

E 2246843 B 4226 P 384-394  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
2/23/2007 10:37:00 AM  
FEE \$41.00 Pgs: 11  
DEP eCASH REC'D FOR THE TALON GROUP

When recorded return to:  
Thomas E. Halter  
Gust Rosenfeld P.L.C.  
201 East Washington, Suite 800  
Phoenix, AZ 85004-2327

Syracuse, UT (#3848-00)

**DRAINAGE AND UTILITY EASEMENT**

**THIS DRAINAGE AND UTILITY EASEMENT** (this "Easement") is made as of the 10 day of February, 2007, by and between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust of 2001 S.E. Tenth Street, Bentonville, Arkansas 72716 ("Wal-Mart" or "Grantor") and **HOLROB-SYRACUSE, LLC**, a Utah limited liability company ("Grantee").

**WITNESSETH:**

**WHEREAS**, Wal-Mart is the owner of the Wal-Mart Tract as shown on the plan attached hereto as Exhibit A hereof, said Tract being more particularly described in Exhibit B attached hereto;

**WHEREAS**, the Wal-Mart Tract is comprised of Lots 1, 2 and 6 of the Syracuse Wal-Mart Subdivision, which subdivision is comprised of Lots 1, 2, 3, 4, 5 and 6 and is shown on a plat recorded on Book 3845, Page 1424 of Official Davis County Records;

**WHEREAS**, Lots 4 and 5 of the Syracuse Wal-Mart Subdivision have been resubdivided into Lots 1, 2, 3, 4, 5, 6 and 7 of the Syracuse Retail Subdivision and are shown on a plat recorded on Book 4034, Page 1249 of Official Davis County Records;

**WHEREAS**, the respective record owners of Lots 1, 2, 3, 4, 5, 6 and 7 of the Syracuse Retail Subdivision and Lot 3 of the Syracuse Wal-Mart Subdivision (said lots collectively referred to herein as the "Outlots" and said Outlots together with the Wal-Mart Tract collectively referred to herein as the "Shopping Center") desire to construct certain retail and commercial improvements upon the Outlots, said Outlots being more particularly described in Exhibit C attached hereto;

**WHEREAS**, pursuant to that certain Easements with Covenants and Restrictions Affecting Land by and between Wal-Mart and Holrob Investments, LLC, a Tennessee limited liability company, dated as of August 9, 2005 and recorded on Book 3845, Page 1435, Official Davis County Records (the "ECR"), Wal-Mart agreed to grant easements necessary for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the development of the Shopping Center; and

**WHEREAS**, pursuant to the terms of the ECR, Wal-Mart desires to grant, for the benefit of the Outlots, certain utility and drainage easements over, through and under certain portions of the Wal-Mart Tract on the terms and conditions set forth herein.

**NOW, THEREFORE**, for and in consideration of the premises, easements, covenants, conditions and restrictions contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart does hereby agree as follows:

700813.3 1/23/07

after recording return to:  
Diana Mills 199564  
First American Title Insurance  
3 Greenway Plaza, #1100  
Houston, TX 77046

1 12-643-0001 12-643-0007  
12-643-0002 12-606-0001  
12-643-0003 12-606-0002  
12-643-0004 12-606-0003  
12-643-0005 12-606-0006  
12-643-0006

1. Easements.

1.1 Grant of Utility Easements. Wal-Mart hereby grants to the owners of the Outlots, for the benefit of the Outlots, a nonexclusive, perpetual easement under and across (but not over Lot 6 of the Syracuse Wal-Mart Subdivision, for the installation, maintenance, repair and replacement of underground water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains, and other facilities necessary for the orderly development and operation of the Outlots and each building from time to time located within the Outlots.

1.2 Grant of Storm Water Easements. Wal-Mart hereby grants to the owners of the Outlots, for the benefit of the Outlots, a nonexclusive perpetual easement over, under, above and across that portion of the Wal-Mart Tract shown cross hatched and identified as a 15' Easement on Exhibit D attached hereto and made a part hereof, for the installation, maintenance, repair and replacement of a storm water drainage system, including, without limitation, any lift and/or pump stations that are part of the such system (the "Storm Water Drainage System"), together with the right to discharge surface water from the Outlots through said Storm Water Drainage System. Wal-Mart has already constructed the Storm Water Drainage System and, at its sole cost and expense, shall operate and maintain, or cause to be operated and maintained, in good order, condition and repair, the Storm Water Drainage System, and make any and all repairs and replacements that may from time to time be required with respect thereto.

1.3 Limitations on Use. The rights granted pursuant to the foregoing easements shall at all times be exercised in such a manner as not to interfere materially with the normal operation of the Wal-Mart Tract and the business conducted therein. Except in an emergency, the right of any owner of an Outlot to enter upon the Wal-Mart Tract for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance notice to the owner of the Wal-Mart Tract as to the time and manner of entry. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of said portions of the Wal-Mart Tract (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the owner of the Wal-Mart Tract). For those improvements installed below-ground, Grantee agrees to return the surface of the easement area to its condition which existed prior to the installation of any of its improvements in the easement area, including but not limited to the replacement of any sod, landscaping, paving or other surface improvements that existed within the easement area prior to such installation

1.4 Grantee will forever waive and hold Grantor harmless for, and defend Grantor against, any claims, losses, causes of action, and suits caused by Grantee or Grantee's agents' employees' or licensees' negligence while exercising the easements rights herein granted and will indemnify Wal-Mart for any losses suffered due to any such claims, losses, causes of action or suits.

1.5 In exercising any rights and privileges under this easement, Grantee shall comply fully with any federal, state or local laws, regulations, ordinances, permits or other authorizations or approvals or other requirements relating to storm water discharges or the control of erosion or sediment discharges from construction projects, including but not limited to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Storm Water General Permit for

Discharges Associated with Construction Activities (collectively the "Storm Water Requirements").

1.6 Grantee shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for, the construction, installation, repair, replacement and maintenance of either Grantee's improvements or the easement area as provided for herein. Grantee shall comply with any and all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including, but not limited to, those governing the prevention, abatement and elimination of pollution and/or protection of the environment and the employment of its workers.

1.7 Grantee shall (i) comply in all respects with all immigration laws, statutes, rules, codes and regulations, (ii) properly maintain all records required by the United States Citizenship and Immigration Services (the "USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each of Grantee's employees, and (iii) respond in a timely fashion to any inspection requests related to such I-9 Forms. Grantee shall fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by the USCIS of Grantee or any of its employees. Grantee shall require all subcontractors performing any work on Grantee's improvements or the easement area as provided for herein to make the covenants set forth in this paragraph.

2. **No Rights in Public; No Implied Easements.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Wal-Mart Tract or the Outlots. No easements, except those expressly set forth in Section 1 shall be implied by this Easement.

3. **Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Easement shall bind and inure to the benefit of the owners of the Wal-Mart Tract and the Outlots, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

4. **Document Modification and Cancellation.** This Easement (including exhibits) may be modified or canceled only by the mutual agreement of (a) Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of the Wal-Mart Tract, or its successors in interest, and (b) the then record owners of each Outlot.

5. **Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

6. **Notices.** All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows::

Wal-Mart: Wal-Mart Real Estate Business Trust. (Store No. #3848)  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716-0550  
Attention: President


With a copy to:

Wal-Mart Real Estate Business Trust. (Store No. #3848)  
Attention: Property Management, Utah  
2001 S.E. 10th Street  
Bentonville, AR 72716-0550

Grantee: Holrob Investements, LLC  
6330 Baum Drive  
Knoxville, TN 37919

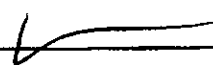
IN WITNESS WHEREOF, Wal-Mart has executed this Easement the day and year first written above.


**WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust

By   
Name: Shannon Letts  
Title: Regional Vice President of Design and Real Estate

\_\_\_\_\_, a/an \_\_\_\_\_

**HOLROB-SYRACUSE, LLC**, a Utah limited liability company

By:   
Its: Pres. de

Approved as to legal terms only  
by   
WAL-MART LEGAL DEPT.  
Date: 2/16/07

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of February, 2007, by Shannon Letts, a regional vice president of design and real estate of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

(Seal and Expiration Date)

" NOTARY SEAL "  
Karen D. Milligan, Notary Public  
Washington County, State of Arkansas  
My Commission Expires 10/30/2008  
State of ~~Tennessee~~

Karen D. Milligan  
Notary Public

County of Knox

Before me, Susan J. Haines of the state and county mentioned, personally appeared Robert S. Talbott with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be the President of Holrob Syracuse, LLC, a Utah limited liability company, the within named bargainer, a limited liability company, and that such President as such President, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the limited liability company as its President.

Witness my hand and seal, at office in Knoxville, this 30 day of January, 2007.

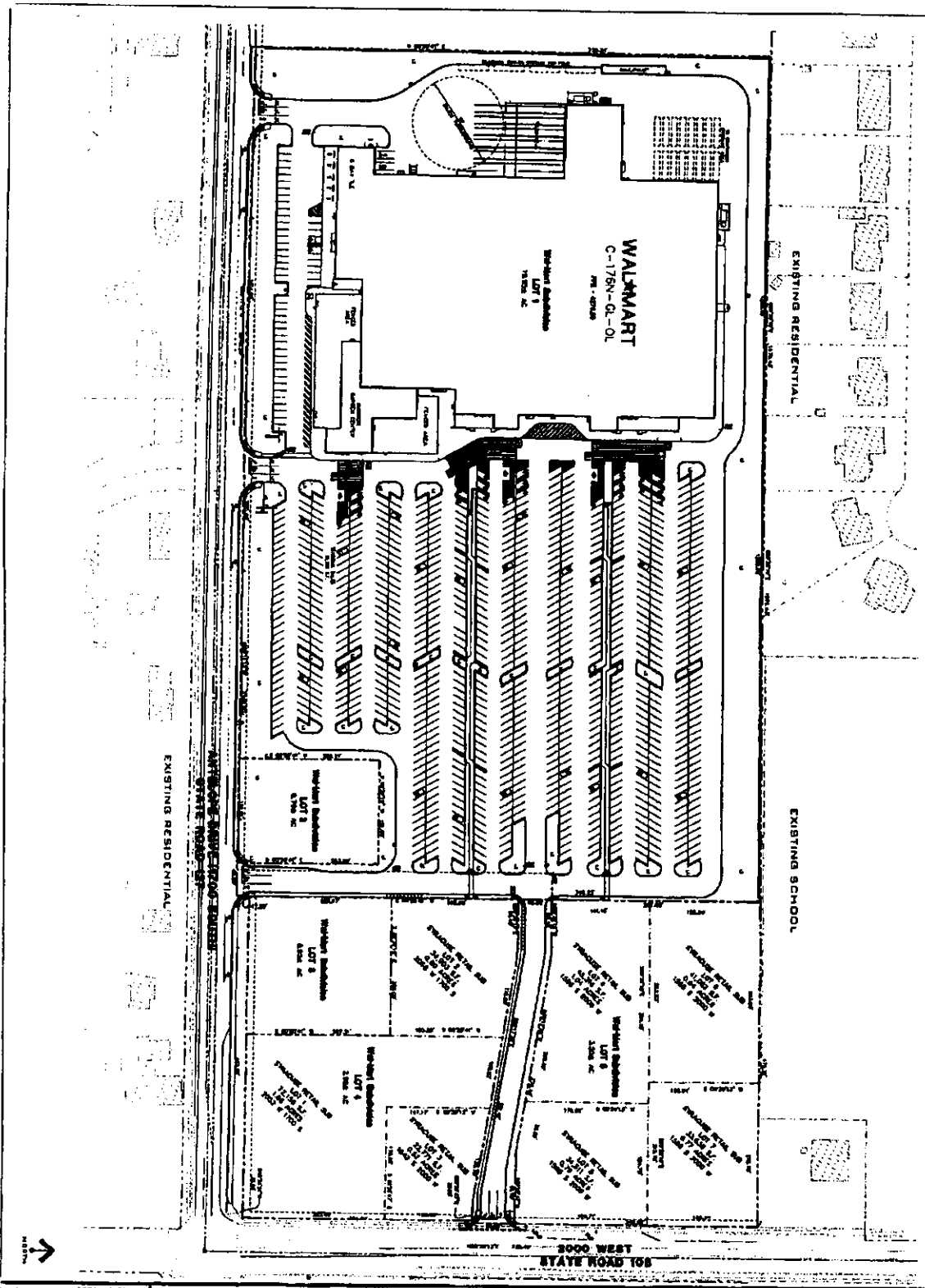
(Seal and Expiration Date)

SUSAN J. HAINES  
STATE OF TENNESSEE  
NOTARY PUBLIC  
KNOX COUNTY

Susan J. Haines  
Notary Public  
expires: 9-11-10

**EXHIBIT A**

(Site plan showing Wal-Mart Tract and Outlots)



03.10  
 SITE PLAN  
 SITE DEVELOPMENT CONSTRUCTION PLANS FOR  
**WALMART SUPERCENTER**  
**STORE 3848-00**  
 NWC 1700 SOUTH & 3000 WEST  
 SYRACUSE, UTAH

**EXHIBIT B**

(Wal-Mart Tract legal description)

ALL OF LOTS 1, 2 & 6 OF THE SYRACUSE WAL-MART SUBDIVISION, RECORDED IN  
BOOK 3845, PAGE 1424 OF DAVIS COUNTY RECORDS.



**EXHIBIT C**

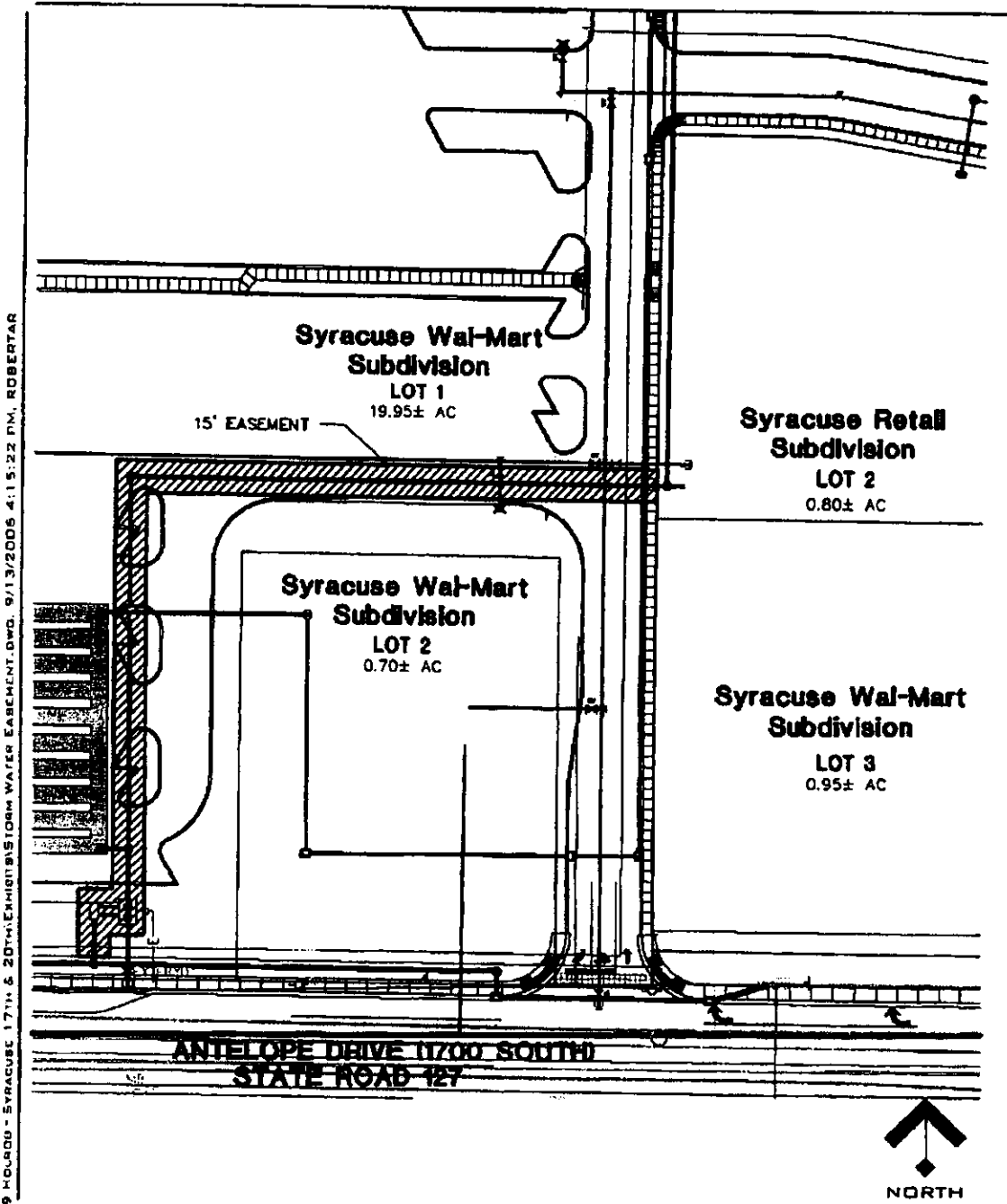
(Outlots legal description)

ALL LOTS 1, 2, 3, 4, 5, 6 AND 7 OF THE SYRACUSE RETAIL SUBDIVISION AS SHOWN ON A PLAT RECORDED IN BOOK 4034, PAGE 1249 OF OFFICIAL DAVIS COUNTY RECORDS AS ENTRY NUMBER 2168297.

AND

LOT 3 OF THE SYRACUSE WAL-MART SUBDIVISION, RECORDED IN BOOK 3845, PAGE 1424 OF DAVIS COUNTY RECORDS.

**EXHIBIT D**  
**(Storm Water Easement)**



J:\2005\05-0009 HOUR00 - SYRACUSE 17TH & 20TH EXHIBIT B'S STORM WATER EASEMENT.DWG. 9/13/2006 4:15:22 PM, ROBERTAR

PROJ #: 05.0009  
 DATE: 09/12/06  
 REV #: 09/13/06  
 ASI #:   
 H DATE:

**SYRACUSE TOWN CENTER**  
**EXHIBIT**  
 NORTHWEST CORNER 2000 WEST & 1700 SOUTH  
 SYRACUSE, UTAH  
**EXHIBIT A - STORM WATER EASEMENT**

**GLE ASSOCIATES**  
 250 SOUTH 400 EAST  
 SUITE 204  
 SALT LAKE CITY  
 UTAH 84111  
 P 801 262 9809  
 F 801 262 9804  
 GLEASSOC.COM  
 ARCHITECTURE  
 ENGINEERING PLANNING  
 LANDSCAPE ARCHITECTURE  
 LAND SURVEYING

