

This instrument prepared by:

Wal-Mart Stores, Inc.
Sam M. Walton Development Complex
2001 S.E. 10th Street
Bentonville, AR 72716-0550

E 2295459 B 4340 P 1202-1206
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
8/7/2007 2:46:00 PM
FEE \$18.00 Pgs: 5
DEP eCASH REC'D FOR METRO NATIONAL TITLE

Return recorded document to:

Fidelity National Title Insurance Company
717 North Harwood Street, Suite 800
Dallas, TX 75201
Attn: Rod Faris
MNT 07050798
14-352-0008

SPECIAL WARRANTY DEED

This SPECIAL WARRANTY DEED is made effective July 31, 2007, between **WAL-MART STORES, INC.**, a Delaware corporation, with a corporate address of 702 S.W. 8th Street, Bentonville, AR 72716 ("Grantor"); and **MILLCREEK PARTNERS, LLC**, a Utah limited liability company, with an address of 1412 S. Legend Hills Drive, Suite 327, Clearfield, UT 84015 ("Grantee").

W I T N E S S E T H:

THAT GRANTOR, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby forever grant, bargain, sell, convey and confirm to Grantee, and its successors and assigns, a certain tract of land situated, lying, and being in the City of Clinton, Davis County, Utah, as more particularly described to wit:

See Exhibit "A" attached hereto and made a part hereof ("Property");

TO HAVE AND TO HOLD said land unto Grantee, and its successors and assigns, forever, with all tenements, appurtenances and hereditaments thereunto belonging, subject to easements, conditions, restrictions and other matters of record, and subject to the following conditions and restrictions:

- (a) The Property shall only be used for purposes of the kind typically found in shopping centers, including, but not limited to, offices, restaurants, and retail shops;
- (b) The Property shall not be used for or in support of the following: (i) a discount store in excess of seven thousand two hundred (7,200) square feet in floor size, wholesale membership/warehouse club, grocery store/supermarket, pharmacy/drug store; (ii) gas station, quick lube/oil change facility, automobile tire sales; (iii) movie theater or bowling alley; (iv) health spa/fitness center greater than three thousand (3,000) square feet; there shall be maintained a parking ratio of eight (8) parking spaces for every one thousand (1,000) square feet of floor building area used for a health spa/fitness center three thousand (3,000) square feet or less; (v) adult book store, adult video store (an adult video store is a video store that sells or rents videos that are rated NC-17, X, XX, XXX, or of a rating assigned to works containing material more sexually explicit than XXX, by the film rating board of the Classification and Rating Administration), pawn shop, bar, night club, gaming activities (including but not limited to gambling, electronic gaming machines, slot machines and other devices similar to the aforementioned), billiard parlor, any place of recreation/amusement, or any business whose principal revenues are from the sale of alcoholic beverages for on or off premises consumption; or (vi) any business whose major source of business is derived from the cashing of checks or making short-term or "payday advance" type loans; this is not to exclude the regular business of any bank or financial institution insured by the F.D.I.C. or mortgage brokerage firm or other similar business providing long-term, mortgage type loans;

- (c) Only one (1) one-story building may be erected on said Property, which building, so long as the applicable parking ratio required herein is met, shall not exceed seven thousand two hundred (7,200) square feet in floor size or twenty-four (24) feet in height, including all towers, parapets, and architectural features;
- (d) In the event the Property is used for a building with multiple tenants, there shall be not less than five (5) parking spaces for every one thousand (1,000) square feet of floor building area thereon, and thirteen (13) parking spaces for every one thousand (1,000) square feet of floor building area used for restaurants exceeding two thousand (2,000) square feet; in the event the Property is used for a free-standing restaurant, there shall be not less than fifteen (15) parking spaces on the Property for every one thousand (1,000) square feet of floor building area thereon; for all other uses permitted hereunder there shall be not less than five (5) parking spaces per one thousand (1,000) square feet of floor building area on the Property;
- (e) (i) only signs advertising business located on the Property may be erected thereon; (ii) signs located on the Property shall not contain images or words that are offensive to the ordinary reasonable person (whether cloaked in images, words, or phrases carrying double meanings); (iii) the Property and all improvements erected or constructed thereon shall be maintained in good condition and repair; and (iv) the exterior of any building constructed on the Property shall not be constructed of metal;
- (f) Grantor reserves the right to approve, which approval shall not be unreasonably withheld, conditioned, or delayed, prior to commencement of any construction by Grantee of any buildings or improvements on the Property, Grantee's: (i) site plans including setbacks from lot lines, location and dimensions of parking areas and spaces, driveways and service areas, placement of building(s) and other improvements including square footage of building(s), location of trash collection, stop signs and bars at all curb cuts, and the location of existing Grantor signage (if any) on the Property; (ii) utility plans including all utility connections (including electric and telephone); (iii) grading plans including stormwater management and detailed elevations; (iv) erosion and sediment control plans including rock construction entrances (to be in place prior to any construction), silt fence (to be in place prior to any construction) and other erosion controls required on the Property; (v) exterior elevations of the front, back, and both sides of the building(s), including height; (vi) exterior signage plans indicating the dimensions of exterior pylon or monument signage and the design of the sign panel(s) to be placed onto the sign structure (collectively the "Development Plan"). Said Development Plan is to be prepared by certified/licensed architects and/or engineers and shall conform to the restrictions set forth above. Grantee shall deliver full-sized plans of the said Development Plan to Grantor for its approval. Grantor shall have thirty (30) days after receipt of the Development Plan from Grantee to approve or disapprove the Development Plan in writing. If the Development Plan is disapproved, Grantor shall give the reasons for such disapproval, and Grantee shall resubmit to Grantor a revised Development Plan incorporating Grantor's suggested revisions within thirty (30) days from the date of Grantee's receipt of Grantor's disapproval, and the same time schedule as mentioned above shall be repeated until the Development Plan is approved; and
- (g) All such covenants, conditions, restrictions and approval rights shall remain in effect for a period of fifty (50) years from the recording of this Deed. The aforesaid covenants, conditions, restrictions and approval rights shall run with and bind the Property, and shall bind Grantee or an affiliated entity, or its successors or assigns, and shall inure to the benefit of and be enforceable by Grantor, or an affiliated entity, or its successors and assigns, by any appropriate proceedings at law or in equity to prevent violations of such covenants, conditions, restrictions and approval rights and/or to recover damages for such violations, including without limitation damages incurred by Grantor, or an affiliated entity, concerning the business conducted on the land adjacent to the Property.

No representations or warranties of any kind have been made by Grantor or anyone on its behalf to the Grantee as to the condition of the Property described herein or any improvements thereon erected, if any, and it is understood and agreed by the parties that the Property is sold **“AS IS, WHERE IS – WITH ALL FAULTS AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.”**

Grantor makes no warranty or representation regarding the condition of the Property, including, without limitation, environmental or ecological condition, it being understood that the Grantee is taking the Property **“AS IS, WHERE IS – WITH ALL FAULTS AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.”**

Without limiting the foregoing, Grantee hereby covenants and agrees that Grantee accepts the property **“AS IS”** and **“WHERE IS”**, and with all faults and defects, latent or otherwise, and that Grantor is making no representations or warranties, either expressed or implied, by operation of law or otherwise, with respect to the quality, physical conditions or value of the Property, the Property’s habitability, suitability, merchantability or fitness for a particular purpose, the presence or absence of conditions on the Property that could give rise to a claim for personal injury, property or natural resource damages; the presence of hazardous or toxic substances, materials or wastes, substances, contaminants or pollutants on, under or about the Property, or the income or expenses from or of the Property.

AND SAID GRANTOR does hereby warrant the title to said Property, and will defend the same against the lawful claims of all persons claiming by, through and under Grantor, but none other, subject to the easements, encumbrances, restrictions, and other matters of record, the conditions and restrictions as stated herein, and subject to real property taxes for the year of 2007, and thereafter.

[Signature page follows]

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed in its name by its Director of Land Development of the Grantor, Wal-Mart Stores, Inc., and caused its corporate seal attested by its Assistant Secretary to be hereto affixed the day and year first above written.

WAL-MART STORES, INC.,
a Delaware corporation

ATTEST:

By:

Ramona C. West
Assistant Secretary

By:

T. Latrice Watkins
Director of Land Development



[CORPORATE SEAL]

Approved as to legal terms only
by *T. Latrice Watkins*
WAL-MART LEGAL DEPT.
Date: 7/17/07

ACKNOWLEDGEMENT

STATE OF ARKANSAS)
) §§
COUNTY OF BENTON)

In the State of Arkansas, County of Benton, on this July 18, 2007, before me, the undersigned, a Notary Public in and for said County and State, personally appeared T. Latrice Watkins to me personally known, who being by me duly sworn did say that she is the Director of Land Development of the Grantor in the foregoing special warranty deed, and that the seal thereto affixed is the corporate seal of said Wal-Mart Stores, Inc., and that said special warranty deed was signed, sealed and delivered by her on behalf of said corporation by authority of its Board of Directors and said T. Latrice Watkins acknowledged said special warranty deed to be the free act and deed of said corporation.

WITNESS MY HAND and notarial seal subscribed and affixed in said County and State, the day and year in this certificate above written.

By: *Paula A. Seay*
Name: Paula A. Seay
Notary Public

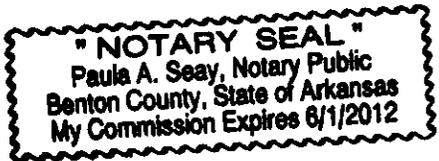


Exhibit "A"

[Legal Description]

Lot 8 of the FINAL PLAT OF CLINTON PINES SUBDIVISION PHASE 2, according to the official plat thereof recorded April 11, 2003, as Entry No. 1852871, in Book 3267, at Page 912, Official Records of Davis County, Utah.