

When recorded return to:  
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Spanish Fork (East), UT #3988-00

**EASEMENTS WITH COVENANTS AND RESTRICTIONS  
AFFECTING LAND ("ECR")**

THIS AGREEMENT is made as of the 6<sup>th</sup> day of December, 2016,  
between WAL-MART STORES, INC., a Delaware corporation ("Wal-Mart"), and WDG  
SPANISH FORK, LLC, a Utah limited liability company ("Developer").

**WITNESSETH:**

**WHEREAS**, Wal-Mart is the ground lessee of the Wal-Mart Tract (the "Wal-Mart Tract") as shown on the plan attached hereto as Exhibit A-1 hereof; said Tract being more particularly described in Exhibit B attached hereto;

**WHEREAS**, Developer is the owner of the Developer Tract (the "Developer Tract") and the Outparcels (the "Outparcels") shown on the plan attached hereto as Exhibit A-1 hereof, the same being more particularly described in Exhibit C hereof and is the fee title owner of the Wal-Mart Tract; and

**WHEREAS**, Wal-Mart and Developer desire that the Wal-Mart Tract, the Developer Tract and the Outparcels be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial Shopping Center (sometimes hereinafter referred to as the "Shopping Center"), and further desire that the Shopping Center be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

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

1. Building/Common Areas.

1.1 "Building Areas" as used herein shall mean those portions of the Shopping Center shown on Exhibit A-2 as "Building Area" (and "Future Building Area" and "Future Expansion Area"). Canopies may encroach from the Building Areas over the Common Areas provided the canopies: (a) do not interfere with the use of the Common Areas; (b) project from any building or structure more than five feet (5') over or outside of the Building Area (c) comply with all applicable laws, rules, ordinances and regulations of every governmental body having jurisdiction over the Shopping Center; and (d) do not materially alter the parking

configuration or vehicular or pedestrian circulation, and/or access in and through the entire Shopping Center.

1.2 "Common Areas" shall be all of the Shopping Center except the Building Areas. Docks, loading areas, service areas and canopies which are attached to buildings but which extend over Common Area shall be deemed to be part of the Building Area which they serve or the buildings to which they are attached and not part of the Common Areas.

1.3 "Tracts" as used herein shall mean the Wal-Mart Tract and the Developer Tract but not the Outparcels. Reference to a "Tract" refers to the Wal-Mart Tract or the Developer Tract but not the Outparcels.

1.4 Conversion to Common Areas: Those portions of the Building Areas which are not from time to time used or cannot, under the terms of this Agreement, be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein. An area converted to Common Area may be, as set forth above, converted back to Building Area, if at the time of conversion back to Building Area, it meets the requirements of this ECR.

2. Use. Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, restaurants, insurance agencies, stock brokerage offices, financial institutions, service shops, offices, and retail stores. No theatre, bowling alley, billiard parlor, night club or other place of recreation or amusement in excess of 5,000 square feet in size, day care facility, child care facility, preschool or children's nursery, any business which derives in excess of 30% of its gross sales from the sale of alcoholic beverages, any business or facility used in growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling marijuana, whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant, shall occupy space within the Shopping Center without the prior written consent of Wal-Mart, which Wal-Mart may withhold in its sole and absolute discretion. No restaurant or cafeteria shall occupy space on any portion of the Restaurant Restriction Area depicted on Exhibit A-2 without the prior written consent of Wal-Mart, which Wal-Mart may withhold in its sole and absolute discretion. Developer recognizes that said businesses may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business. Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Wal-Mart on the Wal-Mart Tract. Developer recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its business on the Wal-Mart Tract; and Developer hereby waives any legal action for damages or for equitable relief which might be available to Developer because of such cessation of business activity by Wal-Mart.

3. Competing Business. Developer covenants that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of the Wal-Mart Tract, either as owner or lessee, no space in or portion of the Developer Tract or the Outparcels, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Developer, shall be leased or occupied by or conveyed to any other party for use as (i) a remote operation or distribution (such as remote internet fulfillment center or locations, locker, grocery, drive-through, grocery home shopping pick-ups, mail order, or similar pick-up facility), (ii) a facility dispensing gasoline or fuel from pumps, (iii) a pharmacy, (iv) a variety, general,

convenience or "dollar" store, (v) a grocery store or supermarket as such terms are defined below, or (vi) as any combination of the foregoing uses. In the event of a breach of this covenant, Wal-Mart shall have the right to terminate this Agreement and to seek any and all remedies afforded by either law or equity, including, without limitation, the rights to injunctive relief. "Grocery store" and "supermarket", as those terms are used herein, shall mean a single food store or food department containing more than 3,000 square feet of building space used for the purpose of selling food for off premises consumption, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments. In no event shall a restaurant that primarily sells prepared ready to eat meals and/or fast-food meals for on-site and offsite consumption be deemed to be a Grocery Store or a supermarket.

#### 4. Buildings.

4.1 Design and Construction. The Buildings constructed on the Shopping Center shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one Tract or Outparcel onto another Tract or Outparcel except as provided for in Subsection 4.4. below. The design and construction shall be of high quality. No improvements shall be constructed, erected or expanded or altered on the Outparcels until the plans for the same (including site layout, exterior building materials and colors and parking) have been approved in writing by Developer. No building constructed on the Wal-Mart Tract or the Developer Tract shall exceed 40' in height above the elevation of the applicable Tract or Outparcel as of the date hereof ("Height"). Incidental architectural embellishments and peaks shall not be considered in connection with determining compliance with said Height restriction. Except for a building used for a bank or credit union, which may not exceed twenty-seven feet (27') in Height, no building constructed on the Outparcels shall exceed twenty-three (23') in Height (except all mechanical improvements and architectural embellishments can be up to six feet (6') making the total maximum height twenty-eight feet (28')) in Height. No building shall have a metal exterior.

4.2 Location/Size. No building shall be constructed on the Shopping Center (as either immediate development or future expansion) except within the Building Areas. Any buildings located on the Outparcels shall not exceed 8,000 square feet in size.

4.3 Fire Protection. Any building constructed within sixty (60) feet of the Wal-Mart Tract shall be constructed and operated in such a manner which will preserve the sprinklered rate on the Wal-Mart building.

4.4 Easements. In the event building wall footings encroach from one Tract onto the other Tract, despite efforts to avoid that occurrence, the party onto whose Tract the footings encroach shall cooperate in granting an encroachment permit or non-exclusive easement to the party whose building wall footings encroach for the construction, maintenance and replacement of such footings.

#### 5. Common Areas.

5.1 Grant of Easements. Each party, as grantor, hereby grants to the other party, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of grantee, a nonexclusive permanent easement over and through the Wal-Mart Tract and the Developer Tract (exclusive of Building Areas) for roadways, walkways, ingress

and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Building Areas located on the Wal-Mart Tract and the Developer Tract. Wal-Mart and Developer hereby grant for the benefit of the Outparcels, nonexclusive permanent easements for vehicular and pedestrian access, ingress, and egress over and across the Wal-Mart Tract and the Developer Tract (exclusive of the Building Areas); provided, however, in no event shall the owner, occupant, licensee or invitee of any of the Outparcels(s) be permitted to use the Wal-Mart Tract or the Developer Tract for vehicular parking or for any other purpose other than as described above. Developer hereby grants to Wal-Mart for the benefit of the Wal-Mart Tract, nonexclusive permanent easements for vehicular and pedestrian access, ingress, and egress over and across the Outparcels (exclusive of the Building Areas); provided however, in no event shall the owner, occupant, licensee or invitee of the Wal-Mart Tract be permitted to use the Outparcels for vehicular parking or for any other purpose other than as permitted pursuant to the terms of this Agreement. The foregoing notwithstanding, the use of the Common Areas for ingress, egress, access and parking shall not cause the obstruction nor the impediment of vehicular or pedestrian traffic, upon or across the parking areas, entrances, exits, driveways, walks or service drives located within the Common Areas. The foregoing notwithstanding, in no event shall any portion of the Wal-Mart Tract be used for construction vehicular ingress or egress except for that portion of the Wal-Mart Tract identified as the "Construction Access" on Exhibit A-3 attached hereto.

**5.2 No Barriers.** No walls, fences, or barriers of any kind shall be constructed or maintained on the Common Areas, or any portion thereof, by any party which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitation, of pedestrians and vehicular traffic between the various lots; provided, however, reasonable traffic controls (which approval shall not be unreasonably withheld or delayed) as may be necessary to guide and control the orderly flow of traffic may be installed so long as access driveways to the parking areas in the Common Areas are not closed or blocked. The only exceptions to this provision shall be (1) for changes to the Building Areas and Common Areas permitted by this ECR, (2) for incidental encroachments upon the Common Areas which may occur as a result of the use of the ladders, scaffolding, storefront barricades and similar facilities resulting in temporary obstruction of the Common Areas, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction work being expeditiously pursued, (3) for incidental, immaterial and temporary encroachments upon the Common Areas which may occur in conjunction with the construction, maintenance or repair of buildings and improvements on the Tracts or Outparcels, so long as such construction, maintenance or repair is being diligently pursued, (4) for temporary blockage of certain areas deemed necessary by the parties to prevent a public dedication of an easement or access right, and (5) for parking lot paving, landscaping and lighting facilities, such directional traffic signs as are required to facilitate the orderly and free flow of pedestrian and vehicular traffic, and pylon sign in the location indicated on the Site Plan.

### **5.3 Limitations on Use.**

(1) **Customers.** Each party shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business in the Shopping Center.

(2) **Employees.** Each party shall use reasonable efforts to ensure that employees park on the Common Areas of said party's Tract or Outparcel.

(3) General. Any activity within the Common Areas other than its primary purpose of the Common Areas, which is to provide for parking for the customers, invitees and employees of those businesses conducted within the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. The use by Wal-Mart of the Common Areas on the Wal-Mart Tract for the display, sale and storage of merchandise and for the use of seasonal sales structures is expressly permitted, provided such use does not materially impair the primary purpose of the Common Areas (as stated above). Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use. Notwithstanding the foregoing, each party covenants and agrees that, to the extent allowed by law, neither party will allow the Common Areas on its tract to be used for rallies, demonstrations, protests, picketing or handbilling to protest, publicize or allege improprieties regarding the acts, policies or operating practices of any business operating within the Shopping Center.

5.4 Utility and Service Easements. Each party hereby establishes and grants to the other party a perpetual nonexclusive easement for the benefit of the owner of each Tract or Outparcel, on, across and under the Common Areas, to install, use, maintain and repair public utility services and distribution systems (including storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center, now upon or hereafter installed on, across or under the Common Areas, to the extent necessary to service such Tract or Outparcel). Both parties shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. No such lines, sewers, utilities or services of one party shall be installed within the Building Areas on the other party's parcel nor shall any utility lines be constructed in any manner as to impede or restrict vehicular or pedestrian traffic upon and across the parking areas, entrances, exits, driveways, walks or other drives located within the Common Areas. Subject to the foregoing, the location of any utilities hereafter installed shall be determined by the owner of the Tract or Outparcel upon which such utilities are to be installed. Subject to the restrictions on location set forth in this Section 8.3, any such installed utility services may be relocated by the owner of a Tract or Outparcel on such owner's Tract or Outparcel, subject to compliance with applicable laws, at the expense of the owner of that Tract or Outparcel, provided that such relocation shall not interfere with, increase the cost of, or diminish utility services to any other Tract or Outparcel.

5.5 Water Flow. Each party hereby establishes and grants a perpetual nonexclusive easement on its Tract or Outparcel for the benefit of the owner of each other Tract or Outparcel to use, maintain and repair any storm water drainage system (the "Storm Drainage System") now or hereafter located on either Tract or any Outparcel, together with the right to discharge surface water runoff across portions of either Tract or any Outparcel in accordance with the design of the Storm Drainage System. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements substantially as shown on Exhibit A-2 (including without limitation building and building expansion, curbs, drives and paving) shall be permitted; provided that no such alterations shall be installed within the Building Areas on the other party's parcel nor shall any utility lines be constructed in any manner as to impede or restrict vehicular or pedestrian traffic upon and across the parking areas, entrances, exits, driveways, walks or other drives located within the Common Areas.

6. Development, Parking Ratios, Maintenance, and Taxes.

6.1 Development. The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement.

6.2 Wal-Mart Tract and Developer Tract "Parking Ratio". Wal-Mart agrees that at all times there shall be independently maintained on the Wal-Mart Tract parking area sufficient to accommodate not fewer than 4.0 car spaces for each 1,000 square feet of building or buildings on the Wal-Mart Tract. Developer agrees that at all times there shall be independently maintained on the Developer Tract parking area sufficient to accommodate not fewer than 5.0 car spaces for each 1,000 square feet of building or buildings on the Developer Tract.

6.3 Outparcel "Parking Ratio". Developer agrees that at all times there shall be independently maintained on each Outparcel parking area sufficient to accommodate not fewer than: (i) 10 spaces for every 1,000 square feet of building space for any restaurant or entertainment use; or (ii) 5.0 spaces per 1,000 square feet of building space for any other use.

6.4 Maintenance.

(1) Standards. The Outparcels, the Developer Tract and the Wal-Mart Tract shall be kept neat and orderly until improved and constructed. Following completion of the improvements on the Common Areas, the parties hereto shall maintain the Common Areas in good condition and repair. The maintenance is to include, without limitation, the following:

(a) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair;

(f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and

(g) Maintaining elements of the Storm Drainage System.

(2) Expenses. The respective owners shall pay the maintenance expense of their Tracts or Outparcels.

(3) By Agent. Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties to maintain the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

6.5 Taxes. Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the Common Areas owned by it. If any such owner shall fail to so pay such taxes and assessments, any other property owner, or the tenant of the property owner, may pay the taxes and assessments and the paying property owner or tenant may then bill the defaulting property owner for the expense incurred, and the defaulting property owner shall pay said bill within fifteen (15) days of receipt thereof. Notwithstanding the foregoing, a property owner shall not be required to pay, discharge or remove any tax or assessment on its property so long as it shall contest at its own expense the existence, amount or validity thereof by appropriate proceedings which shall prevent the collection of or other realization upon the tax or assessment so contested, and the sale, forfeiture or loss of the property subject to the tax or assessment to satisfy the same.

7. Signs. No rooftop sign shall be erected on the building constructed on the Outparcels. No freestanding identification sign may be erected on the Outparcels without approval of the Developer, and in no event shall such freestanding identification sign exceed the height of the Shopping Center pylon sign or block the visibility of the Wal-Mart Store. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3'3" in height, the type and location of such signs to be approved by Developer. No sign shall be located on the Common Areas on the Wal-Mart Tract and the Developer Tract except signs advertising businesses conducted thereon. No signs shall obstruct the ingress and egress shown on Exhibit A-2. Developer shall install and maintain Shopping Center pylon sign (the "Pylon Sign") in the location shown on Exhibit A-2 attached to this Agreement. The design of the Pylon Sign shall be as shown on Exhibit D attached to this Agreement or such other design as mutually approved by Wal-Mart and Developer. Developer, as grantor, grants to Wal-Mart, as grantee, for the benefit of the Wal-Mart Tract, appurtenant to the Wal-Mart Tract, a perpetual, non-exclusive easement to construct, maintain, operate and replace, at Wal-Mart's sole cost and expense, sign panels on the Pylon Sign. Wal-Mart shall have the right to install its sign panel in the first position of the Shopping Center occupants on the Pylon Sign. Such panel shall be of the dimensions shown on Exhibit D. No other occupant or owner in the Shopping Center shall be allocated signage panels on the Pylon Sign which in the aggregate exceed the signage allocated to Wal-Mart. Wal-Mart agrees to pay to Developer Wal-Mart's proportionate share (as calculated below) of Developer's actual out-of-pocket costs paid to third parties for constructing and maintaining the Pylon Sign, including utility costs for illuminating the Pylon Sign, if applicable; provided, however, that Wal-Mart's share of the cost of constructing the Pylon Sign will not exceed \$54,000.00; and provided further that in the case of maintenance that includes only specific panels on the Pylon Sign the party who owns such panels shall pay the entire cost of such maintenance. Wal-Mart's proportionate share of the cost of said construction and maintenance shall be calculated by multiplying the total cost of said construction or maintenance, as the case may be, by a fraction, the numerator of which is the total square

footage of the Pylon Sign allocated by Developer to Wal-Mart for Wal-Mart's use and the denominator of which is the total square footage of the Pylon Sign allocated for use by Wal-Mart and other tenants or occupants of the Shopping Center. Wal-Mart shall pay to Developer Wal-Mart's proportionate share of the cost of constructing the Pylon Sign in one lump-sum payment within 30 days after receipt by Wal-Mart of Developer's written invoice therefor accompanied by satisfactory evidence of the actual costs contained in such invoice. Developer may bill Wal-Mart for Wal-Mart's proportionate share of Developer's reasonable actual out-of-pocket costs paid to third parties for maintaining the Pylon Sign no more frequently than quarterly and Wal-Mart shall pay its proportionate share of the Pylon Sign maintenance costs within 30 days after receipt of a written invoice therefor accompanied by satisfactory evidence of the actual costs contained in such invoice from Developer. The Pylon Sign shall be completed on or before January 1, 2017 (the "Completion Date"). In the event the Pylon Sign is not completed on or before the Completion Date, Wal-Mart shall have the right to construct the Pylon Sign and Developer shall reimburse Wal-Mart for Developer's share of the cost of constructing the Pylon Sign, which share shall be to the costs of construction less the Wal-Mart share.

## 8. Indemnification/Insurance.

8.1 Indemnification. Each party hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Tract or Outparcel, except if caused by the act or negligence of the other party hereto.

### 8.2 Insurance.

(1) Each owner and/or lessee of any portion of the Shopping Center shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property; each party's insurance to afford protection to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage. Each party shall provide the other party with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without 10 days prior written notice to Wal-Mart and the Developer.

(2) At all times during the term of this Agreement, each party shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the state in which the parties' respective properties are located, with such insurance to be for the full replacement value of the insured improvements. The owner or lessee, as applicable, of a Tract or Outparcel shall pay for any increase in the cost of insuring the improvements on the other Tracts or Outparcels if such increase is due to the use by such owner or its tenant(s).

(3) Policies of insurance provided for in this Section 8 shall name Wal-Mart and Developer as insureds.



(4) Each owner and Lessee of any portion of the Shopping Center for itself and its property insurer hereby releases the other owners of portions of the Shopping Center from and against any and all claims, demands, liabilities or obligations whatsoever for damage to property or loss of rents or profits resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

(5) Notwithstanding anything to the contrary contained in this Section 8, so long as the net worth of Wal-Mart shall exceed \$100,000,000.00, and so long as Wal-Mart is owner or lessee of the Wal-Mart Tract, Wal-Mart shall have the right to retain (in whole or in part) the financial risk for any claim. If Wal-Mart elects self-insurance, Wal-Mart shall, upon request, provide Developer with a description of such self-insurance program, financial statements, and evidence of any partial insurance coverage which may be supplementing any plan of partial self-insurance.

## 9. Eminent Domain.

9.1 Owner's Right To Award. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's Tract or Outparcel giving the public or any government any rights in said Tract or Outparcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located in the Shopping Center, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

9.2 Collateral Claims. All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.

9.3 Tenant's Claim. Nothing in this Section 9 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

9.4 Restoration Of Common Areas. The owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Tract or Outparcel as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

10. Rights And Obligations Of Lenders. Any holder of a first lien on any portion of the Shopping Center, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

11. Release from Liability. Any person acquiring fee or leasehold title to any portion of the Shopping Center shall be bound by this Agreement only as to the Tract, Outparcel or portion of the Tract or Outparcel acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Tract, Outparcel or portion of the Shopping Center, except as to obligations, liabilities or responsibilities that accrue during said period of ownership or lease. Although persons may be released under this Section, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said tracts running with the land.

12. Breach. In the event of breach or threatened breach of this Agreement, only all of the record owners of the Wal-Mart Tract as a group, or all record owners of the Developer Tract as a group, or Wal-Mart so long as it or any affiliate has an interest as owner or lessee of the Wal-Mart Tract or Developer so long as it or any affiliate has an interest as owner or lessee of the Developer Tract, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. Notwithstanding the foregoing, all of the record owners of an Outparcel shall be entitled to take any action permitted by this Agreement with respect to the breach of Sections 5.1, 6.4, 6.5, 8.1, 8.2(4) and 9. A "breach" for purposes of this ECR shall mean: a default by any party in a material respect under any term or condition of this Agreement that such party fails either to cure or comply with or to diligently pursue a cure within (i) ten (10) days of receipt of written notice thereof from any other party or record owner, with respect to any monetary default, or (ii) thirty (30) days of receipt of written notice thereof from any other party or record owner with respect to a non-monetary default; provided, however, in the event such non-monetary breach or default is curable but is of such a nature that it cannot with due diligence be cured within such thirty (30) day period, then, provided such party commences to cure such non-monetary breach or default within the thirty (30) day period and continues to cure such non-monetary breach or default with due diligence, then such thirty (30) day period shall be extended for so long as it shall require such party in the exercise of due diligence to cure such non-monetary breach or default, but not to exceed an additional ninety (90) days. In addition to the rights and remedies set forth in this Section 12, in the event of a monetary default, interest shall accrue on all amounts from the due date until the date of actual payment in the amount of 12% per annum. Further, in the event of breach of this Agreement, the prevailing party shall be entitled to recover all costs of collection, including attorneys' and filing fees and court costs.

13. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

14. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by both Developer and Wal-Mart there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (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) Developer, as long as it or its affiliate has any interest as either owner or lessor of the Developer Tract, or its successors in interest.

15. Non-Merger. So long as Wal-Mart or its affiliate is owner or lessee of the Wal-Mart Tract, this Agreement shall not be subject to the doctrine of merger.

16. Duration. Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after 99 years from the date hereof.

17. 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.

18. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

19. Transfer of Interests; Notices.

19.1 Transfer of Interests. In the event that any person or entity (the "Acquiring Party") shall acquire a fee or mortgage interest in any portion of the Shopping Center subject to this Agreement, or any portion thereof, the Acquiring Party shall execute and file in the land records of Utah County, Utah, a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this Agreement may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired (the "Notice Statement"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, a copy of such Notice Statement to all other persons or entities then holding fee or mortgage interests in any tract subject to this Agreement, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Utah County, Utah (the "Existing Interest Holders"). Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this Section 19.1, it shall not be entitled to receive any notice required or permitted to be given under this Agreement, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement. It is understood and agreed that the provisions of this Section 19.1 regarding the recordation of the Notice Statement are satisfied with respect to Developer and Wal-Mart.

19.2 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 Stores, Inc. (#3988-00)  
Attention: President  
2001 S.E. 10th Street  
Bentonville, AR 72716  
Telephone: \_\_\_\_\_

With a copy to:  
Wal-Mart Stores, Inc. (#3988-00)  
Attention: Property Management, State of Utah  
2001 S.E. 10th Street  
Bentonville, AR 72716-0550  
Telephone: \_\_\_\_\_

Developer: WDG Spanish Fork, LLC  
Attn: Spencer Wright  
1178 Legacy Crossing Blvd, Suite 100  
Centerville, Utah 84014  
Telephone: 801-773-7339

Notices shall be effective upon receipt or refusal. The telephone numbers listed above are for purposes of providing the same to overnight delivery services and are not to be otherwise used for notice purposes. In the event that any person acquires a fee interest in the Shopping Center said person shall be entitled to provide a request for notice to the addressees listed above, which request, in order to be effective, must also be recorded in the county recorder's office in the county in which the Shopping Center is located. Any party shall be entitled to change its address for notice by providing notice of such change and recording a copy of the notice of such change in the county recorder's office in the county in which the Shopping Center is located. Until such time as the notice of change is effective pursuant to the terms of this Section 19 and until such time as it is recorded as required above, the last address of said party shall be deemed to be the proper address of said party.

20. Consent. The owner of the Wal-Mart Tract agrees that for so long as a lease of all or a portion of the Wal-Mart Tract is in effect with Wal-Mart as lessee, whenever the consent of the owner of the Wal-Mart Tract is required under the Agreement, the owner of the Wal-Mart Tract will give such consent only after obtaining Wal-Mart's consent.

21. Obligations of the owner of the Wal-Mart Tract. Wal-Mart hereby agrees that so long as a lease of all or a portion of the Wal-Mart Tract is in effect, it will satisfy the obligations of the owner of the Wal-Mart Tract hereunder, and will hold harmless and indemnify the owner of the Wal-Mart Tract from any and all loss, damage, expense, fees, claims, costs, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, arising out of this Agreement, except for those arising out of the acts or omissions of the owner of the Wal-Mart Tract or its employees, agents, contractors or invitees.

22. Counterparts. This Agreement may be executed in one or more counterparts each of which in the aggregate shall constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

WAL-MART STORES, INC., a Delaware corporation

By [Signature]  
L.B. Johnson  
Its Vice President of Real Estate

"Wal-Mart"

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 2016, by L.B. Johnson, a Vice President of Real Estate of Wal-Mart Stores, Inc., a Delaware corporation, on behalf of the corporation.

(Seal and Expiration Date)

PEGGY L. AYERS  
BENTON COUNTY  
NOTARY PUBLIC -- ARKANSAS  
My Commission Expires Sept. 17, 2023  
Commission No. 12395785

[Signature]  
Notary Public

WDG SPANISH FORK, LLC,  
a Utah limited liability company

By Spencer H. Wright

its MANAGER

"Developer"

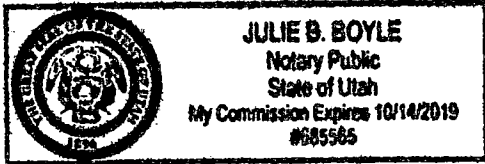
State of Utah

County of Davis

The foregoing instrument was acknowledged before me this 17 day of October, 2016, by Spencer H. Wright, the Manager of WDG Spanish Fork, LLC, a Utah limited liability company, on behalf of the company.

(Seal and Expiration Date)

Julie B. Boyle  
Notary Public



**BENEFICIARY'S CONSENT**

The undersigned beneficiary hereby consents to the placement of the easements, restrictions, and covenants contained in the foregoing instrument on the parcels of land described therein and further agree that the same shall not be terminated on any foreclosure on any parcel of land covered by the said instrument.

**ZIONS FIRST NATIONAL BANK**

By: Brian Cooley  
Name: Brian Cooley  
Title: VP

**NOTARY ACKNOWLEDGMENT**

State of Utah

County of WEBER

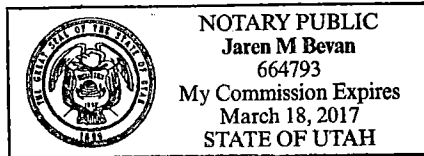
Be it remembered that on this 3<sup>rd</sup> day of FEBRUARY, 2017, before me a notary public in and for the county and state aforesaid, came BRIAN COOLEY, a Vice President of Real Estate of Zions First National Bank, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of such Beneficiary and such person duly acknowledged the execution of the same to be the act and deed of said Beneficiary.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.

JAREN BEVAN  
Notary Public

(SEAL)

My commission expires: MARCH 18, 2017



**EXHIBIT A-1**

(Site plan showing Wal-Mart Tract, Developer Tract and Outparcels)

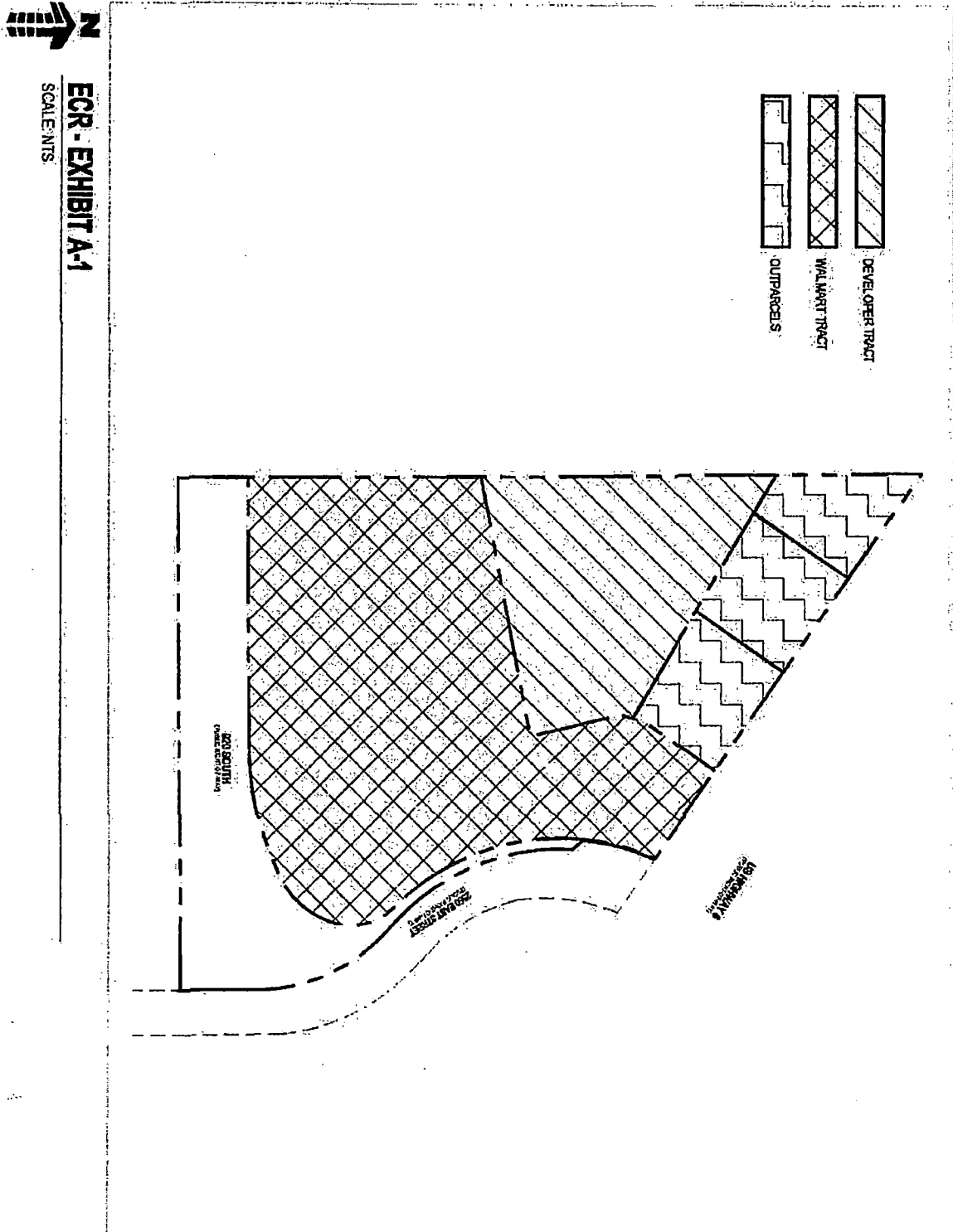


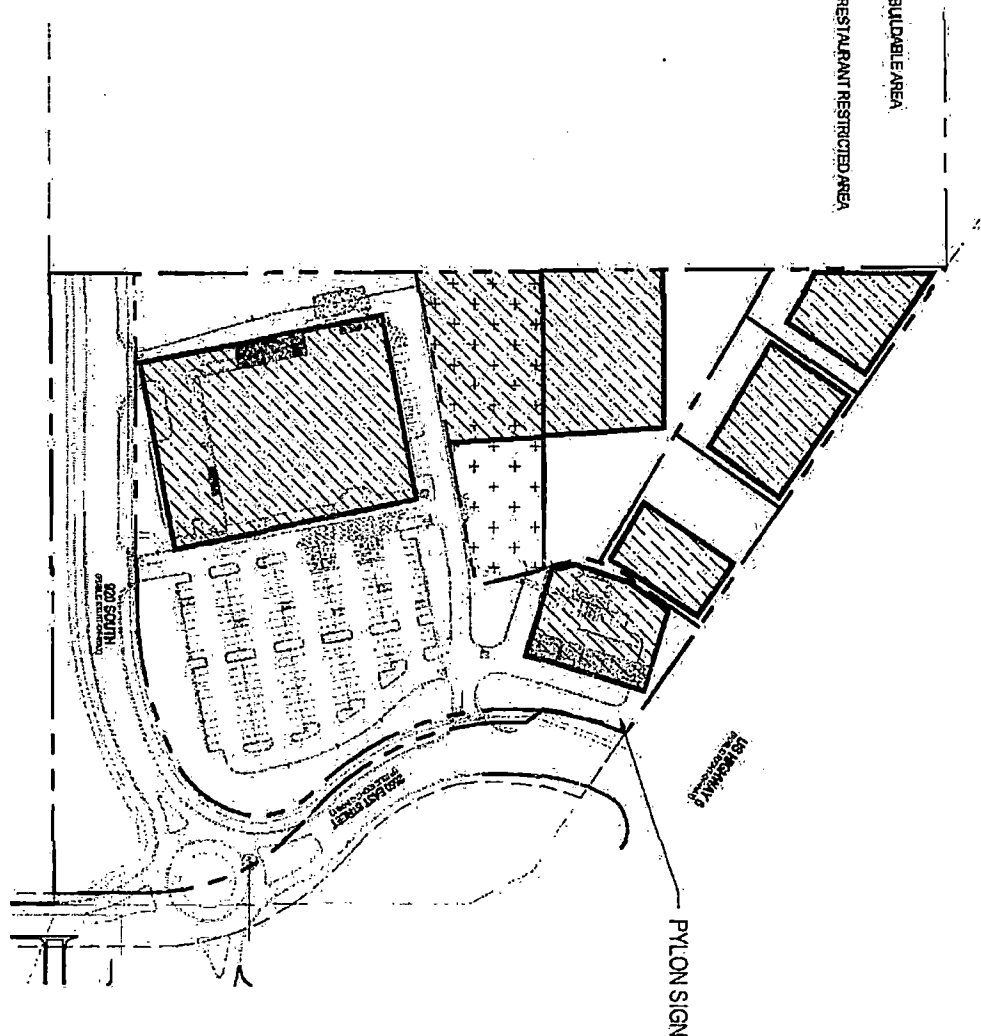
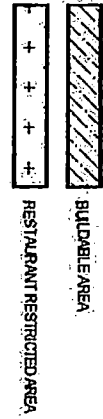


EXHIBIT A-2

(Site plan marked to show various development details)



ECR - EXHIBIT A-2  
SCALE: NTS



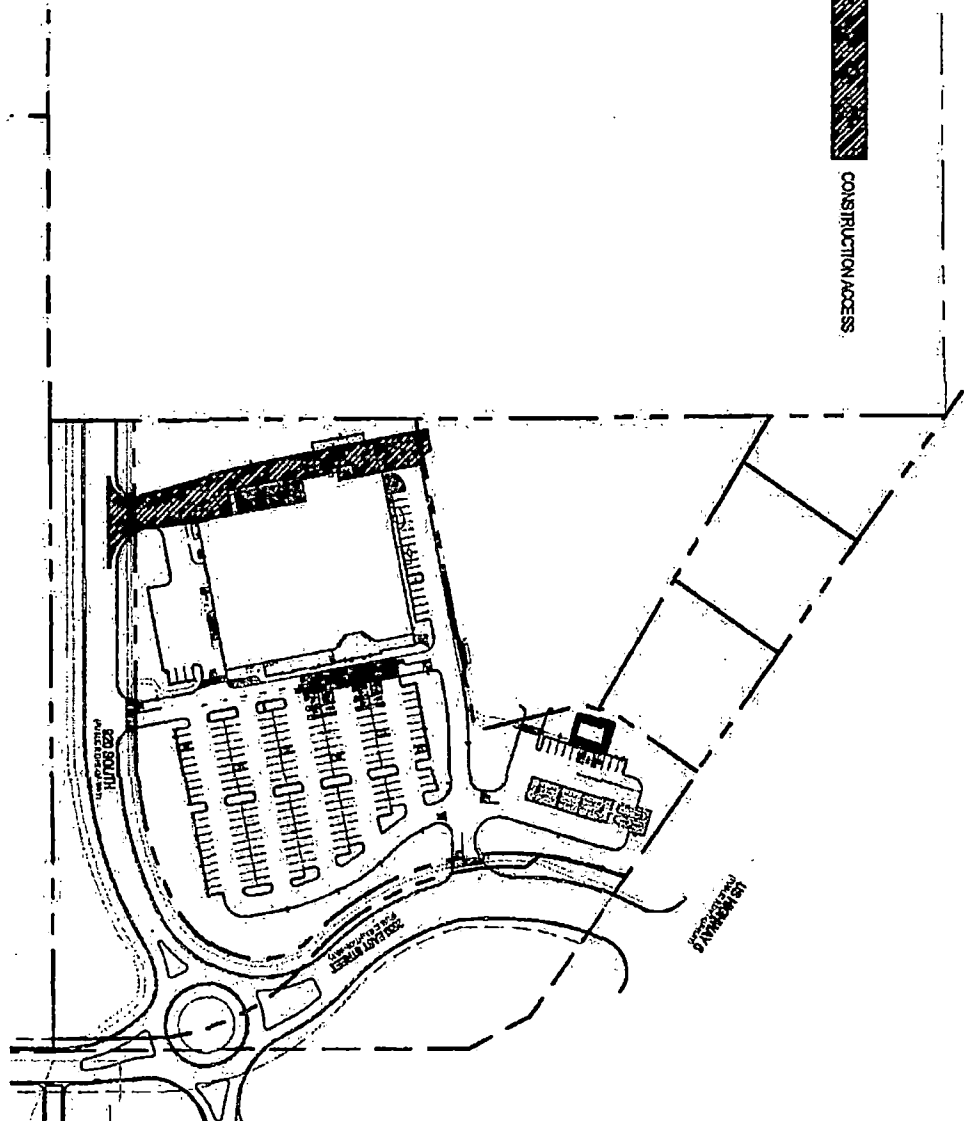
**EXHIBIT A-3**

(Construction Access Depiction)



**ECR - EXHIBIT A-3**  
SCALE: NIS

  
CONSTRUCTION ACCESS



**EXHIBIT B**

(Wal-Mart Tract legal description)

Lot 1, EAST BENCH COMMERCIAL SUBDIVISION, according to the plat thereof recorded in the office of the Utah County Recorder on December 6, 2016, as Entry No. 122351:2016.

**EXHIBIT C**

(Developer Tract and Outparcels legal description)

Lot 2, EAST BENCH COMMERCIAL SUBDIVISION, according to the plat thereof recorded in the office of the Utah County Recorder on December 6, 2016, as Entry No. 122351:2016.

