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Gary W. Ott  
Recorder, Salt Lake County, UT  
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BY: eCASH, DEPUTY - EF 25 P.

**When recorded return to:**

Thomas E. Halter  
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# 14-32-201-062

Magna, UT (#4706-00)

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

**THIS AGREEMENT** is made as of the 26 day of November, 2013, between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("Wal-Mart"), and **ARBOR PARK ASSOCIATES, L.C.**, a Utah limited liability company ("Arbor"), **GUST ARCTIC CIRCLE FAMILY, LLC**, a Utah limited liability company ("Gust Arctic Circle" and together with Arbor, collectively, "Developer").

**WITNESSETH:**

**WHEREAS**, Wal-Mart is the owner of 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**, the applicable Developer is the owner of the Developer Tract and the Outparcels shown on the plan attached hereto as Exhibit A-1 hereof, the same being more particularly described in Exhibit C hereof; 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 do not interfere with the use of the Common Areas.

1.2 "Common Areas" shall be all of the Shopping Center except the Building 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.

2. Use.

2.1 Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices, and retail stores. No cafeteria, theatre, bowling alley, billiard parlor, night club, video game room (except video or other games incidental to a business, including a business such as a Chuck-E-Cheese), day care facility, child care facility, preschool or children's nursery, any business selling alcoholic beverages for on premises consumption (provided the foregoing shall not prohibit the operation of a restaurant, micro-brewery or brew pub where the sale of alcoholic beverages therein comprises less than forty percent (40%) of the restaurant's gross revenues) 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. 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.

2.2 A portion of the Developer Tract is described on Exhibit D attached hereto (the "Future Residential Parcel"). Wal-Mart and Arbor agree that Developer shall have the right after the date hereof to develop the Future Residential Parcel as a residential parcel. In the event that Arbor elects to develop the Future Residential Parcel into residential property, Arbor shall give written notice thereof to Wal-Mart (the "Residential Election Notice"). Within thirty (30) days of Arbor's delivery of the Residential Election Notice, Developer and Wal-Mart shall amend this Agreement to release the Future Residential Parcel from the provisions of this Agreement (including without limitation a release of any cross-parking rights in favor of the Future Residential Parcel), except that (a) the Future Residential Parcel shall continue to be subject to the restrictions set forth in Section 3 hereof, (b) the Future Residential Parcel shall be restricted to residential uses, and (c) Wal-Mart shall continue to have easements for ingress, egress and utilities over the Service Drives.

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 membership warehouse club, (ii) a pharmacy, (iii) a discount department store or other discount store, as such terms are defined below, (iv) a variety, general 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 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 food store or a food department containing more than 10,000 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. "Discount department store" and/or "discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than 35,000 square feet of building space used for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of Wal-Mart. Notwithstanding anything in this agreement to the contrary, the foregoing shall not prohibit the operation of a "category retailer" (meaning a retailer that sells primarily a single line of products such as (but not limited to) an apparel store, a shoe store, a book store, a pet supply store, a cosmetics store, and a discount clothing and soft goods store not carrying other general goods of merchandise but excluding any membership warehouse or grocery store).

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 finished grade. Incidental architectural embellishments and peaks shall not be considered in connection with determining compliance with said height restriction. No building constructed on the Outparcels shall exceed 22' (with an additional 3 feet in height permitted for mechanical improvements and architectural embellishments) in height, as measured from the mean finished elevation of the parking area of the Shopping Center. No building shall have a predominately 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 7,500 square feet in size. Any rooftop equipment constructed on the buildings located on the Outparcels shall be screened so as not to be visible from the mean finished elevation of the parking area.

4.3 Fire Protection. Any building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other buildings in the Shopping Center.

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 easement to the party whose building wall footings encroach provided no such encroachment shall exceed 12".

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 easement over, through and around the Wal-Mart Tract and the Developer Tract 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 easements for vehicular and pedestrian access, ingress, and egress over and across the Wal-Mart Tract and the Developer Tract; 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 easements for vehicular and pedestrian access, ingress, and egress over and across the Outparcels; 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.

5.2 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. 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.

5.3 Utility and Service Easements. Each party hereby establishes and grants to the other party a 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). All 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. The location of any utilities hereafter installed shall be determined by the owner

of the Tract or Outparcel (the location of utilities on the Wal-Mart Tract shall be determined by Wal-Mart as long as it is the owner or lessee of the Wal-Mart Tract) upon which such utilities are to be installed. 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 and, further provided, that no utilities shall be relocated on the Wal-Mart Tract without the prior written consent of Wal-Mart as long as it is the owner of or lessee of the Wal-Mart Tract.

5.4 Water Flow. Each party hereby establishes and grants a 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.

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". Each party hereto agrees that at all times there shall be independently maintained on the Developer Tract and 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 such 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 in excess of 5,000 square feet; or (ii) 7 spaces for every 1,000 square feet of building space for any restaurant less than 5,000 square feet; or (iii) 4.5 spaces per 1,000 square feet of building space for any other use.

6.4 Outparcel and Service Drives Maintenance.

6.4.1 Maintenance of the Outparcels.

(1) Standards. The Outparcels shall be kept neat, orderly, planted in grass and trimmed until improved and constructed. Following completion of the improvements on the Common Areas, the parties hereto shall maintain the Common Areas located on their respective Outparcels or Tracts 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.

#### 6.4.2 Maintenance of the Service Drives.

(1) Standards. The parties hereto shall maintain the Service Drives identified and depicted on Exhibit A-3 attached hereto (the "Service Drives") in good condition and repair. The maintenance is to include, without limitation, the following:

(a) Maintaining, repairing, resurfacing and replacing, when necessary, the Service Drives 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 and restriping the same; sealcoating not more often than every five (5) years;

(b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and sweeping the Service Drives 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; and

(d) Maintaining, keeping in repair and replacing all elements and facilities of the Storm Drainage System within the Service Drives as designated on Exhibit A-3.

(2) Responsibility. Responsibility for maintenance of the Service Drives shall be vested in Arbor who shall maintain the Service Drives to the standards set forth in this Section 6.4.2 and shall be entitled to reimbursement for certain costs incurred in connection with such maintenance as set forth in Paragraph 6.4.2(3)(c) below. In the event that Arbor should fail to maintain the Service Drives as required by this

Paragraph 6.4.2 or shall otherwise breach its obligations with respect to the Service Drives, Wal-Mart shall give written notice thereof to Arbor and if Arbor shall fail to cure such deficiency within 30 days after receipt of such notice (or, if such deficiency cannot be reasonably cured within such 30-day period, then if Arbor shall not in good faith commence to cure such deficiency within such 30-day period or shall not diligently proceed therewith to completion), then Wal-Mart shall have the right, but not the obligation, to cure such default on Arbor's behalf and to back-charge Arbor or bill Arbor, at Wal-Mart option, for its proportionate share of the reasonable out of pocket third-party costs to cure such default, but Arbor shall retain full responsibility for all future maintenance of the Service Drives in accordance with this Paragraph 6.4.2.

(3) Payment and Calculation.

(a) Arbor shall expend only such funds as are reasonably necessary (in Arbor's reasonable discretion) for the operation, maintenance, repair, replacement and upkeep of the Service Drives and shall promptly pay such costs ("CAM Costs") when due. For the purpose of this Agreement, CAM Costs shall not include costs and expenses which are not reasonably necessary for the operation and maintenance of the Service Drives. Exclusions from CAM Costs include but are not limited to the following:

(b) i. Any administrative fees, late charges or fees (other than a management fee payable to Arbor in the amount of five percent (5%) of the CAM Costs);

ii. any costs to clean or repair the Service Drives resulting from promotional activities by Wal-Mart on the Wal-Mart Tract or by the stores on Arbor's Tract or from construction, maintenance or replacement of buildings (which cleaning, maintenance and repair shall be performed by the party responsible for such promotion or construction, maintenance or replacement of buildings at such party's sole cost and expense;

iii real property taxes and assessments;

iv profit, administrative and overhead costs (such as rent, legal, supplies, utilities and wages or salaries paid to management or supervisory personnel) but not the cost for any on-site maintenance office or on-site maintenance personnel;

v entertainment, transportation, meals and lodging of anyone, and plaques, trophies and gift certificates;

vi depreciation and amortization;

vii expenses in connection with services or other benefits which are offered to one or more occupants of the Shopping Center and who are charged directly for such services or other benefits;

viii interest, points and fees on debt or amortization on any mortgage or mortgages encumbering the Shopping Center;

ix all items and services for which an occupant in the Shopping Center reimburses Arbor (other than as a reimbursement as a common area maintenance charge) or which Arbor provides selectively to one or more occupants without reimbursement;

x electrical power costs for which any occupant directly contracts with the local public service company, except for electrical power costs for the Service Drives;

xi all expenses associated with maintenance, repair, replacement, operation and upkeep of buildings in the Building Areas;

xii the cost of acquisition of new land or construction of new buildings;

xiii except as otherwise permitted pursuant to Paragraph 6.4.2(b)(2) above, any expense representing an amount paid to a corporation, entity, or person related to or affiliated with Arbor or its owners, investors or principals which is not consistent with market rate terms; and

xiv earthquake and/or flood insurance, unless such coverage is available at commercially reasonable rates.

(c) Wal-Mart shall reimburse Arbor for fifty percent (50%) of Arbor's out-of-pocket CAM Costs actually incurred in connection with the maintenance of the Service Drives. Arbor shall bill Wal-Mart for the CAM Costs on a quarterly basis in an amount equal to one-fourth of Wal-Mart pro rata share of the CAM Costs estimated by Arbor and all such invoices shall be due and payable within thirty (30) days of receipt. Any amounts not paid within such thirty (30) day period shall bear interest at a rate of twelve percent (12%) per annum.

(d) For a period of two (2) years after the date of Wal-Mart's receipt of a quarterly billing statement, Wal-Mart shall have the right to audit Arbor's books and records pertaining to the operation and maintenance of Service Drives and landscaping. Wal-Mart shall notify Arbor of Wal-Mart's intent to audit at least fifteen (15) days prior to the designated audit date. If such audit shall disclose any error in the determination of CAM Costs, Wal-Mart shall provide Arbor with a copy of the audit, and an appropriate adjustment shall be made forthwith. The cost of any audit shall be paid by Wal-Mart unless Wal-Mart shall be entitled to a refund in excess of three percent (3%) of the amount calculated by Arbor as Wal-Mart's share for the applicable calendar year, in which case Arbor shall pay the cost of such audit. If Arbor disputes such audit, Arbor and Wal-Mart shall work in good faith to resolve such dispute. If such dispute shall not have been settled by agreement, the parties to the dispute shall submit the dispute to arbitration within ninety (90) days after the delivery of the results of the audit. If the dispute shall be determined in Wal-Mart's favor, Developer shall, within thirty (30) days of the dispute, refund to Wal-Mart the amount of an overpayment. Arbor agrees to grant Wal-Mart reasonable access to Arbor's books and records for the purpose of verifying the CAM Costs.

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.



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 7' 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 construct the pylon signs at the locations depicted on Exhibit A-2 (the "Pylon Signs"). The plans and specifications for the Pylon Signs and the construction contract for the Pylon Signs shall be prepared, and awarded, as applicable, by Developer and, prior to award with respect to the Construction Contract and upon completion with respect to the plans and specifications, submitted to Wal-Mart for Wal-Mart's review and approval, not to be unreasonably withheld. The Owner of the Wal-Mart Tract is irrevocably allocated the top 50% of all tenant positions on all sides of the Pylon Signs. No other entity shall be allocated space on the Pylon Signs in excess of that allocated to Wal-Mart. The Developer shall maintain the Pylon Signs structure and all parties shall maintain (and fabricate their own panels). The costs for constructing the Pylon Signs and the cost of maintaining and operating the Pylon Signs shall be allocated pro rata (based on signage size) among the parties displaying signage on the Pylon Signs. The Developer may bill said parties for construction costs upon completion and for maintenance costs not more frequently than quarterly. All billing shall contain all applicable back up documentation and details.

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 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 \$5,000,000.00 for injury or death of a single person, and to the limit of not less than \$5,000,000.00 for any one occurrence, and to the limit of not less than \$5,000,000.00 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 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 8.2(1) shall name Wal-Mart and Developer as additional insureds.

(4) Each owner 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 a party shall exceed \$100,000,000.00, and, with respect to the Wal-Mart Tract, 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.

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 Tract or Outparcel, except as to obligations, liabilities or responsibilities that accrue during said period. 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.

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 tract subject to this Agreement,

or any portion thereof, the Acquiring Party shall execute and file in the land records of Salt Lake 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 Salt Lake 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 Real Estate Business Trust (Store #4706-00)  
2001 S.E. 10th Street  
Bentonville, AR 72716  
Attention: President

With a copy to:

Wal-Mart Real Estate Business Trust (Store #4706-00)  
Attention: Property Management, State of UT  
2001 S.E. 10th Street  
Bentonville, AR 72716-0550

Developer: Arbor Park Associates  
126 Segoe Lily Drive, Suite 275  
Sandy, UT 84070  
Attention: John Gust

With Copy to:

Parr Brown Gee & Loveless  
185 South State Street, Suite 800  
Salt Lake City, Utah 84111  
Attention: David E. Gee, Esq.

Notices shall be effective upon receipt or refusal. 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, 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. Obligations of Developer. The obligations of the Developer hereunder are not joint and several and are made by each Developer on its own behalf, and not on behalf of another Developer.

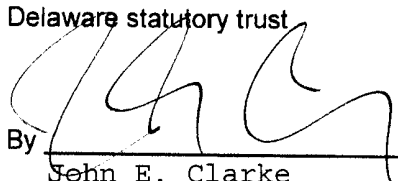
23. Counterparts. This Agreement may be executed in one or more counterparts each of which in the aggregate shall constitute one and the same instrument.

24. Attorney's Fees. In any action or proceeding arising out of this Agreement, each party shall bear its own attorney's fees, and the prevailing party shall be entitled to recover only court costs from the non-prevailing party incurred by such party in enforcing its rights hereunder.

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

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

By

  
John E. Clarke  
Its Vice President of Real Estate

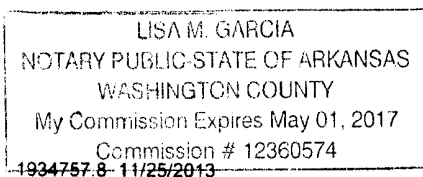
"Wal-Mart"

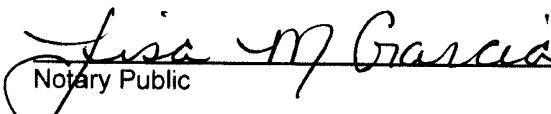
State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 25 day of November, 2013, by John E. Clarke, a Vice President of Real Estate of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.


(Seal and Expiration Date)



  
Notary Public

**ARBOR PARK ASSOCIATES, L.C.**, a Utah limited liability company, by its manager

Arbor Commercial Real Estate L.L.C., a Utah limited liability company

By   
Name: Cory Gust  
Title: Manager

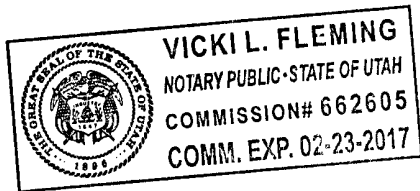
"Developer"

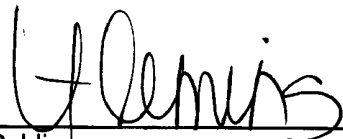
State of Utah

County of Salt Lake

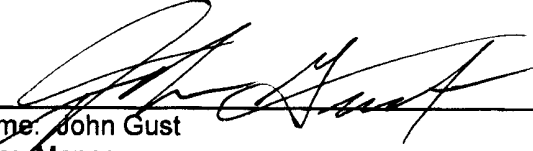
The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of November, 2013, by Cory Gust, a manager of Arbor Commercial Real Estate L.L.C., a Utah limited liability company, a manager of Arbor Park Associates, L.C., a Utah limited liability company, on behalf of the company.

(Seal and Expiration Date)



  
Notary Public

GUST ARCTIC CIRCLE FAMILY, LLC, a Utah  
limited liability company

By   
Name: John Gust  
Title: Manager

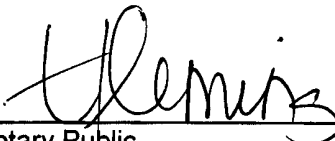
"Developer"

State of Utah

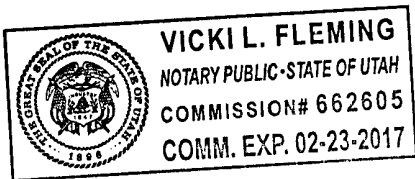
County of Salt Lake

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of November, 2013, by John Gust, a manager of Gust Arctic Circle Family, LLC, a Utah limited liability company, on behalf of the company.

(Seal and Expiration Date)

  
Notary Public

"Developer"



MORTGAGEES CONSENT

The undersigned mortgagees hereby consent 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: Jeffrey A. Holt  
Name: Jeffrey A. Holt  
Title: SVP

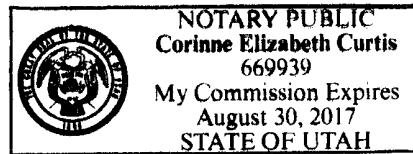
State of Utah

County of Salt Lake

The foregoing instrument, was acknowledged before me this 20 day of November, 2013, by Jeffrey Holt, the SVP of Zions First National Bank, a(n) \_\_\_\_\_, on behalf of the \_\_\_\_\_.

(Seal and Expiration Date)

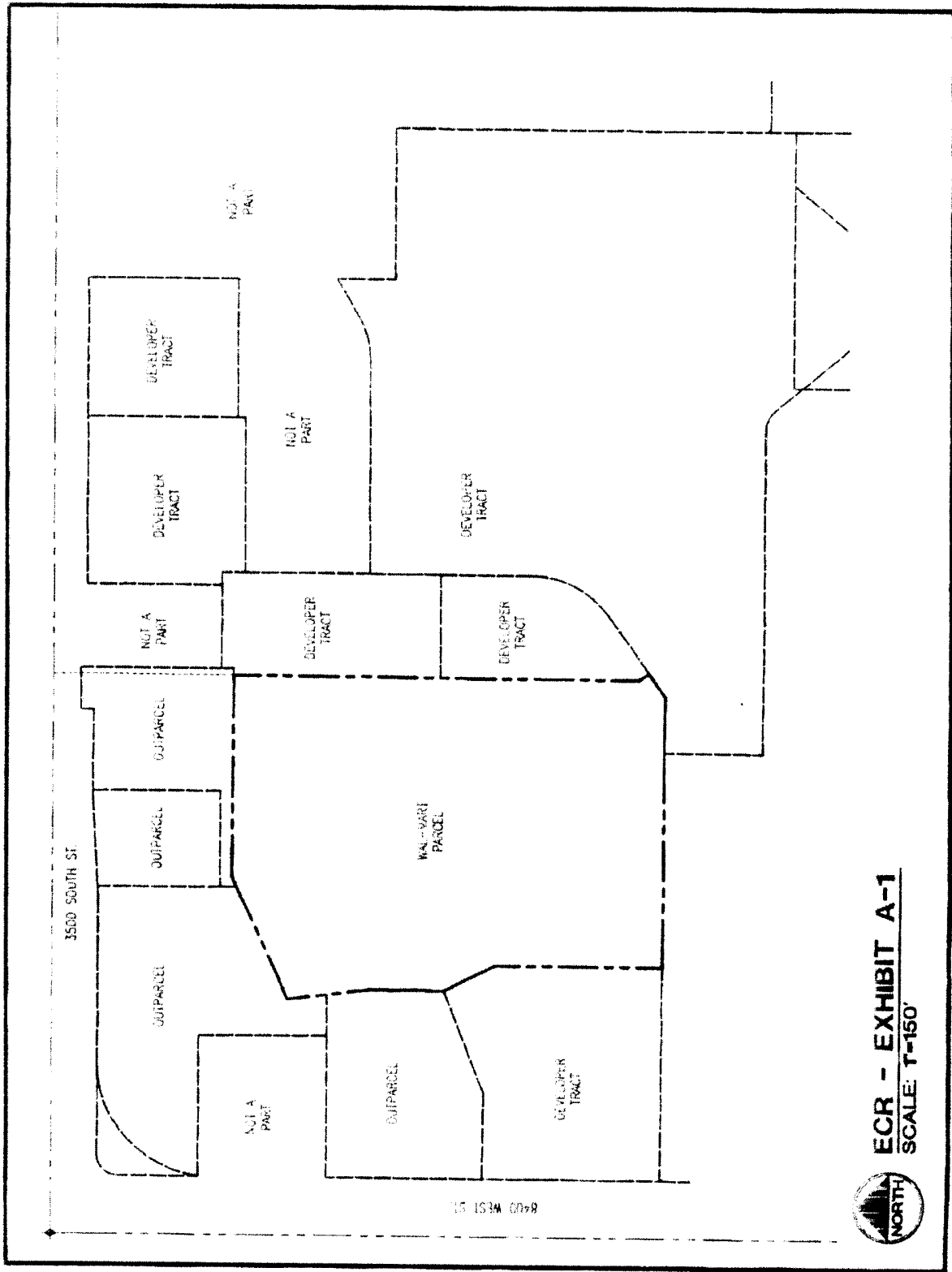
Corinne Elizabeth Curtis  
Notary Public





**EXHIBIT A-1**

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



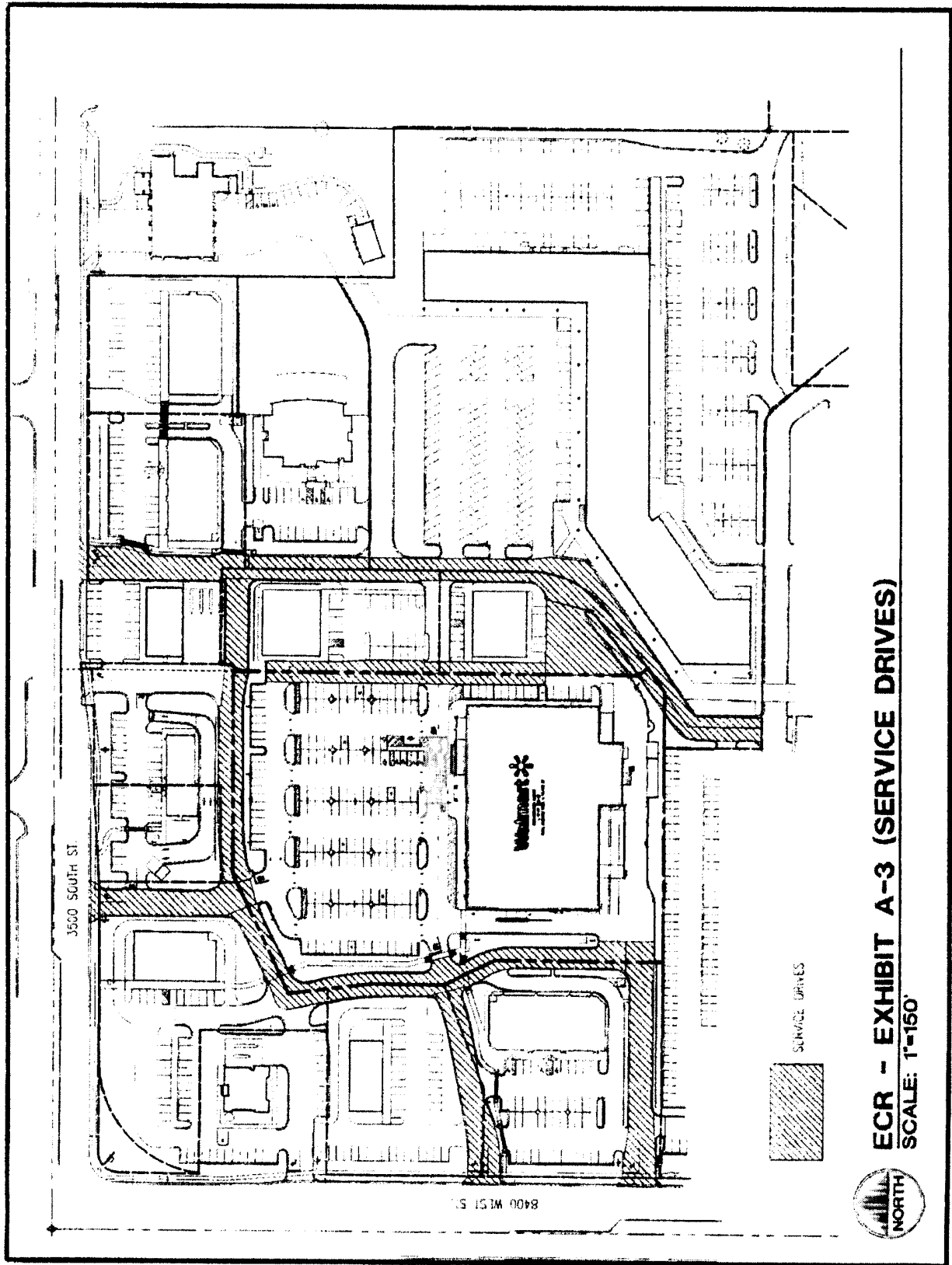
**EXHIBIT A-2**

(Site plan marked to show various development details)



**EXHIBIT A-3**

(Depiction of Service Drives)



**ECR - EXHIBIT A-3 (SERVICE DRIVES)**

SCALE: 1"=150'

**EXHIBIT B**

(Wal-Mart Tract legal description)

Lot 3, of ARBOR PARK COMMERCIAL SUBDIVISION, according to the official Plat thereof recorded in the Salt Lake County Recorder's Office on August 16, 2013 as Entry No. 11706292 in Book 2013P at Page 164.

## EXHIBIT C

(Developer Tract legal description)

Lots 1, 2, 4, 7, 8, 9 and 10, of ARBOR PARK COMMERCIAL SUBDIVISION, according to the official Plat thereof in the Salt Lake County Recorder's Office on August 16, 2013 as Entry No 11706292 in Book 2013P at Page 164.

(Outparcels legal descriptions)

Lots 5 and 6 of ARBOR PARK COMMERCIAL SUBDIVISION, according to the official Plat thereof in the Salt Lake County Recorder's Office on August 16, 2013 as Entry No 11706292 in Book 2013P at Page 164.

Beginning at a point on the Southerly Line of 3500 South Street located 626.80 feet South 89°49'24" East along the Section Line; and 48.01 feet South 0°03'36" West from the North Quarter Corner of said Section 32; and running thence along said Southerly Line of 3500 South Street the following two courses: North 89°49'24" West 100.68 feet; and South 86°54'51" West 109.49 feet; thence South 0°03'36" West 145.76 feet; thence South 89°49' 24" East 210.00 feet; thence North 0°03'36" East 151.99 feet to the point of beginning.



**EXHIBIT D**

(Legal description of Future Residential Parcel)

Lot 1, of ARBOR PARK COMMERCIAL SUBDIVISION, according to the official Plat thereof in the Salt Lake County Recorder's Office on August 16, 2013 as Entry No. 11706292 in Book 2013P at Page 164.