

ENT 118931:2006 PG 1 of 18  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2006 Sep 11 3:46 pm FEE 55.00 BY KH  
RECORDED FOR METRO NATIONAL TITLE  
ELECTRONICALLY RECORDED

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

Saratoga, UT (#4438-00)

58-033-0003  
36-390-0002  
36-390-0003  
36-390-0004  
36-390-0005  
36-390-0008

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

THIS AGREEMENT is made as of the 8<sup>th</sup> day of September, 2006,  
between **WAL-MART STORES, INC.**, a Delaware corporation ("**Wal-Mart**"), and **AMSOURCE  
SARATOGA NWC, LLC**, a Utah limited liability company ("**Developer**").

**WITNESSETH:**

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

**WHEREAS**, Developer is the owner of the Developer Tract shown on the plan attached hereto as Exhibit A hereof, the same being more particularly described in Exhibit C hereof; and

**WHEREAS**, Wal-Mart and Developer desire that the Wal-Mart Tract and the Developer Tract 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 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 "Shopping Center" shall be the development shown as such on Exhibit A.

1.4 "Tracts" as used herein shall mean the Wal-Mart Tract and the Developer Tract. Reference to a "Tract" refers to the Wal-Mart Tract or the Developer Tract.

1.5 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. 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 or other place of recreation or amusement, or business deriving in excess of thirty percent (30%) of its gross revenues from the sale of alcoholic beverages shall occupy space within the Shopping Center without the prior written consent of Wal-Mart. 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 shall be leased or occupied by or conveyed to any other party for use as (i) a facility dispensing gasoline or fuel from pumps, (ii) a membership warehouse club, (iii) a discount department store or other discount store, as such terms are defined below, (iv) a grocery store or supermarket as such terms are defined below, or (v) 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 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 the above, in the event that Wal-Mart fails to commence construction of a retail facility on the Wal-Mart Tract on or before that date which is 3 years from the date this Agreement is recorded or in the event that Wal-Mart fails to open a retail facility on the Wal-Mart Tract to the public on or before that date which is 4 years from the date this Agreement is recorded, then in such event,

this Section 3 shall be of no further force and effect, but the balance of this Agreement shall remain in full force and effect. In addition, after a retail facility is initially opened to the public on the Wal-Mart Tract, in the event that a retail facility is not operated on the Wal-Mart Tract for a period of 12 consecutive months for any reason other than an "Excused Closure", then in such event, this Section 3 shall be of no further force and effect, but the balance of this Agreement shall remain in full force and effect. "Excused Closure" means any period of time during which the improvements on the Wal-Mart Tract are being rebuilt, remodeled or reconstructed.

#### 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 onto another Tract except as provided for in Subsection 4.4. below. The design and construction shall be of high quality. No building constructed on the Wal-Mart Tract shall exceed 40' in height above finished grade and no building on the Developer Tract shall exceed 26' in height above finished grade. However, incidental architectural embellishments and peaks (not to exceed 10' in height) shall not be considered in connection with determining compliance with said height restrictions. No building shall have a metal exterior.

4.2 Location/Size. No building shall be constructed on the Wal-Mart Tract or the Developer Tract (as either immediate development or future expansion) except within the Building Areas. Any buildings located on the Developer Tract shall not exceed 15,000 square feet in size above grade per acre, prorated. Any rooftop equipment constructed on the buildings located on the Developer Tract 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.

#### 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.

## 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.

(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 with 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, 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. Both parties shall use their reasonable 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 (the location of utilities on the Wal-Mart Tract shall be determined by Wal-Mart as long as it is the owner 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 on such owner's Tract, subject to compliance with applicable laws, at the expense of the owner of that Tract, provided that such relocation shall not interfere with, increase the cost of, or diminish utility services to any other Tract 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 for the benefit of the owner of each other Tract to use, maintain and repair any storm water drainage system (the "**Storm Drainage System**") now or hereafter located on either Tract, together with the right to discharge surface water runoff across portions of either Tract 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** (including without limitation building and building expansion, curbs, drives and paving and building within the Building Areas) 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 "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 4.5 car spaces for each 1,000 square feet of building or buildings on the Wal-Mart Tract.

6.3 Developer Tract "Parking Ratio". Developer agrees that at all times there shall be independently maintained on those portions of the Developer Tract located within the Ring Road (as depicted on Exhibit A-2) parking area sufficient to accommodate not fewer than: (i) 10 spaces for every 1,000 square feet of building space for any restaurant (defined as an establishment selling prepared foods for onsite consumption) 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. 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; and

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

(g) Maintaining elements of the Storm Drainage System.

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

(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.

7 Signs. No rooftop sign shall be erected on the building constructed on the Developer Tract. 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 or the Developer Tract except signs advertising businesses conducted thereon. No signs shall obstruct the ingress and egress shown on Exhibit A. Contemporaneously with Wal-Mart's development of the Wal-Mart Tract and subject to obtaining the required permits, Wal-Mart shall construct two Shopping Center pylon signs (the "Pylon Signs") at the locations depicted on Exhibit A. The Developer shall reimburse Wal-Mart for 50% of its out-of-pocket expenses incurred in connection with the construction of the Pylon Signs on demand. Wal-Mart shall be entitled to the top 50% of the signage on each side of each Pylon Sign and the Developer shall be entitled to the bottom 50% of the signage on each side of each Pylon Sign. Each part shall be responsible for fabricating, installing and maintaining their sign panels.

## 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, 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 \$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 ten (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 shall pay for any increase in the cost of insuring the improvements on the other Tracts 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 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.

## 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 giving the public or any government any rights in said Tract. 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 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 or portion of the Tract 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 or portion of the Tract, 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 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.

13 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.

14 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.

15 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 ninety-nine (99) years from the date hereof.

16 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.

17 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.

18 Transfer of Interests; Notices.

18.1 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 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 18.1, 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 18.1 regarding the recordation of the Notice Statement are satisfied with respect to Developer and Wal-Mart.

18.2 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. (Store #4438-00)  
 702 S.W. 8th Street  
 Bentonville, AR 72716  
 Attention: President

With a copy to:  
 Wal-Mart Stores, Inc. (Store #4438-00)  
 Attention: Property Management, State of Utah  
 2001 S.E. 10th Street  
 Bentonville, AR 72716-0550

Developer: Amsource Saratoga NWC, LLC  
 358 So. Rio Grande #200  
 SLC, UT 84101  
 Attention: Manager

With a copy to:  
 Amsource Saratoga NWC, LLC  
 358 So. Rio Grande #200  
 SLC, UT 84101  
 Attention: General Counsel

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 18 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.

19 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.

20 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.

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

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

Approved as to legal terms only  
by [Signature]  
WAL-MART LEGAL DEPT  
Date 9/7/06

**WAL-MART STORES, INC.**, a Delaware corporation

By [Signature]  
Shannon Letts  
Its Assistant Vice President

"Wal-Mart"

**AMSOURCE SARATOGA NWC, LLC**, a Utah limited liability company, by its Manager, Amsource Realty Advisors, LLC

By \_\_\_\_\_  
Its Manager

By \_\_\_\_\_  
Its Manager

"Developer"

pursuant to the terms of this Section 18 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.

19 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.

20 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.

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

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

**WAL-MART STORES, INC.**, a Delaware corporation

By \_\_\_\_\_

Its Assistant Vice President

"Wal-Mart"

**AMSOURCE SARATOGA NWC, LLC**, a Utah limited liability company, by its Manager, Amsource Realty Advisors, LLC

By David R. Gashen  
Its Manager

By \_\_\_\_\_  
Its Manager

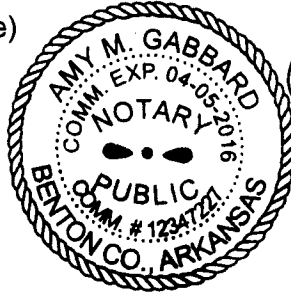
"Developer"

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of September, 2006, by Shannon Letts, an Assistant Vice President of Wal-Mart Stores, Inc., a Delaware corporation, on behalf of the corporation.

(Seal and Expiration Date)



Amy M. Gabbard  
Notary Public

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_ and \_\_\_\_\_, Managers of Amsource Saratoga NWC, LLC, a Utah limited liability company, on behalf of the company.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_, an Assistant Vice President of Wal-Mart Stores, Inc., a Delaware corporation, on behalf of the corporation.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public

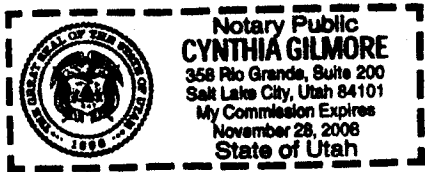
State of Utah

County of Salt Lake

The foregoing instrument was acknowledged before me this 8th day of Sept, 2006, by David R. Grehall and \_\_\_\_\_, Managers of Amsource Saratoga NWC, LLC, a Utah limited liability company, on behalf of the company.

(Seal and Expiration Date)

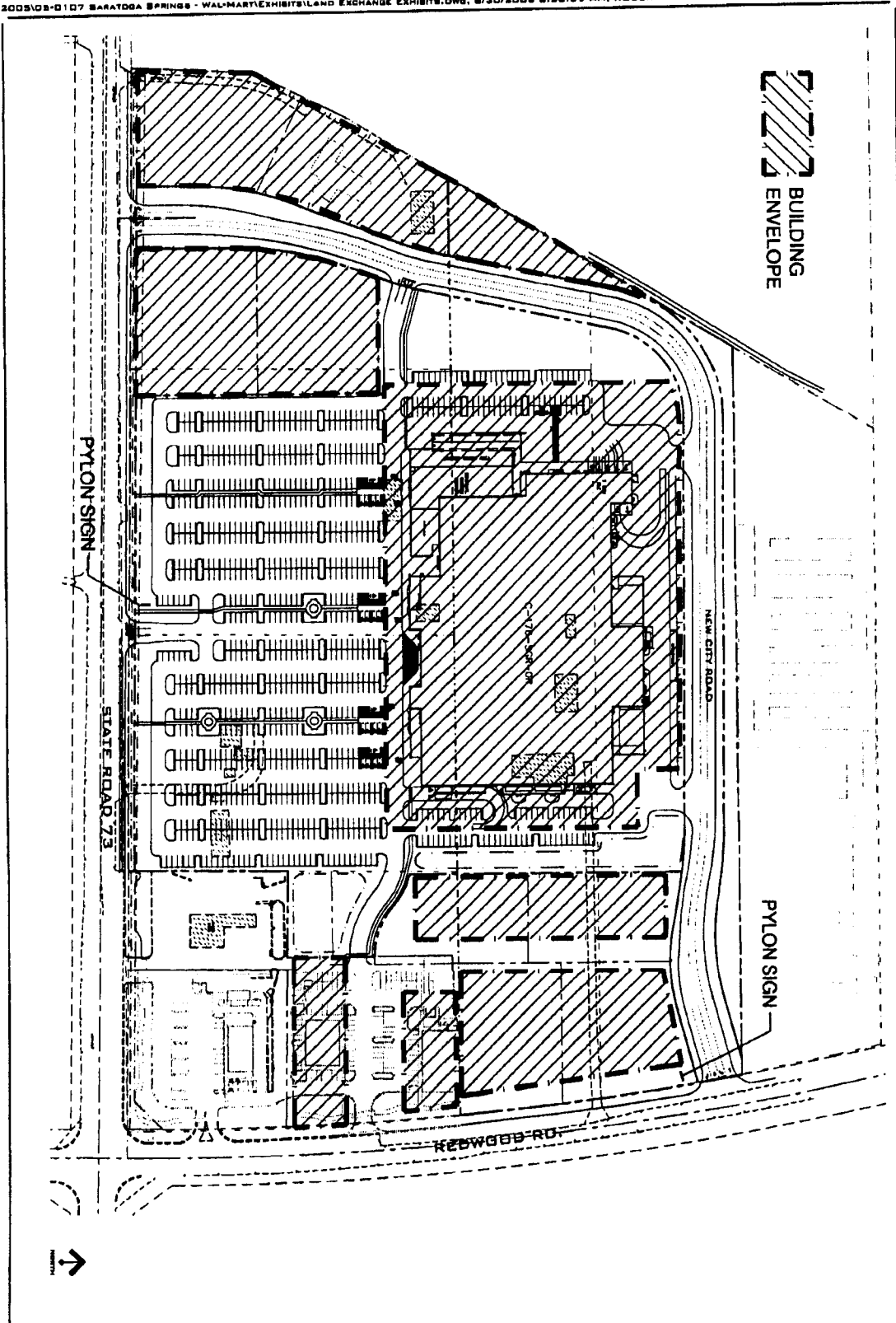
Cynthia Gilmore  
\_\_\_\_\_  
Notary Public



*Long*

*[Handwritten signature]*

J:\2005\03-0107 SARATOGA SPRINGS - WAL-MART\EXHIBITS\LAND EXCHANGE EXHIBIT.DWG, 8/30/2006 8:56:39 AM, ROBERTAR



PRD# : 08.0107  
 DATE: 07/31/06  
 REV# : 8/30/06  
 RSI# :  
 R DATE:

SARATOGA SPRINGS - WAL-MART #4438-00  
 OVERALL SITE PLAN  
 BUILDING AREAS & PYLON SIGN LOCATIONS  
 NW CORNER OF STATE ROAD 73 & REDWOOD ROAD  
 SARATOGA SPRINGS, UTAH

**ELC ASSOCIATES**  
 430 East South Temple  
 SUITE 200  
 SALT LAKE CITY  
 UTAH 84111  
 P 801 582 8888  
 F 801 582 8888  
 W.WALMART.COM

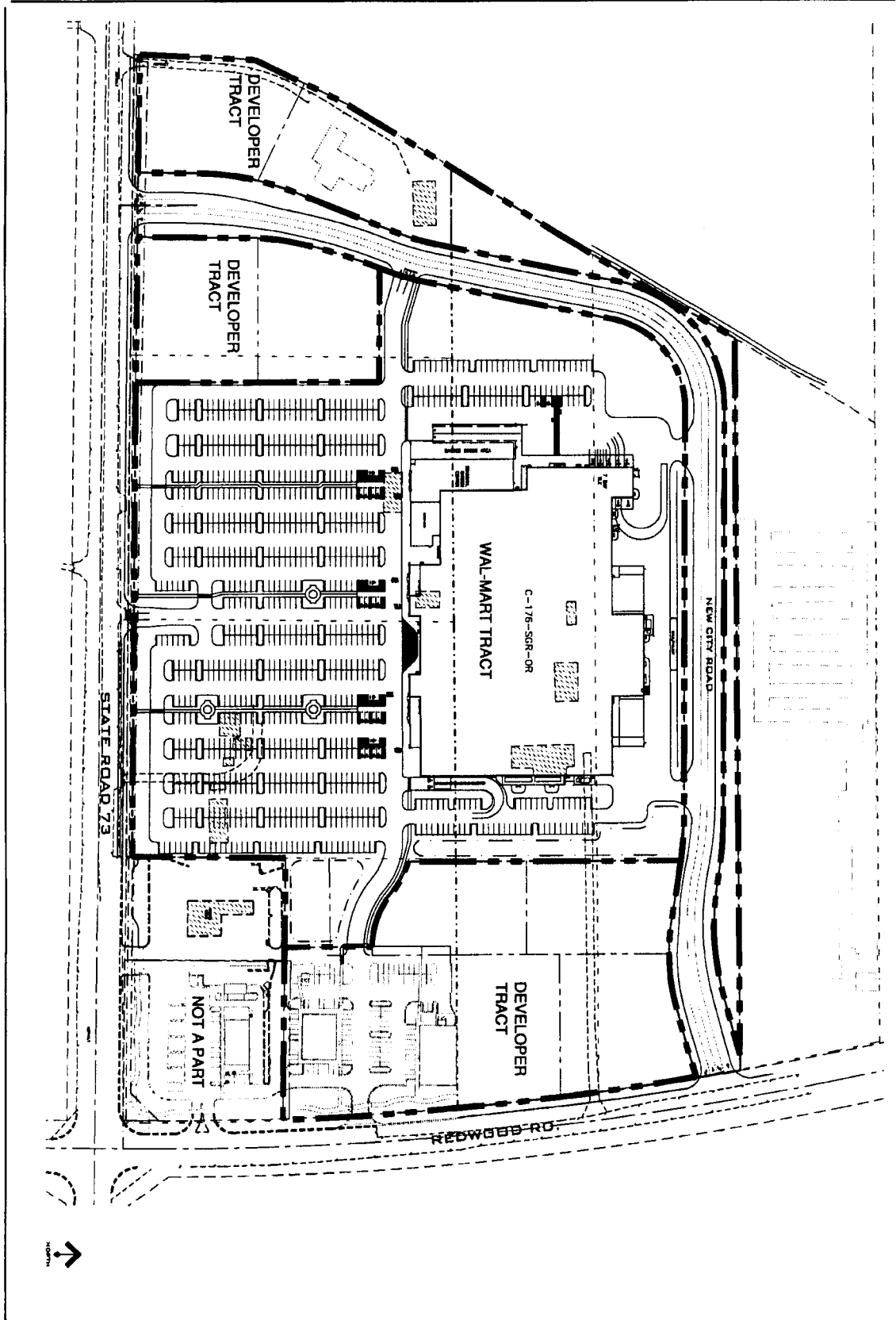


EXHIBIT A TO ECR'S

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J:\2005\05-0107 SARATOGA SPRING - WAL-MART\EXHIBITS\LAND EXCHANGE EXHIBITS.DWG, 9/8/2006 8:16:33 AM, ROBERTAR



PROJ #: 05.0107  
 DATE: 07/31/06  
 REV #: 8/20/06  
 ASI #:   
 R DATE

SARATOGA SPRING - WAL-MART #4438-00  
 OVERALL SITE PLAN  
 BUILDING AREAS & PYLON SIGN LOCATIONS  
 NW CORNER OF STATE ROAD 73 & REDWOOD ROAD  
 SARATOGA SPRING, UTAH

**CLC ASSOCIATES**  
 430 EAST BRUSH TRAIL  
 SUITE 500  
 SALT LAKE CITY  
 UTAH 84111  
 P 801 363 5805  
 F 801 363 5804  
 CLC@CLC.COM  
 ARCHITECTURE  
 ENGINEERING PLANNING  
 LANDSCAPE ARCHITECTURE  
 LAND SURVEYING



SHEET 2 TO EXHIBIT A TO ECR'S

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BA ADJ PARCEL 1

PART OF LOTS 2, 3, 4, 5, AND 6, CROSSROADS RANCHETTES PLAT "A", AS FOUND IN A PLAT RECORDED AS ENTRY NO. 43648, MAP NO. 4326, OFFICIAL RECORDS; TOGETHER WITH A PORTION OF THE LAND DESCRIBED AS PARCEL 1, ON "EXHIBIT A", OF THE CORRECTIVE DEED, RECORDED AS ENTRY NO. 47643:2006, APRIL 20, 2006, OFFICIAL RECORDS; BEING PART OF THE NORTHWEST QUARTER, SECTION 14, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, IN THE STATE OF UTAH, COUNTY OF UTAH, CITY OF SARATOGA SPRINGS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4, SAID POINT ALSO BEING A POINT ON THE NORTH LINE OF S.R. 73 (CEDAR FORT ROAD), AS SHOWN ON THE UDOT ROW PLAN FOR PROJECT NO. SP-0073(1)32; SAID POINT OF BEGINNING ALSO BEING S00°36'32"W GRID (NAD83 (1994) UTAH CENTRAL) ALONG THE EAST LINE OF SAID NORTHWEST QUARTER 1,327.00 FEET, AND S90°00'00"W 513.44 FEET, FROM THE NORTH QUARTER CORNER OF SAID SECTION 14, SAID SECTION CORNER BEING N89°30'06"E 105.27 FEET BY RECORD, AND N89°22'51"E 105.27 FEET BY MEASURE, FROM THE FOUND WITNESS CORNER, PER COUNTY TIE SHEET NO. 33-16RC; THENCE N89°23'01"W ALONG SAID NORTH LINE 833.22 FEET; THENCE N00°00'00"E 439.88 FEET; THENCE S90°00'00"W 202.70 FEET, TO THE BEGINNING OF A NON TANGENT CURVE CONCAVE TO THE SOUTHEAST, WITH A RADIUS OF 991.00 FEET, AND A RADIAL BEARING OF N69°04'05"W; THENCE NORTHERLY 2.13 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 00°07'23", TO A POINT OF REVERSE CURVATURE, WITH A RADIUS OF 534.00 FEET; THENCE NORTHERLY 88.11 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 09°27'12"; THENCE N11°36'05"E 329.82 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST, WITH A RADIUS OF 161.00 FEET; THENCE NORTHEASTERLY 220.95 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 78°37'56"; THENCE S89°45'59"E 712.83 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTH, WITH A RADIUS OF 716.00 FEET; THENCE EASTERLY 85.38 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 06°49'58"; THENCE S00°00'00"E 489.05 FEET, TO THE BEGINNING OF A NON TANGENT CURVE CONCAVE TO THE SOUTH, WITH A RADIUS OF 140.00 FEET, AND A RADIAL BEARING OF N15°37'04"E; THENCE SOUTHEASTERLY 62.04 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 25°23'31", TO A POINT OF REVERSE CURVATURE, WITH A RADIUS OF 140.00 FEET; THENCE EASTERLY 100.21 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 41°00'35"; THENCE S00°00'00"E 120.16 FEET, TO THE SOUTH LINE OF SAID PARCEL 1, AS REFERENCED ABOVE; THENCE N89°17'16"W ALONG SAID SOUTH LINE 155.00 FEET, TO THE EAST LINE OF SAID LOT 4; THENCE S00°37'35"W ALONG SAID EAST LINE 307.84 FEET TO THE POINT OF BEGINNING.

CONTAINS 919,239 SQUARE FEET (OR 21.10 ACRES), MORE OR LESS.

J:\2005\05-0107 SARATOGA SPRINGS - WAL-MART\EXHIBITS\EXHIBITS ABC & EXHIBITS TO ECRS REV1.DWG, 8/30/2006 8:26:35 AM, ROBERTAR

PROJ #: 05.0107  
 DATE: 07/21/06  
 REV #: 08/30/06  
 ASI #:  
 R DATE

SARATOGA SPRINGS - WAL-MART #4438-00  
 WAL-MART MEETS & BOUNDS ALSO KNOW AS LOT 1  
 NW CORNER OF STATE ROAD 73 & REDWOOD ROAD  
 SARATOGA SPRINGS, UTAH

EXHIBIT B TO ECR'S

CLC ASSOCIATES  
 420 EAST SOUTH TEMPLE  
 SUITE 850  
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 ARCHITECTURE  
 ENGINEERING PLANNING  
 LANDSCAPE ARCHITECTURE  
 LAND SURVEYING



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BL ADJ PARCEL 2

PART OF LOTS 2, AND 3, CROSSROADS RANCHETTES PLAT "A", AS FOUND IN A PLAT RECORDED AS ENTRY NO. 43648, MAP NO. 4326, OFFICIAL RECORDS; TOGETHER WITH A PORTION OF THE LAND DESCRIBED AS PARCEL 1, ON "EXHIBIT A", OF THE CORRECTIVE DEED, RECORDED AS ENTRY NO. 47643:2006, APRIL 20, 2006, OFFICIAL RECORDS; BEING PART OF THE NORTHWEST QUARTER, SECTION 14, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, IN THE STATE OF UTAH, COUNTY OF UTAH, CITY OF SARATOGA SPRINGS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF S.R. 68 (REDWOOD ROAD) AS SHOWN ON THE UDOT ROW PLANS FOR PROJECT NO. 102-C(1), SAID POINT ALSO BEING S00°36'32"W GRID (NAD83 (1994) UTAH CENTRAL) ALONG THE EAST LINE OF SAID NORTHWEST QUARTER 322.79 FEET, AND S90°00'00"W 133.73 FEET, FROM THE NORTH QUARTER CORNER OF SAID SECTION 14, SAID SECTION CORNER BEING N89°30'06"E 105.27 FEET BY RECORD AND N89°22'51"E 105.27 FEET BY MEASURE FROM THE FOUND WITNESS CORNER, PER COUNTY TIE SHEET NO. 33-16RC; SAID POINT ALSO BEING THE BEGINNING OF A NON TANGENT CURVE ON THE WEST LINE OF S.R. 68 (REDWOOD ROAD), AS SHOWN ON THE UDOT ROW PLANS FOR PROJECT NO. 102-C(1), CONCAVE TO THE WEST, WITH A RADIUS OF 5,679.65 FEET, AND A RADIAL BEARING OF N80°45'31"E; THENCE SOUTHERLY 705.93 FEET ALONG SAID WEST LINE, THROUGH A CENTRAL ANGLE OF 07°07'17", TO THE SOUTH LINE OF SAID PARCEL 1, AS REFERENCED ABOVE; THENCE N89°17'16"W ALONG SAID SOUTH LINE 301.88 FEET; THENCE N00°00'00"E 120.16 FEET, TO THE BEGINNING OF A NON TANGENT CURVE CONCAVE TO THE NORTH, WITH A RADIUS OF 140.00 FEET, AND A RADIAL BEARING OF S00°00'00"W; THENCE WESTERLY 100.21 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 41°00'35", TO A POINT OF REVERSE CURVATURE, WITH A RADIUS OF 140.00 FEET; THENCE NORTHWESTERLY 62.04 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 25°23'31"; THENCE N00°00'00"E 489.05 FEET, TO THE BEGINNING OF A NON TANGENT CURVE CONCAVE TO THE SOUTH, WITH A RADIUS OF 716.00 FEET, AND A RADIAL BEARING OF N07°03'59"E; THENCE EASTERLY 29.95 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 02°23'49"; THENCE S80°32'12"E 72.78 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTH, WITH A RADIUS OF 356.46 FEET; THENCE EASTERLY 154.27 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 24°47'48"; THENCE N74°40'00"E 128.33 FEET TO THE POINT OF BEGINNING.

CONTAINS 260,500 SQUARE FEET (OR 5.98 ACRES), MORE OR LESS.

BL ADJ PARCEL 3

PART OF LOTS 5, AND 6, CROSSROADS RANCHETTES PLAT "A", AS FOUND IN A PLAT RECORDED AS ENTRY NO. 43648, MAP NO. 4326, OFFICIAL RECORDS, BEING PART OF THE NORTHWEST QUARTER, SECTION 14, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, IN THE STATE OF UTAH, COUNTY OF UTAH, CITY OF SARATOGA SPRINGS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF S.R. 73 (CEDAR FORT ROAD), AS SHOWN ON THE UDOT ROW PLAN FOR PROJECT NO. SP-0073(1)32; SAID POINT BEING S00°36'32"W GRID (NAD83 (1994) UTAH CENTRAL) ALONG THE EAST LINE OF SAID NORTHWEST QUARTER 1,318.03 FEET, AND S90°00'00"W 1,346.71 FEET, FROM THE NORTH QUARTER CORNER OF SAID SECTION 14, SAID SECTION CORNER BEING N89°30'06"E 105.27 FEET BY RECORD, AND N89°22'51"E 105.27 FEET BY MEASURE, FROM THE FOUND WITNESS CORNER, PER COUNTY TIE SHEET NO. 33-16RC; THENCE N89°23'01"W ALONG SAID NORTH LINE 257.07 FEET; THENCE N00°36'59"E 213.60 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE EAST, WITH A RADIUS OF 385.00 FEET; THENCE NORTHERLY 76.74 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 11°25'15", TO A POINT OF COMPOUND CURVATURE WITH A RADIUS OF 991.00 FEET; THENCE NORTHERLY 153.85 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 08°53'41"; THENCE N90°00'00"E 202.70 FEET; THENCE S00°00'00"E 439.88 FEET TO THE POINT OF BEGINNING.

CONTAINS 107,582 SQUARE FEET (OR 2.47 ACRES), MORE OR LESS.

J:\2005\05-01-07 SARATOGA SPRINGS - WAL-MART\EXHIBITS\EXHIBITS ABC & EXHIBITS TO ECRS REV1.DWG, 8/30/2006 8:49:36 AM, ROBERTAR

PROJ #: 05.0107  
 DATE: 07/21/06  
 REV #: 08/30/06  
 ASI #:  
 R DATE

SARATOGA SPRINGS - WAL-MART #4438-00  
 AMBOURCE MEETS & BOUNDS  
 ALSO KNOWN AS OUTLOTS 1, 2 & 3  
 NW CORNER OF STATE ROAD 73 & REDWOOD ROAD  
 SARATOGA SPRINGS, UTAH

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 LANDSCAPE ARCHITECTURE  
 LAND SURVEYING



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BL ADJ PARCEL 4

PART OF LOTS 2, 3, AND 6, CROSSROADS RANCHETTES PLAT "A", AS FOUND IN A PLAT RECORDED AS ENTRY NO. 43648, MAP NO. 4326, OFFICIAL RECORDS, BEING PART OF THE NORTHWEST QUARTER, SECTION 14, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, IN THE STATE OF UTAH, COUNTY OF UTAH, CITY OF SARATOGA SPRINGS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 2, BEING S89°38'48"W 26.35 FEET FROM THE NORTHEAST CORNER OF SAID LOT 2, SAID POINT ALSO BEING S00°36'32"W GRID (NAD83 (1994) UTAH CENTRAL) ALONG THE EAST LINE OF SAID NORTHWEST QUARTER 246.47 FEET, AND S90°00'00"W 173.88 FEET, FROM THE NORTH QUARTER CORNER OF SAID SECTION 14, SAID SECTION CORNER BEING N89°30'06"E 105.27 FEET BY RECORD, AND N89°22'51"E 105.27 FEET BY MEASURE, FROM THE FOUND WITNESS CORNER, PER COUNTY TIE SHEET NO. 33-16RC; THENCE S74°40'00"W 110.58 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTH, WITH A RADIUS OF 446.00 FEET; THENCE WESTERLY 193.02 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 24°47'48", TO A POINT OF REVERSE CURVATURE, WITH A RADIUS OF 784.00 FEET; THENCE WESTERLY 126.29 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 09°13'47"; THENCE N89°45'59"W 712.83 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST, WITH A RADIUS OF 229.00 FEET; THENCE SOUTHWESTERLY 314.28 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 78°37'56"; THENCE S11°36'05"W 329.82 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST, WITH A RADIUS OF 466.00 FEET; THENCE SOUTHERLY 76.89 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 09°27'12"; THENCE S21°03'18"W 186.68 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE EAST, WITH A RADIUS OF 500.00 FEET; THENCE SOUTHERLY 178.36 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 20°26'19"; THENCE S00°36'59"W 113.88 FEET, TO THE NORTH LINE OF S.R. 73 (CEDAR FORT ROAD), AS SHOWN ON THE UDOT ROW PLAN FOR PROJECT NO. SP-0073(1)32; THENCE N89°23'01"W ALONG SAID NORTH LINE 210.72 FEET, TO THE WEST LINE OF SAID SUBDIVISION; THENCE ALONG SAID WEST LINE THE FOLLOWING THREE (3) COURSES: 1) N02°48'17"E 213.30 FEET, 2) N25°53'47"E 180.67 FEET, AND 3) N31°05'46"E 796.38 FEET, TO THE NORTH LINE OF SAID LOT 2; THENCE N89°38'48"E ALONG SAID NORTH LINE 1,261.34 FEET TO THE POINT OF BEGINNING.

CONTAINS 166,742 SQUARE FEET (OR 3.83 ACRES), MORE OR LESS.

J:\12005\05-0107 SARATOGA SPRINGS - WAL-MART\EXHIBITS\EXHIBITS ABC & EXHIBITS TO ECRS REV1.DWG. 8/30/2006 8:50:25 AM. ROBERTAR

PROJ #: 05.0107  
 DATE: 07/21/06  
 REV #: 08/30/06  
 ASI #:  
 R DATE

**SARATOGA SPRINGS - WAL-MART #4438-00**  
**AMSOURCE MEETS & BOUNDS**  
**ALSO KNOWN AS OUTLOTS 4 & 5**  
 NW CORNER OF STATE ROAD 73 & REDWOOD ROAD  
 SARATOGA SPRINGS, UTAH

**CLC ASSOCIATES**  
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 ENGINEERING PLANNING  
 LANDSCAPE ARCHITECTURE  
 LAND SURVEYING



2 OF 2

EXHIBIT C TO ECR 5

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