

ENT 72974:2013 PG 1 of 23  
**Jeffery Smith**  
**Utah County Recorder**  
 2013 Jul 31 02:09 PM FEE 56.00 BY EO  
 RECORDED FOR Metro National Title  
 ELECTRONICALLY RECORDED

When recorded return to:  
 Thomas E. Halter  
 Gust Rosenfeld P.L.C.  
 One East Washington, Suite 1600  
 Phoenix, AZ 85004-2553  
 MNT 29494  
 #14-021-0191

Pleasant Grove City, UT (#4700)

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

**THIS AGREEMENT** is made as of the 31<sup>st</sup> day of July, 2013, between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("Wal-Mart"), and **GROVE VENTURES II, 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-1 hereof, said Tract being more particularly described in Exhibit B attached hereto;

**WHEREAS**, 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 "Business Office" shall mean any non-retail office other than a Health Service Office (as defined below).

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

1.4 "Health Service Office" shall mean an office which provides health and wellness services directly to consumers such as dental offices, chiropractors and doctors' offices, provided, however, that the following specialized practices shall not be permitted within the Shopping Center: family planning clinic, blood donation center, immunology, or indigent services clinic.

1.5 "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.

1.6 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. Subject to Section 4.2, Business Offices and Health Service Offices shall be also permitted in the Developer Tract and the Wal-Mart Tract. No cafeteria, theatre, bowling alley, billiard parlor, or night club, or other place primarily devoted to recreation or amusement rather than the retail sale of goods or professional services, any business which would prevent or inhibit the owner or occupant of the Wal-Mart Tract from obtaining licenses and permits necessary to sell alcoholic beverages for offsite consumption, any business serving alcoholic beverages which derives 50% or more of its gross sales volume serving or selling alcoholic beverages for on or off premises consumption, 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, massage parlor (except therapeutic massage establishments and except as part of a day spa); modeling studio; adult bookstore; any establishment primarily engaged in the business of selling, exhibiting or distributing pornographic or obscene materials; a business primarily engaged in displaying live models or dancers, a video store that sells or rents videos that are rated NC-17, X, XX, XXX, or of a rating assigned to works containing material more sexually explicit than XXX, by the film rating board of the Classification and Rating Administration, shall occupy space within the Shopping Center without the prior written consent of Wal-Mart, which Wal-Mart may withhold in its sole and absolute discretion. No restaurant occupying in excess of five thousand (5,000) square feet shall occupy space on any portion of the Developer Tract without the prior written consent of Wal-Mart, which Wal-Mart may withhold in its sole and absolute discretion. Developer recognizes that said businesses may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business. Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Wal-Mart on the Wal-Mart Tract. Developer recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its business on the Wal-Mart Tract; and Developer hereby waives any legal action for damages or for equitable relief which might be available to Developer because of such cessation of business activity by Wal-Mart.

2.2 Notwithstanding anything to the contrary contained in this Agreement, Developer hereby agrees that if a Health Service Office is located on the Developer Tract, then the Developer Tract shall only be used for Health Service Offices.

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, (v) a variety, general or "dollar" store in excess of 1,200 square feet, (vi) a grocery store or supermarket as such terms are defined below, or (vii) 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.

#### 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; provided, however, that if any Business Offices or Health Service Offices are located on the Developer Tract, then no building constructed on the Developer Tract shall exceed 25' 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' in height, as measured from the mean finished elevation of the parking area of the Shopping Center, unless as otherwise approved by Wal-Mart at its sole discretion in writing; provided, however, that there may be not more than 6 feet of additional architectural embellishments (for a total maximum height of 28') on any such buildings. No building shall have a metal exterior. Notwithstanding anything to the contrary contained herein, the Northeast quadrant of the Developer Tract, as labeled on Exhibit A-2, shall not be developed until the Northwest, Southeast and Southwest quadrants have first been developed.

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. Notwithstanding anything to the contrary contained in this Agreement, a Health Service Office shall only be located on the Developer Tract. If any Building Offices and Health Service Offices are located on the Northeast quadrant and/or the Southeast quadrant of the Developer Tract, then the front doors of such offices shall not face the Wal-Mart Tract.

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; provided, however, if (1) any Business Offices or Health Care Offices are located on the Developer Tract or (2) no retail stores are located on the Developer Tract, then in no event shall the owner, occupant, licensee or invitee of the Developer Tract be permitted to use the Wal-Mart Tract for vehicular parking or for any other purpose other than as described above. 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). Both parties shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. No such lines, sewers, utilities or services of one party shall be installed within the Building Areas on the other party's parcel. 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 a Tract without the prior written consent of the owner of or lessee of such 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 4.5 car spaces for each 1,000 square feet of building or buildings on such Tract; provided, however, that if a Business Office or Health Care Offices are located on the Developer Tract, then Developer

hereby agrees that at all times there shall be independently maintained on the Developer Tract parking area sufficient to accommodate not fewer than 3.5 car spaces for each 1,000 square feet of Business Offices and Health Services Offices located thereon.

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 (a) every 1,000 square feet of building space for any restaurant or entertainment use in excess of 5,000 square feet and (b) any kind of fast food restaurant (i.e. any restaurant with a drive through aisle), notwithstanding a building footprint of less than 5,000 square feet; or (ii) 7 spaces for every 1,000 square feet of building space for any restaurant or entertainment use less than 5,000 square feet (subject to the exception above); or (iii) 5.0 spaces per 1,000 square feet of building space for any other use.

#### 6.4 Maintenance.

(1) Standards. The Outparcels shall be kept neat and orderly, until improved and constructed. If the Outparcels have vegetation, said vegetation shall be trimmed and mowed on a regular basis. Following completion of the improvements on the Common Areas, the parties hereto shall maintain the Common Areas in good condition and repair. The maintenance is to include, without limitation, the following:

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

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

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

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

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

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

(g) Maintaining elements of the Storm Drainage System.

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

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

fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

6.5 Taxes. Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the Common Areas owned by it.

7. Signs.

7.1 Signage. No rooftop sign shall be erected on the building constructed on the Outparcels. No freestanding identification sign may be erected on the Outparcels without approval of the Developer, and in no event shall such freestanding identification sign exceed the height of the shopping center pylon sign or block the visibility of the Wal-Mart Store. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3'3" in height, the type and location of such signs to be approved by Developer. No sign shall be located on the Common Areas on the Wal-Mart Tract and the Developer Tract except signs advertising businesses conducted thereon. All signs shall conform to the sign plan attached hereto as Exhibit D. No signs shall contain derogatory messages concerning any business located in the Shopping Center. No signs shall obstruct the ingress and egress shown on Exhibit A-2.

7.2 Pylon Sign. Developer shall install and maintain one Shopping Center pylon sign (the "Pylon Sign") in the location identified on Exhibit D attached hereto. The design of the Pylon Sign shall be as shown on Exhibit D attached hereto or such other design as mutually approved by Wal-Mart and Developer. No signage shall be permitted to occupy space on the Pylon Sign except signs advertising businesses conducted in the Shopping Center. Developer, as grantor, hereby grants to the owner of the Wal-Mart Tract, as grantee, for the benefit of the Wal-Mart Tract, appurtenant to the Wal-Mart Tract, a perpetual, non-exclusive easement to construct, maintain, operate and replace, at Wal-Mart's sole cost and expense, a sign panel on the Pylon Sign. Wal-Mart shall have the right to install its sign panel in the first position of the Shopping Center occupants on the Pylon Sign. Subject to Wal-Mart's reasonable approval of the cost of the Pylon Sign, Wal-Mart agrees to pay to Developer Wal-Mart's proportionate share (as calculated below) of the cost of constructing and maintaining the Pylon Sign (the cost of construction to include the cost to deliver electricity to the Pylon Sign and the cost of maintaining the Pylon Sign to include the monthly cost of electricity delivered to the Pylon Sign as charged by the local power company); provided, however, that Wal-Mart's share of the cost of constructing the Pylon Sign will not exceed Twenty Five Thousand Dollars \$25,000. Wal-Mart's proportionate share of the cost of construction and maintenance of the Pylon Sign shall be calculated by multiplying the total cost of said construction or maintenance, as the case may be, by a fraction, the numerator of which is the total square footage of the Pylon Sign allocated by Developer to Wal-Mart for Wal-Mart's use and the denominator of which is the total square footage of the Pylon Sign allocated for use by Wal-Mart and other tenants or occupants of the Shopping Center. Wal-Mart shall pay to Developer Wal-Mart's proportionate share of the cost of constructing the Pylon Sign in one lump-sum payment within 30 days after receipt by Wal-Mart of Developer's written invoice therefor. Developer may bill Wal-Mart for Wal-Mart's proportionate share of the cost of maintaining the Pylon Sign no more frequently than quarterly and Wal-Mart shall pay its proportionate share of the Pylon Sign maintenance costs within 30 days after receipt of a written invoice therefor from Developer.

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 \$1,000,000.00 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 \$5,000,000.00 of an umbrella policy covering the Shopping Center. 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 Section 8.2(1) 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 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 Utah County, Utah, a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this Agreement may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired (the "Notice Statement"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, a copy of such Notice Statement to all other persons or entities then holding fee or mortgage interests in any tract subject to this Agreement, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Utah County, Utah (the "Existing Interest Holders"). Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this Section 19.1, it shall not be entitled to receive any notice required or permitted to be given under this Agreement, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement. It is understood and agreed that the provisions of this Section 19.1 regarding the recordation of the Notice Statement are satisfied with respect to Developer and Wal-Mart.

19.2 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered

mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

Wal-Mart: Wal-Mart Stores, Inc. (Store #4700)  
 2001 S.E. 10th Street  
 Bentonville, AR 72716  
 Attention: President

With a copy to:  
 Wal-Mart Stores, Inc. (Store #4700)  
 Attention: Property Management, State of Utah  
 2001 S.E. 10th Street  
 Bentonville, AR 72716-0550

Developer: Grove Ventures II, LLC  
 1572 Woodland Park Dr., Ste. 505  
 Layton, UT 84041

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.

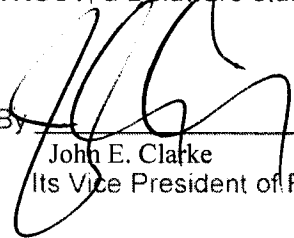
20. Consent. The owner of the Wal-Mart Tract agrees that for so long as a lease of all or a portion of the Wal-Mart Tract is in effect, whenever the consent of the owner of the Wal-Mart Tract is required under the Agreement, the owner of the Wal-Mart Tract will give such consent only after obtaining 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. 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 REAL ESTATE BUSINESS TRUST, a Delaware statutory trust

By  \_\_\_\_\_  
John E. Clarke  
Its Vice President of Real Estate

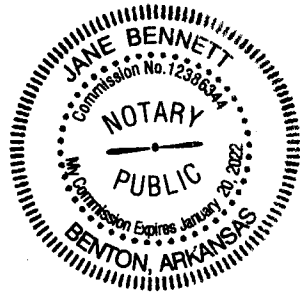
"Wal-Mart"


State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 18th day of July, 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

GROVE VENTURES II, LLC., a Utah limited liability company <sup>by Millcreek Partners, LLC</sup>  
its Manager

By Spencer Wright  
its MANAGER

"Developer"

State of Utah

County of Salt Lake

The foregoing instrument was acknowledged before me this 30 day of July, 2013, by Spencer Wright, the Manager of Grove Ventures II, LLC, a Utah limited liability company, on behalf of the company.

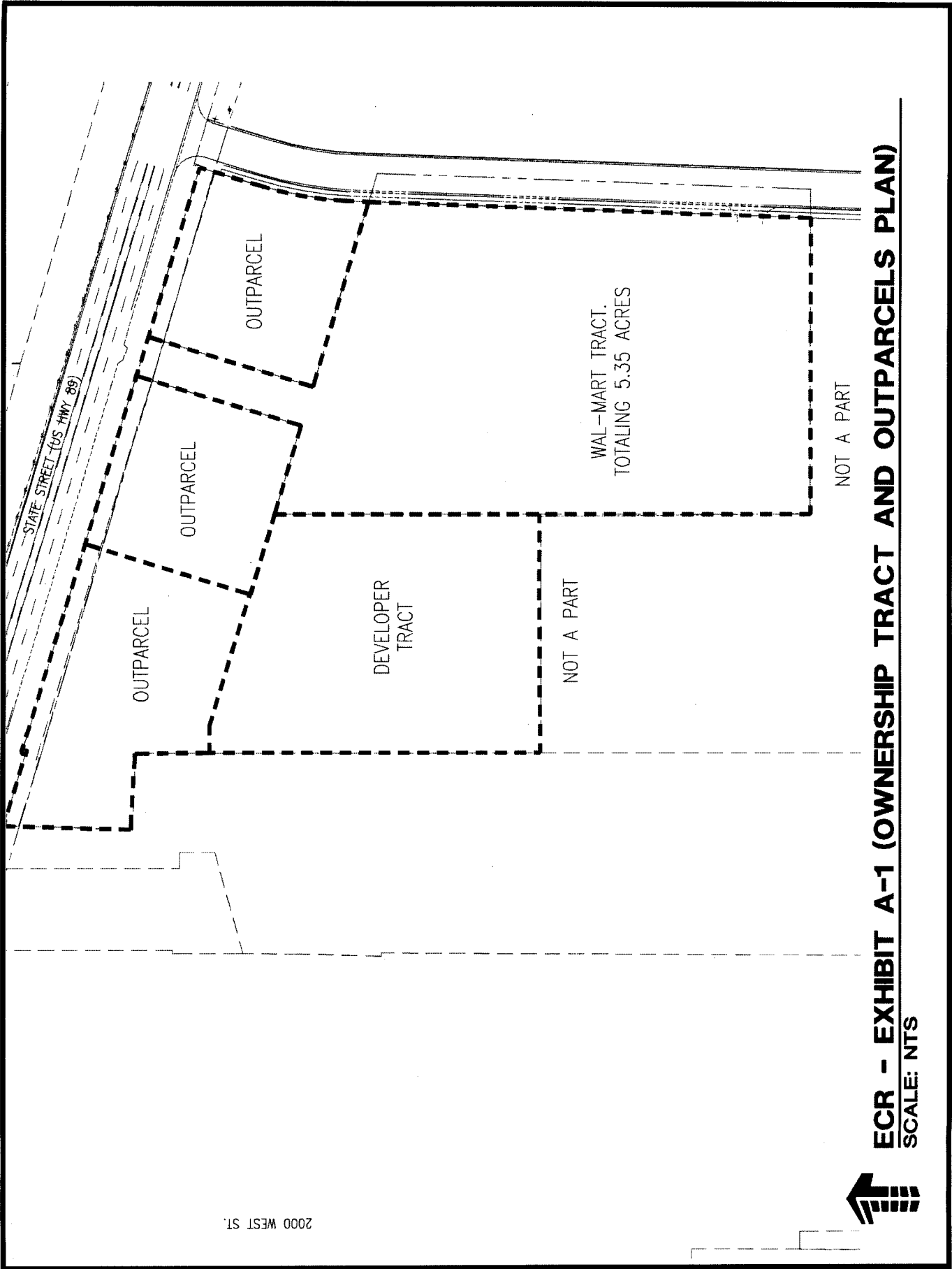
(Seal and Expiration Date)

Tracy Kohler  
Notary Public



**EXHIBIT A-1**

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



2000 WEST ST.



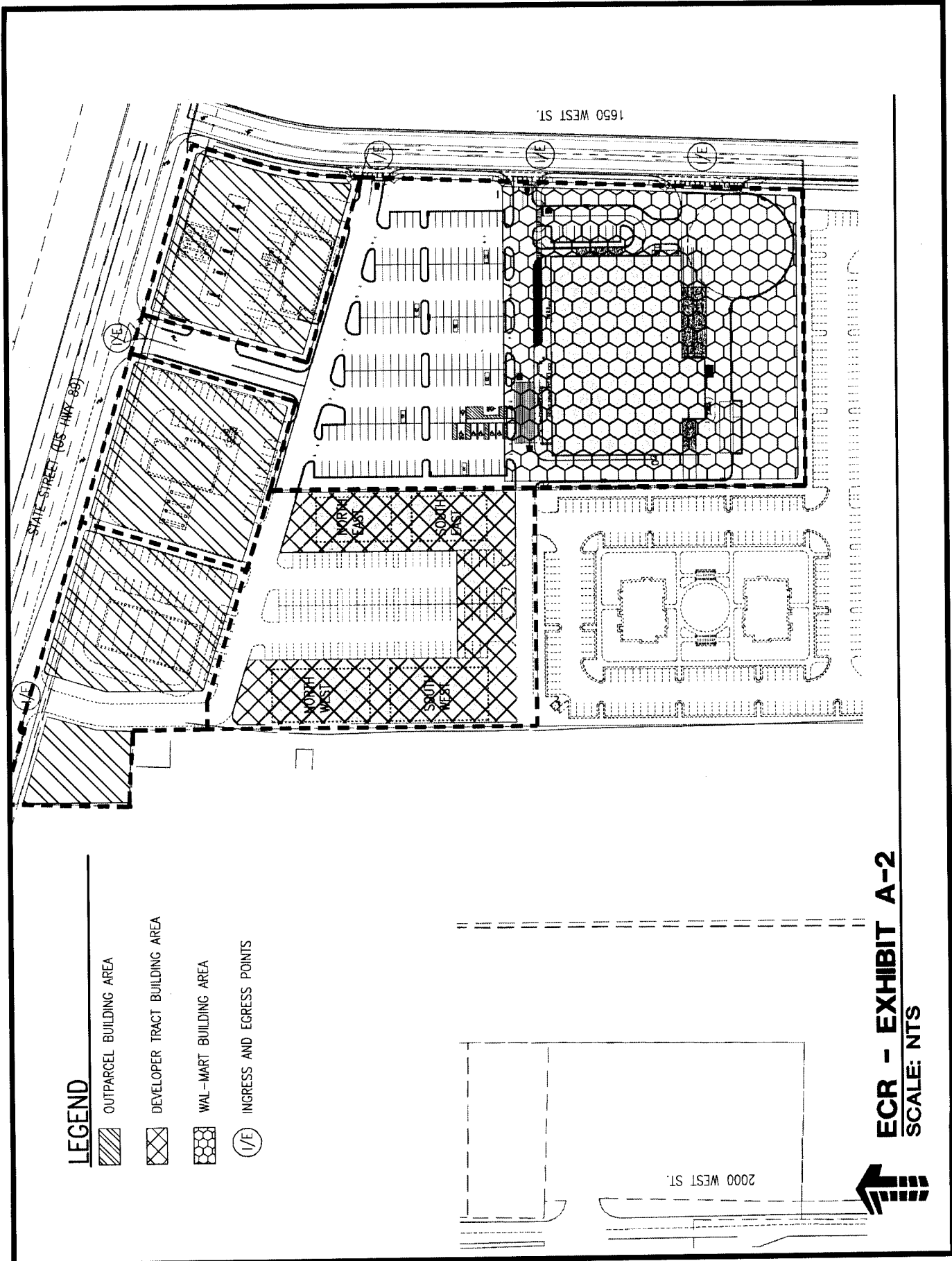
**ECR - EXHIBIT A-1 (OWNERSHIP TRACT AND OUTPARCELS PLAN)**

SCALE: NTS

**EXHIBIT A-2**

(Site plan marked to show various development details)





**LEGEND**

OUTPARCEL BUILDING AREA

DEVELOPER TRACT BUILDING AREA

WAL-MART BUILDING AREA

INGRESS AND EGRESS POINTS

**ECR - EXHIBIT A-2**

SCALE: NTS



2000 WEST ST.

1650 WEST ST.

STATE STREET (US HWY 88)

**EXHIBIT B**

(Wal-Mart Tract legal description)

Lot 5, GROVE COMMONS SUBDIVISION PLAT "A", according to the official plat thereof on file and of record in the office of the Utah County Recorder.

**EXHIBIT C**

(Developer Tract and Outparcels legal description)

Lots 1 and 6, GROVE COMMONS SUBDIVISION PLAT "A", according to the official plat thereof on file and of record in the office of the Utah County Recorder.

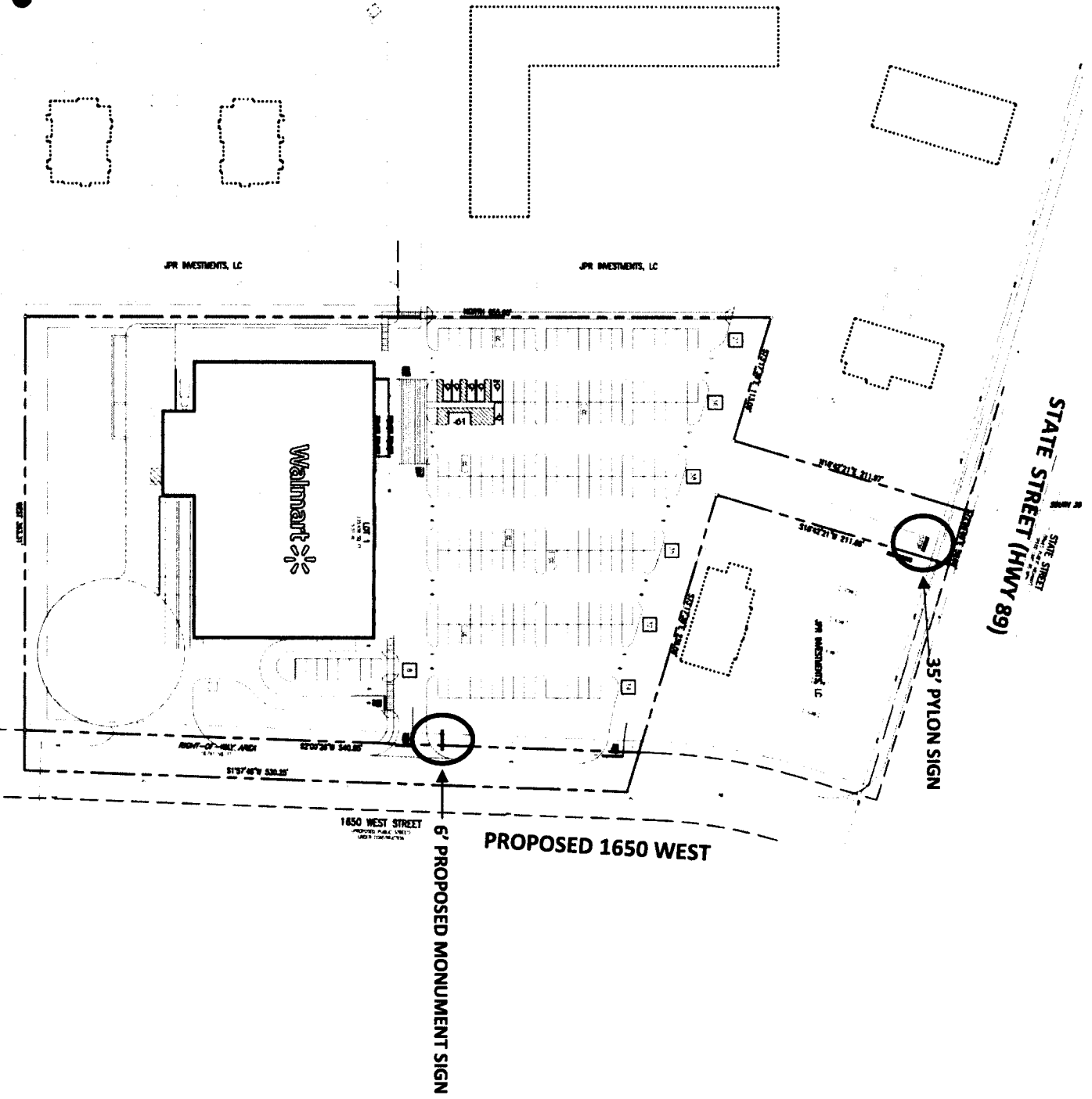
**EXHIBIT D**

**(Attached)**



February 6, 2013

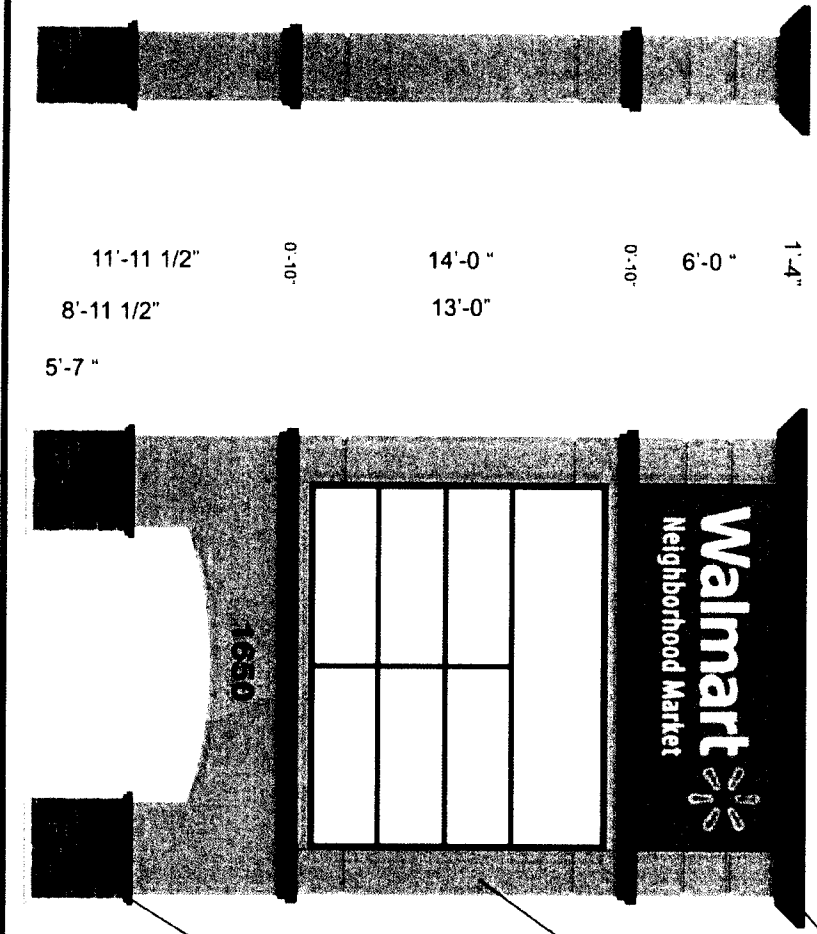
Pleasant Grove, UT #4700



Site Plan



35'-0"



PAINTED SW #7522  
"MEADOWLARK"

PAINTED SW #7694  
"DROMEDARY CAMEL"

CULTURED STONE PHEASANT  
PRO-FIT ALPINE LEDGESTONE

PLUM DISPLAY

SCALE: 3/16" = 1'

DEVELOPER/LANDLORD OWNED



February 6, 2013

Pleasant Grove, UT #4700

Design Sign

5

**YESCO**  
Salt Lake Division

WRIGHT DEVELOPMENT  
1850 W STAT ST  
PLEASANT GROVE UT

Ben 0  
Christian B

4268081

1-2

