

MNT #07051609  
When recorded return to:  
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PT. OF PARCELS #: OHE-1348, OHE-1570-0  
DWC-1570, OHE-1537  
~~07051609~~

Heber, UT (#4696)

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

THIS AGREEMENT ("Agreement") is made as of the 26<sup>th</sup> day of AUGUST, 2008, between WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust ("Wal-Mart"), and BOYER HEBER CITY, L.C., a Utah limited liability company ("Developer").

**WITNESSETH:**

**WHEREAS**, Wal-Mart is the owner of the Wal-Mart Tract as shown on the Site 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 Site Plan attached hereto as Exhibit A-1 hereof, the same being more particularly described in Exhibit C hereof;

**WHEREAS**, Developer is the owner of the "Sign Parcel" shown on the Site Plan attached hereto as Exhibit A-1 hereof, the same being more particularly described in Exhibit C-2 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 "Outparcels" shall mean those certain parcels shown on the Site Plan at Exhibit A-1, and as more particularly described at Exhibit C.

1.4 "Site Plan" and "Detailed Site Plan" shall mean the site plans attached hereto at Exhibits A-1 and A-2.

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. 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 any business deriving in excess of 40% of its gross sales 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. Nothing contained herein shall be deemed a waiver of any rights Developer may have pursuant to any other agreement between Wal-Mart and Developer.

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 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, but Ross Dress for Less and T.J. Maxx will be allowed (iv) except as provided below, 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 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. Nothing herein shall be construed as prohibiting the operation of one or more category retailers, such as Ross Dress for Less or T.J. Maxx, on the Outparcels or the Developer Tract. Category retailers are retailers selling primarily a single type of merchandise such as electronics, apparel, shoes, home improvement products, building supplies, sporting goods, office supplies and appliances. In no event shall any person or entity that operates a membership warehouse club, a pharmacy or a grocery store be deemed to be a category retailer. Notwithstanding the above, it shall be permissible for a dollar store to be operated out of Building E (as depicted on Exhibit A-2) so long as the same does not contain more than 10,000 square feet of building space.

#### 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 forty-five (45) feet in height above finished grade. Incidental architectural embellishments and peaks shall not be considered in connection with determining compliance with said height restriction. The initial building labeled as Building A on Exhibit A-2 shall not have any entrances which face due south. At such time as the initial tenant of said building vacates, said building may have one (1) due south facing entrance which services not more than 1,200 square feet of building area. No building constructed on the Outparcels shall exceed thirty-five feet (35') (including all 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 metal exterior, however, metal awnings shall be permitted.

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 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. The encroaching party shall design the footings to support both parties' buildings.

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 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 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 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 good faith 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 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 the Detailed Site Plan at 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 4.6 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:

(1) On pads outside of the ring road (as shown on attached Exhibit A-1), (i) seven (7) spaces for every one thousand (1,000) square feet of building space for any fast food or quick service restaurant use; (ii) seven (7) spaces for every one thousand (1,000) square feet of building space for any health club or gymnasium use; (iii) ten (10) spaces for every one thousand (1,000) square feet of building space for any full-service, sit down restaurant or entertainment use; and (iv) four and one-half (4½) spaces for every one thousand (1,000) square feet of building space for any other use. Developer shall have the right to allow cross-parking between the Outparcels outside of the ring road for all purposes, including for purposes of meeting parking ratio requirements; and

(2) On pads inside of the ring road (as shown on attached Exhibit A-1), (i) 10 spaces for every 1,000 square feet of building space for any restaurant use, and (ii) 4.75 spaces per 1,000 square feet of building space for any other use, each of which pads must independently meet the required parking ratio.

6.4 Maintenance.

(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 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) By Developer. Developer shall maintain all Common Areas in the Shopping Center in the manner as above outlined, provided, however, that Developer may, if it so desires, contract for such maintenance to be provided by an outside agent. Developer will receive a fee equal to ten percent (10%) of the Common Area Maintenance Costs ("CAM Costs") to cover supervision, management, accounting and similar fees, and shall be entitled to reimbursement for CAM Costs incurred in connection with such maintenance as set forth below.

(3) Failure by Developer to Maintain. If Developer (i) fails to maintain the Common Areas as required by this Section, (ii) breaches its obligations with respect to Common Area maintenance and fails to cure such deficiency within thirty (30) days after written notice to Developer by any party of such deficiency with regard to such party's Tract or Outparcel, or (iii) in the event any party can provide the same level of maintenance services as those being provided by Developer at a cost that is less than the cost of the maintenance services (including the management fee detailed above) being provided by Developer and such party provides reasonable and adequate documentation of such maintenance services to Developer, then such party may elect to self-maintain the Common Areas on its Tract or Outparcel), whereupon such party shall become responsible for such maintenance solely with respect to its Tract or Outparcel and shall no longer be obligated to contribute to the maintenance of the remainder of the Common Areas as otherwise required herein. Notwithstanding the foregoing, maintenance responsibility for exterior building walls of

the individual buildings within the Shopping Center shall be the responsibility of the respective owners of the buildings.

(4) Payment and Calculation of Expenses. The respective owners of the Tracts or Outparcels shall pay the maintenance expense of their Tracts or Outparcels. Each party shall pay its pro rata share of maintenance expenses and fees.

(a) Developer shall expend only such funds as are reasonably necessary for the operation and maintenance of the Common Areas in accordance with the standards set forth in this Section and shall promptly pay such CAM Costs when incurred. 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 Common Areas. Exclusions from CAM Costs include but are not limited to the following:

- i. Any late charges or fees;
- ii. any costs to clean or repair the Common Areas resulting from promotional activities or from construction, maintenance or replacement of buildings;
- 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), provided however, a management fee in an amount not to exceed ten percent (10%) of annual CAM Costs (not including any tax or insurance costs) may be included as a CAM Cost;
- v. entertainment, transportation, meals and lodging of anyone, and plaques, trophies and gift certificates;
- vi. depreciation and amortization except to the extent of actual cost savings realized as a result of the asset in question;
- vii. costs incurred by Developer for alterations which are considered capital improvements;
- viii. 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;
- ix. interest, points and fees on debt or amortization on any mortgage or mortgages encumbering the Shopping Center;
- x. all items and services for which an occupant in the Shopping Center reimburses Developer or which Developer provides selectively to one or more occupants without reimbursement;
- xi. electrical power costs for which any occupant directly contracts with the local public service company;

xii. all expenses associated with maintenance, repair, replacement, operation and upkeep of portions of the Shopping Center under roof;

xiii. the cost of acquisition of new land or construction of new buildings;

xiv. costs exceeding those obtainable through competitive bidding by responsible and qualified bidders; and

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

(b) The annual budget for CAM Costs shall be provided to each party by Developer annually in advance for such party's approval. Each owner shall pay Developer for such owner's quarterly pro-rata share of budgeted CAM Costs determined by dividing the acreage of such owner's Tract and/or Outparcels by the total acreage contained in the Shopping Center as a whole. Developer shall furnish each owner with copies of all paid invoices for CAM Costs, and an owner will have no obligation to render payment to Developer for CAM Costs incurred unless and until Developer provides such owner with the foregoing items. Each party shall have the right to audit Developer's records to determine the validity of CAM Costs in accordance with this Section. Developer may bill the owners for CAM Costs no more frequently than monthly. CAM Costs shall be reconciled annually and adjustments, as may be required, made to the following year's budget.

(c) Each owner shall have the right, not more frequently than once in any calendar year, to audit all of Developer's records pertaining to CAM Costs, taxes and insurance utilizing a representative of such owner's choice. In the event it is determined that Developer has over-billed such owner in excess of two percent (2%) for its CAM Costs, Developer shall reimburse such owner for all reasonable expenses of such audit. In the event such audit shall determine that Developer has underbilled such owner, such owner shall pay the amount by which it was underbilled within thirty (30) days after a receipt by such owner of an invoice for such amount. Developer shall retain its records regarding CAM Costs for a period of at least two (2) years following the final billing for the calendar year in question. Any audits shall be conducted upon thirty (30) days prior written notice to Developer at its office during normal business hours.

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 eight feet (8') 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 the Detailed Site Plan at Exhibit A-2.



In the event the "pylon signs" are erected on the Developer Tract and on the Sign Parcel, Wal-Mart shall have the right to display sign panels on the top of such pylon sign. Wal-Mart shall provide the sign panel, be responsible for the entire cost of installing the sign panel on the pylon sign and shall be responsible for its pro-rata share (calculated as the proportion that the total square footage of its sign panel bears to the total square footage of all sign panels to be displayed thereon) of all maintenance, repairs and utility costs of the pylon sign. This Section 7 is the only Section of this Agreement which constitutes an encumbrance on the Sign Parcel.

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. The owner of the Developer Tract hereby indemnifies and saves the other owners harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage arising in connection with the Common Area Maintenance activities of the owner of the Developer Tract and its agents, contractors and their respective employees.

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. The insurance carried by the owner of the Developer Tract shall cover its Common Area Maintenance activities. 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 or Outparcel shall pay for any increase in the cost of insuring the improvements on the other Tracts or Outparcels if such increase is due to the use by such owner or its tenant(s).

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

(4) Each owner 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.

(6) In the event an owner of any portion of the Developer Tract or the Outparcels fails to maintain the insurance required herein, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a breach under this Agreement, and any other owner of any portion of the Developer Tract or the Outparcels may, in addition to such owner's other remedies, thereafter obtain and pay for such insurance. The owner so curing shall then invoice the defaulting owner for the expenses so incurred. If the defaulting owner does not pay within fifteen (15) days after receipt of the invoice, the curing owner shall have a lien on the portion of the Developer Tract or Outparcel of the defaulting owner for the amount of the invoice, which amount shall bear interest at the rate of 12% from the date of such expiration of said fifteen (15) day period until paid. This Section 8.2(6) shall not apply to the Wal-Mart Tract.

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, any 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 ninety-nine (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 Wasatch 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 Wasatch 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 No. #4696)  
702 S.W. 8th Street  
Bentonville, AR 72716  
Attention: President

With a copy to:  
Wal-Mart Real Estate Business Trust (Store No. #4696)  
Attention: Property Management, State of Utah  
2001 S.E. 10th Street  
Bentonville, AR 72716-0550

Developer: Boyer Heber City, L.C.  
90 South 400 West, Suite 200  
Salt Lake City, Utah 84101

With a copy to:

Nelson Christensen & Helsten  
Attn: Stephen K. Christensen  
68 South Main Street, Suite 600  
Salt Lake City, Utah 84101

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 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 Sha Jett  
Its Regional Vice President

Date: 8.12.08

"Wal-Mart"

**BOYER HEBER CITY, L.C., a Utah limited liability company**

By: The Boyer Company, L.C.  
Its: Manager

By *[Signature]*  
Its *Madge*  
Date: *8/14/08* "Developer"

~~State of Arkansas  
County of Benton~~

~~The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, a Regional Vice President of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.~~

~~(Seal and Expiration Date)  
*SEE NEXT PAGE*~~

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

State of *Utah*  
County of *Salt Lake*

The foregoing instrument was acknowledged before me this *12* day of *August*, 2008, by *Dawn M Glenn*, the *Manager* of The Boyer Company, L.C., manager of Boyer Heber City, L.C., a Utah limited liability company, on behalf of the company.

(Seal and Expiration Date)

*Misty Landward*  
Notary Public



~~BOYER HEBER CITY, L.C., a Utah limited liability company~~

By: ~~The Boyer Company, L.C.~~  
 Its: ~~Manager~~

*SEE PREVIOUS PAGE*

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

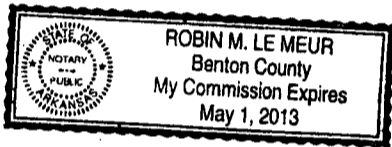
~~"Developer"~~

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of AUGUST, 2008, by Shannon belts, a Regional Vice President of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

(Seal and Expiration Date)



*[Handwritten Signature]*  
 \_\_\_\_\_  
 Notary Public

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

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

~~The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, the \_\_\_\_\_ of The Boyer Company, L.C., manager of Boyer Heber City, L.C., a Utah limited liability company, on behalf of the company.~~

~~(Seal and Expiration Date)~~

~~*SEE PREVIOUS PAGE*~~

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

**EXHIBIT A-1**

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



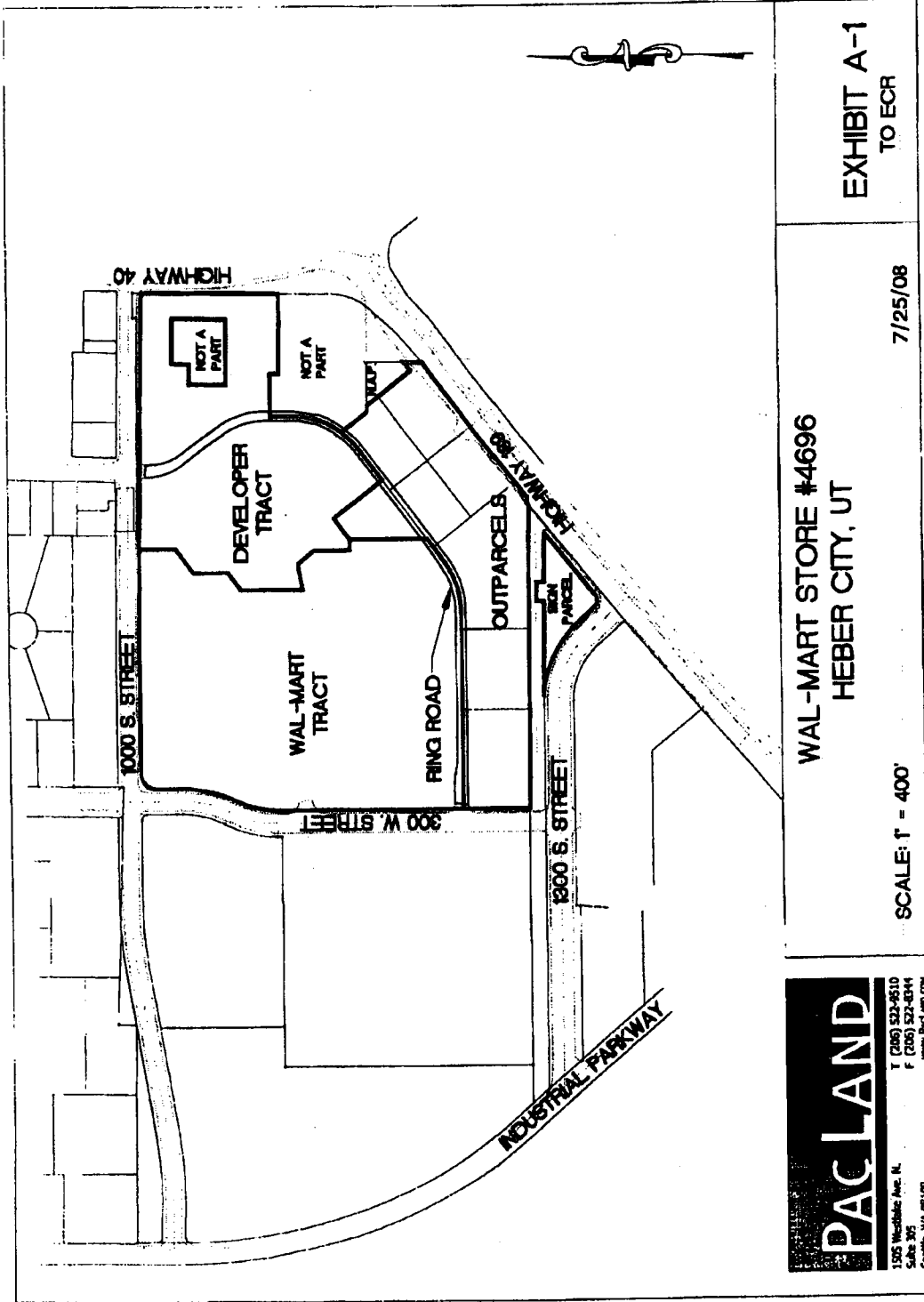


EXHIBIT A-1  
TO ECR

WAL-MART STORE #4696  
HEBER CITY, UT

7/25/08

SCALE: 1" = 400'

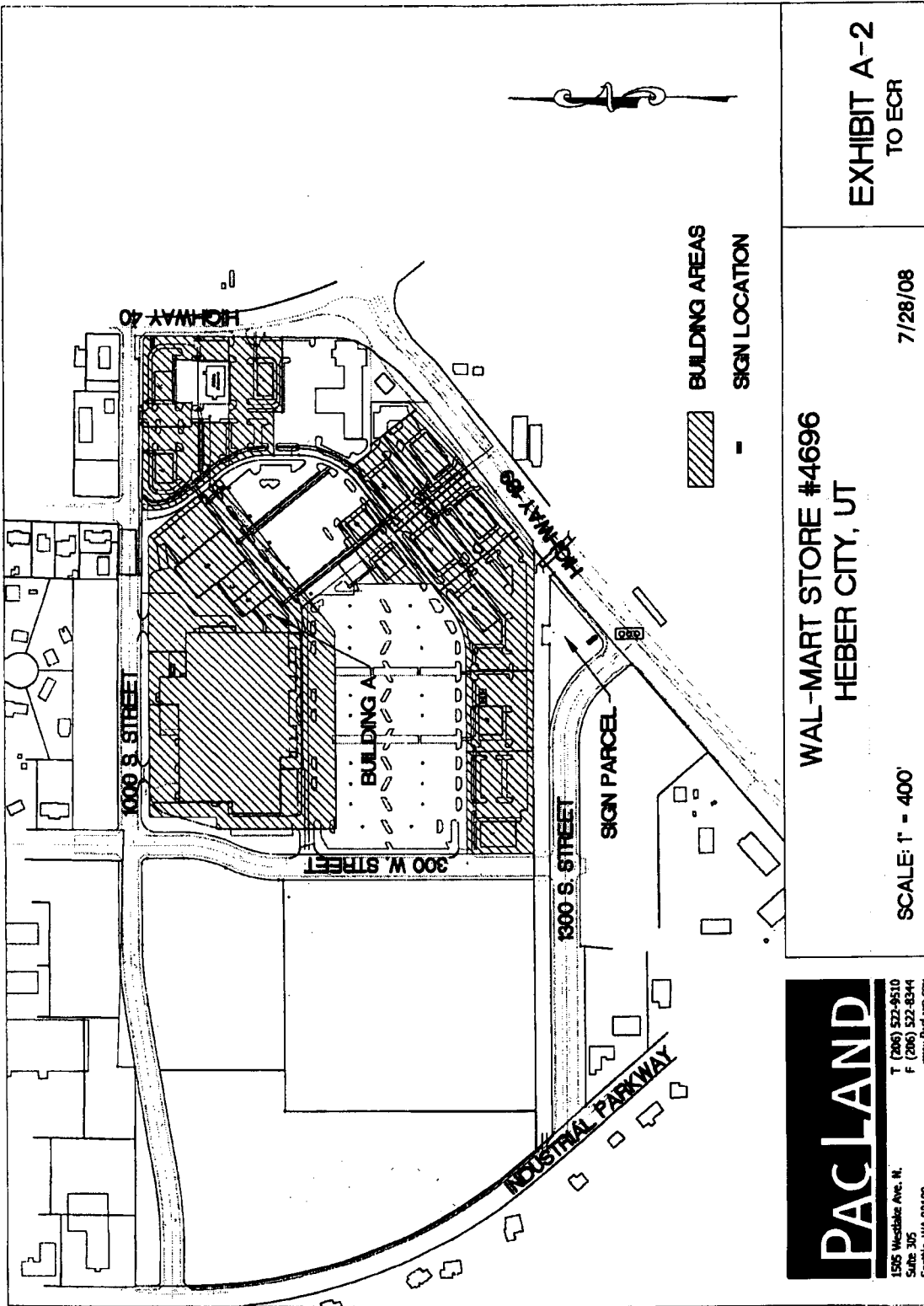
**PACLAND**

1305 Westside Ave. N.  
Suite 305  
Spokane, WA 99208

T (208) 832-8610  
F (208) 832-8344  
www.pacland.com

**EXHIBIT A-2**

(Detailed Site Plan marked to show various development details)



**Exhibit B**

(Wal-Mart Tract legal description)

Lot 1 of VALLEY STATION SUBDIVISION, recorded in the State of Utah, County of Wasatch, on August 20, 2008, Book 972, Page 2269, official records of Wasatch County, Utah.

**Exhibit C**

(Developer Tract and Outparcels legal description)

**Developer Tract:**

Lots 3, 4, 5 and 6, of VALLEY STATION SUBDIVISION, recorded in the State of Utah, County of Wasatch, on August 20, 2008, Book 972, Page 2269, official records of Wasatch County, Utah.

**Outparcels:**

Lots 7, 8, 9, 10, 11, 12, 13 and 14, of VALLEY STATION SUBDIVISION, recorded in the State of Utah, County of Wasatch, on August 20, 2008, Book 972, Page 2269, official records of Wasatch County, Utah.

**EXHIBIT C-2**

(Sign Parcel legal description)

R-11 C-2

**Boyer – Heber City**  
*Sign* Parcel

**July 2, 2008**

A part of the Northeast Quarter of Section 7, Township 4 South, Range 5 East, Salt Lake Base & Meridian, U.S. Survey in Wasatch County, Utah:

Beginning at a point on the Northwesternly Line of U.S. Highway 189 as it is to be dedicated to 67.50 foot half-width located 504.99 feet South  $0^{\circ}06'02''$  East along the Section Line; and 477.57 feet North  $89^{\circ}39'16''$  West from the Northeast Corner of said Section 7; and running thence South  $49^{\circ}38'22''$  West 215.79 feet along said Northwesternly Line of the Highway to a point of curvature; thence Southwesterly, Westerly and Northwesternly along the arc of a 30.00 foot radius curve to the right a distance of 47.12 feet (Central Angle equals  $90^{\circ}00'00''$  and Long Chord bears North  $85^{\circ}21'38''$  West 42.43 feet) to a point of tangency on the Northeasterly Line of 1300 South Street as it is to be dedicated to 42.00 foot half-width; thence along said Northeasterly Line the following two courses: North  $40^{\circ}21'38''$  West 48.66 feet to a point of curvature; and Northwesternly along the arc of a 292.00 foot radius curve to the left a distance of 241.90 feet (Central Angle equals  $47^{\circ}27'56''$  and Long Chord bears North  $64^{\circ}05'36''$  West 235.04 feet) to the Southerly Line of the Heber City/Wasatch County Flood Control Parcel; thence along said Southerly Line the following five courses: South  $89^{\circ}33'36''$  East 265.06 feet; North  $0^{\circ}26'24''$  East 21.00 feet; South  $89^{\circ}33'36''$  East 52.00 feet; South  $0^{\circ}26'24''$  West 21.00 feet; and South  $89^{\circ}33'36''$  East 132.60 feet to the Northwesternly Line of U.S. Highway 189 and the point of beginning.

**Contains 29,385 sq. ft.**  
**or 0.675 acres**

MNT #07051609  
When recorded return to:

Boyer Heber City, L.C.  
Attention: Wade Williams  
90 South 400 West, Suite 200  
Salt Lake City, Utah 84101

PT. OF PARCELS #:  
OHE-1348, OWC-1570,  
OWC-1539

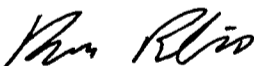
**CONSENT AND SUBORDINATION**

The undersigned, in the various capacities noted in the documents hereinafter described (the "Lender"), is the owner and holder of the following instruments (the "Loan Documents") and the indebtedness secured thereby (the "Loan"):

1. Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated March 28, 2008, executed by BOYER HEBER CITY, L.C., a Utah limited liability company, and BOYER HEBER LAND, L.C., a Utah limited liability company, as Trustors, and WELLS FARGO BANK NATIONAL ASSOCIATION, a national banking association, as Beneficiary and LANDMARK TITLE COMPANY, as Trustee, recorded April 4, 2008 as Entry No. 334157 in Book 963 at Page 2397 of the Official Records of the Wasatch County Recorder.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, the undersigned hereby consents to, ratifies, approves and accepts the terms of that certain EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND dated August 26, 2008 executed by and among BOYER HEBER CITY, L.C., a Utah limited liability company and WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust, to which this Consent and Subordination is attached, and subordinates its interest under the terms of the Loan Documents to the EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND with the result being that the EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND shall have priority over the Loan Documents to the same degree and with the same effect as if the EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND had been executed and recorded prior to the execution and recordation of the Loan Documents. A foreclosure of all or any of the Loan Documents shall not extinguish or impair the existence or priority of the EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND.

WELLS FARGO BANK, NATIONAL ASSOCIATION  
a national banking association

  
By: Ben Bliss  
Its: AVP



STATE OF Utah  
COUNTY OF Salt Lake

On the 19 day of Aug., 2008, personally appeared before me Ben Bliss, the AVP of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, who duly acknowledged to me that he executed the foregoing instrument for and on behalf of said national association, having all requisite authority to so act.



Tina Kennington  
Notary Public  
My Commission Expires: \_\_\_\_\_  
Residing at: \_\_\_\_\_