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08/09/2002 10:39 AM 45.00  
Book - 8631 Pg - 556-572  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
METRO NATIONAL TITLE  
BY: TAS, DEPUTY - WI 17 P.

8317636

When recorded return to:  
Ms. Adele E. Lucas - 8313  
Wal-Mart Real Estate Business Trust  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716-0550

Draper, Utah

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

**THIS AGREEMENT** is made as of the 9th day of August, 2002, between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware business trust, of 2001 S.E. Tenth Street, Bentonville, Arkansas 72716-0550 ("Wal-Mart"), and **AMERICAN ESTATE MANAGEMENT CORP.**, a Utah corporation of 3870 E. Thousand Oaks Circle, Salt Lake City, Utah 84124 ("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 shown on the 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 Developer Tract shown on the plan attached hereto as Exhibit A-1 hereof, the same being more particularly described in Exhibit D hereof (the "Additional Developer Property"); and

**WHEREAS**, Wal-Mart and Developer desire that the Wal-Mart Tract, the Developer Tract (sometimes collectively referred to as the "Tracts", or individually a "Tract") and the Additional Developer Property 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. Use. Buildings located on the Wal-Mart Tract and the Developer Tract shall be used for office purposes, single or multi-family residential purposes and for commercial purposes of the type normally found in a retail shopping center with freestanding outparcels including, without limitation, financial institutions, service shops, restaurants of all types, and retail stores. No theatre, bowling alley, billiard parlor, or any business deriving in excess of 40%

of its gross sales from the sale of alcoholic beverages for on-site consumption shall occupy space on the Wal-Mart Tract or the Developer Tract without the prior written consent of the owner of the other Tract. Each party recognizes that said businesses may inconvenience the other party's customers and adversely affect the other party'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 or by Developer on the Developer Tract. Without limiting the foregoing, 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. 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 Additional Developer Property, shall be leased or occupied by or conveyed to any other party for use as a membership warehouse club, a pharmacy, a discount department store or other discount store or as a grocery store. In the event of a breach of this covenant, Wal-Mart shall have the right to seek any and all remedies afforded by either law or equity. Any single or multi-family residential, commercial, retail, restaurant or office use not expressly prohibited by Section 1 above or this Section 2 is permitted on the Tracts without the approval of Wal-Mart or the Developer. Nothing in this Section 2 shall be deemed to prohibit the operation of the following types of stores on the Developer Tract: (i) category retailers (selling primarily a single category of goods such as electronics, clothes, hardware or sporting goods but which may sell other incidental lines of merchandise so long as such other incidental lines do not in the aggregate occupy more than 25% of the floor area of the applicable business) or (ii) Dollar Stores (and similar retailers) which sell a majority of their merchandise for \$1.00 (as reasonably adjusted for inflation). In addition, the pharmacy restriction contained in this Section 2 shall only apply against the Additional Developer Property for a period of ten (10) years from the date of this Agreement. All other restrictions contained in this Section 2 (including without limitation the pharmacy restriction applicable to the Developer Tract) shall remain in full force and effect for the duration of this Agreement as set forth in Section 14 below. The restrictions contained in this Section 2 are personal to Wal-Mart and affiliates of Wal-Mart and shall not run with ownership of the Wal-Mart Tract in the event the Wal-Mart Tract is conveyed by Wal-Mart to an unaffiliated third party.

3. Buildings. No building on the Tracts shall exceed thirty-five feet (35') in height above finished grade. No building shall have a metal exterior except for incidental architectural features (which features may be structural or non-structural).

4. Grant of Easements.

a. The Main Access Road. Wal-Mart hereby grants to Developer and its tenants, and to their respective agents, customers, invitees, licensees, and employees, a perpetual non-exclusive easement for vehicular and pedestrian ingress and egress over and on that portion of the Wal-Mart Tract which is depicted on Exhibit A-2 as the "Main Access Road". To provide such ingress and egress, the Developer shall have the right to have not less than two curb cuts into the Main Access Road at the locations as may be approved by the City of Draper.

Neither Developer nor Wal-Mart shall block or impair traffic flow on the Main Access Road, provided however, Wal-Mart shall have the right to impair and/or block traffic flow on the Main Access Road during periods of construction, repair, reconstruction of the Main Access Road and in the case of emergency, but in all such instances Wal-Mart shall use commercially reasonable efforts to minimize interference with traffic flow.

b. Storm Water Runoff. Wal-Mart shall, at its sole cost and expense, install a sub-surface storm water conduit from the Developer Tract to a catch basin located in a public right of way (the "Conduit"). The Conduit shall cross the Wal-Mart Tract at the location depicted on Exhibit A-2. Wal-Mart hereby grants to the Developer a perpetual easement for storm water runoff through the Conduit. Developer shall have the exclusive right to use the Conduit to transport storm water from the Developer Tract to a catch basin located in the public right-of-way. Wal-Mart reserves the right to relocate and reconfigure the Conduit in its sole discretion so long as the relocation or reconfiguration does not materially impact storm water runoff from the Developer Tract into the catch basin. Nothing herein shall be deemed to be a grant of detention or retention rights in favor of the Developer on the Wal-Mart Tract.

c. Temporary Construction Easement. Developer hereby grants to Wal-Mart a temporary construction easement on and over the Developer Tract for purposes of constructing the Conduit. This easement shall automatically terminate and be of no further force and effect upon the completion of the construction of the Conduit.

5. Parking, Maintenance, and Taxes.

a. Each party hereto agrees that at all times there shall be independently maintained on each Tract parking area sufficient to accommodate not fewer than (i) 4.7 car spaces for each one thousand (1,000) square feet of building or buildings on such Tract devoted to office uses and non-restaurant or non-fitness center retail use, (ii) 10 car spaces for each one thousand (1,000) square feet of building or buildings on such Tract devoted to non-cafeteria style restaurant use; (iii) 12 car spaces for each one thousand (1,000) square feet of buildings on such Tract devoted to fitness center use or cafeteria style restaurant use; (iv) 1 car space for each one bedroom dwelling unit; and (v) an additional .5 car spaces for each additional bedroom contained in any dwelling unit but not to exceed more than two (2) parking spaces per dwelling unit. In the event that the total number of parking spaces required for all dwelling units pursuant to this Section 5(a) is less than a whole number, the number of required parking spaces for dwelling units shall automatically be rounded up to the next whole number. **EACH PARTY ACKNOWLEDGES AND AGREES THAT NOTHING CONTAINED IN THIS AGREEMENT SHALL IN ANY WAY BE CONSTRUED AS A RIGHT TO CROSS PARK.**

b. Maintenance.

(1) Standards. Except as otherwise provided in Section 5(b)(3) below, the parties hereto shall maintain their respective Tracts (including without limitation the Main Access Road) in good condition and repair. After construction of building and common area improvements, 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.

(2) Expenses. Except as otherwise provided in Section 5(b)(3) and 5(b)(4) below, the respective owners shall pay the maintenance expense of their Tracts.

(3) The Main Access Road. Wal-Mart shall pay all maintenance expenses associated with the maintenance of the Main Access Road, provided however, in the event that the Main Access Road is damaged as a result of any activities on the Developer Tract, the Developer, at its sole cost and expense shall immediately repair any such damage. In the event that the Developer fails to do so, Wal-Mart shall have the right to repair any such damage and the Developer shall reimburse Wal-Mart upon demand for any and all costs and expenses incurred by Wal-Mart in connection with the same.

(4) The Conduit. The Developer shall, at its sole cost and expense, maintain the Conduit in good condition and repair. Except in the case of emergency, the Developer shall not undertake any maintenance in such a manner that interferes with Wal-Mart's business operations on the Wal-Mart Tract. In the case of emergency, the Developer shall use commercially reasonable efforts to undertake all such maintenance in such a manner as to minimize interference with Wal-Mart's business operation on the Wal-Mart Tract. In addition, except in the case of emergency, for any maintenance work which is required to be undertaken on or from the Wal-Mart Tract by the Developer, the Developer shall provide Wal-Mart with not less than 15 working days notice of its intention to conduct maintenance on the Conduit. Except in the case of emergency, no maintenance work which is required to be undertaken on or from the Wal-Mart Tract by the Developer may be conducted between 3:00 p.m. and 8:00 p.m. on weekdays and no maintenance work which is required to be undertaken on the Wal-Mart Tract by the Developer may be conducted on weekends. Wal-Mart hereby grants to the Developer a perpetual easement to enter upon the Wal-Mart Tract for the limited purpose of conducting maintenance on the Conduit as is permitted pursuant to the terms of this Section 5(b)(3).

c. 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 located on its Tract.

6. Indemnification/Insurance.

a. 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.

b. Insurance.

(1) Wal-Mart and the Developer 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 the other party.

(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.

(3) Policies of insurance provided for in this Paragraph 8 shall name Wal-Mart and Developer as insureds as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.

(4) Wal-Mart for itself and its property insurer hereby releases Developer, and Developer for itself and its property insurer hereby releases Wal-Mart from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of either Wal-Mart or Developer 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 Paragraph 6, so long as the net worth of Wal-Mart shall exceed One Hundred Million Dollars (\$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.

7. Eminent Domain.

a. 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 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 Wal-Mart Tract and the Developer Tract, the award attributable to the land and improvements of such portion shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other Tract, provided however, the Developer shall have the right to independently pursue an award or payment (whether as direct damages, severance damages or otherwise) applicable solely to a loss by the Developer of its perpetual easement across the Main Access Road for ingress or egress or a loss by the Developer of its perpetual easement and to discharge storm water through the Conduit.

b. Collateral Claims. All other owners 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.

c. Tenant's Claim. Nothing in this Paragraph 7 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.

8. Rights And Obligations Of Lenders. Any holder of a first lien on the Wal-Mart Tract or the Developer Tract, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

9. Release from Liability. Any person acquiring fee or leasehold title to the Wal-Mart Tract or the Developer Tract, 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 paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Tracts running with the land.

10. Breach. In the event of breach or threatened breach of this Agreement, only all 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. The unsuccessful party in any action shall

pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.

11. Rights of Successors/Release. 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. In the event that either party ceases to be an owner of any portion of the Tracts or the Additional Developer Property, such party shall have no further liability hereunder for any acts or occurrences occurring after said party ceased to own any portion of the Tracts or the Additional Developer Property. Nothing in the foregoing sentence shall be construed as releasing any such party from any liability arising in connection with any acts or occurrences occurring while said party owned any portion of the Tracts or the Additional Developer Property.

12. 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. In the event that the Developer sells portions of the Developer Tract to third parties, the consent of such third parties shall not be required in order to modify or cancel this Agreement. The Developer shall have the right to assign its right to consent to a modification or termination of this Agreement to a single entity by placing any assignment of said rights of record, provided however, in no event shall Developer be entitled to assign such rights to a homeowner's association or any entity similar to a homeowner's association.

13. 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.

14. Duration. Unless otherwise canceled or terminated, all of the easements granted in this Agreement and the rights and obligations created by Sections 5(b)(3) and 5(b)(4) shall continue in perpetuity and all other restrictions, covenants, agreements and rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

15. 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.

16. 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.

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

ATTEST

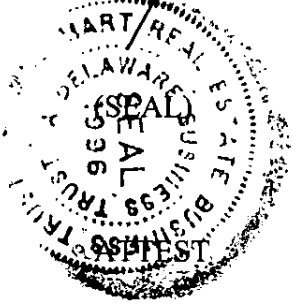
WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware business trust

John McLendon

By Robert M. Beard

Its Assistant Vice President

"Wal-Mart"



AMERICAN ESTATE MANAGEMENT CORP., a Utah corporation

\_\_\_\_\_

By \_\_\_\_\_

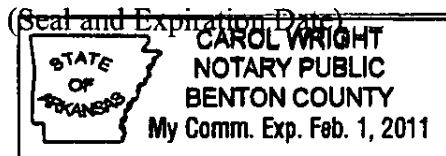
Its \_\_\_\_\_

"Developer"

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of August, 2002, by ROBERT M. BEARD, an Assistant Vice President of Wal-Mart Real Estate Business Trust, a Delaware business trust, on behalf of the trust.



Carol Wright  
Notary Public

Approved as to legal terms only  
by [Signature]

Wal-Mart Legal Team  
Date: 8-8-02



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

ATTEST

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

\_\_\_\_\_

By \_\_\_\_\_

Its Assistant Vice President

(SEAL)

"Wal-Mart"

ATTEST

**AMERICAN ESTATE MANAGEMENT CORP.**, a Utah corporation

\_\_\_\_\_

By \_\_\_\_\_ *P. J. J.*

Its \_\_\_\_\_ *pres.*

"Developer"

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of \_\_\_\_\_, 2002, by \_\_\_\_\_, an Assistant Vice President of Wal-Mart Real Estate Business Trust, a Delaware business trust, on behalf of the trust.

(Seal and Expiration Date)

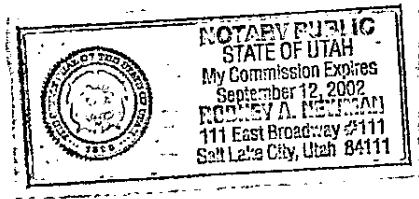
\_\_\_\_\_  
Notary Public

State of Ut

County of SL

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of August, 2002, by PO Cheng Chang, the President of American Estate Management Corp., a Utah corporation, on behalf of the corporation.

(Seal and Expiration Date)



[Signature]  
Notary Public

**EXHIBIT A-1**

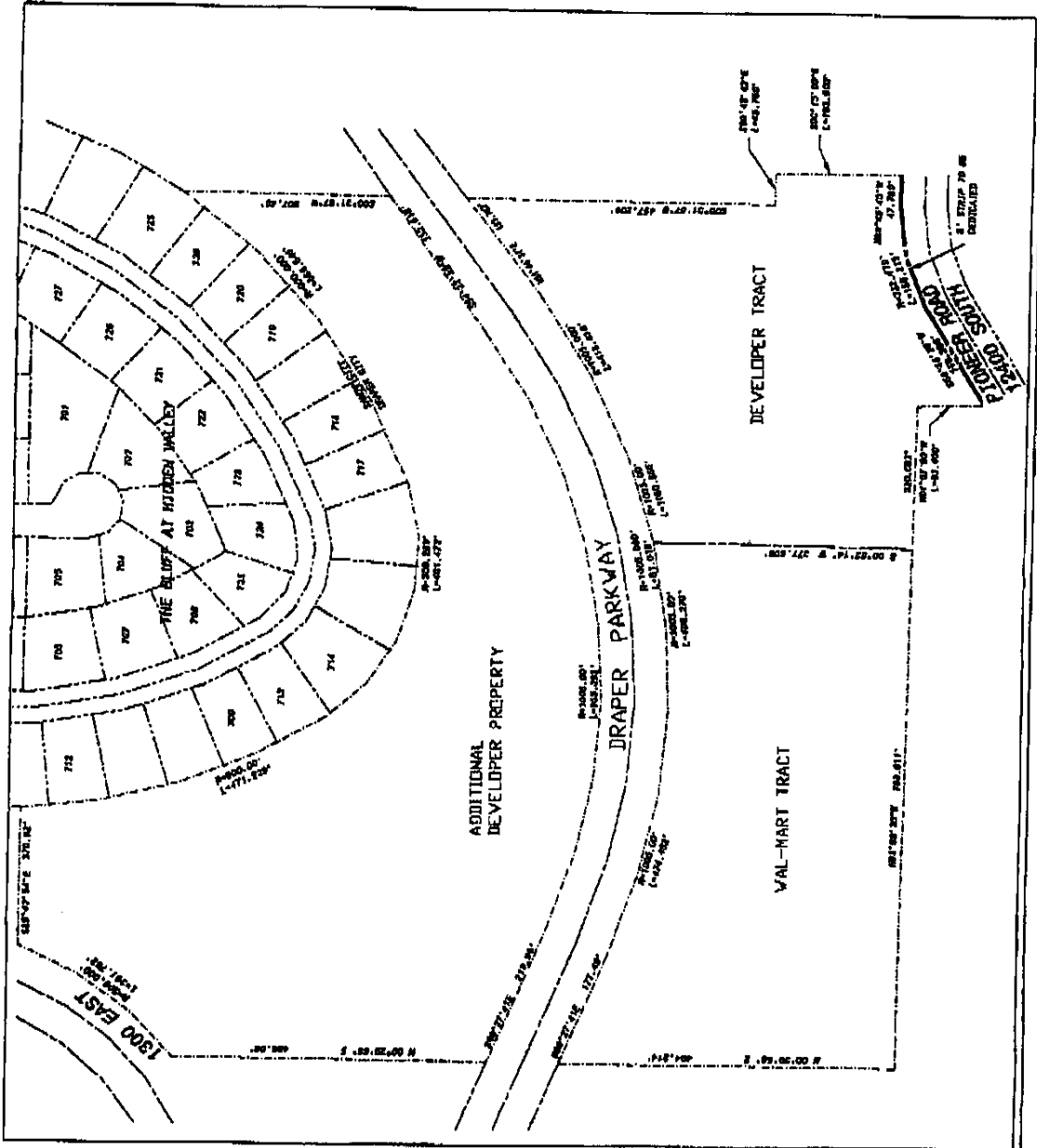
(Site plan showing Wal-Mart Tract, Developer Tract and Outparcels)



NEIGHBORHOOD MARKET  
8310-D  
DRAPER PARKWAY  
DRAPER, UTAH



# EXHIBIT A-1 to ECR



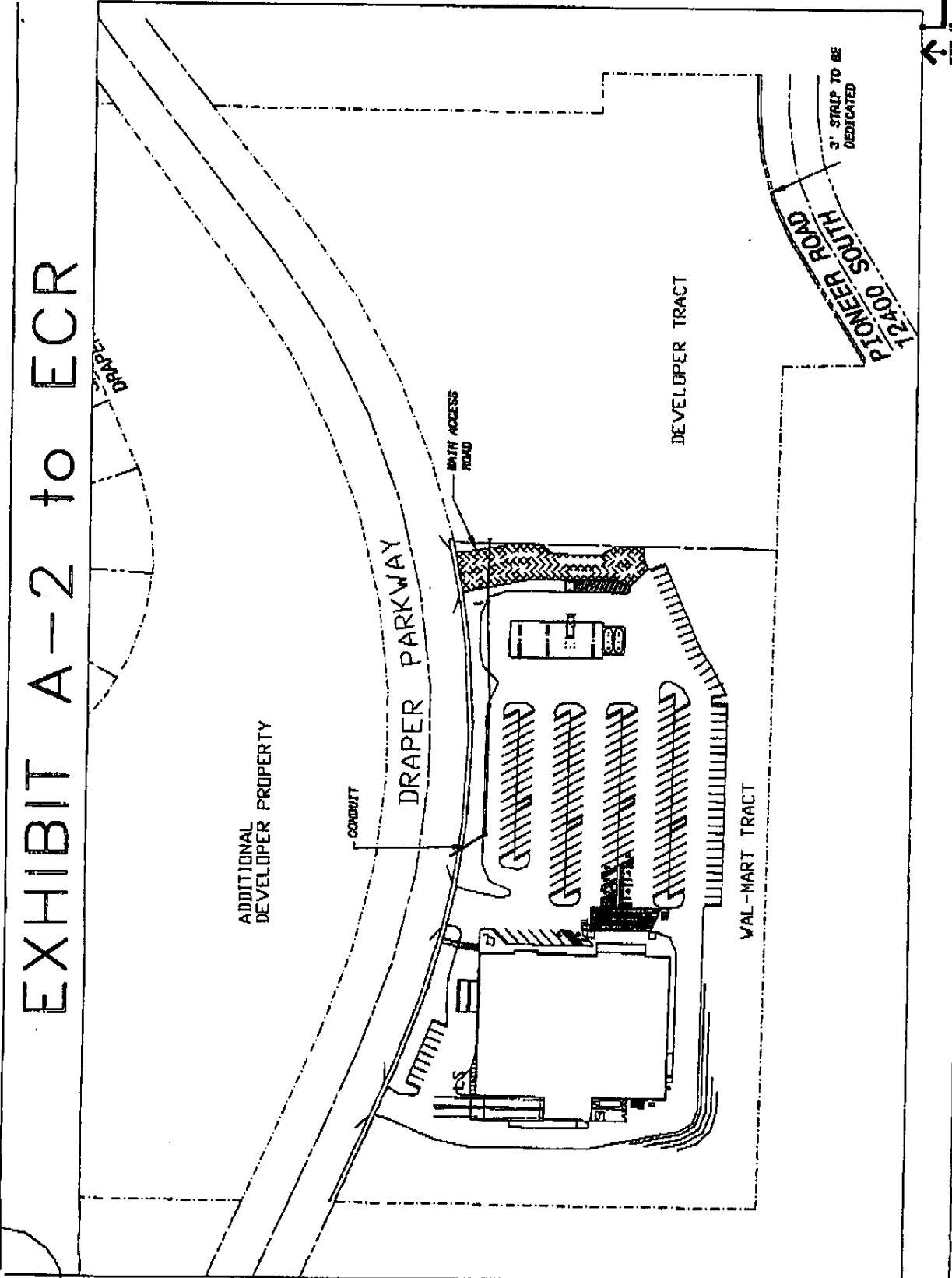
**EXHIBIT A-2**

(Site plan marked to show various development details)



NEIGHBORHOOD MARKET  
8110-D  
DRAPER PARKWAY  
DRAPER, UTAH

# EXHIBIT A-2 to ECR



**EXHIBIT B**

(Wal-Mart Tract legal description)

Lots One (1) and Two (2) of AMERICAN ESTATE MANAGEMENT CORP.  
COMMERCIAL SUBDIVISION, according to the official Plat thereof, recorded  
August 8th, 2002, as Entry No. 8316391, in Book       
2002P, at Page 211, in the office of the Salt Lake County  
Recorder.

*28.28.301.002*

**EXHIBIT C**

(Developer Tract legal description)

Lot Three (3) of AMERICAN ESTATE MANAGEMENT CORP.  
COMMERCIAL SUBDIVISION, according to the official Plat thereof, recorded  
August 8th, 2002, as Entry No. 8316391, in Book       
2002P, at Page 211, in the office of the Salt Lake County  
Recorder.



**EXHIBIT D**

(Additional Developer Property legal description)

Lot Four (4) of AMERICAN ESTATE MANAGEMENT CORP. COMMERCIAL SUBDIVISION, according to the official Plat thereof, recorded August 8th, 2002, as Entry No. 8316391, in Book 2002P, at Page 211, in the office of the Salt Lake County Recorder.