

When recorded return to:
Mr. Chris Callaway
Wal-Mart Stores, Inc.
2001 S.E. 10th Street
Bentonville, AR 72712-6489

Harrisville, UT

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

THIS AGREEMENT is made as of the 13th day of September, 1999, between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware business trust, of 702 S.W. Eighth Street, Bentonville, Arkansas 72716 ("Wal-Mart"), **BOYER HARRISVILLE, L.C.**, a Utah limited liability company, of 127 South 500 East #100, Salt Lake City, Utah ("Developer"), and **MELVIN ROGERS FAMILY, LC**, a Utah limited liability company (the "Owner").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of the Tract 1 (collectively, the "Wal-Mart Tract") and Outparcel 3 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 and Owner are the owners of Tracts 2, 3, 4, 5 and 6 (collectively, the "Developer Tracts") and Outparcels 1 and 2 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, Developer and Owner desire that the Wal-Mart Tract and the Developer Tracts 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 said tracts and the Outparcels 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, Developer and Owner do hereby agree as follows:

I. No Build/Common Areas.

a. "No Build Areas" as used herein shall mean those portions of the Developer Tracts which are shown on Exhibit A-2 as "No Build Areas". Canopies may encroach onto the No Build Areas. Notwithstanding the above, the "No Build Area" shown on Tract 3

E# 1663781 BK2035 P6280
DOUG CROFTS, WEBER COUNTY RECORDER
22-SEP-99 1047 AM FEE \$77.00 DEP MW
REC FOR: EQUITY.TITLE

shall be of no further force and effect in the event Developer or Owner records a Tract Conversion Declaration applicable to Tract 3 in accordance with Section 10 below. In the event Developer determines that development of Tract 4 is not feasible without some encroachment into the "No Build Area" located on Tract 4, Developer shall have the right to so encroach so long as all signs on the Wal-Mart building (as customarily located by Wal-Mart above the entrance doors) in the view corridor framed by the No Build Area remain visible to vehicular traffic. Further, if Developer's buildings on Tract 4 encroach on the No Build Area as previously permitted and if exposure for the Wal-Mart building is still impaired notwithstanding that the Wal-Mart signs are visible as provided above, in Wal-Mart's judgment, Wal-Mart may request and receive, at Developer's cost, additional signage on Tract 4. Developer's proposed development plans shall include site line studies to the building on the Wal-Mart Tract. In any event, Developer shall use its best efforts to develop Tract 4 with either no or minimal encroachment into the "No Build Area".

b. "Common Areas" shall mean those portions of the Developer Tracts and Wal-Mart Tract which are not from time to time under building.

2. Use.

a. 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, restaurant, theatre, bowling alley, billiard parlor, night club or other place of recreation or amusement, or any business serving alcoholic beverages shall occupy space within the Shopping Center without the prior written consent of Wal-Mart. Notwithstanding the above, restaurants may be located on the Developer Tracts so long as each of the following is satisfied: (1) there is not more than 2,000 square feet of Building Area on any one Tract used as a restaurant; (2) no restaurant use may be in a free standing building, and (3) no drive through may be used in connection with any restaurant use. Developer and Owner recognize 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 and Owner recognize and agree 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 and Owner hereby waive any legal action for damages or for equitable relief which might be available to Developer or Owner because of such cessation of business activity by Wal-Mart.

b. Until such time as the easement granted pursuant to Section 5.a.(3) below has been terminated, Tract 2 may be used solely for landscaping purposes. Upon the termination of said easement, Tract 2 may be improved with buildings only if said buildings are part of a development of Tract 2, together with not less than one (1) acre of real property contiguous to Tract 2, which contiguous property must not consist of property encumbered hereby.

3. Competing Business. Developer and Owner covenant 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 Tracts, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Developer or Owner, shall be leased or occupied by or conveyed to any other party for use as a discount department store or as a grocery store. A discount department store shall be any retail store in excess of 10,000 square feet of building size which sell a broad range of merchandise. Any retail sale of food items from a store which contains less than 7,500 square feet of building area shall not constitute the operation of a grocery store. The grocery restriction contained in this sentence shall automatically terminate in the event that the owner or lessee of the Wal-Mart Tract shall, after commencing the sale of groceries, cease to sell groceries from at least 25,000 square feet of Building Area on the Wal-Mart Tract for a period of thirty-six (36) consecutive months. The grocery restriction shall remain in full force and effect notwithstanding the fact that Wal-Mart may fail to commence the sale of groceries on said Tracts within thirty-six (36) months of the date hereof as long as Wal-Mart commences the sale of groceries from at least 25,000 square feet of Building Area within sixty (60) months after the date hereof. 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.

4. Buildings.

a. Design and Construction. The Buildings Areas shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one tract onto another tract except as provided for in Subsection d. below. The design and construction shall be of high quality. No building shall exceed thirty-five feet (35') in height above finished grade. No building shall have a metal exterior.

b. Location. No building shall be constructed on the Developer Tracts (as either immediate development or future expansion) within the No Build Areas.

c. 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.

d. Easements. In the event building wall footings encroach from one tract onto another, 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.

e. Outparcels Development. The Outparcels shall be developed only under the following guidelines, and where the approval of Developer is required, Developer's approval shall bind both Developer and Owner:

(1) No building constructed on the Outparcels shall exceed twenty-four (24) feet in height, as measured from the mean finished elevation of the parking area of the Shopping Center;

(2) Any buildings to be constructed on the Outparcels shall not exceed 7,500 square feet in size, provided however, multiple buildings may be constructed on an Outparcel so long as all of the provisions of this Section 4(e) are strictly complied with.

(3) Any rooftop equipment shall be screened in a manner satisfactory to the Developer;

(4) No rooftop sign shall be erected on the building constructed;

(5) 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.

(6) No improvements shall be constructed, erected, expanded or altered on the Outparcels until the plans for same (including site layout, exterior building materials and colors and parking) have been approved in writing by Developer. No building or structure of any kind shall be erected on the No Build Areas located on the Outparcels; provided, there may be constructed and maintained a canopy or canopies projecting into No Build Areas; normal foundations and doors for ingress and egress may project from such building area; and signs may be erected upon said canopy or canopies, so long as said signs do not obstruct the signs of any other owner or tenant of the Shopping Center.

(7) In developing and using the Outparcels, the owner of the Outparcels shall continuously provide and maintain a parking ratio on such Outparcels equal to one of the following: (i) twelve (12) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use in excess of five thousand (5,000) square feet, (the same ratio shall be provided for a McDonald's Restaurant, notwithstanding a building footprint of less than five thousand (5,000) square feet); or (ii) ten (10) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use less than five thousand (5,000) square feet (subject to the exception above); or (iii) six (6.0) spaces per one thousand (1,000) square feet of building space for any other use. In addition, the owner shall cause landscaping areas to be added and maintained in conjunction with any building or other improvement constructed on the Outparcels.

(8) The Outparcels shall be kept neat and orderly until improved and constructed.

(9) Subject to the prior written consent of Developer, any building, structure or improvement on the Outparcels shall be used for retail or commercial purposes only, however, no building, structure or improvement on the Outparcels may be used as a theater, night club, bowling alley, health spa, cafeteria, billiard parlor or other place of recreation or amusement, or as a business which derives in excess of 30% of its gross revenues from the sale of alcoholic beverages or as a discount department store, grocery store or a variety, general or "dollar" store. Notwithstanding anything to the contrary, a store occupying less than

5,000 square feet building area shall not be considered a variety, general or "dollar" store. Notwithstanding the above, Outparcel 2 (and the buildings currently located thereon) may continue to be used as they are being used on the date hereof. In the event said buildings are demolished or expanded, this exception shall automatically terminate, be of no further force and effect, and Outparcel 2 may be used only in strict compliance with this subsection.

(10) The owner(s) of the Outparcels, Developer or Owner shall maintain comprehensive public liability insurance, property damage and all-risk hazard insurance on the Outparcels their buildings, appurtenances and other improvements located thereon. Such insurance shall (i) be carried with reputable companies licensed to do business in the state in which the Outparcels are located; (ii) have liability limits of at least \$2,000,000.00 for each occurrence, bodily injury and property damage combined; (iii) provide for full replacement value for the buildings and improvements covered thereunder and (iv) not be subject to change, cancellation or termination without at least thirty (30) days prior written notice to Developer.

(11) It is currently contemplated by Wal-Mart that Outparcel 3 shall be used for storm water retention purposes. Notwithstanding the above, in the event that Wal-Mart decides, in its sole discretion, not to use Outparcel 3 for storm water retention, Wal-Mart may develop Outparcel 3 in accordance with the provisions of this Section 4(e).

5. Common Areas.

a. Grant of Easements.

(1) 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 their respective tracts 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 defined above. In addition to the foregoing, Wal-Mart, Developer and Owner hereby grant for the benefit of those certain Outparcels now owned by Developer, Owner and Wal-Mart and identified on Exhibit A-1, nonexclusive easements for vehicular and pedestrian access, ingress, and egress over and across the Wal-Mart Tract and the Developer Tracts; provided, however, in no event shall the owner, occupant, licensee or invitee of any of the Outparcels be permitted to use the Wal-Mart Tract or the Developer Tracts for vehicular parking or for any other purpose other than as described above.

(2) Developer and Owner hereby grant to Wal-Mart a perpetual easement for sign purposes on those areas identified on Exhibit A-2 as sign areas. Wal-Mart shall have the exclusive right to place signage on the top panels of all monument and/or pylon signs (the "Signs") constructed on said areas.

(3) Developer and Owner, each as grantor, hereby grant to Wal-Mart, as grantee, an exclusive easement over and on Tract 2 for purposes of installing, maintaining, and replacing landscape improvements. This easement shall remain in full force and effect for so long as the City of Harrisville requires the use of Tract 2 for landscaping

purposes in connection with the issuance of its approvals applicable to the operation of Wal-Mart's business on the Wal-Mart Tract (collectively the "Approvals"). In the event that the City of Harrisville consents to the use of Tract 2 for purposes other than landscaping and the terms of such consent do not result in a material adverse impact on Wal-Mart or the operation of a retail store on the Wal-Mart Tract, this easement shall automatically terminate.

b. 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 on the Wal-Mart Tract and the Developer Tracts.

(2) Employees. Each party shall use reasonable efforts to ensure that employees shall not park on the Common Areas, except in areas designated on Exhibit A-2 as "employee parking areas," if any. The parties hereto may from time to time mutually designate and approve "employee parking areas" not shown on Exhibit A-2.

(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. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.

c. Utility and Service Easements. The parties shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center and the Outparcels. 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. This Section 5.c. is not intended to in any way modify the agreement between the parties with respect to the allocation of costs associated with utility line construction cost reimbursement.

d. Water Flow. 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, Maintenance, and Taxes.

a. Development.

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(1) Arrangement. The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement.

(2) "Parking Area" Ratio. Each party hereto agrees that at all times there shall be independently maintained on the Wal-Mart Tract and the Developer Tracts

parking area sufficient to accommodate not fewer than five (5.0) car spaces for each one thousand (1,000) square feet of Building Area on such tract. Notwithstanding the above, there shall at all times be maintained on the Developer Tracts parking area sufficient to accommodate not fewer than twelve (12) car spaces for each one thousand (1,000) square feet of Building Area used as a restaurant.

(3) Development Timing. Concurrent with any building being constructed within the Building Areas of either tract by the owner of said tract (the "Developing Party"), the Common Areas of that tract shall be developed in accordance with Exhibit A-2 at the expense of such Developing Party. In the event such construction by the Developing Party shall occur prior to the development of the other tract, the Developing Party shall have the right to grade, pave and use any portion of the Common Areas of the non-developing party's tract for access and for construction of, but not limited to, drainage structures and utility lines as is necessary to provide essential services to the Developing Party's tract. The Developing Party shall present an itemized statement of expenses incurred in the construction of said improvements to and upon the non-developing party's tract, and the non-developing party agrees to reimburse the Developing Party for such costs within thirty (30) days of receipt thereof.

b. Maintenance.

(1) Standards. Following completion of the improvements on the Common Areas, the parties hereto shall maintain the Common Areas (exclusive of the Service Drives delineated on Exhibit A-2 and the Signs) 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.

(2) Expenses. With the exception of the Service Drives and the Signs which shall be maintained in accordance with subsection (3) below, the respective owners shall pay the maintenance expense of their tracts.

(3) Service Drives/Signs. Wal-Mart shall at all times maintain the Service Drives and Signs in good condition and repair. The maintenance of the Service Drives and the Signs shall include but not be limited to:

(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, 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) Maintaining and replacing the Signs (but not the sign panels) as needed.

Developer and Owner shall, upon demand, reimburse Wal-Mart for 50% of all reasonable costs associated with the performance of said obligations. The liability of Developer and Owner hereunder shall be joint and several.

(4) 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.

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 owned by it.

7. Signs. With the exception of the Signs, no sign shall be located on the Common Areas on the Wal-Mart Tract and the Developer Tracts except signs advertising businesses conducted thereon, of which, there shall be no more than two (2) signs on the Common Areas on the Wal-Mart Tract and two (2) signs on the Common Areas on the Developer Tracts. No signs shall obstruct the ingress and egress shown on Exhibit A-2.

8. 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, the Developer and Owner (for the Developer Tracts and the Outparcels until such time as the Outparcels are sold or leased to other parties who shall thereby assume this obligation) 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, Developer and Owner 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 Owner, and Developer for itself and its property insurer hereby releases Wal-Mart and Owner, and Owner for itself and its property insurer hereby releases Wal-Mart and Developer 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 Wal-Mart, Developer or Owner 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 8, 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.

9. 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 Common Areas located on the Wal-Mart Tract and the Developer Tracts, 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.

b. 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.

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

d. Restoration Of Common Areas. The owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective tract as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

10. Tract Conversion. Developer and Owner may, in their sole discretion, convert one or more of the Developer Tracts from a Tract into Outparcels. Developer or Owner may exercise said right by recording a Tract Conversion Declaration which sets forth the number and exact dimensions of the Outparcels created as a result of said conversion. Any such conversion shall be irrevocable. In the event that any such conversion is made, the Outparcels created as a result of said conversion may be developed and operated only in strict accordance with Section 4(e) above. No such conversion shall be permitted in the event that the applicable Tract has been developed in such a manner that, upon a conversion, the development would not be in strict accordance with Section 4(e) above. Notwithstanding the above, Tract 2 may not be converted to Outparcels so long as its use is required by Wal-Mart in order to operate its business on the Wal-Mart Tract in accordance with City of Harrisville requirements.

11. Rights And Obligations Of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon the tract of either party hereto, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such tract. Except as set forth in the preceding sentence, however, any holder of a first lien on the Wal-Mart Tract or the Developer Tracts, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

12. Expansion Of Shopping Center. The parties agree that in the event the Shopping Center is expanded by ownership, control of the parties or agreement with a third

party, all of the provisions of this Agreement shall apply to the expanded area and the parking to the building ratio in the expanded area shall not be less than that provided in Paragraph 6a(2).

13. Release from Liability. Any person acquiring fee or leasehold title to the Wal-Mart Tract or the Developer Tracts, or any expansion of the Shopping Center pursuant to Paragraph 11 or any portion thereof, 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.

14. 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 any of the Developer Tracts 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 Tracts, 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.

15. 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.

16. 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 Tracts, or its successors in interest.

17. 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.

18. 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.

19. 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.

20. 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.

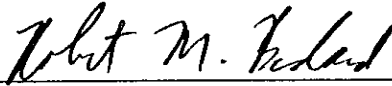
21. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

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

ATTEST


Assistant Secretary

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

By 
Assistant Vice President

"Wal-Mart"

ATTEST

BOYER HARRISVILLE, L.C., a Utah limited liability company

By _____
Its _____

"Developer"

E# 1663781 BK2035 PG291

Approved as to legal terms only
By 
WAL-MART LEGAL TEAM
Date 9-13-99

20. 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.

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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 _____

"Wal-Mart"

ATTEST

BOYER HARRISVILLE, L.C., a Utah limited liability company

Carl B. Cook

By St. O. O.

Its Manager

"Developer"

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ATTEST

MELVIN ROGERS FAMILY, LC, a Utah limited liability company

Carl B. Cook

By Melvin Rogers
Its My Manager

"Owner"

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 1999, by _____, the _____ of Wal-Mart Real Estate Business Trust, a Delaware business trust, on behalf of the business trust.

(Seal and Expiration Date)

Notary Public

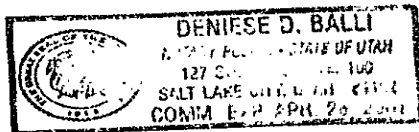
State of Utah

County of Salt Lake

The foregoing instrument was acknowledged before me this 13th day of September, 1999, by Steven B. Baller, the Manager of Boyer Harrisville, L.C., a Utah limited liability company, on behalf of the limited liability company.

(Seal and Expiration Date)

Denise D. Balli
Notary Public



E# 1663781 BK2035 PG293

ATTEST

MELVIN ROGERS FAMILY, LC, a Utah limited liability company

By _____

Its _____

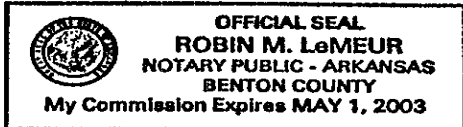
"Owner"

State of ARKANSAS

County of BENTON

The foregoing instrument was acknowledged before me this 13th day of SEPTEMBER, 1999, by ROBERT M. BEDARD, the ASST. VICE PRESIDENT of Wal-Mart Real Estate Business Trust, a Delaware business trust, on behalf of the business trust.

(Seal and Expiration Date)



[Signature]
Notary Public

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 1999, by _____, the _____ of Boyer Harrisville, L.C., a Utah limited liability company, on behalf of the limited liability company.

(Seal and Expiration Date)

Notary Public

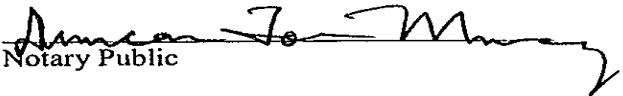
E# 1663781 BK2035 PG294


State of Utah

County of Weber

The foregoing instrument was acknowledged before me this 13th day of Sept, 1999, by Melvin L. Rogers, the Man Member of Melvin Rogers Family, LC, a Utah limited liability company, on behalf of the limited liability company.

(Seal and Expiration Date)


Notary Public


NOTARY PUBLIC
DUNCAN TORR MURRAY
3385 S. Harrison Blvd Ste 1A
Ogden, UT 84403
My Commission Expires
March 27th, 2000
STATE OF UTAH

ET 1663781 BK2035 PG295

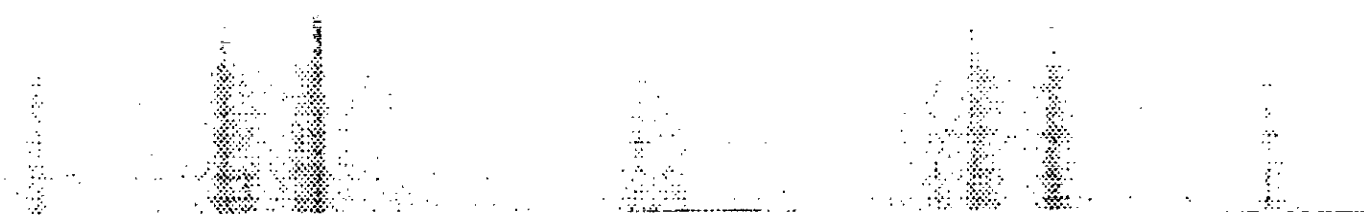
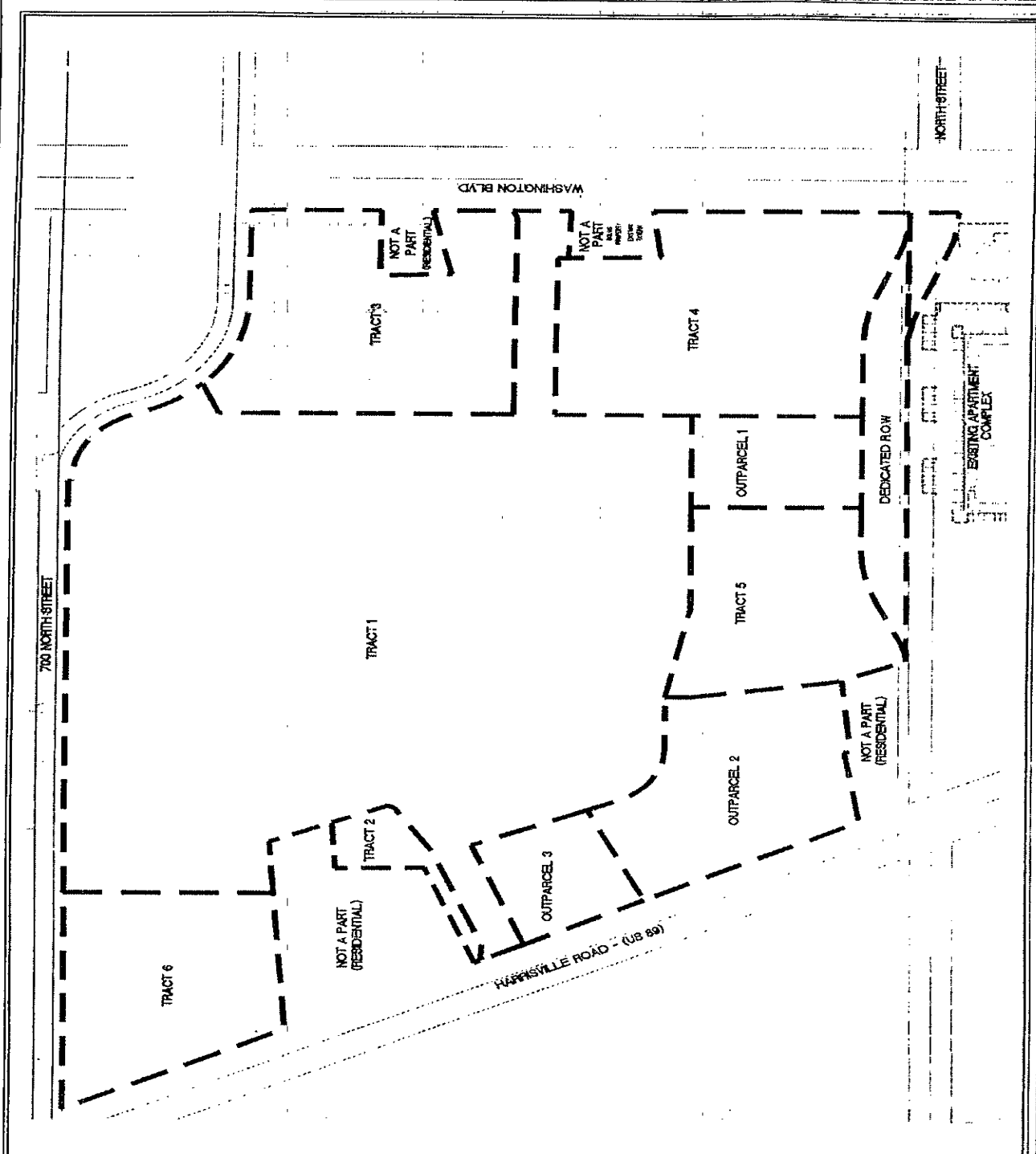


EXHIBIT A-1

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

E# 1663781 BK2035 PG296



PROPOSED RETAIL HARRISVILLE UTAH		ECR EXHIBIT A-1	
Pacific Land Design Planning, Engineering & Construction 2000 S. JAY AVE. SUITE 202 SALT LAKE CITY, UT 84119 (801) 466-8110 FAX (801) 466-8144			
NO. DATE BY REVISIONS	SHEET NO. OF	DATE OF	SHEET NO. OF

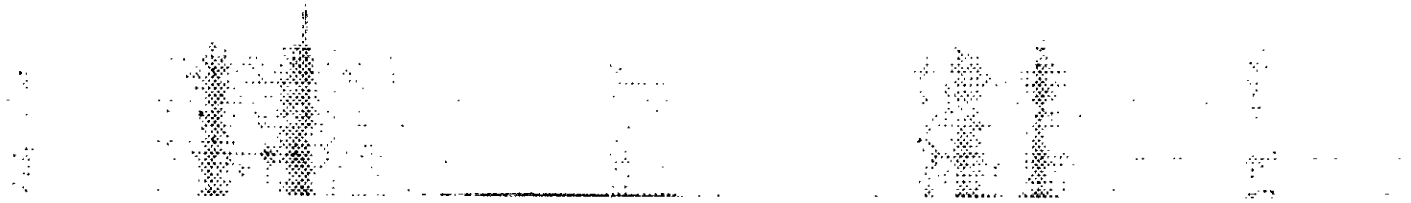
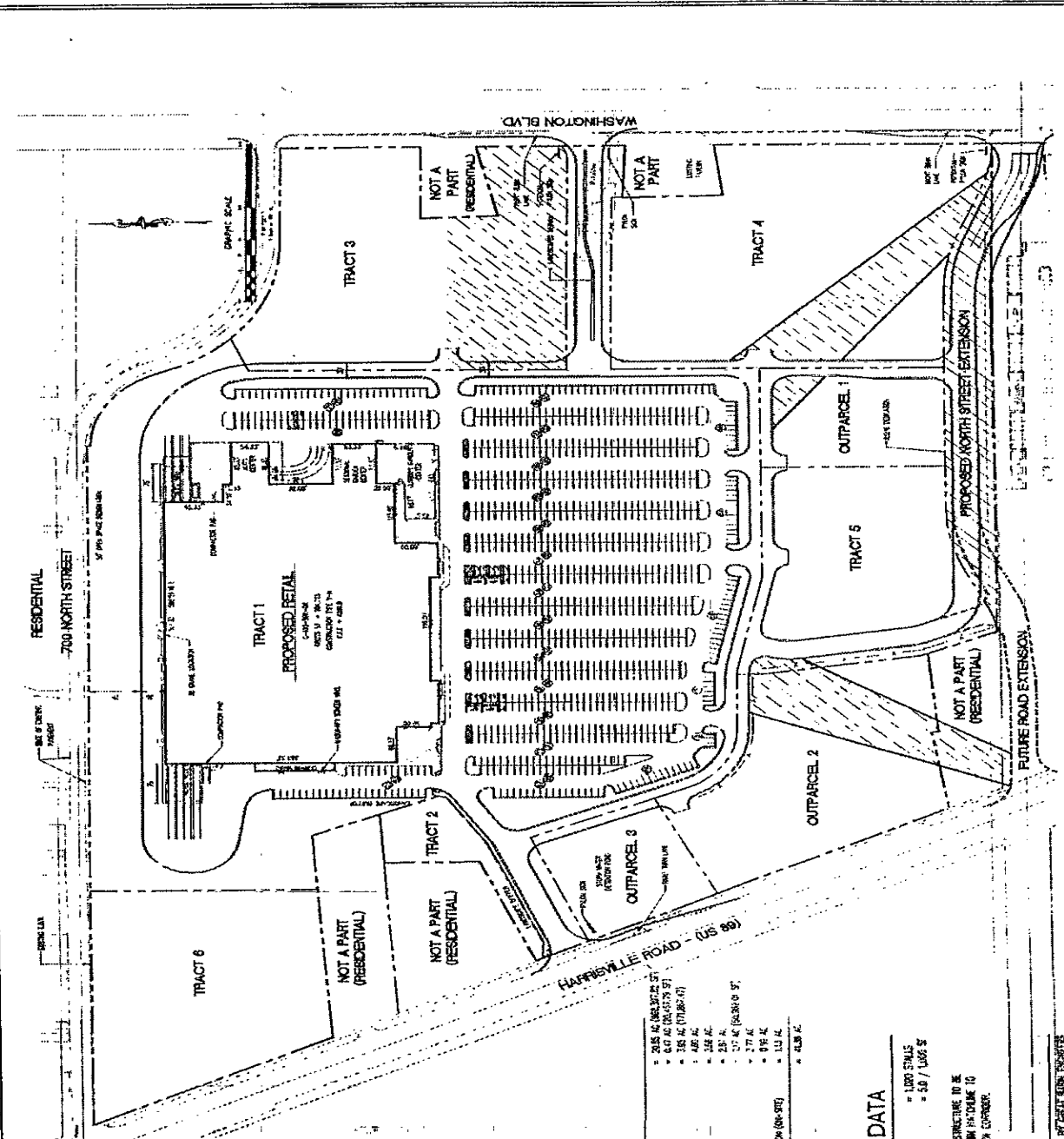


EXHIBIT A-2

(Site plan marked to show various development details)

E# 1663781 BK2035 PG298



SITE DATA

- TRACT 1 = 20.5 AC (51,372 SQ FT)
- TRACT 2 = 6.17 AC (136,075 SQ FT)
- TRACT 3 = 3.8 AC (83,600 SQ FT)
- TRACT 4 = 4.05 AC
- TRACT 5 = 2.5 AC (54,500 SQ FT)
- TRACT 6 = 2.7 AC
- OUTPARCEL 1 = 0.76 AC
- OUTPARCEL 2 = 1.13 AC
- OUTPARCEL 3 = 4.18 AC

PARKING DATA

- PARKING PROVIDED = 1,000 SPACES
- PARKING RATIO = 5.0 / 1,000 SF

NOTES

NO BEARING STRUCTURE TO BE LOCATED WITHIN PARCELS TO PRESERVE TYP. CORNER.

US. DATE	DATE	BY	REVISION

Pacific Land Design
 Planning & Engineering
 1700 SUTHERLAND AVENUE, SUITE 200
 HARRISVILLE, UTAH 84403
 PHONE: 435.226.8244
 FAX: 435.226.8244

PROPOSED RETAIL
 HARRISVILLE
 UTAH

ECR EXHIBIT

A-2

EXHIBIT B

(Wal-Mart Tract and Outparcel 3 legal descriptions)

~~Pt of Tax ID#11-035-0002~~
~~Pt of Tax ID#11-035-0004~~
~~Pt of Tax ID#11-035-0007~~
~~Pt of Tax ID#11-035-0010~~
~~Pt of Tax ID#11-035-0024~~
~~Pt of Tax ID#11-035-0027~~
~~Pt of Tax ID#11-035-0031~~

E# 1663781 BK2035 PG300

EXHIBIT B TO ECR



GREAT BASIN ENGINEERING - NORTH
3544 Lincoln Avenue • Suite #11 • P.O. Box 9307 • Ogden, Utah 84409
(801) 394-4515 • (801) 521-0222 • Fax (801) 392-7544

Revised September 21, 1999
September 9, 1999

BOYER – HARRISVILLE

TRACT 1 – LOT 1

A part of the Southeast Quarter of Section 8, Township 6 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the South right-of-way line of 700 North Street which is 455.95 feet South 88°59'16" East along the North line of said Southeast Quarter of Section 8 and 15.00 feet South from the Northwest corner of said Southeast Quarter Section; and running thence four (4) courses along the South line of said 700 North Street as follows: South 88°59'16" East 855.84 feet; South 1°00'44" West 5.00 feet; Southeasterly along the arc of a 150.00 foot radius curve to the right a distance of 187.31 feet (Central Angle equals 71°32'53" and Long Chord bears South 53°12'49" East 175.38 feet) and Southeasterly along the arc of a 250.00 foot radius curve to the left a distance of 119.75 feet (Central Angle equals 27°26'42" and Long Chord bears South 31°09'44" East 118.61 feet); thence South 68°12'09" West 66.61 feet; thence South 1°00'44" West 462.28 feet; thence South 88°59'16" East 401.61 feet to a point of curvature; thence Northeasterly along the arc of a 40.00 foot radius curve to the left a distance of 25.74 feet (Central Angle equals 36°51'44" and Long Chord bears North 72°34'52" East 25.29 feet) to a non tangent point on the Westerly right-of-way line of Washington Boulevard; thence South 0°50'15" West 92.07 feet along said Westerly right-of-way line; thence North 87°17'45" West 98.04 feet; thence North 2°56'11" East 16.19 feet; thence North 88°59'16" West 328.43 feet; thence South 1°00'44" West 215.90 feet; thence North 89°04'18" West 403.57 feet; thence North 77°12'25" West 184.80 feet; thence North 88°59'16" West 112.03 feet to a point of curvature; thence Northwesterly along the arc of a 118.00 foot radius curve to the right a distance of 139.50 feet (Central Angle equals 67°44'14" and Long Chord bears North 55°07'09" West 131.52 feet); thence North 21°15'02" West 247.92 feet; thence South 68°44'58" West 219.68 feet to a point on the East right-of-way line of Harrisville Road; thence North 24°54'45" West 72.84 feet along said East right-of-way line; thence North 65°05'15" East 5.44 feet; thence South 85°23'09" East 25.31 feet; thence North 68°44'58" East 203.96 feet; thence North 57°48'36" East 111.88 feet; thence North 20°27'21" East 11.37 feet; thence North 21°14'19" West 199.08 feet; thence South 87°18'48" West 106.24 feet; thence North 1°00'44" East 327.31 feet to the point of beginning.

11-035-0042

Contains 908,385 Square Feet
Or 20.854 Acres

EXHIBIT B TO ECR CONT.



GREAT BASIN ENGINEERING - NORTH

3544 Lincoln Avenue • Suite #11 • P.O. Box 9307 • Ogden, Utah 84409
(801) 394-4515 • (801) 521-0222 • Fax (801) 392-7544

September 9, 1999

OUT PARCEL 3 - LOT 7

A part of the Southeast Quarter of Section 8, Township 6 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the Easterly right-of-way line of Harrisville Road which is 9.12 feet South 0°02'14" East along the West line of said Southeast Quarter Section and 807.40 feet South 24°54'45" East along said East right-of-way line from the Northwest corner of said Southeast Quarter Section; and running thence North 68°44'58" East 219.68 feet; thence South 21°15'02" East 196.29 feet; thence South 65°05'15" West 206.69 feet to a point on the Easterly right-of-way line of Harrisville Road; thence North 24°54'45" West 203.92 feet along said Easterly right-of-way line to the point of beginning.

Contains 43,254 Square Feet

Or 0.993 Acre

11-035-0043

E# 1663781 BK2035 PG302

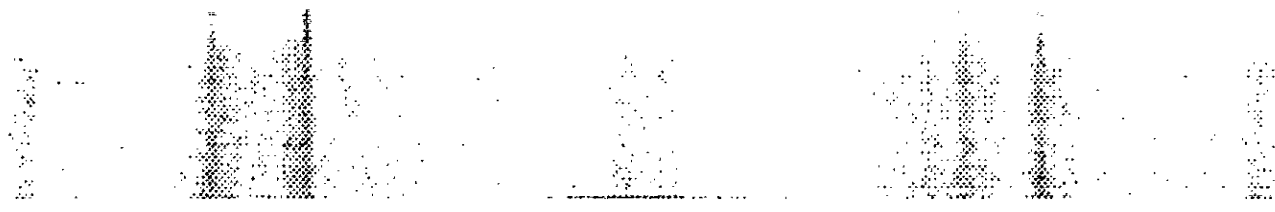


EXHIBIT C

(Developer Tracts and Outparcels 1 and 2 legal descriptions)

E# 1663781 BK2035 PG303

EXHIBIT C TO ECR CONT.



CONSULTING ENGINEERS
AND LAND SURVEYORS

GREAT BASIN ENGINEERING - NORTH

3544 Lincoln Avenue • Suite #11 • P.O. Box 9307 • Ogden, Utah 84409
(801) 394-4515 • (801) 521-0222 • Fax (801) 392-7544

September 10, 1999

BOYER HARRISVILLE

TRACT 6 - LOT 9

A part of the Southeast Quarter of Section 8, Township 6 North, Range 1 West,
Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point at the intersection of the East right of way line of Harrisville Road
and the South line of 700 North Street which is 9.12 feet South $0^{\circ}02'14''$ East along the West
line of said Southeast Quarter Section and 6.54 feet South $24^{\circ}54'45''$ East along said East right
of way line from the Northwest corner of said Southeast Quarter Section; and running thence
South $88^{\circ}59'16''$ East 453.19 feet along said South line; thence South $1^{\circ}00'44''$ West
327.31 feet; thence South $87^{\circ}18'48''$ West 285.71 feet to said East right of way line; thence
North $24^{\circ}54'45''$ West along said right of way line 384.43 feet to the point of beginning.

Contains 125,006 Square Feet

Or 2.870 Acres

11-035-0024

E# 1663781 BK2035 PG304

EXHIBIT C TO ECR



CONSULTING ENGINEERS
AND LAND SURVEYORS

GREAT BASIN ENGINEERING - NORTH

3544 Lincoln Avenue • Suite #11 • P.O. Box 9307 • Ogden, Utah 84409
(801) 394-4515 • (801) 521-0222 • Fax (801) 392-7544

September 10, 1999

BOYER – HARRISVILLE

TRACT 2 – LOT 8

A part of the Southeast Quarter of Section 8, Township 6 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the Easterly right-of-way line of Harrisville Road which is 9.12 feet South 0°02'14" East along the West line of said Southeast Quarter Section and 721.23 feet South 24°54'45" East along said East right-of-way line from the Northwest corner of said Southeast Quarter Section; and running thence North 68°40'24" East 209.36 feet; thence North 0°23'42" East 139.04 feet; thence North 87°29'39" East 94.82 feet; thence South 21°14'19" East 93.32 feet; thence South 20°27'21" West 11.37 feet; thence South 57°48'36" West 111.88 feet; thence South 68°44'58" West 203.96 feet; thence North 85°23'09" West 25.31 feet; thence South 65°05'15" West 5.44 feet to said Easterly right-of-way line of Harrisville Road; thence North 24°54'45" West 13.33 feet along said Easterly right-of-way line to the point of beginning.

Contains 20,469 Square feet

Or 0.470 Acre

11-035-0027

Et 1663781 BK2035 PG305

EXHIBIT C TO ECR CONT.



GREAT BASIN ENGINEERING - NORTH

3544 Lincoln Avenue • Suite #11 • P.O. Box 9307 • Ogden, Utah 84409
(801) 394-4515 • (801) 521-0222 • Fax (801) 392-7544

September 10, 1999

BOYER HARRISVILLE

TRACT 5 - LOT 5

A part of the Southeast Quarter of Section 8, Township 6 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey;

Beginning at a point which is 851.49 feet South 88°59'16" East along the North line of said Southeast Quarter Section and 954.93 feet South from the Northwest corner of said Quarter Section; and running thence South 88°59'16" East 3.27 feet; thence South 77°12'25" East 184.80 feet; thence South 89°04'18" East 212.64 feet; thence South 0°56'19" West 267.07 feet; thence North 89°01'11" West 81.24 feet to a point of curvature; thence Southwesterly along the arc of a 280.00 foot radius curve to the left a distance of 122.67 feet (Central Angle equals 25°06'07" and Long Chord bears South 78°25'45" West 121.69 feet); thence South 65°52'42" West 87.58 feet to a point of curvature; thence Southwesterly along the arc of a 123.54 foot radius curve to the right a distance of 41.33 feet (Central Angle equals 19°09'57" and Long Chord bears South 77°40'26" West 41.13 feet); thence North 20°50'12" West 120.08 feet; thence North 7°15'09" West 230.67 feet; thence North 1°00'44" East 38.00 feet to the point of beginning.

Contains 112,606 Square Feet

Or 2.585 Acres

11-035-0031 PT

ET 1663781 BK2035 PG306

EXHIBIT C TO ECR CONT.



GREAT BASIN ENGINEERING - NORTH

3544 Lincoln Avenue • Suite #11 • P.O. Box 9307 • Ogden, Utah 84409
(801) 394-4515 • (801) 521-0222 • Fax (801) 392-7544

September 10, 1999

BOYER – HARRISVILLE

TRACT 4 – LOT 3

A part of the Southeast Quarter of Section 8, Township 6 North, Range 1 West,
Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the West right-of-way line of Washington Boulevard, which is 1879.56 feet South 88°59'16" East along the North line of said Southeast Quarter of Section 8 and 924.74 feet South 0°50'15" West along said Westerly right-of-way line from the Northwest corner of said Southeast Quarter Section; and running thence South 0°50'15" West 403.13 feet along said Westerly right-of-way line to a non-tangent curve; thence Northwesterly along the arc of a 266.14 foot radius curve to the right a distance of 70.54 feet (Central Angle equals 15°11'10" and Long Chord bears North 81°10'34" West 70.33 feet); thence North 68°16'51" West 117.08 feet to a point of curvature; thence Northwesterly along the arc of a 276.00 foot radius curve to the left a distance of 99.90 feet (Central Angle equals 20°44'20" and Long Chord bears North 78°39'01" West 99.36 feet); thence North 89°01'11" West 150.57 feet; thence North 1°00'44" East 483.14 feet; thence South 88°59'16" East 328.43 feet; thence South 0°01'36" West 162.17 feet; thence North 82°58'15" East 96.00 feet to the point of beginning.

Contains 200,444 Square Feet

Or 4.602 Acres

11-035-0031 Pt

Et 1663781 BK2035 PG307

EXHIBIT C TO ECR CONT.



GREAT BASIN ENGINEERING - NORTH

3544 Lincoln Avenue • Suite #11 • P.O. Box 9307 • Ogden, Utah 84409
(801) 394-4515 • (801) 521-0222 • Fax (801) 392-7544

September 10, 1999

BOYER - HARRISVILLE

TRACT 3 - LOT 2

A part of the Southeast Quarter of Section 8, Township 6 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the West right-of-way line of Washington Boulevard which is 1879.56 feet South 88°59'16" East along the North line of said Southeast Quarter of Section 8 and 293.40 feet South 0°50'15" West along said Westerly right-of-way line from the Northwest Corner of said Southeast Quarter Section; and running thence South 0°50'15" West 203.25 feet along said Westerly right-of-way line; thence North 89°09'45" West 135.00 feet; thence South 1°11'45" East 113.13 feet; thence North 77°00'15" East 134.90 feet to a point on said Westerly right-of-way line of Washington Boulevard; thence South 0°50'15" West 125.58 feet along said Westerly right-of-way line to a non-tangent curve; thence Southwesterly along the arc of a 40.00 foot radius curve to the right a distance of 25.74 feet (Central Angle equals 36°51'44" and Long Chord bears South 72°34'52" West 25.29 feet); thence North 88°59'16" West 401.61 feet; thence North 1°00'44" East 462.28 feet; thence North 68°12'09" East 66.61 feet to a non-tangent curve and the Southerly right-of-way line of 650 North Street; thence two (2) courses along said Southerly right-of-way line as follows: Southeasterly along the arc of a 250.00 foot radius curve to the left a distance of 192.44 foot (Central Angle equals 44°06'11" and Long Chord bears South 66°56'10" East 187.72 feet) and South 88°59'16" East 188.96 feet to the point of beginning.

Contains 171,863 Square Feet

11-035-0046, 0007,
0004

Or 3.945 Acres

± 1663781 BK2035 PG308

EXHIBIT C TO ECR CONT.



CONSULTING ENGINEERS
AND LAND SURVEYORS

GREAT BASIN ENGINEERING - NORTH

3544 Lincoln Avenue • Suite #11 • P.O. Box 9307 • Ogden, Utah 84409
(801) 394-4515 • (801) 521-0222 • Fax (801) 392-7544

September 10, 1999

BOYER HARRISVILLE

OUT PARCEL 2 - LOT 6

A part of the Southeast Quarter of Section 8, Township 6 North, Range 1 West,
Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point which is 851.49 feet South 88°59'16" East along the North line of
said Southeast Quarter Section and 954.93 feet South from the Northwest corner of said
Quarter Section: and running thence South 1°00'44" West 38.00 feet; thence
South 7°15'09" East 230.67 feet; thence South 17°50'22" East 11.78 feet; thence
South 85°27'00" West 150.66 feet; thence North 8°18'45" West 9.70 feet; thence
South 81°41'15" West 147.00 feet to a point on the Easterly right of way line of Harrisville Road;
thence North 24°54'45" West 374.69 feet along said Easterly right of way line; thence
North 65°05'15" East 206.69 feet; thence South 21°15'02" East 51.63 feet to a point of
curvature; thence Southeasterly along the arc of a 118.00 foot radius curve to the left a distance
of 139.50 feet (Central Angle equals 67°44'14" and Long Chord bears South 55°07'09" East
131.52 feet); thence South 88°59'16" East 108.77 feet to the point of beginning.

Contains 120,560 Square Feet

Or 2.768 Acres

11-035-0001, 0031, 0045

Es 1463781 BK2035 PG309

EXHIBIT C TO ECR CONT.



CONSULTING ENGINEERS
AND LAND SURVEYORS

GREAT BASIN ENGINEERING - NORTH

3544 Lincoln Avenue • Suite #11 • P.O. Box 9307 • Ogden, Utah 84409
(801) 394-4515 • (801) 521-0222 • Fax (801) 392-7544

September 9, 1999

BOYER – HARRISVILLE

OUT PARCEL 1 – LOT 4

A part of the Southeast Quarter of Section 8, Township 6 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point which is 1247.64 feet South 88°59'16" East along the North line of said Southeast Quarter Section and 992.35 feet South from the Northwest corner of said Quarter Section; and running thence South 89°04'18" East 190.93 feet; thence South 1°00'44" West 267.24 feet; thence North 89°01'11" West 190.59 feet; thence North 0°56'19" East 267.07 feet to the point of beginning.

Contains 50,962 Square Feet

Or 1.170 Acres

11-035-0031 PT