

MNT #07051609

When recorded return to:

Thomas E. Halter

Gust Rosenfeld P.L.C.

201 East Washington, Suite 800

Phoenix, AZ 85004-2327

PT. OF PARCELS #: OHE-1348, OHE-1570-D  
OHC-1570, OHE-1537  
~~OHE-1537~~

Heber, UT (#4696)

**COVENANTS AND RESTRICTIONS AFFECTING LAND  
("CR")**

August THIS AGREEMENT (this "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 and **BOYER HEBER LAND, L.C.**, a Utah limited liability company (collectively, "Developer").

**WITNESSETH:**

**WHEREAS**, Wal-Mart is the owner of that certain parcel of real property ("Wal-Mart Tract") as shown on the plan attached hereto as Exhibit A hereof, said Tract being more particularly described in Exhibit B attached hereto;

**WHEREAS**, Developer is the owner of those certain parcels of real property ("Developer Tract") shown on the plan attached hereto as Exhibit A hereof, the same being more particularly described in Exhibit C hereof; and

**WHEREAS**, Wal-Mart and Developer desire that the Developer Tract be subject to the conditions and restrictions hereinafter set forth;

**NOW, THEREFORE**, for and in consideration of the premises, 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. Developer covenants that as long as Wal-Mart, or any affiliate of Wal-Mart, is the owner of the Wal-Mart Tract, 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 (except that a pharmacy which is operated as an ancillary use to a hospital or medical clinic shall be permissible), (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) a grocery store or supermarket as such terms are defined below, or (v) as any combination of the foregoing uses. In the event of a breach of this covenant, Wal-Mart shall have the right to terminate this Agreement and to seek any and all remedies afforded by either law or equity, including, without limitation, the rights to injunctive relief. "Grocery store" and "supermarket", as those terms are used herein, shall mean a food store or a food department containing more than 10,000 square feet of building space used for the

purpose of selling food for off premises consumption, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments. "Discount department store" and/or "discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than 65,000 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 Ace Hardware, Ross Dress for Less or T.J. Maxx, on 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.

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

3. Rights of Successors. The 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.

4. Duration. Unless otherwise canceled or terminated and subject to the next paragraph, all rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

5. 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.

6. 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.

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

8. Time of the Essence. Time is of the essence with regard to performance under the terms and provisions of this Agreement. No extension of time for payment of any sum due hereunder shall operate to release, discharge, modify, change, or affect the original liability as established hereunder, either in whole or in part.

9. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the

other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

10. Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between the parties, in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

11. 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. and Boyer Heber Land, 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. 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 Yavapai County, Arizona. Until such time as the notice of change is effective pursuant to the terms of this Section 11 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.

12. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Utah without reference to the conflicts of law provisions thereof, and any dispute with respect to it and the rights and duties thereby created shall be litigated in U.S. District Court for the State of Utah, if it shall have jurisdiction. The parties shall bring any action or suit concerning this Agreement or related matters only in such federal courts if they shall have jurisdiction. The parties shall not raise, and hereby waive, any defenses based on venue, inconvenience of forum, or lack of personal jurisdiction in any action or suit brought in accordance with this Section. The parties acknowledge that they have read and understand this clause and agree voluntarily to its terms.

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 *Shannon Helts*  
Name: Shannon Helts  
Title: 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: *SEE NEXT*  
Name: *FACE*  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

"Developer"

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 \_\_\_\_\_

Name: \_\_\_\_\_

Title: Regional Vice President

Date: SEE PREVIOUS PAGE

"Wal-Mart"

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

By: THE BOYER COMPANY, L.C.  
Its: Manager

By: \_\_\_\_\_

Its: Manager

Date: 8/15/08

BOYER HEBER LAND, L.C., a Utah limited liability company

By: THE BOYER COMPANY, L.C.  
Its: Manager

By: \_\_\_\_\_

Its: Manager

Date: 8/15/08

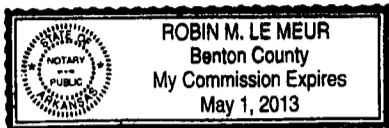
"Developer"

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of AUGUST, 2008, by Shannon betts, the 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 NEXT PAGE~~

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

~~State of Arkansas~~

County of Benton

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

(Seal and Expiration Date)

SEE PREVIOUS PAGE

Notary Public

State of Utah

County of Salt Lake

The foregoing instrument was acknowledged before me this 15 day of August, 2008, by Devon 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.



Misty Landward  
Notary Public

State of Utah

County of Salt Lake

The foregoing instrument was acknowledged before me this 15 day of August, 2008, by Devon M. Glenn, the Manager of The Boyer Company, L.C., a Utah limited liability company, the Manger of **BOYER HEBER LAND, L.C.**, a Utah limited liability company, on behalf of the company.

(Seal and Expiration Date)

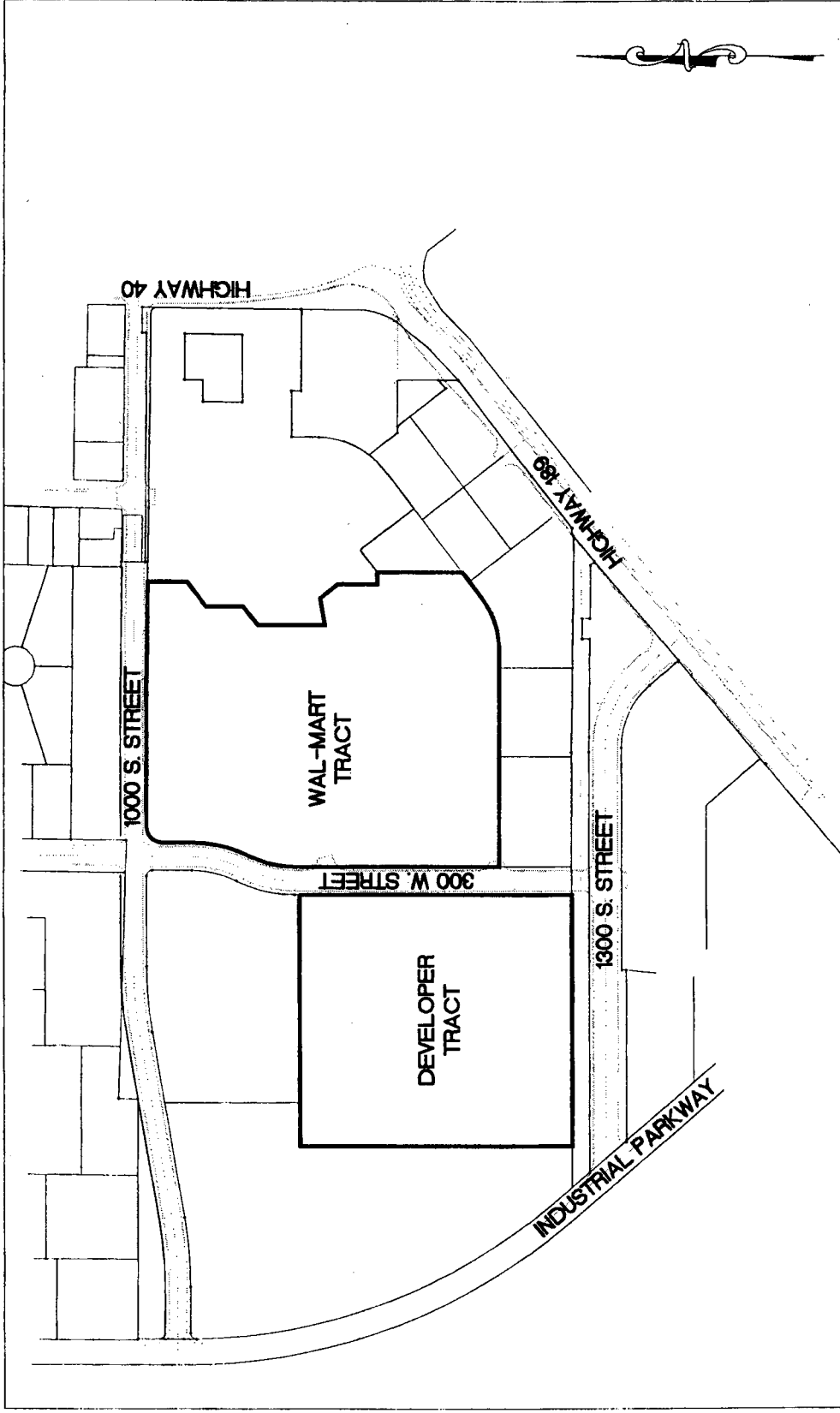
Misty Landward



**EXHIBIT A**

(Schematic showing Wal-Mart Tract and Developer Tract)





**PACLAND**  
 1505 Westlake Ave. N.  
 Suite 305  
 Seattle, WA 98109  
 T (206) 522-9510  
 F (206) 522-8344  
 www.PacLand.com

WAL-MART STORE #4696  
 HEBER CITY, UT

SCALE: 1" = 400'

6/18/08

EXHIBIT A  
 TO CR

**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 legal description)

Lot 15 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.

MNT# 0051609

When recorded return to:

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

PT. OF PARCELS #:  
OHE -1348, OWC-1570,  
OWC-1537

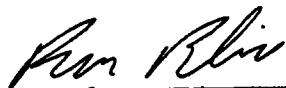
**CONSENT AND SUBORDINATION**

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 COVENANTS AND RESTRICTIONS AFFECTING LAND dated August 2, 2008 executed by and among BOYER HEBER CITY, L.C., a Utah limited liability company, BOYER HEBER LAND, 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 COVENANTS AND RESTRICTIONS AFFECTING LAND with the result being that the COVENANTS AND RESTRICTIONS AFFECTING LAND shall have priority over the Loan Documents to the same degree and with the same effect as if the 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 COVENANTS AND RESTRICTION 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<sup>th</sup> 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: \_\_\_\_\_