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When recorded return to:  
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Birmingham (Valleydale), AL, Store # 3424

**EASEMENTS WITH COVENANTS  
AND RESTRICTIONS AFFECTING LAND**

**THIS EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND** (the "Declaration" or the "Agreement") is made as of the 1<sup>st</sup> day of July, 2014, between **WAL-MART STORES EAST, LP**, a Delaware limited partnership ("Wal-Mart"), and **MIDLAND VALLEYDALE, LLC**, a Delaware limited liability company ("Developer").

**WITNESSETH:**

**WHEREAS**, Wal-Mart is the lessee of an approximately 47,653 square foot building, together with all improvements thereon, including loading docks and other attached ancillary structures and equipment, as shown on the plan attached hereto as Exhibit A-1 hereof (collectively the "Wal-Mart Building"), pursuant to that certain Building Lease Agreement dated contemporaneously herewith between Developer and Wal-Mart (the "Lease"); and

**WHEREAS**, the Wal-Mart Building is located on 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 (the "Wal-Mart Tract");

**WHEREAS**, Developer is the owner of the Developer Tract (the "Developer Tract") and the Outparcels (the "Outparcels") shown on the plan attached hereto as Exhibit A-1 hereof, the same being more particularly described in Exhibit C hereof; and

**WHEREAS**, Wal-Mart and Developer desire that the Wal-Mart Tract, the Developer Tract and the Outparcels be operated and further developed in conjunction with each other pursuant to a general plan for the "Valleydale Marketplace Shopping Center" (sometimes hereinafter referred to as the "Shopping Center"), and further desire that the Shopping Center be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

**NOW, THEREFORE**, for and in consideration of the premises, easements, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart and Developer do hereby agree as follows:



1. Building/Common Areas.

1.1 "Building Areas" as used herein shall mean those portions of the Shopping Center shown on Exhibit A-4 as "Building Area". Canopies may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas. Wal-Mart may, by written notice to Developer, and at Wal-Mart's sole cost, expand the floor area of the Premises by constructing an addition or additions thereto to the extent such addition or additions do not negatively and materially impact the remainder of the Shopping Center and will not alter any of the existing drive aisles of the Shopping Center without Developer's consent, which shall not be unreasonably withheld, conditioned, or delayed ("Future Expansion Area").

1.2 "Common Areas" shall be all of the Shopping Center except the Building Areas. Notwithstanding the foregoing, those portions of the Building Areas which are not from time to time used or cannot, under the terms of this Agreement, be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

1.3 "Tracts" as used herein shall mean the Wal-Mart Tract and the Developer Tract but not the Outparcels. Reference to a "Tract" refers to the Wal-Mart Tract or the Developer Tract but not the Outparcels.

2. Use; Competing Business.

2.1 Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, retail stores, service shops and offices which provides services directly to consumers, including but not limited to financial institutions, real estate agencies, brokerage offices and title companies, travel and insurance agencies, and medical, dental and legal clinics, financial institutions. Developer agrees that, as of the date of this Agreement and until the expiration or termination of the Lease, none of the Shopping Center shall be used for, or leased to a tenant occupant for, any of the following uses (the "Prohibited Uses") without the prior written consent of Wal-Mart, which Wal-Mart may withhold in its sole and absolute discretion: cafeteria, cinema or theatre, bowling alley, skating rink, pool room or billiard parlor, dance hall (except that dance studios or stores that give dance lessons are allowed if not located within one hundred and twenty five (125) feet of the Wal-Mart Building), discotheque, night club, amusement gallery or other place of recreation or amusement, dry cleaning plant (such term will not prevent a dry clean drop off/pick up facility that does not perform any cleaning or laundering on site), adult entertainment facility or adult book store, funeral parlor, flea market, bingo parlor or game of chance business (excluding the sale of lottery tickets), day care facility, child care facility, and any business or facility used in growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling marijuana, whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant.





2.2 No restaurant shall occupy space on any portion of the Developer Tract within one hundred and twenty five (125) feet of the Wal-Mart Building (excluding the Outparcels and the existing 1,300 sq/ft pizza restaurant as shown on Exhibit A-2 as "Pizza Space" in the Shopping Center as of the date of this Agreement, its successors, assigns and subtenants, or any replacement restaurant in the existing Pizza Space, its successors, assigns and subtenants) without the prior written consent of Wal-Mart, which Wal-Mart may withhold in its sole and absolute discretion. Developer recognizes that the businesses described in Section 2.1, and any restaurants other than those permitted by this Section 2.2, may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business.

2.3 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 construct any improvement, and/or construct within any specified time frame, commence the operation of a business or thereafter continuously operate a business by Wal-Mart on the Wal-Mart Tract. Developer recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its business on the Wal-Mart Tract; and Developer hereby waives any legal action for damages or for equitable relief which might be available to Developer because of such cessation of business activity by Wal-Mart.

2.4 Developer covenants that, until the expiration or termination of the Lease, no space in or portion of the Developer Tract or the Outparcels, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Developer or an Affiliate of Developer, as Affiliate is defined below, or any entity which is owned in whole or in part by any member or manager of Developer (collectively, "Developer Entity") (provided, however, a Developer Entity may acquire real property adjacent to the Shopping Center with uses in conflict with this Section 2.4, but the Developer Entity shall not be allowed to add or replace existing tenants in such acquired real property with any tenant whose use violates Wal-Mart's Exclusives, as defined below) shall be leased or occupied by or conveyed to any other party for any of the following uses ("Wal-Mart's Exclusives"): (i) a store selling alcoholic beverages (including beer, wine and liquor) for off-premises consumption, (ii) a pharmacy requiring the presence of a licensed pharmacist for the dispensing of drugs and regulated medicines, (iii) a discount department store or other discount store, as such terms are defined below, (iv) a variety, general or "dollar" store, except that the parties acknowledge and agree that (A) the existing Dollar Tree operating in all or a portion of the existing premises (without expansion) or replacement premises of comparable size within the Shopping Center pursuant to the terms of its lease, shall not be a violation of this Section 2.4, and (B) a "dollar" store in which the sale of grocery items, alcoholic beverages and/or pharmaceutical products, collectively, are conducted from no more than one thousand (1,000) square feet of such store's floor space, shall not be in violation of this Section 2.4, (v) a grocery store or supermarket as such terms are defined below, or (vi) as any combination of the foregoing uses. For all purposes of this Lease, the term "Affiliate" means any person (which shall mean and include a natural person, partnership, a joint venture, a corporation, a trust, a limited liability company, and an unincorporated organization) controlled by or under common control with any other person. For purposes of this definition, "control" (including "controlled by" and "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of



the management and policies of such person, whether through the ownership of any indicia of equity rights (whether issued and outstanding capital stock, partnership interests, limited liability company interests or otherwise) or by any other means. 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, which shall include but not limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments. "Discount department store" and/or "discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than 35,000 square feet of building space used for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of Wal-Mart. Notwithstanding the foregoing, this Declaration shall not (a) restrict the operation of restaurants (including restaurants selling alcoholic beverages) selling prepared ready-to-eat food or beverages for on or off-premises consumption, so long as the gross sales revenue of such restaurant attributable to alcoholic beverage sales does not exceed 50% of the establishment's gross revenues, (b) prohibit or restrict any of the following uses in the Shopping Center: coffee shops, bagel shops, yogurt stores, sandwich shops, specialty bakeries, donut shops, candy stores, pizza restaurants (offering sit-down and/or carry-out service), vitamin shops and ice cream stores or (c) prohibit Incidental Sales of any items covered by this Section 2.4 by other tenants or occupants of the Shopping Center. The term "Incidental Sales" means the sale of any items covered by Wal-Mart's Exclusives which (i) are incidental to the particular tenant or occupant's primary use, and (ii) are not conducted from more than the lesser of (a) ten percent (10%) of such user's floor space or (b) one thousand (1,000) square feet of such tenant or occupant's floor space.

2.5 Notwithstanding anything in this Agreement to the contrary, the Prohibited Uses and Wal-Mart's Exclusives shall not apply to any lease amendments, and to renewals of existing tenant or occupant leases, for any premises on the Developer Tract or the Outparcels, to the extent that Developer does not have the right to condition such lease amendments or renewals upon such existing tenants or occupants making their leases subject to the Prohibited Uses and Wal-Mart's Exclusives.

### 3. Buildings.

3.1 Design and Construction. The Buildings constructed on the Shopping Center shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one Tract or Outparcel onto another Tract or Outparcel except as provided for in Subsection 3.4. below. The design and construction shall be of high quality. No improvements shall be constructed, erected or expanded or altered on the Outparcels until the complete plans and specifications for the same (including but not limited to site layout, exterior elevations, exterior building materials and colors, utility plan and parking) have been approved in writing by Developer. No building constructed on the Wal-Mart Tract or the Developer Tract shall exceed 40' in height above



finished grade. Incidental architectural embellishments and peaks shall not be considered in connection with determining compliance with said height restriction. No building constructed on the Outparcels shall exceed 28 feet (including all mechanical improvements and architectural embellishments) in height, as measured from the mean finished elevation of the parking area of the applicable Outparcel. No building shall have a metal exterior.


3.2 Location/Size. No building shall be constructed on the Shopping Center (as either immediate development or future expansion) except within the Building Areas. Any buildings located on the Outparcels shall not exceed 5,000 square feet in size. Any rooftop equipment constructed on the buildings located on the Outparcels shall be screened so as not to be visible from the parking area. Notwithstanding anything contained herein to the contrary, there shall be no more than one building on each Outparcel and Developer shall not have the right to combine any Outparcels.

3.3 Fire Protection. Any building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinkler rate on the other buildings in the Shopping Center.

3.4 Easements. In the event building wall footings encroach from one Tract onto the other Tract, despite efforts to avoid that occurrence, the party onto whose Tract the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

#### 4. Common Areas.

4.1 Grant of Easements. Each party, as grantor, hereby grants to the other party, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of grantee, a nonexclusive easement over, through and around the Wal-Mart Tract and the Developer Tract for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Building Areas located on the Wal-Mart Tract and the Developer Tract. Wal-Mart and Developer hereby grant for the benefit of the Outparcels, nonexclusive easements for vehicular and pedestrian access, ingress and egress and parking of motor vehicles on, over and across the Wal-Mart Tract and the Developer Tract; provided, however, in no event shall the owner, occupant, licensee or invitee of any of the Outparcels(s) be permitted to use the Wal-Mart Tract or the Developer Tract for vehicular parking (unless such owner, occupant, licensee or invitee meets or exceeds the parking ratio requirements contained in Section 5.3 hereof) or for any other purpose other than as described above. Developer hereby grants to Wal-Mart for the benefit of the Wal-Mart Tract, nonexclusive easements for vehicular and pedestrian access, ingress, and egress over and across the Outparcels.

  
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#### 4.2 Limitations on Use.

(1) Customers. Each party shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business in the Shopping Center.

(2) Employees. Each party shall use reasonable efforts to ensure that employees park on the Common Areas of said party's Tract or Outparcel.

(3) General. Except as expressly provided in this Section, any activity within the Common Areas other than the primary purpose of the Common Areas, which is to provide for access, ingress and egress and parking for the customers, invitees and employees of those businesses conducted within the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose and so long as the same complies with applicable law. No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area; provided, however, the foregoing prohibition shall not be applicable to: (a) the storage of shopping carts in designated cart corrals; (b) the installation of an "ATM" banking facility within an exterior wall of any building or within the drive-thru area of a bank occupant otherwise permitted under this Agreement; (c) vending machines of the type customarily found in similar shopping centers; (d) any recycling center required by law, the location of which shall be subject to the approval of Developer; (e) outdoor seating for restaurants; or (f) sidewalk sales by tenant or occupants on the sidewalk immediately in front of their premises; provided that such displays and sales of merchandise shall be not unreasonably impede the normal flow of pedestrian traffic along and across such sidewalks and vehicular traffic along adjacent drive aisles (as applicable), shall at all times be maintained in a first class state of condition. The use by Wal-Mart of the sidewalk immediately in front of the Wal-Mart Building (but not other portions of the Common Areas) for the display, sale and storage of merchandise and for the use of seasonal sales structures is expressly permitted, subject to the requirements in the preceding sentence. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use. Notwithstanding the foregoing, each party covenants and agrees that, to the extent allowed by law, neither party will allow the Common Areas on its tract to be used for rallies, demonstrations, protests, picketing or handbilling to protest, publicize or allege improprieties regarding the acts, policies or operating practices of any business operating within the Shopping Center.

#### 4.3 Utility and Service Easements.

(1) Each party hereby establishes and grants to the other party a nonexclusive easement for the benefit of the owner of each Tract or Outparcel, on, across and under the Common Areas, to install, use, maintain and repair public utility services and distribution systems (including storm drains, sewers, utilities and other proper services) necessary for the orderly development and operation of the Shopping Center, now upon or hereafter installed on, across or under the Common Areas, to the extent necessary to service such Tract or Outparcel. Both parties shall use their best efforts to cause the installation of such utility



and service lines prior to paving of the Common Areas. No such lines, sewers, utilities or services of one party shall be installed within the Building Areas on the other party's parcel. The location of any utilities hereafter installed shall be determined by the owner of the Tract or Outparcel (the location of utilities on the Wal-Mart Tract shall be determined by Wal-Mart as long as it is the owner or lessee of the Wal-Mart Tract) upon which such utilities are to be installed. The easement area for any particular utility shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility company, or five (5) feet on each side of the centerline if the easement is granted to another party. The grantee shall provide to the grantor a copy of an as built survey showing the location of the applicable utility line. All Utility Lines shall be underground except: (a) ground mounted electrical transformers; (b) as may be necessary during periods of construction, reconstruction, repair or temporary service; (c) as may be required by applicable law, regulation or governmental order; (d) as may be required by the provider of such utility service; (e) as may be attached to a building (e.g. solar panels); and (f) fire hydrants.

(2) Any such installed utility services may be relocated by the owner of a Tract or Outparcel on such owner's Tract or Outparcel, subject to compliance with applicable laws, at the expense of the owner of that Tract or Outparcel, provided that such relocation shall not interfere with, increase the cost of, or diminish utility services to any other Tract or Outparcel and, further provided, that no utilities shall be relocated on the Wal-Mart Tract without the prior written consent of Wal-Mart as long as it is the owner of or lessee of the Wal-Mart Tract.

4.4 Water Flow. Each party hereby establishes and grants a nonexclusive easement on its Tract or Outparcel for the benefit of the owner of each other Tract or Outparcel to use, maintain and repair any storm water drainage system (the "Storm Drainage System") now or hereafter located on either Tract or any Outparcel, together with the right to discharge surface water runoff across portions of either Tract or any Outparcel in accordance with the design of the Storm Drainage System. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements substantially as shown on Exhibit A-2 (including without limitation building and building expansion, curbs, drives and paving) shall be permitted.

4.5 Illumination. Each of the parties hereby covenants and agrees to keep the Common Area located on its Tract or Outparcel fully illuminated each day from dusk until one (1) hour after Wal-Mart closes for business, but not later than 11:00 p.m., and further agrees to keep any exterior building security lights on from dusk until dawn (or such other times as Wal-Mart and Developer may mutually agree). The requirements of this Paragraph 5.5 shall apply to each Tract and Outparcel regardless of the type of use being made of such Tract or Outparcel. Either party may require the other party to illuminate its Tract or Outparcel beyond the required hours set forth above provided that the requesting party agrees to reimburse the other party for such Party's actual out-of-pocket utility costs for lighting beyond the hours required above. Such costs shall be reimbursed once each calendar quarter within thirty (30) days after presentation of paid invoices to the party responsible to reimburse such costs evidencing costs incurred by the party requesting reimbursement along with calculations showing how utility costs were allocated to the hours for which reimbursement is due.



4.6 Temporary Construction Easements. Developer, as grantor, hereby grants to Wal-Mart, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of grantee, certain non-exclusive temporary construction easements (the "Temporary Construction Easements") for the purpose of constructing and maintain the improvements contemplated in the Lease. The Temporary Construction Easements shall be located in the areas of the Shopping Center identified in Exhibit D, and will included, without limitation, construction staging arrangements. For the duration of the Temporary Construction Easements, Wal-Mart hereby agrees not to block or otherwise suspend use of the established driveways in the Shopping Center for unreasonably extensive periods, and Wal-Mart agrees to maintain reasonable alternative means to access during periods of such suspension.

5. Development, Parking Ratios, Maintenance, and Taxes.

5.1 Development. The land on which Developer has constructed the Shopping Center is shown on the site plan attached here to as Exhibit A-1. Among other things, Exhibit A-1 shows the location and size of all buildings constructed within the Shopping Center, shared signage, lighting, parking areas, and tenants' delivery service areas. No improvements or alterations which substantially vary from Exhibit A-1 may be made without the prior written consent of Wal-Mart, except that Developer will be permitted, without Wal-Mart's consent to complete the subdivision(s) necessary to establish the Outparcel(s) as separately conveyable parcels. To the extent depicted on Exhibit A-1 or otherwise required by this Agreement or the Lease, Developer shall neither: reduce the number of parking spaces, nor change the location, size, or layout of parking spaces within the Common Areas, nor diminish the service level (i.e. full service, right-in/right-out, etc.) of entrances or exits to and from the Shopping Center, nor reduce the size of or relocate entrances or exits to and from the Shopping Center, nor consent to the partial or total decommissioning or removal of any traffic signals located at the entrances or exits to and from the Shopping Center, nor consent to the relocation or elimination of any median breaks or turn lanes serving the entrances or exits to and from the Shopping Center, except to the extent any of the foregoing changes are required by applicable laws or governmental authority (such as, but not limited to, the proposed government-initiated widening of Valleydale Road and Caldwell Mill Road, which widenings may take a portion of the Shopping Center property adjacent to both roadways), without Wal-Mart's consent in each instance. Developer will notify Wal-Mart in writing at least thirty (30) days prior to the commencement of any construction, repair or paving of the Common Areas and/or any restriction or closure of any access roads or entrances to the Shopping Center, except in emergency circumstances, in which case Developer shall provide as much notice as possible given the circumstance of the emergency situation. If any construction, repair, paving, restriction and/or closure performed by Developer or its employees, contractors, tenants, agents, or any of their contractors, employees, or agents, impedes or interferes with Wal-Mart's business operations in any material respect, then Wal-Mart may exercise the remedies provided in the Lease in the event of such impediment or interference by the Developer.

5.2 Wal-Mart Tract and Developer Tract "Parking Ratio". Developer agrees that at all times there shall be independently maintained on the Developer Tract parking area sufficient to accommodate not fewer than 5.0 car spaces for each 1,000 square feet of building or buildings on such Tract. Wal-Mart agrees that at all times there shall be



independently maintained on the Wal-Mart Tract parking area sufficient to accommodate not fewer than 4.0 car spaces for each 1,000 square feet of building or buildings on such Tract.

5.3 Outparcel "Parking Ratio". Developer agrees that at all times there shall be independently maintained on each Outparcel parking area sufficient to accommodate not fewer than: (i) 15 spaces for every 1,000 square feet of building space for any restaurant or entertainment use in excess of 5,000 square feet, (the same ratio shall be provided for a McDonald's Restaurant, notwithstanding a building footprint of less than 5,000 square feet); or (ii) 10 spaces for every 1,000 square feet of building space for any restaurant or entertainment use less than 5,000 square feet (subject to the exception above and below); or (iii) 6.0 spaces per 1,000 square feet of building space for any other use and for a Starbucks or Dunkin Donuts restaurant less than two thousand (2,000) square feet.

5.4 Maintenance.

(1) Developer's Obligations.

(i) Common Areas. Developer, without cost or expense to Wal-Mart, shall at all times maintain or caused to be maintained in good and usable repair, including making replacements whenever necessary to sustain that condition, all of the Common Areas (as defined below) of the Shopping Center (the "Common Area Maintenance") in accordance with commercially reasonable industry standards and in compliance with all laws. Notwithstanding the preceding sentence, Developer shall be deemed to be in compliance with law so long as any non-conformance with law (including but not limited to "Accessibility Laws") is permitted (e.g. as a result of changes to Accessibility Laws enacted after the Shopping Center's original improvements were constructed. The "Common Areas" shall include the vehicle parking and other areas of the Shopping Center furnished by Developer for the non-exclusive use of the occupants of the Shopping Center, any common roadways, service areas, driveways, areas of ingress and egress, sidewalks and other pedestrian ways, landscaped areas, retaining walls, fire hydrants, traffic signalization only to the extent signals are not a public improvement, storm water detention and retention ponds located within the Shopping Center or offsite wetlands areas and utility systems (but not including the sanitary lift station serving the Wal-Mart Building exclusively, which shall be maintained by Wal-Mart), but shall not include the Wal-Mart Building or any other leasable areas of the Shopping Center. The maintenance by Developer is to include the following:

1. Keeping in good condition, appearance and repair the surfaces of all sidewalks, curbs, and other pedestrian ways, and restriping and maintenance of paved and parking areas in a level, smooth and evenly-colored condition, with the same type of surfacing material as previously installed or such substitute as shall in all respects be equal in quality, use and durability;

2. Removing all ice, papers, mud and sand, debris, filth and refuse, to the extent reasonably necessary to keep the Shopping Center in a clean and orderly condition;



3. Placing, keeping in good condition and repair, and replacing all utility lines, any necessary or appropriate directional signs, markers and curbs, and signage;

4. Maintaining, trimming, mowing and weeding all landscaped areas, and promptly replacing shrubs and other landscaping when and as necessary;

5. Maintaining, repairing and replacing parking lot lights and providing, utilities for such lights, and maintenance, including the additional electrical costs of any parking lot lighting which extends beyond the Shopping Center's normal operating hours resulting from Wal-Mart's operating beyond such normal operating hours, such lighting to be from dusk until one (1) hour after Wal-Mart's closing for business but not later than 11:00 p.m.;

6. Security services if and only if specifically approved in writing by Wal-Mart prior to Developer contracting for or performing such services;

7. Keeping in good condition, appearance and repair all storm water detention and retention ponds or offsite wetlands areas, and utility systems, including sanitary lift stations and the like;

8. Maintaining, repairing and replacing the Shopping Center pylon sign (but not the panels thereon of individual tenants or occupants or the owner of the self-storage facility located adjacent to the Shopping Center, all of which will be maintained by the applicable panel owner at its sole cost), including the cost of electric power for the sign; and

9. Any additional maintenance required by any governmental entity with respect to the Shopping Center.

(ii) Failure of Developer to Maintain. In the event of (i) Developer's failure to perform the maintenance, or make the repairs or replacements, required of Developer herein within thirty (30) days after Wal-Mart shall give written notice of such failure to Developer (provided that, to the extent that the maintenance, repairs or replacements involved are not reasonably susceptible of completion within such thirty (30) day period, such time period shall be extended by such reasonable period of time as is required for completion if, and only if, Developer commences the necessary maintenance, repairs or replacements within such thirty (30) day period and diligently pursues completion of the same), or (ii) an emergency which, in the opinion of Wal-Mart, renders such notice impracticable (in which case Wal-Mart shall give such notice as is practical under the circumstances), or (iii) Developer's failure to perform Common Area Maintenance which has an immediate effect on traffic flow to the Wal-Mart Building, then, in any such event, Wal-Mart may, at its option but without any obligation to do so, perform the maintenance or make the repairs or replacements involved and, if Wal-Mart does so, Developer hereby covenants to reimburse Wal-Mart for the actual, reasonable and documented costs and expenses thereof and for five percent (5%) of said costs and expenses as administration



fees. If within thirty (30) days after Wal-Mart has given such notice to Developer, together with the documentation of such costs and work, Developer shall fail to reimburse Wal-Mart for the cost of such work and the administration fee, Wal-Mart may exercise the remedies provided in the Lease in the event of such failure by the Developer.

(2) Care of Common Areas: Developer agrees to keep or cause to be kept the Common Areas in a neat and clean condition in accordance with the standard set forth in Section 5.4(1)(i) above, shall refrain from permitting any nuisance or fire hazard therein, shall not knowingly permit or consent to any unlawful or immoral practice to be carried on within the Common Areas by it or any other person, and shall at all times cause the occupancy and use of the Common Areas to comply with all city and county ordinances and with all state and federal laws and regulations relating thereto.

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

5.6 Common Area Maintenance Charges.

(1) Notwithstanding anything to the contrary contained in this Agreement, initial responsibility for maintenance of the Common Areas shall be vested in Developer who shall maintain the Common Areas to the standards set forth in Section 5.4(1)(i) and shall be entitled to reimbursement for certain costs incurred in connection with such maintenance as set forth in Section 5.4(1)(i) and this Section 5.6; provided, however, Wal-Mart may elect to self-maintain the Common Areas surrounding the Wal-Mart Building, including without limitation, Wal-Mart's parking area, as shown on Exhibit F (the "Wal-Mart Common Areas") effective as of the first day of a month and on not less than thirty (30) days prior notice to Developer, and from and after such effective date (the "Takeover Date"), Wal-Mart shall become responsible for such maintenance solely with respect to the Wal-Mart Common Areas and Wal-Mart shall be responsible for the costs of the maintenance of the Wal-Mart Common Areas but shall no longer be obligated to contribute to the maintenance of the remainder of the Common Areas as otherwise required by this Agreement; provided, however, notwithstanding the foregoing, Developer shall continue to operate and maintain (i) the common utility lines of the Shopping Center, including any detention/retention ponds, regardless of location, (ii) the main shopping center access drives providing ingress and egress to and from Valleydale Road and Caldwell Mill Road, (iii) any sign structure upon which a Wal-Mart sign panel is attached; and (iv) the parking lot and security lighting systems for the entire Shopping Center (collectively, the "Continuing Functions"). From and after the Takeover Date, Wal-Mart will continue to pay its proportionate share of all "CAM Costs" (as defined below) relating to Developer's performance of the Continuing Functions. If Wal-Mart elects to self-maintain the Wal-Mart Common Areas as provided above, then Wal-Mart will maintain the Wal-Mart Common Areas to the standards set forth in Section 5.4(1)(i).

(2) Developer shall utilize a bid process to obtain any services or expenses subject to reimbursement pursuant to this Section 5.6 and shall not contract with any person or entity related to or which is an Affiliate (as defined herein) of Developer or any





owners, investors or principals of Developer, except as otherwise expressly provided below. Maintenance responsibility for exterior building walls of the individual buildings within the Shopping Center, as well as any alterations on the Common Areas which are considered capital improvements or replacements (including, without limitation, costs to replace or slurry coat the parking lot), shall be the responsibility of the individual Owners of the applicable Common Areas and shall not be considered as part of the Common Area maintenance responsibilities of Developer or be included in CAM Costs. Developer shall expend only such funds as are reasonably necessary for the operation, maintenance, repair and replacement of the Common Areas (including without limitation, Common Area Maintenance costs and maintaining insurance required by Section 7), and shall promptly pay such costs ("CAM Costs") when incurred. Exclusions from CAM Costs are listed on Exhibit E.

(3) The annual budget for CAM Costs (which Budget shall cover the time period of January 1 through December 31 of each calendar year and is hereinafter referred to as the "CAM Budget") shall be provided to Wal-Mart by Developer annually in advance by December 1 of each year for the next calendar year beginning January 1 for approval by Wal-Mart. Wal-Mart shall review and approve or reject the CAM Budget within sixty (60) days after the same is received by Wal-Mart. Any CAM Cost expense not contained in the CAM Budget (and not otherwise covered by a contingency line item in an approved CAM Budget) shall not be charged unless Wal-Mart specifically approved such expense in writing prior to Developer contracting for such services or unless the same is an "Uncontrollable CAM Cost" (as defined below). Wal-Mart shall reimburse Developer for "Wal-Mart's Share" (defined below) of Developer's out-of-pocket actual CAM Costs not to exceed the sum shown in the CAM Budget, excluding Uncontrollable CAM Costs.

(4) From and after the Commencement Date, on a quarterly basis, Wal-Mart shall pay Developer 1/4th of Wal-Mart's Share of the estimated CAM Costs for the applicable calendar year as shown in the approved budget (which will be reduced by the amount, if any, contributed by any owner or tenant of an outparcel toward CAM Costs). Within 120 days after (i) the end of each calendar year during the Term and (ii) the expiration of the Term, Developer shall submit to Wal-Mart Annual Reconciliation Documentation evidencing Wal-Mart's Share of CAM Costs for the calendar year (or portion thereof) just ended. "Annual Reconciliation Documentation" means, collectively: (a) a final, annual reconciliation statement ("Adjustment Bill") setting forth, the total CAM Costs incurred during the previous year, with a comparison to budget, (b) the method of calculating Wal-Mart's Share, and (c) copies of all paid invoices for CAM Costs. If Wal-Mart's Share of CAM Costs for any calendar year (or part thereof) exceeds the aggregate amounts previously paid by Wal-Mart for such year, Wal-Mart shall pay to Developer the deficiency within thirty (30) days following Wal-Mart's receipt of the Annual Reconciliation Documentation. If the aggregate CAM Cost amounts previously paid by Wal-Mart for the applicable calendar year (or part thereof) exceed Wal-Mart's Share of CAM Costs for such period, Developer shall refund such overpayment to Wal-Mart within thirty (30) days following delivery of the Annual Reconciliation Documentation. If Developer fails to pay Wal-Mart such refund within such thirty (30) day period, Wal-Mart may deduct such overpayment amount from the next Rent payments due to Developer under the Lease until recovered in full.



(5) If Developer fails to deliver the Annual Reconciliation Documentation within the required period, and such failure continues for thirty (30) days after written notice of such failure from Wal-Mart to Developer, Developer, agrees that Developer waives its right to reimbursement for CAM Costs until Developer delivers all delinquent Annual Reconciliation Documentation for the applicable reconciling period(s). Wal-Mart shall also be authorized to cease paying Wal-Mart's quarterly estimated payments of Wal-Mart's Share of CAM Costs until Developer delivers all delinquent Annual Reconciliation Documentation (at which time Wal-Mart shall again start paying Wal-Mart's quarterly estimated payments of Wal-Mart's Share of CAM Costs and shall make a make-up payment with respect to Wal-Mart's quarterly payments that were withheld.) If Developer fails to deliver the delinquent Annual Reconciliation Statement to Wal-Mart within thirty (30) days after a second written notice, then any additional charges which Wal-Mart would otherwise owe above the CAM Costs it has already paid for the applicable calendar year(s) are forever waived.

(6) Notwithstanding anything in this Agreement to the contrary, Wal-Mart's Share of the CAM Costs for the partial calendar year in which the Commencement Date occurs and the first full calendar year of the initial term and each year thereafter will not exceed the amounts set forth in the Lease.

(7) The proportionate share of the CAM Costs to be borne by Wal-Mart shall be the percentage obtained by dividing the square footage of the Building by the total square footage of all buildings constructed in the entire Shopping Center from time to time, excluding any building square footage located on outparcels which are self-maintained by the tenant or occupant thereof (the "Wal-Mart's Share").

(8) Wal-Mart shall have the right to audit all of Developer's and Developer's agents' records pertaining to CAM Costs, utilizing a representative of Wal-Mart's choice, on reasonable prior notice to Developer and during Developer's regular business hours at Developer's principal office. In the event it is determined that Developer has over-billed Wal-Mart for its CAM Costs in an amount equal to or greater than two percent (2%) of Wal-Mart's Share of CAM Costs, Developer shall reimburse Wal-Mart for its overpayment of CAM Costs, plus all reasonable expenses of such audit, provided the audit is not performed on a contingency fee or success fee basis. Developer shall retain its records regarding CAM Costs for a period of at least two (2) years following the final billing for the calendar year in question.

(9) Subject to the mutual agreement of Wal-Mart and Developer, 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 Wal-Mart and Developer to cover supervision, management, accounting and similar fees, which sums are to be included in the CAM Costs. Developer and Wal-Mart hereby approve Midland Atlantic Development Company, LLC, an Ohio limited liability company ("MADC"), as the parties' agent to maintain the Common Areas to the standards set forth in this Agreement, and for its provision of such services Developer will pay MADDC an administrative charge equal to five percent (5%) of CAM Costs.





(10) In the event of a dispute regarding any CAM Costs (be it a dispute as to the item for which the charge is levied or the amount of the charge), then Wal-Mart shall pay the other CAM Costs that are the subject of such invoice as provided in the document except the disputed charge. The parties shall have forty-five (45) days to negotiate a settlement of the disputed charge. If the parties are unable to resolve their differences regarding the disputed charge, then the parties shall appoint an expert who shall make the decision. If the parties cannot agree on an expert then each party, within thirty (30) days after the expiration of the above referenced forty-five (45)-day period, shall select an independent expert and the two experts shall decide the matter and if they are unable to so decide the matter, then they shall, within thirty (30) days after the expiration of the previously mentioned thirty (30)-day period, appoint a third independent expert whose decision shall be final. Each party shall pay the costs of its own expert and Developer and Wal-Mart shall split the costs of the third expert. If a party fails to engage an expert as required hereunder within the applicable time frame, the other party shall send written notice of the same to the non-engaging party and thereafter if the non-engaging party still does not engage an expert within thirty (30) days after said notice, then the position of the other party shall be accepted as true.

6. Signs.

6.1 No rooftop sign shall be erected on the building constructed on the Outparcels.

6.2 As to each of the Outparcels, a freestanding identification sign (pylon or monument style) may be erected (either on the Outparcel itself or adjacent portions of the Developer Tract) to identify the business on the Outparcel without approval of the Developer and Wal-Mart, provided (a) in no event shall such freestanding identification sign exceed the height of the shopping center monument sign or materially block the visibility of the Wal-Mart Store, and (b) such sign will contain only the name of the applicable tenant/occupant of the Outparcel and its logo, using its standard colors and branding. 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 and Wal-Mart, such approval not to be unreasonably withheld or delayed and, in the case of Wal-Mart, if Wal-Mart has not responded to a request for approval for a sign, a second notice ("Reminder Notice") will be provided to Wal-Mart by Developer, and the request for approval will be deemed approved if Wal-Mart does not respond with its denial of approval (and its reasons for denial) within thirty (30) days after receipt of the Reminder Notice with the proposed sign design and specifications from Developer.

6.3 No sign shall be located on the Common Areas on the Wal-Mart Tract and the Developer Tract except signs advertising businesses conducted thereon, of which, there shall be no more than 2 signs on the Common Areas on the Wal-Mart Tract and 2 signs on the Common Areas on the Developer Tract (exclusive of signs identifying businesses on the Outparcels). No signs shall obstruct the ingress and egress shown on Exhibit A-2.

6.4 Wal-Mart, as the lessee of the Wal-Mart Building, shall have the right to place its sign panels in the uppermost position (excluding any general development



identification panel) on both sides of the shopping center monument sign located on the Developer Tract in the location shown on Exhibit A-3 (the "Shopping Center Sign"). Developer shall have the right to all other panels on the Shopping Center Sign as shown on Exhibit A-3 (except for the panels advertising the self-storage facility located adjacent to the Shopping Center, which Wal-Mart acknowledges that the owner of such facility has the right to install and maintain on the Shopping Center Sign). Wal-Mart and Developer grant to each other all necessary access and construction easements for the maintenance, use and construction of the Shopping Center Sign. Wal-Mart and Developer shall be responsible for the maintenance and upkeep of their respective sign panels and sign cabinets in the Shopping Center Sign. Except for the sign panels and sign cabinets, Developer shall be responsible for the maintenance and upkeep of the Shopping Center Sign and each party agrees to reimburse Developer for its pro rata share of the costs of maintaining the Shopping Center Sign. For purposes of this Section 6, Wal-Mart's pro rata share (and the pro rata share of any other tenant/occupant having a sign panels on the monument sign) shall be calculated by multiplying the total costs and expenses incurred by Developer in the maintenance, repair and replacement of the Shopping Center Sign by a fraction, the numerator of which shall be the total square footage of sign panel area devoted to Wal-Mart (or the applicable tenant/owner in the Shopping Center), and the denominator of which shall be the total square footage of the sign panels on the Shopping Center Sign (the "Sign Maintenance Payments"). All Sign Maintenance Payments herein shall be due and payable to Developer within thirty (30) days after receipt of invoices from Developer evidencing such costs and expenses and the method of calculation thereof.

## 7. Indemnification/Insurance.

7.1 Indemnification. Each of Wal-Mart and Developer, and its successors and assigns, hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Tract or Outparcel, except if caused by the negligence or willful act or omission of the other party to this Agreement, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof.

## 7.2 Insurance.

(1) Each owner of any portion of the Shopping Center shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$5,000,000.00 for injury or death of a single person, and to the limit of not less than \$5,000,000.00 for any one occurrence, and to the limit of not less than \$5,000,000.00 for property damage. Each party shall provide the other party with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the



property covered by this Agreement. Such insurance shall provide that the same may not be canceled without ten (10) days prior written notice to Wal-Mart and the Developer.

(2) At all times during the term of this Agreement, each party shall keep improvements on its property insured against loss or damage by all risk of direct physical loss or damage, including coverage for flood, earthquake, and hurricane, and include the upgrading and reconstruction or replacement of said improvements to applicable and then-current governmental codes, statutes, ordinances, rules and regulations, with such insurance to be for the full replacement value of the insured improvements as the same may exist from time to time, less the cost of slab and foundations. The owner of a Tract or Outparcel shall pay for any increase in the cost of insuring the improvements on the other Tracts or Outparcels if such increase is due to the use by such owner or its tenant(s).

(3) Policies of insurance provided for in Section 7.2(1) shall name Wal-Mart and Developer as additional insureds.

(4) Each owner of any portion of the Shopping Center for itself and its property insurer hereby releases the other owners and their respective employees, agents and every person claiming by, through or under either of them, from any and all liability or responsibility (to them or to anyone claiming by, through or under them by way of subrogation or otherwise) for any loss or damage to any property (real or personal) caused by fire or any other insured peril covered or which would be covered by any insurance policies required to be maintained under this Agreement, even if such loss or damage shall have been caused by the fault or negligence of another owner, its employees or agents.

(5) Notwithstanding anything to the contrary contained in this Section 7, so long as the net worth of Wal-Mart shall exceed \$100,000,000.00, and so long as Wal-Mart is owner or lessee of the Wal-Mart Building and/or the Wal-Mart Tract, Wal-Mart shall have the right to retain (in whole or in part) the financial risk for any claim.

## 8. Eminent Domain.

8.1 Owner's Right To Award. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's Tract or Outparcel giving the public or any government any rights in said Tract or Outparcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located in the Shopping Center, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

8.2 Collateral Claims. All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.



8.3 Tenant's Claim. Nothing in this Section 8 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.

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

9. Rights And Obligations Of Lenders. Any holder of a first lien on any portion of the Shopping Center, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

10. Release from Liability. Any person acquiring fee or leasehold title to any portion of the Shopping Center shall be bound by this Agreement only as to the Tract, Outparcel or portion of the Tract or Outparcel acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Tract, Outparcel or portion of the Tract or Outparcel, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this Section, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said tracts running with the land.

11. Breach. In the event of breach or threatened breach of this Agreement, only all of the record owners of the Wal-Mart Tract as a group, or all record owners of the Developer Tract as a group, or Wal-Mart so long as it or any Affiliate has an interest as owner or lessee of the Wal-Mart Tract or Developer so long as it or any Affiliate has an interest as owner or lessee of the Developer Tract, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. Notwithstanding the foregoing, all of the record owners of an Outparcel shall be entitled to take any action permitted by this Agreement with respect to the breach of Sections 4.1, 5.4, 5.5, 7.1, 7.2(4) and 8.

12. 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.

13. 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 (each of such parties an "Approving Party"): (a) Wal-Mart, as long as it, its Affiliate or its successor in interest by merger or operation of law, has any interest as either owner or lessee of the Wal-Mart Tract, and



(b) Developer, as long as it, its Affiliate or its successor in interest by merger or operation of law, has any interest as either owner or Developer of the Developer Tract or the Outparcels. If either Approving Party no longer has an interest as owner or lessee of the applicable Tract described in the preceding sentence, then at such time such Approving Party's right to modify or cancel this Agreement will automatically pass to the then-record owner of the applicable Tract (excluding the Outparcels). Without limiting the generality of the foregoing, this Agreement may be modified by, and only by, a written agreement signed by all of the then current Approving Parties and shall be effective only when recorded in the county and state where the Shopping Center is located; provided, however, that no such modification shall impose any materially greater obligation on, or materially impair any right of, any other owner of an Outparcel unless such owner has joined in the execution of such amendment.

14. 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.

15. Duration. Unless otherwise canceled or terminated, all of the easements and parking rights granted in this Agreement shall continue in perpetuity and all other rights, restrictions and obligations, including, without limitation, the use and competing business restrictions, shall automatically terminate and be of no further force and effect upon the earlier of (a) the termination of the Lease, or (b) ninety-nine (99) years from the date hereof.

16. 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.

17. 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.

18. Transfer of Interests; Notices.

18.1 Transfer of Interests. In the event that any person or entity (the "Acquiring Party") shall acquire a fee or mortgage interest in any tract subject to this Agreement, or any portion thereof, the Acquiring Party shall execute and file in the land records of Shelby County, Alabama, a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this Agreement may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired (the "Notice Statement"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, a copy of such Notice Statement to all other persons or entities then holding fee or mortgage interests in any tract subject to this Agreement, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Shelby County, Alabama (the "Existing Interest Holders"). Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this Section 18.1, it shall not be entitled to receive any notice required or permitted to be given under this Agreement, and the



Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement. It is understood and agreed that the provisions of this Section 18.1 regarding the recordation of the Notice Statement are satisfied with respect to Developer and Wal-Mart.

18.2 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

Wal-Mart: Wal-Mart Stores East, LP. (Store No. 3424)  
Attention: Property Management, State of Alabama  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716-0550

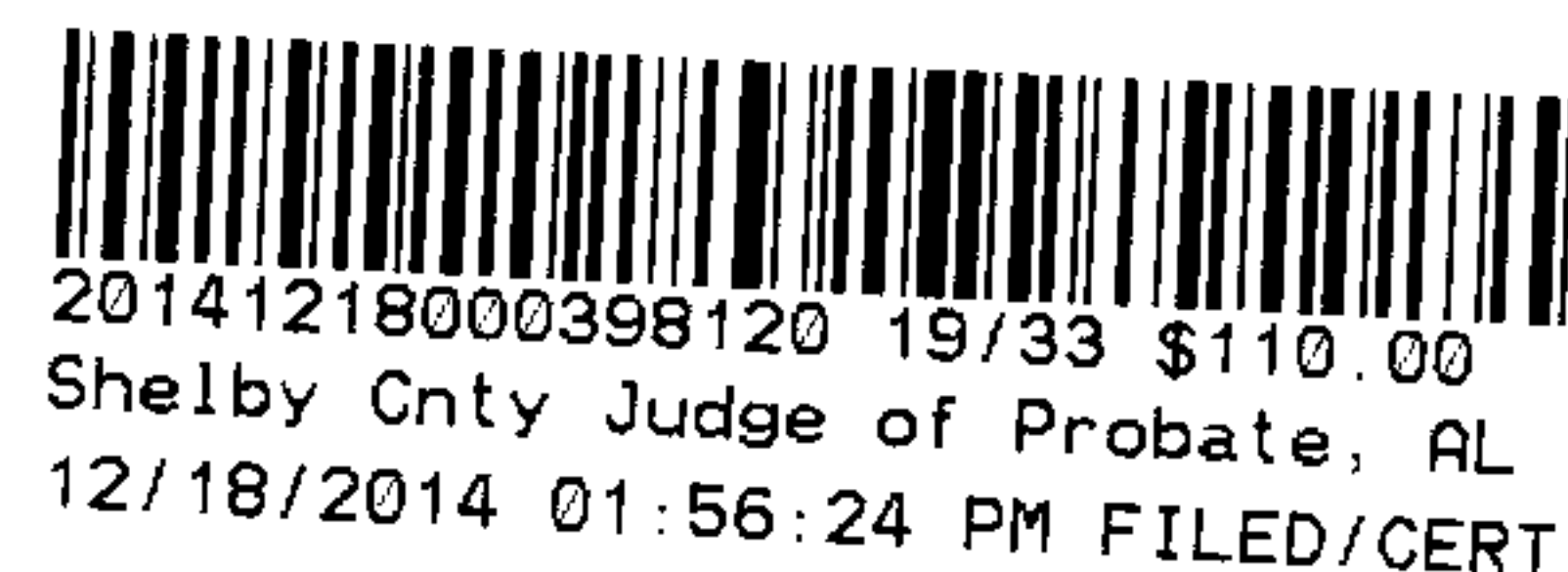
With copies to:

Wal-Mart Stores East, LP (Store No. 3424)  
Attention: Legal Department, State of Alabama  
2001 S.E. 10th Street  
Bentonville, AR 72716-0550

Carl H. Bivens, Esquire  
Troutman Sanders LLP  
1001 Haxall Point  
Richmond, VA 23219

Developer: Midland Valleydale, LLC  
c/o Midland Atlantic  
8044 Montgomery Road  
Suite 710  
Cincinnati, Ohio 45236  
Attn: John I. Silverman

With a copy to:  
John C. Krug, Esquire  
Frost Brown Todd LLC  
3300 Great American Tower  
301 East Fourth Street  
Cincinnati, Ohio 45202



Notices shall be effective upon receipt or refusal. In the event that any person acquires a fee interest in the Shopping Center said person shall be entitled to provide a notice statement to the addressees listed above, which request, in order to be effective, must also be recorded in the county recorder's office in the county in which the Shopping Center is located in accordance with Section 18.1 above. Any party shall be entitled to change its address for notice



by providing notice of such change and recording a copy of the notice of such change in the county recorder's office in the county in which the Shopping Center located. Until such time as the notice of change is effective pursuant to the terms of this Section 18 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.

19. Consent. The owner of the Wal-Mart Tract agrees that for so long as a lease of all or a portion of the Wal-Mart Tract is in effect, whenever the consent of the owner of the Wal-Mart Tract is required under the Agreement, the owner of the Wal-Mart Tract will give such consent only after obtaining Wal-Mart's consent.

20. Obligations of the Owner of the Wal-Mart Tract. Wal-Mart hereby agrees that so long as a lease of all or a portion of the Wal-Mart Tract is in effect, it will satisfy the obligations of the owner of the Wal-Mart Tract hereunder, and will hold harmless and indemnify the owner of the Wal-Mart Tract from any and all loss, damage, expense, fees, claims, costs, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, arising out of this Agreement, except for those arising out of the acts or omissions of the owner of the Wal-Mart Tract or its employees, agents, contractors or invitees.

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

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

MIDLAND VALLEYDALE, LLC,  
a Delaware limited liability company

By

John I. Silverman  
Executive Manager

"Developer"



20141218000398120 20/33 \$110.00  
Shelby Cnty Judge of Probate, AL  
12/18/2014 01:56:24 PM FILED/CERT



State of Ohio


County of Hamilton

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of July, 2014, by John I. Silverman, the Executive Manager of Midland Valleydale, LLC, a Delaware limited liability company, on behalf of the company.

(Seal and Expiration Date)



Jennifer Gibbs  
Notary Public, State of Ohio  
My Commission Expires 04-17-2016

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

20141218000398120 21/33 \$110.00  
Shelby Cnty Judge of Probate, AL  
12/18/2014 01:56:24 PM FILED/CERT



**WAL-MART STORES EAST, LP,**  
a Delaware limited partnership

By: WSE Management, LLC,  
a Delaware limited liability company  
and general partner

By: Mary Rottler (SEAL)  
Mary Rottler  
Vice President, Real Estate

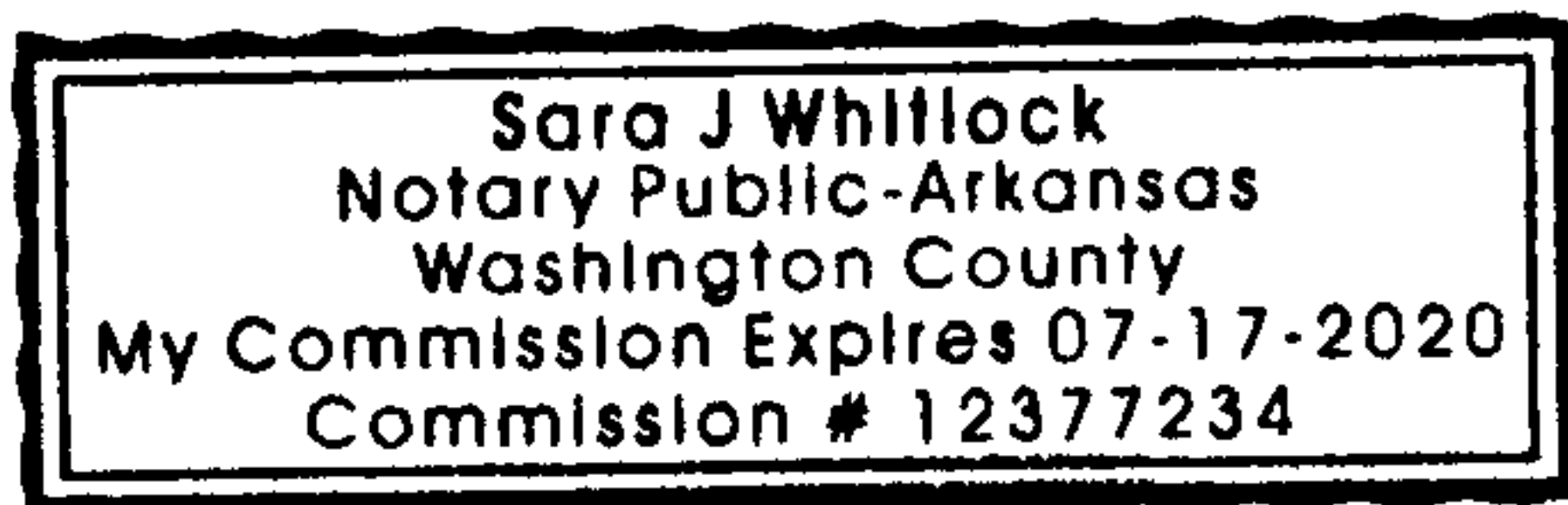
Date: 6/23/14

State of Arkansas

County of Benton

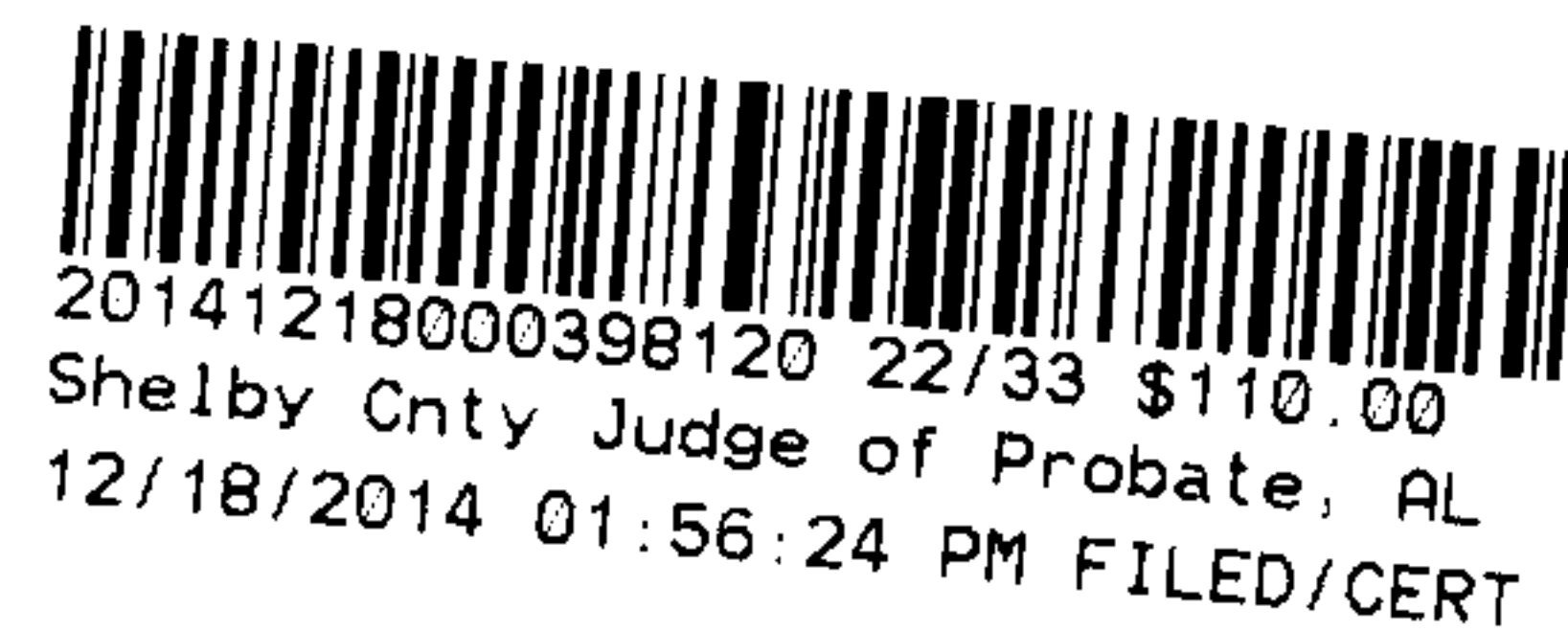
The foregoing instrument was acknowledged before me this 23 day of June, 2014, by Mary Rottler, as Vice President, Real Estate of WSE Management, LLC, a Delaware limited liability company and general partner of Wal-Mart Stores East, LP, a Delaware limited partnership, on behalf of the partnership.

(Seal and Expiration Date)



Sara J Whitlock  
Notary Public

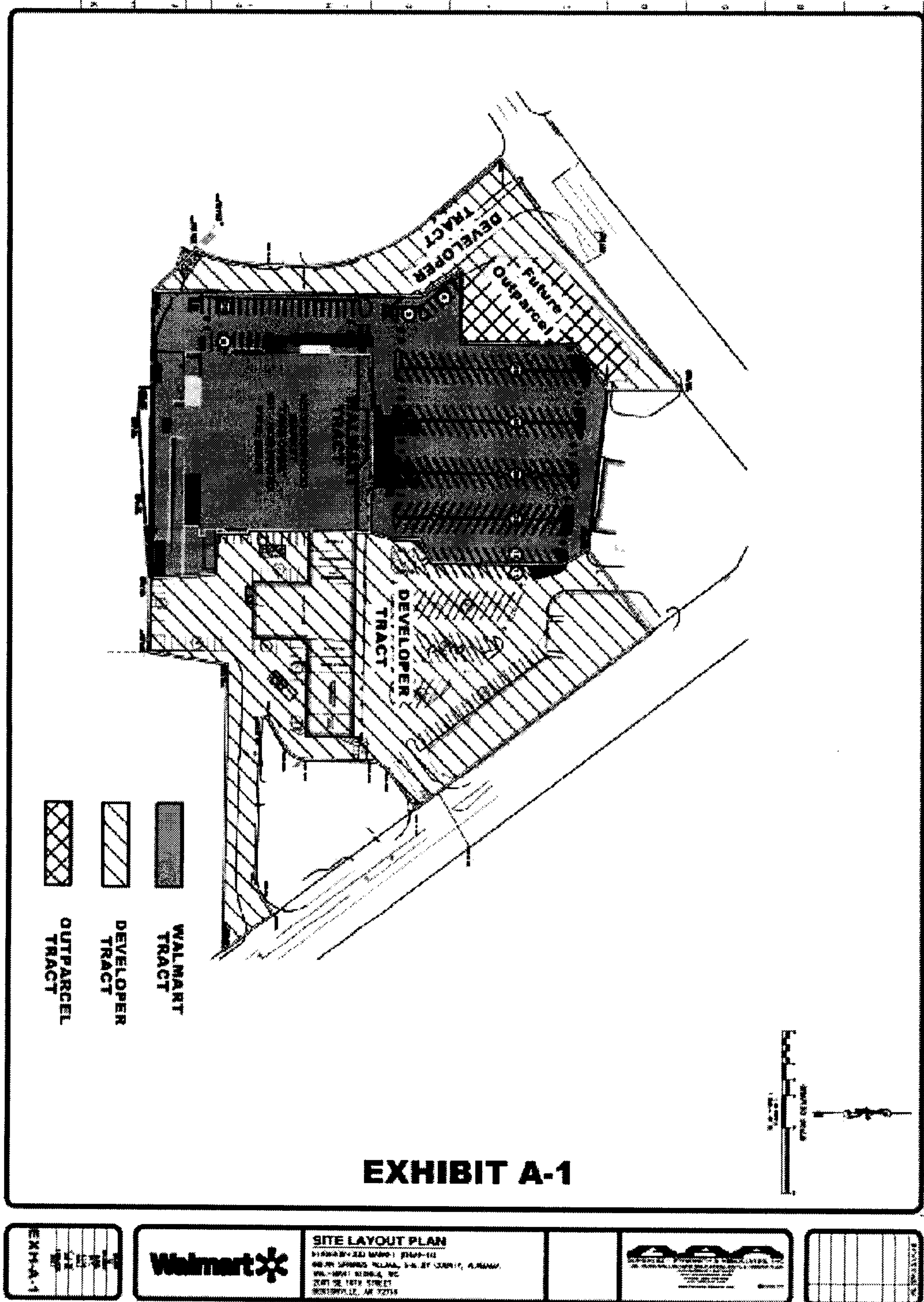
Notary Registration Number: 12377234





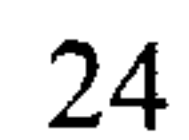
# EXHIBIT A-1

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





(Site plan marked to show various development details)



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**EXHIBIT A-3**  
(Shopping Center Sign)

**Walmart**


April 25, 2013

Birmingham (Valleydale), AL 3424


PROPOSED SIGN

21

**EXISTING SIGN**



**EXISTING SIGN TO BE REFACED**




**EXHIBIT A-3**

EXH A-3

**Walmart**

**SITE LAYOUT PLAN**  
CONCEPTUAL SIGNAGE  
 WALMART STORE #3424-20  
 10000 VALLEYDALE BLVD  
 BIRMINGHAM, AL 35244

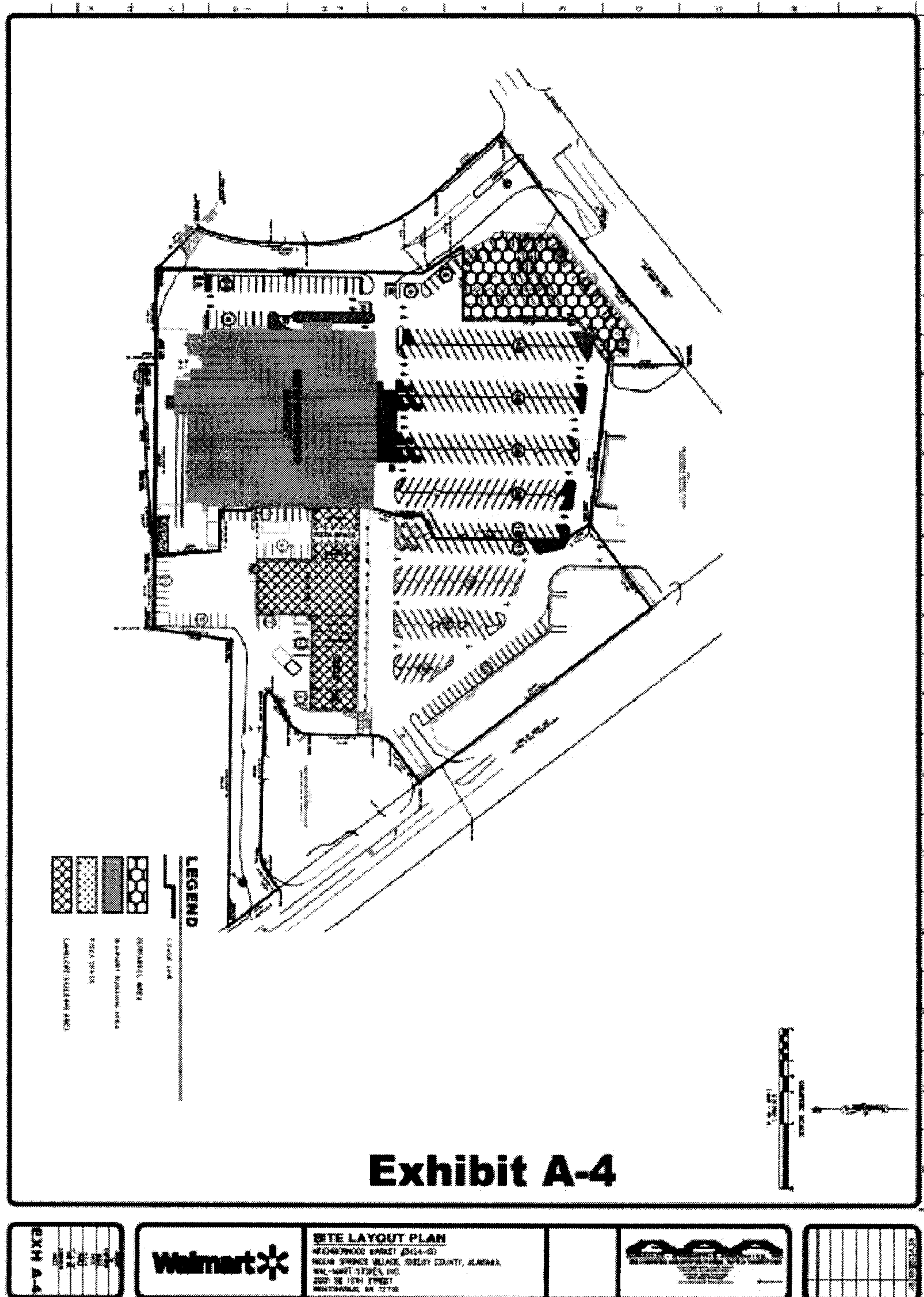


DATE: 04/25/13



# EXHIBIT A-4

(Building Area)





## EXHIBIT B

(Wal-Mart Tract legal description)

A parcel of land situated in the South half of the Northwest quarter of Section 15, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northernmost corner of Lot 2, Valleydale Market Place, as recorded in Map Book 16, page 117, in the Office of the Judge of Probate, Shelby County, Alabama, said point also being a point on the Southernmost right of way line of Valleydale Road (80' right of way); thence leaving said right of way, run South 00 degrees 02 minutes 20 seconds East along said Lot 2 lot line for a distance of 92.72 feet to a found pk nail, said point being the POINT OF BEGINNING; thence run South 82 degrees 57 minutes 04 seconds East along said Lot 2 lot line for a distance of 200.69 feet to a found J.A. Gay capped rebar; thence leaving said Lot 2 lot line, run South 30 degrees 28 minutes 45 seconds East for a distance of 38.91 feet to a set nail; thence run South 00 degrees 48 minutes 00 seconds West for a distance of 164.54 feet to a set nail; thence run South 60 degrees 48 minutes 00 seconds West for a distance of 32.33 feet to a set nail; thence run South 00 degrees 48 minutes 00 seconds West for a distance of 34.58 feet to a set nail; thence run South 16 degrees 38 minutes 19 seconds West for a distance of 30.21 feet to a set nail; thence run South 00 degrees 47 minutes 41 seconds West for a distance of 145.05 feet to a point; thence run South 89 degrees 33 minutes 19 seconds East for a distance of 5.23 feet to a set nail; thence run South 00 degrees 11 minutes 46 seconds West for a distance of 28.98 feet to a set nail; thence run South 00 degrees 20 minutes 27 seconds East for a distance of 10.86 feet to a set nail; thence run South 89 degrees 06 minutes 35 seconds East for a distance of 50.69 feet to a set nail; thence run South 04 degrees 20 minutes 59 seconds East for a distance of 83.28 feet to a found J.A. Gay capped rebar, said point being on the South line of said Lot 2; thence leaving said South line, run North 89 degrees 15 minutes 22 seconds West for a distance of 238.88 feet to a found J.A. Gay capped rebar, said point being on the South line of said Lot 2; thence run North 89 degrees 13 minutes 38 seconds West along said South line for a distance of 120.12 feet to a found LDW capped rebar; thence leaving said South line, run North 00 degrees 45 minutes 45 seconds East for a distance of 338.62 feet to an iron pin set; thence run North 37 degrees 29 minutes 47 seconds West for a distance of 4.67 feet to an iron pin set; thence run North 30 degrees 33 minutes 55 seconds West for a distance of 9.86 feet to an iron pin set; thence run North 33 degrees 31 minutes 05 seconds West for a distance of 46.39 feet to an iron pin set; thence run South 89 degrees 42 minutes 09 seconds East for a distance of 91.21 feet to a set nail; thence run North 00 degrees 48 minutes 00 seconds East for a distance of 147.29 feet to a set nail; thence run North 54 degrees 59 minutes 57 seconds East for a distance of 67.57 feet to the POINT OF BEGINNING. Said parcel contains 170,300 square feet or 3.91 acres more or less.



20141218000398120 27/33 \$110.00  
Shelby Cnty Judge of Probate, AL  
12/18/2014 01:56:24 PM FILED/CERT



## EXHIBIT C

(Developer Tract and Outparcels legal description)

Lot 2, according to the Survey of Valleydale Market Place, as recorded in Map Boox 16, page 117, in the probate Office of Shelby County, Alabama

Less and Except:

A parcel of land situated in the South half of the Northwest quarter of Section 15, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northernmost corner of Lot 2, Valleydale Market Place, as recorded in Map Book 16, page 117, in the Office of the Judge of Probate, Shelby County, Alabama, said point also being a point on the Southernmost right of way line of Valleydale Road (80' right of way); thence leaving said right of way, run South 00 degrees 02 minutes 20 seconds East along said Lot 2 lot line for a distance of 92.72 feet to a found pk nail, said point being the POINT OF BEGINNING; thence run South 82 degrees 57 minutes 04 seconds East along said Lot 2 lot line for a distance of 200.69 feet to a found J.A. Gay capped rebar; thence leaving said Lot 2 lot line, run South 30 degrees 28 minutes 45 seconds East for a distance of 38.91 feet to a set nail; thence run South 00 degrees 48 minutes 00 seconds West for a distance of 164.54 feet to a set nail; thence run South 60 degrees 48 minutes 00 seconds West for a distance of 32.33 feet to a set nail; thence run South 00 degrees 48 minutes 00 seconds West for a distance of 34.58 feet to a set nail; thence run South 16 degrees 38 minutes 19 seconds West for a distance of 30.21 feet to a set nail; thence run South 00 degrees 47 minutes 41 seconds West for a distance of 145.05 feet to a point; thence run South 89 degrees 33 minutes 19 seconds East for a distance of 5.23 feet to a set nail; thence run South 00 degrees 11 minutes 46 seconds West for a distance of 28.98 feet to a set nail; thence run South 00 degrees 20 minutes 27 seconds East for a distance of 10.86 feet to a set nail; thence run South 89 degrees 06 minutes 35 seconds East for a distance of 50.69 feet to a set nail; thence run South 04 degrees 20 minutes 59 seconds East for a distance of 83.28 feet to a found J.A. Gay capped rebar, said point being on the South line of said Lot 2; thence leaving said South line, run North 89 degrees 15 minutes 22 seconds West for a distance of 238.88 feet to a found J.A. Gay capped rebar, said point being on the South line of said Lot 2; thence run North 89 degrees 13 minutes 38 seconds West along said South line for a distance of 120.12 feet to a found LDW capped rebar; thence leaving said South line, run North 00 degrees 45 minutes 45 seconds East for a distance of 338.62 feet to an iron pin set; thence run North 37 degrees 29 minutes 47 seconds West for a distance of 4.67 feet to an iron pin set; thence run North 30 degrees 33 minutes 55 seconds West for a distance of 9.86 feet to an iron pin set; thence run North 33 degrees 31 minutes 05 seconds West for a distance of 46.39 feet to an iron pin set; thence run South 89 degrees 42 minutes 09 seconds East for a distance of 91.21 feet to a set nail; thence run North 00 degrees 48 minutes 00 seconds East for a distance of 147.29 feet to a set nail; thence run North 54 degrees 59 minutes 57 seconds East for a distance of 67.57 feet to the POINT OF BEGINNING. Said parcel contains 170,300 square feet or 3.91 acres more or less.



(Temporary Construction Easements)



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## EXHIBIT E

### (Exclusions from CAM)

- (1) Costs incurred with respect to any space other than the Common Areas.
- (2) All expenses attributable to undeveloped portions of the Shopping Center.
- (3) All expenses associated with maintenance, repair, replacement, operation and upkeep of portions of the Shopping Center under roof, except for maintenance and repair of sidewalks.
- (4) Costs incurred in connection with the initial construction or design of the Shopping Center.
- (5) Costs incurred to repair, change, improve, replace or correct defects in the initial construction or design of the Shopping Center, ordinary wear and tear excepted.
- (6) The cost of acquisition of new land or construction of new buildings.
- (7) Any repair costs exceeding Fifteen Thousand and no/100 Dollars (\$15,000.00) considered an upgrade to existing improvements or new installation for which Developer has not obtained written approval for such specific costs from Wal-Mart.
- (8) Costs of sculpture, paintings or other objects of art installed in, on or above the Shopping Center or the costs of holiday decorations.
- (9) Rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature and which are ordinarily purchased and not leased, except equipment not affixed to the Shopping Center which is used in providing janitorial or similar services.
- (10) Costs of signs in or on the Shopping Center identifying any owner in the Shopping Center or any occupant of the Shopping Center, except that the cost of maintaining and providing electricity to the Shopping Center pylon sign (but not the individual tenant/occupant panels thereon) will be included in accordance with Section 6 of the Agreement.
- (11) Utility costs for which any occupant or owner directly contracts with the utility provider, except that costs for lighting the Common Areas shall not be excluded.
- (12) Profit, administrative and overhead costs (such as rent, legal, supplies, utilities and wages or salaries paid to management or supervisory personnel), except that Developer may include an administrative charge equal to five percent (5%) of CAM Costs.




- (13) Costs of traveling to and attending any off-site management meetings or meetings for professional property management or promotional associations or groups.
- (14) Entertainment, transportation, meals and lodging of anyone, and plaques, trophies and gift certificates.
- (15) Any costs to clean or repair the Common Areas resulting from promotional activities or from construction, maintenance or replacement of buildings.
- (16) Costs incurred in advertising or promoting the Shopping Center for any purpose, including the sale of the Shopping Center or costs incurred with respect to seasonal occupants, costs for on and off-site billboards, and costs of audio and visual promotional production services and promotional materials of any kind.
- (17) All items and services for which an occupant or owner reimburses Developer (other than such occupant or owner's contribution to CAM Costs pursuant to its lease) or which Developer provides selectively to one or more occupants without reimbursement.
- (18) Amounts otherwise included in CAM Costs to the extent reimbursed to Developer, including, without limitation, costs covered by insurance that Developer maintains or is obligated to provide under this Agreement or pursuant to warranties made for the benefit of Developer.
- (19) Any expense paid directly by an owner or occupant.
- (20) Any insurance premium for coverage not required or permitted to be carried by Developer under this Agreement.
- (21) Earthquake and/or flood insurance, unless such coverage is available at commercially reasonable rates relative to those rates in the geographic area in which the Premises is located.
- (22) Direct settlement payments by Developer in personal injury or property claims, except to the extent the same represent payment of deductible amounts under Developer's insurance policies.
- (23) Costs of achieving compliance with any environmental law or regulation applicable to the Shopping Center.
- (24) All costs and expenses associated with the removal and cleanup of hazardous waste or toxic substances.
- (25) Costs, fines or penalties incurred as a result of the violation by Developer of any applicable law, and expenditures required by Developer's failure to comply with applicable laws.





- (26) Interest, points and fees on debt or amortization on any mortgage or mortgages encumbering the Shopping Center.
- (27) Depreciation or capital costs or capital expenses.
- (28) Any ground lease rental.
- (29) Leasing commissions, attorneys' fees, remodeling costs, lease concessions, lease takeover obligations and other costs and expenses incurred in connection with negotiations or disputes with present or prospective occupants of the Remaining Shopping Center.
- (30) Costs incurred by Developer due to the violation by Developer or any occupants of the terms and conditions of any lease of space in the Shopping Center or any violation by Developer of the terms of any ground lease or mortgage for the Shopping Center.
- (31) Any late charges or fees.
- (32) Income, excess profits or franchise taxes or other such taxes imposed on or measured by the income of Developer from the operation of the Shopping Center.
- (33) Any costs associated with the maintenance of any portion of the Common Areas prior to the date of this Agreement.
- (34) Reserves of any kind of nature.

  
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# EXHIBIT F

(Wal-Mart's parking area)

