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EASEMENT WITH COVENANTS AND  
RESTRICTIONS AFFECTING LAND*Carl E. Quisenberry*  
REGISTER OF DEEDS  
MONROE COUNTY, MICH

THIS EASEMENT WITH COVENANTS AND RESTRICTIONS AFFECTING LAND (this "ECR") is made as of the 27<sup>TH</sup> day of August, 1991, between WAL-MART STORES, INC., a Delaware corporation, the address of which is 702 S.W. Eighth Street, Bentonville, Arkansas 72716 ("Wal-Mart"), and Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust under Agreement dated June 14, 1990 and Nancy J. Quisenberry, Trustee under Agreement dated June 14, 1990, the address of which is c/o 1224 North Telegraph Road, Monroe, Michigan 48161 and Real Vest Group, a Michigan partnership, the address of which is 758 South Monroe, Monroe, Michigan 48161, (collectively, "Developer").

RECITALS

Wal-Mart is the owner of certain property located in Frenchtown Charter Township, Monroe County, Michigan (the "Township"). This property is depicted in attached Exhibit A and is more particularly described in attached Exhibits B-1 and B-2. The depiction of this property in attached Exhibit A and the descriptions of this property in attached Exhibit B-1 and B-2 designate this property as (and this property is hereinafter referred to as) "Tract 1" and "Outlot A", respectively.

Developer is the owner of certain property located in the Township. This property is depicted in attached Exhibit A and is more particularly described in attached Exhibits C-1

through C-6. The depiction of this property in attached Exhibit A and the descriptions of this property in attached Exhibits C-1 through C-6 designate this property as (and this property is hereinafter referred to as) "Tract 2", "Tract 3", "Tract 4", "Outlot B", "Outlot C" and "Outlot D", respectively. (Tract 1, Tract 2, Tract 3 and Tract 4 are sometimes collectively referred to as the "Tracts" and are sometimes generically referred to as a "Tract". Outlot A, Outlot B, Outlot C and Outlot D are sometimes collectively referred to as the "Outlots" and are sometimes generically referred to as an "Outlot").

Wal-Mart and Developer desire that Tract 1, Tract 2, Tract 3, Tract 4, Outlot A, Outlot B, Outlot C and Outlot D be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial shopping center (the "Shopping Center") and that the Shopping Center be subject to the easements and the covenants, conditions and restrictions set forth in this ECR.

NOW, THEREFORE, in consideration of the premises, easements, covenants, conditions, restrictions, and encumbrances contained in this ECR, the sufficiency of which is hereby acknowledged, Wal-Mart and Developer do hereby agree that:

1. Building Area and Common Area.

a. "Building Area" means that portion of the Shopping Center designated in attached Exhibit A as

"Building Area", "Future Building Area" or "Future Expansion Area".

b. "Common Area" means that portion of the Shopping Center designated in attached Exhibit A as "Proposed Public Mall Road" and as "Ingress and Egress Easement Area (A)" and "Ingress and Egress Easement Area (B)". Proposed Public Mall Road is more particularly described in attached Exhibit D. Ingress and Egress Easement Area (A) is more particularly described in attached Exhibit E-1 and Ingress and Egress Easement Area (B) is more particularly described in attached Exhibit E-2.

2. Use.

a. The Shopping Center may be used only for commercial purposes of a type normally found in a retail shopping center, including without limitation financial institutions, service shops and retail stores. No discount department or variety, general or "dollar" store and no cafeteria, restaurant, theatre, bowling alley, billiard parlor, health spa, night club or other place of recreation or amusement or any business serving alcoholic beverages shall occupy space within the Shopping Center without the prior written consent of Wal-Mart. Developer recognizes that these

uses may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business.

b. Subparagraph a., above, to the contrary notwithstanding and subject to Paragraph 6.a. below:

(1) Tract 1, Tract 3, Tract 4, Outlot A, Outlot C and Outlot D may each be used for office use, but only if there exists on that Tract or Outlot six (6) parking spaces for each one thousand (1,000) square feet of building space located on that Tract or Outlot.

(2) Tract 1, Tract 3, Tract 4, Outlot A, Outlot B, Outlot C and Outlot D may each be used for the location of a restaurant (which restaurant may serve alcoholic beverages only if incidental to the primary business of the restaurant) if there exists on that Tract or Outlot ten (10) parking spaces for each one thousand (1,000) square feet of restaurant building space located on that Tract or Outlot.

c. Notwithstanding anything to the contrary contained herein, it is expressly agreed that nothing contained in this ECR shall be construed to contain a covenant, either express or implied, that Wal-Mart must either commence the operation of a business or thereafter continuously operate a business by Wal-Mart



on Tract 1. Developer recognizes and agrees that Wal-Mart may at Wal-Mart's sole discretion and at any time during the term of this ECR cease the operation of its business on Tract 1 and Developer waives any legal action for damages or for equitable relief which might be available to Developer because of the cessation of business activity by Wal-Mart on Tract 1. Wal-Mart agrees to begin construction of the Proposed Public Mall Road depicted on Exhibit A within 20 days after obtaining all required permits if such permits are obtained on or before September 15, 1991; otherwise, Wal-Mart shall have no obligation to begin construction of the Proposed Public Mall Road until the beginning of the 1992 Michigan road construction season.

3. Competing Business. Developer covenants that as long as Wal-Mart or any affiliate of Wal-Mart is the user of Tract 1 or Outlot A (whether as an owner or as a lessee) no space in any building located on the Shopping Center and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Developer shall be leased or occupied by or conveyed to any other party for use as a "discount department store" or other "discount store" with either having a building space greater than 30,000 square feet. In the event of a breach of this covenant, Wal-Mart shall have the right to terminate this ECR or to seek any and all remedies afforded by law or equity.

4. Buildings.

a. Design and Construction. Buildings in the Shopping Center shall be designed so that the exterior elevation of each building is architecturally and aesthetically compatible. The design and construction of each building shall be of high quality. No building shall exceed twenty-four feet (24') in height above finished grade. No building shall have metal exterior walls but may have a metal roof.

b. Location. No building shall be constructed on the Shopping Center (as either immediate development or future expansion) except within a Building Area and no improvements or alterations which substantially vary from those shown in Exhibit A may be made without the prior written consent of Wal-Mart. Any building constructed on Tract 2 must be set back at least 500 feet from the center line of Telegraph Road. In no event may any building or any portion of any building located on Tract 3 be located on that portion of Tract 3 more particularly described in attached Exhibit F-1 and depicted in attached Exhibit F-2 and labelled "No-Build Area".

c. Miscellaneous.

- (1) No building on Outlot B may exceed 5,000 square feet in size. Any building on Outlot

B shall be constructed only on the southerly one-half of such Outlot (with parking on the northerly one-half of such Outlot).

- (2) Any rooftop equipment on any building shall be screened in a manner satisfactory to Wal-Mart.
- (3) No rooftop sign shall be erected on any building.
- (4) No freestanding identification sign may be erected without the prior approval of Developer. 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 these signs to be approved by Wal-Mart.
- (5) Only one building may be built on each of Outlots C and D.
- (6) Each Tract or Outlot shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.
- (7) The owner of each Outlot shall maintain comprehensive public liability insurance, property damage and all-risk hazard insurance

on that Outlot and any buildings, appurtenances and other improvements located on that Outlot. This insurance shall (a) be carried with reputable companies licensed to do business in the state in which the Outlot is located; (b) have liability limits of at least \$1,000,000 for each occurrence, bodily injury and property damage combined; (c) provide for the full replacement value of the buildings and improvements covered thereunder; and (d) not be subject to change, cancellation or termination without at least thirty (30) days prior written notice to Developer.

5. Common Areas.

a. Grant of Easements. Each party, as grantor, hereby grants to the other party, as grantee, and to its agents, customers, invitees, licensees, tenants and employees a non-exclusive easement over, through and around that portion of the Common Area located on its respective Tract for ingress and egress of commercial and other vehicles. Wal-Mart and Developer hereby grant for the benefit of the Outlots nonexclusive easements for vehicular and pedestrian access, ingress,



and egress over and across each Tract; provided, however, that in no event shall the owner occupant, licensee or invitee of any Outlot be permitted to use a Tract for vehicular parking or for any purpose other than as described above.

b. Limitations on Use. The primary purpose of the Common Area is to provide ingress and egress for the customers, invitees and employees of those businesses conducted within Building Areas and for the servicing and supplying of these businesses. Persons using the Common Area in accordance with this ECR shall not be charged a fee.

c. Utility and Service Easements. The parties shall cooperate to grant appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other services necessary for the orderly development and operation of the Shopping Center. The parties shall use their best efforts to cause the installation of utility and service lines prior to paving. No utility or service lines, sewers or services of one party shall be installed within any Building Area on any other party's land.

d. Waterflow. Any alteration in the natural waterflow of the Shopping Center which may occur as a

natural consequence of normal construction activities or as a result of the existence of a party's improvements substantially as shown in attached Exhibit A (including without limitation building and building expansion, curbs, drives and paving) shall be permitted.

6. Parking Ratio, Maintenance and Taxes.

a. Parking Ratio. Each party hereto agrees that at all times there shall be independently maintained on each Tract or Outlot parking area sufficient to accommodate not fewer than the greater of (1) five and one-half (5.5) car spaces for each one thousand (1,000) square feet of Building Area on that Tract, (2) the minimum parking ratio requirements of any governmental authority having jurisdiction over the Tract or Outlot or (3) the number of parking spaces required under Paragraph 2.b., above.

b. Maintenance.

(1) Standards. Following completion of the improvements on a Tract or Outlot, the parties hereto shall each maintain its Tract or Outlot in good condition and repair. Maintenance includes without limitation:

(a) Maintaining any Common Area located on its Tract in a level, smooth and evenly covered condition with the type of surfacing material originally installed or a substitute therefor that is in all respects equal in quality, use and durability;

(b) Removing all paper, ice, snow, mud, sand, debris, filth and refuse from any Common Area located on its Tract;

(c) Placing, keeping in repair and replacing necessary and appropriate directional signs, markers and lines;

(d) Operating, repairing and replacing as necessary any artificial lighting facilities as are reasonably required;

(e) Maintaining in good condition and repair all perimeter and exterior building walls, including without limitation all retaining walls;

(f) Maintaining, mowing, weeding, trimming, watering and replacing all landscaped areas and shrubs as is necessary; and

(g) Maintaining, repairing and replacing all parking areas, driveways,

walkways and roadways located in its Tract or Outlot so as to at all times keep these areas in good condition and repair.

(2) Expenses. Each owner shall pay the expense of maintaining the Common Area located on its respective Tract.

(3) By Agent. Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties to maintain the Common Area in the manner required above. This third party may receive a fee that is mutually acceptable to all of the parties hereto to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

(4) Ingress and Egress Easement Area (B). The forgoing provisions of this subparagraph b. to the contrary notwithstanding, that portion of the Common Area located on the northeast corner of Tract 1 and designated on attached Exhibit A as "Ingress and Egress Easement Area (B)" shall be maintained by Wal-Mart as herein required only until Developer or its successors or assigns commences the construction of a building on Tract



3 or on Outlot C or Outlot D. Upon the occurrence of this construction, then notwithstanding that this area is actually owned by Wal-Mart (and no rights of ownership therein shall be implied to Developer), for the purpose of this ECR (but not for purposes of real estate taxes or insurance) that area shall be deemed to be and administered as Common Area that is owned by Developer. Developer shall pay for the cost to upgrade the paving on "Ingress and Egress Easement Area (B)" for the entirety of the Easement located on Tract 1 and shall indemnify and hold Wal-Mart harmless from and against any loss, damage or injury occasioned by Developer's failure to maintain and repair such Easement or arising out of or resulting from the use of such Easement by Developer or its contractors, customers, invitees, successors and assigns.

c. Taxes. Each of the parties hereto agrees to pay or cause to be paid directly to the appropriate taxing authorities prior to delinquency all real property taxes and assessments which are levied against that part of the Common Area located on its Tract.

7. Signs. No sign shall be located on a Tract or Outlot except signs advertising businesses conducted thereon, of

which there shall be no more than two (2) signs on Tract 2, Tract 3 or Tract 4. No signs shall obstruct the ingress and egress shown in attached Exhibit A.

8. Indemnification and Insurance.

a. Indemnification. Each party hereby indemnifies and saves the other party harmless from any and all liabilities, damages, expenses, causes of action, suits, claims or judgments arising from personal injury, death or property damage and occurring on or from its Tract (including Common Area situated thereon) or Outlot, except if caused by the intentional or negligent act of any other party to this ECR or their respective invitees, customers, contractors, etc.

b. Insurance.

(1) The owner of each Tract, Outlot or any portion of the Common Area shall each procure and maintain in full force and effect throughout the term of this ECR general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property. This insurance shall afford protection of not less than \$1,000,000 for injury or death of a single person, of not less than \$1,000,000 for any one

occurrence and of not less than \$100,000 for property damage. Each party shall from time to time upon written request provide the other party with certificates of this insurance that evidence that this insurance is in force. This insurance may be written by additional premises endorsement on any master policy of insurance which may cover property in addition to the property covered by this ECR and shall provide that it may not be cancelled without ten (10) days prior written noticed to the other party.

(2) During the term of this ECR each party shall keep the improvements on its property insured for the full replacement value thereof against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the state in which the Shopping Center.

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

(4) Wal-Mart for itself and its property insurer hereby releases Developer and Developer for itself and its property insurer hereby releases Wal-Mart from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of either Wal-Mart or Developer resulting from or in any way connected with any fire or other casualty, whether or not the fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released, this release being to the extent that the damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or if the releasing party is not carrying that insurance, then to the extent the damage or loss would be covered if the releasing party were carrying that insurance.

(5) Notwithstanding anything to the contrary contained in this Paragraph 8, so long as the net worth of Wal-Mart exceeds \$100,000,000 and so long as Wal-Mart is the owner or lessee of Tract 1, Wal-Mart shall have the right to retain the financial risk for up to \$1,500,000 per claim.



9. Eminent Domain.

a. Owner's Right to Award. Nothing herein shall be construed to give a party any interest in an award or payment made to another party in connection with the exercise of eminent domain or any transfer in lieu thereof which affects the Tract of another party or gives the public or any government any rights in that Tract. In the event of an exercise of eminent domain or transfer in lieu thereof of any part of the Common Area the award attributable to the land and improvements so taken shall be payable only to the owner thereof and no claim thereon shall be made by the owner of any other portion of the Common Area.

b. Collateral Claims. All other owners of the Common Area 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.

10. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon a Tract or Outlot that lien shall be subordinate and inferior to the lien of any first lienholder now or hereafter placed on that Tract or Outlot. Except as set forth in the preceding sentence, the holder of a first lien on a Tract or

Outlot (and any assignee or successor in interest of a first lienholder) shall be subject to the terms and conditions of this ECR.

11. Expansion of the Shopping Center. The parties agree that if the Shopping Center is expanded by ownership, control of the parties or agreement with a third party, this ECR shall apply to the expanded area and the parking ratio in the expanded area shall not be less than that required under this ECR.

12. Special Provision Regarding Tract 4. Anything herein contained to the contrary notwithstanding if the roadway designated in attached Exhibit A as "American Road" is constructed and dedicated to and accepted by the Township, then Tract 4 shall thereafter not be subject to and shall be deemed to have been released from the terms and conditions of this ECR.

13. Release From Liability. Any person acquiring fee or leasehold title to any portion of the Shopping Center (including without limitation pursuant to any expansion of the Shopping Center pursuant to Paragraph 11 or any portion thereof), shall be bound by this ECR only as to the portion of the Shopping Center acquired by that person. A person shall be bound by this ECR only during the period that that person is the fee or leasehold owner of a portion of the Shopping Center, except as to any obligations, liabilities or responsibilities

that accrue during that period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this ECR shall continue to be benefits to and servitudes upon said tracts running with the land.

14. Breach. In the event of a breach or threatened breach of this ECR, only all of the record owners of a Tract (or Wal-Mart so long as it or any affiliate has an interest as owner or lessee of Tract 1 or Developer so long as it or any affiliate has an interest as owner or lessee of Tract 2, Tract 3 or Tract 4), shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date the action was filed.

15. Proposed Public Mall Road. For the purpose of this ECR, Proposed Public Mall Road shall be deemed to be Common Area located entirely on Tract 1, except that Developer shall pay to Wal-Mart upon demand (a) one-half (1/2) of the costs and expenses incurred by Wal-Mart to maintain Proposed Public Mall Road as herein required and (b) one-half (1/2) of the property taxes payable with respect to Proposed Public Mall Road. Wal-Mart and Developer shall cooperate with each other and use best efforts to cause Proposed Public Mall Road to be dedicated

and accepted by the Township. Upon this dedication and acceptance, Proposed Public Mall Road shall not be subject to and shall be deemed to have been released from the terms and conditions of this ECR.

16. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This ECR 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.

17. 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 ECR (including Exhibits) may be modified or canceled only by the mutual agreement of Wal-Mart (as long as it or its affiliate has any interest as either owner or lessee of Tract 1 or Outlot A) and Developer (as long as it or its affiliate has any interest as either owner or lessee of Tracts 2, 3 and 4 or Outlots B, C or D).

18. Non-Merger. So long as Wal-Mart or its affiliate is owner or lessee of Tract 1, this Agreement shall not be subject to the doctrine of merger.



19. Duration. Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

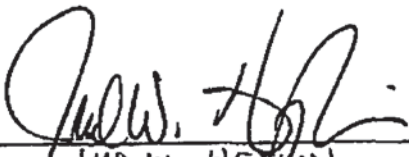
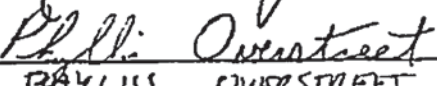
20. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.


21. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

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

In the Presence of:

WAL-MART STORES, INC., a  
Delaware corporation

  
\_\_\_\_\_  
J. W. HEELIN  
  
\_\_\_\_\_  
RAYLISS OVERSTREET

By:   
Its: Vice President, CURTIS H. BARLOW

In the Presence of:

REAL VEST GROUP, a Michigan co-partnership

[Signature]  
HARRY D. SELTZ  
[Signature]  
EDWARD C. DAVID

By: [Signature]  
Its: GENERAL PARTNER  
HENNEN A. CURSINSKI

[Signature]  
HARRY D. SELTZ  
[Signature]  
EDWARD C. DAVID

[Signature]  
Charles P. Quisenberry,  
Trustee of the Charles P.  
Quisenberry Trust under  
Agreement dated June 14, 1990

[Signature]  
HARRY D. SELTZ  
[Signature]  
BRONITTE MOAS

Nancy J. Quisenberry  
Nancy J. Quisenberry, Trustee  
of the Nancy J. Quisenberry  
Trust under Agreement dated  
June 14, 1990

STATE OF ARKANSAS )  
COUNTY OF BENTON ) ss.

The foregoing document was acknowledged before me  
this 21st day of August, 1991 by Curtis H. Barlow  
a Vice President of Wal-Mart  
Stores, Inc., a Delaware corporation, on behalf of the  
Corporation.

Rhonda Benson Ashby  
Notary Public, RHONDA BENSON ASHBY  
Benton County, AR

My Commission Expires: 12-1-2000

STATE OF Michigan )  
COUNTY OF Macquie ) ss.

The foregoing document was acknowledged before me  
this 27th day of August, 1991 by Kenneth Jursinski.

the general of Real Vest Group, a Michigan  
co-partnership.

Harry J. Seitz  
Notary Public, Harry J. Seitz  
Monroe County, MI

My Commission Expires: 3-22-95

STATE OF Michigan ss.  
COUNTY OF Monroe

The foregoing document was acknowledged before me  
this 27<sup>th</sup> day of August, 1991 by Charles P.  
Quisenberry, Trustee of the Charles P. Quisenberry Trust under  
Agreement dated June 14, 1990.

Harry J. Seitz  
Notary Public, Harry J. Seitz  
Monroe County, MI

My Commission Expires: 3-22-95

STATE OF Michigan ss.  
COUNTY OF Monroe

The foregoing document was acknowledged before me  
this 27<sup>th</sup> day of August, 1991 by Nancy J. Quisenberry,  
Trustee of the Nancy J. Quisenberry Trust under Agreement dated  
June 14, 1990.

Harry J. Seitz  
Notary Public, Harry J. Seitz  
Monroe County, MI

My Commission Expires: 3-22-95

Drafted by and when  
recorded, return to:

Edward C. Dawda, Esq.  
Clark, Klein & Beaumont  
1600 First Federal Building  
Detroit, Michigan 48226

Exhibit A

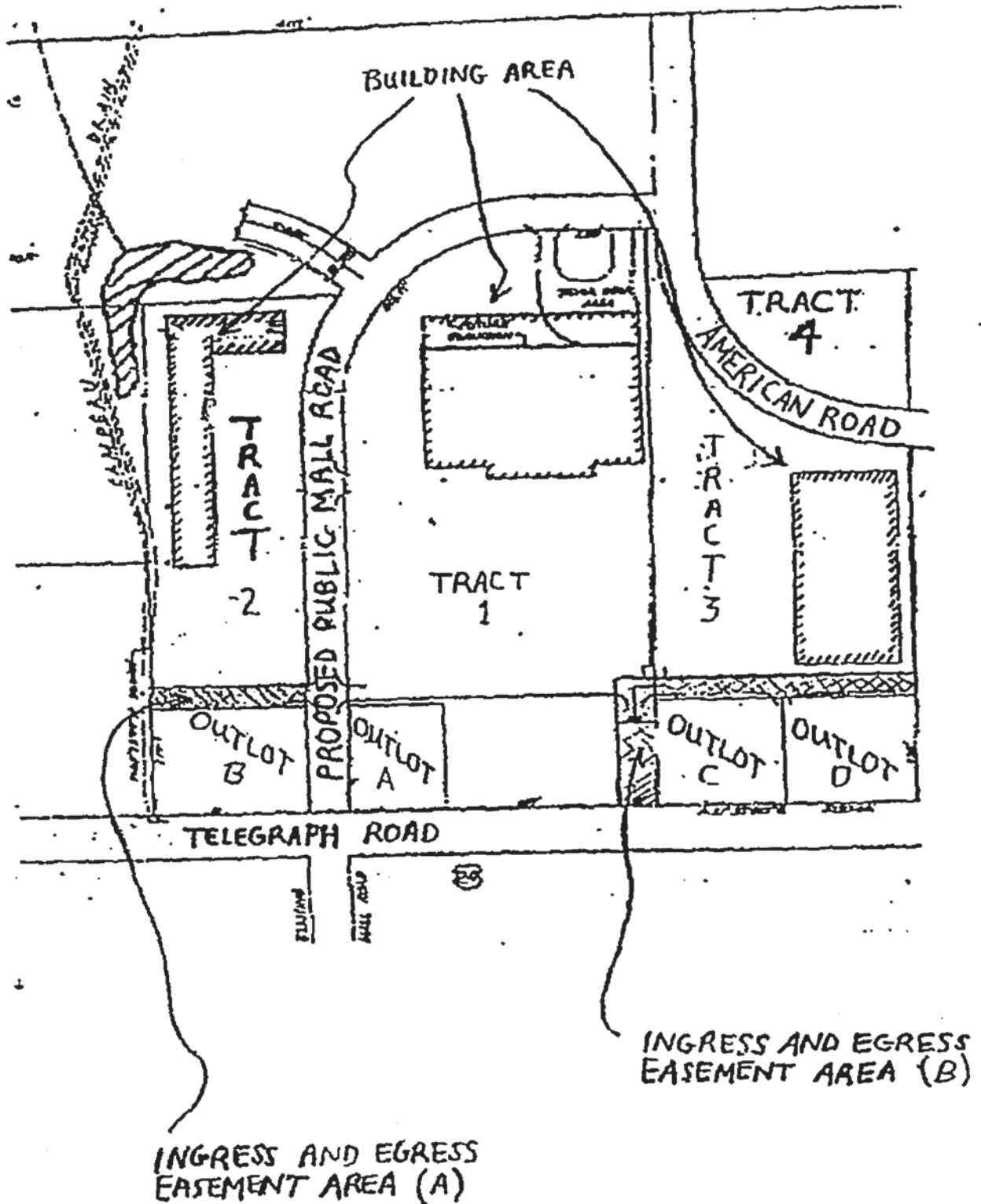




Exhibit B-1  
Tract 1

LIBER 1179 PAGE 0360

Part of Private Claims, 76, 79, 317 and a part of fractional Section 19, T6S, R9E, Frenchtown Township, Monroe County, Michigan, described as: Commencing at a point at the intersection of the westerly right-of-way of Telegraph Road with the centerline of Stewart Road; thence N21°37'00"E 3085.94 feet along the westerly right-of-way of Telegraph Road for a POINT OF BEGINNING; thence N68°23'00"W 230.00 feet; thence S21°37'00"W 190.00 feet; thence N68°23'00"W 653.50 feet; thence 612.61 feet along the arc of a 390.00 foot radius curve to the right, a central angle of 90°00'00" and a chord bearing of N23°23'00"W 551.54 feet; thence N21°37'00"E 230.00 feet; thence S68°23'00"E 1273.50 feet; thence S21°37'00"W 430.00 feet to the POINT OF BEGINNING.

Part of Private Claim 79 and a part of fractional Section 19, T6S, R9E, Frenchtown Township, Monroe County, Michigan, described as: Commencing at a point at the intersection of the westerly right-of-way of Telegraph Road with the centerline of Stewart Road; thence N21°37'00"E 2895.94 feet for a POINT OF BEGINNING; thence N68°23'00"W 230.00 feet; thence N21°37'00"E 190.00 feet; thence S68°23'00"E 230.00 feet to the westerly right-of-way of Telegraph Road; thence S21°37'00"W 190.00 feet along the westerly right-of-way of Telegraph Road and to the POINT OF BEGINNING.

Exhibit C-1  
(Tract 2)

Q A PARCEL OF LAND LOCATED IN PART OF PRIVATE CLAIM 76 AND PART OF FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST AND PRIVATE CLAIM 79, FRENCHTOWN CHARTER TOWNSHIP, MONROE COUNTY, MICHIGAN, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD AND THE CENTERLINE OF STEWART ROAD, THENCE N21°37'00"E, 2507.32 FEET THEREON, FROM THE CENTERLINE OF STEWART ROAD, AND N68°23'00"W, 230.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE N68°23'00"W, A DISTANCE OF 895.16 FEET. TO THE WEST LINE OF PRIVATE CLAIM 76; THENCE N20°02'44"E, A DISTANCE OF 382.12 FEET, ALONG THE WEST LINE OF PRIVATE CLAIM 76, TO THE SOUTHERLY RIGHT-OF-WAY LINE OF THE PROPOSED MALL ROAD; THENCE ALONG THE THE SOUTHERLY RIGHT-OF-WAY LINE OF THE PROPOSED MALL ROAD, ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 470.00 FEET, ARC LENGTH OF 266.13 FEET; A CHORD BEARING OF S52°09'42"E, AND A CHORD LENGTH OF 262.59 FEET; THENCE S68°23'00"E, A DISTANCE OF 653.50 FEET, ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF THE PROPOSED MALL ROAD; THENCE S21°37'00"W, A DISTANCE OF 308.62 FEET TO THE TRUE POINT OF BEGINNING. THE

Exhibit C-2  
(Tract 3)

LIBER 1179 PAGE 0363

A PARCEL OF LAND LOCATED IN PARTS OF PRIVATE CLAIMS 76 AND 317 AND PART OF FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN CHARTER TOWNSHIP, MONROE COUNTY, MICHIGAN, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD AND THE CENTERLINE OF STEWART ROAD, THENCE N21°37'00"E, 3515.94 FEET THEREON, FROM THE CENTERLINE OF STEWART ROAD, AND N68°23'00"W, 230.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE N68°23'00"W, A DISTANCE OF 1,043.50 FEET; THENCE N21°37'00"E, A DISTANCE OF 20.50 FEET; THENCE S68°23'00"E, A DISTANCE OF 8.80 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 470.00 FEET, ARC LENGTH OF 674.70 FEET, A CHORD BEARING OF N70°29'30"E, AND A CHORD LENGTH OF 618.24 FEET; THENCE N29°22'00"E, A DISTANCE OF 85.44 FEET; THENCE S68°23'00"E, A DISTANCE OF 557.47 FEET; THENCE S21°37'00"W, A DISTANCE OF 511.79 FEET TO THE TRUE POINT OF BEGINNING.



A PARCEL OF LAND LOCATED IN PARTS OF PRIVATE CLAIMS 76 AND 79, FRENCHTOWN CHARTER TOWNSHIP, MONROE COUNTY, MICHIGAN, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD AND THE CENTERLINE OF STEWART ROAD, THENCE N21°37'00"E, 4027.73 FEET THEREON, FROM THE CENTERLINE OF STEWART ROAD, AND N68°23'00"W, 868.20 FEET TO THE TRUE POINT OF BEGINNING;

THENCE S29°22'00"W, A DISTANCE OF 74.56 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 390.00 FEET, ARC LENGTH OF 449.71 FEET, A CHORD BEARING OF S62°24'02"W, AND A CHORD LENGTH OF 425.21 FEET, TO THE WEST LINE OF PRIVATE CLAIM 76; THENCE N20°02'44"E, A DISTANCE OF 395.98 FEET, ALONG THE WEST LINE OF PRIVATE CLAIM 76; THENCE S68°23'00"E, A DISTANCE OF 298.66 FEET TO THE TRUE POINT OF BEGINNING.

A PARCEL OF LAND LOCATED IN PART OF PRIVATE CLAIM 79 AND PART OF FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN CHAPTER TOWNSHIP, MONROE COUNTY, MICHIGAN, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD AND THE CENTERLINE OF STEWART ROAD, THENCE N21°37'00"E, 2507.32 FEET THEREON, FROM THE CENTERLINE OF STEWART ROAD, TO THE TRUE POINT OF BEGINNING;

THENCE N68°23'00"W, A DISTANCE OF 230.00 FEET; THENCE N21°37'00"E, A DISTANCE OF 308.62 FEET; THENCE S68°23'00"E, A DISTANCE OF 230.00 FEET, TO THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD; THENCE S21°37'00"W, A DISTANCE OF 308.62 FEET, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD TO THE TRUE POINT OF BEGINNING.

Exhibit C-5  
(Outlot C)

A PARCEL OF LAND LOCATED IN PART OF PRIVATE CLAIM 79, AND PART OF FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN CHARTER TOWNSHIP, MONROE COUNTY, MICHIGAN, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD AND THE CENTERLINE OF STEWART ROAD, THENCE N21°37'00"E, 3515.94 FEET THEREON, FROM THE CENTERLINE OF STEWART ROAD TO THE TRUE POINT OF BEGINNING;

THENCE N68°23'00"W, A DISTANCE OF 230.00 FEET; THENCE N21°37'00"E, A DISTANCE OF 255.90 FEET; THENCE S68°23'00"E, A DISTANCE OF 230.00 FEET, TO THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD; THENCE S21°37'00"W, A DISTANCE OF 255.90 FEET, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD TO THE TRUE POINT OF BEGINNING. THE ABOVE DESCRIBED

Exhibit C-6  
(Outlot D)

A PARCEL OF LAND LOCATED IN PART OF PRIVATE CLAIM 79, AND PART OF FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN CHAPTER TOWNSHIP, MONROE COUNTY, MICHIGAN, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD AND THE CENTERLINE OF STEWART ROAD, THENCE N21°37'00"E, 3771.84 FEET, THEREON, FROM THE CENTERLINE OF STEWART ROAD TO THE TRUE POINT OF BEGINNING;

THENCE N68°23'00"W, A DISTANCE OF 230.00 FEET; THENCE N21°37'00"E, A DISTANCE OF 255.89 FEET; THENCE S68°23'00"E, A DISTANCE OF 230.00 FEET, TO THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD; THENCE S21°37'00"W A DISTANCE OF 255.89 FEET, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD, TO THE TRUE POINT OF BEGINNING.



Exhibit D  
(Proposed Public Mall Road)

LIBER 1179 PAGE 0368

Part of Private Claims, 76, 79, 317 and a part of fractional Section 19, T6S, R9E, Frenchtown Township, Monroe County, Michigan, described as: Commencing at a point at the intersection of the westerly right-of-way of Telegraph Road with the centerline of Stewart Road; thence N21°37'00"E 2815.94 feet along the westerly right-of-way of Telegraph Road for a POINT OF BEGINNING; thence N68°23'00"W 883.50 feet; thence 738.27 feet along the arc of a 470.00 foot radius curve to the right, a central angle of 90°00'00" and a chord bearing of N23°23'00"W 664.68 feet; thence N21°37'00"E 230.00 feet; thence S68°23'00"E 80.00 feet; thence S21°37'00"W 230.00 feet; thence 612.61 feet along the arc of a 390.00 foot radius curve to the left, a central angle of 90°00'00" and a chord bearing of S23°23'00"E 551.54 feet; thence S68°23'00"E 883.50 feet; thence S21°37'00"W 80.00 feet to the POINT OF BEGINNING.

Exhibit E-1  
(Ingress and Egress Easement Area (A))

The easterly fifty feet (50') of the following described property:

A PARCEL OF LAND LOCATED IN PART OF PRIVATE CLAIM 76 AND PART OF FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST AND PRIVATE CLAIM 76, FRENCHTOWN CHARTER TOWNSHIP, MONROE COUNTY, MICHIGAN, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD AND THE CENTERLINE OF STEWART ROAD, THENCE  $N21^{\circ}37'00''E$ , 2507.32 FEET THEREON, FROM THE CENTERLINE OF STEWART ROAD, AND  $N68^{\circ}23'00''W$ , 230.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE  $N68^{\circ}23'00''W$ , A DISTANCE OF 895.16 FEET, TO THE WEST LINE OF PRIVATE CLAIM 76; THENCE  $N20^{\circ}02'44''E$ , A DISTANCE OF 382.12 FEET, ALONG THE WEST LINE OF PRIVATE CLAIM 76, TO THE SOUTHERLY RIGHT-OF-WAY LINE OF THE PROPOSED MALL ROAD; THENCE ALONG THE THE SOUTHERLY RIGHT-OF-WAY LINE OF THE PROPOSED MALL ROAD, ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 470.00 FEET, ARC LENGTH OF 266.13 FEET, A CHORD BEARING OF  $S52^{\circ}09'42''E$ , AND A CHORD LENGTH OF 262.59 FEET; THENCE  $S68^{\circ}23'00''E$ , A DISTANCE OF 653.50 FEET, ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF THE PROPOSED MALL ROAD; THENCE  $S21^{\circ}37'00''W$ , A DISTANCE OF 308.62 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit E-2  
(Ingress and Egress Easement Area (B))

The easterly fifty feet (50') of the following described property:

A PARCEL OF LAND LOCATED IN PARTS OF PRIVATE CLAIMS 76 AND 317 AND PART OF FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN CHARTER TOWNSHIP, MONROE COUNTY, MICHIGAN, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERLY RIGHT-OF-WAY LINE OF TELEGRAPH ROAD AND THE CENTERLINE OF STEWART ROAD, THENCE N21°37'00"E, 3515.94 FEET THEREON, FROM THE CENTERLINE OF STEWART ROAD, AND N68°23'00"W, 230.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE N68°23'00"W, A DISTANCE OF 1,043.50 FEET; THENCE N21°37'00"E, A DISTANCE OF 20.50 FEET; THENCE S68°23'00"E, A DISTANCE OF 8.80 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 470.00 FEET, ARC LENGTH OF 674.70 FEET, A CHORD BEARING OF N70°29'30"E, AND A CHORD LENGTH OF 618.24 FEET; THENCE N23°22'00"E, A DISTANCE OF 85.44 FEET; THENCE S68°23'00"E, A DISTANCE OF 557.47 FEET; THENCE S21°37'00"W, A DISTANCE OF 511.79 FEET TO THE TRUE POINT OF BEGINNING.

and the easterly 280' of the northerly 80' of the following described property:

Part of Private Claims, 76, 79, 317 and a part of fractional Section 19, T6S, R9E, Frenchtown Township, Monroe County, Michigan, described as: Commencing at a point at the intersection of the westerly right-of-way of Telegraph Road with the centerline of Stewart Road; thence N21°37'00"E 3085.94 feet along the westerly right-of-way of Telegraph Road for a POINT OF BEGINNING; thence N68°23'00"W 230.00 feet; thence S21°37'00"W 190.00 feet; thence N68°23'00"W 653.50 feet; thence 612.61 feet along the arc of a 390.00 foot radius curve to the right, a central angle of 90°00'00" and a chord bearing of N23°23'00"W 551.54 feet; thence N21°37'00"E 230.00 feet; thence S68°23'00"E 1273.50 feet; thence S21°37'00"W 430.00 feet to the POINT OF BEGINNING.

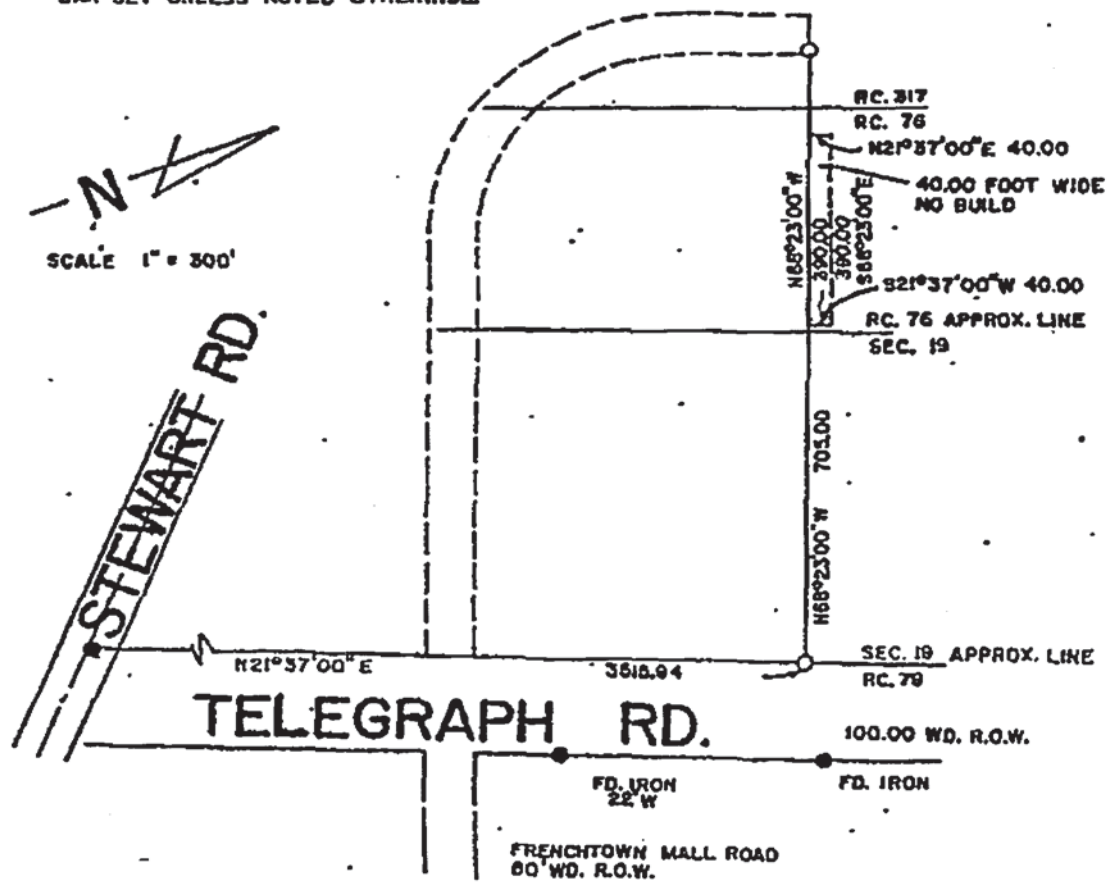
Exhibit F-1  
(Description of No-Build Easement)

A 40.00 foot wide "No-build Easement" lying in Private Claim 76, T6S, R9E, Frenchtown Township, Monroe County, Michigan and described as: Commencing at a point at the intersection of the westerly right-of-way of Telegraph Road with the centerline of Stewart Road; thence N21°37'00"E 3515.94 feet along the westerly right-of-way of Telegraph Road; thence N68°23'00"W 705.00 feet for a POINT OF BEGINNING; thence continuing N68°23'00"W 390.00 feet; thence N21°37'00"E 40.00 feet; thence S68°23'00"E 390.00 feet; thence S21°37'00"W 40.00 feet to the POINT OF BEGINNING.



Exhibit F-2  
(Depiction of Non-Build Easement)

ALL DIMENSIONS ARE IN FEET  
AND DECIMALS THEREOF.  
O INDICATES 1/2" X 16" STEEL  
BAR SET UNLESS NOTED OTHERWISE.



RECEIVED FOR RECORD

95 JUL -3 AM 10:43

*Keri Allen*  
REGISTER OF DEEDS  
MONROE COUNTY, MICH

**FIRST AMENDMENT TO  
EASEMENT WITH COVENANTS  
AND RESTRICTIONS AFFECTING LAND**

This first Amendment to the Easement with Covenants and Restrictions Affecting Land ("ECR") is made as of the 22nd day of August, 1994 by and between Wal-Mart Stores, Inc., a Delaware Corporation the address of which is 702 S.W. Eighth Street, Bentonville Arkansas 72716 ("Wal-Mart"), and Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust under Agreement dated June 14, 1990 and Nancy J. Quisenberry, Trustee of the Nancy J. Quisenberry Trust under Agreement dated June 14, 1990, the address of which is c/o 1224 North Telegraph Road, Monroe, Michigan 48161 and the Real Vest Group, a Michigan Partnership, the address of which is c/o 7359 Whispering Oak Drive, Sylvania, Ohio 43560 (collectively herein "Developer").

**RECITALS**

WHEREAS, in conjunction with Wal-Mart's purchase of a certain parcel of property from Developer on August 21st, 1991, Wal-Mart and Developer simultaneously entered into the ECR, incorporated herein by reference, which governed thereafter the purchased and contiguous properties stipulated therein.

WHEREAS, Wal-Mart and Developer desire to amend the ECR with respect to Outlot "B", being one of the properties governed by the ECR and more specifically outlined in red on Exhibit "A" attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the terms, restrictions and conditions contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart and Developer do hereby agree that:

1. The first sentence of sub-paragraph 4.c.(1) shall and is hereby amended to permit a Ruby Tuesdays' restaurant only of 5,200 square feet in size to occupy Outlot B.
2. All other conditions of sub-paragraph 4.c.(1) specifically and the ECR in its entirety are hereby ratified and shall have the same force and effect as originally written.

*AAC*  
IN WITNESS WHEREOF, the parties have executed this Amendment on the day and year first written above.

IN THE PRESENCE OF:

Wal-Mart Stores, Inc  
a Delaware Corporation

*[Signature]*  
MANNA N. ROOGLO

BY: *[Signature]*  
ITS: ANTHONY L. FULLER  
Director of Prop Mgm

Real Vest Group, a  
Michigan Partnership

*[Signature]*  
STEVEN J. QUISENBERRY  
SONYA QUISENBERRY  
*[Signature]*  
STEVEN J. QUISENBERRY  
SONYA QUISENBERRY  
*[Signature]*  
STEVEN J. QUISENBERRY  
SONYA QUISENBERRY

BY: *[Signature]*  
ITS: General Partner  
KENNETH A. JURINSKI

*[Signature]*  
Charles P. Quisenberry, Trustee  
of the Charles P. Quisenberry  
Trust U/A dated June 14, 1990

*[Signature]*  
Nancy J. Quisenberry, Trustee  
of the Nancy J. Quisenberry  
Trust U/A dated June 14, 1990

AFTER RECORDING,  
RETURN TO:  
K. JURINSKI  
7359 WHISPERING OAK DR  
SYLVANIA, OHIO 43560

STATE OF MICHIGAN )

) ss.

COUNTY OF MONROE )

The foregoing document was acknowledged before me this 22nd day of June, 1995 by Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust under Agreement dated June 14, 1990.

Jacqueline K. Lampkowski  
Notary Public,  
Jacqueline K. Lampkowski  
Monroe County, Michigan

My Commission Expires: 11-3-99

STATE OF MICHIGAN )

) ss.

COUNTY OF MONROE )

The foregoing document was acknowledged before me this 22nd day of June, 1995 by Nancy J. Quisenberry, Trustee of the Nancy J. Quisenberry Trust under Agreement dated June 14, 1990.

Jacqueline K. Lampkowski  
Notary Public,  
Jacqueline K. Lampkowski  
Monroe County, Michigan

My Commission Expires: 11-3-99

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF MONROE )

The foregoing document was acknowledged before me this 22nd day of June 1995 by Raymond A. Jursinski, the General Partner of the Real/Vest Group, a Michigan Co-Partnership.

Jacqueline K. Lampkowski  
Notary Public,  
Jacqueline K. Lampkowski  
Monroe County, Michigan

My Commission Expires: 11-3-99

STATE OF Arkansas )  
 ) ss.  
COUNTY OF Benton )

The foregoing was acknowledged before me this 21st day of June, 1995 by Anthony L. Fuller, Dir. of Property Mgmt. of Wal-Mart Stores, Inc., a Delaware Corporation, on behalf of the Corporation.

Shanna D. Rodgers  
Notary Public,

Benton County, AR

My Commission Expires: March 1, 2004

Drafted by and when  
recorded, return to:





1447-0979

**SECOND AMENDMENT TO  
EASEMENT WITH COVENANTS  
AND RESTRICTIONS AFFECTING LAND**

#1790 LIL  
RECEIVED FOR RECORD  
95 JUL -3 AM 10:48

*Fori Allen*  
REGISTER OF DEEDS  
MONROE COUNTY, MICH

This second Amendment to the Easement with Covenants and Restrictions Affecting Land ("ECR") is made as of the day of November, 1994 by and between Wal-Mart Stores, Inc., a Delaware Corporation the address of which is 702 S.W. Eighth Street, Bentonville Arkansas 72716 ("Wal-Mart"), and Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust under Agreement dated June 14, 1990 and Nancy J. Quisenberry, Trustee of the Nancy J. Quisenberry Trust under Agreement dated June 14, 1990, the address of which is c/o 1224 North Telegraph Road, Monroe, Michigan 48161 and the Real Vest Group, a Michigan Partnership, the address of which is c/o 7359 Whispering Oak Drive, Sylvania, Ohio 43560 (collectively herein "Developer").

**RECITALS**

WHEREAS, in conjunction with Wal-Mart's purchase of a certain parcel of property from Developer on August 21st, 1991, Wal-Mart and Developer simultaneously entered into the ECR, incorporated herein by reference, which governed thereafter the purchased and contiguous properties stipulated therein.

WHEREAS, Wal-Mart and Developer entered into a First Amendment to the ECR on August 22, 1994 attached hereto as Exhibit "FA-1", amending the ECR to permit the building of a "5,200 square foot." Ruby Tuesday Restaurant at the site specified therein, and

WHEREAS, it has now been requested that the aforementioned square footage be increased to 5,500 and Wal-Mart and Developer are desirous of granting said request.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart and Developer do hereby agree that:

1. The first sentence of subparagraph 4.c. (1) of the, ECR and the First Amendment to the ECR are hereby amended to permit a Ruby Tuesdays' restaurant only, of a size not to exceed 5,500 square feet, to occupy Outlot B.
2. All other conditions of subparagraph 4.c.(1)

specifically and the ECR in it's entirety are hereby ratified and shall have the same force effect as originally written.

AAC  
IN WITNESS WHEREOF, the parties have executed this Second Amendment on the day and year first written above.

IN THE PRESENCE OF:

Kristine R. Addington  
Kristine R. Addington  
Shanna D. Rodgers  
Shanna D. Rodgers

Wal-Mart Stores, Inc.  
a Delaware Corporation

BY: Anthony L. Fuller  
Anthony L. Fuller

ITS: Director of Property Management

Jody Weiss  
Jody Weiss  
Jackie M. Saul  
Jackie M. Saul

The Charles P. Quisenberry Trust

BY: Charles P. Quisenberry  
CHARLES P. QUISENBERRY

ITS: Trustee U/A  
dated June 14, 1990

Jody Weiss  
Jody Weiss  
Jackie M. Saul  
Jackie M. Saul

The Nancy J. Quisenberry Trust

BY: Nancy J. Quisenberry  
ITS: Trustee U/A  
dated June 14, 1990  
NANCY J. QUISENBERRY

Jackie M. Saul  
Jackie M. Saul  
Cynthia Thompson  
Cynthia Thompson

The Real Vest Group, a Michigan Partnership

BY: Kenneth A. Jursinski  
ITS: General Partner  
KENNETH A. JURINSKI

AFTER RECORDING,  
RETURN TO:  
K. A. JURINSKI  
7359 WHISPERING OAK DR.  
SYLVANIA, OHIO 43560

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF MONROE )

The foregoing document was acknowledged before me this 22nd day of June, 1995 by Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust under Agreement dated June 14, 1990.

Jacqueline K. Lampkowski  
Notary Public,  
Jacqueline K. Lampkowski,  
Monroe County, Michigan

My Commission Expires: 11-3-99

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF MONROE )

The foregoing document was acknowledged before me this 22nd day of June, 1995 by Nancy J. Quisenberry, Trustee of the Nancy J. Quisenberry Trust under Agreement dated June 14, 1990.

Jacqueline K. Lampkowski  
Notary Public,  
Jacqueline K. Lampkowski,  
Monroe County, Michigan

My Commission Expires: 11-3-99

STATE OF MICHIGAN )  
 ) ss.  
 COUNTY OF MONROE )

The foregoing document was acknowledged before me this 2nd day of June 1995 by KENNETH A. JURSINSKI, the General Partner of the Real/Vest Group, a Michigan Co-Partnership.

Jacqueline K. Lampkowski  
 Notary Public,  
 Jacqueline K. Lampkowski,  
 Monroe County, Michigan

My Commission Expires: 11-3-99

STATE OF Arkansas )  
 ) ss.  
 COUNTY OF Benton )

The foregoing was acknowledged before me this 21st day of June, 1995 by Anthony L. Fuller, Dir. of Property Mgmt. of Wal-Mart Stores, Inc., a Delaware Corporation, on behalf of the Corporation.

Shanna D. Rodgers  
 Notary Public,

Benton County, AR

My Commission Expires: March 1, 2004

Drafted by and when  
 recorded, return to:

K.A. JURSINSKI  
7359 WHISPERING OAK DR  
SYLVANIA, OHIO 43562



1447 0983

RECEIVED FOR RECORD

95 JUL -3 AM 10:49

**THIRD AMENDMENT TO  
THE EASEMENT WITH COVENANTS  
AND RESTRICTIONS AFFECTING LAND**

*Keri Allen*  
REGISTER OF DEEDS  
MONROE COUNTY, MICH

This Third Amendment to the Easement with Covenants and Restrictions Affecting Land ("ECR") is made as of this 30th day of May, 1995 by and between Wal-Mart Stores, Inc., a Delaware Corporation the address of which is 702 S.W. Eighth Street, Bentonville, Arkansas 72716 ("Wal-Mart"), and Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust under Agreement dated June 14, 1990 and Nancy J. Quisenberry, Trustee of the Nancy J. Quisenberry trust under Agreement dated June 14, 1990 and The Real / Vest Group, a Michigan Partnership, all of which the address is c/o 1224 N. Telegraph Road, Monroe, Michigan 48161 (collectively "Developer").

**RECITALS**

WHEREAS, in conjunction with Wal-Mart's purchase of a certain parcel of property from Developer on August 21, 1991, Wal-Mart and Developer simultaneously entered into the ECR, recorded with the Monroe County Register of Deeds at Liber 1179, page 336 and incorporated herein by reference, which governed thereafter the purchased and contiguous properties stipulated therein, and

WHEREAS, for purposes of reference, Wal-Mart and Developer included within the ECR a general legal description of that parcel of property known as Out Lot "B", and

WHEREAS, Wal-Mart and Developer now desire to make specific and confirm the final legal description of Out Lot "B" in anticipation of Developer's sale of same.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart and Developer do hereby agree as follows:

1. The legal description of Out Lot "B" now existing in the ECR is hereby deleted, having no further force or effect and substituted in its place and stead is the legal description more completely set forth on Exhibit "A" attached hereto and made a part hereof.
2. All of the other terms and conditions of the ECR not specifically addressed herein are hereby ratified and shall have the same force and effect as originally written.

IN WITNESS WHEREOF, the parties have executed this Third Amendment to the ECR on the day and year first above written.

IN THE PRESENCE OF:

Kim S. Saylor  
Kim Saylor  
Annette Cogdill  
Annette Cogdill

Wal-Mart Stores, Inc., a Delaware Corporation

Andrew Schwendt-Sorgore  
By: Andrew Schwendt-Sorgore  
Director of Property Development  
Its:

Jody Weiss  
Jody Weiss  
Jackie M. Saul  
Jackie M. Saul

The Charles P. Quisenberry Trust

Charles P. Quisenberry  
By: Charles P. Quisenberry, Trustee  
U/A dated June 14, 1995

Jody Weiss  
Jody Weiss  
Jackie M. Saul  
Jackie M. Saul

The Nancy J. Quisenberry Trust

Nancy J. Quisenberry  
By: Nancy J. Quisenberry, Trustee  
U/A dated June 14, 1995

Jody Weiss  
Jody Weiss  
Jackie M. Saul  
Jackie M. Saul

The Real/Vest Group, a Michigan Partnership

Kenneth A. Jursinski  
By: Kenneth A. Jursinski  
General Partner  
Its: General Partner

AFTER RECORDING,  
RETURN TO:

K. Jursinski  
7359 WHISPERING OAK  
SYLVANIA, OHIO  
43560

STATE OF Michigan }  
COUNTY OF Monroe } ss.

The foregoing document was acknowledged before me this 17 day of MAY, 1995 by Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust under Agreement dated June 14, 1990.

David R Scott  
Notary Public,  
Monroe County, MI

My Commission Expires:  
DAVID R. SCOTT, NOTARY PUBLIC  
MONROE COUNTY, STATE OF MICHIGAN  
MY COMMISSION EXPIRES 12-10-96

STATE OF Michigan }  
COUNTY OF Monroe } ss.

The foregoing document was acknowledged before me this 17<sup>th</sup> day of MAY, 1995 by Nancy J. Quisenberry, Trustee of the Nancy J. Quisenberry Trust under Agreement dated June 14, 1990.

David R Scott  
Notary Public,  
Monroe County, MI

My Commission Expires:  
DAVID R. SCOTT, NOTARY PUBLIC  
MONROE COUNTY, STATE OF MICHIGAN  
MY COMMISSION EXPIRES 12-10-96

STATE OF Michigan }  
COUNTY OF Monroe } ss.

The foregoing document was acknowledged before me this 17<sup>th</sup> day of MAY, 1995 by Kenneth A. Jursinski, the General Partner of Real Vest Group, a Michigan co-partnership.

David R Scott  
Notary Public,  
Monroe County, MI

My Commission Expires:  
DAVID R. SCOTT, NOTARY PUBLIC  
MONROE COUNTY, STATE OF MICHIGAN  
MY COMMISSION EXPIRES 12-10-96

1447 0986

STATE OF Arkansas }  
COUNTY OF Benton } ss.

The foregoing document was acknowledged before me this  
23<sup>rd</sup> day of May, 1995 by Andrew Schweidtfeger,  
Director of Property Development of Wal-Mart Stores, Inc., a Delaware  
corporation, on behalf of the Corporation.

Charlene E. Lyon  
Notary Public,  
Benton County, AR

My Commission Expires: March 1, 2004

Drafted by and when  
recorded, return to:

K.A. Jursinski  
7359 WHISPERING OAK DR.  
SYLVANIA, OHIO 43560



1447 0987

QGT LOT "B"

A parcel of land located in part of Fractional Section 19, Town 6 South, Range 9 East, Frenchtown Charter Township, Monroe County, Michigan, being further described as follows:

Commencing at the Westerly Right-of-Way line of Telegraph Road and the centerline of Stewart Road;  
thence North  $21^{\circ} 37' 00''$  East 2507.32 feet thereon from the centerline of Stewart Road, to the true point of beginning;  
thence North  $68^{\circ} 23' 00''$  West, a distance of 305.00 feet;  
thence North  $21^{\circ} 37' 00''$  East, a distance of 310.52 feet (Measured) 308.62 feet (Recorded) to the South line of so-called Mall Road;  
thence South  $68^{\circ} 23' 00''$  East, a distance of 305.00 feet to the Westerly Right-of-Way line of Telegraph Road;  
thence South  $21^{\circ} 37' 00''$  West, a distance of 310.52 feet (Measured) 308.62 feet (Recorded) along the Westerly Right-of-Way line of Telegraph Road to the True Point of Beginning.



(4)

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REGISTER OF DEEDS  
MONROE COUNTY, MICH

**FOURTH AMENDMENT TO  
THE EASEMENT WITH COVENANTS  
AND RESTRICTIONS AFFECTING LAND**

This Fourth Amendment to the Easement with Covenants and Restrictions Affecting Land ("ECR") is made as of this 22<sup>nd</sup> day of June, 1995 by and between Wal-Mart Stores, Inc., a Delaware Corporation the address of which is 702 S.W. Eighth Street, Bentonville, Arkansas 72716 ("Wal-Mart"), and Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust under Agreement dated June 14, 1990 and Nancy J. Quisenberry, Trustee of the Nancy J. Quisenberry trust under Agreement dated June 14, 1990 and The Real / Vest Group, a Michigan Partnership, all of which the address is c/o 1224 N. Telegraph Road, Monroe, Michigan 48161 (collectively "Developer").

**RECITALS**

WHEREAS, in conjunction with Wal-Mart's purchase of a certain parcel of property from Developer on August 21, 1991, Wal-Mart and Developer simultaneously entered into the ECR, recorded with the Monroe County Register of Deeds at Liber 1179, page 336 and incorporated herein by reference, which governed thereafter the purchased and contiguous properties stipulated therein, and

WHEREAS, for purposes of reference, Wal-Mart and Developer included within the ECR a general legal description of that parcel of property known as Out Lot "B", and an additional document known as Exhibit E-1, setting forth the legal description of an ingress and egress area by way of easement for Out Lot "B", and

WHEREAS, Wal-Mart and Developer entered into a Third Amendment to the ECR revising and confirming the legal description of Out Lot "B" and now desire to amend Exhibit E-1 of the ECR to maintain the agreed upon easement while conforming to the amended legal description set forth in said Third Amendment to the ECR.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart and Developer do hereby agree as follows:

1. The legal description of the "Ingress and Egress Easement Area (A)" now existing in the ECR as Exhibit "E-1" is hereby deleted, having no further force or effect and substituted in its place and stead is the legal description more completely set forth on Exhibit "A" attached hereto and made a part hereof.

9'

2. All of the other terms and conditions of the ECR not specifically addressed herein are hereby ratified and shall have the same force and effect as originally written.

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment to the ECR on the day and year first above written.

IN THE PRESENCE OF:

Annette Cordill  
Annette Cordill  
Kim Saylor  
Kim Saylor

Wal-Mart Stores, Inc., a Delaware Corporation

Anthony L. Fuller  
By: Anthony L. Fuller

Director of Property Management  
Its:

Jacqueline K. Lampkowski  
Jacqueline K. Lampkowski

Mary L. Stoner  
Mary L. Stoner

The Charles P. Quisenberry Trust

Charles P. Quisenberry  
By: Charles P. Quisenberry, Trustee  
U/A dated June 14, 1995

The Nancy J. Quisenberry Trust

Jacqueline K. Lampkowski  
Jacqueline K. Lampkowski

Mary L. Stoner  
Mary L. Stoner

X Nancy J. Quisenberry  
By: Nancy J. Quisenberry, Trustee  
U/A dated June 14, 1995

The Real/Vest Group, a Michigan Partnership

Kenneth H. Surine  
By: Kenneth H. Surine

Jacqueline K. Lampkowski  
Jacqueline K. Lampkowski

Mary L. Stoner  
Mary L. Stoner

General Partner  
Its: General Partner

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF MONROE )

The foregoing document was acknowledged before me this 22nd day of June, 1995 by Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust under Agreement dated June 14, 1990.

Jacqueline K. Lampkowski  
Notary Public,  
Jacqueline K. Lampkowski,  
Monroe County, Michigan

My Commission Expires: 11-3-99

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF MONROE )

The foregoing document was acknowledged before me this 22nd day of June, 1995 by Nancy J. Quisenberry, Trustee of the Nancy J. Quisenberry Trust under Agreement dated June 14, 1990.

Jacqueline K. Lampkowski  
Notary Public,  
Jacqueline K. Lampkowski,  
Monroe County, Michigan

My Commission Expires: 11-3-99

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF MONROE )

The foregoing document was acknowledged before me this 22nd day of June 1995 by Kenneth A. Jursinski, the General Partner of the Real/Vest Group, a Michigan Co-Partnership.

Jacqueline K. Lampkowski  
Notary Public,  
Jacqueline K. Lampkowski  
Monroe County, Michigan

My Commission Expires: 11-3-99

STATE OF Arkansas )  
 ) ss.  
COUNTY OF Benton )

The foregoing was acknowledged before me this 21st day of June, 1995 by Anthony L. Fuller, Dir. of Property Management of Wal-Mart Stores, Inc., a Delaware Corporation, on behalf of the Corporation.

Shanna D. Rodgers  
Notary Public,

Benton County, AR

My Commission Expires: March 1, 2004

Drafted by and when  
recorded, return to:

K. Jursinski  
7359 Whispering Oak Dr.  
Sylvania, OH 43560

Exhibit "A"  
to the Fourth Amendment to the Easement with Covenants  
and Restrictions Affecting Land

(Replaces Exhibit E-1 of the original Easements with Covenants  
and Restrictions Affecting Land Recorded with the Monroe County  
Register of Deeds at Liber 1179, Page 336)

The 50' of property contiguous to and west of the following  
described property:

A parcel of land located in part of Fractional Section 19, Town 6  
South, Range 9 East, Frenchtown Charter Township, Monroe County,  
Michigan, being further described as follows:

Commencing at the Westerly Right-of-Way line of Telegraph Road  
and the centerline of Stewart Road;  
thence North  $21^{\circ} 37' 00''$  East 2507.32 feet thereon from the center-  
line of Stewart Road, to the true point of beginning;  
thence North  $68^{\circ} 23' 00''$  West, a distance of 305.00 feet;  
thence North  $21^{\circ} 37' 00''$  East, a distance of 310.52 feet (Measured)  
308.62 feet (Recorded) to the South line of so-called Mall Road;  
thence South  $68^{\circ} 23' 00''$  East, a distance of 305.00 feet to the  
Westerly Right-of-Way line of Telegraph Road;  
thence South  $21^{\circ} 37' 00''$  West, a distance of 310.52 feet (Measured)  
308.62 feet (Recorded) along the Westerly Right-of-Way line of  
Telegraph Road to the True Point of Beginning.



Exhibit A

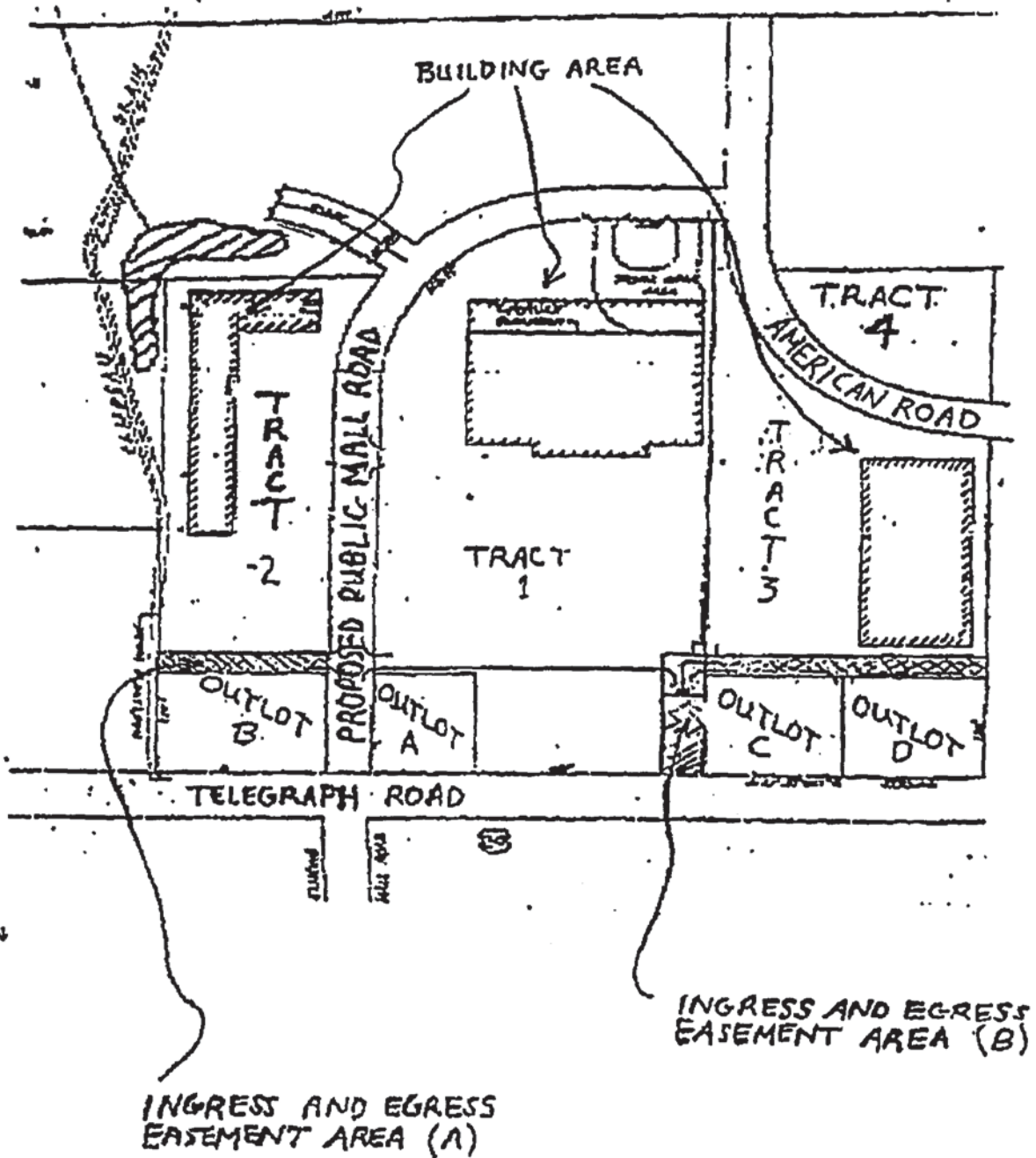


Exhibit "A"  
to the Fourth Amendment to the Easement with Covenants  
and Restrictions Affecting Land

(Replaces Exhibit E-1 of the original Easements with Covenants  
and Restrictions Affecting Land Recorded with the Monroe County  
Register of Deeds at Liber 1179, Page 336)

The 50' of property contiguous to and west of the following  
described property:

A parcel of land located in part of Fractional Section 19, Town 6  
South, Range 9 East, Frenchtown Charter Township, Monroe County,  
Michigan, being further described as follows:

Commencing at the Westerly Right-of-Way line of Telegraph Road  
and the centerline of Stewart Road;  
thence North 21° 37' 00" East 2507.32 feet thereon from the center-  
line of Stewart Road, to the true point of beginning;  
thence North 68° 23' 00" West, a distance of 305.00 feet;  
thence North 21° 37' 00" East, a distance of 310.52 feet (Measured)  
308.62 feet (Recorded) to the South line of so-called Mall Road;  
thence South 68° 23' 00" East, a distance of 305.00 feet to the  
Westerly Right-of-Way line of Telegraph Road;  
thence South 21° 37' 00" West, a distance of 310.52 feet (Measured)  
308.62 feet (Recorded) along the Westerly Right-of-Way line of  
Telegraph Road to the True Point of Beginning.

95 SEP 14 PM 2:26

*Jeri Allen*  
REGISTER OF DEEDS  
MONROE COUNTY, MICH

**FIFTH AMENDMENT TO  
THE BASEMENT WITH COVENANTS  
AND RESTRICTIONS AFFECTING LAND**

This Fifth Amendment to the Easement with Covenants and Restrictions Affecting Land ("ECR") is made as of this \_\_\_\_ day of July, 1995 by and between Wal-Mart Stores, Inc., a Delaware Corporation the address of which is 702 S.W. Eighth Street, Bentonville, Arkansas 72716 ("Wal-Mart"), and Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust under Agreement dated June 14, 1990 and Nancy J. Quisenberry, Trustee of the Nancy J. Quisenberry trust under Agreement dated June 14, 1990 and The Real / Vest Group, a Michigan Partnership, all of which the address is c/o 1224 N. Telegraph Road, Monroe, Michigan 48161 (collectively "Developer").

**RECITALS**

WHEREAS, in conjunction with Wal-Mart's purchase of a certain parcel of property from Developer on August 21, 1991, Wal-Mart and Developer simultaneously entered into the ECR, recorded with the Monroe County Register of Deeds at Liber 1179, page 336 and incorporated herein by reference, which governed thereafter the purchased and contiguous properties stipulated therein, and

WHEREAS, Ruby Tuesday, Inc., ("Ruby") has purchased Out Lot "B" from developer, the development of said Out Lot B being governed, in part, by the ECR and the First, Second, Third and Fourth Amendments thereto, and

WHEREAS, Ruby is now making request of Wal-Mart and Developer to amend the ECR to provide for Ruby's addition of a patio, side-car ("PSC") of approximately 500 square feet of area to its building, a footprint of said PSC being attached hereto as Exhibit "5A-1" and made a part hereof.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart and Developer do hereby agree as follows:

1. Notwithstanding anything to the contrary in the ECR or the First, Second, Third or Fourth Amendments thereto, Ruby shall have and is hereby granted permission to build, install and maintain a PSC, not to exceed 500 square feet of area, in and upon the area outlined in red on Exhibit 5A-1 attached hereto.

2. All of the other terms and conditions of the ECR and Amendments thereto, subject to the modification contained herein above, are hereby ratified and shall have the same force and effect as originally written.

IN WITNESS WHEREOF, the parties have executed this Fifth Amendment to the ECR on the day and year first above written.

IN THE PRESENCE OF:

Kim Saylor  
Kim Saylor

Annette Cogdill  
Annette Cogdill

Jackie M. Saul  
Jackie M. Saul

Kim Letasse  
Kim Letasse

Jackie M. Saul  
Jackie M. Saul

Kim Letasse  
Kim Letasse

Patricia Simmons

Patricia Simmons

Jackie M. Saul  
Jackie M. Saul

Wal-Mart Stores, Inc., a Delaware Corporation

Anthony L. Fuller  
By: Anthony L. Fuller

Director of Property Management  
Its:

The Charles P. Quisenberry Trust

Charles P. Quisenberry  
By: Charles P. Quisenberry, Trustee  
U/A dated June 14, 1995

The Nancy J. Quisenberry Trust

Nancy J. Quisenberry  
By: Nancy J. Quisenberry, Trustee  
U/A dated June 14, 1995

The Real/Vest Group, a Michigan Partnership

Kenneth A. Jursinski  
By: Kenneth A. Jursinski  
Its General Partner



STATE OF MICHIGAN     )  
                                  ) ss.  
COUNTY OF MONROE    )

The foregoing document was acknowledged before me this 11 day of <sup>September</sup> ~~July~~, 1995  
by Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust under  
Agreement dated June 14, 1990.

Fred B. Huntten  
Notary Public

Monroe County, Michigan  
My Commission Expires:

FRED B. HUNTEN  
Notary Public, Monroe County, MI  
My Comm. Expires April 9, 1999

STATE OF MICHIGAN     )  
                                  ) ss.  
COUNTY OF MONROE    )

The foregoing document was acknowledged before me this 11 day of <sup>September</sup> ~~July~~, 1995 by  
Nancy J. Quisenberry, Trustee of the Nancy J. Quisenberry Trust under Agreement  
dated June 14, 1990.

Fred B. Huntten  
Notary Public

Monroe County, Michigan  
My Commission Expires:

FRED B. HUNTEN  
Notary Public, Monroe County, MI  
My Comm. Expires April 9, 1999



STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF MONROE )

The foregoing document was acknowledged before me this 11 <sup>SEPT</sup> day of ~~July~~, 1995 by  
KENNETH A. Jursinski, the General Partner of the Real / Vest Group, a  
Michigan Co-Partnership.

Fred B. Hunten  
Notary Public

Monroe County, Michigan  
My Commission Expires:

FRED B. HUNTEN  
Notary Public, Monroe County, MI  
My Comm. Expires April 9, 1999

STATE OF ARKANSAS )  
 ) ss.  
COUNTY OF BENTON )

The foregoing was acknowledged before me this 29th day of Aug., 1995 by  
Anthony L. Fuller, Director of Property Mgt. of Wal-Mart Stores,  
Inc., a Delaware Corporation, on behalf of the Corporation.

Charlene C. Lyon  
Notary Public

Benton County, Arkansas

My Commission Expires: March 1, 2004

Drafted by and when recorded  
return to: K. A. Jursinski  
7359 Whispering Oak Dr.  
Sylvania, Ohio 43560



**100% Satisfaction Guarantee**

1999

11. 11. 11.

1. The first step is to identify the variables in the model. In this case, the variables are the number of hours spent on each activity (X1, X2, X3, X4, X5, X6, X7, X8, X9, X10, X11, X12, X13, X14, X15, X16, X17, X18, X19, X20, X21, X22, X23, X24, X25, X26, X27, X28, X29, X30, X31, X32, X33, X34, X35, X36, X37, X38, X39, X40, X41, X42, X43, X44, X45, X46, X47, X48, X49, X50, X51, X52, X53, X54, X55, X56, X57, X58, X59, X60, X61, X62, X63, X64, X65, X66, X67, X68, X69, X70, X71, X72, X73, X74, X75, X76, X77, X78, X79, X80, X81, X82, X83, X84, X85, X86, X87, X88, X89, X90, X91, X92, X93, X94, X95, X96, X97, X98, X99, X100) and the total number of hours spent on all activities (Y).

[illegible]

1. The first step is to identify the problem or goal. This involves understanding the current situation and what you want to achieve.

[illegible]

1994-1995 (1-2) 1994-1995

**Model Distribution by Age**

1-2 English	20%
3-4 English	30%
5-6 English	20%
7-8 English	10%
9-10 English	10%
11-12 English	10%

# 1

- **WALL GROUP** PAUL BROWN, ARCHITECTURE AND INTERIORS, 7 Bury Rd, Bury
- **BE SPUNNED** PAUL BROWN
- **SPINNY** BROWN & CO, 100 Blandford Rd, Blandford
- **5-YEAR** BROWN & CO, 100 Blandford Rd, Blandford
- **THE** BROWN & CO, 100 Blandford Rd, Blandford
- **12** BROWN, 100 Blandford Rd, Blandford

NOTE: Students may prepare this material and presentation in the winter or spring semester.

**Ruby Tuesday**  
and the first production of the  
new musical production of the  
Presbyterian Township  
Presbyterian Church, Newburgh  
Newburgh, New York

**Friday**

3

MORRISON RESTAURANTS, INC. Wolfgang Doerschlag Architects

**Wolfgang Doerschlag Architects**  
 1000 N. Michigan Ave., Suite 1000, Chicago, IL 60611-1000

RECEIVED FOR RECORD  
CO JAN 10 AM 8:42*Ken Allen*  
REGISTER OF DEEDS  
MONROE COUNTY, MICH**SIXTH AMENDMENT TO EASEMENT WITH  
COVENANTS AND RESTRICTIONS AFFECTING LAND**

This Amendment to Easement with Covenants and Restrictions Affecting Land ("Agreement" or "Sixth Amended ECR") is made this 29<sup>th</sup> day of December, 1999 (the "Effective Date"), by and between Wal-Mart Real Estate Business Trust, whose address is 702 S.W. Eighth Street, Bentonville, Arkansas 72716 and with offices at Attn: Realty Management, 2001 S.E. 10<sup>th</sup> Street, Bentonville, Arkansas 72712 ("Wal-Mart"), and Steven J. Quisenberry, Successor Trustee of the Charles P. Quisenberry Trust under Agreement dated June 14, 1990 and Nancy J. Quisenberry, Trustee of the Nancy J. Quisenberry Trust under Agreement dated June 14, 1990, whose address is c/o 1224 North Telegraph Road, Monroe, Michigan 48161 and Real Vest Group, a Michigan co-partnership in dissolution, whose address is 4400 D'Evereux Drive, Pensacola, Florida 32504 (collectively "Developer"), Ruby Tuesday, Inc., a Georgia corporation, whose registered address is 30600 Telegraph Road, Bingham Farms, Michigan 48025 ("Ruby"), and Mall Road Management Company, LLC, a Michigan limited liability company, whose address is 22725 Mack Avenue, Suite 206A, St. Clair Shores, Michigan 48080 ("MRM") (sometimes Developer, Ruby and MRM are referred to herein as "Developer and Successors") and Lowe's Home Centers, Inc., a North Carolina corporation, whose address is P.O. Box 1111, North Wilkesboro, North Carolina 28656 (Highway 268 East, North Wilkesboro, North Carolina 28659) ("Lowe's").

**RECITALS**

A. In conjunction with Wal-Mart's purchase of a certain parcel of property from Developer on August 21, 1991, Wal-Mart and Developer simultaneously entered into a certain Easement with Covenants and Restrictions Affecting Land dated August 21, 1991, and recorded at Liber 1179, Pages 336-372 of the Monroe County Records ("Original ECR"). Subsequent to the date of the execution of the Original ECR, the parties hereto executed five (5) amendments to the Original ECR, generally dealing with the construction of the Ruby Tuesday Restaurant on Outlot B, as well as an "Affidavit Acknowledging Easement Rights" clarifying the relationship between the Wal-Mart property and the Real Vest property contiguous to the Wal-Mart property.

B. The five (5) amendments are as follows: First Amendment to Easement with Covenants and Restrictions Affecting Land, dated August 22, 1994, recorded on



July 3, 1995, at Liber 1447, Pages 0974-0978 of the Monroe County Records; Second Amendment to Easement with Covenants and Restrictions Affecting Land, dated November 16, 1994, recorded on July 3, 1995, at Liber 1447, Pages 0979-0982 of the Monroe County Records; Third Amendment to Easement with Covenants and Restrictions Affecting Land, dated May 30, 1995, recorded on July 3, 1995, at Liber 1447, Pages 0983-0987 of the Monroe County Records; Fourth Amendment to Easement with Covenants and Restrictions Affecting Land, dated June 22, 1995, recorded on July 3, 1995, at Liber 1447, Pages 0988-0994 of the Monroe County Records; and Fifth Amendment to Easement with Covenants and Restrictions Affecting Land, dated on or about September 11, 1995, recorded on September 14, 1995, at Liber 1461, Pages 0916-0920 of the Monroe County Records; and the Affidavit Acknowledging Easement Rights was executed on or about April 30, 1998, and recorded on May 7, 1998, at Liber 1682, Page 0370-\_\_\_\_\_ of the Monroe County Records ("Affidavit Acknowledging Easement Rights"). All of the amendments and the affidavit referenced herein are collectively referred to herein as the "Subsequent Amendments".

C. Wal-Mart's land affected by the Original ECR and the Subsequent Amendments was depicted in the Original ECR in Exhibit A and more particularly described in Exhibits B-1 and B-2 attached to and made a part of the Original ECR, said property being further designated in the Original ECR as "Tract 1" and "Outlot A", respectively (collectively for purposes of this Sixth Amended ECR "Wal-Mart Property").

D. The land of the Developer and Successors affected by the Original ECR was depicted therein in Exhibit A and more particularly described in Exhibits C-1 through C-6 attached to and made a part of the Original ECR, said property being further designated in the Original ECR as "Tract 2" (now owned by MRM), "Tract 3", "Tract 4", "Outlot B" (now owned by Ruby), "Outlot C" and "Outlot D", respectively.

E. Lowe's has purchased, or intends to purchase: (i) portions of the Developer's property identified in the Original ECR as "Tract 3", "Tract 4", "Outlot C", "Outlot D", and property identified as "American Road" which runs between Tract 3 and Tract 4; (ii) a small portion of property owned by Developer lying generally to the west of the property described in (i) which is intended for use as the extension of Mall Road; and (iii) other land adjacent to and lying to the north of (i) ("Adjacent Land" which includes Outlot #3). The land described in (i), (ii), and (iii) being referred to hereinafter collectively as "Lowe's Property" and more particularly depicted in Exhibit 1 and described in Exhibit 2 attached hereto and incorporated herein by reference.

F. Wal-Mart, the Developer and Successors and Lowe's now desire to amend the Original ECR and all Subsequent Amendments in accordance with the terms, covenants and conditions set forth in this Sixth Amended ECR.

**NOW, THEREFORE**, in consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained in this Sixth Amended ECR, and in further consideration of the premises, easements, covenants, conditions, restrictions

and encumbrances contained in the Original ECR and all Subsequent Amendments, the sufficiency and adequacy of which is hereby acknowledged, Wal-Mart, the Developer and Successors and Lowe's do hereby agree that the Original ECR is amended as follows:

1. Amendment of Exhibits to Original ECR, and Amendment to Certain Terms.

(a) A part of Exhibit A is amended as follows:

1. That part of Exhibit A attached to the Original ECR and Subsequent Amendments which depicts "Tract 3", "Tract 4", "Outlot C", "Outlot D" and the so-called "American Road" (generally that portion of Exhibit A situated northwest of Tract 1 and Outlot A) is hereby deleted in its entirety and of no further force and effect, and Exhibit 1 is deemed inserted in its place and stead. That is, all references to Exhibit A in the Original ECR and Subsequent Amendments is hereby deemed to refer to that part of Exhibit A not amended herein by Exhibit 1. The terms "Outlot C" and "Outlot D" shall be deemed to refer to "Outlot #1" and "Outlot #2" as shown on Exhibit 1 and described on Exhibit 2 attached and "Outlot #3" is as shown on Exhibit 1 and described on Exhibit 2.

(b) Exhibit C-2, C-3, C-5 and C-6 are hereby deleted in their entirety and Exhibit 2 is inserted in their place and stead.

(c) Whenever in this document the term "land owned by a party" or similar phrase is used, said term shall refer to the land owned by each party as identified in the exhibits to the Original ECR, all Subsequent Amendments, and this Sixth Amended ECR.

2. Amendment to Paragraph 1 - "Building Area and Common Area". Paragraph 1 of the Original ECR is hereby amended to add the following subparagraph (c) to paragraph 1:

c. Notwithstanding anything to the contrary in this paragraph 1, with respect to the Lowe's Property, the "building area" is shown on Exhibit 1 and the "Mall Road Extension" is shown on Exhibit 1 and described on Exhibit 2 (as "B2 and A6 legal"). The "Mall Road Extension" on Exhibit 1 is part of the "Common Area". The "Shopping Center" is deemed to include the Lowe's Property depicted and described in Exhibits 1 and 2, respectively.

3. Amendment to Paragraph 2 - "Use". Paragraph 2 of the Original ECR is amended to add the following sentence to paragraph 2(a), and the following subparagraphs (d) and (e) to paragraph 2, to wit:



(sentence added to end of paragraph 2(a). Further, no space in any building on the Lowe's Property shall be leased, occupied or conveyed to any other party for use as a bar, tavern, dance hall or adult book store.

d. Notwithstanding anything to the apparent contrary in this paragraph 2, the Lowe's Property may at Lowe's option be used for purposes of a Lowe's Home Center retail and/or warehouse facility, home improvement center, paint and/or décor center, appliance and/or home electronics store, lumberyard, building materials supply center, garden center and operation, and specifically, the Lowe's Property may at Lowe's option be used for the businesses of Lowe's or any of its affiliated companies or subsidiaries. Further, it is expressly agreed that nothing contained in the Original ECR and Subsequent Amendments and/or this Sixth Amended ECR shall be construed to contain a covenant, either express or implied, that Lowe's or any of its successors must either commence the operation of a business or thereafter continuously operate a business on the Lowe's Property. Wal-Mart and Developer and Successors recognize and agree that Lowe's may, at Lowe's sole discretion and at any time cease the operation of that business on the Lowe's Property and Wal-Mart and Developer and Successors, jointly and severally, waive any legal action for damages or other equitable relief which might be available to Developer and Successors and/or Wal-Mart because of the cessation of the business activity by Lowe's or its successors on the Lowe's Property.

e. Notwithstanding anything to the apparent contrary in this paragraph 2, the following uses are allowed on the "Adjacent Land" and Outlot #4, and will not be deemed a "competing business" under paragraph 3, provided said uses can provide sufficient parking on the "Adjacent Land" and Outlot #4, and/or the remainder of the Lowe's Property and do not require any parking on the Wal-Mart Property, pursuant to local governmental ordinance, to wit: movie theater, cafeteria, restaurant, appliance and/or home electronics store, bowling alley, health spa, gym, and fitness center.

4. Amendment to Paragraph 3 - "Competing Business". Paragraph 3 of the Original ECR is hereby amended to be "3(a)", and the following is added as new subparagraphs 3(b), 3(c), 3(d) and 3(e), to-wit:

3. Competing Business.

(b) Wal-Mart and Lowe's hereby mutually covenant to each other that as long as Wal-Mart or any affiliate of Wal-Mart is the user of Tract 1 or Outlot A (whether as owner or as a lessee), and so long as Lowe's, or any affiliate or subsidiary of Lowe's, is the user of the Lowe's Property (whether as owner or as lessee) (said property owned by Lowe's and Wal-Mart referred to herein is sometimes collectively called "Wal-Mart/Lowe's Property") space within the Wal-Mart/Lowe's Property will only be used for purposes of the kind typically found in shopping centers, including but not limited to, offices, retail shops, and for no other purposes without prior written consent of Wal-Mart and Lowe's.

(c) Wal-Mart and Lowe's further covenant that other than the Wal-Mart store, no space within the Wal-Mart/Lowe's Property shall be used for the following purposes without prior written consent of Wal-Mart and Lowe's, to wit: a discount department store or other discount store whose square footage exceeds 10,000 square feet, a wholesale club, a discount rack shoe store, automotive maintenance facility engaged in quick lube/oil changes, pharmacy/drug store, convenience/gas station, grocery store or supermarket, vision center or any business in whose principal revenues are from sale of alcoholic beverages, amusement or entertainment

(d) Lowe's and Wal-Mart further covenant that as long as Wal-Mart or an affiliate of Wal-Mart is the user of Tract 1 or Outlot A (whether as owner or as lessee), and so long as Lowe's or any affiliate of Lowe's is the user of the Lowe's Property or Outlot #1, Outlot #2 or Outlot #3 (whether as owner or as lessee), other than the Lowe's Home Improvement Warehouse, no space within the Wal-Mart Lowe's Property shall be used for the following purposes without prior written consent of Lowe's and Wal-Mart, to-wit: a retail and/or warehouse home center facility, home improvement center, paint and/or décor center, appliance and/or home electronics store, lumberyard, building materials supply center, garden center and operation, any of the foregoing having a building space of greater than 5,000 square feet.

(e) In the event of a breach of this covenant, Wal-Mart and/or Lowe's, or either one of them, shall have the right to terminate the Original ECR, all Subsequent Amendments and this Sixth Amended ECR, or to seek any and all remedies afforded to either or both Wal-Mart or Lowe's at law or equity, under any local, state, federal ordinance, statute, rule and/or regulations.

5. Amendment to Paragraph 4 - "Buildings". Paragraph 4 of the Original ECR is hereby amended to add the following subparagraph (d) to the end of paragraph 4:

d. Operation of a Lowe's Business on the Lowe's Property. Notwithstanding anything to the apparent contrary in paragraph 4 of the Original ECR, or any Subsequent Amendments, Lowe's, at its option and in its sole discretion, may construct on the Lowe's Property the Lowe's facility depicted on the Site Development Plan referenced on Exhibit 3, and further including the specifications which are or may become a part thereof through amendment or modification of same and subject to approval by the applicable governmental authorities. Further, permitted building on the Lowe's Property is deemed to include, without limitation, the following as shown or referenced on the Site Development Plan in Exhibit 3, to wit: (i) building materials; (ii) height of the building; (iii) location of all structures and other improvements on the Lowe's Property; (iv) position and screening of rooftop equipment; and (v) all signage on the Lowe's Property (including without limitation, freestanding identification signs, rooftop signs, signs attached to or erected on any building, and all informational and traffic signs on site, off site or adjacent to the Lowe's Property). Notwithstanding the foregoing, and except as allowed herein for construction on the Outlots, no sign(s) or building(s) on either the Wal-Mart Property or Lowe's Property will be located so that said sign(s) or building(s) block(s) the visibility from Telegraph Road of any buildings or signs located on each others property. Subject to approval by the applicable governmental authorities, paragraph 4 ("Buildings") in the Original ECR is deemed amended, as necessary, to permit all building design, construction, location and other miscellaneous matters set forth in this subparagraph (d) and the exhibits attached hereto. Further, subject to approval of the applicable governmental authorities, with respect to the "Adjacent Property" only, Lowe's, at its option, may alter, reconfigure



and/or redesign all or part of any buildings, structures, ingress and egress, and all internal driveways and road networks on the Adjacent Property only, without consent of either Wal-Mart or the Developer and Successors, provided such improvements comply with the other applicable terms and conditions of the Original ECR, all Subsequent Amendments and this Sixth Amended ECR. To the extent necessary, the Original ECR, all Subsequent Amendments, and this Sixth Amended ECR shall be deemed further amended to accommodate and permit such future remodeled, redesigned and reconfigured improvements, without the necessity of filing any other document with respect thereto.

6. Amendment to Paragraph 5(a) - "Grant of Easements".

A. Paragraph 5(a) - Grant of Easements, of the Original ECR is hereby deleted in its entirety and the following is inserted in its place and stead:

5(a). Wal-Mart, Lowe's and Developer and Successors, and each of them, as grantor, hereby grants to each of the other parties hereto, as grantee, and to their respective agents, customers, invitees, licensees, tenants and employees, a non-exclusive easement over, through and around the portion of the Common Area located on the land owned by each respective party hereto, for ingress and egress of commercial and other vehicles, including without limitation, non-exclusive easements for vehicular and pedestrian access, ingress and egress over and across the land owned by each party hereto. Wal-Mart, Lowe's, Developer and Successors, and each of them, hereby grant for the benefit of each of the Outlots identified in the Original ECR, Subsequent Amendments and this Sixth Amended ECR, non-exclusive easements for vehicular and pedestrian access, ingress and egress, over and across the land owned by each party hereto. Provided, however, in no event shall the owner, occupant, licensee or invitee of any Outlot be permitted to use the land of Wal-Mart, Lowe's and/or the Developer and Successors for vehicular parking or for any other purpose that is described herein.

7. Amendment to Paragraph 6 - "Parking Ratio, Maintenance and Taxes".

A. Paragraph 6(a) - "Parking Ratio", of the Original ECR is hereby amended to add the following sentence to the end of paragraph 6(a):

Notwithstanding the foregoing, the parking ratio on the Lowe's Property shall be the greater of 5 car spaces for each 1,000 square feet of enclosed building space on the Lowe's Property, or the minimum parking ratio as required by any governmental authority having jurisdiction over the Lowe's Property in accordance with the ordinances, or any variance to the ordinance, which Lowe's may obtain in its sole discretion; and provided further that the parking ratio on the Adjacent Land shall be determined by local governmental ordinances.

B. Paragraph 6(b) - "Maintenance", of the Original ECR is hereby amended to add the following paragraph as paragraph 6(b)(5):

5. Lowe's Property. For purposes of the standards set forth in paragraph 6(b)(1), the payment of expenses set forth in paragraph 6(b)(2) and the hiring of a mutually agreeable third party to maintain the Common Area as set forth in paragraph 6(b)(3), Lowe's shall be considered an "owner" of a "tract" and the word "tract" for purposes of this paragraph 6(b)(1), (2) and (3) shall mean the Lowe's Property.

C. Paragraph 6(b)(4) - "Ingress and Egress Easement Area (B)", of the Original ECR is hereby deleted in its entirety and the following is inserted in its place and stead:

6(b)(4). The foregoing provisions of this paragraph (b) to the contrary notwithstanding, the portion of the Common Area located on the northeast corner of Tract 1 and designated on the attached Exhibit A as "Ingress and Egress Area (B)" shall be maintained by Lowe's.

8. Amendment to Paragraph 7 - "Signs". Paragraph 7 of the Original ECR is hereby amended to add the following sentence to the end of paragraph 7:

Notwithstanding the foregoing and subject to applicable governmental approval, Lowe's shall erect no more than two (2) free standing signs on the "Lowe's Store Site" described in Exhibit 2 at page 2 of 2 (so-called "A1+B3 Legal (Lowe's Store Site)") in accordance with the plans referenced on Exhibit 3. Notwithstanding the foregoing, the signs permitted on the Adjacent Land shall be pursuant to site plan(s) approved by the local governmental authorities.



9. Amendment to Paragraph 8 - "Indemnification and Insurance".

A. Paragraph 8(b)(3) of the Original ECR is hereby amended to add the following sentence to the end of paragraph 8(b)(3):

Further, policies of insurance provided for in this paragraph 8 shall name Lowe's as insured, as its interest may appear. Wal-Mart, Lowe's and Developer and Successors shall each provide to the other certificates evidencing that this requirement has been satisfied.

B. Paragraph 8(b)(6) of the Original ECR is hereby amended to add subparagraph (6) to the end of paragraph 8(b)(5):

(6) Notwithstanding anything herein to the contrary contained in this paragraph 8, so long as the net worth of Lowe's exceeds \$100,000,000 and so long as Lowe's is the owner or lessee of the Lowe's Property, Lowe's shall have the right to retain the financial risk for up to \$1,500,000 per claim.

10. Amendment to Paragraph 12 - "Special Provision Regarding Tract 4". Paragraph 12 of the Original ECR is hereby deleted in its entirety.

11. Amendment to Paragraph 14 - "Breach". Paragraph 14 of the Original ECR is hereby deleted in its entirety and the following is inserted in its place and stead:

14. Breach. In the event of a breach or threatened breach of the Original ECR, only all of the record owners of any land affected by the Original ECR, the Subsequent Amendments or this Sixth Amended ECR (including without limitation, Wal-Mart and Lowe's so long as either of these parties, or their respective affiliates have an interest as owner or lessee in or to any of the property owned by Wal-Mart and/or Lowe's, or the Developer and Successors, so long as it or any affiliate has an interest as owner or lessee of Tract 2) shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney fees which shall be deemed to have accrued on the date the action was filed.

12. Amendment to Paragraph 15 - "Proposed Public Mail Road". Paragraph 15 of the Original ECR is deleted in its entirety and the following is inserted in its place and stead:

15. Proposed Public Mall Road. For purposes of the Original ECR, the Subsequent Amendments and this Sixth Amended ECR, the Proposed Public Mall Road shall be deemed to be Common Area located entirely on Wal-Mart property and the Mall Road Extension is deemed to be Common Area located entirely on the Lowe's Property as shown on Exhibit 1 and referenced in Exhibit 3. The maintenance, repair and, if necessary, replacement, of the Proposed Public Mall Road on the Wal-Mart property shall be paid for by Wal-Mart, and the maintenance, repair and, if necessary, the responsibility of and replacement, of the Mall Road Extension on the Lowe's Property shall be the responsibility of and paid for by Lowe's, in the same manner as other Common Area maintenance is performed by each party. Wal-Mart and Lowe's shall cooperate with each other and use best efforts to cause the Proposed Public Mall Road and the Mall Road Extension to be dedicated and accepted by the Township. Upon this dedication and acceptance, the Proposed Public Mall Road and the Mall Road Extension shall not be subject to and shall be deemed to have been released from the terms and conditions of the Original ECR, the Subsequent Amendments and this Sixth Amended ECR.

13. Amendment to Paragraph 17 - "Document Execution, Modification and Cancellation". Paragraph 17 of the Original ECR is hereby deleted in its entirety, and the following is inserted in its place and stead:

17. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by Developer and Successors, Wal-Mart and Lowe's, 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 Sixth Amended ECR, all Subsequent Amendments, and the Original ECR, together with their exhibits, may be modified or canceled only by mutual agreement of Wal-Mart (as long as it or its affiliates has an interest as either owner or lessee of Tract 1 or Outlot A), Lowe's (as long as it or its affiliates or subsidiaries have an interest as either owner or lessee in the Lowe's Property), and Developer and Successors (as long as it or its affiliates has an interest as either owner or lessee of the remainder of the Shopping Center).

14. Amendment to Paragraph 18 - "Non-Merger". Paragraph 18 of the Original ECR is hereby deleted in its entirety and the following is inserted in its place and stead:

18. Non-Merger. So long as Wal-Mart, Lowe's, or its respective affiliates, or subsidiaries are owners or lessees of the Wal-Mart property and/or the Lowe's Property, the Original ECR, the Subsequent Amendments and this Sixth Amended ECR shall not be subject to the doctrine of merger.

15. Reference To Affidavit of Acknowledgment. The mutual, reciprocal grant of non-exclusive easement for the purpose of ingress and egress on the Proposed Mall Road and the Mall Road Extension between Developer and Successors, Lowe's and Wal-Mart, as set forth in paragraphs 5(a) and 16 of the Original ECR, the Subsequent Amendments and this Sixth Amended ECR shall benefit the Real Vest land depicted as cross-hatched land on Exhibit A-1 and described on Exhibit A-2 in the Affidavit Acknowledging Easement Rights.

15. Conflict. In the event of an apparent conflict between this Sixth Amended ECR and the Original ECR, the terms and conditions of this Sixth Amended ECR shall control.

16. Counterparts. This Agreement may be signed in counterparts, all counterparts taken together being deemed one original.

***{Signatures On Following Pages}***

IN WITNESS WHEREOF, the parties have executed this Sixth Amended ECR as of the Effective Date.

WITNESSES:

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

Mike Kersting  
Its: Assistant Secretary  
Elizabeth King  
Lease Administrator  
STATE OF ARKANSAS)  
COUNTY OF WASHINGTON )SS

By: [Signature]  
Its: Director, Real Estate Walmart

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of December, 1999, by Sev Young, as Director, Real Estate of WAL-MART STORES, INC., a Delaware corporation. business trust.  
REAL ESTATE BUSINESS TRUST

[Signature]  
NOTARY PUBLIC

{Signatures Continued On Following Pages}





13



WITNESSES:

CHARLES P. QUISENBERRY TRUST  
UNDER AGREEMENT DATED JUNE 14,  
1990

Jeff R. Seltz  
Jeff R. Seltz

By: Steven Jon Quisenberry Trustee.  
His: Trustee

Mary L. Stoner  
Mary L. Stoner

STATE OF MICHIGAN )  
COUNTY OF Monroe )SS

The foregoing instrument was acknowledged before me this 1st day of January, 2000, by Steven Jon Quisenberry, Trustee of the CHARLES P. QUISENBERRY TRUST UNDER AGREEMENT DATED JUNE 14, 1990.

Jeff R. Seltz  
NOTARY PUBLIC

{Signatures Continued On Following Pages}

Jeff R. Seltz  
Notary Public, Monroe County, MI  
Commission Expires April 14, 2001

WITNESSES:

NANCY J. QUISENBERRY TRUST  
UNDER AGREEMENT DATED JUNE 14,  
1990

Jeff R. Seltz  
Jeff R. Seltz

Mary L. Stoner  
Mary L. Stoner

By: Nancy J. Quisenberry  
Nancy J. Quisenberry  
It: Trustee

STATE OF MICHIGAN )  
                                  )SS  
COUNTY OF Monroe )

The foregoing instrument was acknowledged before me this 1st day of  
January, 2000, by Nancy J. Quisenberry as Trustee of the NANCY J.  
QUISENBERRY TRUST UNDER AGREEMENT DATED JUNE 14, 1990.

Jeff R. Seltz  
NOTARY PUBLIC

{Signatures Continued On Following Pages}

Jeff R. Seltz  
Notary Public, Monroe County, MI  
Commission Expires April 14, 2001

LIDER1872PAGE0930

WITNESSES:

RUBY TUESDAY, INC., a Georgia  
corporationWang Cui, Jr.By: Daniel T. Cronk

Daniel T. Cronk

Its: Senior Vice PresidentShirley B. ColleySTATE OF TENNESSEE )  
 )SS  
COUNTY OF BLOUNT )

The foregoing instrument was acknowledged before me this 29th day of  
December, 1990, by Daniel T. Cronk, as Senior Vice President of Ruby Tuesday,  
Inc., a Georgia corporation.  
\* President

Lenn B. Bach  
NOTARY PUBLIC

My Commission Expires: July 12, 2003

(Signatures Continued On Following Pages)

**WITNESSES:**

**MALL ROAD MANAGEMENT COMPANY,  
LLC, a Michigan limited liability company**

Kristin A. Christoffers

By: James M. Vogt  
Its: Managing Member

MEGAN H. PAXTON  
STATE OF MICHIGAN )  
 )SS  
COUNTY OF MACOMB )

The foregoing instrument was acknowledged before me this 05 day of January, 1990, by James M. Voigt, as MANAGER of Man-Gar Road Management Company, LLC, a Michigan limited liability company.

*[Signature]*  
NOTARY PUBLIC

**{Signatures Continued On Following Pages}**

KIRSTIN A CRISTOFORO  
NOTARY PUBLIC STATE OF MICHIGAN  
MACOMB COUNTY  
MY COMMISSION EXP. OCT. 30, 2001

WITNESSES:

LOWE'S HOME CENTERS, INC., a North  
Carolina corporation

Paulette Wood  
Paulette Wood

By: [Signature]  
Thomas E. Whidden  
Its: Executive Vice President

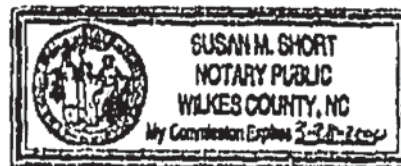
Jackie K. Huffman  
Jackie K. Huffman

STATE OF NORTH CAROLINA )  
  )SS  
COUNTY OF WILKES        )

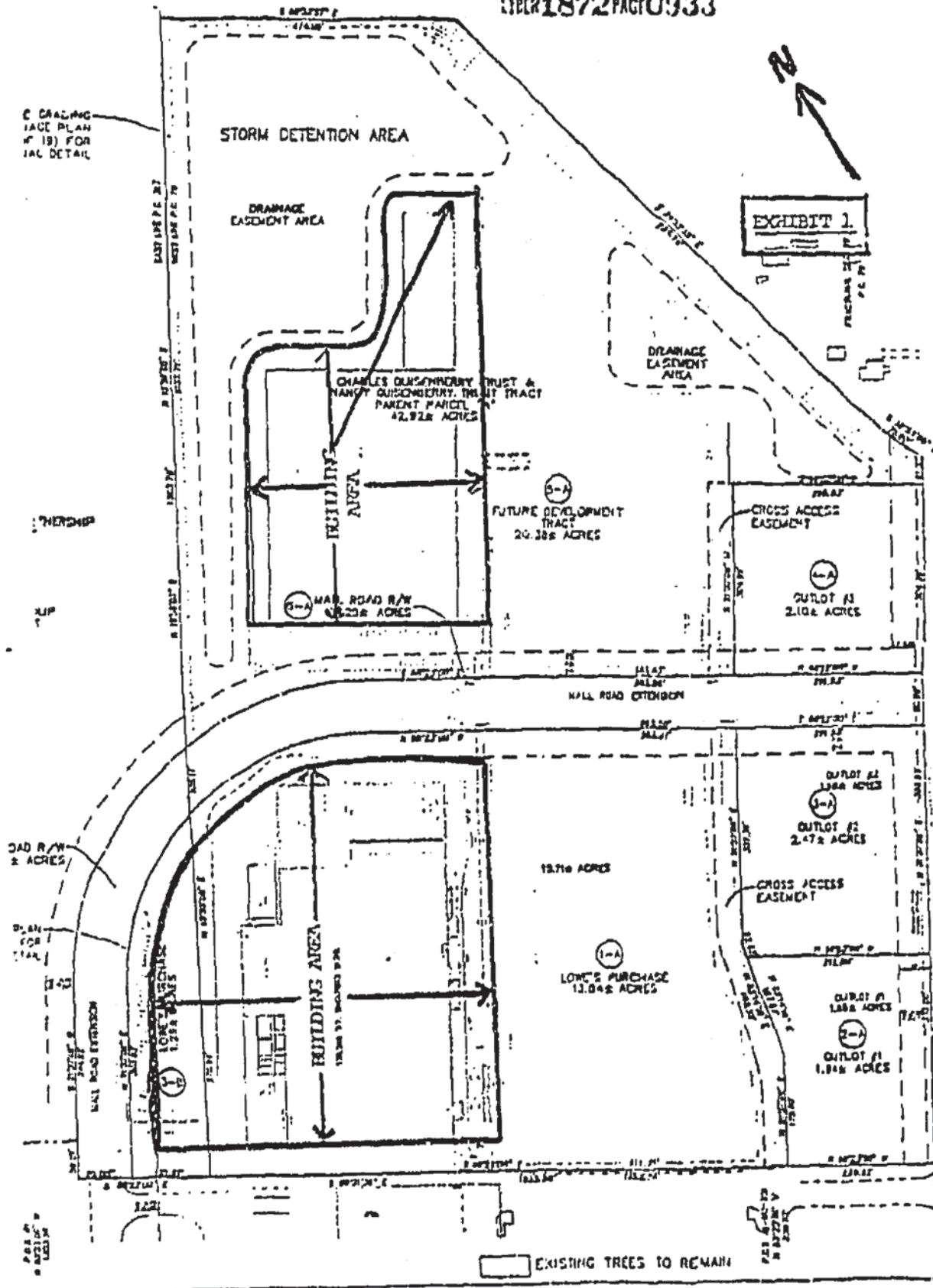
The foregoing instrument was acknowledged before me this 29th day of  
December, 1999, by Thomas E. Whidden as Executive Vice President  
of LOWE'S HOME CENTERS, INC., a North Carolina corporation.

[Signature]  
NOTARY PUBLIC

Drafted by and when recorded return to:  
Richard D. Rattner, Esquire  
Williams, Williams, Ruby & Plunkett, P.C.  
380 North Old Woodward Ave., Ste. 300  
Birmingham, Michigan 48009







## A1 LEGAL

11/21/87 2 PAGE 0934

EXHIBIT 2, PAGE 1 OF 3

LEGAL DESCRIPTION: A1 QUISENBERRY TRUST  
A PARCEL OF LAND BEING A PART OF THE PRIVATE CLAIMS TO 76-79, AND  
FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN  
TOWNSHIP, MONROE COUNTY, MICHIGAN. BEING MORE PARTICULARLY  
DESCRIBED AS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF STEWART ROAD &  
THE WESTERLY RIGHT OF WAY LINE OF TELEGRAPH ROAD, THENCE  
PROCEEDING ALONG SAID WESTERLY LINE OF TELEGRAPH ROAD, NORTH  
21 37' 00" EAST, 3517.84 FEET, THENCE NORTH 68 23' 00" WEST, 299.93 FEET, TO  
THE POINT OF BEGINNING HEREIN DESCRIBED, THENCE CONTINUING NORTH  
68 23' 00" WEST, 911.71 FEET TO A POINT ON THE LINE COMMON TO PRIVATE  
CLAIM 76 AND 317, THENCE ALONG SAID LINE NORTH 19 59' 05" EAST, 570.94 FEET,  
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, RADIUS 390.00 FEET,  
CENTRAL ANGLE 46 49' 12" (THE CHORD OF SAID CURVE BEARS NORTH 88 12' 24"  
EAST, 309.90 FEET) AND HAVING AN ARC DISTANCE OF 318.69 FEET, THENCE  
SOUTH 68 23' 00" EAST, 583.57 FEET, THENCE SOUTH 21 37' 00" WEST, 337.36 FEET  
THENCE SOUTH 03 24 14' 16" WEST, 190.30 FEET, THENCE ALONG A LINE  
PARALLEL TO THE WEST LINE OF TELEGRAPH, SOUTH 21 37' 00" WEST, 175.88 FEET  
TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED. CONTAINING  
13.84 ACRES OF LAND AND BEING SUBJECT TO AN EASEMENT FOR INGRESS,  
EGRESS AND PUBLIC UTILITIES, AND ALSO ANY OTHER EASEMENTS  
RESTRICTIONS OR CONDITIONS OF RECORD.  
F:\LEGALS\99052103.LEG (8-5-99)

## A2 LEGAL (OUTLOT #1)

LEGAL DESCRIPTION: A2 QUISENBERRY TRUST  
A PARCEL OF LAND BEING A PART OF THE PRIVATE CLAIMS TO 76 & 79, AND  
FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN  
TOWNSHIP, MONROE COUNTY, MICHIGAN. BEING MORE PARTICULARLY  
DESCRIBED AS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF STEWART ROAD &  
THE WESTERLY RIGHT OF WAY LINE OF TELEGRAPH ROAD, THENCE  
PROCEEDING ALONG SAID WESTERLY LINE OF TELEGRAPH ROAD, NORTH  
21 37' 00" EAST 3517.84 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN  
DESCRIBED, THENCE NORTH 68 23' 00" WEST, 299.93 FEET, THENCE PARALLEL TO  
THE WESTERLY LINE OF SAID TELEGRAPH ROAD, NORTH 21 37' 00" EAST, 175.88  
FEET, THENCE NORTH 03 14' 16" EAST, 167.67 FEET, THENCE SOUTH 68 23' 00"  
EAST, 292.80 FEET TO A POINT ON THE WESTERLY LINE OF SAID TELEGRAPH  
ROAD, THENCE ALONG SAID WESTERLY LINE SOUTH 21 37' 00" WEST, 335.00  
FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.  
CONTAINING 1.94 ACRES OF LAND MORE OR LESS. ALSO BEING SUBJECT TO ANY  
EASEMENTS, RESTRICTIONS OR CONDITIONS OF RECORD.  
F:\LEGALS\99052103.LEG (8-5-99)

## A3 LEGAL (OUTLOT #2)

LEGAL DESCRIPTION: A3 QUISENBERRY TRUST  
A PARCEL OF LAND BEING A PART OF THE PRIVATE CLAIMS TO 76 & 79, AND  
FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN  
TOWNSHIP, MONROE COUNTY, MICHIGAN. BEING MORE PARTICULARLY  
DESCRIBED AS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF STEWART ROAD &  
THE WESTERLY RIGHT OF WAY LINE OF TELEGRAPH ROAD, THENCE  
PROCEEDING ALONG SAID WESTERLY LINE OF TELEGRAPH ROAD, NORTH  
21 37' 00" EAST, 3552.84 FEET TO THE POINT OF BEGINNING OF THE PARCEL  
HEREIN DESCRIBED, THENCE NORTH 68 23' 00" WEST, 292.00 FEET, THENCE NORTH  
03 14' 16" EAST, 22.63 FEET, THENCE PARALLEL WITH THE WESTERLY LINE OF  
SAID TELEGRAPH ROAD, NORTH 21 37' 00" EAST, 337.36 FEET, THENCE SOUTH  
68 23' 00" EAST, 299.93 FEET, TO A POINT OF THE WESTERLY LINE OF SAID  
TELEGRAPH ROAD, THENCE ALONG SAID WESTERLY LINE SOUTH 21 37' 00" WEST,  
338.83 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.  
CONTAINING 2.47 ACRES OF LAND MORE OR LESS. ALSO BEING SUBJECT TO ANY  
EASEMENTS, RESTRICTIONS OR CONDITIONS OF RECORD.  
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**B2 + A6 LEGAL** (MALL ROAD EXTENSION)

EXHIBIT 2, PAGE 2 OF 3

**LEGAL DESCRIPTION:** B2-A6 (80' WIDE PROPOSED MALL ROAD)  
A PARCEL OF LAND BEING A PART OF THE PRIVATE CLAIMS TO 76 & 79, AND  
FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN  
TOWNSHIP, MONROE COUNTY, MICHIGAN. BEING MORE PARTICULARLY  
DESCRIBED AS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF STEVART ROAD &  
THE WESTERLY RIGHT OF WAY LINE OF TELEGRAPH ROAD, THENCE  
PROCEEDING ALONG SAID WESTERLY LINE OF TELEGRAPH ROAD, NORTH  
21 37' 00" EAST 3517.84 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN  
DESCRIBED. THENCE NORTH 68 23' 00" WEST, 80.05 FEET; THENCE NORTH 21 37' 00"  
EAST, 303.83 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT RADIUS  
470.00 FEET, CENTRAL ANGLE 90 00' 00" (THE CHORD ON SAID CURVE BEARS  
NORTH 66 37' 00" EAST, 664.58 FEET) AND HAVING AN ARC DISTANCE OF 738.27  
FEET; THENCE SOUTH 68 23' 00" WEST, 883.56 FEET, TO A POINT ON THE  
WESTERLY LINE OF TELEGRAPH ROAD; THENCE ALONG SAID WESTERLY LINE  
SOUTH 21 37' 00" WEST, 80.00 FEET; THENCE NORTH 68 23' 00" WEST, 883.50 FEET;  
THENCE ALONG THE ARC OF A CURVE TO THE LEFT, RADIUS 390.00 FEET,  
CENTRAL ANGLE 90 00' 00" (THE CHORD OF SAID CURVE BEARS SOUTH 66 37' 00"  
WEST, 551.54 FEET) AND HAVING AN ARC DISTANCE OF 612.61 FEET; THENCE  
SOUTH 21 37' 00" WEST, 303.83 FEET, TO THE POINT OF BEGINNING OF THE PARCEL  
HEREIN DESCRIBED. CONTAINING 4.64 ACRES OF LAND MORE OR LESS  
TOGETHER WITH AND SUBJECT TO AN EASEMENT FOR INGRESS, EGRESS AND  
PUBLIC UTILITIES.  
F:\LEGALS\99-052103.LEG(8-3-99)

**A1 + B3 LEGAL** (LOWE'S STORE SITE)

**LEGAL DESCRIPTION:** A1 + B3 (TOTAL LOWE'S)  
A PARCEL OF LAND BEING A PART OF THE PRIVATE CLAIMS TO 76- 317, AND  
FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN  
TOWNSHIP, MONROE COUNTY, MICHIGAN. BEING MORE PARTICULARLY  
DESCRIBED AS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF STEVART ROAD &  
THE WESTERLY RIGHT OF WAY LINE OF TELEGRAPH ROAD, THENCE  
PROCEEDING ALONG SAID WESTERLY LINE OF TELEGRAPH ROAD, NORTH  
21 37' 00" EAST 3517.04, THENCE NORTH 68 23' 00" WEST, 239.93 FEET, TO THE  
POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED. THENCE CONTINUING  
NORTH 68 23' 00" WEST, 1032.58 FEET, THENCE NORTH 21 37' 00" EAST, 303.83 FEET,  
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT RADIUS 390.00 FEET  
CENTRAL ANGLE 90 00' 00", (THE CHORD OF SAID CURVE BEARS NORTH 66 37' 00"  
EAST, 551.54 FEET AND HAVING AN ARC DISTANCE OF 612.61 FEET, THENCE  
SOUTH 68 23' 00" EAST, 583.57 FEET, THENCE SOUTH 21 37' 00" WEST, 337.36 FEET,  
THENCE SOUTH 03 14' 16" WEST, 190.30 FEET, THENCE ALONG A LINE PARALLEL  
TO THE WEST LINE OF TELEGRAPH ROAD, SOUTH 21 37' 00" WEST, 175.68 FEET TO  
THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED. CONTAINING  
15.13 ACRES OF LAND MORE OR LESS. BEING SUBJECT TO AND EASEMENT FOR  
INGRESS, EGRESS AND PUBLIC UTILITIES, AND ALSO ANY OTHER EASEMENTS,  
RESTRICTIONS OR CONDITIONS OF RECORD.  
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EXHIBIT 2, PAGE 3 OF 3

"ADJACENT LAND"

**A4 LEGAL** (Outlot #4 -- part of "Adjacent Land")

LEGAL DESCRIPTION: A4 GUISENBERRY TRUST  
A PARCEL OF LAND BEING A PART OF THE PRIVATE CLAIMS TO 76 & 79, AND  
FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN  
TOWNSHIP, MONROE COUNTY, MICHIGAN. BEING MORE PARTICULARLY  
DESCRIBED AS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF STEWART ROAD &  
THE WESTERLY RIGHT OF WAY LINE OF TELEGRAPH ROAD, THENCE  
PROCEEDING ALONG SAID WESTERLY LINE OF TELEGRAPH ROAD, NORTH  
21 37' 00" EAST 4291.67 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN  
DESCRIBED; THENCE NORTH 68 23' 00" WEST, 299.93 FEET, THENCE (PARALLEL  
WITH THE WESTERLY LINE OF TELEGRAPH ROAD) NORTH 21 37' 00" EAST, 304.99  
FEET, THENCE SOUTH 68 23' 00" EAST 299.93 FEET, TO A POINT ON THE WESTERLY  
LINE OF TELEGRAPH ROAD; THENCE ALONG SAID WESTERLY LINE SOUTH  
21 37' 00" WEST, 304.99 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN  
DESCRIBED. CONTAINING 2.10 ACRES OF LAND MORE OR LESS. ALSO BEING  
SUBJECT TO EASEMENTS, RESTRICTIONS OR CONDITIONS OF RECORD.  
F:\LEGALS\99032103.LEG (8-6-99)

**A5 LEGAL** (Remainder of "Adjacent Land")

LEGAL DESCRIPTION: A5 GUISENBERRY TRUST  
A PARCEL OF LAND BEING A PART OF THE PRIVATE CLAIMS TO 76 & 79, AND  
FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN  
TOWNSHIP, MONROE COUNTY, MICHIGAN. BEING MORE PARTICULARLY  
DESCRIBED AS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF STEWART ROAD &  
THE WESTERLY RIGHT OF WAY LINE OF TELEGRAPH ROAD, THENCE  
PROCEEDING ALONG SAID WESTERLY LINE OF TELEGRAPH ROAD, NORTH  
21 37' 00" EAST, 4596.66 TO THE POINT OF BEGINNING OF THE PARCEL HEREIN  
DESCRIBED; THENCE NORTH 68 23' 00" WEST, 299.93 FEET, THENCE SOUTH  
21 37' 00" WEST, 304.99 FEET, THENCE NORTH 68 23' 00" WEST, 583.63 FEET, THENCE  
ALONG THE ARC OF A CURVE TO THE LEFT RADIUS 470.00 FEET, CENTRAL ANGLE  
37 41' 13", (THE CHORD OF SAID CURVE BEARS NORTH 87 13' 36" WEST), AND  
HAVING AN ARC DISTANCE OF 309.15 FEET, TO A POINT ON THE WESTERLY LINE  
OF PRIVATE CLAIM # 76, THENCE ALONG SAID WESTERLY LINE NORTH 19 59' 05"  
EAST, 1127.71 FEET, THENCE SOUTH 68 33' 57" EAST 474.05 FEET, THENCE IN PART  
ALONG THE LITTLE SANDY CREEK SOUTH 24 33' 35" EAST, 924.74 FEET, AND  
SOUTH 32 53' 00" EAST, 75.89 FEET TO A POINT ON THE WESTERLY LINE OF  
TELEGRAPH ROAD, THENCE ALONG SAID WESTERLY LINE SOUTH 21 37' 00" WEST,  
41.32 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.  
CONTAINING 20.38 ACRES OF LAND MORE OR LESS BEING SUBJECT TO THE  
CORRECTIVE RIGHTS OF OTHER RIPARIAN OWNERS AND TO THE PUBLIC TRUST  
IN THE LITTLE SANDY CREEK, AND ALSO BEING SUBJECT TO ANY OTHER  
EASEMENTS RESTRICTIONS OR CONDITIONS OF RECORD.  
F:\LEGALS\99032103.LEG (8-5-99)



**EXHIBIT 3**

The Site Development Plans for Lowe's Companies, Inc. prepared by CESO Engineers & Surveyors, dated August 5, 1999, as updated and revised on 10/5/99, or as may be further revised in the future subject to applicable governmental authority, CESO's job no. 2657 consisting of sheets 1-25 (including an additional sheet 3A). Said Site Development Plans being incorporated herein by reference, but not attached hereto due to their bulk.



06/10/2004 12:32:25 PM  
STATE OF MICHIGAN - MONROE COUNTY  
RECEIVED FOR RECORD  
GERI ALLEN - REGISTER OF DEEDS

RECEIPT# 54093, STATION 1  
\$35.00 MISCELLANEOUS



LIBER 2746

PAGE 120

## **SEVENTH AMENDMENT TO EASEMENT WITH COVENANTS AND RESTRICTIONS AFFECTING LAND**

This Amendment to Easement with Covenants and Restrictions Affecting Land ("Agreement" or "Seventh Amended ECR") is made this 19<sup>th</sup> day of September, 2000 (the "Effective Date"), by and between Wal-Mart Real Estate Business Trust, whose address is 702 S.W. Eighth Street, Bentonville, Arkansas 72716 and with offices at Attn: Realty Management, 2001 S.E. 10<sup>th</sup> Street, Bentonville, Arkansas 72712 ("Wal-Mart"), and Ruby Tuesday, Inc., a Georgia corporation, whose registered address is 30600 Telegraph Road, Bingham Farms, Michigan 48025 ("Ruby"), and Mall Road Management Company, LLC, a Michigan limited liability company, whose address is 22725 Mack Avenue, Suite 206A, St. Clair Shores, Michigan 48080 ("MRM") (sometimes Developer, Ruby and MRM are referred to herein as "Developer and Successors") and Lowe's Home Centers, Inc., a North Carolina corporation, whose address is P.O. Box 1111, North Wilkesboro, North Carolina 28656 (Highway 268 East, North Wilkesboro, North Carolina 28659) ("Lowe's").

### **RECITALS**

A. In conjunction with Wal-Mart's purchase of a certain parcel of property from Developer on August 21, 1991, Wal-Mart and Developer simultaneously entered into a certain Easement with Covenants and Restrictions Affecting Land dated August 21, 1991, and recorded at Liber 1179, Pages 336-372 of the Monroe County Records ("Original ECR"). Subsequent to the date of the execution of the Original ECR, the parties hereto executed six (6) amendments to the Original ECR, generally dealing with the construction of a Lowe's on Tracts #3 and #4, the Ruby Tuesday Restaurant on Outlot B, as well as an "Affidavit Acknowledging Easement Rights" clarifying the relationship between the Wal-Mart property and the Real Vest property contiguous to the Wal-Mart property.





**B.** The six (6) amendments are as follows: First Amendment to Easement with Covenants and Restrictions Affecting Land, dated August 22, 1994, recorded on July 3, 1995, at Liber 1447, Pages 0974-0978 of the Monroe County Records; Second Amendment to Easement with Covenants and Restrictions Affecting Land, dated November 16, 1994, recorded on July 3, 1995, at Liber 1447, Pages 0979-0982 of the Monroe County Records; Third Amendment to Easement with Covenants and Restrictions Affecting Land, dated May 30, 1995, recorded on July 3, 1995, at Liber 1447, Pages 0983-0987 of the Monroe County Records; Fourth Amendment to Easement with Covenants and Restrictions Affecting Land, dated June 22, 1995, recorded on July 3, 1995, at Liber 1447, Pages 0988-0994 of the Monroe County Records; and Fifth Amendment to Easement with Covenants and Restrictions Affecting Land, dated on or about September 11, 1995, recorded on September 14, 1995, at Liber 1461, Pages 0916-0920 of the Monroe County Records; the Affidavit Acknowledging Easement Rights was executed on or about April 30, 1998, and recorded on May 7, 1998, at Liber 1682, Page 0370-\_\_\_\_\_ of the Monroe County Records ("Affidavit Acknowledging Easement Rights"); and the Sixth Amendment to Easement with Covenants and Restrictions Affecting Land, dated on or about December 29, 1999, recorded on January 10, 2000, at Liber 1872, Page 0915-\_\_\_\_\_. All of the amendments and the affidavit referenced herein are collectively referred to herein as the "Subsequent Amendments".

**C.** Wal-Mart's land affected by the Original ECR and the Subsequent Amendments was depicted in the Original ECR in Exhibit A and more particularly described in Exhibits B-1 and B-2 attached to and made a part of the Original ECR, said property being further designated in the Original ECR as "Tract 1" and "Outlot A", respectively (collectively for purposes of this Seventh Amended ECR "Wal-Mart Property").

**D.** The land of the Developer and Successors affected by the Original ECR was depicted therein in Exhibit A and more particularly described in Exhibits C-1 through C-6 attached to and made a part of the Original ECR, said property being further designated in the Original ECR as "Tract 2" (now owned by MRM), "Tract 3", "Tract 4", "Outlot B" (now owned by Ruby), "Outlot C" and "Outlot D", respectively.

**E.** Lowe's has purchased: (i) portions of the Developer's property identified in the Original ECR as "Tract 3", "Tract 4", "Outlot C", "Outlot D", and property identified as "American Road" which runs between Tract 3 and Tract 4; (ii) a small portion of property owned by Developer lying generally to the west of the property described in (i) which is intended for use as the extension of Mall Road; and (iii) other land adjacent to and lying to the north of (i) ("Adjacent Land" which includes Outlot #3). The land described in (i), (ii), and (iii) being referred to hereinafter collectively as "Lowe's Property" and more particularly depicted in Exhibit 1 and described in Exhibit 2 of the Sixth Amendment to ECR.





F. Wal-Mart, the Developer and Successors and Lowe's now desire to amend the Original ECR and all Subsequent Amendments in accordance with the terms, covenants and conditions set forth in this Seventh Amended ECR.

**NOW, THEREFORE**, in consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained in this Seventh Amended ECR, and in further consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained in the Original ECR and all Subsequent Amendments, the sufficiency and adequacy of which is hereby acknowledged, Wal-Mart, the Developer and Successors and Lowe's do hereby agree that the Original ECR is amended as follows:

1. **Amendment to Paragraph 3 – "Competing Business"**. Subparagraphs (c) and (d) of Paragraph 3 of the Original ECR are hereby deleted in their entirety, and the following is inserted in their place and stead:

3. Competing Business.

(c) Lowe's further covenants that no space within the Lowe's Property shall be used for the following purposes without prior written consent of Wal-Mart, to wit: a discount department store or other discount store whose square footage exceeds 10,000 square feet, a wholesale/~~club~~, a discount rack shoe store, automotive maintenance facility engaged in quick lube/oil changes, pharmacy/drug store, convenience/gas station, grocery store or supermarket, vision center or any business in whose principal revenues are from sale of alcoholic beverages, amusement or entertainment

*or warehouse*

(d) Lowe's and Wal-Mart further covenant that as long as Wal-Mart or an affiliate of Wal-Mart is the user of Tract 1 or Outlot A (whether as owner or as lessee), and so long as Lowe's or any affiliate of Lowe's is the user of the Lowe's Property or Outlot #1, Outlot #2 or Outlot #3 (whether as owner or as lessee), no space within the Wal-Mart Property shall be used for the following purposes, , without prior written consent of Lowe's and Wal-Mart, to-wit: a retail and/or warehouse home center facility, home improvement center, paint and/or décor center, appliance store, lumberyard, building materials supply center, garden center and operation, any of the foregoing having a building space of greater than 5,000 square feet; provided however, the foregoing shall not be interpreted to restrict the operation of a Wal-Mart store or Sam's Club on the Wal-Mart Property





as such may be operated from time to time in the sole discretion of Wal-Mart or a related entity.

2. **Amendment to Paragraph 4 – “Buildings”**. The third sentence of Paragraph 4(d) of the Original ECR is hereby amended to be:

(new third sentence) Notwithstanding the foregoing, no sign(s) or building(s) on the Lowe's Property will be located so that said sign(s) or building(s) block(s) the visibility of any existing buildings or signs located on the Wal-Mart Property, as viewed from Telegraph Road.

3. **Amendment to Paragraph 8 – “Indemnification and Insurance”**.

A. Paragraph 8(b)(3) of the Original ECR is hereby amended to add the following phrase to the beginning of the last sentence of said paragraph:

“Upon written request,...”

4. **Amendment to Paragraph 14 – “Breach”**. Paragraph 14 of the Original ECR is hereby deleted in its entirety and the following is inserted in its place and stead:

14. **Breach**. In the event of a breach of the Original ECR, only all of the record owners of any land affected by the Original ECR, the Subsequent Amendments or this Seventh Amended ECR (including without limitation, Wal-Mart and Lowe's so long as either of these parties, or their respective affiliates have an interest as owner or lessee in or to any of the property owned by Wal-Mart and/or Lowe's, or the Developer and Successors, so long as it or any affiliate has an interest as owner or lessee of Tract 2) shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. Each party in any action shall be solely responsible for paying its own attorney fees.

5. **Conflict**. In the event of an apparent conflict between this Seventh Amended ECR and the Original ECR, the terms and conditions of this Seventh Amended ECR shall control.

6. **Counterparts**. This Agreement may be signed in counterparts, all counterparts taken together being deemed one original.

***{Signatures On Following Pages}***



LIBER 2746

PAGE 124

IN WITNESS WHEREOF, the parties have executed this Sixth Amended ECR as of the Effective Date.

WITNESSES:

WAL-MART REAL ESTATE BUSINESS  
TRUST, a Delaware business trustJ. Scott GunnBy: APaskyIts: Vice PresidentJamie HutchinsonSTATE OF ARKANSAS )  
 )SS  
COUNTY OF BENTON )

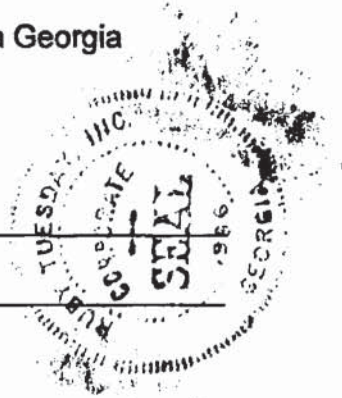
The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of August, 2000, by Anthony L. Fuller, as Vice President of WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware business trust.

Phyllis E. Overstreet  
NOTARY PUBLIC

{Signatures Continued On Following Pages}



WITNESSES:

RUBY TUESDAY, INC., a Georgia  
corporationSue B. ColeyBy: Walter G. Cole, Jr.Maria Lynn KeagyIts: Vice PresidentSTATE OF TENNESSEE )  
 )SS  
COUNTY OF BLOUNT )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of  
August, 2000, by Walter G. Cole, Jr.; as Vice President of Ruby Tuesday,  
Inc., a Georgia corporation.

My Commission Expires 6/29/2002

Joseph M. Christian  
NOTARY PUBLIC

{Signatures Continued On Following Pages}

vge



WITNESSES:

MALL ROAD MANAGEMENT COMPANY,  
LLC, a Michigan limited liability company

Peter C. Cubba

Karen R. Spicuzza  
KAREN R. SPICUZZA

By: James M. Vogt  
Its: Managing Member

STATE OF MICHIGAN )  
 )SS  
COUNTY OF MALCOMB )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of SEPTEMBER, 2000, by JAMES M. VOGT, as MANAGING MEMBER of Mall Road Management Company, LLC, a Michigan limited liability company.

PETER C CUBBA  
Notary Public, Oakland County, MI  
My Commission Expires May 24, 2004

Peter C. Cubba  
NOTARY PUBLIC

**{Signatures Continued On Following Pages}**





LIBER 2746

PAGE 127

## WITNESSES:

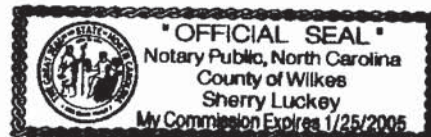
LOWE'S HOME CENTERS, INC., a North  
Carolina corporationBy: David E SheltonIts: Senior Vice PresidentSTATE OF NORTH CAROLINA )  
 )SS  
COUNTY OF WILKES )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of July,  
2000, by David E. Shelton as Senior Vice President of LOWE'S HOME CENTERS,  
INC., a North Carolina corporation.

  
NOTARY PUBLIC

Drafted by and when recorded return to:  
~~Richard D. Rattner, Esquire~~  
~~Williams, Williams, Ruby & Plunkett, P.C.~~  
~~380 North Old Woodward Ave., Ste. 300~~  
~~Birmingham, Michigan 48009~~

Jennifer Dehnhardt  
Wal-Mart Stores, Inc.  
2001 S.E. 10th Street  
Bentonville, AR 72712





RECEIPT# 57665, STATION 1  
\$47.00 MISCELLANEOUS



LIBER 2782 PAGE 731

**EIGHTH AMENDMENT TO EASEMENT WITH  
COVENANTS AND RESTRICTIONS AFFECTING LAND**

THIS EIGHTH AMENDMENT TO EASEMENT WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("Agreement" or "Eighth Amended ECR") is made this 2 day of August, 2004 (the "Effective Date"), by and between Wal-Mart Real Estate Business Trust, whose address is 702 S.W. Eighth Street, Bentonville, Arkansas 72716 and with offices at Attn: Realty Management, 2001 S.E. 10<sup>th</sup> Street, Bentonville, Arkansas 72716-0550 ("Wal-Mart"), RT Detroit Franchise, LLC, a Michigan limited liability company, whose address is 592 Inverness, Highland, Michigan 48357 ("Ruby"), and Mall Road Management Company, LLC, a Michigan limited liability company, whose address is 22725 Mack Avenue, Suite 206A, St. Clair Shores, Michigan 48080 ("MRM") and Lowe's Home Centers, Inc., a North Carolina corporation, whose address is P.O. Box 1111, North Wilkesboro, North Carolina 28656 (Highway 268 East, North Wilkesboro, North Carolina 28659) ("Lowe's"), and Bob Evans Farms Inc., an Ohio corporation, whose address is 3776 South High Street, Columbus, Ohio 43207 ("Bob Evans")

**RECITALS**

A. In conjunction with Wal-Mart's purchase of a certain parcel of property on August 21, 1991, Wal-Mart and Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust Under Agreement dated June 14, 1990 ("Charles Quisenberry") and Nancy J. Quisenberry, Trustee Under Agreement dated June 14, 1990 ("Nancy Quisenberry"), and Real Vest Group, a Michigan partnership ("Real Vest", and together with Charles Quisenberry and Nancy Quisenberry, "Developer") simultaneously entered into a certain Easement with Covenants and Restrictions Affecting Land dated August 21, 1991, and recorded at Liber 1179, Pages 336-372 of Monroe County Records ("Original ECR"). Subsequent to the date of the execution of the Original ECR, the parties hereto executed seven (7) amendments to the Original ECR, generally dealing with the construction of a Lowe's on Tracts #3 and #4, the Ruby Tuesday Restaurant on Outlot B, as well as an "Affidavit Acknowledging Easement Rights" clarifying the relationship between the Wal-Mart property and the Real Vest property contiguous to the Wal-Mart property.

B. The seven (7) amendments are as follows: First Amendment to Easement with Covenants and Restrictions Affecting Land, dated August 22, 1994, recorded on July 3, 1995, at Liber 1447, Pages 0974-0978 of the Monroe County Records ("First Amended ECR"); Second Amendment to Easement with Covenants and Restrictions Affecting Land, dated November 16, 1994, recorded on July 3, 1995 at Liber 1447, Pages 0979-0982 of the Monroe County Records ("Second Amended ECR"); Third Amendment to Easement with Covenants and Restrictions Affecting Land, dated May 30, 1995, recorded on July 3, 1995 at Liber 1447, Pages 0983-0987 of the Monroe County Records ("Third Amended ECR"); Fourth Amendment to Easement with Covenants and Restrictions Affecting Land, dated June 22, 1995, recorded on July 3, 1995 at Liber 1447, Pages 0988-0994 of the Monroe County Records ("Fourth Amended ECR"); Fifth Amendment to Easement with Covenants and Restrictions Affecting Land, dated on or about September 11, 1995, recorded on September 14, 1995, at Liber 1461, Pages 0916-0920 of the Monroe County Records ("Fifth Amended ECR"); the Affidavit Acknowledging Easement Rights was executed on or about April 30, 1998, and recorded on May 7, 1998, at Liber 1682, Page





0370 of the Monroe County Records ("Affidavit Acknowledging Easement Rights"); the Sixth Amendment to Easement with Covenants and Restrictions Affecting Land, dated on or about December 29, 1999, recorded on January 10, 2000, at Liber 1872, Page 0915 of the Monroe County Records ("Sixth Amended ECR"); and the Seventh Amendment to Easement with Covenants and Restrictions Affecting Land, dated September 19, 2000, recorded on June 10, 2004, at Liber 2746, Page 120 of the Monroe County Records ("Seventh Amended ECR"). All of the amendments and the affidavit referenced herein are collectively referred to herein as the "Subsequent Amendments."

C. Lowe's is selling the property identified in the Subsequent Amendments as Outlot 1 (known as Outlot C in the Original ECR) to BSLM Frenchtown, L.L.C. ("BSLM").

D. In connection with such sale, the parties hereto wish to amend the Original ECR and all Subsequent Amendments as set forth herein.

NOW, THEREFORE, in consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained in this Eighth Amended ECR, and in further consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained in the Original ECR and all Subsequent Amendments, the sufficiency and adequacy of which is hereby acknowledged, Wal-Mart, Ruby, MRM, Lowe's and Bob Evans do hereby agree that the Original ECR, as amended by the Subsequent Amendments, is amended as follows:

1. Amendment of Exhibits to Original ECR. Exhibit E-2 describing Ingress and Egress Easement Area (B) is hereby deleted in its entirety and Exhibit 1 attached hereto is inserted in its place and stead. The parties hereto agree that Ingress and Egress Easement Area (B) as set forth herein shall not be modified without the prior written consent of BSLM.

2. Approval and Confirmation. Wal-Mart, along with Ruby, MRM, Lowe's and Bob Evans, where applicable, in accordance with the Original ECR and all subsequent Amendments, hereby confirms and, as required, approves the following:

a. The "building area" with respect to Outlot 1 is as shown on Exhibit 2 attached hereto.

b. The parking ratio with respect to Outlot 1, as part of the Lowe's Property as defined in the Sixth Amended ECR, is the greater of (i) 5 car spaces for each 1,000 square feet of enclosed building space, and (ii) the minimum parking ratio as required by any governmental authority having jurisdiction over Outlot 1 in accordance with the ordinances, or any variance in to the ordinance, which the owner of Outlot 1 may obtain in its sole discretion.

c. Wal-Mart approves the site plan and elevations for Outlot 1 submitted by BSLM and attached hereto as Exhibit 3. Wal-Mart further agrees that BSLM may make changes to the building in the future without Wal-Mart's consent provided such changes are consistent with the quality of the overall design of the initial building approved in the attached site plan.



d. Wal-Mart approves the freestanding sign for Outlot 1 as depicted on Exhibit 4 attached hereto.

3. Amendment of Paragraph 3 – “Competing Business”. Paragraph 3(e) as set forth in the Sixth Amended ECR is hereby amended to add the following sentence to the end of paragraph 3(e):

Notwithstanding the foregoing, Wal-Mart and Lowe’s agree that in the event either one of them elects to terminate the Original ECR and all Subsequent Amendments in accordance with this provision, all access easements, including without limitation the easements set forth in paragraph 5(a) and further referenced in paragraphs 5(c) and 6(b)(4), shall not terminate and shall remain in existence for perpetuity.

4. Amendment of Paragraph 17 - “Document Execution, Modification and Cancellation”. Paragraph 17 of the Original ECR, as amended, is hereby amended by adding the following at the end of the last sentence:

“, and BSLM (as long as it or its affiliates has an interest as either owner or lessee of Outlot 1).”

5. Conflict. In the event of an apparent conflict between this Eighth Amended ECR and the Original ECR or all Subsequent Amendments, the terms and conditions of this Eighth Amended ECR shall control.

6. Counterparts. This Agreement may be signed in counterparts, all counterparts taken together being deemed one original.

[Signatures on Following Pages]





SIGNATURE PAGE TO EIGHTH AMENDED ECR  
WAL-MART SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this Eighth Amended ECR as of the Effective Date.

WITNESSES:

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

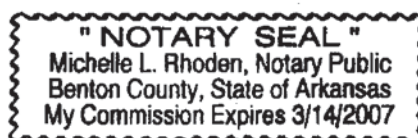
By: Frances Coberly  
Frances Coberly  
Its: Senior Realty Manager

STATE OF ARKANSAS)

)ss

COUNTY OF BENTON )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of July, 2004, by Frances Coberly, as Senior Realty Manager of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of such trust.

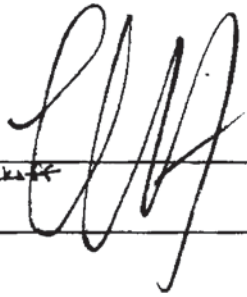


Michelle L. Rhoden  
NOTARY PUBLIC



SIGNATURE PAGE OF EIGHTH AMENDED ECR  
RUBY TUESDAY SIGNATURE PAGE

WITNESSES:

  
\_\_\_\_\_  
Howard P. LuckettRT DETROIT FRANCHISE, LLC, a  
Michigan limited liability companyBy: 

JOHN RICHARD MILLINGTON

Its: STATE OF MICHIGAN )

)ss

COUNTY OF OAKLAND )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of July,  
2004, by John Richard Millington as MANAGER of RT Detroit Franchise, LLC, a  
Michigan limited liability company, on behalf of such company.

Tracy Ann Curlee  
Notary Public, Macomb County, Michigan  
Acting in Oakland County, Michigan  
My Commission Expires: April 12, 2006

  
\_\_\_\_\_  
NOTARY PUBLIC



LIBER 2782 PAGE 736

SIGNATURE PAGE TO EIGHTH AMENDED ECR  
MALL ROAD MANAGEMENT SIGNATURE PAGE

WITNESSES:

*Annunzio P. F. F. F.*  
*Conne J. Warner*

MALL ROAD MANAGEMENT  
COMPANY, LLC, a Michigan  
limited liability company

By: *James Vogt*  
JAMES VOGT  
Its: *MANAGER*

STATE OF *MICHIGAN* )  
COUNTY OF *EMMET* )ss

The foregoing instrument was acknowledged before me this *30* day of *JULY*, 2004, by *James Vogt*, as *manager* of Mall Road Management Company, LLC, a Michigan limited liability company, on behalf of such limited liability company.

*William Dickson*  
NOTARY PUBLIC

WILLIAM DICKSON  
NOTARY PUBLIC EMMET CO., MI  
MY COMMISSION EXPIRES Nov 4, 2005



LIBER 2782

PAGE 737

SIGNATURE PAGE OF EIGHTH AMENDED ECR  
LOWE'S SIGNATURE PAGE

WITNESSES:

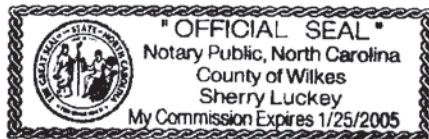
[Signature]  
Beth M. Smith

LOWE'S HOME CENTERS, INC.,  
a North Carolina corporationBy: David E. Shelton  
Its: David E. Shelton  
Senior Vice President

MD  
out

STATE OF North Carolina )  
COUNTY OF Wilkes )ss

The foregoing instrument was acknowledged before me this 23 day of July, 2004, by David E. Shelton, as SR Vice President of Lowe's Home Centers, Inc., a North Carolina corporation, on behalf of said corporation.



Sherry Luckey  
NOTARY PUBLIC





SIGNATURE PAGE OF EIGHTH AMENDED ECR  
BOB EVANS' SIGNATURE PAGE

WITNESSES:

Teresa A. Ehmann  
Teresa A. Ehmann  
Sharon L. Oliver  
Sharon L. Oliver

BOB EVANS FARMS, INC.,  
an Ohio corporation

By: John F. Curry  
John F. Curry  
Senior Vice President

STATE OF Ohio )  
COUNTY OF Franklin )ss

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of July, 2004, by John F. Curry as Senior Vice President of Bob Evans Farms, Inc., an Ohio corporation, on behalf of said corporation.



TERESA A. EHMANN  
Notary Public, State of Ohio  
My Commission Expires November 6, 2007

Teresa A. Ehmann  
NOTARY PUBLIC

**EXHIBIT 1****Ingress and Egress Easement Area**

Part of the Private Claim 76 and part of the Southeast  $\frac{1}{4}$  and the Northeast  $\frac{1}{4}$  of fractional Section 19, Town 6 South, Range 9 East, Township of Frenchtown, Monroe County, Michigan being more particularly described as:

Commencing at the intersection of the centerline of Stewart Road (60 feet wide) and the Westerly Right of Way line of Telegraph Road (100 feet wide), thence along Westerly Right of Way line of said Telegraph Road N  $21^{\circ}37'00''$  E, 3517.84 feet; thence N  $68^{\circ}23'00''$  W, 239.93 feet to the point of beginning of the access easement herein described; thence continuing N  $68^{\circ}23'00''$  W, 50.00 feet; thence parallel to the Westerly line of said Telegraph Road N  $21^{\circ}37'00''$  E, 167.79 feet; thence N  $03^{\circ}14'16''$  E, 190.30 feet; thence parallel to the Westerly line of said Telegraph Road N  $21^{\circ}37'00''$  E, 345.45 feet to a point on the Southerly Right of Way line of Mall Road extension (80 feet wide), thence along said Right of Way line of Mall Road extension S  $68^{\circ}23'00''$  E, 50.00 feet; thence parallel to the Westerly line of said Telegraph Road S  $21^{\circ}37'00''$  W, 337.36; thence S  $03^{\circ}14'16''$  W, 190.30 feet; thence parallel to the Westerly line of said Telegraph Road S  $21^{\circ}37'00''$  W, 175.88 feet to the point of beginning.

and the easterly 280' of the northerly 80' of the following described property:

Part of the Private Claims, 76, 79, 317 and a part of fractional Section 19, T6S, R9E, Frenchtown Township, Monroe County, Michigan, described as: Commencing at a point at the intersection of the westerly right-of-way of Telegraph Road with the centerline of Stewart Road; thence N  $21^{\circ}37'00''$  E 3085.94 feet along the westerly right-of-way of Telegraph Road for a POINT OF BEGINNING; thence N  $68^{\circ}23'00''$  W 230.00 feet; thence S  $21^{\circ}37'00''$  W 190.00 feet; thence N  $68^{\circ}23'00''$  W 653.50 feet; thence 612.01 feet along the arc of a 390.00 foot radius curve to the right, a central angle of  $90^{\circ}00'00''$  and a chord bearing of N  $23^{\circ}23'00''$  W 551.54 feet; thence N  $21^{\circ}37'00''$  E 230.00 feet; thence S  $68^{\circ}23'00''$  E 1273.50 feet; thence S  $21^{\circ}37'00''$  W 430.00 feet to the POINT OF BEGINNING.

✓ Drafted by and ✓ return to:  
Howard Luckoff  
Honnigan Miller  
32270 Telegraph Road  
Bingham Farms MI 48025



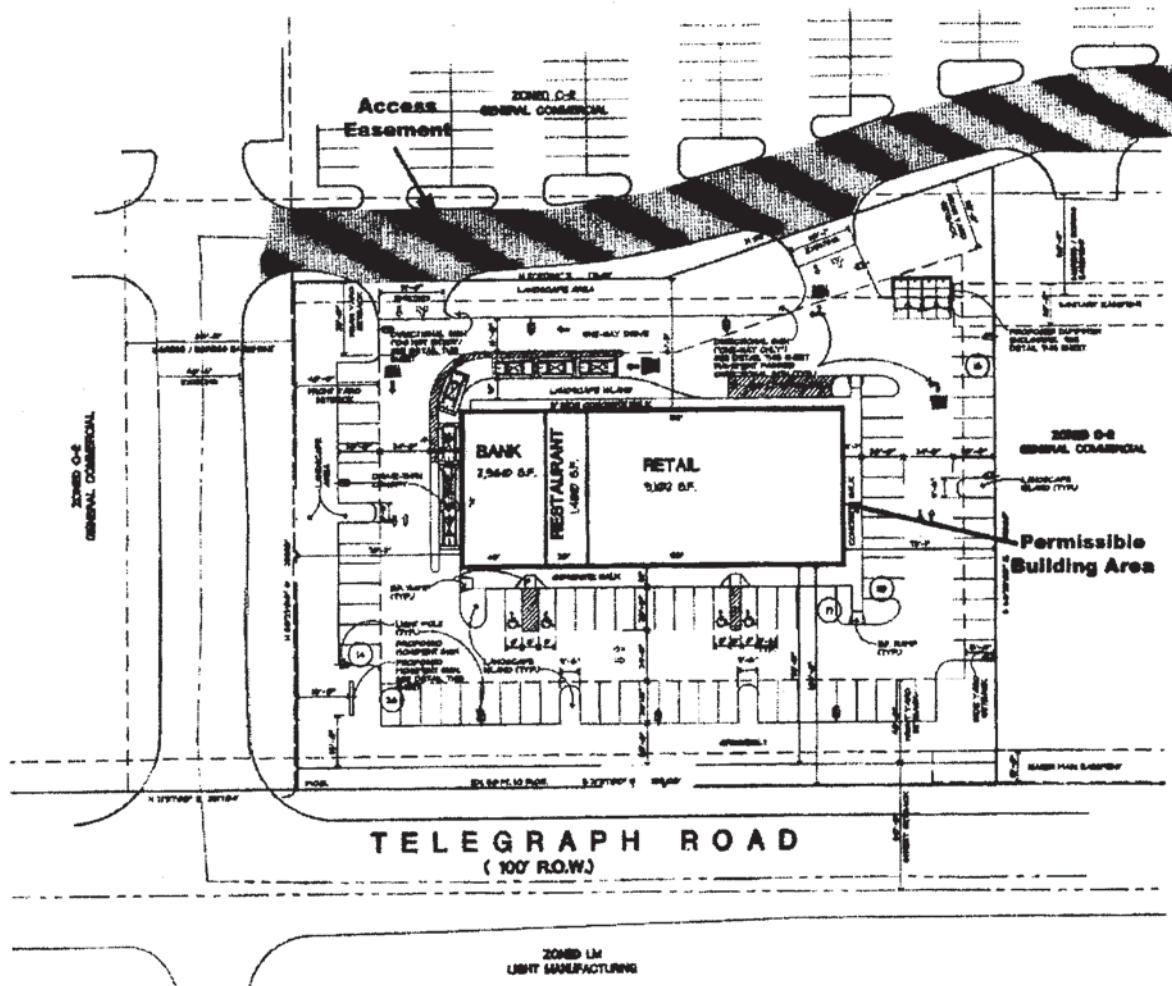
R2782 740 18

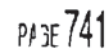
LIBER 2782

PAGE 740

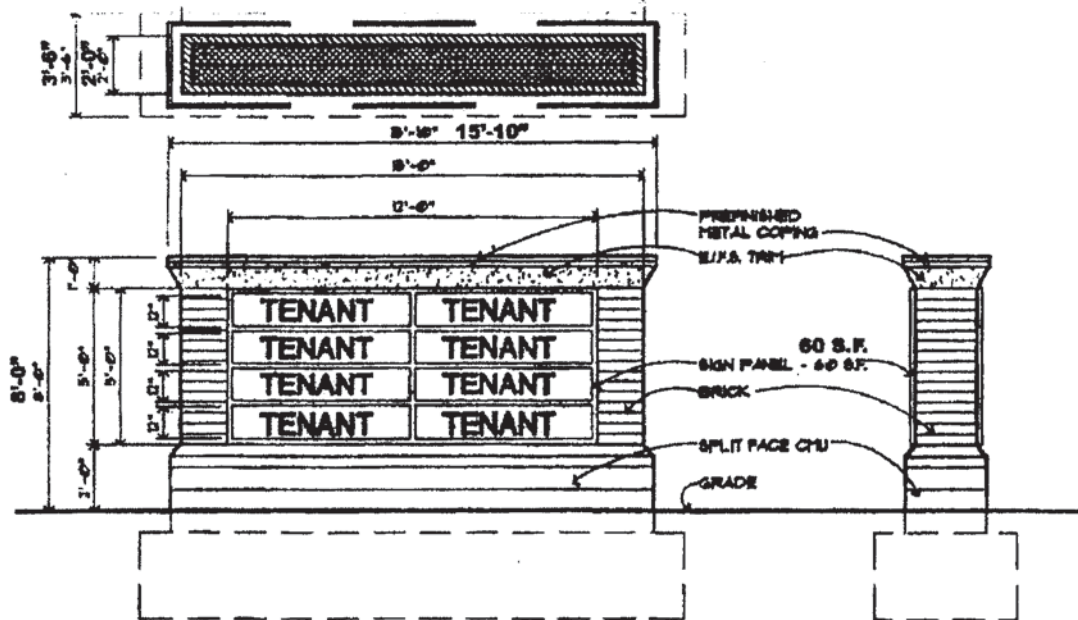
## EXHIBIT 2

### Building Area Depiction







**EXHIBIT 4****BSLM Sign Depiction****NOTES**

1. PROPOSED SIGN AREA IS 60.0 S.F. PER SIGN FACE.

**CONCEPTUAL  
SIGN ELEVATION****(TYP. FOR 2 FACES)****SCALE: 1/4" = 1'-0"**

© COPYRIGHT 2006 ROGVOY ARCHITECTS, P.C.



05/04/2005 11:58:09 AM  
STATE OF MICHIGAN - MONROE COUNTY  
RECEIVED FOR RECORD  
GERI ALLEN - REGISTER OF DEEDS

RECEIPT# 71351, STATION 1  
\$71.00 MISCELLANEOUS



LIBER 2917 PAGE 558

R2917 558 1

**NINTH AMENDMENT TO EASEMENT WITH  
COVENANTS AND RESTRICTIONS  
AFFECTING LAND**

**DATED APRIL 26, 2005**

Instrument prepared by:  
Paul Seifert, Esq.  
Continental Properties Company, Inc.,  
W143 N8675 Executive Parkway  
Menomonee Falls, WI 53051

After recording return to:  
Metropolitan Title Company  
10355 Citation Drive  
Suite 100  
Brighton, MI 48116

NU-492206 \$71.00

71-



**NINTH AMENDMENT TO EASEMENT WITH  
COVENANTS AND RESTRICTIONS AFFECTING LAND**

THIS NINTH AMENDMENT TO EASEMENT WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("Agreement" or "Ninth Amended ECR") is made this 26<sup>th</sup> day of April, 2005 (the "Effective Date"), by and between Wal-Mart Real Estate Business Trust, whose address is 702 S.W. Eighth Street, Bentonville, Arkansas 72716 and with office at Attn: Realty Management, 2001 S.E. 10<sup>th</sup> Street, Bentonville, Arkansas 72712-0550 ("Wal-Mart"), RT Detroit Franchise, LLC, a Michigan limited liability company, whose address is 592 Inverness, Highland, Michigan 48357 ("Ruby"), and Mall Road Management Company, LLC, a Michigan limited liability company, whose address is 22725 Mack Avenue, Suite 206A, St. Clair Shores, Michigan 48080 ("MRM"), and Lowe's Home Centers, Inc., a North Carolina corporation, whose address is P.O. Box 1111, North Wilkesboro, North Carolina 28656 (Highway 268 East, North Wilkesboro, North Carolina 28659) ("Lowe's"), Bob Evans Farms Inc., an Ohio corporation, whose address is 3716 S. High Street \* ("Bob Evans"), and BSLM Frenchtown, L.L.C., a Michigan limited liability company, whose address is 31700 Middlebelt, Suite 165, Farmington Hills, Michigan 48334. ("BSLM").

\* Columbus, OH 43207

**RECITALS**

A. In conjunction with Wal-Mart's purchase of a certain parcel of property on August 21, 1991, Wal-Mart and Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust Under Agreement dated June 14, 1990 ("Charles Quisenberry") and Nancy J. Quisenberry, Trustee Under Agreement dated June 14, 1990 ("Nancy Quisenberry"), and Real Vest Group, a Michigan partnership ("Real Vest", and together with Charles Quisenberry and Nancy Quisenberry, "Developer") simultaneously entered into a certain Easement with Covenants and Restrictions Affecting Land dated August 21, 1991, and recorded at Liber 1179, Pages 336-372 of Monroe County Records, State of Michigan ("Original ECR"). Subsequent to the date of the execution of the Original ECR, eight (8) amendments to the original ECR have been executed and recorded, generally dealing with the construction of a Lowe's on Tracts #3 and #4, the Ruby Tuesday Restaurant on Outlot B, and development of Outlot 1 by BSLM, as well as an "Affidavit Acknowledging Easement Rights" clarifying the relationship between the Wal-Mart property and the Real Vest property contiguous to the Wal-Mart property.

B. The eight (8) amendments are as follows: First Amendment to Easement with Covenants and Restrictions Affecting Land, dated August 22, 1994, recorded on July 3, 1995, at Liber 1447, Pages 0974-0978 of the Monroe County Records, State of Michigan ("First Amended ECR"); Second Amendment to Easement with Covenants and Restrictions Affecting Land, dated November 16, 1994, recorded on July 3, 1995 at Liber 1447, Pages 0979-0982 of the Monroe County Records ("Second Amended ECR"); Third Amendment to Easement with Covenants and Restrictions Affecting Land, dated May 30, 1995, recorded on July 3, 1995 at Liber 1447, Pages 0983-0987 of the Monroe County Records ("Third Amended ECR"); Fourth Amendment to Easement with Covenants and Restrictions Affecting Land, dated June 22, 1995, recorded on July 3, 1995 at Liber 1447,





Pages 0988-0994 of the Monroe County Records ("Fourth Amended ECR"); Fifth Amendment to Easement with Covenants and Restrictions Affecting Land, dated on or about September 11, 1995, recorded on September 14, 1995, at Liber 1461, Pages 0916-0920 of the Monroe County Records ("Fifth Amended ECR"); the Affidavit Acknowledging Easement Rights was executed on or about April 30, 1998, and recorded on May 7, 1998, at Liber 1682, Page 0370 of the Monroe County Records ("Affidavit Acknowledging Easement Rights"); the Sixth Amendment to Easement with Covenants and Restrictions Affecting Land, dated on or about December 29, 1999, recorded on January 10, 2000, at Liber 1872, Page 0915 of the Monroe County Records ("Sixth Amended ECR"); the Seventh Amendment to Easement with Covenants and Restrictions Affecting Land, dated September 19, 2000, recorded on June 10, 2004, at Liber 2746, Page 120 of the Monroe County Records ("Seventh Amended ECR"), and the Eighth Amendment to Easement with Covenants and Restrictions Affecting Land, dated August 2, 2004, recorded on August 10, 2004, at Liber 2782, Page 731 of the Monroe County Records ("Eighth Amended ECR"). All of the amendments and the affidavits referenced herein are collectively referred to herein as the "Subsequent Amendments."

C. Continental Properties ("Continental") has entered into a purchase contract with Lowe's to purchase the Adjacent Property (as defined in the Sixth Amendment). Continental's development of the Adjacent Property will be anchored by Kohl's Michigan, L.P. ("Kohl's"). Continental and Kohl's require that certain revisions be made to the Original ECR and Subsequent Amendments in order to proceed with their respective development. Continental will divide the Adjacent Property into the Kohl's Parcel, the Continental Parcel and Outlot 3 as depicted on the attached Exhibit 1 and as described on the attached Exhibits 2-A, 2-B and 2-C respectively.

D. The parties hereto wish to amend the Original ECR and all Subsequent Amendments as set forth herein.

NOW, THEREFORE, in consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained in this Ninth Amended ECR, and in further consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained in the Original ECR and all Subsequent Amendments, the sufficiency and adequacy of which is hereby acknowledged, Wal-Mart, Ruby, MRM, Lowe's, Bob Evans, and BSLM do hereby agree that the Original ECR, as amended by the Subsequent Amendments, is amended as follows:

1. Amendment of Paragraph 4 - "Buildings". The second sentence of Paragraph 4(b) as set forth in the Original ECR is hereby amended to read as follows:

Any building constructed on Tract 2 must be set back at least 500 feet from the center line of Telegraph Road; provided, however that one building or structure not to exceed one thousand five hundred (1,500) square feet in size and eighteen (18) feet in height may be constructed on Tract 2 and shall not be subject to such 500 foot setback requirement.





2. Amendment of Paragraph 6 – "Parking Ratio, Maintenance and Taxes". Paragraph 6(a) as set forth in the Original ECR and as amended by the Sixth Amended ECR is hereby amended to add the following sentence to the end of Paragraph 6(a):

Notwithstanding the foregoing, the parking ratio on Tract 2 and the Adjacent Property shall be the greater of 5 car spaces for each 1,000 square feet of enclosed building space on Tract 2 and the Adjacent Property respectively, or the minimum parking ratio as required by any governmental authority having jurisdiction over Tract 2 and the Adjacent Property in accordance with the ordinances, or any variance to the ordinance.

3. Amendment of Paragraph 8 – "Indemnification and Insurance". Paragraph 8(b) as set forth in the Original ECR and as amended by the Sixth Amended ECR is hereby amended to add the following sentence to the end of Paragraph 8(b)(3):

Notwithstanding the foregoing, such certificates evidencing that this requirement has been satisfied shall only be provided upon written request of Wal-Mart.

Paragraph 8(b) of the Original ECR is hereby amended to add subparagraph (7) reading as follows:

"(7) Notwithstanding anything herein to the contrary contained in this paragraph 8, so long as the net worth of a party or a party's parent entity exceeds \$100,000,000 such party shall have the right to insure in whole or in part pursuant to a plan of self-insurance.

4. Building Area. Notwithstanding anything in the Original ECR or Subsequent Amendments to the contrary, (a) the Building Area for the Adjacent Property is as shown on the attached Exhibit 1 and (b) Outlot 3 is as depicted on the attached Exhibit 1 and as described on the attached Exhibit 2-C.

5. Improvements. Notwithstanding anything in the Original ECR or Subsequent Amendments to the contrary, Wal-Mart and Lowe's agree and acknowledge that buildings and improvements may be constructed on the Adjacent Property without Wal-Mart's consent so long as such buildings and improvements comply with Sections 7, 9 and 10 of this Agreement.

6. Additional Permitted Uses. Notwithstanding anything in the Original ECR or Subsequent Amendments to the contrary, the following uses shall not be restricted on the Adjacent Property and are expressly permitted: (a) a national appliance or home electronics center chain occupying over 20,000 square feet of lease space, including, Best Buy, Circuit City or Ultimate Electronics as the stores are typically operated as of the date hereof (b) a convenience store (c) a Kohl's Department Store; or similar department store whether or not owned by Kohl's or operating under the "Kohl's" name or (d) a restaurant.



7. Height Limitations. Notwithstanding anything in the Original ECR or Subsequent Amendments to the contrary, as applied to the Adjacent Property, the third sentence of Section 4(a) of the Original ECR is deleted and replaced in its entirety as follows: "No building on the Kohl's Parcel or Continental Parcel shall exceed 30 feet, excluding architectural features. No building on Outlot 3 shall exceed 24 feet, provided that architectural features may be up to 28 feet.

8. Insurance. The language "and (d) not be subject to change, cancellation or termination without at least thirty (30) days prior written notice to Developer" shall be stricken from Section 4(c)(7) of the Original ECR.

9. Kohl's Prototype. A Kohl's prototype (substantially as the prototype exists as of the date hereof) may be constructed on the Kohl's Parcel and any required consents or approvals are hereby granted for construction of same.

10. Outlot 3 Sign. Notwithstanding anything in the Original ECR or the Subsequent Amendments to the contrary, Outlot 3 may contain the pylon sign and monument sign in the approximate locations depicted on the attached Exhibit 3 so long as (a) the monument sign does not exceed nine (9) feet in height and (b) the pylon sign does not exceed seventeen (17) feet in height.

11. Outlot 2/Kohl's Sign Easement. Outlot 2 hereby grants to the Lowe's Property an easement upon Outlot 2 to operate, maintain, repair and replace the existing pylon sign located on the attached Exhibit 4 (the "Lowe's Sign") subject to the following:

(a) The owner of the Lowe's Property may enter upon Outlot 2 from time to time as necessary to complete maintenance and repair work on the Lowe's Sign. Lowe's agrees that all such work shall be performed in a manner that causes as little disturbance to Outlot 2 as may be practicable under the circumstances and any portions of Outlot 2 which may be damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Lowe's, to essentially the same condition as it was in prior to the commencement of such work.

(b) Lowe's shall maintain the Lowe's Sign in a good and workmanlike manner, free from liens and in accordance with all legal requirements. Lowe's shall maintain the Lowe's Sign in accordance with the quality standards of first class shopping centers in the Monroe, Michigan area.

(c) In no event shall Lowe's allow the Lowe's Sign to be used to advertise any use which (1) is prohibited by the terms of the Original ECR and Subsequent Amendments; or (2) identifies a family-style restaurant which would be competitive with Bob Evans.

(d) Lowe's shall maintain an appropriate policy of liability insurance with respect to the Lowe's Sign and shall name Outlot 2 owner as an additional





insured thereon. In addition, Lowe's shall defend, indemnify and hold Outlot 2 owner harmless from and against all liens, losses, liabilities, costs or expenses of any nature (including reasonable attorneys' fees) incurred in connection with or arising out of the Lowe's Sign and/or Lowe's exercise of said easement.

(e) Additionally, Outlot 2 shall be subject to the following easement in favor of the Kohl's Parcel: The owner of the Kohl's Parcel is hereby granted an easement upon Outlot 2 to operate, maintain, repair and replace a panel on the Lowe's Sign in the location and of the dimensions depicted on the attached Exhibit 5 as the "Kohl's Panel". The owner of the Kohl's Parcel may enter Outlot 2 from time to time as necessary to complete maintenance and repair work on the panel and on the Lowe's Sign. The owner of the Kohl's Parcel agrees that all such work shall be performed in a manner that causes as little disturbance to Outlot 2 as may be practicable under the circumstances and any portions of Outlot 2 which may be damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of the owner of the Kohl's Parcel, to essentially the same condition as it was in prior to the commencement of such work. In the event that the sign panel is damaged or destroyed, Lowe's shall rebuild the Lowe's Sign in a diligent and expeditious manner, failing which, the owner of the Kohl's Parcel may rebuild same and bill the owners of the Lowe's Parcel and the Continental Parcel one-third each respectively for the cost of rebuilding the Lowe's Sign. As a condition precedent to this easement, the owner of the Kohl's Parcel shall pay Lowe's the sum of \$4,000.00 to reimburse Lowe's for the cost of constructing the Lowe's Sign.

(f) Additionally, Outlot 2 shall be subject to the following easement in favor of the Continental Parcel: The owner of the Continental Parcel is hereby granted an easement upon Outlot 2 to operate, maintain, repair and replace the panel on the Lowe's Sign in the location and of the dimensions depicted on the attached Exhibit 5 as the "Continental Panel". The owner of the Continental Parcel may enter Outlot 2 from time to time as necessary to complete maintenance and repair work on the panel and on the Lowe's Sign. The owner of the Continental Parcel agrees that all such work shall be performed in a manner that causes as little disturbance to Outlot 2 as may be practicable under the circumstances and any portions of Outlot 2 which may be damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of the owner of the Continental Parcel, to essentially the same condition as it was in prior to the commencement of such work. In the event that the sign panel is damaged or destroyed, Lowe's shall rebuild the Lowe's Sign in a diligent and expeditious manner, failing which, the owner of the Continental Parcel may rebuild same and bill the owners of the Lowe's Parcel and the Kohl's Parcel one-third each respectively for the cost of rebuilding the Lowe's Sign. As a condition precedent to this easement, the owner of Continental's Parcel shall pay Lowe's the sum of \$3,000.00 to reimburse Lowe's for the cost of constructing the Lowe's Sign.



12. Access Easements. The Adjacent Property shall have the benefit of the easements in place for use of Proposed Public Mall Road and the Mall Road Extension. Notwithstanding anything to the contrary in the Original ECR or the Subsequent Amendments, the Adjacent Property shall not have the benefit or nor be burdened by any of the other ingress and egress easements described in the Original ECR or the Subsequent Amendments. In order to offset maintenance expenses associated with the Mall Road Extension, the owner of the Adjacent Property shall pay the sum of \$3,500.00 to Lowe's as a one time charge before December 31, 2005.

13. Remodel of Outlot 1 and Outlot 2. Subject to the approval of the applicable governmental authorities, the owners and occupants of Outlot 1 and Outlot 2 may alter, reconfigure and/or redesign all or part of any buildings, structures, ingress and egress and all internal road networks within Outlot 1 and Outlot 2 only, without consent of either Wal-Mart or the Developer and Successors provided such improvements comply with the other applicable terms and conditions of the Original ECR, all Subsequent Amendments and this Ninth Amended ECR. To the extent necessary, the Original ECR, all Subsequent Amendments and this Ninth Amended ECR shall be deemed further amended to accommodate and permit such future remodeled, redesigned and reconfigured, improvements, without the necessity of filing any other document with respect thereto.

14. Estoppel. By signature below all parties acknowledge and agree that as of the date of this Amendment, no party has actual knowledge of any existing breach of the terms and conditions of the Original ECR or Subsequent Amendments.

15. Defined Terms. Capitalized terms used in this Agreement but not defined herein shall have the meaning assigned to them in the Original ECR or Subsequent Amendments.

16. Conflict. In the event of an apparent conflict between this Ninth Amended ECR and the Original ECR or all Subsequent Amendments, the terms and conditions of this Ninth Amended ECR shall control.

17. Counterparts. This Agreement may be signed in counterparts, all counterparts taken together being deemed one original.

[Signatures on Following Pages]





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IN WITNESS WHEREOF, the parties have executed this Ninth Amended ECR as of the Effective Date.

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

By: Frances Coberly  
Its: Director, Realty Management  
FRANCES COBERLY

Approved as to legal terms only  
by BR  
WAL-MART LEGAL DEPT.  
Date: 7-6-2005

STATE OF ARKANSAS )  
 )SS  
COUNTY OF BENTON )

The foregoing instrument was acknowledged before me this 6<sup>th</sup>  
day of April, 2005, by Frances Coberly, a Director of Realty Management  
of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of such  
trust.

Karen J. Benson  
Signature

My commission expires:

May 1, 2009

OFFICIAL SEAL  
KAREN J. BENSON  
NOTARY PUBLIC, ARKANSAS  
BENTON COUNTY  
COMMISSION EXP. 05-01-09

RT DETROIT FRANCHISE, LLC,  
a Michigan limited liability company

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

Its: \_\_\_\_\_

Manager

John Millington

STATE OF Michigan )

)SS

COUNTY OF Oakland )

The foregoing instrument was acknowledged before me this 28 day of April, 2005, by John Millington, a manager of RT Detroit Franchise, LLC, a Michigan limited liability company on behalf of such company.

Jason R. Wilson  
Signature

My commission expires:

JASON R. WILSON

Notary Public, Oakland County, MI

My Commission Expires Sep. 20, 2007

Acting in the county of Oakland



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Q

MALL ROAD MANAGEMENT COMPANY, LLC,  
a Michigan limited liability company

By: [Signature]  
Its: MANAGER JAMES M. VOGT

STATE OF Michigan )  
 )SS  
COUNTY OF Macomb )

The foregoing instrument was acknowledged before me this 18th day of April, 2005, by JAMES M. VOGT, a MEMBER of Mall Road Management Company, LLC, a Michigan limited liability company on behalf of such company.

[Signature: Heidi D. Temple]  
Signature

My commission expires:

12-27-07

HEIDI D. TEMPLE  
Notary Public, Wayne County, MI  
My Commission Expires Dec. 27, 2007  
ACTING IN MACOMB COUNTY



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LOWE'S HOME CENTERS, INC.,  
A North Carolina corporation

By:  
Its:

Kevin D. Bennett  
vice president Kevin D. Bennett

STATE OF North Carolina )  
 )SS  
COUNTY OF Wilkes )

The foregoing instrument was acknowledged before me this 26 day of  
April, 2005, by Kevin D. Bennett, a Vice President of  
Lowe's Home Centers, Inc., a North Carolina corporation on behalf of such corporation.



Melissa Richardson  
Signature

My commission expires:

2/20/2007



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BOB EVANS FARMS, INC.,  
an Ohio corporation

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

Stephen A. Warehime  
Senior Vice President

STATE OF OHIO )

)SS

COUNTY OF FRANKLIN )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of April, 2005, by Stephen A. Warehime, Senior Vice President of Bob Evans Farms, Inc., an Ohio corporation, on behalf of such corporation.



TERESA A. EHMANN  
Notary Public, State of Ohio  
My Commission Expires November 6, 2007

Teresa A. Ehmann  
Signature

My commission expires: 11/6/07



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BSLM FRENCHTOWN, LLC,  
a Michigan limited liability company

By: [Signature]  
Its: manman Richard Broder

STATE OF Michigan )  
COUNTY OF Oakland )SS

The foregoing instrument was acknowledged before me this 11th day of April, 2005, by Richard Broder of BSLM Frenchtown, LLC, a Michigan limited liability company, on behalf of such

FAYE E. YONKER  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires June 17, 2011  
Acting in \_\_\_\_\_ County

Jaye E Yonker  
Signature

My commission expires:  
\_\_\_\_\_

ACTING IN OAKLAND



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TELEGRAPH ROAD (U.S. 24)

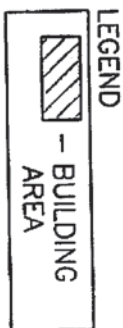
TELEGRAPH ROAD (U.S. 24)

MAIL ROAD EXTENSION

OUTLOT

KOHL'S  
PARCEL

CONTINENTAL  
PARCEL



Project No.  
C-148

EX-01



# **CONTINENTAL PROPERTIES**

COMPANY INC.

P.O. Box 220, Menomonie Falls, Wisconsin 53853

PHONE: (262)502-5500 FAX: (262)502-5522 E-MAIL: [cont\\_properties@cont\\_properties.com](mailto:cont_properties@cont_properties.com)

CITY	Frenchtown Charter Township	DATE	3/11	PROJECT NO.	0404/2803
SHEET	US-24 & Mail Extension Road NWC	REVISION	XIX		
DRAWN BY	US-24_MailExtensionRoad_NWC\EXHIBIT\9thAmendment\Ex-01.dwg	SCALE	1:200		

9TH  
AMENDMENT  
EXHIBIT 01

## REVISIONS

REV	DESCRIPTION	DATE

EXHIBIT 2-A

Kohl's Parcel Legal Description

LAND IN THE COUNTY OF MONROE, TOWNSHIP OF FRENCHTOWN, STATE OF MICHIGAN, DESCRIBED AS FOLLOWS:

A PARCEL OF LAND BEING A PART OF THE PRIVATE CLAIMS TO 76 AND 79, AND FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN TOWNSHIP, MONROE COUNTY, MICHIGAN, DESCRIBED AS; COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF STEWART ROAD AND THE WESTERLY LINE OF TELEGRAPH ROAD, NORTH 21°37'00" EAST 4291.67 FEET; THENCE NORTH 68°23'00" WEST 299.93 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED THENCE NORTH 68°23'00" WEST 583.63 FEET; THENCE 160.52 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 470.00 FEET PASSING THROUGH A CENTRAL ANGLE OF 19°34'05" WITH A CHORD BEARING NORTH 78°10'03" WEST 159.74 FEET; THENCE NORTH 06°55'29" EAST 91.96 FEET; THENCE NORTH 21°37'03" EAST 281.52 FEET; THENCE SOUTH 68°22'53" EAST 343.49 FEET; THENCE SOUTH 21°37'00" WEST 13.31 FEET; THENCE SOUTH 68°23'00" EAST 210.18 FEET; THENCE NORTH 21°37'01" EAST 20.00 FEET; THENCE SOUTH 68°23'00" EAST 9.50 FEET; THENCE NORTH 21°37'01" EAST 20.00 FEET; THENCE SOUTH 68°23'00" EAST 201.18 FEET; THENCE SOUTH 21°37'00" WEST 370.01 FEET TO THE POINT OF BEGINNING.



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EXHIBIT 2-B

Continental Parcel Legal Description

LAND IN THE COUNTY OF MONROE, TOWNSHIP OF FRENCHTOWN, STATE OF MICHIGAN, DESCRIBED AS FOLLOWS:

A PARCEL OF LAND BEING A PART OF THE PRIVATE CLAIMS TO 76 AND 79, AND FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN TOWNSHIP, MONROE COUNTY, MICHIGAN, DESCRIBED AS; COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF STEWART ROAD AND THE WESTERLY LINE OF TELEGRAPH ROAD, NORTH 21°37'00" EAST 4596.66 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED THENCE NORTH 68°23'00" WEST 299.93 FEET; THENCE NORTH 21°37'00" EAST 65.02 FEET; THENCE NORTH 68°23'00" WEST 201.18 FEET; THENCE SOUTH 21°37'01" WEST 20.00 FEET; THENCE NORTH 68°23'00" WEST 9.50 FEET; THENCE SOUTH 21°37'01" WEST 20.00 FEET; THENCE NORTH 68°23'00" WEST 210.18 FEET; THENCE NORTH 21°37'00" EAST 13.31 FEET; THENCE NORTH 68°22'53" WEST 343.49 FEET; THENCE SOUTH 21°37'03" WEST 281.52 FEET; THENCE SOUTH 06°55'29" WEST 91.96 FEET; THENCE 148.63 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 470.00 FEET PASSING THROUGH A CENTRAL ANGLE OF 18°07'08" WITH A CHORD BEARING SOUTH 82°59'21" WEST 148.01 FEET, TO A POINT ON THE WESTERLY LINE OF PRIVATE CLAIM 76; THENCE ALONG SAID WESTERLY LINE NORTH 19°59'05" EAST 1127.71 FEET; THENCE SOUTH 68°33'57" EAST 474.05 FEET; THENCE IN PART ALONG THE LITTLE SANDY CREEK SOUTH 24°33'35" EAST, 924.74 FEET, AND SOUTH 32°53'00" EAST 75.89 FEET, TO A POINT ON THE WESTERLY LINE OF TELEGRAPH ROAD, THENCE ALONG SAID WESTERLY LINE SOUTH 21°37'00" WEST 41.32 FEET TO THE POINT OF BEGINNING.



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EXHIBIT 2-C

Outlot 3 Legal Description

LAND IN THE COUNTY OF MONROE, TOWNSHIP OF FRENCHTOWN, STATE OF MICHIGAN, DESCRIBED AS FOLLOWS:

A PARCEL OF LAND BEING A PART OF THE PRIVATE CLAIMS TO 76 AND 79, AND FRACTIONAL SECTION 19, TOWN 6 SOUTH, RANGE 9 EAST, FRENCHTOWN TOWNSHIP, MONROE COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS: COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF STEWART ROAD AND THE WESTERLY RIGHT OF WAY LINE OF TELEGRAPH ROAD, THENCE PROCEEDING ALONG SAID WESTERLY LINE OF TELEGRAPH ROAD, NORTH 21 DEGREES 37 MINUTES 00 SECONDS EAST 4291.67 FEET, TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE NORTH 68 DEGREES 23 MINUTES 00 SECONDS WEST, 299.93 FEET, THENCE (PARALLEL WITH THE WESTERLY LINE OF TELEGRAPH ROAD) NORTH 21 DEGREES 37 MINUTES 00 SECONDS EAST, 304.99 FEET, THENCE SOUTH 68 DEGREES 23 MINUTES 00 SECONDS EAST 299.93 FEET, TO A POINT ON THE WESTERLY LINE OF TELEGRAPH ROAD: THENCE ALONG SAID WESTERLY LINE SOUTH 21 DEGREES 37 MINUTES 00 SECONDS WEST, 304.99 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.



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F:\Midwest\Frenchtown Charter Township\US-24\_MallExtensionRoad\_NWC

TELEGRAPH ROAD (US 24)

MALL ROAD EXTENSION

OUTLOT 3

PROPOSED MONUMENT SIGN  
FOR SHOPPING CENTERPROPOSED PYLON  
SIGN FOR OUTLOT

25.0'

15.0'

15.0'  
MINIMUM**CONTINENTAL PROPERTIES**

COMPANY INC.

P.O. Box 220, Menomonee Falls, Wisconsin 53052

PHONE: (262)502-5500 FAX: (262)502-5522 E-MAIL: [oad.dwg@continentalproperties.com](mailto:oad.dwg@continentalproperties.com)

CITY: FRENCHTOWN CHARTER TOWNSHIP

STATE: WI

SHEET: 02/23/2003

PROJECT: US 24 &amp; MALL ROAD EXTENSION NWC

DRAWN BY: JEX

SHEET: US-24\_MALL/EX/SIGNAGE/OUTLOT/SIGN-LOC/EX\_03.DWG

SCALE: 1"=50'

DATE: 02/23/2003

EXHIBIT 03  
SIGNAGE  
LOCATION

REVISIONS

REV	DESCRIPTION	DATE

Sheet No.

Project No.

C-148

EX 03



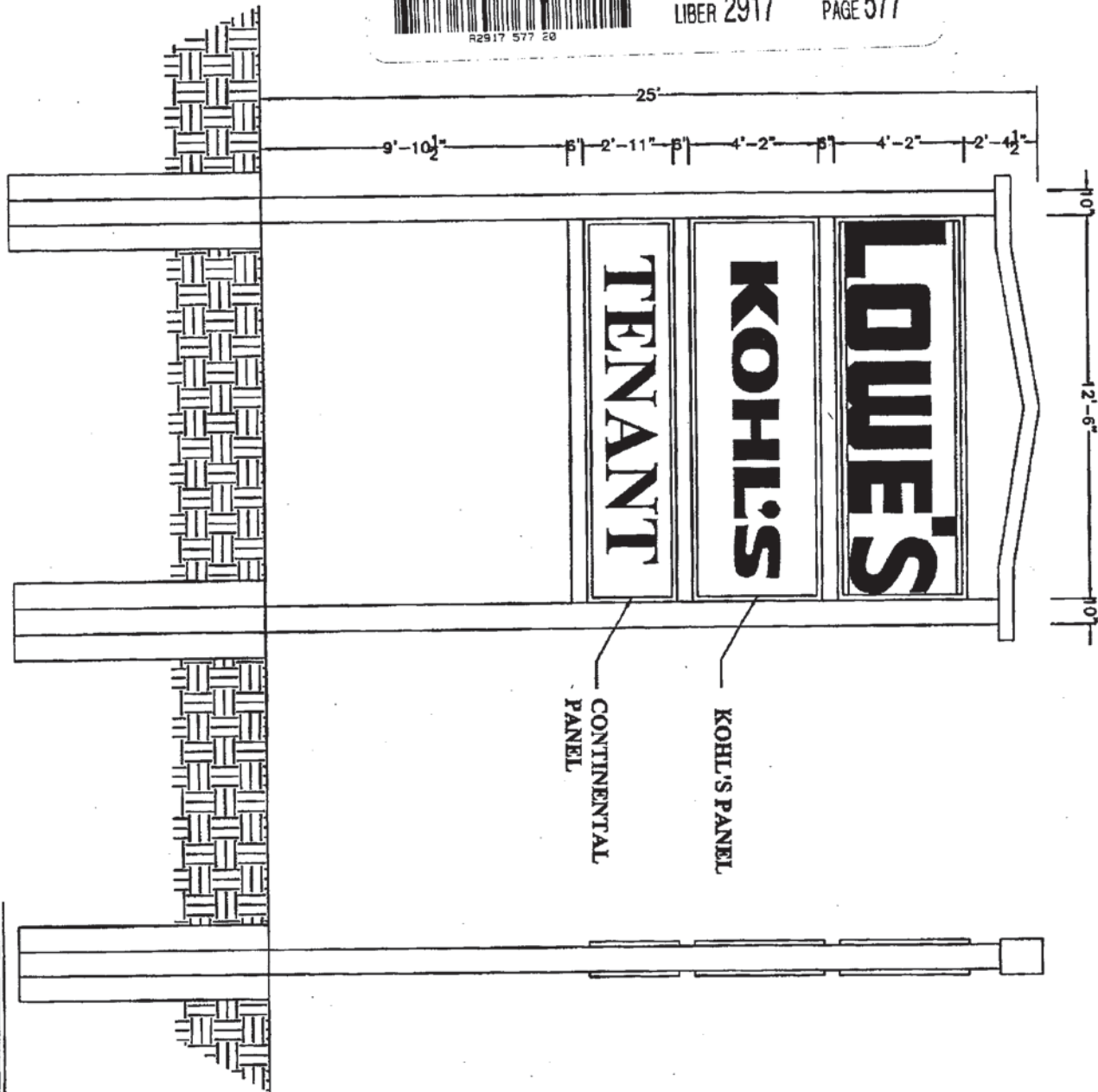






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EX 05

Sheet No.

Project No.  
C-148



NORTH

# **CONTINENTAL PROPERTIES**

P.O. Box 220, Menomonee Falls, Wisconsin 53052  
 PHONE: (262)502-6500 FAX: (262)502-5522 E-MAIL: [ced\\_dwy@properties.com](mailto:ced_dwy@properties.com)

CITY: FRENCHTOWN CHARTER TOWNSHIP STATE: WI DATED: 02/22/2005  
 PROJECT: US-24 & MALL EXTENSION ROAD NWC DRAWN BY: JEX  
 SCALE: 1:60 CHECKED BY: JEX

## **EXHIBIT 05 SIGNAGE PANELS**

### **REVISIONS**

REV	DESCRIPTION	DATE
1	REPLACE CONTINENTAL LABEL WITH BRIGHT LEADER KOHL'S AND CONTINENTAL PANELS	04/04/2005 JEX



LIBER 3073

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RECEIPT# 85993, STATION 1  
\$50.00 MISCELLANEOUS



03/06/2006 1:54:04 PM  
STATE OF MICHIGAN - MONROE COUNTY  
RECEIVED FOR RECORD  
GERI ALLEN - REGISTER OF DEEDS

**TENTH AMENDMENT TO EASEMENT WITH  
COVENANTS AND RESTRICTIONS AFFECTING LAND**

**Dated February 15, 2006**

**By and Between**

**Wal-Mart Real Estate Business Trust**

**RT Detroit Franchise, LLC**

**Mall Road Management Company, LLC**

**Lowe's Home Centers, Inc.**

**Bob Evans Farms, Inc.**

**BSLM Frenchtown, L.L.C., and**

**Continental Monroe 61, LLC**

WS07594

50.00



**TENTH AMENDMENT TO EASEMENT WITH  
COVENANTS AND RESTRICTIONS AFFECTING LAND**

THIS TENTH AMENDMENT TO EASEMENT WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("Agreement" or "Tenth Amended ECR") is made this 15<sup>th</sup> day of February, 2006 (the "Effective Date"), by and between Wal-Mart Real Estate Business Trust, whose address is 702 S.W. Eighth Street, Bentonville, Arkansas 72716 and with offices at Attn: Realty Management, 2001 S.E. 10th Street, Bentonville, Arkansas 72712-0550 ("Wal-Mart"), RT Detroit Franchise, LLC, a Michigan limited liability company, whose address is 592 Inverness, Highland, Michigan 48357 ("Ruby"), Mall Road Management Company, LLC, a Michigan limited liability company, whose address is 22725 Mack Avenue, Suite 206A, St. Clair Shores, Michigan 48080 ("MRM"), Lowe's Home Centers, Inc., a North Carolina corporation, whose address is P.O. Box 1111, North Wilkesboro, North Carolina 28656 (Highway 268 East, North Wilkesboro, North Carolina 28659) ("Lowe's"), Bob Evans Farms Inc., an Ohio corporation, whose address is 3776 South High Street, Columbus, Ohio 43207 ("Bob Evans"), BSLM Frenchtown, L.L.C., a Michigan limited liability company, whose address is 260 East Brown Street, Suite 200, Birmingham, Michigan 48009 ("BSLM"), and Continental Monroe 61, LLC, a Michigan limited liability company, whose address is W134 N8675 Executive Parkway, Menomonee Falls, Wisconsin 53051 ("Continental").

**RECITALS**

A. In conjunction with Wal-Mart's purchase of a certain parcel of property on August 21, 1991, Wal-Mart and Charles P. Quisenberry, Trustee of the Charles P. Quisenberry Trust Under Agreement dated June 14, 1990 ("Charles Quisenberry") and Nancy J. Quisenberry, Trustee Under Agreement dated June 14, 1990 ("Nancy Quisenberry"), and Real Vest Group, a Michigan partnership ("Real Vest", and together with Charles Quisenberry and Nancy Quisenberry, "Developer") simultaneously entered into a certain Easement with Covenants and Restrictions Affecting Land dated August 21, 1991, and recorded at Liber 1179, Pages 336-372 of Monroe County Records ("Original ECR"). Subsequent to the date of the execution of the Original ECR, nine (9) amendments to the Original ECR have been executed and recorded, generally dealing with the construction of a Lowe's on Tracts #3 and #4, the Ruby Tuesday Restaurant on Outlot B, development of Outlot 1 by BSLM, development of the Adjacent Property by Continental as well as an "Affidavit Acknowledging Easement Rights" clarifying the relationship between the Wal-Mart property and the Real Vest property contiguous to the Wal-Mart property ("Affidavit").

B. The nine (9) amendments to the Original ECR are as follows: First Amendment to Easement with Covenants and Restrictions Affecting Land, dated August 22, 1994, recorded on July 3, 1995, at Liber 1447, Pages 0974-0978 of the Monroe County Records ("First Amended ECR"); Second Amendment to Easement with Covenants and Restrictions Affecting Land, dated November 16, 1994, recorded on July 3, 1995 at Liber 1447, Pages 0979-0982 of the Monroe County Records ("Second Amended ECR"); Third Amendment to Easement with Covenants and Restrictions Affecting Land, dated May 30, 1995, recorded on July 3, 1995 at Liber 1447, Pages 0983-0987 of the Monroe County Records ("Third Amended ECR"); Fourth Amendment to Easement with Covenants and Restrictions Affecting Land, dated June 22, 1995, recorded on July 3, 1995 at Liber 1447, Pages 0988-0994 of the Monroe County Records





("Fourth Amended ECR"); Fifth Amendment to Easement with Covenants and Restrictions Affecting Land, dated on or about September 11, 1995, recorded on September 14, 1995, at Liber 1461, Pages 0916-0920 of the Monroe County Records ("Fifth Amended ECR"); the Affidavit Acknowledging Easement Rights was executed on or about April 30, 1998, and recorded on May 7, 1998, at Liber 1682, Page 0370 of the Monroe County Records ("Affidavit Acknowledging Easement Rights"); the Sixth Amendment to Easement with Covenants and Restrictions Affecting Land, dated on or about December 29, 1999, recorded on January 10, 2000, at Liber 1872, Page 0915 of the Monroe County Records ("Sixth Amended ECR"); the Seventh Amendment to Easement with Covenants and Restrictions Affecting Land, dated September 19, 2000, recorded on June 10, 2004, at Liber 2746, Page 120 of the Monroe County Records ("Seventh Amended ECR"); the Eighth Amendment to Easement with Covenants and Restriction Affecting Land, dated August 2, 2004, recorded on August 10, 2004, at Liber 2782, Page 731 of the Monroe County Records ("Eighth Amended ECR"); and the Ninth Amendment to Easement with Covenants and Restrictions Affecting Land, dated April 26, 2005, recorded on May 4, 2005, at Liber 2917, Page 558, of the Monroe County Records ("Ninth Amended ECR"). All of the amendments to the Original ECR and the Affidavit referenced herein are collectively referred to herein as the "Subsequent Amendments."

C. Bob Evans has entered into a purchase agreement with BSLM Frenchtown II, L.L.C., a Michigan limited liability company ("BSLM II"), for BSLM II to purchase an approximately one (1) acre portion of Outlot 2, and, in connection therewith, the parties hereto wish to amend the Original ECR and all Subsequent Amendments as set forth herein.

D. The parties hereto also wish to correct errors in the Ninth Amended ECR by adding certain provisions that were inadvertently omitted from such Ninth Amended ECR when it was recorded, as more particularly set forth herein.

NOW, THEREFORE, in consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained in this Tenth Amended ECR, and in further consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained in the Original ECR and all Subsequent Amendments, the sufficiency and adequacy of which is hereby acknowledged, Wal-Mart, Ruby, MRM, Lowe's, Bob Evans, BSLM and Continental do hereby agree that the Original ECR, as amended by the Subsequent Amendments, is amended as follows:

1. Amendment of Exhibits. Exhibit A of the Original ECR, as amended by the Subsequent Amendments, is hereby amended to replace Outlot 2 with Outlots 2A and 2B, as depicted on Exhibit 1 attached hereto. The Building Area on Outlot 2A and Outlot 2B shall be as depicted on Exhibit 1.

2. Approval. The parties to the ECR, to the extent required, approve the division of Outlot 2 into Outlots 2A and 2B, which outlots shall be afforded the same rights as the outlots under the Original ECR, as amended by all Subsequent Amendments and this Tenth Amended ECR. Furthermore, the parties confirm that (i) the parking ratio with respect to Outlot 2A and Outlot 2B, as part of the Lowe's Property as defined in the Sixth Amended ECR, is the greater of (x) 5 car spaces for each 1,000 square feet of enclosed building space, and (y) the minimum parking ratio as required by any governmental authority having jurisdiction over Outlot 2A and





Outlot 2B in accordance with the ordinances, or any variance to the ordinances which the owners of Outlot 2A and Outlot 2B may obtain in their sole discretion, and (ii) in accordance with the Ninth Amended ECR, no consent of Wal-Mart or the Developer and Successors is required for any site plans or elevations for the construction, development, design, alteration, reconfiguration and/or redesign of any buildings, structures, ingress and egress and any internal road networks which may now or in the future exist within Outlots 1, 2A and 2B, provided such improvements comply with the other applicable terms and conditions of the Original ECR, as amended by all Subsequent Amendments and this Tenth Amended ECR.

3. Ninth Amended ECR. The parties to the ECR hereby agree that the Ninth Amended ECR shall be amended by the following provisions:

a. Notwithstanding the terms and conditions of the Ninth Amended ECR, a restaurant on the Adjacent Property (as defined in the Sixth Amended ECR) is permitted subject to the terms of the Original ECR and all Subsequent Amendments.

b. Notwithstanding the terms and conditions of the Ninth Amended ECR and as applied to the Adjacent Property, no building on Outlot 3 (as defined in the Ninth Amended ECR) shall exceed twenty-four feet (24') in height and no exception shall be made for architectural features.

c. In addition to having the benefit of the easements in place for use of Proposed Public Mall Road and the Mall Road Extension, the Adjacent Property shall be subject to and burdened by the Original ECR and all Subsequent amendments to the ECR including, without limitation, easements in place for the use of Proposed Public Mall Road and the Mall Road Extension.

4. Conflict. In the event of an apparent conflict between this Tenth Amended ECR and the Original ECR or all Subsequent Amendments, the terms and conditions of this Tenth Amended ECR shall control.

5. Definitions. All initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Original ECR, as amended by all Subsequent Amendments.

6. Counterparts. This Agreement may be signed in counterparts, all counterparts taken together being deemed one original.

[Signatures on Following Pages]



**SIGNATURE PAGE TO TENTH AMENDED ECR  
WAL-MART SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have executed this Tenth Amended ECR as of the Effective Date.

WITNESSES:

Phyllis Overstreet  
Tracy M. Price  
TRACY - M. PRICE

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

By: NICK GOODNER 186  
Its: Sr. Kathy Mgr. or

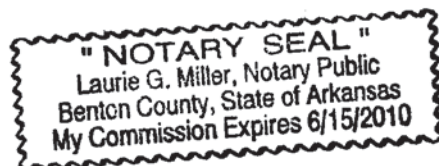
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Approved as to legal terms only  
by BLL  
WAL-MART STORE  
Date: 11/15/2006

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2005, by Nick Goodner, as Senior Realty Manager of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of such trust.

such trust.

*Laurie G. Miller*  
Print Name: Laurie G. Miller  
Notary Public, State of Arkansas  
County of Benton  
My Commission Expires: June 15, 2010  
Acting in the County of Benton

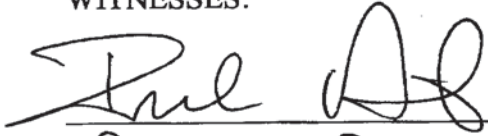




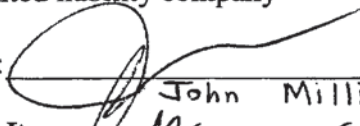

**SIGNATURE PAGE OF TENTH AMENDED ECR  
RUBY TUESDAY SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have executed this Tenth Amended ECR as of the Effective Date.

WITNESSES:

  
Richard Peterson

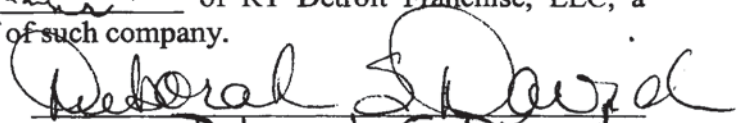
**RT DETROIT FRANCHISE, LLC**, a Michigan limited liability company

By:   
John Millington  
Its:  MANAGER

STATE OF MICHIGAN)  
COUNTY OF Oakland)<sup>ss</sup>

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of Feb., 2008 by John Millington, as MANAGER of RT Detroit Franchise, LLC, a Michigan limited liability company, on behalf of such company.



  
Print Name: Deborah S. David  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires: 10-28-2011  
Acting in the County of Oakland



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**SIGNATURE PAGE TO TENTH AMENDED ECR  
MALL ROAD MANAGEMENT SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have executed this Tenth Amended ECR as of the Effective Date.

WITNESSES:

**MALL ROAD MANAGEMENT COMPANY,  
LLC, a Michigan limited liability company**

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

Its: \_\_\_\_\_

JIM VOGT

MEMBER

MEMBER

STATE OF Michigan )  
 )ss  
COUNTY OF Oakland )

The foregoing instrument was acknowledged before me this 27th day of January, 2008, by Jim Vogt, as Member of Mall Road Management Company, LLC, a Michigan limited liability company, on behalf of such limited liability company.

**MELISSA KASSIS**  
Notary Public, Oakland County, MI  
My Commission Expires April 7, 2008

Melissa Kassis  
Print Name: Melissa Kassis  
Notary Public, State of Michigan,  
County of Oakland  
My Commission Expires: April 7, 2008  
Acting in the County of Macomb





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**SIGNATURE PAGE OF TENTH AMENDED ECR**  
**LOWE'S SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have executed this Tenth Amended ECR as of the Effective Date.

WITNESSES/

Effective Date.

WITNESSES:

*Neal Hamilton*

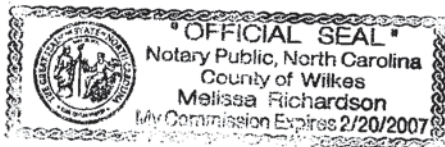
NEAL HAMILTON

**LOWE'S HOME CENTERS, INC.,**  
a North Carolina corporation

By: David E Shelton  
DAVID E. SHELTON  
Its: Senior Vice President

STATE OF North Carolina )  
 )SS  
COUNTY OF Wilkes )

The foregoing instrument was acknowledged before me this 19 day of October, 2005, by David E. Shelton, as Senior Vice President of Lowe's Home Centers, Inc., a North Carolina corporation, on behalf of said corporation.



Melissa Richardson  
Print Name: Melissa Richardson  
Notary Public, State of North Carolina,  
County of Wilkes  
My Commission Expires: 2/20/2007  
Acting in the County of Wilkes



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**SIGNATURE PAGE OF TENTH AMENDED ECR  
BOB EVANS' SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have executed this Tenth Amended ECR as of the Effective Date.

WITNESSES:

Teresa A. Ehmann  
Teresa A. Ehmann  
Stacy Chene  
Stacy Chene

**BOB EVANS FARMS, INC.,**  
an Ohio corporation

By: Stephen A. Warehime  
Stephen A. Warehime  
Senior Vice President

STATE OF Ohio )  
COUNTY OF Franklin )ss

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of October, 2005, by Stephen A. Warehime, as Senior Vice President of Bob Evans Farms, Inc., an Ohio corporation, on behalf of said corporation.



TERESA A. EHMANN  
Notary Public, State of Ohio  
My Commission Expires November 6, 2007

Teresa A. Ehmann  
Print Name: Teresa A. Ehmann  
Notary Public, State of Ohio, County of Franklin  
My Commission Expires: Nov. 6, 2007  
Acting in the County of Franklin



**SIGNATURE PAGE OF TENTH AMENDED ECR  
BSLM SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have executed this Tenth Amended ECR as of the Effective Date.

WITNESSES:

**BSLM FRENCHTOWN, L.L.C.,**  
a Michigan limited liability company

Nichole Collier  
NICHOLE COLLIER  
Jerry Moyer  
JERRY MOYER

By: [Signature] RICHARD B. BRODER  
Its: MANAGER  
MANAGER

STATE OF Mich. )  
MICHIGAN )  
COUNTY OF Oakland )<sup>SS</sup>

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of February, 2006, by Richard B. Broder as Manager of BSLM Frenchtown, L.L.C., a Michigan limited liability company, on behalf of said limited liability company.

Deborah S. Farrah  
Print Name: Deborah S. Farrah  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires: 9/12/12  
Acting in the County of Oakland



**SIGNATURE PAGE OF TENTH AMENDED ECR  
CONTINENTAL SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have executed this Tenth Amended ECR as of the Effective Date.

WITNESSES:

Kimberly Ann  
Carol Thawson  
CAROL

**CONTINENTAL MONROE 61, LLC,**  
a Michigan limited liability company ✈

By: Daniel J. Minahan  
DANIEL J. MINAHAN  
Its: President

\* By: Continental 61 Fund LLC, its managing member  
By: Continental Properties Company, Inc., its manager

STATE OF Wisconsin )  
 )SS  
COUNTY OF Waukesha )

The foregoing instrument was acknowledged before me this 20 day of October, 2005, by David J. Minahan, as President\* of Continental Monroe 61, LLC, a Michigan limited liability company, on behalf of said limited liability company.



Jul M Marinello  
Print Name: Jul M Marinello  
Notary Public, State of Wisconsin  
County of Waukesha  
My Commission Expires: 6/18/06  
Acting in the County of Waukesha

Drafted and Return To  
Candace E. Navell Esq  
Honigman Miller Schwartz and  
Cohn LLP.  
2290 First National Bld.  
660 Woodward Ave.  
Detroit MI 48226

\* of Continental Properties Company, Inc.,  
manager of Continental 61 Fund LLC,  
the managing member





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## EXHIBIT 1

OAKLAND.964001.3

## EXHIBIT A

