

201003559

WASHINGTON COUNTY, STATE OF NEBRASKA

682

FILED

RECORDED September 28, 2010 AT 8:20 A.M.

BOOK 559 PAGE(S) 682-717

2010 SEP 28 AM 8:20

Karen A. Madsen

REGISTER OF DEEDS

Recorded	<u> / </u>
General	<u> / </u>
Numerical	<u> /// </u>
Photostat	<u> _____ </u>
Proofed	<u> _____ </u>
Scanned	<u> _____ </u>

KAREN A. MADSEN
WASHINGTON COUNTY
REGISTER OF DEEDS
BLAIR, NE

When recorded return to:
Erin M. O'Gara, Esq.
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186
(402) 346-6000

Store No. 4568-00
Blair, Nebraska

EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

THESE EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND (these "ECRs" or this "Agreement") are made as of the 24 day of Sept, 2010, by and between WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust ("Wal-Mart"), and HAYDEN PLACE DEVELOPMENT, LLC, a Nebraska limited liability company, HAYDEN PLACE SHOPS, LLC, a Nebraska limited liability company, and CEDAR VALLEY PLACE, LLC, a Nebraska limited liability company (collectively, "Developer").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of the property identified as the "Property", as shown on the site plan attached hereto as Exhibit A-1 hereof (the "Wal-Mart Property"), said property being more particularly described in Exhibit B attached hereto;

WHEREAS, Developer is the owner of the property identified as "Outlots Property" (collectively, the "Outparcels" and individually, an "Outparcel") on Exhibit A-1 attached hereto, the same being more particularly described in Exhibit C attached hereto; and

WHEREAS, Wal-Mart and Developer desire that the Outparcels be subject to certain easements, covenants, conditions and restrictions hereinafter set forth;

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

1. Use and Development of the Wal-Mart Property. Wal-Mart and Developer agree that the Wal-Mart Property shall not be subject to any terms, covenants, conditions or restrictions set forth in these ECRs except for the provisions regarding the North Shopping Center Sign in Section 7.8 herein. The terms, conditions, covenants and restrictions set forth herein shall burden the Outparcels for the benefit of the Wal-Mart Property. Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Wal-Mart on the Wal-Mart Property. Developer recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its

4838-3763-4817.12

Return to:
Nebraska Land Title & Abstract
PO Box 6577
Lincoln NE 68506

682

business on the Wal-Mart Property; and Developer hereby waives any legal action for damages or for equitable relief which might be available to Developer because of such cessation of business activity by Wal-Mart.

2. Building/Common Areas.

2.1 "Building Areas" as used herein shall mean those portions of the Outparcels that are located inside the applicable zoning setback lines. Canopies may encroach from the Building Areas over the Common Areas provided that the canopies do not materially interfere with the use of the Common Areas.

2.2 "Common Areas" shall be all of the Outparcels except the areas in which buildings are located.

2.3 "Floor Area" shall mean with respect to any Building within the Outparcels, the actual number of square feet of floor space within the exterior walls of all floors, measured to the exterior faces of all exterior walls and the center lines of all common walls, including any basements, and including stairs, interior elevators, escalators, air conditioning and other interior equipment rooms but excluding loading docks and platforms, outside selling areas which are not heated or air conditioned (including any area used as a "garden center"), any mezzanine or basement space not used for display and sale of merchandise to the general public. Notwithstanding anything to the contrary in the preceding sentence, any outside selling areas, which are not heated or air conditioned but are used for restaurant purposes, such as outdoor seating or dining areas at a restaurant, shall not be excluded from the calculations of "Floor Area".

2.4 "Property" as used herein shall mean the Wal-Mart Property.

2.5 Conversion to Common Areas: Those portions of the Building Areas which are not from time to time used or cannot, under the terms of this Agreement, be used for Buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

2.6 "Building" shall mean any building or improvement constructed within the Outparcels. "Buildings" shall mean any buildings or improvements constructed within the Outparcels.

3. Use. Buildings located within the Outparcels shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices, and retail stores; provided, however, that the area designated as "Proposed Hotel/Conference Area" on Exhibit A-2 attached hereto (the "Hotel Area") may be used for a hotel, motel, or conference center/banquet facility and further provided that one (1) Building (or portion thereof) located on the Outparcels may be used for a health spa or fitness facility use with a maximum Floor Area of 4,200 square feet. No cafeteria, theatre, bowling alley, billiard parlor, night club or other place of recreation or amusement, any business serving alcoholic beverages (except for restaurants where sales of alcoholic beverages account for less than 50% of the business' annual gross revenue), or any business or facility used in growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling marijuana, whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant shall occupy space within the Outparcels without the prior written consent of Wal-Mart, which Wal-Mart may withhold in its sole and absolute discretion. Developer recognizes that said businesses may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business.

4. Competing Business. Developer covenants that no space in or portion of the Outparcels, and no space in or portion of any other real property adjacent to the Outparcels which is owned by Developer or may subsequently be acquired by Developer, shall be leased or occupied by or conveyed to any other party for use as (i) a membership warehouse club, (ii) a pharmacy, (iii) a discount department store or other discount store, as such terms are defined below, (iv) a variety, general or "dollar" store, (v) a grocery store or supermarket as such terms are defined below, or (vi) as any combination of the foregoing uses. In the event of a breach of this covenant, Wal-Mart shall have the right to terminate this Agreement and to seek any and all remedies afforded by either law or equity, including, without limitation, the rights to injunctive relief. "Grocery store" and "supermarket," as those terms are used herein, shall mean a food store or a food department containing more than 10,000 square feet of building space used for the purpose of selling food for off premises consumption, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments. "Discount department store" and/or "discount store," as those terms are used herein, shall mean a discount department store or discount store containing more than 35,000 square feet of building space used for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of Wal-Mart.

5. Buildings.

5.1 Design and Construction. The design and construction of the Buildings located on each Outparcel shall be in conformity with sound architectural and engineering standards and the construction shall be first quality. No Building on the Outparcels shall have a metal exterior.

5.2 Location/Size. No Building shall be constructed on the Outparcels (as either immediate development or future expansion) except within the Building Areas.

5.3 Fire Protection. Any Building constructed in the Outparcels shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other Buildings in the Outparcels.

5.4 Hotel Area Development. The Hotel Area will be developed only under the following guidelines:

(1) One (1) Building containing a hotel or motel (the "Hotel Building") and one (1) Building containing a conference center/banquet facility (the "Conference Center Building") may be constructed within the Hotel Area. The Hotel Building shall not exceed fifty-two (52) feet in height, as measured from the mean finish elevation and shall not exceed four (4) stories in height. The Conference Center Building shall not exceed twenty six (26) feet in height, as measured from the mean finish elevation and shall not exceed one (1) story in height.

(2) The maximum Floor Area of the Conference Center Building shall be 7,500 square feet per acre of the lot upon which the Conference Center Building is located. The Hotel Area may be subdivided into one or more separate lots, provided, however, that following any such subdivision each such lot is a minimum of .75 acres.

(3) Any rooftop equipment located on the Hotel Building or the Conference Center Building shall be screened in a commercially reasonable manner.

(4) No rooftop sign shall be erected on the Hotel Building or the Conference Center Building.

(5) Except for the two shopping center monument signs (individually, a "Shopping Center Sign" and collectively, the "Shopping Center Signs") which shall be located as shown on Exhibit A-1 attached hereto, no freestanding identification sign may be erected on the Hotel Area without approval of Wal-Mart, and in no event shall such freestanding identification sign exceed the height of any of the buildings on the Wal-Mart Property or materially block the visibility of the retail facilities, monument sign or pylon sign on the Wal-Mart Property. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3'3" in height, the type and location of such signs to be approved by Wal-Mart.

(6) No improvements shall be constructed, erected, expanded or altered on the Hotel Area until the plans for same (including site layout exterior building materials and colors and parking) have been approved in writing by Wal-Mart.

(7) At all times there shall be independently maintained on the Hotel Area parking area sufficient to accommodate not fewer than: (A) 1.1 spaces for each unit located within the Hotel Building that is designated for overnight occupancy; and (B) 10 spaces for each 1,000 square feet of the Conference Center Building.

(8) Until such time as the Hotel Area is developed, the Hotel Area shall be kept neat, orderly, planted in grass and trimmed at all times, except during times of construction or reconstruction.

(9) If the Hotel Building or the Conference Center Building is not constructed within the Hotel Area, then the restrictions set forth in Section 5.5 of this Agreement shall apply to the development of the Hotel Area in lieu of the restrictions set forth this Section 5.4.

5.5 Outparcel Development. The Outparcels will be developed only under the following guidelines:

(1) The Buildings constructed on the Outparcels shall not exceed twenty-six (26) feet in height, as measured from the mean finished elevation, and shall not exceed one (1) story in height.

(2) No more than one (1) Building with a maximum Floor Area of 7,500 square feet may be constructed on each Outparcel (provided, however, that one (1) Outparcel may contain one (1) Building with a maximum Floor Area of 15,000 square feet). The Outparcels may be subdivided so that any one of the Outparcels are combined (in whole or in part) with another Outparcel (and the combined Outparcel shall be considered a single Outparcel hereunder) and the Outparcels may be subdivided so that any such Outparcel is subdivided into one or more separate lots (and each lot shall be considered a single Outparcel hereunder); provided, however, that following any such subdivision (i) the size of any such Outparcel shall be a minimum of .75 acres and (ii) no more than one (1) Building shall be constructed on any such Outparcel at any time with a maximum Floor Area of 7,500 square feet (provided however, that one (1) Outparcel may contain one (1) Building with a maximum Floor Area of 15,000 square feet). Notwithstanding anything to the contrary set forth herein, in no event shall there be more than six (6) Buildings in the aggregate located on the Outparcels at any one time and at all times

each Outparcel shall be subject to and required to independently comply with the parking ratios set forth in Sections 5.4(7) and 5.5(8) herein, as applicable.

(3) Any rooftop equipment located on the Buildings within the Outparcels shall be screened in a commercially reasonable manner.

(4) No rooftop sign shall be erected on the Buildings within the Outparcels.

(5) Except for the Shopping Center Signs, which shall be located as shown on Exhibit A-1 attached hereto, no freestanding identification sign may be erected on the Outparcels without approval of Wal-Mart, and in no event shall such freestanding identification sign exceed the height of any of the buildings on the Wal-Mart Property or materially block the visibility of the retail facilities, monument sign or pylon sign on the Wal-Mart Property. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3'3" in height, the type and location of such signs to be approved by Wal-Mart.

(6) Intentionally Deleted.

(7) Until such time as each of the Outparcels are developed, the Outparcels shall be kept neat, orderly, planted in grass and trimmed at all times, except during times of construction or reconstruction.

(8) Outparcel "Parking Ratio". At all times there shall be independently maintained on each Outparcel parking area sufficient to accommodate not fewer than: (i) 13 spaces for every 1,000 square feet of building space for any restaurant or entertainment use in excess of 5,000 square feet (the same ratio shall be provided for a McDonald's Restaurant, notwithstanding a building footprint of less than 5,000 square feet); or (ii) 10 spaces for every 1,000 square feet of building space for any restaurant or entertainment use less than 5,000 square feet (subject to the exception above); or (iii) 5.0 spaces per 1,000 square feet of building space for any other use.

6. Common Areas.

6.1 Intentionally Deleted.

6.2 Limitations on Use.

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

(2) Employees. Developer shall use reasonable efforts to ensure that its employees park in designated employee areas within each Outparcel.

(3) General. Any activity within the Common Areas other than its primary purpose of the Common Areas, which is to provide for parking for the customers, invitees and employees of those businesses conducted with the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.

6.3 Intentionally Deleted.

6.4 Intentionally Deleted.

7. Development, Maintenance, and Taxes.

7.1 Development. The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement.

7.2 Intentionally Deleted.

7.3 Intentionally Deleted.

7.4 Intentionally Deleted.

7.5 Intentionally Deleted.

7.6 Maintenance.

(1) Standards. The Outparcels shall be kept neat, orderly, planted in grass and trimmed until improved and constructed, except during periods of construction or reconstruction. Following completion of the improvements on the Common Areas located within the Outparcels, the Developer (or its successor in title to any Outparcel) shall maintain the Common Areas in good condition and repair. The maintenance of the Outparcels is to include, without limitation, the following:

(a) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

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

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair; and

(f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary, including regular cutting of all grassy areas.

If the owner of any Outparcel shall fail to so maintain such Outparcel then Wal-Mart shall have the right (but not the obligation) to go onto the Outparcel and perform the maintenance work and the owner of such Outparcel shall promptly reimburse Wal-Mart for the expense thereof.

(2) Expenses. The respective owners of the Outparcels shall pay the maintenance expense of the Outparcels.

(3) By Agent. Subject to the mutual agreement of the owners of the Outparcels, a third party may be appointed as an agent of the parties to maintain the Common Areas of the Outparcels (including the Shopping Center Signs) in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

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

7.8 Shopping Center Sign.

(1) Developer hereby grants to Wal-Mart the sign designation position on the Shopping Center Sign located near the Holly Street entrance (the "North Shopping Center Sign") as depicted on Exhibit D attached hereto (the "Signage Plan"), which designation position shall be an exclusive right and easement in favor of Wal-Mart on the North Shopping Center Sign, including any replacements thereto; provided, however, that Wal-Mart shall only be allowed to use such designation position for purposes of advertising the businesses conducted on the Wal-Mart Property. Wal-Mart shall be responsible for the maintenance and repair of its own designation position on the North Shopping Center Sign, which Wal-Mart shall keep in a good condition and repair. Developer hereby grants to Wal-Mart an easement to enter upon the Outparcels on which the North Shopping Center Sign is located in order to install, maintain and repair its own designation position on the North Shopping Center Sign, including vehicular and pedestrian ingress and egress and the installation of utilities, utility lines, conduits or systems for such purposes, as needed.

(2) Developer shall, at its own cost and expense, maintain, repair, insure and replace the North Shopping Center Sign in a safe first-class condition and in a state of good repair and in accordance with applicable law, subject to any reimbursement as set forth in Sections 7.8(4) and 7.8(6) below. Such duties shall include, but not be limited to, cleaning, painting, repair, lighting, and otherwise maintaining the North Shopping Center Sign. Wal-Mart shall be responsible for maintaining its own designation position on the North Shopping Center Sign at its own cost.

(3) Wal-Mart shall have the right to consent to any major modifications to the North Shopping Center Sign.

(4) In the event that Wal-Mart elects to install an individual signage panel on the North Shopping Center Sign, then Wal-Mart shall be obligated to pay its Pro Rata Share (as hereinafter defined) of the reasonable costs actually incurred by Developer in performing its duties described in Section 7.8(2) above for the North Shopping Center Sign (the "Wal-Mart Sign Charge"). The Wal-Mart Sign Charge shall not include any costs and expenses associated with the maintenance, repair and replacement of any individual panel or designation positions on the North Shopping Center Sign. The "Pro Rata Share" shall be equal to the percentage obtained by dividing the total square footage of Wal-Mart's signage designation position on the North Shopping Center Sign by the

total of the available square footage of available panel space and signage positions for signage on the North Shopping Center Sign. For example, if Wal-Mart elects to install the signage shown on the Signage Plan, then Wal-Mart's Pro Rata Share for the North Shopping Center Sign is 53%.

(5) Within sixty (60) days of the end of each calendar year, Developer shall send Wal-Mart written statements with paid invoices and other reasonable back-up detailing the actual amount of the Wal-Mart Sign Charge for the prior year. Wal-Mart shall pay the amount of the Wal-Mart Sign Charge within sixty (60) days of receipt of such invoice.

(6) Subject to Developer's prior approval, any other property owner or tenant located within the Outparcels may install individual signage panels (individually, a "Tenant Signage Panel" and collectively, the "Tenant Signage Panels") on the North Shopping Center Sign in a location approved by Developer (subject to Wal-Mart's exclusive right to install signage on the North Shopping Center Sign in the designation provision shown on the Signage Plan); provided, however, that each Tenant Signage Panel shall only be used to advertise the businesses that are being conducted on the Outparcels. Any tenant or property owner of the Outparcels who installs a signage panel on the North Shopping Center Sign shall be individually referred to herein as a "Signage Tenant" and collectively referred to herein as the "Signage Tenants." The Signage Tenants shall keep their Tenant Signage Panels in good repair and condition at all times at their own cost and expense. Each Signage Tenant shall pay their pro rata share of the reasonable costs actually incurred by Developer in performing its duties described in Section 7.8(2) above for the North Shopping Center Sign (the "Tenant Sign Charge"). The Tenant Sign Charge shall not include any costs and expenses associated with the maintenance, repair and replacement of any individual panel or designation positions on the North Shopping Center Sign. Each Signage Tenant's pro rata share shall be equal to the percentage obtained by dividing the total square footage of the Signage Tenant's signage designation position on the North Shopping Center Sign by the total of the available square footage of available panel space and signage positions for signage on the North Shopping Center Sign.

(7) Within sixty (60) days of the end of each calendar year, Developer shall send each Signage Tenant written statements with paid invoices and other reasonable back-up detailing the actual amount of the Tenant Sign Charge for the prior year. Each Signage Tenant shall pay the amount of the Tenant Sign Charge within sixty (60) days of receipt of such invoice.

8. Signs.

8.1 No rooftop sign shall be erected on the building constructed on the Outparcels. No signs shall obstruct the ingress and egress shown on Exhibit A-1.

8.2 Developer has constructed and installed the North Shopping Center Sign at its own cost and expense. Wal-Mart shall have the exclusive right, but not the obligation, to install signage on the North Shopping Center Sign in the designation position shown on the Signage Plan during the term of this Agreement as provided in Section 7, above.

9. Indemnification/Insurance.

9.1 Indemnification. Developer hereby indemnifies and saves Wal-Mart harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on any Outparcel owned by Developer, except if caused by the act or negligence of Wal-Mart. The owner of any Outparcel hereby indemnifies and saves Wal-Mart harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its Outparcel, except if caused by the act or negligence of Wal-Mart.

9.2 Insurance.

(1) Each owner of an Outparcel shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$5,000,000.00 for injury or death of a single person, and to the limit of not less than \$5,000,000.00 for any one occurrence, and to the limit of not less than \$5,000,000.00 for property damage. Each such owner of an Outparcel shall provide Wal-Mart and the other owners of the Outparcels with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without ten (10) days prior written notice to Wal-Mart and the Developer.

(2) At all times during the term of this Agreement, each owner of an Outparcel shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the state in which the parties' respective properties are located, with such insurance to be for the full replacement value of the insured improvements. Each owner of an Outparcel shall pay for any increase in the cost of insuring the improvements on such Outparcel if such increase is due to the use by such owner or its tenant(s).

(3) Policies of insurance provided for in this Section 9.2 shall name Wal-Mart and Developer as additional insureds.

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

(5) Intentionally Deleted.

10. Eminent Domain.

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

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

10.3 Tenant's Claim. Nothing in this Section 10 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

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

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

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

13. Breach. In the event of a breach or threatened breach of this Agreement, only all of the record owners of the Wal-Mart Property as a group, or Wal-Mart individually so long as it or any affiliate has an interest as owner or lessee of the Wal-Mart Property, or all of the record owners of the Outparcels as a group, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach (including, without limitation, a suit for damages or an injunction) or threatened breach; provided that the non-defaulting parties have served upon the defaulting party under this Agreement written notice of such breach and such breach (except as to emergencies or as to snow removal) remains uncured for a period of 15 days. Notwithstanding the foregoing, if the failure of the defaulting party relates to a matter which is of an emergency nature involving immediate threat of damage or injury to persons or property or a failure of the defaulting party to remove snow from the parking areas, or the defaulting party has not commenced to cure such default within said fifteen (15) day period, then the non-defaulting parties may institute legal proceedings for full and adequate relief from the consequences of said default or threatened default and, in addition, at its option, may: (i) perform any

such term, provision, covenant, or condition; or (ii) make any such payment required to cure such default. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorneys' fees, which shall be deemed to have accrued on the date such action was filed. Notwithstanding anything to the contrary set forth in this Section, the record owners of any Outparcel shall be entitled to take any action permitted by this Agreement with respect to the breach of Sections 5.4(7), 5.5(8), 9.2(4) and 10 hereof by any such owner of an Outparcel.

14. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter. Developer represents and warrants that each of the current lessees (and their leasehold mortgagees, if applicable) and all current mortgages and lienholders of the Outparcels have executed and acknowledged this Agreement.

15. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by both Developer and Wal-Mart there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of (a) Wal-Mart as long as it or its affiliate has any interest as either owner or Lessee of any portion of the Wal-Mart Property, or its successors in interest, and (b) Developer, as long as it or its affiliate has any interest as either owner or Lessor of any portion of the Outparcels, or its successors in interest.

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

17. Duration. Unless otherwise canceled or terminated, all of the easements granted in this Agreement and all other rights and obligations hereof shall continue in perpetuity.

18. 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.

19. 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.

20. Transfer of Interests; Notices.

20.1 Transfer of Interests. In the event that any person or entity (the "Acquiring Party") shall acquire a fee or mortgage interest in any tract subject to this Agreement, or any portion thereof, the Acquiring Party shall execute and file in the land records of Washington County, Nebraska a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this Agreement may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired (the "Notice Statement"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, a copy of such Notice Statement to all other persons or entities then holding fee or mortgage interests in any tract subject to this Agreement, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Washington County, Nebraska (the "Existing Interest

Holders"). Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this Section 20.1, it shall not be entitled to receive any notice required or permitted to be given under this Agreement, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement. It is understood and agreed that the provisions of this Section 20.1 regarding the recordation of the Notice Statement are satisfied with respect to Developer and Wal-Mart.

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

Wal-Mart: Wal-Mart Real Estate Business Trust
2001 S.E. 10th Street
Bentonville, AR 72716
Attention: Real Estate Manager – Nebraska
(Store No. 4568-00)

Wal-Mart Real Estate Business Trust
2001 S.E. 10th Street
Bentonville, AR 72716
Attention: Legal Department – Nebraska
(Store No. 4568-00)

Developer: Hayden Place Development LLC
12049 CRP 30
Blair, NE 68008
Attn: Mary Berg

Notices shall be effective upon receipt or refusal. In the event that any person acquires a fee interest in the Outparcels or the Wal-Mart Property said person shall be entitled to provide a request for notice to the addressees listed above, which request, in order to be effective, must also be recorded in the county recorder's office in the county in which the Outparcels and the Wal-Mart Property are located. Any party shall be entitled to change its address for notice by providing notice of such change and recording a copy of the notice of such change in the county recorder's office in the county recorder's office in the county in which the Outparcels and the Wal-Mart Property are located. Until such time as the notice of change is effective pursuant to the terms of this Section 20 and until such time as it is recorded as required above, the last address of said party shall be deemed to be the proper address of said party.

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

22. Intentionally Deleted.

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

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

ATTEST

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

George Baens
Assistant Secretary
(SEAL)

By [Signature]
John Clarke J. Robert Boy
Vice President - Real Estate 9/21/2010

STATE OF Arkansas

COUNTY OF Benton

The foregoing instrument was acknowledged before me this 21st day of September, 2010, by John Clarke, Vice President - Real Estate of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust. J. Robert Boy, S. VP - Real Estate, Design, Construction

(Seal and Expiration Date)



[Signature]
Notary Public

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

DEVELOPER:

HAYDEN PLACE DEVELOPMENT, LLC, a
Nebraska limited liability company

ATTEST

By Mary Berg
Name Mary Berg
Its managing member

(SEAL)

STATE OF Nebraska

COUNTY OF Washington

The foregoing instrument was acknowledged before me, this 13th day of September, 2010, by Mary Berg, the Managing Member of Hayden Place Development, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal and Expiration Date)



Randy W. Lock
Notary Public

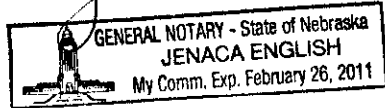
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

DEVELOPER:

HAYDEN PLACE SHOPS, LLC, a Nebraska limited liability company

ATTEST

Jenaca English



(SEAL)

By *Tracy Gross*
Name *Tracy Gross*
Its *Managing Member*

STATE OF *Nebraska*
COUNTY OF *Washington*

The foregoing instrument was acknowledged before me this *17th* day of *September*, 2010, by *Tracy Gross*, the *Managing Member* of Hayden Place Shops, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal and Expiration Date)

David O'Hanlon
Notary Public



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

DEVELOPER: .

CEDAR VALLEY PLACE, LLC, a Nebraska limited liability company

ATTEST

By Mary Berg
Name Mary Berg
Its managing member

(SEAL)

STATE OF Nebraska
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 13th day of September, 2010, by Mary Berg, the Managing Member of Cedar Valley Place, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal and Expiration Date)



Randy W. Lock
Notary Public

CONSENT AND SUBORDINATION BY TENANT

Nichron, LLC, a Nebraska limited liability company, d/b/a Anytime Fitness ("Nichron") is a tenant of one, or a portion of one, of the Outparcels as of the date of this Agreement. The Outparcels are legally described on Exhibit C attached hereto. By its execution hereof, Nichron agrees to abide by and be bound by the terms and conditions set forth in this Agreement. Nichron hereby consents to and acknowledges and agrees that its lease of one, or a portion of one, of the Outparcels and any other agreements concerning Nichron's occupancy and use thereof (collectively, the "Lease") and its use and occupancy of one, or a portion of one, of the Outparcels shall be subordinate and subject to the rights of Wal-Mart under this Agreement and the restrictions, terms and conditions set forth in this Agreement. Further, Nichron hereby confirms that the Lease, and any other agreements concerning Nichron's occupancy and use of one, or a portion of one, of the Outparcels, does not affect, encumber or otherwise place any burdens upon the Wal-Mart Property or any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property, and releases any interest it may have in or to the Wal-Mart Property, and any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property.

Nichron confirms that it has the power, right and authority to enter into this Consent and Subordination and that this Consent and Subordination shall be binding upon Nichron, its successors and assigns, for the benefit of Wal-Mart, its successors and assigns, the Wal-Mart Property, and any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property. This Consent and Subordination is effective as of the date and year first written.

ATTEST

NICHRON, LLC, a Nebraska limited liability company

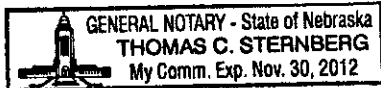
By [Signature]
Name Ronnie Nichols
Its owner
Date 9-14-10

(SEAL)

STATE OF Nebraska
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 24 day of Sept, 2010, by Ronnie Nichols, Owner of Nichron, a Nebraska LLC, on behalf of the Company.

(Seal and Expiration Date)



[Signature]
Notary Public

CONSENT AND SUBORDINATION BY TENANT

Washington County Bank, a Nebraska State Bank ("Bank") is a tenant of one, or a portion of one, of the Outparcels as of the date of this Agreement. The Outparcels are legally described on Exhibit C attached hereto. By its execution hereof, Bank agrees to abide by and be bound by the terms and conditions set forth in this Agreement. Bank hereby consents to and acknowledges and agrees that its lease of one, or a portion of one, of the Outparcels and any other agreements concerning Bank's occupancy and use thereof (collectively, the "Lease") and its use and occupancy of one, or a portion of one, of the Outparcels shall be subordinate and subject to the rights of Wal-Mart under this Agreement and the restrictions, terms and conditions set forth in this Agreement. Further, Bank hereby confirms that the Lease, and any other agreements concerning Bank's occupancy and use of one, or a portion of one, of the Outparcels, does not affect, encumber or otherwise place any burdens upon the Wal-Mart Property or any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property, and releases any interest it may have in or to the Wal-Mart Property, and any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property. For purposes of clarification, Bank hereby confirms that the exclusive use granted to Bank for a stand alone ATM in the Lease shall not apply to the Wal-Mart Property or any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property. Wal-Mart hereby confirms that this Agreement does not prohibit Bank from installing, operating and maintaining a stand alone ATM on the Outparcels.

Bank confirms that it has the power, right and authority to enter into this Consent and Subordination and that this Consent and Subordination shall be binding upon Bank, its successors and assigns, for the benefit of Wal-Mart, its successors and assigns, the Wal-Mart Property, and any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property. This Consent and Subordination is effective as of the date and year first written.

ATTEST

WASHINGTON COUNTY BANK, a Nebraska State Bank

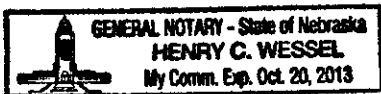
By _____
Name F. Jason Fowler
Its CFO
Date 9-14-10

(SEAL)

STATE OF NEBRASKA
COUNTY OF WASHINGTON

The foregoing instrument was acknowledged before me this 14th day of SEPTEMBER, 2010, by F. JASON FOWLER CFO of W.C.B., a NEBRASKA CORP., on behalf of the BANK.

(Seal and Expiration Date)



Henry C. Wessel
Notary Public

CONSENT AND SUBORDINATION BY TENANT

Bixby, Inc., a Minnesota corporation, d/b/a Great Clips ("Great Clips") is a tenant of one, or a portion of one, of the Outparcels as of the date of this Agreement. The Outparcels are legally described on Exhibit C attached hereto. By its execution hereof, Great Clips agrees to abide by and be bound by the terms and conditions set forth in this Agreement. Great Clips hereby consents to and acknowledges and agrees that its lease of one, or a portion of one, of the Outparcels and any other agreements concerning Great Clips' occupancy and use thereof (collectively, the "Lease") and its use and occupancy of one, or a portion of one, of the Outparcels shall be subordinate and subject to the rights of Wal-Mart under this Agreement and the restrictions, terms and conditions set forth in this Agreement. Further, Great Clips hereby confirms that the Lease, and any other agreements concerning Great Clips' occupancy and use of one, or a portion of one, of the Outparcels, does not affect, encumber or otherwise place any burdens upon the Wal-Mart Property or any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property, and releases any interest it may have in or to the Wal-Mart Property, and any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property.

Great Clips confirms that it has the power, right and authority to enter into this Consent and Subordination and that this Consent and Subordination shall be binding upon Great Clips, its successors and assigns, for the benefit of Wal-Mart, its successors and assigns, the Wal-Mart Property, and any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property. This Consent and Subordination is effective as of the date and year first written.

ATTEST

BIXBY, INC. a Minnesota corporation, d/b/a Great Clips

Dan Hennon

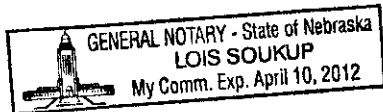
By Linda Martin
Name LINDA MARTIN
Its Vice Pres.
Date 9-14-10

(SEAL)

STATE OF Nebr
COUNTY OF Douglas

The foregoing instrument was acknowledged before me this 14th day of Sept 2010, by Linda Martin, Vice Pres. of Bixby One, a minn Corp, on behalf of the company.

(Seal and Expiration Date)



Lois Soukup
Notary Public

7 0 1

THIS PAGE LEFT INTENTIONALLY BLANK

CONSENT AND SUBORDINATION BY TENANT

Gracenotes, LLC, a Nebraska limited liability company, d/b/a Scooter's Coffeehouse ("Gracenotes") is a tenant of one, or a portion of one, of the Outparcels as of the date of this Agreement. The Outparcels are legally described on Exhibit C attached hereto. By its execution hereof, Gracenotes agrees to abide by and be bound by the terms and conditions set forth in this Agreement. Gracenotes hereby consents to and acknowledges and agrees that its lease of one, or a portion of one, of the Outparcels and any other agreements concerning Gracenotes' occupancy and use thereof (collectively, the "Lease") and its use and occupancy of one, or a portion of one, of the Outparcels shall be subordinate and subject to the rights of Wal-Mart under this Agreement and the restrictions, terms and conditions set forth in this Agreement. Further, Gracenotes hereby confirms that the Lease, and any other agreements concerning Gracenotes' occupancy and use of one, or a portion of one, of the Outparcels, does not affect, encumber or otherwise place any burdens upon the Wal-Mart Property or any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property, and releases any interest it may have in or to the Wal-Mart Property, and any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property.

Gracenotes confirms that it has the power, right and authority to enter into this Consent and Subordination and that this Consent and Subordination shall be binding upon Gracenotes, its successors and assigns, for the benefit of Wal-Mart, its successors and assigns, the Wal-Mart Property, and any other property owned by Wal-Mart, its successors and assigns, in the vicinity of the Wal-Mart Property. This Consent and Subordination is effective as of the date and year first written.

ATTEST

GRACENOTES, LLC, a Nebraska limited liability company

By Debra K Jensen
Name Debra K Jensen
Its Owner
Date 9/14/2010

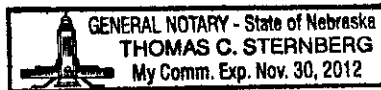
(SEAL)

STATE OF NEBRASKA
COUNTY OF WOODHURST

The foregoing instrument was acknowledged before me this 14 day of Sept, 2010, by Debra Jensen, Owner of Gracenotes LLC, a Nebraska Company, on behalf of the Company.

(Seal and Expiration Date)

Thomas C Sternberg
Notary Public



MORTGAGEE CONSENT

Two Rivers State Bank ("Mortgagee") has made a loan (the "Loan") to Cedar Valley Place, LLC, a Nebraska limited liability company secured by Real Estate Deed of Trust (with Future Advance Clause) securing a sum not to exceed \$370,000, dated February 9, 2007 and filed February 12, 2007 in Book 504, Page 572 in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Outlots.

Mortgagee hereby consents to this Agreement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Agreement, as the same may be amended from time to time.


MORTGAGEE:

TWO RIVERS STATE BANK

By: *[Signature]*
Name: Bandy W. Lock
Its: President/CEO
Date: 9-13-10

STATE OF Nebraska)
) ss.
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 13 day of September, 2010, by Bandy Lock, the President/CEO of Two Rivers State Bank a _____, on behalf of the _____.

[SEAL] 
My Commission Expires 7-23-13

[Signature]
Notary Public

MORTGAGEE CONSENT

Two Rivers Bank ("Mortgagee") has made a loan (the "Loan") to Hayden Place Development, LLC secured by Real Estate Deed of Trust (with Future Advance Clause) securing a sum not to exceed \$1,300,000, dated September 7, 2007 and filed September 10, 2007 in Book 515, Page 630 in the office of the Register of Deeds of Washington County, Nebraska, (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Outlots.

Mortgagee hereby consents to this Agreement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Agreement, as the same may be amended from time to time.

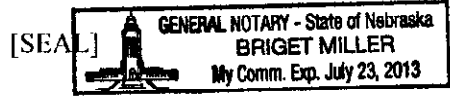
MORTGAGEE:

TWO RIVERS BANK

By: *Randy Lock*
Name: *RANDY LOCK*
Its: *PRESIDENT/CEO*
Date: *9.13.10*

STATE OF Nebraska)
COUNTY OF Washington) ss.

The foregoing instrument was acknowledged before me this 13 day of September, 2010, by Randy Lock, the President/CEO of TWO RIVERS BANK, a _____, on behalf of the _____.



Briget Miller
Notary Public

My Commission Expires 7-23-13

MORTGAGEE CONSENT

Two Rivers State Bank ("Mortgagee") has made a loan (the "Loan") to Jason Berg and Mary Berg, husband and wife, an undivided 1/2 interest and Wayne A. Jones and Holli M. Jones, husband and wife, an undivided 1/2 interest, who are the predecessors in interest to Hayden Place Development, LLC, Cedar Valley Place, LLC and Hayden Place Shops, LLC, secured by Deed of Trust with Future Advance Clause to secure the sum of \$975,000 dated October 20, 2006 and filed of record November 6, 2006 in Book 499, Page 278, in the office of the Register of Deeds of Washington County, Nebraska, (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Outlots.

Mortgagee hereby consents to this Agreement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Agreement, as the same may be amended from time to time.

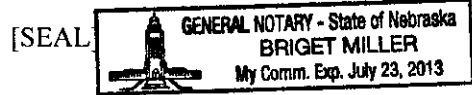
MORTGAGEE:

TWO RIVERS STATE BANK

By: Randy W. Lock
Name: Randy W. Lock
Its: President/CEO
Date: 9-13-10

STATE OF Nebraska
COUNTY OF Washington) ss.

The foregoing instrument was acknowledged before me this 13 day of September, 2010, by Randy Lock, the President/CEO of Two Rivers State Bank, a _____, on behalf of the _____.



Briget Miller
Notary Public

My Commission Expires 7-23-13

MORTGAGEE CONSENT

Two Rivers State Bank ("Mortgagee") has made a loan (the "Loan") to Jason Berg and Mary Berg, husband and wife, an undivided 1/2 interest and Wayne A. Jones and Holli M. Jones, husband and wife, an undivided 1/2 interest, who are the predecessors in interest to Hayden Place Development, LLC, Cedar Valley Place, LLC and Hayden Place Shops, LLC, secured by Construction Security Deed of Trust With Future Advance Clause to secure the sum not to exceed \$1,900,000 dated November 6, 2006 and filed of record November 17, 2006 in Book 500, Page 113, in the office of the Register of Deeds of Washington County, Nebraska, (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Outlots.

Mortgagee hereby consents to this Agreement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Agreement, as the same may be amended from time to time.

MORTGAGEE:

TWO RIVERS STATE BANK

By: Randy W. Lock
Name: Randy W. Lock
Its: President/CEO
Date: 9-13-10

STATE OF Nebraska
COUNTY OF Washington ss.

The foregoing instrument was acknowledged before me this 13 day of September, 2010, by Randy Lock, the President/CEO of Two Rivers State Bank a _____, on behalf of the _____.

[SEAL]



My Commission Expires 7-23-13

Briget Miller
Notary Public

MORTGAGEE CONSENT

Two Rivers Bank ("Mortgagee") has made a loan (the "Loan") to Hayden Place Development, LLC secured by Real Estate Deed of Trust (With Future Advance Clause) to secure the sum not to exceed \$1,300,000 dated October 14, 2008 and filed of record October 27, 2008 in Book 531, Page 311, in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Outlots.

Mortgagee hereby consents to this Agreement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Agreement, as the same may be amended from time to time.

MORTGAGEE:

TWO RIVERS BANK

By: Randy Lock
Name: RANDY W. LOCK
Its: President/CEO
Date: 9-13-10

STATE OF Nebraska)
COUNTY OF Washington) ss.

The foregoing instrument was acknowledged before me this 13 day of September, 2010, by Randy Lock, the President/CEO of Two Rivers Bank, a _____, on behalf of the _____.

[SEAL]



Briget Miller
Notary Public

My Commission Expires 7-23-13

MORTGAGEE CONSENT

Pinnacle Bank – Papillion (“Mortgagee”) has made a loan (the “Loan”) to Hayden Place Shops LLC, a Nebraska limited liability company, secured by Real Estate Deed of Trust (With Future Advance Clause) to secure the sum not to exceed \$1,760,000 dated December 4, 2009 and filed of record December 8, 2009 in Book 548, Page 979, in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the “Encumbrances”). The Encumbrances create a first lien against a portion of the Outlots.

Mortgagee hereby consents to this Agreement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Agreement, as the same may be amended from time to time.

MORTGAGEE:

PINNACLE BANK – PAPHILLION

By: [Signature]
Name: Spencer Kimball
Its: V.P.
Date: 9/14/10

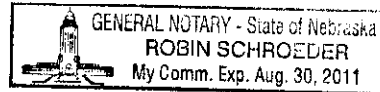
STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 14 day of SEPT., 2010, by Spencer Kimball, the V.P. of PINNACLE BANK, a NEBRASKA CORP., on behalf of the CORP.

[SEAL]

My Commission Expires 8-30-11

[Signature]
Notary Public



CONSENT OF LIENHOLDER

Olsson Associates ("Lienholder") has rendered certain construction services to Hayden Place Development, LLC and/or Cedar Valley Place, LLC and in connection with the same, has filed a (i) Construction Lien in the amount of \$1,943.10, plus interest, filed of record December 21, 2009 in Book 549, Page 297 in the office of the Register of Deeds of Washington County, Nebraska and (ii) a Construction Lien in the amount of \$265,064.82, plus interest, filed of record December 21, 2009 in Book 549, Page 301 in the office of the Register of Deeds of Washington County, Nebraska, both as modified by that certain [Amendment to Construction Lien] dated September 14, 2010, filed of record _____ in the office of the Register of Deeds of Washington County, Nebraska (together with any amendments, modifications, replacements and restatements thereto, the "Construction Liens"). The Construction Liens constitutes a lien against a portion of the Outlots.

Lienholder hereby consents to this Agreement and agrees that the Construction Liens shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Agreement as the same may be amended from time to time. Further, Lienholder represents and warrants to Wal-Mart that the Construction Liens are the only liens filed against the Outlots by Lienholder. Lienholder agrees that any liens that may be filed against the Outlots in the future shall be subject and subordinate to the terms, provisions, covenants, easements and conditions contained in this Agreement as the same may be amended from time to time.

* 9/28/10 BOOK 554 Pg 598 AND BOOK 559 Pg 599

LIENHOLDER:

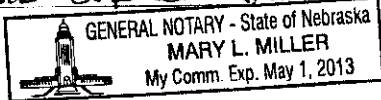
OLSSON ASSOCIATES

By: Brad Stittmatter
Name: Brad Stittmatter
Its: _____
Date: _____

STATE OF Nebraska)
) ss.
COUNTY OF Lawrence)

The foregoing instrument was acknowledged before me this 14th day of Sept, 2010, by Brad Stittmatter the President of Olsson Associates a Nebraska Corporation, on behalf of the Lienholder.

[SEAL]



Mary L. Miller
Notary Public

My Commission Expires 5/1/2013

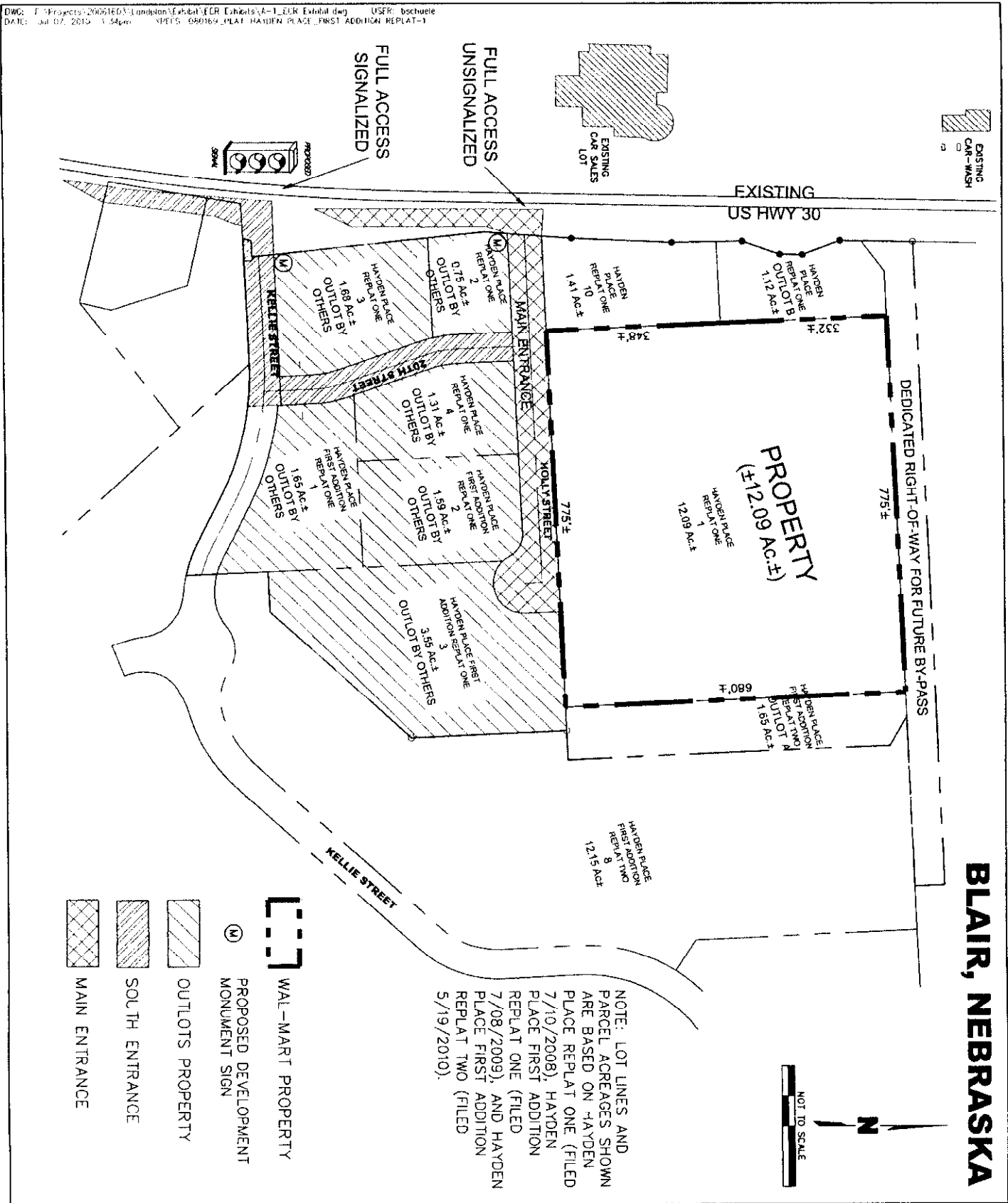
7 1 0

EXHIBIT A-1

SITE PLAN SHOWING WAL-MART PROPERTY AND OUTPARCELS






SEE ATTACHED

7 1 0



BLAIR, NEBRASKA

NOTE: LOT LINES AND PARCEL ACERAGES SHOWN ARE BASED ON HAYDEN PLACE REPLAT ONE (FILED 7/10/2008), HAYDEN PLACE FIRST ADDITION REPLAT ONE (FILED 7/08/2009), AND HAYDEN PLACE FIRST ADDITION REPLAT TWO (FILED 5/19/2010).

-  WAL-MART PROPERTY
-  PROPOSED DEVELOPMENT MONUMENT SIGN
-  OUTLOTS PROPERTY
-  SOUTH ENTRANCE
-  MAIN ENTRANCE

PROJECT NO: 006-1603
 DRAWN BY: MDB
 DATE: 07/07/2010

**EXHIBIT A-1
 EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND**

OLSSON ASSOCIATES
 2111 South 67th Street
 Suite 200
 Omaha, NE 68106
 TEL 402.341.1116
 FAX 402.341.5895

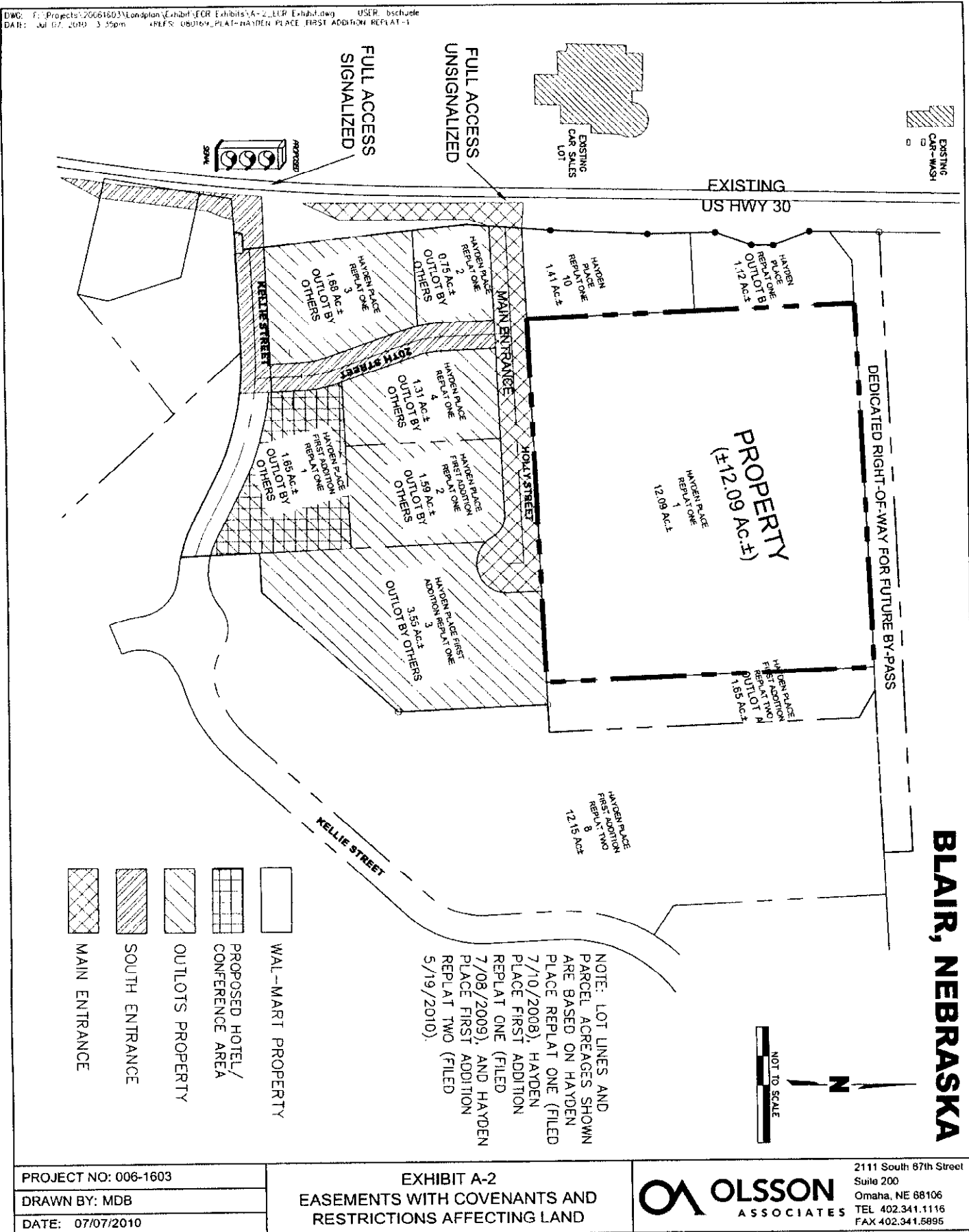
7 1 2

EXHIBIT A-2

SITE PLAN SHOWING BUILDING AREAS, HOTEL/CONFERENCE CENTER AREA

SEE ATTACHED

7 1 2



NOTE: LOT LINES AND PARCEL ACREAGES SHOWN ARE BASED ON HAYDEN PLACE REPLAT ONE (FILED 7/10/2008), HAYDEN PLACE FIRST ADDITION REPLAT ONE (FILED 7/08/2009), AND HAYDEN PLACE FIRST ADDITION REPLAT TWO (FILED 5/19/2010).

BLAIR, NEBRASKA

PROJECT NO: 006-1603
 DRAWN BY: MDB
 DATE: 07/07/2010

**EXHIBIT A-2
 EASEMENTS WITH COVENANTS AND
 RESTRICTIONS AFFECTING LAND**

OLSSON ASSOCIATES

2111 South 67th Street
 Suite 200
 Omaha, NE 68106
 TEL 402.341.1116
 FAX 402.341.5895

714

EXHIBIT B

WAL-MART PROPERTY LEGAL DESCRIPTION

Lot 1, Hayden Place Replat One, City of Blair, Washington County, Nebraska.

714

7 1 5

EXHIBIT C

OUTPARCELS LEGAL DESCRIPTION

Lot 2, Lot 3 and Lot 4, Hayden Place Replat One, and Lot 1, Lot 2, and Lot 3, Hayden Place First Addition Replat One, City of Blair, Washington County, Nebraska

7 1 5

7 1 6

EXHIBIT D
SIGNAGE PLAN

See attached

Omaha Neon Sign Co., Inc.
 1200 North 10th Street - Omaha, Nebraska 68102 - 402-491-9377 - FAX: 402-491-7052

Hayden Place

- REVISIONS:**
- MATERIALS
 - CHANNEL LETTERS
 - NON-LIT SIGNAGE
 - FULL CHANNEL LETTERS
 - FULL FACE SIGN
 - FULL FACE SIGN
 - WOODWAY SIGN
 - OTHER TOOL
 - CHANGE OR REPLACE SIGNAGE
 - SIGNAGE
 - NEW CONSTRUCTION
 - REWORK SIGN
 - TENANT CHANGES
 - LAYOUT CHANGES
 - CONTRACT CHANGES
 - AMENDMENTS TO EXISTING SIGNAGE

PROJECT TYPE:
 NEW CONSTRUCTION

REMARKS:

Tenant changes
 layout changes
 contract changes
 amendments to existing signage

NOTICE:
 ALL SIGNAGE, REPLICATIONS AND MATERIALS SUBJECT TO APPROVAL BY APPLICABLE LOCAL AND STATE REGULATIONS. THE APPLICABLE REGULATIONS AND PERMITS MUST BE OBTAINED PRIOR TO COMMENCEMENT OF WORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.

DRAWING # 56271

DATE 08/11/20

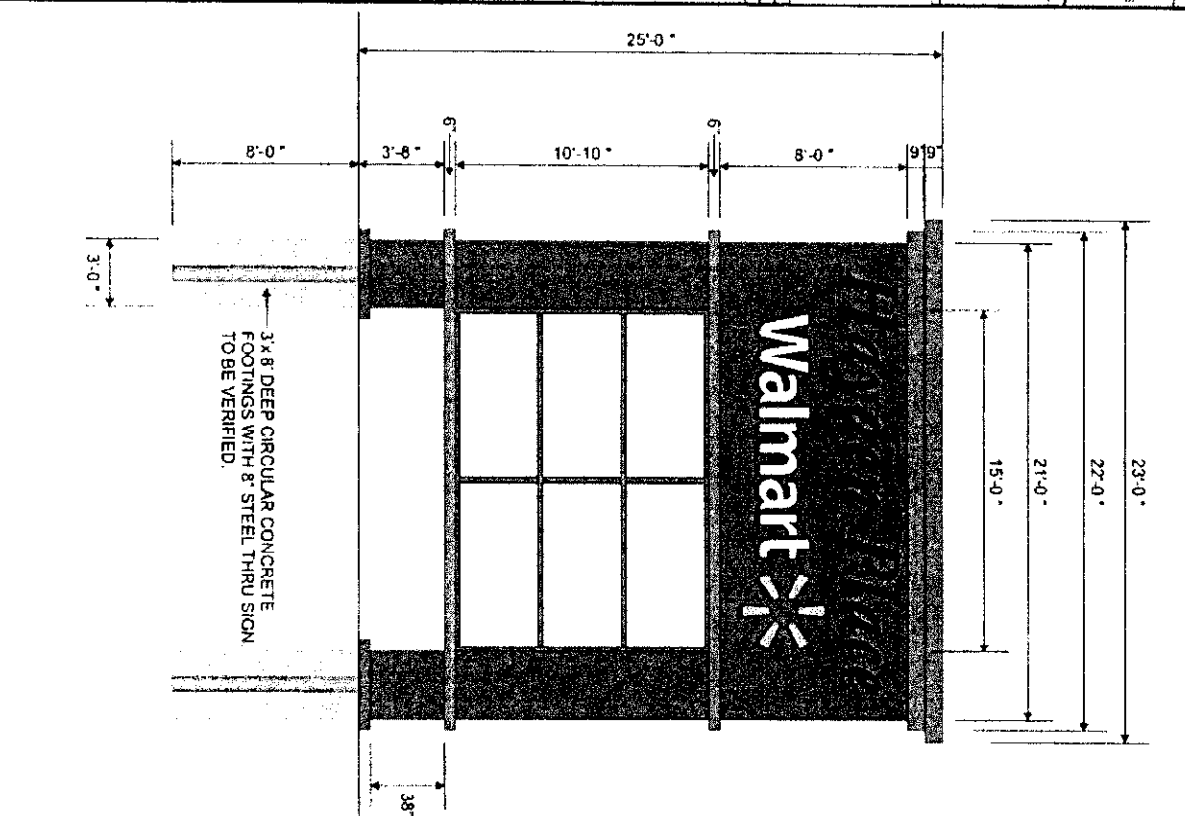
SCALE AS SHOWN

DESIGNED BY [Signature]

CHECKED BY [Signature]

DATE 08/11/20

PROJECT Hayden Place

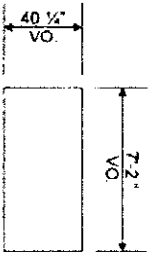


SCALE: 3/16" = 1'-0"

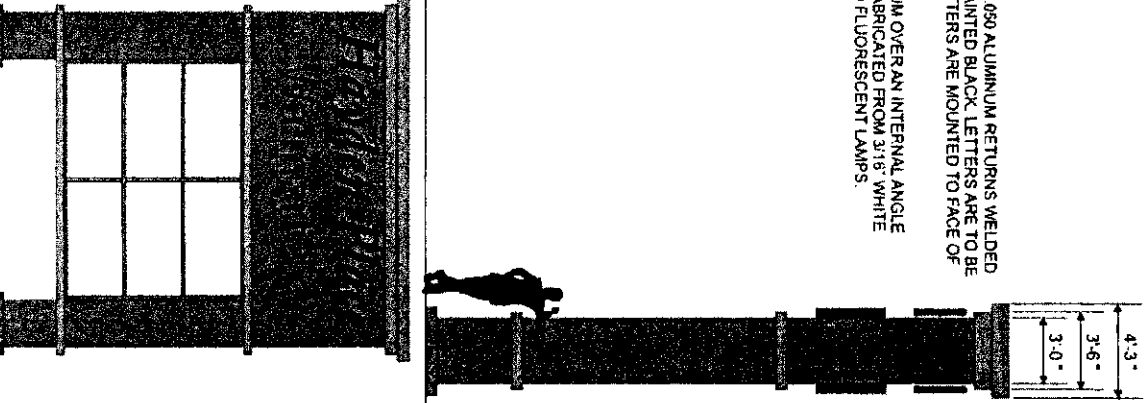
REVERSE CHANNEL LETTERS FABRICATED FROM .050 ALUMINUM RETURNS WELDED TO .050 ALUMINUM FACES. LETTERS ARE TO BE PAINTED BLACK. LETTERS ARE TO BE BACK LIT WITH WHITE LED LIGHTING SYSTEM. LETTERS ARE MOUNTED TO FACE OF CABINET ON 1 1/2" STAND-OFFS.

D/F TENANT CABINET FABRICATED FROM ALUMINUM OVER AN INTERNAL ANGLE IRON FRAME. INDIVIDUAL TENANT PANELS ARE FABRICATED FROM 3/16" WHITE PLEXIGLAS. INTERNAL ILLUMINATION WITH CW/HD FLUORESCENT LAMPS.

- SW 2823 ROCKWOOD CLAY
- SW 6082 COBBLE BROWN



NOTE: WALMART CHANNEL LETTERS ARE TO BE ADDED AT A LATER DATE.



Shoppes at Hayden Place