

After recording return to:
Olhava Associates L.P.
P.O. Box 1449
Edmonds, WA 98020
Attn: Mark Zenger

LAWYERS TITLE INS CORP
Amended Easement Reg Fee: \$ 72.00
11/21/2008 03:00 PM
Walter Washington, Kitsap Co Auditor

200811210126

Page: 1 of 31

Reference: 110011338

DOCUMENT TITLE(S): First Amended and Restated Easements with
Covenants and Restrictions Affecting Land ("ECR")

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:
200406080205

GRANTOR(S): Wal-Mart Real Estate Business Trust (Wal-Mart)
HD Development of Maryland, Inc. (Home Depot)
Olhava Associates Limited Partnership

ABBREVIATED LEGAL DESCRIPTION:

NE SW 10-26-1E

This document has been placed of
record as a customer courtesy and
this company accepts no
liability or responsibility for the
accuracy or validity of the
document.

TAX PARCEL NUMBER(S):

102601-33-060-2004, see pg. E-1 for
additional parcel numbers.

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EXCISE TAX EXEMPT NOV 21 2008

EXCISE TAX EXEMPT NOV 19 2008

Poulsbo, WA (#5272-00)

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

THIS AGREEMENT is made as of the 30th day of October, 2008, between WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust ("Wal-Mart"), HD DEVELOPMENT OF MARYLAND, INC., a Maryland corporation ("Home Depot"), and OLHAVA ASSOCIATES LIMITED PARTNERSHIP, a Washington limited partnership ("Developer") (at times referred to individually, collectively as the "Parties").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of the Wal-Mart Tract as shown on the plan attached hereto as Exhibit "A-1" hereof, said tract being more particularly described in Exhibit "B" attached; and

WHEREAS, Developer is the owner of the property marked Developer Tract/S.C. and Developer Tract/Outparcel (all Developer S.C. and Outparcel Tracts may be referred to collectively herein as the "Developer Tract"), all as shown on the plan attached hereto as Exhibit "A-1" hereof, the same being more particularly described in Exhibit "C" hereof; and

WHEREAS, Home Depot is the owner of the Home Depot Tract as shown on the plan attached hereto as Exhibit "A-1" hereof, the same being more particularly described in Exhibit "D"; and

WHEREAS, the Wal-Mart Tract, the Home Depot Tract, and the Developer Tract (among other property) (collectively, the "Tracts"), are subject to the Easements with Covenants and Restrictions Affecting Land Agreement, dated June 8, 2004, and recorded June 8, 2004, as Recording No. 200406080205, Official Records of Kitsap County, Washington, which the parties hereto wish to terminate, amend, restate and replace in its entirety with this Agreement, effective upon the execution and recording of this Agreement;

WHEREAS, the Tracts are subject to the Olhava Property Master Plan (the "Master Plan"), the Common Easement and Development Agreement, dated December 15, 1998, and recorded December 31, 1998, Recording No. 3144708, Official Records of Kitsap County, Washington, as amended by those certain i) First Amendment recorded December 12, 2005 under Recording No. 200512120155, ii) Second Amendment recorded April 11, 2007 under Recording No. 200704110101, and iii) Release of Covenant Agreement recorded April 22, 2008 under Recording No. 200804220224 (collectively, the "CEDA"), and other associated project approvals from the City of Poulsbo and other governmental agencies with jurisdiction, as the same may be modified or amended (such agreements and approvals together with the Master Plan and CEDA are sometimes referred to herein collectively as the Project Approvals); and

WHEREAS, the Parties desire that the Tracts be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial shopping center (sometimes hereinafter referred to as the "Shopping Center"), and further desire that said tracts be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

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

1. **Building/Common Areas.**

a. "Building Areas" as used herein shall mean that portion of the Tracts shown on Exhibit "A-1" or in the Master Plan Approvals as "Building Area", as the same may be modified from time to time in accordance with the Project Approvals (such modification to be with Wal-Mart's and/or Home Depot's consent when required per Sections 4(b), 4(c)(5), 6(a)(2)(i) and 6(a)(3)(i) herein). Canopies may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

b. "Common Areas" shall be all of the Tracts except the Building Areas, and except any structure or facility designed for the exclusive use of an owner or tenant in the Shopping Center, such as trash enclosures areas and loading docks. Any subsequent expansion or contraction of building(s) once constructed shall increase or decrease the Common Area as appropriate.

c. "Conversion to Common Areas" shall be those portions of the Building Areas on each tract which are not from time to time used, or cannot under the terms of this Agreement (including Paragraph 6(a)(3)) be used, for buildings; such areas shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

d. "Wal-Mart Zone of Control" shall be Lots 3-A and 3-C (as depicted on Exhibit A-1 attached hereto).

e. "Home Depot Zone of Control" shall be Lots 4-A, 4-E, 4-F and the Truck Access Area (as depicted on Exhibit A-1 attached hereto).

f. "Outparcels" are defined to mean collectively Lots 3-A, 3-C, 4-A, 4-B, and 4-F (as depicted on Exhibit A-1 attached hereto).

2. **Shopping Center Use.** Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices, and retail stores; except as otherwise set forth below:

a. So long as Wal-Mart's retail store on the Wal-Mart Tract, once open for business, has not thereafter been closed for business for more than twelve (12) continuous months, no portion of any building or structure in the Shopping Center which is located within four hundred (400) feet from any property line of the Wal-Mart Tract may be used as a cafeteria, restaurant deriving more than fifty percent (50%) of its gross sales from alcoholic beverages, theater, bowling alley, health spa, billiard parlor, night club or other place of recreation or amusement, or any business serving alcoholic beverages (except restaurants as provided above), without the prior written consent of Wal-Mart and Developer (excepting, however, that any Outparcel within Wal-Mart's Zone of Control may not be used as a restaurant serving alcoholic beverages). Developer recognizes that said businesses may inconvenience Wal-Mart's customers and may adversely affect Wal-Mart's business. Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Wal-Mart on the Wal-Mart Tract. Developer recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its business on the Wal-Mart Tract; and Developer hereby waives any legal action for damages or for equitable relief which might be available to Developer because of such cessation of business activity by Wal-Mart.

b. So long as Home Depot's retail store on the Home Depot Tract, once open for business, has not thereafter been closed for business for more than twelve (12) continuous months, no portion of the Shopping Center in the Home Depot Zone of Control shall be used for any non-commercial use or for any of the following purposes: a surplus store; gun range; the sale of guns as a primary use; car wash facility or gasoline station; a warehouse; an animal kennel (except for Lot 4-A (as depicted on Exhibit A-1 attached hereto), which may kennel overnight if boarding is associated with its veterinary service); theater, auditorium, sports or other entertainment viewing facility (whether live, film, audio/visual or video); bowling alley; skating rink; fitness center, workout facility, gym, health spa or studio, or exercise facility; restaurants which derive more than 35% of their gross sales from alcohol sales; or Business Office usage (defined as any office that does not provide services directly to a customer, other than incidental in connection with non-prohibited uses). Retail Office usage (defined as any office which provides services directly to customers, including but not limited to real estate, stock brokerage, mortgage brokerage, title companies, financial institutions, travel and insurance agencies, and medical, dental and legal clinics) is permissible in the Home Depot Zone of Control only so long as (i) no single office space is greater than 5,000 square feet; (ii) no more than 9,000 square feet of office space shall be permitted in any single building and, (iii) no more than 30,000 square feet of total office space shall be permitted in the Home Depot Zone of Control.

c. No portion of the Shopping Center, or the Common Area thereof, shall be used for any of the following:

(i) a flea market or a business selling so-called "second hand" goods (the term "second hand" shall mean stores which sell goods primarily as a service to the public rather than to a retail customer for a profit); cemetery; mortuary; any establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; a so-called "head shop"; off-track betting parlor; junk yard; recycling facility or stockyard; repair shop (including lubrication and/or service center other than on the Wal-Mart Tract) that routinely stores vehicles outdoors overnight, body and fender shop, or motor vehicle or boat storage facility (neither the foregoing restriction nor anything else in this Agreement to the contrary shall preclude the owner of the Home Depot Tract and/or the owner of the Wal-Mart Tract's sale or rental of delivery vehicles and trailers to its customers as part of its business); a mini-storage or self-storage facility; a laundromat or dry-cleaning facility (but this shall not be deemed to prohibit nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer); a bar, tavern or cocktail lounge (defined as any business deriving more than 50% of its gross sales from the sale of alcoholic drinks by the glass); a discotheque, dance hall, comedy club, night club or adult entertainment facility; billiard or pool hall; massage parlor, game parlor or video arcade (which shall be defined as any store containing more than three (3) electronic games); a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees and not to customers (but shall specifically not prohibit a school which is incidental to a primary retail or commercial purpose); industrial, residential or manufacturing uses, a school (other than a day-care or similar facility) or a house of worship; or

(ii) traveling carnivals, fairs, auctions, shows, kiosks, booths for the sale of fireworks, sales by transient merchants utilizing vehicles or booths and other promotions of any nature; provided, however, nothing in this provision shall prohibit seasonal outdoor sales in compliance with the Project Approvals. Except as otherwise permitted in this Agreement, in the event that unauthorized Persons, including without limitation tenants or invitees of tenants occupying buildings now or at any future time located in the Shopping Center, utilize the parking area for other than temporary parking by customers while shopping in the Shopping Center, Developer (or the lot owners' association, when established) shall, upon written request by Home Depot or Wal-Mart, take whatever action as shall be necessary to prevent said unauthorized use; or

(iii) any business or use which creates strong, unusual or offensive odors, fumes, dust or vapors; emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness; creates unusual fire, explosive or other hazards, or materially increases the rate of insurance for any other Tract, Owner or Occupant; provided however, the operation of a typical Home Depot home improvement store, Wal-Mart store, or other typical commercial and retail establishments, shall not be deemed to be in violation of this Section.

d. Other than fuel, lube or repair or similar facilities, no oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any portion of the Tracts, nor shall oil wells, tanks, tunnels, or mineral excavation or shafts be permitted upon the surface of any portion of the Tracts. No derrick or other structure designed for use in boring for water, oil,

natural gas or other minerals shall be erected, maintained or permitted on any portion of the Shopping Center.

e. No portion of the Common Area shall be used for the sale, storage or display of merchandise or food; provided, however, that (i) the display of delivery vehicles for sale and/or rental to its customers as part of the Wal-Mart Tract Owner's or the Home Depot Tract Owner's business shall be permitted, (ii) the seasonal sale of merchandise by the owner or occupant of the Home Depot Tract and Wal-Mart Tract, respectively, on the Home Depot Tract and Wal-Mart Tract shall be permitted from the parking lot in the outside sales area and the sidewalk located on the Home Depot Tract and Wal-Mart Tract, to the extent allowed by law, governmental approvals and the Project Approvals, and (iii) seasonal or temporary sales of non-prohibited merchandise by the owner or occupant of Lot 7-A (as depicted on Exhibit A-1 attached hereto) shall be permitted on any area of Lot 7-A east or north of the building(s) located on Lot 7-A, to the extent allowed by law, governmental approvals and the Project Approvals.

f. For purposes of this Agreement, all service areas shall be the sole exclusive property of the owners of the buildings associated with such areas and each owner shall have the exclusive right to use such areas for whatever purpose such owner deems appropriate and is allowed by law, governmental approvals and the Project Approvals, including without limitation, the sale and display of merchandise.

g. For purposes of this Agreement, any persons engaging in the following activities in any portion of the Shopping Center (except an owner, occupant or tenant on the tract where their business is located) will not be considered to be permittees under this Agreement: (i) exhibiting any placard, sign, or notice that does not advertise an existing business in the Shopping Center; (ii) distributing any circular, handbill, placard, or booklet promoting an existing business in the Shopping Center; (iii) soliciting memberships or contributions for an existing business in the Shopping Center; (iv) parading, picketing, or demonstrating; and (v) failing to follow regulations relating to the use of the Shopping Center.

h. This Agreement is not intended to, and does not, create or impose any obligation on a party to operate, continuously operate, or cause to be operated a business or any particular business in the Shopping Center or on any parcel.

i. If Wal-Mart ceases operating on the Wal-Mart Tract for a period of twelve (12) continuous months after the initial opening of such retail store, Developer shall have the right to reacquire the Wal-Mart Tract. The Reacquisition Price shall be equal to the sum of (i) the original purchase price of the Wal-Mart Tract, and (ii) all amounts expended and capitalized by Wal-Mart in developing the Wal-Mart Tract, less depreciation taken or allowed. Closing costs shall be paid as follows:

By Wal-Mart: (a) Title insurance examination and premium (Standard Owner's Policy); (b) Expenses of placing title in proper condition; (c) Preparation of Statutory Warranty Deed; (d) Revenue stamps, transfer tax or excise tax; and (e) One-half (1/2) the escrow fee, if any.

By Developer: (a) Preparation of Mortgage, Deed of Trust or other applicable financing instruments; (b) Recording fees; (c) One-half (1/2) the escrow fee, if any; and (d) Cost difference, if any, between extended owner's title policy or any 'endorsed' policy (if requested by Developer) and standard owner's title insurance policy.

Developer shall give Wal-Mart written notice of its intention to exercise this reacquisition right, and the transaction shall close within ninety (90) days of such written notice. In the event that the Developer exercises the reacquisition rights granted by this Section, Wal-Mart shall convey to the Developer by Statutory Warranty Deed in the form acceptable to Developer, marketable fee simple title to the Wal-Mart Tract free and clear of any and all encumbrances, subject only to the same exceptions and in the same state as was evidenced by the title insurance policy issued in favor of Wal-Mart pursuant to the terms hereof, subject to such easements, dedications and rights-of-way which may have been required in Wal-Mart's discretion to make beneficial use of the Land or those exceptions approved by Developer (the "Permitted Exceptions"). At any Repurchase Closing, Developer shall be able to obtain, at Wal-Mart's expense, a standard form ALTA Owner's Title Insurance Policy (the "Policy") issued by the Title Company, insuring marketable fee simple title to Developer in the full amount of the Reacquisition Price and containing no exceptions or conditions other than the Permitted Exceptions as provided in this Section. After the Repurchase Closing all restrictions contained in any agreement between Wal-Mart and Developer, including without limitation these ECRs or any other document pertaining to the use of any property for any purposes, shall automatically terminate and be of no further force or effect, and the Developer is authorized to record a notice documenting the terminated provisions on the property so affected. The reacquired property shall be deemed part of the Developer Tract, and all of the remaining provisions of this Agreement shall continue to apply.

3. Competing Business.

a. The Parties covenant that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of the Wal-Mart Tract, either as owner or lessee, and (other than for portions of the Wal-Mart Tract sublet by Wal-Mart) operates a retail establishment similar to a typical discount department store with pharmacy, no portion of the remaining Tracts, shall be leased or occupied by or conveyed to any other party for use as a membership warehouse club, or as a pharmacy exceeding 12,000 square feet, a discount department store exceeding 30,000 square feet, a grocery store exceeding 12,000 square feet, or a variety, general or "dollar" store. Notwithstanding anything to the contrary contained herein, in the event that Wal-Mart closes its retail store after opening, and such closure exists for a continuous period of at least twelve (12) months, then Wal-Mart's right to the exclusive uses contained in this Section 3 (a) shall automatically terminate with respect to the Developer Tract. In the event of a breach of this covenant, Wal-Mart shall have the right to terminate this Agreement as to the breaching party only, and to seek any and all remedies afforded by either law or equity. If this "competing business" clause is challenged by any third party, then Wal-Mart shall defend the other Parties and/or itself at Wal-Mart's sole expense, except if the other Parties are in any way responsible for the competing business (by violating this provision itself or leasing, subleasing, assigning or conveying it rights hereunder or in its Property to a third party who violates this provision), then Developer and/or other Parties, respectfully, shall defend and hold harmless Wal-Mart. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Section 3 (a) shall prohibit the operation of a typical Home Depot home improvement store on the Home Depot Tract.

b. The Parties covenant that as long as Home Depot, or any affiliate of Home Depot, is the user of the Home Depot Tract, either as owner or lessee, and operates a retail home improvement store, no portion of the Shopping Center other than the Home Depot Tract shall be used for a home improvement center or for any business which sells, displays, leases, rents or distributes the following items or materials, singly or in any combination: lumber, hardware, tools, plumbing supplies, electrical supplies, paint, wallpaper and other wallcoverings, hard and soft flooring (including tile, wood flooring, rugs and carpeting), gardening and garden nursery supplies (but not a florist), Christmas trees, indoor and outdoor lighting systems and light fixtures, cabinets, large kitchen and household appliances, or closet organizing systems, except for the incidental sale of such items, and except for business on the approved Letter Agreement Regarding Permitted Users between Developer and Home Depot dated July 19, 2004. An "incidental sale of such items" is one in which there is no more than the lesser of (i) twenty percent (20%) of the total Floor Area of any such business, or (ii) 5,000 square feet of sales and/or display area, relating to such items individually or in the aggregate of any such business. Notwithstanding anything to the contrary contained herein, in the event that Home Depot closes its retail store after opening, and such closure exists for a continuous period of at least twelve (12) months, then Home Depot's right to the exclusive uses contained in this Section 3 (b) shall automatically terminate with respect to the remaining Developer Tracts and be of no further force or effect, and the Developer is authorized to record a notice documenting the terminated provisions on the property so affected. The reacquired property shall be deemed part of the Developer Tract, and all of the remaining provisions of this Agreement shall continue to apply. In the event of a breach of this covenant, Home Depot shall have the right to terminate this Agreement as to the breaching party only, and to seek any and all remedies afforded by either law or equity. If this "competing business" clause is challenged by any third party, then Home Depot shall defend the other Parties and/or itself at Home Depot's sole expense, except if the other Parties are in any way responsible for the competing business (by violating this provision itself or leasing, subleasing, assigning or conveying its rights hereunder or in its Property to a third party who violates this provision), then Developer and/or other Parties, respectfully, shall defend and hold harmless Home Depot. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Section 3 (b) shall prohibit the operation of a Wal-Mart store on the Wal-Mart Tract.

c. Developer covenants that, so long as Home Depot, or any affiliate of Home Depot, is the user of the Home Depot Tract, either as owner or lessee, and operates a retail home improvement store, no portion of any Outparcel(s) in the Home Depot Zone of Control shall be used for a business which sells, displays, or distributes the following items or materials, singly, or in any combination, except for the incidental sale of such items, and except for business on the approved Letter Agreement Regarding Permitted Users between Developer and Home Depot dated July 19, 2004: pool supplies, window treatments (including draperies, curtains and blinds), kitchen or bathrooms or components thereof (including tubs, sinks, faucets, mirrors, cabinets, showers, vanities, countertops and related hardware), windows, siding, ceiling fans, artificial plants, outdoor cooking equipment and accessories, patio furniture and patio accessories, or unfinished and finished furniture. An "incidental sale of such items" is one in which there is no more than the lesser of (i) twenty percent (20%) of the total Floor Area of any such business, or (ii) 5,000 square feet of sales and/or display area, relating to such items individually or in the aggregate of any such business. Notwithstanding anything to the contrary contained herein, in the event that Home Depot closes its retail store after opening, and such closure exists for a continuous period of at least twelve (12) months, then Home Depot's right to the exclusive

uses contained in this Section 3(c) shall automatically terminate with respect to the Outparcel(s) in the Home Depot Zone of Control. In the event of a breach of this covenant, Home Depot shall have the right to terminate this Agreement as to the breaching party only, and to seek any and all remedies afforded by either law or equity. If this "competing business" clause is challenged by any third party, then Home Depot shall defend the other Parties and/or itself at Home Depot's sole expense, except if the other Party is in any way responsible for the competing business (by violating this provision itself or leasing, subleasing, assigning or conveying its rights hereunder or in its Property to a third party who violates this provision), then Developer and/or other Parties, respectfully, shall defend and hold harmless Home Depot. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Section 3(c) shall prohibit the operation of a Wal-Mart store on the Wal-Mart Tract.

4. Buildings.

a. Design and Construction. The buildings shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one tract onto another tract except as provided for in Subsection d below. The design and construction shall be of high quality. No building shall exceed thirty-five feet (35') in height above finished grade (measured using the City of Poulsbo method). No building shall have metal exterior walls; metal mansards, accents or roofs are acceptable.

b. Location. No building shall be constructed on any tract (as either immediate development or future expansion) except as allowed in the Project Approvals; however, in the Wal-Mart Zone of Control, no improvements or alterations which infringe on the view corridor shown on Exhibit "A-1" may be made without the prior written consent of Wal-Mart. The front wall(s) of the main building(s) located on the Wal-Mart Tract and the Home Depot Tract, respectively, shall be constructed substantially in the location shown in Exhibit "A-1".

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

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

e. Outparcel Development. Any Outparcel(s) shall be developed only under the following guidelines:

(I) Height: Any building constructed on the Outparcel(s) shall not exceed the height shown below, as measured using City of Poulsbo methods:

(i) In the Wal-Mart Zone of Control (Lots 3-A and 3-C): twenty-five feet

(ii) In the Home Depot Zone of Control (Lot 4-E): twenty-five feet (25')

(iii) In the Home Depot Zone of Control (Lots 4-A and 4-F): thirty-five feet (35')

(2) Any rooftop equipment shall be screened in a manner satisfactory to the Developer.

(3) No rooftop sign shall be erected on the building constructed.

(4) No freestanding identification sign may be erected on any Outparcel(s) without approval of the Developer. Any such sign must comply with the College Marketplace Sign Program included in the *Olhava/College Marketplace Consolidated Building Design and Site Development Guidelines* (the "Design Guidelines"), and in no event shall such freestanding identification sign exceed the allowed height of the Wal-Mart or Home Depot freestanding identification sign; or, on any Outparcel(s) in the Wal-Mart Zone of Control, block the visibility of the Wal-Mart Store from the view corridor shown on the Site Plan (Exhibit "A-1") to the main access road (Olhava Way, formerly known as "A" Street). Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance exit signs shall not exceed four feet (4') in total height, and building signs as allowed by the Project Approvals, the type and location of such signs to be approved by Developer.

(5) No improvements shall be constructed, erected, expanded or altered on any Outparcel(s) until the plans for same (including site layout, exterior building materials and colors and parking) have been approved in writing by Developer. In addition, no building or structure of any kind shall be erected on any Outparcel(s) in the Wal-Mart Zone of Control except outside of the view corridor shown on the Site Plan (Exhibit "A-1") or in such other location as approved by Wal-Mart and Developer; provided, there may be constructed and maintained a canopy or canopies projecting from said building area; normal foundations and doors for ingress and egress may project from such building area; and signs may be erected upon said canopy or canopies, so long as said signs do not obstruct the signs of any other owner or tenant of the Shopping Center.

(6) In developing and using any Outparcel(s) in the Wal-Mart Zone of Control (Lots 3-A and 3-C), the owner of said Outparcel(s) shall continuously provide and maintain a parking ratio on said Outparcel(s) equal to one of the following:

(i) twelve (12) parking spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use in excess of five thousand (5,000) square feet (the same ratio shall be provided for a McDonald's Restaurant, notwithstanding a building footprint of less than five thousand (5,000) square feet); or

(ii) ten (10) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use less than five thousand (5,000) square feet (subject to the exception above); or

(iii) five (5.0) spaces per one thousand (1,000) square feet of building space for any other use, or such smaller parking requirement as warranted by such other use (such as a hotel, motel, carpet store, paint store, or furniture store) and allowed by applicable code.

In addition, the owner shall cause landscaping areas to be added and maintained in conjunction with any building, parking or other improvement constructed on the Outparcel(s).

(7) In developing and using any Outparcel(s) in the Home Depot Zone of Control (Lots 4-A, 4-E and 4-F), the owner of said Outparcel(s) shall continuously provide and maintain a parking ratio on said Outparcel(s) equal to one of the following:

(i) five (5) parking spaces for each one thousand (1,000) square feet of floor area, or such smaller parking requirement as allowed by applicable code; or

(ii) ten (10) parking spaces for each one thousand (1,000) square feet of floor area for each single restaurant which has less than five thousand (5,000) square feet of floor area, except a restaurant with less than 1,500 square feet of floor area must satisfy the governmental requirements only; or

(iii) fifteen (15) parking spaces for each one thousand (1,000) square feet of floor area for each restaurant which has at least five thousand (5,000) square feet of floor area, but less than seven thousand (7,000) square feet of floor area; or

(iv) twenty (20) parking spaces for each one thousand (1,000) square feet of floor area for each restaurant which has seven thousand (7,000) square feet of floor area or more.

If an owner or occupant operates a restaurant incidentally to its primary business purpose, then so long as such primary operation continues, the portion of the floor area occupied by such restaurant shall be excluded from the application of subsections (ii), (iii) and (iv) above. For purposes of this clause only, a restaurant shall be an "incidental operation" if it occupies less than seven percent (7%) of the owner's or occupant's floor area and does not have a separate customer entry/exit door to the outside of the building. In the event an occupant utilizes floor area for both restaurant and retail purposes, and such restaurant purpose is not an "incidental operation", only the portion of floor area allocated for restaurant purposes shall be subject to the application of subsections (ii), (iii) and (iv) above. If the minimum number of parking spaces required by government regulations is greater than the minimum requirements set forth above, then the minimum number of parking spaces as required by government regulations shall control.

Further, the aggregate square footage of restaurants on the Outparcels in the Home Depot Zone of Control shall not exceed 18,000 square feet.

In addition, the owner shall cause landscaping areas to be added and maintained in conjunction with any building, parking or other improvement constructed on the Outparcel(s).

(8) In the event of condemnation of part of any Outparcel(s) or sale or transfer in lieu thereof that reduces the number of usable parking spaces below that which is required in Section 4 (c) (6) or 4 (c) (7) as applicable, the owner whose Outparcel is so affected shall use its best efforts (including, without limitation, using proceeds from the condemnation award or settlement) to restore and/or substitute parking spaces in order to comply with the applicable parking requirements set forth above. If such compliance is not possible, the owner whose Outparcel is so affected shall not be deemed in default hereunder, but such owner shall not be permitted to expand the amount of floor area located upon its Outparcel unless the expanded building complies with the applicable parking requirements set forth above. If such floor area is thereafter reduced other than by casualty, the floor area on such parcel may not subsequently be increased unless the parking requirement is satisfied.

(9) The Outparcel(s) shall be kept neat and orderly in their existing condition or as modified in accordance with the Project Approvals.

(10) Subject to the prior written consent of Developer, any building, structure or improvement on the Outparcel(s):

(a) in the Wal-Mart Zone of Control shall be used for retail or commercial purposes only including, without limitation, financial institutions, service shops, offices, and retail stores. So long as Wal-Mart meets the requirements of Section 3 (a) herein, no portion of any building or structure on any such Outparcel(s) may be used as a pharmacy, a discount department store, grocery store or a variety, general or "dollar" store as set forth in Section 3 (a) herein. In addition, so long as Wal-Mart meets the requirements of Section 2 (a) herein, no building, structure or improvement on any such Outparcel(s) which is located within four hundred (400) feet from any property line of the Wal-Mart Tract may be used as a theater, night club, bowling alley, health spa, cafeteria, billiard parlor or other place of recreation or amusement, or as a business serving or selling alcoholic beverages as set forth in Section 2 (a) herein; and

(b) in the Home Depot Zone of Control shall be used for retail or Retail Office purposes only; however, so long as Home Depot meets the requirements of Section 3 (b) and 3 (c) herein, no such Outparcel(s) shall be used for any of the following purposes: (i) a home improvement center or for any business which sells, displays, leases, rents or distributes the following items or materials, singly or in any combination: lumber, hardware, tools, plumbing supplies, electrical supplies, paint, wallpaper and other wallcoverings, hard and soft flooring (including tile, wood flooring, rugs and carpeting), gardening and garden nursery supplies, Christmas trees, indoor and outdoor lighting systems and light fixtures, cabinets, large kitchen and household appliances, or closet organizing systems, except for the incidental sale of such items; or (ii) a business which sells, displays, or distributes the following items or materials, singly, or in any combination: pool supplies, window treatments (including draperies, curtains and blinds), kitchen or bathrooms or components thereof (including tubs, sinks, faucets, mirrors, cabinets, showers, vanities, countertops and

related hardware), windows, siding, ceiling fans, artificial plants, outdoor cooking equipment and accessories, patio furniture and patio accessories, or unfinished and finished furniture except for the incidental sale of such items as set forth in Sections 3 (b) and 3 (c) herein. In addition, so long as Home Depot meets the requirements of Section 2 (b) herein, no portion any such Outparcel(s) shall be used for any non-commercial use or for any of the following purposes: a surplus store; gun range; the sale of guns as a primary use; car wash facility or gasoline station; a warehouse; an animal kennel (except for Lot 4-A (as depicted on Exhibit A-1 attached hereto), which may kennel overnight if boarding is associated with its veterinary service); theater, auditorium, sports or other entertainment viewing facility (whether live, film, audio/visual or video); bowling alley; skating rink; fitness center, workout facility, gym, health spa or studio, or exercise facility; restaurants which derive more than 35% of their gross sales from alcohol sales; or Business Office usage, as set forth in Section 2 herein; and

(c) is also subject to the other use restrictions set forth in this Agreement, including but not limited to Sections 2 (c), 2 (d), 2 (e), and 2 (g).

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

5. Common Areas.

a. Grant of Easements. Each party, as grantor, hereby grants to the each of the other parties, as grantee, and to the agents, customers, invitees, licensees, tenants and /employees of grantee, a nonexclusive easement over, through and around the Common Areas on their respective tracts for roadways, walkways, ingress and egress, temporary loading and unloading of commercial and other vehicles, and the use of facilities (except for vehicular parking and service areas) installed for the comfort and convenience of customers, invitees, licensees, tenants, and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above. In addition to the foregoing, Wal-Mart, Home Depot and Developer hereby grant for the benefit of those certain Outparcel(s) identified on Exhibit "A-1", nonexclusive easements over the Common Areas on their tracts for vehicular and pedestrian access, ingress, and egress over and across the Wal-Mart Tract, Home Depot Tract and the Developer Tract. Provided, however, in no event shall the owner, occupant, licensee or invitee of any of the Outparcel(s) be permitted to use the Wal-Mart Tract, Home Depot Tract or any other portion of the Developer Tract for vehicular parking or for any other purpose other than as described above. In no event shall the owner, occupant, licensee or invitee of the Developer Tract be permitted to use the Wal-Mart Tract or Home Depot Tract for vehicular parking or any other purpose other than as described above. In no event shall the owner, occupant, licensee or invitee of the Wal-Mart Tract be permitted to use the Developer Tract or the Home Depot Tract for

vehicular parking or any other purpose other than as described above. In no event shall the owner, occupant, licensee or invitee of the Home Depot Tract be permitted to use the Developer Tract or the Wal-Mart Tract for vehicular parking or any other purpose other than as described above.

b. **Limitations on Use.**

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

(2) **Employees.** Each party shall use reasonable efforts to ensure that employees shall not park on the Common Areas, except in areas designated on Exhibit "A-1" as "employee parking areas", if any. The parties hereto may from time to time mutually designate and approve "employee parking areas" not shown on Exhibit "A-1".

(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, expressly while actually conducting business within the Building Areas, and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.

c. **Utility and Service Easements.** The parties shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center and the Outparcel(s). The parties shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. No such lines, sewers, utilities or services of one party shall be installed within the Building Areas, Future Building Areas, or expansion areas on the another party's parcel, and may not be installed until the location is approved by the parcel owner on which the item is to be placed, which location approval will not be unreasonably withheld.

d. **Water Flow.** Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the parties' improvements substantially as shown on Exhibit "A-1" or allowed by the Project Approvals (including without limitation building and building expansion, curbs, drives and paving), in accordance with the Project Approvals, shall be permitted.

6. **Development, Maintenance, and Taxes.**

a. **Development.**

(1) **Arrangement.** The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement or the Project Approvals, and no change materially affecting the utility of driveways, drive aisles, service drives, circulation

patterns, or layout of parking spaces on any portion of the Common Area west of "U" Street shall occur without the prior written consent of both (a) Developer *and* (b) either (i) the owner of the Wal-Mart Tract (as to changes south of the north boundary of the Wal-Mart Tract; or changes to the slope road between the Wal-Mart Tract and the Home Depot Tract) or (ii) the Owner of the Home Depot Tract (as to changes north of the south boundary of the Home Depot Tract and south of the north boundary of the Home Depot Tract and Lot 7-A; or changes to the slope road between the Wal-Mart Tract and the Home Depot Tract), which consent shall not be unreasonably withheld, conditioned or delayed.

(2) Within the area marked on the Site Plan as "Home Depot Zone of Control," no party may, without the owner of the Home Depot Tract's prior written consent, which consent may be granted, in the owner of Home Depot's Tract's sole and absolute discretion: (i) alter the location of any joint accessways to or from "U" Street; or (ii) voluntarily (as opposed to a government or court order) change the number of parking spaces below that required to comply in all respects with either Section 6(a)(4) or Section 4(c)(7).

(3) Within the Wal-Mart Zone of Control, no party may, without the owner of the Wal-Mart Tract's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed: (i) alter the location of any joint accessways to or from "U" Street, or (ii) change the number of parking spaces below that required to comply in all respects with either Section 6(a)(4) or Section 4(e)(6).

(4) "Parking Area" Ratio. Each party hereto agrees that at all times there shall be independently maintained on the Wal-Mart Tract and Home Depot Tract parking area sufficient to accommodate not fewer than four and six-tenths (4.6) car spaces for each one thousand (1,000) square feet of Building Area on such tract, and at all times there shall be independently maintained on the Developer Tract parking area sufficient to accommodate not fewer than five (5.0) car spaces for each one thousand (1,000) square feet of Building Area on such tract or each portion thereof, or such smaller parking requirement as warranted by the use of any portion of the Developer Tract (such as a hotel, motel, carpet store, paint store, or furniture store) and allowed by applicable code. Any Outparcel is also subject to the parking requirements provided in Sections 4(e)(6) or 4(e)(7), as applicable.

(5) Development Timing. Concurrent with any building being constructed within the Building Areas of the Shopping Center by the owner of any tract (the "Developing Party"), the Common Areas of that tract shall be developed in accordance with Exhibit "A-1" (or as amended as allowed by the Project Approvals) at the expense of such Developing Party. In the event such construction by the Developing Party shall occur prior to the development of another tract, the Developing Party shall have the right to grade, pave and use any portion of the Common Areas of the non-developing party's tract for access and for construction of, but not limited to, drainage structures and utility lines pursuant to the Project Approvals as is necessary to provide essential services to the Developing Party's tract, subject to the prior written approval by Developer, which shall not be unreasonably withheld, conditioned or delayed. With the specific exclusion of such activity that any party may undertake on the Home Depot Tract or Wal-Mart Tract or "U" Street, the Developing Party shall present an itemized statement of expenses incurred in the construction of said

improvements to and upon the non-developing party's tract, and the non-developing party agrees to reimburse the Developing Party for its fair share of such costs benefiting the non-developing party's tract within thirty (30) days of receipt thereof.

(6) **Access Drives.** Those driveways and drive aisles labeled as "**Protected Drive Access**" on **Exhibit "A-1"** hereof shall not be blocked or altered in any way by the owners or lessees of the property upon which they are located in any manner which will prohibit or interfere with their use for ingress, egress and delivery to the Wal-Mart Tract, Home Depot Tract and the Developer Tract. Except in the case of an emergency, any closure or restriction of any portion of a Protected Drive Access for maintenance purposes shall be subject to the mutual agreement of the Developer and the owners of the Wal-Mart Tract and the Home Depot Tract. No closure, repairs or maintenance (other than for emergencies) shall obstruct or hinder the use of a Protected Drive Access during the months of September through December each year.

b. **Maintenance.**

(1) **Standards.** Following completion of the improvements on the Common Areas, the parties hereto shall maintain the Common Areas in good condition and repair, in the same condition as similar first class shopping centers and commercial areas in the Puget Sound region. Notwithstanding any other provisions in this Agreement:

(i) Wal-Mart may elect by written notice to have the sole responsibility and right to maintain the Common Areas of the Wal-Mart Tract, except for "U" Street, any jointly used utility facilities and any slope areas marked on **Exhibit "A-1"**, which shall be maintained by Developer (or the lot owners association, when established) at all tract owner's expense.

(ii) Home Depot may elect by written notice to have the sole responsibility and right to maintain the Common Areas of the Home Depot Tract, except for "U" Street, any jointly used utility facilities and any slope areas marked on **Exhibit "A-1"**, which shall be maintained by Developer (or the lot owners association, when established) at all tract owner's expense.

(iii) Developer may elect by written notice to have the sole responsibility and right to maintain the Common Areas of any portion of the Developer Tract, except for "U" Street, the private street from "A" Street to "U" Street between Lots 3-A and 3-C, any jointly used utility facilities (including stormwater facilities) and any slope areas marked on **Exhibit "A-1"**, which shall be maintained by Developer (or the lot owners association, when established) at all tract owner's expense.

(2) The maintenance is to include, without limitation, the following:

(i) 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;

(ii) 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;

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

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

(v) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary, including those in rights-of-way along tract boundaries.

(vi) Maintaining all jointly used utility facilities, including stormwater systems.

(vii) Maintaining all slope areas marked on the Site Plan (Exhibit "A-1").

(3) **Expenses.** The respective owners shall pay the maintenance expense of their tracts, including, without limitation, the Common Areas thereon. The expense for any jointly used or commonly maintained items described above shall be paid based on the allocations as stated on Schedule B of the Development Agreement dated April 7, 2004 and recorded under Kitsap County Auditor's File No. 200404290005, as amended from time to time.

(4) With the exception of the Home Depot Tract, which shall be maintained by Home Depot only and the Wal-Mart Tract, which shall be maintained by Wal-Mart only, and those portions of the Developer Tract being maintained by Developer, a third party may be appointed as an agent of the parties to maintain the remaining Common Areas (and any jointly used or commonly maintained items described above) in the manner as above outlined. Said third party may receive for such agency a reasonable fee 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 whose properties are being maintained.

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

7. **Signs.** No sign shall be located on the Common Areas on the Tracts except signs advertising businesses conducted thereon or signs otherwise approved by the City of Poulsbo and Developer. Any sign must comply with the College Marketplace Sign Program included in the *Olhava/College Marketplace Consolidated Building Design and Site Development Guidelines* (the "Design Guidelines"), and be approved in writing by both the Developer and the City of Poulsbo. Notwithstanding the foregoing, entrance-exit signs (which signs shall be of a monument type, not to

exceed four (4) feet in total height), directional signs, menu boards, and other monument-type signs shall be allowed adjacent to a building or building drive-through lane(s) (or both) pursuant to plans approved by the Developer and the City of Poulsbo, and signs necessary for the safe and efficient operation of the Common Areas shall be allowed.

8. **Indemnification/Insurance.**

a. **Indemnification.** Each party hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own tract, except if caused by the act or negligence of the other party hereto.

b. **Insurance.**

(1) The Parties and the Developer (for the Developer Tract and any portions thereof, including the Outparcel(s) until such time as the Outparcel(s) are sold or leased to other parties who will thereby assume this obligation) shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage, and to the limit of not less than \$2,000,000.00 in the aggregate. Each party shall provide the other party (or the lot owners' association, when established) with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without ten (10) days prior written notice to the other party.

(2) At all times during the term of this Agreement, each party shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under an all-risk or special perils coverage form of Uniform Extended Coverage Clause in effect from time to time in the state in which the parties' respective properties are located; with such insurance to be for the full replacement value of the insured improvements.

(3) In the event an owner wishes to develop fuel, lube, repair or similar facilities, which shall include, fuel islands, fuel island canopies and the area thereunder, fuel pumps, fuel storage tanks, oil storage tanks, piping, tank filling ports, compressed air islands, trash receptacles, air hoses, water hoses, vacuums, signs, safety equipment, access ports, and other structures or equipment associated with selling and dispensing of gasoline or automobile oil, motor fuel and/or other non-packaged petroleum products, and is so permitted under the terms of this Agreement, then such owner must also maintain pollution liability insurance in an amount equal to \$5,000,000.00 or otherwise agreed to be reasonable by the parties to this Agreement.

(4) Policies of insurance provided for in this Section 8 shall initially name each other Party herein as additional insureds as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained; once the lot owners' association is established, the certificates shall thereafter name the association and its members for the benefit of all lot owners.

(5) Each Party to this Agreement for itself and its property insurer hereby releases the other parties to this agreement 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 any of the other Parties 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.

(6) Notwithstanding anything to the contrary contained in this Section 8, any insurance required to be maintained hereunder may be maintained in whole or in part either: (i) under a plan of self-insurance, or from a carrier which specializes in providing coverage to or for such parties or their affiliates, or firms in the same or related businesses, so long as the net worth of the Owner of that tract in the Shopping Center shall exceed Two Hundred Fifty Million Dollars (\$250,000,000.00) as shown in its most recent audited financial statement, or (ii) under any municipal entity insurance plan, which may include self-insurance, or association insurance, with respect to the stormwater facility tracts to be eventually transferred to the City of Poulsbo.

9. Eminent Domain.

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

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

c. Tenant's Claim. Nothing in this Section 9 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for any portion of any such award or payment.

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

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

11. **Expansion of Shopping Center.** The parties agree that in the event the Shopping Center is expanded by ownership, control of the parties or agreement with a third party, all of the provisions of this Agreement shall apply to the expanded area and the parking to the building ratio in the expanded area shall not be less than that provided herein.

12. **Release from Liability.** Any person acquiring fee or leasehold title to the Tracts, or any expansion of the Shopping Center pursuant to Section 11 or any portion thereof, shall be bound by this Agreement only as to the tract or portion of the tract acquired by, or leased by, such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such tract or portion of the tract, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the covenants, 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 breach or threatened breach of this Agreement, only: (i) all record owners of the Wal-Mart Tract as a group, or (ii) all record owners of the Home Depot Tract as a group, or (iii) a majority of the total record owners of the Developer Tract as a group, or (iv) Wal-Mart so long as it or any affiliate has an interest as owner or lessee of the Wal-Mart Tract, or (v) Home Depot so long as it or any affiliate has an interest as owner or lessee of the Home Depot Tract, or (vi) Developer so long as it or any affiliate has an interest as owner or lessee of any portion of the Developer Tract containing a total of not less than ten (10) acres, 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 and costs, as set by the court.

14. **Self-Help.** If an owner or occupant of any Tract, except for owner of the Wal-Mart Tract, fails to perform any provision of this Agreement required of it, then upon ten (10) days prior written notice (except that no notice shall be required in an emergency), the Developer (or the lot owners' association, when established) or Home Depot shall have the right, but not the obligation, to enter upon the defaulting owner's or occupant's Tract (other than the Wal-Mart Tract) to cure such default for the account of and at the expense of the owner or occupant of such Tract. If the Developer (or the lot owners' association, when established) exercises its self-help right, then, within ten (10) days after receipt of an invoice from such party, the defaulting owner and/or occupant shall reimburse to such

party all costs reasonably incurred by such party in curing such default, plus an administrative fee equal to fifteen percent (15%) of such costs. Furthermore, the curing party shall have the right, if such invoice is not paid within said ten (10) day period, to record a lien on the Tract of the defaulting owner and/or occupant for the amount of the unpaid costs incurred by such party pursuant to this Section 14 and the administrative fee, together with accrued interest at a rate of prime plus 5% per annum or the maximum legal chargeable rate, if it is less than prime plus 5%.

15. **Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

16. **Document Execution, Modification and Cancellation.** It is understood and agreed that until this document is fully executed by each of the Parties 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, except the prior agreement. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of (a) Wal-Mart and Home Depot, as long as they or their affiliates have any interest as either owner or lessee of their respective tracts, and (b) Developer, as long as it or its affiliate has any interest as either owner or lessee of at least ten (10) acres of the Shopping Center.

17. **Non-Merger.** So long as the Parties or their affiliates are owners or lessees of their respective tract, or Developer or its affiliate is the owner of all or any part of the Developer Tract, this Agreement shall not be subject to the doctrine of merger.

18. **Duration.** Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after June 8, 2094.

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

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

21. **Conflicts.** In the event one or more provisions of this Agreement conflict with the Master Plan, the Master Plan shall control and govern and the inconsistent provision of this Agreement shall be severed or modified to the extent necessary to render it consistent with the Master Plan and as so severed or modified, this Agreement shall continue in full force and effect. In the event one or more provisions of the CEDA conflict with this Agreement, this Agreement shall control and govern and the inconsistent provision of the CEDA shall be severed or modified to the extent necessary to render it consistent with this Agreement and as so severed or modified, the CEDA shall continue in full force and effect.

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

DEVELOPER:

OLHAVA ASSOCIATES LIMITED PARTNERSHIP,
a Washington limited partnership

By: **First Western Development of Washington III Associates,**
a Washington general partnership
Its: Managing General Partner

By: _____
Its: General Partner

WAL-MART:

WAL-MART REAL ESTATE BUSINESS TRUST,
a Delaware Statutory Trust

By: _____
Its: *Director*

HOME DEPOT:

HD DEVELOPMENT OF MARYLAND, INC.,
a Maryland corporation

By: _____
Its: **Erika M. Strawn**
Sr. Attorney

STATE OF ARKANSAS)
)
COUNTY OF BENTON)

The foregoing instrument was acknowledged before me this 30 day of October, 2008, by Nick Woodner, the ~~Assistant Vice President~~ Director of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the statutory trust.

(Seal and Expiration Date)

Jennifer Kamensky
Notary Public



STATE OF WASHINGTON)
)
COUNTY OF KING)

The foregoing instrument was acknowledged before me this 22nd day of September, 2008, by MARK O. ZENGER, a General Partner of First Western Development of Washington III Associates, a Washington general partnership, the managing general partner of Olhava Associates Limited Partnership, a Washington limited partnership, on behalf of the limited partnership.

(Seal and Expiration Date)

Karen E. Booth
Notary Public

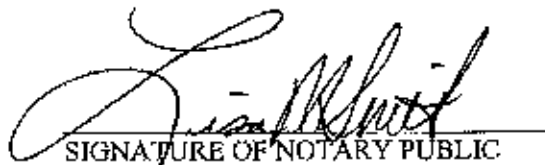


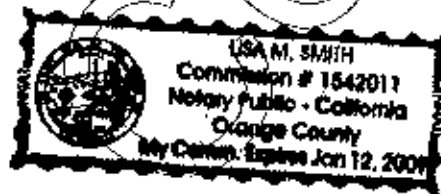
STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On 10-1- 2008, before me, Lisa M. Smith personally appeared Erika M. Strawn, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC



(SEAL)

Description of Attached Document

EXHIBIT "A-1"

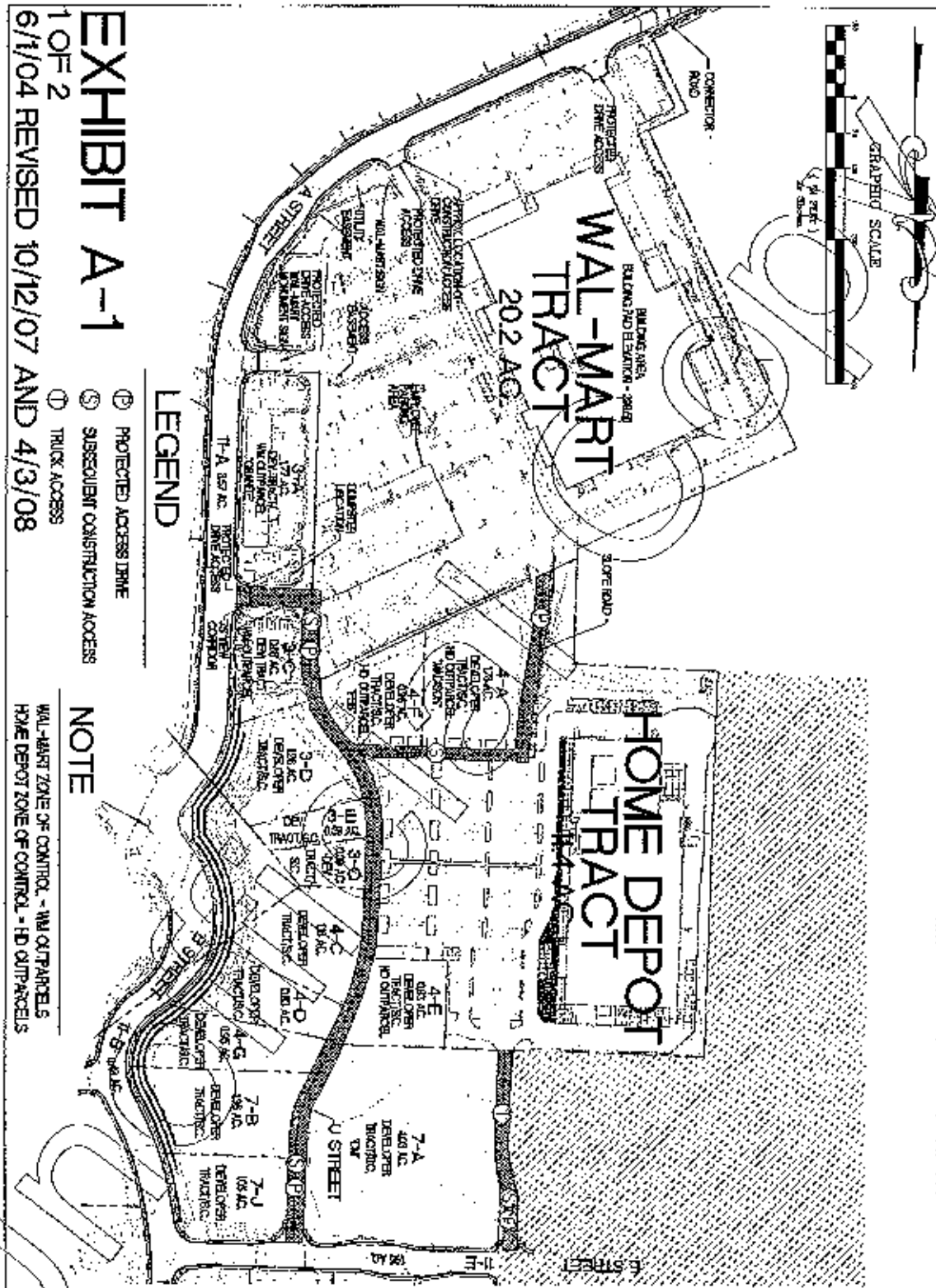
Site plan Tracts and Outparcels and various development details

SEE ATTACHED.

¹⁸ Amended and Restated ECRs
Home Depot U.S.A., Inc./Olhava Associates Limited (Poulsbo, WA)
105665 0201/1140520.28

FINAC
Date: 9/03/08

A-1



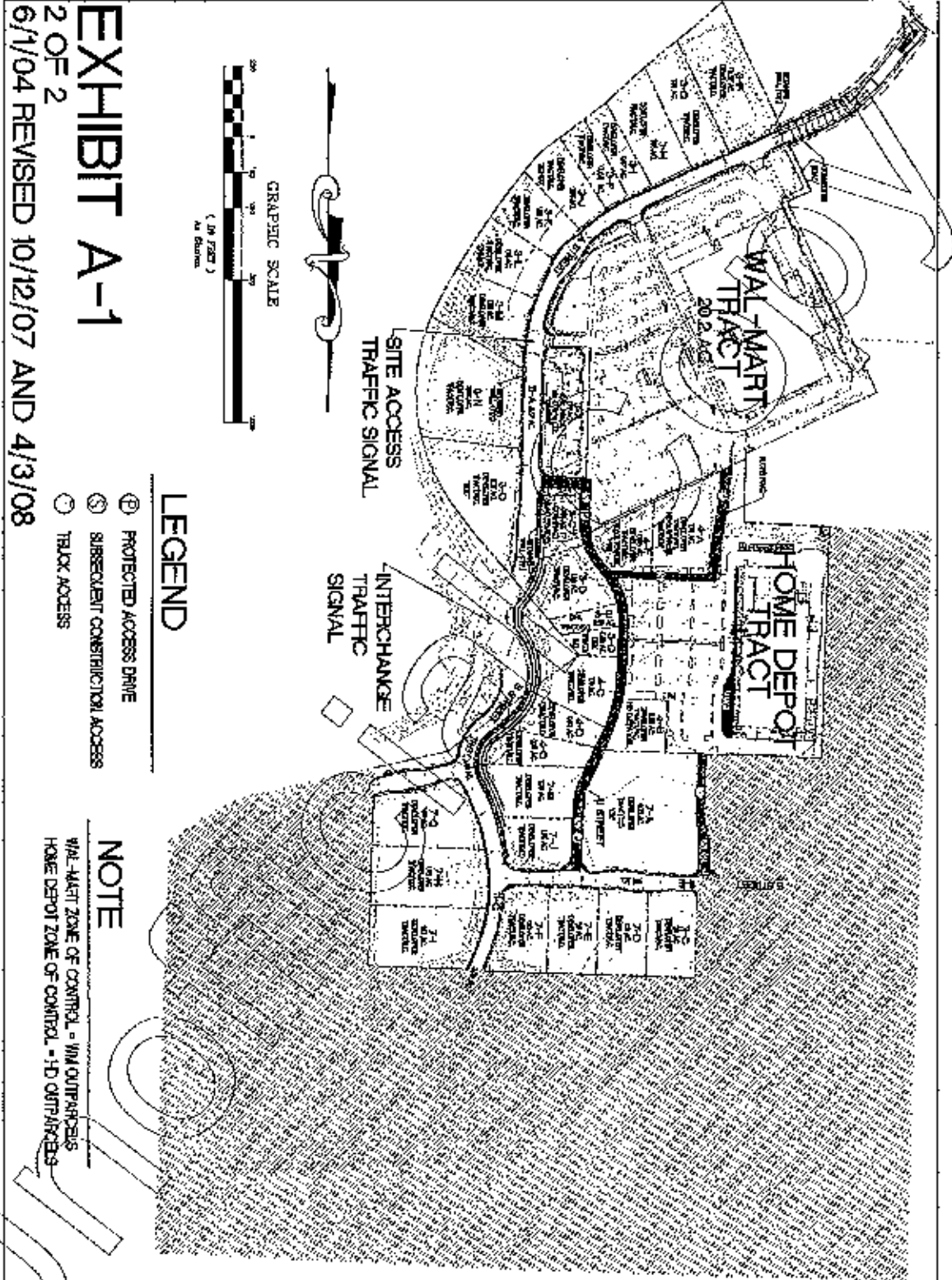


EXHIBIT A-1
 2 OF 2
 6/1/04 REVISED 10/12/07 AND 4/3/08

EXHIBIT "B"

Wal-Mart Tract legal description

Tract IV of Lot Segregation recorded under Auditor's File No. 200307310379, and amended under documents recorded under Auditor's File Nos. 200601250090 and 200601250088, being a portion of Section 10, Township 26 North, Range 1 East, W.M., records of Kitsap County, Washington;

TOGETHER WITH an easement as more fully described in Common Easement And Development, recorded under Auditor's File No. 3144708 and amended under Auditor's File No. 200512120135, being a portion of Section 10, Township 26 North, Range 1 East, W.M., records of Kitsap County, Washington;

ALL SITUATE IN THE CITY OF POULSBO, COUNTY OF KITSAP, STATE OF WASHINGTON.

EXHIBIT "C"

Developer Tract legal description

Lots 3-A, 3-C and 3-O, City of Poulsbo Short Plat No. 01-19-05-04, recorded under Kitsap County Auditor's File No. 200601250112; and

Lots 3-D, 3-E, 4-A and 4-F, City of Poulsbo Short Subdivision No. 01-19-05-05, recorded under Kitsap County Auditor's File No. 200601250113; and

Lots 3-F, 3-G, 3-H and 3-I, City of Poulsbo Short Subdivision No. 01-19-05-01, recorded under Kitsap County Auditor's File No. 200601250109; and

Lots 3-J, 3-K, 3-L and 3-P, City of Poulsbo Short Subdivision No. 01-19-05-02, recorded under Kitsap County Auditor's File No. 200601250110; and

Lots 3-M and 3-N, City of Poulsbo Short Subdivision No. 01-19-05-03, recorded under Kitsap County Auditor's File No. 200601250111; and

Lots 3-Q, 4-C, 4-D and 4-E, City of Poulsbo Short Subdivision No. 01-19-05-06, recorded under Kitsap County Auditor's File No. 200601250114; and

Lots 4-G, 7-A, 7-B and 7-J, City of Poulsbo Short Subdivision No. 01-19-05-14, recorded under Kitsap County Auditor's File No. 200601250115; and

Lots 7-C, 7-D, 7-E and 7-F, City of Poulsbo Short Subdivision No. 01-19-05-15, recorded under Kitsap County Auditor's File No. 200601250116; and

Lots 7-G, 7-H and 7-I, City of Poulsbo Short Subdivision No. 01-19-05-16, recorded under Kitsap County Auditor's File No. 200601250117;

ALL being a portion of Section 10, Township 26 North, Range 1 East, W.M., records of Kitsap County Auditor;

ALL SITUATE IN THE CITY OF POULSBO, COUNTY OF KITSAP, STATE OF WASHINGTON.

EXHIBIT "D"

Home Depot Tract Legal Description

Tract IV-B of Lot Segregation recorded under Auditor's File No. 200403230116, and amended under document recorded under Auditor's File No. 200405050296, and corrected under Auditor's File No. 200601250089, being a portion of Section 10, Township 26 North, Range 1 East, W.M., records of Kitsap County Auditor;

TOGETHER WITH an easement as more fully described in Common Easement And Development, recorded under Auditor's File No. 3144708 and amended under Auditor's File No. 200512120155, being a portion of Section 10, Township 26 North, Range 1 East, W.M., records of Kitsap County, Washington;

ALL SITUATE IN THE CITY OF POULSBO, COUNTY OF KITSAP, STATE OF WASHINGTON.

Tax Account Numbers

| | |
|---------------|-------------------|
| IV Wal-Mart | 102601-3-060-2004 |
| 3Q Home Depot | 102601-3-030-2003 |
| 3A | 102601-4-050-2004 |
| 3C | 102601-4-051-2003 |
| 3O | 102601-4-052-2002 |
| 3D | 102601-2-036-2007 |
| 3E | 102601-2-037-2006 |
| 4A | 102601-2-039-2004 |
| 4F | 102601-2-038-2005 |
| 3F | 102601-3-062-2002 |
| 3G | 102601-3-063-2001 |
| 3H | 102601-3-064-2000 |
| 3I | 102601-3-065-2009 |
| 3J | 102601-4-045-2002 |
| 3K | 102601-4-046-2001 |
| 3L | 102601-4-047-2000 |
| 3P | 102601-4-044-2001 |
| 3M | 102601-4-048-2009 |
| 3N | 102601-4-049-2008 |
| 3Q | 102601-2-040-2001 |
| 4C | 102601-2-041-2000 |
| 4D | 102601-2-042-2009 |
| 4E | 102601-2-043-2008 |
| 4G | 102601-2-044-2007 |
| 7A | 102601-2-045-2006 |
| 7B | 102601-2-046-2005 |
| 7J | 102601-2-047-2004 |
| 7C | 102601-2-048-2003 |
| 7D | 102601-2-049-2002 |
| 7E | 102601-2-050-2001 |
| 7F | 102601-2-051-2000 |
| 7G | 102601-2-028-2007 |
| 7H | 102601-2-029-2006 |
| 7I | 102601-2-030-2005 |