

Document Number

EASEMENTS WITH
COVENANTS AND
RESTRICTIONS
AFFECTING LAND

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Louise I. Principle, Register of Deeds
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76049267 \$79.00

JANX

REGD&D2

Recording Area

Name and Return Address
Prepared by:

Dawda, Mann, Mulcahy & Sadler, PLC
39533 Woodward Ave., Ste. 200
Bloomfield Hills, MI 48304-5103
Attn: Gary A. Kravitz

79

Parcel Identification Number (PIN)

80-4-222-271-0101;
80-4-222-271-0200; and
80-4-222-271-0211

Somers, WI / ECR Execution Version
Sam's Store No 6331-02 / LP No 092680
Wal-Mart Store No 1167-04 / LP No 152326

Somers, WI
1167-04 (Wal-Mart)
6331-02 (Sam's)

**EASEMENTS WITH COVENANTS AND
RESTRICTIONS AFFECTING LAND**

THIS EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND (this "Agreement") is made as of the 2 day of Oc+, 2007, by and among **WAL-MART STORES EAST, LP**, a Delaware limited partnership ("Wal-Mart"), **SAM'S EAST, INC.**, an Arkansas corporation ("Sam's") and **SOMERS MARKET CENTER LLC**, a Delaware limited liability company ("Developer").

W I T N E S S E T H :

WHEREAS, Wal-Mart is the owner of a certain tract of land as shown on the site plan attached hereto as **Exhibit A** hereof ("Site Plan"), such tract being more particularly described in **Exhibit B** attached hereto (the "Wal-Mart Tract"),

WHEREAS, Sam's is the owner of a certain tract of land as shown on the Site Plan, such tract being more particularly described in **Exhibit C** attached hereto (the "Sam's Tract") The Sam's Tract and the Wal-Mart Tract are sometimes collectively referred to as Phase I;

WHEREAS, Developer is the owner of certain tracts of land as shown on the Site Plan as Lots 3, 4 and 5, such tracts being more particularly described in **Exhibit D** attached hereto (the "Developer Tract"), certain tracts of land as shown on the Site Plan as Lots 7 through 20 and Outlots 1 through 4 such lots being more particularly described on **Exhibit D** attached hereto (the "Outparcels");

WHEREAS, Wal-Mart, Sam's and Developer desire that Phase I, the Developer Tract and the Outparcels be developed in conjunction with each other pursuant to a general plan of improvement to form a Shopping Center for commercial and retail use as more particularly outlined in this Agreement (the "Shopping Center"), and further desire that such Shopping Center be subject to the easements and the covenants, conditions and restrictions hereinafter set forth,

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

1 Building/Common Areas.

(a) The Shopping Center, excluding Phase I, shall be divided into six (6) zones identified as follows Lots 11, 12, 13, 14, 15 and 16 shall be Zone 1, Lots 17 and 18 shall be Zone 2, Lots 19 and 20 shall be Zone 3; Lot 10 and Outlot 2 shall be Zone 4, Lots 7, 8 and 9 shall be Zone 5; Lots 3, 4 and 5 shall be Zone 6 and the Detention Area [as that term is defined in subsection (d) below]

(b) Zone 1 shall be subdivided into at least four (4) individual parcels with each parcel having building(s) of not more than 35,000 square feet in the aggregate Zone 2 shall be subdivided into at least two (2) individual parcels with each parcel therein having building(s) of not more than 25,000 square feet in the aggregate; Zone 3 shall be subdivided into at least two (2) individual parcels with each parcel therein having building(s) of not more than 25,000 square feet in the aggregate, Zone 4 shall be subdivided into at least one (1) individual parcel with building(s) therein having not more than 25,000 square feet in the aggregate. Zone 5 shall be subdivided into at least two (2) individual parcels Zone 6 shall not have any mandatory minimum number of subdivisions. Building square footage shall be measured using BOMA standards and shall include the square footage of second and higher stories, if any, but not basements and mezzanine levels

(c) The parties have identified certain areas which are designated as "No Build Areas" on the Site Plan. No Owner may construct any building, monument, fence intended for visibility screening or other similar structures within the No Build Areas

(d) Outlots 1, 3 and 4 as identified on the Site Plan are to be used as detention ponds and their related appurtenances and Outlot 2 as identified on the Site Plan shall be reserved as a wetland area (collectively Outlots 1 through 4, inclusive shall be referred to as the "Detention Area"). No building, monument, sign or other similar structure may be constructed within the Detention Area without the express written consent of Wal-Mart and Sam's

(e) Definitions

(1) "Building" shall mean a permanently enclosed structure which has been, will be or may be constructed, but shall not include Common Area Improvements [as this term is defined in Section 1(e)(2) below]. For purposes of this Agreement, "Building" shall include any appurtenant canopies, supports, loading docks, truck ramps, drive through areas and other outward extensions

(2) "Common Area Improvements" shall mean all improvements constructed from time to time within the Common Area and intended for common use which may include, without limitation, parking areas, access and egress drives, service drives, non-dedicated streets, lighting standards, sidewalks, landscaping, detention basins, fixtures, and signage The initial Common Area Improvements are shown on the Site Plan

(3) "Common Areas" shall mean all real property owned by the Owners who are party to this Agreement intended and constructed for the common use and enjoyment of the Owners and their respective Permittees [as this term is defined in Section 1(e)(7), below], including, without limitation, the Detention Area, parking areas, access and egress drives, service drives, sidewalks and non-dedicated streets and shall consist of all portions of the Shopping Center upon which no Building is currently constructed. Common Areas do not include drive up or drive through areas and facilities, loading docks, patio areas, or permanent outdoor sales areas

(4) "Consenting Owner" shall mean and refer to the respective Owners of the Wal-Mart Tract, the Sam's Tract and the Developer Tract. In the event that either of the Wal-Mart or the Sam's Tract is further subdivided, the current Consenting Owner for such Tract shall designate in writing the particular tract of the subdivided tract whose Owner shall succeed as the Consenting Owner. In the event that the Developer Tract is further subdivided or in the event that the Developer Tract is to be conveyed such that the Developer Tract is not under single ownership, the current Consenting Owner for the Developer Tract shall designate in writing the particular parcel whose owner shall succeed as the Consenting Owner.

(5) "Developer's Agreement" shall mean the Developer's Agreement by and between Town of Somers, Town of Somers Utility District, Town of Somers Water Utility (collectively, the "Town") and Developer, for "Somers Market Center" a Proposed Planned Unit Development Being a Part of Section 27, Town 2 North, Range 22 East.

(6) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any tract of land which is a part of the Shopping Center, but excluding those having such interest merely as security for the performance of any obligation

(7) "Permittees" shall mean tenants and subtenants and the occupants, contractors, customers, agents, licensees, guests, and invitees of an Owner, its tenants and subtenants.

(8) "Tracts" as used herein shall mean the Wal-Mart Tract, the Sam's Tract and the Developer Tract but not the Outparcels

2. 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, medical offices and retail stores. No cafeteria, theatre, bowling alley, billiard parlor, night club or other place of recreation or amusement, or any business serving alcoholic beverages shall occupy space within the Shopping Center without the prior written consent of Wal-Mart and Sam's. Notwithstanding the foregoing sentence, (a) a sit-down restaurant may serve alcoholic beverages so long as the annual gross sales of alcoholic beverages from such restaurant does not exceed forty percent (40%) of all gross sales of the restaurant; in addition to the foregoing, the parties acknowledge that sit down restaurants with full service menus and bars such as, by way of example only, Chili's, Friday's, BW3, Bennigan's

or Champs, as such restaurants are currently operated, are permitted in the Shopping Center; (b) a movie theater, bowling alley, car dealership, cafeteria, place of indoor recreation or amusement, health club or spa with adjacent pool, office building, or hotel may be located on the Developer Tract and Outparcels 7, 8 and 9 so long as (i) any of the public entrances or exits for the building constructed for such use is located at least two hundred feet (200') away from the boundaries of the Wal-Mart and Sam's Tracts; (ii) there is no cross access between the Tract or Outparcel with such use and Phase I, (iii) there is no cross-parking between the Tract or Outparcel with such use and Phase I; and (iv) there is a decorative fence of at least two feet (2') in height installed between the Developer Tract and Phase I where those two properties are directly adjacent and (c) the Developer Tract may be utilized for office purposes 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 any Owner on any Tract or the Outparcels The Owners hereby waive any legal action for damages or for equitable relief which might be available to an Owner because of such cessation of business activity by any occupant.

No Owner shall operate, lease, rent or permit its Tract or Outparcel or any portion thereof, to be used or occupied as an adult book store or a store selling or exhibiting pornographic materials. As used herein, "an adult book store or store selling or exhibiting pornographic materials" shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated "X" or "NC-17" by the Motion Picture Rating Association, or any successor thereto (except as permitted herein); provided, however, this provision shall not prohibit the operation of: (x) a Blockbuster Video or similar operation; (y) a Borders Books & Music, Barnes & Noble, Books-a-Million or similar operation; or (z) a national or regional movie theater chain such as, by way of example only, Regal Cinemas, AMC or National Amusements, for clause (x), (y) and (z) above, each as they are currently operated as of the date of this Agreement and so long as such operations cater to families as opposed to being strictly adult oriented.

3. Competing Business. Developer covenants that as long as Wal-Mart or Sam's, or any affiliate thereof, is the user of the Wal-Mart Tract or the Sam's Club, either as owner or lessee, no space in or portion of the Shopping Center, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Developer, shall be leased or occupied by or conveyed to any other party for use as (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 If the Owner(s) of the Wal-Mart Tract and Sam's Tract, fail to open for business as a Wal-Mart store or Sam's Club store within five (5) years after the date of this Agreement or once opened, close their businesses for at least five (5) consecutive years, the restrictions set out in clauses (i)

through (v), above, shall be of no further force or effect. If neither Owner of the Wal-Mart Tract nor the Sam's Tract opens as a grocery store or once opened fails to operate a grocery on its Tract for a period of at least five (5) years, the restriction against operating a portion of the Shopping Center as a grocery shall be of no further force or effect. In the event of a breach of this covenant, Wal-Mart and Sam's shall have the right 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 ten thousand (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; provided, however, that this restriction shall not prohibit a gourmet grocery store which sells as a primary and not as an incidental use, gourmet or specialty food-type items, natural, organic or health-type foods, or foods from other countries, operating in a Building containing less than twenty-five thousand (25,000) square feet, such as, by way of example only, Trader Joe's, from operating in the Shopping Center. "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 thirty-five thousand (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 and Sam's. In addition to the foregoing, Developer covenants that as long as Wal-Mart or Sam's, or any affiliate thereof, is the user of the Wal-Mart Tract or the Sam's Club, either as owner or lessee, only one (1) facility dispensing gasoline or fuel from pumps (a "Gas Station") shall exist within the Shopping Center in addition to any Gas Station operated by Wal-Mart or Sam's.

4 Buildings.

(a) Design and Construction The Buildings constructed on the Shopping Center shall be designed so that building wall footings shall not encroach from one Tract or Outparcel onto another Tract or Outparcel except as provided for in Subsection 4(e) below. The design and construction of all Buildings and improvements shall be of high quality. No improvements shall be constructed, erected or expanded or altered on the Outparcels until the plans for the same (including site layout, exterior building materials and colors and parking) have been approved in writing by Developer. No Building shall have a metal exterior, provided, however, that Buildings may contain metal design elements or decorations such as, architectural metal siding, metal panels and decorative architectural metal with concealed fasteners.

(b) Height Limitations No Building constructed on Phase I and Zone 6 shall exceed fifty feet (50') in height above finished grade. Buildings constructed in Zones 1 through 5 shall be subject to two (2) maximum height requirements of twenty five feet (25') and thirty feet (30') as follows: no more than fifty percent (50%) of the total gross building square footage of Buildings constructed in Zones 1 through 5 may exceed twenty-five feet (25') in height and no Buildings may exceed thirty feet (30') in height. All measurements of building height shall be

measured from the mean finished elevation of the parking area of the Building in question. For the purposes of this Subsection, building square footage shall mean the number of square feet of floor area in a Building as measured from the exterior base of any exterior wall to the center line of any party wall or to the exterior base of other exterior walls if no party wall exists, excluding any area within basements, second or higher floors, temporary outside sales areas and mezzanines. In addition, no more than fifty percent (50%) of the total building square footage of Buildings constructed in Zone 4 may exceed twenty-five feet (25') in height. All Buildings may have roof-mounted equipment and related screening and architectural features such as chimneys or entrance parapets up to five feet (5') higher than the height limitations provided above; provided, however, that such screening and architectural features shall not exceed twenty percent (20%) of the linear front footage of the Building in question.

(c) Location/Size. Any rooftop equipment constructed on the Buildings located in Zones 1 through 5 shall be screened so as not to be visible from the mean finished elevation of the parking area of the Tract or Outparcel, as the case may be, in question. The average aggregate width of all Buildings located on a parcel within Zones 1 through 5 shall not exceed sixty percent (60%) of the linear footage of said parcels as measured along the western (except for that area covered by Lots 14 through 16 as depicted on the Site Plan which shall be measured differently) property line of such parcel. If a parcel is a pie shape and not a rectangular shape, then the width of the parcel shall be calculated by taking the sum of the width of the parcel along the western property line and the width along the eastern property line and dividing said sum by two (2). The "width" of a building, for purposes of this subsection, shall be the distance of the longest possible line that can be drawn parallel to the eastern boundary of the parcel on which the Building sits (or the chord of such boundary if such boundary is a curve) between a point on the northern exterior of such Building and a point on the southern exterior of such Building (except for that area covered by Lots 14 through 16 as depicted on the Site Plan which shall be measured differently). Lots 14 through 16 shall be subject to the same width restriction set out in the prior three sentences, except that the width shall be measured along the southern property line and the building widths shall be measured from east to west on a line as parallel as possible to the northern boundary of the parcel. In addition to the aggregate average width restriction set out in this Section for Zones 1 through 5, no width of any Building(s) may exceed seventy percent (70%) of the lineal front footage of the parcel it is located on as measured by the applicable standards set out above in this Section.

(d) 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.

(e) Easements. In the event Building wall footings encroach from one Tract onto the other Tract or one Outparcel to another Outparcel, despite efforts to avoid that occurrence, the Owner onto whose Tract the footings encroach shall cooperate in granting an encroachment permit or easement to the Owner whose Building wall footings encroach.

5 Common Areas.

(a) Grant of Easements Except as provided in Section 2, above, each Owner, as grantor, hereby grants to the other Owners, as grantees, and to Permittees of such grantees, a nonexclusive easement over, through and around the Wal-Mart Tract, the Sam's Tract and the Developer Tract for access to roadways and walkways, ingress and egress, parking of motor vehicles, and the use of facilities installed for the comfort and convenience of Permittees of all businesses and occupants of the Buildings constructed on the Wal-Mart Tract, the Sam's Tract and the Developer Tract. Wal-Mart, Sam's and Developer hereby grant for the benefit of the Outparcels, nonexclusive easements for vehicular and pedestrian access, ingress, and egress over and across the Wal-Mart Tract, the Sam's Tract and the Developer Tract; provided, however, in no event shall the Owner or Permittees of any of the Outparcels be permitted to use the Wal-Mart Tract, the Sam's Tract or the Developer Tract for vehicular parking or for any other purpose other than as described above. Developer hereby grants to Wal-Mart for the benefit of the Wal-Mart Tract and Sam's for the benefit of the Sam's Tract, nonexclusive easements for vehicular and pedestrian access, ingress, and egress over and across the Outparcels; provided, however, in no event shall the Owner or Permittees of the Wal-Mart Tract or Sam's Tract be permitted to use the Outparcels for vehicular parking or for any other purpose other than as permitted pursuant to the terms of this Agreement.

(b) Limitations on Use

(1) Customers. Each Owner 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 Owner shall use reasonable efforts to ensure that its employees, tenants, tenants' employees and contractors park on the Common Areas of such Owner's Tract or 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 Permittees of those businesses conducted within the Buildings 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. The use by the Owners of the Common Areas of the Shopping Center for the display, sale and storage of merchandise and for the use of seasonal sales structures is expressly permitted, so long as such use does not exceed ten percent (10%) of the Common Area of the Tract or Outparcel in question and so long as the outside sales area is maintained in a neat, orderly and clean condition Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use. Notwithstanding the foregoing, each Owner covenants and agrees that, to the extent allowed by law, no Owner will allow the Common Areas on its tract to be used for rallies, demonstrations, protests, picketing or handbilling to protest, publicize or allege improprieties regarding the acts, policies or operating practices of any business operating within the Shopping Center.

(c) Utility and Service Easements. Each Owner hereby establishes and grants to the other Owners a nonexclusive easement for the benefit of such Owners of each Tract or Outparcel, on, across and under the Common Areas, to install, use, maintain and repair public utility services and distribution systems (including storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center), now upon or hereafter installed on, across or under the Common Areas, to the extent necessary to service such Tract or Outparcel. Each Owner shall use its best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. The location of any utilities hereafter installed shall be determined by the Owner of the Tract or Outparcel (the location of utilities on the Wal-Mart Tract shall be determined by Wal-Mart as long as it, or affiliate thereof, is the owner, lessee or user of the Wal-Mart Tract and the Sam's Tract shall be determined by Sam's as long as it, or affiliate thereof, is the owner, lessee or user of the Sam's Tract) upon which such utilities are to be installed. Any such installed utility services may be relocated by the Owner of a Tract or Outparcel on such Owner's Tract or Outparcel, subject to compliance with applicable laws, at the expense of the Owner of that Tract or Outparcel, provided that such relocation shall not interfere with, increase the cost of, or diminish utility services to any other Tract or Outparcel and, further provided, that no utilities shall be relocated on the Wal-Mart Tract without the prior written consent of Wal-Mart as long as it is the owner, user or lessee of the Wal-Mart Tract, or on the Sam's Tract without the prior written consent of Sam's as long as it is the owner, user or lessee of the Sam's Tract. Each Owner shall avoid planting in utility and service easements. If planting does occur, any plants removed due to utility or service work within such easements shall be replaced by the party performing the work.

(d) Water Flow. Each Owner hereby establishes and grants a nonexclusive easement on its Tract or Outparcel for the benefit of the Owner of each other Tract or Outparcel to use, maintain and repair any storm water drainage system (the "Storm Drainage System") now or hereafter located on any Tract or any Outparcel, together with the right to discharge surface water runoff across portions of any Tract or any Outparcel in accordance with the design of the Storm Drainage System. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the Owner's improvements substantially as shown on Exhibit A (including without limitation building and building expansion, curbs, drives and paving) shall be permitted. Developer hereby grants an easement to the other Owners to drain storm water into the detention basins located within the Detention Areas as the same are depicted on the Site Plan (on Outlots 1 through 4).

(e) Illumination. Each Owner hereby covenants and agrees to keep the Common Area located on its Tract or Outparcel fully illuminated each day from dusk until 11:00 p m., and further agrees to keep any exterior building security lights on from 11:00 p m until dawn (or such other times as Wal-Mart, Sam's and Developer may mutually agree). The requirements of this Section 5(e) shall apply to each Tract and Outparcel regardless of the type of use being made of such Tract or Outparcel. Any Owner may require any other Owner to illuminate its Tract or Outparcel beyond the required hours set forth above provided that the requesting Owner agrees to reimburse the other Owner for such Owner's actual out-of-pocket utility costs for lighting beyond the hours required above. Such costs shall be reimbursed once each calendar quarter within thirty (30) days after presentation of paid invoices to the Owner.

responsible to reimburse such costs evidencing costs incurred by the Owner requesting reimbursement along with calculations showing how utility costs were allocated to the hours for which reimbursement is due. Each Owner shall at all times comply with the exterior lighting and illumination standards set forth in the Developer's Agreement.

(f) Road Easements. The Owners grant each other and their Permittees a nonexclusive easement for ingress and egress over that portion of each Owners' Tract or Outparcel which is depicted as being included as a portion of Somers Boulevard, Market Lane and 35th Street on the Site Plan, for access to and from the Owners' Tracts and Outparcels to the publicly dedicated roads adjacent to the Shopping Center

6 Development, Parking Ratios, Maintenance, and Taxes

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

(b) Parking Ratio on Phase I and Zone 6. Except as specifically provided in subsection (c) below, each Owner hereto agrees that there shall be at all times a parking area independently maintained on Phase I and Zone 6 sufficient to accommodate not fewer than four (4) car spaces for each one thousand (1,000) square feet of any Building or Buildings on such Tract

(c) Outparcels Parking Ratio.

(1) Developer agrees that at all times there shall be a parking area independently maintained on the Outparcel(s) in Zone 1 and 2 which are directly adjacent to Somers Boulevard (as currently depicted on the Site Plan, these would be Lots 16 and 17) and contain a portion of that area depicted as "Higher Parking Area" on the Site Plan, sufficient to accommodate not fewer than: (i) twelve (12) 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 style fast food 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) spaces per one thousand (1,000) square feet of building space for any other use. These same parking ratios shall apply to any parcel of two (2) or fewer acres created by Developer within Zone 6 which parcel includes a portion of that area depicted as "Higher Parking Area" on the Site Plan

(2) Developer agrees that there shall be a parking area independently maintained at all times on all remaining Outparcels within Zones 1, 2, 3, 4 and 5 sufficient to accommodate not fewer than: (i) ten (10) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use; or (ii) four (4) spaces for every one thousand (1,000) square feet of building space for any other use

(d) In the event of a conflict between the parking ratios set out in this Agreement and the parking ratios established by the Town, the more restrictive standards shall apply

(e) Maintenance

(1) Standards. The Shopping Center shall be kept neat, orderly, planted in grass and trimmed until improved and constructed. Following completion of the Common Area Improvements, each Owner shall maintain the Common Areas on its Tract or Outparcel (except for the main drives which are identified on the Site Plan as "Market Lane", "Somers Boulevard" and "35th Street" collectively the "Main Driveways") in good condition and repair. The maintenance 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 and traffic control 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,

(F) Maintaining, mowing, weeding, fertilizing, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary to keep all landscaping in a live, healthy, safe and aesthetically pleasing state; and

(G) Maintaining elements of the Storm Drainage System

(2) Expenses The respective Owners shall pay the maintenance expense of their Tracts or Outparcels and the Common Areas located thereon except as specifically provided below

(3) By Agent The owner of the Wal-Mart Tract, the Sam's Tract and the Owner of the Developer Tract shall agree upon a third party (the "Agent") to be appointed as an agent of the parties to maintain the following Common Areas: (a) the Detention Area, (b) the Main Driveways including lighting and directional signage thereon; (c) the Shopping Center Signs (as this term is defined in Section 7, below); and (d) any general landscaping (i) associated with the entrances into the Shopping Center off of Green Bay Road, 38th Street and

31st Street; (ii) located within or directly adjacent to the Main Driveways; and (iii) located within the landscape buffer along 31st Street and within the roundabout at the intersection of Somers Boulevard and 35th Street, in the manner as above outlined (collectively, the "General Common Elements"). The parties agree that Developer or an entity affiliated with developer may act as Agent and is hereby approved as an acceptable Agent. The owner of the Wal-Mart Tract, the Sam's Tract and the Developer Tract must mutually agree on the terms and language within any contract engaging the services of such Agent. Said third party may receive for such agency a fee that is mutually acceptable to all parties and consistent with standard practice in the Kenosha County, Wisconsin area 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. The Owners shall pay their prorata share of all expenses for maintaining and operating the General Common Elements, including, without limitation, the third party agency fee, real estate taxes applicable to the Detention Area and a premium for insurance on the Detention Area (collectively, the "Common Element Expenses") Each Tract or Outparcel Owner shall pay its prorata share of Common Element Expenses commencing when foundations for a Building are commenced on said Tract or Outparcel. An Owner's prorata share shall be a percentage calculated by dividing the total acreage of the Tract or Outparcel in question by the total acreage of those Tracts and Outparcels which have building foundations commenced thereon (minus the Detention Area and Main Driveways).

(4) Exclusions from Common Element Expenses. Notwithstanding anything to the contrary contained in this Agreement in no event shall any of the following be included in the total Common Element Expenses:

(A) Capital expenditures required by Developer's failure to comply with laws;

(B) Costs incurred by the Agent with respect to goods and services (including utilities) sold and supplied to occupants of the Shopping Center to the extent that the Agent is entitled to reimbursement for such costs from such occupants (other than in the nature of Common Element Expense charges with respect to services provided to all Owners);

(C) Leasing commissions, attorneys' fees, remodeling costs, lease concessions, lease takeover obligations and other costs and expenses incurred in connection with negotiations or disputes with present or prospective occupants of the Shopping Center;

(D) Costs incurred by the Agent due to the violation by the Agent or any occupants of the terms and conditions of any lease of space in the Shopping Center or any violation by the Agent of the terms of any ground lease or mortgage for the Shopping Center;

(E) Interest, points and fees on debt or amortization on any mortgage or mortgages encumbering the Shopping Center,

(F) All items and services for which an Owner or any occupant in the Shopping Center reimburses the Agent or which the Agent provides selectively to one or more occupants (other than an Owner) without reimbursement;

(G) Costs of maintenance of signs in or on the Shopping Center identifying any Owner in the Shopping Center or any occupant of the Shopping Center to the extent the Agent is entitled to reimbursement for such costs from any such Owner or occupants directly from such Owner or occupant;

(H) Depreciation on Developer's original investment in the Shopping Center;

(I) The cost of supervisory personnel or property managers;

(J) All costs and expenses associated with the removal and cleanup of hazardous waste or toxic substances caused directly and exclusively by the Agent;

(K) Costs incurred in connection with the initial construction or design of the Shopping Center;

(L) Costs incurred to repair, change, improve, replace or correct defects in the initial construction or design of the Shopping Center, ordinary wear and tear excepted;

(M) Costs, fines or penalties incurred solely as a result of the violation by the Agent of any applicable law;

(N) Costs incurred in advertising or promoting the Shopping Center for any purpose, including the sale of the Shopping Center or costs incurred with respect to seasonal occupants, costs for on and off site billboards, and costs of audio and visual promotional production services and promotional materials of any kind;

(O) Income, excess profits or franchise taxes or other such taxes imposed on or measured by the income of the Agent from the operation of the Shopping Center;

(P) Insurance premiums to the extent any occupant causes the Agent's existing insurance premiums to increase or requires the Agent to purchase additional insurance, and

(Q) Any costs relating to the management, operation, repair or replacement of Buildings or facilities located upon the Shopping Center which are not used for the operation of the Shopping Center and which would not normally be used by retail customers of occupants, such as costs related to the management, operation, repair or replacement of office buildings or hotels which may be located upon the Shopping Center

(5) Budget Submission. At least ninety (90) days prior to the commencement of the calendar year and each year thereafter the Agent shall submit to each Consenting Owner, for such Consenting Owner's review and approval, a proposed annual budget for Common Element Expenses ("Budget") covering, respectively, the first partial calendar year and each calendar year thereafter, together with a copy of the bids required herein and any backup materials reasonably requested by any Consenting Owner. If an item of maintenance or replacement is to be accomplished in phases over a period of calendar years, such as resurfacing of the drive and/or parking areas, then the Budget shall separately identify the cost attributable to the ensuing calendar years (specifying the portion of the Common Area affected), and shall note the anticipated cost and timing (specifying the portion of the Common Area affected) of such phased work during succeeding calendar years. Notwithstanding anything in this Agreement to the contrary, so long as the Owners of the Wal-Mart Tract and the Sam's Tract are responsible for payment of at least 75% of the CAM Expenses, only the Consenting Owners for the Wal-Mart Tract and Sam's Tract shall be required to approve the Budget.

(A) Consenting Owner's Review. Each Consenting Owner shall, within sixty (60) days after receipt of the Budget, deliver written notice of its approval or disapproval of the Budget to the Agent ("Budget Approval Notice"). Notwithstanding the foregoing, if the Agent does not comply with the time frames required herein for submission of the Budget and all back up materials, any such delay in submission shall entitle the Consenting Owners to a corresponding extension in delivering their Budget Approval Notices. If a Consenting Owner(s) fails to submit its approval in writing prior to the expiration of the sixty (60) days, such action shall not constitute automatic approval of the Consenting Owners nor waive or relinquish its rights to approve the Budget.

(B) Disapproval by Consenting Owners/Bidding With respect to each submitted Budget, each Consenting Owner shall approve all items of Common Area Expenses ("CAM Items") that such Consenting Owner deems acceptable, even if the Budget contains other CAM Items which the Consenting Owner deems unacceptable, such that the Consenting Owner shall have approved as much of the Budget as possible. If a Consenting Owner disapproves of any CAM Items, it must specify its reasons for disapproval in the Budget Approval Notice and the Agent shall promptly revise and resubmit the same until the Agent and the Consenting Owner(s) reach agreement on the matters in question. The Agent and Consenting Owner shall attempt in good faith to reach agreement as to the disapproved items as quickly as reasonably possible and in any event prior to the expiration of the applicable calendar year.

(C) If, prior to the expiration of the applicable calendar year, the Agent and the majority of the Consenting Owners are unable to agree upon the inclusion of a particular CAM Item with the Budget, despite their good faith efforts, the parties shall submit such item to arbitration at the closest office of the American Arbitration Association or such other arbitration association mutually agreeable to the Consenting Owners. Each party shall be responsible for its own costs incurred in arbitrating the matter and the parties shall share evenly the cost of the arbitrator. The determination of the arbitrator shall be binding on the parties and the Budget shall be revised accordingly.

(D) If the Agent and the Consenting Owners are unable to agree upon the cost of a particular CAM Item, as reflected in the Budget then the following shall apply.

(1) If the disagreement arises with respect to the first partial calendar year the lowest bid for said item shall be incorporated into the Budget, and

(2) If the disagreement arises with respect to subsequent Budgets, the Agent shall promptly submit for rebid each disapproved CAM Item in accordance with the procedures in Section 6(e)(5) (and if the existing calendar year expires during the foregoing bidding process, the Agent shall continue to maintain the Common Area based upon the approved portions, if any, of the currently submitted Budget and those portions of the just expired Budget that relate to disputed CAM Items).

(6) Emergency Expenses. If the Agent is required to incur an expense for the emergency repair or replacement of any portion of the General Common Elements, which expense has not been set forth in an approved Budget, then each Owner shall pay its proportionate share of such expense provided that the Agent has given each Owner the best and earliest notice of the same that is feasible under the circumstances. For purposes of this Section, an "emergency" necessitating repair or replacement shall be one which presents an imminent threat or danger of harm to person or property. If the total cost of the emergency action exceeds Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) [which amount shall automatically increase by five percent (5%) every ten (10) years], then the Agent may submit a supplemental billing to each Owner, together with evidence supporting such payment. Each Owner (subject to its right to contest the validity of the expenditure), shall pay its share thereof within thirty (30) days. If the cost limitation set forth above is not exceeded, then such costs shall be included as part of the Common Element Expenses at the year end.

(7) Billing. Beginning on the first day of the first calendar month of the first partial maintenance year and continuing on the first day of each calendar month thereafter, the Owner of each Tract or Outparcel (or its respective tenants or agents, as it may direct) shall pay to the Agent in advance one twelfth (1/12) of such Owner's prorata share of the total annual Common Element Expenses for the first partial maintenance year and every year thereafter, as set forth in the approved Budget.

(8) Reconciliation. Within ninety (90) days after the end of each calendar year the Agent shall send to each Owner a written statement of the total Common Element Expenses actually paid by the Agent during said calendar year ("Actual Expenses") and the difference between said Owner's prorata share of the Actual Expenses and the sum of all the monthly payments made by said Owner relative to said calendar year or partial calendar year as the case may be ("Reconciliation Statement"). The Reconciliation Statement shall be accompanied by complete copies of invoices, statements and documents supporting the expenses covered by said statement (collectively, "Backup Invoices"). The Agent shall, within fifteen (15) days after receipt of an Owner's written request, provide to such Owner such additional documentation as the Owner reasonably requests to substantiate the expenses (sometimes referred to herein as "Additional Documentation"), and such Owner's obligation to pay any invoice submitted by the Agent in the Reconciliation Statement shall be contingent upon its receipt of said Additional Documentation. The Owners and the Agent shall, within thirty (30) days after the Agent submits the Reconciliation Statement to the Owners, make such adjustments

and payments as necessary so that the Agent receives the entire amount of the undisputed portion (but no more) of each Owner's proportionate share of the Actual Expenses for the applicable calendar year or partial calendar year as the case may be. Notwithstanding the foregoing, if the Actual Expenses for any single item exceed the budgeted cost of said item by more than five percent (5%), or if the total CAM Expenses exceed the aggregate Budget by more than five percent (5%), the Owners shall not be liable for such excess unless the Consenting Owners have approved such excess in writing. Any reimbursement that may be due by the Agent to the Owners may, if the Agent and Owners so agree, take the form of a credit on the Owner's next succeeding installment(s).

(9) Agent's Insurance Agent shall (i) carry the minimum insurance coverages required in Section 8 of this Agreement, (ii) shall take such steps as are necessary to extend the scope of the insurance coverages required in Section 8 of this Agreement so as to cover the activities of such Owner as Agent; and (iii) otherwise comply with all provisions thereof as if the Agent were an Owner under this Agreement.

(f) Taxes. Each Owner 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

(a) General Signage. No rooftop sign shall be erected on any Buildings constructed in the Shopping Center. No freestanding identification sign may be erected on the Outparcels without consent of the Developer, and in no event shall such freestanding identification sign exceed the height of the shopping center monument signs or block the visibility of the Wal-Mart store or the Sam's Club store. Any monument sign of five (5) feet in height and five feet in width shall be deemed to conform to the requirement of this Section 7. Each Outparcel shall have no more than one (1) monument sign. In Zone 6 there shall be allowed no more than one (1) monument sign for each Building located therein. Notwithstanding the foregoing provisions of this Section, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3'3" in height, the type and location of such signs to be approved by Developer. No sign shall be located on the Common Areas on the Wal-Mart Tract, the Sam's Tract, the Developer Tract or the Outparcels except signs advertising businesses conducted thereon.

(b) Shopping Center Signs. Developer hereby grants to both Wal-Mart and Sam's a perpetual easement to maintain, operate and replace a sign panel for each of them on each face of the shopping center monument sign structures identifying the Shopping Center to be erected in Zones 1, 4 and 5 in the areas indicated on the Site Plan as "Shopping Center Sign" (hereinafter, the "Shopping Center Signs"). Each sign panel for Wal-Mart and Sam's (collectively, the "Wal-Mart Sign Panels") shall occupy the top two (2) positions on each face of the Shopping Center Signs. Subject to obtaining governmental approvals, the Shopping Center Signs shall be designed substantially as set forth in the attached **Exhibit E**, or another design approved by Wal-Mart, Sam's and Developer and the same shall be constructed to maximum

height as permitted by the governmental authorities having jurisdiction. Developer has the right to install and maintain other panels on each face of the Shopping Center Signs and to assign such right to occupants of the Developer's Tract or the Outparcels upon such terms as it may desire which are not in conflict with this Section. The size and location of the remaining sign panels on the Shopping Center Signs shall be substantially as indicated on the attached **Exhibit E**. Any sign panel to be located on the Shopping Center Signs by Developer or its assigns, other than a Wal-Mart Sign Panel, (collectively, the "Developer's Sign Panels") shall be: (1) consistent with comparable first class community shopping centers in the metropolitan Kenosha, Wisconsin market area, and (2) installed by (including the installation of a panel box, if necessary), maintained in good repair by and replaced at the sole expense of Developer or its assigns. Wal-Mart shall have reasonable access to and over the Outparcels for purposes of maintaining, repairing and/or replacing the Wal-Mart Sign Panels.

8. Indemnification/Insurance.

(a) Indemnification. Each Owner hereby indemnifies and saves the other Owners harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Tract or Outparcel, except if caused by the act or negligence of such other Owners.

(b) Insurance.

(1) Each Owner 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 Owner'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 Owner shall provide the other Owners 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 Owner 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, Sam's and Developer.

(2) At all times during the term of this Agreement, each Owner 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. The Owner of a Tract or Outparcel shall pay for any increase in the cost of insuring the improvements on the other Tracts or Outparcels if such increase is due to the use by such owner or its tenant(s).

(3) Policies of insurance provided for in this Section 8 shall name Wal-Mart, Sam's and Developer as insureds.

(4) Each Owner for itself and its property insurer hereby releases the other Owners 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 Owner being released or by any agent, associate or employee of the Owner being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing Owner is obligated hereunder to carry, or, if the releasing Owner is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing Owner were carrying that insurance

(5) Notwithstanding anything to the contrary contained in this Section 8, so long as the net worth of an Owner shall exceed One Hundred Million and 00/100 Dollars (\$100,000,000.00), [which amount shall automatically increase by five percent (5%) every ten (10) years], such Owner shall have the right to retain (in whole or in part) the financial risk for any claim.

9. Eminent Domain.

(a) Owner's Right To Award. Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owner's Tract or Outparcel giving the public or any government any rights in said Tract or Outparcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located in the Shopping Center, the award attributable to the land and Common Area 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 Common Area Improvements taken from another Owner.

(c) Tenant's Claim Nothing in this Section 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.

(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 or Outparcel as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owner.

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

11. Release from Liability Any person acquiring fee or leasehold title to any portion of the Shopping Center shall be bound by this Agreement only as to the Tract, Outparcel or portion of the Tract or Outparcel acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Tract, Outparcel or portion of the Tract or Outparcel, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this Section 11, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said tracts running with the land.

12. Breach. In the event of breach or threatened breach of this Agreement, only all Owners of the Wal-Mart Tract as a group, or all Owners of the Sam's Tract as a group, or all Owners of the Developer Tract as a group, or Wal-Mart so long as it or any affiliate has an interest as owner, user or lessee of the Wal-Mart Tract (or Sam's Tract), or Developer so long as it or any affiliate has an interest as owner or lessee of the Developer Tract, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. Notwithstanding the foregoing, all of the record owners of an Outparcel shall be entitled to take any action permitted by this Agreement with respect to the breach of Sections 5(a), 5(d), 6(e), 6(f), 8(a), 8(b)(4) and 9.

13. 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.

14. Document Execution, Modification and Cancellation It is understood and agreed that until this document is fully executed by Developer, Wal-Mart and Sam's, there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This 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, user or Lessee of the Wal-Mart Tract, or its successors in interest, (b) Sam's, as long as it or its affiliate has any interest as either owner, user or Lessee of the Sam's Tract, or its successors in interest, and (c) Developer, as long as it or its affiliate has any interest as either owner or lessor of the Developer Tract, or its successors in interest.

15. Non-Merger. So long as Wal-Mart or its affiliate is owner or lessee of the Wal-Mart Tract (or the Sam's Tract), this Agreement shall not be subject to the doctrine of merger.

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

17 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.

18 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.

19 Estoppel Certificate Within twenty-one (21) days after written request by an Owner, the other Owners shall execute, acknowledge and deliver to the requesting Owner a certificate in reasonably acceptable form, certifying to the best of their knowledge: (a) whether this Agreement is unmodified and in full force and effect, (b) whether the responding Owner (i) asserts any default under the Agreement or claim against the requesting Owner, (ii) knows of any fact which, with the giving of notice or the passage of time, or both, could give rise to any such default or claim (or if there are such assertions or knowledge, stating said assertions or knowledge), and (c) regarding any other information reasonably requested by the requesting Owner, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser, mortgagee, or assignee of any mortgagee of the requesting Owner's property. An Owner may only make two (2) requests for estoppel certificates each calendar year.

20. Transfer of Interests, Notices.

a. 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 Kenosha County, Wisconsin, 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 Kenosha County, Wisconsin (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, 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 regarding the recordation of the Notice Statement are satisfied with respect to Developer, Wal-Mart and Sam's.

b. 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 or Sam's: Wal-Mart Stores, Inc (Store No. #1167-07 and 6331-02)
Attention: President
2001 S.E. 10th Street
Bentonville, AR 72716-0550

With a copy to. Wal-Mart Stores, Inc. (Store No. #1167-07 and 6331-02)
Attention: Property Management, State of Wisconsin
2001 S.E. 10th Street
Bentonville, AR 72716-0550

Developer. Somers Market Center LLC
c/o Bradford Real Estate Services, Inc.
Attention: Stephen Pagnotta
10 S. Wacker Drive
Suite 2935
Chicago, IL 60606

With a copy to Ms Elizabeth L. Corey
Foley & Lardner LLP
321 North Clark, Suite 2800
Chicago, IL 60610

And The Inland Real Estate Development Corporation
Attention: General Counsel
2901 Butterfield Road
Oak Brook, IL 60523

Notices shall be effective upon receipt or refusal. In the event that any person acquires a fee interest in the Shopping Center said person shall be entitled to provide a 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 Shopping Center is located. Any Owner 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 Shopping Center is 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 Owner shall be deemed to be the proper address of said Owner.

21. Consent. The Owner of the Wal-Mart Tract agrees that for so long as a lease of all or a portion of the Wal-Mart Tract is in effect, whenever the consent of the Owner of the Wal-Mart Tract is required under this Agreement, the Owner of the Wal-Mart Tract will give such

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

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

23. Developer's Agreement. All Owners shall abide by the terms and provisions of the Developer's Agreement; provided, however, that the violation of any terms or provisions of the Developer's Agreement, shall not be deemed a breach of this Agreement and only the Town may enforce the Developer's Agreement

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

[Remainder of page intentionally left blank, Signatures on following pages]

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

Approved as to legal terms only
by Ron
WAL-MART LEGAL DEPT.
Date: 10-2-07

STATE OF ARKANSAS)
COUNTY OF BENTON)ss

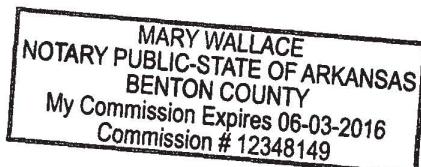
**WAL-MART STORES EAST, LP,
a Delaware limited partnership**

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

By: Michael E. Gardner
Its Regional Vice President, Design and Real Estate

Its Regional Vice President, Design and Real Estate

The foregoing instrument was acknowledged before me this 2 day of October, 2007, by Michael E. Gardner, Regional Vice President, Design and Real Estate of WSE Management LLC, a Delaware limited liability company, general partner of Wal-Mart Stores East, LP, a Delaware limited partnership, on behalf of said partnership.




Mary Wolf
Notary Public
Benton County, Arkansas
My Commission Expires.

[Signatures Continued on Next Page]

Somers, WI / ECR Execution Version
Sam's Store No 6331-02 / LP No 092680
Wal-Mart Store No. 1167-04 / LP No 152326

Approved as to legal terms only
by Riotm
WAL-MART LEGAL DEPT.
Date: 10.2.7

SAM'S EAST, INC.,
an Arkansas corporation

By

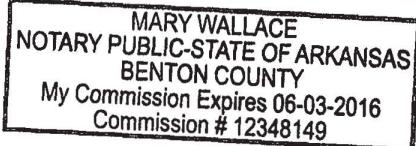


Michael E. Gardner

Its Regional Vice President, Design and Real Estate

STATE OF ARKANSAS)
)
COUNTY OF BENTON)

The foregoing instrument was acknowledged before me this 2 day of
october, 2007, by Michael E. Gardner, Regional Vice President, Design and Real Estate of
Sam's East, Inc., an Arkansas corporation, on behalf of said partnership



Mary Wallace
Notary Public
Benton County, Arkansas
My Commission Expires:

[Signatures Continued on Next Page]

SOMERS MARKET CENTER LLC,
a Delaware limited liability company

By: Ired – Bradford Somers, L.L.C.
Its: Managing Member

By: Ired Somers, L.L.C.
Its: Managing Member

By: Inland Retail Development, LLC
Its: Sole Member

By: Matthew G. Fiascone
Matthew G. Fiascone
Its: President

STATE OF ILLINOIS }
 } ss
COUNTY OF COOK }

The foregoing instrument was acknowledged before me this 1 day of
October, 2007, by Matthew G. Fiascone, President of Inland Retail Development,
LLC, as Sole Member of Ired Somers, L.L.C., as Managing Member of Ired-Bradford Somers,
L.L.C., as Managing Member of Somers Market Center LLC, a Delaware limited liability
company.

(Seal and Expiration Date)



Gina E. Millington
Notary Public

[Signatures End]

**CONSENT, JOINDER AND SUBORDINATION
OF LENDER**

The undersigned, Bank of America, N.A. ("Lender"), is the owner and holder of that certain Mortgage from Somers Market Place, LLC, a Delaware limited liability company (the "Mortgage") dated March 14, 2007, which is recorded in the records of Kenosha County, Wisconsin, as Document Number 1516451, as the same may have been further amended (the "Mortgage").

Lender, as the owner and holder of the Mortgage, hereby joins in, consents to and subordinates the Mortgage to, the foregoing:

1. Developer's Agreement by and between the Town of Somers and the Somers Market Center, LLC for "Somers Market Center" a Proposed Planned Unit Development Being a Part of Section 27, Town 2 North, Range 22 East;
2. Easements with Covenants and Restrictions Affecting Land made by and among Wal-Mart Stores East, LP, Sam's East, Inc., and Somers Market Center LLC; and
3. Declaration of Stormwater Facility Maintenance made by Somers Market Center LLC

(collectively, the "Agreements") to which this Consent, Joinder and Subordination is attached, and Lender agrees that all of its right, title and interest in and to the real property described therein existing by virtue of the Mortgage shall be bound by, subject to and subordinate to the easements and other terms and provisions of the foregoing Agreements, and the Agreements shall survive any foreclosure, deed in lieu of foreclosure and/or exercise of any remedy by Lender pursuant to the Mortgage.

LENDER:

Bank of America, N.A.,
a national banking association

By: Ghi S. Gavin
Name: Ghi S. Gavin
Its: Sr. Vice President

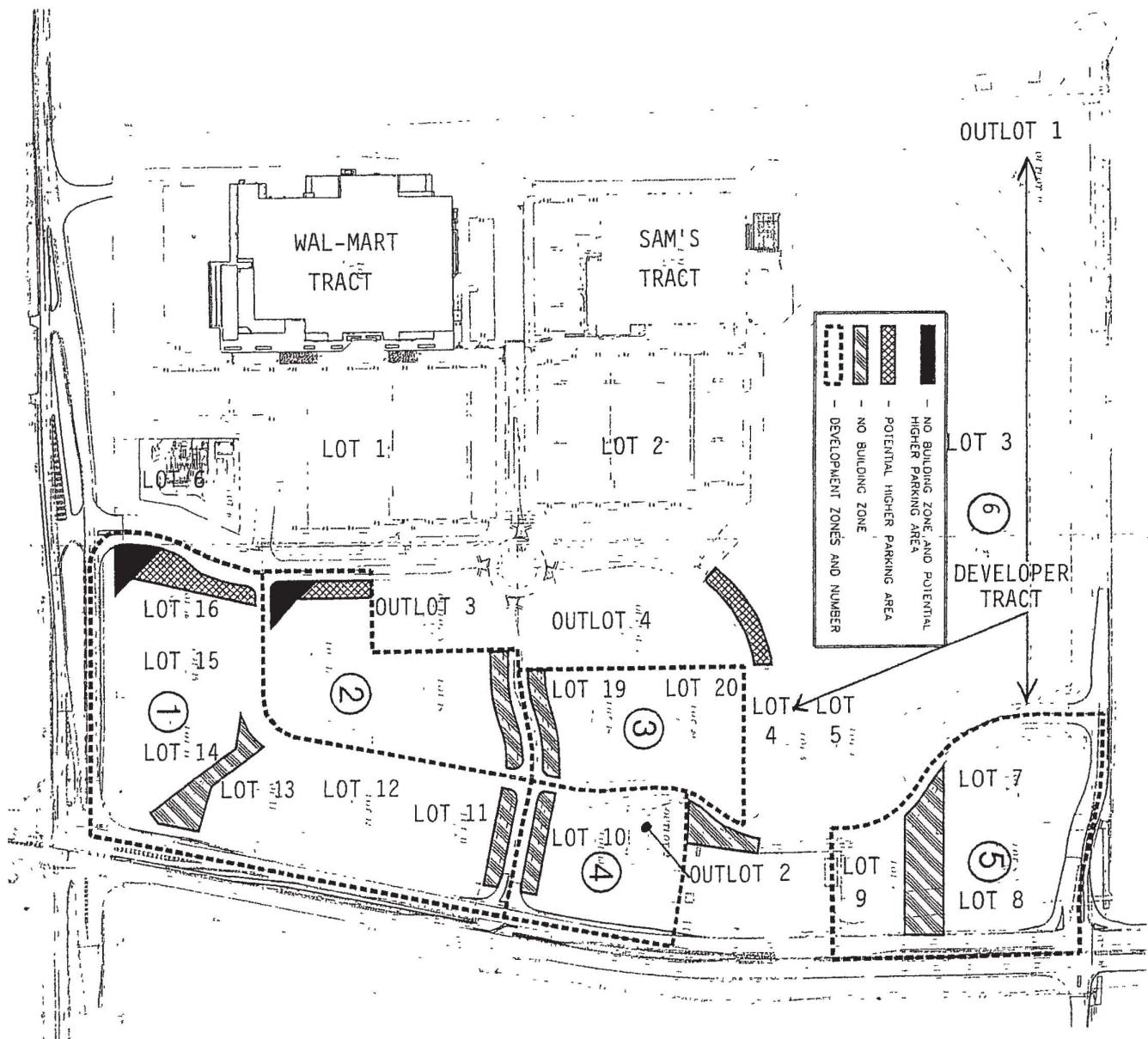
Attest: Linda J. Frixon
Name: Linda J. Frixon
Its: Assistant Vice President



EXHIBIT A

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

ECR SITE PLAN



(No) Depicts Zones 1-6

EXHIBIT B

(Wal-Mart Tract legal description)

Lot 1 of the plat of Somers Market Center Subdivision recorded on Oct 3, 2007 as document number 1535778, being part of the Northeast 1/4 of Section 27, Township 2 North, Range 22 East of the Fourth Principle Meridian, lying and being in the Town of Somers, County of Kenosha and State of Wisconsin

EXHIBIT C

(Sam's Tract legal description)

Lots 2 and 6 of the plat of Somers Market Center Subdivision recorded on Oct
3, 2007 as document number 1535778, being part of the Northeast 1/4 of Section
27, Township 2 North, Range 22 East of the Fourth Principle Meridian, lying and being in the
Town of Somers, County of Kenosha and State of Wisconsin

EXHIBIT D

(Developer Tract and Outparcels legal description)

Lots 3 through 5, 7 through 20 and Outlots 1 through 4 all inclusive of the plat of Somers Market Center Subdivision recorded on Oc + 3, 2007 as document number 1535778, being part of the Northeast 1/4 of Section 27, Township 2 North, Range 22 East of the Fourth Principle Meridian, lying and being in the Town of Somers, County of Kenosha and State of Wisconsin.

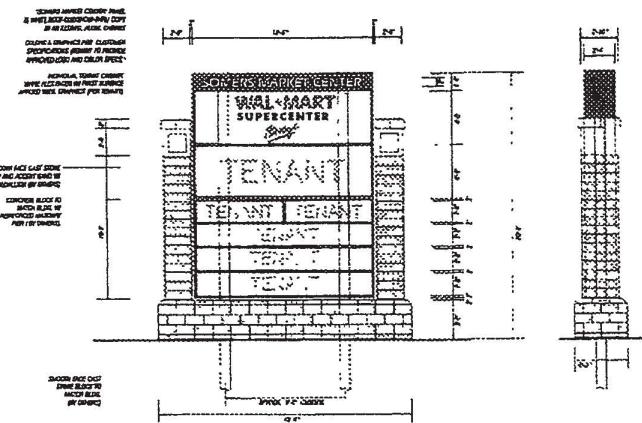
EXHIBIT E

(Sign Exhibits)

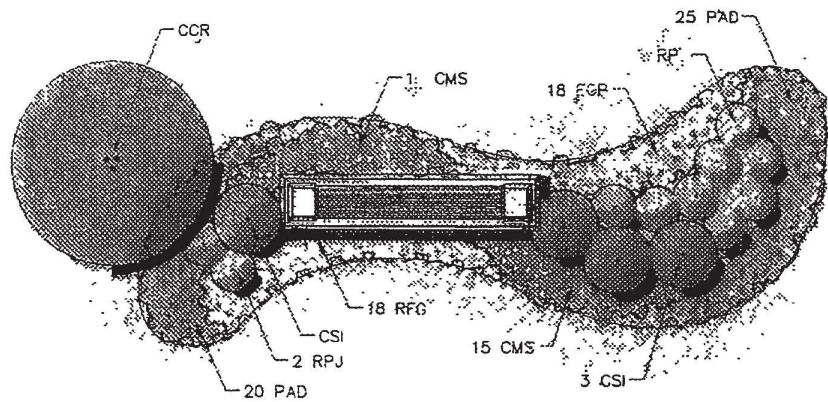
[See attached]

Somers, WI / ECR Execution Version
Sam's Store No 6331-02 / LP No 092680
Wal-Mart Store No 1167-04 / LP No 152326

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SUBDIVISION MONUMENT SIGN

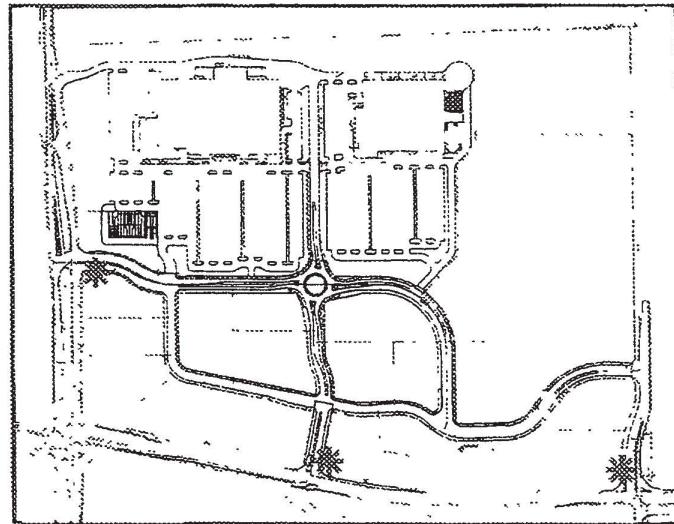


MONUMENT SIGN LANDSCAPE PLAN

PLANTING LIST

KEY	QTY	Botanical name	SIZE	REMARKS
CCR	3	Cercis canadensis EASTERN REDBUD	8'	MULT-STEM
CMS	90	Chrysanthemum maximum SHASTA DAISY	1 GAL	
CSI	12	Chrysanthemum maximum ISANTI RED TWO DOGWOOD	36"	
ECP	54	Echinacea purpurea 'Magnus' PURPLE CONEFLOWER	1 GAL	
PAD	135	Pennisetum alopecuroides 'Hameln' DWARF FOUNTAIN GRASS	1 GAL	
RFG	54	Rudbeckia fulgida 'Goldsturm' BLACK EYED SUSAN	1 GAL	
RPJ	30	Rhododendron x 'P.J.M.' PJM RHODODENDRON	30"	

* QUANTITIES REFLECT TOTALS FOR ALL THREE BED SIGN LOCATIONS



SIGN LOCATION MAP

EXHIBIT A

(Site Plan showing tracts)

