

**Perris (S), California
Store # 4490-00**

DEVELOPMENT AGREEMENT

between

**MTC CONSOLIDATED, LLC,
a California limited liability company
("Developer")**

and

**WAL-MART REAL ESTATE BUSINESS TRUST,
a Delaware statutory trust
("Wal-Mart")**

TABLE OF CONTENTS

1. UNLIMITED AREA CODE CLASSIFICATION.....	1
2. STORM WATER COMPLIANCE.....	1
3. INDEMNITY.....	2
3.1 Definitions.....	2
4. DEVELOPER’S EMPLOYEES.....	5
5. CONSTRUCTION OF THE SITEWORK.....	6
5.1 The Sitework.....	6
5.2 Developer Default.....	6
6. THE CONSTRUCTION CONTRACT AND REIMBURSEMENT.....	10
6.1 The Construction Contract.....	10
6.2 Bid and Budget Approval.....	10
6.3 Pro Rata Defined.....	11
6.4 Governmental Reimbursement of Sitework Costs.....	11
6.5 Reimbursement of Sitework Costs by Wal-Mart.....	12
6.6 Final Payment.....	12
6.7 Testing and Certification.....	13
6.8 Warranty.....	13
6.9 Letter of Credit.....	13
6.10 Insurance.....	14
6.11 Audit.....	21
6.12 Quality of Sitework.....	22
6.13 Independent Contractors.....	22
6.14 Non-Exclusive.....	22
6.15 Compliance.....	23
6.16 Limitation of Liability.....	24
6.17 Representations and Warranties.....	24
6.18 Developer General Contractor and Subcontractors.....	25
6.19 Compliance With Other Applicable State Law.....	25
6.20 Compliance With California Law.....	26
7. MISCELLANEOUS.....	26
7.1 No Waiver.....	26

7.2	Remedies Cumulative.....	26
7.3	License for Construction Activity, Self-Help.....	26
7.4	Not A Partnership.....	27
7.5	No Third Party Beneficiary Rights.....	27
7.6	Force Majeure.....	27
7.7	Notices.....	29
7.8	Successors And Assigns.....	30
7.9	Effect Of Agreement.....	31
7.10	Captions And Headings.....	31
7.11	Time.....	31
7.12	Time Period Computation.....	31
7.13	Construction.....	31
7.14	Joint And Several Obligations.....	31
7.15	Authority.....	32
7.16	Counterparts.....	32
7.17	Recordation.....	32
7.18	Governing Law.....	32
7.19	Severability.....	32
7.20	No Minimum Business; No Reliance.....	32
7.21	Confidential Information.....	33
7.22	Publicity.....	33
7.23	Information Security.....	34
7.24	Attorneys' Fees.....	34
7.25	Cross-Default.....	34
7.26	Delivery of Vendor Form.....	35

TABLE OF EXHIBITS

<u>EXHIBIT</u>	<u>IDENTIFIER</u>
PLOT PLAN SHOWING TRACTS	A-1
PLOT PLAN WITH DEVELOPMENT DETAILS.....	A-2
DEVELOPER LEGAL.....	B
WAL-MART LEGAL	C
CONSTRUCTION SCHEDULE.....	D
PLANS & SPECS.....	E
WAL-MART'S DESIGN CRITERIA AND PROCESS	F
BUDGET.....	G
AUDIT PREPARATION PACKET.....	H
MEMORANDUM OF DEVELOPMENT AGREEMENT.....	I
INSPECTION REPORT FORM.....	J
COMPLIANCE WITH OTHER APPLICABLE STATE LAW	K
COMPLIANCE WITH CALIFORNIA LAW	L
DEVELOPER'S BREAKDOWN OF DETAILED COSTS	M
DEVELOPER'S WRITTEN GUARANTEE	N
WAL-MART PROJECT COSTS SHEET ON JOINT DEVELOPER BUILT STORES....	O
CONTRACTOR CERTIFICATIONS.....	P
WAL-MART BUILDING-ONLY CONSTRUCTION CONTRACT SPECIAL CONDITIONS.....	Q

DEVELOPMENT AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 2006, by and between **MTC Consolidated, LLC**, a California limited liability company, hereinafter referred to as “Developer”, and **Wal-Mart Real Estate Business Trust**, a Delaware statutory trust, hereinafter referred to as “Wal-Mart” (the “Agreement”).

WITNESSETH:

WHEREAS, Developer is the owner of a certain tract of land in Riverside County, State of California, described on the Plot Plan Sketch attached hereto as Exhibit A-1 and more particularly described on the attached written legal descriptions of the properties attached hereto as Exhibit B, each attached hereto and made a part hereof (the “Developer Tract”); and

WHEREAS, Wal-Mart is the owner of a certain tract of land adjacent to the land owned by Developer in Riverside County, State of California, described on Exhibit A-1 and more particularly described on Exhibit C, each attached hereto and made a part hereof (the “Wal-Mart Tract”); and

WHEREAS, Developer and Wal-Mart are desirous of developing the Wal-Mart Tract and the Developer Tract (collectively the “Tracts”), so as to create a harmonious and efficient shopping center (the “Shopping Center”); and

WHEREAS, the parties are desirous of entering into an Agreement to bind the parties with regard to certain sitework necessary to developing the Tracts and are desirous of setting forth that agreement in writing;

NOW, THEREFORE, for and in consideration of the mutual exchange of the covenants contained herein, the parties hereby agree as follows:

1. UNLIMITED AREA CODE CLASSIFICATION. The Developer agrees that any buildings constructed by Developer or its contractors, subcontractors or agents adjacent to the Wal-Mart Tract shall be constructed and operated in a manner which shall preserve “Unlimited Area Code Classification” of Wal-Mart’s building on the Wal-Mart Tract and all buildings on the Developer Tract and shall maintain the same structural classification, site clearances, and sprinklered rating as Wal-Mart’s building, in each case except to the extent applicable governmental agencies do not permit Developer, its contractors, subcontractors or agents to do so.

2. NO WORK ON WAL-MART TRACT. Under no circumstance shall Developer construct any Sitework (or other work) on the Wal-Mart Tract pursuant to this Agreement after the date hereof.

3. INDEMNITY. [NOTE: NEED TO ADD MUTUAL INDEMNITY FROM WAL-MART TO DEVELOPER] {3. INDEMNITY.}

3.1 Definitions.3.1Definitions. The following terms used in this Agreement shall have the meanings set forth below (unless otherwise expressly provided herein):

- (a) “Contract” or “Contract Documents” shall mean this Development Agreement, as well as the Purchase Agreement and the Declaration of Covenants, Conditions, Restrictions and Reciprocal Easement executed by Wal-Mart and the Developer, each together with any exhibits or attachments incorporated therein.
- (b) “Damages” shall mean any and all lawsuits, claims, actions, injuries, damages ~~{(including, but not limited to,}~~**(but excluding** punitive ~~{,~~ consequential~~}~~ and exemplary damages), losses, fines, penalties, sanctions, deficiencies, judgments, awards, costs, expenses (including, without limitation, reasonable fees, disbursements, and costs of attorneys, accountants, experts and investigators), reasonable settlement payments, liabilities, remediation expenses, corrective action costs, and other obligations, including, without limitation, property damages and bodily or personal injuries, illnesses and deaths (whether or not such injury is physically manifest, or emotional in nature without any attendant physical manifestation of such injury), and, with respect to third party claims in each case, regardless of whether such matters are groundless, fraudulent or false.
- (c) “Environmental Laws” shall mean any and all laws, statutes, regulations and judicial interpretations thereof of the United States, of any state in which the construction site is located, and of any other government or quasi-government authority having jurisdiction, that relate to the prevention, abatement and elimination of pollution and/or protection of the environment, including but not limited to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. § 6901 *et seq.*, the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, the Clean Air Act (“CAA”), 42 U.S.C. § 7401 *et seq.*, the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300f *et seq.*, the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*, and the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 *et seq.*, together with any state statutes or local ordinances or other requirements serving any similar or related purposes.
- (d) “Hazardous Materials” shall mean those materials, substances, wastes, pollutants or contaminants which are deemed to be hazardous, toxic or radioactive and shall include but not be limited to those substances defined as “hazardous substances,” “hazardous materials,” “hazardous wastes,” or

other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act 49 U.S.C. § 1801 *et seq.*, and any other federal, state or local governmental statutes, laws, codes, ordinances, rules, regulations and precautions, or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) petroleum products or byproducts, or petroleum, including crude oil or any fraction thereof, or natural gas, natural gas liquids, liquefied natural gas, synthetic gas or mixtures of synthetic gas and natural gas, (iii) asbestos, and (iv) polychlorinated biphenyls.

- (e) “Wal-Mart Indemnified Parties” shall have the meaning set forth in Section 3.2.
- (f) “Storm Water Requirements” means all federal, states or local laws, regulations, ordinances, permits or other authorizations, approvals or other requirements relating to storm water discharges or the control of erosion or sediment discharges from construction projects, including but not limited to the Clean Water Act, 33 U.S.C. §1251 *et seq.* and the NPDES General Permit for Stormwater Discharges Associated with Construction Activities.
- (g) “Sitework” shall have the meaning set forth in Section 5.

3.2 Developer shall indemnify, protect, defend and hold harmless Wal-Mart and its affiliates and its and their respective directors, stockholders, members, managers, officers, employees, agents, consultants, representatives, successors, transferees and assigns (collectively, the “Wal-Mart Indemnified Parties”) from and against any and all Damages arising from, relating to or associated with any actual or alleged (a) actions or omissions of Developer or its employees, agents, representatives, or Developer General Contractor, Subcontractors or Sub-subcontractors, or any employees, agents, representatives or contractors of any of the foregoing, in connection with the performance of the Sitework hereunder, including, without limitation, (i) any lien, security interest, claim or encumbrance in favor of any person or entity making a claim by reason of having provided labor, materials or equipment relating to the Sitework, and (ii) any injury, damage, harm or loss arising from, relating to or in any manner connected with the “release” or “threatened release” of Hazardous Materials, contaminants, oil or radioactive materials from any Wal-Mart premises as a result of Developer’s performance of the Sitework, even if not discovered or alleged until after the termination of the Contract, and/or (b) any breach, violation or default by Developer or its employees, agents, representatives, or Developer General Contractor, Subcontractors or Sub-subcontractors, or any employees, agents, representatives or contractors of any of the foregoing, of Developer’s obligations

under the Contract Documents, including, without limitation, any violation of any law, statute, ordinance, order, rule or regulation, including, without limitation, any Environmental Law, the Storm Water Requirements and those set forth in Section 4. Developer's obligations to indemnify and defend Wal-Mart Indemnified Parties hereunder shall apply unless it shall be ultimately determined by a final judicial decision from which there is no further right to appeal that the Wal-Mart Indemnified Parties are not entitled to indemnification under this Agreement. Further, in the event that it is ultimately determined by a final judicial decision from which there is no further right to appeal that a portion of the fault is attributable to the Wal-Mart Indemnified Parties, Developer's obligations on the indemnity will be proportional to the proportional fault of Developer and the Wal-Mart Indemnified Parties.

- 3.3 If a Wal-Mart Indemnified Party has a right against a person (other than another Wal-Mart Indemnified Party or one of Wal-Mart's insurers) with respect to any Damages paid to such Wal-Mart Indemnified Party by Developer, then Developer, to the extent of such payment, shall be subrogated to the right of such Wal-Mart Indemnified Party.
- 3.4 If requested by Developer, the Wal-Mart Indemnified Parties shall cooperate (a) in contesting any claim for Damages, which the Developer elects to contest, or (b) if appropriate, in making any counterclaim against the person asserting the claim, or any cross-complaint against any person; provided, that the Developer shall reimburse the Wal-Mart Indemnified Parties for any reasonable out-of-pocket expenses incurred by them in so cooperating.
- 3.5 If an Wal-Mart Indemnified Party receives notice of the assertion, filing or service of any lawsuit, claim, demand, action, liability or other matter that is or may be covered by this indemnity, Wal-Mart shall promptly notify the Developer thereof in writing; provided that no failure by Wal-Mart to give timely notice shall relieve the Developer of liability hereunder (unless such delay in notification materially prejudices Developer's rights with respect to the party making the claim covered by this indemnity). Upon receipt of notice, from whatever source, of any such lawsuit, claim, demand, action, liability or other matter covered by this indemnity, the Developer shall immediately take necessary and appropriate action to protect the Wal-Mart Indemnified Parties' interest, with counsel satisfactory to Wal-Mart in its reasonable discretion; provided that, Wal-Mart, at its sole and absolute discretion, retains the right to select and appoint counsel to defend any Wal-Mart Indemnified Party and/or to replace any counsel that Wal-Mart reasonably determines is unacceptable with new counsel (and the reasonable fees and expenses of such new counsel shall be payable by Developer). Any counsel provided by the Developer to defend any Wal-Mart Indemnified Party shall accept, acknowledge receipt of, and conduct the defense of such Wal-Mart Indemnified Party in accordance with, Wal-Mart's Indemnity Counsel Guidelines. The Wal-Mart Indemnified Parties shall at all times have the right to direct the

defense of, and to accept or reject any offer to compromise or settle, any lawsuit, claim, demand or liability asserted against them.

3.6 The indemnification obligations set forth in the Contract Documents are (a) independent of, and will not be limited by, each other or any insurance obligations in the Contract Documents (whether or not complied with) or damages or benefits payable under workers' compensation or other statutes, (b) not diminished or limited in any way by any insurance carried in whole or in part by Wal-Mart, which shall in all cases function in excess of these indemnification obligations, and (c) will survive the termination of this Agreement until all matters covered by this indemnity are fully and finally barred by applicable law. The indemnification provisions in the Contract Documents shall include all applicable law affecting the validity or enforceability of those provisions, and the applicable law will operate to amend those provisions to the minimum extent necessary to bring the provisions into conformity with the applicable law. The provisions, as modified, shall continue in full force and effect.

3.7 **ALL INDEMNIFICATION OBLIGATIONS IN PARAGRAPH 3.2 OF THIS AGREEMENT SHALL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW FOR THE WAL-MART INDEMNIFIED PARTIES' BENEFIT, REGARDLESS OF THE CAUSE(S) OR ALLEGED CAUSE(S) OF THE CLAIMS.**

4. DEVELOPER'S EMPLOYEES. Developer warrants that it shall use commercially reasonable efforts to [NOTE: THIS SHOULD BE LESS OF AN ISSUE SINCE SITE WORK ON WAL-MART TRACT WILL BE DONE BEFORE CLOSING] comply with all federal, state, and local laws, ordinances, statutes, rules, and regulations governing the employment of its workers, including, but not limited to, the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et seq.*; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*; the Child Labor Act, 29 U.S.C. § 212 *et seq.*; the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*; the Economic Dislocation and Worker Adjustment Act, 29 U.S.C. § 565 *et seq.*; the Employee Polygraph Protection Act of 1988, 29 U.S.C. § 2001 *et seq.*; the Equal Pay Act of 1963, 29 U.S.C. § 201 *et seq.*; the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 *et seq.*; the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a *et seq.*; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 553 *et seq.*; the Older Worker Benefit Protection Act, 29 U.S.C. § 621 *et seq.*; and the Omnibus Budget Reconciliation Act of 1986, 29 U.S.C. § 623 *et seq.* Without limitation on any rights to reimbursement it may have hereunder or under other agreements or instruments, Developer warrants that it shall be responsible exclusively for all compensation, salary, and any other remuneration due to individuals who perform Sitework under the Contract Documents. Developer warrants that should Wal-Mart be named as a respondent or defendant in any administrative or judicial proceeding based upon an alleged violation of any federal, state or local law, regulation or ordinance arising out of the Developer's employment of individuals performing Sitework under

the Contract Documents, Developer shall indemnify, defend and hold harmless Wal-Mart from any and all liability due to the Developer's violation of this Section.

5. CONSTRUCTION OF THE SITEWORK.

5.1 The Sitework. 5.1 The Sitework. The Developer shall undertake and complete the construction of each element of work described on Exhibit E (the "Plans and Specs") attached hereto and made a part hereof (collectively the "Sitework"). The Sitework shall be performed and completed in a manner determined by Developer in the exercise of its sole and independent judgment that meets or exceeds the minimum requirements set forth in Exhibit E and Exhibit F. In addition, the Sitework shall be performed and completed in a manner determined by Developer in the exercise of its sole and independent judgment that meets or exceeds the procedures and requirements set forth in the Wal-Mart Design Criteria and Process detailed in Exhibit F attached hereto and made a part hereof. Any and all references to conformance with Exhibit F contained in this Agreement shall require that Developer meet or exceed the minimum requirements set forth in Exhibit F. In the case of any conflict between any Exhibit attached to this Agreement (including without limitation, Exhibit E) and Exhibit F, Exhibit F controls in all respects. Each and every element of the Sitework shall be substantially completed on or before that applicable date listed in the construction schedule attached hereto as Exhibit D and made a part hereof. In addition to the above and in preparation of Wal-Mart's construction of its building on the Wal-Mart Tract Developer agrees to the following:

(a) Access; Schedule; Storage. Developer shall provide to Wal-Mart and shall thereafter maintain (i) adequate access by Wal-Mart or Wal-Mart's Contractor or subcontractors to the Wal-Mart building pad for the purpose of transporting personnel, equipment and supplies to the building pad including a heavy-haul access way (the "Construction Access Drive") consisting of gravel, rock or binder course of paving, or other such material approved by the government authorities, and Developer shall, at its sole cost and expense, prepare and maintain the Construction Access Drive in the locations shown on Exhibit A-2, of the size and according to the specifications standards and procedures contained in Exhibits E and F attached hereto. The Staging Area shall include all required erosion and sediment controls.

5.2 Developer Default. 5.2 Developer Default. To the maximum extent permitted by applicable law, in the event that ~~{(i) in the sole opinion of Wal-Mart,}~~ **(i) [NOTE: THIS TOO SHOULD BE LESS OF AN ISSUE SINCE SITE WORK ON WAL-MART TRACT WILL BE DONE BEFORE CLOSING]** Developer ~~{is not proceeding with due diligence to complete the Sitework; (ii) Developer}~~ does not complete any element of the Sitework on or before the applicable date set forth on Exhibit D, ~~{(iii) in}~~ **(ii) in** the ~~{sole}~~ **reasonable** opinion of Wal-Mart, conditions relating to the Sitework constitute or

present ~~{an}~~ **a medical** emergency or ~~{threat or potential}~~ **material imminent** threat to human health or the environment, ~~{(iv) Developer}~~ **(iii) Developer** fails to perform any of its obligations under this Agreement, or ~~{(v) Wal-Mart determines, in its sole discretion, that Developer}~~ **(iv) Developer**, Developer General Contractor, any Subcontractor or any Sub-Subcontractor is not complying with the requirements of this Agreement, then in any such event, Wal-Mart shall have the right to provide Developer a written Notice of Default ~~{, except}~~ **(provided, however, that** in the case of a default outlined in subsection (ii) above, ~~{in which event no}~~ **only such** Notice of Default **as is reasonable under the circumstances** shall be required as a condition to the exercise of its ~~{remedies hereunder}~~ **self-help remedy in paragraph 5.2(a) hereof**. In the event that Developer does not **commence to** cure a default under ~~{(iii)}~~ **(ii)** above within ~~{twenty-four (24)}~~ **forty-eight (48)** hours of Wal-Mart's Notice of Default **and complete the same with due diligence within a reasonable time**, or in the event that Developer does not **commence to** cure any other default within ten (10) days of receipt of such Notice of Default ~~{(or with respect to any other default that requires more than ten (10) days to cure, if Developer fails to commence to cure such default within ten (10) days and thereafter to diligently pursue such action until such default is cured)}~~ **and complete the same with due diligence within a reasonable time**, then Wal-Mart may exercise any of the following remedies:

- (a) **Self Help.** Wal-Mart shall have the ~~{immediate right}~~ **right, upon giving Developer five (5) days' further prior written notice to Developer (except in the case of emergency, in which case such right shall be immediate)** to enter upon the site and perform said Sitework as set forth herein **(except to the extent Developer commences to cure such default within such five (5) day period and thereafter completes the same with due diligence within a reasonable time)**. In such event, Wal-Mart may perform such **portion of the construction of the Sitework on the Wal-Mart Tract** that pertains to or is necessary (in Wal-Mart's sole discretion) for Wal-Mart to construct and open a retail facility to the public on the Wal-Mart Tract, **and Wal-Mart shall perform such work in strict conformance with the requirements set forth in this Agreement**. Said work (collectively referred to as "Self-Help Work") ~~{may}~~ **shall not** include ~~{partial}~~ **any** Sitework to be done on the Developer Tract. Nothing herein shall in any way be construed as requiring Wal-Mart to undertake or complete any element of the Sitework. Developer shall cooperate fully with Wal-Mart to ensure compliance with any Storm Water Requirements relating to or in connection with any Self-Help Work ~~{. Among other things, and without limitation, Developer shall, upon request by Wal-Mart, continue implementing any erosion and sediment controls set forth in the Comprehensive SWPPP or take any steps necessary to effect a transfer of permit coverage to Wal-Mart or Wal-Mart's contractor.}~~ **to the extent such compliance requires work on the Developer Tract. [NOTE: SWPPP WORK WILL ALL BE DONE**

BEFORE DELIVERY, SO NOT RELEVANT HERE] In the event that the Self-Help Work does not encompass the entirety of the Sitework **on the Wal-Mart Tract**, the Developer shall remain obligated to construct the balance of the Sitework in strict conformance with the requirements set forth in this Agreement. In the event that Wal-Mart undertakes the Self-Help Work as permitted in this Section 5.2 and to the maximum extent permitted by applicable law, all **commercially reasonable out-of-pocket** costs (including without limitation, all soils testing, surveying (including ALTA as-built survey), paving core testing, engineering fees and other soft costs (collectively “Soft Costs”)) incurred by Wal-Mart in connection with the construction of the Self-Help Work together with an administrative and mobilization expense not to exceed ~~{fifteen (15%)}~~ **ten (10%)** percent of all such costs, shall automatically be deducted from the amounts owed to Developer by Wal-Mart pursuant to Section 6.3. In the event that Wal-Mart exercises Self-Help, Wal-Mart may exercise or call any letter of credit obtained by Developer pursuant to Section 6.9; provided, however, that in the event any deductions from amounts owed Developer by Wal-Mart pursuant to Section 6.3 or amounts received by Wal-Mart through exercising or calling any letter of credit does not cover the **commercially reasonable out-of-pocket** costs of such Self-Help, Wal-Mart does not waive, and expressly reserves, its right to pursue any claims at law or equity available to recover ~~{the}~~ **such** costs of such Self-Help. Nothing herein shall be construed to require **or permit** Wal-Mart to complete or perform all of the planned Sitework on the Developer Tract. In the event that Wal-Mart performs the Self-Help Work under the terms of this Section 5.2, Developer hereby waives approval of the **commercially reasonable out-of-pocket** costs of the Self-Help Work.

- (b) **Liquidated Damages.** As an alternative to Wal-Mart undertaking the Self-Help Work as permitted in subsection (a) above, Wal-Mart may elect to allow the Developer to complete the Sitework and Developer shall pay to Wal-Mart liquidated damages in the amount of ~~{Five}~~ **Two** Thousand and No/100 Dollars ~~{(\$5,000.00)}~~ **(\$2,000.00)** per day (commencing upon the applicable date contained in Exhibit D) until each and every element of the ~~{Sitework}~~ **Self-Help Work** is completed by Developer. The parties acknowledge that: (i) it would be impracticable to fix the actual damages suffered by Wal-Mart as a result of Developer’s failure to perform as required hereunder; and (ii) the amount of the liquidated damages represents a fair and reasonable compensation to Wal-Mart for such default. **[NOTE: NEED TO DISCUSS DELETION OF LD’S, ESPECIALLY SINCE ALL REAL WORK WILL NOW BE DONE BEFORE CLOSING (SO WHATEVER IS LEFT AS “SITEWORK” HEREUNDER WOULD BE MINIMAL (THIS IS ALSO ONE REASON FOR DELETING (c), (d) AND (e) BELOW)]**~~{(e) Work Stoppage for Environmental Violations. Wal Mart may require the Developer or the Developer General Contractor to stop work until~~

~~noncompliance with this Agreement is remedied or corrected to Wal-Mart's satisfaction. In such event, any delay in completion of the Shopping Center for which damages may be assessed or payable under any other provisions of this Agreement shall, to the maximum extent permitted by law, be charged to Developer, in addition to any damages resulting to Wal-Mart arising from such delay, from any violations of the Storm Water Compliance provisions set forth in Section 2 above.~~

~~{(d) Withholding Payments. Wal-Mart may withhold payment of amounts due to Developer under this Agreement sufficient to satisfy all claims for fines, penalties, supplemental environmental projects or other requirements imposed by regulatory agencies or claims and demands of private citizens' groups to the extent the same are based upon the actions of Developer or its default hereunder. The amount of the sums to be withheld will be determined by Wal-Mart using its best estimate and judgment of the total potential amount of such claims based upon information known to Wal-Mart at the time of such withholding. At such time as Wal-Mart is satisfied that all potential claims of regulatory agencies and private parties or citizens' groups (either asserted or potential) have been resolved, Wal-Mart shall forthwith make payment of the withheld sums to Developer, less any sum to which Wal-Mart may otherwise be entitled to under the terms of this Agreement and less any sum necessary to satisfy any such claims, fines, penalties, supplemental environmental projects, or other requirements imposed by regulatory agencies or claims and demands of private citizens' groups.}~~ (c) [Intentionally Deleted]

~~{(e) Terminate Developer General Contractor. Wal-Mart may require that Developer terminate its contract with Developer General Contractor and hire a replacement general contractor to complete any work under this Agreement.}~~

(d) [Intentionally Deleted]

(e) [Intentionally Deleted] [NOTE: DEVELOPER'S GC WILL LIKELY ONLY BE WORKING ON DEVELOPER TRACT AFTER CLOSING, SO (e) NOT APPROPRIATE]

(f) Terminate this Agreement. In the event of a default under Sections 2, 4, 6.4, 6.17 or 6.20 beyond any applicable notice and/or cure period, Wal-Mart may terminate this Agreement, in which event Wal-Mart shall have no obligation to pay Developer for any sums that first accrue after the date of termination ~~{, or which it would otherwise be required to pay Developer under the terms of this Agreement}~~; provided, however, such termination shall not relieve Wal-Mart from its obligations to pay amounts that have accrued under this Agreement prior to the date of such termination. No such termination shall affect Developer's obligations to pay amounts that otherwise have accrued under this Agreement prior to the date of such

termination, including, without limitation, Developer's indemnity obligations or insurance obligations, which obligations shall survive any such termination.

- (g) Other Remedies at Law or in Equity. Wal-Mart may exercise any other right or remedy available at law or in equity.

6. THE CONSTRUCTION CONTRACT AND REIMBURSEMENT.

6.1 The Construction Contract.6.1 The Construction Contract. Developer agrees to contract for and oversee the design and construction of the Sitework. Developer shall bid the Sitework, sign the construction contracts, and shall be responsible to oversee its completion. Developer's contract for the Sitework shall contain a clause which provides that Wal-Mart is a third party beneficiary of said contract and a clause that once the Sitework has begun, the contractor will use due diligence in completing the work and, to the maximum extent permitted by applicable law, will not permit a cessation of work for a period greater than three (3) days unless such cessation of work is a result of Force Majeure. Developer agrees not to enter into ~~{“pay when paid”}~~ “pay when paid” (NOTE: PLEASE CLARIFY WHAT EXACTLY IS INCLUDED HERE; SENTENCE REMAINS SUBJECT TO DEVELOPER'S APPROVAL.) contracts with its contractors or subcontractors and shall require a similar provision in all contracts and/or subcontractor contracts.

6.2 Bid and Budget Approval.6.2 Bid and Budget Approval. [NOTE: IF THERE WILL BE NO SUBSTANTIAL SITework LEFT TO DO AFTER CLOSING, BIDDING AND BUDGETING SHOULD BE DELETED, AND DEVELOPER SHOULD SIMPLY BE LIMITED TO PASSING THROUGH REASONABLE COSTS] Developer shall put the Sitework out to open bid to at least three (3) general contractors within five (5) days from the date of this Agreement. All of the general contractors on the bid list shall be approved by Developer and Wal-Mart, which approval shall not be unreasonably withheld. Prior to award, Developer shall submit the low bid (or another bid, which is not the low bid, along with reason(s) why the low bid should not be accepted), in a form that lists the costs and quantities of all items relating to the Sitework (i.e., the unit prices therefor and the number of units required and/or a lump sum price breakdown) to Wal-Mart for approval. Within fifteen (15) days of receipt of such submission, Wal-Mart shall either (a) approve the bid; or (b) disapprove the bid and provide Developer with reason(s) for such disapproval. If Wal-Mart does not respond within such fifteen (15) day period, Wal-Mart shall be deemed to have disapproved the submitted bid. Within ten (10) days after Wal-Mart approval, Developer shall enter into a contract with the low bidder unless some reason for disqualification has occurred, or unless Wal-Mart has approved a bid which was not the low bid in accordance with the foregoing. If Wal-Mart disapproves the bid, Developer and Wal-Mart shall work together to reduce the cost with, if requested by either Developer or Wal-Mart, the work being rebid in the manner

set forth above. Attached hereto as Exhibit G and made a part hereof is the parties estimated budget, including Soft Costs, for the construction of the Sitework. Upon approval of the bid by both parties, Developer shall submit a revised budget for the costs, including Soft Costs, associated with construction of the Sitework. Developer and Wal-Mart shall amend this Agreement to incorporate the approved revised budget as a replacement Exhibit G (the "Budget"). Wal-Mart's approval shall be required of any changes to the Budget which would increase Wal-Mart's pro rata share of the costs of the Sitework; provided that Wal-Mart shall approve emergency change orders necessary to prevent or abate imminent threats to human health or the environment. Except to the extent otherwise required by applicable law, Wal-Mart shall not incur any responsibility for the cost of changes to the Budget (or other work contemplated herein by Developer) unless and until Wal-Mart has approved said changes to the Budget.

6.3 Pro Rata Defined. 6.3 Pro Rata Defined. Wal-Mart's pro rata share shall be _____ percent (___%) of the costs detailed in the Budget, including Soft Costs (the "Contract Sum"), and Developer's share shall be the balance of all costs, including Soft Costs, associated with the construction of the Sitework the "Developer's Share"). In the event any change order(s) must be affected due to any unforeseen circumstances beyond the reasonable control of the parties or due to any other Force Majeure, the increase in Sitework costs shall be borne in the same percentages as hereinbefore mentioned. Wal-Mart shall reimburse Developer for its reasonable out-of-pocket costs and expenses incurred to prepare and perform the monthly reporting required by Wal-Mart pursuant to Exhibit H hereto. [NOTE: WAL-MART HAS REIMBURSED DEVELOPER FOR THESE COSTS IN THE AMOUNT OF ABOUT \$35,000 IN PRIOR DEALS.]

6.4 Governmental Reimbursement of Sitework Costs. 6.4 Governmental Reimbursement of Sitework Costs. Notwithstanding Wal-Mart's pro rata share of the cost of the Sitework, to the extent that any of the Sitework is paid for by any governmental or semi-governmental authority by virtue of any agreement or otherwise, such share of expenses paid by such governmental or semi-governmental authority shall not be conditioned upon Wal-Mart's payment of its pro rata share therefor. In addition, to the extent Developer is now or in the future reimbursed for any portion of the Sitework by any governmental or semi-governmental authority, Developer shall pay to Wal-Mart upon receipt of each such payment Wal-Mart's pro rata share of such reimbursement based upon the same percentage of Wal-Mart's pro rata share initially paid for the cost of the Sitework.

[NOTE: NEED TO DISCUSS DELETING THIS PARAGRAPH, ESPECIALLY SINCE NO REAL SITE WORK MAY REMAIN TO DO AFTER CLOSING] Notwithstanding the foregoing, Developer hereby represents and warrants that ~~{it has not, and covenants and agrees that it will not, take}~~ as of the date hereof, to its actual knowledge (without imputation or

duty to investigate of any kind) it has not taken any action to cause a prevailing wage claim with respect to ~~{the Sitework, this Agreement or otherwise arising out of the Contract Documents. Developer shall indemnify, defend and hold Wal-Mart, and its officers, members, employees, and agents harmless from any claims, costs, judgments, liabilities, penalties, damages (including increased costs) arising out of or related to the claim or assertion that the Developer's receipt of any "public funds" (as that term is used in Section 1720 of the California Labor Code or any successor statute) has resulted in the Sitework or Wal-Mart's activities}~~ work previously done by it on the Wal-Mart Tract. ~~{being deemed a "public work" for purposes of Labor Code Section 1720, as amended. This Section shall survive the termination of this Agreement}~~

- 6.5 Reimbursement of Sitework Costs by Wal-Mart. 6.5 Reimbursement of Sitework Costs by Wal-Mart. [NOTE: NEED TO DISCUSS DELETING SECTIONS 6.5 THROUGH 6.9, 6.11, 6.12, 6.14, 6.15 AND 6.18 IF NO SITE WORK WILL BE LEFT TO DO AFTER CLOSING] At such time as the Sitework is begun, Developer shall submit to Wal-Mart on a calendar-month basis, applications for payment describing the Sitework which has been performed, certified as correct by a licensed civil engineer, together with mechanics' lien waivers for all labor, suppliers, materialmen, contractors and subcontractors to the extent included in the application for payment, and Wal-Mart shall make progress payments to Developer equal to one hundred percent (100%) of Wal-Mart's share of any Soft Costs, and ninety percent (90%) (or such greater percentage as may be required by applicable law) of Wal-Mart's share of the amount allocated to labor, materials and equipment either stored at the site for use in or previously incorporated in the Sitework, less the aggregate of previous payments made by Wal-Mart to Developer for Sitework. Wal-Mart shall pay such amount within thirty (30) days of receipt of the above mentioned items (unless a shorter period of time is required by applicable law).
- 6.6 Final Payment. 6.6 Final Payment. To the maximum extent permitted by law, Wal-Mart shall be under no obligation to make final payment until Developer has provided the following:
- (a) Final lien waivers for all labor, suppliers, materialmen, contractors and subcontractors;
 - (b) An ALTA As-built Survey conforming to Exhibit A-2, certified to by a licensed engineer or architect;
 - (c) Testing results for compaction density and paving core samples;
 - (d) ~~{Completion of the Audit, to Wal-Mart's satisfaction, as set forth in Section 6.11 of this Agreement or waiver of the Audit requirements in writing by Wal-Mart;}~~ [Intentionally Deleted] [NOTE: AUDIT AND ADJUSTMENT CAN BE MADE LATER AS NEEDED];

- (e) Completion of the Wal-Mart Project Costs Sheet, as shown on Exhibit M attached hereto and made a part hereof;
- (f) Completion of the Sitework in accordance herewith;
- (g) Certification by Developer that the Sitework has been completed as required hereunder;
- (h) A copy of the Notice of Termination to the extent required to be submitted by Developer, Developer General Contractor, Wal-Mart or Wal-Mart General Contractor under any Storm Water Requirement relating to the Sitework;
- (i) Developer General Contractor's breakdown of detailed costs conforming to Exhibit M; and
- (j) Completion of the Wal-Mart Project Cost Sheets, as shown on Exhibit O attached hereto and made a part hereof.

Developer covenants and agrees to provide all final lien waivers required by Wal-Mart pursuant to this Agreement no later than fifteen (15) days after completion of the Sitework.

- 6.7 Testing and Certification.6.7 Testing and Certification. All tests must meet or exceed the criteria established in Exhibits A-2, E and F and Developer's contracts with contractors shall provide that all tests meet or exceed the criteria specified in Exhibits A-2, E and F and that the As-built Survey conforms to Exhibit A-2. Test results, as completed, shall be sent to Developer, Wal-Mart and the contractor. Upon completion of the site grading, Developer shall provide a certification statement from an engineering firm approved by Wal-Mart certifying that the site has been graded to the elevation shown on Exhibits A-2 and E.
- 6.8 Warranty.6.8 Warranty. To the maximum extent permitted by applicable law, prior to Wal-Mart's making final payment, Developer shall also have provided for Wal-Mart a written guarantee in the form set forth in Exhibit N attached hereto warranting that all labor and materials furnished and all of the Sitework performed under this Agreement is in conformity with the requirements contained in this Agreement, that all materials and equipment installed are free from imperfect workmanship and materials, and that Developer shall promptly repair at Developer's sole cost and expense ~~{all}~~ any of the Sitework which ~~{Wal-Mart determines, in its sole discretion,}~~ is shown to be defective within one (1) year from the date of one hundred percent (100%) completion of the work.
- 6.9 Letter of Credit.6.9 Letter of Credit. At the time the Sitework begins, Developer shall provide either (a) a Performance Bond and a Labor and Material Bond executed by Developer or the contractor and a surety licensed to do business in California and acceptable to Wal-Mart, or (b) letter of credit from a

reputable financial institution in an amount equal to Developer's Share of the Contract Sum as defined in Section 6.3 in form and content acceptable to Wal-Mart which is callable by Wal-Mart in the event Developer defaults on its obligations under this Agreement and fails to cure in the manner and within the time period set forth in Section 5 or does not properly perform the Sitework as described herein. Provided, however, that in the event any deductions from amounts owed Developer by Wal-Mart pursuant to Section 6.3 or amounts received by Wal-Mart through exercising or calling any letter of credit do not cover the costs of any Self-Help, Wal-Mart does not waive, and expressly reserves, its right to pursue any claims at law or equity available to recover the costs of such Self-Help.

6.10 Insurance. 6.10 Insurance. **[NOTE: SECTION STILL SUBJECT TO CONFIRMATION WITH LANDLORD'S INSURANCE CONSULTANT]**

(a) Developer. Each party shall carry, and shall cause its contractors, subcontractors to carry, during the course of any construction work performed and/or contracted for by it hereunder, ~~{(a) Developer. Developer General Contractor and each Subcontractor and Sub-subcontractor shall carry }~~ insurance coverage as specified below for not less than the following limits, unless a greater amount is required by law. Provision of some types of insurance by a Subcontractor or Sub-subcontractor, including applicable limits of liability, may be waived or modified, at the option of Wal-Mart **in its commercially reasonable discretion**, where it is deemed that either such insurance is not applicable, that adequate coverage is provided by the Developer's or Developer General Contractor's insurance, or that waiver or modification is otherwise appropriate under the circumstances; provided, however, that Subcontractors and Sub-subcontractors must, in all cases, procure Workers' Compensation Insurance, Employer's Liability Insurance **(unless such party has no employees)** and Business Automobile Liability Insurance.

- (i) Workers' Compensation insurance with statutory limits or if no statutory limits exist, with minimum limits of One Million and No/100 Dollars (\$1,000,000.00) per occurrence. The Workers' Compensation insurance will conform to the laws of the state in which the Sitework is being performed. The Workers' Compensation insurance will include a Longshoreman and Harbor Workers Act Endorsement, as needed, and include "other states" coverage. The Workers' Compensation policy will be primary insurance and non-contributing with respect to persons directly engaged in the performance of Sitework on the Tracts.
- (ii) Employer's Liability insurance with minimum limits of ~~{Two}~~ **One** Million and No/100 Dollars

~~}{(\$2,000,000.00)}~~}{(\$1,000,000.00)} for each employee for bodily injury by accident and for each employee for bodily injury by disease.

- (iii) Commercial General Liability insurance (excluding Automobile Liability), including liability for this project and blanket coverage, Personal and Advertising Injury, Products-Completed Operations (including Broad Form Property Damage), Medical Payments, Contractor's Protective, Bodily Injury, and Property Damage, with minimum limits of Two Million and No/100 Dollars (\$2,000,000.00) per occurrence, Three Million and No/100 Dollars (\$3,000,000.00) general annual aggregate and completed operations aggregate, Five Hundred Thousand and No/100 Dollars (\$500,000.00) personal and advertising injury per occurrence, and Five Thousand and No/100 Dollars (\$5,000.00) medical expense. Developer shall obtain an endorsement to each insurance policy to provide fresh per occurrence and aggregate limits for each location and to provide express coverage for punitive damages where permitted by law. Such Commercial General Liability insurance shall also contain contractual liability coverage with minimum limits of Two Million and No/100 Dollars (\$2,000,000.00) per occurrence, and Three Million and No/100 Dollars (\$3,000,000.00) in the aggregate, and insuring all liability assumed by Developer pursuant to this Agreement. The Products-Completed Operations coverage shall remain in force and effect for a period of two (2) years following Completion of the Sitework. This insurance shall not be self-funded, collateralized or based on any type of fronting arrangement, or issued through a captive insurance company.
- (iv) Umbrella/Excess Liability Insurance (excluding Automobile Liability), including coverage for bodily injury, personal injury and property damage liability, with minimum limits of ~~{Ten}~~ **Five** Million and No/100 Dollars ~~}{(\$10,000,000.00)}~~}{(\$5,000,000.00)} per occurrence and annual general aggregate for Developer ~~{,}~~ **and** Developer General Contractor. ~~{and all Subcontractors, Sub-subcontractors and other insureds}~~ Developer shall cause each insurance company to provide the insurance on an umbrella basis in excess over and no less broad than the liability coverages required in this Agreement, and with coverage that "drops down" for exhausted aggregate limits under liability coverages and contractual liability coverages as required in this Agreement and with an endorsement to provide new per occurrence and aggregate limits for each location. There will be a three (3) year sunset clause for reporting of claims subsequent to the two (2) year completed operations period. This insurance shall not be self-

funded, collateralized or based on any type of fronting arrangement, or issued through a captive insurance company.

(v) Builder's Risk Insurance as follows:

- (A) "All Risk" Builder's Risk Insurance, also known as Course of Construction Insurance, with minimum limits in an amount that will cover full construction costs at the property as of the date it will be completed and ready for occupancy, the Contract Sum, any increased costs from change orders, profit and overhead, or, if greater, the property values at risk at the Tracts. This coverage shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for services and expenses of Developer, Developer General Contractor, and any architects required as a result of such insured loss. The insurance required herein shall also include coverage for all losses related to business interruption to Wal-Mart, Developer, Developer General Contractor, Subcontractors and Sub-subcontractors on account of the damages detailed herein. If Wal-Mart is damaged by the failure of the Developer, Developer General Contractor, or any Subcontractors or Sub-subcontractors to maintain this insurance, then the Developer shall bear all reasonable costs properly attributable thereto.
- (B) Coverage will be provided for property at the Tracts or in inland transit to the Tracts, in each case that are intended for building, erection, assembly and/or installation. The policy will not cover construction type tools, equipment and machinery used for construction and not intended to form a permanent part of the Sitework.
- (C) **[NOTE: CLARIFY WHICH COVERAGES THIS APPLIES TO AND MAKE IT SUBJECT TO WAL-MART GETTING A LOWER PRICE THAN DEVELOPER]** Wal-Mart may, if deemed to be in the best interest, obtain this coverage separately and receive a credit from Developer for the cost of this coverage.

- (D) Wal-Mart and Developer agree to waive all rights against each other and against Developer General Contractor, Wal-Mart General Contractor, and their respective Subcontractors and Sub-subcontractors with respect to any losses to the extent that such losses are fully covered by the builder's risk insurance obtained pursuant to this Agreement. Wal-Mart or Developer, as appropriate, shall require of Developer General Contractor, Wal-Mart General Contractor, and their respective Subcontractors and Sub-subcontractors, by appropriate written agreements, similar waivers each in favor of the other parties identified herein. The builder's risk insurance policy specified in this Agreement shall also provide and contain waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged.
- (vi) Commercial/Business Automobile Liability insurance with minimum combined single limits of Two Million and No/100 Dollars (\$2,000,000.00) per occurrence (bodily injury and property damage liability). Developer and Wal-Mart shall cause each insurance company to provide coverage for liability arising out of the use or operation of owned, hired, leased and non-owned vehicles. The insurance shall apply to all operations of the Developer, Developer General Contractor and any Subcontractors and Sub-subcontractors both on and away from the Tracts. As used herein, "automobile" shall mean any vehicle licensed or required to be licensed under any applicable state vehicle code.
- (vii) Environmental liability insurance with minimum limits of liability of Two Million and No/100 Dollars (\$2,000,000.00) for the Tracts, collectively. If requested by Wal-Mart, Developer will provide written assurance to Wal-Mart that it will not exclude underground storage tank coverage from its liability insurance obtained hereunder, in satisfaction of the required environmental liability coverage under this Agreement.
- (b) Such insurance required herein must be carried with insurance companies that are financially sound and acceptable to Wal-Mart, and to the extent expressly required hereunder with respect to each type of policy, Developer, Developer General Contractor and each Subcontractor and Sub-subcontractor shall maintain such insurance, at their sole cost and

expense, in full force and effect until this Agreement has been fully performed, all equipment, implements and machinery of Developer, Developer General Contractor and such Subcontractor and Sub-subcontractor have been removed from, and all employees, agents, representatives, Subcontractors and Sub-subcontractors of Developer have left Wal-Mart's premises and final payment of the Contract Sum is made, unless any such coverage is required pursuant to the terms of the Contract Documents to be maintained after all of the foregoing items have been completed. Developer shall require its Developer General Contractor, Subcontractors and all Sub-subcontractors to comply with all insurance requirements set forth in the Contract Documents relating to construction of the Sitework.

- (c) Developer shall cause each insurance company, including those of Developer General Contractor and its Subcontractors and Sub-subcontractors (i) to issue the insurance on an occurrence basis, (ii) to provide defense coverage for liability insurance policies as an additional benefit and not within the limits of liability, (iii) to issue an endorsement to all policies stating that the policies are primary and that Wal-Mart's policies are excess, secondary and noncontributing, (iv) to issue an endorsement to all policies to provide a waiver of subrogation in favor of Wal-Mart, (v) to issue an endorsement to all policies, except the workers' compensation and employer's liability insurance policies, to include Wal-Mart and its subsidiaries, affiliates, officers, directors, employees, and agents as "additional insureds," (vi) with respect to workers' compensation and employer's liability insurance, to obtain stop gap coverage by endorsement or otherwise for monopolistic states, and (vii) to include in each insurance policy a provision that the insurance company or companies shall not cancel, non-renew, or change coverage from the requirements of the Contract Documents without providing at least thirty (30) days' advance written notice to Wal-Mart. The insurance company or companies shall not exclude from coverage allegations of the negligence, strict liability, or gross negligence, whether sole or otherwise, of the "additional insureds", but coverage may be excluded if there has been a final judicial decision from which there is no further right to appeal of the negligence, strict liability or gross negligence of the "additional insureds". Additionally, the insurance company or companies shall not include any Third Party Beneficiary Exclusion in the policies required herein. ~~{Developer}~~ **Each party** releases ~~{Wal-Mart}~~ **the other party** and its subsidiaries, affiliates, officers, directors, members, managers, employees, and agents from any liability covered by the insurance for which subrogation is waived; the release applies to any liabilities, no matter how caused, not just to insurance proceeds actually received. ~~{Developer}~~ **Each party** shall provide to ~~{Wal-Mart}~~ **the other** at least thirty (30) days' advance written notice of any contemplated cancellation, non-renewal, or change in insurance coverage. Upon request, ~~{Developer}~~

each party shall provide to ~~{Wal-Mart}~~ **the other** a certified copy of any and all insurance policies and any and all insurance policy information required in this Agreement.

- (d) Developer shall provide to Wal-Mart before the Sitework is started, and at least thirty (30) days prior to the expiration of a policy or policies of insurance in effect during the term of this Agreement, a certificate or certificates of insurance evidencing all required insurance in the Contract Documents which are acceptable to Wal-Mart. Developer shall retain copies of all certificates of insurance provided by Developer General Contractor, Subcontractors and Sub-subcontractors and, if requested by Wal-Mart, shall promptly provide such certificates of insurance to Wal-Mart. All certificates, among other things, shall:
- (i) Show _____, its subsidiaries and affiliates as a certificate holder and Wal-Mart's address as _____.
 - (ii) Show Developer, Developer General Contractor, Subcontractors or Sub-subcontractors as the Named Insured.
 - (iii) Show the names of the insurance companies providing each coverage, their addresses, the policy numbers of each coverage, and policy dates of each coverage.
 - (iv) Show the name of the person providing the certificate and that person's address and telephone number.
 - (v) Contain the signature of an authorized representative of the person providing the certificate.
 - (vi) Show that each insurance company named Wal-Mart and its subsidiaries, affiliates, officers, directors, employees, and agents as additional insureds in each insurance policy.
 - (vii) Confirm waivers of subrogation.
 - (viii) Show the amounts of all deductibles and self-insured retentions.
 - (ix) Show the primary status of each insurance policy with respect to all other insurance purchased by Wal-Mart and the existence of new per-occurrence and aggregate limits for each location.
 - (x) Have attached executed and signed copies of all required endorsements to each insurance policy, which shall include the commitment that each insurance company shall issue each insurance policy to the Named and additional insureds, and that

each policy is in full force and effect, and that each insurance company shall give to Wal-Mart at least thirty (30) days' advance written notice, by certified mail, return receipt requested, in the event of cancellation, non-renewal, or change in coverage of any insurance policy. Accordingly, with respect to obligations owed by the insurers to the Named and additional insureds under the policies required herein, such endorsements shall not contain the phrases "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon Company, its agents or representatives," or similar phrases.

- (xi) Contain the following express provision or similar phrases: "This is to certify that the policies of insurance described herein have been issued to the Insured for whom this certificate is executed and are in force at this time. In the event of cancellation, non-renewal, or material reduction in coverage affecting the certificate holder, thirty (30) days' prior written notice will be given to the certificate holder by certified mail or registered mail, return receipt requested."
 - (xii) Have any and all disclaimers deleted from the certificate to the extent that such disclaimers conflict with the above requirements.
- (e) **If available at a commercially reasonable cost**, Developer shall not procure an insurance policy or policies with deductibles or self-insured retentions in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00), provided that the deductibles for earthquake and flood coverage under the Builder's Risk Insurance policy shall not be in excess of ~~{Twenty Five Thousand and No/100 Dollars (\$25,000.00)}~~ **ten percent (10%) of the covered amount (or such lower percentage of the covered amount to the extent such lower percentage deductible is available at a commercially reasonable cost)**. Developer shall pay all deductibles or self-insured retentions to the insurance policy or policies that Developer is required to provide under this Agreement.
- (f) Upon execution of any contract, subcontract or other agreement with Developer General Contractor and each Subcontractor, the Developer General Contractor and subcontractor will be notified by the Developer of the Developer General Contractor and Subcontractor's inclusion in the insurance set forth in, and Developer General Contractor and Subcontractor's obligations under, this Section. Developer shall require Developer General Contractor and Subcontractors to comply with these requirements with respect to Sub-subcontractors
- (g) The foregoing requirements as to types and limits of insurance coverage to be maintained by the Developer and his Developer General Contractor, Subcontractors and Sub-subcontractors, and the Wal-Mart's approval

thereof, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Developer and its Developer General Contractor, Subcontractors and Sub-subcontractors under this Agreement.

- (h) The Developer and its Developer General Contractor, Subcontractors and Sub-subcontractors shall require their insurance carriers to waive all rights of subrogation against Wal-Mart, its directors, officers, agents and employees and against the Developer (if applicable) and the Developer General Contractor and the other Subcontractors and Sub-subcontractors.
- (i) Developer's failure to procure and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If Developer fails to remedy the breach within ten (10) days after notice from Wal-Mart, Wal-Mart may, in addition to any other remedy available to it, at its option, purchase the insurance, at Developer's expense, or immediately terminate this Agreement. Developer shall indemnify and defend Wal-Mart Indemnified Parties from and against any Damages or other losses (including, but not limited to, prosecution of claims for coverage against any insurer) arising from Developer's failure to procure and/or maintain the insurance.

6.11 Audit. 6.11 Audit. The Developer shall maintain separate and complete books and records accurately reflecting the expense of the Sitework and the manner in which any materials meet the specifications set forth in this Agreement ("Developer's Accounting Records") and shall retain the same for at least two years after the Sitework is completed. These records shall include all supporting and related evidence necessary to substantiate the actual cost of the Sitework and the manner in which any materials meet the specifications set forth in this Agreement. The progress payments required pursuant to Section 6.5 above shall be based upon the costs represented by these records. Upon the completion of the Sitework, the Developer shall furnish Wal-Mart with a Summary of Total Costs (in the form attached as a part of Exhibit H), separately listing the total costs related to material, labor, and contractors. Developer shall provide to Wal-Mart copies of Developer's Accounting Records within seven days of any written request and at Developer's sole cost and expense.

The Developer shall be thoroughly prepared and shall assist Wal-Mart in an inspection and audit of the Developer's Accounting Records within ninety (90) days after completion of Sitework. In addition, Wal-Mart shall have the right at any time during the construction of the Sitework or within a two (2) year period after completion of Sitework to conduct inspections and audits of the Developer's Accounting Records. These records would include all supporting and related evidence necessary to substantiate the actual cost of the Sitework, including costs charged on an "allocated basis." If such audit shall disclose Wal-Mart has paid the Developer more than the amount properly payable by Wal-Mart under the

provisions of this Agreement, the Developer shall promptly refund the amount of all identified exceptions. In the event the audit determines the identified exceptions to be in excess of two percent (2%) of Wal-Mart's share of the audited cost of the Sitework, the Developer will reimburse Wal-Mart for all third-party costs and expenses incurred in connection with the performance of such audit, including, without limitation, all travel expenses.

The audit of Developer's Accounting Records will be conducted in accordance with Wal-Mart's Audit Preparation Packet attached as Exhibit H. The books and records maintained by Developer pursuant to this Section **6.11** shall reflect the forms and standards established by Wal-Mart's Audit Preparation packet in order to facilitate the inspections and audits of Developer's Accounting Records.

- 6.12 Quality of Sitework.6.12 Quality of Sitework. Developer shall perform the Sitework in a professional and workman-like manner. Developer shall use commercially reasonable efforts to ensure that all Developer's employees and agents present a neat, clean and professional appearance and conduct themselves in a business-like manner at all times while on Wal-Mart property.
- 6.13 Independent Contractors.6.13 Independent Contractors. Wal-Mart and Developer enter into this Agreement and the Contract Documents as independent contractors and at arms' length. Neither Wal-Mart nor Developer has the right, and shall not seek, to exercise any control over the other party, its employees, or its agents. Developer shall control the methodology for performing the Sitework. Each party shall be solely responsible for hiring, firing, promoting, demoting, rates of pay, benefits, and other terms and conditions in regard to its own employees. Neither Developer nor any of its employees or agents may be considered Wal-Mart's agents or employees for any purpose and have no authority to act or purport to act on Wal-Mart's behalf. Neither Developer nor its employees or agents are entitled to receive any benefits, including but not limited to salary, vacation pay, sick leave, retirement benefits, social security, workers' compensation, health, disability, unemployment, and stock options, that Wal-Mart may provide to its employees.
- 6.14 Non-Exclusive.6.14 Non-Exclusive. Developer shall perform the Sitework for Wal-Mart on a non-exclusive basis. Wal-Mart retains the right to contract with others in the business of providing construction work as Wal-Mart determines from time to time and may assign work to others at the Wal-Mart Tract as it determines necessary. Wal-Mart makes no projections about the quantity of work which may be assigned to Developer, and Developer may not rely in any way on any past or perceived projections or expectations of work. Wal-Mart shall not have any responsibility or liability in connection with any act or expenditure, including expenditures for equipment, materials, supplies, hiring, or capital, by Developer because of any actual or perceived projections or expectations as to work.

6.15 Compliance.6.15 Compliance. Developer shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for, the performance and completion of the Sitework and all other activities and obligations under the Contract Documents. Developer shall comply with any and all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including, but not limited to (a) all Environmental Laws and (b) those applicable to the use, generation, storage, handling, discharge, disposal and transport of Hazardous Materials; provided that, notwithstanding the foregoing, Developer shall not cause any Hazardous Material to be used, generated, stored, handled or disposed of on or about any Tract in violation of Environmental Laws without the prior written consent of Wal-Mart, which consent may be withheld in the sole discretion of Wal-Mart. Without limiting the foregoing, all chemicals and other products utilized in the performance of the Sitework must be fully compliant with all Environmental Laws. Developer hereby covenants and agrees that the application of all chemicals and other products utilized in the performance of the Sitework must be performed by a licensed applicator if so required under any Environmental Law or any other law, statute, rule, regulation, code, order or ordinance. ~~{Developer acknowledges and agrees that it is informed and aware that strict compliance with the Storm Water Requirements is required of the Developer by Wal-Mart as a material condition of this Agreement. Developer does hereby agree, covenant, warrant and represent that it will, at times during the performance of the Contract Documents, strictly comply with all Storm Water Requirements.}~~[NOTE: STORM WATER WORK SHOULD BE DONE BEFORE CLOSING] Developer shall also include requirements for such compliance in all contracts relating to the performance and completion of the Sitework that is the subject of the Contract Documents. Developer shall be responsible for any and all federal, state and local taxes arising from or relating to the performance or completion of the Sitework, including, without limitation, all federal, state and local unemployment taxes and federal and state income and social security taxes to be withheld from wages. Wal-Mart is hereby authorized to file, on behalf of Developer, any and all reports, returns or other documents which are required of Developer by any governmental authority and which Developer shall have failed to file in accordance with the provisions of this Agreement, provided, that Wal-Mart has provided Developer with at least ten (10) days' prior written notice of such failure prior to filing on behalf of Developer. Developer further authorizes and empowers Wal-Mart to pay on behalf of Developer any and all taxes, fees and assessments which Developer shall have failed to pay as required by the provisions of this Agreement, together with all required penalties and interest (provided that Wal-Mart has provided Developer with at least ten (10) days' prior written notice of such failure prior to paying any such taxes, fees and assessments on behalf of Developer), and Developer shall promptly reimburse Wal-Mart therefor within ten (10) days after receiving an invoice for such amounts.

6.16 Limitation of Liability.6.16 Limitation of Liability. **[EITHER DELETE SECTION OR MAKE MUTUAL]** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM LIABILITY, IF ANY, OF WAL-MART FOR ALL DAMAGES, INCLUDING CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSON OR PROPERTY WHETHER ARISING FROM WAL-MART'S BREACH OF THE CONTRACT DOCUMENTS, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, CONTRACT, STATUTE, TORT OF ANY KIND, OR OTHERWISE WITH RESPECT TO THE CONTRACT DOCUMENTS IS LIMITED TO AN AMOUNT NOT TO EXCEED THE CURRENT INVOICED AMOUNT FOR SITEWORK. IN NO EVENT SHALL WAL-MART BE LIABLE TO DEVELOPER FOR ANY INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST INCOME, LOST REVENUES, BUSINESS INTERRUPTION, OR LOST BUSINESS ARISING FROM THE RELATIONSHIP BETWEEN DEVELOPER AND WAL-MART, INCLUDING ALL PRIOR DEALINGS AND AGREEMENTS, OR THE CONDUCT OF BUSINESS UNDER, OR BREACH OF, THE CONTRACT DOCUMENTS OR THE TERMINATION OF THIS AGREEMENT OR BUSINESS RELATIONS WITH DEVELOPER, REGARDLESS OF WHETHER DEVELOPER SEEKS DAMAGES UNDER ANY THEORY OF LAW AND EVEN IF DEVELOPER ADVISED WAL-MART OF THE POSSIBILITY OF SUCH DAMAGES. DEVELOPER ONLY MAY RECOVER DAMAGES, IF ANY, WITHIN THE LIMITATIONS IN THIS AGREEMENT. THOSE DAMAGES, IF ANY, SHALL CONSTITUTE DEVELOPER'S EXCLUSIVE REMEDY IN LIEU OF ANY OTHER REMEDY DEVELOPER MAY HAVE AT LAW OR IN EQUITY. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.17 Representations and Warranties.6.17 Representations and Warranties. Developer hereby represents, warrants and covenants to Wal-Mart as follows:

- (a) Developer is a limited liability company duly organized, validly existing and in good standing, under the laws of the State of California. To the extent required by applicable law, Developer has qualified as a foreign business eligible to conduct business in the state where the Sitework is performed and under the laws of all other jurisdictions where the nature of its business or the nature or location of its assets requires such qualification.
- (b) Developer (i) has complied, and shall at all times during the term of this Agreement comply, in all respects with all immigration laws, statutes, rules, codes, orders and regulations, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal

Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and any successor statutes thereto, (ii) has properly maintained, and shall at all times during the term of this Agreement properly maintain, all records required by the United States Citizenship and Immigration Services (the "USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each of Developer's employees, and (iii) has responded, and shall at all times during the term of this Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of this Agreement, Developer shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by the USCIS of Developer or any of its employees. Developer shall immediately, and in any event within two (2) hours, notify Wal-Mart's representative in writing and by in-person voice communication (not voice mail) of any unscheduled inspections, raids, investigations, inquiries, visits or audits conducted by the USCIS or any other governmental agency or authority related to environmental, immigration or employee-safety issues of Developer, its agents, employees, Developer General Contractor, Subcontractors or Sub-subcontractors. Developer shall, on a bi-annual basis during the term of this Agreement, conduct an audit of the I-9 Forms for its employees and shall promptly correct any defects or deficiencies which are identified as a result of such audit. ~~{ Wal-Mart may, in its sole discretion, terminate this Agreement immediately if, at any time during the term, (x) Developer violates or is in breach of any provision of this Section 6.17(b), or (y) the USCIS determines that Developer has not complied with any of the immigration laws, statutes, rules, codes, orders or regulations of the United States, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigration Responsibility Act of 1996, as amended, and any successor statutes thereto.}~~ Developer shall require Developer General Contractor and all Subcontractors and Sub-subcontractors to make the representations and warranties set forth in this Section **6.17**.

- 6.18 Developer General Contractor and Subcontractors. 6.18 Developer General Contractor and Subcontractors. All agreements and contracts between Developer and Developer General Contractor shall provide, and shall require the Developer General Contractor to cause all agreements and contracts with Subcontractors and Sub-subcontractors to provide, that the Developer General Contractor, Subcontractor or Sub-subcontractor, as the case may be, is subject to all of the terms and conditions of this Agreement, except to the extent expressly stated otherwise in the Contract Documents.
- 6.19 Compliance With Other Applicable State Law. 6.19 Compliance With Other Applicable State Law. If the Tracts are located in any of the States set forth in Exhibit K (Compliance With Other Applicable State Law), then Developer and

Wal-Mart shall comply with the provisions set forth therein with respect to such State. The terms and provisions of Exhibit K are hereby incorporated by reference into, and made a part of, this Agreement.

- 6.20 Compliance With California Law. 6.20 Compliance With California Law. If the Tracts are located within the State of California, Developer shall complete Exhibit J (with respect to California), and Exhibit K to this Agreement in its entirety and both Wal-Mart and Developer shall execute such Exhibits, as applicable. The execution of such Exhibits is required in addition to, and not in place of, the execution of this Agreement by Developer and Wal-Mart. Developer shall comply in all respects with all of the terms, conditions and obligations in such Exhibits. The terms and provisions of Exhibit J and Exhibit K are hereby incorporated by reference into, and made a part of, this Agreement.

7. MISCELLANEOUS.

- 7.1 No Waiver. 7.1 No Waiver. A party's failure to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein, or conformance with any of the time frames set forth in the Construction Schedule, shall not be deemed a waiver of any rights or remedies that said party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein, or conformance with any other time frames set forth in the Construction Schedule, by the same party.
- 7.2 Remedies Cumulative. 7.2 Remedies Cumulative. In addition to the remedies set forth in this Agreement, each party shall have all other remedies provided by law or equity to the same extent as if fully set forth herein word for word. No remedy available to any party shall exclude any other remedy available to such party under this Agreement or provided by law or equity. All remedies shall be cumulative.
- 7.3 License for Construction Activity, Self-Help. **[NOTE: STILL NEED THIS SECTION TO BE MUTUAL]** 7.3 License for Construction Activity, Self-Help.
- (a) Developer (referred to in this Section **7.3(a)** as "Grantor Party") grants to Wal-Mart, and its contractors, employees, agents, and representatives, a nonexclusive license over the Tract owned by the Grantor Party for performance of all work required or permitted to be performed by Wal-Mart under this Agreement.
 - (b) Developer, (referred to in this Section **7.3(b)** as "Grantor Owner"), grants to Wal-Mart for the benefit of each Tract belonging to Wal-Mart (referred to in this Section **7.3(b)** as "Grantee Owner"), a license to enter the Grantor Owner's Tract for the purpose of performing such work on the Grantor Owner's Tract as is necessary to cure any default by the Grantor

Owner under this Agreement (to the extent such cure rights are expressly granted herein) and to perform any obligations or exercise any other rights which are expressly granted to the Grantee Owner hereunder.

- 7.4 Not A Partnership.7.4 Not A Partnership. Nothing in the Contract Documents creates any relationship of trust or fiduciary relationship between Wal-Mart and Developer. The Contract Documents do not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship. Any correspondence or other reference to “partners” or other similar terms will not be deemed to alter, amend or change the independent contractor relationship between the parties unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.
- 7.5 No Third Party Beneficiary Rights.7.5 No Third Party Beneficiary Rights. This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto, except for Owner Indemnified Parties as defined herein.
- 7.6 Force Majeure.7.6 Force Majeure. For purposes of this Agreement, Force Majeure shall mean any event including, without limitation, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, governmental delays in approval of the permits, plans or other entitlement documents for the shopping center of which the Wal-Mart Tract and the Developer Tract will be a part, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other cause (except financial) beyond the reasonable control of Developer, its contractors, subcontractors, or any entity controlled by Developer that delays the performance of any obligation under this Agreement despite Developer’s best efforts to fulfill the obligation. “Best efforts” includes reasonably anticipating any reasonably foreseeable potential force majeure event and addressing the effects of any such event with commercially reasonable efforts (i) as it is occurring and (ii) after it has occurred, to prevent or minimize any resulting delay to the extent reasonably possible. Force Majeure does not include Developer’s financial inability to perform any obligation under this Agreement. Failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a required permit or approval that is necessary to meet the requirements of this Agreement, or failure of Wal-Mart to approve contracts in accordance herewith shall not, in any event, be considered Force Majeure events.
- (a) Developer shall notify Wal-Mart orally and by electronic or facsimile transmission as soon as reasonably possible, but not later than ~~seventy-two (72) hours~~ thirty (30) days after the time Developer first knew of, or in the exercise of reasonable diligence under the circumstances should

have known of, any event which might constitute a Force Majeure event. Developer shall make the oral notification required by this paragraph by calling _____ at (479) _____ and sending him/her a message by electronic mail to _____. If Mr./Ms. _____ is not available by telephone, Developer may satisfy the telephone notice requirement by leaving a message for Mr./Ms. _____ stating that Developer had called to notify Mr./Ms. _____ pursuant to this paragraph. Wal-Mart may designate an alternative representative to receive oral notification at its discretion by sending Developer a written designation in accordance with Section 7.7.

- (b) The written notice Developer submits pursuant to this paragraph shall indicate whether Developer claims that the delay should be excused due to a Force Majeure event. The notice shall describe in detail the basis for Developer's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Developer shall adopt all reasonable measures to avoid or minimize such delay. Failure to so notify Wal-Mart shall render this Section 7.6 (Force Majeure) void and of no effect as to the event in question, and shall be a waiver of Developer's right to obtain an extension of time for its obligations based on such event.
- (c) If a delay in performance is, or was, caused by a Force Majeure event, Wal-Mart shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event, and liquidated damages shall not be due for such a period.
- (d) Compliance with a requirement of this Agreement shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date. Developer shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.
- (e) In the event a Developer claims a Force Majeure event has delayed performance of any obligation set forth in any Storm Water Requirement, Developer shall notify the U.S. EPA or other appropriate federal, state or local agency in the manner specified in any permit, regulation, statute, ordinance or other Storm Water Requirement. Developer shall provide Wal-Mart with a copy of any such notification, as well as any response or other correspondence relating to the notification provided by EPA or the federal, state or local agency.

7.7 Notices. 7.7 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent by: (i) certified or registered mail, postage prepaid, return receipt requested, (ii) personal delivery, or (iii) a recognized overnight carrier that provides proof of delivery, and shall be addressed as follows:

- (a) Prior to opening for business. For any period of time prior to the date that Wal-Mart opens a store on the Wal-Mart Tract (Wal-Mart having no obligation to do so), all notices and other communications shall be sent to the following addresses:

If to Wal-Mart:

Wal-Mart Real Estate Business Trust
Attn: Real Estate Manager
(Ref: Perris (S), CA Store No. 4490-00)
2001 SE 10th Street
Bentonville, AR 72716-0550

If to Seller:

MTC Consolidated, LLC
Attn: Judy Rosen
41391 Kalmia Street, Suite 200
Murrieta, CA 92562

With a Copy to:

Gresham Savage Nolan & Tilden
Attn: Mark A. Ostoich, Esq.
or J. Matthew Wilcox, Esq.
(Ref: Perris (S), CA Store No. 4490-00)
550 E. Hospitality Lane, Suite 300
San Bernardino, CA 92408-4205

With a Copy to:

Cox, Castle & Nicholson LLP
Attention: Scott Grossfeld, Esq.
2049 Century Park East, Suite 2800
Los Angeles, CA 90067
Fax No.: (310) 277-7889

With a Copy to:

Wal-Mart Real Estate Business Trust
Attn: George J. Bacso, Esq.
(Ref: Perris (S), CA Store No. 4490-00)
2001 SE 10th Street
Bentonville, AR 72716-0550

With a Copy to:

Arthur Pearlman Corporation
Attn: Arthur L. Pearlman
1137 Second Street, Suite 100
Santa Monica, CA 90403

- (b) After opening for business. For any period of time after Wal-Mart has opened a store on the Wal-Mart Tract (Wal-Mart having no obligation to do so except to any extent expressly provided in this Agreement or the Declaration described in Section 3.1), all notices and other communications shall be sent to the following addresses:

If to Wal-Mart:

Wal-Mart Real Estate Business Trust
Attn: Property Manager
(Ref: Perris (S), CA Store No. 4490-00)
2001 SE 10th Street
Bentonville, AR 72716-0550

With a Copy to:

Wal-Mart Real Estate Business Trust
Attn: President
(Ref: Perris (S), CA Store No. 4490-00)
2001 SE 10th Street
Bentonville, AR 72716-0550

If to Seller:

MTC Consolidated, LLC
Attn: Judy Rosen
41391 Kalmia Street, Suite 200
Murrieta, CA 92562

With a Copy to:

Cox, Castle & Nicholson LLP
Attn: Scott Grossfeld, Esq.
2049 Century Park East, Suite 2800
Los Angeles, CA 90067
Fax No.: (310) 277-7889

With a Copy to:

Arthur Pearlman Corporation
Attn: Arthur L. Pearlman
1137 Second Street, Suite 100
Santa Monica, CA 90403

Notices shall be deemed effective upon receipt or rejection only. Any party may change its address for notice purposes hereunder by delivering notice of such change of address to ~~{Wal-Mart}~~ **the other party** hereunder in accordance with this section.

- 7.8 Successors and Assigns. 7.8 Successors And Assigns. The terms, covenants, conditions and agreements contained herein shall constitute covenants running with the land within the Tracts and shall be binding upon, and inure to the benefit of, the heirs, personal representatives, successors and assigns of the parties hereto; provided, however, that the parties acknowledge that Wal-Mart is relying upon the expertise and reputation of Developer for the performance of Developer's obligations under this Agreement, and, therefore, Developer may not assign or delegate its obligations hereunder. Notwithstanding the foregoing, upon written notice to Wal-Mart, Developer shall have the right to assign its interest in the Agreement without the consent of Wal-Mart: (a) to an Affiliate (as hereinafter defined) or subsidiary owned or controlled by Developer, or (b) as part of a merger, consolidation or sale of substantially all of the assets of Developer; provided, that Developer shall not be relieved of its obligations hereunder following any such assignment **if the assignee has a net worth less than [the net worth of Developer as of the date hereof]**. "Control" means ownership of more than a fifty percent (50%) interest in the transferee entity. The term "Affiliate" shall mean any entity (including, without limitation, any individual, partnership, firm, association, corporation, limited liability company, trust or any other form of business) which controls, is controlled by or under common control with

Developer; provided, that Developer shall not be relieved of its obligations hereunder following any such assignment **if the assignee has a net worth less than [the net worth of Developer as of the date hereof]**. In the event of any sale or conveyance of a party's interest in its Tract, said party shall remain liable to ~~{Wal-Mart}~~ **the other party** for the performance of said party's obligations hereunder.

- 7.9 Effect Of Agreement.7.9 Effect Of Agreement. This Agreement, including but not limited to any exhibits which are or may in the future become a part of this Agreement, supersede any prior agreements between the parties concerning the Tracts, and no oral statements, representations or prior written matter relating to the subject matter hereof, but not contained in this Agreement, shall have any force or effect. Nothing contained in this Agreement, including the site plan attached as Exhibit A-2, shall give rise to duties or covenants on the part of Wal-Mart or Developer, express or implied, other than the express duties and covenants set forth herein. ANY REPRESENTATION OF DEVELOPER'S OR WAL-MART'S AGENTS OR ANY THIRD PARTY WHICH IS NOT INCORPORATED IN THIS AGREEMENT SHALL NOT BE BINDING UPON DEVELOPER OR WAL-MART AND SHOULD BE CONSIDERED AS UNAUTHORIZED. This Agreement shall not be amended or added to in any way except by written instruments executed by both parties or their respective successors in interest.
- 7.10 Captions And Headings.7.10 Captions And Headings. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.
- 7.11 Time.7.11 Time. Time is of the essence of this Agreement.
- 7.12 Time Period Computation.7.12 Time Period Computation. All time periods in this Agreement shall be deemed to refer to calendar days unless the time period specifically references business days. There shall be no extension of time for the performance of any act under this Agreement notwithstanding the fact that the last date on which to perform such act falls on a Saturday, Sunday or local, state or national holiday.
- 7.13 Construction.7.13 Construction. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.
- 7.14 Joint And Several Obligations.7.14 Joint And Several Obligations. In the event any party hereto is composed of more than one (1) person, the obligations of said party shall be joint and several.

- 7.15 Authority.7.15 Authority. Each person executing this Agreement represents and warrants that he or she has authority to sign this Agreement on behalf of the corporation, limited liability company, or other entity for which he is signing, and that his or her signature binds said entity to the terms and provisions of this Agreement.
- 7.16 Counterparts.7.16 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgment pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this Agreement.
- 7.17 Recordation.7.17 Recordation. This Agreement shall not be recorded in the office of the recorder (the "Official Records") of the county in which the Tracts are located. However, concurrently with the execution of this Agreement, the parties shall execute and record in the Official Records a Memorandum of this Agreement in the form attached hereto as Exhibit I and made a part hereof. Upon the termination of this Agreement, the parties hereto shall execute a document for recordation evidencing such termination and indicating that his Agreement is no longer effective. The parties hereto shall each be responsible for one-half (1/2) of all recordation costs incurred pursuant to this Section **7.17**.
- 7.18 Governing Law.7.18 Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of California without reference to the conflicts of law provisions thereof, and any dispute with respect to it and the rights and duties thereby created shall be litigated in U.S. District Court for the Central District of the State of California. The parties shall bring any action or suit concerning the Contract Documents or related matters only in such federal courts. The parties shall not raise, and hereby waive, any defenses based on venue, inconvenience of forum, or lack of personal jurisdiction in any action or suit brought in accordance with this Section. **The parties acknowledge that they have read and understand this clause and agree voluntarily to its terms.**
- 7.19 Severability.7.19 Severability. If any term, covenant or condition of the Contract Documents or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Contract Documents, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each and every remaining term, covenant or condition of the Contract Documents shall be valid and enforced to the fullest extent permitted by law.
- 7.20 No Minimum Business; No Reliance.7.20 No Minimum Business; No Reliance. Wal-Mart has no obligation to provide any minimum amount of business to Developer, and no person has authority to make any representations or promises of business to Developer on Wal-Mart's behalf or about Wal-Mart's intentions or expectations of renewing or extending this Agreement or providing

any present or future business to Developer. If Developer makes any expenditures, investments, or commitments in reliance on any present or future business from Wal-Mart under the Contract Documents or otherwise, Developer does so at Developer's own risk and without any obligation whatsoever from Wal-Mart.

7.21 Confidential Information. 7.21 Confidential Information. Developer recognizes that it may come into possession of Wal-Mart Confidential Information (as hereinafter defined). Developer shall hold confidential and shall not use or disclose, and will cause its employees, officers, directors, managers, partners, affiliates and other representatives (collectively, the "Representatives") to hold confidential and not use or disclose, all Wal-Mart Confidential Information, and shall only disclose the Wal-Mart Confidential Information to such of its Representatives with a "need to know" such information. As used herein, "Wal-Mart Confidential Information" means all information concerning Wal-Mart and its affiliates, subsidiaries, employees, suppliers and customers that is not available to the general public, that reasonably or logically may be considered to be confidential or proprietary, or that may reasonably be expected to do harm to Wal-Mart if divulged, in each case together with all analyses, compilations, studies, data, reports, interpretations, forecasts, documents and records, whether prepared by Developer or others, that contain or otherwise reflect such information. At any time upon the request of Wal-Mart, and in any event upon the earlier of the completion of the Sitework or the termination of this Agreement, Developer shall return to Wal-Mart all such Wal-Mart Confidential Information, including, without limitation, all written and electronic copies thereof, all storage devices on which any Wal-Mart Confidential Information is stored, and all other materials containing or incorporating any Wal-Mart Confidential Information, including any and all excerpts, parts, portions, transcriptions, copies, facsimiles and reproductions of any Wal-Mart Confidential Information. In connection with performing the Sitework, Developer may have access to material non-public information about Wal-Mart or its affiliates, subsidiaries, suppliers, customers or employees. Developer acknowledges and agrees that federal and state securities laws prohibit Developer or its Representatives from trading in Wal-Mart's securities while in the possession of material non-public information regarding Wal-Mart. Developer further acknowledges and agrees that information obtained while performing the Sitework may constitute material non-public information. Developer irrevocably agrees that neither it nor any of its officers or directors shall trade any Wal-Mart securities during any period in which Developer possesses material non-public information.

7.22 Publicity. 7.22 Publicity. Developer shall not refer to Wal-Mart or any company affiliated with Wal-Mart in any advertising or published communication without the prior written approval of Wal-Mart, which approval may be withheld in Wal-Mart's sole discretion. Developer shall not use, or allow to be used, Wal-Mart's name, logo, trademarks, service marks, patents, copyrights or trade dress without

the prior written approval of Wal-Mart, which approval may be withheld in Wal-Mart's sole discretion.

- 7.23 Information Security.7.23 Information Security. Developer represents that it currently follows, and shall for so long as it is performing any Sitework under the Contract Documents continue to follow, reasonable industry practices as a means to prevent any compromise of its information systems, computer networks, or data files ("Systems") by unauthorized users, viruses, or malicious computer programs which could in turn be propagated via computer networks, email, magnetic media or other means to Wal-Mart. In the event Developer's systems are breached or compromised in any way, Developer shall give Wal-Mart immediate notice of the nature and scope of the breach or compromise. Developer shall apply appropriate internal information security practices, including, but not limited to, using appropriate firewall and anti-virus software; maintaining said countermeasures, operating systems, and other applications with up-to-date virus definitions and security patches; installing and operating security mechanisms in the manner in which they were intended sufficient to **reasonably** ensure Wal-Mart will not be **materially and adversely** impacted nor its operations **materially** disrupted; and permitting only authorized users access to Wal-Mart Systems. Developer shall use up-to-date anti-virus tools to remove known viruses and malware from any email message or data transmitted to Wal-Mart; use reasonable efforts to (a) prevent the transmission of attacks on Wal-Mart via the network connections with Wal-Mart and (b) prevent unauthorized access to Wal-Mart Systems via the Developer's networks and access codes. In accordance with all applicable law and regulations, Developer shall safeguard confidential, protected, individually identifiable personal information (health, financial, identity) which is received, transmitted, managed, processed, etc.
- 7.24 Attorneys' Fees.7.24 Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under the Contract Documents, the prevailing party will be entitled to recover all costs and expenses, including court costs and reasonable attorneys' fees.
- 7.25 Cross-Default.7.25 Cross-Default. **[start]** The default or breach by Developer beyond any applicable notice and/or cure period of (or the occurrence of an event which, with the passage of time or the giving of notice or either of them would constitute a default or breach by Developer of) any of the terms or conditions of, or obligations set forth in, (a) another contract or agreement with Wal-Mart, or any subsidiary, division or affiliate of Wal-Mart (collectively, the "Other Contracts"), which terms, conditions or obligations are similar to any of those set forth in Sections Error! Reference source not found., **4**, **6.15** or **6.17(b)** of this Agreement or that otherwise relate to environmental, immigration or employee-safety issues, shall constitute an event of default hereunder, and (b) Sections Error! Reference source not found., **4**, **6.15** or **6.17(b)** of this Agreement or any other terms or conditions of, or obligations set forth in, the Contract Documents that otherwise relate to environmental, immigration or

employee-safety issues, shall constitute an event of default under the Other Contracts, and in the case of each of clauses (a) and (b), Wal-Mart shall have the right to pursue such remedies as are provided for herein or in the Other Contracts, as applicable, or at law or in equity, concurrently, cumulatively or successively against Developer until all damages arising by reason of such default have been paid in full.

7.26 Delivery of Vendor Form. 7.26 Delivery of Vendor Form. Developer acknowledges that it has executed and delivered the attached Exhibit O and all information required thereby to Wal-Mart contemporaneously with execution of this agreement by Developer.

THIS AGREEMENT shall be binding upon the parties hereto, their administrators, heirs, successors or assigns and can be changed only by written agreement signed by all parties.

[SIGNATURES FOLLOW ON NEXT PAGE]

[NOTE: ALL EXHIBITS ARE SUBJECT TO DEVELOPER'S REVIEW AND APPROVAL.]

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date and year first above written.

DEVELOPER:

**MTC CONSOLIDATED, LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY**

BY: _____

NAME: _____

ITS: _____

DATE: _____

WAL-MART:

**WAL-MART REAL ESTATE
BUSINESS TRUST, A DELAWARE
STATUTORY TRUST**

BY: _____

NAME: _____

ITS: REGIONAL VICE PRESIDENT

DATE: _____

EXHIBIT A-1
(Plot Plan showing tracts)

EXHIBIT A-2
(Plot Plan with development details)

EXHIBIT B
(Developer Legal)

EXHIBIT C
(Wal-Mart Legal)

EXHIBIT D
CONSTRUCTION SCHEDULE

ITEM	DEVELOPER COMPLETION DATES
Grading and Compaction	
Off-Site Utilities	
On-Site Utilities	
Storm Drainage Facilities	
Parking Lot Paving	
Highway and Entranceway	
Parking Lot Lights	
Landscaping	
Roadside Sign	
Engineering	
TOTAL	

INITIAL

EXHIBIT E
(Plans & Specs)

EXHIBIT F

Wal-Mart's Design Criteria and Process

[NOTE: DEVELOPER WILL FOLLOW THESE CRITERIA WITH RESPECT TO THE SITE PLAN APPROVAL SUBMITTED TO THE COUNTY, BUT THEY WILL NOT APPLY TO THE SPECIFICATIONS FOR THE CIVIL ENGINEER AND ARCHITECT, AS WAL-MART WILL BE CONSTRUCTING THEIR OWN IMPROVEMENTS. IF THIS IS NOT THE CASE THEN FURTHER REVIEW OF EXHIBIT F WILL BE NECESSARY.]

I. INTRODUCTION AND PURPOSE

The purpose of this document is to summarize the design procedure for the Developer and the Developer's Consultants for the sitework/building coordination portion of a Wal-Mart project. This document summarizes the minimum content, criteria, and timing of the Wal-Mart Design Deliverables provided by the Developer's consultants (i.e., site architect, civil engineer, landscape architect, site electrical engineer, geotechnical engineer, surveyor, environmental consultant, etc.) to the Wal-Mart Building Consulting Architect (Building A/E). The criteria/processes defined herein are intended to help facilitate and expedite the design process for Wal-Mart's self-developed projects and developer/joint-developer projects.

Nothing in this Exhibit F shall be construed or interpreted as allowing Wal-Mart to control any part of either: (1) day-to-day operations relating to erosion and sediment controls or compliance with Storm Water Requirements at the Developer Tract or the Wal-Mart Tract, or (2) the development or modification of any plans or specifications relating to the Sitework, or any erosion or sediment controls or the compliance with any Storm Water Requirements. The procedures and criteria set forth herein represent minimum procedures and criteria which may, in part, be necessary to achieve compliance with Storm Water Requirements or other federal, state or local law. Wal-Mart presents these procedures and criteria as guidance and minimum standards which Developer shall meet or exceed in a manner selected through the exercise of its sole discretion. Developer and Developer General Contractor, but not Wal-Mart or Wal-Mart General Contractor, shall have such Operational Control over day-to-day operations and plans and specifications at the Developer Tract and the Wal-Mart Tract.

This document includes the following sections:

- 1) Introduction and Purpose
- 2) Definition of Roles
- 3) Process
- 4) Important Site Development and Coordination Issues
- 5) Design Deliverable Matrix
- 6) Design Deliverable Criteria

It is imperative that all Design Deliverables meet or exceed the minimum standards set forth in the Wal-Mart Design Deliverable Criteria. For the purposes of this document, Design Deliverables shall include, but not necessarily be limited to:

- Topographic/Boundary Surveys
- Geotechnical Reports
- Environmental Assessments
- Wetland Evaluations
- Fuel Studies
- Water Flow Studies
- Site Development Plans/Specifications
- Site Feasibility Studies
- Sitework Punchlist
- Minimum Requirements for Retaining Wall Design

II. DEFINITION OF ROLES

1. The Wal-Mart Staff.

Wal-Mart Real Estate & Construction is the division of Wal-Mart Stores, Inc. responsible for the development of all stores within the United States (including Alaska and Hawaii). A Wal-Mart Engineering Manager (EM) will be assigned to each designated region to work together with the Real Estate Manager (REM), RE/Engineering Assistant, Site-Adapt Architectural Manager (SAAM) and Construction Manager (CM) as a “POD” Team. The Wal-Mart selected Building Architectural/Engineering firm (A/E) shall perform the building design and assist the Wal-Mart managers to coordinate with the Developer and his consultants through the design and implementation of the store build-out and completion. The EM, SAAM and the CM will also act as a liaison with the other divisions of Wal-Mart involved in components of store development (i.e., Store Operations, Merchandise Planning, ISD, Store Planning, etc.).

2. The Developer.

The Developer is the party who contracts with Wal-Mart to either build the entire Wal-Mart sitework and building or just the sitework to within five feet of the Wal-Mart building.

3. The Developer’s Consultants.

The Developer’s Consultants normally consist of a Site Architect, Civil Engineer, Landscape Architect, Site Electrical Engineer, Geotechnical Engineer, Water Flow Engineer, Environmental Consultant, Survey Engineer, etc. These consultants are typically required to perform the design or survey of the entire site as well as the Wal-Mart parcel. These consultants shall be required to evaluate the local conditions, City, State, and other relevant agencies’ criteria, and to design the required construction documents to meet the minimum standards set forth in the Wal-Mart Design Deliverable Criteria, or the local agencies’ criteria, whichever is more stringent. Additionally, these consultants shall communicate all

criteria or updated information to the Developer or a designated Developer's Consultant so that Wal-Mart's managers and consultants can adhere to these requirements.

III. PROCESS

1. Pre-Development Review Meeting

Prior to the Executive Committee Real Estate Meeting, or at some later time (if mutually agreed upon by the Developer and Wal-Mart), the Developer shall meet with the Wal-Mart project team to include the REM, EM, SAAM, and CM at the Bentonville office to review the entire development or joint development process and time schedule. Wal-Mart may make exception to this requirement for developers that have successfully completed previous Wal-Mart projects.

The purpose of this meeting is to allow both Wal-Mart and Developer to discuss and clarify all the pertinent issues and requirements as related to the selected site. The group should focus on the goals of developing site design and producing construction documents for a Wal-Mart Store, Sam's Club, or Wal-Mart SuperCenter by following two distinct process sequences:

- 1) Project definition - the initial analysis and project scoping for the production of documents for the store.
- 2) Design development - the process of adapting Wal-Mart stores minimum development requirements to the selected site and coordinating the design between the site development consultants and Wal-Mart's building A/E.

2. Developer's Project Point of Contact

Developer shall appoint one point of contact (POC) for the overall site design effort. This person may be the Developer's representative, site architect, or civil consultant. This point of contact will coordinate between the Developer's consultants and Wal-Mart's Building A/E for the phasing of the site development plans and the Wal-Mart building plan. Critical areas of coordination may include the sidewalk, driveways, landscaping/irrigation, utility entries, lighting, egress doors, ramps, other building appendages, truck dock areas, and all other interface points around the building. The POC would direct any coordinating efforts including the walk-around conference call between the Developer's consultants and Wal-Mart's building A/E. The POC shall help resolve any design issues, which may arise during the design and construction process. Any changes made by the plan approval agencies need to be disseminated by the POC to all the developer's consultants as well as Wal-Mart's staff and Building A/E. It is the POC's responsibility to ensure that the site development plans (i.e., landscape, site electrical, site lighting, site utilities, grading, drainage, etc.) are updated in accordance with the changed site plan and approved elevations. It is the POC's responsibility to disseminate and coordinate the updated site plans to Wal-Mart's Building A/E so that the Building A/E can make the appropriate plan changes.

3. Civil Engineering Consultant Selection Process.

The Developer is encouraged to utilize Civil Engineering Consultants that are experienced with Wal-Mart's Design Deliverable Criteria in order to facilitate the design process. The Wal-Mart

EM will provide suggestions upon request by the Developer. It is critical that both Developer and Wal-Mart select a suitable consultant in a timely manner so as to not delay the project schedule. The Civil Consultant may meet the EM to discuss the Wal-Mart Design Deliverable Criteria at a separate meeting or at the same pre-development meeting as mentioned previously.

4. Site Selection and Background Investigation Information.

The Developer must provide initial site/project background investigation information to the Wal-Mart POD Team. If the information provided to Wal-Mart is found to not meet or exceed the minimum standards set forth in the Wal-Mart Design Deliverable Criteria, then the Developer will be notified and given the opportunity to correct. If, in a reasonable timeframe, the Developer fails to perform with regards to these issues, then Wal-Mart shall have the right to perform/complete any of the Design Deliverables at the sole expense of the Developer. **All Design Deliverables must meet or exceed the minimum requirements as set forth in the attached Design Deliverable Criteria; any deviations must be approved by the Wal-Mart EM and/or SAAM; provided, however, that neither Wal-Mart nor the Wal-Mart General Contractor shall have any control over plans or specifications or day-to-day operations relating to the installation or maintenance of erosion and sediment controls or otherwise relating to compliance with any Storm Water Requirements.**

5. Site Design Procedure

Between the time the design is ready to commence and the site is purchased or leased by Wal-Mart, there may be many issues which need to be addressed in the entitlements process. These issues may include Environmental Impact Report (EIR) analysis, Planned Unit Development (PUD) or Site Plan approval, platting, planning and zoning, wetlands mitigation study, traffic study, etc. Depending on the duration of this entitlement process, the finalization of the site design may occur as early as within two months from the Wal-Mart approval date of the project, or in many cases much later.

There are three basic steps in the design process phase. The first step is for the Developer and Wal-Mart to agree on an initial **Conceptual Site Plan** with the proper building footprint and site layout to include the Developer's building envelope areas and parking areas adequate to comply with the ECR (regarding both use and parking requirements). In addition, this Concept Site Plan will be reviewed with regards to access driveways and entrances, truck dock turn-around areas, over-all functionality, etc. The Developer and the Wal-Mart EM and SAAM must agree upon an appropriate building and hardscape elevation and a signage criteria before they are presented to the City. These plans are then taken by the Developer to the site and to the governing authorities to ascertain the applicable design criteria for the project such as codes, design requirements, special design considerations, conditions of approval, etc. Much of this information may have been already acquired in the site selection or due diligence phase. This information must be distributed to the Wal-Mart EM and Wal-Mart's Building A/E as soon as it is obtained. The Building A/E will perform an initial site visit (ISV) to the City to address any issues that affect the design, schedule and budget.

The second step is the **Design Civil** reports and design civil drawings. The developer will provide the geotechnical investigation, water flow test, and utility data sheet to the EM and the

Wal-Mart Building A/E in accordance with the Wal-Mart format. The design civil drawings are typically CAD drawings of the prototype footprint with an established finished floor elevation, site survey information, initial grading, drainage, and utilities, and a preliminary parking layout with site development information sufficient for the EM and the Building A/E to review. Any preliminary civil drawings and/or design civil drawings should meet or exceed the minimum requirements outlined in the Plans Requirements Checklist which is found in the Wal-Mart Design Deliverable Criteria. The time schedule and content of design civil deliverables should meet or exceed the standards prescribed in the Design Civil Deliverables Matrix which is also found in the Wal-Mart Design Deliverable Criteria.

The third step of the design process is the **Final Documents and Permit** phase which includes an approved plan and permit by the appropriate local agencies to perform all on-site and off-site improvements for those portions of the shopping center on both the Wal-Mart Tract and the Developer Tract. On developer projects, the Developer shall obtain the building permit. The Building A/E will support the Developer by responding to comments from plan reviewers. On joint development projects, the Developer's POC shall support the Wal-Mart Building A/E to expedite Wal-Mart's obtaining their building permit. The Developer's POC shall ensure that his consultants address any code comments which may arise from Wal-Mart's building plan review comments if they are responsible for that issue. The Developer's POC shall assist the EM to obtain backup information for Wal-Mart's impact fees pertaining to the project. The Developer's POC shall also be responsible to inform Wal-Mart and the Building A/E of any changes to the plans throughout the plan approval and permitting process.

Note: The Developer shall be required to perform site and building design coordination which shall include a minimum of two walk-around conference calls or meetings to coordinate all design drawings. The first should be conducted within one week of the delivery of the design civil plans. This call or meeting should include the developer, site architect, civil consultant, site electrical engineer, landscape architect, Wal-Mart Building A/E, Wal-Mart EM, and Wal-Mart SAAM. Critical design elements such as utility service entrances, building floor and pad elevation, grades around the building, etc. should be covered so that all consultants can continue their portion of the design in accordance with the decisions agreed upon between developer and Wal-Mart. The second walk-around call or meeting should be conducted at about 90% of design drawings or no later than six weeks before the out-to-bid date for the Wal-Mart building. This meeting should ensure that all consultants, the developer, and Wal-Mart are still in unison. On a developer project, the second walk-around should occur immediately after the Building A/E's final plot and prior to submittal of building plans to the Developer. Any information regarding changes to the design shall be transmitted to Wal-Mart as soon as the developer receives it.

The Developer's consultants (site architect, civil consultant, landscape architect, site electrical engineer) must submit status plans at the design civil stage (normally 30% to 40%), 60% (which includes revisions from walk-around comments), 90%(which should include the City plan check comments), and final set as approved for permit. The Developer shall submit site development plans in accordance with the Wal-Mart engineering distribution list, which is found in the Wal-Mart Design Deliverable Criteria. The Developer shall also provide a status report biweekly to report entitlement, zoning, survey, design, and permit approval status.

IV. IMPORTANT SITE DEVELOPMENT AND COORDINATION ISSUES

1. Design Schedule and Cost Estimate

Developer must submit a design schedule that incorporates the milestone dates in the Design Civil Deliverable Matrix, which is found in the Wal-Mart Design Deliverable Criteria. Developer shall also submit a cost estimate and delivery schedule for all on-site and off-site improvements. The Wal-Mart REM and EM must approve any delays or deviations from these schedules; provided, however, that neither Wal-Mart nor the Wal-Mart General Contractor shall have any Operational Control over any operations, plans or specifications relating to any such on-site or off-site improvements.

2. Parking Lot Requirements

Developer shall meet or exceed the minimum parking stall ratio as well as the minimum parking stall width, length, and bay spacing set forth in the Wal-Mart Site Development Guidelines, which is found in the Wal-Mart Design Deliverable Criteria, regardless of pre-agreed upon parcel boundaries. Boundaries must be adjusted to accommodate stall widths, lengths, bay spacing, and parking ratio, as well as adequate driveways for trucks and customer traffic. All proposed compact stalls must be approved by the Wal-Mart EM prior to incorporating them into the design. Developer shall provide adequate parking for all adjacent shops in accordance with the greater of the Wal-Mart Lease and/or ECR, or the city parking ordinance (i.e., retail- 5:1, restaurant- 10:1, theater- 20:1, etc.).

3. Conditions of Approval

Developer shall distribute a draft copy of the site plan conditions of approval to Wal-Mart staff (Real Estate, Architectural, Engineering, and Construction) for review and input. Developer shall also distribute approved copy of the conditions of approval to Wal-Mart staff and Wal-Mart building A/E to guide the design of the project. The Developer MUST gain the approval of the Wal-Mart EM and SAAM prior to making changes to the Wal-Mart building elevations and/or site design beyond the original approved plans and elevations; provided, however, that neither Wal-Mart nor the Wal-Mart General Contractor shall have any control over plans or specifications or day-to-day operations relating to the installation or maintenance of erosion and sediment controls or otherwise relating to compliance with any Storm Water Requirements.

4. Lighting System Design, Approval and Installation

Developer shall provide the Parking Lot Lighting System within the Wal-Mart tax plat. The system shall include, but not be limited to, the foundations, anchor bolts, poles, fixtures, lamps, underground conduits, electrical circuits, and grounding. The system shall be designed and constructed to meet or exceed the minimum requirements set forth in the standard Wal-Mart Specifications and Wal-Mart Site Development Guidelines. Developer shall submit design information to the Wal-Mart Site Lighting Vendor (SLV) for review and comment as specified in the Site Lighting Electrical Design and Coordination Process. The Wal-Mart EM will review and approve the plans submitted for the Design Civil Package. Note: The Developer will be

allowed to purchase materials from the Wal-Mart Lighting Vendor at the same price as Wal-Mart.

5. Sign Package

Developer shall provide a proposed sign package to the Wal-Mart Real Estate Manager, Engineering Manager, and Sign Manager to review and comment before it is submitted to the local approval agency. Thereafter, developer shall provide the signage package as approved by the authority. If requested, Wal-Mart can provide a prototypical Wal-Mart sign package to the Developer.

6. Landscape and Irrigation

As a normal procedure unless otherwise specified, the Developer's landscape architect shall be responsible for designing and gaining permit approval for the landscape at the Wal-Mart sidewalk and planters. He shall ensure that he is coordinated with the approved or updated Site Plan and Hardscape Plan. This procedure is more efficient since the landscape architect is designing for the overall center and understands the city's requirements. On a joint development project, the cost of the sidewalk and planter landscape design shall be negotiated between Wal-Mart and the developer and paid under the site cost cap. Furthermore, on a joint development project, the developer shall also provide the irrigation lines to the sidewalk and other planters and install a stub-out. Wal-Mart's contractor shall "box-out" for the planter areas and thereafter install the plantings and the topsoil.

7. Developer's Responsibilities of Sitework Coordination

The Developer shall certify in writing to the Wal-Mart CM that site development plans are coordinated properly with Wal-Mart's building plans prior to sending out site plans for the sitework contractor to commence construction. The Developer shall be responsible to ensure all sitework is constructed in accordance with approved site plans (i.e., grading, utilities, landscape, lighting, etc.). If there are any corrections of sitework elements such as utility connection points, grades, downspouts, etc. to be made, the Developer shall remediate within 7 days of finding or notification by the Wal-Mart CM. If corrective actions are not started within 7 days, then Wal-Mart shall have the right to make the corrections at the expense of the Developer; provided, however, that neither Wal-Mart nor the Wal-Mart General Contractor shall have any control over plans or specifications or day-to-day operations relating to the installation or maintenance of erosion and sediment controls or otherwise relating to compliance with any Storm Water Requirements.

8. Site Utility and As-Built Drawings

The Developer's sitework contractor shall, at a minimum, stake or mark clearly all underground utility stubouts, provide agency approved as-built drawing which show spot elevations of backfill or excavation (at truck wells, stem walls, etc.) and provide one point of contact such as the project Superintendent for any coordination issues.

9. Temporary Utility Services, Wal-Mart Building Pad and Staging Area/Haul Road

(i) Access; Schedule; Storage: Concurrent with the Developer's completion of the Wal-Mart building pad as set forth above, Developer shall provide to Wal-Mart (a) adequate access to the Wal-Mart building pad for the purpose of transporting personnel, equipment and supplies to the building pad including a heavy-haul access way (the "Construction Access Drive") consisting of gravel, rock or binder course of paving, (b) a written construction schedule, subject to Wal-Mart's approval, setting forth all activities adjacent to the Wal-Mart building pad and/or having an effect on either the construction or operation of Wal-Mart's building and (c) an area adjacent to the Wal-Mart building pad approximately 200 feet by 200 feet for use by Wal-Mart and its contractors as a storage and staging area during construction of its building (the "Staging Area"). Developer shall prepare a portion of the parking lot to the subgrade elevation and shall install the stone base for the paving in this Staging Area. Wal-Mart shall be responsible for fencing the staging area if Wal-Mart desires and Wal-Mart shall be responsible for maintaining the staging area throughout construction; provided, however, that Developer General Contractor shall be responsible for installing, inspecting and maintaining any erosion and sediment controls at or adjacent to the Staging Area. The Staging Area shall be turned back over to the Developer in a condition similar to the condition Wal-Mart received the Staging Area. Developer shall maintain the Construction Access Drive and any related stone accesses or other erosion or sediment controls designed and intended to control the migration of dirt and mud to the adjoining roads. Developer shall provide and maintain a wheel washdown area if required by any local, state or federal authority. Developer shall install, inspect and maintain a proper storage area, including any necessary erosion or sediment controls, for any hazardous materials that may need to be brought to the site by the Wal-Mart building contractor. The storage area shall be installed, inspected and maintained in compliance with all local, state, and federal requirements. Developer shall provide a 30-foot access prepared to rough subgrade around the Wal-Mart building during the construction of the Wal-Mart building. During this period, the Developer shall install, inspect and maintain any necessary erosion or sediment controls but shall not install site paving or curbing in the access area unless approved by the Wal-Mart building contractor. The access road shall be returned to the developer in a similar condition to the way it was delivered to Wal-Mart. Wal-Mart agrees that when the access road area is returned to the control of the Developer, it will have all the Wal-Mart exterior sidewalks, stoops, truckwells, concrete aprons, porches, access ramps, and any other building appurtenance completed so as to allow the Developer to proceed with completion of the paving around the Wal-Mart building.

(ii) Utilities: Concurrent with Developer's completion of the Wal-Mart building pad, Developer shall provide temporary electrical (120/240, single phase), water (1½-2" line capped with valve), telephone and sewer to a point designated by Wal-Mart within five (5) feet of the Wal-Mart building pad. Upon completion of the decking of the Wal-Mart building roof, as part of its efforts to avoid negatively impacting Developer or Developer General Contractor's compliance with Storm Water Requirements, Wal-Mart shall install measures to control the roof runoff (such as the installation of downspouts) in an attempt to protect the Developer's surrounding sitework from excessive roof runoff. Developer shall be responsible for insuring that any storm sewer serving the roof runoff from the Wal-Mart building shall be installed to within 5 feet of the building by the date the Wal-Mart roof decking is complete. Wal-Mart shall

supply the site light poles, anchor bolts, and fixtures for the lights shown to be circuited to the Wal-Mart building. Developer shall provide for receipt and storage of the Wal-Mart lights poles, anchor bolts, and fixtures and shall install the foundations, poles fixtures, electric conduit and wiring in accordance with Exhibit A-1.

(iii) Building Pad. The Wal-Mart building pad shall be prepared to the elevation indicated on Plans in compliance with the Foundation Subsurface Preparation Note for the Wal-Mart building pad and as typically indicated on the grading plans which are a part of Exhibit A-1. In the event the Foundation Subsurface Preparation Note is not found in the exhibits to this agreement, Developer shall prepare the Wal-Mart building pad to an elevation equal to the finished floor elevation minus the thickness of the Wal-Mart floor slab and any proposed stone base beneath the slab. Upon completion of the building pad Developer shall provide on a plot plan spot elevations on a 50 foot grid across the entire pad as a part of the above mentioned certification requirements. All spot elevations must be within ± 0.1 feet of the proposed pad elevation.

10. Punchlist Approval

The Developer shall perform a punchlist inspection in accordance with Wal-Mart's Punchlist Criteria, which is found in the Wal-Mart Design Deliverable Criteria. The Developer's engineer of record must obtain the Wal-Mart CM's input for the final punchlist and his sign-off on the corrections of the punchlist items. If sitework elements are constructed which do not meet or exceed to Wal-Mart's minimum standards (i.e., inadequate sewer line or storm line product), then, except as may otherwise be required by applicable law, Wal-Mart may take necessary corrective action and back-charge the costs of such corrective action to the developer; provided, however, that neither Wal-Mart nor the Wal-Mart General Contractor shall have any control over plans or specifications or day-to-day operations relating to the installation or maintenance of erosion and sediment controls or otherwise relating to compliance with any Storm Water Requirements. Except as may be otherwise required by applicable law, Wal-Mart will not approve the final payment application by the contractor without satisfying all corrections as specified by the Wal-Mart Construction Manager.

11. Miscellaneous Sitework Items

On a joint development project, the Developer shall provide a list of all sitework items not covered under the site cost cap (i.e., light poles/fixtures, pylon signs, monument signs, directional signs, and sidewalk decorations such as benches, bike racks, and fountains, artwork pieces). Anything not identified to Wal-Mart shall be assumed to be covered under the site cost cap.

DESIGN CIVILS DELIVERABLE MATRIX

The purpose of this matrix is to summarize the content and timing of the deliverable from the Developer to the Wal-Mart Engineering Manager (EM) and to the Wal-Mart Consulting Architect (Building A/E). The Design Civil package shall be the base date around which the

deliverables to the Building A/E are scheduled. This matrix also defines the EM's minimum level of review responsibility for each deliverable to assure the quality of the deliverable.

WHEN	WHO	WHAT
4 Weeks prior to Design Civil Date	Developer	<ul style="list-style-type: none"> • Send 3 copies of completed Preliminary Civils (including initially agreed upon site plan, grading/drainage, utility, and landsBuilding A/Epe plans) to EM. These plans should be at least 15% complete. • Send 3 copies of completed Utility Data Sheet and Composite Utility Plan per the distribution list.
	Developer and EM	<ul style="list-style-type: none"> • Review the Prel. Civils with the Site Adapt Architectural Manager (SAAM) for accuracy and feasibility.
	Developer	<ul style="list-style-type: none"> • Send 3 copies of approved Prel. Civils to Building A/E not later than 2 days before the due date.
2 Weeks prior to Design Date	Developer	<ul style="list-style-type: none"> • Send 3 copies of the completed Geotechnical Report to EM.
	Developer and EM	<ul style="list-style-type: none"> • Review the Geotechnical Report in sufficient detail with the Building A/E to ensure the report meets 1) the Sitework Design Guidelines and 2) all criteria needed as the basis for the building design.
	Developer	<ul style="list-style-type: none"> • Send 3 copies of the approved Geotechnical Report and addendum if any, to the Building A/E not later than 2 days prior to the due date. • Provide the Site Lighting Layout Plan to the Wal-Mart Site Lighting Vendor.
At Design Civils Date	Developer	<ul style="list-style-type: none"> • Send completed Water Flow Report and Design Civil Plans (including approved Site Plan, Grading/Drainage, Utility, and Landscape Plans); and electronic

WHEN	WHO	WHAT
		<p>file of Site Lighting Layout to Consulting Architect (CA). These plans should be 30% to 40% complete and meet the criteria specified in the Plan Requirements Checklist.</p> <ul style="list-style-type: none"> • Send copies of the Design Civil Plans to other WM staff in accordance with the WM Plan Distribution List. • WM's Utility Manager shall have the completed Fuel Study by this date.
	Developer and EM	<ul style="list-style-type: none"> • Review the Water Flow Report in sufficient detail to ensure that the report meets 1) the Sitework Design Guidelines and 2) all criteria needed as the basis for the building design. • Review the Design Civil Plans to ensure that the plans meet or exceed 1) the Sitework Design Guidelines, 2) the Plans Requirements Checklist, and 3) all criteria needed as the basis for the building design.
	Developer	<ul style="list-style-type: none"> • Send 3 copies of the approved Water Flow Report and the approved Design Civil Plans to the Building A/E not later than 2 days prior to the due date. • The WM Utility Dept will send the Fuel Study to the Building A/E by this date.
1 Week after Design Civils Date	Developer, Developer's POC, EM, SAAM, and Building A/E	<ul style="list-style-type: none"> • Conduct a "Walk Around the Building" phone conference to coordinate the site development plans with the building plans. Make decisions on design issues.
	Developer and EM and SAAM	<ul style="list-style-type: none"> • Ensure that the design plans for site and building are revised in accordance with the results of the

WHEN	WHO	WHAT
		Walk Around phone conference and decisions made between the Developer and Wal-Mart.
	Developer	<ul style="list-style-type: none"> • Initiate the “Walk Around the Building” phone conference.
When Site Development Plans are 60% completed	Developer	<ul style="list-style-type: none"> • Send 60% completed site development plans to EM and Building A/E. • Conduct another “Walk Around the Building” phone conference with the EM, SAAM, and the Building A/E, if necessary.
When Site Development Plans are 90% completed	Developer	<ul style="list-style-type: none"> • Send 90% completed site development plans to EM and Building A/E. • Conduct the final “Walk Around the Building” phone conference with the EM, SAAM, and the Building A/E. These site development plans and the building plans should include the revisions from the City’s plan review comments. • On a developer project, the final “Walk Around” shall occur immediately after the Building A/E’s final plot of the building plans.

WHEN	WHO	WHAT
<p>When Site Development Plans are fully approved by the City and other approval agencies.</p>	<p>Developer</p>	<ul style="list-style-type: none"> • Send to EM and Building A/E approved plans in accordance with the WM Plan Distribution List. • Developer shall also send 3 copies of the approved Sitework Specifications which has been stamped and signed by the Civil Engineer of Record. • On a full Developer project, WM REM, EM, and SAAM shall review the final Site Development Plans and Sitework Specifications, and final building plans and building plan specifications and provide an approved signature and date of approval.

Wal-Mart Design Deliverable Criteria

- Topographic/Boundary Survey
- Geotechnical Report
- Environmental Assessment
- Fuel Study
- Water Flow Study
- Site Development Guidelines
- Plans Checklist
- Site Feasibility Requirements
- Sitework Punchlist
- Wal-Mart Master Sitework Specifications (not included herein, but incorporated herein by reference. Contact Wal-Mart EM if a preliminary copy is needed)
- Distribution List
- Minimum Requirements for Retaining Wall Design
- Site Lighting Electrical Design and Coordination Process

EXHIBIT G
(Budget)

EXHIBIT H

**WAL-MART STORES, INC.
DEVELOPMENT
AUDIT PREPARATION
PACKET**

REVISED June 23, 1997

NOTE: This purpose of this packet is to outline the requirements of the developer in preparation of the audit. If anything in this audit preparation packet is inconsistent with the Agreement, the Agreement shall govern.

INDEX OF TOPICS

<u>TOPIC</u>	<u>PAGE</u>
Table of Contents	2
Complete And Return (Developer Information):	3
General Information (Wal-Mart Audit Information):	4
- Mailing Address	
- Phone & Fax Numbers	
Introduction:	5
Audit Schedule and Process:	
- Final Audit	6
- Audit Cancellations	6
- Time Requirements	6
- Exceptions	6
- Quality Review Process	6
Documentation:	
Preliminary Review	
- Project Cost History	7
- Project Cost Summary	8
- Lien Releases	8
- Contract Status Report	8
- Employee Listing	8
- Labor Burden	8
- Equipment	9
Office Visit	
- Material Invoices	10
- Contracts	10
- Employee Time Sheets	10
- Audit File	10
Examples:	
- Project Cost History	11-12
- Labor Schedules	13-14
- Equipment List	15
- Contractor's Status Report	16
- Project Cost Summary	17

COMPLETE & RETURN

HOME OFFICE ADDRESS

Developer Name _____
Street Address _____
City/State/Zip _____
Phone Number _____

C.F.O. OR CONTROLLER

DEVELOPER'S REPRESENTATIVE TO WAL-MART REAL ESTATE

AUDIT COORDINATOR

NOTE: We are requesting each developer to designate an "audit coordinator" in an effort to improve communications between the developers and Wal-Mart with regards to the scheduling, preparing, and performance of the audit. This individual should have full authority to and be responsible for the following:

- 1) contacting Wal-Mart Audit with any questions or concerns prior to the audit;
- 2) setting the audit date;
- 3) informing all of the developer's personnel of the audit date;
- 4) preparing the necessary documentation for the audit and sending the information listed for preliminary review prior to the audit date; and
- 5) ensuring that all necessary personnel are present to assist with the audit.

DIRECTIONS TO YOUR OFFICE FROM THE AIRPORT

BUDGET MOTELS CLOSE TO YOUR OFFICE

A COPY OF THIS PAGE IS TO BE RETURNED WITH THE SIGNED AGREEMENT.

GENERAL

INFORMATION

I. Mailing Address:

Wal-Mart Stores, Inc.
Internal Audit Department
Attn: Construction Audit
702 South West 8th
Bentonville, AR 72716-8055

II. Audit Telephone:

Costley, Lewis	(479) 273-4562
Hester, Grant	(479) 273-4913
Hull, Susan	(479) 273-9048
Shelton, Leigh Ann	(479) 273-4562
Zuzek, Scott	(479) 277-9154

Fax (479) 273 - 4566

INTRODUCTION

This packet has been established to provide a better understanding of the Wal-Mart audit process. The information on the following pages will describe the minimum requirements for documentation supporting the costs of the project. We will work with you to find a way to meet our needs that is within your company's abilities. In order to expedite the audit process, some or all of the schedules and reports, in addition to those requested for the preliminary review, may be requested to be sent to the Wal-Mart Home Office. Please use the examples in this packet when preparing your schedules as the audit will not commence until the supporting documentation is in an acceptable format.

NOTE: The documentation listed in this packet is NOT all inclusive. Additional information may be requested during the audit. The omission from this packet of a particular issue or item of documentation does not exempt that issue or documentation from the audit.

As stated in Agreement, "the developer shall be prepared and shall assist the owner in an audit of the Developer's Accounting Records within 90 days after possession of the project. In addition, the owner shall have the right to conduct an audit within 2 years after possession of the project."

In these type of arrangements, the final payment application should not be submitted until the final total cost of the project is determined. Therefore, all requested information concerning this project should be prepared in an acceptable format prior to the submission of the final payment application.

The completion of the documentation in the format requested by this audit packet can expedite the payment of any retainage that may be held contingent upon completion of this audit. It is to your benefit that the documentation be prepared in this format.

AUDIT SCHEDULE

I. Scheduling the audit:

The following steps will be used to schedule the audit:

- a. Per the typical agreement, a project is subject to audit 90 days following Wal-Mart's possession.
- b. When sending the final payment application, place the information described as "Preliminary Review" in the audit packet in a separate mailing and address it clearly in bold letters to "**Internal Audit**" at the address on page 4 of this packet. This information will be reviewed prior to setting an audit date.
- c. After the preliminary review has been completed, the auditor responsible for the audit will contact your company with any additional documentation required and will set an audit date.
- d. A letter from the Internal Audit department will be sent confirming the audit date.

II. Audit cancellations:

If Wal-Mart has not significantly contributed to the cause of the cancellation:

- a. The contractor will reimburse Wal-Mart the cost of any plane tickets that cannot be exchanged or refunded.
- b. The audit will be rescheduled for the next open date on the audit calendar.

III. Time Requirements:

The time required to complete the audit will vary depending on several factors, including the extent to which you have prepared the documentation and the number of discrepancies found. We should require only minimal assistance provided all of the requested documentation is prepared and gathered in the area where we will be working.

IV. Exceptions:

1. All exceptions noted will be discussed. We will also try to keep you informed of exceptions during the audit so that you will have an opportunity to review them and offer additional information.

2. Any possible suggestions for improvement in documentation on future audits will be discussed.

NOTE: The audit is not finalized until a report has been issued. All information given at a closing conference is preliminary. It is possible that additional issues or exceptions will be noted during our quality review process.

V. Quality Review Process:

During our audit we will compile our audit tests into a set of workpapers. These work papers are then reviewed by another individual to ensure their accuracy. It is possible that additional exceptions will be discovered during this process. If additional exceptions are noted, you will be contacted by phone before the report is issued.

After receiving the report, the Construction Director will contact you for resolution of the audit issues.

DOCUMENTATION

Paragraph 14:

- * At the conclusion of the project, the developer shall furnish the owner with a summary of total costs, separately listing the total costs related to material, labor, and subcontracts.
- * The developer shall furnish the owner with separate and complete books and records accurately reflecting the expense of the Site Development Work.
- * These records should include all supporting and related evidence necessary to substantiate the actual cost of the Site Development Work.

NOTE: If the project cost information can be supplied on 3.5" diskette in either Microsoft Excel, Lotus, d-Base or other spreadsheet formats, this could expedite the audit process. If this option is available, contact the Wal-Mart Construction Audit Team at the number on page 4.

I. PRELIMINARY REVIEW - SENT WITH FINAL PAYMENT APPLICATION

As stated earlier, some of the documentation will be sent into our office with the final payment application for review and the remaining documentation will be reviewed at the Contractor's office. The following documentation will be reviewed in our office and should be sent with the final payment application.

A. Project Cost History:

This is the controlling document for the audit. This report should contain only those costs billed to the project and only those reimbursable according to the agreement. This report should be sorted by vendor and listed alphabetically. The cost history should consist of five basic parts:

- 1) materials
- 2) contracts
- 3) labor & burden
- 4) equipment
- 5) general conditions (items that do not belong in other categories)

The project cost history should contain a separate entry for every item which has been billed to the project (i.e. a separate entry for each invoice or each payment to

Contractors, a separate charge for each employee for each week worked, etc.). The total of these entries should exactly match the amount billed to Wal-Mart. Each charge should include:

- 1) Date
- 2) Reference number (invoice number, contractor payment application number, employee number, etc.)
- 3) Description of the charge
- 4) Name of the Payee (vendor name, contractor, employee, etc.)
- 5) Amount charged

An additional report should be included in which all charges are listed by cost code.

The audit can not be done until an acceptable cost history is provided. Cost histories broken into numerous cost codes by themselves will not be sufficient for audit purposes. If the cost summary provided is not arranged in a manner which will allow the determination of all the above information, a supplemental schedule will have to be prepared by the developer prior to the audit.

An example which fits the above situation has been provided as page 14.

- B. The project cost summary should agree with the total cost in the final billing. The total cost of the items should exactly match the total amount billed. If the cost listed in the project cost summary does not match the amount billed, you will need to determine the reason for this difference prior to the audit. The General Conditions category should include all costs which have not been included in any of the other categories.

A schedule which must be completed to ensure that the cost history matches the amount billed has been included as page 21.

- C. Lien releases for all major material vendors:

In a separate folder labeled "Materials Lien Releases" include a copy of all final lien releases required from materials vendors.

- D. Subcontracts status report:

In a separate folder labeled "Contract Status Report" place a current copy of your contractor status report. At a minimum this report should show the following information for each contract charged to the project.

1. Contractor name
2. The final contract amount
3. The total amount charged Wal-Mart for the contract

4. The total amount paid the contractor to date
5. The remaining amount due the contractor

An example of a Contractor's Status Report is provided on page 20.

E. Employee listing (If any labor of the developer was used):

In a separate folder titled "Employee Listing" include the following documentation:

1. Employee name
2. Position
3. Hire date
4. State of Residence for State Unemployment Tax purposes
5. YTD earnings prior to starting this job
6. Union affiliation
7. Worker's Comp classification
8. Hourly rate
9. Increased to... (amount of hourly rate increase)
10. Date of increase

F. Labor Burden:

In a separate folder titled "Labor Burden" include the following:

1. A list of all items which comprise burden and the documentation supporting each item listed. The following are some common burden items and the documentation required for back up.
 - a. FICA No backup needed
 - b. FUTA No backup needed
 - c. SUTA A copy of the quarterly tax return filed with the state for each quarter the project ran. This will be required for each state listed on the "Employee Listing".
 - d. VACATION A copy of the company policy regarding vacations will be required.
 - e. HOLIDAYS A copy of the company policy regarding holidays will be required. A listing of holidays the company gives time off for should be included.
 - f. MEDICAL A copy of the company's policy regarding medical benefits and a copy of the insurance policy which lists the

individuals covered and the cost of that coverage will be required. If the project spans more than one policy period then a copy of the policy for each period will be needed.

Any other benefits which are covered in burden should also be listed and the documentation supporting that item included. The supporting documentation should clearly demonstrate the calculation used to apply the items comprising burden to the project. As an example, a schedule should be included to demonstrate how holidays were accumulated and charged to the job (5 holidays / 2080 hours = .019 holiday hours per hour charged to the job).

Examples are included as pages 16-18. All the applicable information should be provided.

G. Equipment (If developer-owned equipment was involved):

In a separate folder labeled "Equipment" include the following:

1. A list of all developer-owned equipment charged to the project which shows the make, model and year, rental rate per time period and the total amount charged to the job for each piece of equipment.

An example of one format for this list has been provided as page 19.

2. A description of the method used to calculate the rental rates for each major class of equipment. For example, calculating a rental rate for a truck used on the job taking into consideration purchase price, maintenance, insurance and deducting a salvage value. Your agreement may require you to demonstrate that the rates charged are the best available in the local area.

An example of one acceptable method of determining rental rates has been included on page 19.

3. Quotes from local rental companies of rental rates for the same piece of equipment that is charged to the job. Three (3) quotes will be sufficient.

II. REVIEW AT THE CONTRACTOR'S OFFICE

The documentation that will be reviewed at your office should be organized and placed into some type of storage box (a cardboard packing box is recommended) and placed in the location where the auditor will be working **BEFORE THE AUDITOR ARRIVES AT YOUR OFFICE.** The documentation should be arranged in the order listed below.

A. Original Vendor Invoices:

There should be a separate folder for each major vendor and these folders should be arranged in alphabetical order (a Misc. A, Misc. B, etc. folder should be used for those vendors which have few charges to the project). All original invoices charged to the project should be included in one of these folders. There should be no invoices for charges to other projects. If possible, the canceled check which paid an invoice should be attached to that invoice. If your current filing system would make it difficult to separate the invoices for this particular project you should contact us to discuss some possible alternatives.

B. Contracts

In a separate two-sided folder for each Contract include the following documentation:

1. Secured to the left side of the folder (“a” would be on the bottom):
 - a. All insurance documentation required by contract.
 - b. The payment and performance bond if required.
 - c. A copy of all payment applications in application number order. If possible, a canceled check should be attached to each application.
 - d. The final release of lien.
2. Secured to the right side of the folder (“a” would be on the bottom):
 - a. The competitive bid list or an explanation why bids were not taken. Behind this list the actual bids submitted along with all backup should be included.
 - b. Correspondence with the developer (letters, etc.).
 - c. All change orders in change order number order.
 - d. The original contract.

The contract folders should be arranged in the same order in which they appear on the “Contract Status Report”.

C. All employee time sheets.

- a. The time sheets should be separated by employee.
- b. Each employee’s time sheets should be arranged in date order.
- c. Each employee’s time sheets should be stapled together.
- d. Arrange the grouped time sheets in the same order as the “Employee Listing”.

NOTE: If your payroll system has a direct deposit option, have your payroll registers available for review.

D. Audit File:

In a separate folder labeled “Audit File” include the following (if available):

1. A copy of the project manager’s project notes, letters, daily activity log etc.
2. Any notes, memos, letters, etc. sent to or received from Wal-Mart’s Real Estate Manager.
3. A summary of all back charges to contractors or vendors.

PROJECT COST HISTORY
M - Material & Misc.
E - Equipment
S - Subcontract
G - General Conditions

Invoice Date	Cost Type	Vendor Name	Description	Invoice Number	Invoice Amount
21-Feb-94	M	TERRY STEEL		604	\$420.66
28-Feb-94	M	TERRY STEEL		616	\$1,052.24
07-Mar-94	M	TERRY STEEL		2298	\$448.67
13-Mar-94	M	TERRY STEEL	Material returned	160049	\$60.00
TOTAL					\$1,961.57
15-Jan-94	G	ACKERMAN, JAMES	subsistence		\$350.00
22-Jan-94	G	ACKERMAN, JAMES	subsistence		\$350.00
29-Jan-94	G	ACKERMAN, JAMES	subsistence		\$350.00
5-Feb-94	G	ACKERMAN, JAMES	subsistence		\$350.00
12-Feb-94	G	ACKERMAN, JAMES	subsistence		\$350.00
19-Feb-94	G	ACKERMAN, JAMES	subsistence		\$210.00
TOTAL					\$1,960.00
15-Jan-94	S	WELDING CENTRAL INC.		2563	\$336.00
21-Jan-94	S	WELDING CENTRAL INC.		2632	\$5,978.00
27-Jan-94	S	WELDING CENTRAL INC.		260	\$2,814.00
TOTAL					\$9,128.00
15-Jan-94	G	CULLIGAN WATER SUPPLY		19867	\$86.35
16-Feb-94	G	CULLIGAN WATER SUPPLY		20486	\$56.25
12-Mar-94	G	CULLIGAN WATER SUPPLY		20844	\$50.50
18-Apr-94	G	CULLIGAN WATER SUPPLY		21521	\$62.35
TOTAL					\$255.45
01-Feb-94	M	YANKEE EQUIPMENT	Golf Cart Rental	1922	\$3,019.78
TOTAL					\$3,019.78
6-Feb-94	E	YAMAHA	Co. Owned Rental	87	\$250.00
TOTAL					\$175.00
TOTAL					\$425.00

TOTAL SUBCONTRACTS:	\$9,128.00
TOTAL MATERIALS:	\$4,881.35
TOTAL EQUIPMENT*:	\$425.00
TOTAL GEN. CONDITIONS	\$1,960.00

*3rd Party Equipment rental needs to be included in "Materials"

**ALL INFORMATION SENT IN FOR PRELIMINARY REVIEW MUST AGREE WITH THE AMOUNTS CHARGED IN THE PROJECT COST HISTORY.

Employee Listing
ABC Developers
Wal-Mart #2222 - Portsmouth, OH

Employee Name	Position	Hire Date	State of Res. for SUTA	YTD Earnings Prior to Job	Union	W/C Class	G/L Class
John Smith	Asst. Super.	4/10/90	KY	\$15,343.00	non	2525	91580
Frank Wolf	Superintendent	8/24/85	TN	\$21,654.00	non	2525	91580
Bill Thomas	Electrician	5/22/92	OH	\$14,253.00	local #25	8053	91342

Wages and Burden
ABC Developers
Wal-Mart #2222 - Portsmouth, OH

Employee	94 Wages	95 Wages	Total Wages	FICA	FUTA	SUTA	Health	Union	W/C	Total Burden	Total
John Smith	18462.88	9885.38	28348.26	2168.64	56.00	118.00	339.00	0.00	138.23	2819.87	
Frank Wolf	21902.25	12525.75	34428.00	2633.74	56.00	130.00	339.00	0.00	68.65	3227.39	
Bill Thomas	7665.00	4641.00	12306.00	941.41	56.00	130.00	0.00	105.00	48.15	1280.56	
Totals	48030.13	27052.13	75082.26	5743.79	168.00	378.00	678.00	105.00	255.03	7327.82	

Points to remember:

1. Ensure supplemental labor schedule matches labor charges on job cost history.
2. A separate column must be made for each burden category.
3. FUTA and SUTA must have separate columns for each year (if applicable).

WAL-MART #2222 - PORTSMOUTH, OH
ABC Developers, INC. - KINGSPORT, TN
CERTIFIED PAYROLL

EMPLOYEE	WEEK ENDING	HOURLY RATE	REG. HOURS	O.T. HOURS	REG. DOLLARS	O.T. DOLLARS	TOTAL DOLLARS
John Smith	9/28/94	\$25.00	40	10	1,000.00	375.00	\$1,375.00
John Smith	10/5/94	\$25.00	40	10	1,000.00	375.00	\$1,375.00
John Smith	10/12/94	\$25.00	40	13	1,000.00	487.50	\$1,487.50
John Smith	10/19/94	\$25.00	40	9	1,000.00	337.50	\$1,337.50
John Smith	10/26/94	\$25.00	40	7	1,000.00	262.50	\$1,262.50
John Smith	11/2/94	\$25.00	40	10	1,000.00	375.00	\$1,375.00
John Smith	11/9/94	\$25.00	40	5	1,000.00	187.50	\$1,187.50
John Smith	11/16/94	\$25.00	40	8	1,000.00	300.00	\$1,300.00
John Smith	11/23/94	\$25.00	40	9	1,000.00	337.50	\$1,337.50
John Smith	11/30/94	\$25.00	40	9	1,000.00	337.50	\$1,337.50
John Smith	12/7/94	\$25.00	40	7	1,000.00	262.50	\$1,262.50
John Smith	12/14/94	\$25.25	40	8	1,010.00	303.00	\$1,313.00
John Smith	12/21/94	\$25.25	40	6	1,010.00	227.25	\$1,237.25
John Smith	12/28/94	\$25.25	40	7	1,010.00	265.13	\$1,275.13
Total 94 Wages							\$18,462.88
John Smith	1/4/95	25.25	40	5	1,010.00	189.38	\$1,199.38
John Smith	1/11/95	25.25	40	4	1,010.00	151.50	\$1,161.50
John Smith	1/18/95	25.25	40	2	1,010.00	75.75	\$1,085.75
John Smith	1/25/95	25.25	40	1	1,010.00	37.88	\$1,047.88
John Smith	2/1/95	25.25	40	4	1,010.00	151.50	\$1,161.50
John Smith	2/8/95	25.25	40	2	1,010.00	75.75	\$1,085.75
John Smith	2/15/95	25.25	40	1	1,010.00	37.88	\$1,047.88
John Smith	2/22/95	25.25	40	1	1,010.00	37.88	\$1,047.88
John Smith	3/1/95	25.25	40	1	1,010.00	37.88	\$1,047.88
Total 95 Wages							\$9,885.38
Frank Wolf	9/7/94	28.50	40		1,140.00	0.00	1,140.00
Frank Wolf	9/14/94	28.50	40	2	1,140.00	85.50	1,225.50
Frank Wolf	9/21/94	28.50	40	3	1,140.00	128.25	1,268.25
Frank Wolf	9/28/94	28.50	40	2	1,140.00	85.50	1,225.50
Frank Wolf	10/5/94	28.50	40	2	1,140.00	85.50	1,225.50
Frank Wolf	10/12/94	28.50	40	9	1,140.00	384.75	1,524.75
Frank Wolf	10/19/94	28.50	40	3	1,140.00	128.25	1,268.25
Frank Wolf	10/26/94	28.50	40	3	1,140.00	128.25	1,268.25
Frank Wolf	11/2/94	28.50	40	5	1,140.00	213.75	1,353.75
Frank Wolf	11/9/94	28.50	40	2	1,140.00	85.50	1,225.50
Frank Wolf	11/16/94	28.50	40	7	1,140.00	299.25	1,439.25
Frank Wolf	11/23/94	28.50	40	6	1,140.00	256.50	1,396.50
Frank Wolf	11/30/94	28.50	40		1,140.00	0.00	1,140.00
Frank Wolf	12/7/94	28.50	40	2	1,140.00	85.50	1,225.50
Frank Wolf	12/14/94	28.50	40	3	1,140.00	128.25	1,268.25
Frank Wolf	12/21/94	28.50	40	6	1,140.00	256.50	1,396.50
Frank Wolf	12/28/94	28.50	40	4	1,140.00	171.00	1,311.00

Total 94 Wages

21,902.25

Frank Wolf	1/4/95	28.50	40	10	1,140.00	427.50	1,567.50
Frank Wolf	1/11/95	28.50	40	7	1,140.00	299.25	1,439.25
Frank Wolf	1/18/95	28.50	40	8	1,140.00	342.00	1,482.00
Frank Wolf	1/25/95	28.50	40	4	1,140.00	171.00	1,311.00
Frank Wolf	2/1/95	28.50	40	8	1,140.00	342.00	1,482.00
Frank Wolf	2/8/95	28.50	40	5	1,140.00	213.75	1,353.75
Frank Wolf	2/15/95	28.50	40	3	1,140.00	128.25	1,268.25
Frank Wolf	2/22/95	28.50	40	6	1,140.00	256.50	1,396.50
Frank Wolf	3/1/95	28.50	40	2	1,140.00	85.50	1,225.50

Total 95 Wages 12,525.75

Bill Thomas	9/28/94	14.00	32	3	448.00	63.00	511.00
Bill Thomas	10/5/94	14.00	35		490.00	0.00	490.00
Bill Thomas	10/12/94	14.00	40		560.00	0.00	560.00
Bill Thomas	10/19/94	14.00	38	1	532.00	21.00	553.00
Bill Thomas	10/26/94	14.00	40		560.00	0.00	560.00
Bill Thomas	11/2/94	14.00	38		532.00	0.00	532.00
Bill Thomas	11/9/94	14.00	37		518.00	0.00	518.00
Bill Thomas	11/16/94	14.00	39		546.00	0.00	546.00
Bill Thomas	11/23/94	14.00	40	4	560.00	84.00	644.00
Bill Thomas	11/30/94	14.00	40	2	560.00	42.00	602.00
Bill Thomas	12/7/94	14.00	40	3	560.00	63.00	623.00
Bill Thomas	12/14/94	14.00	39		546.00	0.00	546.00
Bill Thomas	12/21/94	14.00	36		504.00	0.00	504.00
Bill Thomas	12/28/94	14.00	34		476.00	0.00	476.00

Total 94 Wages 7,665.00

Bill Thomas	1/4/95	14.00	38		532.00	0.00	532.00
Bill Thomas	1/11/95	14.00	40		560.00	0.00	560.00
Bill Thomas	1/18/95	14.00	40	2	560.00	42.00	602.00
Bill Thomas	1/25/95	14.00	40		560.00	0.00	560.00
Bill Thomas	2/1/95	14.00	40	1	560.00	21.00	581.00
Bill Thomas	2/8/95	14.00	36		504.00	0.00	504.00
Bill Thomas	2/15/95	14.00	35		490.00	0.00	490.00
Bill Thomas	2/22/95	14.00	32		448.00	0.00	448.00
Bill Thomas	3/1/95	14.00	26		364.00	0.00	364.00

Total 95 Wages 4,641.00

TOTAL WAGES \$75,082.25

RENTAL RATE CALCULATION

Item: 1994 F450 Ford One Ton Truck With Tools, Welder, Equipment

Estimated Life: 5 years

Cost Description	Yearly Cost	Five Year Cost	Yearly Rental Rate	Monthly Rental Rate	Weekly Rental Rate	Daily Rental Rate	Hourly Rental Rate
Purchase Price		\$18,000.00					
Tools & Equipment *	\$900.00	\$4,500.00					
Maintenance	\$400.00	\$2,000.00					
Insurance Cost	\$800.00	\$4,000.00					
Salvage Value		<u>(\$1,000.00)</u>					
		\$27,500.00	\$5,500.00	\$458.33	\$105.77	\$15.11	\$1.89

# ON TRUCK	ITEM	ITEM COST	TRUCK COST	LIFE OF TOOLS	YEARLY COST
1	WELDER	\$2,500.00	\$2,500.00	5	\$500.00
1	WISE	\$300.00	\$300.00	3	\$100.00
2	COME-A-LONG	\$300.00	\$600.00	2	\$300.00

TOTAL \$900.00 *

REMEMBER: Small tools under \$250 are not reimbursable under the contract. Charges for equipment rental must match rental rates calculated using the equations above. Time charged must be documented through time logs and maintenance and insurance costs must be justified. Equipment rental periods must be justified. Equipment rental periods must be used that will reflect the best rates available.

The contract generally requires that rental rates should be researched to obtain the best rates available. For developer-owned equipment, this requires that the developer be able to demonstrate that the costs do not exceed local rental rates (bid, quote, price sheet, etc.).

CONTRACT STATUS REPORT
 ABC Developers, INC. - KINGSPORT, TN
 WAL-MART #2222 - PORTSMOUTH, OH

Contractor	Revised Contract Amount	Amount Paid by Developer	Amount due the Contractor	Total	Amount charged to Wal-Mart	Diff
Kilgor painting	25,000.00	22,500.00	2,250.00	24,750.00	25,000.00	250.00
Bates Excavating	350,000.00	350,000.00	0.00	350,000.00	350,000.00	0.00
Totals				374,750.00	375,000.00	250.00

Revised Amount - contract price plus change orders

Total - Amount paid plus amount due

Amount charged Wal-Mart - should match cost history

Diff. - Total - Amount charged to Wal-Mart (should be 0, explain if not)

PROJECT COST SUMMARY

DOES THE PROJECT COST HISTORY TIE TO THE FINAL BILLING?

Total Labor & Labor Burden _____

Total Contracts _____

Total Materials (Including 3rd Party Rentals) _____

Total Equipment (Developer Owned) _____

Total General Conditions
(that are not included in other categories on this page) _____

Total Project Costs _____

Wal-Mart's Share _____%

Total Billable Amount _____

Amount Billed Wal-Mart
(Final Payment Application) _____

Difference _____

INITIAL

EXHIBIT I

When recorded return to:

MEMORANDUM OF DEVELOPMENT AGREEMENT

This Memorandum of Development Agreement (this "Memorandum") is made this ____ day of _____, 200__, by and among _____, a(n) _____, of _____ ("Developer") and **WAL-MART STORES, INC.**, a Delaware corporation ("Wal-Mart"), of 2001 S.E. 10th Street, Bentonville, Arkansas 72716-0550.

Wal-Mart is the owner of the real property legally described on Exhibit A attached hereto and made a part hereof (the "Wal-Mart Tract").

Developer is the owner of the real property legally described on Exhibit B attached hereto and made a part hereof (the "Developer Tract").

Developer and Wal-Mart are the parties to that certain Development Agreement dated _____ (as amended from time to time, the "Agreement"), pursuant to which Developer has agreed to construct certain improvements to **[the Wal-Mart Tract and (NOTE: DELETE IF NO WORK BY DEVELOPER ON WAL-MART TRACT AFTER CLOSING.)]** the Developer Tract **[and Wal-Mart has agreed to reimburse the Developer for a portion of the costs incurred in connection therewith (NOTE: SAME ISSUE AS ABOVE.)]**. The parties respective obligations are binding upon their successors and assigns and the agreements and covenants contained in the Development Agreement run with title to the Wal-Mart Tract and the Developer Tract.

The parties are executing this memorandum to put of record the existence of the Development Agreement. Either the Developer or Wal-Mart may be contacted at the address listed above for more particulars.

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

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be duly executed as of the date first above written.

_____ a(n)

By _____

Its _____

WAL-MART STORES, INC., a Delaware corporation

By _____

Its Assistant Vice President

STATE OF _____)
)
COUNTY OF _____)

On _____, 200__, before me, _____, a Notary Public, in and for said County and State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____, Notary Public

STATE OF _____)
)
COUNTY OF _____)

On _____, 200__, before me, _____, a Notary Public, in and for said County and State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____, Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF THE WAL-MART TRACT

EXHIBIT B
LEGAL DESCRIPTION OF THE DEVELOPER TRACT

EXHIBIT J

Daily Storm Water Inspection Report

Store Number, Project Type and Location: _____

Inspector Name and Title: _____ Director: _____

Date/Time of Inspection: _____ Weather Conditions: _____

Schedule Completion Date: _____ Construction Stage (circle all that apply): clearing/Grubbing Paving

Rough Grading Infrastructure Building Construction Final Grading Final Stabilization Terminate Permit _____

Type of Control	Describe status, identify problems, maintenance needs, or non-conformance with details or temporary alteration	Problem addressed (date and description of corrective action)
Structural:		
Silt Fence <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Tears/Holes <input type="checkbox"/> Burial <input type="checkbox"/> Sed. Accum. <input type="checkbox"/> Sed. bypass	
Const. Exit <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Voids Filled <input type="checkbox"/> Trackout	
Check Dam <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Sed. Accumulation	
Inlet Protection <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Sed. Accum. <input type="checkbox"/> Sed. Bypass <input type="checkbox"/> Application not approp.	
Diversion Ditch/Berm <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Erosion <input type="checkbox"/> Stabilization	
Sediment Trap <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Sed. Accumulation	
Sed. Basin <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Sed. Accumulation <input type="checkbox"/> Bank erosion <input type="checkbox"/> Stabilization	
Discharge Point <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Erosion <input type="checkbox"/> Sed. Discharge	
Mat. Storage/ Secondary Contain. <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Not shown on Site Map <input type="checkbox"/> Spills <input type="checkbox"/> Out of design. area <input type="checkbox"/> Improper storage: chem; solvents; paint; petro	
Other Structural Controls <input type="checkbox"/> OK <input type="checkbox"/> N/A		
Non-Structural:		
GoodHousekeeping <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Solid Waste <input type="checkbox"/> Sanitary Waste <input type="checkbox"/> Dust Control	

Store Number, Project Type and Location: _____ Date: _____

Page 2

Equip. Wash/Maint. <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Spills <input type="checkbox"/> Outside designated area	
Concrete Washout <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Spills out of designated area <input type="checkbox"/> Not shown on Site Map	
Stabilization:		
Seed/Sod Mulching, Geotextile, Blankets <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Need Temp. stab. <input type="checkbox"/> Need final stab. <input type="checkbox"/> Health of veg.	
Record Keeping:		
Entrance Postings <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> NOI <input type="checkbox"/> Permits <input type="checkbox"/> Jobsite Posting	
SWPPP Notebook <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Missing Sections <input type="checkbox"/> Missing Forms	
Site Map/Details <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> Activities not up-to-date <input type="checkbox"/> Deviate from details	
Miscellaneous:		
SWPPP/Site Map <input type="checkbox"/> OK <input type="checkbox"/> N/A	<input type="checkbox"/> BMP Additions <input type="checkbox"/> Modifications <input type="checkbox"/> Not up-to-date	

I certify under penalty of perjury that I personally conducted this inspection and prepared this inspection report. All corrective actions noted as necessary on preceding Daily Inspection Reports prepared by “Inspectors”, Compliance Officers, or Construction Managers have been fully completed as noted above in conformance with the time limitations provided in the Contract Documents. Based upon my observations during the inspection, I certify that the information in this inspection report is true, accurate, and complete. I am aware that there are significant penalties for perjury, including fines and imprisonment for knowing violations.

Inspector’s Signature – Daily Inspection Date

I certify under penalty of perjury that I personally observed this inspection. All corrective actions noted as necessary on preceding Daily Inspection Reports prepared by “Inspectors”, Compliance Officers, or Construction Managers have been fully completed as noted above in conformance with the time limitations provided in the Contract Documents. Based upon my observations during the inspection, I certify that the information in this inspection report is true, accurate, and complete. I am aware that there are significant penalties for perjury, including fines and imprisonment for knowing violations.

Compliance Officer’s Signature Date
(by-weekly)

I certify under penalty of perjury that I personally observed this . Based upon my observations during the inspection, I certify that the information in this inspection report is true, accurate, and complete. In addition, I have reviewed the _____
_____ [insert number of inspection reports] inspection reports previous to this one and I certify that all corrective actions noted as necessary have been fully and timely completed. I am aware that there are significant penalties for perjury, including fines and imprisonment for knowing violations.

Construction Manager’s Signature Date
(every monthly inspection)

EXHIBIT K
CALIFORNIA

1. CONSTRUCTION LENDER. The name and address of each lender providing construction financing to Wal-Mart for the project, if applicable, is set forth below:

Not applicable

Applicable

Lender Name: _____

Lender Address: _____

Lender Name: _____

Lender Address: _____

2. DEVELOPER'S QUALIFICATION UNDER CONTRACTOR'S LICENSE LAW. Developer represents to Wal-Mart and agrees that during the entire term of this Development Agreement: (check one)

Developer is and shall continue to be a general contractor licensed by the State of California Contractors License Board, with the general contractors license in the name of the entity which is the Developer as named on Page 1 hereof.

Developer does and shall continue to employ, at no cost or expense to Wal-Mart, a full time independent contractor construction manager who is licensed by the State of California Contractors License Board as a general contractor, and Developer shall closely supervise, control and monitor the activities of that individual during the term of this contract.

The name of the Responsible Managing Officer or Employee of Developer (the "RMO") or the independent construction manager (the "Construction Manager") is _____. The identity of the RMO or Construction Manager shall not be changed without the prior written consent of Wal-Mart and, conversely, the RMO or Construction Manager shall be replaced, for cause, if requested by Wal-Mart. Throughout the balance of this Development Agreement, reference to duties or activities to be undertaken by Developer shall be deemed to incorporate, by reference, the same requirement for the RMO or Construction Manager.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD WHOSE ADDRESS IS: CONTRACTOR'S LICENSE BOARD, 1020 "N" STREET, SACRAMENTO, CALIFORNIA 95814. UNDER THE MECHANIC'S LIEN LAW (CALIFORNIA CIVIL CODE), ANY CONTRACTOR, SUBCONTRACTOR, LABORER, SUPPLIER, OR OTHER PERSON WHO HELPS TO IMPROVE AN OWNER'S PROPERTY, BUT IS NOT PAID FOR HIS WORK OR SUPPLIES, HAS A RIGHT TO ENFORCE A CLAIM AGAINST THE OWNER'S PROPERTY. THIS MEANS THAT, AFTER A COURT HEARING, OWNER'S PROPERTY CAN BE SOLD BY A COURT OFFICER AND THE PROCEEDS OF THE SALE USED TO SATISFY THE INDEBTEDNESS. THIS CAN HAPPEN EVEN IF THE OWNER HAS PAID HIS OWN CONTRACTOR IN FULL, IF THE SUBCONTRACTOR, LABORER OR SUPPLIER REMAINS UNPAID. UNDER STATE LAW THE OWNER MAY PROTECT HIMSELF AGAINST SUCH CLAIMS BY FILING, BEFORE COMMENCEMENT OF THE WORK, AN ORIGINAL OR MODIFIED CONTRACT FOR THE WORK OF IMPROVEMENT IN THE OFFICE OF THE COUNTY RECORDER WHERE THE PROPERTY IS SITUATED, AND BY REQUIRING A CONTRACTOR'S PAYMENT BOND BE RECORDED IN THE SAME OFFICE. THIS BOND SHALL BE IN AN AMOUNT NOT LESS THAN 50% OF THE CONTRACT PRICE AND SHALL, IN ADDITION TO ANY CONDITIONS FOR THE PERFORMANCE OF THE CONTRACT, BE CONDITIONED FOR THE PAYMENT IN FULL OF THE CLAIMS OF ALL PERSONS FURNISHING LABOR, SERVICES, EQUIPMENT, OR MATERIALS FOR THE WORK DESCRIBED IN THIS CONTRACT.

3. NOTICE OF COMPLETION. Developer shall timely file on behalf of Developer and Wal-Mart Notices of Completion and Notices of Cessation of Labor, as described in the California Mechanics' Lien Law, provided that the filing of any Notice of Completion by Developer shall not be binding, as between Developer and Wal-Mart on the question of whether, in fact, the Sitework has been properly, fully or timely completed.

4. GENERAL CONTRACTOR'S QUALIFICATIONS AND ROLE. Developer and Wal-Mart acknowledge that they intend that Developer retain the services of one or more duly licensed and qualified general contractors to actually construct the Sitework as described herein. Developer shall obtain and deliver to Wal-Mart copies of such general contractor's: State of California Contractor's License Board ("CLB") license, statutory bond filed with the CLB, business license from the jurisdiction where the Tracts are located, workman's compensation insurance policy, and general liability insurance policy, in the amounts defined in the Agreement to which this Exhibit is attached. Developer's contract for the construction of the Sitework shall contain a clause forbidding assignment of the general contractor's duties, including coordination and supervision of the Sitework, without the prior written consent of Developer. Developer covenants and agrees that it will not grant such consent, or otherwise terminate or amend such construction contract, without the prior written consent of Wal-Mart. Conversely, Developer agrees that, in the event the general contractor fails to perform under the terms of its construction contract, Developer shall terminate such construction contract upon the written request of Wal-

Mart. Developer shall disclose to Wal-Mart, in writing, the extent to which it presently has, or in the future obtains, a legal or equitable interest in, control over, affiliation or profit sharing arrangement with the general contractor. Developer also acknowledges that Wal-Mart will retain a separate general contractor to construct the building and related improvements to the Wal-Mart Tract. Developer has made an independent investigation of the job site conditions, including soil conditions and all other conditions that might affect the progress of the site work, and has satisfied himself as to those conditions. Any information that may have been furnished to Developer by Wal-Mart about job conditions is for Developer's convenience only, and Wal-Mart does not warrant that the conditions are as indicated, and Developer has not relied on information furnished by Wal-Mart.

5. ASSIGNMENT OF PLANS, SPECIFICATIONS, REPORTS, PERMITS, CONTRACTS AND WARRANTIES. Developer hereby assigns to Wal-Mart, as its tenant in common, Developer's right, title and interest in and to the Plans and Specs, and any and all other plans, specifications, reports, permits and other documents which Developer obtains or develops in connection with the Sitework. Developer also hereby assigns to Wal-Mart, as its tenant in common, Developer's rights, remedies and causes of action, by contract or at law or in equity, pursuant to the General Contract and related subcontracts, and any warranties under the General Contract and related subcontracts; provided, however, that neither Developer nor Wal-Mart may pursue any remedies under the same without prior written notice to the other, and provided, further, that neither Developer nor Wal-Mart may waive, release, compromise or settle any claims thereunder without a concurrent execution of such waiver, release, compromise or settlement by the other tenant in common.

6. LIQUIDATED DAMAGES. With respect to Section Error! Reference source not found. of the attached Agreement, the parties acknowledge that:

THE PARTIES HERETO HAVE CONSIDERED THE AMOUNT OF DAMAGES WHICH WAL-MART IS LIKELY TO INCUR IN THE EVENT OF A DEFAULT OR BREACH BY DEVELOPER, OR ITS AGENT THE GENERAL CONTRACTOR, IN THEIR OBLIGATION TO TIMELY COMPLETE THE SITework, AND THE PARTIES HERETO HAVE AGREED THAT THE SUM OF \$5,000 PER CALENDAR DAY IS A REASONABLE APPROXIMATION AND LIQUIDATION OF WAL-MART'S POTENTIAL DAMAGES, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO WAL-MART THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE RECEIPT AND RETENTION OF SUCH AMOUNT BY WAL-MART, IF IT ELECTS THE REMEDY DESCRIBED IN THIS SUBSECTION, IS INTENDED TO CONSTITUTE THE LIQUIDATED DAMAGES TO WAL-MART PURSUANT TO THE CALIFORNIA CIVIL CODE, AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF THE CALIFORNIA CIVIL CODE, OR ANY

SIMILAR PROVISION. SAID AMOUNT OF LIQUIDATED DAMAGES SHALL BE IN LIEU OF ANY OTHER SUMS, OTHER THAN ATTORNEYS' FEES AND COSTS, DUE OR PAYABLE TO THE NON-DEFAULTING PARTY.

DEVELOPER WAL-MART

7. INCORPORATION BY REFERENCE.

- A. Granting and Encumbrance Language. This Development Agreement incorporates by reference all of the preamble clauses of the Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements recorded over the Shopping Center by Wal-Mart and Developer as though set forth in full herein, which establish and encumber the Project with certain covenants, conditions, restrictions, easements and lien rights. The covenants, conditions, restrictions, easements and lien rights created and referred to herein shall be additional covenants, conditions, restrictions, easements and lien rights added to and supplementing the Declaration.

- B. Lien of Assessments. Without limiting the generality of Section 7.A above, this Development Agreement incorporates by reference all of Article 9 of the Declaration, entitled "Enforcement Remedy/Lien Rights", as though said article were set forth in full herein. All successors in interest to Developer and Wal-Mart are hereby placed on notice that Wal-Mart will, under the circumstances specified in this Development Agreement, below, have the right to place a lien upon the Developer Tract, and to foreclose the same in the manner specified in said Article 9, in the event of non-payment by Developer or its successors in interest of the sums due Wal-Mart under the terms of this Development Agreement.

EXHIBIT L

COMPLIANCE WITH CALIFORNIA LAW

The terms, conditions and obligations of this Exhibit L shall apply if the Tracts are located within the State of California. All capitalized terms used but not defined in this Exhibit L shall have the meanings ascribed to them in the Contract.

THIS EXHIBIT L MUST BE COMPLETED IN ITS ENTIRETY AND MUST BE EXECUTED BY DEVELOPER AND WAL-MART. DEVELOPER MUST COMPLY IN ALL RESPECTS WITH THIS EXHIBIT L. IF DEVELOPER FAILS TO COMPLY IN ANY RESPECT WITH ANY OF THE TERMS, CONDITIONS OR OBLIGATIONS SET FORTH HEREIN, WAL-MART SHALL HAVE THE RIGHT TO IMMEDIATELY TERMINATE THIS CONTRACT AND/OR SEEK ANY AND ALL REMEDIES THAT IT MAY HAVE AT LAW, IN EQUITY OR UNDER THIS CONTRACT.

THE EXECUTION OF THIS EXHIBIT L IS REQUIRED IN ADDITION TO, AND NOT IN PLACE OF, THE EXECUTION OF THIS CONTRACT BY DEVELOPER AND WAL-MART.

Except as set forth in Paragraph 8 of this Exhibit L, the information to be supplied by the Developer shall pertain to Developer and its employees, as applicable, and not to Developer General Contractor or to its Subcontractors or Sub-subcontractors.

Developer hereby represents, warrants and covenants to Wal-Mart as follows:

1. Wal-Mart's name, address, and telephone number are set forth in the Contract. Developer's true, correct and complete name, address, telephone number, and employer identification number for state tax purposes is set forth below:

Name: _____

Address: _____

Telephone No.: _____

Employer Identification No.: _____

2. The policy number of each of Developer's workers' compensation insurance policies and the name, address and telephone number of each insurance carrier providing such coverage to Developer are set forth below, all of which information shall be true, correct and complete in all respects.

Workers' Compensation Policy No.: _____
Insurance Company Name: _____
Address: _____

Telephone No.: _____

Workers' Compensation Policy No.: _____
Insurance Company Name: _____
Address: _____

Telephone No.: _____

Workers' Compensation Policy No.: _____
Insurance Company Name: _____
Address: _____

Telephone No.: _____

3. For each vehicle owned by Developer that is used for transportation in connection with performing any Sitework pursuant to this Contract, Developer shall identify (a) the vehicle identification number, (b) the policy number for the vehicle liability insurance policy covering such vehicle, and (c) the name, address, and telephone number of the insurance company providing such coverage, all of which information shall be true, correct and complete in all respects. If this provision is not applicable to Developer, Developer shall insert "Not applicable" in the space set forth below.

Vehicle Identification No.: _____
Vehicle Liability Insurance Policy No.: _____
Insurance Company Name: _____
Address: _____

Telephone No.: _____

Vehicle Identification No.: _____
Vehicle Liability Insurance Policy No.: _____
Insurance Company Name: _____
Address: _____

Telephone No.: _____

Vehicle Identification No.: _____
Vehicle Liability Insurance Policy No.: _____
Insurance Company Name: _____
Address: _____

Telephone No.: _____

Vehicle Identification No.: _____
Vehicle Liability Insurance Policy No.: _____
Insurance Company Name: _____
Address: _____

Telephone No.: _____

4. Developer shall begin performing the Sitework on the date set forth in the Contract, unless a different date is otherwise specified in this paragraph 4: _____ . The performance of the Sitework shall be completed on the date set forth in the Contract, unless a different date is otherwise specified in this paragraph 4: _____ . The date on which this Contract was signed by each of Wal-Mart and Developer is set forth in the Contract.

5. The true, correct and complete address of each parcel of real property to be used to house Developer's workers in connection with this Contract is set forth below. If this provision does not apply to Developer, Developer shall insert "Not applicable" below.

Parcel 1 Address: _____

Parcel 2 Address: _____

Parcel 3 Address: _____

6. The total number of workers to be employed by Developer under this Contract, the total amount of all wages to be paid, and the date or dates when those wages are to be paid, are set forth below. If any or all of such information is not known as of the date hereof, Developer shall provide the best estimate of such information available as of the date hereof. Developer shall identify below whether the information is actual or based upon estimates. **Developer acknowledges and agrees that, if any of the information set forth in this paragraph 6 or in any other provision of this Exhibit L is an estimate, Developer shall have**

a continuing duty to ascertain the information required to be disclosed and to promptly reduce that information to writing once that information becomes known more accurately or specifically. Such writing shall reference this Contract, shall contain all of the provisions set forth in this Exhibit that are affected by the changes or updates, shall be executed by Developer and Wal-Mart, and shall be promptly delivered to Wal-Mart by Developer. In any event, on a periodic basis and in no event less than every ninety (90) days, Developer shall provide prompt written notice to Wal-Mart of the total number of workers to be employed by Developer under this Contract, the total amount of all wages to be paid, and the date or dates when those wages are to be paid, for the next 90-day period.

Total number of workers to be employed by Developer under this Contract:	_____	<input type="checkbox"/> Actual number <input type="checkbox"/> Best estimate available
Total amount of all wages to be paid:	\$ _____	<input type="checkbox"/> Actual amount <input type="checkbox"/> Best estimate available
Date or dates when those wages are to be paid:	_____	<input type="checkbox"/> Actual date(s) <input type="checkbox"/> Best estimate available

7. On each Application for Payment submitted to Wal-Mart by Developer pursuant to this Contract, Developer shall identify the actual date or dates on which all amounts, including wages, due to individuals who perform Sitework under this Contract, for the period covered by such Application for Payment, were or will be paid.

8. Set forth below is the following information relating to the Developer General Contractor, Subcontractors, Sub-subcontractors, material suppliers and other independent contractors contracted to perform the Sitework under the Contract Documents: (a) the total number of independent contractors (including Developer General Contractor and the Subcontractors, Sub-subcontractors, material suppliers and other independent contractors) who will be utilized under this Contract as independent contractors, and (b) the names of each of the Developer General Contractor, Subcontractors, Sub-subcontractors, material suppliers and other independent contractors and the current local, state and federal contractor license identification numbers that each of them is required to have pursuant to local, state and federal laws, statutes, codes, rules, regulations and ordinances. If any or all of such information is not known as of the date hereof, Developer shall provide the best estimate of such information available as of the date hereof. Developer shall identify below whether the information is actual or based upon estimates. **Developer acknowledges and agrees that, if any of the information set forth in this paragraph 8 or in any other provision of this Exhibit L is an estimate, Developer shall have a continuing duty to ascertain the information required to be disclosed and to promptly reduce that information to writing once that information becomes known more accurately or specifically. Such writing shall reference this Contract, shall contain all of the provisions set forth in this Exhibit that are affected by the changes or updates, shall be executed by Developer and Wal-Mart, and shall be promptly delivered to Wal-Mart by Developer.** In any event, on a periodic basis and in no event less than every ninety (90) days, Developer shall provide prompt written notice to Wal-Mart of the total number of persons who will be utilized under this Contract as independent contractors, (including Developer General

Contractor and the Subcontractors, Sub-subcontractors, material suppliers and other independent contractors) and the local, state and federal contractor license identification numbers that each of them is required to have pursuant to local, state and federal laws, statutes, codes, rules, regulations and ordinances, for the next 90-day period.

Total number of independent contractors (including Developer General Contractor and the Subcontractors, Sub-subcontractors, material suppliers and other independent contractors) to be utilized under this Contract:		<input type="checkbox"/> Actual number <input type="checkbox"/> Best estimate available
---	--	--

Names and Local, State and Federal Contractor License Identification Numbers:

Names and License Identification Numbers of Developer General Contractor and the Subcontractors, Sub-subcontractors, Material Suppliers and Other Independent Contractors	Local, State or Federal (check applicable box)
_____	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal
_____	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal
_____	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal
_____	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal
_____	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal
_____	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal

Names and License Identification Numbers of Developer General Contractor and the Subcontractors, Sub-subcontractors, Material Suppliers and Other Independent Contractors	Local, State or Federal (check applicable box)
_____	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal
_____	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal
_____	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal
_____	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal
_____	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal
_____	<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal

9. Developer shall keep a copy of this Contract for a period of not less than four (4) years following the termination of this Contract.

10. This Contract includes funds sufficient to allow Developer to comply with all applicable local, state and federal laws, rules and regulations governing the Sitework to be performed.

11. Any updates, modifications, amendments or changes to any of the information set forth in this Exhibit L, including, without limitation, any notices to be provided by Developer to Wal-Mart pursuant to paragraphs 6 and 8 hereof, shall (a) be in writing, (b) reference this Contract, (c) contain all of the provisions set forth in this Exhibit that are affected by the changes, updates, modifications or amendments, (d) be executed by Developer and Wal-Mart, and (e) be promptly delivered to Wal-Mart.

[signature page follows]

Acknowledged and agreed as of the date set forth below.

_____, 200__

Wal-Mart: _____

By: _____

Name: _____

Title: _____

_____, 200__

Developer: _____

By: _____

Name: _____

Title: _____

Vendor No.: _____

EXHIBIT M

DEVELOPER'S BREAKDOWN OF DETAILED COSTS

	Monthly Billing Summary										Project Summary	
	Total Wal-Mart Allocation	Initial Payment	Monthly Expenses	Less 10% Retainage	Current Billing	Previous Retainage	Previous Billing	% Complete	Total Billed to Date	Total Retainage		
Hard:												
Land & other pre-paid items prior to Closing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Site Improvements:												
Demolition, Grading & Compaction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Tenant Relocation Expense	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
On-Site Utilities	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Storm Drainage	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Parking Lot Paving	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Parking Lot Lights	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Landscaping	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Off-site Improvements:												
Roadside Sign	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Highway and Entranceway	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Off-site Utilities	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Changes Orders:												
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Engineering:												
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

EXHIBIT N

DEVELOPER'S WRITTEN GUARANTEE

DEVELOPER HEREBY WARRANTS THAT ALL LABOR AND MATERIALS FURNISHED AND ALL OF THE SITEWORK PERFORMED UNDER THIS AGREEMENT IS IN CONFORMITY WITH THE REQUIREMENTS CONTAINED IN THIS AGREEMENT, THAT ALL MATERIALS AND EQUIPMENT INSTALLED ARE FREE FROM IMPERFECT WORKMANSHIP AND MATERIALS, AND THAT DEVELOPER SHALL PROMPTLY REPAIR AT DEVELOPER'S SOLE COST AND EXPENSE ALL OF THE SITEWORK WHICH WAL-MART DETERMINES, IN ITS SOLE DISCRETION, TO BE DEFECTIVE WITHIN ONE (1) YEAR FROM [INSERT DATE OF 100% COMPLETION OF THE WORK].

FOR DEVELOPER:

By _____

Its _____

Date _____

EXHIBIT O

WAL-MART PROJECT COSTS SHEET ON JOINT DEVELOPER BUILT STORES

To properly prepare a cost segregation tax workpaper for Federal tax and Income tax we need to obtain the following breakout of sitework cost from the Developer. Also, for Property Tax purposes the following information is vital for the department to get out on the front end for ad-valorem taxes to be discussed with the Assessors and for setting tax accruals.

Location: _____ Store Size: _____
 Developer: _____ Developer's Address: _____
 Date: _____ Store Number _____

	<u>WAL-MART SHARE</u>	<u>JOINT DEVELOPER SHARE</u>
Improvements		
Building – Net		
Landscaping		
Paving & Parking		
Site Demolition		
Site Work & Earthwork		
Curbs, sidewalks, water, storm, sanitary system, landscape irrigation and fences can be lumped together		
Construction Bond (Included In Building and Site Work)		
Change Orders		
TOTAL COST OF IMPROVEMENTS		
TOTAL COST OF LAND & IMPROVEMENTS		

*Please attach the final Civil Engineer's estimates from the Developer.

INITIAL

EXHIBIT P

CONTRACTOR CERTIFICATIONS

[Project Type and Number]

[Project Location]

The General Contractor and/or subcontractor(s) and their employees that will implement the pollutant control measures described in the SWPPP and/or are involved in ground-disturbing activities on the site must be identified below. Each must sign a statement certifying that they understand the General Permit authorizing storm water discharges during construction. These statements must be maintained in the SWPPP file on site.

Contractor implementing the SWPPP:

Business Name

Business Address

Business Telephone Number

CERTIFICATION: [Modify the certification specific to state requirements if applicable]

"I certify that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification. The SWPPP has been made available to me to review and I agree to stay in compliance with the permit."

Signature

Date

Printed Name

Title

EXHIBIT Q

**WAL-MART BUILDING-ONLY CONSTRUCTION CONTRACT
SPECIAL CONDITIONS**

----- COMPARISON OF HEADERS -----

-HEADER 1-

Perris (S), CaliforniaStore # 4490-00

-HEADER 2-

-HEADER 3-

-HEADER 4-

Perris (S), CAStore # 4490-00

-HEADER 5-

----- COMPARISON OF FOOTERS -----

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-FOOTER 22-

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