

T/W

FOR AMEND SEE DE Book 13798 Page 884 LP

Deed Book 12108 Pg 162
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Clerk of Superior Court
Cobb County, Georgia 30144

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EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("ECR")

FOR AMEND SEE DE Book 13239 Page 4333
FOR NOTICE SEE DE Book 12108 Page 182
DE Book 14003 Page 3279 aks

THIS AGREEMENT is made as of the 14th day of January, 1999, between WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware business trust, of 702 S.W. 8th Street, Bentonville, Arkansas 72712-6489, with a mailing address of 2001 S.E. 10th Street, Bentonville, Arkansas 72712 ("Wal-Mart"), JACOBY LINDBERGH PROPERTIES II, L.L.C. ("WM Owner"), a Georgia limited liability company, of 1000 Abernathy Road, Suite 1800, Atlanta, Georgia 30328, AUSTELL SHOPS ASSOCIATES, L.L.C. ("Shops Owner"), a Georgia limited liability company and GIPSON/EAST-WEST, L.L.C. ("Gipson Owner") a Georgia limited liability company, of 7 Piedmont Center, Suite 150, Atlanta, Georgia 30305.

WITNESSETH:

WHEREAS, WM Owner is the owner of Tract 1 as shown as containing 24.516 acres on the plan attached hereto as Exhibit A hereof, said tract being more particularly described in Exhibit B attached hereto; and

WHEREAS, Shops Owner is the owner of Tract 2, as shown as containing 2.459 acres on the plan attached hereto as Exhibit A hereof, said tract being more particularly described on Exhibit C attached hereto, and of Tract 3, containing 1.025 acres and being more particularly described in Exhibit D attached hereto; and

WHEREAS, Wal-Mart is the lessee of Tract 1 pursuant to a lease dated January 14, 1999 (the "WM Lease"); and

WHEREAS, Gipson Owner is the owner of Tract 4 as shown as containing 15.961 acres on the plan attached hereto as Exhibit A hereof, said tract being more particularly described on Exhibit E attached hereto; and

WHEREAS, Wal-Mart, WM Owner, Shops Owner and Gipson Owner desire that Tracts 1, 2, 3 and 4 be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial shopping center (Tracts 1, 2, 3 and 4, being sometimes hereinafter referred to as the "Shopping Center"), and further desire that said Tracts be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

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

1. **Building/Common Areas.**

- a. "Building Areas" as used herein shall mean that portion of Tract 1, Tract 2 and Tract 3 shown on Exhibit A as "Building Area" (and "Future Building Area" and "Future Expansion Area") and any portion of Tract 4 upon which Gipson Owner elects to construct buildings. Canopies may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas.
- b. "Common Areas" shall be all of the Shopping Center except the Building Areas.
- c. Conversion to Common Areas: Those portions of the Building Areas on each Tract which are not from time to time used or cannot, under the terms of this Agreement (including Paragraph 6a(3)), be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

for notice of interest see as
DE Book 14036 Page 6383
DE Book 14504 Page 609 s/p
DE Book 14504 Page 2793 s/p
DE BOOK 15287 PAGE 1526 ✓JR
DE BOOK 15287 PAGE 1528 ✓JR

FOR NOTICE SEE hmg
DE Book 14907 Page 3855 ✓
DE BOOK 14939 PAGE 1904 ✓ KM

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- d. "Tract" or "Tracts" shall mean either Tract 1 and/or Tract 2 and/or Tract 3 and/or Tract 4, as the context may require.
- e. Notwithstanding the forgoing, Wal-Mart (for so long as the WM Lease is in effect) may add additional building areas or change, delete, enlarge, reduce or otherwise modify existing Building Areas for Tract 1, so long as such changes do not impair access to the other Tracts, and are done in compliance with applicable laws and ordinances, the minimum parking standards set forth in paragraph 6(a)(ii) are satisfied and further provided that the value of the Shopping Center shall not be materially diminished thereby.

2. **Use.** Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices, and retail stores; provided Tract 4 also may be used for office buildings and restaurants. So long as the WM Lease shall be in effect, no cafeteria, grocery store, pharmacy, optical store, drug store, restaurant, theatre, bowling alley, billiard parlor, night club or other place of recreation or amusement, or any business serving alcoholic beverages shall occupy space within Tract 1, Tract 2 or Tract 3 without the prior written consent of Wal-Mart. Notwithstanding the foregoing, Shops Owner may utilize all or a portion of Tract 2 and Tract 3 which is greater than 200 feet from the front doors of the Wal-Mart store located on Tract 1, as a restaurant or a business selling alcoholic beverages for offsite consumption or which have sales of alcohol constituting not greater than fifty percent (50%) of sales from such restaurant or business without the consent of Wal-Mart. Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Wal-Mart on Tract 1. Each owner recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its business on its respective tract; and WM Owner, Gipson Owner and Shops Owner hereby waive any legal action for damages or for equitable relief which might be available to such Owner because of such cessation of business activity by Wal-Mart.

3. **Competing Business.** WM Owner, Gipson Owner and Shops Owner covenant that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of Tract 1, either as owner or lessee, no space in or portion of Tract 2 or Tract 3 or Tract 4, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by WM Owner, or Shops Owner, shall be leased or occupied by or conveyed to any other party for use as a discount department store. In the event of a breach of this covenant, Wal-Mart shall have the right to seek any and all remedies afforded by either law or equity against the party breaching this agreement.

4. **Buildings.**

- a. **Design and Construction.** The Buildings Areas on Tract 1, Tract 2 and Tract 3 shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one Tract onto another Tract except as provided for in Subsection (d) below. The design and construction shall be of high quality. No building located on Tracts 1, 2 and 3 shall exceed thirty-five feet (35') in height above finished grade as measured from finished floor to roof. No building shall have a metal exterior.
- b. **Location.** Subject to paragraph 1(e), no building shall be constructed on Tracts 1, 2 and 3 (as either immediate development or future expansion) except within the Building Areas and during the term of the WM Lease, no improvements or alterations which substantially vary from those shown on Exhibit A with respect to Tracts 1, 2 and 3 may be made without

- the prior written consent of Wal-Mart. Subject to paragraph l(e), the front wall(s) of the building(s) on Tracts 1, 2 and 3 shall be constructed in the location shown in Exhibit A.
- c. **Fire Protection.** Any building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other buildings in the Shopping Center.
- d. **Easements.** In the event building wall footings encroach from one Tract onto another, despite efforts to avoid that occurrence, the party onto whose Tract the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.
- e. **Outparcel(s) Development.** Any outparcel on Tract 1, Tract 2 and Tract 3 (an "Outparcel") shall be developed only under the following guidelines:
- (1) The building constructed on an Outparcel(s) shall not exceed twenty-five (25) feet in height, as measured from the mean finished elevation of the parking area of Tract 1, Tract 2 and Tract 3.
 - (2) Any buildings to be constructed on an Outparcel(s) shall not exceed 8,000 square feet in size.
 - (3) Any rooftop equipment shall be screened in a manner satisfactory to the Shops Owner;
 - (4) No rooftop sign shall be erected on the building constructed;
 - (5) No freestanding identification sign may be erected on an Outparcel(s) without approval of the Shops Owner, and in no event shall such freestanding identification sign exceed the height of the shopping center pylon sign or block the visibility of the Wal-Mart store. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3'3" in height, the type and location of such signs to be approved by the Shops Owner.
 - (6) No improvements shall be constructed, erected, expanded or altered on an Outparcel(s) until the plans for same (including site layout, exterior building materials and colors and parking) have been approved in writing by Shops Owner. No building or structure of any kind shall be erected on an Outparcel(s) except upon that area designated as a building area on the Site Plan; provided, there may be constructed and maintained a canopy or canopies projecting from said building area; normal foundations and doors for ingress and egress may project from such building area; and signs may be erected upon said canopy or canopies, so long as said signs do not obstruct the signs of any other owner or tenant of Tract 1, Tract 2 or Tract 3.
 - (7) In developing and using an Outparcel(s), the owner of an Outparcel(s) shall continuously provide and maintain a parking ratio on each Outparcel equal to one of the following: (i) twelve (12) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use in excess of five thousand (5,000) square feet (the same ratio shall be provided for a McDonald's restaurant, notwithstanding a building footprint of less than five thousand (5,000) square feet); or (ii) ten (10) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use less than five thousand (5,000) square feet

- 2 (subject to the exception above); or (iii) six (6.0) spaces per one thousand (1,000) square feet of building space for any other use. In addition, the owner shall cause landscaping areas to be added and maintained in conjunction with any building or other improvement constructed on the Outparcel(s).
- (8) The Outparcel(s) shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.
- (9) Subject to the prior written consent of the Shops Owner, any building, structure or improvement on an Outparcel(s) shall be used for retail or commercial purposes only, however, no building, structure or improvement on an Outparcel(s) may be used as a theater, night club, bowling alley, health spa, cafeteria, optical store, pharmacy, drug store, grocery store, billiard parlor or other place of recreation or amusement, or as a business serving or selling alcoholic beverages except for off-site consumption or if less than fifty percent (50%) of sales from such business is alcohol, or as a discount department store or a variety, general or "dollar" store.
- (10) The owner(s) of an Outparcel(s) shall maintain comprehensive public liability insurance, property damage and All-Risk hazard insurance on the Outparcel(s) their buildings, appurtenances and other improvements located thereon. Such insurance shall (i) be carried with reputable companies licensed to do business in the state in which the Outparcel(s) are located; (ii) have liability limits of at least \$5,000,000.00 for each occurrence, bodily injury and property damage combined; (iii) provide for full replacement value for the buildings and improvements covered thereunder and (iv) not be subject to change, cancellation or termination without at least thirty (30) days prior written notice to Wal-Mart (so long as the WM Lease is in effect) and the owners of Tract 1, Tract 2 and Tract 3.

5. **Common Areas.**

a. **Grant of Easements.**

- (1) WM Owner and Shops Owner each hereby establish and grant a nonexclusive easement for the benefit of the other (except that such easement shall not encumber or benefit an Outparcel) and their agents, customers, invitees, licensees, tenants and employees, over, through and around Tract 1, Tract 2 and Tract 3 for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above. In addition to the foregoing, WM Owner and Shops Owner hereby grant for the benefit of the Outparcel(s), nonexclusive easements for vehicular and pedestrian access, ingress, and egress over and across Tract 1, Tract 2 and Tract 3; provided, however, in no event shall the owner, occupant, licensee or invitee of any Outparcels be permitted to use Tract 1, Tract 2 or Tract 3 for vehicular parking or for any other purpose other than as described above.
- * (2) WM Owner and Shops Owner each hereby establish and grant a nonexclusive easement for the benefit of Gipson Owner, its agents, customers, invitees, licensees, tenants and employees, over, through and around Tract 1, Tract 2 and Tract 3 for

roadways, walkways and ingress and egress through the Common Areas of such Tracts.

- (3) Gipson Owner hereby establishes and grants a nonexclusive easement for the benefit of the WM Owner and the Shops Owner, and their agents, customers, invitees, licensees, tenants and employees, over, through and around Tract 4 for roadways, walkways and ingress and egress through the Common Areas of Tract 4.
- (4) Wal-Mart Owner, Shops Owner and Gipson Owner each hereby grant to the others the right to construct driveways on or across the common boundary line of Tract 1, Tract 3 and Tract 4; provided such driveways shall be constructed of the same material as the driveways then existing at the Shopping Center, shall be of a grade and construction such that the free flow of traffic between such Tracts is not interrupted and such driveways shall be constructed in the locations shown on Exhibit "A".

b. **Limitations on Use.**

- (1) **Customers.** Each party shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business at the Shopping Center.
- (2) **Employers.** the owners of Tracts 1, 2 and 3 shall use reasonable efforts to ensure that employees of businesses located on Tracts 1, 2 or 3 shall not park on the Common Areas, except in areas of Tracts 1, 2 or 3 designated on Exhibit A as "employee parking areas" if any. The owners of Tracts 1, 2 and 3 may from time to time mutually designate and approve on Tracts 1, 2 and/or 3 additional "employee parking areas" not shown on Exhibit A. Gipson Owner shall ensure that employees of businesses located on Tract 4 shall not park on the Common Areas located on Tracts 1, 2 or 3.
- (3) **General.** Any activity within the Common Areas other than its primary purpose of the Common Areas, which is to provide for access and parking for the customers, invitees and employees of those businesses conducted with the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose; provided, however, that the owners of Tracts 1, 2 and 3 shall not be permitted to undertake other activities on Tract 4 and the owner of Tract 4 shall not be permitted to undertake other activities on Tracts 1, 2 and 3. The use by the owner or tenant(s) of Tract 1, Tract 2 and Tract 4 of the Common Areas on such Tract 1, Tract 2 and Tract 4 for the display, sale and storage of merchandise and for the use of seasonal sales structures is expressly permitted; provided such owners or tenants may only display, sell or store on their respective tracts. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.

c. **Utility and Service Easements.**

- (1) WM Owner and Shops Owner hereby establish and grant a nonexclusive easement for the benefit of the other, across and under those areas of Tract 1, Tract 2 and Tract 3 not used for buildings, to install, use, maintain and repair public utility services and distribution systems (including storm drains, sewers, utilities and other proper

- Services necessary for the orderly development and operation of Tracts 1-3), now upon or hereafter installed on, across or under those areas of Tract 1, Tract 2 and Tract 3 not used for buildings, to the extent necessary to service Tract 1, Tract 2, and Tract 3.
- (2) WM Owner and Shops Owner hereby establish and grant a nonexclusive easement for the benefit of Gipson Owner on across and under that portion of Tract 1 and Tract 3 described on Exhibit E hereof, to install, use and maintain storm drainage facilities; including any detention ponds located thereon.
 - (3) The parties hereto shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. Except as specifically provided herein, the location of any utilities hereafter installed shall be determined by the owner of the Tract (the location of utilities on Tract 1 shall be determined by Wal-Mart as long as its lease for Tract 1 is in effect) upon which such utilities are to be installed. Any such installed utility services may be relocated by the owners of a Tract on such owner's Tract, subject to compliance with applicable laws, at the expense of the owner of that Tract, provided that such relocation shall not interfere with, increase the cost of, or diminish utility services to any other Tract and, further provided, that no utilities shall be relocated on Tract 1 without the prior written consent of Wal-Mart as long as its lease for Tract 1 is in effect.
- d. Water Flow.
- (1) WM Owner and Shops Owner hereby establish and grant a nonexclusive easement for the benefit of the other, to use, maintain and repair any storm water drainage system, including the Detention Ponds located on Tract 2 and Tract 3 as shown on Exhibit A (the "Storm Drainage System"), together with the right to discharge surface water runoff across portions of Tract 1 or Tract 2 or Tract 3 in accordance with the design of the Storm Drainage System. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements substantially as shown on Exhibit A (including without limitation building and building expansion, curbs, drives and paving) shall be permitted.
6. Development, Maintenance, and Taxes.
- a. Development.
 - (1) Arrangement. The arrangement of be Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement.
 - (2) Parking Area Ratio. Shops Owner, WM Owner and Gipson Owner agree that at all times there shall be independently maintained on each Tract of the Shopping Center parking area sufficient to meet the requirements of applicable governmental ordinances or regulations, provided in no event shall the parking ratio on Tract 1, Tract 2 and Tract 3 be fewer than five (5) car spaces for each one thousand (1,000) square feet of Building Area on Tract 1, Tract 2 and Tract 3. Gipson Owner agrees that it shall not seek any parking variance on any portion of Tract 4 which is within seven hundred twenty-five (725) feet of the eastern boundary of Tract 1 and Tract 3 without the prior written consent of WM Owner and Shops Owner and so long as the

- Wal-Mart lease shall be in effect, which consent shall not be unreasonably withheld or delayed. Wal-Mart Owner and Shops Owner agree that neither of them will seek any parking variance on Tract 1, Tract 2 or Tract 3 without the prior written consent of Gipson Owner which consent shall not be unreasonably withheld or delayed.
- (3) **Development Timing.** Concurrent with any building being constructed within the Building Areas of Tract 1, Tract 2 or Tract 3 by the owner of said tract (the "Developing Party"), the Common Areas of that tract shall be developed in accordance with Exhibit A at the expense of such Developing Party. In the event such construction by the Developing Party shall occur prior to the development of Tracts 1, 2 or 3, the Developing Party shall have the right to grade, pave and use any portion of the Common Areas of the non-developing party's tract (i.e., Tracts 1, 2 or 3) for access and for construction of, but not limited to, drainage structures and utility lines as is necessary to provide essential services to the Developing Party's tract. The Developing Party shall present an itemized statement of expenses incurred in the construction of said improvements to and upon the non-developing party's tract, and the non-developing party (i.e., the owners of Tract 1 or Tract 2 or Tract 3) agrees to reimburse the Developing Party for such costs within thirty (30) days of receipt thereof.
- (4) **Service Drive.** WM Owner and Shops Owner agrees that if on Exhibit A hereof a service drive is delineated on such Owner's Tract by crosshatching and is labeled as a "Service Drive", it shall develop the same simultaneously with the development and construction on Tract 1, Tract 2 and Tract 3. In the event such Owner does not comply with the provisions of the preceding sentence, (a) WM Owner shall have the right to cause any Service Drive delineated on Tract 2 or Tract 3 to be developed and to be reimbursed by the Owner of such Tract for its costs in doing so within thirty (30) days of receipt of an itemized statement of expenses, and (b) Shops Owner shall have the right to cause any service drive delineated on Tract 1 to be developed and to be reimbursed by the owner of such Tract for its costs in doing so within thirty (30) days of receipt of an itemized statement of expenses.
- b. **Maintenance.**
- (1) **Standards.** Following completion of improvements (including buildings and Common Areas) on any Tract, the owner of such Tract shall maintain such improvements in good condition and repair. The maintenance is to include, without limitation, the following:
- (a) Maintaining the surfaces of all driveways, parking areas and other paved portions of the Common Areas in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
 - (b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
 - (c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;

- (d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;
- (e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair;
- (f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and
- (g) Maintaining elements of the Storm Drainage System.

Shops Owner shall maintain the Detention Areas and related drainage facilities servicing Tract 1, Tract 2 and Tract 3.

- (2) **Expenses.** The respective owners shall pay the maintenance expense of their Tracts; provided the costs and expenses of the maintenance and repair for the Detention Ponds located on the Tract 2 and Tract 3 and the drainage facilities located on such tracts servicing Tract 1, Tract 2 and Tract 3 shall be divided prorata between the owners of Tracts 1, 2 and 3 based on the acreage of each Tract. To the extent Tract 4 shall utilize any Detention Pond located on Tract 2 or Tract 3, Gipson Owner also shall pay its pro rata share (based on acreage of the entire Shopping Center) of the costs and expenses of the maintenance and repair of the pond which it utilized. In the event the owner of any Tract shall have a use on its Tract that shall cause any increase in the capacity of any Detention Pond or the storm drainage facilities, then such Owner shall be responsible for all costs and expenses relating to such increased capacity, including maintenance, and shall obtain all governmental approvals required for such increase.
- (3) **By Agent.** Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties to maintain the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.
- c. **Taxes.** Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the real property and improvements owned by it.
- 7. **Signs.** No sign shall be located on the Common Areas on Tracts 1, 2 and 3 except signs advertising businesses conducted thereon, of which, there shall be no more than two (2) signs on the Common Areas on each Tract. No signs shall obstruct the ingress and egress shown on Exhibit A.
- 8. **Indemnification/Insurance.**
 - a. **Indemnification.** The owner of each Tract hereby indemnifies and saves the other parties harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Tract, except if caused by the act or negligence of the other party hereto.
 - b. **Insurance.**
 - (1) The owner of each Tract shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property

- damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$5,000,000.00 for injury or death of a single person, and to the limit of not less than \$5,000,000.00 for any one occurrence, and to the limit of not less than \$5,000,000.00 for property damage. The owner of Tract 1, Tract 2 and Tract 3 shall provide Wal-Mart (so long as the WM Lease is in effect), and the owner of the other listed Tracts with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without thirty (30) days prior written notice to the other party. The obligations of the owner of Tract 1 to maintain insurance under this provision may be satisfied by Wal-Mart.
- (2) At all times during the term of this Agreement, the owner of Tract 1, Tract 2 and Tract 3 shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the form of All-Risk insurance coverage in effect from time to time in the state in which the parties' respective properties are located, with such insurance to be for the full replacement value of the insured improvements. The obligations of the owner of Tract 1 to maintain insurance under this provision may be satisfied by Wal-Mart. The owner of a Tract, shall pay for any increase in the cost of insuring the improvements on the other Tract if such increase is due to the use by such owner or its tenant(s) of the first Tract.
 - (3) Policies of insurance provided for in this Paragraph 8 shall name Wal-Mart (so long as the WM Lease is in effect), WM Owner, and Shops Owner as insureds as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.
 - (4) Wal-Mart, and the owner of each Tract, each for itself and its property insurer, hereby releases the others, and their tenants, employees and agents from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any tenant, agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated under this ECR to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.
 - (5) Notwithstanding anything to the contrary contained in this Paragraph 8, so long as the net worth of Wal-Mart shall exceed One Hundred Million Dollars (\$100,000,000.00), and so long as Wal-Mart is owner or lessee of Tract 1, Wal-Mart shall have the right to retain the financial risk for any claim.

c. **Damage and Destruction.** In the event of destruction or damage to any extent to the buildings on the Shopping Center, the affected Owner shall either (i) diligently commence and pursue completion of the repair or restoration, provided if such repair or restoration affects Tract 1, such repair or restoration shall be in accordance with the Lease or (ii) within ninety (90) days after the destruction or damage clear away the ruins and leave the Tract in a clean, orderly, sightly and safe condition, provided if the damage or destruction is to Tract 1 the such clearing shall occur promptly after termination of the Lease.

9. **Eminent Domain.**

- a. **Owner's Right To Award.** Nothing herein shall be construed to give the owner of any Tract any interest in any award or payment made to another party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's Tract or giving the public or any government any rights in said Tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on Tracts 1, 2, 3 and 4 the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.
- b. **Collateral Claims.** All other owners of Tracts may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.
- c. **Tenant's Claim.** Nothing in this Paragraph 9 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.
- d. **Restoration Of Common Areas.** The owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Tract as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

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

11. **Expansion Of Shopping Center.** The parties agree that in the event the Shopping Center is expanded by ownership, control of the parties or agreement with a third party, all of the provisions of this Agreement shall apply to the expanded area and the parking to the building ratio in the expanded area shall not be less than that provided in Paragraph 6a(2). In addition, the owner of Tract 2 will permit Wal-Mart to enter any building on Tract 2 which is within sixty (60) feet of the nearest exterior wall of the building on Tract 2, and will secure for Wal-Mart such permission from other tenants of such building, if any, for such work, as may be necessary in connection with alterations, improvements, or additions to the building on Tract 1.

12. **Release from Liability.** Any person acquiring fee or leasehold title on any Tract or Outparcel subject hereto, or any expansion of the Shopping Center pursuant to Paragraph 11 or any portion thereof, shall be bound by this Agreement only as to the Tract, or portion thereof, acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner

of such Tract, or ~~portion~~ thereof, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Tracts running with the land.

13. Breach.

- a. **Parties With Remedies.** In the event of breach or threatened breach of this Agreement, only all record owners of Tract 1 as a group, or all record owners of Tract 2 as a group, or all record owners of Tract 3 as a group, or all record owners of Tract 4 as a group, or Wal-Mart so long as it or any affiliate has an interest as owner or lessee of Tract 1, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed. Notwithstanding the foregoing, the record owner of an Outparcel shall be entitled to take any action permitted by this ECR with respect to the breach of Paragraphs 5(a), 5(c) 5(d), 6(b), 6(c), 8(a), 8(b)(4) and 9.
- b. **Remedies.** If any owner shall fail to perform any covenant or condition contained in this ECR, the aggrieved party shall give the defaulting party at least thirty (30) days written notice of such alleged default; provided in the event of an emergency, no notice shall be required in order to exercise any self-help remedy. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default be not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting party shall have not in good faith commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion) the aggrieved party may institute legal proceedings for full and adequate relief from the consequences of said default or threatened default.
- c. **Right of Entry.** The defaulting party hereby grants to the aggrieved party a non-exclusive right of entry and non-exclusive easements across and under any and all parts of the defaulting party's Tract (excluding the right to enter any buildings demised to or owned by others) for all purposes reasonably necessary to enable the aggrieved party (acting directly or through agents, contractors, or subcontractors), to perform any of the terms, provisions, covenants or conditions of this ECR which the defaulting party shall have failed to perform, after notice and time to cure, as aforesaid, but no notice and time to cure need be given in the event of any emergency.

14. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter. Notwithstanding the forgoing, the owners of the Outparcel(s) shall have the right to enforce, and shall have the benefit of, only Paragraphs 5(a), 5(c), 5(d), 6(b), 6(c), 8(a), 8(b)(4) and 9.

15. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by WM Owner, Gipson Owner, Shops Owner, and Wal-Mart there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of (a) Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of Tract 1, or its successors in interest; (b) the owners of Tract 1, Tract 2, Tract 3 and Tract 4; (c) with respect to

Paragraphs 5(a), 5(c), 5(d), 6(b), 6(c), 8(a), 8(b)(4), 9 and 13, the owners of an Outparcel (to the extent such modification or cancellation affects such Outparcel); and (d) with respect to Paragraph 4(e), the owner or lessee of an Outparcel with respect to which a provision is modified or terminated.

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

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

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

19. **Transfer of Interests: Notices.**

- a. In the event that any person or entity (the "Acquiring Party") shall acquire a fee or mortgage interest in any tract subject to this ECR, or any portion thereof, the Acquiring Party shall execute and file in the land records of Cobb County, Georgia, a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this ECR may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired (the "Notice Statement"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, a copy of such Notice Statement to all other persons or entities then holding fee or mortgage interests in any tract subject to this ECR, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Cobb County, Georgia (the "Existing Interest Holders"). Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this Subparagraph (a), it shall not be entitled to receive any notice required or permitted to be given under this Declaration, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement. It is understood and agreed that the provisions of this Paragraph 19 regarding the recordation of the Notice Statement are satisfied with respect to WM Owner, Gipson Owner, Shops Owner, and Wal-Mart.
- b. Any notice hereunder shall be in writing and shall be served by overnight delivery or certified mail, return receipt requested, postage prepaid, addressed to the respective addresses of the parties as follows:

If intended for WM Owner:

Jacoby Lindbergh Properties II, L.L.C.
1000 Abernathy Road, Suite 1800
Atlanta, Georgia 30328
Attention: James F. Jacoby

If intended for Shops Owner:

Austell Shops Associates, L.L.C.
1000 Abernathy Road, Suite 1800
Atlanta, Georgia 30328
Attention: James F. Jacoby

If intended for Wal-Mart:

Wal-Mart Real Estate Business Trust

2001 S.E. 10th Street
Bentonville, Arkansas 72712
Attn: Property Management

If intended for Gipson Owner:

Gipson/East-West, L.L.C.
7 Piedmont Center, Suite 150
Atlanta, Georgia 30305
Attention: John H. Gipson

Each party to this ECR may designate by notice in writing a new or other address to which such notice shall thereafter be so given or served. A copy of any such notice shall also be contemporaneously delivered in the manner herein specified to any fee mortgagee or tenant who shall have duly registered with any party its name and address. Notice shall be deemed given when received.

20. **Consent.** The owner of Tract I agrees that for so long as the WM Lease is in effect, whenever the consent of the owner of Tract I is required under the ECR, the owner of Tract I will give such consent only after obtaining Wal-Mart consent.

21. **Obligations of the Owner of Tract I.** Wal-Mart hereby agrees that so long as the WM Lease is in effect, it will satisfy the obligations of the owner of Tract I hereunder, and will hold harmless and indemnify the owner of Tract I from any and all loss, damage, expense, fees, claims, costs, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, arising out of this ECR, except for those arising out of the acts or omissions of the owner of Tract I or its employees, agents, contractors or invitees.

22. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document. TIME IS OF THE ESSENCE OF THIS AGREEMENT. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

23. **Estoppels.** At the request of any party hereto, the other parties to this Agreement, from time to time, not to exceed three (3) per year, within thirty (30) days after such party's request, shall execute and deliver to the requesting party any reasonably requested estoppel letter with respect to the status of this Agreement. The non-requesting parties agree that such estoppel statements may be relied upon by any mortgagee, purchaser or assignee of the requesting party's interest in this Agreement or such party's tract.

IN WITNESS WHEREOF, this Agreement has been signed as of the day first above written.

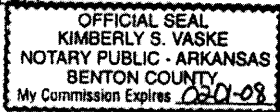
Signed, sealed and delivered
in the presence of

[Signature]
Witness

Kimberly S. Vaske
Notary Public

My commission expires: 02-01-08

[NOTARY SEAL]



WAL-MART:

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

By: [Signature]
Assistant Vice President

Attest: [Signature]
Assistant Secretary

Signed, sealed and delivered
in the presence of:

[Signature]
Witness

[Signature]
Notary Public

My commission expires:

[NOTARY SEAL]



WM OWNER:

JACOBY LINDBERGH PROPERTIES II, L.L.C., a
Georgia limited liability company

By: Austell WM G.P., Inc., a Georgia corporation,
manager

By: [Signature]
James F. Jacoby, President

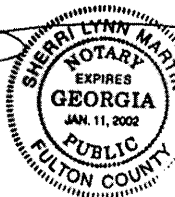
Signed, sealed and delivered
in the presence of:

[Signature]
Witness

[Signature]
Notary Public

My commission expires:

[NOTARY SEAL]



SHOPS OWNER:

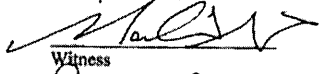
AUSTELL SHOPS ASSOCIATES, L.L.C., a
Georgia limited liability company

By: Austell Shops G.P., Inc., a Georgia corporation,
manager

By: [Signature]
James F. Jacoby, President

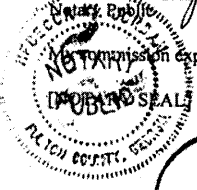
Approved as to legal terms only
By: [Signature]
WAL-MART LEGAL TEAM
Date: 1/12/08

Signed, sealed and delivered
in the presence of:



Witness

Rebecca Jordan



My commission expires:

Notary Public, Fulton County, Georgia
My Commission Expires Jan. 24, 1990



GIPSON OWNER:

GIPSON/EAST-WEST, L.L.C., a Georgia limited liability company

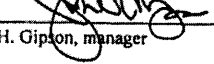
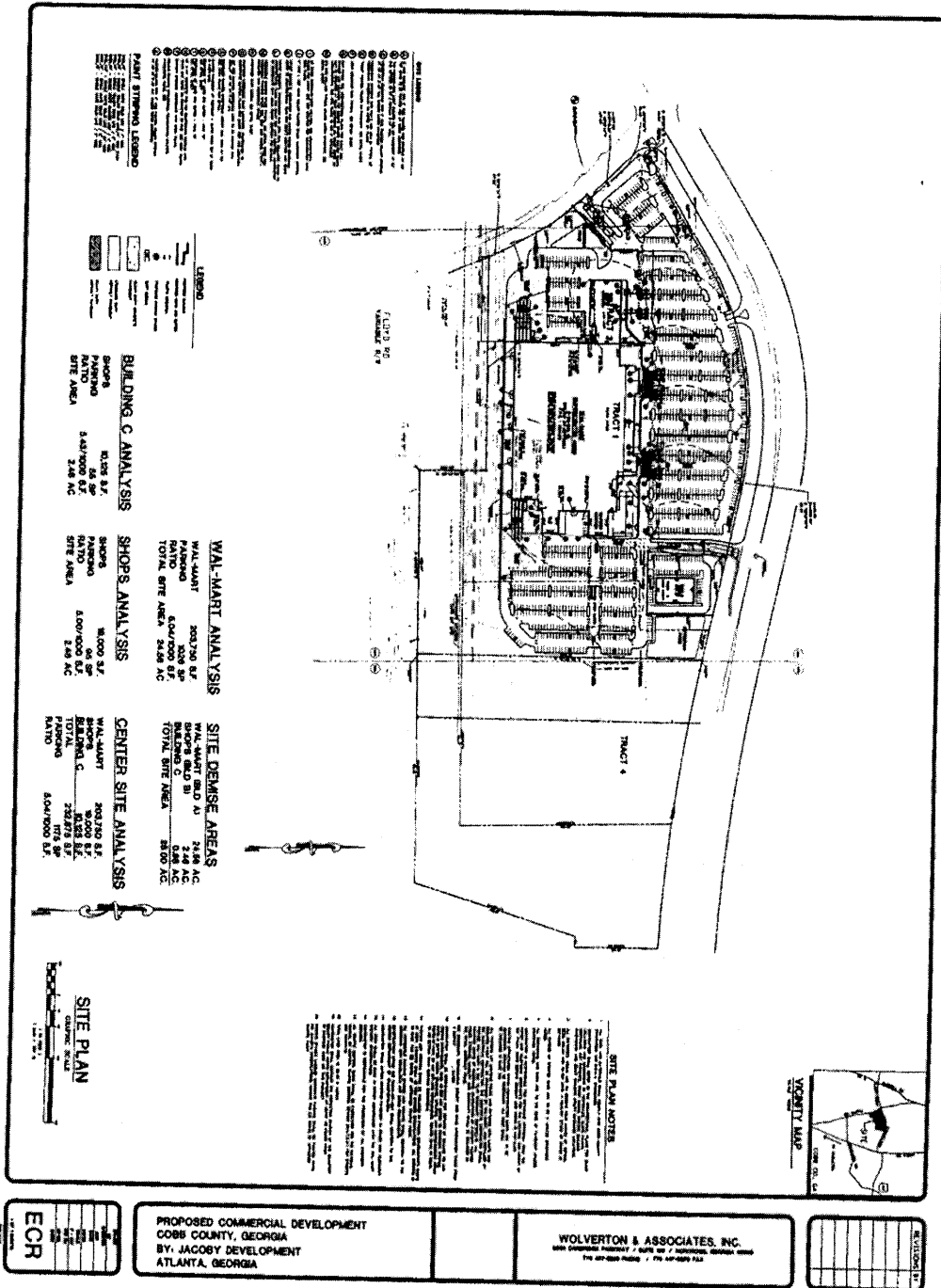
By: 
John H. Gipson, manager

Exhibit A



Walmart Tract
V1299

EXHIBIT "B"

ALL THAT TRACT or parcel of land lying and being in Land Lots 923, 924 and 927 of the 19th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at the northern point of the southeast mitered intersection of Floyd Road (variable right-of-way) and East-West Connector Road (180 foot right-of-way) at a concrete monument found; thence run northeasterly along and coincident with the southerly right-of-way of East-West Connector Road North 60°43'28" East a distance of 346.88 feet to a concrete monument found on the southerly right-of-way line of East-West Connector Road; thence continue along and coincident with said right-of-way along the arc of a curve, an arc distance of 738.97 feet (said curve having a radius of 1055.92 feet, being subtended by a chord lying to the south of said arc, bearing North 80°16'54" East, a chord distance of 723.98 feet) to an iron pin set; thence continue to run along and coincident with said right-of-way along the arc of a curve, an arc distance of 55.01 feet (said curve having a radius of 1055.92 feet, being subtended by a chord lying to the south of said arc, bearing North 78°10'37" West, a chord distance of 55.01 feet) to a concrete monument found; thence run South 76°44'03" East a distance of 212.84 feet to an iron pin set; thence leave said right-of-way line and run South 12°25'56" West a distance of 51.68 feet to an iron pin set; thence run South 02°09'05" West a distance of 78.39 feet to an iron pin set; thence run South 06°03'37" West a distance of 75.24 feet to an iron pin set; thence run South 01°29'11" West a distance of 51.22 feet to an iron pin set; thence run South 88°30'49" East a distance of 200.00 feet to an iron pin set; thence run North 01°29'11" East a distance of 208.36 feet to an iron pin set on the southerly right-of-way of East-West Connector Road; thence run along and coincident with said right-of-way South 76°44'03" East a distance of 145.26 feet to an iron pin set; thence leave said right-of-way and run South 01°45'54" West a distance of 898.21 feet to an iron pin set; thence run North 88°50'55" West a distance of 583.67 feet to a 1/2" rebar bent; thence run North 00°42'06" East a distance of 208.06 feet to an iron pin set; thence run North 89°04'11" West a distance of 679.07 feet to an iron pin set on northeasterly of right-of-way line of Floyd Road; thence run along and coincident with said right-of-way North 21°51'11" West a distance of 47.93 feet to an iron pin set; thence run North 28°34'01" West a distance of 121.55 feet to an iron pin set; thence leave said right-of-way and run South 88°31'51" East a distance of 113.35 feet to an iron pin set; thence run North 01°28'14" East a distance of 39.74 feet to an iron pin set; thence run South 88°32'03" East a distance of 136.00 feet to an iron pin set; thence run North 01°28'17" East a distance of 116.19 feet to an iron pin set; thence run South 88°31'37" East a distance of 74.16 feet to an iron pin set; thence run North 01°28'00" East a distance of 26.25 feet to an iron pin set; thence run North 66°55'04" East a distance of 28.34 feet to an iron pin set; thence run North 00°03'50" East a distance of 185.02 feet to an iron pin set; thence run North 83°31'21" West a distance of 52.75 feet to an iron pin set; thence run South 70°36'32" West a distance of 26.69 feet to an iron pin set; thence run North 88°32'00" West a distance of 214.61 feet to an iron pin set; thence run South 01°28'14" West a distance of 133.31 feet to an iron pin set; thence run South 50°12'29" West a distance of 184.91 feet to an iron pin set on the northeasterly right-of-way line of Floyd Road; thence run along and coincident with said right-of-way along the arc of a curve, an arc distance of 57.98 feet (said curve having a radius of 5765.10 feet, being subtended by a chord lying to the southwest of said arc, bearing North 39°16'43" West, a chord distance of 57.98 feet) to an iron pin set; thence continue to run along and coincident with said right-of-way North 45°42'34" East a distance of 14.53 feet to an iron pin set; thence continue to run along and coincident with said right-of-way along the arc of a curve, an arc distance of 127.59 feet (said curve having a radius of 5779.58 feet, being subtended by a chord lying to the southwest of said arc, bearing North 40°13'14" West, a chord distance of 127.59 feet) to an iron pin set; thence continue to run along and coincident with said right-of-way North 43°02'22" West a distance of 76.28 feet to a concrete monument found; thence run along and coincident with the mitered intersection of Floyd Road and East-West Connector Road North 09°39'51" East a distance of 36.64 feet to a concrete monument found; said monument being the POINT OF BEGINNING.

Said tract containing 24.516 acres and being more particularly shown as "Walmart Tract" on that certain survey for Jacoby Lindbergh Properties II, L.L.C.; Austell Shops Associates, L.L.C.; Chicago Title Insurance Company; SouthTrust Bank National Association and SouthTrust Capital Funding Corporation, prepared by Mayes, Sudderth & Etheredge Inc., bearing the seal and certification of George T. White, Georgia Registered Land Surveyor No. 1929, dated December 17, 1998 and last revised January 11, 1999.



04/1202.041

Shops A Tract
1/13/99

EXHIBIT "C"

ALL THAT TRACT or parcel of land lying and being in Land Lots 923 and 924 of the 19th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at the northern point of the southeast mitered intersection of Floyd Road (variable right-of-way) and East-West Connector Road (180 foot right-of-way) at a concrete monument found; thence run along and coincident with said mitered intersection South 09°39'51" West a distance of 36.64 feet to a concrete monument found and the southern point of the southeast mitered intersection; thence run along and coincident with the northeast right-of-way line of Floyd Road South 43°02'22" East a distance of 76.28 feet to an iron pin set; thence continue to run along and coincident with said right-of-way along the arc of a curve, an arc distance of 127.59 feet (said curve having a radius of 5779.58 feet, being subtended by a chord lying to the southwest of said arc, bearing South 40°13'14" East, a chord distance of 127.59 feet) to an iron pin set; thence continue to run along and coincident with said right-of-way South 45°42'34" West a distance of 14.53 feet to an iron pin set; thence run along and coincident with said right-of-way along the arc of a curve, an arc distance of 57.98 feet (said curve having a radius of 5765.10 feet, being subtended by a chord lying to the southwest of said arc, bearing South 39°16'43" East, a chord distance of 57.98 feet) to an iron pin set; said iron pin set being the TRUE POINT OF BEGINNING; from the TRUE POINT OF BEGINNING AS ESTABLISHED thence leave said right-of-way and run North 50°12'29" East a distance of 184.91 feet to an iron pin set; thence run North 01°28'14" East a distance of 133.31 feet to an iron pin set; thence run South 88°32'00" East a distance of 214.61 feet to an iron pin set; thence run North 70°36'52" East a distance of 26.69 feet to an iron pin set; thence run South 88°31'21" East a distance of 52.75 feet to an iron pin set; thence run South 00°03'50" West a distance of 183.02 feet to an iron pin set; thence run South 66°55'04" West a distance of 28.34 feet to an iron pin set; thence run South 01°28'00" West a distance of 26.25 feet to an iron pin set; thence run North 88°31'37" West a distance of 74.16 feet to an iron pin set; thence run South 01°28'17" West a distance of 116.19 feet to an iron pin set; thence run North 88°32'03" West a distance of 138.00 feet to an iron pin set; thence run South 01°28'14" West a distance of 39.74 feet to an iron pin set; thence run North 88°31'51" West a distance of 113.35 feet to an iron pin set; thence run along and coincident with the right-of-way Floyd Road North 28°34'01" West a distance of 49.73 feet to an iron pin set; thence continue along and coincident with said right-of-way along the arc of a curve, an arc distance of 92.82 feet (said curve having a radius of 5765.10 feet, being subtended by a chord lying to the southwest of said arc, bearing North 38°31'45" West, a chord distance of 92.82 feet) to an iron pin set; said iron pin set being the TRUE POINT OF BEGINNING.

Said tract containing 2.459 acres and being more particularly shown as "Shops A Tract" on that certain survey for Jacoby Lindbergh Properties II, L.L.C.; Austell Shops Associates, L.L.C.; Chicago Title Insurance Company; SouthTrust Bank; National Association and SouthTrust Capital Funding Corporation; prepared by Mayes, Sudderth & Etheredge Inc., bearing the seal and certification of George T. White, Georgia Registered Land Surveyor No. 1929, dated December 17, 1998 and last revised January 11, 1999.



041222.01

Shops Tract B
1/13/99

EXHIBIT "D"

ALL THAT TRACT or parcel of land lying and being in Land Lot 924 of the 19th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at the northern point of the southeast mirrored intersection of Floyd Road (variable right-of-way) and East-West Connector Road (180 foot right-of-way) at a concrete monument found; thence run northeasterly along and coincident with the southerly right-of-way of East-West Connector Road North 60°43'28" East a distance of 346.88 feet to a concrete monument found on the southerly right-of-way line of East-West Connector Road; thence continue along and coincident with said right-of-way along the arc of a curve, an arc distance of 738.97 feet (said curve having a radius of 1055.92 feet, being subtended by a chord lying to the south of said arc, bearing North 80°16'34" East, a chord distance of 723.98 feet) to an iron pin set; thence continue to run along and coincident with said right-of-way along the arc of a curve, an arc distance of 55.01 feet (said curve having a radius of 1055.92 feet, being subtended by a chord lying to the south of said arc, bearing North 78°10'17" West, a chord distance of 55.01 feet) to a concrete monument found; thence run South 76°44'03" East a distance of 212.84 feet to an iron pin set; said iron pin set being the TRUE POINT OF BEGINNING; from the TRUE POINT OF BEGINNING AS ESTABLISHED thence leave said right-of-way line and run South 12°25'56" West a distance of 51.68 feet to an iron pin set; thence run South 02°09'05" West a distance of 78.39 feet to an iron pin set; thence run South 06°03'37" West a distance of 75.24 feet to an iron pin set; thence run South 01°29'11" West a distance of 51.22 feet to an iron pin set; thence run South 88°30'49" East a distance of 200.00 feet to an iron pin set; thence run North 01°29'11" East a distance of 208.36 feet to an iron pin set on the southerly right-of-way of East-West Connector Road; thence continue along and coincident with said right-of-way North 76°44'03" West a distance of 188.26 feet to an iron pin set; said iron pin set being the TRUE POINT OF BEGINNING.

Said tract containing 1.025 acres and being more particularly shown as "Shops Tract B" on that certain survey for Jacoby Lindbergh Properties II, L.L.C.; Austell Shops Associates, L.L.C.; Chicago Title Insurance Company; SouthTrust Bank, National Association and SouthTrust Capital Funding Corporation, prepared by Mayes, Suddorth & Etheredge Inc., bearing the seal and certification George T. White, Georgia Registered Land Surveyor No. 1929, dated December 17, 1998 and last revised January 11, 1999.

04/12/01 041


EXHIBIT E

ALL THAT TRACT or parcel of land lying and being in Land Lots 92A, 925, 926 and 927 of the 19th District, 2nd Section of Cobb County, Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING commence at a concrete monument found at the mitred intersection of the easterly right-of-way line of Floyd Road (a variable right-of-way) and the southerly right-of-way line of the East-West Connector Road (a 180 foot right-of-way) and run thence along the southerly right-of-way line of the East-West Connector Road the following courses and distances: north 60 degrees 43 minutes 28 seconds east a distance of 346.88 feet to a concrete monument found; thence along a curve to the right along the arc of a 1,055.92 foot radius curve an arc distance of 738.97 feet to an iron pin set, said arc being subtended by a chord lying to the northwest thereof and having a bearing of north 40 degrees 16 minutes 54 seconds east a chord distance of 723.98 feet; thence along a curve to the right along the arc of a 1,055.92 radius curve an arc distance of 55.01 feet to a concrete monument found, said arc being subtended by a chord having a bearing of south 78 degrees 10 minutes 37 seconds east a chord distance of 55.01 feet; thence south 76 degrees 44 minutes 03 seconds east a distance of 546.36 feet to an iron pin set and the TRUE POINT OF BEGINNING; from said TRUE POINT OF BEGINNING continue along the southerly right-of-way line of the East-West Connector Road, south 76 degrees 44 minutes 03 seconds east a distance of 34.19 feet to a concrete monument found; thence continuing along said southerly right-of-way line along the arc of a 5,819.58 foot radius curve an arc distance of 888.47 feet, said arc being subtended by a chord lying to the north thereof and having a bearing of south 80 degrees 59 minutes 11 seconds east and a chord distance of 887.60 feet; thence leaving the East-West Connector Road southerly right-of-way, south 01 degree 09 minutes 25 seconds west a distance of 264.55 feet to a point; thence north 85 degrees 11 minutes 14 seconds west for a distance of 35 feet to a point; thence south 18 degrees 57 minutes 12 seconds west for a distance of 532.84 feet to a point; thence north 88 degrees 50 minutes 35 seconds west for a distance of 724.45 feet to a point; thence north 01 degree 45 minutes 54 seconds east for a distance of 898.21 feet to a point and the TRUE POINT OF BEGINNING.

Said tract containing 15.961 acres more or less and being more particularly shown on Survey for Gipson/East-West, L.L.C., et al, dated November 10, 1998, last revised January 12, 1999, by Mayes, Sudderth and Etheredge, Inc., George T. White, Georgia Registered Land Surveyor No. 1929.

065412.01



== TOTAL PAGE.09 ==