

DEVELOPMENT AGREEMENT
FOR
FOR REVISIONS TO WAL-MART PARCEL
AT SEAWALK POINTE

This agreement is entered into this ___ day of _____, 2010, between Wal-Mart Stores East, LP (“Wal-Mart”); a Delaware limited partnership, licensed to conduct business in the State of Florida and the City of Hallandale Beach, a municipal corporation organized and existing under the laws of the State of Florida.

FINDINGS OF FACT

This agreement is predicated upon the following facts:

A. A Development Agreement for Development of Seawalk Pointe and Maintenance of Improvements, dated June 19, 1992, was recorded in the Public Records of Broward County in OR Book 19718, page 633, on July 28, 1992 (“1992 Development Agreement”). This 1992 Development Agreement was entered into by the City, Wal-Mart Stores, Inc., a Delaware corporation (Wal-Mart’s predecessor in interest), Hooker Atlanta (7) Corporation, a Georgia corporation, Three Islands Associates, a Missouri general partnership having Gordon Property Company, L.P., VII, a Missouri limited partnership and Kroenke Group Investments, Inc., a Missouri corporation, as its general partners, Three Islands Associates Retail General Partnership, a Missouri general partnership, Three Islands Associates Residential General Partnership, a Missouri General Partnership, James M. Gordon and E. Stanley Kroenke, their heirs, successors and assignees, jointly and severally.

B. The City of Hallandale Beach Zoning and Land Development Code, Article III, Section 32-174(d)(2), requires the City to enter into binding Development Agreements for the development of real property with persons having legal or equitable interests in such real property;

C. Pursuant to the Zoning and Land Development Code, Section 32-174 PDD, Planned Development District and the Design Guidelines Manual, the City has adopted rules and regulations establishing procedures and requirements for Development Agreements;

D. Wal-Mart Stores East, LP has requested the City of Hallandale Beach to enter into a Development Agreement for revisions to the Wal-Mart Parcel at Seawalk Pointe and proceedings have been taken into accordance with the aforementioned City of Hallandale Beach rules and regulations as cited above;

E. The Hallandale Beach City Commission has found that this Development Agreement is consistent with the Comprehensive Plan, the Major Development Plan, the Land Development Regulations and all other applicable requirements except as otherwise provided for in this agreement;

NOW THEREFORE, THE PARTIES AGREE:

1. Definitions. For the purpose of this agreement, unless the context otherwise requires:

a. Owner shall mean Wal-Mart Stores East, L.P.

b. Project shall mean the Major Development Plan approved by the City of Hallandale Beach for construction of 22,210 square foot addition to the existing Wal-Mart located at 2551 East Hallandale Beach Boulevard. The net lot area of property is 19.88 acres and is legally described in Exhibit A attached. Wal-Mart Stores East, L.P. is the successor owner of the real property previously owned by Wal-Mart Stores, Inc, and is the only property included in the 1992 Development Agreement which is affected by the changes set forth herein.

2. Description of Real Property. The legal description of the property which is the subject of this agreement is described and contained in Exhibit A.

3. Specific Restrictions on Development of Real Property. The project shall be undertaken and carried out in accordance with all City Codes and Ordinances in effect on the effective date of this agreement, except for those exceptions and variations as set forth in this agreement or any exhibit attached hereto. All additional Code Amendments adopted after the date of this agreement and not conflicting with the exceptions and variations enumerated in this agreement shall be applicable to the project. The City and the Owner agree that the development of the project will be governed in conformance with the following agreement, limitations, and modifications:

a. Permitted Uses. The project may include all those uses permitted by the Central City Business District and land use designation of general commercial with the application of the Planned Redevelopment Overlay and all uses permitted under this agreement and in accordance with the Hallandale Beach Comprehensive Plan.

b. Permitted Development.

Retail Existing: 121,079 square feet.

Retail Proposed: 22,210 square feet

Total Proposed: 143,289 square feet

c. Parking. Parking shall be provided per Exhibit B.

d. Site Design Standards. Please refer to Exhibit B, a complete set of the plans, as to setbacks, maximum height, open space, parking, and landscaping and other applicable site development standards of the project. Exhibit B shall be maintained in the City of Hallandale Beach Development Services Department.

e. All plans shall provide detailed design data subject to final approval by the City Manager during the building permit process. The owner agrees to comply with all local,

county, state and federal laws pertaining to this construction.

4. Modification of Code Regulations. The City agrees to grant a modification of the following Code provisions.

(a) Section 32-453(d) requiring wheel stops be placed in each parking space except in parallel spaces of the area depicted in Exhibit C-1 attached.

(b) Section 32-605(d)(12) Permitted Signs, limiting additional freestanding signage in shopping centers to 32 square feet in sign area and 6 feet in height in order to allow a freestanding sign on the property 60 square feet in sign area and 6'-8' in height as depicted in Exhibit C-2 attached.

5. Special Conditions.

a. See attached Exhibit D for the list of conditions incorporated herein by reference.

b. Wal-Mart acknowledges and agrees with the Conditions of Approval set forth in Exhibit D. To the extent any provision on this Agreement more specially sets forth any requirements which are part of the Conditions of Approval, or imposes a more rigorous requirement than contained therein, such provision shall control unless expressly stated to the contrary and no provision of this Agreement shall be deemed a waiver of any applicable Code or ordinance unless expressly stated to the contrary herein, Wal-Mart agrees and understands that it shall be bound by all applicable Codes and ordinances.

c. It is understood and agreed that the permission given by the City to proceed with the revised site plan and code modifications is conditioned upon fulfillment of the terms of this Agreement. It is understood and agreed that failure to fulfill any provision of this Agreement, or the Conditions of Approval, or a specific building permit condition, may result in the non-issuance of certificates of occupancy, certificates of completion, and other regulatory approvals until such time as all conditions are complied with, and that the City shall not be liable for any direct, indirect and/or consequential damages claimed for such non-issuance.

d. Certificates or other approvals issued shall not limit or waive the City's right to otherwise require the timely fulfillment of all conditions and terms of this Agreement.

6. Sidewalks. Wal-Mart agrees to construct sidewalks in accordance with the attached Exhibit B.

7. Exhibits and Controlling Documents. The following documents are made a part hereof by this reference:

a. The Code of Ordinances of the City of Hallandale Beach.

b. The Development Plans and Specifications filed with the City.

c. In the event that the Major Development Plan and/or any of its contents

are found to be in conflict with this Development Agreement, the applicable provision of this Development Agreement shall prevail.

d. There shall be strict adherence to this Development Agreement and the Major Development Plan. Any substantive change or amendment to the aforementioned Exhibits shall be addressed in conformance with Zoning and Land Development Code, Article IV, Section 32-174(j).

8. Amendments. Any amendment to this agreement or to the development plans shall not be approved unless all parties agree to the amendment in writing. All amendments not requiring City Commission approval shall be subject to the final approval by the City Manager on behalf of the City.

9. Building Permits and Certificates of Occupancy. The City agrees to issue to the owner, upon application and approval, all required building permits, approvals or other required permits and Certificates of Occupancy for the construction, use and occupancy of the project, subject to compliance with the permit conditions, this agreement and the most current Florida Building Code Broward County Edition, as amended from time to time.

10. Fees. Wal-Mart shall pay all fees as required by City Code. Approvals are also based upon payment of the City's usual and customary fees and charges for such applications, permits or services, in effect at the time of issuance of the permit or approval, and any financial contribution identified as part of this agreement.

11. Binding Effect of Agreement. This agreement shall be binding upon the Owner and the City and upon any successive owners, their respective assignees, successors, including any mortgagees who acquire title by deed or foreclosure, legal representatives, heirs and beneficiaries (as applicable) upon acquiring any interest in the property. This Agreement shall run with the land and obligate the record title owner of the Wal-Mart Property but these obligations are specially conditioned upon Wal-Mart proceeding with the construction of the revised site plan. The City acknowledges and agrees Wal-Mart has no obligation to commence construction of the revised site plan. This agreement shall be recorded in the Public Records of Broward County, Florida.

Wal-Mart acknowledges and confirms that with the exception of the changes set forth herein, the 1992 Development Agreement is in full force and effect as it relates to the Wal-Mart Property.

12. Breach of Agreement. In the event that the Owner has materially breached the Development Agreement, prior to issuance of the Certificate of Occupancy, the Owner shall commence to cure the breach within 30 days of notice by the City. If the Owner is unable or unwilling to cure the breach and abide by the agreement, the City shall exercise its right to take appropriate legal action for the purpose of curing the breach and enforcing this agreement. In the event of any litigation arising under, or in any manner related to this Agreement, venue for any such litigation shall be in Broward County, Florida.

13. Hold Harmless. Owner agrees to and shall hold the City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from the direct or indirect operations of the Owner or those of the property owners contractor, subcontractor, agent, employee, or other person acting on his behalf which relate to the project. Property owner agrees to and shall defend the City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of property owners activities in connection with the project.

14. Monitoring Official. The City Manager or his designee shall ensure that all requirements of this agreement are met.

15. Surety. Bonding shall be as provided in the Code and applicable ordinances and regulations. This agreement shall not affect such requirements except to provide for joint and severable liability and to make clear that all requirements shall be binding on any mortgagees, successors or assigns. Irrevocable letters of credit in such form and issued by such institution as may be acceptable by the City shall serve as appropriate surety against failure to perform.

However, nothing herein shall prevent the City, in its discretion, from accepting bonds or letters of credit in lieu of any specific improvement, on site or off site, being completed within a specified time period.

16 Notices. Any notice, demand or other communication required or permitted under the terms of this agreement shall be in writing, made by overnight delivery services or certified mail, return receipt requested, and shall be deemed to be received by the addressee one (1) business day after sending by overnight delivery services, and three (3) business days after mailing, if sent by certified mail. Notices shall be addressed as provided below:

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| (1) <u>If to the City:</u> | <u>With a copy to:</u> |
| City of Hallandale Beach
Attention: City Manager
400 South Federal Highway
Hallandale Beach, FL 33009
(954) 457-1300 - Phone
(954) 457-1342 - Fax | City Attorney
City of Hallandale Beach
400 South Federal Highway
Hallandale Beach, FL 33009 |
| (2) <u>If to the Owner:</u> | <u>With a copy to:</u> |
| Wal-Mart Stores East, LP
Attention: South Florida Real Estate Manager
7725 NW 48 th Street, Suite 150.
Doral, Florida 33166 | Wal-Mart Legal Department
2001 SE 10 th Street
Bentonville, AR 72716-0550 |

17. Effective Date of the Agreement. This agreement shall become effective upon the Hallandale Beach City Commission approval and execution by the Owner and City Manager of

the City.

18. Recording. This agreement or a memorandum shall be recorded in the Public Records and shall run with the land.

19. Severability. In the event that any portion or section of this agreement is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this agreement, which shall remain in full force and effect.

IN WITNESS WHEREOF this agreement has been executed by the parties on the day and year first above written.

:

CITY OF HALLANDALE BEACH

By: _____
Mark Antonio, City Manager

Approved as to form:

David Jove, City Attorney

Witnesses:

Attest: _____
James Buschman, City Clerk

EXHIBIT "A" (1 of 2)

THAT PORTION OF PARCEL F, ACCORDING TO THE PLAT OF THREE ISLANDS 2ND SECTION, AS RECORDED IN PLAT BOOK 77 AT PAGE 37 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID PARCEL F; THENCE RUN SOUTH 89°06'38" WEST (ON AN ASSUMED BEARING) 149.08 FEET ALONG THE SOUTH BOUNDARY OF SAID PARCEL F, TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°06'38" WEST 921.17 FEET, ALONG SAID SOUTH BOUNDARY; THENCE RUN NORTH 0°53'22" WEST 47 FEET; THENCE RUN NORTH 89°06'38" EAST 22.16 FEET; THENCE RUN NORTH 0°53'22" WEST 161 FEET; THENCE RUN SOUTH 89°06'38" WEST 31 FEET; THENCE RUN NORTH 0°53'22" WEST 195 FEET; THENCE RUN NORTH 89°06'38" EAST 31 FEET; THENCE RUN NORTH 0°53'22" WEST 76.80 FEET; THENCE RUN NORTH 74°18'39" WEST 165.40 FEET, TO AN INTERSECTION WITH THE WESTERLY BOUNDARY OF SAID PARCEL F; THENCE RUN NORTH 15°41'21" EAST 167.15 FEET ALONG SAID WESTERLY BOUNDARY; THENCE RUN SOUTH 38°35'01" EAST 105.87 FEET; THENCE RUN NORTH 64°24'29" EAST 311.77 FEET; THENCE RUN NORTH 89°06'38" EAST 498.30 FEET; THENCE RUN SOUTH 46°18'32" EAST 232.10 FEET; THENCE RUN SOUTH 72°04'22" EAST 17.91 FEET; THENCE RUN SOUTH 0°53'22" EAST 43.31 FEET; THENCE RUN SOUTH 72°04'22" EAST 20.07 FEET; THENCE RUN SOUTH 0°53'22" EAST 147.23 FEET; THENCE RUN SOUTH 89°06'38" WEST 6.71 FEET; THENCE RUN SOUTH 0°53'22" EAST 289.50 FEET; THENCE RUN SOUTH 89°06'38" WEST 31 FEET; THENCE RUN SOUTH 0°53'22" EAST 78.50 FEET TO THE POINT OF BEGINNING. EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

COMMENCING AT SAID SOUTHEAST CORNER OF PARCEL F; THENCE RUN SOUTH 89°06'38" WEST (ON AN ASSUMED BEARING) 798.16 FEET ALONG SAID SOUTH BOUNDARY OF PARCEL F; THENCE RUN NORTH 0°53'22" WEST 264.50 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH 89°06'38" WEST 127.01 FEET; THENCE RUN NORTH 0°53'22" WEST 28 FEET; THENCE RUN SOUTH 89°06'38" WEST 30.50 FEET; THENCE RUN NORTH 0°53'22" WEST 49.87 FEET; THENCE RUN NORTH 89°06'38" EAST 76.29 FEET; THENCE RUN NORTH 0°53'22" WEST 172.84 FEET; THENCE RUN NORTH 89°06'38" EAST 93 FEET; THENCE RUN SOUTH 0°53'22" EAST 181 FEET; THENCE RUN SOUTH 89°06'38" WEST 11.78 FEET; THENCE RUN SOUTH 0°53'22" EAST 69.71 FEET TO THE POINT OF BEGINNING. SAID LANDS SITUATE IN THE CITY OF HALLANDALE BEACH, BROWARD COUNTY, FLORIDA.

EXHIBIT "A" (2 OF 2)

LESS AND EXCEPT:

A PORTION OF PARCEL "F", THREE ISLANDS SECOND SECTION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 77, PAGE 37, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID PARCEL "F"; THENCE RUN ALONG THE NORTH RIGHT-OF-WAY BOUNDARY OF HALLANDALE BEACH BOULEVARD (125.00 FOOT RIGHT-OF-WAY) SOUTH 89°06'38" WEST, 1238.65 FEET; THENCE NORTHWESTERLY ALONG THE EAST RIGHT-OF-WAY BOUNDARY OF THREE ISLANDS BOULEVARD (100.00 FOOT RIGHT-OF-WAY) ALONG THE ARC OF A TANGENT CURVE BEING CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 78.54 FEET; THENCE NORTH 00°53'22" WEST, 104.52 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A TANGENT CURVE BEING CONCAVE TO THE EAST, HAVING A RADIUS OF 665.00 FEET, A CENTRAL ANGLE OF 07°40'56", AN ARC DISTANCE OF 89.16 FEET TO THE POINT OF BEGINNING; THENCE NORTHEASTERLY ALONG THE EAST RIGHT-OF-WAY BOUNDARY OF SAID THREE ISLANDS BOULEVARD (100 FOOT RIGHT-OF-WAY), ALONG THE ARC OF SAID TANGENT CURVE BEING CONCAVE TO THE EAST, HAVING A RADIUS OF 665.00 FEET, A CENTRAL ANGLE OF 08°53'47", AN ARC DISTANCE OF 103.26 FEET; THENCE NORTH 15°41'21" EAST, 405.53 FEET; THENCE SOUTH 74°18'39" EAST, 8.00 FEET; THENCE SOUTH 15°41'21" WEST, 508.37 FEET TO THE POINT OF BEGINNING.

CONTAINING 646,496 SQUARE FEET OR 14.84 ACRES, MORE OR LESS.

EXHIBIT B

Exhibit B is the development plans dated October 25, 2010 for the Wal-Mart Stores East LP which are maintained in the Development Services Department.

EXHIBIT C-1



PERSPECTIVE



Hallandale, Florida # 1996

Small text detailing project information and dates.

Monument Sign

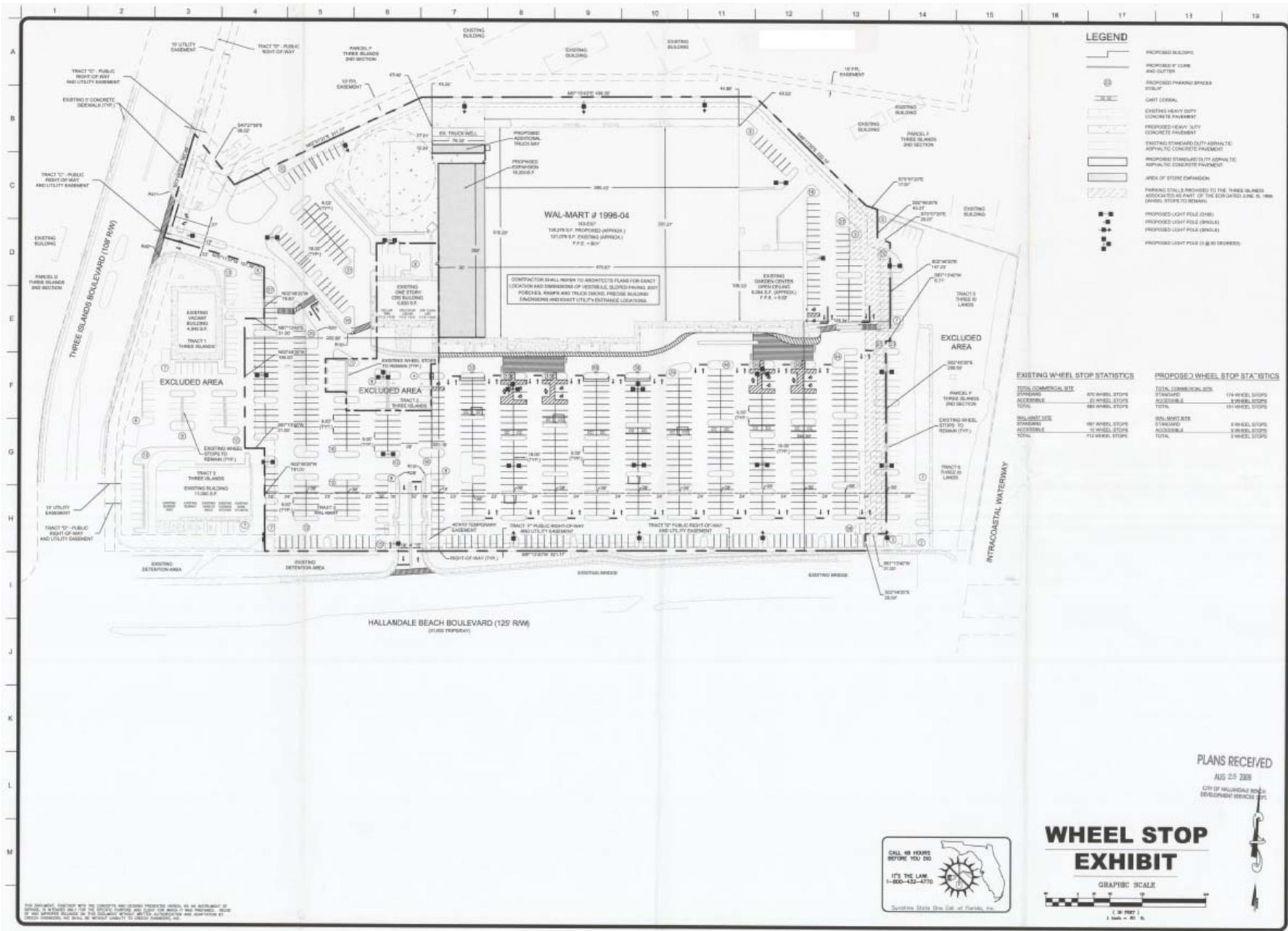


710 West Rowdown Drive
Rogers, Arkansas 72756

Phone: 479.636.3545
Fax: 479.636.1309
www.pb2.com



EXHIBIT C-2



LEGEND

- PROPOSED BUILDING
- PROPOSED UTILITY EASEMENT
- PROPOSED PARKING SPACE
- EXISTING HEAVY DUTY CONCRETE PAVEMENT
- EXISTING HEAVY DUTY ASPHALT PAVEMENT
- EXISTING STANDARD DUTY ASPHALT PAVEMENT
- EXISTING STANDARD DUTY CONCRETE PAVEMENT
- AREA OF STONE EXPANSION
- PROPOSED LIGHT POLE (DOUBLE)
- PROPOSED LIGHT POLE (SINGLE)
- PROPOSED LIGHT POLE (NO SIDEWALK)

EXISTING WHEEL STOP STATISTICS

TOTAL COMMERCIAL SITE	870 WHEEL STOPS
STANDARDS	23 WHEEL STOPS
ACCESSIBLE	847 WHEEL STOPS
TOTAL	870 WHEEL STOPS

PROPOSED WHEEL STOP STATISTICS

TOTAL COMMERCIAL SITE	174 WHEEL STOPS
STANDARDS	3 WHEEL STOPS
ACCESSIBLE	171 WHEEL STOPS
TOTAL	174 WHEEL STOPS

REVISIONS BY

CREECH
 CONSULTING ENGINEERS
 700 S.E. 10TH STREET, FORT LAUDERDALE, FL 33304
 PHONE: 352.433.1111 FAX: 352.433.1115
 WWW.CREECH-ENGINEERS.COM

WAL-MART SUPERCENTER #1996-04
 HALLANDALE BEACH, BROWARD COUNTY, FLORIDA
 PROPOSED HEAVY DUTY ASPHALT (TYP.)
 2001 SE 10TH STREET, BENTONVILLE, AR 72716

PLANS RECEIVED
 AUG 25 2008
 CITY OF HALLANDALE
 DEVELOPMENT SERVICES DEPT



WHEEL STOP EXHIBIT
 GRAPHIC SCALE
 1" = 20' (AS SHOWN)
 1" = 40' (AS SHOWN)

DATE: 8/25/08
 DRAWN BY: JAC
 CHECKED BY: JAC
 SCALE: 1" = 20'
 SHEET NO.: 001
 SHEET TOTAL: 001

WX

1 OF 1 SHEETS

Exhibit D
Conditions of approval
Wal-Mart Stores East, LP

All of the following conditions are intended to be requirements of the final design as submitted for and approved during construction document preparation and issuance of building permits. The conditions may include or supplement general requirements of the Zoning and Land Development Code, the Florida Building Code, the City Design Guidelines Manual, any other applicable Code and the approved Major Development Plan.

The Developer shall comply with the list of conditions as specified herein:

Section 1

Prior to the issuance of a building permit for the proposed development, the Owner shall make the following commitments to the City to mitigate the impacts of the proposed Development upon City Services and facilities:

1. Contribution of \$22,000 to the City's bus shelter program for a bus shelter on Three Islands Boulevard or for other transportation systems.
2. Installation of sidewalk network from Three Islands Boulevard connecting to site per site plan contained in Exhibit B.
3. Contribution of \$25,000 to the City's transit system.
4. The development shall include environmentally sensitive features including conservation measures and follow sustainability standards.
5. Contribution of \$10,000 to the City for the purpose of enhancing the City's medians. The donation will fund the installation of landscaping and other improvements on East Hallandale Beach Boulevard.
6. The owner shall construct all utilities servicing the building underground, including any existing above ground utilities to be utilized within the scope of the project.
7. The owner shall contribute \$10,000 for City's Park improvements.
8. The owner shall contribute \$25,000 to the City for Crime prevention Programs.
9. There shall be consistency in color scheme with the Wal-Mart building and the adjacent building to the west owned by Three Islands Associates.

10. The owner shall include purple piping for irrigation purposes. Irrigation for the property shall be a gray water (reclaimed water) system with the understanding that possible water will be used for the property until such time that reclaimed water is available.
11. Adherence to Wal-Mart adopted Action Plan for Shopping Center Maintenance per City Ordinance #2006-09.

Section II

Prior to issuance of the Certificate of Occupancy, the owner shall make the following commitments to City:

1. Payment to the City of traffic mitigation fee in the amount of \$96,728.00 according to City Ordinance.
2. Payment to the City of \$5,000 to cover the cost associated with re-generation of aerial photography of the property after construction or to contribute to the purchase of a GIS software system.
3. Payment to the City of \$25,000 towards the improvement/upgrade of the City's water main system by underground lines across the Intracoastal Waterway.
4. Payment to the City of \$10,000 for the Water Conservation Infrastructure Program.
5. Payment to the City of \$20,000 for City Parking Fund.
6. Payment to the City of connection fees for water and sewer according to City Ordinance.
7. Payment to the City of \$20,000 for Citywide Affordable Housing Program.