

V116448

CHARTER TITLE COMPANY

06/19/01 201537959 V116448 \$59.00
Gessner & West Bellfort (Store 3542)

V158537

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

07/06/01 101607803 V158537 \$59.00

THIS AGREEMENT is made between Wal-Mart Stores East, Inc. ("Wal-Mart") and Ruffino 73, Ltd., a Texas limited partnership ("Developer").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of that certain 9.4376 acre, more or less, tract of land described by metes and bounds on Exhibit A attached hereto and made a part hereof for all purposes (herein called the "Wal-Mart Tract");

WHEREAS, Developer is the owner of approximately 15.3654 acre, more or less, being all of the land to the north of the Wal-Mart Tract or contiguous thereto, and being that tract of land described by metes and bounds on Exhibit B attached hereto and made a part hereof for all purposes (herein called the "Developer Tract");

WHEREAS, the one hundred twenty foot (120') tract of land located on the Developer Tract and immediately contiguous to the Wal-Mart Tract shall hereinafter be referred to as "Tract A" as shown on Exhibit C attached hereto and made a part hereof for all purposes;

WHEREAS, Wal-Mart and Developer desire that said tracts be subject to the easements, 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 and Developer do hereby agree as follows:

*This document is being refiled to fill in the plat film code number.

AFTER RECORDING
HOLD FOR
CHARTER TITLE COMPANY
GF 01070041
Clerk: Cosley

1. **Building/Common Areas.**

- a. "Building Areas" as used herein shall mean those portions of the Wal-Mart Tract and the Developer Tract upon which buildings, detention ponds, fences, walls or other such improvements are built from time to time.
- b. "Common Areas" as used herein shall mean all of those portions of the Wal-Mart Tract and the Developer Tract except the Building Areas.

2. **Use.** Wal-Mart and Developer agree, that no cafeteria, theater, bowling alley, billiard parlor, night club, funeral parlor, flea market, industrial manufacturing, automobile dealership, skating rink, bar (other than incidental to a business operated primarily as a restaurant), health spa or exercise facility, adult bookstore or other establishment selling, exhibiting or distributing pornographic or obscene materials or live models or dancers, amusement arcade, car wash, car repair facility, betting parlor, central laundry or dry cleaning plant (other than a dry cleaning drop-off facility which does not use dry cleaning fluids or similar chemicals or substances on site in connection with the dry cleaning of clothes) or any business which creates strong, unusual or offensive odors, fumes, emissions or sounds shall be located or operated on the Wal-Mart Tract or Tract A. Additionally, Developer agrees that (i) no drugstore, grocery store or convenience store using or occupying over 3,450 square feet shall be constructed or operated on the Developer Tract without the prior written consent of the owner(s) of the Wal-Mart Tract; provided, however, this does not exclude a store selling groceries or drugs within a larger facility provided that the area within said store specifically allocated for the sale of prescription drugs does not exceed 3,450 square feet, and the area specifically allocated for the sale of grocery items does not exceed 3,450 square feet. Developer further agrees that except in conjunction with the sale of gasoline at a car wash facility, no gasoline service station or other establishment primarily engaged in the sale of gasoline or

diesel fuel, shall be constructed or operated on the Developer Tract without the prior written consent of the owner(s) of the Wal-Mart Tract. 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 either Wal-Mart or Developer on their respective properties. Wal-Mart and Developer each agree that either Wal-Mart or Developer may in its sole discretion and at any time during the term of this Agreement, cease the operation of its business on its respective property covered hereby; and each of Wal-Mart and Developer hereby waive any legal action for damages or for equitable relief which might be available to them because of such cessation of business activity by the other such party. In the event that Wal-Mart (or any tenant of Wal-Mart or any successor owner of the Wal-Mart Tract) ceases operation of its business as a grocery store or a drugstore on the Wal-Mart Tract for a period in excess of twelve (12) consecutive months, the restrictions set forth in this Section 2 will forever terminate and be of no further force or effect; provided, however, in the event such business operations cease on the Wal-Mart Tract for a period in excess of twelve (12) consecutive months due to reasons beyond the control of the parties, including, without limitation, flood, tornado or other adverse weather conditions, earthquake, war, riot, insurrection, strike, lockout, boycott or embargo, acts of God, casualties, delays by governmental authorities, labor disputes, unusual delays in transportation and unavailability of materials then these restrictions shall not terminate so long as Wal-Mart (or any tenant of Wal-Mart or any successor owner of the Wal-Mart Tract) diligently pursues the recommencement of such business operations on the Wal-Mart Tract within such twelve (12) consecutive month period.

3. **Common Areas.**

- a. Use of Common Areas. The Common Areas shall be used with reasonable business judgment to provide for outside sales or display areas, driveways, landscaping and parking for the customers, invitees, and employees of the businesses conducted on the Wal-Mart Tract and the Developer Tract and for servicing and supplying of the businesses on such tracts. Specifically, the Common Area located on the Wal-Mart Tract and the Developer Tract may be used for outside sales or display areas and for the storage of trailers or containers, relating to the business conducted on such tract, so long as it does not cause the Wal-Mart Tract or the Developer Tract to fail to meet the City of Houston's requisite parking ratios. Notwithstanding the foregoing, the storage of trailers and containers must only be behind or immediately beside the stores located on such tract.
- b. Grant of Easements. Each party hereto, as grantor, hereby grants to the other party hereto, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of such grantee, for the benefit of the Developer Tract and the Wal-Mart Tract a non-exclusive easement to use and cross the Common Areas during the term of this Agreement, including the aisles, driveway areas, common curb cuts, roadways and sidewalks located within such Common Areas for purposes of ingress, egress, passage and delivery of vehicles and pedestrians; provided however, no easement for parking purposes is granted by either Wal-Mart or Developer.
- c. Temporary Construction Easement. Wal-Mart and Developer shall have

temporary rights of ingress and egress to and from, together with reasonable working space on, the Developer Tract and the Wal-Mart Tract respectively in order to carry out activities related to the preparation of and the completion of improvements on the Wal-Mart Tract and the Developer Tract (the "Work"); provided, however, that (i) such rights do not entitle either party to the use of the Tract of the other for a means of access for construction vehicles over and across such tract and (ii) such rights will terminate as to any portion of either Tract upon the completion of the grading on either tract.

Wal-Mart or Developer, in the event it exercises its right of ingress and egress to and from the Developer Tract or the Wal-Mart Tract respectively, agrees to and shall use only so much of the Developer Tract or the Wal-Mart Tract respectively as is reasonably necessary to permit the Work to be performed and completed, and agrees to and shall hold Developer or Wal-Mart respectively, its successors and assigns harmless from and against any claims, damages, liabilities, actions and causes of action resulting from Wal-Mart's activities on the Developer Tract or Developer's activities on the Wal-Mart Tract in causing the Work to be performed and completed. Wal-Mart agrees, following the completion of the Wal-Mart Work, to restore the Developer Tract and Developer agrees, following the completion of the Developer Work, to restore the Wal-Mart Tract to its condition immediately prior to the commencement of the Work to the extent reasonably practicable and to the extent consistent with appropriate surface water drainage and control for the Wal-Mart Tract and the Developer Tract. Wal-Mart, when

performing the Wal-Mart Work, shall at all times maintain positive drainage on the Developer Tract such that no ponding of stormwater shall occur on the Developer Tract and Developer, when performing the Developer Work, shall at all times maintain positive drainage on the Developer Tract such that no ponding shall occur on the Wal-Mart Tract.

- d. Limitations on Use of Parking. Each party hereto shall use reasonable efforts to ensure that their respective agents, customers, invitees, licensees, tenants and employees shall not be permitted to park on the Common Areas located on the property which is owned by the other party hereto.
- e. Utility and Service Easements. Wal-Mart and Developer shall cooperate with each other in the granting to each other within the Common Areas of appropriate and proper easements for the installation, repair and replacement of water lines, storm water drainage lines and facilities, sanitary sewer lines and facilities, electric lines, gas lines, telephone lines and similar utility lines and facilities and other proper services necessary for the orderly development and operation of the Wal-Mart Tract and the Developer Tract. Both parties will use their good faith commercially reasonable efforts to cause the installation of such utility and service lines prior to any paving on either the Wal-Mart Tract or the Developer Tract. If from necessity either party has to install such lines underneath areas already paved by the other party, then such party shall restore the paving to its original or better condition promptly after the installation and at no cost to the other party. No such lines or facilities of one party shall be installed in a place where (i) the Wal-Mart building(s) are

anticipated to be constructed once Wal-Mart has provided to Developer a site plan indicating where such building(s) are anticipated to be located on the Wal-Mart Tract or (ii) the building(s) of the owner of the Developer Tract is anticipated to be constructed once the owner of the Developer Tract has provided to Wal-Mart a site plan indicating where such building(s) are anticipated to be located on the Developer Tract.

- f. Water Flow. Each party hereto agrees that upon completed development, its tract will have a self-contained storm water drainage system.
- g. Building Areas. Wal-Mart and Developer each shall have the right to build, expand or relocate its buildings from time to time on its respective property, so long as access remains open.

4. **Development, Maintenance, and Taxes.**

- a. Development. Wal-Mart and Developer agree that no barriers, fences, curbs, walls, ditches, barricades or other structures or obstacles will be erected on, along or adjacent to the common boundary lines between the Wal-Mart Tract and the Developer Tract or elsewhere on the Common Areas, so as to unreasonably interfere with, burden, impede or in any way prevent vehicular and pedestrian traffic from freely passing across the Common Areas to and from Gessner Road and West Bellfort Road; provided, however, that Wal-Mart and/or Developer shall have the right in its sole discretion to reconfigure or relocate its parking lot, driveways, drive lanes and access areas. Notwithstanding the foregoing to the contrary, with respect to the Developer Tract only, such restrictions shall only apply to that portion of the Developer

Tract which is contiguous to the Wal-Mart Tract and which is developed for retail purposes. In the event that the portion of the Developer Tract which is contiguous to the Wal-Mart Tract is developed for non-retail use, the restrictions set forth in this Section 4(a) shall not apply.

b. Maintenance. Wal-Mart, at its expense, shall maintain the Common Areas located on the Wal-Mart Tract in good condition and repair. Developer, at its expense, shall maintain the Common Areas located on the Developer Tract in good condition and repair. Such maintenance is to include, without limitation, the following:

- (i) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
- (ii) Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- (iii) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
- (iv) Placing, operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;
- (v) Maintaining all perimeter walls or fences in a good condition and state of repair; and

- (vi) Maintaining all landscaped areas and making such replacements of shrubs and other landscaping as is necessary, including regular cutting of all grassy areas in a reasonable manner.

If either party hereto shall fail to so maintain its tract or fail to maintain its respective sign or sign easement area as set forth in Section 5 hereof, the other party hereto shall have the right, after first giving at least thirty (30) days' written notice of its complaint (and opportunity of its complaint to be remedied) to go onto the property of the other party hereto and perform such maintenance work, in which event the other party hereto shall promptly reimburse such party for the expense thereof.

- 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 all or any part of the property owned by it in fee simple.
- d. Parking Ratio. In developing and using Tract A, the owner of Tract A shall continuously provide and maintain a parking ratio on such Tract A equal to one of the following: (i) fifteen (15) 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 or similar type fast-food restaurant, notwithstanding a building footprint of less than five thousand (5,000) square feet; or (ii) ten (10) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use less than five thousand (5,000) square feet

(subject to the exception above); or (iii) five (5.0) spaces per one thousand (1,000) square feet of building space for any other use.

5. Signs.

- a. Usage of Signs. No sign shall be located on the Common Areas except signs advertising the business conducted thereon.
- b. Pylon Sign. To the extent permitted by applicable codes, regulations, statutes, ordinances and laws, and in the event (i) Wal-Mart constructs a multi-user pylon sign located on the Wal-Mart Tract along West Bellfort Road, (ii) Developer develops a retail development on Tract A, and (iii) Wal-Mart has at least one hundred (100) square feet of surface area on such pylon sign to advertise its business, then Wal-Mart agrees that it shall allow Developer to install on such pylon sign a marquis or electric placard (in size, graphic style and material approved by Wal-Mart in its reasonable discretion) for the benefit of Developer's tenants. In the event that Developer elects to place its tenants' names on such pylon sign as provided above, Developer will be responsible for all costs associated with such artwork to be placed on the pylon sign plus a pro rata share, based upon the actual square footage of sign face for Wal-Mart and Developer's tenants, of the costs of constructing, installing, operating and maintaining the monument sign. Notwithstanding the foregoing to the contrary, Wal-Mart reserves the right to advertise its business on the top sixty percent (60%) portion of the pylon sign.

6. **Indemnification/Insurance.**

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

b. **Insurance.**

(i) Each party shall procure and maintain in full force and effect throughout the term of this Agreement general commercial liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage. Each party shall provide the other party with certificates of such insurance from time to time to evidence that such insurance is in force within ten (10) business days of a request by the other party. 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 at least ten (10) days' prior written notice to the other party hereto.

- (ii) At all times during the term of this Agreement, each party hereto shall keep the improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the state in which the property is located, with such insurance to be for the full replacement value of the insured improvements.
- (iii) Wal-Mart for itself and its property insurer hereby releases Developer, and Developer for itself and its property insurer hereby releases Wal-Mart from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of either Wal-Mart or Developer resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.
- (iv) Notwithstanding anything to the contrary contained in this Section 6, so long as the net worth of Wal-Mart or its parent company, shall

exceed One Hundred Million Dollars (\$100,000,000.00) and so long as either Wal-Mart or its parent company is owner of all or a portion of the Wal-Mart Tract, then Wal-Mart shall have the right to self insure and retain the financial risk imposed under this Section 7 for up to Two Million Dollars (\$2,000,000.00) per claim.

7. **Rebuild and Repair.** In the event of a casualty, each party shall diligently proceed to either (i) rebuild and repair any damaged improvements, or (ii) raze the improvements, clear the debris and grade their tract.

8. **Eminent Domain.**

a. **Right to Award.** Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's tract or giving the public or any governmental entity any rights to said tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Wal-Mart Tract or the Developer Tract, the award attributable to the land and improvements of such portion so taken shall be payable only to the owner of the fee simple title thereof, and no claim thereon shall be made by the other party.

b. **Collateral Claims.** The party whose land is not so taken (or transferred in lieu thereof) may file collateral claims with the condemning authority for its losses which are separate and apart from the value of the land area and improvements taken from the other party hereto.

- c. Tenant's Claim. Nothing in this Section 8 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between a 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 its Common Area so condemned shall promptly repair and restore the remainder of its Common Area so owned as nearly as practicable to the condition of 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 any contribution from the other party hereto.

9. Rights and Obligations of Lenders. Any mortgage or deed of trust affecting the Shopping Center or any portion of same shall at all times be subject and subordinate to the terms of this Agreement, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure, shall acquire title subject to and burdened by all of the terms of this Agreement. Each party hereto represents and warrants to the other party hereto that there is no presently existing mortgage or deed of trust lien affecting or covering its tract of property covered by this Agreement.

10. Release from Liability. Any party owning or acquiring fee or leasehold title to the Wal-Mart Tract or the Developer Tract or any portion thereof, shall be bound by this Agreement only as to the tract or portion of the tract acquired by such party. In addition, such party shall be bound by this Agreement only during the period such party is the fee or leasehold owner of such tract or portion of the tract, except as to obligations, liabilities or responsibilities that accrue during said period. Although parties may be released under this paragraph, the easements, covenants and

restrictions in this Agreement shall continue to be benefits and servitudes upon said tracts running with the land.

11. **Breach.** In the event of breach or threatened breach of this Agreement, any record owner(s) of the Wal-Mart Tract, or any record owner(s) of the Developer Tract 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 attorneys' fees, which shall be deemed to have accrued on the date such action was filed. Notwithstanding the foregoing to the contrary, the liability of the Developer hereunder is strictly and expressly limited to the assets of Ruffino 73, Ltd. Notwithstanding the foregoing to the contrary, the liability of Wal-Mart hereunder is strictly and expressly limited to Wal-Mart's interest in the Wal-Mart Tract and the buildings located thereon.

12. **Rights of Successors.** The easements, restrictions, benefits, obligations, terms and provisions 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 lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter in this Agreement.

13. **Document Execution, Modification and Cancellation.** It is understood and agreed that until this document is fully executed by both Wal-Mart and Developer, there is not and shall not be an agreement of any kind between the parties hereto relating to the matters covered by this Agreement upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits hereto) may be modified or canceled only by all of the owners of the Wal-Mart Tract and the Developer Tract.

14. **Duration.** Unless otherwise canceled or terminated, this Agreement and all the easements, rights, obligations, terms and provisions hereof shall automatically terminate and be of no further force and effect after seventy-five (75) years from the date hereof.

15. **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.

16. **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 relating to the subject matter hereof, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered by all of the owners of the Wal-Mart Tract and the Developer Tract.

17. **Miscellaneous.**

- a. **No Venture.** Nothing contained in this Agreement shall be construed to make the parties hereto partners or joint venturers for any purpose or to render either party hereto liable for the debts or obligations of the other party.
- b. **Counterparts.** This Agreement may be executed in one or more counterparts.
- c. **Severability.** If any provision of this Agreement shall be held to be invalid, inoperative or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
- d. **Choice of Law.** This Agreement is governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth in the respective acknowledgments below to be effective as of June 18, 2001.

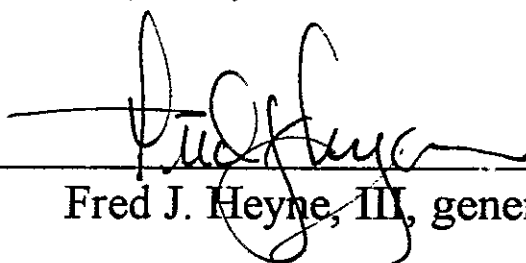
"Grantee"

Wal-Mart Stores East, Inc. *ker*

By: 
Barry Shannahan, Assistant Vice President

"Grantor"

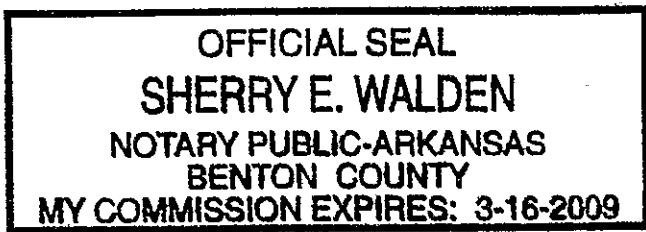
Ruffino 73, Ltd., a Texas limited partnership *(2) / or*

By: 
Fred J. Heyne, III, general partner */ or*

THE STATE OF ARKANSAS §
 §
COUNTY OF BENTON §

This instrument was acknowledged before me on June 11, 2001 by Barry Shannahan, Assistant Vice President of Wal-Mart Stores East, Inc., on behalf of such corporation.

Sherry E. Walden
Notary Public



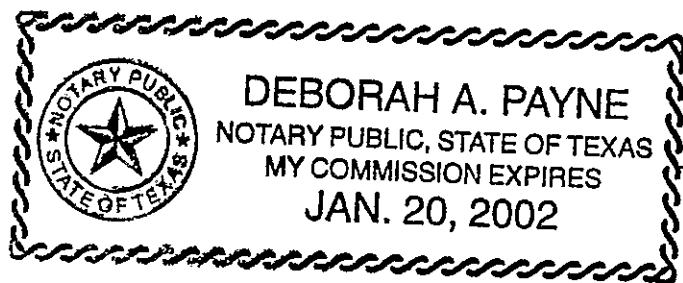
Printed Name of Notary:

Sherry E. Walden

My Commission Expires: 3-16-2009

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on MAY 30, 2001 by Fred J. Heyne, III, the general partner of Ruffino 73 Ltd., a Texas limited partnership, on behalf of such limited partnership.



Deborah A. Payne
Notary Public

Printed Name of Notary:

My Commission Expires: 1-20-02

LIST OF EXHIBITS

- Exhibit A - Description of Wal-Mart Tract
- Exhibit B - Description of Developer Tract
- Exhibit C - Description of Tract A

0002-91-2000

Exhibit A

Description of Wal-Mart Tract

All that certain 9.4376 acre (411,101 square foot) tract of land located in the H.T.&B. R.R. Co. Survey, Abstract Number 1184 and the Henry H. Cone Survey, Abstract No. 191, Harris County Texas, being out of and a part of Unrestricted Reserve "A", in Block 1, of WEST BELLFORT BUSINESS PARK, a subdivision as shown on the plat thereof recorded at Film Code Number 480090 of the Harris County Map Records, said 9.4376 acre tract being more particularly described by metes and bounds as follows: (All bearings are referenced to the plat of BENNING PARK, a subdivision as shown on the plat thereof recorded in Volume 337, Page 22 of the Harris County Map Records)

BEGINNING at the northeast corner of Block 1, in Unrestricted Reserve "A", of WEST BELLFORT SE, a subdivision as shown on the plat thereof recorded at Film Code Number 452014 of the Harris County Map Records and of a called 0.9251 acre tract of land described by deed recorded under Harris County Clerk's File Number U150267 lying in the west right-of-way line of South Gessner, (100-foot wide right-of-way) from which a 5/8-inch iron rod with plastic cap stamped "CLARK" found bears North 85° 34' 26" West, a distance of 0.24 feet for an ell corner of the herein described tract;

THENCE, South 87° 31' 57" West, along the north line of said 0.9251 acre tract and of Unrestricted Reserve "A" of said WEST BELLFORT SE, a distance of 215.63 feet to the northwest corner of said 0.9251 acre tract and of Unrestricted Reserve "A" of said WEST BELLFORT SE from which a 5/8-inch iron rod with plastic cap stamped "CLARK" found bears North 51° 28' 44" East, a distance of 0.36 feet for an ell corner of the herein described tract;

THENCE, South 02° 34' 57" East, along the west line of said 0.9251 acre tract and of Unrestricted Reserve "A" of said WEST BELLFORT SE, a distance of 309.26 feet to a 5/8-inch iron rod with plastic cap stamped "BENCHMARK ENGR" set at the southwest corner of said 0.9251 acre tract and of Unrestricted Reserve "A" of said WEST BELLFORT SE lying in the northerly right-of-way line of West Bellfort (100-foot wide right-of-way) and the arc of a curve to the right from which a 5/8-inch iron rod with plastic cap stamped "CLARK" found bears North 72° 53' 51" West, a distance of 1.23 feet for the southeast corner of the herein described tract;

THENCE, northwesterly, along said northerly right-of-way line a distance of 356.68 feet along the arc of said curve to the right having a radius of 1,950.00 feet through a central angle of 10° 28' 49" and a chord that bears North 82° 56' 40" West, a distance of 356.18 feet to a 5/8-inch iron rod with plastic cap stamped "COBB FINDLEY" found at the end of said curve;

THENCE, North 77° 42' 16" West, continuing along said common line, a distance of 71.56 feet to an "X" scribed in concrete found at an angle point;

THENCE, North 77° 49' 25" West, continuing along said common line, a distance of 15.14 feet to the southeast corner of a called 0.219 acre parcel described by deed recorded under Harris County Clerk's File Number R401054 and the southwest corner of a 35-foot wide access easement described

iron rod with plastic cap stamped "COBB FINDLEY" found bears North $61^{\circ} 48' 59''$ West, a distance of 0.26 feet at an angle point of the herein described tract;

THENCE, North $02^{\circ} 33' 23''$ West, along the east line of said 0.219 acre parcel and the west line of said 35-foot wide access easement, a distance of 79.97 feet to a 5/8-inch iron rod with plastic cap stamped "BENCHMARK ENGR" set at the northeast corner of said 0.219 acre parcel from which a 5/8-inch iron rod found bears South $04^{\circ} 50' 00''$ West, a distance of 0.85 feet for an ell corner of the herein described tract;

THENCE, South $87^{\circ} 24' 09''$ West, along the north line of said 0.219 acre parcel, a distance of 167.00 feet to the northwest corner of said 0.219 acre parcel lying in the east line of a called 0.640 acre parcel of land designated as Tract I and described by deed recorded under Harris County Clerk's File Number U463993 from which a 5/8-inch iron rod found bears South $05^{\circ} 35' 11''$ West, a distance of 0.24 feet at an ell corner of the herein described tract;

THENCE, North $02^{\circ} 28' 11''$ West, along said east line, a distance of 50.00 feet to a 5/8-inch iron rod found at the northeast corner of said 0.640 acre parcel lying in the south line of a called 8.938 acre tract of land designated as Tract II and described by deed recorded under Harris County Clerk's File Number U463993, same being the south line of Unrestricted Reserve "C", Block 3, in WESTBRAE PARK, SECTION TWO, a subdivision as shown on the plat thereof recorded in Volume 319, Page 135 of the Harris County Map Records at an ell corner of the herein described tract;

THENCE, North $87^{\circ} 24' 09''$ East, along the south line of said 8.938 acre tract and the south line of said Unrestricted Reserve "C", a distance of 58.75 feet to the southeast corner of said 8.938 acre tract and of said Unrestricted Reserve "C" from which a 5/8-inch iron rod with plastic cap stamped "PREJEAN 4925" found bears North $31^{\circ} 45' 28''$ West, a distance of 0.03 feet at an ell corner of the herein described tract;

THENCE, North $02^{\circ} 35' 35''$ West, along the east line of said 8.938 acre tract and of said Unrestricted Reserve "C", a distance of 30.00 feet to an angle point from which a 5/8-inch iron rod found bears South $20^{\circ} 29' 52''$ East, a distance of 0.20 feet;

THENCE, North $02^{\circ} 34' 49''$ West, continuing along the east line of said 8.938 acre tract and of said Unrestricted Reserve "C", a distance of 424.17 feet to a 5/8-inch iron rod with plastic stamped "BENCHMARK ENGR" found for the northwest corner of the herein described tract;

THENCE, North $87^{\circ} 24' 05''$ East, a distance of 773.36 feet to a 5/8-inch iron rod with plastic stamped "BENCHMARK ENGR" set lying in the west right-of-way line of said South Gessner for the northeast corner of the herein described tract;

THENCE, southwesterly, along said west right-of-way line a distance of 17.93 feet along the arc of said curve to the right having a radius of 1,950.00 feet through a central angle of $00^{\circ} 31' 37''$ and a chord that bears South $01^{\circ} 55' 04''$ West, a distance of 17.93 feet to a 5/8-inch iron rod with cap found for the point of tangency of said curve;

THENCE, South $02^{\circ} 10' 51''$ West, continuing along said west right-of-way line, a distance of 74.48 feet to a 5/8-inch iron rod with cap found for the point of curvature of a curve to the left;

THENCE, southeasterly, continuing along said west right-of-way line, a distance of 170.42 feet along the arc of said curve to the left having a radius of 2,050.00 feet through a central angle of $04^{\circ} 45' 47''$ and a chord that bears South $00^{\circ} 12' 03''$ East, a distance of 170.37 feet to the point of tangency of said curve from which a 5/8-inch iron rod with plastic cap stamped "PREJEAN 4925" bears South $82^{\circ} 45' 47''$ West, a distance of 0.40 feet;

THENCE, South $02^{\circ} 34' 57''$ East, continuing along said west right-of-way line, a distance of 95.03 feet to the **POINT OF BEGINNING** and containing a computed area of 9.4376 acres (411,101 square feet) of land.

Exhibit B

Description of Developer Tract

All that certain 15.3654 acre (669,316 square foot) tract of land located in the H.T.&B. R.R. Co. Survey, Abstract Number 1184, Harris County Texas, being out of and a part of Unrestricted Reserve "A", in Block 1, of WEST BELLFORT BUSINESS PARK, a subdivision as shown on the plat thereof recorded at Film Code Number 480090 of the Harris County Map Records, said 15.3654 acre tract being more particularly described by metes and bounds as follows: (All bearings are referenced to the plat of BENNING PARK, a subdivision as shown on the plat thereof recorded in Volume 337, Page 22 of the Harris County Map Records)

BEGINNING at a 5/8-inch iron rod with plastic cap stamped "BENCHMARK ENGR" set lying in the west right-of-way line of South Gessner (100-foot wide right-of-way) at the southeast corner of Unrestricted Reserve "D", of WESTBRAE PARK, SECTION THREE, a subdivision as shown on the plat thereof recorded in Volume 325, Page 44 of the Harris County Map Records for the northeast corner of the herein described tract

THENCE, South $02^{\circ} 26' 07''$ East, along said west right-of-way line, a distance of 733.96 feet to a 5/8-inch iron rod with cap found for the point of curvature of a curve to the right;

THENCE, southeasterly, continuing along said west right-of-way line a distance of 139.18 feet along the arc of said curve to the right having a radius of 1,950.00 feet through a central angle of $04^{\circ} 05' 22''$ and having a chord that bears South $00^{\circ} 23' 26''$ East, a distance of 139.15 feet to a 5/8-inch iron rod with cap set for the southeast corner of the herein described tract;

THENCE, South $87^{\circ} 24' 05''$ West, a distance of 773.36 feet to a 5/8-inch iron rod with plastic cap stamped "BENCHMARK ENGR" set lying in the east line of a called 8.938 acre tract of land designated as Tract II as described by deed recorded under Harris County Clerk's File Number U463993 and WESTBRAE PARK, SECTION TWO, a subdivision as shown on the plat thereof recorded in Volume 319, Page 135 of the Harris County Map Records for the southwest corner of the herein described tract;

THENCE, North $02^{\circ} 34' 49''$ West, along the east line of said 8.938 acre tract and of said WESTBRAE PARK, SECTION TWO, at a distance of 26.02 feet pass the southeast corner of a called 87,192 square feet tract of land described by deed recorded under Harris County Clerk's File Number P794604 and being the northeast corner of said 8.938 acre tract from which a 3/4-inch iron pipe found bears North $85^{\circ} 54' 17''$ East, a distance of 0.89 feet, continuing along said course, for a total distance of 441.03 feet to a 5/8-inch iron rod with plastic cap stamped "BENCHMARK ENGR" for the northeast corner of said 87,192 square feet tract lying in the south right-of-way line of Benning Drive (60-foot wide right-of-way) as dedicated by the plat of said WESTBRAE PARK, SECTION TWO, and by said plat of WEST BELLFORT BUSINESS PARK and from which a 3/4-inch iron pipe found bears North $86^{\circ} 13' 36''$ East, a distance of 1.29 feet, same point being the beginning of a curve to the left;

THENCE, northwesterly, along said right-of-way line a distance of 314.16 along the arc of said curve to the left having a radius of 60.00 feet through a central angle of $300^{\circ} 00' 00''$ and having a chord that bears North $02^{\circ} 34' 49''$ West, a distance of 60.00 feet to a 5/8-inch iron rod with plastic cap stamped "BENCHMARK ENGR" set at the southeast corner of THE COMMONS AT WESTBRAE, SECTION ONE, a subdivision as shown on the plat thereof recorded in Volume 324, Page 1 of the Harris County Map Records and being the northeast corner of said WESTBRAE PARK, SECTION TWO from which a 3/4-inch iron pipe found bears North $78^{\circ} 51' 12''$ East, a distance of 1.54 feet, same point being the end of said curve;

THENCE, North $02^{\circ} 34' 49''$ West, along the east line of said THE COMMONS AT WESTBRAE, a distance of 372.17 feet to a 1/2-inch iron rod found at an ell corner of said THE COMMONS AT WESTBRAE for the northwest corner of the herein described tract;

THENCE, North $87^{\circ} 24' 56''$ East, along an interior line of said THE COMMONS AT WESTBRAE, at a distance of 444.99 feet pass the southwest corner of said Unrestricted Reserve "D", of WESTBRAE PARK, SECTION THREE and being an ell corner of said THE COMMONS AT WESTBRAE, continuing along said course, for a total distance of 780.54 feet to the **POINT OF BEGINNING** and containing a computed area of 15.3654 acres (669,316 square feet) of land.

Exhibit C

Description of Tract A

All that certain 2.1393 acre (93,188 square foot) parcel of land located in the H.T.&B. R.R. Co. Survey, Abstract Number 1184, Harris County Texas, being out of and a part of Unrestricted Reserve "A", in Block 1, of WEST BELLFORT BUSINESS PARK, a subdivision as shown on the plat thereof recorded at Film Code Number 480090 of the Harris County Map Records, said 2.1393 acre parcel being more particularly described by metes and bounds as follows: (All bearings are referenced to the plat of BENNING PARK, a subdivision as shown on the plat thereof recorded in Volume 337, Page 22 of the Harris County Map Records)

COMMENCING FOR REFERENCE at a 5/8-inch iron rod with plastic cap stamped "BENCHMARK ENGR" set for the northeast corner of a called 87,192 square feet tract of land described by deed recorded under Harris County Clerk's File Number P794604 lying in the south right-of-way line of Benning Drive (60-foot wide right-of-way) as dedicated by the plat of WESTBRAE PARK, SECTION TWO, a subdivision as shown on the plat thereof recorded in Volume 319, Page 135 of the Harris County Map Records and by said plat of WEST BELLFORT BUSINESS PARK and from which a 3/4-inch iron pipe found bears North 86° 13' 36" East, a distance of 1.29 feet;

THENCE, South 02° 34' 49" East, along the east line of said 87,192 square feet tract and the east line of said WESTBRAE PARK, SECTION TWO, a distance of 321.03 feet to the **POINT OF BEGINNING** and being the northwest corner of the herein described tract;

THENCE, North 87° 24' 05" East, a distance of 778.54 feet to a point lying in the west right-of-way line of South Gessner (100-foot wide right-of-way) and being on the arc of a curve to the right at the northeast corner of the herein described tract;

THENCE, southeasterly, along said right-of-way line a distance of 120.13 along the arc of said curve to the right having a radius of 1,950.00 feet through a central angle of 03° 31' 47" and having a chord that bears South 00° 06' 38" East, a distance of 120.11 feet to a 5/8-inch iron rod with plastic cap stamped "BENCHMARK ENGR" set for the southeast corner of the herein described tract;

THENCE, South 87° 24' 05" West, a distance of 773.36 feet to a 5/8-inch iron rod with plastic cap stamped "BENCHMARK ENGR" set lying in the east line of a called 8.938 acre tract of land designated as Tract II as described by deed recorded under Harris County Clerk's File Number U463993 and said WESTBRAE PARK, SECTION TWO for the southwest corner of the herein described tract;

THENCE, North 02° 34' 49" West, along the east line of said 8.938 acre tract and of said WESTBRAE PARK, SECTION TWO, at a distance of 26.02 feet pass the southeast corner of said 87,192 square feet tract and being the northeast corner of said 8.938 acre tract from which a 3/4-inch iron pipe found bears North 85° 54' 17" East, a distance of 0.89 feet, continuing along said course,

for a total distance of 120.00 feet to the **POINT OF BEGINNING** and containing a computed area of 2.1393 acres (93,188 square feet) of land.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED. In the Official Public Records of Real Property of Harris County, Texas on

JUL - 6 2001



Beverly B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

FILED
2001 JUL - 6 AM 11:12
Beverly B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

FILED
2001 JUN 19 AM 11:44
Beverly B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

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JUN 19 2001
Beverly B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS



RECORDERS MEMORANDUM
ALL BLACKOUTS, ADDITIONS AND CHANGES
WERE PRESENT AT THE TIME THE INSTRUMENT
WAS FILED AND RECORDED.

5416-92-145