

**MEMORANDUM OF UNDERSTANDING BETWEEN SOUTH RIVER CITY CITIZENS  
NEIGHBORHOOD ASSOCIATION AND WAL-MART**

**I. Overall Agreement Structure and Statements of Purpose**

In exchange for the South River City Citizens Neighborhood Association (SRCC)'s endorsement of the zoning change of the site in question near Ben White and IH35 regarding a proposed Wal-Mart (hereinafter site in question), Wal-Mart agrees to alter the site plans for the site in question and comply with such site plans in accordance with the conditions and procedures further described in this Memorandum of Understanding (hereinafter Memo), including attached letters, exhibits, site plans and elevations. SRCC agrees to work with Wal-Mart as described in this Memo, and to provide reasonable political support and assistance with processing the related permits and approvals through the City process for this Wal-Mart construction to implement the terms of this Memo by making available an officer or spokesperson for the SRCC to represent the SRCC during such process.

- a) Exhibit A: Mr. Suttle's 12/3/03 letter to SRCC
- b) Exhibit B: The new draft site with infiltration controls
- c) Exhibit C: 12/3/03 draft elevation

**Statement of SRCC:** SRCC would like to thank Wal-Mart for coming to this agreement and submitting changes to their original site plan that, according to the SRCC engineers, will infiltrate storm water that would otherwise be discharged from the site to preserve some or all of the Blunn Creek base flow that currently originates from this site. But Wal-Mart should also recognize that the SRCC community is a diverse one, with good people of diverse opinions, some of who are still shocked that we had to expend so much energy simply to save Blunn Creek. Supporters of this agreement not only look forward to the future relationship with this Wal-Mart to enhance this community watershed partnership, but also in building the understanding that rivers are saved one creek watershed at a time.

**Statement of Wal-Mart:** Wal-Mart would like to thank SRCC for engaging in the discussion which has led to this agreement and SRCC's endorsement of the zoning change and site plan for the Wal-Mart on Ben White Boulevard. From the start, Wal-Mart was committed to meeting the City's standards for development on its site. These City standards reflect the City's policy of protecting the watersheds in our community and Wal-Mart was prepared to fully comply with them, thereby fulfilling the City's policy of protection of Blunn Creek. However, at the request of SRCC, Wal-Mart is willing to voluntarily alter its plans according to the attachments to address the alleged concerns raised by SRCC's engineer (Glenrose Engineering and Lauren Ross) with respect to Blunn Creek. Wal-Mart also looks forward to a continuing relationship with SRCC throughout the construction and operation of the Wal-Mart Supercenter on Ben White Boulevard.

## II.

Wal-Mart anticipates closing on (i.e. finalizing the purchase of) the site in question upon securing necessary permits for construction and operation of the Wal-Mart. It is anticipated that the City Council will approve the zoning change on December 11, 2003. It is anticipated that subdivision and site plan and building permit will be approved by about March 1, 2004. It is anticipated that closing will occur within 10 days of the issuance of the building permit.

## III.

Within 10 days of closing, Wal-Mart will draft and file a public restrictive covenant, to be approved by SRCC, between Wal-Mart and the City of Austin incorporating the above in Number 1 and appropriate sections of this agreement (including Exhibits A, B and C).

## IV.

In addition, Wal-Mart would like to ensure the recognition of its special relationship with SRCC, the land and community in and around the site in question by the following commitments:

a. In addition, to the normal and customary expenses incurred for processing approvals through the City of Austin, Wal-Mart has voluntarily incurred additional expenses in reviewing and responding to SRCC's concerns. Wal-Mart also recognizes that SRCC has incurred some expenses in the development of this agreement. At SRCC's request, Wal-Mart has agreed to reimburse SRCC \$25,000 for its expenses incurred, or that are expected to be incurred regarding issues related to the above SRCC Statement. It is anticipated that SRCC will deposit the funds in its existing non-profit account or similar account. Wal-Mart will make such \$25,000 reimbursement contribution within 10 days of the closing referenced above.

b. Upon the Grand Opening of the Wal-Mart at the site in question, Wal-Mart's Ben White store manager will evaluate the present relationship with SRCC to anticipate how it may best cooperate with the community to enhance Wal-Mart's relationship with the community and the surrounding watersheds. SRCC will assist in this effort.

c. Performance Issues: The SRCC and Wal-Mart will continue discussions on criteria to ensure that the construction and operation of facility on the site in question ensure compliance with the standards of this agreement. The Site Plan shall be substantially consistent with this agreement and as shown in the attached exhibit. As referenced in the December 3, 2003 attached letter, the City of Austin will have the right for reasonable access to the storm water facilities on the site in question. In addition:

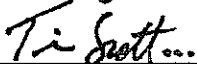
- i. Wal-Mart will allow SRCC's engineer or designated inspector access for inspection of the temporary and permanent control measures installed to control stormwater runoff during the construction activities. Wal-Mart's

- representative will respond in writing (if requested by SRCC) to comments provided by SRCC's inspector.
- ii. Wal-Mart will make their Stormwater Pollution Prevention Plan (SWPPP) for their construction activities, pursuant to the TPDES Stormwater Permit, TXR150000, available for review by the SRCC. The intent of SRCC is to verify Wal-Mart's full compliance with the stormwater discharge permit for this construction activities.
  - iii. Wal-Mart will present to SRCC a maintenance plan for the permanent storm water control system. The maintenance plan will designate Wal-Mart staff who will be responsible for implementing the plan, define specific maintenance tasks and the schedule for routine inspections and maintenance activities. The maintenance plan shall also include a description of the proposed follow-up protocol for addressing deficiencies found during the inspection procedures.
  - iv. Wal-Mart will notify SRCC at any particular time who would be the appropriate site manager who has the authority to confer with SRCC and respond to their site plan compliance requests.
  - v. Wal-Mart will allow a SRCC representative access for final construction inspection of the permanent storm water controls. The intent of SRCC's inspection is to satisfy the neighborhood that the permanent stormwater controls have been installed according to the approved site plan. Wal-Mart will review and respond to any requests for action made by SRCC's engineer.

V.

In addition, although Wal-Mart voluntarily agreed to a majority of SRCC's requests, Wal-Mart and SRCC recognize that some of the issues that have been a part of the negotiating process have not been agreed to by Wal-Mart, and an inventory of the issues still remaining is listed on Attachment D. Wal-Mart and SRCC remain committed to a continuing dialogue into the future about issues that will enhance each other's value in a community dialogue, especially as it may be applied to the living Blunn Creek Watershed.

Signature Page



Wal-Mart Representative

(1) Ad Hoc SRCC Committee Member

(2) Ad Hoc SRCC Committee Member

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(3) Ad Hoc SRCC Committee Member

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(4) Ad Hoc SRCC Committee Member

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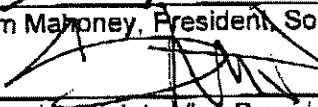
(5) Ad Hoc SRCC Committee Member

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(6) Ad Hoc SRCC Committee Member



(1) Tim Mahoney, President, South River City Citizens, Ad Hoc SRCC Committee Member



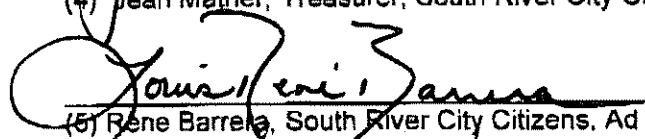
(2) Sherri Ancipink, Vice-President, South River City Citizens, Ad Hoc SRCC Committee Member



(3) Kenny Hilbig, Secretary, South River City Citizens, Ad Hoc SRCC Committee Member



(4) Jean Mather, Treasurer, South River City Citizens, Ad Hoc SRCC Committee Member



(5) Rene Barrera, South River City Citizens, Ad Hoc SRCC Committee Member



(6) Jeff Kessel, South River City Citizens, Ad Hoc SRCC Committee Member

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**EXHIBIT A:** Richard Suttle's 12/3/03 letter to SRCC

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**EXHIBIT B:** The new site with infiltration controls

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**EXHIBIT C:** 12/3/03 draft elevation

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**EXHIBIT D:** List of issues still to be decided

1. Pervious pavement
2. Concrete (non-asphalt) pavement
3. Additional list/inventory

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**EXHIBIT E: INTENTIONALLY LEFT BLANK**

EXHIBIT "A"**ARMBRUST & BROWN, L.L.P.**

ATTORNEYS AND COUNSELORS

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(512) 435-2300

FACSIMILE 512-435-2380

RICHARD T. SUTTLE, JR.  
(512) 435-2310  
rsuttle@ablaw.com

December 3, 2003

VIA FACSIMILE (512) 447-3566Tim Mahoney  
President, South River City Citizens  
P.O. 1961  
Austin, Texas 78767

Re: Wal-Mart Zoning Case on Ben White Boulevard

Dear Tim:

I represent and I am writing to you on behalf of Wal-Mart. Wal-Mart has approximately 21.5 acres under contract located generally on Ben White Boulevard at I-35. Approximately 1.4 acres of the tract is zoned SF-3 and I have filed a zoning case requesting LI zoning to be consistent with the rest of the acreage. As part of the zoning request, we have met with representatives of your neighborhood group several times to try to get SRCC's support for the case. Most recently we have met with representatives of Glenrose Engineering to discuss possible measures to enhance the project and its potential impact on Blunn Creek. We have been working off SRCC's list of requests entitled "Conditions for Acceptance of Zoning Approval for Proposed Wal-Mart at Headwaters of Blunn Creek on Ben White".

After this morning's meeting, it appears that if SRCC will support the zoning change and the project, Wal-Mart is willing to commit to the following if a Wal-Mart store is built on the site:

1. No diminishment of existing base flow rate and volume from site. Maintain at least 95% of the existing site average annual infiltration. Response: Wal-Mart will provide water quality treatment for approximately 109,000 cubic feet of storm runoff using applicable City of Austin storm water controls. This is approximately 25% more treatment capacity than current City of Austin code requires. Wal-Mart will provide storage and conveyance to retain and infiltrate approximately 134,000 cubic feet of storm runoff on site. Wal-Mart will provide area and suitable conveyance to infiltrate approximately 109,000 cubic feet of storm runoff within 40 hours of the end of a rainfall event. Assuming unit

**ARMBRUST & BROWN, L.L.P.**

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head and an average permeability of .5 inches per hour for subsoils, approximately 65,400 square feet of infiltration area will be provided. Wal-Mart agrees to provide a rainwater harvesting system which will consist of rooftop rainwater conveyance storage and appropriate distribution for at least 1/2 inch over the roof area or approximately 8,600 cubic feet. The infiltration areas will include the water quality and detention pond along with depressed landscaping areas within the parking lot and along the eastern side of the building. It is our understanding that this fully meets SRCC's request on this issue.

2. **Enhanced water quality requirements.** Response: See above. In addition, Wal-Mart will develop and implement an integrated pest management system meeting City of Austin specifications. Wal-Mart will landscape using native plant species in accordance with the recommendations of the Austin "Grow Green" Program. Wal-Mart will install an in-store "Grow Green" information kiosk in the garden center of the Wal-Mart. Wal-Mart will allow reasonable access to the infiltration sites by the City of Austin. Wal-Mart will not use or sell coal tar sealants in its store or on its parking lot. Wal-Mart will provide a general construction sequence and policy for hazardous materials handling to SRCC for review and comment.
3. **Neighborhood compatibility design standards.** Response: Lighting: Light poles along the side of the building and behind the building will be lowered to 30 feet mounting height and will use a 400 watt fixture. We will use flat glass lenses throughout the site. In the front of the store, the standard Wal-Mart fixtures will be used except that they will be the flat glass without any sag lenses. Wal-Mart will install lighting so that no direct beams leave the site or are projected into the sky. Wal-Mart will install 30% more plant material than required by the current City of Austin Landscaping Code. Wal-Mart will use a design on its façade that is substantially similar to its store located on I-35 on Parmer Lane with modifications to incorporate architectural features similar St. Edwards. Type 3 bike racks will be provided in accordance with City of Austin specifications and no reduction will be requested. Wal-Mart will use the same or similar materials to enclose its garden center as was used on the I-35 and Parmer store. Wal-Mart will incorporate the use of skylights in its interior lighting program along with energy saving controls to reduce electrical consumption. Wal-Mart will provide 24-hour security.

These are the items that Wal-Mart will commit to at this time if SRCC will support its zoning case and project. There are other items still under consideration by Wal-Mart that have not been resolved but we are still considering them (specifications for low VOC paints, sealants and finishes, a test area for pervious pavement, among others). I am unable to get a definitive answer on those answers prior to your 4:30 p.m. rally today.

If this letter accurately outlines terms under which SRCC could support the Wal-Mart on Ben White, and if you need one more week to discuss this with SRCC, Wal-Mart does not object



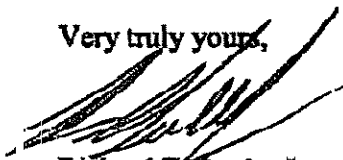
**ARMBRUST & BROWN, L.L.P.**

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to a one week postponement of third reading. This agreement to the postponement is made in the spirit of cooperation and with the understanding that Wal-Mart's commitments contained herein are the basis for support of its project by SRCC. If you want the case postponed, I will not object with the understanding that no objections will be raised by SRCC for the item to be taken up at the December 11 Council meeting.

Thank you for all the time you've taken on this project and Wal-Mart looks forward to SRCC's support of this project. If you have any questions or comments, please do not hesitate to contact me.

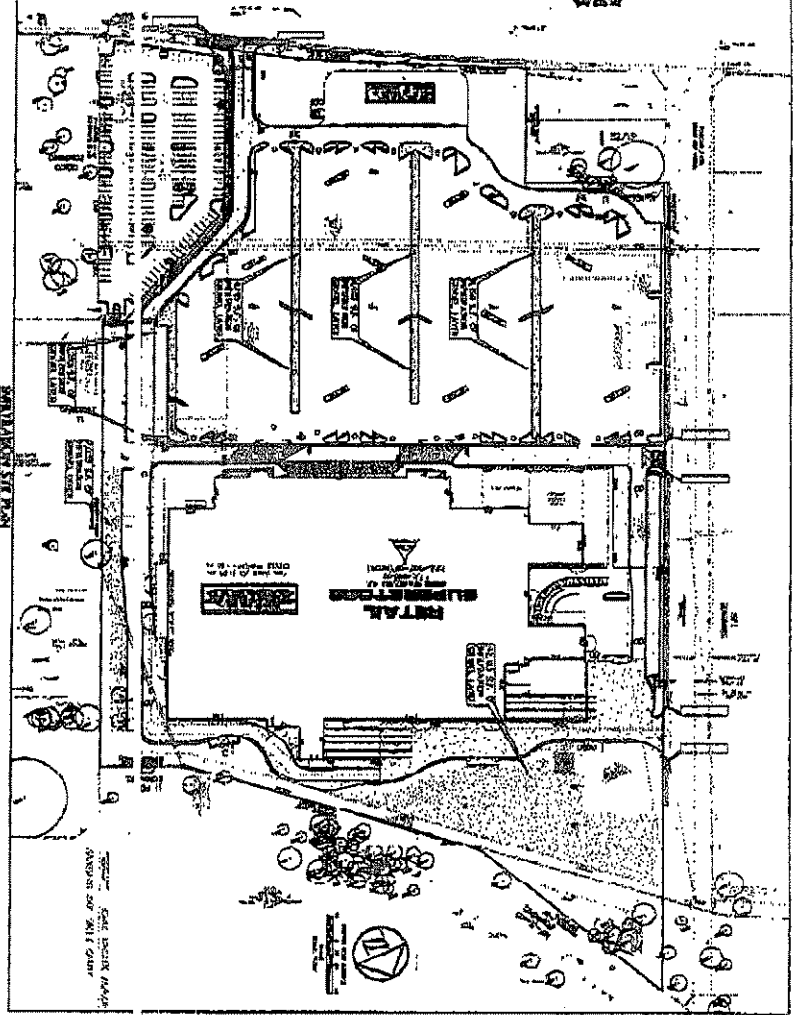
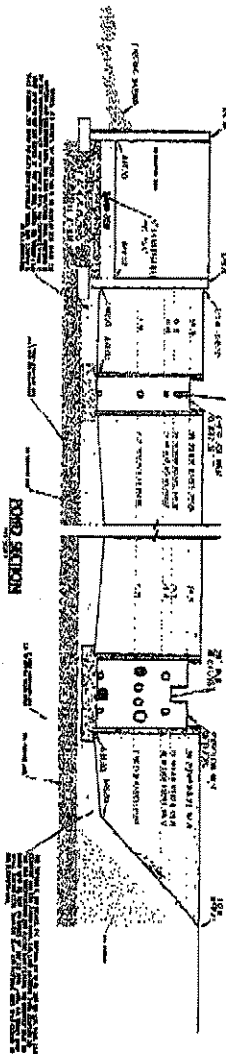
Very truly yours,



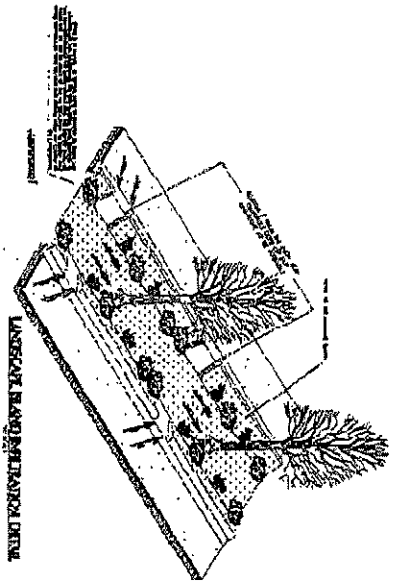
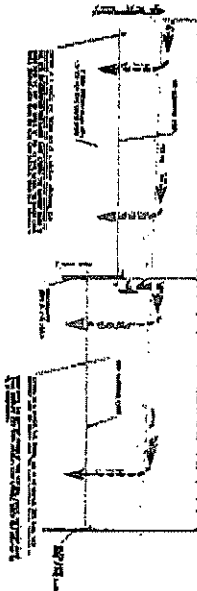
Richard F. Suttle, Jr.

cc: Tim Scott  
City Council  
Joe Grasso

**EXHIBIT "B"**



LANDSCAPING DETAIL



NO.	DESCRIPTION	DATE	BY	CHECKED
1	REVISION			
2	REVISION			
3	REVISION			
4	REVISION			
5	REVISION			
6	REVISION			
7	REVISION			
8	REVISION			
9	REVISION			
10	REVISION			

SP-03-0387C

PROJECT NO.	710 E. BEN WHITE B.V.D.
SHEET	C25
OF	40

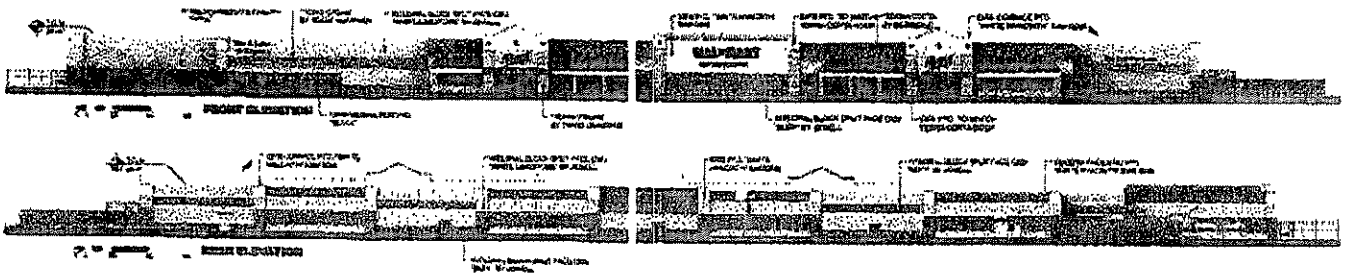
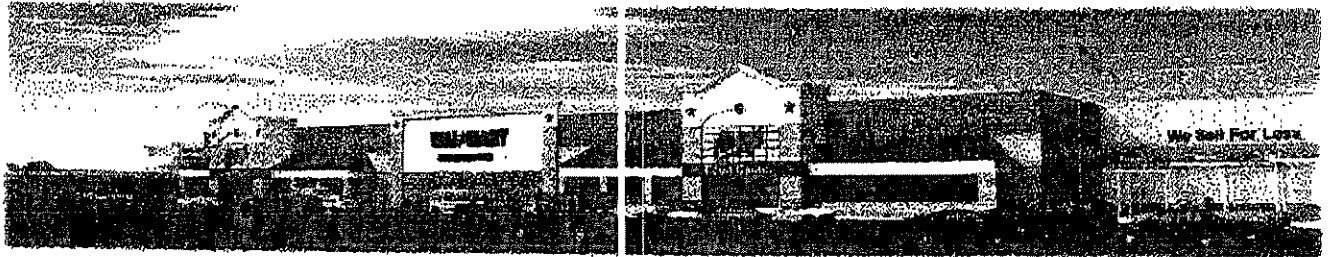


710 E. BEN WHITE B.V.D.  
AUSTIN, TEXAS  
INFILTRATION PLAN AND DETAILS

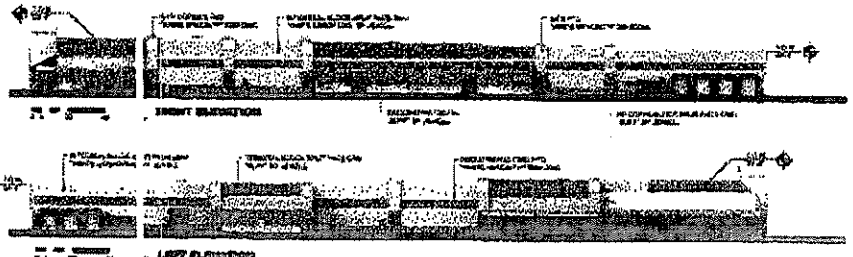
**TWIN OAKS**  
COMMERCIAL DEVELOPMENT

**DA** Draft & Associates, Inc.  
1001 E. 11th Street, Suite 100  
Austin, TX 78702  
Phone: 512-476-1111  
www.draftandassociates.com

**EXHIBIT "C"**



ITEM	QTY	UNIT	PRICE	TOTAL
1. 1/2" x 1				



**REPRESENTATION ONLY**  
**NOT FOR CONSTRUCTION**  
 This drawing is for informational purposes only and is not intended for construction. It is not a contract document and should not be used as such. All dimensions and quantities are approximate and subject to change without notice.



**Austin, TX**  
 78701 1202500