

This instrument prepared by:

Wal-Mart Real Estate Business Trust  
Sam M. Walton Development Complex  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716-0550

E 2295460 B 4340 P 1207-1213  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
8/7/2007 2:46:00 PM  
FEE \$23.00 Pgs: 7  
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#14-352-0006 +  
14-352-0008

**RECIPROCAL ACCESS EASEMENT**

This RECIPROCAL ACCESS EASEMENT is made effective July 31, 2007, between **ERIC S. ZORN, AS MANAGING TRUSTEE FOR WAL -MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust, with an address of 702 S.W. 8<sup>th</sup> Street, Bentonville, AR 72716 ("Wal-Mart"); and **MILLCREEK PARTNERS, LLC**, a Utah limited liability company, with an address of 1412 S. Legend Hills Drive, Suite 327, Clearfield, UT 84015 ("Millcreek").

**WITNESSETH**

**WHEREAS**, Wal-Mart is the owner of that certain tract or parcel of land situated in the City of Clinton, County of Davis, State of Utah, identified as Tract 1 on the site plan attached hereto as Exhibit "A" and more fully described on Exhibit "B" ("Tract 1"); and

**WHEREAS**, Millcreek will be by the time this instrument is recorded the owner of that 0.92 acre, more or less, tract or parcel of land in the same city, county, and state, which tract lies adjacent to Tract 1 and is identified as Tract 2 on Exhibit "A" and more fully described on Exhibit "B" ("Tract 2") which tract Wal-Mart Stores, Inc., is current owner of and intends to convey title to Millcreek by deed; and

**WHEREAS**, Millcreek has requested from Wal-Mart, and Wal-Mart is desirous of granting to Millcreek, a non-exclusive easement for pedestrian and vehicular ingress and egress over and across that portion of the Access Area identified on Exhibit "A" resting on Tract 1.

**WHEREAS**, Wal-Mart has requested from Millcreek, and Millcreek is desirous of granting to Wal-Mart, a non-exclusive easement for pedestrian and vehicular ingress and egress over and across that portion of the Access Area identified on Exhibit "A" and resting on Tract 2.

**NOW THEREFORE**, in consideration of one dollar (\$1.00) and other good and valuable consideration, Wal-Mart does hereby grant to Millcreek, and Millcreek does hereby grant to Wal-Mart, a non-exclusive easement for vehicular and pedestrian ingress and egress over and across the Access Area for access to and from Tracts 1 and 2, subject to the following terms and conditions to which the parties hereto do hereby agree:

1. **Use of Access Area.** The ingress and egress rights granted hereby may be used non-exclusively by, and are limited to, Wal-Mart, Millcreek, their tenants, and their respective customers and employees associated with the business operations located on Tracts 1 and 2. Only passenger vehicles and light trucks and pedestrian traffic associated with Tract 2 may use the Access Area, but nothing herein shall be construed to limit or restrict ingress or egress associated with Tract 1 or any part thereof. Millcreek shall not be allowed to use the Access Area for heavy truck traffic except as may be necessary for developing Tract 2 or delivering merchandise to the business operation to be located thereon.

2. **Maintenance.** (a) In the event Wal-Mart fails to maintain or repair the Access Area, Millcreek may do so at its sole expense, provided Millcreek uses like or similar quality and type of materials originally installed on the Access Area, and further provided Millcreek does not change the grade or elevation of the Access Area without the permission of Wal-Mart. Any repair or maintenance performed within the Access Area must be preceded by a two (2) week

written notice to Wal-Mart. Notwithstanding the foregoing, routine maintenance or construction shall be prohibited during the months of November and December, except for the initial construction of Millcreek's improvements on Tract 2, and all work shall be completed by October 31<sup>st</sup> of the then-current year. Millcreek covenants and agrees that Tract 1 will not be used as a staging area and will not be used to store equipment, trucks, dirt, supplies, etc. Millcreek further covenants and agrees that no heavy trucks associated with the construction shall use the entranceways located upon Tract 1 without Wal-Mart's prior written consent, except for the initial construction of Millcreek's improvements on Tract 2.

(b) Millcreek shall, at its sole cost and expense pave any unpaved portion of the curb cut area from Tract 2 to the Access Area, and if, in the process of paving and developing the Access Area, Millcreek encounters any irrigation equipment previously installed by Wal-Mart in the Access Area, Millcreek shall disconnect and relocate any such equipment at its cost. If Millcreek encounters any utility lines under the Access Area, it shall encase said lines in order to protect it. If it is necessary for Millcreek to remove trees or any other type of landscaping, it shall relocate it adjacent to the Access Area in a location acceptable to Wal-Mart.

3. Damage to Access Area, or Other Improvements. If, in the process of developing Tract 2, Millcreek damages, breaks, destroys, or in any way impairs the Access Area, or any other improvements of Wal-Mart, Wal-Mart in its sole discretion, may require Millcreek to either: (i) restore at Millcreek's sole cost and expense the Access Area, or Wal-Mart's improvements, to its original quality and condition; or (ii) Wal-Mart may restore the Access Area, or improvements, and invoice Millcreek for Wal-Mart's costs incurred restoring the damaged Access Area, or improvements; whereupon Millcreek agrees to reimburse Wal-Mart within thirty (30) days of receipt of an invoice for such expenses.

4. Indemnification.

(a) Millcreek shall indemnify and hold harmless Wal-Mart from any damages or liability to persons or property that might arise from the use of the Access Area by Millcreek, its customers, suppliers, employees, and tenants or anyone else using the Access Area for ingress and egress to and from Tract 2. Millcreek further agrees that Millcreek will at all times during the duration of this easement maintain and pay for comprehensive general liability insurance affording protection to Wal-Mart and Millcreek naming Wal-Mart as an additional insured on the policy or policies for a combined bodily injury and property damage limit of liability not less than \$2,000,000.00 for each occurrence. Millcreek further agrees, upon request to deliver to Wal-Mart a certificate or certificates from an insurance company or insurance companies satisfactory to Wal-Mart evidencing the existence of such insurance and naming Wal-Mart as an additional insured.

(b) Wal-Mart shall indemnify and hold harmless Millcreek from any damages or liability to persons or property that might arise from the use of the Access Area by Wal-Mart, its customers, suppliers, employees, and tenants or anyone else using the Access Area for ingress and egress to and from Tract 1. Wal-Mart further agrees that Wal-Mart will at all times during the duration of this easement maintain and pay for comprehensive general liability insurance affording protection to Millcreek and Wal-Mart naming Millcreek as an additional insured on the policy or policies for a combined bodily injury and property damage limit of liability not less than \$2,000,000.00 for each occurrence. Wal-Mart further agrees, upon request to deliver to Millcreek a certificate or certificates from an insurance company or insurance companies satisfactory to Millcreek evidencing the existence of such insurance and naming Millcreek as an additional insured. Notwithstanding the anything to the contrary found within this paragraph 4(b), so long as Wal-Mart's net worth exceeds \$100,000,000.00, Wal-Mart shall have the right to self-insure.

5. Relocation. Wal-Mart and Millcreek shall only relocate the Access Area upon the mutual written consent of the parties, which consent shall not be unreasonably withheld, conditioned, or delayed.

6. Compliance. Millcreek hereby warrants and represents to Wal-Mart that Millcreek in exercising its rights under this Agreement shall comply fully with any federal, state or local laws, regulations, ordinances, permits or other authorizations. In addition to the other representations contained herein, Millcreek hereby warrants and represents to Wal-Mart that Millcreek shall comply fully with any federal, state or local laws, regulations, ordinances, permits

or other authorizations or approvals or other requirements relating to storm water discharges or the control of erosion or sediment discharges from construction projects, including but not limited to the Clean Water Act, 33 U.S.C. § 1251 et seq., and the Storm Water General Permit for Discharges Associated with Construction Activities (collectively the "Storm Water Requirements") (including without limitation preparing a Storm Water Pollution Prevention Plan (if applicable) to avoid negatively impacting any erosion or sediment controls during earth-disturbing activities, if any) in exercising any rights or privileges under this Agreement, Millcreek recognizing and affirming Wal-Mart would not enter into this Agreement without this warranty and representation from Millcreek. Furthermore, Millcreek hereby warrants and represents to Wal-Mart that Millcreek has a policy to (i) comply in all respects with all immigration laws, statutes, rules, codes and regulations, (ii) properly maintain all records required by the United States Citizenship and Immigration Services (the "USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each of Millcreek's employees, and (iii) respond in a timely fashion to any inspection requests related to such I-9 Forms. Millcreek warrants and represents it has a policy to fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by the USCIS of Millcreek or any of its employees. Millcreek warrants and represents to Wal-Mart it has a policy to conduct an annual audit of the I-9 Forms for its employees and has a policy to promptly correct any defects or deficiencies which are identified as a result of such audit. Millcreek warrants and represents it has a policy to require all subcontractors performing any work for Millcreek to comply with the covenants set forth in this Section. Millcreek recognizes and affirms Wal-Mart would not enter into this Agreement if Millcreek did not have such policies.

7. Public Grant. Nothing contained herein shall be used or construed as a grant of any rights to any public or governmental authority or agency.

8. Duration. The agreements contained herein and the rights granted hereby shall run with the titles to Tracts 1 and 2 and the Access Area and shall bind and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

9. Change of Ownership. In the event Millcreek conveys or transfers title to Tract 2 to another party, Wal-Mart shall be notified thereof within thirty (30) days thereafter. Wal-Mart shall be provided the name and address of such transferee.

10. Effective Date. This instrument shall become effective conditioned upon and subject to the conveyance of Tract 2 by Wal-Mart Stores, Inc., to Millcreek to be evidenced by the recording of a deed.

11. Headings. The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the agreements contained herein or the rights granted hereby.

12. Counterparts. This document, and any modifications, may be executed in one or more counterparts, all parties need not be signatories to the same documents, and all counterpart signed documents shall be deemed to be an original and one (1) instrument.

[Signature pages follow]



WITNESS OR ATTEST:

MILLCREEK PARTNERS, LLC

Gay M. Wright  
Linna D. Dwyer

By: Spencer H. Wright  
SPENCER H. WRIGHT  
Title: MANAGER

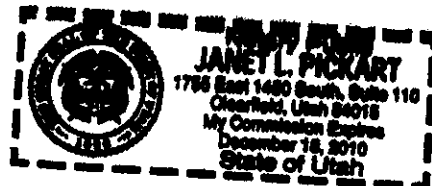
**COMPANY ACKNOWLEDGMENT**

STATE OF Utah )  
 ) §§  
COUNTY OF Davis )

On this 31<sup>st</sup> day of July, 2007, before me, the undersigned notary public in and for said County and State, personally appeared before me Spencer H. Wright to me personally known, who, being by me duly sworn, did say that he she is Manager of Millcreek Partners, LLC, and that the seal, if any, affixed to the foregoing instrument is the seal of said limited liability company, and that said instrument was signed, sealed and delivered by him/her on behalf of said limited liability company by authority of its Members/Managers, and said Millcreek Partners, LLC acknowledged said instrument to be the free act and deed of said limited liability company.

WITNESS MY HAND and notarial seal subscribed and affixed in said County and State, the day and year in this certificate above written.

Janet L. Pickart  
Name: Janet L. Pickart  
Notary Public

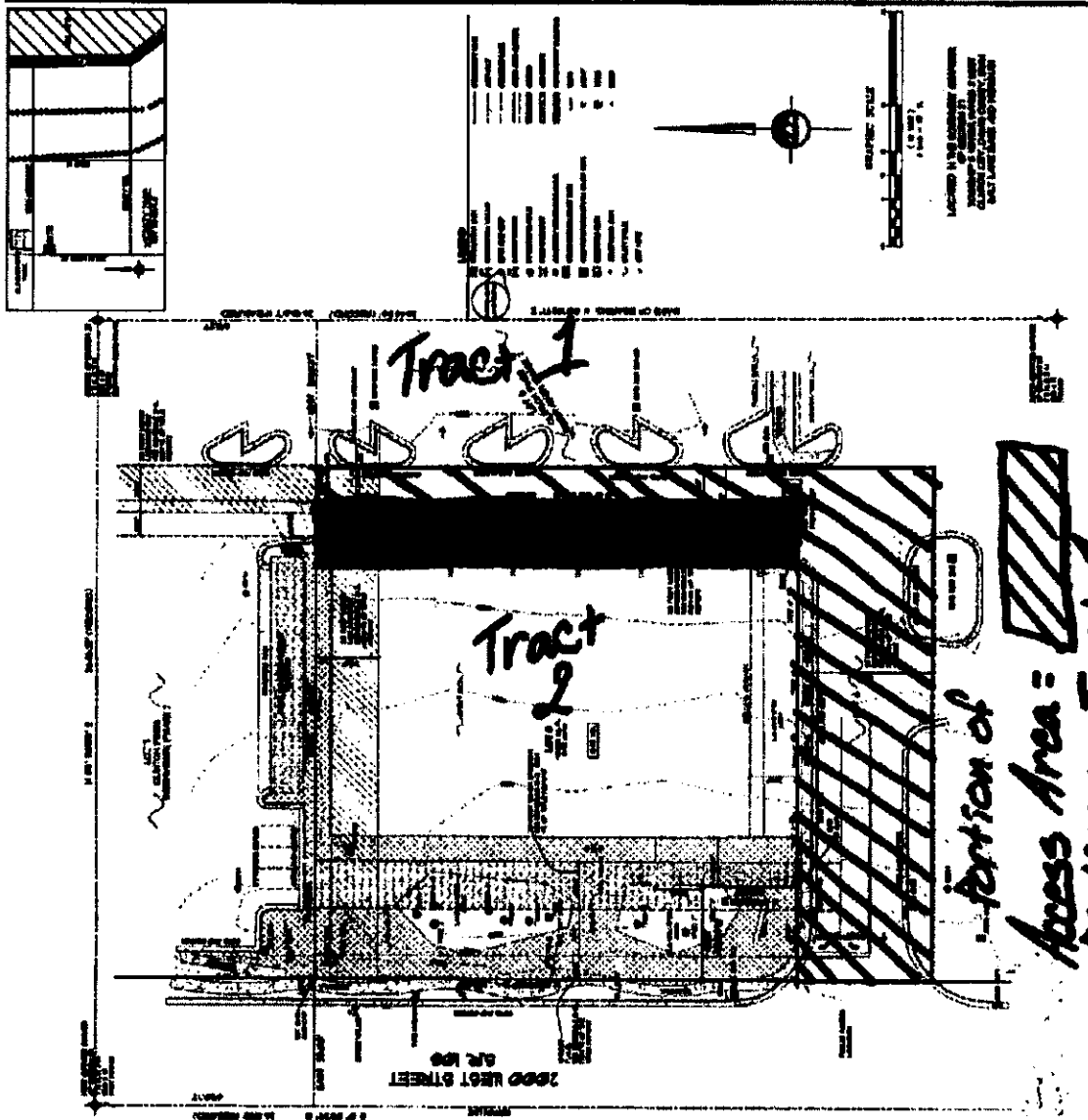


My Commission Expires: 12-18-2010

EXHIBIT "A"

Site Plan

ENSTRON 1101 WEST 10TH AVENUE DENVER, CO 80202	LOT 8, CLINTON COMMERCIAL ALTA 1800 NORTH 2800 WEST CLINTON UTM			1 OF 1
------------------------------------------------------	-----------------------------------------------------------------------	--	--	--------



Access Area = Resting on Tract 1

Portion of Access Area Resting on Tract 2 =

NO VEHICLES

THIS SITE PLAN IS THE PROPERTY OF ENSTRON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM. ALL RIGHTS ARE RESERVED.

EXHIBIT "B"

Tract 1 Legal Description:

Lot 6 of the FINAL PLAT OF CLINTON PINES SUBDIVISION PHASE 2, according to the official plat thereof recorded April 11, 2003, as Entry No. 1852871, in Book 3267, at Page 912, Official Records of Davis County, Utah.

Tract 2 Legal Description:

Lot 8 of the FINAL PLAT OF CLINTON PINES SUBDIVISION PHASE 2, according to the official plat thereof recorded April 11, 2003, as Entry No. 1852871, in Book 3267, at Page 912, Official Records of Davis County, Utah.