

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  
 Attn: Brad Rogers  
 (479) 277-1348

10190760

8/10/2007 4:45:00 PM \$24.00

Book - 9502 Pg - 4686-4693

Gary W. Ott

Recorder, Salt Lake County, UT

METRO NATIONAL TITLE

BY: eCASH, DEPUTY - EF 8 P.

Return recorded document to:

Fidelity National Title Insurance Company  
 717 North Harwood Street, Suite 800  
 Dallas, TX 75201  
 Attn: Rod Faris  
 (866) 969-5300  
 MNT 06049347  
 \*20-23-226-004

**ACCESS EASEMENT**

This ACCESS EASEMENT is made effective August 6, 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 ("Millcreek"), with an address of 1412 S. Legend Hills Drive, Suite 327, Clearfield, UT 84015, and **WAYNE A. BELLEAU**, an individual ("Mr. Belleau"), with an address of 1412 S. Legend Hills Drive, Suite 316, Clearfield, UT 84015 (together Millcreek and Mr. Belleau are referred to herein as "Grantee").

**WITNESSETH**

**WHEREAS**, Wal-Mart is the owner of that certain tract or parcel of land situated in the City of West Valley City, County of Salt Lake, State of Utah, identified as Tract 1 on the site plan attached hereto as Exhibit "A" ("Tract 1"); and

**WHEREAS**, Grantee will be by the time this instrument is recorded the owner of that 0.80 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 Grantee by deed; and

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

**NOW THEREFORE**, in consideration of one dollar (\$1.00) and other good and valuable consideration, Wal-Mart does hereby grant to Grantee a non-exclusive easement for vehicular and pedestrian ingress and egress over and across the Access Area for access to and from Tract 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, Grantee and its tenants and their respective customers and employees associated with the business operation to be located on Tract 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. Grantee 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, Grantee may do so at its sole expense, provided Grantee uses like or similar quality and type of materials originally installed on the Access Area, and further provided Grantee 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 Grantee's improvements on Tract 2, and all work shall be completed by October

31<sup>st</sup> of the then-current year. Grantee 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. Grantee 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 Grantee's improvements on Tract 2.

(b) Grantee 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, Grantee encounters any irrigation equipment previously installed by Wal-Mart in the Access Area, Grantee shall disconnect and relocate any such equipment at its cost. If Grantee encounters any utility lines under the Access Area, it shall encase said lines in order to protect it. If it is necessary for Grantee 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, Grantee 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 Grantee to either: (i) restore at Grantee'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 Grantee for Wal-Mart's costs incurred restoring the damaged Access Area, or improvements; whereupon Grantee agrees to reimburse Wal-Mart within thirty (30) days of receipt of an invoice for such expenses.

4. Indemnification. Grantee 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 Grantee, its customers, suppliers, employees, and tenants or anyone else using the Access Area for ingress and egress to and from Tract 2. Grantee further agrees that Grantee will at all times during the duration of this easement maintain and pay for comprehensive general liability insurance affording protection to Wal-Mart and Grantee 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. Grantee 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.

5. Relocation. Wal-Mart reserves the right in its sole and absolute discretion to modify or relocate the Access Area provided such modification or relocation does not materially restrict or prevent ingress and egress to and from Tract 2.

6. Compliance. Grantee hereby warrants and represents to Wal-Mart that Grantee 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, Grantee hereby warrants and represents to Wal-Mart that Grantee 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, Grantee recognizing and affirming Wal-Mart would not enter into this Agreement without this warranty and representation from Grantee. Furthermore, Grantee hereby warrants and represents to Wal-Mart that Grantee 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 Grantee's employees, and (iii) respond in a timely fashion to any inspection requests related to such I-9 Forms. Grantee 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 Grantee or any of its employees. Grantee 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. Grantee warrants and represents it has a policy to require all subcontractors performing any work for Grantee to comply with the covenants set forth in this

Section. Grantee recognizes and affirms Wal-Mart would not enter into this Agreement if Grantee 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 Tract 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 Grantee 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 Grantee 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.

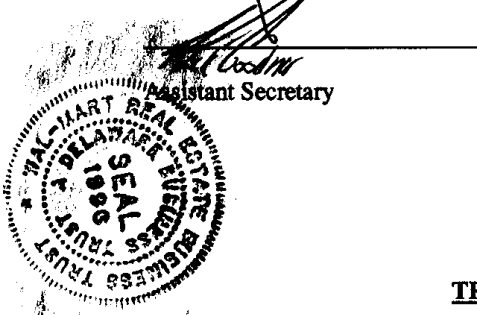
[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

ERIC S. ZORN, AS MANAGING TRUSTEE FOR WAL-MART REAL ESTATE BUSINESS TRUST

ATTEST:

By: *[Signature]*  
T. Latriece Watkins  
Title: Director of Land Development



Approved as to legal terms only by *[Signature]*  
WAL-MART LEGAL DEPT.  
Date: 7/25/07

**TRUST ACKNOWLEDGMENT**

STATE OF ARKANSAS    )  
  ) §§  
COUNTY OF BENTON    )

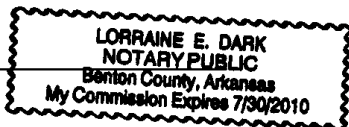
On this 26<sup>th</sup> day of July, 2007, before me, the undersigned notary public in and for said County and State, personally appeared before me T. Latriece Watkins to me personally known, who, being by me duly sworn, did say that she is Director of Land Development of Wal-Mart Real Estate Business Trust, and that the seal affixed to the foregoing instrument is the seal of said trust, and that said instrument was signed, sealed and delivered by her on behalf of said trust by authority of its Managing Trustee, and said T. Latriece Watkins acknowledged said instrument to be the free act and deed of said trust.

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

*[Signature]*  
Name: \_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_



WITNESS OR ATTEST:

*[Signature]*

MILLCREEK PARTNERS, LLC

By: *[Signature]*

Title: MANAGER

**LIMITED LIABILITY COMPANY ACKNOWLEDGMENT**

STATE OF Utah )  
COUNTY OF Davis ) §§

On this 6 day of AUGUST, 2007, before me, the undersigned notary public in and for said County and State, personally appeared before me STANLEY A. WILFONG 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 MANAGER 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.

*[Signature]*  
Name: \_\_\_\_\_  
Notary Public

My Commission Expires: 12-18-2010



WITNESS:

[Signature]

WAYNE A. BELLEAU

By: [Signature]  
Wayne A. Belleau

**PERSONAL ACKNOWLEDGMENT**

STATE OF Utah )  
COUNTY OF Davis ) §§

On this 6 day of AUGUST, 2007, before me, the undersigned notary public in and for said County and State, personally appeared before me Wayne A. Belleau, an individual known or identified to me to be the person whose name is subscribed to the within instrument, and said Wayne A. Belleau acknowledged to me that he executed the same.

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

[Signature]  
Name \_\_\_\_\_  
Notary Public

My Commission Expires: 12-18-2010

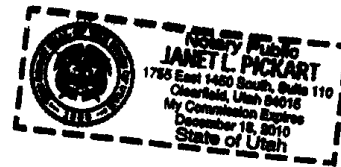


EXHIBIT "A"

Site Plan

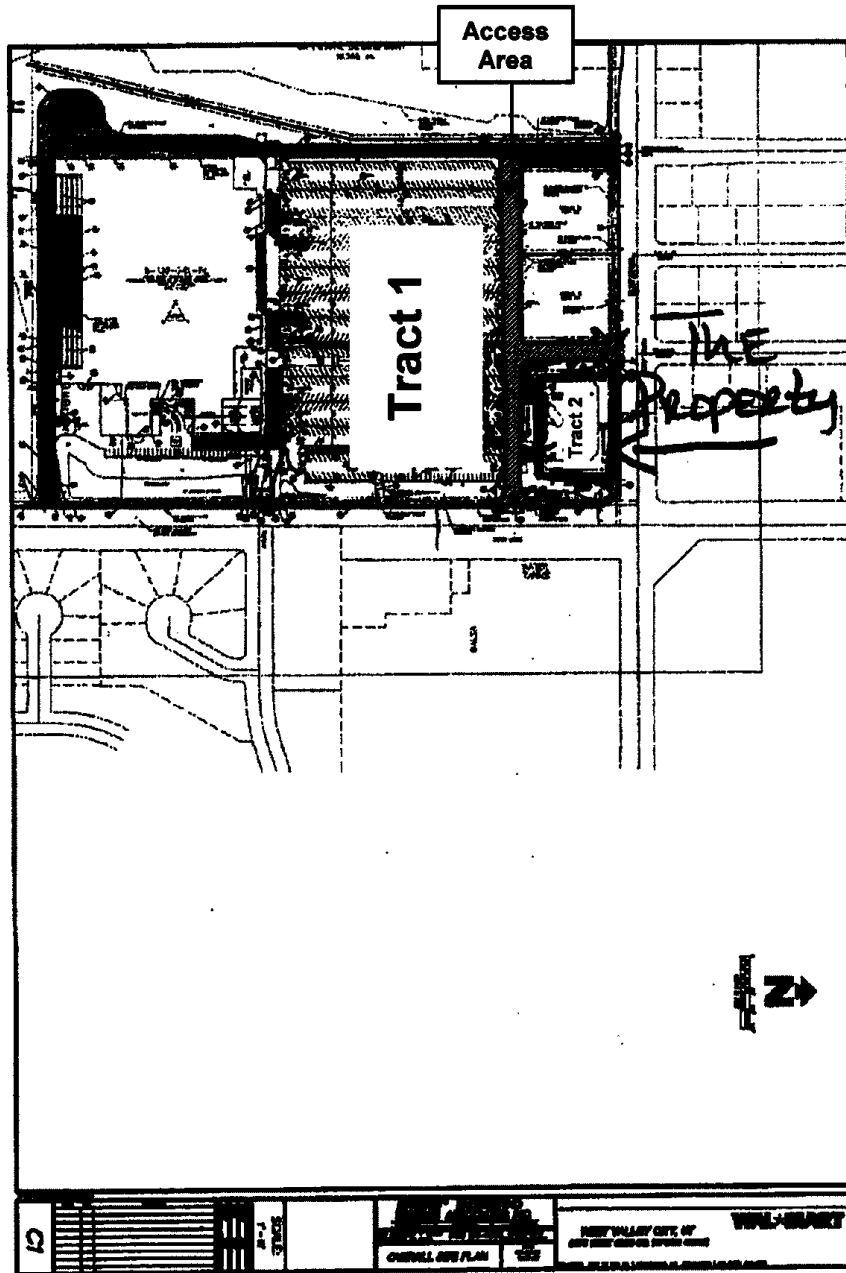


EXHIBIT "B"

Tract 2  
[Grantee's tract legal description]

Lot 4, WEST VALLEY COMMERCIAL RETAIL CENTER SUBDIVISION,  
according to the official plat thereof, recorded in the office  
of the Salt Lake County Recorder.