



MISC 2004011921



JAN 28 2004 15:19 P 7

This instrument prepared by:

Wal-Mart Stores, Inc.
Sam M. Walton Development Complex
2001 S.E. 10th Street
Bentonville, AR 72716-0550
Attn: Brandi Lewis
(479) 277-1348

After recording return to:

Fidelity National Title Insurance Company
717 North Harwood Street, Suite 800
Dallas, TX 75201
Attn: Rod Faris
(214) 969-5300

Wm
7/3
36⁵⁰ *OU-36854*
FEE _____ FB _____
BKP _____ C/O _____ COMP *ML*
SEL _____ SCAN _____ FV _____

Received - RICHARD TAKECHI
Register of Deeds, Douglas County, NE
1/28/2004 3:19:30 PM



2004011921

ACCESS EASEMENT

This ACCESS EASEMENT is entered into as of the 2nd day of December, 2003, by and between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust, with an address of 702 S.W. 8th Street, Bentonville, AR 72716 ("Wal-Mart"), and **WALLY PROPERTIES, LLC**, an Oklahoma limited liability company, with an address of P.O. Box 10210 Fort Smith, AR 72917 ("Grantee").

WITNESSETH

WHEREAS, Wal-Mart is the owner of that certain tract or parcel of land situated in the City of Omaha, County of Douglas, State of Nebraska; and

WHEREAS, Grantee will be by the time this instrument is recorded the owner of that 2.30 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 fee simple title to Grantee by a warranty 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" and more fully described on Exhibit "C" ("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.

(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

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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. Wal-Mart shall indemnify and hold harmless Grantee from any damages on liability to persons or property that might arise from the use of the Access Easement by Wal-Mart, its affiliated companies, its customers, suppliers, employees, and tenants or anyone else using the Access Easement for ingress and egress to and from Tract 1.

5. Curb Cuts. Grantee shall be entitled to install no more than two (2) thirty (30) foot curb cut(s) as shown on the Grantee's Plan of Development as approved by Wal-Mart

6. 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.

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. At such time, the obligation of Grantee under Paragraph 4 to provide liability insurance shall cease and said transferee shall be responsible for providing liability insurance as indicated in Paragraph 4.

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 warranty deed.

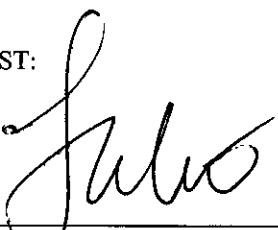
11. Headings. The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the agreements contained herein or the rights granted hereby.

12. Counterparts. This document, and any modifications, may be executed in one or more counterparts, including by facsimile, 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.

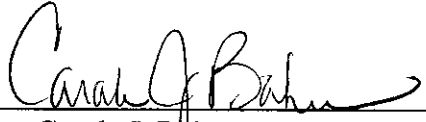
(Signature pages follow)

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

**WAL-MART REAL ESTATE
BUSINESS TRUST**

ATTEST:


Latriece Watkins
Assistant Secretary *PS*

BY: 

Carole J. Baker
TITLE: Director of Land Development

TRUST ACKNOWLEDGMENT

STATE OF ARKANSAS)
) §
COUNTY OF BENTON)

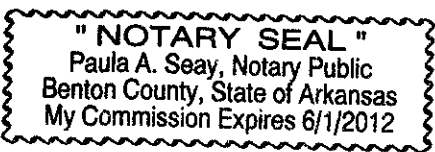
On this 2nd day of December, 2003, before me, the undersigned notary public in and for said County and State, personally appeared before me Carole J. Baker to me personally known, who, being by me duly sworn, did say that she is Director of Land Development of Wal-Mart Real Estate Business Trust and that the seal affixed to the foregoing instrument is the seal of said trust, and that said instrument was signed, sealed and delivered on behalf of said trust by authority of its Managing Trustee, and said Carole J. Baker acknowledged said instrument to be the free act and deed of said trust.

WITNESS BY HAND and notarial seal subscribed and affixed in said County and State the 2nd day of December, 2003.



NOTARY PUBLIC

My Commission Expires:
6/1/2012



WITNESS OR ATTEST:

WALLY PROPERTIES, LLC

BY: John D. Alfred
JOHN D. ALFRED
TITLE: MEMBER/MANAGER

COMPANY ACKNOWLEDGMENT

STATE OF Arkansas)
) §
COUNTY OF Sebastian)

On this 22nd day of January, 2003, before me, the undersigned notary public in and for said County and State, personally appeared before me John D. Alfred to me personally known, who, being by me duly sworn, did say that he/she is a member of Wally Properties, LLC, and that the seal affixed to the foregoing instrument is the seal of said limited liability company, and that said instrument was signed, sealed and delivered on behalf of said limited liability company by authority of its Board of Directors, and said _____ acknowledged said instrument to be the free act and deed of said limited liability company.

WITNESS BY HAND and notarial seal subscribed and affixed in said County and State the 22nd day of January, ~~2003~~ 2004

Janet Sebastian
NOTARY PUBLIC

My Commission Expires:

2-1-11

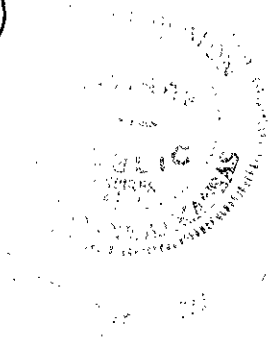


EXHIBIT "A"

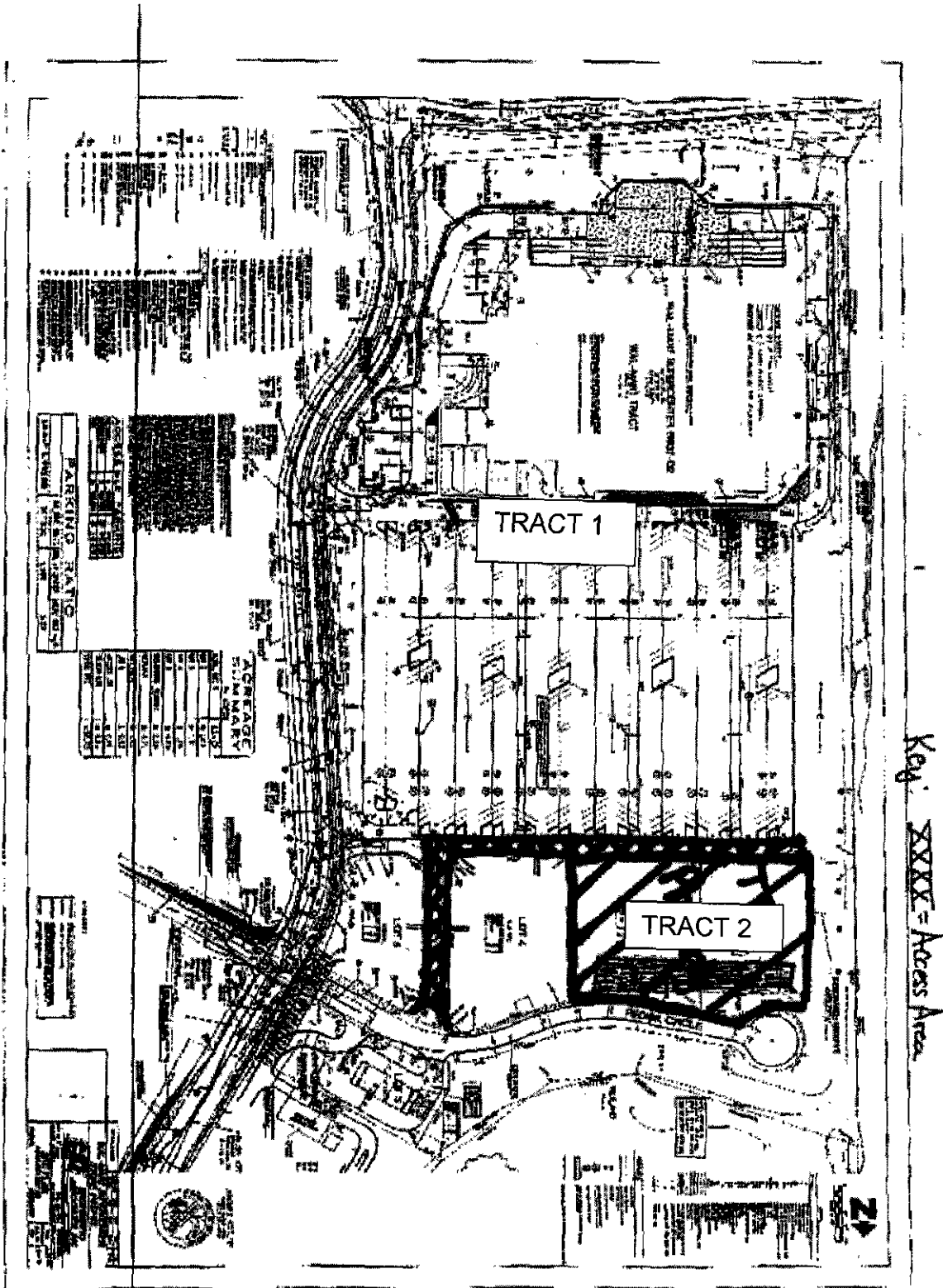


EXHIBIT "B"
(Grantee's Tract legal description)

LOTS 2 AND 3, STARWOOD SOUTH REPLAT, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA. TOGETHER WITH AN ACCESS EASEMENT LYING IN LOT 1, STARWOOD SOUTH REPLAT AS SURVEYED, PLATTED, AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 2; THENCE S 2 59'52" W A DISTANCE OF 41.99 FEET; THENCE S 87 00'08" E A DISTANCE OF 638.85 FEET; THENCE N 2 59'51" E A DISTANCE OF 281.45 FEET; THENCE N 51 38'42" E TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF REDICK CIRCLE A DISTANCE OF 42.99 FEET; THENCE N 57 14'40" W ALONG SAID RIGHT OF WAY A DISTANCE OF 25.60 FEET; THENCE CONTINUING ON SAID RIGHT OF WAY ON CURVE WITH A RADIUS OF 140.23 FEET AND ARC DISTANCE OF 74.10 FEET AND A CHORD BEARING N 72 22'27" W A DISTANCE OF 73.24 FEET; THENCE S 42 00'53" E A DISTANCE OF 26.62 FEET; THENCE S 2 59'52" W A DISTANCE OF 266.75 FEET; THENCE S 47 59'52" W A DISTANCE OF 19.09 FEET; THENCE N 87 00'08" W A DISTANCE OF 583.35 FEET ALONG THE SOUTHERLY LINE OF LOTS 2, 3, AND 4 TO THE POINT OF BEGINNING.

EXHIBIT "C"

Access Area
(Part of Tract 1 legal description)

EASEMENT CONTAINS: 39,910.46 SQUARE FEET OR 0.92 ACRES MORE OR
LESS