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Register of Deeds, Douglas County, NE  
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2006114112

ACCESS EASEMENT

This ACCESS EASEMENT is entered into as of the 20<sup>th</sup> day of September, 2006, by and 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 **SIMMONDS PROPERTIES, LTD.**, a Nebraska limited liability company, with an address of 11404 W. Dodge Road, Suite 650, Omaha, NE 68154 ("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, 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" 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. 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.

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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 using the Access Area for ingress and egress to and from Tract 2. Grantee shall not be obligated, and this indemnification is not intended to apply to, any wear, tear or deterioration of the Access Area from normal usage by Grantee or any of its customers, suppliers, employees or tenants. 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. 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. However, Wal-Mart shall not have the right to modify or relocate the Access Area without consent of Grantee if such modification or relocation would require the modification or relocation of any buildings or improvements constructed by the Purchaser on the Tract 2.

7. 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.

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

9. 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.

10. 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.

11. 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.

12. 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.

13. 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:

Ben Beath

SIMMONDS PROPERTIES, LTD.

BY: PK Blissman

TITLE: CFO

**CORPORATE ACKNOWLEDGMENT**

STATE OF NEBRASKA )  
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COUNTY OF DOUGLAS )

On this 20 day of SEPTEMBER, 2006, before me, the undersigned notary public in and for said County and State, personally appeared before me PAUL K. BLISSMAN to me personally known, who, being by me duly sworn, did say that he/she is CHIEF FINANCIAL OFFICER of Simmonds Properties, Ltd., 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 Board of Directors, and said PAUL K. BLISSMAN acknowledged said instrument to be the free act and deed of said limited liability company. PK. BLISSMAN

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

Janet J. Clark  
Notary Public

My Commission Expires:  
8-21-2008

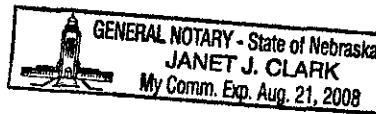




EXHIBIT "B"

Tract 2  
[Grantee's tract legal description]

Lot 5, Starwood South Replat, a Subdivision in Douglas County, Nebraska

## EXHIBIT "C"

### Access Area [Part of Tract 1 legal description]

#### Legal Description

A permanent easement for ingress/egress over that part of Lot 1, STARWOOD SOUTH REPLAT, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, described as follows:

Beginning at the southeast corner of Lot 5, STARWOOD SOUTH REPLAT, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska,

Thence along a curve to the left (having a radius of 365.27 feet and a long chord bearing South 00°22'12" East (assumed bearings) for 28.48 feet) for an arc length of 28.48 feet along the west right of way line of 99th Street;

Thence North 87°23'45" East for one foot (1.00') continuing along said west right of way line;

Thence South 02°36'15" East for 26.15 feet continuing along said right of way line to the south back of curb of the entrance road into said Lot 1;

Thence North 72°31'08" West for 27.52 feet to the said south back of curb line;

Thence South 87°51'46" West for 45.58 feet continuing along said south back of curb line;

Thence North 89°36'14" West for 101.45 feet to the continuing along the said south back of curb line to the southerly extended west back of curb line of the north-south road way lying west of said Lot 5;

Thence North 00°41'09" East for 316.32 feet along said west back of curb;

Thence North 13°21'50" West for 13.21 feet continuing along the said west back of curb to the south right of way line of Redick Circle;

Thence along a curve to the right (having a radius of 140.23 feet and a long chord bearing South 70°04'14" East for 51.27 feet) for an arc length of 51.56 feet along said south right of way line;

Thence South 59°32'17" East for 25.59 feet along said south right of line to the northwest corner of said Lot 5;

Thence along the west and south lines of said Lot 5 for the following five (5) courses:

1) Thence South 49°17'28" West for 42.90 feet;

2) Thence South 00°43'34" West for 190.55 feet;

3) Thence along a curve to the left (having a radius of 48.74 feet and a long chord bearing South 44°14'55" East for 68.91 feet) for an arc length of 76.53 feet;

4) Thence South 89°23'11" East for 43.14 feet;

5) Thence North 68°46'36" East for 46.78 feet to the POINT OF BEGINNING.

Contains 17,327 square feet