

Rogersville, TN

This Instrument Prepared by:  
Long, Ragsdale & Waters, P.C.  
1111 Northshore Drive, N.W.  
Suite S-700  
Knoxville, Tennessee 37919

ACCESS, EASEMENT AND RESTRICTIONS AGREEMENT

THIS AGREEMENT is made as of the 17<sup>th</sup> day of December, 2000, WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware business trust with offices at 2001 S.E. 10<sup>th</sup> Street, Bentonville, Arkansas 72716 ("Wal-Mart"), MARY ELIZABETH GRAY, who resides at 1308 West Main Street, Rogersville, Tennessee 37857-2304 ("Gray").

WITNESSETH:

Wal-Mart is the owner of Lot 2 as shown on the Plot Plan attached hereto as Exhibit A hereof, said Lot being more particularly described in Exhibit B attached hereto. Gray is the owner of Lot 1, Lot 3 and Lot 4 shown on the Plot Plan attached hereto as Exhibit A hereof, with Lots 1 and 3 being more particularly described in Exhibit C hereof.

Wal-Mart intends to construct a paved access road across Lot 4 to provide access for the Lots to Highway 11W. The roadway area which is identified as "Access Easement" on Lot 4 shown on the Plot Plan and is more particularly described on Exhibit D attached hereto (the "Access Easement") and is intended to be a roadway serving the Lots. Wal-Mart also intends to designate a portion of the Wal-Mart Lot as a drive lane for use by the Lots pursuant to the terms of this Agreement (such drive lane is identified on the Plot Plan and referred to hereinafter as the "Drive Lane").

Wal-Mart and Gray desire that Lots 1, 2, 3 and 4 be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial Shopping Center (sometimes hereinafter referred to as the "Shopping Center"), and further desire that said Lots be subject to the easements and the covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart and Gray do hereby agree as follows:

1. Definitions.

As used herein, any reference to specific numbered "Tracts(s)", "Lot(s)" or "Parcel(s)" shall mean and refer to the applicable Lot(s) as identified on the Plot Plan. For example, "Lot 2" shall mean and refer to the Wal-Mart Lot which is identified as Lot 2 on the Plot Plan. Unless otherwise defined herein, and unless the context shall otherwise prohibit or otherwise require, the following words and phrases shall have the following meanings in this Agreement:

"Agreement" shall mean this Agreement and any and all amendments thereto duly filed for record in the Office of the Register of Deeds for Hawkins County, Tennessee.

"Breach" shall mean a failure to comply with the terms of this Agreement.

"Gray Lots" shall mean, collectively, Lots 1, 3 and 4.

"Lots" shall mean the Gray Lots, the Wal-Mart Lot, and/or any of them, depending upon the context in which the word Lot is used in this Agreement.

"Lot Owner" shall mean any Person now or hereafter owning fee simple title to any of the Gray Lots, the Wal-Mart Lot, and/or any of them, as the context may require or any common or joint interest therein, as shown by the Public Records of Hawkins County, Tennessee, subject to the following special rule. Any Person having an interest in any Lot solely as security under a Mortgage shall not be deemed as "Lot Owner", unless such Person has excluded the Mortgagor from possession of the Lot by appropriate legal proceedings following a default under such Mortgage or has acquired fee simple title, or undivided interest therein, to a Lot by foreclosure or deed in lieu thereof. Individual tenants or lessees of a Lot shall not be deemed to be a "Lot Owner."

"Mortgage" shall mean a mortgage, deed to secure debt, deed of trust, or other similar security instrument now or hereafter duly recorded in the real property records of Hawkins County, Tennessee, conveying a lien upon or security title to any Lot (or any interest or estate therein) or any improvements thereon.

"Mortgagee" shall mean the holder of a Mortgage.

"Mortgagor" shall mean the grantor of a Mortgage.

"Permittee" shall mean any person that is a tenant or subtenant of a Lot Owner, and any officer, agent, employee, licensee, guest, invitee, independent contractor, or mortgagee of a Lot Owner, or its tenant or subtenants.

"Person" shall mean a natural Person, corporation, partnership, association, trust, governmental body or other legal entity, or any combination thereof.

"Primary Driveway Area" shall mean the area identified as "Primary Driveway Area" on the Plot Plan.

"Plot Plan" shall mean the drawing attached hereto as Exhibit A and all amendments, modifications and replacements thereof.

"Shopping Center" means the commercial shopping center constructed on Lots 1, 2 and 3, if any.

"Storm Drainage System" shall have the meaning provided in Section 6(b) of this Agreement.

"Wal-Mart Lot" shall mean the Lot 2.

2. Use. Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, restaurants, financial institutions, service shops, offices, and retail stores. No theatre, bowling alley, billiard parlor, night club or other place of recreation or amusement, or any business serving alcoholic beverages shall occupy space within the Shopping Center without the prior written consent of Wal-Mart, provided that restaurant(s) on the Gray Lots shall be permitted to sell alcoholic beverages for on-premises consumption as an incidental part of their restaurant business. The term "incidental" as used herein is defined as 49% or less of total sales being derived from the sale of alcohol. Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Wal-Mart on Lot 2. Gray recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its business on Lot 2; and Gray hereby waives any legal action for damages or for equitable relief which might be available to

to relocate the location of the Drive Lane on the Wal-Mart Lot and the foregoing easement pursuant to the rights granted hereinafter.

- d. Access to Wal-Mart Lot for Access Easement. Gray shall retain the right to access the roadway in the Access Easement from Lot 4 in as many locations and at any access location acceptable to her. The opening and access point to the Wal-Mart Lot contemplated for the Access Easement is shown on the Plot Plan and such opening and access is hereinafter called the "Access Easement Opening." The Access Easement Opening shall in no event be blocked, closed, altered, changed, or removed except as provided herein. The Access Easement Opening shall at all times remain in one place as shown on the Plot Plan unless altered by Wal-Mart as provided hereinafter. There shall be maintained between the Access Easement Opening and Lot 4 a smooth and level grade transition to allow the use of the Access Easement for pedestrian and vehicular ingress and egress.
- e. Access to Wal-Mart Lot for Lots 1 and 3. The opening and access point to the Wal-Mart Lot from Lot 1 and Lot 3 are shown on the Plot Plan and such opening and access points are hereinafter called the "Gray Lots Access Openings." The Gray Lots Access Openings shall be available only after the current uses of Lots 1 and 3 change to another use permitted by the terms of this Agreement. Except as otherwise provided herein, the Gray Lots Access Openings shall not be available for use by the Lot Owners and Permittees of Lots 1 and 3. The Gray Lots Access Openings shall in no event be blocked, closed, altered, changed or removed and shall at all times remain in place as shown on the Plot Plan unless altered by Wal-Mart as provided hereinafter.
- f. Relocation of Drive Lane and Access Openings. Wal-Mart retains the unilateral right to (a) relocate the location of the Drive Lane as it relates solely to its location on the Wal-Mart Lot (and the easement granted thereon), (b) relocate the Access Easement Opening (so long as such relocation does not substantially and materially alter Gray's access to Lot 4), or (c) relocate the Gray Lots Access Openings. In the event Wal-Mart chooses to exercise its rights to make such relocations, the parties hereto grant Wal-Mart the authority to substitute a new Plot Plan as Exhibit A to show correctly such relocations without the further consent or approval of any other party to or beneficiary of this Agreement. All costs directly resulting from such relocations shall be borne by Wal-Mart.
- g. No Parking Easement. As among the Lots, this Agreement does not create any expressed or implied grants or easements for parking.

5. Buildings.

The foregoing restrictions shall not apply to Lot 2 but shall apply to the Gray Lots 1 and 3 only upon the occurrence of any change after the date hereof in the use of the Gray Lots 1 and 3.

- a. Design and Construction. The buildings areas on the Gray Lots 1 and 3 shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible.

b. Easements. In the event building wall footings encroach from one Lot of the Gray Lots 1 and 3 onto another, despite efforts to avoid that occurrence, the party onto whose Lot the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

c. Lot Development. The Gray Lots 1 and 3 shall be developed after the date hereof only under the following guidelines:

- (1) The building constructed on the Gray Lots 1 and 3 shall not exceed twenty-eight (28) feet in height, as measured from the mean finished floor elevation of the Shopping Center;
- (2) Any rooftop equipment shall be screened in a manner satisfactory to Wal-Mart;
- (3) No rooftop sign shall be erected on the building constructed;
- (4) No freestanding identification sign may be erected on the Gray Lots 1 and 3 without approval of Wal-Mart, and in no event shall such freestanding identification sign exceed the height of the shopping center pylon sign or block the visibility of the Wal-Mart Store. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3'3" in height, the type and location of such signs to be approved by Wal-Mart.
- (5) No improvements shall be constructed, erected, expanded or altered on the Gray Lots 1 and 3 until the plans for same (including site layout, exterior building materials and colors and parking) have been approved in writing by Wal-Mart, provided, however, that (i) the approval of Wal-Mart shall not be required with respect to the construction of the prototypical building of a National or Regional Chain (as defined below) which does not violate the other guidelines of this Paragraph 5 (including, without limitation, building height, size, parking and setback requirements). As used herein, "National Chain" shall mean a person or entity operating at least one hundred (100) stores under a single trade name in the United States and a "Regional Chain" shall mean a person or entity operating at least twenty-five (25) stores under a single trade name in a particular region of the United States. However, there shall be maintained at all times, a minimum of 30 feet building setback line from all property lines.
- (6) In developing and using the Gray Lots 1 and 3, the owner of the Lots shall continuously provide and maintain a parking ratio on such Lot(s) equal to one of the following: (i) fifteen (15) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use in excess of seven thousand (7,000) square feet; or (ii) ten (10) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use less than seven thousand (7,000) square feet; or (iii) five (5) spaces per one thousand (1,000) square feet of building space for any other use. In addition, the owner shall cause landscaping areas to be added and maintained in conjunction with any building or other improvement constructed on the Lot(s).

- (7) The Gray Lots 1 and 3 shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.
- (8) The owner(s) of the Gray Lots 1 and 3 shall maintain comprehensive public liability insurance, property damage and All-Risk hazard insurance on the Gray Lots their buildings, appurtenances and other improvements located thereon. Such insurance shall (i) be carried with reputable companies licensed to do business in the state in which the Lot(s) are located; (ii) have liability limits of at least \$2,000,000.00 for each occurrence, bodily injury and property damage combined; (iii) provide for full replacement value for the buildings and improvements covered thereunder and (iv) not be subject to change, cancellation or termination without at least thirty (30) days prior written notice to Wal-Mart. Policies of insurance shall name Wal-Mart as additional insureds as its interests may appear, and such owner of the Gray Lots 1 and 3 shall provide certificates evidencing the fact that such insurance has been obtained. Wal-Mart and Gray, each for themselves and their property insurer, hereby release the others, and their tenants, employees and agents from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any tenant, agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated under this Agreement to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

6. Mutual and Reciprocal Utility Easements.

- a. Utility and Service Easements. Gray and Wal-Mart hereby establish and grant mutual and reciprocal nonexclusive easements for the benefit of the owner of each Lot, on, across and under the Lots (but only within fifteen (15) feet from the property line of each Lot or Primary Driveway Area), to install, use, maintain and repair public utility services and distribution systems (including storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center), now upon or hereafter installed on, across or under the Lots, to the extent necessary to service such Lot. Both parties shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Lots. Subject to the foregoing restrictions, the location of any utilities hereafter installed shall be determined by the owner of the Lot upon which such utilities are to be installed. Any such installed utility services may be relocated by the owner of a Lot on such owner's Lot, subject to compliance with applicable laws, at the expense of the owner of that Lot, provided that such relocation shall not interfere with,

increase the cost of, or diminish utility services to any other Lot and, further provided, that no utilities shall be relocated on Lot 1 without the prior written consent of Wal-Mart.

- b. Water Flow. Gray and Wal-Mart hereby establish and grant mutual and reciprocal nonexclusive easements for the benefit of the owner of each Lot to use, maintain and repair any storm water drainage system (the "Storm Drainage System") now or hereafter located on any Lot, together with the right to discharge surface water runoff across portions of Lot in accordance with the design of the Storm Drainage System. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements (including without limitation building and building expansion, curbs, drives and paving) shall be permitted.

7. Temporary Construction Easement. Gray hereby grants and conveys to Wal-Mart and its Permittees the non-exclusive right and privilege to enter upon a portion of the Gray Lots adjoining Lot 2 as shown on the Plot Plan and to place soils thereon, to remove soils therefrom, to permanently change the grade and the slope thereon, to install piping and related facilities for stormwater drainage and to use Lots 1, 3 or 4 in any reasonable manner to assist the development of Lot 2, all such use substantially in accordance with the Plot Plan. Wal-Mart shall cause the grading, filling and installation of piping to be completed in conjunction with the grading and site preparation of Lot 2. Following completion of such work, Gray, its successors and assigns shall be responsible for mowing and maintaining the Gray Lots.

8. Maintenance and Taxes.

a. Maintenance.

- (1) Standards. Following completion of improvements on any Lot, the owner of such Lot shall maintain such improvements in good condition and repair. The maintenance is to include, without limitation, the following:
- (a) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
  - (b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
  - (c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
  - (d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;
  - (e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair;
  - (f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and

(g) Maintaining elements of the Storm Drainage System.

(2) Expenses. The respective owners shall pay the maintenance expense of their Lots.

b. Taxes. Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the real property and improvements owned by it.

9. Indemnification/Insurance.

a. Indemnification. The owner of each Lot hereby indemnifies and saves the other parties harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Lot, except if caused by the act or negligence of the other party hereto.

b. Insurance. Wal-Mart shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about the Wal-Mart Lot, such insurance to afford protection to the limit of not less than \$2,000,000 for injury or death of a single person, and to the limit of not less than \$2,000,000 for any one occurrence, and to the limit of not less than \$2,000,000 for property damage. So long as the net worth of Wal-Mart shall exceed One Hundred Million Dollars (\$100,000,000), and so long as Wal-Mart is owner of Lot 1, Wal-Mart shall have the right to retain the financial risk for any claim.

10. Eminent Domain.

a. Owner's Right To Award. Nothing herein shall be construed to give the owner of any Lot any interest in any award or payment made to another party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's Lot or giving the public or any government any rights in said Lot.

b. Collateral Claims. All other owners of Lots may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.

c. Tenant's Claim. Nothing in this Paragraph 10 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

d. Restoration. The owner of any portion of the Lots so condemned shall promptly repair and restore the remaining portion of the Lots within its respective Lot as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

11. Expansion Of Shopping Center. The parties agree that in the event the Shopping Center is expanded by ownership, control of the parties or agreement with a third party, all of the provisions of this Agreement shall

apply to the expanded area and the parking to the building ratio in the expanded area shall not be less than that provided in this Agreement.

12. Release from Liability. Any person acquiring fee or leasehold title on any Lot subject hereto, or any expansion of the Shopping Center pursuant to Paragraph 11 or any portion thereof, shall be bound by this Agreement only as to the Lot, or portion thereof, acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Lot, or portion thereof, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Lots running with the land.

13. Breach.

- a. Parties With Remedies. In the event of Breach or threatened Breach of this Agreement, Wal-Mart or Gray or their heirs, successors or assigns shall be entitled to institute proceedings for full and adequate relief from the consequences of said Breach or threatened Breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.
- b. Remedies. If any owner shall fail to perform any covenant or condition contained in this Agreement, the aggrieved party shall give the defaulting party at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default be not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting party shall have not in good faith commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion) the aggrieved party may institute legal proceedings for full and adequate relief from the consequences of said default or threatened default.
- c. Right of Entry. The defaulting party hereby grants to the aggrieved party a non-exclusive right of entry and non-exclusive easements across and under any and all parts of the defaulting party's Lot (excluding the right to enter any buildings demised to or owned by others) for all purposes reasonably necessary to enable the aggrieved party (acting directly or through agents, contractors, or subcontractors), to perform any of the terms, provisions, covenants or conditions of this Agreement which the defaulting party shall have failed to perform, after notice and time to cure, as aforesaid, but no notice and time to cure need be given in the event of any emergency.

14. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessors, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.



15. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by Gray and Wal-Mart there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of (a) Wal-Mart as long as it or its affiliate has any interest as either owner or Lessee of Lot 2 or its successors in interest or (b) Gray as long as she or her heirs, successors or assigns have any interest as owner of the Gray Lots.

16. Non-Merger. So long as Wal-Mart or its affiliate is owner or lessee of Lot 1 this Agreement shall not be subject to the doctrine of merger.

17. Duration. Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

18. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

19. Transfer of Interests; Notices.

- a. In the event that any person or entity (the "Acquiring Party") shall acquire a fee or mortgage interest in any Lot subject to this Agreement, or any portion thereof, the Acquiring Party shall execute and file in the land records of Hawkins County, Tennessee, a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this Agreement may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired (the "Notice Statement"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, a copy of such Notice Statement to all other persons or entities then holding fee or mortgage interests in any Lot subject to this Agreement, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Hawkins County, Tennessee (the "Existing Interest Holders"). Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this Subparagraph (a), it shall not be entitled to receive any notice required or permitted to be given under this Agreement, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement. It is understood and agreed that the provisions of this Paragraph 22 regarding the recordation of the Notice Statement are satisfied with respect to Gray and Wal-Mart.
- b. Any notice hereunder shall be in writing and shall be served by overnight delivery or certified mail, return receipt requested, postage prepaid, addressed to the respective addresses of the parties as follows:

If intended for Gray:

1308 West Main Street  
Rogersville, Tennessee 37857-2304

If intended for Wal-Mart:

Wal-Mart Real Estate Business Trust  
2001 S.E. 10th Street  
Bentonville, Arkansas 72716  
Attention: Property Management Department

Each party to this Agreement may designate by notice in writing a new or other address to which such notice shall thereafter be so given or served. A copy of any such notice shall also be contemporaneously delivered in the manner herein specified to any fee mortgagee or tenant who shall have duly registered with any party its name and address. Notice shall be deemed given when received.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

21. Run With The Land. This Agreement and all the provisions hereof are and shall be real covenants running with the Lots, and shall burden and bind the Lots for the duration hereof. To that end, this Agreement shall be deemed incorporated into all deeds and conveyances hereinafter made by any Lot Owner. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of the Lot shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Agreement; and in accepting such interest or estate in, or a security interest with respect to, any portion of any Lot, and the terms of this Agreement shall be binding upon Wal-Mart and their respective heirs, successors and assigns.

22. Tenant Joinder and Consent. The tenant of Lot 3 joins this Agreement to evidence his consent to its terms pursuant to the document attached hereto as Exhibit B.

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

WAL-MART REAL ESTATE BUSINESS TRUST  
A Delaware business trust



By: [Signature]  
Name: Sarajoye Hamman  
Title: Assistant Vice President

ATTEST:

[Signature]  
By: [Signature]  
(SEAL)



\_\_\_\_\_  
MARY ELIZABETH GRAY

If intended for Gray:

1308 West Main Street  
Rogersville, Tennessee 37857-2304

If intended for Wal-Mart:

Wal-Mart Real Estate Business Trust  
2001 S.E. 10th Street  
Bentonville, Arkansas 72716  
Attention: Property Management Department

Each party to this Agreement may designate by notice in writing a new or other address to which such notice shall thereafter be so given or served. A copy of any such notice shall also be contemporaneously delivered in the manner herein specified to any fee mortgagee or tenant who shall have duly registered with any party its name and address. Notice shall be deemed given when received.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

21. Run With The Land. This Agreement and all the provisions hereof are and shall be real covenants running with the Lots, and shall burden and bind the Lots for the duration hereof. To that end, this Agreement shall be deemed incorporated into all deeds and conveyances hereinafter made by any Lot Owner. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of the Lot shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Agreement; and in accepting such interest or estate in, or a security interest with respect to, any portion of any Lot, and the terms of this Agreement shall be binding upon Wal-Mart and their respective heirs, successors and assigns.

22. Tenant Joinder and Consent. The tenant of Lot 3 joins this Agreement to evidence his consent to its terms pursuant to the document attached hereto as Exhibit E.

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

WAL-MART REAL ESTATE BUSINESS TRUST  
A Delaware business trust

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Its  
(SEAL)

  
MARY ELIZABETH GRAY

STATE OF ARKANSAS  
COUNTY OF BENTON

Before me, a notary public, of the State and County aforesaid, personally appeared Baculent with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, swore to and acknowledged his self to be Assistant Vice President of WAL-MART REAL ESTATE BUSINESS TRUST, the within-named bargainor, a business trust, and that he as such Assistant Vice President, executed the foregoing instrument for the purpose therein contained, by signing the name of the business trust by his self as Assistant Vice President.

WITNESS my hand and seal at office in Bentonville, this 23 day of December, 2000.



Mary Ann Dickerson  
Notary Public

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

Before me, a notary public of the state and county aforesaid, personally appeared, MARY ELIZABETH GRAY, to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as his free act and deed.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Notary Public

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

STATE OF ARKANSAS  
COUNTY OF BENTON

Before me, a notary public, of the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, swore to and acknowledged \_\_\_\_\_ self to be Assistant Vice President of WAL-MART REAL ESTATE BUSINESS TRUST, the within-named bargainor, a business trust, and that he as such Assistant Vice President, executed the foregoing instrument for the purpose therein contained, by signing the name of the business trust by \_\_\_\_\_ self as Assistant Vice President.

WITNESS my hand and seal at office in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Notary Public

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

STATE OF TENNESSEE  
COUNTY OF HAWKINS

Before me, a notary public of the state and county aforesaid, personally appeared, MARY ELIZABETH GRAY, to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as his free act and deed.

WITNESS my hand and seal this 11th day of December, 2000.

Pat C. Boyd  
Notary Public

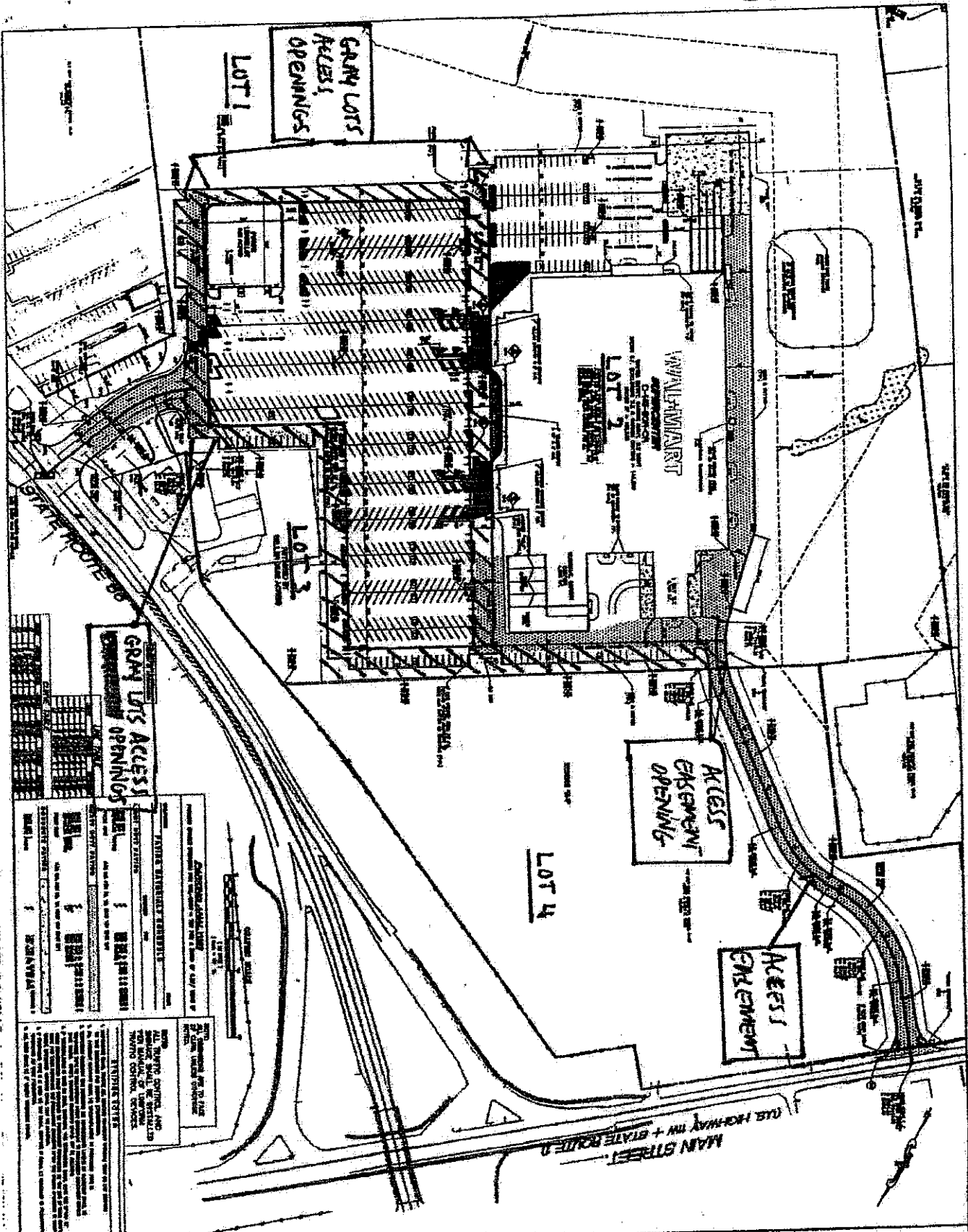
My Commission Expires: \_\_\_\_\_



Exhibit A: Plot Plan

Exhibit B: Access Easement

EXHIBIT A



**GRAND LOTS ACCESS OPENINGS**

NO.	DATE	DESCRIPTION	APPROVED BY
1			
2			
3			
4			

**NOTES:**

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES AND ALL APPLICABLE LOCAL ORDINANCES.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
5. THE CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND STRUCTURES.
6. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES.
7. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
8. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
9. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
10. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.

Paving Plan

**Wal-Mart Supercenter #3234**  
 5204 Route 66  
 Rogersville, Tennessee  
 Owner: Wal-Mart Real Estate Business Trust



C4.0

## LEGAL DESCRIPTION

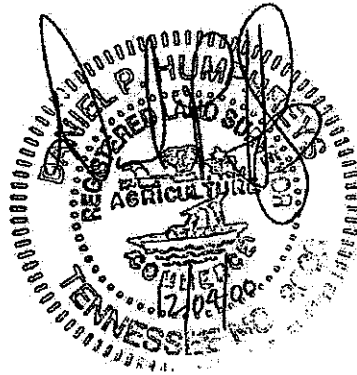
Lot 2.

Situated, lying and being in the Fourth (4th) Civil District of Hawkins County, Tennessee, within the City of Rogersville, and being part of Parcel 22.00, CLT Map 113C, Group "A" and part of Parcel 22.00, CLT Map 113 in the Hawkins County Assessor's Office, and being more particularly bounded and described as follows to wit:

Beginning at a "pk" nail found on the eastern right of way of State Route 66, said "pk" being located S51°39'W, a distance of 1,127.5 feet from centerline intersection of Main Street (State Route 1) and State Route 66, thence with the eastern right of way line of State Route 66, S69°51'45"E, a distance of 38.24 feet to an iron rod set on the proposed right of way; thence with the proposed right of way the following seven (7) calls: 1) S21°18'37"W, a distance of 57.58 feet to an iron rod set; 2) with a curve to the right having a radius of 170.00 feet, an arc distance of 74.23 feet, a chord bearing of S33°49'10"W, and a chord distance of 73.64 feet to an iron rod set; 3) with a compound curve to the right having a radius of 20.00 feet, an arc distance of 34.88 feet, a chord bearing of N83°42'57"W, and a chord distance of 30.62 feet to an iron rod set; 4) S30°08'52"E, a distance of 121.25 feet to an iron rod set; 5) with a non tangent curve to the right, having a radius of 45.00 feet, an arc distance of 60.77 feet, a chord bearing of N08°32'19"E, and a chord distance of 56.26 feet to an iron rod set; 6) with a reverse curve to the left having a radius of 230.00 feet, an arc distance of 104.03 feet, a chord bearing of N34°16'03"E, and a chord distance of 103.14 feet to an iron rod set; 7) N21°18'37"E, a distance of 58.30 feet to an iron rod set on the western right of way line of State Route 66; thence with the western right of way line of State Route 66, S69°22'54"E, a distance of 65.12 feet to an iron rod found, a common corner with Kindall & Brenda Lawson; thence with the line of Lawson the following two (2) calls: 1) S35°54'04"W, a distance of 217.85 feet to an iron rod set; 2) S35°16'31"E, a distance of 54.38 feet to an iron rod found, a common corner with Johnson & Johnson Real Estate Company; thence with the line of Johnson & Johnson Real Estate Company, S37°02'05"E, a distance of 45.01 feet to an iron rod found, a common corner with Hawkins County Development Company, Inc.; thence with the line of Hawkins County Development Company, Inc., S35°29'43"E, a distance of 129.27 feet to an iron rod set, a common corner with Lot 1, Final Plat, WalMart SuperCenter; thence with the line of Lot 1 the following seven (7) calls: 1) S59°51'08"W, a distance of 468.13 feet to an iron rod set; 2) S30°08'52"E, a distance of 46.83 feet to an iron rod set; 3) S59°51'08"W, a distance of 304.83 feet to an iron rod set; 4) S30°08'52"E, a distance of 30.00 feet to an iron rod set; 5) S59°51'08"W, a distance of 150.00 feet to an iron rod set; 6) N30°08'52"W, a distance of 74.20 feet to an iron rod set; 7) S59°51'08"W, a distance of 210.41 feet to an iron rod set on the line of Douglas & Elizabeth Smith; thence with the line of Smith and the line of Kyle & Iva Mathis



N35°31'47"W, a distance of 751.84 feet to a 2" iron pipe found, a common corner with Holston Electric Coop.; thence with the line of Holston Electric Coop., N54°34'19"E, a distance of 200.00 feet to a 2" iron pipe found, a common corner with Frank & Mary Gray; thence with the line of Gray the following three (3) calls: 1) N59°30'25"E, a distance of 123.90 feet to an iron rod set; 2) N59°30'25"E, a distance of 60.76 feet to an iron rod set; 3) N59°30'25"E, a distance of 580.87 feet to a iron rod set, a common corner with Lot 3, Final Plat, WalMart SuperCenter; thence with the line of Lot 3 the following two (2) calls: 1) S30°08'52"E, a distance of 359.90 feet to an iron rod set; 2) N59°51'08"E, a distance of 200.64 feet to a "pk" nail found, a common corner with Donald & Penny Rogers; thence with the line of Rogers N43°15'16"E, a distance of 116.66 feet to the **POINT OF BEGINNING**. Containing 843,722 square feet or 19.37 acres, according to the survey by Daniel P. Humphreys, R.L.S. Number 2060, of Site Inc., 8915 George Williams Road, Knoxville TN 37923, dated November 13, 2000, and last revised December 4, 2000, said survey bearing file number "1195alta1". All bearings are referenced thereon to Tennessee Department of Transportation Project Number 37005-3203-04 (const).

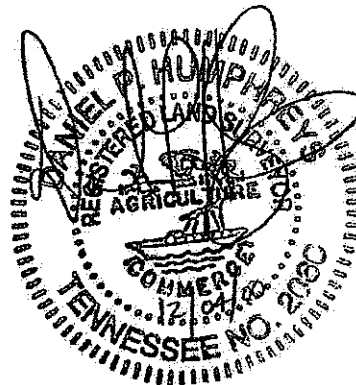


## LEGAL DESCRIPTION

Lot 1.

**Situated, lying and being** in the Fourth (4th) Civil District of Hawkins County, Tennessee, within the City of Rogersville, and being part of Parcel 22.00, CLT Map 113 in the Hawkins County Assessor's Office, and being more particularly bounded and described as follows to wit:

**Beginning** at an iron rod set on the line of Hawkins County Development Company, Inc., a common corner with Lot 1, Final Plat, Wal-mart SuperCenter, said iron rod being located  $S42^{\circ}59'E$ , a distance of 1,529.7 feet from centerline intersection of Main Street (State Route 1) and State Route 66; thence with the line of of Hawkins County Development Company, Inc.  $S35^{\circ}29'43"E$ , a distance of 36.06 feet to an iron rod found, a common corner with Packtower, Ltd; thence leaving the line of of Hawkins County Development Company, Inc. and with the line of Packtower, Ltd  $S35^{\circ}27'53"E$ , a distance of 284.45 feet to an iron rod set, a common corner with Hawkins County Development Company, Inc.; thence leaving the line of Packtower, Ltd and with the lines of Hawkins County Development Company, Inc. & Junior Lee Worley  $S57^{\circ}07'40"W$ , a distance of 1,129.50 feet to an iron pipe found a common corner with Douglas & Elizabeth Smith; thence leaving the line of Worley and with the line of Smith the following two (2) calls: 1)  $N35^{\circ}31'47"W$ , a distance of 223.01 feet to an iron rod found; 2)  $N35^{\circ}31'47"W$ , a distance of 148.81 feet to an iron rod set, a common corner with Lot 2; thence with the common line of Lot 2 the following seven (7) calls: 1)  $N59^{\circ}51'08"E$ , a distance of 210.41 feet to an iron rod set; 2)  $S30^{\circ}08'52"E$ , a distance of 74.20 feet to an iron rod set; 3)  $N59^{\circ}51'08"E$ , a distance of 150.00 feet to an iron rod set; 4)  $N30^{\circ}08'52"W$ , a distance of 30.00 feet to an iron rod set; 5)  $N59^{\circ}51'08"E$ , a distance of 304.83 feet to an iron rod set; 6)  $N30^{\circ}08'52"W$ , a distance of 46.83 feet to an iron rod set; 7)  $N59^{\circ}51'08"E$ , a distance of 468.13 feet to the **POINT OF BEGINNING**. Containing 365,789 square feet or 8.40 acres, according to the survey by Daniel P. Humphreys, R.L.S. Number 2060, of Site Inc., 8915 George Williams Road, Knoxville TN 37923, dated November 13, 2000, and last revised December 4, 2000, said survey bearing file number "1195alta1". All bearings are referenced thereon to Tennessee Department of Transportation Project Number 37005-3203-04 (const).



**LEGAL DESCRIPTION**

Lot 3.

**Situated, lying and being** in the Fourth (4th) Civil District of Hawkins County, Tennessee, within the City of Rogersville, and being part of Parcel 22.00, CLT Map 113 in the Hawkins County Assessor's Office, and being more particularly bounded and described as follows to wit:

**Beginning** at an iron rod set on the western right of way of State Route 66, said rod also being a common corner with Mary E. Gray, said iron rod being located S42°32'E, a distance of 738.8 feet from centerline intersection of Main Street (State Route 1) and State Route 66; thence with the western right of way line of State Route 66 the following two (2) calls: 1) S67°47'00"E, a distance of 200.14 feet to a concrete right of way monument; 2) S39°44'36"E, a distance of 32.11 feet to an iron rod found, a common corner with Donald & Penny Rogers; thence leaving said right of way and with the line of Rogers S35°17'04"E, a distance of 170.78 feet to a "pk" nail found, a common corner with Lot 2, Final Plat, Wal-Mart SuperCenter; thence leaving the line of Rogers and with the common line of Lot 2 the following two (2) calls: 1) S59°51'08"W, a distance of 200.64 feet to a iron rod set; 2) N30°08'52"W, a distance of 359.90 feet to an iron rod set on the line of Mary E. Gray; thence leaving the line of Lot 2, and with the line of Gray N59°30'25"E, a distance of 57.79 feet to the **POINT OF BEGINNING**. Containing 57,432 square feet or 1.32 acres, according to the survey by Daniel P. Humphreys, R.L.S. Number 2060, of Site Inc., 8915 George Williams Road, Knoxville TN 37923, dated November 13, 2000, and last revised December 4, 2000, said survey bearing file number "1195alta1". All bearings are referenced thereon to Tennessee Department of Transportation Project Number 37005-3203-04 (const).

