

## DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between the City of Jefferson, Wisconsin, a Wisconsin municipal corporation (hereinafter referred to as "City"); and Wal-Mart Real Estate Business Trust, a Delaware statutory trust (hereinafter referred to as "Wal-Mart").

### RECITALS

WHEREAS, Wal-Mart has entered into binding contracts for the purchase by Wal-Mart and the sale by current fee owners of adjacent and contiguous parcels of real property located within the Town of Jefferson, County of Jefferson, State of Wisconsin, which real property consists of that certain 1.223 acre parcel of property ("Parcel 1") located adjacent to County Road K and owned by William and Alice Pinnow ("Owner 1") and that certain approximate 21.652 acre parcel of property ("Parcel 2") located adjacent to State Trunk Highway 26 and owned by the Roger W. Sherman & Beverly A. Sherman Joint Revocable Trust ("Owner 2") [Parcel 1 and Parcel 2 are collectively hereinafter referred to as the "Property" and are legally described in Exhibit A attached hereto];

WHEREAS, Wal-Mart's obligation to close upon the Property is expressly conditioned upon the satisfaction of certain conditions, including but not limited to: (i) the annexation of the Property from the Town of Jefferson into the City of Jefferson (the "Annexation"); (ii) adequate zoning of the Property for Wal-Mart's intended use (the "Re-Zoning"); and (iii) the acquisition by Wal-Mart of all necessary and requisite governmental approvals and permits for its intended use of the Property [including approval by the Wisconsin Department of Transportation ("WisDOT") as more particularly described herein];

WHEREAS, in order to accomplish the Annexation sought, Wal-Mart, together with Owner 1 and Owner 2 (as necessary and required by statutory requirements and governmental ordinance and regulation) has submitted to the City an Annexation Petition and Pre-Annexation Agreement pursuant to Wisconsin law;

WHEREAS, Wal-Mart anticipates that upon acquisition of the Property from Owner 1 and Owner 2, it will develop the Property for a 24 hour Wal-Mart SuperCenter retail department store including groceries and a pharmacy of approximately 156,760 square feet, and a gas station and garden center adjacent thereto (collectively, the "Wal-Mart Project"), as identified on Exhibit B (the "Site Plan");

WHEREAS, the Property is subject to Ordinance 3-03 dated June 3, 2003 creating Section 300-30.M of the Municipal Code of the City of Jefferson relating to large retail buildings in excess of 50,000 square feet (as amended, the "Ordinance");

WHEREAS, pursuant to the Ordinance, the Wal-Mart Project is categorized as a conditional use in the zoning district in which it is allowed and a Conditional Use Permit shall be required in order for Wal-Mart to develop the Wal-Mart Project at the Property;

WHEREAS, Wal-Mart has requested and submitted application for the re-zoning of the Property to "BHN" as set forth in that certain Ordinance No. 7-02, dated August 6, 2002 (as amended, the "Zoning Ordinance"), which zoning (together with the Conditional Use Permit to be obtained pursuant to the Ordinance) is adequate to permit the operation and construction of the Wal-Mart Project;

WHEREAS, in order to protect the health, safety and welfare and convenience of the public, the City and Wal-Mart are also desirous of performing certain public improvements to the roads and drives serving the Property and surrounding area and certain public improvements to the City's sanitary and storm sewer systems and public water supply system all as more particularly set forth herein;

WHEREAS, the Wisconsin statutes grant the City Council the power to act for the government and good order of the City, for its commercial benefit and for the health, safety, welfare and convenience of the public [Wisconsin Statutes Section 62.11(5)];

WHEREAS, pursuant to Chapter 236, Wisconsin Statutes, a Development Agreement is allowed and pursuant to the Ordinance, a Development Agreement (addressing payment of utilities not limited to storm water infrastructure) is required;

WHEREAS, Wal-Mart and the City are desirous of setting forth herein certain conditions regarding the City's approval of the Wal-Mart Project in conformance with the Ordinance, Wal-Mart's Conditional Use Permit and the City's Master Plan; and,

WHEREAS, Section 236.13(2) of the Wisconsin State Statutes and the Land Division Ordinance of the City provide that as a condition of approval of a Certified Survey Map or Subdivision Plat, the governing body of a municipality may require that the Developer make and install or have made and have installed, any public improvements reasonably necessary and related to the Property and that the Developer provide an Irrevocable Letter of Credit approved by the City Attorney guaranteeing that the Developer shall make and install or have made and installed those public improvements within a reasonable time.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1. CONDITIONS

This Agreement is expressly contingent upon the satisfaction of the following contingencies:

- (a) Wal-Mart acquiring fee simple ownership of the Property; and

- (b) The finalization of the Annexation of the Property (such that any and all applicable appeal periods have expired);
- (c) The City approving the Re-Zoning of the Property to the BHN zoning classification as defined in the Zoning Ordinance (such that such Re-Zoning is final and not subject to appeal or referendum) pursuant to the City ordinances.

The Effective Date of this Agreement shall be the date upon which the City has granted the Conditional Use Permits to Wal-Mart for the construction of the Wal-Mart Project.

The parties acknowledge and agree that if Wal-Mart does not acquire the Property within Three Hundred Sixty Five (365) days of the Effective Date of this Agreement, then this Agreement shall terminate without further action of either the City or of Wal-Mart. Upon termination of this Agreement, the parties shall have no further rights or obligations to the other hereunder.

## 2. ZONING APPROVALS AND PERMITS

(a) Zoning. As part of the Annexation process, the City agrees to consider (but has no obligation to approve) the Re-Zoning of the Property in accordance with its ordinances and applicable laws. The parties acknowledge that the definition of BHN as set forth in the Zoning Ordinance is a proper zoning classification for the construction and operation of the Wal-Mart Project (together with the Conditional Use Permit to be obtained pursuant to the Ordinance).

(b) Permits, Cooperation, Etc. The City agrees to consider (but has no obligation to approve) all requests for approvals and permits, necessary for construction of the Wal-Mart SuperCenter on the Property in a timely fashion, including, without limitation, certified survey map and site plan approval. When public hearings are required by law to be held prior to granting any such approvals, the City will conduct such hearings.

## 3. CONDITIONS TO CONSTRUCTION OF WAL-MART STORE

(a) No Covenant to Operate. It is expressly understood that Wal-Mart has no obligation to construct, open or operate the Wal-Mart Project on the Property or to perform any of the Public Improvements [set forth in subparagraph (c) hereinbelow] unless and until it has purchased the Property and commenced construction of the Wal-Mart Project; it being the understanding of the parties that the Public Improvements are only necessary if Wal-Mart owns the Property and constructs the Wal-Mart Project.

(b) Site Plan Conditions. If all of the Conditions are satisfied and Wal-Mart elects to construct the Wal-Mart Project on the Property, the City and Wal-Mart stipulate and agree that conditions regarding the City's approval of Wal-Mart's Site Plan, will include but not necessarily be limited to the following improvements ("Site Improvements") and conditions relating to such improvements ("Site Plan Conditions"):

1. All lighting within the proposed development of the Wal-Mart

SuperCenter shall be downward directed for the parking lot and shall be the responsibility of Wal-Mart, and shall be such quality and quantity as Wal-Mart deems appropriate. It shall further comply with City Ordinances.

2. Interior parking lot islands for the Wal-Mart SuperCenter shall be curbed and landscaped only as shown on **Exhibit C** (the Landscape Plan).
3. Wal-Mart shall cause the construction of a detention pond along the northern boundary of the Property for the Property only. Maintenance of said detention pond shall be the responsibility of the owner of the land upon which the same is located. An alternative to the detention pond has been generally discussed. Any alternative must be subsequently approved by the City Engineer.
4. The building exterior material shall be a combination of smooth face and split face concrete block to be **integral colors** in an earth tone color scheme as shown on **Exhibit D**, Building Elevation. The seasonal garden center shall be enclosed with black extruded aluminum fencing and shade cloth.
5. The building signage and sign square footage shall be as shown on **Exhibit E**, Building Signage and must comply with City Ordinances.
6. Wal-Mart shall cause the construction of driveway connections to County Highway K as shown on **Exhibit B**.
7. Wal-Mart shall cause the construction of a driveway connection to State Trunk Highway 26 as shown on **Exhibit B**.
8. The conditions set forth in the Conditional Use Permit (attached as **Exhibit I** annexed hereto and made a part hereof) and the Ordinance.

(c) **Public Improvements.** The construction of the Wal-Mart SuperCenter shall also be expressly conditioned upon construction of the following public improvements ("Public Improvements") and conditions regarding such Public Improvements, which are also set forth below:

1. Wal-Mart shall cause the construction and be responsible for any and all associated costs of 3-lane roadway improvement to County Highway K from the southern most property line of the Property to Collins Road within the existing sixty six (66) foot wide public right-of-way. The construction shall also include the associated utilities, as described below. Wal-Mart shall construct and install the following: an eight (8) inch water main, an eight (8) inch sanitary sewer main, and a storm sewer main necessary to accommodate the County K roadway improvements and the Wal-Mart development. Wal-Mart shall pay construction costs directly relating to the improvement and utility extensions. Said roadway shall be constructed in accordance with the City's Subdivision Code and County standards. The City agrees to use reasonable efforts to cause the County to approve said roadway. Wal-Mart shall construct and further be responsible for any and all costs for the installation and/or upgrade of traffic control signs or signals, as required by the City or the Wisconsin Department of Transportation.

2. Wal-Mart intends to construct, at Wal-Mart's sole expense, a driveway connection to State Trunk Highway 26, as shown on Exhibit F, Proposed Access (the "Proposed STH 26 Access"). Wal-Mart and the City understand that the Wisconsin Department of Transportation (WisDOT) has jurisdiction over STH 26 along the Property frontage until [2012], at which time WisDOT will turn over jurisdictional control to the City. The City and Wal-Mart agree to the Proposed STH 26 Access configuration for the duration of WisDOT jurisdictional control over STH 26 along the property frontage, unless mutually agreed to in writing by the City and Wal-Mart to change said configuration. The City shall support and if necessary, secure, an access permit from Wisconsin Department of Transportation and all other governmental authorities necessary to construct the Proposed STH 26 Access. **[CAN THIS BE REVISITED LATER?]**
3. Wal-Mart intends to construct, at Wal-Mart's sole expense, traffic signals for a full access intersection in all directions and intersection modifications at the Proposed STH 26 Access following the jurisdictional transfer of the STH 26 from WisDOT to the City as shown on Exhibit G, Proposed Future Access (the "Proposed Future STH 26 Access Improvements"). Following the jurisdictional transfer of the STH 26 from WisDOT to the City but prior to Wal-Mart commencing construction of the Proposed STH 26 Access, Wal-Mart shall provide the City with a letter of credit in the amount of **150% of** the estimated cost of the Proposed Future STH 26 Access Improvements. Wal-Mart's form of letter of credit is attached hereto as Exhibit H. Said letter of credit shall provide that Wal-Mart must complete said Proposed Future STH 26 Access Improvements within **[one hundred twenty (120) days]** following the jurisdictional transfer of the STH 26 from WisDOT to the City or the City shall have the right to perform the work for the Proposed Future STH 26 Access Improvements itself and access the letter of credit as reimbursement. Upon completion of the Proposed Future STH 26 Access Improvements, the City shall release the letter of credit to Wal-Mart, or the remaining portion thereof in the event the City had to complete the Proposed Future STH 26 Access Improvements itself and there is a balance remaining. In the event there is not a balance remaining, then Wal-Mart shall reimburse the City the amount, if any, that the cost of the Proposed Future STH 26 Access Improvements exceeds the letter of credit amount, within thirty (30) days of Wal-Mart's receipt from the City of an invoice and reasonable documentation for such costs.
4. The City agrees to not enter into an agreement with the Wisconsin Department of Transportation, or any other party, that restricts access other than that shown on Exhibit G.
5. Wal-Mart agrees to construct and be responsible for all associated costs for a third traffic lane for westerly traffic on Collins Road between County K and Highway 26 as part of a condition of occupancy. Furthermore, Wal-Mart shall construct and be responsible for any and all costs for the installation and/or upgrade of traffic control signs or signals as required by the City or the

Wisconsin Department of Transportation. Wal-Mart shall also be responsible to perform and pay for an updated traffic impact analysis.

(d) Wal-Mart agrees to construct, at its sole cost and expense, the Public Storm Sewer Extension from intersection of County K and Collins Road to the Rock River. Wal-Mart shall not be obligated to pay any tap-in fee as a result of the Public Storm Sewer or the connection of the Wal-Mart Project thereto. The City acknowledges and agrees that in the event any properties request to tie in into the Public Storm Sewer, Wal-Mart shall be entitled to recover [Ten Percent (10%)] of the service fee (the "Service Fee") usually charged by the City for any other connections to the Public Storm Sewer for a period of [ten (10) years] from the date of acceptance of the Public Storm Sewer by the City. The Service Fee shall be based upon the square footage/usage basis in accordance with the established engineering principles and rate guidelines established by the City from time to time.

(e) Certificate of Occupancy. Wal-Mart shall complete those Public Improvements and Site Improvements specified herein prior to the opening of the proposed retail store, which is part of the Wal-Mart Project; provided, however, that if the Public Improvements and/or Site Improvements are substantially completed and the work yet to be completed does not impact the health or safety, such as, by way of example only, landscaping work (the "Remaining Improvements"), the City shall issue a certificate of occupancy and permit the opening of the retail store so long as Wal-Mart provides the City with a letter of credit in the amount of the estimated cost of the Remaining Improvements. Remaining improvements cannot include any roads or traffic control devices. In addition, Wal-Mart shall provide the City Said letter of credit shall provide that Wal-Mart must complete said Remaining Improvement within sixty (60) days of the opening of the retail store or the City shall have the right to perform the Remaining Improvements items itself and access the letter of credit as reimbursement. Upon completion of the Remaining Improvements, the City shall release the letter of credit to Wal-Mart, or the remaining portion thereof in the event the City had to complete the Remaining Improvements itself and there is a balance remaining. In the event there is not a balance remaining, then Wal-Mart shall reimburse the City the amount, if any, that the cost of the Remaining Improvements exceeds the letter of credit amount, within thirty (30) days of Wal-Mart's receipt from the City of an invoice and reasonable documentation for such costs.

No occupancy permit shall be issued until all other improvements required by this Agreement, including the first lift of asphalt are installed and approved by the City. The occupancy permit shall be issued by the City where outstanding work to complete construction required per the approved site and building plans is not life threatening, or a safety concern, and only upon the formulation of a punch list of said outstanding work with a corresponding reasonable completion date which list is acceptable to both the City's Building Inspector and Developer. Failure to complete any item on the punch list within the accepted timeline will result in a penalty of \$500.00 per day plus reimbursement to the City for inspection services at the rate of 155% of the actual hourly rate paid for the inspection services by the City. Payment of these penalties are guaranteed by the irrevocable letter of credit as provided in Section VII (A) of this agreement.

**COMPLIANCE WITH CODE.** Wal-Mart, entirely at its own expense, shall construct and install all improvements and provide all plans, specifications and other documents in accordance with the provisions of this Agreement, the provisions of the Municipal Code of the City, the review and oversight by the pertinent committees of the Common Council charged with responsibility for the improvements subject of this agreement, the City Engineer, and where applicable, the City Attorney and Wisconsin Department of Transportation.

(f) Temporary Construction Easements. The City shall grant any and all necessary temporary construction easements upon the property owned and controlled by the City (the "City Property") required by Wal-Mart in order for Wal-Mart to perform the Public Improvements (the "Temporary Construction Easements"). Wal-Mart shall, at its sole cost and expense, restore the affected portion of the City's property to the same condition which existed prior to the commencement of such work. The City warrants that it owns and controls all the City Property described and Wal-Mart's obligation to perform the Public Improvements shall not require access to any other property owned or otherwise controlled by a third party.

(g) Submission and Approval of Plans. All work with respect to each element of the Site Improvements and Public Improvements set forth in Section 3(b) and 3(c) above (collectively, the "Improvements") shall be in conformity with this Agreement, where this Agreement specifically addresses such Improvements and Wal-Mart's plans and specifications for the Improvements, which are subject to the City's approval, pursuant to the conditions below:

(i) Construction Plans. Wal-Mart shall submit to the City construction plans ("Construction Plans") for each element of the Improvements for which it is responsible. The City shall within thirty (30) days from receipt approve or disapprove the Construction Plans, after reviewing said plans for compliance with all applicable City ordinances and this Agreement. If the City disapproves any of the Construction Plans, Wal-Mart shall submit revised Construction Plans within a reasonable time from the date of rejection. Upon resubmission, the City shall review and approve or disapprove such revised Construction Plans within thirty (30) days of submittal. This process shall repeat until such plans are approved by the City. In reviewing said plans, the City will take into account the normal and customary costs of constructing elements of this type. Any request for change in the Construction Plans by the City shall not cause an unreasonable increase in the costs.

(ii) Changes in Construction Plans. Prior to completion of the Improvements as certified by the City, if Wal-Mart desires to make any substantial change in the Construction Plans which significantly affects the appearance, function, or structural integrity of such element, Wal-Mart shall submit the proposed change to the City for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Agreement and meet all applicable ordinances, the City shall approve the proposed change and notify Wal-Mart in writing of its approval. If the City disapproves of such changed Construction Plans, it shall so advise Wal-Mart within thirty (30) days of submission and Wal-Mart may submit revised changed Construction Plans within a reasonable time from the date of rejection. This process shall repeat until such changed Construction Plans are approved by the City. If such changed Construction Plans are not so approved or rejected within thirty (30) working days of receipt of the

submission by the City from Wal-Mart, such changed plans will be deemed approved. Said changes shall not be allowed if they would significantly alter/modify/change the general appearance of the store as seen in Exhibit \_\_\_\_\_.

4. NOTICES

Any written notice or demand hereunder from any party to another party shall be in writing and shall be served by (a) personal delivery, (b) certified mail, return receipt requested or, (c) overnight courier such as Federal Express, United Parcel Service or Express Mart at the following addresses:

to the City at:  
City of Jefferson, Wisconsin

Attn: Tanya Stewart  
City Clerk  
317 S. Main Street  
Jefferson, WI 53549

and to Wal-Mart at:  
Wal-Mart Real Estate Business Trust  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716-0550  
Attn: Kevin Carter, with a copy to Adele E. Lucas, Esq.  
Facsimile: (479) 273-8380

With a copy to:  
DAWDA, MANN, MULCAHY & SADLER, PLC  
39533 Woodward Avenue  
Suite 200  
Bloomfield Hills, Michigan 48304-5103  
Attn: Edward C. Dawda

or to the last known address of any party or to the address provided by an assignee if such address is given in writing. Any party may change its address by providing notice in accordance with this provision.

5. ORDINANCES

The City, Wal-Mart and Owner agree to follow all city ordinances in regards to their respective obligations set forth herein.

6. BINDING EFFECT

This Agreement shall be binding upon the parties hereto and their respective heirs, executors, personal representatives, corporate authorities, administrators, successors and assigns. In the event of sale of the Property prior to full completion of all requirements in accordance with this Agreement, Wal-Mart shall make acceptance of the conditions imposed by this Agreement by purchaser a condition of sale and Wal-Mart shall thereafter have no liability under this Agreement.

7. TIME



Time shall be of the essence of this Agreement.

8. AMENDMENT

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the parties hereto relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, expressed or implied, between them, other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by the City of Jefferson and Wal-Mart.

9. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate and distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

10. WAIVER

Neither party shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other party upon one or more occasion to insist upon or seek compliance with any such terms or conditions.

11. COVENANTS RUNNING WITH THE LAND

The benefits and burdens of this Agreement shall be deemed covenants which run with the land and shall be binding on the successors and assigns of Wal-Mart.

12. REMEDIES

Upon a breach of this Agreement, any Party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance or both, or may obtain rescission for repudiation or material failure of performance. Notwithstanding the foregoing, before the failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the satisfaction of the complaining Party within thirty (30) days of receipt of such notice.

13. FORCE MAJEURE

If performance of any covenant to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party, which circumstances may include, but are not limited to, acts of God, war, acts of civil disobedience, harsh weather, strikes or similar acts, the time for such performance shall be extended by the amount of time of such delay.

14. GOVERNING LAW

This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. Wal-Mart shall at all times observe and comply with all federal, state and local laws, regulations and ordinances which are in effect, as of the date hereof, which may affect the conduct of the work to be accomplished under this Agreement.

15. A. SIDEWALKS. Wal-Mart shall construct a five (5) foot wide sidewalk along to Highway 26 right-of-way pursuant to the Site Plan as approved by the Planning Commission. Wal-Mart shall provide to the City a separate letter of credit for the sole purpose of constructing a five (5) foot wide sidewalk. The amount of the letter of credit shall be based upon a cost estimate prepared by Wal-Mart's civil engineer and approved by the City Engineer. At the option of the City a ten foot pedestrian path may be installed instead of the sidewalk.

B. STREET TREES. Wal-Mart shall install Street Trees as requested by the City and in addition to those identified in the landscape plan shown on Exhibit \_\_\_\_, attached.

C. OTHER UTILITIES. Wal-Mart shall be responsible for and cause electrical power, telephone facilities, cable TV lines and natural gas facilities to be installed in such a manner as to make proper and adequate service available to each building on the Site Plan of the Development. Plans indicating the proposed location of each such utility to service the Development shall be provided to the City prior to the installation of the utility, as approved and shown on the Detailed Site Plans.

16. DEDICATION.

A. Subject to all of the other provisions of this Agreement, Wal-Mart shall, without charge to the City, upon completion of all of the within described public improvements, unconditionally give, grant, convey title and fully dedicate the same to the City, its successors and assigns, and in fee simple, free and clear of all monetary encumbrances, together with, including without limitation because of enumeration, all lands upon which they stand (unless such land is located within a dedicated public easement), and all structures, mains, conduits, pipes, lines, machinery, equipment and appurtenances which may in any way be a part of or pertain to such improvements and together with any and all necessary easements for access thereto. After such dedication and acceptance thereof by the City, said public improvements shall thereafter be under the jurisdiction of and subject to inspection by the City Engineer or his representatives, and the City shall have the right to connect or integrate other sewer or water facilities provided hereunder as the City decides, with no payment or award to, or consent required of, Wal-Mart.

B. If Wal-Mart requests that the Common Council accept the CSM or Final Plat prior to completion of all public improvements, Wal-Mart shall file with the City an irrevocable letter of credit, acceptable to the City, in an amount as established by Wal-Mart's civil engineer and approved by the City Engineer that will reasonably compensate the City for completion of said public improvements in the event the Developer fails to complete the public improvements within the time requirements as set forth hereinabove, and the amount of the letter of credit shall be established in an amount which is One Hundred Fifty percent (150%) of the City Engineer's approved estimate of the cost of completion of the required improvements.

C. Necessary permits shall be obtained for all work. Dedication shall not constitute acceptance of any Improvements by the City. All public Improvements will be accepted by the City by separate resolution at such time as said Improvements are in acceptable form and

according to City specifications, but no later than one (1) year after submission by the Developer for acceptance by the City, provided said submittal is an acceptable form and according to City specifications. Acceptance of the dedication of any Improvements does not constitute a waiver by the City of the right to draw funds under the Irrevocable Letter of Credit on account of any defect in or failure of the Improvements, or failure to pay the cost thereof, that is detected or which occurs during the warranty period running after acceptance of the Improvements by the City.

## 17. CERTIFICATE OF ACCEPTANCE

A. Promptly after completion of construction of the Improvements described in Section III above, submittal of as-built documents, and upon written request of Wal-Mart to the City Administrator, the City, following proper inspection, testing, approval and acceptance will execute and deliver to Wal-Mart a certificate of acceptance. The certificate of acceptance by the City shall be (and it shall be so provided in the Resolution of Acceptance authorizing issuance of the certificate of acceptance) conclusive determination of satisfaction with respect to the obligations of Wal-Mart and its successors and assigns that the construction of such Improvements has been completed in accordance with the provision of this Agreement.

B. If the City refuses or fails to place said Resolution in accordance with the provision of this Agreement on the Common Council agenda for approval within thirty (30) days of the City's receipt of Wal-Mart's letter requesting acceptance, then the City shall, within thirty (30) days after written request by Wal-Mart, provide Wal-Mart with a written statement indicating in adequate detail in which respects Wal-Mart has failed to complete construction of such element in accordance with the provisions of this Agreement, or is otherwise in default and what measures or steps will be necessary, for Wal-Mart to take or perform in order to obtain such Resolution. Said Resolution as provided herein shall not be unreasonably withheld by the City.

## 18. PAYMENT OF FEES.

A. GENERALLY. Wal-Mart shall pay all fees, expenses, costs and disbursements which Wal-Mart is required to pay pursuant to the Municipal Code of the City of Jefferson and/or this Agreement. Unless required to be paid as a condition of the approval of this Agreement, such amount(s) shall be paid within Forty-five (45) days after being billed therefore. All billing of fees outlined below shall be forwarded to Wal-Mart's engineer at McClure Engineering Associates, Inc. 6838 East State Street, Rockford, Illinois, 61108 for processing. This does not absolve Wal-Mart for its sole financial responsibility for payment to the City.

B. REVIEW, PROFESSIONAL, AND INSPECTION FEES AND COSTS. Wal-Mart shall be responsible for payment of all fees and costs incurred by the City in connection with this Development.

1. Review Fees and Costs. Wal-Mart shall pay the fees and costs equal to the actual technical, planning and administrative review and processing costs of the City and its consultants, and the publication costs, that are associated with performing necessary reviews and approval services relating to the CSM or Plat Reviews, Site Plans, and this Agreement.

2. Professional Fees and Costs. (a) Legal. Wal-Mart agrees to pay all of the City legal fees and costs incurred in relation to the approval of this Development, whether performed by the City Attorney or his designee, including but not limited to: the review of all documents, plans and plats submitted by Wal-Mart and/or its representatives, the negotiation and drafting of this Agreement, all legal research, the drafting of any related documents (including Ordinances), as well as any time incurred in the various and miscellaneous involvements which have been required during the plan approval processes. Said amount shall not exceed \$ 15,000.

(b) Engineering. Wal-Mart agrees to pay all of the City engineering fees and costs incurred in relation to the approval of this Development, whether provided by the City Engineer, a staff engineer or technician or designated employee or by a consultant, including but not limited to: the review of all documents, plans and plats submitted by Wal-Mart and/or its representatives, oversight of the development, and the cost to update the Official City Map and the City water and sewer maps. Said amount shall not exceed \$ 10,000.

(c) Planning. Wal-Mart agrees to pay all of the City planning fees and costs incurred in relation to the approval of this Development, whether provided by staff, technicians, designated employees or by a consultant, including but not limited to: the review of all documents, plans and plats submitted by Wal-Mart and/or its representatives and oversight of the development. Said amount shall not exceed \$ 5,000.

3. Inspection Fees and Costs. Wal-Mart shall reimburse the City for the costs of inspection and related services provided by the City or by a consultant on the basis of all such services rendered, but said amount shall not exceed \$14,000. The Inspector of the improvements on behalf of the City shall be chosen by the City. In the event that the Inspector chosen by the City for site inspection during the improvement construction phase is someone other than an employee of the City Engineer's Office the City Engineer may require involvement by his firm in oversight of those inspection processes from time to time as he deems necessary, the cost of which the Developer agrees to pay, inclusive within the \$14,000 set forth above.

C. SEWER CONNECTION CHARGES. Wal-Mart shall pay sewer connection charges pursuant to the City of Jefferson Municipal Code.

## 19. FINANCIAL GUARANTEES.

A. AMOUNT. For Wal-Mart Supercenter Phase I, Wal-Mart shall deposit with the City an irrevocable letter of credit in the amount to be established at one hundred fifty percent (150%) of the anticipated public improvement costs by Wal-Mart's engineer and approved by the City Engineer, the items to be included as listed in Schedule A, attached, which shall assure the faithful performance of Wal-Mart's obligations under this Agreement, and which shall include the amounts required for the public off-site road and street improvements, the extension of public water mains, and the installation of the sidewalk or pedestrian walk. The amount of the irrevocable letter of credit for the Development shall be determined at the time Developer seeks approval.

The amount of a letter of credit shall be reduced from time to time in amounts equal to the value of improvements which have been installed, completed and approved by the City or shall be increased in the event of delay in the installation of improvements and the escalation of costs. In no event shall the amount of the letter of credit be reduced below the aggregate total estimated cost of the improvements not yet installed or accepted, plus fifty percent (50%). The City is hereby authorized to contact Wal-Mart's financial agent directly from time to time regarding the sufficiency of the financial guarantee. Each letter of credit may be drafted so as to terminate upon the passage of sixty (60) days after acceptance by the City of all improvements covered by said letter of credit. However, in the event of a failure by Wal-Mart to complete any public improvement for which any letter of credit stands as security, it shall not terminate until the passage of one hundred and twenty (120) days from the final date of completion as established hereinabove. Once the improvements undertaken by Wal-Mart have been installed and accepted by the City, the letter of credit may be reduced to 50% of the aggregate total cost of the improvements completed by Wal-Mart.

The drawdown of any letter of credit as set forth in this agreement shall be made with only the approval of the City Engineer and the City Attorney and only after Wal-Mart has been given at least 45 days prior written notice of the reason for the draw down and has failed to commence to cure such reason within such 45 day period. Notice of anticipated draw down and opportunity to cure shall be given to Wal-Mart in the manner and at the address set forth in Section 4, above.

B. **FORM.** Irrevocable letters of credit shall be approved as to form mutually agreed to by the City Attorney and Wal-Mart. Letters of credit shall be payable to the City and shall be conditioned upon, and guarantee to, the City the performance by Wal-Mart of its obligations under this Agreement.

C. **LIABILITY NOT RELEASED.** All letters of credit given hereunder are security devices only, which in no manner limit the liability of Wal-Mart to the City, however arising and regardless of the amount. It shall be the responsibility of Wal-Mart or their successors to provide City not less than sixty (60) days notice of the expiration of any required letter of credit herein, or the payment of the existing letter of credit amount prior to expiration date.

D. **RESERVATION OF ASSESSMENT RIGHTS.** In the event that the letter of credit does not provide sufficient funds to complete the improvements to be dedicated to the City as provided herein, in addition to the remedies for default provided to the City by this financial guarantee, the City reserves the right with notice or notice of hearing to impose special assessments or charges for any amount to which it is entitled by virtue of this Agreement upon the Development. Such special assessments or charges shall be collected on the next succeeding tax roll as are other special assessments or charges.

E. **CASH DEPOSIT REQUIRED.** 1. For the Development, Wal-Mart shall deposit on the sole behalf of the City at a mutually acceptable depository, a cash sum equal to the total of all charges enumerated in Section 18 to cover "out-of-pocket" costs and expenses incurred by the City for review, professional (legal, engineering and planning), technical, inspection and administrative fees and expenses for work performed while representing the interests of the City as they relate to this Development. The sum shall be deposited in an interest bearing account with all interest accruing also credited on behalf of Wal-Mart to the account. Itemized statements of withdrawal(s) and the supporting documentation including, but not limited to, invoices by the City shall be furnished to Wal-Mart at the time of withdrawal.

The sum deposited at the time of signing this Agreement shall be \$44,000. This amount shall cover the charges incurred as set forth in Section 18 both prior to and subsequent to the signing of this agreement. Any additional costs and expenses shall not be billed to Wal-Mart.

In the event that the Development fails to proceed or is terminated, Wal-Mart shall remain liable for these fees and costs, incurred to the date of Wal-Mart's delivery of its notice of intent not to proceed with or to terminate the Development.

2. In addition to the cash deposit requirements set forth in Section 19(E) Wal-Mart shall make an additional, separate letter of credit on the sole behalf of the City at a mutually acceptable depository in an amount which is ten percent (10%) of the costs of the landscaping and storm water drainage facility installation as prepared by Wal-Mart's engineer and approved by the City Engineer, which amount shall guarantee that Wal-Mart will strictly adhere to the installation of landscaping per the site plan approved by the Planning Commission as identified in Exhibit \_\_\_\_\_. The surface water detention pond requirements are set forth in Section 3(b)(3). The letter of credit shall remain in effect permanently or until revision of the terms of the conditional use permit by the Plan Commission are modified, from the completion of the installation of all landscaping referenced herein.

Wal-Mart shall maintain the landscape and storm water detention pond and if the City determines that Wal-Mart has not done so, it shall provide written notice to Wal-Mart by certified mail to the local store manager at the store's local address and the corporate real estate attorney for Wisconsin (#8313) at Sam Walton Development Complex, 2001 SE 10<sup>th</sup> Street, Bentonville AR 72716-0550, ATTN: Legal Department-Wisconsin, and Letter of Credit-Bond Manager Dept. 9382, of the maintenance required and if such work is not completed within thirty (30) days of the notice, the City shall proceed with the work and deduct the cost of such work by drawing against the above referenced letter of credit. Itemized statements of withdrawal(s) and the supporting documentation including but not limited to invoices by the City shall be furnished to Wal-Mart at the time of draw down, and Wal-Mart shall increase the letter of credit for that amount within thirty (30) days of receiving such statement. The cost of such work shall be established at a rate of one hundred fifty percent (150%) of the actual cost in order to cover the cost of administration in addition to the work itself. If the City is to do required work after the expiration of the letter of credit, the cost to the City under this Section shall be assessed as a special charge against the Property and shall be added to the real estate tax bill for the year in question and Wal-Mart will not protest the special assessment. Any notice delivered by the City to Wal-Mart under this paragraph shall specifically identify this Agreement and reference this paragraph as well as the one hundred fifty percent (150%) penalty described above.

## 20. GUARANTEE AND INDEMNIFICATION.

A. GUARANTEE OF IMPROVEMENTS. Wal-Mart shall guarantee all dedicated improvements against defects due to faulty materials or workmanship which appear within eighteen (18) months from the date of acceptance of dedication of such improvements as provided for in this Agreement. Wal-Mart shall repair or replace any such improvements deemed by the City necessary to eliminate such defects and shall pay for all damages to City property or easements and all other City costs resulting from such defects during such period.

B. GENERAL INDEMNIFICATION. Wal-Mart shall indemnify and hold the City harmless against and from any and all liabilities, costs and expenses incurred by the City which

may in any manner result from or arise in the course of, out of, or as a result of the negligence of Wal-Mart, its agents, successors, assigns, contractors or employees in connection with the construction of the public improvements to be dedicated to the City pursuant to this Agreement. The City shall first look to its insurance coverage before claiming under this indemnity. This indemnification shall terminate at the end of 18 months and one (1) day from the acceptance of dedication of the improvements required by this Agreement.

C. CONTRACT INSURANCE. Contractors engaged by Wal-Mart to perform the work required by this Agreement within the Development and public rights-of-way shall, prior to commencing such work, submit to the City acceptable proof of the following coverages. Further, these certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least ten (10) days written notice has been given to the City. Wal-Mart shall file a Certificate of Insurance showing the City as additional insured and containing a ten (10) day notice to the City of cancellation:

1. Unemployment and workers compensation insurance which is in strict compliance with state laws.

2. Comprehensive personal and public liability insurance which is not less than \$5,000,000.

3. Comprehensive property damage insurance having limits of not less than \$5,000,000.

4. Comprehensive automobile liability and property damage insurance for operations of all hired and non-hired motor vehicles of not less than \$ 1,000,000.

5. Fire and extended coverage which shall insure against losses and damages to incomplete and completed work, materials or equipment covering the improvements to be dedicated to the City until the same have been accepted by the City.

## 20. MISCELLANEOUS REQUIREMENTS.

A. SURVEY MONUMENTS. Wal-Mart hereby agrees to properly place and install survey or other monuments required by statute and ordinance.

B. DEED RESTRICTIONS. Wal-Mart hereby agrees to execute and record deed restrictions. A copy of such deed restrictions shall be included with and made a part of this Agreement and the Site Plan.

1. Such restrictions shall include a covenant that there shall be no future division or subdivision of lots in this Development without a CSM or Subdivision Plat, Site Plans, and the approval of the Planning Commission of the City.

2. Such deed restrictions shall bar the use of any land or buildings located within the Development for any use which is not a Permitted Use pursuant to this Agreement.

C. DEBRIS. Wal-Mart shall be responsible for cleaning up any debris resulting from construction by the Developer, its contractors or its subcontractors within the Development. Wal-Mart shall clean up all debris within 48 hours after receiving notice from the City Engineer or Building Inspector.

D. CLEAN-UP. During construction of the improvements required hereunder, the Developer shall be responsible for cleaning up the mud and dirt on the roadways within the Development and its abutting streets resulting from construction of such improvements. The Developer shall clean the roadways within eighteen (18) hours after receiving notice from the City Engineer or the Department of Public Works.

E. EROSION CONTROL. Erosion control shall be carried out pursuant to all applicable state codes and statutes, and ordinances of the City. Wal-mart shall cause all grading, excavation, open cuts, side slopes, and other land surface disturbances to be so mulched, seeded, sodded, or otherwise protected that erosion, siltation, sedimentation and washing are prevented, in accordance with the plans and specifications approved by the City Engineer. In addition:

1. Sod shall be laid in strips at those intervals necessary to prevent erosion and at right angles to the direction of drainage.

2. Temporary vegetation and mulching shall be used to protect critical areas, and permanent vegetation shall be installed as soon as practical.

3. Construction at any given time shall be confined to the smallest practical area and for the shortest practical period of time.

4. Sediment basins shall be installed and maintained at all drainageways to trap, remove and prevent sediment and debris from being washed outside the area being developed.

5. Temporary erosion control devices shall be removed upon the installation of permanent erosion control devices.

Any conflict between the requirements of the City and the WDNR shall be resolved in favor of the City provided that the WDNR does not object to the City's requirements.

F. OUTSIDE SALES AND STORAGE. Any outside sales and/or storage in the Development shall be strictly limited to those areas designated on the Site Plan.

G. OVERHEAD DOORS. All overhead doors shall remain closed unless ingress or egress is in progress, except between the hours of 9:00 a.m. and 4:00 p.m. Monday through Saturday.

H. OUTSIDE SPEAKERS. No outside public address speakers may be used except as required for emergency purposes.

I. OUTSIDE LIGHTING. The outside lighting shall conform to the Municipal Code of the City, as shown on the Site Plan so as to minimize the effect of such lighting on the surrounding area.



J. NOISE. The City may determine in the future to limit the time of deliveries to the building in the Development so as to minimize the effect of noise on the surrounding area, in accordance with the City's noise regulations.

K. OVERNIGHT PARKING. Parking lots shall not be utilized for camping, nor parking of semi-trailers between 2:00 a.m. and 6:00 a.m., except for utilization of delivery docks.

L. DEPARTMENT OF TRANSPORTATION REVIEW. Wal-Mart shall be responsible for compliance with Wisconsin Administrative Code Ch. Trans. 233.

M. VACANT BUILDING. In order to promote community values and mitigate any perceived negative impact of a vacant store, Wal-Mart shall undertake the following measures in the event the Wal-Mart Supercenter store becomes vacant for a period in excess of four (4) years from the date of the store closing:

1. Wal-Mart will consider demising the existing building for adaptive re-uses, as necessary, in order to meet the needs of future tenants. Wal-Mart may need to subdivide the building and accepts responsibility for the costs of demising the building, however, other arrangements may be negotiated with tenants, depending upon the nature of the tenants lease requirements.
2. Keep all lights illuminated in the parking lot and some on the exterior of the building to offer a positive appearance and safe condition of the property.
3. Should the building remain completely vacant in excess of 4 continuous years from the date of the Wal-Mart Supercenter closing, Wal-Mart shall completely demolish the structure and rough grade the building pad site.
4. Wal-Mart shall deposit with the City an irrevocable letter of credit in the amount of one hundred percent (100%) of the estimated cost to demolish the building, prepared by Wal-Mart's engineer and approved by the City Engineer. If however Wal-Mart sells the building during that four (4) year time frame or leases it, the buyer or lessee will be required to post a substitute letter of credit and the letter of credit will be returned to Wal-Mart once that purchaser or lessee posts a substitute letter with the City.

N. CONSTRUCTION. Any and all damage to completed improvements, public or private, caused by construction of this Development shall be repaired by the Developer, its successors and assigns as determined by the City Engineer.

## 21. GENERAL PROVISIONS.

A. PLATTING REGULATIONS. All provisions of City of Jefferson Municipal Zoning Code, Building Code and Land Division Ordinance, along with Wisconsin Statutes Chapter 236, Platting Land, along with all applicable state statutes and codes and Municipal Code provisions

which are not inconsistent with or in conflict with any of the provisions of this Agreement are incorporated herein by reference and all such provisions shall bind the parties hereto and be a part of this Agreement as fully as if set forth herein and as shown on the Detailed Site Plan.

This Agreement and all work and improvements required by this Agreement shall be performed and carried out in strict compliance with and subject to the provisions of the Municipal Code. In the event that the City accepts dedication of the improvements as provided in this Agreement Wal-Mart will be deemed to have met all of the requirements of the Municipal Code and as shown of the Detailed Site Plans.

B. VESTED RIGHTS. The City does not warrant by this Agreement that Wal-Mart is entitled to any other approval(s) required by the City, if any, before Wal-Mart is entitled to commence development of the Property or to transfer ownership of the Property described on the CSM.

C. ENFORCEMENT. Any party to this Agreement, or their respective successors or assigns, may either in law or in equity by suit, action, mandamus, or other proceeding, enforce and compel performance of this Agreement against any other party hereto and their respective successors and assigns.

D. MEETS STATUTORY REQUIREMENTS. Execution of this Agreement and the provision of the security required herein shall be accepted by the City as adequate provision for the Improvements within the meaning of Section 236.13(2) of the Wisconsin State Statutes.

E. BENEFITS. The benefits of this Agreement to Wal-Mart are personal and may not be assigned without the express written approval of the City, except to a purchaser or lessee of the Phase II development of the Property. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of Wal-Mart and also shall be binding on the successors and assigns of Wal-Mart. The City shall release the original Wal-Mart Irrevocable Letters of Credit if it accepts new security from any developer or lender who obtains the Property.

F. ENGAGEMENT OF QUALIFIED CONTRACTORS. Wal-Mart agrees to engage a general contractor for all work included in this Agreement who is qualified to perform the work. Wal-Mart shall furnish to the City the names of said general contractor as it is hired.

G. TERM. Wal-Mart agrees to have all construction contemplated within this agreement satisfactorily completed within three (3) years of the date this Agreement is signed by the parties.

H. RECORDATION. The City shall record an original copy of this Agreement in the office of the City Clerk of the City of Jefferson, Jefferson County, Wisconsin. In addition, the City shall record either an original copy or certified copy of this Agreement in the office of the Jefferson County Register of Deeds.

I. IMMUNITY. Nothing contained in this Agreement constitutes a waiver of the City's

sovereign immunity under any applicable state law.

J. **PERSONAL JURISDICTION AND VENUE.** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement or Irrevocable Letter of Credit shall be deemed to be proper only if such action is commenced in Circuit Court for Jefferson County, Wisconsin unless another court is necessary to join an issuer of an Irrevocable Letter of Credit. Wal-Mart expressly waives its right to bring such action in or to remove such action to any other court whether state or federal.

K. **HEADINGS.** Paragraph and Section headings in this Agreement are included in this Agreement for the convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

22. **TAXES.** Wal-Mart agrees to pay directly to the taxing entity any and all taxes due to the entity, including but not limited to, property taxes owed to the Town of Jefferson incurred as part of the annexation process.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the first date set forth above.

**CITY OF JEFFERSON, WISCONSIN,**  
a Wisconsin municipal corporation

**WAL-MART REAL ESTATE  
BUSINESS TRUST,**  
a Delaware statutory trust

By: \_\_\_\_\_  
Collin Stevens, Mayor

By: \_\_\_\_\_  
Michael E. Gardner, Regional Vice  
President of Design and Real Estate

Attest:  
By: \_\_\_\_\_  
Tanya Stewart, City Clerk

STATE OF WISCONSIN )  
 ) SS.  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the Mayor of the City of Jefferson, and \_\_\_\_\_, personally known to me to be the City Clerk of the City of Jefferson, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument as Mayor and as City Clerk of said Municipal Corporation, and caused the seal of said Municipal Corporation to be affixed thereto, pursuant to authority given by the corporate authorities of the City of Jefferson for the uses and purposes therein set forth.

Given under my hand and Notarial seal, this \_\_\_\_ day of \_\_\_\_\_, 2006.

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

STATE OF ARKANSAS )  
 ) SS.  
COUNTY OF BENTON )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Michael E. Gardner, personally known to me to be the Regional Vice President, Design and Real Estate of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Regional Vice President, appeared before me this day in person and acknowledged that he signed, sealed and delivered the foregoing instrument as such Regional Vice President, and as his free and voluntary act, for the uses and purposes therein set forth; and on his respective oath stated that he was duly authorized to execute said instrument and that the seal affixed thereto is the seal of said trust.

Given under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_  
Notary Public  
Benton County, Arkansas

**EXHIBITS:**

Exhibit A - Property Description

Exhibit B – Site Plan

Exhibit C – Landscape Plan

Exhibit D – Building Elevation

Exhibit E – Building Signage

Exhibit F - Proposed STH 26 Access

Exhibit G - Proposed Future STH 26 Access Improvements

Exhibit H - Wal-Mart's form of Letter of Credit

Exhibit I - Conditional Use Permit

Drafted by McClure Engineering and reviewed by Dawda, Mann Mulcahy & Sadler, PLC

DRAFT FOR DISCUSSION ONLY