

**DRAINAGE AND
ACCESS EASEMENT
AGREEMENT**

Document Number

SEE ATTACHED

Recording Area

Name and Return Address:

Joseph M. Judge

Dawda Mann Mulcahy & Sadler,
PLC

39533 Woodward Ave., Suite 200

Bloomfield Hills, MI 48304

Parcel Identification Numbers

(PIN): 419-0209-100-7

DRAINAGE AND ACCESS EASEMENT AGREEMENT

THIS DRAINAGE AND ACCESS EASEMENT AGREEMENT (the "Agreement") is made as of the _____ day of _____, 2011 by and between **Wal-Mart Real Estate Business Trust**, a Delaware statutory trust with an address of 702 S.W. 8th Street, Bentonville, Arkansas 72716-0550 and a mailing address of 2001 S.E. 10th Street, Bentonville, Arkansas 72716-0550 ("**Walmart**") and the **City of Milwaukee**, a Wisconsin municipal corporation, with an address of 200 E. Wells Street, Milwaukee, Wisconsin 53202 (the "**City**").

W I T N E S S E T H:

WHEREAS, Walmart is the owner of that certain tract or parcel of land situated in the City of Milwaukee, State of Wisconsin, as more particularly described in the legal description attached hereto as **Exhibit A** (the "**Walmart Parcel**");

WHEREAS, the City is the owner of that certain tract or parcel of land, consisting of a public right-of-way (alley) located in the City of Milwaukee, State of Wisconsin, as more particularly described in the legal description attached hereto as **Exhibit B** (the "**R-O-W Parcel**"); and

WHEREAS, the R-O-W Parcel is contiguous and adjacent to the Walmart Parcel.

NOW THEREFORE, Walmart and the City hereby agree as follows:

1. Walmart, for and in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to the City, its successors and assigns, an exclusive, perpetual right and easement to drain surface storm water from the R-O-W Parcel onto the Walmart Parcel (the "**Drainage Easement**").

2. The City, for and in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Walmart, its successors and assigns, a non-exclusive, perpetual right and easement to (a) maintain, construct, reconstruct, pave, repave, repair, resurface and stripe an access drive, open to the public within the R-O-W Parcel, (b) to access and use the R-O-W Parcel for pedestrian and vehicular traffic related to Walmart's operation of its store on the Walmart Parcel, and (c) to sweep and remove snow, ice, debris, and rubbish from the R-O-W Parcel (the "Access Easement"). The Drainage Easement and the Access Easement are sometimes collectively referred to herein as the "**Easements**".

THE DRAINAGE EASEMENT AND THE ACCESS EASEMENT ARE GRANTED SUBJECT TO THE FOLLOWING:

1. Walmart and the City shall each have the right to use and enjoy fully their respective parcels and subject to the rights hereby granted.

2. The City and Walmart, respectively will indemnify, defend, protect and hold the other harmless from any claims, suits, causes of actions, demands, liabilities, losses, damages, injuries and costs and expenses arising out of their use of the respective Easements granted herein.

3. Any and all work conducted by Walmart on the R-O-W Parcel for purposes of the Access Easement shall be done at Walmart's sole cost and expense.

4. The Easements granted hereunder are permanent easements that run with the land.

5. In exercising any of the rights granted herein, the City will not unreasonably interfere with the normal use of the Walmart Parcel and Walmart will not unreasonably interfere with the normal use of the R-O-W Parcel. Each party hereto agrees to use due care in any use of the Easements granted herein and in the construction, installation, repair, replacement and maintenance of each party's improvements as provided for herein so as not to unreasonably disturb such other party's use of their respective parcel and Walmart will not prohibit, obstruct and/or diminish the City's rights to drain storm water from the R-O-W Parcel onto the Walmart Parcel as provided for herein.

6. This Agreement contains all of the agreements and stipulations between Walmart and the City with respect to the granting of said Easements, and the same shall inure to the benefit of and be binding upon Walmart and the City and their respective successors and assigns.

7. The laws of the State of Wisconsin shall apply to the Agreement.

8. If any term, provision or condition contained in the Agreement shall, to any extent, be invalid or unenforceable, the remainder of the Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. No waiver of breach of any of the easements, covenants and/or agreements herein contained shall be construed as, or constitute a waiver of any other breach or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other covenant and/or agreement.

10. Except as provided specifically above, this Agreement, or any easement, covenant, or restriction or undertaking contained herein, may be terminated, extended or amended as to each of the portions of any of the properties subject hereto only by the recording of the appropriate documents in the records of Milwaukee County, State of Wisconsin, which documents must be executed by all of parties hereto.

11. All exhibits referred to herein and attached hereto shall be deemed part of the Agreement.

12. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

[Remainder of page intentionally left blank; signatures appear on following pages]

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first written above.

WITNESS:

THE CITY:

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

Print Name: _____

By: John Clarke
Its: Vice President - Real Estate

STATE OF ARKANSAS)
) SS.
COUNTY OF BENTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by John Clarke, Vice-President - Real Estate of WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust, on behalf of the trust.

_____, Notary Public
_____ County, _____
My Commission Expires: _____

[Signatures continue on following page]

WITNESS:

WALMART:

CITY OF MILWAUKEE,
a Wisconsin municipal corporation

Print Name: _____

By: _____

Its: _____

STATE OF WISCONSIN)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____ the _____ of the CITY OF MILWAUKEE, a Wisconsin municipal corporation, on behalf of the City.

_____, Notary Public
_____ County, Wisconsin
My Commission Expires: _____

Drafted outside of the State of Wisconsin by
and when recorded return to:

Dawda, Mann, Mulcahy & Sadler, PLC
39533 Woodward Avenue, Suite 200
Bloomfield Hills, Michigan 48304
Attention: Joseph M. Judge

EXHIBIT A

Legal Description of Walmart Parcel

Lots Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19) and Twenty (20) in Block One (1) in Golfside Gardens No. 3, being a Subdivision of a part of the Northwest One-Quarter (1/4) of Section Thirty-four (34), in Township Seven (7) North, Range Twenty-one (21) East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Also

All of Block Two (2), including the vacated alley in Golfside Gardens No. 3, being a Subdivision of a part of the Northwest One-Quarter (1/4) of Section Thirty-four (34), in Township Seven (7) North, Range Twenty-one (21) East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Also

Vacated South 71st Street lying between Blocks One (1) and Two (2) in Golfside Gardens No. 3, being a Subdivision of a part of the Northwest One-Quarter (1/4) of Section Thirty-four (34), in Township Seven (7) North, Range Twenty-one (21) East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Also

All of West Dickinson Street between the West line of the North-South alley extended South in Block One (1) in Golfside Gardens No. 3, being a Subdivision of a part of the Northwest One-Quarter (1/4) of Section Thirty-four (34), in Township Seven (7) North, Range Twenty-one (21) East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, and the East line of South 72nd Street extended South.

Commonly known address: 7025 W. Main, Milwaukee, Wisconsin

EXHIBIT B

Legal Description of R-O-W Parcel

That part of a Public Alley being in Block 1, Golfside Gardens No. 3, being a part of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 34, Town 7 North, Range 21 East, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Southwest corner of the Northwest $\frac{1}{4}$ of said Section; thence $N01^{\circ}34'19''W$ along the West line of the Northwest $\frac{1}{4}$ of said Section 683.68 feet to a point on the South line of W. Main Street extended; thence $N89^{\circ}08'17''E$ along the South line of said Street 1297.94 feet; thence $S87^{\circ}40'37''E$ along the South line of W. Main Street extended 476.94 feet to the West line of a Public Alley; thence $S01^{\circ}07'07''E$ along the West line of said Alley 122.30 feet to the point of beginning; thence $N88^{\circ}50'31''E$ 18.00 feet to a point on the East line of said Alley; thence $S01^{\circ}07'07''E$ along the East line of said Alley; thence $N88^{\circ}58'09''W$ 18.01 feet to a point on the West line of a said Alley; thence $N01^{\circ}07'07''W$ along the West line of a said Alley 311.66 feet to the point of beginning.