

10261163
10/29/2007 2:59:00 PM \$30.00
Book - 9531 Pg - 1203-1212
Gary W. Ott
Recorder, Salt Lake County, UT
METRO NATIONAL TITLE
BY: eCASH, DEPUTY - EF 10 P.

06049343

This instrument prepared by:

Wal-Mart Real Estate Business Trust
Sam M. Walton Development Complex
2001 S.E. 10th Street
Bentonville, AR 72716-0550
Attn: Brad Rogers, Assistant General Counsel
Telephone: (479) 204-3147

Return recorded document to:

Chicago Title and Trust Company
171 N. Clark Street
Chicago, IL 60601
Attn: Nancy Castro

ACCESS EASEMENT

27-08-178-017

This ACCESS EASEMENT is made effective October 25th, 2007, between WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust, with an address of 702 S.W. 8th Street, Bentonville, AR 72716 ("Wal-Mart"); and AMSOURCE SOUTH JORDAN WMP, LLC, a Utah limited liability company, with an address of 358 South Rio Grande, Suite #200, Salt Lake City, UT 84101 ("Grantee").

WITNESSETH

WHEREAS, Wal-Mart is the owner of that certain tract or parcel of land situated in the City of South Jordan, County of Salt Lake, State of Utah, identified as Tract 1 on the site plan attached hereto as Exhibit "A" ("Tract 1"); and

WHEREAS, Grantee will be by the time this instrument is recorded the owner of that 0.63 acre, more or less, tract or parcel of land in the same city, county, and state, which tract lies adjacent to Tract 1 and is identified as Tract 2 on Exhibit "A" and more fully described on Exhibit "B" ("Tract 2") which tract Wal-Mart Stores, Inc., is current owner of and intends to convey title to Grantee by deed; and

WHEREAS, Grantee has requested from Wal-Mart, and Wal-Mart is desirous of granting to Grantee, a non-exclusive easement for pedestrian and vehicular ingress and egress over and across that portion of Tract 1 identified as the Access Area on Exhibit "A" and more fully described on Exhibit "C" ("Access Area").

NOW THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, Wal-Mart does hereby grant to Grantee a non-exclusive easement for vehicular and pedestrian ingress and egress over and across the Access Area for access to and from Tract 2, subject to the following terms and conditions to which the parties hereto do hereby agree:

- 1. Use of Access Area.** The ingress and egress rights granted hereby may be used non-exclusively by, and are limited to, Grantee and its tenants and their respective customers and employees associated with the business operation to be located on Tract 2. Only passenger vehicles and light trucks and pedestrian traffic associated with Tract 2 may use the Access Area, but nothing herein shall be construed to limit or restrict ingress or egress associated with Tract 1 or any part thereof. Grantee shall not be allowed to use the Access Area for heavy truck traffic except as may be necessary for developing Tract 2 or delivering merchandise to the business operation to be located thereon.

2. **Maintenance.** (a) In the event Wal-Mart fails to maintain or repair the Access Area, Grantee may do so at its sole expense, provided Grantee uses like or similar quality and type of materials originally installed on the Access Area, and further provided Grantee does not change the grade or elevation of the Access Area without the permission of Wal-Mart. Any repair or maintenance performed within the Access Area must be preceded by a two (2) week written notice to Wal-Mart. Notwithstanding the foregoing, routine maintenance or construction shall be prohibited during the months of November and December, except for the initial construction of Grantee's improvements on Tract 2, and all work shall be completed by October 31st of the then-current year. Grantee covenants and agrees that Tract 1 will not be used as a staging area and will not be used to store equipment, trucks, dirt, supplies, etc. Grantee further covenants and agrees that no heavy trucks associated with the construction shall use the entranceways located upon Tract 1 without Wal-Mart's prior written consent, except for the initial construction of Grantee's improvements on Tract 2.

(b) Grantee shall, at its sole cost and expense pave any unpaved portion of the curb cut area from Tract 2 to the Access Area, and if, in the process of paving and developing the Access Area, Grantee encounters any irrigation equipment previously installed by Wal-Mart in the Access Area, Grantee shall disconnect and relocate any such equipment at its cost. If Grantee encounters any utility lines under the Access Area, it shall encase said lines in order to protect it. If it is necessary for Grantee to remove trees or any other type of landscaping, it shall relocate it adjacent to the Access Area in a location acceptable to Wal-Mart.

3. **Damage to Access Area, or Other Improvements.** If, in the process of developing Tract 2, Grantee damages, breaks, destroys, or in any way impairs the Access Area, or any other improvements of Wal-Mart, Wal-Mart in its sole discretion, may require Grantee to either: (i) restore at Grantee's sole cost and expense the Access Area, or Wal-Mart's improvements, to its original quality and condition; or (ii) Wal-Mart may restore the Access Area, or improvements, and invoice Grantee for Wal-Mart's costs incurred restoring the damaged Access Area, or improvements; whereupon Grantee agrees to reimburse Wal-Mart within thirty (30) days of receipt of an invoice for such expenses.

4. **Indemnification.** Grantee shall indemnify and hold harmless Wal-Mart from any damages or liability to persons or property that might arise from the use of the Access Area by Grantee, its customers, suppliers, employees, and tenants or anyone else using the Access Area for ingress and egress to and from Tract 2. Grantee further agrees that Grantee will at all times during the duration of this easement maintain and pay for comprehensive general liability insurance affording protection to Wal-Mart and Grantee naming Wal-Mart as an additional insured on the policy or policies for a combined bodily injury and property damage limit of liability not less than \$2,000,000.00 for each occurrence. Grantee further agrees, upon request to deliver to Wal-Mart a certificate or certificates from an insurance company or insurance companies satisfactory to Wal-Mart evidencing the existence of such insurance and naming Wal-Mart as an additional insured.

5. **Relocation.** Wal-Mart reserves the right in its sole and absolute discretion to modify or relocate the Access Area provided such modification or relocation does not materially restrict or prevent ingress and egress to and from Tract 2.

6. **Compliance.** Grantee hereby warrants and represents to Wal-Mart that Grantee in exercising its rights under this Agreement shall comply fully with any federal, state or local laws, regulations, ordinances, permits or other authorizations. In addition to the other representations contained herein, Grantee hereby warrants and represents to Wal-Mart that Grantee shall comply fully with any federal, state or local laws, regulations, ordinances, permits or other authorizations or approvals or other requirements relating to storm water discharges or the control of erosion or sediment discharges from construction projects, including but not limited to the Clean Water Act, 33 U.S.C. § 1251 et seq., and the Storm Water General Permit for Discharges Associated with Construction Activities (collectively the "Storm Water Requirements") (including without limitation preparing a Storm Water Pollution Prevention Plan (if applicable) to avoid negatively impacting any erosion or sediment controls during earth-disturbing activities, if any) in exercising any rights or privileges under this Agreement, Grantee recognizing and affirming Wal-Mart would not enter into this Agreement without this warranty and representation from Grantee. Furthermore, Grantee hereby warrants and represents to Wal-Mart that Grantee has a policy to (i) comply in all respects with all immigration laws,

statutes, rules, codes and regulations, (ii) properly maintain all records required by the United States Citizenship and Immigration Services (the "USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each of Grantee's employees, and (iii) respond in a timely fashion to any inspection requests related to such I-9 Forms. Grantee warrants and represents it has a policy to fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by the USCIS of Grantee or any of its employees. Grantee warrants and represents to Wal-Mart it has a policy to conduct an annual audit of the I-9 Forms for its employees and has a policy to promptly correct any defects or deficiencies which are identified as a result of such audit. Grantee warrants and represents it has a policy to require all subcontractors performing any work for Grantee to comply with the covenants set forth in this Section. Grantee recognizes and affirms Wal-Mart would not enter into this Agreement if Grantee did not have such policies.

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

8. Duration. The agreements contained herein and the rights granted hereby shall run with the titles to Tract 2 and the Access Area and shall bind and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

9. Change of Ownership. In the event Grantee conveys or transfers title to Tract 2 to another party, Wal-Mart shall be notified thereof within thirty (30) days thereafter. Wal-Mart shall be provided the name and address of such transferee.

10. Effective Date. This instrument shall become effective conditioned upon and subject to the conveyance of Tract 2 by Wal-Mart Stores, Inc., to Grantee to be evidenced by the recording of a deed.

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

12. Counterparts. This document, and any modifications, may be executed in one or more counterparts, all parties need not be signatories to the same documents, and all counterpart signed documents shall be deemed to be an original and one (1) instrument.

[Signature pages follow]


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

WAL-MART REAL ESTATE
BUSINESS TRUST

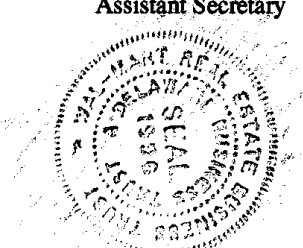
ATTEST:




NICK GOODNER
Assistant Secretary

By: 

T. Latriece Watkins
Title: Director of Land Development



Approved as to legal terms only
By: 

WAL-MART LEGAL DEPARTMENT
Date: 10/17/07

TRUST ACKNOWLEDGMENT

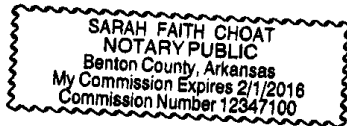
STATE OF ARKANSAS)
) §§
COUNTY OF BENTON)

On this 18th day of October, 2007, before me, the undersigned notary public in and for said County and State, personally appeared before me T. Latriece Watkins to me personally known, who, being by me duly sworn, did say that she is Director of Land Development of Wal-Mart Real Estate Business Trust, and that the seal affixed to the foregoing instrument is the seal of said trust, and that said instrument was signed, sealed and delivered by her on behalf of said trust by authority of its Managing Trustee, and said T. Latriece Watkins acknowledged said instrument to be the free act and deed of said trust.

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


Name: SARAH FAITH CHOAT
Notary Public

My Commission Expires: 2/1/2016



WITNESS OR ATTEST:

AMSOURCE SOUTH JORDAN WMP, LLC, a Utah limited liability company, by its Manager, Amsource Development Inc., a Utah corporation

KScothell
Kaylyn Scothern

Curtis Robertson
Curtis Robertson

By: David R Gaskill
DAVID R GASKILL

Title: PRESIDENT

By: [Signature]
BRYAN TODD

Title: VICE PRESIDENT

COMPANY ACKNOWLEDGMENT

STATE OF UTAH)
)
COUNTY OF SALT LAKE) §§

On this 25th day of October, 2007, before me, the undersigned notary public in and for said County and State, personally appeared before me DAVID R. GASKILL and BRYAN TODD to me personally known, who, being by me duly sworn, did say that they are the president and VICE PRESIDENT of Amsource Development Inc., and that the seal, if any, affixed to the foregoing instrument is the seal of said company, and that said instrument was signed, sealed and delivered by them on behalf of said company by authority of its Board of Directors, and they acknowledged said instrument to be the free act and deed of said company.

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

[Signature]
Name: _____
Notary Public



My Commission Expires: _____

dy

[Signature]

EXHIBIT "A"

Site Plan

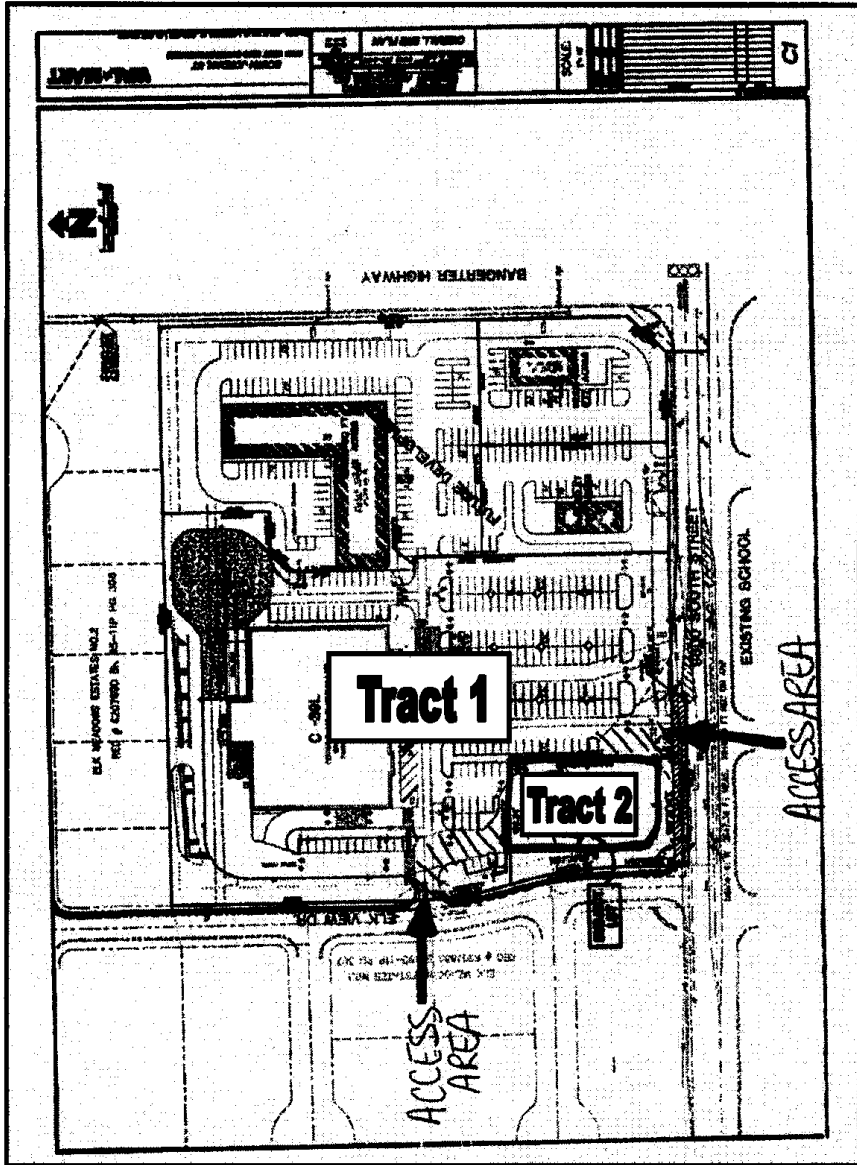


EXHIBIT "B"

Tract 2

[An updated legal description of the Property will be supplied by the Purchaser upon completion of the Survey and, subject to Wal-Mart's approval, inserted at this point in the Agreement.]

EXHIBIT B

Lot 2 of SOUTH JORDAN NEIGHBORHOOD MARKET SUBDIVISION, according to the official plat thereof, recorded JULY 18, 2002, as Entry No. 8296896, in Book 2002P, at Page 188, in the office of the Salt Lake County Recorder.

EXHIBIT "C"

Access Area

[A legal description of the Access Area will be supplied by the Purchaser upon completion of the Survey and, subject to Wal-Mart's approval, inserted at this point in the Agreement. The area(s) legally described shall be depicted on the Survey]

EXHIBIT C

LEGAL DESCRIPTION FOR CROSS ACCESS EASEMENT A

A cross access easement being located in Lot 1, South Jordan Neighborhood Market Subdivision recorded as Entry No. 8296896, in Book 2002P at Page 188, Official Records, also being part of Section 8, Township 3 South, Range 1 West, Salt Lake Base and Meridian; being more particularly described as follows:

Beginning at a point on the North line of Lot 2 of said South Jordan Neighborhood Market, said point being N89°40'33"W along Section Line 208.84 feet, and N00°19'27"E 48.88 feet, to the South Line of said South Jordan Neighborhood Market Subdivision, and along said South Line the following two (2) courses: 1) N89°39'18"W 414.62 feet, and 2) N89°41'58"W 79.47 feet, to the East line of said Lot 2, and N00°00'00"E along said East Line 196.84 feet, to the North Line of said Lot 2, and N89°39'18"W along said North Line 46.13 feet from the center of said Section 8; thence continuing along said North Line N89°39'18"W 66.29 feet; thence N00°00'00"E 17.85 feet; thence N12°09'01"W 50.20 feet, to the beginning of a tangent curve concave to the South, with a radius of 30.00 feet; thence Westerly 56.46 feet along said curve, through a central angle of 107°49'35", to the beginning of a non-tangent curve concave to the East, with a radius of 459.07 feet and a radial bearing of S85°34'48"W, said curve being on the West Line of said Lot 1; thence northerly 28.30 feet along said curve, through a central angle of 3°31'57", to the beginning of a non-tangent curve concave to the North, with a radius of 20.00 feet and a radial bearing of S32°36'39"W; thence Easterly 39.82 feet along said curve, through a central angle of 114°05'13"; thence S90°00'00"E 52.49 feet; thence S00°00'00"W 96.23 feet; thence S41°51'58"E 14.34 feet, to the beginning of a tangent curve concave to the Northeast, with a radius of 30.00 feet; thence Easterly 24.37 feet along said curve, through a central angle of 46°32'03"; thence S88°24'02"E 8.43 feet; thence S00°20'42" 12.04 feet, to the point of beginning.

LEGAL DESCRIPTION FOR CROSS ACCESS EASEMENT B

A cross access easement being located in Lot 1, South Jordan Neighborhood Market Subdivision recorded as Entry No. 8296896, in Book 2002P at Page 188, Official Records, also being part of Section 8, Township 3 South, Range 1 West, Salt Lake base and meridian; being more particularly described as follows:

Beginning at point on the North Line of 9800 South, said point also being on the South Line of said Lot 1, said point being N89°40'33"W along Section Line 208.84 feet, and N00°19'27"E 48.88 feet, to the South Line of said South Jordan Neighborhood Market Subdivision, and N89°39'18"W along said South Line 414.62 feet from the center of said section 8; thence N89°41'58"W along said North Line 79.47 feet, to the East Line of Lot 2 of said South Jordan Neighborhood Market; thence N00°00'00"E along said East Line 89.64 feet; thence S90°00'00"E 19.77 feet; thence S42°51'42"E 56.09 feet; thence S18°51'35"E 37.05 feet; thence S34°33'24"E 16.86 feet, to the Point Of Beginning.