

ORDINANCE NO. 05-55 AC CMS

**AN ORDINANCE APPROVING A CONSTRUCTION DEVELOPMENT AGREEMENT
WITH WAL-MART REAL ESTATE BUSINESS TRUST FOR THE
CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS RELATING TO THE
DEVELOPMENT OF A PROPOSED WAL-MART AND DECLARING AN EMERGENCY**

WHEREAS, Wal-Mart Real Estate Business Trust has submitted plans to the Oberlin Planning Commission and the City of Oberlin for a proposed development to be located at 46440 U.S. Route 20 in the City of Oberlin; and

WHEREAS, the Oberlin Planning Commission has approved the site plan and improvement plans for same; and

WHEREAS, the City of Oberlin desires to enter into a construction agreement with the developer to ensure installation of all proposed public improvements in the proposed development in accordance with the improvement plans.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the proposed Construction Development Agreement between the City of Oberlin, Ohio, and Wal-Mart Real Estate Business Trust, for the construction and installation of proposed public improvements in or adjacent to a proposed development to be located at or adjacent to 46440 U.S. Route 20, Oberlin, Ohio, a copy being attached hereto and incorporated herein by reference, is hereby approved, and the City Manager is hereby authorized and directed to execute same on behalf of the City.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the citizens of the City of Oberlin, or to provide for the usual daily operation of a municipal department, to wit:

"to approve a Construction Development Agreement in a timely manner so as to avoid construction delays", and shall take effect immediately upon passage.

**DEVELOPMENT CONSTRUCTION
AGREEMENT -WAL-MART - 2005
ORDINANCE NO. 05-55 AC CMS
TUBE CONTAINS AGREEMENT**

PASSED: 1st Reading – July 18, 2005
2nd Reading – August 1, 2005 (E)
3rd Reading –

ATTEST:


CLERK OF COUNCIL


PRESIDENT OF COUNCIL

POSTED: August 2, 2005

EFFECTIVE DATE: August 2, 2005

**CITY OF OBERLIN
DEVELOPMENT CONSTRUCTION AGREEMENT**

Section I. Identification of Parties:

This Construction Agreement (hereinafter referred to as the "Agreement") is by and between the **City of Oberlin, Ohio** (hereinafter referred to as the "**CITY**"), and **Wal-Mart Real Estate Business Trust**, a Delaware Statutory Trust whose business address is **2001 S.E. 10th Street, Bentonville, Arkansas 72712-6489** (hereinafter referred to as the "**DEVELOPER**").

Section II. Successors and Assigns:

This Agreement shall be binding upon and shall inure to the CITY, its legal representatives, agents, elected and appointed officials, and the DEVELOPER, its legal representatives, successors, and assigns. Except and specifically excluding assignments, transfers or conveyances to any subsidiary of Wal-Mart Stores, Inc., the DEVELOPER shall not assign, transfer or otherwise convey any right, title or interest in this Agreement without first obtaining the written consent of the CITY; provided, however, in no event (except with respect to subsidiaries of Wal-Mart Stores, Inc.) shall the obligations, liabilities and responsibilities of the DEVELOPER be released without first obtaining the express written consent of the CITY, which consent shall not be unreasonably withheld.

Section III. Description of Property:

This Agreement shall cover the development of real estate owned by the DEVELOPER, and known as 46440 U.S. Route 20, which real estate is further described on Exhibit "A". The CITY approves the site plan and improvement plans. A copy of said approved site plan and improvement plans of said real estate prepared by KS Associates, Inc. and dated July 12, 2005 and marked Exhibit "B" are attached hereto for the purpose of identification of the real estate and the on-site improvements covered by this Agreement.

The DEVELOPER has provided to the City Engineer one (1) copy of the final site plan (including plans for public improvements (hereinafter called "Public Improvements")) in AutoCad.dwg format, a copy of which is included on Exhibit "B".

Section IV. Improvement Plans and Specifications:

The DEVELOPER, in order to furnish the required plat and the required improvement plans and specifications for use in the construction of all improvements included in this Agreement, agrees that said site plan, including plats and legal descriptions of all easements, are prepared by a registered Surveyor, and that said improvement plans and specifications are prepared by a registered Professional Engineer, both of whom are in good standing and duly registered with the Ohio Board of Registration for Professional Engineers and Surveyors, with authorization to practice in the State of Ohio. The Surveyor and Engineer may be the same person provided he or she holds both required registrations. The Public Improvement plans have been determined by the CITY to be in compliance with CITY ordinances and construction standards and the requirements of this Agreement. All required Public Improvements shall be constructed in accordance with the approved Public Improvement plans and specifications.

9/19

Sean,
original signed
copy for permanent
files (WAL-Mart).

Thanks,
Rob

The specifications are based on the standard specifications of the City of Oberlin Public Works Standards, which are incorporated herein by reference, and those required by the Oberlin Municipal Light and Power System. Said Standards have been used in the development of the construction documents and produced and distributed by the DEVELOPER to the parties involved in the construction of the Public Improvements. Reference to said Standards shall not constitute compliance with this requirement.

The DEVELOPER has provided to the City Engineer three (3) sets of the printed plans showing the Public Improvements with one (1) AutoCad.dwg file accurately describing all of the Public Improvements to be constructed. Three (3) sets of the printed plans with one (1) AutoCad.dwg file shall be submitted to the City Engineer of all approved revisions or additions to the Public Improvement plans.

Section V. Required Improvements:

The DEVELOPER agrees to plan, manage, schedule, supervise, and to construct all required improvements within the development site and to construct additional required Public Improvements that will be located outside the limits of the development but which Public Improvements are required to serve facilities which will be located within the development site as specified in this Agreement. The Public Improvements are shown on Exhibit "B".

A.) As specified in the approved improvement plans, the required improvements to be constructed on-site are:

- 1.) Sanitary sewer system
- 2.) Storm sewer system
- 3.) Water mains with fire hydrants, and all service laterals to the building(s)
- 4.) Concrete driveway/street pavements with curbs and an underdrain system
- 5.) Concrete sidewalks
- 6.) Underground parking lot lighting and street lighting system
- 7.) Underground primary and secondary electrical distribution system and interconnecting facilities
- 8.) Grading and seeding of the site
- 9.) Trees and plantings
- 10.) All required easements (shown on Exhibit "B") be dedicated to the CITY
- 11.) Any other improvements set forth on the final site plan and improvement plans attached as part of Exhibit "B".

The CITY intends to provide water to service the development. If the CITY is ultimately legally prohibited from providing water service to the development, the CITY agrees that it will not object to the Developer obtaining water from an alternative source.

B.) As specified in the approved Public Improvement plans, the required Public Improvements necessary to connect to or to improve existing public facilities that will be located outside the limits of the development include:

- 1.) Sanitary sewer system
- 2.) Storm sewer system
- 3.) Water mains and fire hydrants
- 4.) Electrical system improvements as specified by OMLPS
- 5.) Road improvements

- 6.) All required easements (shown on Exhibit "B") be dedicated to the CITY
 - 7.) Site Restoration
 - 8.) Any other improvements set forth on the Public Improvement plans attached as part of Exhibit "B".
- C.) The DEVELOPER shall be responsible for the entire cost of all the required Public Improvements, including but not limited to:
- 1.) Surveys, plat drawings, and easements
 - 2.) Engineering design
 - 3.) Construction and installation costs, including supervision of same
 - 4.) Stormwater Management Plan to be implemented continuously during development and construction activities
 - 5.) CITY Review and Inspection costs
 - 6.) Materials Testing Costs
 - 7.) Bonds, insurance and title guarantees
 - 8.) Landscape plans, production and installation costs, including but not limited to curb lawn trees
 - 9.) All permit and tap-in fees
 - 10.) Certification of the as-built drawings by the DEVELOPER's Engineer and Surveyor.
- D.) The DEVELOPER shall be responsible for its share (as defined below), up to the maximum cost set forth in Exhibit "C" hereto, of the following future off-site improvements designed and constructed to ensure an adequate level of service to the site and surrounding areas:
- 1.) 100% of Electrical system east loop circuit upgrade, (see Exhibit "C")
 - 2.) 100% of Electrical system overhead circuit extension, (see Exhibit "C")
 - 3.) 50% of Electrical system second circuit (see Exhibit "C")
- E.) The DEVELOPER shall install surface drainage and subsurface drainage systems in accordance with the approved improvement plans. Some alterations in the water flow may occur as a consequence of the existence of the improvements shown on Exhibit "B". Service water drainage and subsurface drainage systems of abutting property shall not be adversely affected by the improvements by the DEVELOPER.
- F.) The DEVELOPER shall hold the CITY harmless from any and all costs, expenses, liabilities and claims arising from the DEVELOPER's failure to comply with the requirements of this Agreement in the construction of the Public Improvements.
- G.) The DEVELOPER agrees to grant the CITY access to the site for the purpose of inspection, and as otherwise reasonably determined necessary by the CITY.

Section VI. Compliance with Laws, Regulations and Codes:

The DEVELOPER, in construction of all improvements, shall comply with all applicable Federal, State and City laws, regulations and codes.

Prior to the commencement of applicable construction activities, the DEVELOPER shall file with the City Engineer a copy of all permits necessary for the improvements, including all required ODOT permits for road improvements, State plan approval and permits for water main extension, State plan approval and permits for sanitary sewer extension, and State NPDES permit for stormwater control and discharge.

Section VII. Pre-Construction Procedures:

- A.) **INSURANCE.** Before the DEVELOPER authorizes a contractor to work on any of the required improvements identified in Section V herein, or begins work on the required Public Improvements with its own forces, DEVELOPER shall cause to be filed with the Public Works Director, copy(s) of a Certificate of Liability Insurance with the CITY named as additional insured. The liability insurance shall remain in force until all work has been completed and Oberlin City Council accepts the improvements. The liability limits for the required coverages noted hereinabove shall be at least:

	<u>Each Occurrence</u>	<u>Aggregate</u>
Bodily Injury and Property Damage, Combined	\$1,000,000.00	\$2,000,000.00
Vehicle Liability	\$1,000,000.00	\$1,000,000.00

- B.) **PERFORMANCE BOND.** The DEVELOPER agrees that it will post a performance bond in the amount of Eight Hundred Fifteen Thousand Four Hundred Thirty Dollars (\$815,430.00) or an irrevocable letter of credit subject to approval as to the amount by the City Engineer and as to form by the Law Director, in accordance with Section 1357.05(a) of the City of Oberlin Zoning Code. The amount of the performance bond shall be based on an itemized estimate provided by the DEVELOPER to the City Engineer for the installed cost of all of the Public Improvements detailed in the approved Public Improvement plans.

The performance bond shall guarantee the completion of all Public Improvements required hereunder. In the event that the required Public Improvements are not completed by the DEVELOPER within the time period designated in this Agreement, the City Manager shall have the option, thirty (30) days after issuing written notice to the DEVELOPER, to complete the Public Improvements and to collect and receive funds from the performance bond to be applied towards the costs of completing said Public Improvements.

The DEVELOPER agrees that the expenditure of funds by the DEVELOPER in completing part of the required Public Improvements shall not reduce the amount of the performance bond or letter of credit (as the case may be) for which the DEVELOPER is responsible.

Notwithstanding any contrary provision of this Agreement, the performance bond shall be released within thirty (30) days after all Public Improvements except the principal access drive (hereinafter called "Principal Access Drive") (shown on Exhibit "B") have

been accepted by the City Council of the CITY, and thirty (30) days after the Principal Access Drive has been completed to the satisfaction of the City Manager.

- C.) **RESTORATION BOND.** The DEVELOPER agrees to post a restoration bond in the amount of Fifty Five Thousand Seven Hundred Seventy Dollars (\$55,770.00) or an irrevocable letter of credit subject to approval as to the amount by the City Engineer and as to form by the Law Director, in accordance with Section 1357.05(b) of the City of Oberlin Zoning Code. The amount of the restoration bond shall be based on an itemized estimate provided by the CITY to the DEVELOPER for the estimated cost of potential damages to existing Public Improvements adjacent to the development.

The restoration bond shall guarantee the repair of any damage done to the existing public utilities including, but not limited to, curbs, gutters, sidewalks, driveways, street pavement, landscaping, or other items within the right-of-way adjacent to the development or within areas or easements controlled by the CITY. In the event that said damages are not repaired and/or replaced by the DEVELOPER within the time period designated in this Agreement, the City Manager shall have the option, thirty (30) days after issuing written notice to the DEVELOPER, to complete the repairs and/or replacements and to collect and receive funds from the restoration bond to be applied towards the costs of completing said repairs and/or replacements.

The restoration bond shall be released within thirty (30) days after all damaged facilities have been restored to the satisfaction of the City Manager. If no facilities have been damaged, the restoration bond shall be released within thirty (30) days after all Public Improvements (except the Principal Access Drive) have been accepted by the City Council of the CITY and thirty (30) days after the Principal Access Drive has been completed to the satisfaction of the City Manager.

- D.) **INSPECTION OF IMPROVEMENTS.** Prior to receiving authorization to proceed, the DEVELOPER shall submit to the Public Works Director the required fees for inspection and testing services with respect to the Public Improvements as delineated hereinafter in Section VIII of this Agreement.

The CITY shall make inspections during the installation of Public Improvements to ensure conformity with the approved Public Improvement plans and with this Agreement. The CITY may, at its sole discretion, contract for inspection services which fees shall be paid from the DEVELOPER's deposit.

The CITY may have materials testing of the work performed during the installation of the Public Improvements to ensure conformity with the approved Public Improvement plans and this Agreement. Said testing shall be performed in accordance with the Public Works Standards.

The inspections of all construction by the City Engineer and other personnel employed by the CITY shall be done to ensure proper installation and construction of all Public Improvements; provided, however, that the presence of CITY personnel shall not make the CITY liable for the acts of the DEVELOPER or the DEVELOPER's agents. The DEVELOPER, its successors and assigns, agrees to hold the CITY, its agents, representatives, elected and appointed officials and employees, harmless from any and all liability, claims, causes of action, damage to property or person arising out of or in

connection with any acts, errors, omissions, or negligence arising out of or caused by the design or by the construction of any and all Public Improvements by the DEVELOPER.

The DEVELOPER shall provide a minimum of twenty-four (24) hours (exclusive of weekends and holidays) advance notification of start/stop of construction activity to the CITY. Construction shall not recommence prior to the expiration of the twenty-four (24) hour notification period. All inspection costs due to non-compliance with this clause shall be borne by the DEVELOPER.

The installation of all required Public Improvements shall be supervised by a professional engineer employed by the DEVELOPER.

- E.) RESPONSIBLE PARTY. The DEVELOPER shall designate a Project Representative thoroughly knowledgeable with the approved Public Improvement plans and empowered to act on behalf of the DEVELOPER. The Project Representative shall be the CITY's primary contact with regard to the construction of the improvements. The Project Representative will coordinate a pre-construction meeting and subsequent job meetings as may be required with the CITY.
- F.) AUTHORIZATION TO PROCEED. Once the DEVELOPER has met all pre-construction conditions, the City Manager shall issue written authorization to the DEVELOPER to proceed with the installation of the approved Public Improvements. No work shall begin prior to the receipt of the written authorization to proceed.

Section VIII. Inspection Costs incurred by CITY:

The DEVELOPER agrees to deposit with the CITY the amount of Forty Thousand Seven Hundred Seventy-One and 50/100 Dollars (\$40,771.50) representing 5% of the estimated construction cost of the Public Improvements as determined by the DEVELOPER's design professional and approved by the City Engineer. Said funds shall be deposited in a dedicated construction inspection account. Said funds may be drawn on by the CITY to pay for review and inspection charges and costs directly related to Public Improvements due to the development subject to this Agreement. The fees for contracted inspection services shall be paid from the DEVELOPER's deposit. Construction observation shall continue for the full duration of the Public Improvements including remedial activities required to secure the CITY's acceptance of said Public Improvements. In the event that the funds are insufficient to pay for customary and reasonable review and inspection charges and costs related to the Public Improvements, additional funds shall be deposited by the DEVELOPER in increments of not less than 1% of the aforementioned Public Improvement construction cost until such time as the CITY accepts said Public Improvements. The CITY shall, with written notice, provide a full accounting of said deposit account to the DEVELOPER.

The DEVELOPER shall deposit with the CITY the additional amount of Eight Thousand One Hundred Fifty-Four and 30/100 Dollars (\$8,154.30) representing 1% of the estimated construction cost of Public Improvements as determined by the DEVELOPER's design professional and approved by the City Engineer. Said funds shall be deposited in a dedicated construction inspection account. Said funds may be drawn on by the CITY to pay the costs of materials testing and reporting by a materials testing firm based on the invoices of said firm. In the event that the funds are insufficient to pay for customary and reasonable costs of materials testing and reporting by said materials testing firm, additional funds shall be deposited by the DEVELOPER in increments of not less than 0.2% of the aforementioned construction

cost until such time as the CITY accepts said Public Improvements. The CITY shall, with written notice, provide a full accounting of said deposit account to the DEVELOPER.

Upon completion of all required inspections and testing and following acceptance of the Public Improvements by Oberlin City Council, the City Engineer shall make a final and complete statement of the amount of the inspection and testing costs charged or to be charged against the DEVELOPER's deposit account. The City Engineer shall make a recommendation to the City Manager requiring final payment or making a refund to the DEVELOPER, which refund will be paid to DEVELOPER within thirty (30) days after the Public Improvements (except the Principal Access Drive) have been accepted by the City Council of the CITY, and thirty (30) days after the Principal Access Drive has been completed to the satisfaction of the City Manager.

Section IX. Modification of Improvement Plans:

If at any time before or during the construction of the required improvements, it is demonstrated to the satisfaction of the City Manager and the City Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the City Manager may authorize such modifications upon written request of the DEVELOPER, provided such modifications are within the spirit and intent of the Planning Commission's approval and do not amount to the waiver or substantial alteration of the function of any improvement required by the Commission. The City Manager shall issue such authorization in writing and shall transmit a copy to the Planning Commission.

Section X. Stop Work Order:

In the event that the DEVELOPER fails to comply with the terms and conditions of this Construction Agreement or the DEVELOPER fails to construct the Public Improvements in accordance with the approved Public Improvement plans or is performing said work in a dangerous or unsafe manner, the CITY shall have the right to issue a Stop Work Order. The effect of this order shall be limited to the matter(s) specified in the order.

The Stop Work Order shall be issued in writing with the reason for the order clearly stated and the condition(s) under which the cited work may resume. The Stop Work Order shall be given to the DEVELOPER or the DEVELOPER's Agent and to the person(s) doing the work. Upon issuance of the Stop Work Order, the cited work shall immediately cease, except such work as that person is directed to perform to remove a violation or unsafe condition.

Failure to cease work after receipt of a Stop Work Order is hereby declared to be a public nuisance.

Section XI. Completion Time:

The DEVELOPER agrees to complete all required improvements listed in Section V within 365 consecutive days (1 Year) from the date of issuance of the building permit by the CITY, except those improvements whose completion date is otherwise indicated, unless completion is extended (for no more than 365 additional days) in writing for good cause by the Oberlin City Manager, or unless construction is delayed due to *force majeure*, labor delays, legal actions (such as injunctive relief granted), or other reasons beyond the control of the DEVELOPER. Requests for extension(s) of time for good cause shall be submitted in writing to the City Manager no less than thirty (30) days prior to the completion date or approved extension date, and shall not be unreasonably denied.

Section XII. Acceptance of Land and Improvements:

The Public Improvements may be accepted by the CITY for public maintenance only by action of the Oberlin City Council, through the passage of an ordinance accepting the Public Improvements for public maintenance.

The DEVELOPER acknowledges its responsibility for all maintenance costs incurred (by it or by the CITY) before the date of passage of the ordinance accepting the Public Improvements for public use and maintenance. Prior to acceptance, the DEVELOPER shall be responsible for the maintenance of all Public Improvements. The DEVELOPER shall repair all failures in or damages to the Public Improvements as soon as they become apparent.

The DEVELOPER shall, prior to the acceptance of the Public Improvements, provide waivers of lien executed by all suppliers, contractors, and subcontractors who have provided materials or performed work related to the construction of the Public Improvements.

The DEVELOPER's professional engineer who has supervised the installation of the Public Improvements shall, after completion of the installation, certify to the City Manager that all Public Improvements and the Principal Access Drive have been constructed as required by this Agreement and as such requirements may have been modified during the course of construction (if authorized). The DEVELOPER shall provide to the City Engineer one set of AutoCad.dwg drawing files and one set of printed plans accurately describing all of such Public Improvements, as constructed.

After all Public Improvements have been completed and all of the conditions met, the DEVELOPER shall petition the CITY in writing for acceptance of the Public Improvements except the Principal Access Drive. When the City Manager and the City Engineer determine that such Public Improvements have been completed and all requirements and conditions have been complied with, they shall make a written recommendation to City Council to accept such Public Improvements for ownership, operation, and maintenance. City Council shall accept such Public Improvements by the adoption of an ordinance.

Within thirty (30) days after such Public Improvements have been accepted and thirty (30) days after completion of the Principal Access Drive to the satisfaction of the City Manager, the CITY shall release the performance bond and establish the maintenance bond (described below).

At the request of the City Manager, the DEVELOPER shall petition the CITY in writing for acceptance of the Principal Access Drive shown on Exhibit "B". When the City Manager and the City Engineer determine that all requirements and conditions have been complied with, they shall make a written recommendation to City Council to accept the Principal Access Drive for ownership, operation, and maintenance. City Council shall accept the said Principal Access Drive by the adoption of an ordinance.

Section XIII. Maintenance Guarantee:

At the time the Public Improvements (except the Principal Access Drive) are accepted by City Council of the CITY and the Principal Access Drive is completed to the satisfaction of the City Manager, a maintenance guarantee shall be posted with the City Manager in the amount of ten percent (10%) of the costs of the Public Improvements. The guarantee shall be arranged for a period that shall expire twelve (12) months from the date of acceptance of the Public Improvements (except the Principal Access Drive, in which case the maintenance guarantee shall remain in effect for a period of twelve (12) months from

the date of completion of the Principal Access Drive to the satisfaction of the City Manager). Said guarantee shall be either a cash deposit, a corporate surety bond, or an irrevocable letter of credit in a form approved by the Law Director.

During the maintenance guarantee period, it shall be the DEVELOPER's responsibility to make any and all repairs necessary, and to repair all failures and damages of any type or due to any cause. Any street, public utilities, street trees, monuments, and all other Public Improvements shall be in a condition acceptable to the City Manager at the end of the maintenance guarantee period. If maintenance is not satisfactory to the City Manager, the City Manager may claim such portion of the maintenance guarantee as is necessary to pay for repairs to the Public Improvements.

Section XIV. Building Construction before Improvements are Complete:

The DEVELOPER or its assigns may, after obtaining the required permit(s) from the City Building Department, posting the required bonds, and complying with all other applicable portions of this Agreement, begin the construction of all improvements comprising the project and necessary for the operation of a Wal-Mart Super Center, subject to governmental approvals.

However, in no event shall any such improvements be occupied before the Chief Building Official has issued an occupancy permit and before all of the sanitary sewers, storm sewers, water lines, fire hydrants, street and highway improvements, traffic lights, electrical service, street-lighting and the parking lot that will serve the development have been constructed, tested and approved for use by the City of Oberlin and accepted by ordinance of the City Council, excepting only the principal access drive and those off-site improvements which by their nature may not be immediately completed as itemized in Exhibits "B" and "C".

Section XV.

Should the building or buildings on the development site become vacant for a period of more than six consecutive months, the DEVELOPER agrees to market the building(s) and/or site for use in accordance with the City's Zoning Code. The DEVELOPER will fully and fairly consider the potential sale or lease of the building(s) and/or site. DEVELOPER will utilize Wal-Mart Realty's in-house team of architects, engineers, and tenant construction managers to assist in the subdivision or renovation of spaces to fit potential new tenants' needs and to facilitate reaching agreements regarding the lease or sale of the building(s) and/or site.

Section XVI. Indemnification:

Except with respect to matters that are due to *force majeure*, labor delays, actions (such as injunctive relief granted) due to legal actions filed relating to the improvements, or other reasons beyond the control of DEVELOPER, the DEVELOPER agrees to indemnify and save harmless the CITY and its elected and appointed officials, agents, representatives and employees from any and all causes of action, suits, claims and damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from or incurred in connection with any work, acts, or obligations carried out or done or to be carried out or to be done under this Agreement by the DEVELOPER, or the omission of any work, acts or obligations to be carried out or to be done by the DEVELOPER under this Agreement.

The covenants, conditions and obligations contained in this Agreement are binding upon the DEVELOPER, its successors and assigns, and run with the land which is the subject matter of this Agreement, said lands being further described as situated in the State of Ohio, County of Lorain, City of Oberlin, and more particularly described on Exhibit "A".

Section XVII. Breach of Contract:

The DEVELOPER agrees that any violation of or non-compliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract. A breach of contract shall also be deemed to have occurred in the event of the DEVELOPER's failure to perform work at the development site for a period of one hundred twenty (120) days after DEVELOPER commences such work. The CITY agrees that, in the event of a breach, it shall provide the DEVELOPER with notice thereof in writing. Should DEVELOPER fail to remedy the breach to the satisfaction of the CITY within thirty (30) days after receiving notice thereof from the CITY, the CITY shall have the right to stop the work forthwith and utilize the DEVELOPER's guarantees and bonds for such purpose, and require the DEVELOPER to pay any additional amount necessary to complete the work.

Section XVIII. Attachments:

The following attachments are hereby incorporated by reference and made a material part of this Agreement:

- Exhibit "A": Legal Description
- Exhibit "B": Final Site Plan and approved Improvement Plans (including a drawing of all easements)
- Exhibit "C": OMLPS memo describing future capital improvements.

Section XIX. Notices:

Any notice required or intended to be given under this Agreement shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earlier of: (i) the day of delivery to the addressee if personally delivered during regular business hours; (ii) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees; (iii) two (2) days after putting the notice in the U.S. mail; or (iv) the day of confirmation of receipt:

If to the CITY, to: Robert DiSpirito, City Manager
85 S. Main Street
Oberlin, Ohio 44074-1603

With a Copy to: Eric Severs, Law Director
City of Oberlin, Ohio
85 S. Main Street
Oberlin, Ohio 44074-1603

If to DEVELOPER, to: Wal-Mart Stores, Inc.
Attention: Mr. Tim Rogers
2001 S.E. 10th Street
Bentonville, AR 72716-0550

With a Copy to: Dawda, Mann, Mulcahy & Sadler, PLC
39533 Woodward Avenue
Suite 200
Bloomfield Hills, MI 48304
Attention: Edward C. Dawda or Gary A. Kravitz

And: Wickens, Herzer, Panza, Cook & Batista Co.
35765 Chester Road
Avon, OH 44011-1262
Attention: Marsha L. Collett or Todd A. Schrader

Section XX. Entire Agreement:

This Agreement constitutes the entire agreement between the CITY and the DEVELOPER with respect to the development of the property to which it relates. The parties hereto agree that no representation or warranties shall be binding upon either part unless expressed in writing in this instrument.

Section XXI. Modifications:

No changes in, modifications to, extension of, supplement to or discharge of this Agreement shall be valid or enforceable unless it is in writing and duly executed on behalf of the CITY and the DEVELOPER and approved by ordinance of Oberlin City Council.

Section XXII. Governing Law:

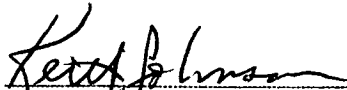
This Agreement is to be interpreted and construed in accordance with the laws of the State of Ohio. Adjudication, if required, shall be in a court of competent jurisdiction in Lorain County, State of Ohio.

Section XXIII. Severability:

If any term or provision of this Agreement shall become or be declared by a court of law to be invalid or unenforceable, the remainder of this Agreement and the application of the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

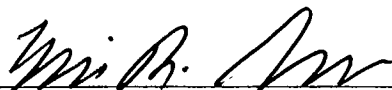
IN WITNESS WHEREOF, the parties have hereunto set their hands to this Agreement on this 19th day of September, 2005.

APPROVED AS TO AMOUNT OF BOND:



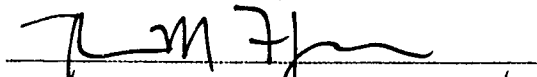
Keith Johnson, P.E.
Oberlin City Engineer

APPROVED AS TO FORM:




Eric R. Severs
Law Director

IN THE PRESENCE OF:

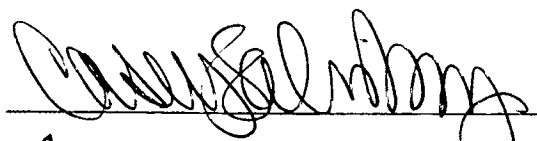

THOMAS M. FLYNN

THE CITY OF OBERLIN, OHIO

By:

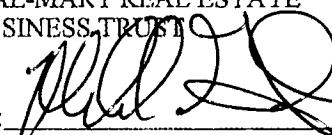

Robert DiSpirito
City Manager


IN THE PRESENCE OF:


CASEY SALISBURY

WAL-MART REAL ESTATE
BUSINESS TRUST

By:


Michael E. Gardner
Assistant Vice President

Approved as to legal terms only
by 

Wal-Mart Legal Team

Date: 9-14-05

State of Ohio)
) SS:
Lorain County)

Before me, a Notary Public in and for the County of Lorain, State of Ohio, personally appeared the above named CITY OF OBERLIN, OHIO by Robert DiSpirito, its City Manager, who acknowledged that he did execute and sign the foregoing instrument and that the same is his free act and deed as said City Manager.

IN TESTIMONY WHEREOF, I have hereunto affixed my signature and seal at Oberlin, Ohio this 19th day of September, 2005.

K. C. Farlow
Notary Public

State of Arkansas)
) SS:
Benton County)

Kristine C. Farlow
Notary Public - State of Ohio
My Commission Expires 8/24/08

Before me, a Notary Public in and for the County of Benton, State of Arkansas, personally appeared the above named Wal-Mart Real Estate Business Trust, by Michael E. Gardner, its Assistant Vice President, who acknowledged that he did execute and sign the foregoing instrument and that the same is his free act and deed as said Assistant Vice President.

IN TESTIMONY WHEREOF, I have hereunto affixed my signature and seal at Bentonville, AR this 16 day of September, 2005.



David C. Goble
Notary Public



KS ASSOCIATES

SURVEY GROUP

Exhibit "A"

**Oberlin Wal-Mart
Wal-Mart Parcel Description
23.01 Acres
Page 1 of 2**

Situated in the City of Oberlin and Township of Pittsfield, County of Lorain, State of Ohio and known as being part of Original Pittsfield Township Lot No. 15. Also being part of the land conveyed to Oberlin Land Company as recorded in O.R. Volume 83, Page 488 of the Lorain County Land Records, being more definitely described as follows;

Commencing at the intersection of the centerline of State Route 58 and the southerly line of Original Pittsfield Township Lot No. 16, said point being distant North $00^{\circ} 58' 25''$ East, 29.45 feet from a 1" iron pin found in a monument box on the centerline of State Route 58;

Thence, along said southerly line, South $89^{\circ} 56' 16''$ West, 4.16 feet to the southeasterly corner of Original Pittsfield Township Lot No. 15;

Thence, along the southerly line of Original Pittsfield Township Lot No. 15, South $89^{\circ} 56' 16''$ West, 747.62 feet to the **True Point of Beginning** for the parcel herein described;

Thence, continuing along said southerly line, South $89^{\circ} 56' 16''$ West, 1341.02 feet;

Thence, leaving said southerly line, North $00^{\circ} 28' 21''$ West, 740.77 feet to an iron pin set in the southerly line of land conveyed to Carol Varner as recorded in O.R. Volume 1044, Page 265 of the Lorain County Land Records and passing through an iron pin set 49.34 feet northerly of the southerly line of Original Pittsfield Township Lot No. 15;

Thence, along Varner's southerly line, North $89^{\circ} 21' 29''$ East, 1340.99 feet to an iron pin set;

Thence, leaving said southerly line, South $00^{\circ} 28' 21''$ East, 754.34 feet to the point of beginning and passing through an iron pin set 73.43 feet northerly of the southerly line of Original Pittsfield Township Lot No. 15.

Containing within said bounds 23.01 acres (1,002,468 square feet) of land as surveyed by KS Associates, Inc. under the supervision of Mark A. Yeager, Professional Surveyor, No. 7289 in March 2004.

260 Burns Road, Suite 100 • Elyria, Ohio 44035 • Phone (440) 365-4730

Email: mailroom@ksassoc.com • Web: www.ksassoc.com • Fax (440) 365-4790

Oberlin Wal-Mart
Wal-Mart Parcel Description
23.01 Acres
Page 2 of 2

All iron pins set are 5/8" x 30" capped rebar inscribed "KS ASSOCS INC PROP MARKER".

Bearings are based on Ohio State Plane, North Zone NAD83 (1986) Grid North based on GPS observations performed in January 2003.

Exhibit "B"
Final Site Plan and
Approved Improvement Plans

Sheet Number	Description	Date	Last Revised
1	TITLE - Cover Sheet	7/12/2005	NONE
2	P-1 - ALTA Survey Page 1	3/19/2004	1/10/2005
3	P-2 - ALTA Survey Page 2	3/19/2004	1/10/2005
4	P-3 - ALTA Survey Page 3	3/17/2004	1/10/2005
5	P-4 - ALTA Survey Page 4	3/19/2004	1/10/2005
6	SW-1 - Phase 1 SWPP	6/15/2005	7/7/2005
7	SW-2 - Phase 2 SWPP	6/15/2005	7/7/2005
8	SW-3 - SWPP Notes and Details	6/15/2005	7/7/2005
9	SW-4 - SWPP Notes and Details	6/15/2005	7/7/2005
10	SW-5 - SWPP Drainage Areas	3/29/2005	NONE
11	DEMO - Demolition Plan	3/29/2005	NONE
12	C-1 - Site Plan	3/29/2005	NONE
13	C-2 - Horizontal Control Plan	3/29/2005	NONE
14	C-3 - Grading Plan	3/29/2005	NONE
15	C-4 - Utility Plan	3/29/2005	7/11/2005
16	C-4.1 - Map of Public Improvements	6/27/2005	7/12/2005
17	C-4.2 - Map of Access and Utility Easements	4/18/2005	7/12/2005
18	C-5 - Sanitary and Water Plan and Profile	3/29/2005	NONE
19	C-6 - Sanitary and Water Plan and Profile	3/29/2005	NONE
20	L-1 - Landscape Plan	4/28/2005	NONE
21	LT-1 - Lighting Plan	3/29/2005	NONE
22	D-1 - Construction Details	3/29/2005	NONE
23	D-2 - Construction Details	3/29/2005	NONE
24	D-3 - Construction Details	3/29/2005	NONE
25	D-4 - Construction Details	3/29/2005	NONE
26	D-5 - Construction Details	3/29/2005	NONE
27	D-6 - Construction Details	3/29/2005	NONE
28	D-7 - Construction Details	3/29/2005	NONE
29	D-8 - Construction Details	3/29/2005	NONE
30	D-9 - Construction Details	3/29/2005	NONE
31	D-10 - Construction Details	3/29/2005	NONE
32	D-11 - Construction Details	3/29/2005	NONE
33	D-12 - Construction Details	3/29/2005	NONE
34	D-13 - Construction Details	3/29/2005	NONE
35	D-14 - Construction Details	3/29/2005	NONE
36	D-15 - Construction Details	3/29/2005	NONE
37	D-16 - Construction Details	3/29/2005	NONE
Site Electrical Drawings:			
1	E-1 - Electrical Site Plan	2/25/2005	NONE
2	E-2 - Electrical Legend and Details	2/25/2005	NONE
3	E-3 - Electrical Specifications	2/25/2005	NONE

Traffic Impact Study was prepared by KS Associates, Inc., dated January 4, 2005, and approved by ODOT by letter dated January 24, 2005

July 12, 2005

EXHIBIT C

What follows is a description of **electrical system offsite improvements** with estimated costs including labor, materials and equipment charges. Also included are proposed completion dates for each project.

Overhead Circuit Extension – Cost to Developer shall not exceed \$4,740

OMLPS will extend primary overhead electric service from the south side of U.S. Route 20 to a new riser pole location on the north side near the truck service entrance to the Wal-Mart development. Since this overhead circuit extension is necessary only to provide primary electric service to Wal-Mart, their share of this project shall be 100%. The proposed completion date for this work shall be in accordance with Developer's construction schedule.

East Loop Circuit Upgrade – Cost to Developer shall not exceed \$122,290

Presently, the area in which the proposed Wal-Mart development will be located (State Route 58 and State Route 20) is served by a 3-phase circuit called the "East Loop Circuit". This circuit travels from a City substation on South Professor Street approximately 1.1 miles to a point just south of the Route 58/20 intersection. This circuit is currently operating at near 50% capacity.

It is operational policy of OMLPS to maintain circuit loading at not more than 50% of the rated capacity. The benefits of this operational policy include power quality enhancement, distribution system flexibility, efficiency, reliability and safety. In order to maintain this margin, OMLPS will upgrade the East Loop Circuit to a feeder-class 336 KCMIL conductor. Also, approximately 0.4 miles of conductor from the intersection of Route 58/20 west to the Wal-Mart site will be upgraded as well.

The costs associated with these off-site improvements are directly attributable to the Wal-Mart Development since the existing circuit is adequate for current loads. The addition of Wal-Mart uses up the reserve margin available to the remaining OMLPS customers and puts the circuit loading well over 50%. Accordingly, Wal-Mart's share of this project shall be 100%.

The proposed completion dates for this project are as follows:

Upgrade of 0.4 miles of wire along Route 20 west - November, 2005

Upgrade of 1.1 miles of East Loop Circuit - November, 2007

Second Circuit – Cost to Developer shall not exceed \$47,915

Reliable and sound design of the utility distribution system to feed a load the size of Wal-Mart must incorporate looping capability from a second circuit. Currently, the Wal-Mart development area is fed by only one circuit. OMLPS will construct a second circuit to the Wal-Mart development site. This circuit will provide power to the Wal-Mart development in the event that the East Loop circuit becomes unavailable due to storms, equipment failures or maintenance requirements. Since other customers in the area will benefit from this improvement, Wal-Mart's share shall be 50% of the total cost for this project, estimated at \$95,850.

The proposed completion date for this project is November, 2006.

•

WAL-MART DEVELOPMENT GUIDELINES

EXHIBIT B –

FINAL SITE PLAN AND APPROVED IMPROVEMENT PLANS

FOR:

OBERLIN, OHIO
#5309-01

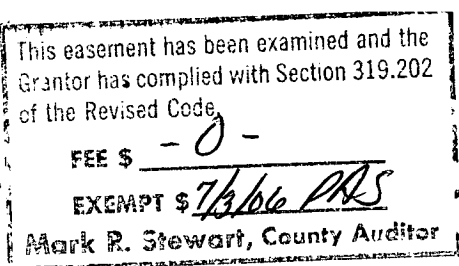
SEPTEMBER 20, 2005

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Final Site Plan and
Approved Improvement Plans

Sheet Number	Description	Date	Last Revised
1	TITLE – Cover Sheet	7/12/2005	NONE
2	P-1 – ALTA Survey Page 1	3/19/2004	1/10/2005
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3	E-3 – Electrical Specifications	2/25/2005	NONE

Traffic Impact Study was prepared by KS Associates, Inc., dated January 4, 2005, and approved by ODOT by letter dated January 24, 2005.

Sept. 20, 2005



151801#2347

Oberlin, Ohio
Store Number 5309-01**UTILITY EASEMENT AGREEMENT FOR SANITARY SEWER AND WATER LINES**

THIS UTILITY EASEMENT AGREEMENT FOR SANITARY SEWER AND WATER LINES (this "Agreement") is made as of the 29th day of June, 2006, by and between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust with an address of 2001 S.E. 10th Street, Bentonville, Arkansas 72716-0550 ("Wal-Mart") and **THE CITY OF OBERLIN**, an Ohio municipal corporation, whose address is 85 South Main Street, Oberlin, Ohio 44074 ("City").

Wal-Mart is the owner of that certain land situated in the City of Oberlin, Lorain County, State of Ohio, as shown on the site plan attached hereto as **Exhibit A** (the "Site Plan") and more particularly described by the legal description attached hereto as **Exhibit B** (the "Wal-Mart Property").

Wal-Mart, to the extent that the Easement Area described below affects the Wal-Mart Property, 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 City, its successors and assigns, a perpetual right and easement to enter upon and to construct, reconstruct, use, operate and maintain sanitary sewer lines, water lines and related equipment, across or under a strip of land located in the Wal-Mart Property, more particularly described and depicted in **Exhibit C** attached hereto and made a part hereof (the "Easement Area").

THE EASEMENT IS GRANTED SUBJECT TO THE FOLLOWING:

1. Wal-Mart shall have the right to use and enjoy fully the Easement Area subject to the rights hereby granted, but Wal-Mart agrees that it will not construct nor permit to be constructed any lakes, ponds, buildings or other structures of a permanent nature upon or over the Easement Area.

JEAN -
original recorded easement
goes w/ Walmart Develop-
ment Agreement.
Jeff

2. In exercising any of the rights granted herein, the City will not unreasonably interfere with the normal use of the Easement Area and will, at its sole cost and expense and with due diligence, restore the Easement Area to its condition immediately prior to the exercise of any of the rights granted herein including, but not limited to, the replacement of any sod, landscaping, paving or other improvements that existed within the Easement Area prior to City's use. City agrees to use due care in any use of the Easement Area and in the construction, installation, repair, replacement and maintenance of either City's improvements or the Easement Area as provided for herein so as not to unreasonably disturb Wal-Mart's use of its adjacent property. City shall not interfere with Wal-Mart's business operations on its adjacent property while utilizing the Easement Area.

3. City will indemnify, defend, protect and hold Wal-Mart harmless from any claims for damages or injuries arising out of or connected directly or indirectly with the use by City of the easement granted herein.

4. The easement granted hereunder is a perpetual easement that runs with the land. The prior sentence notwithstanding, Wal-Mart shall have the right at its sole option and expense to relocate said easement upon the Wal-Mart Property so long as: (a) a commercially reasonable alternative easement is available which satisfies the original intent of this document and which is reasonably acceptable in design and location to City; and (b) Wal-Mart pays any and all costs of relocation of any and all municipal infrastructure occupying the easement to be relocated. The easement granted pursuant to this Agreement will continue in full force and effect so long as the easement is used by the City, its successors and assigns. If the easement is no longer being used by City, its successors and assigns, Wal-Mart shall have the right to send written notice to City requesting termination of the Agreement (the "Easement Termination Notice"). If City does not object to the Easement Termination Notice within thirty (30) days of City's receipt of same, this Agreement will automatically terminate and the easement granted herein shall be rendered null and void.

5. Wal-Mart shall not grant another utility easement in all or a portion of the Easement Area without the City's prior written consent which consent shall not be unreasonably conditioned, delayed

or withheld; provided, however, that this restriction shall not affect existing easements or utility lines already located in all or a portion of the Easement Area.

6 In exercising any rights and privileges under this easement, City 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").

7. City shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for, the construction, installation, repair, replacement and maintenance of either City's improvements or the easement area as provided for herein. City shall comply with any and all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including, but not limited to, those governing the prevention, abatement and elimination of pollution and/or protection of the environment and the employment of its workers.

8. This Agreement contains all of the agreements and stipulations between Wal-Mart and City with respect to the granting of said easement, and the same shall inure to the benefit of and be binding upon Wal-Mart and City and their respective successors and assigns.

9. City or its contractors, while performing any work within the Easement Area, 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 easement in the amount of, not less than \$5,000,000 for injury or death of a single person, and to the limit of not less than \$5,000,000 for any one occurrence, and to the limit of not less than \$5,000,000 for property damage. City shall provide Wal-Mart with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by City which may cover other

property in addition to the property covered by this easement. Such insurance shall provide that the same may not be canceled without thirty (30) days prior written notice to Wal-Mart.

10. The laws of the State of Ohio shall apply to this Agreement.

11. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this 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 this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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

13. 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 Lorain County, State of Ohio, which documents must be executed by all of the parties hereto.

14. All exhibits referred to herein and attached hereto shall be deemed part of this Agreement.

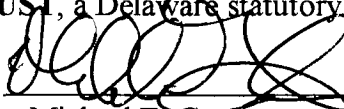
15. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

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

The undersigned have executed this Agreement the date first written above.

WAL-MART:

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

By: 
Michael E. Gardner

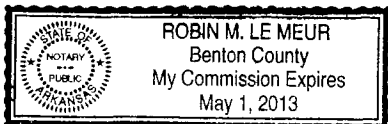
Its: Regional Vice President,
Design and Real Estate


ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)


Be it remembered that on this 23rd day of June, 2006, before me a notary public in and for the county and state aforesaid, came Michael E. Gardner, the Regional Vice President, Design and Real Estate for Wal-Mart Real Estate Business Trust, a Delaware statutory trust, who is personally known to me to be the person who executed the within document on behalf of Wal-Mart Real Estate Business Trust, a Delaware statutory trust and such person duly acknowledged the execution of the same to be the act and deed of said statutory trust.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.




Notary Public
Benton County, Arkansas
My Commission Expires: _____

[Signatures continue on following page]

Approved as to legal terms only
by 
WAL-MART LEGAL DEPT
Date: 6-20-06

CITY:

THE CITY OF OBERLIN,
an Ohio municipal corporation

By: 

Name: Robert DiSpirito

Its: City Manager

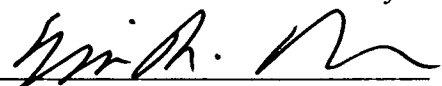
STATE OF OHIO)
)ss.
COUNTY OF LORAIN)

The foregoing instrument was acknowledged before me this 29th day of June, 2006, by Robert DiSpirito, the City Manager of the City of Oberlin, an Ohio municipal corporation, on behalf of the corporation.



, Notary Public
Lorain County, Ohio

My Commission Expires: _____

Approved as to form: 

Eric R. Severs
City of Oberlin Law Director

ERIC R. SEVERS, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date.
Section 147.03 R.C.

Drafted by and when recorded return to:

City of Oberlin
85 South Main Street
Oberlin, Ohio 44074
Attention: Eric R. Severs, Esq.

EXHIBIT A

Site Plan

(See attached)




































SANITARY SEWER SCHEDULE

STATION	SITUATION	TYPE	COORDINATES	EXTENSION	FORMER AGENCY	TYPE OF STRUCTURE	NO. OF PERSONS ON SITE	NO. OF INJURY	NO. OF DEATH	REMARKS
			NORTHING	EASTING						
STATION 1	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 1
STATION 2	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 2
STATION 3	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 3
STATION 4	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 4
STATION 5	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 5
STATION 6	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 6
STATION 7	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 7
STATION 8	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 8
STATION 9	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 9
STATION 10	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 10
STATION 11	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 11
STATION 12	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 12
STATION 13	SALE 001	W	R 23250.40	E 41000.80		RELAY TO CHINA CABLE	000.00	000.00 (000)	000.00 (000)	STATION 13

UTILITY LEGEND

- [illegible]

LEGEND

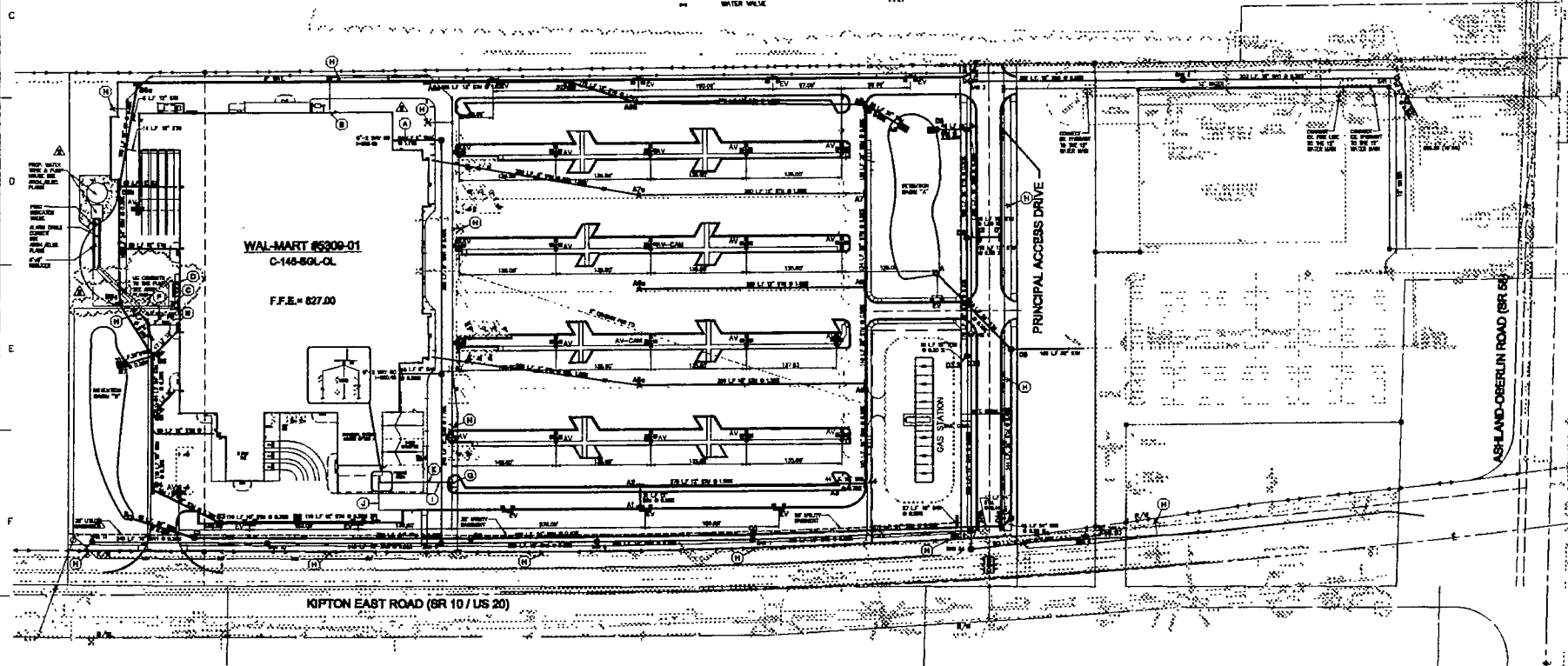
- | | | |
|---|---|---|
| | DRAINING WATER LINE | |
| | DRAINING STORM LINE | |
| | DRAINING SANITARY LINE | |
| | DRAINING OVERHEAD ELECTRIC/TELEPHONE LINE | |
| | DRAINING UNDERGROUND ELECTRIC LINE | |
| | DRAINING UNDERGROUND TELEPHONE LINE | |
| | DRAINING NATURAL GAS LINE | |
| | EXISTING UNDERGROUND ELECTRIC | |
| | PROPOSED STORM LINE 12" AND GREATER | |
| | PROPOSED STORM LINE LESS THAN 12" | |
| | PROPOSED SANITARY LINE | |
| | PROPOSED WATER LINE | |
|  | STORM DRAIN |  EXISTING SANITARY MANHOLE |
|  | SANITARY MAN |  EXISTING STORM MANHOLE |
|  | CURB INLET |  EXISTING WATER |
|  | CATCH BASIN |  EXISTING INLET SQUARE |
|  | CATCH DASH/MANHOLE |  EXISTING INLET ROUND |
|  | CLEAROUT |  EXISTING UTILITY POLE |
|  | 9-WAY CLEANOUT |  EXISTING UTILITY VALVE |
|  | UTILITY VALVE |  EXISTING GUY ANCHOR |
|  | BACKFLOW PREVENTER |  EXISTING POST SQUARE |
|  | FIRE HYDRANT |  EXISTING FIRE HYDRANT/
FIRE STAND PIPE |
|  | UTILITY MANHOLE |  EXISTING LIGHT POLE |
|  | SIGN |  EXISTING MANHOLE |
|  | TELEPHONE BOX |  EXISTING SIGN |
|  | PIPE BOLLARD |  EXISTING TELEPHONE BOX |
|  | LIGHT POLE |  EXISTING PHONE |
|  | GAS METER |  EXISTING MONITOR WELL |
|  | TRANSFORMER |  EXISTING ELECTRIC BOX |
|  | WATER VALVE | |

SITE UTILITY NOTES

- [illegible]

UTILITY ABBREVIATIONS

WA	WATER APPOINTMENT	WAP	WAPLING
WM	WATER VALVE	WAT	WATER
WM	WATER METER	WTM	WTM
WYO	WIRE HYDRAUT	WBN	WARRANTY
WSP	WIRE STRAND PIPE	WOP	OVERHEAD
CA	WATER CANN	TEL	TELEPHONE
CA	WATER CAP	THP	TYPICAL
GV	GAS VALVE	N.T.M.	NOT TO SCALE
EM	ELECTRIC METER	R	RECORD
FF	FRESHENED FLOOR ELEVATION	(S)	SURVEYED
CO	CLEANOUT	(U)	USED
LP	LIGHT POLE	FO	FOUR
LS	WELT BOLTING	ESMT	EXISTING
ML	MALET BOLING	TKAT	TRAFFIC CONTROL
ML	MALET BOLING	MA	MAINTENANCE
STHM	STORM MANHOLE	MD	MECHANICAL CONDITION



UTILITY PLAN

GRAPHIC SCALE



**2 MORNING DAYS
BEFORE YOU DIG**

CALL TOLL FREE 1-800-362-2784

CHINA, LITHIUM, POLYMERIZATION, RESEARCH

WAL-MART SUPERCENTER #308-01, OBERLIN, OH
CITY OF OBERLIN, LORAIN COUNTY, OHIO
WAL-MART STORES, INC.
BENTONVILLE, AR

C-4

15 0537 84072

REVISIONS	BY
07-11-08 PER CDEPA 00000003	STB
01-05-08 OTB CIVIL	
06-05-08 PER CDEPA 000-01121	STB
01-20-08 CDD 1	STB
02-20-08 CDD 02	STB
02-20-08 CDD 03	STB

EXHIBIT B

Legal Description for Wal-Mart Property

Situated in the City of Oberlin and Township of Pittsfield, County of Lorain, State of Ohio and known as being part of Original Pittsfield Township Lot No. 15. Also being part of the land conveyed to Oberlin Land Company as recorded in O.R. Volume 83, Page 488 of the Lorain County Land Records, being more definitely described as follows;

Commencing at the intersection of the centerline of State Route 58 and the southerly line of Original Pittsfield Township Lot No. 16, said point being distant North 00° 58' 25" East, 29.45 feet from a 1" iron pin found in a monument box on the centerline of State Route 58;

Thence, along said southerly line, South 89° 56' 16" West, 4.16 feet to the southeasterly corner of Original Pittsfield Township Lot No. 15;

Thence, along the southerly line of Original Pittsfield Township Lot No. 15, South 89° 56' 16" West, 747.62 feet to the **True Point of Beginning** for the parcel herein described;

Thence, continuing along said southerly line, South 89° 56' 16" West, 1341.02 feet;

Thence, leaving said southerly line, North 00° 28' 21" West, 740.77 feet to an iron pin set in the southerly line of land conveyed to Carol Varner as recorded in O.R. Volume 1044, Page 265 of the Lorain County Land Records and passing through an iron pin set 49.34 feet northerly of the southerly line of Original Pittsfield Township Lot No. 15;

Thence, along Varner's southerly line, North 89° 21' 29" East, 1340.99 feet to an iron pin set;

Thence, leaving said southerly line, South 00° 28' 21" East, 754.34 feet to the point of beginning and passing through an iron pin set 73.43 feet northerly of the southerly line of Original Pittsfield Township Lot No. 15.

Containing within said bounds 23.01 acres (1,002,468 square feet) of land as surveyed by KS Associates, Inc. under the supervision of Mark A. Yeager, Professional Surveyor, No. 7289 in March 2004.

All iron pins set are 5/8" x 30" capped rebar inscribed "KS ASSOCS INC PROP MARKER".

EXHIBIT C

Legal Description and Depiction for Easement Area

(See attached)

Proposed Utility Easement
0.7698 Acres

Situated in the City of Oberlin and Township of Pittsfield, County of Lorain, State of Ohio and known as being part of Original Pittsfield Township Lot No. 15. Also being part of the land conveyed to Wal-Mart Real Estate Business Trust as recorded in Instrument No. 200501068971 of the Lorain County Land Records, being more definitely described as follows;

Commencing at the southeasterly corner of said land conveyed to Wal-Mart Real Estate Business Trust;

Thence, along Wal-Mart Real Estate Business Trust's easterly line, North $00^{\circ} 28' 21''$ West, 73.43 feet to the northerly right of way of Kipton East Road (State Route 10) (U.S. Route 20) (width varies) and the **True Point of Beginning** for the parcel herein described;

Thence, along said northerly right of way the following two courses;

Along the arc of a curve which deflects to the right, 690.95 feet, said curve having a radius of 11399.20 feet, a central angle of $03^{\circ} 28' 23''$, and a chord of 690.85 feet which bears South $87^{\circ} 55' 30''$ West;

Thence South $89^{\circ} 57' 12''$ West, 650.43 feet to the westerly line of said land conveyed to Wal-Mart Real Estate Business Trust;

Thence, along Wal-Mart Real Estate Business Trust's westerly line, North $00^{\circ} 28' 21''$ West, 25.00 feet;

Thence, leaving said westerly line, North $89^{\circ} 57' 12''$ East, 650.55 feet;

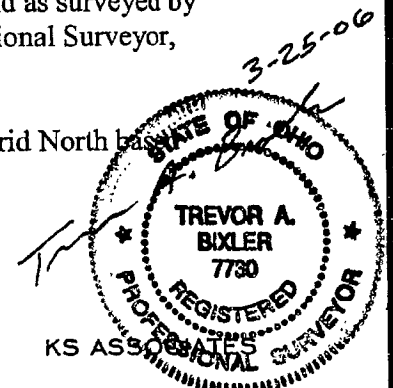
Thence, along the arc of a curve which deflects to the left, 690.83 feet to said easterly line of land conveyed to Wal-Mart Real Estate Business Trust, said curve having a radius of 11374.20 feet, a central angle of $03^{\circ} 28' 48''$, and a chord of 690.73 feet which bears North $87^{\circ} 55' 16''$ East;

Thence, along Wal-Mart Real Estate Business Trust's easterly line, South $00^{\circ} 28' 21''$ East, 25.04 feet to the point of beginning.

Containing within said bounds 0.7698 acres (33,535 square feet) of land as surveyed by KS Associates, Inc. under the supervision of Trevor A. Bixler, Professional Surveyor, No. 7730 in January of 2006.

Bearings are based on Ohio State Plane, North Zone NAD83 (1986) Grid North based on GPS observations performed in January 2003.

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14-00-015-000-017
OBERLIN LAND COMPANY
OR. VOL. 83 P. 488

POB

L5

C2

C1

L1

POC

O.L. 15

O.L. 26

S89°56'16"W

U.S. ROUTE 20

STATE ROUTE 10

(R/W VARIES)

L4 CITY OF OBERLIN

L2 TOWNSHIP OF PITTSFIELD

R/W

R/W

R/W

R/W

14-00-015-000-018
WAL-MART REAL ESTATE BUSINESS TRUST
INST. NO. 20050106897

14-00-015-000-017
OBERLIN LAND COMPANY
OR. VOL. 83 P. 488



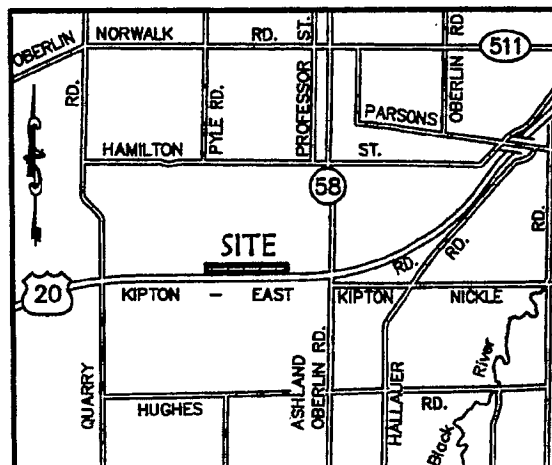
SCALE: 1"=300'
MARCH 25, 2006
KS JOB NO. 04038

ABBREVIATIONS

POB POINT OF BEGINNING
POC POINT OF COMMENCEMENT

VICINITY MAP

NO SCALE



CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	BEARING
C1	690.95'	11399.20'	3°28'23"	690.85'	S87°55'30"W
C2	690.83'	11374.20'	3°28'48"	690.73'	N87°55'16"E

LINE TABLE

LINE	BEARING	LENGTH
L1	N00°28'21"W	73.43'
L2	S89°57'12"W	650.43'
L3	N00°28'21"W	25.00'
L4	N89°57'12"E	650.55'
L5	S00°28'21"E	25.04'



PROPOSED UTILITY EASEMENT EXHIBIT

ACROSS THE LANDS OF
WAL-MART REAL ESTATE BUSINESS TRUST
PART OF ORIGINAL PITTSFIELD TOWNSHIP LOT
NO. 15, CITY OF OBERLIN,
COUNTY OF LORAIN, STATE OF OHIO

Trevor A. Bixler 3-25-06

TREVOR A. BIXLER
PROFESSIONAL SURVEYOR, OHIO NO. 7730



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mailroom@ksassoc.com
www.ksassoc.com

151201

Box Severs

JUDITH M. NEDWICK
LORAIN COUNTY
RECORDER

2006 JUL -3 A 10:47

RECEIVED FOR RECORD

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KLO