

## **ORDINANCE NO. 06-103 AC CMS**

### **AN ORDINANCE ACCEPTING CERTAIN PERMANENT IMPROVEMENTS AT THE WALMART DEVELOPMENT AND DECLARING AN EMERGENCY**

**BE IT ORDAINED** by the Council of the City of Oberlin, County of Lorain, State of Ohio, 5/7ths of all members elected thereto concurring:

**SECTION 1.** That certain proposed public permanent improvements, including water lines, sanitary sewer lines, storm sewer lines and street lighting system, for the WalMart Development, as recorded in Vol. 74, Pages 37-39, of the Lorain County Record of Plats, be and the same are hereby accepted by the City of Oberlin for ownership, operation, and maintenance, pursuant to Section 1311.06 of the Codified Ordinances of the City of Oberlin.

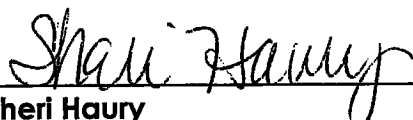
**SECTION 2.** It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action,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

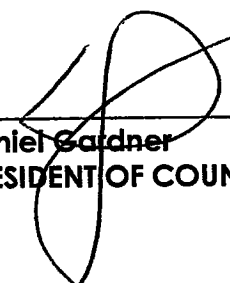
**SECTION 3.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit:

"to allow for timely compliance with the terms of the Development Construction Agreement", and shall take effect immediately upon passage.

**PASSED:**      1<sup>st</sup> Reading – December 18, 2006 (E)  
                    2<sup>nd</sup> Reading –  
                    3<sup>rd</sup> Reading –

**ATTEST:**

  
\_\_\_\_\_  
Sheri Haury  
INTERIM CLERK OF COUNCIL

  
\_\_\_\_\_  
Daniel Gardner  
PRESIDENT OF COUNCIL

**POSTED:** December 19, 2006

**EFFECTIVE DATE:** December 19, 2006

a:/ORD06-103.WalMartImprovements.doc



December 7, 2006

Mr. Robert DiSpirito  
City Manager  
City of Oberlin  
85 South Main Street  
Oberlin, Ohio 44074

Land Development

Transportation

Government Services

Land Surveying

**RE: Wal-Mart Store #5309-01 Oberlin, OH – Acceptance of Public Improvements**

Dear Mr. DiSpirito:

On behalf of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, we hereby request acceptance of the Public Improvements, not including the Principal Access Drive, which were installed concurrent with the construction of the Wal-Mart Store at 46440 US Route 20, Oberlin, Ohio.

Sincerely,

**KS ASSOCIATES, INC.**

A large, fluid, handwritten signature in black ink, which appears to read 'Lynn S. Miggins'. The signature is written over the company name.

Lynn S. Miggins, P.E.  
President

**KS Associates, Inc.**

Civil Engineers + Surveyors

260 Burns Road, Suite 100  
Elyria, Ohio 44035

P 440 365 4730

F 440 365 4790

[www.ksassociates.com](http://www.ksassociates.com)

JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

DEC 12, 2006

L/C NO.: L5LS-660711

ITEM NO: 0004

TO:  
CITY OF OBERLIN  
69 SOUTH MAIN STREET  
OBERLIN, OH 44074

RE: L5LS-660711 AMENDMENT NO 2

APPLICANT  
WAL-MART REAL ESTATE BUSINESS TRUST  
2001 SE 10TH STREET  
BENTONVILLE, AR 72716-0550  
ATTN: L/C MANAGER, DEPT 9382  
TEL (479) 273-8755

IN ACCORDANCE WITH INSTRUCTIONS RECEIVED, THE ABOVE REFERENCED STANDBY  
LETTER OF CREDIT HAS BEEN AMENDED AS FOLLOWS:

RECEIVER'S REFERENCE: 5309

NEW FINAL EXPIRY DATE: DECEMBER 19, 2007

ALL OTHER TERMS AND CONDITIONS OF THE CREDIT REMAIN UNCHANGED

  
AUTHORIZED SIGNATURE

Agnes Martinez  
Assistant Vice President

JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

DEC 5, 2006

L/C NO.: L5LS-660711

ITEM NO: 0003

TO:  
CITY OF OBERLIN  
69 SOUTH MAIN STREET  
OBERLIN, OH 44074

RE: L5LS-660711 AMENDMENT NO 1

APPLICANT  
WAL-MART REAL ESTATE BUSINESS TRUST  
2001 SE 10TH STREET  
BENTONVILLE, AR 72716-0550  
ATTN: L/C MANAGER, DEPT 9382  
TEL (479) 273-8755

IN ACCORDANCE WITH INSTRUCTIONS RECEIVED, THE ABOVE REFERENCED STANDBY  
LETTER OF CREDIT HAS BEEN AMENDED AS FOLLOWS:

RECEIVER'S REFERENCE:	5309
NEW FINAL EXPIRY DATE:	DECEMBER 4, 2007
L/C DECREASED BY:	USD761,480.00

THE AVAILABLE AMOUNT OF THIS LETTER OF CREDIT AFTER GIVING EFFECT TO THIS  
AMENDMENT IS USD53,950.00 (FIFTY THREE THOUSAND NINE HUNDRED FIFTY AND  
00/100 U.S. DOLLARS).

2ND PARAGRAPH ON PAGE 1 IS HEREBY DELETED IN ITS ENTIRETY AND IS REPLACED  
WITH: QUOTE

1. A NOTARIZED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICIAL OF  
CITY OF OBERLIN, STATING THAT: THE FUNDS DRAWN UNDER IRREVOCABLE STANDBY  
LETTER OF CREDIT NO. L5LS-660711 ISSUED BY JPMORGAN CHASE BANK, N.A. ARE  
DUE BY REASON OF WAL-MART STORES, INC.'S FAILURE TO MAINTAIN THE  
CONSTRUCTION OF ALL PUBLIC IMPROVEMENTS DETAILED IN SECTION V. OF THE  
DEVELOPMENT CONSTRUCTION AGREEMENT BY AND BETWEEN CITY OF OBERLIN AND WAL-

JPMorgan Chase Bank, N.A.  
c/o JPMorgan Treasury Services  
Global Trade Services  
10420 Highland Manor Drive  
Tampa, FL 33610

OCT 19, 2005  
OUR L/C NO.: L5LS-660711  
APPLICANT REF. NO.: 5309

TO:  
CITY OF OBERLIN  
69 SOUTH MAIN STREET  
OBERLIN, OH 44074

APPLICANT:  
WAL-MART REAL ESTATE BUSINESS TRUST  
2001 SE 10TH STREET  
BENTONVILLE, AR 72716-0550  
ATTN: L/C MANAGER, DEPT 9382  
TEL (479) 273-8755

WE ENCLOSE HERewith (AS A PERMANENT PART OF THIS LETTER OF CREDIT) AN  
IRREVOCABLE STANDBY LETTER OF CREDIT OPENED IN YOUR FAVOR SUBJECT TO ISP98

TRANSACTION REFERENCE NUMBER: L5LS-660711

DATE AND PLACE OF EXPIRY: OCTOBER 19, 2006  
AT OUR COUNTER

DOCUMENTARY CREDIT AMOUNT: USD815,430.00

AUTO EXTENSION: YES

EXTENSION PERIOD: 12 MONTH(S)

NOTIFICATION PERIOD: 30 DAY(S)

FINAL EXPIRY DATE: OCTOBER 19, 2007

THIS LETTER OF CREDIT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE  
WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF  
CONFLICT OF LAWS.

PLEASE REVIEW THE DETAILS OF THIS ENCLOSURE AND THE ATTACHED LETTER OF  
CREDIT IMMEDIATELY AND CONTACT OUR CLIENT SERVICE GROUP AT THE TELEPHONE  
NUMBER OR E-MAIL ADDRESS PROVIDED WITHIN THE LETTER OF CREDIT IF YOU HAVE  
ANY QUESTIONS.

  
AUTHORIZED SIGNATURE

Agnes Martinez  
Assistant Vice President


# City of Oberlin

85 South Main St. Oberlin, OH 44074

## Public Works Department

December 11, 2006

TO: Rob DiSpirito, City Manager

FROM: Jeff Baumann, Public Works Director 

RE: Walmart: Acceptance of certain Public Improvements

On October 9, 2006 City Council passed Ordinance 06-83 which amended the Development Construction Agreement between the City and Walmart. This amendment allowed Walmart to open on October 9<sup>th</sup> and extended the time to complete all required items to December 31, 2006.

These various items are now complete and staff recommends acceptance of the public improvements to the water, sanitary sewer, storm sewer and electrical systems. This proposed acceptance does not include the 'Principal Access Drive' as it has not been the City's intent to accept the street until it is connected to the north.

Punch list repairs and/or improvements to the water, sanitary sewer and electrical systems are now completed to the satisfaction of the Public Works Department and OMLPS.

On the administrative side, the Development Construction Agreement requires certain documentation prior to acceptance of the public improvements by City Council. This includes:

- "waivers of lien executed by all suppliers, contractors, and subcontractors..."
- "The Developer's professional engineer...shall...certify to the City Manager that all Public Improvements...have been constructed as required by this Agreement..."
- The provision of 'as-built' drawings, both in hard copy and in electronic format
- "a maintenance guarantee shall be posted...in the amount of ten percent (10%) of the costs of the Public Improvements"
- "the Developer shall petition the City in writing for acceptance of the Public Improvements except the Principal Access Drive."

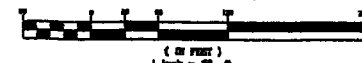
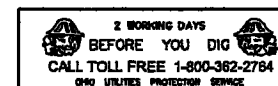
These administrative items are now completed. Waivers of Lien, in forms approved by Mr. Severs, have been provided by the contractor and sub-contractors. A copy of the certification of the improvements, prepared and stamped by Lynn Miggins, PE and president of KS Associates (attached) has been provided. Ms. Miggins has also prepared the 'petition' for acceptance (attached). I have received the as-built drawings. The Performance Guarantee, a letter of credit, has been amended to the revised amount of the Maintenance Guarantee, a total of \$53,950, representing 10% of the value of the public improvements proposed to be accepted.

Ms. Miggins is planning to attend City Council meeting on December 18<sup>th</sup> to assist in answering any questions which may arise. Please let me know if you have any questions in the interim.

### SITE UTILITY NOTES

77. ALL NECESSARY PERMITS AND/OR CONFORMANCE REQUIRED BY CODES AND/OR STATE SERVICE COMPANIES SHALL BE OBTAINED PRIOR TO ANYWORKED BEING DONE AND THE PERMITS OF RECORD.
78. UTILITIES TO BE MOVED OR IN THE CITY OF CHICAGO SHALL HAVE THE CITY ENGINEERING DIVISION, CONSTRUCTION, INSURE DRAWINGS, AND APPEARANCE PRIOR TO THE CITY AS CONTRACTING EXPENSE.
79. THE PROPOSED FACILITIES WILL SHOWN A MINIMUM 20 PSI PRESSURE DELIVERED TO THE CORD STOP SECOND FLOOR, OPERATING CONDITIONS.
80. BOOSTER PUMPS AND HOT PERMITTERS IN SERVICE CONDITIONS.
81. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE CITY OF CHICAGO, THE CONTRACTOR SHALL COMPLY WITH LOCAL, FIRE, ORDINANCES TO NOTIFY THEM OF THE PRESENCE OF DRADES IN THOSE AREAS WHERE APPROPRIATE.
82. FLOOD BASINS, FOUNDATION DRAINS, AND OTHER CLEAN WATER CONNECTIONS TO THE SANITARY SEWER AND

WA	WATER APPURTENANCE	SAP	SAPLING
WV	WATER VALVE	WAT	WATER
WM	WATER METER	STM	STORM
HYD	FIRE HYDRANT	SAH	SANITARY
FSP	FIRE STAND PIPE	ON	OVERHEAD
GM	GAS METER	TBL	TELEPHONE
GA	GAS APPURTENANCE	TYP	TYPICAL
GV	GAS VALVE	N.T.S.	NOT TO SCALE
EM	ELECTRIC METER	(R.)	RECORD
FF	FINISHED FLOOR ELEVATION	(S.)	SURVEYED
CO	CLEAROUT	(U.)	USED
LP	LIGHT POLE	FD.	FOUND
IS	INLET SQUARE	ESMT	EASIMENT
IR	INLET ROUND	TQHN	TRAVEL CONTROL MANHOLE
IG	INLET GUTTER	MH	MANHOLE
SMH	STORM MANHOLE	FO	FIBEROPTIC CONDUIT
SMH	SANITARY MANHOLE		
MMH	INLET MANHOLE		



**KS ASSOCIATES, INC.**  
2860 Burns Road, Suite 100  
Elyria, Ohio 44035  
Phone (440) 365-4730  
Fax (440) 365-4790  
mailroom@ksassoc.com  
www.ksassoc.com



WAL-MART SUPERCENTER #5309-01, OBERLIN, OH  
CITY OF OBERLIN, LORAIN COUNTY, OHIO  
WAL-MART STORES, INC.  
BENTONVILLE, AR

DRAWN
MP
CHECKED
LSM
DATE
03-25-2003
SCALE
1"=60'-0"
JOB No.
04028
SHEET

**C-4**