

DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into as of the ____ day of _____, 2010 by and between **THE CITY OF LEXINGTON, NEBRASKA**, a Nebraska municipal corporation (the "City") and **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("Wal-Mart").

PRELIMINARY STATEMENTS

Wal-Mart or its affiliate holds fee simple title to certain real property located at or near the intersection of Frontier Street and Highway 283 in the City of Lexington, Dawson County, Nebraska, as more particularly described in Exhibit A attached hereto (the "Wal-Mart Property"). In connection with Wal-Mart's development of the Wal-Mart Property, Wal-Mart's affiliate, Wal-Mart Stores, Inc., a Delaware corporation and the City entered into that certain Agreement dated on or near July 2002, as may have been amended (the "Original Development Agreement"). Wal-Mart has performed all of its duties and obligations under the Original Development Agreement.

The City desires to design and construct certain improvements (the "Improvements") in and to the Frontier Street and State Highway 283 right-of-way and intersection (the "Intersection"), as detailed on the plans and specifications (the "Plans") attached hereto as Exhibit B. Wal-Mart has no duty to undertake such Improvements or contribute to the funding of such Improvements. Notwithstanding the foregoing, Wal-Mart has agreed to reimburse the City for a portion of the costs incurred by the City to design and construct the Improvements, subject to the terms, conditions and limitations set forth in this Agreement.

NOW THEREFORE, the City and Wal-Mart, in consideration of the terms, covenants and conditions herein set forth, hereby agree as follows:

1. **City Construction of the Improvements.** The City shall construct the Improvements (the "Construction") in accordance with the Plans and in full compliance with all applicable laws. No Construction shall take place, and the Roadway shall remain open and unimpeded, during the following months: October, November and December. The City will complete the Construction and deliver the Deliverables, as defined below, to Wal-Mart on or before October 31, 2011.

2. **Deliverables.** Within sixty (60) days after the completion of the Construction, the City shall deliver the following (collectively, the "Deliverables") to Wal-Mart:

- (a) the certification of a licensed engineer or architect, addressed to Wal-Mart, certifying that the Construction of the Improvements has been fully completed in accordance with the Plans;
- (b) copies of an as-built survey depicting the Roadway and the Improvements post-Construction;
- (c) a statement showing the total project cost and including copies of paid invoices for all costs (the "Construction Costs") arising from the Construction; and

- (d) copies of lien waivers or other proof satisfactory to Wal-Mart that the City has paid all of the Construction Costs.

3. **Wal-Mart Contribution.** In the event that the City completes the Construction in accordance with the Plans, provides the Deliverables to Wal-Mart and is not in default of its obligations under this Agreement, within sixty (60) days after the City satisfies all such conditions and provides written demand to Wal-Mart, Wal-Mart shall reimburse the City for twenty-five percent (25%) of the Construction Costs incurred by the City to complete the Construction (the "Contribution"), provided, however, that Wal-Mart's liability for the Contribution shall in no event exceed Fifty Thousand Dollars (\$50,000) (the "Cap"). Wal-Mart's liability to the City pursuant to this Agreement shall in no event exceed the Cap.

4. **Dedication of Improvements.** Upon the City's completion of the Construction and Wal-Mart's payment of the Contribution, Wal-Mart, its owners, employees, customers, licensees and invitees, together with the general public, shall be entitled to the free and unobstructed use of the Intersection without further cost or contribution and the City shall thereafter maintain in perpetuity the Improvements in as good condition as other public improvements which the City maintains now or in the future.

5. **No Improvement District or Special Assessments.** The City shall create no improvement district arising out of the Construction of the Improvements. The City shall assess no tax against Wal-Mart or the Wal-Mart Property associated with the design or Construction of the Improvements. Wal-Mart's payment of the Contribution as set forth herein represents the maximum liability of Wal-Mart to fund and pay for the Improvements. The City waives any requirement of Wal-Mart to pay any special or other assessment associated with the Construction of the Improvements. The City shall take all steps necessary to ensure that neither Dawson County nor any other governmental agency shall seek to collect any sums from Wal-Mart respecting the Construction of the Improvements, save and except for the Contribution.

6. **No Obligation to Construct or Operate.** Notwithstanding anything to the contrary contained herein, the City agrees that the Wal-Mart Property may be used for any lawful purpose. It is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either expressed or implied, to either commence the construction of a building or the operation of a business or thereafter continuously operate a business on the Wal-Mart Property. The City recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion, cease the operation of its business on the Wal-Mart Property and the City hereby waives any legal action for damages or for equitable relief resulting from such cessation of business activity by Wal-Mart.

7. **No Agency or Partnership.** This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between the City and Wal-Mart nor between the City and any officer, employee, contractor or representative of Wal-Mart. No joint employment is intended or created by this Agreement for any purpose. The City agrees to so inform its employees, agents, contractors and subcontractors who are involved in the implementation of or construction under this Agreement.

8. **Governing Law.** This Agreement shall be construed under the laws of the State of Nebraska.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto.

10. **Counterparts.** This Agreement may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original, and all of which shall constitute collectively one agreement.

11. **Binding Effect.** The effectiveness of this Agreement is conditioned upon its approval and adoption by the City Council of the City, the authorized execution by its Mayor, and the compliance with any other requirements legally necessary to bind the City. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

12. **Further Assurances.** From time to time after the date hereof, without further consideration, the parties will (i) execute and deliver, or cause to be executed and delivered, such instruments to each other as may reasonably be requested in order to effectuate the intent of this Agreement and (ii) use reasonable good faith efforts to obtain any third-party consents reasonably necessary to effectuate the intent of this Agreement.

13. **Severability.** The provisions of this Agreement shall be deemed severable. If any part of this Agreement shall be held invalid, illegal or unenforceable, the remainder shall remain in full force and effect, and such invalid, illegal or unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

14. **Authorization.** Wal-Mart represents, covenants and warrants that the making and execution of this Agreement and all other documents and instruments required or related hereunder have been fully authorized by the necessary corporate action of Wal-Mart and are valid, binding and enforceable obligations of Wal-Mart in accordance with their respective terms. The City represents, covenants and warrants that the making and execution of this Agreement and all other documents and instruments required or related hereunder have been fully authorized by the necessary organizational action of the City and are valid, binding and enforceable obligations of the City in accordance with their respective terms.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter set forth.

THE CITY:

THE CITY OF LEXINGTON, NEBRASKA
a Nebraska municipal corporation

Date: _____

By: _____
Mayor

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter set forth.

WAL-MART:

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

Date: _____

By: _____

Name: _____

Title: _____

EXHIBIT A

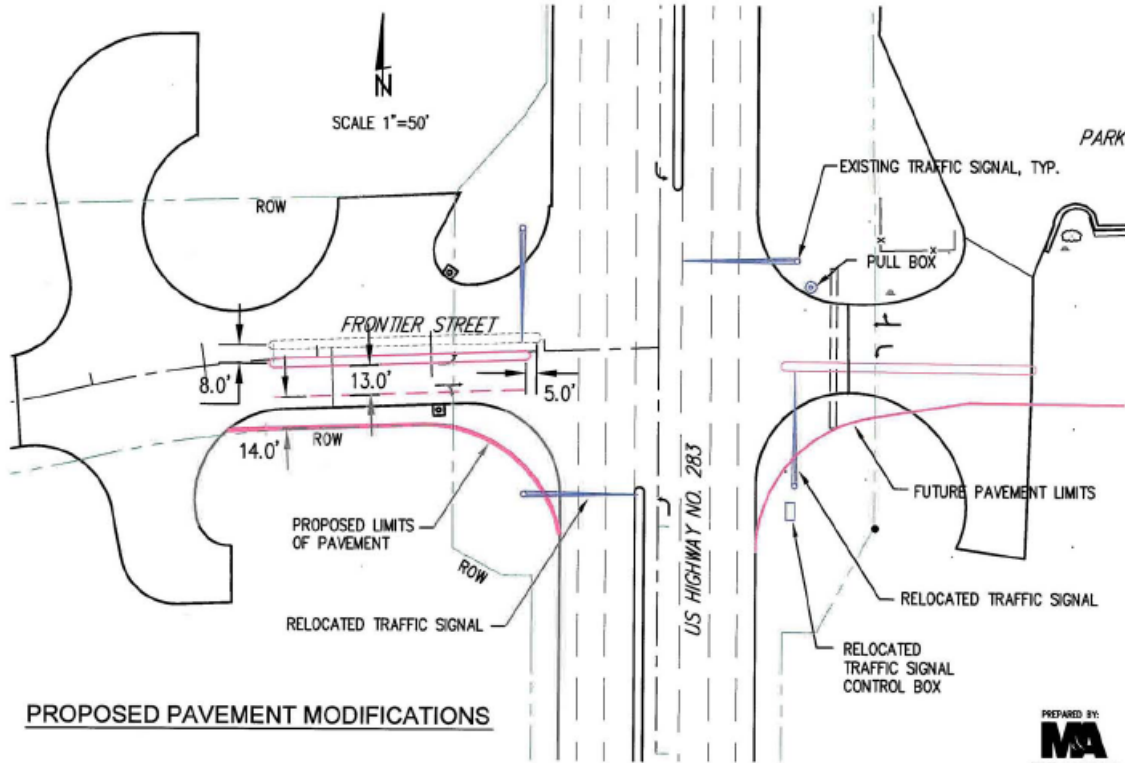
DESCRIPTION OF THE WAL-MART PROPERTY

A TRACT OF LAND LOCATED IN THE SOUTH HALF OF THE SOUTHWEST QUARTER (S½, SW¼) OF SECTION 17 AND THE NORTH HALF OF THE NORTHWEST QUARTER (N½, NW¼) OF SECTION 20, BOTH IN TOWNSHIP 9 NORTH, RANGE 21 WEST OF THE 6TH P.M., DAWSON COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID S½, SW¼ ; THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 22 MINUTES 01 SECONDS WEST ALONG THE SOUTH LINE OF SAID S½, SW¼ A DISTANCE OF 590.77 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF INTERSTATE 80, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE SOUTH 67 DEGREES 26 MINUTES 56 SECONDS WEST ALONG SAID NORTH LINE A DISTANCE OF 121.09 FEET TO A POINT OF CURVATURE; THENCE AROUND A CURVE IN A CLOCKWISE DIRECTION HAVING A DELTA ANGLE OF 16 DEGREES 03 MINUTES 52 SECONDS, AN ARC LENGTH OF 201.45 FEET; A RADIUS OF 718.50 FEET AND A CHORD OF SOUTH 75 DEGREES 32 MINUTES 58 SECONDS WEST A DISTANCE OF 200.79 FEET; THENCE NORTH 01 DEGREES 31 MINUTES 07 SECONDS EAST A DISTANCE OF 1401.97 FEET TO A POINT ON THE NORTH LINE OF SAID S½, SW¼; THENCE NORTH 89 DEGREES 36 MINUTES 02 SECONDS EAST ALONG SAID NORTH LINE A DISTANCE OF 544.43 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 47 SECONDS WEST A DISTANCE OF 438.96 FEET; THENCE NORTH 89 DEGREES 35 MINUTES 45 SECONDS EAST A DISTANCE OF 263.95 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF HIGHWAY 283; THENCE SOUTH 01 DEGREES 51 MINUTES 28 SECONDS WEST ALONG SAID WEST LINE A DISTANCE OF 403.13 FEET TO A POINT OF CURVATURE; THENCE AROUND A CURVE IN A CLOCKWISE DIRECTION HAVING A DELTA ANGLE OF 00 DEGREES 21 MINUTES 14 SECONDS, AN ARC LENGTH OF 46.74 FEET, A RADIUS OF 7564.40 FEET AND A CHORD OF SOUTH 05 DEGREES 05 MINUTES 15 SECONDS WEST A DISTANCE OF 46.74 FEET; THENCE SOUTH 42 DEGREES 34 MINUTES 04 SECONDS WEST A DISTANCE OF 462.65 FEET; THENCE SOUTH 67 DEGREES 34 MINUTES 01 SECONDS WEST A DISTANCE OF 213.78 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 20.00 ACRES MORE OR LESS.

EXHIBIT B—PLANS



PREPARED BY:
MA
MILLER & ASSOCIATES
CONSULTING ENGINEERS, P.A.
1111 CENTRAL AVENUE
KEENE, NH 03547