



**COMMITMENT FOR TITLE INSURANCE  
ISSUED BY  
COMMONWEALTH LAND TITLE INSURANCE COMPANY**

**NOTICE**

**IMPORTANT—READ CAREFULLY:** THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

**COMMITMENT TO ISSUE POLICY**

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Commonwealth Land Title Insurance Company, a Florida Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within 180 Days after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

COMMONWEALTH LAND TITLE INSURANCE COMPANY

By:

ATTEST

President

Secretary

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Commonwealth Land Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.*

**81C165B**

**ALTA Commitment for Title Insurance 8-1-16**

**Copyright American Land Title Association. All rights reserved.**

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.





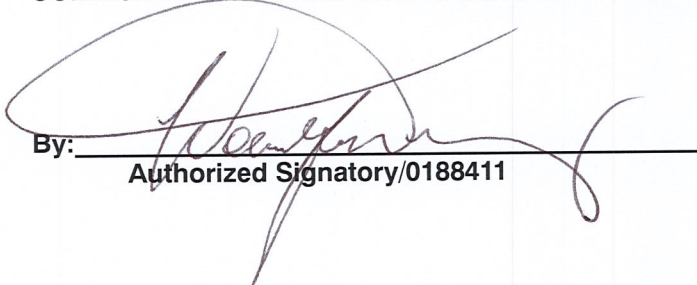
**Transaction Identification Data for reference only:**

Issuing Agent: **Woodford W. Dinning, Jr.**  
Issuing Office: **Lloyd & Dinning, LLC**  
ALTA® Universal ID: **1042331**  
Loan ID Number:  
Commitment Number: **DemopolisHwy80Property**  
Issuing Office File Number: **DemopolisHwy80Property**  
Property Address: **Highway 80 West, Demopolis, AL 36732**  
Revision Number:

**SCHEDULE A**

1. Commitment Date: **August 17, 2018**
2. Policy to be issued:
  - (a) 2006 ALTA® Owner's Policy (6/17/06):  
Proposed Insured: **To be amended**  
Proposed Policy Amount: **\$300,000.00 (as placeholder)**
  - (b) 2006 ALTA® Loan Policy (6/17/06):  
Proposed Insured:  
Proposed Policy Amount: **\$**
3. The estate or interest in the Land described or referred to in this Commitment is fee simple.
4. Title to the fee simple estate or interest in the Land is at the Commitment Date vested in:  
**Demopolis Highway 80 Property, LLC, an Alabama Limited Liability Company**
5. The Land is described as follows:  
**See legal description attached hereto as Exhibit "A".**

**COMMONWEALTH LAND TITLE INSURANCE COMPANY**

By:   
**Authorized Signatory/0188411**

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Commonwealth Land Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.*

**81C165B**

**ALTA Commitment for Title Insurance 8-1-16**

**Copyright American Land Title Association. All rights reserved.**

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



**SCHEDULE B, PART I  
Requirements**

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records, to-wit:
  - A good and valid Deed executed by the present owners, Demopolis Highway 80 Property, LLC, in favor of the proposed insured, and recorded in the Probate Office of Marengo County, Alabama.
  - Payment and satisfaction of a Mortgage in favor of First Commercial Bank recorded March 20, 2010 in Mortgage Book 2010, Pages 101 et. seq., in the Probate Office of Marengo County, Alabama.

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Commonwealth Land Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.*

**81C165B**

**ALTA Commitment for Title Insurance 8-1-16**

**Copyright American Land Title Association. All rights reserved.**

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



**SCHEDULE B, PART II**  
**Exceptions**

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.
2. Ad valorem taxes for the year 2018.
3. Rights of parties in possession.
4. Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey and inspection of the premises.
5. Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Taxes or special assessments which are not shown as existing liens by the public records.
7. Easements, or claims of easements, not shown by the public records.
8. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto.
9. Any prior reservations or conveyance, together with release of damages of minerals of every kind and character, including but not limited to gas, oil, sand and gravel, in, on and under subject property.
10. General and special taxes or assessments for 2018 and subsequent years not yet due and payable.
11. The reservation with respect to gas and water easement of fifteen (15) feet set out in that certain Deed dated April 7, 2005, and recorded in Deed Book 10-B, Pages 389-394, Marengo County, Alabama.

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Commonwealth Land Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.*

**81C165B**

**ALTA Commitment for Title Insurance 8-1-16**

**Copyright American Land Title Association. All rights reserved.**

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



12. Declaration of restrictions set out at Deed Book 10-B, Pages 395-397, Marengo County, Alabama.
13. Temporary Grading and Construction Easement by and between Rivertown Properties, Inc. and Wal-mart Stores East, L.P., recorded in Deed Book 10-A, Page 638, Marengo County, Alabama.
14. Easements and building line as shown on recorded map.
15. Easements with Covenants and Restrictions affecting land recorded in Deed Book 10-A, Pages 670-693, Marengo County, Alabama.
16. Restrictions, limitations, conditions and other provisions as set out in Map Book 4, Page 65 in the Probate Office of Marengo County, Alabama.
17. Right(s) of Way(s) granted to Marengo County, Alabama as set out in Book 4G, Page 407 in the Probate Office of Marengo County, Alabama.
18. Rights acquired by the State of Alabama in condemnation proceedings filed in Case # CV-93-063 as recorded in Book 85, Page 769 in Marengo County, Alabama.
19. Any applicable zoning ordinances.
20. Any and all other easements, rights-of-way, reservations, agreements, restrictions, and setback lines of record.
21. Title to that portion of the property with any road right-of-ways.
22. Access Easement Agreement as recorded in Book 10-A, Page 645 in the Probate Office of Marengo County, Alabama.

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Commonwealth Land Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.*

**81C165B**

**ALTA Commitment for Title Insurance 8-1-16**

**Copyright American Land Title Association. All rights reserved.**

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

## COMMITMENT CONDITIONS

### 1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:
- (a) the Notice;
  - (b) the Commitment to Issue Policy;
  - (c) the Commitment Conditions;
  - (d) Schedule A;
  - (e) Schedule B, Part I—Requirements; and
  - (f) Schedule B, Part II—Exceptions; and
  - (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

### 4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Commonwealth Land Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.*

81C165B

ALTA Commitment for Title Insurance 8-1-16

Copyright American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



**5. LIMITATIONS OF LIABILITY**

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
  - (i) comply with the Schedule B, Part I—Requirements;
  - (ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
  - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

**6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT**

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

**7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT**

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Commonwealth Land Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.*

81C165B

ALTA Commitment for Title Insurance 8-1-16

**Copyright American Land Title Association. All rights reserved.**

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



8. **PRO-FORMA POLICY**

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. **ARBITRATION**

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <<http://www.alta.org/arbitration>>.

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Commonwealth Land Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.*

81C165B

ALTA Commitment for Title Insurance 8-1-16

**Copyright American Land Title Association. All rights reserved.**

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



**EXHIBIT "A"**

Lot 4A-1, being a re-subdivision of Lots 4A and 4B of the re-subdivision of Lots 2 and 4 of West 80 Commercial Park, said lot being laid down and described on the map or plat of said Lot 4A-1, filed for record at Map Slide R 322, Marengo County Probate Office.

Subject to any and all restrictive covenants, easements, rights-of-way, and reservations of record.

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Commonwealth Land Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.*

**81C165B**

**ALTA Commitment for Title Insurance 8-1-16**

**Copyright American Land Title Association. All rights reserved.**

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

21.00  
211.00

SEND TAX NOTICES TO:  
MAP Development, LLC  
The Park Woods Bldg.  
402 Office Park Drive, G-115  
Birmingham, AL 35223

No. \_\_\_\_\_  
FILED IN PROBATE OFFICE  
MARENGO COUNTY, ALA.

AM APR 21 2005 3:35 PM

CINDY D. NEILSON, Judge

I, CINDY D. NEILSON DO HEREBY CERTIFY  
THAT SAID INSTRUMENT WAS FILED FOR  
RECORD THIS 21st DAY OF April  
2005 BOOK 10B PAGE 389-394  
DEED TAX 211.00 MTG. TAX \_\_\_\_\_

Cindy D. Neilson  
Judge of Probate  
Marengo County, Alabama

STATE OF ALABAMA )  
MARENGO COUNTY )

#### WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that in consideration of Two Hundred Twenty Thousand and 00/100 Dollars (\$220,000.00) and other good and valuable consideration in hand paid to **RIVERTOWN PROPERTIES, INC.**, an Alabama corporation (the "Grantor"), the receipt of which is acknowledged, the Grantor does hereby grant, bargain, sell, convey and warrant unto **MAP DEMOPOLIS, LLC**, an Alabama limited liability company (the "Grantee"), the real property lying and being situated in the County of Marengo, State of Alabama, and being more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property"), together with all of Grantor's right, title and interest in and to that certain Access Easement Agreement (the "Access Easement Agreement") by and between Wal-Mart Stores East, LP and Grantor, dated February 3, 2005, and recorded in Deed Book 10A at Page 645 in the Probate Office of Marengo County, Alabama, but only insofar as the Access Easement Agreement benefits and services the Property.

Grantor reserves unto itself, its successors and assigns, a fifteen (15) foot gas and water easement, being more particularly described on Exhibit B attached hereto, to the extent that such easement affects the Property as depicted on the plat attached hereto as Exhibit C.

The Property is conveyed subject to, those certain liens, encumbrances and other matters set forth on Exhibit D attached hereto (the "Permitted Exceptions").

And Grantor does for itself, its successors and assigns, covenant with the said Grantee, its successors and assigns, that Grantor is lawfully seized in fee simple of said premises; that they are free from all encumbrances, unless otherwise noted on Exhibit D herein; that Grantor has a good right to sell and convey the same as aforesaid; and that it will, and its successors and assigns shall, warrant and defend the same to the said Grantee, its successor and assigns forever, against the lawful claims of all persons.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, GRANTOR has executed this conveyance as of the 7th  
day of April, 2005.

**RIVERTOWN PROPERTIES, INC.**

By: Ed Key  
Ed Key, its President

STATE OF ALABAMA )  
COUNTY OF MARENGO )

I, Richard S. Manley, a Notary Public in and for said County, in said State, do hereby certify that **ED KEY**, whose name as President of **RIVERTOWN PROPERTIES, INC.**, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 7th day of April, 2005.

Richard S. Manley  
Notary Public  
My Commission Expires: 9-26-2006

This instrument prepared by:  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC  
Attn: Debora L. Horn  
17th Floor, AmSouth Plaza  
Post Office Box 22567  
Jackson, MS 39225-2567  
(601) 948-5711

**EXHIBIT A**

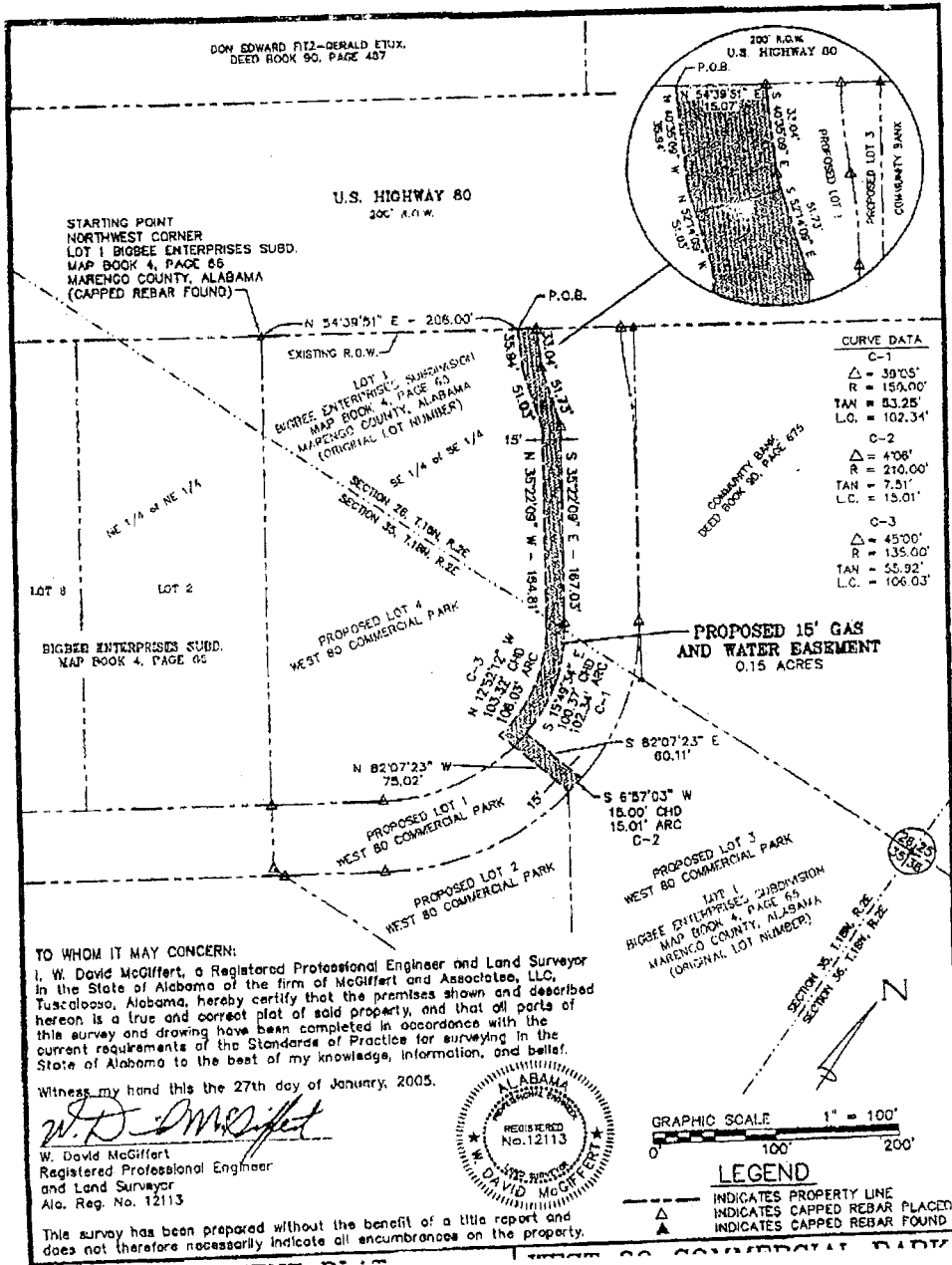
Lot 4, West 80 Commercial Park, as said lot is laid down or described on a map or plat of the said West 80 Commercial Park, which plat is recorded in the Probate Office, Marengo County, Alabama on Slide 305, Right.

**EXHIBIT B**

Part of Proposed Lot 1 and Lot 4 of West 80 Commercial Park and also being part of the Northeast Quarter of the Northeast Quarter of Section 35, and part of the Southeast Quarter of the Southeast Quarter of Section 26, Township 18 North, Range 2 East, Marengo County, Alabama, and being more particularly described as follows:

As a STARTING POINT, start at the Northwest corner of Lot 1 BigBee Enterprises Subdivision as recorded in Map Book 4, Page 65, in the Probate Office of Marengo County, Alabama; thence North 54 degrees 39 minutes 51 seconds East and along the South boundary of U.S. Highway No. 80 right-of-way, a 200 foot right-of-way for a distance of 206.00 feet to the POINT OF BEGINNING of the parcel herein described; thence continue North 54 degrees 39 minutes 51 seconds East and along the South boundary of said U.S. Highway No. 80 right-of-way for a distance of 15.07 feet to a point; thence South 40 degrees 35 minutes 09 seconds East for a distance of 33.04 feet to a point; thence South 52 degrees 14 minutes 09 seconds East for a distance of 51.73 feet to a point; thence South 35 degrees 22 minutes 09 seconds East for a distance of 167.03 feet to the point of curvature of a curve having a delta of 39 degrees 05 minutes, a radius of 150.00 feet, and a tangent length of 53.25 feet; thence South 15 degrees 49 minutes 34 seconds East to the chord for a chord distance of 100.37 feet (102.34 feet arc distance) to a point; thence South 82 degrees 07 minutes 23 seconds East for a distance of 60.11 feet to the point of curvature of a curve having a delta of 04 degrees 06 minutes, a radius of 210.00 feet, and a tangent length of 7.51 feet; thence South 06 degrees 57 minutes 03 seconds West for a chord distance of 15.00 feet (15.01 feet arc distance) to a point; thence North 82 degrees 07 minutes 23 seconds West for a distance of 75.02 feet to a point of curvature of a curve having a delta of 45 degrees 00 minutes, a radius of 135.00 feet, and a tangent length of 55.92 feet; thence North 12 degrees 52 minutes 12 seconds West to the chord for a chord distance of 103.32 feet (106.03 feet arc distance) to a point; thence North 35 degrees 22 minutes 09 seconds West for a distance of 164.81 feet to a point; thence North 52 degrees 14 minutes 09 seconds West for a distance of 51.03 feet to a point; thence North 40 degrees 35 minutes 09 seconds West for a distance of 35.94 feet to the POINT OF BEGINNING of the parcel herein described. Said parcel containing 0.15 acres, more or less.

# EXHIBIT C



**EXHIBIT D****Permitted Exceptions**

1. Taxes for the current year and subsequent years.
2. Building setback lines as shown on plat of West 80 Commercial Park as laid down or described on a map or plat of the said West 80 Commercial Park, which plat is recorded in the Probate Office, Marengo County, Alabama on Slide 305, Right.
3. Fifteen (15) foot utility easement as shown on plat of West 80 Commercial Park, as laid down or described on a map or plat of the said West 80 Commercial Park, which plat is recorded in the Probate Office, Marengo County, Alabama on Slide 305, Right.
4. Temporary Grading and Construction Easement Agreement by and between Rivertown Properties, Inc. and Wal-Mart Stores East, LP, dated February 1, 2005 and recorded in Deed Book 10A at Page 638.

12.00

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions is made and entered into as of the 6th day of April, 2005, by MAP Demopolis, LLC, an Alabama limited liability company, hereafter referred to as "Declarant".

WHEREAS, Wal-Mart Stores East, LP ("Wal-Mart") is the owner of that property more particularly described in Exhibit A attached hereto and incorporated by reference herein, which property is located in Demopolis, Marengo County, Alabama, such described property being hereafter referred to as the "Wal-Mart Property";

WHEREAS, Declarant is the owner of that property more particularly described in Exhibit "B" attached hereto and incorporated by reference herein, which property is hereafter referred to as the "Restricted Property"; and

WHEREAS, Declarant desires to establish certain restrictions upon the Restricted Property for the benefit of the Wal-Mart Property;

NOW, THEREFORE, Declarant for itself, its successors and assigns does hereby agree that the Restricted Property shall be subject to and shall be used in conformance with the following covenants and agreements:

1. No building or structure shall be constructed or maintained on the Restricted Property unless such building or structure shall conform to the following covenants and requirements:

- a. Any such building shall not exceed twenty-two feet (22') in height;
- b. Each building constructed and maintained on the Restricted Property shall not exceed the building size of 10,000 square feet, or 5,000 square feet in the event the Restricted Property is subdivided;
- c. All buildings, building improvements, and alterations on the Restricted Property shall be architecturally and aesthetically compatible to the building and improvements located on the Wal-Mart Property.
- d. In developing and using the Restricted Property, the owner of the Restricted Property shall continuously provide and maintain a parking ratio on such Restricted Property equal to one of the following: (i) fifteen (15) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use in excess of five thousand (5,000) square feet, (the same ratio shall be provided for a McDonald's Restaurant, notwithstanding a building footprint of less than five thousand (5,000) square feet); or (ii) ten (10) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use less than five thousand (5,000) square feet (subject to the exception above); or (iii) six (6.0) spaces

No.  
FILED IN PROBATE OFFICE  
MARENGO COUNTY, ALA.

AM APR 21 2005 PM 3:35

CINDY D. NEILSON, Judge

I, CINDY D. NEILSON DO HEREBY CERTIFY  
THAT SAID INSTRUMENT WAS FILED FOR  
RECORD THIS 21st DAY OF April  
2005 BOOK 100 PAGE 195-397  
DEED TAX \_\_\_\_\_ MTG. TAX \_\_\_\_\_

Cindy D. Neilson  
Judge of Probate  
Marengo County, Alabama

per one thousand (1,000) square feet of building space for any other use. In addition, the owner shall cause landscaping areas to be added and maintained in conjunction with any building or other improvement constructed on the Restricted Property.

- e. The Restricted Property shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.
- f. Any building, structure or improvement on the Restricted Property shall be used for retail purposes only, however, no building, structure or improvement on the Restricted Property may be used as a theater, night club, bowling alley, health spa, cafeteria, billiard parlor or other place of recreation or amusement, or as a business serving or selling alcoholic beverages (except a restaurant deriving less than fifty percent (50%) of its gross revenues from the sale of alcoholic beverages) or as a discount department store or a variety, general or "dollar" store.
- g. No space in or portion of the Restricted Property shall be leased or occupied by or conveyed to any other party for use as (i) a grocery store or supermarket, as hereinafter defined below, or (ii) a discount department store or other discount store, as hereinafter defined. "Grocery store" and "supermarket", as those terms are used herein, shall mean a food store or a food department containing more than 10,000 square feet of gross leasable area for the purpose of selling food for consumption off the premises, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments. "Discount department store" and/or "other discount store" as those terms are used herein, shall mean a discount department store, discount store or wholesale club containing more than 35,000 square feet of gross leasable area for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, pharmacy, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of Wal-Mart.

2. Any of the foregoing restrictions may be waived, amended, modified, released or terminated at any time and from time to time by Declarant; provided, that Declarant shall not waive, amend, modify, release or terminate this Agreement without the prior written consent of Wal-Mart Stores, Inc., during such time that such entity or an affiliate thereof occupies and conducts business on the Restricted Property.

3. The foregoing restrictions and agreements are imposed on the Restricted Property for the benefit of the Wal-Mart Property. Accordingly, all references herein, to "Declarant" shall mean the Declarant herein and any successor in title who may become the owner of the Wal-Mart Property. In the event that another entity shall become the owner of the Wal-Mart Property, then such entity shall be considered the Declarant for all purposes of this Declaration.

4. The agreements, restrictions and covenants herein made shall be deemed restrictive covenants running with the land and shall be binding upon the Restricted Property and any person who may from time to time own, lease or otherwise have an interest in the Restricted Property.

5. This Declaration is made in and shall be construed pursuant to the laws of the state in which the Wal-Mart Property is located.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year above set forth.

- DECLARANT-  
MAP Demopolis, LLC

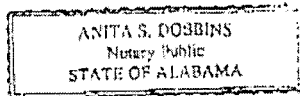
By: Mark H. Peeples

Its: President

The State of Alabama  
Jefferson County)

I, Anita S. Robbins, a Notary Public in and for said County in said State, hereby certify that Mark H. Peeples whose name as member of MAP Demopolis, LLC, an Alabama limited liability company, is signed to the foregoing Declaration of Restrictions and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 6th day of April, 2005.



Anita S. Robbins  
Notary Public

My commission expires: July 21, 2006

No. \_\_\_\_\_  
FILED IN PROBATE OFFICE  
MARENGO COUNTY, ALA.

AM FEB 18 2005 3:30 PM

Prepared by:  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC  
Attn: Debora L. Horn  
17th Floor, AmSouth Plaza  
Post Office Box 22567  
Jackson, MS 39225-2567  
(601) 948-5711

CINDY D. NEILSON, Judge

I, CINDY D. NEILSON DO HEREBY CERTIFY  
THAT SAID INSTRUMENT WAS FILED FOR  
RECORD THIS 18th DAY OF Feb  
2005 BOOK 1042 PAGE 638-644  
DEED TAX 10.00 MTG. TAX  
Cindy D. Neilson  
Judge of Probate  
Marengo County, Alabama

#### TEMPORARY GRADING AND CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY GRADING AND CONSTRUCTION EASEMENT AGREEMENT (this "Agreement") is dated as of the 18th day of February, 2005 (the "Effective Date"), by and between RIVERTOWN PROPERTIES, INC., an Alabama corporation ("Grantor"), and WAL-MART STORES EAST, LP, a Delaware limited partnership ("Grantee").

#### WITNESSETH

WHEREAS, Grantor is the owner of that certain tract or parcel of land situated in the City of Demopolis, Marengo County, State of Alabama, identified as Lot 4 of West Highway 80 Commercial Park, a subdivision of record in Map Side at Page 705 of the records of the Probate Judge of Marengo County, Alabama (the "Grantor Property"); and

WHEREAS, Grantee is the owner of that certain tract or parcel of land in the same city, county and state, which tract lies adjacent to the Grantor Property, and is identified as Lot 1 of West Highway Commercial Park (the "Grantee Property"); and

WHEREAS, in connection with the development of the Grantee Property, Grantee has requested from Grantor, and Grantor is desirous of granting to Grantee, certain temporary construction easements and permanent grading easement, over and across those portions of the Grantor Property, as more particularly described in this Agreement and the exhibits hereto.

NOW THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Grant of Temporary Construction Easement. Grantor does hereby sell, grant and convey to Grantee thirty (30) foot temporary construction easement (the "Temporary Construction Easement No. 1") over and across that certain portion of the Grantor Property being more particularly described on Exhibit A attached hereto. The Temporary Construction Easement No. 1 shall remain in effect from and after the Effective Date through and including the first (1st) anniversary of the Effective Date (the "Temporary Construction Easement No. 1 Term").

2. Grant of Permanent Grading Easement and Additional Temporary Construction Easement. Grantor does hereby sell, grant and convey to Grantee a permanent grading easement (the "Grading Easement") and temporary construction easement ("Temporary Construction Easement

No. 2") over and across that certain portion of the Grantor Property being more particularly described on Exhibit B attached hereto. In accordance with the Grading Easement, Grantee may grade the Grading Easement in order for the Grading Easement to be level with and the same elevation as Grantee Property (as Grantee Property may hereafter be developed), and in connection therewith, may add and remove fill, soil and other materials to and from the Grading Easement. The Grantee shall assign to the Grantor, to the extent assignable, any rights it may have against a third party in the event hazardous materials are contained in the fill delivered to the Grading Easement by such third party. The Temporary Construction Easement No. 2 shall remain in effect from and after the Effective Date through and including the first (1st) anniversary of the Effective Date (the "Temporary Construction Easement No. 2 Term").

2. Duration. The agreements contained herein and the rights granted hereby shall run with the title to the Grantor Property and Grantee Property and shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

3. Entire Agreement. This instrument contains all of the agreements and stipulations between Grantor and Grantee and there are no other terms, conditions, promises, undertakings, statements or representations, express or implied, concerning the granting of easements contemplated by this Agreement.

4. Governing Law. This Agreement shall be governed by the laws of the State of Alabama.

5. 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.

6. Counterpart. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written, although actually executed on the respective dates set forth in the acknowledgements.

**- GRANTOR -**

**RIVERTOWN PROPERTIES, INC.**

By: Ed Key  
Ed Key, its President

STATE OF ALABAMA     )  
COUNTY OF MARENGO    )

I, Richard S. Manly Notary Public in and for said County, in said State, do hereby certify that **ED KEY**, whose name as President of **RIVERTOWN PROPERTIES, INC.**, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 1st day of February, 2005.

Richard S. Manly  
Notary Public

My Commission Expires: 9-26-2006

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written, although actually executed on the respective dates set forth in the acknowledgements.

- GRANTEE -

**WAL-MART STORES EAST, LP,**  
a Delaware limited partnership

By: WSE Management, LLC, a Delaware limited liability company, its General Partner

By: *Robert M. Bedard*  
Robert M. Bedard, Assistant Manager

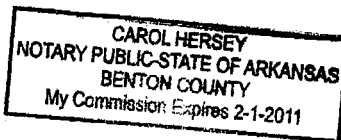
STATE OF ARKANSAS

COUNTY OF BENTON

I, CAROL HERSEY, a Notary Public in and for said County, in said State, do hereby certify that **ROBERT M. BEDARD**, whose name as Assistant Manager of WSE Management, LLC, a Delaware limited liability company, the General Partner of Wal-Mart Stores East, LP, a Delaware limited partnership, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, as such Assistant Manager, and with full authority, executed the same voluntarily for and as the act of said Limited Liability Company, acting in its capacity as General Partner of the aforesaid limited partnership.

Notary Public

My Commission Expires: 02/01/2011



Approved as to legal terms only  
by *Robert M. Bedard*

WAL-MART LEGAL DEPT

Date: 2-3-05

### EXHIBIT A

Part of proposed Lot 4 of West 80 Commercial Park and also being part of the Northeast Quarter of the Northeast Quarter of Section 35, and part of the Southeast Quarter of the Southeast Quarter of Section 26, Township 18 North, Range 2 East, Marengo County, Alabama, and being more particularly described as follows:

As a STARTING POINT, start at the Northwest corner of Lot 1 BigBee Enterprises Subdivision as recorded in Map Book 4, Page 65, in the Probate Office of Marengo County, Alabama; thence North 54 degrees 39 minutes 51 seconds East and along the South boundary of U.S. Highway No. 80 right-of-way, a 200 foot right-of-way for a distance of 190.94 feet to the POINT OF BEGINNING of the parcel herein described; thence continue North 54 degrees 39 minutes 51 seconds East and along the South boundary of said U.S. Highway No. 80 right-of-way for a distance of 30.13 feet to a point; thence South 40 degrees 35 minutes 09 seconds East for a distance of 33.04 feet to a point; thence South 52 degrees 14 minutes 09 seconds East for a distance of 51.73 feet to a point; thence South 35 degrees 22 minutes 09 seconds East for a distance of 167.03 feet to the point of curvature of a curve having a delta of 90 degrees 00 minutes, a radius of 150.00 feet, and a tangent length of 150.00 feet; thence South 09 degrees 37 minutes 51 seconds West to the chord for a chord distance of 212.14 feet (235.64 feet arc distance) to a point; thence South 54 degrees 37 minutes 51 seconds West for a distance of 89.10 feet to a point, said point being on the West boundary of said Lot 1; thence North 35 degrees 21 minutes 40 seconds West and along the West boundary of said Lot 1 for a distance of 30.00 feet to a point; thence North 54 degrees 37 minutes 51 seconds East for a distance of 89.10 feet to a point of curvature of a curve having a delta of 90 degrees 00 minutes, a radius of 120.00 feet, and a tangent length of 120.00 feet; thence North 09 degrees 37 minutes 51 seconds East to the chord for a chord distance of 169.71 feet (188.51 feet arc distance) to a point; thence North 35 degrees 22 minutes 09 seconds West for a distance of 162.59 feet to a point; thence North 52 degrees 14 minutes 09 seconds West for a distance of 50.34 feet to a point; thence North 40 degrees 35 minutes 09 seconds West for a distance of 38.85 feet to the POINT OF BEGINNING of the parcel herein described. Said parcel containing 0.38 acres, more or less.



**EXHIBIT B**

Part of Proposed Lot 3 of West 80 Commercial Park and also being part of the Northeast Quarter of the Northeast Quarter of Section 35, Township 18 North, Range 2 East, Marengo County, Alabama, and being more particularly described as follows:

As a STARTING POINT, start at the Northeast corner of said Section 35; thence North 89 degrees 31 minutes 30 seconds West and along the North boundary of said Section 35 for a distance of 230.38 feet to the POINT OF BEGINNING of the parcel herein described; thence South 09 degrees 47 minutes 21 seconds East for a distance of 94.90 feet to a point; thence South 80 degrees 12 minutes 39 seconds West for a distance of 34.84 feet to a point; thence North 35 degrees 23 minutes 09 seconds West for a distance of 16.34 feet to a point of curvature of a curve having a delta of 90 degrees 00 minutes, a radius of 210.00 feet, and a tangent length of 210.00 feet; thence North 10 degrees 36 minutes 30 seconds West for a chord distance of 87.99 feet (88.65 feet arc distance) to a point, said point being on the North boundary of said Section 35; thence South 89 degrees 31 minutes 30 seconds East for a distance of 43.86 feet to the POINT OF BEGINNING of the parcel herein described. Said parcel containing 0.09 acres, more or less.

Alabama-Demopolis  
Store #731-02

EASEMENTS WITH COVENANTS AND  
RESTRICTIONS AFFECTING LAND ("ECR")

THIS AGREEMENT (the "Agreement") is made as of the 3<sup>rd</sup> day of February, 2005, between WAL-MART STORES EAST L.P., a Delaware limited partnership, with offices at 702 S.W. Eighth Street, Bentonville, Arkansas 72716 and a mailing address of 2001 S.E. Tenth Street, Bentonville, Arkansas 72712, (together with its subsidiaries, affiliates and assignees "Wal-Mart"), and MAP DEMOPOLIS, LLC, an Alabama limited liability company, with offices at 402 Office Park Drive, Suite G-115, Birmingham, Alabama 35223, ("Developer").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of Parcel 2 as shown on the plan attached hereto as Exhibit A hereof, said Parcel 2 being more particularly described in Exhibit B attached hereto; and

WHEREAS, Developer is the owner of Parcel 1 shown on the plan attached hereto as Exhibit A hereof, the same being more particularly described in Exhibit C hereof; and

WHEREAS, Wal-Mart and Developer desire that Parcels 1 and 2 be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial shopping center (sometimes hereinafter referred to as the "Shopping Center"), and further desire that said Parcels be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart and Developer do hereby agree as follows:

1. Building/Common Areas.

- a. "Building Areas" as used herein shall mean those portions of Parcels 1 and 2 shown on Exhibit A as "Building Area" (and "Future Building Area" and "Future Expansion Area").

Demopolis, AL, Store #731-02  
ECR  
January 18, 2005  
1002176\_2

No. \_\_\_\_\_  
FILED IN PROBATE OFFICE  
MARENGO COUNTY, ALA.

AM FEB 18 2005 3:30 PM

CINDY D. NELSON, Judge

I, CINDY D. NELSON DO HEREBY CERTIFY  
THAT SAID INSTRUMENT WAS FILED FOR  
RECORD THIS 18<sup>th</sup> DAY OF Feb  
2005 BOOK 148 PAGE 670-693  
DEED TAX \_\_\_\_\_ MTG. TAX \_\_\_\_\_

Cindy D. Nelson  
Judge of Probate  
Marengo County, Alabama

671

Canopies may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

- b. "Common Areas" shall be all of Parcels 1 and 2 except the Building Areas.
- c. Conversion to Common Areas: Those portions of the Building Areas on each Parcel which are not from time to time used or cannot, under the terms of this Agreement (including Paragraph 6a(3)), be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.
- d. "Parcel" or "Parcels" shall mean Parcel 1 and/or Parcel 2, as the context may require.
- e. Notwithstanding the forgoing, Wal-Mart (for so long as it owns, leases or occupies all or a portion of Parcel 2) may add additional building areas or change, delete, enlarge, reduce or otherwise modify existing Building Areas, so long as such changes do not impair access to Parcel 1, and are done in compliance with applicable laws and ordinances, and further provided that the value of the Shopping Center shall not be materially diminished thereby.

2. Use. Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices, and retail stores. Except as shown on Exhibit C, no cafeteria, restaurant, theatre, bowling alley, billiard parlor, night club or other place of recreation or amusement, or any business serving alcoholic beverages (except a restaurant deriving less than fifty percent (50%) of its gross revenues from the sale of alcoholic beverages) shall occupy space within the Shopping Center without the prior written consent of Wal-Mart. Notwithstanding anything to the contrary contained herein, it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Wal-Mart on Parcel 2. Developer recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its business on Parcel 2; and Developer hereby waives any legal action for damages or for equitable relief which might be available to Developer because of such cessation of business activity by Wal-Mart.

3. Competing Business. Developer covenants that as long as Wal-Mart owns, leases or occupies Parcel 2, no space in or portion of Parcel 1, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Developer, shall be leased or occupied by or conveyed to any other party for use as (i) a grocery store or supermarket, as hereinafter defined below, or (ii) a discount department store or other discount store, as hereinafter defined. In the event of a breach of this covenant, Wal-Mart shall have the right to terminate this Agreement and to seek any and all remedies afforded by either law or equity, including, without limitation, the rights to injunctive relief. "Grocery store" and "supermarket", as those terms are used herein, shall mean a food store or a food department containing more than 10,000 square feet of gross leasable area for the purpose of selling food for consumption off the premises, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments. "Discount store" and/or "discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than 35,000 square feet of gross leasable area for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, pharmacy, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of Wal-Mart.

4. Buildings.

- a. Design and Construction. The Buildings Areas shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one Parcel onto another Parcel, except as provided for in Subsection d. below. The design and construction shall be of high quality. No building shall exceed thirty-eight feet (38') in height above finished grade.
- b. Location. Subject to paragraph 1(o), no building shall be constructed on Parcels 1 and 2 (as either immediate developments or future expansion) except within the Building Areas and no improvements or alterations which substantially vary from those shown on Exhibit A may be

673

made without the prior written consent of Wal-Mart. Subject to paragraph 1(c), the front walls of the buildings on Parcels 1 and 2 shall be constructed in the location shown in Exhibit A.

- c. Fire Protection. Any building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other buildings in the Shopping Center.
- d. Easements. In the event building wall footings encroach from one Parcel onto another, despite efforts to avoid that occurrence, the party onto whose Parcel the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

5. Common Areas.

- a. Grant of Easements. Each of Wal-Mart and Developer, as its interest may appear, hereby establishes and grants a nonexclusive easement for the benefit of the owner of each Parcel, and their agents, customers, invitees, licensees, tenants and employees, over, through and around their respective Parcels for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above. Such easement shall include the use by Developer of Wal-Mart's primary access road depicted on Exhibit A attached hereto (the "Access Road").
- b. Limitations on Use.
  - (1) Customers. Each party shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on Parcels 1 and 2.

- (2) Employees. Each party shall use reasonable efforts to ensure that employees shall not park on the Common Areas, except in areas designated on Exhibit A as "employee parking areas," if any. The parties hereto may from time to time mutually designate and approve "employee parking areas" not shown on Exhibit A.
- (3) General. Any activity within the Common Areas other than the primary purpose of the Common Areas, which is to provide for parking for the customers, invitees and employees of those businesses conducted with the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. The use by the owner or any tenant of Parcel 2 of the Common Areas on such Parcel 2 for the display, sale and storage of merchandise and for the use of seasonal sales structures is expressly permitted. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.
- c. Utility and Service Easements. Each of Wal-Mart and Developer, as its interest may appear, hereby establishes and grants a nonexclusive easement for the benefit of the owner of each Parcel, on, across and under the Common Areas, to install, use, maintain and repair public utility services and distribution systems (including storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center), now upon or hereafter installed on, across or under the Common Areas, to the extent necessary to service such Parcel. Both parties shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. The location of any utilities hereafter installed shall be determined by the owner of the Parcel (the location of utilities on Parcel 2 shall be determined by Wal-Mart as long as it is the owner of Parcel 2) upon which such utilities are to be installed. Any such installed utility services may be relocated by the owner of a Parcel on such owner's Parcel, subject to compliance with applicable laws, at the

6/1)

expense of the owner of that Parcel, provided that such relocation shall not interfere with, increase the cost of, or diminish utility services to any other Parcel and, further provided, that no utilities shall be relocated on Parcel 2 without the prior written consent of Wal-Mart as long as it is the owner of Parcel 2. Wal-Mart and Developer acknowledge and agree that it is contemplated that Developer will tie into the water, sewer and storm water drainage systems to be constructed by Wal-Mart on Parcel 2 in such manner and in such locations as Wal-Mart shall approve, in advance in writing. Wal-Mart and Developer further acknowledge and agree that the nonexclusive easement provided herein shall include a thirty-foot (30') power and telephone utility easement across Parcel 1 and Parcel 2 as depicted on Exhibit D attached hereto.

- d. Water Flow. Each of Wal-Mart and Developer, as its interest may appear, hereby establishes and grants a nonexclusive easement for the benefit of the owner of each Parcel to use, maintain and repair any storm water drainage system (the "Storm Drainage System") now or hereafter located on either Parcel, together with the right to discharge surface water runoff across portions of either Parcel in accordance with the design of the Storm Drainage System. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements substantially as shown on Exhibit A (including without limitation building and building expansion, curbs, drives and paving) shall be permitted.

6. Development, Maintenance, and Taxes.

a. Development.

- (1) Arrangement. The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement.
- (2) "Parking Area" Ratio. Developer, as the owner of Parcel 1, agrees that at all times there shall be independently maintained on Parcel 1 parking area sufficient to

accommodate no fewer than five (5.0) car spaces for each one thousand (1,000) square feet of Building Area gross leased space on such Parcel; provided that all restaurants and other entertainment uses must have a minimum of fifteen (15.0) car spaces for each one thousand (1,000) square feet of gross leased space of Building Area on such Parcel with the exception that the first 2,100 square feet of restaurant use may maintain a five (5.0) parking ratio per 1,000 square feet of gross leased space. Wal-Mart, as the owner of Parcel 2, agree that at all times there shall be independently maintained on Parcel 2 parking area sufficient to meet the requirements of applicable governmental ordinances or regulations, subject to such variances as Wal-Mart or Developer may obtain.

- (3) Development Timing. Concurrent with any building being constructed within the Building Areas of either Parcel by the owner of said Parcel (the "Developing Party"), the Common Areas of that Parcel shall be developed in accordance with Exhibit A at the expense of such Developing Party. In the event such construction by the Developing Party shall occur prior to the development of the other Parcel, the Developing Party shall have the right to grade, pave, install temporary curbs between the Parcels and use any portion of the Common Areas of the non-developing party's Parcel for access and for construction of, but not limited to, drainage structures and utility lines as is necessary to provide essential services to the Developing Party's Parcel. The Developing Party shall present an itemized statement of expenses incurred in the construction of said improvements to and upon the non-developing party's Parcel, and the non-developing party agrees to reimburse the Developing Party for such costs within thirty (30) days of receipt thereof.

677

b. Maintenance.

- (1) Standards. Following completion of improvements (including buildings and Common Areas) on any Parcel, the owner of such Parcel shall maintain such improvements in good condition and repair. The maintenance is to include, without limitation, the following:
- (a) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
  - (b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
  - (c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
  - (d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;
  - (e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair;
  - (f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and
  - (g) Maintaining elements of the Storm Drainage System.
- (2) Expenses. The respective owners shall pay the maintenance expense of their Parcels; provided, however, that Wal-Mart shall be solely responsible for maintenance of the Access Road and the sewer lift pump (the "Lift Pump") to be constructed on the northwest corner of Parcel 2, and Developer shall reimburse Wal-Mart on an annual

basis for Developer's pro rata share of the Access Road, which pro rata share is agreed to be 20% and Lift Pump maintenance expenses as reasonably determined by Wal-Mart on the basis of actual water usage in the case of the Lift Pump.

- (3) By Agent. Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties to maintain the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

- c. Taxes. Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the real property and improvements owned by it.

7. Signs. No sign shall be located on the Common Areas on Parcels 1 and 2 except signs advertising businesses conducted thereon, of which there shall be no more than two (2) signs on the Common Areas on Parcel 1. No signs shall obstruct the ingress and egress shown on Exhibit A.

8. Indemnification/Insurance.

- a. Indemnification. The owner of each Parcel hereby indemnifies and saves the other parties harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Parcel or Outparcel, except if caused by the act or negligence of the other party hereto.

b. Insurance.

- (1) The owner of each Parcel 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 its property, each party's insurance to afford protection to the limit of not

679

less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage. The owner of each Parcel shall provide Wal-Mart and the owner of the other Parcel 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 the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without thirty (30) days prior written notice to the other party. The obligations of the owner of Parcel 2 to maintain insurance under this provision may be satisfied by Wal-Mart.

- (2) At all times during the term of this Agreement, the owner of each Parcel shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the form of all-risk insurance coverage in effect from time to time in the state in which the parties' respective properties are located, with such insurance to be for the full replacement value of the insured improvements. The obligations of the owner of Parcel 2 to maintain insurance under this provision may be satisfied by Wal-Mart. The owner of a Parcel shall pay for any increase in the cost of insuring the improvements on the other Parcel if such increase is due to the use by such owner or its tenants of the first Parcel.
- (3) Policies of insurance provided for in this Paragraph 8 shall name Wal-Mart and owner of each Parcel as insureds as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.

- (4) Wal-Mart and the owner of each Parcel, each for itself and its property insurer, hereby releases the others, and their tenants, employees and agents from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any tenant, agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated under this Agreement to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.
- (5) Notwithstanding anything to the contrary contained in this Paragraph 3, so long as the net worth of Wal-Mart shall exceed One Hundred Million Dollars (\$100,000,000.00), and so long as Wal-Mart is owner or lessee of Parcel 2, Wal-Mart shall have the right to retain the financial risk for any claim.

9. Eminent Domain.

- a. Owner's Right To Award. Nothing herein shall be construed to give the owner of any Parcel any interest in any award or payment made to another party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's Parcel or giving the public or any government any rights in said Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on Parcels 1 and 2, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

681

- b. Collateral Claims. All other owners of Parcels may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.
- c. Tenant's Claim. Nothing in this Paragraph 9 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.
- d. Restoration Of Common Areas. The owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Parcel as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

10. Rights And Obligations Of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon any Parcel, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Parcel. Except as set forth in the preceding sentence, however, any holder of a first lien on any Parcel, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

11. Expansion Of Shopping Center; Release, Excess Land. The parties agree that in the event the Shopping Center is expanded by ownership, control of the parties or agreement with a third party, all of the provisions of this Agreement shall apply to the expanded area and the parking to the building ratio in the expanded area shall not be less than that provided in Paragraph 6a(2). In addition, the owner of Parcel 1 will permit Wal-Mart to enter any building on Parcel 1 which is within sixty (60) feet of the nearest exterior wall of the building on Parcel 2, and will secure for Wal-Mart such permission from other tenants of such building, if any, for such work, as may be necessary in connection with alterations, improvements, or additions to the building on Parcel 2. In the event that Developer sells or conveys any portion of the southern most four acres of Parcel 1 (the "Excess Land") to Ed

Key or Rivertown Properties, Inc., or their affiliates, successor or assigns ("Permitted Grantee"), then Wal-Mart agrees to release the Excess Land from the terms and conditions of this Agreement upon the written request of the Permitted Grantee.

12. Release from Liability. Any person acquiring fee or leasehold title on any Parcel subject hereto, or any expansion of the Shopping Center pursuant to Paragraph 11 or any portion thereof, shall be bound by this Agreement only as to the Parcel, or portion thereof, acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Parcel, or portion thereof, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Parcels running with the land.

13. Breach.

- a. Parties With Remedies. In the event of breach or threatened breach of this Agreement, only all record owners of Parcel 1 as a group, or all record owners of Parcel 2 as a group, or Wal-Mart so long as it or any affiliate has an interest as owner of Parcel 2, or Developer so long as it or any affiliate has an interest as owner of Parcel 1, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.
- b. Remedies. If any owner shall fail to perform any covenant or condition contained in this Agreement, the aggrieved party shall give the defaulting party at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default be not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting party shall have not in good faith commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to

683

completion) the aggrieved party may institute legal proceedings for full and adequate relief from the consequences of said default or threatened default.

- c. Right of Entry. The defaulting party hereby grants to the aggrieved party a non-exclusive right of entry and non-exclusive easements across and under any and all parts of the defaulting party's Parcel (excluding the right to enter any buildings demised to or owned by others) for all purposes reasonably necessary to enable the aggrieved party (acting directly or through agents, contractors, or subcontractors), to perform any of the terms, provisions, covenants or conditions of this Agreement which the defaulting party shall have failed to perform, after notice and time to cure, as aforesaid, but no notice and time to cure need be given in the event of any emergency.

14. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

15. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by both Developer and Wal-Mart there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of (a) Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of Parcel 2, or its successors in interest; and (b) Developer, as long as it or its affiliate has any interest as either owner or lessee of Parcel 1, or its successors in interest.

16. Non-Merger. So long as Wal-Mart is owner of Parcel 2, this Agreement shall not be subject to the doctrine of merger.

17. Duration. Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

18. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

19. Transfer of Interests: Notices.

- a. In the event that any person or entity (the "Acquiring Party") shall acquire a fee or mortgage interest in any parcel subject to this Agreement, or any portion thereof, the Acquiring Party shall execute and file in the land records of Marengo County, Alabama, a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this Agreement may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired (the "Notice Statement"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, a copy of such Notice Statement to all other persons or entities then holding fee or mortgage interests in any parcel subject to this Agreement, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Marengo County, Alabama (the "Existing Interest Holders"). Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this Subparagraph (a), it shall not be entitled to receive any notice required or permitted to be given under this Agreement, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement. It is understood and agreed that the provisions of this Paragraph 19 regarding the recordation of the Notice Statement are satisfied with respect to Developer and Wal-Mart.
- b. Any notice hereunder shall be in writing and shall be served by overnight delivery or certified mail, return receipt requested, postage prepaid, addressed to the respective addresses of the parties as follows:

685

## If intended for Developer:

402 Office Park Drive  
Suite G-115  
Birmingham, AL 35223  
Attention: Mark Peoples

## If intended for Wal-Mart:

2001 SE 10th Street  
Bentonville, Arkansas 72712-6489  
Attention: Realty Management Department

Each party to this Agreement may designate by notice in writing a new or other address to which such notice shall thereafter be so given or served. A copy of any such notice shall also be contemporaneously delivered in the manner herein specified to any fee mortgagee or tenant who shall have duly registered with any party its name and address. Notice shall be deemed given when received.

20. Consent. The owner of Parcel 2 agrees that for so long as a lease to Wal-Mart of all or a portion of Parcel 2 is in effect, whenever the consent of the owner of Parcel 2 is required under this Agreement, the owner of Parcel 2 will give such consent only after obtaining Wal-Mart's consent.

21. Obligations of the Owner of Parcel 2. Wal-Mart hereby agrees that so long as it leases all or a portion of Parcel 2, it will satisfy the obligations of the owner of Parcel 2 hereunder, and will hold harmless and indemnify the owner of Parcel 2 from any and all loss, damage, expense, fees, claims, costs, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, arising out of this Agreement, except for those arising out of the acts or omissions of the owner of Parcel 2 or its employees, agents, contractors or invitees.

22. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once

executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

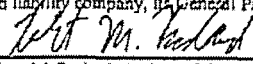
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

ATTEST:



WAL-MART STORES EAST, L.P., a Delaware  
limited partnership ("Wal-Mart")

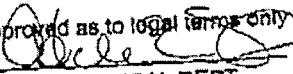
By: WSE Management, LLC, a Delaware  
limited liability company, its General Partner

By:   
Robert M. Bedard, Assistant Manager

ATTEST:

MAP DEMOPOLIS, LLC, ("Developer")

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to legal terms only  
by:   
WAL-MART LEGAL DEPT.  
Date: 2-3-05

687

executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

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

ATTEST:

WAL-MART STORES EAST, L.P., a Delaware  
limited partnership ("Wal-Mart")

By: WSE Management, LLC, a Delaware  
limited liability company, its General Partner

By: \_\_\_\_\_  
Robert M. Bedard, Assistant Manager

ATTEST:

MAP DEMOPOLIS, LLC, ("Developer")

By: \_\_\_\_\_  
Its: \_\_\_\_\_

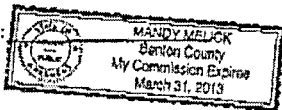
The State of Arkansas )  
 )  
 Benton County )

I, Mandy Melick, a Notary Public in and for said County in said State, hereby certify that Robert M. Bedard whose name as Assistant Manager of WSE Management, LLC, a Delaware limited liability company, the general partner of Wal-Mart Stores East, L.P., a Delaware limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company in its capacity as general partner of said limited partnership.

Given under my hand this 22<sup>nd</sup> day of February, 2005.

Mandy Melick  
 Notary Public

My commission expires:



The State of \_\_\_\_\_ )  
 )  
 Benton County )

I, \_\_\_\_\_, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of MAP DEMOPOLIS, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
 Notary Public

My commission expires: \_\_\_\_\_

687

The State of Arkansas )  
 )  
 Benton County )

I, \_\_\_\_\_, a Notary Public in and for said County in said State, hereby certify that Robert M. Bedard whose name as Assistant Manager of WSE Management, LLC, a Delaware limited liability company, the general partner of Wal-Mart Stores East, L.P., a Delaware limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company in its capacity as general partner of said limited partnership.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
 Notary Public

My commission expires: \_\_\_\_\_

The State of Alabama )  
 )  
 Benton County of Jefferson )

I, Anita S. Dobbins, a Notary Public in and for said County in said State, hereby certify that MARK A. PEOPLES whose name as MEMBER of MAP DEMOPOLIS, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

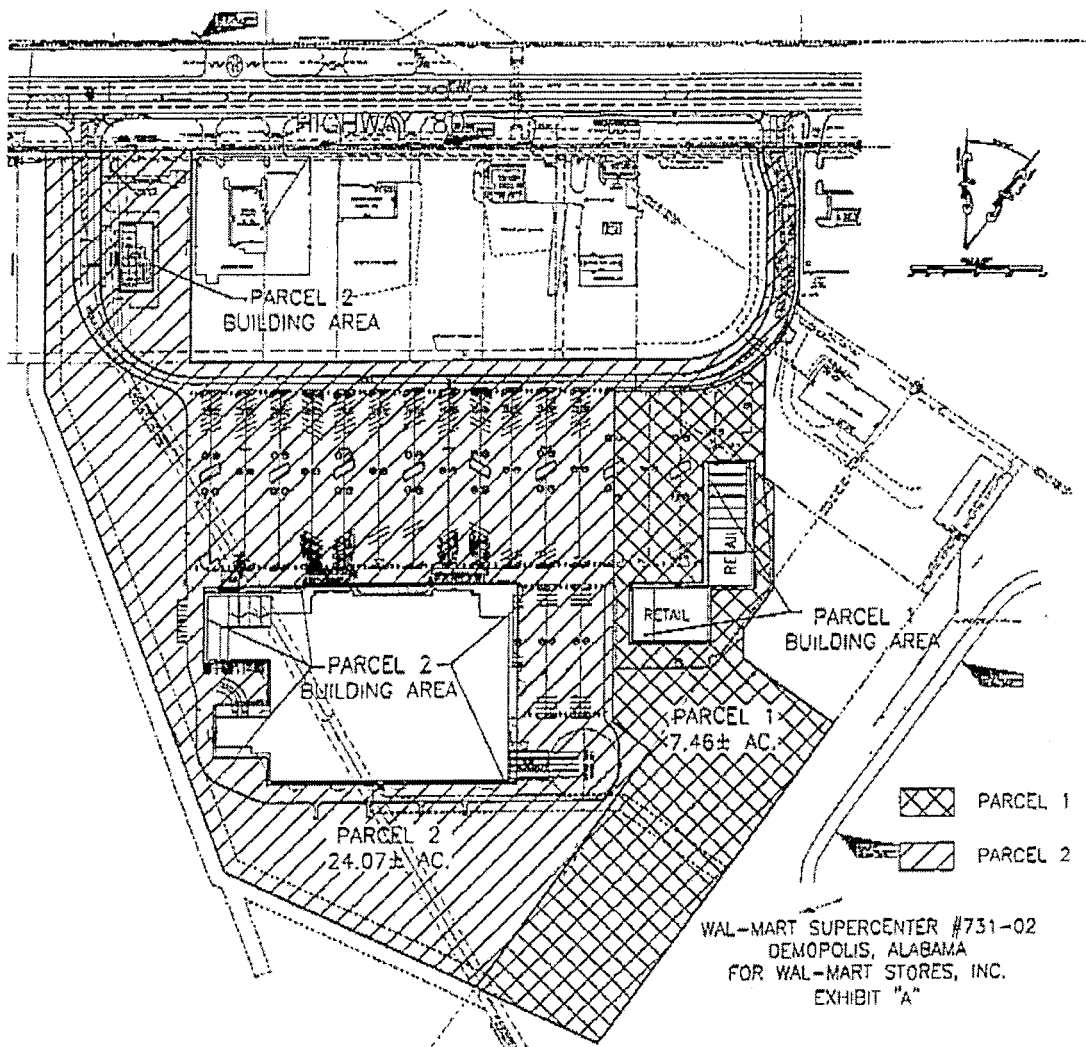
Given under my hand this 15<sup>th</sup> day of February, 2005.

Anita S. Dobbins  
 NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
 MY COMMISSION EXPIRES: July 31, 2006  
 BONDED THROUGH NOTARY PUBLIC UNDERWRITERS

My commission expires: \_\_\_\_\_

## EXHIBIT "A"

## SITE PLAN



691

## EXHIBIT "B"

Legal Description  
PARCEL 2 (WAL-MART)

Part of the Northeast Quarter of the Northeast Quarter of Section 35 and part of the Southeast Quarter of the Southeast Quarter of Section 28, Township 18 North, Range 2 East, Marengo County, Alabama, and being more particularly described as follows:

As a STARTING POINT, start at the Northwest corner of Lot 1 BigBee Enterprises Subdivision as recorded in Map Book 4, Page 85, in the Probate Office of Marengo County, Alabama; said point also being on the South boundary of U.S. Highway No. 80 right-of-way, a 200 foot right-of-way; thence North 54 degrees 30 minutes 31 seconds East and along said right-of-way for a distance of 221.07 feet to the POINT OF BEGINNING of the parcel herein described; thence North 54 degrees 39 minutes 31 seconds East and along said right-of-way for a distance of 69.00 feet to a point of curvature of a curve having a delta of 10 degrees 07 minutes, a radius of 259.47 feet and a tangent length of 22.97 feet; thence South 40 degrees 31 minutes 09 seconds East to the chord along the aforementioned curve for a chord distance of 45.78 feet (45.82 feet arc distance) to the point of curvature of a curve having a delta of 10 degrees 12 minutes, a radius of 309.47 feet and a tangent length of 27.83 feet; thence South 40 degrees 28 minutes 00 seconds East to the chord for a chord distance of 53.05 feet (53.12 feet arc distance) to a point; thence South 35 degrees 22 minutes 00 seconds East for a distance of 149.00 feet to a point of curvature of a curve having a delta of 90 degrees 00 minutes, a radius of 210.00 feet, and a tangent length of 210.00 feet; thence South 09 degrees 37 minutes 31 seconds West to the chord for a chord distance of 297.00 feet (329.89 feet arc distance) to a point; thence South 54 degrees 37 minutes 31 seconds West for a distance of 127.18 feet to a point; thence South 35 degrees 22 minutes 00 seconds East for a distance of 813.12 feet to a point; thence South 57 degrees 23 minutes 09 seconds East for a distance of 88.27 feet to a point, said point being on the East boundary of said Section 35; thence South 00 degrees 29 minutes 31 seconds West and along said East boundary of Section 35 for a distance of 540.45 feet to a point; thence South 80 degrees 12 minutes 31 seconds West for a distance of 509.07 feet to a point; thence North 35 degrees 53 minutes 11 seconds West for a distance of 953.53 feet to a point; thence North 35 degrees 22 minutes 23 seconds West for a distance of 450.29 feet to a point, said point being on the South boundary of U.S. Highway No. 80 right-of-way, a 200 foot right-of-way, said point also being the Northwest corner of Lot 9 of said BigBee Enterprises Subdivision; thence North 54 degrees 38 minutes 31 seconds East and along said right-of-way for a distance of 205.52 feet to a point, said point being the Northeast corner of Lot 8 of said BigBee Enterprises Subdivision; thence South 35 degrees 22 minutes 29 seconds East and along the East boundary of said Lot 8 for a distance of 399.56 feet to a point, said point being the Southeast corner of said Lot 8; thence North 54 degrees 37 minutes 31 seconds East along the Southern boundary of said BigBee Enterprises Subdivision for a distance of 902.82 feet to a point of curvature of a curve having a delta of 90 degrees 00 minutes, a radius of 150.00 feet, and a tangent length of 150.00 feet; thence North 09 degrees 37 minutes 31 seconds East to the chord for a chord distance of 212.14 feet (235.84 feet arc distance) to a point; thence North 35 degrees 22 minutes 09 seconds West for a distance of 187.03 feet to a point; thence North 52 degrees 14 minutes 09 seconds West for a distance of 31.73 feet to a point; thence North 40 degrees 33 minutes 09 seconds West for a distance of 33.04 feet to the POINT OF BEGINNING of the parcel herein described. Said parcel containing 24.07 acres, more or less.

## EXHIBIT "C"

Legal Description  
PARCEL 1 AND OUTPARCELS (DEVELOPER)

Part of Lot 1, BigBee Enterprises Subdivision, as recorded in Map Book 4, page 65 in the Probate Office of Marengo County, Alabama, and also being part of the Northeast Quarter of the Northeast Quarter of Section 35, Township 18 North, Range 2 East, Marengo County, Alabama, and being more particularly described as follows:

As a STARTING POINT, start at the Northwest corner of Lot 1 BigBee Enterprises Subdivision as recorded in Map Book 4, Page 65, in the Probate Office of Marengo County, Alabama; thence South 35 degrees 21 minutes 40 seconds East and along the West boundary of said Lot 1 for a distance of 453.26 feet to a point, said point being the Southwest corner of said Lot 1; thence South 89 degrees 33 minutes 09 seconds East and along the South boundary of Lot 1 for a distance of 10.75 feet to the POINT OF BEGINNING of this parcel herein described; thence continue South 89 degrees 33 minutes 09 seconds East and along said South boundary of Lot 1 for a distance of 284.30 feet to a point; thence North 35 degrees 23 minutes 09 seconds West for a distance of 229.50 feet to a point, said point marking the point of curvature of a curve having a delta of 45 degrees 38 minutes, a radius of 210.00 feet, and a tangent length of 83.34 feet; thence South 31 degrees 48 minutes 51 seconds to the chord and along the aforementioned curvature for a chord distance of 162.52 feet (167.24 feet arc distance) to a point; thence South 54 degrees 37 minutes 51 seconds West for a distance of 80.39 feet to the POINT OF BEGINNING. Said parcel containing 0.51 acres more or less.

## AND ALSO:

Part of the Northeast Quarter of the Northeast Quarter of Section 35 and part of the Northwest Quarter of the Northwest Quarter of Section 35, Township 18 North, Range 2 East, Marengo County, Alabama, and being more particularly described as follows:

As a STARTING POINT, start at the Northwest corner of Section 36, Township 18 North, Range 2 East, Marengo County, Alabama; thence South 89 degrees 31 minutes 30 seconds East and along the North boundary of said Section 35 for a distance of 245.87 feet to a point, said point also being the Northeast corner of Lot 1 BigBee Enterprises Subdivision as recorded in Map Book 4, Page 65, in the Probate Office of Marengo County, Alabama; thence South 00 degrees 29 minutes 51 seconds West and along the East boundary of said Lot 1 for a distance of 561.82 feet to the POINT OF BEGINNING of this parcel herein described; thence North 89 degrees 33 minutes 09 seconds West for a distance of 205.88 feet to a point; thence North 35 degrees 23 minutes 09 seconds West for a distance of 52.82 feet to a point; thence North 00 degrees 05 minutes 51 seconds East for a distance of 94.74 feet to a point; thence North 35 degrees 23 minutes 09 seconds West for a distance of 190.51 feet to a point, said point being on the South boundary of said Lot 1; thence North 89 degrees 33 minutes 09 seconds West and along the aforementioned South boundary of Lot 1 for a distance of 308.40 feet to a point; thence South 54 degrees 37 minutes 51 seconds West for a distance of 48.79 feet to a point; thence South 35 degrees 22 minutes 09 seconds East for a distance of 813.12 feet to a point; thence South 87 degrees 23 minutes 09 seconds East for a distance of 88.27 feet to a point, said point being on the West boundary of said Section 36; thence South 00 degrees 29 minutes 51 seconds West and along the aforementioned West boundary of said Section 36 for a distance of 540.45 feet to a point; thence North 80 degrees 12 minutes 51 seconds East for a distance of 248.74 feet to a point; thence North 00 degrees 29 minutes 51 seconds East for a distance of 731.80 feet to the POINT OF BEGINNING of this parcel herein described. Said parcel containing 7.48 acres more or less.



## RIGHT-OF-WAY DEED FOR PUBLIC ROAD

Form P-2R-88-3/19/49-Dement-Meridian

STATE OF ALABAMA,  
MARENGO

County

J. D. Smith

J. D. Smith

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned,

and wife **Madlyne G. Smith**

of the County and State aforesaid, in and for the consideration of one dollar

(\$1.00) in hand paid by **Marengo County**

the receipt whereof is hereby acknowledged and for the further consideration

of the benefit accruing to us and to the public from the construction or improvement of a public road through our lands, in **Marengo** County,do hereby give, grant, bargain, sell and convey unto **Marengo County**, its successors or assigns, a Right-of-way hereinafter described,over and across our said lands in **Marengo** County, Ala., for a public road; which right-of-way shall be **40**feet in width on **each** side of the center line of said road, as it is now located and staked out by the State Highway Department or as much of ourlands as is required to make a **80** foot right-of-way across our lands, said right-of-way herein conveyed being more particularly described asfollows, to-wit: **And as shown by the Right of Way Map of State Project SACP No-635, and recorded in the office of the Judge of Probate Marengo County.****Commencing at Sta. 483+69 on centerline of said Project and the East property line, thence along 2-00 curve left 198.2 Ft., thence S-88-00 W. for a distance of 1466.8 Ft..****Said strip of land being 40 Ft. in width on each side of said centerline.****Said strip of land lying in the SW 1/4, Sec.33, T-14, R-3-E and containing 1.0 acre, more or less, including area now used as right of way.****It is the intention of the grantor to convey a right of way for a Farm to Market Road Project SACP NO-635, whether accurately described or not.****Marengo**

To Have and to Hold by **Marengo** County, or its Assigns, and for and in consideration of the benefit to our property by reason of the construction or improvement of said road, we hereby release the County aforesaid, and all of its employees and officers, and the State of Alabama and all of its employees and officers from all consequential damages, present or prospective, to our property, arising out of the construction, improvement, maintenance or repair of said road, and that said road is a benefit to our property is hereby admitted and acknowledged. All agreements covering the moving, relocating and/or changing of the buildings and/or structures located wholly or partially on the above described right-of-way shall be in writing and approved by the State Highway Department before same shall be valid and binding on the said State Highway Department. The grantor hereby grants permission with right of ingress and egress to grantor's adjoining property at any time during construction period of project for purpose of moving grantor's buildings and/or structures from the above described right-of-way.

In witness whereof, we have hereunto set our hands and seal this the **11** day of **Sept.** 19 **47**.

Witness:

**J D Smith**

(Seal)

**Madlyne G. Smith**

(Seal)

## ACKNOWLEDGMENT FOR INDIVIDUAL

STATE OF ALABAMA,  
**Marengo**

County

I, **Freda W. Bradford**a **N. P.**

in and for said County, in said State hereby certify that

**J. D. Smith & Madlyne G. Smith**whose name **s are**

signed to the foregoing conveyance, and

who **are** known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, **they** executed the same voluntarily on the day the same bears date.Given under my hand this **11** day of **Sept.** A. D. 19 **47**.**Freda W. Bradford****Notary Public**

(Official Title)

## ACKNOWLEDGMENT FOR WIFE

STATE OF ALABAMA,  
**Marengo**

County

I, **Freda W. Bradford**a **N. P.**

in and for said State and County, do hereby certify that on

**11th** day of **Sept.** 19 **47**,came before me the within named **Madlyne G. Smith****J. D. Smith**known to me to be the wife of **J. D. Smith** who being examined separately and apart from her husband, touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord and without fear, constraint or threats on the part of her husband.In witness hereof, I hereunto set my hand this the **11th** day of **Sept.** 19 **47**.**Freda W. Bradford****Notary Public**

(Official Title)

## ACKNOWLEDGMENT FOR CORPORATION

STATE OF ALABAMA,

County

I, \_\_\_\_\_, a \_\_\_\_\_ in and for said County, in said State, hereby certify

that \_\_\_\_\_ whose name as \_\_\_\_\_

of the \_\_\_\_\_ Company, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19 \_\_\_\_\_.

(Official Title)

STATE OF ALABAMA, County of **Marengo**I, **R. J. Westbrook**

Judge of Probate in and for said State and County, hereby certify that the within con-

veyance was filed in my office at \_\_\_\_\_ o'clock \_\_\_\_\_ M., on the **3rd.** day of **Feb.** 19 **48**, and dulyrecorded in Deed Record **4-G** page **407**Dated **3rd.** day of **Feb.** 19 **48****R. J. Westbrook**

FILED

JUL 18 1994

IN THE CIRCUIT COURT OF MARENGO COUNTY, ALABAMA DEWAINE SEALY, CLERK  
Marengo County, Alabama

STATE OF ALABAMA,  
PLAINTIFF

vs

BIGBEE ENTERPRISES, INC.

DEFENDANTS

CIVIL ACTION Number CV-93-063

TRACT NUMBER 59-A

AMENDED JUDGMENT

This cause was regularly scheduled for trial before a struck jury, and the parties and their attorneys appeared in open Court. The parties agreed and stipulated that the only issue to be decided by the jury was the amount of just compensation due to the property owner.

It is, therefore, ORDERED, ADJUDGED and DECREED by this Court that the State of Alabama, through eminent domain proceedings has the right to take the property described in the Petition as Tract Number 59-A, which shall be more particularly described below, for use as a right of way for a public road, and that the right of eminent domain has been lawfully exercised.

After hearing the evidence and testimony, the jury returned the following verdict:

We, the jury, hereby assess and fix the damages and compensation to the owner of the property described as Tract Number 59-A in the Application for Condemnation filed in the office of the Judge of Probate of Marengo County, Alabama on the 14th day of January, 1993 at \$30,000.00 times 3.48 acres = \$104,400.00. s/ Jesse Langley, Foreman.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that the amount of the damages as just compensation for the

FILED IN PROBATE OFFICE  
MARENGO COUNTY, ALA.

2:00 P.M. AUG 30 1994 A.M.

I, CINDY D. HOPKINS, DO HEREBY CERTIFY  
THAT SAID INSTRUMENT WAS FILED FOR  
RECORD THIS 30th DAY OF July, 1994  
AND RECORDED BOOK NO. 88 PAGE 15-2nd  
MTG. TAX. DEED TAX.  
Cindy D. Hopkins  
JUDGE OF PROBATE  
MARENGO COUNTY, ALABAMA

CINDY D. HOPKINS, JUDGE

taking of said Tract Number 59-A, hereinafter described, by the State of Alabama for use as a right of way for a public road be, and the same is hereby assessed at \$104,400.00, plus pre-judgment interest in the amount of \$11,290.13 as computed on the worksheet attached as Exhibit "A" and incorporated herein by reference, making the total amount the sum of \$115,690.13.

It is further ORDERED, ADJUDGED and DECREED by the Court that, upon payment to the owner or payment into Court of the sum so assessed together with interest, the hereinafter described real estate be, and the same is hereby condemned to the use of the State of Alabama as a right of way for public road: See Exhibit "B" attached hereto and incorporated herein.

The Clerk of the Circuit Court is directed to pay over the judgment amount, including pre-judgment interest, to Bigbee Enterprises, Inc.

All DONE and ORDERED this 11th day of July, 1994.

Eddie Hardaway, Jr. ✓  
Eddie Hardaway, Jr. Acting Circuit Judge

**FILED**

JUL 18 1994

DEWAINE SEALY, CLERK  
Marengo County, Alabama

PROJECT NO. F-188(21)

MARENGO COUNTY

TRACT NO. 59-A

DATE PETITION FILED

DATE 1-19-93

APPROVED OFFER (AO)

DATE N/A

\$ 34,200

DEPOSIT IN PROBATE COURT

DATE 5-7-93

\$ 50,000

CIRCUIT COURT AWARD

DATE 7-6-94

\$ 104,400

NUMBER OF DAYS BETWEEN DATE OF DEPOSIT  
IN PROBATE COURT AND THE CIRCUIT COURT AWARD

DAYS 424 (A)

NUMBER OF DAYS BETWEEN DATE PETITION FILED  
AND THE DATE THE PROBATE COURT AWARD PAID INTO COURT

DAYS 108 (B)

STATE COMPUTATION

$\frac{(\text{CCA } \$104,400 - \text{PCA } \$50,000)}{365} \times .12 \times 424 \text{ (A) DAYS} = \$7583.21$

$\frac{\text{CCA } \$104,400}{365} \times .12 \times 108 \text{ (B) DAYS} = \$3706.92$

TOTAL \$11,290.13  
(TOTAL INTEREST DUE PROPERTY OWNER)

FHWA COMPUTATION

$\frac{(\text{PCA } \$50,000 - \text{AO } \$34,200)}{365} \times .12 \times 45 \text{ DAYS} = \$233.75$

$\frac{(\text{CCA } \$104,400 - \text{PCA } \$50,000)}{365} \times .12 \times 424 \text{ (A) DAYS} = \$7583.21$

TOTAL \$7816.96

**FILED**

(INTEREST FHWA WILL  
PARTICIPATE IN)

JUL 18 1994

DEWAINE SEALY, CLERK  
Marengo County, Alabama

THIS INSTRUMENT PREPARED BY

CHARLES W. TAYLOR

STATE OF ALABAMA HIGHWAY  
DEPARTMENT, BUREAU OF RIGHT  
OF WAY, MONTGOMERY, ALABAMA 36130

STATE OF ALABAMA )

COUNTY OF MARENGO )

TRACT NO. 59-A

## FEE SIMPLE

## WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, for and in consideration of the sum of \_\_\_\_\_ dollars, cash in hand paid to the undersigned by the State of Alabama, the receipt of which is hereby acknowledged, we (I), the undersigned, grantor(s), \_\_\_\_\_ have (has) this day

bargained and sold, and by these presents do hereby grant, bargain, sell and convey unto the State of Alabama the following described property, lying and being in Marengo County, Alabama, and more particularly

described as follows: and as shown on the right-of-way map of the State of Alabama Highway Department as Project No. F-188(21) recorded in the Office of the Judge of Probate of Marengo County, Alabama and as shown on the Property Plat attached hereto and made a part hereof:

PARCEL NO. 1 OF 2: Commencing at the northwest corner of the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  Section 35, T-18-N, R-2-E; thence easterly along the north line of said NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , a distance of 212 feet, more or less, to a point that is 100 feet northwesterly of and at right angles to the centerline of Project No. F-188(21) and the point of beginning of the property herein to be conveyed; thence continuing easterly along said north line, a distance of 40 feet, more or less, to the present northwesternmost right-of-way line of U.S. Highway No. 80; thence southwesterly along said present northwesternmost right-of-way line, a distance of 512 feet, more or less, to a present right-of-way line offset; thence southeasterly along said present right-of-way line offset, a distance of 25 feet, more or less, to the present northwest right-of-way line of said highway; thence southwesterly along said present northwest right-of-way line, a distance of 912 feet, more or less, to the west property line; thence northerly along said west property line, a distance of 60 feet, more or less, to a point that is 100 feet northwesterly of and at right angles to the centerline of said project; thence N 50° 01' 04" W, parallel with the centerline of said project, a distance of 1360 feet, more or less, to the point of beginning.

Said strip of land lying in the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  Section 35, T-18-N, R-2-E and containing 1.27 acres, more or less.

PARCEL NO. 2 OF 2: Commencing at the northeast corner of the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  Section 35, T-18-N, R-2-E; thence westerly along the north line of said NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , a distance of 785 feet, more or less, to a point that is 100 feet southeasterly of and at right angles to the centerline of Project No. F-188(21) and the point of beginning of the property herein to be conveyed; thence S 50° 01' 04" W, parallel with the centerline of said project, a distance of 2228 feet, more or less, to a point that is 100 feet southeasterly of and at right angles to the centerline of said project at Station 474+00; thence southwesterly along a line, a distance of 90 feet, more or less, to a point, on the present east right-of-way line of Marie Street, that is easterly of and at right angles to the traverse

of said street at Station 21+51.73; thence northerly along said present east right-of-way line, a distance of 110 feet, more or less, to the present southeast right-of-way line of U.S. Highway No. 80; thence northeasterly along said present southeast right-of-way line, a distance of 1490 feet, more or less, to a present right-of-way line offset; thence southeasterly along said present right-of-way line offset a distance of 30 feet, more or less, to the present southeasternmost right-of-way line of said highway; thence northeasterly along said present southeasternmost right-of-way line, a distance of 712 feet, more or less, to the north line of said NE $\frac{1}{4}$  of NE $\frac{1}{4}$ ; thence easterly along said north line a distance of 48 feet, more or less, to the point of beginning.

Said strip of land lying in the NW $\frac{1}{4}$  of NE $\frac{1}{4}$  and the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  Section 35, T-18-N, R-2-E and containing 2.21 acres, more or less.

To Have and To Hold, unto the State of Alabama, its successors and assigns in fee simple forever.

And for the consideration, aforesaid, we (I) do for ourselves (myself), for our (my) heirs, executors, administrators, successors, and assigns covenant to and with the State of Alabama that we (I) are (am) lawfully seized and possessed in fee simple of said tract or parcel of land hereinabove described; that we (I) have a good and lawful right to sell and convey the same as aforesaid; that the same is free of all encumbrances, liens, and claims, except the lien for ad valorem taxes which attached on October 1, last past, and which is to be paid by the grantor; and that we (I) will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.

The grantor(s) herein further covenant(s) and agree that the purchase price above-stated is in full compensation to them (him-her) for this conveyance, and hereby release the State of Alabama and all of its employees and officers from any and all damages to their (his-her) remaining property contiguous to the property hereby conveyed arising out of the location, construction, improvement, landscaping, maintenance, or repair of any public road or highway that may be so located on the property herein conveyed.

In witness whereof, we (I) have hereunto set our (my) hand(s) and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

774

SW 1/4 SE 1/4  
SEC 26

NE 1/4 NE 1/4  
SEC 35

NW 1/4 - NE 1/4  
SEC. 35

PARCEL 1 OF 2

PARCEL 2 OF 2

SW 1/4 NE 1/4  
SEC. 35

NW 1/4 NE 1/4  
SEC. 35

SE 1/4 NE 1/4  
SEC. 35

NE 1/4 NE 1/4  
SEC. 35

NW 1/4 NW 1/4  
SEC. 36

TRACT 59A  
SCALE 1" = 1000'

CT NUMBER 59A STATE OF ALABAMA HIGHWAY DEPARTMENT  
ER: BRYAN W. COMPTON JR. & MARY ALICE PROJ. NO. F-188 (21)  
TON OSGOOD PARCEL 1 OF 2 = 1.27 AC. COUNTY: MARENGO  
AL ACPT RE: 150.66 SCALE: 1" = 200'  
REQUIT: 3.48 DATE: 6-27-90

No.  
FILED IN PROBATE OFFICE  
MARENGO COUNTY, ALA.

AM FEB 18 2005 3:30 PM

Prepared by:

Butler, Snow, O'Mara, Stevens & Cannada, PLLC

Attn: Don B. Cannada

17th Floor, AmSouth Plaza

Post Office Box 22567

Jackson, MS 39225-2567

(601) 948-5711

CINDY D. NEILSON, Judge

I, CINDY D. NEILSON DO HEREBY CERTIFY  
THAT SAID INSTRUMENT WAS FILED FOR  
RECORD THIS 18th DAY OF Feb  
2005 BOOK 1082 PAGE 645-655  
DEED TAX 2.00 MTG. TAX

Cindy D. Neilson  
Judge of Probate  
Marengo County, Alabama

**ACCESS EASEMENT AGREEMENT**

THIS ACCESS EASEMENT AGREEMENT is entered into as of the 3rd day of February, 2005, by and between WAL-MART STORES EAST, L.P., a Delaware limited partnership, with offices at 2001 S.E. 10th Street, Bentonville, Arkansas 72716-0550 ("Wal-Mart"), and RIVERTOWN PROPERTIES, INC., an Alabama corporation, with an address of 605 Barnes Street, Demopolis, Alabama 36732 ("Rivertown").

**WITNESSETH:**

WHEREAS, Wal-Mart is the owner of that certain tract or parcel of land situated in the City of Demopolis, County of Marengo, State of Alabama, identified as Lot 1 of West Highway 80 Commercial Park, a subdivision of record in Map 5114c at Page 305 of the records of the Probate Judge of Marengo County, Alabama ("Tract 1"); and

WHEREAS, Rivertown is the owner of those certain 4.99-acre and 2.06-acre tracts or parcels of land in the same city, county, and state, which tract lies adjacent to Tract 1 and are identified as Lots 3 and 4 of said West Highway 80 Commercial Park (collectively "Tract 2"); and

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

**NOW, THEREFORE**, in consideration of one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Wal-Mart does hereby grant to Rivertown a non-exclusive easement for utilities and for vehicular and pedestrian ingress and egress over and across the Access Road 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 Road. The ingress and egress rights granted hereby may be used non-exclusively by, and are limited to, Rivertown, its successors and assigns, its tenants and their respective customers and employees associated with the business operation to be located on Tract 2. The utility easement granted hereby may be used non-exclusively by, and are limited to, Rivertown and its successors and assigns to install, use, maintain and repair utility services and distribution systems on, across or under those portions of the Access Road designated for utilities and only to the extent necessary to service Tract 2.

2. Maintenance. Wal-Mart shall be responsible for maintaining the Access Road and keeping the Access Road in a smooth and usable condition. Rivertown shall reimburse Wal-Mart for Rivertown's pro rata share of the actual cost of maintaining the Access Road as reasonably determined by Wal-Mart on the basis of frontage feet.

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

within thirty (30) days of receipt of an invoice for such expenses. If Rivertown fails to reimburse Wal-Mart within said thirty (30) day period, Wal-Mart has the option to terminate this Agreement and the easements granted hereunder immediately with no further obligations or liabilities on the part of Wal-Mart. However, Wal-Mart may pursue any legal remedies or alternatives to collect any outstanding reimbursements related to this Agreement.

4. Indemnification. Rivertown shall indemnify, defend and hold harmless Wal-Mart from any damages or liability to persons or property that might arise at any time from the use of the Access Road by Rivertown, its customers, suppliers, employees, and tenants or anyone else using the Access Road for ingress and egress to and from Tract 2. Rivertown further agrees that Rivertown will at all times during the duration of this easement maintain and pay for comprehensive general liability insurance affording protection to Wal-Mart and Rivertown 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 \$1,000,000.00 for each occurrence.

Rivertown 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. Curb Cuts. Rivertown shall be entitled to install no more than one curb cut not exceeding forty feet (40') in width as approved by Wal-Mart between Lot 3 and the Access Road and between Lot 4 and the Access Road. Such curb cuts and the access easements granted hereunder shall benefit and service said Lots 3 and 4 of West Highway 80 Commercial Park only and no other lands.

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

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 Road and shall bind and enure to the benefit of the parties hereto and their respective heirs, successors and assigns.


9. Change of Ownership. In the event Rivertown 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. The parties specifically agree that this Agreement may be assigned (or subleased) to an affiliate, subsidiary or related entity of Wal-Mart Stores, Inc., or a third party, without consent or notice.

10. Compliance with Law. Rivertown, in exercising the privileges granted by this Agreement, shall comply with all applicable federal, state, county and municipal laws, ordinances and regulations.

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.

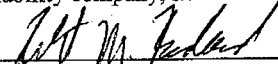
IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and  
year first above written.

ATTEST OR WITNESS:

  
Assistant Secretary

WAL-MART STORES EAST, LP  
a Delaware limited partnership

By: WSE Management, LLC, a Delaware  
limited liability company, its General Partner

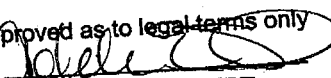
By:   
Robert M. Bedard, Assistant Manager

ATTEST OR WITNESS:

\_\_\_\_\_

RIVERTOWN PROPERTIES, INC., an  
Alabama corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to legal terms only  
by   
WAL-MART LEGAL DEPT.  
Date: 2-7-05

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

ATTEST OR WITNESS:

\_\_\_\_\_

**WAL-MART STORES EAST, LP**  
a Delaware limited partnership

By: WSE Management, LLC, a Delaware  
limited liability company, its General Partner

By: \_\_\_\_\_  
Robert M. Bedard, Assistant Manager

ATTEST OR WITNESS:

Robert M. Bedard

**RIVERTOWN PROPERTIES, INC., an**  
Alabama corporation

By: Ed. Ray  
Its: President

STATE OF ARKANSAS

COUNTY OF BENTON

I, Bobbi Matz, a Notary Public in and for said County, in said State, do hereby certify that Robert M. Bedard, whose name as Assistant Manager of WSE Management, LLC, a Delaware limited liability company, the General Partner of Wal-Mart Stores East, LP, a Delaware limited partnership, is signed to the foregoing Access Easement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Access Easement, he, as such Assistant Manager, and with full authority, executed the same voluntarily for and as the act of said Limited Liability Company, acting in its capacity as General Partner of the aforesaid limited partnership.

BOBBI KAY MATZ  
NOTARY PUBLIC-STATE OF ARKANSAS  
BENTON COUNTY  
My Commission Expires 9-27-2014

Bobbi Kay Matz  
Notary Public

My Commission Expires:

9.27.2014

STATE OF ALABAMA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a \_\_\_\_\_ in and for said County, in said State, do hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of Rivertown Properties, Inc., an Alabama corporation, is signed to the foregoing Access Easement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Access Easement, he, in his capacity as such \_\_\_\_\_, executed the same voluntarily for and as the act of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF ARKANSAS

COUNTY OF BENTON

I, \_\_\_\_\_, a \_\_\_\_\_ in and for said County, in said State, do hereby certify that Robert M. Bedard, whose name as Assistant Manager of WSE Management, LLC, a Delaware limited liability company, the General Partner of Wal-Mart Stores East, LP, a Delaware limited partnership, is signed to the foregoing Access Easement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Access Easement, he, as such Assistant Manager, and with full authority, executed the same voluntarily for and as the act of said Limited Liability Company, acting in its capacity as General Partner of the aforesaid limited partnership.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF ALABAMA

COUNTY OF MARENG

I, Richard S. Manby Notary Public in and for said County, in said State, do hereby certify that Ed Key, whose name as PRESIDENT of Rivertown Properties, Inc., an Alabama corporation, is signed to the foregoing Access Easement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Access Easement, he, in his capacity as such PRESIDENT, executed the same voluntarily for and as the act of said corporation.

Richard S. Manby  
Notary Public

My Commission Expires:

9-26-2006

**EXHIBIT "A"**

Access Road Description

JACKSON 987804v6

Demopolis, AL Store #731-02  
Rivertown Access Easement  
December 3, 2004  
987804\_6

653

654

## EXHIBIT " "

### LEGAL DESCRIPTION PROPOSED ACCESS EASEMENT WEST 80 COMMERCIAL PARK

A proposed access easement of variable width over and across proposed Lot 1 of the West 80 Commercial Park, and being more particularly described as follows:

As a starting point, begin at the Northwest corner of Lot 1 of BigBee Enterprises Subdivision as recorded in Map Book 4 at Page 85 in the Probate Office of Marengo County, Alabama, said point also lying on the South boundary of US Highway 80, said road having a 200 foot Right-of-Way width; thence run North 54 degrees 39 minutes 51 seconds East and along said South Right-of-Way margin for a distance of 232.63 feet to the POINT OF BEGINNING of the proposed access easement herein described; thence continue North 54 degrees 39 minutes 51 seconds East and along said South Right-of-Way margin for a distance of 36.00 feet to a point, said point marking the point of curvature of a curve having a delta of 21 degrees 59 minutes, a radius of 132 degrees 00 minutes, and a tangent length of 25.63 feet; thence run South 46 degrees 21 minutes 47 seconds East and along the aforementioned curve for a chord distance of 50.33 feet (50.64 feet arc distance) to the point of reverse curvature of a curve having a delta of 21 degrees 59 minutes a radius of 168.00 feet and a tangent length of 32.63 feet; thence run South 46 degrees 21 minutes 39 seconds East and along the aforementioned curve for a chord distance of 64.07 feet (64.46 feet arc distance) to the point of tangency of the aforementioned curve; thence run South 35 degrees 22 minutes 05 seconds East for a distance of 138.59 feet to the point of curvature of a curve having a delta of 90 degrees 00 minutes a radius of 203.86 feet and a tangent of 203.86 feet; thence run South 09 degrees 37 minutes 55 seconds West and along the aforementioned curve for a chord distance of 288.30 feet (320.22 arc distance) to the point of tangency of the aforementioned curve; thence run South 54 degrees 37 minutes 55 seconds West for a distance of 889.38 feet to the point of curvature of a curve having a delta of 90 degrees 00 minutes a radius of 224.00 feet and a tangent of 224.00 feet; thence run North 80 degrees 22 minutes 05 seconds West along the aforementioned curve for a chord distance of 316.78 feet (351.86 feet arc distance) to the point of tangency of the aforementioned curve; thence run North 35 degrees 22 minutes 05 seconds West for a distance of 179.03 feet to a point; thence run North 39 degrees 10 minutes 22 seconds West for a distance of 49.98 feet to a point lying on the South boundary of US Highway 80, said road having a 200 foot Right-of-Way; thence run North 54 degrees 38 minutes 31 seconds East and along said South Right-of-Way margin for a distance of 51.32 feet to a point; thence departing from said South Right-of-Way margin run South 35 degrees 22 minutes 05 seconds East for a distance of 252.90 feet to the point of curvature of a curve having a delta of 90 degrees 00 minutes a radius of 176.00 feet and a tangent of 176.00 feet; thence run South 80 degrees 22 minutes 05 seconds East and along the aforementioned curve for a chord distance of 248.90 feet (276.46 feet arc distance) to the point of tangency of the aforementioned curve; thence run North 54 degrees 37 minutes 55 seconds East for a distance of 874.74 feet to the point of curvature of a curve having a delta of 90 degrees 00 minutes and a radius of 182.50 feet and a tangent of 182.50 feet; thence run North 09 degrees 37 minutes 55 seconds East and along the aforementioned curve for a chord distance of 258.09 feet (286.67 feet arc distance) to the point of tangency of the aforementioned curve; thence run North 35 degrees 22 minutes 05 seconds West for a distance of 133.95 feet to the point of curvature of a curve having a delta of 21 degrees 59 minutes a radius of 132.00 feet and a tangent of 25.64 feet; thence run North 46 degrees 21 minutes 39 seconds West for a chord distance of 50.34 feet (50.65 feet arc distance) to the point of return curvature of a curve having a delta of 21 degrees 59 minutes a radius of 168.00 feet and a tangent of 32.64 feet; thence run North 46 degrees 21 minutes 33 seconds West and along the aforementioned curve for a chord distance of 64.08 feet (64.47 feet arc distance) to the POINT OF BEGINNING of the access easement herein described. Said access easement containing 1.42 acres more or less.



