

**LEASE  
BETWEEN**

**DECATUR MIDSTAR, LTD.,  
A TEXAS LIMITED PARTNERSHIP,  
AS LANDLORD**

**AND**

**TRACTOR SUPPLY COMPANY,  
A DELAWARE CORPORATION,  
AS TENANT**

**DATED AS OF APRIL 17, 2008**

## TABLE OF CONTENTS

	PAGE
1. DEMISED PREMISES.....	1
2. CONSTRUCTION OF IMPROVEMENTS BY LANDLORD.....	1
3. CONSTRUCTION PLANS.....	1
4. TIME FOR COMMENCEMENT AND COMPLETION.....	2
5. LIQUIDATED DAMAGES.....	2
6. ZONING AND PERMITS.....	2
7. CONSTRUCTION INDEMNIFICATION.....	2
8. INSPECTION OF WORK.....	2
9. TENANT'S STORAGE OF MATERIALS OR INSTALLATION OF EQUIPMENT.....	2
10. CHANGES IN THE WORK.....	3
11. WORKMANSHIP OF IMPROVEMENTS/WARRANTY.....	3
12. PERMITS, CERTIFICATES AND APPROVALS.....	3
13. ACCEPTANCE.....	3
14. TERM AND RENT.....	3
15. EXCLUSIVE USE COVENANT.....	4
16. COMMON AREA.....	5
17. REPAIRS AND MAINTENANCE - LANDLORD.....	6
18. REPAIRS AND MAINTENANCE - TENANT.....	7
19. INSURANCE.....	7
20. WAIVER OF CLAIMS.....	9
21. INDEMNIFICATION.....	9
22. ENTRANCES.....	9
23. UTILITIES.....	10
24. TAXES AND ASSESSMENTS.....	10
25. PERMITTED CONTESTS.....	10
26. ASSIGNMENT AND SUBLETTING.....	11
27. SIGNS.....	11
28. CONDITION OF PREMISES; COMPLIANCE WITH LAWS.....	11
29. ENVIRONMENTAL CONDITIONS.....	11
30. SATELLITE SYSTEM.....	12
31. DAMAGE TO DEMISED PREMISES.....	13
32. ALTERATIONS.....	13
33. MECHANICS LIENS.....	13
34. CONDEMNATION.....	14
35. TENANT'S DEFAULT.....	14
36. LANDLORD'S DEFAULT.....	14
37. USE AND QUIET POSSESSION.....	15
38. TENANT'S BUSINESS OPERATION.....	15
39. SURRENDER OF DEMISED PREMISES.....	15
40. RIGHT TO AUDIT.....	16
41. LANDLORD'S CONSENTS AND APPROVALS.....	16
42. ATTORNEYS' FEES.....	16
43. RECORDING.....	16
44. NO WAIVER.....	16
45. TRUE LEASE.....	16
46. PUBLIC RELEASES.....	16
47. CONFIDENTIALITY.....	17
48. INCENTIVES.....	17
49. HOLD OVER.....	17
50. NOTICES.....	17
51. CONDITION OF TITLE: ENCUMBRANCES.....	18
52. LANDLORD'S PAYMENT OBLIGATIONS.....	18
53. ESTOPPEL CERTIFICATES.....	18

54.	SUBORDINATION NON-DISTURBANCE AND ATTORNMENT .....	18
55.	TENANT PROPERTY .....	18
56.	INVALIDITY OF CERTAIN PROVISIONS .....	18
57.	FORCE MAJEURE .....	19
58.	GOVERNING LAW; SUBMISSION TO VENUE AND JURISDICTION .....	19
59.	ENTIRE AGREEMENT .....	19
60.	BINDING EFFECT .....	19
61.	TIME IS OF THE ESSENCE .....	19
62.	LEASE INTERPRETATION .....	19
63.	COMPUTATION OF DAYS .....	19
64.	LANDLORD'S RIGHT TO RECAPTURE .....	19
65.	SHOPPING CENTER EASEMENTS .....	20
66.	PRIOR LEASE .....	20

## INDEX OF DEFINED TERMS

	PAGE
ADA.....	11
Build Area .....	5
Building .....	1
Common Area.....	5
Common Area Expense .....	5
Condemnation Proceedings .....	14
Critical Common Area.....	5
Demised Premises.....	1
Easement.....	20
Effective Date .....	1
Environmental Condition .....	12
Environmental Laws .....	12
Extension Term.....	3
Fenced Outdoor Display Area .....	1
Fixed Rent .....	3
Governmental Approved Plans.....	2
Hazardous Materials.....	12
Hazardous Substances .....	12
Improvements .....	1
Initial Term .....	3
Landlord.....	1
Landlord Indemnitees .....	9
Landlord's Proposed Plans.....	1
Laws .....	11
Lease Year .....	3
Leaseable Area.....	1
Outdoor Display Areas.....	20
Permanent Sidewalk Display Area .....	1
Permanent Trailer and Equipment Display Area .....	1
Prior Lease .....	2
Prohibited Uses .....	15
Rent Commencement Date .....	3
Restricted Products .....	4
Restricted Property .....	4
Satellite Equipment.....	12
Shopping Center.....	1
Taxes .....	10
Tenant.....	1
Tenant Environmental Indemnification Items .....	12
Tenant Indemnitees.....	2
Tenant Initial Approved Plans.....	1
Tenant Property .....	18
Tenant's Standard Signs .....	11
Term.....	3

## **EXHIBITS**

Exhibit "A"	Legal Description of the Shopping Center
Exhibit "B"	Site Plan
Exhibit "C"	Intentionally Deleted
Exhibit "D"	Tenant's Standard Signs
Exhibit "E"	Intentionally Deleted
Exhibit "F"	Subordination, Non-Disturbance and Attornment Agreement
Exhibit "G"	Easements with Covenants and Restrictions Affecting Land

## LEASE

THIS LEASE, is entered into as of this 17 day of April, 2008 (the "**Effective Date**"), by and between Decatur Midstar, Ltd, a Texas limited partnership, 1848 Norwood Plaza, Suite 214, Hurst, Texas 76054, as landlord ("**Landlord**"), and Tractor Supply Company, a Delaware corporation, 200 Powell Place, Brentwood, Tennessee 37027, as tenant ("**Tenant**").

1. **DEMISED PREMISES.** Landlord represents and warrants that it owns lawful fee simple title to those certain premises, located at 1200 Highway 51, in the City of Decatur, County of Wise, State of Texas, and more particularly described in the legal description attached hereto and made a part hereof as **Exhibit "A"** (the "**Shopping Center**"). The Shopping Center contains a gross leaseable area of 65,545 square feet ("**Leaseable Area**"). The Leaseable Area shall be adjusted from time to time for any increase or decrease in building sizes of buildings located within the Shopping Center. Landlord hereby leases to Tenant, on the terms and conditions contained in this Lease, that portion of the Shopping Center containing approximately 31,745 square feet of interior building space (the "**Building**"), together with "**Permanent Sidewalk Display Area**", "**Permanent Trailer and Equipment Display Area**" (7,040 sq. ft.), loading docks, and a fenced outdoor display area of approximately 9,600 square feet (the "**Fenced Outdoor Display Area**") (collectively, the "**Demised Premises**"), as shown outlined in red on the Site Plan attached hereto and made a part hereof as **Exhibit "B"**.

2. **CONSTRUCTION OF IMPROVEMENTS BY LANDLORD.** Landlord covenants that it shall furnish and complete, at its sole cost and expense, all of the materials, labor, equipment, tools and supervision, and shall do everything necessary to renovate to Tenant's specifications and approval, the Permanent Trailer and Equipment Display Area, as shown on the Site Plan (collectively, the "**Improvements**"). Landlord shall renovate and construct a concrete pad of approximately 7,040 square feet North of the Building over an existing concrete drainage ditch (which shall be used as Tenant's Permanent Trailer and Equipment Display Area) and provide plans for Tenant's approval prior to construction. Tenant's approval shall not be unreasonably withheld or delayed. Until such time as this Permanent Trailer and Equipment Display Area is constructed, Tenant shall continue to utilize all Outdoor Display Areas it is currently using, but after the concrete pad is constructed Tenant shall have no storage or display rights other than as shown on **Exhibit "B"**.

### 3. **CONSTRUCTION PLANS.**

A. **Tenant Initial Approved Plans.** Landlord shall furnish Tenant or Tenant's designee, at Landlord's sole cost and expense, design drawings and specifications for the Improvements ("**Landlord's Proposed Plans**"). Tenant shall have thirty (30) days from receipt of Landlord's Proposed Plans to approve or disapprove such plans in writing, which approval shall not be unreasonably withheld. Tenant's approval may include modifications to Landlord's Proposed Plans. Tenant's approval of Landlord's Proposed Plans means only that Landlord's Proposed Plans meet the requirements of Tenant, and do not indicate, and should not be construed by Landlord as indicating, required governmental approvals or legal compliance, which are at the cost and obligation of Landlord. The plans as approved by Tenant, if at all, shall be referred to as the "**Tenant Approved Plans**".

Tenant's failure to approve or disapprove Landlord's Proposed Plans within thirty (30) days of receipt shall not mean that Tenant approves or disapproves such plans, and Landlord agrees not to construe Tenant's failure to approve in such fashion. Tenant's period of time to approve or disapprove Landlord's plans shall be reasonably extended upon request by Tenant.

If Tenant disapproves Landlord's Proposed Plans, Tenant shall notify Landlord in writing the reasons for Tenant's disapproval. Landlord, at its sole cost and expense, and within thirty (30) days from receipt of Tenant's disapproval of such plans, shall revise Landlord's Proposed Plans to satisfy Tenant's objections, in which case the revised plans shall be the Tenant Approved Plans.

B. Governmental Approved Plans. Tenant shall present the Tenant Approved Plans, for approval, to all governmental agencies having jurisdiction over the Improvements and whose approval is required. The plans as approved and stamped by such governmental agencies shall be referred to as the "Governmental Approved Plans".

If within sixty (60) days after the Effective Date (i) Tenant cannot, despite using its commercially reasonable efforts, obtain all required governmental approvals for use of the Outdoor Display Areas, or (ii) the governmental agencies require such changes to the Outdoor Display Areas or their specifications such that the Outdoor Display Areas would not be economically feasible as determined by Tenant in its reasonable discretion, or (iii) the governmental agencies require such changes to the Outdoor Display Areas or their specifications such that they would not meet Tenant's requirements as determined by Tenant in its reasonable discretion, Tenant may immediately terminate this Lease by delivery of written notice to Landlord within such sixty (60) day period (together with reasonably sufficient information setting forth Tenant's termination) and upon such termination the Prior Lease dated August 28, 1995 between Wal-Mart Stores, Inc. (Landlord's predecessor) and Tenant ("Prior Lease") shall be reinstated as if same had never been terminated, and any sums received by Landlord from Tenant under this Lease in excess of the amounts which would have been paid by Tenant under the Prior Lease shall be credited against the next installment of Fixed Rent due under the Prior Lease.

4. TIME FOR COMMENCEMENT AND COMPLETION. INTENTIONALLY DELETED

5. LIQUIDATED DAMAGES. INTENTIONALLY DELETED

6. ZONING AND PERMITS. Landlord shall (i) secure and pay for all permits required for construction of the Improvements and (ii) pay for all fees in connection with construction of the Improvements. Landlord shall post all bonds, secure and pay for all permits, and pay all fees for construction of the Improvements on or in connection with public property.

Landlord represents and warrants to Tenant that upon the Effective Date, Tenant shall have the uninhibited right to use the Demised Premises, including all outdoor display areas as identified in Exhibit "B" (on sidewalks and in existing parking or other Common Areas) for its intended use. As such, Landlord shall be responsible to secure any and all consents, waivers and/or amendments which may be required to allow Tenant's use under any existing title encumbrance, including but not limited to, any lease, easement, reciprocal access agreement, restrictions, exclusive use provisions, or other covenants. Tenant shall be responsible for obtaining the approval of all governmental agencies as required to use the outdoor display areas.

7. CONSTRUCTION INDEMNIFICATION. In addition to Landlord's indemnification in Subsection 21 A, Landlord shall protect, indemnify and save harmless Tenant, its affiliates, and each of their respective officers, directors, partners, employees, representatives, agents, and assignees (individually and collectively, the "Tenant Indemnitees") from and against any and all claims, demands, actions, causes of action, suits, judgments, liability, expenses (including reasonable attorneys' fees, experts' fees, court costs, and other proceeding costs), and damages arising or growing out of any failure to act, or omission on the part of Landlord or those acting on behalf of Landlord in any manner arising out of or connected with the construction of the Improvements during the period of construction.

Landlord's indemnification of the Tenant Indemnitees is one of first defense and payment, not of reimbursement or surety. Landlord's indemnification of the Tenant Indemnitees shall in no way be limited by or to Landlord's insurance.

8. INSPECTION OF WORK. Tenant shall at all times have access to and the right to inspect construction of the Improvements and the elements thereof, wherever and by whomever same take place.

9. TENANT'S STORAGE OF MATERIALS OR INSTALLATION OF EQUIPMENT.  
INTENTIONALLY DELETED

10. **CHANGES IN THE WORK.** INTENTIONALLY DELETED

11. **WORKMANSHIP OF IMPROVEMENTS/WARRANTY.** All materials and equipment items shall be new and of the quality specified in the Tenant Approved Plans. The Improvements shall be constructed in a good and workmanlike manner and shall comply in all respects with the Tenant Approved Plans, all lawful requirements applicable to the Demised Premises and the Permitted Encumbrances.

Landlord shall remedy, at its sole cost and expense, any defects in the Improvements due to faulty materials or workmanship and pay for any damage to other work resulting from such defects and/or the remedying thereof. Neither the foregoing nor any other provision in this Lease, shall limit Landlord's liability for defects or installations resulting from deliberate or other deviations from the plans and specifications to less than the legal limit of liability under the law of the jurisdiction where the Demised Premises are located. Tenant shall give Landlord notice of observed defects with reasonable promptness. Should Landlord fail to replace or remedy the defective work within thirty (30) days following notice from Tenant, then Tenant shall give a second notice to Landlord, and if Landlord does not, within five (5) days after receipt of the second notice, replace or remedy the defective work, then after the expiration of the second five (5) day period, Tenant shall have the right to make such corrections and Landlord expressly authorizes Tenant to offset the cost thereof against future Fixed Rent payments, provided Tenant's offset right shall be limited to no more than thirty-five percent (35%) of any single installment of Fixed Rent unless said Fixed Rent offset occurs during the last twelve (12) months of the Initial Term or last twelve (12) months of any Extension Term, wherein Tenant shall be authorized to offset any rent payments, Fixed or otherwise, until it has been reimbursed for all costs and expenses associated with correcting defects in the Improvements as set forth above.

12. **PERMITS, CERTIFICATES AND APPROVALS.** INTENTIONALLY DELETED

13. **ACCEPTANCE.** INTENTIONALLY DELETED

14. **TERM AND RENT.**

A. **Term.** The initial term of this Lease shall be for a period of ten (10) Lease Years commencing on the Rent Commencement Date (the "**Initial Term**") unless sooner terminated as provided or permitted herein. Provided Tenant shall not be in default hereunder, Tenant shall be entitled to extend the term of this Lease for two (2) successive periods of five (5) years each (each an "**Extension Term**"), upon the same terms and conditions as herein set forth, except as to number of renewals and rent. The Initial Term together with any Extension Term, properly noticed, shall be referred to as the "**Term**". Tenant may only extend this Lease by giving Landlord written notice as provided herein not less than one hundred eighty (180) days prior to the expiration of the Initial Term, or of any Extension Term, as applicable. In the event Tenant does not give notice exercising its right to extend this Lease, Tenant waives its right to all subsequent Extension Terms.

B. **Rent.** The rental ("**Fixed Rent**") during the Term shall be as set out below and shall commence on the first day of the month following full execution of the Lease (the "**Rent Commencement Date**"). For purposes of this Section, the term "**Lease Year**" shall mean each 12-month period of the Term commencing on the Rent Commencement Date and every anniversary thereof, provided that if the Rent Commencement Date is on a date other than the first (1<sup>st</sup>) day of the month, the first Lease Year shall be extended by the number of days from the Rent Commencement Date until the first (1<sup>st</sup>) day of the next succeeding month, such that each Lease Year, except possibly the first Lease Year, shall commence on the first day of the month.



<u>PERIOD</u>	<u>MONTHLY FIXED RENT</u>	<u>ANNUAL FIXED RENT</u>
Lease Years 1 through 10	\$14,142.00	\$169,708.77
Lease Years 11 through 15 First Extension Term	\$15,557.00	\$186,679.64
Lease Years 16 through 20 Second Extension Term	\$17,112.00	\$205,347.60

Commencing on the Rent Commencement Date, Tenant shall pay its rent monthly in advance on or before the first day of each month without offset or demand, except as otherwise provided herein. All rent provided for in this Lease shall be pro rated for any partial month at the beginning or end of the Term. Tenant's pro rata rent obligation shall be in the ratio of the number of days in the partial month for which Tenant has a rent obligation divided by the number of days in the month and multiplied by the applicable monthly rent as set out above.

C. Rent Payment. Tenant shall make rent checks payable to Decatur Midstar, LTD, Tax ID # 20-3657678, and mail them to the following address: 1848 Norwood Plaza, Suite 214, Hurst, TX 76054, or such other location as may be designated by Landlord in writing from time to time in accordance with Section 50 of this Lease. Tenant shall not be obligated to make payment to any person or entity not identified in this Subsection C with out written instruction of Landlord and the party identified in this Subsection C, if different than Landlord. The term "rent" as used in this Lease means both Fixed Rent and any other sums due Landlord by Tenant hereunder.

D. Electronic Fund Transfer. In the event that Landlord's financial institution accepts the electronic transfer of funds, Tenant may make payments of rent and any other sums which may come due hereunder by electronic fund transfer. Landlord shall complete all applications and do all other things as may be reasonably required to authorize such electronic fund transfers.

15. **EXCLUSIVE USE COVENANT.** So long as Tenant is not in default under the Lease for which a judgment of default has been rendered in favor of Landlord, and Tenant or Tenant's assignee or sublessee is utilizing the Demised Premises for the uses set forth in clauses (a) – (p) of this Section, and Tenant continues to conduct business within the market, the Landlord covenants and agrees not to sell, lease, rent, occupy or allow to be occupied, or otherwise transfer or convey all or any portion of the Restricted Property, as such term is defined below, for the purpose of selling or offering for sale those items which support a farm/ranch/rural/do-it-yourself lifestyle including: (a) tractor and equipment repair and maintenance supplies; (b) farm fencing; (c) livestock gates; (d) livestock feeding systems; (e) animal feed and health/maintenance products for pets or livestock (including but not limited to: dog, cat, bird, horse, cattle, goat, pig, fowl, rabbits, equine and livestock); (f) western wear and boots; (g) outdoor work wear (similar to and specifically including Carhartt products) and boots; (h) horse and rider tack and equipment; (i) bird feed, housing and related products; (j) lawn and garden equipment (including but not limited to, push/riding mowers, mow-n-vacs, garden carts, snow blowers, chippers and shredders, wheel barrows, and log splitters); (k) hardware; (l) power tools; (m) welders and welding supplies; (n) open and closed trailers; (o) 3-point equipment; and, (p) truck and trailer accessories (including truck tool boxes, and trailer hitches and connections) (the "**Restricted Products**"). Nothing contained in this Lease shall prevent any tenant on the Restricted Property from selling Restricted Products as an incidental part of its other and principal business so long as the total number of square feet devoted by such tenant to the display for sale of Restricted Products does not exceed five percent (5%) of the total number of square feet of space used for merchandise display by such tenant (including one-half (1/2) of the aisle space adjacent to any display area). Further, this covenant shall not apply to any business operated by Tenant, or any affiliate of Tenant. "**Restricted Property**" shall mean any property within ten (10) miles of the Demised Premises that is owned, controlled or developed by Landlord (or any entity in which Landlord, or an equity holder of Landlord, holds an equity or management interest) for commercial purposes.

Landlord acknowledges that in the event of any breach of this Section 15 for which a judgment of breach has been rendered in favor of Tenant, remedies at law would be inadequate. Therefore, and in that event, Tenant shall be entitled to (i) continue this Lease on the same terms and conditions that existed immediately before the violation, *except* that Tenant's rent and all future rent shall be reduced by one-half (½) until such violation has ceased, and Landlord expressly authorizes such rent reduction without further action by the parties; (ii) cancel this Lease without further obligation or liability to Landlord; (iii) relief by injunction; and (iv) remedies at law, or otherwise, as Tenant may elect in its sole discretion. Tenant's rights and remedies set forth in this Section 15 may be exercised in any order and in any combination whatsoever. No right or remedy herein conferred upon or reserved to Tenant is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity.

Notwithstanding the foregoing, in the event Tenant ceases to operate in the Demised Premises for at least ninety (90) days or more (except in the event of a re-modeling, assignment, casualty or condemnation, in which event the time period above shall be increased to one hundred eighty (180) days so long as Tenant commences operations within such one hundred eighty (180) day period), Landlord may enter into leases within the Restricted Property for the following uses: (i) a pet store up to, but not exceeding, 6,000 square feet so long as the sales area for pet supplies does not exceed 750 square feet; and (ii) an automobile parts store of any size.

16. **COMMON AREA.** The entire tract of land on which Landlord has constructed the Shopping Center is shown on Exhibit "B". The Site Plan designates the location and size of all buildings constructed, store sizes, parking area, which shall be sufficient for adequate parking of customer cars, customer parcel pickup facilities, and Tenant's delivery service areas. All that portion of the tract of land not covered by buildings or the Demised Premises is the common area (the "**Common Area**") for the joint use of all tenants, customers, invitees, and employees. Landlord agrees that it will not lease, allow to be occupied or allow any other structure to be built on the "**Critical Common Area**" designated on the Site Plan without the prior written consent of Tenant, which may not be unreasonably withheld. Additionally, Landlord may construct a pad site of up to 5,000 square feet in the Common Area as shown on Exhibit "B" ("**Build Area**") and in that event Tenant agrees that the occupant of any improvements constructed on the Build Area shall have rights of access and parking on, over and across the Common Areas in common with Tenant. Landlord agrees to maintain all Common Area in good repair, to keep such area clean, to remove snow and ice therefrom, to keep such area lighted during hours of darkness when Tenant is open for business, and to keep the parking area properly striped to assist in the orderly parking of cars.

Tenant agrees to pay Landlord its pro rata share of Landlord's actual cost of care and maintenance of the Common Area ("**Common Area Expense**"). Common Area Expense shall include, lighting, sweeping, trash removal, parking lot maintenance and repair, mowing, landscaping, cleaning, security (if provided by Landlord), maintaining, repairing and testing the fire sprinkler systems in the Shopping Center, and snow removal, but shall not include capital repairs (except for resurfacing of the parking lot no more frequently than once every ten (10) years), management or administrative fees, roof repairs or replacement, or structural repairs. Tenant's pro rata share of Common Area Expense shall be in the ratio that the number of square feet in the Building bears to the Leaseable Area.

Commencing on the Rent Commencement Date, Tenant shall make payments to Landlord monthly in the amount of One Thousand Three Hundred Twenty Two and 71/100 Dollars (\$1,322.71), which represents Landlord's good faith estimate of Tenant's pro rata share of Common Area Expense; provided, however, for the first full calendar year of the Term of this Lease, Tenant's pro rata share of Common Area Expense shall not exceed Sixteen Thousand Dollars (\$16,000.00), and Tenant shall have no liability or obligation for any excess. Tenant's pro rata share of Common Area Expense is subject to a maximum increase of five percent (5%) over Tenant's pro rata share of the Common Area Expense for the immediately preceding year. The costs of utilities for the common areas and snow and ice removal expenses shall be excluded from the cap on Common Area Expense.

Within ninety (90) days after the end of each calendar year, Landlord shall furnish Tenant a statement, and supporting documentation satisfactory to Tenant, setting forth with particularity the size of the Leaseable Area, any changes in the size of the Leaseable Area during the calendar year and the effective date of such changes, Tenant's pro rata share of Common Area Expense for the calendar year just ended, and Tenant's payments made during the calendar year. If Tenant's pro rata share of Common Area Expense exceeds the payments made by Tenant, Tenant shall pay Landlord the deficiency within sixty (60) days after receipt of the statement and the supporting documentation reasonably satisfactory to Tenant. If Tenant's payments made during the calendar year exceeds Tenant's pro rata share of Common Area Expense, Landlord shall refund to Tenant the amount of the overpayment along with the issuance of the statement. Commencing in the second calendar year of the Term, Tenant's monthly payment shall be adjusted once annually to equal 1/12<sup>th</sup> of Tenant's actual pro rata share of Common Area Expense for the immediately preceding calendar year, subject to the limits set out above.

If Landlord does not issue its annual Common Area Expense statement (and supporting documentation satisfactory to Tenant) within one hundred twenty (120) days after the end of any calendar year, Tenant may discontinue its monthly Common Area Expense payments until Landlord issues such annual statement and supporting documentation reasonably satisfactory to Tenant. Tenant shall have no liability for remitting monthly Common Area Expense payments for such time following the expiration of the one hundred twenty (120) day period through the date Landlord's annual statement is actually received by Tenant. Landlord's failure to submit to Tenant an annual statement (and supporting documentation satisfactory to Tenant) for Common Area Expense within twelve (12) months after the end of the calendar year shall nullify Landlord's right to collect from Tenant the reimbursement for that particular calendar year and Tenant may take a credit against rent and other charges due under this Lease for any sums already paid by Tenant for such calendar year.

Tenant's obligation for a pro rata share of Landlord's Common Area Expense shall be pro rated at the beginning or end of the Term, for the period of time Tenant has rent obligations under this Lease compared to the period of time covered by Landlord's Common Area Expense statement.

17. **REPAIRS AND MAINTENANCE - LANDLORD.** Commencing on the Rent Commencement Date and during the Term, Landlord shall maintain the Shopping Center, at its sole cost and expense, in good condition and shall perform all necessary maintenance, repair, and replacement:

A. to the structure and exterior of the Building, to the extent not the responsibility of Tenant under Section 18, including but not limited to:

(i) the roof, drains, gutters and downspouts such that the Building remains weather-tight and storm water is directed away from the foundation;

(ii) the foundation, sub-floors, walls;

B. to all outdoor elements of the Demised Premises and the Shopping Center, to the extent not the responsibility of Tenant under Section 18, including, but not limited to:

(i) the integrity of the structure and surface of all paved areas including sealing and striping (except for the Fenced Outdoor Display Area) such that there are no pot holes or other conditions that may compromise its utility and safety (certain expenses may be included in Common Area Expense subject to the terms of Section 16);

(ii) all exterior utility lines and pipes to the point of entry to the Building;

(iii) all other structural portions of the Demised Premises.

C. maintaining, repairing and testing the fire sprinkler system, if any, (which expenses may be included in Common Area Expense subject to the terms of Section 16);

D. covered, or required to be covered, by Landlord's insurance obligations under this Lease; and,

E. necessitated due to the negligence or intentional misconduct of Landlord and/or its agents, or other occupants of the Shopping Center, including items which would be Tenant's responsibility under Section 18 but for such negligence or intentional misconduct, or due to Landlord's failure to observe or perform any of its covenants or obligations under this Lease.

Landlord has the right and responsibility to enter the Demised Premises periodically, at any reasonable time during Tenant's normal business hours and upon reasonable advance notice to Tenant, to inspect the condition of the Demised Premises and to perform any maintenance, repairs or replacements required to be performed by Landlord hereunder. Any maintenance, repairs, or replacements by Landlord shall be performed so as to cause the least interference possible with Tenant's business operation. If Tenant shall become aware of any maintenance, repair or replacement that may be necessary and which is Landlord's obligation hereunder, Tenant shall notify Landlord in writing. Landlord shall complete any such maintenance, repair or replacement within thirty (30) days of the date of Tenant's notice to Landlord (or sooner in the event of an emergency); provided, however, if any required repair, restoration or replacement cannot be reasonably accomplished within such thirty (30) day period, then Landlord shall commence same within such thirty (30) day period and diligently pursue same to completion, but in no event shall such completion extend beyond sixty (60) days from Tenant's notice.

18. **REPAIRS AND MAINTENANCE - TENANT.** Commencing on the Rent Commencement Date and during the Term, Tenant shall be responsible, at its sole cost and expense for:

- A. repairing and replacing glass, windows and doors;
- B. maintaining the interior of the Building, excluding Landlord's obligations under Section 17;
- C. maintaining and repairing (i) the pavement (including resurfacing, if necessary) and (ii) the fence in the Fenced Outdoor Display Area;
- D. snow plowing within the Fenced Outdoor Display Area, in Tenant's sole discretion;
- E. maintaining, repairing and replacing the HVAC, electrical and plumbing equipment and systems in the Building, provided Tenant shall have no such obligation during the last three (3) years of the Term;
- F. maintaining, repairing and replacing Tenant's building sign(s); and
- G. repairs or replacements necessitated due to the negligence or intentional misconduct of Tenant and/or its agents, including items which would be Landlord's responsibility under Section 18 but for such negligence or intentional misconduct, or due to Tenant's failure to observe or perform any of its covenants or obligations under this Lease.

19. **INSURANCE.**

A. **Landlord's Insurance.**

(i) **Commercial General Liability Insurance.** Landlord agrees to carry and maintain commercial general liability insurance on an occurrence form, including contractual liability, personal and bodily injury, and property damage insurance, on the Shopping Center, with a combined single limit in an amount sufficient to protect Landlord and Tenant, but in no event will such insurance be in an amount less than a combined single limit of \$2,000,000 per occurrence and an aggregate limit of \$5,000,000. Tenant shall be named as an additional insured under

Landlord's insurance subject to the provisions of this Lease. Landlord shall provide Tenant with a certificate of insurance evidencing such coverage prior to the Rent Commencement Date and thereafter, once annually within thirty (30) days of the policy's expiration date. Landlord's insurance shall contain a clause stating that there shall be no reduction, cancellation, or non-renewal of coverage without giving Tenant ten (10) days prior written notice. Such insurance shall also be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by Tenant and which relate to Landlord's negligence and/or obligations hereunder, and shall contain a severability of interest clause. All Landlord insurers shall have an A.M. Best rating of at least A- VIII.

(ii) Property Insurance. Landlord shall carry property insurance insuring the Demised Premises, including any structural alterations made by Tenant pursuant to Section 32, and the Shopping Center for perils covered by the causes of loss – "special form all risk" including building ordinance coverage, and in addition, flood (if Shopping Center is in a zone designated A or V), and boiler and machinery coverage (if applicable). Such insurance shall be written on a replacement cost basis with an agreed value equal to the full insurable replacement value of the foregoing. Landlord shall provide Tenant with a certificate of insurance evidencing such coverage prior to the Rent Commencement Date and thereafter, once annually within thirty (30) days of the policy's expiration date.

(iii) Tenant's Reimbursement. Tenant shall reimburse Landlord for its pro rata share of Landlord's commercial general liability and property insurance premiums for the Shopping Center as required to be carried hereunder. Tenant's pro rata share shall be in the ratio which the number of square feet in the Building bears to the Leaseable Area. Landlord shall bill Tenant within sixty (60) days of the date of Landlord's payment of premiums which billings shall be accompanied by legible copies as of the paid premium invoices and such additional information as may be necessary to calculate Tenant's pro rata share. If Landlord fails to bill Tenant within twelve (12) months of the date of Landlord's payment of a premium, Tenant's reimbursement obligation for that premium shall thereupon be extinguished. Tenant's obligation for a pro rata share of Landlord's insurance costs shall be pro rated at the beginning and end of the Term for the period of time Tenant has rent obligations under this Lease compared to the period of time covered by Landlord's insurance policies. Landlord shall use due diligence and good faith to obtain the insurance at a rate favorable to Tenant.

B. Tenant's Insurance. At all times Tenant occupies the Demised Premises, Tenant shall, at its sole cost and expense, and subject to the terms of this Lease, carry and maintain commercial general liability insurance, including contractual liability, personal and bodily injury, and property damage insurance, on the Demised Premises, with a combined single limit of not less than \$2,000,000 per occurrence and an aggregate of \$5,000,000. Landlord shall be named as an additional insured under Tenant's insurance, subject to the provisions of this Lease. Such insurance shall also be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by Landlord and which relate to Tenant's negligence and/or obligations hereunder, and shall contain a severability of interest clause. Tenant shall provide Landlord with a certificate of insurance as evidence of such coverage. Tenant may provide the insurance herein required in any blanket policy or policies which it carries. All Tenant insurers shall have an A.M. Best rating of at least A- VIII. Provided Tenant maintains a consolidated tangible net worth of at least \$100,000,000 determined in accordance with GAAP, Tenant may self-insure its required insurance. Tenant shall name as an additional insured and provide proof of insurance to Landlord's mortgagee only upon receipt of written notice, provided in accordance with Section 50, of mortgagee's name and address.

C. Mutual Waiver of Subrogation. Each party to the extent possible shall obtain, for each policy of property insurance, provisions permitting waiver of any claim against the other party for loss or damage within the scope of the insurance.

20. **WAIVER OF CLAIMS.**

A. **Landlord's Waiver.** Landlord and all parties claiming under Landlord waive, release and discharge Tenant from all rights of recovery, causes of action, claims and liabilities arising from or caused by or resulting from fire or other casualty or hazard to the extent covered by insurance or could be covered by a "special form-all risk" policy available on the Demised Premises and the Shopping Center, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof. The foregoing waiver shall apply regardless of the cause or origin of the claim, including but not limited to, the negligence of Tenant or Tenant's agents, officers, employees or contractors.

B. **Tenant's Waiver.** Tenant and all parties claiming under Tenant waive, release and discharge Landlord from all rights of recovery, causes of action, claims and liabilities arising from or caused by or resulting from fire or other casualty or hazard to the extent covered by insurance or which could be covered by insurance available for Tenant Property, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof. The foregoing waiver shall apply regardless of the cause or origin of the claim, including but not limited to, the negligence of Landlord or Landlord's agents, officers, employees or contractors.

21. **INDEMNIFICATION.**

A. **Landlord Indemnification.** Subject to Subsection 20 B, Landlord shall defend, indemnify and save harmless the Tenant Indemnitees from and against any and all claims, costs, damages, judgments, expenses, fines, liabilities and losses (including reasonable attorneys' fees, paralegal fees, expert witness fees, consultant fees, and other costs of defense) arising from or as a result of (i) any accident, injury, including death, loss or damage of any kind whatsoever caused to any person or to the property of any person as shall occur in the Shopping Center, including on the Demised Premises, commencing on the Rent Commencement Date and during the Term caused by the negligence or misconduct of Landlord, its agents, employees or contractors, or (ii) Landlord's failure to perform its obligations under this Lease. The indemnities provided herein are ones of first defense and payment, not of reimbursement or surety and shall in no way be limited by or to the amount of insurance carried, or required to be carried, by Landlord. The obligations of this Subsection 21 A shall survive expiration or termination of this Lease.

B. **Tenant Indemnification.** Subject to Subsection 20 A, Tenant shall defend, indemnify and save harmless Landlord and its directors, officers, partners, employees and agents ("**Landlord Indemnitees**") from and against any and all claims, costs, damages, judgments, expenses, fines, liabilities and losses (including reasonable attorneys' fees, paralegal fees, expert witness fees, consultant fees, and other costs of defense) arising from or as a result of (i) any accident, injury, including death, loss or damage of any kind whatsoever caused to any person or to the property of any person as shall occur in the Shopping Center, including on the Demised Premises commencing on the Rent Commencement Date and during the Term caused by the negligence or misconduct of Tenant, its agents, employees or contractors, or (ii) Tenant's failure to perform its obligations under this Lease. The indemnities provided herein are ones of first defense and payment, not of reimbursement or surety and shall in no way be limited by or to the amount of insurance carried, or required to be carried, by Tenant. The obligations of this Subsection 21 B shall survive expiration or termination of this Lease.

22. **ENTRANCES.** Tenant shall have unrestricted use and access to all streets, entrances, passways, loading docks, and delivery lanes to the Demised Premises and easements adjacent thereto. Landlord shall not permit or allow any changes to the entrances, easements, passways, curb cuts and delivery lanes on or benefiting the Shopping Center and/or the Demised Premises without the prior written consent of Tenant, not to be unreasonably withheld. If any street, right of way, or all or any part of the Common Area is obstructed or blocked for repairs, reconstruction, or otherwise for more than 48 hours, to the extent the operation of Tenant's business is adversely affected, a proportionate reduction of rent shall be made. If customer access to Tenant's store is blocked for any reason other than the negligence or other action of Tenant or its employees, agents or contractors, rent shall equitably abate.

23. **UTILITIES.** Tenant shall have the right to select its utility service providers, and shall pay for all utilities used by it in the Demised Premises during the Term of this Lease. Landlord shall provide any reasonable easements or licenses required by any utility providers for which Tenant seeks services for the operation of its business, including internet or telecommunication services, within fifteen (15) days after Tenant's request provided Landlord and Landlord's lender reasonably approve same.

24. **TAXES AND ASSESSMENTS.** Beginning on the Rent Commencement Date, Tenant shall pay Landlord annually Tenant's pro rata share of tax payments for real estate, ad valorem and special assessments (collectively the "**Taxes**") lawfully imposed against the Shopping Center for the then current calendar year. Tenant's pro rata share shall be in the ratio which the number of square feet in the Building bears to the Leaseable Area. Within ninety (90) days after the end of each calendar year, Landlord shall furnish Tenant a statement, and supporting documentation reasonably satisfactory to Tenant, including (i) copies of all bills for Taxes for the Shopping Center, (ii) proof of Landlord's payment of the Taxes, and setting forth with particularity the size of the Leaseable Area, any changes in the size of the Leaseable Area during the calendar year and the effective date of such changes, Tenant's pro rata share of Taxes for the calendar year just ended, and Tenant's payments made during the calendar year. If Tenant's pro rata share of Taxes exceeds the payments made by Tenant, Tenant shall pay Landlord the deficiency within sixty (60) days after receipt of the statement and the supporting documentation reasonably satisfactory to Tenant. If Tenant's payments made during the calendar year exceeds Tenant's pro rata share of Taxes, Landlord shall refund to Tenant the amount of the overpayment along with the issuance of the statement. Commencing in the second calendar year of the Term, Tenant's monthly payment shall be adjusted once annually to equal 1/12<sup>th</sup> of Tenant's actual pro rata share of Taxes for the immediately preceding calendar year.

If Landlord does not issue its annual statement for Taxes (and supporting documentation satisfactory to Tenant) within one hundred eighty (180) days after the end of any calendar year, Tenant may discontinue its monthly payments for Taxes until Landlord issues such annual statement and supporting documentation reasonably satisfactory to Tenant. Tenant shall have no liability for remitting monthly payments for Taxes for such time following the expiration of the one hundred eighty (180) day period through the date Landlord's annual statement is actually received by Tenant. Landlord's failure to submit to Tenant an annual statement (and supporting documentation reasonably satisfactory to Tenant) for Taxes within twelve (12) months after the end of the calendar year shall nullify Landlord's right to collect from Tenant the reimbursement for that particular calendar year and Tenant may take a credit against rent and other charges due under this Lease for any sums already paid by Tenant for such calendar year.

Tenant's obligation for a pro rata share of Landlord's Taxes shall be pro rated at the beginning or end of the Term, for the period of time Tenant has rent obligations under this Lease compared to the period of time covered by Landlord's statement for Taxes.

Landlord agrees to pay all Taxes before delinquency and shall further obtain all savings offered for early payment. Tenant shall not be obligated to pay any portion of any penalty for delinquent payment or for a saving which could have been realized for discounted early payment, provided Landlord timely provides Tenant with the tax bill and Tenant timely pays its pro rata share of same. Tenant shall have no obligation to pay, or liability for, any franchise, corporate, estate, inheritance, succession, transfer, net income, AMT, or excess profits taxes or other similar taxes, whether currently existing or imposed during the Term of this Lease. Any rollback taxes that may be or become due as the result of any assessment based on a change in land use shall be Landlord's obligation.

25. **PERMITTED CONTESTS.** Landlord agrees to copy Tenant on all notices that Taxes are to be increased within seven (7) days of receipt of such notices. In the event Tenant, in its sole discretion, determines to contest the proposed increase, it shall so notify Landlord within seven (7) days of receipt of Landlord's notice. Landlord shall timely file all notices or other legal papers with the taxing authority proposing the Tax increase to assert Landlord's right to contest the proposed Tax increase. Landlord shall diligently contest the proposed Tax increase. Tenant shall pay its pro rata share of Landlord's reasonable costs and expenses incurred in contesting the proposed Tax increase. Tenant's

pro rata share shall be the ratio which the number of square feet in the Building bears to the Leaseable Area.

26. **ASSIGNMENT AND SUBLETTING.** Tenant may sublet or assign the Demised Premises at any time when the use by the subtenant or assignee shall not be in violation of any Permitted Encumbrance. Tenant shall notify Landlord with the name of the subtenant or assignee within fifteen (15) days of any subletting or assignment. Following any subletting or assignment, Tenant shall not be relieved from any of the terms and conditions of this Lease, and shall remain primarily liable. After such subletting or assignment, the word Tenant as used herein shall include any such subtenant or assignee.

27. **SIGNS.** Landlord hereby approves Tenant's standard signs consisting of a store front sign over the primary entrance to store and a free standing pylon sign, as described and depicted in **Exhibit "D" ("Tenant's Standard Signs")**. Landlord and Tenant agree that Tenant's Standard Signs shall be limited in size only by Tenant's discretion and applicable Laws, which may include any lawful variance granted. If Tenant chooses to seek a variance, Landlord agrees to cooperate with Tenant in securing such variance(s), including but not limited to signing any application and/or (if required) appearing at any hearing or before any board or commission as may be required. Tenant shall be responsible to obtain, at solely its cost and expense, any permit required for the installation of Tenant's signs.

28. **CONDITION OF PREMISES; COMPLIANCE WITH LAWS.**

A. **Tenant's Compliance.** Tenant shall comply in all material respects with all Laws, as such term is defined below, (i) regarding the physical conditions of the Demised Premises, but only to the extent the Laws pertain to the particular manner in which Tenant uses the Demised Premises; or (ii) that do not relate to the physical condition of the Demised Premises but relate to the lawful use of the Demised Premises and with which only the occupant can comply, such as laws governing maximum occupancy, workplace smoking, and illegal business operations; the obligation to comply in every other case is expressly assumed by Landlord. Notwithstanding anything to the contrary set forth in this Lease, Tenant shall not be required to construct or pay the cost of complying with any requirements resulting from encumbrances to Landlord's title, underwriters' requirements or Laws requiring construction of improvements in the Demised Premises which are properly capitalized under general accounting principles, unless such compliance is necessitated solely because of Tenant's particular use of the Demised Premises.

The term "**Laws**" shall mean all laws, statutes, ordinances, rules and regulations and orders applicable to the Demised Premises or the Common Areas of any municipal, county, state, federal, or other government agency or authority having jurisdiction over the parties to this Lease or the Demised Premises, or both, in effect at the Effective Date or any time during the Term.

B. **Landlord's Compliance.** Landlord represents and warrants that as of the Effective Date, the Demised Premises and the Common Areas shall conform to all requirements of encumbrances to Landlord's title, all underwriters' requirements, and all Laws applicable thereto, including but not limited to compliance with the applicable provisions of the Americans with Disabilities Act of 1990 ("**ADA**") (Pub. L 101-36), and the ADA Accessibility Guidelines for Buildings and Facilities as issued and amended by the U.S. Architectural and Transportation Barriers Compliance Board (56 F.R. 35455 et. seq.). Except as is specifically Tenant's responsibility under Subsection 29 A, Landlord shall comply in all material respects with all Laws, regarding the physical conditions of the Demised Premises and the Common Areas.

29. **ENVIRONMENTAL CONDITIONS. Landlord's Obligations.**

(i) **Landlord's Representations and Warranties.** Landlord represents and warrants that to the best of Landlord's knowledge any use, storage, treatment, disposal, handling or transportation of Hazardous Materials (as defined below) which has occurred upon the Shopping Center prior to the Rent Commencement Date has been in compliance with all applicable federal, state and local laws, regulations and ordinances now in effect. Landlord



additionally represents and warrants that to the best of Landlord's knowledge no release, leak, discharge, spill, disposal or emission of Hazardous Materials has occurred upon or under the Shopping Center.

(ii) Landlord's Indemnification. In addition to any other rights and remedies that Tenant may have at law or in equity and notwithstanding the limitation of Landlord's representations and warranties in Subsection 29 A (i), Landlord agrees, at its sole cost and expense, to indemnify, defend and hold Tenant Indemnitees harmless against and from any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings (administrative or otherwise), costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys' fees, consultants', and experts' fees and expenses and disbursements incurred in investigating, defending against, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against any of the Tenant Indemnitees and arising directly or indirectly under or on account of any Environmental Condition (as such term is defined below) of the Shopping Center, regardless of whether such Environmental Condition was disclosed in the Assessment or whether such Environmental Condition arose prior or subsequent to the execution of this Lease; provided however, that Landlord shall have no obligation to indemnify Tenant Indemnitees for any Tenant Environmental Indemnification Items (as defined below). Landlord's obligations under this Subsection 29 A (ii) shall survive expiration or termination (unless otherwise provided) of this Lease.

B. Tenant's Obligation. Tenant covenants that it shall comply in all material respects with Environmental Laws in the operation of its business. Further, Tenant shall indemnify and hold Landlord Indemnitees harmless from and against all claims, damages, losses, costs, expenses (including, without limitation, reasonable attorneys' fees), actions and liabilities arising out of the treatment, storage, disposal or the arranging therefor of Hazardous Material or Hazardous Substance generated or used by Tenant on the Shopping Center in violation of Environmental Laws, including, without limitation, claims or natural resource damage, personal injury, property damage or response or remedial costs ("**Tenant Environmental Indemnification Items**"). Tenant's obligation under this Subsection 29 B shall survive expiration or termination (unless otherwise provided) of this Lease.

C. Definitions. For purposes of this Lease, the following defined terms shall apply:

(i) "**Environmental Laws**" shall mean any federal, state or local statute, regulation or ordinance of any judicial or administrative decree or decision, whether now existing or hereafter enacted, promulgated or issued, with respect to air, water and soil including without limitation Hazardous Materials, Hazardous Substances, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, air emissions or wells.

(ii) "**Hazardous Materials**" and "**Hazardous Substances**" shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous, toxic or presents a risk to human health or the environment under any Environmental Laws.

(iii) "**Environmental Condition**" shall mean the presence in, on or under the Shopping Center of any "Hazardous Substance" or "Hazardous Material" as such terms are defined herein, the removal of which is required or the existence or management of which is prohibited, penalized, or regulated by Environmental Laws.

30. SATELLITE SYSTEM. Tenant has installed at or on the Building, and Landlord acknowledges and approves, a satellite communications antenna and related equipment (collectively, "**Satellite Equipment**"), which shall become part of Tenant Property. Tenant represents to Landlord that Tenant has installed such Satellite Equipment at its own cost and expense and in accordance with Laws. Tenant shall be responsible for the maintenance and repair thereof, at Tenant's sole cost. Tenant agrees

34. **CONDEMNATION.**

A. **Demised Premises.** In the event the Demised Premises are taken in Condemnation Proceedings, Tenant may cancel the Lease without further liability to Landlord. In the event any part of the Demised Premises are taken in Condemnation Proceedings so that in the reasonable business judgment of Tenant the Demised Premises remaining would be unsatisfactory for Tenant's business operation, Tenant may cancel this Lease or, at its option, retain that portion of the Demised Premises not taken. In the event Tenant retains the Demised Premises, Landlord will promptly and with due diligence restore the remaining premises to proper tenantable condition. Until the Demised Premises are restored to proper tenantable condition rent shall abate. Thereafter, rent shall be reduced in proportion to the amount of land and building area lost, or, if Tenant shall elect, in proportion to the effect of the loss of such area on Tenant's business, as reasonably determined by Tenant and Landlord in their commercially reasonable business judgment. In the event that the laws governing the Condemnation Proceedings provide separate compensation/benefits for lessees, Tenant shall be entitled to such compensation and/or benefits provided that it does not diminish any award or right to which Landlord is entitled.

B. **Shopping Center.** In the event any part of the Shopping Center, or rights-of-way or approaches to the Shopping Center are taken in condemnation proceedings so that in the reasonable judgment of Tenant the portion of the Shopping Center remaining would be unsatisfactory for Tenant's business operation, Tenant may cancel this Lease, or at Tenant's option, remain as Tenant under this Lease, in which case Landlord shall promptly and diligently restore the entire remaining Shopping Center to proper tenantable condition. Until the Shopping Center is restored to proper tenantable condition, rent shall abate. Thereafter, rent shall be reduced in proportion to the amount of land or building areas lost, or if Tenant shall elect, in proportion to the effect of the loss of such area on Tenant's business, as reasonably determined by Tenant and Landlord in their commercially reasonable business judgment.

C. **Condemnation Proceedings Defined.** For purposes of this Lease, the term "**Condemnation Proceedings**" shall mean a governmental taking of all or any part of the Demised Premises or the Shopping Center, and shall include conveyances and grants made in anticipation of or in lieu of Condemnation Proceedings

35. **TENANT'S DEFAULT.** If Tenant defaults in the performance of any obligation under this Lease, Landlord shall give notice to Tenant specifying the nature of the default. (i) Non-Monetary Defaults. If Tenant does not, within thirty (30) days after receipt of the notice, cure the default, or, if the default is of a nature that it cannot reasonably be cured within a period of thirty (30) days, and Tenant does not commence the cure within the thirty (30) day period and proceed thereafter with reasonable diligence and in good faith to cure the default (but in no event shall such additional cure period exceed thirty (30) days unless upon mutual agreement of the parties), then after the expiration of the thirty (30) day period Landlord shall have the right to pursue its legal and equitable remedies. (ii) Monetary Defaults. If Tenant does not, within fifteen (15) days after receipt of the notice, cure a default in the payment of rent or other charges properly due to Landlord, then after the expiration of the fifteen (15) day period Landlord shall give a second notice to Tenant, and if Tenant does not, within five (5) days after receipt of the second notice, cure the default, then after the expiration of the second five (5) day period Landlord shall have the right to pursue its legal and equitable remedies; provided, however, after the second written notice in any calendar year, no further written notices will be required in such calendar year before Landlord shall have the right to pursue such remedies.

36. **LANDLORD'S DEFAULT.** If Landlord defaults in the performance of any obligation under this Lease, Tenant shall give notice to Landlord specifying the nature of the default. If Landlord's default shall continue for more than thirty (30) days after receipt of the notice, then Tenant shall give a second notice to Landlord, and if Landlord does not, within five (5) days after receipt of the second notice, cure the default, then after the expiration of the second five (5) day period, Tenant may (i) pursue its legal and equitable remedies, and/or (ii) cure the default (without notice if in Tenant's reasonable judgment an emergency shall exist), and Landlord shall pay to Tenant upon demand the cost thereof within ten (10) days. If Landlord does not make such payments to Tenant within ten (10) days, Tenant may offset the amount due from Landlord against any payments for rent or other payments due Landlord, if any,

provided Tenant's offset right shall be limited to no more than fifty percent (50%) of any single installment of Fixed Rent unless there are not enough installments of Fixed Rent remaining in the Term of this Lease to fully reimburse Tenant for such payments if Tenant's offset right is limited to fifty percent (50%) of any single installment of Fixed Rent, wherein Tenant shall be authorized to offset any rent payments, Fixed or otherwise, until it has been reimbursed for all costs and expenses associated with curing such default. Any such offset shall not constitute a default by Tenant unless Tenant shall fail to pay the amount of such offset to Landlord within ten (10) days after a final unappealable adjudication by a court of competent jurisdiction that such amount is owing to Landlord. Except when in Tenant's reasonable judgment an emergency shall exist, Tenant shall not commence to cure any default of a nature that could not reasonably be cured within a period of thirty (30) days, provided Landlord shall have commenced to cure the default within the cure period and so long as Landlord proceeds with reasonable diligence and in good faith to cure the default.

37. **USE AND QUIET POSSESSION.**

A. **Use.** Except with respect to the Prohibited Uses (hereinafter defined) and to the extent prohibited by the Permitted Encumbrances, Tenant may use the Demised Premises for any lawful purpose, provided that Tenant may not change its use to one which violates any then existing exclusive of another tenant in the Shopping Center or in any recorded instrument. The "**Prohibited Uses**" shall mean use of any part of the Demised Premises for (i) livestock slaughter or feeding, (ii) fireworks or explosives storage, distribution or manufacture, (iii) any use which would require a license from the Nuclear Regulatory Commission, (iv) biological or hazardous waste incineration, (v) scrap material accumulation, storage or sales, (vi) smelting, (vii) a rendering plant, (viii) the principal use being the manufacture, distribution, storage, treatment, incineration or disposal of chemicals, petroleum products, solvents, hazardous waste or other Hazardous Materials, (ix) a cement or asphalt plant, (x) a crematorium, (xi) a dry cleaning plant or central laundry facility or (xii) the manufacture, storage, distribution, production, sale of or any use involving pornographic materials or items, or (xiii) any establishment featuring nude, topless or partially-clad dancing.

B. **Quiet Possession.** Subject to the Permitted Encumbrances, Landlord covenants that it will put Tenant into complete and exclusive possession of the Demised Premises, free from all orders, restrictions and notices of any public or quasi-public authority, and that if Tenant shall pay the rental and perform all the covenants and provisions of this Lease to be performed by Tenant, Tenant shall, commencing on the Rent Commencement Date and during the Term, freely, peaceably and quietly occupy and enjoy the full possession of the Demised Premises, and the tenements and appurtenances thereto belonging, and the rights and privileges granted without hindrance. In addition, Landlord agrees to indemnify, defend, and hold Tenant harmless from any and all claims seeking to prevent Tenant from quiet and complete possession of the Demised Premises. If any time after the Effective Date, the title of Landlord shall fail for any reason, then Tenant shall, in addition to all remedies available at law or in equity, have the right on Landlord's behalf and at Landlord's expense to correct any default and offset such amount against rent or terminate this Lease, provided Tenant's offset right shall be limited to no more than fifty percent (50%) of any single installment of Fixed Rent unless there are not enough installments of Fixed Rent remaining in the Term of this Lease to fully reimburse Tenant for such payments if Tenant's offset right is limited to fifty percent (50%) of any single installment of Fixed Rent, wherein Tenant shall be authorized to offset any rent payments, Fixed or otherwise, until it has been reimbursed for all costs and expenses associated with curing such default.

38. **TENANT'S BUSINESS OPERATION.** Landlord and Tenant agree that nothing in this Lease shall be construed to imply that Tenant is required to conduct its business in any particular manner or for any specified number of hours per day or week, or to limit the number of hours per day or week that Tenant may operate in the Demised Premises, or as creating an implied or expressed obligation upon Tenant to continuously occupy or operate a business in the Demised Premises.

39. **SURRENDER OF DEMISED PREMISES.** Upon the expiration of this Lease and all renewal periods, Tenant shall peaceably surrender the Demised Premises to Landlord in the same condition in which they were received from Landlord at the commencement of this Lease, except: (i) as altered as permitted or required by this Lease; (ii) for repairs, replacements and maintenance required to

be performed by Landlord; (iii) for items covered by Landlord's insurance; and (iv) except for ordinary wear and tear. This Section 39 shall not apply to cancellation or termination of this Lease pursuant to Section 31, DAMAGE TO DEMISED PREMISES, or pursuant to Section 34, CONDEMNATION, pursuant to which Tenant shall have no obligation or liability to Landlord. Tenant shall remove its property from the Premises within a reasonable time after the Lease expiration (not to exceed fifteen (15) days), without additional rent obligation.

40. **RIGHT TO AUDIT.** Landlord and Tenant agree to keep their financial records related to this Lease in accordance with sound accounting principles on a consistently applied basis. Within one (1) year of the issuance of any statement under this Lease, the parties or their authorized representatives may, at any reasonable time, upon seven (7) days prior written notice to the other, have the right to audit the other party's business records relating to any statement issued by one party to the other for the period covered by the statement. In the event the audit discloses an underpayment or over-billing of more than five percent (5%), the party conducting the audit shall be reimbursed for the reasonable cost of the audit by the audited party. In addition, the amount of underpayment or over-billing disclosed by an audit shall be paid by the audited party to the auditing party regardless of amount.

41. **LANDLORD'S CONSENTS AND APPROVALS.** Whenever it is stated in this Lease that Landlord's consent or approval is required, Landlord agrees that such consent or approval will not be unreasonably withheld, conditioned or delayed. If, in any instance, Landlord refuses to grant its consent or approval, Landlord agrees to simultaneously give Tenant written notice of the reason(s) for such refusal. If Landlord's consent or approval is not given or refused within ten (10) days after Tenant's written request therefore, Tenant shall give Landlord a second written request therefore, and if Landlord's consent or approval is not given or refused within five (5) days after Landlord's receipt of such second request, such consent or approval shall be deemed automatically granted.

42. **ATTORNEYS' FEES.** If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, including, but not limited to, fees and costs of appeal.

43. **RECORDING.** In the event either party desires to record the existence of this Lease, the parties agree to execute a Memorandum of Lease setting forth the term, number of renewal option periods and length, the exclusive use covenant in favor of Tenant, the description of the Demised Premises, and any other terms and conditions of the Lease the parties agree to make of public record. Tenant agrees to execute a release in recordable form upon termination of this Lease.

44. **NO WAIVER.** The failure of Landlord or Tenant to insist upon the strict performance of any provision of this Lease, or the failure of Landlord or Tenant to exercise any right, option or remedy contained in this Lease shall not be construed as a waiver for the future of any such provision, right, option, or remedy, or as a waiver of any subsequent breach. No provision of this Lease shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

45. **TRUE LEASE.** This Lease is intended as, and shall constitute, an agreement of lease, and nothing herein shall be construed as conveying to Tenant any right, title or interest in or to the Demised Premises nor to any remainder or reversionary estates in the Demised Premises held by any person, except, in each instance, as a Tenant. Under no circumstances shall this Lease be regarded as an assignment of all of Landlord's interests in and to the Demised Premises. Instead Landlord and Tenant shall have the relationship between them of Landlord and Tenant, pursuant to the provisions of this Lease.

46. **PUBLIC RELEASES.** Landlord and Tenant agree that no press release or other public disclosure shall be made by either of them or any of their respective agents concerning this transaction without the prior written consent of the other. Tenant agrees that a "tombstone" type advertisement may be placed by Landlord upon execution of this Lease, provided, however, that Landlord agrees to obtain approval from Tenant with respect to the contents thereof prior to placing such advertisement.

47. **CONFIDENTIALITY.** Landlord and Tenant covenant and agree to hold in confidence ALL terms and conditions of this Lease not made a matter of public record by virtue of a recorded Memorandum of Lease as provided for in Section 43 of this Lease unless the party desiring to disclose the confidential information requests the consent of the non-disclosing party; provided, however, such written request shall contain the information to be disclosed and each party to whom disclosure is sought. Written consent of the non-disclosing party shall be narrowly construed to apply only to those matters and those persons set forth in the disclosing party's written request. It is expressly agreed that confidentiality is of the utmost importance to Tenant's ongoing business and in the event Landlord makes a disclosure in breach of this provision Tenant shall have standing to enforce this covenant at law or in equity. This covenant shall be governed by the laws of the State of Tennessee without regard to its conflict of laws or any other provision for conflict of laws. Notwithstanding anything contained herein to the contrary, Landlord may disclose the terms and conditions of this lease to those parties necessary to obtain financing in connection with the Demised Premises or Landlord's construction obligations hereunder (e.g. appraiser, lender, accountant, attorney) and potential buyers of the Demised Premises; provided, however, Landlord shall be responsible for obtaining adequate assurances from such parties that the terms and provisions hereof will be held in confidence as Landlord shall continue to be liable hereunder for any disclosure not in compliance with this Section 47.

48. **INCENTIVES.** Landlord hereby waives and disclaims for itself and all third parties claiming through it, any and all rights and interest to any incentives, tax abatements or inducements or the like made or offered (either in the past or in the future) to Tenant by any state or local government agency, development authority, or otherwise in connection with the Demised Premises. Landlord agrees to execute, acknowledge and deliver to Tenant, upon no less than ten (10) days' prior request by Tenant, all documents necessary in a form reasonably satisfactory to Tenant, waiving and disclaiming Landlord's interest in any such incentives, tax abatements, inducements or the like.

49. **HOLD OVER.** Any holding over by Tenant beyond the Initial Term of the Lease or any Extension Term thereof shall be on the same terms and conditions as contained herein except that rent shall be increased to 150% of the rent paid in the last month of the expired term (unless Landlord and Tenant are in active negotiations for another renewal after the end of the second Extension Term, in which event the increase in rent shall be delayed for up to thirty (30) days), and shall be a month-to-month tenancy, terminable by either party upon thirty (30) days prior written notice to the other party.

50. **NOTICES.** All notices required under this Lease shall be given and deemed to have been properly served if delivered in writing personally, by certified mail, by a nationally recognized overnight courier providing signed proof of delivery, or via facsimile with proof of transmission to:

Landlord at:

Decatur Midstar, LTD  
1848 Norwood Plaza, Suite 214  
Hurst, TX 76054  
Facsimile: (817) 268-2240  
Telephone: (817) 268-5489

To Tenant at:

Lease Administration Department  
Tractor Supply Company  
200 Powell Place  
Brentwood, TN 37027  
Facsimile: (615) 440-4132  
Telephone: (615) 440-4600

or such other place or places as either of them may designate in writing to the other from time to time in accordance with the provisions of this Section 50. Date of service of a notice served by mail shall be the date on which such notice is received by the addressee. Date of service by any other method shall be the date of receipt.

51. **CONDITION OF TITLE: ENCUMBRANCES.** Landlord shall not permit or grant any easements or other encumbrances to be placed of record without Tenant's prior written consent which shall not be unreasonably withheld, conditioned or delayed; provided, Tenant may only withhold consent if such easements or other encumbrances would materially interfere with Tenant's business operation. Examples of conditions causing such material interference may include, but are not limited to, inadequate access to the property, inadequate ingress and egress, inadequate drive lanes, inadequate areas provided for Fenced Outdoor Display Area, Permanent Sidewalk Display Area, and Permanent Trailer and Equipment Display Area (provided Tenant acknowledges that the Outdoor Display Areas (as defined in Section 65 below) as shown on the Site Plan are adequate), inadequate loading dock or delivery areas or access thereto, inadequate paved parking within reasonable proximity to the Building, or inadequate visibility, which determination shall be determined on an objectively reasonable basis by Tenant, exercising its reasonable business judgment.

52. **LANDLORD'S PAYMENT OBLIGATIONS.** Without relieving Tenant of any reimbursement or payment obligation under this Lease, Landlord agrees to pay all costs, charges, assessments and obligations which are its legal responsibility and which are related to the Demised Premises (collectively, "Landlord's Obligations"). In the event Landlord does not timely pay or satisfy any costs, charges, assessments and obligations related to the Demised Premises, Tenant, without liability or forfeiture of the cost thereof against future rent payable and/or any other monies properly due to Landlord hereunder. As a condition to making any such payments, Tenant shall provide Landlord with at least thirty (30) days' advance written notice of its intent to do so (except in the event of foreclosure or forfeiture or other instance where Tenant must make prompt payment to prevent loss of its rights or disruption of its business).

53. **ESTOPPEL CERTIFICATES.** Upon the reasonable request of either party, Landlord and Tenant agree to execute and deliver to the other within ten (10) business days after receipt of the request, a written instrument, (a) certifying that this Lease has not been modified and is in full force and effect or, if there has been a modification of this Lease, that this Lease is in full force and effect as modified, stating such modifications; (b) stating that the fixed monthly rent has not been paid more than thirty (30) days in advance, or if so, the date to which it has been paid; (c) stating whether or not, to the knowledge of the party executing the instrument, the other party hereto is in default and, if the party is in default, stating the nature of the default; and (d) stating the date of this Lease.

54. **SUBORDINATION NON-DISTURBANCE AND ATTORNMEN**. Tenant agrees that this Lease shall, at Landlord's request, be subject and subordinate to any first mortgage or deed of trust hereafter placed upon the Demised Premises upon the condition that the mortgagee or holder of a deed of trust provides Tenant with an SNDA in the form attached hereto and made a part hereof as **Exhibit "F"** or such other form as may be required by Landlord's lender and which is reasonably acceptable to Tenant.

55. **TENANT PROPERTY.** All Tenant's personal property, furniture, furnishings, signs, equipment, machinery, trade fixtures and trade uses ("**Tenant Property**") located at the Demised Premises and/or Shopping Center shall remain the property of Tenant and may be removed from the Demised Premises at any time. Landlord shall have no lien or other interest whatsoever in any Tenant Property and within ten (10) days following Tenant's request, Landlord shall execute documents in reasonable form to evidence Landlord's waiver of any right, title, lien, or interest in Tenant Property located in the Demised Premises.

56. **INVALIDITY OF CERTAIN PROVISIONS.** If any provisions of this Lease shall be invalid or unenforceable, the remainder of the provisions of this Lease shall not be affected and every other provision of this Lease shall be enforceable to the fullest extent permitted by law.

57. **FORCE MAJEURE.** If either party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease by: (a) any strike, lockout, or labor dispute not caused by the negligence non-performing party or breach of a labor contract by the non-performing party; (b) the inability to obtain labor or materials not resulting in any way from the negligence or any act or omission of the non-performing party; (c) an Act of God; (d) governmental restrictions, regulations or controls not existing as of the date of this Lease; (e), enemy or hostile governmental action; (f) civil commotion, insurrection, sabotage, fire or other casualty not resulting from the non-performing party's negligence or other actions; or, (g) any other condition beyond the reasonable control of the responsible party, then the time to perform the obligation or satisfy the condition shall be extended for a period of time equal in length to the length of the event.

58. **GOVERNING LAW; SUBMISSION TO VENUE AND JURISDICTION.** Except as provided in Section 47, this Lease shall be governed by and construed in accordance with the laws of the state in which the Demised Premises are located, without giving effect to its conflict of laws principles or rules. Landlord and Tenant hereby consent to the exercise of personal jurisdiction over them by any court of competent jurisdiction within the locus of the Demised Premises in connection with any action brought for the enforcement of rights or remedies under this Lease and waive all defenses of lack of personal jurisdiction and forum non conveniens.

59. **ENTIRE AGREEMENT.** This instrument its attachments, any duly executed amendments, the documents incorporated into the Lease by reference, and any written agreements which are duly executed pursuant to the terms and provisions of this Lease, if any, contain the entire agreement between the parties and there are no covenants, express or implied, except as contained herein. No statement, promise or inducement made by either party or agent of either party that is not contained in this written agreement shall be valid or binding. No waiver of any condition or covenant of this Lease by either party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant of the Lease. This Lease may be modified only by a written document signed by both Landlord and Tenant.

60. **BINDING EFFECT.** As of the Effective Date, this Lease shall bind and inure to the benefit of the parties hereto, their heirs, successors, executors, administrators, and assigns.

61. **TIME IS OF THE ESSENCE.** It is expressly agreed that time shall be of the essence of this Lease.

62. **LEASE INTERPRETATION.** This Lease has been submitted to the scrutiny of all parties hereto and their counsel, if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight being given to its having been drafted by any party hereto or its counsel. All captions and headings are for convenience of reference only and in no way shall be used to interpret or modify the provisions set forth in this Lease.

63. **COMPUTATION OF DAYS.** When referred to in this Lease, days shall mean calendar days unless otherwise provided. In computing any period of time prescribed or allowed by this Lease, the date of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included; however, if the last day is a Saturday, Sunday, or federally adopted legal holiday, the last day of the period shall be the next day that is not one of the aforementioned days.

64. **LANDLORD'S RIGHT TO RECAPTURE.** If Tenant should discontinue its operations in the Demised Premises for a period of ninety (90) days or more (except in the event of remodeling, assignment or sublet, casualty or condemnation, in which event the time period above shall be increased to one hundred eighty (180) days so long as Tenant commences operations within such one hundred eighty (180) day period), Landlord shall have the right at any time thereafter to re-capture the Demised Premises by delivering thirty (30) days' advance written notice to Tenant. In such event, Tenant shall deliver the Demised Premises to Landlord at the end of such thirty (30) day period in the condition required under the Lease as if the Lease term had naturally expired, and the Lease shall terminate and

the parties shall have no further rights or obligations one to the other thereunder except for those that expressly survive termination.

65. **SHOPPING CENTER EASEMENTS.** Landlord and Tenant acknowledge the Shopping Center will be encumbered by the easements, covenants, conditions and restrictions of the Easements with Covenants and Restrictions Affecting Land dated October 27, 2005, between Wal-Mart Real Estate Business Trust and Decatur Midstar, Ltd and Midstar Properties GP, Inc., recorded in the register's office for Wise County, Texas, Volume 1617, Page 177 and in the form of the document attached as **Exhibit "G"** (the "**Easement**"). Landlord represents and warrants that it shall not initiate, approve, authorize or permit any material modification or change to the form of the Easement without first giving Tenant prior written notice of any proposed change. Tenant shall have thirty (30) days from receipt of such notice to consent.

Landlord hereby grants to Tenant exclusive use and possession of the portions of the Common Areas depicted on **Exhibit "B"** as the Fenced Outdoor Display Area, Permanent Sidewalk Display Area, and Permanent Trailer and Equipment Display Area (collectively the "**Outdoor Display Areas**"), notwithstanding the terms of the Easement, and consents to Tenant's intended use of the Outdoor Display Areas. Landlord shall prevent the exercise of any easement rights granted in the Easement in the Outdoor Display Areas, except by Tenant.

66. **PRIOR LEASE.** Landlord and Tenant agree that on the Rent Commencement Date, the Prior Lease shall terminate (subject to reinstatement as set out in Section 3.B above), and the parties shall have no further rights or duties one to the other thereunder except those that specifically survive termination.

**[SIGNATURES APPEARING ON NEXT PAGE]**



IN WITNESS WHEREOF, the parties have executed this Lease in multiple counterparts, each of which shall be an original document, as of the day and year first above written.

**LANDLORD:**

DECATUR MIDSTAR, LTD.  
a Texas limited partnership

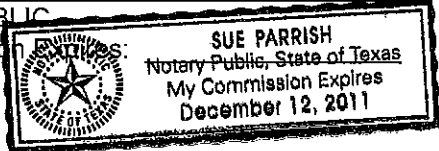
By: Midstar Properties GP, Inc.,  
A Texas corporation,  
its general partner

BY *Burk Collins*  
Burk Collins, President

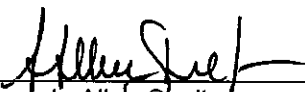
STATE OF TEXAS                     )  
  )  
COUNTY OF TARRANT            )

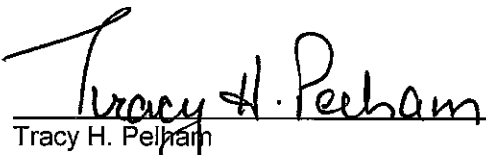
Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared Burk Collins, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Midstar Properties GP, Inc., a Texas corporation, General Partner of Decatur Midstar, LTD., a Texas limited partnership, and that he executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

In Witness Whereof, I hereunto set my hand and official seal this 17 day of April, 2008.

*Sue Parrish*  
NOTARY PUBLIC  
My Commission Expires:  SUE PARRISH  
Notary Public, State of Texas  
My Commission Expires  
December 12, 2011

**WITNESSES FOR TENANT:**

  
Amanda Allen Shelton

  
Tracy H. Pelham

**TENANT:**


TRACTOR SUPPLY COMPANY,  
a Delaware corporation

BY:   
Clay Teter, Vice-President, Real Estate

STATE OF TENNESSEE     )  
                                      )  
COUNTY OF WILLIAMSON    )

Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared Clay Teter, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Vice President - Real Estate of Tractor Supply Company, a Delaware corporation, and that he executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President - Real Estate.

In Witness Whereof, I hereunto set my hand and official seal this 10<sup>th</sup> day of April, 2008.

  
NOTARY PUBLIC: Angela Kelly  
My Commission Expires: March 7, 2011



## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE SHOPPING CENTER

Being a tract or parcel of land out of the J. Bullock Survey, Abstract No. 79, and the A.J. Walker Survey, Abstract No. 860, situated in Wise County, Texas and more particularly a part of that certain 10 acre tract of land conveyed to Wal-Mart Properties, Incorporated of Bentonville, Arkansas, as recorded in Volume 419, Page 810, Deed Records, Wise County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCE at an iron pin in the Southeast corner of said 10 acre tract, said iron pin being situated in the West Right-of-Way line of State Highway No. 51;

THENCE West, a distance of 779.03 feet and North 05 degrees 24 minutes East, a distance of 186.34 feet to the point of beginning of the tract herein described;

THENCE North 05 degrees 24 minutes East with the West line of said 10 acre tract a distance of 373.66 feet and an iron pin for corner said iron pin being in the Northwest corner of said 10 acre tract;

THENCE East with the North line of said 10 acre tract 779.03 feet to an iron pin for corner, said iron pin being in the West Right-of-Way line of said Highway and in the North corner of said 10 acre tract;

THENCE in a Southerly direction with a curve to the right and along said Highway's West Right-of-Way line, said curve having a central angle of 02 degrees 01 minutes 06 seconds a radius of 11,398.90 feet and arc distance of 401.55 feet (chord bearing South 05 degrees 00 minutes 10 seconds West, 401.53 feet) to a point for corner;

THENCE West a distance of 371.00 feet, to a point for corner;

THENCE North a distance of 28.0 feet, a point for corner;

THENCE West a distance of 408.18 feet to the point of beginning, and containing 301.217 square feet or 6.915 acres of land, more or less.

TOGETHER with all rights, and easements, including easement for ingress and egress and cross-parking created by that certain Easements with Covenants and Restrictions affecting land, dated as of May 14, 1982 and filed on September 13, 1982 under Clerk's File No. 65503 in the Deed Records of Wise County, Texas, in Volume 434, Page 798 as modified by a certain First ECR Modification Agreement, dated August 31, 1982 and filed on September 13, 1982, under Clerk's File No. 65504 in the Deed Records of Wise County, Texas, in Volume 434, Page 814.

**EXHIBIT "B"**

**SITE PLAN**

Site Plan Approved by:

*Clay Tefer*

Tenant: Clay Tefer V.P. Real Estate

*B. H. Callen*  
Landlord: *Super Market*

Shopping Center

Permitted Premises

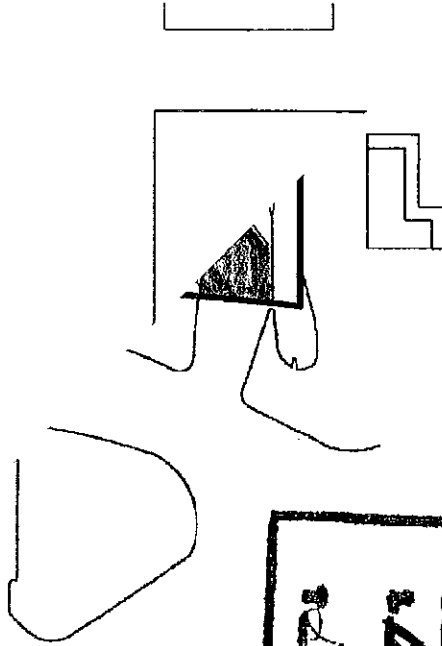
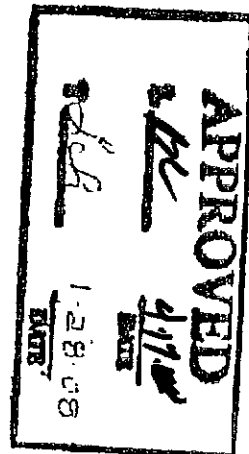
Outdoor Display Area

Trailer & Equipment Display Area

Pedestrian Walkway Display Area

Area

(See SUPPLY)



**EXHIBIT "C"**  
**INTENTIONALLY DELETED**

# EXHIBIT "D" TENANT'S STANDARD SIGNS

## Tenant's Trademark Protected Logo

The content of the Building Sign and the Pylon Sign shall be Tenant's trademark- protected, two-color logo. The Tractor Supply Company logo consists of a rectangle the background of which is white and bordered in black. The interior space of the rectangle is comprised of a Pantone (PMS) 185 Red trapezoid with "TSC" in white lettering on its face, and "Tractor Supply Co" in Black placed to the right of the trapezoid as depicted below.

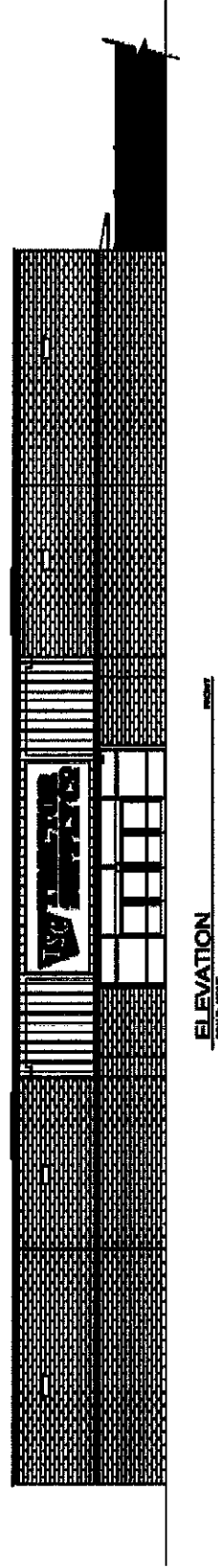
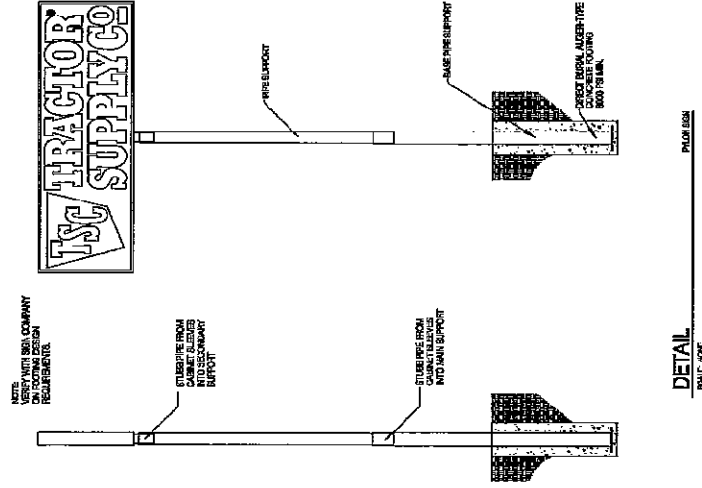


## Tenant's Building Sign

Tenant's Building Sign shall be affixed to the Building centered over the primary entrance to Tenant's store. The Building Sign shall be an internally lit, poly-vinyl box sign, the content of which shall be Tenant's trademark protected, two-color logo as described herein.

## Tenant's Pylon Sign

Tenant's Pylon Sign shall be installed on the Demised Premises or Shopping Center, as applicable, at a location or locations as identified on the Site Plan attached as **Exhibit "B"**. Tenant's Pylon Sign shall be an internally lit, poly-vinyl, two-faced, box sign, the content of which shall be Tenant's trademark protected, two-color logo as described herein.



**EXHIBIT "E"**  
**INTENTIONALLY DELETED**



**EXHIBIT "F"**  
**SNDA**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**, dated as of \_\_\_\_\_, 2008, ("**Agreement**"), by and between Tractor Supply Company, a Delaware corporation, ("**Tenant**"), having an address at 200 Powell Place, Brentwood, Tennessee 37027, \_\_\_\_\_, a \_\_\_\_\_, ("**Landlord**") having an address at \_\_\_\_\_, and \_\_\_\_\_, ("**Mortgagee**"), having an address at \_\_\_\_\_.

**WITNESSETH:**

**WHEREAS**, Tenant has leased from Landlord certain real property and improvements located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, and more particularly described on **Exhibit "A"** (the "**Demised Premises**"), pursuant to that certain lease dated as of \_\_\_\_\_, 2007 (the "**Lease**");

**WHEREAS**, by an Assignment of Lease and Rents from Landlord to Mortgagee (the "Assignment"), Landlord has assigned or will assign its interest under the Lease to Mortgagee; and

**WHEREAS**, Mortgagee is or will be the holder of a Mortgage or Deed of Trust from Landlord to Mortgagee (the "Mortgage") relating to the Demised Premises;

**WHEREAS**, Tenant desires that the Tenant's right of possession under the Lease shall not be disturbed upon deed in lieu of foreclosure, foreclosure of the Mortgage or Mortgagee's exercise of any remedy against Landlord provided for in the Mortgage or otherwise, and Mortgagee desires to have Tenant attorn to Mortgagee as landlord in such event.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt whereof is hereby acknowledged, Tenant, Landlord, and Mortgagee mutually agree as follows:

1. All capitalized terms contained herein and not defined herein shall have the meaning assigned to such term in the Lease.
2. Mortgagee acknowledges that it has received an executed copy of the Lease and consents to and approves of the Lease and all of the terms and conditions thereof.
3. Tenant's interest in the Lease and all rights of Tenant thereunder, including Tenant's Right of First Refusal, if any, shall be and are hereby declared subject and subordinate to the Mortgage upon the Demised Premises and its terms, and the term "Mortgage" as used herein shall also include all advances made or to be made under the Mortgage and any amendment, supplement, modification, renewal, refinance or replacement thereof.
4. Landlord and Tenant represent and warrant that the Lease is in full force and effect as of the date hereof.
5. If the Mortgagee shall become the owner of the Demised Premises by reason of foreclosure of the Mortgage or otherwise, or if the Demised Premises shall be sold as a result of any action or proceeding to foreclose the mortgage or by a deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without the necessity for executing any new lease, as a direct lease between the Tenant, as tenant thereunder, and the Mortgagee or other then owner of the Demised Premises, as the landlord

thereunder, upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

- a) The Tenant shall be bound to the Mortgagee or such other new owner under all of the terms, covenants and provisions of the Lease for the remainder of the Term (including any Extension Term, properly noticed) and the Tenant hereby agrees to attorn to the Mortgagee or such other new owner and to recognize the Mortgagee or such other new owner as the Landlord under the Lease; provided, however, Tenant shall be under no obligation to pay rent to the Mortgagee or such other new owner, until Tenant has received written notice from the Mortgagee, or such other new owner, that it has succeeded to the interest of Landlord under the Lease together with such documentation as required to evidence Mortgagee's or such other new owner's right to collect rent; and
  - b) The Mortgagee or such other new owner shall be bound to the Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the Term (including any Extension Term properly noticed) which terms, covenants and provisions the Mortgagee or such other new owner agrees (or shall be deemed to have agreed) to assume and perform.
6. Mortgagee for itself, its successors and assigns, covenants and agrees with Tenant that, Tenant's possession of the Demised Premises, its right of possession and all other rights of Tenant under the Lease will not be disturbed by virtue of or as a result of any foreclosure of the Mortgage, deed in lieu of foreclosure, or upon the exercise of any remedy against Landlord provided for in the Mortgage by Mortgagee or otherwise. Mortgagee further covenants and agrees that Tenant shall not be made a party to any action brought by Mortgagee upon the exercise of any remedy against Landlord provided for in the Mortgage or otherwise; provided, however, Mortgagee may join Tenant as a party in any such action if such joinder is necessary under any statute or law for the purpose of effecting the remedies available to Mortgagee under the Mortgage but only for such purpose and not for the purpose of terminating the Lease, or affecting Tenant's possessory or other rights under the Lease.
7. Mortgagee for itself, its successors and assigns, covenants and agrees with Tenant that all condemnation awards and insurance proceeds paid or payable with respect to the Demised Premises shall be applied and paid in the manner set forth in the Lease.
8. Tenant agrees, that in the event of Landlord's default under the Lease, Tenant shall accept cure of such default by Mortgagee, within the time limits provided in the Lease, as cure by Landlord.
9. The Mortgagee acknowledges and agrees that all personal property, merchandise, furniture, furnishings, signs, equipment, machinery, trade fixtures and trade uses (collectively, "Tenant Property"), whether owned by the Tenant or any subtenant or leased by the Tenant installed in or on the Demised Premises, regardless of the manner or mode of attachment, shall remain the property of the Tenant and may be removed by the Tenant at any time. In no event (including, without limitation, upon a default under the Lease or Mortgage) shall the Mortgagee have any liens, rights or claims in the Tenant's Property, whether or not all or any part thereof shall be deemed fixtures; and the Mortgagee expressly waives all rights of levy, distraint or execution with respect to the Tenant's Property. This provision shall be self-operative and effective without the execution of any further instruments on the part of any party hereto
10. Tenant agrees that upon Mortgagee's obtaining title to the Demised Premises from Landlord under the Mortgage, Mortgagee shall not be bound by any rent or additional rent which Tenant might have prepaid for more than the then current month under the Lease to any prior landlord (including Landlord).

11. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or by their respective successors in interest.
12. This Agreement shall be governed by the laws of the state in which the Demised Premises are located.
13. All information, notices or requests provided for or permitted to be given or made pursuant to this Agreement shall be deemed to be an adequate and sufficient notice if given in writing and service is made by either (i) registered or certified mail, postage prepaid, in which case notice shall be deemed to have been served on the date received by the addressee, or (ii) nationally recognized overnight air courier, next day delivery, prepaid, and requiring signature upon delivery in which case such notice shall be deemed to have been served on the date received by the addressee. All notices shall be addressed to the addresses set forth below, or to such other addresses as may from time to time be specified in writing by Tenant, Landlord or Mortgagee to the other parties hereto:

If to Mortgagee:

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

If to Landlord:

Decatur Midstar, LTD.  
1848 Norwood Plaza, Suite 214  
Hurst, TX 76054

If to Tenant:

Lease Administration Department  
Tractor Supply Company  
200 Powell Place  
Brentwood, TN 37027

14. Notwithstanding any provision of this Lease to the contrary, the liability of Mortgagee under and with respect to the Lease shall be limited to the interest of Mortgagee in the Demised Premises, and any judgment in favor of Tenant or any party claiming by, through or under Tenant against Mortgagee shall be collectible only out of its respective interest in the Demised Premises. In no event shall any judgment for damages be entered against Mortgagee which is in excess of the value of such interest.
15. This Agreement shall be binding upon and inure to the benefit of Tenant, Landlord and Mortgagee, and their successors and assigns.
16. This Agreement may be executed in counterparts, each of which separately shall be considered an original but all of which together shall be considered one and the same Agreement.

17. Mortgagee agrees to promptly record this document in the public records, Wise County, Texas, and provide a true and correct copy to Tenant, including all recording information.

**[Signatures on following pages.]**

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

**WITNESSES FOR TENANT:**

**TENANT:**

TRACTOR SUPPLY COMPANY,  
a Delaware corporation

\_\_\_\_\_  
Carolyn Carlyle

\_\_\_\_\_  
Amanda Allen Shelton

BY: \_\_\_\_\_  
Clay Teter, Vice-President, Real Estate

STATE OF TENNESSEE     )  
                                      )  
COUNTY OF WILLIAMSON )

Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared Clay Teter, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the Vice President - Real Estate of Tractor Supply Company, a Delaware corporation, and that he executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President - Real Estate.

In Witness Whereof, I hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC: Angela Kelly  
My Commission Expires: March 7, 2011

WITNESSES FOR LANDLORD:

LANDLORD:

DECATUR MIDSTAR, LTD.  
A TEXAS LIMITED PARTNERSHIP

By: Midstar Properties GP, Inc.,  
A Texas corporation,  
its general partner

BY: \_\_\_\_\_  
Burk Collins, President

STATE OF TEXAS                    )  
  )  
COUNTY OF TARRANT            )

Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared Burk Collins, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Midstar Properties GP, Inc., a Texas corporation, General Partner of Decatur Midstar, LTD., a Texas limited partnership, and that he executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

\_\_\_\_\_ In Witness Whereof, I hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

WITNESSES FOR MORTGAGEE:

MORTGAGEE:

\_\_\_\_\_  
A \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
BY: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
ITS: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

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

Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself/himself to be the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ (corporation, partnership, limited liability company), and that (s)he executed the foregoing instrument for the purposes therein contained, by signing the name of the \_\_\_\_\_ by herself/himself as \_\_\_\_\_.

In Witness Whereof, I hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A" to SNDA  
LEGAL DESCRIPTION**



Guardian Title Co.  
GF: 20050194

**This document prepared by:**

Brad Rogers  
Wal-Mart Realty Company  
Sam M. Walton Development Complex  
2001 S. E. 10<sup>th</sup> St.  
Bentonville, AR 72716-0550  
479-204-3147

**Return/Mail to:**

Fidelity National Title Insurance Company  
717 North Harwood Street  
Suite 800  
Dallas, TX 75201

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

**THIS ECR AGREEMENT** is effective as of the 27 day of October, 2005, between **WAL-MART REAL ESTATE BUSINESS TRUST** a Delaware statutory trust, of 702 SW 8<sup>th</sup> Street, Bentonville, Arkansas 72716 ("Wal-Mart") and **Decatur Midstar, Ltd and Midstar Properties GP, Inc.** with a business address of 1848 Norwood Plaza, Suite 214, Hurst, TX 76054 (collectively, "Developer").

**WITNESSETH:**

WHEREAS, Wal-Mart is the owner of that certain tract of land situated in or near the City of Decatur, State of Texas, identified as Tract 1 on Exhibit A-2, adjacent to Tract 2, as defined below ("Tract 1"); and

WHEREAS, Decatur Midstar, Ltd is, or will be by the time this instrument is recorded, the owner and Midstar Properties GP, Inc. is the lessee of that certain approximately 6.91 acre tract of land in the same city, and state, which tract lies adjacent to Tract 1 and is identified as Tract 2 on Exhibit A-1 and more fully described on Exhibit B ("Tract 2"); (Exhibits A-1 and A-2 may hereinafter be collectively referred to as Exhibit A) and

WHEREAS, Wal-Mart and Developer desire that Tract 1 and Tract 2 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 all of Tract 1 and those portions of Tract 2 shown on Exhibit A as "Building Area". 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 Tract 1 and Tract 2 except the Building Areas.

- C. **Conversion to Common Areas:** Those portions of the Building Areas on each tract which are not from time to time used or cannot, under the terms of this Agreement, 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.

2. **Use.** Buildings on Tract 2 shall be used for commercial purposes of the type normally found in retail shopping centers including without limitation offices, restaurants, financial institutions and retail shops. No bar, tavern, dance hall, adult book store, and no restaurant that serves alcoholic beverages wherein the sale of alcoholic beverages exceeds 50% of the gross sales of such restaurant shall be permitted. Developer recognizes that said businesses may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business. 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 the Wal Mart Tract. 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 the Wal Mart Tract; 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. Intentionally omitted.

4. **Buildings.**

- A. **Design and Construction.** The Building 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 tract onto another tract. The design and construction shall be of high quality. No building on Tract 2 shall exceed forty (40') in height above finished grade. No building on Tract 2 shall have a metal exterior.
- B. **Location.** No building shall be constructed on Tract 2 (as either immediate development or future expansion) except within the Building Areas and no improvements or alterations which substantially vary from those shown on Exhibit A may be made without the prior written consent of Wal-Mart. The front wall(s) of the building(s) on Tract 2 shall be constructed in the location shown on Exhibit A.
- C. **Access.** Except as otherwise expressly permitted herein, no improvements shall be constructed or developed on any of the tracts that will interfere with the use and enjoyment of any easements described herein.
- D. **Easements.** In the event building wall footings encroach from one Tract onto the other Tract, despite efforts to avoid that occurrence, the party onto whose Tract the footings encroach shall cooperate in

granting an encroachment permit or easement to the party whose building wall footings encroach.

E. **Outparcel Development.** Developer may develop an outparcel on Tract 2 if a separate area is marked on Exhibit A as "Building Area." All restrictions and obligations herein placed on Tract 2 shall also apply to that outparcel on Tract 2. Furthermore, the outparcel on Tract 2 shall be developed only under the following guidelines:

- (1) The building constructed on the outparcel shall not exceed twenty (20) feet in height, as measured from the mean finished elevation of the parking area of Tract 2;
- (2) Any buildings to be constructed on the Outparcel shall not exceed 4,000 square feet in size;
- (3) Any rooftop equipment shall be screened;
- (4) No rooftop sign shall be erected on the building constructed;
- (5) No freestanding identification sign may be erected on the outparcel without approval of Wal-Mart, and in no event shall such freestanding identification sign exceed the height of the shopping center pylon sign or block the visibility of the Wal-Mart store. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed three feet three inches (3'3") in height, the type and location of such signs to be approved by Wal-Mart.
- (6) There may be constructed and maintained a canopy or canopies projecting from the building area; normal foundations and doors for ingress and egress may project from such building area; and signs may be erected upon said canopy or canopies, so long as said signs do not obstruct the signs of any other owner or tenant of Tract 1 or Tract 2.
- (7) The parties hereto agree that at all times there shall be independently maintained on Tract 2 sufficient parking area to accommodate not fewer than five (5) car parking spaces for each one thousand (1,000) square feet of Building Area attributable to retail uses and not fewer than ten (10) car parking spaces for each one thousand (1,000) square feet of Building Area attributable to restaurant uses. The outparcel on Tract 2 shall contain a sufficient, self-contained parking area to comply with the parking ratios hereinabove mentioned without use of the parking area(s) of Tract 2 in order to satisfy the parking ratio requirements.
- (8) The outparcel shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.
- (9) The owner(s) of the outparcel on Tract 2 shall maintain comprehensive public liability insurance, property damage and all-risk hazard insurance on the outparcel(s) and the buildings, appurtenances

and other improvements located thereon. Such insurance shall (i) be carried with reputable companies licensed to do business in the state in which the Outparcel is located; (ii) have liability limits of at least \$2,000,000.00 for each occurrence, bodily injury and property damage combined; (iii) provide for full replacement value for the buildings and improvements covered thereunder and (iv) not be subject to change, cancellation or termination without at least thirty (30) days' prior written notice to Wal-Mart.

5. **Common Areas.**

A. **Grant of Easements.** Each party, as grantor, hereby grants to the other party, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of grantee, a non-exclusive easement over, through and around their respective tracts for roadways, walkways, ingress and egress, loading and unloading of customer vehicles including 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. Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to create parking easements on Tract 1 or Tract 2.

B. **Truck Parking and Access.** Wal-Mart shall have uninterrupted tractor/trailer truck access, via a truck access drive on Tract 2 as shown on Exhibit A. No party or its agents shall block or interfere with the access to the truck access drive as shown on Exhibit A. This ECR Agreement strictly prohibits the parking of trucks and/or trailers in the common truck access drive. Either party may notify the other party as to the violation of this provision and if the notified party fails to reasonably respond, then the notifying party may have the truck and/or trailer towed from the truck access drive at the expense of the other. Wal-Mart shall be responsible for asphalt pavement and landscape damages caused in the truck access drive by its trucks or its tractor trailer truck agents.

C. **Drainage Easement.** Each party, as grantor, hereby grants to the other party, as grantee, a non-exclusive easement for the drainage of storm water from Tract 1 onto and into the Concrete Drainage Ditch located on Tract 2, and from Tract 2 into the Detention Pond on Tract 1 (as shown on Exhibit A).

(1) **Maintenance.**

a. In the event that either party disturbs the Detention Pond or Concrete Drainage Ditch, such party shall restore the surface of the Detention Pond or Concrete Drainage Ditch to the original condition immediately following any of its permitted activities within the easement areas, so that the other party,

its successors and assigns, shall have the free and unobstructed use thereof, subject to the rights of the other party herein provided.

- b. As the Detention Pond and Concrete Drainage Ditch shall from time to time require maintenance or repairs, Wal-Mart shall pay for the cost of the Detention Pond maintenance or repairs and Developer shall pay for the cost of the Concrete Drainage Ditch. If either party reasonably believes maintenance or repairs are necessary, regardless of whether the other party agrees or disagrees, such party shall have the right to perform such maintenance or repairs and the other party, its successors and assigns, shall indemnify and hold harmless the repairing party for the cost of such maintenance or repairs.

(2) Indemnification.

- a. Wal-Mart, its successors and assigns, will not be responsible for damage to others from said Detention Pond. Developer shall indemnify, defend, and hold harmless Wal-Mart, its successors and assigns, from any damages or liability to persons or property that might arise from the use, construction, operation or maintenance of the Detention Pond by Developer, its agents, employees, contractors, or anyone authorized by Developer. In no event shall Developer be liable in contract, tort, strict liability, indemnity, warranty or otherwise, for any special indirect, incidental or consequential damages, such as, but not limited to, loss of anticipated profits or revenue, loss of use, non operation or increased cost of operation of other equipment, cost of capital, or claims of customers of Wal-Mart for loss or damage of any nature whatsoever.
- b. Developer, its successors and assigns, will not be responsible for damage to others from said Concrete Drainage Ditch. Wal-Mart shall indemnify, defend, and hold harmless Developer, its successors and assigns, from any damages or liability to persons or property that might arise from the use, construction, operation or maintenance of the Detention Pond Easement Area by Wal-Mart, its agents, employees, contractors, or anyone authorized by Wal-Mart. In no event shall Wal-Mart be liable in contract, tort, strict liability, indemnity, warranty or otherwise, for any special indirect, incidental or consequential damages, such as, but not limited to, loss of anticipated profits or revenue, loss of use, non operation or increased cost of operation of other equipment,

cost of capital, or claims of customers of Developer for loss or damage of any nature whatsoever.

- (3) Relocation. Wal-Mart reserves the right to modify or relocate the Detention Pond, in its sole and absolute discretion, provided any such modification or relocation does not prevent adequate delivery of storm water drainage from Tract 2.
- (4) Hazardous Waste. Each party (also hereafter the indemnifying party), its successors and assigns, shall indemnify, defend and hold harmless the other party from and against any and all losses, liabilities (including strict liability), damages, injuries, expenses, and costs including, without limitation, reasonable attorney's fees, of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the other party, its successors and assigns, by any person or entity or governmental agency, for, with respect to, or as a direct or indirect result of the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Substance (as defined herein below) resulting from the operations of the indemnifying party upon or under any parcel of land owned by the other party including without limitation, any losses, liabilities (including strict liability), damage, injuries, expenses, and costs, including, without limitation, reasonable attorney's fees, of any settlement or judgment or claims asserted or arising under, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Resource Conservation Recovery Act, the Federal Water Pollution Control Act, the Federal Environmental Pesticides Act, the Clean Water Act, any so called federal, state or local "Superfund" or "Superlien" statute, or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability (including strict liability), or standards of conduct concerning any Hazardous Substance.
- (5) Storm Water Compliance. In exercising any rights and privileges under this Agreement, both parties shall comply fully with any federal, state or local laws, regulations, ordinances, permits or other authorizations or approvals or other requirements relating to storm water discharges or the control of erosion or sediment discharges from construction projects, including but not limited to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Storm Water General Permit for Discharges Associated with Construction Activities (collectively the "Storm Water Requirements"). In addition to any other provisions of any Storm Water Requirements:
- (6) Compliance. Both parties hereby warrant and represent to each other that in exercising rights under this Agreement such party

shall comply fully with any federal, state or local laws, regulations, ordinances, permits or other authorizations. In addition to the other representations contained herein, both parties hereby warrant and represent that they shall comply fully with any federal, state or local laws, regulations, ordinances, permits or other authorizations or approvals or other requirements relating to storm water discharges or the control of erosion or sediment discharges from construction projects, including but not limited to the Clean Water Act, 33 U.S.C. § 1251 et seq., and the Storm Water General Permit for Discharges Associated with Construction Activities (collectively the "Storm Water Requirements") to avoid negatively impacting any erosion or sediment controls during earth-disturbing activities, if any) in exercising any rights or privileges under this Agreement, both parties recognizing and affirming neither party would enter into this Agreement without this warranty and representation.

- (7) **Other Compliance.** Each party shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for, the construction, installation, repair, replacement and maintenance of its respective Detention Pond or Concrete Drainage Ditch. Each party shall comply with any and all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including, but not limited to, those governing the prevention, abatement and elimination of pollution and/or protection of the environment and the employment of its workers.

- D. **Water Flow.** Each party hereto agrees that it will not alter the flow of surface water from its tract onto the other, provided that 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. **Signs.** No sign shall be located on the Common Areas on Tract 2 except signs advertising businesses conducted thereon, of which, such signs shall not block the visibility of Tract 1 and there shall be not more than two (2) signs on the Common Areas on Tract 2. No sign on Tract 2 shall exceed the height of the Wal-Mart pylon sign on Tract 1. No signs shall obstruct the ingress and egress as shown on Exhibit A. Any and all signs to be erected and/or maintained upon the tracts shall be required to comply with all municipal, local, state and other governmental laws, codes, ordinances, rules and regulations applicable thereto. Each party shall be responsible for constructing its signage to be erected upon the tracts, and for maintaining the same, as well as for facilitating and maintaining utility services to any and all such signage as is necessary for the installation, maintenance and lighting thereof.

7. **Indemnification/Insurance.**

A. **Indemnification.** Each party hereby indemnifies and saves the other party 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 tract, except if caused by the act or negligence of the other party hereto.

B. **Insurance.**

- (1) Each party 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 less than \$3,000,000.00 for injury, death of a single person, or property damage and to the limit of not less than \$3,000,000.00 for any one occurrence. Each party shall provide the other party 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 ten (10) days' prior written notice to the other party.
- (2) At all times during the term of this Agreement, each party 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 broad form of Uniform Extended Coverage Clause 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.
- (3) Policies of insurance provided for in this Paragraph 7 shall name Wal-Mart and Developer 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 for itself and its property insurer hereby releases Developer, and Developer for itself and its property insurer hereby releases Wal-Mart, 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 of either Wal-Mart or Developer resulting from or in any way connected with any fire or other casualty whether or not such fire or casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any 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 hereunder 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 7, 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 or an affiliated entity is owner or Lessee of Tract 1, Wal Mart shall have the right to retain (in whole or in part) the financial risk for any claim.

8. **Rights And Obligations Of Lenders.** If by virtue of any right or obligation set forth herein a lien shall be placed upon the tract of either party hereto, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such tract. Except as set forth in the preceding sentence, however, any holder of a first lien on Tract 1 or Tract 2, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

9. **Shopping Center Expansion.** 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 5.0 car spaces for each 1,000 square feet of building or buildings on the expanded area.

10. **Termination.** This Agreement shall terminate upon the mutual written agreement of the parties hereto.

11. **Remedies.**

- A. If any party hereto fails (following thirty (30) days' written notice thereof) to fulfill its obligations under this Agreement, then, in addition to any other rights or remedies available under this Agreement or at law or in equity, the obligations hereunder of the failing party hereto may be performed by any other party hereto following such thirty (30) day notice period; and, in doing so, the performing party shall have (as and if necessary) the right to go in, on or about all or any portion of the parcel or tract owned or leased by the failing party for the purposes of so performing the obligations of the failing party, and the costs shall be borne by the performing party.
- B. Any party hereto shall have the right to enforce this Agreement by any proceeding at law or in equity against any person or persons violating or attempting to violate this Agreement, which enforcement may include either an action to restrain a violation or to recover damages.

12. **Release from Liability.** Any person acquiring fee or leasehold title to Tract 1 and Tract 2, or any expansion of the Shopping Center pursuant to Paragraph 9 or any portion thereof, shall be bound by this Agreement only as to the tract or portion of

the tract 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 tract or portion of the tract, 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 tracts running with the land.

13. **Breach.** In the event of breach or threatened breach of this Agreement, only all record owners of Tract 1 as a group, or all record owners of Tract 2 as a group, or Wal-Mart so long as it or any affiliate has an interest as owner or lessee of Tract 1, or Developer so long as it or any affiliate has an interest as owner or lessee of Tract 2, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The parties hereby agree that if either party brings an action against the other party to enforce the terms hereof or to declare rights hereunder, each party shall pay their own attorney's fees and costs incurred therein.

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 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 Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of Tract 1, and Developer, as long as it or its affiliate has any interest as either owner or lessee of Tract 2. This ECR may be modified without the consent of any future outlot owners, so long as such modification does not place any additional restrictions or obligations on said outlot owners.

16. **Non-Merger.** So long as Wal-Mart or its affiliate is owner or lessee of Tract 1, 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 twenty-five (25) 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. **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.

20. **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be considered delivered upon receipt when mailed by certified or registered mail, postage prepaid, addressed as follows:

**If To Wal-Mart**

Wal-Mart Real Estate Business Trust  
Attn: Realty Management/Texas  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716-0550

**If To Developer**

Decatur Midstar, Ltd  
1848 Norwood Plaza  
Suite 214  
Hurst, TX 76054

21. **No Public Gift or Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the tracts, or of any property covered or benefited hereby, or portion thereof, to any governmental authority or the general public or for any public use or purpose whatsoever, it being the intention and understanding of the parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed.

22. **Time is of the Essence.** Time is of the essence in this Agreement. Unless otherwise specifically set forth herein, the term "days" or "daily" shall include Saturdays, Sundays and all holidays, and the term "months" shall refer to calendar months.

23. **Recording.** This Agreement may be recorded by either party hereto in the official public records and/or applicable real property records of the city, county and/or state where the subject tracts are located. Upon termination of this Agreement pursuant to the provisions hereof, the parties hereto shall execute or cause to be executed a document for recordation stating that this Agreement is no longer effective.

24. **No Joint Venture or Partnership.** The parties do not intend by this Agreement to create a partnership or joint venture among themselves. No party to this Agreement is authorized to act as agent for any other party or to otherwise act on behalf of any other party except as expressly set forth herein.

25. **Severability.** If any provision of this Agreement shall be determined to be void or unenforceable by any court of competent jurisdiction, such determination shall not affect any other provisions of this Agreement. All other provisions of this Agreement shall remain in full force and effect as if such void or unenforceable provisions had not been included herein. If any provision of this Agreement is susceptible to two or more constructions, one of which would render the provision valid, that provision shall be given the meaning which rendered the same valid.

26. **No Waiver.** Any indulgence or departure at any time or by any party hereto from any of the provisions hereof or failure by any party to exercise or enforce any of its rights and remedies hereunder shall not modify this Agreement and shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or of any other term or provision contained in this Agreement or waive future compliance therewith by the other party.

27. **Law Governing.** This Agreement and all rights and obligations created hereby shall be governed by the laws of the State of Texas.

29. **Multiple Counterparts.** This Agreement may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original, and all of which shall constitute collectively one agreement. However, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

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

ATTEST:

**WAL-MART REAL ESTATE BUSINESS TRUST**

a Delaware trust

J. Scott Greear  
Assistant Secretary

At

By:

Jed Harrison

Its: Director of Building Development

(SEAL)

**TRUST ACKNOWLEDGMENT**

Approved as to legal terms only

by [Signature]  
WAL-MART LEGAL DEPT.

Date: 10/19/2005

STATE OF ARKANSAS )

) ss.

COUNTY OF BENTON )

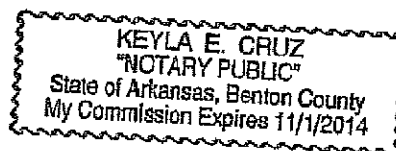
On this 20<sup>th</sup> day of October, 2005, before me, the undersigned notary public in and for said County and State, personally appeared before me Jed Harrison to me personally known, who, being by me duly sworn, did say that he is Director of Building Development of Wal-Mart Real Estate Business Trust and that the seal affixed to the foregoing instrument is the seal of said trust, and that said instrument was signed and sealed in behalf of said trust by authority of its Board of Directors, and said Jed Harrison acknowledged said instrument to be the free act and deed of said trust.

WITNESS BY HAND and notarial seal subscribed and affixed in said County and State the 20<sup>th</sup> day of October 2005.

[Signature]  
Keyla Cruz  
NOTARY PUBLIC

My Commission Expires:

11/1/2014



ASSIGNEE:

Decatur Midstar, Ltd

By: Midstar Properties GP, Inc.

Witness

or Attest: Harold Whitten

Type Name: Harold Whitten

By: Burk Collins

Burk Collins, President

**PARTNERSHIP ACKNOWLEDGMENT**

STATE OF Texas

)

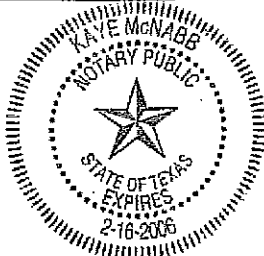
) ss.

COUNTY OF Tarrant

)

On this 25<sup>th</sup> day of October, 2005, before me, the undersigned notary public in and for said County and State, personally appeared before me Burk Collins to me personally known, who, being by me duly sworn, did say that he is president of Midstar Properties GP, Inc., general partner of Decatur Midstar, Ltd., and that said instrument was signed and delivered on behalf of said partnership by authority of its General Partner, and said Burk Collins acknowledged said instrument to be the free act and deed of Burk Collins.

WITNESS BY HAND and notarial seal subscribed and affixed in said County and State the 25<sup>th</sup> day of October, 2005.



Kaye McNabb  
[type name here]  
NOTARY PUBLIC

My Commission Expires:

2-16-06

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

ATTEST:

MIDSTAR PROPERTIES GP, INC.

Harold Whitten  
Print Name: Harold Whitten

By: Buck Collins  
Print Name: Buck Collins  
Its: President

CORPORATE ACKNOWLEDGMENT

STATE OF Texas )  
COUNTY OF Tarrant ) ss.

On this 25th day of October, 2005, before me, the undersigned notary public in and for said County and State, personally appeared before me Buck Collins to me personally known, who, being by me duly sworn, did say that he is President of Midstar Properties GP, Inc. and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Buck Collins President acknowledged said instrument to be the free act and deed of said corporation.

WITNESS BY HAND and notarial seal subscribed and affixed in said County and State the 25th day of October, 2005.

Kaye McNabb  
NOTARY PUBLIC

My Commission Expires:

2-16-06

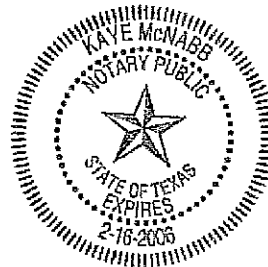






Exhibit A-2

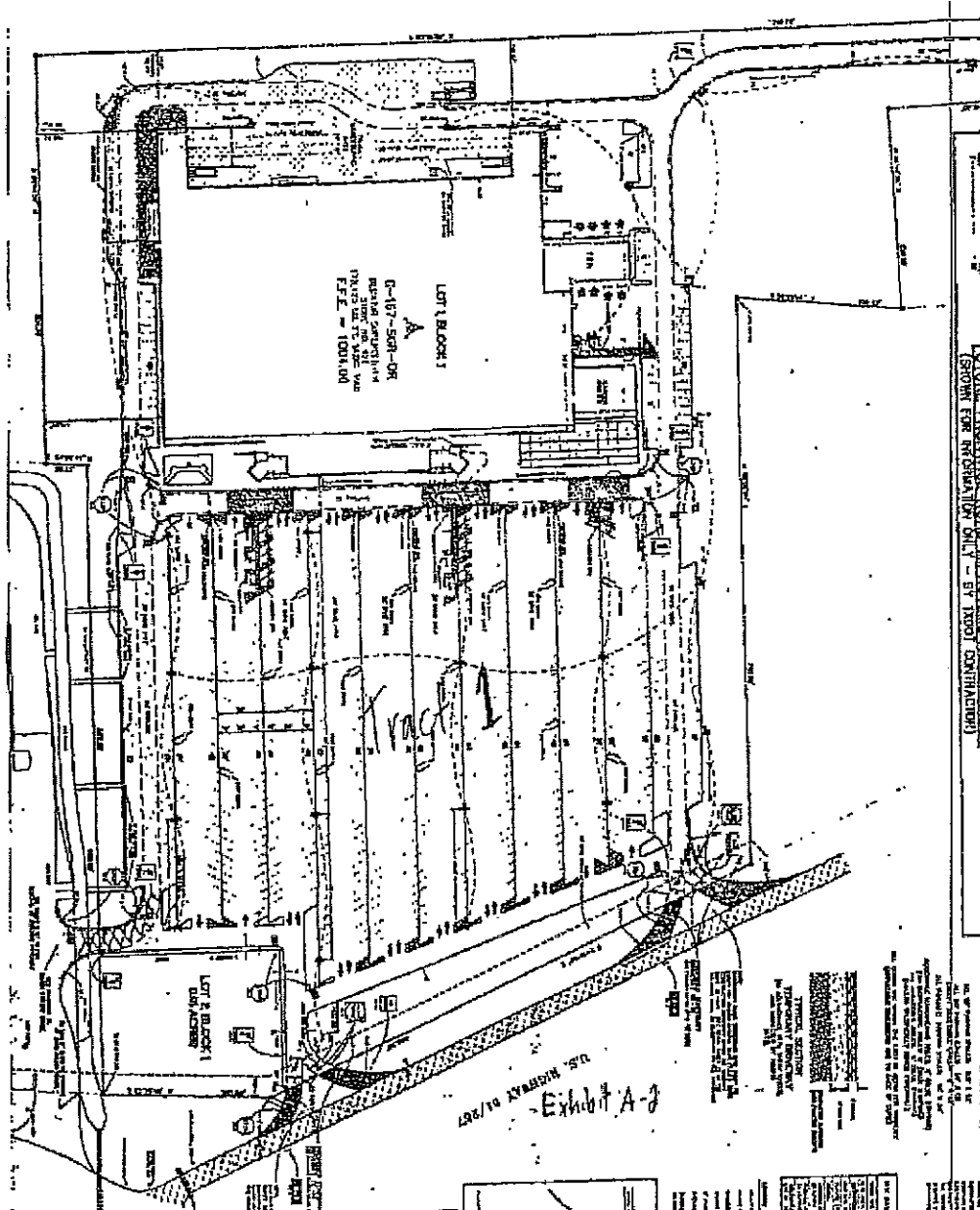


Exhibit B

Being a tract or parcel of land out of the J. Bullock Survey, Abstract No. 79, and the A.I. Walker Survey, Abstract No. 860, situated in Wise County, Texas and more particularly a part of that certain 10 acre tract of land conveyed to Wal-Mart Properties, Incorporated of Bentonville, Arkansas, as recorded in Volume 419, Page 810, Deed Records, Wise County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCE at an iron pin in the Southeast corner of said 10 acre tract, said iron pin being situated in the West Right-of-Way line of State Highway No. 51;

THENCE West, a distance of 779.03 feet and North 05 degrees 24 minutes East, a distance of 186.34 feet to the point of beginning of the tract herein described;

THENCE North 05 degrees 24 minutes East with the West line of said 10 acre tract a distance of 373.66 feet and an iron pin for corner said iron pin being in the Northwest corner of said 10 acre tract;

THENCE East with the North line of said 10 acre tract 779.03 feet to an iron pin for corner, said iron pin being in the West Right-of-Way line of said Highway and in the North corner of said 10 acre tract;

THENCE in a Southerly direction with a curve to the right and along said Highway's West Right-of-Way line, said curve having a central angle of 02 degrees 01 minutes 06 seconds a radius of 11,398.90 feet and arc distance of 401.55 feet (chord bearing South 05 degrees 00 minutes 10 seconds West, 401.53 feet) to a point for corner;

THENCE West a distance of 371.00 feet, to a point for corner;

THENCE North a distance of 28.0 feet, a point for corner;

THENCE West a distance of 408.18 feet to the point of beginning, and containing 301.217 square feet or 6.915 acres of land, more or less.

TOGETHER with all rights, and easements, including easement for ingress and egress and cross-parking created by that certain Easements with Covenants and Restrictions affecting land, dated as of May 14, 1982 and filed on September 13, 1982 under Clerk's File No. 65503 in the Deed Records of Wise County, Texas, in Volume 434, Page 798 as modified by a certain First ECR Modification Agreement, dated August 31, 1982 and filed on September 13, 1982, under Clerk's File No. 65504 in the Deed Records of Wise County, Texas, in Volume 434, Page 814.