

WAL01NTH

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF APPLICANT OR DEVELOPER: WAL-MART REAL ESTATE BUSINESS TRUST

PROJECT/SUBDIVISION: ON-SITE IMPROVEMENTS

LOCATION: 2881 NORTH AVENUE

PARCEL NO.: 2943-181-15-001

FILE NO.: SPR-2000-118

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2001

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

ON-SITE IMPROVEMENTS  
8/11/02  
145  
2011/02/10

## DEVELOPMENT IMPROVEMENTS AGREEMENT

**Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are **Wal-Mart Real Estate Business Trust**, ("the Developer") and **THE CITY OF GRAND JUNCTION**, Colorado ("the City" or "City").

FOR valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

**Effective Date:** The Effective Date of the Agreement will be the date that this agreement is signed which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

### RECITALS

The Developer seeks permission to develop property within the City which property is more particularly described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Property and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

### DEVELOPER'S OBLIGATION

1. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site improvements listed on Exhibit B attached and incorporated by this reference ("the Improvements" or "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The hourly rate of "in-house" City inspection services is \$45.00 per hour. The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

2. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee in a form and with terms acceptable to the City. A copy of which or a memorandum thereof is attached as Exhibit C.

3. **Standards:** The Developer shall construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

4. **Guarantee:** The Developer guarantees that the Improvements, each and every one of them, will be free from defects and meet the City of Grand Junction Zoning and Development Code standards for a period of twelve (12) months from the date that the City Engineer accepts or approves the last Improvement completed by the Developer.

5. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 60 days from the Effective Date ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the 18th month from the Effective Date of this Agreement (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

6. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after final development approval.

7. **Notice of Defect:** The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications approved in the development application or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to correct the defect. The City may grant reasonable extensions.

8. **Approval of Improvements:** The City's final approval of Improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the Improvements in fee simple or other document as accepted by the City Attorney and that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney on the Improvements. Approval of any Improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

9. **Reduction of Security:** After the completion of any Improvement, the amount which the City is entitled to draw on the guarantee will be reduced by an amount equal to 90 percent of the estimated cost of such Improvement as shown in Exhibit B. At the written request of the Developer, the City will execute a certificate verifying the completion of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification. Upon the completion of all of the Improvements covered by this Agreement the remaining balance that may be drawn under the guarantee shall be available to the City for 90 days after the expiration of 12 months, as provided in Paragraph 6 above.

10. **Use of Proceeds:** The City will use funds deposited with it, drawn or guaranteed pursuant to any written agreement entered into between the parties only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

11. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

(a) Developer's failure to complete each portion of the Improvements in conformance with the time schedule provided in paragraph number seven (7.), above;

(b) Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable correction period;

(c) Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;

(d) Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;

(e) Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

Unless specifically provided herein the City may not declare a default until written notice has been sent to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

12. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B will be *prima facie* evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow or other guarantee establish the maximum amount of the Developer's liability.

13. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit B) of all Improvements previously completed or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete Improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or lender) who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements and provides to the

City reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the Improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

14. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance or non-performance of work at the Property or the Property being developed pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance or non-performance of work pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer against the City. The Developer is not an agent or employee of the City.

15. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

16. **Amendment or Modification:** The parties to this Agreement may amend or modify the Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

17. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

18. **Vested Rights:** The City does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the City, if any, before the Developer is entitled to commence development or to transfer ownership of the Property being developed. Upon the execution of this Agreement by the Developer, the City shall issue a temporary certificate of occupancy for the building improvements located on the Property.

19. **Integration:** **This Agreement, together with the exhibits and attachments thereto** constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

20. **Third Party Rights:** No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

21. **Time:** For the purpose of computing the Abandonment and Completion Periods, and time periods for City action, such times in which war, civil disasters, or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

22. **Severability:** If any part, term, or provision of this Agreement is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

23. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City will constitute a release of the original Developer from his liability under this Agreement. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

24. **Notice:** Any notice required or permitted by this Agreement will be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: Wal-Mart Real Estate Business Trust  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716-0550  
Attn: Chris Callaway-8703

If to City: City of Grand Junction  
Community Development Director  
250 N. 5th Street  
Grand Junction, Colorado 81501

25. **Recordation:** Developer will pay for all costs to record this Agreement or a Memorandum thereof in the Clerk and Recorder's Office of Mesa County, Colorado.

26. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

27. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, letter of credit, improvements disbursements agreement, or cash escrow agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa

County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

28. Conditions of Approval:

(a) City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been finally approved by the City.

(b) Prior to requesting final approval of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City engineer as-built drawings in reproducible form, blueline stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification; (ii) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other regulated substances or materials; (iii) provide written evidence to the City Attorney that the title to lands underlying the improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney.

City of Grand Junction  
250 North Fifth Street  
Grand Junction CO 81501

RJN

Pat Cecil 4/24/01  
City of Community Development date



Theresa J. Martiny 4-25-01  
City Clerk, Deputy date

By: Robert M. Bedard  
Developer: Wal-Mart Real Estate Business Trust date

Name (printed): Robert M. Bedard

Its (position): Asst. Vice President

Attest:

ASST Kristi Phillips 4-9-01  
Secretary Kristi Phillips date



**EXHIBIT A**

Legal Description

LOTS 1 AND 2 OF WAL-MART SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED IN PLAT BOOK 14 AT PAGE 235, OFFICIAL RECORDS OF MESA, COLORADO.

**EXHIBIT B**

<b>EXHIBIT B</b>				
<b>PRIVATE IMPROVEMENTS LIST/DETAIL</b>				
DATE: March 27, 2001				
NAME OF DEVELOPMENT: Wal-Mart Expansion Store #1280				
LOCATION: North Avenue and Melody Lane				
PRINTED NAME OF PERSON PREPARING: Charles R. Davis (CLC Associates, Inc.)				
Description	Units	Total Quantity	Unit Price	Total Amount
<b>I. SANITARY SEWER</b>				
1. PVC Sanitary Sewer Main 10" (incl. Trenching, bedding & backfill)	LF	400	\$30.00	\$12,000.00
2. Sewer Services (incl. Trenching, bedding, & backfill)	EA	4	\$1,500.00	\$6,000.00
3. Sanitary Sewer Manhole(s)	EA	4	\$2,500.00	\$10,000.00
4. Cleanouts	EA	4	\$500.00	\$2,000.00
<b>SUBTOTAL</b>				<b>\$30,000.00</b>
<b>II. DOMESTIC WATER</b>				
1. Water Main 8" (incl. Excavation, bedding, backfill, valves and appurtenances)	LF	1,150	\$30.00	\$34,500.00
2. Water Services (incl. Excavation, bedding, backfill)	EA	1	\$2,000.00	\$2,000.00
3. Connect to Existing Water Line	EA	2	\$1,500.00	\$3,000.00
4. Valves and Fittings	LS	1	\$12,000.00	\$12,000.00
5. Fire Hydrant	EA	3	\$2,500.00	\$7,500.00
6. Yard Hydrant	EA	1	\$2,500.00	\$2,500.00
<b>SUBTOTAL</b>				<b>\$61,500.00</b>
<b>III. STORM DRAINAGE</b>				
1. Erosion Control System	LS	1	\$15,000.00	\$15,000.00
2. 8" Irrigation Pipe	LF	1,025	\$16.00	\$16,400.00
3. 12" RCP/PPP/CMP	LF	240	\$24.00	\$5,760.00
4. 15" RCP/PPP/CMP	LF	140	\$30.00	\$4,200.00
5. 18" RCP/PPP/CMP	LF	855	\$30.00	\$25,650.00
6. 24" RCP/PPP/CMP	LF	830	\$45.00	\$37,350.00

7. Connect to Existing	EA	3	\$1,000.00	\$3,000.00
8. Junction Box	EA	2	\$2,500.00	\$5,000.00
9. Area Inlet	EA	10	\$2,200.00	\$22,000.00
10. Irrigation Manhole	EA	1	\$1,500.00	\$1,500.00
11. 15" RCP CL IV	LF	144	\$30.00	\$4,320.00
12. Irrigation Box Structures	EA	7	\$1,209.00	\$8,463.00
<b>SUBTOTAL</b>				<b>\$148,643.00</b>
<b>IV. DRY UTILITIES</b>				
1. Electric	LS	1	\$10,000.00	\$10,000.00
2. Telephone	LS	1	\$5,000.00	\$5,000.00
3. Gas	LS	1	\$7,500.00	\$7,500.00
<b>SUBTOTAL</b>				<b>\$22,500.00</b>
<b>V. EARTHWORK</b>				
1. Clear and Grub	AC	6	\$1,000.00	\$6,000.00
2. Cut/Fill Compaction	CY	23,000	\$2.00	\$46,000.00
3. Off-site Import	CY	20,000	\$5.00	\$100,000.00
4. Pad Preparation	LS	1	\$50,000.00	\$50,000.00
<b>SUBTOTAL</b>				<b>\$202,000.00</b>
<b>VI. PAVING AND PARKING LOT</b>				
1. Asphalt Patch	SY	650	\$25.00	\$16,250.00
2. Regular Duty Asphalt (incl. Base)	SY	12,500	\$11.00	\$137,500.00
3. Heavy Duty Asphalt (incl. Base)	SY	12,300	\$15.00	\$184,500.00
4. Heavy Duty Concrete (incl. Base)	SY	4,400	\$20.00	\$88,000.00
5. Sidewalks	LF	550	\$10.00	\$5,500.00
6. Handicap Ramp	EA	5	\$350.00	\$1,750.00
7. Curb and Gutter	LF	8,000	\$10.00	\$80,000.00
8. Striping and Signage	LS	1	\$15,000.00	\$15,000.00
9. Parking Lot Lighting (bases, conduit, wiring, etc.)	EA	22	\$700.00	\$15,400.00
10. Cart Corral	EA	6	\$500.00	\$3,000.00
11. Bollards	EA	10	\$600.00	\$6,000.00
<b>SUBTOTAL</b>				<b>\$552,900.00</b>
<b>VII. LANDSCAPING</b>				
1. Design/Architecture	LS	1	\$10,000.00	\$10,000.00
2. Earthwork (incl. Top soil, fine grading, and berming)	LS	1	\$50,000.00	\$50,000.00
3. Plant Material and Planting	LS	1	\$52,000.00	\$52,000.00
4. Irrigation System	LS	1	\$51,000.00	\$51,000.00
5. One year maintenance agreement	LS	1	\$12,000.00	\$12,000.00
<b>SUBTOTAL</b>				<b>\$175,000.00</b>

<b>VIII. MISCELLANEOUS</b>				
1. Design/Engineering	LS	1	\$100,000.00	\$100,000.00
2. Surveying	LS	1	\$20,000.00	\$20,000.00
3. Developer's Inspection Costs	LS	1	\$2,500.00	\$2,500.00
4. Quality Control Testing	LS	1	\$25,000.00	\$25,000.00
5. Construction Traffic Control	LS	1	\$10,000.00	\$10,000.00
6. City Inspection Fees @ \$45.00/hr	LS	1	\$2,500.00	\$2,500.00
7. Permit Fees	LS	1	\$50.00	\$50.00
8. General Construction Supervision	LS	1	\$165,000.00	\$165,000.00
<b>SUBTOTAL</b>				<b>\$325,050.00</b>
<b>TOTAL ESTIMATED COST OF PRIVATE IMPROVEMENTS</b>				<b>\$1,456,093.00</b>

ISSUING BANK:  
BANK OF AMERICA, N.A.  
STANDBY LETTERS OF CREDIT  
333 S. BEAUDRY AVENUE  
19TH FLOOR, MAIL CODE CA9-703-19-23  
LOS ANGELES, CA 90017-1466

ISSUE DATE: MAY 4, 2001

IRREVOCABLE STANDBY LETTER OF CREDIT NO. 3037656

BENEFICIARY:  
CITY OF GRAND JUNCTION  
250 NORTH 5<sup>TH</sup> STREET  
GRAND JUNCTION, CO 81501

APPLICANT:  
WAL-MART STORES, INC.  
ATTN: DEPT. 44-9382  
702 SOUTHWEST 8<sup>TH</sup> STREET  
BENTONVILLE, AR 72716-0550

ATTN: BILL NEBEKER

TELEPHONE NO.: (970) 244-1430

AMOUNT: U.S. \$1,456,093.00  
ONE MILLION FOUR HUNDRED FIFTY-SIX  
THOUSAND NINETY-THREE AND NO/100'S  
US DOLLARS

EXPIRY DATE: MAY 4, 2002

GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. 3037656 IN YOUR FAVOR, AS BENEFICIARY, BY ORDER AND FOR ACCOUNT OF WAL-MART STORES, INC., 702 SOUTHWEST 8TH STREET, BENTONVILLE, AR 72716-0550 UP TO THE AGGREGATE SUM OF ONE MILLION FOUR HUNDRED FIFTY-SIX THOUSAND NINETY-THREE AND NO/100'S US DOLLARS (U.S. \$1,456,093.00), EXPIRING ON MAY 4, 2002, AT THE COUNTERS OF BANK OF AMERICA, N.A., AVAILABLE BY PAYMENT AGAINST YOUR DRAFT(S) DRAWN ON US AT SIGHT ACCOMPANIED BY:

1. A NOTARIZED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICIAL OF THE CITY OF GRAND JUNCTION, STATING THAT: THE FUNDS DRAWN UNDER LETTER OF CREDIT NO. 3037656 ISSUED BY BANK OF AMERICA, N.A. ARE DUE BY REASON OF WAL-MART'S FAILURE TO COMPLETE ON-SITE IMPROVEMENTS, INCLUDING: SANITARY SEWER, DOMESTIC WATER, STORM DRAINAGE, DRY UTILITIES, PAVING, CURB AND GUTTER, AND LANDSCAPING PER THE DEVELOPMENT IMPROVEMENTS AGREEMENT SIGNED ON 4/24/01, FOR WAL-MART STORE #1280 IN GRAND JUNCTION, COLORADO, AS SHOWN ON PLANS PREPARED BY CLC ASSOCIATES, INC., DATED SEPTEMBER 2, 2000, AND THAT AT LEAST TEN (10) DAYS IN ADVANCE OF THE PRESENTATION OF THE SIGHT DRAFT FOR PAYMENT, THE CITY OF GRAND JUNCTION HAS PROVIDED TO THE DEVELOPER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, NOTICE OF THE CITY OF GRAND JUNCTION'S INTENTION TO DRAW FUNDS ON THIS LETTER OF CREDIT. THE WORK TO BE COMPLETED IS AS FOLLOWS: (LIST WORK WAL-MART FAILED TO COMPLETE.)

2. THE ORIGINAL OF THIS LETTER OF CREDIT.

SPECIAL CONDITIONS:

- A. PARTIAL DRAWINGS ARE ACCEPTABLE.
- B. NO OPINION OF LEGAL COUNSEL SHALL BE REQUIRED.


ANY DRAFT DRAWN UNDER THIS LETTER OF CREDIT MUST BE MARKED QUOTE DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. 3037656 ISSUED BY BANK OF AMERICA, N.A..UNQUOTE

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NO. 3037656

WE HEREBY ENGAGE WITH YOU THAT ANY DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED ON THE PRESENTATION AT OUR OFFICE AT 333 S. BEAUDRY AVENUE, 19TH FLOOR, MAIL CODE CA9-703-19-23 LOS ANGELES, CA 90017-1466, ATTN: STANDBY LETTER OF CREDIT DEPARTMENT, VIA COURIER SERVICE OR REGISTERED MAIL OR ANY OTHER MEANS OF DELIVERY, ON OR BEFORE THE EXPIRATION DATE AS SPECIFIED ABOVE.

UNLESS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

BANK OF AMERICA, N.A.



AUTHORIZED SIGNATURE

**SERAFIN CABAYAN**



CARRILLO, BOLIVAR

AUTHORIZED SIGNATURE

# Memorandum

**DATE:** October 31, 2001

**TO:** Stephanie Tuin

**FROM:** Bill Nebeker SN

**SUBJECT:** Wal-Mart - Revised Letter of Credit

Attached is a revised letter of credit for the Wal-Mart Super Store at 2881 North Avenue. This letter is in the amount of \$64,270 and is for all remaining uncompleted on and off-site improvements. The letter has an expiration of October 3, 2002.

Please place this letter in the Wal-Mart file with the development improvements agreement and other documents. Thanks

If you have any questions please call me at #1447 or email me.

Advising Bank

\*\*\*\*\* DIRECT \*\*\*\*\*

APPLICANT:  
WAL-MART STORES, INC.  
LETTER OF CREDIT MANAGER-9382  
2001 SE 10TH STREET  
BENTONVILLE, AR 72716-0550

Beneficiary

CITY OF GRAND JUNCTION  
250 NORTH 5TH STREET  
GRAND JUNCTION, CO 81501  
ATTN: BILL NEBEKER

AMOUNT: USD 64,270.00  
(SIXTY FOUR THOUSAND TWO  
HUNDRED SEVENTY AND 00/100  
UNITED STATES DOLLARS)

MAIL  
TO

IRREVOCABLE STANDBY LETTER OF CREDIT NO. 5-217820  
THIS LETTER OF CREDIT IS NOT EFFECTIVE UNTIL OCTOBER 4, 2001  
ISSUE DATE: SEPTEMBER 25, 2001

BENEFICIARY:  
CITY OF GRAND JUNCTION  
250 NORTH 5TH STREET  
GRAND JUNCTION, CO 81501

ATTN: BILL NEBEKER  
TELEPHONE NO.: (970) 244-1430

APPLICANT:  
WAL-MART STORES, INC.  
LETTER OF CREDIT MANAGER-9382  
2001 SE 10TH STREET  
BENTONVILLE, AR 72716-0550

AMOUNT: U.S. \$64,270.00  
SIXTY FOUR THOUSAND TWO HUNDRED SEVENTY AND NO/100 US DOLLARS

EXPIRY DATE: OCTOBER 3, 2002

GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. 5-217820 IN YOUR FAVOR, AS BENEFICIARY, BY ORDER AND FOR ACCOUNT OF WAL-MART STORES, INC., LETTER OF CREDIT MANAGER-9382, 2001 SE 10TH STREET, BENTONVILLE, AR 72716-0550, UP TO THE AGGREGATE SUM OF SIXTY FOUR THOUSAND TWO HUNDRED SEVENTY AND NO/100 US DOLLARS (U.S. \$64,270.00), EXPIRING ON OCTOBER 3, 2002, AT THE COUNTERS OF THE CHASE MANHATTAN BANK, 300 S. GRAND AVENUE, 4TH FLOOR, LOS ANGELES, CA 90071, AVAILABLE BY PAYMENT AGAINST YOUR DRAFT(S) DRAWN ON US AT SIGHT ACCOMPANIED BY:

1. A NOTARIZED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICIAL OF THE CITY OF GRAND JUNCTION, STATING THAT: THE FUNDS DRAWN UNDER LETTER OF CREDIT NO. 5-217820 ISSUED BY THE CHASE MANHATTAN BANK ARE DUE BY REASON OF WAL-MART'S FAILURE TO COMPLETE

--CONTINUED--

5-217820- -001-L1-01-

\_\_\_\_\_  
Authorized Signature

Provisions applicable to this credit

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision.) International Chamber of Commerce Publication No. 500



Advising Bank

\*\*\*\*\* DIRECT \*\*\*\*\*

APPLICANT:  
WAL-MART STORES, INC.  
LETTER OF CREDIT MANAGER-9382  
2001 SE 10TH STREET  
BENTONVILLE, AR 72716-0550

Beneficiary

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A  
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T  
O  
CITY OF GRAND JUNCTION  
250 NORTH 5TH STREET  
GRAND JUNCTION, CO 81501  
ATTN: BILL NEBEKER

AMOUNT: USD 64,270.00  
(SIXTY FOUR THOUSAND TWO  
HUNDRED SEVENTY AND 00/100  
UNITED STATES DOLLARS)

ON-SITE AND OFF-SITE IMPROVEMENTS AS DETAILED IN THE DEVELOPMENT IMPROVEMENTS AGREEMENT, EXHIBIT B, SIGNED SEPTEMBER 25, 2000, FOR WAL-MART STORE #1280 IN GRAND JUNCTION, COLORADO, AS SHOWN ON PLANS PREPARED BY CLC ASSOCIATES, INC., DATED SEPTEMBER 14, 2000, AND THAT AT LEAST TEN (10) DAYS IN ADVANCE OF THE PRESENTATION OF THE SIGHT DRAFT FOR PAYMENT, THE CITY OF GRAND JUNCTION HAS PROVIDED TO THE APPLICANT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, NOTICE OF THE CITY OF GRAND JUNCTION'S INTENTION TO DRAW FUNDS ON THIS LETTER OF CREDIT. THE WORK TO BE COMPLETED IS AS FOLLOWS: (LIST WORK WAL-MART FAILED TO COMPLETE.)

2. THE ORIGINAL OF THIS LETTER OF CREDIT.

SPECIAL CONDITIONS:

PARTIAL DRAWINGS ARE ACCEPTABLE.

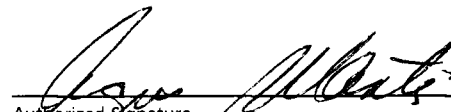
ANY DRAFT DRAWN UNDER THIS LETTER OF CREDIT MUST BE MARKED "DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. 5-217820 ISSUED BY THE CHASE MANHATTAN BANK."

WE HEREBY ENGAGE WITH YOU THAT ANY DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED ON THE PRESENTATION AT OUR OFFICE AT 300 S. GRAND AVENUE, 4TH FLOOR, ATTN: STANDBY LETTER OF CREDIT DEPARTMENT, LOS ANGELES, CA 90071, VIA COURIER SERVICE OR REGISTERED MAIL, ON OR BEFORE THE EXPIRATION DATE AS SPECIFIED ABOVE.

UNLESS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

5-217820- -001-L1-01-

01-01

  
Authorized Signature  
AGNES MARTINEZ  
ASSISTANT TREASURER & SUPERVISOR

Provisions applicable to this credit

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision.) International Chamber of Commerce Publication No. 500

# Memorandum

**DATE:** November 30, 2001

**TO:** Stephanie Tuin  
City Clerk

**FROM:** Bill Nebeker <sup>RN</sup>  
Senior Planner

**SUBJECT:** Wal Mart Letter of Credit

Wal Mart has requested a release and return of their Letter of Credit (LOC) No. 5-216670 in the amount of \$347,175.00. Since most of the improvements have been made to their site at 2881 North Avenue the Community Development Department has agreed on a reduced amount to guarantee the last remaining improvements to be installed on the property. We have received a replacement LOC for a lesser amount that will adequately cover the remaining outstanding improvements. By this memo I am requesting to remove the original LOC from the file and return it to Wal Mart.

If you have any questions please call me at #1447.

## City of Grand Junction

Community Development Department  
Planning • Zoning • Code Enforcement  
250 North 5th Street  
Grand Junction, CO 81501-2668

Phone: (970) 244-1430  
FAX: (970) 256-4031



November 30, 2001

Wal-Mart Stores, Inc.  
Attention: Scott Sill  
Dept. 9382 Letters of Credit  
2001 S.E. 10th Street  
Bentonville, Ark. 72716-0550

Subject: Irrevocable Standby Letter of Credit No. 5-216670

Dear Mr. Sill:

By this letter the City of Grand Junction is releasing the Irrevocable Standby Letter of Credit No. 5-216670 in the amount of \$347,175.00 with an expiration date of May 4, 2002.

This action is being taken since the City has received a replacement letter of credit (LOC) for the remaining uncompleted improvements associated with the Wal-Mart expansion at 2881 North Avenue. That LOC number is 5-217820 in the amount of \$64,270. Even though this LOC has an expiration date of October 3, 2002, the City expects full improvements to be completed within 18 months of the original contract, which constitutes a completion date of March 25, 2002.

The original letter of credit is enclosed. If you have any questions please call me at (970) 244-1447.

Sincerely,

Handwritten signature of Bill Nebeker in black ink.

Bill Nebeker  
Senior Planner

Handwritten signature of Rick Dorris in black ink.

Rick Dorris  
Development Engineer

C: Kristin Llwellyn – CLC Associates

G:\Planning\billn\SPR\00118-walmart-locrelease2.doc



Printed on recycled paper

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



OCTOBER 2, 2002  
L/C NO.: 5-217820  
AMENDMENT NO: 1

**Advising Bank**

\*\*\*\*\* DIRECT \*\*\*\*\*

APPLICANT:  
WAL-MART STORES, INC.  
LETTER OF CREDIT MANAGER-9382  
2001 SE 10TH STREET  
BENTONVILLE, AR 72716-0550

**Beneficiary**

MAIL  
TO

CITY OF GRAND JUNCTION  
250 NORTH 5TH STREET  
GRAND JUNCTION, CO 81501  
ATTN: BILL NEBEKER

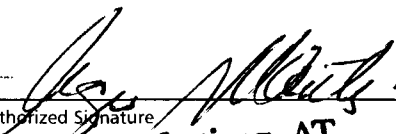
IN ACCORDANCE WITH INSTRUCTIONS RECEIVED, THE ABOVE-REFERENCED  
LETTER OF CREDIT HAS BEEN AMENDED AS FOLLOWS:

1 - THE EXPIRATION DATE IS EXTENDED TO JUNE 03, 2003.

ALL OTHER TERMS AND CONDITIONS OF THE CREDIT REMAIN UNCHANGED.

5-217820- -002-A1-01-

01-01

- 1 -  
  
Authorized Signature  
**Agnes Martinez, AT**

**Provisions applicable to this credit**

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision.) International Chamber of Commerce Publication No. 500

July 29, 2003

Memo to File

Original Letter of Credit for \$347,175 was released via a letter from Bill Nebeker dated November 30, 2001. Upon inspection of the file, the actual letter of credit was not returned as requested and is therefore being returned now.

Stephanie Tuin

July 29, 2003

Memo to File

Original Letter of Credit and subsequent amendment extending the date for the amount of \$64,270 was returned to Ronnie Edwards 7-29-03 based on the attached Release of DIA.

Stephanie Tuin

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated 9-25, 2000 (year) and recorded at Book 2758, Page 560 thru 572 of the land records of Mesa County, Colorado, by and between Wal-Mart Real Estate Busn. Trust (Developer) and the City of Grand Junction (City) pertaining to Walmart Expansion (Project).

Legal Description: Lots 1 & 2 of Wal-Mart Subdivision, recorded plat book 14 page

2128379 06/18/03 0430PM  
JANICE WARD CLK&REC MESA COUNTY Co  
REC FEE \$5.00 SURCHG \$1.00

Whereas, Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of an Improvements Agreement and Guarantee, and

Whereas, the City of Grand Junction and all other agencies possessing regulatory authority over the Project and/or the improvements have inspected the improvements and have accepted the same,

NOW THEREFORE, officials of the City of Grand Junction and other officials duly representing their agencies, possessing and representing by their signatures, affixed thereto, that they possess sufficient authority to accept improvements and release the portion of the guarantee pertaining to the improvements under their jurisdiction, do accept, sign and release said improvements agreement and guarantee.

CITY OF GRAND JUNCTION:  
By: City Engineer [Signature]

Date 6-18-03

City Utilities Manager N/A

Date \_\_\_\_\_

Fire Marshall N/A

Date \_\_\_\_\_

UTE WATER:

By: N/A

Date \_\_\_\_\_

GRAND JUNCTION DRAINAGE:

By: N/A

Date \_\_\_\_\_

OTHER: STAFF

By: Ronnie Edwards, APA

Date 6/18/03

In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book 2758, Page 560 thru 572 of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand Junction Zoning and Development Code are hereby released, subject to the required warranty period.

Director of Community Development [Signature]

Date 6/18/03

The foregoing instrument was executed before me this 18th day of June, 2003 (year)

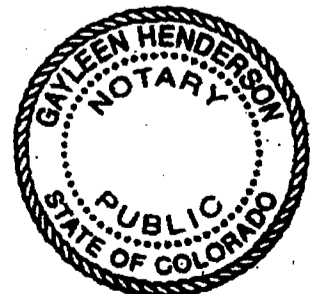
by Pat Cecil

Director of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Notary Public Gayleen Henderson

My commission expires 10/29/2005



My Commission Expires 10/29/2005