

WAL91NTH

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENT AGREEMENT

NAME OF AGENCY OR CONTRACTOR: WAL-MART STORES, INC., A DELAWARE CORPORATION

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: LOT 1, INDEPENDENCE  
CENTER SUBDIVISION (WAL-MART STORE LOCATED AT 2880 NORTH AVENUE)

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1991

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

1-2-92

copy to: Karl Metzner  
Community Dev. Dept.

12-11-92

copy to Don Newton,  
City ENGINEER

1586417 10:40 AM 11/19/91

MONIKA TODD CLERK MESA COUNTY CO

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. Parties: This Development Improvements Agreement (the "Agreement") is made and entered into this 18 day of November, 1991 by and between WAL-MART STORES, INC., a Delaware corporation, ("the Developer"), and THE CITY OF GRAND JUNCTION, COLORADO ("the City").

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

2. Effective Date: The Effective Date of the Agreement will be the date that it is recorded in the Clerk and Recorder's Office of Mesa County, Colorado, which shall not be sooner than recordation of the final plat for Independence Center Subdivision.

RECITALS

The Developer seeks permission to develop property within the City to be known as Independence Center Subdivision (the "Subdivision"), which property is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Subdivision and limiting the harmful effects of substandard subdivisions. The purpose of this Agreement is to protect the City from the cost of completing subdivision improvements itself, and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the Subdivision or for the benefit of lot owners in the Subdivision. 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 OBLIGATIONS

3. Improvements: The Developer will design, construct and install, at its own expense, those on-site and off-site subdivision improvements described in Exhibit "B" attached hereto and incorporated herein by reference. The Developer agrees to pay the City for the costs of the public improvements (hereinafter "the Improvements") described in Exhibit "B" and Exhibit "C" attached hereto and incorporated herein by reference; the terms of payment for said Improvements are set forth in paragraph 28, below. The Developer also agrees to pay City inspection costs estimated to be \$6,298.00, but will pay the actual cost at an hourly rate of \$19.68 per hour. The Developer's obligation to complete the improvements described in Exhibit "B" is and will be independent of any obligations of the City contained herein.

4. Security: To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the Developer will enter into an escrow agreement which conforms to its obligations under paragraph 28, below.

5. Standards: The Developer will construct the improvements described in Exhibit "B" in accordance with design specifications submitted by the Developer and approved by the City.

6. Warranty: The Developer warrants that the improvements described in Exhibit "B," each and every one of them, will be free from defects for a period of one (1) year from the date that the City Engineer accepts or approves the improvements completed by the Developer, which acceptance or approval will be in writing.

7. Commencement and Completion Periods: Developer agrees that the improvements described in Exhibit "B" will be completed within one (1) year from the Effective Date of this Agreement (the "Completion Period").

8. Compliance with Law: The Developer will comply with all relevant federal, state and local laws, ordinances, and regulations in effect at the time of final subdivision plat approval when fulfilling its obligations under this Agreement.

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

10. Acceptance of Improvements: The City's final acceptance and/or approval of improvements will not be given or obtained until Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the improvements in fee simple and that there are no liens, encumbrances, or other restrictions on the improvements. Approval and/or acceptance of any improvements shall not constitute a waiver by the City of any rights it may have on account of any defect in or failure of any improvement that is detected or which occurs within a period of one (1) year from the date of acceptance and/or approval, provided that written notice of such defect is delivered to Developer within said one (1) year period.

11. Use of Proceeds: The City will use the funds escrowed under the terms of this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

12. 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 any portion of the improvements described in Exhibit "B" in conformance with the agreed upon time schedule; provided, however, that the City may not declare a default until the expiration of the thirty (30) days notice period provided to the Developer pursuant to paragraph 9, above, unless such default occurs within the thirty (30) day period ~~following~~ <sup>\* prior to</sup> the expiration of any letter of credit securing the Developer's obligations;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; provided, however, that the City may not declare a default until the expiration of the thirty (30) days notice period provided to the Developer pursuant to paragraph 9, above;
- 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, subject to compliance with the Developer's statutory rights to cure any such default;
- d. Notification to City, by any lender with a lien on the property, of a default on an obligation; in such event the City may immediately declare a default, subject to compliance with the Developer's statutory rights to cure any such default;
- e. Initiation of any foreclosure action of any lien or initiation of mechanic's lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; in such event the City may immediately declare a default, subject to compliance with the Developer's statutory rights to cure any such default.

13. Measure of Damages: The measure of damages for breach of this Agreement by Developer will be the reasonable cost of satisfactorily completing the improvements described in Exhibit "B," plus reasonable City administrative expenses. In the event of a breach, the estimated costs of the improvements shown on Exhibit "B" shall be prima facie evidence of the minimum cost of completion for any improvement(s) upon which construction has not begun; however, the Developer shall remain liable for the actual costs of installing the improvements shown on Exhibit "B."

14. City's Rights Upon Default: When any event of default occurs, the City may draw on the cash or letter of credit held by the escrow agent as described in paragraph 28, below, to the extent of the face amount of said letter of credit or full amount of escrowed cash for the purpose of curing the default of any specific line item(s) in Exhibit "B," less ninety percent (90%) of the estimated cost (as shown on Exhibit "B") of all improvements described therein and previously accepted by the City. The City will have the right to complete any uncompleted 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 escrowed letter of credit, cash, or other funds or assets to a subsequent developer (or a lender) who has acquired the Subdivision 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 reasonable security for the obligation. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

15. Indemnification: The Developer expressly agrees to indemnify and hold the City, its officers, employees and assigns harmless from and against all claims, costs and liability 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 of work at the Subdivision or the Property pursuant to this Agreement. Notwithstanding the foregoing, to the extent that the City assumes the responsibility(ies) of Developer hereunder, as contemplated in paragraph 14, above, the indemnity provided for herein shall be fully reciprocal. The Developer is not an agent or employee of the City.

16. 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 City and 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.

17. Amendment or Modification: The parties to this Agreement may amend or modify this 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 will be properly notarized before it may be effective. The parties hereto expressly contemplate that this Agreement may be amended upon their mutual agreement to

allocate a portion of the sales tax revenues to be generated from the future development of the Property to reimburse Wal-Mart for a portion of the actual costs incurred by it to construct and install the Improvements.

18. 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 the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

19. 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 of the Subdivision or to transfer ownership of property in the Subdivision. Notwithstanding the foregoing, Wal-Mart, its successors, grantees, and assigns, shall be entitled to develop the Property up to a maximum of 162,900 square feet, subject only to satisfaction of the City's standard building permit requirements.

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 Completion Period, and time periods for City action, such times in which war, civil disasters, labor strikes, severe weather conditions, 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 the courts 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 shall be void. Notwithstanding the foregoing, the Developer shall be permitted to sell and lease-back the Property without the City's express written approval, provided that the Developer has met the security requirements set forth in paragraph 28, below. The burdens of this Agreement are personal obligations of the Developer, and shall 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 hereunder 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.

24. Notice: Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

If to Developer:                   President  
Wal-Mart Stores, Inc.  
702 S. W. 8th Street  
Bentonville, AR 72716

With a Copy to:                   John Grimes  
Wal-Mart Real Estate  
The Mitchell Building  
701 S. Walton Boulevard  
Bentonville, Arkansas 72716

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

25. Recordation: Developer will pay for any costs to record a copy of this Agreement 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 immunity under any applicable state law.

27. Personal Jurisdiction and Venue: Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement, letter of credit or cash escrow agreement will be deemed to be proper only if such action is commenced in District Court for Mesa County. 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. Payment of Improvements. In order to guarantee the performance by Developer of its obligations hereunder, Developer shall, simultaneously with the recordation of this Agreement, deposit into an interest-bearing escrow account at Western Colorado Title Company, Inc. in Grand Junction, with all interest thereon accruing to Developer, cash in an amount equal to the total estimated costs of the Improvements required hereunder, as set forth in Exhibit "B" and Exhibit "C" hereto. Alternatively, in the event the Developer elects to secure the payment of its

obligations under Exhibit "B" with a letter of credit, pursuant to this paragraph, the letter of credit shall be deposited with the escrow agent simultaneously with the recordation of this Agreement, provided, however, that if it is a requirement of the Developer to use a Colorado assigned bank, said deposit shall be made within five (5) days following the recordation of the Agreement. The escrow agent will be authorized to make disbursements out of said escrow account to the contractor(s) responsible for installing said Improvements upon receipt by the escrow agent of (a) an invoice itemizing the work performed, accompanied by lien waivers from materialmen, contractor(s), and subcontractor(s); and (b) approval in writing for the payment of such invoice from an authorized representative of the City. As payments are disbursed by the escrow agent, the Developer's liability hereunder shall be reduced pro-rata.

The estimated costs of the improvements set forth in Exhibit "B" are advisory only, and shall not be considered binding upon either the Developer or the City. The Developer shall be obligated to pay for the actual costs of installing the improvements set forth in Exhibit "B." To the extent that the estimated costs are insufficient to pay the actual costs of said improvements, the Developer shall be responsible for paying the difference between the estimated costs and the actual costs. To the extent that the estimated costs exceed the actual costs, the Developer shall be entitled to a credit against the cost of improvements remaining to be constructed, or to a reimbursement of the amount deposited with the escrow agent in excess of actual costs incurred.

The cost estimates for the improvements set forth in Exhibit "C" shall be deemed binding and conclusive upon both the Developer and the City. To the extent that the estimated costs are insufficient to pay the actual costs of said improvements, the City shall not be entitled to any additional payments from the Developer for the difference between the estimated costs and the actual costs. To the extent that the estimated costs exceed the actual costs, the Developer shall not be entitled to any credit or reimbursement therefore.

Developer shall have the right, at any time and in its sole and absolute discretion, to substitute its letter of credit for that portion of the cash deposit held by the escrow agent for payment of the improvements set forth in Exhibit "B," from a financial institution selected by the Developer and acceptable to the City, which acceptance shall be communicated in writing to the escrow agent upon the request of the Developer. As payment for any improvements are made directly by Wal-Mart to materialmen, contractor(s), and subcontractor(s), and the escrow agent receives appropriate confirmation of payment together with approval in writing from an authorized representative of the City, the face amount of the letter of credit, and Developer's liability thereunder, shall be reduced pro-rata. Said letter of credit shall be released immediately upon the delivery by City of



notice in writing to both the escrow agent and the financial institution issuing said letter of credit that all contractors performing services for said subdivision have been paid in full, and that all improvements set forth in Exhibit "B" have been installed and approved and/or accepted.

29. Acceptance/Phased Development.

a. Conditions of Acceptance: The 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 approved and/or accepted by the City.

Prior to requesting final acceptance of streets, storm drainage facilities, or other required improvements, the Developer shall furnish to the City Engineer as-built drawings in reproducible form and copies of results of all construction control tests required by City specifications.

Notwithstanding the above, City agrees that (a) whenever its consent or approval is required to effect any of the provisions of this Agreement, such consent or approval shall not be unreasonably withheld; and (b) whenever Wal-Mart is required to submit to City any plans, specifications, drawings, details, or other pertinent data required in connection with the Property, City shall review and process such submittals in a prompt and efficient manner, in accordance with applicable ordinances, codes, regulations, policies and procedures.

b. Phased Development: If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.


Attest:

*Neva B. Lockhart*  
Neva B. Lockhart  
City Clerk

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

By: *Mark K. Achen*  
Mark K. Achen  
City Manager

Attest:

  
Secretary

Wal-Mart Stores, Inc.  
a Delaware Corporation

By:

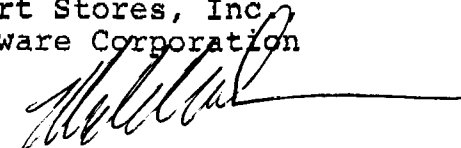
  
Michael R. Nelson  
Assistant Vice-President  
of Real Estate

EXHIBIT "A"

LEGAL DESCRIPTION

LOT 1, INDEPENDENCE CENTER SUBDIVISION, MESA COUNTY, GRAND JUNCTION,  
COLORADO.

EXHIBIT "B"  
 Engineer's Cost Opinion of Public Improvements  
 for  
 Sam's Wholesale Club  
 Grand Junction, CO

1. INDEPENDENT & HIGHWAY 6 & 50 FRONTAGE

<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
Curb and Gutter-North Side	477	LF	6.00	\$ 2,862.00
Curb and Gutter-South Side	365	LF	6.00	2,190.00
Asphalt Paving and Base	2,158	SY	13.00	28,054.00
5' Sidewalk	460	LF	6.00	2,760.00
Concrete Crossspan	200	LF	6.00	1,200.00
Handicap Ramps	4	EA	300.00	1,200.00
			<b>SUBTOTAL</b>	<b>\$ 38,266.00</b>

2. FAITH STREET

<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
Asphalt Paving and Base	3,772	SY	13.00	\$ 49,036.00
Curb and Gutter	878	LF	6.00	5,268.00
5' Sidewalk	1,188	LF	6.00	7,128.00
Concrete Crossspan	200	LF	6.00	1,200.00
Handicap Ramps	5	EA	300.00	1,500.00
Signage	1	LS	200.00	200.00
			<b>SUBTOTAL</b>	<b>\$ 64,332.00</b>

3. 25 1/2 ROAD

<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
Asphalt Paving & Base	863	SY	13.00	\$ 11,219.00
Ditch Improvements	1	LS	1,200.00	1,200.00
Concrete Cross Pan	100	LF	6.00	600.00
			<b>SUBTOTAL</b>	<b>\$ 13,019.00</b>

4. WATER SYSTEM

<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
8" P.V.C. Waterline	2,759	LF	16.00	\$ 44,144.00
6" D.I.P. Waterline	590	LF	12.00	7,080.00
Wet Tap with Valve	2	EA	2,500.00	5,000.00
Fire Hydrant Assembly	7	EA	2,000.00	14,000.00
Valves and Fittings	1	LS	15,000.00	15,000.00
Water Meter Service	1	EA	2,500.00	2,500.00
			<b>SUBTOTAL</b>	<b>\$ 87,724.00</b>

**Recorder's Note: Poor Legibility On  
 Document Provided For Recording.**

5. HIGHWAY 6 & 50 & INDEPENDENT

<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
Signalization and Intersection and Street Improvements	1	LS	100,000.00	<u>\$100,000.00</u>
			SUBTOTAL	<u>\$100,000.00</u>
1. INDEPENDENT & HIGHWAY 6 & 50 FRONTAGE				\$ 38,266.00
2. FAITH STREET				64,332.00
3. 25 1/2 ROAD				13,019.00
4. WATER SYSTEM				87,724.00
5. HIGHWAY 6 & 50 & INDEPENDENT				<u>100,000.00</u>
			TOTAL	<u>\$303,341.00</u>
			10% CONTINGENCY	<u>\$ 30,334.00</u>
			GRAND TOTAL	<u>\$333,675.00</u>

**EXHIBIT "C"**  
**Engineer's Cost Opinion of Public Improvements**  
**for**  
**Sam's Wholesale Club**  
**Grand Junction, CO**

BOOK 1866 PAGE 359

1. 25 1/2 ROAD

<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
1/2 Future Street Section	532	LF	60.00	\$ 31,920.00
			SUBTOTAL	\$ 31,920.00
			TOTAL	\$ 31,920.00
			10% CONTINGENCY	<u>3,192.00</u>
			GRAND TOTAL	\$ 35,112.00



COPY

**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



August 9, 2001

*original LOC  
Given to Bill  
Nebeker  
8-24-01  
S. Nye*

Wal-Mart Stores, Inc.  
Attn: Sharon R. Doyle – 9382  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716-0550

Subject: Irrevocable Standby Letter of Credit No. 3037656

Dear Ms. Doyle:

The on-site improvements per the Development Improvements Agreement, dated April 24, 2001, between Wal-Mart Real Estate Business Trust and The City of Grand Junction, for Wal-Mart Store #1280 at 2881 North Avenue, Grand Junction, Colorado, have been substantially completed.

By this letter the City of Grand Junction is authorizing Wal-Mart to reduce the amount of Irrevocable Standby Letter of Credit No. 3037656 to \$347,175 from the current total amount of \$1,456,093.00.

This letter is not to be construed as total acceptance of the improvements.

Sincerely,

Bill Nebeker  
Senior Planner

Rick Dorris  
Development Engineer





**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 81501-2668  
ATTN: BILL NEBEKER

AMOUNT: USD 347,175.00  
(THREE HUNDRED FORTY SEVEN  
THOUSAND ONE HUNDRED SEVENTY  
FIVE AND 00/100 UNITED STATES  
DOLLARS)

IRREVOCABLE STANDBY LETTER OF CREDIT NO. 5-216670

ISSUE DATE: AUGUST 15, 2001

BENEFICIARY:  
CITY OF GRAND JUNCTION  
250 NORTH 5TH STREET  
GRAND JUNCTION, CO 81501-2668

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: US \$347,175.00  
THREE HUNDRED FORTY SEVEN THOUSAND ONE HUNDRED SEVENTY FIVE AND  
NO/100 US DOLLARS

EXPIRY DATE: MAY 4, 2002

GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. 5-216670 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 THREE HUNDRED FORTY SEVEN THOUSAND ONE HUNDRED SEVENTY FIVE AND NO/100 US DOLLARS (U.S. \$347,175.00), EXPIRING ON MAY 4, 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. 5-216670 ISSUED BY THE CHASE MANHATTAN BANK ARE DUE BY REASON OF WAL-MART'S FAILURE TO COMPLETE ON-SITE IMPROVEMENTS, INCLUDING: SANITARY SEWER, DOMESTIC WATER,

-CONTINUED-

5-216670- -001-L1-01-

01-01

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**

CITY OF GRAND JUNCTION  
250 NORTH 5TH STREET  
GRAND JUNCTION, CO 81501-2668  
ATTN: BILL NEBEKER

AMOUNT: USD 347,175.00  
(THREE HUNDRED FORTY SEVEN  
THOUSAND ONE HUNDRED SEVENTY  
FIVE AND 00/100 UNITED STATES  
DOLLARS)

MAIL  
TO

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 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. 5-216670 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.

5-216670- -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



1725246 10:48 AM 02/03/95  
MONIKA TODD CLK&REC MESA COUNTY CO

RELEASE FROM IMPROVEMENTS AGREEMENT/GUARANTEE

Development Name INDEPENDENCE CENTER SUB File # 1-92

Location INDEPENDENT AVE & HWY 69.50 (SAM'S CLUB)

THE FOLLOWING SIGNATURES INDICATE ACCEPTANCE OF IMPROVEMENTS REQUIRED FOR THIS DEVELOPMENT. ONLY AN AUTHORIZED REPRESENTATIVE OF THE ENTITIES LISTED BELOW MAY SIGN THIS DOCUMENT.

CITY ENGINEER

J. Don Newton 7-21-93  
Signature & Date

J. Don Newton, City Engineer  
Print Name & Title

WATER (NON-CITY)

N/A  
Signature & Date

\_\_\_\_\_  
Print Name & Title

CITY UTILITIES MANAGER

\* Gregory D. Traimer  
Signature & Date

Gregory D. Traimer, Utility Manager  
Print Name & Title

IRRIGATION

Irrigation systems must be signed off by a professional engineer.

I have personally inspected the completed system. It has been properly designed and installed and is fully operational.

N/A  
Signature & Date

\_\_\_\_\_  
Print Name & P.E. Number

FIRE DEPARTMENT

George Bennett 9/4/93  
Signature & Date

George Bennett, Fire Inspector  
Print Name & Title

P.E. Stamp

DRAINAGE

John L. Ballagh 10/5/93  
Signature & Date

JOHN L. BALLAGH, MANAGER  
Print Name & Title

\* Sewer within subdivision not up to Joint Sewer System Standards and has not been accepted for maintenance or future replacement  
\*\*\*\*\*

I hereby certify that the improvements required by the Improvements Agreement recorded in the records of the County Clerk and Recorder of the County of Mesa, Colorado, in Book 1866, at pages 349 thru 356 and supported by the Improvements Guarantee recorded in Book 1866, at pages 352 thru 359 have been completed and accepted by the above signatures.

In accordance with the provisions of the Grand Junction Zoning and Development Code, the above referenced agreement and guarantee are hereby released.

Jerry Tu 10/6/93  
Signature & Date  
Director of Planning