

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL DIVISION

2006 APR 24 A 9:27

WAL-MART REAL ESTATE BUSINESS)
TRUST AND 6WAK LAND INVESTMENTS,)
L.L.C.)

BY *sn*

v.)

Case No. 2003-CV-595
Division 4

THE CITY OF LAWRENCE, KANSAS,)
BOARD OF ZONING APPEALS AND)
THE CITY OF LAWRENCE, KANSAS)

6WAK LAND INVESTMENT, L.L.C.)

v.)

Case No. 2003-CV-596
Division 4

THE CITY OF LAWRENCE, KANSAS,)
BOARD OF ZONING APPEALS AND)
THE CITY OF LAWRENCE, KANSAS)

**CONSENT ORDER HOLDING CASES IN
ABEYANCE AND ENTERING SETTLEMENT AND MUTUAL RELEASE**

The Court enters the following order upon request and presentation of the parties, and upon submission of certain agreements in the captioned cases and related cases, as set forth further here.

1. Presently pending before this Court, within this Division, are (or were) the following cases (referred to as “the Lawsuits”) involving property owned by 6Wak Land Investments LLC, located at approximately 6th and Wakarusa, within the City of Lawrence:

- a. 03C275;
- b. 03C339;
- c. 03C595;

- d. 03C596;
- e. 03C682 (dismissed without prejudice);
- f. 04C58 (dismissed without prejudice); and
- g. 04C216.

2. The plaintiffs in one or more of the Lawsuits include 6Wak Land Investments LLC and Wal-Mart Real Estate Business Trust. 6Wak Land is represented here and in connection with the requests made giving rise to this Order by James C. Bowers, Mary Jo Shaney and Roger N. Walter. Wal-Mart Real Estate Business Trust is represented here and in connection with the requests made giving rise to this Order by Todd Thompson and Timothy J. Sear.

3. The defendants in one or more of the Lawsuits include the City of Lawrence, Kansas, the City of Lawrence, Kansas Board of Zoning Appeals (“BZA”), referred to collectively as the City Parties. To the extent the individual Victor Torres has not been previously dismissed with prejudice from the Lawsuits, he shall be included as one of the City Parties. The City Parties are represented here and in connection with the requests made giving rise to this Order by R. Scott Beeler, Jennifer M. Hannah and David Corliss.

3. 6Wak Land, Wal-Mart and the City Parties will be referred to here collectively as the Parties.

4. Case numbers 03C595 and 03C596 presently are set for trial on count two in each of the Petitions, to commence April 24, 2006.

5. The Parties, through counsel, have asked leave of this Court to hold the Lawsuits in abeyance, and to enter a consent order to delay the April 24, 2006 trial, pending the outcome of a zoning and plan submittal as part of an overall settlement process as reflected in the Parties' Agreement to Hold Lawsuits in Abeyance (with attached Exhibit A - Settlement and Mutual Release Agreement). Those agreements are attached to this Order and are incorporated here by reference.

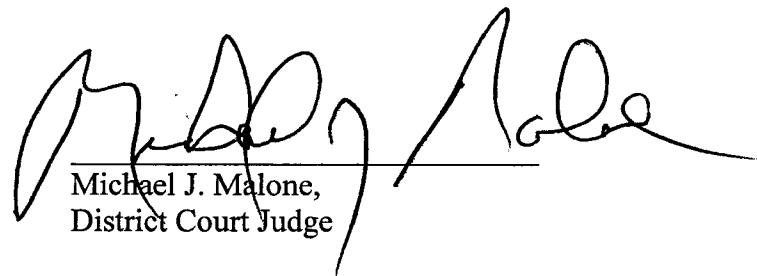
6. The Court, upon consideration of the Parties' joint requests and upon review of the agreements presented, hereby enters and approves the Parties' Agreement to Hold Lawsuits in Abeyance and the Settlement and Mutual Release Agreement.

WHEREFORE, upon presentation of the Parties' Agreement to Hold Lawsuits in Abeyance (with attached Exhibit A - Settlement and Mutual Release Agreement) and, further, upon presentation by the Parties through their counsel of their mutual consent to the entry of this Order, and for good cause shown, the Court hereby:

ORDERS THAT the Lawsuits shall be held in abeyance for a period of six (6) months to allow 6Wak Land, Wal-Mart and the City staff to prepare, file, review and determine a zoning and plan request pertaining to the 6th and Wakarusa property, as further set forth in the Parties' abeyance and settlement agreements. The six (6) month period of abeyance shall be extended, if necessary, upon mutual agreement of the Parties subject to the approval of this Court.

IT IS SO ORDERED.

Date: 4-24-06



Michael J. Malone,
District Court Judge

PREPARED AND APPROVED BY:

**WHITE GOSS BOWERS MARCH
SCHULTE & WEISENFELS, a Professional
Corporation**

By: 

Mary Jo Shaney, KS #22366

James C. Bowers, Jr.

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APPROVED BY:

**MORRIS, LAING, EVANS, BROCK &
KENNEDY**

By: 

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800 S.W. Jackson, Suite 1310

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Telephone: 785-232-2662

Facsimile: 785-232-9983

ATTORNEYS FOR PLAINTIFF

6WAK LAND INVESTMENTS, L.L.C.

ATTORNEYS FOR PLAINTIFF

6WAK LAND INVESTMENTS, L.L.C.

APPROVED BY:

LATHROP & GAGE LC

By: 

R. Scott Beeler, Esq., KS #10118

Jennifer M. Hannah, Esq., KS #19111

10851 Mastin Boulevard

Building 82, Suite 1000

Overland Park, Kansas 66210-1669

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ATTORNEYS FOR THE CITY OF
LAWRENCE AND THE CITY OF
LAWRENCE, KANSAS BOARD OF
ZONING APPEALS

APPROVED BY:

**POLSINELLI SHALTON WELTE
SUELTHAUS PC**

By 

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Kevin J. Bracer, Esq., KS #19250
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Overland Park, Kansas 66211
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Facsimile: 913-451-6205

and

**THOMPSON RAMSDELL & QUALSETH,
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Lawrence, Kansas 66044-2803
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Facsimile: 785-841-4499

**ATTORNEYS FOR WAL-MART REAL
ESTATE BUSINESS TRUST**

{31085 / 62389; 144484.}

FILED
DOUGLAS COUNTY
DISTRICT COURT
2006 APR 24 A 9 27

AGREEMENT TO HOLD LAWSUITS IN ABEYANCE

This Agreement To Hold Lawsuits In Abeyance ("Agreement") is made and entered into this 21st day of April, 2006, by and between 6WAK LAND INVESTMENTS, LLC (hereinafter referred to as "6WAK"); WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware business trust (hereinafter referred to as "WAL-MART"); CITY OF LAWRENCE, KANSAS (hereinafter referred to as "CITY"); and CITY OF LAWRENCE, KANSAS BOARD OF ZONING APPEALS (hereinafter referred to as "BZA"). CITY and BZA are collectively referred to as the "CITY PARTIES" in this Agreement. 6WAK, WAL-MART and the CITY PARTIES are collectively referred to as the "PARTIES" in this Agreement. The PARTIES hereto further acknowledge and agree that to the extent the individual Victor Torres has not been previously dismissed with prejudice from the actions filed against him per the case numbers below, then he too shall be referred to as one of the CITY PARTIES for purposes of this Agreement.

WHEREAS, 6WAK and/or WAL-MART has filed various Petitions for mandamus, money damages and other relief against the CITY and/or the CITY PARTIES in the District Court of Douglas County, Kansas pursuant to assigned case numbers:

03C275
03C339
03C595
03C596
03C682 (currently dismissed without prejudice)
04C58 (currently dismissed without prejudice)
04C216

(hereinafter the "LAWSUITS"); and

WHEREAS, the CITY PARTIES have specifically denied any fault, unreasonable, arbitrary or capricious decision, breach of duty, negligence, responsibility, culpability or liability on their parts in any respect whatsoever; and

WHEREAS, over the course of time, the PARTIES have met, communicated and sought to reach, and ultimately have reached, an agreement as to a process for the settlement of each of the disputes among them; and

WHEREAS, the PARTIES agree and acknowledge that the process for reaching a settlement is intended to provide an acceptable means to resolve all issues and claims of any nature whatsoever, known or unknown, relating to or arising out of the LAWSUITS, individually and *in toto*; and

WHEREAS, the PARTIES agree and acknowledge that the process described in this Agreement was reached through negotiation between the PARTIES and their representatives, and that this Agreement is made without duress and upon the advice of each PARTIES' respective counsel; and

WHEREAS, the PARTIES further agree and acknowledge that each has contributed to or had the opportunity to contribute to the final form of this Agreement and that it shall be considered as having been jointly drafted; and

WHEREAS, Case Nos. 03C595 and 03C596, as noted above, are presently set for trial to the Court to commence April 24, 2006, and the PARTIES hereto, desire to seek leave of Court to hold said cases in abeyance and enter a consent order to delay any such trial pending the outcome of a zoning and plan submittal as part of the settlement process as further provided below; and

WHEREAS, the PARTIES further desire to hold each of the other listed case numbers above (if they remain presently pending), in abeyance for a period of six (6) months; and

WHEREAS, in an effort to avoid the risk and expense of proceeding with any or all of the claims in any or all of the LAWSUITS, and as a result of the agreement reached between the PARTIES, the PARTIES now desire to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants, payments, releases, rights and obligations set forth herein, the sufficiency and receipt of which are hereby acknowledged by each party, the PARTIES agree as follows:

1. LAWSUITS in Abeyance. The PARTIES hereby agree to jointly seek leave of Court for the entry of an order to hold each of the numbered LAWSUITS in abeyance for a period of six (6) months to allow 6WAK, WAL-MART, and the CITY staff to prepare and the CITY to file for review and determination of a zoning and plan request pertaining to the subject property located at the northwest corner of 6th and Wakarusa in Lawrence, Kansas. The six (6) month period of abeyance shall be extended, if necessary, upon mutual agreement of the PARTIES and with District Court approval. The PARTIES further agree that in the event that such rezoning and plan approval application are processed to final approval by the governing body of the CITY, and upon expiration of the statutory period of thirty (30) days for appeal of such decision, and the issuance of the building permit for the construction of the Feature Building, then the Settlement Agreement and Mutual Release (attached hereto as Exhibit A, which Exhibit has been executed by the PARTIES simultaneously herewith and placed in escrow with Commerce Title, Lawrence, KS, with instructions to hold it in escrow until the building

permit for the Feature Building is issued, and then and only then shall it be released to the PARTIES) shall immediately be released to the PARTIES, and the PARTIES shall cause each and every of the enumerated LAWSUITS to be dismissed by the Court with prejudice as further provided in paragraph 6 herein. In the event that the building permit for the Feature Building is not issued in accordance with this Agreement, then the Settlement Agreement and Mutual Release shall be null and void, and of no legal effect. The PARTIES further agree that should the zoning application and plan approval request not be approved by the City Commission, (or if approved in a form which is unacceptable to 6WAK and WAL-MART), then the PARTIES shall request that the District Court place any or all of the pending subject cases back upon the active docket for additional scheduling. 6WAK and WAL-MART shall each advise the CITY in writing within five (5) business days of the approval by the governing body of the CITY as to whether the approval is acceptable. If the District Court dismisses the pending cases with prejudice, all PARTIES are to bear their own costs and attorney's fees incurred in any of the LAWSUITS.

2. Zoning and Plan Approval Application. The CITY will file a zoning and plan approval application for the property at the northwest corner of 6th and Wakarusa (as defined and stated in the LAWSUITS) which plan shall be provided to the CITY by 6WAK and WAL-MART. The PARTIES agree that the project to be defined within the application shall incorporate enhanced design and construction standards at a level such that the physical appearance and layout of the site and the project will be of high quality and in keeping with the highest levels of aesthetics and designs developed by WAL-MART in other locations, and in keeping with and consistent with the design standards of

the City. It is further agreed by the PARTIES that the enhanced standards will apply to all buildings and improvements on the site, including the Wal-Mart Center (the "Feature Building"), the garden center and any and all pad site buildings.

6WAK and WAL-MART acknowledge that the CITY and its staff shall conduct a thorough review of the rezoning and plan application and will make staff recommendations on such plans. Nothing contained in this Agreement shall constitute a pre-approval of the zoning and plan approval application or a substitution for full procedural review in accordance with City standards, processes and procedures.

The PARTIES hereto agree that the proposed total square footage of commercial development for the subject site shall not exceed 128,000 square feet. The PARTIES further agree that any garden center to be incorporated with the Feature Building will not be a structure of any type and will not have mechanical heating or air conditioning. It is agreed that the garden center will be 6,500 square feet in size, "open air" in style, and will be encircled with black iron fencing on masonry posts (or other materials in accordance with the design standards of the CITY as part of the planning and zoning process). The PARTIES further agree that the Feature Building shall be not larger than 99,990 square feet and shall be a fully enclosed building, climate controlled with mechanical heating and air conditioning. The remainder of the square footage for the total site after deduction for the Feature Building and garden center square footage (remainder =21,500 square feet) shall be apportioned in pad site development through planning and negotiation between the applicant and CITY staff.

3. Non-Waiver. All PARTIES agree and stipulate that entry of this Agreement and contemplated zoning and plan submittal shall not be construed as an

admission, waiver or abandonment of any claim or defense in the above-numbered LAWSUITS until such time as the dismissals with prejudice and mutual releases referenced herein are in effect.

4. Traffic Signal. WAL-MART hereby agrees to pay for two-thirds (2/3) of the reasonable cost of traffic signalization at 6th and Congressional if the zoning and plan approval applications are approved. The CITY shall determine the total cost of such traffic light and shall then invoice WAL-MART for its prorated two-thirds contribution. Said payment shall be made not later than thirty (30) days following the approvals and permit issuance described in paragraph 1 above, or thirty (30) days following the CITY's submission of an invoice to WAL-MART, whichever is later.

5. Fee Reimbursement. The CITY has previously paid to 6WAK the sum of \$27,600.00 in fees assessed by the District Court. As part of the consideration for this Agreement, 6WAK agrees to reimburse to the CITY the sum of \$27,600.00. Said payment shall be made not later than 30 days following the execution of this Agreement.

6. Settlement Agreement and Mutual Release. Conditioned upon the approvals and permit issuance described in paragraph 1 above, in a form acceptable to Wal-Mart and 6WAK, the PARTIES shall immediately dismiss with prejudice the LAWSUITS. In connection therewith, 6WAK, WAL-MART and the CITY PARTIES have executed and placed in escrow the Settlement Agreement and Mutual Release ("Settlement Agreement") which provides, among other things, that 6WAK, WAL-MART and the CITY PARTIES mutually release, acquit and forever discharge each other and their respective past and present agents, servants, employees, directors, officers, commissioners, staff, attorneys, insurers, parent companies, subsidiaries, successors and

assigns, of and from any and all past, present or future claims, causes of action, damages, injuries, expenses, attorney's fees, liabilities, in law or in equity, of any nature whatsoever, known or unknown, arisen or which may arise in the future, in any way relating to or arising out of the LAWSUITS, including all matters claimed or that could have been claimed in the LAWSUITS. Furthermore, the Settlement Agreement shall acknowledge that the settlement is a compromise of a disputed claim and that the Settlement Agreement shall not be construed as an admission, as all PARTIES hereto deny any and all liability to each other and deny the nature and extent of any damage claimed by the other.

7. Binding Effect. The PARTIES agree and acknowledge that this Agreement shall bind the PARTIES to this Agreement and also their respective heirs, administrators, executors, assigns, officers, directors, attorneys, subsidiaries, employees, and successors in interest, and shall inure to the benefit of the parties released and their respective heirs, administrators, executors, assigns, officers, directors, attorneys, subsidiaries, employees, and successors in interest.

8. Reliance. The PARTIES acknowledge and warrant that, except as stated herein, no promises or inducements have been made or offered by the PARTIES for this Agreement and that this Agreement is executed by the PARTIES without reliance upon any other statements or representations made by the PARTIES concerning the nature or merits of any claims that they might have had against each other. The PARTIES assume the risk that the facts or law may be otherwise than the PARTIES believe.

9. Modification and Waiver. No modification or waiver of any provision of this Agreement nor consent to any departure therefrom, shall in any event be effective, unless the same shall be in writing and signed by the PARTIES.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and each of which shall constitute but one and the same Agreement.

11. Construction. This Agreement has been arrived at after thorough bargaining and negotiations, with attorneys advising each party. The language of this Agreement is a product of the mutual effort of the PARTIES. This Agreement shall be construed fairly as to all PARTIES; it shall not be construed for or against any party on the basis or the extent to which that party participated.

12. Severability. In the event that any one or more of the provisions or parts of a provision contained in the Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provisions or part of a provision of this Agreement, but this Agreement shall be reformed and construed in any such jurisdiction as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein, and such provision or part shall be reformed so it would be valid, legal and enforceable to the maximum extent permitted in such jurisdiction.

13. Future Cooperation. The PARTIES agree to fully cooperate, to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement which are not inconsistent with its terms.

14. Entire Agreement. The PARTIES state that this Agreement contains the entire agreement between the PARTIES, and there are no other oral, written, express or implied promises, agreements, representations or inducements not specified in this Agreement. The PARTIES also agree that all of the terms of this Agreement are contractual and not a mere recital.

15. Governing Law. This Agreement shall be interpreted in accordance with and governed by the laws of the state of Kansas.

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IN WITNESS WHEREOF, the PARTIES have subscribed their names on the day
and year written above.

6WAK LAND INVESTMENTS, LLC

By _____

Print Name: _____

Its _____

*Approved
JRS
4-20-06*

WAL-MART REAL ESTATE BUSINESS
TRUST

By *Carl R. Muller*

Print Name: *CARL R. MULLER*

Its *VICE PRESIDENT*

CITY OF LAWRENCE, KANSAS and
CITY OF LAWRENCE, KANSAS on
behalf of LAWRENCE, KANSAS BOARD
OF ZONING APPEALS

By _____

Print Name: _____

Its _____

IN WITNESS WHEREOF, the PARTIES have subscribed their names on the day
and year written above.

6WAK LAND INVESTMENTS, LLC

By [Signature]

Print Name: William R. Newsome

Its Manager

WAL-MART REAL ESTATE BUSINESS
TRUST

By [Signature]

Print Name: CHUCK R. MILLER

Its VICE President

CITY OF LAWRENCE, KANSAS and
CITY OF LAWRENCE, KANSAS on
behalf of LAWRENCE, KANSAS BOARD
OF ZONING APPEALS

By [Signature]

Print Name: Mike Amyx

Its Mayor

*Approved
JRS
4-20-06*

EXHIBIT A

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement ("Agreement") is made and entered into this ____ day of _____, 2006, by and between 6WAK LAND INVESTMENTS, LLC (hereinafter referred to as "6WAK"); WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware business trust (hereinafter referred to as "WAL-MART"); CITY OF LAWRENCE, KANSAS (hereinafter referred to as "CITY"); and CITY OF LAWRENCE, KANSAS BOARD OF ZONING APPEALS (hereinafter referred to as "BZA"). CITY and BZA are collectively referred to as the "CITY PARTIES" in this Agreement. 6WAK, WAL-MART and the CITY PARTIES are collectively referred to as the "PARTIES" in this Agreement. The PARTIES hereto further acknowledge and agree that to the extent the individual Victor Torres has not been previously dismissed with prejudice from the actions filed against him per the case numbers below, then he too shall be referred to as one of the CITY PARTIES for purposes of this Agreement.

WHEREAS, 6WAK and/or WAL-MART has filed various Petitions for mandamus, money damages and other relief against the CITY and/or the CITY PARTIES in the District Court of Douglas County, Kansas pursuant to assigned case numbers:

03C275
03C339
03C595
03C596
03C682 (currently dismissed without prejudice)
04C58 (currently dismissed without prejudice)
04C216

(hereinafter the "LAWSUITS"); and

WHEREAS, the CITY PARTIES have specifically denied any fault, unreasonable, arbitrary or capricious decision, breach of duty, negligence, responsibility, culpability or liability on their parts in any respect whatsoever; and

WHEREAS, over the course of time, the PARTIES have met, communicated and have engaged in the planning and zoning process of the CITY, resulting in the subject property being re-planned and rezoned, and a building permit ready for issuance for a Wal-Mart that is the Feature Building on the subject property; and

WHEREAS, the results of the planning and zoning process now allow for the settlement of each of the disputes among them upon issuance of the building permit; and

WHEREAS, the PARTIES agree and acknowledge that the settlement is intended to resolve all issues and claims of any nature whatsoever, known or unknown, relating to or arising out of the LAWSUITS, individually and *in toto*; and

WHEREAS, the PARTIES agree and acknowledge that the settlement and mutual releases described in this Agreement are made without duress and upon the advice of each PARTIES' respective counsel; and

WHEREAS, the PARTIES further agree and acknowledge that each has contributed to or had the opportunity to contribute to the final form of this Agreement and that it shall be considered as having been jointly drafted; and

WHEREAS, as a result of the completion of the re-planning and rezoning process and upon the issuance of the building permit in accord therewith, the PARTIES now desire to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants, payments, releases, rights and obligations set forth herein, the sufficiency and receipt of which are hereby acknowledged by each party, the PARTIES agree as follows:

16. LAWSUITS to be Dismissed. The PARTIES agree that in light of the rezoning and plan receiving final approval by the governing body of the CITY, and now that the statutory period of thirty (30) days for appeal of such decision has expired, and simultaneous with the CITY's issuance of the building permit for the construction of the Feature Building, the PARTIES shall immediately act to cause each and every of the enumerated LAWSUITS to be dismissed by the Court with prejudice. All PARTIES are to bear their own costs and attorney's fees incurred in any of the LAWSUITS.

17. Mutual Release. Conditioned upon the approvals and permit issuance described in paragraph 1 above, and the dismissals with prejudice of the LAWSUITS as contemplated herein, then 6WAK, WAL-MART and the CITY PARTIES do hereby mutually release, acquit and forever discharge each other and their respective past and present agents, servants, employees, directors, officers, commissioners, staff, attorneys, insurers, parent companies, subsidiaries, successors and assigns, of and from any and all past, present or future claims, causes of action, damages, injuries, expenses, attorney's fees, liabilities, in law or in equity, of any nature whatsoever, known or unknown, arisen or which may arise in the future, in any way relating to or arising out of the LAWSUITS, including all matters claimed or that could have been claimed in the LAWSUITS.

18. Compromise of Disputed Claims. The PARTIES acknowledge that this is a compromise of a disputed claim. This Agreement shall not be construed as an admission, as all PARTIES hereto deny any and all liability to each other and deny the nature and extent of any damage claimed by the other.

19. Binding Effect. The PARTIES agree and acknowledge that this Agreement shall bind the PARTIES to this Agreement and also their respective heirs, administrators, executors, assigns, officers, directors, attorneys, subsidiaries, employees, and successors in interest, and shall inure to the benefit of the parties released and their respective heirs, administrators, executors, assigns, officers, directors, attorneys, subsidiaries, employees, and successors in interest.

20. Reliance. The PARTIES acknowledge and warrant that, except as stated herein, no promises or inducements have been made or offered by the PARTIES for this Agreement and that this Agreement is executed by the PARTIES without reliance upon any other statements or representations made by the PARTIES concerning the nature or merits of any claims that they might have had against each other. The PARTIES assume the risk that the facts or law may be otherwise than the PARTIES believe.

21. Modification and Waiver. No modification or waiver of any provision of this Agreement nor consent to any departure therefrom, shall in any event be effective, unless the same shall be in writing and signed by the PARTIES.

22. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and each of which shall constitute but one and the same Agreement.

23. Construction. This Agreement has been arrived at after thorough bargaining and negotiations, with attorneys advising each party. The language of this Agreement is a product of the mutual effort of the PARTIES. This Agreement shall be

construed fairly as to all PARTIES; it shall not be construed for or against any party on the basis or the extent to which that party participated.

24. Severability. In the event that any one or more of the provisions or parts of a provision contained in the Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provisions or part of a provision of this Agreement, but this Agreement shall be reformed and construed in any such jurisdiction as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein, and such provision or part shall be reformed so it would be valid, legal and enforceable to the maximum extent permitted in such jurisdiction.

25. Future Cooperation. The PARTIES agree to fully cooperate, to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement which are not inconsistent with its terms.

26. Entire Agreement. The PARTIES state that this Agreement contains the entire agreement between the PARTIES, and there are no other oral, written, express or implied promises, agreements, representations or inducements not specified in this Agreement. The PARTIES also agree that all of the terms of this Agreement are contractual and not a mere recital.

27. Governing Law. This Agreement shall be interpreted in accordance with and governed by the laws of the state of Kansas.

IN WITNESS WHEREOF, the PARTIES have subscribed their names on the day and year written above.

6WAK LAND INVESTMENTS, LLC

By _____

Print Name: _____

Its _____

Approved
[Signature]
4-20-06

WAL-MART REAL ESTATE BUSINESS TRUST

By *Carl R. Muller*

Print Name: *CARL R. MULLER*

Its *Vice President*

CITY OF LAWRENCE, KANSAS and
CITY OF LAWRENCE, KANSAS on behalf of
LAWRENCE, KANSAS BOARD OF ZONING
APPEALS

By _____

Print Name: _____

Its _____

6WAK LAND INVESTMENTS, LLC

By W. Newsome

Print Name: William R. Newsome

Its Manager

WAL-MART REAL ESTATE BUSINESS TRUST

By Carl R. Mulken

Print Name: Carl R. Mulken

Its Vice President

CITY OF LAWRENCE, KANSAS and
CITY OF LAWRENCE, KANSAS on behalf of
LAWRENCE, KANSAS BOARD OF ZONING
APPEALS

By Mike Amyx

Print Name: Mike Amyx

Its Mayor

Approved
4-20-06