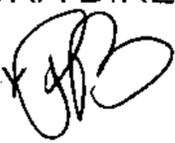

MEMORANDUM

TO: GREGORY J. ORAVEC, ASSISTANT CITY MANAGER/CRA DIRECTOR
THRU: PAM E. BOOKER, SENIOR ASSISTANT CITY ATTORNEY 
FROM: AZLINA GOLDSTEIN SIEGEL, ASSISTANT CITY ATTORNEY 
DATE: MAY 9, 2012
SUBJECT: EASTERN WATERSHED IMPROVEMENT PROJECT (EWIP)
TEMPORARY GRANT OF ACCESS AND ENTRY AGREEMENT
(WAL-MART STORES EAST, LP)

Attached for review, consideration and approval by the City Council of the City of Port St. Lucie is a Temporary Grant of Access and Entry Agreement ("TGAE"). Among the activities that the City and its contractors have been performing for the Eastern Watershed Improvement Project (EWIP) is the clearing and removal of exotic trees and other plantings from City-owned properties and drainage easements. Exotic plantings were mistakenly removed from an area not owned by the City, more specifically the property is located at 10855 S. U.S. Highway 1 in Port St. Lucie and owned by Wal-Mart Stores, East, LP, a Delaware limited partnership ("Wal-Mart").

Pursuant to your direction, I have worked out an agreement with Wal-Mart that will allow the City to repair the disturbed and impacted area. The City will install a row of Wax Myrtle shrubs and other native vegetation in addition to a temporary irrigation system that will allow the new plantings to become established. The City will also provide a one (1) year warranty on said plantings. Since Wal-Mart participates in an electronic signature program, I will forward to you the Electronic DocuSign document once the TGAE is approved by City Council so that you may sign it electronically.

Please process this resolution as required for the placement of this matter on the agenda for the May 14, 2012, Regular City Council meeting. If you have any questions, please do not hesitate to contact me.

AGS/bb

Attachments: Temporary Grant of Access and Entry Agreement
Aerial Site Location Map

cc: James Angstadt, P.E., Project Manager

RECEIVED

MAY 09 2012

City Manager's Office

Project: Eastern Watershed Improvement Project ("EWIP")
Site Info: Walmart Store #929 in Port St. Lucie, FL
Address: 10855 S. US Highway 1, Port St. Lucie, FL
Parcel ID: 4412-800-0001-000/0

TEMPORARY GRANT OF ACCESS AND ENTRY AGREEMENT

THIS TEMPORARY GRANT OF ACCESS AND ENTRY AGREEMENT ("Agreement"), dated this _____ day of _____, 2012, is made by and between **WAL-MART STORES EAST, LP, a Delaware limited partnership**, (hereinafter, "WAL-MART"), located at 702 S. W. 8th Street, Bentonville, Arkansas 72716, with notices sent to Wal-Mart Real Estate Business Trust, Attn: Realty Management Dept. #44-9384 at 2001 S.E. 10th Street, Bentonville, Arkansas 72716-0550, and the **CITY OF PORT ST. LUCIE, a Florida municipal corporation**, with a mailing address of 121 S.W. Port St. Lucie Blvd., Port St. Lucie, FL 34984-5099 (hereinafter, "CITY") The following statements are a material part of this Agreement:

WHEREAS, WAL-MART is the owner of that certain real property commonly referred to as Wal-Mart Store #929 ("the Property"), and is more particularly described in Exhibit "A and depicted on Exhibit "B";" which is attached hereto and incorporated herein; and

WHEREAS, the CITY inadvertently removed exotic vegetation in an area on a portion of the Property identified on Exhibit "B" that was believed to be CITY-owned lands during the CITY'S construction of the Howard Creek Stormwater Treatment Area for its Eastern Watershed Improvement Project ("EWIP"); and

WHEREAS, the CITY desires to replace the vegetation it removed and/or damaged during its construction activities and therefore seeks from WAL-MART the temporary right, privilege, permission, and authority to access, enter and travel upon the Property to install and plant landscaping and such other related materials, in the CITY'S sole discretion and at the CITY'S sole cost and expense; within the impacted area on the Property; and

WHEREAS, WAL-MART desires to give and grant to the CITY, and the CITY desires to accept and receive, a non-exclusive and temporary grant of access and entry over upon, under and across, the Property solely for the purposes set forth herein.

NOW THEREFORE, in consideration of the covenants contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. CITY'S Landscaping Work. The area on the Property that was disturbed and impacted by the CITY'S construction activities for EWIP ("Disturbed Area") will be returned to the same, or better, condition it was in immediately prior to entry at the sole cost and expense of the CITY. The CITY'S landscaping work will consist of installing a row of Wax Myrtle shrubs and other vegetation native to Florida which are drought tolerant once they have become established, in the CITY'S sole discretion, in the Disturbed Area, as depicted in graphic attached hereto as Exhibit "B". As part of the planting, the City, at its sole cost and expense, will provide a temporary irrigation system to the new plantings to help them in becoming established, such irrigation system to run from the Howard Creek STA. The City shall warrant the plants for a one-year

period and will replace them with similar plants should they not survive. If the CITY fails to install and plant landscaping within the area on the Property that was disturbed and damaged by the CITY within ten (10) business days after the date of expiration or termination of this Agreement, WAL-MART may proceed with reasonable restoration efforts and bill the CITY for actual expenses associated with such restoration.

2. Notice. The CITY shall give WAL-MART'S store manager at this location 24 hours notice prior to entering the Property. Work shall be conducted during the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday only. Work shall be prohibited through the periods of October through December.

3. Compliance with Applicable Laws and Approvals. The CITY, at its own expense, shall comply with all applicable laws, regulations, rules, ordinances, plans, policies and orders and shall obtain any and all permits which may be required with respect to its use of and its activities to be conducted on the Property pursuant to this Agreement.

4. Effectiveness. This Agreement shall be of no force and effect until it is fully executed by both the CITY and WALMART, and this Agreement shall terminate forty-five (45) days from the date the last party signs the Agreement. Notwithstanding anything herein to the contrary, this Agreement may be terminated by either party upon one (1) day prior written notice. In cases of emergency or breach of the terms of this Agreement, the rights and privileges granted by WAL-MART to the CITY may be terminated immediately by either party.

5. Indemnification from Willful Misconduct or Negligent Actions by the CITY. The CITY agrees to indemnify, protect, defend and hold harmless WAL-MART and its affiliates and its and their respective directors, stockholders, members, managers, officers, employees, agents, consultants, representatives, successors, transferees and assigns (collectively, the "Wal-Mart Indemnified Parties") from and against any and all liabilities, liens, losses, rights, demands, damages, expenses, causes of action, claims, fines, penalties, judgments, awards, injuries, and other costs (including, but not limited to, attorney's fees) arising from, relating to or resulting from the willful misconduct or negligent actions performed under this Agreement by the CITY, or that of its suppliers, contractors, employees, or agents performing the landscaping work within the Disturbed Area solely in connection with the landscaping work described herein. Notwithstanding anything to the contrary in this Agreement, the indemnities provided by the CITY hereunder will not extend or apply to any claims, damages, suits, actions, losses, liabilities, liens, expenses, fines, penalties, judgments, awards, injuries, investigation costs, or any other expenses and costs caused by or resulting from the negligence or willful misconduct of WAL-MART, or its officers, employees, agents, invitees, licensees, agents, contractors, or other affiliates and instrumentalities.

6. Liens. The CITY shall not permit any mechanics, environmental, or other liens to be filed against the Property for any reason relating to its landscaping work, including, but not limited to, labor or materials furnished to the Property at CITY'S instance or request. If any such lien is filed against the Property, the CITY shall cause the same to be discharged of record, by immediate payment of the claim or by posting an appropriate bond. The CITY shall indemnify, hold harmless and defend Grantor and the Property from and against any such lien solely caused by or resulting from the CITY'S landscaping work within the Disturbed Area on the Property.

7. Insurance Requirements. The CITY shall require all of its suppliers, contractors, employees or agents and consultants who will travel upon and use the Property to perform the landscaping work within the Disturbed Area to obtain and maintain in full force and effect, commercial general liability insurance insuring against loss or liability in connection with bodily injury, death, property damage or destruction occurring on or about the Disturbed Area. Such insurance shall be as follows:

Each occurrence	\$1,000,000.00
Personal/advertising injury	\$1,000,000.00
Products/completed operations aggregate	\$2,000,000.00
General aggregate	\$2,000,000.00
Fire damage (any fire)	\$100,000.00
Medical expense (any one person)	\$10,000.00

Prior to the entry on and use of the Property for the performance of the landscaping work within the Disturbed Area by any of the CITY'S suppliers, contractors, employees or agents, the CITY shall deliver to WAL-MART certificates of insurance evidencing the coverages required by this paragraph.

8. Notification Disclosure and Reporting.

A. Copies. The CITY agrees to provide WAL-MART with copies as soon as reasonably possible (not to exceed ten (10) business days) after receipt of WAL-MART'S request for any study, report, permit, releases (if obtained) from subcontractors upon the subcontractors' completion of work, data or other written information which the CITY may prepare, receive, or cause to be prepared.

B. Notice.

Notices in writing to WAL-MART shall be addressed to:

Realty Manager
Wal-Mart Realty Management
2001 S. E. 10th Street,
Bentonville, Arkansas 72716-0550.

Notices in writing to the CITY shall be addressed to:

Gregory J. Oravec, City Manager
CITY OF PORT ST. LUCIE
121 S.W. Port St. Lucie Boulevard
Port St. Lucie, FL 34984.

With a copy to:

Azlina Goldstein Siegel, Assistant City Attorney
CITY OF PORT ST. LUCIE
121 S.W. Port St. Lucie Boulevard
Port St. Lucie, FL 34984.

9. Payment. Intentionally deleted.

10. No Real Property Interest Conveyed. It is expressly understood that this Agreement does not grant or convey any permanent interest in or to the Property and is not exclusive to the CITY.

11. Attorneys' Fees. In the event of a dispute between the parties with respect to this Agreement, the prevailing party shall be entitled to collect its reasonable attorneys' fees from the other. Further, this Agreement is governed by and will be construed in accordance with the laws of the State of Florida, and in the event of any litigation concerning the terms of this Agreement, proper venue thereof will be St. Lucie County, Florida.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A facsimile copy and/or email transmission of this Agreement and any signatures thereon shall be considered for all purposes as originals.

13. Entire Agreement. This Agreement contains the entire understanding and agreement among the parties with respect to the landscaping work and related activities contained in this Agreement. This instrument may be modified only by a writing signed by both the CITY and WAL-MART.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on behalf of their respective entities, successors and assigns, the day and year first written above, which shall be the date the last party signs this Agreement.

Wal-Mart Stores East, LP,
a Delaware limited partnership

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

By: _____
Barri Tulgetske, Division Manager

City of Port St. Lucie

By: _____
Gregory J. Oravec, City Manager

Exhibit A
Store#929 Port St. Lucie, FL
Property Address: 10855 South U.S. Highway #1

LOT 1, WAL-MART AT PORT ST. LUCIE, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK 41, PAGES 8, 8A AND 8B, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA.

AND: A PORTION OF TRACT 15, BLOCK 4, SECTION 12, TOWNSHIP 37 SOUTH, RANGE 40 EAST, ACCORDING TO PLAT NO. 1 SAINT LUCIE GARDENS, AS RECORDED IN PLAT BOOK 1, PAGE 35, PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE INTERSECTION OF THE NORTH LINE OF SAID TRACT 15 AND THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1 (A 200 FOOT RIGHT-OF-WAY); THENCE SOUTH 27°50'21" EAST ALONG THE SAID WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1, A DISTANCE OF 429.84 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 62°09'39" WEST, A DISTANCE OF 60.00 FEET; THENCE SOUTH 27°50'21" EAST, A DISTANCE OF 40.00 FEET; THENCE NORTH 62°09'39" EAST, A DISTANCE OF 60.00 FEET TO THE WEST RIGHT-OF-WAY OF U.S. HIGHWAY NO. 1; THENCE NORTH 27°50'21" WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

LESS LIFT STATION DEEDED TO THE CITY OF PORT ST. LUCIE IN OFFICIAL RECORDS BOOK 1545, PAGE 484, PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA.

LESS THAT PROPERTY DEEDED TO THE CITY OF PORT ST. LUCIE IN OFFICIAL RECORDS BOOK 1545, PAGE 480, PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA.



Imagery Date: 12/14/2010 1994

27°15'51.33"N 80°17'12.44"W elev 9 ft

Eye all 725 ft

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Google earth

5.9.12
Aerial Site Location Map
for Landscaping Work on the
Wal-Mart Property

Property Address: 10855 S. US Highway 1, Port St. Lucie