

RESOLUTION 40-2009

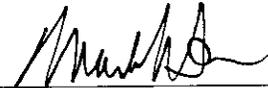
A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH WAL-MART STORES, INC.

WHEREAS, on November 25, 2005, the Mayor and Council approved a Development Agreement with Wal-Mart Stores, Inc. that provided for a payment schedule for the City to reimburse Wal-Mart for the cost of construction of certain public infrastructure built by Wal-Mart as part of its development of a commercial store in Benson; and

WHEREAS, the parties are in agreement to revise the time when the annual payments are due to May 31 of each year.

NOW, THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Benson, Arizona that the Amendment to the Development Agreement with Wal-Mart Stores, Inc., attached hereto as Exhibit A, is hereby approved and the Mayor is authorized to execute said Amendment on behalf of the City.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA this 26th day of May, 2009.



MARK M. FENN, Mayor

ATTEST:



VICKI L. VIVIAN, City Clerk

APPROVED AS TO FORM:



MICHAEL J. MASSEE, City Attorney

When recorded return to:
City Clerk
City of Benson
120 W. 6th Street
Benson, Arizona 85602

AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT

THIS AMENDMENT NO. 1 is made and entered into as of this 19th day of May, 2009, by and between the CITY OF BENSON, an Arizona municipal corporation (the "City"), and WAL-MART STORES, INC., a Delaware corporation ("Wal-Mart").

WHEREAS, the City and Wal-Mart previously entered into that certain Development Agreement (the "Original Development Agreement") dated October 31, 2005; and

WHEREAS, the City and Wal-Mart previously agreed that, in consideration of Wal-Mart's dedications and construction of Public Infrastructure, the City would pay to Wal-Mart a Sales Tax Rebate to be paid annually commencing with the first anniversary after the opening of the Wal-Mart Store, and continuing for each of the next anniversaries until payments are paid in full; and

WHEREAS, the City and Wal-Mart desire to amend certain payment terms and provisions of the Original Development Agreement as more particularly set forth below.

NOW, THEREFORE, for and in consideration of the mutual promises, terms and conditions contained herein, the parties hereby agree as follows:

1. Except to the extent otherwise expressly set forth herein, all capitalized terms shall have the identical meanings as those set forth in the Original Development Agreement.
2. Section 6(e) of the Original Development Agreement shall be and is hereby amended to read as follows:

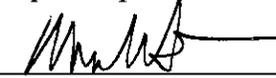
(e) The City shall make the Annual Payments on May 31st of each year commencing with May 31, 2009, and continuing for each year thereafter until the Rebate Amount has been paid in full; provided, however, the City's obligation to make the Annual Payments shall apply only to those periods of time the Wal-Mart Store is open for business and shall abate during any period of time the Wal-Mart Store is not open for

business. If and at such time as Wal-Mart reopens the Wal-Mart Store for business, the City's obligation to make the Annual Payments shall recommence and continue until such time as the Rebate Amount has been paid in full. The Annual Payments shall be applied first to unpaid secured interest and second to the unpaid amount of the Costs.

3. All other terms and provisions of the Original Development Agreement not amended herein remain in full force and effect.
4. All signatories to this Amendment No. 1 represent and warrant to the other signatories hereof that each is duly authorized and empowered to execute this Amendment No. 1 on behalf of the entity that is a party to this Amendment No. 1.
5. This Amendment No. 1 may be executed in any number of counterparts, each of which shall constitute one and the same instrument, and either party hereto may execute this Amendment No. 1 by signing any such counterparts.
6. The Original Development Agreement as modified hereby, constitutes the final agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

IN WITNESS WHEREOF, the CITY OF BENSON and WAL-MART STORES, INC., by their respective officers, authorized to do so, have executed this Amendment No. 1.

CITY OF BENSON, an Arizona
municipal corporation

By 

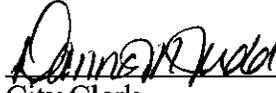
Title Mayor

WAL-MART STORES, INC., a
Delaware Corporation

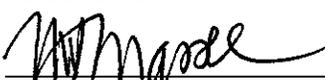
By 

Its DIRECTOR - Realty Management

ATTEST:


Deputy City Clerk

APPROVED AS TO FORM


City Attorney

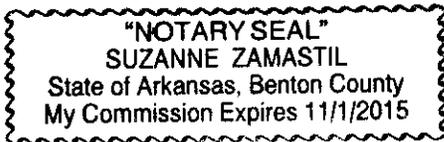
JS

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 19 day of May, 2009, by Nick Goodner, the Director of Realty Management of Wal-Mart Stores, Inc., a Delaware corporation, on behalf of the corporation.

(Seal and Expiration Date)



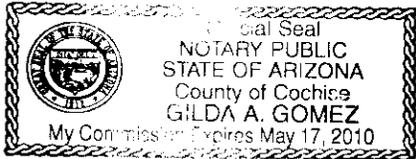
Suzanne Zamastil
Notary Public

State of Arizona

County of Cochise

The foregoing instrument was acknowledged before me this 28 day of May, 2009, by MARK M. FENN, the MAYOR of the City of Benson, an Arizona municipal corporation, on behalf of the City.

(Seal and Expiration Date)



Gilda A Gomez
Notary Public