

**BOONE TOWN COUNCIL
CLOSED SESSION MINUTES
MARCH 31, 2008**

The Boone Town Council met in Closed Session on March 31, 2008, beginning at 1:39 p.m. in the Administration Conference Room, at Boone Town Hall, 567 West King Street. Mayor Loretta Clawson presided. Council members present were Mayor Pro Tem Lynne Mason, Janet Pepin, Stephen Phillips, Liz Aycok, and Rennie Brantz. Staff present were Town Manager Greg Young. Town Attorney Sam Furguele was also present. The following persons were also present: Jim Gallagher of PB2 Architecture & Engineering, Jason Donahue, and Donna Mizelle representing Walmart, Inc..

Mayor Clawson called the meeting to order. Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to enter Closed Session pursuant to NCGS 143-318.11a)3) in order to discuss the following matters:

- \$ Leola Street Property.
- \$ Blowing Rock Interconnect.

VOTE:Aye - All
Nay - None

Upon a motion by Council Member Brantz, seconded by Council Member Mason, Council moved to exit Closed Session at 3:09 p.m.

VOTE:Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to approve the following lease agreement contingent on meeting two conditions:

1. The application must present architectural elevations when applying for a permit through the Town of Boone Board of Adjustment.
2. The Town Council authorizes the Town Manager to execute the lease agreement.

Boone, North Carolina
Store # 2496-04

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease Agreement") is made and entered into this _____ day of _____, 2008 (the "Effective Date"), by and between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("Wal-Mart"), and the **TOWN OF BOONE**, a North Carolina municipal corporation (the "Town"). The designations "Wal-Mart", "Town", and "Ground Lessor" (as defined herein) as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, under that certain lease agreement by and between H and E Exchange and Wal-Mart Stores, Inc., dated as of the 3rd day of August, 1995, as amended by the First Amendment to Lease Agreement dated as of the 18th day of June, 1996, as ultimately assigned to Wal-Mart on October 31, 1996, as ultimately assigned to WM Boone Limited Partnership (the "Ground Lessor") on January 1, 1997, and as amended by the Second Amendment to Lease Agreement dated as of the 5th day of February, 1997 (collectively, the "Ground Lease"), Wal-Mart is the lessee of that certain parcel of real property located at Watauga Village Drive, Boone,

North Carolina, as more particularly described on **Exhibit A** attached hereto and incorporated herein (the “Leased Premises”); and

WHEREAS, Wal-Mart operates a Wal-Mart retail store containing 122,000 square feet, more or less, on the Leased Premises (the “Store”); and

WHEREAS, Wal-Mart desires to expand the Store to include an additional 27,738 square feet, more or less (the “Expansion”) for a total of 149,978 square feet (the “Expanded Store”); and

WHEREAS, Town is owner of that certain parcel of real property consisting of 1.2 acres, more or less, located at the intersection of Pride Drive and Leola Street, Boone, North Carolina, as more particularly described on **Exhibit B** attached hereto and incorporated herein (the “Community Garden Area”); and

WHEREAS, in order to provide additional green space in the vicinity of the Store, and in conjunction with the Town’s site plan approval process with respect to the Expansion, Wal-Mart desires to lease the Community Garden Area from the Town; and

WHEREAS, by leasing the Community Garden Area from Town, upon Wal-Mart’s submission of site plans to Town, and upon Town’s approval of same, it is Wal-Mart’s purpose to comply with the requirements of Article XII of the Town of Boone United Development Ordinance (the “UDO”) entitled “Intensity Regulations” with respect to the acquisition of additional green space in conjunction with site plan approval for the Expansion (the “Livability Standards”); and

WHEREAS, in order to satisfy the purposes as set forth herein, Wal-Mart and Town now desire to enter into an agreement whereby Wal-Mart will lease the Community Garden Area from Town, under the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **LEASE OF SUBJECT PROPERTY AND TERM.** As of the Effective Date hereof, Town hereby contracts with Wal-Mart and agrees to lease to Wal-Mart and Wal-Mart hereby agrees to lease from Town the Community Garden Area for a term of fifteen (15) years beginning on the date of the Grand Opening of the Expanded Store (the “Term”), subject to the provisions, options, and conditions as specified herein, including without limitation the occurrence, happening, or satisfaction of any condition precedent or subsequent as specified in Paragraph 17 hereof.

2. **OPTION TO EXTEND LEASE TERM.** Wal-Mart may elect to renew this Lease Agreement and thereby extend the Term hereof for six (6) consecutive periods of five (5) years each (each such period, an “Extension Period”), upon the same terms and conditions and for the same rentals as specified herein, by giving Town at least thirty (30) days previous written notice of its election to make each such extension. Upon the giving of each such notice within the time specified therefor, this Lease Agreement shall be considered as having been extended for the period specified in such notice without the necessity of the execution of any additional instruments.

3. **DEPOSIT.** Upon the Effective Date hereof, Wal-Mart shall pay to Town as a deposit on the Community Garden Area a one-time, fixed, non-refundable payment of Twenty Thousand and 00/100 Dollars (\$20,000.00) (the “Deposit”). From the Effective Date hereof up and until the expiration of the Due Diligence Period (as defined in Paragraph 17 hereof), until this Lease Agreement is terminated as provided herein, or unless Wal-Mart otherwise consents or demands in writing, in consideration for this Deposit, Town shall keep the Community Garden Area in its current condition and shall observe all laws, ordinances, regulations, and restrictions affecting the Community Garden Area and its use, and shall not lease or otherwise transfer the Community Garden Area to any third party.

4. **LEASE RENTAL.** Beginning upon the expiration of the Due Diligence Period and continuing over the Term hereof or any Extension Period as may be elected hereunder, Wal-Mart shall pay to Town as rent for the Community Garden Area a fixed annual rent of Sixty Thousand and 00/100 Dollars (\$60,000.00) per year (the "Lease Rental"), payable in equal successive installments of Five Thousand and 00/100 Dollars (\$5,000.00) each, due and payable on the first day of each and every calendar month. Lease Rental shall remain unmodified over the course of the Term hereof or any Extension Period except as in accordance with the express provisions of Paragraph 9 hereof.

5. **REPRESENTATIONS AND WARRANTIES OF TOWN.** Town hereby covenants, represents and warrants to Wal-Mart that:

A. Town is the fee simple owner of the Community Garden Area and has the full power, authority, and requisite governmental approval to enter into this Lease Agreement.

B. As of the Effective Date hereof, the Community Garden Area will be and shall remain free of all previous tenants or any party with a claim of right to possession to the Community Garden Area except as in accordance with Paragraph 6 hereof, and any prior leases of the Community Garden Area will be of no further force or effect.

C. Town will faithfully and promptly discharge all of its responsibilities and obligations as set forth herein and to comply with all the terms and conditions hereof.

6. **LICENSE.** Wal-Mart shall use commercially reasonable efforts to execute a license, the substantive form of which is attached hereto and incorporated herein by reference as **Exhibit C** (the "License"), with the Appalachian Coalition for Just and Sustainable Communities, a North Carolina nonprofit corporation, or any such successor North Carolina nonprofit corporation desiring to maintain the Community Garden Area in accordance with the terms and conditions of the License (collectively, the "Nonprofit"), so that Nonprofit may have a limited right of access to and use of the Community Garden Area for the uses as specified herein during the Term or any Extension Periods as may be elected hereunder. Should (i) Nonprofit no longer be effectively organized pursuant to the laws of the State of North Carolina for any reason; (ii) should no successor Nonprofit be available to assume the obligations and duties as set forth in the License following solicitation by the Boone Town Council and upon the presentation of a qualified Nonprofit replacement by the Boone Town Council to Wal-Mart; or (iii) should Nonprofit default under the License in accordance with its terms, then the License shall be terminated and of no further force and effect, and Wal-Mart shall be under no further obligation under this Paragraph 6. In connection with the indemnification provisions as set forth in Paragraph 11 hereof, Town hereby agrees and acknowledges that Wal-Mart may, as a condition precedent to the execution of the License, initially require Nonprofit to obtain a minimum of One Million Dollars and 00/100 (\$1,000,000.00) of comprehensive liability insurance coverage from an insurer acceptable to Wal-Mart, naming both Town and Wal-Mart as additional insureds, providing copies of policies as well as notice in advance of any lapse or modification in coverage, and insuring against all liability whatsoever in connection with Nonprofit's use and occupancy of the Community Garden Area. In connection with the terms and conditions of the License, Town hereby agrees and acknowledges that should Nonprofit become financially able to obtain insurance coverage in excess of One Million Dollars and 00/100 (\$1,000,000.00), Wal-Mart may require Nonprofit to obtain such coverage in connection with the indemnification provisions as set forth in Paragraph 11 hereof. Should Nonprofit be unable or unwilling to obtain or maintain insurance in amounts reasonably sufficient to satisfy Wal-Mart, in Wal-Mart's sole and absolute discretion and in connection with the indemnification provisions as set forth in Paragraph 11 hereof, then Town expressly agrees and acknowledges that Wal-Mart shall be under no obligation to extend the License to Nonprofit or execute same. Further, should Nonprofit be unable or unwilling to maintain appropriate insurance following the execution of the License, or should such insurance lapse at any point, Town expressly agrees and acknowledges that such failure to maintain appropriate insurance by Nonprofit is proper grounds for termination of the License, and Wal-Mart shall be under no further obligation under this Paragraph 6 to the noncompliant Nonprofit.

7. **USE OF THE REAL PROPERTY.** The parties hereto agree that the Community Garden Area may be used for any lawful purpose, including without limitation

future use by Town as additional greenway or green space, which does not undermine Wal-Mart's use of the Community Garden Area as "open space" pursuant to the UDO and in compliance with the Livability Standards. From the Effective Date hereof, Town agrees that Town shall not engage in any actions or endeavors that shall interfere with the use of the Community Garden Area as set forth herein in such a manner as to cause the Community Garden Area to fall out of compliance with the Livability Standards, and Wal-Mart agrees that Wal-Mart's use of the Community Garden Area shall be in compliance with and not in violation of, any local zoning and/or applicable governmental rules, regulations or use laws.

8. **RESTRICTIONS ON USE; APPORTIONMENT OF RESPONSIBILITIES.**

The parties hereto hereby agree to the following restrictions on the use of and apportionment of responsibilities with respect to the Community Garden Area:

a. Upon the Community Garden Area, Wal-Mart shall not (i) place or build any structures or improvements; (ii) leave, place, or store any personal property; (iii) plant any vegetation without the prior written consent of Town; (iv) store vehicles, including without limitation delivery trucks; (v) store inventory; (vi) park or unload vehicles, including without limitation delivery trucks; (vii) exhibit outdoor displays (collectively, the "Non-Monetary Default Items"). Notwithstanding anything contained herein to the contrary, Town expressly acknowledges that the Nonprofit (i) has placed or built structures or improvements upon the Community Garden Area and Town is aware of and hereby ratifies same; (ii) that the Nonprofit engages and has engaged in gardening and planting activities on the property and Town is aware of and hereby ratifies same; and (iii) that the Nonprofit may continue to engage in such gardening and planting activities as provided pursuant to the terms and conditions of the License and in accordance with Paragraph 7 hereof.

b. Neither Town nor Wal-Mart shall generate, remove, store, transport, treat, dispose of, install, or otherwise use any hazardous substances on, in, under or in any way related to the Community Garden Area or cause or permit any such generation, storage, treatment, disposal, installation, or other use with respect thereto in violation of any Environmental Laws. The term "Environmental Laws" includes without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act and other federal laws governing the environment as in effect on the date of this Lease Agreement together with their implementing regulations and guidelines as of the date of this Lease Agreement, and all state, regional, county, municipal and other local laws, regulations and ordinances that are equivalent or similar to the federal laws recited above or that purport to regulate Hazardous Materials. The term "Hazardous Materials" includes petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), and any substance, material waste, pollutant or contaminant listed or defined as hazardous or toxic under any local, state or federal Environmental Laws. If any information exists of which Town is aware of and which Town is required by law to disclose to third parties concerning the presence of any hazardous substances under or upon the Community Garden Area, Town shall make such information available to Wal-Mart. Notwithstanding anything contained herein to the contrary, this Paragraph 8(b) shall not prevent the reasonable use of common garden-variety fertilizers and pesticides commonly used in connection with small-scale or household gardening operations.

c. Wal-Mart shall have no responsibility for the payment of charges, costs, and expenses of utility services to the Community Garden Area, except for such activities undertaken thereon by Wal-Mart.

d. Any license fees, occupational permits or fees, sales or use taxes charged or levied by any governmental authority by reason of this Lease

Agreement, the business operations of Wal-Mart or Wal-Mart's use and occupancy of the Community Garden Area, shall be promptly paid and discharged by Wal-Mart, other than an income tax on Town's receipt of the Lease Rental.

- e. Wal-Mart shall pay all taxes and assessments levied or assessed by any lawful authority against the Community Garden Area as the same may fall due. Wal-Mart shall, upon written request, furnish Town with a copy of the receipts for such taxes and assessments promptly upon payment thereof.
- f. Town shall reasonably cooperate with Wal-Mart or any party to whom Wal-Mart assigns or subleases this Lease Agreement in order to prevent unauthorized persons from entering, accessing, or using the Community Garden Area or any building, improvement, or any natural feature thereon.
- g. Town shall have the right to promulgate such rules and regulations as it may deem appropriate for the behavior of its employees, volunteers, guests, and any and all other licensees and invitees, users, and trespassers with respect to the Community Garden Area.

9. **ASSIGNMENT AND SUB-LETTING.** Wal-Mart may, upon receipt of consent from Town, such consent not to be withheld, conditioned, or delayed without cause, assign or sublet the Community Garden Area. Notwithstanding anything contained herein to the contrary, Town hereby consents to Wal-Mart's assignment or sublease of the Community Garden Area to the Ground Lessor or any parent, subsidiary, or affiliate of Wal-Mart, provided, however, that "affiliate" for purposes of this Lease Agreement shall not be construed to include any previously independent large retailing entity that may be purchased subsequent to the Effective Date hereof by Wal-Mart (each such independent large retailing entity a "Subsequently Purchased Entity"). Any such assignment or sublease shall require that the use of the Community Garden Area be preserved as a community garden or similar green space to be utilized and maintained for a public or municipal purpose and in accordance with the terms of Paragraphs 6 and 7 hereof. Notwithstanding anything herein to the contrary, in no event shall any use be made of the Community Garden Area that is reasonably likely to cause violation of any Environmental Laws or that may cause the Community Garden Area, Leased Premises, Expansion, or Expanded Store to become out of compliance with the Livability Standards. Should Wal-Mart assign the Community Garden Area to a Subsequently Purchased Entity, or a person or entity other than the Ground Lessor or any parent, subsidiary, or affiliate of Wal-Mart, Town may renegotiate the Lease Rental as set forth in Paragraph 4 herein with the assignee in accordance with the terms and conditions of any relevant assignment agreement. Notwithstanding anything contained herein to the contrary, in no event shall Wal-Mart or any parent, subsidiary, or affiliate thereof or Ground Lessor be required to pay Lease Rental other than in the amount as expressly set forth in Paragraph 4 hereof.

10. **INSURANCE.** During the Term of this Lease Agreement, or any extensions or renewals hereof, Wal-Mart may provide, at Wal-Mart's sole cost and expense, a standard comprehensive liability policy of insurance, naming Town as an additional insured and insuring against all liability whatsoever in connection with the use and occupancy of the said Community Garden Area by Wal-Mart. Such liability policy shall be written by an insurer acceptable to Town in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) for any claim or damage to any single person and not less than ONE MILLION DOLLARS (\$1,000,000.00) for personal injury in any one accident and the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for any property damage. Said insurance shall provide for thirty (30) days advance notice to Town prior to cancellation. Notwithstanding anything to the contrary contained herein, so long as the net worth of Wal-Mart exceeds ONE HUNDRED MILLION DOLLARS (\$100,000,000.00), and so long as Wal-Mart is the lessee under the Ground Lease, Wal-Mart shall have the right to retain, either in whole or in part, the financial risk for any claim. In the event Town levies a claim against Wal-Mart, and should Wal-Mart decide to self-insure as provided in this Paragraph 10 against same, Wal-Mart shall provide the appropriate insurance contact information to Town.

11. **INDEMNIFICATION.** To the extent to which Wal-Mart cannot, through the use of discretionary commercially reasonable efforts, recover indemnification as set forth in

Paragraph 6 above, and in accordance with the terms and conditions of the License or any applicable assignment or sublease, from any licensee, assignee, or sublessee of the Community Garden Area, Town shall indemnify, defend and hold harmless Wal-Mart and each of its affiliates and each of their respective officers, directors, employees and agents, and its or their successors, assigns and grantees, from and against any and all liabilities, losses, damages or expenses, causes of action, suits, awards, costs, claims (including without limitation claims by third parties for personal injury, death, or damage to property) and judgments, or any other expenses, including reasonable legal expenses (including appeals) in connection with any action, suit or claim arising from any injury to any persons or any property, in, including, on, or about the Community Garden Area, of any and every nature and for any matter arising, growing out of, concerning, or otherwise touching, affecting, or implicating the use, occupation, management or possession of or presence upon the Community Garden Area, or of or regarding any building, improvement, natural feature, or sewer or other utility thereon, or any part thereof, occasioned by any person, thing, or entity, including without limitation any delegates of Town, agents, employees, assigns or other occupants, guests, or invitees of Town, in an amount up to but in no event exceeding the full extent of all applicable insurance policies then held by Town. Notwithstanding anything contained herein to the contrary, Wal-Mart agrees to indemnify, defend and hold harmless Town and its officers, directors, agents, and employees, and its or their successors, assigns and grantees from and against any and all losses, damages, claims (including without limitation claims by third parties for personal injury, death, or damage to property), liens, liabilities, costs and expenses (including court costs and reasonable attorneys' fees) arising solely out of Wal-Mart's or its agents' or employees' activities occurring on the Community Garden Area, excepting those claims, liabilities, or damages arising solely from the negligence or willful misconduct of Town or Nonprofit, or any of the officers, directors, agents, or employees of either.

12. **INSPECTION AND REPAIR.** Wal-Mart shall, at any time during the Term of this Lease Agreement or Extension Period hereof, permit inspection of the Community Garden Area by Town. Town will coordinate with Wal-Mart to minimize disruption of Wal-Mart's operations thereon.

13. **EMINENT DOMAIN AND DESTRUCTION.** If the whole or any part of the Community Garden Area or any improvements or structures thereon shall be taken by any public authority under the power of eminent domain or be partially or substantially destroyed in such a manner as to prevent Wal-Mart or Ground Lessor from continuing to use the Community Garden Area for the purposes intended hereunder, then this Lease Agreement shall terminate on the date the possession, taking of, or destruction of the whole or part of the Community Garden Area occurs. If, despite the foregoing, Wal-Mart or Ground Lessor can continue to use the Community Garden Area for the purposes and uses intended hereby, then Wal-Mart or Ground Lessor may waive termination as provided herein, and the Lease Rental due hereunder for the remaining Term hereof or any Extension Period as provided herein, shall be justly and proportionately reduced.

14. **REPRESENTATIONS AND WARRANTIES OF WAL-MART.** Wal-Mart hereby covenants, represents, warrants and agrees with Town as follows:

- A. To promptly pay Lease Rental when due.
- B. That Wal-Mart has the full power and authority to enter into this Lease Agreement and has the capacity to complete all the terms and conditions hereof.
- C. To faithfully and promptly discharge all of its responsibilities and obligations as set forth herein and to comply with all the terms and conditions hereof.
- D. Not to alter, improve, or destroy the Community Garden Area, or any part thereof, without the prior written consent of Town, such consent not to be unreasonably withheld, conditioned, or delayed.

15. **BROKERS' COMMISSIONS.** Wal-Mart shall be responsible for the payment of any brokerage fee or commission to ECDC Realty, Inc., pursuant to the terms of a separate represent and warrant, each to the other, that there are no other brokers, salesmen or other

Agreement, the business operations of Wal-Mart or Wal-Mart's use and agreement as approved by Wal-Mart and ECDC Realty, Inc. Town and Wal-Mart hereby

11. **INDEMNIFICATION.** To the extent to which Wal-Mart cannot, through the use of discretionary commercially reasonable efforts, recover indemnification as set forth in

hereto hereby agrees to indemnify and hold the other harmless from any claim made for any such commission, finder's fee or compensation.

16. **DEFAULT.** Should any Event of Default (as defined below) occur, Town may terminate this Lease Agreement, in which event Wal-Mart shall immediately surrender possession of the Community Garden Area to Town, and this Lease Agreement shall be of no further force or effect and the parties hereto shall have no further obligations hereunder.

An Event of Default shall be deemed to have occurred:

(i) should Wal-Mart commit any of the Non-Monetary Default Items as set forth in Paragraph 8(a) hereof, and, after thirty (30) days' written notice by Town to Wal-Mart and Wal-Mart's attorney as set forth in Paragraph 18.G. hereof (or such longer time as is reasonably necessary to cure such failure provided Wal-Mart has commenced the cure and is diligently pursuing same), after an additional fifteen (15) days' written notice by Town to Wal-Mart and Wal-Mart's attorney as set forth in Paragraph 18.G. hereof, Wal-Mart fails to cure said breach or default or fails to perform those acts required by it hereunder to be performed;

(ii) should Wal-Mart commit the same Non-Monetary Default Item as set forth in Paragraph 8(a) hereof twice within a twelve (12) month period, fail to cure same in accordance with the cure periods as set forth in subparagraph (i) above, and upon Wal-Mart's commission of the same Non-Monetary Default Item a third time despite Town's transmission of notice by registered mail following each commission of the same Non-Monetary Default Item directly to Wal-Mart and Wal-Mart's attorney as set forth in Paragraph 18.G. hereof, and Wal-Mart fails to cure such Non-Monetary Default Item within ten (10) days of Wal-Mart's written or oral receipt of such third notice from Town; or

(iii) should Wal-Mart fail to perform any of its monetary obligations or agreements as set forth herein, including without limitation its obligation to pay Lease Rental hereunder, after thirty (30) days' written notice by Town to Wal-Mart (the "First Notice"), after an additional fifteen (15) days' written notice by Town to Wal-Mart following the First Notice (the "Second Notice"), after a final fifteen (15) days' written notice by Town to Wal-Mart following the Second Notice (the "Third Notice"), and upon receipt by Wal-Mart of Town's written election to terminate the Lease Agreement following the expiration of the Third Notice period (the "Termination Notice") within ten (10) days of the date of the Termination Notice and in accordance with this Paragraph 16, Wal-Mart fails to cure its default and perform its monetary obligations or agreements as set forth herein.

17. **CONDITIONS TO LEASE AGREEMENT.** This Lease Agreement is hereby expressly conditioned upon: (i) Wal-Mart obtaining all required internal approvals from Wal-Mart's Real Estate Committee (the "REC") on or before May 11, 2008; (ii) Wal-Mart obtaining the successful rezoning, permitting, or obtaining of any other necessary or mandated permits, amendments, plats, approvals, or governmental requirements (collectively, the "Approvals"), within nine months following the Effective Date hereof or as extended in accordance with the terms of Paragraph 18.A below (the "Due Diligence Period"), that Wal-Mart, in Wal-Mart's sole and absolute discretion, decides are necessary or useful in order for Wal-Mart to contemplate, commence, construct, open, operate, or maintain the Expansion or Expanded Store; (iii) Wal-Mart deciding, in Wal-Mart's sole and absolute discretion, to contemplate, commence, construct, open, operate, or maintain the Store, Expansion, or Expanded Store; and (iv) the Ground Lease being in full force and effect. Should Wal-Mart fail to receive REC approval, should the Ground Lease expire, terminate, or no longer be of any force or effect for any reason, should Wal-Mart be unable to successfully obtain any one of the Approvals during the Due Diligence Period, or should Wal-Mart decide for any reason not to contemplate, construct, open, operate, or maintain the Store, Expansion, or Expanded Store, then Wal-Mart shall not be obligated hereunder, and this Lease Agreement shall be of no further force and effect, and the parties hereto shall have no further obligations hereunder. Should this Lease Agreement terminate in accordance with the terms and conditions hereof or for any reason, Town shall retain the Deposit as its sole and exclusive remedy, as the parties hereto acknowledge that the exact amount of damages Town

represent and warrant, each to the other, that there are no other brokers, salesmen or other

persons or entities entitled to any commission, finder's fee or compensation of any nature or character, whatsoever, in connection with the making, negotiating or performing of this transaction, and each party

MISCELLANEOUS PROVISIONS

A. Extension of Due Diligence Period. Within thirty (30) days prior to the expiration of the Due Diligence Period and upon written notice to Town, Wal-Mart may elect to extend the Due Diligence Period hereof for three (3) consecutive periods of thirty (30) days each (each such period, a "Due Diligence Extension Period"), upon the same terms and conditions as specified herein. In consideration for each Due Diligence Extension period so elected, Wal-Mart shall pay Town Two Thousand Two Hundred and Twenty-Two and 00/100 Dollars (\$2,222.00). Upon the giving of each such notice within the time specified therefor, the Due Diligence Period shall be considered as having been extended for the period specified in such notice without the necessity of the execution of any additional instruments.

B. Amendments. No amendment, change, modification or waiver of any of the provisions of this Lease Agreement, in whole or in part, shall be effective unless the same is in writing, refers expressly to this Lease Agreement, and is signed by both Town and Wal-Mart.

C. Non-Waiver. The failure of either party to insist, in any one or more instances, upon a strict performance of any of the covenants or agreements in this Lease Agreement, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future of such covenants, agreements, or options, but the same shall continue and remain in full force and effect.

D. Governing Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue shall be proper in Watauga County, North Carolina.

E. Severability. If any provision of this Lease Agreement or the application thereof to any person or circumstances shall, for any reason and to any extent, be invalid or unenforceable, that provision shall be severed herefrom, and the remainder of this Lease Agreement and the application of that provision to other persons or circumstances shall not be affected, but rather shall be enforced to the extent permitted by law.

F. Parties' Relationship. Nothing contained in this Lease Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, employer and employee, or of partnership or joint venture or of any association whatsoever between Wal-Mart and Town other than as is contained herein, it being expressly understood and agreed that none of the provisions contained in this Lease Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between Wal-Mart and Town other than the relationship of a lessee and lessor.

G. Notice. All notices required or permitted hereunder shall be given in writing and shall be deemed to have been given either: (i) upon personal delivery or confirmed facsimile transmission; (ii) one (1) day after deposit with a courier service for next day delivery; or (iii) five (5) days after deposit in the U.S. mail, registered mail-postage prepaid. In all cases, notices shall be directed to the signatories below at the addresses and/or facsimile transmission numbers set forth below. Either party may change its address, facsimile number or contact person upon written notice to the other party in accordance with the terms of this Paragraph.

If to Wal-Mart: Wal-Mart Real Estate Business Trust
2001 S.E. 10th Street
Bentonville, Arkansas 72716-0550
Attention: Realty Manager for North Carolina
Store # 2496-04

Copy to: Wal-Mart Real Estate Business Trust
Legal Department (05-8313)
2001 S.E. 10th Street
Bentonville, Arkansas 72716-0550
Attention: Mr. James A. Cole, Esq.
Store # 2496-04

could sustain as a result of such termination would be impractical and extremely difficult to ascertain.

Copy to:

Troutman Sanders LLP

Attn: Ashley H. Story
PO Box 1389
Raleigh, NC 27602
PHONE (919) 835-4103
FAX (919) 829-8700

If to Town: Town of Boone, North Carolina
Attn: Greg Young, Town Manager
PO Box 192
Boone, NC 28607

Copy to: Town Attorney of Boone
Attn: Mr. Samuel F. Furgiuele
PO Box 386
Boone, NC 28607
PHONE (828) 264-7110

H. Entire Agreement. This Lease Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings, agreements, and contracts, whether written or oral, except as may be expressly provided hereunder. This Lease Agreement shall inure to the benefit of and the responsibilities and obligations of the parties hereto shall be binding upon their personal representatives, heirs, successors and assigns.

Remainder of Page Intentionally Blank; Signature Pages Follow

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be duly executed by their duly authorized corporate officers as of the Effective Date hereof.

WAL-MART REAL ESTATE BUSINESS TRUST,
a Delaware statutory trust

By: _____(SEAL)

J. Chris Callaway
Regional Vice President of Design and Real Estate

TOWN OF BOONE
a North Carolina municipal corporation

By: _____(SEAL)

Greg Young
Town Manager

VOTE:Aye - All
Nay - None

Upon a motion by Council Member Mason, seconded by Council Member Brantz, Council moved to adjourn the meeting at 3:15 p.m.

Deputy Town Clerk

Mayor