

## ESCROW AGREEMENT

This Escrow Agreement is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2000 by and between Wal-Mart Stores, Inc., a Delaware corporation ("Wal-Mart") with an address of 2001 S.E. 10th Street, Bentonville, Arkansas 72716, and the City of Rapid City, South Dakota ("City").

**Covenants**

- A. Wal-Mart and City have entered into a Development Agreement (the "DA") concerning the payment by Wal-Mart of certain intersection improvements to be constructed by the City, the terms of which are incorporated herein.
- B. Pursuant to Paragraph 1 (A) of the DA, Wal-Mart shall deposit Two Hundred Fifty Five Thousand Seven Hundred Fifty-nine and 00/100 Dollars (\$255,759.00) into an escrow account (the "Escrow Account") with Pennington Title Company ("Escrow Agent") for payment of said intersection improvements.

NOW, THEREFORE, intending to be legally bound hereby, the parties hereto agree as follows:

1. **Deposit of Funds.** Wal-Mart will deliver into Escrow with the Escrow Agent, the sum of Two Hundred Fifty Five Thousand Seven Hundred Fifty-nine and 00/100 Dollars (\$255,759.00). The Escrow Account is to be deposited in a federally insured interest-bearing account and any and all such interest shall accrue for the benefit of and shall be paid to Wal-Mart. City and Wal-Mart shall designate the type of account to be utilized for this purpose.

2. **No Third Parties.** No part of the Escrow Account will at any time be subject or liable to attachment or levy at the suit of any creditor of City, or of any other interested party, or at the suit of any contractor or any of its creditors. This Agreement is solely for the benefit of Wal-Mart and the City and no third parties shall have any rights herein or hereunder.

3. **Pay Applications.** Escrow Agent agrees not to release the Escrow Account or any portion thereof without first having received a written pay application from the City, or its agent as provided in the DA.

4. **Distribution of Funds.** Ten (10) days from the receipt of a pay application, the Escrow Agent shall pay from the Escrow, to the City or such other person as it shall direct, the amount set forth in the pay application, unless Escrow Agent has received a written objection from Wal-Mart setting forth reasons why said payment shall not be made. In such event, the disputed portion of said payment application shall not be paid until such time as Wal-Mart shall deliver to the Escrow Agent, written authorization to pay same.

5. **Authenticity of Documentation.** Escrow Agent may rely absolutely upon the genuineness and authority of any pay application from the City, not only as to its due execution and validity, but also as to the truth and acceptability of any information therein contained. In connection with any action taken relative to this Agreement, Escrow Agent shall not be held liable for anything done or omitted to be done other than its negligence or willful misconduct.

6. **Interest on deposit.** All interest accrued on the Contribution shall be paid to Developer on a periodic basis, but no less frequently than annually, or within thirty (30) days of the depletion of the Contribution from the Escrow.

7. **Duration.** This Agreement shall remain in full force and effect for a period of five (5) years from the date of the deposit of the funds into escrow. At the end of the term of this Agreement, any unexpended portion of the escrow, plus all accrued interest thereon shall be refunded promptly to Developer.

8. **Disputes.** In the event of an unresolved dispute between the parties, Escrow Agent is authorized to seek an order from the Circuit Court as to how to proceed. Attorneys' fee and court costs incurred by Escrow Agent, will be shared equally by the Wal-Mart and the City.

9. **Binding Effect.** The obligations of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the benefit of, the successors and assigns of the parties hereto.

10. **Defined Terms.** Any capitalized terms which are not defined herein shall be defined pursuant to the DA.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

CITY OF RAPID CITY, SOUTH DAKOTA

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
("City")

ATTEST

WAL-MART STORES, INC..

\_\_\_\_\_

By: \_\_\_\_\_  
Kim Lane  
Assistant Vice President  
("Wal-Mart")

Its Assistant Secretary

\_\_\_\_\_ joins in this Agreement for the purpose of acknowledging its receipt of the Escrow Account and there terms and conditions hereof and agreeing to abide and comply with the terms, provisions and conditions of this Agreement.

PENNINGTON TITLE COMPANY

By: \_\_\_\_\_  
("Escrow Agent")