

DEVELOPMENT AND REIMBURSEMENT AGREEMENT

THIS DEVELOPMENT AND REIMBURSEMENT AGREEMENT is made and entered into as of _____, 2013 (this "Agreement"), by and between the **CITY OF GAUTIER, MISSISSIPPI** (the "City"), a body politic of the State of Mississippi (the "State"), **SINGING RIVER, LLC**, a Mississippi limited liability company, and **SM PROPERTIES GAUTIER, LLC**, a Mississippi limited liability company (collectively, the "Developer"), and **WAL-MART REAL ESTATE TRUST**, a Delaware statutory trust ("Wal-Mart").

WITNESSETH:

WHEREAS, the Developer is in the process of redeveloping the Singing River Mall retail shopping complex, more particularly described in the Tax Increment Financing Plan, Town Center Project, Gautier, Mississippi, October 2011 (the "City TIF Plan") and in **EXHIBIT A** hereto (the "Project");

WHEREAS, pursuant to Sections 21-45-1 *et seq.*, Mississippi Code of 1972, as amended (the "Act"), the City is authorized to undertake redevelopment projects (as defined in the Act) in connection with redevelopment plans (as defined in the Act) within the City in order to encourage private redevelopment therein and is authorized to finance such redevelopment projects through the issuance of tax increment financing bonds; and

WHEREAS, the Developer has requested the City issue tax increment financing bonds, in one or more series, pursuant to the Act in a principal amount not to exceed Twenty Million Dollars (\$20,000,000) (the "Bonds"), to provide funds for the Public Infrastructure Improvements as more particularly described in **EXHIBIT A** hereto; and

WHEREAS, the Public Infrastructure Improvements will cost approximately Twenty Million Dollars (\$20,000,000); and

WHEREAS, by resolution dated _____, 2011, the City adopted and approved the City TIF Plan after holding a public hearing in connection therewith, and indicated its intent to proceed with the sale and issuance of the Bonds, in one or more series, in order to finance all or a part of the costs of the Public Infrastructure Improvements pursuant to the request of the Developer and by virtue of such statutory authority as may now or hereafter be conferred by the Act and as described in the City TIF Plan;

WHEREAS, on _____, 2011, Jackson County, Mississippi (the "County") adopted and approved the Tax Increment Financing Plan Town Center Project, Jackson County, Mississippi, November 2011 (the "County TIF Plan") after holding a public hearing in connection therewith, and indicate its intent to cooperate with the City's efforts to finance all or a portion of the costs of the Public Infrastructure Improvements pursuant to the request of the Developer and by virtue of such statutory authority as may now or hereinafter be conferred by the Act and as described in the City TIF Plan and/or the County TIF Plan (collectively referred to herein as the "TIF Plans"); and

WHEREAS, it is anticipated that the City and County will enter into an Interlocal Cooperation Agreement, pursuant to the Act, (the "Interlocal Agreement") wherein the City and County will agree to pledge certain ad valorem and sales tax revenues in a proportional amount provided therein in connection with City's issuance of the Bonds; and

WHEREAS, at the time of the issuance and sale of the Bonds, the City intends to create a debt service reserve fund in connection therewith, and to partially fund such debt service reserve fund with certain incremental increases in tax revenues collected (and intended to be pledged pursuant to the TIF Plans) prior to the issuance and sale of the Bonds; and

WHEREAS, it is necessary for the Developer to go forward with the Project and the construction of the Public Infrastructure Improvements in anticipation of the delivery of the Bonds, and as required by the Act, the City, the Developer and Wal-Mart now desire to enter into this Agreement in order to set forth the agreement between the parties for (a) the construction and installation of the Project and the Public Infrastructure Improvements by the Developer and (b) the sale and issuance of the Bonds by the City in order to finance all or a part of the costs of the Public Infrastructure Improvements and the costs incident to the sale and issuance of the Bonds; and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the parties hereto intend to be legally bound hereby and in consideration of mutual covenants hereinafter contained do hereby agree as follows:

1. UNDERTAKINGS OF THE CITY. Subject to the conditions herein stated, the City agrees as follows:

a. The City will effect such procedures with respect to the sale and issuance of the Bonds, including, without limitation, the adoption of appropriate resolutions and such other procedures and documents as may be required by the Act.

b. Upon the sale and issuance of the Bonds, the City hereby agrees to partially fund the debt service reserve fund (as may be created in connection with the Bonds) with such tax increment collected. If Bonds are never issued pursuant to this Agreement, such funds shall be treated as the general revenue of the City. Funds will be segregated at the time of issuance of the Bonds. Bonds will be issued for TIF reimbursable expenditures only for the amounts serviceable for the life of the Bonds. The City's obligation under the TIF Plan is based upon the Developer's representation therein.

c. The City will use all reasonable efforts to sell and issue the Bonds, in one or more series, in an amount necessary to reimburse Wal-Mart for the cost of acquiring that certain parcel of land, together with the existing parking lot improvements thereon, described on **Exhibit B** hereto (the "Future Wal-Mart Parking Site") and Wal-Mart and/or Developer for their respective costs associated with the installation, acquisition, and construction of the Public Infrastructure Improvements and to provide for any necessary capitalized interest, a debt service reserve fund, and costs of issuance of the Bonds, pursuant to the terms of the Act on such terms, conditions and

rates of interest as shall be mutually agreeable to the City and to the Purchaser (as hereinafter defined).

d. The sale or sales of the Bonds shall be by negotiated sale to one or more purchasers (the "Purchaser") or public bid determined by Bond Counsel and City advisors.

e. Pursuant to the resolution or resolutions of the City authorizing the sale and issuance of the Bonds (collectively, the "Bond Resolution"), the proceeds from any sale of the Bonds will be delivered to the City for handling and distribution according to the terms of the Bond Resolution and the Act.

f. The Bond Resolution will, among other provisions, provide that proceeds from any sale of the Bonds shall first pay the City's costs incurred in connection with the Project, which shall include but not be limited to the expenses, costs and fees incurred by the City in connection with the TIF Plans, and this Agreement, including costs of issuance of the Bonds and funding a reserve to pay any debt service on the Bonds that will be due and payable before the first Tax Increment (as defined hereinbelow) is received by the City and any reserve that may be required by the Purchasers, and then the proceeds shall next be used to reimburse Wal-Mart \$7,500,000.00 for the cost of the the Future Wal-Mart Parking Site and any other eligible TIF costs, and then to reimburse the Developer for eligible TIF costs, in an amount not to exceed \$12,500,000, for Developer acquiring, installing and constructing the Public Infrastructure Improvements; and the remainder of the Bond proceeds, if any, shall be disbursed by the City in the manner authorized by law.

g. In accordance with the Act, the Bonds shall mature twenty (20) years from their date, may be subject to redemption at such times and at such premiums and shall be in such form and in all other respects be of such detail and issued under such conditions as may be determined in the Bond Resolution.

h. The Bonds will be secured by a pledge from the City of 100% of the increased real and personal property ad valorem taxes and 35% of the increased retail sales tax, and an anticipated pledge from the County of 75% of the increased real and personal property ad valorem taxes generated from within the TIF District as set forth in the TIF Plans, in accordance with the Interlocal Agreement. As used herein and subject to the limitations set forth in the Interlocal Agreement, the term "Tax Increment" shall mean the incremental increase in tax revenues generated by the Project as provided in the TIF Plans, including a pledge of a portion of the incremental increase in tax revenues derived from (i) sales tax rebates to the City generated by the Project, and (ii) certain ad valorem revenues to the City and County generated from the "captured assessed value" (as defined in the Act) of the real and personal property comprising the Project, excluding levies for public school purposes to secure and provide for the payment of the principal of and interest on the Bonds.

i. Costs of issuance for the Bonds, including, but not limited to, the fees and expenses of City Counsel, Bond Counsel, Financial Advisor, Planning Consultant and

Bond Underwriter will be paid from the proceeds of the Bonds; provided, however, that if the Bonds are not issued and this Agreement is terminated as provided in Paragraph 5 hereof, fees and expenses incurred by City Counsel and Bond Counsel will be paid as provided in Paragraph 5 hereof.

j. Within a reasonable time after adoption of all proceedings of the City required by the Act for the sale and issuance of the Bonds, the City may submit the same for validation under the provisions of Sections 31-13-1, *et seq.*, Mississippi Code of 1972, as amended, and may prosecute said validation proceedings and secure therein a final decree of the Chancery Court of Jackson County, Mississippi validating the Bonds.

k. The City's obligation to reimburse Wal-Mart and the Developer under this Agreement is further limited to Wal-Mart's actual cost of acquiring the Future Wal-Mart Parking Site and Wal-Mart's and Developer's actual costs to acquire, install, and construct the Public Infrastructure Improvements as defined in **EXHIBIT A** hereto, including professional fees and other incidental costs necessary for the acquisition, installation, and construction of the infrastructure. Furthermore, the City's obligation to expend funds or reimburse the Developer is expressly limited to funds available under this Agreement from Bond proceeds derived from any sale and delivery of the Bonds and available after distribution in accordance with the Bond Resolution and Paragraph 1(d) and (e) of this Agreement. Any and all land acquisition costs necessary for the Public Infrastructure Improvements and reimbursement are limited to cost of the land and will not include soft costs such as consulting or realtor fees associated with such land acquisition.

2. UNDERTAKINGS OF THE DEVELOPER. Subject to the conditions herein stated, the Developer agrees as follows:

a. The Developer, and/or its agents, will timely cause to be constructed and installed the Project in accordance with the TIF Plans and as set forth in **EXHIBIT A**, and in accordance with the building codes of the City and all other applicable standards, laws and regulations.

b. The Developer, and/or its agents, will timely cause to be constructed and installed the Public Infrastructure Improvements in accordance with the building codes of the City and all other applicable standards, laws and regulations of the City and as otherwise required under State law. The Developer shall submit plans and specifications with respect to the Public Infrastructure Improvements to the City and such plans and specifications shall be subject to the approval of the City, which approval shall be limited to the determination of whether such plans and specifications are in compliance with the building codes of the City and all other applicable standards, laws and regulations of the City.

c. The Developer will prepare and file with the City a Preliminary Plat and Final Plat in connection with the Project in accordance with the City's zoning and subdivision regulations.

d. In connection with the construction and installation of the Project and the Public Infrastructure Improvements, the Developer will obtain all necessary approvals from all applicable State, City, federal and other governmental agencies.

e. The Public Infrastructure Improvements described in **EXHIBIT A** will be constructed and installed to City standards to allow for their dedication or conveyance to the City, if applicable.

f. Following their installation and construction, the Developer will, in a manner and form satisfactory to the City, dedicate or convey or have dedicated or conveyed to the City, if applicable, the Public Infrastructure Improvements described in **EXHIBIT A**, and, if required by the nature of such Public Infrastructure Improvements, convey or have conveyed easements to the City in connection with such Public Infrastructure Improvements.

g. Wal-Mart assumes the risk of acquiring the Future Wal-Mart Parking Site and the Developer assumes the risk of proceeding with construction of the Project and Public Infrastructure Improvements prior to sale and issuance of the Bonds, and acknowledge and agree the City is not authorized or obligated to use its general fund to pay any part of the costs of the Project or the Public Infrastructure Improvements. In the event the Bonds are not sold and delivered, no resulting liability shall accrue to the City, irrespective of expenditures made by Developer or Wal-Mart. Developer acknowledges and agrees that the final amount of the Bonds will be determined by mutual agreement between the Developer and the City based on the pledged Tax Increment available to the City to fund debt service on the Bonds. In the event the Bond proceeds are insufficient to pay the costs of the Public Infrastructure Improvements, the Developer agrees to pay such deficiency necessary to complete the Public Infrastructure Improvements as set forth herein and still dedicate or convey the intended Public Infrastructure Improvement areas to the City. The City's financial reimbursement liability is specifically limited to section 1(k) hereinabove.

h. The Developer shall maintain separate records on the costs of the Project and the Public Infrastructure Improvements in a manner so as to aid the City in accounting for costs eligible for reimbursement under this Agreement. Invoices for Public Infrastructure Improvements and any other documentation shall be delivered to the City Manager on not less than a quarterly basis throughout the Project.

3. CONDITIONS PRECEDENT TO ISSUANCE OF THE BONDS.

The Developer and Wal-Mart acknowledge and agree that the City's obligation to issue and close the Bonds and reimburse the Developer and Wal-Mart pursuant to this Agreement is expressly subject to the conditions precedent that the Developer (i) shall have obtained all required approvals of the Preliminary Plat in connection with the Project and (ii) shall have the plans and specifications for the Public Infrastructure Improvements described in **EXHIBIT A** approved by the City pursuant to section 2(b) above. Upon satisfaction of the requirements of this Paragraph 3, the City agrees to use its best efforts to timely sell and issue the Bonds on a schedule mutually acceptable to the City and the Developer. The City further agrees to issue Bonds at the request of the Developer, in one or more series, as certain phases of the

Public Infrastructure Improvements and the Project have been completed and in such amounts and terms necessary for the marketing of the Bonds to be issued during each phase or series; provided that before the Developer incurs any cost with respect to the Public Infrastructure Improvements for which it shall seek reimbursement, the Developer shall have obtained the City's prior written approval of the scope of work and all construction and engineering contracts and cost of each, in order for such item of expense to be an eligible TIF expenditure and reimbursable cost item. Any cost overruns or costs in excess of the proceeds of the TIF Bonds available for such purposes shall be an obligation of Developer irrespective of the requirement that such improvements will be dedicated to the City for general public use. Bonds will not be marketed to the public for any portion of the Public Infrastructure Improvements in the TIF Plan until the same has been dedicated or conveyed to the City.

4. LIMITED OBLIGATION. The Bonds will be limited obligations of the City and County payable solely from the pledged Tax Increment. The Bonds will be secured by a pledge from the City of 100% of the increased real and personal property ad valorem taxes and 35% of the increased retail sales tax as prescribed in the TIF Plans, and an anticipated pledge from the County of 75% of the increased real and personal property ad valorem taxes generated from within the boundaries of the TIF District and as set forth in the respective TIF Plans of the City and County. Except for the pledged Tax Increment, neither the full faith and credit or taxing power of the City or County nor the full faith and credit or taxing power of the State or any political subdivision thereof, including the City and County, is pledged to the payment of the Bonds.

5. TERMINATION. If the Bonds are not issued and delivered on or before five (5) years from the date hereof (or such other date as shall be mutually agreed upon in writing by the City and the Developer), this Agreement shall thereupon terminate. This Agreement may also be terminated by written agreement of the Developer and the City. Upon termination of this Agreement related solely to any failure to fulfill the conditions precedent in Paragraph 3 above, it is expressly understood that the City assumes sole liability for all reasonable fees and expenses incurred by the City, City Counsel, Bond Counsel, Financial Advisor and Planning Consultant to the City in relation, directly or indirectly, to the sale and issuance of the Bonds.

6. ADDITIONAL PROVISIONS.

a. This Agreement has been made by the City and the Developer and no person other than the foregoing and their successors and assigns shall acquire or have any right under or by virtue of this Agreement.

b. This Agreement shall become effective upon the execution and acceptance hereof by the parties hereto and shall be valid and enforced from and after the time of such execution and acceptance.

c. If any paragraph or part of a paragraph of this Agreement shall be declared null and void or unenforceable against any of the parties hereto by any court of competent jurisdiction, such declaration shall not affect the validity or enforceability of any other section or part of a paragraph of this Agreement. Unless

such section so materially affects the document as a whole to render the same not in accordance with the intent of the parties hereto.

d. In the event any agreement contained in this Agreement shall be breached and such breach shall thereafter be waived, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

e. This Agreement shall inure to the benefit of the City and the Developer and their respective successors and assigns.

f. This Agreement shall be governed as to validity, construction and performance by the laws of the State.

g. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall constitute but one and the same agreement.

h. Except as otherwise provided herein, no amendment, change, modification, alteration or termination of this Agreement shall be made other than pursuant to a written agreement signed by the City, Wal-Mart and the Developer with the authorization of the City Council.

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be duly executed as of the _____ day of _____, 2013.

CITY OF GAUTIER, MISSISSIPPI

By: _____
Tommy L. Fortenberry, Mayor

Cindy Russell, City Clerk

SINGING RIVER, LLC,
a _____ limited liability company

By: _____
Name: _____
Title: _____

SM PROPERTIES GAUTIER, LLC

By: _____
Name: _____
Title: _____

WAL-MART REAL ESTATE TRUST

By: _____
Name: _____
Title: _____

EXHIBIT

A

PROJECT: The Project will be the redevelopment of the Singing River Mall and its four (4) to five (5) outparcels (the “Mall”) into a high quality mixed-use development that is expected to feature commercial businesses, office buildings, parking facilities, and related uses, which will be undertaken by the Developer, and the development of the City’s new town center located north of Singing River Mall (“Town Green”), which will be undertaken by the City with the participation of Developer as provided hereinafter. The Mall will be converted to an open air shopping venue by a complete reconfiguration of the layout, including demolition of approximately two hundred fifty thousand (250,000) square feet of the existing leasable area. The redeveloped Mall will consist of three hundred fifty thousand (350,000) square feet of open-air anchor (including a retail store to be constructed by Wal-Mart adjacent to the Future Wal-Mart Parking Site), junior anchor, and smaller retail spaces. A minimum of two sit-down full-service restaurants will exist on the Project site.

PUBLIC INFRASTRUCTURE IMPROVEMENTS:

A. General Improvements. The funds will be used to pay the cost of the Wal-Mart acquiring the Future Wal-Mart Parking Site, and Wal-Mart and/or Developer constructing public and/or private parking facilities, and various public infrastructure improvements of the Project including, but not limited to, installation of utilities such as water, sanitary sewer, and natural gas lines, relocation of utilities; installation and relocation of electrical services; installation of storm drainage; construction of roadways with curb and gutter, sidewalks; installation of traffic signalization and signage; grading; landscaping and lighting of parking areas and rights- of-way; purchase of rights-of-way necessary for the installation of the infrastructure improvements described hereinabove; capitalized interest; engineering; preparation fees for this TIF Plan; other incidental costs; and related professional fees. The construction of the aforementioned improvements will be undertaken to provide for the public convenience, health, and welfare.

B. Town Center Project Improvements. The landscaping for the Project shall include: stamped concrete at key pedestrian connections; a minimum of two comparable public art sculptures approved by the City that convey the City’s theme as “Nature’s Playground”; a splash/spray pad (2,000 square feet minimum) at the northwest corner of the site; substantial landscaping; uplighting of many shade trees and key landscape features; tall (30” minimum height) landscaped pots with irrigation along storefronts; holiday lighting infrastructure; and irrigated hanging baskets on lights at key intersections.

1. Notwithstanding any provisions in this Development and Reimbursement Agreement to the contrary, Developer's obligation with respect to the costs of the Town Center Project Improvements listed in paragraph B shall be limited to \$500,000.00 in the aggregate, for which Developer will be reimbursed from eligible TIF funds.
2. The Project shall include the following architectural details: blade store signs; two-story end-caps for multi-tenant buildings; an arcade store front with a minimum depth of eight feet (8'); varied building setbacks; varied rooflines; brick, stucco and cast stone as the dominant building materials; and architectural building lights.
3. The rear of the retailers along the East/West Dolphin shall address the pedestrian with architectural details for a "mainstreet feel" such awnings, a varied façade, signage, faux shutters and other features.
4. The Project shall include the following safe and direct pedestrian connections:
 - a. From the easternmost entrance on Hwy 90 to the new retail strip on the east;
 - b. From the westernmost entrance on Hwy 90 to the main Belks entrance;
 - c. From North/South Dolphin Drive to the front of Sears;
 - d. From the westernmost entrance on Dolphin Drive to the small retailers adjacent to the major new tenant;
 - e. From the easternmost entrance on Dolphin Drive to the main entrance of the major new tenant;
 - f. Interconnections between Sears, Belks, and the new retail nodes; and
 - g. From the new Hwy 90 path to the main entrances of the new retailers (outparcels) along Hwy 90.

C. Town Green Improvements. The City's vision for Town Green necessitates roadway, stormwater, pedestrian, landscape, architectural and amenity elements. In furtherance of the Town Green portion of the Project, the Developer will participate in a transportation enhancement project along Dolphin Road to add sidewalks, landscaping, site furnishings and street lights. In order to address stormwater impacts of the Town Green portion of the Project, the Developer will participate in the engineering and funding of stormwater improvements serving the Project and also on the City's new Town Green property.

1. Notwithstanding any provisions in this Development and Reimbursement Agreement to the contrary, Developer's obligation with respect to the costs of the Town Green Improvements listed in paragraph B shall be limited to \$850,000.00 in the aggregate, for which Developer will be reimbursed from eligible TIF funds.

**EXHIBIT B LEGAL
DESCRIPTION OF
FUTURE WAL-MART
PARKING SITE
PROPERTY**