

## **TAB 3**

# **Example of a Deed Restriction**

RCUJPM1253JAN411MONROE



\* 2 0 1 0 R 0 0 1 3 8 5 \*

2010R00138

COVENANT DEED

RECORDED ON 01/04/2010 02:44:34PM  
SHARON D LEMASTERS-REGISTER OF DEED

MONROE COUNTY, MI  
RECORDING: 26.00



PAGES: 5

[Space Above This Line For Recording Data]

Parcel Identification Number: Part of 58-07-076-003-20

Return recorded document to:  
American Title  
4131 N. Central Expressway, Suite 450  
Dallas, TX 75204  
Attn: Stephanie Kleam  
(214) 520-9999

This instrument prepared by:  
Wal-Mart Realty Company  
Sam M. Walton Development Complex  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716-0550  
Attn: Brad Rogers, Asst. General Counsel

**COVENANT DEED**

This COVENANT DEED is made effective December 2, 2009, between WAL-MART REALTY COMPANY, an Arkansas corporation, with a corporate address of 702 S.W. 8<sup>th</sup> Street, Bentonville, AR 72716 ("Grantor"); and KERR MONROE, LLC, a Michigan limited liability company, with an address of 3217 River Walk, Saugatuck, MI 49453 ("Grantee").

**W I T N E S S E T H:**

THAT GRANTOR, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby forever grant, bargain, sell, convey and confirm to Grantee, and its successors and assigns, a certain tract of land, together with all improvements of any kind thereon, situated, lying, and being in the Township of Frenchtown, Monroe County, Michigan, as more particularly described to wit:

See Exhibit "A" attached hereto and made a part hereof ("Property");

TO HAVE AND TO HOLD said land unto Grantee, and its successors and assigns, forever, with all tenements, appurtenances and hereditaments thereunto belonging, subject to easements, conditions, restrictions and other matters of record.

This conveyance is expressly subject to the following conditions and restrictions:

- (a) The Property will not be used for or in support of the following: (i) a grocery store or supermarket, as hereinafter defined below; (ii) a wholesale club operation

similar to that of a Sam's Club owned and operated by Walmart; (iii) a discount department store or other discount store, as hereinafter defined; or (iv) a pharmacy (the "Property Restrictions"). "Grocery store" and "supermarket", as those terms are used herein, shall mean a food store or a food department containing more than thirty-five thousand (35,000) square feet of gross leasable area, for the purpose of selling food for consumption off the premises, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments. "Discount department store" and/or "discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than fifty thousand (50,000) square feet of gross leasable area, for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of Walmart. Notwithstanding the foregoing, the Property Restrictions shall not apply to Wal-Mart Stores, Inc., or any parent company, affiliate subsidiary, or related company.

- (b) The Property Restrictions shall remain in effect for a period of twenty (20) years from the recording of this deed. The aforesaid Property Restrictions shall run with and bind the Property, and shall bind Grantee or an affiliated entity, or its successors or assigns, and shall inure to the benefit of and be enforceable by Grantor, or its successors and assigns, by any appropriate proceedings at law or in equity to prevent violations of such aforesaid Property Restrictions or to recover damages for such violations.

No representations or warranties of any kind have been made by Grantor or anyone on its behalf to the Grantee as to the condition of the Property described herein or any improvements thereon erected, if any, and it is understood and agreed by the parties that the Property is sold **"AS IS, WHERE IS - WITH ALL FAULTS AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED."**

Grantor makes no warranty or representation regarding the condition of the Property, including, without limitation, environmental or ecological condition, it being understood that the Grantee is taking the Property **"AS IS, WHERE IS - WITH ALL FAULTS AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED."**

Without limiting the foregoing, Grantee hereby covenants and agrees that Grantee accepts the property **"AS IS"** and **"WHERE IS"**, and with all faults and defects, latent or otherwise, and that Grantor is making no representations or warranties, either expressed or implied, by operation of law or otherwise, with respect to the quality, physical conditions or value of the Property, the Property's habitability, suitability, merchantability or fitness for a particular purpose, the presence or absence of conditions on the Property that could give rise to a claim for personal

injury, property or natural resource damages; the presence of hazardous or toxic substances, materials or wastes, substances, contaminants or pollutants on, under or about the Property, or the income or expenses from or of the Property.

AND SAID GRANTOR does hereby warrant the title to said Property, and will defend the same against the lawful claims of all persons claiming by, through and under Grantor, but none other, subject to the easements, encumbrances, restrictions, and other matters of record, the conditions and restrictions as stated herein, and subject to real property taxes for the year of 2009, and thereafter.

Grantor grants to Grantee the right to make all divisions under section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967.

This Property may be located within the vicinity of farm land or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

[Signature page follows]

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed in its name by its Senior Director of Realty Sales and Leasing of the Grantor, Wal-Mart Realty Company, and caused its corporate seal to be hereto affixed the 30<sup>th</sup> day of November, 2009.

WAL-MART REALTY COMPANY,  
an Arkansas corporation

By: Carole J. Baker  
Carole J. Baker  
Senior Director of Realty Sales  
and Leasing



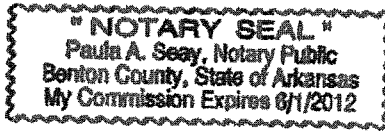
ACKNOWLEDGEMENT

STATE OF ARKANSAS )  
  ) §§  
COUNTY OF BENTON )

In the State of Arkansas, County of Benton, on this November 30, 2009, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Carole J. Baker to me personally known, who being by me duly sworn did say that she is Senior Director of Realty Sales and Leasing of the Grantor in the foregoing covenant deed, and that the seal thereto affixed is the corporate seal of said Wal-Mart Realty Company, and that said covenant deed was signed, sealed and delivered by her on behalf of said corporation by authority of its Board of Directors and said Carole J. Baker acknowledged said covenant deed to be the free act and deed of said corporation.

WITNESS MY HAND and notarial seal subscribed and affixed in said County and State, the day and year in this certificate above written.

By: Paula A. Seay  
Name: Paula A. Seay  
Notary Public



**Exhibit "A"**

**[Legal Description]**

Part of Private Claims 76, 79, 317, and a part of fractional Section 19, Town 6 South, Range 9 East, Frenchtown Township, Monroe County, Michigan, described as: Commencing at a point at the intersection of the Westerly right-of-way of Telegraph Road with the centerline of Stewart Road; thence N 21°37'00" E, 3085.94 feet along the Westerly right-of-way of Telegraph Road for a Point of Beginning; thence N 68°23'00" W, 243.07 feet; thence N 21°37'00" E, 350.00 feet along an existing back of curb line and parallel with the Westerly right-of-way of Telegraph Road; thence S 68°23'00" E, 243.07 feet; thence S 21°37'00" W, 350.00 feet along the Westerly right-of-way of Telegraph Road to the Point of Beginning, containing approximately 1.95 acres, more or less.