

## Mutual Release and Settlement Agreement

THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT (this "Agreement"), made this 29th day of March, 2018, by and between the District of Columbia, a municipal corporation and local government for the territory constituting the permanent seat of the federal government of the United States of America (the "District"), represented by its Attorney General, and Walmart Inc., a Delaware corporation, inclusive of any subsidiary, division, business organization, joint venture, predecessor or any other associated corporate entity, including Wal-Mart Stores East, LP, a Delaware limited partnership (collectively, "Walmart") witnesseth as follows:

### **I. THE PARTIES**

1. The District of Columbia is a municipal corporation empowered to sue and be sued, and is the local government for the territory constituting the permanent seat of the federal government. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. DC Code § 1-301.81(a)(1).

2. Walmart through its retail stores, online, and mobile devices provides retail goods and services.

### **II. DEFINITIONS**

3. **Developer Financing Agreement ("DFA").** Developer Financing Agreement means the agreement authorized by the District for the issuance of Tax Increment Financing (TIF) bonds to support the redevelopment of the Skyland Town Center and adjacent parcels.

Specifically the District offered the developer, Rappaport Companies, \$40 million, in aggregate, TIF for Block 1 construction.

4. **Rappaport Companies (“Rappaport”).** Rappaport is a real estate servicing company that provides retail leasing, tenant representation, property management, construction management, development, marketing receivership and asset management services for retail space in shopping center and mixed use developments in urban and suburban settings. The National Capital Revitalization Corporation awarded the development rights for the Skyland Town Center to Rappaport.

5. **Skyland Town Center (“Skyland”).** Skyland Town Center means the 18.5 acre shopping center located at the interchange of Alabama Avenue, Good Hope Road, and Naylor Road in Southeast Washington which had thirty businesses.

6. **Tax Increment Financing (“TIF”).** Tax Increment Financing is a program through which the District provides economic development project funds by borrowing against future tax receipts expected to be generated as a result of the construction and operation of projects partially funded by these funds.

### **III. BACKGROUND**

7. On July 2, 2007, Rappaport and the District executed an Exclusive Rights Agreement granting Rappaport exclusive rights to develop Skyland into a mixed-use retail and residential town center.

8. In November 2010, Walmart announced its desire to move into the District proposing to open four stores by 2012. The four proposed stores were: (1) New Jersey Avenue and H Street, NW (Ward 6); (2) 5929 Georgia Avenue, NW (Ward 4); (3) New York Avenue

and Bladensburg Road, NE (Ward 5); and (4) East Capitol and 58th Street, SE (Ward 7), referred to as the Capitol Gateway location.

9. In November 2011, Walmart announced its plans for two additional stores: (1) Skyland (Ward 7) and (2) Fort Totten Square, 5661 3rd St, NE (Ward 4), in addition to the other four stores originally proposed in 2010. At the time, Walmart stated in a publicly released document that its intentions to open stores in the District were contingent upon continued favorable business conditions in the District.

10. In 2013, Walmart canceled plans to build the New York Avenue and Bladensburg Road, NE (Ward 5) store after the developer lost control of the sites. This brought the total planned Walmart stores to five.

11. On December 4, 2013, Walmart opened its first two stores in the District: (1) 5929 Georgia Avenue, NW (Ward 4); and (2) New Jersey Avenue and H Street, NW (Ward 6). Walmart opened the store at Fort Totten Square, 5661 3rd St, NE (Ward 4) on October 28, 2015.

12. On March 2, 2014, Mayor Vincent Gray held the groundbreaking at Skyland. The groundbreaking was attended by numerous public and private sector officials, including Walmart and Rappaport representatives.

13. In November 2014, Walmart expressed concern over the restrictive use covenant possessed by Safeway ("Safeway's Covenant") and expressed reluctance to sign the Ground Lease without removal of the covenant. (Email from Gary Rappaport to Vincent Gray, Nov. 1, 2014, 5:44 p.m. EST; Email from Robert Gottlieb to Mark Alberta with Jennifer Bruton, 9:36 a.m. EST). Safeway's Covenant reads:

For fifty (50) years following the date of recording of this deed, no portion of this Property conveyed hereby (or any improvement hereafter constructed thereon or any portion thereof) shall be

occupied or used, directly or indirectly, for the purposes of a general market or a grocery store, meat market, fish market, fruit store, vegetable store, prescription pharmacy, or any combination thereof. Notwithstanding the foregoing, nothing herein set forth shall limit or impair occupancy or use of the property for a non-prohibited primary use which may include incidental sales of food items including snack foods in an area not to exceed 500 square feet.

14. On November 6, 2014, Rappaport signed the Skyland Ground Lease.
15. On December 19, 2014, Walmart signed the Skyland Ground Lease. The Ground Lease contained a condition precedent that Safeway's Covenant be condemned.
16. In April 2015, the District and Walmart began negotiations on how to condemn the covenant to Walmart's satisfaction. The District originally wanted to mitigate the consequences of the covenant through insurance or condemn the covenant without compensation under new authority granted by the D.C. Council. However, Walmart opposed these solutions. Walmart was concerned that the uncompensated condemnation under the new authority was subject to challenge as unconstitutional.
17. On October 1, 2015, through its counsel, Troutman Sanders, Walmart confirmed to Rappaport that a Mutual Release and Settlement Agreement reached between the District and Safeway would satisfy the Ground Lease condition precedent.
18. On October 2, 2015, the District agreed to pay Safeway \$900,000 a year for four years, from 2019 to 2022, to release Safeway's Covenant, should Safeway still be in operation when Walmart, or another supermarket, opened and operated at Skyland.
19. On October 19, 2015, the District and Rappaport executed the Developer Financing Agreement. Under the DFA, the District offered Rappaport \$40 million, in aggregate, of Tax Increment Financing for Block 1 construction.

20. On November 2, 2015, Rappaport, with two other developers, purchased the Skyland Town Center property for \$700,000 from the District.

21. After a strategic review of its portfolio and pipeline, Walmart announced on January 15, 2016, that it would not open the stores at Skyland or Capitol Gateway. The announcement was part of a larger announcement that Walmart would close 269 stores worldwide, including 154 stores in the United States.

22. In 2016, the District began a review of the circumstances and implications of the termination by Wal-Mart Stores East, LP, a subsidiary of Wal-Mart Stores, Inc., of its ground lease to build and open a store at Skyland.

23. As of March 2018, Walmart is maintaining three stores in the District. Rappaport continues to look for a retailer or combination of retailers to take the Block 1 anchor spot.

24. Walmart denies that it engaged in any wrongdoing related to its termination of the Skyland Ground Lease. Walmart asserts that its decision to not build and operate a store at Skyland was based purely on economic factors and unfavorable business conditions.

25. By this Agreement, the District and Walmart ("Parties") hereby agree to mutually settle and release each other from any and all liability as to each other, and desire to resolve this matter without resorting to litigation.

#### **IV. APPLICATION**

26. The provisions of this Agreement shall apply to the District and Walmart and all persons or entities controlled by the Parties, including without limitation their principals, officers, elected or appointed officials, directors, employees, agents, successors, assignees, affiliates, merged or acquired entities, or wholly owned subsidiaries.

V. **PAYMENT TERMS**

27. In consideration of the mutual promises and agreements contained in this Agreement, and as a condition thereof, within thirty (30) days of the date of the execution of this Agreement, Walmart shall pay to the District one million, three hundred thousand dollars (\$1,300,000.00) ("Settlement Sum") in full, final, and complete settlement of all claims that were or could have been raised or asserted by the District in connection with or arising out of Walmart's termination of the December 2014 Skyland Ground Lease, the Safeway Covenant, the October 2015 Mutual Release and Settlement Agreement regarding the Safeway Covenant and/or any other claims in connection with or related to Walmart at Skyland or Capitol Gateway.

VI. **RELEASE**

28. In consideration of the Settlement Sum, and the mutual promises in this Agreement, the receipt and sufficiency of which are acknowledged, the District unconditionally and irrevocably releases and forever discharges Walmart and its present, former, and future parents, predecessors, successors, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint ventures, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys, vendors, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each person or entity acting or purporting to act for them or on their behalf, and each, respectively, against all claims, counterclaims, actions, suits, rights, causes of action, lawsuits, set-offs, costs, losses, controversies, agreements, promises and demands, or liabilities, including, but not limited to, suits, debts, accounts, bills, damages, judgments, executions, warranties, attorney's fees, costs of litigation, expenses, claims, and demands that the District could have pursued (directly or indirectly) related to or arising out of

Walmart's termination of the December 2014 Skyland Ground Lease, the Safeway Covenant, the October 2015 Mutual Release and Settlement Agreement regarding the Safeway Covenant, and any other claims in connection with or related to Walmart at Skyland or Capitol Gateway.

29. For consideration of the mutual promises contained in this Agreement, the receipt and sufficiency of which are acknowledged, Walmart unconditionally and irrevocably releases and forever discharges the District and its present, former, and future parents, predecessors, successors, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint ventures, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys, vendors, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each person or entity acting or purporting to act for them or on their behalf, and each, respectively, against all claims, counterclaims, actions, suits, rights, causes of action, lawsuits, set-offs, costs, losses, controversies, agreements, promises and demands, or liabilities, including, but not limited to, suits, debts, accounts, bills, damages, judgments, executions, warranties, attorney's fees, costs of litigation, expenses, claims, and demands that Walmart has, had or could have had related to or Walmart's termination of the December 2014 Skyland Ground Lease, the Safeway Covenant, the October 2015 Mutual Release and Settlement Agreement regarding the Safeway Covenant and any other claims in connection with or related to Walmart at Skyland or Capitol Gateway.

**VII. ADDITIONAL TERMS**

30. **Effective Date.** This Agreement shall be considered effective and fully executed on the last date which any party executes the Agreement.

31. **Adequate Consideration.** The consideration received with this Agreement is fair, adequate, and substantial, and it consists only of the terms in this Agreement.

32. **Covenant Not to Sue.** The District agrees not to file claims in any court or other forum against Walmart for any matter within the scope of this Agreement. Walmart agrees not to file claims in any court or other forum against the District for any matter within the scope of the Agreement.

33. **No Admission of Liability.** Each of the Parties understands and agrees that this Agreement and the settlement provided for here consists of all disputed claims and defenses, to avoid litigation and to buy peace, and that this Agreement and the settlement provided for here shall not be construed or viewed as an admission by any Party of liability or wrongdoing, such liability being denied. This Agreement, and the settlement provided for here, shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding, other than an action to enforce the Agreement, if offered by either Party to show, demonstrate, evidence, or support a contention that any of the Parties acted illegally, improperly, or in breach of law, contract, or proper conduct.

34. **Waiver.** The failure of either Party to demand from the other performance of any act under the Agreement shall not be construed as a waiver of that Party's right to demand, at any subsequent time, such performance.

35. **Choice of Law.** This Agreement shall be construed under, and all disputes shall be controlled by, the laws of the District of Columbia and any action brought regarding the Agreement shall be brought in the Superior Court of the District of Columbia without regard to the District of Columbia's choice of law rules. However, this provision does not alter the



controlling law of any underlying settled claim or defense should a Party fail to honor the Agreement.

36. **Parties' Counsel.** As used in this Agreement, the phrase "the District's Counsel" means:

Attorney General for the District of Columbia  
441 4th Street, N.W.  
Washington, D.C. 20001

and all of its current and former predecessors, successors, partners, agents (alleged or actual), representatives, employees and affiliates. The District represents and warrants that: (i) "Plaintiff's Counsel," as defined above, includes all persons (natural or legal) and entities having any interest in any award of attorney's fees or litigation costs to the District's Counsel in connection with the Litigation; or (ii) that, to the extent there are other persons or entities having any interest in any award of attorney's fees or litigation costs in connection with the Litigation, they will be satisfied by the District's Counsel.

As used in this Agreement, the phrase "Walmart's Counsel" means:

Benjamin F. Wilson  
Beveridge & Diamond, PC  
1350 I Street, NW, Suite 700  
Washington, D.C. 20005

and all of its current and former predecessors, successors, partners, agents (alleged or actual), representatives, employees and affiliates. Walmart represents and warrants that "Walmart's Counsel," as defined above, includes all persons (natural or legal) and entities having any interest in any award of attorney's fees or litigation costs to Walmart's Counsel in connection with the Litigation.

37. **No Interpretation of Captions or Headings.** The captions and headings within this Agreement are for ease of reference only and do not create any substantive meaning or modify the terms and clauses either following them or contained in any other provision of this Agreement.

38. **Neutral Interpretation and Counterparts.** The Parties shall be deemed to have cooperated in the drafting and preparation of this Agreement. Hence, any construction to be made of this Agreement shall not be construed against any Party. This Agreement may be executed in counterparts and each executed counterpart shall be effective as the original. All faxed, emailed, or electronic signatures affirming this Agreement constitute an original signature.

39. **Integration/Single Agreement.** This Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties, and the terms are contractual and not merely recitals. There is no other agreement, written or oral, expressed or implied between the Parties regarding the subject matter of this Agreement and the Parties declare and represent that no promise, inducement, or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them or upon which they have relied. The terms and conditions of this Agreement may not be contradicted by evidence of any prior or contemporaneous agreement, and no extrinsic evidence may be introduced in any judicial proceeding to interpret this Agreement. This provision does not apply either to any other business relations between the Parties (*e.g.*, a credit card, investment, or bank account) not related to the subject matter of this Agreement unless they have been otherwise invalidated or modified by the terms of this Agreement.


40. **Amendments to the Agreement.** All amendments or changes of any kind must be in writing, executed by all Parties.

41. **Authority.** The Parties represent and warrant they have not sold, transferred, conveyed, assigned, or otherwise disposed of any right, title, or interest in any of the Released Matters to any person or entity, and neither Party is aware of any other person or entity who may have or who has asserted or can assert a right, title, or interest in any of the Released Matters covered by this Agreement. The Parties further affirm that the persons signing this Settlement Agreement and Release on their behalf can fully execute this Agreement and understand its contents, and the Parties have legal counsel of their own choice or that they obtained such legal counsel to explain the legal effect of executing this Agreement.

42. **Advice of Counsel.** Each Party to this Agreement acknowledges that it has had the benefit of advice of competent legal counsel or the opportunity to retain such counsel regarding its decision to enter this Agreement. The individuals whose signatures are affixed to this Agreement in a personal or representative capacity represent that they are competent to enter this Agreement and are doing so freely and without coercion by any other Party or non-party.

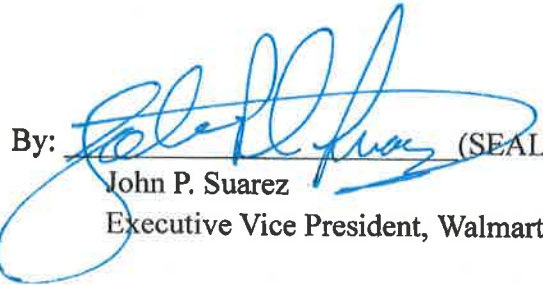
43. **Successors.** This Agreement shall inure to the benefit of the respective heirs, successors, and assigns of the Parties and every one of the Releasees shall be deemed intended third-party beneficiaries of this Agreement.

**FOR THE DISTRICT OF COLUMBIA:**

  
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KARL A. RACINE  
Attorney General for the District of Columbia

Dated: 3/29/18

**FOR WALMART INC. AND WAL-MART STORES EAST LP:**

By:  (SEAL)  
John P. Suarez  
Executive Vice President, Walmart Realty