



## AMENDMENT TO EASEMENT AGREEMENT

This Amendment to Easement Agreement (this "Amendment") is made by and between Sam's Real Estate Business Trust, a Delaware statutory trust ("Sam's Trust") and 4180 Belt Line, Ltd., a Texas limited partnership ("Belt Line").

For Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sam's Trust and Belt Line acknowledge and agree as follows:

1. Reference is hereby made to that certain Easement Agreement between Wal-Mart Stores, Inc., a Delaware corporation ("Wal-Mart") and Hoffsteaks, Inc., a Texas corporation ("Hoffsteaks"), dated as of January 29, 1993, recorded in Volume 93020, Pages 5041 et seq. of the Official Public Records of Real Property of Dallas County, Texas (herein called the "Easement Agreement").

2. All terms defined in the Easement Agreement and used herein with initial capital letters shall have the same meanings herein as are ascribed to such terms in the Easement Agreement, except to the extent that the meaning of any such term is specifically modified by the provisions hereof. In addition, other terms not defined in the Easement Agreement but defined herein will, when delineated with initial capital letters, have the meanings ascribed thereto in this Amendment. Terms and phrases used herein which are not delineated by initial capital letters shall have the meanings commonly ascribed thereto.

3. Having succeeded to the interests of Wal-Mart, Sam's Trust is the current owner of fee simple title to Lot 1 described in the Easement Agreement. Therefore, for purposes of the Easement Agreement and this Amendment, the defined terms "Wal-Mart" and "Sam's Trust" are interchangeable, and shall mean and refer to any owner of a fee simple interest in Lot 1.

4. Having succeeded to the interests of Hoffsteaks, Belt Line is the owner of fee simple title to Lot 2 described in the Easement Agreement. Therefore, for purposes of the Easement Agreement and this Amendment, the defined terms "Hoffsteaks" and "Belt Line" are interchangeable, and shall mean and refer to any owner of a fee simple interest in Lot 2.

5. Sam's Trust and Belt Line desire to amend the Easement Agreement to provide that, among other things, Belt Line shall no longer have any parking easements or any other parking rights or privileges located on Lot 1 which arise under the Easement Agreement.

6. Notwithstanding anything therein contained to the contrary, the Easement Agreement is hereby amended as follows:

- (a) The text of Section 2, titled "*WAL-MART to HOFFSTEAKS Access Easement 2*," is deleted in its entirety and replaced with the text "*2. Intentionally Omitted.*"
- (b) The text of Section 3, titled "*WAL-MART to HOFFSTEAKS Parking Easement*," is hereby deleted in its entirety and replaced with the text "*3. Intentionally Omitted.*"

- (c) The text of Section 5, titled “*Improvements by Hoffsteaks*,” is deleted in its entirety and replaced with the text “5. *Intentionally Omitted*.” Notwithstanding the foregoing, the payment, discharge, indemnification and hold harmless obligations of Belt Line described in paragraph 5(b) thereof shall hereafter remain in full force and effect with respect to any such liability which accrued on or before the effective date of this Amendment.
- (d) The title of Section 6 is changed from “*Development of Easements*” to “*Development of Lot 2*”.
- (e) Section 7, titled “*Indemnification/Insurance*” is modified by deleting the text “*or for parking within the Parking Easement*”.
- (f) Section 7, titled “*Indemnification/Insurance*” is also modified by the addition of the following text as two (2) new paragraphs:

*“Hoffsteaks shall procure and maintain in full force and effect throughout the term of this instrument general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property and the easement areas created hereunder, such insurance to afford protection to the limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) for injury or death of a single person, and to the limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) for any one occurrence, and to the limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) for property damage. Hoffsteaks shall provide Wal-Mart with a certificate of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by Hoffsteaks in addition to the property covered by this instrument. Such insurance shall provide that the same may not be canceled without ten (10) days prior written notice to Wal-Mart. The policy or policies of insurance provided for in this paragraph shall name Wal-Mart as an additional insured.*”

*At all times during the term of this instrument, Hoffsteaks shall keep the improvements on Lot 2 insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the State of Texas, with such insurance to be for the full replacement value of the insured improvements.”*

- (g) Section 9, titled “*Modification and/or Relocation*,” is modified by: (1) deleting the text “(a)” from the first line thereof; (2) deleting from the first sentence thereof the text “, *the Parking Easement and Access Easement 2*” and the text “*or reduce the number of parking spaces located within the Parking Easement (other than as specified in paragraph 10(b) below)*”; (3) deleting the second sentence thereof (i.e., the sentence beginning “*Any such relocated....*”); and (4) deleting paragraph 9(b) in its entirety.

- (h) Section 15, titled “*Curb Cuts*,” is modified by deleting the text “*and one (1) 30-foot curb cut between the Access Easement 2 and Lot 2 as indicated on Exhibit A*”.
- (i) Any and all other references to “*Access Easement 2*” are deleted. Any and all other references to the “*Parking Easement*” are deleted. Belt Line hereby releases, relinquishes and quitclaims to Sam’s Trust any and all right, title and interest that Belt Line may have in and to the Parking Easement and Access Easement 2, together with any and all landscaping and improvements (e.g., trees, shrubs, other vegetation, signs, paving, curbs, gutters, medians, sidewalks, driveways and parking areas) constructed by Belt Line within the boundaries of the Parking Easement and Access Easement 2.
- (j) Exhibits D, E and F are deleted in their entirety.
- (k) Unless otherwise agreed in writing between Sam’s Trust and Belt Line, neither Belt Line nor any of its customers, employees, tenants, licensees or invitees shall have any right or privilege to park vehicles on Lot 1. Belt Line agrees to cause any vehicles parked in violation of such restriction to be immediately towed from Lot 1 at the sole risk and expense of Belt Line. Additionally, Sam’s Trust shall have the right (but not the obligation) to cause any vehicles parked in violation of such restriction to be towed from such premises at the sole risk and expense of Belt Line. Belt Line agrees to promptly reimburse Sam’s Trust for the expense of doing so, and Belt Line further agrees to indemnify, defend and hold harmless Sam’s Trust for any loss or claim resulting from Sam’s Trust causing any such vehicles to be towed from Lot 1.
- (l) Sam’s Trust’s address for notices is: Wal-Mart Stores, 2001 Southeast Tenth Street, Bentonville, AR 72716. Attention: Realty Manager – Dallas, Texas Area, Reference Store No. 6376; *with a copy to*: Sam’s Club, 4150 Belt Line Road, Addison, Texas 75001, Attention: Store Manager.
- (m) Belt Line’s address for notice is: 4180 Belt Line, Ltd., 3346, Walnut Bend Lane, Houston, Texas 77042, Attention: L.K. Wales.

7. The Easement Agreement is further amended to the extent necessary to conform to the foregoing. Except as amended hereby, all other terms and provisions of the Easement Agreement are ratified and shall remain unchanged and in full force and effect and this Amendment and the Easement Agreement shall be construed as one instrument. In the event of any inconsistency, the terms and provisions of this Amendment shall control over and modify the terms and provisions of the Easement Agreement.

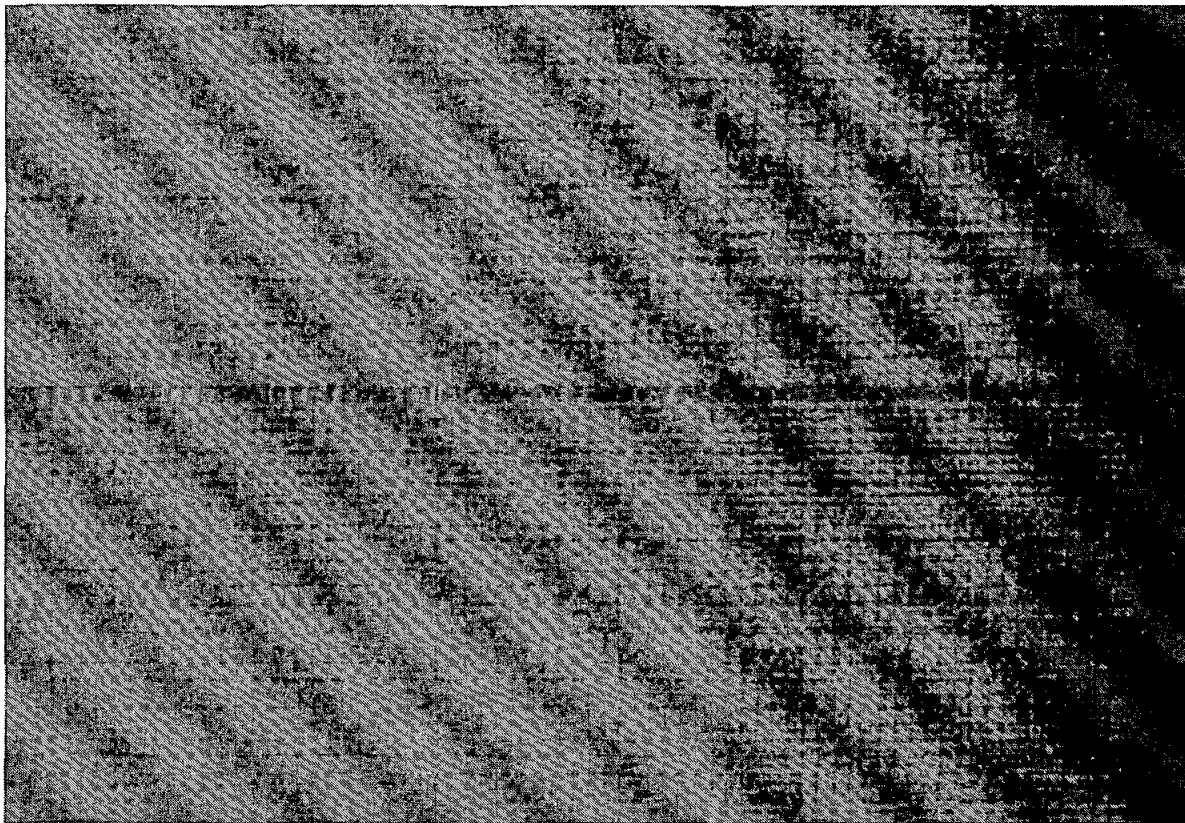
8. Belt Line represents and warrants that: (a) it is the owner in fee simple of Lot 2; (b) there are no mortgages, deeds of trust or other liens affecting any interest in Lot 2 other than those securing indebtedness to Prosperity Bank; and (c) except as set forth below, there are no tenants of such land owned by Belt Line or any portion thereof.

9. Sam's East, Inc., an Arkansas corporation ("**Sam's East**") is the lessee of Lot 1 and operates the improvements located thereon. 4180 Belt Line Operating, Ltd., a Texas limited partnership ("**Belt Line Operating Entity**") is the lessee of Lot 2 and operates the improvements located thereon. K & R 4180, Inc., a Texas corporation ("**K&R**") is the sole general partner of Belt Line and Belt Line Operating Entity. For Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sam's East, Belt Line Operating Entity and K&R: (a) consent to the execution and delivery of this Amendment by their respective landlords; (b) acknowledge and agree that their use and enjoyment of their respective leaseholds shall hereafter be subject to the terms and conditions of the Easement Agreement as amended by this Amendment; and (c) agree to comply with the terms and conditions of the Easement Agreement as amended by this Amendment.

10. Each of Sam's Trust, Belt Line, Sam's East, Belt Line Operating Entity and K&R represents and warrants to the other parties hereto that the person executing this Amendment on behalf of such representing and warranting party has all requisite corporate, partnership or other legal authority to do so.

11. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which when disassembled and aggregated shall constitute one and the same instrument.

[Signature Pages Follow]



EXECUTED on the dates set forth below, to be effective, however, as of January 30, 2008.

**SAM'S REAL ESTATE BUSINESS TRUST,**  
a Delaware statutory trust

By: [Signature]  
Name: Anthony Fuller  
Its: Senior Vice President

**4180 BELT LINE, LTD.,**  
a Texas limited partnership

By: K & R 4180, Inc.,  
a Texas corporation,  
its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SAM'S EAST, INC.,**  
an Arkansas corporation

By: [Signature]  
Name: Anthony Fuller  
Title: Senior Vice President

**4180 BELT LINE OPERATING, LTD.,**  
a Texas limited partnership

By: K & R 4180, Inc.,  
a Texas corporation,  
its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to legal terms only  
by [Signature]  
WAL-MART LEGAL DEPT.  
Date: 1/29/2008

**K & R 4180, INC.,**  
a Texas corporation

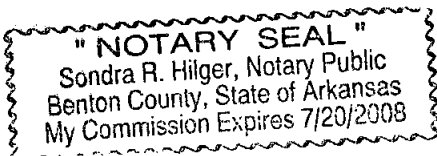
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARKANSAS §

COUNTY OF BENTON §

Before me, the undersigned authority, on this day personally appeared ANTHONY FULLER acting in his capacity as VICE PRES of Sam's Real Estate Business Trust, a Delaware statutory trust, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity herein stated, and as the act and deed of such entity.

Given under my hand and seal of office this 29 day of January, 2008.



Sondra R Hilger  
Notary Public

SONDRA R. HILGER  
Printed Name of Notary

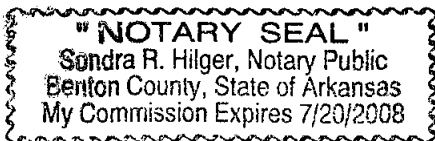
My Commission Expires: 2008

STATE OF ARKANSAS §

COUNTY OF BENTON §

Before me, the undersigned authority, on this day personally appeared ANTHONY FULLER, acting in his capacity as VICE PRES of Sam's East, Inc., an Arkansas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity herein stated, and as the act and deed of such entity.

Given under my hand and seal of office this 29 day of January, 2008.



Sondra R Hilger  
Notary Public

SONDRA R. HILGER  
Printed Name of Notary

My Commission Expires: 2008

EXECUTED on the dates set forth below, to be effective, however, as of January 30,  
2008.

**SAM'S REAL ESTATE BUSINESS TRUST,**  
a Delaware statutory trust

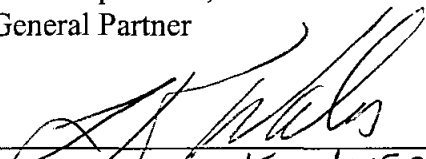
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SAM'S EAST, INC.,**  
an Arkansas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

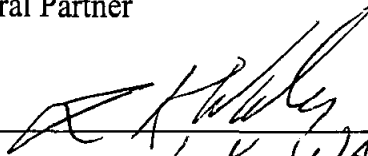
**4180 BELT LINE, LTD.,**  
a Texas limited partnership

By: K & R 4180, Inc.,  
a Texas corporation,  
its General Partner

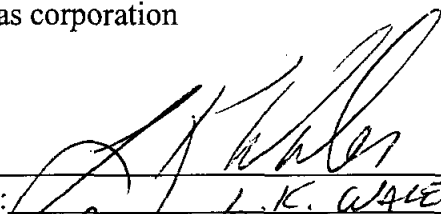
By:   
Name: L. K. WALES  
Its: PRESIDENT

**4180 BELT LINE OPERATING, LTD.,**  
a Texas limited partnership

By: K & R 4180, Inc.,  
a Texas corporation,  
its General Partner

By:   
Name: L. K. WALES  
Its: PRESIDENT

K & R 4180, INC.,  
a Texas corporation

By:   
Name: L.K. WALES  
Its: PRESIDENT

STATE OF ARKANSAS       §  
  §  
COUNTY OF BENTON       §

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, acting in his capacity as \_\_\_\_\_ of Sam's Real Estate Business Trust, a Delaware statutory trust, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity herein stated, and as the act and deed of such entity.

Given under my hand and seal of office this \_\_\_\_\_ day of January, 2008.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: \_\_\_\_\_



STATE OF ARKANSAS           §  
  §  
COUNTY OF BENTON         §

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, acting in his capacity as \_\_\_\_\_ of Sam's East, Inc., an Arkansas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity herein stated, and as the act and deed of such entity.

Given under my hand and seal of office this \_\_\_\_ day of January, 2008.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF Harris       §

Before me, the undersigned authority, on this day personally appeared L.K. Wales, acting in his capacity as President of K & R 4180, Inc., a Texas corporation, the General Partner of 4180 Belt Line, Ltd., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity herein stated, and as the act and deed of such entities.

Given under my hand and seal of office this 30<sup>th</sup> day of January, 2008.

Patricia L Bell  
Notary Public

Patricia L Bell  
Printed Name of Notary

My Commission Expires: 10-10-2011



STATE OF TEXAS §  
COUNTY OF Harris §

Before me, the undersigned authority, on this day personally appeared LK Wales, acting in his capacity as President of K & R 4180, Inc., a Texas corporation, the General Partner of 4180 Belt Line Operating, Ltd., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity herein stated, and as the act and deed of such entities.

Given under my hand and seal of office this 30<sup>th</sup> day of January, 2008.



Patricia L Bell

Notary Public

Patricia L Bell

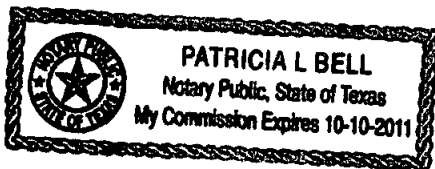
Printed Name of Notary

My Commission Expires: 10-10-2011

STATE OF TEXAS §  
COUNTY OF Harris §

Before me, the undersigned authority, on this day personally appeared LK Wales, acting in his capacity as President of K & R 4180, Inc., a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity herein stated, and as the act and deed of such corporation.

Given under my hand and seal of office this 30<sup>th</sup> day of January, 2008.



Patricia L Bell

Notary Public

Patricia L Bell

Printed Name of Notary

My Commission Expires: 10-10-2011

**JOINDER BY LOT 2 MORTGAGEE**

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, Prosperity Bank ("Lender"), being the present legal and beneficial owner and holder of liens (including, without limitation, deed of trust liens), securing payment of a promissory note or promissory notes currently owned and held by Lender against that certain tract or parcel of land described as Lot 2 in the above and foregoing Amendment, does hereby: (1) subordinate the liens held by Lender to the provisions of such Amendment with the same effect as if the Amendment had been executed, delivered and recorded prior to the execution of the instruments creating such liens; and (2) agree that, notwithstanding any foreclosure pursuant to any such liens (or conveyance in lieu thereof), the Amendment shall continue unabated, and in full force and effect.

PROSPERITY BANK

By: Robert L Bentley  
 Name: Robert L. Bentley  
 Title: Chairman - Houston Area

STATE OF Texas                     §  
    §  
 COUNTY OF Harris                     §

Before me, the undersigned authority, on this day personally appeared Robert L Bentley, acting in \_\_\_\_\_ capacity as Chairman Houston Area of Prosperity Bank, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity herein stated, and as the act and deed of such entity.

Given under my hand and seal of office this 29 day of January, 2008.

Patricia L Bell

Notary Public

Patricia L Bell

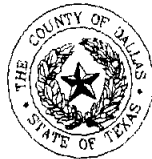
Printed Name of Notary

My Commission Expires: 10-10-2011



**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS



*[Handwritten signature]*

John F. Warren, County Clerk  
Dallas County TEXAS

February 04, 2008 04:22:09 PM

FEE: \$56.00

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