

SETTLEMENT AGREEMENT

Agreement made effective as of the ____ day of _____, 2019, by and between Wal-Mart Real Estate Business Trust (“Plaintiff”) and the City of Waukesha, Wisconsin (“City”).

RECITALS

1. The Plaintiff is the owner of certain real property located at 2000 South West Avenue, Waukesha, Wisconsin more particularly described as Lots one (1) and two (2) and Outlot one (1) of Certified Survey Map No. 10488, recorded December 21, 2007 in the office of the Register of Deeds for Waukesha County, Wisconsin as Document No. 3534066; being part of Lot 1, Block 13, in Sunset Heights Subdivision, being a part of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$, the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, and the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 15, Township 6 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin (“the Property”);

2. Plaintiff commenced actions against the City which are pending in the Circuit Court for Waukesha County, entitled *Wal-Mart Real Estate Business Trust v. City of Waukesha* Case No. 17 CV 1841, and *Wal-Mart Real Estate Business Trust v. City of Waukesha* Case No. 18 CV 1258 (“the Actions”);

3. In the Actions, the Plaintiff makes claims against the City for excessive tax assessments against the Property and for declaratory judgment regarding Estimated Fair Market Value of the property for the tax years 2017 and 2018.

4. Plaintiff and the City have arrived at a settlement of the Actions, subject to review and approval by the Common Council of the City.

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. **Assessed Value.** The total assessed value of the Property for the tax year 2017 shall be \$12,906,500, this is based on the subject premises having 187,500 square feet and at \$69.00 per square foot, including land and improvements. The total assessed value of the property for the tax year 2018 shall also be \$12,906,500, this is based on the subject premises having 187,500 square feet and at \$69.00 per square foot, including land and improvements.

2. **Refund.** The City shall make payment to Wal-Mart Real Estate Business Trust. in the amount of \$21,737.16 as a refund of property taxes previously paid by the Plaintiff based on the property tax assessment of the Property for the tax year 2017, and \$21,965.81 as a refund of property taxes paid for the tax year 2018, for a total payment of \$43,702.97.. The refund of property taxes for the tax year 2017, in the amount of \$21,737.16 shall be made within thirty (30) days of the approval of this Settlement Agreement by the Common Council of the City. The refund of property taxes for the tax year 2018 in the amount of \$21,965.81 shall be paid on or before September 1, 2019.

3. **Waiver of Costs.** Each party waives all claims for costs.

4. **Dismissal of Action.** Not later than 10 days after Plaintiff receives payment in full of the refund of taxes as provided in Section 2 of this Agreement, the parties shall, through their attorneys, enter into a stipulation for the dismissal of the Actions with prejudice and without costs to either party, and file the stipulations with the Circuit Court for Waukesha County.

5. **Release of Claims.** In consideration of the payments made to the Plaintiff by the City pursuant to this Agreement, the Plaintiff for itself, its successors and assigns, releases the City from any and all claims, known or unknown, in connection with real estate taxes paid for the tax years 2017 and 2018, and from any other claims which may have accrued prior to the date of this Agreement.

6. **Attorney Fees.** Each party shall be solely responsible for the fees of its attorney.

7. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors and assigns.

8. **Governing Law.** This Agreement shall be governed and interpreted by laws of the State of Wisconsin.

9. **No Assignment or Transfer.** Plaintiff represents and warrants that it has not assigned or transferred to anyone and will not assign or transfer to anyone any of the claims made by it in the Actions.

10. **No Admission of Liability.** This Agreement is the settlement of disputed claims. By entering in this Agreement, the City does not admit any liability to Plaintiff for any of the claims asserted in the Actions or Plaintiff's objections to the assessments, and payment made under this Agreement shall not be construed an admission of such liability. In addition, this Agreement and none of the agreed upon values or assessments set forth in this Agreement shall be admissible in any proceeding or assessment challenge in any tax year after 2018.

11. **Reliance.** Each party acknowledges that it has been represented throughout all negotiations leading up to this Agreement by attorneys of its choice. Each party represents that in entering into the Agreement, the party has relied on its own judgment and on the advice of its attorneys and that no statements or representations made by the other party or any of its agents, except those expressly made in this Agreement, have influenced or induced the party to sign this agreement.

12. **Entire Agreement.** This agreement constitutes the entire agreement of the parties concerning its subject matter and supersedes all prior or contemporaneous agreements, written or oral, representations, negotiations and discussions concerning its subject matter.


13. **Amendments.** This Agreement may not be amended, modified or altered in any manner whatsoever except by further written agreement duly authorized and signed by the parties.

14. **Waiver.** No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

15. **Authorization.** Each person signing this agreement on behalf of either party represents and warrants that the person holds the position indicated beneath the person's signature and that the person has all authority required to sign this Agreement on behalf of the party.

16. **Approval.** This Agreement is subject to the approval of the Common Council of the City of Waukesha. If it is not approved, it shall be null and void.

Dated this 21st day of January, 2019.



Wal-Mart Real Estate Business Trust

Dated this _____ day of _____, 2019.

City of Waukesha