

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2006-30539

2006 SEP -5 R 11:28 AM

Shawn J. Lowrey

REGISTER OF DEEDS

COUNTER LM C.E. ag
VERIFY a D.E. ag
PROOF an
FEES \$ 67.00
CHECK # _____
CHG. SEC CASH _____
REFUND _____ CREDIT _____
SHORT _____ NGR _____

When recorded return to:

Rick Crawford, Esq.
The Katz Law Firm
435 Nichols Road, Second Floor
Kansas City, MO 64112

Papillion, NE
Store #1671-3

FIRST AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

THIS FIRST AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND (this "Amendment") is made as of the 1 day of September, 2006, by and among **MARKET POINTE, LLC**, a Missouri limited liability company ("Developer"), **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware Statutory Trust ("Wal-Mart") and **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation ("Lowe's").

WITNESSETH:

WHEREAS, Developer, Wal-Mart and Lowe's previously executed and recorded that certain EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND dated January 23, 2006 and filed with the Sarpy County, Nebraska Register of Deeds on January 24, 2006 as Instrument No. 2006-02430 (the "ECR");

WHEREAS, Developer desires to combine Lot 13 and Lot 14 into one lot; and

WHEREAS, the modification of the ECR requires the mutual agreement of Developer, Wal-Mart, Lowe's and Kohl's Illinois, Inc., a Nevada corporation, the successor by assignment from Kohl's Department Stores, Inc. ("Kohl's").

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Developer, Wal-Mart, Lowe's and Kohl's do hereby agree as follows:

1. **Definitions.** Capitalized terms used herein but not defined herein shall have the meaning given to them in the ECR.

2. **Combination of Lot 13 and Lot 14/Replat.** Notwithstanding anything to the contrary contained in Section 4(e)(i) of the ECR, Developer may at its option replat and combine Lot 13 and Lot 14 into one single Outparcel containing approximately 2.47 acres. In the event Lot 13 and Lot 14 are combined into one Outparcel containing approximately 2.47 acres, then the combined Outparcel shall be considered a single Outparcel referred to as Lot 13, no more than one (1) Building shall be constructed thereon and all references to Lot 14 in the ECR shall be deleted. Notwithstanding anything to the contrary contained in Section 4(e)(ii) of the ECR, when Lot 13 and Lot 14 are combined into one Outparcel referred to as Lot 13 containing

SEC

A

approximately 2.47 acres, the Floor Area of the Building on new Lot 13 shall not exceed nine thousand five hundred (9,500) square feet.

3. Legal Description of Developer Property. If Developer combines Lot 13 and Lot 14 into a single Outparcel by filing a replat, the following shall be the legal description of the Developer Property to be shown on Exhibit C of the ECR: "Lots Two (2) through seven (7) and Outlot "A", Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska; and Lots Eight (8) through thirteen (13), Market Pointe Addition Replat 1, an Administrative Subdivision, in Sarpy County, Nebraska." In such event, Developer, Wal-Mart, Lowe's and Kohl's hereby ratify and approve such legal description.

4. Rights of Successors. This Amendment shall bind and inure to the benefit of the parties hereto and their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

5. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by Developer, Lowe's and Wal-Mart and filed of record in Sarpy County, Nebraska, there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. Notwithstanding the provisions of Section 16 of the ECR, the parties agree that after Developer conveys an Outparcel to a third party and the third party becomes a Property Owner under the terms of the ECR, the Developer may thereafter alter the size of one or more Outparcels owned by Developer, modify the Site Plan and make other modifications and amendments to the ECR which do not materially affect a Property Owner of an Outparcel without having to obtain the prior written approval of a Property Owner of an Outparcel other than Developer.

6. Non-Merger. This Amendment shall not be subject to the doctrine of merger.

7. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document and in no way affect the terms and provisions hereof.

8. Entire Agreement. This Amendment constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Amendment once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document. This Amendment may be executed in one or more counterparts each of which in the aggregate shall constitute one and the same instrument.

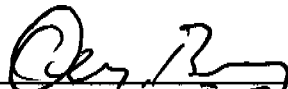
9. Severability. In the event any provision or portion of this Amendment is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

B

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first written above.

"Developer"

MARKET POINTE, LLC, a Missouri limited liability company

By: 
Name: OWEN J. BUCKLEY
Title: Managing Member

"Wal-Mart"

WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware Statutory Trust

By: _____
Name: _____
Title: _____

"Lowe's"

LOWE'S HOME CENTERS, INC.
a North Carolina corporation

By: _____
Name: _____
Title: _____

AGREED TO AND ACCEPTED BY:

KOHL'S ILLINOIS, INC.,
a Nevada corporation

By: _____
Name: _____
Title: _____

C

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first written above.

"Developer"

MARKET POINTE, LLC, a Missouri limited liability company

By: _____
Name: _____
Title: _____

"Wal-Mart"

WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware Statutory Trust

 By: Shannon Letts
Name: Shannon Letts
Title: Assistant Vice President

"Lowe's"

LOWE'S HOME CENTERS, INC.
a North Carolina corporation

By: _____
Name: _____
Title: _____

AGREED TO AND ACCEPTED BY:

KOHL'S ILLINOIS, INC.,
a Nevada corporation

By: _____
Name: _____
Title: _____

D

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first written above.

"Developer"

MARKET POINTE, LLC, a Missouri limited liability company

By: _____
Name: _____
Title: _____

"Wal-Mart"

WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware Statutory Trust

By: _____
Name: _____
Title: _____

"Lowe's"

LOWE'S HOME CENTERS, INC.
a North Carolina corporation

By: David E Shelton
Name: David E. Shelton
Title: Senior Vice President

Handwritten initials and signature:
Ked
JEB CP
[Signature]

AGREED TO AND ACCEPTED BY:

KOHL'S ILLINOIS, INC.,
a Nevada corporation

By: _____
Name: _____
Title: _____

E

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first written above.

"Developer"

MARKET POINTE, LLC, a Missouri limited liability company

By: _____
Name: _____
Title: _____

"Wal-Mart"

WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware Statutory Trust

By: _____
Name: _____
Title: _____


"Lowe's"

LOWE'S HOME CENTERS, INC. a North Carolina corporation

By: _____
Name: _____
Title: _____

AGREED TO AND ACCEPTED BY:

KOHL'S ILLINOIS, INC.,
a Nevada corporation

By: 
Name: Richard D. Schepp
Title: Attorney-in-Fact

SRC

F

STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)

The foregoing instrument was acknowledged before me this 20th day of August, 2006, by Shannon Letts, Assistant Vice President of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

[SEAL]
Gina Norton
NOTARY PUBLIC-STATE OF ARKANSAS
BENTON COUNTY
My Commission Expires July 16, 2011

Gina Norton
Notary Public
My Commission Expires 7-16-2011

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2006, by Owen J. Buckley, a Managing Member of Market Pointe, LLC, a Missouri limited liability company, on behalf of the limited liability company.

[SEAL]

Notary Public
My Commission Expires _____

STATE OF NORTH CAROLINA)
) ss.
COUNTY OF WILKES)

The foregoing instrument was acknowledged before me this ___ day of _____, 2006, by _____ of Lowe's Home Centers, Inc., a North Carolina corporation, on behalf of the Corporation.

[SEAL]

Notary Public
My Commission Expires _____

G

STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by _____ of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

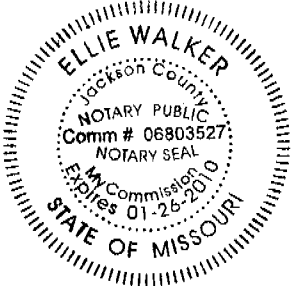
[SEAL]

Notary Public
My Commission Expires _____

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

The foregoing instrument was acknowledged before me this 31st day of August, 2006, by Owen J. Buckley, a Managing Member of Market Pointe, LLC, a Missouri limited liability company, on behalf of the limited liability company.

[SEAL]



Ellie Walker

Notary Public
My Commission Expires 1/26/2010

STATE OF NORTH CAROLINA)
) ss.
COUNTY OF WILKES)

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by _____ of Lowe's Home Centers, Inc., a North Carolina corporation, on behalf of the Corporation.

[SEAL]

Notary Public
My Commission Expires _____

H

STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2006, by _____ of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

[SEAL]

Notary Public
My Commission Expires _____

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2006, by Owen J. Buckley, a Managing Member of Market Pointe, LLC, a Missouri limited liability company, on behalf of the limited liability company.

[SEAL]

Notary Public
My Commission Expires _____

STATE OF NORTH CAROLINA)
) ss.
COUNTY OF WILKES)

The foregoing instrument was acknowledged before me this 31st day of August, 2006, by David C Shelton of Lowe's Home Centers, Inc., a North Carolina corporation, on behalf of the Corporation.

[SEAL]

SHERRY LUCKEY
Notary Public, North Carolina
Wilkes County
My Commission Expires
January 25, 2010

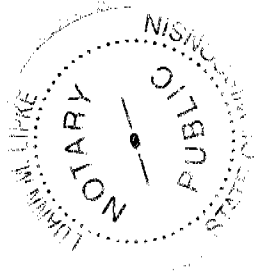
Sherry Luckey
Notary Public
My Commission Expires 1/25/10

I

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

The foregoing instrument was acknowledged before me this 31st day of August, 2006, by Richard D. Schepp of Kohl's Illinois, Inc., a Nevada corporation, on behalf of the Corporation.

[SEAL]



DuAnn M. Dipke
Notary Public
My Commission Expires 10-18-09

J

CONSENT AND SUBORDINATION

First National Bank of Kansas, a national banking association, beneficiary of a Deed of Trust dated December 23, 2005 and filed for record on January 24, 2006, in Instrument No. 2006-02421, Records, Sarpy County, Nebraska and the beneficiary of a Deed of Trust dated June 23, 2006 and filed for record on June 26, 2006, in Instrument No. 2006-21609, Records, Sarpy county, Nebraska (the "Deeds of Trust"), does hereby subordinate the Deeds of Trust to the First Amendment to Easements With Covenants and Restrictions Affecting Land ("Amended ECR") and that certain Market Pointe Addition Replat 1, an administrative subdivision filed for record in Sarpy County, Nebraska ("Replat") as though the Amended ECR and Replat were filed in the real estate records of Sarpy County, Nebraska, prior in time to the recording of the Deeds of Trust in the real estate records of Sarpy County, Nebraska; and hereby consents to the terms of the Amended ECR.

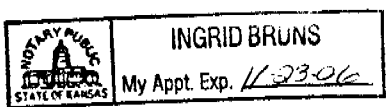
FIRST NATIONAL BANK OF KANSAS, a national banking association

By: [Signature]
Name: J. CRAIG NICHOLS
Title: SVP
Date: 8-31-06

STATE OF Kansas
COUNTY OF Johnson

Before me the undersigned authority, on this day personally appeared J. Craig Nichols, known to me to be the person whose name is subscribed to the foregoing instrument, and upon being duly sworn did state and acknowledge he/she is Senior V.P. of FIRST NATIONAL BANK OF KANSAS, a national banking association, and that he/she executed the foregoing instrument in the capacity stated under authority of its Board of Directors and executed the foregoing document for the uses, purposes and considerations therein expressed as the free and voluntary act and deed of the corporation.

Given under my hand and seal of office this the 31 day of August, 2006.



Ingrid Bruns
Notary Public
My Commission Expires 11-26-06

2006-30539 K

**LEGAL DESCRIPTION OF PROPERTY AFFECTED BY FIRST AMENDMENT
TO EASEMENTS WITH COVENANTS AND
RESTRICTIONS AFFECTING LAND**

Adjusted Lots Two (2) and Three (3), Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska, as adjusted in a Lot Line Adjustment filed October 26, 2005 as Instrument No. 2005-39750, Recorder, Sarpy County, Nebraska; Lots One (1) and Four (4) through seven (7) and Outlot "A", Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska; and Lots Eight (8) through Thirteen (13), Market Pointe Addition Replat 1, an Administrative Subdivision, in Sarpy County, Nebraska.