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FILED SARPY CO. NE.  
INSTRUMENT NUMBER

**2014-07968**

2014 Apr 22 10:40:47 AM

*Lloyd J. Dowding*

REGISTER OF DEEDS



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THE ABOVE SPACE IS RESERVED FOR THE REGISTER OF DEEDS RECORDING INFORMATION

**THIS PAGE INCLUDED  
FOR INDEXING**

**LLOYD J. DOWDING**  
SARPY COUNTY REGISTER OF DEEDS  
STEVEN J. STASTNY, DEPUTY  
1210 GOLDEN GATE DRIVE, STE. 1109  
PAPILLION, NE 68046-2895  
402-593-5773

**THIRD AMENDMENT TO EASEMENTS WITH COVENANTS AND  
RESTRICTIONS AFFECTING LAND CORRECTING LEGAL DESCRIPTION OF SECOND  
AMENDMENT**

**THIS THIRD AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND** (the “**Amendment**”) is made as of the 11<sup>th</sup> day of April, 2017, by and among **SPIRIT MT PAPILLION NE, LLC**, a Delaware limited liability company (“**Developer**”), the successor by assignment from Market Pointe, LLC, a Missouri limited liability company, **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware Statutory Trust (“**Wal-Mart**”), **LOWE’S HOME CENTERS, INC.**, a North Carolina corporation (“**Lowe’s**”), **KOHL’S ILLINOIS, INC.**, a Nevada corporation (“**Kohl’s**”), **MARKET POINTE, LLC**, a Missouri limited liability company (“**Market Pointe**”) and **HOMEFIELD ADVANTAGE I, LLC**, a Missouri limited liability company (collectively, the “**Parties**”).

Preliminary Statement:

**Whereas**, Market Pointe, 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, as amended by that certain First Amendment to Easements With Covenants And Restrictions Affecting Land recorded September 5, 2006 as Instrument No. 2006-30539 (“**First Amendment**”), and as further amended by that certain Second Amendment to Easements With Covenants And Restrictions Affecting Land recorded on February 9, 2009 as Instrument No. 2009-03341 (“**Second Amendment**”) (collectively, as amended, the “**ECR**”) covering the Market Pointe Shopping Center located in Papillion, Nebraska (the “**Shopping Center**”) as more particularly described in the ECR;

**Whereas**, Market Pointe assigned its rights, title and interests under the ECR as the “Developer” and the “Property Owner” of the “Developer Property” to Developer pursuant to that certain Assignment and Assumption of Rights Under ECR dated June 20, 2008, Instrument No. 2008-18534;

**Whereas**, Homefield Advantage I, LLC, (“**Homefield**”) is the current owner of Lot 13 (as hereafter defined);

**Whereas**, the parties to this Amendment desire to update the legal description of the Shopping Center and the site plan exhibits to the ECR in order to reflect the various changes to the affected real property since the original filing of the ECR;

**Whereas**, Market Pointe and Homefield desire the ability to relocate common lots lines and/or to replat certain Outparcels as set forth herein.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals which are incorporated herein by this reference, Developer and the Parties hereby amend the ECR as follows:

1. **Exhibit A** attached hereto and made a part hereof reflects the current site plan of the Shopping Center (the “**Site Plan**”), which replaces any and all previous site plans.

2. **Exhibit A-1** attached hereto and made a part hereof reflects the amended legal descriptions replaces any and all previous versions of those legal descriptions. All other legal descriptions for the properties in the Shopping Center remain unchanged.
3. Notwithstanding anything to the contrary contained in the ECR, the Parties agree that Market Pointe, Homefield, or the current owner of Lot 13, as such Lot 13 is reflected on the Site Plan, may at its discretion replat Lot 13 into two separate Outparcels (the "**Replatted Lots 13 and 14**") provided (i) that the common lot line between the Replatted Lots 13 and 14 does not increase or decrease the size of the two separate Outparcels by more than thirty percent (30%) over the original size of such Outparcels before the two lots were previously combined pursuant to the First Amendment, and (ii) no more than one (1) Building with a maximum Floor Area of 7,000 square feet shall be constructed on each of Replatted Lots 13 and 14.
4. Effective and applicable as to the Outparcel reflected on the Site Plan as Lot 13 only, except as otherwise specifically detailed in Section 4(b) herein, Section 3(b) of the ECR is hereby deleted and replaced with the following. The Parties hereto acknowledge that Section 3(b) of the ECR remains unchanged as to the remainder of the Shopping Center:

"(b) So long as Lowe's or a successor lessee or assignee is the owner or lessee of the Lowe's Property, as either an owner or lessee, or so long as the Lowe's Ground Lease is in effect, no portion of Lot 13, or Lots 13 and 14 if they are divided, shall be used for any of the following purposes:

"(a) A hardware store or center.

(b) An appliance, home electronics and/or lighting store or center; provided, however, the foregoing shall not prohibit a Best Buy, Radio Shack, computer store or personal electronics store.

(c) A nursery and/or lawn and garden store or center (including any outdoor areas and the seasonal sale of Christmas trees).

(d) A paint, wall paper, tile, flooring, carpeting and/or home decor store or center.

(e) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Sears Appliance and Hardware (or any combination of such Sears concepts), or any business selling Sears branded products (e.g. Kenmore, Craftsman, etc.), HHgregg, Great Indoors, Pacific Sales, Conn's, Sutherlands, Scotty's and Orchard Supply Great Indoors, Sutherlands, Scotty's and/or Orchard Supply.

The exclusive rights above shall also apply to prohibit a business having space in its store devoted to selling the categories of merchandise commonly sold by the above referenced types of businesses. In the event of a breach of this covenant, Lowe's shall have the right to seek any and all remedies afforded by either law or equity including injunctive relief against the party breaching this Agreement."

5. **MISCELLANEOUS.** Except as amended herein, all other terms and provisions of the ECR shall remain unchanged and in full force and effect and are ratified by the parties hereto. In the event of any conflict or inconsistency between the terms of the ECR and the terms of this Amendment, the terms of this Amendment shall govern and control. This Amendment may be executed in one or more counterparts, each of which in the aggregate shall constitute one and the same instrument.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]**



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

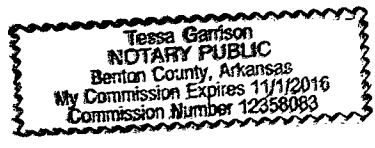
By: [Signature]  
Name: Sarah Reyes  
Title: Senior Manager II - West

STATE OF Arkansas )  
 ) ss.  
COUNTY OF Benton )

The foregoing instrument was acknowledged before me this 16 day of July,  
2013 by Sarah Reyes, Senior Manager II - West of Wal-Mart Real Estate Business  
Trust, a Delaware statutory trust, on behalf of the trust.

[SEAL]

Tessa Garrison  
Notary Public  
My Commission Expires 11/1/2016













**CONSENT OF LENDER  
TO  
THIRD AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS  
AFFECTING LAND CORRECTING LEGAL DESCRIPTION OF SECOND AMENDMENT**

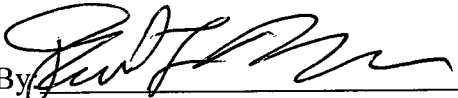
The undersigned, the owner and holder of a Deed of Trust recorded as Instrument No. 2010-09597 in the Official Records of Sarpy County, Nebraska, as amended (the "Security Instrument"), hereby consents to the terms and conditions of the Third Amendment to Easements with Covenants and Restrictions Affecting Land Correcting Legal Description of Second Amendment to which this Consent is attached, as executed by Spirit MT Papillion NE, LLC, a Delaware limited liability company, the successor by assignment from Market Pointe, LLC, a Missouri limited liability company, Wal-Mart Real Estate Business Trust, a Delaware Statutory Trust, Lowe's Home Centers, Inc., a North Carolina corporation, Kohl's Illinois, Inc., a Nevada corporation, Market Pointe, LLC, a Missouri limited liability company, and Homefield Advantage I, LLC, a Missouri limited liability company (the "Amendment"), which Amendment affects the property subject to the Security Instrument, and agrees that any foreclosure of the lien of the Security Instrument shall be subject to the terms of the Amendment.

Date: DEC 5, 2013.

**LENDER:**

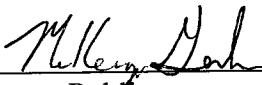
JACKSON NATIONAL LIFE INSURANCE

By: PPM Finance, Inc., its authorized agent

By:   
Name: David Henderson  
Title: Senior Managing Director

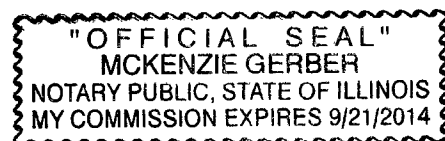
STATE OF ILLINOIS     )  
  ) ss.  
County of Cook         )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of DECEMBER, 2013 by DAVID HENDERSON, the SENIOR MANAGING DIRECTOR of PPM Finance, Inc., as authorized agent for Jackson National Life Insurance Company, on behalf of the company.

  
Notary Public

My Commission Expires:

9-21-2014





**EXHIBIT A-1**

**Amended Legal Descriptions**

**LEGAL DESCRIPTION OF OUTPARCELS**

**Lots 1 and 2, Market Pointe Addition Replat 6, a subdivision in Sarpy County, Nebraska.**

**Lots 1 and 2, Market Pointe Addition Replat 4, an Administrative Lot Line Adjustment, being a replat of Lot 6, Market Pointe Addition and Lots 1 and 2, Market Pointe Addition Replat 3, a subdivision in Sarpy County, Nebraska.**

**Lots 9, 10, 11, 12 and 13, Market Pointe Addition Replat 1, an Administrative Subdivision, being a replat of Lots 8 through 14, Market Pointe Addition, a subdivision in Sarpy County, Nebraska.**