



BK 1507 PG 558-563



MISC 2003 12188

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REGISTER OF DEEDS
DUBLAS COUNTY, NE

Upon Recording Return to:
Richard J. Rosenblatt, Esq.
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186

Store #1637

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (this "Declaration") is made and executed as of the 3 day of APRIL, 2003, by Carol J. Gendler and Steven H. Gendler, Co-Trustees of the H. Lee Gendler Family Trust, Carol J. Gendler, Trustee of the Carol J. Gendler Revocable Trust, Irvin Gendler, Trustee of the Irvin Gendler Revocable Trust (collectively, "Declarant").

WHEREAS, Declarant is the owner of that certain real property more particularly described in Schedule A attached hereto and incorporated by reference herein, which real property is hereafter referred to as the "Wal-Mart Property";

WHEREAS, Declarant is also the owner of that certain real property more particularly described in Schedule B, attached hereto and incorporated by reference herein, which property is hereafter referred to as the "Burdened Property";

WHEREAS Declarant has previously conveyed or will convey the Wal-Mart Property to Wal-Mart Real Estate Business Trust, a Delaware business trust, and/or Wal-Mart Stores, Inc., a Delaware corporation (collectively, "Wal-Mart"), pursuant to a separate deed instrument; and

WHEREAS, Declarant desires to establish certain restrictions upon the Burdened Property for the benefit of the Wal-Mart Property;

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NOW, THEREFORE, Declarant for itself, its successors and assigns does hereby declare that the Burdened Property shall be subject to and shall be used in conformance with the following covenants, restrictions and agreements:

1. The ownership, development and use of the Burdened Property and any and all buildings, structures or other improvements (each an "Improvement" and collectively, the "Improvements") shall be restricted, burdened and subject to all of the limitations as set forth below.

a. No Burdened Property shall be conveyed to, leased to, occupied by or used as (i) a grocery store or supermarket, as hereinafter defined below, (ii) a wholesale club operation similar to that of a 'Sam's Club' as owned and operated by Wal-Mart or (iii) a discount department store or other discount store, as hereinafter defined. As used in this Declaration, "grocery store" and "supermarket" shall mean either (A) a stand-alone food store containing more than 15,000 square feet of gross leasable area or (B) a food department containing more than 7,500 square feet of gross leasable area, maintained in either event (A) or (B) for the purpose of selling food for consumption off of the premises, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any other grocery products normally sold in such stores or departments. As used in this Declaration, "discount department store" and/or "discount store" shall mean a discount department store or discount store containing more than 35,000 square feet of gross leasable area for the purpose of selling a full line of hard goods and soft goods, including but not limited to clothing, cards, gifts, electronics, garden supplies, furniture, pharmacy items, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories in a retail operation similar to that of Wal-Mart; provided, however, that the term "discount department store" and/or "discount store" shall not include stores similar to those operated by the current recognized chains of office-supply stores (for example, Staples, Office Max, Office Depot, etc.), electronics stores (for example, Best Buy, Circuit City, etc.), pet-supply stores (for example, Petco, PetsMart, etc.), pharmacies (for example, Pharmor, Walgreen's, etc.), automobile parts stores (for example, Pep Boys, Auto Zone, etc.) or home improvement stores (for example, Lowes, Menards, etc.).

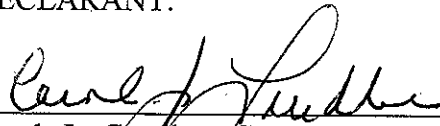
2. The foregoing covenants, restrictions and agreements (a) are imposed upon the Burdened Property for the benefit of the Wal-Mart Property and all portions thereof, (b) shall be effective for a period of 99 years from the date hereof, except as otherwise set forth herein and

(c) shall be deemed restrictive covenants running with the land and shall be binding upon the Burdened Property and any person who may from time to time own, lease or otherwise have an interest in the Burdened Property or any portion thereof. In the event that (a) Wal-Mart shall fail to construct a retail facility on the Wal-Mart Property within three (3) years of the date of this Declaration or (b) after such three (3) year period, none of Wal-Mart or its affiliates holds any interest in any portion of the Wal-Mart Property, then in either of such events, this Declaration shall automatically terminate and expire as of such date.


4. In the event of a breach or threatened breach of any term of this Declaration, Wal-Mart shall have the right to exercise any and all remedies afforded under law and at equity, including, without limitation the right to obtain injunctive relief. This Declaration is made in and shall be construed pursuant to the laws of the state in which the Burdened Property is located.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year above set forth.


DECLARANT:




Carol J. Gendler, Co-Trustee of the H. Lee Gendler Family Trust



Steven H. Gendler, Co-Trustee of the H. Lee Gendler Family Trust



Carol J. Gendler, Trustee of the Carol J. Gendler Revocable Trust



Irvin Gendler, Trustee of the Irvin Gendler Revocable Trust

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 14 day of March, 2003 by Carol J. Gendler, Co-Trustee of the H. Lee Gendler Family Trust, on behalf of the trust.

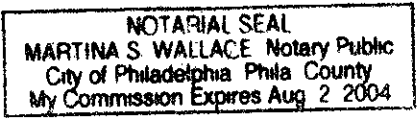


Philip B. Warren

Notary Public

Pennsylvania
STATE OF NEBRASKA)
Philadelphia) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 11th day of March, 2003 by Steven H. Gendler, Co-Trustee of the H. Lee Gendler Family Trust, on behalf of the trust.

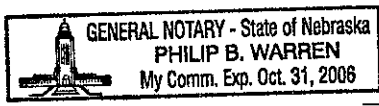


Martina S. Wallace

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 14 day of March, 2003 by Carol J. Gendler, Trustee of the Carol J. Gendler Revocable Trust, on behalf of the trust.



Philip B. Warren

Notary Public

WASHINGTON
STATE OF NEBRASKA)
KING) ss.
COUNTY OF DOUGLAS)

March *[Signature]* The foregoing instrument was acknowledged before me this 14th day of March, 2003 by Irvin Gendler, Trustee of the Irvin Gendler Revocable Trust, on behalf of the trust.

Thomas P. Farrell

Notary Public



SCHEDULE A

WAL-MART PROPERTY LEGAL DESCRIPTION

Lots 8, 9, 10, 11, 12 and Outlot 1, in Starwood South, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

SCHEDULE B

BURDENED PROPERTY LEGAL DESCRIPTION

Lots 1 through 7, in Starwood South, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska