

923 Ottumwa Square Associates
Limited Partnership
TO
Wal-Mart Stores, Inc.
A.D., 1991 at 9:57 o'clock A.

3pg

Candace L. Smith
COUNTY RECORDER

Doc # 2923

RECORD 478

RECORD FEES 15.00

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#1285 - Ottumwa, IA

FIRST AMENDMENT TO ECR

FILED DEC 13, 1991

THIS AGREEMENT is made this 15th day of July, 1991, between Ottumwa Square Associates Limited Partnership, an Ohio limited partnership of 34555 Chagrin Blvd., Moreland Hills, OH 44022, hereinafter called "DEVELOPER", and WAL-MART STORES, INC., a Delaware corporation of 702 S.W. 8th Street, Bentonville, Arkansas 72716, hereinafter called "WAL-MART".

WITNESSETH:

WHEREAS, the Developer and Wal-Mart have entered into a Easement with Covenants and Restrictions Agreement dated the 27th day of July, 1988, which was recorded in the public records of Wapello County, Iowa on December 9, 1988, in book 462, page 650 (the "ECR"), affecting certain premises in the City of Ottumwa in Wapello County, Iowa; and

WHEREAS, the parties are now desirous of making certain amendments, changes and alterations to said ECR Agreement to reflect accurately their intents and wishes.

NOW, THEREFORE, that for One Dollar (\$1.00) and other good and valuable considerations, the sufficiency of which is hereby acknowledged, Developer and Wal-Mart agree as follows:

1. In Paragraph 2, which is entitled "Use", the following paragraph shall be inserted in its entirety:

Notwithstanding the provision of the preceding paragraph, the parties to this agreement agree that the Wal-Mart Tract may be used for any lawful purpose. It is expressly agreed that nothing contained in this ECR Agreement shall be construed to contain a covenant, either express or implied, to either commence operation of a business or thereafter continuously operate a business on the Wal-Mart Tract. All parties recognize and agree that Wal-Mart may, at its sole discretion and at any time during the term of its Lease or this agreement, cease the operation of its business; and all parties hereby waive any legal action for damages or for equitable relief which might be available because of such cessation of business activity by Wal-Mart.

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Except as hereby modified and amended, all other terms, covenants, and conditions of the said ECR Agreement dated the 27th day of July 1988, shall continue and remain without change.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first hereinabove written.

WITNESS OR ATTEST:

Ottumwa Square Associates

Limited Partnership
an Ohio limited partnership
by its General Partner
W & M Properties

By: John R. McGill
Its: General Partner

Reggie L. Denton
John A. McQuinn

ATTEST:

WAL-MART STORES, INC.

Assistant Secretary
(SEAL)

Thomas P. Seay
Senior Vice President

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PARTNERSHIP ACKNOWLEDGMENT

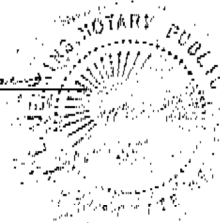
STATE OF OHIO)
) SS * the partnership which executed the
 COUNTY OF CUYAHOGA) foregoing instrument

Be it remembered that on this 15th day of July, 1996, before me a notary public in and for the county and state aforesaid, came John E. McGill, General Partner of W & M Properties, General Partner, of Ottumwa Square Associates Limited Partnership, an Ohio limited partnership of Moreland Hills, OH, who personally known to me to be the person who executed as such partner the within instrument of writing on behalf of such partnership, and such person duly acknowledged the execution of the same to be the act and deed of said partnership.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.

(SEAL) PEGGY L. JENKINS, Notary Public
 State of Ohio
 My commission expires November 7, 1994

Peggy L. Jenkins
 Notary Public



CORPORATE ACKNOWLEDGMENT

STATE OF ARKANSAS)
) SS
 COUNTY OF BENTON)

Be it remembered that on this 9th day of May, 1996, before me a notary public in and for the county and state aforesaid, came Thomas P. Saay, Senior Vice President of WAL-MART STORES, INC., a Delaware corporation, who personally known to me to be the person who executed as such officer the within instrument of writing on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

In testify whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.

April L. Hogan
 Notary Public



MY COMMISSION EXPIRES 12/11/2000, 1996.