

Filed for Record the 16 day of AprilA.D., 1993 at 2:31 o'clock P

54
WMS Realty Limited Partnership
to
Ott Square Associates Limited Partnership

Cassidy Smith
 COUNTY RECORDER

Doc # 6754

RECORD 485

127 PAGE 127

RECORD FEES 50.00

SECOND AMENDMENT TO EASEMENTS WITH COVENANTS
 AND RESTRICTIONS AFFECTING LAND ("ECR")

THIS SECOND AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("ECR") is entered into as of this 5th day of January, 1993, by and between WMS REALTY LIMITED PARTNERSHIP, a(n) Illinois limited partnership (hereinafter referred to as "WMS Realty"), and OTTUMWA SQUARE ASSOCIATES LIMITED PARTNERSHIP, an Ohio limited partnership (hereinafter referred to as "Developer").

W I T N E S S E T H:

WHEREAS, Wal-Mart Properties, Inc. ("Wal-Mart") and Developer entered into that certain Easements with Covenants and Restrictions Affecting Land ("ECR"), dated July 27, 1988, which was recorded in the office of the Wapello County Recorder, State of Iowa on December 9, 1988 in Book 462, Page 650, as amended by that certain First Amendment to ECR, dated July 15, 1991, which was recorded in the office of the Wapello County Recorder, State of Iowa on December 13, 1991 in Book 478, Page 41 (collectively, the "ECR"); and

WHEREAS, Wal-Mart transferred all of its right, title and interest in and to the Wal-Mart Parcel (as defined in the ECR) to WMS Realty; and

WHEREAS, First National Bank of Chicago, as trustee, and J. G. Finley, as trustee, are each the holder of a separate mortgage lien recorded against the Wal-Mart Parcel, and each joins in this Second Amendment at the request of WMS Realty; and

WHEREAS, WMS Realty and Developer desire to amend the ECR in certain respects.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, WMS Realty and Developer agree as follows:

1. Section 2 of the ECR is hereby amended by deleting the first sentence of the second paragraph in its entirety and the following sentence is hereby inserted in substitution for and in lieu thereof:

"Notwithstanding the foregoing, WMS Realty hereby consents to the operation of any restaurant or video game room (or similar place of recreation or amusement) in the Shopping Center, provided said restaurant or video game room is at least eighty (80) feet from the Wal-Mart building."

2. Exhibits A, B and C attached to the ECR and made a part thereof are hereby deleted in their entirety and the revised Exhibits A, B and C attached hereto and made a part hereof are hereby inserted in substitution for and in lieu thereof.

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3. Except as specifically amended hereby, all of the terms, conditions, covenants, provisions and agreements contained in the ECR are, and shall remain, unchanged and in full force and effect.

4. Wal-Mart, as the current lessee of the Wal-Mart Parcel, hereby consents to the terms and conditions of this Second Amendment to Easements with Covenants and Restrictions Affecting Land, to the extent of its right, title and interest in and to the Wal-Mart Parcel, and hereby covenants to WMS Realty and Developer, that so long as Wal-Mart shall lease the Wal-Mart Parcel, Wal-Mart shall be obligated to comply with any and all of the obligations of the owner of the Wal-Mart Parcel set forth in the ECR, as amended herein, and to pay any costs and expenses otherwise payable hereunder by the owner of the Wal-Mart Parcel.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Easements with Covenants and Restrictions Affecting Land ("ECR") as of the day and year first above written.

WITNESSES:

Tom Beatus
Tom Beatus (Print Name)
Ralph Kessa
RALPH KESSA (Print Name)

WMS REALTY LIMITED PARTNERSHIP
 a(n) Delaware Limited partnership
 By: *WMS Realty Partner Corp. General Partner*
a Delaware Corporation
 By: Thomas J. Tisch (Print Name)
 Its: President

WITNESSES:

John M. McGill
John M. McGill (Print Name)
Cynthia A. Kinsel
Cynthia A. Kinsel (Print Name)

OTTUMWA SQUARE ASSOCIATES LIMITED
 PARTNERSHIP, an Ohio Limited
 partnership
 By W & M Properties,
 Its General Partner

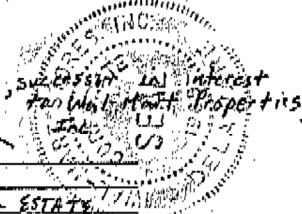
By: *John E. McGill*
John E. McGill, General Partner

ATTEST:

Carl Owsby
Asst Secretary

WAL-MART STORES, INC.
 a Delaware Corporation

By: *[Signature]*
 Its: Asst. V.P. of REAL ESTATE



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WITNESSES:

Theresa DePalma
~~Theresa DePalma~~ (Print Name)

J. J. Mill
~~J. J. Mill~~ (Print Name)

FIRST NATIONAL BANK OF CHICAGO
 Trustee

By: [Signature]
R. J. FINLEY
 Its: VICE PRESIDENT



WITNESSES:

Theresa DePalma
~~Theresa DePalma~~ (Print Name)

J. J. Mill
~~J. J. Mill~~ (Print Name)

J. G. FINLEY Trustee

[Signature]

STATE OF New York
 COUNTY OF New York SS:

BEFORE ME, a Notary Public in and for said County and State,
 personally appeared WNS REALTY LIMITED PARTNERSHIP, a(n) DE LAWARE
 limited partnership, by its General Partner, THOMAS J. TISCH its president
 who acknowledged that he did execute the foregoing instrument and that
 the same is his free act and deed and the free act and deed of said
 general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and official
 seal at New York, New York this 4th day of December, 1992.
 (City) (State)

Carol Duktorski
 Notary Public

CAROL DUKTORSKI
 NOTARY PUBLIC, State of New York
 No. 304720514
 Qualified in Nassau County
 Cert. Filed in New York County
 Commission Expires June 30, 1994

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STATE OF OHIO)
COUNTY OF CUYAHOGA) SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared JOHN R. MCGILL, General Partner of W & M PROPERTIES, General Partner of OTTUMWA SQUARE ASSOCIATES LIMITED PARTNERSHIP, the partnership which executed the foregoing instrument, who acknowledged that he did execute the foregoing instrument on behalf of said partnership and that same is his free and voluntary act and deed as general partner of W & M Properties, general partner of said partnership and is the free act and deed of said limited partnership for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Moreland Hills, Ohio this 3rd day of November, 1992.

Cynthia P. Kujala
Notary Public

CYNTHIA P. KUJALA
Notary Public, Ohio
My Comm. Expires
Recorded in Book



STATE OF ARKANSAS)
COUNTY OF BENTON) SS:

Be it remembered that on this 6th day of November, 1992, before me a Notary Public in and for the County and State aforesaid, came Hummer P. Nelson, ASST. V.P. OF REAL ESTATE of WAL-MART STORES, INC., a Delaware corporation, who is 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 testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.

Dorothy J. Jensen
Notary Public



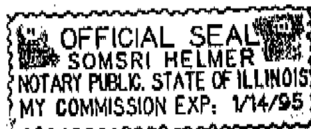
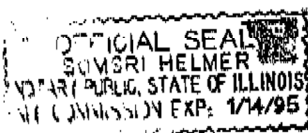
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STATE OF ILLINOIS }
COUNTY OF COOK } SS

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, RESTORER, known to me to be the VICE PRESIDENT of FIRST NATIONAL BANK OF CHICAGO, Trustee, the banking association which executed the foregoing instrument, who acknowledged that he/she did sign and seal the foregoing instrument for, and on behalf of said banking association being thereunto duly authorized by its Board of Directors that the same is his/her free act and deed as such officer and the free act and deed of said banking association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at CHICAGO, ILLINOIS this 5TH day of JANUARY 1993.
(City) (State)

Somsri Helmer
Notary Public

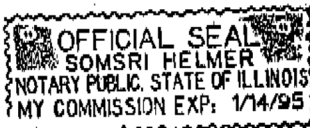


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STATE OF ILLINOIS }
COUNTY OF COOK } SS

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above-named J. G. FINLEY, Trustee, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at CHICAGO, ILLINOIS this 5TH day of JANUARY, 1993.
(City) (State)

Somsri Helmer
Notary Public



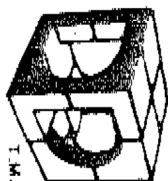
THIS INSTRUMENT PREPARED BY:

Joan Allgood, Esq.
Allgood & Cyncynatus
34555 Chagrin Boulevard
Moreland Hills, Ohio 44022
Telephone: (216) 247-4700

OTTUMWA.BCR
082092

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NOTE: THIS DRAWING WAS PREPARED
WITHOUT BENEFIT OF A
SURVEY AND IS SUBJECT TO
MODIFICATIONS.



Cleveland, Ohio

PAGE 133

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BACK SIDE

EXHIBIT A

Quincy

SITE PLAN

REST OF
DRAWING NOT
REPRODUCED

EXHIBIT A

DRAWING NO.

DRAWN BY

CHECKED BY

QUINCY PLACE

U.S. HIGHWAY 39 AND

OTTUMWA, IOWA

DEVELOPERS DIVERSIFIED 174555 C

P.119

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DESCRIPTIONWal-Mart Parcel (Dept. Store "A") or Tract-4

A part of Government Lot Four (4), in Section Twenty-three (23), Township Seventy-two (72) North, Range Fourteen (14) West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa together with a part of the Accretions belonging to said part of Government Lot Four (4), being otherwise known and described as a part of Auditor's Lot One (1), a part of Auditor's Lot Three (3) and a part of Auditor's Lot Five (5) of said Government Lot Four (4) located in a part of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 23, ALSO, a part of Government Lot One (1), in Section Twenty-six (26), Township Seventy-two (72) North, Range Fourteen (14) West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, together with all of the accretions belonging to said part of Government Lot One (1), being otherwise known and described as a part of Auditor's Lot One (1) and a part of Auditor's Lot Two (2) of said Government Lot One (1) located in the Northeast Quarter (NE $\frac{1}{4}$) of said Section 26, being more particularly described as follows, -to-wit:

A part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 23 and also a part of the Northeast Quarter (NE $\frac{1}{4}$) of Section 26, all in Township 72 North, Range 14 West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, described as follows, -to-wit: Commencing at the North One-quarter (N $\frac{1}{4}$) Corner of said Section 26; thence North 00° - 55' - 50" East along the North line of said Section 26, a distance of 52.01 feet to the Southeast Corner of the right of way acquired by the State of Iowa by Warranty Deed from David J. Thorne and Anna Thorne, filed for Record on the 5th Day of February 1963 in Book 307, Page 376 in the Office of the Recorder, Wapello County, Iowa, said point also being the point of beginning of the Tract of Land herein described; thence North 00° - 55' - 50" East along the North line of said Section 26, a distance of 52.01 feet to the Southeast Corner of the right of way acquired by the State of Iowa by Warranty Deed from David J. Thorne and Anna Thorne, filed for Record on the 5th Day of February 1963 in Book 307, Page 376 in the Office of the Recorder, Wapello County, Iowa, said point also being the point of beginning of the Tract of Land herein described; thence North 00° - 40' - 30" East along the East right of way line of Quincy Ave., a distance of 49.58 feet; thence leaving the said right of way line and running South 89° - 53' East, a distance of 184.80 feet; thence North 00° - 07' East, a distance of 235.00 feet; thence North 89° - 53' West, a distance of 182.51 feet to a point on the said East right of way line of Quincy Ave.; thence North 00° - 40' - 30" East along the said East right of way line of Quincy Ave., a distance of 65.00 feet; thence leaving the said right of way line and running South 89° - 53' East, a distance of 181.88 feet; thence North 00° - 07' East, a distance of 193.00 feet to a point on the South right of way line of U. S. Highway No. 34 as found described of Record in said Book 307, Page 376; thence South 89° - 53' East along the said South right of way line of U. S. Highway No. 34 as found described in Book 307, Page 376 and also found described in Book 307, Page 378, in the said Office of the Recorder, Wapello County, Iowa on a line that is 135 feet normally distant Southerly from centerline of Primary Road No. U. S. 34, a distance of 534.00 feet; thence leaving the said right of way line and running South 00° - 07' West, a distance of 566.00 feet; thence North 89° - 53' West, a distance of 104.00 feet; thence South 00° - 07' West, a distance of 150.70 feet; thence South 89° - 53' East, a distance of 150.00 feet; thence South 00° - 07' West, a distance of 14.14 feet; thence North 89° - 53' West, a distance of 778.14 feet to a point on the East right of way line of the said Quincy Ave., said point also being 30.00 feet East of the West line of the said NE $\frac{1}{4}$ of Section 26; thence North 00° - 14' - 30" East along the said East right of way line of Quincy Ave., a distance of 84.70 feet; thence leaving the said right of way line and running South 89° - 53' East, a distance of 188.00 feet; thence North 00° - 07' East, a distance of 270.00 feet; thence North 89° - 53' West, a distance of 187.41 feet to a point on the said East right of way line of Quincy Ave.; thence North 00° - 14' - 30" East along the said East right of way line of Quincy Ave., a distance of 48.36 feet to a point on the North line of the said NE $\frac{1}{4}$ of Section 26; thence North 89° - 55' - 50" East along the said North line of the NE $\frac{1}{4}$ of Section 26, a distance of 22.01 feet to the point of beginning, containing 536,786.53 square feet or 12.322 Acres.

LESS THE FOLLOWING DESCRIBED PARCEL

Beginning at the Northeast Corner of said Tract Number Four (Tract-4) of W & M Subdivision; thence South 00° - 07' West along the East line of said Tract Number Four (Tract-4), a distance of 566.00 feet to an angle point in said Tract Four (Tract-4); thence North 89° - 53' West along the boundary line of said Tract Number Four (Tract-4), a distance of 82.11 feet to a point on the East line of a North and South concrete curbed Median Island produced South; thence North 00° - 12' - 56" East along the said East line of the concrete curbed Median Island and this line produced North, a distance of 566.00 feet to a point on the North line of said Tract Number Four (Tract-4); thence South 89° - 53' East along the said North line of Tract Number Four (Tract-4), a distance of 81.13 feet to the point of beginning, containing 46, 197.20 square feet or 1.060 Acres more or less, and being subject to all Easements, Restrictions, Covenants and Agreements of Record.

EXHIBIT B

DESCRIPTION

Developers Parcel or Tract-5

A part of the Accretions to Government Lot Four (4), in Section Twenty-three (23), Township Seventy-two (72) North, Range Fourteen (14) West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, being otherwise known and described as a part of Auditor's Lot Five (5) of the Accretions to said Government Lot Four (4) located in a part of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 23, ALSO, a part of the Accretions to Government Lot One (1), in Section Twenty-six (26), Township Seventy-two (72) North, Range Fourteen (14) West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, being otherwise known and described as a part of Auditor's Lot Two (2) of the Accretions to said Government Lot One (1) located in a part of the Northeast Quarter (NE $\frac{1}{4}$) of said Section 26, being more particularly described as follows, to-wit:

A part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 23 and also a part of the Northeast Quarter (NE $\frac{1}{4}$) of Section 26, all in Township 72 North, Range 14 West of the 5th P.M., in the City of Ottumwa, Wapello County, Iowa, described as follows, to-wit: Commencing at the North One-quarter (N $\frac{1}{4}$) Corner of said Section 26; thence North 89°-55'-50" East along the North line of said Section 26, a distance of 52.01 feet to the Southeast Corner of the right of way acquired by the State of Iowa by Warranty Deed from David J. Thorne and Anna Thorne, filed for Record on the 5th Day of February 1963 in Book 307, Page 376 in the Office of the Recorder, Wapello County, Iowa; thence North 00°-40'-30" East along the East right of way line of Quincy Ave., a distance of 542.60 feet to an angle point in said right of way line; thence South 89°-53' East along the South right of way line of U. S. Highway No. 34, as found described in said Book 307, Page 376 and also found described in Book 307, Page 378, in the said Office of the Recorder, Wapello County, Iowa on a line that is 135 feet normally distant Southerly from centerline of Primary Road No. U. S. 34, a distance of 714.00 feet to the point of beginning of the Tract of Land herein described; thence continuing South 89°-53' East along the said right of way line, a distance of 502.35 feet; thence leaving the said right of way line and running South 00°-07' West, a distance of 405.50 feet; thence South 45°-07' West, a distance of 458.70 feet; thence South 00°-07' West, a distance of 111.15 feet; thence North 89°-53' West, a distance of 159.30 feet; thence South 45°-07' West, a distance of 102.81 feet; thence North 00°-07' East, a distance of 190.00 feet; thence North 89°-53' West, a distance of 150.00 feet; thence North 00°-07' East, a distance of 159.70 feet; thence South 89°-53' East, a distance of 101.00 feet; thence North 00°-07' East, a distance of 566.00 feet to the point of beginning, containing 432,334.62 square feet or 9.923 Acres.

AND THE FOLLOWING DESCRIBED PARCEL

Beginning at the Northeast Corner of said Tract Number Four (Tract-4) of W S M Subdivision; thence South 00°-07' West along the East line of said Tract Number Four (Tract-4), a distance of 366.00 feet to an angle point in said Tract Four (Tract-4); thence North 89°-53' West along the boundary line of said Tract Number Four (Tract-4), a distance of 82.11 feet to a point on the East line of a North and South concrete curbed Median Island produced South; thence North 00°-12'-56" East along the said East line of the concrete curbed Median Island and this line produced North, a distance of 566.00 feet to a point on the North line of said Tract Number Four (Tract-4); thence South 89°-53' East along the said North line of Tract Number Four (Tract-4), a distance of 81.13 feet to the point of beginning, containing 46,197.20 square feet or 1.080 Acres more or less, and being subject to all Easements, Restrictions, Covenants and Agreements of Record.

EXHIBIT

C