

FILED FOR RECORD THE 17 DAY OF July  
A.D., 1998 AT 2:40 O'CLOCK P.M.

6 pg

TO

Cassidy Smith  
COUNTY RECORDER

Doc # 0410

RECORD FEE \$ 3.00

RECORD 508

PAGE 566

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

THIS THIRD AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("ECR") is entered into this 23 day of December, 1997, by and between WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware business trust (hereinafter referred to as "Wal-Mart"), and DEVELOPERS DIVERSIFIED REALTY CORPORATION, an Ohio corporation (hereinafter referred to as "DDRC"), successor in interest to Ottumwa Square Associates Limited Partnership ("Developer").

WITNESSETH:

WHEREAS, Wal-Mart Properties, Inc. and Developer entered into that certain Easements with Covenants and Restrictions Affecting Land ("ECR"), dated July 27, 1988, recorded in the office of the Wapello County Recorder, State of Iowa on December 9, 1988 in Book 462, Page 650, as amended by First Amendment to ECR, dated July 15, 1991, recorded in the office of the Wapello County Recorder, State of Iowa on December 13, 1991 in Book 478, Page 41, and Second Amendment to Easements with Covenants and Restrictions Affecting Land ("ECR"), dated January 5, 1993, recorded in the office of the Wapello County Recorder, State of Iowa on April 16, 1993, in Book 485, Page 127 (collectively the "ECR"); and

WHEREAS, Wal-Mart Properties, Inc. transferred all of its right, title and interest in and to Tract 1 (as defined in the ECR) to WMS Realty Limited Partnership ("WMS Realty"); and

WHEREAS, WMS Realty transferred all of its right, title and interest in and to Tract 1 to Wal-Mart; and

WHEREAS, OSALP transferred all of its right, title and interest in and to Tract 2 and the Outparcels (as defined in the ECR) to DDRC; 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 Tract 1, and each joins in this Third Amendment at the request of Wal-Mart; and

WHEREAS, Wal-Mart and DDRC 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, Wal-Mart and DDRC agree as follows:

1. Section 2 of the ECR is hereby amended by adding the following paragraph at the end of Section 2 of the ECR:

"For so long as Wal-Mart or any affiliate, lessee or sublessee of Wal-Mart shall continue to operate its business on Tract 1, that portion of Tract 1 shown on Exhibit A as "Future Parking," and outlined in red on Exhibit D (the "Restricted

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Parking Lot") attached hereto and made a part hereof, shall be used only for the parking of motor vehicles. Except with the prior written approval of Wal-Mart, no building or structure shall be constructed or maintained on the Restricted Parking Lot."

2. Exhibit A of the ECR is hereby amended by deleting "4500 S. F." as the Maximum Building Size on Outlot C and inserting "5000 S.F." in substitution for and in lieu thereof.

3. Wal-Mart Stores, Inc., as the current lessee of the Wal-Mart Parcel, hereby consents to the terms and conditions of this Third Amendment to Easements with Covenants and Restrictions Affecting Land, to the extent of its right, title and interest in and to Tract 1, and hereby covenants to Wal-Mart and DDRC, that so long as Wal-Mart Stores, Inc. shall lease Tract 1, Wal-Mart Stores, Inc. shall be obligated to comply with any and all of the obligations of the owner of Tract 1 set forth in the ECR, as amended herein.

4. 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.

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

WAL-MART REAL ESTATE BUSINESS  
TRUST, a Delaware business trust

By: [Signature]  
Anthony L. Fuller (Print Name)  
Its: Vice President

DEVELOPERS DIVERSIFIED REALTY  
CORPORATION, an Ohio corporation

By: [Signature]  
Joan Allgood, Vice President

WITNESSES:

[Signature]  
(Print Name) ELIZABETH A. BERRY  
[Signature]  
(Print Name) Peggy L. Jenkins

WITNESSES:

[Signature]  
(Print Name) M. Ivy  
[Signature]  
(Print Name) N. Sullivan

FIRST NATIONAL BANK OF CHICAGO  
Trustee

By: [Signature]  
D.R. J. BANNER (Print Name)  
Its: Vice President

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## WITNESSES:

M. Luy  
 (Print Name) M. Luy  
N. Sierra  
 (Print Name) N. SIERRA

J. G. FINLEY, Trustee

[Signature]

## ATTEST:

WAL-MART STORES, INC.  
 a Delaware corporation

By: [Signature] (Print Name)  
Anthony L. Fuller  
 Its: Vice President

STATE OF ARKANSAS )  
 ) SS:  
 COUNTY OF BENTON )

Be it remembered that on this 25<sup>th</sup> day of September, 1997, before me a Notary Public in and for the County and State aforesaid, came Anthony L. Fuller, Vice President of WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware business trust, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of such business trust, and such person duly acknowledged the execution of the same to be the act and deed of said business trust.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notary seal the day and year last above written.

Phyllis E. Overstreet  
Phyllis E. Overstreet, Notary Public

My Commission expires: 7-19-03



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STATE OF OHIO )  
 ) SS:  
 COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, personally appeared Joan Allgood, known to me to be the Vice President of DEVELOPERS DIVERSIFIED REALTY CORPORATION, the corporation which executed the foregoing instrument, who acknowledged that she did sign and seal the foregoing instrument for and on behalf of said corporation being thereunto duly authorized by its Board of Directors that the same is her free act and deed as such officer and the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Moreland Hills, Ohio this 18th day of September, 1997.

*Elizabeth A. Berry*  
 Notary Public **ELIZABETH A. BERRY**  
 Notary Public, State of Ohio, Cuyahoga County  
 My Commission Expires Mar. 8, 1998

STATE OF ILLINOIS )  
 ) SS:  
 COUNTY OF Cook )

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, R. J. BRINER, 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 23rd day of DECEMBER, 1997.  
 (City) (State)

*Somsri Helmer*  
 Notary Public



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STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF Clark )

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 23<sup>rd</sup> day of DECEMBER, 1997.  
 (City) (State)

Somsri Helmer  
 Notary Public



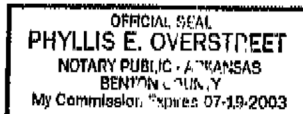
STATE OF ARKANSAS )  
 ) SS:  
 COUNTY OF BENTON )

Be it remembered that on this 25<sup>th</sup> day of September, 1997, before me a Notary Public in and for the County and State aforesaid, came Anthony L. Fuller, Vice President 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.

Phyllis E. Overstreet  
Phyllis E. Overstreet, Notary Public

My Commission expires: 7-19-03



THIS INSTRUMENT PREPARED BY:

Jerry M. Cyncynatus, Esq.  
 34555 Chagrin Boulevard  
 Moreland Hills, Ohio 44022  
 Telephone: (216) 247-4700

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