

Returne Heartland Title  
1300 S. 119th St  
Omaha 68144

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STATE OF IOWA, Pottawattamie County  
Filed for record this 13<sup>th</sup> day of July  
1995 at 2:40 o'clock P.M. and recorded  
in book 96 page 203

COMPAKED

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RECORDING FEE \$ 55.00  
RMA FEE \$ 1.00

AMF:041895

John J. Martine  
Recorder

**THIRD AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND**

THIS THIRD AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("Third Amendment") is made and entered into as of this 11<sup>th</sup> day of July, 1995, by and among WAL-MART STORES, INC., a Delaware corporation having an office at 702 S.W. Eighth Street, Bentonville, Arkansas 72716 ("Wal-Mart"), LAKE MANAWA CENTRE LIMITED PARTNERSHIP, a Nebraska limited partnership, having an office at 11506 Nicholas Street, Suite 200, Omaha, Nebraska 68154 ("Developer"), and TOYS "R" US, INC., a Delaware corporation having an office at 461 From Road, Paramus, New Jersey 07652 ("Toys").

**WITNESSETH**

WHEREAS, Wal-Mart and Developer entered into an Easements with Covenants and Restrictions Affecting Land dated August 12, 1992 and recorded on December 4, 1992 as Instrument No. 93-16493 in the Recorder's Office of Pottawattamie County, Iowa (the "Original ECR"), affecting the property described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Original ECR was amended by that certain Amendment to Easements with Covenants and Restrictions Affecting Land dated December 28, 1993 and recorded on January 11, 1994 as Instrument No. 94-23521 in the said Recorder's Office (the "First Amendment"); and

WHEREAS, the Original ECR was further amended by that certain Second Amendment to Easements with Covenants and Restrictions Affecting Land dated October 13, 1994 and recorded on December 22, 1994 as Instrument No. 95-15492 in said Recorder's Office (the "Second Amendment") (the Original ECR, as amended by the First Amendment and the Second Amendment, being referred to herein as the "ECR"); and

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WHEREAS, Toys has acquired or is about to acquire the right, title and interest of Developer in and to that portion of the Shopping Center (as defined in the ECR) described in Exhibit B attached hereto and made a part hereof (the "Toys Parcel"), and is the assignee of all of Developer's rights under the ECR as may relate to the Toys Parcel; and

WHEREAS, by way of this Third Amendment to Easements with Covenants and Restrictions Affecting Land, the parties hereto desire to further amend the ECR.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereby agree as follows. (For the purposes of this Third Amendment, capitalized terms shall have the meanings ascribed to them in the ECR, unless otherwise defined herein).

1. From and after the date upon which Toys acquires fee title to the Toys Parcel, Toys shall be deemed admitted as a party to the ECR (as amended hereby) with respect to the Toys Parcel only and only during the period Toys is the fee or leasehold owner of the Toys Parcel, except as to obligations, liabilities or responsibilities that accrue during said period.

2. Reference is made to Lots 19, 20, 21, 22, 23 and 24 (hereinafter collectively referred to as the "Strip Center Lots") as shown on the site plan attached to this Third Amendment as Exhibit C (the "Third Amendment Site Plan"). It is hereby agreed that (a) the "Building Areas" pertaining to the Strip Center Lots shall mean those respective portions of said Lots which are within the "Allowable Building Area" as shown on the Third Amendment Site Plan; (b) the "Common Areas" pertaining to the Strip Center Lots shall be all of said Lots except said Building Areas; and (c) the maximum square footage of the buildings located within the Strip Center Lots shall be as shown on the Third Amendment Site Plan.

3. Wal-Mart and Developer hereby acknowledge and agree that the construction by Toys of a prototypical Toys "R" Us store shall be deemed "architecturally compatible" pursuant to Section 4a of the Original ECR.

## COMPARED

4. The parties hereto confirm that the Strip Center Lots do not contain any "Outparcel(s)" (referred to in Section 4e of the Original ECR).

5. Notwithstanding Section 7 of the Original ECR, the owner or lessee of each respective Strip Center Lot shall be entitled to install and maintain a single pylon sign located within the Common Area in back of its store building, provided that each such sign shall not exceed a height of sixty feet.

6. In the second line of Section 8b(3) of the Original ECR, the words "and Toys" shall be added after the word "Developer."

7. The first six lines of Section 8b(4) of the Original ECR shall be amended to read as follows: "Wal-Mart for itself and its property insurer hereby releases Developer and Toys, and Developer for itself and its property insurer hereby releases Wal-Mart and Toys, and Toys for itself and its property insurer hereby releases Wal-Mart and Developer, from and against all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits or either Wal-Mart or Developer or Toys resulting from or in any way connected..."

8. There shall be added to the end of Section 8b(5) of the Original ECR the following sentence: "Furthermore, so long as the net worth of Toys shall exceed One Hundred Million Dollars (\$100,000,000), and so long as Toys is owner or lessee of the Toys Parcel, Toys shall have the right to retain the financial risk hereunder."

9. In the fifth line of Section 13 of the Original ECR, there shall be added after the words "Tract 2" the following language: "or Toys so long as it or any affiliate has an interest as owner or lessee of the Toys Parcel."

10. The second sentence of Section 15 of the Original ECR shall be amended to read in its entirety as follows: "This Agreement (including Exhibits) may be modified only by the mutual agreement of Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of Tract 1, and Developer, as long as it or its affiliate has any interest as either owner or lessor of Tract 2. This Agreement (including Exhibits) may be canceled only by the mutual agreement of Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of

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Tract 1, Developer, as long as it or its affiliate has any interest as either owner or lessee of Tract 2 and Toys, as long as it or its affiliate has any interest as either owner or lessee of the Toys Parcel. Further, Wal-Mart shall not close that portion of the roadway known as 32nd Avenue which is located within Tract 1 (the "32nd Avenue Portion") to the customers of the Strip Center Lots provided, however, the preceding sentence shall not prohibit Wal-Mart from maintaining the 32nd Avenue Portion as may be necessary from time to time.

11. There shall be added to the end of Section 1 of the Original ECR the following subsections 1d and 1e:

d. "Future Development" shall mean those areas so indicated on Lot 2 and Lot 3 on the Third Amendment Site Plan. The owner(s) of Lot 2 and Lot 3 shall have the right to develop buildings or parking on the Future Development areas provided that any such buildings shall not exceed one story or twenty-five (25) feet in height.

e. "Alternate Hotel Site" shall mean that area so indicated on the Third Amendment Site Plan. Developer may combine the area designated as "Detention Cell" on the Third Amendment Site Plan with Lot 24 to form one lot containing a hotel, subject, however, to the following terms and conditions: (a) Developer may relocate such "Detention Cell" within the Alternate Hotel Site, so long as (x) such relocated Detention Cell is located between the hotel building and the remainder of the Strip Center Lots; and (y) such relocation of the Detention Cell shall not adversely affect stormwater drainage or access to and from the Toys Parcel; (b) any such hotel building shall not exceed three (3) stories nor forty (40) feet in height; and (c) the allowable building area with respect to the Alternate Hotel Site shall cover the entire new lot except, however, that no buildings, structures or other improvements may in any event be constructed within that area currently shown as the front parking field of Lot 24 on the Third Amendment Site Plan.

Except as herein provided, all other terms, covenants and conditions of the ECR shall remain in full force and effect, and the same are hereby ratified and confirmed. The terms, covenants and conditions contained in this Third Amendment shall bind and inure to the benefit of the parties hereto and their respective heirs, representatives, lessees, successors and assigns.

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IN WITNESS WHEREOF, Wal-Mart, Developer and Toys have executed the within Third Amendment as of the day and year first above written.

WAL-MART STORES, INC.,  
a Delaware corporation

By: Cal Oraby

LAKE MANAWA CENTRE LIMITED  
PARTNERSHIP, a Nebraska  
limited partnership

By: Lake Manawa Centre, Inc.,  
a Nebraska corporation,  
general partner.

By: [Signature]

TOYS "R" US, INC.

By: Michael Paul Miller  
Michael Paul Miller  
Sr. Vice President  
Real Estate

**CONFIDENTIAL**

**CONFIDENTIAL**

**EXHIBIT A**

**TO**

**AMENDMENT TO EASEMENTS, COVENANTS AND  
RESTRICTIONS AFFECTING LAND ("ECR")**

**Wal-Mart Stores, Inc., a Delaware corporation, as owner of the  
following described real estate:**

**Lot Two (2), Three (3), and Three A (3A) of  
Lake Manawa Centre Subdivision, a subdivision  
located in the city of Council Bluffs,  
Pottawattamie County, Iowa.**

**Lake Manawa Centre Limited Partnership, a Nebraska limited  
partnership, as owner of the following described real estate:**

**Lots 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16  
and 17 of Lake Manawa Centre subdivision, a  
subdivision located in the City of Council  
Bluffs, Pottawattamie County, Iowa.**

**94-23524**

EXHIBIT B

COMPARED

TOY'S PARCEL

LOT 19, LAKE MANAWA CENTRE SUBDIVISION - PHASE III,  
BEING A PART OF THE NORTHEAST QUARTER OF SECTION 12,  
TOWNSHIP 74 NORTH, RANGE 44 WEST OF THE 5TH P.M.,  
POTTAWATTAMIE COUNTY, IOWA, MORE PARTICULARLY  
DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST 1/4 CORNER OF SECTION 12 AND  
ASSUMING THE SOUTH LINE OF THE NORTHEAST 1/4 TO BEAR  
S 89°59'57" W; THENCE S 89°59'57" W ALONG SAID SOUTH LINE  
AND THE NORTH R.O.W. LINE OF 34TH AVENUE A DISTANCE OF  
305.20'; THENCE N 0°18'10" E ALONG THE EAST LINE OF THE  
WEST 61 1/2 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4  
A DISTANCE OF 1147.46' TO THE POINT OF BEGINNING; THENCE  
N 89°42'26" W ALONG THE NORTH LINE OF LOT 2 OF LAKE  
MANAWA CENTRE SUBDIVISION A DISTANCE OF 989.30' TO THE  
POINT OF CURVATURE OF A 459.12' RADIUS CURVE; THENCE  
WESTERLY ALONG SAID CURVE TO THE LEFT, A DISTANCE OF  
15.05', (HAVING A CHORD BEARING OF S 89°25'18" W AND A  
CHORD DISTANCE OF 15.05';) THENCE N 0°13'19" W ALONG THE  
EAST LINE OF LOT 5 OF SAID SUBDIVISION A DISTANCE OF  
166.20'; THENCE S 89°42'50" E A DISTANCE OF 468.50';  
THENCE S 0°14'04" W A DISTANCE OF 20.05'; THENCE  
S 89°42'41" E A DISTANCE OF 537.30'; THENCE  
S 0°17'08" W A DISTANCE OF 146.01' TO THE POINT OF  
BEGINNING.