

## FIRST AMENDMENT TO CONTRACT

THIS FIRST AMENDMENT TO CONTRACT entered into as of the 28 day of May, 1997, by and between **OTR**, an Ohio general partnership, acting on behalf of the Board of Trustees of **THE STATE TEACHERS RETIREMENT SYSTEM OF OHIO**, as successor in interest to Wal-Mart Properties, Inc. (hereinafter referred to as "OTR") and **BIRMINGHAM REALTY COMPANY**, an Alabama corporation, as successor in interest to Sherman Holland, Jr. (hereinafter referred to as "BRC"), for the purpose of amending that certain contract dated the 12th day of January, 1981, between **WAL-MART PROPERTIES, INC.** ("Wal-Mart"), and **SHERMAN HOLLAND, JR.** ("Holland"), filed for record in the Office of the Judge of Probate of Shelby County, Alabama, in Book No. 39, page 573 (the "Contract").

Inst # 1997-23314

### I. RECITALS:

A. Wal-Mart and Holland entered into the Contract which essentially is a reciprocal easement agreement between the parties as owners of adjoining parcels of real estate they have developed for commercial retail purposes. The parcels are referred to herein as "Parcel I" and "Parcel II". The Contract shall hereinafter be referred to as the Reciprocal Easement Agreement ("REA").

B. Wal-Mart formerly was the owner of Parcel I, as described in the REA; OTR is the present owner of Parcel I, having succeeded to the ownership interest of Wal-Mart in Parcel I. Wal-Mart Stores, Inc. leased Parcel I from OTR for a primary term of 25 years under Lease (the "Lease") dated March 25, 1982.

C. BRC has succeeded to Holland's ownership interest in Parcel II.

D. Wal-Mart has built a Wal-Mart retail store on certain property adjacent to and north of Parcel I (the "Wal-Mart Property"), and in connection with construction of its store facility, Wal-Mart has developed on Parcel I a drainage system and retention ponds which serve Parcel I and the new Wal-Mart Property.

E. OTR has agreed to sell to Wal-Mart a strip of property constituting a portion of Parcel I located adjacent to the Wal-Mart Property and constituting approximately 1.40 acres, in consideration of a monetary payment and the reciprocal grant between Wal-Mart and OTR of cross-easements for access, an easement to OTR for drainage purposes and an exclusive easement to OTR for vehicular parking on the Wal-Mart Property to accommodate 28 parking spaces.

F. Attached hereto as **Exhibit A** is a site plan depicting that portion of Parcel I after the 1.40-acre tract has been severed and sold to Wal-Mart, also reflecting the location of areas designated for future expansion and development on Parcel I.

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SHELBY COUNTY JUDGE OF PROBATE  
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*Calvin*

II. **AGREEMENT:** In consideration of the preceding recitals and the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. **Substitution of Site Plan.** The existing approved site plan between the parties as reflected in Exhibit A to the REA is hereby replaced by a new site plan, attached hereto as **Exhibit A**. BRC does hereby approve the sale of the 1.40 acre strip of property to Wal-Mart and does hereby agree that such strip of property shall be released in its entirety from all the terms and conditions and easements contained in the REA. BRC does also approve the expansion areas as shown on the new site plan, it being understood that OTR may expand the existing building as shown on the site plan and build a second building on the pad site as shown on the new site plan (the "Pad Site"), provided, however, that (i) the "Common Area" to "Building Area" ratio, as required in Section C.4 (a) (1) of the REA shall be maintained, it being understood that the area of the adjacent Wal-Mart Property in which the 28 exclusive parking spaces is situated shall be included as "Common Area" for computing the ratio so long as such easement shall be effective, (ii) BRC shall have the right to approve the leasing or rental of the Pad Site under certain conditions as set forth in the attached **Exhibit B**.

2. **Joinder by Wal-Mart.** Section C.8 (a) (1) of the REA provides that as long as Wal-Mart is the operator of Parcel I, Wal-Mart shall have the authority to modify the REA. Notwithstanding such provision, Wal-Mart agrees that it shall not modify the REA in any manner without the written consent and joinder of OTR. Accordingly, the authority to modify the REA shall rest with OTR and Wal-Mart jointly, so long as Wal-Mart has a leasehold interest in any part of Parcel I. Both OTR and Wal-Mart agree that upon the request of either to the other with respect to a proposed modification to the REA, the consent of the party so requested shall not be unreasonably withheld or delayed.

3. **Ratification.** Except as hereinabove modified and amended, the REA shall remain in full force and effect throughout its term, and the REA and all provisions thereof are hereby ratified and confirmed.

THIS AMENDMENT has been entered into as of the 11th day of <sup>June</sup>~~May~~, 1997.

OTR, an Ohio general partnership acting  
on behalf of the Board of Trustees of The  
State Teachers Retirement System of  
Ohio

By: 

A General Partner

BIRMINGHAM REALTY COMPANY, an  
Alabama corporation

By: Stephen A. Hoene  
Its: Senior Vice President

WAL-MART PROPERTIES, INC., a  
Delaware corporation

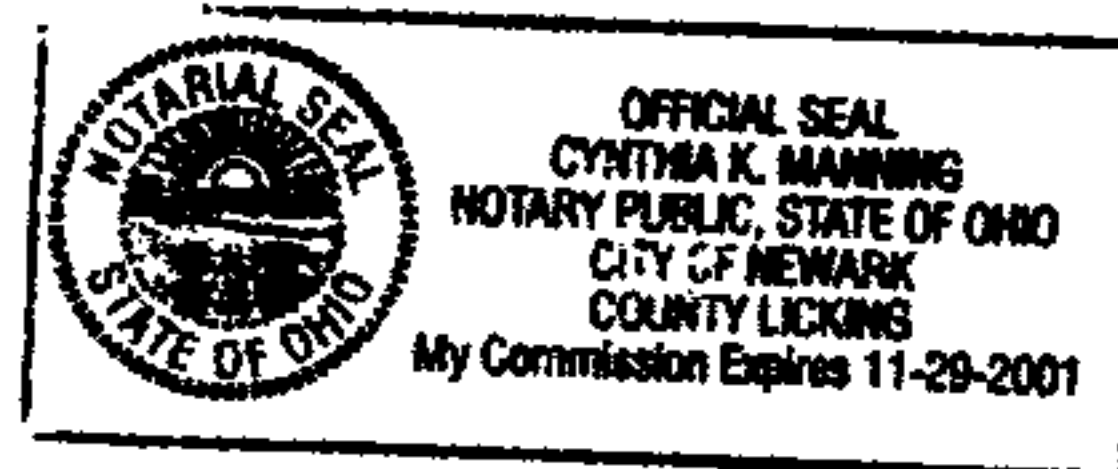
By: [Signature]  
Its: [Signature]

STATE OF OHIO )  
LICKING COUNTY )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby  
certify that Stephen A. Mitchell whose name as General Partner of OTR, an Ohio  
general partnership, is signed to the foregoing instrument, and who is known to me,  
acknowledged before me on this day that, being informed of the contents of the instrument,  
he, in his capacity as such General Partner executed the same voluntarily on the day the  
same bears date.

Given under my hand this the 11th day of June, 1997.

Cynthia K. Manning  
Notary Public  
My Commission Expires: \_\_\_\_\_



STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Stephen W. House, whose name as Sr. U.P. of BIRMINGHAM REALTY COMPANY, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this the 3rd day of <sup>July</sup>~~May~~, 1997.

[Signature]  
Notary Public  
My Commission Expires: 10-27-97

STATE OF Arkansas )  
Benton COUNTY )

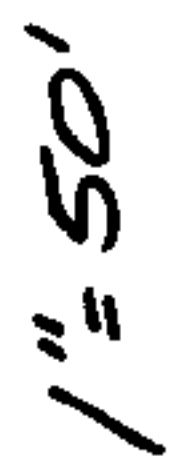
I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that J. Robert Bray, whose name as Asst U.P. of WAL-MART PROPERTIES, INC., a Delaware corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this the 2nd day of <sup>June</sup>~~May~~, 1997.

Raeleen A. Mattson  
Notary Public  
My Commission Expires: 4-13-06



## EXHIBIT



## **EXHIBIT B**

OTR, its successors or assigns, agrees that, without the ~~express~~ written consent of Birmingham Realty, which consent shall not be unreasonably withheld, OTR shall not lease or rent the Pad Site or any portion thereof or improvement thereon if the primary use by OTR's tenant is in direct competition with the primary use of any tenant of Birmingham Realty on Parcel II at the time OTR commences or authorizes the commencement of any tenant improvements for such tenant. Any tenant who leases or rents the Pad Site shall not sublease to any subtenant whose primary use is in competition with the primary use of any Birmingham Realty tenant on Parcel II at the time of such sublease. Notwithstanding the foregoing, OTR shall have the right, at any time and from time to time, without the necessity of obtaining Birmingham Realty's consent, to lease or rent the Pad Site or any portion thereof or improvement thereon for any of the following uses:

1. Fast food restaurant;
2. Bank;
3. Realty company, insurance agency or other office use;
4. Medical or dental clinic.

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