

Inst # 2002-11202

03/08/2002-11202
09:29 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
005 CH 25.00

Birmingham, AL

SHORT FORM MEMORANDUM TERMINATION OF LEASE AGREEMENT

THIS SHORT FORM MEMORANDUM TERMINATION OF LEASE AGREEMENT (this "Agreement") is made and entered into as of the 19th day of February, 2002 (the "Effective Date"), between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware trust ("Tenant"), and **DEVELOPERS DIVERSIFIED OF ALABAMA, INC.**, an Alabama limited partnership (hereinafter "Landlord"), and is made with reference to the following facts:

A. Landlord and Tenant are parties to that certain Lease Agreement dated June 25, 1993 (the "Lease"), pursuant to which Tenant leases from Landlord certain premises located in the City of Birmingham, County of Jefferson, State of Alabama, as more particularly described in the Lease and in Exhibit "A" a copy of which is attached hereto and made a part hereof (the "Premises").

B. Although the Lease is not scheduled to expire until August 30, 2014, Landlord and Tenant now desire to provide for an early expiration of the term of the Lease as hereinafter provided.

NOW, THEREFORE, in consideration of the foregoing recitals and defined terms which are incorporated herein by this reference, and the mutual covenants and conditions herein contained, the parties hereto do hereby agree as follows:

1. Concurrently herewith, the parties have entered into that certain Lease Termination Agreement, herewith (the "Termination Agreement"), the terms of which are incorporated herein by this reference and made a part hereof.

2. As of the lease termination date, subject to the terms of the Termination Agreement, the Lease shall be and hereby is amended to reflect that the term of the Lease shall be deemed to have terminated on January 31, 2002.

3. Landlord hereby covenants and agrees with Tenant that the Demised Premises shall not be used for or in support of the following: a discount department store, where a "Discount department store" as that term is used herein, shall mean a discount department store or a discount store containing more than 35,000 square feet of gross leasable area selling a full line of hard good and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, pharmacy, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount retail operation similar to that of Lessee as of the Termination Date; a wholesale club or warehouse club similar to that of a Sam's Club owned and operated by Lessee; a grocery store or supermarket containing more than 10,000 square feet of gross leasable area where a "Grocery Store" and "Supermarket" as those terms are used herein, shall mean selling food for consumption off the premises, which shall include but not be limited to the sale

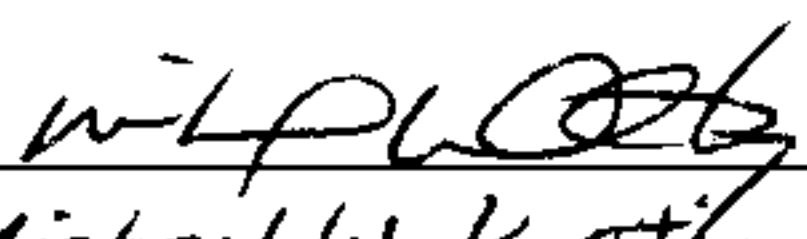
of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments ("Restrictions"). These Restrictions shall remain in effect until that date which is the earlier of: (i) that date Lowe's Home Improvement opens for business in the Demised Premises; or (ii) August 30, 2014.

4. This Agreement is a short form for recording purposes only, and is not a complete summary of the Lease Termination Agreement. Accordingly, the provisions of this Agreement shall not be used in interpreting the Lease Termination Agreement.


5. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

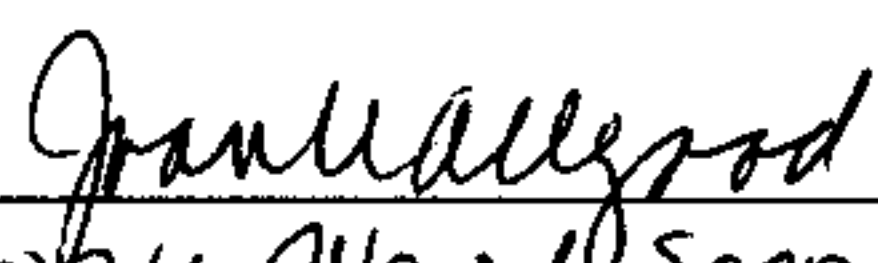
ATTEST:

By: 
Michael W. Kersting
Its: Assistant Secretary

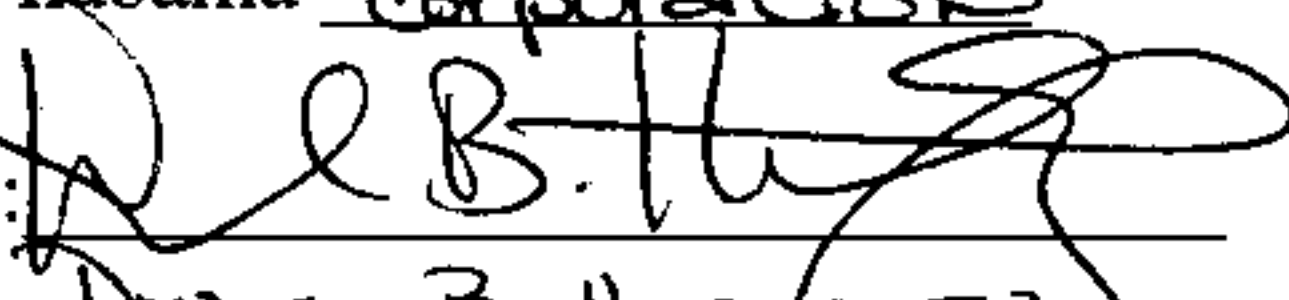
**WAL-MART REAL ESTATE
BUSINESS TRUST**
a Delaware trust

By: 
Anthony L. Fuller
Its: ~~Director of Building Development~~
Vice President

ATTEST:


John U. Allgood, Secretary
Print Name

**DEVELOPERS DIVERSIFIED
OF ALABAMA, INC.,**
an Alabama corporation

By: 
DANIEL B. HARWITZ
Its: Executive Vice President

The foregoing instrument was acknowledged before me this 14th day of February 2002, by Anthony L. Fuller, the ~~Director of Building Development~~ ^{Vice President}, of Wal-Mart Real Estate Business Trust, a Delaware business trust, on behalf of the business trust.

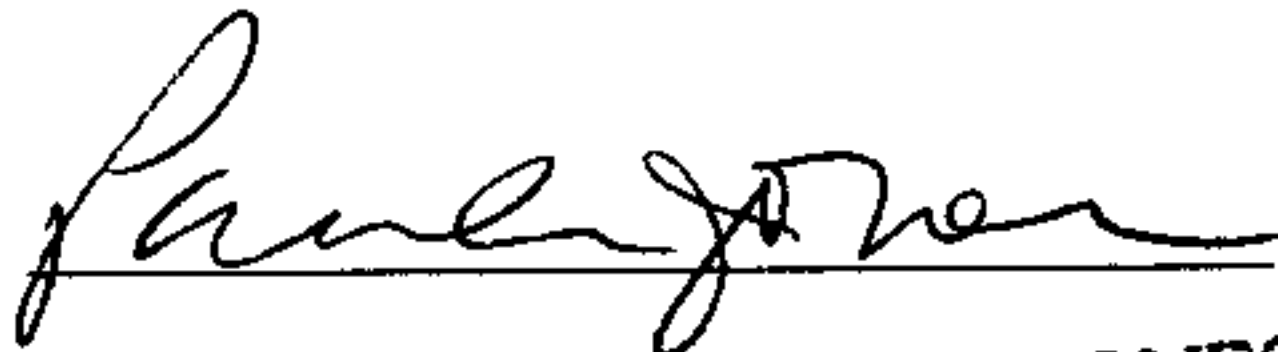
" NOTARY SEAL "
Sherry D. Laemmle, Notary Public
Benton County, State of Arkansas
My Commission Expires 7/10/2006

Sonya Webster
Wal-Mart Stores, Inc.
Department 9385
2001 SE 10th St.
Bentonville, AR 72712-0550

STATE OF Ohio)
) ss
COUNTY OF Cuyahoga

In the State of Ohio, County of Cuyahoga, on this 18th day of February 2002, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Daniel B. Hurwitz as Exec. Vice President, of Developers Diversified of Alabama, Inc., who is personally known to me to be such, and who is personally known to me to be the person who executed as such 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.

WITNESS my hand and notarial seal subscribed and affixed in said county and state, the day and year in this certificate above written.



Notary Public

PAULA JONES, Notary Public
State of Ohio, Cuyahoga County
My Commission Expires Jan. 11, 2004

My Commission Expires:

Exhibit "A"

Land lying and being in Shelby County, Alabama, and being more particularly described as that certain tract of land containing 63.88 acres, more or less, and being designated as Lots 1, 1A, 2 and 2A on that certain map entitled "Brook Highland Plaza Resurvey" recorded in Map Book 18, Page 99, in the Probate Office for Shelby County, Alabama.

LESS AND EXCEPT:

ALL THAT TRACT OR PARCEL OF LAND lying and being in Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

BEGINNING at the northwest corner of the southeast quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama being south $89^{\circ} 31' 51''$ west a distance of 843.96 feet from the northeast corner of Lot 1, Brook Highland Plaza Resurvey (Map Book 18, Page 99); thence run south $89^{\circ} 31' 51''$ west a distance of 50.00 feet to a point; thence run south $00^{\circ} 38' 38''$ east a distance of 300.00 feet to a point; thence run north $89^{\circ} 37' 51''$ east a distance of 20.00 feet to a point; thence run south $01^{\circ} 36' 53''$ east a distance of 293.07 feet to a point; thence run south $89^{\circ} 31' 51''$ west a distance of 225.00 feet to a point; thence run south $00^{\circ} 38' 38''$ east a distance of 145.41 feet to a point; thence run south $88^{\circ} 21' 20''$ west a distance of 150.94 feet to a point; thence run along the arc of a curve an arc distance of 325.14 feet (said curve having a radius of 910.27 feet a chord bearing of north $81^{\circ} 24' 44''$ west a chord distance of 323.42 feet) to a point; thence run north $71^{\circ} 10' 44''$ west a distance of 90.62 feet to a point; thence run north $64^{\circ} 18' 36''$ west a distance of 37.79 feet to a point; thence run north $73^{\circ} 31' 00''$ west a distance of 110.98 feet to a point; thence run north $56^{\circ} 07' 21''$ west a distance of 73.40 feet to a point located on the to a point located on the easterly right-of-way line of Brook Highland Parkway (right-of-way varies); thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north $16^{\circ} 29' 00''$ east a distance of 206.74 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north $73^{\circ} 31' 00''$ west a distance of 12.00 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway, along the arc of a curve an arc distance of 254.68 feet (said curve having a radius of 310.47 feet, a chord bearing of north $39^{\circ} 59' 00''$ east, and a chord distance of 247.60 feet) to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north $26^{\circ} 31' 00''$ west a distance of 12.00 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north $63^{\circ} 29' 00''$ a distance of 512.37 feet to point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north $26^{\circ} 31' 00''$ west a distance of 20.00 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway, along the arc of a curve an arc distance of 301.28 feet (said curve having a radius of 635.12 feet, a chord bearing of north $40^{\circ} 52' 21''$ east, a chord distance of 482.17 feet) to a point; thence leaving the right-of-way line of Brook Highland Parkway run

south $89^{\circ} 50' 48''$ east a distance of 85.21 feet to a point; thence run south $00^{\circ} 38' 38''$ east a distance of 355.06 feet to a point; said point being the POINT OF BEGINNING.

Said tract being designated as "Proposed Phase II" on that certain survey for A.B. Shopping Centers Properties, prepared by Carr & Associates Engineers, Inc., bearing the seal and certification of Barton P. Carr, Registered Professional Land Surveyor No.16685, dated November 25, 1994, last revised December 21, 1994.

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