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REGISTER OF DEEDS : **JOELLYN M. STORZ**

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

Document Number

Document Title

This Third Amendment to Easements with Covenants and Restrictions Affecting Land, made as of December 8<sup>th</sup>, 2015, by and among Wal-Mart Real Estate Business Trust, a Delaware statutory trust ("Wal-Mart Trust"), Sam's Real Estate Business Trust, a Delaware statutory trust ("Sam's Trust"), and Bank of America, N.A.

**RECITALS**

Developer, Sam's East, Inc. and Wal-Mart Stores East, LP entered into a certain Easements with Covenants and Restrictions Affecting Land dated October 4, 2007 and recorded as Document 1536042 in the Kenosha County Register of Deeds Office on 10/04/2007 and as amended by that certain

First Amendment to Easements with Covenants and Restrictions Affecting Land dated April 8, 2009 and recorded as Document 1586682 in the Kenosha County Register of Deeds Office on 4/30/2009, as amended by that certain Second Amendment to Easements with Covenants and Restrictions Affecting Land dated December 2014 and recorded as Document 1740969 in the Kenosha County Register of Deeds Office on 1/13/15 (collectively the "ECR") for the development of certain land in the Town of Somers, Kenosha County, Wisconsin (the "Property"), as more particularly described in ECR; and

Sam's East, Inc. and Wal-Mart Stores East, L.P. conveyed their interests in a portion of the Property to Sam's Trust and Wal-Mart Trust, respectively; and

RCG-Somers, LLC currently owns Lots 4 and 5 and the Outparcels ("Developer"); and

SMMFLP Limited Partnership (hereinafter referred to as "SMM") owns Lot 3 and intends to construct multi-family housing on Lot 3; and

Sam's Trust, Wal-Mart Trust, Developer, and SMM are hereinafter collectively referred to as the "Parties"; and

The ECR does not contemplate a multi-family residential use on Lot 3; and

Return to:

John E. Hotvedt  
Hotvedt & Terry, LLC  
4015 - 80th Street, Suite H  
Kenosha, WI 53142

**See attached Exhibit A**

Parcel Identification Number

The Parties desire to amend the ECR, as more particularly provided herein to accommodate a multi-family residential use on Lot 3.

### AGREEMENT

In consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties do hereby agree as follows:

1. The following defined terms used in the ECR are modified as stated below:
  - a. The defined term "Developer Tract" is hereby modified to include only Lots 4 and 5 and exclude Lot 3.
  - b. Lot 3 shall hereafter be referred to as the "Multi-Family Tract."
  - c. The defined term "Shopping Center" is hereby modified to include the Multi-Family Tract in addition to (i) Phase I, (ii) the Developer Tract, and (iii) the Outparcels.
  - d. The defined term "Tract" set forth in Section 1. (e)(8) is hereby modified to include the Multi-Family Tract in addition to the (i) Wal-Mart Tract, (ii) Sam's Tract, and (iii) Developer Tract.
2. Section 2 "Use" is hereby amended by adding the following as a third paragraph:

"Notwithstanding anything in this Agreement to the contrary, Lot 3 shall be permitted to be developed and operated as a first-class, garden-style residential multi-family development, in compliance with applicable laws, so long as it is maintained and operated in accordance with first-class standards of comparable properties in the greater Milwaukee metropolitan area."
3. Section 3 "Competing Business" is hereby amended by:
  - a. deleting in its entirety the first grammatical sentence of the section beginning "Developer covenants..." and replacing it with the following sentence:

"No Owner shall operate, lease, rent or permit the following uses in the Shopping Center for as long as Wal-Mart or Sam's, or any affiliate thereof, is the user of the Wal-Mart Tract or the Sam's Tract, either as owner or lessee: (i) a membership warehouse club, (ii) a pharmacy, (iii) a discount department store or other discount store, as such terms are defined below, (iv) a variety, general or "dollar" store, (v) a grocery store or supermarket as such terms are defined below, or (vi) as any combination of the foregoing uses.
  - b. deleting in its entirety the last grammatical sentence of the section beginning "In addition to the foregoing, Developer covenants..." and replacing it with the following sentence:

"In addition to the foregoing, Developer covenants that as long as Wal-Mart or Sam's, or any affiliate thereof, is the user of the Wal-Mart Tract or the Sam's Tract, either as owner or lessee, only one (1) facility dispensing gasoline or fuel from pumps (a "Gas Station") shall exist on the Developer Tract or Outparcels which are then owned by Developer."

4. Section 4(a) Design and Construction is hereby amended by deleting in its entirety the first grammatical sentence beginning "No Improvements shall be constructed..." and replacing in its entirety with the following sentence:

"No future improvements which would constitute a material modification to the improvements currently shown on the final Planned Unit Development as approved by the Village of Somers shall be constructed, erected or expanded or altered on the Multi-family Tract until the plans for the same (including site layout, exterior building materials and colors and parking) have been approved in writing by the Developer."

5. Section 5(a) "Common Areas" is amended to add the following sentence:

"Notwithstanding anything in the ECR to the contrary, the grant of easements provided herein shall not apply for the benefit of the Multi-Family Tract for the purposes of vehicular access, ingress and egress, and parking of motor vehicles over, across and upon the Developer Tract and the Outparcels, and the Owner, lessee, users or occupants of the Multi-Family Tract and their respective Permittees shall expressly not have the right to access or parking through, over or on the Developer Tract or Outparcels."

6. Section 5(d) is amended to add the following sentence:

"No development or improvement is permitted on the Multi-family Tract which would materially increase water flow or drainage over, under or through the Developer Tract or Outparcels."

7. Section 6(b) "Parking Ratio on Phase I and Zone 6" is hereby amended by adding the following at the end of the existing paragraph:

"Notwithstanding anything in this Agreement to the contrary, Lot 3 shall be permitted to have a parking ratio of spaces per unit on Lot 3, as shown on the final Planned Unit Development approved by the Village of Somers, but in no event, less than 1.5 parking stalls per dwelling unit located on said Lot 3."

8. Section 6(e)(3) "By Agent" is hereby amended by deleting in its entirety the first grammatical sentence beginning "The Owner of the Wal-Mart Tract..." and replacing in its entirety with the following sentence:

"The Owner of the Wal-Mart Tract, the Owner of the Sam's Tract, and the Developer, as long as Developer or its affiliate has an interest as owner or lessee in the Shopping Center or until it designates another Owner as its designee for the purposes of this Section 6(e)(3), shall agree upon a third-party (the "Agent") to be appointed as an agent of the parties to maintain the following Common Areas: (a) the Detention Area, (b) the Main Driveways including lighting and directional signage thereon; (c) the Shopping Center Signs (as this term is defined in Section 7 below); and (d) any general landscaping located within or associated with (i) the entrances of the Shopping Center off of Green Bay Road, 38<sup>th</sup> Street and 31<sup>st</sup> Street, (ii) areas adjacent to the Main Driveways; and (iii)

the landscape buffer along 31<sup>st</sup> Street and within the roundabout at the intersection of Somers Boulevard and 35<sup>th</sup> Street (collectively, the "General Common Elements)."

9. Section 12 "Breach" is hereby amended by deleting in its entirety the first grammatical sentence beginning "In the event of breach..." and replacing it with the following sentence:

"In the event of breach or threatened breach of this Agreement, only all Owners of the Wal-Mart Tract as a group, or all Owners of the Sam's Tract as a group, or Developer, as long as Developer or any affiliate of Developer has an interest as owner or lessee in Developer Tract or Outparcels, or Wal-Mart, so long as it or any affiliate has an interest as owner, user or lessee of the Wal-Mart Tract or Sam's Tract, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach."

10. Section 14 "Document Execution, Modification and Cancellation" is hereby amended by deleting in its entirety the last grammatical sentence beginning "This Agreement (including exhibits)..." and replacing it in its entirety with the following sentence:

"This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of (a) Wal-Mart, as long as it or its affiliate has any interest as either owner, user or Lessee of the Wal-Mart Tract, or its successors in interest, (b) Sam's, as long as it or its affiliate has any interest as either owner, user, or Lessee of the Sam's Tract, or its successor in interest, and (c) Developer, as long as it or its affiliate has any interest as either owner or lessor in the Developer Tract or Outparcels. Notwithstanding the foregoing, no modification or amendment to this Agreement which materially affects the use of or restrictions placed upon the Multi-Family Tract shall be effective without the written agreement of the owner of said Multi-Family Tract."

11. Section 20(b) "Notices" is hereby amended to by deleting the notice address for Developer in its entirety and replacing it as follows:

Developer: RCG-Somers, LLC  
c/o RCG Ventures, LLC  
3060 Peachtree Road, NW, Suite 400  
Atlanta, GA 30305  
Attn: VP of Operations

With a copy to: RCG-Somers, LLC  
c/o RCG Ventures, LLC  
3060 Peachtree Road, NW, Suite 400  
Atlanta, GA 30305  
Attn: General Counsel

12. Except as specifically modified hereby, the ECR shall continue in full force and effect. This Amendment shall be construed, interpreted, and enforced under the laws of the State of Wisconsin. This Amendment is binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns under the Agreement. All capitalized terms not defined in this

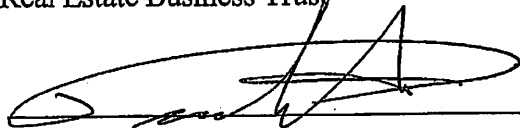
Amendment shall have the same meaning ascribed to those terms in the ECR. In the event of any conflict between the terms of this Amendment and the terms of the ECR, the terms of this Amendment shall govern and control. This Amendment may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Amendment.

[EXECUTION PAGES FOLLOW]

The Parties have executed this Third Amendment to Easements with Covenants and Restrictions Affecting Land as of the date first written above.

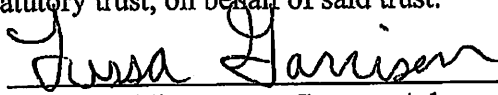
Sam's Real Estate Business Trust

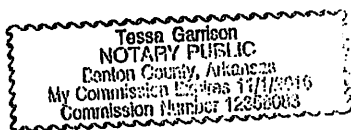
By:

  
Travis L. Rodgers, Senior Realty Manager II

STATE OF ARKANSAS     )  
  ) ss.  
COUNTY OF BENTON     )

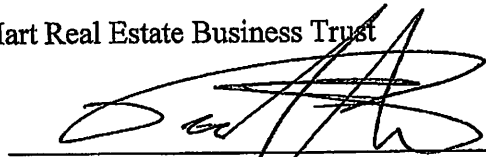
This instrument was acknowledged before me on November 9, 2015, by Travis L. Rodgers, Senior Realty Manager II of Sam's Real Estate Business Trust, a Delaware statutory trust, on behalf of said trust.

  
Notary Public, Benton County, Arkansas  
My Commission expires 11/1/2016



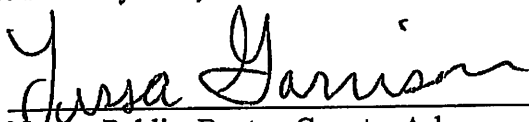
Wal-Mart Real Estate Business Trust

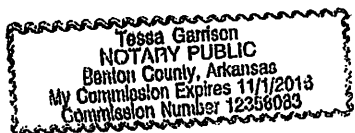
By:

  
Travis L. Rodgers, Sr Realty Manager II

STATE OF ARKANSAS     )  
  ) ss.  
COUNTY OF BENTON     )

This instrument was acknowledged before me on November 9, 2015 by Travis L. Rodgers, Senior Realty Manager II of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of said trust.

  
Notary Public, Benton County, Arkansas  
My Commission expires 11/1/2016



SMMFLP Limited Partnership, as Owner of Lot 3

By:

  
Stephen C. Mills, General Partner

STATE OF WISCONSIN


)

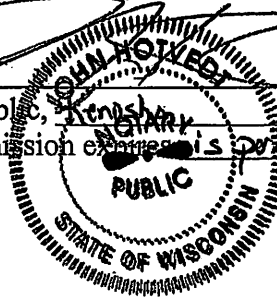
) ss.

COUNTY OF KENOSHA

)

This instrument was acknowledged before me on December 8<sup>th</sup>, 2015 by Stephen C. Mills as General Partner of SMMFLP Limited Partnership on behalf of said partnership.

  
Notary Public, Kenosha County, Wisconsin  
My Commission expires December 15, 2016



RCG-SOMERS, LLC, a Georgia limited liability company,

By: RCG Ventures Fund III, LP, a Georgia limited partnership, its manager

By: RCG Ventures Fund III GP, LLC, a Georgia limited liability company, its general partner

By: [Signature]

Name: Brad R Garner

Title: Executive Vice President

STATE OF Georgia )  
COUNTY OF Fulton ) ss.

This instrument was acknowledged before me on November 30<sup>th</sup>, 2015 by Brad R Garner as Executive Vice President of RCG VENTURES FUND III GP, LLC, on behalf of said limited liability company.

[Signature]

Notary Public, Michelle Rooks Usey County, Fulton  
My Commission expires 10-01-2018

This document drafted by:  
John E. Hotvedt  
Attorney at Law

00261087.docx





EXHIBIT A TO  
THIRD AMENDMENT TO  
EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

Parcel Numbers:	82-4-222-271-0301	82-4-222-271-0313
	82-4-222-271-0302	82-4-222-271-0314
	82-4-222-271-0303	82-4-222-271-0315
	82-4-222-271-0304	82-4-222-271-0316
	82-4-222-271-0305	82-4-222-271-0317
	82-4-222-271-0306	82-4-222-271-0318
	82-4-222-271-0307	82-4-222-271-0325
	82-4-222-271-0308	82-4-222-271-0321
	82-4-222-271-0309	82-4-222-271-0322
	82-4-222-271-0310	82-4-222-271-0323
	82-4-222-271-0311	82-4-222-271-0324
	82-4-222-271-0312	

Wal-Mart Tract legal description:

Lot 1 of the plat of Somers Market Center Subdivision recorded on October 3, 2007 as Document Number 1535778, being part of the Northeast 1/4 of Section 27, Township 2 North, Range 22 East of the Fourth Principal Meridian, lying and being in the Village of Somers, County of Kenosha and State of Wisconsin.

Parcel Number: 82-4-222-271-0301

Sam's Tract legal description:

Lots 2 and 6 of the plat of Somers Market Center Subdivision recorded on October 3, 2007 as Document Number 1535778, being part of the Northeast 1/4 of Section 27, Township 2 North, Range 22 East of the Fourth Principal Meridian, lying and being in the Village of Somers, County of Kenosha and State of Wisconsin.

Parcel Numbers: 82-4-222-271-0302  
82-4-222-271-0306

United Hospital System Tract legal description:

Lots 19 and 20 of the plat of Somers Market Center Subdivision recorded on October 3, 2007 as Document Number 1535778, being part of the Northeast 1/4 of Section 27, Township 2 North, Range 22 East of the Fourth Principal Meridian, lying and being in the Village of Somers, County of Kenosha and State of Wisconsin.

Parcel Number: 82-4-222-271-0325

SMMFLP Limited Partnership Tract legal description:

Lot 3 of the plat of Somers Market Center Subdivision recorded on October 3, 2007 as Document Number 1535778, being part of the Northeast 1/4 of Section 27, Township 2 North, Range 22 East of the Fourth Principal Meridian, lying and being in the Village of Somers, County of Kenosha and State of Wisconsin.

Parcel Number: 82-4-222-271-0303

RCG-Somers, LLC Tract legal description:

Lots 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and Outlots 1, 2, 3 and 4, Somers Market Center Subdivision, being a part of the northwest quarter and part of the southwest quarter, and part of the northeast quarter and part of the southeast quarter of the northeast quarter of Section 27, Town 2 North, Range 22 East, lying and being in the Village of Somers, Kenosha County, State of Wisconsin.

Parcel Numbers: 82-4-222-271-0304 (Lot 4)  
82-4-222-271-0305 (Lot 5)  
82-4-222-271-0307 (Lot 7)  
82-4-222-271-0308 (Lot 8)  
82-4-222-271-0309 (Lot 9)  
82-4-222-271-0310 (Lot 10)  
82-4-222-271-0311 (Lot 11)  
82-4-222-271-0312 (Lot 12)  
82-4-222-271-0313 (Lot 13)  
82-4-222-271-0314 (Lot 14)  
82-4-222-271-0315 (Lot 15)  
82-4-222-271-0316 (Lot 16)  
82-4-222-271-0317 (Lot 17)  
82-4-222-271-0318 (Lot 18)  
82-4-222-271-0321 (Outlot 1)  
82-4-222-271-0322 (Outlot 2)  
82-4-222-271-0323 (Outlot 3)  
82-4-222-271-0324 (Outlot 4)