

JG
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ASSIGNMENT OF EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

THIS ASSIGNMENT OF EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("Assignment") is made and entered into as of the ___ day of October, 1993, by and among JOHN M. GILLEN, as Trustee of THE DESOTO, INC. PENSION PLANS REAL PROPERTY TRUST UNDER TRUST AGREEMENT DATED OCTOBER 1, 1992 ("TRUST"), DESOTO, INC., a Delaware corporation ("DESOTO"), and INSTITUTE OF GAS TECHNOLOGY, an Illinois not-for-profit corporation ("INSTITUTE").

RECORDING \$93.50

T#0011 TRAN 7469 10/12/93 10:04:00

WITNESSETH: 4286 4 * - 93 - 814534

COOK COUNTY RECORDER

WAL-MART STORES, INC., a Delaware corporation ("WAL-MART"), is the owner of the real estate described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "Tract 1"). DESOTO is the owner of the real estate described in Exhibit "B" attached hereto and incorporated herein by reference (hereinafter referred to as "Tract 2"). TRUST is the owner of the real estate described in Exhibit "C" attached hereto and incorporated herein by reference (hereinafter referred to as "Tract 3"). WAL-MART, DESOTO and TRUST agreed to all of the terms and provisions set forth in that certain Easements With Covenants And Restrictions Affecting Land dated May 10, 1993 (hereinafter referred to as the "Agreement"), a copy of which is attached hereto as exhibit "D" and incorporated herein by reference. TRUST has the right to commence the enforceability of the Agreement pursuant to the terms and provisions of that certain Memorandum of Agreement dated May 10, 1993 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois as Document No. 93466415 (the "Memorandum"), a copy of which is attached is attached hereto as Exhibit "D" and incorporated herein by reference.

DESOTO and TRUST are conveying Tract 2 and Tract 3 to INSTITUTE and desire to assign to INSTITUTE their respective rights, title and interest in, to and under the Agreement and Memorandum.

1. Assignment of Rights. TRUST AND DESOTO hereby jointly and severally assign, transfer, convey and set over to INSTITUTE all of their respective rights, duties and obligations in, to and under the Agreement and the Memorandum. INSTITUTE hereby accepts the foregoing assignment and hereby assumes and agrees to be bound by all of the terms and provisions of the Agreement and Memorandum from and after the date hereof. TRUST AND DESOTO hereby represent and warrant to INSTITUTE that neither party has exercised any of their respective rights under the Memorandum or Agreement.

E 114600 / 10931458 Cook Co. Ill.

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2. Binding Effect. It is agreed and understood that this Assignment shall be binding upon and inure to the benefit of TRUST, DESOTO, INSTITUTE, and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the day and year first above written.

THE DESOTO, INC. PENSION PLANS
REAL PROPERTY TRUST UNDER TRUST
AGREEMENT DATED OCTOBER 1, 1992

BY: *John M. Gillen*
JOHN M. GILLEN, TRUSTEE

DESOTO, INC., a Delaware
corporation

ATTEST:

By: _____
Its: _____

Its: _____

INSTITUTE OF GAS TECHNOLOGY, an
Illinois not-for-profit
corporation

ATTEST:

By: *James J. Dembo*
Its: *Exec. President*

Its: _____

THIS INSTRUMENT PREPARED BY
~~AND RETURN TO:~~

Harold S. Dembo
Katz Randall & Weinberg
Suite 2300
200 N. LaSalle Street
Chicago, Illinois 60601

PERMANENT INDEX NOS.:

08-25-203-019
08-25-201-007

ADDRESS:

1700 S. Mount Prospect Road
Des Plaines, Illinois

Return to: Pat Brady

Russ Hardie

HSD/70759.1 10/2/93 11:30am

*150 N Michigan 2500
Chgo IL 60601*



93-14534

UNOFFICIAL COPY

9 3 11 4 5 4

2. Binding Effect. It is agreed and understood that this Assignment shall be binding upon and inure to the benefit of TRUST, DESOTO, INSTITUTE, and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the day and year first above written.

THE DESOTO, INC. PENSION PLANS
REAL PROPERTY TRUST UNDER TRUST
AGREEMENT DATED OCTOBER 1, 1992

BY: _____
JOHN M. GILLEN, TRUSTEE

DESOTO, INC., a Delaware
corporation

By: _____
Its: VICE - CHAIRMAN

ATTEST:

Anna E. Ewale
Its: Secretary

INSTITUTE OF GAS TECHNOLOGY, an
Illinois not-for-profit
corporation

ATTEST:

By: _____
Its: _____

Its: _____

THIS INSTRUMENT PREPARED BY
AND RETURN TO:

Harold S. Dembo
Katz Randall & Weinberg
Suite 2300
200 N. LaSalle Street
Chicago, Illinois 60601

PERMANENT INDEX NOS.:

08-25-203-019
08-25-201-007

ADDRESS:

1700 S. Mount Prospect Road
Des Plaines, Illinois

93-14534

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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STATE OF New York)
COUNTY OF New York)

I, Stephanie T. Ioannou, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN M. GILLEN, TRUSTEE OF THE DESOTO, INC. PENSION PLANS REAL PROPERTY TRUST UNDER TRUST AGREEMENT DATED OCTOBER 1, 1992, is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Trustee of said Trust, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Trust for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 6th day of October, 1993.

Stephanie T. Ioannou
Notary Public

STEPHANIE T. IOANNOU
Notary Public, State of New York
No. 4918453
Qualified in Nassau County 94
Commission Expires Feb. 1, 10...

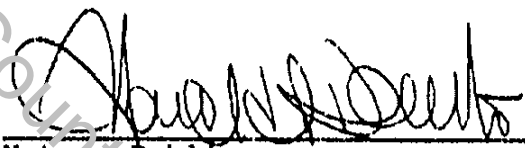
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STATE OF Illinois)
COUNTY OF Cook)

I, Harold S. Dewbro, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Andreas Schiendorfer, as Vice-Chairman and Anne E. Exorle as Secretary of DESOTO, INC., a Delaware corporation, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice-Chairman and Secretary of said Corporation, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation for the uses and purposes therein set forth; and said Secretary did then and there acknowledge that (s)he, as custodian of the corporate seal of said Corporation did affix the corporate seal of said Corporation to said instrument as his (her) own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 7th day of October, 1993.


Notary Public

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EXHIBIT "A" TRACT 1

Lot 2 in DeSoto Subdivision being a subdivision of the Northeast 1/4 of the Northeast 1/4 of Section 25, (except the West 451.72 feet thereof and excepting that portion taken for Mount Prospect Road), all in Township 41 North, Range 11, East of the Third Principal Meridian, in the City of Des Plaines, in Cook County, Illinois, according to the plat thereof recorded on June 18, 1993, as Document No. 93466413.

Commonly known as the Southwest corner of Mount Prospect Road and Oakton Street, Des Plaines, Illinois

Permanent Index Nos.: 08-25-201-004 & part of 08-25-201-007

Property of Cook County Clerk's Office

93466413

UNOFFICIAL COPY

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EXHIBIT "B" TRACT 2

The East 832.0 feet of the North 600 feet of the South East 1/4 of the North East 1/4 of Section 25, Township 41 North, Range 11 East of the Third Principal Meridian (except from said tract Harry Wille's Subdivision of the West 400 feet of the East 832 feet of the North 200 feet of said Section) all in Cook County, Illinois, except that part taken for road by deed registered as Document Number 3408383.

Permanent Index No.: 08-25-203-019

Property of Cook County Clerk's Office

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EXHIBIT "C" TRACT 3

Lot 1 in DeSoto Subdivision being a subdivision of the Northeast 1/4 of the Northeast 1/4 of Section 25, (except the West 451.72 feet thereof and excepting that portion taken for Mount Prospect Road), all in Township 41 North, Range 11, East of the Third Principal Meridian, in the City of Des Plaines, in Cook County, Illinois, according to the plat thereof recorded on June 18, 1993, as Document No. 93466413.

Commonly known as 1700 South Mount Prospect Road, Des Plaines, Illinois

Permanent Index Nos.: part of 08-25-201-007

UNOFFICIAL COPY

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EXHIBIT "D"
MEMORANDUM OF AGREEMENT AND
EASEMENTS WITH COVENANTS AND RESTRICTIONS
AFFECTING LAND

Property of Cook County Clerk's Office

UNOFFICIAL COPY

MEMORANDUM OF AGREEMENT

93466415

THIS MEMORANDUM OF AGREEMENT ("Memorandum") is made and entered into as of the 14th day of May, 1993, by and among DESOTO, INC. PENSION PLANS REAL PROPERTY TRUST UNDER TRUST AGREEMENT DATED OCTOBER 1, 1992 ("TRUST"), DESOTO, INC., a Delaware corporation ("DESOTO") and WAL-MART STORES, INC., a Delaware corporation ("WAL-MART").

. DEPT-01 RECORDING \$73.
. T45555 TRAN 5071 06/18/93 10129101
. 435018 #-93-466415
. COOK COUNTY RECORDER

WITNESSETH:

WAL-MART is the owner of the real estate described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "Tract 1"). DESOTO is the owner of the real estate described in Exhibit "B" attached hereto and incorporated herein by reference (hereinafter referred to as "Tract 2"). TRUST is the owner of the real estate described in Exhibit "C" attached hereto and incorporated herein by reference (hereinafter referred to as "Tract 3"). The parties have agreed to all of the terms and provisions set forth in that certain Easements With Covenants And Restrictions Affecting Land dated even date herewith (hereinafter referred to as the "Agreement"), a copy of which is attached hereto as Exhibit "D" and incorporated herein by reference. The definitions of the terms used in this Memorandum are as set forth in the Agreement.

1. The Agreement. Pursuant to the Agreement, the parties shall grant to each other, inter alia, reciprocal easements for ingress and egress, subject, however, to certain restrictions and limitations on the use of each respective parcel, all upon such terms, provisions, conditions and agreements as set forth in the Agreement. From and after the Effective Date, TRUST shall have the right to construct, at its sole cost and expense, not more than two (2) curb cuts between Tract 1 and Tract 3 in order to effectuate the reciprocal easements of ingress and egress between the parcels as set forth in the Agreement. The location of the curb cuts shall require WAL-MART's consent which shall not be unreasonably withheld. All curb cuts shall comply with all applicable federal, state and local laws, ordinances and regulations. WAL-MART shall be responsible for any costs incidental to making Tract 1 accessible for vehicular and pedestrian traffic pursuant to the Agreement.

2. Term of Agreement. The term, effectiveness and enforceability of the Agreement shall commence as of a date selected by TRUST in the event TRUST elects to utilize Tract 3 (hereinafter referred to as the "Effective Date"), provided, however, TRUST records in the Office of the Recorder of Deeds of Cook County, Illinois a notice of the Effective Date of the

ALL: (4) 895118 WMS 5/13/93 19930374

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Agreement. A true and correct copy of said notice shall be delivered to all of the other parties to the Agreement in accordance with the terms and provisions of the Agreement. Notwithstanding anything herein to the contrary, TRUST's right to establish the Effective Date shall continue for a term of seventy-five (75) years from the date hereof, after which time it shall be automatically extended for one (1) successive period of twenty (24) years each, unless terminated within one hundred eighty (180) days of the expiration of the initial seventy-five (75) year term or any extension thereof by an instrument recorded by the parties hereto, or as otherwise provided in the Agreement. If terminated, neither party shall have the right to reinstate the Effective Date.

3. Purpose. The purpose of this instrument is to give notice of the reciprocal easements and use restrictions to be created by the Agreement on the Effective Date and of the existence of such Agreement which, together with this instrument, constitutes the agreement among the parties hereto.

4. Binding Effect. It is agreed and understood that this Memorandum and the Agreement shall be binding upon and inure to the benefit of TRUST, DESOTO, WAL-MART, and their respective successors and assigns.

5. Entire Agreement. This Memorandum, together with Exhibits "A" through "D" inclusive, contains all of the terms, conditions and covenants between the parties and no modifications, waivers or variations of this Memorandum shall be binding unless made in writing and signed by the party against whom the same is sought to be enforced. This Memorandum supersedes and takes the place of any and all previously written or oral agreements, representations or negotiations concerning the subject matter hereof.

6. Modification Provisions. Except as set forth in the Agreement, this Memorandum may not be modified in any respect whatsoever, or rescinded in whole or in part, except with the consent of all of the owners of Tract 1, Tract 2 and Tract 3, and then only by written instrument duly executed and acknowledged by all of said owners, and duly recorded in the office of the Recorder of Deeds of Cook County, Illinois.

7. Governing Law. This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the laws of the State of Illinois.

8. Severability. The invalidity of any provision of this Memorandum shall not affect the validity of any other provision of this Memorandum or the remaining portion of the applicable provision.

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Property of Cook County Clerk's Office

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9. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the day and year first above written.

THE DESOTO, INC. PENSION PLANS
REAL PROPERTY TRUST UNDER TRUST
AGREEMENT DATED OCTOBER 1, 1992

BY:

John M. Gillen
JOHN M. GILLEN, TRUSTEE

DESOTO, INC., a Delaware
corporation

ATTEST:

Mark W. Russell
Its: ASSISTANT SECRETARY

By: Anna F. Eusebi
Its: _____

WAL-MART STORES, INC., a
Delaware corporation

ATTEST:

Its: _____

By: _____
Its: _____

THIS INSTRUMENT PREPARED BY
AND RETURN TO:

Harold S. Dembo
Katz Randall & Weinberg
Suite 2300
200 N. LaSalle Street
Chicago, Illinois 60601

PERMANENT INDEX NOS.

08-25-201-004
08-25-201-007

ADDRESS:

1700 S. Mount Prospect Road
Des Plaines, Illinois

Property of Cook County Clerk's Office

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9. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the day and year first above written.

THE DESOTO, INC. PENSION PLANS
REAL PROPERTY TRUST UNDER TRUST
AGREEMENT DATED OCTOBER 1, 1992

BY: _____
JOHN M. GILLEN, TRUSTEE

DESOTO, INC., a Delaware
corporation

ATTEST:

By: _____
Its: _____

Its: _____

WAL-MART STORES, INC., a
Delaware corporation

ATTEST:

By: _____
Its: _____
Mark J. Vice President

George Bass
Its: *Assistant Secretary*

THIS INSTRUMENT PREPARED BY
AND RETURN TO:

Harold S. Dembo
Katz Randall & Weinberg
Suite 2300
200 N. LaSalle Street
Chicago, Illinois 60601

PERMANENT INDEX NOS.

08-25-201-004
08-25-201-007

ADDRESS:

1700 S. Mount Prospect Road
Des Plaines, Illinois

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STATE OF New York
COUNTY OF New York

I, Stephanie T. Ioannou, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN M. GILLEN, TRUSTEE OF THE DESOTO, INC. PENSION PLANS REAL PROPERTY TRUST UNDER TRUST AGREEMENT DATED OCTOBER 1, 1992, is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Trustee of said Trust, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Trust for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17th day of May, 1993.

Stephanie T. Ioannou
Notary Public

STEPHANIE T. IOANNOU
Notary Public, State of New York
No. 4918483
Qualified in Nassau County
Commission Expires Feb. 1, 1994

Notary of Cook County Clerk's Office

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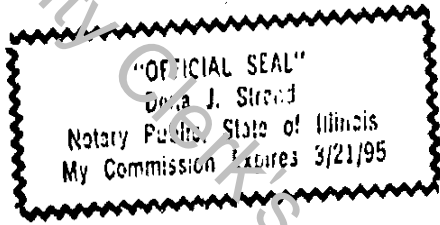
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STATE OF Illinois)
COUNTY OF Cook)

I, Dena J. Strand
a Notary Public in and for the said County, in the State
aforesaid, DO HEREBY CERTIFY that A. E. Eisele,
as VICE President and M. W. Russell, as
ASST Secretary of DESOTO, INC., a Delaware corporation, are
personally known to me to be the same persons whose names are
subscribed to the foregoing instrument as such VICE
President and ASST Secretary of said Corporation,
respectively, appeared before me this day in person and
acknowledged that they signed and delivered the said instrument as
their own free and voluntary act and as the free and voluntary act
of said Corporation for the uses and purposes therein set forth;
and said ASST Secretary did then and there acknowledge
that he, as custodian of the corporate seal of said Corporation did
affix the corporate seal of said Corporation to said instrument as
his own free and voluntary act and as the free and voluntary act of
said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial
seal this 15th day of June, 1993.

Dena J. Strand
Notary Public



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STATE OF Arkansas)
COUNTY OF Benton)

I, Rae Lynn Henderich, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Patrick F. Perry, as Assistant Vice President of WAL-MART STORES, INC., a Delaware corporation, and Geary F. Reese III, as Assistant Secretary of said Corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary of said Corporation, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth; and said Assistant Secretary did then and there acknowledge that he, as custodian of the corporate seal of said Corporation, did affix the corporate seal of said Corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10th day of May, 1993.

Rae Lynn Henderich
Notary Public
My Commission Expires 2/1/2003

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EXHIBIT "A" TRACT 1

Lot 2 in DeSoto Subdivision being a subdivision in the Northeast 1/4 of the Northeast 1/4 of Section 25, (Except the West 451.72 feet thereof and Excepting that portion taken for Mount Prospect Road), all in Township 41 North, Range 11, East of the Third Principal Meridian, in the City of Des Plaines, in Cook County, Illinois, according to the plat thereof recorded on JUNE 18, 1993, as Document No. 93466413.

Commonly Known as:

1700 South Mount Prospect Road
Des Plaines, Illinois

PERMANENT INDEX NUMBERS:

08-25-201-004
08-25-201-007

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Property of Cook County Clerk's Office

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EXHIBIT "B"
TRACT 2

THE EAST 832.0 FEET OF THE NORTH 600 FEET OF THE SOUTH EAST 1/4 OF THE NORTH EAST 1/4 OR SECTION 25, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT FROM SAID TRACT BARRY WILLE'S SUBDIVISION OF THE WEST 400 FEET OF THE EAST 832 FEET OF THE NORTH 200 FEET OF SAID SECTION) ALL IN COOK COUNTY, ILLINOIS, EXCEPT THAT PART TAKEN FOR ROAD BY DEED REGISTERED AS DOCUMENT NUMBER 3408383.

Property of Cook County Clerk's Office

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EXHIBIT "C" TRACT 3

Lot 1 in DeSoto Subdivision being a subdivision in the Northeast 1/4 of the Northeast 1/4 of Section 25, (Except the West 451.72 feet thereof and Excepting that portion taken for Mount Prospect Road), all in Township 41 North, Range 11, East of the Third Principal Meridian, in the City of Des Plaines, in Cook County, Illinois, according to the plat thereof recorded on JUNE 18, 1993, as Document No. 934684/3.

Property of Cook County Clerk's Office

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EXHIBIT "D"
EASEMENTS WITH COVENANTS AND RESTRICTIONS
AFFECTING LAND

Property of Cook County Clerk's Office

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EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("ECR")

This Agreement is made as of the _____ day of _____, 1993, between WAL-MART STORES, INC., a Delaware corporation, of 702 S.W. Eighth Street, Bentonville, Arkansas 72716 ("Wal-Mart"), DeSOTO, INC., a Delaware corporation ("DeSoto"), of 16750 South Vincennes, South Holland, Illinois 60473, and THE DeSOTO, INC. PENSION PLANS REAL PROPERTY TRUST UNDER TRUST AGREEMENT DATED OCTOBER 1, 1992 ("Trust"), c/o John M. Gillen, 50 Jane Street, New York, New York 10014. (Hereinafter DeSoto and Trust are collectively called "the Developer".)

W I T N E S S E T H:

WHEREAS, Wal-Mart is the owner of Tract 1 as shown on the plan attached hereto as Exhibit A, said tract being more particularly described in Exhibit B attached hereto;

WHEREAS, DeSoto, Inc. is the owner of Tract 2 shown on the plan attached hereto as Exhibit A, the same being more particularly described in Exhibit C hereof; and

WHEREAS, The DeSoto, Inc. Pension Plans Real Property Trust is the owner of Tract 3 shown on the plan attached hereto as Exhibit A, the same being more particularly described on Exhibit D hereof;

WHEREAS, Wal-Mart and Developer desire that Tracts 1, 2 and 3 be developed in conjunction with each other pursuant to a general plan of improvement to form a uniform and harmonious site

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Property of Cook County Clerk's Office

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(sometimes hereinafter referred to as the "Project"), and further desire that said tracts be subject to the easements and the covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart and Developer do hereby agree as follows:

1. Building/Common Areas:

- A. "Building Areas" as used herein shall mean that portion of Tract 1 and those portions of Tract 2 and Tract 3 on which buildings currently exist or on which Wal-Mart or Developer shall construct buildings.
- B. "Common Areas" shall be all of Tracts 1, 2 and 3 except the Building Areas, and except for any trash enclosures, loading docks and designated employee parking serving the buildings on the respective tracts.

2. Use: Buildings in the Project shall be used for commercial purposes of the type normally found in a retail shopping center (except that the office building located on Tract 3 may continue to be used as such) and office building, including, without limitation, financial institutions, service shops, offices and retail stores. No theatre, bowling alley, health spa, billiard parlor, night club or other place of recreation or amusement, or any business serving alcoholic beverages, shall occupy space within the Project without the prior written consent of Wal-Mart. Developer recognizes that said businesses may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business. Notwithstanding anything to the contrary

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contained herein, it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Wal-Mart on Tract 1 or by Developer on Tract 2 or Tract 3. Developer and Wal-Mart recognize and agree that either party may, at either party's sole discretion and at any time during the term of this Agreement, cease the operation of its business on its respective tract; and each party hereby waives any legal action for damages or for equitable relief which might be available to the other because of such cessation of business.

3. Competing Business: Developer covenants that as long as Sam's Club, or any affiliate of Wal-Mart, is the user of Tract 1, either as owner or lessee, no space in or portion of Tract 2 or Tract 3, and no space in or portion of any other real property adjacent to the Project owned by Developer shall be leased or occupied by or conveyed to any other party for use as a warehouse club or warehouse type wholesale/retail store similar to those currently operated in the Chicago market as Sam's Club, Pace and Warehouse Club operations. In the event of a breach of this covenant, Wal-Mart shall have the right to terminate this Agreement and to seek any and all remedies afforded by either law or equity.

4. Buildings:

A. Design and Construction: The Building Areas shall be designed (except for the existing office building on Tract 3) so that building wall footings shall not encroach from one

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tract onto another. The design and construction shall be of high quality. No building (except for the existing building on Tract 3) shall exceed thirty-five feet (35') in height above finished grade. No building shall have a metal exterior.

B. Fire Protection: Any building constructed in the Project shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other buildings in the Project. No obligations shall be imposed upon Developer under this paragraph with respect to the existing office building on Tract 3.

5. Common Areas:

A. Grant of Easements: Each party, as grantor, hereby grants to the other party, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of grantee, a non-exclusive easement over, through and around their respective tracts (excluding Building Areas, loading docks, trash enclosures serving the buildings thereon, and designated employee parking areas) for roadways, walkways, pedestrian and vehicular ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above.

B. Limitations on Use:

(1) Customers: Each party shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on Tracts 1, 2 or 3.

(2) Employees and Tenants: Each party shall use reasonable efforts to ensure that employees and tenants of their respective buildings shall not park on the Common Areas of the

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other party's respective tract, except in areas designated as "employee parking areas". Except as set forth above, Wal-Mart and Developer hereby grant to the other and their respective invitees and customers the right to park on each other's parcels in the designated parking areas.

- (3) General: Any activity within the Common Areas other than the primary purpose of the Common Areas, which is to provide for parking, ingress and egress for the customers, invitees and employees of those businesses conducted with the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. Parking by customers, tenants, invitees and employees shall not be permitted in the service drives. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.

- C. Water Flow: Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements (including, without limitation, building and building expansion, curbs, drives and paving) shall be permitted, provided it is in conformity with storm water, sewer and detention/retention facilities serving the Project.

6. Development, Maintenance and Taxes:

A. Development:

- (1) Arrangement: The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement, except with the consent of Wal-Mart and Developer.
- (2) "Parking Area" Ratio: Each party

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hereto agrees that at all times there shall be independently maintained on each tract parking area sufficient to accommodate not fewer than five and one-half (5 1/2) car spaces for each one thousand (1,000) square feet of Building Area on such tract. Provided, however, if Tract 2 or Tract 3 shall be developed with a restaurant or cafeteria, there shall be maintained on Tract 2 or Tract 3 a parking area sufficient to accommodate not fewer than fifteen (15) car spaces for each one thousand (1,000) square feet of Building Area on such tract. Further provided, Tracts 2 and 3 may be considered as one in determining whether the applicable parking ratios have been met. If either party shall violate this provision, the other party shall have the right to immediately terminate this Agreement and close off all access points between Tract 1 and Tract 3, with the costs thereof to be borne by the violating party.

B. Maintenance:

(1) Standards: Following completion of the improvements on the Common Areas, the parties hereto shall maintain the Common Areas on their respective properties in good condition and repair. The maintenance is to include, without limitation, the following:

(a) Maintaining the driveway, parking lot, service drive and sidewalk surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed, or such substitute as shall in all respects be equal in quality, use and durabil-

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ity;

- (b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- (c) Placing, keeping in repair and replacing any necessary directional signs, markers and lines;
- (d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;
- (e) Maintaining all perimeter and exterior building walls including, but not limited to, all retaining walls, in a good condition and state of repair; and
- (f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.
- (g) Maintaining all detention areas.

(2) **Expenses:** The respective owners shall pay the maintenance expense of their tracts.

C. **Taxes:** Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and assessments which are levied against that part of the Common Areas owned by it, provi-

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ded, however, that each party shall have the right to contest such taxes and make payment under protest to the extent permitted by law.

7. Indemnification/Insurance:

A. Indemnification: Each party hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death or property damage and occurring on or from its own tract, except if caused by the act or negligence of the other party, its agents, employees, tenants or invitees hereto.

B. Insurance:

- (1) Wal-Mart (for Tract 1) and Developer (for Tract 2 and Tract 3) shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$1,000,000 for injury or death of a single person, and to the limit of not less than \$1,000,000 for any one occurrence, and to the limit of not less than \$500,000 for property damage. Each party shall provide the other party with certificates of such insurance from time to time, upon written request, to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be cancelled without thirty (30) days prior written notice to the other party.

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(2) Policies of insurance provided for in this Paragraph 7 shall name Wal-Mart and Developer and their respective lenders, if any, as insureds as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.

(3) Wal-Mart, for itself and its property insurer, hereby releases Developer, its officers, directors, shareholders, employees and agents, and Developer, for itself and its property insurer, hereby releases Wal-Mart, its officers, directors, shareholders, employees and agents, from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of either Wal-Mart or Developer resulting from, or in any way connected with, any fire or other casualty, whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released, or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

(4) Notwithstanding anything to the contrary contained in this Paragraph 7, so long as the net worth of Wal-Mart shall exceed One Hundred Million Dollars (\$100,000,000), and so long as Wal-Mart is owner or lessee of Tract 1, Wal-Mart shall have the right to retain the finan-

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cial risk for up to One Million Five Hundred Thousand Dollars (\$1,500,000) per claim; provided, if Wal-Mart retains such financial risk, it shall be deemed to be directly liable as an insurer for the full amount of any required insurance coverage.

8. Eminent Domain:

- A. Owner's Right to Award: Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's tract or giving the public or any government any rights in said tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on Tracts 1, 2 and 3, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.
- B. Collateral Claims: All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.
- C. Tenant's Claim: Nothing in this Paragraph 8 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.
- D. Restoration of Common Areas: The owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective tract as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, including the required parking ratios, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any

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other owner. However, an owner shall not be required as a result of any such condemnation to either reduce the Building Area or acquire other land.

9. Rights and Obligations of Lenders: If, by virtue of any right or obligation set forth herein, a lien shall be placed upon the tract of either party hereto, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such tract. Except as set forth in the preceding sentence, however, any holder of a first lien on Tracts 1, 2 or 3, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

10. Expansion of Project: The parties agree that, in the event the Project is expanded by ownership, control of the parties or agreement with a third party, all of the provisions of this Agreement shall apply to the expanded area and the parking to the building ratio in the expanded area shall not be less than that provided in Paragraph 6a(2).

11. Release from Liability: Any person acquiring fee or leasehold title to Tracts 1, 2 or 3, or any expansion of the Project pursuant to Paragraph 10 or any portion thereof, shall be bound by this Agreement only as to the tract or portion of the tract acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such tract or portion of the tract, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released

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under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said tracts running with the land.

12. Breach: In the event of breach or threatened breach of this Agreement, only all record owners of Tract 1 as a group, or all record owners of Tract 2 or Tract 3 as a group, or Wal-Mart, so long as it or any affiliate has an interest as owner or lessee of Tract 1, or Developer, so long as it or any affiliate has an interest as owner or lessee of Tract 2 or Tract 3, shall be entitled to institute legal or equitable proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorneys' fees, which shall be deemed to have accrued on the date such action was filed.

13. Rights of Successors: The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural, and the masculine gender includes the feminine and neuter.

14. Document Execution, Modification and Cancellation: It is understood and agreed that, until this document is fully executed by both Developer and Wal-Mart, there is not and shall not be an agreement of any kind between the parties hereto upon

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which any commitment, undertaking or obligation can be founded. Except as set forth in Paragraph 16 below, this Agreement (including exhibits) may be modified or cancelled 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 or Tract 3.

15. Non-Merger: So long as Wal-Mart or its affiliate is owner or lessee of Tract 1, this Agreement shall not be subject to the doctrine of merger.

16. Duration: Unless otherwise cancelled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof. Notwithstanding anything herein to the contrary, Developer shall have the right, at any time, to terminate this Agreement upon thirty (30) days written notice to Wal-Mart. In the event of such termination, Developer shall be responsible for the costs of closing off all access points between Tract 1 and Tract 3. In addition, any unsatisfied obligation of one party to the other shall survive the termination of this Agreement, but all of the other covenants, agreements, obligations and restrictions shall terminate. Further, if the buildings on either Tract 1 or Tract 3 shall be destroyed or condemned, the owner thereof shall notify the other party within ninety (90) days of such destruction or condemnation

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of his intent to rebuild. In the absence of notice to rebuild within such ninety (90) day period, then either party may immediately terminate this Agreement and close off all access points between the Tracts.

17. Headings: The headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this document or in any way affect the terms and provisions hereof.

18. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

19. No Public Dedication: Except for water mains and appurtenances, storm sewers and lines, storm water detention facilities, and sanitary sewers and lines, all or any of which may be dedicated at the discretion of Developer or Wal-Mart, the establishment of the various rights, obligations and covenants hereunder do not and shall not, by virtue of this Agreement, imply or result in any public or quasi-public dedication or public or quasi-public rights in or to any portion of the Project.

20. Estoppel Certificates: The respective owners of Tracts 1, 2 and 3 shall, upon written request of the other owner and

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within thirty (30) days of such request, execute and deliver estoppel certificates addressed to such parties as may be designated by the requesting owner, which estoppel certificates shall state that this Agreement is in full force and effect and that the then owners of Tracts 1, 2 and 3 are not in breach hereof, or if such breach is alleged, the precise nature and extent of any such alleged breach and the remedial action deemed necessary to cure such breach, and setting forth such other reasonable information concerning this Agreement and the Project as may be contained in such estoppel certificate.

21. Tenant: As used in this Agreement, the terms "tenant" or "lessee" shall also mean "subtenant" or "sublessee" or further subtenancies thereunder.

22. Curb Cuts: From and after the effective date of this Agreement, Trust shall have the right to construct, at its sole cost and expense, not more than two (2) curb cuts between Tract 1 and Tract 3 in order to effectuate the reciprocal easements of ingress and egress between such tracts. The location of the curb cuts shall require Wal-Mart's consent, which shall not be unreasonably withheld. All curb cuts shall comply with all applicable federal, state and local laws, ordinances and regulations. Wal-Mart shall be responsible for any costs incidental to making Tract 1 accessible for vehicular and pedestrian traffic pursuant to the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement

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the day and year first written above.

WAL-MART STORES, INC.,
a Delaware corporation

DeSOTO, INC.,
a Delaware corporation

By: _____

By: _____

Its: _____

Its: _____

ATTEST:

ATTEST:

Its: _____

Its: _____

THE DeSOTO, INC. PENSION PLANS REAL
PROPERTY TRUST U/T/A dated October 1,
1992

By: John M. Gillen, Trustee

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