

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2007-03669  
2007 FEB -5 P 3:17  
*Glenn J. Lawling*  
REGISTER OF DEEDS

COUNTER LM C.E. A  
VERIFY TM D.E. B  
PROOF M  
FEES \$ 60.50  
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CHG SEC. CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_

**MODIFICATION OF EASEMENT AGREEMENTS**

THIS MODIFICATION OF EASEMENTS AGREEMENT is made this 22 day of January 2007, by MARKET POINTE, LLC, a Missouri limited liability company ("Market Pointe"), WAL-MART REAL ESTATE BUSINESS TRUST ("Wal-Mart"), and OM GILES, LLC, a Nebraska limited liability company ("Grantor").

RECITALS

WHEREAS, Grantor is the owner of the real property legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Grantor's Property"); and

WHEREAS, the Grantor's Property is subject to the following agreements (i) Access Easement Agreement ("Common F") ("Common F Access Easement") recorded in the Office of the Sarpy County Register of Deeds on January 24, 2006, as Instrument No. 2006-02432, (ii) Storm Water Drainage Facilities Easement Agreement ("Common G") ("Common G Drainage Easement") recorded in the Office of the Sarpy County Register of Deeds on January 24, 2006, as Instrument No. 2006-02433, and (iii) Reciprocal Storm Water Drainage Facilities Easement ("Common H and Common D") ("Common H and D Reciprocal Drainage Easement") recorded in the Office of the Sarpy County Register of Deeds on January 24, 2006, as Instrument No. 2006-02424 (collectively, the "Easement Agreements", and all of the real property covered by the Easement Agreements shall be collectively referred to as the "Easement Areas"); and

WHEREAS, the parties desire to modify (i) the legal description for Common G contained in the Common G Drainage Easement due to an error in the legal description for Common G, and (ii) the legal description for Common H contained in the Common H and D Reciprocal Drainage Easement due to an error in the legal description for Common H; and

*Sec*  
*741031*

A

WHEREAS, the parties desire to otherwise modify the Easement Agreements as set forth below.

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereby agree to modify the Easement Agreements as follows:

1. Defined Terms. All capitalized terms not otherwise defined herein shall have the meaning ascribed to such term(s) in the Easement Agreements.

2. Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth in the Easement Agreements shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

3. Correction of Legal Descriptions. The parties agree that: (a) the legal description for Common G set forth on Exhibit D to the Common G Drainage Easement is hereby deleted and replaced with the legal description for Common G as set forth on the attached Exhibit B which is incorporated into the Common G Drainage Easement by this reference; and (b) the legal description for Common H set forth on Exhibit D to the Common H and D Reciprocal Drainage Easement is hereby deleted and replaced with the legal description for Common H as shown on the attached Exhibit C which is incorporated into the Common H and D Reciprocal Drainage Easement by this reference.

4. Conveyances. The Easement Agreements are hereby amended to provide that, notwithstanding anything to the contrary set forth therein, the Easement Areas to be purchased by Market Pointe from Grantor shall be conveyed by Grantor to Market Pointe by special warranty deed; and the closings for such conveyances shall occur on or before March 30, 2007, subject to any delays in obtaining governmental approvals relating thereto.

5. Counterparts. The parties agree that this Modification of Easement Agreements may be signed in counterparts and shall have the same force and effect as if all required signatures were contained in a single, original instrument.

6. Full Force and Effect. Except as modified herein, the Easement Agreements are and shall remain in full force and effect and shall continue and be binding upon the parties hereto and their successors and assigns and all persons claiming under them.

B

IN WITNESS WHEREOF, the undersigned have executed this Modification of Easement Agreements on the day and year first above written.

MARKET POINTE, LLC,  
a Missouri limited liability company

By: Owen J. Buckley

WAL-MART REAL ESTATE  
BUSINESS TRUST

By: \_\_\_\_\_

GRANTOR: OM GILES, LLC,  
a Nebraska limited liability company

By: \_\_\_\_\_

STATE OF Missouri )  
  ) ss.  
COUNTY OF Jackson )

The foregoing instrument was acknowledged before me on this 30 day of January 2007, by Owen J. Buckley, Managing Member of Market Pointe, LLC, a Missouri limited liability company, on behalf of the limited liability company.

MARTA CHASTEEN  
Notary Public-Notary Seal  
STATE OF MISSOURI  
Jackson County  
My Commission Expires May 25, 2009

Marta Chasteen  
Notary Public



D

IN WITNESS WHEREOF, the undersigned have executed this Modification of Easement Agreements on the day and year first above written.

MARKET POINTE, LLC,  
a Missouri limited liability company

By: \_\_\_\_\_

WAL-MART REAL ESTATE  
BUSINESS TRUST

By: \_\_\_\_\_

GRANTOR: OM GILES, LLC,  
a Nebraska limited liability company

By: *[Signature]*

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

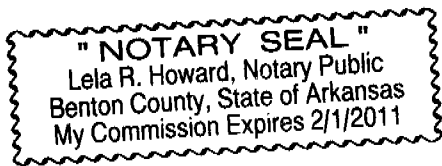
The foregoing instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_ 2007, by \_\_\_\_\_ of Market Pointe, LLC, a Missouri limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

E

STATE OF Arkansas )  
COUNTY OF Benton ) ss.

The foregoing instrument was acknowledged before me on this 22<sup>nd</sup> day of January 2007, by Matt R. Powers, Senior Realty Manager of Wal-Mart Real Estate Business Trust.



Lela R. Howard  
Notary Public

STATE OF NEBRASKA )  
COUNTY OF LANCASTER ) ss.

The foregoing instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_ 2007, by \_\_\_\_\_ of OM Giles, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

F

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day  
of \_\_\_\_\_ 2007, by \_\_\_\_\_, \_\_\_\_\_ of  
Wal-Mart Real Estate Business Trust.

\_\_\_\_\_  
Notary Public

STATE OF KANSAS )  
 ) ss.  
COUNTY OF JOHNSON )

The foregoing instrument was acknowledged before me on this 22<sup>nd</sup>  
day of January 2007, by Brad Korell, Manager  
of OM Giles, LLC, a Nebraska limited liability company, on behalf of the limited  
liability company.

Brandi Grube  
Notary Public



G

Exhibit A

Common F:

A tract of land being in the East Half of the Northwest Quarter of Section 24, Township 14 North, Range 12 East of the 6th P.M., City of Papillion, Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Northwest corner of the East Half of said Northwest Quarter, thence on an assumed bearing of S00°03'18"E along the West line of the East Half of said Northwest Quarter, a distance of 32.90 feet to a point of intersection with the South line of Giles Road right of way, said point being the true point of beginning, thence S89°40'45"E along said South line, a distance of 118.68 feet to a point of curvature of a non tangent curve, thence along a curve in a counter clockwise direction, having a radius of 49.00 feet, an arc length of 42.66 feet, a chord bearing of S24°53'11"W and a chord length of 41.33 feet to a point of tangency, thence S00°03'18"E, a distance of 19.65 feet to a point of curvature, thence along a curve in a clockwise direction, having a radius of 126.00 feet, arc length of 173.01 feet, a chord bearing of S39°16'51"W, and a chord length of 159.73 feet to a point of intersection with the West line of the East Half of said Northwest Quarter, thence N00°03'18"W along the West line of the East Half of said Northwest Quarter, a distance of 181.45 feet to the point of beginning.

Common G:

A tract of land being in the East Half of the Northwest Quarter of Section 24, Township 14 North, Range 12 East of the 6th P.M., City of Papillion, Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Northwest corner of said East Half of Section 24, thence S00°03'18"E (assumed bearing), 32.90 feet to a point of intersection with the South line of Giles Road right of way; thence S89°40'45"E along said South right of way line, 118.68 feet to the true point of beginning; thence continuing S89°40'45"E along said South line, 250.84 feet; thence S00°03'18"E, 250.01 feet; thence N89°40'45"W, 369.52 feet to the West line of the East Half of said Section 24; thence N00°03'18"W along said East line, 68.56 feet to a point of curvature on a non-tangent curve, thence along said curve in a counter clockwise direction, having a radius of 126.00 feet, an arc length of 173.01 feet, a chord bearing of N39°16'51"E and a chord length of 159.73 feet to a point of tangency; thence N00°03'18"W, 19.65 feet to a point of curvature, thence along said curve in a clockwise direction, having a radius of 49.00 feet, an arc length of 42.66 feet a chord bearing of N24°53'11"E and a chord length of 41.33 feet to the point of beginning.

Common H:

A tract of land being in the East Half of the Northwest Quarter of Section 24, Township 14 North, Range 12 East of the 6th P.M., City of Papillion, Sarpy County, Nebraska, more particularly described as follows:

Beginning at the Southwest corner of the East Half of said Northwest Quarter, thence N00°03'18"W along the West line of said East Half, 278.76 feet; thence S89°42'55"E, 375.00 feet; thence S00°03'18"E, 278.76 feet to the South line of said East Half; thence N89°42'55"W along said South line, 375.00 feet to the point of beginning.



M

Exhibit B

Common G:

A tract of land being in the East Half of the Northwest Quarter of Section 24, Township 14 North, Range 12 East of the 6th P.M., City of Papillion, Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Northwest corner of said East Half of Section 24, thence  $S00^{\circ}03'18''E$  (assumed bearing), 32.90 feet to a point of intersection with the South line of Giles Road right of way; thence  $S89^{\circ}40'45''E$  along said South right of way line, 118.68 feet to the true point of beginning; thence continuing  $S89^{\circ}40'45''E$  along said South line, 250.84 feet; thence  $S00^{\circ}03'18''E$ , 250.01 feet; thence  $N89^{\circ}40'45''W$ , 369.52 feet to the West line of the East Half of said Section 24; thence  $N00^{\circ}03'18''W$  along said East line, 68.56 feet to a point of curvature on a non-tangent curve, thence along said curve in a counter clockwise direction, having a radius of 126.00 feet, an arc length of 173.01 feet, a chord bearing of  $N39^{\circ}16'51''E$  and a chord length of 159.73 feet to a point of tangency; thence  $N00^{\circ}03'18''W$ , 19.65 feet to a point of curvature, thence along said curve in a clockwise direction, having a radius of 49.00 feet, an arc length of 42.66 feet a chord bearing of  $N24^{\circ}53'11''E$  and a chord length of 41.33 feet to the point of beginning.

I

Exhibit C

Common H:

A tract of land being in the East Half of the Northwest Quarter of Section 24, Township 14 North, Range 12 East of the 6th P.M., City of Papillion, Sarpy County, Nebraska, more particularly described as follows:

Beginning at the Southwest corner of the East Half of said Northwest Quarter, thence N00°03'18"W along the West line of said East Half, 278.76 feet; thence S89°42'55"E, 375.00 feet; thence S00°03'18"E, 278.76 feet to the South line of said East Half; thence N89°42'55"W along said South line, 375.00 feet to the point of beginning.

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## CONSENT

FIRST NATIONAL BANK OF KANSAS, a national banking association ("Mortgagee") is the beneficiary of a Deed of Trust and Security Agreement in the principal amount of \$12,111,000.00 from Market Pointe, LLC, a Missouri limited liability company ("Market Pointe"), dated October 17, 2006 and filed on October 26, 2006 as Instrument No. 2006-36787, in the Sarpy County Register of Deeds Office; Mortgagee is the secured party under the UCC Financing Statement filed January 24, 2006 as Instrument No. 2006-02423, in the Sarpy County Register of Deeds Office; and Mortgagee is the Assignee of an Assignment of Rents, Leases and Other Benefits between Market Pointe as the Assignor and First American Title Insurance Company as Trustee, dated October 12, 2006, filed October 26, 2006 as Instrument No. 2006-36788, in the Sarpy County Register of Deeds Office (which these three documents shall be collectively referred to as the "Deed of Trust"). The Deed of Trust encumbers Lots 2, 3, 4, 5, 6, 7, and Outlot A, Market Pointe Addition, an Addition to the City of Papillion; and Lots 8 and 11, Market Pointe Addition Replat 1, an Addition to the City of Papillion, all in Sarpy County, Nebraska.

Mortgagee hereby consents to this Modification of Easements Agreement ("Agreement") and agrees that it will not disturb the rights of OM Giles, LLC ("OM Giles"), its successors and assigns, under this Agreement in the event of foreclosure of the Deed of Trust, and OM Giles, as well as its successors and assigns, shall continue to enjoy all rights and privileges granted it under this Agreement provided that OM Giles is not in default under the terms of this Agreement. OM Giles, its successors and assigns, acknowledges that the purchaser at any foreclosure (including Mortgagee), its successors and assigns shall have all the rights of and be recognized as the successor to Market Pointe, LLC under this Agreement.

Mortgagee hereby agrees that this Agreement will not disturb the rights of Wal-Mart Real Estate Business Trust ("Wal-Mart"), its successors and assigns, under this Agreement in the event of foreclosure of the Deed of Trust, and Wal-Mart, as well as its successors and assigns, shall continue to enjoy all rights and privileges granted it under this Agreement provided that Wal-Mart is not in default under the terms of this Agreement. Wal-Mart, its successors and assigns, acknowledges that the purchaser at any foreclosure (including Mortgagee), its successors and assigns shall have all the rights of and be recognized as the successor to Market Pointe, LLC under this Agreement.

Mortgagee hereby agrees that this Agreement will not disturb the rights of Lowe's Home Centers, Inc., a North Carolina corporation ("Lowe's"), its successors and assigns, under this Agreement in the event of foreclosure of the Deed of Trust, and Lowe's, as well as its successors and assigns, shall continue to enjoy all rights and

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privileges granted it under this Agreement provided that Lowe's is not in default under the terms of this Agreement. Lowe's, its successors and assigns, acknowledges that the purchaser at any foreclosure (including Mortgagee), its successors and assigns shall have all the rights of and be recognized as the successor to Market Pointe, LLC under this Agreement.

This Consent is effective as of the date and year first written.

**MORTGAGEE:**  
FIRST NATIONAL BANK OF KANSAS,  
a national banking association

By [Signature]  
J. Craig Nichols, Sr. Vice President

Date: 1-26-07

STATE OF Kansas  
COUNTY OF Johnson ss.

The foregoing instrument was acknowledged before me this 26 day of January, 2007, by J. Craig Nichols, the Senior Vice President of FIRST NATIONAL BANK OF KANSAS, a national banking association, on behalf of the FIRST NATIONAL BANK OF KANSAS.

[SEAL]

Ingrid Bruns Notary  
Public My  
Commission Expires 11-23-10

