



MISC 2014056816



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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
07/25/2014 09:05:08.00



2014056816

Prepared By And Upon
Recording Return To:
Erin O'Gara, Esq.
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186

Omaha, NE
Store No. 4139-00

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (this "**Agreement**") is made by and between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("**Wal-Mart**") and **RUFFIN PROPERTIES LLC** ("**Owner**") (individually, a "**Party**" and collectively, the "**Parties**") as of this 20th day of July, 2014 (the "**Effective Date**").

PRELIMINARY STATEMENTS

Wal-Mart is the fee simple owner of the real property in the City of Omaha, County of Douglas, State of Nebraska, legally described in Exhibit A attached hereto (the "**Wal-Mart Property**"). Owner is the fee simple owner of the real property in the City of Omaha, County of Douglas, State of Nebraska, legally described in Exhibit B attached hereto (the "**Owner Property**"). Wal-Mart desires to grant to Owner, for the benefit of and appurtenant to the Owner Property, a limited, non-exclusive access easement over a portion of the Wal-Mart Property that is legally described and depicted on Exhibit C attached hereto (the "**Wal-Mart Easement Area**"). Owner desires to grant to Wal-Mart, for the benefit of and appurtenant to the Wal-Mart Property a limited, non-exclusive access easement over a portion of the Owner Property that is legally described as depicted on Exhibit D attached hereto (the "**Owner Easement Area**"). The Wal-Mart Easement Area and the Owner Easement Area shall be collectively referred to herein as the "**Easement Area**" and the Wal-Mart Property and the Owner Property shall be collectively referred to herein as the "**Properties**."

AGREEMENT

For and in consideration of \$10 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Grant of Access Easement.** Subject to any restrictions, easements or other matters of record, Wal-Mart hereby grants to Owner, for the benefit of the Owner Property, a perpetual, non-exclusive easement for vehicular and pedestrian ingress and egress across and over the Wal-Mart Easement Area, and Owner hereby grants to Wal-Mart, for the benefit of the Wal-Mart Property, a perpetual, non-exclusive easement for vehicular and pedestrian ingress and egress across and over the Owner Easement Area.

2. **Non-Exclusive Easement.** The easements and other rights granted herein are not exclusive, and each of the Parties hereby reserves unto itself and to the other present and future owners of the Properties the right to utilize the portion of the Easement Area located on its property for such purposes as do not unreasonably endanger or interfere with the easements and other rights granted herein. Each of the Parties shall have the right to grant such other easements, rights or privileges to such persons and/or entities and for such purposes as each party in its sole discretion may elect, so long as such purposes do not unreasonably endanger or interfere with the easements and rights granted herein.

3. **Indemnification.** Wal-Mart, and its successors and assigns in ownership of Wal-Mart Easement Area, shall indemnify and hold harmless Owner and its agents and employees from and against all claims, damages, losses and expenses, including reasonable attorneys' fees and reasonable litigation expenses (collectively, the "**Losses**"), arising out of or resulting from the use of Wal-Mart Easement Area, but excluding any Losses caused by the negligent or willful acts of Owner. Owner, and its successors and assigns in ownership of Owner Easement Area, shall indemnify and hold harmless Wal-Mart and its agents and employees from and against all Losses arising out of or resulting from the use of Owner Easement Area, but excluding any Losses caused by the negligent or willful acts of Wal-Mart.

4. **No Dedication.** Nothing herein shall be deemed to be a gift or dedication of any portion of the Easement Area to the general public, or for any public use, or purpose whatsoever. No rights, privileges or immunities of any party hereto shall inure to the benefit of any third party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

5. **Binding Upon Property.** The restrictions, rights and obligations created pursuant to the terms of this Agreement shall run with and be binding upon the Easement Area in perpetuity, including future subdivisions and/or reconfigurations of such property and shall be binding on all entities having or acquiring any right, title or interest in the Easement Area.

6. **Insurance.** Each of the Parties shall procure and maintain in full force and effect general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring in connection with each Party's exercise of the easement rights granted hereunder, which insurance shall afford protection for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage. Each of the Parties shall provide to the other party to this Agreement 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 each of the Parties which may cover other property in addition to the Easement Area. Such insurance shall not be canceled without ten (10) days' prior written notice to the other Party to this Agreement. Notwithstanding anything to the contrary contained in this Section 6, so long as the net worth of Wal-Mart shall exceed \$100,000,000.00, and so long as Wal-Mart is owner or lessee of the Wal-Mart Property, Wal-Mart shall have the right to retain (in whole or in part) the financial risk for any claim.

7. **Development Period.** Notwithstanding anything herein to the contrary, Owner hereby acknowledges, consents and agrees that during such period of time as Wal-Mart is developing the Wal-Mart Property for its intended use (the “**Development Period**”), including but not limited to the construction of the buildings and other improvements on the Wal-Mart Property and the performance of certain grading, utility installation, lighting installation, paving and landscaping work on the Wal-Mart Property, that Owner, its agents, customers, invitees, licensees, tenants and employees, shall not have access to the Wal-Mart Property or use of the Easement Area as otherwise granted hereunder. The Development Period shall expire the earlier of (i) the grand opening of Wal-Mart’s business on the Wal-Mart Property or (ii) two (2) years after the Effective Date.

8. **Relocation and Temporary Obstruction.** Each of the Parties shall have the right, at its sole cost and expense, to modify or relocate the portion of the Easement Area located on its property, provided that any such modification or relocation is approved by the City of Omaha and does not diminish the non-relocating Party’s access to North Saddle Creek Road. In addition, each Party shall have the right to temporarily obstruct or block the Easement Area located on its property in order to perform any repairs or maintenance to the portion of the Easement Area located on its property.

9. **Compliance with Laws.** In exercising any rights and privileges under this Agreement, each of the Parties shall comply fully with any and all applicable federal, state or local laws, rules, regulations, statutes, codes, orders and ordinances.

10. **No Joint Venture.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among Wal-Mart and Owner nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered separate, and no Party shall have the right to act as an agent for the other Party, unless expressly authorized to do so in this Agreement.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

12. **Authority.** Each Party executing this Agreement personally represents and warrants that he or she has the requisite authority to bind the Party on whose behalf this Agreement is being executed.

13. **Counterparts.** This Agreement may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original, and all of which shall constitute collectively one agreement.

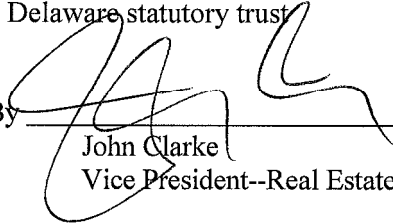
[Signature page to follow]

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

WAL-MART:

WAL-MART REAL ESTATE BUSINESS TRUST,
a Delaware statutory trust

By


John Clarke
Vice President--Real Estate

STATE OF ARKANSAS

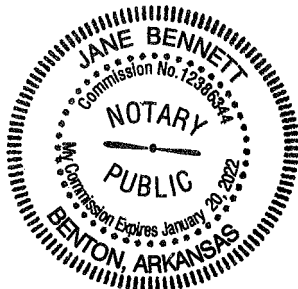
)

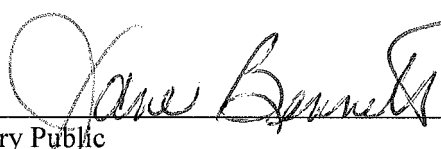
) ss.

COUNTY OF BENTON

)

On this 22nd day of July in the year 2014, before me, a Notary Public, personally appeared John Clarke, Vice President -- Real Estate, of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, known or identified to me to be the person named in and who executed the foregoing instrument and acknowledged that he executed the same on behalf of the trust.





Notary Public
My commission expires:

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

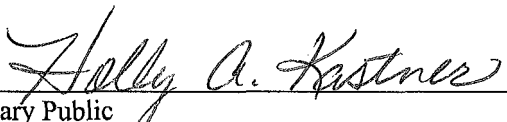
OWNER:

RUFFIN PROPERTIES LLC


By
Mr. Phil G. Ruffin
Owner

STATE OF ~~NEBRASKA~~ *Kansas*)
) ss.
COUNTY OF ~~DOUGLAS~~ *Sedgwick*)

The foregoing instrument was acknowledged before me this 16th day of July 2014, before me, a Notary Public, personally appeared Phil G. Ruffin, Owner – Ruffin Properties LLC, known or identified to me to be the person named in and who executed the foregoing instrument and acknowledged that he executed the same on behalf of the company.



Notary Public
My commission expires: 3/4/18



EXHIBIT A
WAL-MART PROPERTY

Lot 1 and Lot 2, Poppleton Park Replat One, City of Omaha, Douglas County, Nebraska.

EXHIBIT B

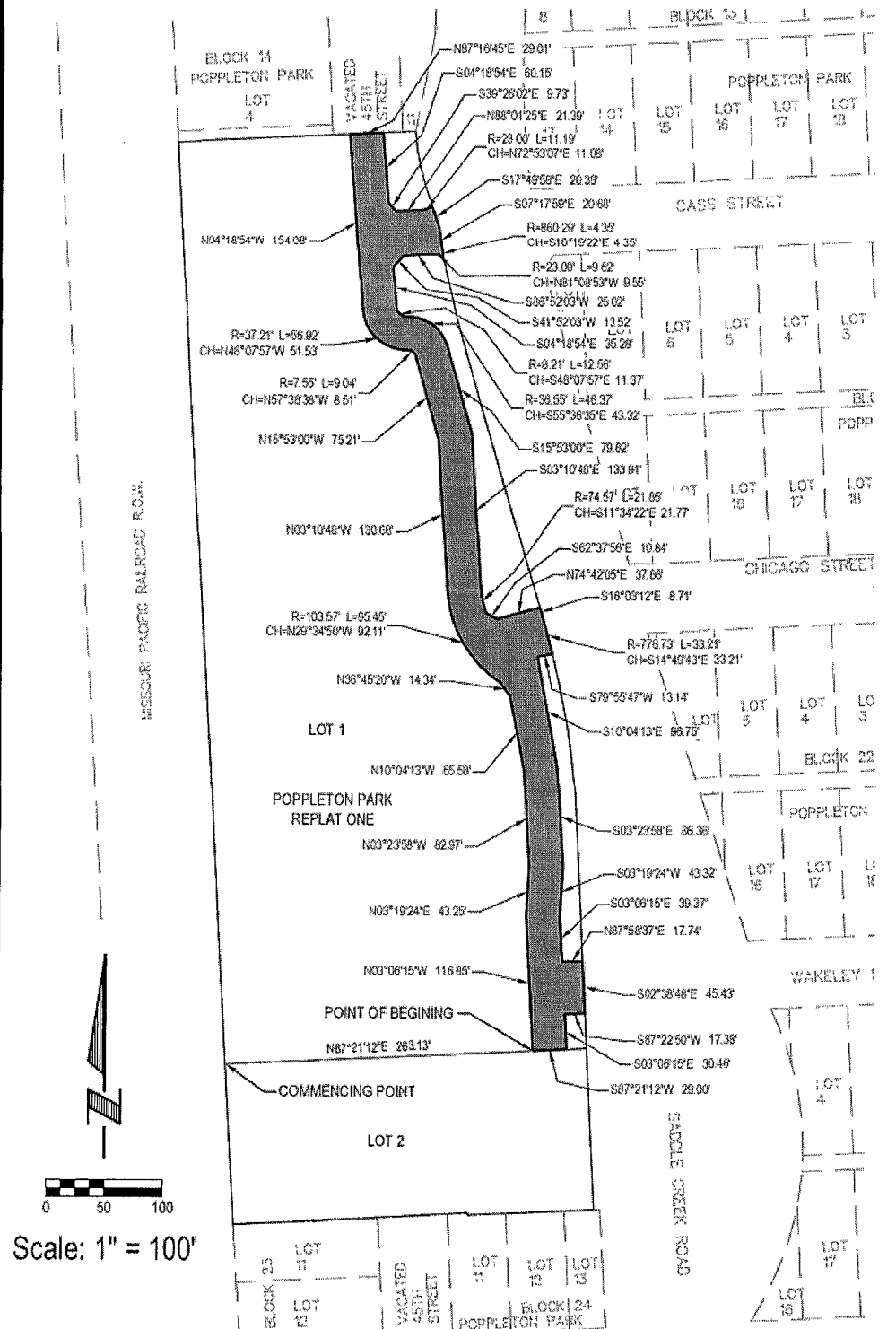
OWNER PROPERTY

10-30740

Part of Lots 1, 2 and 3, Block 14 and part of Lots 9, 10 and 11, Block 13, Poppleton Park a
subdivision in Douglas County, Nebraska.

EXHIBIT C
WAL-MART EASEMENT AREA
(See attached)

EXHIBIT "A"



PAGE 1 OF 2: SEE PAGE 2 FOR LEGAL DESCRIPTION

	E & A CONSULTING GROUP, INC. Engineering • Planning • Environmental & Field Services 350 North 117th Street, Omaha, NE 68154 Phone: 402.695.4700			CROSS ACCESS EASEMENT AREA LOT 1, POPPLETON PARK REPLAT ONE DOUGLAS, COUNTY
	Drawn by: FCE	Scale: 1" = 100'	Date: 10/29/2013	
	Job No.: P2011.162.012	Book No. #####		

EXHIBIT "A"

LEGAL DESCRIPTION CROSS ACCESS EASEMENT AREA

A TRACT OF LAND LOCATED IN LOT 1, POPPLETON PARK REPLAT ONE, A SUBDIVISION LOCATED IN THE SW1/4 OF SECTION 17 AND ALSO THE NW1/4 OF SECTION 20 ALL LOCATED IN TOWNSHIP 15 NORTH, RANGE 13 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT SOUTHWEST CORNER OF SAID LOT 1, POPPLETON PARK REPLAT ONE, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 2, SAID POPPLETON PARK REPLAT ONE, AND ALSO ON THE EAST LINE OF THE MISSOURI PACIFIC RAILROAD RIGHT-OF-WAY; THENCE N87°21'12"E (ASSUMED BEARING) ALONG THE SOUTH LINE OF SAID LOT 1, POPPLETON PARK REPLAT ONE, SAID LINE ALSO BEING THE NORTH LINE OF SAID LOT 2, POPPLETON PARK REPLAT ONE, A DISTANCE OF 263.13 FEET TO THE POINT OF BEGINNING; THENCE N03°06'15"W, A DISTANCE OF 116.85 FEET; THENCE N03°19'24"E, A DISTANCE OF 43.25 FEET; THENCE N03°23'58"W, A DISTANCE OF 82.97 FEET; THENCE N10°04'13"W, A DISTANCE OF 65.58 FEET; THENCE N36°45'20"W, A DISTANCE OF 14.34 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 103.57 FEET, A DISTANCE OF 95.45 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N29°34'50"W, A DISTANCE OF 92.11 FEET; THENCE N03°10'48"W, A DISTANCE OF 130.68 FEET; THENCE N15°53'00"W, A DISTANCE OF 75.21 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 7.55 FEET, A DISTANCE OF 9.04 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N57°38'38"W, A DISTANCE OF 8.51 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 37.21 FEET, A DISTANCE OF 56.92 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N48°07'57"W, A DISTANCE OF 51.53 FEET; THENCE N04°18'54"W, A DISTANCE OF 154.08 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 1, POPPLETON PARK REPLAT ONE, SAID LINE ALSO BEING ON THE SOUTHERLY RIGHT-OF-WAY OF VACATED 45TH STREET; THENCE N87°16'45"E ALONG SAID NORTH LINE OF LOT 1, POPPLETON PARK REPLAT ONE, SAID LINE ALSO BEING SAID SOUTHERLY RIGHT-OF-WAY LINE OF VACATED 45TH STREET, A DISTANCE OF 29.01 FEET; THENCE S04°18'54"E, A DISTANCE OF 60.16 FEET; THENCE S39°26'02"E, A DISTANCE OF 9.73 FEET; THENCE N88°01'25"E, A DISTANCE OF 21.39 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 23.00 FEET, A DISTANCE OF 11.19 FEET, SAID CURVE HAVE A LONG CHORD WHICH BEARS N72°53'07"E, A DISTANCE OF 11.06 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 1, POPPLETON PARK REPLAT ONE, SAID LINE ALSO BEING THE WESTERLY RIGHT-OF-WAY LINE OF SADDLE CREEK ROAD; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF LOT 1, POPPLETON PARK REPLAT ONE, SAID LINE ALSO BEING SAID WESTERLY RIGHT-OF-WAY LINE OF SADDLE CREEK ROAD ON THE FOLLOWING 3 DESCRIBED COURSES: S17°49'59"E, A DISTANCE OF 20.39 FEET; THENCE S07°17'59"E, A DISTANCE OF 20.68 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 860.29 FEET, A DISTANCE OF 4.35 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S10°19'22"E, A DISTANCE OF 4.35 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 23.00 FEET, A DISTANCE OF 9.62 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N81°08'53"W, A DISTANCE OF 9.55 FEET; THENCE S86°52'03"W, A DISTANCE OF 25.02 FEET; THENCE S41°52'03"W, A DISTANCE OF 13.52 FEET; THENCE S04°18'54"E, A DISTANCE OF 35.28 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 8.21, A DISTANCE OF 12.56 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S48°07'57"E, A DISTANCE OF 11.37 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 36.55 FEET, A DISTANCE OF 46.37 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S55°36'35"E, A DISTANCE OF 43.32 FEET; THENCE S15°53'00"E, A DISTANCE OF 79.62 FEET; THENCE S03°10'48"E, A DISTANCE OF 133.91 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 74.57 FEET, A DISTANCE OF 21.85 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S11°34'22"E, A DISTANCE OF 21.77 FEET; THENCE S62°37'56"E, A DISTANCE OF 10.84 FEET; THENCE N74°42'05"E, A DISTANCE OF 37.86 FEET TO A POINT ON SAID EASTERLY LINE OF LOT 1, POPPLETON PARK REPLAT ONE, SAID LINE ALSO BEING SAID WESTERLY RIGHT-OF-WAY LINE OF SADDLE CREEK ROAD; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF LOT 1, POPPLETON PARK REPLAT ONE, SAID LINE ALSO BEING SAID WESTERLY RIGHT-OF-WAY LINE OF SADDLE CREEK ROAD ON THE FOLLOWING 2 DESCRIBED COURSES: S16°03'12"E, A DISTANCE OF 8.71 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 776.73 FEET, A DISTANCE OF 33.21 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S14°49'43"E, A DISTANCE OF 33.21 FEET; THENCE S79°55'47"W, A DISTANCE OF 13.14 FEET; THENCE S10°04'13"E, A DISTANCE OF 96.75 FEET; THENCE S03°23'58"E, A DISTANCE OF 83.36 FEET; THENCE S03°19'24"W, A DISTANCE OF 43.32 FEET; THENCE S03°06'15"E, A DISTANCE OF 39.37 FEET; THENCE N87°58'37"E, A DISTANCE OF 17.74 FEET TO A POINT ON SAID EASTERLY LINE OF LOT 1, POPPLETON PARK REPLAT ONE, SAID LINE ALSO BEING SAID WESTERLY RIGHT-OF-WAY LINE OF SADDLE CREEK ROAD; THENCE S02°38'48"E ALONG SAID EASTERLY LINE OF LOT 1, POPPLETON PARK REPLAT ONE, SAID LINE ALSO BEING SAID WESTERLY RIGHT-OF-WAY LINE OF SADDLE CREEK ROAD, A DISTANCE OF 45.43 FEET; THENCE S87°22'50"W, A DISTANCE OF 17.38 FEET; THENCE S03°06'15"E, A DISTANCE OF 39.46 FEET TO A POINT ON SAID SOUTH LINE OF LOT 1, POPPLETON PARK REPLAT ONE, SAID LINE ALSO BEING SAID NORTH LINE OF LOT 2, POPPLETON PARK REPLAT ONE; THENCE S87°21'12"W ALONG SAID SOUTH LINE OF LOT 1, POPPLETON PARK REPLAT ONE, SAID LINE ALSO BEING SAID NORTH LINE OF LOT 2, POPPLETON PARK REPLAT ONE, A DISTANCE OF 29.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 28,718 SQUARE FEET OR 0.659 ACRES MORE OR LESS.

PAGE 2 OF 2: SEE PAGE 2 FOR DRAWING



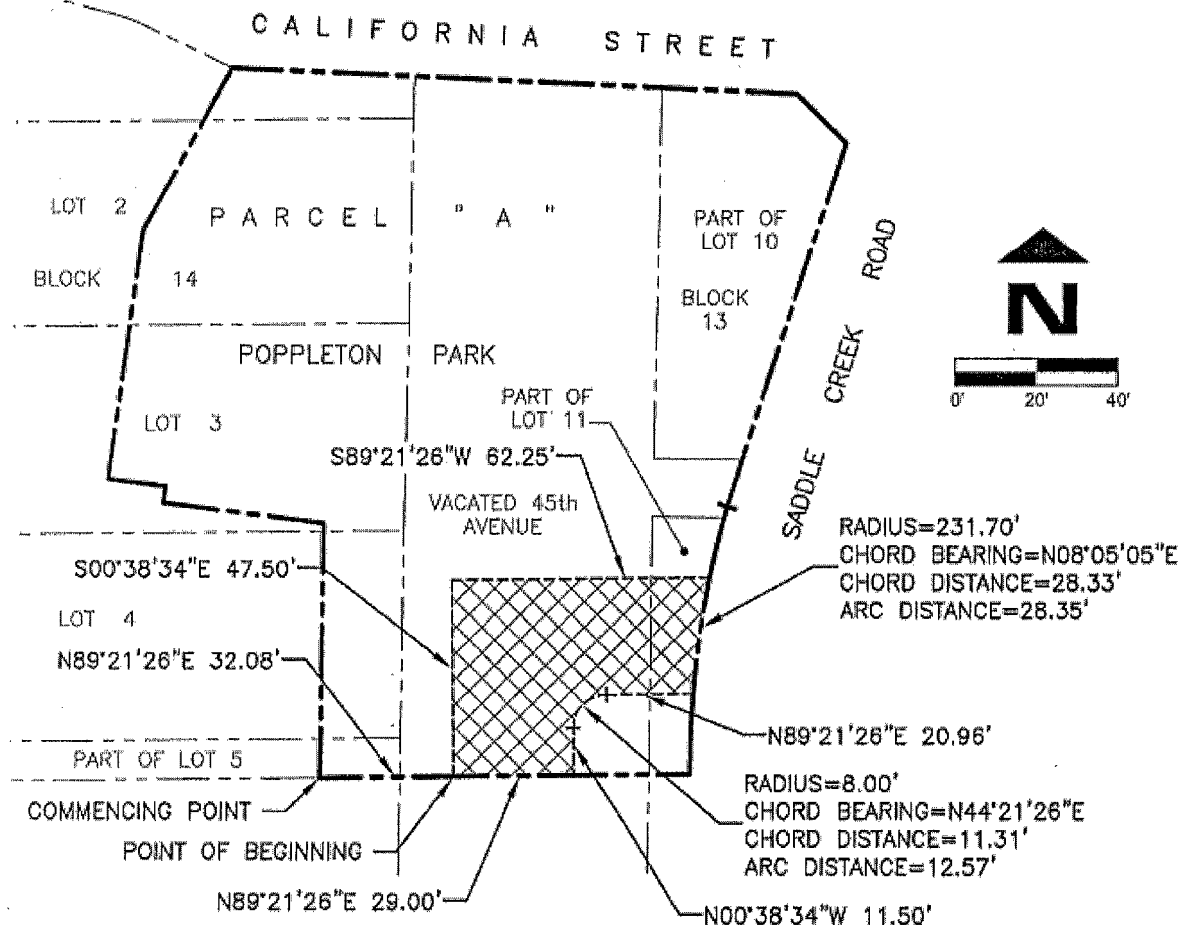
E & A CONSULTING GROUP, INC.

Engineering • Planning • Environmental & Field Services
330 North 117th Street, Omaha, NE 68154 Phone: 402.695.4700

Drawn by: FCE Scale: 1" = 100' Date: 10/29/2013
Job No.: P2011.182.012 Book No. #####

CROSS ACCESS EASEMENT AREA
LOT 1, POPPLETON PARK REPLAT ONE
DOUGLAS COUNTY

EXHIBIT D
OWNER EASEMENT AREA
(See Attached)



LEGAL DESCRIPTION

PART OF LOT 11, BLOCK 13, POPPLETON PARK, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, TOGETHER WITH PART OF VACATED 45th AVENUE ADJACENT TO SAID LOT 11 ON THE WEST LYING WITHIN A TRACT OF LAND DESCRIBED ON A DEED RECORDED IN BOOK 1627 AT PAGE 316 OF THE DOUGLAS COUNTY RECORDS AND HEREIN AFTER CALLED PARCEL "A", ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS, COMMENCING AT THE SW CORNER OF SAID PARCEL "A"; THENCE N89°21'26"E (ASSUMED BEARING) 32.08 FEET ON THE SOUTH LINE OF SAID PARCEL "A" TO THE POINT OF BEGINNING; THENCE CONTINUING N89°21'26"E 29.00 FEET ON THE SOUTH LINE OF SAID PARCEL "A"; THENCE N00°38'34"W 11.50 FEET; THENCE NORTHEASTERLY ON AN 8.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N44°21'26"E, CHORD DISTANCE 11.31 FEET, AND ARC DISTANCE OF 12.57 FEET; THENCE N89°21'26"E 20.96 FEET TO THE WEST LINE OF SADDLE CREEK ROAD; THENCE NORTHEASTERLY ON THE WEST LINE OF SADDLE CREEK ROAD ON A 231.70 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N08°05'05"E, CHORD DISTANCE 28.33 FEET, AN ARC DISTANCE OF 28.35 FEET; THENCE S89°21'26"W 62.25 FEET; THENCE S00°38'34"E 47.50 FEET TO THE POINT OF BEGINNING.



Job Number: 1771-112-EX
thompson, drossen & dornier, inc.
10898 Old Mill Rd
Omaha, NE 68154
p.402.330.8880 f.402.330.5886
td2co.com

Date: OCTOBER 7, 2013
Drawn By: RJR
Reviewed By: JDW
Revision Date:

EXHIBIT "A"

Book
Page