

FILED SARPY CO. NE.

INSTRUMENT NUMBER

200730881

2007 OCT -9 P 3:24

Glenn J. Dowling

REGISTER OF DEEDS

COUNTER	<u>LM</u>	G.E.	<u>DB</u>
VERIFY	<u>BT</u>	D.E.	<u>DB</u>
PROOF	<u>BT</u>		
FEE \$	<u>27.00</u>		
CHECK #			
CHG.	<u>CRS</u>	CASH	
REFUND		CREDIT	
SHORT		NCR	

Gretna, Nebraska
Store No. 4600-00

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT (this "Easement") is made this 4 day of ~~August~~ ^{October}, 2007 by **WESTERN LAND COMPANY, L.L.C.**, a Nebraska limited liability company ("Grantor") in favor of **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust, and **WAL-MART STORES, INC.**, a Delaware corporation (together, "Wal-Mart").

PRELIMINARY STATEMENTS

Grantor is the fee simple owner of the real property legally described as follows:

Lots 4 and 5 and Outlot 1, WICKS SOUTHPOINTE, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska

(the above-described real property being referred to herein as "Grantor Property").

Wal-Mart is the fee simple owned of the real property legally described as follows:

Lot 8, WICKS SOUTHPOINTE, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska

(the above-describe real property being referred to herein as "Wal-Mart Property").

In connection with Wal-Mart's development of the Wal-Mart Property, Wal-Mart will be constructing and installing certain storm sewer pipe and other related improvements (the "Improvements") within a portion of the Grantor Property. Grantor desires to grant to Wal-Mart, together with its respective successors and assigns, a temporary construction easement to construct the Improvements (including all construction activities incidental thereto) together with the right of ingress and egress to and from the same on, over, and through the portion of the Grantor Property depicted and legally described on Exhibit A attached hereto and incorporated herein (the "Easement Area").

AGREEMENT

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

RETURN TO: LAND AMERICA FINANCIAL GROUP, INC.
1850 N. CENTRAL AVE. #300
PHOENIX, AZ 85004
ESCROW # 06-49978

30881

CRS22214

4838-3130-5729.2

FILE 6TH

A

1. **Grant of Easement.** Grantor hereby grants to Wal-Mart, its heirs, successors, assigns, agents, licensees and invitees for the benefit of the Wal-Mart Property, a temporary construction easement to use the Easement Area for construction activities incidental to the construction of the Improvements; provided, however, that Wal-Mart shall have no obligation to construct the Improvements and further provided that in the event Wal-Mart shall not have constructed the Improvements within the Easement Area prior to the time Grantor desires to develop any burdened property, upon written notice by Grantor to Wal-Mart of Grantor's intent to develop such Property, subject to Wal-Mart's review and approval and any plans and specifications for the Improvements and subject to Wal-Mart's right to inspect and approve the construction of the Improvements, Wal-Mart may permit Grantor to construct the Improvements at Grantor's cost and to use the Easement Area for such purpose.

2. **Access; Improvements.** No buildings, improvements or other structures, nor any fill or fill material, or embankment work shall be placed in, on, over or across the Easement Area by the Grantor during the term of this Easement without the express approval of Wal-Mart.

3. **Binding Upon Property.** The easement, rights and obligations created pursuant to the terms of this Easement shall be appurtenant to the Wal-Mart Property and run with and be binding upon the Easement Area, including future subdivisions and/or reconfigurations of such properties, and shall be binding on all entities having or acquiring any right, title or interest in such properties and shall inure to the benefit of each owner, tenant, subtenant, employee or invitee thereof.

4. **Expiration of Temporary Construction Easement.** The Easement and all interests granted hereby shall terminate upon the completion of the Improvements. Wal-Mart agrees to execute, deliver and record a release of this Easement upon request of Grantor upon completion of the Improvements. In the event this Easement has not been affirmatively released and no visible sign of active construction exists within the Easement Area, this Easement shall terminate ten years from the date of this Easement.

5. **No Dedication.** Nothing herein contained 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. Except as herein specifically provided, 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 Easement.

6. **Title.** The Grantor confirms with the Wal-Mart and its assigns that the Grantor is seized in fee of the Easement Area and that it has the right to grant and convey the easement and rights granted herein, and that it will warrant and defend such easement and rights to the Wal-Mart and its assigns against the lawful claims and demands of all persons.

7. **Condition Upon Expiration.** Wal-Mart, at its own expense, shall restore, as nearly as possible, the Easement Area as to its condition as existing on the date of this Easement. Restoration shall include the removal of all debris and trash, the backfilling and compaction of trenches, the replacement of fences, the replacement of topsoil and the reseeding of lawns or pasture areas.

C

LEGAL DESCRIPTION

A temporary construction easement over that part of Lots 4 and 5 and Outlot 1, WICKS SOUTHPOINTE, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska, described as follows:

Beginning at the west corner of said Outlot 1;

Thence North 37°38'59" East (bearings referenced to the Final Plat of WICKS SOUTHPOINTE) for 30.94 feet along the northwest line of said Outlot 1;

Thence North 87°02'50" East for 253.61 feet parallel with and twenty foot (20') north of the north line of the existing permanent storm sewer easement;

Thence South 02°57'10" East for 60.00 feet parallel with and twenty foot (20') east of the east line of the existing permanent storm sewer easement;

Thence South 87°02'50" West for 225.41 feet parallel with and twenty foot (20') south of the south line of the existing permanent storm sewer easement;

Thence South 24°34'42" East for 150.90 feet parallel with and forty foot (40') east of the east line of the existing permanent storm sewer easement;

Thence South 37°26'29" West for 420.23 feet parallel with and forty foot (40') east of the east line of the existing permanent storm sewer easement to the south line of said Lot 5;

Thence North 56°13'25" West for 40.08 feet along said south line to the east line of said storm sewer easement;

Thence North 37°26'29" East for 418.29 feet along said east line;

Thence North 25°02'51" East for 151.84 feet along said east line to the north line of said Lot 4;

Thence South 52°21'01" East for 20.27 feet along said north line to the Point of Beginning.

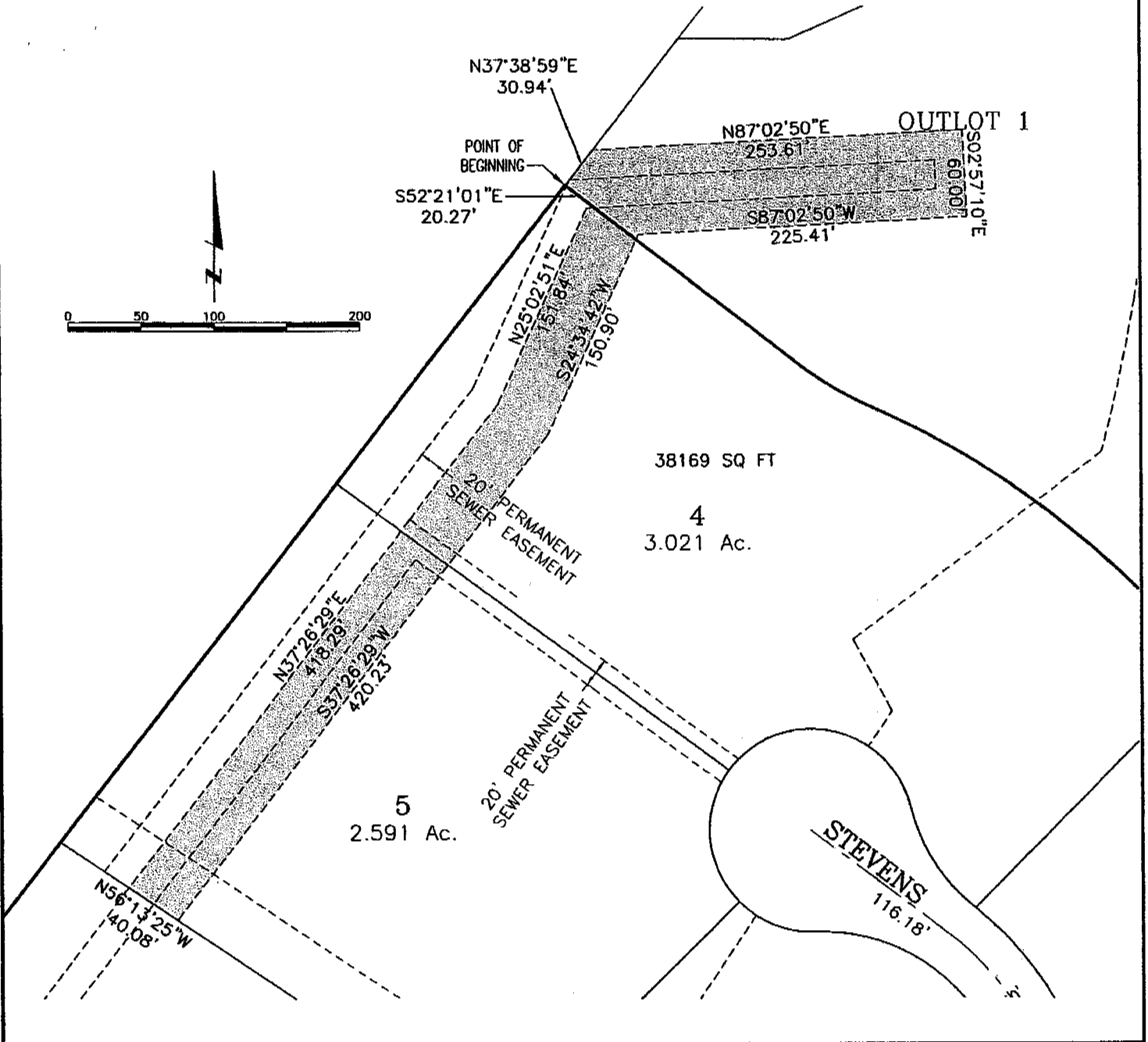
Contains 38,169 square feet.


EASEMENT EXHIBIT

2007-30881 D

LEGAL DESCRIPTION

A temporary construction easement over that part of Lots 4 and 5 and Outlot 1, WICKS SOUTHPOINTE, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska, described as follows: (SEE ATTACHED SHEET FOR COMPLETE LEGAL DESCRIPTION)



 Lamp, Rynearson & Associates, Inc.
 14710 West Dodge Road, Suite 100
 Omaha, Nebraska 68154-2027

WWW.LRA-INC.COM

(Ph) 402.496.2498
(Fax) 402.496.2730

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