

FILED SAPPY CO. NE.
INSTRUMENT NUMBER
2007-30882
2007 OCT -9 P 3:27 B

COUNTER W G.E. W
VERIFY POW D.E. W
PROOF _____
FEES \$ 42.00
CHECK # _____
CHG CRS CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

TO:

Glenn J. Lawing
REGISTER OF DEEDS

Gretna, NE
Store #4600-00

TEMPORARY EASEMENT TO DEPOSIT FILL

THIS TEMPORARY EASEMENT TO DEPOSIT FILL (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, "Grantee").

PRELIMINARY STATEMENTS

Grantor is the fee simple owner of certain real property legally described in Exhibit A attached hereto and incorporated herein (the "Grantor Property"). Grantee is the fee simple owner of certain real property legally described in Exhibit C and pictorially depicted on Exhibit B each attached hereto and incorporated herein (the "Grantee Property"). Grantor desires to grant to Grantee a temporary easement for access to the Grantor Property and for the permanent placement and deposit of fill, dirt and earth on that portion of the Grantor Property depicted on Exhibit B, subject to the terms and conditions hereinafter set forth.

AGREEMENT

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

1. **Grant of Easement.** Grantor hereby grants to Grantee, its affiliates, heirs, successors, assigns, agents, licensees and invitees for the benefit of the Purchase Tract a temporary easement to enter the Grantor Property and to permanently place and deposit on the Grantor Property up to 20,000 cubic yards of fill, dirt and earth from the Grantee Property, subject to the terms and conditions of this Easement and provided Grantee shall deposit such fill, dirt and earth at such locations on the Grantor Property as directed by Grantor, as generally depicted on Exhibit B. During the term of this Easement, Grantor shall grant no other right in the Grantor Property or any portion thereof without Grantee's prior written consent if such other right could interfere with Grantee's rights herein or with Grantee's development activities on Grantee's Property, which consent Grantee may withhold in its sole discretion.

4826-9843-2769.3

FILE 7th

RETURN TO: LANDAMERICA FINANCIAL GROUP, INC.
1850 N. CENTRAL AVE. #300
PHOENIX, AZ 85004
ESBROW HQ 0649978

30882

CRS 22214

A

2. **Improvements.** Grantee shall have no obligation to remove from or deposit onto the Grantor Property any fill, dirt or earth. No buildings, improvements or other structures, nor any fill or fill material, or embankment work shall be placed in, on, over or across the Grantor Property by Grantor without the express approval of Grantee during the term of the Easement if such buildings, improvements, structures, fill, dirt or earth could interfere with Grantee's rights hereunder or development activities on Grantee's Property.

3. **Indemnification.** Grantee hereby agrees to indemnify and hold Grantor harmless from and against any and all liabilities, claims, damages, costs and expenses arising from or relating to Grantee's actions related to its activities at the Grantor Property, except if caused by the act or negligence of Grantor. Notwithstanding the foregoing, Grantor and Grantee hereby expressly acknowledge that the indemnification by Grantee shall not extend to (and Grantee shall have no liability for) claims, damages, costs and expenses arising from or relating to the condition of the fill, dirt and earth placed by Grantee on the Grantor Property and Grantor hereby holds Grantee harmless from and against any and all liabilities, claims, damages, costs and expenses related to the condition of such fill, dirt and earth, including, without limitation, any injury, damage, harm or loss arising from, relating to or in any manner connected with the "release" or "threatened release" of Hazardous Materials (as defined in applicable environmental laws, rules or regulations), contaminants, oil or radioactive materials on Grantor Property arising out of or connected with the dirt, earth and fill placed on the Grantee Property by Grantee from the Grantee Property, even if not discovered or alleged until after the termination of this Easement.

4. **Binding Upon Property.** The easement, rights and obligations created pursuant to the terms of this Easement shall be appurtenant to the Purchase Tract and run with and be binding upon the Grantor Property, 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.

5. **Term of Easement.** The Easement and all interests granted hereby with respect to such easement shall terminate on the three-year anniversary of the date of this Easement.

6. **No Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Grantor Property 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.

7. **Title.** Grantor confirms with Grantee and its assigns that Grantor is seized in fee of the Grantor Property 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 Grantee and its assigns against the lawful claims and demands of all persons.

[Signature Page to Follow]

C

EXHIBIT A

GRANTOR PROPERTY LEGALLY DESCRIBED

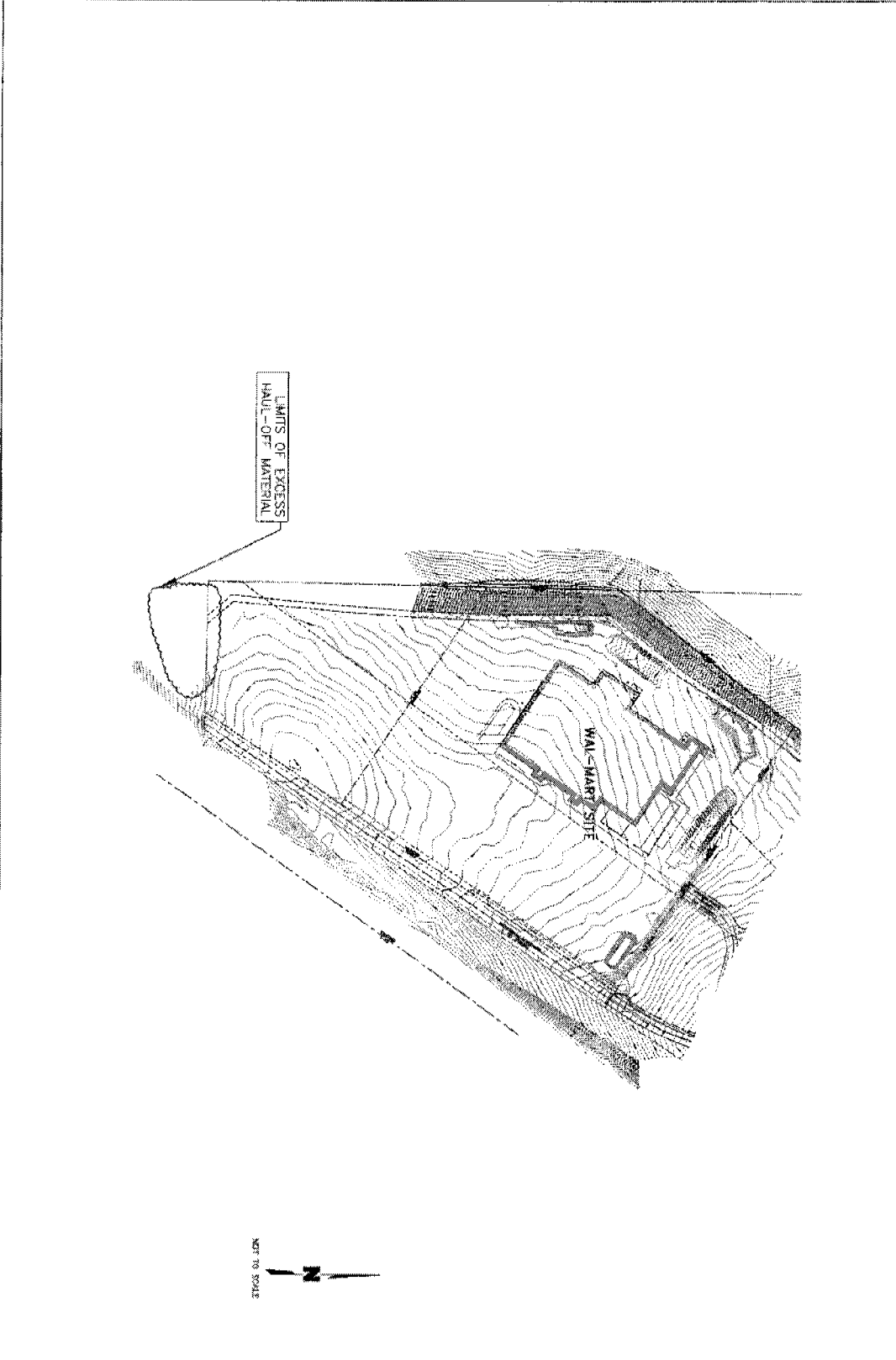
Outlot 1, WICKS SOUTHPOINTE, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.


D

EXHIBIT B
GRANTEE PROPERTY AND EASEMENT AREA OF GRANTOR PROPERTY
ILLUSTRATED

[to be attached]

E



PROJECT: 2005-1310	WAL-MART AREA TO EXPORT 20,000 CY	 2120 South 72nd Street Suite 1400 Omaha, NE 68120-6216 TEL: 402-241-1310 FAX: 402-241-1265
DRAWN BY: JGV		
DATE: 04-12-07		

P:\05\2005\1310\1310.dwg User: jgv
 DATE: Apr 2, 2007 8:22am 400% 1210-ctext 1210-plate 1210-connection 1210-print Phase-1 1210-wood 100%

F

EXHIBIT C
GRANTEE PROPERTY

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

EASEMENT EXHIBIT

2007-30882 G

LEGAL DESCRIPTION

A temporary construction easement for stock piling of soil over that part of the South Half of Section 34, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, described as follows:

Beginning at the southwest corner of Lot 9, WICKS SOUTHPOINTE, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska;

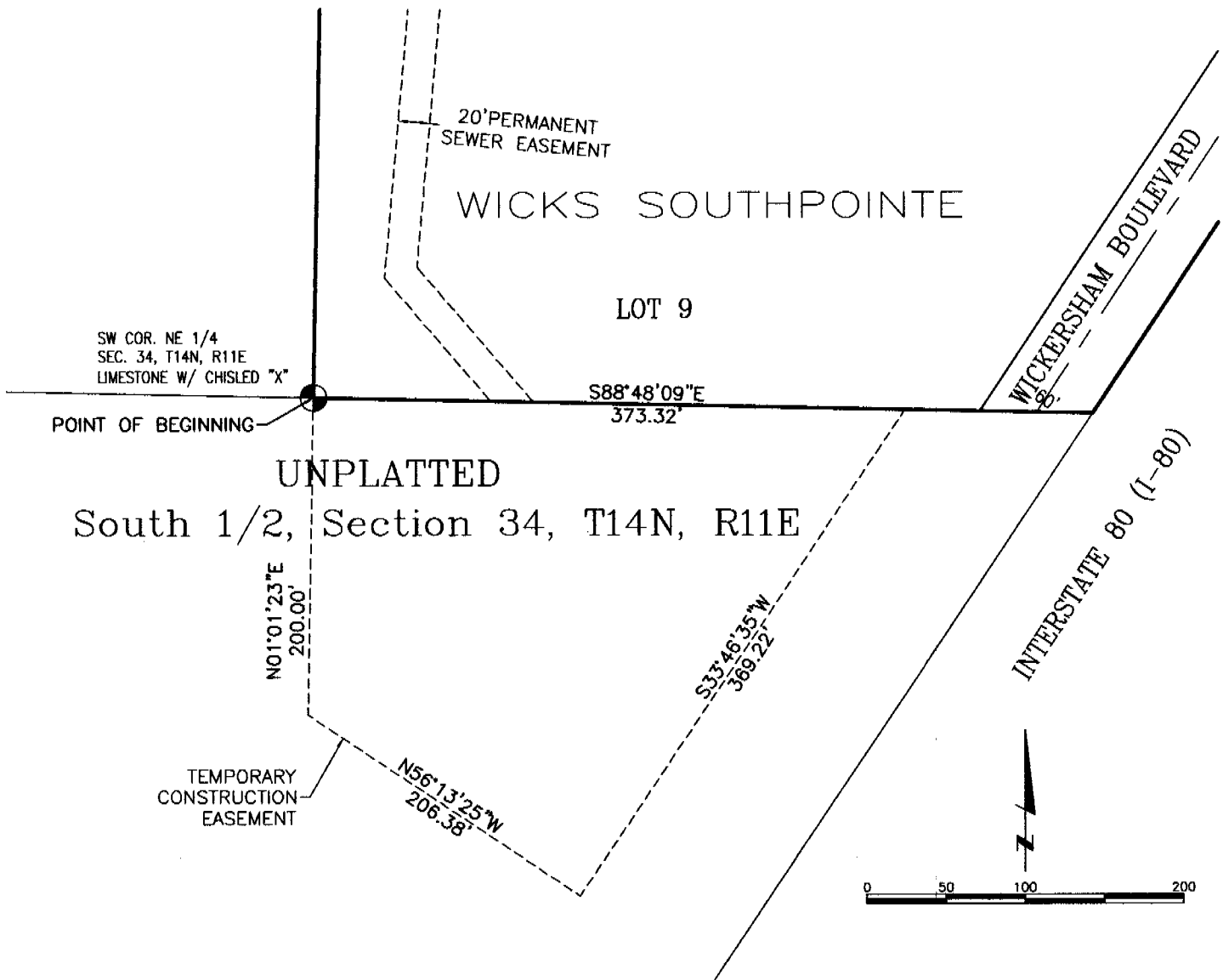
Thence South 88°48'09" East (bearings referenced to the Final Plat of WICKS SOUTHPOINTE) for 373.32 feet along the south line of said Lot 9;

Thence South 33°46'35" West for 369.22 feet parallel with and one-hundred foot northwest of the northwest right of way line of Interstate 80;

Thence North 56°13'25" West for 206.38 feet to the extended west line of said Lot 9;

Thence North 01°01'2" East for 3 feet 200.00 along said extended west line to the Point of Beginning.

Contain 75,432 square feet.



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

drawn by: MJW
designer: RDP
job number-tasks: 99022.22-051
date: AUGUST 17, 2007
book: page:
file name: 99022TEMP CONST EAS