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FILED SARPY COUNTY NEBRASKA
INSTRUMENT NUMBER

2010-18637

07/21/2010 3:23:18 PM

Lloyd J. Dowling

~~Prepared By And Upon
Recording Return To:
Margot J. Wickman, Esq.
Kutak Rock LLP
1650 Farnam Street
Omaha, Ne 68102-2186~~

REGISTER OF DEEDS



Gretna, NE
Store No. 4600-00

AMENDMENT NO. 1 TO SANITARY SEWER EASEMENT

THIS AMENDMENT NO. 1 TO SANITARY SEWER EASEMENT (this "Amendment") is made as of this 16th day of July, 2010 by and between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("Grantor") and **SANITARY IMPROVEMENT DISTRICT NO. 282, SARPY COUNTY** ("Grantee").

PRELIMINARY STATEMENTS

Grantor is the fee simple owner 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-described real property being referred to herein as "Grantor Property").

A 20-foot sanitary sewer easement (the "Easement") was established by Grantor's predecessor-in-interest by that certain Final Plat, Wick's Southpointe, in Sarpy County, Nebraska, filed February 5, 2007 as instrument number 2007-03681 (the "Plat"). The Easement burdens the Grantor Property.

Upon construction of the sanitary sewer contemplated by the Easement, it was determined that the sanitary sewer was inadvertently constructed outside the boundary of the Easement.

Grantor and Grantee therefore desire to amend the Easement to relocate the Easement to the actual location of the sanitary sewer.

AGREEMENT

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

1. **Easement Area.** On and after the date of this Amendment, the Easement shall be deemed amended such that the location of the Easement burdening the Grantor Property is as depicted

*RJR OLSSON ASSOC. 2111 S. 67th St.
Omaha NE 68106*

and legally described on Exhibit A (the “Easement Area”) and the Easement shall be deemed released as to the Grantor Property other than as to that portion legally described on Exhibit A.

2. **Terms of Easement.** Because the terms of the Easement, as established on the Plat, were not specified, the Easement is further amended by adding the following as the terms of the Easement:

a. **Improvements.** The Easement was established on the Plat to permit the construction and maintenance of certain sanitary sewer pipes and other related improvements within the Easement (the “Improvements”). The Improvements have been constructed and installed by Grantee and Grantee shall be the owner of the Improvements. As set forth in the “Grants of Easements” portion of the Plat, no permanent structures, trees, retaining walls, loose rock walls nor any grading, fill or fill material or embankment work shall be placed in, on, over, or across the Easement Area, but the same may be used by Grantor for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses of the Easement.

b. **Right Of Access.** Grantee shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area from property adjacent thereto as herein described; provided, however, Grantee shall limit its access, ingress and egress to the minimum necessary to enjoy the use of the Easement and exercise its rights hereunder. Grantee shall not interfere with Grantor’s business operations while exercising its rights under the Easement.

c. **Maintenance and Restoration of Easement Area.** All Improvements placed within the Easement Area pursuant to the Easement shall be the property of Grantee. Grantee agrees to use due care in any use of the Easement and in the construction and maintenance of both the Easement Area and the Improvements so as not to unreasonably disturb Grantor’s use of its property. Grantee agrees to return the Easement Area to its condition which existed prior to the installation of any of its improvements in the Easement Area, including but not limited to the replacement of any sod, landscaping, paving or other improvements that existed within the Easement Area prior to such installation

d. **Binding Upon Property.** The easements, rights and obligations created pursuant to the Easement shall be appurtenant to and run with and be binding upon the real properties herein identified, 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. In the even any portion of the Grantor Property is transferred to a third-party, such portion of the Grantor Property shall have the benefit of the Easement.

e. **No Further Dedication.** No portion of the Grantor Property shall be deemed a gift or dedication to the general public, or for any public use, or purpose whatsoever and 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 the Easement.

f. **Non-Merger.** The easements, rights and obligations established by the Easement shall not merge or terminate if all of the Grantor Property and the Grantee property become owned by the same entity, but shall continue until released and terminated by all parties benefited hereby.

f. Indemnification. Grantee hereby indemnifies and saves harmless Grantor from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring as the result of the Grantee's negligence, intentional act or willful misconduct in connection with Grantee's use of the Easement, except if caused by the act or neglect of Grantor.

g. Insurance. Grantee shall procure and maintain in full force and effect throughout the term of the Easement 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 for injury or death of a single person, and to the limit of not less than \$5,000,000.00 for any one occurrence, and to the limit of not less than \$5,000,000.00 for property damage. Such insurance may be written by additional premises endorsement on any master policy of insurance (or combined with an umbrella policy) carried by the party which may cover other property in addition to the property covered by the Easement. Such insurance shall not be canceled without ten (10) days' prior written notice to the other party.

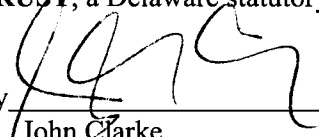
[Signature Page to Follow]

C

IN WITNESS WHEREOF, the parties have caused the authorized execution of this Easement, the day and year first above written.

WAL-MART:

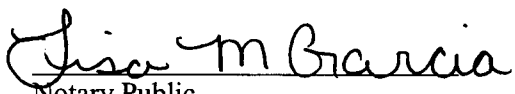
WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust

By 
John Clarke
Vice President—Real Estate

Trg
TDS
6:13:10

STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)

The foregoing instrument was acknowledged before me this 16th day of July, 2010 by John Clarke, Vice President, Real Estate of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.


Notary Public

My Commission Expires:
May 01, 2017

LISA M. GARCIA
NOTARY PUBLIC-STATE OF ARKANSAS
WASHINGTON COUNTY
My Commission Expires May 01, 2017
Commission # 12360574

D

Gretna, NE
Store No. 4600-00

SID 282:

SANITARY IMPROVEMENT DISTRICT
282, Sarpy County

By: *Gale L. Wickersham*
Name Gale L. Wickersham
Title Chairman

STATE OF NEBRASKA)
) ss.
COUNTY OF Sarpy)

The foregoing instrument was acknowledged before me this 20th day of May, 2010 by Gale L. Wickersham the Chairman of Sanitary Improvement District 282, Sarpy County, on behalf of the sanitary improvement district.

Debra L. Arkfeld
Notary Public

My Commission Expires:



EASEMENT EXHIBIT

LEGAL DESCRIPTION

A twenty (20) foot wide permanent easement for the construction and maintenance of sanitary sewers over that part of Lot 8, WICKS SOUTHPOINTE, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska, the center line described as follows:

Commencing at the northwest corner of said Lot 8;

Thence South 56°13'25" East (bearings referenced to the Final Plat of WICKS SOUTHPOINTE) for 66.79 feet along the north line of said Lot 8, to the TRUE POINT OF BEGINNING;

Thence South 38°24'55" West for 127.65 feet;

Thence South 33°18'49" West for 264.04 feet;

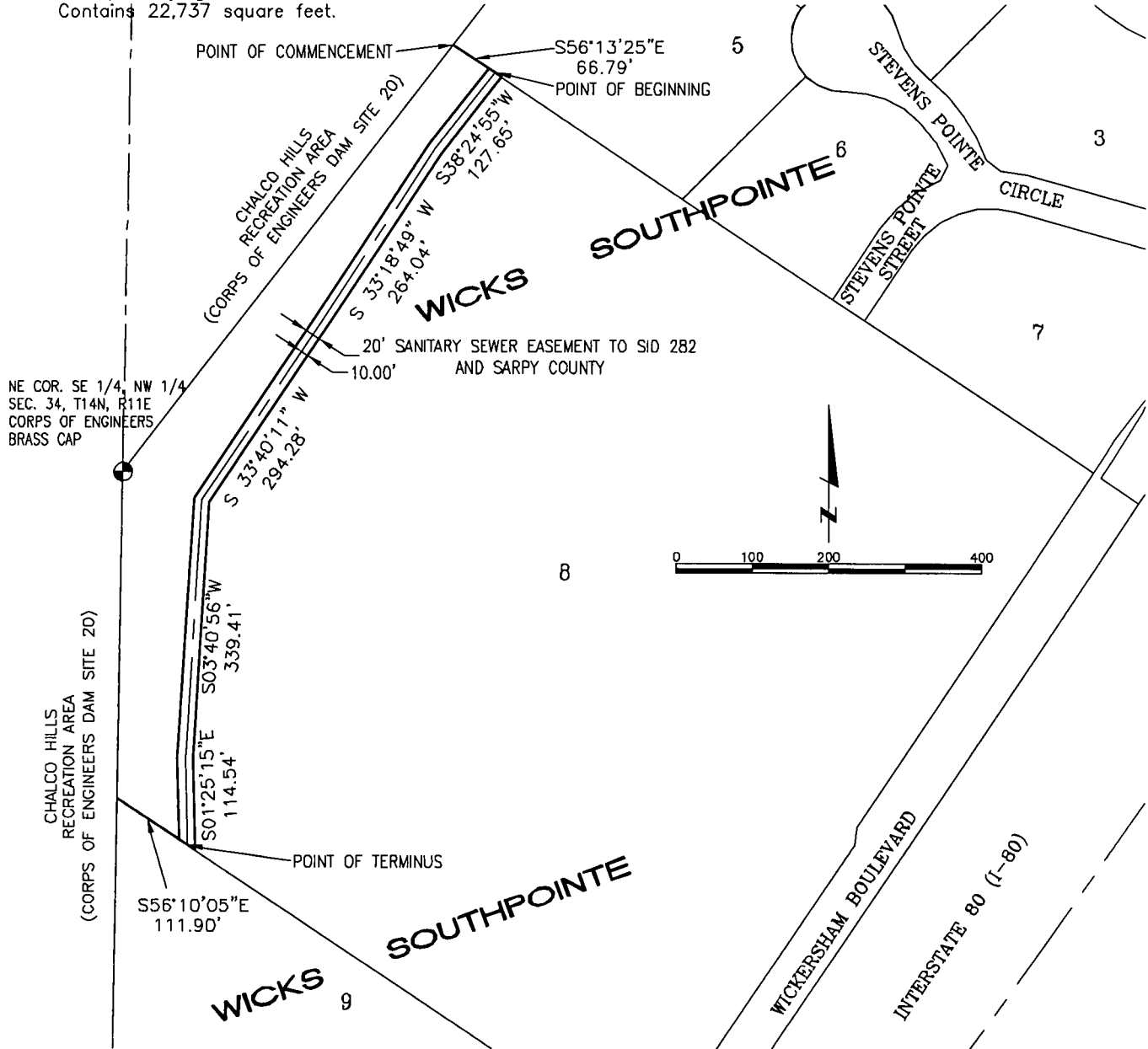
Thence South 33°40'11" West for 294.28 feet;

Thence South 03°40'56" West for 339.41 feet;

Thence South 01°25'15" East for 114.54 feet to the south line of said Lot 8 and the point of terminus;

Said point lying South 56°10'05" East for 111.90 feet from the southwest corner of said Lot 8.

Contains 22,737 square feet.



Lamp, Rynearson & Associates, Inc.

14710 West Dodge Road, Suite 100
Omaha, Nebraska 68154-2027

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drawn by: EAM
designer: WEK
job number-task: 99022.90-375
date: 8-12-09
book: page:
file name: 99022E110.dwg