

FILED SARPY COUNTY NEBRASKA
INSTRUMENT NUMBER

2010-18639

07/21/2010 3:23:27 PM

Clyde J. Dowling

REGISTER OF DEEDS

COUNTER ah C.E. ab
VERIFY LM/JS D.E. P
PROOF _____
FEES \$ 811.50
CHECK# 1504
CHG _____ CASH _____
REFUND _____ CREDIT _____

PREPARED BY AND UPON _____
RECORDING RETURN TO:
MARGOT J. WICKMAN, ESQ.
KUTAK ROCK LLP
1650 FARNAM STREET
OMAHA, NE 68102-2186



Gretna, NE
Store No. 4600-00

DECLARATION OF UTILITY EASEMENTS

THIS DECLARATION OF UTILITY EASEMENTS (this "Declaration") is made by WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware business trust (the "Declarant") as of this 17th day of June, 2010.

PRELIMINARY STATEMENTS

Declarant is the fee owner of certain real property located in Sarpy County, Nebraska and legally described as follows:

Lots 1, 2 and 3, WICKS SOUTHPOINTE 1ST ADDITION, Sarpy County, Nebraska, according to the recorded plat thereof (the "Declarant Property").

Declarant desires to encumber the Declarant Property by granting certain utility easements rights, subject to the terms and conditions set forth in this Declaration.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares as follows:

1. **Declaration of Water Main Easement.** Declarant hereby grants, conveys, declares and establishes for the benefit of the Declarant Property and subject to any matters of record, a perpetual non-exclusive water main easement (the "Water Main Easement") across, over and below those portions of the Declarant Property, which are depicted on Exhibit A-1 attached hereto and legally described on Exhibit A-2 attached hereto (collectively, the "Water Main Easement Area") for the installation, operation, maintenance, repair and replacement of a water

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

main and related utility facilities and improvements, together with the right of ingress and egress thereto.

2. **Declaration of Sanitary Sewer Easement.** Declarant hereby grants, conveys, declares and establishes for the benefit of the Declarant Property and subject to any matters of record, a perpetual non-exclusive sanitary sewer easement (the "Sanitary Sewer Easement") across, over and below those portions of the Declarant Property, which are depicted on Exhibit B-1 attached hereto and legally described on Exhibit B-2 attached hereto (collectively, the "Sanitary Sewer Easement Area") for the installation, operation, maintenance, repair and replacement of a sanitary sewer and related utility facilities and improvements, together with the right of ingress and egress thereto.

3. **Declaration of Storm Sewer Easement.** Declarant hereby grants, conveys, declares and establishes for the benefit of the Declarant Property and subject to any matters of record, a perpetual non-exclusive storm sewer easement (the "Storm Sewer Easement") across, over and below those portions of the Declarant Property, which are depicted on Exhibit C-1 attached hereto and legally described on Exhibit C-2 attached hereto (collectively, the "Storm Sewer Easement Area") for the installation, operation, maintenance, repair and replacement of a storm sewer and related utility facilities and improvements, together with the right of ingress and egress thereto.

4. **Non-Exclusive Easement.** The Water Main Easement, the Sanitary Sewer Easement and the Storm Sewer Easement (collectively, the "Easement") granted herein are not exclusive, and Declarant reserves unto itself and to the other present and future owners of the Declarant Property the right to utilize the Water Main Easement Area, the Sanitary Sewer Easement Area and the Storm Sewer Easement Area (collectively, the "Easement Areas") for such purposes as do not unreasonably endanger or interfere with the easements and other rights granted herein. Declarant shall have the right to grant such other easements, rights or privileges to such persons and/or entities and for such purposes as Declarant, in its sole discretion may elect, so long as such purposes do not unreasonably endanger or interfere with the easements and other rights granted herein.

5. **Installation Costs; Restoration and Indemnification.** This Declaration does not require the construction of any water main, sanitary sewer or storm sewer lines but rather governs the respective obligations of the owners of the respective lots regarding any future construction and maintenance of said lines and connections. The owners of each lot within the Declarant Property shall be responsible for all costs and expenses related to the installation, repair, maintenance, and replacement of any such lines and connections serving each respective Lot. The owners of Lots 2 and 3 agree to restore it its preexisting condition any portion of Lot 1 which may be disturbed or damaged in the installation, repair, maintenance, or replacement of the lines and connections. In addition, the owners of Lot 2 and Lot 3 hereby indemnify the owner of Lot 1 and hold the owner of Lot 1 harmless from any and all damage to Lot 1 and any property, persons or improvements located thereon or in, including any other expense, causes or action, claims or other liability, in any case caused by such owner's exercise of its rights hereunder and its use of the sanitary sewer and from any failure by such owners to comply with the next succeeding sentence. The owners of Lot 2 and Lot 3 shall each be solely responsible for the installation, maintenance and liability for any storm water quality treatment devices and

requirements required by the governmental and other authorities having jurisdiction over such property.

The owners of Lot 2 and Lot 3, respectively shall have the right to tap into and connect any storm or sanitary sewer improvements now or hereafter located on Lot 1 of the Declarant Property within the Easement Areas; provided, however, that the increased drainage from Lot 2 or Lot 3 shall not cause the drainage to exceed the capacity of such improvements, and the connection to and use of such improvements shall not interfere with the operation of business on Lot 1.

6. **Maintenance of Improvements on Lot 1.** To the extent water main, sanitary sewer or storm sewer improvements exist or are constructed on portions of Lot 1 within the Easement Areas, which improvements serve Lot 1 and another Lot within the Declarant Property, Declarant reserves for the owner of Lot 1 the exclusive right to maintain such improvements. To the extent the owner of Lot 1 maintains such improvements, the owners of Lot 1 shall have the right to charge each of the respective owners of Lot 2 and Lot 3 its proportional share of the cost of maintaining such improvements, which proportional share shall be determined based upon the ratio of square footage of each lot to the square footage of the Declarant Property; provided, however, in addition to the party's proportional share, each party's charge shall include any increased cost of maintenance attributable to such party's failure to comply with the remainder of this section regarding hazardous waste, sediment and particulates. Not more often than quarterly, the owner of Lot 1 may submit invoices and/or statements to the other parties detailing the costs of maintaining, repairing and cleaning the improvements. Within 30 days after receipt of such statements, the owners of Lot 2 and Lot 3, respectively, shall remit to the owner of Lot 1 their pro rata share of such costs. The owner of Lot 2 and Lot 3, respectively, to the extent such lots drain or discharge into the sanitary or storm sewer improvements shall be responsible for preventing the discharge of removable waste, sediment, particulates and Hazardous Substances at such party's sole cost and expense. Such responsibility shall include, without limitation, (i) in the case of restaurants or food establishments, reasonable, installation and regular and customary maintenance of grease traps and the prevention of discharge of any biological agents, enzymes or bacteria commonly known as "grease eating" compounds, (ii) in the case of any car wash, installation and regular and customary maintenance of pre-treatment or grit removal systems.

For purposes of this Declaration, "Hazardous Substances" shall mean those materials, substances, wastes, pollutants or contaminants which are deemed to be hazardous, toxic or radioactive and shall include but not be limited to those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," or other similar designations in any environmental law or regulation, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) petroleum products or byproducts, or petroleum, including crude oil or any fraction thereof, or natural gas, natural gas liquids, liquefied natural gas, synthetic gas or mixtures of synthetic gas and natural gas, (iii) asbestos and (iv) polychlorinated biphenyls.

7. **No Representations by Declarant.** Declarant hereby makes no representations or warranties, either expressed or implied, by operation of law or otherwise, with respect to the quality, physical condition or value of the improvements now constructed or to be constructed in

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the Easement Areas or their suitability, merchantability or fitness for a particular purpose, the presence or absence of conditions on such improvements that could give rise to any claims for personal injury, property or natural resource damages or otherwise; or the presence of hazardous or toxic substances, materials, waste, contaminants or pollutants on, under or about such improvements.

8. **Insurance.** Each of the owners of Lot 2 and Lot 3, respectively, shall procure and maintain in full force and effect throughout the term of this Declaration 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 this Declaration. Such insurance shall not be canceled without ten (10) days' prior written notice to the other Lot owners.

9. **No Further Rights.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Areas to the general public, or for any public use, or purpose whatsoever. This Declaration creates no rights to the Declarant Property in favor of the general public or, except as specifically set forth herein, any other party or property.

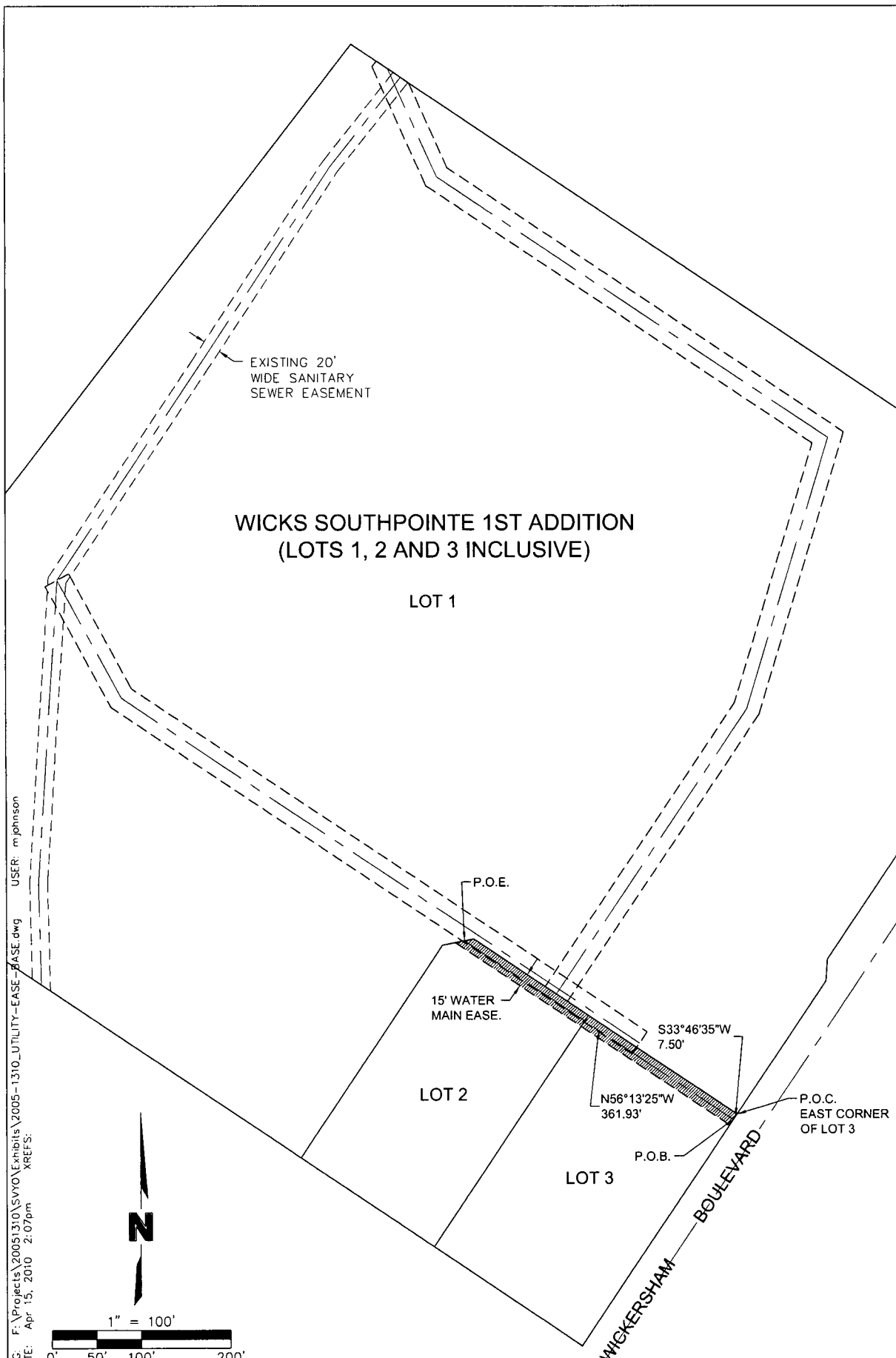
10. **No Interference.** No buildings, improvements or other structures shall be placed in the Easement Areas that would interfere with the easement rights of the benefitted property.

11. **Binding Upon Property; No Merger.** The restrictions, rights and obligations created pursuant to the terms of this Declaration shall run with and be binding upon the Declarant Property in perpetuity, 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 the Declarant Property. Declarant currently owns all the Declarant Property, comprise of Lot 1, Lot 2 and Lot 3. Declarant reserves the right to sell or otherwise convey all or any of Lot 1, Lot 2 or Lot 3 in one or a series of transactions. Notwithstanding any such future conveyance, the easements, rights and obligations established by this Declaration shall not merge or terminate if all of the Easement Areas and Lot 2 and/or Lot 3 once again become owned or are owned by the same entity, but shall continue until released and terminated by all parties benefitted hereby.

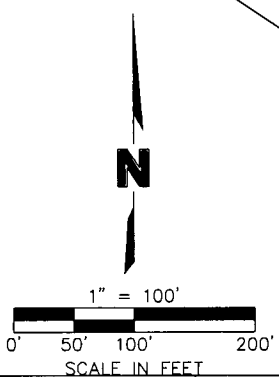
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EXHIBIT A-1
DEPICTION OF WATER MAIN EASEMENT
(attached)

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 USER: mjohnson
 DATE: Apr 15, 2010 2:07pm
 XREFS:



PROJECT NO: 005-1310
 DRAWN BY: MRJ
 DATE: 04/13/10

WICKS SOUTHPOINTE 1ST ADDITION
WATER MAIN EASEMENT



2111 South 67th Street
 Omaha, NE 68106
 TEL 402.341.1116
 FAX 402.341.5885

EXHIBIT
1

G

EXHIBIT A-2

**LEGAL DESCRIPTION OF WATER MAIN EASEMENT
(attached)**

**LEGAL DESCRIPTION
WATER MAIN EASEMENT**

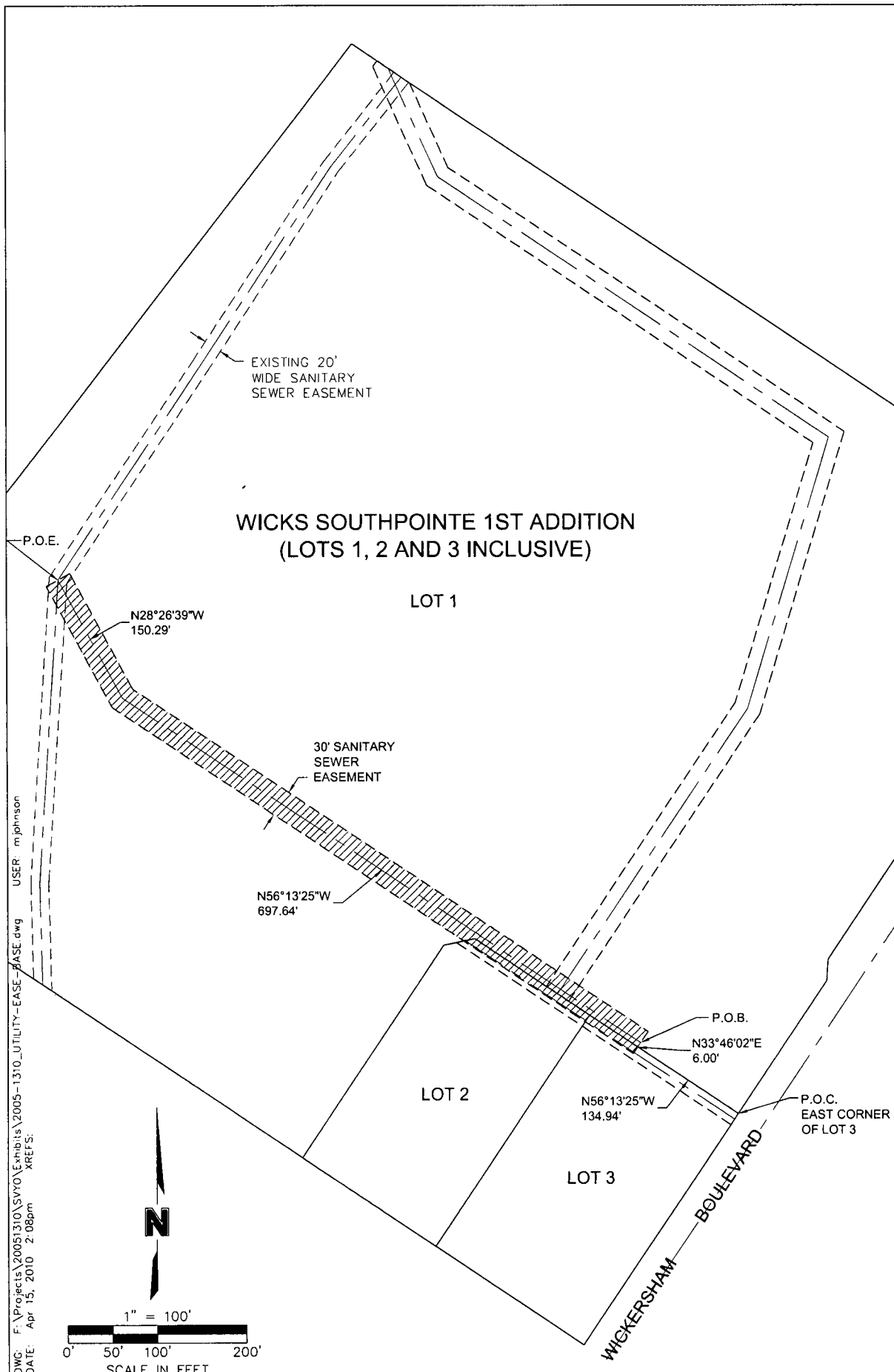
A LEGAL DESCRIPTION FOR A STRIP OF LAND COMPOSED OF A PORTION OF LOTS 2 AND 3, WICKS SOUTHPOINTE 1ST ADDITION, ALL LOCATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERN CORNER OF SAID LOT 3; THENCE SOUTHWESTERLY ALONG THE SOUTHEAST LINE OF SAID LOT 3 ON AN ASSUMED BEARING OF S33°46'35"W, A DISTANCE OF 7.50' TO **THE TRUE POINT OF BEGINNING** FOR WATER MAIN EASEMENT PURPOSES 15.00' WIDE LYING 7.50' ON EACH SIDE OF THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS; THENCE N56°13'25"W ALONG A LINE 7.50' SOUTHWEST OF AND PARALLEL WITH THE NORTHEAST LINE OF SAID LOT 3 AND LOT 2, A DISTANCE OF 361.93' TO A POINT OF INTERSECTION WITH THE MOST NORTHERN LINE OF SAID LOT 2, SAID POINT ALSO BEING THE POINT OF ENDING, THE SIDE LINES OF SAID STRIP BEING SHORTENED OR LENGTHENED TO TERMINATE AT THE MOST NORTHERN LINE OF SAID LOT 2, SAID STRIP CONTAINS A CALCULATED AREA OF 5,428.98 SQUARE FEET, OR 0.12 ACRES MORE OR LESS.

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EXHIBIT B-1
DEPICTION OF SANITARY SEWER EASEMENT
(attached)

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PROJECT NO: 005-1310
DRAWN BY: MRJ
DATE: 04/13/10

WICKS SOUTHPOINTE 1ST ADDITION
SANITARY SEWER EASEMENT



2111 South 87th Street
Omaha, NE 68108
TEL 402.341.1116
FAX 402.341.5895

EXHIBIT

2

R

EXHIBIT B-2

**LEGAL DESCRIPTION OF SANITARY SEWER EASEMENT
(attached)**

L

**LEGAL DESCRIPTION
SANITARY SEWER EASEMENT**

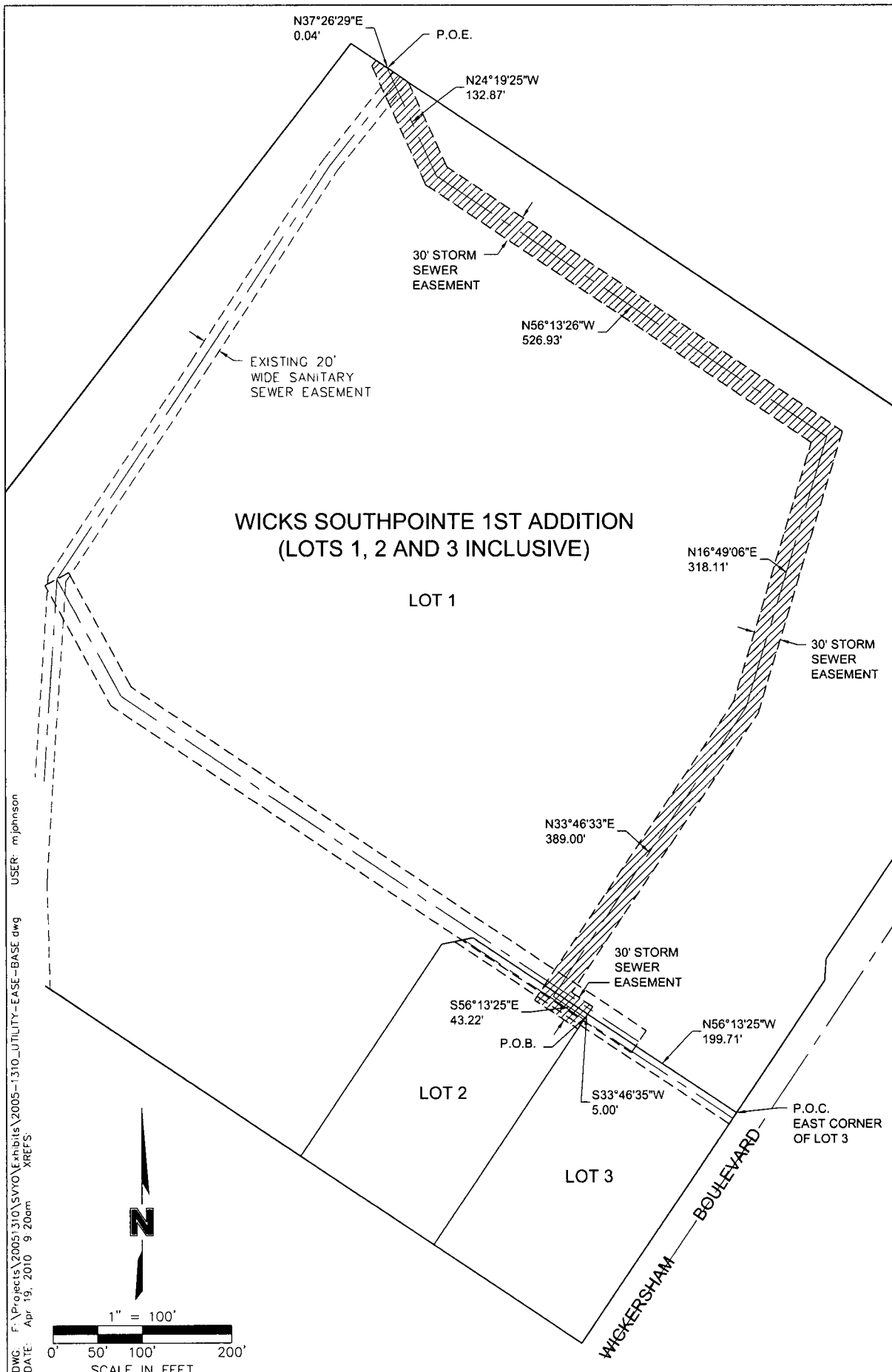
A LEGAL DESCRIPTION FOR A STRIP OF LAND COMPOSED OF A PORTION OF LOTS 1, 2 AND 3, WICKS SOUTHPOINTE 1ST ADDITION, ALL LOCATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERN CORNER OF SAID LOT 3; THENCE NORTHWESTERLY ALONG THE NORTHEAST LINE OF SAID LOT 3 ON AN ASSUMED BEARING OF N56°13'25"W, A DISTANCE OF 134.94' TO A POINT; THENCE N33°46'02"E, A DISTANCE OF 6.00' TO **THE TRUE POINT OF BEGINNING** FOR SANITARY SEWER EASEMENT PURPOSES 30.00' WIDE LYING 15.00' ON EACH SIDE OF THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS; THENCE N56°13'25"W, A DISTANCE OF 697.64' TO A POINT; THENCE N28°26'39"W, A DISTANCE OF 150.29' TO THE POINT OF ENDING. SAID STRIP CONTAINS A CALCULATED AREA OF 25,438.48 SQUARE FEET OR 0.58 ACRES MORE OR LESS.

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EXHIBIT C-1
DEPICTION OF STORM SEWER EASEMENT
(attached)

N



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 DATE: Apr 13, 2010 9:20am
 USER: mjohnson
 XREFS:

PROJECT NO: 005-1310
 DRAWN BY: MRJ
 DATE: 04/13/10

WICKS SOUTHPONTE 1ST ADDITION
STORM SEWER EASEMENT



2111 South 67th Street
 Omaha, NE 68106
 TEL 402.341.1116
 FAX 402.341.5895

EXHIBIT
 3



EXHIBIT C-2

**LEGAL DESCRIPTION OF STORM SEWER EASEMENT
(attached)**

**LEGAL DESCRIPTION
STORM SEWER EASEMENT**

A LEGAL DESCRIPTION FOR A STRIP OF LAND COMPOSED OF A PORTION OF LOTS 1 AND 2, WICKS SOUTHPOINTE 1ST ADDITION, LOCATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 14 NORTH, RANGE 11 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 1, SAID POINT BEING THE MOST EASTERN CORNER OF LOT 3, WICKS SOUTHPOINTE 1ST ADDITION; THENCE NORTHWESTERLY ALONG THE NORTHEAST LINE OF SAID LOT 3 ON AN ASSUMED BEARING OF N56°13'25"W, A DISTANCE OF 199.71' TO THE MOST NORTHERN CORNER OF SAID LOT 3, SAID POINT BEING THE MOST EASTERN CORNER OF LOT 2, WICKS SOUTHPOINTE 1ST ADDITION, THENCE 33°46'35"W ALONG THE SOUTHEAST LINE OF SAID LOT 2, A DISTANCE OF 5.00' TO **THE TRUE POINT OF BEGINNING** FOR STORM SEWER EASEMENT PURPOSES 30' WIDE LYING 15.00' ON EACH SIDE OF THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS; THENCE N56°13'26"W ALONG A LINE 5.00' SOUTH WEST OF AND PARALLEL WITH THE NORTHEAST LINE OF SAID LOT 2, A DISTANCE OF 43.22' TO A POINT, THENCE N33°46'33"E, A DISTANCE OF 389.00' TO A POINT; THENCE N16°49'06"E, A DISTANCE OF 318.11' TO A POINT; THENCE N56°13'26"W, A DISTANCE OF 526.93' TO A POINT; THENCE N24°19'25"W, A DISTANCE OF 132.87' TO A POINT; THENCE N37°26'29"E, A DISTANCE OF 0.04' TO A POINT OF INTERSECTION WITH THE NORTHEAST LINE OF SAID LOT 1, SAID POINT BEING THE POINT OF ENDING, THE SIDE LINES OF SAID STRIP BEING SHORTENED OR LENGTHENED TO TERMINATE AT THE NORTHEAST LINE OF SAID LOT 1. SAID STRIP CONTAINS A CALCULATED AREA OF 42,252.01 SQUARE FEET OR 0.97 ACRES MORE OR LESS.