

718

FILED

201003560  
WASHINGTON COUNTY, STATE OF NEBRASKA

RECORDED September 28, 2010 AT 8:21 A.M.

BOOK 559 PAGE(S) 718-734

*Karen A. Madsen*

REGISTER OF DEEDS

Recorded	<u>      /      </u>
General	<u>      /      </u>
Numerical	<u>      /      </u>
Photostat	<u>      /      </u>
Proofed	<u>      /      </u>
Scanned	<u>      /      </u>

2010 SEP 28 AM 8:21

KAREN A. MADSEN  
WASHINGTON COUNTY  
REGISTER OF DEEDS  
BLAIR, NE

PREPARED BY AND UPON  
RECORDING RETURN TO:  
ERIN O'GARA  
KUTAK ROCK LLP  
1650 FARNAM STREET  
OMAHA, NE 68102-2186  
(402) 346-6000

Blair, NE  
Store No. 4568-00

**TEMPORARY CONSTRUCTION AND GRADING EASEMENT**

**THIS TEMPORARY CONSTRUCTION AND GRADING EASEMENT** (this "Easement") is made this 24 day of September, 2010 by and among **HAYDEN PLACE DEVELOPMENT, LLC** and **CEDAR VALLEY PLACE, LLC** (together with its successors and assigns, "Grantor") and **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("Wal-Mart").

**PRELIMINARY STATEMENTS**

Grantor is the fee simple owner of certain real property legally described on Exhibit A attached hereto (the "Grantor Property") which includes that portion of the Grantor Property legally described on Exhibit B-2 attached hereto and depicted as the shaded area in Exhibit B-1 attached hereto and incorporated herein by reference (the "Easement Area"). Wal-Mart is the fee simple owner of certain real property legally described in Exhibit C attached hereto and incorporated herein by reference (the "Wal-Mart Property"). In connection with Wal-Mart's construction of certain improvements on and in the vicinity of the Wal-Mart Property (collectively, the "Improvements"), Grantor desires to grant to Wal-Mart a temporary exclusive easement for (i) the performance of certain grading and stabilization activities and the installation and maintenance of Erosion Control BMP's (as defined herein) and storm sewer improvements within the Easement Area that are necessary for Wal-Mart's construction of the Improvements, and (ii) the performance of all construction activities incidental to Wal-Mart's construction of the Improvements, including without limitation the operation of equipment, storage of materials and movement of a working force, together with the right of ingress and egress to and from the same, on, over and through the Easement Area, subject to the terms set forth herein. The term "Erosion Control BMP's" shall be mean silt fences, silt dike check dams, erosion control blankets, diversion swales and berms, inlet protections and other similar measures.

4835-1171-5078.2

*Return to*  
Nebraska Land Title & Abstract  
PO Box 6577  
Lincoln NE 68506

718

## AGREEMENT

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

1. **Grant of Easement.** Grantor hereby grants to Wal-Mart, its affiliates, successors, assigns, agents, contractors, licensees and invitees an exclusive easement for (i) the performance of certain grading and stabilization activities, and the installation and maintenance of Erosion Control BMP's and storm sewer improvements within the Easement Area that are necessary for Wal-Mart's construction of the Improvements, and (ii) the performance of all construction activities incidental to Wal-Mart's construction of the Improvements, including without limitation the operation of equipment, storage of materials and movement of a working force, together with the right of ingress and egress to and from the same, on, over and through the Easement Area. Upon the completion of the construction of the Improvements, Wal-Mart shall restore the Easement Area to the same general condition as existed prior to Wal-Mart's construction of the Improvements.

2. **Access; Improvements.** During the term of this Easement, Wal-Mart and/or its agents shall have the sole right to grade and place fill, dirt, earth and other material in and/or remove fill, dirt and earth from the Easement Area, and otherwise improve the Easement Area. 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 Grantor during the term of this Easement without the express approval of Wal-Mart, which Wal-Mart may withhold in its sole discretion. During the term of this Easement, Grantor shall not access, enter upon or otherwise disturb the Easement Area without the express written approval of Wal-Mart, which Wal-Mart may withhold in its sole discretion.

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 Grantor Property and 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. **Term of the Temporary Construction Easement.** This Easement and all interests granted hereby shall terminate and be of no further effect either upon the completion of Wal-Mart's work within the Easement Area and the stabilization of the Easement Area. At the request of Grantor, Wal-Mart will execute and record in the real property records of Washington County, Nebraska, a termination of this Easement upon the expiration of this Easement.

5. **No Rights of Third Parties.** 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. **Indemnity.** Wal-Mart shall indemnify, defend and hold Grantor harmless of and from any and all claims, liabilities, causes of action, charges or expenses of any kind arising from or concerning Wal-Mart's use or occupancy of the Easement Area (excluding claims, liabilities, causes of action, charges or expenses arising from the acts of Grantor).

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



GRANTOR:

**CEDAR VALLEY PLACE, LLC**, a Nebraska limited liability company

By Mary Berg  
Printed Name Mary Berg  
Its Managing Member

STATE OF Nebraska  
COUNTY OF Washington ) ss.

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of September, 2010, by Mary Berg, the Managing Member of Cedar Valley Place, LLC, a Nebraska limited liability company on behalf of the limited liability company.



Randy W. Lock  
Notary Public

My Commission Expires: \_\_\_\_\_

722

WAL-MART:

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

By [Signature]  
John Clarke J. Robert Boy 9/21/2010  
Vice President - Real Estate  
Sr VP - Real Estate, Design, Construction

STATE OF Arkansas

COUNTY OF Benton

)  
) ss.  
)

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of September, 2010 by John Clarke, Vice President - Real Estate, of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust. J. Robert Boy, Sr VP - Real Estate, Design, Construction



[Signature]  
Notary Public  
My commission expires:  
May 27, 2020



**MORTGAGEE CONSENT**

Two Rivers Bank ("Mortgagee") has made a loan (the "Loan") to Hayden Place Development, LLC secured by Real Estate Deed of Trust (with Future Advance Clause) securing a sum not to exceed \$1,300,000, dated September 7, 2007 and filed September 10, 2007 in Book 515, Page 630 in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Grantor Property.

Mortgagee hereby consents to this Easement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Easement, as the same may be amended from time to time.

**MORTGAGEE:**

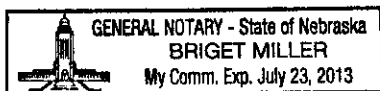
**TWO RIVERS BANK**

By: Randy W Lock  
Name: RANDY W LOCK  
Its: President/CEO  
Date: 9-13-10

STATE OF Nebraska )  
COUNTY OF Washington ) ss.

The foregoing instrument was acknowledged before me this 13 day of September, 2010, by Randy Lock, the President/CEO of Two Rivers Bank a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

[SEAL]



Briget Miller  
Notary Public

My Commission Expires 7-23-10

**MORTGAGEE CONSENT**

Two Rivers State Bank ("Mortgagee") has made a loan (the "Loan") to Jason Berg and Mary Berg, husband and wife, an undivided 1/2 interest and Wayne A. Jones and Holli M. Jones, husband and wife, an undivided 1/2 interest, the predecessor in interest to Hayden Place Development, LLC and Cedar Valley Place, LLC, secured by Deed of Trust with Future Advance Clause to secure the sum of \$975,000 dated October 20, 2006 and filed of record November 6, 2006 in Book 499, Page 278, in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Grantor Property.

Mortgagee hereby consents to this Easement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Easement, as the same may be amended from time to time.

**MORTGAGEE:**

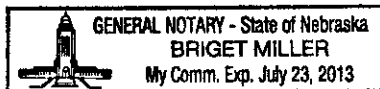
**TWO RIVERS STATE BANK**

By: *Randy W. Lock*  
Name: *Randy W. Lock*  
Its: *President/CEO*  
Date: *9/13/10*

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 13 day of September, 2010, by Randy Lock, the President/CEO of Two Rivers State Bank a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

[SEAL]



*Briget Miller*  
Notary Public

My Commission Expires 7-23-13



**MORTGAGEE CONSENT**

Two Rivers State Bank ("Mortgagee") has made a loan (the "Loan") to Jason Berg and Mary Berg, husband and wife, an undivided 1/2 interest, the predecessor in interest to Hayden Place Development, LLC and Cedar Valley Place, LLC, and Wayne A. Jones and Holli M. Jones, husband and wife, an undivided 1/2 interest secured by Construction Security Deed of Trust With Future Advance Clause to secure the sum not to exceed \$1,900,000 dated November 6, 2006 and filed of record November 17, 2006 in Book 500, Page 113, in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Grantor Property.

Mortgagee hereby consents to this Easement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Easement, as the same may be amended from time to time.

**MORTGAGEE:**

**TWO RIVERS STATE BANK**

By: *Randy W. Lock*  
Name: *Randy W. Lock*  
Its: *President/CEO*  
Date: *9-13-10*

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 13 day of September 2010, by Randy Lock, the President/CEO of Two Rivers State Bank a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

[SEAL]



*Briget Miller*  
Notary Public

My Commission Expires 7-23-13

**MORTGAGEE CONSENT**

Two Rivers Bank ("Mortgagee") has made a loan (the "Loan") to Hayden Place Development, LLC secured by Real Estate Deed of Trust (With Future Advance Clause) to secure the sum not to exceed \$1,300,000 dated October 14, 2008 and filed of record October 27, 2008 in Book 531, Page 311, in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Grantor Property.

Mortgagee hereby consents to this Easement and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, and conditions contained in this Easement, as the same may be amended from time to time.

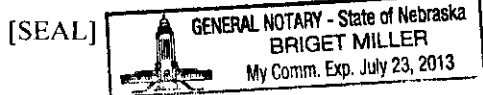
**MORTGAGEE:**

**TWO RIVERS BANK**

By: *Randy W. Lock*  
Name: Randy W. Lock  
Its: President/CEO  
Date: 9-13-10

STATE OF Nebraska  
COUNTY OF Washington ) ss.

The foregoing instrument was acknowledged before me this 13 day of September, 2010, by Randy Lock, the President/CEO of Two Rivers Bank, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.



*Briget Miller*  
Notary Public

My Commission Expires 7-23-13



**EXHIBIT A**  
**GRANTOR PROPERTY**

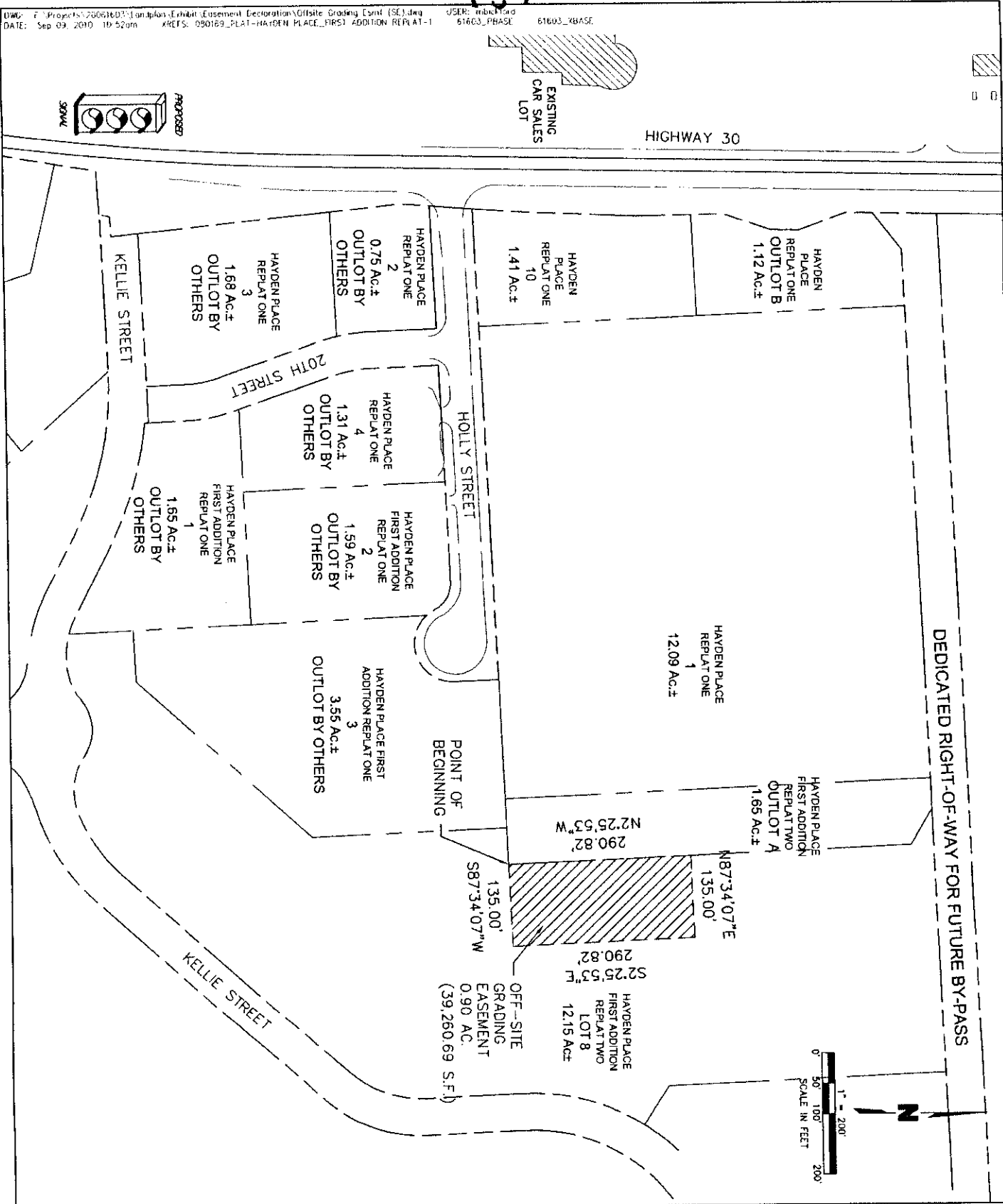
Lot 8, Hayden Place First Addition Replat Two, City of Blair, Washington County, Nebraska

730

**EXHIBIT B-1**  
**DEPICTION OF EASEMENT AREA**  
**SEE ATTACHED**

731

DWG: F:\Projects\1606\1607\1607\Exhibit\Exhibit\Exhibit\Grading\Grading (SE).dwg USER: mdb\mdb  
DATE: Sep 09, 2010 10:52am XREFS: 090163\_PLAT-HAYDEN PLACE FIRST ADDITION REPLAT-1 61603\_PHASE 61603\_XBASE



PROJECT NO: 006-1603  
 DRAWN BY: MDB  
 DATE: 7/15/2010

**EXHIBIT B-1**  
 TEMPORARY CONSTRUCTION  
 AND GRADING EASEMENT

**OLSSON ASSOCIATES**  
 2111 South 67th Street  
 Suite 200  
 Omaha, NE 68106  
 TEL 402.341.1116  
 FAX 402.341.5895

731

732

**EXHIBIT B-2**  
**LEGAL DESCRIPTION OF EASEMENT AREA**  
**SEE ATTACHED**

DWG: F:\Projects\20061603-Landplan\Exhibit\Easement Declaration\Offsite Grading Easmt (SL).dwg USLR: mbirkford  
 DATE: Jul 15, 2010 2:18pm XPLTS: 080769\_PLAT-HAYDEN PLACE FIRST ADDITION REPEAT-1 61603\_PBASE 61603\_XBASE

A TRACT OF LAND LOCATED ON HAYDEN PLACE FIRST ADDITION, REPLAT TWO LOT 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF HAYDEN PLACE FIRST ADDITION, REPLAT TWO LOT OUTLOT A, SAID POINT ALSO BEING THE POINT OF BEGINNING, THENCE NORTHERLY ALONG THE EAST LINE OF SAID OUTLOT A ON AN ASSUMED BEARING OF N02°25'53"W, 290.82 FEET; THENCE N87°34'07"E, 135.00 FEET; THENCE S02°25'53"E, 290.82 FEET; THENCE S87°34'07"W, 135.00 FEET; TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINING 0.90 ACRES (39,260.69 SQ. FT.) MORE OR LESS.

PROJECT NO: 006-1603

DRAWN BY: MDB

DATE: 6/18/2010

**EXHIBIT B-2**  
 TEMPORARY CONSTRUCTION  
 AND GRADING EASEMENT



2111 South 67th Street  
 Suite 200  
 Omaha, NE 68106  
 TEL 402.341.1116  
 FAX 402.341.5895



734

**EXHIBIT C**

**WAL-MART PROPERTY**

Lot 1, Hayden Place Replat One, Outlot B, Administrative Lot Line Adjustment of Outlot B and Lot 10,  
Hayden Place Replat One and Outlot A, Hayden Place First Addition Replat Two, City of Blair,  
Washington County, Nebraska