



MISC 2012089857

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SEP 07 2012 13:17 P 7

Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 9/7/2012 13:17:07.51



2012089857

When Recorded Return To:

B-Hans-Ipson
 Kutak-Rock-LLP
 4650-Farnam-Street
 Omaha-NE-68102-2486
 (402)-346-6000~

Nebraska Land Title & Abstract
 PO Box 6577
 Lincoln NE 68506

Omaha, NE (NHM 50th & L)
 Store No. 3172

PERMANENT EASEMENT FOR TRAFFIC SIGNAL FACILITIES

This **PERMANENT EASEMENT FOR TRAFFIC SIGNAL FACILITIES** (this "Easement") is made as of the Effective Date, as defined herein, by **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("Grantor"), and **THE CITY OF OMAHA, NEBRASKA**, a Nebraska municipal corporation ("Grantee"). The "Effective Date" of this Easement is the date that the same is duly executed, acknowledged and delivered by Grantor and Grantee. Grantor, Grantee and their respective successors and assigns are herein referred to individually as a "Party" and, collectively, as the "Parties."

PRELIMINARY STATEMENTS

Grantor is the fee simple owner of the real property legally described in Schedule A attached hereto (the "**Grantor Property**"). Grantor has made certain modifications to the traffic signal at the intersection of 50th Street and L Street in Omaha, Nebraska and, in connection therewith, has installed certain traffic signal facilities, including subsurface electrical components and detection loops (collectively, the "**Facilities**"), upon a portion of the Grantor Property depicted and legally described in Schedule B attached hereto (the "**Easement Area**"). Grantor desires to grant to Grantee, and any licensee of Grantee, a permanent easement to use, maintain, repair and replace the Facilities located within the Easement Area as set forth herein, 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 and Grantee hereby agree as follows:

Section 1. Grant of Permanent Easement for Traffic Signal Facilities. Subject to matters of record, Grantor, for itself, its successors and assigns, hereby grants and declares, for the benefit of Grantee, its licensees, successors and assigns, a perpetual, non-exclusive easement to access the Easement Area for the purpose of using, maintaining, repairing and replacing the Facilities, subject to the terms and conditions of this Easement.

Section 2. Improvements. No buildings, improvements, structures or other impediments which would materially, adversely affect the use or enjoyment of the rights granted herein shall be placed in, on, over or across the portions of the Easement Area on which the Facilities are situated during the term of this Easement. Notwithstanding the forgoing, Grantor may construct and maintain driveways, parking areas, landscaping and walkways upon the Easement Area. Grantor shall restore any public walkways placed over, across and above the Easement Area as nearly as is reasonably possible to its original contour within a reasonable time after any work is performed.

Section 3. Maintenance and Restoration of Easement Area. Grantee shall be responsible for the maintenance, repair and replacement of the Facilities placed in the Easement Area, and Grantee shall expeditiously perform any such repair, maintenance or replacement required to maintain the Facilities in proper working order during the term of this Easement. Grantee agrees to use due care in exercising any of the rights granted pursuant to this Easement and in the use, repair, replacement and maintenance of the Facilities as provided for herein so as not to unreasonably disturb Grantor's use and enjoyment of the Grantor Property. Grantee agrees to return the Easement Area to the condition which existed prior to Grantee's repair, replacement or maintenance of the Facilities 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 activities by Grantee.

Section 4. Binding Upon Property. The easements, restrictions, rights and obligations created pursuant to the terms of this Easement shall be binding upon the Easement Area, including future subdivisions and/or reconfigurations of such property, 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.

Section 5. 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.

Section 6. Title. Subject to matters of record, Grantor confirms with Grantee and its assigns that 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.

Section 7. Notice. All notices, requests, demands and other communications required or permitted under this Easement must be in writing and will be deemed to have been delivered, received and effective: (i) on the date of service, if served by hand delivery or by facsimile on the party to whom notice is to be given; or (ii) on the date that is the next business day after deposit of the notice properly addressed to the party at the address shown below, if sent by overnight Federal Express or equivalent overnight delivery; or (iii) three days after deposit of the notice properly addressed, if sent by U.S. certified mail, return receipt requested. The addresses, telephone numbers, and facsimile numbers shown below are the places and

numbers for delivery of all notices. Each party may change the place or number for delivery of notice by notifying the other party.

If to Grantor: Wal-Mart Real Estate Business Trust
c/o Wal-Mart Stores, Inc.
Attention: Realty Manager—Nebraska (Store No. 3172-00)
2001 S.E. 10th Street
Bentonville, AR 72716-0550
Facsimile: (479) 204-0496

with copy to: B. Hans Ipson
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186
Facsimile: (402) 346-1148

If to Grantee: City of Omaha
Public Works Department
1819 Farnam Street
Omaha, NE 68183

Section 8. Governing Law. This Easement will be governed by and construed in accordance with the procedural and substantive laws of the State of Nebraska.

Section 9. Severability. If any provision of this Easement or the application of this Easement to any party to this Easement or any other person is held to be invalid, void or illegal, the remaining provisions will nonetheless remain in full force and effect and not be affected by the invalidity or illegality.

Section 10. Authority. Each person executing this Easement personally represents and warrants that he or she has the requisite authority to bind the party on whose behalf the Easement is being executed.

Section 11. Amendments. This Easement may be amended only by a recordable written instrument properly executed and notarized on behalf of Grantor and Grantee or their respective successors and assigns.

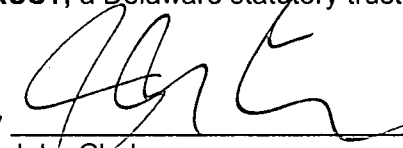
Section 12. Counterparts. The Easement may be executed in any number of counterparts, whether by original, copy or telecopy signature, and each counterpart of this Easement so executed shall, taken together, comprise one and the same original document.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have executed this Easement as of the Effective Date.

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

By



John Clarke

Vice President – Real Estate

Date

August 29, 2012

ACKNOWLEDGEMENT

STATE OF ARKANSAS

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ss.

COUNTY OF BENTON

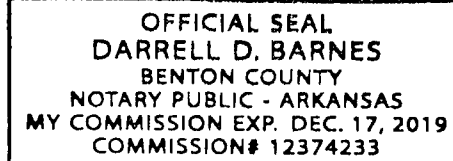
)

The forgoing instrument was acknowledged before me on this 29th day of August, 2012 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: _____



IN WITNESS WHEREOF, the parties have executed this Easement as of the Effective Date.

CITY OF OMAHA, NEBRASKA

Mayor

Date

ATTEST:

City Clerk

Date

APPROVED AS TO FORM:

Assistant City Attorney

Date

STATE OF NEBRASKA

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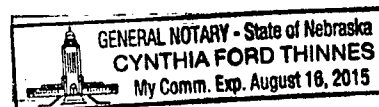
) ss.

COUNTY OF DOUGLAS

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On this 6th day of September, 2012, before me, a Notary Public in and for said County and State, personally appeared Jim Suttle, Mayor of the City of Omaha, Nebraska, who executed the above and acknowledged the execution thereof to be his voluntary act and deed on behalf of said City.

Cynthia Ford Thinnies
NOTARY PUBLIC
My Commission expires 8/16/15

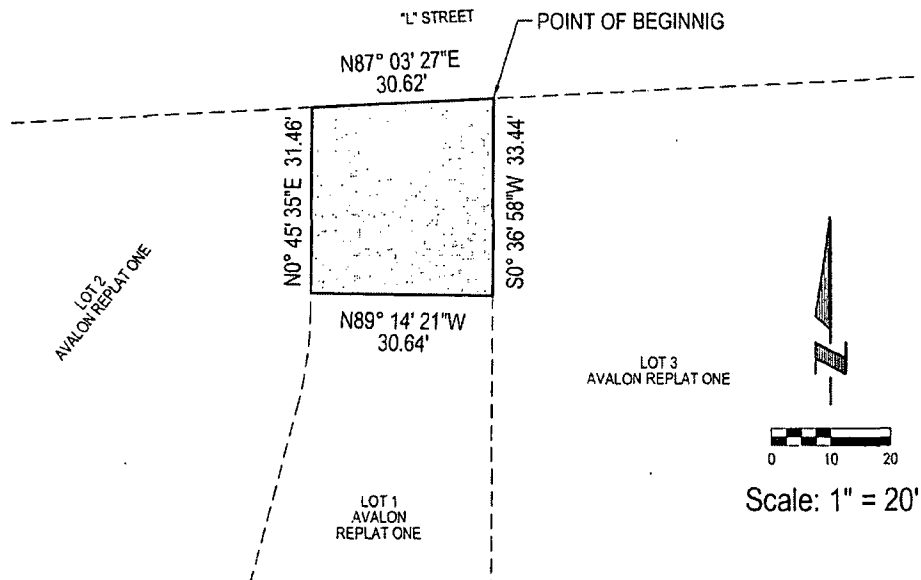


SCHEDULE A
LEGAL DESCRIPTION OF GRANTOR PROPERTY

Lots 1, 2, 4, and Outlot A, Avalon Replat One, Douglas County, Nebraska

SCHEDULE B

DESCRIPTION OF EASEMENT AREA



LEGAL DESCRIPTION OF TRAFFIC SIGNAL FACILITIES EASEMENT AREA:

A PERMANENT TRAFFIC SIGNAL FACILITIES EASEMENT AREA LOCATED IN LOT 1, AVALON REPLAT ONE, A SUBDIVISION LOCATED IN THE SE1/4 OF SECTION 6, TOWNSHIP 14 NORTH, RANGE 13 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT NORTHEAST CORNER OF SAID LOT 1, AVALON REPLAT ONE, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT 3, SAID AVALON REPLAT ONE AND ALSO ON THE SOUTHERLY RIGHT-OF-WAY LINE OF "L" STREET; THENCE S00°36'58"W (ASSUMED BEARING) ALONG THE EAST LINE OF SAID LOT 1, AVALON REPLAT ONE, SAID LINE ALSO BEING THE WEST LINE OF SAID LOT 3, AVALON REPLAT ONE, A DISTANCE OF 33.44 FEET; THENCE N89°14'21"W, A DISTANCE OF 30.64 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 1, AVALON REPLAT ONE, SAID LINE ALSO BEING THE EASTERLY LINE OF LOT 2, SAID AVALON REPLAT ONE; THENCE N00°45'35"E ALONG SAID NORTHERLY LINE OF LOT 1, AVALON REPLAT ONE, SAID LINE ALSO BEING SAID EASTERLY LINE OF LOT 2, AVALON REPLAT ONE, A DISTANCE OF 31.46 FEET TO THE NORTHEAST CORNER OF SAID LOT 2, AVALON REPLAT ONE, SAID POINT ALSO BEING ON THE SAID SOUTHERLY RIGHT-OF-WAY LINE OF "L" STREET; THENCE N87°03'27"E ALONG SAID NORTHERLY LINE OF LOT 1, AVALON REPLAT ONE, SAID LINE ALSO BEING SAID SOUTHERLY RIGHT-OF-WAY LINE OF "L" STREET, A DISTANCE OF 30.62 FEET TO THE POINT OF BEGINNING.

SAID PERMANENT STORMWATER EASEMENT CONTAINS AN AREA OF 993 SQUARE FEET OR 0.023 ACRES MORE OR LESS.

	E&A CONSULTING GROUP, INC. ENGINEERING • PLANNING • FIELD SERVICES <small>3301 KOTTER LANE STREET, DAWA, NE 68054 PHONE: (402) 325-4700</small>		TRAFFIC SIGNAL FACILITIES EASEMENT AREA LOT 1, AVALON REPLAT ONE SE1/4 SECTION 6, T14N, R13E DOUGLAS COUNTY, NEBRASKA
	Drawn by: FCE	Chkd by:	
Job No.: 2011.182.008		Date: 05/10/12	Book No.: XXXXX