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FILED SARPY CO. NE.
 INSTRUMENT NUMBER
2009-07438

2009 MAR 19 A 10:24

Glenn J. Dowling
 REGISTER OF DEEDS

When recorded return to:
 Margot J. Wickman, Esq.
 Kutak Rock LLP
 1650 Farnam Street
 Omaha, NE 68102-2186
 (402) 346-6000

Gretna, Nebraska
 Wal-Mart Store # 4600-00

FIRST AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

THIS FIRST AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND (this "Amendment") is made as of the 22nd day of October, 2008, by and among WESTERN LAND COMPANY, L.L.C., a Nebraska limited liability company ("Developer") and WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware Statutory Trust ("Wal-Mart").

WITNESSETH:

WHEREAS, the Developer and Wal-Mart previously executed and recorded that certain Easements with Covenants and Restrictions Affecting Land dated October 2, 2007 and filed with the Sarpy County, Nebraska Register of Deeds on October 9, 2007 as Instrument No. 2007-30877 (the "ECR");

WHEREAS, Wal-Mart is the fee simple owner of the Wal-Mart Tract (as defined in the ECR) and Developer is the fee simple owner of the Developer Tract (as defined in the ECR);

WHEREAS, pursuant to Section 14 of the ECR, the ECR may be modified only by the mutual agreement of Wal-Mart, so long as Wal-Mart or its affiliate has any interest as either owner of Lessee of the Wal-Mart Tract, and Developer, so long as Developer or its affiliate has any interest as either owner or lessor of the Developer Tract; and

WHEREAS, Wal-Mart and Developer desire to amend the ECR to, among other things, (a) permit Buildings to be built for hotel or motel use on Lot 4 and Lot 5 of the Shopping Center, (b) increase the maximum permitted height of hotel or motel buildings constructed on Lot 4 or Lot 5; (c) to increase the maximum total floor space per acre for hotel or motel buildings constructed on Lot 4 and Lot 5; (d) to provide for specific minimum parking requirements applicable to hotel or motel buildings constructed on Lot 4 and Lot 5, all as more particularly set forth below.

A

A G R E E M E N T :

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Wal-Mart do hereby agree as follows:

1. Definitions. Capitalized terms used herein but not defined herein shall have the meaning given to them in the ECR.

2. Use. Section 2 of the ECR is hereby amended by inserting the following sentence at the end of such section:

“Notwithstanding anything to the contrary contained herein, Buildings on either or both of Lot 4 or Lot 5 (as such lots are depicted on Exhibit A-1 attached hereto and legally described on Exhibit C attached hereto) in the Shopping Center shall, in addition to any other use permitted herein, be permitted to be used for the operation of a hotel or motel.”

3. Outparcel Development; Maximum Height of Buildings. Section 4.5(1) of the ECR is hereby amended by inserting the following sentence at the end of such section:

“Notwithstanding anything to the contrary contained herein, the height of any hotel or motel Buildings constructed on Lot 4 or Lot 5 of the Outparcels shall not exceed the lesser of four (4) stories or sixty (60) feet, as measured from the mean finished elevation, including mechanical equipment, incidental peaks and canopy features which are also subject to the height limitation.”

4. Outparcel Development; Building Size. Section 4.5(2) of the ECR is hereby amended by inserting the following sentence at the end of such section:

“Notwithstanding anything to the contrary contained herein, hotel or motel Buildings constructed on Lot 4 or Lot 5 of the Outparcels shall not have a ground floor in excess of 20,000 square feet in total floor space.”

5. Outparcel Parking Ratio. Section 6.6 of the ECR is hereby amended by inserting the following new subsection (iv) at the end of the first sentence thereof:

“(iv) for any hotel or motel (which use is restricted to Lot 4 or Lot 5 of the Outparcels), (aa) one (1) space for each unit that is designated for overnight occupancy located within such hotel or motel Building, and (bb) for any other space within such hotel or motel, such minimum spaces as otherwise are required by this subsection.”

6. Exhibit A-1. Exhibit A-1 to the ECR is hereby amended by substituting the exhibit attached hereto and by this reference incorporated herein as Exhibit A-1 for the exhibit initially attached as Exhibit A-1 to the ECR.

B

7. Rights of Successors. This Amendment shall bind and inure to the benefit of the parties hereto and their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

8. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by Developer and Wal-Mart and filed of record in Sarpy County, Nebraska, there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded.

9. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document and in no way affect the terms and provisions hereof.

10. Entire Agreement. This Amendment constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Amendment once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document. Except as modified by this Amendment, all provisions of the ECR shall continue in full force and effect. This Amendment may be executed in one or more counterparts each of which in the aggregate shall constitute one and the same instrument.

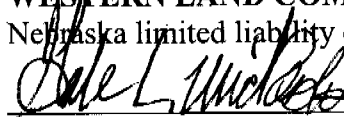
11. Severability. In the event any provision or portion of this Amendment is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

C

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first written above.

DEVELOPER:

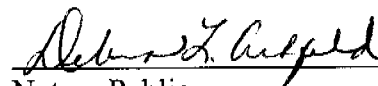
WESTERN LAND COMPANY, L.L.C., a
Nebraska limited liability company

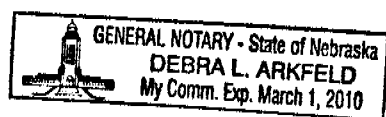


Gale L. Wickersham
Managing Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 3rd day of October, 2008, by Gale L. Wickersham, the Managing Member of Western Land Company, LLC, a Nebraska limited liability company, on behalf of the limited liability company.


Notary Public

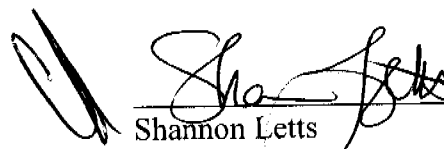


D

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first written above.

WAL-MART:

**WAL-MART REAL ESTATE
BUSINESS
TRUST**, a Delaware Statutory Trust



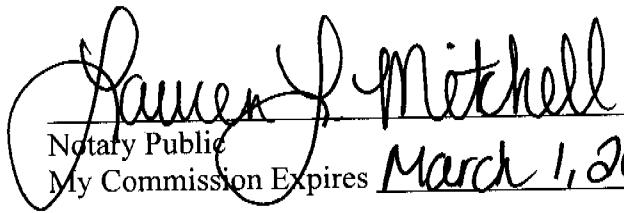
Shannon Letts
Regional Vice President
Design and Real Estate

STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)

The foregoing instrument was acknowledged before me this 22nd day of October, 2008, by Shannon L. Letts, Regional Vice President, Design and Real Estate of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

[SEAL and Expiration Date]

LAUREN L. MITCHELL
Notary Public - Arkansas
Benton County
My Commission Expires March 1, 2017
Commission # 12359078



Notary Public
My Commission Expires March 1, 2017

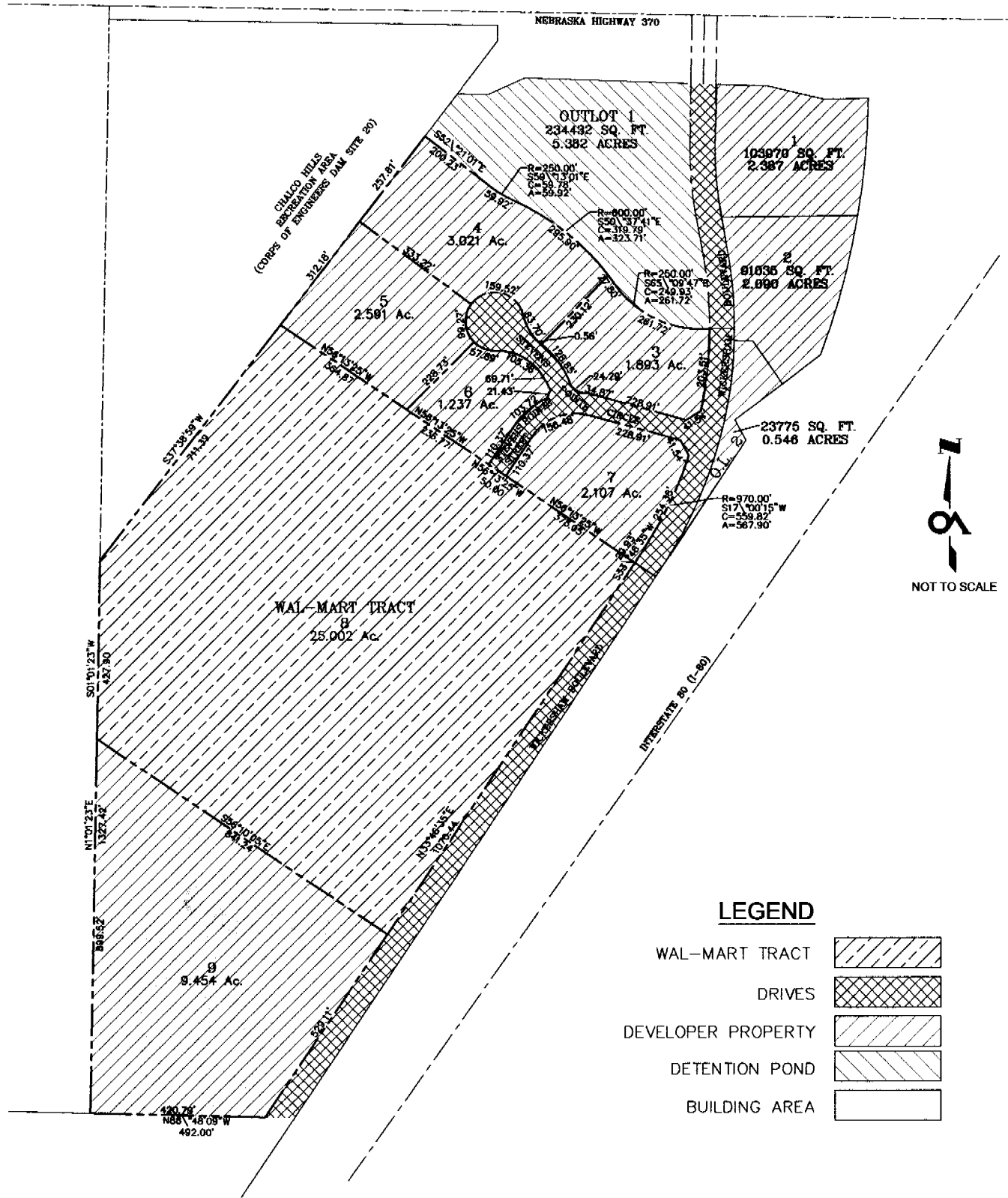
E

EXHIBIT A-1
[Substituted Exhibit A-1 to ECR]

2009-07438F

LEGAL DESCRIPTION

LOTS 1 THROUGH 9, WICKS SOUTHPOINTE, A SUBDIVISION AS SURVEYED, PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA, EXCEPT FOR THAT PART OF SAID LOTS 7 AND 8 AS REFERRED TO IN THE PLAT AND DEDICATION FOR STREET, RECORDED AS INSTRUMENT NO. 2007-26198, RECORDS OF SARPY COUNTY, NEBRASKA.



LEGEND

- WAL-MART TRACT
- DRIVES
- DEVELOPER PROPERTY
- DETENTION POND
- BUILDING AREA

DATE: Mar 03, 2009 1:49pm XREFS:

PROJECT NO: 005-1310	EASEMENT WITH COVENANTS & RESTRICTIONS AFFECTING LAND	MOLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JJV		2120 South 72nd Street Suite 1400 Omaha, NE 68124-6316 TEL 402.341.1116 FAX 402.341.5895	A-1
DATE: 12/22/08			