



1324 501 MISC



01127 00 501-530

Nebr Doc Stamp Tax
Date
\$
By

RICHARD N TAKECH
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

00 JAN 21 PM 3:48

RECEIVED

**THIS PAGE INCLUDED FOR INDEXING
PAGE DOWN FOR BALANCE OF INSTRUMENT**

1127
m 15400 OC-32931
15400
15400 15400 15400
15400 15400 15400

**EASEMENTS WITH COVENANTS AND
RESTRICTIONS AFFECTING LAND ("ECR")**

THIS AGREEMENT is made as of the 20th day of January, 2000, between WAL-MART STORES, INC., a Delaware corporation, of 702 S.W. Eighth Street, Bentonville, Arkansas 72716 ("Wal-Mart"), and Lanoha-Center Development, Inc., a Nebraska corporation, of 19111 West Center Road, Omaha, Nebraska ("Developer").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of Lot 2 of Ridgeview, a subdivision as surveyed, platted and recorded, Douglas County, Nebraska (hereinafter "Tract 1") as shown on the plan attached hereto as Exhibit A hereof (the "Site Plan"), said tract being more particularly described in Exhibit B attached hereto;

WHEREAS, Developer is the owner of Lot 18 of Ridgeview Subdivision, Douglas County, Nebraska (hereinafter "Tract 2"); and Lot 1 and Lots 3 through Lot 17, of Ridgeview Subdivision, Douglas County, Nebraska (hereinafter, collectively, the "Outparcel(s)") shown on the plan attached hereto as Exhibit A hereof, the same being more particularly described in Exhibit C hereof; and

WHEREAS, Wal-Mart and Developer desire that Tracts 1 and 2 be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial Shopping Center (sometimes hereinafter referred to as the "Shopping Center"), and further desire that said tracts and the Outparcel(s) be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart and Developer do hereby agree as follows:

9951010445

1. Building/Common Areas.

- a. "Building Areas" as used herein shall mean that portion of Tract 1 and those portions of Tract 2 and the Outparcel(s) shown on Exhibit A as "Building Area". Canopies may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas.
- b. "Common Areas" shall be all of Tracts 1 and 2 except the Building Areas.
- c. Conversion to Common Areas: Those portions of the Building Areas on Tract 1 and Tract 2 which are not from time to time used or cannot, under the terms of this Agreement, be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein; provided, however, that the owner of Tract 1 and Tract 2 may reconvert such areas to Building Areas at any time upon written notice to the owner of the other Tract and constructing buildings or improvements thereof.

2. Use.

- a. Restrictions. Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices, and retail stores. No theatre, bowling alley, adult book store, adult theatre, adult amusement facility, or any facility selling or displaying pornographic material, billiard parlor, night club or other place of recreation or amusement, or any business which derives more than fifty percent (50%) of its annual revenues from the sale of alcoholic beverages shall occupy space within the Shopping Center; provided, however, this restriction shall not apply to a business which sells alcoholic beverages on an "off-sale" basis only or to sports bars or to

cocktail lounges less than 4,000 square feet on Tract 2. Developer recognizes that said businesses may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business.

Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Wal-Mart on Tract 1. Developer recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its business on Tract 1; and Developer hereby waives any legal action for damages or for equitable relief which might be available to Developer because of such cessation of business activity by Wal-Mart.

- b. **Wal-Mart Store.** Any construction of a Wal-Mart Store on Tract 1 must be similar in appearance to the Wal-Mart Store on Edgewood Road in Cedar Rapids, Iowa and generally in conformity with the Retail Store Conceptual Site Plan, Option 13, (Job #13774.0 DWG Name 3774-13), dated August 18, 1999, prepared by CEI Engineering, Inc. attached hereto as Exhibit D ("Conceptual Store Plan"), subject to any changes required by or in response to governmental authorities; provided, however, that the Wal-Mart Store may be between 190,000 square feet and 220,000 square feet in size. Nothing in this Agreement shall be construed to require Wal-Mart to construct or operate a store on Tract 1.
- c. **Construction of Wal-Mart Store.** In consideration of Developer's sale of Tract 1 to Wal-Mart, Wal-Mart hereby agrees that in the event that Wal-Mart (or its successors and assigns) fails to secure necessary building permits and fails to commence construction of a building foundation for a Wal-Mart store on Tract 1 on or before the date which is three (3) years following the date of

closing of Tract 1, Developer shall have the option to repurchase Tract 1 from its then current owner under the following terms and conditions:

i. The purchase price shall be equal to the gross purchase price which Wal-Mart paid to Developer for Tract 1 as reflected in the closing statement for the sale and purchase of Tract 1 pursuant to the Purchase Agreement between Wal-Mart and Developer (the "Purchase Agreement") plus Wal-Mart's reasonable development costs with respect to Tract 1;

ii. All prorations and closing costs shall be allocated between the Developer and Wal-Mart in the same manner as provided in the Purchase Agreement;

iii. All liens and encumbrances (except for this Agreement) placed upon Tract 1 following Developer's transfer of Tract 1 to Wal-Mart shall be discharged or a corresponding amount of funds as necessary to discharge such liens and encumbrances shall be applied as a credit to the purchase price; and

iv. Developer must notify the owner of Tract 1 of the exercise its option to repurchase Tract 1 within the sixty (60) day period commencing on the third anniversary of the closing date of Tract 1 by written notice to the owner of Tract 1 and by filing of a duplicate of such written notice with the Douglas County Register of Deeds, both within such 60 day period, with the closing to occur thirty (30) days following such notice. If such notice and recordation are not timely given and made by Developer within such sixty (60) day period, this option shall terminate and be of no further force or effect. This option shall also be of no further force or effect if Wal-Mart secures the necessary building permits and commences construction of a building foundation for a Wal-Mart store on Tract 1 within the three (3) year period commencing on the closing date of Tract 1.

Nothing in this Agreement shall be construed to require Wal-Mart to construct or operate a store on Tract 1.

3. **Competing Business.** Developer covenants that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of Tract 1, either as owner or lessee, no space in or portion of Tract 2, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Developer, shall be leased or occupied by or conveyed to any other party for use as a discount department store or other discount store or a store selling groceries if the square footage of floor space devoted to groceries exceeds 5,000 square feet; provided, however, that discount department store or other discount store shall not include, without limitation, Staples, Best Buy, Petco, Pharmor, Pep Boys, Circuit City, or Lowes, Menards or other home improvements store, or any store (regardless if it was otherwise deemed a discount department store or other discount store) less than 55,000 square feet of floor space. In the event of a breach of this covenant, Wal-Mart shall have the right, in its sole discretion, to terminate any or all of the easements granted to the Owner of Tract 2 (but not the obligations imposed upon the Owner of Tract 2) in this Agreement and to seek any and all remedies afforded by either law or equity.

4. **Buildings.**

- a. **Design and Construction.** The Building Areas on Tract 1 and Tract 2 shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one Tract onto another Tract except as provided for in Subsection d. below. The design and construction shall be of high quality. No building on Tract 1 or Tract 2 shall exceed thirty-five feet (35') in height above finished grade. No building shall have a metal exterior.
- b. **Location.** No structure of any type or building shall be constructed on Tracts 1 and 2 (as either immediate development or future expansion) except within the Building Areas without the prior written consent of Wal-Mart and

Developer. The front wall(s) of the building(s) on Tract 1 and Tract 2 shall be constructed in the Building Areas shown in Exhibit A.

- c. **Fire Protection.** Any building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other buildings in the Shopping Center.
- d. **[Intentionally Left Blank]**
- e. **Outparcel(s) Development.** The Outparcel(s) shall be developed only under the following guidelines:
 - (1) The buildings constructed on the Outparcel(s) shall not exceed twenty-five (25) feet in height (excluding rooftop HVAC and similar equipment) except for Lots 1, 3, 4 and Lots 12 through 17, inclusive, as shown on Exhibit A, which must only comply with applicable zoning requirements. The height of a building shall be measured from the top of the curb on the highest point on the Outparcel(s);
 - (2) Any buildings to be constructed on the Outparcel(s) shall not exceed square footage limitations imposed by applicable zoning requirements.
 - (3) Any rooftop equipment shall be screened in a manner satisfactory to the Developer;
 - (4) No rooftop sign shall be erected on the building constructed;
 - (5) No freestanding identification sign may be erected on the Outparcel(s) in violation of applicable zoning requirements, and in no event shall such freestanding identification sign exceed the height of the shopping center pylon sign or materially block the visibility of the Wal-Mart Store. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3'3" in height, the type and location of such signs to be approved by Developer.

- (6) No improvements shall be constructed, erected, expanded or altered on the Outparcel(s) until the plans for same (including site layout, exterior building materials and colors and parking) have been approved in writing by Developer. No building or structure of any kind shall be erected on the Outparcel(s) except within that area designated as a Building Area on the Site Plan; provided, there may be constructed and maintained a canopy or canopies projecting from said Building Area; normal foundations and doors for ingress and egress may project from such Building Area; and signs may be erected upon said canopy or canopies, so long as said signs do not obstruct the signs of any other owner or tenant of the Shopping Center.
- (7) In developing and using the Outparcel(s), the owner of the Outparcel(s) shall continuously provide and maintain a parking ratio on such Outparcel(s) equal to not less than six (6) spaces for every one thousand (1,000) square feet of building space except that any restaurant use shall have no less than twelve (12) spaces for every one thousand (1,000) square feet of building space. In addition, each Owner of the Outparcel(s) shall cause landscaping areas to be added and maintained in conjunction with any building or other improvement constructed on the Outparcel(s).
- (8) The Outparcel(s) shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.
- (9) All buildings, structures, improvements on the Outparcel(s) shall be used for retail or commercial purposes only. No theatre, bowling alley, billiard parlor, nightclub or other place of recreation or amusement, or any business which derives more than fifty percent (50%) of its annual revenues from the sale of alcoholic beverages shall occupy space on the Outparcel(s), provided, however, this restriction shall not apply to a

business which sells alcoholic beverages on an "off-sale" basis only or to sports bars or to cocktail lounges less than 4,000 square feet on Lots 12 through 17. As long as Wal-Mart or any affiliate of Wal-Mart is the user of Tract 1, either as owner or lessee, no space in or a portion of the Outparcel(s) shall be leased or occupied by or conveyed to any other party for use as a discount department store or other discount store selling groceries if the square footage of floor space devoted to groceries exceeds 5,000 square feet; provided, however, that discount department store or other discount store shall not include, without limitation, Staples, Best Buy, Petco, Pharmor, Pep Boys, Circuit City, or Lowes, Menards or other home improvements store, or any store (regardless if it was otherwise deemed a discount department store or other discount store) less than 55,000 square feet of floor space.

- (10) The owner(s) of the Outparcel(s) or Developer shall maintain comprehensive public liability insurance, property damage and all-risk hazard insurance on the Outparcel(s) and their buildings, appurtenances and other improvements located thereon. Such insurance shall (i) be carried with reputable companies licensed to do business in the state in which the Outparcel(s) are located; (ii) have liability limits of at least \$2,000,000.00 for each occurrence, bodily injury and property damage combined; (iii) provide for full replacement value for the buildings and improvements covered thereunder and (iv) not be subject to change, cancellation or termination without at least thirty (30) days prior written notice to Developer.

- f. **Additional Rules Regarding Outparcel(s) Development.** No buildings or structures may be erected on any of Lots 1 and Lots 12 through 17 except within the areas designated as a "Building Area" on Exhibit A for such Lots.

The Outparcels designated as Lots 3 through 11 shall be restricted and may not be combined except as follows:

- (1) With respect to Lots 3 through 11, all side yards for all such Lots shall be the greater of (a) 20 feet or (b) the size required by City ordinances; provided, however, that if a side yard on any such particular Lot is at least 50 feet, then the other side yard on such Lot shall be the greater of (x) 10 feet or (y) size required by City ordinances. No buildings or structures shall be erected in such side yards.
- (2) Lot 3 and Lot 4 may be combined; provided, however, that in the event Lots 3 and 4 are so combined into one (1) Lot, the building setback from the north lot line of Lot 4 must be 45 feet.
- (3) Lot 6 may not be combined with any other Lot without the written consent of Wal-Mart, but the interior lot lines of Lot 6 may be moved either (i) east or west or (ii) north or south up to 20 feet.
- (4) With respect to Lots 6, 7, 8, 9, 10 and 11, the front footage of buildings erected along West Center Road shall not exceed 718.84 feet in the aggregate.
- (5) With respect to Lots 3, 4, 5 and 6, the front footage of buildings erected along 180th Street shall not exceed 634.79 feet in the aggregate.
- (6) Lot 9 cannot be combined with any other Lot. In addition, the front footage of buildings erected on Lot 9 must be between 170 feet and 210 feet.
- (7) The common lot line of Lot 7 and Lot 8 may be modified and such Lots may be combined without restriction.
- (8) The common lot line of Lot 10 and Lot 11 may be modified and such Lots may be combined without restriction.

The restrictions set forth in this Subsection f. are in addition to, and not in lieu of, other restrictions set forth in this Agreement or otherwise applicable to such Lots pursuant to law.

5. Common Areas.

- a. Grant of Easements. Each of Wal-Mart and Developer, as grantor, hereby grants to the other party, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of grantee, a nonexclusive easement over, through and around the Common Areas situated on their respective tracts for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above. In addition to the foregoing, Wal-Mart and Developer hereby grant for the benefit of those certain Outparcel(s) now owned by Developer and identified on Exhibit C, nonexclusive easements for vehicular and pedestrian access, ingress, and egress over and across Tract 1 and Tract 2; provided, however, in no event shall the owner occupant, licensee or invitee of any of the Outparcel(s) be permitted to use Tract 1 or Tract 2 for vehicular parking or for any other purpose other than as described above.
- b. Limitations on Use.
 - (1) Customers. Each owner shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on Tracts 1 and 2. There shall be no charge for parking.
 - (2) Employees. Each owner shall use reasonable efforts to ensure that employees shall not park on the Common Areas, except in areas

designated on Exhibit A as "employee parking areas," if any. The owners of Tract 1 and Tract 2 may from time to time mutually designate and approve "employee parking areas" not shown on Exhibit A.

- (3) **General.** Any activity within the Common Areas other than its primary purpose of the Common Areas, which is to provide for parking for the customers, invitees and employees of those businesses conducted with the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.
- c. **Utility and Service Easements.** The owners of Tract 1 and Tract 2 and the Outparcels shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center and the Outparcel(s). The owners of Tract 1 and Tract 2 shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. No such lines, sewers, utilities or services of one party shall be installed within the Building Areas on the other party's parcel.
- d. **Water Flow.** Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements substantially as shown on Exhibit A (including without limitation building and building expansion, curbs, drives and paving) shall be permitted.
- e. **Construction of Shared Driveway by Wal-Mart.** If either the owner of Tract 1 or Tract 2 ("First Party") develops its Tract before the other party ("Other

Party") develops its Tract, the First Party may construct the shared private driveway along the common boundary line of Tract 1 and Tract 2 depicted on Exhibit A as the "Shared Access Drive" (the "Driveway"). A portion of such Driveway is within both Tract 1 and Tract 2. Accordingly, the Other Party hereby grants to the First Party a temporary easement on, over and across the other Tract for the purpose of constructing such Driveway. The specifications for such Driveway are attached hereto as Exhibit F. If the First Party constructs such Driveway, the Other Party shall reimburse the First Party in the amount of \$15 per square yard for each square yard of such Driveway located on the Other Party's Tract. The Other Party shall reimburse the First Party within 14 days after completion of construction by the First Party and submission by the Other Party of (i) an invoice depicting in reasonable detail the amount of such reimbursement (and calculation thereof) and (ii) evidence of full payment to contractors and appropriate lien waivers. If the First Party is not reimbursed by the Other Party within such 14 day period, interest shall accrue on the amount of such reimbursement at the rate of 1 % per month from the date such reimbursement was due until the date of such payment. To secure such payment of such reimbursement, the First Party shall have a lien against the Other Party's Tract in the amount of such reimbursement and interest (if any).

The Driveway is part of the Common Area hereunder. Accordingly, after completion, each party shall maintain the portion of the Driveway on its Tract.

6. Development, Maintenance, and Taxes.

a. Development.

- (1) Arrangement. The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement.

- (2) **"Parking Area" Ratio.** The owners of Tract 1 and Tract 2 hereto agree that at all times there shall be independently maintained on Tract 1 and Tract 2 parking area sufficient to accommodate not fewer than that number of car spaces for each one thousand (1,000) square feet of Building Area that is required of Wal-Mart on Tract 1 pursuant to the building permit for the Wal-Mart Store on Tract 1 issued by the City of Omaha Planning Department.

b. **Maintenance.**

- (1) **Standards.** Following completion of the improvements on the Common Areas, the parties hereto shall maintain the Common Areas in good condition and repair. The maintenance is to include, without limitation, the following:
- (a) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
 - (b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
 - (c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
 - (d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required and at all times in conformance with standards in applicable ordinances and agreements applicable to the Common Areas.

- (e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair; and
 - (f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.
- (2) **Expenses.** The respective owners shall pay the maintenance expense of their tracts or lots.
 - (3) **By Agent.** Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties to maintain the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas on the agreed basis.
 - (4) **Landscape, Maintenance and Green Areas.** The respective owners shall maintain landscaped areas on their respective tracts or Outparcel(s) in good condition, with all green areas to be equipped with sprinkler systems, all at the expense of the owner.
- c. **Taxes.** Each of the owners hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the Common Areas owned by it.

7. **Signs.**

- a. **Common Area Signage.** No sign shall be located on the Common Areas on Tracts 1 and 2 except signs advertising businesses conducted thereon, of which, there shall be no more than two (2) free-standing signs on the Common Areas

on Tract 1 and two (2) free-standing signs on the Common Areas on Tract 2.

No signs shall obstruct the ingress and egress shown on Exhibit A.

- b. **Shopping Center Sign.** There is hereby granted by the Developer and/or reserved in favor of the Owners of Tracts 1 and 2 and the Outparcel(s) a signage easement on, over and across the property located adjacent to the 183rd Street and West Center Road entrance as identified on Exhibit "E" attached to this Agreement ("Sign Easement Area"). The Owners of Tracts 1 and 2 agree to cooperate in the design and construction of the entrance sign, with fifty percent (50%) of the signage space allocated to Tract 1, and the Developer to determine allocation of the remaining fifty percent (50%) of the signage space. All costs for design, construction, maintenance, repair and replacement of the entrance sign shall be shared pro rata among Tract 1 and Tract 2 and the Outparcels, based upon the amount of sign space to which the Owner is entitled, provided, that each individual owner shall be responsible for the design, placement and maintenance of its own specific lettering on the sign. All such signage shall be consistent with typical first-class community strip shopping center signage in Omaha, Nebraska, and in conformance with applicable zoning ordinances.

8. **Indemnification/Insurance.**

- a. **Indemnification.** Each of the owners of Tract 1 and Tract 2 and the Outparcels hereby indemnifies and saves the other part(ies) harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own tract, except if caused by the act or negligence of the other party hereto.
- b. **Insurance.**
- (1) Wal-Mart and the Developer (for Tract 2 and the Outparcel(s) until such time as the Outparcel(s) are sold or leased to other parties who shall

thereby assume this obligation) shall procure and maintain in full force and effect throughout the term of this Agreement 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 to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage. Each party shall provide the other party with certificates of such insurance from time to time upon written request to evidence that such insurance is in force.

Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without ten (10) days prior written notice to the other party.

- (2) At all times during the term of this Agreement, each of the owners of Tract 1 and Tract 2 and the Outparcels shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the state in which the parties' respective properties are located, with such insurance to be for the full replacement value of the insured improvements.
- (3) Policies of insurance provided for in this Paragraph 8 shall name Wal-Mart and Developer as insureds as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.

- (4) Wal-Mart for itself and its property insurer hereby releases Developer, and Developer for itself and its property insurer hereby releases Wal-Mart from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of either Wal-Mart or Developer resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.
- (5) Notwithstanding anything to the contrary contained in this Paragraph 8, so long as the net worth of Wal-Mart shall exceed One Hundred Million Dollars (\$100,000,000.00), and so long as Wal-Mart is owner or Lessee of Tract 1, Wal-Mart shall have the right to retain the financial risk for any claim.

9. Eminent Domain.

- a. **Owner's Right To Award.** Nothing herein shall be construed to give any owner any interest in any award or payment made to any other owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other owner's tract or Outparcel or giving the public or any government any rights in said tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on Tracts 1 and 2, the award attributable to the land and improvements of such

portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

- b. **Collateral Claims.** All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.
- c. **Tenant's Claim.** Nothing in this Paragraph 9 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.
- d. **Restoration Of Common Areas.** The owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective tract as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

10. **Rights And Obligations Of Lenders.** If by virtue of any right or obligation set forth herein a lien shall be placed upon the tract of either party hereto, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such tract.

Except as set forth in the preceding sentence, however, any holder of a first lien on Tracts 1 or 2, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

11. **Expansion Of Shopping Center.** The parties agree that in the event the Shopping Center is expanded by ownership, control of the parties or agreement with a third party, all of the provisions of this Agreement shall apply to the expanded area and the parking to the building ratio in the expanded area shall not be less than that provided in Paragraph 6a(2).

It is understood that the Developer has a contract pending for the acquisition of the eastern half of Lots 3 and 4 of Ridgeview Subdivision as depicted in Exhibit A. If the Developer or any affiliate thereof acquires such land, all of such Lots 3 and 4 shall be subject to this Agreement as Outparcel(s).

12. **Release from Liability.** Any person acquiring fee or leasehold title to Tracts 1 or 2, or any expansion of the Shopping Center pursuant to Paragraph 11 or any portion thereof, shall be bound by this Agreement only as to the tract or portion of the tract acquired by such person.

In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such tract or portion of the tract, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said tracts running with the land.

13. **Breach.** In the event of breach or threatened breach of this Agreement, only all record owners of Tract 1 as a group, or all record owners of Tract 2 as a group, or Wal-Mart so long as it or any affiliate has an interest as owner or lessee of Tract 1 or Developer so long as it or any affiliate has an interest as owner or lessee of Tract 2, or the Owners of seventy-five percent (75%) of the gross acreage of the Outparcel(s) as a group, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.

14. **Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

15. **Document Execution, Modification and Cancellation.** It is understood and agreed that until this document is fully executed by both Developer and Wal-Mart 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. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of (a) Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of Tract 1, or its successors in interest and (b) Developer, as long as it or its affiliate has any interest as either owner or lessor of Tract 2, or its successors in interest.

16. **Non-Merger.** So long as Wal-Mart or its affiliate is owner or lessee of Tract 1, this Agreement shall not be subject to the doctrine of merger.

17. **Duration.** Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

18. **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 nor in any way affect the terms and provisions hereof.

19. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement 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.

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

ATTEST

[Signature]
Its Assistant Secretary

(SEAL)

IMPRINTED SEAL
REGISTER OF DEEDS

WAL-MART STORES, INC.

[Signature]
Its Assistant Vice President

J ROBERT BRAY
"Wal-Mart"

dated 1/20/2000

LANOHA-CENTER DEVELOPMENT, INC.

By: [Signature]

Its: [Signature]

"Developer"

Exhibits

- A - SITE PLAN
- B - TRACT 1
- C - TRACT 2 AND OUTPARCEL(S)
- D - CONCEPTUAL STORE PLAN
- E - SIGN EASEMENT AREA
- F - DRIVEWAY SPECIFICATIONS

Approved as to legal terms only

By [Signature]

WAL-MART LEGAL TEAM

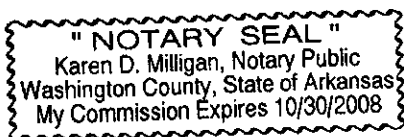
Date 1.20.00

899-779.D8

STATE OF ARKANSAS)
COUNTY OF Benton) SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that J. Robert Ray, personally known to me to be the Asst. Vice Pres of Wal-Mart Stores, Inc., and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Asst. Vice Pres; appeared before me this day in person and acknowledged that he signed, sealed and delivered the foregoing instrument as such Asst. Vice Pres, and as his free and voluntary act of said Asst. Vice Pres for the uses and purposes therein set forth; and on his respective oath stated that he was duly authorized to execute said instrument.

Given under my hand and Notarial Seal this 20th day of January, 2000.



Karen D. Milligan
Notary Public

My Commission Expires: 10/30/2008

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) SS.

The foregoing instrument was acknowledged before me this 21st day of JANUARY, 2000, by David F. Lanoha, President of Lanoha-Center Development, Inc., a Nebraska corporation, on behalf of the corporation.

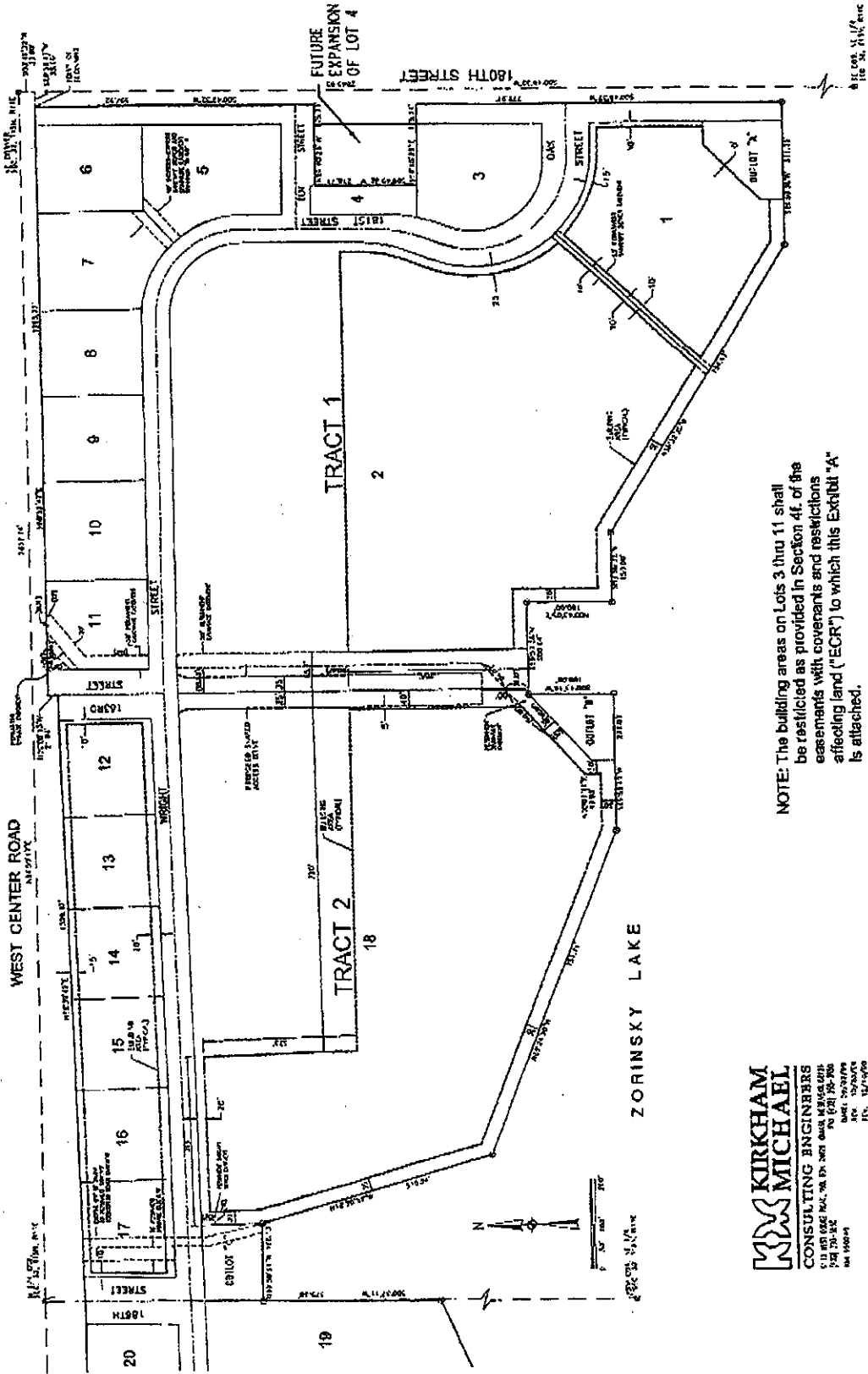
[Signature]
Notary Public

My Commission  My Comm. Exp. Febr. 5, 2000

899-779.D8

RIDGEVIEW EXHIBIT "A"

01-19-00



**KIRKHAM
MICHAEL**
CONSULTING ENGINEERS
S 11 455 6661 RAILWAY DR. SOT OMAHA NE 68134-0711
PH 402 735-5300
FAX 402 735-5300
WWW.KIRKHAMMICHAEL.COM
REV. 01/19/00

EXHIBIT BTRACT 1

Lot 2, Ridgeview, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Omaha #1637-2




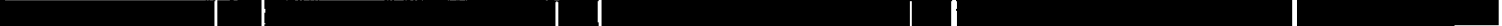
EXHIBIT CTRACT 2

Lot 18, Ridgeview, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

OUTPARCEL(S)

Lot 1 and Lots 3 through 17, inclusive, Ridgeview, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Omaha #1637-2



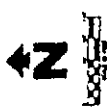
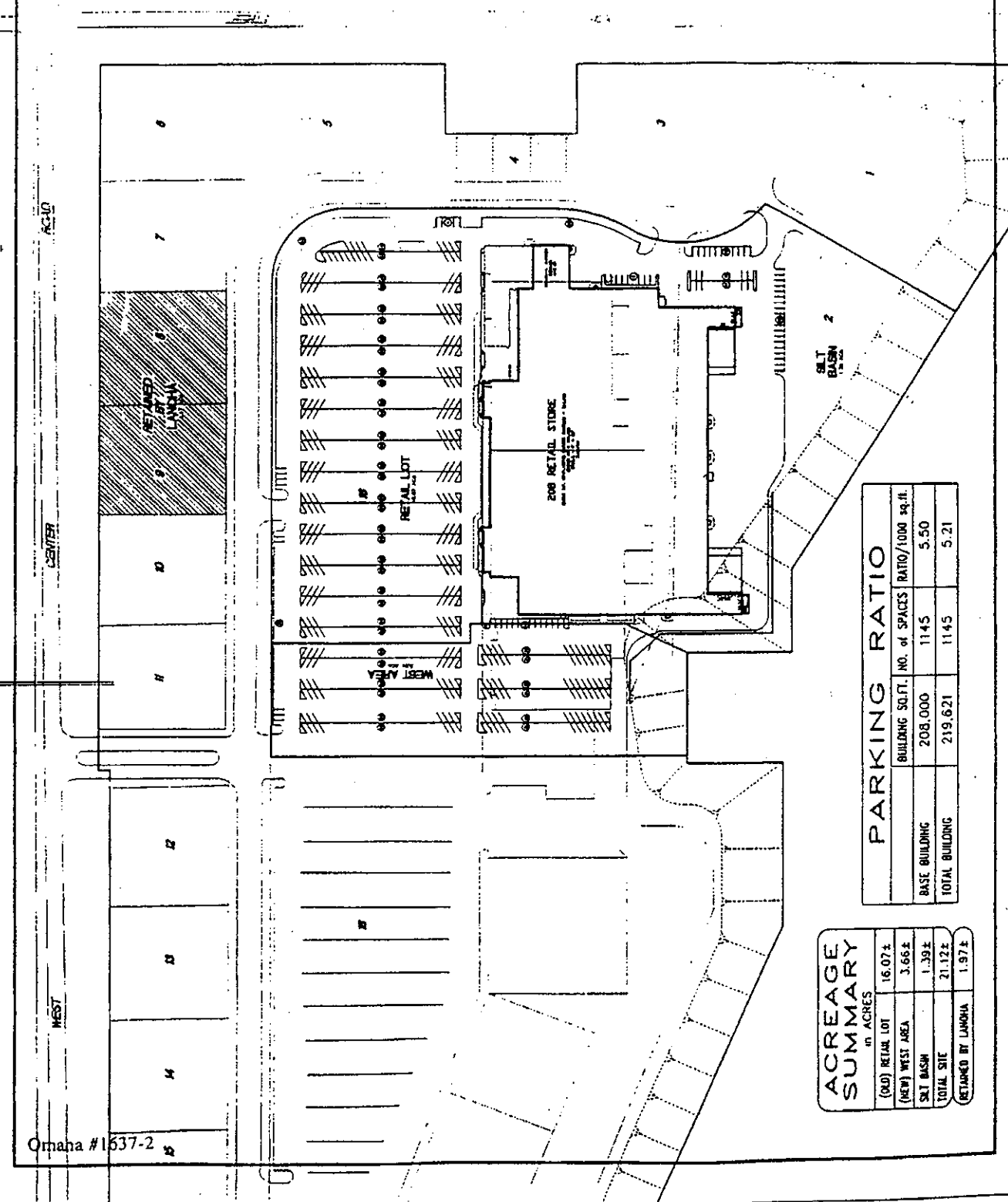


EXHIBIT D TO ECR
CONCEPTUAL STORE PLAN



CONCEPTUAL SITE PLAN
Scale: 1" = 100' ±
Date: 11/11/11
Sheet: 1 of 1



ACREAGE SUMMARY

in ACRES	
(OLD) RETAIL LOT	16.07 ±
(NEW) WEST AREA	3.66 ±
SALT BASIN	1.39 ±
TOTAL SITE	21.12 ±
RETAINED BY LANDLORD 1.97 ±	

PARKING RATIO

	BUILDING SQ. FT.	NO. of SPACES	RATIO/1000 sq. ft.
BASE BUILDING	208,000	1145	5.50
TOTAL BUILDING	219,621	1145	5.21

Omaha #1637-2

EXHIBIT E

SIGN EASEMENT AREA

A TRACT OF LAND LOCATED IN LOT 11, RIDGEVIEW, A PLATTED AND RECORDED SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

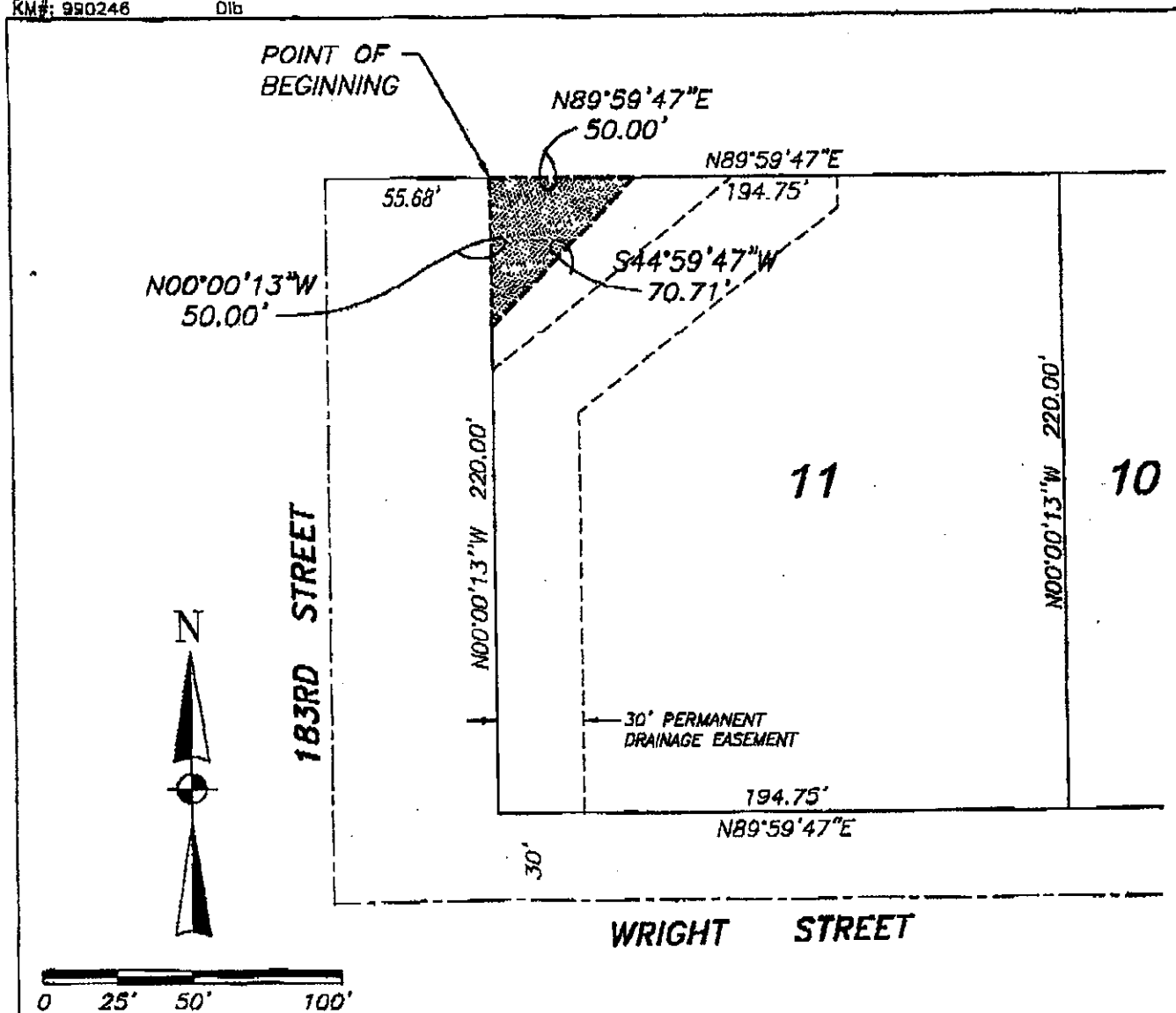
BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 11; THENCE ALONG THE NORTH LINE OF SAID LOT 11, N89°59'47" (PLATTED BEARING), 50.00 FEET; THENCE S44°59'47"W, 70.71 FEET TO A POINT ON THE WEST LINE OF SAID LOT 11; THENCE ALONG SAID WEST LINE, N00°00'13"W, 50.00 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.03 ACRE (1250 SQUARE FEET), MORE OR LESS.

See attached drawing of the Sign Easement Area.

NOV-11-1999
KM#: 99024611:39:55
Dlb

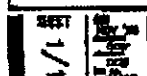
S:\990246\SIGNESMT.dwg

EXHIBIT E

LEGAL DESCRIPTION - SIGNAGE EASEMENT

A TRACT OF LAND LOCATED IN LOT 11, RIDGEVIEW, A PLATTED AND RECORDED SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 11; THENCE ALONG THE NORTH LINE OF SAID LOT 11, N89°59'47"E (PLATTED BEARING), 50.00 FEET; THENCE S44°59'47"W, 70.71 FEET TO A POINT ON THE WEST LINE OF SAID LOT 11; THENCE ALONG SAID WEST LINE, N00°00'13"W, 50.00 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.03 ACRE (1250 SQUARE FEET), MORE OR LESS.



SIGNAGE EASEMENT

S.I.D. 450
LOT 11 - RIDGEVIEW

DOUGLAS COUNTY

NEBRASKA

KIRKHAM
MICHAEL
CONSULTING ENGINEERS

EXHIBIT FDRIVEWAY SPECIFICATIONS

The shared access drive just South of 183rd Street shall consist of four asphalt lanes with medians and a concrete approach slab. A half section of road will be from the property line 10 feet to the face of curb and 25 feet to the edge of pavement. Curb and gutter would not be required at the edge of pavement to allow for continued construction. The concrete approach slab shall have 9" thick P.C.C. per Nebraska Department of Roads, Section 1002, Class "47B-3,625". The asphalt shall consist of 5" Asphaltic Base Course and 3" Asphaltic Surface Course per Nebraska Department of Roads, Section 1028, Type SPL. At least the upper 9 inches of subgrade shall consist of low-plasticity soils compacted to 98% of the materials maximum Standard Proctor dry density (ATSM D-698).

Prior to construction, the First Party shall secure the Other Party's approval of the construction plans and specifications, which approval shall not be unreasonably withheld or delayed. If the Other Party does not disapprove such plans or specifications in writing within 10 days of receiving such plans and specifications from the First Party, such plans and specifications shall be deemed approved. If the plans and specifications are so disapproved, the above process shall be repeated until the plans and specifications are approved (or deemed approved).