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WASHINGTON COUNTY, STATE OF NEBRASKA

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Karen A. Madsen

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

REGISTER OF DEEDS

When recorded return to:
Erin M. O'Gara, Esq.
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186
(402) 346-6000

Blair, NE
Store No. 4568-00

TEMPORARY CONSTRUCTION AND PERMANENT GRADING EASEMENT

THIS TEMPORARY CONSTRUCTION AND PERMANENT GRADING EASEMENT (this "Easement") is made as of this 24 day of Sept, 2010, by the City of Blair, a Nebraska municipality (the "City") in favor of Wal-Mart Real Estate Business Trust, a Delaware statutory trust ("Wal-Mart").

PRELIMINARY STATEMENTS

Wal-Mart is the fee simple owner of the real property described in Exhibit A attached hereto and incorporated herein (the "Wal-Mart Property"). In connection with Wal-Mart's acquisition of the Wal-Mart Property, Wal-Mart desires to construct and perform certain improvements to the Wal-Mart Property and adjacent property (collectively, the "Improvements"). Certain property to the north of the Wal-Mart Property (the "Easement Area"), which is depicted and legally described on Exhibit B attached hereto, is publicly dedicated right of way and is under the control of the City.

Subject to the terms and conditions hereinafter set forth, City desires to encumber and grant certain easements for the (i) grading, seeding, construction, installation and maintenance of Erosion Control BMP's (as defined below), a swale (the "Swale") and storm sewer improvements (the improvements described in subsection (i) shall be collectively referred to herein as the "Drainage Improvements") within the Easement Area for the purpose of directing storm water runoff from the Easement Area, and the properties to the north of the Easement Area (collectively, the "Adjacent Properties") through the Easement Area out onto the Highway 30 right of way, and away from the Wal-Mart Property, 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 across and over the Easement Area, all in accordance with the terms and conditions set forth in this Easement. "Erosion Control BMP's" may include silt fences, silt dike check dams, erosion control blankets, diversion swales and dams, inlet protections and other similar measures.

AGREEMENT

For and in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Wal-Mart and City agree as follows:

1. **Grant of Permanent Grading Easement and Construction of Swale.** City hereby grants Wal-Mart, its affiliates, successors, assigns, agents, licensees and invitees, for the benefit of the

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Nebraska Land Title & Abstract
PO Box 6577
Lincoln NE 68506

4810-8667-3158.7

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Wal-Mart Property, a permanent non-exclusive easement (the "**Permanent Easement**") for the grading, seeding, construction, installation and maintenance of the Drainage Improvements within the Easement Area for the purpose of directing storm water runoff from the Easement Area and the Adjacent Properties through the Easement Area out onto the Highway 30 right of way, and away from the Wal-Mart Property. In the event that Wal-Mart elects to construct the Improvements, then Wal-Mart shall, at its own cost and expense, construct and install the Drainage Improvements within the Easement Area which shall direct storm water runoff from the Easement Area and the Adjacent Properties through the Easement Area out onto the Highway 30 right of way, and away from the Wal-Mart Property, all as shown on **Exhibit C** attached hereto and in accordance with plans provided to the City (the "**Plans**"). Following the completion of construction and installation of the Drainage Improvements and the stabilization of the Easement Area, Wal-Mart shall provide the City with a written certificate from its engineer stating that the Drainage Improvements were constructed in accordance with the Plans, a copy of its Notice of Termination for its storm water permit and "as-built" drawings showing the final grade of the Easement Area (the "**Wal-Mart Deliverables**"). Following the receipt of the Wal-Mart Deliverables, the City shall with reasonable promptness and at Wal-Mart's expense, inspect the Drainage Improvements and confirm that they were constructed and installed in accordance with the Plans. Upon City's confirmation that the Drainage Improvements were constructed in accordance with the Plans, then Wal-Mart shall dedicate the Drainage Improvements to the City and the City shall accept the same and the City shall, at its own cost and expense, maintain the Easement Area and the Drainage Improvements in good repair and condition, including without limitation, keeping the Easement Area neat, orderly and planted with grass at all times, and performing such repairs, maintenance and improvements to the Drainage Improvements as may be required to keep the Swale at a sufficient slope and grade so that storm water from the Easement Area and the Adjacent Properties is directed into the Swale and away from the Wal-Mart Property at all times. If the City fails to so maintain the Easement Area and Drainage Improvements in good repair and condition as required herein, then Wal-Mart shall have the right, but not the obligation, to enter into the Easement Area and perform any such repair, maintenance and improvements to the Drainage Improvements and the Easement Area as necessary and City shall promptly reimburse Wal-Mart for the costs of such repair, maintenance, and improvements.

2. **Grant of Temporary Easement.** City hereby grants to Wal-Mart, its affiliates, successors, assigns, agents, licensees and invitees, for the benefit of the Wal-Mart Property, a temporary non-exclusive easement (the "**Temporary Easement**") for 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 across and over the Easement Area. The Temporary Easement shall expire and be of no further force and effect upon Wal-Mart's completion of its construction of the Improvements.

3. **Access; Improvements; Release of Permanent Easement.** City shall place no dirt, fill or fill material upon the Easement Area at any time, unless in accordance with its maintenance and repair obligations set forth in Section 1 herein. City shall place no buildings, improvements or other structures in, on, over or across the Easement Area. Until such time as Wal-Mart releases the Permanent Easement as provided herein, City shall not take any action or allow such action to be taken at any time that would result in a change in the condition, slope, grade or elevation of the Swale within the Easement Area as constructed by Wal-Mart, without the express written approval of Wal-Mart. Notwithstanding the foregoing, Wal-Mart acknowledges that the City intends to construct a road within the Easement Area for a state highway by-pass or city street (collectively, the "**Street Improvements**") and City acknowledges and agrees that the proposed Street Improvements shall be constructed in such a manner so that the storm water runoff from the Easement Area and the Adjacent Properties is directed through the Easement Area and out onto the Highway 30 right of way, and away from the Wal-Mart Property at all times. Prior to the City certifying to the Nebraska Department of Roads that all right of way required for the Street Improvements is free and clear of all encumbrances, City shall provide Wal-Mart with a certification (the

“**Certification**”) from the supervising engineer for the Street Improvements construction project certifying that the Street Improvements are in final design and the design complies with the requirements contained in the foregoing sentence. Upon Wal-Mart’s receipt of the Certification, Wal-Mart shall execute and record a release of this Easement in the real property records of Washington County, Nebraska.

4. **Binding Upon Property.** The easement, rights and obligations created pursuant to the terms of this Easement shall be appurtenant to the Easement Area, the Wal-Mart Property and the Adjacent Properties and run with and be binding upon the Easement Area, the Wal-Mart Property and the Adjacent Properties, 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.

5. **Title.** City confirms with Wal-Mart that City has the right to grant and convey the easements and other rights granted herein, and that it will warrant and defend such easements and rights to Wal-Mart against the lawful claims and demands of all persons.

6. **Use.** It is expressly agreed that nothing contained in this Easement shall be construed to contain a covenant, either expressed or implied, to either construct the Drainage Improvements, commence the construction of the Improvements (including the construction of a building or other improvements on the Wal-Mart Property), or to continuously operate a business on the Wal-Mart Property.

7. **Counterparts.** This Easement may be executed in three or more duplicate counterparts, each of which shall be deemed an original, and all of which together shall constitute but one and the same instrument.

[Remainder of page left intentionally blank – signature page follow]

Blair, NE
Store No. 4568-00

IN WITNESS WHEREOF, Wal-Mart and Grantee have caused the authorized execution hereof,
the day and year first above written.

WAL-MART:

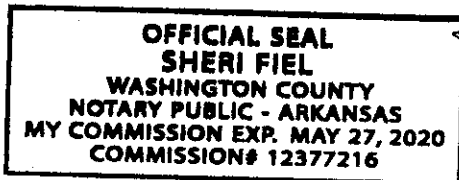
WAL-MART REAL ESTATE BUSINESS TRUST, a
Delaware statutory trust


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

STATE OF Arkansas

COUNTY OF Benton

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




Notary Public
My commission expires: May 27, 2020

GRANTEE:

CITY OF BLAIR, a Nebraska municipality

By: [Signature]
Name: James Ralph
Its: Mayor

STATE OF Nebraska)
) §
COUNTY OF Washington)

The foregoing instrument was acknowledged before me this 13 day of September, 2010 by James Ralph, Mayor of the City of Blair, a Nebraska municipality, on behalf of the municipality.

[Signature]
Notary Public
My commission expires: June 20, 2012



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EXHIBIT A

LEGAL DESCRIPTION AND DEPICTION OF THE WAL-MART PROPERTY

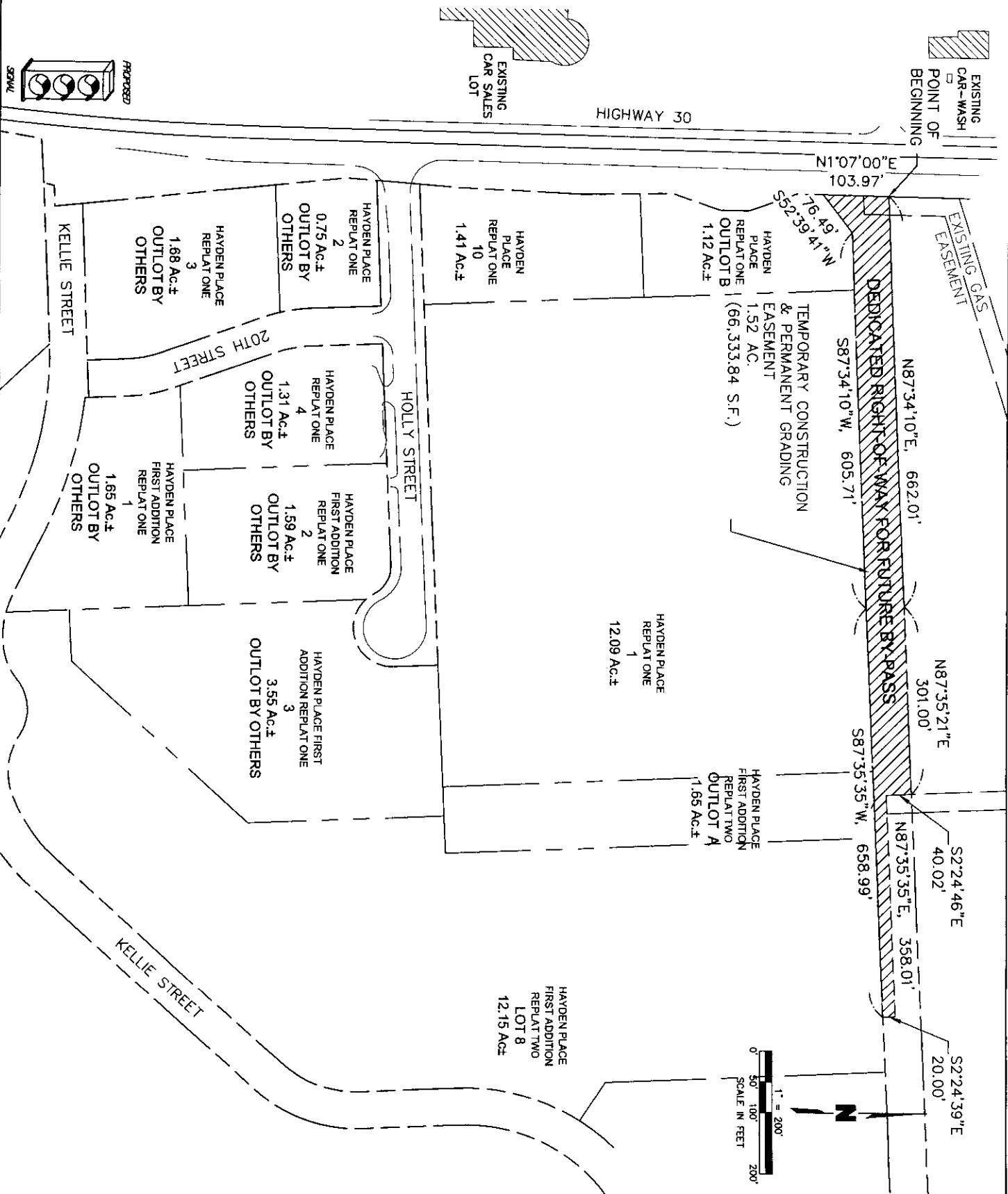
Lot 1, Hayden Place Replat One, Outlot B, Administrative Lot Line Adjustment of Outlot B and Lot 10,
Hayden Place Replat One and Outlot A, Hayden Place First Addition Replat Two, City of Blair,
Washington County, Nebraska

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EXHIBIT B

LEGAL DESCRIPTION & DEPICTION OF THE EASEMENT AREA

See attached Exhibit B-1 and B-2



PROJECT NO: 006-1603
 DRAWN BY: MDB
 DATE: 7/20/2010

EXHIBIT B-1
 TEMPORARY CONSTRUCTION AND
 PERMANENT GRADING EASEMENT

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

LEGAL DESCRIPTION

A TRACT OF LAND LOCATED ON A PORTION OF THE DEDICATED RIGHT-OF-WAY FOR THE BLAIR FUTURE BY-PASS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF HIGHWAY 30 AND THE NORTH RIGHT-OF-WAY OF SAID FUTURE BY-PASS, THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID FUTURE BY-PASS ON AN ASSUMED BEARING OF N87°34'10"E, 662.01 FEET; THENCE CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE N87°35'21"E, 301.00 FEET; THENCE S02°24'46"E, 40.02 FEET; THENCE N87°35'35"E, 358.01 FEET; THENCE S02°24'39"E, 20.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF SAID FUTURE BY-PASS; THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE S87°35'35"W, 658.99 FEET; THENCE CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE S87°34'10"W, 605.71 FEET; THENCE CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE S52°39'41"W, 76.49 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF HIGHWAY 30; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE N01°07'00"E, 103.97 FEET TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINING 1.52 ACRES (66,333.84 SQ. FT.) MORE OR LESS.


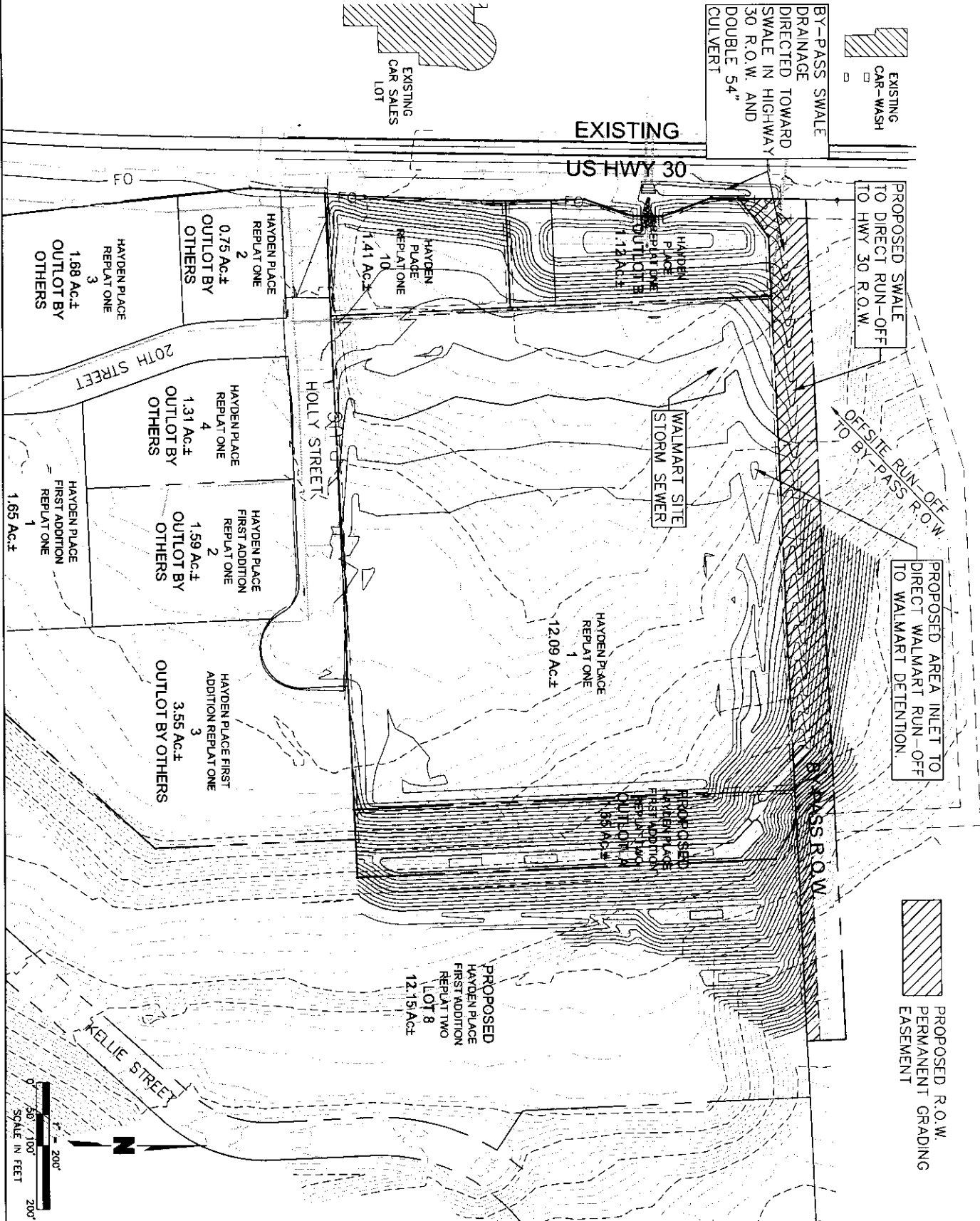
PROJECT NO: 006-1603	EXHIBIT B-2 TEMPORARY CONSTRUCTION AND PERMANENT GRADING EASEMENT	 2111 South 67th Street Suite 200 Omaha, NE 68106 TEL 402.341.1116 FAX 402.341.5895
DRAWN BY: MDB		
DATE: 7/20/2010		

EXHIBIT C

Site Plan Showing the Drainage Improvements

[See attached]



PROJECT NO: 006-1603
 DRAWN BY: MDB
 DATE: 7/27/2010

BY-PASS DRAINAGE EXHIBIT

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