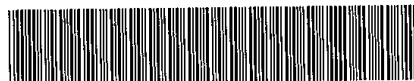




BK 1382 PG 339-345



MISC 2001 07336

RICHARD N. TARESH
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

01 MAY 18 PM 2:12

RECEIVED

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
A PART OF RIDGEVIEW, A SUBDIVISION,
AS SURVEYED, PLATTED AND RECORDED
IN DOUGLAS COUNTY, NEBRASKA**

This Declaration of Covenants, Conditions, Restrictions and Easements for a Part of Ridgeview, a Subdivision, as Surveyed, Platted and Recorded in Douglas County, Nebraska (the "Declaration"), is made and entered into as of this 27 day of April, 2001, by LANOHA-CENTER DEVELOPMENT, INC., a Nebraska corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Douglas County, Nebraska, which is part of the Ridgeview Shopping Center (the "Shopping Center"), more particularly described as follows (the "Shopping Center Lots"):

Lot 1, Lots 3 through 7, inclusive, and Lots 10 through 17, inclusive, Ridgeview, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, and Lots 1 and 2, Ridgeview Replat 2, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

WHEREAS, Declarant desires that the Shopping Center Lots be developed in the manner which will establish a first class retail shopping center, and desires to provide certain covenants, conditions, restrictions and easements that will preserve the amenities and provide for the maintenance of the character and integrity of the Shopping Center Lots.

NOW, THEREFORE, Declarant hereby declares that all of the Shopping Center Lots shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, and easements which are for the purpose of protecting the value and desirability of, and which shall run with, all of said Shopping Center Lots.

**ARTICLE I
Definitions**

1.1 **Building.** The term "Building" shall mean any enclosed structure placed, constructed or located on the Shopping Center Lots, which for purposes of this Declaration shall include any canopies, supports, loading docks, ramps or outward extensions or protrusions of physical structures.

1.2 **Building Lot.** The term "Building Lot" shall mean the Shopping Center Lots.

1.3 **Common Area.** The term "Common Area" shall mean all of the Shopping Center Lots exclusive of the areas on which Buildings are constructed from time to time.

1.4 **Landscaped Area.** The term "Landscaped Area" shall mean all of the green and landscaped areas on each of the Building Lots as developed in accordance with approved landscape plans and which shall also include, with respect to each Building Lot, the area from the curb of street right-of-way to the lot line of the Building Lot.

1.5 **Owner.** The term "Owner" shall mean the legal owner of fee title to a Shopping Center Lot, as reflected by the records of the Douglas County Register of Deeds. If a Shopping Center Lot is owned by one or more Persons, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Shopping Center Lot shall designate one of their number to represent all owners of the Shopping Center Lot in question and such designated Person shall be deemed the Owner for such Shopping Center Lot.

1.6 **Permittee.** The term "Permittee" shall mean all Owners, their tenants or licensees of a Shopping Center Lot, and each of their respective officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, and invitees.

1.7 **Person.** The term "Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or government entity.

Return recorded document to:
James D. Buser
GAINES PANSING & HOGAN
10050 Regency Circle, Suite 200
Omaha, Nebraska 68114

✓ 424 =

Misc ✓ 43⁰⁰ OC-32931
FEE 43⁰⁰ FB OC-32942
7
16
BKP _____ C/O _____ COMP 2
DEL _____ SCAN dc fv

1.8 Site Plan. The term "Site Plan" shall mean the site plan attached hereto as Exhibit "A."

ARTICLE II Lot Restrictions

2.1 Prohibited uses. No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first class retail shopping center or office uses approved by Declarant.

2.2 Building restrictions and requirements. The applicable zoning regulations for the City of Omaha shall govern parking and the height, side yard, rear yard and building setback requirements for all Buildings, subject to the following additional restrictions:

(a) No Building or other improvement shall be constructed on any Building Lot in violation of the Easements With Covenants and Restrictions Affecting Land dated January 20, 2000, and recorded with the Register of Deeds of Douglas County on January 21, 2000, in Book 1324 at Page 501, Miscellaneous Records, as amended by the Amendment to Easements with Covenants and Restrictions Affecting Land dated September 1, 2000, and recorded with the Register of Deeds of Douglas County on September 1, 2000, in Book 1350 at Page 183, Miscellaneous Records (the "Wal-Mart ECR"), the Easements with Covenants and Restrictions Affecting Land dated September 1, 2000, and recorded with the Register of Deeds of Douglas County on September 1, 2000, in Book 1350 at Page 199, Miscellaneous Records (the "Lowe's ECR"), or in violation of the Subdivision Agreement or the Mixed Use Agreement for the Ridgeview Subdivision, as may be amended from time to time (the "Subdivision and Mixed Use Agreements").

(b) No Building shall be constructed on any Building Lot within sixty-two (62) feet of the curb of Wright Street or 181st Street except as otherwise approved in writing by Declarant.

(c) Each Owner of a Building Lot shall be responsible for submitting a landscape plan to the Declarant in accordance with the procedures specified in Article III prior to construction of a Building, and for installing landscaping in the Landscaped Area as approved by Declarant. The landscape plan must provide that Landscaped Areas will be fully sprinklered and shall provide for a minimum landscape buffer on the Building Lot from lot line to parking area on the side and rear and from the curb of the street to the parking area on all sides of the Building Lot which border an interior street. No tree situated in the Landscaped Area may be moved, removed, cut or destroyed unless complete plans describing the exact tree or trees to be moved, removed, or cut or destroyed, and the reason therefor, shall have been submitted to and approved by Declarant in accordance with Section 3.1 of Article III of this Declaration. For purposes of this Section, "Tree" shall mean and refer to a tree of any type with a diameter larger than one (1) inch at a height of five (5) feet. Each Owner shall repair and maintain in good condition any and all Trees, shrubs, bushes, flowers and other landscaping improvements placed in and along the Landscape Area. Should any of such Trees, shrubs, bushes, or other landscaping improvements be removed, die, or deteriorate into a poor condition, the Owner of the Building Lot shall, at its expense, replace such Trees, shrubs, or other landscaping improvements with Trees, bushes, shrubs or other landscaping improvements of the same or similar quality. In the event such replacement does not occur upon thirty (30) days written notice from the Declarant, the Declarant may cause such replacement to occur and charge the Owner of the Lot for such replacement.

2.3 Sidewalks. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each Building Lot and upon each street side of each corner Building Lot. The sidewalk shall be placed four (4) feet back of the street curb line and shall be constructed by the Owner of the Building Lot abutting such street right-of-way prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Omaha.

2.4 Pavement specifications. All paving of parking and drive areas constructed on the Building Lot within fifty-two feet (52') of the Lot line abutting Wright Street or 181st Street must be constructed with six (6) inch unreinforced concrete. Owners must include a drive area on their Building Lot that is twenty-four feet (24') wide and located between twenty-eight feet (28') and fifty-two feet (52') in from the Lot line abutting Wright Street or 181st Street unless otherwise approved in writing by Declarant. All drive aprons and curb cuts connecting to street right-of-ways shall be constructed to meet City of Omaha requirements.

2.5 Other. The Building Lots are restricted by the Wal-Mart ECR, the Lowe's ECR and the Subdivision and Mixed Use Agreements. In the event of any conflict between the terms of this Declaration and the Wal-Mart ECR or the Subdivision and Mixed Use Agreements, the terms of the Wal-Mart ECR, the Lowe's ECR or the Subdivision and Mixed Use Agreements, as the case may be, shall control.

ARTICLE III
Buildings and Construction

3.1 Plan Approval. No Building, fence, wall, drive or parking area, or other external improvement, including landscaping, above or below ground (herein an "Improvement") shall be constructed, erected or placed or permitted to remain on any Building Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

(a) An Owner desiring to erect an Improvement shall deliver two sets of construction plans, site plans, signage plans, landscaping plans, and plot plans to Declarant (herein collectively referred to as the "Plans"). Such Plans shall include a description of the type, quality, color and use of materials proposed for the exterior of such Improvement, together with such other detailed drawings as may reasonably be requested by Declarant to review such Improvement. Concurrent with the submission of the Plans, Owner shall notify the Declarant of the Owner's mailing address.

(b) Declarant shall review such Plans in light of the covenants, conditions, restrictions and easements in this Declaration, and in relation to the type and exterior of improvements which have been constructed or approved for construction on the Building Lots. In this regard, Declarant intends that the Building Lots shall be developed as a first-class retail shopping center with Buildings constructed of high quality materials. The decision to approve or refuse approval of any proposed Improvement shall be exercised by Declarant in a reasonable manner to promote conformity and harmony of the external design of the Improvements constructed within the Development Property, and to protect the value, character and quality of all of the Building Lots in a manner consistent with this Declaration. If Declarant determines that the external design and location of the proposed Improvement does not conform with the standards or requirements of this Declaration, does not conform with the surrounding Improvements and topography or will not protect and enhance the integrity and character of all of the Building Lots as a first-class retail shopping center, Declarant may refuse approval of any proposed Improvement.

(c) Written notice of any approval of a proposed Improvement shall be mailed to the Owner at the address specified by the Owner upon submission of the Plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the Plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.

(d) No Building Lot Owner or combination of Building Lot Owners, or any other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to the Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

3.2 Construction of Improvements.

(a) Each Owner agrees that all construction activities performed by it on a Building Lot shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state and federal government, or any department or agency thereof. All construction shall utilize new materials, and shall be performed in a good, safe, and workmanlike manner. The Buildings constructed on the Building Lot 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 onto other Building Lots.

(b) Each Owner agrees that its construction activities shall not:

(i) Unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Shopping Center by any other Owner or its Permittees; and

(ii) Unreasonably interfere with the construction work being performed on any other part of the Shopping Center.

(c) In connection with any construction, reconstruction, repair or maintenance on a Building Lot, the Owner of the Building Lot shall have the right to create a temporary staging and/or storage area on its Building Lot at such location as will not unreasonably interfere with the Owner's of other Building Lots and their Permittees access to their Building Lots.

3.3 Common Area. Contemporaneously with the construction of a Building upon a Shopping Center Lot, the constructing Owner shall cause the Common Area on its Shopping Center Lot to be completed in a good and workmanlike manner in accordance with good engineering standards and otherwise in conformance with this Agreement.

3.4 Due Diligence in Construction. It is acknowledged and agreed that no Owner shall have an obligation to commence construction of any Building on its Building Lot; however, the Owners agree that once construction has been commenced, such Building shall be completed in a reasonably diligent and workmanlike manner.

ARTICLE IV Easements

4.1 Ingress, egress and parking. Each Owner hereby grants and conveys to each other Owner for its use and for the use of its Permittees, in common with others entitled to use the same, a nonexclusive perpetual easement for the passage of vehicles over and across the parking and driveway Common Area of the Owner's Shopping Center Lot, as the same may be from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveway and sidewalk Common Area of each grantor's Shopping Center Lot, as same may from time to time be constructed and maintained for such other use. Such easement rights shall be subject to the following reservations as well as any other applicable provisions contained in this Declaration:

(a) Each Owner further reserves the right to close off its portion of the Common Area for such reasonable period of time as may be legally necessary, in the opinion of the Owner's counsel, to prevent the acquisition of prescriptive rights by any one; provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Owner shall give written notice to each other Owner of its intention to do so, and shall attempt to coordinate such closing with each other party so that no unreasonable interference with the passage of pedestrians or vehicles shall occur;

(b) Each Owner reserves the right at any time from time to time to reasonably exclude and restrain any person who is not a Permittee from using the Common Area on its Shopping Center Lot;

(c) Each Owner shall take reasonable efforts to ensure that Permittees shall not park on the Common Areas except while shopping or transacting business on the Shopping Center Lots;

(d) Each Owner shall take reasonable efforts to prevent their Permittees from parking on the Common Areas of the Shopping Center Lots of other Owners; and

(e) No fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular traffic between the Shopping Center Lots shall be erected or permitted within or across the Common Area, exclusive of the limited curbing and other forms of traffic control depicted on the Site Plan, or permitted staging and/or storage areas.

4.2 Utilities. The Owners of the Shopping Center Lots shall cooperate in the granting of appropriate and proper temporary and perpetual 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. The Owners of the Shopping Center Lots shall use their best efforts to cause the installation of such utility and service lines prior to the paving of the Common Areas. No such storm drains, utilities or services of an Owner required on its Shopping Center Lot shall be installed within the Building Areas on any other Owner's Shopping Center Lot.

4.3 Surface water. Each Owner hereby grants and conveys to the Owner owning an adjacent Shopping Center Lot the perpetual right and easement to discharge surface storm drainage and/or runoff from the grantee's Shopping Center Lot over, upon and across the Common Area of the grantor's Shopping Center Lot, provided, however, no party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Shopping Center Lot if such alteration would materially increase the flow of surface water onto the adjacent Shopping Center Lot either in the aggregate or by directing the flow of surface water to a limited area.

ARTICLE V Maintenance and Repair

5.1 Common Area. Following completion of the improvements on the Common Areas, the Owners shall maintain the Common Areas situated on their Shopping Center Lot in good condition and repair. The maintenance is to include, without limitation, the following:

(a) Maintaining the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or each substituted as shall in all respects be equal in quality, use, and durability;

(b) Removal of 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 and appropriate parking and traffic 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 and applicable ordinances and agreements applicable to the Common Areas; and

(e) Maintaining, mowing, weeding, trimming and watering all landscaping installed in accordance with approved landscape plans within the Landscaped Area and making such replacements of shrubs and other landscaping as is necessary to place such areas in an attractive and thriving condition and as will otherwise comply with this Declaration.

The Owners shall pay the maintenance expense for the Common Areas associated with their Shopping Center Lot; provided, however, that by mutual agreement of the Owners of the Shopping Center Lots, a third party may be appointed as an agent of the Owners to maintain the Common Area in the manner as above specified.

5.2 180th Street and West Center Road Right-of-Way Sprinkler System. Declarant hereby reserves a permanent nonexclusive right and easement in favor of Declarant to install, maintain, repair, and replace a sprinkler system to water the right-of-way abutting the Shopping Center Lots, and to otherwise maintain such right-of-way area on the northerly ten (10) feet of the Shopping Center Lots abutting West Center Road and the easterly ten (10) feet of the Building Lots abutting 180th Street. Without limitation of the rights and easements herein granted, the Declarant and its agents may come upon such easement area for the purpose of constructing, maintaining, repairing, operating, and replacing such sprinkler system. Declarant will maintain, fertilize, mow, trim, and water such right-of-way area abutting West Center Road and 180th Street, and all expenses and fees incurred by the Declarant relating to such activities shall be assessed to the Owners of the Building Lots as provided in Article VI.

5.3 Buildings and Building Areas. After completion of construction of a Building, each Owner covenants and agrees to maintain and keep the exterior portion of the Buildings located on its Shopping Center Lot in first class condition and state of repair, and in compliance with all governmental laws, rules, regulations, and ordinances applicable thereto. Each party further agrees to store all trash and garbage in adequate containers, to locate such containers at the rear of Buildings so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage.

5.4 Utility lines. Each Owner shall maintain and repair, or cause to be maintained and repaired in good and safe condition, all separate utility lines utilized by it regardless of where located. Any party performing or causing to be performed maintenance or repair work on utility lines agrees to promptly pay all costs and expenses associated therewith, to diligently complete such work as quickly as possible, and to promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement of such work.

ARTICLE VI Annual Assessment

6.1 Assessment Matters. The Declarant shall fix, levy and charge the Owner of each Building Lot with an annual assessment (herein the "Assessment") which shall represent each Building Lot Owner's representative share of Declarant's expenses pertaining to Declarant's maintenance obligations under Section 5.2 and including expenses for the fixing, levying, collecting and enforcement of all Assessments.

6.2 Lien of Assessment. All Assessments, together with interest thereon, costs and reasonable attorney fees shall be the personal obligation of the Owner of each Building Lot at the time when the Assessment first becomes due and payable. The Assessments, together with interest thereon, costs and reasonable attorney fees, shall also be a charge and continuing lien upon the Building Lot in respect of which the Assessments are charged.

6.3 Assessment Allocation. All assessments shall be determined and assessed against Building Lots according to the total number of lineal feet of the Building Lot that abuts West Center Road and 180th Street multiplied times the Front Foot Assessment Amount. The term "Front Foot Assessment Amount" shall mean Four Dollars (\$4.00) for the 2001 calendar year, subject to increases in Declarant's sole discretion by no more than five percent (5%) annually, which increases may be accumulated by Declarant if not raised in a calendar year.

6.4 Due Date. Any installment of Assessments which is not paid within thirty (30) days following delivery of notice of Assessment shall be delinquent. Delinquent Assessments shall bear interest from the date when due at the rate of sixteen percent (16%) per annum. The Declarant may bring an action at law against the Owner personally obligated to pay the same, foreclose the lien against the Building Lot, or pursue any other legal or equitable remedy. The Declarant shall be entitled to recover as a part of the action and shall be indemnified against the interest, cost and reasonable attorney fees incurred by the Declarant with respect to such action. The mortgagee of any Building Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs, and fees. The Declarant shall assign to any mortgagee who cures such a delinquency, all of its rights with respect to such lien and the right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Declarant.

ARTICLE VII MISCELLANEOUS

7.1 Enforcement. In the event of a breach or threatened breach of this Declaration, only the Declarant or an Owner shall be entitled to institute proceedings for full and adequate relief from consequences of such breach or threatened breach.

7.2 Perpetual Duration. This Declaration and the covenants, conditions, restrictions and easements shall create mutual benefits and servitudes running with the land and shall bind and inure to the benefit of the parties hereto, and their respective heirs, representatives, lessees, successors and assigns. This Declaration shall be perpetual, provided, however, that this Declaration may be amended by the Declarant or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, in any manner which it may determine, in its full and absolute discretion, for a period of five (5) years from the date hereof. Thereafter, this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Building Lots.


7.3 Waiver, etc. By the written consent of the Declarant for a period of five (5) years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to the Building Lots may be waived, modified, or amended for any Building Lot in any manner, for such time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver, modification or amendment will have on the Development Property and the Owner requesting the waiver, modification or amendment. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to the Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any requested waiver, modification, or amendment.

7.4 Termination of Declarant Status. Declarant, or its successors or assigns, may terminate its status as Declarant under this Declaration at any time by filing a notice of termination of status as Declarant. Upon such filing, the Owners of a majority of the Building Lots may appoint another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

7.5 Survival. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

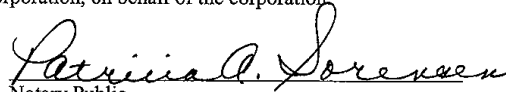
IN WITNESS WHEREOF, this Declaration has been executed effective as of the day and year first above written.

LANOHA-CENTER DEVELOPMENT, INC., a Nebraska corporation

By: 
David F. Lanoha, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 27 day of April, 2001, by David F. Lanoha, President of Lanoha-Center Development, Inc., a Nebraska corporation, on behalf of the corporation.


Notary Public



70639v10

EXHIBIT 'A'

RIDGEVIEW

