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WASHINGTON COUNTY, STATE OF NEBRASKA

RECORDED September 28, 2010 AT 8:30 A M.

BOOK 559 PAGE(S) 696-681

*Karen A. Madsen*

REGISTER OF DEEDS

Recorded	_____
General	_____
Numerical	_____
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Scanned	_____

FILED

2010 SEP 28 AM 8:20

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

Upon Recording Return to:

Erin M. O'Gara, Esq.  
Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102-2186

Blair, NE  
Store No. 4568-00

**DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**

**THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS** (this "Declaration") is made and executed as of the 24 day of September, 2010 by **HAYDEN PLACE DEVELOPMENT, LLC**, a Nebraska limited liability company, and **CEDAR VALLEY PLACE, LLC**, a Nebraska limited liability company, hereafter collectively referred to as "**Declarant**" in favor of **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("**Wal-Mart**").

**WHEREAS**, Wal-Mart is the owner of certain real property more particularly described in Exhibit A attached hereto and incorporated by reference herein, which real property is hereafter referred to as the "**Wal-Mart Property**";

**WHEREAS**, Declarant is the owner of that certain real property more particularly described in Exhibit B, attached hereto and incorporated by reference herein, which property is hereafter referred to as the "**Burdened Property**";

**WHEREAS**, Declarant desires to establish certain easements, covenants and restrictions upon the Burdened Property for the benefit of the Wal-Mart Property;

**NOW, THEREFORE**, Declarant, for itself, its successors and assigns, does hereby declare that the Burdened Property shall be subject to and shall be used in conformance with the easements, covenants, and restrictions set forth herein.

I. The ownership, development and use of the Burdened Property shall be restricted, burdened, encumbered and subject to all of the easements, covenants, and restrictions set forth below.

a. Slope Easement Area.

(i) Slope Easement. In connection with Wal-Mart's proposed development of the Wal-Mart Property, Declarant hereby grants to Wal-Mart, for the benefit of the Wal-Mart Property, a permanent exclusive easement (the "**Slope Easement**") over, upon, within and under that certain portion of the Burdened Property shown and legally described on Exhibit C-1 and Exhibit C-2 attached hereto (the "**Slope Easement Area**") to allow Wal-Mar to enter upon the Slope Easement Area to (a) perform certain grading

4829-8433-2038.5

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Nebraska Land Title & Abstract  
PO Box 6677  
Lincoln NE 68506

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work and all construction activities that are necessary and desirable for the establishment and maintenance of a permanent slope at a specific grade for the purpose of maximizing the stability of the slope located on the Wal-Mart Property, and (b) construct, operate and maintain permanent storm drainage, slope protection erosion control and other improvements (collectively, the “**Slope Improvements**”) deemed necessary or desirable by Wal-Mart in its discretion in order to maximize the stability of the slope located on the Wal-Mart Property over, upon, within and under the Slope Easement Area. Wal-Mart shall have the right and obligation to maintain the Slope Easement Area and the Slope Improvements at its own cost and expense.

(ii) **Access Restrictions.** As a part of the Slope Easement, Declarant hereby declares and restricts, for the benefit of the Wal-Mart Property and the stability of the slope located thereon, that the owner of the Burdened Property shall not (a) enter upon, or permit anyone to enter upon, the Slope Easement Area for any reason without the prior written consent of Wal-Mart, which Wal-Mart may withhold in its discretion or (b) otherwise take any action or allow such action to be taken that would deteriorate the vegetation and stability of the Slope Easement Area or otherwise change the elevation of the Slope Easement Area without the prior written consent of Wal-Mart, which Wal-Mart may withhold in its discretion.

(iii) **Termination of Slope Easement.** In the event that the owner of the Burdened Property desires to improve the Slope Easement Area, then prior to making any such improvements or taking any action within the Slope Easement Area, the owner of the Burdened Property shall submit to Wal-Mart for its review and approval completed signed and sealed construction drawings and design calculations (the “**Plans**”), which demonstrate that the Slope Easement Area will be graded to direct all stormwater runoff which falls on the Slope Easement Area away from the Wal-Mart Property, except for any precipitation that falls within the limits of the No Build Easement Area and the Slope Easement Area that would naturally drain towards the Wal-Mart Property in the site grading conditions existing as of the date of this Declaration shall be allowed to drain towards the Wal-Mart Property in compliance with the terms and conditions set forth in Section 1(f) herein. Exhibit H attached hereto contains a depiction of the existing site grading conditions as of the date of this Declaration. Wal-Mart may approve, conditionally approve, or reject the Plans in its discretion. Upon any approval of the Plans, the owner of the Burdened Property shall complete the work set forth in the Plans (the “**Work**”) to the satisfaction of Wal-Mart and in accordance with all applicable laws and regulations. Following the completion of the Work, Wal-Mart shall inspect the same in order to confirm that the Work was constructed in accordance with the terms and conditions set forth herein. The owner of the Burdened Property shall make any modifications required by Wal-Mart in order to cause the Work to comply with the terms and conditions set forth herein. Upon Wal-Mart’s confirmation that the Work was constructed in accordance with the terms and conditions set forth herein, Wal-Mart shall execute, acknowledge and record in the real property records of Washington County, Nebraska, a termination of the Slope Easement (the “**Termination**”) that terminates and releases the Slope Easement from the Burdened Property. The form Termination is attached hereto as Exhibit D.

(iv) **Responsibility for Costs and Expenses.** Wal-Mart shall not be responsible for any costs or expenses associated with its review and approval of the Plans, including, without limitation, the costs of any modifications required by Wal-Mart

to the Plans in order for the Plans to comply with the terms and conditions set forth herein. The owner of the Burdened Property shall reimburse Wal-Mart all of its reasonable costs and expenses associated with the review of the Plans, and the inspection of the Work, and the review and execution of the Termination, including, without limitation soft costs such as engineering and legal fees, within thirty (30) days of receipt of invoice(s) setting forth such costs and expenses.

b. **Priority of the Slope Easement Over the No Build Easement, the Retaining Wall Easement and the Building Restriction Easement.** Notwithstanding anything to the contrary set forth herein, until such time as Wal-Mart executes and records the Termination, which shall terminate and release the Slope Easement and the covenants and restrictions set forth in Section 1(a), the No Build Easement, the Retaining Wall Easement and the Building Restriction Easement shall be subordinate to the Slope Easement and the portion of the No Build Easement Area, the Retaining Wall Easement Area and the Building Restriction Easement Area that are located within the Slope Easement Area shall be subject to the terms, covenants and restrictions set forth in Section 1(a). The easements, covenants and restrictions set forth in this Section 1(a) shall govern the use of the Slope Easement Area until such time (if any) that Wal-Mart executes and records the Termination, and upon any execution and recording of the Termination, the use and development of the Slope Easement Area and any improvements located thereon shall be governed by the No Build Easement, the Retaining Wall Easement and the Building Restriction Easement and the easements, covenants and restrictions set forth in Sections 1(c), 1(d) and 1(e), as applicable.

c. **No Build Easement.** Declarant hereby declares and restricts, for the benefit of Wal-Mart and the Wal-Mart Property and the stability of the slope located thereon, a permanent easement (the “**No Build Easement**”) that prohibits retaining walls, buildings, structures or other improvements from being constructed or maintained upon, under or above that portion of the Burdened Property shown and legally described on Exhibit E attached hereto (the “**No Build Easement Area**”). The owner of the Burdened Property shall at all times maintain the No Build Easement Area in good repair and condition, including, without limitation, keeping the No Build Easement Area neat, orderly and planted with grass or other landscape approved by Wal-Mart and keeping the No Build Easement Area free of surface erosion at all times. The owner of the Burdened Property shall correct and repair any areas of surface erosion that develop within the No Build Easement Area, including but not limited to, placing additional soil to fill erosion rills or gullies, and reseeding and watering until new vegetation is established. The owner of the Burdened Property shall take no action or allow any action to be taken which would deteriorate the vegetation and soil stability of the No Build Easement Area. The owner of the Burdened Property shall be responsible for ensuring that the slope within the No Build Easement Area shall at no time exceed a ratio of 3 feet (horizontal) to 1 foot (vertical) change (3’(H):1’(V)).

d. **Retaining Wall Easement.** Declarant hereby declares and restricts, for the benefit of Wal-Mart and the Wal-Mart Property and the stability of the slope located thereon, a permanent easement (the “**Retaining Wall Easement**”) that, with the exception of a retaining wall that satisfies the conditions set forth below (the “**Retaining Wall**”), prohibits buildings, structures or permanent improvements from being constructed, maintained and/or located on the portion of the Burdened Property shown and legally described on Exhibit F (the “**Retaining Wall Easement Area**”).

(i) **Specifications for the Retaining Wall.** The Retaining Wall and the Retaining Wall Easement Area shall comply with the specifications set forth below.

(1) The Retaining Wall shall be a Gravity Retaining Wall System (StoneStrong or equivalent as approved by Wal-Mart), and shall be acceptable to Wal-Mart in its discretion.

(2) The maximum base of elevation of the Retaining Wall shall not exceed an elevation of 1238.00 feet (NAVD88), as measured from the bottom of the lowest foundation block or wall footing of the Retaining Wall at the western edge of the Retaining Wall Easement Area. Said base of wall elevation of the Retaining Wall may increase at no greater than the rate of 3 feet (horizontal) to 1 foot (vertical) change (3(H):1(V)), extending easterly from the western boundary of the Retaining Wall Easement Area.

(3) The maximum height and elevation of the Retaining Wall shall not exceed a height of 12 feet and an elevation of 1250.0 feet (NAVD88), as measured from the bottom of the lowest foundation block or wall footing at the top of the Retaining Wall, for any given segment of the Retaining Wall Easement Area. The maximum height of exposed Retaining Wall shall not exceed nine (9) feet.

(ii) **Review and Approval Procedure for Retaining Wall.** Prior to performing any work within the Retaining Wall Easement Area, the owner of the Burdened Property shall submit completed signed and sealed construction drawings and design calculations (the “Retaining Wall Plans”) for the Retaining Wall to Wal-Mart for its review and approval. Wal-Mart may approve, conditionally approve, or reject the Retaining Wall Plans for any reason in its discretion. Wal-Mart shall respond to the owner of the Burdened Property with its approval, conditional approval or rejection within ninety (90) days of receipt of the Retaining Wall Plans. If Wal-Mart has not responded to the Retaining Wall Plans within ninety (90) days after receipt of the Retaining Wall Plans, then the owner of the Burdened Property shall send Wal-Mart written notice and Wal-Mart shall have an additional thirty (30) day period from the receipt of such written notice in which to either approve, conditionally approve or reject the Retaining Wall Plans. The Retaining Wall Plans shall include a slope stability analysis taking into account the Retaining Wall (either present or proposed) within the Retaining Wall Easement Area. A minimum factor of safety of 1.5 shall be obtained in the global stability analysis. Upon any approval of the Retaining Wall Plans, the owner of the Burdened Property shall complete the work set forth in the Retaining Wall Plans in compliance with applicable laws and regulations and to Wal-Mart’s satisfaction. Following the completion of the construction of the work set forth in the Retaining Wall Plans, Wal-Mart shall inspect the Retaining Wall and any related work and confirm that the Retaining Wall and any related work was constructed in accordance with the requirements set forth herein. The owner of the Burdened Property shall make any modifications required by Wal-Mart in order for the Retaining Wall and any related work to comply with the terms and conditions set forth in this Declaration.

(iii) **Responsibility for Costs and Expenses.** Wal-Mart shall not be responsible for any costs or expenses associated with the Retaining Wall or the Retaining Wall Easement Area, including, without limitation, any modifications Wal-Mart requires to the proposed Retaining Wall as a result of its review of the Retaining Wall Plans in order for the Retaining Wall to comply with the terms and conditions set forth herein. The owner of the Burdened Property shall reimburse Wal-Mart for all reasonable costs

and expenses associated with Wal-Mart's review of the Retaining Wall Plans and Wal-Mart's inspection of the Retaining Wall and related work once completed, including soft costs such as engineers and legal fees, within thirty (30) days of a receipt of invoice(s) setting forth such costs and expenses.

(iv) **Maintenance.** The owner of the Burdened Property shall maintain the Retaining Wall and the Retaining Wall Easement Area in a good condition and repair at all times. The portion of the Retaining Wall Easement Area that does not contain the Retaining Wall shall be kept neat, orderly and planted with grass or other landscape approved by Wal-Mart. The owner of the Burdened Property shall keep the slope located on the Retaining Wall Easement Area free of surface erosion at all times. The owner of the Burdened Property shall correct and repair any areas of surface erosion that develop within the Retaining Wall Easement Area, including but not limited to placing additional soil to fill erosion rills or gullies, and reseeding and watering until new vegetation is established. The owner of the Burdened Property shall be responsible for ensuring that the slope within the Retaining Wall Easement Area shall at no time exceed a ratio of 3 feet (horizontal) to 1 foot (vertical) change (3'(H):1'(V)).

(v) **Applicability of Requirements.** The requirements and conditions set forth herein for the construction of the Retaining Wall are applicable for any construction, reconstruction, repair and maintenance of the Retaining Wall, except that the owner of the Burdened Property shall not be required to provide Wal-Mart with the Retaining Wall Plans prior to any non-structural repair or maintenance of the Retaining Wall.

e. **Building Restriction Easement.** Declarant hereby declares and restricts, for the benefit of Wal-Mart and the Wal-Mart Property and the stability of the slope thereon, a permanent easement (the "**Building Restriction Easement**") that, with the exception of any permanent structures that satisfy the conditions and restrictions set forth below (individually, a "**Building**" and collectively, the "**Buildings**") and Retaining Walls that satisfy the conditions and restrictions set forth above, prohibits any buildings, structures or permanent improvements from being constructed or maintained on the portion of the Burdened Property shown and legally described on Exhibit G attached hereto (the "**Building Restriction Easement Area**").

(i) **Specifications for Buildings.** The Buildings shall comply with the specifications set forth below.

(1) The maximum finished floor elevation (measured to the top of the finished floor slab of a Building) of the lower level of the Building shall not exceed an elevation of 1250.0 feet (NAVD88) within the Building Restriction Easement Area.

(2) Foundations or footings of the Buildings within the Building Restriction Easement Area shall extend to a minimum depth of 6 feet, as measured from the bottom of the nearest foundation to the finished floor elevation of 1250.0 feet (NAVD88). Within the Building Restriction Easement Area, the maximum foundation bearing elevation of the Building shall not exceed an elevation of 1244.0 feet (NAVD88).

(3) The maximum unfactored structural building loads and the maximum net allowable soil-bearing pressure that may be applied to the foundations of the Buildings within the Building Restriction Easement Area shall not exceed the following limits:

- (A) Continuous Wall Footings: 5 klf (kips per linear foot)
- (B) Isolated Column Footings: 50 kips each
- (C) Maximum Net Allowable Soil Bearing Pressure: 1500 psf (pounds per square foot)

(4) The maximum proposed ground elevation within the Building Restriction Easement Area shall not exceed an elevation of 1250.0 feet (NAVD88).

(5) Any Retaining Walls constructed within the Building Restriction Easement Area shall confirm to the conditions and restrictions set forth in Section 1(d) above.

(ii) **Review and Approval Procedure for Buildings.** Prior to performing any work within the Building Restriction Easement Area, the owner of the Burdened Property shall submit completed signed and sealed construction drawing and design calculations (the "Building Plans") for the Buildings to Wal-Mart for its review and approval. The Building Plans shall include a slope stability analysis taking into account the Buildings (either present or proposed) within the Building Restriction Easement Area. A minimum factor of safety of 1.5 shall be obtained in the global stability analysis. Wal-Mart may approve, conditionally approve or reject the Building Plans in its discretion. Wal-Mart shall respond to the owner of the Burdened Property with its approval, conditional approval or rejection within ninety (90) days of receipt of the Building Plans. If Wal-Mart has neither approved, conditionally approved or rejected the Building Plans within ninety (90) days after receipt of the Building Plans, then the owner of the Burdened Property shall send Wal-Mart written notice, and Wal-Mart shall have an additional thirty (30) day period from the receipt of such written notice in which to either approve, conditionally approve or reject the Building Plans. Upon any approval of the Building Plans, the owner of the Burdened Property shall complete the work set forth in the Building Plans in accordance with applicable laws and regulations and to Wal-Mart's reasonable satisfaction. Following the completion of construction of the work set forth in the Building Plans, Wal-Mart shall inspect the Building(s) and any related work and confirm that the Building(s) and any related work was constructed in accordance with the requirements set forth herein. The owner of the Burdened Property shall make any modifications required by Wal-Mart in order for the Building(s) and any related work to comply with the requirements set forth herein.

(iii) **Responsibility for Costs and Expenses.** Wal-Mart shall not be responsible for any costs or expenses associated with the Buildings or the Building Restriction Easement Area, including without limitation, any modifications Wal-Mart requires to be made to the proposed Building as a result of its review of the Building Plans. The owner of the Burdened Property shall reimburse Wal-Mart for all reasonable costs and expenses associated with Wal-Mart's review of the Building Plans and Wal-

Mart's inspection of the Buildings once completed, including soft costs such as engineering and legal fees, within thirty (30) days of a receipt of invoice setting forth such costs and expenses.

(iv) **Maintenance.** The owner of the Burdened Property shall maintain the Buildings and the Building Restriction Easement Area in a good condition and repair at all times. The portion of the Building Restriction Easement Area that does not contain any Buildings shall be kept neat, orderly and planted with grass. The owner of the Burdened Property shall keep the slope located on the Building Restriction Easement Area free of surface erosion at all times. The owner of the Burdened Property shall correct and repair any areas of surface erosion that develop within the Building Restriction Easement Area, including, but not limited to, placing additional soil to fill erosion rills or gullies and reseeding and watering until new vegetation is established. The maximum proposed ground elevation within the Building Restriction Easement Area shall not exceed an elevation of 1250.0 feet (NAVD88).

(v) **Applicability of Requirements.** The requirements and conditions set forth herein for the construction of the Buildings are applicable for any construction, reconstruction, repair and maintenance of the Buildings, except that the owner of the Burdened Property shall not be required to provide Wal-Mart with Building Plans prior to any non-structural repair or maintenance of the Buildings.

(vi) **Construction of Retaining Walls Within the Building Restriction Easement.** As noted above, Retaining Walls that comply with the terms and conditions set forth in Section 1(d) above may be located within the Building Restriction Easement Area. In such event, the terms and conditions set forth in Section 1(d) shall apply to the construction, installation and maintenance of any Retaining Walls constructed within the Building Restriction Easement Area.

f. **Negative Stormwater Covenant.** Stormwater runoff from the Burdened Property shall not be discharged onto, toward, or directed through the Wal-Mart Property, except that any precipitation that falls within the limits of the No Build Easement Area and the Slope Easement Area that would naturally drain towards the Wal-Mart Property in the undeveloped site grading conditions existing as of the date of this Declaration shall be allowed to drain towards the Wal-Mart Property. Exhibit H attached hereto contains a depiction of the existing undeveloped site grading conditions as of the date of this Declaration. The right to drain towards the Wal-Mart Property as set forth above shall automatically terminate upon any change in the grade of the Burdened Property or any development of the Burdened Property that increases the rate or volume of the stormwater runoff from the Burdened Property.

(i) **Conditions To Be Satisfied for Right to Drain Towards Wal-Mart Property Prior to Development of Burdened Property.** Upon the satisfaction of the below conditions, any stormwater runoff from the Burdened Property that is directed towards the Wal-Mart Property shall be directed by way of overland surface flow based upon the existing site conditions as of the date of this Agreement (which are depicted on Exhibit H attached hereto) to an area inlet (the "Inlet") located on the Burdened Property and constructed by Wal-Mart through a pipe to be constructed by Wal-Mart on the Wal-Mart Property (the "Wal-Mart Pipe"), all in the manner described below and as generally depicted on Exhibit I attached hereto.

(1) Wal-Mart has elected to develop the Wal-Mart Property and Wal-Mart has completed construction of its proposed improvements to the Wal-Mart Property, including without limitation, the construction of the Wal-Mart Pipe and the Inlet, and Wal-Mart has obtained a Notice of Termination from the Nebraska Department of Environmental Quality with respect to its storm water permit.

(2) Wal-Mart has applied for and obtained permits from the City, the State and other governmental entities with jurisdiction over the Wal-Mart Property and the Burdened Property for approval to discharge stormwater from the Wal-Mart Pipe, which shall by-pass Wal-Mart's proposed stormwater detention pond, into the Highway 30 right-of-way, which are acceptable to Wal-Mart in its discretion.

(3) Wal-Mart and the owner of the Burdened Property shall execute, acknowledge and record in the Washington County Real Property Records the form of Drainage Easement attached as Exhibit J attached hereto, which shall permit the stormwater runoff from the Burdened Property that is directed towards to the Wal-Mart Property to discharge into the Inlet and through the Wal-Mart Pipe all in accordance with the terms of the Drainage Easement.

(4) The rate and volume of the stormwater runoff from the Burdened Property shall not increase from the rate and volume of stormwater runoff as of the date of this Declaration, as evidenced by the existing undeveloped site conditions shown on Exhibit H attached hereto. Any change in the grade of the Burdened Property or any development of the Burdened Property that increases the rate or volume of the stormwater runoff from the Burdened Property shall not be permitted.

(5) No stormwater from the Burdened Property shall be directed towards the Wal-Mart Property except in the manner set forth above.

(ii) **Conditions To Be Satisfied for Right to Increase Stormwater Rate or Volume Towards the Wal-Mart Property Upon Any Development of the Burdened Property.** The rate and flow of the stormwater runoff from the Burdened Property that is directed towards the Wal-Mart Property shall not be increased from the existing undeveloped site grading conditions as of the date of this Declaration, as evidenced by the existing undeveloped site conditions shown on Exhibit H attached hereto, as measured at the Inlet until the below conditions have been satisfied. Upon any development of the Burdened Property, then upon the satisfaction of the below conditions, the rate and volume of the storm water runoff from the Burdened Property that is directed towards the Wal-Mart Property may be increased in accordance with the terms of the Storm Water Drainage Easement and in the manner prescribed below.

(1) The owner of the Burdened Property has submitted to Wal-Mart for its review and written approval, which Wal-Mart may grant, withhold or condition in its discretion, signed and sealed construction drawings, design calculations and a drainage study (collectively, the "**Drainage Plans**") which show the stormwater runoff from the Burdened Property that is directed towards the Wal-Mart Property directed to a single point source location and directed



toward the Inlet or the storm drain pipe to be constructed by the owner of the Burdened Property and connected into the Wal-Mart Pipe, at the proposed connection location at the eastern boundary of Outlot A, all as generally depicted on Exhibit I attached hereto.

(2) Upon any written approval by Wal-Mart of the Drainage Plans, the owner of the Burdened Property shall construct the improvements and perform the work set forth in the approved Drainage Plans (collectively, the “**Drainage Improvements**”) in accordance with applicable laws and regulations and to Wal-Mart’s satisfaction. Following the completion of construction of the Drainage Improvements, Wal-Mart shall inspect the Drainage Improvements and any related work and confirm that the Drainage Improvements and any related work was constructed in accordance with the requirements set forth herein. The owner of the Burdened Property shall make any modifications required by Wal-Mart in order for the Drainage Improvements and any related work to comply with the terms and conditions set forth herein.

(3) The volume and rate of stormwater runoff from the Burdened Property that is directed towards the Wal-Mart Property and through the Wal-Mart Pipe shall in no event exceed 48 cubic feet per second (cfs) in the 10-year storm event; 64 cubic feet per second (cfs) in the 50-year storm event; 74 cubic feet per second (cfs) in the 100-year storm event. The volume and rate of the stormwater runoff from the Burdened Property shall be measured at the entrance of the Wal-Mart Pipe.

(4) No stormwater runoff from the Burdened Property shall be directed towards the Wal-Mart Property except in the manner set forth above.

(iii) **Responsibility for Costs and Expenses.** Wal-Mart shall not be responsible for any costs and expenses associated with the Drainage Plans or the Drainage Improvements, including, without limitation, any modifications Wal-Mart requires to be made to the Drainage Plans and the Drainage Improvements in order for the Drainage Plans and Drainage Improvements to comply with the terms and conditions set forth herein. Declarant shall reimburse Wal-Mart for all reasonable costs and expenses associated with Wal-Mart’s review of the Drainage Plans and subsequent inspection of the Drainage Improvements, including soft costs such as engineering and legal fees, within thirty (30) days of receipt of a written invoice setting forth such costs.

2. The foregoing easements, covenants, restrictions and agreements (a) are imposed upon the Burdened Property for the benefit of the Wal-Mart Property and all portions thereof, (b) except as otherwise set forth herein, shall be effective in perpetuity and (c) shall be deemed easements and restrictive covenants running with the land, appurtenant to the Wal-Mart Property and the Burdened Property and shall be binding upon the Burdened Property and any person who may from time to time own, lease or otherwise have an interest in the Burdened Property or any portion thereof, for the benefit of the Wal-Mart Property and any persons who may from time to time own, lease or otherwise have an interest in the Wal-Mart Property or any portion thereof.

3. In the event of a breach or threatened breach of any term of this Declaration, Wal-Mart shall have the right to exercise any and all remedies afforded under law and at equity, including, without limitation, the right to obtain injunctive relief, and in addition, at its option, may: (i) perform any such

term, provision, covenant, or condition at the cost and expense of the owner of the Burdened Property and the owner of the Burdened Property hereby grants Wal-Mart the right to enter upon the Burdened Property in order to exercise such rights; or (ii) make any such payment required to cure such default. It is expressly agreed that no breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder or under applicable law by reason of any such breach. This Declaration is made in and shall be construed pursuant to the laws of the state in which the Burdened Property is located.

4. Notwithstanding anything to the contrary set forth in this Declaration or the exhibits attached hereto, it is expressly declared that nothing in this Declaration or the exhibits attached hereto is construed as containing a covenant or undertaking on the part of Wal-Mart, either expressed or implied, to commence construction of a building or other structure or to open a business or thereafter continuously operate a business on the Wal-Mart Property. Declarant acknowledges and agrees that the proposed improvements to the Wal-Mart Property that are shown on the exhibits to the Declaration are for informational purposes only and that in the event that Wal-Mart does elect to develop the Wal-Mart Property, Wal-Mart shall not be obligated to develop the Wal-Mart Property in the manner shown on the exhibits attached to the Declaration, with the exception of the Drainage Easement Area and the Wal-Mart Pipe which shall be located in substantially the same location as shown in the exhibits in the event that Wal-Mart elects to develop the Wal-Mart Property.

5. This Declaration may only be modified, amended or terminated by the mutual agreement of (i) Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of any portion of the Wal-Mart Property, or its successors in interest, and (ii) Developer, as long as it or its affiliate has any interest as either owner or lessor of any portion of the Burdened Property, or its successors in interest. The owner of the Wal-Mart Property agrees that for so long as a lease of all of any portion of the Wal-Mart Property is in effect, whenever the consent of the owner of the Wal-Mart Property is required under this Declaration, the owner of the Wal-Mart Property will give such consent only after obtaining Wal-Mart's consent.

6. The owner of the Burdened Property hereby indemnifies and saves the owner of the Wal-Mart Property 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 the Burdened Property or resulting from any breach by the owner of the Burdened Property of the terms of this Declaration, except if caused by the act or negligence of the owner of the Wal-Mart Property.

7. The owner of the Burdened Property shall procure and maintain in full force and effect throughout the term of this Declaration general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about or resulting from the Burdened Property or any breach of this Declaration by the owner of the Burdened Property. The owner of the Burdened Property's insurance shall afford protection to the limit of not less than \$5,000,000.00 for injury or death of a single person, and to the limit of not less than \$5,000,000.00 for any one occurrence, and to the limit of not less than \$5,000,000.00 for property damage. The owner of the Burdened Property shall provide the owner of the Wal-Mart Property 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 owner of the Burdened Property which may cover other property in addition to the Burdened Property. Such insurance shall provide that the same may not be canceled without ten (10) days prior written notice to Wal-Mart.

8. All notices and communications required or permitted to be given hereunder shall be in writing and hand delivered or mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express or similar overnight delivery service, addressed as follows:

If to Declarant:

Hayden Place Development, LLC  
Cedar Valley Place, LLC  
12049 CRP 30  
Blair, NE 68008  
Attn: Mary Berg

If to Wal-Mart:

Wal-Mart Stores, Inc.  
2001 Southeast 10<sup>th</sup> Street  
Bentonville, AR 72716-0050  
Attn: Property Management - Nebraska  
Store No. 4568-00

With Copy To:

Larry Jobeun  
Fullenkamp, Doyle and Jobeun  
11410 West Center Road  
Omaha, NE 68144

With Copy To:

Wal-Mart Stores, Inc.  
2001 Southeast 10<sup>th</sup> Street  
Bentonville, AR 72716-0050  
Attn: Legal Department – Nebraska Store  
No. 4568-00

With Copy To:

Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102  
Attn: Erin O’Gara / Rich Rosenblatt

Notice shall be deemed to have been given upon receipt or refusal. Any party shall be entitled to change its address for notice by providing notice of such change and recording a copy of such change in the county recorder’s office in the county in which the Burdened Property is located. Until such time as the notice of change is effective pursuant to the terms of this Section 8 and until such time as it is recorded as required above, the last address of said party shall be deemed to be the property address of said party.

9. In the event Declarant conveys or transfers title to the Burdened Property to another party, Wal-Mart shall be notified thereof within thirty (30) days thereafter pursuant to the provisions of Section 8. Wal-Mart shall be provided the name and address of such transferee.

10. Declarant confirms with Wal-Mart that Declarant 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. Declarant hereby represents and warrants that any and all mortgagees, lien holders, tenants and persons with an interest in the Burdened Property have executed and acknowledged this Declaration.

*Remainder of Page Left Intentionally Blank – Signature Pages to Follow*

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year above set forth.

DECLARANT:

Hayden Place Development, LLC, a Nebraska limited liability company

By Mary Berg  
Name Mary Berg  
Title Managing Member

STATE OF Nebraska )  
COUNTY OF Washington )

) ss.

On this 17th day of September, in the year 2010, before me, a Notary Public, personally Mary Berg, the Managing Member of Hayden Place Development, LLC, a Nebraska limited liability company, on behalf of the limited liability company, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.



Randy W. Lock  
Notary Public

My Commission Expires:

8-16-2014

DECLARANT:

Cedar Valley Place, LLC, a Nebraska limited liability company

By Mary Berg  
Name Mary Berg  
Title Managing Member

STATE OF Nebraska )  
COUNTY OF Washington )

) ss.

On this 17<sup>th</sup> day of September in the year 2010, before me, a Notary Public, personally appeared Mary Berg, the Managing Member of Cedar Valley Place, LLC, a Nebraska limited liability company, on behalf of the limited liability company, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.



Randy W. Lock  
Notary Public

My Commission Expires:  
760 816-14

**MORTGAGEE CONSENT**

Two Rivers State Bank ("Mortgagee") has made a loan (the "Loan") to Cedar Valley Place, LLC, a Nebraska limited liability company secured by Real Estate Deed of Trust (with Future Advance Clause) securing a sum not to exceed \$370,000, dated February 9, 2007 and filed February 12, 2007 in Book 504, Page 572 in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Burdened Property.

Mortgagee hereby consents to this Declaration and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, conditions and restrictions contained in this Declaration, as the same may be amended from time to time.

This Consent is effective as of the date and year first written.

**MORTGAGEE:**

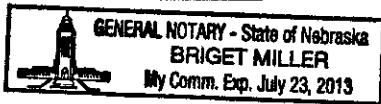
**TWO RIVERS STATE BANK**

By: *Randy W. Lock*  
Name: RANDY W. LOCK  
Its: President/CEO  
Date: 9-17-2010

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of September, 2010, by Randy Lock, the President/CEO of Two Rivers State Bank a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

[SEAL]



*Briget Miller*  
Notary Public

My Commission Expires 7-23-13

**MORTGAGEE CONSENT**

Two Rivers Bank ("Mortgagee") has made a loan (the "Loan") to Hayden Place Development, LLC secured by Real Estate Deed of Trust (with Future Advance Clause) securing a sum not to exceed \$1,300,000, dated September 7, 2007 and filed September 10, 2007 in Book 515, Page 630 in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Burdened Property.

Mortgagee hereby consents to this Declaration and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, conditions and restrictions contained in this Declaration, as the same may be amended from time to time.

This Consent is effective as of the date and year first written.

**MORTGAGEE:**

**TWO RIVERS BANK**

By: Randy W. Lock  
Name: RANDY W. LOCK  
Its: President/CEO  
Date: 9-17-2010

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of September, 2010, by Randy Lock, the President/CEO of Two Rivers Bank a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

[SEAL]



Briget Miller  
Notary Public

My Commission Expires 7-23-13

MORTGAGEE CONSENT

Two Rivers State Bank ("Mortgagee") has made a loan (the "Loan") to Jason Berg and Mary Berg, husband and wife, an undivided 1/2 interest and Wayne A. Jones and Holli M. Jones, husband and wife, an undivided 1/2 interest, the predecessors in interest to Hayden Place Development, LLC and Cedar Valley Place, LLC, secured by Deed of Trust with Future Advance Clause to secure the sum of \$975,000 dated October 20, 2006 and filed of record November 6, 2006 in Book 499, Page 278, in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Burdened Property.

Mortgagee hereby consents to this Declaration and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, conditions and restrictions contained in this Declaration, as the same may be amended from time to time.

**MORTGAGEE:**

**TWO RIVERS STATE BANK**

By: *Randy W. Lock*  
Name: Randy W. Lock  
Its: President/CEO  
Date: 9-15-10

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of September, 2010, by Randy Lock, the President/CEO of Two Rivers State Bank a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

[SEAL] 

*Briget Miller*  
Notary Public

My Commission Expires 7-23-13



**MORTGAGEE CONSENT**

Two Rivers State Bank ("Mortgagee") has made a loan (the "Loan") to Jason Berg and Mary Berg, husband and wife, an undivided 1/2 interest and Wayne A. Jones and Holli M. Jones, husband and wife, an undivided 1/2 interest, the predecessor in interest to Hayden Place Development, LLC and Cedar Valley Place, LLC, secured by Construction Security Deed of Trust With Future Advance Clause to secure the sum not to exceed \$1,900,000 dated November 6, 2006 and filed of record November 17, 2006 in Book 500, Page 113, in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Burdened Property.

Mortgagee hereby consents to this Declaration and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, conditions and restrictions contained in this Declaration, as the same may be amended from time to time.

**MORTGAGEE:**

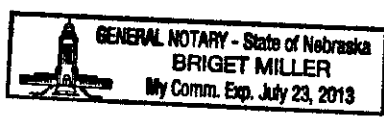
**TWO RIVERS STATE BANK**

By: Randy W. Lock  
Name: Randy W. Lock  
Its: President/CEO  
Date: 9-17-2010

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of September, 2010, by Randy Lock, the President/CEO of Two Rivers State Bank, on behalf of the \_\_\_\_\_.

[SEAL]



Briget Miller  
Notary Public

My Commission Expires 7-23-13

**MORTGAGEE CONSENT**

Two Rivers Bank ("Mortgagee") has made a loan (the "Loan") to Hayden Place Development, LLC secured by Real Estate Deed of Trust (With Future Advance Clause) to secure the sum not to exceed \$1,300,000 dated October 14, 2008 and filed of record October 27, 2008 in Book 531, Page 311, in the office of the Register of Deeds of Washington County, Nebraska (together with all instruments executed by Hayden Place Development, LLC and Mortgagee in connection with the Loan, including all amendments, modifications, replacements and restatements thereto, the "Encumbrances"). The Encumbrances create a first lien against a portion of the Burdened Property.

Mortgagee hereby consents to this Declaration and agrees that the Encumbrances shall be subject and subordinate to the terms, provisions, covenants, easements, conditions and restrictions contained in this Declaration, as the same may be amended from time to time.

**MORTGAGEE:**

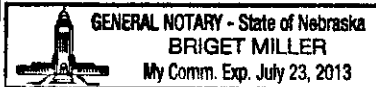
**TWO RIVERS BANK**

By: Randy Lock  
Name: RANDY LOCK  
Its: President/CEO  
Date: 9-17-2010

STATE OF Nebraska  
COUNTY OF Washington ) ss.

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of September 2010, by Randy Lock, the President/CEO of Two Rivers Bank a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

[SEAL]



Briget Miller  
Notary Public

My Commission Expires 7-23-13

CONSENT OF LIENHOLDER

Olsson Associates ("Lienholder") has rendered certain construction services to Hayden Place Development, LLC and/or Cedar Valley Place, LLC and in connection with the same, has filed a (i) Construction Lien in the amount of \$175,111.79, plus interest, filed of record December 21, 2009 in Book 549, Page 291 in the office of the Register of Deeds of Washington County, Nebraska and (ii) a Construction Lien in the amount of \$17,280.52, plus interest, filed of record December 21, 2009 in Book 549, Page 294 in the office of the Register of Deeds of Washington County, Nebraska, , and (iii) a Construction Lien in the amount of \$1,943.10, plus interest, filed of record December 21, 2009 in Book 549, Page 297 in the office of the Register of Deeds of Washington County, Nebraska and (iv) a Construction Lien in the amount of \$265,064.82, plus interest, filed of record December 21, 2009 in Book 549, Page 301 in the office of the Register of Deeds of Washington County, Nebraska (together with any amendments, modifications, replacements and restatements thereto, collectively the "Construction Liens"). The Construction Liens constitutes a lien against a portion of the Burdened Property.

Lienholder hereby consents to this Declaration and agrees that the Construction Liens shall be subject and subordinate to the terms, provisions, covenants, easements, conditions and restrictions contained in this Declaration as the same may be amended from time to time. Further, Lienholder represents and warrants to Wal-Mart that the Construction Liens are the only liens filed against the Burdened Property by Lienholder. Lienholder agrees that any liens that may be filed against the Burdened Property in the future shall be subject and subordinate to the terms, provisions, covenants, easements and conditions contained in this Declaration as the same may be amended from time to time.

LIENHOLDER:

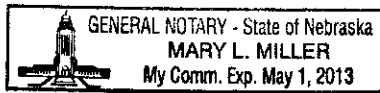
OLSSON ASSOCIATES

By: Brad Stuttman  
Name: Brad Stuttman  
Its: President  
Date: September 20, 2010

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Lancaster )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of September 2010, by Brad Stuttman, the President of Olsson Associates a Nebraska Corporation, on behalf of the Lienholder.

[SEAL]



Mary L Miller  
Notary Public

My Commission Expires 5/1/2013

645

**EXHIBIT A**

**Legal Description 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

**EXHIBIT B**

**Legal Description of the Burdened Property**

Lot 8, Hayden Place First Addition Replat Two, City of Blair, Washington County, Nebraska

**EXHIBIT C**

**Legal Description and Depiction of the Slope Easement Area**

**See Exhibit C-1 and Exhibit C-2 attached hereto**



**LEGAL DESCRIPTION**

A TRACT OF LAND LOCATED ON HAYDEN PLACE FIRST ADDITION, REPLAT TWO LOT 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF HAYDEN PLACE FIRST ADDITION, REPLAT TWO OUTLOT A, SAID POINT ALSO BEING THE POINT OF BEGINNING SAID POINT ALSO BEING ON THE SOUTH RIGHT-OF-WAY LINE OF THE FUTURE BLAIR BY-PASS, THENCE EASTERLY ALONG SAID SOUTH RIGHT-OF-WAY LINE ON AN ASSUMED BEARING OF N87°35'47"E, 346.96 FEET; THENCE S02°24'39"E, 48.74 FEET; THENCE S33°54'30"W, 261.32 FEET; THENCE S02°25'36"E, 129.38 FEET; THENCE S87°34'07"W, 135.00 FEET TO A POINT ON THE EAST LINE OF SAID OUTLOT A, THENCE N02°25'47"W ALONG THE EAST LINE OF SAID OUTLOT A, 352.76 FEET, THENCE N60°10'55"W, 67.50 FEET TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINING 1.78 ACRES (77,339.22 SQ. FT.) MORE OR LESS.

PROJECT NO: 006-1603

DRAWN BY: MDB

DATE: 7/1/2010

**EXHIBIT C-2  
 SLOPE GRADING EASEMENT**



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



EXHIBIT D

Form of Termination

PREPARED BY:  
ERIN M. O'GARA, ESQ.  
KUTAK ROCK LLP  
1650 FARNAM STREET  
OMAHA, NE 68102-2186  
(402) 346-6000

Blair, NE  
Store No. 4568-00

TERMINATION AND RELEASE OF SLOPE EASEMENT

This **TERMINATION AND RELEASE OF SLOPE EASEMENT** (this "**Termination**") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("**Wal-Mart**") in favor of **HAYDEN PLACE DEVELOPMENT, LLC** and **CEDAR VALLEY PLACE, LLC** (collectively, the "**Declarant**").

PRELIMINARY STATEMENTS

WHEREAS, Declarant is the owner of certain property legally described on Exhibit A attached hereto (the "**Declarant Property**").

WHEREAS, Wal-Mart is the owner of certain property legally described on Exhibit B attached hereto (the "**Wal-Mart Property**").

WHEREAS, Declarant established certain easements, covenants and restrictions on the Burdened Property for the benefit of the Wal-Mart Property in that certain Declaration of Easements, Covenants and Restrictions (the "**Declaration**") dated \_\_\_\_\_, and recorded \_\_\_\_\_, as document number \_\_\_\_\_, in the real property records of Washington County, Nebraska.

WHEREAS, pursuant to the terms of the Declaration, Wal-Mart will release the Slope Easement from the Burdened Property if the terms and conditions set forth in the Declaration for the release of the Slope Easement have been met as determined by Wal-Mart, and Wal-Mart has determined that the terms and conditions set forth in the Declaration for the release of the Slope Easement have been satisfied.

NOW THEREFORE, in consideration of the premises and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Termination of Slope Easement.** The Slope Easement set forth in Section 1(a) of the Declaration is hereby terminated and released from the Burdened Property. Pursuant to the terms of the Declaration, upon the execution and recording of the Termination, the use and development of the Slope Easement Area and any improvements located thereon shall be subject to the No Build Easement, the Retaining Wall Easement and the Building Restriction Easement, and the easements, covenants and restrictions set forth in Sections 1(c), 1(d) and 1(e) of the Declaration, as applicable.

2. **Full Force and Effect; Counterparts.** To the extent not inconsistent herewith, all other terms and provisions of the Declaration shall remain in full force and effect and are ratified by the parties hereto. This Termination may be executed in counterparts, each of which when taken together shall constitute one entire agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Blair, NE  
Store No. 4568-00

IN WITNESS WHEREOF, the parities have executed this Termination as of the date and year first written above.

WAL-MART

Wal-Mart Real Estate Business Trust

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

) ss.

On this \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me, a Notary Public, personally appeared \_\_\_\_\_, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT TO EXHIBIT D – FORM OF TERMINATION**

**EXHIBIT A**

**Legal Description of the Wal-Mart Property**

**[To be inserted at the time of the recording of the Termination]**

654

**EXHIBIT TO EXHIBIT D – FORM OF TERMINATION**

**EXHIBIT B**

**Legal Description of the Burdened Property**

**[To be inserted at the time of the recording of the Termination]**

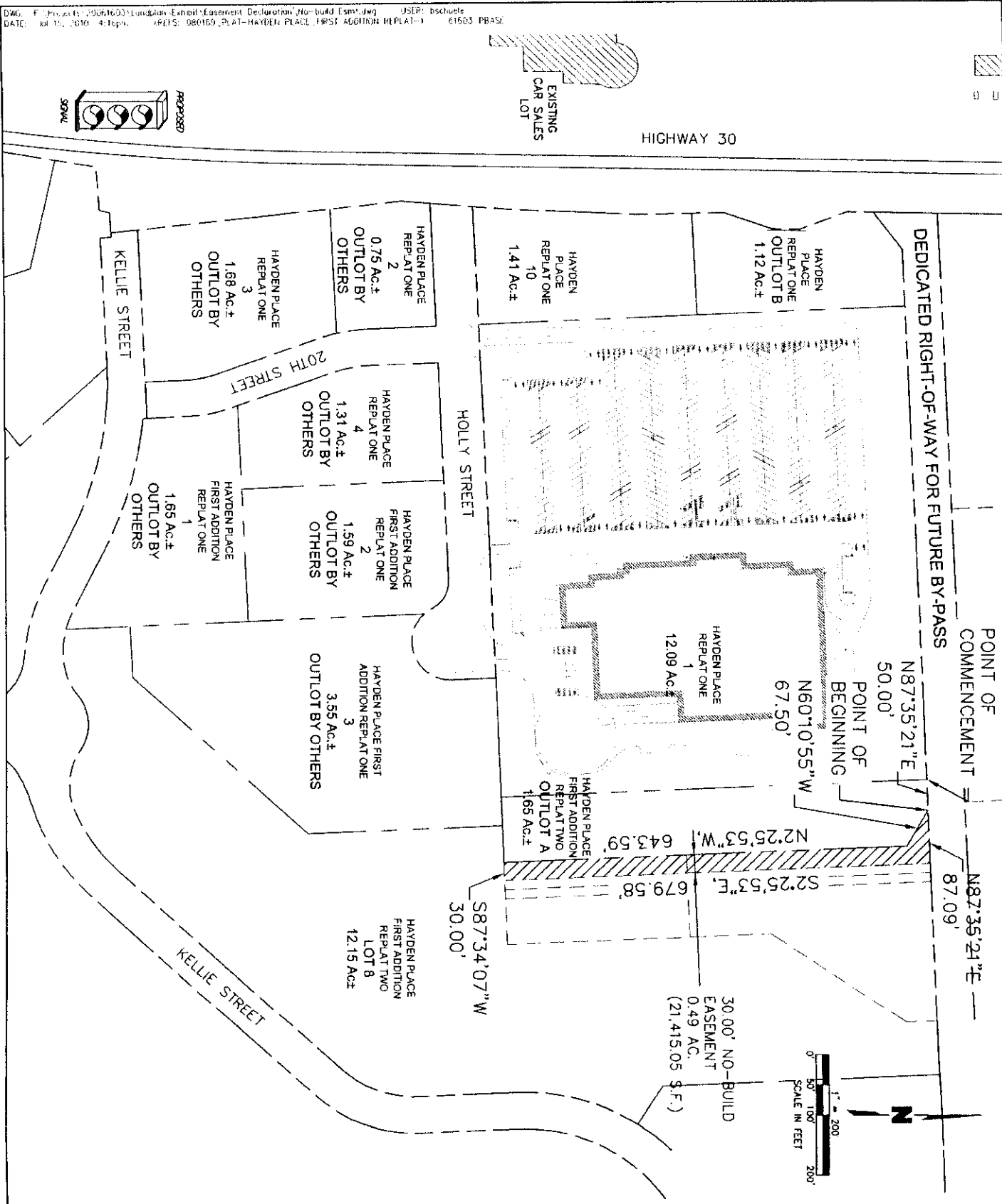
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655

**EXHIBIT E**

**No Build Easement**

**See Exhibit E-1 and Exhibit E-2 attached hereto**



PROJECT NO: 006-1603

DRAWN BY: MDB

DATE: 7/15/2010

**EXHIBIT E-1  
NO-BUILD EASEMENT**



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 HAYDEN PLACE FIRST ADDITION, REPLAT TWO LOT 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF HAYDEN PLACE, REPLAT ONE LOT 1, SAID POINT ALSO BEING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF THE FUTURE BLAIR BY-PASS, THENCE N87°35'21"E, 50.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON SAID RIGHT-OF-WAY; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY N87°35'21"E, 87.09 FEET; THENCE S02°25'53"E, 679.58 FEET; THENCE S87°34'07"W, 30.00 FEET TO THE SOUTHEAST CORNER OF SAID OUTLOT A; THENCE ALONG THE EAST LINE OF SAID OUTLOT A N02°25'53"W, 643.59 FEET; THENCE N60°10'55"W, 67.50 FEET TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINING 0.49 ACRES (21,415.05 SQ. FT.) MORE OR LESS.

PROJECT NO: 006-1603
DRAWN BY: MDB
DATE: 6/18/2010

**EXHIBIT E-2  
NO-BUILD EASEMENT**

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

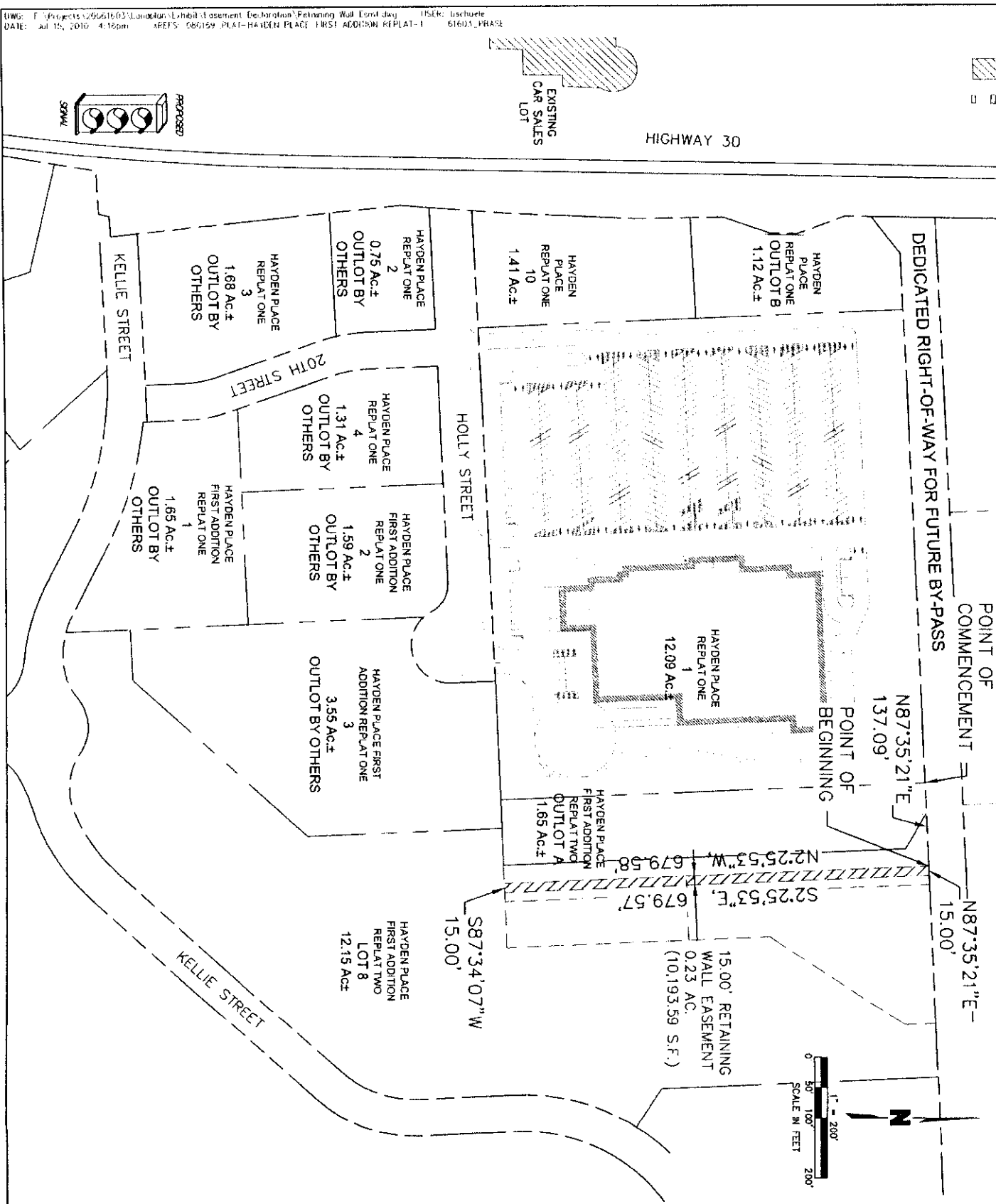




**EXHIBIT F**

**RETAINING WALL EASEMENT**

**See Exhibit F-1 and Exhibit F-2 attached hereto**



PROJECT NO: 006-1603  
 DRAWN BY: MDB  
 DATE: 7/15/2010

**EXHIBIT F-1**  
**RETAINING WALL 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 HAYDEN PLACE FIRST ADDITION, REPLAT TWO LOT 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF HAYDEN PLACE, REPLAT ONE LOT 1, SAID POINT ALSO BEING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF THE FUTURE BLAIR BY-PASS, THENCE CONTINUING ALONG SAID RIGHT-OF-WAY N87°35'21"E, 137.09 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON SAID RIGHT-OF-WAY; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY N87°35'21"E, 15.00 FEET; THENCE S02°25'53"E, 679.57 FEET; THENCE S87°34'07"W, 15.00 FEET; THENCE N02°25'53"W, 679.58 FEET; TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINING 0.23 ACRES (10,193.59 SQ. FT.) MORE OR LESS.

PROJECT NO: 006-1603

DRAWN BY: MDB

DATE: 6/18/2010

**EXHIBIT F-2  
RETAINING WALL EASEMENT**



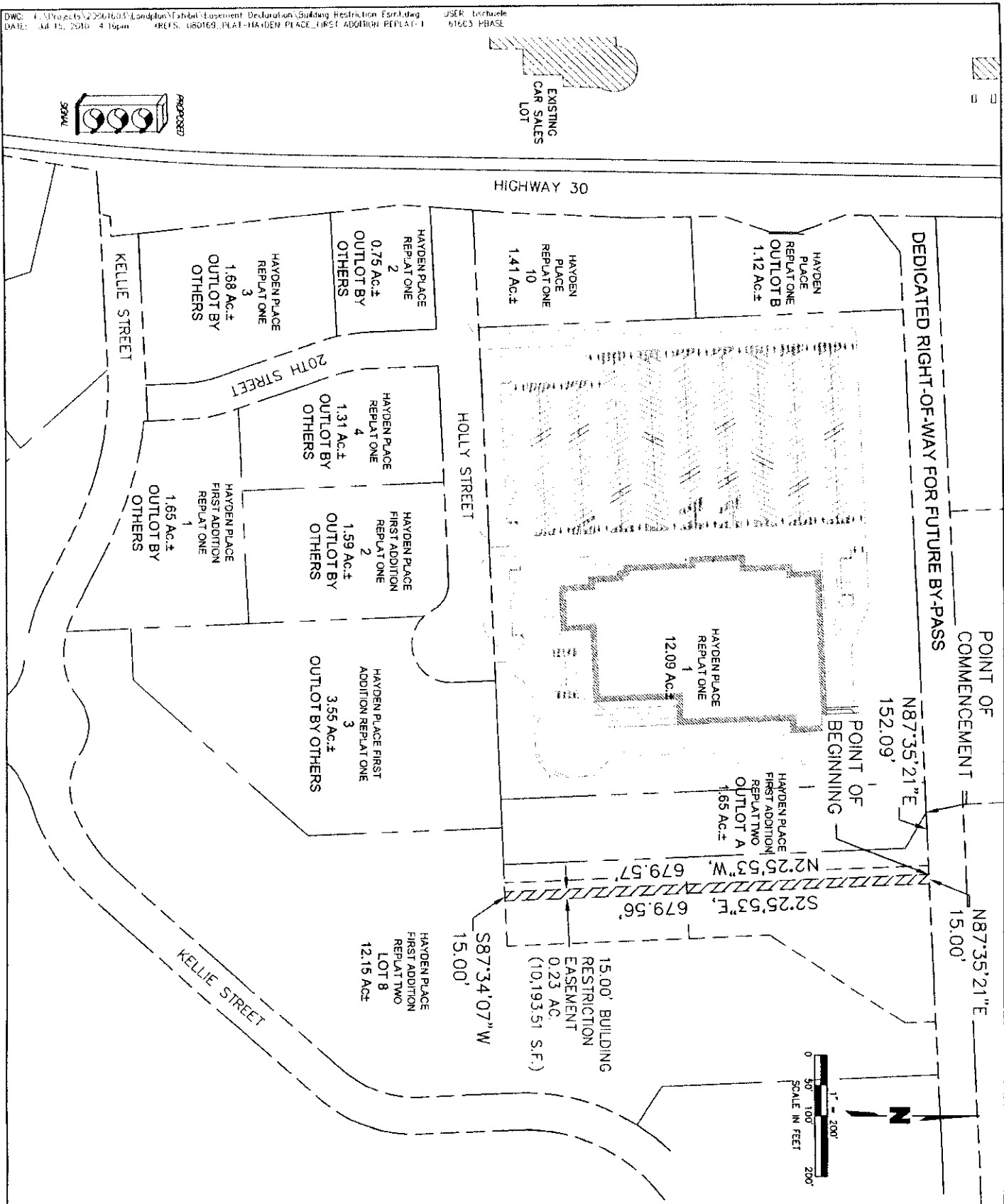
2111 South 67th Street  
Suite 200  
Omaha, NE 68106  
TEL 402.341.1116  
FAX 402.341.5895

661

**EXHIBIT G**

**BUILDING RESTRICTION EASEMENT**

**See Exhibit G-1 and Exhibit G-2 attached hereto**



PROJECT NO: 006-1603  
 DRAWN BY: MDB  
 DATE: 7/15/2010

**EXHIBIT G-1**  
**BUILDING RESTRICTION**  
**EASEMENT**



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 HAYDEN PLACE FIRST ADDITION, REPLAT TWO LOT 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF HAYDEN PLACE, REPLAT ONE LOT 1, SAID POINT ALSO BEING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF THE FUTURE BLAIR BY-PASS, THENCE CONTINUING ALONG SAID RIGHT-OF-WAY N87°35'21"E, 152.09 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON SAID RIGHT-OF-WAY; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY N87°35'21"E, 15.00 FEET; THENCE S02°25'53"E, 679.56 FEET; THENCE S87°34'07"W, 15.00 FEET; THENCE N02°25'53"W, 679.57 FEET; TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINING 0.23 ACRES (10,193.51 SQ. FT.) MORE OR LESS.

PROJECT NO: 006-1603

DRAWN BY: MDB

DATE: 7/1/2010

**EXHIBIT G-2  
BUILDING RESTRICTION  
EASEMENT**



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

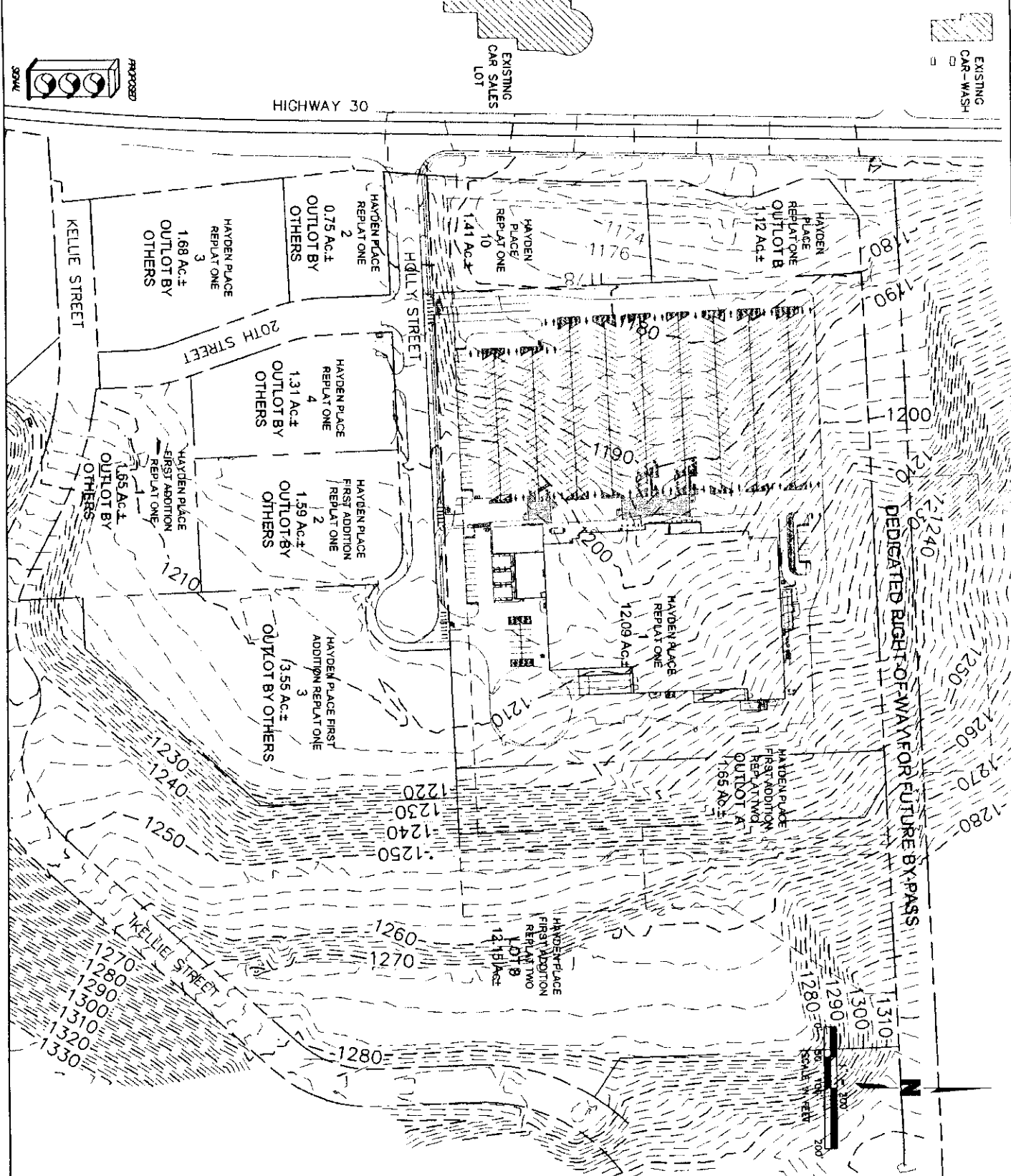
664

**EXHIBIT H**

**SITE GRADING CONDITIONS/ELEVATIONS AS OF DATE OF DECLARATION**

**See attached**

664



PROJECT NO: 006-1603  
 DRAWN BY: MDB  
 DATE: 7/16/2010

**EXHIBIT H**  
**EXISTING SITE GRADING**

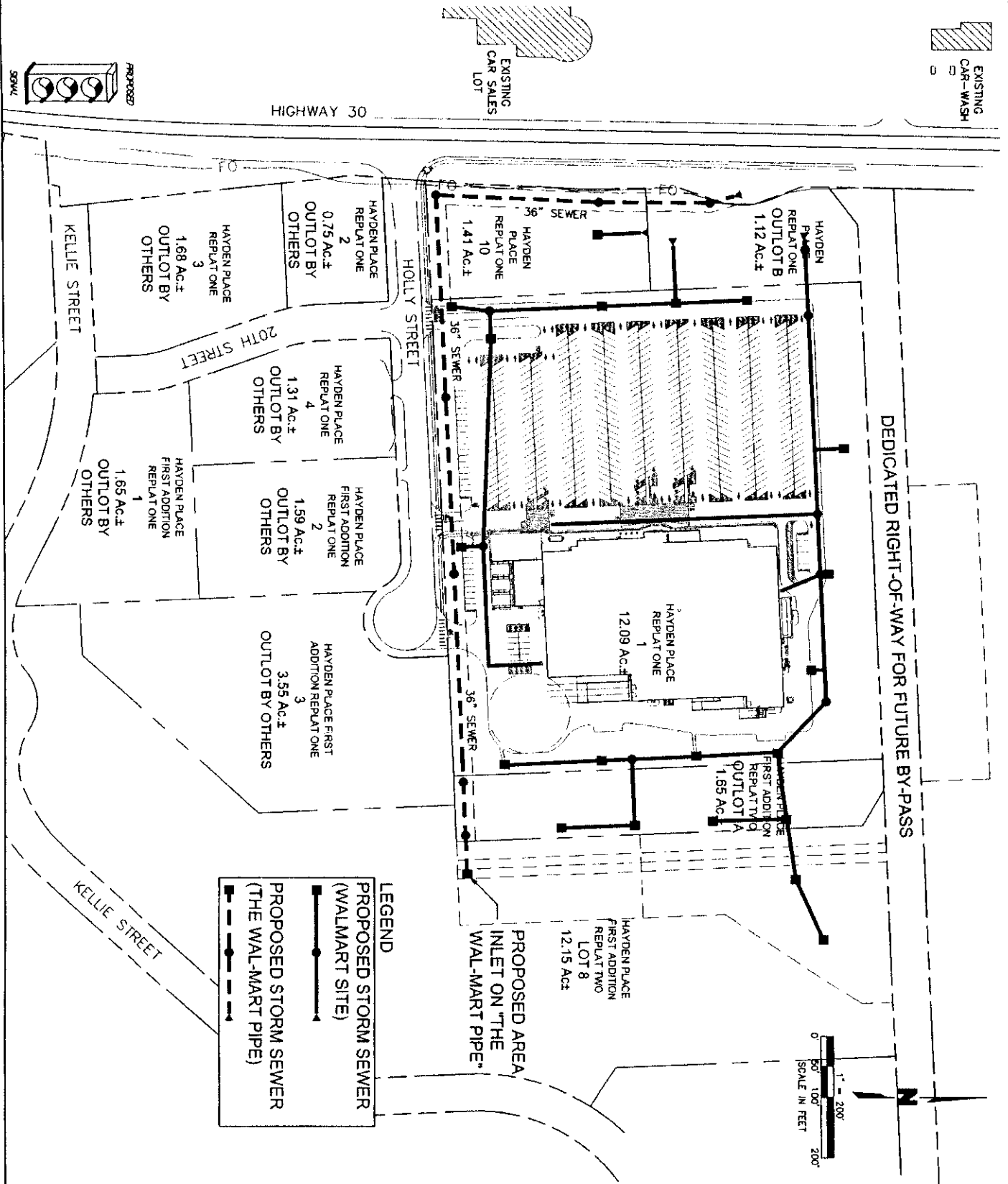
**OLSSON ASSOCIATES**  
 2111 South 67th Street  
 Suite 200  
 Omaha, NE 68106  
 TEL 402.341.1116  
 FAX 402.341.5895



666

**EXHIBIT I**  
**DEPICTION OF DRAINAGE PIPES**

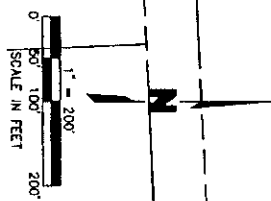
**See attached**



**LEGEND**

PROPOSED STORM SEWER (WALMART SITE)

PROPOSED STORM SEWER (THE WAL-MART PIPE)



PROJECT NO: 006-1603  
 DRAWN BY: MDB  
 DATE: 7/16/2010

**EXHIBIT I  
 DRAINAGE PIPES**



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

## EXHIBIT J

## FORM DRAINAGE EASEMENT

## STORM WATER DRAINAGE EASEMENT

**THIS STORM WATER DRAINAGE EASEMENT** (this “**Easement**”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Wal-Mart Real Estate Business Trust, a Delaware statutory trust, of 702 S. W. 8<sup>th</sup> Street, with offices at 2001 S. E. 10<sup>th</sup> Street, Bentonville, Arkansas 72716-0550, c/o Realty Management #4568-00, (“**Grantor**”); and Hayden Place Development, LLC, a Nebraska limited liability company, whose address is 12049 CRP 30, Blair, Nebraska 68008, Attention: Mary Berg (hereinafter referred to as “**Seller**”).

## WITNESSETH

**WHEREAS**, Grantor is the owner of that certain tract or parcel of land situated in the city of Blair, county of Washington, state of Nebraska, identified as “Wal-Mart Tract” on Exhibit A attached hereto and made a part hereof (“**Wal-Mart Tract**”) and more fully described on Exhibit D attached hereto and made a part hereof; and

**WHEREAS**, Seller is the owner of that certain tract or parcel of land in the same city, county, and state, which tract lies to the east of the Wal-Mart Tract and is identified as “Seller Tract” on Exhibit A and more fully described on Exhibit B attached hereto and made a part hereof (“**Seller Tract**”); and

**WHEREAS**, Seller has requested from Grantor, and Grantor is desirous of granting to Seller, a non-exclusive easement for storm water drainage through a pipe and related drainage facilities (collectively, the “**Pipe**”) that were constructed by Grantor on the Wal-Mart Tract for the benefit of the Seller Tract as more particularly depicted and legally described in Exhibit C attached (the “**Storm Water Drainage Easement**”).

**NOW THEREFORE**, in consideration of one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

1. Grant of Easement and Use of Storm Water Drainage Easement. Grantor does hereby grant to Seller a nonexclusive easement for the drainage of storm water from the Seller Tract through the Pipe within the Storm Water Drainage Easement. Seller acknowledges and agrees that Seller has reviewed and approved of the construction of the Pipe and that the Pipe was constructed in accordance with plans prepared by Grantor and approved by Seller. Grantor has not made, and specifically disclaims, any representations and warranties regarding the preparation of the plans for the Pipe and the construction of the Pipe.

2. Volume, Rate and Flow of Stormwater from the Burdened Property.

(a) Limits Prior to the Development of the Any of the Burdened Property. Stormwater runoff from the Seller Tract shall be diverted via overland surface flow from the Seller Tract to an area inlet located on the Seller Tract and constructed by Grantor (the “**Inlet**”) and through the Pipe; provided that the rate and volume of the stormwater runoff from the Seller Tract does not exceed the rate and

volume of the stormwater runoff as of the date of the Declaration, which is evidenced by the attached depiction of the then-current undeveloped site grading conditions which are set forth on Exhibit E attached hereto. No stormwater runoff from the Burdened Property may be directed towards the Wal-Mart Property except in the manner set forth in this Section 2(a). Seller acknowledges and agrees that Seller has reviewed and approved of the construction of the Inlet and that the Inlet was constructed in accordance with plans prepared by Grantor and approved by Seller. Grantor has not made, and specifically disclaims, any representations and warranties regarding the preparation of the plans for the Inlet and the construction of the Inlet.

(b) Limits After the Development of Any of the Burdened Property. Upon any satisfaction of the conditions set forth in Section 1(f)(ii) of the Declaration of Restrictions by Hayden Place Development, LLC and Cedar Valley Place, LLC dated \_\_\_\_\_, 2010 and recorded \_\_\_\_\_, 2010 at \_\_\_\_\_ in the real property records of Washington County, Nebraska (the "**Declaration**"), including without limitation the construction of Drainage Improvements to Grantor's satisfaction, then the rate and volume of stormwater runoff from the Seller Tract that is directed towards the Wal-Mart Tract may be increased from the limits set forth in this Section 1(a) above, provided, however, that in no circumstances shall the rate and volume of stormwater from the Seller Tract through the Pipe exceed 48 cubic feet per second (cfs) in the 10-year storm event; 64 cubic feet per second (cfs) in the 50-year storm event; 74 cubic feet per second (cfs) in the 100-year storm event. Upon the development of any of the Burdened Property and the satisfaction of the conditions set forth in Section 1(f)(ii) of the Declaration, no stormwater runoff from the Burdened Property may be directed towards the Wal-Mart Property except in the manner set forth in Section 2(b) above.

2. Maintenance. Grantor shall repair and maintain the Pipe and the Storm Water Drainage Easement at its own cost and expense. Seller shall be responsible for the repair and maintenance of the Inlet and the Drainage Improvements (as defined in the Declaration) at its own cost and expense.

3. Indemnification. Seller shall indemnify, defend, and hold harmless Grantor, its successors and assigns, from any damages or liability to persons or property that might arise from the use of the Inlet, the Pipe and the Storm Water Drainage Easement by Seller, its agents, employees, contractors, or anyone authorized by Seller. In no event shall Grantor be liable in contract, tort, strict liability, indemnity, warranty or otherwise, for any special indirect, incidental or consequential damages, such as, but not limited to, loss of anticipated profits or revenue, loss of use, nonoperation or increased cost of operation of other equipment, cost of capital, or claims of customers of Seller for loss or damage of any nature whatsoever.

4. Public Grant. Nothing contained herein shall be used or construed as a grant of any rights to any public or governmental authority or agency.

5. Duration. The agreements contained herein and the rights granted hereby shall run with the title to the Storm Water Drainage Easement area and shall bind and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

6. Change of Ownership. In the event Seller conveys or transfers title to Seller Tract to another party, Grantor shall be notified thereof within thirty (30) days thereafter. Grantor shall be provided the name and address of such transferee.

7. Relocation. Grantor reserves the right to modify or relocate the Storm Water Drainage Easement, Inlet or Pipe, in its sole and absolute discretion, provided any such modification or relocation does not prevent adequate delivery of such drainage services to the Seller Tract.

8. Insurance. Seller will carry and keep in force, at its own expense, Commercial General Liability insurance with companies that do business in this State, in an amount not less than \$2,000,000.00 single limited personal injury and property damage; and \$2,000,000.00 combined personal injury and property damage. All policies of insurance shall be considered primary of any existing, similar insurance carried by Grantor. Seller shall furnish Grantor with a Certificate of Insurance upon written request.

9. Hazardous Waste. Seller (hereafter the indemnifying party), its successors and assigns, shall indemnify, defend and hold harmless Grantor from and against any and all losses, liabilities (including strict liability), damages, injuries, expenses, and costs including, without limitation, reasonable attorney's fees, of any settlement or judgement and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Grantor, its successors and assigns, by any person or entity or governmental agency, for, with respect to, or as a direct or indirect result of the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Substance (as defined hereinbelow) resulting from the operations of the Seller upon or under any parcel of land owned by Grantor including without limitation, any losses, liabilities (including strict liability), damage, injuries, expenses, and costs, including, without limitation, reasonable attorney's fees, of any settlement or judgment or claims asserted or arising under, as amended, the comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Resource Conservation Recovery Act, the Federal Water Pollution Control Act, the Federal Environmental Pesticides Act, the Clean Water Act, any so called federal, state or local "Superfund" or "Superlien" statute, or any other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability (including strict liability), or standards of conduct concerning any Hazardous Substance. "Hazardous Substance" shall mean those materials, substances, wastes, pollutants or contaminants which are deemed to be hazardous, toxic or radioactive and shall include but not be limited to those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," or other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act 49 U.S.C. § 1801 *et seq.*, and any other federal, state or local governmental statutes, laws, codes, ordinances, rules, regulations and precautions, or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) petroleum products or byproducts, or petroleum, including crude oil or any fraction thereof, or natural gas, natural gas liquids, liquefied natural gas, synthetic gas or mixtures of synthetic gas and natural gas, (iii) asbestos and (iv) polychlorinated biphenyls.

10. Headings. The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the agreements contained herein or the rights granted hereby.

11. Counterparts. This agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

12. Governmental Regulations. Seller acknowledges that it is Seller's sole responsibility to abide by any governmental regulations associated with the use of the Pipe and the Storm Water Drainage Easement.

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

ATTEST:  
\_\_\_\_\_

**WAL-MART REAL ESTATE  
BUSINESS TRUST**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Senior Realty Manager

ATTEST:  
\_\_\_\_\_

**SELLER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CORPORATE ACKNOWLEDGMENT

STATE OF ARKANSAS)

) ss.

COUNTY OF BENTON )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ before me, the undersigned notary public in and for said County and State, personally appeared before me \_\_\_\_\_ to me personally known, who, being by me duly sworn, did say that he/she is Senior Realty Manager of **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust, and that the seal affixed to the foregoing instrument is the seal of said trust, and that said instrument was signed and sealed on behalf of said trust by authority of its Board of Directors, and said Senior Realty Manager acknowledged said instrument to be the free act and deed of said trust.

WITNESS MY HAND and notarial seal subscribed and affixed in said County and State the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ before me, the undersigned notary public in and for said County and State, personally appeared before me \_\_\_\_\_ to me personally known, who, being by me duly sworn, did say that he is \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and that the seal affixed to the foregoing instrument is the seal of said \_\_\_\_\_, and that said instrument was signed and sealed in behalf of said \_\_\_\_\_ by authority of its Board of Directors, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said \_\_\_\_\_.

WITNESS MY HAND and notarial seal subscribed and affixed in said County and State the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



674

**EXHIBIT A TO FORM DRAINAGE EASEMENT  
DEPICTION OF WAL-MART TRACT AND SELLER TRACT  
[To be inserted at the time of the recording of the Drainage Easement]**

675

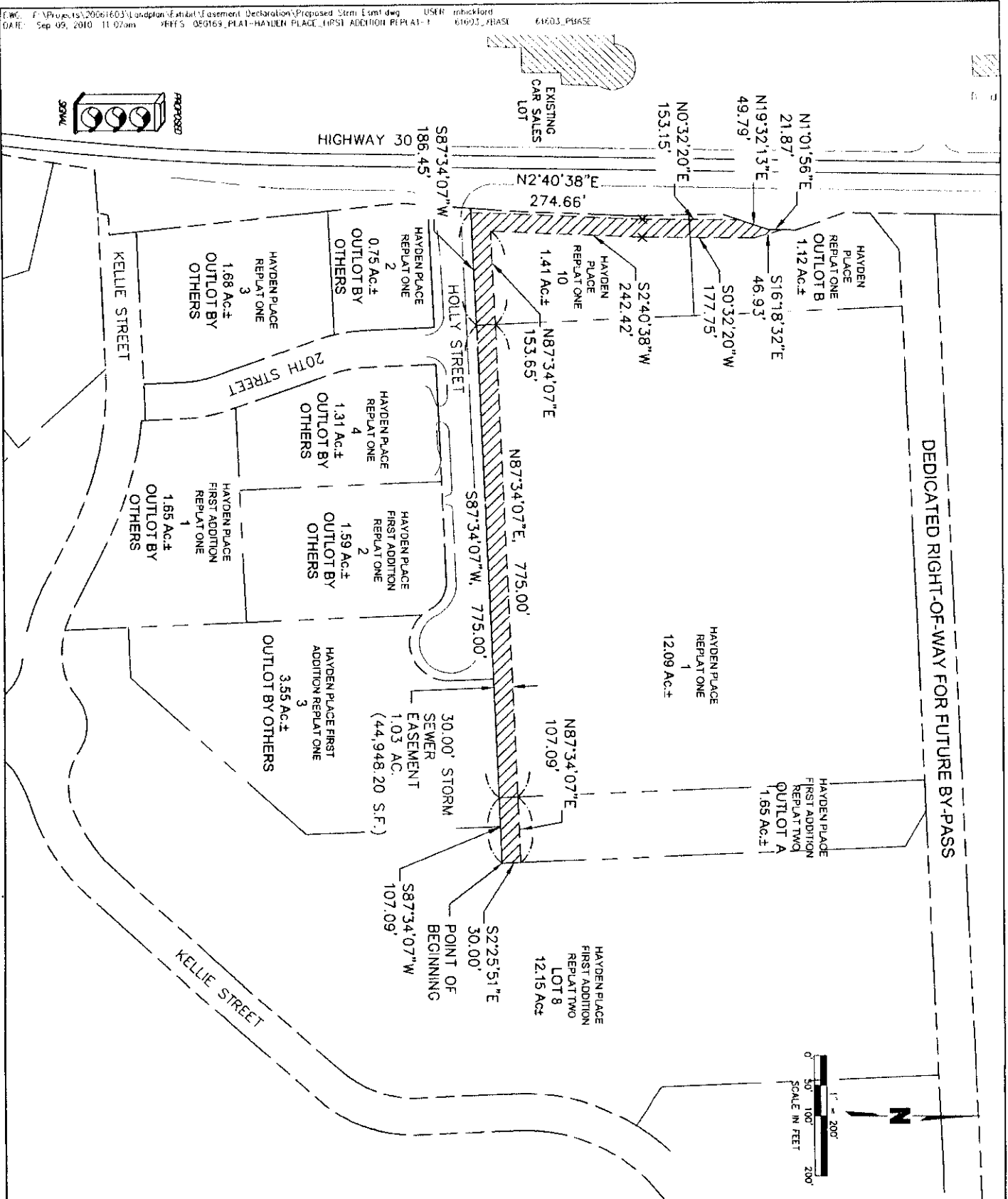
**EXHIBIT B TO FORM DRAINAGE EASEMENT**

**SELLER TRACT LEGAL DESCRIPTION**

**[To be inserted at the time of the recording of the Drainage Easement]**

**EXHIBIT C TO FORM DRAINAGE EASEMENT  
DEPICTION AND LEGAL DESCRIPTION OF STORMWATER DRAINAGE EASEMENT**

**See attached Exhibit C-1 and Exhibit C-2, to be updated as necessary**



PROJECT NO: 006-1603  
 DRAWN BY: MDB  
 DATE: 8/10/2010

**EXHIBIT C-1  
 DRAINAGE EASEMENT**



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 HAYDEN PLACE REPLAT ONE LOTS 1, 10, AND OUTLOT B, AND HAYDEN PLACE FIRST ADDITION REPLAT TWO OUTLOT A, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID OUTLOT A THENCE S87°34'07"W ON AN ASSUMED BEARING ALONG THE SOUTH LINE OF SAID OUTLOT A ALSO BEING THE NORTHERLY LINE OF LOT 8 HAYDEN PLACE FIRST ADDITION REPLAT TWO AND THE NORTH LINE OF LOT 3 HAYDEN PLACE FIRST ADDITION REPLAT ONE FOR A DISTANCE OF 107.09 FEET TO THE SOUTHWEST CORNER OF SAID OUTLOT A ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 1 HAYDEN PLACE REPLAT ONE; THENCE CONTINUING S87°34'07"W ALONG THE SOUTH LINE OF SAID LOT 1 ALSO BEING THE NORTH LINE OF SAID LOT 3 ALONG WITH THE NORTH RIGHT-OF-WAY LINE OF HOLLY STREET FOR A DISTANCE OF 775.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1 ALSO BEING THE SOUTHEAST CORNER OF LOT 10 HAYDEN PLACE REPLAT ONE. THENCE CONTINUING S87°34'07"W ALONG THE SOUTH LINE OF SAID LOT 10 HAYDEN PLACE REPLAT ONE, ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF HOLLY STREET FOR A DISTANCE OF 186.45 FEET; THENCE N02°40'38"E FOR A DISTANCE OF 274.66 FEET; THENCE N00°32'20"E, 153.15 FEET TO A POINT ON THE WESTERN LINE OF HAYDEN PLACE REPLAT ONE OUTLOT B ALSO BEING THE EAST RIGHT-OF-WAY LINE OF HIGHWAY 30; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE ON AN ASSUMED BEARING OF N19°32'13"E, 49.79 FEET; THENCE N01°01'56"E, 21.87 FEET; THENCE S16°18'32"E, 46.93 FEET; THENCE S00°32'20"W, 177.75 FEET; THENCE S02°40'38"W, 242.42 FEET; THENCE N87°34'07"E, 153.65 FEET TO A POINT ON THE EAST LINE OF LOT 10 HAYDEN PLACE REPLAT ONE ALSO BEING A POINT ON THE WEST LINE OF LOT 1 HAYDEN PLACE REPLAT ONE; THENCE CONTINUING N87°34'07"E, 775.00 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1 ALSO BEING A POINT ON THE WEST LINE OF OUTLOT A HAYDEN PLACE FIRST ADDITION REPLAT TWO; THENCE CONTINUING N87°34'07"E, 107.09 FEET TO A POINT ON EAST LINE OF SAID OUTLOT A; THENCE S02°25'51"E, 30.00 FEET TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINING 1.03 ACRES (44,948.20 SQ. FT.) MORE OR LESS.

PROJECT NO: 006-1603  
DRAWN BY: MDB  
DATE: 8/10/2010

**EXHIBIT C-2  
DRAINAGE EASEMENT**



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

679

**EXHIBIT D TO FORM DRAINAGE EASEMENT**

**LEGAL DESCRIPTION OF WAL-MART TRACT**

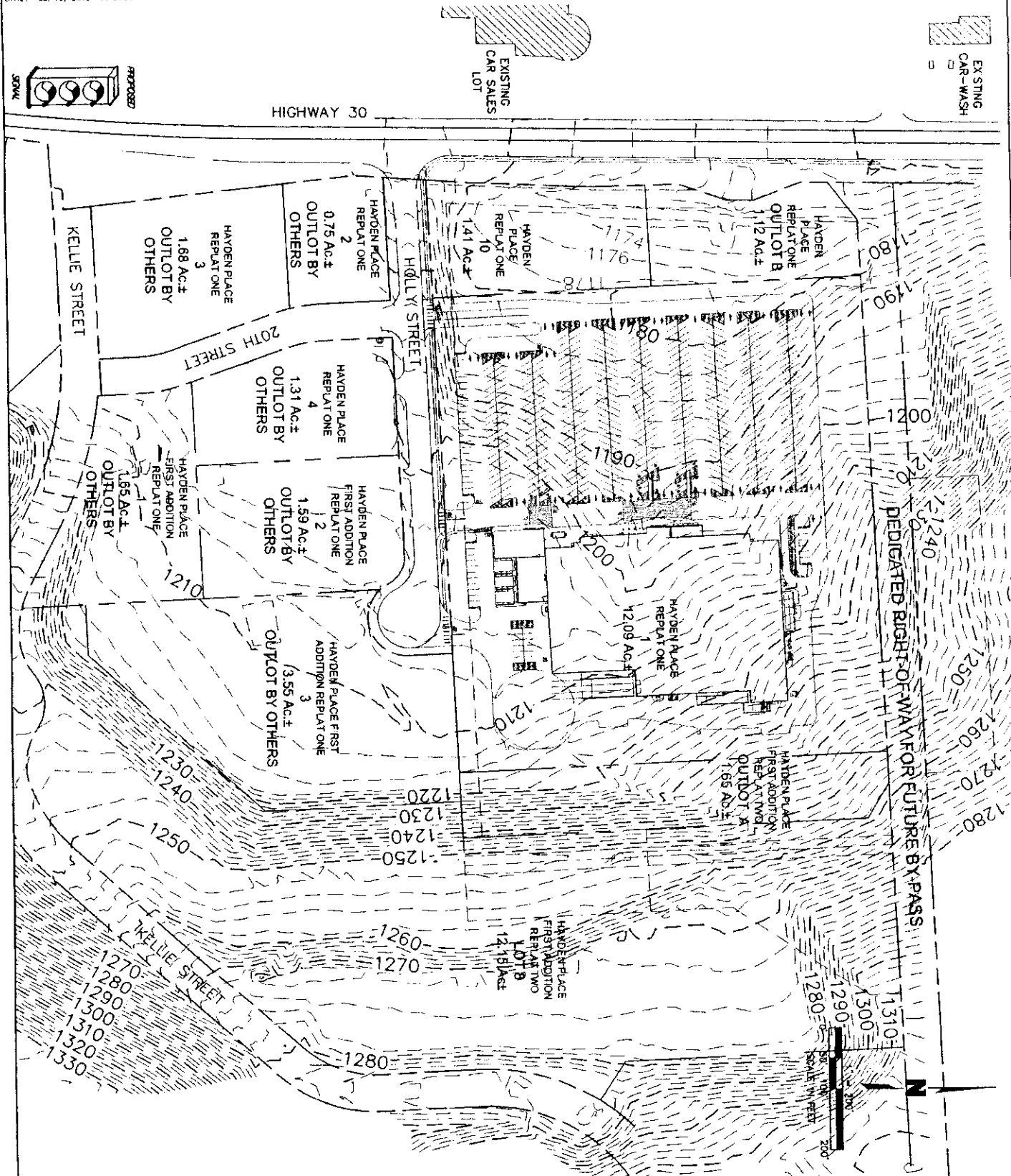
**[To be inserted at the time of the recording of the Drainage Easement]**

680

**EXHIBIT E TO FORM DRAINAGE EASEMENT  
EXISTING SITE GRADING CONDITIONS AS OF DATE OF DECLARATION**

**See attached**

DWG: F:\Projects\20061603\Landprep\Sheet\2010-07-16\_Site Sewer Pipes.dwg USER: muckford  
DATE: Jul 16, 2010 10:36am XREFS: 080163\_PLAT-HAYDEN PLACE FIRST ADDITION REPLAT-1 61603\_RHASE 61603\_PBASE



PROJECT NO: 006-1603  
 DRAWN BY: MDB  
 DATE: 7/16/2010

**EXHIBIT H**  
**EXISTING SITE GRADING**

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