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INSTRUMENT NUMBER
2006-02430

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Glenn J. Dowling

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When recorded return to:
Brian C. Eades, Esq.
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Omaha, NE 68102-2186

Papillion, NE
Store #1671-3

**EASEMENTS WITH COVENANTS AND
RESTRICTIONS AFFECTING LAND**

THIS EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND (this "Agreement") is made as of the 23rd day of January, 2006, by and among **MARKET POINTE, LLC**, a Missouri limited liability company ("Developer"), **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware Statutory Trust ("Wal-Mart") and **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation ("Lowe's").

WITNESSETH:

WHEREAS, Wal-Mart is the fee simple owner of the real property which is identified as Lot 1 on the site plan attached hereto as Exhibit A (the "Site Plan"), and more particularly described in Exhibit B attached hereto (the "Wal-Mart Property");

WHEREAS, Developer is the fee simple owner of the real property which is identified as Lot 2, Lot 3 and Common D on the Site Plan, and more particularly described in Exhibit C attached hereto (the "Developer Property");

WHEREAS, Developer is the fee simple owner of the real property which is identified as Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9, Lot 10, Lot 11, Lot 12, Lot 13 and Lot 14 on the Site Plan, and more particularly described in Exhibit D attached hereto (each sometimes referred to individually as "Lot 4", "Lot 5", "Lot 6", "Lot 7", "Lot 8", "Lot 9", "Lot 10", "Lot 11", "Lot 12", "Lot 13" or "Lot 14" and sometimes individually as an "Outparcel" and collectively as the "Outparcels");

WHEREAS, Lowe's and Developer have or intend to execute a ground lease (the "Lowe's Ground Lease") for Lot 2 identified on the Site Plan and more particularly described in Exhibit E attached hereto (the "Lowe's Property"). The Developer Property includes the Lowe's Property and the other property described as Developer Property on Exhibit C and any reference

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to the Developer Property includes the Lowe's Property; however any reference to the Lowe's Property refers to only the Lowe's Property.

WHEREAS, as of the date hereof, Developer is the fee simple owner of the real property which is identified as Common C, Common D and Common E (together, the "Developer Common Use Parcels") on the Site Plan and Wal-Mart is the fee simple owner of the real property which is identified as Common A and Common B (together, the "Wal-Mart Common Use Parcels") on the Site Plan (each a "Common Use Parcel" and collectively the "Common Use Parcels");

WHEREAS Developer and Wal-Mart hold certain easement rights in certain real property identified as "Common F" and "Common G" on the Site Plan and legally described on Exhibit F attached hereto pursuant to that certain Storm Water Drainage Facilities Easement Agreement by and between Developer, Wal-Mart and Ken E. Peters, Keith A. Peters and Louise Peters, Kon R. Peters, Kerel L. Henderson and Carl Henderson, Kae S. Pavlik, Trustee of the Kae S. Pavlik Family Trust dated October 22, 1999 and Kae S. Pavlik, Trustee of the Duane S. Pavlik Family Trust dated October 22, 1999 (collectively, "Pavlik") dated as of the date hereof and that certain Access Easement by and between Developer, Wal-Mart and Pavlik dated as of the date hereof, and Developer holds certain easement rights in certain real property identified as "Common H" on the Site Plan and legally described on Exhibit F attached hereto pursuant to that certain Storm Water Drainage Facilities Easement Agreement by and between Developer and Pavlik dated as of the date hereof, and the terms "Common Use Parcel", "Common Use Parcels" and "Developer Property" shall include Common F, Common G, and Common H, regardless of whether Developer holds an easement interest or a fee simple interest in Common F, Common G and Common H.

WHEREAS, Wal-Mart, Lowe's and Developer desire that the Wal-Mart Property, the Lowe's Property, Developer Property, the Outparcels and the Common Use Parcels be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial shopping center (sometimes hereinafter referred to as the "Shopping Center"), and further desire that the Shopping Center be subject to the easements and the covenants, conditions and restrictions hereinafter set forth.

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

Section 1. Definitions..

(a) **"Building"** shall mean any building or improvement constructed in the Shopping Center. **"Buildings"** shall mean any buildings and improvements constructed in the Shopping Center.

(b) **"Building Areas"** as used herein shall mean those portions of the Wal-Mart Property, the Lowe's Property, the Developer Property, and the Outparcels shown on the Site Plan and identified as a "Building Area", "Future Building Area", or a "Future Expansion Area". Canopies may encroach from the Building Areas over the

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Common Areas provided the canopies do not interfere with the use of the Common Areas. Notwithstanding the building area being shown on the Site Plan as encroaching on Common Area roadways or truck access areas, nothing herein shall permit the construction of any structure in any area shown as a roadway or truck access areas, which has been constructed or planned to be constructed as Common Area without the express written consent of Developer, Lowe's and Wal-Mart.

(c) "Common Areas" shall be all of the Wal-Mart Property, Developer Property, the Lowe's Property, the Outparcels and the Common Use Parcels except the Building Areas. The Parties acknowledge and agree that Developer at any time may remove Common D from the encumbrances of this Agreement and dedicate such parcel to the City of Papillion, Nebraska (the "City").

(d) "Conversion to Common Areas" shall mean that those portions of the Building Areas which are not from time to time used or cannot, under the terms of this Agreement, be used for a Building, truck dock, fenced in staging area or a garden center and shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

(e) "Design Criteria" shall mean the Developer's design criteria handbook, which may be revised or amended from time to time by Developer, which shall be provided by Developer to any Property Owner upon written request.

(f) "Floor Area" shall mean with respect to any Building or structure within the Shopping Center, the actual number of square feet of floor space within the exterior walls of all floors, measured to the exterior faces of all exterior walls and the center lines of all common walls, including any basements, and including stairs, interior elevators, escalators, air conditioning and other interior equipment rooms but excluding loading docks and platforms, outside selling areas which are not heated or air conditioned (including any area used as a "garden center"), any mezzanine or basement space not used for display and sale of merchandise to the general public. Notwithstanding anything to the contrary in the preceding sentence, any outside selling areas, which are not heated or air conditioned but are used for restaurant purposes, shall not be excluded from the calculation of "Floor Area".

(g) "Properties" as used herein shall collectively refer to the Wal-Mart Property, the Lowe's Property, the Developer Property, the Outparcels and the Common Use Parcels. Reference to a "Property" refers to the Wal-Mart Property, the Developer Property, the Lowe's Property, an Outparcel or a Common Use Parcel.

(h) "Property Owner" as used herein shall mean the record title holder of each Property and, as to the Lowe's Property, Lowe's or a successor ground lessee under the Lowe's Ground Lease while the Lowe's Ground Lease is in effect, and the "Property Owners" shall refer to all record title holders of all Property and the ground lessee of the Lowe's Property, all as located within the Shopping Center. Notwithstanding the foregoing, with respect to Common F, Common G and Common H, the term "Property

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Owner" shall mean Developer regardless of whether Developer holds an easement interest or a fee simple interest in Common F, Common G, or Common H.

(i) "Proportionate Share" as used herein shall mean the amount of assessment determined by multiplying all JMCA expenses by a fraction, the numerator of which shall be the number of square feet of usable land area as defined on Exhibit I (the "Usable Land") in Property Owner's Property and the denominator of which shall be the total number of usable square feet of land area then existing in the Shopping Center, as then configured.

Section 2. Use. Any Buildings constructed or to be constructed in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center, including, without limitation, financial institutions, service shops, offices and retail stores. No cafeteria, theatre, bowling alley, skating rink, billiard parlor, or night club shall occupy space within the Shopping Center without the prior written consent of the Property Owner of the Wal-Mart Property, the Lowe's Property and the Developer Property. No business whose annual gross revenues from the sale of alcoholic beverages exceeds 50% of the gross revenues of such business shall occupy any portion of the Developer Property without the prior written consent of Wal-Mart and Lowe's. Without the prior written consent of the Property Owner of the Wal-Mart Property, the Property Owner of the Lowe's Property and the Property Owner of the Developer Property no portion of the Shopping Center shall be sold, leased, occupied or used for any of the following: (a) any adult type bookstore or other establishment selling or exhibiting pornographic materials or paraphernalia for use with illicit drugs (with the exception of Borders or Barnes & Noble or a similar national bookstore chain); a facility for the sale, rental, or storage of new or used cars or trucks; a flea market or barber college; a swap shop; facility for counseling or activities relating to abortion, euthanasia, or birth control (with the exception of the sale of prescription or over the counter birth control, which is expressly permitted hereunder); massage parlor, topless bar, or a club which provides striptease entertainment, X-rated movie theatre or X-rated video shop; (b) mortuary; (c) mobile home or trailer court, labor camp, junkyard or stockyard, land fill, garbage dump or area for the dumping disposing incineration or reduction of garbage; (d) off-track betting parlor; (e) carnival or amusement park or (f) manufacturing, distillation, smelting, refining, industrial, agricultural, drilling, mining or quarrying operation, (g) a health club, gymnasium or spa; (h) service station (except on the Wal-Mart Property); (i) pawn shop; (j) training or educational facility (including without limitation, a school, college, reading room or other facility catering primarily to students and trainees rather than customers); (k) car wash, except on an Outparcel and where the same shall have constructed and shall use sanitary sewer, water and storm water drainage lines entirely separate from those utilized by Lots 1-3; (l) dry cleaning plant, central laundry or laundromat (except that a facility accepting drop-off only of dry cleaning or laundry shall be allowed); or (m) child day care facility. Developer recognizes that such businesses may inconvenience the customers of Wal-Mart, Developer and other Property Owners and adversely affect their business. In addition to the restrictions set forth in this Section 2 and Section 3 of this Agreement, no Property shall be used for any purpose that may be prohibited by applicable zoning regulations. Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Wal-Mart on the Wal-Mart Property or by Lowe's on the Lowe's Property. Developer recognizes and agrees that Wal-Mart or Lowe's,

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respectively, may, at Wal-Mart's or Lowe's respective sole discretion and at any time during the term of this Agreement, cease the operation of its business on the Wal-Mart Property and/or Lowe's Property, and Developer hereby waives any legal action for damages or for equitable relief which might be available to Developer because of such cessation of business activity by Wal-Mart or Lowe's.

Section 3. Competing Business.

(a) So long as Wal-Mart, or any affiliate of Wal-Mart, is the user of the Wal-Mart Property, either as owner or lessee, no space in or portion of the Developer Property or Outparcels (with the exception of the Lowe's Property and Lot 3), and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Developer, shall be leased or occupied by or conveyed to any other party for use as (a) a facility dispensing gasoline or fuel from pumps, (b) a membership warehouse club, (c) a pharmacy requiring the services of a licensed pharmacist, (d) a Discount Department Store or other Discount Store, as such terms are defined below, (e) a variety, general or "dollar" store, (f) a Grocery Store or Supermarket as such terms are defined below or (g) any combination of the foregoing uses. "Grocery Store" and "Supermarket," as those terms are used herein, shall mean a food store or a food department containing more than 16,000 square feet of Floor Area used for the purpose of selling food for off-premises consumption, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products or any grocery products normally sold in such stores or departments. "Discount Department Store" and/or "Discount Store," as those terms are used herein, shall mean a discount department store or discount store containing more than 35,000 square feet of building space used for the purpose of selling a full line of hard goods and soft goods including, but not limited to, clothing, cards, gifts, electronics, garden supplies, furniture, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories at a discount in a retail operation similar to that of Wal-Mart. The term "Discount Department Store" and "Discount Store" shall specifically exclude and not apply to either: (i) Kohl's Department Stores ("Kohl's"); or (ii) Lowe's. Wal-Mart acknowledges and agrees that Kohl's and Lowe's either have or will enter into agreement(s) with Developer for space within the Shopping Center and their occupancy of such space shall be allowed and not be in violation of this Section. In the event of a breach of this covenant, Wal-Mart shall have the right to seek any and all remedies afforded by either law or equity against including, without limitation, the right to injunctive relief.

(b) So long as Lowe's or a successor lessee or assignee is the owner or lessee of the Lowe's Property, as either an owner or lessee, or so long as the Lowe's Ground Lease is in effect, no portion of the Developer Property (except the Lowe's Property) or the Outparcels shall be used for any of the following purposes: (i) a hardware store containing more than 5,000 square feet of useable floor area; (ii) an appliance and/or home electronics store containing more than 5,000 square feet of useable floor area (provided the foregoing shall not prohibit a Circuit City store, Best Buy store, Gateway Computer store, Radio Shack store or a successor store to any of the foregoing which has

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substantially the same types and quantities of merchandise as offered by such stores on the date of this Agreement, or if different types or quantities of merchandise are offered, such merchandise does not exceed the limitations on this Section (b)); (iii) a lawn and garden store containing more than 3,000 square feet of useable floor area; (iv) a paint and/or home décor center containing more than 5,000 square feet of useable floor area; or (v) a retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Great Indoors, Sutherlands; Scotty's and Orchard Supply. These restrictions or exclusive rights shall also apply to prohibit a larger business having space in its store devoted to selling the merchandise described in subparagraphs (i) through (v) which such space exceeds the limitations of subparagraphs (i) through (v). In the event of a breach of this covenant, Lowe's shall have the right to seek any and all remedies afforded by either law or equity including injunctive relief against the party breaching this Agreement. Notwithstanding anything to the contrary in this subsection 3(b), the foregoing exclusives shall not apply to Lot 3 so long as the Kohl's Lease (as defined herein) is in effect.

Section 4. Buildings.

(a) Design and Construction.

(i) **General.** The Buildings constructed on the Shopping Center shall be designed so that the exterior elevation of each Building shall be architecturally and aesthetically compatible with any Building constructed by Wal-Mart on the Wal-Mart Property and so that Building wall footings shall not encroach from one Property or Outparcel onto another Property or Outparcel except as provided for in subsection (d) below. The design and construction shall be in conformity with sound architectural and engineering standards and the construction shall be of high quality and the construction of all Buildings within the Shopping Center shall be in accordance with the City of Papillion Zoning Regulations and the City of Papillion Architectural and Site Design Guidelines. No Building shall have a metal exterior. The Property Owners in the performance of their construction shall not (i) cause any unnecessary or unreasonable increase in the cost of construction of the other Properties (ii) unreasonably interfere with any other construction being performed on the other Properties; or (iii) unreasonably impair the use, occupancy or enjoyment of the Properties or any part thereof as permitted or contemplated by this Agreement.

(ii) **Height Restrictions.** No Building constructed on the Wal-Mart Property, Lowe's Property or Lot 3 of the Developer Property shall exceed 50 feet (including all mechanical improvements and architectural embellishments) in height above finished grade.

(iii) **Additional Design Requirements for Buildings Located on the Developer Property.** The Buildings constructed on the Developer Property shall be in accordance with the Design Criteria and are subject to the prior written

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approval of Developer. Each Property Owner of any portion of the Developer Property or an Outparcel shall cause its respective architect to work in good faith with the Developer so that the Buildings to be erected and constructed will have an overall cohesive and related architectural continuity and will be in harmony with the balance of the Developer Property improvements. Developer's approval of the plans and specifications shall be conclusive as to such Property Owner's compliance with this Section.

(b) **Location.** No Building shall be constructed on the Wal-Mart Property, Developer Property or Outparcels except within the Building Areas.

(c) **Fire Protection.** Any Building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other Buildings in the Shopping Center.

(d) **Easements.** In the event Building wall footings encroach from one Property or Outparcel onto another Property or Outparcel, despite efforts to avoid that occurrence, the party onto whose Property or Outparcel the footings encroach shall cooperate in granting an encroachment agreement, a boundary line agreement, or an easement to the party whose Building wall footings encroach.

(e) **Outparcel Development.** In addition to the foregoing and other requirements in this Agreement, the Outparcels shall be developed under the following guidelines:

(i) **Location.** The Outparcels shall only be located in the areas designated as "Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9, Lot 10, Lot 11, Lot 12, Lot 13, and Lot 14" on the Site Plan. No more than eleven (11) Buildings may be constructed on the Outparcels in the aggregate. No more than one (1) Building shall be constructed on any one of the Outparcels. Under no circumstances may two or more of the Outparcels designated as Lot 7, Lot 8, Lot 9, Lot 10, Lot 11, Lot 12, Lot 13 or Lot 14 on the Site Plan be replatted so that such Outparcels are merged or combined into a single Outparcel. The Outparcels designated as Lot 7, Lot 8, Lot 9, Lot 10, Lot 11, Lot 12, Lot 13 or Lot 14 on the Site Plan may be replatted to change the size of each respective Outparcel; provided, however, that the size of any Outparcel is not increased by more than thirty percent (30%) over its size as of the date hereof. Notwithstanding anything herein to the contrary, if two or more of the Outparcels designated as Lot 4, Lot 5, or Lot 6 are combined as hereinafter provided, then the combined Outparcel shall be considered a single Outparcel and no more than one (1) Building shall be constructed thereon.

(ii) **Floor Area.** The Floor Area of the Buildings to be constructed on the Outparcels identified on the Site Plan as Lot 9 and Lot 10 shall not exceed twelve thousand five hundred (12,500) square feet per Outparcel and the Building to be located on either Outparcel shall not have a north-south dimension of more than ninety (90) feet. The Buildings located on Lots 8 and 9 shall be located within the building envelopes shown on the Site Plan for such Outparcels, and no

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Building on Lot 8 may be closer than 85.75 feet to the northern boundary of Lot 8 that is shown on the Site Plan attached hereto as Exhibit A. The Floor Area of the Buildings to be constructed on the Outparcels identified on the Site Plan as Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, Lot 11, Lot 12, Lot 13 and Lot 14 shall not exceed eight thousand (8,000) square feet per Outparcel; provided, however, the following shall be applicable: (a) if any two (2) of Lot 4, Lot 5, or Lot 6 are combined, the Floor Area of the Building on the two (2) combined Outparcels shall not exceed fourteen thousand (14,000) square feet, and (b) if less than an entire Outparcel is added to or subtracted from an existing Outparcel for Lot 4, 5 or 6, then the maximum Floor Area of a Building to be constructed on the affected combined Outparcels shall be eight thousand (8,000) square feet for each one and two-tenths (1.2) acres of land contained within the affected Outparcel, but adjusted based on such ratio for Outparcels that are smaller or larger than 1.2 acres, subject to the maximum Floor Area of 14,000 square feet for a combined Outparcel. If Lot 8 is made larger or combined with Lot 7 as described above, such combined Outparcel remains subject to the restriction no Building may be constructed closer than 85.75 feet to the northern boundary of Lot 8 as shown on the original Site Plan attached as Exhibit A.

(iii) **Height.** No Building constructed on the Outparcels shall exceed 26 feet (including all mechanical improvements and architectural embellishments) in height, as measured from the mean finished elevation of the parking area of the Shopping Center. Notwithstanding anything in the previous sentence to the contrary, with respect to Buildings on all Outparcels (other than Lot 9 and Lot 10), architectural features and parapets that may extend above the roof deck may exceed 26 feet in height above finished floor grade and shall not exceed 28 feet in height above finished floor grade; provided that such architectural features and parapets may be no more than 20% of the Building facade for architectural purposes. With respect to Buildings on Lot 9 and Lot 10, architectural features and parapets that may extend above the roof deck may exceed 26 feet in height above finished floor grade and shall not exceed 30 feet in height above finished floor grade; provided that such architectural features and parapets may be no more than 20% of the Building facade for architectural purposes.

(iv) **Rooftop Equipment and Signs.** Any rooftop equipment shall be screened in a commercially reasonable manner: (a) satisfactory to Developer (with respect to any of the Outparcels identified as Lot 4, Lot 5, and Lot 6), (b) satisfactory to the Developer and Wal-Mart (with respect to any of the Outparcels identified as Lot 10, Lot 11, Lot 12, Lot 13, and Lot 14) and (c) satisfactory to Developer and Lowe's (with respect to any of the Outparcels identified as Lot 7, Lot 8 and Lot 9). No rooftop sign shall be erected on any Buildings constructed on an Outparcel.

(v) **Parking Ratio.** In developing and using the Outparcels, the Property Owner or lessee of each Outparcel shall continuously provide and maintain an adequate number of parking spaces sufficient to maintain a parking ratio on such Outparcel equal to one of the following: (i) 15 spaces for every

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1,000 square feet of Building space for any restaurant or entertainment use in excess of 7,500 square feet; (ii) 10 full size automobile parking spaces for each 1,000 square feet of Floor Area used for restaurants or entertainment uses, which are less than 7,500 square feet and do not serve alcohol; (iii) 12 full size automobile parking spaces for each 1,000 square feet of Floor Area used for restaurants or entertainment uses, which are less than 7,500 square feet and do serve alcohol; (iv) 5 full sized automobile parking spaces for each 1,000 square feet of Floor Area for any other use; or (v) in each case, the number of parking spaces required by applicable law, if greater.

(vi) General Rules.

(A) Landscaping. The Property Owner of each Outparcel shall cause landscaping areas of each Outparcel to be added and maintained in conjunction with any Building.

(B) Maintenance. The Property Owner of each Outparcel shall keep each Outparcel neat, orderly, planted in grass and trimmed until improved and constructed.

(C) Use. Any Building on an Outparcel shall be used for retail or commercial purposes only and shall not violate the Restrictions on Use as provided for in this Agreement.

(D) Signs. No sign located on an Outparcel may block the visibility of the Buildings, monument sign, or pylon sign on the Wal-Mart Property, Lowe's Property or the Developer Property, without the express written consent of the Wal-Mart, Lowe's and the Developer except that the Property Owner of the Developer Property may construct signs promoting and advertising the Shopping Center in the areas of the Shopping Center as depicted on the Site Plan in compliance with all governmental requirements and as provided in this Agreement. Notwithstanding the foregoing, there may also be erected on each Outparcel entrance-exit signs to facilitate the free flow of traffic. All signs erected on any Outparcel shall be in accordance with all applicable governmental requirements, the Design Criteria. All signs erected on any Outparcel are subject to the approval of Developer in advance.

(E) Repair. Any party or independent Property Owner purchasing or leasing from Developer and having an ownership or leasehold interest in an Outparcel shall repair any damage caused to any of the utility facilities serving the Shopping Center caused by such party, or a lessee or user of the Outparcel, to the extent the Outparcel benefits from any of the utility facilities serving the Shopping Center.

(F) Casualty Repair. In the event any Building on an Outparcel shall be damaged or destroyed by any casualty, the Property

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Owner, lessee or user of the Outparcel shall within thirty (30) days of such damage or destruction: (a) commence to repair and/or reconstruct such Building to the condition required by this Agreement; or (b) level such Building, remove the debris from the Outparcel and keep the Outparcel neat, orderly, planted in grass and trimmed, until subsequently improved and constructed upon.

(G) **Further Division.** Subject to the restrictions in Section 4(e) of this Agreement, Developer may subdivide, convey, lease or assign any Outparcel or any portion thereof through any means including, but not limited to, subdivision, lease, ground lease, condominium declaration or air-lot condominium declaration.

(H) **Runs with Land.** The foregoing restrictions and agreements are imposed on each of the Outparcels for the benefit of the Shopping Center. The agreements, restrictions, and covenants herein made shall be deemed restrictive covenants running with the land and shall be binding upon each of the Outparcels and any person who may from time to time own, lease, or otherwise have an interest in any of the Outparcels.

(f) **Completion of Buildings.** All Buildings on the Developer Property and Outparcels shall substantially and materially comply with the Site Plan and the Design Criteria unless changes are approved in writing by Developer. No Building Area on the Wal-Mart Property or Developer Property or the Outparcels shall be modified without the prior written consent of Wal-Mart and Lowe's. Weather permitting and subject to Force Majeure (as hereinafter defined), all paving and landscaping with respect to a particular Property must be completed prior to such time as the Building constructed thereon is opened for business.

Section 5. Common Areas.

(a) **Ingress, Egress and Access Easements.** Developer does hereby grant and convey to Wal-Mart and its successors and/or assigns a perpetual nonexclusive easement for pedestrian and vehicular ingress, egress and regress, and loading and unloading of commercial and other vehicles by Wal-Mart and its agents, customers, invitees, licensees, tenants and employees over the Common Areas located on the Developer Property and the Outparcels and over Common C and Common F. Wal-Mart does hereby grant and convey to Developer and/or assigns, and its tenants and their agents, customers, invitees, licensees and employees, a perpetual nonexclusive easement for pedestrian and vehicular ingress, egress and regress, and loading and unloading of commercial and other vehicles by Developer and/or assigns, and its tenants and their agents, customers, invitees, licensees and employees over the Common Areas located on the Wal-Mart Property and over Common A, and Common B. Wal-Mart and Developer hereby grant for the benefit of the Outparcels a nonexclusive easement for vehicular and pedestrian access, ingress and egress over and across the Wal-Mart Property, Common A and Common B, the Developer Property, Common C and Common F; provided, however, in no event shall

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the Property Owner, tenant, occupant, licensee or invitee of any of the Outparcels be permitted to use the Wal-Mart Property, Lowe's Property or the Developer Property for vehicular parking or for any other purpose other than as described above.

(b) *Limitations on Use.*

(i) *Customers.* Wal-Mart, Lowe's and Developer shall each use reasonable efforts to ensure that their customers and invitees shall not be permitted to park on the parking areas of their respective Properties except while shopping or transacting business on such Properties. No customers of Wal-Mart shall have the right to park on the Developer Property, Lowe's Property or the Outparcels. No customers of the Developer Property, Lowe's Property or the Outparcels shall have the right to park on the Wal-Mart Property. If violation of the prohibition in the prior sentence or the restrictions on employee parking pursuant to subsection (ii) below presents a problem to Wal-Mart, Lowe's or Developer, then the party whose customers are violating the prohibition shall take reasonable steps including without limitation placing of appropriate signs to assure that its customers park only on its Property.

(ii) *Employees.* Wal-Mart, Lowe's and Developer shall use reasonable efforts to ensure that their respective employees park only in the areas designated by Wal-Mart, Lowe's and Developer from time to time as "employee parking areas" on their respective Properties.

(iii) *General.* Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use. Wal-Mart and Developer shall each have the right, at a time that does not interfere with the use of such areas by the other party and not more frequently than once per year, to bar access to such areas on its Property by the general public if necessary in order to ensure that the public does not gain any rights with respect thereto.

(c) *Utility and Service Easements.* Wal-Mart (with regard to the Wal-Mart Property and the Wal-Mart Common Use Parcels) and Developer (with regard to the remainder of the Shopping Center) hereby establish, grant and convey a nonexclusive easement for the benefit of each Property Owner on, across and under the Common Areas and the Common Use Parcels to install, use, maintain, repair and replace public utility services and distribution systems (including storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center), now upon or hereafter installed on, across or under the Common Areas, to the extent necessary to service such Property. Wal-Mart and Developer shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. The location of any utilities hereafter installed shall be determined by the Property Owner of the Property upon which such utilities are to be installed. Any such installed utility services may be relocated by the Property Owner on such Property Owner's Property, subject to compliance with this Agreement and applicable laws, at the expense of the Property Owner relocating such utility services, provided that such relocation shall not interfere with, increase the cost of or diminish utility services to any

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other Property and, further provided, that no utilities shall be relocated on the Wal-Mart Property without the prior written consent of Wal-Mart as long as it is the owner of or lessee of the Wal-Mart Property, and no utilities may be relocated on the Lowe's Property under this Agreement without the prior written consent of Lowe's as long as Lowe's is the owner or lessee of the Lowe's Property.

(d) **Water Flow.** Wal-Mart (with regard to the Wal-Mart Property and the Wal-Mart Common Use Parcels) and Developer (with regard to the remainder of the Shopping Center) hereby establish, grant and convey a nonexclusive easement for the benefit of each Property Owner to use, maintain and repair any storm water drainage system (the "Storm Drainage System") now or hereafter located on any portion of the Property, together with the right to discharge surface water runoff across portions of the Property in accordance with the design of the Storm Drainage System. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's Buildings substantially as shown on the Site Plan (including, without limitation, Building and Building expansion, curbs, drives and paving) shall be permitted.

(e) **Drainage Easement.** Developer hereby grants to Wal-Mart, for the benefit of the Wal-Mart Property and the Wal-Mart Common Use Parcels, and Wal-Mart hereby grants to Developer, for the benefit of the Developer Property, the Outparcels and the Developer Common Use Parcels, perpetual easements: (i) to allow storm-water and other water leaving the Wal-Mart Property to enter onto and/or cross over the Developer Property and the Developer Common Use Parcels; (ii) to allow storm-water and other water leaving the Developer Property, the Developer Common Use Parcels and the Outparcels to enter onto and/or cross over the Wal-Mart Property, and the Wal-Mart Common Use Parcels; (iii) to allow storm-water and other water leaving the Wal-Mart Property and the Wal-Mart Common Use Parcels to collect in storm water detention facilities (the "Developer Facilities") located on Common D, Common E, Common G, and Common H in the approximate location depicted on the Site Plan; and (iv) to allow storm-water and other water leaving the Developer Property, the Outparcels and the Developer Common Use Parcels to collect in the storm water detention facility (the "Wal-Mart Facility") located on Common G. Developer shall not grant an easement interest in Common G, as depicted on the Site Plan and as legally described on Exhibit F attached hereto, to property owners adjacent to the Wal-Mart Property, the Developer Property, or the Outparcels. Wal-Mart, at Wal-Mart's sole expense, shall be responsible for any modifications to the Developer Facilities which may be necessary to accommodate storm-water and other water leaving the Wal-Mart Property and the Wal-Mart Common Use Parcels. The Developer Facilities and Wal-Mart Facility shall hereinafter be collectively referred to as the "Facilities". Developer, at Developer's sole expense, shall be responsible for any modifications to the Wal-Mart Facility which may be necessary to accommodate storm-water and other water leaving the Developer Property and the Developer Common Use Parcels. Developer and Wal-Mart shall grant to each other such easements as may be necessary for each party to complete the construction of any modifications referenced in the preceding sentence. Developer shall not alter the Developer Facilities or its functions without Wal-Mart's prior written consent and Wal-Mart shall not alter the Wal-Mart Facility or its functions without

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Developer's prior written consent. Developer, its heirs, successors and assigns shall at all times repair, replace and maintain the Facilities in good working order and condition at its own sole cost and expense, subject to the reimbursement obligations set forth in Section 6(f) of this Agreement. Developer shall be solely responsible for the Facilities' compliance with all storm water guidelines promulgated by the Environmental Protection Agency or any other governmental agency having jurisdiction. In the event that Developer shall fail to so maintain the Facilities for a period of ten (10) days after written notice of its failure to so maintain the same, Wal-Mart shall have the right to enter upon the Facilities and perform such maintenance itself, in which event Developer shall be liable to Wal-Mart for all sums expended by Wal-Mart in so performing Developer's maintenance duties hereunder. Developer hereby indemnifies Wal-Mart against any and all claims and losses arising out of Developer's use of the Developer Property and/or the Developer Facilities and arising out of the introduction of any substance into the Developer Facilities or other substance which enters the Developer Property in violation of the requirements of all applicable laws, including with out limitation the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), as amended, including any claim that the storm water or any other substance which enters the Developer Facilities or the Developer Property violates the requirements of any applicable laws as aforesaid. Wal-Mart hereby indemnifies Developer against any and all claims and losses arising out of Wal-Mart's use of the Wal-Mart Property and/or the Wal-Mart Facility and arising out of the introduction of any substance into the Wal-Mart Facility by Wal-Mart or other substance which Wal-Mart permits to enter the Wal-Mart Property in violation of the requirements of all applicable laws, including with out limitation the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), as amended, including any claim that the storm water from the Wal-Mart Property or any other substance which Wal-Mart permits to enters the Wal-Mart Facility or the Wal-Mart Property violates the requirements of any applicable laws as aforesaid.

(f) **Relocation.** Except during the periods from March 15 through May 15 and November 1 through the following January 15 (during which periods relocation of utility facilities is not permitted without consent of Developer and Wal-Mart), the Grantor of any easement (the "Grantor") under this Section 5 may relocate on its Property any separate utility facilities or common utility facilities installed thereon under any easement granted hereunder; provided, however that such relocation meets with the following:

(i) **Notice by Grantor.** The relocation may be performed only after Grantor has given the grantee of such easement (the "Grantee") thirty (30) days' written notice of its intention to relocate such facilities;

(ii) **No Interference.** The relocation shall not interfere with or diminish the utility services to Grantee (however, temporary interference with and diminution in utility services shall be permitted if such interference occurs during the non-business hours of the Grantee, and Grantee has been so notified under this Section 5(f).

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(iii) **No Reduction.** The relocation shall not reduce or unreasonably impair the usefulness or function of the facilities in question;

(iv) **Location.** The relocation shall cause the utility facilities to be located underground, if commercially practicable;

(v) **Cost.** The relocation shall be performed without cost or expense to Grantee, and if common utility facilities which provide service to the Grantee are involved, such relocation shall be performed in accordance with plans approved by the Grantee; and

(vi) **Restoration.** The Grantor, in exercising any right whatsoever herein acquired, may temporarily excavate or cut through any road, drive, surface, fence, curb, or walk or similar common area structure permitted herein, but shall as soon as reasonably possible replace and repair such landscaped improved surface or other permitted structure to its former condition without the obligation of maintenance, and resod grass areas and cultivated, established lawn, and shall pay to the Property Owner, or its tenants, compensation for any damage caused any structure or for any trees, shrubs, or surfacing materials not replaced or repaired.

(g) **Provisions Pertaining to Easements.** All easements granted herein shall be easements appurtenant and not easements in gross. In the event a Property Owner transfers or conveys a portion of its Property in accordance with the terms of this Agreement, those easements granted hereunder which benefit, bind, and burden the remainder of the Property not transferred or conveyed shall benefit, bind, and burden the portion of the Property so transferred or conveyed, and those easements granted hereunder which benefit, bind, and burden the portion so transferred or conveyed shall benefit, bind, and burden the remainder of the Property of which it was a part. All easements granted hereunder shall exist by virtue of this Agreement, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Property, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. Upon the request of a Property Owner, the other Property Owners shall sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document as may be approved by the Property Owners.

Section 6. Development, Parking Ratios, Maintenance and Taxes.

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

(b) **Parking Ratios.** Wal-Mart and Developer agree that at all times there shall be independently maintained on both the Developer Property and the Wal-Mart

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Property parking area sufficient to accommodate not fewer than four and one half (4.5) car spaces for each one thousand (1,000) square feet of Floor Area contained in the Building Area on such Property or the number of parking spaces required by applicable law, whichever is greater.

(c) **Outparcel Parking Ratios.** Developer agrees that at all times there shall be independently maintained on each Outparcel the parking specified in Section 4.

(d) **Subdivision.** Subject to the provisions of this Agreement, each Property Owner reserves the right to convey, lease, or assign its Property or any portion thereof through any means including, but not limited to, lease, or ground lease.

(e) **Maintenance of All Properties.**

(i) **Standards.** Following completion of the improvements on the Common Areas, each Property Owner, at its expense, shall maintain the Common Areas located on its respective Property in good condition and repair. The maintenance is to include, without limitation, the following:

(A) maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability;

(B) removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(C) placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;

(D) operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(E) maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair;

(F) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and

(G) maintaining elements of the Storm Drainage System.

(ii) **Expenses.** The Property Owners shall each pay the maintenance expenses with respect to maintenance of the Common Areas located on their respective Properties.

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(iii) *By Agent.* Subject to the mutual agreement of the Property Owners, a third party may be appointed as an agent of the Property Owners to maintain the Common Areas in the manner as above outlined. Such third party may receive for such agency a fee that is mutually acceptable to the Property Owners to cover supervision, management, accounting, and similar fees, which sums are to be included in the general maintenance expense paid by the respective Property Owners of the Common Areas.

(iv) *Buildings.* Each of the Property Owners covenants that it, in addition to other requirements of this Section, will keep the inside and outside of all glass in the doors and windows of its Building clean; will maintain its Building at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; and will not permit accumulation of garbage, trash, rubbish and other refuse, will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefore until called for to be removed.

(f) *Joint Maintenance Common Areas.* For purposes of this Agreement, the phrase "Joint Maintenance Common Area(s)" means the following areas which shall not be occupied by Buildings and which under the terms of this Agreement are to be maintained and repaired by Developer and the costs of maintenance, repairs, and replacements shall be apportioned between the Property Owners. The Joint Maintenance Common Areas are: (a) "Storm Basins" shall mean the drainage pipes and detention facilities and detention ponds on Common D, Common E, Common G, Common H and the drainage pipes on Common F serving the Storm Basins (Common C being the areas on the eastern portion of Lot 2 and Lot 3 identified as "Detention Area") all as shown on the Site Plan, to be constructed and maintained by Developer; (b) "Landscaping Area" shall mean all areas of green space, landscaping, trees, grass, or plantings as shown on the attached Exhibit G; (c) the "Shopping Center Signs" shown on the attached Exhibit H; and (d) "Common Roadways" (collectively) or "Common Roadway" (individually) shall mean the private roadways and curbs adjoining such roadways as indicated by the crosshatched areas shown on the Site Plan as Common A, Common B, Common C and Common F.

(i) *Maintenance of Joint Maintenance Common Areas.* Notwithstanding anything in Section 6(e), after the initial construction or installation of the following items, Developer shall perform the following maintenance within the Joint Maintenance Common Areas ("JMCA") as shown on the Site Plan. Each Property Owner shall pay its Proportionate Share of the following costs incurred by Developer ("JMCA Expenses" or individually, a "JMCA Expense"):

(A) *Storm Basin.* Developer shall maintain the Storm Basins including: silt removal, dredging, and other necessary maintenance, landscaping, and any improvements erected surrounding the Storm Basins. Developer shall charge the Property Owners and their successors and assigns, computed as detailed in this Section, for their respective share of

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such amount as is sufficient to pay for the maintenance of the Storm Basins and for all maintenance, silt removal, landscaping and other costs (other than construction costs) incurred with regard to Common D, Common E, Common G and Common H (hereinafter referred to as "Storm Basin Costs").

(B) **Landscaping Maintenance.** Developer shall maintain and replace, and shall charge the Property Owners and their successors and assigns, computed as detailed in this Section, for their respective share of such amount as is sufficient to pay for the maintenance of the Landscaping Area and water sprinkler systems, including but not limited to the costs of maintenance, repair, replacements maintenance of islands and landscaping and the removal of debris, utility costs to operate sprinkler systems, and any other costs incurred in Developer's reasonable judgment, to maintain such Landscaping and sprinkler systems, in a condition reasonably required to insure necessary aesthetics in Developer's reasonable discretion.

(C) **Shopping Center Signs.** Developer shall maintain and operate, replace, and shall charge the Property Owners, their successors and assigns, for their respective share of such amount as is sufficient to pay for the maintenance, repair, replacement and operation of the Shopping Center Signs (however, the individual panels thereon shall be maintained, repaired, and replaced by the party installing such panel or entitled to install such panel).

(D) **Common Roadways.** Developer shall maintain, and shall charge the Property Owners and their successors and assigns, computed as detailed in this Section, for their respective share of such amount as is sufficient to pay for the maintenance, repair, replacement, and operation of the Common Roadways. Such costs shall include, but not be limited to, the costs of snow removal, sweeping, removal of debris, lighting and any other costs incurred in the reasonable judgment of the Developer to maintain such roadways in a condition reasonably required to insure acceptable access to the various Properties within the Shopping Center and any necessary aesthetics.

(ii) **Liability Insurance.** Developer shall charge the Property Owners and their successors and assigns, computed as detailed in this Section, for their respective share of such amount as is sufficient to pay for Liability and Property (casualty) Insurance for Common F, Common G and Common H in amounts and coverages as shall reasonably be determined by Developer. Developer agrees that all policies of insurance required under this Section shall be issued by financially responsible insurance companies qualified to do business in the state of Nebraska; certificates of such policies will be delivered to any Property Owner upon request for the same; as often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Developer for the same in

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a like manner and to like extent; and, all public liability, property damage and other casualty policies shall be written as primary policies, not contributing with or secondary to coverage which the Property Owners may carry. The liability insurance policies carried by Developer for Common F, Common G and Common H shall name each of the Property Owners as additional insureds thereunder.

(iii) **Taxes.** Developer shall pay before delinquent, and upon completion of re-platting, shall charge the Property Owners and their successors and assigns, computed as detailed in this Section, for their respective share of such amount as is sufficient to pay for, all costs and expenses relating to real property taxes (the "Taxes") assessed for any reason and levied on improvements and land comprising Common F, G and H.

(iv) **Computation of Charges.** Each Property Owner shall be obligated to pay the sum of (i) each of the aforementioned JMCA Expenses plus (ii) the multiplication of each and every JMCA Expenses, other than the Taxes and Insurance described in subsection 5(f)(ii) above, by a management fee of ten percent (10%) of said costs multiplied times a fraction, the numerator of which shall be the usable square footage of the particular Property and the denominator shall be the square footage of all then Developed Usable Property (the "JMCA Payments"). For purposes of this subsection, a Property is considered a "Developed Usable Property" if a building permit has been issued for the construction of a building on the Property.

(v) **Payment of JMCA Expenses.** The JMCA Payments for each Property Owner shall be paid in monthly installments on the first day of each calendar month in advance, in an amount reasonably estimated by Developer. For the first full calendar year and any partial year prior thereto, Developer shall have the right, exercisable by notice from Developer to a Property Owner at any time to require a Property Owner to pay to Developer as a Property Owner's Proportionate Share of JMCA Expenses a different sum of money than reasonably estimated based upon costs actually incurred as JMCA Expenses. In the event Developer shall have given notice to a Property Owner of the changed amount then, commencing on the date designated by Developer and continuing for the balance of the period during the term of this Agreement, as herein after defined, indicated by Developer. Property Owner shall pay Developer on the first day of each month, monthly in advance, one-twelfth (1/12th) of the amount so estimated by Developer. Within ninety (90) days after the end of each calendar year, Developer shall furnish each Property Owner with a statement in reasonable detail summarizing the actual JMCA Expenses for the preceding calendar year and setting forth the method by which the Property Owner's Proportionate Share was determined as herein provided. If the aggregate of the monthly Property Owner's Proportionate Share paid by Property Owner during any year exceeds the amount which is actually due by Property Owner as provided herein, the difference shall be credited against the next succeeding monthly Property Owner's Proportionate Share payment to be made by Property Owner under this section.

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(vi) **Audit.** Developer shall keep complete and accurate books and records in accordance with generally accepted accounting principles concerning the operation, maintenance and repair of the Common Areas and the JMCA. Each Property Owner and its agents shall, upon written request to Developer within three (3) years following the end of such calendar year, have the right to review, audit and copy Developer's records and computations regarding the JMCA Expenses for that given year. If any adjustment is required to any previous payment by a Property Owner of the JMCA Expenses, such adjustment shall be made within 30 days of such Property Owner's audit. If any statement of JMCA Expenses previously furnished to the Property Owner shall be greater than one hundred five percent (105%) of the actual JMCA Expenses shown by such audit, Developer shall immediately pay the Property Owner's reasonable costs of such audit for the period audited. Should the Property Owner question the accuracy of the statement of JMCA Expenses, Property Owner's right to dispute any such costs shall be conditioned upon payment to Developer of Property Owner's Proportionate Share thereof prior to its right to contest any such costs, with an adjustment thereafter, if necessary.

(vii) **Assignment.** Developer may freely assign its rights and obligations with regard to this Section to any subsequent Property Owner of the Developer Property.

Section 7. Taxes. Wal-Mart, Lowe's and Developer agree to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against its respective Property or Outparcel.

Section 8. Signs. No sign shall be located on the Common Areas on the Wal-Mart Property or the Developer Property except signs advertising businesses conducted thereon, and in all cases shall be monument signs and must comply with all applicable governmental requirements. Developer shall be entitled to place signs identifying the Shopping Center in the locations set forth on the Site Plan. All signs erected on the Developer Property and Outparcels shall be in accordance with the Design Criteria, applicable governmental requirements and are subject to the approval by Developer in advance. Each of Wal-Mart, as to the Wal-Mart Property, and Developer, as to the Developer Property, grant to the other and to the applicable tenants of such Property Owner, a nonexclusive easement and right to enter on its Property for the purposes of installing, repairing, replacing, maintaining and removing its panels on the signs.

Section 9. Indemnification/Insurance.

(a) **Indemnification.** Each Property Owner hereby indemnifies and saves the other Property Owner(s) harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death or property damage and occurring on or from its own Property or Outparcel, except if caused by the act or negligence of the other Property Owner hereto.

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(b) **Insurance.**

(i) Each Property Owner shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$5,000,000 for injury or death of a single person, to the limit of not less than \$5,000,000 for any one occurrence and to the limit of not less than \$5,000,000 for property damage. Each Property Owner shall provide the other party with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the Property Owner which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without ten (10) days' prior written notice to the other Property Owners.

(ii) At all times during the term of this Agreement, each Property Owner shall keep Buildings and improvements on its Property insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the state in which the Shopping Center is located, with such insurance to be for the full replacement value of the insured Buildings and improvements.

(iii) Policies of insurance provided for in this section shall name each Property Owner as insureds as their respective interests may appear, and upon written request, each of them shall provide to each other certificates evidencing the fact that such insurance has been obtained.

(iv) Each Property Owner for itself and its property insurer hereby releases the other Property Owners from and against any and all claims, demands, liabilities or obligations whatsoever for damage to property or loss of rents or profits resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the Property Owner being released or by any agent, tenant, associate or employee of the Property Owner being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

(v) Notwithstanding anything to the contrary contained in this Section, so long as the net worth of a Property Owner or its parent shall exceed \$100,000,000, a Property Owner shall have the right to retain (in whole or in part) the financial risk for any claim.

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(vi) In the event of the destruction and damage to any extent to the Buildings constructed on the Shopping Center, the affected Property Owner shall either (a) diligently commence and pursue completion of the repair or restoration of such damage or (b) within ninety (90) days after the destruction and damage clear away the debris and the ruins and leave the Property in clean, orderly, sightly and safe condition.

Section 10. Eminent Domain.

(a) **Owner's Right to Award.** Nothing herein shall be construed to give another Property Owner any interest in any award or payment made to another Property Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting the other Property Owners' Property or giving the public or any government any rights in said Property. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located in the Shopping Center, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Property Owner thereof, and no claim thereon shall be made by the Property Owners of any other portion of the Common Areas.

(b) **Collateral Claims.** All Property Owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and Buildings taken from another Property Owner.

(c) **Tenant's Claim.** Nothing in this Section shall prevent a tenant from making a claim against a Property Owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

(d) **Restoration of Common Areas.** The Property Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Property as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any Property Owner.

Section 11. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon the Shopping Center, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Property. Except as set forth in the preceding sentence, however, any holder of a first lien on the Shopping Center, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

Section 12. Release From Liability. Any person acquiring fee or leasehold title to any portion of the Shopping Center shall be bound by this Agreement only as to the Property or portion of the Property acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Property or portion of the Property, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this Section, the easements, covenants and

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restrictions in this Agreement shall continue to be benefits to and servitudes upon such properties running with the land.

Section 13. Breach. In the event of breach or threatened breach of this Agreement, only all of the record owners of a Property or Developer, so long as it or any affiliate has an interest as owner or lessee of any portion of the Shopping Center, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach.

Section 14. Default and Remedies.

(a) **Notice and Cure.** A default shall occur under this Agreement if any party (a "Defaulting Party") shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by the Defaulting Party pursuant to this Agreement and any such failure (except as to emergencies or as to snow removal) shall remain uncured for a period of thirty (30) days after either the Developer or the Property Owner of the Wal-Mart Property or the Property Owner of the Lowe's Property (the "Aggrieved Owner") shall have served upon the Defaulting Party written notice of such failure; provided that no default shall occur if: (i) the default is of such character as reasonably to require more than thirty (30) days to cure and the Defaulting Party shall commence to cure such default within said thirty (30) day period and shall continuously and diligently cure such default after commencing such cure; or (ii) a separate notice and remedy provision is specifically provided elsewhere in this Agreement for such default and the Defaulting Party complies with and cures under said provision. Notwithstanding the foregoing, if the failure of the Defaulting Party relates to a matter which is of an emergency nature involving immediate threat of damage or injury to persons or property or a failure of the Defaulting Party to remove snow from the parking areas, or the Defaulting Party has not commenced to cure such default within said thirty (30) day period, then the Aggrieved Owner may institute legal proceedings for full and adequate relief from the consequences of said default or threatened default and, in addition, at its option, may: (i) perform any such term, provision, covenant, or condition; or (ii) make any such payment required to cure such default. The Defaulting Party shall promptly reimburse the Aggrieved Owner for all expenses and costs incurred.

(b) **Default Interest.** Interest shall accrue on sums owed by a Defaulting Party to an Aggrieved Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest (the "Default Rate") equal to the lesser of: (a) the floating rate which is equal to five percent (5%) per annum in excess of the annual rate of interest from time to time announced by the largest federally insured bank in the metropolitan Omaha, Nebraska area (or such other bank as may reasonably be selected by Developer), as its corporate base rate or so called prime rate of interest, or (b) the then maximum lawful rate of interest in Nebraska applicable to the capacity of the Defaulting Party and the nature of the debt. In the event a corporate base rate is not announced, and no maximum lawful rate applies, then the Default Rate shall equal eighteen percent (18%) per annum.

(c) **Additional Remedies.** The Aggrieved Owner may offset any sums due to the Defaulting Party (an "Offset") pursuant to this Agreement. Any Offset pursuant to

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the provisions of this subsection shall not constitute a default in the payment thereof unless the Aggrieved Owner taking such Offset shall fail to pay the amount of such Offset of the Defaulting Party within thirty (30) days after final adjudication that such Offset is owing to the Defaulting Party and thus was improperly deducted. The right to Offset given in this subsection is for the sole protection of the Aggrieved Owner, and its existence shall not release the Defaulting Party from the obligation to perform the terms, provisions, covenants and conditions herein provided to be performed thereby or deprive the Non-Defaulting Party of any legal rights.

(d) **Non-exclusive Right of Entry and Non-exclusive Easements.** Each party hereto hereby grants to the other a non-exclusive right of entry and non-exclusive easements for and during the Term of this Agreement, as hereinafter defined, in, over and under their respective real property (excluding the right to enter any Buildings thereon) for all purposes reasonably necessary, to enable the Aggrieved Owner (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Declaration which the Defaulting Owner shall have failed to perform, after notice and time to cure, as aforesaid, but only such notice and time to cure as shall be reasonable or practicable under the circumstances need be given in the event of any emergency.

(e) **Breach.** In the event of a breach, or attempted or threatened breach, of any of the terms, provisions, covenants or conditions of this Declaration, the Aggrieved Owner shall be entitled forthwith to full and adequate relief by injunction, damages, and all other available legal and equitable remedies from the consequences of such breach.

Section 15. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

Section 16. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by Developer, Lowe's and Wal-Mart there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of (a) the then Property Owners, (b) for as long as the lease agreement between Developer and Kohl's (the "Kohl's Lease") remains in effect, the agreement of Kohl's, and (c) for as long as the Lowe's Ground Lease remains in effect, the agreement of Lowe's.

Section 17. Non-Merger. This Agreement shall not be subject to the doctrine of merger.

Section 18. Duration. Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after 99 years from the date hereof.

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Section 19. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document and in no way affect the terms and provisions hereof.

Section 20. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

Section 21. Transfer of Interests; Notices.

(a) **Transfer of Interests.** In the event that any person or entity (the "Acquiring Party") shall acquire a fee or mortgage interest in any property subject to this Agreement, or any portion thereof, the Acquiring Party shall execute and file in the land records of Sarpy County, Nebraska, a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this Agreement may be sent, the nature of the interest held by the Acquiring Party and the date that such interest was acquired (the "Notice Statement"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, a copy of such Notice Statement to all other persons or entities then holding fee or mortgage interests in any Property subject to this Agreement, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Sarpy County, Nebraska (the "Existing Interest Holders"). Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this subsection (a), it shall not be entitled to receive any notice required or permitted to be given under this Agreement, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement. It is understood and agreed that the provisions of this subsection (a) regarding the recordation of the Notice Statement are satisfied with respect to Developer and Wal-Mart.

(b) **Notices.** All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express or similar overnight delivery service, addressed as follows:

If to Developer: Market Pointe, LLC
c/o The R. H. Johnson Company
801 W. 47th Street, Suite 219
Kansas City, MO 64112
Attention: Owen J. Buckley

with a copy to: The Katz Law Firm
6299 Nall, Suite 210
Mission, KS 66202
Attention: Richard B. Katz, Esq.

X

If to Wal-Mart: Wal-Mart Stores, Inc.
2001 Southeast 10th Street
Bentonville, AR 72716-0550
Attention: Legal Department-Nebraska
Store No. 1671-3

with a copy to: Wal-Mart Stores, Inc.
2001 Southeast 10th Street
Bentonville, AR 72716-0550
Attention: Real Estate Manager-Nebraska
Store No. 1671-3

with a copy to: Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186
Attention: Michael L. Curry, Esq.

If to Lowe's Lowe's Home Centers, Inc.
Highway 268 East, East Dock
North Wilkesboro, North Carolina 28659
Attention: Property Management Department

With a copy to: Lowe's Home Centers, Inc.
Highway 268 East, East Dock
North Wilkesboro, North Carolina 28659
Attention: Richard G. Pratt, Law Department

Notices shall be effective upon receipt or refusal. In the event that any person acquires a fee interest in the Shopping Center said person shall be entitled to provide a request for notice to the addressees listed above, which request, in order to be effective, must also be recorded in the office of the Sarpy County Register of Deeds. Any party shall be entitled to change its address for notice by providing notice of such change and recording a copy of the notice of such change in the office of the Sarpy County Register of Deeds. Until such time as the notice of change is effective pursuant to the terms of this section and until such time as it is recorded as required above, the last address of said party shall be deemed to be the proper address of said party.

Section 22. Consent. The Property Owner of the Wal-Mart Property agrees that for so long as a lease of all or a portion of the Wal-Mart Property is in effect, whenever the consent of the Property Owner of the Wal-Mart Property is required under the Agreement, the Property Owner of the Wal-Mart Property will give such consent only after obtaining Wal-Mart's consent. The Property Owner of the Developer Property agrees that (a) for so long as the lease between Kohl's and Developer covering a portion of the Developer Property is in effect, whenever the consent of the Property Owner of the Developer Property is required under the Agreement, the Property Owner of the Developer Property will give such consent only after obtaining Kohl's prior written consent, and (b) for so long as the Lowe's Ground Lease covering a portion of the Developer Property is in effect, whenever the consent of the Developer or the Property Owner of

Y

the Developer Property is required under the Agreement, the Developer or the Property Owner of the Developer Property will give such consent only after obtaining Lowe's prior written consent.

Section 23. Counterparts. This Agreement may be executed in one or more counterparts each of which in the aggregate shall constitute one and the same instrument.

Section 24. No Barriers. No barriers, fences, grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Shopping Center from time to time devoted to pedestrian access, vehicular roadways or parking area, or in any manner unreasonably restrict or interfere with the use and enjoyment by any of the Property Owners of the rights and easements created by this Agreement. The preceding sentence shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes or the installation of barriers or curbs at the perimeter or edge of a Property. Nor shall the foregoing prohibit or restrict the storage, display or sale of merchandise on the sidewalks in front of the store on the Wal-Mart Property, Lowe's Property or Lot 3 or on the parking lot of such Property, provided the same are in compliance with applicable ordinances and statutes and are limited to those areas shown on the Site Plan. In addition, each Property Owner may temporarily close or block traffic on its Property for the time necessary for the purpose of protecting ownership rights and preventing creation of easements to the public and unrelated third parties (provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Property Owner shall give fifteen (15) days written notice to each other Property Owner of its intention to do so and shall attempt to coordinate such closing with each other Property Owners, so that no unreasonable interference in the passage of pedestrians or vehicles shall occur), and may temporarily fence off portions of its Property as reasonably required for the purpose of repair, construction and reconstruction. The Property Owners shall use reasonable efforts to ensure that no such closing shall occur during weekends, holidays or normal business hours.

Section 25. Restrictive Covenants. The foregoing restrictions and agreements are imposed on each portion of the Property for the benefit of the Shopping Center. The agreements, restrictions and covenants herein made shall be deemed restrictive covenants running with the land and shall be binding upon each of the Property and any person who may from time to time own, lease, or otherwise have an interest in any of the Property.

Section 26. Estoppel Certificates. Each Property Owner shall upon not less than thirty (30) days from receipt of written notice from any other Property Owner execute and deliver to such other Property Owner a certificate stating that (a) either this Agreement is unmodified and in full force and effect or is modified (and stating the modification); and (b) whether or not to the best of its knowledge the other Property Owners are in default in any respect under this Agreement and if in default, specifying such default.

Section 27. Assignment. The rights and obligations of any person hereunder may be assigned in whole or in part to any person acquiring the entire interest of in a Property or to one or more ground lessees or lessees which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or lease between such Property Owner and such ground lessee or lessee.

Section 28. Continuous Occupancy. No Property Owner is obligated to continuously operate a business on its Property, respectively. Nothing contained in this Agreement shall be construed, interpreted or otherwise read to prevent a Property Owner from closing its business on its Property, respectively. In no event shall Developer or any Property Owner have any liability whatsoever for the failure of any Property Owner to continuously operate. Developer makes no representation whatsoever that any Property Owner will continuously operate.

Section 29. Force Majeure. If any Property Owner is delayed or hindered in or prevented from the performance of any obligation required under this Agreement by reason of inability to procure materials, failure of power, strikes, labor troubles, lock outs, restrictive governmental laws or regulations, riots, insurrection, war, military or usurped power, sabotage, unusually severe weather, fire or other casualty or other reason (but excluding inadequacy of insurance proceeds, financial inability or the lack of suitable financing) of a like nature beyond the reasonable control of such delayed party ("Force Majeure"), the time for performance of such obligation shall be extended for the period of the delay, provided that Force Majeure shall not excuse any Property Owner from the prompt and timely payment of any amounts required under this Agreement. No delay under this Section shall be permitted in connection with delays caused by the failure of the Properties or the Shopping Center to comply with local governmental ordinances, codes or regulations then in effect.

Section 30. Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

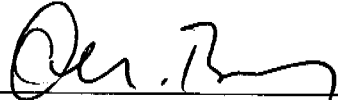
Section 31. Exhibits. Each reference herein to an exhibit refers to the applicable exhibit that is attached to this Agreement. All such exhibits constitute a part of this Agreement and by this reference are expressly made a part hereof. The following is a list of Exhibits:

- EXHIBIT A SITE PLAN**
- EXHIBIT B LEGAL DESCRIPTION OF WAL-MART PROPERTY**
- EXHIBIT C LEGAL DESCRIPTION OF DEVELOPER PROPERTY**
- EXHIBIT D LEGAL DESCRIPTION OF OUTPARCELS**
- EXHIBIT E LEGAL DESCRIPTION OF LOWE'S PROPERTY**
- EXHIBIT F LEGAL DESCRIPTION OF COMMON D, COMMON F,
 COMMON G AND COMMON H**
- EXHIBIT G LANDSCAPING AREA**
- EXHIBIT H SHOPPING CENTER SIGNS**
- EXHIBIT I USABLE LAND AREAS**
- EXHIBIT J FORM OF CONSENT**

Aa

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

MARKET POINTE, LLC, a Missouri limited liability company

By: 
Owen J. Buckley, Managing Member

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

By _____
Shannon Letts
Director of Design and Real Estate

LOWE'S HOME CENTERS, INC.
a North Carolina corporation

By: _____
Name: _____
Title: _____

Ab

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

MARKET POINTE, LLC, a Missouri limited liability company

By: _____
Name: _____
Title: _____

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

By Shannon Letts
Shannon Letts
Director of Design and Real Estate
Assistant Vice President

LOWE'S HOME CENTERS, INC.
a North Carolina corporation

By: _____
Name: _____
Title: _____

Approved as to legal terms only
by John T. G. [Signature]
WAL-MART LEGAL DEPT.
Date: 1/19/06

AC

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

MARKET POINTE, LLC, a Missouri limited liability company

By: _____
Name: _____
Title: _____

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

By _____
Shannon Letts
Director of Design and Real Estate

LOWE'S HOME CENTERS, INC.
a North Carolina corporation

By: David E Shelton
Name: David E. Shelton
Title: Senior Vice President

CR
RS

Ad

STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)

The foregoing instrument was acknowledged before me this 19th day of January, 2006, by Shannon Letts, ~~Director of Design and Real Estate~~ ^{Assistant Vice President} of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

[SEAL]
"NOTARY SEAL"
Karen D. Milligan, Notary Public
Washington County, State of Arkansas
My Commission Expires 10/30/2008

Karen D. Milligan
Notary Public
My Commission Expires 10-30-2008

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2005, by Owen J. Buckley, a Managing Member of Market Pointe, LLC, a Missouri limited liability company, on behalf of the limited liability company.

[SEAL]

Notary Public
My Commission Expires _____

STATE OF NORTH CAROLINA)
) ss.
COUNTY OF WILKES)

The foregoing instrument was acknowledged before me this ___ day of _____, 2005, by _____ of Lowe's Home Centers, Inc., a North Carolina corporation, on behalf of the Corporation.

[SEAL]

Notary Public
My Commission Expires _____

Ae

STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Shannon Letts, Director of Design and Real Estate of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

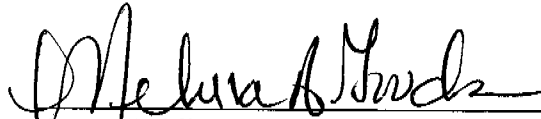
[SEAL]

Notary Public
My Commission Expires _____

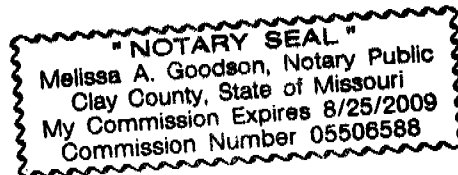
STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

The foregoing instrument was acknowledged before me this 21st day of December 2005, by Owen J. Buckley, a Managing Member of Market Pointe, LLC, a Missouri limited liability company, on behalf of the limited liability company.

[SEAL]



Notary Public
My Commission Expires _____



STATE OF NORTH CAROLINA)
) ss.
COUNTY OF WILKES)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____ of Lowe's Home Centers, Inc., a North Carolina corporation, on behalf of the Corporation.

[SEAL]

Notary Public
My Commission Expires _____

AS

STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2005, by Shannon Letts, Director of Design and Real Estate of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

[SEAL]

Notary Public
My Commission Expires _____

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2005, by Owen J. Buckley, a Managing Member of Market Pointe, LLC, a Missouri limited liability company, on behalf of the limited liability company.

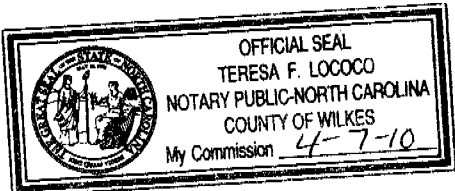
[SEAL]

Notary Public
My Commission Expires _____

STATE OF NORTH CAROLINA)
) ss.
COUNTY OF WILKES)

The foregoing instrument was acknowledged before me this 22 day of December, 2005, by David R. Shelton of Lowe's Home Centers, Inc., a North Carolina corporation, on behalf of the Corporation.

[SEAL]



Teresa F. Lococo
Notary Public
My Commission Expires 4-7-10

Ag
D

EXHIBIT A

SITE PLAN

At

EXHIBIT B

LEGAL DESCRIPTION OF WAL-MART PROPERTY

Lot One (1), in Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska.

AJ

EXHIBIT C

LEGAL DESCRIPTION OF DEVELOPER PROPERTY

Lots Two (2) through 14 and Outlot "A", in Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska.

AK

EXHIBIT D

LEGAL DESCRIPTION OF OUTPARCELS

Lots Four (4) through 14, in Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska.

AI

EXHIBIT E

LEGAL DESCRIPTION OF LOWE'S PROPERTY

Lot Two (2), in Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska as amended by the Administrative Lot Line Adjustment Lots 2 and 3 Market Pointe Addition, adjusting Lots 2 and 3.

Am

EXHIBIT F

**LEGAL DESCRIPTION OF COMMON D, COMMON F, COMMON G
AND COMMON H**

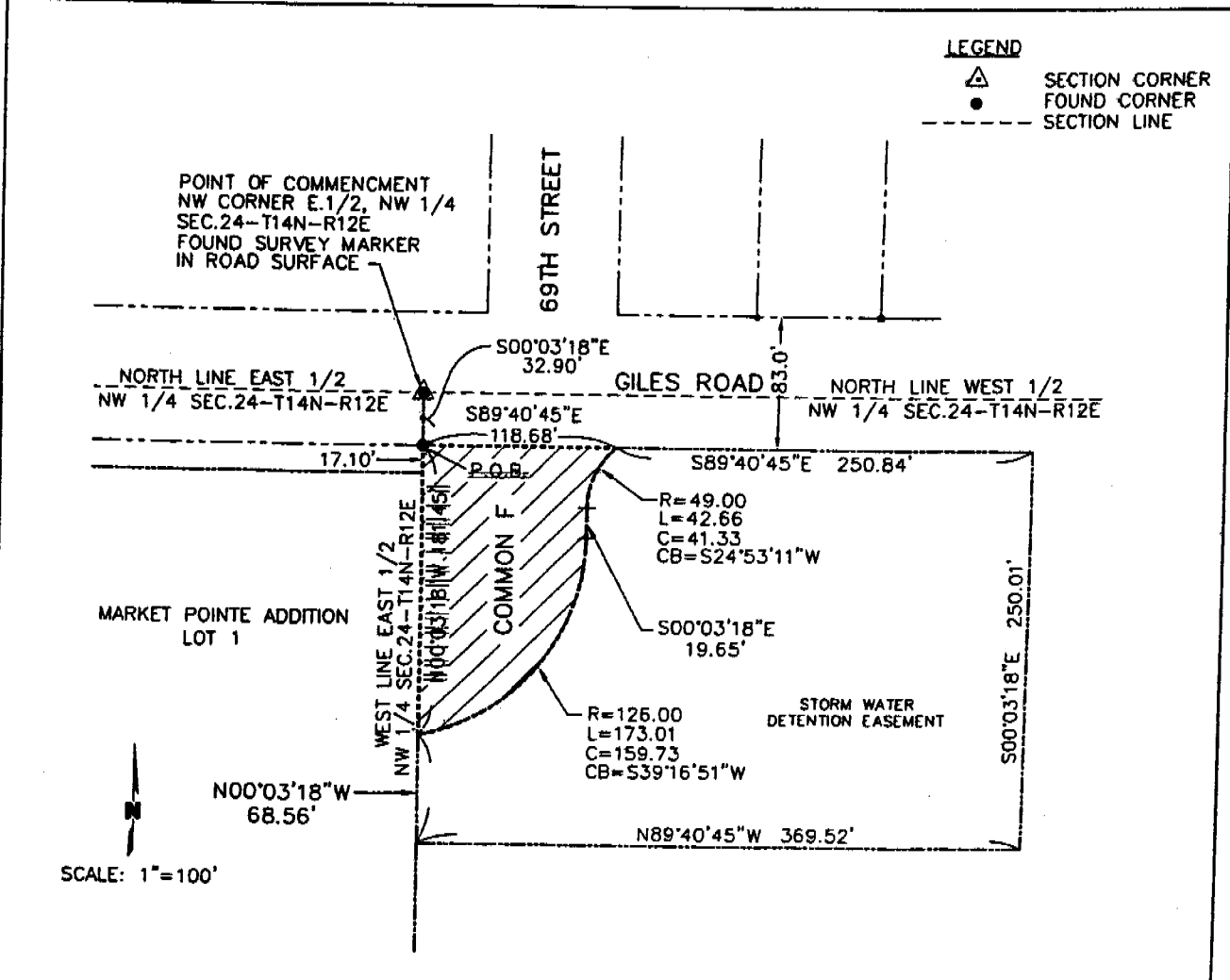
[See attached]

An

LEGAL DESCRIPTION OF COMMON D

Outlot "A", in Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska

A0



LEGEND
 ▲ SECTION CORNER
 ● FOUND CORNER
 - - - SECTION LINE

LEGAL DESCRIPTION (COMMON F)

PUBLIC ACCESS AND PEDESTRIAN WAY EASEMENT

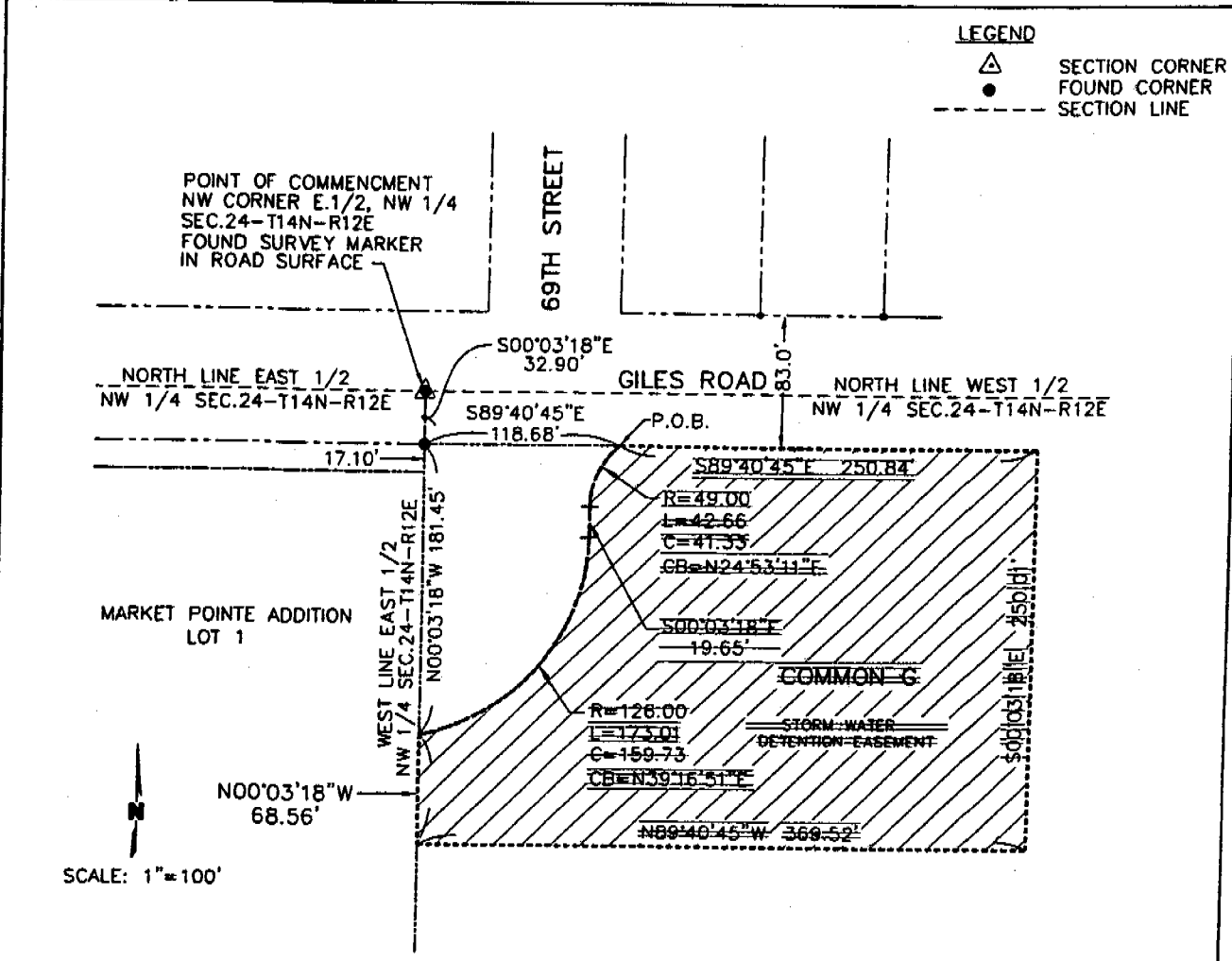
A TRACT OF LAND BEING IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., CITY OF PAPIILLON, SARPY COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE EAST HALF OF SAID NORTHWEST QUARTER, THENCE ON AN ASSUMED BEARING OF S00°03'18"E ALONG THE WEST LINE OF THE EAST HALF OF SAID NORTHWEST QUARTER, A DISTANCE OF 32.90 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF GILES ROAD RIGHT-OF-WAY, SAID POINT BEING THE TRUE POINT OF BEGINNING, THENCE S89°40'45"E ALONG SAID SOUTH LINE, A DISTANCE OF 118.68 FEET TO A POINT OF CURVATURE OF A NON TANGENT CURVE, THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 49.00 FEET, AN ARC LENGTH OF 42.66 FEET, A CHORD BEARING OF S24°53'11"W AND A CHORD LENGTH OF 41.33 FEET TO A POINT OF TANGENCY, THENCE S00°03'18"E, A DISTANCE OF 19.65 FEET TO A POINT OF CURVATURE, THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 126.00 FEET, ARC LENGTH OF 173.01 FEET, A CHORD BEARING OF S39°16'51"W, AND A CHORD LENGTH OF 159.73 FEET TO A POINT OF INTERSECTION WITH THE WEST LINE OF THE EAST HALF OF SAID NORTHWEST QUARTER, THENCE N00°03'18"W ALONG THE WEST LINE OF THE EAST HALF OF SAID NORTHWEST QUARTER, A DISTANCE OF 181.45 FEET TO THE POINT OF BEGINNING AND CONTAINING A CALCULATED AREA OF 15,400 SQUARE FEET OR 0.35 ACRES, MORE OR LESS.

COMMON F MARKET POINTE ADDITION PAPIILLON, NEBRASKA	REVISIONS 1 2 3 4 5 6 7 8 9 10	 DLSSON ASSOCIATES SURVEYING - ENGINEERING - ARCHITECTURE 1000 S. 10th Street, Papillion, NE 68046 (402) 464-1100
	DATE: Dec 08, 2005 4:25pm DRAWN BY: [Name] CHECKED BY: [Name]	

DATE: Dec 08, 2005 4:25pm
 DRAWN BY: [Name]
 CHECKED BY: [Name]

Ap



LEGAL DESCRIPTION (COMMON G)
STORM WATER DETENTION EASEMENT

A TRACT OF LAND BEING IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., CITY OF PAPIILLION, SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID EAST HALF OF SECTION 24, THENCE 500'03'18"E (ASSUMED BEARING), 32.90' TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF GILES ROAD RIGHT-OF-WAY; THENCE 589'40'45"E ALONG SAID SOUTH RIGHT OF WAY LINE, 118.68 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING 589'40'45"E ALONG SAID SOUTH LINE, 250.84 FEET; THENCE 500'03'18"E, 250.01 FEET; THENCE N89'40'45"W, 369.52 FEET TO THE WEST LINE OF THE EAST HALF OF SAID SECTION 24; THENCE N00'03'18"W ALONG SAID EAST LINE, 68.56 FEET TO A POINT OF CURVATURE ON A NON-TANGENT CURVE, THENCE ALONG SAID CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 126.00 FEET, AN ARC LENGTH OF 173.01 FEET, A CHORD BEARING OF N39'16'51"E AND A CHORD LENGTH OF 159.73 FEET TO A POINT OF TANGENCY; THENCE N00'03'18"W, 19.65 FEET TO A POINT OF CURVATURE, THENCE ALONG SAID CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 49.00 FEET, AN ARC LENGTH OF 42.66 FEET A CHORD BEARING OF N24'53'11"E AND A CHORD LENGTH OF 41.33 FEET TO THE POINT OF BEGINNING AND CONTAINING A CALCULATED AREA OF 1.77 ACRES (76,979 S.F.), MORE OR LESS.

DATE: 01-04-2005 4:37PM
 USER: bmlb
 PROJECT: 01-04-2005
 DRAWING: 01-04-2005

COMMON G MARKET POINTE ADDITION PAPIILLION, NEBRASKA	REVISIONS NO. DATE DESCRIPTION	 OLSSON ASSOCIATES ENGINEERS - PLANNERS - SURVEYORS - ARCHITECTS 1000 PAPER DRIVE, SUITE 200, PAPIILLION, NEBRASKA 68043-1000 PHONE: 402-471-1000 FAX: 402-471-1001
	2005	

Ag

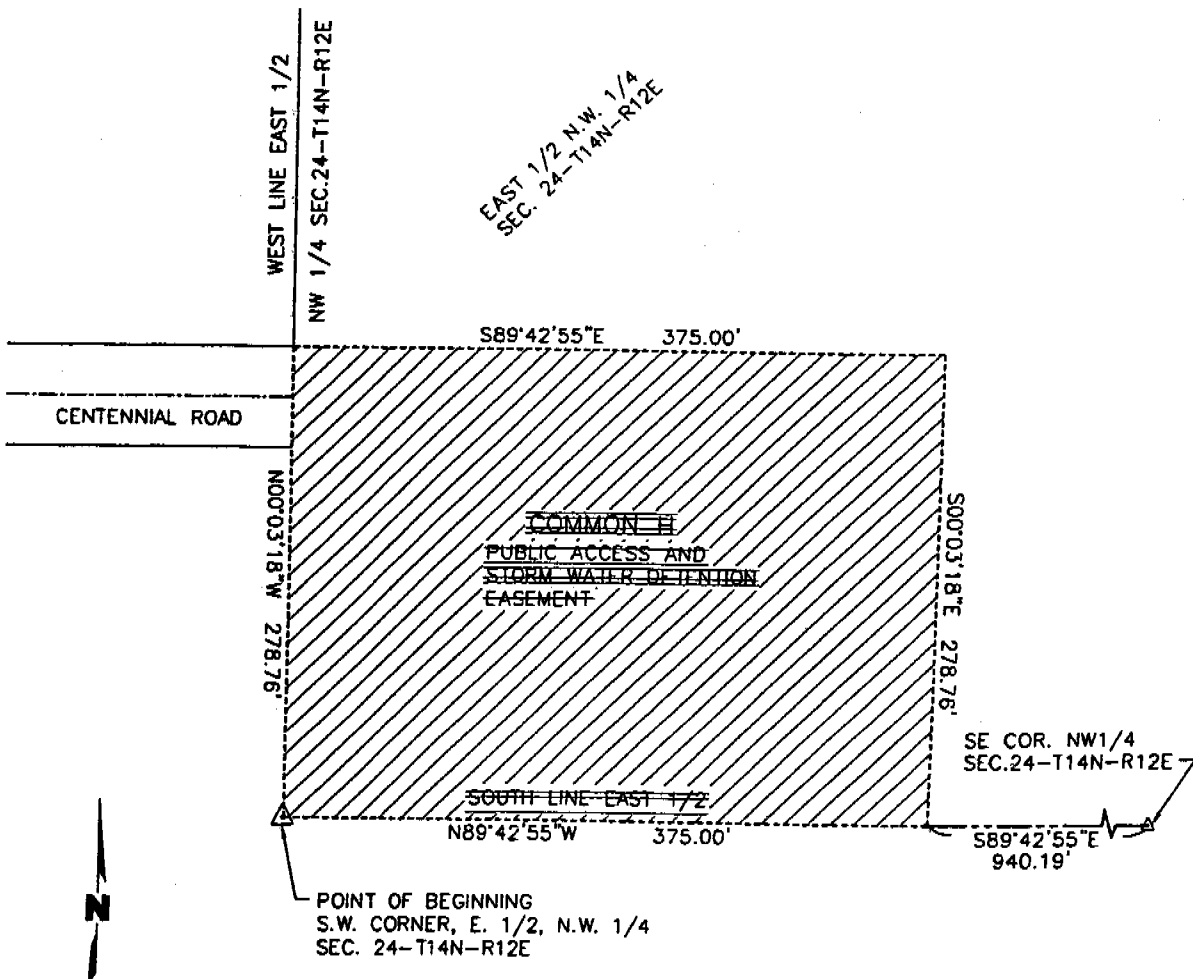
LEGAL DESCRIPTION (COMMON H)

STORM WATER DETENTION EASEMENT

LEGAL DESCRIPTION


A TRACT OF LAND BEING IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., CITY OF PAPILLION, SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE EAST HALF OF SAID NORTHWEST 1/4, THENCE N00°03'18"W ALONG THE WEST LINE OF SAID EAST HALF, 278.76 FEET; THENCE S89°42'55"E, 375.00 FEET; THENCE S00°03'18"E, 278.76 FEET TO THE SOUTH LINE OF SAID EAST HALF; THENCE N89°42'55"W ALONG SAID SOUTH LINE, 375.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.40 ACRES (104,535 S.F.), MORE OR LESS.



SCALE: 1"=100'

DWG: F:\Projects\20031063\Survey\dwg\Commont.dwg
 DATE: Dec 08, 2005 5:05pm
 USER: bwlken
 REFS:

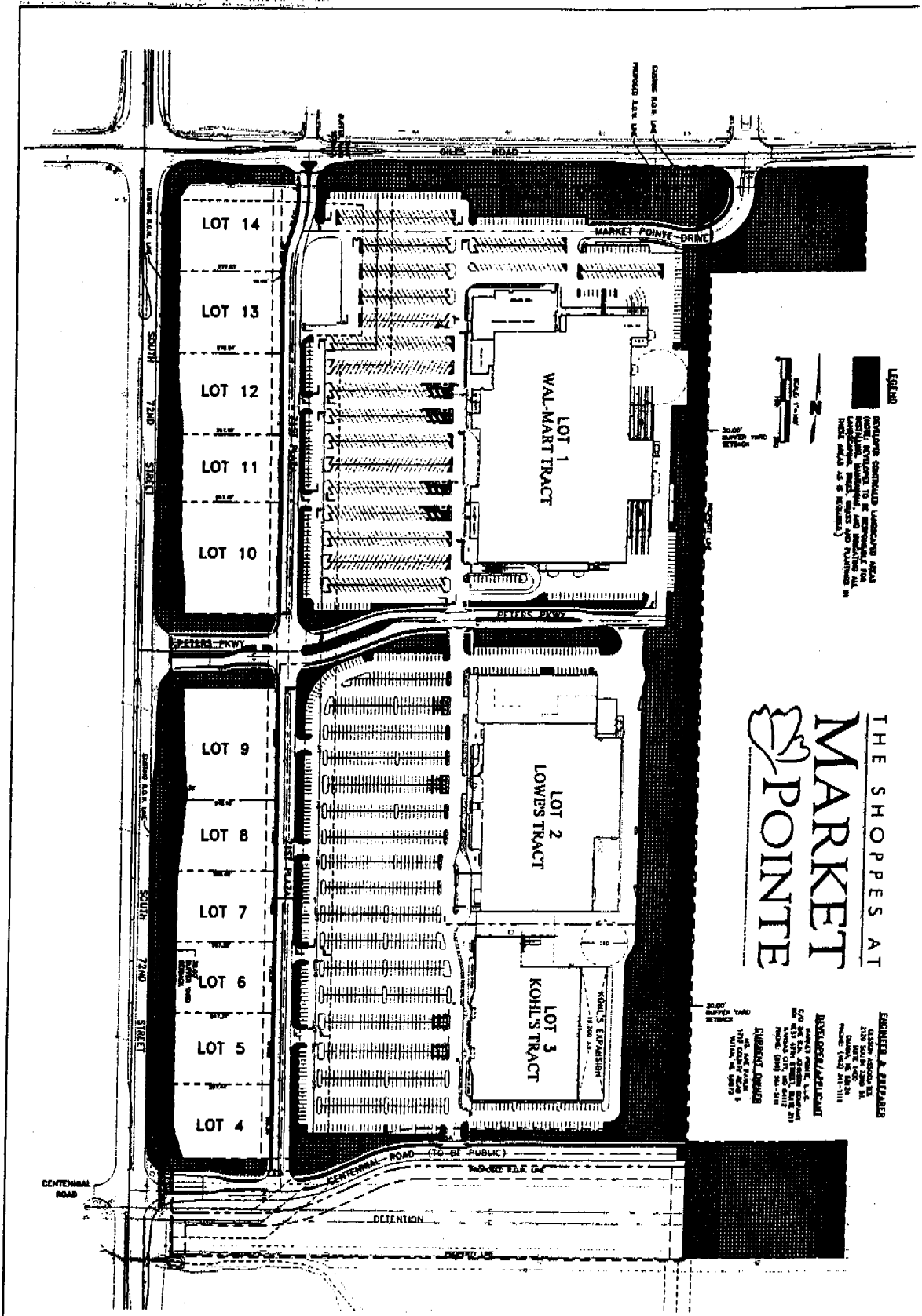
COMMON AREA H MARKET PONTE PAPILLION, NEBRASKA	REVISIONS 2/1 1/1	 OLSSON ASSOCIATES ENGINEERS - PLANNERS - ARCHITECTS - SURVEYORS 1000 N. 10th St., Suite 200 - Lincoln, NE 68502 Phone: 402.426.1000 Fax: 402.426.1001
	2005	

Ar

EXHIBIT G
LANDSCAPING AREA

AS

EXHIBIT G



THE SHOPPES AT MARKET POINTE

ENGINEER & ARCHITECT
 JAMES A. BROWN
 200 SOUTH 20TH ST.
 LINCOLN, NE 68502
 PHONE: (402) 421-1111
 FAX: (402) 421-1111

ARCHITECT/INTERIOR
 JAMES A. BROWN, L.L.C.
 200 SOUTH 20TH ST.
 LINCOLN, NE 68502
 PHONE: (402) 421-1111
 FAX: (402) 421-1111

DEVELOPER
 MARKET POINTE
 1177 OAKVIEW BLVD.
 LINCOLN, NE 68505

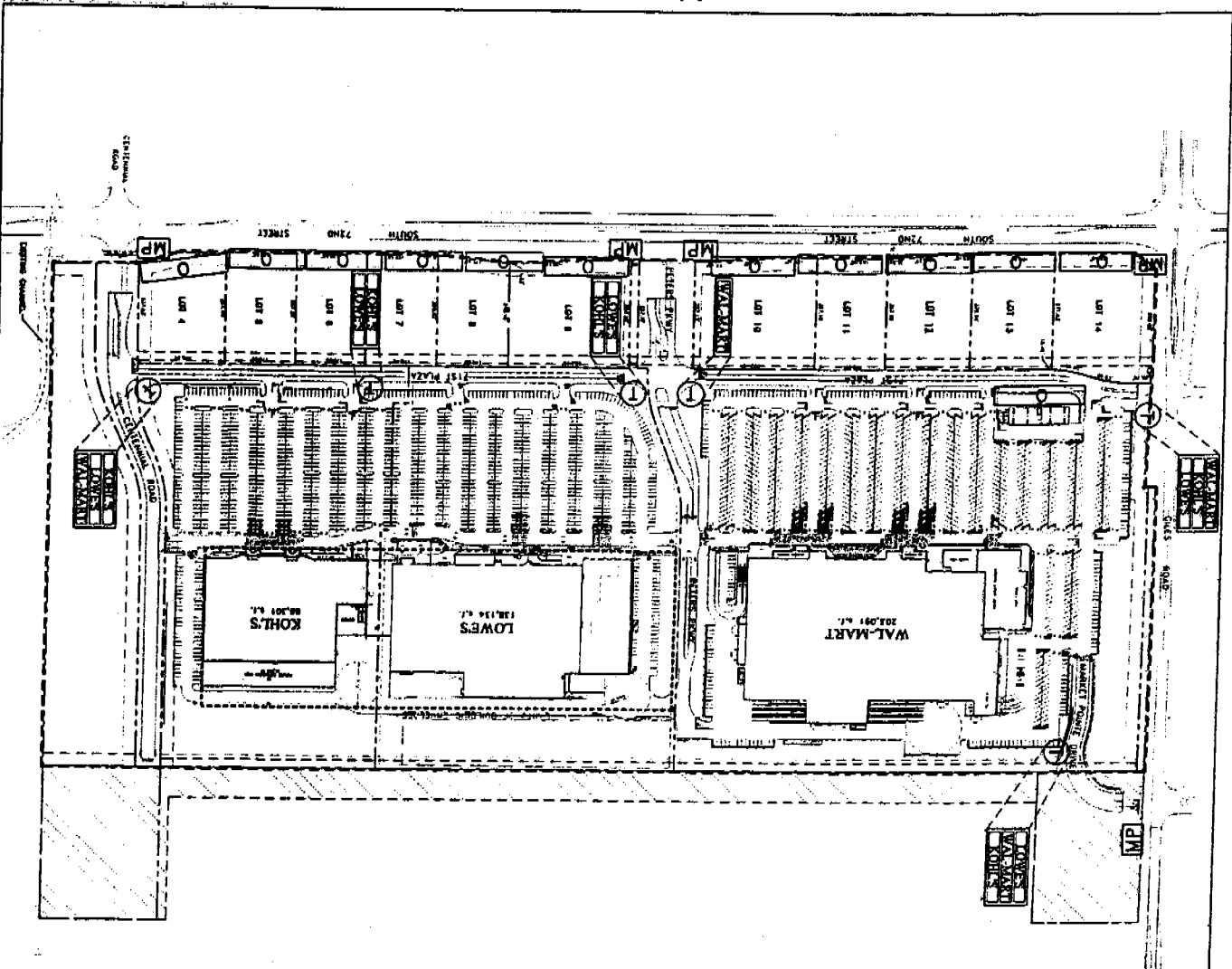
EXHIBIT G	DEVELOPER CONTROLLED LANDSCAPED AREAS EXHIBIT	REVISIONS	OLESON ASSOCIATES ENGINEERS • PLANNERS • ARCHITECTS • SURVEYORS 2000 N. 24th St., Lincoln, NE 68504 • Phone: (402) 421-1111 • Fax: (402) 421-1111													
	MARKET POINTE ADDITION	<table border="1"> <thead> <tr> <th>No.</th> <th>Date</th> <th>Description</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>		No.	Date	Description										
No.	Date	Description														
	PAPILLION, NEBRASKA	2005														

At

EXHIBIT H
SHOPPING CENTER SIGNS

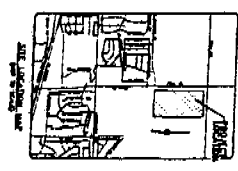
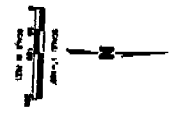
Au

EXHIBIT H



NOTE:
 STORAGE ALLOCATIONS FOR INDIVIDUAL LOTS MAY BE ADJUSTED ACCORDING TO USER, NOT TO EXCEED TOTAL ALLOWABLE STORAGE FOR THE CENTER.

- MP STORAGE ADVERTISING SHOPPING CENTER
- T STORAGE ADVERTISING MAJOR TENANT
- O STORAGE ADVERTISING OUTPARCEL TENANT



MARKET POINTE ADDITION
 PRELIMINARY PLAT/MIXED USE DEVELOPMENT PLAN
 PAPPILION, NEBRASKA

LORNE & SONS
 1700 SOUTH 22ND STREET
 PAPERILLON, NEBRASKA 68046
 PHONE (402) 231-1111

JOHNSON COMPANY
 507 WEST 10TH STREET
 PAPERILLON, NEBRASKA 68046
 PHONE (402) 231-1111

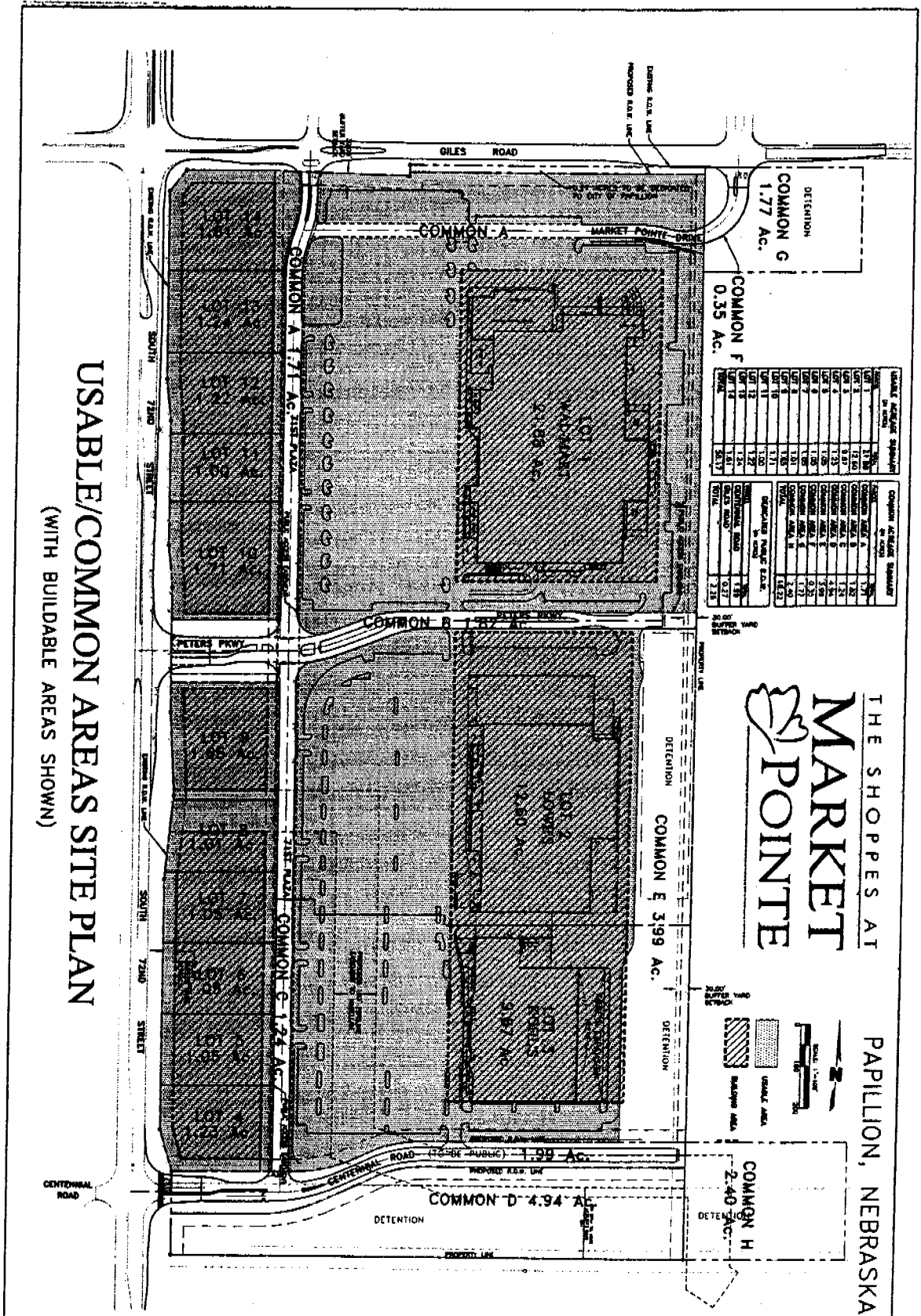
SUBMIT DURING
 11:00 AM TO 4:00 PM
 MONDAY THROUGH FRIDAY
 PAPERILLON, NEBRASKA

<p>EXHIBIT H</p>	<p>SIGNAGE PLAN</p> <p>MARKET POINTE ADDITION</p> <p>PRELIMINARY PLAT/MIXED USE DEVELOPMENT PLAN</p> <p>PAPPILION, NEBRASKA</p>	<p>REVISIONS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	DESCRIPTION										<p>JOHNSON COMPANY</p>	<p>OLSSON ASSOCIATES</p>
NO.	DATE	DESCRIPTION														

AV

EXHIBIT I
USEABLE LAND

Aw



USABLE/Common Areas Site Plan
(WITH BUILDABLE AREAS SHOWN)

THE SHOPPES AT
MARKET
POINTE

PAPILLION, NEBRASKA

Common Area Schedule		Common Area Schedule	
Lot	Area (Ac.)	Lot	Area (Ac.)
LOT 1	2.68	LOT 1	2.68
LOT 2	2.68	LOT 2	2.68
LOT 3	2.68	LOT 3	2.68
LOT 4	2.68	LOT 4	2.68
LOT 5	2.68	LOT 5	2.68
LOT 6	2.68	LOT 6	2.68
LOT 7	2.68	LOT 7	2.68
LOT 8	2.68	LOT 8	2.68
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LOT 99	2.68	LOT 99	2.68
LOT 100	2.68	LOT 100	2.68

SHEET 1 OF 1	USABLE/Common Areas Site Plan (WITH BUILDABLE AREAS SHOWN)	REVISIONS NO. DATE DESCRIPTION	THE R.L.H. JOHNSON COMPANY	OLSSON ASSOCIATES ENGINEERS • PLANNERS • SCIENTISTS • SURVEYORS
	MARKET POINTE ADDITION	2005		
PAPILLION, NEBRASKA				

2006-02430 Ax

**EXHIBIT J
FORM OF CONSENT**

CONSENT

First National Bank of Kansas, a national banking association ("Mortgagee") is the beneficiary of a Deed of Trust in the principal amount of \$12,500,000 from Market Pointe, LLC, a Missouri limited liability company, dated December 23, 2005 and recorded on _____ in Book _____, Page _____, of Sarpy County in the Register of Deeds (the "Deed of Trust"). The Deed of Trust encumbers Lots 2-14 in Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska.

Mortgagee hereby consents to this Agreement and agrees that it will not disturb the rights of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, its successors and assigns, under this Agreement in the event of foreclosure of the Deed of Trust, and Wal-Mart Real Estate Business Trust, as well as its successors and assigns, shall continue to enjoy all rights and privileges granted it under this Agreement provided that Wal-Mart Real Estate Business Trust is not in default under the terms of this Agreement. Wal-Mart Real Estate Business Trust, its successors and assigns, acknowledges that the purchaser at any foreclosure (including Mortgagee), its successors and assigns shall have all the rights of and be recognized as the successor to Market Pointe LLC under this Agreement.

Mortgagee hereby consents to this Agreement and agrees that it will not disturb the rights of Lowe's Home Centers, Inc., a North Carolina corporation, its successors and assigns, under this Agreement in the event of foreclosure of the Deed of Trust, and Lowe's Home Centers, Inc., as well as its successors and assigns, shall continue to enjoy all rights and privileges granted it under this Agreement provided that Lowe's Home Centers, Inc. is not in default under the terms of this Agreement. Lowe's Home Centers, Inc., its successors and assigns, acknowledges that the purchaser at any foreclosure (including Mortgagee), its successors and assigns shall have all the rights of and be recognized as the successor to Market Pointe LLC under this Agreement.

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

MORTGAGEE:

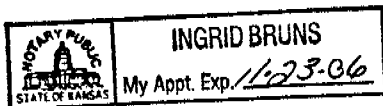
FIRST NATIONAL BANK OF KANSAS,
a national banking association

By: [Signature]
Its: J. CRAIG NICHOLS
Date: 12-21-05

STATE OF Kansas
COUNTY OF Johnson ss.

The foregoing instrument was acknowledged before me this 21 day of December, 2005, by J. Craig Nichols the Sr. V.P. of First National Bank of Kansas on behalf of the corporation.

[SEAL]



Notary Public Ingrid Bruns
My Commission Expires 11-23-06