



BK 1350 PG 183-198



MISC 2000 11727

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By

RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

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1-DECEMBER-1964

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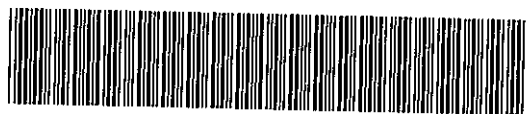
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RETURN TO:  
CHARLIE WEBER  
NEBRASKA TIME COMPANY  
633 S. NINTH ST.  
LINCOLN, NE. 68508



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RICHARD N TAKECHI  
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DOUGLAS COUNTY, NE

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RETURN TO:  
CHARLIE WEBER  
NEBRASKA TITLE COMPANY  
633 S. NINTH ST.  
LINCOLN, NE. 68508

**AMENDMENT TO EASEMENTS WITH COVENANTS**  
**AND RESTRICTIONS AFFECTING LAND**

This Amendment to Easements with Covenants and Restrictions Affecting Land ("Amendment") is made as of the 1 day of Sept., 2000 among WAL-MART STORES, INC., a Delaware corporation, with an address of 702 S.W. Eight Street, Bentonville, Arkansas 72616 ("Wal-Mart"), LANOHA-CENTER DEVELOPMENT, INC., a Nebraska corporation with an address of 19111 West Center Road, Omaha, Nebraska ("Developer") and LOWE'S HOME CENTERS, INC., North Carolina corporation, with an address of Highway 268 East-East Dock, North Wilkesboro, North Carolina 28659 ("Lowe's").

**RECITALS:**

1. Wal-Mart and Developer have previously executed a certain agreement captioned "Easement With Covenants And Restrictions Affecting Land" dated January 20, 2000, as recorded with the Douglas County Register of Deeds on January 21, 2000 in Book 1324, Page 501 Miscellaneous Records (the "Original ECR").

2. At the time of the Original ECR, Wal-Mart was the owner of Tract 1 ("Tract 1") as defined in the Original ECR, which is legally described in Exhibit A hereto; and the Developer was the owner of Tract 2 ("Tract 2") and the Outparcels ("Outparcels") as defined in the Original ECR which are legally described in Exhibit B attached hereto.

3. Lowe's, on today's date, has purchased Lot 2 of Ridgeview Replat 1, which is a portion of Tract 2 ("Lowe's Tract"), shown on the site plan attached hereto as Exhibit C as the Lowe's Tract (the "Lowe's Site Plan") and being more particularly described in Exhibit D attached hereto.

4. After such conveyance of the Lowe's Tract, Developer is the owner of the remaining portion of Tract 2 described in Exhibit E hereto, being Lot 1 of Ridgeview Replat 1 (the "Developer Remainder Lot") which is shown on the site plan attached hereto as Exhibit C, and Developer is also the owner of the Outparcels.

5. In connection with Lowe's purchase of the Lowe's Tract, Wal-Mart, Developer and Lowe's desire to amend certain portions of the Original ECR to acknowledge the ownership of the Lowe's Tract by Lowe's and to otherwise incorporate the terms set forth in this Amendment.

## AGREEMENT

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, Developer and Lowe's do hereby agree as follows:

1. **Defined Terms.** All capitalized terms used in this Amendment and not otherwise defined herein have the same meanings ascribed to them in the Original ECR. Lowe's acknowledges the Original ECR is binding on the Lowe's Tract and that the Lowe's Tract is the beneficiary of applicable provisions in the Original ECR.

2. **Buildings.** The following is added to Section 4a, Design and Construction of the Original ECR at the end of such subsection: "The height restriction of 35 feet above finished grade does not include canopies, parapets or architectural features, which are permitted to a maximum height of 50 feet above finished grade."

3. **Construction of Shared Driveway.** Section 5.e, Construction of Shared Driveway by Wal-Mart of the Original ECR is hereby clarified to indicate Lowe's is the "Other Party" and that Wal-Mart is the "First Party" referenced in such Subsection.

4. **Parking.** Section 6.a.(2), "Parking Area" Ratio of the Original ECR is hereby amended to provide there shall be maintained on each of Tract 1, the Lowe's Tract, and the Developer Remainder Parcel parking area sufficient to accommodate not fewer than the greater of (i) four (4) car spaces for each 1,000 square feet of Building Area or (ii) the number of spaces for each 1,000 square feet of Building Area required by applicable laws and ordinances or by variance obtained by a party.

5. **Signage.** The last sentence of Section 7.b, Shopping Center Sign of the Original ECR is deleted and the following is added at the end of such subsection: "Developer shall prepare, for the review and approval of Lowe's and the Owner of Tract 1, a proposed sign plan for the Sign Easement Area and the Second Sign Easement Area (as defined herein). In designing the proposed signs, Wal-Mart shall be in the top position with Lowe's in the second position for the sign for the Sign Easement Area, and Lowe's shall be in the top position with Wal-Mart in the second position for the sign for the Second Sign Easement Area. Lowe's and Wal-Mart shall each have 30 days in which to approve or disapprove the sign plan. If written disapproval is not received from Lowe's by the end of such 30-day period, the approval of Lowe's is deemed given. If written disapproval is not received from Wal-Mart by the end of such 30-day period, Developer shall send to Wal-Mart a reminder notice, stating that if Wal-Mart's disapproval of the proposed sign is not received within 10 days after receipt of such reminder notice, the approval of Wal-Mart is deemed given. The reminder notice shall be sent to

Wal-Mart Stores, Inc., 2001 SE Tenth Street, Bentonville, Arkansas 72712 Attention: Mr. Art Scott, Engineer, with a copy to the same address to the attention of Mr. Roy Covert. There is hereby further granted by the Developer and/or reserved in favor of the Owners of Tracts 1 and the Lowe's Tract a further signage easement on, over and across the property located adjacent to 180th Street in the proposed area shown on the Site Plan on Exhibit A (the "Second Sign Easement Area"). The parties acknowledge, however, Developer is attempting to acquire all of Outparcel 4 shown on the Site Plan, and in the event Developer so acquires all of Outparcel 4, the location of the Second Sign Easement Area will be moved to Outparcel 4, near the intersection of 180th Street and Elm Street, in which case, the revised Second Sign Easement Area will, when designated, be memorialized in a recorded document. The Owners of Tracts 1 and the Lowe's Tract agree to cooperate in the design and construction of such sign, with fifty percent (50%) of the signage space allocated to the Lowe's Tract and fifty percent (50%) of the signage space allocated to Tract 1, but subject to identification of the name of the Shopping Center name on the sign. All costs for design, construction, operation, maintenance, repair and replacement of the entrance sign shall be shared pro rata among the Lowe's Tract and Tract 1, based upon the amount of sign space to which the Owner is entitled, provided, that each individual owner shall be responsible for the design, placement and maintenance of its own specific lettering on the sign. All signage in this Section 7.b. shall be consistent with typical first-class community strip shopping center signage in Omaha, Nebraska, and in conformance with applicable zoning ordinances."

6. **Ratification** As amended by this Amendment, the Original ECR is hereby ratified and confirmed in its entirety. Except as specifically modified and supplemented by the provisions of this Amendment, the Original ECR remains in full force and effect and without modification. Nothing in this Amendment shall prohibit further amendments of the Original ECR, as amended hereby, provided such amendments shall be in writing executed by all parties to this Amendment and duly recorded with the Recorder of Deeds for Douglas County, Nebraska."

7. **Counterparts.** This Amendment may be executed in any number of counterparts, all of which collectively constitute a single executed document.

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

WAL-MART STORES, INC.

By: [Signature]  
Name: Kim Lane  
Title: Asst. Vice President

LANOHA-CENTER DEVELOPMENT, INC.

By: [Signature]  
Name: Daniel F. Lanoha  
Title: Pres

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

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

Approved as to legal terms only  
By [Signature]  
WAL-MART LEGAL TEAM  
Date 8.31.00

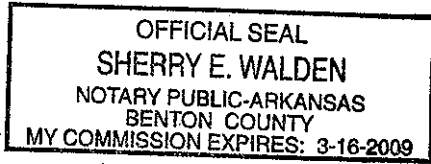
ACKNOWLEDGEMENT

STATE OF ARKANSAS

COUNTY OF BENTON

The foregoing instrument was executed and acknowledge before me this 31<sup>st</sup> day of August, 2000, by Kim Lane, as Assistant Vice President of Real Estate of Wal-Mart Stores, Inc., a Delaware corporation, who is authorized to act on behalf of the corporation and who is personally known to me.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.



[Notary Seal]

Signed: Sherry E. Walden  
NOTARY PUBLIC

Print Name: Sherry E. Walden

My Commission Expires: 3-16-2009

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

WAL-MART STORES, INC.

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

LANOHA-CENTER DEVELOPMENT, INC.

By: *[Signature]*  
Name: David F. Lanoha  
Title: pres.

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

By: *[Signature]*  
Name: Stephen A. Hellrung  
Title: Senior Vice President

cc: JRF  
DNB

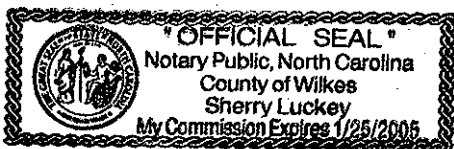


STATE OF North Carolina )  
 )  
COUNTY OF Wilkes )

SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Stephen A. Hellmuth, personally known to me to be the Sr. Vice President of Lowe's Home Centers, Inc., and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Sr. Vice President, appeared before me this day in person and acknowledged that he signed, sealed and delivered the foregoing instrument as such Sr. Vice President, and as his free and voluntary act of said Corporation for the uses and purposes therein set forth; and on his respective oath stated that he was duly authorized to execute said instrument.

Given under my hand and Notarial Seal this 30<sup>th</sup> day of August, 2000.



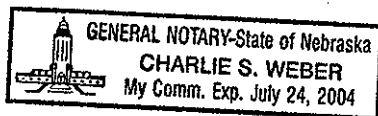
Sherry Luckey  
Notary Public

My Commission Expires: 01/25/05

STATE OF NEBRASKA )  
 )  
COUNTY OF DOUGLAS )

SS.

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of SEPTEMBER, 2000, by David F. Lanoha, President of Lanoha-Center Development, Inc., a Nebraska corporation, on behalf of the corporation.



Charlie S. Weber  
Notary Public

My Commission Expires: July 24, 2004

**EXHIBIT A**

**Lot 2 Ridgeview, a Subdivision, as surveyed, platted and recorded in Douglas County,  
Nebraska**

**EXHIBIT B**

**TRACT 2**

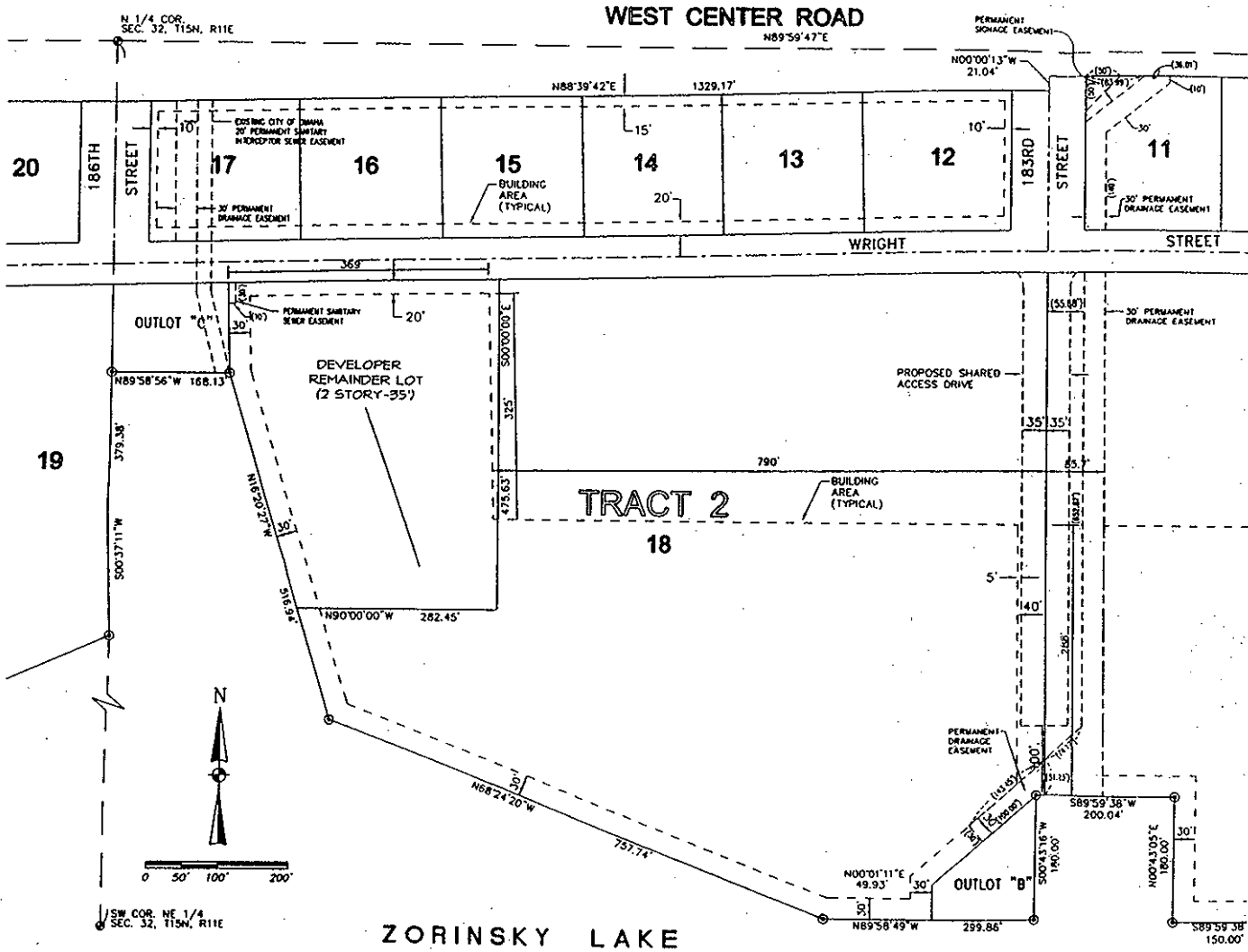
**Lot 18, Ridgeview, a Subdivision, as surveyed, platted and recorded in Douglas County,  
Nebraska ;**

**OUTPARCELS**

16  
Lot 1 and Lots 3 through 17, inclusive, Ridgeview, a Subdivision, as surveyed, platted and  
recorded in Douglas County, Nebraska

# RIDGEVIEW EXHIBIT "C"

01-19-00



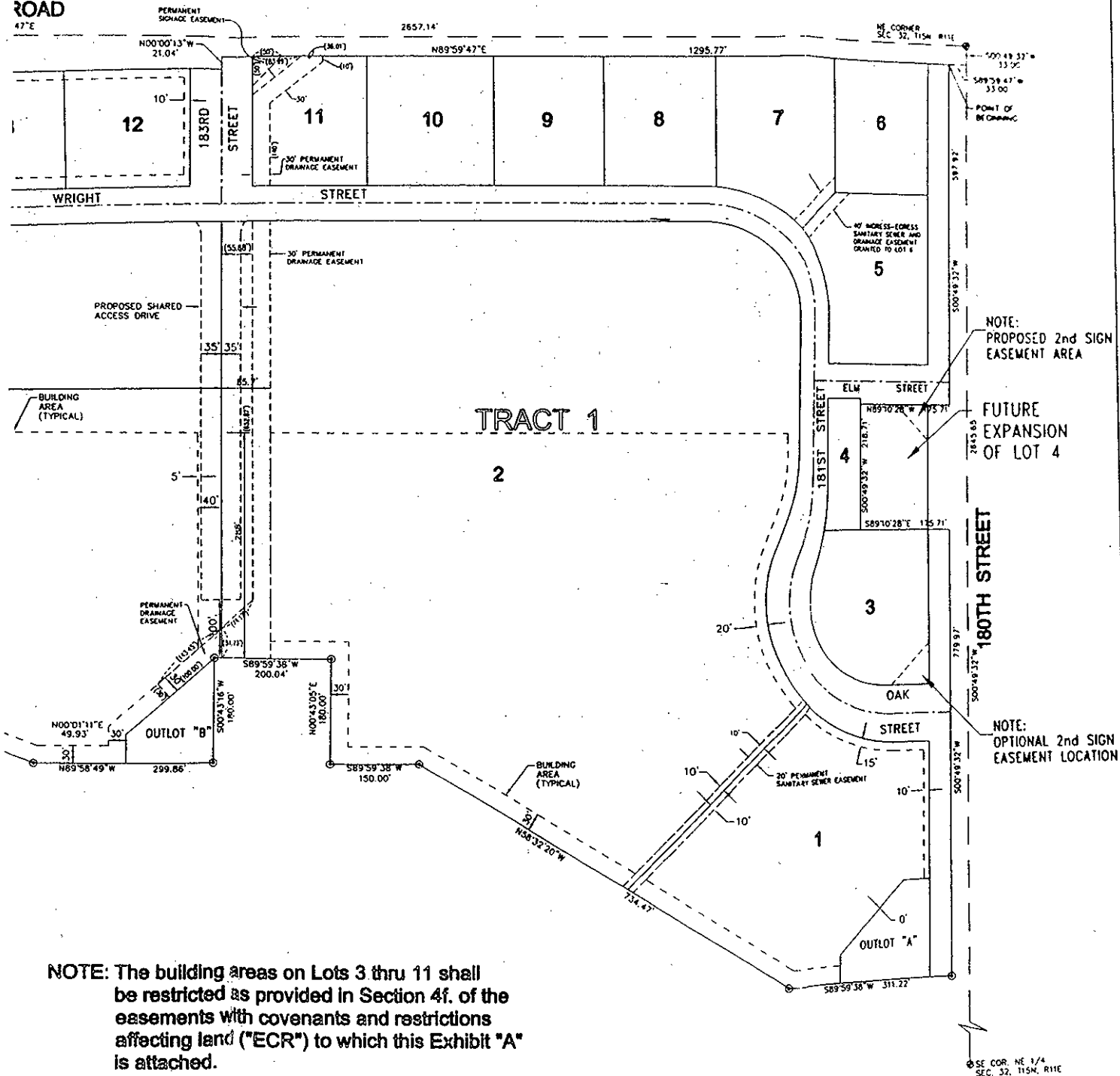
**KIRKHAM  
MICHAEL**  
CONSULTING ENGINEERS  
9110 WEST DODGE ROAD, P.O. BOX 24129, OMAHA, NEBRASKA 68124  
(402) 393-5630 FAX (402) 255-3850  
KM 990246

DATE: 09/02/99  
REV. 10/20/99  
REV. 12/10/99  
REV. 01/14/00  
REV. 01/19/00

NOTE: The building areas on Lots 3 thru 10 be restricted as provided in Sec easements with covenants and affecting land ("ECR") to which is attached.

01-19-00

## ROAD



**FOR COPY**

WEST CENTER ROAD

1694 25.7

WEST CENTER ROAD

1694 25.7

1694 25.7

101.4 36.3

101.4 36.3

101.4 36.3

17

16

15

14

13

10700 STREET

WRIGHT

UTIL T

NORTHERN AREA

DEVELOPER  
REMAINDER LOT

SOUTHERN AREA

PARKING LOT  
SALES AREA

LOWE'S  
TRACT

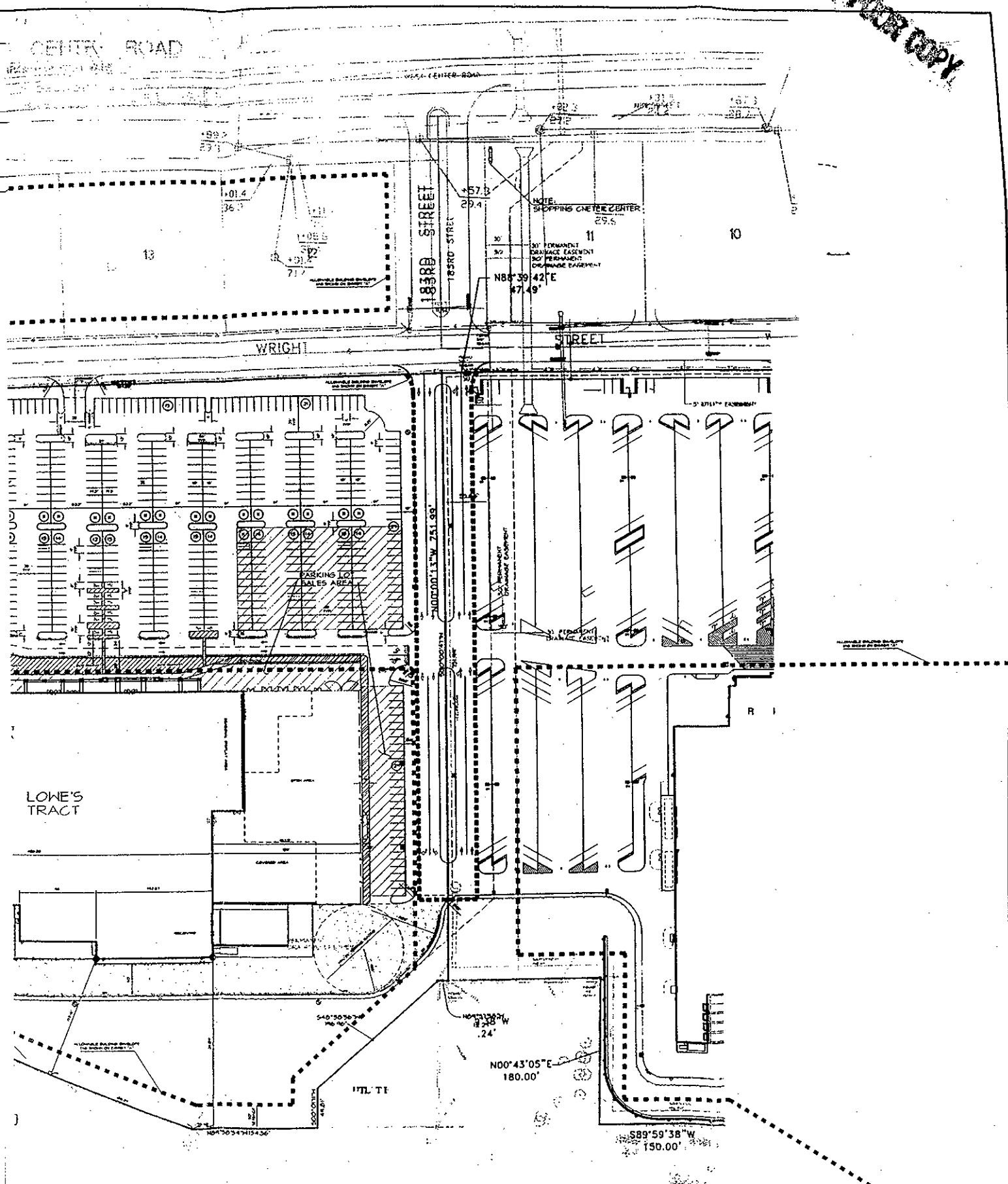
PARKING LOT  
SALES AREA

ZDIFONSKY LAKE

UTIL T1

**RIDGEVIEW EXHIBIT** 00 C 00  
REV. DATE

CENTER ROAD



## **EXHIBIT D**

### **Legal Description of the Lowe's Tract**

**Lot 2 of Ridgeview Replat 1, being a replat of Lot 18, Ridgeview, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, as recorded in the Register of Deed's Office for Douglas County, Nebraska**



## **EXHIBIT E**

### **Legal Descriptions of the Developer Remainder Lot**

**Lot 1 of Ridgeview Replat 1, being a replat of Lot 18, Ridgeview, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, as recorded in the Register of Deed's Office for Douglas County, Nebraska**