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RICHARD N. TAKECHI
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EASEMENTS WITH COVENANTS AND
RESTRICTIONS AFFECTING LAND

THIS EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("ECR") is made as of the 1 day of Sept. 2000, between **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation, of Highway 268 East, North Wilkesboro, North Carolina 28659 ("Lowe's") and **LANOHA-CENTER DEVELOPMENT, INC.**, a Nebraska corporation, of 19111 West Center Road, Omaha, Nebraska ("Developer"). Each of Lowe's and Developer is a "Party" and collectively, the "Parties."

WITNESSETH

1. Wal-Mart Stores, Inc. is the owner of Lot 2 of Ridgeview, a subdivision as surveyed, platted and recorded, Douglas County, Nebraska (hereinafter "Tract 1") as shown on the plan attached hereto as Exhibit A hereof (the "Site Plan"), said tract being more particularly described in Exhibit B attached hereto;

2. Lowe's, on today's date, has purchased Lot 2 of Ridgeview Replat I which is a portion of the lot formerly known as Lot 18 of Ridgeview, a subdivision in Douglas County, Nebraska ("Lowe's Tract"), shown on the drawing attached hereto as Exhibit A-1 as the Lowe's Tract and being more particularly described in Exhibit C attached hereto.

3. Developer is the owner of Lot 1 of Ridgeview Replat I which is the remaining portion of the lot formerly known as Lot 18 (that is, the portion not owned by Lowe's) of Ridgeview, a subdivision in Douglas County, Nebraska (such remaining portion being designated as the "Developer Remainder Lot" as shown on the drawing attached hereto as Exhibit A-1), and is also the owner of Lot 1 and Lots 3 through 17 of Ridgeview, a subdivision in Douglas County, Nebraska (hereinafter collectively the "Out Parcels") shown on the Site Plan attached hereto as Exhibit A and being more particularly described in Exhibit D attached hereto. Collectively, the property owned by Developer as described in Exhibit D is referred to as the "Developer Property."

4. Wal-Mart and Developer have previously executed a certain agreement captioned "Easements 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").

5. The Original ECR acknowledged the intention of the owners thereof that Tracts 1 and 2 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 said tracts and the Outparcel(s) be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

6. In connection with Lowe's purchase of the Lowe's Tract, Developer and Lowe's desire to subject the Lowe's Tract and the Developer Property to the provisions of this ECR, to acknowledge the ownership of the Lowe's Tract by Lowe's, and to otherwise incorporate the terms set forth in this ECR.

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

1. **Building/Common Areas.**

a. "Building Areas" as used herein shall mean that portion of the Lowe's Tract and the Developer Property shown on Exhibit A-1 as "Building Area." Canopies may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

b. "Common Areas" shall be all of the Lowe's Tract and the Developer Remainder Lot except the Building Areas.

c. Conversion to Common Areas: Those portions of the Building Areas on the Lowe's Tract and the Developer Remainder Lot which are not from time to time used or cannot, under the terms of this Agreement, be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein; provided, however, that the owner of the Lowe's Tract and the Developer Remainder Lot may reconvert such areas to Building Areas at any time upon written notice to the owner of the other Tract and constructing buildings or improvements thereof.

2. **Use.**

a. **Restrictions.** Buildings 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 theatre, bowling alley, adult book store, adult theatre, adult amusement facility, or any facility selling or displaying pornographic material, billiard parlor, night club or other place of recreation or amusement, or any business which derives more than fifty percent (50%) of its annual revenues from the sale of alcoholic beverages shall occupy space within the Shopping Center; provided, however, the foregoing restriction for businesses engaging in the sale of alcoholic beverages shall not apply to a business which sells alcoholic beverages on an "off-sale" basis only or to sports bars or to cocktail lounges less than 4,000 square feet on the northern area of the Developer Remainder Lot shown on Exhibit A-1. Developer recognizes that said businesses may inconvenience Lowe's customers and adversely affect Lowe's business.

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 Lowe's on the Lowe's Tract. Developer recognizes and agrees that Lowe's may, at Lowe's sole discretion and at any time during the term of this Agreement, cease the operation of its business on the Lowe's Tract; 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 Lowe's.

b. **Lowe's Store.** Any construction of a Lowe's Store on the Lowe's Tract must be similar in appearance to the drawing attached hereto as Exhibit E and generally in compliance with the retail store conceptual site plan ("Conceptual Store Plan"), subject to any changes required by or in response to governmental authorities. Nothing in this Agreement shall be construed to require Lowe's to construct or operate a store on the Lowe's Tract.

c. **Construction of Lowe's Store.** In consideration of Developer's sale of the Lowe's Tract to Lowe's, Lowe's hereby agrees that in the event that Lowe's (or its successors and assigns) fails to secure necessary building permits and fails to commence construction of a building foundation for a Lowe's store on the Lowe's Tract on or before the date which is three (3) years following the date of closing of the Lowe's Tract and thereafter Lowe's will pursue construction in accordance with customary building practices, Developer shall have the option to repurchase the Lowe's Tract from its then current owner under the following terms and conditions:

(1) The purchase price shall be equal to the gross purchase price which Lowe's paid to Developer for the Lowe's Tract as reflected in the closing statement for the sale and purchase of the Lowe's Tract pursuant to the Option Agreement between Lowe's and Developer (the "Purchase Agreement") plus the reasonable development costs of Lowe's with respect to the Lowe's Tract.

(2) All prorations and closing costs shall be allocated between the Developer and Lowe's in the same manner as provided in the Purchase Agreement;

(3) All liens and encumbrances (except for this Agreement) placed upon the Lowe's Tract following Developer's transfer of the Lowe's Tract to Lowe's shall be discharged or a corresponding amount of funds as necessary to discharge such liens and encumbrances shall be applied as a credit to the purchase price; and

(4) Developer must notify the owner of the Lowe's Tract of the exercise Developer's option to repurchase the Lowe's Tract within the sixty (60) day period commencing on the third anniversary of the closing date of the Lowe's Tract by written notice to the owner of the Lowe's Tract and by filing a duplicate of such written notice with the Douglas County Register of Deeds, both within such 60 day period, with the closing to occur thirty (30) days following such notice. If such notice and recordation are not timely given and made by Developer within such sixty (60) day period, this option shall terminate and be of no further force or effect. This option shall also be of no further force or effect if Lowe's

commences construction of a building foundation for a Lowe's store on the Lowe's Tract within the three (3) year period commencing on the closing date of the Lowe's Tract.

Nothing in this Agreement shall be construed to require Lowe's to construct or operate a store on the Lowe's Tract.

3. **Competing Business.** Developer covenants that as long as Lowe's, or any affiliate of Lowe's, is the user of the Lowe's Tract, either as owner or lessee, no space in or portion of Tract 1 or the Developer Property and no space in or a portion of any other real property adjacent to the Shopping Center which may be subsequently acquired by Developer, shall be leased or occupied by or conveyed to any other party for use as a retail and/or warehouse home improvement center, home improvement service center, lumber yard or building materials supply center, hardware store containing more than 5,000 square feet of leasable floor area; appliance and/or home electronic store containing more than 5,000 square feet of leaseable floor area (which does not include stores that are primarily engaged in the sales of computers or personal communications systems such as Gateway Computer Stores, or Sprint, PCS or All-Tel stores), lawn and garden store containing more than 3,000 square feet of leasable floor area; paint and/or décor center containing more than 5,000 square feet of leasable floor area (which does not include the office of an interior decorator offering personal decorating services); or retail and/or warehouse home improvement center, lumberyard, building material supply center, home improvement service center and other stores or centers similar to those operated by Lowe's, Home Depot, Home Owner's Warehouse, Home Quarters, Hechinger's, Builder's Square, 84 Lumber, Wickes, Hughes Lumber, McCoy's, Homebase, Eagle, Menards, Sears Hardware, Sutherlands, Orchard Supply and Payless Cashways. Provided, however, the foregoing shall not include Staples, Best-Buy, Petco, Pharmor, Pep Boys, CompUSA or Circuit City (the "Permitted Stores"). If after the date of this Agreement, a store which is equivalent to any of the foregoing named Permitted Stores in the products carried and sold by such store and in the merchandising and marketing format of such store, and the majority of the products sold from such equivalent store do not compete with the products sold by Lowe's, desires to locate at the Shopping Center, Developer will request in writing Lowe's approval for the store to operate at the Shopping Center. Lowe's will notify Developer within thirty (30) days whether Lowe's approves or disapproves the addition of such equivalent store at the Shopping Center. If Lowe's fails to disapprove the addition of such store at the Shopping Center by the end of such 30-day period, the approval by Lowe's for the store described in the notice will be deemed given by Lowe's for the named store. In the event of a breach of the covenants of this Section, Lowe's shall have the right, in its sole discretion, to terminate any or all of the easements granted to the owner of Tract 1 or the Developer Property (but not the obligations imposed upon the owners of such Tracts), in this Agreement or in the Original ECR and to seek any and all remedies afforded by either law or equity.

4. **Buildings.**

a. **Design and Construction.** The Building Areas on the Lowe's Tract and the Developer Remainder Lot shall be designed so that building wall footings shall not encroach from one Tract onto another Tract. The design and construction of the buildings on the Developer Remainder Lot will be of a quality

equal to or better than that of the building on the Lowe's Tract. No building on the Lowe's Tract shall exceed thirty-five feet (35') in height above finished grade. The height restriction of 35 feet above finished grade for the Lowe's Tract does not include canopies or parapets or architectural features, which are permitted to a maximum height of 50 feet above finished grade. No building on the Developer Remainder Lot shall exceed twenty-five feet (25') in height above finished grade, except the building shown on the Site Plan as "Permissible 2-Story building" may reach a height not to exceed 35 feet (35') above finished grade. No building shall have a metal exterior.

b. **Location.** No structure of any type or building shall be constructed on the Lowe's Tract or the Developer Remainder Lot (as either immediate development or future expansion) except within the Building Areas without the prior written consent of Lowe's and Developer. The front wall(s) of the building(s) on the Lowe's Tract and the Developer Remainder Lot shall be constructed in the Building Areas shown in Exhibit A-1.

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. **Outparcel(s) Development.** The Outparcel(s) shall be developed only under the following guidelines:

(1) The buildings constructed on the Outparcel(s) shall not exceed twenty-five feet (25') in height (excluding rooftop HVAC and similar equipment) except for Lots 1, 3, 4, as shown on Exhibit A, which must only comply with applicable zoning requirements, and except as provided in the following sentence. The buildings constructed on Outparcels 16 and 17 and the Developer Remainder Lot may be 2-story buildings if required to meet applicable governmental requirements, including without limitation floor area ratios, but such 2-story buildings shall not exceed thirty-five feet (35') in height. The height of a building shall be measured from the top of the curb on the highest point on the Outparcel(s);

(2) Any buildings to be constructed on the Outparcel(s) shall not exceed square footage limitations imposed by applicable zoning requirements;

(3) Any rooftop equipment shall be screened in a manner satisfactory to the Developer;

(4) No rooftop sign shall be erected on the building constructed;

(5) No freestanding identification sign may be erected on the Outparcel(s) in violation of applicable zoning requirements, and in no event shall such freestanding identification sign exceed the height of the shopping center pylon sign or materially block the visibility of the Lowe's

Store. Developer shall submit to Lowe's the location, size and type of signs proposed to be erected on the Outparcels, and Lowe's shall have 30 days after receipt of such notice in which to notify Developer of Lowe's disapproval of such sign, based on Lowe's determines such sign will block the visibility of the Lowe's Store or the Shopping Center sign. If, by the end of such 30-day period after Lowe's receives notice, Lowe's does not notify Developer that Lowe's disapproves the proposed sign described in the notice, Developer is permitted to erect the sign described in such notice. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3'3" in height, the type and location of such signs to be approved by Developer;

(6) No improvements shall be constructed, erected, expanded or altered on the Outparcel(s) until the plans for same (including site layout, exterior building materials and colors and parking) have been approved in writing by Developer. No building or structure of any kind shall be erected on the Outparcel(s) except within that area designated as a Building Area on the Site Plan; provided, there may be constructed and maintained a canopy or canopies projecting from said Building Area; normal foundations and doors for ingress and egress may project from such Building Area; and signs may be erected upon said canopy or canopies, so long as said signs do not obstruct the signs of any other owner or tenant of the Shopping Center;

(7) In developing and using the Outparcel(s), the owner of the Outparcel(s) shall continuously provide and maintain a parking ratio on such Outparcel(s) equal to not less than six (6) spaces for every one thousand (1,000) square feet of building, space except that any restaurant use shall have no less than twelve (12) spaces for every one thousand (1,000) square feet of building space for restaurants, except that any restaurant that is not free standing but rather is an in-line occupant of a multi-tenant building shall have no less than eight (8) spaces for every one thousand (1,000) square feet of building space for such in-line restaurant use. In addition, each owner of the Outparcel(s) shall cause landscaping areas to be added and maintained in conjunction with any building or other improvement constructed on the Outparcel(s);

(8) The Outparcel(s) shall be kept neat, orderly, planted in grass and trimmed until improved and constructed;

(9) All buildings, structures, improvements on the Outparcel(s) shall be used for retail or commercial purposes only. No theatre, bowling alley, billiard parlor, nightclub or other place of recreation or amusement, or any business which derives more than fifty percent (50%) of its annual revenues from the sale of alcoholic beverages shall occupy space on the Outparcel(s); provided, however, the immediately foregoing restriction for

businesses engaging in the sale of alcoholic beverages shall not apply to a business located on Outparcels 15, 16 or 17 shown on the Site Plan which sells alcoholic beverages on an "off-sale" basis only or to sports bars or to cocktail lounges provided such business occupies less than 4,000 square feet. As long as Lowe's or any affiliate of Lowe's is the user of the Lowe's Tract, either as owner or lessee, no space in or a portion of the Outparcel(s) shall be leased or occupied by or conveyed to any other party for use as a retail and/or warehouse home improvement center, home improvement service center, lumber yard or building material supply center; hardware store containing more than 5,000 square feet of leasable floor area; appliance and/or home electronic store containing more than 5,000 square feet of leaseable floor area(which does not include stores that are primarily engaged in the sales of computers or personal communications systems such as Gateway Computer Stores, or Sprint, PCS or All-Tel stores), lawn and garden store containing more than 3,000 square feet of leasable floor area; paint and/or décor center containing more than 5,000 square feet of leasable floor area (which does not include the office of an interior decorator offering personal decorating services); or retail and/or warehouse home improvement center, lumberyard, building material supply center, home improvement service center and other stores or centers similar to those operated by Lowe's, Home Depot, Home Owner's Warehouse, Home Quarters, Hechinger's, Builder's Square, 84 Lumber, Wickes, Hughes Lumber, McCoy's, Homebase, Eagle, Menards, Sears Hardware, Sutherlands, Orchard Supply and Payless Cashways. Provided, however, the foregoing shall not include Staples, Best-Buy, Petco, Pharmor, Pep Boys, CompUSA or Circuit City (the "Permitted Stores"). If after the date of this Agreement, a store which is equivalent to any of the foregoing named Permitted Stores in the products carried and sold by such store and in the merchandising and marketing format of such store, and the majority of the products sold from such equivalent store do not compete with the products sold by Lowe's, desires to locate on an Outparcel, Developer will request in writing Lowe's approval for the store to operate on an Outparcel. Lowe's will notify Developer within thirty (30) days whether Lowe's approves or disapproves the addition of such equivalent store on an Outparcel. If Lowe's fails to disapprove the addition of such store on an Outparcel by the end of such 30-day period, the approval by Lowe's for the store described in the notice will be deemed given by Lowe's for the named store. In the event of a breach of the covenants of this Section, Lowe's shall have the right, in its sole discretion, to terminate any or all of the easements granted to the owners of the Outparcels (but not the obligations imposed upon the owners of such Tracts), in this Agreement or in the Original ECR and to seek any and all remedies afforded by either law or equity.

(10) The owner(s) of the Outparcel(s) or Developer shall maintain comprehensive public liability insurance, property damage and all-risk hazard insurance on the Outparcel(s) and their buildings, appurtenances

and other improvements located thereon. Such insurance shall (i) be carried with reputable companies licensed to do business in the state in which the Outparcel(s) are located; (ii) have liability limits of at least \$2,000,000.00 for each occurrence, bodily injury and property damage combined; (iii) provide for full replacement value for the buildings and improvements covered thereunder and (iv) not be subject to change, cancellation or termination without at least thirty (30) days prior written notice to Developer.

(e) **Additional Rules Regarding Outparcel(s) Development.** No buildings or structures may be erected on any of Lot 1 and Lots 12 through 17 except within the areas designated as a "Building Area" on Exhibit A for such Lots. The Outparcels designated as Lots 12 through 17 shall be restricted and may not be combined except as follows:

- (1) There shall be no combinations of any of Lots 12, 13 and 14.
- (2) For Lots 15, 16 and 17, Developer may combine any two of such Lots with each other (but none may be combined with any of Lots 12 through 14), if Developer elects to construct a multi-tenant retail building on such two combined Lots, provided the size of the building on the combined Lots must conform to all governmental requirements.

The restrictions set forth in this Subsection are in addition to, and not in lieu of, other restrictions set forth in this Agreement or otherwise applicable to such Lots pursuant to law.

5. **Common Areas.**

a. **Grant of Easements.** Each of Lowe's and Developer, as grantor, hereby grants to the other Party, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of grantee, a nonexclusive easement over, through and around the Common Areas situated on their respective tracts for roadways, walkways, ingress and egress, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above; provided, however, in no event shall the owner, occupant, licensee or invitee of the Lowe's Tract or the Developer Property be permitted to use the other Party's parcel for vehicular parking or for any other purpose other than as described above.. In addition to the foregoing, Lowe's and Developer hereby grant for the benefit of those certain Outparcel(s) now owned by Developer and identified on Exhibit D, nonexclusive easements for vehicular and pedestrian access, ingress, and egress over and across the Lowe's Tract and the Developer Remainder Lot; provided, however, in no event shall the owner, occupant, licensee or invitee of any of the Outparcel(s) be permitted to use the Lowe's Tract or Developer Remainder Lot for vehicular parking or for any other purpose other

than as described above. Developer, as grantor, hereby grants to Lowe's, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of each grantee, a non-exclusive easement over, through and around those areas on the Outparcels for vehicular and pedestrian access, ingress and egress, and over and across the Outparcels; provided, however, in no event shall the owner, occupant, licensee or invitee of the Lowe's Tract be permitted to use the Outparcel(s) for vehicular parking or for any other purpose other than as described above. Lowe's hereby grants to Developer, for the benefit of the Developer Remainder Lot, a nonexclusive, perpetual easement for the placement, installation, maintenance, repair and replacement of the islands identified on Exhibit A-1 on the parking lot of the western boundary of the Lowe's Tract and the eastern boundary of the Developer Remainder Lot, which shall be placed generally as shown on Exhibit A-1 for purposes of landscaping, and definition of parking/driveway areas.

b. **Limitations on Use.**

(1) **Customers.** Each owner shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on the Lowe's Tract or on the Developer Remainder Lot. There shall be no charge for parking.

(2) **Employees.** Each owner shall use reasonable efforts to ensure that employees shall not park on the Common Areas, except in areas designated on Exhibit A-1 as "employee parking areas," if any. The owners of the Lowe's Tract and the Developer Remainder Lot may from time to time mutually designate and approve "employee parking areas" not shown on Exhibit A-1.

(3) **General.** Any activity within the Common Areas other than its primary purpose of the Common Areas, which is to provide for parking for the customers, invitees and employees of those businesses conducted with the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use. Without limiting the foregoing, to the extent not in violation of applicable municipal laws, Lowe's may conduct sales on its parking lot in the area designated on Exhibit A-1 as "Parking Lot Sales Area" and on the sidewalks surrounding its building, and Lowe's shall have the exclusive right to occupancy and use of such Parking Lot Sales Area and sidewalk areas as may be designated by Lowe's.

c. **Utility and Service Easements.** The owners of the Lowe's Tract and the Developer Remainder Lot and the Outparcels shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly

development and operation of the Shopping Center and the Outparcel(s). The owners of the Lowe's Tract and the Developer Remainder Lot shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. No such lines, sewers, utilities or services of one Party shall be installed within the Building Areas on the other Party's parcel.

d. **Water Flow.** 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 improvements substantially as shown on Exhibit A (including without limitation building and building expansion, curbs, drives and paving) shall be permitted.

e. **Construction of Shared Driveway by Lowe's.** If either the owner of the Lowe's Tract or Tract 1 ("First Party") develops its Tract before the other party ("Other Party") develops its Tract, the First Party may construct the shared private driveway along the common boundary line of the Lowe's Tract and Tract 1 depicted on Exhibit A as the "Shared Access Drive" (the "Driveway"). A portion of such Driveway is within both the Lowe's Tract and Tract 1. Accordingly, the Other Party hereby grants to the First Party a temporary easement on, over and across the other Tract for the purpose of constructing such Driveway. The specifications for such Driveway are attached hereto as Exhibit H. If the First Party constructs such Driveway, the Other Party shall reimburse the First Party in the amount of \$15 per square yard for each square yard of such Driveway located on the Other Party's Tract. The Other Party shall reimburse the First Party within 14 days after completion of construction by the First Party and submission by the Other Party of (i) an invoice depicting in reasonable detail the amount of such reimbursement (and calculation thereof) and (ii) evidence of full payment to contractors and appropriate lien waivers. If the First Party is not reimbursed by the Other Party within such 14 day period, interest shall accrue on the amount of such reimbursement at the rate of 1% per month from the date such reimbursement was due until the date of such payment. To secure such payment of such reimbursement, the First Party shall have a lien against the Other Party's Tract in the amount of such reimbursement and interest (if any).

The Driveway is part of the Common Area hereunder. Accordingly, after completion, each party shall maintain the portion of the Driveway on its Tract.

6. **Development, Maintenance, and Taxes.**

a. **Development.**

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

(2) **"Parking Area" Ratio.** The owners of the Lowe's Tract and the Developer Remainder Lot hereto agree that at all times there shall be

independently maintained on the Lowe's Tract and the Developer Remainder Lot parking area sufficient to accommodate not fewer than four car spaces for each one thousand (1,000) square feet of Building Area or such amount that is required of Lowe's on the Lowe's Tract pursuant to the building permit for the Lowe's Store on the Lowe's Tract issued by the City of Omaha Planning Department.

b. **Maintenance.**

(1) **Standards.** Following completion of the improvements on the Common Areas, the parties hereto shall maintain the Common Areas 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 and at all times in conformance with standards in applicable ordinances and agreements applicable to the Common Areas.

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

(f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

(2) **Expenses.** The respective owners shall pay the maintenance expense of their Tracts or Lots.

(3) **By Agent.** Subject to the mutual agreement of the Parties hereto, a third party may be appointed as an agent of the Parties to maintain the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all Parties to

cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas on the agreed basis.

(4) **Landscape, Maintenance and Green Areas.** The respective owners shall maintain landscaped areas on their respective Tracts or Outparcel(s) in good condition, with all green areas to be equipped with sprinkler systems, all at the expense of the owner. The landscape plan of Lowe's is subject to the prior reasonable approval of Developer. If Developer does not object to such landscape plan within 30 days of submittal by Lowe's, such approval of Developer is deemed given.

c. **Taxes.** Each of the owners hereto agrees 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 that part of the Common Areas owned by it.

7. **Signs.**

a. **Common Area Signage.** No sign shall be located on the Common Areas on Tract 1, the Developer Remainder Lot and the Lowe's Tract except signs advertising businesses conducted thereon, of which there shall be no more than two (2) free-standing signs on the Common Areas on Tract 1 and no more than one (1) free standing sign on the Common Areas of the Lowe's Tract, and no more than one (1) free standing sign on the Common Areas of the Developer Remainder Lot. No signs shall obstruct the ingress and egress shown on Exhibit A, nor shall any sign obstruct the visibility or sight line of the Lowe's Tract or the Developer Remainder Lot, respectively.

b. **Shopping Center Signs.** Developer has, pursuant to the Original ECR, created in favor of the owners of Tract 1 and the Lowe's Tract and the Outparcel(s) a signage easement on, over and across the property located adjacent to the 183rd Street and West Center Road entrance as identified on Exhibit F" attached to this Agreement ("Sign Easement Area"). The owners of Tract 1 and the Lowe's Tract agree to cooperate in the design and construction of the entrance 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. All costs for design, construction, maintenance, operation, 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. 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). Lowe's and the owner of Tract 1 shall have 30 days in which to approve or disapprove the sign plan. If written disapproval is not received from Lowe's or the owner of Tract 1, as the case may be, by the end of such 30-day period, the

approval of Lowe's or the owner of Tract 1, as the case may be, is deemed approved. There is hereby further granted by the Developer and/or reserved in favor of the owners of Tract 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 Tract 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 on the sign. All costs for design, construction, maintenance, operation, 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 such signage shall be consistent with typical first-class community strip shopping center signage in Omaha, Nebraska, and in conformance with applicable zoning ordinances.

8. **Indemnification/Insurance.**

a. **Indemnification.** Each of the owners of the Lowe's Tract and the Developer Remainder Lot and the Outparcels hereby indemnifies and saves the other part(ies) 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 tract, except if caused by the act or negligence of the other Party hereto.

b. **Insurance.**

(1) Lowe's and the Developer (for the Developer Remainder Tract and the Outparcel(s) until such time as the Outparcel(s) are sold or leased to other parties, who shall thereby assume this obligation) 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 \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage. Each Party 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 Party 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 Party.

(2) At all times during the term of this Agreement, each of the owners of the Lowe's Tract and the Developer Remainder Lot and the Outparcels shall keep 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 parties' respective properties are located, with such insurance to be for the full replacement value of the insured improvements.

(3) Policies of insurance provided for in this Paragraph 8 shall name Lowe's and Developer as insureds as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.

(4) Lowe's for itself and its property insurer hereby releases Developer, and Developer for itself and its property insurer hereby releases Lowe's from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of either Lowe's or Developer 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 Party being released or by any agent, associate or employee of the Party 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.

(5) Notwithstanding anything to the contrary contained in this Paragraph 8, so long as the net worth of Lowe's or the parent company of Lowe's shall exceed One Hundred Million Dollars (\$100,000,000.00), and so long as Lowe's is owner or lessee of the Lowe's Tract, Lowe's shall have the right to retain the financial risk for any claim.

9. **Eminent Domain.**

a. **Owner's Right To Award.** Nothing herein shall be construed to give any owner any interest in any award or payment made to any other owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other owner's tract or Outparcel or giving the public or any government any rights in said tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on the

Lowe's Tract or the Developer Remainder Lot, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

b. **Collateral Claims.** All other 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 improvements taken from another owner.

c. **Tenant's Claim.** Nothing in this Paragraph 9 shall prevent a tenant from making a claim against an 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 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 tract 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 other owner.

10. **Rights And Obligations Of Lenders.** If by virtue of any right or obligation set forth herein a lien shall be placed upon the tract of either Party hereto, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such tract. Except as set forth in the preceding sentence, however, any holder of a first lien on the Lowe's Tract or the Developer Property, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

11. **Expansion Of Shopping Center.** The parties agree that in the event the Shopping Center is expanded by ownership, control of the parties or agreement with a third party, all of the provisions of this Agreement shall apply to the expanded area and the parking to the building ratio in the expanded area shall not be less than provided in Paragraph 6(2).

It is understood that the Developer is attempting to acquire the eastern half of Lot 4 of Ridgeview Subdivision as depicted on Exhibit A. If the Developer or any affiliate thereof acquires such land, all of the acquired property shall be subject to this Agreement as Outparcel(s).

12. **Release from Liability.** Any person acquiring fee or leasehold title to the Lowe's Tract or the Developer Property, or any expansion of the Shopping Center pursuant to Paragraph 11 or any portion thereof, shall be bound by this Agreement only as to the tract or portion of the tract 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 tract or portion of the tract, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said tracts running with the land.

13. **Breach.** In the event of breach or threatened breach of this Agreement, only all record owners of the Lowe's Tract as a group, or all record owners of the Developer Remainder Lot as a group, or Lowe's so long as it or any affiliate has an interest as owner or lessee of the Lowe's Tract or Developer so long as it or any affiliate has an interest as owner or lessee of the Developer Remainder Lot, or the owners of seventy-five percent (75%) of the gross acreage of the Outparcel(s) as a group, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.

14. **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 herein, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

15. **Document Execution, Modification and Cancellation.** It is understood and agreed that until this document is fully executed by both Developer and Lowe's 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) Lowe's as long as it or its affiliates has any interest as either owner or lessee of the Lowe's Tract, or its successors in interest and (b) Developer, as long as it or its affiliate has any interest as either owner or lessor of the Developer Remainder Lot, or its successors in interest.

16. **Non-Merger.** So long as Lowe's or its affiliate is owner or lessee of the Lowe's Tract, this Agreement shall not be subject to the doctrine of merger.

17. **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 ninety-nine (99) years from the date hereof.

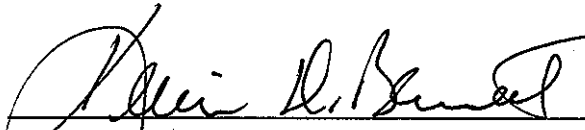
18. **Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

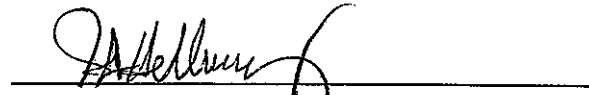
19. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a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

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

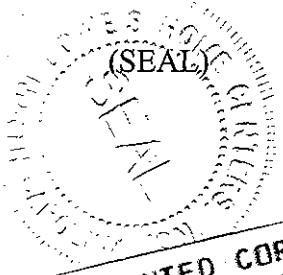
ATTEST

LOWE'S HOME CENTERS, INC.


Its Name Kevin D. Bennett
Assistant Secretary



Its Name Stephen A. Hellrung
Senior Vice President

DWB



IMPRINTED CORPORATE SEAL
REGISTER OF DEEDS

LANOHA-CENTER DEVELOPMENT, INC.

By: 
Its: Pres.
Name DAVID F. LANOHA

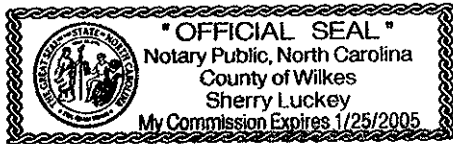
Exhibits

- A - SITE PLAN OF ENTIRE SITE
- A-1 DRAWING OF LOT 18 WITH THE LOWE'S TRACT AND DEVELOPER REMAINDER LOT
- B - LEGAL DESCRIPTION OF TRACT 1 (THE WAL-MART TRACT)
- C LEGAL DESCRIPTION OF THE LOWE'S TRACT
- D - LEGAL DESCRIPTION OF THE DEVELOPER REMAINDER LOT AND OUTPARCEL(S)
- E - CONCEPTUAL STORE PLAN FOR LOWE'S STORE
- F - SIGN EASEMENT AREA
- G SECOND SIGN EASEMENT AREA
- H - DRIVEWAY SPECIFICATIONS

STATE OF North Carolina)
)
) SS.
COUNTY OF Wilkes)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Stephen A. Hellawing, 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 30th day of August, 2000.



Sherry Luckey
Notary Public

My Commission Expires: 01/25/05

STATE OF NEBRASKA)
)
) SS.
COUNTY OF DOUGLAS)

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



[Signature]
Notary Public

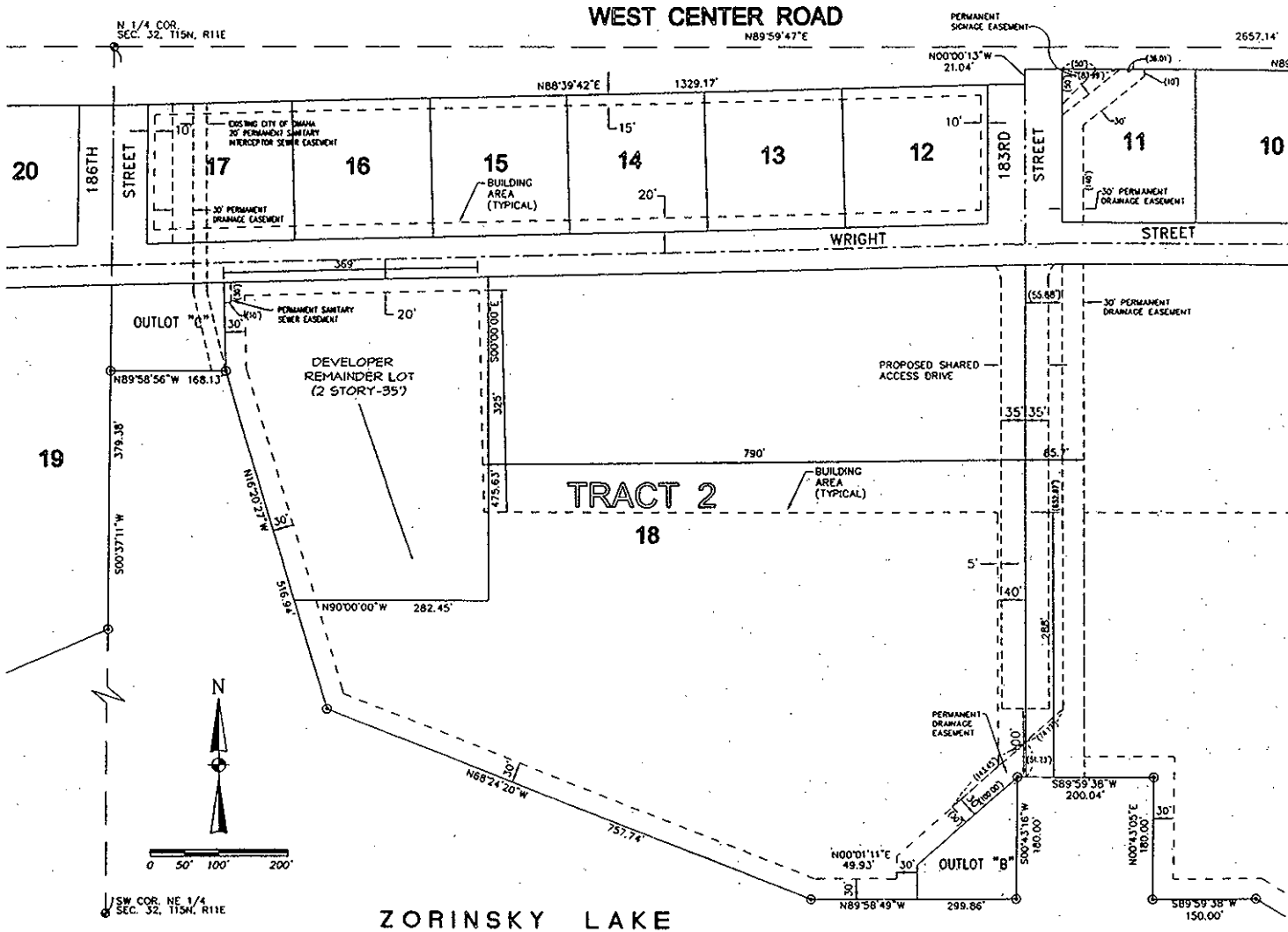
My Commission Expires: July 24, 2004

EXHIBIT A

SITE PLAN FOR SHOPPING CENTER

RIDGEVIEW EXHIBIT "A"

01-19-00



**KIRKHAM
MICHAEL**

CONSULTING ENGINEERS

9110 WEST DODGE ROAD, P.O. BOX 24129, OMAHA, NEBRASKA 68124
(402) 393-5630 FAX (402) 755-3650

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 11 shall be restricted as provided in Section 4) easements with covenants and restrictions affecting land ("ECR") to which this E is attached.

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RIDGEVIEW EXHIBIT "A"

01-19-00

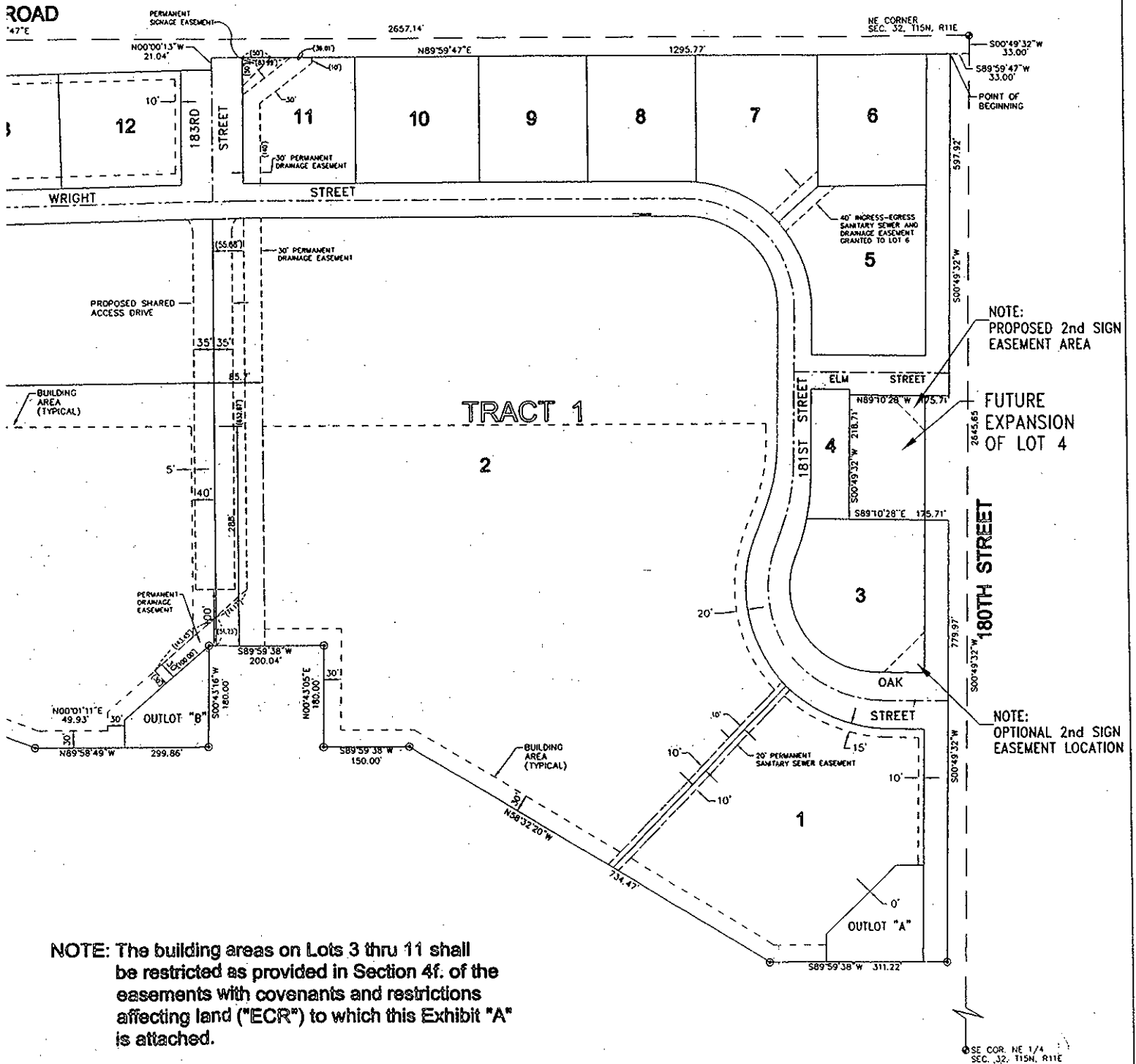


EXHIBIT A-1

SITE PLAN FOR LOWE'S TRACT AND DEVELOPER REMAINDER LOT

WEST CENTER ROAD

(RIGHT-OF-WAY VARIES)

WEST CENTER ROAD

+69.4
7.9

+89.2
29.3

+72.3
27.4

+01.4
36.3

+11.4
35.4
+08.2
36.2
+07.2
71.4

17

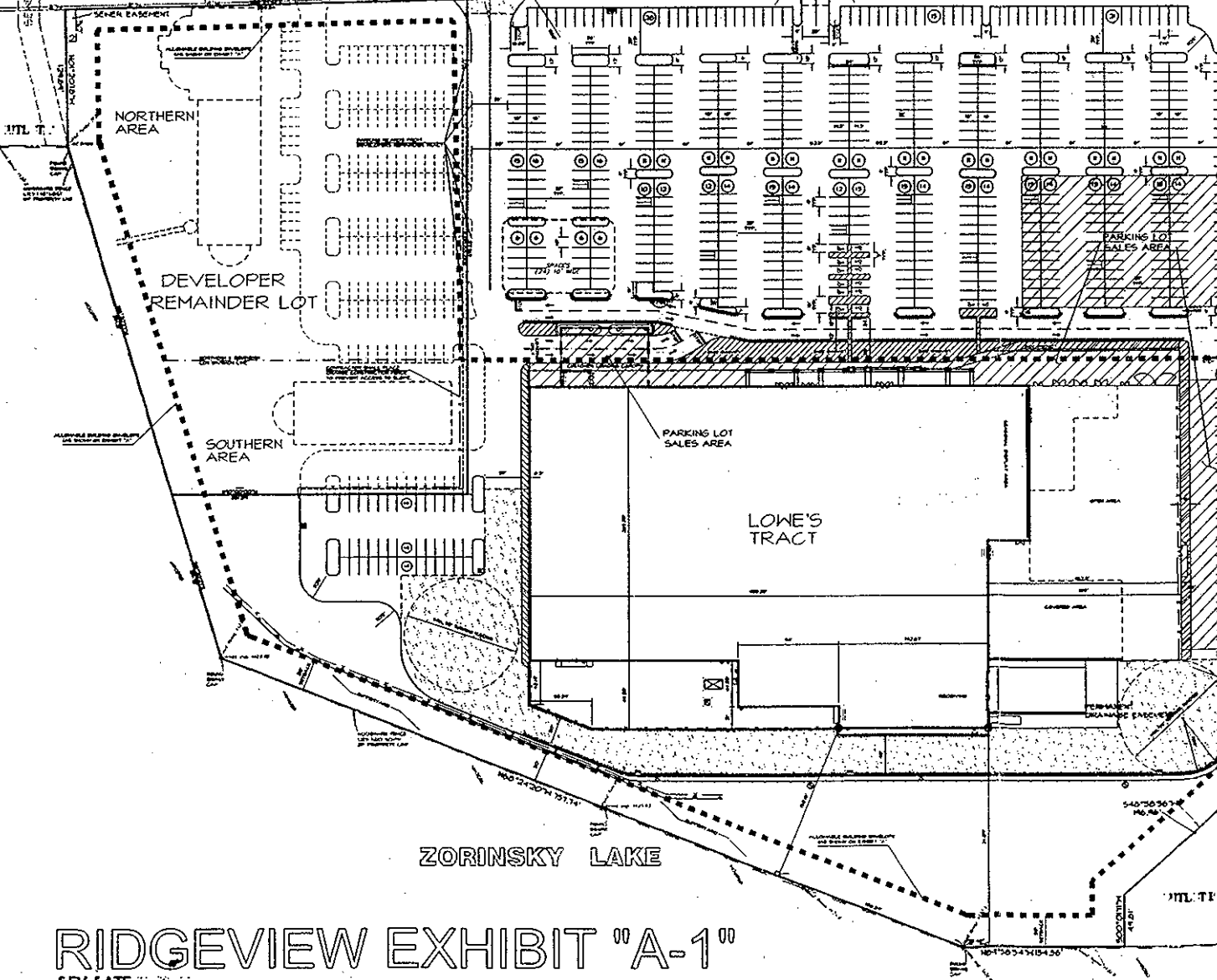
16

15

14

13

WRIGHT



ZORINSKY LAKE

RIDGEVIEW EXHIBIT "A-1"

REV. DATE

ER ROAD

(ARES)

ER ROAD

WEST-CENTER ROAD

+89.2
29.3

+01.4
36.3

+11.4
35.4

+08.2
36.2

+01.2
71.4

+82.3
27.4

+31.5
27.2

+87.3
28.7

NOTE:
SHOPPING CARTER CENTER
29.6

30' PERMANENT
EASEMENT

30' PERMANENT
EASEMENT

30' PERMANENT
EASEMENT

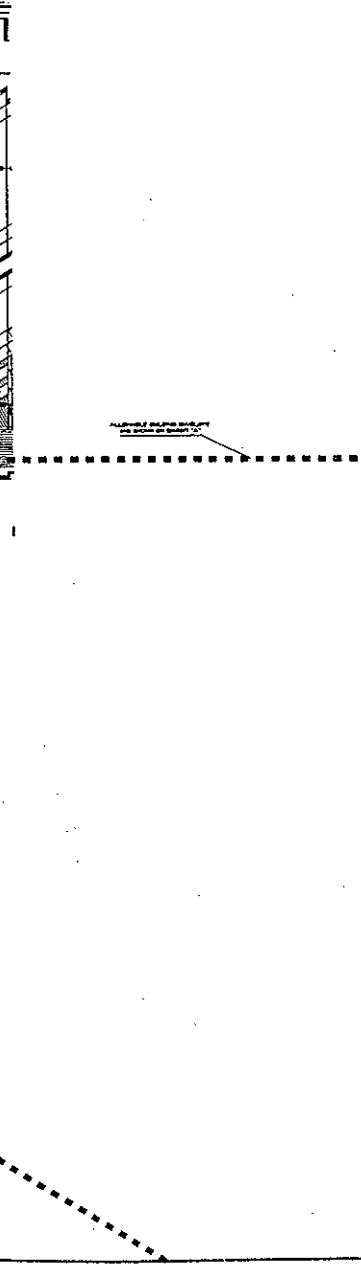
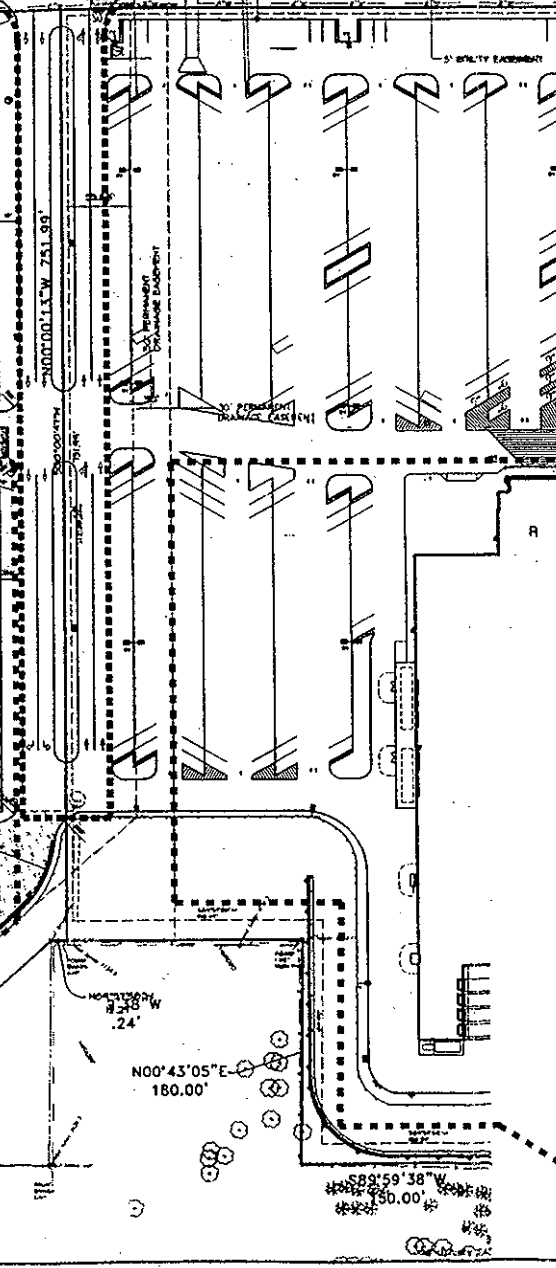
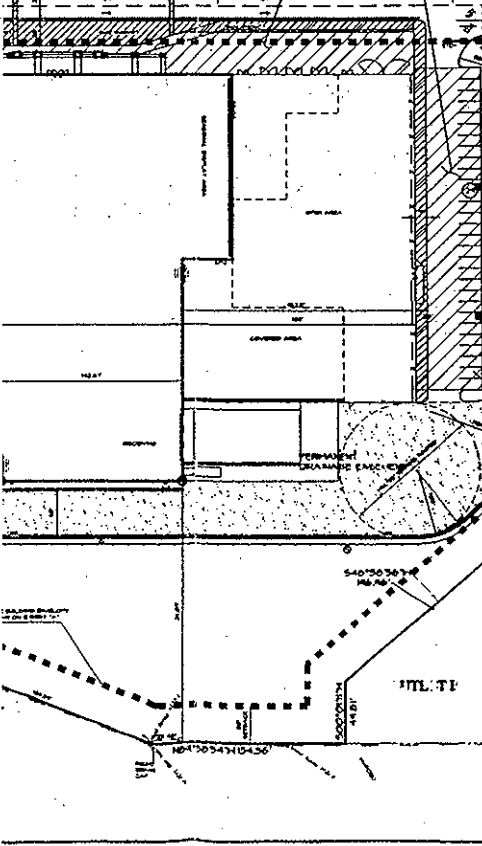
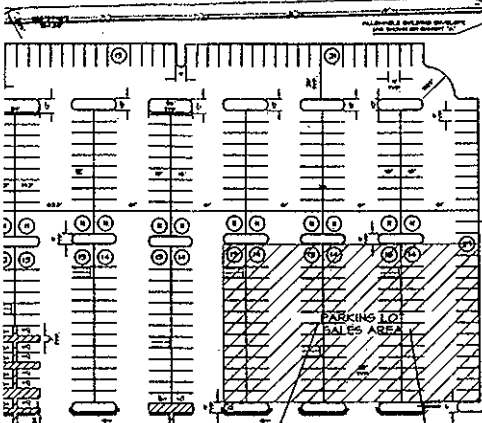
N88°39'42"E
47.49'

13

10

WRIGHT

STREET



PARKING LOT
SALES AREA

N100°13'W 751.99'

N00°43'05"E
180.00'

S89°59'38"W
180.00'

N04°30'54"W 104.50'

S40°50'34"W 106.00'

S40°50'34"W 106.00'

S40°50'34"W 106.00'

S40°50'34"W 106.00'

10' PERMANENT EASEMENT

10' PERMANENT EASEMENT

N00°43'05"E
180.00'

S89°59'38"W
180.00'

N04°30'54"W 104.50'

S40°50'34"W 106.00'

S40°50'34"W 106.00'

S40°50'34"W 106.00'

S40°50'34"W 106.00'

10' PERMANENT EASEMENT

10' PERMANENT EASEMENT

EXHIBIT B

LEGAL DESCRIPTION OF TRACT 1 (WAL-MART TRACT)

Lot 2, Ridgeview, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

EXHIBIT C

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.

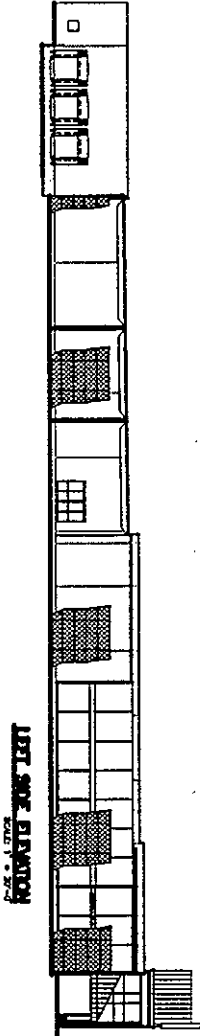
EXHIBIT D

DEVELOPER REMAINDER LOT

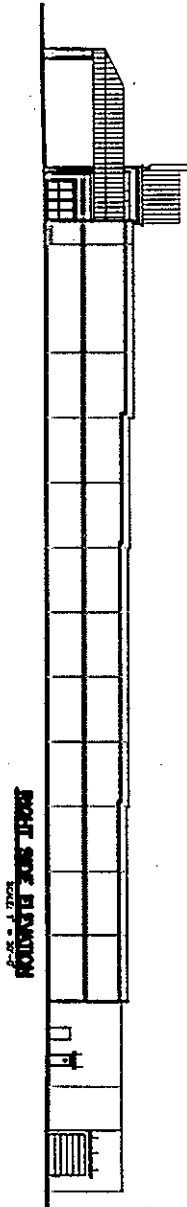
Lot 1 of Ridgeview Replat 1, being a replat of Lot 18, Ridgeview, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, as recorded in the Register of Deed's Office for Douglas County, Nebraska

OUTPARCEL(S)

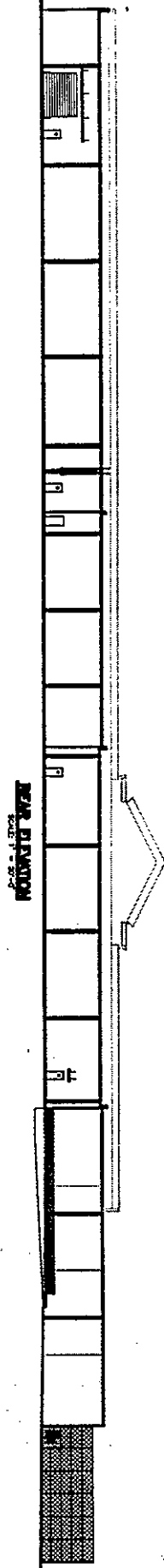
Lot 1 and Lots 3 through 17, inclusive, Ridgeview, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.



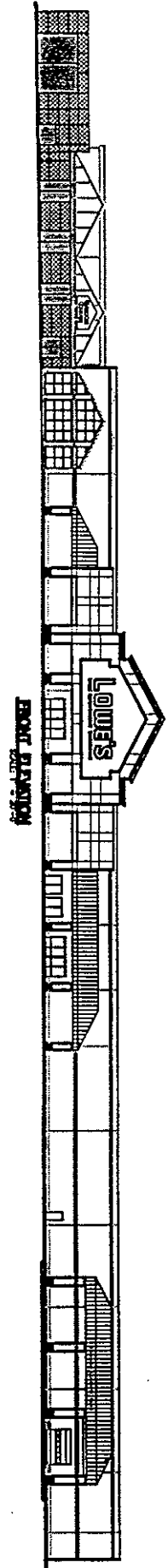
LEFT SIDE ELEVATION
SCALE 1/8" = 1'-0"



RIGHT SIDE ELEVATION
SCALE 1/8" = 1'-0"



REAR ELEVATION
SCALE 1/8" = 1'-0"



FRONT ELEVATION
SCALE 1/8" = 1'-0"

12-77

<p>12-77</p> <p>A-5</p>	<p>DRAWN BY: _____</p> <p>CHECKED: _____</p> <p>PERMIT SET: _____</p> <p>ISSUE DATE: _____</p> <p>CONTRACT SET: _____</p> <p>ISSUE DATE: _____</p>	<p>EXTERIOR ELEVATIONS</p> <p>LOWE'S OF</p> <p>S.W. OMAHA, NEBRASKA</p>	<p>LOWE'S</p> <p>Company, Inc.</p> <p>P. O. Box 9777 S. Omaha, N. B. 68108</p>	<table border="1"> <tr> <th>NO.</th> <th>REVISION</th> <th>DATE</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> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	REVISION	DATE																<p>SCALE</p> <p>1/8" = 1'-0"</p>
	NO.	REVISION	DATE																				

EXHIBIT F

SIGN EASEMENT AREA

A TRACT OF LAND LOCATED IN LOT 11, RIDGEVIEW, A PLATTED AND RECORDED SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 11; THENCE ALONG THE NORTH LINE OF SAID LOT 11, N89°59'47" (PLATTED BEARING), 50.00 FEET; THENCE S44°59'47"W, 70.71 FEET TO A POINT ON THE WEST LINE OF SAID LOT 11; THENCE ALONG SAID WEST LINE, N00°00'13"W, 50.00 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.03 ACRE (1250 SQUARE FEET), MORE OR LESS.

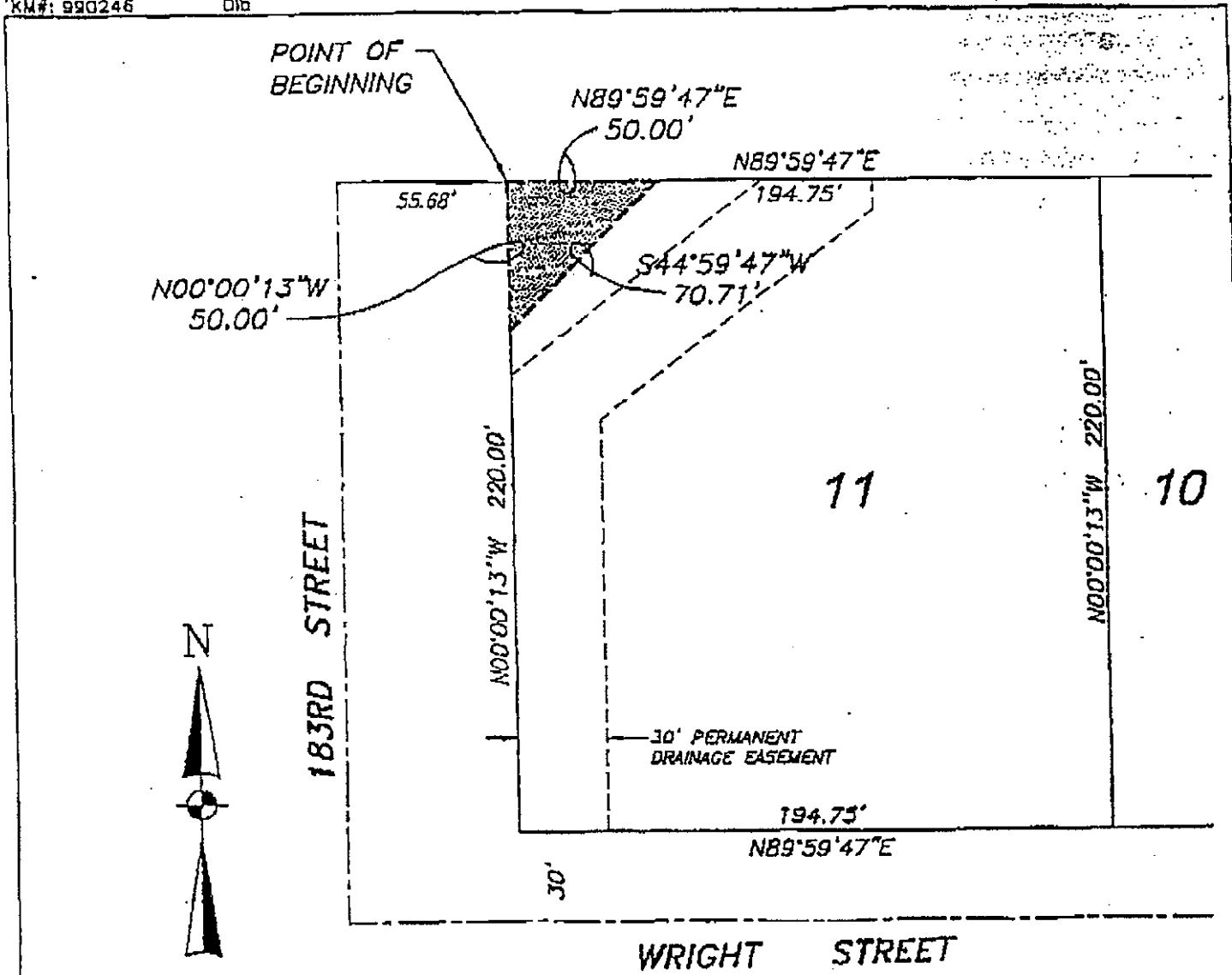
See attached drawing of the Sign Easement Area.

NOV-11-1999
RN#: 990246

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Dib

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EXHIBIT F



LEGAL DESCRIPTION - SIGNAGE EASEMENT

A TRACT OF LAND LOCATED IN LOT 11, RIDGEVIEW, A PLATTED AND RECORDED SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 11; THENCE ALONG THE NORTH LINE OF SAID LOT 11, N89°59'47"E (PLATTED BEARING), 50.00 FEET; THENCE S44°59'47"W, 70.71 FEET TO A POINT ON THE WEST LINE OF SAID LOT 11; THENCE ALONG SAID WEST LINE, N00°00'13"W, 50.00 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.03 ACRE (1250 SQUARE FEET), MORE OR LESS.

1/1
POINT

SIGNAGE EASEMENT

S.J.D. 450
LOT 11 - RIDGEVIEW
DOUGLAS COUNTY NEBRASKA

KIRKHAM
MICHAEL
CONSULTING ENGINEERS

EXHIBIT G

SECOND SIGN EASEMENT AREA

See Site Plat (Exhibit A)

Legal description to be added by amendment when determined and completed.

EXHIBIT H

DRIVEWAY SPECIFICATIONS

The shared access drive just South of 183rd Street shall consist of four asphalt lanes with medians and a concrete approach slab. A half section of road will be from the property line 10 feet to the face of curb and 25 feet to the edge of pavement. Curb and gutter would not be required at the edge of pavement to allow for continued construction. The concrete approach slab shall have 9" thick P.C.C. per Nebraska Department of Roads, Section 1002, Class "47B-3,625". The asphalt shall consist of 5" Asphaltic Base Course and 3" Asphaltic Surface Course per Nebraska Department of Roads, Section 1028, Type SPL. At least the upper 9 inches of subgrade shall consist of low-plasticity soils compacted to 98% of the materials maximum Standard Proctor dry density (ATSM D-698).

Prior to construction, the First Party shall secure the Other Party's approval of the construction plans and specifications, which approval shall not be unreasonably withheld or delayed. If the Other Party does not disapprove such plans or specifications in writing within 10 days of receiving such plans and specifications from the First Party, such plans and specifications shall be deemed approved. If the plans and specifications are so disapproved, the above process shall be repeated until the plans and specifications are approved (or deemed approved).