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*Glenn J. ...*  
REGISTER OF DEEDS

GAUNTER *SM*  
Verify *SM*  
D.E. *SW*  
Proof *SW*  
Fee \$ 149.00  
Ck  Cash  Chg  *ATIC*

**EASEMENTS WITH COVENANTS AND  
RESTRICTIONS AFFECTING LAND ("ECR")**

**THIS AGREEMENT** is made as of the 17<sup>th</sup> day of March, 2000, between **WAL-MART STORES, INC.**, a Delaware corporation, of 702 S.W. Eighth Street, Bentonville, Arkansas 72716 ("Wal-Mart"), and Mike Hogan Development Company, a Nebraska corporation, of 818 Tara Plaza, Papillion, Nebraska 68046 ("Developer"), and The 15<sup>th</sup> & Cornhusker, L.L.C., a Nebraska limited liability company, of 818 Tara Plaza, Papillion, Nebraska 68046 ("LLC").

**WITNESSETH:**

**WHEREAS**, Wal-Mart is the owner of Lot 8 of Wolf Creek Replat 1, a subdivision as surveyed, platted and recorded, Sarpy County, Nebraska (hereinafter "Tract 1") as shown on the plan attached hereto as Exhibit A (the "Site Plan"), said tract being more particularly described in Exhibit B attached hereto;

**WHEREAS**, Developer is the owner of Lot 9 of Wolf Creek Replat 1, Sarpy County, Nebraska (hereinafter "Tract 2") as shown on the plan attached hereto as Exhibit A, said tract being more particularly described in Exhibit C hereof; and

**WHEREAS**, Developer and LLC own Lot 1 through 5 and Lot 7 of Wolf Creek Replat 1, Sarpy County, Nebraska (collectively, the "Outparcel(s)" as shown on the plan attached hereto as Exhibit A hereof, the same being more particularly described in Exhibit C hereof; and

**WHEREAS**, Wal-Mart and Developer desire 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 Wal-Mart, Developer and LLC further desire that said Tracts and the Outparcel(s) be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

*next to: ATIC  
attn: Carol*

**06162**

*chs  
ATIC  
9951002061*

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:

1. **Building/Common Areas.**

- a. "Building Areas" as used herein shall mean that portion of Tract 1 and those portions of Tract 2 shown on Exhibit A 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 Tracts 1 and 2 except the Building Areas.
- c. Conversion to Common Areas: Those portions of the Building Areas on Tract 1 and Tract 2 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 Tract 1 and Tract 2 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, this restriction shall not apply to a business similar

in setup and quality to the "Winery" or "Spirit World" in Omaha, Nebraska, which sells wine and alcoholic beverages on an "off-sale" basis and has a deli or sandwich shop. Developer recognizes that said businesses may inconvenience Wal-Mart's customers and adversely affect Wal-Mart'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 Wal-Mart on Tract 1. Developer and LLC recognize and agree that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its business on Tract 1; and Developer and LLC hereby waive any legal action for damages or for equitable relief which might be available to Developer and LLC because of such cessation of business activity by Wal-Mart.

- b. **Wal-Mart Store.** Any construction of a Wal-Mart Store on Tract 1 must be generally in conformity with the Retail Store Conceptual Site Plan, (Job #13771.0 DWG Name 3771PROJ), dated February 9, 2000, prepared by CEI Engineering, Inc. attached hereto as Exhibit D ("Conceptual Store Plan"), subject to any changes required by or in response to governmental authorities; provided, however, that the Wal-Mart Store may be between 190,000 square feet and 220,000 square feet in size. Nothing in this Agreement shall be construed to require Wal-Mart to construct or operate a store on Tract 1.
- c. **Construction of Wal-Mart Store.** In consideration of Developer's sale of Tract 1 to Wal-Mart, Wal-Mart hereby agrees that in the event that Wal-Mart (or its successors and assigns) fails to secure necessary building permits and fails to commence construction of a building foundation for a Wal-Mart store on Tract 1 on or before the date which is two (2) years following the date of

closing of Tract 1, Developer shall have the option to repurchase Tract 1 from its then current owner under the following terms and conditions:

i. The purchase price shall be equal to the gross purchase price which Wal-Mart paid to Developer for Tract 1 as reflected in the closing statement for the sale and purchase of Tract 1 pursuant to the Purchase Agreement between Wal-Mart and Developer, dated February 11, 1999 (the "Purchase Agreement") plus Wal-Mart's reasonable development costs with respect to Tract 1;

ii. All prorations and closing costs shall be allocated between the Developer and Wal-Mart in the same manner as provided in the Purchase Agreement;

iii. All liens and encumbrances (except for this Agreement) placed upon Tract 1 following Developer's transfer of Tract 1 to Wal-Mart 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

iv. Developer must notify the owner of Tract 1 of the exercise its option to repurchase Tract 1 within the sixty (60) day period commencing on the second anniversary of the closing date of Tract 1 by written notice to the owner of Tract 1 and by filing of 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 Wal-Mart secures the necessary building permits and commences construction of a building foundation for a Wal-Mart store on Tract 1 within the two (2) year period commencing on the closing date of Tract 1.

Nothing in this Agreement shall be construed to require Wal-Mart to construct or operate a store on Tract 1.

- d. **Additional Restriction on Tract 1.** Wal-Mart agrees that it will not open a gas station on Tract 1 within the one year period commencing on the closing date of its purchase of Tract 1 from the Developer.

3. **Competing Business.** Developer, for itself and successors and assigns with respect to Tract 2, covenants that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of Tract 1, either as owner, no space in or portion of Tract 2, 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 (i) a grocery store or supermarket, as hereinafter defined below, (ii) a wholesale club operation similar to that of a Sam's Club owned and operated by Wal-Mart, (iii) a discount department store or other discount store, as hereinafter defined, (iv) pharmacy or (v) gas station. "Grocery Store" and "supermarket", as those terms are used herein, shall mean a food store or a food department containing more than 25,000 square feet of gross leasable area, other than Tract 1, for the purpose of selling food for consumption off the premises, 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 25,000 square feet of gross leasable area, other than Tract 1, for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, pharmacy, 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; provided, however, that discount department store or other discount store shall not include, without limitation, Staples, Best Buy, Petco, Pharmor, Pep Boys, Circuit City, or Lowes, Menards or other home improvements store or any store (regardless if it was otherwise deemed a discount department store or other discount store). In the event of

a breach of this covenant, Wal-Mart shall have the right, in its sole discretion, to terminate any or all of the easements granted to the Owner of Tract 2 (but not the obligations imposed upon the Owner of Tract 2) in this Agreement and to seek any and all remedies afforded by either law or equity.

4. **Buildings.**

- a. **Design and Construction.** The Building Areas on Tract 1 and Tract 2 shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one Tract onto another Tract except as provided for in Subsection d. below. The design and construction shall be of high quality. No building on Tract 1 or Tract 2 shall exceed thirty-five feet (35') in height above finished grade. No building shall have a metal exterior.
- b. **Location.** No structure of any type or building shall be constructed on Tracts 1 and 2 (as either immediate development or future expansion) except within the Building Areas without the prior written consent of the owners of Tract 1 and Tract 2. The front wall(s) of the building(s) on Tract 1 and Tract 2 shall be constructed in the Building Areas shown in Exhibit A.
- 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. **[Intentionally Left Blank]**
- e. **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 (25) feet in height (excluding rooftop HVAC and similar equipment);
  - (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 Wal-Mart Store. 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.
- (7) In developing and using the Outparcel(s), the owner of the Outparcel(s) shall continuously provide and maintain a parking ratio in conformance with applicable zoning requirements.
- (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.

As long as Wal-Mart or any affiliate of Wal-Mart is the user of Tract 1, 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 pharmacy, theater, night club, bowling alley, health spa, billiard parlor or other place of recreation or amusement, a discount department store

or a variety, general or "dollar" store, 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, this restriction shall not apply to a business which is similar in setup and quality to the "Winery" or "Spirit World" in Omaha, Nebraska, which sells wine and alcoholic beverages on an "off-sale" basis and has a deli or sandwich shop.

- (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.

f. **Additional Rules Regarding Development of Lot 7.** Lot 7 of Wolf Creek Replat 1 shall be subject to the following additional restrictions:

- (1) The owner of Lot 7 agrees that the total maximum size of improvements on Lot 7 shall not exceed twelve thousand (12,000) square feet of gross leasable area which may be in one building or in two buildings.
- (2) No buildings on Lot 7 may be constructed within thirty (30) feet of either Cornhusker Road or 15<sup>th</sup> Street.



The restrictions set forth in this Subsection f. are in addition to, and not in lieu of, other restrictions set forth in this Agreement or otherwise applicable to such Lot 7 pursuant to law.

5. **Common Areas.**

- a. **Grant of Easements.** Each of Wal-Mart 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, parking of motor vehicles, 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. In addition to the foregoing, Wal-Mart and Developer hereby grant for the benefit of the Outparcel(s), nonexclusive easements for vehicular and pedestrian access, ingress, and egress over and across Tract 1 and Tract 2; provided, however, in no event shall the owner occupant, licensee or invitee of any of the Outparcel(s) be permitted to use Tract 1 or Tract 2 for vehicular parking or for any other purpose other than as described above.
- 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 Tracts 1 and 2. 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 as "employee parking areas," if any. The

owners of Tract 1 and Tract 2 may from time to time mutually designate and approve "employee parking areas" not shown on Exhibit A.

- (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.
- c. **Utility and Service Easements.** The owners of Tract 1 and Tract 2 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 Tract 1 and Tract 2 and the Outparcel(s) 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.** If either the owner of Tract 1 or Lot 7 ("First Party") develops Tract 1 or such Lot 7 before the other party ("Other Party") develops its tract or Lot, the First Party may construct the shared

private (non-publicly dedicated) driveway along the common boundary line of Tract 1 and Lot 7 depicted on Exhibit A and A1 as the "Shared Access Drive" (the "Driveway"). A portion of such Driveway is within both Tract 1 and Lot 7. 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 E. If the First Party constructs such Driveway, the Other Party shall reimburse the First Party in an amount equal to the "Proportionate Responsibility" of the Other Party for such cost, as set forth below, multiplied times the documented cost of construction of the Driveway. For purposes of this Agreement, the agreed upon "Proportionate Responsibility" shall be as follows:

<u>Owner</u>	<u>Proportionate Responsibility</u>
Tract 1	72%
Lot 7	28%

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 Tract 1 and Tract 2 hereto agree that at all times there shall be independently maintained on Tract 1 and Tract 2 parking area sufficient to accommodate not fewer than five (5) car spaces for each one thousand (1,000) square feet of leasable plan area of improvements constructed on such tract.
- (3) Development Timing. Concurrent with any building being constructed within Tract 1 or Tract 2, the owner of the Tract being developed (the "Developing Party"), shall develop the Common Areas of that lot in conformance with Exhibit A at the expense of such Developing Party. In the event such construction by the Developing Party shall occur prior to the development of the other Tract, the Developing Party shall have the right to grade, pave and use any portion of the Common Areas of the non-developing party's tract for access and for construction of improvements, including without limitation, approved drainage structures and utility lines, as necessary to provide essential services to the Developing Party's tract.

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.
  - (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.
- 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 Tracts 1 and 2 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 two (2) free-standing signs on the Common Areas on Tract 2. No signs shall obstruct the ingress and egress shown on Exhibit A.
- b. **Shopping Center Sign.** From time to time, owners of Tract 1, Tract 2 and the Outparcel(s) may enter into agreements for common signage, the arrangements for usage and cost sharing of which shall be set forth in a written agreement and provided that any common signage arrangements on Tract 1 shall be within the sole discretion of Wal-Mart.

8. **Indemnification/Insurance.**

- a. **Indemnification.** Each of the owners of Tract 1 and Tract 2 and the Outparcel(s) 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) Each of the owners of Tract 1 and Tract 2 and the Outparcel(s) 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 Tract 1 and Tract 2 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 Wal-Mart and Developer and the LLC 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) Each of the owners of Tract 1 and Tract 2 and the Outparcel(s) and their respective property insures hereby releases the other owners, 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 any such owner 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 Wal-Mart shall exceed One Hundred Million Dollars (\$100,000,000.00), and so long as Wal-Mart is owner or Lessee of Tract 1, Wal-Mart 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(s) 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 Tracts 1 and 2, 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 either Tract or an Outparcel, 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 Tracts 1 or 2, 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 that provided in Paragraph 6a(2).

12. **Release from Liability.** Any person acquiring fee or leasehold title to Tracts 1 or 2, an Outparcel, 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 or Outparcel 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 or Outparcel, 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 Tract 1 as a group, or all record owners of Tract 2 as a group, or Wal-Mart so long as it or any affiliate has an interest as owner or lessee of Tract 1 or Developer so long as it or any affiliate has an interest as owner or lessee of Tract 2, 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 hereto, 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, Wal-Mart and the LLC 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) Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of Tract 1, or its successors in interest and (b) Developer, as long as it or its affiliate has any interest as either owner or lessor of Tract 2, or its successors in interest.

16. **Non-Merger.** So long as Wal-Mart or its affiliate is owner or lessee of Tract 1, 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

WAL-MART STORES, INC.

*[Signature]*  
Its Assistant Secretary

*[Signature]*  
Its Assistant Vice President

(SEAL)

"Wal-Mart"

MIKE HOGAN DEVELOPMENT COMPANY

By: *Michael J. Hogan*  
Its: *Pres*

"Developer"

THE 15<sup>TH</sup> & CORNHUSKER, L.L.C.

By: *Michael J. Hogan*  
Its: *Manager*

"LLC"

Exhibits

- A - SITE PLAN
- A1-COMMON DRIVE
- B - TRACT 1
- C - TRACT 2 AND OUTPARCEL(S)
- D - CONCEPTUAL STORE PLAN
- E - DRIVEWAY SPECIFICATIONS

Approved as to legal terms only  
By: *[Signature]*  
WAL-MART LEGAL TEAM  
Date: *3-16-00*

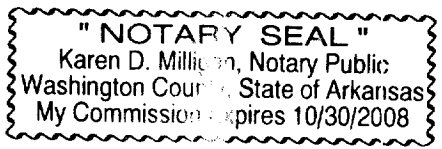
800-336.D1

2000-06162 T

STATE OF ARKANSAS )  
COUNTY OF Benton ) SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Kim Lane, personally known to me to be the Asst. Vice Pres. of Wal-Mart Stores, Inc., and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Asst. Vice Pres., appeared before me this day in person and acknowledged that he signed, sealed and delivered the foregoing instrument as such Asst. Vice Pres., and as his free and voluntary act of said Asst. Vice Pres. 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 16th day of March, 2000.

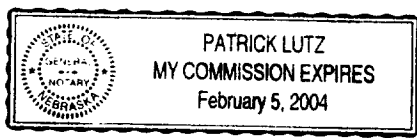


Karen D. Miligan  
Notary Public

My Commission Expires: 10-30-2008

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) SS.

The foregoing instrument was acknowledged before me this 17th day of March, 2000, by Michael J. Hogan, President of Mike Hogan Development Company, a Nebraska corporation, on behalf of the corporation.

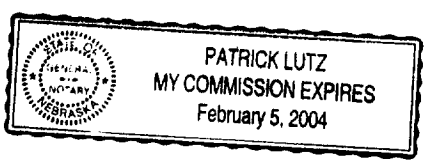


[Signature]  
Notary Public

My Commission Expires: 2-5-2004

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) SS.

The foregoing instrument was acknowledged before me this 17th day of March, 2000, by Michael J. Hogan, Manager of The 15th Cornhusker, L.L.C., a Nebraska limited liability company, on behalf of the company.



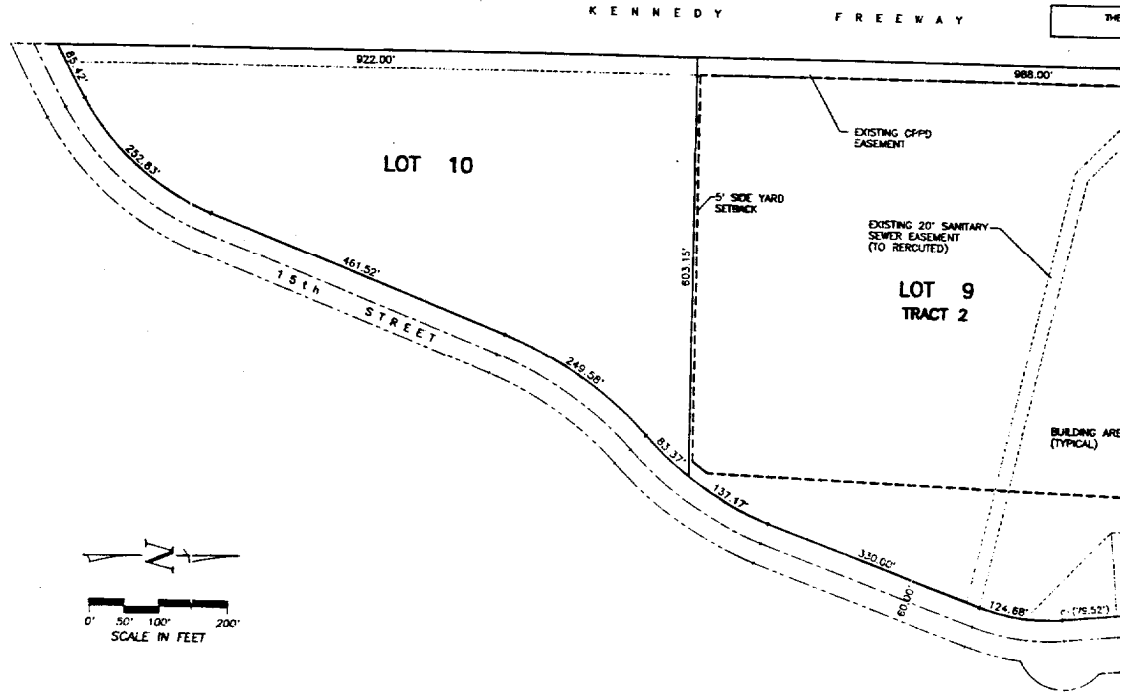
[Signature]  
Notary Public

My Commission Expires: 2-5-2004

2000-06162u

# EXHIBIT "A"

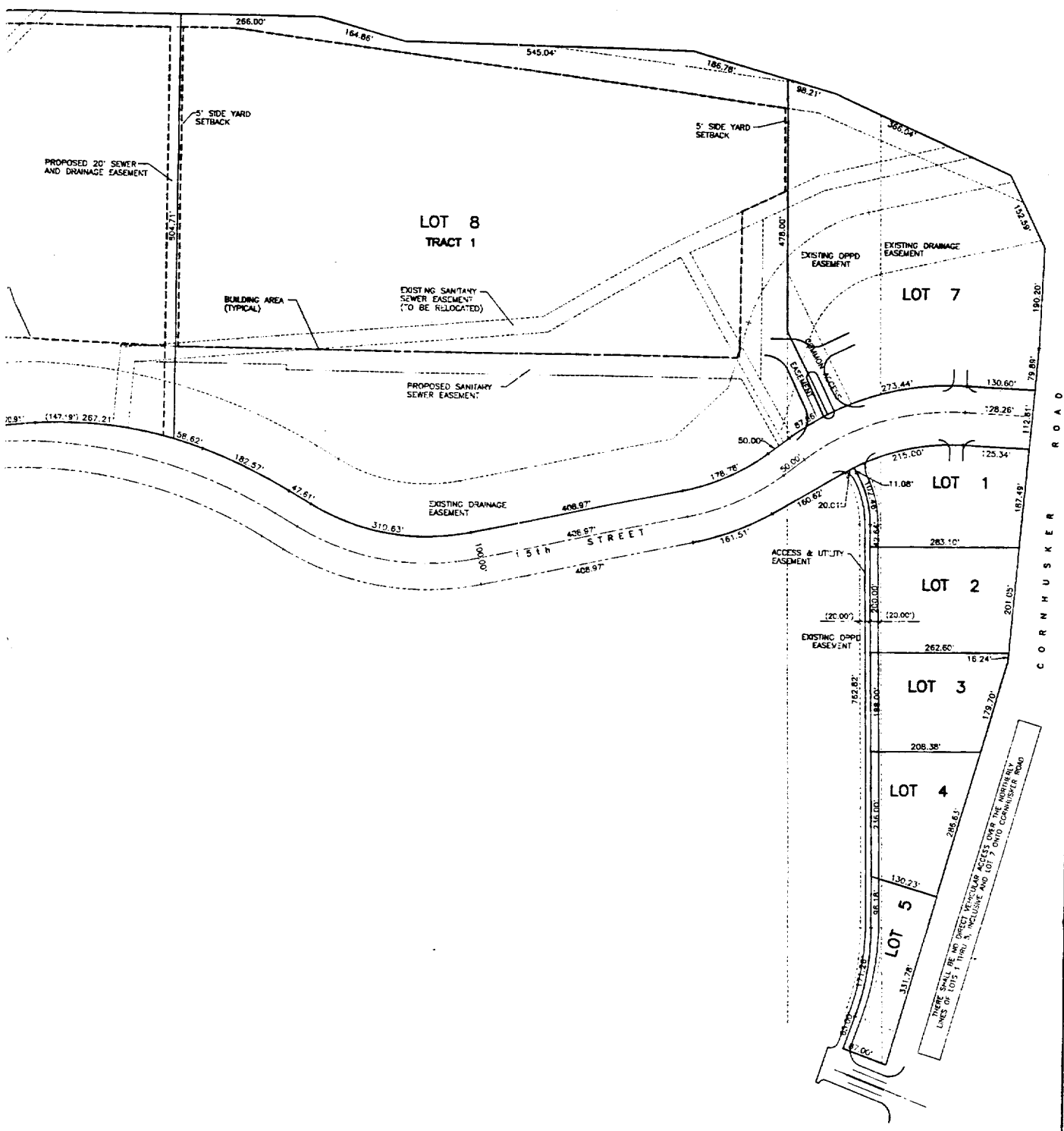
## ECR SITE PLAN



BELLEVUE, NB. #2847-00

2000-06162Y

SHALL BE NO DIRECT VEHICULAR ACCESS OVER THE WESTERLY  
OF LOTS 7, 8, 9 AND 10 ONTO THE KENNEDY FREEWAY



AS SHOWN	MAR. 9, 2000
DATE	JKW
DESIGNED BY	DAJ
CHECKED BY	MAR. 15, 2000

# WOLF CREEK REPLAT 1

EXHIBIT "A"

ECR SITE PLAN

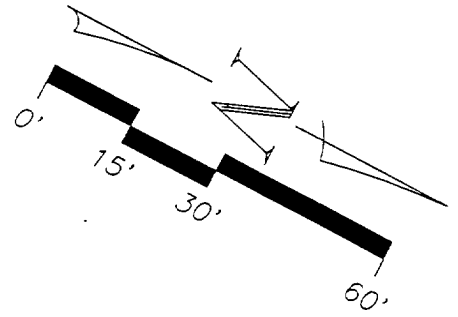
**2 THOMPSON, DREESSEN & DORNER, INC.**  
 Consulting Engineers & Land Surveyors  
 10836 OLD MILL ROAD  
 OMAHA, NE 68154  
 (402) 330 - 8860



161-122

161122ECR.DWG

2000-06162 W



LOT 7, WOLF CREEK REPLAT 1

LOT 8, WOLF CREEK REPLAT 1

277.83'

111.73'

EASEMENT

COMMON ACCESS

175.53'

205.29'

87.86'

50.03'

4.48'

15TH STREET

EXHIBIT A-1  
COMMON ENTRANCE DETAIL

Bellevue, NB. #2847 -00



2000-06162 X

**EXHIBIT B**

**TRACT 1**

Lot 8, Wolf Creek Replat 1, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.

Bellevue, NB #2847-00

2000-06162 Y

**EXHIBIT C**

**TRACT 2**

Wolf Creek Replat 1

Lot 9, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.

**OUTPARCEL(S)**

Lot 7 and Lots 1 through 5, inclusive, Wolf Creek Replat 1, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.





**EXHIBIT E**

**DRIVEWAY SPECIFICATIONS**

The shared access drive shall consist of four asphalt lanes with medians. The asphalt shall consist of 4" Asphaltic Base Course and 2" 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).