

638328

AGREEMENT AND RESTRICTIVE COVENANT

This AGREEMENT AND RESTRICTIVE COVENANT, made and entered into this 8th day of June 1990 by and between the city of Gillette, Wyoming, a municipal corporation and city of the first class, hereinafter CITY, of 201 East Fifth Street, Gillette, Wyoming, 82716 and Wal-mart Stores, Inc. a Delaware corporation 702 S. W. 8th Street, Bentonville, Arkansas 72716, hereinafter WAL-MART and Powder Basin Properties, A Wyoming Partnership, P.O. Box 4221, Gillette, Wyoming 82717, hereinafter POWDER BASIN, and W. M. Grace Development Co., 7575 North 16th Street, Suite 1, Phoenix, Arizona, 85020, a partner in Powder Basin Properties hereinafter GRACE. WAL-MART, POWDER BASIN, GRACE and CITY may be referred to collectively herein as the PARTIES.

WHEREAS, WAL-MART desires to construct a building occupying approximately 95,000 square feet using type V-N fully sprinklered construction in compliance with the Uniform Building Code which provides that 60 feet of open space surround the building, and wishes to be allowed to use adjoining separately owned property to maintain at least 60 feet of open space around the building on its north side; and,

WHEREAS, POWDER BASIN, the owner of the land to the north of the site for the WAL-MART store wishes to allow the request of WAL-MART but would like to be able to build additional buildings on a zero lot line directly adjacent to the north of the WAL-MART store; and,

WHEREAS, the CITY will approve this use of adjacent land as open space if the WAL-MART store and all buildings contiguous to it are surrounded as a unit by at least 60 feet of open space on all sides and if they are built using at a minimum, type V-N construction and have an

automatic fire-extinguishing system throughout the structure hereinafter sprinklered; and,

WHEREAS, the PARTIES agree that this AGREEMENT AND RESTRICTIVE COVENANT is a Restrictive Covenant enforceable by the CITY and shall be filed with the Campbell County Clerk and Ex-Officio Recorder of Deeds to give notice of these restrictions and prevent development, construction and any use of any building on Lots 1B and 1C contrary to the terms of this AGREEMENT AND RESTRICTIVE COVENANT.

NOW therefore, the PARTIES agree and covenant as follows:

1. WAL-MART has applied to the CITY for a building permit pursuant to the 1988 edition of the Uniform Building Code as adopted and amended by section 5- 1 of the Gillette City Code to construct a structure to be used as a Walmart store, hereinafter referred to as the STORE, occupying approximately 95,000 square feet.

2. The STORE will be located on a tract of land legally described as Lot 1B of the Resubdivision of Lot 1A of Block 1 of the Resubdivision of Lots 1, 2, 3 & 4 of Block 1 of the Homestead Addition to the City of Gillette, Wyoming, according to the plat thereof duly recorded with the records of the Campbell County Clerk and Ex-Officio Recorder of Deeds, hereinafter referred to as Lot 1B. Lot 1B is south of, adjoins and borders a tract of land owned by POWDER BASIN described as Lot 1C of the Resubdivision of Lot 1A of Block 1 of the Resubdivision of Lots 1, 2, 3 & 4 of Block 1 of the Homestead Addition to the City of Gillette, Wyoming, according to the plat thereof duly recorded with the records of the Campbell County Clerk and Ex-Officio Recorder of Deeds hereinafter referred to as Lot 1C. Lots 1B and 1C may be referred to collectively herein as the LAND.

3. WAL-MART intends to construct the STORE using type V-N fully sprinklered construction. The PARTIES agree that the Uniform Building Code provides that a building of 95,000 square feet built with type V-N construction and fully sprinklered must have at least 60 feet of open space around it on all sides. WAL-MART may construct the north wall of the STORE upon the north property line of Lot 1B.

4. In order to maintain at least 60 feet of open space around the STORE on its north side, the southern most 60 feet of Lot 1 must be left as open space in compliance with the Uniform Building Code except as authorized by the terms of this AGREEMENT AND RESTRICTIVE COVENANT. must be executed and filed by POWDER BASIN.

5. The PARTIES acknowledge and agree that in order to permit the construction and operation of an additional building attached to and adjoining the STORE, under different ownership from the STORE, the STORE and all additional attached contiguous buildings must be treated as a single building and 60 feet of open space must be maintained around all sides of the STORE and all additional buildings attached to and adjoining it or to any additional buildings attached to and adjoining any additional buildings attached to and adjoining the STORE.

6. The PARTIES acknowledge and agree that any and all additional buildings attached to and adjoining the STORE, or any additional buildings attached to and adjoining any and all additional buildings attached to and adjoining the STORE, must be constructed to at least Type V N construction standards and be fully sprinklered.

7. The PARTIES acknowledge and agree that since Lot 1B and Lot 1C are under separate ownership and may both be further subdivided in the future, it is necessary that this agreement concerning the construction

and operation of the STORE be enforceable as a covenant running with the LAND described herein by the CITY to insure compliance with the terms hereof.

8. This AGREEMENT AND RESTRICTIVE COVENANT, and every part thereof, shall constitute a covenant running with the LAND described above and may be enforced by the CITY by an action at law or equity.

9. This AGREEMENT AND RESTRICTIVE COVENANT shall inure to the benefit of, and be binding upon the parties hereto, their respective heirs, successors in interest and assigns. This AGREEMENT AND RESTRICTIVE COVENANT shall bind each and every successor in interest to the LAND or any portion or parcel thereof.

10. This AGREEMENT AND RESTRICTIVE COVENANT shall be governed by the laws of the State of Wyoming. The District Court of the Sixth Judicial District in Campbell County Wyoming shall have venue and jurisdiction exclusively for any action in law or equity which may be instituted to enforce the terms of this AGREEMENT AND RESTRICTIVE COVENANT.

11. If any legal action is instituted to enforce any of the terms of this AGREEMENT AND RESTRICTIVE COVENANT, the unsuccessful party shall pay the successful party's reasonable attorneys' fees and all costs of the action including court costs, expert witness fees and all other actual expenses incurred in the prosecution of the action.

12. If any section, subsection, sentence, clause, phrase or portion of this AGREEMENT AND RESTRICTIVE COVENANT is for any reason held invalid or unconstitutional by any Court or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and

independent provision and shall not affect the validity of the remaining portions hereof, which shall remain in full force and effect.

DATED This 8th day of June, 1990.

CITY OF GILLETTE:

H. A. Carter
M. A. Carter, Mayor

(SEAL)
ATTEST: Mildred Huravitch
Mildred Huravitch, City Clerk

Wal-mart Stores, Inc. a Delaware corporation

Charles A. Bullock
Vice President

(SEAL)
ATTEST: [Signature]
Secretary

Powder Basin Properties, A Wyoming Partnership

VICE-
President of W. M. Grace Development Co., a partner of Powder Basin
Properties, A Wyoming Partnership

NONE
(SEAL)
ATTEST: NONE
Secretary

by W. M. Grace Development Co. a General Partner
[Signature]

President

(SEAL)
ATTEST:

Note

Secretary

STATE OF WYOMING)
) ss.

County of Campbell)

On the 24th day of June, 1990, before me personally came H. A. Carter, and Mildred Hufavitch, to me known, who, being by me duly sworn, did depose and say they reside in Campbell County, Wyoming; they are the Mayor and Clerk, respectively, of the City of Gillette, Wyoming a City of the First Class and the municipal corporation which executed the foregoing instrument; they know the seal of the said municipal corporation; that the seal affixed to the said instrument is such municipal corporate seal; that it was so affixed by order of the Governing Body of the said municipal corporation; and that they signed their names to the said instrument by like order.

Barbara D. Bates
Notary Public



My Commission Expires:

STATE OF Idaho)
) ss.
County of Washington)

The above and foregoing AGREEMENT AND RESTRICTIVE COVENANT was acknowledged before me by David H. Carlson, President and Michael Olson, secretary of Wal-mart Stores, Inc. a Delaware corporation this 27th day of June, 1990.
Witness my hand and official seal.

Patricia W. Wells
Notary Public



My Commission Expires:
1-1-93
draft 5/24/90

STATE OF Arizona)
) ss.
 County of Maricopa)

The above and foregoing AGREEMENT AND RESTRICTIVE COVENANT was acknowledged before me by Howard T. Grace ^{vice} president of W. M. Grace Development Co., a partner of Powder Basin Properties. A Wyoming Partnership and _____, secretary of _____ this 8th day of June, 1990.

Witness my hand and official seal

Barbara A. Schmidt
 Notary Public

My Commission Expires: November 21, 1991

STATE OF Arizona)
) ss.
 County of Maricopa)

The above and foregoing AGREEMENT AND RESTRICTIVE COVENANT was acknowledged before me by Howard T. Grace ^{vice} president and None ^{secretary} of W. M. Grace Development Co. this 8th day of June, 1990.

Witness my hand and official seal.

Barbara A. Schmidt
 Notary Public

My Commission Expires:
 11/21/91

STATE OF WYOMING)
 Campbell County)
 Filed for record this 29th day of June A.D. 1990 at 2:46 o'clock P.M. and recorded in Book 1108
 of Photos on page 593-599 Fee \$ 16.00 638328
Christine E. Addison
 County Clerk and Ex-Officio Registrar of Deeds

RECORDED
 ABSTRACTED
 INDEXED
 CHECKED

By Marie Hackett
 Deputy

draft 5/24/90

page 7



TOTAL \$ 0.00

When recorded, return to:

Shawn E. Tobin, Esq.
Gammage & Burnham
Two North Central Avenue
Phoenix, Arizona 85004

638330

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

THIS AGREEMENT is made as of the 6th day of July, 1990, between WAL-MART STORES, INC., a Delaware corporation, of Mitchell Building, 701 South Walton Boulevard, Bentonville, Arkansas 72716 ("Wal-Mart"), and POWDER BASIN PROPERTIES, a Wyoming general partnership, c/o W. M. Grace Development Co., 7575 North 16th Street, Suite 1, Phoenix, Arizona 85020 ("Developer").

W I T N E S S E T H

WHEREAS, Wal-Mart is the owner of Parcel A as shown on the plan attached hereto as Exhibit "A" hereof, said parcel being more particularly described in Exhibit "B" attached hereto;

WHEREAS, Developer is the owner of Parcel B shown on the plan attached hereto as Exhibit "A" hereof, said parcel being more particularly described in Exhibit "C" hereof; and

WHEREAS, Wal-Mart and Developer desire that Parcel A and Parcel B 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 parcels be subject to the easements, covenants, conditions and restrictions hereinafter set forth.

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

1. Building/Common Areas.

(a) "Building Areas" as used herein shall mean that portion of Parcel A and those portions of Parcel B shown on Exhibit "A" as "Building Area" (and "Future Building Area" and "Future Expansion 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 Parcel A and Parcel B except the Building Areas.

(c) Conversion to Common Areas: Those portions of the Building Areas on each parcel 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.

2. Use. 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 bowling alley, billiard parlor, nightclub or other place of recreation or amusement shall occupy space within the Shopping Center without the prior written consent of Wal-Mart. No business whose primary activity is to serve alcoholic beverages for consumption on premises (i.e., a bar or tavern or similar business, and no cafeteria restaurant) shall be located within the Shopping Center within two hundred feet (200') of Parcel A

without the prior written consent of Wal-Mart. Developer recognizes that said business may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business.

3. Buildings.

(a) Design and Construction. The Building Areas 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 parcel onto another parcel except as provided for in subparagraph (d) below. The design and construction shall be of high quality. No building on Parcel B shall exceed twenty-eight feet (28') in height above finished-grade. No building shall have a metal exterior.

(b) Location. No Improvements shall be constructed on Parcel A and Parcel B (as either immediate development or future expansion) except within the Building Areas, and no Improvements or alterations which substantially vary from those shown on Exhibit "A" may be made without the prior written consent of Wal-Mart. The front walls of the buildings on Parcels A and B shall be constructed in the locations shown on 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) Easements. In the event building wall footings encroach from one parcel onto another, despite efforts to avoid that occurrence, the party onto whose parcel the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

(e) Pad Development. The "Pads" (i.e., Pad A and Pad B as outlined on Exhibit "A" attached hereto) shall be developed only under the following guidelines:

(i) No building on the Pads shall exceed twenty-eight feet (28') in height, as measured from the mean finished elevation of the parking area of the Shopping Center.

(ii) No building constructed on a Pad shall exceed the maximum square footage for such Pad set forth on Exhibit "A" attached hereto.

(iii) Any rooftop equipment shall be screened in a manner satisfactory to Developer.

(iv) No rooftop sign shall be erected on any building located on the Pads.

(v) No freestanding identification sign may be erected on the Pads without prior written approval of Developer, 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.

(vi) No improvements shall be constructed, erected, expanded or altered on the Pad(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 Pads except upon that area designated as a Building Area on Exhibit "A"; 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.

(vii) The Pads shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.

(viii) In developing and using the Pads, the owners of the Pads shall provide and maintain parking on the Pads at a ratio of ten (10) spaces for every 1,000 square feet of building space for any restaurant or entertainment use, or six (6) spaces per 1,000 square feet of building space for any other use. In addition, the owners shall cause landscaped areas to be added and maintained in conjunction with any building or other improvements constructed on the Pads.

4. Common Areas.

(a) Grant of Easements. Each party, 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 their respective parcels 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.

(b) Limitations on Use.

(i) Customers. Each party 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 Parcel A and Parcel B.

(ii) Employees. Each party 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 parties hereto may from time to time mutually designate and approve "employee parking areas" not shown on Exhibit "A".

(iii) General. Any activity within the Common Areas other than the primary purpose of the Common Areas, which is to provide for parking for the customers, invitees and employees of those businesses conducted within 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 parties 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. Both parties 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" shall be permitted (including without limitation building and building expansion, curbs, drives and paving).

5. Development, Maintenance and Taxes.

(a) Development.

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

(ii) Parking Area Ratio. Each party hereto agrees that at all times there shall be independently maintained on each parcel's parking area sufficient to accommodate not fewer than four (4) car spaces for each one thousand (1,000) square feet of Building Area on such parcel.

(iii) Service Drive. Developer agrees that if on Exhibit "A" hereof a service drive is delineated on Tract 2 by crosshatching and is labeled as a service drive, it shall develop the same simultaneously with the development and construction on Tract 1 by Wal-Mart. In the event Developer does not comply with the provisions of the preceding sentence, in addition to any other legal remedies, Wal-Mart shall have the right to cause the service drive delineated on Tract 2 to be developed and to be reimbursed by Developer for its cost in doing such construction.

(b) Maintenance.

(i) Standards. Following completion of the improvements on the Common Areas, the parties hereto shall each maintain the Common Areas located in their respective parcel 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.

(ii) Expenses. The respective owners shall pay the maintenance expenses of their parcels.

(iii) 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 main-

tenance expense paid by the respective owners of the Common Areas.

(c) Taxes. Each of the parties 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.

6. Signs. No sign shall be located on the Common Areas on Parcel A and Parcel B except signs advertising business conducted thereon. The parties agree that there shall be no more than two (2) free-standing signs on the Common Areas on Parcel A and two (2) free-standing signs on the Common Areas on Parcel B. The parties agree that there shall be a single pylon sign identifying the Shopping Center located at the location indicated on Exhibit "A" to this Agreement (the "Sign Location"), which sign may also identify any development which Developer subsequently constructs on its existing property lying immediately to the north of the Shopping Center. The parties acknowledge that the Sign Location is located on other property owned by Developer to the north of the Shopping Center. Developer hereby grants an easement for such sign in favor of the Shopping Center property over the property described on Exhibit "D" (being a 10' by 10' parcel located immediately to the north of the northeast corner of the property). Wal-Mart may initially place a standard Wal-Mart pylon sign at the Sign Location at Wal-Mart's cost, provided that Developer shall thereafter have the right to replace such sign (at Developer's sole cost and expense) with a monument pylon sign identifying both the Shopping Center and Developer's property located to the north of the Shopping Center, provided that Wal-Mart's name shall be placed on the top of such sign so long as Wal-Mart owns and leases any part of the Shopping Center. No signs shall obstruct the ingress and egress shown on Exhibit "A".

7. Indemnification/Insurance.

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

(b) Insurance.

(i) Each party 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 \$1,000,000.00 for injury or death of a single person, and to the limit of not less than \$1,000,000.00 for any one occurrence, and to the limit of not less than \$100,000.00 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 cancelled without ten (10) days' prior written notice to the other party.

(ii) At all times during the term of this Agreement, each party 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.

(iii) Policies of insurance provided for in this paragraph 7 shall name Wal-Mart 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.

(iv) Wal-Mart, for itself and its property insurer, hereby releases Developer, and Developer, for itself and its property insurer, hereby releases Wal-Mart 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 Wal-Mart 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.

(v) Notwithstanding anything to the contrary contained in this paragraph 7, so long as the net worth of Wal-Mart shall exceed One Hundred Million Dollars (\$100,000,000.00), and so long as either Wal-Mart is owner or lessee of Parcel A, Wal-Mart shall have the right to retain the financial risk for up to One Million Five Hundred Thousand Dollars (\$1,500,000.00) per claim.

8. Eminent Domain.

(a) Owner's Right To Award. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's parcel or giving the public or any government any rights in said parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on Parcel A and Parcel B, 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 8 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 parcel 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.

9. Rights And Obligations Of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon the parcel 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 parcel. Except as set forth in the

preceding sentence, however, any holder of a first lien on Parcel A and Parcel B, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

10. Release From Liability. Any person acquiring fee or leasehold title to Parcel A and Parcel B shall be bound by this Agreement only as to the parcel or portion of the parcel 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 parcel or portion of the parcel, 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 parcels running with the land.

11. Breach. In the event of breach or threatened breach of this Agreement, only all record owners of Parcel A as a group, or all record owners of Parcel B as a group, or Wal-Mart so long as it or any affiliate has an interest as owner or lessee of Parcel A, or Developer so long as it or any affiliate has an interest as owner or lessee of Parcel B, 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 attorneys' fees, which shall be deemed to have accrued on the date such action was filed.

12. Rights of Successor. 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.

13. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by both Developer and Wal-Mart, there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or cancelled only by the mutual agreement of Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of Parcel A, and Developer as long as it or its affiliate has any interest as either owner or lessor of Parcel B.

14. Miscellaneous Easements and Access Rights.

(a) Access to South Development. Developer and Wal-Mart agree that the Shopping Center shall be connected to Developer's existing development to the south of the Shopping Center (the "South Development") by two two-lane access drives at the locations indicated on Exhibit "A" attached hereto. Wal-Mart shall construct the western access at its sole cost and expense at the same time it constructs its premises on Parcel A. Developer shall construct the eastern bridge at its sole cost and expense at such time as Developer determines that the traffic between the Shopping Center and the South Development warrants it. Each party shall maintain the access constructed by it at its own cost and expense. All construction and maintenance pursuant to this paragraph 14(a) shall wholly comply with all applicable building codes and regulations. Developer and Wal-Mart hereby grant to each other and their respective guests, tenants, invitees, licensees, heirs, successors and assigns, reciprocal easements for ingress, egress and access over the said bridges and over the respective Common Areas of the Shopping Center and the South Development.

(b) Access Easements to and from Parcel A and Parcel B. Wal-Mart hereby grants to Developer and to Developer's guests, tenants, invitees, licensees, heirs, successors and assigns,

assigns two (2) easements for ingress, egress and access over portions of that part of Parcel A designated as the "Expanded Parking Lot" to provide access between Parcel A and Parcel B (the "Lot Access Easements"). The location of the Lot Access Easements is depicted on Exhibit "A" and a more particular description of the Lot Access Easements is attached hereto as Exhibit "E".

(c) Construction Along Common Building Boundary Line.
The parties acknowledge that Wal-Mart presently plans to construct its building on Parcel A so that the north wall of such building will be directly on the north boundary of Parcel A and further acknowledges that Developer may construct a building on property owned by it to be north of the Shopping Center (the "North Property") which would also be on the property line between the Shopping Center and the North Property. Each party agrees to permit the other to build their proposed buildings along the said property line, subject to the following provisions:

(i) In order to accommodate any footings, foundations, columns or walls which may be constructed or reconstructed immediately adjacent to a common boundary line and which may overlap that common boundary line, each party grants to each other party a nonexclusive easement in, to, over, under and across that portion of its parcel adjacent to such common boundary line in space not theretofore occupied by any then existing structure for the construction, maintenance and replacement of footings to a maximum distance of three (3) feet onto the grantor's parcel and for the construction, replacement and maintenance of foundations, columns, or walls to a maximum distance of six inches (6") onto the grantor's parcel. The grant of easement shall include the reasonable right of access necessary to exercise and enjoy such grant. The easement shall continue in effect for the term of this Agreement and thereafter for so long as the building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such building if the same shall be destroyed, damaged, or demolished) and shall include the reasonable right of access necessary to exercise and enjoy such grant. Prior to utilizing such easement, the grantee party shall advise the grantor party of its intention to use the same, shall provide plans and specifications and proposed construction techniques for the improvements to be located within the easement area, and shall give the grantor party an opportunity to commence any construction activities which such party contemplates undertaking at approximately the same time to the end that each party involved shall be able to utilize subterranean construction techniques which will permit the placement above ground of a building on each parcel immediately adjacent to the common boundary line. If a common subterranean construction element is used by the parties, it is specifically understood that each shall assume and pay its reasonable share of the cost and expense of the initial construction and, so long as both parties are benefiting therefrom, subsequent maintenance thereof. In the event any building utilizing a common subterranean element is destroyed and not replaced or is removed, the common subterranean construction element shall be left in place for the benefit of any building utilizing the same located on the adjoining parcel.

(ii) The second party to construct a building along the common boundary line between parcels shall do so in a manner that does not result in damage to the improvements in place on the adjoining parcel, shall hold and shall be harmless the first party from and against any and all liability resulting from the second party's actions, and shall further undertake and assume at its sole cost the obligation of completing and maintaining the nominal attachment (flashing and seal) of its building to the existing building on the other parcel, it being the intent of

parties to establish and maintain the appearance of one continuous building complex. In performing such attachment, the wall of one building shall not receive support from nor apply pressure to the wall of the other building.

(iii) The provisions of this paragraph 14(c) are intended to run under the land and are intended to benefit (A) Wal-Mart and any successor owner or lessee of Parcel A and (B) Developer and any successor owner or lessee of the North Property.

(d) Shared Access and Utility Covenant. Wal-Mart, as owner of Parcel A, and Developer, as owner of Parcel B and the North Property, hereby grant to each other and their respective guests, tenants, invitees, licensees, heirs, successors and assigns a reciprocal easement for ingress, egress and access and for public utilities over the portions of the Shopping Center and the North Property outlined on Exhibit "A" and the "Shared Access and Utility Easement," as more particularly described in Exhibit "F".

15. Non-Merger. So long as Wal-Mart or its affiliate is owner or lessee of Parcel A, this Agreement shall not be subject to the doctrine of merger.

16. Duration. Unless otherwise cancelled or terminated, this Agreement and all the easements, rights and obligations hereof shall automatically terminate and be of no further force and effect after fifty-seven (57) years from the date hereof.

17. 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.

18. 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.

19. Governing Law. This Agreement shall be governed by the laws of the State of Wyoming.

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

POWDER BASIN PROPERTIES, a
Wyoming general partnership

By Howard T. Grace V.P.
Its W.M. GRACE DEV. CO., A GENERAL PARTNER
"Developer"

STATE OF ARIZONA)
) ss.
County of Maricopa)

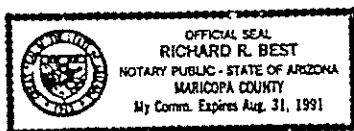
On this 27th day of June, 1990, before me, the undersigned officer, personally appeared Howard T. Grace, who acknowledged himself to be VICE PRESIDENT of W.M. GRACE DEV. CO. of POWDER BASIN PROPERTIES, a Wyoming general partnership, and that he, in such capacity, being authorized so to do, executed the

foregoing instrument for the purposes therein contained by signing the name of the general partnership by himself.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

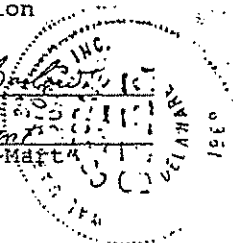
[Signature]
Notary Public

My Commission Expires:



WAL-MART STORES, INC.,
a Delaware corporation

By: Curtis H. Barlow
Its Vice President
"Wal-Mart"



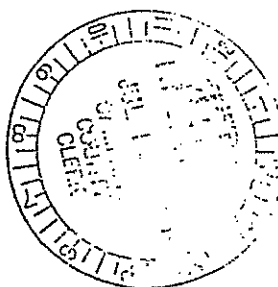
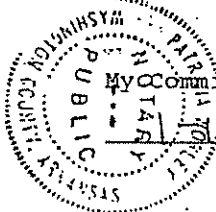
STATE OF Arizona)
County of Washington) ss.

On this 30th day of July, 1990, before me, the under-
signed officer, personally appeared Curtis H. Barlow,
who acknowledged himself to be Vice President of
WAL-MART STORES, INC., a Delaware corporation, and that he, in
such capacity, being authorized so to do, executed the foregoing
instrument for the purposes therein contained by signing the name
of the corporation by himself.

IN WITNESS WHEREOF, I hereunto set my hand and official
seal.

[Signature]
Notary Public

My Commission Expires:



EXHIBITS

Exhibit A	Plan
Exhibit B	Parcel A
Exhibit C	Parcel B
Exhibit D	Sign Easement
Exhibit E	Lot Access Easement
Exhibit F	Shared Access and Utility Easement

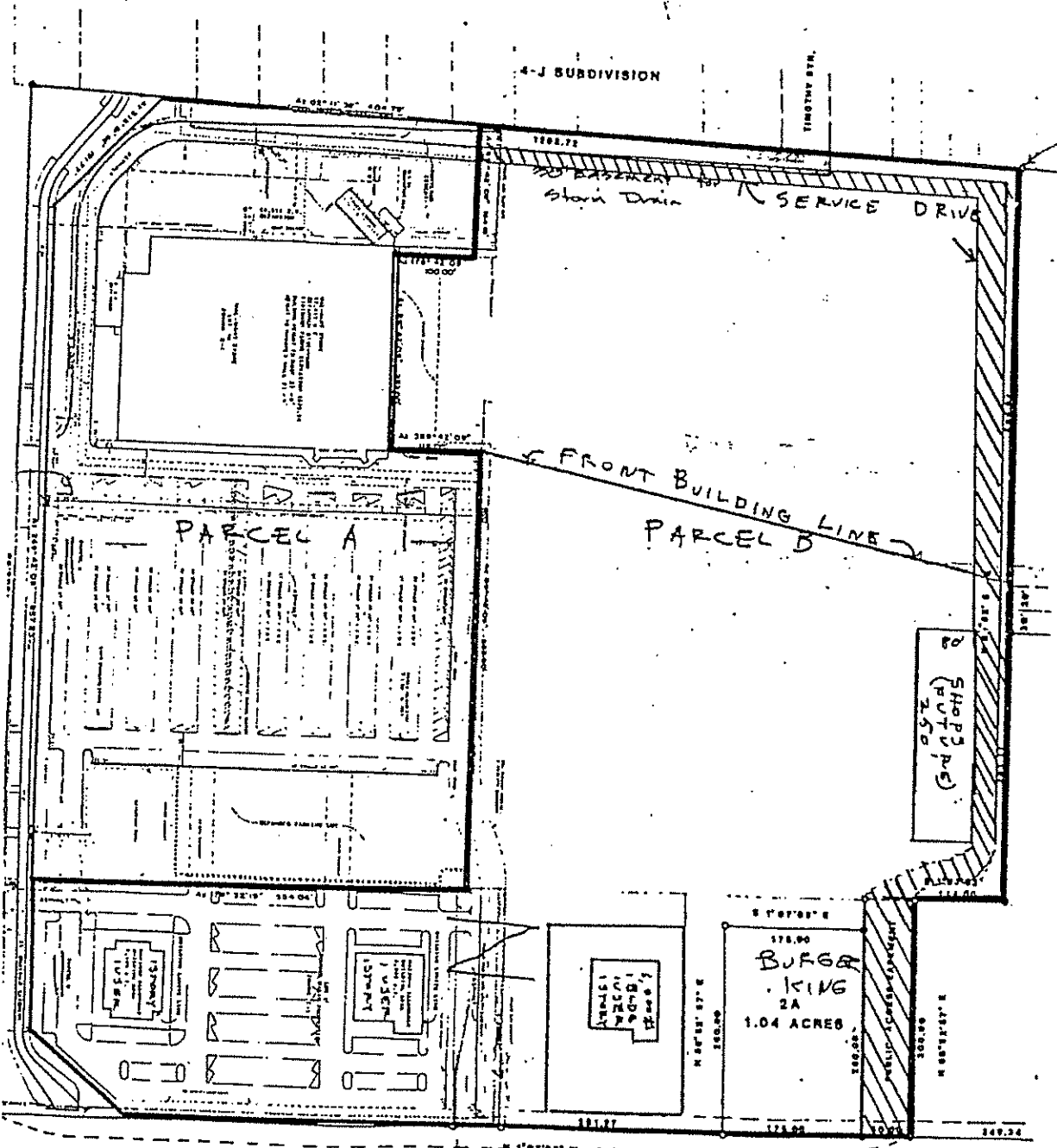


Exhibit "A"
DEVELOPMENT
PLAN

Parcel A

LEGAL DESCRIPTION

Lot 1B of the Resubdivision of Lot 1A of Block 1 of the resubdivision of Lots 1, 2, 3 and 4 of Block 1 of the Homestead Addition to the City of Gillette, Campbell County, Wyoming, being located in the Northeast quarter of Section 34, Township 50 North, Range 72 West, 6th P.M.

EXHIBIT "C"

Parcel 8

LEGAL DESCRIPTION

A portion of Lot 1C of the Resubdivision of Lot 1A of Block 1 of the Resubdivision of Lots 1,2,3 and 4 of Block 1 of the Homestead Addition to, the City of Gillette, Campbell County, Wyoming being located in the NE 1/4 of Section 34, T50N, R72W, 6th P.M. and more particularly described as follows:

Commencing at a 3/4" iron pin monumenting the SW corner of Lot 1C and the NW corner of Tract 1 of the Powder Basin Center Subdivision, said pin being the point of beginning and lying on the Easterly Boundary line of the 4-J Subdivision and S 2° 11' 38" W a distance of 1,697.88 feet from 2" brass cap monumenting the North 1/4 corner of Section 34;

Thence N 2° 11' 38" E along said Easterly Boundary of 4-J Subdivision a distance of 168.71 feet to a 2" iron pipe monumenting the Southwesterly corner of Lot 1B;

Thence S 46° 08' 08" E, 191.77 feet to an "x" chiselled in the concrete slope paving which monuments the Southwesterly angle point in the boundary of Lot 1B;

Thence N 89° 42' 09" E, 857.23 feet to a 2" iron pipe monumenting the SE corner of Lot 1B;

Thence N 1° 07' 41" W along the Easterly Boundary line of Lot 1B, 554.06 feet to a 2" iron pipe monumenting the NE corner of Lot 1B;

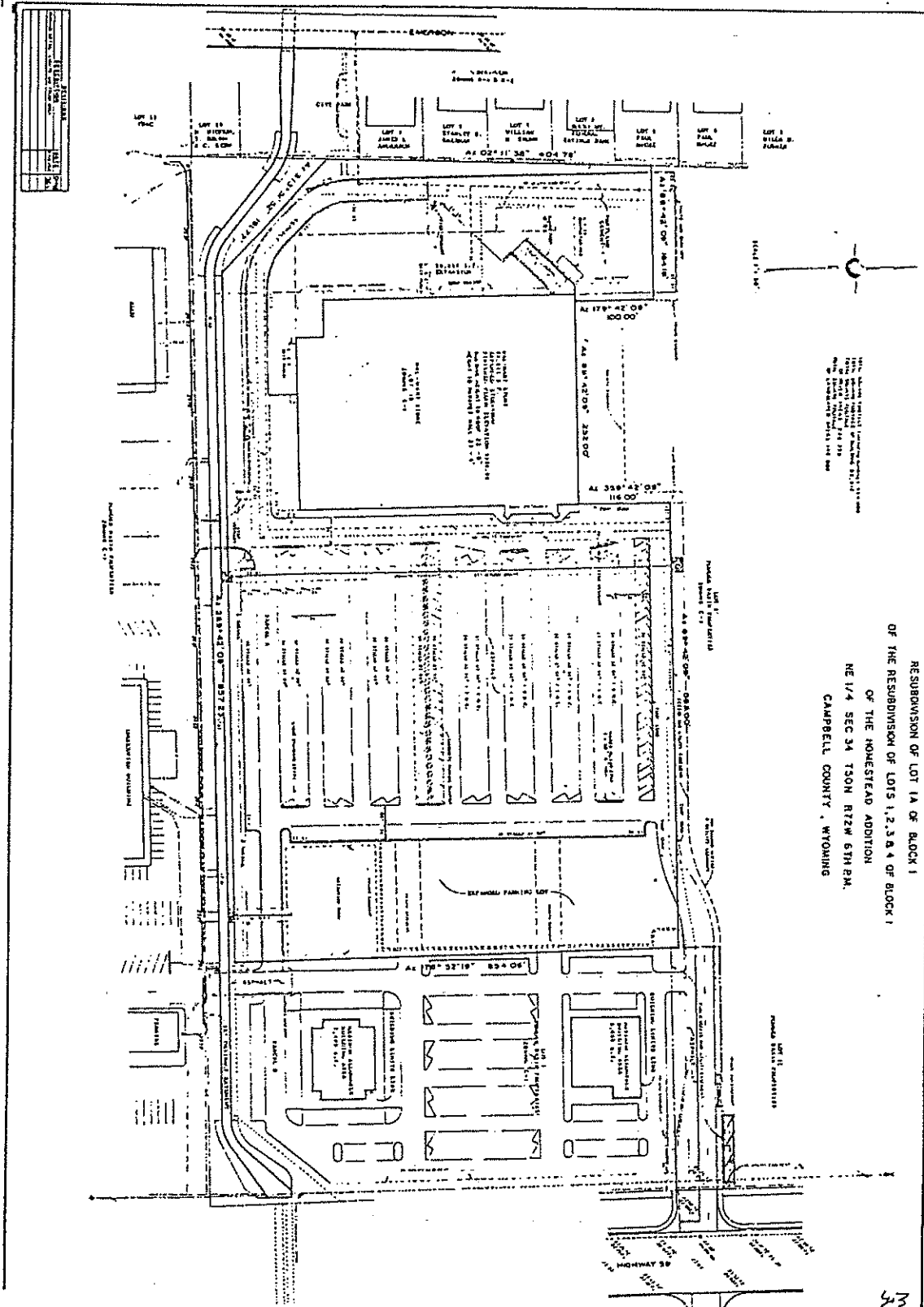
Thence N 0° 58' 39" W, 50.78 feet to rebar with aluminum cap lying on the north line of a public access and utility easement;

Thence N 89° 42' 09" E along said North line, 300.00 feet to the point of intersection with the Westerly Right of Way line for Highway #59;

Thence S 1° 07' 03" E along said Right of Way, 639.79 feet to a rebar with plastic cap monumenting the SE corner of Lot 1C, and the NE corner of Tract 3 of the Powder Basin Center Subdivision;

Thence S 89° 42' 09" W along the boundary line common to Lot 1C and Powder Basin Center Subdivision, 1,302.66 feet to a 3/4" iron pipe and the point of beginning.

EXHIBIT "D"
SIGNAGE EASEMENT

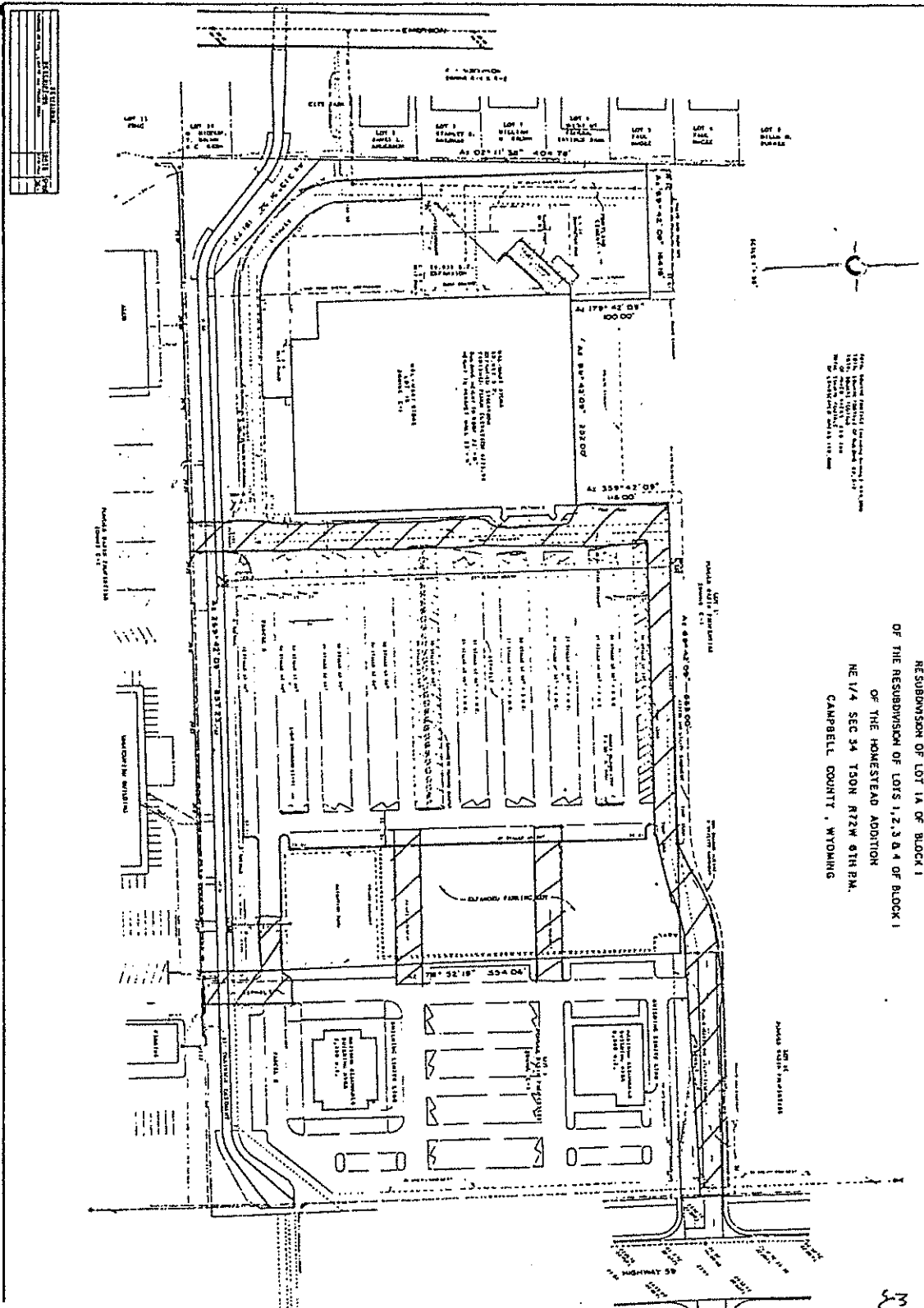


PROJECT WAL-MART STORE
GILLETTE, WYOMING
DEVELOPMENT PLAN

INTERMOUNTAIN
PROFESSIONAL SERVICES
INC.
1000 NORTH 2000
SPOKANE, IDAHO 83401

PROJECT 1780
DATE 10/20/00
SURVEYOR TPA, TPA, JCB
DRAWN BY STAFF

EXHIBIT "E"
LOT ACCESS EASEMENT



Sheet 1
N

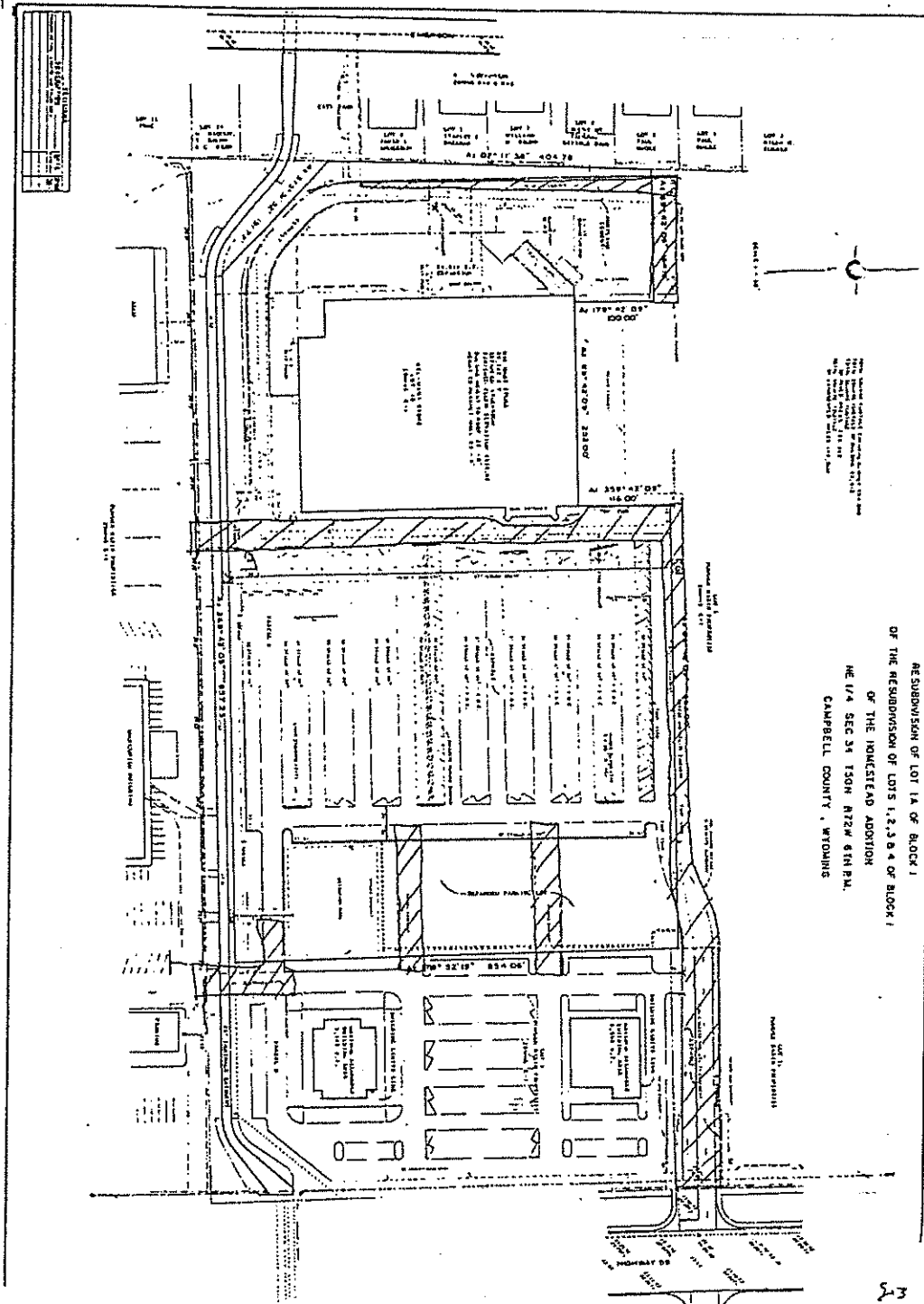
PROJECT WAL-MART STORE
GILLETTE, WYOMING
DEVELOPMENT PLAN

INTERMOUNTAIN
PROFESSIONAL SERVICES
INC.

PROJECT WAL-MART STORE
DATE 10/20/00
SUBMITTER TWP. TWP. JOB
DRAWN BY STAFF

EXHIBIT "F"

SHARED ACCESS AND UTILITY EASEMENT



RESUBDIVISION OF LOT 1A OF BLOCK 1
OF THE RESUBDIVISION OF LOTS 1, 2, 3 & 4 OF BLOCK 1
NE 1/4 SEC 35 T50N R72W 65TH PM.
CAMPBELL COUNTY, WYOMING

PROJECT WAL-MART STORE
GILLETTE, WYOMING
DEVELOPMENT PLAN

INTERMOUNTAIN
PROFESSIONAL SERVICES
INC.

PROJECT 1704
DATE 3/29/90
SHEET 1 OF 2
DRAWN BY STAFF

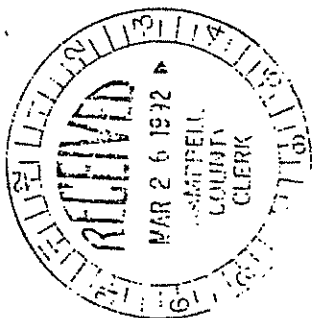
STATE OF WYOMING
Campbell County
Filed for record this 19th day of July A.D. 1990 at 4:24 o'clock P.M. and recorded in Book 1111
of Photos page 290-306 Fees \$ 36.00
by Shirley E. Addison RECORDED
County Clerk and Ex-Officio Register of Deeds ABSTRACTED
INDEXED
CHECKED

638330

By Margaret A. Smith
Deputy

When Recorded, Return To:

Shawn E. Tobin, Esq.
Gammage & Burnham
Two North Central Avenue
18th Floor
Phoenix, Arizona 85004



SUBDIVISION IMPROVEMENT AGREEMENT

WHEREAS, Powder Basin Properties, a Wyoming general partnership ("Powder Basin"), is presently the owner of all of Lot 1C of Block 1 of the resubdivision of Lot 1A of Block 1 of the resubdivision of Lots 1, 2, 3 and 4 of Block 1 of the Homestead Addition, situated in the Northeast one-quarter (1/4) of Section 34, Township 50 North, Range 72 East, 6th P.M., Campbell County, Wyoming (the "Existing Property");

WHEREAS, Powder Basin has contracted to sell a portion of the Existing Property to GFI-Gillette Investments Limited Partnership, a Utah limited partnership ("GFI"), which entity plans to develop a K-Mart Store on its property;

WHEREAS, in connection with the proposed sale to GFI, Powder Basin has requested that the City of Gillette (the "City") agree to a subdivision of the Existing Property, as shown on the new plat of the Existing Property to be recorded contemporaneously with this Agreement (the "Plat");

WHEREAS, in consideration of the City approving the resubdivision of the Existing Property and of the Plat, the City has requested that Powder Basin (or its successors in title) agree to construct certain access and utility improvements prior to development of Lots 2B, 2C, 2D and 2E of the Existing Property, as shown on the Plat;

NOW, THEREFORE, Powder Basin agrees as follows:

1. **Obligations with Respect to Lot 2E.** Powder Basin agrees that before the owner or any lessee of Lot 2E (the "Lot 2E Owner") commences any development on Lot 2E, as shown on the Plat, and as a condition precedent to the City issuing a building permit for such development, the Lot 2E Owner shall construct the following:

(a) If the Owner of Lot 2B has not previously done so, the Lot 2E Owner shall construct a sewer line in sufficient capacity to serve the proposed development on Lot 2E from Highway 59 to Parcel 2E and shall "stub off" the sewer line to serve Lot 2B. The sewer line shall be constructed in the "Easement for Lots 2B and 2E for Private Sanitary Sewer Service to Sanitary Sewer Main in Highway 59," as shown on the Plat along the north and east boundaries of Lot 2B and crossing Lot 1D.

2. **Obligations with respect to Lot 2B.** Powder Basin agrees that before the owner or any lessee of Lot 2B (the "Lot 2B Owner") commences any development on Lot 2B, as shown on the Plat, and as a condition precedent to the City issuing a building permit for such development, the Lot 2B Owner shall construct the following:

(a) If Lot 2E has not previously been developed, the Lot 2B Owner shall construct the sewer line referred to in paragraph 1(b) above to service Lot 2E, which sewer line shall serve both Lot 2B and Lot 2E.

(b) The Lot 2B Owner shall also grade and pave a two-lane private roadway providing access to Lot 2B from the Public Access and General Utility Easement located on the southern boundary of Lot 2B. The private roadway shall be located in the Public Access Easement located along the western boundary of Lot 2B.

(c) The Lot 2B Owner shall construct a twelve inch (12") water line along the east boundary of Lot 2B so as to connect the existing water line at the southeast corner of Lot 2A to the existing water line at the southeast corner of Lot 2B.

3. **Obligations with Respect to Lot 2C.** Powder Basin agrees that before the owner or any lessee of Lot 2C (the Lot 2C Owner") commences any development on Lot 2C, as shown on the Plat, and as a condition precedent to the City issuing a building permit for such development, the Lot 2C Owner shall construct the following:

(a) If Lot 2C is developed before Lot 2D, the Lot 2C Owner shall construct a sewer line and a water line from the existing sanitary sewer and water mains in Highway 59 to the southeast corner of Lot 2C (being also the

northeast corner of Lot 2D) in sizes sufficient to handle the anticipated sewer and water needs of the likely development on Lots 2C and 2D. The Lot 2C Owner shall then (i) split the sewer and water lines to serve Lots 2C and 2D, (ii) "stub off" the water and sewer lines intended to serve Lot 2D and (iii) construct such sewer and water lines on Lot 2C as are necessary to serve the development thereof.

(b) If Lot 2C is developed after Lot 2D, the Lot 2C Owner shall be responsible only for constructing such sewer and water lines as are needed to serve the development on Lot 2C and connecting those lines to the "stubbed off" lines previously constructed by the Lot 2D Owner (see ¶ 4(a) below).

(c) If Lot 2C is developed before Lot 2D, the Lot 2C Owner shall grade and pave a two-lane private roadway providing access to Lot 2C from the Public Access and General Utility Easement located on the northern boundary of Lot 2C. The private roadway shall be located in the Public Access Easement located along the western boundary of Lot 2C.

4. **Obligations with Respect to Lot 2D.** Powder Basin agrees that before the owner or any lessee of Lot 2D (the "Lot 2D Owner") commences any development on Lot 2D, as shown on the Plat, and as a condition precedent to the City issuing a building permit for such development, the Lot 2D Owner shall construct the following:

(a) If Lot 2D is developed before Lot 2C, the Lot 2D Owner shall construct a sewer line and a water line from the existing sanitary sewer and water mains in Highway 59 to the southeast corner of Lot 2C (being also the northeast corner of Lot 2D) in sizes sufficient to handle the anticipated sewer and water needs of the likely development on Lots 2C and 2D. The Lot 2D Owner shall then (i) split the sewer and water lines to serve Lots 2C and 2D, (ii) "stub off" the water and sewer lines intended to serve Lot 2C and (iii) construct such sewer and water lines on Lot 2D as are necessary to serve the development thereof.

(b) If Lot 2D is developed after Lot 2C, the Lot 2D Owner shall be responsible only for constructing such sewer and water lines as are needed to serve the development on Lot 2D and connecting those lines to the "stubbed off" lines previously constructed by the Lot 2C Owner (see ¶ 3(a) above).

(c) The Lot 2D Owner shall grade and pave a two-lane private roadway providing access to Lot 2D from the Public Access and General Utility Easement located immediately north of the north line of Lot 2C. The private roadway shall be located in the Public Access Easement located along

the western boundary of Lot 2C. If the Lot 2C Owner has previously constructed the private roadway called for in paragraph 3(c) above, the Lot 2D Owner may satisfy its obligation hereunder by connecting its private roadway to the private roadway constructed by the Lot 2C Owner.

(d) The Lot 2D Owner shall construct a bridge over the storm drainage ditch located at the southwest corner of Lot 2D to connect Lot 2D to the existing development to the south.

5. **Construction Requirements.** All sewer and water lines which the various Lot Owners are required to construct hereunder shall be constructed to satisfy the standards established for such lines by the applicable utilities. Similarly, all private roadways to be constructed hereunder shall comply with applicable City standards for comparable private roadways. All private roadways to be constructed hereunder shall be standard size for two-lane traffic (one lane in either direction).

6. **Miscellaneous.**

(a) **Covenants Running with Land; Land Affected.** This Agreement is intended to be a covenant running with the land and shall bind all successor owners and/or lessees of Lots 2B, 2C, 2D or 2E of the Existing Property (as such Lots are set forth in the Plat). This Agreement shall not affect any other part of the Existing Property.

(b) **Recording.** This Agreement shall be recorded in the records of the Campbell County Recorder to provide notice to all potential purchasers and/or lessees of the contents of this Agreement.

(c) **No Personal Obligation.** Neither Powder Basin nor any subsequent owner or lessee of any Lot subject to this Agreement shall have any personal liability for constructing the improvements provided for herein nor shall there be any lien on any of the land if such improvements are not built. The only consequence for failure to construct the improvements provided for herein is that the owner and/or lessee of the affected Lot shall not be entitled to obtain a building permit from the City to construct any other improvements on their Lot until such improvements have been built (or satisfactory arrangements for their construction have been provided to the City).

(d) **Each Lot Separate.** Each Lot may satisfy the obligations provided for under this Agreement separately. Upon satisfaction of such obligations, such Lot shall be released from any further obligations under this Agreement. A Lot shall be conclusively deemed to have satisfied the requirements of this Agreement relating to that Lot upon the issuance of a building permit by the City for the construction of a building on such Lot.

IN WITNESS WHEREOF, the undersigned has executed this Subdivision Improvement Agreement as of the 19th day of March, 1992.

POWDER BASIN PROPERTIES,
a Wyoming general partnership

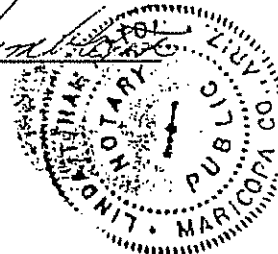
By: W.M. GRACE DEVELOPMENT
CO., an Arizona corporation, Its
General Partner

By *Howard T. Grace*
Its *Vice-President*

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 19th day of March, 1992, by *Howard T. Grace*, as *Vice-President* of W.M. GRACE DEVELOPMENT CO., an Arizona corporation, General Partner of POWDER BASIN PROPERTIES, a Wyoming general partnership, on behalf of the partnership.

Linda F. Hunt
Notary Public



My Commission Expires:
9/1/92

STATE OF WYOMING }
Campbell County } ss.
Filed for record this 26th day of March A.D. 1992 at 3:20 o'clock P.M. and recorded in Book 1183
of Photos on page 172-176 Fees \$ 14.00 **656813**
Shirley E. Addison RECORDED
County Clerk and Ex-Officio Register of Deeds INDEXED
CHECKED

By *Linda F. Hunt*
Deputy

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
GRANT OF EASEMENTS

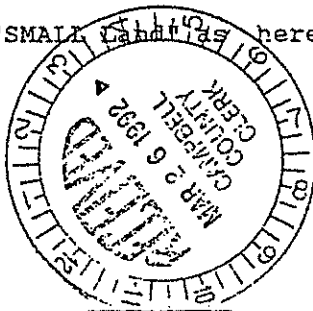
This Declaration of Covenants, Conditions and Restrictions and Grant of Easements (hereinafter referred to as the "Declaration"), is made and executed as of the 19th day of March, 1992, by and between GFI-GILLETTE INVESTMENTS LIMITED PARTNERSHIP, a Utah limited partnership (hereinafter referred to as "Declarant-GFI"), POWDER BASIN PROPERTIES, a Wyoming general partnership (hereinafter referred to as "Declarant-POWDER BASIN") and LAWRENCE and JILL SMALL, husband and wife (hereinafter referred to as "Declarant-SMALL"). Declarant-GFI, Declarant-POWDER BASIN and Declarant-SMALL are sometimes collectively referred to herein as "Declarants".

RECITALS:

A. Description of GFI Land. Declarant-GFI is the owner of the "GFI Land" as hereinafter defined, which Land is located in Campbell County, State of Wyoming, and more particularly described in Exhibit "A" attached hereto.

B. Description of POWDER BASIN Land. Declarant-POWDER BASIN is the owner of the "POWDER BASIN Land" as hereinafter defined, which Land is located adjacent to the GFI Land and is more particularly described in Exhibit "B" attached hereto.

C. Description of SMALL Land. Declarant-SMALL is the owner of the "SMALL Land" as hereinafter defined, which Land is



located adjacent to the GFI Land and the POWDER BASIN Land and is more particularly described in Exhibit "C" attached hereto.

D. Improvement of Subject Land. Declarant-GFI or its successors or assigns proposes to improve the GFI Land, Declarant-POWDER BASIN or its successors or assigns proposes to improve the POWDER BASIN Land, and Declarant-SMALL or its successors or assigns has improved and may further improve the SMALL Land, in a joint development as a "Shopping Center" in two or more phases under a general plan or scheme of development and for that purpose Declarants intend to hereby create and establish certain easements, restrictions, and obligations with respect to the GFI Land, the POWDER BASIN Land and the SMALL Land (collectively the "Subject Land").

E. Buildings on Subject Land. Declarant-GFI will construct a store located on the Building Area designated as Kmart on the GFI Land, as described herein (hereinafter also referred to as the "Kmart Parcel"), to be leased to Kmart Corporation (hereinafter "Kmart"), pursuant to that certain Lease (the "Kmart Lease") dated the 20th day of February, 1992, and Declarant-POWDER BASIN and Declarant SMALL have set aside certain portions of the POWDER BASIN Land and of the SMALL Land (collectively the "Building Areas") for future construction of structures or buildings, and the maintenance of an existing building, on the POWDER BASIN Land and on the SMALL Land, respectively.

F. Common Areas. Declarants will make and provide certain roadways, sidewalks, parking areas, mall, and utility improvements and facilities, including grading, surfacing, lighting, striping, planting, installation of sewer, water, electrical, and gas lines in, under, over, and upon the GFI Land, POWDER BASIN Land and SMALL Land and intend for such purposes to set aside certain portions of the GFI Land, POWDER BASIN Land and SMALL Land (hereinafter referred to as the "Common Areas").

G. Easements and Rights of Way. Declarants desire to establish and create for the benefit of each Building Area certain easements and rights-of-way for access over and upon the Common Areas.

H. Intent and Purpose. Declarants intend by recording this Declaration, together with the Exhibits attached hereto, to subject the Subject Land and all improvements situated or to be situated thereon to the provisions of this Declaration and to impose upon the Subject Land mutually beneficial restrictions for a general plan of improvement for the benefit of the Owners of all interests in the Subject Land.

NOW, THEREFORE, Declarants, as the Owners of the Subject Land for themselves and their legal representatives, successors, and assigns hereby declare and agree as follows:

ARTICLE I

DEFINITIONS

1.01. Defined Terms. Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.02. "GFI Land" shall mean the parcel of land consisting of approximately 9.640 acres, also referred to as the "Kmart Parcel", and/or "Lot 1D" and more particularly described in Exhibit "A" which is attached hereto and by this reference incorporated herein.

1.03. "POWDER BASIN Land" shall mean three separate parcels of land, namely, the first parcel consisting of approximately 5.616 acres and also referred to as "Major/Retail Parcel" and/or "Lot 1E", the second parcel consisting of approximately .906 acres, and also referred to as "Outlot 1" and/or "Lot 2E", and the third parcel consisting of approximately 2.085 acres and also referred to as the "Outlot 2" and/or "Lot 2B", all of which parcels are more particularly described in Exhibit "B" which is attached hereto and by this reference incorporated herein.

1.04. "SMALL Land" shall mean the parcel of land consisting of approximately 1.04 acres, also referred to as the "Burger King Parcel" and/or "Lot 2A", and more particularly described in Exhibit "C", which is attached hereto and by this reference incorporated herein.

1.05. "Subject Land" shall mean collectively the GFI Land, the POWDER BASIN Land and the SMALL Land.

1.06. "Shopping Center" shall mean all Parcels of land contained in the Subject Land and contains all Building Areas and Common Areas collectively. The Shopping Center shall be developed in two or more phases. The first phase consists of the development of the Kmart Parcel. The subsequent phases shall consist of the development of the remainder of POWDER BASIN Land. The SMALL Land is presently developed.

1.07. "Building Areas" shall mean the area or areas designated and set forth within each separate Parcel on the Site Plan such as "Kmart" within the Kmart Parcel, "Retail" and "Major" within the Major/Retail Parcel, "Retail" within Outlot 1, "Burger King" within the Burger King Parcel and "Retail" within Outlot 2 which shall be established pursuant to Article 3.03.

1.08. "Site Plan" shall mean the initial site plan attached hereto as Exhibit "D" and by this reference incorporated herein, as may be amended from time to time by the parties as set forth in this Declaration.

1.09. "Building" shall mean the structure or structures to be constructed within the Building Areas.

1.10. "Common Areas" shall mean those portions of the Shopping Center, (or Subject Land) including common facilities thereon, which are not Building Areas.

1.11. "Owner" shall mean the record owner of the fee title to a Parcel.

1.12. "Parcel" shall mean each separate parcel of land contained in the Shopping Center held by any record Owner and includes the Kmart Parcel described in Article D above.

1.13. "Responsible Owner" shall mean the Owner of the Kmart Parcel and the Owner of the Major/Retail Parcel. Responsible Owner shall also mean the lessee of the Kmart Parcel and/or the Major/Retail Parcel, under a ground lease or other lease having an initial term of twenty-five (25) years or longer so long as it is designated in the lease as the "Responsible Owner" for the purposes of this Agreement. In addition, Declarant-Powder Basin, so long as Declarant-Powder Basin owns any Parcel in the Shopping Center, is hereby designated as a Responsible Owner and Kmart is hereby also designated as a Responsible Owner.

1.14. "Floor Area" shall mean the area measured from exterior surface of exterior walls and from the center of common walls or interior demising partitions.

ARTICLE II

Common Plan. Declarants by this Declaration intend to establish a common plan for the development of the Subject Land in order to insure the protection and improvement of the Subject Land, and as hereinafter set forth, by this Declaration will establish certain easements, covenants, and reservations upon and subject to which the Subject Land will be used, held, leased, sold, or

conveyed by Declarants which easements, covenants, and reservations are intended for the benefit of the Subject Land and each Owner of any interest therein, whether present or future, and which shall inure and pass with the Subject Land and each and every interest therein. The Declarants hereby declare and acknowledge that the Subject Land is subject to the terms and provisions of the Easements with Covenants and Restrictions Affecting Land entered into on July 6, 1990, ("ECRs") by and between Declarant-POWDER BASIN and WAL-MART STORES, INC., a copy of which Covenants are attached hereto as Exhibit "E" and incorporated herein.

ARTICLE III

LAND USE

3.01. Permitted and Prohibited Uses. Except as otherwise provided in this Declaration, the Shopping Center and any portion thereof shall be used, if at all, only for the construction, operation, and maintenance thereon of retail, office, commercial or wholesale mercantile businesses, including without limitation the so-called fast food or drive-through restaurants, convenience stores, business and professional offices, financial institutions, and related facilities common to neighborhood-community type retail shopping centers, and for Common Areas relating to and necessary to the operation of the foregoing. The Shopping Center and any portion thereof shall not be used for warehousing (other than the temporary storage of fixtures,

equipment, and inventory by an occupant of the Shopping Center), industrial, manufacturing, or residential purposes, except for the storage and/or manufacture of such goods as are required as a necessary incident to the conduct of a particular retail mercantile business, business or professional office, financial institution or related facility situated in the Shopping Center. In no event shall any Building Area or portion thereof be used or operated for any use or purpose, and/or by any tenant or other occupant, which is not consistent and compatible with the intention of the parties, at all times during the term of this Agreement, to maintain and operate a first-class shopping center of a quality equal to that maintained and operated in other first-class shopping centers in the State of Wyoming.

3.02. No Interference with Common Areas. No use of the Shopping Center shall interfere with the use of the Common Areas within the Shopping Center for the purposes for which they were intended as provided in this Agreement or impede the free flow of vehicular or pedestrian traffic thereon. However, tenants and/or Owners of each Parcel shall have the right to conduct sidewalk or outdoor sales or entertainment within the Common Area within said Parcel.

3.03. Conformity to Site Plan. Declarants, or their successors and assigns, shall develop the Shopping Center in the manner shown in the Site Plan attached hereto as Exhibit "D". The Building Areas and the Common Areas within the GFI Land, the POWDER

BASIN Land and the SMALL Land are hereby established as set forth in the Site Plan. Declarant-GFI and Declarant-POWDER BASIN agree that they will develop the Kmart Parcel and POWDER BASIN Land, respectively, and related onsite and offsite improvements substantially in accordance with the Site Plan attached as Exhibit "D". Except as expressly set forth herein, any changes to the Exhibit "D" Site Plan may only be made with the prior written consent of the Responsible Owners, which consent shall not be unreasonably withheld if such changes do not materially and adversely impact upon or affect traffic flow, visibility, parking upon and access with respect to the Shopping Center. The Site Plan shall be amended to reflect any change in the development of the Building Areas and Common Areas as herein established and approved. Notwithstanding any provision of this Agreement, the exact location of the Building Area located on Outlot 2 may be changed subject to the approval of the Declarant Powder-Basin, or its successors or assigns. In no event shall the parking ratio within any Parcel be less than four spaces per 1,000 feet of Floor Area of all Buildings within that Parcel, and at no time shall any Owner use any parking spaces within another Parcel to satisfy the required parking ratio, provided that any Owner may use parking spaces located within another Parcel to satisfy any parking ratios greater than four spaces per 1,000 feet for a proposed use which parking ratios are imposed by the City of Gillette.

Notwithstanding any other provision in this Agreement to the contrary, no obligation exists on the part of Declarant-Small to alter any existing development on the Small Land existing at the recording of this Agreement, including the site improvements, or structures or buildings, thereon or the type of business operated thereon at the date of the recording of this Agreement, to comply with the terms and conditions of this Agreement.

ARTICLE IV

RESTRICTIONS OF USE OF BUILDING AREAS

4.01. Building Design and Construction. Each Building or other improvement (including signs) to be constructed, altered, remodeled, repaired, or reconstructed in the Shopping Center shall be architecturally harmonious and compatible with the other Buildings and improvements from time-to-time located in the Shopping Center, except that if Outlot 2 is sold or leased to a national or regional chain (e.g., Pizza Hut), the Building on Outlot 2 may be constructed in accordance with the standard plans and specifications for that chain. All construction of Buildings and modifications to the exterior of existing Buildings constructed within the Shopping Center, except the Kmart Building, shall be subject to the prior written approval of all Responsible Owners, which approvals shall not be unreasonably withheld. No modifications to the elevation and exterior appearances, including changes of materials and colors, for Buildings in the Shopping Center, except the Kmart Building, shall take place prior to such

approval, which approvals shall not be unreasonably withheld. All construction, alteration, and repair work relative to the Shopping Center shall be accomplished in an expeditious manner, in compliance with all laws, rules, regulations, orders, permits, approvals, and licenses of governmental authorities having jurisdiction. The Owner undertaking such work shall take all necessary measures to minimize any disruption or inconvenience caused by such work. Such work shall be accomplished in such a manner as to minimize any damage or adverse effect which might be caused by such work to any other party or to the Parcel on which the work is being done or any other Parcel in the Shopping Center. The Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work and shall restore the affected portion of the Parcel upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, the Owner undertaking such work shall promptly pay all costs and expenses associated therewith and shall indemnify and hold all Owners harmless from all damages, losses, or claims, including reasonable attorneys fees, attributable to the performance of such work. Except in cases of emergency or the prior consent of the Responsible Owners, all such work shall be undertaken only after giving said Responsible Owners thirty (30) days' prior written notice of the work to be undertaken, the scope

and nature of the work, the duration of the work, and the area in which the work is to be performed.

4.02. Building Height. Subject to the terms of the ECRs, in no event shall any Building in the Shopping Center be of a height in excess of thirty feet (30'), provided that any Building to be located in the Building Areas designated as Outlot 1, Outlot 2, and Burger King on Exhibit "D" may be of a height not exceeding twenty-five feet (25'). For the purposes of this Section 4.02, height shall be measured from finished grade of floor to the highest point of the Building.

4.03. Automatic Sprinklers. Every Building shall be either equipped with automatic sprinkler systems which meet all the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating of any Building built upon any other Building Area. The purpose of this paragraph is to allow Buildings built on each Building Area to be fire-rated as separate and distinct units without deficiency charge.

4.04. Location and Size of Buildings. Subject to the restrictions set forth in this Agreement, all Buildings shall be placed or constructed upon the respective Parcel in the Shopping Center only within the Building Areas as herein defined. No Buildings shall be placed or constructed in the Shopping Center within the Common Areas, except pylon signs, directional signs, bumper guards or curbs, landscape planters, lighting standards, and

other landscaping or other improvements as may be required under applicable controls and regulations of the County of Campbell or the City of Gillette, Wyoming. In addition, subject to the provisions of Section 4.01, any Owner may construct, install, repair, remove, replace, and maintain sidewalks and walkways, and canopies and marquees (with signs which may be affixed thereto) which may encroach a reasonable distance (not to exceed fifteen feet (15')) over or upon, as the case may be, the sidewalks and walkways contiguous to the Building Area. The Building Area of each Parcel may, but need not be developed to the full gross square footage of Floor Area as set forth on Exhibit "D" as amended or as allowed in Section 3.03; provided, however, except as provided in the preceding sentence, no Building located on any Building Area may be extended beyond the boundaries of the Building Area as shown on Exhibit "D" as amended, nor may a Building be enlarged after it is initially constructed in such a manner that will enlarge it beyond the original Building Area or reduce the parking ratio on the applicable Parcel below four (4) spaces per 1,000 square feet without the prior written consent of all the Responsible Owners, which consent shall not be unreasonably withheld if such additions do not materially and adversely impact upon or affect traffic flow, visibility, parking upon and access with respect to the Shopping Center and the respective Parcels.

4.05. Outlot Parcels Size and Location. The Building Area as designated within Outlot 1 may be developed into not more

than one (1) building, which shall not exceed ten thousand square feet (10,000 sq. ft.) in Floor Area. The Building Area as designated within Outlot 2 pursuant to Section 3.03 may be developed into not more than one (1) building, which shall not exceed six thousand square feet (6,000 sq. ft.) in Floor Area.

4.06. Maintenance of Buildings. The Owner of each Parcel in the Shopping Center shall maintain, or cause to be maintained, in a safe, clean, and tenantable condition and in good order and repair, consistent in manner and appearance with a first-class shopping center, all buildings (including, but not limited to, all loading docks, truck facilities, and compactor areas) located on its respective Parcel.

4.07 Construction Along Common Building Boundary Line. The parties acknowledge that Declarant-GFI presently plans to construct the Kmart Building on the Kmart Parcel so that the South wall of such Building will be directly on the South boundary of the Kmart Parcel and further acknowledges that Declarant-Powder Basin may construct a Building on the Major/Retail Parcel which would also be on the property line between the Kmart Parcel and the Major/Retail Parcel. Each party agrees to permit the other to build their proposed buildings along the said property line, subject to the following provisions:

(a) In order to accommodate any footings, foundations, columns or walls which may be constructed or reconstructed immediately adjacent to a common boundary line

and which may overlap that common boundary line, each party grants to each other party a nonexclusive easement in, to, over, under and across that portion of its parcel adjacent to such common boundary line in space not theretofore occupied by any then existing structure for the construction, maintenance and replacement of footings to a maximum distance of three (3) feet onto the grantor's parcel and for the construction, replacement and maintenance of foundations, columns, or walls to a maximum distance of six inches (6") onto the grantor's parcel. The grant of easement shall include the reasonable right of access necessary to exercise and enjoy such grant. The easement shall continue in effect for the term of this Agreement and thereafter for so long as the building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such building if the same shall be destroyed, damaged, or demolished) and shall include the reasonable right of access necessary to exercise and enjoy such grant. Prior to utilizing such easement, the grantee party shall advise the grantor party of its intention to use the same, shall provide plans and specifications and proposed construction techniques for the improvements to be located within the easement area, and shall give the grantor party an opportunity to commence any construction activities which such party contemplates undertaking at approximately the same time to the end that each party involved shall be able to

utilize subterranean construction techniques which will permit the placement above ground of a building on each parcel immediately adjacent to the common boundary line. If a common subterranean construction element is used by the parties, it is specifically understood that each shall assume and pay its reasonable share of the cost and expense of the initial construction and, so long as both parties are benefiting therefrom, subsequent maintenance thereof. In the event any building utilizing a common subterranean element is destroyed and not replaced or is removed, the common subterranean construction element shall be left in place for the benefit of any building utilizing the same located on the adjoining parcel.

(b) The second party to construct a building along the common boundary line between Parcels shall do so in a manner that does not result in damage to the improvements in place on the adjoining Parcel, shall hold and save harmless the first party from and against any and all liability resulting from the second party's actions, and further shall undertake and assume at its sole cost the obligation of completing and maintaining the nominal attachment (flashing and seal) of its building to the existing building on the other Parcel, it being the intent of the parties to establish and maintain the appearance of one continuous building complex. In performing such attachment, the wall of one

building shall not receive support from nor apply pressure to the wall of the other building.

ARTICLE V

COMMON AREAS

5.01. Use of Common Areas. The Common Areas shall be used for the following purposes only:

(a) The parking of passenger vehicles and pedestrian and vehicular traffic.

(b) The installation, maintenance, and operation of underground common and/or public utilities services serving any of the Building Areas, together with and including vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, conduits, and related facilities on site, storm drainage piping, and retention and detention ponds, and related facilities, and sewage facilities, all of which (except hydrants) shall, to the extent reasonably possible, be even with or below the surface of the ground.

(c) The location of mail boxes, public telephones, newspaper racks, and benches for the comfort and convenience of customers, visitors, invitees, licensees, and patrons of mercantile, restaurants, business or professional establishments and occupants located or to be located upon any of the Building Areas or any portion thereof, as the Declarants and their legal representatives, successors, assigns, or grantees may from time-to-time deem appropriate.

(d) The construction, maintenance, repair, replacement, rearrangement, and reconstruction of parking sites or stalls, streets, sidewalks, ramps, driveways, lanes, curbs, gutters, traffic control areas, signals, traffic islands, and traffic and parking lighting facilities.

(e) The construction, maintenance, repair, replacement, and reconstruction of pylon signs (with appropriate underground electrical connections), if otherwise permitted.

(f) The construction, maintenance, repair, replacement, and reconstruction of any mall or landscaped areas including planters, planting boxes, edgers, decorative walls, and sprinklers and valves.

(g) The ingress and egress of customers, visitors, invitees, licensees, and patrons (and their vehicles) of mercantile, business, or professional establishments located on the Building Areas and to and from any public streets adjacent thereto, and the ingress and egress of delivery and service trucks and vehicles to and from the Building Areas or any portion thereof and to and from any public streets adjacent thereto, for the delivery of goods, wares, merchandise, and the rendition of services to Owners and their respective heirs, successors, grantees, assigns, and lessees.

(h) The ingress and egress of any of the persons designated in Paragraph (g) above and their vehicles, to and

from any portion of any Building Area and to and from the public streets adjacent thereto.

(i) Subject to adequate provision for the uses set forth in the other paragraphs in this Section 5.01, the rearrangement and reconstruction of truck loading and unloading areas, including ramps, docks, and similar facilities and trash, refuse, and garbage container storage areas.

(j) The temporary parking of trucks, tractors, trailers, and other delivery vehicles used in conjunction with the exercise of any of the activities described in Paragraph (g) above.

(k) Subject to the foregoing limitations and restrictions, during the course of construction of any Buildings which may hereafter be constructed upon any of the Building Areas, those portions of the Common Areas immediately adjacent thereto may be used by the Owner of the Building Area, or, with such Owner's written consent, by the tenant thereof for the temporary storage of construction materials and equipment used and to be used in connection with the construction of the Building, provided that such use thereof does not unreasonably interfere with the normal use of such Common Areas; provided, however, that no such temporary storage shall be allowed on the Kmart Parcel without the prior written consent of Kmart if then a lessee.

(1) The conducting of sidewalk or outdoor sales or entertainment by the Owner or lessee thereof of the Parcel containing said Common Area provided that such sales are conducted within said Parcel.

5.02. Prohibited Use of Common Areas. The Common Areas shall not at any time be used for the parking of trucks (other than passenger trucks) or the loading or unloading thereof, except for the parking, loading or unloading of trucks during and in connection with construction of Buildings upon any of the Building Areas and the servicing and supplying of Building Areas; provided, however, that if at all possible such service and supplies shall be provided to the Building Areas from the Common Area at the rear of the Building Areas, the delivery or removal of trade fixtures, including signs, or the construction, repair, or maintenance of parking areas and improvements and facilities herein permitted, upon the condition, however, that any such use shall be confined to the portion of the Common Areas which is reasonably necessary in connection with the matters herein specified and shall be diligently and promptly completed.

5.03. Parking and Associated Areas. All driving aisles, parking aisles, driveways, and parking areas contained within the Common Areas shall be properly graded, leveled, and paved with concrete or asphalt and shall also be properly marked with painted lines for the orderly flow of traffic and the parking of motor vehicles. All parking areas within the Common Areas shall be

provided with appropriate access to driving aisles and driveways of adequate width.

5.04. Lighting. All parking areas within the Common Areas shall be illuminated during business hours occurring during darkness and for a reasonable period prior and subsequent thereto.

5.05. No Changes in Traffic Patterns. Following the completion of the construction of the Buildings or similar structures on the Building Areas the sizes and arrangements of those portions of the Common Areas then used for parking areas and the traffic circulation and flow patterns on the Common Areas shall not be changed or altered without the prior written consent of the Responsible Owners, which consent shall not be unreasonably withheld if such changes or alterations do not materially or adversely impact upon or affect traffic flow, visibility, parking upon or access with respect to the Shopping Center and the respective Parcels.

ARTICLE VI

EASEMENTS

6.01. Grant and Declaration of Reciprocal Easements. Declarants hereby grant to each and every Owner and their respective successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees, and invitees, and declare for the benefit of each of the respective Parcels within the Shopping Center permanent, mutual, reciprocal, and non-exclusive easements and rights to use the Common Areas for the

purposes for which they are intended, as provided in this Agreement, including, but not limited to, ingress, egress, access, and parking for vehicular or pedestrian traffic, upon or across the parking areas, entrances, exits, driveways, walks, or service drives located within the Common Areas and the use of storm drainage and retention facilities, landscaping, public rest rooms, if any, and other public facilities, directional signs and other areas intended for common use.

6.02. Separate Utility Lines. Declarants hereby grant to each and every Owner, respectively, nonexclusive easements in, to, over, under, and across the Common Areas of the respective Parcels, provided that no such easement shall encroach within fifteen feet of any boundary of a Building Area within said Parcel without the prior written consent of the Owner thereof, for the installation, operation, flow, and passage, use, maintenance, repair, relocation and removal of sanitary sewers, storm drains, retention and detention ponds, water and gas mains, electrical power lines, telephone lines and other utility lines, all of such sewers, drains, mains, and lines to be underground, serving the respective Parcels of each of the Owners. However, the easement for separate utility lines provided herein shall be limited to such portion of the Common Areas as necessary to provide reasonable utility services to each Parcel together with such area on both sides of the utility line as is the ordinary custom and practice in the industry to provide for the installation, operation, and

maintenance of the utility. The easements shall be defined and placed of record in conjunction with installation. All separate utility easements shall, to the extent possible, follow the most direct route to tie into common transmission lines except where such direct route would unnecessarily disrupt or damage Buildings and/or structures located upon the Common Areas or Building Areas.

6.03. Common Utility Lines. Declarants hereby grant to each and every Owner, respectively, nonexclusive easements in, to, over, under, and across the Common Areas of the respective Parcels, provided that no such easement shall encroach within fifteen feet of any boundary of a Building Area within said Parcel without the prior written consent of the Owner thereof, for the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of sanitary sewers, storm drains, retention and detention ponds, water and gas mains, electrical power lines, cable television, telephone lines and other utility lines, all of such sewers, drains, mains, and lines to be underground, for the service of Common Areas and for use in common with other parties. Declarants hereby further reserve to each and every Owner the right to grant such easements in, to, over, under, and across its respective Parcels, for the purposes hereinabove enumerated, to such other parties as may from time to time be entitled thereto. Easements identifying the exact location and use of such common utility lines shall be placed of record in conjunction with the installation of the utility.

6.04. Location of Utility Easements. The location of all utility easements of the character described in this Section shall be subject to the prior written approval of the Owner in, to, over, and under whose Parcel the same is to be located. If requested by any utility company or any Owner upon completion of construction of such utility facilities the Owners of Parcels affected thereby shall join in the execution of an agreement, in recordable form, appropriately identifying the type and location of such respective utility facility.

6.05. Installation, Maintenance and Repair. The grantee of any of the utility easements referred to in this Section shall be responsible as between the grantor and the grantee thereof for the installation, maintenance, and repair of all sanitary sewers, storm drains, pipes and conduits, mains and lines and related equipment installed pursuant to such grant. Any such maintenance and repair shall be performed only after two (2) weeks notice to the grantor of the grantee's intention to do such work, except in the case of emergency, and any such work shall be done without cost or expense to the grantor, and in such manner as to cause as little disturbance in the use of the Common Area, Building Area, or Parcel as may be practicable under the circumstances.

6.06. Relocation. At any time the grantor of any of the utility easements granted pursuant to this Section shall have the right to relocate on the land of the grantor any such sewers, drains, mains, and lines and related equipment then located on the

land of the grantor, provided that such relocation shall be performed only after thirty (30) days notice of the grantor's intention to so relocate shall be given to the grantee, and such relocation: (a) shall not interfere with or diminish the utility services to the grantee; (b) shall not reduce or unreasonably impair the usefulness or function of such utility; (c) shall be performed without cost or expense to grantee; and (d) shall be made in accordance with and subject to applicable municipal ordinances, building codes, regulatory review, etc. Notwithstanding such relocation, maintenance shall be the obligation of the grantee; provided that if there shall be any material increase in such cost, the grantor shall bear such excess.

6.07. Use of Easements. The easements and rights-of-way, established by this Section, shall be for the benefit of and restricted solely to the use of the Owners and their respective successors and assigns, the lessees and sub-lessees of the Owners, mortgagees under mortgages covering any of the Subject Land, beneficiaries and trustees under deeds of trust covering any of the Subject Land and to their agents, customers, employees, licensees, and business invitees and the same is not intended and shall not be construed as creating any rights in or for the benefit of the general public; provided further that the grant herein is subject to the provisions of Section 6.08 below.

6.08. Right to Close Common Areas. Each Declarant for itself and the then Owners of any portion of the Common Areas

reserves the right to close temporarily all or any portion of the Common Areas within a Parcel held by said Owner to such extent as in the opinion of either Declarant or the then Owners of the Common Areas is legally necessary and sufficient to prevent the dedication thereof or any accrual of any rights therein in any person other than as created hereby or in the public generally.

6.09. No Further Easements. No Owner of any real property interest in the Subject Land shall grant any easement, right-of-way, or right of use with respect to any of the Common Areas, except as provided herein. Nor shall any such person grant any easement, right-of-way, or right of use with respect to any Building Area, the fee ownership of which is not vested in said party.

ARTICLE VII

CERTAIN RIGHTS AND OBLIGATIONS OF THE DECLARANTS AND OWNERS

7.01. The Common Areas. Each Owner shall be responsible, at its own expense, for the exclusive management and control of the Common Areas and all improvements thereon within its respective Parcel and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair. The Owner shall be responsible for the maintenance and repair of the Common Areas within its Parcel, including, without limitation, painting thereof, snow and ice removal, repair and replacement of surfacing and maintenance of landscaping, walkways, and driveways. In particular, the Owner shall be responsible for the maintenance

of the roads and associated improvements located or to be located in whole or in part upon the Common Areas within its Parcel. Notwithstanding this Paragraph 7.01 or any other provision herein, the parties agree that no Owner shall be required to construct the Common Areas on their respective Parcel(s) until such Owner constructs one or more buildings on the applicable Parcel. Declarant-Powder Basin hereby grants to Declarant-GFI the right to construct parking, roadways and related common area facilities on the portion of the Major/Retail Parcel as depicted on the Site Plan, provided that in such event Declarant-GFI shall (a) construct such improvements in accordance with all requirements of the City of Gillette, Wyoming, (b) maintain all such improvements at its own cost until the then-Owner of the Major/Retail Parcel completes a Building on the Major/Retail Parcel and (c) maintain insurance on the portion of the Major/Retail Parcel covered by such improvements (as required by Section 7.02 below) and pay all real estate taxes attributable to the improvements until the then-Owner of the Major/Retail Parcel constructs a Building on the Major/Retail Parcel.

7.02 Common Area Liability Insurance. Each Owner shall, at all times, maintain, or cause to be maintained, general public liability insurance against claims for personal injury or death and property damage occasioned by accident occurring upon, in or on the Common Areas within the respective Parcel of each Owner, such insurance in each case to afford protection to the limits as

determined adequate by each Owner and consented by the Declarant-GFI, or its successors or assigns, which consent shall not be unreasonably withheld (provided that no Owner shall be required to maintain coverages of more than \$1,000,000 for bodily injury or property damage or more than \$3,000,000 in total liability coverage). Each Owner, with the consent of the Declarant-GFI or its successors or assigns, which consent shall not be unreasonably withheld, may from time to time increase or decrease the amounts of insurance maintained hereunder to reflect any actual and substantial decrease in the value of the dollar or increase in risk occurring after the date of this Agreement.

7.03 Taxes. Each Owner shall pay, or cause to be paid, unless otherwise required by the terms of any lease, directly to the tax assessor, prior to delinquency, all real property taxes and other special taxes and assessments which may be levied or assessed against the Parcel owned by said Owner, including the portion of the Common Area within such Owner's Parcel, and including any assessment attributable to appurtenant interests created by this Agreement, subject to the right of any party to contest such taxes and assessments in the manner provided by law.

7.04 Rules and Regulations. The Declarant-GFI and its successors and assigns, with the consent of the Responsible Owners, may make reasonable rules and regulations governing the use of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration and with the

terms and conditions of existing long-term leases. The Declarant-GFI may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Declarant-GFI shall be entitled to recover their costs, including reasonable attorneys' fees, as provided in Section 10.04 hereof.

7.05 Implied Rights. The Declarants may exercise any right or privilege given to them expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE VIII

CONDEMNATION AND CASUALTY

8.01. Condemnation. If at any time or times all or any part of the Subject Land shall be taken or condemned by any public authority under power of eminent domain, the provisions of this article shall apply. A voluntary sale or conveyance of all or any part of the Subject Land in lieu of condemnation but under threat of condemnation, shall be deemed to be a taking by eminent domain.

8.02. Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "Condemnation Award") attributable to the value of any land within the Common Areas shall be payable only to the Owner

thereof and no claim thereon shall be made by the other Owners; provided, however, that all other Owners may file collateral claims with the condemning authority over and above the value of the land and improvements located within the Common Areas so taken to the extent of any damage suffered by their respective Building Areas resulting from severance of the appurtenant portions of the Common Areas so taken. The Owner of the portions of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas so owned by such Owner as near as practicable to the condition of the same immediately prior to the condemnation and without contribution from any other Owner; provided, however, that the obligation to repair or reconstruct shall be limited such that the cost thereof shall not exceed the amount of the Condemnation Award payable to the Owner of the Common Areas so condemned less said Owner's costs, including, but not limited to, attorneys' fees and court costs arising out of the condemnation proceedings.

8.03. Casualty. In the event of destruction or damage from fire or any other casualty to any buildings or improvements erected on the Subject Land, the Owner having its buildings or improvements destroyed or damaged, at its sole cost and expense, shall within six (6) months of the date of such fire or casualty have: (i) started to rebuild or repair the same; or (ii) leveled and paved the same. If any Owner elects to rebuild or repair and rebuild to at least substantially the same size and as good as

condition as such was in immediately preceding such fire or casualty within one (1) year of the date of such fire or casualty. If the Owner elects to level and pave the buildings or improvements destroyed or damaged, the same shall be leveled and paved so that the affected area conforms substantially to the Common Areas surrounding it. Anything in this subparagraph notwithstanding, if such event shall destroy five percent (5%) or less of the ground floor area of such building or structure, then the Owner of such building or structure shall have no option to level or pave the building or improvement and shall rebuild or repair the same in accordance with this subparagraph.

ARTICLE IX

APPROVALS

Upon receipt by an Owner of a request for approval, provided for or required by this Agreement, such Owner shall, within thirty (30) days after receipt of such request for approval, notify in writing the party making such request of any objections thereto (such objections to be specifically stated) and such party may within fifteen (15) days thereafter resubmit its request for approval rectifying any such objections to the appropriate Owner. The Owner shall then have an additional fifteen (15) days after receipt of said revisions to approve or disapprove same. Failure to give any written notice of disapproval within the periods provided for above shall constitute approval thereof by such Owner. All consents and approvals requested herein from the Owners shall

require the consent of the Owner of the Kmart Parcel and of Owners owning a majority of the balance of the Floor Area in the Shopping Center. All consents and approvals requested herein from the Responsible Owners shall require the consent of all Responsible Owners.

ARTICLE X

ENFORCEMENT

10.01. The right to enforce the terms, covenants, and easements contained herein shall belong only to the Owners, lessees of the Owners, if any, and to mortgagees under mortgages covering any of the Subject Land and beneficiaries and trustees under deeds of trust covering any of the Subject Land of the Owners, provided that the lease or memorandum of lease in favor of such lessee, mortgage in favor of such mortgagee, or deed of trust in favor of such beneficiary and trustee is recorded in the office of the Recorder of Campbell County, State of Wyoming.

10.02. In the event of any violation or threatened violation of any of the terms, restrictions, or covenants contained herein, any person entitled to enforce this Declaration will have, in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

10.03. If performance of any act or obligation of any party is prevented or delayed by an act of God, war, labor disputes, or other cause or causes beyond the reasonable control of

such party, the time for the performance of the act or obligation shall be extended for the period that such act or performance is actually delayed or prevented by any such cause.

10.04. In the event that any suit is brought for the enforcement of any provision of this Declaration or as the result of any alleged breach thereof or for a declaration of rights and duties hereunder, the successful party or parties to such suit shall be entitled to collect reasonable attorneys' fees from the losing party or parties and any judgment or decree rendered shall include an award thereof.

10.05. It is expressly agreed that no breach or violation of this Declaration will terminate this Declaration, but this limitation will not affect, in any manner, any other rights or remedies for any breach of this Declaration.

10.06. A breach or violation of any of the terms, covenants, or restrictions of this Declaration will not defeat or render invalid the lien of any first mortgage or first deed of trust, made in good faith and for value, or any mortgages securing construction financing on the Kmart Parcel or any other Parcel, but such term, covenants, or restriction will be binding on and be effective against anyone whose title to any portion of the Subject Land is acquired by foreclosure, trustee's sale, or otherwise.

10.07. The specified remedies to which any person entitled to enforce this Declaration may resort under the terms of this Declaration are cumulative and are not intended to be

exclusive of any other remedies or means of redress to which any person entitled to enforce this Declaration may be lawfully entitled in case of any breach or threatened breach of any provision of this Declaration. Failure to insist in any one or more cases upon the strict performance of any of the covenants of this Declaration or to exercise any remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such covenant or remedy.

ARTICLE XI

DURATION

This Declaration and each easement, covenant, condition, and restriction hereby created shall continue for a period of fifty (50) years from the date hereof, or for such longer period so long as Kmart, its sublessees, successors or assigns, is a lessee or occupant with respect to the Kmart Parcel under the Kmart Lease, unless terminated, modified, or amended by an instrument executed as herein set forth and duly recorded in the office of the Recorder of Campbell County, State of Wyoming.

ARTICLE XII

AMENDMENTS OF MODIFICATIONS

12.01. Consent to Modification. This Declaration and any provision, covenant, or easement contained herein may be terminated, extended, modified, or amended with the written consent

of all of the then Responsible Owners, each mortgagee under mortgages covering any of the Subject Land owned by a Responsible Owner and each beneficiary and trustee under trust deeds covering any of the Subject Land owned by a Responsible Owner; provided, however, that no termination, extension, modification or amendment of this Declaration shall be effective unless a written instrument setting forth the terms thereof has been executed as herein provided, acknowledged, and recorded in the office of the Recorder of Campbell County, State of Wyoming.

12.02. No Consent of Other Persons. Anything in this Article XII to the contrary notwithstanding, no lessee or licensee or any other person having any interest in the Subject Land other than those persons specifically designated in Section 12.01 above need consent to any termination, extension, modification, or amendment of this Declaration or any part hereof.

ARTICLE XIII

MISCELLANEOUS

13.01. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Subject Land to the general public or for the general public or for any public purposes whatsoever, it being the intention that this Declaration will be strictly limited to and for the purpose expressed herein.

13.02. Severability. If any clause, sentence, or other portion of the terms, covenants, or restrictions of this Declaration becomes illegal, null, or void for any reason, or is held by any Court of competent jurisdiction to be so, the remaining portions shall remain in full force and effect.

13.03. Dominant and Servient Estates. Each and all of the easements and rights granted or created herein are appurtenances to the applicable portions of the Subject Land and none of such easements and rights may be transferred, assigned, or encumbered except as an appurtenance to such portions. For the purposes of such easements and rights, the property benefited shall constitute the dominant estate, and the particular areas of the Subject Land which respectively are burdened by such easements and rights shall constitute the servient estate.

13.04. Covenants Run with Land. Each and all of the covenants, restrictions, and provisions contained in this Declaration (whether affirmative or negative in nature); (a) shall be deemed to be covenants which run with the land; (b) are made for the direct, mutual, and reciprocal benefit of each parcel hereinabove described; (c) will create mutual equitable servitudes upon each Parcel in the Subject Land in favor of the Subject Land; (d) will bind every person having any fee, leasehold, or other interest in any portion of the Subject Land at any time or from time to time to the extent that such portion is affected or bound by the covenant, restriction, or provision is to be performed on

such portion; and (e) will inure to the benefit of the Declarants and their respective successors and assigns as to the respective parcels of land in the Subject Land and to the benefit of mortgagees under mortgages covering the Subject Land and beneficiaries and trustees under trust deeds covering the Subject Land.

13.05. Compliance with Laws. All Owners shall comply promptly with all federal, state, and municipal statutes and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies pertaining to the use of occupancy of the Subject Land, as such statutes, ordinances, regulations, orders, and directives now exist or may hereafter provide.

13.06. Benefit and Burden. The terms, covenants, and conditions contained herein shall inure to the benefit of and shall be binding upon the Declarants, all Owners, and any other person having any interest in the Subject Land and their respective legal representatives, successors, and assigns.

13.07. Intent and Purpose. The provisions of this Declaration, and any Supplemental or Amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a shopping center. Failure to enforce any provision, restriction, covenant, or condition in this Declaration, or in any Supplemental or Amended Declaration, shall not operate as a waiver of any such provision,

restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

13.08. Construction. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The articles and section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, or otherwise affect the content, meaning, or intent of this Declaration or any article, section, or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall no affect the validity or enforceability of any other provision hereof.

13.09. Registration of Mailing Address. Each Owner shall register from time-to-time with the Declarants its current mailing address. All notices or demands intended to be served upon any Owner may be sent by first-class U.S. mail, postage prepaid, addressed to the Owner at its registered mailing address, or, if no address has been registered, to the Building Area of such Owner. All notices or demand intended to be served upon the Declarant-GFI may be sent by first-class U.S. registered or certified mail, postage prepaid, addressed to the Declarant-GFI at its offices at 74 East 500 South, Suite 200, Bountiful, UT 84010, or to such other address as the Declarant-GFI may hereafter furnish to the Owners in

writing. All notices or demand intended to be served upon the Declarant-POWDER BASIN may be sent by first-class U.S. registered or certified mail, postage prepaid, addressed to the Declarant-POWDER BASIN at its offices at c/o W.M. Grace Development Co., 7575 North 16th Street, Suite 1, Phoenix, Arizona 85020, or to such other address as the Declarant-POWDER BASIN may hereafter furnish to the Owners in writing. All notices or demand intended to be served upon the Declarant-SMALL may be sent by first-class U.S. registered or certified mail, postage prepaid, addresses to the Declarant-SMALL at P.O. Box 2043, Sheridan, Wyoming 82801, or to such other address as the Declarant-SMALL may hereafter furnish to the Owners in writing. All notices or demands intended to be served upon Kmart shall be sent by first-class U.S. registered or certified mail, postage prepaid, addressed to Kmart at 3100 West Big Beaver Road, Troy, Michigan 48084, or to such other address as Kmart may hereafter furnish to the Owners in writing. Any notice or demand referred to in this Declaration shall be deemed given when deposited in the U.S. mail, postage prepaid, and in the form provided for in this section.

13.10. Effective Date. This Declaration shall take effect immediately upon recording.

13.11. Owner Obligations. All obligations of each Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that it may be leasing, renting, or selling its Parcel under contract. The Owner shall have no

obligation for expenses or other obligations accruing after it conveys the fee title to its Parcel(s) to another party.

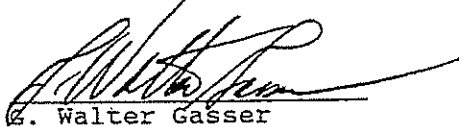
13.12. Not a Partnership. The parties hereto do not by this Declaration, in any way or for any purpose, become partners or joint venturers of the other parties in the conduct of their respective businesses or otherwise. The provisions of this Agreement relating to sharing of common area expenses, the common management of the properties, and the granting of reciprocal easements are included solely for the purpose of providing a reasonable method for the allocation and management of common costs of operating and maintaining shared facilities and providing for mutual ingress and egress to contiguous parcels of real property.

IN WITNESS WHEREOF, the Declarants have duly executed this Declaration the day and year first above written.

"DECLARANT-GFI"

GFI-GILLETTE INVESTMENTS
LIMITED PARTNERSHIP,
a Utah Limited Partnership

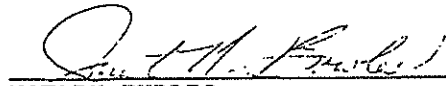
BY: WGA-GILLETTE, INC., a Utah
Corporation, General Partner

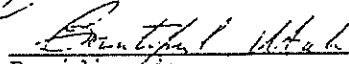
By: 
G. Walter Gasser
Its: President

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On the 17th day of March, 1992, the foregoing instrument was acknowledged before me by G. Walter Gasser, the signer of the

foregoing Declaration, who being by me duly sworn did say that he is the President of WGA-Gillette, Inc., the General Partner of GFI-Gillette Investments Limited Partnership, a Utah limited partnership, and that he was authorized to, and did, execute the foregoing Declaration as General Partner in said Partnership.



NOTARY PUBLIC


Residing in

10-31-93
My Commission Expires

\cta\401
02/18/92



"DECLARANT-POWDER BASIN"

POWDER BASIN PROPERTIES, a Wyoming
General Partnership

By: W.M. GRACE DEVELOPMENT CO.,
General Partner

By: Howard A. Grace
Its: VICE-PRESIDENT

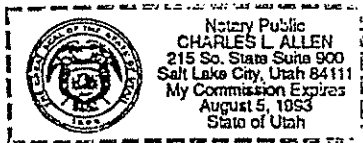
STATE OF Utch)
COUNTY OF S.L.) : ss.

On the 19 day of March, 1992, the foregoing instrument
was acknowledged before me by Harold T. Green, the signer of the
foregoing Declaration, who being by me duly sworn did say that he
is a General Partner of POWDER BASIN PROPERTIES, a Wyoming General
Partnership, and that he was authorized to, and did, execute the
foregoing Declaration on behalf of said Partnership.

[Signature]
NOTARY PUBLIC

My Commission Expires

Residing in



"DECLARANT-POWDER BASIN"

POWDER BASIN PROPERTIES, a Wyoming
General Partnership

By: SCOUT DEVELOPMENT COMPANY,
General Partner

By: Anthony L. Levinson
Its: S. U. P.

STATE OF Missouri)
 : ss.
COUNTY OF Jackson)

On the 20 day of March, 1992, the foregoing instrument
was acknowledged before me by Anthony L. Levinson, the signer of the
foregoing Declaration, who being by me duly sworn did say that he
is a General Partner of POWDER BASIN PROPERTIES, a Wyoming General
Partnership, and that he was authorized to, and did, execute the
foregoing Declaration on behalf of said Partnership.

Paula C. Panarisi
NOTARY PUBLIC
Clay County, Missouri
Residing in

12-1-92
My Commission Expires

PAULA C. PANARISI
NOTARY PUBLIC STATE OF MISSOURI
CLAY COUNTY
MY COMMISSION EXP DEC. 1, 1992



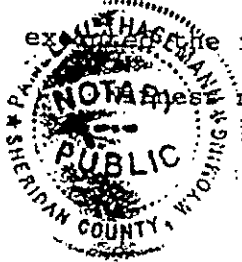
"DECLARANT-SMALL"

Lawrence Small
LAWRENCE SMALL

Jill Small
JILL SMALL

STATE OF WYOMING)
) SS.
COUNTY OF SHERIDAN)

On the 24th day of March, 1992, the foregoing instrument was acknowledged before me by LAWRENCE SMALL, the signer of the foregoing Declaration, who being by me duly sworn did say that he executed the foregoing Declaration.



Witness my hand and official seal.

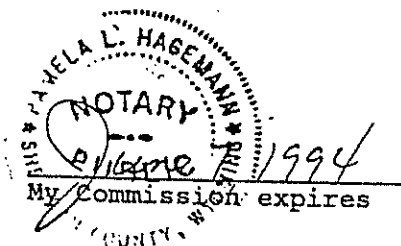
Pamela L. Hagemann
Notary Public
Sheridan, Wyoming
Residing in

June 7, 1994
My Commission expires

STATE OF WYOMING)
) SS.
COUNTY OF SHERIDAN)

On the 24th day of March, 1992, the foregoing instrument was acknowledged before me by JILL SMALL, the signer of the foregoing Declaration, who being by me duly sworn did say that he executed the foregoing Declaration.

Witness my hand and official seal.



Pamela L. Hagemann
Notary Public
Sheridan, Wyoming
Residing in

June 7, 1994
My Commission expires

"GFI LAND"

"Kmart Parcel"

Lot 1D of the resubdivision of Lot 1C of Block 1 of the resubdivision of Lot 1A of Block 1 of the resubdivision of Lots 1, 2, 3 and 4 of Block 1 of the Homestead Addition, situated in the NE 1/4 of Section 34, T. 50 North, R. 72 East, 6th P.M., Campbell County, Wyoming, said tract being more particularly described as follows, to wit:

Beginning at the southwest corner of Lot 6, Block 1, of the Homestead Addition, said point of beginning lying South 02°11'38" West, a distance of 444.16 feet from the north 1/4 corner of said Section 34; thence, from said point of beginning along the southerly lines of Lots 6 and 5A, Block 1, of the Homestead Addition, North 88°52'57" East, a distance of 685.33 feet to the northwest corner of Lot 2E of the resubdivision of Lot 1C of Block 1, of the resubdivision of Lot 1A of Block 1A of Block 1 of the resubdivision of Lots 1, 2, 3 and 4 of Block 1 of the Homestead Addition; thence, along the west and south lines of said Lot 2E, South 00°17'51" East, a distance of 192.72 feet; North 89°42'09" East, a distance of 73.37 feet; North 59°42'09" East, a distance of 163.57 feet; and North 88°52'57" East, a distance of 31.36 feet to a point of the south line of Lot 5A, Block 1 of the Homestead Addition; thence, along said south line North 88°52'57" East, a distance of 300.00 feet to a point on the west right-of-way line of Highway 59; thence, along said right-of-way line South 01°07'03" East, a distance of 60.00 feet to the northeast corner of Lot 2A, of the resubdivision of Lot 1A of Block 1 of the resubdivision of Lots 1, 2, 3 and 4 of Block 1 of the Homestead Addition; thence, along the north line of said Lot 2A, South 88°52'57" West, a distance of 260.00 feet to the northwest corner of said Lot 2A; thence along the north and east lines of Lot 2B and the north line of Lot 1E of the resubdivision of Lot 1C, Block 1, of the resubdivision of Lot 1A of Block 1 of the resubdivision of Lot 1A of Block 1 of the resubdivision of Lots 1, 2, 3 and 4 of Block 1 of the Homestead Addition; South 88°52'57" West, a distance of 40.02 feet;

thence, South 01°06'33" East, a distance of 284.94 feet;
thence, South 89°42'09" West, a distance of 511.62 feet;
thence, South 00°17'51" East, a distance of 33.66 feet;
and, South 89°42'09" West, a distance of 445.76 feet to a point on the east line of Four-J Subdivision; thence, along said east line North 02°11'38" East, a distance of 479.70 feet to the point of beginning.

EXHIBIT "A"

"POWDER BASIN LAND"

"Major/Retail Parcel"

Lot 1E of the resubdivision of Lot 1C of Block 1 of the resubdivision of Lot 1A of Block 1 of the resubdivision of Lots 1, 2, 3 and 4 of Block 1 of the Homestead Addition, situated in the NE 1/4 of Section 34, T. 50 North, R. 72 East, 6th P.M., Campbell County, Wyoming.

EXHIBIT "B"

"POWDER BASIN LAND"

"Outlot 1"

Lot 2E of the resubdivision of Lot 1C of Block 1 of the resubdivision of Lot 1A of Block 1 of the resubdivision of Lots 1, 2, 3 and 4 of Block 1 of the Homestead Addition, situated in the NE 1/4 of Section 34, T. 50 North, R. 72 East, 6th P.M., Campbell County, Wyoming.

EXHIBIT "B" CONTINUED

"POWDER BASIN LAND"

"Outlot 2"

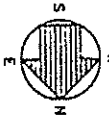
Lot 2B of the resubdivision of Lot 1C of Block 1 of the resubdivision of Lot 1A of Block 1 of the resubdivision of Lots 1, 2, 3 and 4 of Block 1 of the Homestead Addition, situated in the NE 1/4 of Section 34, T. 50 North, R. 72 East, 6th P.M., Campbell County, Wyoming.

EXHIBIT "B" CONTINUED

"SMALL LAND"

Lot 2A of the resubdivision of Lot 1A of Block 1 of the resubdivision of Lots 1, 2, 3 and 4 of Block 1 of the Homestead Addition, situated in the NE 1/4 of Section 34, T. 50 North, R. 72 East, 6th P.M., Campbell County, Wyoming.

EXHIBIT "C"

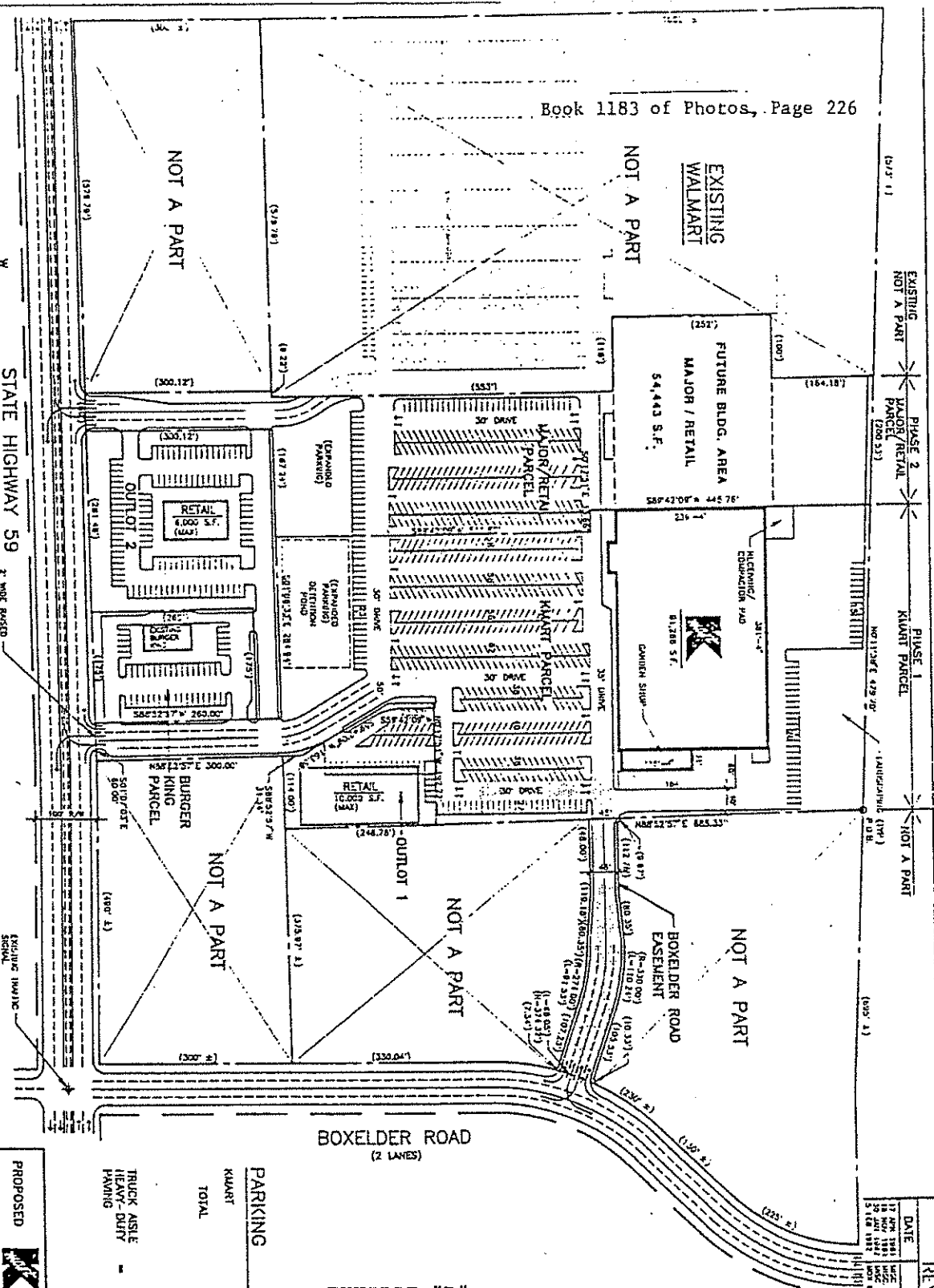


STATE HIGHWAY 59
(4 LANES W/LEFT TURN)

2 WIDE PAVED
CLUTTER FREE
SIDEWALK (TYP.)

SCALE: 1" = 100'

PLOT PLAN



BOXELDER ROAD
(2 LANES)

EXHIBIT "D"

DATE	DESCRIPTION
17 JAN 1991	WDC APPROVED
18 JAN 1991	WDC APPROVED
19 JAN 1991	WDC APPROVED
20 JAN 1991	WDC APPROVED
21 JAN 1991	WDC APPROVED
22 JAN 1991	WDC APPROVED
23 JAN 1991	WDC APPROVED
24 JAN 1991	WDC APPROVED
25 JAN 1991	WDC APPROVED
26 JAN 1991	WDC APPROVED
27 JAN 1991	WDC APPROVED
28 JAN 1991	WDC APPROVED
29 JAN 1991	WDC APPROVED
30 JAN 1991	WDC APPROVED
31 JAN 1991	WDC APPROVED

PARKING

KUART	-	441 CARS
TOTAL	-	868 CARS

TRUCK ASLE
HEAVY-DUTY
PAVING

PROPOSED
WDC
4863

GILLETTE, WYOMING
S.W. CORNER OF BOXELDER ROAD
AND STATE HIGHWAY 59

DATE: 17 JANUARY 1991

When recorded, return to:

Shawn E. Tobin, Esq.
Gammage & Burnham
Two North Central Avenue
Phoenix, Arizona 85004

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

July THIS AGREEMENT is made as of the *14th* day of *July*, 1990, between WAL-MART STORES, INC., a Delaware corporation, of Mitchell Building, 701 South Walton Boulevard, Bentonville, Arkansas 72716 ("Wal-Mart"), and POWDER BASIN PROPERTIES, a Wyoming general partnership, c/o W. M. Grace Development Co., 7575 North 16th Street, Suite 1, Phoenix, Arizona 85020 ("Developer").

W I T N E S S E T H

WHEREAS, Wal-Mart is the owner of Parcel A as shown on the plan attached hereto as Exhibit "A" hereof, said parcel being more particularly described in Exhibit "D" attached hereto;

WHEREAS, Developer is the owner of Parcel B shown on the plan attached hereto as Exhibit "A" hereof, said parcel being more particularly described in Exhibit "C" hereof; and

WHEREAS, Wal-Mart and Developer desire that Parcel A and Parcel B 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 parcels be subject to the easements, covenants, conditions and restrictions hereinafter set forth.

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

1. Building/Common Areas.

(a) "Building Areas" as used herein shall mean that portion of Parcel A and those portions of Parcel B shown on Exhibit "A" as "Building Area" (and "Future Building Area" and "Future Expansion 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 Parcel A and Parcel B except the Building Areas.

(c) Conversion to Common Areas: Those portions of the Building Areas on each parcel 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.

2. Use. 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 bowling alley, billiard parlor, nightclub or other place of recreation or amusement shall occupy space within the Shopping Center without the prior written consent of Wal-Mart. No business whose primary activity is to serve alcoholic beverages for consumption on premises (i.e., a bar or tavern or similar business, and no cafeteria restaurant) shall be located within the Shopping Center within two hundred feet (200') of Parcel A

without the prior written consent of Wal-Mart. Developer recognizes that said business may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business.

3. Buildings.

(a) Design and Construction. The Building Areas 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 parcel onto another parcel except as provided for in subparagraph (d) below. The design and construction shall be of high quality. No building on Parcel B shall exceed twenty-eight feet (28') in height above finished grade. No building shall have a metal exterior.

(b) Location. No Improvements shall be constructed on Parcel A and Parcel B (as either immediate development or future expansion) except within the Building Areas, and no Improvements or alterations which substantially vary from those shown on Exhibit "A" may be made without the prior written consent of Wal-Mart. The front walls of the buildings on Parcels A and B shall be constructed in the locations shown on 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) Easements. In the event building wall footings encroach from one parcel onto another, despite efforts to avoid that occurrence, the party onto whose parcel the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

(e) Pad Development. The "Pads" (i.e., Pad A and Pad B as outlined on Exhibit "A" attached hereto) shall be developed only under the following guidelines:

(i) No building on the Pads shall exceed twenty-eight feet (28') in height, as measured from the mean finished elevation of the parking area of the Shopping Center.

(ii) No building constructed on a Pad shall exceed the maximum square footage for such Pad set forth on Exhibit "A" attached hereto.

(iii) Any rooftop equipment shall be screened in a manner satisfactory to Developer.

(iv) No rooftop sign shall be erected on any building located on the Pads.

(v) No freestanding identification sign may be erected on the Pads without prior written approval of Developer, 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.

(vi) No improvements shall be constructed, erected, expanded or altered on the Pad(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 Pads except upon that area designated as a Building Area on Exhibit "A"; provided, there may be constructed and maintained a canopy or canopies projecting from said Building Area; normal foundations and doors for

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