

445516

DEED OF DECLARATION

THIS DEED OF DECLARATION made this 14<sup>th</sup> day of October 1977, by C & W MANHATTAN ASSOCIATES, ("C & W") a Texas Limited Partnership, with its principal place of business at 3431 West Alabama, Houston, Texas 77027, hereinafter called "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the Owner of two (2) tracts of land designated "Parcel A" and "Parcel B" located in the City of Gillette, County of Campbell, and State of Wyoming; said parcels are more fully described in Exhibits "A" and "A-1" respectively, which Exhibits are attached hereto, and made a part hereof. The aforementioned two (2) parcels are hereinafter sometimes referred to collectively as the "Entire Premises", and together are shown on the plot plan, attached hereto, and made a part hereof, and marked Exhibit "B"; and

WHEREAS, the Entire Premises are more fully described on Exhibit "C" attached hereto, and made a part hereof; and

WHEREAS, Declarant has executed a Lease dated October 14 \_\_\_\_\_, 1977, with respect to Parcel A with the K-Mart Corporation, formerly S. S. Kresge Company, a memorandum of which lease is recorded in the office of Recorder of Campbell County, Wyoming, and being in Book 414, Page 495, and Declarant hereby grants unto said Tenant all of the rights, privileges and easements herein created for the benefit of Parcel A, and the K-Mart Corporation, formerly S. S. Kresge Company, is willing to consent to this Deed of Declaration and subordinate its Lease to this Deed of Declaration by executing said consent; and

WHEREAS, Declarant will lease and/or sell Parcel B to other tenants and/or owners and has reserved Parcel B for future development; and

WHEREAS, Declarant desires to establish, as hereinafter provided, nonexclusive easements for the use of those portions of the Entire Premises, which are not from time-to-time improved with buildings or other structures, and which are intended for use as driveways, pedestrian ways, sidewalks, parking areas, parking spaces, and for ingress and egress to and from public roadways and utility line purposes (the foregoing portions of the Entire Premises hereinafter collectively referred to as "Common Areas").

THEREFORE, the Declarant, as Owner of the Entire Premises, for itself, its successors and assigns, declares as follows:

1. (a) Declarant hereby grants to each and every person, partnership, corporation or other entity now or hereinafter owning or having an interest in all or any portion of Parcels A and B, a mutual reciprocal and nonexclusive easement, license, right and privilege, for the installation, maintenance, and connection to all underground utilities including all utility lines, wires, pipes, conduits, sewers and drainage lines, and the rights and privileges of passage and use both pedestrian and vehicular including but not limited to the parking of vehicles, and for ingress and egress to and from the roadways adjoining the Entire Premises, in, to, upon, through and over the Common Areas from time-to-time located on the Entire Premises. Declarant agrees that any future connections to the existing "underground utility lines", the term "underground utility lines" as used herein shall include by way of reference but not limitation, all wires, pipes, conduits, sewer drainage lines, etc., and located on Parcel A shall be subject to the advanced written approval of the K-Mart Corporation, formerly the S. S. Kresge Company, Construction Department, while it is the Tenant of Parcel A,

(b) Declarant hereby agrees that any costs, and/or expenses incurred by the Tenant of Parcel A in repairing and/or

maintaining the underground sanitary sewer or other "under-ground utility lines" located on Parcel A shall be reimbursed on a prorata basis by the Owners of Parcels A and B to the K-Mart Corporation, formerly the S. S. Kresge Company, so long as it is the occupant of Parcel A. The amount of reimbursement shall be determined by computing the amount of such costs and expenses and multiplying same by a fraction, the numerator of which shall be the total amount of square feet of land area included in Parcels A or B, and the denominator of which shall be the total square footage of land area located within the Entire Premises.

(c) The easements, rights, and privileges granted hereby shall be for the benefit of and be restricted solely to the owners from time-to-time of all or any portion of Parcels A and B, but such owner or owners may grant the benefit of such easement, rights and privileges to its tenants now or hereafter occupying a building or portions thereof on the Entire Premises for the period of such tenancy, and to the customers, employees and business invitees of said tenant, but the same is not intended, and shall not be construed as creating any rights in and for the benefit of the general public.

(d) Notwithstanding anything contained in Paragraph 1 to the contrary, the easements, rights, and privileges hereinabove granted shall not extend to or exist over portions of the Entire Premises hereinabove improved with buildings or other structures or designated as future building areas.

(e) The easements, rights, and privileges hereinbefore granted shall be used and enjoyed in such a manner as to cause the least possible interference with the conduct and operations of the business at any time existing on the Entire Premises.

(f) All parties agree that at all times there shall be independently maintained on each parcel, not less than three (3) square feet of developed common area for each one (1) square foot

of total building floor area, including all basements and mezzanines.

2. The Owners and/or Tenants (if obligated to do so pursuant to any lease) of the respective parcels of property comprising the Entire Premises shall be responsible at their own expense for all costs and expenses of the maintenance of the Common Area located on their respective parcels which shall include, but not be limited to, electricity, cleaning, snow removal, repairs and replacements, including resurfacing and restriping, maintenance of lights and light standards, landscaping, and all other functions necessary for the proper maintenance, upkeep, and operation of such Common Areas. In the event all or any of the Owners and/or Tenants elect to maintain the Common Areas located on their respective parcels in conjunction with each other, then in such event, all such costs and expenses shall be prorated among such Owners and/or Tenants in the same proportion as the floor area of their respective improvements bears to the aggregate floor area of all improvements owned and/or leased by such participating Owners and/or Tenants.

3. The Owners and/or Tenants (if obligated to do so pursuant to any lease) of the respective parcels of property comprising the Entire Premises shall timely pay all real estate taxes and assessments, water rents and charges levied on their respective parcels.

4. Each Owner and/or Tenant (if obligated to do so pursuant to any lease), of a parcel shall purchase and maintain on its own parcel comprehensive liability insurance covering injuries to person or property within the area of its respective parcel in the amount of \$250,000.00 with respect to injuries to any one person; and in the amount of at least \$1,000,000.00 with respect to any one accident; and in the amount of at least \$100,000.00 with respect to damage to property, and shall indemnify to the

extent covered by insurance proceeds and hold harmless other party or parties from damages arising out of any accident occurring on its parcel except where caused by negligence of the other party or parties. Notwithstanding the foregoing, the Owner and/or Tenant of Parcel A shall be relieved of its insurance obligation hereunder as long as the K-Mart Corporation, formerly S. S. Kresge Company, is in a position to self-insure in regard to liability insurance in accord with the terms of its Lease.

Declarant shall have the right, after discussion with the Owners of the Entire Premises to reasonably increase or decrease the amounts of insurance set forth herein. The intent of this right is to reserve to the Declarant the ability to modify such amounts in light of existing and future monetary fluctuations.

5. In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any part of the Entire Premises, that portion of the award attributable to the value of any land within the Common Areas so taken shall be payable to the owner in fee, as the case may be with respect to claims with the condemning authority, over and above the value of the land within the Common Area so taken, to the extent of any damage suffered to their respective improvements resulting from the severance of the appurtenant Common Area or utility easements and facilities so taken, provided further however that the owner in fee of the portion of the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area so owned by such Owner as near as practicable to the condition of same immediately prior to such condemnation and without contribution from any other Owners of the Entire Premises except to the extent that the proceeds of such award are sufficient to pay the costs of such restoration and repair, or if the Owner is not obligated to restore and/or repair pursuant to a lease

affecting the area so condemned.

No party shall have any right to any award made by the condemning authority for the value of any rights or other benefits relating to other parcels, whichever is taken by the condemnation.

6. Notwithstanding any of the covenants and conditions contained herein, no Owner of all or any part of the Entire Premises, nor its partners, shareholders, officers, executors, transferees, heirs, successors and assigns shall be personally liable for any of the obligations arising from this Deed of Declaration and any judgment rendered hereon shall be limited to the Owner's interest in its parcel as aforesaid, and no deficiency or other personal judgment, order or decree, including any order for specific performance shall be rendered against said Owner or its partners, whether general and/or limited, the assets of the partnership, shareholders, officers, executors, transferees, heirs, successors and assigns, in any action or proceeding brought hereunder.

7. No fences, barriers or other obstructions shall be erected or maintained between Parcels A and B, except to facilitate smooth and safe traffic flow between the Parcels.

8. Declarant for itself and the then Owners of all or any part of the easement areas does, however, reserve the right to close temporarily all or any portion of the said easement areas to such extent, in the opinion of Declarant or the then Owners of all or any part of the easement areas, as may be legally necessary and sufficient to prevent a dedication thereof or an accrual of any rights in any person other than as aforesaid or in the public generally therein. Any such temporary closing shall, however, be further subject to the reasonable consent of all Owners of the Entire Premises.

9. The easements hereby granted, the restrictions hereby imposed and the agreements and covenants herein contained shall

be easements, restrictions and covenants herein running with the land, and shall inure to the benefit of, and be binding upon Declarant and all future Owners of all or any portion of the Entire Premises, and their respective heirs, successors and assigns, and all persons claiming under them for a term of seventy-seven (77) years, from the date hereof, unless terminated either as set forth herein, or by unanimous consent of the K-Mart Corporation, formerly S. S. Kresge Company, while it is the Tenant of Parcel A, and all the Owners of the Entire Premises.

10. In the event of a breach, or attempted or threatened breach, by any Owner hereafter of any portion of said Entire Premises, in any of the terms, covenants and conditions hereof including payment of taxes and assessments, any one or all other Owners of the Entire Premises shall be entitled forthwith to full and adequate relief by injunctions and/or all such other available legal and equitable remedies from the consequences of such breach including payment of any amounts due, and any deed, lease, assignment, conveyance or contract made in violation of this Declaration shall be void and may be set aside upon petition of one or more of the Owners in making any payments of such suit or proceedings shall be assessed against the defaulting Owner and shall constitute a lien against the real estate or the interest therein wrongfully deeded, leased, assigned, conveyed or contracted for until paid, effective upon recording notice thereof in the Office of the Recorder in and for the County where the Entire Premises is located, but any such lien shall be subordinate to any First Mortgage covering any portion of the Entire Premises and any Purchaser at any foreclosure sale (as well as any grantee of deed in lieu of foreclosure), under any such First Mortgage shall take title free from any such existing lien, but, otherwise, subject to the provisions hereof. The remedies of any one or all such Owners

of the Building Areas specified herein shall be cumulative as to each and as to all other permitted at law or in equity.

11. This Agreement shall be construed in accordance with the law of the State of Wyoming.

IN WITNESS WHEREOF, C & W MANHATTAN ASSOCIATES has caused this Deed of Declaration to be signed the day and year first above written.

WITNESSES:

Nancy Schlender  
Daniel Hasselberg

C & W MANHATTAN ASSOCIATES, a Texas Limited Partnership, by the General Partner, COOGAN & WALTERS, a Texas General Partnership, acting by Roland Walters, a General Partner

By: Roland Walters  
ROLAND WALTERS, General Partner

APPROVED  
SA  
gy

CONSENTED TO BY:

K-MART CORPORATION

By: \_\_\_\_\_  
J. P. Johnson  
Vice President

ATTEST:

\_\_\_\_\_  
C. E. Lotzar, Jr.  
Assistant Secretary




THE STATE OF TEXAS    ))  
                                  ))  
                                  SS:  
COUNTY OF HARRIS    ))

BEFORE ME, the undersigned authority, on this day personally appeared ROLAND WALTERS, a General Partner of COOGAN & WALTERS, a Texas General Partnership, the General Partner of C & W MANHATTAN ASSOCIATES, a Texas Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at said County and State this 14<sup>th</sup> day of October, A.D., 1977.

JESSICA E. PHILLIPS  
Notary Public in and for Harris County, Texas  
My Commission Expires September 10, 1978  
Bonded by Alexander Lovett, Lawyers Surety Corp.

*Jessica E. Phillips*  
Notary Public in and for  
HARRIS County, T E X A S  


STATE OF MICHIGAN    ))  
                                  ))  
                                  SS:  
COUNTY OF OAKLAND    ))

I do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, Margaret T. Grant, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared J. P. Johnson and C. E. Lotzar, Jr. known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn did depose and say that they reside in Birmingham, Michigan

respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the Corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

LEGAL DESCRIPTION  
K MART PREMISES  
PARCEL A

COMMENCING at the SW Corner of Wagon Wheel Subdivision of the City of Gillette as recorded by the Campbell County Clerk, thence southerly on the East ROW of Highway 14/16 416.31 feet on a bearing of South 2 degrees 27 minutes 22 seconds East to a point,

THENCE South 89 degrees 36 minutes 22 seconds East 60.07 feet to the point of beginning.

THENCE South 89 degrees 36 minutes 22 seconds East 600.00 feet to a point,

THENCE South 0 degrees 20 minutes 45 seconds West 286.00 feet to a point,

THENCE North 89 degrees 36 minutes 22 seconds West 586.00 feet to a point,

THENCE North 2 degrees 27 minutes 22 seconds West 286.35 feet to the point of beginning, all containing 3.89 acres more or less.

Above parcel being a part of Tract A of the Tarver Ranch Company Addition to the City of Gillette, Campbell County, Wyoming, according to Plat thereof recorded February 8, 1978, in Book 2 of Plats, page 106.

EXHIBIT "A"  
of  
EXHIBIT "D"

LEGAL DESCRIPTION  
PARCEL B

COMMENCING at the SW Corner of Wagon Wheel Subdivision of the City of Gillette as recorded by the Campbell County Clerk, thence southerly on the East ROW of Highway 14/16 416.31 feet on a bearing of South 2 degrees 27 minutes 22 seconds East to a point, thence South 89 degrees 36 minutes 22 seconds East 60.07 feet to a point, thence South 2 degrees 27 minutes 22 seconds East 286.35 feet to the point of beginning, thence South 89 degrees 36 minutes 22 seconds East 586.00 feet to a point, thence South 0 degrees 20 minutes 45 seconds West 315.00 feet to a point, thence North 89 degrees 36 minutes 22 seconds West 570.58 feet to a point, thence North 2 degrees 27 minutes 22 seconds West 315.39 feet to the point of beginning all containing 4.18 acres more or less.

Above parcel being a part of Tract A of the Tarver Ranch Company Addition to the City of Gillette, Campbell County, Wyoming, according to Plat thereof recorded February 8, 1978, in Book 2 of Plats, page 106.

C&M MOUNTAIN ASSOC

DATE: 11-1-81  
REVISED: 11-1-81

K-mart  
GILLETTE, WYOMING

SHEET NO.

# PRELIMINARY SITE PLAN

GILLETTE, WYOMING

K-MART - sq. ft. 40,308  
SITE ACRES 8.917  
PARKING 561

SCALE: 1"=50'

### NOTES

1. SEE ALL UTILITIES.
2. PROPERTY MEASUREMENTS ARE BASED ON SURVEY DATA.
3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
4. PROPERTY SUBJECT TO LOCAL APPROVALS.
5. PROPERTY SUBJECT TO LOCAL APPROVALS.
6. PROPERTY SUBJECT TO LOCAL APPROVALS.
7. PROPERTY SUBJECT TO LOCAL APPROVALS.
8. PROPERTY SUBJECT TO LOCAL APPROVALS.
9. PROPERTY SUBJECT TO LOCAL APPROVALS.
10. PROPERTY SUBJECT TO LOCAL APPROVALS.

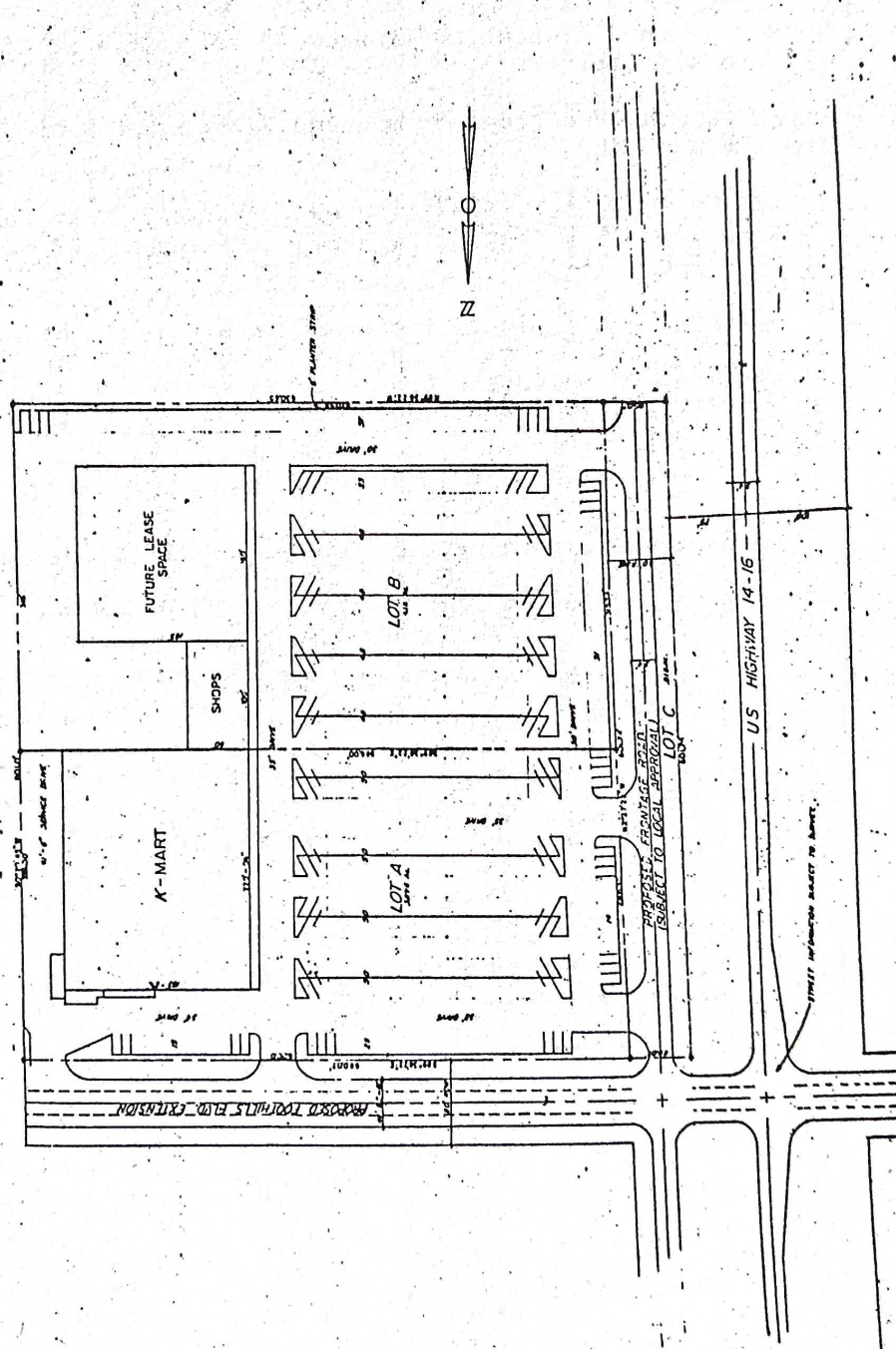


EXHIBIT "B"  
OF  
EXHIBIT "D"

LEGAL DESCRIPTION  
ENTIRE PREMISES

COMMENCING at the Southwesterly Corner of Wagon Wheel Subdivision of the City of Gillette as recorded by the Campbell County Clerk, thence southerly on the East right of way line of Highway 14-16 416.31 feet on a bearing of South 2 degrees 27 minutes 22 seconds East to a point;

THENCE South 89 degrees 36 minutes 22 seconds East 60.07 feet to the point of beginning.

THENCE South 89 degrees 36 minutes 22 seconds East 600.00 feet to a point;

THENCE South 0 degrees 20 minutes 45 seconds West 286.00 feet to a point;

THENCE North 89 degrees 36 minutes 22 seconds West 586.00 feet to a point;

THENCE North 2 degrees 27 minutes 22 seconds West 286.35 feet to a point of beginning, all containing 3.89 acres more or less,

TOGETHER with all right, title and interest of the owner of the aforesaid property in, to and under that certian Deed of Declaration made by C. & W Manhattan Associates under date of October 14, 1977 and to be recorded prior to the recording of this instrument.

Above parcels being a part of Tract A of the Tarver Ranch Company Addition to the City of Gillette, Campbell County, Wyoming, according to Plat thereof recorded February 8, 1978, in Book 2 of Plats, page 106.

STATE OF WYOMING }  
Campbell County } ss. 445516  
Filed for record this 26th day of Sept.  
A. D. 19 78 at 1:06 o'clock P.M. and re-  
corded in Book 437 of Photos RECORDED ✓  
on page 430 Fees \$ 28.00 ABSTRACTED ✓  
Suzanne E. Addison INDEXED ✓  
County Clerk and Ex-Officio Register of Deeds  
By Samuel G. Watabanoff  
Deputy



WHEREAS, Declarant desires to establish, as hereinafter provided, nonexclusive easements for the use of those portions of the Entire Premises, which are not from time-to-time improved with buildings or other structures, and which are intended for use as driveways, pedestrian ways, sidewalks, parking areas, parking spaces, and for ingress and egress to and from public roadways and utility line purposes (the foregoing portions of the Entire Premises hereinafter collectively referred to as "Common Areas").

THEREFORE, the Declarant, as Owner of the Entire Premises, for itself, its successors and assigns, declares as follows:

1. (a) Declarant hereby grants to each and every person, partnership, corporation or other entity now or hereinafter owning or having an interest in all or any portion of Parcels A and B, a mutual reciprocal and nonexclusive easement, license, right and privilege, for the installation, maintenance, and connection to all underground utilities including all utility lines, wires, pipes, conduits, sewers and drainage lines, and the rights and privileges of passage and use both pedestrian and vehicular including but not limited to the parking of vehicles, and for ingress and egress to and from the roadways adjoining the Entire Premises, in, to, upon, through and over the Common Areas from time-to-time located on the Entire Premises. Declarant agrees that any future connections to the existing "underground utility lines", the term "underground utility lines" as used herein shall include by way of reference but not limitation, all wires, pipes, conduits, sewer drainage lines, etc., and located on Parcel A shall be subject to the advanced written approval of the K-Mart Corporation, formerly the S. S. Kresge Company, Construction Department, while it is the Tenant of Parcel A,

(b) Declarant hereby agrees that any costs, and/or expenses incurred by the Tenant of Parcel A in repairing and/or

maintaining the underground sanitary sewer or other "underground utility lines" located on Parcel A shall be reimbursed on a prorata basis by the Owners of Parcels A and B to the K-Mart Corporation, formerly the S. S. Kresge Company, so long as it is the occupant of Parcel A. The amount of reimbursement shall be determined by computing the amount of such costs and expenses and multiplying same by a fraction, the numerator of which shall be the total amount of square feet of land area included in Parcels A or B, and the denominator of which shall be the total square footage of land area located within the Entire Premises.

(c) The easements, rights, and privileges granted hereby shall be for the benefit of and be restricted solely to the owners from time-to-time of all or any portion of Parcels A and B, but such owner or owners may grant the benefit of such easement, rights and privileges to its tenants now or hereafter occupying a building or portions thereof on the Entire Premises for the period of such tenancy, and to the customers, employees and business invitees of said tenant, but the same is not intended, and shall not be construed as creating any rights in and for the benefit of the general public.

(d) Notwithstanding anything contained in Paragraph 1 to the contrary, the easements, rights, and privileges hereinabove granted shall not extend to or exist over portions of the Entire Premises hereinabove improved with buildings or other structures or designated as future building areas.

(e) The easements, rights, and privileges hereinbefore granted shall be used and enjoyed in such a manner as to cause the least possible interference with the conduct and operations of the business at any time existing on the Entire Premises.

(f) All parties agree that at all times there shall be independently maintained on each parcel, not less than three (3) square feet of developed common area for each one (1) square foot



of total building floor area, including all basements and mezzanines.

2. The Owners and/or Tenants (if obligated to do so pursuant to any lease) of the respective parcels of property comprising the Entire Premises shall be responsible at their own expense for all costs and expenses of the maintenance of the Common Area located on their respective parcels which shall include, but not be limited to, electricity, cleaning, snow removal, repairs and replacements, including resurfacing and restriping, maintenance of lights and light standards, landscaping, and all other functions necessary for the proper maintenance, upkeep, and operation of such Common Areas. In the event all or any of the Owners and/or Tenants elect to maintain the Common Areas located on their respective parcels in conjunction with each other, then in such event, all such costs and expenses shall be prorated among such Owners and/or Tenants in the same proportion as the floor area of their respective improvements bears to the aggregate floor area of all improvements owned and/or leased by such participating Owners and/or Tenants.

3. The Owners and/or Tenants (if obligated to do so pursuant to any lease) of the respective parcels of property comprising the Entire Premises shall timely pay all real estate taxes and assessments, water rents and charges levied on their respective parcels.

4. Each Owner and/or Tenant (if obligated to do so pursuant to any lease), of a parcel shall purchase and maintain on its own parcel comprehensive liability insurance covering injuries to person or property within the area of its respective parcel in the amount of \$250,000.00 with respect to injuries to any one person; and in the amount of at least \$1,000,000.00 with respect to any one accident; and in the amount of at least \$100,000.00 with respect to damage to property, and shall indemnify to the

extent covered by insurance proceeds and hold harmless other party or parties from damages arising out of any accident occurring on its parcel except where caused by negligence of the other party or parties. Notwithstanding the foregoing, the Owner and/or Tenant of Parcel A shall be relieved of its insurance obligation hereunder as long as the K-Mart Corporation, formerly S. S. Kresge Company, is in a position to self-insure in regard to liability insurance in accord with the terms of its Lease.

Declarant shall have the right, after discussion with the Owners of the Entire Premises to reasonably increase or decrease the amounts of insurance set forth herein. The intent of this right is to reserve to the Declarant the ability to modify such amounts in light of existing and future monetary fluctuations.

5. In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any part of the Entire Premises, that portion of the award attributable to the value of any land within the Common Areas so taken shall be payable to the owner in fee, as the case may be with respect to claims with the condemning authority, over and above the value of the land within the Common Area so taken, to the extent of any damage suffered to their respective improvements resulting from the severance of the appurtenant Common Area or utility easements and facilities so taken, provided further however that the owner in fee of the portion of the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area so owned by such Owner as near as practicable to the condition of same immediately prior to such condemnation and without contribution from any other Owners of the Entire Premises except to the extent that the proceeds of such award are sufficient to pay the costs of such restoration and repair, or if the Owner is not obligated to restore and/or repair pursuant to a lease

affecting the area so condemned.

No party shall have any right to any award made by the condemning authority for the value of any rights or other benefits relating to other parcels, whichever is taken by the condemnation.

6. Notwithstanding any of the covenants and conditions contained herein, no Owner of all or any part of the Entire Premises, nor its partners, shareholders, officers, executors, transferees, heirs, successors and assigns shall be personally liable for any of the obligations arising from this Deed of Declaration and any judgment rendered hereon shall be limited to the Owner's interest in its parcel as aforesaid, and no deficiency or other personal judgment, order or decree, including any order for specific performance shall be rendered against said Owner or its partners, whether general and/or limited, the assets of the partnership, shareholders, officers, executors, transferees, heirs, successors and assigns, in any action or proceeding brought hereunder.

7. No fences, barriers or other obstructions shall be erected or maintained between Parcels A and B, except to facilitate smooth and safe traffic flow between the Parcels.

8. Declarant for itself and the then Owners of all or any part of the easement areas does, however, reserve the right to close temporarily all or any portion of the said easement areas to such extent, in the opinion of Declarant or the then Owners of all or any part of the easement areas, as may be legally necessary and sufficient to prevent a dedication thereof or an accrual of any rights in any person other than as aforesaid or in the public generally therein. Any such temporary closing shall, however, be further subject to the reasonable consent of all Owners of the Entire Premises.

9. The easements hereby granted, the restrictions hereby imposed and the agreements and covenants herein contained shall

be easements, restrictions and covenants herein running with the land, and shall inure to the benefit of, and be binding upon Declarant and all future Owners of all or any portion of the Entire Premises, and their respective heirs, successors and assigns, and all persons claiming under them for a term of seventy-seven (77) years, from the date hereof, unless terminated either as set forth herein, or by unanimous consent of the K-Mart Corporation, formerly S. S. Kresge Company, while it is the Tenant of Parcel A, and all the Owners of the Entire Premises.

10. In the event of a breach, or attempted or threatened breach, by any Owner hereafter of any portion of said Entire Premises, in any of the terms, covenants and conditions hereof including payment of taxes and assessments, any one or all other Owners of the Entire Premises shall be entitled forthwith to full and adequate relief by injunctions and/or all such other available legal and equitable remedies from the consequences of such breach including payment of any amounts due, and any deed, lease, assignment, conveyance or contract made in violation of this Declaration shall be void and may be set aside upon petition of one or more of the Owners in making any payments of such suit or proceedings shall be assessed against the defaulting Owner and shall constitute a lien against the real estate or the interest therein wrongfully deeded, leased, assigned, conveyed or contracted for until paid, effective upon recording notice thereof in the Office of the Recorder in and for the County where the Entire Premises is located, but any such lien shall be subordinate to any First Mortgage covering any portion of the Entire Premises and any Purchaser at any foreclosure sale (as well as any grantee of deed in lieu of foreclosure), under any such First Mortgage shall take title free from any such existing lien, but, otherwise, subject to the provisions hereof. The remedies of any one or all such Owners

of the Building Areas specified herein shall be cumulative as to each and as to all other permitted at law or in equity.

11. This Agreement shall be construed in accordance with the laws of the State of Wyoming.

IN WITNESS WHEREOF, C & W MANHATTAN ASSOCIATES has caused this Deed of Declaration to be signed the day and year first above written.

WITNESSES:

*[Handwritten signatures of witnesses]*

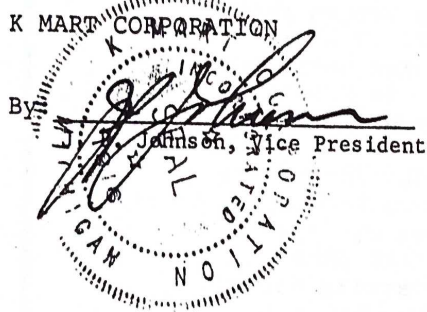
C & W MANHATTAN ASSOCIATES, a Texas Limited Partnership, by the General Partner, COOGAN & WALTERS, a Texas General Partnership, acting by ROLAND WALTERS, a General Partner

By: *[Signature of Roland Walters]*  
ROLAND WALTERS, General Partner

CONSENTED TO BY:

K MARTA CORPORATION

By: *[Signature]*  
R. Jamison, Vice President



ATTEST:

*[Signature of C. E. Lotzar, Jr.]*  
C. E. Lotzar, Jr., Assistant Secretary

THE STATE OF TEXAS )  
 )  
COUNTY OF HARRIS )

BEFORE ME, the undersigned authority, on this day personally appeared ROLAND WALTERS, a General Partner of COOGAN AND WALTERS, a Texas General Partnership, the General Partner of C & W MANHATTAN ASSOCIATES, a Texas Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at said County and State this 14<sup>th</sup> day of October A.D., 1977.

*Jimmie W. Flynn*

Notary Public in and for  
HARRIS COUNTY, T E X A S

My commission expires

9-30-78



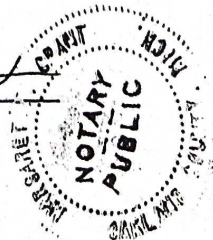
STATE OF MICHIGAN )  
 ) SS  
COUNTY OF OAKLAND )

I do hereby certify that on this 22<sup>nd</sup> day of September, 1977, before me, Margaret T. Grant, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared J. P. Johnson and C. E. Adair, Jr. known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn did depose and say that they reside in Birmingham, Michigan and

respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the Corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and seal and affixed my official seal the day and year in this certificate first above written.

*Margaret T. Grant*  
Notary Public



My commission expires:

MARGARET T. GRANT  
Notary Public, Oakland County, Mich.  
My Commission Expires June 30, 1981

LEGAL DESCRIPTION  
K MART PREMISES  
PARCEL A

COMMENCING at the SW Corner of Wagon Wheel Subdivision of the City of Gillette as recorded by the Campbell County Clerk, thence southerly on the East ROW of Highway 14/16 416.31 feet on a bearing of South 2 degrees 27 minutes 22 seconds East to a point,

THENCE South 89 degrees 36 minutes 22 seconds East 60.07 feet to the point of beginning.

THENCE South 89 degrees 36 minutes 22 seconds East 600.00 feet to a point,

THENCE South 0 degrees 20 minutes 45 seconds West 286.00 feet to a point,

THENCE North 89 degrees 36 minutes 22 seconds West 586.00 feet to a point,

THENCE North 2 degrees 27 minutes 22 seconds West 286.35 feet to the point of beginning, all containing 3.89 acres more or less.

Above parcel being a part of Tract A of the Tarver Ranch Company Addition to the City of Gillette, Campbell County, Wyoming, according to Plat thereof recorded February 8, 1978, in Book 2 of Plats, page 106.

LEGAL DESCRIPTION  
PARCEL B

COMMENCING at the SW Corner of Wagon Wheel Subdivision of the City of Gillette as recorded by the Campbell County Clerk, thence southerly on the East ROW of Highway 14/16 416.31 feet on a bearing of South 2 degrees 27 minutes 22 seconds East to a point, thence South 89 degrees 36 minutes 22 seconds East 60.07 feet to a point, thence South 2 degrees 27 minutes 22 seconds East 286.35 feet to the point of beginning, thence South 89 degrees 36 minutes 22 seconds East 586.00 feet to a point, thence South 0 degrees 20 minutes 45 seconds West 315.00 feet to a point, thence North 89 degrees 36 minutes 22 seconds West 570.58 feet to a point, thence North 2 degrees 27 minutes 22 seconds West 315.39 feet to the point of beginning all containing 4.18 acres more or less.

Above parcel being a part of Tract A of the Tarver Ranch Company Addition to the City of Gillette, Campbell County, Wyoming, according to Plat thereof recorded February 8, 1978, in Book 2 of Plats, page 106.

EXHIBIT "A-1"  
of  
EXHIBIT "D"





# PRELIMINARY SITE PLAN

GILLETTE, WYOMING

K-MART 50 FT. 40,308

SITE ACRES 8.917

PARKING 551

SCALE 1"=50'

NOTES:

1. SEE ALL EXISTING UTILITIES AND RECORDS.
2. ALL DISTANCES ARE APPROXIMATE.
3. ALL DIMENSIONS ARE APPROXIMATE.
4. ALL DIMENSIONS ARE APPROXIMATE.
5. ALL DIMENSIONS ARE APPROXIMATE.
6. ALL DIMENSIONS ARE APPROXIMATE.
7. ALL DIMENSIONS ARE APPROXIMATE.
8. ALL DIMENSIONS ARE APPROXIMATE.
9. ALL DIMENSIONS ARE APPROXIMATE.
10. ALL DIMENSIONS ARE APPROXIMATE.

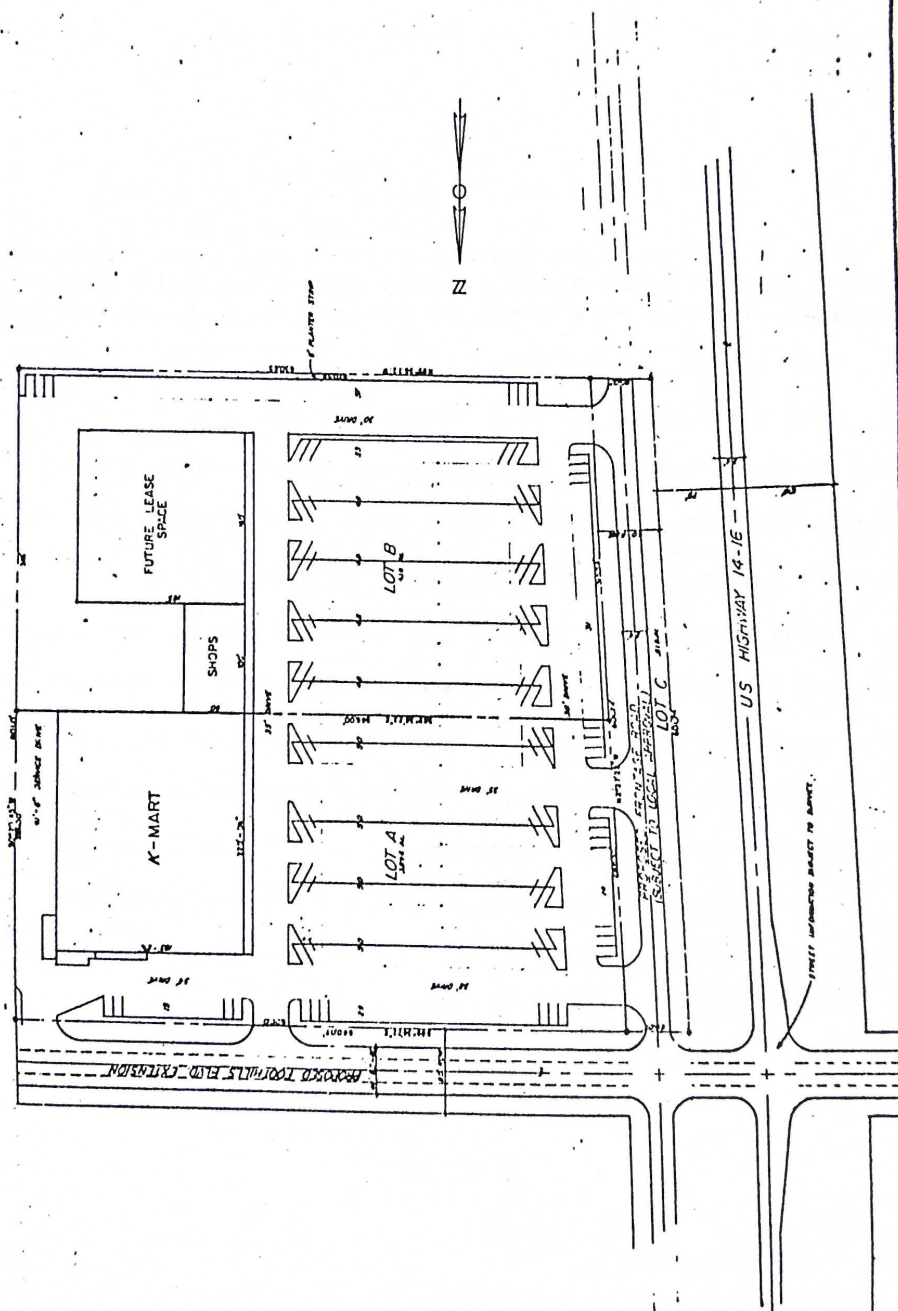


EXHIBIT "B" of Exhibit "D"

LEGAL DESCRIPTION  
ENTIRE PREMISES

COMMENCING at the Southwesterly Corner of Wagon Wheel Subdivision of the City of Gillette as recorded by the Campbell County Clerk, thence southerly on the East right of way line of Highway 14-16 416.31 feet on a bearing of South 2 degrees 27 minutes 22 seconds East to a point;

THENCE South 89 degrees 36 minutes 22 seconds East 60.07 feet to the point of beginning.

THENCE South 89 degrees 36 minutes 22 seconds East 600.00 feet to a point;

THENCE South 0 degrees 20 minutes 45 seconds West 286.00 feet to a point;

THENCE North 89 degrees 36 minutes 22 seconds West 586.00 feet to a point;

THENCE North 2 degrees 27 minutes 22 seconds West 286.35 feet to a point of beginning, all containing 3.89 acres more or less,

TOGETHER with all right, title and interest of the owner of the aforesaid property in, to and under that certain Deed of Declaration made by C. & W Manhattan Associates under date of October 14, 1977 and to be recorded prior to the recording of this instrument.

Above parcels being a part of Tract A of the Tarver Ranch Company Addition to the City of Gillette, Campbell County, Wyoming, according to Plat thereof recorded February 8, 1978, in Book 2 of Plats, page 106.

STATE OF WYOMING } ss. 4-15-78  
Campbell County }  
Filed for record this 26th day of Sept.  
A. D., 19 78 at 1:06 o'clock P.M. and re-  
corded in Book 437 of Photos RECORDED ✓  
on page 430 Fees \$ 28.00 ABSTRACTED ✓  
INDEXED ✓  
Sylvia E. Addison CHECKED ✓  
County Clerk and Ex-Officio Register of Deeds  
By Donna J. Watabaugh  
Deputy

STATE OF WYOMING } Re-recorded  
Campbell County } ss. 4-17-78  
Filed for record this 6th day of Nov.  
A. D., 19 78 at 11:24 o'clock A.M. and re-  
corded in Book 442 of Photos RECORDED ✓  
on page 489 Fees \$ 28.00 ABSTRACTED ✓  
INDEXED ✓  
Sylvia E. Addison CHECKED ✓  
County Clerk and Ex-Officio Register of Deeds  
By Donna J. Watabaugh  
Deputy