

FIRST AMENDMENT TO DECLARATION OF COVENANTS  
AND RESTRICTIONS AND GRANT OF EASEMENTS

5359482

THIS FIRST AMENDMENT ("First Amendment") to the Declaration of Covenants and Restrictions Grant of Easements dated October 1, 1980 ("Original Declaration") relating to property in the City of Kearns, Salt Lake County, State of Utah, is dated and shall be effective as of November 1, 1991, and is made by WPS COMPANY, a Utah general partnership (hereinafter "WPS"), KMART CORPORATION, a Michigan corporation, ZIONS FIRST NATIONAL BANK, a national banking association, ALBERTSON'S, INC., a Delaware corporation, FIRST INTERSTATE BANK OF UTAH, a national banking association, AC PROPERTIES, L.C., a Utah limited liability company, FIRST SECURITY BANK OF UTAH, a national banking association, and SALT LAKE COUNTY, STATE OF UTAH (together hereinafter referred to collectively as "the Parties").

R E C I T A L S

A. WPS executed the Original Declaration the 1st day of October, 1980, by and through its general partner CDI, Ltd., a Utah limited partnership, and such Original Declaration was recorded on October 10, 1980, as Entry No. 3488623, in Book 5162, at Page 1481, in the office of the County Recorder, Salt Lake County, State of Utah, and affects the land ("Subject Land") more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

B. The Parties desire to amend the Original Declaration to change the size and configuration of certain portions of the Building Areas and Common Areas to the Subject Land as well as traffic circulation and flow patterns, ingress, egress and parking configurations within the Subject Land.

THE ORIGINAL DECLARATION IS HEREBY AMENDED AS FOLLOWS:

1. Exhibit "B" to the Original Declaration is hereby deleted in its entirety and replaced by the Exhibit "B" attached hereto and incorporated herein by this reference. From and after the effective date above stated, any reference in this First Amendment or in the Original Declaration to the "Site Plan" or to Exhibit "B" shall mean and refer to the Site Plan which is attached hereto as Exhibit "B", and the "Building Areas" and "Common Areas" as referred to in said Original Declaration shall mean and include the Building Areas and Common Areas which are designated on the Site Plan attached hereto as Exhibit "B".

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2. The parties hereto hereby expressly consent to the building of the Kmart addition and garden shop identified on the Exhibit "B" Site Plan attached hereto, and to ~~any~~ change associated therewith occurring to the Kmart building exterior design, color or elevation and to ~~any~~ change to the Common Area due to said addition, including changes to the sizes and arrangements of the Common Area improvements and including the traffic circulation and flow patterns, ingress, egress and parking configurations. the existing

3. This Amendment may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute but one and the same instrument, and shall become effective only upon execution of one or more of such counterparts by each of the parties hereto.

Except as amended herein, the Original Declaration shall remain in full force and effect.

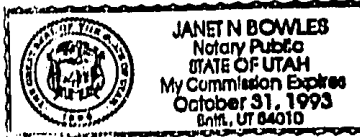
WFS COMPANY,  
a Utah general partnership

By: CDI, LTD., a Utah Limited Partnership, as General Partner

By: *G. Walter Gasser*  
G. Walter Gasser, General Partner of CDI, Ltd.

STATE OF Utah )  
                                  ) : SS.  
COUNTY OF Davis )

On the 18<sup>th</sup> day of November, 1991, personally appeared before me G. WALTER GASSER, who duly acknowledged to me that he executed the foregoing instrument as a General Partner in and on behalf of CDI, LTD., a Utah limited partnership, and that said CDI, LTD., executed said instrument as a General Partner in and on behalf of WFS COMPANY, a Utah general partnership.



*Janet N Bowles*  
NOTARY PUBLIC  
Residing at: *Sandy, UT*

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WPS COMPANY  
a Utah General Partnership

By: WEST POINT SQUARE  
ASSOCIATES, a Utah Limited  
Partnership, as General Partner

By: Ray J. Blake  
General Partner

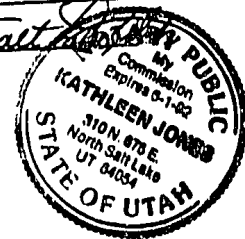
By: \_\_\_\_\_  
General Partner

STATE OF Utah )  
COUNTY OF Salt Lake : ss.

On the 20th day of December, 1991, personally appeared before me RAY F. CLARK and \_\_\_\_\_ who duly acknowledged to me that they executed the foregoing instrument as a General Partners in and on behalf of WEST POINT SQUARE ASSOCIATES, a Utah limited partnership, and that said WEST POINT SQUARE ASSOCIATES executed said instrument as a General Partner in and on behalf of WPS COMPANY, a Utah general partnership.

Kathleen Jones  
NOTARY PUBLIC

Residing at: North Salt Lake



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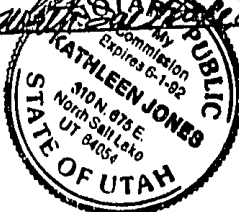
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WEST POINT SQUARE ASSOCIATES,  
a Utah Limited Partnership

By: Ray J. Blake  
General Partner

STATE OF Utah )  
                  ) : ss.  
COUNTY OF Salt Lake

On the 20th day of December, 1991, personally appeared before me Ray F. Blake who duly acknowledged to me that he/she executed the foregoing instrument as General Partner in and on behalf of WEST POINT SQUARE ASSOCIATES, a Utah limited partnership, and that said WEST POINT SQUARE ASSOCIATES executed said instrument as a General Partner in and on behalf of WPS COMPANY, a Utah general partnership.

[Signature]  
NOTARY PUBLIC  
Residing at: 1121 E. 1000 N.  


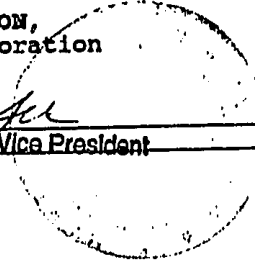
FORM 6542 PAGE 2550

ATTES

*[Signature]*  
Secretary  
Assistant Secretary

EMART CORPORATION,  
a Michigan corporation

By: *[Signature]*  
Its: Senior Vice President

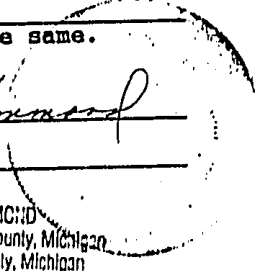


STATE OF Michigan  
COUNTY OF Oakland ss.

On the 2<sup>nd</sup> day of October, 1992, personally appeared before me M. L. Skillas and J. E. LOIZAR, JR., who, being by me duly sworn, did say that they are the Senior Vice President and Assistant Secretary of EMART CORPORATION, a Michigan corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said \_\_\_\_\_ and \_\_\_\_\_ acknowledged to me that said corporation executed the same.

*[Signature]*  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

IRENE F. HAMMICH  
Notary Public, Macomb County, Michigan  
Acting in Oakland County, Michigan  
My Commission Expires July 10, 1995



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ALBERTSON'S, INC.  
a Delaware corporation

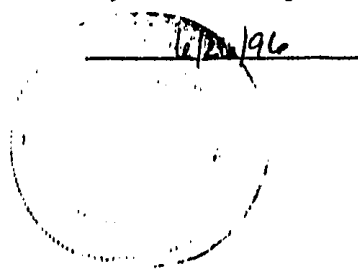
*cm*  
By: William H. Arnold  
Its: Vice President, Real Estate Law

STATE OF IDAHO        )  
                                  ) ss.  
County of Ada         )

On this 10<sup>th</sup> day of December, 1991, before me, the undersigned, a Notary Public in and for said State, personally appeared William H. Arnold, to me known to be Vice President, Real Estate Law, of Albertson's, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:



Kathy Davis  
Notary Public for the  
State of Idaho  
Residing at Boise, Idaho

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FIRST INTERSTATE BANK OF UTAH,  
a national banking association

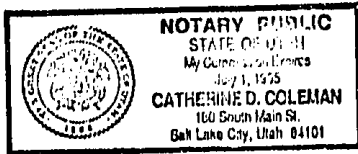
ATTEST:

Virginia S. Smith  
Secretary Assistant

By: Damon Miller  
Its: Vice President

STATE OF UTAH )  
                                  ) ss.  
COUNTY OF SALT LAKE )

On the 28<sup>th</sup> day of APRIL, 1992<sup>2<sup>ce</sup></sup>, personally appeared before me VIRGINIA S. SMITH and DAMON MILLER, who, being by me duly sworn, did say that they are the ASST. SECRETARY and VICE PRESIDENT of FIRST INTERSTATE BANK OF UTAH, a national banking association, and that the foregoing instrument was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said VIRGINIA S. SMITH and DAMON MILLER acknowledged to me that said association executed the same.



Catherine D. Coleman  
NOTARY PUBLIC  
Residing at: Salt Lake City, UT

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AC PROPERTIES, L.C., a Utah  
Limited Liability Company

By: William G. Gee  
William G. Gee  
Its: General Manager

STATE OF UTAH )  
                                  : ss.  
COUNTY OF SALT LAKE )

On the 20th day of AUGUST, <sup>1992</sup> ~~1991~~, personally appeared before me **WILLIAM G. GEE**, who, being by me duly sworn, did say that he is the General Manager of **AC PROPERTIES, L.C.**, a Utah Limited Liability Company, and that the foregoing instrument was signed on behalf of said company by authority of its Bylaws or a resolution of its Board of Directors, and said **WILLIAM G. GEE** acknowledged to me that said company executed the same.

Bonnie A. Aviles  
NOTARY PUBLIC  
Residing at: 411 W. 7200 So. Ste. 200  
Midvale, UT 84047



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FIRST SECURITY BANK OF UTAH,  
a national banking association

ATTEST:

\_\_\_\_\_  
Secretary

By: *Chris Mawson*  
Its: President

STATE OF Utah )  
                          ) : ss.  
COUNTY OF Salt Lake )

On the 11th day of March, 1992, personally appeared before me n/a and Chris Mawson, who, being by me duly sworn, did say that ~~she is the A.V.P.~~ she is the A.V.P. and Chris Mawson of FIRST SECURITY BANK OF UTAH, a national banking association, and that the foregoing instrument was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said n/a and Chris Mawson acknowledged to me that said association executed the same.

NOTARY PUBLIC  
JEANENE V. CLARK  
70 So. Main St.  
S.L.C., UT 84111  
COMMISSION EXPIRES  
NOV. 7, 1995  
STATE OF UTAH

*Jeanene V. Clark*  
NOTARY PUBLIC  
Residing at: *First Security*

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SALT LAKE COUNTY

By: E. James Bradley  
Its: \_\_\_\_\_

APPROVED AS TO FORM

Salt Lake County Attorney's Office

By: mm  
Deputy County Attorney

Date: 4-16-92

STATE OF UTAH )  
                          ) : SS.  
COUNTY OF SALT LAKE )

On the 2nd day of April, 1992, personally appeared before me E. JAMES BRADLEY to be duly sworn and say for himself that he is the Chairman of the Board of Commissioners of Salt Lake County, State of Utah, and that the foregoing instrument was signed on behalf of said County by the authority of its Board of Commissioners and said E. JAMES BRADLEY acknowledged to me that said County executed the same.



Gabriel Velazquez  
NOTARY PUBLIC  
Residing at: S.L.C. Utah

EXHIBIT "A"

WEST POINT SHOPPING CENTER

CITY OF KEARNS, SALT LAKE COUNTY, STATE OF UTAH

PROPERTY DESCRIPTION

Beginning at a point on the South right of Way Line of 5400 South Street, N89°56'30"E, 823.9 ft, and S0°03'30"E, 33.00 ft from the Northwest Corner of Section 17, T2S, R1W, SLB&M; said point also being the northeast corner of a tract of land deeded to Edward N. and Jennean Ortega, special W.D. recorded in book 3401, page 327 Aug. 23, 1973; and running thence N89°56'30"E, 567.61 ft along said south right of way line to the east line of a permanent easement of the Jordan Aqueduct recorded in book 3235 page 127 and referred to as Parcel No. JA-204(F); thence E13°24'08"E along said east line, 217.48 ft; thence S17°01'08"E, 886.50 ft along said line; thence N89°54'30"W, 876.41 ft; thence N0°03'30"W, 531.25 ft; thence S89°56'30"W, 133.90 ft; thence N0°03'30"W, 276.00 ft; thence N89°56'30"E, 133.90 ft; thence N0°03'30"W, 250.00 ft to beg. Cont. 18.2478 acres.

Together with the following described right of way:

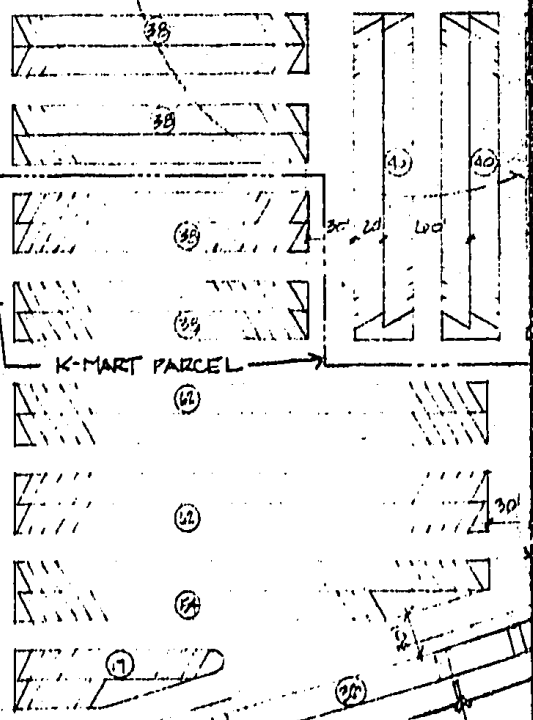
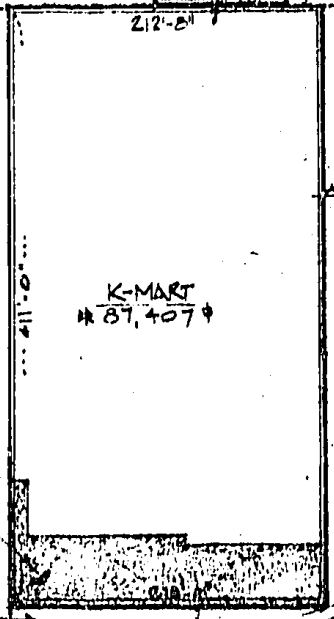
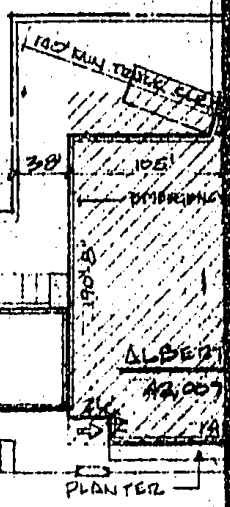
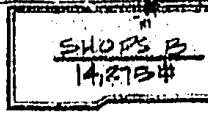
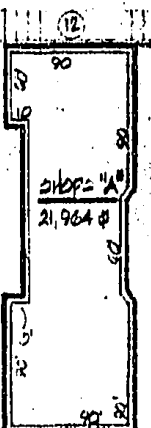
Beginning at a point S0°05'29"E, 559.00 ft, and N89°54'30"W, 68.89 ft. and S0°05'30"W, 245.32 ft. from the Northwest Corner of Section 17, T2S, R1W, SLB&M; running thence S89°54'30"E, 488.17 ft.; thence N79°10'20"E, 205.30 ft; thence S89°54'30"E, 203.25 ft.; thence S0°03'30"E, 35.00 ft.; thence N89°54'30"W, 200.00 ft.; thence S79°10'20"W, 205.30 ft.; thence N89°54'30"W, 491.52 ft. to the East Line of 4015 West Street; thence N0°05'30"E, 35.00 ft. to the point of beginning.

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4015 WEST STREET

BLDG. PAD / LEASE



EXPANSION AREA  
(INCL. IN K-MART G.P.A.)  
COVERED GARDEL SHOP & GARDEN AREA  
6,700 sq ft

UTILITY BARRIEMENT

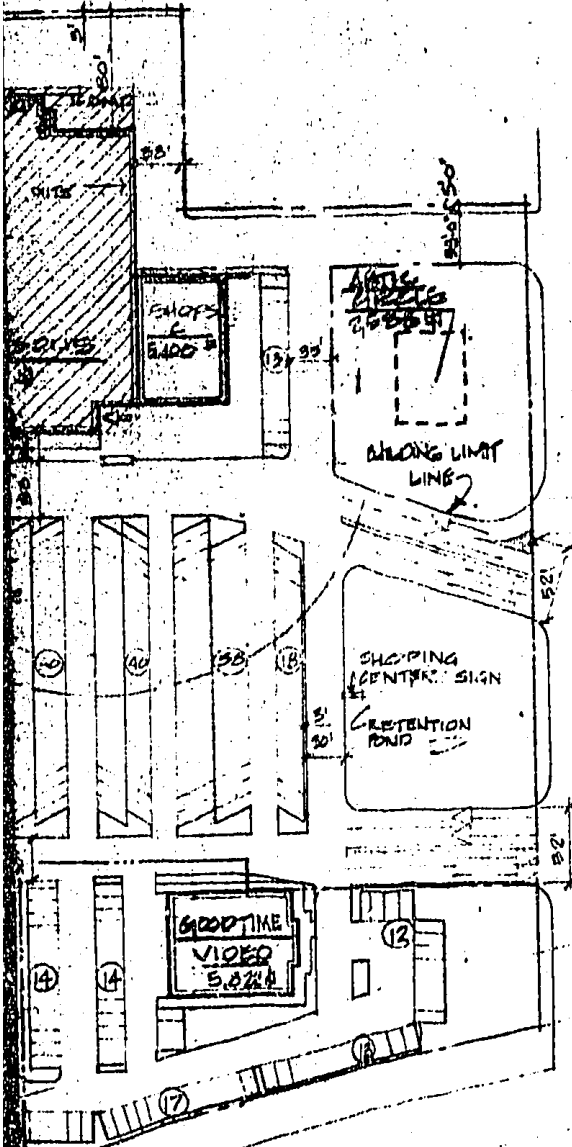
ALBERTSON'S RIGHT  
PROPOSED WEST VALLEY HIGHWAY

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IMPORTANT - DISTANCE BETWEEN REAR CURB & REAR OF ALBERTSON'S MAY VARY BASED ON LOADING RAMP REQUIREMENTS & GRADDS. CONSEQUENTLY, ALBERTSON'S BUILDING MAY MOVE FORWARD A MAXIMUM OF 10'00'. TO BE VERIFIED WITH ALBERTSON'S PROJECT ARCHITECT.

TOTAL BLDG. AREA  
TOTAL CARPARKS  
CARPARKS W. IN 200' RADIUS  
LEASDD FROM  
\* DOES NOT INCLUDE G.P.A. AREA SQUARE FOOTAGE

POLE ANGLE 200



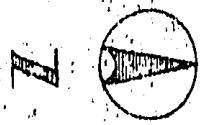
SOUTH STREET

'RIGHT TURN ONLY' SIGN  
PRINTED D&B

SHOPPING CENTER SIGN  
RETENTION POND

PROPOSED JORDAN DUCT

PROPOSED SIGNAL



SCALE: 1"=100'-0"

**EXHIBIT-B SITE PLAN**

REVISIONS

1-24-91	ADJUST SIGNING THROUGH SHOP AREA TO LINE
2-24-91	1-11-91 (5) ADD MAIN ST. 1910, SIGNAGE, PARKING, CHANGE SHOP FRONT, CHANGE SIGNAGE, ADD SIGNAGE TO S.H.
3-14-91	REVISIONS TO EXHIBIT A-DEN 10-1-88 P.R.O. REVISED SHOP SIGNAGE, ADD SIGNAGE TO MAIN ST. 1910, SIGNAGE, PARKING, CHANGE SHOP FRONT, CHANGE SIGNAGE, ADD SIGNAGE TO S.H.
1-12-91	REV. SIGNAGE TO SHOW SHOP, ADDRESS SIGN, ADDRESS, AND PARKING.
2-14-91	REMOVE FUTURE ENTRY NOTE ON S4 S. ENTRY, SHOW K-MILE PARCEL.
10-11-91	REV. SIGNAGE TO SHOW SHOP, ADDRESS, AND PARKING.

West  
Per  
1/12/91  
1/13/91  
1/15/91  
1/16/91

**SITE PLAN**



PROJECT

S.W.C.  
5400,  
50. ST.  
&  
W. VALLEY  
HWY.

KEARNS  
UTAH

STORE NO.  
353

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APPROVED	
McEAY	[Signature]
SOLWAGER	[Signature]
MICHAEL	[Signature]
CLAY BY	[Signature]
LANDON	[Signature]
HORNBECKER	[Signature]

Drawn By: J.C.J.  
Checked By: [Signature]  
Date: 1/16/91  
Sheet: 01

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27 OCTOBER 92 12:06 PM  
KATIE L. DIXON  
RECORDER, BALD LAKE COUNTY, UTAH  
CRAIG GABBER  
270 S MAIN STE 110 BOUNTIFUL, 84010  
REC BY: DIANE KILPACK, DEPUTY

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