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Vol. m92 Page 20112

## UTILITY EASEMENT

MTC 27916

THIS UTILITY EASEMENT is entered into as of the 1st day of September, 1992, by and between WAL-MART STORES, INC. a Delaware corporation whose address is 701 S. Walton Blvd., Attn: Property Management, Bentonville, AR 72716 ("Wal-Mart"); and WARBURTON & BUTTNER DEVELOPMENT COMPANY, LP, a California limited partnership, whose address is c/o Environs West, 2990 Jamacha Road, Suite 250, El Cajon, CA 94109 (hereinafter referred to as "Grantee").

## WITNESSETH

WHEREAS, Wal-Mart is the owner of that certain tract or parcel of land containing 14.519 acres, more or less, situated in the city of Klamath Falls, county of Klamath, state of Oregon, identified as Tract 1 on Exhibit A attached hereto and more fully described on Exhibit B attached hereto.

WHEREAS, Grantee is or will be by the time this instrument is recorded the owner of that certain 0.974 acre tract or parcel of land in the same city, county, and state, which tract lies adjacent to Tract 1 and is identified as Tract 2 on Exhibit A and more fully described on Exhibit B attached hereto.

WHEREAS, Grantee has requested from Wal-Mart, and Wal-Mart is desirous of granting to Grantee, a nonexclusive easement for water line and storm water drainage line under that portion of Tract 1 identified as Water Easement, and Storm Water Drainage Easement, respectively, on Exhibit C, and more fully described on Exhibit D attached hereto.

NOW THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, Wal-Mart does hereby grant to Grantee the non-exclusive easements for a water line and storm water drainage line over across and over those identified portions of Tract 1, subject to the following terms and conditions to which the parties hereto do hereby agree:

- A. Wal-Mart to Grantee Water Easement. Wal-Mart hereby grants to Grantee a nonexclusive water easement that may be needed for making an underground water line connection from the southwest corner of Tract 2 to the existing water line on Tract 1, which easement area is identified as "Water Easement Area" on Exhibit C and is more particularly described on Exhibit D.
- B. Wal-Mart to Grantee Storm Water Drainage Easement. Wal-Mart hereby grants to Grantee a non-exclusive perpetual ten (10) foot wide easement over and across a portion of Tract 1 where identified on Exhibit C as the Storm Water Drainage Easement Area and more fully described on Exhibit D ("Storm Water Drainage Easement") for the purpose of installing, maintaining, and repairing a buried drainage pipe for carrying storm water runoff from Tract 2 to the catch basin located on Tract 1 (identified as the "Catch Basin" on Exhibit C), so long as such drainage shall not cause any material damage to Tract 1 under which storm water is being drained, or any improvements thereon. In the exercise of such rights, Grantee shall not take or cause to be taken any action which would constitute a material change to the original civil engineering plan or drainage calculations for Tract 1 and Grantee shall use reasonable efforts to minimize to the extent reasonably practicable any damage to or interference with the use and enjoyment of any other tract or of any business conducted thereon.

1. Use. The grantee, through its officers, employees and agents, shall have the right to enter upon the Water Easement and Storm Water Drainage Easement Areas in such a manner and at such times from the date hereof as may be reasonably necessary for the purpose of constructing, building, laying, patrolling, replacing and maintaining thereon a water and sewer line, respectively, including such renewals, repairs, replacements and removals as may be from time to time required. Said right shall be perpetual so long as Grantee shall operate a the applicable water or sewer line as herein provided, but should Grantee cease to use said line for a period of one year, then the applicable easement shall become null and void, and all such applicable water and/or sewer lines of appurtenances thereon installed in or upon said lands

shall be removed by Grantee within a reasonable time. Said water line shall be laid so that the top thereof shall be buried not less than thirty inches below the natural surface of the ground; and said sewer line shall be laid so that the top thereof shall be buried not less than thirty-six inches below the natural surface of the ground.

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2. Maintenance. (a) Grantee shall restore the surface of the Sanitary Sewer and Water Easement Areas to their original condition immediately following any of Grantee's permitted activities within the easement areas, so that Wal-Mart, its successor and assigns shall have the free and unobstructed use thereof, subject to the rights of Grantee herein provided. Grantee will make no unreasonable interference with such use of the surface of said lands by Wal-Mart, its successor and assigns.

(b) Grantee, upon the initial installation, and upon each and every occasion that the same is repaired, renewed, added or removed, shall restore the premises of Tract 1, and any such buildings or improvements disturbed, to as good condition as they were prior to any such installation or work, including the restoration of any topsoil.

3. Indemnification. Wal-Mart, its successors and assigns, will not be responsible for damages by others to said water and/or sewer line. Grantee shall indemnify and hold harmless Wal-Mart from any damages or liability to persons or property that might arise from the use, construction, operation or maintenance of the Sanitary Sewer, Water, and Storm Water Drainage Easements by Grantee, its agents, employees, contractors, or anyone authorized by Grantee.

4. Public Grant. Nothing contained herein shall be used or construed as a grant of any rights to any public or governmental authority or agency.

5. Duration. The agreements contained herein and the rights granted hereby shall run with the titles to Tract 2 and the Access Area, Sanitary Sewer and Water Easement Areas and shall bind and enure to the benefit of the parties hereto and their respective heirs, successors, and assigns; subject to the provisions of Paragraph 1 hereinabove relative to the Sanitary Sewer and Water Easement duration.

6. Change of Ownership. In the event Grantee conveys or transfers title to Tract 2 to another party, Wal-Mart shall be notified thereof within thirty (30) days thereafter. Wal-Mart shall be provided the name and address of such transferee.

7. Relocation. (a) Wal-Mart reserves the right to modify or relocate the sanitary sewer and water lines and associated easements and the storm water drainage system provided any such modification or relocation does not prevent adequate delivery of such utility services to Tract 2.

(b) In case of the opening of a public road or street to or upon Tract 1, then any portion of such water and/or sewer line interfering with the proper construction and maintenance of such road or street shall be adjusted accordingly by Grantee, at its expense, so as not to interfere with such road or street.

8. Headings. The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the agreements contained herein or the rights granted hereby.

9. Counterparts. This agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

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

ATTEST:

WAL-MART STORES, INC.

By:

*Executive Vice President*

Title: *Thomas P. Seay*

WITNESS OR ATTEST:

WARBURTON & BUTTNER  
DEVELOPMENT  
COMPANY, LP, a California  
limited partnership  
(Grantee)

By:

*John T. Warburton*

Title:

*Partner*

CORPORATE ACKNOWLEDGEMENT

STATE OF ARKANSAS )

) ss.

COUNTY OF BENTON )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1992, before me, the undersigned notary public in and for said County and State, personally appeared before me \_\_\_\_\_, to me personally know, who, being by me duly sworn, did say that he is \_\_\_\_\_ of WAL-MART STORES, INC., a Delaware corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

WITNESS BY HAND and notarial seal subscribed and affixed in said County and State the \_\_\_\_\_ day of \_\_\_\_\_, 1992.

*Cydney Jayne Messer*

NOTARY PUBLIC

Residing at: Fayetteville, AR

My Commission Expires: October 1, 2001



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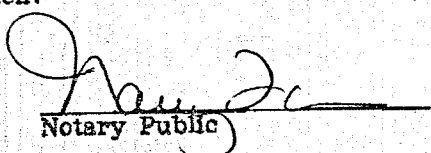
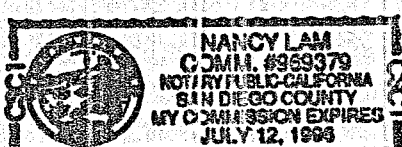
ACKNOWLEDGEMENT

STATE OF California )  
COUNTY OF San Diego ) SS

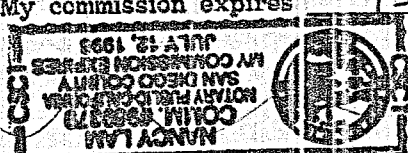
Be it remembered that on this 1st day of September, 1992  
before me a notary public in and for the county and state aforesaid, came  
John T. Warburton of  
Whitewater Butte Del. a partnership, who is personally known to me  
to be such partner, and who is personally known to me to be the person  
who executed as such partner the within instrument of writing on behalf of  
such partnership, and such person duly acknowledged the execution of the  
same to be the act and deed of said partnership.

In testimony whereof, I have hereunto set my hand and affixed my  
notary seal the day and year last above written.

(SEAL)

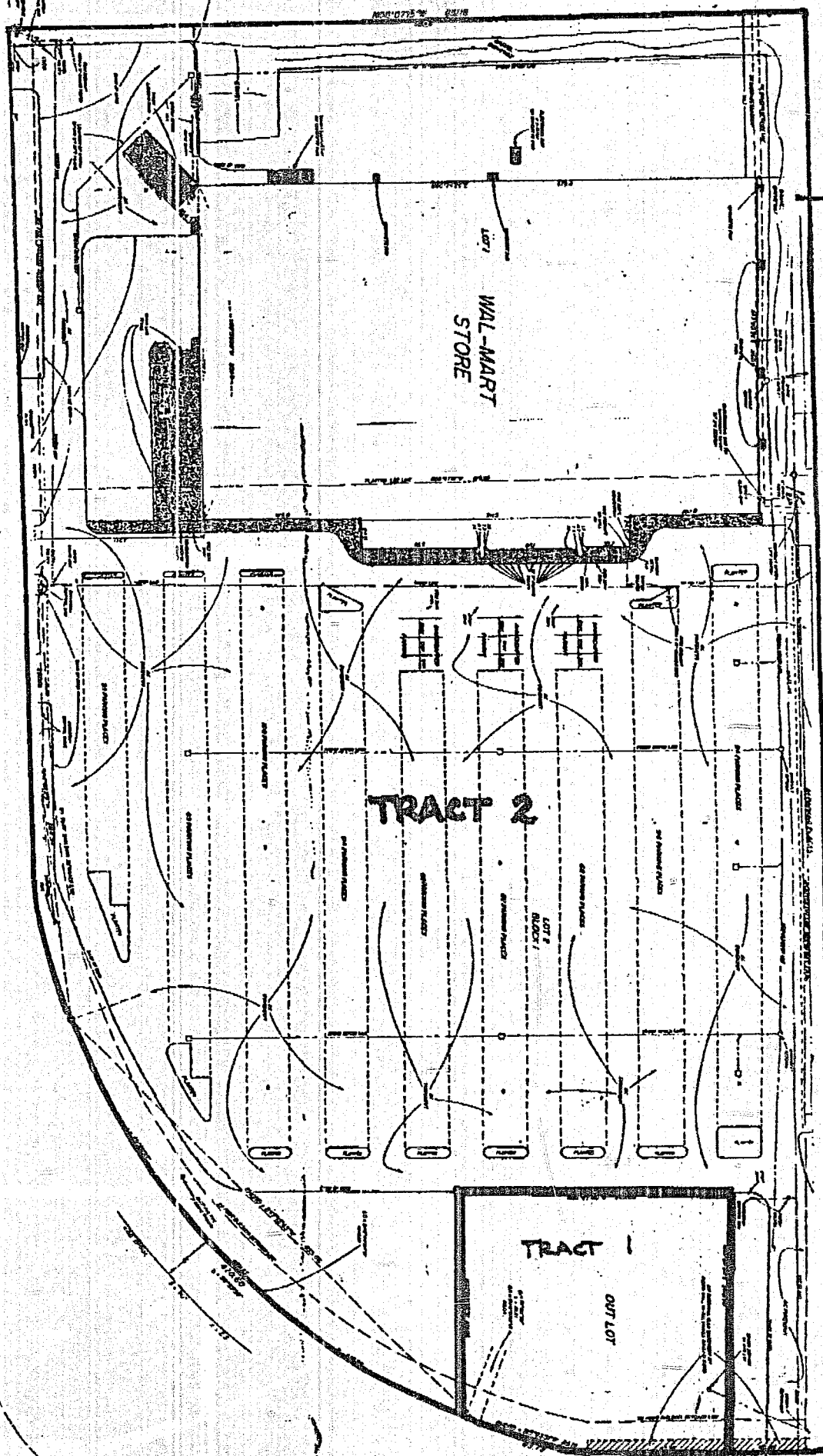
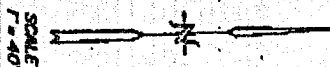
  
Notary Public

My commission expires

7-12, 1992

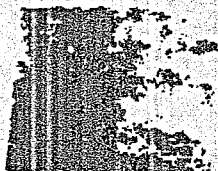
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EXHIBIT 'A'



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TRACT 1



### LEGAL DESCRIPTION

ENTIRE PARCEL MINUS OUT LOT  
(WAL-MART TRACT)

A TRACT OF LAND SITUATED IN LOTS 1, 2 AND 3 BLOCK 1 OF TRACT 1080 -- WASHBURN PARK AND THE SE1/4NE1/4 OF SECTION 9, T39S, R9EWM, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2 THENCE S00°02'00"E ALONG THE EAST LINE OF SAID LOT 2 60.00 FEET; THENCE S89°58'00"W 209.00 FEET; THENCE S00°02'00"E 209.00 FEET; THENCE N89°58'00"E 181.66 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 2; THENCE ALONG THE BOUNDARIES OF SAID LOTS 2 AND 1 ALONG THE ARC OF A CURVE TO THE RIGHT (RADIUS POINT BEARS N68°55'22"W 532.96 FEET AND CENTRAL ANGLE EQUALS 49°28'52") 460.27 FEET, ALONG THE ARC OF A SPIRAL CURVE TO THE RIGHT (THE LONG CHORD OF WHICH BEARS S84°01'28"W 384.34 FEET) 384.00 FEET, N89°26'30"W 40.35 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2, AND N89°26'30"W 359.98 FEET TO A POINT FROM WHICH THE SOUTHWEST CORNER OF SAID LOT 1 BEARS N89°26'30"W 260.00 FEET; THENCE N00°07'15"W, PARALLEL TO THE WEST LINE OF SAID LOT 1, 619.8 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 1; THENCE CONTINUING N00°07'15"W 32.00 FEET; THENCE S89°25'39"E 359.98 FEET TO A POINT ON THE WEST LINE OF SAID LOT 3; THENCE N89°58'00"E 77.06 FEET TO A POINT ON THE EAST LINE OF SAID LOT 3; THENCE S00°02'00"E 32.00 FEET TO THE POINT OF BEGINNING, CONTAINING 14.519 ACRES, MORE OR LESS, WITH BEARINGS BASED ON SAID TRACT 1080 -- WASHBURN PARK.

TRACT 2

### LEGAL DESCRIPTION

OUT LOT

A TRACT OF LAND SITUATED IN LOT 2 BLOCK 1 OF TRACT 1080 -- WASHBURN PARK BEING IN THE SE1/4NE1/4 OF SECTION 9, T39S, R9EWM, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 2, SAID POINT BEING S00°02'00"E 50.00 FEET FROM THE NORTHEAST CORNER OF SAID LOT 2, THENCE, ALONG THE EASTERLY LINE OF SAID LOT 2, S00°02'00"E 113.36 FEET, ALONG THE ARC OF A SPIRAL CURVE TO THE RIGHT (THE LONG CHORD OF WHICH BEARS S15°23'31"W 89.18) 89.79 FEET, ALONG THE ARC OF A CURVE TO THE RIGHT (RADIUS EQUALS 532.96 FEET, CENTRAL ANGLE EQUALS 01°06'38" AND LONG CHORD BEARS C20°31'19"W 10.33 FEET) 10.33 FEET, THENCE S89°58'00"W 181.66 FEET; THENCE N00°02'00"W 209.00 FEET; THENCE N89°58'00"E 209.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.974 ACRES, MORE OR LESS, WITH BEARINGS BASED ON SAID TRACT 1080 -- WASHBURN PARK.

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## WATER EASEMENT:

### #1 WATER

An easement located in the SE 1/4, NE 1/4, of Section 9, T39S, R9E, W.M. Klamath County, Oregon for constructing and maintaining water service lines as may be required more particularly described as follows:

Beginning at the Northwest corner of Parcel 2 as defined by Major Land Partition 23-91; said point also bears S 73-50-02 W-217.47 feet from the Southeast corner of Lot 3 of Tract 1080 of Washburn Park; thence N 89-58-58 E along the North line of said Parcel 2, 20.00 feet; thence North 30.00 feet more or less to the South line of an easement described in Volume M92 Page 16216 Klamath County Records; thence S 89-58-58 W along the South line of the easement described in said Volume M92 Page 16216; 20.00 feet; thence South 30.00 feet more or less to the point of beginning.

## STORM WATER DRAINAGE EASEMENT:

### #2 STORM DRAINAGE

A 10 foot easement located in the SE 1/4, NE 1/4, of Section 9, T39S, R9E, W.M. Klamath County, Oregon for constructing and maintaining a storm drain line, the centerline of which is more particularly described as follows:

Beginning at a point on the North line of Parcel 2 as defined by Major Land Partition 23-91; said point bears N 89-58-58 E - 50.00 feet from the Northwest corner of said Parcel 2; said point also bears S 69-18-43 W - 169.77 feet from the Southeast corner of Lot 3 of Tract 1080 of Washburn Park; thence North 30.00 feet more or less to the South line of the easement described in Volume M92 Page 16216, Klamath County records, being the termination point for this easement.

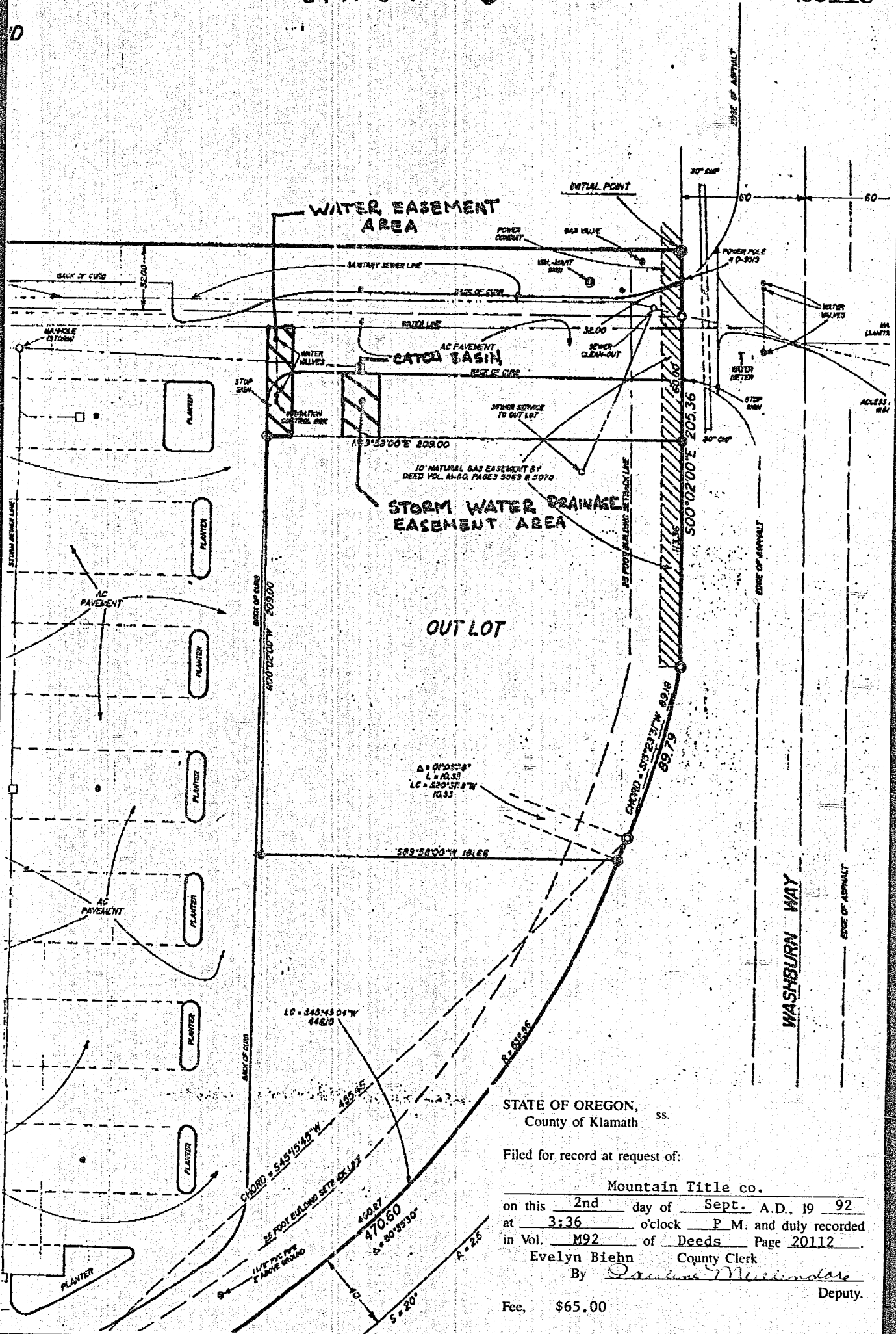
# EXHIBIT D



# EXHIBIT "C"

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D



STATE OF OREGON,  
County of Klamath ss.

Filed for record at request of:

Mountain Title co.

on this 2nd day of Sept. A.D., 19 92  
at 3:36 o'clock P M. and duly recorded  
in Vol. M92 of Deeds Page 20112

Evelyn Biehn County Clerk

By Debra M. Mendenhall  
Deputy.

Fee, \$65.00