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WTC-56329

Vol M04 Page 28886

When recorded return to:
Christopher McNichol
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201 East Washington, Suite 800
Phoenix, Arizona 85004-2327

State of Oregon, County of Klamath
Recorded 05/11/2004 3:10 P m
Vol M04 Pg 28886-98
Linda Smith, County Clerk
Fee \$ 810 # of Pgs 13

Klamath Falls, OR #1772-02

**RATIFICATION AND AMENDMENT OF
DECLARATION OF CROSS EASEMENTS AND
RESTRICTIVE COVENANTS
(WITH CONSENT)**

THIS RATIFICATION AND AMENDMENT OF DECLARATION OF CROSS EASEMENTS AND RESTRICTIVE COVENANTS (WITH CONSENT) (the "Amendment") is made and entered into as of and effective as of the 11th day of May, 2004, by and among OZ INVESTMENT, L.L.C., an Oregon limited liability company ("Developer"); FERRIS KLAMATH FALLS INVESTMENT PROPERTY, LLC, an Oregon limited liability company ("Ferris"), as successor to No Apples I - Klamath, L.L.C., a Washington limited liability company ("NAI"); and BIG 5 CORP., a Delaware corporation, as successor to United Merchandising Corp. ("Big 5 Corp."); as consented to by WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust ("Wal-Mart").

RECITALS:

Developer and NAI entered into that certain Declaration of Cross Easements and Covenants dated March 10, 1997, and recorded March 12, 1997, in Vol. M97, as page 7211 of the real estate records of Klamath County, Oregon (as amended from time to time, the "Declaration"). NAI assigned all its rights under the Declaration to United Merchandising Corp. ("UMC") for as long as UMC retains a leasehold interest in Parcel 2 (as defined in the Declaration). Big 5 Corp. is the successor to UMC. Ferris is the assignee of NAI's interests in the real estate subject to the Declaration (the "Center"). Big 5 Corp. currently operates a "Big 5" sporting goods store on Parcel 2 of the Center.

The parties wish to ratify and amend the Declaration as provided herein.

AGREEMENTS:

IN CONSIDERATION of the foregoing premises and the mutual covenants contained in the Declaration and those hereinafter set forth, the parties hereby agree as follows:

1. **Capitalized Terms.** Capitalized terms in this Amendment, if not otherwise defined herein, shall have the meanings ascribed to those terms in the Declaration.

2. **Ratification.** Notwithstanding the provisions of Paragraph 8.12 of the Declaration, and specifically as relates to the requirement of the recording of the memorandum of the UMC Lease (as defined in the Declaration), all of Article 2, all of Article 4 and

8/10 AM

Paragraphs 8.4 and 8.5 of the Declaration are hereby ratified and declared to have been, *nunc pro tunc*, a part of the Declaration and to be in full force and effect from the recording date of the Declaration, and any requirements of Paragraph 8.12 as regards the recording of a memorandum of the UMC Lease are hereby waived *nunc pro tunc*.

3. Parcels 3 and 4. The parties hereby acknowledge that Parcel 3 and Parcel 4 (as defined in the Declaration) were acquired by Developer on May 13, 1994 and June 29, 1999 (collectively, the "Acquisition Date"), and that pursuant to the terms of Article 7 of the Declaration, effective as of the Acquisition Date, the terms, covenants and conditions of the Declaration shall apply with full force and effect to Parcel 3 and Parcel 4. In addition, the parties hereby agree that, effective as of the Acquisition Date, Parcel 3 and Parcel 4 shall be entitled to the cross-easements and benefits of the ECR (as defined below). The parties hereby amend the Declaration adding Parcel 3 and Parcel 4 to the description of Parcel 1 so that, effective as of the Acquisition Date, the terms and conditions of the Declaration, as they pertain to Parcel 1, are hereby ratified to also pertain to Parcel 3 and Parcel 4.

4. ECR. The parties hereto recognize and acknowledge the continued applicability to the property subject to the Declaration, as amended by this Amendment, and those certain Easements with Covenants and Restrictions Affecting Land, dated May 21, 1991, and recorded July 25, 1991, at Recorders Number 31086, in volume M-91 at page 12081, in the real estate records of Klamath County, Oregon (the "ECR" as referenced herein and in Section 1.7 of the Declaration), as amended by amendment (the "ECR Amendment") and recorded concurrently with this Amendment. The Declaration, as amended hereby, shall remain subject to the ECR, as so amended in the manner set forth herein and in the Declaration. By executing this Amendment, Wal-Mart acknowledges the applicability of the Declaration, as amended hereby, to the "New Parcel (Wal-Mart)" (which New Parcel (Wal-Mart) includes portions of Parcels 1 and 4 under the Declaration) as depicted on the revised and substituted Site Plan attached as Exhibit A hereto and as Exhibit A to the ECR Amendment (the "Revised Site Plan"), which Revised Site Plan the parties hereto have acknowledged and agreed to pursuant to Section 9 of the ECR Amendment.

5. New Plat. The parties hereto acknowledge that there has been a replat recorded on April 23, 2004, at Land Partition No 23-03, in the records of Klamath County (the "New Plat"), as regards some of the property which is the subject of the Declaration and the ECR, such that (i) the New Parcel (Wal-Mart), which was a portion of Parcels 1 and 4 under the Declaration, is now described as Lot 1 of the New Plat, (ii) the remaining portion of Parcel 4 plus a portion of Parcel 1 under the Declaration is now described as Lot 2 of the New Plat, and (iii) a portion of Parcel 1 under the Declaration is now described as Lot 3 of the New Plat, all as depicted on the Depiction set forth on attached Exhibit B.

6. Authority. The parties hereto represent and warrant to each other: (a) that each has the full power and authority to enter into this Amendment and that the Amendment shall be binding upon each; (b) that it does not require the consent of any third party to enter into this Amendment; and (c) that no party shall be in breach or contravention of any contract, agreement or lease by entering into this Amendment.

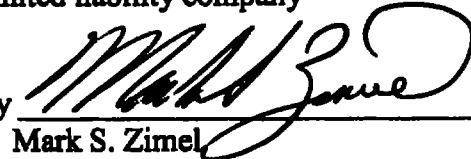
7. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement.

8. Full Force and Effect. Except as expressly modified by this Amendment, the Declaration remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first set forth above.

OZ INVESTMENT, L.L.C., an Oregon
limited liability company

By



Mark S. Zimel
Its Member

**FERRIS KLAMATH FALLS
INVESTMENT PROPERTY, LLC**, an
Oregon limited liability company, as successor
to No Apples I – Klamath, L.L.C., a
Washington limited liability company

By

Its

BIG 5 CORP., a Delaware corporation, as
successor to United Merchandising Corp.

By

Its

Acknowledged and agreed, solely to
evidence its consent pursuant to Section 4
herein

**WAL-MART REAL ESTATE BUSINESS
Trust, a Delaware statutory trust**

By _____

Its _____

State of Washington

County of Clark

The foregoing instrument was acknowledged before me this 7 day of May 2004,
by Mark S. Zimel, a member of OZ Investment, L.L.C., an Oregon limited liability company, on
behalf of the limited liability company.

(Seal and Expiration Date)

Maigorie P. Sullivan
Notary Public

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8. Full Force and Effect. Except as expressly modified by this Amendment, the Declaration remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first set forth above.

OZ INVESTMENT, L.L.C., an Oregon
limited liability company

By _____
Mark S. Zimel
Its Member

**FERRIS KLAMATH FALLS
INVESTMENT PROPERTY, LLC**, an
Oregon limited liability company, as successor
to No Apples I – Klamath, L.L.C., a
Washington limited liability company

By
Its

BIG 5 CORP., a Delaware corporation, as
successor to United Merchandising Corp.

By _____
Its _____

State of CALIFORNIACounty of MARIN

The foregoing instrument was acknowledged before me this 5/10 day of 2004, by NIC/A. FERRIS, a President of Ferris Klamath Falls Investment Property, LLC, an Oregon limited liability company, as successor to No Apples I - Klamath, L.L.C., a Washington limited liability company, on behalf of the limited liability company.

(Seal and Expiration Date)



Matt J. Mirabella, Jr.
Notary Public

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of 2004, by Big 5 Corp., a Delaware corporation, as successor to United Merchandising Corp., on behalf of the corporation.

(Seal and Expiration Date)

Notary Public

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of 2004, by _____, Vice President of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the statutory trust.

(Seal and Expiration Date)

Notary Public

7. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement.

8. Full Force and Effect. Except as expressly modified by this Amendment, the Declaration remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first set forth above.

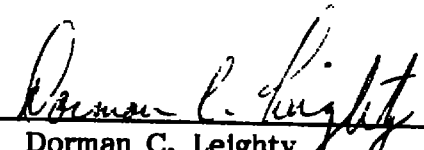
OZ INVESTMENT, L.L.C., an Oregon
limited liability company

By _____
Mark S. Zimel
Its Member

**FERRIS KLAMATH FALLS
INVESTMENT PROPERTY, LLC**, an
Oregon limited liability company, as successor
to No Apples I - Klamath, L.L.C., a
Washington limited liability company

By _____
Its _____

BIG 5 CORP., a Delaware corporation, as
successor to United Merchandising Corp.

By 
Dorman C. Leighty
Its Vice President, Real Estate


LDT


GSM

28893

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of 2004, by _____, a _____ of Ferris Klamath Falls Investment Property, LLC, an Oregon limited liability company, as successor to No Apples I - Klamath, L.L.C., a Washington limited liability company, on behalf of the limited liability company.

(Seal and Expiration Date)

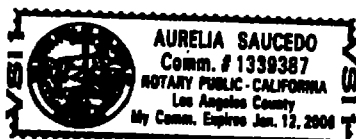
Notary Public

State of California

County of Los Angeles

The foregoing instrument was acknowledged before me this 10th day of 2004, by Big 5 Corp., a Delaware corporation, as successor to United Merchandising Corp., on behalf of the corporation.

(Seal and Expiration Date)



Aurelia Saucedo
Notary Public

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of 2004, by _____, Vice President of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the statutory trust.

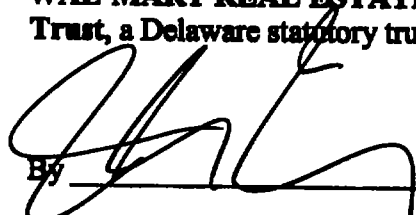
(Seal and Expiration Date)

Notary Public

28894

Acknowledged and agreed, solely to
evidence its consent pursuant to Section 4
herein

WAL-MART REAL ESTATE BUSINESS
Trust, a Delaware statutory trust

By  _____
Its _____ Assistant Vice President

MBA

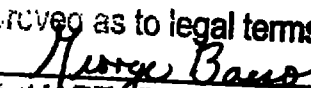
State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of 2004,
by Mark S. Zimel, a member of OZ Investment, L.L.C., an Oregon limited liability company, on
behalf of the limited liability company.

(Seal and Expiration Date)

Notary Public

Reviewed as to legal terms only
by  _____
WAL-MART LEGAL DEPT.
Date: 5-7-04

State of _____

28895

County of _____

The foregoing instrument was acknowledged before me this _____ day of 2004, by _____, a _____ of Ferris Klamath Falls Investment Property, LLC, an Oregon limited liability company, as successor to No Apples I - Klamath, L.L.C., a Washington limited liability company, on behalf of the limited liability company.

(Seal and Expiration Date)

Notary Public

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of 2004, by Big 5 Corp., a Delaware corporation, as successor to United Merchandising Corp., on behalf of the corporation.

(Seal and Expiration Date)

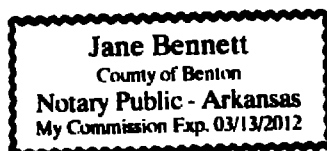
Notary Public

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 7th ^{MAY} day of 2004, by John E. Clarke, Vice President of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the statutory trust.

(Seal and Expiration Date)



Jane Bennett
Notary Public

S:\OR\KLAMATH FALLS\GRIMS\EXPANSION \2DWCS\FX-HIBITS\KFGR-EXHIBIT_A_5-4

1144 Gresham Ave. E.
Suite 601
Seattle, WA 98109

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F (206) 522-9344
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PAC LAND

SHOPPING CENTER - SITE PLAN
NWC WASHBURN AND LAVERNE
KLAMATH FALLS, OR

SCALE: 1" = 250'

EXHIBIT A

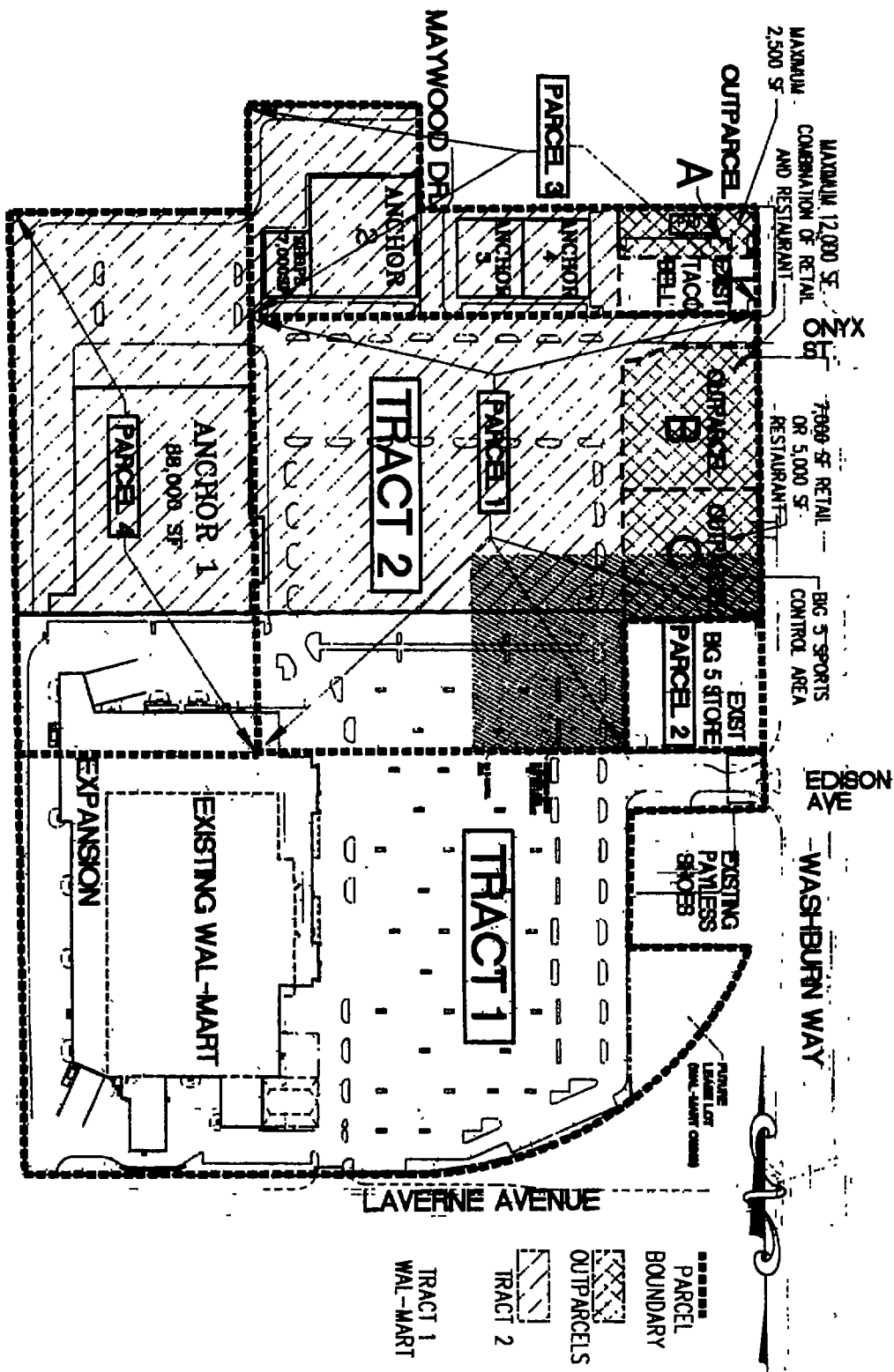


EXHIBIT B

DEPICTION OF NEW PLAT PARCELS

S. OR\KLAMATH FALLS\GRIMS\EXPANSION \2DWGS\EX-IBITS\KFGR-EXHIBIT_A_5-4

1144 Building Ave. E.
Salem, OR 97301
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F (503) 522-4344
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PAC-LAND

SCALE: 1" = 250'

SHOPPING CENTER - NEW PARCELS
NWC WASHBURN AND LAVERNE
KLAMATH FALLS, OR

5-6-2004

EXHIBIT B

