

WAL94NTH

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: EASEMENT

NAME OF AGENCY OR CONTRACTOR: WAL-MART STORES, INC. A DELAWARE, CORPORATION, BY: ASST. VICE-PRESIDENT OF REAL ESTATE) WAGNER EQUIPMENT CO. A COLORADO CORPORATION, BY: ROBERT R. BARROWS (VICE-PRESIDENT), AND THE CITY OF GRAND JUNCTION OF COLORADO A MUNICIPAL CORPORATION BY: DAVID VARLEY (ASST. CITY MANAGER)

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: NORTH AVE. LOT 1 , WAL-MART MINOR SUBDIVISION

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1994

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

EXHIBIT "C"

AGREEMENT AND NO BUILD EASEMENT

THIS AGREEMENT is made as of the 7th day of June, 1994, between WAL-MART STORES, INC., a Delaware corporation, whose address is 702 S. W. Eighth Street, Bentonville, Arkansas 72716 (hereinafter called "Grantee") and WAGNER EQUIPMENT CO. a Colorado corporation whose address is 18000 East Smith Road, Aurora, Colorado 80011, (hereinafter called "Grantor").

WHEREAS, Grantor is owner of Parcel A in the city of Grand Junction, County of Mesa, State of Colorado hereinafter described in Exhibit "A" attached hereto, which northerly property line of Parcel A abuts the Wal-Mart Tract, hereinafter described as Parcel B in Exhibit "A", measuring approximately sixty (60') feet by four hundred twelve and fifty-two hundredths (412.52') feet;

WHEREAS, Grantee is desirous of obtaining a no build easement area from Grantor;

WHEREAS, the City of Grand Junction requires certain covenants and agreements from Wal-Mart;

W I T N E S S E T H

NOW, THEREFORE, the said Grantor, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Grantee, its successors and assigns, a non-exclusive right to a "No Build Easement" on, over, across or under Parcel A measuring approximately twenty (20') feet by one hundred eighty-two and seventy-two hundredths (182.72') feet located in Grand Junction, Colorado. THE EASEMENTS ARE MADE SUBJECT TO THE FOLLOWING:

1. The Grantor shall have the right to use and enjoy fully said premises for parking and drive lanes subject to the easement rights hereby granted, but Grantor agrees that it will not construct nor permit to be constructed any lakes, ponds, buildings or other structures of a permanent nature upon or over said easement area without the written consent of both Grantee and the City of Grand Junction.
2. Grantor and Grantee recognize and understand that within a portion of the described No Build Easement area there currently exists a portion of an in ground loading dock. It is hereby agreed and accepted that Grantor shall have the right to maintain, repair and continually use said in ground dock as required by Grantor and that granting of this No Build Easement shall not obstruct nor interfere in anyway with Grantors use and enjoyment of said in ground dock.
3. The Grantee will indemnify and hold harmless the Grantor from any claims for damages or injuries arising out of or connected directly or indirectly with the use by the Grantee, its invitees, licensees and guests of the easement granted herein, or of the property covered by the easement.
4. The easement granted hereunder is a permanent easement and will continue in full force and effect so long as the easement is used by the Grantee, its successors and assigns.
5. This easement contains all of the agreements and stipulations between the Grantor and Grantee with respect to the granting of said easement, and the same shall inure to the benefit

of and be binding upon the Grantor and Grantee and their respective successors and assigns and thereafter so long as it is required by the City to meet the public safety and health needs.

6. The City of Grand Junction shall retain the right to enforce the terms of the easement against both the Grantor and the Grantee so long as the building is in existence. The Grantee, and its successors and assigns, shall indemnify and hold harmless the City of Grand Junction, its officers, agents and employees from any claims, however stated, for damages or injuries arising out of the use of the easement and the failure to provide unobstructed access to emergency personnel and equipment.

7. While the Wal-Mart building is in existence, the Grantee agrees to take such steps as may be required to maintain the sixty foot-swath of unobstructed area except for the portion the surrounds the Wal-Mart loading dock as shown on Exhibit "B". This easement is intended to satisfy the criteria for an unlimited area surrounding a building as outlined in Section 506(b) of the Uniform Building Code. Grantee agrees to police the area of the easement and to enforce the terms of this agreements as against the owner of the burdened property, and as to others as may reasonably be required.

8. This easement shall not be terminated or relocated or otherwise modified without the prior written consent of the City's Chief Building Official or the Fire Chief.

9. This easement contains all of the agreements and stipulations between the Grantor and Grantee with respect to the granting of said easement, and the same shall inure to the benefit of and be binding upon the Grantor and Grantee and their respective successors and assigns. This easement shall be recorded by Grantee at its expense in the official county records and shall provide copies of same to all parties to the easement.

IN WITNESS WHEREOF, the undersigned have executed this easement agreement the date first written above.

Attest: [Signature]
Assistant Secretary

WAL-MART STORES, INC.
[Signature]
Its Asst. Vice President of Real Estate

Attest: [Signature]
President

WAGNER EQUIPMENT CO.
[Signature]
Its: [Signature]



Attest: [Signature]
Its: [Signature]
City Clerk

CITY OF GRAND JUNCTION, COLORADO
[Signature]
Its: [Signature]

CORPORATE ACKNOWLEDGEMENT

STATE OF COLORADO)
COUNTY OF Adams) §

On this 1st day of June 1994, personally appeared Robert D. Parsons to me personally known who, being by me duly sworn, did say that he is the Vice-President of Wagner Equipment Co., a Colorado corporation, and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by the authority of its Board of Directors and said _____ acknowledged said instrument to be the free act and deed of said corporation

In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

My Commission Expires
2-17-95

Doreen F. Taylor
Notary Public
Residing in Colorado

CORPORATE ACKNOWLEDGEMENT

STATE OF ARKANSAS)
COUNTY OF BENTON) §

Be it remembered that on this 3rd day of June, 1994, before me a notary public in and for the county and state aforesaid, came Robert M. Bidwell Assistant Vice President of Real Estate, of Wal-Mart Stores, Inc., a corporation, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

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

MY COMMISSION EXPIRES 9/25/99

Dorothy E. Jensen
Dorothy E. Jensen
Notary Public
Residing in Benton county

ACKNOWLEDGEMENT

STATE OF COLORADO)
COUNTY OF MESA) §

On this 7th day of June, 1994, personally appeared David Varley to me personally known who, being by me duly sworn, did say that he is the Assistant City Manager of The City of Grand Junction of Colorado, a municipal corporation and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by the authority of its Assistant City Manager

and said ~~Assistant City Manager~~ acknowledged said instrument to be the free act and deed of said corporation

In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

Stephan Kye
Notary Public
Residing in Mesa County

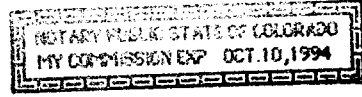


EXHIBIT "A"

PARCEL A: LAND OWNED AND RETAINED BY WAGNER EQUIPMENT CO. COVERED BY NO BUILD EASEMENT TO WAL-MART

A parcel of land situated in NE1/4 of Section 18 T1S R1E of the Ute Meridian, being described as follows:

Considering the South line of the NE1/4NE1/4 of Section 18, T1S, R1E, Ute P.M. to bear N 89°59'52" W and all bearings contained herein to be relative thereto.

COMMENCING at the SE Corner of Lot One Wal-Mart Minor Subdivision thence S00°16'12"E 60.00 feet to the Point of Beginning, thence N89°59'51"W 182.72 feet; thence S00°00'08"W 20.00 feet; thence S89°59'51"E 182.72 feet; thence N00°16'12"W 20.00 feet to the point of beginning.

PARCEL B: LAND OWNED AND RETAINED BY WAL-MART

A parcel of land situated in NE1/4 of Section 18, T1S, R1E of the Ute Meridian, being described as follows:

Considering the South line of the NE1/4NE1/4 of Section 18, T1S, R1E, Ute P.M. to bear N 89°59'52" W and all bearings contained herein to be relative thereto.

Beginning at the SE Corner of Lot One Wal-Mart Minor Subdivision thence N89°59'51"W 379.80 feet to the NW corner of a parcel described in Book 1836 Page 437 of the Mesa County Clerk and Recorder records; thence S00°00'08"W 60.00 feet; thence S89°59'51"E 380.08 feet; thence N00°16'12"W 60.00 feet to the point of beginning.

AGREEMENT

BOOK 1741 PAGE 966

THIS AGREEMENT is made and entered into this Fourth day of May, 1989, by and between the GRAND VALLEY IRRIGATION COMPANY, a Colorado nonprofit mutual irrigation corporation, hereinafter known as "Company," and the CITY OF GRAND JUNCTION, a municipal corporation, hereinafter known as "City."

WHEREAS, in order to widen Patterson Road it is necessary to pipe portions of the existing open irrigation ditch for portions of the Independent Ranchmans' Feeder Ditch owned and operated by the Company, to wit:

1. 24 1/2 Road and Patterson Road

From the east side of 24 1/2 Road, City is to extend an existing pipe of 342 lineal feet of 81" x 59" corrugated steel pipe (SCP). The City would extend this same size pipe with an additional 140 lineal feet of bituminous coated CSP, and would pour a concrete headwall sloped at 1 1/2:1 with bolt for the Irrigation Company to attach their trash rack.

2. 26 Road (1st Street) and Patterson Road

On the Northeast side of 1st Street a connection would be made to the existing 25 degree bend, of 12 lineal feet of 81" x 59" bituminous coated CSP. The City would extend this same size pipe with an additional 40 feet of bituminous coated CSP, and would pour a concrete headwall sloped at 1 1/2:1 with bolts for Irrigation Company to attach a trash rack.

3. Willowbrook Road Crossing of Independent Ranchmans' Feeder

Northeast of 26 Road and Patterson Road approximately 350 feet along the Independent Ranchmans' Feeder, the City would install a road crossing of two (2) 82.5 l.f. x 60 rcp. The end of the culverts will be protected with concrete.

WHEREAS, said pipe extensions and road crossings will be for the purpose of widening and improving said intersections.

NOW, THEREFORE, in consideration of the mutual promises, duties and conveyances set forth below, the parties agree as follows:

1. The company hereby grants the City the non-exclusive right to enter upon and to use the property owned or possessed by the Company pursuant to the instrument recorded in Book 2 Page 86 and the Company agrees that the City, at the City's expense, may extend said pipes, over, under and through the property described above for the purpose of constructing, maintaining and repairing streets subject to the following:

- A. Prior to construction, the City shall prepare and furnish to the Company plans and specifications of the extensions showing their location, design, elevation, materials and construction. The Company shall have the right to approve these plans as to their safety and effect on the Company's use and maintenance of the Independent Ranchmans' Ditch, so long as such approval is not unreasonably withheld.
 - B. The extensions shall not unduly interfere with the operation and maintenance of the Independent Ranchmans' Ditch by the Company including, without limitation, the flow of water therein and the ability of the Company to inspect, clean, slope, repair and maintain the remaining ditch and ditch banks, or anything pertaining to the ditch.
 - C. The City shall operate, maintain and repair said pipes.
 - D. Nothing contained herein shall be construed to prevent the Company from performing any maintenance work on or within its ditch or ditch banks which the Company may in its sole discretion deem proper and desirable, using reasonable care.
2. The parties agree that, for the purpose of defining the relative duties and obligations of the parties hereto only, the existing open ditch owned by the Company is inherently dangerous and that the City's conversion of said existing ditch to a closed, piped system will reduce the risk of injury to persons and property, with one possible exception: if a person were gain entrance to the closed piped system it would be more difficult to get out that it would be if the ditch was open. The City has therefore agreed to construct a barrier at the opening of the piped system to eliminate the possibility of accidental entry therein. Given the foregoing, the City agrees to indemnify and to hold harmless the Company from any and all damages that arise or result from the negligent acts and omissions of the City and from the intentional acts of the City; said indemnity shall include the Company's, and its employees, court costs and attorney's fees incurred in investigating or defending such claims or damages as are described above.

This agreement shall inure to the benefit of and be binding upon the parties' legal successors, representatives and assigns.

Dated the year and date first above written.



GRAND VALLEY IRRIGATION COMPANY,
a Colorado nonprofit mutual
irrigation company.

Dorinda Thompson
Dorinda Thompson, Secretary

By: *Edward J. Currier*
Edward J. Currier, President

ATTEST:

CITY OF GRAND JUNCTION

Neva B. Lockhart
Neva B. Lockhart, City Clerk

By: *Mark K. Achen*
Mark K. Achen, City Manager

by [unclear] martinez