

260

RETURN RECORDED DOCUMENT TO:

BENCOR/SHERIDAN LIMITED PARTNERSHIP
ATTN: JON GORSKI
90 S. CASCADE, STE 330
COLORADO SPRINGS, CO 80903

495119 EASEMENT
BOOK 459 PAGE 0260
RECORDED 12/14/2004 AT 03:50 PM
AUDREY KOLTISKA, SHERIDAN COUNTY CLERK

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") is made and entered into this 13th day of December, 2004, by and between SHERIDAN MOTOR, INC., A WYOMING CORPORATION (the "Parcel A Owner"), and BENCOR/SHERIDAN LIMITED PARTNERSHIP, A WYOMING LIMITED PARTNERSHIP (the "Parcel B Owner").

RECITALS

- A. The Parcel A Owner is the owner of that certain real property situated in the City of Sheridan, County of Sheridan, State of Wyoming, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("Parcel A").
- B. The Parcel B Owner is the owner of that certain real property situated in the City of Sheridan, County of Sheridan, State of Wyoming, more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference ("Parcel B").
- C. The Parcel B Owner intends to develop Parcel B for use by Walgreen (hereinafter defined).
- D. The Parcel A Owner currently has developed Parcel A as a retail/commercial site.
- E. The parties hereto desire to impose an easement upon Parcel B, and to establish certain restrictions with respect to said Parcel A, for the mutual and reciprocal benefit and complement of Parcel A and Parcel B and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.
- F. Under separate instrument, the parties are terminating an existing easement across Parcel B.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Parcel A Owner and the Parcel B Owner hereby covenant and

agree that the Parcels and all present and future owners and occupants of the Parcels shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Agreement, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

AGREEMENTS

1. Definitions. For purposes hereof:

- (a) The term "Owner" or "Owners" shall mean the Parcel A Owner (as to Parcel A) and the Parcel B Owner (as to Parcel B) and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.
- (b) The term "Parcel" or "Parcels" shall mean each separately identified parcel of real property now constituting a part of the real property subjected to this Agreement as described on Exhibits "A" and "B", that is, Parcel A and Parcel B, and any future subdivisions thereof.
- (c) The term "Permittees" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).
- (d) The term "Walgreen" or "Walgreens" shall mean Walgreen Co., an Illinois corporation (or any of its affiliates, subsidiaries, successors or assigns). Walgreen shall be deemed a third party beneficiary to this Agreement.
- (e) The term "Walgreen Lease" or "Walgreens Lease" shall mean that Lease of Parcel B from the Parcel B Owner as landlord to Walgreen as tenant, and any amendments, extensions or replacements thereof.
- (f) The term "Site Plan" shall mean that site plan of Parcel B attached hereto as Exhibit "C" and by reference made a part hereof. Except as may be otherwise provided in this Agreement, the Site Plan is for identification purposes only.

2. Easement.

2.1 Grant of Easement. Subject to any express conditions, limitations or reservations contained herein, Parcel B Owner hereby grants a non-exclusive easement for reasonable access, ingress and egress over that

paved driveway described on Exhibit "D" attached hereto (the "Driveway") and as shown by the cross hatching on Exhibit "C" attached hereto so as to provide for the passage of motor vehicles and pedestrians to Parcel A over Parcel B on the Driveway.

2.2 Indemnification. Parcel A Owner shall indemnify and hold Parcel B Owner and Walgreens harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of Parcel A Owner, its contractors, employees, agents, or others acting on behalf of Parcel A Owner in connection with use of the Driveway.

2.3 Access Opening. The opening and access point contemplated between the Parcels for use of the Driveway, is shown on the Site Plan and such opening and access point between the Parcels for use of the Driveway, as contemplated pursuant to paragraph 2.1(a) above, are hereinafter called the "Access Opening." The Access Opening shall in no event be blocked, closed, altered, changed or removed and shall at all times remain in place as shown on the Site Plan. There shall be maintained between the Access Opening a smooth and level grade transition to allow the use of the Driveway for pedestrian and vehicular ingress and egress as set forth in paragraph 2.1 above. Except with respect to the Access Opening, each Owner shall be permitted to maintain a fence, curbing, landscaping or other improvements along the boundary line of its Parcel.

3. Maintenance. Parcel B Owner shall maintain the Driveway in a clean and neat condition.

4. Restrictions.

4.1 General. Each Parcel shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Parcel which is illegal.

4.2 Additional Parcel A Restrictions. Throughout the term of this Agreement, it is expressly agreed that neither all nor any portion of that property described on Exhibit "A" attached hereto shall be used, directly or indirectly, for any one or more of the following purposes: (i) the operation of a drug store or a so-called prescription pharmacy or for any other purpose requiring a qualified pharmacist or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind.

4.3 Drive-Throughs. There shall be no restriction imposed by this easement prohibiting facilities on Parcel A that utilize a vehicular drive-up or

drive-through at which the stopping or standing of motor vehicles in line at a location for dropoff and/or pickup is intended (as, for example, at a restaurant, car wash or bank); PROVIDED HOWEVER, neither this easement nor the Driveway shall be used in any manner such that motor vehicles in line at such a drive-up or drive-through on Parcel A stop or stand onto Parcel B and/or the Driveway, or otherwise interfere with a normal pattern and flow of pedestrian or vehicular traffic on and across Parcel B and/or the Driveway.

5. Insurance. Throughout the term of this Agreement, each Owner shall procure and maintain general and/or comprehensive public liability and property damage insurance against claims for personal injury (including contractual liability arising under the indemnity contained in paragraph 2.2 above), death, or property damage occurring upon such Owner's Parcel, with single limit coverage of not less than an aggregate of Two Million Dollars (\$2,000,000.00) including umbrella coverage, if any, and naming each other Owner and Walgreen during the continuance of the Walgreen Lease (provided the Owner obtaining such insurance has been supplied with the name of such other Owner in the event of a change thereof) as additional insureds. Walgreen (whether as tenant under the Walgreen Lease or in the event Walgreen becomes an Owner of a Parcel) may elect to self insure and/or carry insurance required hereunder under master or blanket policies of insurance.
6. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of Parcel A or Parcel B. No easement, except (i) that expressly set forth in paragraph 2, and/or (ii) an easement over Parcel A so as to enable the construction of the Driveway and other improvements required for the initial development for Walgreens by the Owner of Parcel B, shall be implied by this Agreement; in that regard, and without limiting the foregoing, no easements for parking, signage, drainage or utilities are granted or implied.
7. Remedies and Enforcement.

7.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) and Walgreen shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. Walgreen shall have the right, but not the obligation, to enforce this Agreement on behalf of the Owner of Parcel B, and/or to cure a breach or default hereunder by the Owner of Parcel B, which enforcement or cure shall be accepted by the other Owner(s) as if effected by the Owner of Parcel B.

7.2 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good

faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

7.3 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of paragraphs 2 and/or 4 of this Agreement, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owner and/or its Permittees to suffer irreparable harm and such nondefaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of paragraphs 2 and/or 4 of this Agreement, the nondefaulting Owner and Walgreen, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of paragraphs 2 and/or 4 of this Agreement.

8. Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Sheridan County Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of Parcel A and Parcel B in accordance with paragraph 9.2 hereof.

9. Miscellaneous.

9.1 Attorneys' Fees. In the event a party (including Walgreen) institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

9.2 Amendment.

(a) The parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of Parcel A and Parcel B, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the County Recorder of Sheridan County, Wyoming.

(b) Notwithstanding subparagraph 9.2(a) above to the contrary, no termination of this Agreement, and no modification or amendment of this Agreement shall be made nor shall the same be effective unless the same has been expressly consented to in writing by Walgreen (during the continuance of the Walgreen Lease).

9.3 Consents. Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or

approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner or Walgreen under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing. During the continuance of the Walgreen Lease, any consent by the Owner of Parcel B, to be effective, shall also require the consent of Walgreen. Any consent of Walgreen may be given, denied or conditioned by Walgreen in Walgreen's sole and absolute discretion.

9.4 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

9.5 No Agency. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

9.6 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

9.7 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

9.8 Separability. Each provision of this Agreement and the application thereof to Parcel A and Parcel B are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of both Parcels by the same person or entity shall not

terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

9.9 Time of Essence. Time is of the essence of this Agreement.

9.10 Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

9.11 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party and Walgreen may change from time to time their respective address for notice hereunder by like notice to the other party and Walgreen. Notice given by any Owner hereunder to be effective shall also simultaneously be delivered to Walgreen (during the continuance of the Walgreen Lease). The notice addresses of the Parcel A Owner, the Parcel B Owner and Walgreen are as follows:

Walgreen: Walgreens
Attention: Law Department
Mail Stop No. 1420
104 Wilmot Road
Deerfield, Illinois 60015

Parcel B Owner: Bencor/Sheridan Limited Partnership
Attention: Jon Gorski
90 S. Cascade, Suite 330
Colorado Springs, CO 80903

Parcel A Owner: Sheridan Motor, Inc.
Attention: John Koltiska
1858 Coffeen Avenue
Sheridan, Wyoming 82801

9.12 Governing Law. The laws of the State in which the Parcels are located shall govern the interpretation, validity, performance, and enforcement of this Agreement.

9.13 Estoppel Certificates. Each Owner, within thirty (30) day of its receipt of a written request from the other Owner(s) or Walgreen, shall from time to time provide the requesting Owner or Walgreen, a certificate binding upon such Owner stating: (a) to the best of such Owner's knowledge, whether any party to this Agreement is in default or violation of this Agreement and if so identifying such default or violation; and (b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

9.14 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

PARCEL B OWNER:

BENCOR/SHERIDAN LIMITED PARTNERSHIP
BY: BENCOR DEVELOPMENT, LLC
ITS GENERAL PARTNER

By: Ray Walkowski
Its: MANAGER

PARCEL A OWNER:

SHERIDAN MOTOR, INC.

BY: [Signature]
ITS: President

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STATE OF COLORADO)
) s.s.
COUNTY OF EL PASO)

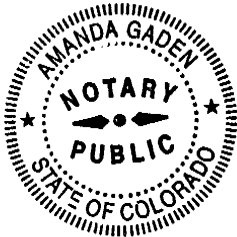
This instrument was acknowledged before me on the 9th day of December, 2004, by Ray Walkowski, Manager of Bencor Development, LLC, a Colorado limited liability company, general partner of Bencor/Sheridan Limited Partnership, a Wyoming limited partnership on behalf of said limited liability company.

[Signature]
Notary Public

[SEAL]

My Commission expires:

8/31/05



STATE OF WYOMING)
) s.s.
COUNTY of SHERIDAN)

Before me, a Notary Public in and for said State, on this day personally appeared John Koltiska, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the President of SHERIDAN MOTOR, INC., a Wyoming corporation, and who acknowledged to me that he executed said instrument for the purpose and consideration therein expressed, and as the act of said partnership.

Given under my hand and seal of office this 13th day of December, 2004.

[Signature]
Notary Public

[SEAL]

My Commission expires:

5-13-06



EXHIBIT "A"

LEGAL DESCRIPTION

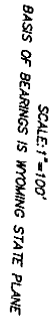
RE: Restricted Use Area for Sheridan Motor, Inc
December 02, 2004

A tract of land situated in Lot 2 of the King-Neighbors Addition and the SE¼SW¼ of Section 35, Township 56 North, Range 84 West, 6th P.M. to the City of Sheridan, Sheridan County, Wyoming; said tract being more particularly described as follows:

COMMENCING at the northeast corner of a tract of land described in Book 457 of Deeds, Page 354; thence S00°19'20"E, 188.32 feet along the east line of said tract and the westerly right of way line of Coffeen Avenue (AKA State Highway 14, 87 & I-90 Business Loop) to the **POINT OF BEGINNING** of said tract; thence S00°19'20"E, 156.77 feet along said east line of said tract and said westerly right of way line of Coffeen Avenue (AKA State Highway 14, 87 & I-90 Business Loop) to a point; thence S89°51'38"W, 134.16 feet to a point, said point lying on the southerly line of said Lot 2; thence S89°51'38"W, 264.36 feet along said southerly line of Lot 2 to a point; thence N00°07'59"W, 155.05 feet to a point; thence N89°36'48"E, 398.01 feet to the **POINT OF BEGINNING**.

Said tract contains 1.43 acres of land more or less.

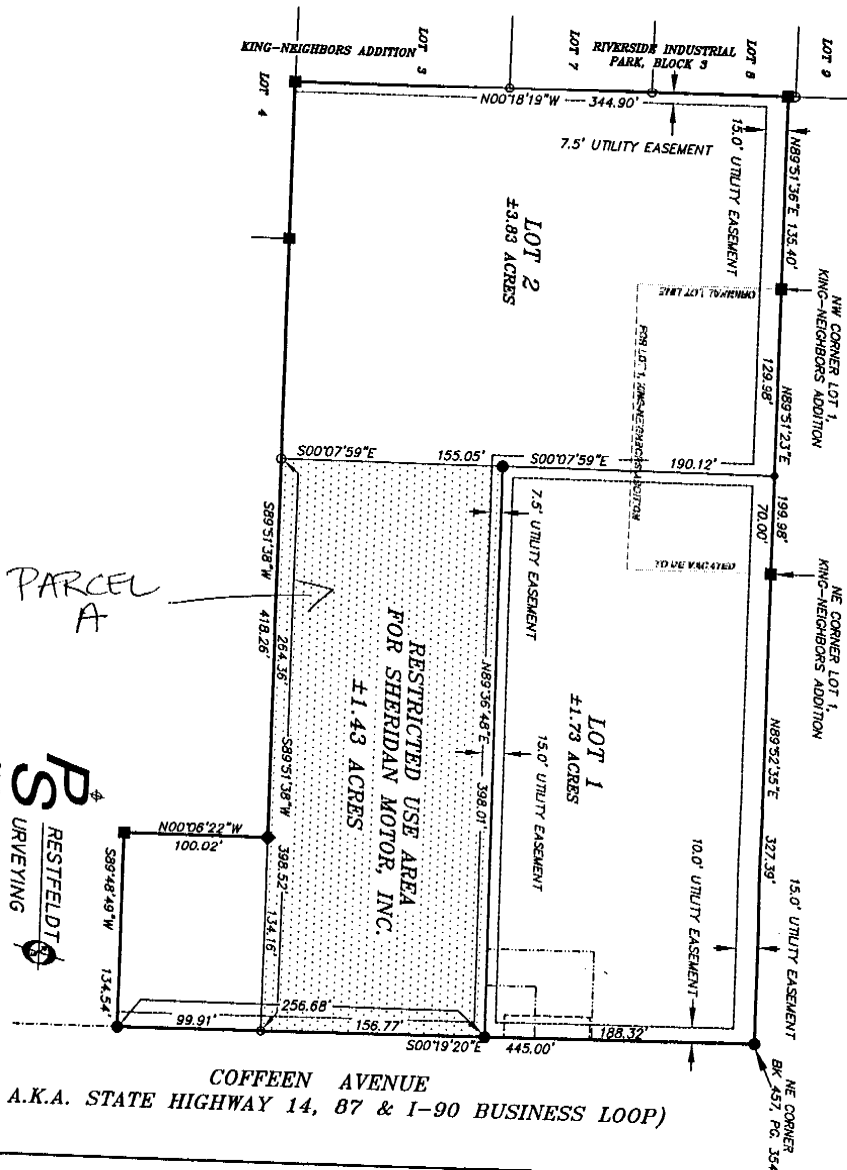
Basis of Bearings is Wyoming State Plane (East Central Zone).



SCALE: 1"=100'


LEGEND

- FOUND 3" BRASS CAP PER LS 102
 FOUND 3-1/4" ALUMINUM CAP PER LS 2615
 FOUND 1-1/2" ALUMINUM CAP PER LS 2615
 SET 3-1/4" ALUMINUM CAP PER LS 2615
 FOUND 1-1/2" ALUMINUM CAP PER LS & LS 3664
 FOUND CONCRETE RIGHT OF WAY MONUMENT
 SET 1-1/2" OR 2" ALUMINUM CAP PER LS 2615
 CALCULATED POSITION-NOT FOUND/NOT SET
 LOT/PARCEL LINE
 UTILITY EASEMENT
 BOUNDARY LINE
 RIGHT OF WAY LINE
 ORIGINAL LOT LINE FOR LOT 1, KING-NEIGHBORS ADDITION
 TO BE VACATED
 ACCESS EASEMENT TO LOT 2
 EXISTING ROW EASEMENT (Bk. 290, Pg. 44)
 SECTION LINE
 RESTRICTED USE AREA FOR SHERIDAN MOTOR, INC.



COFFEEN AVENUE

A.K.A. STATE HIGHWAY 14, 87 & I-90 BUSINESS LOOP)

PS  **RESTFELDT**
URVEYING

PO BOX 3082
SHERIDAN, WY 82801
307-672-7415
FAX 674-5000

JN: 24028
DF: 2004/2004028D
RESTRICTED USE AREA
PAF: 1.000235
DECEMBER 06, 2004

EXHIBIT "B"

LEGAL DESCRIPTION

RE: Proposed Lot 1 of the JMK Subdivision to the City of Sheridan
Record Owner: Bencor/Sheridan Limited Partnership
October 20, 2004

A tract of land situated in Lot 1 and Lot 2 of the King-Neighbors Addition to the City of Sheridan, and the SE¼SW¼ of Section 35, Township 56 North, Range 84 West, 6th Principal Meridian, City of Sheridan, Sheridan County, Wyoming; said tract being more particularly described as follows:

BEGINNING at the northeast corner of a tract of land described in Book 457 of Deeds, Page 354 (monumented with a 2" aluminum cap per LS 2615), said point lying on the west right of way line of Coffeen Avenue (AKA State Highway 14, 87 & I-90 Business Loop); thence S00°19'20"E, 188.32 feet along the east line of said tract and said west right of way line to a point (monumented with a 1-½" aluminum cap per PLS 2615); thence S89°36'48"W, 398.01 feet to a point (monumented with a 1-½" aluminum cap per PLS 2615); thence N00°07'59"W, 190.12 feet to a point (monumented with a 1-½" aluminum cap per PLS 2615), said point lying on the north line of said Lot 1; thence N89°51'23"E, 70.00 feet along said north line of said Lot 1 to a point (monumented with a 1-½" aluminum cap per PE & LS 3864), said point being the northeast corner of said Lot 1; thence N89°52'35"E, 327.39 feet to the **POINT OF BEGINNING**.

Said tract contains 1.73 acres of land more or less.

Basis of Bearings is Wyoming State Plane (East Central Zone).

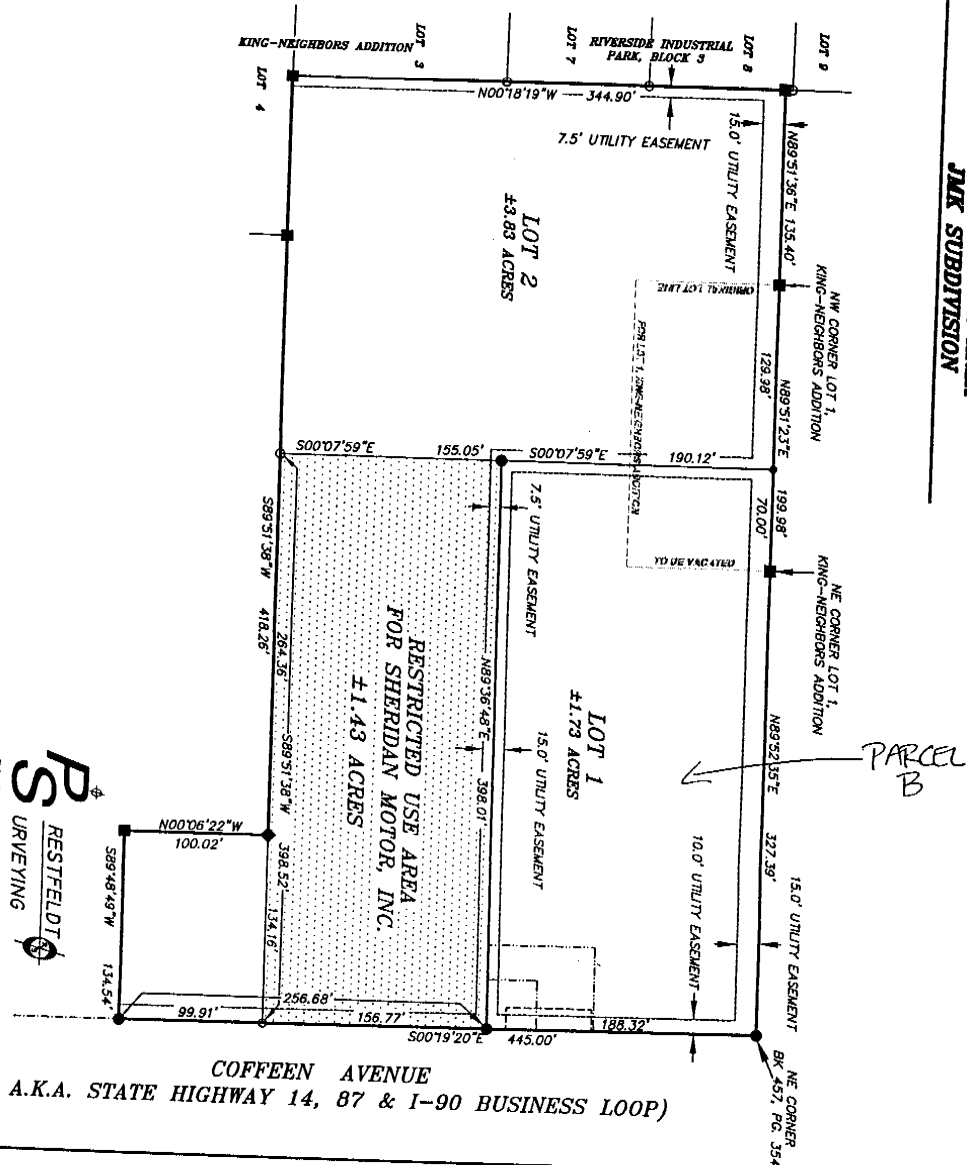
**EXHIBIT
OF THE
RESTRICTED USE AREA
JMK SUBDIVISION**



SCALE: 1"=100'
BASIS OF BEARINGS IS WYOMING STATE PLANE

LEGEND

- FOUND 3" BRASS CAP PER LS 102
- FOUND 3-1/4" ALUMINUM CAP PER LS 2615
- ◆ SET 3-1/4" ALUMINUM CAP PER LS 2615
- ◆ FOUND 1-1/2" ALUMINUM CAP PER LS 2615
- FOUND 1-1/2" ALUMINUM CAP PER FE & LS 3864
- SET 1-1/2" OR 2" ALUMINUM CAP PER LS 2615
- CALCULATED POSITION-NOT FOUND/NOT SET
- LOT/PARCEL LINE
- BOUNDARY LINE
- UTILITY EASEMENT
- RIGHT OF WAY LINE
- ORIGINAL LOT LINE FOR LOT 1, KING-NEIGHBORS ADDITION TO BE VACATED
- ACCESS EASEMENT TO LOT 2
- EXISTING R.O.W. EASEMENT (BK. 290, PG. 44)
- SECTION LINE
- RESTRICTED USE AREA FOR SHERIDAN MOTOR, INC.



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EXHIBIT "D"

LEGAL DESCRIPTION

**RE: Lot 1, JMK Subdivision Access Easement to Lot 2, JMK Subdivision
October 27, 2004**

A tract of land situated in Lot 2 of the King-Neighbors Addition and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 56 North, Range 84 West, 6th P.M. to the City of Sheridan, Sheridan County, Wyoming; said tract being more particularly described as follows:

COMMENCING at the northeast corner of a tract of land described in Book 457 of Deeds, Page 354; thence S00°19'20"E, 113.32 feet along the east line of said tract and the westerly right of way line of Coffeen Avenue (AKA State Highway 14, 87 & I-90 Business Loop) to the **POINT OF BEGINNING** of said easement; thence S00°19'20"E, 40.00 feet along said east line of said tract and said westerly right of way line of Coffeen Avenue (AKA State Highway 14, 87 & I-90 Business Loop) to a point; thence S89°36'48"W, 35.00 feet to a point; thence S00°19'20"E, 35.00 feet to a point; thence S89°36'48"W, 25.00 feet to a point; thence N00°19'20"W, 75.00 feet to a point; thence N89°36'48"E, 60.00 feet to the **POINT OF BEGINNING** of said easement.

Said tract contains 3,275 square feet or 0.08 acres of land more or less.

Basis of Bearings is Wyoming State Plane (East Central Zone).

