

FIRST AMENDMENT TO COVENANTS FOR OPERATION,  
MAINTENANCE AND RECIPROCAL EASEMENTS

THIS FIRST AMENDMENT ("First Amendment") to the Covenants for Operation, Maintenance and Reciprocal Easements dated November 20, 1980 ("Original Covenant") relating to property in the City of North Logan, Cache County, State of Utah, is dated and shall be effective as of October 31, 1990, and is by CDI, Ltd., a Utah limited partnership (hereinafter "CDI"), L.G.U. REALTY, INC., a Delaware corporation (hereinafter "LGU"), LOGAN REALTY LIMITED PARTNERSHIP, a Utah limited partnership (hereinafter "Logan Realty"), and SUPER WASH, INC., an Illinois corporation (hereinafter "Super Wash") (together hereinafter referred to collectively as the "Declarants").

R E C I T A L S

A. CDI executed the Original Covenant the 20th day of November, 1980, a copy of which is attached hereto as Exhibit "1" and incorporated herein by reference, and affecting the land ("Subject Land") more particularly described on Exhibit "A" to the Original Covenant.

B. Subsequent to the execution of the Original Covenant, Super Wash has acquired a portion of the Subject Land and Logan Realty has acquired a portion of the Subject Land ("K mart Demised Premises") and LGU is the current Landlord to K mart under the K mart Lease pertaining to the K mart Demised Premises.

C. Declarants desire to amend the Original Covenant in order to redefine the boundaries of the Subject Land, and to change the description of the K mart Demised Premises and the locations of the Building Areas and Common Area due to the expansion of the K mart facility.

THE ORIGINAL COVENANT IS HEREBY AMENDED AS FOLLOWS:

1. Exhibit "A" to the Original Covenant, which describes the Subject Land, is hereby deleted in its entirety and replaced by the Exhibit "A" 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 Covenant to Exhibit "A" shall mean and refer to the Exhibit "A", or to the "Subject Land", which is attached hereto.

2. Exhibit "A-1" to the Original Covenant, which describes the K mart Demised Premises, is hereby deleted in its entirety and replaced by the Exhibit "A-1" 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 Covenant to Exhibit "A-1" or to the "K mart Demised Premises" shall mean and refer to the Exhibit "A-1" which is attached hereto.

KMART003.mms

ENT 541062 Bk 487 Pg 271  
RECORDED 1991 1:00PM Fee 17.50  
MICHAEL L GLEED, RECORDER  
\*\* CACHE COUNTY, UTAH \*\* RECORDED BY DB  
For ALLEN, NELSON, HARDY & EVANS

3. Exhibit "B" to the Original Covenant 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 Covenant to the "Site Plan" or to Exhibit "B" shall mean and refer to the Site Plan which is attached hereto as Exhibit "B." The "Building Areas" and "Common Area," as provided in Paragraphs 1.2 and 1.3 of the Original Covenant, and the parking space size and configuration of the Subject Land, as provided in Paragraph 4 of the Original Covenant, shall mean and include the Building Areas, Common Area and parking configuration, which is designated on the Site Plan attached hereto as Exhibit "B."

4. This First 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 Covenant shall remain in full force and effect.

CDI, Ltd., a Utah limited partnership

By: *[Signature]*  
General Partner

STATE OF Utah )  
COUNTY OF Beaver ) ss.

On the 20th day of November, 1990, personally appeared before me Walter Cannon, the signer of the foregoing First Amendment, who being by me duly sworn, did say that he is a General Partner of CDI, Ltd., a Utah limited partnership, and that he was authorized to, and did, execute the foregoing First Amendment as a General Partner in said partnership.



*[Signature]*  
NOTARY PUBLIC  
Residing at: Box 441, 7166

L.G.U. REALTY, INC., a Delaware corporation

By: [Signature]  
Its: President

ATTEST:

\_\_\_\_\_

STATE OF New York )  
: ss.  
COUNTY OF New York )

On the \_\_\_\_\_ day of \_\_\_\_\_, 1990, personally appeared before me Donald J. Cole and \_\_\_\_\_, the signers of the foregoing First Amendment, who being by me duly sworn, did say that they are the President and \_\_\_\_\_ of L.G.U. REALTY, INC., a Delaware 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 President and \_\_\_\_\_ acknowledged to me that said corporation executed the same.

[Signature]  
NOTARY PUBLIC  
Residing at: 551 5th Ave NYC

JOSEPH WEIZMAN  
Notary Public, State of New York  
No. 6146500300  
Cert. Filed in Westchester Co.  
Commission Expires Oct 31, 1992

LOGAN REALTY LIMITED  
PARTNERSHIP, a Utah limited  
partnership

By: [Signature]  
Its: General Partner

STATE OF Nebraska )  
                          ) ss.  
COUNTY OF Nebraska )

On the \_\_\_ day of \_\_\_\_\_, 1990, personally appeared before me Robert Bell, the signer of the foregoing First Amendment, who being by me duly sworn, did say that he is the General Partner of LOGAN REALTY LIMITED PARTNERSHIP, a Utah limited partnership, and that he was authorized to, and did, execute the foregoing First Amendment as General Partner in said partnership.

[Signature]  
NOTARY PUBLIC  
Residing at: CSA 5th Ave NTC

JOSEPH WEITZMAN  
Notary Public, State of New York  
No. 014860330  
Cert. Filed in Westchester Cty.  
Commission Expires Oct 31, 1992

SUPER WASH, INC., an Illinois corporation

By: Joseph B. Herman  
Its: VICE PRESIDENT

ATTEST:

Robert D. Black president

STATE OF Illinois )  
: ss.  
COUNTY OF Waukegan )

On the 19th day of December, 1990, personally appeared before me Joseph B. Herman and Robert D. Black, the signers of the foregoing First Amendment, who being by me duly sworn, did say that they are the Vice President and President of SUPER WASH, INC., an Illinois 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 Vice President and President acknowledged to me that said corporation executed the same.

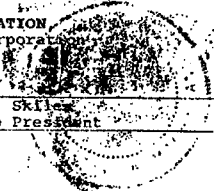


L. Ellen K. Belt  
NOTARY PUBLIC  
Residing at: Abbeville, Illinois

CONSENTED TO BY:

K MART CORPORATION  
a Michigan corporation

By: M. L. Skiles  
M. L. Skiles  
Its: Vice President



ATTEST:

D. H. Burdick

STATE OF Michigan )  
                                  ) ss.  
COUNTY OF Oakland )

On the 12th day of November, 1990, personally appeared before me M. L. Skiles and D. H. Burdick, who, being by me duly sworn, did say that they are the Vice President and Assistant Secretary of K MART 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 M. L. Skiles and D. H. Burdick acknowledged to me that said corporation executed the same.

D. H. Burdick  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_



Notary Public, Oakland County, Michigan  
My commission expires 7/24/91  
Acting in Oakland County

EXHIBIT "A"

NORTH PARK SQUARE SHOPPING CENTER  
CITY OF NORTH LOGAN, CACHE COUNTY, STATE OF UTAH

PROPERTY DESCRIPTION

PART OF LOT 5, BLOCK 8, PLAT "D", LOGAN FARM SURVEY DESCRIBED AS FOLLOWS:  
BEGINNING AT A POINT WHICH LIES SOUTH 1°03'43" WEST, 7.00 FEET FROM THE NORTHWEST CORNER OF SAID LOT 5 AND RUNNING THENCE SOUTH 88°14'48" EAST ALONG THE PRESENT SOUTH LINE OF 1800 NORTH STREET, 762.25 FEET (SOUTH 88°16'32" EAST, 762.68 FEET BY RECORD); THENCE SOUTH 1°33'40" WEST ALONG AN EXTENDED FENCE LINE, 647.64 FEET (SOUTH 1°33'53" WEST BY RECORD); THENCE NORTH 89°15'22" WEST, 756.56 FEET TO THE EAST LINE OF US HIGHWAY 91 (NORTH 89°17'04" WEST, 756.96 FEET BY RECORD); THENCE NORTH 1°03'43" EAST ALONG SAID EAST LINE, 661.01 FEET TO THE POINT OF BEGINNING. CONTAINING 11.40 ACRES +-

EXHIBIT "A-1"

KMART DEMISED PREMISES  
NORTH PARK SQUARE SHOPPING CENTER  
CITY OF NORTH LOGAN, CACHE COUNTY, STATE OF UTAH

PROPERTY DESCRIPTION

PART OF LOT 5, BLOCK 8, PLAT "D", LOGAN FARM SURVEY DESCRIBED AS FOLLOWS:  
BEGINNING AT A POINT WHICH LIES SOUTH 88°14'48" EAST, 150.00 FEET (SOUTH 88°16'32" EAST BY RECORD) AND SOUTH 1°03'43" WEST, 7.00 FEET FROM THE NORTHWEST CORNER OF SAID LOT 5 AND RUNNING THENCE SOUTH 88°14'48" EAST ALONG THE PRESENT SOUTH LINE OF 1800 NORTH STREET, 612.12 FEET (SOUTH 88°16'32" EAST, 612.68 FEET BY RECORD); THENCE SOUTH 1°33'40" WEST ALONG A CHAIN LINK FENCE EXTENDED, 600.00 FEET (SOUTH 1°33'53" WEST BY RECORD); THENCE NORTH 88°32'33" WEST, 115.00 FEET; THENCE NORTH 1°33'53" EAST, 60.00 FEET TO THE SOUTH BUILDING LINE OF KMART STORE; THENCE NORTH 88°32'33" WEST ALONG SAID SOUTH BUILDING LINE EXTENDED, 207.50 FEET; THENCE NORTH 1°33'53" EAST, 20.00 FEET; THENCE NORTH 88°32'33" WEST, 77.50 FEET; THENCE SOUTH 1°33'53" WEST, 132.62 FEET; THENCE NORTH 89°15'22" WEST, 356.52 FEET (NORTH 88°17'04" WEST BY RECORD) TO THE EAST LINE OF US HIGHWAY 91; THENCE NORTH 1°03'43" EAST ALONG SAID EAST LINE, 46.51 FEET; THENCE SOUTH 89°15'22" EAST, 150.00 FEET; THENCE NORTH 1°03'43" EAST, 130.00 FEET; THENCE NORTH 89°15'22" WEST, 41.88 FEET; THENCE NORTH 1°03'43" EAST, 179.40 FEET; THENCE NORTH 88°56'17" WEST, 108.00 FEET TO THE SAID EAST LINE OF US HIGHWAY 91; THENCE NORTH 1°03'43" EAST ALONG SAID EAST LINE, 161.50 FEET; THENCE SOUTH 88°14'48" EAST, 150.00 FEET (SOUTH 16'32" EAST BY RECORD); THENCE NORTH 1°03'43" EAST, 143.00 FEET TO THE POINT OF BEGINNING.  
CONTAINING 9.13 ACRES +-



EXHIBIT "B"

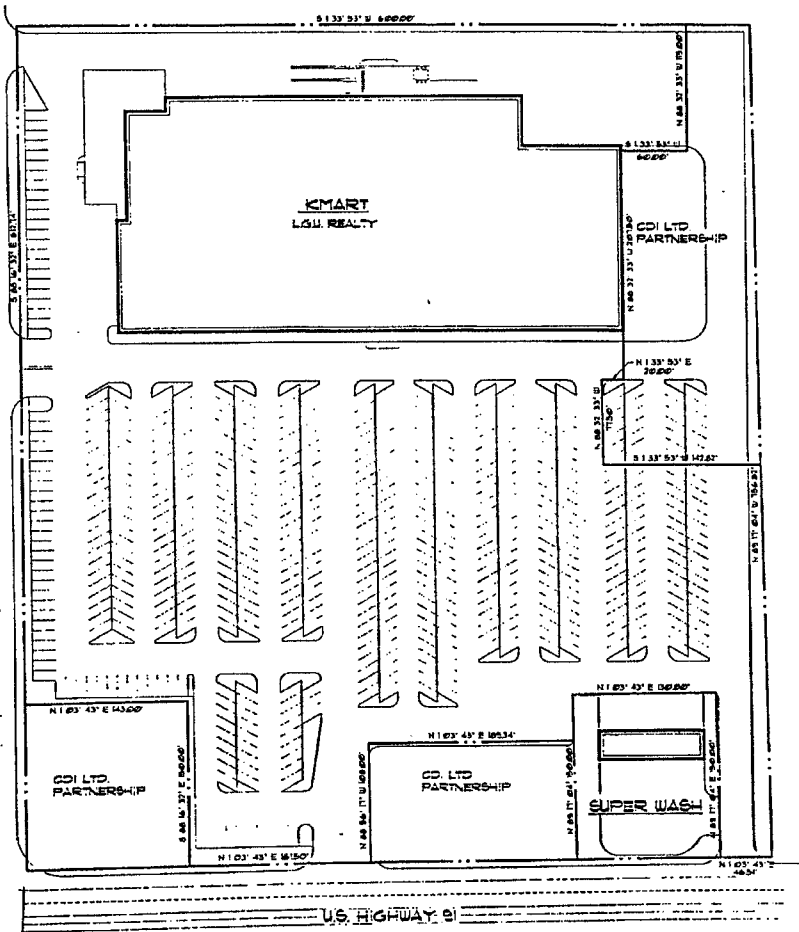


EXHIBIT "I"

Covenants For Operation,  
Maintenance and Reciprocal Easements

THIS AGREEMENT is made this 22<sup>nd</sup> day of November, 1980, by CDI, Ltd. ("CDI"), a Utah limited partnership, with its principal place of business at 220 South 200 East, Suite 150, Salt Lake City, Utah 84111.

W I T N E S S E T H:

WHEREAS, CDI is the owner of that certain tract of land more fully described in Exhibit A attached hereto, being located in the City of North Logan, Cache County, State of Utah, and hereinafter referred to as the "Shopping Center" and shown on the site plan attached hereto as Exhibit B and made a part hereof (the "Site Plan"); and

WHEREAS, CDI has executed a Lease with respect to that certain piece of land in the Shopping Center more fully described in Exhibit A-1 attached hereto (the "K mart Demised Premises") with K mart Corporation ("K mart"), a Memorandum of which Lease has been recorded in the office of the County Recorder, Cache County, State of Utah, and CDI hereby grants unto said Tenant all of the rights, privileges and easements herein created for the benefit of the K mart Demised Premises; and K mart is willing to consent to this Covenants For Operation, Maintenance and Reciprocal Easements by executing said consent hereon; and

WHEREAS, Zions First National Bank ("Zions") is the trustee and beneficiary under that certain Trust Deed, dated June 1, 1980, is the trustee under that certain Deed of Trust and Security Agreement, dated as of June 1, 1980, and is the

trustee under that certain Indenture or trust, dated as of June 1, 1980, all with respect to a portion of the Shopping Center constituting the K mart Demised Premises; and

WHEREAS, Zions is willing to consent to this Covenants For Operation, Maintenance And Reciprocal Easements by executing said consent hereon; and

WHEREAS, CDI may lease and/or sell all or portions of the Shopping Center to other tenants and/or owners and CDI, Zions, K mart and future owners are hereinafter sometimes referred to collectively as "The Parties"; and

WHEREAS, The Parties desire to subject each and every portion of the Shopping Center to the covenants, conditions and restrictions hereinafter set forth, and to provide for certain rights and easements in order that each owner, their tenants, subtenants and concessionaires, and the suppliers, customers, patrons, employees, and invitees thereof may freely use the Common Areas (as hereinafter defined) for the parking of automobiles and other light vehicles of transportation, and for the ingress and egress of pedestrians and such automobiles and other vehicles to the commercial areas of the Shopping Center.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, The Parties agree as follows:

1. Uses and Restrictive Covenants.

1.1 Commercial Purposes. The Shopping Center shall be used for commercial purposes only. Such purposes shall be limited to the construction, leasing, operation and maintenance of mercantile, business, service and professional

establishments, and related facilities such as the Shopping Center Common Area.

1.2 Building Areas. For the purpose of this Agreement, the Shopping Center is divided into two (2) categories which relate to use, and are referred to herein as "Building Area" and "Common Area", respectively. The construction, establishment and maintenance of buildings upon the Shopping Center shall be confined within the Building Area designated on the Site Plan. Buildings will be limited to one story in height, plus mezzanine.

1.3 Common Area. "Common Area" includes all of the areas within the Shopping Center to be used in common for the benefit of the parcels and the owners and occupants of every part thereof or interest therein. Common Area includes all areas within the Shopping Center not from time to time improved with buildings. (Building Area includes loading docks, trash and trash pads). The Common Area of the Shopping Center is shown on the Site Plan.

## 2. Easements.

2.1 Use of Common Area. The Common Area shall be used only for the following purposes related to the businesses and activities conducted in the Shopping Center, and each party hereto grants to the other party non-exclusive easements for use of its Parc-1, as follows:

(a) The parking of passenger vehicles and the pedestrian and vehicular traffic of persons, firms or entities who possess or occupy the Shopping Center, or any part thereof or space therein, whether as owners, lessees, sublessees or concessionaires (but only during

such period of possession and occupancy) including such use by their officers, directors, employees, agents, contractors, customers, invitees and all of said persons entitled to use Common Area being referred to herein as "Entitled Users");

(b) Ingress and egress by any Entitled User, and the vehicles thereof, to any and from any portion of the Common Area and the public streets adjacent to the Common Area.

(c) The installation, maintenance and operation, within the confines of the Common Area of public utilities services and appurtenances necessary for servicing the Building and Common Areas, all of which shall, whenever reasonably feasible, be below the surface of the finished paving or above ground improvements. Any of the foregoing permitted installations which are located above the surface shall be located so that there shall be an unimpeded access for vehicles and trucks to and from the loading areas of the Building Area and to and from the public streets to the loading areas of the Building Area;

(d) The construction, maintenance, repair, replacement, rearrangement and construction of parking sites or stalls, sidewalks, ramps, driveways, lanes, curbs, gutters, traffic control areas, signals, traffic islands, traffic and parking, lighting facilities, planters, planting boxes, fountains, sprinklers, valves and landscape shrubbery which shall not substan-

tially affect or change the Common Area as shown on the Site Plan; and provided, that any activity hereby permitted shall require the consent of the owner of the Parcel upon which the same is to be done, and K mart so long as it is a Tenant of the K mart Demised Premises, which consent shall not be unreasonably withheld;

(e) The ingress, egress, and temporary parking of delivery and service trucks and vehicles to and from the Building Area or any portion thereof and the public streets adjacent to the Shopping Center, for the delivery of goods, wares, merchandise, furniture, fixtures, supplies and equipment, and the rendition of services to any Entitled User;

(f) The installation, repair, replacement and maintenance of (i) building foundations; (ii) building canopies and canopy support columns; and (iii) pilasters and other building columns or pillars from any Building Area, over, onto and in the pedestrian sidewalks, the Common Area and Building Area;

(g) The temporary use (including erection of ladders, scaffolding and store front barricades) during periods of construction, remodeling or repair, and ingress and egress for vehicles transporting construction materials and equipment and use thereof by construction equipment, upon the conditions, however, that all construction, remodeling or repair of buildings and building appurtenances is diligently performed and such ladders, scaffolding and barricades are promptly removed upon the completion of such work.

2.2 Description of Easements. Each owner, pursuant to this Paragraph 2, grants to the other owner an easement to the Parcel owned by the grantee of such easement, and, in each instance, such easement shall be non-exclusive for the use in common with grantor, and the Entitled Users of its Parcel.

2.3 Utility Easements.

(a) Each party shall have the right and easement, at the expense of the party benefited thereby, to connect to and continually use, for the benefit of its Parcel, any and all storm drains, utility lines, sewers, and other services which have previously been installed in, to, under, upon and over the Common Area of the other party.

(b) None of the parties or their tenants shall interfere with such storm drains, utility lines, sewers and other services on their respective Parcels if such interference would disrupt the orderly development and operation of the business to be conducted on any other party's Parcel, except for the relocation thereof and the necessary maintenance and repair thereof after reasonable notice of the nature and extent of such relocation, maintenance and repair given to the other party. In the event such notice is given, the other affected parties shall have the option to require that such relocation, maintenance and repair be carried on at such times as would minimize the disruption of the orderly development and operation of the other party's Common Area or Building Area, in which event such other party shall bear the cost of any overtime pay or other

additional expense necessitated by such request.

(c) In the event it is necessary for any party to cause the installation of a storm drain, utility line or sewer line across the Common Area located on the Parcel of another party subsequent to the initial paving and improving of such Common Area, the other party shall not unreasonably withhold the granting of an additional easement or easements for such purpose; provided, however, that such easement or easements shall not unreasonably interfere with normal operation of the business of such other party, and the party benefited thereby shall bear all costs related to the creation of such easement. Any such work of installation shall be conducted at such times and in such manner as to minimize the interference with normal operations of the business of such other party, and any additional expense caused to minimize interference shall be borne by the party benefiting from such installation; provided, however, that neither party shall be obligated to pay or incur overtime labor costs to complete any such installation unless the installation is conducted during the premium business time of thirty (30) days prior to Easter or thirty (30) days prior to Christmas.

2.4 **No Walls, Fences or Barriers.** No walls, fences or other barriers shall be constructed or erected in the Shopping Center which would prevent or impair the use or exercise of the foregoing easements or the free access of pedestrians and vehicular traffic between the various Parcels; provided, however, that curb stops, or such other reasonable



traffic controls as may be necessary to guide and control the orderly flow of traffic, may be installed so long as the access driveways are not closed or blocked. The Parties specifically reserve the right to close, temporarily, all or any portion of the said easement areas as may be deemed legally necessary and sufficient to prevent a dedication thereof or an accrual of any rights in any person other than as aforesaid or in the public generally therein. Any such temporary closing shall, however, be further subject to the reasonable consent of the owners of the Entire Premises and K mart while it is a Tenant of the K mart Demised Premises.

3. Common Area Maintenance.

3.1 Maintenance. Except as may otherwise be provided by a separate written agreement, each of the parties hereto shall maintain, or cause to be maintained, at its own cost and expense, the Common Area on its respective Parcel at all times in a safe, sightly and serviceable condition and repair, said maintenance to include, but not be limited to, the following:

(a) Maintaining the surfaces in a smooth and evenly covered condition with the type of surfacing material originally installed, or such substitute as shall in all respects be equal in quality, use and durability;

(b) Removing all standing water, papers, debris, filth and refuse and thoroughly sweeping the Common Area to the extent reasonably necessary to keep the Common Area in a clean and orderly condition;

(c) Placing, keeping in repair and re-

placing any appropriate directional signs, markers, and lines;

(d) Operating, keeping in repair and replacing, when necessary, such parking lot lighting facilities as shall reasonably be required;

(e) Maintaining all landscaped areas and repairing automatic sprinkler systems or water lines in the Common Area and making replacements of shrubs and other landscaping as is necessary; and

(f) Maintaining and repairing any and all common storm drains, utility lines, sewers and other utility systems and services which are necessary for the operation of the building and improvements within the Shopping Center.

3.2 Building Maintenance. All buildings constructed within the Shopping Center shall be maintained in a good and serviceable condition and in accordance with all applicable governmental rules and regulations. In the event a building is damaged or destroyed (partially or totally) by fire, the elements or any other casualty, the owner of the parcel on which such building is located shall either (i) cause said building to be promptly repaired, rebuilt and restored as nearly as practicable to its condition just prior to such damage or destruction; or (ii) promptly raze said building and clear, clean, grade and fence the building area.

3.3 Property Taxes. The owners and their respective successors in interest shall pay, or cause to be paid, unless otherwise required by the terms of any lease, directly to the Tax Assessor, prior to delinquency, all real property

taxes and other special taxes and assessments which may be levied or assessed against the Parcel owned by said party, including any assessment attributable to its appurtenant interests created by this Agreement, subject to the right of any party to contest such taxes and assessments in the manner provided by law.

4. Parking Ratio.

The owners of all or any portion of the Shopping Center shall maintain, within its respective Parcel, the number of automobile parking spaces of the size and configuration shown on the Site Plan, or not less than five (5) automobile parking spaces for each one thousand (1,000) square feet of total building floor area, including all basements and mezzanines and none of the parties shall alter or rearrange the Common Area on its Parcel from and after the completion of construction without the prior written consent of the other owners and K mart so long as it is a Tenant of the K mart Demised Premises.

5. Insurance/Indemnification.

Each owner (and/or tenant if obligated to do so pursuant to any lease) of a parcel shall purchase and maintain on its own parcel comprehensive liability insurance covering injuries to person or property within the area of its respective parcel in the amount of at least Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) with respect to injuries to any one person; and in the amount of at least One Million and No/100 Dollars (\$1,000,000.00) with respect to any one accident; and in the amount of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) with respect to damage to

property, and shall indemnify, hold harmless and defend the other party or parties from damages arising out of any accident occurring on its parcel except where caused by negligence of the other party or parties.

6. Condemnation.

In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any part of the Shopping Center, that portion of the award attributable to the value of any land and improvements so taken shall be payable only to the owner in fee, as the case may be with respect to the portion condemned, and no claim thereon shall be made by other owners of any other portion of the Shopping Center, provided, however, all other owners and tenants of the Shopping Center may file collateral claims with the condemning authority, over and above the value of the land and improvements so taken, to the extent of any damage suffered to their respective interests resulting from the severance of the appurtenant property or utility easements and facilities so taken, provided further, however, that the owner in fee of the portion of the premises so condemned shall, if feasible, promptly cause the remaining portion of the Building Area and Common Area so owned by such owner to be repaired and restored as near as practicable to the condition of same immediately prior to such condemnation. In the event an owner determines that it is impracticable to rebuild any building so taken by condemnation proceedings, such building shall be promptly razed, and the building area site cleared, cleaned, graded and fenced at such owner's expense.

General Provisions.

7.1 Negation of Partnership. None of the provisions hereof shall be deemed to create a partnership between or among The Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures, or members of any joint enterprise.

7.2 Covenants Shall Run With the Land. All of the agreements, rights, covenants and grants of easements contained in this Agreement shall be binding upon and inure to the benefit of The Parties hereto, their respective heirs, successors (by merger, consolidation, or otherwise), assigns, devisees, administrators, representatives, lessees and all other persons acquiring said land or any part thereof, whether by operation of law or in any manner whatsoever.

7.3 Termination; Amendment. This Agreement shall continue for a period of seventy-five (75) years from the date hereof and may be cancelled, changed, modified or amended in whole or in part only by written and recorded agreement executed by all of the record owners of the Shopping Center and K mart while it is a Tenant of the K mart Demised Premises.

7.4 Enforcement.

(a) In the event of a default or breach in the performance of any of the obligations or agreements hereunder, any owner, tenant or mortgagee shall have the right, but not the obligation, to cure such default for the account of and at the expense of the defaulting party, and the party curing such default shall have the right to recover from the defaulting

party, all costs and other sums expended in connection therewith, plus interest thereon at the rate of twelve percent (12%) per annum.

(b) All costs and expenses of curing any default hereunder and interest on said amounts at the rate of twelve percent (12%) per annum pursuant to subparagraph (a) above, and all costs and expenses of any suit or proceedings, including attorney's fees, shall be assessed against the defaulting party or person and shall constitute a lien against the real property or the interest therein of such party or person until paid, effective upon recording a notice thereof in the office of the County Recorder. No person or party, nor its partners, shareholders, officers, executors, transferees, heirs, successors and assigns shall be personally liable for a default in the obligations imposed by the terms of this Agreement requiring the payment of monetary sums. No deficiency or other monetary judgment shall be sought against said owner or owners or its partners, whether general and/or limited, the assets of the partnership, shareholders, officers, executors, transferees, heirs, successors and assigns, in any action or proceeding brought because of a default hereunder. Any such lien shall be subordinate to any bona fide mortgage or Deed of Trust encumbering any portion of the property of the defaulting party or person, except if the defaulting party or person is a lessee (who shall have been given written notice of the default) such lien shall not be subordinate to said Lease, and any purchaser at any

foreclosure or trustee's sale (as well as any grantee by Deed in lieu of foreclosure or trustee's sale) under any such mortgage or Deed of Trust shall take title free from any such lien, but otherwise subject to all of the provisions of this Agreement, which run with the land. Subject to the provisions hereof, in the event of a default, any owner, tenant or mortgagee may seek full and adequate relief by injunction and/or such other legal and equitable remedies as may be available.

7.5 Severability. Invalidation of any of the covenants, conditions, restrictions or other provisions contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

7.6 Headings. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit, expand or define the contents of their respective sections or paragraphs.

7.7 Minimization of Damages. In all situations arising under this Agreement, all parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

IN WITNESS WHEREOF, The Parties hereto have executed this Agreement intending it to be effective November 20, 1980.

CDI, Ltd., a Utah  
limited partnership

By C. Walter Casser  
C. Walter Casser  
General Partner

Est 54 1062 Bk 487 Ps 293

By Leon Peterson  
Leon Peterson  
General Partner

CONSENTED TO BY:  
K MART CORPORATION,  
a Michigan Corporation

By J. P. Johnson  
J. P. Johnson  
Vice President

CONSENTED TO BY:  
ZIONS FIRST NATIONAL BANK,  
a national association

By William D. ...  
Its ...

ATTEST:  
APPROVED  
By C. E. Lotzka, Jr.  
C. E. Lotzka, Jr.  
Assistant Secretary

ATTEST:  
By ...  
Its ...

STATE OF Utah )  
COUNTY OF Salt Lake ) ss.

BEFORE ME, the undersigned authority, on this day personally appeared G. WALTER GASSER and LEON PETERSON, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at said County and State this 19th day of Nov., 1950.

My Commission Expires: 7-7-51  
NOTARY PUBLIC  
Residing at: ...

STATE OF Utah )  
COUNTY OF Salt Lake ) ss.

BEFORE ME, the undersigned authority, on this day personally appeared ... and ...



the ~~the~~ Vice President and Assistant Vice President respectively, of Zions First National Bank, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at said County and State this 20th day of November 1940

Allen A. Martin  
NOTARY PUBLIC  
Residing at: Birmingham

My Commission Expires:

8-18-44

STATE OF MICHIGAN )  
                          ) ss.  
COUNTY OF OAKLAND )

I do hereby certify that on this 20th day of November, 1940, before me, County and State aforesaid, and duly commissioned, personally appeared J. P. JOHNSON and C. E. LOTZAR, JR., known to me to be the Vice President and Assistant Secretary, respectively, of the K MART CORPORATION, a Michigan corporation, who, being by me duly sworn, did depose and say that they reside in Birmingham, Michigan and Birmingham, Michigan respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Margaret I. Grant  
NOTARY PUBLIC  
Residing at: Oakland, Michigan

My Commission Expires:

MARGARET I. GRANT  
Notary Public, Oakland County, Mich.  
My Commission Expires June 30, 1951

EXHIBIT A  
NORTH PARK SQUARE SHOPPING CENTER  
PROPERTY DESCRIPTION

Beginning at a point S1°03'43"W, 7.00 ft from the NW Cor of Lot 5, Block 8, Plat "D", Logan Farm Survey, said NW Cor of lot 5 being the intersection of the East R/W line of U.S. Highway 89-91 and the South R/W line of a County Road (1800 North Street) in North Logan, Utah and running thence S88°16'32"E, 762.68 ft; thence S1°33'53"W, 1142.09 ft; thence N89°17'04"W, 752.62 ft. to the East R/W line of said Highway 91; thence N1°03'43"E, along said R/W line 1155.42 ft to beginning.

Containing 19.9795 Ac.

All of the above land is in the SW1/4 Sec 22, T12N, R1E, SLB&M.

EXHIBIT A-1

X MART DEMISED PREMISES, NORTH LOGAN, UTAH

Beginning at a point  $S88^{\circ}16'32''E$ , 150.00 ft. and  $S1^{\circ}03'43''W$ , 7.00 ft. from the NW Cor of Lot 5, Block 8, Plat "D", Logan Farm Survey, said NW Cor of Lot 5, being the intersection of the East R/W line of U.S. Highway 89-91 and the South R/W line of a County Road (1800 North Street) in North Logan Utah and running thence  $S88^{\circ}16'32''E$ , 612.68 ft; thence  $S1^{\circ}33'53''W$ , 450.83 ft; thence  $S88^{\circ}16'32''E$ , 650.69 ft; thence  $N1^{\circ}03'43''E$ , 149.42 ft; thence  $N88^{\circ}56'17''W$ , 108.00 ft; thence  $N1^{\circ}03'43''E$ , 161.50 ft; thence  $S88^{\circ}16'32''E$ , 150.00 ft; thence  $N1^{\circ}03'43''E$ , 143.00 ft; to beg. Containing 7.0296 Ac.

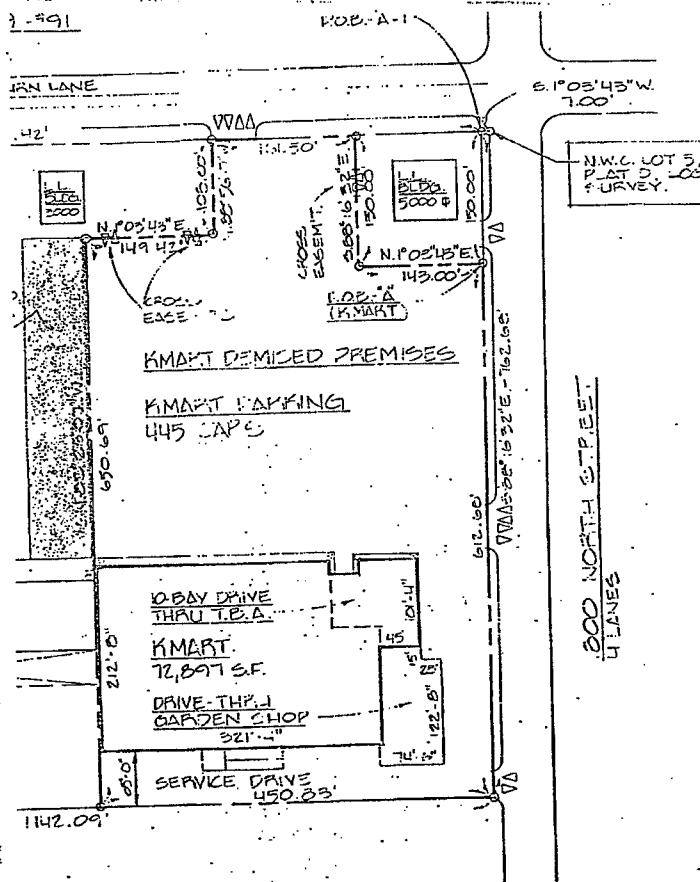
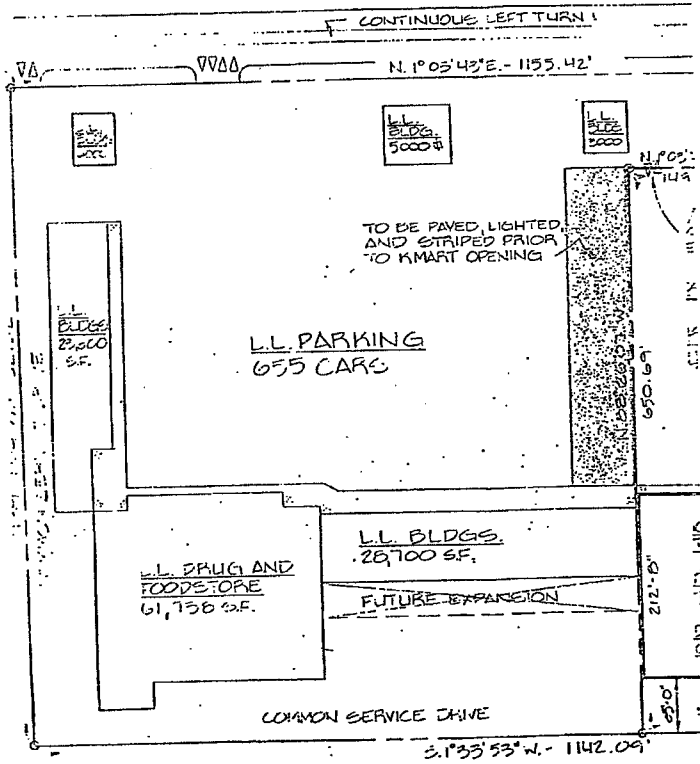


EXHIBIT B

U.S. HIGHWAY 29 - 91  
4 LANES



U.S. HIGHWAY 39 - 491  
4 LANES

CONTINUOUS LEFT TURN LANE

N. 1° 05' 42" E. - 1155.42'

L.L. BLDG.  
14000

L.L. BLDG.  
5000

L.L. BLDG.  
3000

N. 1° 05' 42" E.  
1149.42'

TO BE PAVED, LIGHTED  
AND STRIPED PRIOR  
TO KMART OPENING

CROSS  
EDGE

KM:

KM:

445

L.L. PARKING  
655 CARS

COMMON LEFT TURN LANE

L.L. BLDG.  
23200 SF.

650.65'

L.L. DRUG AND  
FOODSTORE  
61,758 SF.

L.L. BLDGS.  
28,700 SF.

FUTURE EXPANSION

10.8'  
THF

KM:

72.8

DRAIN  
GAP

SEP

COMMON SERVICE DRIVE

212'-8"

S. 1° 33' 53" W. - 1142.09'

