

E 1005286 B 1559 P 1586
CAROL DEAN PAGE, DAVIS CNTY RECORDER
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REC'D FOR FIRST AMERICAN TITLE CO OF UTA

EASEMENT AGREEMENT

E 1005286 B 1559 P 1586

SW-7-47.1W

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into as of the 11th day of September, 1991, by and between THE CORPORATION OF THE EPISCOPAL CHURCH IN UTAH ("Episcopal Church") and CDI-EVANS DEVELOPMENT COMPANY, a joint venture organized and existing as a Utah limited partnership ("CDI-Evans"), DESERET MUTUAL BENEFIT ASSOCIATION, a Utah nonprofit corporation ("DMBA"), MCDONALDS CORPORATION, a Delaware corporation ("McDonalds"), KMART CORPORATION, a Michigan corporation ("Kmart"), ZIONS FIRST NATIONAL BANK, a National Banking Association ("Zions"), ALBERTSON'S, INC., a Delaware corporation ("Albertson's") and FIRST SECURITY BANK OF UTAH, N.A. ("First Security") (hereinafter collectively the "Shopping Center Parties").

W I T N E S S E T H:

WHEREAS, CDI-Evans is the owner of a certain tract of land located in the City of Layton, County of Davis, State of Utah, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, hereinafter referred to as "Shopping Center"; and

WHEREAS, McDonalds is the record owner of a portion of the Shopping Center; and

WHEREAS, DMEA is the record owner of a portion of the Shopping Center; and

WHEREAS, First Security is the record owner of a portion of the Shopping Center; and

WHEREAS, CDI-Evans is the record owner of the buildings and improvements located in the Shopping Center, with the exception of

FIRST AMERICAN TITLE
RMP# 273959
D-3731

McDonald's and First Security Bank, and CDI-Evans is also the ground lessee of all of the land of the Shopping Center pursuant to two separate Ground Lease Agreements between DMBA and CDI-Evans, each dated December 2, 1981, as evidenced by two Memoranda of Ground Lease Agreements recorded as Entry No. 605170, Book 886, Page 844, and as Entry No. 605169, Book 886, Page 830, respectively, of the records of the County Recorder of Davis County, Utah; and

WHEREAS, McDonalds, DMBA, First Security and CDI-Evans are all of the record owners of the Shopping Center; and

WHEREAS, the Episcopal Church is the owner of certain real property contiguous to the North boundary of the Shopping Center, and

WHEREAS, CDI-Evans and the Episcopal Church have entered into an agreement whereby CDI-Evans has agreed to purchase a portion of the property owned by the Episcopal Church (the "Church Parcel") to provide additional parking for the Shopping Center (the "Agreement"), and

WHEREAS, the Church Parcel to be purchased by CDI-Evans is more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference; and

WHEREAS, as part of the Agreement the Episcopal Church is to receive an access easement over the Shopping Center property; and

WHEREAS, Zions is still the trustee and beneficiary under one of the Trust Deeds dated June 1, 1980, which is referred to and more particularly described in that certain Covenants for

Operation, Maintenance and Reciprocal Easements dated November 20, 1980, and recorded as Entry No. 581474, Book 850, Page 605, on the records of the County Recorder of Davis County, Utah (the "REA") (the other such Trust Deed which is referred to and described in the REA having been released and reconveyed of record) and Zions is also still the trustee under that certain Trust Indenture dated as of June 1, 1980, which is referred to and described in the REA, all with respect to the portion of the Shopping Center constituting the Kmart Demised Premises; and

WHEREAS, pursuant to an unrecorded Shopping Center Sublease dated August 5, 1982, Albertson's is the lessee of a portion of the Shopping Center;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.1 Access Easement: CDI-Evans hereby grants to the Episcopal Church, its successors and assigns, for the benefit of the Church, a permanent nonexclusive right of access for ingress and egress by vehicular and pedestrian traffic over and across that portion of the Shopping Center described as the 35 foot Service Drive on the north boundary of the Shopping Center from Highway 91 (Main Street) east to the "Access Drive", as identified as the "Access Easement" more particularly described in Exhibit "C" attached hereto and incorporated herein by this reference (the "Easement"). Access between the Shopping Center and the remaining

property owned by the Episcopal Church shall be in the location designated herein and described as the "Access Drive" on Exhibit "D". CDI-Evans agrees not to construct any permanent barricades or structures which could hinder or impede vehicular traffic access between the Shopping Center and the remaining property owned by the Episcopal Church over and across the Access Easement shown on Exhibit "C". It is agreed that no cross-easement is granted hereby, it being the intent of the Parties that this be a one-way easement.

1.2 Restrictions on Use: The Episcopal Church shall use the Easement solely for passenger vehicle and pedestrian access associated with the religious, charitable and educational use of the remaining property owned by the Episcopal Church. The Easement shall not be used by trucks or other heavy equipment without the prior written consent of CDI-Evans. At no time shall the Easement be used for commercial purposes or for access to the remaining Episcopal Church property if such property ceases to be used solely for religious, charitable and educational purposes.

The Episcopal Church shall have the right, at its sole discretion, to restrict the use of the Easement by gate or other means. In addition, improvement of the access point of the Easement shall not be a condition precedent to the effectiveness of the grant of the Easement as contained in this Agreement. The Episcopal Church may improve such access point and make use of the Easement at any time after the effective date of this Agreement.

1.3 Limitation of Liability: The Episcopal Church hereby acknowledges that the Easement will be used at the sole risk of the user. For the sole purpose of allocating liability between the Shopping Center Parties, and the Episcopal Church, and for no other purpose, the Episcopal Church agrees that any damage caused to property or persons by its invitees and guests in connection with the use of the easement will not be the responsibility of the Shopping Center Parties.

2. The Episcopal Church agrees to construct said access at its sole cost and expense, which includes the relocation of the drainage ditch and refuse disposal dumpster. Plans for said construction shall be submitted to CDI-Evans for their review and approval which approval shall not be unreasonably withheld. The access shall be designed by a licensed and professional civil engineer and shall be in a manner so as to minimize and limit, as much as possible, storm water drainage from the Access Drive, to the Shopping Center Property, and according to requirements, laws and ordinances of the City of Clearfield. Maintenance of said Access Drive and an area two feet (2') south of the existing retaining wall shall be at the sole cost of the Episcopal Church and shall be done regularly using high quality materials. At no time shall snow from the access road be placed on the Shopping Center Property.

3. Successors and Assigns: The provisions of this Agreement shall constitute covenants running with the land and shall be binding upon and inure to the benefit of each of the parties

hereto, their heirs, personal representatives, successors and assigns.

£ 1005286 § 1559 P 1591

4. Duration: The term of this Agreement shall be perpetual.

5. Injunctive Relief: In the event of any violation or threatened violation by any person of any of the terms, covenants or conditions of this Agreement, any or all of the parties hereto shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Agreement or available under statute, law or equity.

6. Modification: This Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except with the consent of the parties hereto and then only by written instrument duly executed and acknowledged by all of the parties hereto and duly recorded in the Office of the Recorder of Davis County, Utah. No modification or rescission of this Agreement shall affect the rights of any lienholder unless the lienholder consents in writing to the modification or rescission.

7. Not a Public Dedication: Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purposes whatsoever. It being the intention of the parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed.

8. Attorney's Fees: In the event any entity which is entitled to the benefits of this Agreement brings an action at law

or in equity to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover from the other party its reasonable attorney's fees and court costs in addition to all other appropriate relief.

E 1005286 & 1539 P 1592

EXECUTED as of the day and year first above written.

CORPORATION OF THE EPISCOPAL CHURCH
IN UTAH

By: Walter C. Evans, President
Its: Authorized Agent

CDI-EVANS DEVELOPMENT COMPANY,
a joint venture organized and
existing as a Utah limited
partnership

By: CDI, LTD., General Partner
of CDI-Evans Development Company

By: G. Walter Gasser
G. Walter Gasser, General
Partner of CDI, Ltd.

DESERET MUTUAL BENEFIT ASSOCIATION,
a Utah nonprofit corporation

ATTEST:

Secretary

By: _____
Its: _____

MCDONALDS CORPORATION,
a Delaware corporation

ATTEST:

Secretary

By: _____
Its: _____

KMART CORPORATION,
a Michigan corporation

ATTEST:

Secretary

By: _____
Its: _____

or in equity to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover from the other party its reasonable attorney's fees and court costs in addition to all other appropriate relief.

EXECUTED as of the day and year first above written.

**CORPORATION OF THE EPISCOPAL CHURCH
IN UTAH**

By: _____
Its: Authorized Agent

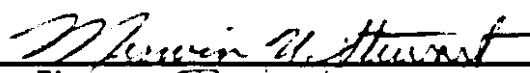
CDI-EVANS DEVELOPMENT COMPANY,
a joint venture organized and
existing as a Utah limited
partnership

By: **CDI, LTD., General Partner**
of **CDI-Evans Development Company**

By: _____
G. Walter Gasser, General
Partner of CDI, Ltd.

**DESERT MUTUAL INSURANCE COMPANY fka
DESERT MUTUAL BENEFIT ASSOCIATION,**
a Utah nonprofit corporation

ATTEST: 
Secretary

By: 
Its: President

MCDONALDS CORPORATION,
a Delaware corporation

ATTEST: _____
Secretary

By: _____
Its: _____

KIART CORPORATION,
a Michigan corporation

ATTEST: _____
Secretary

By: _____
Its: _____

or in equity to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover from the other party its reasonable attorney's fees and court costs in addition to all other appropriate relief.

E 1005286 B 1559 P 1594

EXECUTED as of the day and year first above written.

**CORPORATION OF THE EPISCOPAL CHURCH
IN UTAH**

By: _____
Its: Authorized Agent

CDI-EVANS DEVELOPMENT COMPANY,
a joint venture organized and
existing as a Utah limited
partnership

By: CDI, LTD., General Partner
of CDI-Evans Development Company

By: _____
G. Walter Gasser, General
Partner of CDI, Ltd.

DESERT MUTUAL BENEFIT ASSOCIATION,
a Utah nonprofit corporation

ATTEST:

Secretary

By: _____
Its: _____

McDONALDS CORPORATION,
a Delaware corporation

ATTEST:

Assistant Secretary
Seymour Greenman



By: _____
Its: Joseph R. Thomas, Director

EMART CORPORATION,
a Michigan corporation

ATTEST:

Secretary

By: _____
Its: _____

or in equity to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover from the other party its reasonable attorney's fees and court costs in addition to all other appropriate relief. E 1005286 8 1559 P 1595

EXECUTED as of the day and year first above written.

CORPORATION OF THE EPISCOPAL CHURCH IN UTAH

By: Walter C. Evans President
Its: Authorized Agent

CDI-EVANS DEVELOPMENT COMPANY, a joint venture organized and existing as a Utah limited partnership

By: CDI, LTD., General Partner of CDI-Evans Development Company

By: G. Walter Gasser
G. Walter Gasser, General Partner of CDI, Ltd.

DESERET MUTUAL BENEFIT ASSOCIATION, a Utah nonprofit corporation

ATTEST:

Secretary

By: _____
Its: _____

MCDONALDS CORPORATION, a Delaware corporation

ATTEST:

Secretary

By: _____
Its: _____

KMART CORPORATION, a Michigan corporation

ATTEST:

[Signature]
Secretary

By: M. J. [Signature]
Its: Senior Vice President

ZIONS FIRST NATIONAL BANK,
a national banking association

ATTEST:

Douglas M. Fisher
Secretary

TRUST OFFICER

By: [Signature]
Its: TRUST OFFICER

ALBERTSON'S, INC.,
a Delaware corporation

ATTEST:

Secretary

By: _____
Its: _____

ATTEST:

FIRST SECURITY BANK OF UTAH, N.A.

Secretary

By: _____
Its: _____

STATE OF _____)
) : ss.
COUNTY OF _____)

On the _____ day of September, 1991, personally appeared before me _____ and _____, who, being by me duly sworn, did say that they are the _____ and _____ of THE CORPORATION OF THE EPISCOPAL CHURCH IN UTAH, 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 _____ and _____ acknowledged to me that said corporation executed the same.

My Commission Expires:

NOTARY PUBLIC:
Residing at: _____

ZIONS FIRST NATIONAL BANK,
a national banking association

E 1005286 8 1559 P 1597

ATTEST:

Secretary

By: _____
Its: _____

ATTEST:

Secretary

ALBERTSON'S, INC.,
a Delaware corporation

By: Thomas L. Albertson
Its: Senior Vice President

Post

ATTEST:

Secretary

FIRST SECURITY BANK OF UTAH, N.A.

By: _____
Its: _____

STATE OF _____)
) : ss.
COUNTY OF _____)

On the ____ day of September, 1991, personally appeared before me _____ and _____, who, being by me duly sworn, did say that they are the _____ and _____ of THE CORPORATION OF THE EPISCOPAL CHURCH IN UTAH, 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 _____ and _____ acknowledged to me that said corporation executed the same.

My Commission Expires:

NOTARY PUBLIC:
Residing at: _____

ZIONS FIRST NATIONAL BANK,
a national banking association

ATTEST:

E 1005286 B 1559 P 1598

Secretary

By: _____
Its: _____

ALBERTSON'S, INC.,
a Delaware corporation

ATTEST:

Secretary

By: _____
Its: _____

FIRST SECURITY BANK OF UTAH, N.A.

ATTEST:

Secretary

By: W L Houghton
Its: EX VP

STATE OF _____)
 : ss.
COUNTY OF _____)

On the ____ day of September, 1991, personally appeared before me _____ and _____, who, being by me duly sworn, did say that they are the _____ and _____ of THE CORPORATION OF THE EPISCOPAL CHURCH IN UTAH, 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 _____ and _____ acknowledged to me that said corporation executed the same.

My Commission Expires: _____

NOTARY PUBLIC:
Residing at: _____

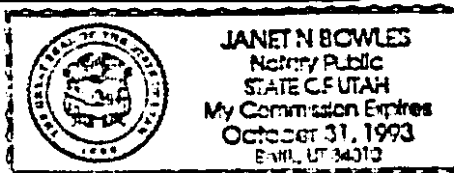
STATE OF Utah)
 : ss.
COUNTY OF Davis)

E 1005286 B 1559 P 1600

On the 5th day of September, ^{March} 1991, personally appeared before me G. WALTER GASSER, who duly acknowledged to me that he executed the foregoing instrument as a General Partner in and on behalf of CDI, LTD., a Utah limited partnership, and that said CDI, LTD., executed said instrument as a General Partner in and on behalf of CDI-EVANS DEVELOPMENT COMPANY, a joint venture organized and existing as a Utah general partnership.

My Commission Expires:

10-31-93



[Signature]
NOTARY PUBLIC:

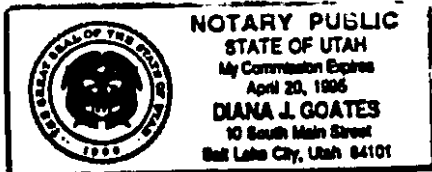
Residing at: Beautiful Utah

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 3rd day of September, ^{December} 1991, personally appeared before me Merwin U. Stewart and Victor N. Gibb, who, being by me duly sworn, did say that they are the President and Secretary of DESERET MUTUAL INSURANCE COMPANY fka DESERET MUTUAL BENEFIT ASSOCIATION, a Utah nonprofit 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 Merwin U. Stewart and Victor N. Gibb acknowledged to me that said corporation executed the same.

My Commission Expires:

4-20-95



[Signature]
NOTARY PUBLIC:

Residing at: Salt Lake

MCDONALD'S
(ACKNOWLEDGMENT)

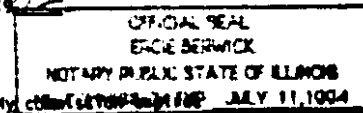
E 1005286 B 1559 P 1601

STATE OF ILLINOIS
COUNTY OF DuPage

SS:

I, Eric Serwick a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that Joseph R. Thomas, Department Director of McDonald's Corporation, a Delaware corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Department Director appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as such Department Director and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 6 day of February, 1992



Eric Serwick
Notary Public

(ACKNOWLEDGMENT - INDIVIDUAL)

STATE OF
COUNTY OF

SS:

I, _____ a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that _____ and _____ of _____ who (is)(are) personally known to me to be the same person(s) whose name(s) (is)(are) subscribed to the foregoing instrument appeared before me this day in person and acknowledged that (he)(they) signed, sealed and delivered the said instrument as (P)(their) free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this _____ day of _____, 19____.

Notary Public

My commission expires _____.

(ACKNOWLEDGMENT - CORPORATE)

STATE OF
COUNTY OF

SS:

I, _____ a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that _____, President of _____ a(n) _____ corporation, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as such President and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this _____ day of _____, 19____.

Notary Public

My commission expires _____.

STATE OF _____)
 : ss.
COUNTY OF _____)

E 1005286 & 1559 P 1602

On the _____ day of September, 1991, personally appeared before me _____ and _____, who, being by me duly sworn, did say that they are the _____ and _____ of McDONALDS CORPORATION, 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 _____ and _____ acknowledged to me that said corporation executed the same.

My Commission Expires:

NOTARY PUBLIC:

Residing at: _____

STATE OF Michigan)
 : ss.
COUNTY OF Oakland)

On the 2nd day of October, 1991, personally appeared before me M. E. Skiles and E. LOTZAR, JR., who, being by me duly sworn, did say that they are the Senior Vice President and Assistant Secretary of KMART 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 _____ and _____ acknowledged to me that said corporation executed the same.

My Commission Expires:

Irene F. Hammoud
NOTARY PUBLIC:

Residing at: _____

IRENE F. HAMMOUD
Notary Public, Macomb County, Michigan
Acting in Oakland County, Michigan
My Commission Expires July 10, 1995

STATE OF _____)
 : ss.
COUNTY OF _____)

E 1005286 B 1559 P 1604

On the _____ day of September, 1991, personally appeared before me _____ and _____, who, being by me duly sworn, did say that they are the _____ and _____ of ZIONS FIRST NATIONAL BANK, a National Banking Association, and that the foregoing instrument was signed on behalf of said association by authority of its Bylaws or a resolution of its Board of Directors, and said _____ and _____ acknowledged to me that said corporation executed the same.

My Commission Expires:

NOTARY PUBLIC:
Residing at: _____

STATE OF Idaho)
 : ss.
COUNTY OF Ada)

On the 27th day of ~~September~~ ^{November}, 1991, personally appeared before me Thomas R. Saldin and _____, who, being by me duly sworn, did say that they ~~are~~ ^{are} the Senior Vice President and _____ of ALBERTSON'S, 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 Thomas R. Saldin and _____ acknowledged to me that said corporation executed the same.

My Commission Expires:
5/1/94

Granda Tachigai 31700
NOTARY PUBLIC:
Residing at: Meridian, Idaho

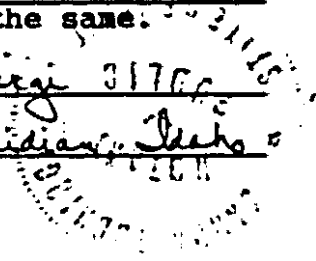


EXHIBIT "A"

LAYTON SHOPPING CENTER

**OVERALL DESCRIPTION
(Including US-91 Pads)**

E 1005286 B 1559 P 1606

A part of the Southwest Quarter of Section 7, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the North right-of-way line of 2000 North Street (State Road No. 108) which is North 0°03'10" East 50.00 feet and South 89°47' West 502.16 feet from the South Quarter Corner of said Section 7 and running thence South 89°47' West 500.69 feet along said North line to the Easterly right-of-way line of U.S. Highway 91; thence North 36°47' West 975.58 feet along said Easterly line; thence North 89°43'40" East 681.59 feet; thence North 0°03'10" East 23.00 feet; thence North 89°43'40" East 425.84 feet; thence South 0°03'10" West 24.33 feet to a point which is North 0°03'10" East 833.54 feet and South 89°45'20" West 480.32 feet from said South Quarter Corner of Section 7; thence South 89°45'20" West 21.84 feet; thence South 0°03'10" West 783.30 feet to the point of beginning.

Contains 14.505 Acres

Subject to Proposed 8 Foot Road Widening along South line of Property.

SW-7-47-1W

*09-022- 0125
0088
0051
0133
0075
0077
0037*

EXHIBIT "B"

Property Description

City of Layton, Davis County, State of Utah

E 1005286 B 1559 P 1607

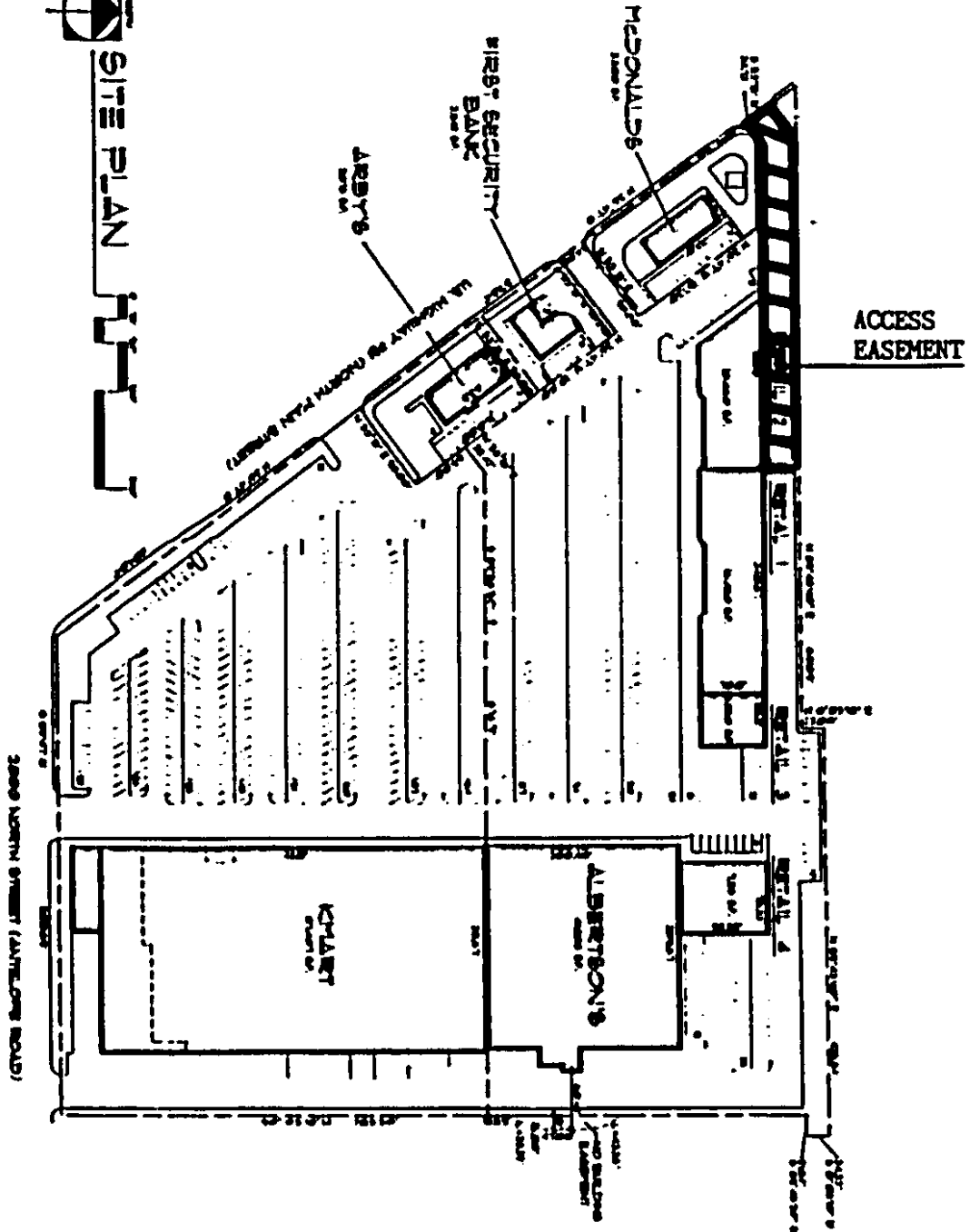
**A part of the Southwest Quarter of Section 7,
Township 4 North, Range 1 West, Salt Lake Base and
Meridian, U.S. Survey:**

**Beginning at a point which is 835.10 feet North
0°03'10" East; 790.79 feet South 89°43'40" West from the
southeast corner of the Southwest Quarter of said
Section 7; said point being the intersection of the North
line of the Deseret Mutual Benefit Association Property
and the East line of the Corporation of the Episcopal
Church Property and running thence South 89°43'40" West
115.37 feet; thence North 0°03'10" East 23.00 feet;
thence North 89°43'40" East 115.37 feet; thence South
0°03'10" West 23.00 feet to the point of beginning.**

Contains 2,653 Square Feet

At 09-022-0051

ANTELOPE SQUARE
LAYTON UTAH



TABULATIONS

CHILDTIME	67,401 SF.
ALBERTSON'S	41,803 SF.
RETAIL 1	6,450 SF.
RETAIL 2	30,440 SF.
RETAIL 3	3,640 SF.
RETAIL 4	729 SF.
MCDONALDS	2,800 SF.
FIRST SECURITY BANK	2,840 SF.
ARBY'S	2,575 SF.
TOTAL	176,878 SF.

TOTAL PARKING PROVIDED **NO SPACES**



Burlini/Bilberichla, Ltd.

Architectural Plans 200 4400 E. Orchard Lane 400, Layton, Utah 84040 801-223-7920

EXHIBIT "D"

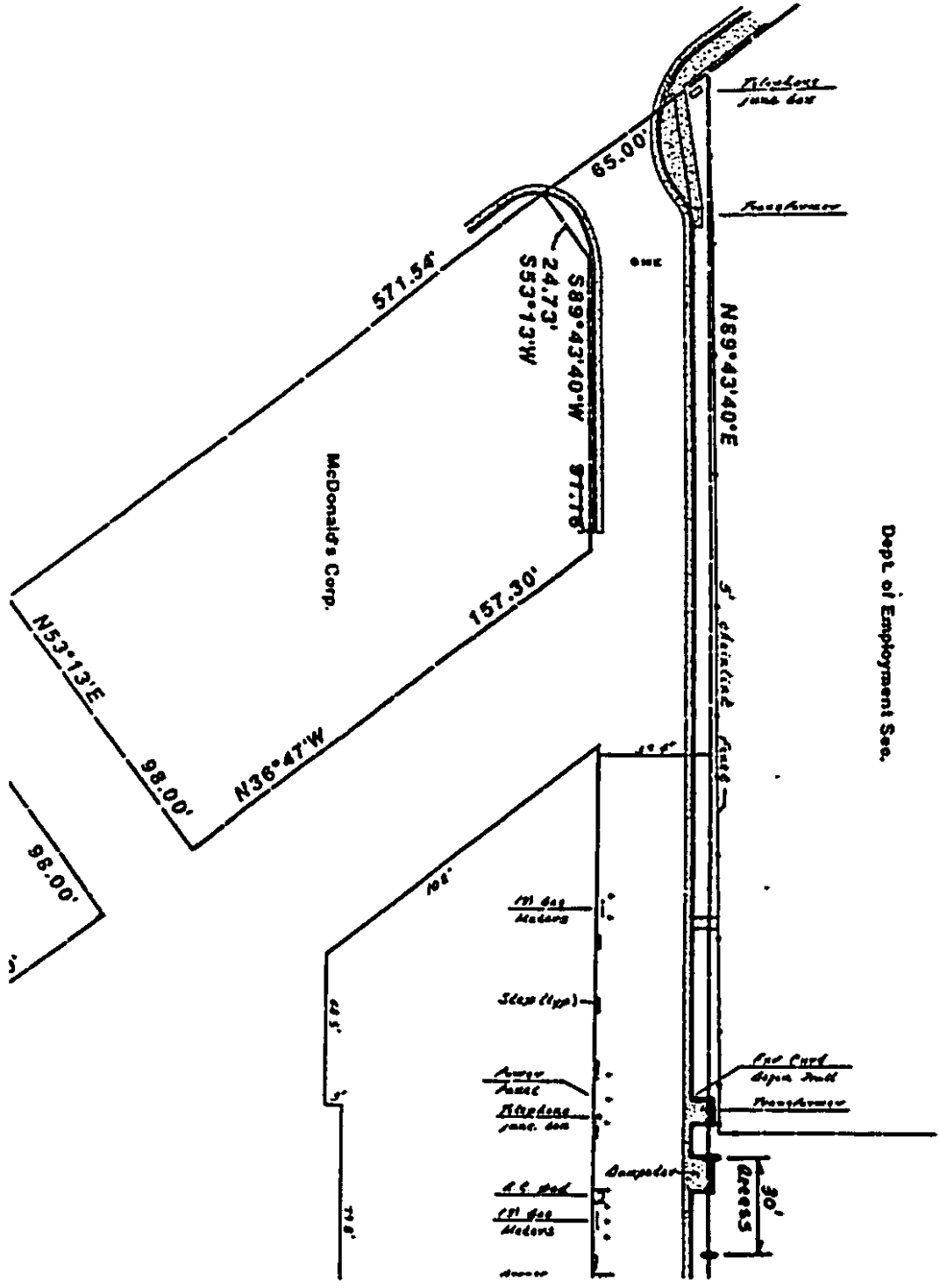
E 1005286 B 1559 P 1609

"Access Drive"

A 30 Foot Wide Access Point being located as follows:

A part of the Southwest Quarter of Section 7, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the North Property Line of Grantors Property which is North 0°03'10" East 835.10 feet and South 89°43'40" West 1216.66 feet from the South Quarter Corner of said Section 7 and running thence South 89°43'40" West 30.00 feet along said North line.



Dept. of Employment Sec.

EXHIBIT "D"
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