

10-177-0001, 0002, 0003, 0005, 0006

WHEN RECORDED, RETURN TO:

Bradley R. Helsten
 Neilson Rasmussen & Christensen
 215 South State Street, Suite 900
 Salt Lake City, Utah 84111

RETURNED
 OCT 30 1998

E 1453731 & 2384 P 272
 JAMES ASHMER, DAVIS CITY RECORDER
 1998 OCT 30 10:15 AM FEE 24.00 DEP REC
 REC'D FOR WEBSTER, DAWID

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement"), dated October 30, 1998, is made by CRACKER BARREL OLD COUNTRY STORE, INC., a Tennessee corporation ("Cracker Barrel") and SUMMIT LODGING, II L.C., A Utah limited liability company ("Summit").

RECTALS

1. Cracker Barrel is the owner of a certain parcel of real property located in Davis County, State of Utah, which is referred to herein as "Parcel 1" and which is legally described as follows:

Lots 5 and 6 of Eagle Park Center a Commercial Subdivision, according to the official Plat thereof recorded in Book 1923, page 811, in the office of the County Recorder of Davis County, State of Utah.

2. Summit is the owner of certain real property adjacent to Parcel 1 and located in Davis County, State of Utah, which are referred to as "Parcel 2" and which are legally described as follows:

Lots 1, 2 and 3 of the aforesaid Subdivision.

Parcel 1 and Parcel 2 shall be collectively referred to as the "Parcels."

3. As used herein, "Site Plan" shall mean the site plan attached hereto as Exhibit "A".

4. As used herein, "Owner" shall mean the record owner of the fee title to the Parcels or any portion thereof, their respective heirs, successors and assigns.

5. As used herein, "Easement Areas" shall be shown as cross-hatched on Exhibit "A".

6. Summit desires easements for ingress and egress and parking upon and across the Easement Areas for the benefit of Parcel 2 under certain terms and conditions.

In consideration of the sum of One Dollar (\$1.00) cash in hand, paid by Summit to Cracker Barrel, the receipt of which is hereby acknowledged, the Parties intending to be legally bound, do hereby agree as follows:

1. **Cracker Barrel Grant of Easements.** Cracker Barrel hereby grants and conveys to Summit the following easements over and across Parcel 1 for the use and benefit of Parcel 2, Summit:

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A perpetual, non-exclusive easement for vehicular and pedestrian ingress and egress over and upon the Easement Areas and a perpetual, non-exclusive easement for vehicular parking upon only the area marked on Exhibit "A" as being 46.2 feet in width and 236.08 feet in length, for the use and benefit of Summit, its tenants, employees, business invitees and guests.

2. **Improvement and Maintenance of Easement Area.** Summit, at its sole cost and expense, shall undertake to improve and maintain the Easement Area by providing, grading, gutters, drains, paving, curbing, striping, signage and landscaping for the intended use as a thoroughfare and parking area. Summit shall provide all necessary cleaning, maintenance and repair of the Easement Area so as to keep the area in good condition for its intended use.

Summit shall coordinate all construction activities on the Easement Areas with the General Manager of the Cracker Barrel Old Country Store located on Parcel 1 at least Seventy-two (72) hours prior to the commencement of such construction; and, Summit shall coordinate all maintenance of the Easement Areas with said General Manager, at least 48 hours prior to such maintenance so as not to unduly interfere with the operation of the restaurant.

3. **Indemnity.** Cracker Barrel shall have no obligation or liability whatsoever in connection with the maintenance or management of the Easement Areas. Summit shall manage, operate and maintain the Easement Areas at its sole cost and expense. Summit agrees to protect, indemnify, defend (with counsel selected by Cracker Barrel) and save harmless, Cracker Barrel from and against any and all liability to third parties, claims, damages and costs, including attorney fees, which arise out of or are related in any way to the Easement Areas, including those incurred by any act or neglect of Summit or any of its agents, servants, or employees, in, on or about the Easement Areas.

4. **Insurance.** Summit shall, at all times, maintain a policy of commercial general liability insurance covering the Easement Area in an amount no less than \$1,000,000.00 per incident, \$2,000,000.00 aggregate. Cracker Barrel shall be listed as an "additional insured" under such policy. The requirements of this Section may be met by including the Easement Parcel as part of a blanket liability policy issued to Summit. Summit shall, within thirty (30) days of written request, deliver to Cracker Barrel a certificate showing such insurance to be then in effect.

5. **Covenants Running with the Land.** The rights and obligations contained in this Agreement shall run with the land, benefitted and burdened, and shall enure to and be for the benefit of, and shall be binding upon the Owners of the Parcels, their successors, assigns, and the tenants, sub-tenants, licensees, concessionaires, mortgagees in possession, customers and business invitees of such Owners.

6. Not a Partnership. The Owners do not by this Agreement, in any way or for any purpose, become partners or joint venturers of the other party in the conduct of their respective businesses or otherwise. The provisions of this Agreement relating to the granting of easements are solely for the purpose of providing ingress and egress.

7. Amendment. This Easement Agreement shall not be amended, modified or terminated without the prior written consent of the Owner of both Parcels; provided that the Owner (as to its Parcel only) make changes to their Parcel so long as such changes do not materially affect the ingress and egress easements granted herein.

8. Costs of Default. In the event of default by any party hereto, the defaulting party shall pay all costs and expenses of the other party, including a reasonable attorney's fee, which may be incurred by such other party in enforcing its rights and remedies resulting from such default, whether or not suit is commenced or an appeal is taken, or in enforcing any judgment, and whether or not related to proceedings in bankruptcy or seeking relief from any automatic stay in bankruptcy.

9. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or Dedication of any portion of the Easement Areas 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 Easement Agreement shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Easement Areas herein affected, or any portion thereof is by permission, and subject to the control of the Parties. Notwithstanding any other provisions herein to the contrary, the Parties may periodically restrict ingress and egress over and across the Easement Areas in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such time as to have a minimum effect on the parties occupying the Parcels.

IN WITNESS WHEREOF, that Cracker Barrel and Summit have executed this Agreement as of the day and year first above written.

CRACKER BARREL:

CRACKER BARREL OLD COUNTRY STORE, INC., a Tennessee corporation,

By: 
Donald G. Kravitz
Its: Vice President

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

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The foregoing instrument was acknowledged before me, the undersigned notary public, as of October 22, 1998, by Kevin S. Gara, a Member of SUMMIT LODGING II, a Utah limited liability company, and that he, in such capacity being authorized so to do, executed the foregoing instrument for the purposes set forth therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Cindy McCarty
Notary Public
My commission expires: 10/1/2000

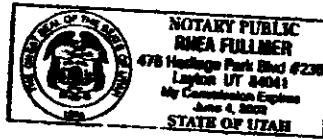


STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me, the undersigned notary public, as of October 22, 1998, by Daniel J. Phelps, a Member of SUMMIT LODGING II, a Utah limited liability company, and that he, in such capacity being authorized so to do, executed the foregoing instrument for the purposes set forth therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Rhea Fullmer
Notary Public
My commission expires:



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

The foregoing instrument was acknowledged before me, the undersigned notary public, as of October 22, 1998, by Douglas M. Durbano, in his capacity as a Member of Summerhaze Investment Company, L.C., which is a Member of SUMMIT LODGING II, a Utah limited liability company, and that he, in such capacity being authorized so to do, executed the foregoing instrument for the purposes set forth therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Rhea Fullmer
Notary Public
My commission expires:

