

WAT GASSER & ASSOCIATES
220 South 200 East
Salt Lake City, Utah

SW-7-47-120

COVENANTS FOR OPERATION,
581474 MAINTENANCE AND RECIPROCAL EASEMENTS **605**

THIS AGREEMENT is made this 25th 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 Layton, Davis 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 tract 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, Davis 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

Recorded at request of **UTAH TITLE CO.**
Date **DEC 11 1980** at **11:10 AM** **CAROL DEAN PAGE** Recorder Davis County
By *Sharon Anderson* Deputy Book **850** Page **605**
Fee Paid \$ **22.50**

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- On Margin
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trustee under that certain Indenture of 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 Parcel, 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 licensees (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, edgers, 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.

7. General Provisions.

7.1 Negation of Partnership. None of the terms or 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


G. Walter Gasser
General Partner

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 Mike Dawson
Its 2nd Vice President

PPROVER
BAS

ATTEST:
By C. E. Lotzar, Jr.
C. E. Lotzar, Jr.
Assistant Secretary

ATTEST:
By David E. Allen
Its Assistant Vice President

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., 1980.

Clair E. Gilbert
NOTARY PUBLIC
Residing at: Midvale, Utah

My Commission Expires:
7-7-81

STATE OF)
COUNTY OF Salt Lake : ss.

BEFORE ME, the undersigned authority, on this day personally appeared Mike Dawson and David E. Miller.

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EXHIBIT A

ANTELOPE SQUARE SHOPPING CENTER

PROPERTY DESCRIPTION

Beginning at a point on the North R/W line of 2000 N. Street, Layton, Utah, said point being $N0^{\circ}03'10''E$, 42.00 ft and $S89^{\circ}47'W$, 502.16 ft. from the $S1/4$ Cor Sec 7, T4N, R1W, SLB&M and running thence $N0^{\circ}03'10''E$, 801.61 ft; thence $S89^{\circ}43'40''W$, 1085.59 ft. to the easterly R/W line of U.S. Highway 91; thence $S36^{\circ}47'$, E, along said R/W 985.54 ft. to the North R/W line of 2000 North Street; thence $N89^{\circ}47'$ E, along said North R/W line 494.72 ft. to beg.

Containing 14.3714 Ac.

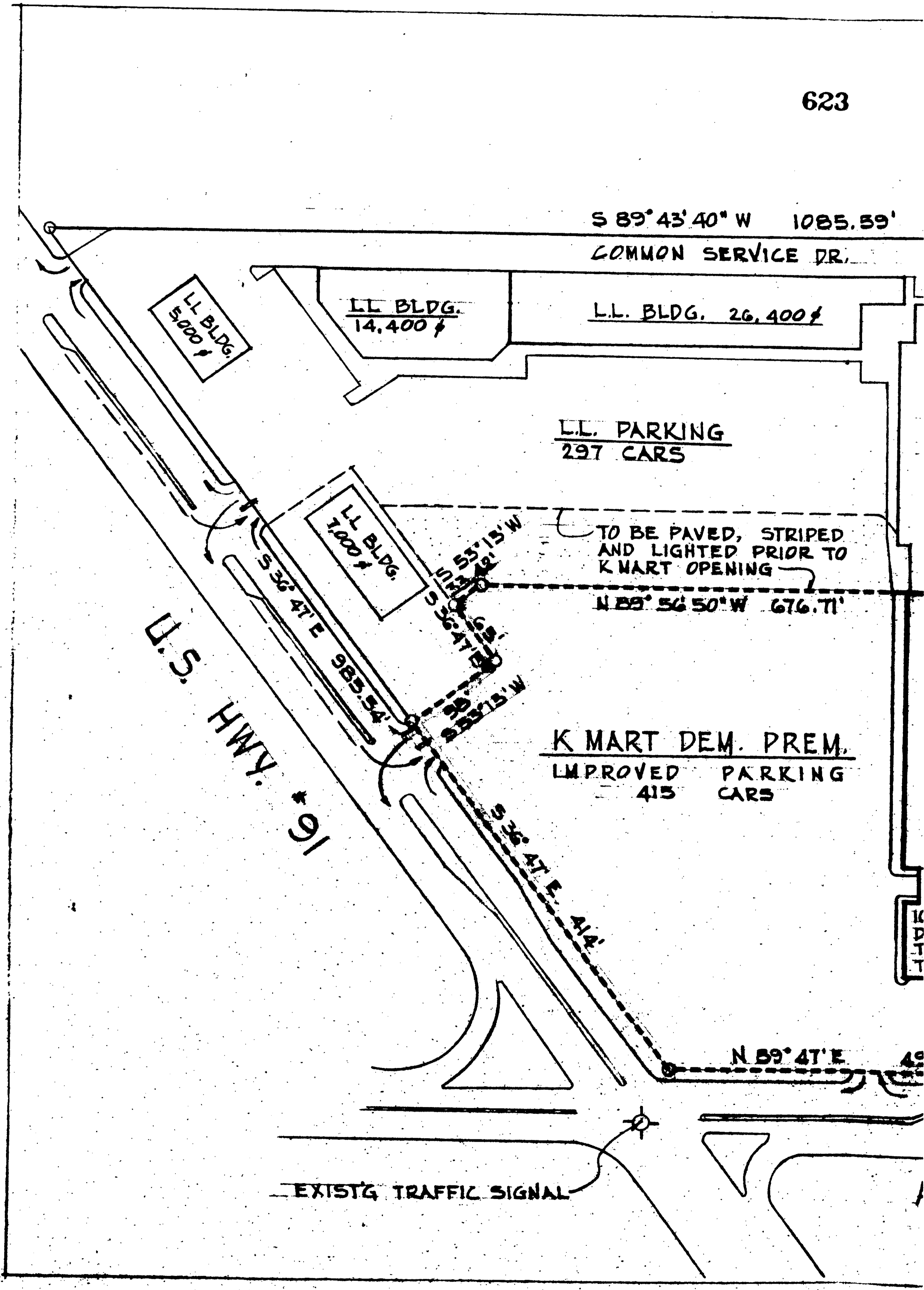
EXHIBIT A-1

K MART DEMISED PREMISES, LAYTON, UTAH

Beginning at a point N0°03'10"E, 50.00 ft. and S89°47' W, 502.16 ft. from the S1/4 Cor Sec 7, T4N, R1W, SLB&M and running thence N0°03'10"E. 451.83 ft; thence N89°56'50"W, 676.71 ft; thence S53°13'W, 33.42 ft; thence S36°47' E, 65.00 ft; thence S53°13' W, 98.00 ft; thence S36°47' E, 404.00 ft; thence N89°47' E, 500.69 ft. to beg.

Containing 6.686 Ac.

623



624

STORE No. 7426
 NEC HWY. # 91 & ANTELOPE RD.
LAYTON, UTAH

EXHIBIT 'B'

DATE:

DEC. 18, 1979

