

WHEN RECORDED, MAIL TO:

Jerry W. Dearing  
1800 Eagle Gate Tower  
60 East South Temple  
P. O. Box 45120  
Salt Lake City, Utah 84145-0120

ENT 762856 Bk 1015 Pg 732  
DATE 11-JUN-2001 4:55PM FEE 20.00  
MICHAEL L GLEED, RECORDER - FILED BY TJ  
CACHE COUNTY, UTAH  
FOR CACHE TITLE COMPANY

**EASEMENT**  
(For Construction Footings)

Easement granted by CDI, LTD., a Utah limited partnership (hereinafter "Retail Owner"), relating to certain real property located in Cache County, State of Utah, more particularly described herein.

**RECITALS:**

A. Retail Owner is the owner of a certain parcel of real property located in Cache County, State of Utah, more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein. Such property is referred to herein as the "Retail Parcel."

B. CDI, LTD., a Utah limited partnership (for this purpose hereinafter "Expansion Owner"), is also the owner of another parcel of real property in Utah County, State of Utah, more particularly described on Exhibit "B" attached hereto and by this reference incorporated herein. Such property is referred to herein as the "K-Mart Expansion Parcel" and is located adjacent to and immediately North of the Retail Parcel.

C. Kmart Corporation has caused its building to be expanded on to the K-Mart Expansion Parcel, which expansion is currently used as part of a K-Mart store (hereinafter "K-Mart Building Expansion").

D. The K-Mart Building Expansion has been erected with its outer south wall located approximately .44 feet north of the common boundary line between the Retail Parcel and the K-Mart Expansion Parcel.

E. The underground footings, foundation and/or exterior pillars and columns of the south wall of the K-Mart Building Expansion may encroach upon the Retail Parcel.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. Retail Owner hereby grants a permanent non-exclusive easement to Expansion Owner for the benefit of the K-Mart Expansion Parcel on and under the northernmost three (3)

feet of the Retail Parcel, approximately 170 feet in length going east from the west side of the south wall of the K-Mart Building Expansion (the "Easement Property"), for the purpose of permitting the use, maintenance, and repair of any underground footings, foundations or exterior pillars and columns supporting or used in connection with the south wall of the K-Mart Building Expansion. The Easement Property is located approximately as marked in yellow on Exhibit "C" attached hereto and by this reference incorporated herein. This grant of easement shall include a reasonable right of access necessary to exercise and enjoy such grant.

2. This easement is intended to allow the Expansion Owner and future owners of the K-Mart Expansion Parcel the non-exclusive use of the Easement Property as it is currently used in connection with the K-Mart Building Expansion. By reason of this grant of easement, Retail Owner hereby consents to the prior placement of any and all underground footings, foundations and/or exterior pillars and columns which may have been used on the south wall of the K-Mart Building Expansion and which may currently exist on the Retail Parcel.

3. Retail Owner, on its own behalf and its successors or assigns, as owner of the Retail Parcel, expressly reserves the right to use the Easement Property so long as such use does not structurally undermine or interfere with the K-Mart Building Expansion or unduly interfere with maintenance of the structures on the Easement Property.

4. In the event Retail Owner, its successors or assigns, constructs a building or other improvement along or near the common boundary line between the Retail Parcel and the K-Mart Expansion Parcel or on the Easement Property, Retail Owner expressly reserves the right, for itself and any future owner of the Retail Parcel, to utilize any underground footings or foundations which may encroach upon the Retail Parcel as a result of construction of the K-Mart Building Expansion. In such event, Retail Owner or its successors will do so in a manner that does not result in damage to the underground footing or foundations or other improvements on the K-Mart Expansion Parcel and shall hold and save harmless the owner and lessees of the K-Mart Expansion Parcel, their successors and assigns, from and against any and all liability resulting from such action.

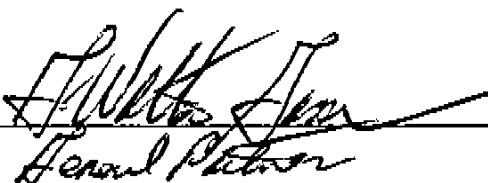
5. Although this is a permanent easement, in the event the K-Mart Building Expansion, the south wall thereof, or the footings, are removed or destroyed and are not replaced within three (3) years thereafter, this Easement shall automatically be deemed abandoned and shall be of no further force or effect.

6. This grant of easement is made for benefit of the K-Mart Expansion Parcel and shall encumber the Retail Parcel in accordance with the terms hereof.

IN WITNESS WHEREOF, this Easement is executed this 11<sup>th</sup> day of June, 2001.

CDI, Ltd., a Utah limited partnership

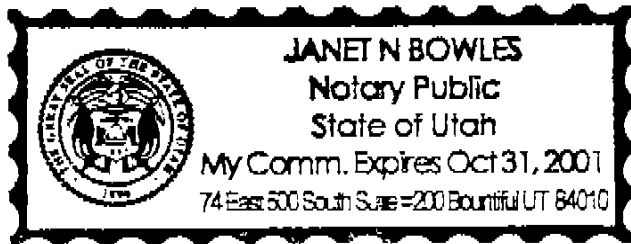
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By:   
Gerald Patton

G. Walter Gasser, General Partner

STATE OF UTAH     )  
                                      : ss.  
County of ~~Utah~~ *Davis* )

PERSONALLY APPEARED, G. Walter Gasser, General Partner of CDI, Ltd., a Utah limited partnership, who, by me being duly sworn did say that he is the General Partner of CDI, LTD., a Utah limited partnership, and that he was authorized to, and did execute the foregoing Easement as General Partner on the 11<sup>th</sup> day of June, 2001.



*Janet N Bowles*  
\_\_\_\_\_  
NOTARY PUBLIC

Residing at: *Bountiful, Utah*  
\_\_\_\_\_

My commission expires:  
10-31-01

::ODMA\PCDOCS\DOCS\521917\1

ENT 762856 Bk 1015 Pg 734

LEGAL DESCRIPTION OF RETAIL PARCEL

RETAIL PARCEL: PART OF LOT 5, BLOCK 8, PLAT "D", LOGAN FARM SURVEY, AS RECORDED IN THE OFFICE OF THE CACHE COUNTY RECORDER DESCRIBED AS FOLLOWS:

BEGINNING SOUTH 88°16'32" EAST, 759.02 (762.32' BY RECORD) AND SOUTH 1°33'53" WEST, 607.16 FEET FROM THE NORTHWEST CORNER OF LOT 5, BLOCK 8, PLAT "D", LOGAN FARM SURVEY;

AND THENCE SOUTH 01°33'53" WEST, 47.48 FEET;  
THENCE NORTH 89°17'04" WEST, 400.08 FEET;  
THENCE NORTH 01°33'53" EAST, 132.62 FEET;  
THENCE SOUTH 88°32'56" EAST, 77.50 FEET;  
THENCE SOUTH 01°27'04" WEST, 20.00 FEET;  
THENCE SOUTH 88°32'56" EAST, 207.50 FEET;  
THENCE SOUTH 01°33'53" WEST, 60.00 FEET;  
THENCE SOUTH 88°32'56" EAST, 115.00 FEET TO THE BEGINNING.

CONTAINING 0.89 ACRES +/-.

LEGAL DESCRIPTION OF KMART EXPANSION PARCEL

EXPANSION PARCEL: PART OF LOT 5, BLOCK 8, PLAT "D", LOGAN FARM SURVEY,  
AS RECORDED IN THE OFFICE OF THE CACHE COUNTY RECORDER DESCRIBED AS  
FOLLOWS:

BEGINNING SOUTH 88°16'32" EAST, 759.02 (762.32' BY RECORD) AND SOUTH  
1°33'53" WEST, 607.16 FEET FROM THE NORTHWEST CORNER OF LOT 5, BLOCK 8,  
PLAT "D", LOGAN FARM SURVEY;

AND THENCE NORTH 88°32'56" WEST, 115.00 FEET;  
THENCE NORTH 01°33'53" EAST, 60.00 FEET;  
THENCE NORTH 88°32'56" WEST, 207.50 FEET;  
THENCE NORTH 01°27'04" EAST, 20.00 FEET;  
THENCE NORTH 88°32'56" WEST, 77.50 FEET;  
THENCE SOUTH 01°33'53" WEST, 132.62 FEET;  
THENCE NORTH 89°17'04" WEST, 353.22 FEET;  
THENCE NORTH 01°03'43" EAST, 46.45 FEET;  
THENCE SOUTH 89°15'22" EAST, 150.00 FEET;  
THENCE NORTH 01°03'43" EAST, 130.00 FEET;  
THENCE NORTH 89°15'22" WEST, 42.00 FEET;  
THENCE NORTH 01°03'43" EAST, 29.99 FEET;  
THENCE SOUTH 88°26'07" EAST, 647.04 FEET;  
THENCE SOUTH 01°33'53" WEST, 149.33 FEET TO THE BEGINNING.

CONTAINING 2.09 ACRES +/-.

Exhibit "B"

QUIZNOS PARCEL  
19,440 sq. ft.

SUPERWASH PARCEL  
19,500 sq. ft.

KIMART EXPANSION PARCEL  
91,137 sq. ft.

RETAIL PARCEL  
38,675 sq. ft.

EXISTING BUILDING

EASEMENT PROPERTY

POINT OF BEGINNING

Measurements and Bearings:

- Top Left: 180.00' (North), 150.01' (East)
- Top: 108.00' (North), 150.00' (East), 130.00' (North), 150.00' (East)
- Left: 180.00' (North), 150.01' (East), 130.00' (North), 150.00' (East)
- Bottom Left: 108.00' (North), 150.00' (East), 130.00' (North), 150.00' (East)
- Bottom: 108.00' (North), 150.00' (East), 130.00' (North), 150.00' (East)
- Right: 108.00' (North), 150.00' (East), 130.00' (North), 150.00' (East)
- Bottom Right: 108.00' (North), 150.00' (East), 130.00' (North), 150.00' (East)