

86571

28-01-02

**Parties** THIS MEMORANDUM OF LEASE dated this 15th day of October, 1973, between ~~SIXTH AVENUE ENTERPRISES~~ Eltinge, Graziadio & Sampson Development Co., a partnership, and O'Connor & Company, a partnership, doing business as Sixth Avenue Enterprises, corporation having its principal office at 1840 WEST IMPERIAL HIGHWAY, LOS ANGELES, CALIFORNIA 90047 (herein referred to as "Landlord"), and S. S. KRESGE COMPANY, a Michigan corporation having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084, (herein referred to as "Tenant"),

WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations and the further consideration of the rents reserved and the covenants and conditions more particularly set forth in a certain lease between Landlord and Tenant and bearing even date herewith, Landlord and Tenant do hereby covenant, promise and agree as follows:

**Demised Premises**

1. Landlord does demise unto Tenant and Tenant does take from Landlord for the term herein after provided, and any extension thereof, the following property: Tenant's completed building or buildings (designated K mart and Food Market), together with site improvements to be constructed as specified in said lease by Landlord at its expense on the land described in Exhibit "A" and depicted on Exhibit "B" attached hereto and made a part hereof, and situated in the CITY of OREGON, County of Klamath, State of OREGON; Klamath Falls said building or buildings to be in the locations and of the dimensions depicted on said Exhibit "B".

Landlord hereby gives and grants unto Tenant, in common with others entitled thereto, including Tenant's agents, employees, customers, licensees and invitees the following licenses, rights, privileges and easements: the use of parking areas, common areas (including rest rooms and other facilities, if any), roadways, sidewalks and accessways to public streets and highways indicated on said Exhibit "B", together with the use of any delivery or servicing areas adjoining Tenant's said buildings or designated as such on Exhibit "B", which areas shall be adequate for the passage, unloading and, if necessary, turning around of trailer trucks and other commercial vehicles.

Said land, completed buildings and site improvements, together with the licenses, rights, privileges and easements herein set forth, shall be hereinafter collectively referred to as the "demised premises".

**Term**

2. The lease term shall commence upon the date of occupancy by Tenant of said buildings, and shall terminate upon such date as shall be TWENTY-FIVE ( 25 ) years from the last day of the month in which said date of occupancy by Tenant shall occur; provided, however, Tenant shall have the option to extend the lease term for TEN ( 10 ) successive periods of FIVE ( 5 ) additional years each.

**Building Areas**

3. Landlord covenants, during the period commencing with the date of execution of the aforesaid lease and ending upon the last day of the lease term and any extension or renewal thereof, that it will not erect or construct any buildings or other structures upon land described in Exhibit "A", except as shown on Exhibit "B"; provided, however, in the event that the date of occupancy by Tenant of the demised premises shall not occur prior to such date as shall be seven (7) years from the date of the aforesaid lease, then the restrictions imposed by this Article shall cease and determine and shall be of no further force or effect.

**Signs**

4. The demised premises shall be referred to by only such designation as Tenant may indicate. Landlord expressly recognizes that the service mark and trademark "K mart" is the valid and exclusive property of Tenant, and Landlord agrees that it shall not either during the term of this lease or thereafter directly or indirectly contest the validity of said mark "K mart", or any of Tenant's registrations pertaining thereto in the United States or elsewhere, nor adopt or use said mark or any term, word, mark or designation which is in any aspect similar to the mark of Tenant. Landlord further agrees that it will not at any time do or cause to be done any act or thing, directly or indirectly, contesting or in any way impairing or tending to impair any part of the Tenant's right, title and interest in the aforesaid mark, and Landlord shall not in any manner represent that it has ownership interest in the aforesaid mark or registrations therefor, and specifically acknowledges that any use thereof pursuant to this lease shall not create in Landlord any right, title or interest in the aforesaid mark.

Tenant shall have the option to erect at its sole cost and expense upon any portion of the demised premises signs of such height and other dimensions as Tenant shall determine, and bearing such legend or inscription as Tenant shall determine. Tenant shall have the option to utilize the lighting standards in the parking lot for advertising purposes by attaching, or causing to be attached, signs advertising any and all products and services as Tenant shall elect.

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Signs  
(cont'd)

Landlord shall not permit any other signs, billboards or posters to be displayed on any portion of the demised premises.

The sole purpose of this instrument is to give notice of said lease and all its terms, covenants and conditions to the same extent as if said lease were fully set forth herein.

The conditions, covenants and agreements contained in this instrument shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns. All covenants and agreements of this instrument and said lease shall run with the land.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate as of the day and year first above written.

ELTINGE, GRAZIADIO & SAMPSON  
DEVELOPMENT CO., a partnership

O'CONNOR & COMPANY,  
a partnership

WITNESSES:

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

By

*[Signature]*

President

Attest

*[Signature]*

Secretary

S. S. KRESGE COMPANY

By

*[Signature]*

Vice President

Attest

*[Signature]*

Beatrice L. McGaw

Assistant Secretary

APPROVED



3075

## ACKNOWLEDGMENTS

STATE OF CALIFORNIA }

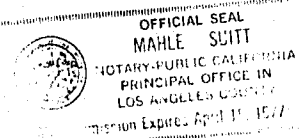
STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES } ss.

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On this 16th day of October, 1973, before me,  
the undersigned, a Notary Public in and for said County and State,  
personally appeared Lowell O'Connor and Betty O'Connor

known to me to be all of the partners of the partnership that  
executed the within instrument, said persons being known to me  
to be the persons who executed the within instrument on behalf  
of said partnership, said partnership being known to me to be one  
of the joint venturers of Sixth Avenue Enterprises,  
the joint venture that executed the within instrument and  
acknowledged to me that such partnership executed the same as  
a member of said joint venture and that such joint venture  
executed the same.

WITNESS my hand and official seal.



*Mahle Suitt*  
Mahle Suitt

STATE OF MICHIGAN }  
COUNTY OF OAKLAND } ss:

I do hereby certify that on this 7th day of November, 1973, before me,  
Mary E. Harker  
County and State aforesaid, and duly commissioned, personally appeared  
J. P. JOHNSON and BEATRICE L. McGAW  
known to me to be the Vice President and Assistant Secretary of S. S. Kresge Company, who, being by  
me duly sworn, did depose and say that they reside in

Grosse Pointe Woods, Michigan and Troy, Michigan  
respectively; that they are the Vice President and Assistant Secretary respectively of S. S. Kresge  
Company, 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 corpora-  
tion; 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.

My commission expires:

*Mary E. Harker*  
Notary Public

MARY E. HARKER  
Notary Public, Oakland County, Mich.  
My Commission Expires June 12, 1977

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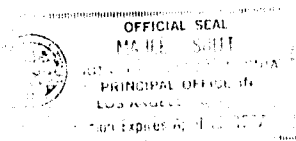
ACKNOWLEDGMENTS

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES } ss.

On this 17th day of October, 1973, before me, the undersigned, a Notary Public in and for said County and State, personally appeared George L. Graziadio and James K. Sampson,

known to me to be two of the partners of the partnership that executed the within instrument, said persons being known to me to be the persons who executed the within instrument on behalf of said partnership, said partnership being known to me to be one of the joint venturers of Sixth Avenue Enterprises the joint venture that executed the within instrument and acknowledged to me that such partnership executed the same as a member of said joint venture and that such joint venture executed the same.

WITNESS my hand and official seal.



*Mahle Suitt*  
Mahle Suitt

STATE OF MICHIGAN }  
COUNTY OF OAKLAND } ss:

I do hereby certify that on this 7th day of November, 1973, before me, Mary E. Harker, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared J. P. JOHNSON and BEATRICE L. McGAW,

known to me to be the Vice President and Assistant Secretary of S. S. Kresge Company, who, being by me duly sworn, did depose and say that they reside in Grosse Pointe Woods, Michigan and Troy, Michigan respectively; that they are the Vice President and Assistant Secretary respectively of S. S. Kresge Company, 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.

My commission expires: \_\_\_\_\_

*Mary E. Harker*  
Notary Public

MARY E. HARKER  
Notary Public, Oakland County, Mich.  
My Commission Expires June 12, 1977



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LEGAL DESCRIPTION

A description of a parcel of land being a part of tracts 36 and 43, Enterprise Tracts, located in the Northwest one-quarter (N.W.  $\frac{1}{4}$ ) of the Northwest one-quarter (N.W.  $\frac{1}{4}$ ) of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon. Said parcel of land being more particularly described as follows:

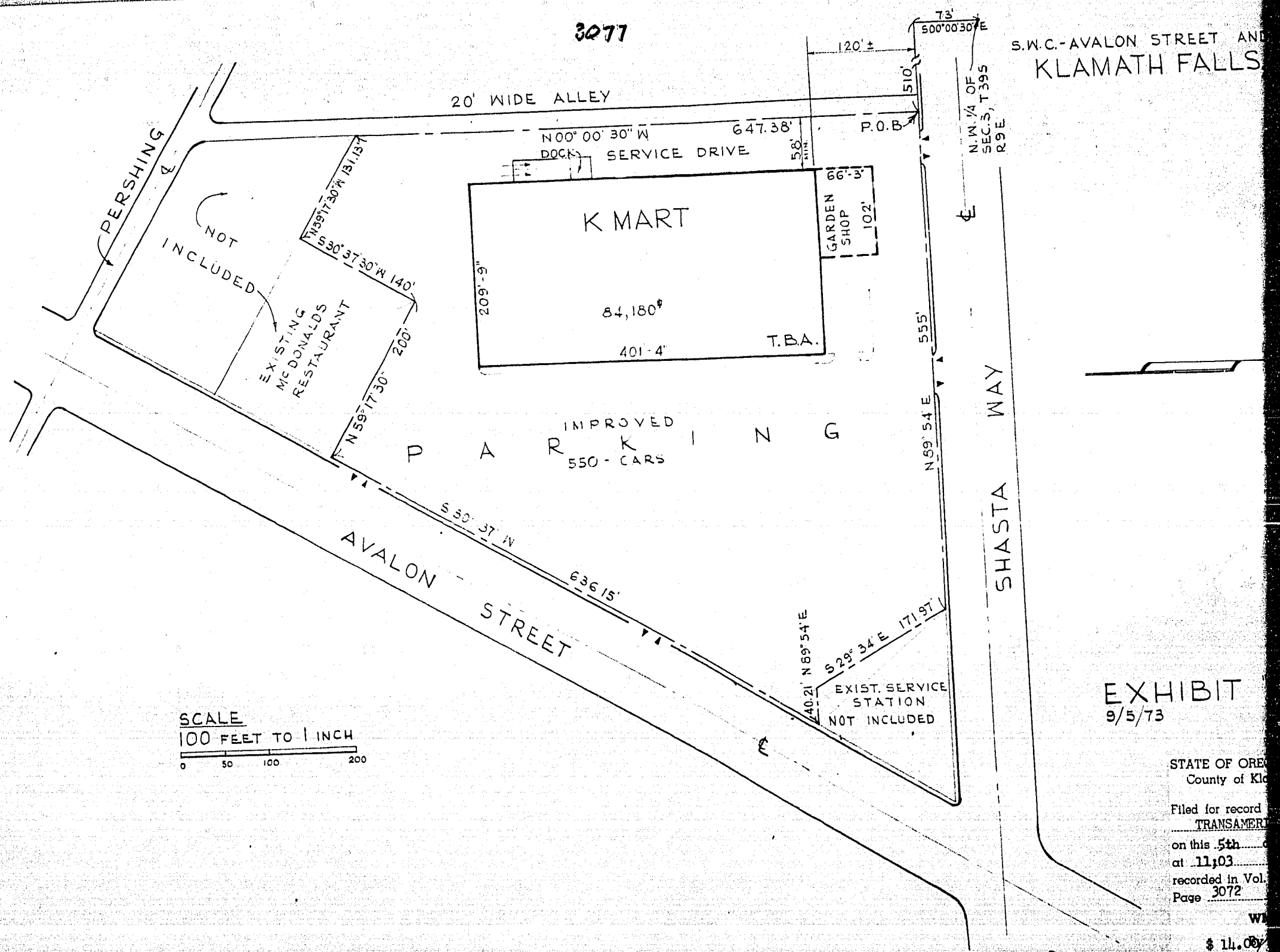
Beginning at the Northwest corner of said Section 3, thence South  $00^{\circ}00'30''$  East a distance of 73.00 feet; thence North  $89^{\circ}54'00''$  East a distance of 510.00 feet to the true point of beginning. Said true point of beginning being on the Southerly boundary line of Shasta Way.

Thence continuing North  $89^{\circ}54'00''$  East along said Southerly boundary line a distance of 555.00 feet; thence South  $29^{\circ}34'00''$  East a distance of 171.97 feet (previous deed calls this 172.28); thence North  $89^{\circ}54'00''$  East a distance of 40.21 feet (previous deed calls this 40.10 feet) to a point on the Westerly boundary line of Avalon Street; thence South  $30^{\circ}37'00''$  West a distance of 636.15 feet (previous deed calls this South  $30^{\circ}38'30''$  West a distance of 636.41 feet) to the Northeasterly corner of that tract of land deeded to McDonald Corporation in Volume M-71, Page 9231, Microfilm Records of Klamath County, Oregon. Thence North  $59^{\circ}17'30''$  West (previous deed calls this  $59^{\circ}21'20''$  West) along the Northeasterly line of said McDonald Tract a distance of 200.00 feet to the Northwesterly corner of said McDonald Tract; thence South  $30^{\circ}37'30''$  West (previous deed calls this South  $30^{\circ}38'30''$  West) along the Northwesterly line of said McDonald Tract a distance of 140.00 feet to the Southwesterly corner of said McDonald Tract; thence North  $59^{\circ}17'30''$  West a distance of 131.13 feet to the Northwesterly corner of that certain parcel described in Mortgage given by Rickfalls, Inc., to the United States National Bank of Oregon, dated March 28, 1961, recorded April 4, 1961, in Volume 201, Page 355, Mortgage Records of Klamath County, Oregon (previous deed calls this North  $59^{\circ}21'30''$  West a distance of 130.67 feet); thence North  $00^{\circ}00'30''$  West a distance of 647.38 feet to the true point of beginning.

Said parcel of land contains an area of 8.245 Acres.

EXHIBIT A

3077



SCALE  
100 FEET TO 1 INCH  
0 50 100 200

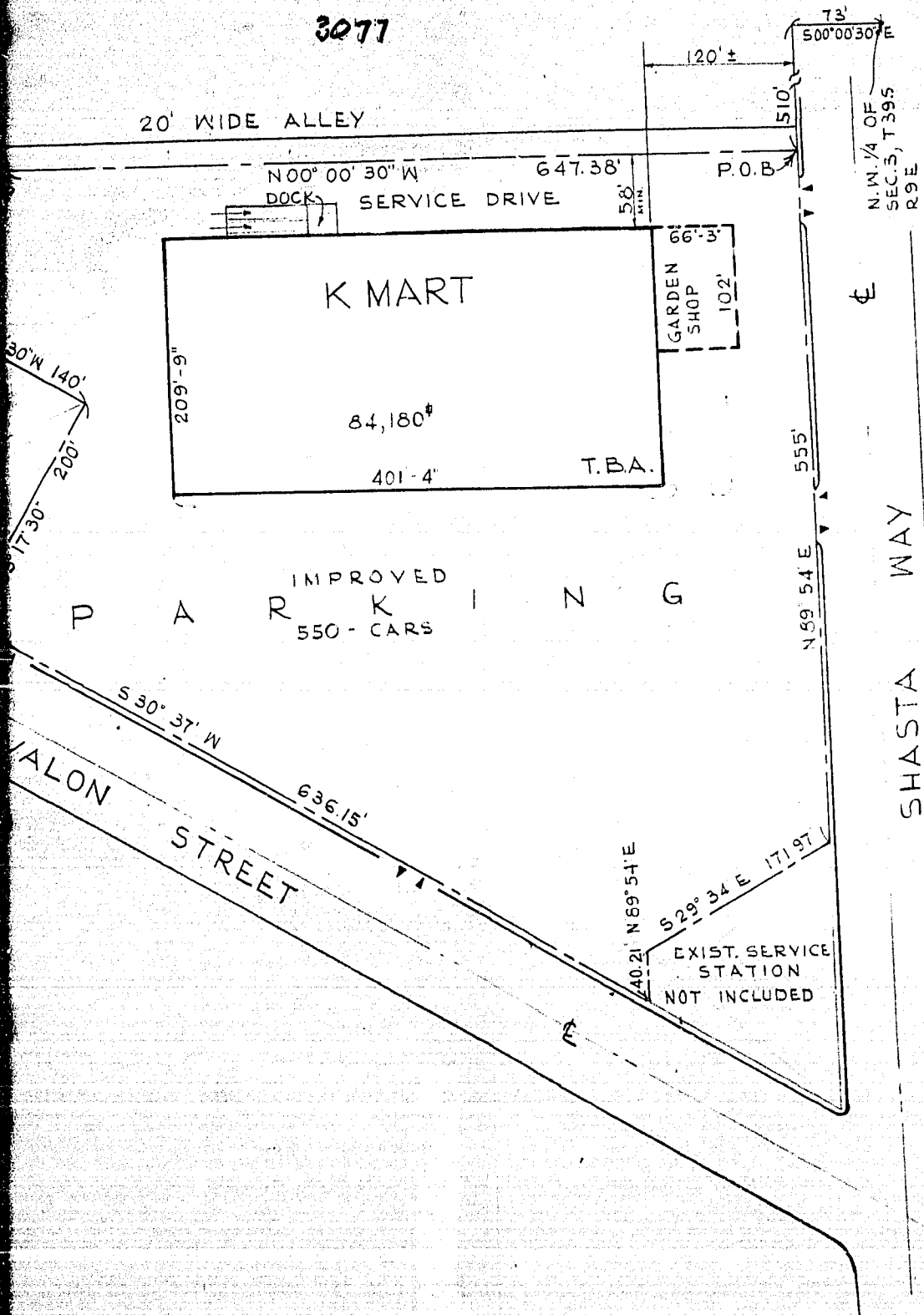
EXHIBIT  
9/5/73

STATE OF OREGON  
County of Klamath  
Filed for record  
TRANSAMER  
on this 5th  
at 11:03  
recorded in Vol.  
Page 3072  
Fee \$ 14.00



3078

3077



S.W.C-AVALON STREET AND SHASTA WAY  
KLAMATH FALLS, OREGON.

EXHIBIT "B"  
9/5/73

STATE OF OREGON, }  
County of Klamath } ss.

Filed for record at request of:  
TRANSAMERICA TITLE INS. CO  
on this 5th day of MARCH A.D., 1974  
at 11:03 o'clock A.M. and duly  
recorded in Vol. M 74 of DEEDS  
Page 3072

WM. D. MILNE, County Clerk

Fee \$ 14.00 Deputy.