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DECLARATION AND GRANT OF EASEMENTS

THIS DECLARATION AND GRANT OF EASEMENTS is made and entered into this 8th day of April, 1994, by and between ROBERT H. and JANE T. BREINHOLT, jointly and severally, as individuals (hereinafter called "Breinholt"), with a mailing address of c/o Capitol Industries, 2880 South Main Street, Suite 114, South Salt Lake City, Utah, 84115, and HEBER S. JACOBSEN, an individual (hereinafter called "Jacobsen"), with a mailing address of 265 East 100 South, Suite 265, Salt Lake City, Utah, 84111.

RECITALS:

This instrument is made and entered into with reference to the following definitions and recitals of fact, which are a material part hereof.

A. Breinholt Property. Breinholt is the owner of certain real property (hereinafter called the "Breinholt Property") located in Salt Lake City, County of Salt Lake, State of Utah, and more particularly described as follows:

Beginning at a point East 175 feet, more or less, and North 339.26 feet, more or less, from the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, said section corner being an unmarked County Survey Monument located at the South right-of-way line of the Salt Lake Garfield and Western Railroad, said beginning point is also South 0°04'57" West 34.69 feet and East 175 feet, more or less, and North 339.26 feet more or less from an unmarked County Survey Monument which is South 89°57'27" West 2,639.8 feet from the North quarter corner of Section 3, Township 1 South, Range 1 West, Salt Lake Base and Meridian, as shown on the area reference plat on file in the Salt Lake County Surveyor's Office, and running thence from said beginning point East 153.02 feet; thence North 19°28'15" West 6.06 feet, thence North 360 feet to the South line of North Temple Street; thence South 89°58'38" West 151 feet; thence South 365.65 feet to the point of beginning, containing 1.268 acres.

B. Jacobsen Property. Jacobsen is the owner of certain real property located immediately adjacent to, and contiguous with the easterly boundary of the Breinholt Property, which property is currently paved and is more particularly described as follows:

Beginning on the South line of North Temple Street at a point 323.33 feet North 89°58'38" East and South 66.60 feet from a Salt Lake City Survey Monument, said monument being South 89°58'38" West 2577.29 feet from a Salt Lake City Survey Monument at the intersection of North Temple Street and Redwood Road to the North, said point of beginning being also East 326 feet and North 704 feet, more or less, from the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian and running thence South 360 feet, more or less; thence South 19°28'15" East 6.06 feet to the South line of the Breinholt Property as described herein above; thence East 28 feet; thence North 19°28'15" West 6.06 feet; thence North 360 feet, more or less, to the South line of North Temple Street; thence West 28 feet to the point of beginning.

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C. INGRESS AND EGRESS EASEMENT PREMISES. Breinholt desires to obtain from Jacobsen, and Jacobsen is willing to grant to Breinholt, a right-of-way and easement for ingress and egress upon, over and across the property described in Paragraph B above, which property shall hereinafter be called the "Ingress and Egress Easement Premises".

D. Culinary Water line Easement Premises. Jacobsen desires to obtain from Breinholt and Breinholt is willing to grant to Jacobsen and to an entity he controls identified as HSJ Properties, an easement to accommodate the location of an existing culinary water line on a portion of the Breinholt Property, which portion of the Breinholt Property is more particularly described as follows and which property is herein after called the "Culinary Water Line Easement Premises":

A 10-foot wide culinary water easement 5 feet each side of the following described center line:

Beginning on the South line of North Temple Street at a point North 89°58'38" East 306.54 feet and South 66.60 feet from a Salt Lake City Survey Monument located in North Temple Street, said point also being East 309.21 feet and North 704.96 feet, more or less, from the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, and running thence South 365.70 feet, to the Point of Terminus.

E. The Breinholt Property, the Ingress and Egress Easement Premises and the Culinary Water Line Easement Premises are more particularly described and located on that certain survey undertaken by CRS Consulting Engineers, Inc. dated December 29, 1992, a copy of which survey is attached hereto as Exhibit A and by this reference made a part hereof. In the event any of the descriptions contained herein are found to be inaccurate, the parties hereto agree to cooperate to obtain accurate descriptions as needed for the future disposition and conduct of the management and ownership of their respective parcels of property.

NOW, THEREFORE, for valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

1. **Jacobsen's Grant of Easement.** Jacobsen hereby grants to Breinholt, its successors heirs and assigns, and their respective tenants, customers, invitees and employees, as an easement appurtenant to the Breinholt Property as described in Paragraph A above, a perpetual easement and right for ingress and egress over and across the Ingress and Egress Easement Premises described in Paragraph B above.

2. **Use of Ingress and Egress Easement Premises.** Exclusive use of the Ingress and Egress Easement Premises is not hereby granted, and the right to use the Ingress and Egress Easement Premises for ingress and egress in common with Breinholt is hereby expressly reserved by Jacobsen and his successors, assigns and grantees; provided, that such use by Jacobsen and his successors, assigns, and grantees shall not at any time deprive Breinholt or its heirs and assigns, and their respective tenants, customers, employees and invitees, of the ingress and egress described in paragraph 1 above.

3. Maintenance Standard. Jacobsen covenants at all times to keep the Ingress and Egress Easement Premises in good repair as a roadway for vehicular traffic, including such paving with concrete or asphalt, such marking with painted lines for the orderly flow of traffic and such snow removal as are consistent with the maintenance of a commercial business park. If Jacobsen shall fail to maintain the Ingress and Egress Easement Premises as required pursuant to this paragraph 4, Breinholt shall give Jacobsen written notice of the claimed maintenance failure, and Jacobsen shall have thirty (30) days following the giving of such notice to cure the failure. If Jacobsen has failed to cure the maintenance failure within such thirty (30) day period, or if such failure is not capable of being cured within a thirty (30) day period and Jacobsen shall fail to begin to cure such failure, Breinholt may, but shall not be required to, cure the failure, and Breinholt may deduct any reasonable costs it incurs in curing such failure from the Maintenance Fee, as defined below, next due and owing. If the reasonable costs incurred by Breinholt in curing the maintenance failure are in excess of the amount of the next due Maintenance Fee, then Breinholt shall have the right to make demand upon Jacobsen for payment of that sum which exceeds the next due Maintenance Fee, which sum Jacobsen agrees to pay to Breinholt within fifteen (15) days after receipt of Breinholt's written demand for such payment. If Jacobsen fails to pay such sum in full within the fifteen day period, the unpaid amount shall bear interest from the date of receipt of notice thereof to the date of payment at the rate of fifteen percent (15%) per annum.

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4. Maintenance Fee. Commencing ~~January 1, 1993~~, and continuing on January 1 of every year thereafter, Breinholt, for so long as it is owner of record of the Breinholt Property, and thereafter Breinholt's successors and assigns, shall pay to Jacobsen an annual fee (the "Maintenance Fee"), which fee represents a contribution by the owner of the Breinholt Property towards payment of the costs of maintaining Breinholt's pro rata share of the Ingress and Egress Easement Premises. The Maintenance Fee due January 1, 1993, shall be in the amount of Nine Hundred and Fifty Dollars (\$950.00). Thereafter, the Maintenance Fee shall increase by four percent (4%) each year (e.g. on January 1, 1994 the Maintenance Fee shall be \$988.00, on January 1, 1995 the Maintenance Fee shall be \$1027.52, and so forth). It is acknowledged and agreed by the parties hereto that the four percent (4%) annual increase in the Maintenance Fee shall remain constant no matter what the amount of the actual annual costs of maintaining the Ingress and Egress Easement Premises may be. If Breinholt shall fail to pay the Maintenance Fee in full by the tenth day of January of any year (except for the January 1, 1993 and the January 1, 1994 payments which are payable upon the execution of this instrument by both parties), the unpaid amount shall bear interest from the due date thereof to the date of payment at the rate of fifteen percent (15%) per annum. Additionally, if Breinholt's failure to pay the Maintenance Fee in full in any year continues beyond January 31 of that year Jacobsen shall have the right to record a Notice of Lien against the Breinholt Property in the amount of the delinquent Maintenance Fee. Notwithstanding the foregoing, Jacobsen shall not be entitled to record a Notice of Lien against the Breinholt Property if Breinholt gives Jacobsen written notice that it is contesting payment of the Maintenance Fee and provided that Breinholt either posts a bond in favor of Jacobsen or pays into escrow the amount of the contested Maintenance Fee pending resolution of Breinholt's objection to payment. *The Maintenance Fee may be paid quarterly, at Breinholt's option in which event payments shall be made on the 1st of January, April, July, and October of each year.*

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5. Grant of Culinary Water Line Easement. Breinholt hereby grants to Jacobsen and HSJ Properties, their successors, heirs, assigns, and their respective tenants, invitees and employees, the right to locate a culinary water line below the surface of the Culinary Water Line Easement Premises described in Paragraph D above, along with the additional right to enter onto the Breinholt Property to repair and maintain the subject culinary water line whenever such repair and maintenance is necessary. Jacobsen, his successors, heirs and assigns, agree that they will repair any and all damage caused by

such repair or maintenance work and shall restore the affected portion of the Breinholt Property upon which such work is performed to a condition which is equal to the condition which existed prior to the beginning of such work. In addition, Jacobsen, his successors, heirs and assigns, shall promptly pay all costs and expenses associated with such repair and maintenance work and shall indemnify and hold harmless Breinholt, its successors, heirs and assigns, from all damages, losses, or claims, including reasonable attorneys' fees, attributable to the performance of such work. If Jacobsen shall fail to pay the costs and expenses associated with the repair and maintenance work, Breinholt may, but shall not be required to, pay such costs and expenses. If Breinholt pays such costs and expenses, then Breinholt shall have the right to make demand upon Jacobsen for payment of such costs and expenses, which sum Jacobsen agrees to pay Breinholt within fifteen (15) days after receipt of Breinholt's written demand for such payment. If Jacobsen fails to pay such sum in full within the fifteen (15) day period, the unpaid amount shall bear interest from the due date thereof to the date of payment at the rate of fifteen percent (15%) per annum. Notwithstanding the foregoing, it is understood by Breinholt that Jacobsen will bill Breinholt, and each and every other party that benefits from the subject culinary water line, for reimbursement for the costs and expenses associated with the foregoing-described repair and maintenance work on a pro rata basis based upon the amount of water used by each such party in the preceding twelve months. If Breinholt fails to pay its pro rata share of such costs and expenses within fifteen (15) days after receipt of Jacobsen's written demand for payment, such sum shall bear interest from the date of notice thereof to the date of payment at the rate of fifteen percent (15%) per annum. Except in cases of emergency, all repair and maintenance work shall be undertaken only after giving Breinholt, its successors, heirs and assigns, thirty (30) days prior written notice of the nature of the work to be undertaken, the duration of the work and the area in which the work is to be performed. Despite the foregoing, Breinholt, its successors, heirs and assigns, reserve the right to use the Culinary Water Line Easement Premises for their own purposes so long as such purposes will not interfere with Jacobsen's full enjoyment of the rights granted by this instrument. Additionally, Breinholt shall have the right to relocate the culinary water line on the Breinholt Property provided that such relocation shall be performed only after thirty (30) days notice to Jacobsen of Breinholt's intention to so relocate the line, such relocation shall be performed without cost or expense to Jacobsen and such relocation shall not reduce or unreasonably impair the usefulness or function of the culinary water line easement set forth in this paragraph. If Jacobsen and/or HSI Properties shall fail to keep current those certain water accounts with Salt Lake City Corporation related to the culinary water line billings and the fire hydrant line serving the Breinholt Property, Breinholt shall have the right to assume the easement has been abandoned and shall, upon giving Jacobsen written notice of its intentions, have the right to takeover the responsibilities of Jacobsen with respect to the other users of the water and fire lines. In the event Breinholt shall negligently conduct an activity or an occurrence which results in the water or fire line needing maintenance or repair, Breinholt shall be solely responsible for the costs and expenses of any necessary repairs.

6. Running of Benefits and Burdens. All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, assigns, successors, tenants and personal representatives of the parties hereto. Whenever a transfer of the parcels described in paragraphs A and B above takes place, liability of the transferor for breach of covenant occurring thereafter shall automatically terminate and shall automatically be assumed by the transferee of said parcel.

7. Notices. The giving of notice required hereunder shall be in writing and shall be sent to either party at the addresses set forth in the opening paragraph above (or to any other address provided in writing by either party to the other), by registered or certified mail, postage prepaid, return receipt requested, or by reputable commercial overnight

delivery services providing a receipt, or a teletype if the receipt of said notice can and is verified by the sending party. Notice shall be deemed to have been given on the third (3rd) business day following the date of mailing or upon the date set forth in the report of delivery in the case of commercial overnight delivery service, or on the date of sending in the case of a teletyped notice.

8. Attorney's Fees and Arbitration. Either party may seek enforce this instrument, and the prevailing party in such dispute shall be entitled to recover its costs and reasonable attorney's fees, provided that, however, the parties hereto hereby agree that any such dispute arising from the enforcement or interpretation of this instrument shall be submitted to arbitration, and that said arbitration shall be conducted by a professional arbitration association, and that the decision of the arbitrators shall be binding upon the parties hereto.

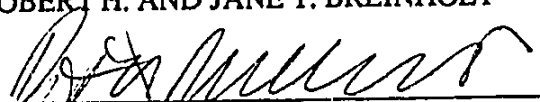
9. Recording of Easements. In the event either party hereto desires to have the easements described herein recorded on the records of the Salt Lake County Recorder, the party so desiring shall pay all recording costs and expenses arising therefrom.

10. Payment of Property Tax Refund. Simultaneous with the execution of this instrument, Breinholt shall pay to Jacobsen the full amount of the property tax refund for 1991 which was erroneously sent to Breinholt by the Salt Lake County Treasurer's office.

IN WITNESS WHEREOF, this Declaration and Grant of Easements is made and executed the day and year first above written.

"BREINHOLT"

ROBERT H. AND JANE T. BREINHOLT



ROBERT H. BREINHOLT



JANE T. BREINHOLT

"JACOBSEN"

HEBER S. JACOBSEN

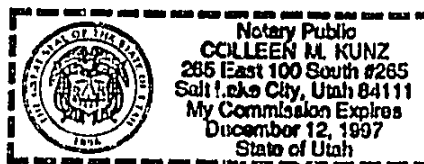


HEBER S. JACOBSEN

STATE OF UTAH)
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 8th
day of April, 1994, by Robert H. Breinholt and
Jane T. Breinholt.

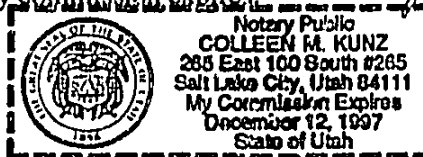
Colleen M. Kunz
Notary Public
Residing at: Davis County, Utah
My commission expires:



STATE OF UTAH)
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 8th
day of April, 1994, by Heber S. Jacobsen.

Colleen M. Kunz
Notary Public
Residing at: Davis County, Utah
My commission expires:



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4:56 PM 22.00
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
HEBER'S JACOBSEN
265 E 100 E #265 S SLC UT
84111
REC BY: K BLANCHARD , DEPUTY - WI