

When Recorded, Mail to:

Gregory S. Bell, Esq.  
KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, UT 84111-1004

6479233  
10/11/96 3:18 PM 50.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
LANDMARK TITLE  
REC BY: B GRAY DEPUTY - HI

6479233

DECLARATION OF EASEMENTS AND RESTRICTIONS  
[OVERLOOK AT UNION POINT - SANDY CITY, UTAH]

THIS DECLARATION OF EASEMENTS AND RESTRICTIONS is made this 11<sup>th</sup> day of October, 1996 by OVERLOOK AT UNION PARK, L.C., a Utah limited liability company ("Declarant") together with the other persons and entities who join herein by their signatures at the end of this Declaration.

RECITALS:

A. Declarant owns Lots 1 through 5, inclusive, (the "Lots") of Overlook at Union Point, a subdivision according to the Official Plat thereof recorded in the Salt Lake County Recorder's Office, and located in Sandy City, State of Utah. The Lots are sometimes jointly referred to herein as the "Project." Any combination of the Lots may be collectively referred to as "Lots" and any one of them may be referred to as a "Lot."

B. Declarant wishes to create various easements for mutual access and for the placement of utilities within the Project and to provide for the sharing of the cost of maintenance of the Main Roadway in the Project, as well as create certain restrictions to insure the proper use of the Project.

NOW, THEREFORE, it is mutually covenanted, agreed and declared as follows:

1. Definitions.

- a. "Control Committee:" As defined in Section 15 below.
- b. "Defaulting Owner:" As defined in Section 10.a. below.
- c. "Default Rate:" A rate of interest equal to the lesser of (i) the highest rate allowed by law, and (ii) the rate seven percent (7%) above the published reference rate of interest charged from time to time to corporate borrowers of the highest credit standard by First Security Bank of Utah, N.A.
- d. "Ground Lessee:" A Person who has leased a Lot for the purpose of constructing a Building thereon. The Ground Lessee shall be the Owner for purposes of voting and giving consents as to such Lot, except as otherwise set forth herein and except as the Ground Lessee and its lessor may agree between them in writing.

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e. "Landscape Plan:" As defined in Section 6 below.

f. "Lienholder:" Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Lot.

g. "Main Roadway:" The main roadway in the Project and accesses to and from 1300 East Street as depicted and designated on the conceptual site plan of the Project, which is attached hereto and incorporated herein as Exhibit "A", as such main roadway and accesses to and from 1300 East Street may be changed in design or location from the conceptual site plan attached hereto by consent of the Owners affected by such change(s).

h. "Maintenance Share:" Each Owner shall be responsible to pay twenty percent (20%) of the maintenance of the Roadway, if such maintenance is done by a Manager; otherwise, each Owner shall maintain the Main Roadway on its respective Parcel at its sole cost.

i. "Manager:" Initially, the Owner or tenant of Lot 2, as determined between the Owner and tenant of Lot 2, or otherwise as selected pursuant to Section 5 hereof.

j. "Non-Defaulting Owner:" As defined in Section 10.a. below.

k. "Owner:" The respective owner of each Lot. A Ground Lessee shall act as the Owner for the Lot it leases, except as otherwise set forth herein.

l. "Person:" Individuals, partnerships, firms, associations, limited liability companies, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

m. "Plat:" The Plat of Overlook at Union Point, a subdivision, as recorded in the Salt Lake County Recorder's Office.

n. "Project:" As described in the Recitals above.

o. "Site Plan:" Attached as Exhibit "A".

## 2. Main Roadway Development.

a. Declarant to Install Main Roadway. Declarant shall install the Main Roadway at its expense.

b. Plans and Specifications. The Main Roadway shall generally be located and shall have the dimensions as set forth on the Site Plan attached hereto as Exhibit "A". The final design of the Main Roadway shall be made by McNeil Engineering, Inc. (or such other engineering or design firm reasonably approved by Declarant) and shall comply with applicable municipal ordinances and good design and construction practices for similar facilities in the Salt Lake City, Utah area. Declarant shall circulate plans and specifications for the Main Roadway to all of the Owners. Each Owner shall have the right to review and approve the plans and specifications prior to the commencement of construction of such improvements, which approval shall not be unreasonably withheld or delayed. Any material changes to the plans and specifications for the Main

Roadway must receive the approval of all of the Owners affected by such changes. If Declarant has not received either the approval of an Owner or the rejection of an Owner of plans and specifications or material changes thereto within ten (10) days of written notice from Declarant, such Owner shall be deemed to have given its approval thereto.

c. Curb Cuts, Etc. Subject to municipal approvals, each Owner shall determine the number and location of curb cuts between the Main Roadway and such Owner's property, subject to the reasonable approval of the engineer who designed the Main Roadway with reference to good commercial design and engineering practice.

3. Easements.

a. Ingress and Egress, Passage of Traffic. Each Owner, as grantor, hereby grants to the other Owners and their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, during the term hereof, for the benefit of each Lot belonging to the other Owners, as grantees, a non-exclusive easement for vehicular and pedestrian traffic (including delivery trucks, vans and other vendor and supply vehicles) upon, over and across that portion of the Main Roadway located on the respective grantor's Lot(s) and the walks and driveways located on the respective grantor's Lot(s) as they may be changed from time to time. Notwithstanding anything contained herein to the contrary, each Lot shall contain adequate parking to meet the parking needs of the uses made or contemplated upon such Lot. No parking shall be allowed on the Main Roadway, but nothing contained herein shall prohibit the installation of parking areas directly adjacent to and with direct access to and from the Main Roadway.

b. Utility Lines and Facilities.

(1) Each Owner, as grantor, hereby grants to the other Owners for the benefit of each Lot belonging to the other Owners, as grantees, a non-exclusive easement, for the term hereof, under, through and across the grantor's Lot(s) for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains and other public or private utilities. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any Buildings or improvements located in the Project). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved Main Roadway or with the normal operation of or access to any business in the Project and shall be located at a place reasonably approved by the Owner of the burdened Parcel and work thereon shall be performed during times reasonably approved by the Owner of the burdened Parcel. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Main Roadway or other improvements resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Lots upon which such utility lines and facilities are located within thirty (30) days after the date of completion of construction of same. Once an easement has been located within the Project and such easement is evidenced by a separate recorded easement agreement, to the extent that the language contained in such separate easement agreement is inconsistent with the provisions herein, the language of the separate easement agreement shall be controlling over contrary provisions herein; provided, however, the owners of all Parcels which are burdened and

benefitted by such easement must agree to such easement in writing prior to its recordation and effectiveness.

Notwithstanding the foregoing to the contrary, each Owner shall use its best efforts to locate the utilities serving its respective Lot on such Lot and in the Main Roadway. No utility line may be laid or installed where the Lot Owner intends to build a building or to build other improvements which will be incompatible with the location of such utilities.

(2) At any time and from time to time the Owner of a Lot shall have the right to relocate on its Lot any utility line or facility installed pursuant to the foregoing grant of easement which is then located on the land of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Lot served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish utility service to the Lots served by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Owner or occupant of any other Lot, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Owners of all Lots served by such utility lines and facilities within thirty (30) days after the date of completion of such relocation.

(3) Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing, repairing, upgrading, replacing and maintaining the utility lines and facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration.

#### 4. Easements Appurtenant.

a. Generally. Each and all of the easements and rights granted or created herein are appurtenances to Lots benefitted thereby and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions. For the purposes of such easements and rights, the particular Lots which are benefitted by such easements shall constitute the dominant estate, and the Lots which are burdened by such easements and rights shall constitute the servient estate. Each and all of the easements, covenants, restrictions and provisions contained in this Agreement create mutual equitable servitudes upon each Lot in favor of the other Lots and constitute covenants running with the land. The easements shall bind every Person having any fee, leasehold or other interest in any portion of the Project at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction, or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

b. Access from 1300 East Street Over Side Street. If the applicable municipal entity which is the owner thereof should convey to the Owner of Lot 5 or any other Owner the fee simple estate in or an easement or right-of-way over the side street which connects or will connect 1300 East Street with Lot 5, such conveyance shall be deemed to be for the benefit of all of the Lots, and all of the Owners shall own a non-exclusive easement therein pursuant to this Declaration, and a recorded instrument amending this Declaration shall be recorded against the title to such property.

5. Maintenance of Main Roadway; Maintenance of Sidewalks, Drives and Parking Areas. Manager shall be responsible to maintain the Main Roadway, at the cost and expense of the Owners, in the

proportion of their respective Maintenance Shares. Manager shall bill the Owners monthly or quarterly, as Manager shall determine, and such billing may be in advance based on a budget submitted to the Owners. The budget so submitted shall be deemed adopted unless objected to by any Owner within fifteen (15) days of receipt thereof. Manager shall reconcile all accounts of Owners at the end of each calendar year, granting a credit in the amount overpaid for those Owners who have overpaid and requiring an additional payment of the shortage of those Owners who have underpaid.

Such maintenance and repair shall include, but shall not be limited to the following as they relate to the Main Roadway:

- (a) adequate marking and striping of the Main Roadway;
- (b) maintenance and repair of all electrical, lighting and other equipment and facilities in good operating condition including electric light replacement, and maintenance, repair and replacement of all lighting, if any, in the Main Roadway;
- (c) snow removal, trash removal, sweeping and maintenance and repair of blacktop on the Main Roadway; and
- (d) the portion of the cost of blacktop replacement, paving replacement, or curb, gutter, sidewalk or adjoining street repair required by a municipal authority or assessment district, or any other expense or cost for a capital addition or replacement to the Main Roadway.

Each Owner or its tenants shall keep the sidewalks, drives and parking areas on its Lot free and clear of ice, snow and debris at its own expense.

Manager shall not be required to provide liability insurance for the Main Roadway, except in its capacity of an Owner for its respective Lot.

Manager may resign upon sixty (60) days prior written notice to all of the Owners. The Owners shall select another of their number to act as Manager. If no one is appointed as Manager, then each Owner shall perform the functions of Manager as to the portion of the Main Roadway located on its respective Lot at its sole cost.

6. Landscape Plan. Declarant has developed a landscape plan for the landscaping of the frontage of the Lots along 1300 East Street as well as certain other areas along the Main Roadway or exposed to public view (the "Landscape Plan"). The Landscape Plan is in the possession of Declarant. In purchasing a Lot, each Owner undertakes the responsibility to review the Landscape Plan and, unless such Lot is already landscaped in accordance with the Landscape Plan, to landscape the affected portions of its Lot in accordance with the Landscape Plan by the end of the August following completion of the Main Roadway; provided, however, in the case of a Lot on which construction of improvements will be commenced prior to such deadline, the deadline shall be extended until the completion of such construction, but not longer than eighteen (18) months from the end of the August following completion of the Main Roadway.

7. Insurance. Each Owner, from and after the time that its respective Lot is developed, shall obtain and maintain commercial general liability insurance covering injuries to persons and property on, in or

about its Lot and the Main Roadway, with a combined single limit of not less than Two Million Dollars (\$2,000,000.00) with a deductible not in excess of Twenty-Five Thousand Dollars (\$25,000.00). All such policies of insurance shall be issued by solvent and responsible insurance companies authorized to do business in the State of Utah, and all such policies shall contain a waiver of the right of subrogation. Each Owner agrees to furnish the other Owners certificates evidencing the insurance coverage required under this Agreement upon request.

8. Taxes. Each Owner shall pay directly to the tax collector when due the real property taxes and other special taxes and assessments assessed against the Owner's Lot, including any portion of the Main Roadway on such Owner's Lot; subject, however, to the right of any such Owner to contest the amount or validity of all or any part of said taxes and assessments and further subject to such Owner's right to obtain reimbursement from its tenant(s) pursuant to agreement with such tenant(s). In the event of such contest, the contesting party shall prosecute such contest with diligence, shall take such steps as are necessary to avoid a tax sale of its parcel and, upon final determination of such contest shall promptly pay when due the taxes and assessments then due.

9. Effect of Sale by Owner. In the event an Owner sells all of its interest in its Lot, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the Lot sold by it arising under this Agreement after the sale and conveyance of title, and the purchaser thereof shall upon such purchase be prospectively liable for all the terms and conditions of this Declaration as pertaining to the Lot so purchased, but the selling Owner shall remain liable for all obligations arising under this Agreement prior to the sale and conveyance of title. Nothing contained herein shall bar or restrict the operation of Sections 10 and 11 which permit the liening and foreclosure of a Lot for certain defaults under this Declaration. Notwithstanding the foregoing to the contrary, no mortgagee, holder of a deed of trust or purchaser at a foreclosure sale of a mortgage or deed of trust shall be personally liable for any obligation arising under this Agreement prior to the sale or conveyance of title.

10. Default.

a. Installation of Landscaping and Maintenance of Main Roadway. In the event that any Owner shall fail to install landscaping as and when required pursuant to Section 6 above, shall fail to pay to Manager its Maintenance Share of costs for the maintenance of the Main Roadway as and when required pursuant to Section 5 above, or if there is no Manager, shall fail properly to maintain that portion of the Main Roadway which is from time to time located on its Lot (a "Defaulting Owner"), Manager or any other Owner (a "Non-Defaulting Owner") may send written notice of such failure to the Defaulting Owner. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as the "Deficiencies") in the Defaulting Owner's performance. Except with respect to snow removal, the Defaulting Owner shall have thirty (30) days after receipt of the said notice in which to correct the Deficiencies or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said thirty (30) day period, and thereafter, to proceed diligently to complete the correction of the Deficiencies. With respect to snow removal, an Owner shall be a Defaulting Owner, if such Owner fails to remove snow from the Main Roadway on its Property after telephonic notice from a Non-Defaulting Owner that snow must be removed and fails to do so within a reasonable time and the Non-Defaulting Owner removes such snow. In the event that the Defaulting Owner shall fail or refuse to correct or to begin to correct the Deficiencies, as the case may be, the Non-defaulting Owner may, at its option, correct the Deficiencies. In the event that the Non-Defaulting Owner shall exercise the said option and shall correct the Deficiencies, the Defaulting Owner shall, promptly upon receipt

from the Non-Defaulting Owner of an itemized invoice for the costs incurred by the Non-Defaulting Owner in correcting the Deficiencies, pay all costs so incurred to the Non-Defaulting Owner together with interest at the Default Rate from the date of such invoice. Furthermore, the Non-Defaulting Owner which cures such Deficiencies, shall have a lien on the Lot of the Defaulting Owner for the amount of costs incurred in correcting such Deficiencies plus accrued interest as set forth above.

b. Taxes. In the event an Owner fails to pay when due all taxes and assessments described in Section 7 above and such taxes and assessments become delinquent and the Defaulting Owner has not commenced and is not duly prosecuting any contest of such taxes, which failure continues for a period of fifteen (15) days after receipt of written notice thereof from any other Owner, such failure shall constitute a default, and any other Owner may thereafter pay such taxes and assessments. The Non-Defaulting Owner shall then bill the Defaulting Owner for the expenses incurred together with interest from the date of such bill at the Default Rate. The Defaulting Owner shall have fifteen (15) days within which to pay the bill. If the Defaulting Owner does not so pay, the Non-Defaulting Owner shall have a lien on the Lot of the Defaulting Owner for the amount of the bill together with interest at the Default Rate.

c. Legal Action. In addition to the foregoing, in the event any Person initiates or defends any legal action or proceeding to enforce the provisions of Sections 10 and 11, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal and in bankruptcy court) as determined by the court in the same or a separate proceeding.

d. No Waiver. The failure of a Person to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said Person may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other Person.

e. Remedies. In addition to the remedies set forth in Sections 10 and 11, each Person entitled to enforce this Agreement shall have all other remedies provided by law to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any Person shall exclude any other remedy herein or by law provided, but each shall be cumulative.

#### 11. Lien for Expenses or Taxes.

a. Procedure. The lien provided for in Section 10 (under either 10.a. or b.) above shall only be effective when filed for record by a Non-Defaulting Owner as a claim of lien against the Lot of the Defaulting Owner in the office of the Salt Lake County Recorder. Such claim of lien shall contain at least:

- (i) An itemized statement of all amounts due and payable pursuant hereto;
- (ii) A description sufficient for identification of the Lot of the Defaulting Owner which is the subject of the lien;
- (iii) The name of the Owner or reputed Owner of the Lot which is the subject of the lien; and

(iv) The name and address of the Non-Defaulting Owner.

b. Priority. The lien, when so established against the Lot described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the Person curing the default of the Defaulting Owner and may be enforced and foreclosed as a mortgage in a suit or action brought in any court of competent jurisdiction. A Defaulting Owner may post such security with the court to forestall a foreclosure action by a Non-Defaulting Owner as and on such terms as the court shall permit.

12. Indemnity. To the extent that any liability of an Owner to another Owner, its employees, agents, invitees, tenants, subtenants, successors and assigns is covered by insurance, each Owner respectively waives all rights of subrogation against the other Owners. Subject to said waiver of subrogation, the Owner of each Lot agrees to indemnify, defend and hold harmless the other Owners and occupants of all other Lots from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal or in bankruptcy court), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring on said Owner's Lot, unless caused by the negligent or willful act or omission of the indemnified Person, its agents, contractors or employees.

13. Restrictions. The Lots shall be subject to the following restrictions:

a. No hotel, motel or lodging facility or guest quarters may be built or operated on Lots 1, 2 or 5, without the prior written consent of the Owners of Lots 3 and 4.

b. Lot 2 may not be used for a low-end fast-food restaurant (Wendy's, McDonald's, Einstein's Bros. Bagels and Kenny Rogers are not low-end fast food restaurants.)

c. No restaurant deriving 50% or more of its revenues from a buffet or smorgasbord format shall be permitted anywhere in the Project other than Lot 1, without the prior written consent of the Owner of Lot 1.

d. No portion of the Project may be used as a bar, tavern or cocktail lounge (except as an incidental use associated with a restaurant or lodging); entertainment or recreational facilities or training or educational facilities; automotive maintenance or repair facility (including oil and lubrication facilities and tire sales) or car wash; for the renting, leasing, selling or displaying of boats, motor vehicles or trailers; for industrial purposes; or, unless the prior, written approval of the Owner of Lot 3 is obtained, for low-end lodging. No part of the Project may create strong, unusual or offensive odors, fumes, dust, vapors, noise or pollution; be a public or private nuisance; emit noise or sounds that are objectionable due to intermittence, beat, frequency, shrillness or loudness; be used, in whole or in part, for the warehousing, dumping or disposing of garbage or refuse; sell indecent or pornographic literature, adult entertainment or any other form of sexually oriented business; operate gasoline refining and/or manufacturing operations, a junk yard, scrap metal yard, waste material business, dumping, disposal, incineration or reduction of garbage or refuse.

14. Construction. Development and construction on any Lot shall be done in such a way as adequately to protect, cover, safeguard, screen, secure, shelter and shield the improvements on other Lots from any and all debris, trash, waste, dissipation, dust, powder, earth, vapors, or any condition offensive or noxious by reason of odor, fumes, vibrations, dust, smoke, radiation, noise or pollution, or that is hazardous by reason



of excessive danger of fire or explosion, or use as to cause or to produce a nuisance or interfere with the use of the other lots within the Project, including without limitation, interference, damage or injury to improvements, occupants and other property located thereon. Such protection measures shall be approved in advance in writing by the Owners of each other Lot (on which one or more buildings have been built). In addition, after completion of an extended stay lodging facility on Lot 4, no development, clearing, grading and/or construction of improvements on the Lots shall occur between the hours of 6:00 p.m. local time and 7:30 a.m. local time. In connection herewith, any party hereto which violates this Section 14 agrees to indemnify any Owner and its respective nominees, successors, or assigns for any and all damages and expenses, of any kind or nature whatsoever arising out of, resulting from, relating to or incident to their respective Lots for the violation of the provisions of this Section 14, including without limitation, all expenses related to the enforcement of this Section 14.

15. Control Committee. The use of the Lots in the Project shall be governed by a Control Committee in accordance with the restrictions in this Declaration. Each Owner shall be a member of the Control Committee and have one vote. The Control Committee shall approve those uses which the Control Committee believes do not and will not violate the terms of this Declaration. The action of the Control Committee shall require the affirmative vote of three (3) or more Owners. The Control Committee may enforce the restrictions in this Declaration. Notwithstanding the other provisions of this Section 15 to the contrary, no approval of the Control Committee shall be required to build (i) a restaurant (which does not violate the restrictions in Section 13) on Lots 1, 2 and/or 5; (ii) a motel, hotel or lodging facility on Lots 3 or 4; or (iii) an office building, including a financial institution office, on Lot 5.

16. Signs. A monument sign and/or a pylon sign may be installed on each Lot advertising the business(es) on such Lot. The Owners of two or more Lots may join together to install a monument and/or pylon sign on one of their Lots, which advertises businesses within the Project. No temporary or portable signs or signs advertising businesses outside the Project shall be allowed on the Project.

17. General Provisions.

a. Covenants Run With the Land. Each Restriction on each Lot shall be a burden on that Lot, shall be appurtenant to and for the benefit of the other Lots and each part thereof and shall run with the land.

b. Successors and Assigns. This Declaration created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any person acquiring a Lot, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

c. Duration. Except as otherwise provided herein, the term of this Declaration shall be perpetual, unless terminated by all of the Owners and any Lienholders; provided, upon termination of this Agreement, (i) each Owner of a Lot without direct access to 1300 East Street shall retain a perpetual easement over the Main Roadway to and from 1300 East until such Lot gains direct access to 1300 East Street or another public street acceptable to such Owner; and (ii) all utilities easements granted herein shall continue in full force and effect, and each Owner shall enter into such documentation as will be required to evidence of record the easements provided for in (i) and (ii) herein..

d. Injunctive Relief. In the event of any violation or threatened violation by any Person of any of the restrictions contained in this Declaration, any or all of the Owners and Ground Lessees of the property included within the Project shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

e. Modification and Termination. This Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of all of the Owners of the Lots at the time of such modification or termination, and then only by written instrument duly executed and acknowledged by all of the required Owners and recorded in the office of the recorder of the county in which the Project is located. No modification or termination of this Declaration shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

f. Method of Approval. Whenever the consent or approval of any Owner is required, such consent or approval shall be exercised only in the following manner. Each Lot shall have only one (1) vote. The Owner(s) and Ground Lessee(s) (if consisting of more than one [1] Person) of each Lot shall agree among themselves and designate in writing to the Owners of each of the other Lots a single person who is entitled to cast the vote for that Lot. If the Owners of any such Lot cannot agree who shall be entitled to cast the single vote of that Lot, or if the Owners fail to designate the single person who is entitled to cast the vote for that Lot within thirty (30) days after receipt of request for same from any other Owner, then that Lot shall not be entitled to vote. In the event a Lot is not entitled to vote, its consent or approval shall not be necessary.

g. Delegation by Owner. Any Owner may delegate its duties and assign its rights under this Declaration as it affects such Owner's Lot to its lessee, but any such delegation shall not relieve such Owner of its duties under this Agreement.

h. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

i. Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise effective on the date of such acquisition.

j. Default. A Person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money and such lesser time as specified above with respect to snow removal) from receipt of written notice from any Owner specifying the particulars in which such Person has failed to perform the obligations of this Declaration unless such Person, prior to the expiration of said thirty (30) days (ten [10] days in the event of failure to pay money and such lesser time as specified above with respect to snow removal), has rectified the particulars specified in said notice of default. However, excepting a default for failure to remove snow, such Person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty- (30-) or ten- (10-) day period, as

applicable, and such Person is using good faith and its best efforts to rectify the particulars specified in the notice of default. This Section may be enforced by the means and remedies set forth in Section 10 and 11 above.

k. Notices.

(1) All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by United States mail, certified or registered, or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the Person and address designated below or, in the absence of such designation, to the Person and address shown as the Owner on the then current real property tax rolls of Salt Lake County. All notices to the parties shall be sent to the Person and address set forth below:

Declarant: 2157 South Highland Drive  
Salt Lake City, UT 84106  
Attn: John R. Thackeray

The Person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt.

Any Person who shall become an Owner under this Declaration may request notice pursuant to the provisions of this Section 17.k. by filing for record with the Salt Lake County Recorder's office a request for notice by referring to this instrument and by sending a copy thereof in the manner set forth above in this section 17.k. to the other Owners of record.

(2) For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to Section 17.k.(1) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the Person or entity specified pursuant to Section 17.k.(1) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

l. Waiver. The failure of a Person to insist upon strict performance of any of the restrictions contained herein shall not be deemed a waiver of any rights or remedies that said Person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the restrictions contained herein by the same or any other Person.

m. Attorney's Fees. In the event any Person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal or in bankruptcy court).

n. Severability. If any term or provision of this Declaration or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to Persons or circumstances, other than those as to which it is invalid

or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

o. Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

p. Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any Person not a party hereto unless otherwise expressly provided herein.

q. Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

r. Entire Agreement. This Declaration contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

s. Construction. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

t. Joint and Several Obligations. In the event any party hereto is composed of more than one Person, the obligations of said party shall be joint and several.

u. Recordation. This Declaration shall be recorded in the land records of Salt Lake County.

EXECUTED as of the day and year first above written.

DECLARANT: OVERLOOK AT UNION PARK, L.C., a Utah limited liability company

By [Signature]  
John R. Thackeray, Managing Member

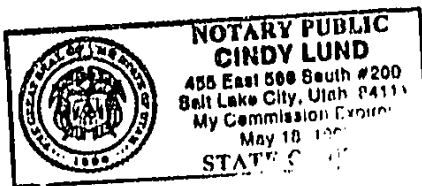
STATE OF UTAH )  
 )  
 ) :ss  
COUNTY OF SALT LAKE )

On this 11<sup>th</sup> day of October, 1996, personally appeared before me John R. Thackeray, who personally acknowledged to me that he executed the foregoing instrument.

My Commission Expires:

May 18, 1997

[Signature]  
Notary Public  
Residing at: SALT LAKE CITY, UTAH



CONSENTS AND JOINDERS

The individuals and entities whose signatures appear on the following pages own an interest in the Project (whether a fee interest, a lien securing a debt or otherwise) and hereby join in the foregoing Declaration as it relates to their respective interests in the Project, and hereby render their said interest in the Project subject and subordinate to the foregoing Declaration.

THE YOUTH ENRICHMENT FOUNDATION, a Utah non-profit corporation

By: *Jim Cox*  
Jim Cox, President

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

On this \_\_\_\_\_ day of October, 1996, before me a Notary Public, personally appeared Jim Cox, known to me to be the President of THE YOUTH ENRICHMENT FOUNDATION, a Utah non-profit corporation, who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that said corporation executed the same.

My Commission Expires:

March 5, 2000



*Robert J. [Signature]*  
ROBERT J. [Signature]  
Notary Public  
Salt Lake City, Utah 84115  
My Commission Expires  
March 5, 2000  
State of Utah

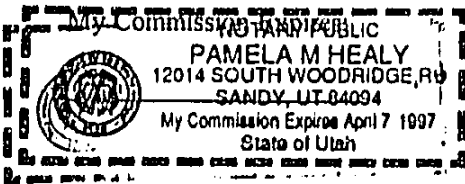
*Robert J. [Signature]*  
*Salt Lake City, UT*

Bert E. Johnson  
Bert E. Johnson, trustee of the Bert E. Johnson Family Trust Agreement dated July 8, 1980.

Jeanne B. Johnson  
Jeanne B. Johnson, trustee of the Bert E. Johnson Family Trust Agreement dated July 8, 1980.

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

On this 10<sup>th</sup> day of October, 1996, before me a Notary Public, personally appeared Bert E. Johnson, known to me to be trustee of the Bert E. Johnson Family Trust Agreement dated July 8, 1980, who executed the within instrument on behalf of the trust therein named, and acknowledged to me that said trust executed the same.

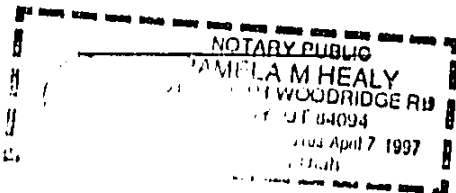


Pamela M Healy  
NOTARY PUBLIC  
Residing in: Salt Lake County

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

On this 10<sup>th</sup> day of October, 1996, before me a Notary Public, personally appeared Jeanne B. Johnson, known to me to be trustee of the Bert E. Johnson Family Trust Agreement dated July 8, 1980, who executed the within instrument on behalf of the trust therein named, and acknowledged to me that said trust executed the same.

My Commission Expires:



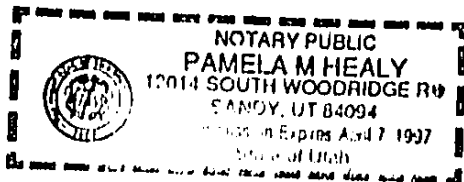
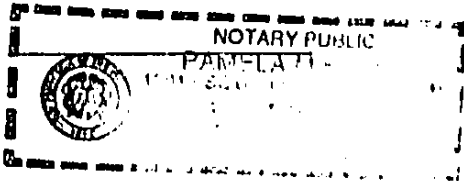
Pamela M Healy  
NOTARY PUBLIC  
Residing in: Salt Lake County

Karen B. Mazanis  
Karen B. Mazanis

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

On this 10<sup>th</sup> day of October, 1996, before me a Notary Public, personally appeared Karen B. Mazanis, known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that she executed the same.

My Commission Expires:



Pamela M. Healy  
NOTARY PUBLIC  
Residing in: Salt Lake County



Frank Harada

Frank Harada

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

On this 20<sup>th</sup> day of October, 1996, before me a Notary Public, personally appeared Frank Harada, known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that she executed the same.

My Commission Expires:

May 18, 1997

Cindy Lund  
NOTARY PUBLIC  
Residing in: Salt Lake City, Utah

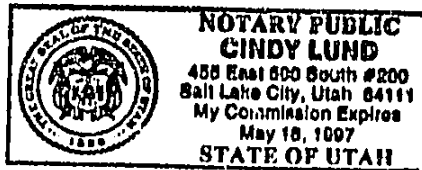


EXHIBIT "A"

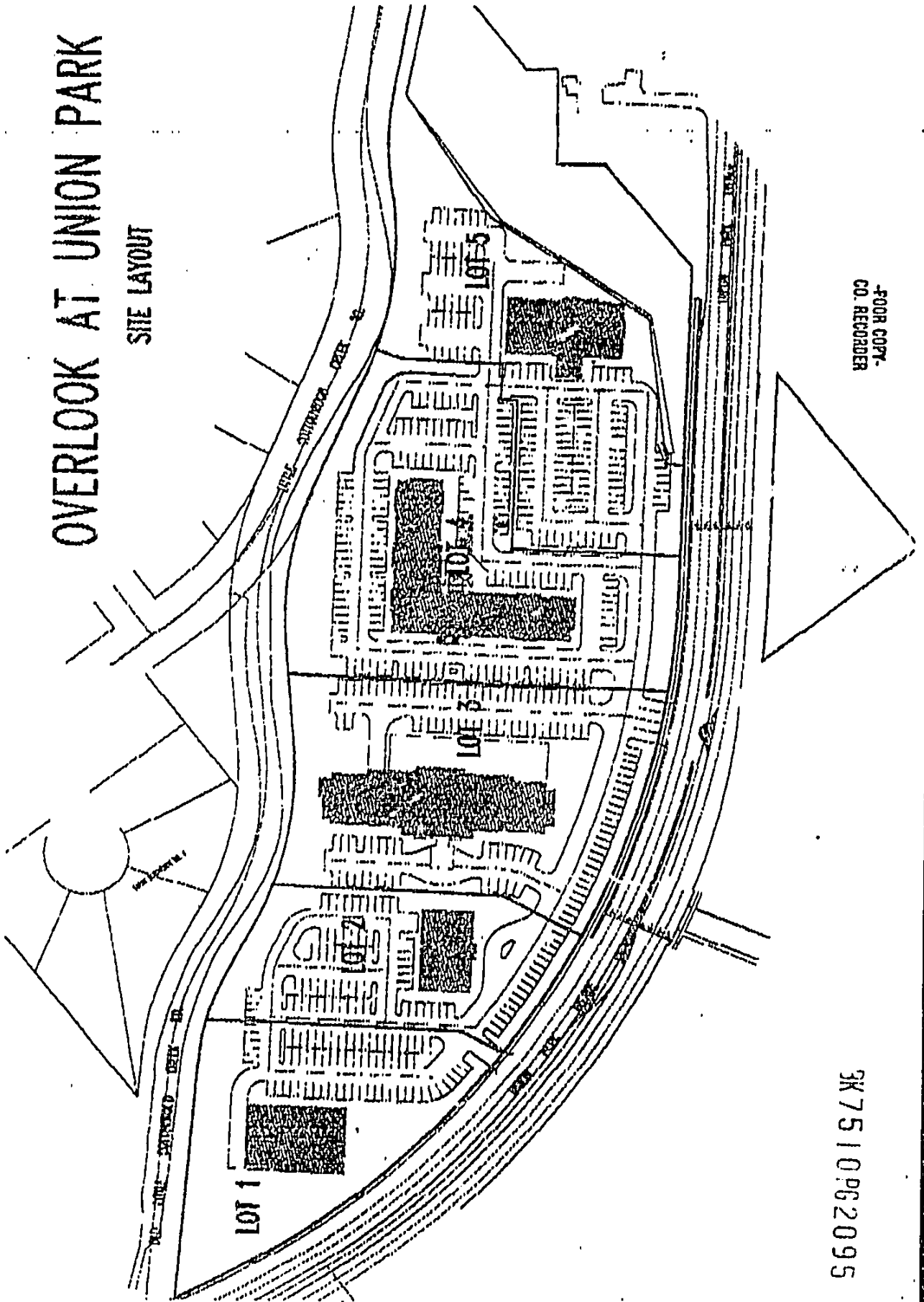
SITE PLAN

The following Site Plan is attached hereto only for the purposes set forth in the Declaration, provided, however, that the depiction of buildings, parking areas and/or uses for any Lot are conceptual only and are not binding upon Declarant or any person or entity who may have or come to have an interest in any Lot. Moreover, the location of the Main Roadway and accesses to and from 1300 East Street may be changed in accordance with the terms of the Declaration.

Exhibit "A"  
Site Plan Attachment

OVERLOOK AT UNION PARK

SITE LAYOUT



FOUR COPY  
CO. REORDER

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