



1. That a perpetual and non-exclusive easement and right of way be created by the terms hereof and granted to The Parties for the use and benefit of their respective parcels over and across the following described real property located in Utah County, State of Utah:

Commencing at a point located North 0°38'10" West along the Section line 175.74 feet and West 694.91 feet from the East one-quarter corner of Section 10, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 89°51'54" West 387.88 feet; thence South 0°08'06" East 136.49 feet; thence South 89°56'57" West 30.00 feet; thence North 0°08'06" West 131.80 feet; thence South 89°56'37" West 177.88 feet; thence South 125.89 feet; thence North 87°04'06" West 21.41 feet; thence along the arc of a 1800.00 foot radius curve to the left 13.63 feet (chord bears North 87°17'07" West 13.63 feet); thence North 124.11 feet; thence South 89°56'37" West 231.03 feet; thence North 18°33'14" West 32.98 feet; thence East 224.93 feet; thence North 89°13'51" East 296.00 feet; thence North 89°51'54" East 351.07 feet; thence South 0°34'11" East 30.00 feet to the point of BEGINNING.

The real property described in this paragraph which is burdened by the easement and right of way shall hereinafter be referred to as the "Easement Property".

2. Use. The Easement Property shall be used only for the following purposes related to the businesses and activities conducted upon The Parties' real property, and each Party hereto grants to the other Parties perpetual and non-exclusive easements over and across the Easement Property as follows:

2.1. Access. Ingress and egress by all persons, firms or entities who possess or occupy the property of The Parties or any part thereof, whether as owners, lessees, sublessees or concessionaires including such use by their officers, directors, employees, agents, contractors, customers, guests and invitees and the vehicles thereof, to and from any part of the property of The Parties and the public streets adjacent to the Easement Property.

2.2. Utilities. Each party shall have the right and easement, at the expense of The Party benefitted thereby, to connect to and continually use, maintain and repair for the benefit of The Party's parcel, any and all storm drains, utility lines, sewers, and other services which have previously been installed in, to, under, upon and over the Easement Property.

a. None of The Parties or their tenants shall interfere with such storm drains, utility lines, sewers and other services lying within the Easement Property 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 or parties. 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 parcel, in which event such other Party shall bear the cost of any overtime pay or other additional expense necessitated by such request.

b. In the event it is necessary for any Party to cause the installation of an additional storm drain, utility line or sewer line across the Easement Property subsequent to the date hereof, the other Parties shall not unreasonably withhold the granting and an additional easement or easements for such purpose; provided, however, that such easement or easements shall not unreasonably interfere with the normal and usual uses of the Easement Property by the other Parties, and The Party benefitted 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 the normal use of the Easement Property by the other Parties, and any additional expense caused to minimize interference shall be borne by the party benefiting from such installation; provide, however, that neither party shall be obligated to pay or incur overtime labor costs to complete any such installation.

c. The installation, maintenance and repair of any and all storm drains, sewer lines and utility lines located within the confines of the Easement Property shall, whenever reasonably feasible, be below the surface of the finished paving or other above ground improvement.

2.3. No Walls, Fences or Barriers. No walls, fences or other barriers shall be constructed or erected on the Easement Property 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 and the dedicated streets abutting the Easement Property; 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 all The Parties.

2.4. No Parking. No parking of vehicles for any purpose shall be permitted within the Easement Property. The Parties shall be responsible for policing the actions of their tenants,

employees, customers, guests, invitees, agents and concessionaires to insure that use or exercise of the foregoing easements and the free access of pedestrians and vehicular traffic between the various parcels and the dedicated streets abutting the Easement Property shall remain unimpeded.

3. Maintenance Of Easement Property. Subject to the terms and conditions of paragraphs 3.1, 3.2, 3.3 and 3.4 herein, The Parties shall be responsible for the maintenance of the Easement Property 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 Easement Property to the extent reasonably necessary to keep the Easement Property in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any appropriate directional signs, markers and lines; and

(d) Snow Removal.

3.1 Maintenance Director. The Parties hereby appoint Dell S. Nichols as Maintenance Director of the Easement Property from and after the date hereof. A majority of The Parties may remove the Maintenance Director by executing and filing of record and serving on the owners of the remaining Parcels an instrument stating that the Maintenance Director has been removed in which event a majority of The Parties shall appoint another owner to be the new Maintenance Director. The Maintenance Director shall have the right, upon giving ninety (90) days prior written notice to all The Parties to resign as Maintenance Directory; whereupon a new Maintenance Director shall then be appointed with the approval of a majority of The Parties.

3.2 Reimbursement of Maintenance Director. The Maintenance Director shall contract for and pay for all of the items enumerated as maintenance expenses in paragraphs 3 herein, provided that the Maintenance Director shall not contract for or pay for any item the pro rata share of which for any Parcel exceeds Two Thousand Dollars (\$2,000.00) without the prior written consent of The Party owning that Parcel.

a. At least thirty (30) days prior to the initial commencement of the cleaning and sweeping of the Easement Property and any other maintenance work done on a regular basis, the Maintenance Director shall submit said maintenance work for bid to at least four (4) bidders. The names of the bidding contractors or

companies and the amount of their respective bids shall be furnished to all of The Parties by the Maintenance Director within ten (10) days after receipt thereof. The Maintenance Director shall award the contract to the low bidder unless by prior written consent a majority of The Parties award the contract to a higher bidder.

b. The owners of all the parcels shall cause the Maintenance Director to be reimbursed for all of his out-of-pocket expenses in performing such services plus a maximum service charge of ten percent (10%) of said expenses to cover administration costs.

c. The Maintenance Director agrees to operate on a nonprofit basis with an end to keeping such expenses at a reasonable minimum.

3.3 Billing for Expenses. The Parties (or their respective delegates, tenants, or agents, as they may direct) shall be billed quarterly for their pro rata share of all expenses incurred by the Maintenance Director in maintaining the Easement Property as provided above including the ten percent (10%) administration costs with the first billing date being the last day of the first full calendar quarter following the date that Dell S. Nichols commences construction of the improvements upon the Nichols Property.

a. Each of The Parties must pay a proportionate share of the expenses equal to the total land area of its parcel benefitted by the easement and right of way created herein. The pro rata share of each party (owner) has been calculated as follows:

<u>Parcel</u>	<u>Land Area (Acres)</u>	<u>Percentage share of expenses</u>
Nichols Property	<u>6.158</u>	<u>.6191</u>
Deseret Property	<u>2.671</u>	<u>.3217</u>
Dairy Queen Property	<u>.590</u>	<u>.0592</u>
Caton Property	<u>.531</u>	<u>- 0 -</u>
Total	<u>9.95</u>	<u>100%</u>

b. Notwithstanding any other provision herein to the contrary, Caton shall not be responsible for any of the expenses associated with the maintenance of the Easement Property nor shall the Caton property be subject to any lien for the non-payment of such expenses. Deseret shall be responsible for reimbursing the Maintenance Director for all expenses that would otherwise be attributable to Caton and to the Caton Property. Accordingly, Caton shall not be able to participate with the other Parties in the selection of the Maintenance Director, nor shall Caton be able to participate in any decisions to be made by the other Parties regarding the maintenance of the Easement Property.

3.4 Effect of Sale by The Parties. If any Party sells its parcel, then after the date of sale, such Party shall have no further obligation under this Agreement with respect to such parcel sold; provided, however, the selling Party shall remain liable for obligations incurred prior to said sale.

a. In the event any Party fails or refuses at any time to pay when due its share of the maintenance expenses as set forth above, then legal action may be instituted against the defaulting Party for reimbursement plus interest on the unpaid principal balance at the prime interest rate charged by First Security Bank of Utah to major commercial borrowers plus four percent (4%), or at the highest rate allowed by law, whichever is less. Furthermore, the Maintenance Director and the other Parties shall have a lien on the parcel of the defaulting Party for the amount of the expenses, which amount shall bear interest at the prime interest rate charged by First Security Bank of Utah to major commercial borrowers plus four percent (4%), or at the highest rate allowed by law, whichever is less, until paid; provided, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Parties Parcel until such dispute is settled by final court decree or mutual agreement.

b. In addition to the foregoing, if any Party defaults under this Agreement, the Maintenance Director and any other Party may institute legal action against the defaulting Party for specific performance, declaratory relief, damages, or other suitable legal or equitable remedy. In addition to recovery of the sums so expended on behalf of the defaulting Party, the prevailing Party in the action shall be entitled to receive from this losing Party such amount as the court may adjudge to be reasonable attorney's fees for services rendered to the prevailing Party in any such action.

c. The lien provided for herein shall only be effective when filed for record by the Maintenance Director or by the curing Party as a claim of lien against the defaulting Party in the Office of the County Recorder of Utah County, Utah, signed and verified, which shall contain at least:

- (a) A statement of the unpaid amount of costs and expenses;
- (b) A description sufficient for identification of the property of the defaulting Party which is the subject of the lien; and
- (c) The name of the owner of the property which is the subject of the alleged lien.

d. The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claims 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 Maintenance Director or by the Party curing the default of the defaulting Party, and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

4. Insurance/Indemnification. Each Party (and/or tenant if obligated to do so pursuant to any lease) shall purchase and maintain on its own parcel comprehensive liability insurance covering injuries to person or property within the Easement Property and within its 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 Parties from damages arising out of any accident occurring as a result of its use of the Easement Property except where caused by negligence of another Party or Parties.

5. Condemnation. In the event of the condemnation by any duly constituted authority for a public or quasi-public use of all or any part of the Easement Property, that portion of the award attributable to the value of any land and improvements so taken shall be payable only to the Party in fee, as the case may be with respect to the portion condemned, and no claim thereon shall be made by other Parties benefitted by the Easement Property, provided, however, all other Parties and tenants 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 taking.

6. Negation of Partnership. None of the 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. Covenants Shall Run With the Land. All of the agreements, rights, covenants and grants of easements contained in this Agreement shall be perpetual and non-exclusive, and 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 a manner whatsoever.

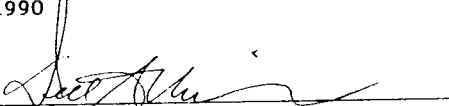
8. Severability. Invalidation of any of the covenants, conditions, restrictions or other provisions contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

9. 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.

10. 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 on September \_\_\_\_\_, 1990

"NICHOLS":

  
DELL S. NICHOLS


"DAIRY QUEEN":

OREM DAIRY QUEEN ASSOCIATES,  
a Utah Limited Partnership

By:   
JOSEPH O. COTTON, General Partner

"MOUNTAIN VIEW":

MOUNTAIN VIEW INVESTMENT COMPANY,  
a Utah Corporation

By:   
Its: VICE PRES.

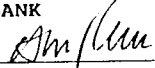
"CATON":

CATON, WALLACE, ARANGO, NILSON and  
ASSOCIATES, a Utah Limited  
Partnership

By:   
CHARLES A. CATON, General Partner

"DESERET":

DESERET BANK

By:   
Its: PRESIDENT









Legal description of "Deseret Property" located in  
the City of Orem, County of Utah, State of Utah,  
which is more particularly described as follows:

Commencing at a point located North 00°38'10" West 387.05 feet and West 694.67 feet from the East one-quarter corner of Section 10, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 00°34'11" East 333.24 feet; thence along the arc of a 15.00 foot radius curve to the right 23.70 feet (chord bears South 44°41'23" West 21.31 feet); thence South 89°56'57" West 403.78 feet; thence North 00°08'06" West 131.80 feet; thence South 89°56'37" West 443.91 feet to a point on the Easterly side of State Street, (U.S. Highway 91); thence North 18°33'14" West along the Easterly side of said State Street 32.98 feet; thence East 224.93 feet; thence North 89°13'51" East 296.00 feet; thence North 00°18'19" West 179.61 feet; thence North 89°35'15" East 350.23 feet to the point of beginning.

EXHIBIT 'B'

ENT29431 BK 2721 PG 376

Legal description of "Mountain View Property" located  
in the City of Orem, County of Utah, State of Utah,  
which is more particularly described as follows:

Commencing 148 feet North of the Southeast corner of the Southwest quarter of the Northeast quarter of Section 10, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence West 212.25 feet; thence Northwesterly along the East line of the State Road 58 feet; thence East 227.0 feet; thence South 57.50 feet to the point of beginning.

LESS AND EXCEPTING the following: Commencing at a point on the East line of State Street, Orem, Utah, said point being North 46.51 feet and West 1517.34 feet from the East quarter corner of Section 10, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along said street line North 18 deg. 29' 11" West 129.85 feet; thence North 89 deg. 56' 27" East 239.14 feet; thence South 0 deg. 08' 06" East 126.60 feet to the North line of 800 North Street; thence along said street line North 87 deg. 11' 38" West 48.32 feet; thence South 89 deg. 56' 37" West 150.00 feet to the point of beginning.

LESS AND EXCEPTING any portion of land lying within Lots 1&2, Plat A, Macey's Subdivision, Orem, Utah according to the official plat thereof on file and of record in the office of the Utah County Recorder.

EXHIBIT 'C'

Legal description of the real property of Orem Dairy Queen Associates located in the City of Orem, County of Utah, State of Utah which is more particularly described as follows:

COMMENCING at a point on the East line of State Street, Orem, Utah said point being North 46.51 feet and West 1517.34 feet from the East Quarter Corner of Section 10, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along said street line North 18°29'11" West 129.85 feet; thence North 89°56'27" East 239.14 feet; thence South 0°08'06" East 125.60 feet to the North line of 800 North Street; thence along said street line North 87°11'38" West 48.32 feet; thence South 89°56'37" West 150.00 feet to the point of BEGINNING.

EXHIBIT 'D'

Legal description of "Caton Property" located in the City of Orem, County of Utah, State of Utah, which is more particularly described as follows:

BEGINNING West 1139.40 feet and North 31.88 feet from the East Quarter Corner of Section 10, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 89° 56' 37" West 27.93 feet; thence North 0° 03' 23" West 5.0 feet; thence North 87° 11' 38" West 151.93 feet; thence North 0° 08' 06" West 125.60 feet; thence North 89° 56' 37" East 179.65 feet; thence South 0° 08' 06" East 138.19 feet to the point of BEGINNING.

CONSENT TO CREATION OF EASEMENT

Deseret Bank is the present Trustee and Beneficiary of two separate Deeds of Trust that encumber the real property of Orem Dairy Queen Associates as the same is described in the foregoing Easement Agreement. The Deeds of Trust are identified as follows:

- (a) Dated: July 16, 1984  
Recorded: July 31, 1984  
Entry No: 22582  
Book: 2153  
Page: 316  
Securing Note in the amount of \$345,000.00
  
- (b) Dated: March 15, 1984  
Recorded: March 21, 1984  
Entry No.: 8438  
Book: 2123  
Page: 494  
Securing Note in the amount of \$320,000.00

Deseret Bank hereby consents to the creation of the easements described in the foregoing Easement Agreement and hereby agrees and acknowledges that the foreclosure of either of the Deeds of Trust described herein shall not effect the use of the easement property by the parties entitled thereto nor shall such a foreclosure effect the validity nor the enforceability of the terms and provisions of the Easement Agreement.

Dated this 15<sup>th</sup> day of September, 1990.

DESERET BANK

By: *Am/Am*



STATE OF Utah )  
 )  
 ) :ss  
COUNTY OF Utah )

ENT29431 BK 2721 PG 380

On the 6 day of September, 1990, personally appeared before me HAL J. ALLEN, who being by me duly sworn did say, that he the said HAL J. ALLEN is the President of DESERET BANK, A Corporation, and the within and foregoing instrument was signed on behalf of said corporation by authority of a resolution of its Board of Directors, and said HAL J. ALLEN duly acknowledged to me that said corporation executed the same.

Barbara Jure  
NOTARY PUBLIC

RESIDING IN Neem, Utah

MY COMMISSION EXPIRES



CONSENT TO CREATION OF EASEMENT

West One Bank is the successor in interest to the Continental Bank and Trust Company as Trustee and Beneficiary of two separate Deeds of Trust that encumber the real property of Caton, Wallace, Arango, Nilson and Associates as the same is described in the foregoing Easement Agreement. The Deeds of Trust are identified as follows:

- (a) Dated: July 28, 1988  
Recorded: July 28, 1988  
Entry No: 21822  
Book: 2529  
Page: 815  
Securing Note in the amount of \$969,000.00
  
- (b) Dated: July 28, 1988  
Recorded: July 28, 1988  
Entry No.:21824  
Book: 2529  
Page: 819  
Securing Note in the amount of \$131,000.00

West One Bank hereby consents to the creation of the easements described in the foregoing Easement Agreement and hereby agrees and acknowledges that the foreclosure of either of the Deeds of Trust described herein shall not effect the use of the easement property by the parties entitled thereto nor shall such a foreclosure effect the validity nor the enforceability of the terms and provisions of the Easement Agreement.

Dated this \_\_\_\_\_ day of September, 1990.

WEST ONE BANK

By: \_\_\_\_\_

STATE OF Utah        )  
                          :ss  
COUNTY OF            )

ENT29431 BK 2721 PG 382

On the \_\_\_\_\_ day of September, 1990, personally appeared before me \_\_\_\_\_, who being by me duly sworn did say, that he the said \_\_\_\_\_ is the \_\_\_\_\_ of WEST ONE BANK, A Corporation, and the within and foregoing instrument was signed on behalf of said corporation by authority of a resolution of its Board of Directors, and said \_\_\_\_\_ duly acknowledged to me that said corporation executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

RESIDING IN: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_