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NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
LANDMARK TITLE  
REC BY: P ANDERSON DEPUTY - WI

PREPARED BY AND WHEN  
RECORDED RETURN TO:

Victor A. Taylor, Esq.  
Kimball, Parr, Waddoups, Brown & Gee  
185 South State Street, Suite 1300  
P.O. Box 11019  
Salt Lake City, Utah 84147-0019  
telephone: (801) 532-7840  
telecopier: (801) 532-7750

**PARKING AGREEMENT**  
[2855 E. Cottonwood Parkway, L.C./BWB Properties, Inc.]

THIS PARKING AGREEMENT (this "Agreement") is entered into as of the 8th day of August, 1997, between 2855 E. COTTONWOOD PARKWAY, L.C., a Utah limited liability company ("Parkway"), whose address is 2855 East Cottonwood Parkway, Suite 560, Salt Lake City, Utah 84121, and BWB PROPERTIES, INC., a Utah corporation ("BWB"), whose address is P. O. Box 755 Orem, Utah 84059.

FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Parkway and BWB agree as follows:

1. Definitions. As used in this Agreement, each of the following terms shall have the indicated meaning:

1.1. "Adjustment Date" (for purposes of Paragraph 6.2.1) means the second anniversary of the Commencement Date and each anniversary of the Commencement Date thereafter.

1.2. "Basic Monthly Rent" means the following amounts per calendar month:

1.2.1. for each of the twelve (12) calendar months commencing on the Commencement Date, the product of Ten Dollars (\$10) per month multiplied by the number of Designated Stalls;

1.2.2. for each of the twelve (12) calendar months commencing on the first (1st) anniversary of the Commencement Date, the product of Fifteen Dollars (\$15) per month multiplied by the number of Designated Stalls;

1.2.3. for each of the thirty-six (36) calendar months commencing on the second (2nd) anniversary of the Commencement Date, the product of Fifteen Dollars (\$15) per month multiplied by the number of Designated Stalls, increased in accordance with Paragraph 6.2; and

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1.2.4. for each calendar month on and after the fifth (5th) anniversary of the Commencement Date, a "market rate," meaning a monthly rental equal to the amount generally charged by the Parcel 11 Owner from time to time to tenants of the building located on Parcel 11 for reserved parking in the Parking Terrace;

provided, however, that the Basic Monthly Rent shall not exceed the amount generally charged by the Parcel 11 Owner from time to time to tenants of the building located on Parcel 11 for reserved parking in the Parking Terrace.

1.3. "Commencement Date" means the first day of the first full calendar month on or after the first anniversary of the date of this Agreement.

1.4. "Designated Stalls" means forty-three (43) stalls in the Parking Terrace unless, as a result of a change in the site plan for the improvements to be constructed on the Restaurant Parcel, additional stalls are required, in which event "Designated Stalls" shall mean up to forty-seven (47) stalls total in the Parking Terrace if requested by the Restaurant Parcel Owner. The exact location of the Designated Stalls may be designated from time to time by the Parcel 11 Owner, following consultation with the Restaurant Parcel Owner.

1.5. "Mortgage" means a mortgage or a deed of trust recorded in the Official Records.

1.6. "Mortgagee" means the mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the Official Records.

1.7. "Official Records" means the official records of the Salt Lake County Recorder, State of Utah.

1.8. "Owner" means the person that at the time concerned is the legal owner of record (in the Official Records) of a whole or undivided fee interest in any portion of any Parcel. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the Parcel concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

1.9. "Parcel 11" means the real property located in Salt Lake County, Utah, described as follows:

PARCEL 11:

Beginning at a point which is North 0°08'51" East along the quarter section line 908.56 feet, and North 89°04'36" East 740.83 feet, and North 55°02'48" East 206.85 feet from the West quarter corner of Section 23, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 55°02'48" East 393.09 feet; thence South 31°38'01" East 111.32 feet; thence South 70°30'09" East 57.70 feet; thence South 34°39'50" East 284.29 feet; thence South 11°06'23" East 28.44 feet; thence South 42°36'15" East 63.15 feet;

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thence South 64°43'27" East 71.26 feet; thence South 32°54'51" West 100.16 feet to a point on a 210.00 foot radius curve to the left the chord of which bears South 88°59'48" West; thence westerly along said curve through a central angle of 67°50'08" a distance of 248.63 feet; thence South 55°04'44" West 161.13 feet to a point of a 835.00 foot radius curve to the right the chord of which bears South 55°10'54" West; thence southwesterly along said curve through a central angle of 0°12'21" a distance of 3.00 feet; thence North 34°55'16" West 499.58 feet to the point of beginning.

PARCEL 11A:

Beginning at a point which is North 0°08'51" East along the quarter section line 908.56 feet, and North 89°04'36" East 740.83 feet, and North 55°02'48" East 206.85 feet from the West quarter corner of Section 23, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 34°55'16" West 67.93 feet to a point on the South right-of-way line of I-215 and a point on a 2076.90 foot radius curve to the left the chord of which bears North 62°36'26" East; thence northeasterly along said South line and curve through a central angle of 5°57'01" a distance of 215.69 feet; thence North 67°29'16" East along said South line 183.64 feet; thence South 55°02'48" West 393.09 feet to the point of beginning.

1.10. "Parcels" means Parcel 11 and the Restaurant Parcel, collectively, and "Parcel" means either Parcel 11 or the Restaurant Parcel, individually, where no distinction is required by the context in which such term is used.

1.11. "Parking Terrace" means the parking terrace located on Parcel 11.

1.12. "Restaurant Parcel" means the real property located in Salt Lake County, Utah, described as follows:

Beginning at a point which is North 00°08'51" East 540.34 feet along the Section line and East 1725.01 feet from the West quarter corner of Section 23, Township 2 South, Range 1 East, Salt Lake Base and Meridian, said point being on the northerly line of the land conveyed to Blue Cross and Blue Shield of Utah, a Utah corporation, in that certain Special Warranty Deed recorded January 17, 1996 as Entry No. 6259077 in Book 7311 at Page 849 of the official records (the "Official Records") of the Salt Lake County Recorder, and running thence North 52°29'23" East 86.73 feet; thence North 79°12'42" East 119.00 feet; thence North 57°53'55" East 100.26 feet to a point on the centerline of Big Cottonwood Creek; thence along said centerline the following five (5) courses: South 10°59'32" East 138.07 feet, South 20°59'32" East 62.73 feet, South 50°00'00" East 95.00 feet, South 60°00'00" East 32.21 feet, and South 49°55'31" East 50.66 feet; thence leaving said creek centerline South 42°42'26" West 164.67 feet to a point on the centerline of Cottonwood Parkway (a private road), said centerline being the northerly line of the aforementioned Blue

Cross and Blue Shield of Utah property; thence along said centerline of said Cottonwood Parkway the following three (3) courses: North 77°30'44" West 27.42 feet to a point on a 330.00 foot radius curve to the right (radius bears North 12°29'16" East), thence along said curve 230.39 feet, thence North 37°30'37" West 213.48 feet to the point of beginning.

2. Purpose. The Parcel 11 Owner has agreed to permit the Restaurant Parcel Owner to use certain parking stalls in the Parking Terrace to enable the Restaurant Parcel Owner to comply with the Salt Lake County Commission's preliminary approval of a restaurant/private club to be located on the Restaurant Parcel, subject to the terms and conditions of this Agreement. The purpose of this Agreement is to set forth such agreement and such terms and conditions.

3. Parking Easement.

3.1. Grant of Parking Easement. The Restaurant Parcel shall have appurtenant thereto and shall be benefitted by, and Parcel 11 shall be subject to and shall be burdened by, a perpetual, non-exclusive easement for vehicular parking in the Designated Stalls, subject to the terms and conditions of this Agreement.

3.2. Covenants Run With Land. Each provision of this Agreement shall constitute a covenant running with the land, subject to the terms and conditions of this Agreement. The interests in and rights concerning any portion of the Parcels held by or vested in Parkway and BWB or any other person on or after the date of this Agreement shall be subject and subordinate to this Agreement, and this Agreement shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this Agreement.

4. Use.

4.1. Permitted Use. The Designated Stalls may be used by employees of the restaurant and/or private club to be located on the Restaurant Parcel for employee parking or valet parking for such restaurant and/or private club only, and for no other purpose.

4.2. Prohibited Uses. The Restaurant Parcel Owner shall not do or permit anything to be done by its employees which will:

4.2.1. create a public or private nuisance or unreasonably interfere with the use of the Parking Terrace by the Parcel 11 Owner or its tenants, employees, agents, contractors, licensees or invitees, or any employee, agent, contractor, licensee or invitee of its tenants;

4.2.2. overload the floors or otherwise damage the structure of the Parking Terrace;

4.2.3. violate any applicable law, ordinance, rule or regulation, including, without limitation, one relating to hazardous substances, hazardous wastes, pollutants or contaminants, or any requirements of any board of fire underwriters or other similar body relating to the Parking Terrace; or

4.2.4. result in the use of parking stalls other than the Designated Stalls.

4.3. Termination. If use of the Restaurant Parcel changes to a use other than that of a restaurant and/or private club, this Agreement and all right, title and interest of the Restaurant Parcel Owner under this Agreement shall automatically terminate and thereafter be of no further force or effect, except for the obligation of the Restaurant Parcel Owner to pay any amounts due under this Agreement for the period prior to such termination.

5. Parcel 11 Owner's Duties Regarding Parking Terrace.

5.1. Maintenance of Parking Terrace. The Parcel 11 Owner shall exercise reasonable, good faith efforts to keep the Parking Terrace in a reasonably clean, orderly and usable condition and in a good state of maintenance and repair, consistent with a first-class commercial development.

5.2. Damage of Parking Terrace. If all or any part of the Parking Terrace is damaged or destroyed through casualty, the Parcel 11 Owner shall, as soon as reasonably possible, subject to the receipt by the Parcel 11 Owner of insurance proceeds, rebuild and restore the same to substantially the same condition as existed prior to the damage or destruction.

5.3. Condemnation of Parking Terrace. If all or any part of the Parking Terrace is taken through condemnation or is conveyed to a condemning authority under threat of condemnation, the Parcel 11 Owner shall, as soon as reasonably possible, subject to the receipt by the Parcel 11 Owner of condemnation proceeds, restore the remaining improvements in compliance with all applicable laws, ordinances, rules and regulations. The quality of materials and workmanship used in such restoration shall be equal to or better than those used in connection with the original Parking Terrace.

6. Basic Monthly Rent; Consumer Price Index Escalation.

6.1. Basic Monthly Rent. The Restaurant Parcel Owner covenants to pay to the Parcel 11 Owner without deduction, offset, prior notice or demand the Basic Monthly Rent in lawful money of the United States in consecutive monthly installments at such place as the Parcel 11 Owner may designate, in advance on or before the first day of each calendar month commencing on the Commencement Date. If this Agreement expires or terminates on a day other than the last day of a calendar month, the Basic Monthly Rent for such fractional month shall be prorated on a per diem basis.

6.2. Consumer Price Index Escalation.

6.2.1. Escalation. The Basic Monthly Rent shall be increased as of each Adjustment Date, to the product obtained by multiplying the Basic Monthly Rent set forth in Paragraph 1.2.2 by a fraction, the numerator of which is the Consumer Price Index (as defined in Paragraph 6.2.2) for the third month preceding the Adjustment Date concerned, and the denominator of which is the Consumer Price Index for the third month preceding the first anniversary of the Commencement Date. The amount of such increase shall be determined by the Parcel 11 Owner as soon as reasonably practicable after the Consumer Price Index for the third

month preceding each such Adjustment Date becomes available. The Restaurant Parcel Owner shall pay such increased Basic Monthly Rent until the later of the next Adjustment Date or the date on which the Parcel 11 Owner provides to the Restaurant Parcel Owner the amount of the next increase in the Basic Monthly Rent. The Parcel 11 Owner may invoice the Restaurant Parcel Owner retroactively for the increased portion of the Basic Monthly Rent due for the period between any such Adjustment Date and the date of such invoice. The delay or failure of the Parcel 11 Owner to compute or to bill the Restaurant Parcel Owner for any adjustment to be made pursuant to this Paragraph 6.2 shall not impair the continuing obligation of the Restaurant Parcel Owner to pay the increased portion of the Basic Monthly Rent resulting from such adjustment. In no event shall the Basic Monthly Rent be decreased as a result of this Paragraph 6.2.

6.2.2. Consumer Price Index. The following provisions shall apply to Paragraph 6.2.1:

(a) "Consumer Price Index" shall mean "Consumer Price Index--U.S. City Average For All Items For All Urban Consumers (1982-84=100)" (the "CPI-U") published monthly in the "Monthly Labor Review" or other publication by the Bureau of Labor Statistics, United States Department of Labor (the "Labor Bureau").

(b) If the CPI-U is discontinued, "Consumer Price Index" shall mean "Consumer Price Index--U.S. City Average For All Items For Urban Wage Earners and Clerical Workers (1982-84=100)" (the "CPI-W") published monthly in the "Monthly Labor Review" or other publication by the Labor Bureau.

(c) If the CPI-W is discontinued, "Consumer Price Index" shall refer to comparable statistics on the purchasing power of the consumer dollar published by the Labor Bureau or by another agency of the United States reasonably selected by the Parcel 11 Owner.

(d) If the Labor Bureau or another agency of the United States no longer publishes comparable statistics on the purchasing power of the consumer dollar, "Consumer Price Index" shall refer to comparable statistics published by a responsible financial periodical or recognized authority reasonably selected by the Parcel 11 Owner, and adjustments shall be made in the computation set forth in Paragraph 6.2.1 as the circumstances may require in order to carry out the intent of this Paragraph 6.2.

(e) If the base year "(1982-84=100)" or other base year used in computing the CPI-U or the CPI-W is changed, the figures used in making the adjustments in Paragraph 6.2.1 shall be changed accordingly so that all increases in the CPI-U and CPI-W are taken into account notwithstanding any such change in the base year.

## 7. Default; Remedies.

7.1. Delinquent Payments. Any amount required to be paid by the Restaurant Parcel Owner to the Parcel 11 Owner which is not timely paid shall accrue interest on and after the date due until paid in full, before and after judgment, at the rate of eighteen percent (18%) per annum. In addition, a late charge of five percent (5%) of such payment may be charged by the

Parcel 11 Owner for any payment not made within ten (10) days after the date due. Such late charge is payable not as a penalty, but in order to compensate the Parcel 11 Owner for the additional expense involved in handling the delinquent payment. The acceptance by the Parcel 11 Owner of any payment that is less than the entire amount then due shall be on account only and shall not constitute a waiver of the obligation to pay such entire amount. If the Parcel 11 Owner brings suit to enforce the obligations of the Restaurant Parcel Owner under this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled.

7.2. Remedies. If any amount required to be paid by the Restaurant Parcel Owner to the Parcel 11 Owner is not paid within ten (10) days after written notice is given by the Parcel 11 Owner to the Restaurant Parcel Owner of such delinquency, the Parcel 11 Owner may:

7.2.1. terminate this Agreement on written notice to the Restaurant Parcel Owner, which notice may be recorded in the Official Records; or

7.2.2. exercise any other rights or remedies which may exist at law or in equity.

8. Movement of Designated Stalls. On at least ten (10) days' prior written notice to the Restaurant Parcel Owner, the Parcel 11 Owner may, following consultation with the Restaurant Parcel Owner, change the location of the Designated Stalls to a location in another improved parking area located within the Cottonwood Office Park, provided that the Owner of such other parking area executes an agreement in favor of the Restaurant Parcel Owner substantially similar in form and substance to this Agreement, and such relocation does not violate the conditional use permit issued for the Restaurant Parcel or any applicable parking ordinance.

9. Insurance; Indemnification.

9.1. Insurance. The Restaurant Parcel Owner shall maintain the following, in forms and otherwise reasonably satisfactory to the Parcel 11 Owner: (a) commercial general liability insurance insuring against all claims for personal injury, death or property damage occurring in or around the Cottonwood Corporate Center, with a combined single limit for bodily injury and property damage of not less than \$3,000,000 per occurrence, including (i) liquor liability coverage and any liability of the Restaurant Parcel Owner under §§32A-14-101 et seq. of the Utah Code Annotated, as amended, (ii) contractual coverage, and (iii) garage liability coverage; and (b) workers' compensation insurance satisfying the Restaurant Parcel Owner's obligations under the workers' compensation laws of the State of Utah. The Parcel 11 Owner and any Mortgagee of Parcel 11 of which the Restaurant Parcel Owner is given written notice shall be named as an additional insured under such liability policy, and such liability insurance shall be primary and non-contributing in the event of loss with any other insurance the Parcel 11 Owner or such Mortgagee may carry. The insurer concerned shall agree that the coverage under such liability policy will not be modified or cancelled unless at least thirty (30) days' advance written notice of the proposed modification or cancellation has been given to the Parcel 11 Owner and any such Mortgagee. Such insurance shall be carried with companies that are authorized to transact business in Utah and rated Class A:XI or better in the most recent publication of Best's Key Rating Guide, Property-Casualty, or rated

similarly in another similar publication. Concurrently with the execution of this Agreement, the Restaurant Parcel Owner shall deliver to the Parcel 11 Owner and any such Mortgagee certificates duly executed by the insurer concerned evidencing such insurance coverage.

9.2. Indemnification. The Restaurant Parcel Owner shall indemnify, defend and hold harmless the Parcel 11 Owner from and against all losses, damages, claims, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorneys' fees, whether incurred with or without the filing of suit, on appeal or otherwise), liabilities, judgments and liens, of whatever kind or character, which are caused by the Restaurant Parcel Owner or its employees, customers, guests, invitees or agents. The provisions of this Paragraph 9.2 shall survive any termination of this Agreement.

10. General Provisions.

10.1. Modification. This Agreement may not be terminated, extended, modified or amended without the consent of each Owner, and any such termination, extension, modification or amendment shall be effective on recordation in the Official Records of a written document effecting the same, executed and acknowledged by each Owner; provided, however, that no such termination, extension, modification or amendment shall affect the rights of any Mortgagee holding a Mortgage constituting a lien on any Parcel unless such Mortgagee consents to the same in writing.

10.2. Force Majeure. Either Owner shall be excused from performing any obligation set forth in this Agreement, except the payment of money, so long as (but only so long as) the performance of such obligation is prevented or delayed by an act of God, weather, avalanche, fire, earthquake, flood, explosion, act of the elements, war, invasion, insurrection, riot, malicious mischief, vandalism, larceny, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, order of government or civil defense authorities or any other cause beyond the reasonable control of the Owner prevented or delayed.

10.3. Notices. Any notice or demand to be given by either Owner to the other shall be given in writing by personal service, telecopy (provided that a hard copy of any such notice has been dispatched by one of the other means for giving notice within twenty-four (24) hours after telecopying), express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, and addressed to such Owner (a) as set forth at the outset of this Agreement, or (b) as set forth in the instrument pursuant to which such Owner acquired title to its Parcel, unless a different address has previously been set forth in a writing delivered to the Owner giving such notice. Either Owner may change the address at which such Owner desires to receive notice on written notice of such change to the other Owner. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the Owner to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

10.4. No Partnership or Third Party Beneficiaries. No provision in this Agreement shall be deemed or construed to create a partnership between the Owners or to make either Owner



the agent of the other. In no event and under no circumstance shall the Owners be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any person who is not an Owner unless otherwise expressly provided in this Agreement.

10.5. Construction. Titles and headings of Paragraphs of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. All pronouns shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person to whom reference is made may require. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Agreement shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

10.6. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah.

10.7. Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding on, each Owner and the heirs, personal representatives, successors and assigns of each Owner.

10.8. Integration of Other Agreements. This Agreement constitutes the entire agreement of the Owners with respect to the subject matter of this Agreement, and supersedes all previous contracts, correspondence and documentation relating to the subject matter of this Agreement.

PARKWAY AND BWB have executed this Agreement on the respective dates set forth below, to be effective as of the date first set forth above.

PARKWAY:

2855 E. COTTONWOOD PARKWAY, L.C.,  
by its manager:

COTTONWOOD CORPORATE CENTER L.L.C.,  
a Utah limited liability company,  
by its members:

OREGON-CALIFORNIA PARTNERS, L.P.,  
a California limited partnership,  
by its general partner:

REDMOND HOLDINGS, INC.,  
an Oregon corporation

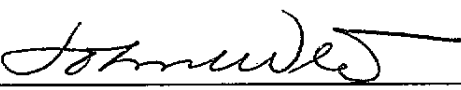
By   
Lary J. Mielke  
President

Date 8/7/97

C & E HOLDINGS PARTNERSHIP,  
a Utah general partnership,  
by its managing general partner:

COTTONWOOD EQUITIES, LTD.,  
a Texas limited partnership,  
by its general partner:

COTTONWOOD REALTY SERVICES, L.L.C.,  
a Texas limited liability company

By   
John L. West  
Managing Director

Date 8/11/97

BWB:

BWB PROPERTIES, INC.

By *[Signature]*

Its *Vice-President*

Date *Aug 11, 1997*

State of ~~Utah~~ California )  
County of ~~Salt Lake~~ Los Angeles ) ss.

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of August, 1997, by Lary J. Mielke, the President of Redmond Holdings, Inc., the general partner of Oregon-California Partners, L.P., one of the members of Cottonwood Corporate Center L.L.C., the manager of 2855 E. Cottonwood Parkway, L.C.

(Seal)

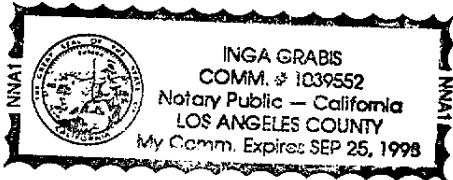
*[Signature]*  
Notary Public

My Commission Expires:

*Sep 25, 1998*

Residing at:

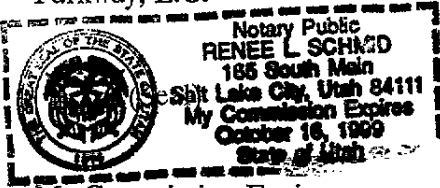
*Monrovia, California*



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State of Utah )  
County of Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of August, 1997, by John L. West, the managing director of Cottonwood Realty Services, L.L.C., the general partner of Cottonwood Equities, Ltd., the managing general partner of C & E Holdings Partnership, one of the members of Cottonwood Corporate Center L.L.C., the manager of 2855 E. Cottonwood Parkway, L.C.



Renee L. Schmid  
Notary Public

My Commission Expires:

10-16-99

Residing at:

SLC, UT

State of Utah )  
County of Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 11th day of August, 1997, by McKAY S. MATTHEWS, the VICE PRESIDENT of BWB Properties, Inc.

(Seal)

Jeffrey J. Jensen  
Notary Public

My Commission Expires: 9/10/2000

Residing at: Salt Lake City, Utah

