

When Recorded, Mail to:
U.E.M. Development Company, Inc.
3168 South 1030 West
Salt Lake City, Utah 84119

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01/24/97 10:54 AM 32.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
MERRILL TITLE
REC BY:V AS:IBY DEPUTY - WI

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**RESTRICTIVE COVENANTS
(Non-Build Easement)**

THIS AGREEMENT entered into this 15th day of January, 1997, by and between the U.E.M. Development Company, Inc., a Utah corporation (hereinafter the "UEM") and WAGON ROD PROPERTIES, L.L.C., a Utah Limited Liability Company (hereinafter, "WRP").

WHEREAS, the UEM and WRP have previously entered into that certain Contract for the Purchase and Sale of Real Property dated November 21, 1996, as amended, providing for the purchase, sale and development of certain real property located in the City of South Salt Lake, State of Utah (the "Agreement").

WHEREAS, as a result of the purchase and sale contemplated by the Agreement, WRP shall be the owner of certain real property as more specifically described upon Exhibit "A" attached hereto and incorporated herein by reference (the "WRP Property") and UEM shall retain the ownership of certain real property as more specifically described upon Exhibit "B" attached hereto and incorporated herein by reference (the "UEM Property"). Collectively, the WRP Property and the UEM Property shall be referred to as the "Properties."

WHEREAS, the parties, to promote and enhance the construction, development and use of their respective properties now desire: i) to provide for the free flow of traffic upon their properties; ii) to impose a non-build easement upon that portion of their respective properties as more specifically described upon Exhibit "C" attached hereto and incorporated herein by reference (hereinafter the "Easement Property"); and iii) to provide for the maintenance, repair, and replacement of the Easement Property all in accordance with the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual promises and covenants herein set forth, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Easements.** The parties hereto, and each of them, relative to their respective parcels, on behalf of themselves, their successors and assigns, hereby grant, convey and transfer unto one another and their successors or assigns, and every person, partnership, corporation or other entity now or hereafter having an interest in all or a portion of the Properties, a non-exclusive easement, license, and privilege of passage, use and right of way on and over the Easement Property for purpose of pedestrian and vehicular traffic including but not limited to ingress and egress to and from the Properties and all public and private roadways adjoining or adjacent to the Properties. Subject to the restrictions below, the rights, privileges and easements transferred and conveyed hereby shall be for all types of vehicular traffic and uses including but not limited to, emergency vehicles, delivery trucks, equipment and other commercial and domestic vehicles, whether or not directly related to any of the parties, their successors, assigns, tenants or licensee's operation or business and shall be for the benefit of tenants, employees, business invitees, guests, etc. The easements and rights of way granted

*UEM III, Inc.

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herein are expressly limited such that the Owner and/or Tenant of each parcel is entitled to provide, develop and construct such buildings, structures, utilities, parking, landscaping, lighting and other improvements ("Improvements") upon their respective properties including the Easement Property in such a manner and configuration as such owner shall determine in its sole discretion, provided such Improvements are constructed in accordance with this Agreement, applicable laws, codes and regulations and do not materially impede the free flow of traffic.

The rights, privileges and easements granted hereby shall be for the benefit of the dominant estate and the owners, tenants and invitees of all or any portion of the dominant estate, their successors and assigns. The owners may grant the benefit of such easements, rights and privileges to its tenants, now, or hereafter occupying a building or a portion thereof upon the dominant estate during the period of such tenancy and to their customers, employees, business invitees, licensees, contractors and the respective agents of such tenants or the parcel owner.

2. **Non-Build Easement.** The parties hereto, and each of them, do hereby grant, convey and subject that portion of the Easement Property upon their respective parcels to a non-build easement subject to the following:

(a) Except as provided below, no building, structure, nor any other type of improvement shall be constructed upon the Easement Property without the prior approval of both parties hereto. It is the specific intent of the parties in imposing this non-build easement that no buildings or other permanent improvements be constructed upon the Easement Property so as to provide appropriate vehicular and pedestrian access to, and parking upon their respective parcels as well as adjacent parcels, including but not limited to set-back, clearance and access requirements for fire and other public safety vehicles.

(b) Notwithstanding the foregoing, the construction and development of any of the following upon the Easement Property shall not constitute a building, structure, or improvement that is prohibited to be constructed upon the Property pursuant to paragraph 2.(a) above provided it is completed in such a way as not materially impede the free flow of traffic between the properties.

(i) The installation, construction, maintenance and operation of underground utilities servicing the Properties and adjacent properties, including but not limited to electrical power, water, sewer, storm drainage, telephone, natural gas, or propane transmission lines and facilities reasonably associated therewith.

(ii) The construction and operation of roadways, driveways, parking lots, fire hydrants and fire protection equipment, landscaping (including trees, shrubs, sprinkling systems, etc.), directional signs, parking lot lighting, fences, paving, curb, gutter, sidewalk, signs, monuments and other similar improvements commonly incorporated into a parking lot and common area for a commercial warehouse business operation of the size and magnitude of the facilities to be constructed upon the Properties.

(iii) During periods of construction, the construction and operation of temporary storage and similar facilities including open storage, parking and staging

areas for delivery vehicles and such other use of open space customarily utilized in the construction of commercial warehouse facilities within the community.

3. **Zoning.** The granting of the easements provided herein shall not confer upon the dominant estate holder any right or privilege which would entitle the dominant estate holder to obtain a more or less intensive use of its property that could be sustained without reliance upon this easement. Each parcel will be required to stand alone relative to parking, zoning and use of its respective parcel irrespective of the existence of this easement. Each of the easements, rights and privileges granted or created herein are appurtenances to the dominant estate and the easements, rights or privileges may not be transferred, assigned or encumbered except as an appurtenance of such parcel.

4. **Maintenance and Upkeep.** Subsequent to initial construction, the owner of each parcel shall be solely responsible for the subsequent upkeep and maintenance of the Easement Property which exists upon the respective parcels. The Owners of the Properties shall cooperate with one another in the completion of the necessary repairs to the Easement Property. All repairs, upkeep and maintenance shall be performed in a diligent and workmanlike manner and shall include the following:

(a) Maintenance of the paved and cemented surfaces in a smooth condition, free of pot holes and obstructions. Materials used in maintaining paved surfaces shall be of an equal or greater quality as the original surface.

(b) Maintenance of all driveways providing ingress and egress to and from public roadways and between the Parcels. Maintenance shall include but shall not be limited to the use of exit and directional markers, traffic control signs as reasonably required to efficiently and safely regulate traffic upon the easement.

(c) The removal and/or proper containment of all trash, snow, ice, debris and residue upon the Properties. The owners of undeveloped parcels or portions thereof shall not be responsible for the removal or containment of snow and ice upon their parcel but shall be required to maintain their property in a reasonable fashion.

(d) Restriping as required to maintain clearly visible traffic lanes, parking stalls, as well as points of ingress and egress.

(e) Should either party, its successor or assigned fail to properly maintain that portion of the easement upon the respective parcel, the dominant estate owner (s) upon thirty days written notification of the owner serving the estate may proceed with reasonable upkeep and maintenance of all or a portion of the Easement Property. Property owner(s) failing to properly maintain the Easement Property upon their respective parcel shall be financially responsible for its proportionate share of upkeep and maintenance incurred relative to the parcel.

5. **Covenants Running with the Land.** Each of the covenants, restrictions, conditions and provisions contained in this Agreement, whether affirmative or negative in nature, are made for the direct benefit of the Easement Property; will create servitudes upon the Easement Property in favor of the parties hereto; will constitute covenants running with the land; will bind every person having

a fee, leasehold or any other interest in any portion of the Easement Property at any time and from time to time to the extent that such portion is affected or bound by the covenants, restrictions or provisions in question, whether the covenants, restrictions, conditions or provision are to be performed on such portions; and will run to the benefit of the parties and their respective successors and assigns to the parcels.

6. **Not a Public Dedication.** Nothing contained in this Agreement will be deemed to be a gift or dedication of any portion of the Easement Property to the general public or for any public purpose whatsoever. It is the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein. Unless provided otherwise, the owners of portions of the Easement Property shall jointly have the right to temporarily close all or a portion of the Easement Property to such extent as is legally necessary and sufficient to prevent the dedication of the Easement Property or any accrual rights therein to any person other than the rights created hereby or in the public generally.

7. **Enforcement--Injunctive Relief.** In the event of any violation of any party of the covenants, conditions or restrictions set forth in this Agreement, the owners of the Properties shall have the right to enforce the covenants, conditions and restrictions set forth in this Agreement. The owners of the Properties or their respective successors or assigns, as the case may be, shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, thirty (30) days written notice shall be given to the owners of the Easement Property. It is expressly agreed that no breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement, but this limitation shall not affect, in any manner, any other rights or remedies that the parties may have by reason of any breach of this Agreement.

8. **Miscellaneous Provisions.**

(a) This Agreement shall not create an association, partnership, joint venture or principal or other agency relationship between the parties hereto their successors and assigns.

(b) Each party shall be excused for the period of any delay in the performance of any obligation hereunder provided by such cause or cause was beyond the party's control including but not limited to fire or other casualty, force majeure, natural disasters, floods or Acts of God.

(c) Failure of a party to insist on the performance of any provision or to exercise any option hereunder shall not be construed as a waiver of future enforcement of any such provision or option. No provisions in this Agreement shall be deemed to have been waived unless such waiver shall be in writing and signed by each of the parties.

(d) If any provision of this Agreement or the application thereof, to any person or circumstance shall to any extent be invalid, the remainder of this Agreement or the application of such provisions to persons or circumstances other than those which it is held invalid shall not be affected thereby.

(e) Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) The covenants, conditions and restrictions imposed by this Agreement shall be perpetual in duration.

(g) This Agreement may be terminated, extended or amended as to each portion of the Easement Property only by the recording of an appropriate document upon the official record of the Salt Lake County Recorders Office which document must be executed by the owners of the Easement Property.

(h) This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, representatives, trustees, successors and assigns.

(i) This Agreement shall be construed in accordance with the laws of the State of Utah.

(j) This Agreement contains the entire agreement between the parties and there are no other terms, express or implied except as contained herein.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

WAGON ROD PROPERTIES,
A Utah Limited Liability Company


Melvin Tabor

ITS: Managing Member

Development Company

U.E.M. PROPERTIES, INC.,
a Utah corporation

UEM III, Inc.

BY: 

ITS:  VICE PRES -

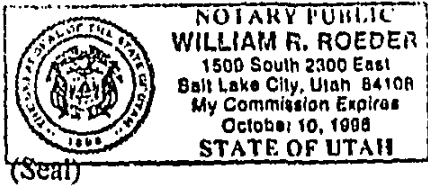
BY: 

ITS:  VICE PRES -

STATE OF UTAH)
 : SS
COUNTY OF SALT LAKE)

This day, before me, a Notary Public of the State and County aforesaid, personally appeared Melvin Tabor, who being by me duly sworn, did say that he is a Managing Member of Wagon Rod Properties, a Utah Limited Liability Company, and that said instrument was signed in behalf of said company by authority of its members and said Melvin Tabor acknowledged to me that said company executed the same.

Witness my hand and official seal this 15th day of January, 1997.

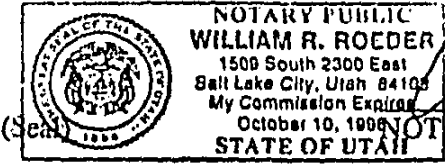


William R. Roeder
NOTARY PUBLIC

STATE OF UTAH)
 : SS
COUNTY OF SALT LAKE)

This day, before me, a Notary Public of the State and County aforesaid, personally appeared Gary H. Eckman, who being by me duly sworn, did say that he is the vice president of U.E.M. Properties, Inc., a Utah corporation, and that said instrument was signed in behalf of said corporation by authority of its bylaws and said Gary H. Eckman acknowledged to me that said corporation executed the same.

Witness my hand and official seal this 15th day of January, 1997.



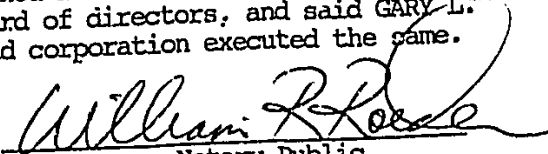
William R. Roeder
NOTARY PUBLIC

(d:/rmb/eckman/tabor.cse)

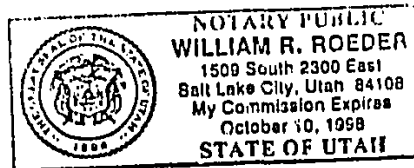
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STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 15th day of January, 1997, personally appeared before me GARY L. ECKMAN, who being by me duly sworn, did say, for himself, that he, the said GARY L. ECKMAN is the VICE PRESIDENT of UEM III, INC., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors, and said GARY L. ECKMAN duly acknowledged to me that said corporation executed the same.


Notary Public

My Commission Expires:
Residing at:



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EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

BEGINNING at a point located South 1868.47 feet and West 3061.14 feet from the Northeast corner of Section 26, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence South $88^{\circ}22'00''$ West 43.50 feet; thence South $01^{\circ}38'00''$ East 96.50 feet to a point on a 45.0 foot radius curve to the right (chord bears South $43^{\circ}22'00''$ West); thence Southwesterly along the arc of said curve 70.69 feet; thence South $88^{\circ}22'00''$ West 15.13 feet to a point of a 333.0 foot radius curve to the left (chord bears South $67^{\circ}52'54''$ West); thence Southwesterly along the arc of said curve 238.12 feet; thence North $01^{\circ}57'00''$ West 25.04 feet to a point on a 405.00 foot radius curve to the left (chord bears North $29^{\circ}26'42''$ East); thence Northeasterly along the arc of said curve 232.48 feet; thence North $13^{\circ}00'00''$ East 144.06 feet to a point on a 400 foot radius curve to the left (chord bears North $06^{\circ}02'34''$ West); thence Northwesterly along the arc of said curve 265.89 feet; thence North $88^{\circ}22'00''$ East 187.41 feet; thence South $01^{\circ}38'00''$ East 398.00 feet to the point of BEGINNING.

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EXHIBIT "B"

THE UEM PROPERTY DESCRIPTION

-PUGH COPY-
CO. RECORDER

BEG S 1456.75 FT & W 2645.53 FT FR NE COR SEC 26, T 1S, R
1W, SLM; S 88-22' W 388.23 FT; N 1-38' W 280.5 FT; N 88-22'
E 388.23 FT; S 1-38' E 280.5 FT TO BEG. 2.5 AC 5779-2189
5986-2683 1888-322 6044-737 6277-940 6277-1230

BEG S 1589.32 FT & W 3112.62 FT FR NE COR SEC 26, T 1S, R
1W, SLM; S 88-22' W 113.02 FT; NW'LY ALG 400 FT RADIUS CURVE
TO L 247.22 FT; N 43- W 211.57 FT; N 71-12'52" E 401.34 FT;
S 1-38' E 360.21 FT; W'LY ANG S'LY ALG 66 FT RADIUS CURVE TO
L 159.21 FT; SE'LY ALG 33 FT RADIUS CURVE TO R 27.75 FT TO
BEG. 2.65 AC

BEG S 1576.37 FT & W 2658.57 FT FR NE COR SEC 26, T 1S, R
1W, SLM; S 88-22' W 388.23 FT; S 1-38' E 377 FT; S 88-22' W
33 FT; N 1-38' W 876.99 FT; N 71-12'52" E 311.58 FT; S
83-14'50" E 124.84 FT; S 1-38' E 573.67 FT TO BEG. 3.67 AC M
OR L. 6607-277

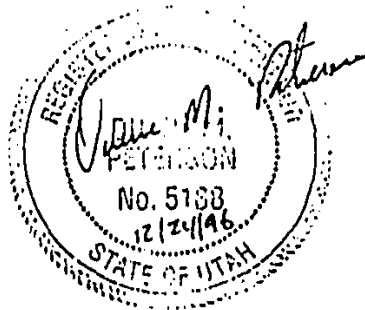
BK 7584 P60409

EXHIBIT "C"

THE EASEMENT PROPERTY DESCRIPTION

COMMON ACCESS & NON-BUILD EASEMENT
FOR
CENTRAL VALLEY

BEGINNING at a point which is West 3043.402 feet and South 1964.437 feet from the Northeast Corner of Section 26, Township 1 South, Range 1 West, Salt Lake Base and Meridian; thence South $88^{\circ}22'00''$ West 58.500 feet; thence North $01^{\circ}38'00''$ West 75.286 feet; thence North $89^{\circ}23'03''$ West 13.983 feet; thence North $01^{\circ}39'09''$ West 28.709; thence South $89^{\circ}23'03''$ East 12.436 feet; thence North $01^{\circ}36'33''$ West 332.786 feet; thence North $45^{\circ}41'00''$ East 43.248 feet; thence South $88^{\circ}22'00''$ West 163.274 feet to a point of a 400.000 foot radius curve to the right; thence Northwesterly along the arc of said curve 63.667 feet, (chord bears North $25^{\circ}17'57''$ West 63.610 feet); thence North $88^{\circ}22'00''$ East 216.929 feet; thence South $01^{\circ}38'00''$ East 524.423 feet to the Point of beginning.



Prepared 12-19-96 d.d.p.

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