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DOUG [unclear]
WEBER COUNTY CLERK
DEPUTY *Thomas M. [unclear]* 1/4 '02

JAN 31 8 53 AM '02

FILED AND RETURNED FOR
Associated Title

AFTER RECORDING, PLEASE RETURN TO:

LARSEN, KIMBALL, PARR & CROCKETT
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
Attention: Victor A. Taylor, Esq.

PLATED VENDED
INDEXED MICROFILMED

DECLARATION OF EASEMENTS
AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS AND RESTRICTIONS (the "Declaration") is entered into as of the 26 day of December, 1985, between OGDEN CITY, a municipal corporation (the "City"), whose address for the purposes hereof is c/o Larry Davis, 2650 Washington Boulevard, Suite 205, Ogden, Utah 84401, and DAMSON/BIRTCHER REALTY INCOME FUND-II, LIMITED PARTNERSHIP, a Delaware limited partnership ("Birtcher"), whose address for the purposes hereof is 1261 East Dyer Road, Santa Ana, California 92705, Attention: Stuart I. Ackerberg.

RECITALS:

A. The City owns a certain tract of real property (the "City Parcel") located in Weber County, State of Utah, more particularly described on the attached Exhibit A.

B. Birtcher owns a certain tract of real property (the "Birtcher Parcel") located in Weber County, State of Utah, more particularly described on the attached Exhibit B.

C. The City and Birtcher desire to create certain easements and restrictions across the City Parcel that will benefit Birtcher, its partners, successors and assigns and the Birtcher Parcel.

AGREEMENT:

NOW, THEREFORE, for the foregoing purposes, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the reciprocal benefits to be derived from the easements, restrictions and requirements set forth below, the City and Birtcher hereby agree as follows:

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*08-087-0018, 0047, 0063, 0081
M. 07-287-0017*

1. Definitions. As used in this Declaration, the following terms shall have the indicated meanings:

(a) "Benefitted Parties" means Birtcher, its successors and assigns, and its tenants, subtenants and concessionaires, and the customers, invitees, guests and licensees of such persons.

(b) "Parcel" means the City Parcel or the Birtcher Parcel where no distinction between the two is required by the context in which the term is used.

(c) "Parcels" means the City Parcel and the Birtcher Parcel, collectively.

(d) "Parties" means all of the persons who are a Party, taken in the aggregate.

(e) "Party" means each person executing this Declaration and its heirs, officers, directors, partners, assigns and successors in interest with respect to the Parcel or portion of a Parcel owned by it, as the same may be shown by the records of Weber County, State of Utah, as of the date of the exercise of powers granted hereunder or the performance or failure of performance by such Parties of the obligations created by this Declaration. Without limiting the generality of the foregoing, the term Party refers to the persons who fit the following classifications:

(i) The person or persons holding fee title to all or any portion of the City Parcel or the Birtcher Parcel; and

(ii) The lessee or lessees under a ground lease of all or a portion of any Parcel for a fixed minimum term of thirty (30) years or longer, in which event the fee owner of the real property covered by such lease will not be deemed to be a Party as to such Parcel or portion of a Parcel, as the case may be, for the purposes of this Declaration during the duration of such ground lease.

2. Grant of Easement. The City grants to the Benefitted Parties the following easements upon, over and across the City Parcel:

(a) Exclusive easement for the purpose of vehicular parking and pedestrian and vehicular ingress and egress.

(b) Exclusive easement for the purpose of construction, maintenance and repair of the improvements on the

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City Parcel as of the date hereof and of any similar improvements.

(c) Exclusive easement for any purposes or uses for which the same is used currently or for which the same hereafter may be used by the Benefitted Parties.

3. Duration. This Declaration and each easement, restriction and undertaking set forth herein shall be perpetual, unless terminated by ninety (90) days' prior written notice given by the City to Birtcher in accordance with Paragraph 10.

4. Termination. In the event that this Declaration is terminated pursuant to Paragraph 3, Birtcher shall not have any obligation whatsoever to remove any improvements located on the City Parcel. Birtcher shall in no event whatsoever be obligated to repair or replace any such improvements.

5. Modification. This Declaration and any easement, restriction or undertaking contained herein may be terminated, extended, modified or amended with the unanimous consent of the Parties, and any such termination, extension, modification or amendment shall be effective upon proper recordation of a written document evidencing the same, executed and acknowledged by all of the Parties then existing, in the Office of the Weber County Recorder.

6. Not A Public Dedication. Nothing contained in this Declaration will be deemed to be a gift or dedication of any portion of either Parcel to or for the general public or for any public purposes whatsoever, it being the intention of the Parties that this Declaration will be strictly limited to and for the purpose expressed here.

7. Covenants Run With Land.

(a) Each and all of the easements, restrictions and rights granted or created hereby are appurtenances to the respective Parcels to which they relate. For the purposes of the easements, restrictions and rights set forth herein, the Parcel benefitted thereby shall constitute the dominant estate, and the Parcel burdened thereby shall constitute the servient estate.

(b) Each and all of the easements, restrictions and rights contained in this Declaration (whether affirmative or negative in nature) (i) are made for the direct, mutual and reciprocal benefit of each Parcel; (ii) shall create mutual equitable servitudes upon each Parcel in favor of the other Parcel; (iii) shall constitute covenants running with the land;

(iv) shall bind every person having any fee, leasehold or other interest in any portion of the Parcel at any time or from time to time to the extent that such portion is affected or bound by the easement, restriction or right in question, or to the extent that the easement, restriction or right is to be performed on such portion; and (v) shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns as to their respective Parcels.

8. No Partnership. The Parties do not by this Declaration, in any way or for any purpose, become partners or joint venturers of each other in the conduct of their respective businesses or otherwise.

9. Force Majeure. Each Party shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by any cause or causes beyond such Party's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or services or acts of God.

10. Notice. Any notice required to be given under this Declaration must be in writing. Except when actual receipt is expressly required by the terms hereof, notice is considered given either (a) when delivered in person to the recipient named at the address set forth above, or (b) upon the fourth business day after being properly placed in the United States mail, either registered or certified, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or person intended. Either party hereto may, by notice given at any time or from time to time, require subsequent notices to be given to another individual, whether an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change. Such recipient named must be an individual. If more than one recipient is named, delivery of notice to any one such recipient is sufficient.

11. Titles and Captions. Paragraph titles or captions to this Declaration are for convenience only and shall not be deemed to be part of this Declaration and in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts of this Declaration.

12. Pronouns and Plurals. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms and the singular form of nouns, pronouns and verbs shall include the plural and vice

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versa. Each of the foregoing genders and plurals is understood to refer to a corporation, partnership or other legal entity when the context so requires.

13. Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forebear from all such action as may be necessary or appropriate to achieve the purposes of this Declaration.

14. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Utah.

15. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Declaration or to exercise any rights or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Declaration, but shall be under no obligation to, waive any of his rights or any conditions to his obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Declaration but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

16. Severability. In the event that any condition, covenant or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Declaration and shall in no way affect any other condition, covenant or other provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such condition, covenant or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

17. Authorization. Each individual executing this Declaration does thereby represent and warrant to each other so signing (and each other entity for which another person may be signing) that he has been duly authorized to deliver this Declaration in the capacity and for the entity set forth where he signs.

18. Exhibits. All Exhibits referred to herein and attached hereto are incorporated herein by this reference.

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IN WITNESS WHEREOF, this Declaration of Easements and Restrictions is executed as of the day and year first above written

THE CITY:

ATTEST:

Deanne Adams
City Recorder

OGDEN CITY,
a municipal corporation

By [Signature]
Its _____

APPROVED AS TO FORM:

Timothy W. Blackburn
Timothy W. Blackburn
Assistant Corporation Counsel

BIRTCHER:

DAMSON/BIRTCHER REALTY INCOME FUND-II, LIMITED PARTNERSHIP, a Delaware limited partnership, by its General Partner:

APPROVED:

Leonard Peterson
Leonard Peterson
Airport Manager

DAMSON/BIRTCHER INVESTORS, a California general partnership, by its General Partner:

APPROVED:
[Signature]
Public Works Department

BIRTCHER INVESTORS, a California limited partnership, by its General Partner:

Albert S. Nagy
Albert S. Nagy, General Partner,
by Stuart I. Ackberg,
Attorney-In-Fact

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STATE OF Utah)
COUNTY OF Weber) ss.

On this 26th day of December, 1985, personally appeared before me Cowles Wadsworth, the signer of the foregoing Declaration, who being by me duly sworn, did say that he is the CITY MANAGER of Ogden City, a municipal corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its bylaws or a resolution of its board of directors, and said Cowles Wadsworth acknowledged to me that said corporation executed the same.

Cowles Wadsworth
NOTARY PUBLIC
Residing in Ogden, Utah


My Commission Expires:

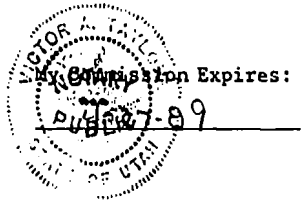
August 10, 1987

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

On this 20th day of December, 1985, personally appeared before me Stuart I. Ackerberg, who, being by me duly sworn did say that he is the attorney-in-fact of Albert S. Nagy, a general partner of Birtcher Investors, a California limited partnership, a general partner of Damson/Birtcher Investors, a California general partnership, a general partner of Damson/Birtcher Realty Income Fund-II, Limited Partnership, a Delaware limited partnership, and that the foregoing instrument was signed on behalf of Albert S. Nagy by authority, and said Stuart I. Ackerberg acknowledged to me that he as such attorney-in-fact executed the same as the general partner of and on behalf of Birtcher Investors, as the general partner of and on behalf of Damson/Birtcher Investors, as the general partner of and on behalf of Damson/Birtcher Realty Income Fund-II, Limited Partnership, that said Damson/Birtcher Realty Income Fund-II, Limited Partnership executed the same, and that said partnerships executed the same pursuant to the authority contained in their respective partnership agreements.


NOTARY PUBLIC
Residing in Salt Lake County



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VAT/BIRT2(14)
12/20/85.

EXHIBIT A

to

DECLARATION OF EASEMENTS AND RESTRICTIONS

CITY PARCEL

The City Parcel described in the foregoing Declaration of Easements and Restrictions is located in the County of Weber, State of Utah, and is more particularly described as follows:

A part of the Northwest quarter of Section 12, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U. S. Survey: BEGINNING at a point on the South line of 4000 South Street, said point being 1128.52 feet North $89^{\circ}41'15''$ East along the center line of 4000 South Street and 33.00 feet South $0^{\circ}33'$ West from the Northwest corner of said Section 12, running thence North $89^{\circ}41'15''$ East 17.00 feet along said South line to an existing wire fence line; thence along said fence the following three courses: South $0^{\circ}05'30''$ West 115.20 feet; South $44^{\circ}40'59''$ West 1393.61 feet; and South $89^{\circ}41'15''$ West 3.52 feet; thence North $44^{\circ}32'34''$ East 1376.41 feet; thence North $0^{\circ}33'$ East 125.00 feet to the point of BEGINNING.

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EXHIBIT B

to

DECLARATION OF EASEMENTS AND RESTRICTIONS

BIRTCHER PARCEL

The Birtcher Parcel described in the foregoing Declaration of Easements and Restrictions is located in the County of Weber, State of Utah, and is more particularly described as follows:

A part of the Northwest quarter of Section 12, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U. S. Survey: BEGINNING at the intersection of the East line of 1900 West Street and the South line of 4000 South Street, said point being 47.41 feet North 89°41'15" East along the center line of 4000 South Street and 33.00 feet South 0°33' West from the Northwest corner of said Section; running thence North 89°41'15" East 1081.00 feet; thence South 0°33' West 125.00 feet; thence South 44°32'34" West 1376.41 feet; thence South 89°41'15" West 125.00 feet to the East line of 1900 West Street; thence North 0°33' East 1100.83 feet along said East line to point of BEGINNING.

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