

WHEN RECORDED, RETURN TO:

Gallagher & Kennedy, P.A.
2600 North Central Avenue
Phoenix, Arizona 85004-3920
Attn: Scott K. Henderson, Esq.

07-021-0029
07-031-0094 thru
07-133-0001
+ thru 0021

E 1342320 B 2166 P 1234
JAMES ASHAUER, DAVIS CNTY RECORDER
1997 AUG 21 4:51 PM FEE 32.00 DEP REC
REC'D FOR FIRST AMERICAN TITLE CO OF UT

*subsequent Condo ph 4 (Common)
ph 5 (Common)*

147 F&U R/W

EASEMENT AGREEMENT AND COVENANTS

This EASEMENT AGREEMENT AND COVENANTS (this "Agreement") is made and entered into this 22nd day of July, 1997, by and among TC Residential Phoenix III, Inc., a Texas corporation ("TCR"), the City of Clearfield, a municipal corporation of the State of Utah, acting with the prior approval of the City Council of the City of Clearfield (the "City") and the [Sundowner Condominium Management Committee], a _____ ("Sundowner").

RECITALS

- A. TCR is the owner of that certain real property situated in the City of Clearfield, Utah and more particularly described on Exhibit "A" attached hereto and made a part hereof and as shown on the Site Plan on Exhibit "B" attached hereto and made a part hereof ("Parcel 1").
- B. The City is the owner of that certain real property situated in the City of Clearfield, Utah, and located adjacent to Parcel 1, as shown on the Site Plan ("Parcel 2").
- C. Sundowner is the owner of that certain real property situated in the City of Clearfield, Utah, and located adjacent to Parcel 2, as shown on the Site Plan ("Parcel 3").
- D. The parties hereto desire that (i) Sundowner and the City grant to TCR a non-exclusive easement for emergency vehicular ingress and egress over Parcels 2 and 3 and (ii) Sundowner grant to the City a non-exclusive easement for vehicular ingress and egress over Parcel 3, each on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENTS

I. Easement. The City hereby grants and conveys to TCR, together with all of TCR's agents, employees, contractors, invitees and licensees, for the benefit of Parcel 1, a non-exclusive easement for emergency vehicular ingress and egress upon, over and across Parcel 2 in approximately the location shown on the Site Plan, and Sundowner hereby grants

and conveys to TCR, together with all of TCR's agents, employees, contractors, invitees and licensees, for the benefit of Parcel 1, a non-exclusive easement for emergency vehicular ingress and egress upon, over and across Parcel 3 in approximately the location shown on the Site Plan (collectively, the "Easement"). Sundowner hereby grants and conveys to the City, together with all of the City's agents, employees, contractors, invitees and licensees, for the benefit of Parcel 2, the right to use the portion of the Easement which is located on Parcel 3 for vehicular ingress and egress upon, over and across Parcels 3.

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2. Road Development. TCR covenants and agrees to re-construct and resurface the existing road which lies in the portion of the Easement located on Parcel 3 (the "Road") and to provide aggregate road base or an acceptable equivalent along the portion of the Easement located on Parcel 2 (collectively, the "Road Improvements"), each in accordance with the Plans and Specifications on Exhibit "C" attached hereto and made a part hereof. TCR further agrees to install "No Parking" signs along the southern boundary of the Road and to apply red paint to the curbing of the Road.

3. Parking. The City may, at its own cost and expense, develop such automobile parking spaces within Parcel 2 adequate to serve the parking requirements of the City Park which the City plans to develop on Parcel 2 (the "Park"). The City covenants and agrees that no employee, contractor, invitee or licensee of the Park shall be permitted to park along the Road or in any other location on Parcel 3 and shall take reasonable steps to prevent such individuals from parking on Parcel 3. The City agrees to construct a six (6)-foot security fence along the border between Parcel 3 and the additional real property owned by the City located adjacent to Parcel 3, as shown on the Site Plan.

4. Recreational Vehicle Storage. The City agrees that following completion of the Road Improvements, the total number of square feet of the existing recreational vehicle storage parking lot located on Parcel 3 and shown on the Site Plan (the "RV Storage Lot") eliminated due to the Road Improvements shall be added to the RV Storage Lot along its eastern boundary, such that the total number of square feet contained in the RV Storage Lot shall be substantially the same following the Road Improvements as it was prior to the Road Improvements. Following completion of the Road Improvements and such re-configuration of the RV Storage Lot, the City agrees to execute and deliver to Sundowner a Quitclaim Deed conveying to Sundowner such portion Parcel 2 necessary to accommodate the re-configured RV Storage Lot. Upon recordation of such Quitclaim Deed, TCR agrees to re-locate the fence currently existing on the property line between Parcels 2 and 3 to a location along the new property line established by such Quitclaim Deed.

5. Maintenance: Snow and Ice Removal. Following completion of the Road Improvements, Sundowner covenants and agrees to perform, at its own cost and expense, all maintenance of the portion of the Road located on Parcel 3 required for the normal operation and uses of the Road contemplated under this Agreement, including, without limitation, removal of snow, ice and other debris. During the period beginning upon completion of the Road Improvements and ending upon the City's completion of its

development of the Park, TCR covenants and agrees to perform, at its own cost and expense, all maintenance of the portion of the Easement located on Parcel 2 required for the normal operation and uses of the Easement contemplated under this Agreement, including, without limitation, removal of snow, ice and other debris, and following the City's completion of its development of the Park, the City covenants and agrees to perform, at its own cost and expense, such maintenance of the portion of the Easement located on Parcel 2.

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6. Representation and Warranty. Sundowner hereby represents and warrants to TCR and the City that it has the full right and power to bind the [Sundowner Condominium Homeowner's Association] and its members (the "Association") and that upon execution, this Agreement shall constitute a valid and binding obligation of the Association.

7. Entire Agreement. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein, and no prior agreement, arrangement or understanding pertaining to any such matters shall be effective for any purpose.

8. Obligations Run With the Land; Successors and Assigns. It is intended that each of the easements, covenants, agreements and restrictions set forth herein shall run with the land and create equitable servitudes in favor of the real property benefitted thereby, and shall bind every person having any fee, leasehold or other interest therein. The provisions of this Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.

9. Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one and the same Agreement.

10. Severability; Applicable Law. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

11. No Dedication. No part of this Agreement shall be construed as creating any rights in the general public nor as dedicating for public use any portion of Parcel 1 whatsoever, it being the intention of the parties hereto that this Agreement be strictly limited to and for the purposes expressed herein.

IN WITNESS WHEREOF, this Agreement is entered into by the parties as of
the day, month and year first above written. E 1342320 B 2166 P 1237

TC RESIDENTIAL PHOENIX III, INC., a Texas
corporation

By Johnny A. Duke
Name: Johnny A. Duke
Title: v. p.

CITY OF CLEARFIELD, a Utah municipal
corporation

By Melton E. Hamblin
Name: MELTON E. HAMBLIN
Title: MAYOR

SUNDOWNER CONDOMINIUM
MANAGEMENT COMMITTEE, a

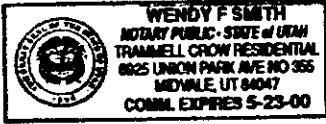
By Les Corcoran
Name: LES CORCORAN
Title: Chairman
Management Committee
Sundowner Condominiums.

STATE OF UTAH)
County of Salt Lake) ss.

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The foregoing instrument was acknowledged before me this 19 day of ~~July~~ ^{August} 1997, by Jeffrey A. Duke, the vice president of TC RESIDENTIAL PHOENIX II, INC. a Texas corporation, on behalf of the corporation.

IN WITNESS WHEREOF, I hereunto have set my hand and official seal.



Wendy F. Smith
Notary Public

My Commission Expires:

5-23-00

STATE OF UTAH)
County of DAVIS) ss.

The foregoing instrument was acknowledged before me this 27th day of July, 1997, by NELDON E. HANBLIN, the MAYOR of the CITY OF CLEARFIELD, a Utah municipal corporation, on behalf of the municipal corporation.

IN WITNESS WHEREOF, I hereunto have set my hand and official seal.

Stephen G. Lane
Notary Public



STATE OF UTAH)
County of Davis) ss.

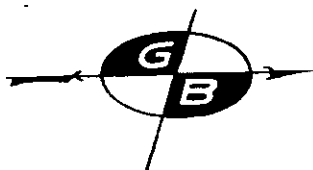
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The foregoing instrument was acknowledged before me this 13th day of July, ^{August} 1997, by Les Corcoran, the Chairman of SUNDOWNER CONDOMINIUM MANAGEMENT COMMITTEE, a _____, on behalf of the _____.

IN WITNESS WHEREOF, I hereunto have set my hand and official seal.

Richard G. Hase
Notary Public

My Commission Expires  RICHARD G. HASE
1770 S. UNIVERSITY BLVD. SUITE 100
SALT LAKE CITY, UT 84143
PHONE: 325-0115
COM. EXPIRES 1-8-99



GREAT BASIN ENGINEERING, INC.

Consulting Engineers and Land Surveyors

P.O. Box 9307
Ogden, Utah 84409

Ogden (801) 394-4515
Salt Lake (801) 521-8529
FAX (801) 392-7544



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JOHANSEN - THACKERAY (CLEARFIELD)

EASEMENT THROUGH SUNDOWNER CONDOS.

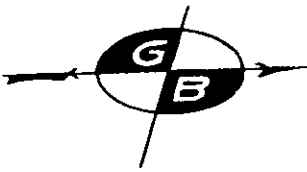
A part of the Northeast Quarter of Section 7, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

An easement for road and utilities being 35.0 feet in width measured at right angles toward the northerly side of the line described as follows: Beginning at a point on the most Easterly line of The Sundowner Condominium Phase 4, Clearfield City, Davis County, Utah, which is 1,328.31 feet West; 261.97 feet South and 929.00 feet South $0^{\circ}08'33''$ West from the Northeast corner of said section, and running thence two (2) courses along the Southerly line of said Sundowner Condominiums Phase 4 and Phase 5, Clearfield City, Davis County, Utah as follows: North $57^{\circ}24'35''$ West 1,160.34 feet and South $89^{\circ}54'15''$ West 314.93 feet, to the East line of 1500 East Street. The sideline of said 35.0 foot easement to be extended or shortened to meet at angle points and to terminate at the Grantor's westerly line.

MEMBER OF AMERICAN SOCIETY OF CIVIL ENGINEERS

MEMBER OF UTAH COUNCIL OF LAND SURVEYORS

MEMBER OF AMERICAN CONSULTING ENGINEERS COUNCIL



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JOHANSEN - THACKERAY (CLEARFIELD)

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EASEMENT THROUGH CITY PARK

A part of the Northeast Quarter of Section 7, Township 4 North, Range 1 West,
 Salt Lake Base and Meridian, U.S. Survey:

An easement for road and utilities being 17.5 feet in width measured at right angles toward the Northerly and Southerly side of the following centerline described: Beginning at a point on the most Easterly line of the Sundowner Condominium Phase 4, Clearfield City, Davis County, Utah, which is 1,328.31 feet West, 261.97 feet South and 908.34 feet South 0°08'33" West from the Northeast corner of said section; and running thence South 57°24'35" East 12.48 feet to a point of curvature; thence Southeasterly along the arc of a 212.15 foot radius curve to the left a distance of 98.21 feet (Central Angle equals 26°31'24" and Long Chord bears South 70°40'17" East 97.33 feet) to a point of reverse curvature; thence Southeasterly along the arc of a 185.42 foot radius curve to the right a distance of 97.68 feet (Central Angle equals 30°10'56" and Long Chord bears South 68°50'31" East 96.55 feet) to a point of tangency; thence South 53°45'03" East 201.71 feet to the East line of the Clearfield City Park, being the West line of the Johansen-Thackeray property. The sideline of said 35.0 foot easement to be extended or shortened to meet at angle points and to terminate at the Grantor's easterly and westerly lines

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MEMBER OF UTAH COUNCIL OF LAND SURVEYORS

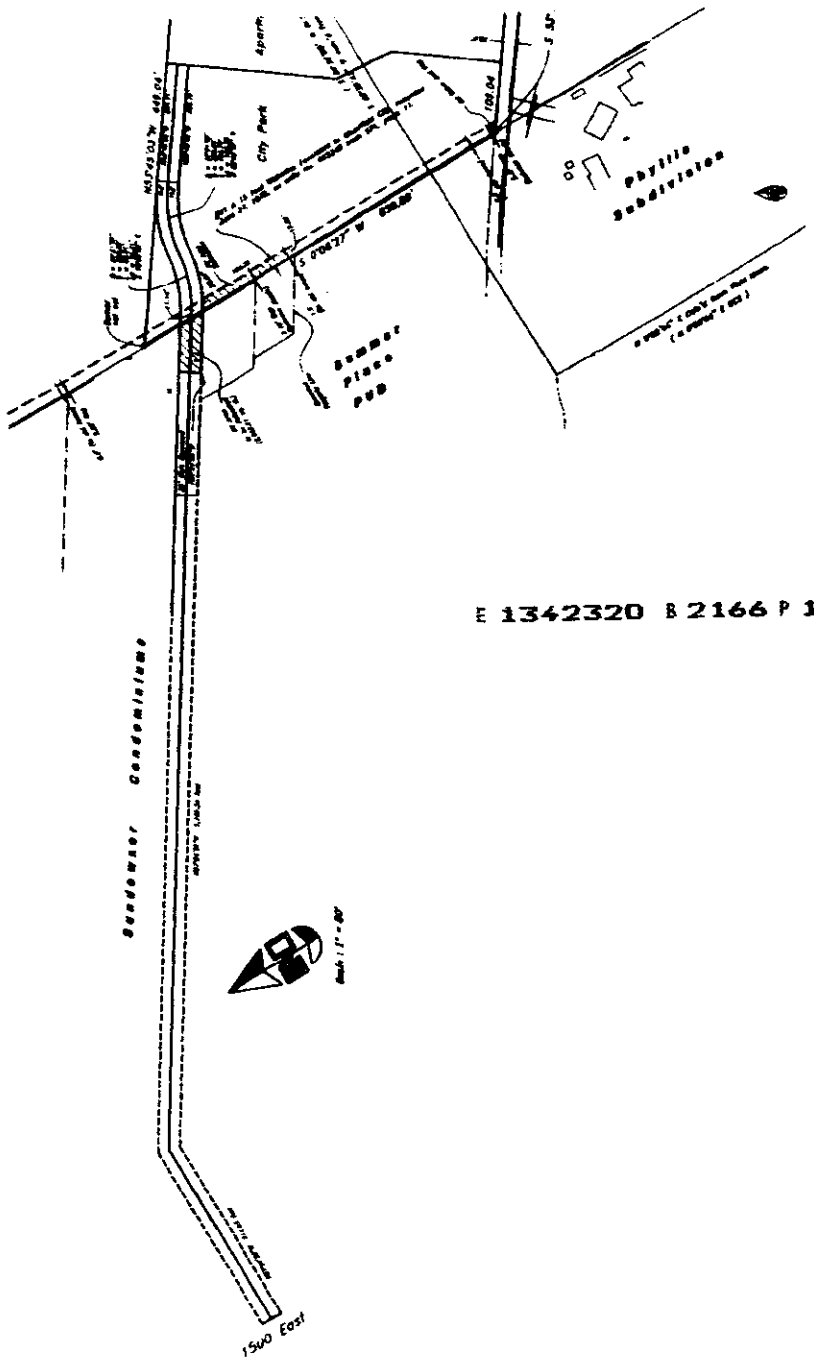
MEMBER OF AMERICAN CONSULTING ENGINEERS COUNCIL

EXHIBIT A

[ATTACH LEGAL DESCRIPTION]

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JAMES ASHAUER
Davis County Recorder



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EXHIBIT B

[ATTACH PARCEL SITE PLAN]

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JAMES ASHAUER
Davis County Recorder

EXHIBIT C

[ATTACH PLANS AND SPECIFICATIONS]

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A. ASPHALT REPAIR

1. EXCAVATE EXISTING ASPHALT; HAUL FROM JOBSITE
2. FINE GRADE AND COMPACT EXISTING BASE COURSE
3. FURNISH, PLACE AND COMPACT ADDITIONAL ROAD BASE (3" DEPTH)
4. FURNISH, PLACE AND COMPACT A TWO AND ONE HALF INCH (2 ½") ASPHALT MAT

B. CONCRETE WATERWAY

1. CONSTRUCT 3' WIDE CONCRETE WATERWAY

*NOTES:

1. QUANTITY OF CONCRETE WATERWAY IS UNKNOWN. SHOTS NEED TO BE TAKEN TO DETERMINE WHERE WATERWAY IS REQUIRED.
2. FOR 1" ADDITIONAL ROAD BASE, IN PLACE OF 2" ROAD BASE, AS SHOWN ABOVE, DEDUCT \$0.05 PER SF FROM ABOVE UNIT PRICE.