

AFTER RECORDING, PLEASE RETURN TO:

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Salt Lake City, Utah 84111

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REGISTERED STATES TITLE  
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DIXON

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KATIE L. DIXON  
RECORDER  
SALT LAKE COUNTY,  
UTAH

3502613

AGREEMENT CONCERNING  
TUNNEL IN STREET

THIS AGREEMENT, dated the 9<sup>th</sup> day of October, 1980, is made and executed by SALT LAKE CITY CORPORATION, a body corporate and politic of the State of Utah (hereinafter referred to as "City"), and CROSSROADS PLAZA ASSOCIATES, a Utah Joint Venture and General Partnership (hereinafter referred to as "Crossroads").

RECITALS:

A. Crossroads is the Tenant under certain long-term Ground Leases which, when taken and considered together, cover the following-described realty situated in Salt Lake City, County of Salt Lake, State of Utah (the following-described realty being hereinafter referred to as the "Overall Site"), which said Overall Site comprises the bulk of the city block bounded by Main Street, West Temple, First South, and South Temple:

BEGINNING at the Southeast corner of Lot 3, Block 76, Plat "A", Salt Lake City Survey (which point is also the intersection of the North line of First South Street and the West line of Richards Street), and running thence (along the West line of Richards Street) North 207.50 feet; thence West 330 feet to a point on the East line of West Temple Street; thence (along said East line) North 292.5 feet; thence East 82.5 feet; thence North 1.0 foot; thence East 148.5 feet; thence North 159.0 feet to a point on the South line of South Temple Street; thence (along said South line) East 264.00 feet to the Northeast corner of Lot 7 in said Block 76; thence (along the East line of said Lot 7) South 105.00 feet; thence East 41.00 feet; thence North 20.67 feet; thence East 124.00 feet to a point on the West line of Main Street; thence (along said West line) South 462.746 feet, more or less, to the Northeasterly corner of the property generally known or referred to as the "McIntyre Building Condominium"; thence West 145.00 feet; thence South 47.92 feet; thence West 10.15 feet; thence South 65.00 feet to the North line of First South Street; thence (along said North line) West 174.85 feet to the point of BEGINNING.

TOGETHER WITH a right-of-way over each of two (2) strips of land described as follows:

(1) BEGINNING 99 feet West of the Northeast corner of Lot 6, Block 76, Plat "A," Salt Lake City Survey, and running thence South 100 feet; thence West 11.5 feet; thence North 100 feet; thence East 11.5 feet to the point of BEGINNING.

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(2) BEGINNING 110 feet West of the Northeast corner of Lot 8, Block 76, Plat "A," Salt Lake City Survey, and running thence South 84 feet 4 inches; thence West 14 feet; thence North 84 feet 4 inches; thence East 14 feet to the point of BEGINNING.

B. Various improvements located on the Overall Site have heretofore been or are being constructed and completed. Included among such improvements is an eight (8) level parking garage. Said parking garage, as the same may hereafter be restored, replaced, enlarged, reduced in size, or otherwise altered, is hereinafter referred to as the "Parking Garage." Crossroads is the owner of the Parking Garage.

C. The Parking Garage is located adjacent to West Temple, which is a street over which the City has control.

D. In connection with construction of the Parking Garage there was also constructed an access tunnel connecting the Parking Garage with West Temple Street. Said access tunnel in part underlies the surface of West Temple Street and in part penetrates the surface of said Street. Said access tunnel and the structures and facilities located therein, to the extent that said tunnel, structures, and facilities are located within the boundaries (projected vertically downward) of said Street, are hereinafter collectively referred to merely as the "Tunnel."

E. Crossroads desires to obtain City's formal consent to the existence and continuance of the Tunnel. City is willing to give such consent in return for the assurances provided to it in the following provisions of this Agreement.

NOW, THEREFORE, for the aforesaid purposes and in consideration of the benefits to be derived from the following provisions, City and Crossroads hereby agree to all of the matters treated below.

1. Consent to Tunnel. City hereby consents to, and hereby grants unto Crossroads an easement for, the existence and continuance of the Tunnel for as long as the Parking Garage exists or until Crossroads advises City in writing that the Tunnel is no longer needed (whichever first occurs). (As used in this Agreement the phrase "the term of this Agreement" or words of similar import shall mean the duration of the consent and easement which are provided for in the preceding portion of this Section 1.)

2. Safety and Removal. Throughout the term of this Agreement Crossroads shall keep and maintain the Tunnel free of safety hazards. When the term of this Agreement comes to an end, Crossroads shall remove the Tunnel and shall restore the area affected thereby to substantially the same condition as existed prior to creation of the Tunnel.

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3. Plans. City acknowledges that Crossroads has heretofore prepared and submitted to City, and that the City Transportation Engineer, the City Engineer, and the City Parks Department have each heretofore approved as to design and materials, plans for the street median, the street dividing raised islands, and the landscaped areas related to the Tunnel where same penetrates the surface of West Temple Street. To the extent that it has not already done so, upon completion of construction of the facilities concerned Crossroads shall furnish to City a set of reproducible "as built" plans showing all facilities related to the Tunnel that have been constructed by Crossroads on, above, or below the surface of West Temple Street, including, but not necessarily limited to, structural members, utility lines, street median, street dividing raised islands, curbs, gutters, landscaped areas, and any sprinkling system(s) involved.

4. Remaining Construction. To the extent that it has not heretofore completed the same, within a reasonable period of time Crossroads shall construct and complete the various facilities referred to in the preceding Section 3, shall connect any sprinkling system(s) to City water lines, and shall pay all connection charges related to such connection(s).

5. Maintenance. From and after its acceptance (which may have already occurred) of those facilities referred to in Section 3 hereof which are located on, at, or above the surface of West Temple Street, City shall maintain the same. Throughout the term of this Agreement Crossroads shall maintain those facilities referred to in Section 3 hereof which are located below the surface of West Temple Street.

6. Control of Utility, Etc. Services in Street. Throughout the term of this Agreement City, as the governmental authority having control over West Temple Street, shall have the right to control the installation of utility and other services in said Street; provided, however, that no such installation shall be such as to materially interfere with the Tunnel or the use thereof.

7. Indemnification and Liability Insurance. Crossroads shall indemnify and hold harmless City and its agents and employees from and against any and all loss, damage, claims, liability, and costs (including attorneys' fees) that may be incurred during the term of this Agreement by City or its agents and employees by reason of the construction, existence, or use of the Tunnel. Throughout the term of this Agreement Crossroads shall maintain in force comprehensive general liability insurance respecting claims for bodily injury, death, and property damage occurring in or about the Tunnel. Said insurance shall name City as an additional insured and the limits thereof shall be such as to afford at least the coverage provided by a "combined single limit" of \$1,000,000.00 for bodily injury, death, and property damage.

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8. Rights as Appurtenance to Parking Garage. The various rights and benefits accorded to Crossroads in this Agreement are intended to be and shall be appurtenances of the Parking Garage and shall automatically accompany the ownership of and title to the Parking Garage, whether or not such rights and benefits are specifically mentioned in any instrument(s) whereby ownership of and title to the Parking Garage are transferred.

9. Release upon Transfer. From and after the time that Crossroads or any subsequent owner of the Parking Garage transfers (other than merely for purposes of security for an obligation) or is otherwise divested of ownership of the Parking Garage, it shall be relieved of all liabilities and obligations which under this Agreement are imposed upon either Crossroads or the owner of the Parking Garage (except such liabilities or obligations as may have already accrued).

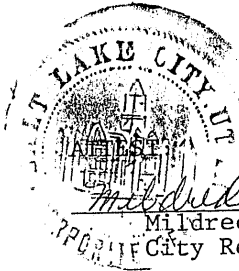
10. Successors and Assigns -- Covenants Run with Land. Each provision of this Agreement which is to be performed or observed by Crossroads or City is intended to and shall constitute a covenant running with the land (the land, in the case of Crossroads, being the Parking Garage) and is intended to and shall be binding upon and enforceable against not only Crossroads and City, but also their respective grantees, transferees, successors, and assigns. The provisions of this Agreement are intended to and shall inure to the benefit of the respective grantees, transferees, successors, and assigns of Crossroads and City.

11. Title and Mortgage Protection. As used in this Section 11, the term "Mortgage" shall mean and refer to both a mortgage and a deed of trust and the term "Mortgagee" shall mean and refer to both the mortgagee under a mortgage and the beneficiary under a deed of trust. A breach of any of the covenants, provisions, or requirements of this Agreement shall not result in any forfeiture or reversion of title or of any other rights, interests, or benefits. A breach of any of the covenants, provisions, or requirements of this Agreement shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee or trustee interested under any Mortgage affecting the rights and interests of Crossroads under this Agreement shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Agreement. No amendment to this Agreement shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

12. Interpretation. The captions which precede the Sections of this Agreement are for convenience only and shall in no way affect the manner in which any provision hereof is construed. There are no representations or agreements between Crossroads and City concerning the subject matter of this Agreement except as set forth herein, and this Agreement supersedes any and all prior negotiations, agreements, or understandings between Crossroads and City in any way related to the subject matter hereof. Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. None of the provisions of this Agreement may be altered or modified except through an instrument in writing. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

DATED the day and year first above written.

"City":



SALT LAKE CITY CORPORATION,  
a Body Corporate  
and Politic

By Ted L. Wilson  
Ted L. Wilson,  
Mayor

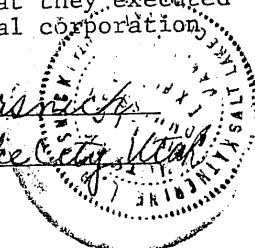
STATE OF UTAH )  
COUNTY OF SALT LAKE ) ss.

On this 9th day of October, 1980, personally appeared before me TED L. WILSON and MILDRED V. HIGHAM, known to me to be the Mayor and City Recorder, respectively, of SALT LAKE CITY CORPORATION, a body corporate and politic of the State of Utah, who duly acknowledged to me that they executed the foregoing Agreement on behalf of said municipal corporation and pursuant to authority.

My Commission Expires:

1-8-83

Katherine L. Barisnick  
Notary Public  
Residing at: Salt Lake City, Utah



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"Crossroads":

CROSSROADS PLAZA ASSOCIATES,  
a Utah Joint Venture and General  
Partnership composed of the  
Corporation and the Joint  
Venture named below

By: THE EQUITABLE LIFE ASSURANCE  
SOCIETY OF THE UNITED STATES,  
a New York Corporation

By *William R. Smith*  
Its VICE PRESIDENT

By: OKLAND-FOULGER COMPANY, a  
Maryland Joint Venture  
composed of the two (2)  
Limited Partnerships  
named below

By: FOULGER PROPERTIES,  
LIMITED, a Maryland  
Limited Partnership  
which is one of the  
two Joint Venturers  
in said Joint Venture

By: SID FOULGER, INC., a  
Maryland corporation  
which is the sole  
General Partner in  
said Limited  
Partnership

By *Sid Foulger*  
Sid Foulger,  
President

By: OKLAND PROPERTIES,  
LIMITED, a Utah Limited  
Partnership which is one  
of the two Joint  
Venturers in said  
Joint Venture

By: JACK OKLAND, INC., a  
Utah corporation  
which is the sole  
General Partner  
in said Limited  
Partnership

By *Jack Okland*  
Jack Okland,  
President



ATTEST:  
*Heene C. Lutich*  
Title: Asst Secretary

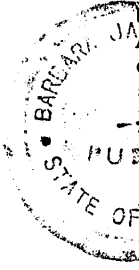
ATTEST:  
*Wilford A. Beesley*  
Wilford A. Beesley,  
Secretary

ATTEST:  
*Richard T. Lindberg*  
Richard T. Lindberg,  
Secretary

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STATE OF NEW YORK )  
 ) ss.  
COUNTY OF NEW YORK )

On this 28th day of October, 1980, personally appeared before me William C. Frantz and Helen C. Patrick, who being by me duly sworn, did say that they are the vice President and Asst. Secty., respectively, of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation, and that the foregoing Agreement was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said Officers acknowledged to me that said corporation executed the same in its capacity as one of the two Joint Venturers and Partners in, and on behalf of, CROSSROADS PLAZA ASSOCIATES, a Utah Joint Venture and General Partnership.



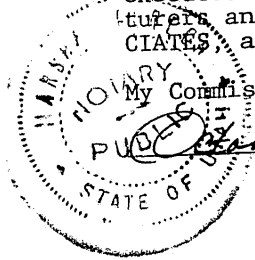
My Commission Expires:

BARBARA JANE STUMM  
Notary Public, State of New York  
No. 41-4681711  
Qualified in Queens County  
Commission Expires March 30, 1982

Barbara Jane Stumm  
Notary Public  
Residing at: Queens, NY

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

On this 7th day of November, 1980, personally appeared before me SID FOULGER and WILFORD A. BEESLEY, who being by me duly sworn, did say that they are the President and Secretary, respectively, of SID FOULGER, INC., a Maryland corporation, and that the foregoing Agreement was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said Officers acknowledged to me that said corporation executed the same in its capacity as the sole General Partner in, and on behalf of, FOULGER PROPERTIES, LIMITED, a Maryland Limited Partnership, and that said Limited Partnership executed the same in its capacity as one of the two Joint Venturers in, and on behalf of, OKLAND-FOULGER COMPANY, a Maryland Joint Venture, and that said Joint Venture executed the same in its capacity as one of the two Joint Venturers and Partners in, and on behalf of, CROSSROADS PLAZA ASSOCIATES, a Utah Joint Venture and General Partnership.



My Commission Expires:

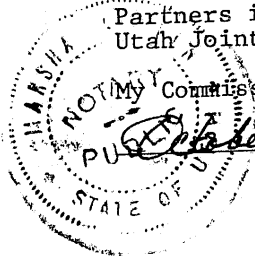
October 1, 1982.

Barbara Jane Stumm  
Notary Public  
Residing at: Salt Lake City, Utah

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

On this 15th day of November, 1980, personally appeared before me JACK OKLAND and RICHARD T. LINDBERG, who being by me duly sworn, did say that they are the President and Secretary, respectively, of JACK OKLAND, INC., a Utah corporation, and that the foregoing Agreement was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said Officers acknowledged to me that said corporation executed the same in its capacity as the sole General Partner in, and on behalf of, OKLAND PROPERTIES, LIMITED, a Utah Limited Partnership, and that said Limited Partnership executed the same in its capacity as one of the two Joint Venturers in, and on behalf of, OKLAND-FOULGER COMPANY, a Maryland Joint Venture, and that said Joint Venture executed the same in its capacity as one of the two Joint Venturers and Partners in, and on behalf of, CROSSROADS PLAZA ASSOCIATES, a Utah Joint Venture and General Partnership.



Harsha Gordon  
Notary Public  
Residing at: Salt Lake City, Utah

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