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**WHEN RECORDED, PLEASE RETURN TO:**

Victor A. Taylor, Esq.  
Kimball, Parr, Waddoups, Brown & Gee  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111

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06/09/95 09:23 AM 30.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
ASSOCIATED TITLE  
REC BY: D KILPACK DEPUTY - WI

**DECLARATION  
OF  
EASEMENTS, COVENANTS AND RESTRICTIONS**

THIS DECLARATION (this "Declaration") is executed as of the 27th day of April, 1995, by NAMDAR LIMITED PARTNERSHIP, a Utah limited partnership, also known as Namdar Partnership ("Namdar"), whose address is 4400 West 879 South, Salt Lake City, Utah 84127, and DMRB, LLC, a Utah limited liability company, SCSB, LLC, a Utah limited liability company, and BAMBERGER COMPANY, a Utah corporation (collectively, "Bamberger"), whose address is 163 South Main Street, Salt Lake City, Utah 84111.

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

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

"Easement Area" means the real property located in Salt Lake County, Utah, described as follows:

A right-of-way and easement fifty (50) feet in width running southerly from California Avenue to the Harshaw Parcel, as generally shown on the map attached as Exhibit A, incorporated by this reference, subject to such modification and clarification (reasonably acceptable to Harshaw) as may be required on the final determination of the boundary between the Bamberger Parcel and the Namdar Parcel. On such final determination, the "Easement Area" shall mean the real property located in Salt Lake County, Utah, twenty-five (25) feet on each side of a line running southerly along the boundary between the property then owned by Namdar and the property then owned by Bamberger from the center of the intersection of 4400 West Street and California Avenue to the northerly boundary of the Harshaw Parcel.

The dimensions of the Easement Area will be increased to sixty-six (66) feet (with the same center line) pursuant to an amendment to this Declaration entered into by the Parcel Owners promptly after municipal determination of the actual location of the intersection of 4400 West Street and California Avenue.

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

Beginning at the South quarter corner of Section 7, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence along the quarter section

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line North 00°00'53" East 143.20 feet; thence South 89°45'01" East 1607.51 feet to the west line of the Bangerter Highway; thence South 0°25'41" West 143.19 feet along said west line, to the south line of said Section 7; thence North 89°45'01" West 1606.49 feet along said south line to the point of beginning.

**"Mortgage"** means a mortgage or a deed of trust recorded in the official records.

**"Mortgagee"** means the mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the official records.

**"Other Parcels"** means the real property located in Salt Lake County, Utah, described as follows:

The property owned by Namdar on the date of this Declaration that is located to the South of California Avenue, and the property owned by Bamberger on the date of this Declaration that is located to the West of Bangerter Highway and to the South of California Avenue.

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

**"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. If there is more than one Owner of a Parcel at the time concerned, the obligations and liabilities of each such Owner for performance under, and compliance with, the applicable provisions of this Declaration shall be joint and several. 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.

**"Parcels"** means the Harshaw Parcel and the Other Parcels, collectively, and **"Parcel"** means either of such Parcels, individually, where no distinction is required by the context in which such term is used.

## 2. Grant of Rights-of-Way and Easements.

2.1 Access Right-of-Way and Easement. The Parcels (but no other real property) shall have appurtenant thereto, and shall be benefitted by, and the Easement Area shall be subject to, and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for vehicular ingress and egress on, over and across the Easement Area.

### 2.2 Utilities Right-of-Way and Easement.

2.2.1 Grant of Right-of-Way and Easement. The Parcels (but no other real property) shall have appurtenant thereto and shall be benefitted by, and the Easement Area shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires,

conduits and related facilities (including, without limitation, pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, sewage, storm drainage and all types of water) under, through and across the Easement Area.

2.2.2 Exercise of Right-of-Way and Easement. Any Parcel Owner may (a) enter on any portion of the Easement Area as may be necessary or appropriate in order to accomplish the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of the utilities and facilities referred to in Paragraph 2.2.1, and (b) in connection with such utilities and facilities, excavate or conduct construction activities on the Easement Area, so long as such excavation or construction activities are performed in a good and workmanlike manner and are prosecuted diligently to completion. On completion of such excavation or construction activities, the Owner conducting such activities shall immediately restore any portion of the Easement Area affected to the same condition as existed prior to the commencement of such excavation or construction activities, using the same type and quality of materials previously used.

3. No Interference. Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the rights-of-way and easements granted in Paragraph 2 shall be constructed or erected, nor shall any Owner in any other manner obstruct or interfere with the use of such rights-of-way and easements.

4. Maintenance. Any Owner may (but is not obligated to) at any time improve the surface of the Easement Area with asphalt, concrete or other similar material. Such Owner shall thereafter maintain or cause to be maintained the Easement Area in a good, clean and safe condition and repair, free from debris, rubbish, snow, ice and other materials. Each other Owner shall reimburse such Owner for the costs and expenses of such maintenance on a pro rata basis mutually determined by the Owners, with the effect that all Owners shall share such costs and expenses based on the nature, extent and frequency of their respective use of the Easement Area.

5. Duration. This Declaration and each right-of-way, easement, covenant and restriction set forth in this Declaration shall be perpetual.

6. Public Dedication. Except as specifically set forth in this Paragraph 6, nothing contained in this Declaration shall be deemed to be a gift, donation or dedication of all or any portion of the Parcels for the general public or for any public purpose whatsoever, it being the intention of the undersigned that this Declaration be strictly limited to the purposes expressed in this Declaration. If Salt Lake City Corporation is presented with a plan for the development and extension of 4400 South Street southerly from the intersection of 4400 South Street and California Avenue, all Owners shall reasonably cooperate in any dedication required by such development and extension, and shall participate in the reasonable cost and expense of such development and extension. Any such cost or expense shall be divided one-third (1/3) each among Namdar, Bamberger and Harshaw. To the extent that the public right-of-way for 4400 South Street corresponds to the Easement Area, the Owners shall quitclaim to Salt Lake City Corporation such portion of the Easement Area that so corresponds for public use, with any compensation for such dedication being divided one-third (1/3) each among Namdar, Bamberger and Harshaw.

7. Appurtenances to Parcels; Covenants Run with Land; Various Events.

7.1 Appurtenances to Parcels. Each right-of-way, easement, covenant and restriction created by this Declaration is an appurtenance to the Parcel benefited by such right-of-way, easement, covenant and restriction (but no other real property) and may not be transferred, assigned or encumbered except as an appurtenance to the benefitted Parcel. For the purposes of each such right-of-way, easement, covenant and restriction, the benefitted Parcel shall constitute the dominant estate and the burdened Parcel shall constitute the subservient estate.

7.2 Covenants Run with Land; Various Events.

7.2.1 Covenants Run with Land. Each right-of-way, easement, covenant and restriction contained in this Declaration (whether affirmative or negative in nature) shall (a) create an equitable servitude on the burdened Parcel in favor of the benefitted Parcel (but no other real property), (b) constitute a covenant running with the land, (c) benefit and bind every person having any fee, leasehold, Mortgage lien or other interest in any portion of the Parcel concerned to the extent that such portion is affected or bound by the right-of-way, easement, covenant or restriction in question, or to the extent that such right-of-way, easement, covenant or restriction is to be performed on such portion, and (d) benefit and bind any Owner whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means.

7.2.2 Transfer of Parcel. If any Owner transfers all or any portion of the Parcel owned by such Owner, the transferee shall automatically be deemed to have assumed and agreed to be personally bound by the covenants of such Owner contained in this Declaration, and if the transferring Owner has by such transfer transferred all of such Owner's ownership interest in such Parcel, such transferring Owner shall be released and discharged from all obligations under this Declaration that accrue after the date of recordation in the official records of the instrument effecting such transfer.

7.2.3 Effect of Breach. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration (but such limitation shall not affect any other right or remedy or limit any obligation that any Owner may have under this Declaration by reason of any such breach), or defeat or render invalid the lien of any Mortgage made in good faith and for value as to any Parcel, except as provided in Paragraph 8.

7.2.4 Identical Ownership. The ownership of any Parcel by the same person shall not result in the termination of this Declaration.

7.2.5 Priority of Declaration. The interests in and rights concerning any portion of the Parcels held by or vested in the undersigned or any other person on or after the date of this Declaration shall be subject and subordinate to the arrangement provided for in this Declaration, and the arrangement provided for in this Declaration 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 Declaration. The undersigned are the sole owners of the Easement Area.

8. Modification. This Declaration and any right-of-way, easement, covenant or restriction contained in this Declaration may not be terminated, extended, modified or amended without the consent of each Owner, and any such termination, extension, modification or amendment

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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.

9. Attorneys' Fees. If any Owner brings suit to enforce or interpret this Declaration or for damages on account of the breach of any provision of this Declaration, 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.

10. General Provisions. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This Declaration shall inure to the benefit of, and be binding on, each Owner and the heirs, personal representatives, successors and assigns of each Owner. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration 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 Declaration.

THE UNDERSIGNED have executed this Declaration on the respective dates set forth below, to be effective as of the date first set forth above.

NAMDAR LIMITED PARTNERSHIP

By Stan Rodman  
Its GENERAL PARTNER  
Date 4 28 95

~~DMRB, LLC  
By \_\_\_\_\_  
Its \_\_\_\_\_  
Date \_\_\_\_\_~~

~~SCSB, LLC  
By \_\_\_\_\_  
Its \_\_\_\_\_  
Date \_\_\_\_\_~~

~~BAMBERGER COMPANY  
By \_\_\_\_\_  
Its \_\_\_\_\_  
Date \_\_\_\_\_~~



State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of April, 1995, by Ivan Radman, the General Partner of Namdar



Lorie E. Springer  
Notary Public

My Commission Expires:

Residing at:

February 28, 1996

Salt Lake County, Utah

State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this \_\_\_ day of April, 1995, by \_\_\_\_\_, the \_\_\_\_\_ of DMRB, LLC.

(Seal)

\_\_\_\_\_  
Notary Public

My Commission Expires:

Residing at:

BK 7166Pg0094



State of Utah )  
County of Salt Lake ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of April, 1995, by \_\_\_\_\_, the \_\_\_\_\_ of Namdar Limited Partnership.

(Seal)

\_\_\_\_\_  
Notary Public

My Commission Expires:

Residing at:

State of Utah )  
County of Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of April, 1995, by David W. Bernolfo, the Managing Partner of DMRB, LLC.

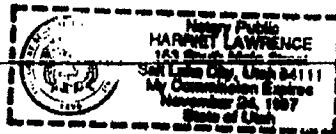
(Seal)

HARVEST LAWRENCE  
Notary Public

My Commission Expires:

Residing at:

November 24, 1997



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State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 28th day of April, 1995, by  
Stephen C. Bamberger, the ~~Manager~~ Manager of SCSB,  
LLC.

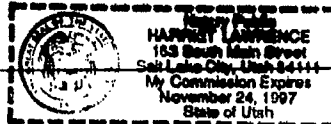
(Seal)

Hannet Lawrence  
Notary Public

My Commission Expires:

November 24, 1997

Residing at:



State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 28th day of April, 1995, by  
David W. Bernolfo, the President of  
Bamberger Company.

(Seal)

Hannet Lawrence  
Notary Public

My Commission Expires:

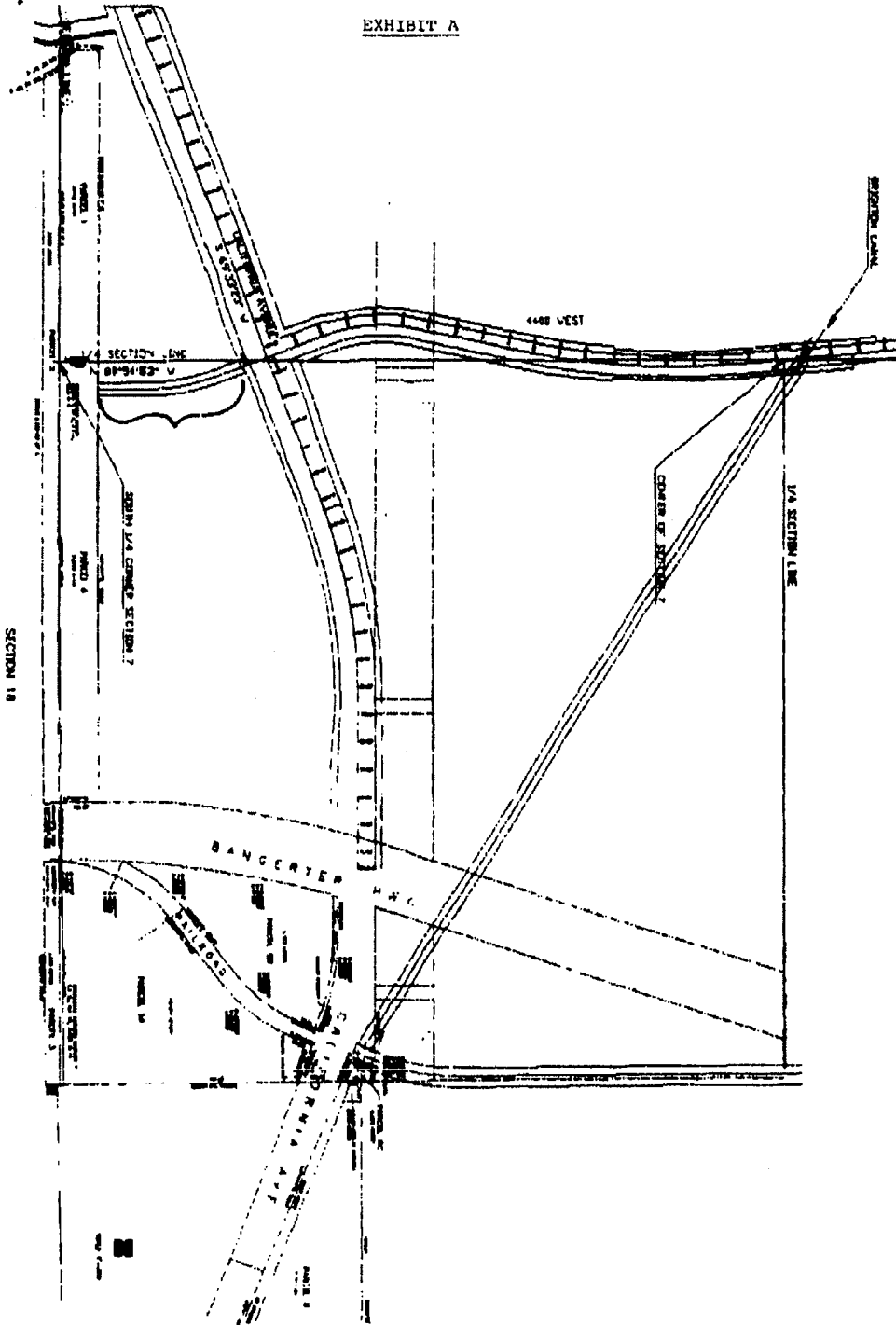
November 24, 1997

Residing at:



BK 716696096

EXHIBIT A



BK 7166PG0097