

AFTER RECORDING MAIL TO:
ROOKER, LARSEN, KIMBALL & PARR
185 South State, Suite 1300
Salt Lake City, Utah 84111
Attn: David Gee
35671-02

APPROVED

4125140

LEASE AGREEMENT TO OCCUPY
PUBLIC PROPERTY
AND NOTICE OF INCHOATE LIEN

AUG 12 1985

CITY RECORDER

AN AGREEMENT, made and entered into this _____ day of
AUG 12 1985, 1985, by and between SALT LAKE CITY
CORPORATION, a municipal corporation of the State of Utah,
hereinafter "City", and 215 SOUTH STATE ASSOCIATES, a Utah
limited partnership, whose principal place of business is 675
East 500 South, Salt Lake City, Utah 84102, hereinafter
"Lessee".

WITNESSETH:

WHEREAS, the Lessee is owner of certain real property
("Lessee's property") located at 215 South State Street, Salt
Lake City, Utah 84111, more particularly described as follows:

PARCEL 1:

Beginning at the northwest corner of Lot 5,
Block 56 Plat "A", Salt Lake City Survey, and
running thence East 231.00 feet; thence South
231.00 feet; thence West 66.00 feet; thence
South 99.00 feet; thence West 66.00 feet;
thence North 50.33 feet; thence West 99.00
feet; thence North 279.67 feet to the point
of beginning.

PARCEL 2:

Beginning at a point East 51.00 feet and
South 154.00 feet from the northwest corner
of Lot 7, Block 56 Plat "A", Salt Lake City
Survey; and running thence South 64.83 feet;

BOOK 5682 PAGE 831

thence West 51.00 feet; thence South 61.67 feet; thence West 81.00 feet; thence North 126.50 feet; thence East 132.00 feet to the point of beginning.

PARCEL 3:

Beginning at a point which lies East 66.00 feet and South 130.00 feet from the northwest corner of Lot 6, Block 56 Plat "A", Salt Lake City Survey; thence South 101.00 feet; thence East 2.00 feet; thence North 101.00 feet; thence West 2.00 feet to the point of beginning.

WHEREAS, the City is the owner of certain real property adjoining or abutting the above described property of the Lessee; and

WHEREAS, the Lessee proposes to encroach upon the City property and desires to continue utilizing the City's property as follows: Footings, storm drains and vaults; and

WHEREAS, the City is agreeable to the use of the City property provided that the Lessee complies with the mutual provisions and covenants contained herein.

NOW, THEREFORE, it is agreed by and between the City and the Lessee as follows:

1. GRANT OF LEASE FOR USE: City hereby leases to the Lessee the real property described in paragraph 2 for the following purposes: Footings, storm drains and vaults. Such use is non-exclusive as described in paragraph 9 and shall be subject to the terms and conditions stated hereinafter.

2. DESCRIPTION OF CITY'S REAL PROPERTY: The City's real property which Lessee may so utilize is located in Salt Lake County, State of Utah, and is more particularly described as follows and is hereafter referred to as the "Premises":

See Exhibit "B".

3. DURATION OF LEASE: City grants Lessee the right to use and occupy the property described in paragraph 2 for a period of Sixty (60) years from the date hereof, subject to the terms of this Agreement.

4. RENT:

(a) As consideration for the use of the City's property described herein and the privileges created herein, Lessee agrees to pay City, annually in advance, beginning in 1985, the sum of \$1,175.00. The initial payment is due and tendered concurrent herewith. Thereafter rent shall be due on or before the anniversary date hereof (hereafter "Due Date"), provided, however, that on each tenth Due Date, the rent may be adjusted to reflect the increase or decrease in the value of the rental property. Such adjustment shall be increased or decreased by the same

percentage as the percentage increase or decrease in the assessed value of the real property abutting the leased property, as determined by the Salt Lake County Assessor. The annual rental payment shall be increased by the same percentage increase, if any, in the Consumer Price Index herein specified for the preceding twelve month period ending the last day of May. The Consumer Price Index unit for this purpose shall be the "U.S. City Average Geographic Index" for the components including "all urban consumers" based on "all items" as published for said month by the Bureau of Labor Statistics of the federal government. If publication of said Consumer Price Index should cease, such annual percentage increase shall be determined by reference to such similar index as shall replace it, or as agreed upon by the parties.

(b) Annual rental payments shall be made to Salt Lake City Corporation and sent to City's Property Manager, 451 South 200 East, Room 320, Salt Lake City, Utah 84111, unless notified of change of address in writing by the City. All rental payments shall be made annually on or before the due date. A delinquency penalty charge of ten percent (10%) of the annual rental payment shall be assessed on any payment not

received by the City by the due date. Subject to the provisions of paragraph 12, failure to pay the annual payment and penalty charges within thirty (30) days of the due date shall constitute breach of the terms of this Agreement and constitute just cause for termination hereof prior to the expiration of the current term, and such unpaid amount shall bear interest until paid at the rate of an additional ten percent (10%) per annum until paid.

5. EXTENT OF WORK: Lessee agrees not to erect or install any other structure, other than stated above, or make any other improvement on the said City's property without the prior written consent of City. Lessee agrees to install and maintain said structure and improvements at its sole expense. Lessee shall provide within sixty (60) days from the execution of this lease, two copies of "as constructed" set of drawings to the City Engineer.

6. TRAFFIC CONTROL: Lessee agrees to maintain free passage for City and for City residents along the public way. Lessee further agrees to restore the surface and/or improvements of the Premises or public way disturbed hereunder and to repair any damage caused to the Premises or public way as a result of its use thereof.

7. REMOVE IMPROVEMENTS: Upon expiration of the terms of the Agreement, Lessee shall, at Lessee's sole expense and when requested in writing by City, remove, any improvements installed by Lessee on said Premises and sidewalk. Said removal shall be in accordance with all pertinent City, State or other regulatory requirements and shall be completed within 12 months from the date of the City's written request. Lessee shall restore the surface, subsurface and related improvements to their prior condition. Upon Lessee's failure to do so pursuant to the City's notice, Lessee agrees to pay City any and all costs of removing and/or restoring such improvements, and such cost shall create and constitute a lien upon "Lessee's property."

8. REPAIR OF DAMAGE: Lessee agrees, upon written notice, to repair any damage caused to the Premises and sidewalk and other public improvement as a result of Lessee's use or the existence or removal of Lessee's improvements thereon.

9. NONEXCLUSIVE NATURE - USE BY CITY: The lease and rights created herein are not exclusive. Lessee's use at all times is subject to any and all existing rights of way of all public utilities of any and every description, now located in, over or under the Premises. It is also subject to rights of entry for the purpose of maintaining, altering, repairing, rerouting, removing or replacing the same. At all times said Premises is subject to any use City may desire, not inconsistent

with Lessee's use. City shall not be liable to Lessee for any loss of use or damage to Lessee's improvements thereon.

10. MAINTAIN STRUCTURE: Lessee agrees to maintain, at its sole expense, the entire structure including the facilities and public improvements located on the Premises.

11. INSURANCE: Lessee agrees to obtain and maintain during the entire existence of this lease a comprehensive general liability policy of insurance covering the Premises with minimum coverage amounts as required by City from time to time, but for the present a minimum of \$1,000,000 per individual, \$1,000,000 per occurrence or accident, and \$1,000,000 property damages. Said insurance shall provide for a minimum of 30-day prior written notice of cancellation to the City but cancellation shall not relieve Lessee of this obligation to provide insurance. On all such coverage City shall be named as an additional insured, and Lessee agrees to furnish to City, concurrent herewith and as changes occur in policies or coverage, as needed during the course of this lease, appropriate certificates of insurance verifying such present and continued coverage. Lessee assumes at its expense the responsibility to (1) insure, construct, repair, and maintain the underground concrete foundation; and (2) to insure and indemnify City that its activities do not disturb the surface use of the sidewalk or other subsurface uses of and/or in the public right of way. Lessee assumes all risk of any damage

from such public use, including the drainage, settling, breakage, etc. that may occur to Lessee's subsurface improvements.

12. TERMINATION:

(a) This lease is made subject to termination by City for breach of default under any of the terms above. City may terminate said agreement for breach or default if after thirty (30) days written notice to Lessee the violation(s) remain(s) uncured. Notice shall be given at Lessee's last address known to the City with a copy sent by certified mail in care of the above address of the Lessee's property. This lease shall not be terminated, however, so long as lessee is diligently pursuing the cure or is prevented from curing the default for reasons of force majeure. Upon written request by the City, Lessee shall be responsible to remove any improvements from said Premises and will restore the surface and subsurface to its prior condition. Lessee agrees that City shall not be liable for any loss, cost, expense or inconvenience suffered by Lessee as a result of such termination and restoration. Lessee agrees to pay City any and all costs, including attorney's fees, of removing said improvements and collecting therefor in the event of failure of Lessee to remove them as requested within

the period specified and, upon Lessee's failure to pay such costs, they shall create and constitute a lien upon "Lessee's property."

(b) This lease is further subject to termination by the City in the event that the City reasonably determines that such leased property is necessary for any of the following purposes:

1. Construction or operation of facilities relating to the conveyance of water or sewage;

2. Construction or operation of facilities relating to fire protection;

3. Construction or operation of streets or facilities relating to mass public transportation;

4. Construction or operation of facilities relating to City owned or operated communications;
or

5. Exercise by any third party, holding a franchise from the City, of its right to locate facilities related to the operation of said franchise.

(c) Termination of the lease shall take place upon the expiration of 30 days from the date of written notice thereof being mailed, first class and postage prepaid, to Lessee. Lessee shall, within 12 months

from the date of termination remove the improvements installed by Lessee on said Premises to conform to the needs of the City; provided, however, if another location is equally suitable for the needs of the City, in the judgment of the City, the City shall not terminate this lease; and provided further, if an equally suitable site requires the expenditure of funds in excess of those which would be expended on the Premises, Lessee shall have the option of allowing the lease to terminate or provide for, in a manner acceptable to the City, the discharge of any increased cost associated with the non-leased site.

13. INDEMNIFICATION: Lessee agrees to indemnify, save harmless and defend City, its agents and employees, from all claims, mechanics liens, loss, demands, damages, actions, cost, expense and charges of any and every kind, including attorney's fees, arising out of or by reason of Lessee's use of said Premises or any activities conducted thereon by Lessee, its agents, employees, invitees or trespassers.

14. COVENANT RUNNING WITH THE LESSEE'S REAL PROPERTY: City and Lessee agree that this Agreement shall run with the Lessee's real property described on page 1 above and shall be binding upon the heirs, executors, administrators, assigns, etc. of said Lessee and upon the successors and assigns of the City,

as much so as if each and all of them had been specifically mentioned. This Agreement may be transferred and assigned only with the City's prior written consent which will not be unreasonably withheld. City agrees to either approve or disapprove a proposed assignee within thirty (30) days from submission to the Mayor, provided the assignee concurrently submits a letter of commitment for required insurance coverage and such other information as the City may reasonably require to evaluate the assignee's ability to perform under this Agreement. City shall have upon default of the terms of this lease a lien upon Lessee's property herein described for the purpose and to the extent necessary to cure the default. If, at the time of any default hereunder, the lienable interest in said property is insufficient based upon City's engineering study to cure the default, then City may require the insufficiency to be covered by a performance bond. At the time of any assignment, and approval thereof by the City under this paragraph, City shall provide to assignor a written release of liability in a form as provided in Exhibit "A" attached hereto; provided however, as a condition of approving such assignment, the City may require an inchoate lien effective upon the date hereof upon Lessee's property herein described for the purpose and to the extent reasonably necessary to cure any potential default or if there is insufficient lienable interest in said property based upon the City's engineering

study to cure the default, then City may require the insufficiency to be covered by a performance bond. Any costs associated with the said engineering study shall be discharged by assignor.

15. RELEASE OF COVENANT: Lessee and City agree that on notice of termination or revocation by City, or thereafter when requested by Lessee, and after the improvements have been removed and the property restored, the City shall file a release of encumbrance, if required in writing by Lessee, with the County Recorder.

16. DESIGNATED REPRESENTATIVE - NOTICE: Any notice(s) required or permitted to be given pursuant to this Agreement may be personally served or may be served by certified mail, return receipt requested, to the following addresses:

City:

David A. Hales
Property Manager
451 South 200 East, Room 320
Salt Lake City, Utah 84111

Courtesy Copy to:

Salt Lake City Attorney's Office
100 City & County Building
Salt Lake City, Utah 84111

City Recorder
311 City & County Building
Salt Lake City, Utah 84111

Lessee:

BOOK 5682 PAGE 842

19. AMENDMENT: This Agreement represents the agreement between the parties. No term of this Agreement shall be modified or affected without written approval of the contracting parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day herein first above written.

SALT LAKE CITY CORPORATION, a
municipal corporation of the
State of Utah

ATTEST CITY OF UTAH
Kathryn Marshall
CITY RECORDER

By: *Palmer DePaulis*
MAYOR

"LESSEE"

APPROVED

AUG 12 1985

CITY RECORDER

215 SOUTH STATE ASSOCIATES,
a Utah Limited Partnership,
By: Boyer-Gardner Properties
Partnership No. 2, a General
Partnership

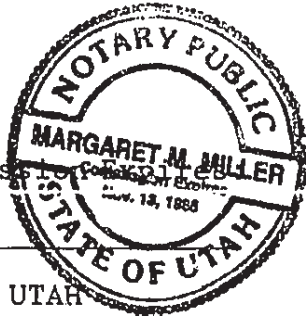
By: *H. Roger Boyer*
H. ROGER BOYER

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

On the ___ day of AUG 12 1985, 1985, personally appeared before me PALMER A. DePAULIS and KATHRYN MARSHALL, who being by me duly sworn, did say that they are the Mayor and City Recorder, respectively, of SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, and said persons

5682 843

acknowledged to me that said corporation executed the foregoing document.



My Commission Expires

Margaret M. Miller
NOTARY PUBLIC
Residing at: SJC, Utah

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

On the 9th day of August, 1985,
personally appeared before me H. ROGER BOYER, as General Partner
of Boyer-Gardner Properties Partnership No. 2, a General
Partnership, as General Partner of 215 South State Associates, a
Utah Limited Partnership, and said person acknowledged to me that
said limited partnership executed the foregoing document.

Nancy M. Wetherell
NOTARY PUBLIC
Residing at: Salt Lake County, Utah

My Commission Expires:

NOTARY PUBLIC
March 5, 1988

APPROVED

AUG 12 1985

CITY RECORDER

CONSENT TO ASSIGNMENT AND RELEASE

CONSENT AND ASSIGNMENT, made and entered into this
_____ day of AUG 12 1985, _____, by and between SALT LAKE
CITY CORPORATION, a municipal corporation of the State of Utah
(hereinafter "City), and 215 South State Associates, a Utah
limited partnership (hereinafter "Assignor").

W I T N E S S E T H :

1. The City is the lessor and Assignor is the lessee
under that certain Lease Agreement to Occupy Public Property and
Notice of Inchoate Lien dated AUG 12 1985
(hereinafter "Lease Agreement").

2. Pursuant to said Lease Agreement, the lessee's
rights and obligations may be transferred and assigned only with
the City's prior written consent.

3. Assignor now desires to assign its rights and
obligations under the Lease Agreement to State of California
Public Employees Retirement System ("CALPERS").

4. Assignor and CALPERS have provided the City all
information required by the City pursuant to the Lease Agreement.

5. City has determined that the information provided
by Assignor and CALPERS is sufficient and that there is no
present default under the Lease Agreement.

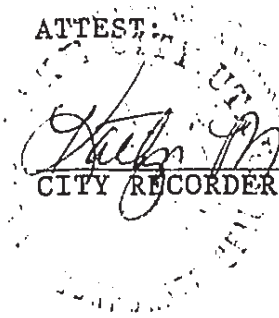
FILED
AUG 12 1985
CITY RECORDER

6. City approves CALPERS as the assignee under the Lease Agreement and releases Assignor from liability under the Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah

ATTEST:



Kathryn Marshall
CITY RECORDER

By: *Palmer A. DePaulis*
MAYOR

"ASSIGNOR"

215 SOUTH STATE ASSOCIATES,
APPROVED a Utah Limited Partnership,
By: Boyer-Gardner Properties
Partnership No. 2, a General
Partnership

AUG 12 1985

CITY RECORDER

By: *H. Roger Boyer*
H. ROGER BOYER

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

On the _____ day of AUG 12 1985, 1985, personally appeared before me PALMER A. DePAULIS and KATHRYN MARSHALL, who being by me duly sworn, did say that they are the Mayor and City Recorder, respectively, of SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, and said persons

BOOK 5682 PAGE 846

EXHIBIT "B"

PARCEL NO. 1

Beginning at a point 60.33 feet North of the S.W. Corner of Lot 5, Block 56, Plat "A", S.L.C. Survey and running thence West 13 feet; thence North 12 feet; thence East 13 feet; thence South 12 feet to the point of beginning. Said area contains 156.00 square feet more or less.

PARCEL NO. 2

Beginning at a point 186.50 feet, N. 0°02'30" E. of the S.W. Corner of Lot 5, Block 56, Plat "A", S.L.C. Survey, and running thence West 2.08 feet; thence N. 0°02'30" E. 139.125 feet; thence West .875 feet; thence N. 0°02'30" E., 5.813 feet; thence running N. 89°58'19" E. 39.583 feet along the south side of 200 South Street; thence North 2.125 feet; thence N. 89°58'19" E., 29.5 feet; thence South .708 feet; thence N. 89°58'19" E., 165.42 feet to the west side of Floral Street; thence South 2.875 feet; thence S. 89°58'19" W. 231.000 feet; thence S. 0°02'30" W., 143.875 feet to the point of beginning. Said area contains 941.20 square feet, more or less.

230

RECORDED FILE NO.
DATE
REBECCA GRAY

AUG 16 1 49 PM '85

SALT LAKE COUNTY,
UTAH