

125648

WHEN RECORDED, PLEASE RETURN TO:

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Parry Murray & Ward
1270 Eagle Gate Tower
Salt Lake City, Utah 84111

**GRANT OF EASEMENT
AND
DECLARATION
OF
COVENANTS AND RESTRICTIONS**

THIS DECLARATION (this "Declaration") is executed as of the 10th day of July, 1996, by the undersigned.

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

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

D-702-1 1.1 **"Hunt Property"** means the real property located in Wayne County, Utah, and described on Exhibit "A" attached hereto.

D-702-2 1.2 **"Simmons Property"** means the real property located in Wayne County, Utah, and described on Exhibit "B" attached hereto.

D-702-3 1.3 **"Hebertson Property"** means the real property located in Wayne County, Utah, and described on Exhibit "C" attached hereto.

1.4 **"Easement Parcel"** means the real property located in Wayne County, Utah and described on Exhibit "D" hereto.

1.5 **"Official records"** means the official records of the Wayne County, State of Utah.

1.6 **"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 of the parcels of property described in paragraphs 1.1, 1.2, or 1.3 above (a "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.

2. Access Right-of-Way and Easement. The Hunt Property is hereby granted, and shall have appurtenant thereto and shall be benefitted by, and the Simmons Property shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement (the "Easement") for utilities and pedestrian and vehicular ingress and egress on, over and across the Easement Parcel. The Easement is only granted, at this time, as to the center 25 feet of the Easement Parcel, provided that if governmental authorities require a wider easement in order to allow for use by Owners of the Hunt Parcel in accordance with the terms of this Declaration, an easement shall be granted for the width required by governmental authorities, up to the entire Easement Parcel. Use of the Easement shall be contingent on compliance by the Owners of the Hunt Property with the provisions of this Declaration. The Easement shall be limited to use for ingress, egress and utilities to and for the benefit of the Owners of the Hunt Property, their guests and invitees, to such extent as may be necessary or customary for the use specified in paragraph 6. Notwithstanding that Joan K. Hebertson has a separate easement for ingress and egress to the Hebertson Property, Simmons hereby also grants to Hebertson, to benefit and be appurtenant to the Hebertsons property, a right to use the Easement for pedestrian and vehicular ingress and egress on, over and across the Easement Parcel to the Hebertson Property.

3. Survey of Easement. Subsequent to execution of the Declaration, the Hunts and Simmons shall have the final location of the Easement Parcel surveyed, which expense shall be shared one-half each. This Declaration shall be amended, if necessary, to reflect the exact location of the Easement Parcel.

4. Use of Easement. The Easement may be gated at the public roadway by Simmons or any other Owner, at the expense of Simmons or the Owner desiring a gate. Any gates erected at the entrance to the public roadway shall be kept closed, but shall not be locked. All utilities placed within the easement shall be underground only. No overhead utility lines shall be utilized within the Easement Parcel. The Easement shall be maintained as a private roadway.

5. Maintenance of Easement. Costs of maintaining the surface of the Easement Parcel from the public roadway to the Hebertson Property shall be paid one-third (1/3) each by the Owners of the Hebertson Property, Simmons Property, and Hunt Property. Costs of maintaining the surface from that point to the Hunt Property will be paid by the Owners of the Hunt Property, provided that,

If an Owner of the Simmons Property constructs a building which is accessed by means of the Easement Parcel, beyond the Hebertson Property, the Owner of the Simmons Property shall share maintenance costs of the Easement Parcel to that point. Costs of installation and any maintenance of utility lines will be paid by the Owners using those lines. Once utility lines are installed by an Owner, if another Owner desires to use those utility lines for the benefit of their property, they shall reimburse the Owner who installed the lines on a fair and proportionate basis. In the event that Simmons increases the intensity of use of the Simmons Property for commercial, residential or agricultural purposes, so that greater use of the access on the Easement Parcel is made by Owners or tenants of the Simmons Property than Owners or tenants of the Hunt Property, the proportion of maintenance costs paid by Simmons shall be proportionately increased.

6. Restriction on Use. For fifty (50) years from and after the date of this Declaration, the Hunt Property shall be used solely for residential use or for farms and/or ranches. There shall be, on the Hunt Property, a maximum of four single family residential building lots. The single family lots shall not be restricted to the number and size of structures to be placed thereon, provided that only one family regularly resides on the property and the structures are constructed and primarily used for that family. A small guest house associated with a larger single family dwelling which is not used for commercial rental purposes shall not be considered a violation of this provision.

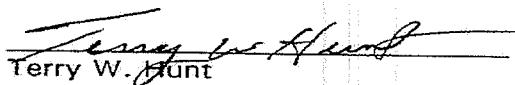
7. Termination of Easement. In the event that the Owners of the Hunt Property obtain alternate access to the Hunt Property, across real property other than the Simmons Property, the use restrictions of this Declaration may be terminated upon the execution and recording of a document which validly relinquishes all rights of all Owners of the Hunt Property to the Easement.

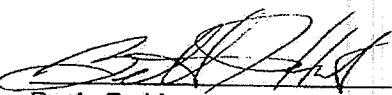
8. Right to Enforce. The restrictions herein set forth at paragraph 6 shall run with the land and bind the Owners, their heirs, successors and assigns, until the expiration of the fifty (50) years referred to in Paragraph 2, at which date they shall terminate and end. The restrictions of paragraph 6 on use or maintenance of the easement are made for the sole benefit of the Owners of the Hunt Parcel, the Hebertson Parcel, and the Simmons Parcel, their heirs, successors, and assigns and no other entity shall have the right to enforce these restrictions. No restriction herein set forth shall be personally binding on any corporation, person or persons, except in respect to breaches committed during its, his, her, or their seisin of or title to said land. The Owner or owners of the Hunt Parcel, the Hebertson Parcel, and the Simmons Parcel shall have the right to sue for and obtain an injunction prohibitive or mandatory to prevent the breach of or to enforce the observance of the restrictions above set forth in addition to ordinary legal actions for damages.

9. 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, except as set forth in Paragraph 7 above, and any such termination, extension, modification or amendment 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.

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 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 provisions or the remaining provisions of this Declaration.

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

By: 
Terry W. Hunt

By: 
Beth P. Hunt

By: 
Joan K. Hebertson

By: 
Stephen R. Simmons

STATE OF UTAH)
COUNTY OF SALT LAKE) ss

On the 15th day of July, 1996, personally appeared before me Terry W. Hunt who acknowledged to me that he executed the same.

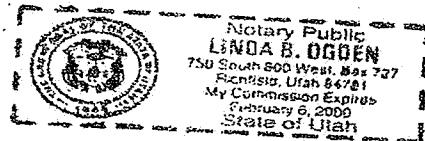


Linda B. Ogden
NOTARY PUBLIC

STATE OF UTAH)
COUNTY OF SALT LAKE) ss

On the 15th day of July, 1996, personally appeared before me Beth P. Hunt who acknowledged to me that she executed the same.

[S E A L]



Linda B. Ogden
NOTARY PUBLIC

STATE OF UTAH)
COUNTY OF SALT LAKE) ss

On the 10th day of July, 1996, personally appeared before me Joan K. Hebertson who acknowledged to me that she executed the same.

[S E A L]

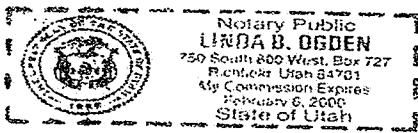


C. E. Updike
NOTARY PUBLIC

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

On the 15th day of July, 1996, personally appeared before me Stephen R. Simmons who acknowledged to me that he executed the same.

[S E A L]



Linda B. Ogden
NOTARY PUBLIC

simmons1c&r001.doc

EXHIBIT "A"
PLAINTIFFS' PROPERTY

LEGAL DESCRIPTION

Beginning at the North East Corner of the
North West Quarter of Section 14, Township 29,
Range 4 East, SLM. Thence South 400 ft.,
South Westerly 1200 ft. along the North side
of the old river channel, Thence North 500
ft., Thence East 1200 ft., to Place of
Beginning, containing 12.38 acres, more or
less.

EXHIBIT "B"
SIMMONS PROPERTY

LEGAL DESCRIPTION

Parcel No. 1: Commencing at the Northeast Corner of the Southeast Quarter of the Southwest Quarter of Section 11, Township 29 South, Range 4 East, Salt Lake Base and Meridian; running thence West 40 rods; thence South 40 rods; thence West 40 rods; thence South 40 rods; thence East 1150. feet; thence North 436 feet; thence East 500 feet; thence North 884 feet; thence West 330 feet to place of beginning.

Parcel NO. 2: Commencing at the Northeast Corner of the Southeast Quarter of the Southwest Quarter of Section 11, Township 29 South, Range 4 East, Salt Lake Base & Meridian and running thence East 1,225 feet; thence running Northwesterly along highway 1,270 feet, more or less, to a point North of the point of beginning; thence running South 245 feet, more or less, to the point of beginning.

SUBJECT TO a non-exclusive easement and right-of-way for rights of ingress, egress, and utilities, over and across the existing roadway, beginning at the intersection of said existing roadway and Utah State Highway 24, being approximately 90 feet East and 240 feet North of the Northwest Corner of the Southwest Quarter of the Southeast Quarter of said Section 11, Township 29 South, Range 4 East, Salt Lake Base and Meridian, and running in a Southerly direction to the South line of said Section 11.

Less: Parcel deeded to Deborah Sparks, Book 157, Page 441.

EXHIBIT "C"

EASEMENT PARCEL

LEGAL DESCRIPTION

Description for roadway easement: 25 feet wide with the easterly boundary described as follows:

Beginning at the Easterly boundary of the intersection of the existing roadway and Utah State Highway 24, being approximately 90 feet East and 240 feet North of the Northwest Corner of the Southwest Quarter of the Southeast Quarter of Section 11, Township 29 South, Range 4 East, Salt Lake Base and Meridian, and running thence in a Southerly direction 1124 feet, more or less, to the adjoining property boundary; thence West 260 feet to the aforesaid property corner; thence South 436 feet along property boundary to the South line of said Section 11.

This roadway easement is only granted as to the total width of 25 feet, provided that if governmental authorities require a wider easement in order to allow for use by Owners of the Hunt Property in accordance with the terms of the foregoing Grant of Easement and Declaration of Covenants and Restrictions Declaration, dated the 10th day of July, 1996, an easement shall be granted for the width required by governmental authorities, up to a total width of 35 feet wide, with the easterly boundary of such easement being the line described above.

EXHIBIT "D"
HEBERTSON PROPERTY

LEGAL DESCRIPTION

Parcel 1: Beginning at the Southwest Corner of the Southeast Quarter of Section 11, Township 29 South, Range 4 East, Salt Lake Base and Meridian, and running thence West 170 feet; thence North 436 feet; thence East 500 feet; thence South 436 feet; thence West 330 feet to the point of beginning.

Parcel 2: TOGETHER WITH a non-exclusive easement and right-of-way for rights of ingress, egress, and utilities, over and across the existing roadway, beginning at the intersection of said existing roadway and Utah State Highway 24, being approximately 90 feet East and 240 feet North of the Northwest corner of the Southwest Quarter of the Southeast Quarter of said Section 11, Township 29 South, Range 4 East, Salt Lake Base and Meridian, and running in a Southerly direction to the South line of said Section 11.

SUBJECT, to easements, rights-of-way, and restrictions of records, or enforceable in law and equity.