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**THIS INSTRUMENT PREPARED BY
AND RECORD AND RETURN TO:**

Stephen M. Tumblin, Esq.
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
1000 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101-3650

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JAMES ASHAUER, DAVIS CNTY RECORDER
1998 AUG 28 1:25 PM FEE 37.00 DEP JTA
REC'D FOR TUMBLIN, STEPHEN M.

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**DECLARATION OF RECIPROCAL EASEMENTS AND
COVENANTS**

THIS DECLARATION OF RECIPROCAL EASEMENTS AND COVENANTS (the "Declaration") is made this ~~19th~~ day of ~~June~~^{MAY}, 1998, by **BARTON CREEK PARTNERS, L.L.C.**, a Utah limited liability company ("Barton Creek"), and **GUARDIAN LIMITED PARTNERSHIP NO. 1**, an Idaho limited partnership ("Guardian"). Barton Creek and Guardian sometimes are collectively referred to herein as "Declarants."

RECITALS:

A. Barton Creek is the fee simple owner of certain real property located in Davis County, Utah, as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Barton Creek Property"). Guardian is the fee simple owner of certain real property located in Davis County, Utah, adjacent to the Barton Creek Property, as more particularly described on Exhibit "B" attached hereto and incorporated herein by reference (the "Guardian Property"). The Barton Creek Property and the Guardian Property collectively are referred to as the "Property."

B. Barton Creek and Guardian intend to develop the Barton Creek Property and the Guardian Property respectively as an office building, a hotel and a restaurant that together shall be known as the "Clearwater Center" (the "Clearwater Center"), substantially in accordance with the Site Plan as shown on Exhibit "C" attached hereto and incorporated herein by reference (the "Site Plan").

C. Declarants desire to subject the Property to certain reciprocal easements and restrictive covenants as hereinafter set forth.

NOW, THEREFORE, Declarants hereby declare as follows:

1. **DECLARATION.** The Property will be held, sold and conveyed subject to the following easements, covenants and restrictions which are for the purpose of enhancing the value of the Property as an integrated commercial community and are intended to create mutual equitable servitudes upon each of the Parcels, as that term is defined in Section 3 below, in favor of the other Parcel, to create reciprocal rights among the respective Owners for use by such Owners and their Tenants, as such terms are defined in Section 3 below, and to create privity of contract and an estate among Declarants, the grantees of the Parcels and their respective successors, successors in title, and assigns.

2. **BENEFITS AND BURDENS.** Every person or entity who is an Owner of either Parcel agrees to all of the terms and provisions of this Declaration and will be entitled to its benefits and subject to its burdens. The Property is subject to, benefitted and burdened by all terms and conditions hereof which are hereby deemed to be covenants running with the land and which will run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and will inure to the benefit of each Owner thereof.

3. **DEFINITIONS.** In addition to the defined terms otherwise set forth in this Declaration, the capitalized terms set forth below will have the following meanings:

3.1 "**Common Areas**" will mean all areas within the Property, including, without limitation, sidewalks, Parking Areas, Roadways, loading areas, medians, green spaces, landscaping and walkways, excluding, however, buildings and fixtures and other similar improvements associated with the operation of a business on a Parcel.

3.2 "**Hazardous Substances**" will mean any and all materials or substances which are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" under any applicable Legal Requirements including, without limitation, asbestos, polychlorobiphenyls, chlorofluorocarbons, petroleum and any substance which requires a permit or special handling in its use, storage, treatment or disposal.

3.3 "**Improvements**" will mean buildings, structures, fixtures and other similar-type improvements, now or hereafter located on any portion of any Parcel, and all additions, alterations, restorations and repairs to, and replacements of, any of the foregoing; excluding, however, all improvements located within the interior of any building located on any portion of any Parcel.

3.4 "**Legal Requirements**" will mean any and all applicable federal, state, county and municipal laws, ordinances, regulations, codes, rules or orders including without limitation, requirements relating to minimum lot size, handicapped and regular parking, building setbacks, fire codes, lot coverage ratios, frontage, site plan approval, access to public right of way, and any other environmental protection, land use, and zoning laws and regulations.

3.5 "**Owner**" will mean and refer to the owner of fee simple title to a Parcel or any portion thereof (whether it be one or more persons, firms, associations, corporations or other legal entities), its heirs, personal representatives, successors in title, successors and assigns, but will not mean or refer to a mortgagee, its successors or assigns, unless or until such mortgagee has acquired title pursuant to a foreclosure or deed in lieu thereof.

3.6 "**Parcel**" will mean each of the Barton Creek Property and the Guardian Property or any portion thereof.

3.7 "**Parking Areas**" will mean those portions of the Common Areas designated as regular or handicapped parking areas as shown on the Site Plan.

3.8 "**Property**" will mean the Barton Creek Property and the Guardian Property, which constitute all of the Parcels.

3.9 "**Roadways**" will mean all streets, roads, service lanes, fire lanes, loading dock areas, aisles and driveways now or hereafter located on or within the Property, including any relocation or reconfiguring of the same.

3.10 "**Tenant**" will mean any tenant, lessee, or sublessee of a Parcel, its heirs, personal representatives, successors in title, successors and assigns.

4. **RECIPROCAL EASEMENTS.** Declarants hereby declare and reserve unto and in favor of themselves and each Owner, for use by each Owner and its Tenants, mortgagees, employees, concessionaires, agents, patrons, licensees and invitees the following reciprocal easements:

4.1 **Roadways.** A non-exclusive, perpetual easement for pedestrian and vehicular ingress and egress, including, without limitation, pedestrian and vehicular access between the Parcels and public rights-of-way adjoining the Property, over and across the Roadways.

4.2 **Drainage.** A non-exclusive, perpetual easement for surface flow drainage of storm water runoff originating from any Parcel over, on and across the Roadways and the Parking Areas located on any other Parcel, as now existing or hereafter located. In the event the Roadways and/or the Parking Areas located on any Parcel are relocated or reconfigured, the Owner or Owners, as the case may be, so relocating or reconfiguring such Roadways and/or Parking Areas shall relocate any drainage facilities at its or their sole expense as necessary to ensure that the flow of storm water and other runoff over, on and across such Roadways and/or Parking Areas shall continue as existed prior to the relocation or reconfiguration of such Roadways and/or Parking Areas.

4.3 **Utilities.** A non-exclusive, perpetual easement for the purpose of construction, installation, operation, maintenance, connection, repair, relocation and removal of underground water and sewer, electricity, telephone, natural gas and cable television lines and facilities, under the surface of the Roadways and Parking Areas located on the Property (the "**Utility Easement Area**"), for the purpose of providing utility service to Improvements located on any portion of the Property. Such easement will be for the purposes of providing a right to construct, install, erect, maintain, use and connect to utilities, wires, cables, conduits, sanitary sewers, water mains, gas, sewer, electric and water lines, irrigation lines and equipment, other public conveniences or utilities under, through, and across the Utility Easement Area and will include the right to enter upon the surface of any portion of the Property over the Utility Easement Area to implement the foregoing rights. After installation, construction, reconstruction, repair, replacement or removal of any such underground utility lines or facilities, the Owner(s) of the portion of the Property benefitting from the use of such underground utility lines or facilities will, as soon as reasonably possible, perform all work necessary to repair, replace and restore the earth, pavement, landscaping and planting and surface improvements within the Utility Easement Area, to the condition existing prior to excavation; provided, however (i) all work under Section 4.3 shall be performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business in the Property and pursuant to timetables which will cause a minimum of delay in completing the work; (ii) any and all damage to the Utility Easement Area shall be promptly repaired and the Utility Easement Area shall be restored to the condition that existed prior to the performance of such work; and (iii) the Owner(s) responsible hereunder for such reconstruction or repair of any portion of the Utility Easement Area shall indemnify and hold every other Owner and Tenant of the Property harmless from and against all liens, claims, liabilities, costs, and expenses incurred by such other Owner or Tenant as a result of such reconstruction or repair of any portion of the Utility Easement Area.

4.4 **Parking Easement: Parking Standards.** A non-exclusive, perpetual easement for the parking of passenger motor vehicles and motorcycles upon the Parking Areas in designated parking spaces located on the Property. Such easement shall include the right of pedestrian ingress and egress over, on, and

across the Parking Areas located on the Property. The parking spaces on the Barton Creek Property may be used by the Owner of the Guardian Property or any portion thereof to meet any parking requirements for the Guardian Property if permitted by applicable Legal Requirements, and the parking spaces on the Guardian Property may be used by the Owner of the Barton Creek Property or any portion thereof to meet any parking requirements for the Barton Creek Property if permitted by applicable Legal Requirements. The parking spaces on either Parcel shall not be reduced below that required by the Site Plan without the prior written consent of the Owner of the other Parcel. The Owner of each Parcel shall, upon and at all times following substantial completion of Improvements on such Parcel, provide a surfaced parking area with proper pavement markings and traffic directional signage, substantially as shown on the Site Plan, subject to relocation as may be permitted under this Declaration. In developing and using any Parcel, the Owner of such Parcel shall continuously provide and maintain that number of marked parking spaces necessary to achieve entirely within the boundaries of the such Parcel the parking ratio required by applicable Legal Requirements relative to the then current use of such Parcel, as such use may exist from time to time. The Owners of either Parcel shall not seek, nor permit any other person or entity to seek, a variance or waiver from the minimum parking requirements applicable to the Improvements located on the Parcels pursuant to such Legal Requirements without the prior written consent of the Owner of the other Parcel. No parking spaces located outside the boundaries of any Parcel shall be included in determining compliance of such Parcel with the foregoing minimum parking requirements.

4.5 **Sidewalk Easements.** Each Owner and Tenant, its employees, agents, suppliers, licensees, customers, and invitees, shall have the non-exclusive right of ingress and egress for pedestrian access on, over and across those portions of the Common Areas improved with sidewalks, curbs and ramps.

5. **USE AND ALTERATION OF ROADWAYS AND PARKING AREAS.** Each Owner and Tenant, by its acceptance of title to or other possessory interest in any Parcel, covenants that it will comply with the following conditions with respect to the Roadways and Parking Areas located on each Parcel:

5.1 **Intended Use.** No Owner or Tenant, nor any persons claiming under or through them, will use the Roadways or Parking Areas for any other purpose than those purposes contemplated by the foregoing easements.

5.2 **Barriers.** No Owner or Tenant, nor any persons claiming under or through them, will construct, erect or maintain any barriers, walls, curbs, or blockades on, over or about the Roadways or Parking Areas that would interfere with the rights granted pursuant to the foregoing easements.

5.3 **Employee Limitation.** Notwithstanding the easement granted in Section 4.4 above, the employees of the Owner or any Tenant of any Parcel, or any persons claiming under or through them, shall use only the Parking Areas located on such Parcel and shall not use the Parking Areas located on any other Parcel.

5.4 **Permissible Alteration.** Notwithstanding the easements granted herein, the Owner of each Parcel will have the right, subject to the restrictions set forth herein and in Sections 4.1 and 4.4 above, to construct, change, modify, alter, remove, replace or relocate any Roadways or Parking Areas within its Parcel as such Owner deems necessary and/or desirable; provided that all of the foregoing will be in compliance with applicable Legal Requirements, and further provided that the reciprocal easements granted in Sections 4.1 and 4.4 are relocated over the new Roadways or Parking Areas, as the case may be, and are not obstructed from use as contemplated under such easements.

6. **PARCEL MAINTENANCE.**

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6.1 **Obligations of Owner of Barton Creek Properties.** The Owner of the Barton Creek Property (the "**Barton Creek Owner**"), by its acceptance of title to or other possessory interest in the Barton Creek Property, shall have the right, but not the obligation, to maintain the Common Areas located on the Property in a clean, safe, attractive and functional condition consistent with the operation of a first class Property, and shall have the right, but not the obligation, to make any necessary repairs or replacements (including, without limitation, maintenance, repair, restriping or repaving of Common Areas, Parking Areas, and of the Roadways now or hereafter located on or within such Parcel) to comply with the foregoing requirements (collectively, its "**Maintenance and Repair Obligations**"). Notwithstanding the foregoing, the Owner of any other Parcel shall have the right, but not the obligation, to perform any such necessary maintenance of any Parcel in the event the Barton Creek Owner shall fail to maintain such Parcel in accordance with the provisions of this Section 6.

6.2 **Property Management.** In exercising its right to perform the Maintenance and Repair Obligations, the Barton Creek Owner, upon the written consent of the Owner of each other Parcel, may engage a property management firm to perform any or all of the Maintenance and Repair Obligations associated with the Property.

6.3 **Pro Rata Contribution Based on Parcel Size.** The actual costs and expenses incurred by the Barton Creek Owner in the performance of its Maintenance and Repair Obligations, or by any party entitled to perform such obligations upon failure of the Barton Creek Owner to do so (in either case, a "**Performing Party**"), shall be borne by the Owners of the Parcels, in proportion to the relative size of the Common Areas, measured in square feet, of each of the Parcels; provided, however, that the actual costs and expenses of maintenance and repair projects that are unique to a specific Parcel shall be borne by the Owner of that specific Parcel. Costs and expenses will be evidenced by receipts, invoices, statements or work orders showing the materials provided and work performed, and the cost thereof. A Performing Party may add to such costs and expenses a reasonable premium or service charge.

6.4 **Assessment of Costs and Expenses.** Upon determination of the actual cost and expense of an obligation for which a Performing Party is entitled to allocate, and determination of the allocated share of such cost and expense chargeable to the parties responsible therefor, as provided in Section 6.3 above, the Performing Party may deliver to the other Owner(s) (each, an "**Assessed Party**"), a statement for the allocated share of such costs and expenses due from such Assessed Party to the Performing Party. Such statement shall be accompanied by evidence of such cost and expense and an explanation of the method of calculating the allocation. Each Assessed Party shall pay to the Performing Party the amount of such statement within 30 days after the Assessed Party's receipt thereof. Failure of an Assessed Party to timely pay such statement will entitle the Performing Party to cause the amount of such unpaid statement to accrue interest from the due date thereof until paid at a rate of 18% per annum, and to take appropriate action at law or in equity against the Assessed Party to collect the amount of such unpaid statement and accrued interest thereon, together with reasonable attorneys' and paralegals' fees and costs incurred in collection, at trial, on appeal or in bankruptcy proceedings.

6.5 **Certification of Cost Contributions.** Upon the request of any person having an ownership or executory interest in any Parcel in connection with the proposed sale or mortgaging of such Parcel, the Performing Party will promptly provide a written certification of the amounts, if any, then due from the Assessed Party relating to cost contributions due and payable under this Section 6 as to such Parcel.

6.6 **Continuing Nature of Contributions.** The obligation of each Assessed Party to pay its share of cost contributions as provided in this Section 6 will run with title to the Parcel owned by such

Assessed Party, and will be an obligation of any successor in title to such Parcel. Notwithstanding the continuing nature of such obligations, no conveyance of such Parcel by an Assessed Party will relieve such Assessed Party of its obligations as an Assessed Party to pay any amounts due and unpaid as of the date of such conveyance, which payment obligation will be an obligation of both the transferor and transferee in such conveyance. The foregoing provisions shall not apply to any first mortgagee that may succeed to title to the Barton Creek Property or the Guardian Property or any part thereof, by foreclosure or deed in lieu of foreclosure, but shall apply to any subsequent purchaser of all or any part of the Barton Creek Property or the Guardian Property from any such mortgagee.

7. **Insurance.** Each Owner shall carry or cause to be carried the types of insurance listed below, placed with a company licensed to transact business in the state where the Property is located and rated at least "A-" or "excellent" or "superior" in the most recent edition of Best's Insurance Report. Certificates of insurance, on an Accord 27 form or its equivalent, insuring the Improvements on any Parcel, shall be furnished to the other Owner upon written request.

7.1 **Liability Insurance.** Each Owner shall carry at its sole expense, comprehensive general liability insurance coverage stipulating limits of liability in a commercially reasonable amount of not less than \$2,000,000 per occurrence and deductibles of not more than \$50,000.

7.2 **Casualty Insurance.** Each Owner shall carry or cause to be carried all-risk commercial property insurance on the Improvements and any permanent or structural additions, alterations, and improvements made thereto in the amount of the full replacement cost thereof and deductibles of not more than \$50,000.

8. **ENVIRONMENTAL CONDITION.**

8.1 **Storage of Hazardous Substances.** Each Owner and Tenant shall comply with all applicable Legal Requirements as to any Hazardous Substance used, stored, generated or disposed of within the Property. Notwithstanding compliance with the foregoing, nothing in this Declaration shall permit any Owner or Tenant to store, use, or sell materials that constitute or may contain Hazardous Substances on any Parcel. In the event any Owner or Tenant shall cause or permit any Hazardous Substance to be used, stored, generated, or disposed of, in, on, or about the Property in violation of any applicable Legal Requirements or this Declaration, the Owner and Tenant of such portion of the Property responsible for generating, using, storing or disposing of such Hazardous Substance shall undertake any required action, including, without limitation, cleanup, removal, remediation, and restoration, mandated by any federal, state, or local agency or political subdivision pursuant to any applicable Legal Requirements.

8.2 **Indemnification.** Each Owner and Tenant (each, an "Indemnifying Party") hereby indemnifies and agrees to hold harmless each other Owner or Tenant, as applicable (each, an "Indemnified Party"), from and against any and all claims, damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses (including, without limitation, attorneys', consultants', and experts' reasonable fees and costs) of any kind or nature whatsoever, which may at any time be imposed upon or incurred by an Indemnified Party arising from or out of the actions or omissions of an Indemnifying Party in violation of any applicable Legal Requirements relating to Hazardous Substances on, in, under, or affecting all or any portion of any Parcel or adjacent land owned or leased by such Indemnifying Party which in any way affects all or any portion of any Parcel or adjacent land owned or leased by any Indemnified Party.

9. **RIGHTS AND OBLIGATIONS OF LENDERS.** If by virtue of any right or obligation set forth herein a lien is placed upon any portion of the Property, such lien shall expressly be subordinate and inferior to the lien of any first mortgagee.

10. **PAYMENT OF EXPENSES.** Each Owner, by its acceptance of title to or other possessory interest in any Parcel, covenants that it will pay, or cause to be paid, with respect to their respective Parcel, and any Common Areas, Roadways or Parking Areas owned by it, on or before the date when due and payable:

10.1 **Taxes and Assessments.** All taxes, assessments, levies, fees and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are assessed against such Parcel, Common Areas, Roadways or Parking Areas Area shall be paid prior to delinquency. Each Owner may, at its expense, by appropriate proceedings diligently prosecuted, contest in good faith the validity or amount of any such taxes, assessments and other charges to remain unpaid. However, if by non-payment of any such items the title to any portion of the Property will be adversely affected, such Owner shall promptly pay such taxes, assessments or charges;

10.2 **Utility Costs and Charges.** All amounts required to be paid which are attributable to the use, installation, maintenance, repair and replacement of utility lines and facilities serving such Parcel;

10.3 **Common Area Maintenance.** All payments of the costs and expenses for maintaining, repairing, or restoring the Common Areas, Roadways, and Parking Areas of the Property as provided in Section 6 above.

10.4 **Governmental and Other Charges.** All sums required to be paid under all applicable Legal Requirements now or hereafter enacted, made or issued, whether or not presently contemplated applicable to such Parcel, Roadways, and Parking Areas or the use thereof, and all contracts (including insurance policies), agreements, covenants, conditions and restrictions applicable to such Parcel, Roadways, and Parking Areas, or the ownership, occupancy or use thereof.

11. **CONDEMNATION RIGHTS.**

11.1 **Condemnation Award.** In the event that any portion of the Property is taken by any governmental authority under the power of eminent domain or a deed in lieu of condemnation is given therefor, each Owner of any such portion of the Property so taken or conveyed shall be entitled to share in the award or proceeds based upon the respective values of the encumbered fee simple interests of the Owners in such property. Notwithstanding the foregoing, (i) if the taking includes Improvements which are shared, owned, or possessed by more than one Owner, the award shall be used to relocate, replace or restore such Improvements to as good a condition and for the use as existed prior to such taking, to the extent practicable, and, otherwise, to another useful condition, and (ii) if the taking includes any easements an Owner has in any portion of the Property so taken, a portion of the award attributable to such easement rights shall be paid to the grantee of such easements as compensation therefor.

11.2 **Relocation of Easements.** In the event that any Parcel, or portion thereof, is taken under the power of eminent domain or a deed in lieu of condemnation is given therefor, any easements which provide access for ingress/egress to the Property will be relocated as necessary, to prevent any disruption of access from adjacent public rights of way.

12. **REMEDIES; ENFORCEMENT OF COVENANTS.**

12.1 **Failure to Comply with Covenants.** If any Owner fails to comply (each party referred to hereunder as a "Defaulting Owner") with any covenants herein set forth and has not cured the same within 30 days following written notice by any other Owner (each party referred to hereunder as a "Non-Defaulting Owner") of such failure to comply, unless such violation cannot be cured within 30 days in which case the Defaulting Owner shall not have initiated a cure within such 30 day period and be diligently proceeding to cure such violation, the Non-Defaulting Owner may maintain a proceeding against such Defaulting Owner for the purpose of obtaining specific performance of such Defaulting Owner's covenants and/or preventing or enjoining all or any such violation, including mandatory injunctions requiring the Defaulting Owner to restore the Improvements or other matters involved to a conforming state not in violation of this Declaration. The Non-Defaulting Owner, in its discretion, may also undertake any such action for damages, at law or in equity, as may be necessary or desirable to cause the Defaulting Owner's Parcel to comply with such covenants and to charge the cost of the same with interest thereon, to the Defaulting Owner as damages.

12.2 **Remedies Cumulative.** The remedies in this Section 12 will be construed as cumulative to all other remedies now or hereafter provided at law or in equity. In the event that an action is brought to enforce the provisions of this Declaration, the prevailing party will be entitled to receive from the non-prevailing party its reasonable attorneys' and paralegals' fees and costs incurred in connection therewith.

12.3 **Limitations.** Notwithstanding anything contained in this Section 12 to the contrary, the liability of each party hereunder shall be limited to such party's interest in the Property.

13. **MISCELLANEOUS.**

13.1 **No Waiver.** No delay or omission in the exercise of any right accruing to any Owner or Tenant under this Declaration will impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time. A waiver by any Owner or Tenant of a nonconforming condition or noncompliance with the restrictions and conditions set forth in this Declaration will not be construed to be a waiver of any subsequent nonconforming condition or noncompliance.

13.2 **Duration and Amendment.** Each of the easements declared herein will be deemed to run with title to the Property in perpetuity, and will not be affected by the termination or modification of the foregoing restrictions. This Declaration may be modified, amended or terminated only by an instrument signed by all of the Owners; and in no event shall the consent or approval of any Tenant be required.

13.3 **Successors and Assigns.** Each of the covenants and easements set forth in this Declaration will continue and be binding upon each Owner and, upon the respective heirs, personal representatives, successors in title, successors and assigns, and all other persons, parties or legal entities claiming by, through or under any of the Owners.

13.4 **Notices.** Notices and demands required or permitted to be given hereunder to any Owner, shall be sent by certified mail, return receipt requested, addressed, postage prepaid, to the address set forth herein, or by overnight courier, hand delivery, or by facsimile to the telefax number provided herein, or if no address is set forth herein, to the address of record with the tax assessor of Davis County, Utah, for the Owner of such Parcel. Notices and demands will be deemed given 3 days after mailing. The address for notices hereunder for Barton Creek and Guardian are as follows:

If to Barton Creek: Barton Creek Partners, L.L.C.
505 South Main Street
Bountiful, Utah 84111
Attention: Thomas C. Mabey
Telecopy: (801) 298-2791

With a copy to: Stephen M. Tumblin, Esq.
LeBoeuf, Lamb Greene & MacRae L.L.P.
1000 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101-1685
Telecopy: (801) 359-8256

If to Guardian: Guardian Limited Partnership No. 1.
2235 East 25th Street, Suite 220
Idaho Falls, Idaho, 83404
Attention: Dan Harwood
Telecopy: (208) 524-5455

13.5 **No Dedication.** Nothing contained in this Declaration will be deemed to constitute a dedication of any Parcel, or any portion or portions thereof to any governmental body or agency or to the general public, or construed to create any rights in or for the benefit of any persons other than the Owner of each Parcel and their respective mortgagees, successors, assigns, tenants, vendors, employees, officers, concessionaires, agents, patrons, licensees and invitees, it being the intention that this Declaration will be strictly limited to and for the purposes herein expressed.

13.6 **Constructive Notice and Acceptance.** Every person or legal entity who or which will hereafter own or acquire any right, title, interest or estate in or to any portion of the Property, whether or not such interest is reflected upon the public records of Davis County, Utah, will be conclusively deemed to have consented and agreed to each and every covenant, condition, and easement contained or by reference incorporated herein, whether or not any reference to this Declaration is contained in the document or instrument pursuant to which such person or legal entity will have acquired such right, title, interest or estate in the Property or any portion thereof.

13.7 **Effect of Invalidation.** If any particular provision of this Declaration is held to be invalid by any court, the validity of such provision will not affect the validity of the remaining provisions hereof.

13.8 **Estoppel Certificate.** Each Owner agrees that upon written request (which shall not be more frequent than one (1) time during any period of twelve consecutive calendar months) of any other Owner, it will issue to such Owner, or its prospective mortgagee or successor, an estoppel certificate stating to the issuer's knowledge (with "knowledge" being limited to the executive officers, general partners, or members, of such Owner, without independent verification or investigation) that as of such date:

- (a) whether the Owner to whom the request has been directed knows of any default by the requesting Owner under this Declaration, and if there are known defaults, specifying the nature thereof;

- (b) whether the Owner has assigned, modified or amended this Declaration in any way (and if it has, then stating the nature thereof);
- (c) whether this Declaration is in full force and effect;

Such statement shall act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Owner furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Owner to disclose correct and/or relevant information.

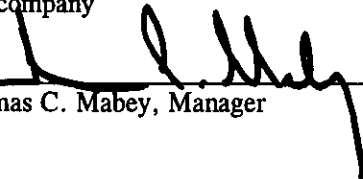
13.9 **No Partnership or Joint Venture.** None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

13.10 **Liability of Parties.** Nothing therein shall be construed to render any party liable for the debts or obligations of any other party, except as may be expressly provided herein, nor shall anything herein restrict a party's right to sell, lease, mortgage or otherwise convey its interests in its Parcel or to assign its rights hereunder to any successor in title and, upon the assumption of such assigning party's obligation by the assignee, such assignor shall be relieved of its liability hereunder arising after, but not on or before the date of such assignment and assumption.

IN WITNESS WHEREOF, Declarants have executed this Declaration for the purposes stated herein as of the date first above written.

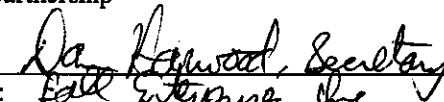
BARTON CREEK:

BARTON CREEK PARTNERS, L.L.C., a Utah limited liability company

By: 
Thomas C. Mabey, Manager

GUARDIAN:

GUARDIAN LIMITED PARTNERSHIP NO. 1, an Idaho limited partnership

By: 
Title: Ball Enterprises, Inc.
General Partner

STATE OF ~~IDAHO~~ Utah)
 :ss.
COUNTY OF Davis)

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The foregoing instrument was acknowledged before me this 19th day of May, 1998, by THOMAS C. MABEY, who is the Manager of BARTON CREEK PARTNERS, L.L.C., a Utah limited liability company.

Kathleen A. Curtis
NOTARY PUBLIC
Residing at Salt Lake County, Utah

My Commission Expires:

1-28-2002



STATE OF ~~UTAH~~ Idaho
 :ss.
COUNTY OF ~~SALT LAKE~~ Bonneville

The foregoing instrument was acknowledged before me this 14 day of August 1998, by Dan Hanusoba, who is a Secretary of Ball Enterprises who is a general partner of GUARDIAN LIMITED PARTNERSHIP NO. 1.

Doni Gutman
NOTARY PUBLIC
Residing at Salt Lake County, Utah

My Commission Expires:

5/21/99



EXHIBIT "A"

Legal Description of Barton Creek Property

Beginning at a point on the West line of 500 West Street, said point being North $0^{\circ}08'30''$ West 1943.51 feet along the Section line and South $89^{\circ}51'30''$ West 161.15 feet from the East Quarter corner of Section 24, Township 2 North, Range 1 West, Salt Lake Base and Meridian, said point also being North $0^{\circ}22'48''$ East 1547.01 feet along the centerline of 500 West Street and North $89^{\circ}37'12''$ West 40.00 feet from the centerline monument found at the intersection of 400 North Street and 500 West Street and running thence South $0^{\circ}22'48''$ West 291.58 feet along said West line; thence North $89^{\circ}37'12''$ West 462.69 feet to a point on the Easterly right of way line of Interstate 15; thence along said Easterly line the following 2 courses: North $21^{\circ}35'58''$ East 104.14 feet to a point on a 2776.90 foot radius curve to the right (radius bears South $68^{\circ}58'34''$ East); thence along the arc of said curve 224.68 feet through a central angle of $4^{\circ}38'09''$; thence leaving said Easterly line south $65^{\circ}05'01''$ East 29.67 feet; thence South $89^{\circ}37'12''$ East 310.38 feet to the point of beginning.

Legal Description of Guardian Property

Beginning at a point on the West line of 500 West Street, said point being North 0°08'30" West 1943.51 feet along the Section line and South 89°51'30" West 161.15 feet from the East Quarter corner of Section 24, Township 2 North, Range 1 West, Salt Lake Base and Meridian, said point also being North 0°22'48" East 1547.01 feet along the centerline of 500 West Street and North 89°37'12" West 40.00 feet from the centerline monument found at the intersection of 400 North Street and 500 West Street and running thence North 89°37'12" West 310.38 feet; thence North 65°05'01" West 29.67 feet to a point on the Easterly right of way line of Interstate 15, said point also being on a 2776.90 foot radius curve to the right (radius bears South 64°20'25" East); thence along said Easterly line the following 3 courses: along the arc of said curve 1.75 feet through a central angle of 0°02'10" North 27°58'50" East 277.61 feet to a U.D.O.T. Right of Way Marker on said East Right of Way, and North 32°30'37" East 245.40 feet; thence leaving said East right of way South 89°35'53" East 67.50 feet to a U.D.O.T. Right of Way Marker on the West line of 500 West Street; thence South 0°22'48" West 283.53 feet along said West line of 500 West street of another U.D.O.T. Right of Way Marker on said West line; thence South 89°22'27" East 10.00 feet to a U.D.O.T. Right of Way Marker on the West line of 500 West Street; thence South 0°22'48" West 184.13 feet along said West line to the point of beginning.

The above described property also known by the street address of:

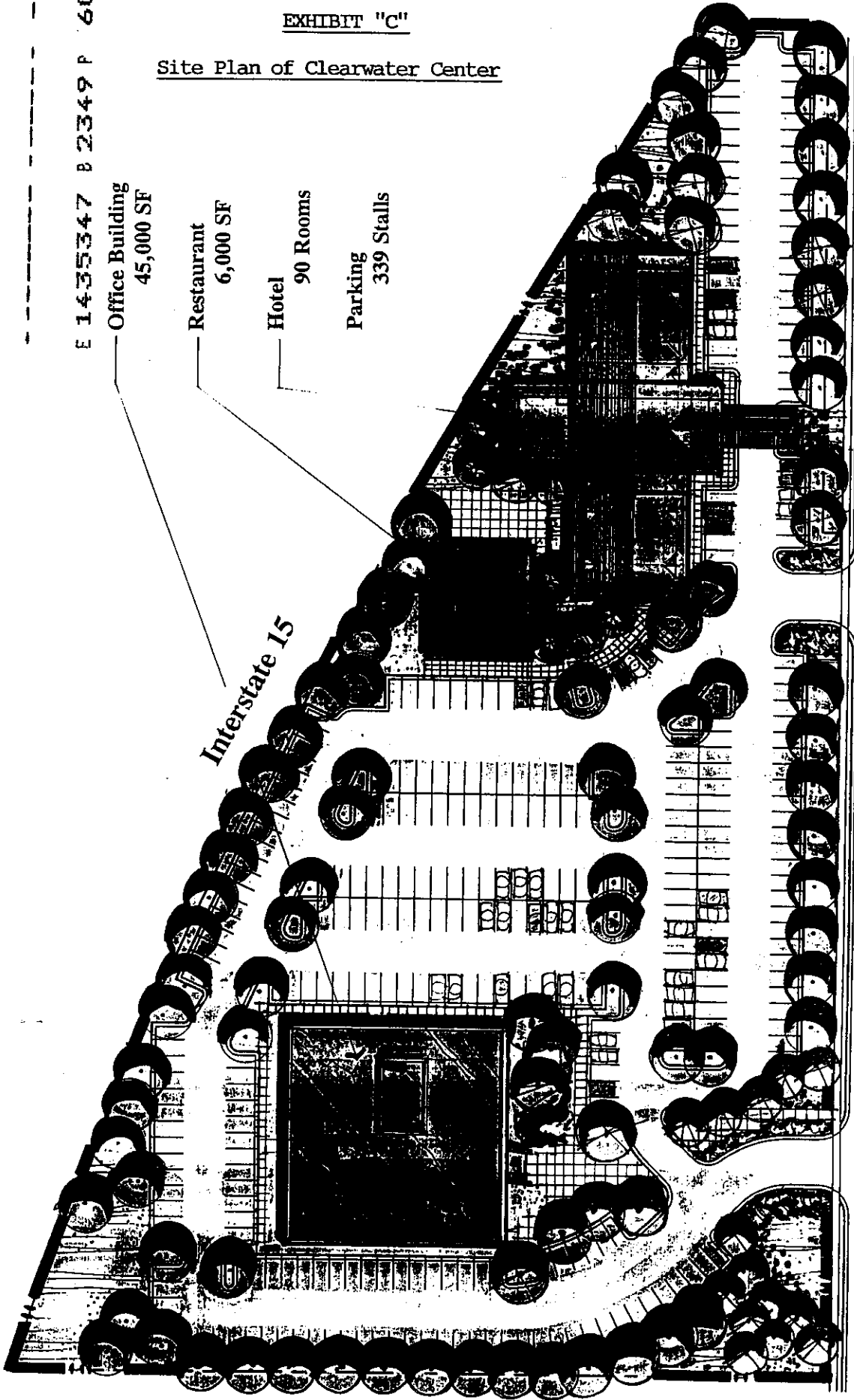
unable to verify

* * *

E 1435347 B 2349 P 607

EXHIBIT "C"

Site Plan of Clearwater Center



Office Building
45,000 SF

Restaurant
6,000 SF

Hotel
90 Rooms

Parking
339 Stalls

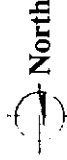
Interstate 15

500 West

The Clearwater Center

Site Plan

Scale 1" = 50'-0" North



300 West 700 South
Salt Lake City, Utah 84101
Telephone 801 521-8600
Facsimile 801 521-7913

GILLIES STRANSKY BREMS SMITH