

2300

UTAH TITLE & RECORDS  
DEPT  
REF  
*John A. Williams*

OCT 27 2 45 PM '83

KATHIE L. DIXON  
RECORDER  
SALT LAKE COUNTY  
UTAH

Attachment No. 2

WHEN RECORDED MAIL TO:

David E. Gee, Esq.  
ROOKER, LARSEN, KIMBALL & PARR  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111

3862259

DECLARATION OF EASEMENTS,  
COVENANTS AND RESTRICTIONS

WT-89976

THIS DECLARATION (the "Declaration") is made and entered into this 27 day of October, 1983, by and between WOODLAND INVESTMENT CO., a Utah limited partnership ("Woodland"), and THE WOODLANDS ASSOCIATES, a joint venture organized pursuant to the Utah Uniform Partnership Act ("Associates").

RECITALS

- A. Woodland owns a tract of real property ("Tract A") located in Salt Lake County, State of Utah, the legal description of which is set forth on Exhibit "A."
- B. Associates, contemporaneously with the execution of this Declaration, is acquiring a tract of real property ("Tract B") located in Salt Lake County, State of Utah, the legal description of which is set forth on Exhibit "B."
- C. The parties desire to create certain cross easements and rights between and impose certain covenants and restriction on Tracts A and B.

THEREFORE, for TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

BOOK 5502 PAGE 1559

1. Definitions. As used in this Declaration:

(a) "Party" means each person executing this instrument and its heirs, assigns and successors in interest with respect to Tract A or Tract B, as the case may be, as the same may be shown by the records of Salt Lake County, State of Utah, as of the date of the exercise of powers granted hereunder or the performance of or failure of performance by such Parties of the obligations created by this Declaration. Without limiting the generality of the foregoing, the term Party refers to the persons who fit the following classifications:

(i) The person or persons holding fee title to all or any portion of Tract A or Tract B; and

(ii) The lessee or lessees under a ground lease of all or a portion of any Tract for a fixed minimum term of thirty (30) years, or longer, in which event the fee owner of the real property covered by such lease will not be deemed to be a Party as to such Tract or portion of such Tract for the purposes of this Declaration during the duration of such ground lease.

(b) "Parties" means every person who is a Party, taken in the aggregate.

2. Covenants and Restrictions with Respect to Tract B.

(a) No party shall attempt to obtain or consent to any change or variance in zoning of Tract B if such change would jeopardize the right of Woodland, its successors and assigns, to retain and maintain any sign described in Section 3 of this Declaration.

(b) The official name of any building complex located on Tract B will contain the word "Woodland" or "Woodlands" unless the use of such word is not permitted by applicable laws, regulations or ordinances. The owner of Tract B shall have the right to relieve Tract B of the obligation imposed by this Section 2(b) by paying to the owner of Tract A, in a lump sum, the amount of \$100,000 for the express and sole purpose of obtaining such relief.

(c) No part of Tract B shall, for a period of twenty-five (25) years following the date of this Declaration, be used as a Theater-Restaurant; provided, that this restriction

shall be void if no Theater-Restaurant is operated on Tract A for a continuous period of sixty (60) months. For purposes of this Section 2(c), the term "Theater-Restaurant" shall mean a public or private dining facility, operated for profit, having 20 or more tables, where live vocal, theatrical or comedy entertainment is regularly provided.

(d) If construction of a Health Club on Tract A is commenced before the latter of one (1) year from the date of this Declaration or nine (9) months after the commencement of construction of the first building on Tract B, then for as long as such Health Club is completed within a reasonable time and continuously available to the Parties with respect to Tract B and all tenants of such Parties and all of the personnel of such tenants, at prices competitive with or less than those being charged by Health Clubs open to the general public, no Health Club will be operated on Tract B or directly or indirectly by Associates (but not its successors) within a radius of 5/8's of a mile of Tract A. For purposes of this Section 2(d), the term "Health Club" shall mean a public or private facility containing a jogging facility, exercise and weight room, a sauna, swimming pool, tennis or racquetball court, a jacuzzi or similar significant exercise facility.

3. Signs on Tract B. Subject to the limitations set forth below, Associates grants to Woodland the right to erect and operate on Tract B, at any time and from time to time, one free-standing double-sided sign (the "Woodland Sign"), which may be a "pylon" sign. The design and operation of the Woodland Sign shall comply with the following conditions:

(a) Any Woodland Sign may be electrically lighted and may display lighted, electronically activated messages. The dimensions, height and style of any Woodland Sign shall be designated by Woodland but shall be subject to the approval of a licensed building architect. Such architect shall be chosen by the Party owning Tract B from a list of three licensed building architects selected by Woodland. The face or faces of any Woodland Sign shall be located within a square or rectangle, and said square or rectangle shall not exceed 275 square feet per side.

(b) Any Woodland Sign shall be erected on a parcel of land located in the Southwest corner of Tract B and described on Exhibit "C" (the "Woodland Sign Location"). To the

extent feasible the Woodland Sign shall be located on the southern ten (10) feet of the Woodland Sign Location. The Woodland Sign may be altered or replaced from time to time as long as the alteration or replacement complies with the limitations set forth in this Section 3.

(c) The Woodland Sign may not be used to advertise or refer in any way to an office or offices for rent.

(d) The design and operation of any Woodland Sign will comply with all applicable laws, ordinances and regulations.

(e) Woodland, at its cost and expense, shall maintain any Woodland Sign in good and safe operating condition. If Woodland fails to maintain any Woodland Sign, then, on one hundred eighty (180) days' written notice to Woodland, Associates may either cause such maintenance to be performed or have the sign removed and shall have a lien on Tract A for the amount expended in maintaining (but not removing) any Woodland Sign, plus interest at the rate of twelve percent (12%) per annum from the date of such expenditure.

(f) Notwithstanding any other provision contained in this Section 3, the right of Woodland and its successors and assigns to erect any Woodland Sign and to possess the Woodland Sign Location shall be extinguished if such sign is not erected within five (5) years of the date hereof or if such sign, once erected, is abandoned for a continuous period of one (1) year thereafter.

(g) Woodland and each person constituting a Party with respect to Tract A shall indemnify, defend and hold Associates and each person constituting a Party with respect to Tract B harmless from and against any and all liabilities, losses, actions, proceedings, judgments, controversies, claims, costs or expenses (including attorneys' fees) arising out of the design, use or operation of any Woodland Sign.

(h) No right granted to Woodland by this Section 3 shall limit or restrict in any way the right of Associates to erect and operate (or permit to be erected and operated) signs on Tract B.

(i) Associates may place on Tract A a sign advertising the office project to be located on Tract B. Such sign may remain until April 30, 1984.

#### 4. Grant of Easement.

(a) Woodland grants to Associates a nonexclusive easement appurtenant to and across Tract A for the purpose of allowing vehicular access between the public streets and any and all parking areas or roadways and lanes situated on Tract B; provided, that the foregoing right of access shall be limited to use for such purposes and to such extent as may be customary for use of Tract B for commercial purposes (including, but not limited to, reasonable and customary deliveries). The easement granted by this subsection (a) shall be limited to the roadway described on Exhibit "D" (the "Associates Roadway"). At any time before December 31, 1983, by giving written notice to Associates, Woodland may relocate the Associates Roadway up to twenty-five (25) feet to the north or south of the centerline of the Associates Roadway as described on Exhibit "D." Thereafter, Woodland shall not move or relocate the Associates Roadway. In addition to the foregoing, Associates shall have the right to elevate or sink the western twenty (20) feet of the Associates Roadway in order to align the same with the upper and/or lower decks of a parking ramp. On or before November 30, 1984 Woodland agrees to construct a paved roadway twenty-five (25) feet wide on the Associates Roadway in accordance with good construction practices.

(b) Associates grants to Woodland a nonexclusive easement appurtenant to and across Tract B for the purpose of allowing vehicular access between the public streets and any and all parking areas situated on Tract A. The easement granted by this subsection (b) shall be limited to the roadway described on Exhibit "E" (the "Woodland Roadway"). In addition Associates shall provide a twenty-five (25) foot two-way access lane from the Woodland Roadway to the Associates Roadway in such location as Associates may designate (the "Connecting Roadway"). At any time before December 31, 1983, by giving written notice to Woodland, Associates may relocate the Woodland Roadway up to twenty-five (25) feet to the north or south of the centerline of the Woodland Roadway as described on Exhibit "E." Thereafter Associates shall not move or relocate the Woodland Roadway. On or before June 30, 1985 Associates agrees to construct a paved roadway twenty-five (25) feet wide on the Woodland Roadway and

the Connecting Roadway in accordance with good construction practices. The foregoing notwithstanding the easements granted over the Woodland Roadway and the Connecting Roadway shall be subject to the following conditions:

(i) The easement for the Connecting Roadway is limited to seven (7) feet in height;

(ii) The easements for the Woodland Roadway and the Connecting Roadway are limited to use for such purposes and to such extent as may be customary for use of Tract A for commercial purposes (including, but not limited to, reasonable and customary deliveries consistent with the foregoing height restriction) and to erect and maintain any Woodland Sign;

(iii) A parking ramp or any similar structure may be constructed on Tract B except over the Woodland Roadway, and Associates may route all traffic using the Connecting Roadway through such structure on the upper and/or the lower deck of any such structure; and

(iv) The location of the Connecting Roadway may be altered, relocated or changed in any manner and at any time and from time to time without the prior written consent of Woodland upon sixty (60) days' prior written notice to Woodland.

(c) The Parties agree to keep and maintain at its sole cost and expense the roadways located on its Tract in good condition. If a Party fails to so keep and maintain the roadway for which it is responsible, or to construct the same, the other Party may on thirty (30) days written notice to perform such maintenance and/or construction and the performing party shall have a lien on the Tract owned by the defaulting Party for the amount expended plus interest at the rate of twelve percent (12%) per annum from the date of such expenditure.

(d) The easements granted pursuant to this Section 4 shall benefit each of the Parties and their respective tenants, concessionaires, customers, invitees and guests, and the concessionaires, invitees, customers and guests of any tenant or subtenant of the respective Parties.

5. Duration. This Declaration and each easement, covenant, restriction and undertaking of this Declaration shall

be for a term of ninety-nine (99) years unless sooner terminated pursuant to Section 2.

6. Modification. This Declaration and any easement, covenant, restriction or undertaking contained herein may be terminated, extended, modified or amended as to the whole of the Tracts of any portion of them, with the unanimous consent of the Parties.

7. Not a Public Dedication. Nothing contained in this Declaration will be deemed to be a gift or a dedication of any portion of either Tract to the general public or for the general public or for any public purpose whatsoever, it being the intent of the Parties that this Declaration be strictly limited to and for the purpose expressed herein.

8. Mutuality; Benefits and Burdens Run with Land.

(a) Each and all of the easements, covenants, restrictions, rights and provisions granted or created herein are appurtenances to the Tracts and none of the easements, covenants, restrictions, rights and provisions may be transferred, assigned, or encumbered except as an appurtenance to such Tracts. For the purposes of the easements, covenants, restrictions, rights and provisions created by this Declaration, the Tract benefited will constitute the dominant estate, and the Tract burdened by such easements, covenants, restrictions, rights and provisions will constitute the servient estate.

(b) Each and all of the easements, covenants, restrictions, conditions, rights and provisions contained in this Declaration (whether affirmative or negative in nature) are made for the direct, mutual and reciprocal benefit of each Tract; will create mutual equitable servitudes upon each Tract running with the land; will bind and inure to the benefit of every person having any fee, leasehold, or other interest in any portion of the Tracts at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction, right or provision in question, or that the easement, covenant, restriction, right or provision is to be performed on such portion; and will bind and inure to the benefit of the Parties and their respective heirs, successors and assigns as to their respective Tracts.

BOOK 5502  
PAGE 1565

9. Miscellaneous Provisions.

(a) The Parties do not by this Declaration, in any way or for any purpose, become partners or joint venturers of each other in the conduct of their respective businesses or otherwise.

(b) Each Party shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from timely performing by a cause or causes beyond such Party's control, including labor disputes, civil commotion, war, governmental regulations, moratoriums or controls, fire or other casualty, inability to obtain any material or services, or acts of God.

(c) Failure of a Party to insist upon the strict performance of any provision or to exercise any option hereunder shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this Declaration shall be deemed to have been waived unless such waiver is in writing and signed by the Party alleged to have waived its rights.

(d) If any provision of this Declaration or the application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Declaration shall be valid and enforced to the fullest extent permitted by law.

(e) Except as otherwise provided, all provisions herein shall be binding upon and shall inure to the benefit of the Parties, their legal representatives, heirs, successors and assigns.

(f) Each person executing this Declaration for an entity represents and warrants that he is duly authorized to execute and deliver the same on behalf of the entity for which he is signing (whether it be a corporation, general or limited partnership or otherwise), and that this Declaration is binding upon such entity in accordance with its terms.



(g) This Declaration shall be construed in accordance with the laws of the State of Utah.

(h) All exhibits referred to in this Declaration are hereby incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Declaration on the day and year first set forth above.

"WOODLAND":

WOODLAND INVESTMENT CO., a Utah  
limited partnership

By  
Its

*Reginald M Woodland*  
*general partner*

"ASSOCIATES":

THE WOODLANDS ASSOCIATES, a  
joint venture organized under  
the Utah Uniform Partnership  
Act by its two Venturers:

MHP-WOODLANDS, LTD., a Utah  
limited partnership, by its  
sole general partner MHC  
PROPERTIES, INC., a Utah  
corporation

By  
Its

*Gary J Machan*  
*President*

BOOK 5502 PAGE 1567

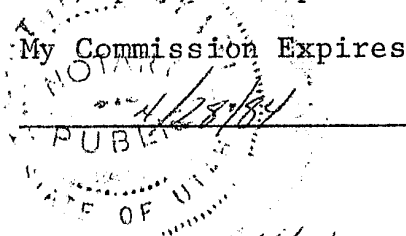
SLC-1 LIMITED PARTNERSHIP, a Wisconsin limited partnership, by its sole general partner JOHNSON WAX DEVELOPMENT CORPORATION, a Wisconsin corporation

By Thomas W. Smith  
Its Vice President

STATE OF Utah )  
COUNTY OF Salt Lake ) ss.

On the 27th day of October, 1983, personally appeared before me Supreme N. Woodland who being by me duly sworn, did say that he is general partner of WOODLAND INVESTMENT CO. a Utah limited partnership, and said Supreme N. Woodland duly acknowledged to me that the executed within and foregoing instrument was signed on behalf of said partnership.

My Commission Expires:



Cynthia Jensen  
Notary Public  
Residing at Salt Lake City Utah

STATE OF Utah )  
COUNTY OF Salt Lake ) ss.

On the 27th day of October, 1983, personally appeared before me Gary L. Macham who being by me duly sworn, did say that he is President of MHC PROPERTIES, INC., a Utah corporation, which is the general partner of MHP-Woodlands, Ltd., a Utah limited partnership, which is one of the members of The Woodlands Associates, a joint venture organized pursuant to the Utah Uniform Partnership Act, and said Gary L. Macham duly acknowledged to me that the executed within and foregoing instrument was signed on

BOOK 5502 PAGE 1568

behalf of said corporation in its capacity as the sole general partner of MHP-Woodlands, Ltd., on behalf of said partnership in its capacity as one of the venturers of The Woodlands Associates, on behalf of said partnership, by authority of its bylaws or a resolution of its board of directors.

My Commission Expires: 4/28/84  
STATE OF UTAH

Cynthia Cooper  
Notary Public  
Residing at Salt Lake City Utah

STATE OF Utah )  
COUNTY OF Salt Lake ) ss.

On the 7th day of October, 1983, personally appeared before me Thomas W. Smith, who being by me duly sworn, did say that he is Vice President of JOHNSON WAX DEVELOPMENT CORPORATION, a Wisconsin corporation, which is the general partner of SLC-1 Limited Partnership, a Wisconsin limited partnership, which is one of the members of The Woodlands Associates, a joint venture organized pursuant to the Utah Uniform Partnership Act, and said Thomas W. Smith duly acknowledged to me that the executed within and foregoing instrument was signed on behalf of said corporation in its capacity as the sole general partner of SLC-1 Limited Partnership, on behalf of said partnership in its capacity as one of the venturers of The Woodlands Associates, on behalf of said partnership, by authority of its bylaws or a resolution of its board of directors.

My Commission Expires: 4/28/84  
NOTARY PUBLIC  
STATE OF UTAH

Cynthia Cooper  
Notary Public  
Residing at Salt Lake City Utah

BOOK 5502 PAGE 1569

EXHIBIT "A"

BEGINNING at the Northeast corner of Lot 8, Block 5, Ten Acre Plat "A", Big Field Survey; and running thence South  $0^{\circ}09'59''$  West 572.84 feet to the Southeast corner of said Lot 8; thence South  $0^{\circ}09'59''$  West 19.83 feet to the South line of Lot 14A, CLEARVIEW ACRES SUBDIVISION; thence South  $89^{\circ}55'$  West 106.51 feet to the Southeast corner of Lot 15A; thence North  $88^{\circ}50'40''$  West 100.01 feet to the Southeast corner of Lot 16A; thence North  $89^{\circ}52'30''$  West 100.00 feet to the Southeast corner of Lot 17A; thence North  $89^{\circ}59'27''$  West 100.00 feet to the Southeast corner of Lot 18A; thence North  $88^{\circ}23'10''$  West 100.03 feet to the Southeast corner of Lot 19A; thence North  $89^{\circ}01'$  West 100.01 feet to the Southeast corner of Lot 20A; thence North  $87^{\circ}39'20''$  West 160.11 feet to the Southwest corner of said Lot 20A; CLEARVIEW ACRES SUBDIVISION: thence North  $0^{\circ}14'13''$  East 6.78 feet to the Southwest corner of said Lot 8; Block 5, Ten Acre Plat "A"; thence North  $0^{\circ}14'13''$  East 573.07 feet to the Northwest corner of said Lot 8; thence South  $89^{\circ}58'24''$  East 89.30 feet; thence along the arc of a 622.03 foot radius curve to the right 715.24 feet to the point of BEGINNING, said arc being subtended by a chord of South  $89^{\circ}58'24''$  East 676.48 feet.

EXHIBIT "B"

Real Property Owned by Woodland Investment Company

The following real property located in Salt Lake County,  
Utah:

TRACT I

Commencing 145.67 feet South from the Northeast corner of Lot 12, Block 5, Ten Acre Plat A, Big Field Survey; thence South 237.13 feet; West 379.5 feet; North 0°06'10" East 383 feet; East 229.5 feet; South 145.67 feet; East 150 feet to BEGINNING. 2.82 acres.

TRACT II

Commencing North 0°04' East 168.2 feet from the Southeast corner of Lot 12, Block 5, Ten Acre Plat A, Big Field Survey; thence North 0°04' East 23.2 feet; West 23 rods South 0°04' West 23.2 feet; East 23 rods to BEGINNING. 0.2 acres.

TRACT III

Commencing at the Southeast corner of Lot 11, Block 5, Ten Acre Plat "A", Big Field Survey; thence West 766.09 feet; North 327.21 feet; East 766.09 feet; South 327.21 feet to BEGINNING.

The foregoing notwithstanding Tracts ~~III~~ shall be benefited by the Woodland Easement only so long as its use is limited to use for apartment purposes.

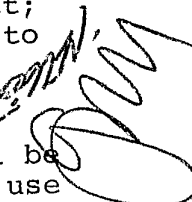
*I AND II*  


EXHIBIT "C"

Beginning at a point South 0°14'13" West 6.8 feet from the Southwest corner of Lot 8, Block 5, Ten Acre Plat 'A', Big Field Survey; and running thence North 0°14'13" East 35.00 feet; thence South 87°39'20" East 32.00 feet; thence South 0°14'13" West 35.00 feet; thence North 87°39'20" West 32.0 feet to beginning.

If a conditional use permit is granted, the north-south dimension of this easement shall be reduced to the minimum distance necessary to contain the approved sign but not less than fifteen (15) feet.

BOOK 5502 PAGE 1572

EXHIBIT "D"

"BEGINNING at a point which is S 0°05'44"W 271.18 feet from the Northeast corner of Lot 11, Block 5, Ten Acre Plat "A", Big Field Survey, said point also being S 0°05'44"W 843.69 feet from the Northeast corner of Lot 10, Block 5, Ten Acre Plat "A", Big Field Survey, located in the Southwest quarter of Section 32, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence N 89°59'32"W 766.0 feet, more or less, to the West line of said Lot 11; thence S 0°05'44"W 25.00 feet; thence S 89°59'32"E 766.0 feet, more or less; thence N 0°05'44"E 25.0 feet to the point of BEGINNING.

EXHIBIT "E"

Beginning a point which is South 0°14'13" West 6.78 feet from the Southwest corner of Lot 8, Block 5, Ten Acre Plat 'A'; Big Field Survey; and running thence North 0°14'13" East 80.00 feet; thence South 87°40' East 159.78 feet; thence South 89°22'10" East 606.75 feet to the East line of said Lot 8; thence South 0°09'59" West 80.00 feet to the South line of Lot 14A, CLEARVIEW ACRES SUBDIVISION; thence South 89°55' West 106.51 feet; thence North 88°50'40" West 100.01 feet; thence North 89°52'30" West 100.00 feet; thence North 89°59'27" West 100.00 feet; thence North 88°23'10" West 100.03 feet; thence North 89°01' West 100.01 feet; thence North 87°39'20" West 160.11 feet to the point of beginning.

BOOK 5562 PAGE 1574