

WHEN RECORDED, MAIL TO:

Richard H. Johnson, II, Esq.  
Van Cott, Bagley, Cornwall & McCarthy  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84144

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into this 21<sup>st</sup> day of September, 1994, by and between STRATTON BROTHERS PARTNERSHIP, a Utah general partnership (hereinafter referred to as "Grantor") and CANYON RIDGE, L.C., a Utah limited liability company (hereinafter referred to as "Grantee").

RECITALS:

A. Grantor is the owner of certain real property located in Washington County, State of Utah, and more particularly described as follows:

*M.J.C.*  
*J.W.D.*  
*Parcel 1*  
*ALL R/S*

~~\_\_\_\_\_~~ TRACT OF LAND IN SECTION 36;  
TOWNSHIP 41 SOUTH, RANGE 14 WEST AND SECTION  
31, TOWNSHIP 41 SOUTH, RANGE 13 WEST, SALT  
LAKE BASE & MERIDIAN, FURTHER DESCRIBED AS  
FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 36, THENCE N 00°08'03" E 111.43 FEET ALONG THE EAST SECTION LINE OF SAID SECTION 36 TO THE NORTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY U-17 AND THE POINT OF BEGINNING; THENCE N 00°08'03" E, 1638.31 FEET ALONG THE EAST SECTION LINE; THENCE S 89°59'55" W, 5.00 FEET; THENCE N 00°11'44" E, 1300.96 FEET; THENCE S 89°36'17" E, 80.00 FEET; THENCE S 00°09'41" W, 2916.96 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SAID HIGHWAY U-17; THENCE S 73°50'20" W, 78.14 FEET ALONG SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

A PARCEL OF 5.22 ACRES MORE OR LESS.

00479833 Bk0853 Pg0420

RUSSELL SHIRTS \* WASHINGTON CO RECORDER  
1994 SEP 27 16:40 PM FEE \$31.00 BY CB  
FOR: SOUTHERN UTAH TITLE CO

Parcel 2

A PARCEL OF LAND IN THE NORTHEAST AND SOUTHEAST QUARTERS OF SECTION 36, TOWNSHIP 41 SOUTH, RANGE 14 WEST, SALT LAKE BASE & MERIDIAN, FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST QUARTER OF SAID SECTION 36; THENCE N 00°08'03" E, 1749.74 FEET ALONG THE EAST SECTION LINE TO THE POINT OF BEGINNING. THENCE N 0°08'03" E, 995.57 FEET ALONG THE EAST SECTION LINE TO THE EAST QUARTER CORNER OF SAID SECTION 36; THENCE N 0°23'43" E, 1320.00 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 36; THENCE S 88°57'12" E, 2638.42 FEET ALONG THE SIXTEENTH LINE TO THE CENTER SECTION LINE OF SAID SECTION 36; THENCE S 00°22'36" W, 337.61 FEET ALONG THE CENTER SECTION LINE OF SAID SECTION 36; THENCE N 56°58'34" E, 41.34 FEET; THENCE S 33°07'11" E, 250.74 FEET; THENCE S 09°24'03" W, 306.11 FEET; THENCE S 09°51'36" E, 426.30 FEET; THENCE SOUTH, 161.00 FEET; THENCE S 40°32'56" W, 312.66 FEET TO THE CENTER SECTION LINE OF SAID SECTION 36; THENCE S 00°22'36" W, 621.76 FEET; THENCE N 89°59'55" E, 2641.45 FEET TO THE EAST SECTION LINE AND THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 41 SOUTH, RANGE 14 WEST, SALT LAKE BASE & MERIDIAN, FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST QUARTER OF SAID SECTION 36; THENCE N 00°08'03" E, 1749.73 FEET ALONG THE EAST SECTION LINE; THENCE N 89°51'57" W, 5.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF 3400 WEST STREET AND THE POINT OF BEGINNING; THENCE S 89°59'55" W, 1237.00 FEET; THENCE N 00°08'03" E, 998.42 FEET; THENCE S 89°51'57" E, 1237.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF 3400 WEST STREET; THENCE S 00°08'03" W, 995.19 FEET ALONG SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

A PARCEL OF 106.10 ACRES MORE OR LESS, BASIS OF BEARING BEING THE EAST SECTION LINE OF SECTION 36, TOWNSHIP 41 SOUTH, RANGE 14 WEST, FROM THE SOUTHEAST QUARTER TO THE EAST QUARTER CORNER N 00°08'03" E.

(hereinafter referred to as the "Stratton Property").

B. Grantee is purchasing from Grantor certain real property located in Washington County, State of Utah, including without limitation that certain property described in Exhibit A attached hereto (all of the real property of Grantee located in Washington County, State of Utah, including without limitation the property described in Exhibit A attached hereto, and any additional property adjacent thereto that may be acquired by Grantee pursuant to that certain Option Agreement dated September 27, 1994, between Grantor and Grantee, is hereinafter referred to as the "Benefitted Property").

C. Grantee desires to obtain from Grantor easements and rights-of-way over the Stratton Property to permit ingress and egress to the Benefitted Property and any additional property adjacent thereto that may be acquired by Grantee pursuant to that certain Option Agreement dated September 27, 1994, between Grantor and Grantee, and for the extension of utilities to the Benefitted Property, and Grantor is willing to grant such an easement on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, Grantor and Grantee hereby agree as follows:

1. Grant of Access Easement. Grantor hereby grants, conveys and assigns to Grantee for the benefit of the Benefitted Property, or any portion thereof, a perpetual, non-exclusive easement and right-of-way (hereinafter the "Access Easement" over, along and across an unimproved dirt road and roadway existing on the Stratton Property which is commonly referred to as "Hippy Road" and more particularly described as Parcel 1 in paragraph A, above, for ingress and egress to and from the Benefitted Property. Notwithstanding the fact that such road existing upon and across the Stratton Property at the time of the grant of this Access Easement may not extend to the Benefitted Property or may be narrow or otherwise less than is required for Grantee's future development and use of the Benefitted Property, the parties hereby acknowledge and agree that the easement and right-of-way across the Stratton Property granted hereunder shall be equal in size, width, dimensions and scope as is required or

necessary to satisfy and comply with all laws, ordinances, rules, regulations and orders of any governmental entities.

2. Grant of Utility Easement. Grantor hereby grants, conveys and assigns to Grantee for the benefit of the Benefitted Property, or any portion thereof, perpetual, non-exclusive easements and rights-of-way (the "Utility Easements") over, along and across the Stratton Property for the purpose of installation and maintenance of any service or utility lines, of any nature (underground to the extent such lines can reasonably and practicably be placed underground), poles, piping, etc., necessary or convenient for providing utilities and services to the Benefitted Property (hereinafter the "Utility Lines"). Notwithstanding the fact that the Utility Easements granted hereby is a blanket easement covering all portions of the Stratton Property, Grantee agrees that the Utility Easements will be located, to the extent possible and practicable to Grantee, such that they will not pass through, over or under buildings constructed upon the Stratton Property at the time of the installation of the Utility Lines. At such time as the location of the Utility Lines is determined, not to exceed two (2) years, Grantee agrees to cooperate with Grantor in extinguishing the blanket easement granted under this grant of easement, and substituting in place thereof specifically described thirty-foot easements, or easements meeting city or utility requirements, for the Utility Easements. Grantee shall have reasonable access to the Stratton Property for the purpose of ascertaining the best location for the Utility Lines and for the installation thereof, and for the purpose of preparing any surveys necessary in order to establish the location of said substitute easements. Grantee agrees to extinguish and release the blanket easement described in this grant of easement when said substitute easements are ascertained and conveyed to Grantee.

3. Construction and Slope Easements. Grantor grants to Grantee, its agents and employees the temporary right to enter upon and have access to the Stratton Property. Such easement shall be for the express purpose of construction work necessary to develop the Benefitted Property and to install the Utility Lines. Grantor further agrees to grant to Grantee slope easements and the right to backfill, grade and contour the Stratton Property as may be necessary to establish the necessary grade for the development of the Benefitted Property and to comply with all laws, ordinances, rules, regulations and orders necessary to permit and accomplish the development and use of the Benefitted Property. Even though Grantor reserves the right to use the Stratton Property for purposes that will not interfere with the Grantee's full enjoyment of the rights granted by this instrument, the Grantor nevertheless agrees that it shall not erect or construct any building or other structure or otherwise

interfere or obstruct the easements granted pursuant to this paragraph 3. In particular, Grantor agrees that it will not remove or in any way affect the integrity of the slope easements granted hereunder.

4. Perpetual Easements. The easements and rights of way reserved hereunder shall be a benefit running with the Benefitted Property or any part thereof and a burden upon the Stratton Property, in perpetuity, and shall be for the use and benefit of Grantee and its successors, heirs and assigns, and their licensees, invitees, agents, representatives and others Grantee desires to provide access to the Benefitted Property.

5. Mortgages, Trust Deeds or Liens. Grantor represents and warrants to Grantee that it has full right, power and authority to execute this Agreement and to create the access easement and utility easement and to establish all burdens upon the Stratton Property as provided herein. Grantor hereby agrees that to the extent the Stratton Property that is affected by this Agreement is encumbered by mortgages, trust deeds, liens or leases of any nature, that Grantor shall, within thirty (30) days after the execution of this Agreement, cause such mortgagee, trustee and beneficiary, lien holder or lessee to execute, acknowledge and deliver to Grantee a Subordination Agreement sufficient in all respects to cause any such party's interests in the Stratton Property to be made subject and subordinate to the easements, rights and interests created under this Agreement.

6. Indemnification. Grantee hereby indemnifies Grantor and agrees to hold Grantor harmless from and against any and all claims, demands or liabilities relating to Grantee's use of the easements and rights-of-way granted to Grantee hereunder, except such claims or liabilities as arise by virtue of or are related to negligence or willful acts of Grantor or his successors, assigns and their invitees, licensees, agents and representatives. Grantee's liability hereunder shall be limited to the extent of Grantee's negligence or willful conduct.

7. Specific Performance. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or a threatened breach of any of the provisions hereof. Therefore, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy, if so elected by the non-defaulting party. It is the intention of the parties by this provision to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

8. Entire Agreement. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties hereto relative to the subject matter hereof. Any prior negotiations, correspondence or understandings relative to the subject matter hereof shall be deemed to be merged in this Agreement and shall be of no force or effect. This Agreement may not be amended or modified except in writing executed by all of the parties hereto.

9. Interpretation. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Utah. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include both other genders, the term "person" shall include an individual, partnership (general or limited), corporation, trust or other entity or association or combination thereof, and the terms "Grantor" or "Grantee" shall include the Grantor or Grantee herein named and any successors in interest or assignees of such Grantor or Grantee. The section headings contained in this Agreement are for purposes of reference only and shall not limit expand or otherwise affect the construction of any provisions of this Agreement. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. The provisions of this Agreement shall be construed both as covenants and conditions in the same manner as though the words importing such covenants and conditions were used in each separate provision hereof. Exhibits attached hereto are by this reference incorporated herein and made a part hereof.

10. Attorneys' Fees. If any action is brought because of any breach of or to enforce or interpret any of the provisions of this Agreement, the party prevailing in such action shall be entitled to recover from the other party reasonable attorneys' fees and court costs incurred in connection with such action, the amount of which shall be fixed by the court and made a part of any judgment rendered.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which shall together constitute one and the same instrument.

12. No Waiver. Acceptance by either party of any performance less than required hereby shall not be deemed to be a waiver of the rights of such party to enforce all of the terms and conditions hereof. Except as otherwise expressly provided herein, no waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

13. Invalidity of Provision. If any provisions of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permitted by applicable law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole.

14. Enforceability. The Grantor represents and warrants that the Grantor has duly authorized the execution, delivery and performance of this Agreement and that no other approval or authorization is required by or on behalf of the Grantor. The persons signing below on behalf of the Grantor personally represent and warrant the representation and warranty of Grantor in the preceding sentence.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the day and year first above written.

GRANTOR:

STRATTON BROTHERS PARTNERSHIP,  
a Utah general partnership

GRANTEE:

CANYON RIDGE, L.C., a Utah  
a Utah limited liability company

By Winston G. Stratton  
Winston G. Stratton,  
General Partner

By Michael J. Bodell  
Michael J. Bodell, Manager

By Neil J. Stratton  
Neil J. Stratton,  
General Partner

By Donald G. Newell  
Donald G. Newell, Manager

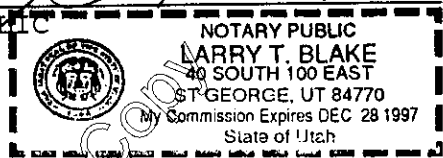
By Glen E. Stratton  
Glen E. Stratton,  
General Partner

STATE OF UTAH

COUNTY OF WASH ; ss.

The foregoing instrument was acknowledged before me this 22 day of Sept, 1994, by WINSTON G. STRATTON, a partner of STRATTON BROTHERS PARTNERSHIP, a Utah general partnership.

NOTARY PUBLIC

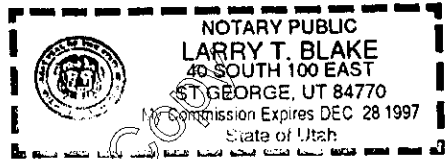


STATE OF UTAH

COUNTY OF WASH ; ss.

The foregoing instrument was acknowledged before me this 22 day of Sept, 1994, by NEIL J. STRATTON, a partner of STRATTON BROTHERS PARTNERSHIP, a Utah general partnership.

NOTARY PUBLIC

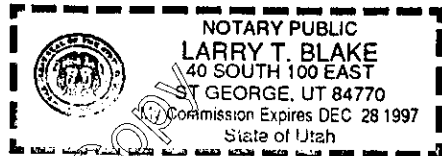


STATE OF UTAH

COUNTY OF WASH ; ss.

The foregoing instrument was acknowledged before me this 22 day of Sept, 1994, by GLEN E. STRATTON, a partner of STRATTON BROTHERS PARTNERSHIP, a Utah general partnership.

NOTARY PUBLIC





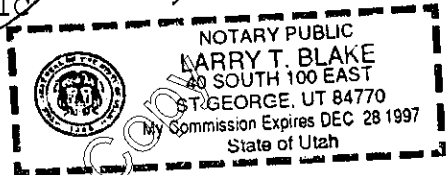
STATE OF UTAH

COUNTY OF WASH )

ss.

The foregoing instrument was acknowledged before me this 22 day of Sept, 1994, by MICHAEL J. BODELL, a Manager of CANYON RIDGE, L.C., a Utah limited liability company.

*[Signature]*  
NOTARY PUBLIC



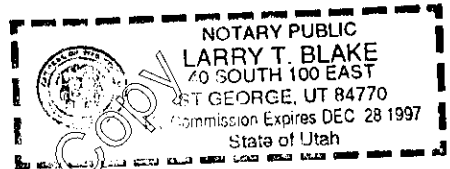
STATE OF UTAH

COUNTY OF WASH )

ss.

The foregoing instrument was acknowledged before me this 22 day of Sept, 1994, by DONALD G. NEWELL, a Manager of CANYON RIDGE, L.C., a Utah limited liability company.

*[Signature]*  
NOTARY PUBLIC



**EXHIBIT A**

That certain real property located in Washington County, State of Utah, and more particularly described as follows:

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 41 SOUTH, RANGE 14 WEST, SALT LAKE BASE & MERIDIAN, FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 36; THENCE N 00°08'03" E, 1749.74 FEET ALONG THE EAST SECTION LINE; THENCE N 89°51'57" W, 5.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF PROPOSED STRATTON ROAD AND THE POINT OF BEGINNING; THENCE S 89°59'55" W, 1237.00 FEET; THENCE N 00°08'03" E, 998.12 FEET; THENCE S 89°51'57" E, 1237.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF SAID PROPOSED STRATTON ROAD; THENCE S 00°08'03" W, 995.19 FEET ALONG SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

A PARCEL OF 28.30 ACRES MORE OR LESS.