

**DECLARATION OF
RECIPROCAL ACCESS AND DRIVEWAY EASEMENTS**

This Declaration of Reciprocal Access and Driveway Easements ("Declaration") is made as of this 27th day of June, 1997, by W/H No. 29, L.L.C., a Utah limited liability company ("Declarant").

UNDERSTANDINGS:

A. Declarant is the fee owner of a certain parcel of real property located in the Salt Lake International Center and commonly known as 635 Billy Mitchell Drive, Salt Lake City, Utah ("Parcel 1"), which Parcel 1 is depicted on the site plan attached hereto and made a part hereof as Exhibit A and which is legally described on Exhibit B attached hereto and made a part hereof. Declarant is also the fee owner of a certain parcel of real property located in the Salt Lake International Center in Salt Lake City, Utah ("Parcel 2"), which Parcel 2 is contiguous to Parcel 1, is depicted on the site plan attached hereto and made a part hereof as Exhibit A and is legally described on Exhibit C attached hereto and made a part hereof. Parcel 1 and Parcel 2 are sometimes referred to collectively herein as the "Property".

C. Declarant caused to be recorded in the office of the Salt Lake County Recorder on June 26, 1997 in Book 97-6P of Plats, Page 185, a certain Amended Plat 5, Salt Lake International Center ("Plat"), which Plat, in part, created the easement legally described on Exhibit D attached hereto and made a part hereof and depicted on Exhibit A attached hereto ("Driveway Easement").

D. Declarant desires, in this Declaration, to set forth the benefits and the burdens associated with the Driveway Easement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereafter provided and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby covenants and agrees as follows:

1. **Recitals.** The foregoing recitals are deemed remade herein and form a part of this Declaration.

2. **Definitions.** In addition to the other terms defined elsewhere in this Declaration, the following terms, for the purposes of this Declaration, shall have the following definitions:

a. **"Driveway"** shall mean that paved or otherwise improved surface in the Driveway Easement over which vehicular ingress and egress and maneuvering is permitted between Parcel 1 and Parcel 2.

b. **"Emergency Situation"** shall mean a situation causing, or immediately likely to cause, bodily injury to persons or substantial physical damage to the Property or any part thereof or improvements thereon or adjacent thereto. The duration of an

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Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

- c. "Improvements" shall mean all buildings and all other incidental structures of a permanent nature.
- d. "Owner" shall mean (i) each person holding record fee title to any portion of the Property, or (ii) each lessee entitled to occupy any part of the Property under a lease or estate for years for an initial fixed term of 40 years or longer, but only if the rights of an "Owner" under this Declaration are transferred to such lessee for the term of the lease under the applicable document creating such leasehold or estate for years; accordingly, references to this Declaration to "ownership" shall be deemed to include either or both the holding of a fee title and/or the holding of any such leasehold estate or estate for years.
- e. "Permittees" shall mean any person or entity from time to time entitled to the use and occupancy of any portion of the Property under an ownership right or any lease, sublease, license, concession or other similar agreement, and all officers, directors, employees, agents, tenants, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants and concessionaires of such person or entity.

3. **Grant and Declaration of Easements.** The Driveway Easement shall be subject to and in accordance with all of the terms, covenants, conditions and restrictions contained in this Declaration. Declarant hereby reserves, grants and conveys the Driveway Easement for the benefit of Parcel 1 and Parcel 2, respectively, and each Owner thereof, for its use and for the use of its Permittees, in common with others entitled to use the same. The Driveway Easement shall be a perpetual, non-exclusive, irrevocable easement appurtenant to that portion of the Property owned by each Owner, on, over and across that portion of the Property on which the Driveway Easement is located. The Driveway Easement shall be for the normal and uninhibited flow of motorized vehicle traffic, including without limitation, semi-truck trailer traffic; provided, however, that the Driveway Easement shall be only for ingress, egress and maneuvering and shall not include the parking or loading of any vehicles thereon or other conduct that unreasonably interferes with the applicable Owner's and/or Permittees' ordinary and reasonable commercial operations thereon.

4. **Maintenance and Repair of Easements.** Until such time as a final Certificate of Occupancy has been issued by the applicable governmental authority in connection with any Improvements on Parcel 2 ("Final C/O"), the Owner of Parcel 1 will, at its sole cost and expense, maintain and repair the Driveway in accordance with the standards described below. From and after the issuance of a Final C/O, the Owner of Parcel 1 will, at that Owner's sole cost and expense, maintain that portion of the Driveway located on Parcel 1 in accordance with the standards described below, and the Owner of Parcel 2 will, at that Owner's sole cost and expense, maintain that portion of the Driveway located on Parcel 2 in accordance with the standards described below. Notwithstanding the foregoing, any cost of maintenance or repair arising out of other than normal use, such as damage to the Driveway and increased debris thereon caused by construction vehicles, shall be charged to and paid by the party originating the other than normal use.

The Driveway will be maintained in a clean, sightly and safe condition consistent with the plans and specifications for same, which maintenance and repair shall include, but shall not necessarily be limited to, maintaining surface condition and stormwater collection in the manner in which it was designed and constructed and keeping the surface of the Driveway free from unreasonable accumulations of snow, ice and debris. All such maintenance shall be performed timely and in a good and workmanlike manner and shall cause as little disturbance to the affected portions of the Driveway as is reasonably possible under the circumstances.

Each Owner hereby grants to the other Owner and its successors and assigns, for the benefit of the Property, a non-exclusive, irrevocable and perpetual easement, on, over and across so much of the Property that is reasonably necessary for that Owner to maintain and repair the Driveway or any portion thereof that is not maintained or repaired by another Owner in accordance with the provisions of this Paragraph 4, subject to the prior notice and other requirements of Paragraph 5 hereof.

5. **Defaults; Notice of Entry.**

- a. **Default.** If at any time the Owner obligated to repair, maintain and restore as set forth in Paragraph 4 hereof shall not proceed diligently with any such repair or maintenance, then (i) the other Owner may give written notice to the obligated Owner specifying the respect or respects in which such repair or maintenance has not proceeded and, if, upon the expiration of thirty (30) days after the receipt of such notice (except in an Emergency Situation, in which event no written notice is necessary), any such repair or maintenance is still not proceeding diligently, then the Owner giving such notice may (but shall have no obligation to) perform such repair and maintenance and take all appropriate steps to carry out the same. Notwithstanding the foregoing, if the need for maintenance or repairs arising on the Driveway Easement is in the nature of an Emergency Situation, the foregoing notice and opportunity to cure provision shall not be applicable and, in such case, the non-defaulting Owner may enter upon the Driveway Easement to perform such repair or corrective work as shall be reasonably necessary to remedy the Emergency Situation.
- b. **Payment.** If an Owner cures any default or otherwise performs any obligation on behalf of the other Owner in accordance with sub-paragraph (a) above, the defaulting Owner shall pay to the performing Owner the reasonable out-of-pocket costs incurred by the performing Owner in effectuating such cure within twenty (20) days plus an administrative fee of 10% of those costs, following the receipt by the defaulting Owner of a written statement reasonably detailing those out-of-pocket costs and expenses and that administrative fee.
- c. **Failure to Pay.** If an Owner fails to pay to the other Owner any sum of money due the other Owner under or pursuant to the provisions of this Declaration and within the time period specified in this Declaration, then such sum due and owing shall bear interest from the due date thereof until the date paid at the rate, compounded semi-annually, of 2.0% plus the corporate base rate of interest from time to time published by Bank of America (or any similar or successor banking institution, if Bank of

America ceases to exist) as its corporate base rate of interest. In addition to any other rights or remedies such Owner may have, such Owner shall, after the expiration of ten (10) days after written notice to the other Owner, have the right to place a lien against the portion of the Property owned by the defaulting Owner in the amount due from the defaulting Owner. All liens under this subparagraph, shall arise immediately upon the recording of a notice by such owner with the Salt Lake County Recorder and may be enforced by a proceeding at law or in equity to foreclose such lien in like manner as a mortgage on real property in the State of Utah or by any other remedy available by statute or at law or in equity. Any such lien shall continue in full force and effect until such sum of money shall have been paid in full. As a part of such claim for money, the party enforcing such lien shall be entitled to the recovery of costs and reasonable attorney's fees incurred as a result of such enforcement. However, any such lien shall be secondary and inferior to the mortgage lien of any non-affiliated financial institution of record against title to that portion of the Property prior to the date of filing any lien created hereunder.

6. **Rights, Priorities and Liabilities.**

- a. **Binding Effect and Priority of Declaration.** The easements, covenants and rights granted hereunder shall be considered as easements, covenants and rights running with the land in perpetuity and not conditions, and the same shall be binding upon and inure to the benefit of each Owner and its successors and assigns. Such easements, covenants and rights shall be superior and prior to any claim, lease, occupancy agreement, easement, encumbrance, interest or right of any kind and character of third parties and to any mortgage affecting the Property, which mortgage shall at all times be subject and subordinate to the terms of this Declaration, except as otherwise expressly provided herein. Such easements, covenants and rights shall become binding upon and benefit any mortgagee, purchaser or successor of any purchaser of all or any portion of the Property at any foreclosure sale or any judicial sale, and shall also be binding upon and benefit every person or party whosoever, who or which shall at any time own any interest in the Property how so ever the ownership thereof may be acquired.
- b. **Rights of Third Parties.** Nothing contained in this Declaration shall be deemed to be a gift of any portion of the Property to the general public or any public use or purposes whatsoever, it being the intention of the Declarant that this Declaration be for the exclusive benefit of the parties specified herein and that nothing in this Declaration, express or implied, shall be construed to confer or create any rights, benefits, privileges, claims, actions, or remedies in or for the benefit of any other person, any governmental body or agency, or the general public other than the parties specified herein and their successors and assigns.

7. **Miscellaneous**

- a. **Amendment.** No amendment of this Declaration shall be effective until recorded in the Office of the Salt Lake County Recorder. No such amendment may remove,

revoke or modify any easement, covenant or right contained in this Declaration without the written consent of the Owners, their mortgagees or any other party which acquires rights in the Property by or through such Owners.

- b. Severability. Invalidation by judgment or court order of any one or more of the covenants or restrictions contained herein shall in no way effect any other provisions which shall remain in full force and effect.
- c. Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.
- d. Constructive Notice and Acceptance. Every person now or hereafter owning or acquiring any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, by reference or otherwise, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Property.
- e. Headings. The paragraph headings used herein are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the respective paragraphs to which they refer.
- f. Governing Law. This Mortgage is to be construed in accordance with and governed by the laws of the State of Utah without reference to questions of conflicts of law.

IN WITNESS WHEREOF, Declarant has caused this Declaration of Reciprocal Access and Driveway Easements to have been executed and delivered as of the day and year first above written.

DECLARANT:

W/H No. 29, L.L.C., a Utah
limited liability company

By: 

Its: Vice President

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

O'BRIEN, O'ROURKE & HOGAN
10 South LaSalle Street, Suite 2900
Chicago, Illinois 60603
Attn. Howard I. Goldblatt, Esq.

RETURN TO: Nancy Lewis
TICOR TITLE INSURANCE
203 N. LaSALLE, STE. 1400
CHICAGO, IL 60601
RE: N24 24424-46

Acknowledgment

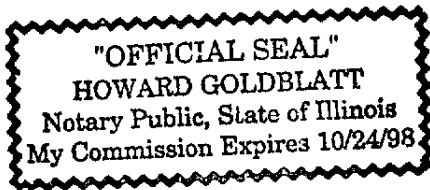
STATE OF ILLINOIS


COUNTY OF COOK

On the 27th day of JUNE, 1997, personally appeared before me GERALD A. YIGEDA, who, being by me duly sworn (or affirmed), did say that he is the VICE PRESIDENT of W/H No. 29, L.L.C., the Utah limited liability company described in and that executed the foregoing instrument, and that said instrument was signed on behalf of said Utah limited liability company by authority of the managers of the limited liability company and its operating agreement, and said VICE PRESIDENT acknowledged to me that said Utah limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year in this certificate first above written.

My commission expires:





NOTARY PUBLIC
Residing at Chicago, Illinois

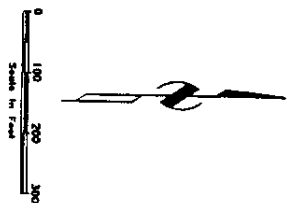
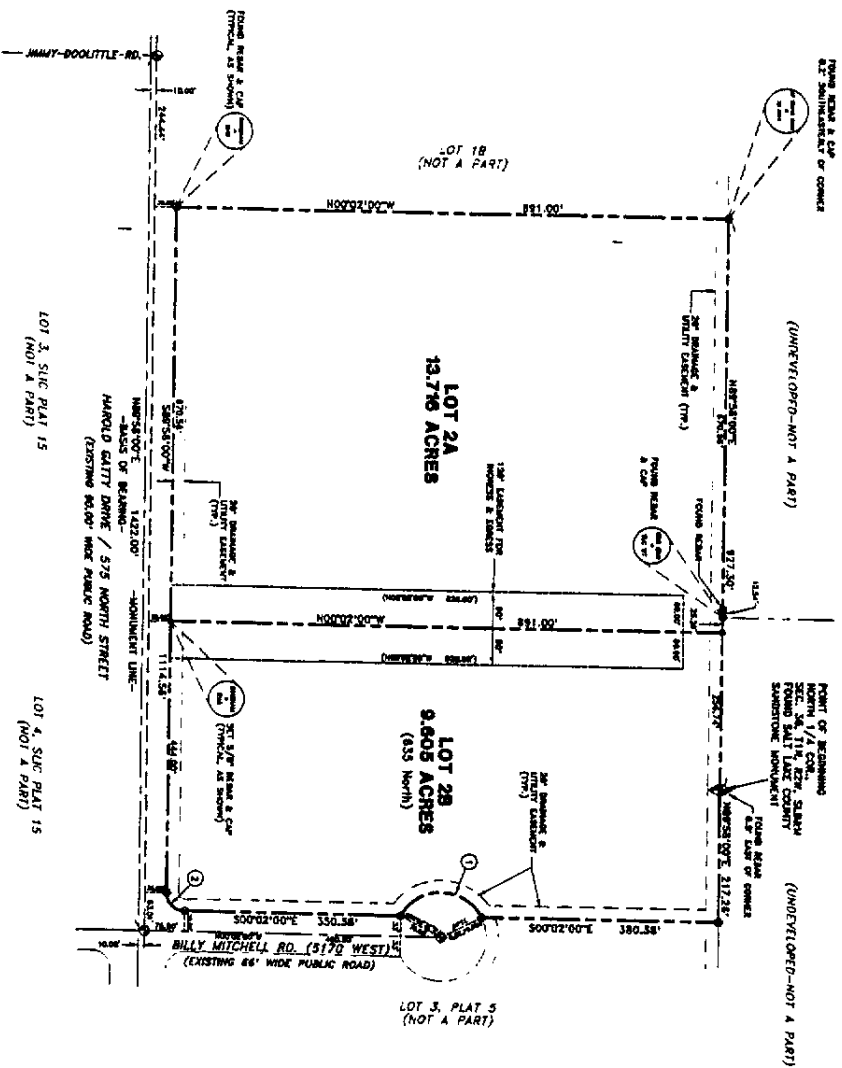
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Exhibit A

Depiction of Property and Driveway Easement

AMENDED LOT 2, AMENDED PLAT 5
SALT LAKE INTERNATIONAL CENTER
PART OF THE NORTH HALF OF SECTION 36
TOWNSHIP 1 NORTH, RANGE 2 WEST, S.L.B. & M.

BK 7707 PG 1322



- LEGEND
- ◆ FOUND SECTION CORNER MONUMENT SALT LAKE COUNTY SURVEY
 - ◆ FOUND SALT LAKE CITY STREET MONUMENT
 - SET 5/8" NEAR & CAP MARKED THROUGH EASE AT PROPERTY CORNERS
 - FOUND NEAR & CAP MARKED THROUGH EASE
 - FOUND PROPERTY CORNER AS NOTED
 - ① CURVE TABLE REFERENCE NUMBER

CURVE TABLE

| CURVE | DELTA | CHORD | LENGTH | TANGENT |
|-------|------------|--------|---------|---------|
| ① | 139°14'30" | 71.80' | 138.80' | 14.88' |
| ② | 89°59'50" | 20.88' | 47.17' | 8.60' |

NOTE: An Autograph Easement has been granted to Salt Lake City Corporation (subject to conditional Airport operations). See Entry No. 843283 in Book 758 of Page 845 in the Salt Lake County Recorder's Office.

PREPARED BY:
BINGHAM
ENGINEERING
5100 WILEY POST WAY
SALT LAKE CITY, UT 84116
SUC-3530

KUNNER
ACCOUNT
SHEET 2
OF 2 SHEETS

Exhibit B

Legal Description of Parcel 1

Lot 2A of Amended Lot 2, Amended Plat 5, Salt Lake International Center recorded on June 26, 1997 in Book 97-6P of Plats, Page 185, in the office of the Salt Lake County Recorder, being located in the Northwest Quarter of Section 36, Township 1 North, Range 2 West, Salt Lake Base & Meridian, in Salt Lake County, Utah

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Exhibit C

Legal Description of Parcel 2

Lot 2B of Amended Lot 2, Amended Plat 5, Salt Lake International Center recorded June 26, 1997 in Book 97-6P of Plats, Page 185, in the office of the Salt Lake County Recorder, being located in the Northwest Quarter of Section 36, Township 1 North, Range 2 West, Salt Lake Base & Meridian, in Salt Lake County, Utah.

Exhibit D

Legal Description of Driveway Easement

A 120 foot wide strip of land centered 60 feet on each side of the common property boundary line proposed between Lots 2A & 2B of Amended Lot 2, Amended Plat 5, Salt Lake International Center recorded on June 26, 1997 in Book 97-6P of Plats, Page 185, in the office of the Salt Lake County Recorder, being located in the Northwest Quarter of Section 36, Township 1 North, Range 2 West, Salt Lake Base & Meridian, more particularly described as follows:

Beginning at a point 256.74 South 89°58'00" West along the Section line and 891.00 feet South 00°02'00" East from the North Quarter Corner of Section 36, Township 1 North, Range 2 West, Salt Lake Base & Meridian and running thence South 89°58'00" West 60.00 feet along the Southerly boundary line of said Lot 2 and the Northerly boundary line of Harold Gatty Drive; thence North 00°02'00" West 828.00 feet; thence North 89°58'00" East 120.00 feet; thence South 00°02'00" East 828.00 feet to said Southerly line of Lot 2; thence South 89°58'00" West 60.00 feet along said line to the point of beginning. Contains 2.281 acres, more or less.

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07/09/97 10:40 AM 30.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
METRO NATIONAL TITLE
REC BY: E FROGGET , DEPUTY - WI

HG/WINWORD/WHC\RE\SALTDREV2.ESM/6-23-97

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