

STC #83230

0697003

1985 MAR 18 PM 3:11

WHEN RECORDED MAIL TO:
BOUNTIFUL GATEWAY PARTNERS, LTD. EN PT AB
667 East 100 South
Salt Lake City, Utah 84102

PAGE 1000

CAROL DEAN PAGE
DAVIS COUNTY RECORDER
DEPUTY FEE 17.00

NE 25-2N-1W

GRANT OF EASEMENTS AND RESTRICTIVE COVENANTS

INSTRUMENT executed this 12th day of March, 1985 by BOUNTIFUL GATEWAY PARTNERS LTD., a Utah Limited Partnership ("Gateway" herein).

1. FACTS AND OBJECTIVES

This Instrument for Grant of Easements and Restrictive Covenants is made with reference to the following facts and objectives:

A. Gateway is the owner of that certain tract of land referred to herein as "Phase I", which land is located in Davis County, State of Utah and more fully described on Exhibit "A" attached hereto. Contiguous to Phase I is certain property referred to herein as "Phase II" which property is more fully described on Exhibit "B" attached hereto. Gateway intends to develop Phase I for commercial use. It is also contemplated that there will be some commercial structures developed upon Phase II. Both Phase I and Phase II are sometimes collectively referred to herein as the "Entire Premises". Also attached hereto as Exhibit "C" is a site plan which sets forth the proposed development plan for the Entire Premises as presently contemplated and which shall for purposes of this Agreement be considered as part hereof and shall be hereafter attached and referred to as the "Site Plan"

B. The owner of the fee title to Phase I and Phase II may lease and/or sell their respective parcels to other tenants and/or owners.

C. Gateway desires to establish, as hereinafter provided, non-exclusive easements for the use of those portions of the Entire Premises which are intended for use as driveways, pedestrian ways, sidewalks, parking areas, roadways and construction and maintenance of utility easements. The foregoing portions of the Entire Premises hereinafter collectively referred to as "Common Areas" shall include any and all portions of the Entire Premises which shall not have constructed thereon a building or other structure associated with the occupancy thereof which is designed for the exclusive use of a tenant or owner and its invitees and guests. Said common areas are generally designated on the Site Plan.

D. Gateway further desires to set out the terms, conditions, easements, and restrictive covenants which shall control the operation, maintenance and development of Phase I.

E. Gateway also desires to provide for the common

development of a compatible, unified commercial development on the Entire Premises and agrees that Gateway and its successors and assigns will be bound by the terms and conditions hereof.

2. TERM

The term of this Agreement shall commence on the date of execution hereof, and shall continue for a term of sixty-five (65) years from the commencement date. The term of this Agreement shall be automatically extended for successive ten year increments unless terminated by a concurring vote of both of the following groups: 1) a majority of all owners then having a fee interest in Phase I or Phase II; and 2) by a majority of all mortgagees then having any interest in the Entire Premises.

3. EASEMENT ON PHASE I

Gateway hereby grants to each and every person, partnership, corporation or other entity now or hereinafter owning or having an interest in all or any portion of Phase I a mutual, reciprocal and non-exclusive easement, license, right and privilege, on all Common Area located within Phase I, for: (i) the installation, maintenance and connection to all underground utilities including all utility lines, wires, pipes, conduits, sewers and drainage lines, herein "Utility Lines"; and (ii) the rights and privileges of passage and use for both pedestrian and vehicular traffic, including but not limited to, the parking of vehicles and for the ingress and egress to and from the roadways adjoining Phase I. Said easement for ingress, egress and vehicle parking is only for business invitees, including any related deliveries. Gateway agrees that any future connections to the existing Utility Lines located on Phase I shall be, following the date that the buildings are constructed, subject to advance written approval of the owner of the respective parcels where such future connections are to occur.

No owner shall have the right to withhold any written approval required by this paragraph 3 when reasonable arrangements are made to perform any work required in a manner and at times calculated to cause minimal disruption with the business of the tenants upon that portion of Parcel I where the work is to be accomplished.

Any costs, or expenses incurred in repairing or maintaining the Utility Lines located on and servicing any portion of Phase I shall be borne by the owner of said portion. The costs of repairing or maintaining Utility Lines located on one owner's portion of Parcel I but servicing solely another owner's portion of said Phase I shall be paid by the owner of the portion of Phase I receiving such service.

The easements, rights and privileges granted hereby shall be for the benefit of and be restricted solely to the owners from time to time of all or any portion of Phase I, but such owner or such owners may grant the benefit of such easement, right and privileges to its tenants now or hereafter occupying a building or portions thereof on Phase I for a period of such tenancy, and to

the customers, employees and business invitees of said tenants, but the same is not intended, and shall not be construed as creating any rights in and for the benefit of the general public.

Notwithstanding anything contained in Paragraph 3 to the contrary, the easements, rights and privileges hereinabove granted shall not extend to or exist over portions of the Entire Premises hereinafter improved with buildings or other structures as shown on the Site Plan.

The easements, rights and privileges hereinabove granted shall be used and enjoyed in such a manner as to cause the least possible interference with the conduct and operations of the business at any time existing on Phase I. The construction of buildings upon Phase I shall be limited to such an extent that in the case where a building is constructed, there shall always be at least three parking spaces for each 1000 square feet of gross building area to be constructed.

There shall be a minimum of two (2) vehicular driveway entrances to the parking area of Phase I. One (1) vehicular driveway entrance on 500 South Street and a Crash-Gate emergency ingress/egress on the southwest corner of Phase I to be located as designated on the Site Plan, as said streets are now designated; provided, however, that if fewer such entrances are authorized and permitted by lawful public authority, then the minimum permitted by said authority shall at all times be maintained. In the event that fewer than the two described entrances are permitted, Gateway agrees to seek appropriate governmental authorizations for additional access up to the minimum referred to above in this paragraph.

Each owner of a portion of Phase I shall have the right to permit employee parking on their respective portion except that such employee parking may be limited from time to time to specific area mutually designated by Gateway or their successors.

4. EASEMENT ON PHASE I TO OWNERS OF PHASE II

Subject to the terms and conditions of Paragraph #9 herein, Gateway hereby grants to each and every person, partnership, corporation or other entity now or hereinafter owning or having an interest in all or any portion of Phase II, a mutual reciprocal and non-exclusive easement, license, right and privilege over and access the Common Area located within Phase I, for the installation, maintenance and connection to all underground utilities including all Utility Lines, and the rights and privileges of passage and use for both pedestrian and vehicular traffic, including but not limited to, the parking of vehicles and for the ingress and egress to and from the public roadways adjoining Phase I. Said easement for ingress, egress and vehicle parking is only for business invitees, including any related deliveries. Said easement for Utilities is subject to the fact that any future connections to the existing utility lines shall be, following the date that the buildings are constructed, subject to advance written approval of the owner of the respective portion of Phase I where such future connections are to occur.

No owner shall have the right to withhold any written approval required by this paragraph 4 when reasonable arrangements are made to perform any work required in a manner and at times calculated to cause minimal disruption with the business of the tenants upon that portion of Phase I where the work is to be accomplished.

The costs of repairing or maintaining utility lines located on one owner's parcel but servicing any portion of Phase II shall be paid by the owner of the Phase II.

The easements, rights and privileges granted hereby shall be for the benefit of and be restricted solely to the owners from time to time of all or any portion of Phase II, but such owner or such owners may grant the benefit of such easement, right and privileges to its tenants now or hereafter occupying a building or portions thereof on the Phase II for a period of such tenancy, and to the customers, employees and business invitees of said tenants, but the same is not intended, and shall not be construed as creating any rights in and for the benefit of the general public.

Notwithstanding anything contained in Paragraph 4 to the contrary, the easements, rights and privileges hereinabove granted shall not extend to or exist over portions of the Entire Premises hereinafter improved with buildings or other structures as shown on the Site Plan.

The easements, rights and privileges hereinabove granted shall be used and enjoyed in such a manner as to cause the least possible interference with the conduct and operations of the business at any time existing on Phase I. The construction of buildings upon the Entire Premises shall be limited to such an extent that: 1) in the case where a building is constructed there shall always be at least three parking spaces for each 1000 square feet of gross building area to be constructed; or 2) in the case where an 84 unit motel is constructed there shall always be at least 90 total parking stalls attributable to said motel space.

5. COMPLETION OF COMMON AREAS

Gateway agrees that at the time it develops Phase I that all sidewalks shall be of concrete construction, and all service drives, parking aisles, driveways, curbs and parking areas shall be graded, leveled and paved with concrete or asphalt, and marked for the orderly distribution of automobiles.

6. MODIFICATION OF SITE PLAN

So long as Gateway shall remain the fee title holder to all of Phase I, Gateway reserves the right to modify, amend, or revise the Site Plan in any manner that it shall determine shall be necessary for the commercial development of the Entire Premises, provided that such modification shall provide for reasonable ingress and egress to the Entire Premises over and across Phase I and the parking requirement for the access to Phase I shall comply with all applicable minimum zoning requirements. For purposes of this Paragraph 6, the term "Gateway" shall include any holder or owner of a security interest in any portion of the Entire Premises

granted by Gateway, which holder shall become the legal owner of such portion by reason of a foreclosure sale, deed in lieu of foreclosure, or any other event whereby such holder shall realize upon its security, or purchase at such foreclosure sale, or the successors and assigns of any such party, who shall acquire legal title to any portion of the entire premises at such a foreclosure sale, or by reason of a deed in lieu of such sale, or upon the exercise of the rights of a holder of such security interest.

7. MAINTENANCE AND TAXES

The owner of each respective portion of Phase I shall be responsible at their own expense for all costs and expenses of the maintenance of the Common Areas located in their respective portion of Phase I which shall include, but not be limited to, electricity, cleaning, snow removal, repairs and replacements, including resurfacing and restriping, maintenance of lights and light standards including illumination during the hours the businesses of the commercial development are open, and a reasonable period prior and subsequent thereto, to a minimum of one and one-half foot candles measured at ground level of Common Areas, landscaping and all other functions necessary for the proper maintenance, upkeep and operation of such Common Areas. The owners shall cause the common areas to be thoroughly cleaned and maintained in a first class condition and snow to be properly removed on every occasion where it impedes the safe and reasonable commercial use of said facilities. In the event any or all of the owners elect to maintain the Common Areas located on their respective parcels in conjunction with each other, then in such event, all such costs and expenses shall be prorated among such owners in such proportions as the owners or their successors may agree to in writing, unless and until the owners of all of Phase I, whether one or more, shall elect otherwise, be responsible to pay the percentage of the total cost of maintaining the Common Area that shall be obtained by dividing the net leasable square footage of buildings or other structures located upon said owners portion of Phase I by the total number of net leasable square footage in all buildings and structures located in Phase I.

The owners of any portion of the respective parcels of property comprising Phase I shall timely pay all real estate taxes and assessments, water rents and charges levied on their respective portion of Phase I.

8. CONDEMNATION

In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any part of Phase I, that portion of the award attributable to the value of any land within the Common Areas so taken shall be payable only to the owner in fee, as the case may be with respect to the portion condemned, and no claim thereon shall be made by other owners of any other portion of Phase I, provided, however, all other owners of Phase I may file collateral claims with the condemning authority, over and above the value of the land within the Common

Areas so taken, to the extent of any damage suffered to their respective improvements resulting from the severance of the appurtenant Common Area or utility easements and facilities so taken, provided, however, that the owner in fee of the portion of the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area so owned by such Owner as near as practicable to the condition of the same immediately prior to such condemnation and without contribution from any other owners of Phase I except to the extent that the proceeds of such award are insufficient to pay the costs of such restoration and repair.

No party shall have any right to any award made by the condemning authority for the value of any rights or other benefits relating to any owner's portion of Phase I, whichever is taken by the condemnation.

9. CONDITIONS GOVERNING GRANT OF EASEMENT TO PHASE II

The grant of easement set forth in paragraph 4 herein shall automatically terminate July 31, 1986 unless all of the following events shall have occurred before July 31, 1986:

a. SKB Development, a Utah general partnership or its successor in interest is vested in fee title in Phase II.

b. The Owners of Phase II shall have executed and caused to be recorded in the official records of real property for Davis County, State of Utah, reciprocal easements for roadway access to 600 South, ingress, egress, utilities, construction access, etc. of similar breadth and scope as those given by Gateway to Phase II pursuant to paragraph #4, above. Said easements shall name Gateway or its successor in interest as the grantee of such easements.

c. A plan for the development of Phase II is submitted to Gateway and approved by Gateway. Said plan shall be for either: 1) a motel facility providing for overnight accommodations, convention facilities, and a limited food serving capacity not to exceed 2,000 square feet; or 2) any other plan acceptable to Gateway which is consistent and comparable with the then existing use of Phase I and not in violation of any prevailing lease covenants pertaining to Phase I.

10. OBSTRUCTIONS

No fences, barriers or other obstructions, except as are shown on the Site Plan shall be erected or maintained between Phase I or Phase II except to facilitate smooth and safe traffic flow between the phases.

11. CONTROL OF ACCESS

Gateway for itself and the then owners of all or any part of the easement areas do, however, reserve the right to close temporarily all or any portion of the said easement areas to such

extent, in the opinion of Gateway or the then owners of all or any part of the easement areas, as may be legally necessary and sufficient to prevent a dedication thereof or an accrual of any rights in any person other than Gateway or the then owners. Any such temporary closing shall, however, be further subject to the reasonable consent of all owners of the Entire Premises.

12. COVENANTS RUN WITH LAND

Subject to the operation of paragraph #9, above, the easements hereby granted, the restrictions hereby imposed and the agreements and covenants herein contained shall be easements, restrictions and covenants running with the land, and shall inure to the benefit of, and be binding upon, all future owners of all or any portion of Phase I, and their respective heirs, successors and assigns, and all persons claiming under them for a term of sixty-five (65) years from the effective date hereof, or for any extension period thereof, unless terminated either as set forth herein, or by unanimous cause of all the owners of Phase I.

13. EQUITABLE REMEDIES

In the event of a breach, or attempt or threatened breach, by any owner hereafter or any portion of said Phase I, in any of the terms, covenants and conditions hereof including payment of taxes and assessments, anyone or all other owners of a portion of Phase I shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach including payment of any amounts due, and any deed, lease, assignment, conveyance or contract made in violation of this Agreement shall be void and may be set aside upon petition of one or more of the said owners. All costs and expenses incurred by any owner in making any payments in any such suit or proceedings shall be assessed against the defaulting owner in favor of any prevailing owner and shall constitute a lien against the real estate or the interest therein for which such payment was made or against the real estate or the interest therein wrongfully deeded, leased, assigned, conveyed or contracted for until paid, effective upon recording notice thereof in the Office of the Recorder in and for the county where Phase I is located, but any such lien shall be subordinated to any first mortgage covering any portion of Phase I and any purchaser at any foreclosure sale (as well as any grant of deed in lieu of foreclosure) under any such first mortgage shall take title free from any such existing lien, but otherwise be subject to the provisions hereof. The remedies of any one or all such owners of a portion of Phase I specified herein shall be cumulative as to each and as to all other permitted at law or in equity.

In the further event of any failure by a party to perform, fulfill or observe any agreement herein to be performed, fulfilled or be served by it, continuing for thirty (30) days after receipt of written notice, wherein situations involving potential danger to the health or safety of persons, in, on or about of substantial

deterioration of Phase I or any portion or part hereof, in each case after written notice specifying such, any other party may, at its election, cure such failure or breach for and on behalf of the defaulting party, and any amount which the party so electing shall expend for such purpose, or which shall otherwise be due by any party to any of the other parties hereunder, shall be paid to the party to whom due on demand, without contest, upon delivery of its invoice, together with interest thereon at the lower of (i) the rate of twelve (12) percent per annum, or (ii) the maximum permissible from time to time under applicable law, from the date of the expenditure or the date when the same shall have become due to the date of payment thereof in full. The provisions of this paragraph shall in all respects be subject and subordinate to the lien of any mortgages or any deeds of trust at any time or from time to time on the land of the defaulting party and the rights of the holders thereof.

14. SUCCESSORS FOND

The rights herein granted or reserved and the restrictions herein set forth shall run with the land and the agreements herein contained shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

15. FORCE MAJEURE

If Gateway hereto are prevented from timely performance of any requirement hereunder by strikes, lock outs, natural disasters, delays in obtaining materials, acts of God or any similar event, the time for performance shall be extended by the period of any such delay.

16. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of Utah.

"GATEWAY"

Countiful Gateway Partners, Ltd.,
a Utah Limited Partnership

By: SKB Development,
a Utah General Partnership,
its General Partner

By: Steven E. Smoot
Steven E. Smoot, Partner

By: W. Scott Kjar
W. Scott Kjar, Partner

By: Roy L. Bosley
Roy L. Bosley, Partner

CONSENT TO RECORDATION AND SUBORDINATION

The undersigned Michael S. Purles and Richard D. Nicholls, as Trustees of Pension Equity Growth Trust (the "Trust") do hereby acknowledge that the Trust is the Beneficiary under a Trust Deed dated December 31, 1984 (the "Trust Deed") and recorded in the official records of Davis County, State of Utah on February 12, 1985 as Entry No. 694493 in Book 1022 at Page 1203 which Trust Deed encumbers Phase I of the real property, as described in the within Grant of Easements and Restrictive Covenants.

The undersigned do hereby consent to the recordation of the within Grant of Easements and Restrictive Covenants, and does further agree that the lien and encumbrance of the Trust Deed in favor of the Trust are hereby subordinated and made junior, inferior and subject to the terms and conditions of the within Grant of Easements and Restrictive Covenants.

Dated this 6TH day of MARCH, 1985.

Pension Equity Growth Trust

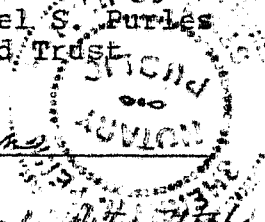
By Richard D. Nicholls
Richard D. Nicholls, Trustee

By Michael S. Purles
Michael S. Purles, Trustee

STATE OF UTAH)
 : SS.
COUNTY OF SALT LAKE)

On the 6th day of March, 1985, personally appeared before me Michael S. Purles and Richard D. Nicholls, who being by me duly sworn did say that they are the Trustees of Pension Equity Growth Trust, and that said instrument was signed in behalf of said Trust by authority of its Trust Agreement, and said Michael S. Purles and Richard D. Nicholls acknowledged to me that said Trust executed the same.

Sherry L. Jensen
Notary Public

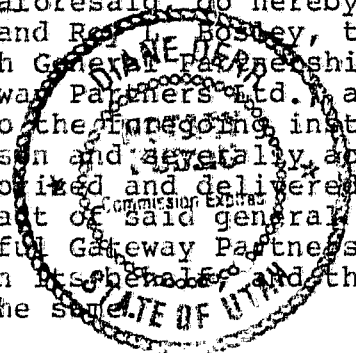


My Commission Expires:
2-24-87

Residing at: Salt Lake City, Utah

STATE OF UTAH)
)
) ss.
County of Salt Lake)

I, DAVE DERR, a Notary Public in and for the County and State aforesaid, do hereby certify that Steven E. Smoot, W. Scott Kjar, and Roy L. Bosley, the General Partners of SEB Development, a Utah General Partnership, the general partner of Bountiful Gateway Partners Ltd., a Utah Limited Partnership, subscribed to the foregoing instrument, appeared before me this day in person and ~~personally~~ acknowledged that they being thereunto duly authorized and delivered the said instrument as the free and voluntary act of said general partnership, as general partner of Bountiful Gateway Partners, Ltd., and that said instrument was executed on its behalf, and that said limited partnership did execute the same.



Given under my hand and notarial seal this 12th day of MARCH, 1985.

Dave Derr
Notary Public

My commission expires:
9-28-86

EXHIBIT "A"

[To Grant of Easements and Restrictive Covenants]

[Legal Description of Phase I]

Real property situate in Davis County, State of Utah and more particularly described as follows:

06-049-0063-
S110
E110
M-N-E-SE
3N

BEGINNING at a point on the South Line of 500 South Street which is North 89°59'16" West 132.00 feet along the Section Line and South 0°11'26" East 539.88 feet along the centerline of 500 West Street and South 89°41'24" West 490.18 feet along the centerline of 500 South Street South 0°12'36" East 38.28 feet to a fence corner from the Northeast Corner of Section 25, Township 2 North, Range 1 West, Salt Lake Base and Meridian and running thence South 73°06'36" West 234.12 feet along the fence line; thence North 89°10'36" West 168.40 feet along a fence line to a point of tangency of a 90.00 foot radius curve to the left; thence Southwesterly 126.90 feet along the arc of said curve through a central angle of 80°47'24"; thence South 10°02' West 499.42 feet along the Easterly no-access line of the I-15 Freeway to the North end of a frontage road (said no-access line is 1.0 foot Easterly of and parallels the fence); thence South 86°59' East 322.75 feet thence North 0°29'32" East 439.42 feet; thence East 297.25 feet; thence South 1.41 feet; thence East 9.22 feet; thence South 0°00'52" West 48.17 feet; thence North 89°41'24" East 126.96 feet; thence North 0°27'17" East 37.82 feet; thence North 88°31'35" East 5.68 feet; thence North 0°10'21" West 226.06 feet along the West edge of a retaining wall to a point on the South line of said 500 South Street; thence South 89°41'24" West 144.51 feet along said street; thence South 83°44' West 6.03 feet along said street; thence South 0°27' East 65.39 feet; thence West 44.00 feet; thence North 0°27' West 60.91 feet to the point of BEGINNING.

EXHIBIT "B"

[To Grant of Easements and Restrictive Covenants]

[Legal Description of Phase II]

Real property situate in Davis County, State of Utah and more particularly described as follows:

06-049-0007-
-9100
0017-

BEGINNING at a point on the West Line of a public street (600 South Street) which is South 0°13'24" East 1069.20 feet along the Section Line and North 89°59'16" West 563.19 feet from the Northeast Corner of Section 25, Township 2 North, Range 1 West, Salt Lake Base and Meridian, which point is also 429.00 feet West of the centerline of a street (500 West Street); and running thence South 0°14'16" West 74.34 feet along an existing fence line; thence West 308.02 feet; thence North 0°29'32" East 353.39 feet; thence East 241.30 feet; thence South 0°00'04" East 131.59 feet along a line that is 492.98 feet West of the centerline of said 500 West Street; thence South 89°59'56" West 15.00 feet; thence South 0°00'04" East 107.44 feet; thence Southeasterly 28.98 feet along the arc of a 25.00 foot radius curve to the left through a central angle of 66°25'09" (radius point bears North 89°59'56" East from the beginning of the curve); thence North 0°00'04" West 22.91 feet; thence Southeasterly 62.82 feet along the arc of a 40.00 foot radius curve to the left through a central angle of 89°59'12" (radius point bears North 89°59'56" East from the beginning of the curve); thence South 89°59'16" East 23.99 feet to the point of BEGINNING.

TOGETHER WITH AND SUBJECT TO a 30 foot wide right-of-way, the centerline of which is described as follows: BEGINNING at a point on the West Line of a public street which is South 0°13'24" East 1069.20 feet along the Section Line and North 89°59'16" West 563.19 feet from the Northeast Corner of Section 25, Township 2 North, Range 1 West, Salt Lake Base and Meridian which point is also 429 feet West of the centerline of a street (500 West Street) and running thence North 89°59'16" West 23.99 feet thence Northwesterly 62.82 feet along the arc of a 40.00 foot radius curve to the right through a central angle of 89°59'12" (radius point bears North 0°00'44" East from the beginning of the curve); thence North 0°00'44" East 52.44 feet; thence Northwesterly 35.83 feet along the arc of a 40.00 foot radius curve to the left through a central angle of 51°19'04".