

7613336

(1)

7613336
04/07/2000 02:49 PM 24.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
BY: 5BM, DEPUTY - WI 8 p.

WHEN RECORDED, MAIL TO:
Read R. Hellewell, Esq.
KIRTON & McCONKIE
60 East South Temple, Suite 1800
Salt Lake City, UT 84111-1004

Space Above for Recorder's Use Only

DECLARATION OF USE RESTRICTIONS

THIS DECLARATION OF USE RESTRICTIONS (the "Declaration") is made and entered into this 24 day of April, 2000 by **ZIONS SECURITIES CORPORATION**, a Utah corporation, ("Declarant") in contemplation of the following facts and circumstances:

A. Declarant is the fee simple owner of certain real property ("Business Pad 102") which is located in Salt Lake County, State of Utah and specifically described on Exhibit "A" which is attached hereto and incorporated herein by this reference.

B. Business Pad 102 is located within and is part of Lake Park Corporate Centre (the "Project") which has been developed by Declarant as a commercial office park and related uses.

C. The Project, including Business Pad 102, is subject to the terms and conditions of that certain Master Declaration of Easements, Covenants and Restrictions for Lake Park Corporate Centre dated February 1, 1996 and recorded with the Salt Lake County Recorder, State of Utah, on February 6, 1996, as Entry No. 6274549 in Book 7325 beginning at Page 0615, as same may be amended from time to time in accordance with the provisions thereof (the "Master Declaration").

D. Declarant desires to impose on Business Pad 102 certain limitations on the use thereof and to provide that no portion of Business Pad 102 shall be occupied or used, directly or indirectly, for certain uses or purposes as set forth herein.

NOW, THEREFORE, Declarant does hereby declare as follows:

1. Use Restrictions. No portion of Business Pad 102 shall be occupied or used, directly or indirectly, for any of the following purposes:

a. any use which emits an offensive or obnoxious odor, fume, dust, vapor, noise or sound which can be heard or smelled outside of any building located on Business Pad 102 or

FIRST AMERICAN TITLE
NCM# 444493

BK8353 PG8690

creates a fire, explosion or other hazard (including, without limitation, the display or sale of explosives or fireworks), or constitutes a public or private nuisance, or any use which creates a noise or sound that is objectionable due to intermittent, beat, frequency, shrillness or loudness;

b. any warehouse or assembling, except for warehouse or assembling as an incidental part of the primary office or research and development use of a tenant or occupant of Business Pad 102, or any manufacturing, factory, distilling, refining, smelting, agricultural or mining operation or facility or any drilling for and/or removal of subsurface substances;

c. any thrift, liquidation, "flea market" or "second hand" store;

d. any mobile home park, trailer court, labor camp, junkyard, stockyard or animal basin (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);

e. any dumping, disposing, incinerating or reducing of garbage (exclusive of garbage compactors or dumpsters located near the rear of any building);

f. any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, except for laundry facilities located within any hotel or motel used exclusively by the guests thereof;

g. any central or commercial laundry or dry cleaning plant or coin-operated laundry or laundromat;

h. any automobile, truck, trailer or recreational vehicles sales, leasing, display, repair or maintenance (including, without limitation, body and fender shops) or car wash or gas station;

i. any living quarters or sleeping apartments;

j. any veterinary hospital or animal raising facility;

k. any mortuary, funeral parlor or home or similar service establishment;

l. any type of karate, gymnasium or dance studio, except for fitness centers open only to employees of businesses operated at Business Pad 102;

m. any bowling alley, amusement or game room, amusement park, carnival, game parlor, skating rink, billiard room, hall or parlor, pool hall, gun range, off-track betting establishment, massage parlor, adult book store, peep show store, head shop store or any other similar store or club (which are defined as stores or clubs with any inventory, including nude photos, sexual devices, magazines, videos, tapes or objects depicting genitalia and other similar items; and no individuals, whether male or female, shall be employed in any capacity in such store or club which includes the displaying of any genitalia, whether topless or bottomless or otherwise); any

business devoted to sale of articles or merchandise normally used or associated with illegal or unlawful activities, including, without limitation, the sale of paraphernalia used in connection with marijuana, cocaine or other controlled drugs or substances; any bar serving alcoholic beverages, tavern, pub, cocktail lounge, ballroom, night club, other entertainment facility, dance hall, discotheque, beauty school, barber college, library, church or house of worship.

n. any sports, recreational or tanning facility; except for fitness centers and temporary recreational facilities open only to employees of businesses operated at Business Pad 102, any business which creates a public or private nuisance; any use which creates dust, dirt or fly ash in excessive quantities or any processing or rendering plant;

o. the use, storage, transportation, handling, manufacture or emission of any noxious, toxic, caustic or corrosive fuel or gas or other hazardous substance; provided, however, the provisions of this paragraph shall not prohibit the use, storage, transportation, handling, manufacture or emission of hazardous substance in accordance with applicable laws relating thereto if such hazardous substance is customarily used in the ordinary course of business as an incidental part of the primary office use of a tenant or occupant of Business Pad 102;

p. the emission of microwave, radio wave, or other similar electronic, light or noise radiation at levels which are dangerous to health or which interfere with the power operation of electronic, telephone, computer or other business equipment of tenants of Business Pad 102;

q. any theater.

r. any fast-food restaurant, drive-through restaurant or any restaurant other than (i) a full-service, sit down restaurant providing table service, or (ii) a restaurant, delicatessen, cafeteria or snack shop which is located within a building used primarily as an office building, provided that such restaurant, delicatessen, cafeteria or snack shop is intended to serve primarily the tenants and occupants of such building;

s. any residential facility or hotel, motel, or transient lodging facility other than a full-service hotel having a national flag; and/or

t. any retail shop or establishment selling goods at retail to the public other than a retail shop located within a building used primarily as an office building, provided that such retail shop is intended to serve primarily tenants and occupants of such building.

2. Master Declaration. The use restrictions set forth in this Declaration shall be in addition to any restrictions set forth in the Master Declaration. Business Pad 102 shall remain subject to all terms and conditions in the Master Declaration.

3. Covenants to Run With Land. This Declaration is intended to and shall run with the land which is included in Business Pad 102 and the provisions thereof shall be binding upon all parties having or acquiring the right, title or interest in and to all or any portion of Business Pad 102 and the respective heirs, successors and assigns of such parties.

4. Compliance. Each element of any portion of Business Pad 102 shall comply strictly with the provisions of this Declaration. Failure to comply with any of the same shall be grounds for enforcement as provided in this Declaration. The enumeration of remedies in this Declaration shall neither waive nor limit for any person or entity mentioned herein the remedies available to such person or entity. The rights and remedies set forth in this Declaration are cumulative and are in addition to and not in lieu of any other right or remedy which any party may have under any other instrument or agreement or at law or in equity.

5. Enforcement. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration shall be enforceable by each party which is an "Owner" of a portion of Business Pad 102. The term "Owner" as used herein, shall have the meaning set forth in the Master Declaration. Such enforcement may be undertaken in any manner permitted by law including, without limitation, a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages incurred. In the event any action, with or without suit, is undertaken by a party to enforce any provision hereof, the prevailing party shall be entitled to its reasonable attorney fees incurred in such action.

6. No Third Party Beneficiary. This Declaration has been executed and recorded for the benefit of the "Owners" of any portion of Business Pad 102 which is described as set forth on "Exhibit A". No other party shall be construed to be an intended third party beneficiary of any of the restrictions set forth herein and no party other than an Owner of a portion of Business Pad 102 shall, therefore, have the right to enforce any provision hereof, unless such right shall be specifically set forth herein.

7. Duration of Restrictions. The restrictions herein set forth shall survive so long as the Master Declaration shall remain in effect on Business Pad 102 in accordance with the terms and conditions set forth in the Master Declaration.

8. Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

9. Captions. The titles, headings and captions used herein are for convenience only and are not a part of this Declaration and shall not be considered in construing, nor shall same be used to limit or amplify the terms and provisions hereof.

10. Invalidity of Provision. If any provision of this Declaration as applied 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 permissible by law) any other provision of this Declaration, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Declaration as a whole.

11. Exhibits. All exhibits to this Declaration are incorporated herein by this reference.

12. Governing Law. This Declaration and the exhibits attached hereto shall be governed by and construed under the laws of the State of Utah.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Use Restriction to be effective as of the date first above written.

Declarant: **ZIONS SECURITIES CORPORATION**,
a Utah corporation

By: William Kent Money
William Kent Money
Its: President

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

The foregoing instrument was acknowledged before me this 15 day of April, 2000 by William Kent Money, as President of Zions Securities Corporation.

My Commission Expires:

JUNE 8, 2001

ROBERT R. HELLEWELL
Notary Public
Residing at: SALT LAKE CITY, UTAH

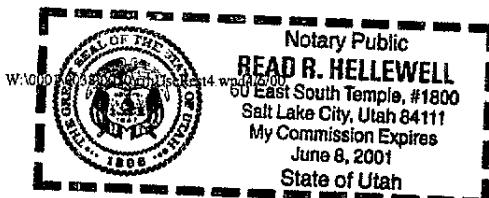


EXHIBIT "A"
TO
DECLARATION OF USE RESTRICTIONS

[Legal Description - Business Pad 102]

Real property located in Salt Lake County, State of Utah, which is specifically described as follows:

Beginning at a point on the Southeasterly right-of-way line of LAKE PARK BOULEVARD, a 106 foot wide right-of-way, said point also being North 89°50'50" West 591.272 feet along the Quarter Section line and SOUTH 323.190 feet from the East Quarter Corner of Section 19, Township 1 South, Range 1 West, Salt Lake Base and Meridian and running thence South 49°37'05" East 21.970 feet; thence South 20°08'05" East 5.363 feet to the southerly side of a concrete retaining wall forming the boundary of a waterway, and continuing along the southerly and westerly side of said retaining wall for the following fifty-six courses:

1. South 78°40'10" East 22.976 feet,
2. North 89°54'32" East 33.298 feet,
3. South 68°54'02" East 35.087 feet,
4. South 50°36'17" East 98.594 feet,
5. South 46°58'03" East 54.020 feet,
6. South 41°12'50" East 24.994 feet,
7. South 31°31'07" East 23.146 feet,
8. South 17°25'30" East 28.134 feet,
9. South 08°20'57" East 26.680 feet,
10. South 20°26'38" East 30.880 feet,
11. South 35°10'02" East 44.810 feet,
12. South 16°47'53" East 21.543 feet,
13. South 01°54'42" East 36.093 feet,
14. South 19°47'50" East 28.250 feet,
15. South 34°07'50" East 31.033 feet,
16. South 30°02'29" East 29.989 feet,
17. South 18°10'24" East 37.128 feet,
18. South 10°41'27" East 60.294 feet,
19. South 21°51'22" East 33.378 feet,
20. South 18°23'11" East 33.621 feet,
21. South 23°23'22" East 39.486 feet,
22. South 28°31'50" East 91.489 feet,
23. South 37°45'35" East 49.088 feet,
24. South 45°42'46" East 35.520 feet,
25. South 53°54'49" East 51.477 feet,

EXHIBIT "A"
TO
DECLARATION OF USE RESTRICTIONS

[Legal Description - Business Pad 102]

Continued

26. South 44°16'02" East	29.419 feet,
27. South 54°27'24" East	52.734 feet,
28. South 44°32'38" East	34.286 feet,
29. South 29°43'09" East	92.531 feet,
30. South 34°44'03" East	65.244 feet,
31. South 51°47'01" East	36.607 feet,
32. South 49°22'31" East	54.928 feet,
33. South 42°24'54" East	45.748 feet,
34. South 54°07'28" East	38.959 feet,
35. South 43°38'51" East	27.619 feet,
36. South 35°19'21" East	30.501 feet,
37. South 21°47'55" East	23.988 feet,
38. South 09°39'19" East	20.445 feet,
39. South 01°33'00" East	37.932 feet,
40. South 25°05'35" East	53.500 feet,
41. South 29°15'17" East	67.187 feet,
42. South 41°51'52" East	45.053 feet,
43. South 54°54'16" East	38.223 feet,
44. South 40°14'21" East	54.602 feet,
45. South 29°08'58" East	72.449 feet,
46. South 27°45'42" East	59.604 feet,
47. South 40°41'58" East	55.399 feet,
48. South 30°49'57" East	21.058 feet,
49. South 17°23'09" East	45.946 feet,
50. South 06°03'15" East	20.395 feet,
51. South 06°40'48" West	71.111 feet,
52. South 04°32'01" East	32.071 feet,
53. South 20°50'57" East	61.431 feet,
54. South 35°34'41" East	36.434 feet,
55. South 48°59'08" East	28.486 feet,
56. South 56°07'52" East	12.977 feet;

thence South 06°27'54" West 66.868 feet; thence South 59°54'40" East 39.572 feet; thence South 37°30'00" East 41.859 feet to the northerly right-of-way line of Parkway Boulevard, a 106 foot wide right-of-way; thence North 82°58'24" West 766.654 feet along said right-of-way line; thence Northwesterly 378.894 feet along a 1277.000 foot radius curve to the right (Delta= 17°00'00" and Long Chord bears North 74°28'24" West 377.505 feet); thence North 65°58'24" West 83.637 feet;

EXHIBIT "A"
TO
DECLARATION OF USE RESTRICTIONS

[Legal Description - Business Pad 102]

Continued

thence Northeasterly 558.986 feet along the easterly right-of-way line of Lake Park Boulevard, an 833.000 foot radius curve to the left (Delta= $38^{\circ}26'54''$ and chord bears North $00^{\circ}43'27''$ East 548.556 feet); thence North $18^{\circ}30'00''$ West 687.315 feet; thence Northeasterly 632.302 feet along a 632.000 foot radius curve to the right, (Delta= $57^{\circ}19'23''$ and chord bears North $10^{\circ}09'42''$ East 606.259 feet to the point of beginning.

Containing 1,333,850 sq. ft., or 30.62098 acres, more or less.

W:\0001\0038\0020\vhUseRest4.wpd