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Michael Gleed, Rec. - Filed By TJ
Cache County, UT
For ADVANCED TITLE CO

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

**KOHN SMITH SUBDIVISION
A Commercial Subdivision**

August 26th, 2002

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DECLARATION

RECITALS

Section 1: Declarants, KOHN SMITH and ARLENE SMITH, as Owners of Lot 2, and JERRY W. CARLSON and PATTY CARLSON, as Owners of Lot 1, are the Owners of the following described real property located in the City of Logan, County of Cache, State of Utah, legally described and set forth as follows:

LOT 1 AND LOT 2 OF THE KOHN SMITH SUBDIVISION, recorded September 3, 1999 in File of Plats 1999-1281 of the Cache County Recorder's Office.

("the Land").

Section 2: Declarants own all of the lots ("Lots") in the subdivision, and desire to provide for the preservation of the public access and parking easement referenced in the recorded plat map, together with all other easements and amenities of said development. To this end, and for the benefit of the Land and the Owners thereof, Declarants desire to subject the Land to the covenants, conditions, restrictions, charges, easements and liens hereinafter set forth.

Section 3: The Land is hereby made subject to the following covenants, conditions, restrictions, charges, easements and liens, all of which shall be deemed to run with the Land and each and every portion thereof, to ensure the proper use and appropriate development and improvement of the Land so as to:

- A. Protect the Owners of Lots against improper development and use of Lots.
- B. Prevent the erection on easements across the Land of structures or other improvements that would interfere with the primary purpose of such easements.
- C. Provide for proper operation and maintenance of the easements across the Lots.
- D. Generally promote the welfare and safety of the Owners of the Lots and Property.

NOW, THEREFORE, for such purposes, Declarants hereby make the following Declaration containing covenants, easements, conditions and restrictions relating to this Subdivision, which are for the purpose of protecting the value and desirability of the Land, and which shall be an enforceable equitable servitude, where reasonable, and shall run with the Land; and be binding on all parties, their heirs, successors and assigns having any right, title or interest in the Land, Lots or any part thereof, and shall inure to the benefit of each Owner thereof:

1. Name: The name by which the Subdivision shall be known is the KOHN SMITH SUBDIVISION.

2. Definitions: The terms used in this Declaration including Exhibits attached hereto shall have the meaning stated herein unless the context otherwise requires.

- a. "Assessment" shall mean and refer to any amounts levied, charged or assessed against an Owner and/or such Owner's Lot in accordance with the provisions of this Declaration.
- b. "Association" shall mean KOHN SMITH SUBDIVISION OWNERS' ASSOCIATION, an unincorporated association, its successors and assigns, of which all of the Lot Owners are Members. A Board of Trustees may be appointed as the governing body of the Association and shall have such authority as reasonably necessary to implement and enforce the terms and conditions of this Agreement. Until otherwise elected, the Board of Trustees shall be one person designated by each Owner of Lots 1 and 2 of said Subdivision. Upon vote by a majority of the Members of the Association, the Association may be incorporated under the laws of the State of Utah.
- c. "Board of Trustees" shall mean the Board of Trustees of the Association as appointed herein and until their successors are elected by a majority vote of the Lot Owners of the Subdivision.
- d. "Building" shall mean and include, but not be limited to, the main portion of all structures built for permanent use and all projections or extensions thereof, including, but not limited to, garages, storage facilities, canopies, porches and courtyards (to the extent permitted, if at all, by this Declaration).
- e. "Building Site" or "Building Area" shall mean and refer to the areas shown as such on any recorded Plat with respect to any portion of the Property, and shall exclude any easements for utilities, storm drain systems and public utilities.
- f. "Easement Areas" shall mean and refer to:
 - i. Those areas specifically set forth in the Plat as recorded and designated as easements for parking, access, and public utilities. The parking and access easement is specifically described as follows:

Beginning at a point 388.225 ft. South of the Southwest Corner of Lot 3, Block 1, Plat "D" Logan City Survey and Running thence East 172.77 ft.; thence South 9.54 ft.; thence East 20.0 ft.; thence South 27.0 ft.; thence West 20.0 ft.; thence S56*33'E 20.0 ft.; thence S33*27'W 99.0 ft.; thence

S60*50'W 24.98 ft.; thence S65*57'49"W 13.42 ft.; thence S60*35'39"W 115.98 ft.; thence North 118.52 ft.; then East 96.59 ft.; thence North 56.59 ft.; thence West 96.59 ft.; thence North 30.0 ft. to the point of beginning.

- ii. All other parts of the Property necessary or convenient to the existence, maintenance, and safety of the easements described in paragraph 2.f.i.

- g. "Easement Expenses" shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Easement Areas, to all items, things and sums which are assessed against the Lot Owners in accordance with the provisions of this Declaration, such rules and regulations which the Association may from time to time adopt, and such other determinations and agreements lawfully made and /or entered into by the Association.

- h. "Declarant" shall mean and refer to the current owners of Lots 1 and 2 of KOHN SMITH SUBDIVISION, their successors and assigns if such successors and assigns are Owners of all or any portion of the Land and are designated by the Declarants to perform the obligations or succeed to the rights of Declarants hereunder.

- i. "Declaration" shall mean this Declaration.

- j. "Land" shall mean and refer to the real property described in the Recitals, Section 1..

- k. "Lienholder" (lienholder) shall mean the beneficiary of a recorded trust deed or the mortgagee of a recorded mortgage under which the interest of a Lot Owner in a Lot is pledged.

- l. "Lot" shall mean and refer to one of the Lots designated as a Lot on the Plat of the Subdivision and hereinafter shall be jointly described as "Lots".

- m. "Manager" shall mean and refer to the person, persons or corporation elected by the Association to manage the affairs of the Association.

- n. "Member" shall mean each Lot Owner who automatically is a Member in the Association as provided herein.

- o. "Owner" shall mean and refer to the record Owner (or an officer or agent of the record Owner), whether one (1) or more persons or entities, of fee simple title to any Lot, but excluding those having such interest solely as security for the performance of any obligation, in which event the equitable Owner of such fee simple title shall be deemed to be the Owner thereof, plus Logan City shall be deemed an Owner by virtue of owning Main Street which will utilize the Easement Areas for drainage and

public utility purposes. Logan City shall have voting and notice rights with respect to Easement Areas affecting Logan City the same as any other Lot Owner.

- p. "Property" shall mean and include the Land and all easements, rights and appurtenances belonging thereto.
 - q. "Signage Use Rights" shall mean the right of each Lot Owner to use up to its percentage ownership of all Lots in the Subdivision of the signage space currently located and in use on Lot 2.
3. Covenants to Run with the Land. This Declaration containing covenants, conditions and restrictions relating to the Subdivision shall be enforceable equitable servitudes which shall run with the Land, and this Declaration and its servitudes shall be binding upon Declarant, its successors and assigns, and upon all Lot Owners or subsequent Lot Owners, their grantees, mortgagees, successors, heirs, executors, administrators, devisees and assigns.
4. Description of Improvements.
- a. The significant improvements contained or to be contained in the Land include public utility easements, and the parking and access easement referenced in paragraph 2.f.i..
 - b. Any utility pipe or drainage system servicing more than a single Lot, and not located in the roadway dedicated to Logan City, and all other accessories used therewith;
 - c. All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in easement use, or which have been designated as Easement Areas;
 - d. Nothing shall be done or kept in any Lot or in the Easement Areas which will interfere with the easements, drainage system and public utility lines.
5. Ownership and Use.
- a. Ownership of a Lot. Each Lot Owner shall be entitled to the exclusive Ownership and possession of each Lot, subject to the limitations stated in this Declaration.
 - b. Nature of and Restrictions on Ownership and Use. Each Lot Owner shall have and enjoy the rights and privileges of fee simple Ownership of that Lot. Each Lot Owner may use the Easement Areas in accordance and consistent with the purpose for which they are intended, but subject to this Declaration and the rules and regulations of the Association. Each Lot Owner may use its Signage Use Rights consistent with its percent ownership of all Lots in the Subdivision, or as agreed between all Lot Owners and the Association. Rights of use shall be appurtenant

to and run with each Lot. No Easement Area may have any structure placed over or upon it.

6. Association.

a. Association. The Association shall have, and is hereby granted, the following authority and powers:

- i. The authority to perform work affecting such Easement Areas as reasonably necessary, which work must be done in a workmanlike manner, and any damage to the improvements of a Lot permitted in an Easement Area of a Lot must be repaired by the Association;
- ii. The authority to execute and record, on behalf of all Members of the Association, any amendment to the Declaration which has been approved by a 67% vote of Members at a meeting to authorize such amendment; provided no such amendment shall impair or negatively impact the rights of any lienholder of any Lot unless all lienholders of Lots consent to the same;
- iii. The authority to enter into contracts for the Association;
- iv. The power to sue and be sued;
- v. The power and authority to borrow money, provided that no indebtedness for borrowed funds shall exceed in the aggregate at any given time the sum of \$5,000.00 without the prior vote or approval of a majority vote of Members at a meeting;
- vi. The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Management in carrying out any of its functions or to insure that the Easement Areas are maintained and used in a manner consistent with the interest of the Members of the Association; and
- vii. The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Association to perform its functions for the Members of the Association.

b. Manager. The Association may carry out through a Professional Property Manager or other agent any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the

Easement Areas for the benefit of the Association and the Lot Owners, and shall, to the extent permitted by law, have authority to conduct the functions or acts required or permitted to be performed by the Association itself. Until changed by the Association, the Manager of the Easement Areas shall be the Lot Owner of Lot 2.

7. Membership in the Association and Voting Rights.

- a. Membership. Every Owner of a Lot shall be a Member of the Association. Membership in the Association shall not be assignable, except to the successor in interest of the Member, and every Membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot.
- b. Transfer. The Association Membership held by any Owner of a Lot shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or lienholder of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association.

8. Easements.

- a. Each Lot shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Easement Areas located within the boundaries of such Lot.
- b. In the event that, by reason of the construction and installation of storm drain pipes, systems or retention ponds, the Easement Areas encroach or shall hereafter encroach upon any part of any Lot, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of the Easement Areas.
- c. The Association may have such rights to access with temporary easements as may be necessary for the maintenance, repair or replacement of any of the Easement Areas or for making emergency repairs therein necessary to prevent damage.
- d. All work performed in the construction, maintenance, repair and replacement of any Easement Area shall be effected as expeditiously as possible and include the right to the storage of materials and the parking of construction vehicles and equipment as reasonably needed upon Easement Areas. The person performing such work shall, at its sole cost and expense, promptly repair and restore to its prior condition all landscaping and other permitted improvements made by a Lot Owner damaged in the performance of such work.

9. Change in Ownership. The Association may for all purposes act and rely on the information concerning Lot Owners which is obtained from the office of the County Recorder of Cache County, Utah. The address of an Owner shall be deemed to be the address of the Lot owned by such person unless the Association is otherwise advised in writing.
10. Association Assessments.
- a. General. Every Lot Owner shall pay an equal share of the Easement Expenses. Payment thereof shall be in such amounts and at such times as the Association determines. No assessment for a single improvement in the nature of a capital expenditure which exceeds the sum of \$5,000.00 shall be made without the same having been first voted on and approved by a majority of the Members of the Association. This shall not limit the Association from taking reasonable emergency actions to preserve and protect the Property.
 - b. Lien. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.
 - c. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Lots and for the improvement and maintenance of the Easement Areas.
 - d. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.
 - e. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Easement Areas or abandonment of a Lot.
 - f. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall

extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

11. Taxes. It is understood that each Lot is subject to separate assessment and taxation by assessing each Lot for all types of taxes authorized by law. Each Lot Owner will, accordingly, pay and discharge any and all taxes which may be assessed against a Lot.
12. Insurance.
 - a. Hazard Insurance. Each Lot Owner shall at all times maintain in force hazard insurance meeting the following requirements:
 - i. A multi-peril type "master" or "blanket" and liability policy covering the entire Lot.
 - ii. The named insured under each policy required to be maintained by the foregoing item (i) shall be the Lot Owner with the Owners' Association as an additional insured.
 - b. Liability Insurance. Each Lot Owner shall at all times maintain in force a Comprehensive policy of public liability insurance covering all of the Lot and Easement Areas, showing the Association as an additional insured. Such insurance shall include a "Severability of Interest Endorsement" or its equivalent which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of other Owners, or the Association. The coverage afforded by such public liability insurance shall include protection against water damage liability, liability for property of others, and such other risks as customarily are covered with respect to developments similar to the Easement Areas in construction, location and use. The limit of liability under such insurance shall not be less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence.
13. Payment of Easement Expenses.
 - a. Each Lot Owner shall pay the Association the allocated portion, past, present, and future, of the Easement Expenses deemed necessary by the Association to manage and operate the Easement Areas, upon the terms, at the time, and in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the Association. Each installment shall be due on or before the first day of each month. If the Lot Owner shall fail to pay any installment within ten (10) days of the time when the same becomes due, the Owner shall pay a ten dollar (\$10.00) late fee or such amount as the Association

may otherwise establish and shall pay interest on the installment at the rate of twelve percent (12%) per annum from the date when such installment shall become due to the date of the payment thereof, together with all costs and expenses, including attorney's fees, incurred in any proceedings brought to collect such unpaid easement expenses.

- b. The Easement Expenses above referred to for each year, or portions of the year, are hereby defined and shall be deemed to be such aggregate sum as the Association from time to time shall determine, in its judgment, is to be paid by all the Owners of the Lots then in existence to enable the Association to pay all estimated expenses and outlays of the Association to the close of such year, growing out of or in connection with the maintenance and operation of the Easement Areas, repairs and renovations to Easement Areas, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the payment of any deficit remaining from the previous period, the creation of a reasonable contingency or other necessary reserve or surplus fund, as well as all other costs and expenses relating to the Easement Areas. The Association may, from time to time, up to the close of the year for which such cash requirements have been so filed or determined, increase or diminish the amount previously fixed or determined for such year. It may include, in the cash requirements for any year, any liabilities or items of expense which accrued or became payable in the previous year, but were not included therein; and also any sums which the Association may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.
- c. The portion payable with respect to each Lot in and for each year or for a portion of a year shall be a sum equal to the aggregate amount of such Easement Expenses for such year, or portion of year, determined as aforesaid, divided by the number of Members of the Association (i.e. Lot Owners). Such assessments, together with any additional sums accruing under this Declaration, shall be payable monthly in advance, or in such payments and installments as shall be required by the Association.
- d. The Association shall have discretionary powers to prescribe the manner of maintaining and operating the Easement Areas and to determine the cash requirements of the Association to be paid as aforesaid by the Owners under this Declaration. Every such reasonable determination by the Association within the bounds of this Declaration shall be final and conclusive as to the Lot Owners, and any expenditures made by the Association, within the bounds of this Declaration, shall as against the Lot Owner be deemed necessary and properly made for such purpose.

14. Maintenance.

- a. Owner Maintenance. Each Owner of a Lot at the Owner's expense shall keep the landscaping and/or any permitted improvements on the Easement Areas of such Lot in good order, condition and repair and in a clean and sanitary condition. Except to the extent that the Association is protected by insurance against such injury, the Lot Owner shall repair all injury or damages to the Easement Areas caused by the act, negligence or carelessness of the Lot Owner or that of any tenant or subtenant, or any occupant of the Lot.
- b. Except as hereinafter provided, the Association shall provide for such maintenance and operation of the Easement Areas as may be reasonably necessary to keep them functional and generally in good condition and repair.

15. Right of Entry. The Association and its duly authorized agents shall have the right to enter any and all of the Lots in case of an emergency originating in or threatening such Lot or any other part of the Easement Areas, whether or not the Lot Owner or occupant thereof is present at the time. The Association and its duly authorized agents shall also have the right to enter into any and all of said Lots at all reasonable times as required for the purpose of making necessary repairs upon the Easement Areas, or for the purpose of performing emergency installations, alterations or repairs to the installations located therein or thereon; provided, however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to the Lots in the Easement Areas; and provided further, that the Lot Owner or occupant affected by such entry shall first be notified thereof if available and if time permits.

16. Obligation to Comply with Declaration Rules and Regulations and Enforcement. Each Lot Owner, tenant, subtenant or other occupant of a Lot shall comply with the provisions of this Declaration, and the rules and regulations, all agreements and determinations lawfully made and/or entered into by the Association or the Lot Owners, when acting in accordance with their authority. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

17. Indemnification of Board of Trustees. Each Member of the Board of Trustees shall be indemnified and held harmless by the Lot Owners against all costs, expenses and liabilities whatsoever, including, without limitation, attorney's fees, reasonably incurred in connection with any proceeding to which the Board Member may become involved by reason of being or having been a Member of said Board of Trustees; provided, however, the foregoing indemnification shall not apply if the loss, expense or liability involved


resulted from the willful misconduct, gross negligence or other intentional act of the Board Member.

18. Amendment. This Declaration may be amended upon the affirmative vote or approval and consent of not less than 67% of the Members of the Association. Logan City may add additional storm water drainage to the Subdivision from other public roads provided such additions do not surpass the system capacity, and if such expansion exceeds the system capacity, Logan City, at its sole expense, may make such repairs and replacements to the Easement Areas as will create adequate capacity for the expansion. No additional Property may be annexed to the Development. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the Association. In said instrument the Association shall certify that the vote or consent required by this Section has occurred.
19. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of the Members of the Association for authorization or approval of a transaction, such requirements may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from the required number of Lot Owners necessary to approve such action. The following additional provisions shall govern any application of this section:
 - a. All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner;
 - b. Any change in ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.
20. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, paragraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections or section or sections had not been inserted.
21. Gender. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

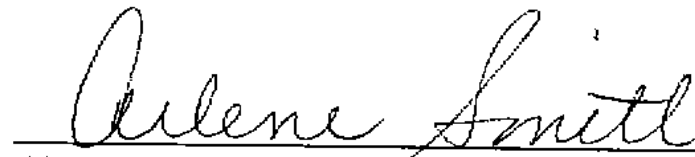
- 22. Waivers. No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.
- 23. Topical Headings. The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.
- 24. Effective Date. This Declaration shall take effect upon recording. This Declaration shall run with and bind the Land for a term of twenty (20) years from the date this Declaration is recorded in the Office of the Recorder of the County of Cache, State of Utah, after which time it shall be automatically extended for successive periods of ten (10) years each unless terminated by written agreement of all Owners and all lienholders.

IN WITNESS WHEREOF, the Declarants have executed this Declaration of Covenants, Conditions, and Restrictions as of this 26 day of August, 2002.

DECLARANTS:



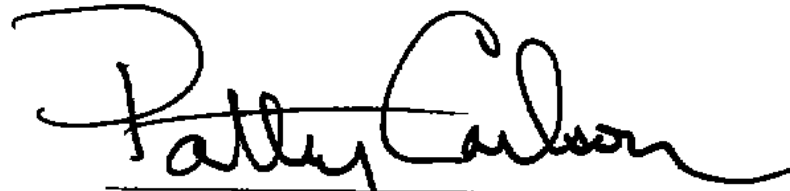
 KOHN SMITH



 ARLENE SMITH



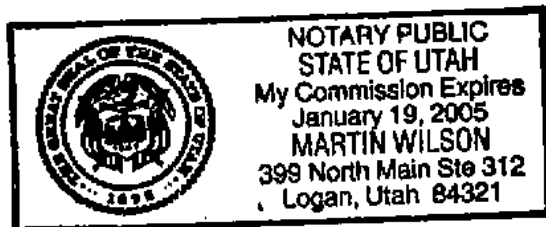
 JERRY W. CARLSON

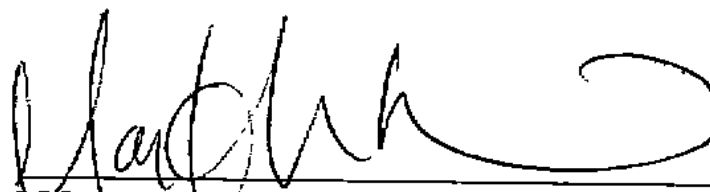


 PATTY CARLSON

STATE OF UTAH)
 : ss.
 County of Cache)

On the 26 day of August, 2002, personally appeared before me KOHN SMITH and ARLENE SMITH, the signers of the within instrument, who duly acknowledged to me that they executed the same.

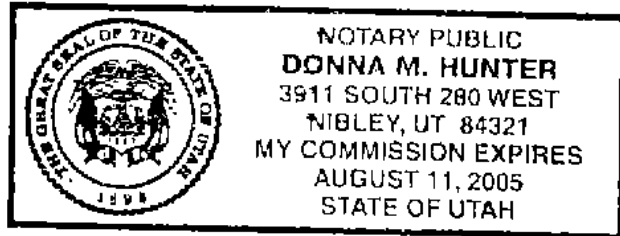




 NOTARY PUBLIC

STATE OF UTAH)
 :SS.
COUNTY OF CACHE)

On the 27 day of August, 2002, personally appeared before me JERRY W. CARLSON and PATTY CARLSON, the signers of the within instrument, who duly acknowledged to me that they executed the same.



Donna M. Hunter

NOTARY PUBLIC

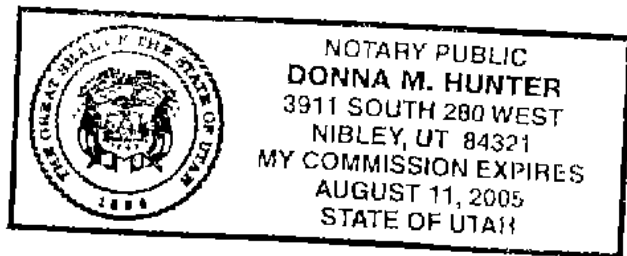
Apex, LLC

[Signature]

By: *Apex, LLC*
Its: *Managing Partner*

STATE OF UTAH)
 :SS.
COUNTY OF CACHE)

On the 27 day of August, 2002, personally appeared before me ROGER WELSH the Managing Partner of Apex, LLC the signer of the within instrument, who duly acknowledged to me that he executed the same.



Donna M. Hunter

NOTARY PUBLIC