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RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
PARR WADDUPS BROWN GEE &  
185 S STATE #1300 LOVELESS  
SLC UT 84111-1536  
BY: ZJM, DEPUTY - WE 17 P.

AGREEMENT OF EASEMENTS,  
WITH TERMINATION OF CERTAIN PRIOR EASEMENTS

THIS AGREEMENT (this "Agreement") is made as of the 22<sup>nd</sup> day of January, 2003, among (i) the CITY OF SOUTH SALT LAKE, a municipal corporation ("City"), (ii) BOYER SOUTH SALT LAKE ASSOCIATES, LTD., a Utah limited partnership ("Boyer"), and (iii) FAY CASE NURSING HOME, INC., a Utah corporation ("Fay Case"), all of whom are sometimes referred to herein collectively as the "Owners" or individually as an "Owner," which terms shall also include each subsequent fee title holder of the Parcels (as defined below).

RECITALS

A. City is the owner of certain real property located in Salt Lake County, Utah, described as follows:

[Tax Parcel No. 16-19-326-020]

Beginning at a point on the South line of Morris Avenue, said point being 300.42 feet North 89°58'09" West (Deed - North 89°59'36" West) along the lot line and 110.63 feet North 00°12'39" East, and 253.10 feet North 89°58'18" West (Deed - North 89°59'43" West) from the Southeast corner of Lot 14, Block 41, Ten Acre Plat "A", Big Field Survey, and running thence South 00°12'39" West 397.88 feet; thence North 89°57'46" West (Deed - North 89°59'18" West) 230.51 feet, more or less, to a point 33.00 feet perpendicularly distant West of the East line of Lot 4 of said Block 41; thence North 00°09'47" East 168.69 feet; thence South 89°58'09" East (Deed - South 89°59'18" East) 33.00 feet to a point on the East line of said Lot 4; thence North 00°09'47" East 229.16 feet, more or less along said Lot line and the East line of Lot 5, to a point on the South line of Morris Avenue; thence South 89°58'18" East (Deed - South 89°59'43" East), along said South line, 197.85 feet, more or less, to the point of beginning.

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B. Boyer is the owner of certain real property located in Salt Lake County, Utah, described as follows:

[Tax Parcel No. 16-19-326-021]

Beginning at a point on the South right-of-way line of Morris Avenue, said point being North 89°59'36" West along the lot line 300.42 feet (Deed – West 300.32 feet) and North 0°12'39" East 110.63 feet (Deed – North 110.55 feet) from the Southeast corner of Lot 14, Block 41, Ten Acre Plat "A", Big Field Survey, and running thence South 0°12'39" West 110.63 feet (Deed – South 110.55 feet); thence North 89°59'36" West (Deed – West) 3.28 feet; thence South 0°12'39" West 287.29 feet (Deed – South 287.10 feet); thence North 89°59'18" West (Deed – West) 480.41 feet; thence North 0°09'47" East (Deed – North) 168.69 feet; thence South 89°59'18" East (Deed – East) 33.00 feet; thence North 0°09'47" East (Deed – North) 229.16 feet to the South right-of-way line of Morris Avenue; thence South 89°59'43" East along said South line 450.93 feet (Deed – East 450.66 feet) to the point of beginning. LESS AND EXCEPTING the following:

Beginning at a point on the South line of Morris Avenue, said point being 300.42 feet North 89°58'09" West (Deed – North 89°59'36" West) along the lot line and 110.63 feet North 0°12'39" East, and 253.10 feet North 89°58'18" West (Deed – North 89°59'43" West) from the Southeast corner of Lot 14, Block 41, Ten Acre Plat "A", Big Field Survey, and running thence South 0°12'39" West 397.88 feet; thence North 89°57'46" West (Deed – North 89°59'18" West) 230.51 feet, more or less, to a point 33.00 feet perpendicularly distant West of the East line of Lot 4 of said Block 41; thence North 0°09'47" East 168.69 feet; thence South 89°58'09" East (Deed – South 89°59'18" East) 33.00 feet to a point on the East line of said Lot 4; thence North 0°09'47" East 229.16 feet, more or less along said lot line and the East line of Lot 5, to a point on the South line of Morris Avenue; thence South 89°58'18" East (Deed – South 89°59'43" East), along said South line, 197.85 feet, more or less, to the point of beginning.

C. Fay Case is the owner of certain real property (the "Fay Case Parcel") located in Salt Lake County, Utah, described as follows:

[Tax Parcels No. 16-19-326-002 and No. 16-19-326-022]

Beginning at a point on the West line of 300 East Street at the Northeast corner of Lot 15, Block 41, Ten Acre Plat "A", Big Field Survey, and running thence North 89°57'55" West along the North line of said Lot 112.00 feet; thence

South 00°14'30" West 124.00 feet; thence South 89°58'22" East 112.00 feet to said West line of 300 East Street; thence South 00°14'30" West along said West line 163.11 feet; thence North 89°58'22" West 303.54 feet; thence North 00°12'39" East 287.14 feet; thence South 89°57'55" East 3.38 feet; thence North 00°14'30" East 110.55 feet to the South line of Morris Avenue; thence South 89°57'55" East along said South line 300.32 feet to said West line of 300 East Street; thence South 00°14'30" West along said West line 110.55 feet to the point of beginning.

(The real property described in Recitals A through C, inclusive, is referred to in this Agreement collectively as the "Parcels" and individually as a "Parcel.")

D. The Owners desire to grant to one another certain reciprocal easements over and across each of their Parcels for vehicular ingress and egress as more particularly provided herein and for the mutual benefit of the Owners and of each and all of the Parcels, and accordingly do hereby establish such easements as are hereinafter set forth, subject to which the Parcels shall be improved, held, exchanged, leased, sold and/or conveyed.

E. Such easements (i) are imposed upon each Parcel as a mutual equitable servitude in favor of the other Parcels, (ii) shall create reciprocal rights and obligations between and among the Owners, (iii) shall create a privity of contract and estate between and among the Owners, and (iv) shall run with the land.

F. The Owners intend that the successive Owners of all or any portion of any Parcel will be bound hereby for the benefit of the other Parcels and the Owners thereof.

NOW THEREFORE, in consideration of the foregoing, and the covenants and agreements set forth herein, the Owners agree as set forth above in the Recitals and as follows:

**I. INGRESS AND EGRESS EASEMENTS.**

**A. Driveways.** Each Owner, with respect to its Parcel, hereby grants to each other Owner as grantee, for the benefit of each other Owner, for the use of the Owners and the occupants of the Parcels and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants and concessionaires of such occupants (collectively, "Permittees"), and for the benefit of, and as a burden on, the Parcels, a perpetual, non-exclusive right-of-way and easement appurtenant to each Parcel for the purpose of vehicular ingress and egress (but not parking) on, over and across the real property located on the Parcels, described as follows (the "Driveways") and shown on the drawing attached as Exhibit A, incorporated by this reference:

[Tax Parcels No. 16-19-326-020, No. 16-19-326-021 and No. 16-19-326-022]

An easement for ingress and egress upon part of a parcel of land conveyed to the City of South Salt Lake and the Municipal Building Authority of the City of South Salt Lake by Special Warranty Deed recorded in book 7273 at pages 542-544 situate in Lots 4 and 15, Block 41, Ten Acre Plat A, Big Field Survey, South Salt Lake City, Salt Lake County, State of Utah, and a parcel of land conveyed to Boyer South Salt Lake Associates by Warranty Deed recorded in book 7122 at pages 2053-2055 situate in Lots 14 and 15, Block 41, Ten Acre Plat A, Big Field Survey, South Salt Lake City, Salt Lake County, State of Utah, and a parcel of land conveyed to the Fay Case Nursing Home, Inc. by Quitclaim Deed recorded in book 8722 at pages 329-331 situate in Lot 15, Block 41, Ten Acre Plat A, Big Field Survey, South Salt Lake City, Salt Lake County, State of Utah, more particularly described as follows: Beginning at a point on the West right-of-way line of 300 East Street said point being South 0°14'30" West along the West right-of-way line of 300 East Street 252.70 feet from the Northeast corner of Lot 15, Block 41, Ten Acre Plat A, Big Field Survey and running thence South 0°14'30" West along said West right-of-way line of 300 East Street 24.00 feet; thence North 89°58'22" West 307.59 feet; thence North 47°06'52" West 25.63 feet; thence North 89°57'46" West 450.45 feet to a point 26.00 feet perpendicularly distant westerly of the East line of said Lot 4; thence North 0°09'47" East 140.69 feet; thence South 89°58'09" East 24.00 feet; thence South 0°09'47" East 116.69 feet; thence South 89°57'46" East 401.65 feet; thence North 0°12'39" East 346.03 feet to the South right-of-way line of Morris Avenue; thence South 89°59'43" East along the South right-of-way line of Morris Avenue 24.00 feet; thence South 0°12'39" West 345.90 feet; thence South 47°06'52" East 25.84 feet; thence South 89°58'22" East 307.60 feet to the point of beginning.

The foregoing shall not create any rights in any persons other than the Owners and their respective Permittees.

**B. Maintenance and Repair.** Each Owner shall, at its own expense, cause any portion of the Driveways located on its Parcel to be maintained at all times in good and clean condition and repair, which shall include, but not be limited to the following:

1. maintaining the paved surface in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;
2. removing all papers, debris, filth, refuse, ice and snow, and thoroughly sweeping such portion to the extent reasonably necessary to keep such portion in a clean and orderly condition;

3. placing, keeping in repair and replacing appropriate directional signs, markers and lines, where necessary; and

4. maintaining free and unobstructed access over and across such portion.

**C. Speed Control.** Notwithstanding anything to the contrary contained in this Agreement, the Fay Case Parcel Owner may install speed bumps or other similar devices on any portion of the Driveways located on the Fay Case Parcel if such Owner determines that doing so is reasonably necessary in order to control or regulate the speed of vehicles driving on the Fay Case Parcel.

**D. Parking.** This Agreement does not create any rights-of-way or easements for parking. Each Parcel shall be "self-parked," meaning that all parking spaces required under applicable zoning ordinances, development codes or other municipal requirements for all buildings on any Parcel shall be wholly located within such Parcel. No Parcel may use the parking located on another Parcel. If the Owner or the tenant of any Parcel, or the employees, agents, licensees or invitees of such Owner or tenant, use the parking located on another Parcel, the Owner of the Parcel using such parking shall, at the request of the Owner of the Parcel on which such parking is located, cause such unauthorized parking to cease promptly.

**E. Realignment of Oakland Avenue.** The Owners acknowledge that Oakland Avenue may be realigned. If such realignment occurs, the Owners shall promptly amend this Agreement so that the portion of the Driveways connecting to Oakland Avenue as it is currently located is moved so as to connect with Oakland Avenue as realigned, with the effect that the Driveways shall continue to provide access to Oakland Avenue, and over Oakland Avenue to State Street.

**F. Termination of Prior Easements.** The easements described as the "Southern Drive Easement," the "Southern Connecting Drive Easement" and the "Temporary Easement," and all provisions relating thereto, as set forth in the Special Warranty Deed, dated January 20, 1998 and recorded February 6, 1998 as Entry No. 6857604 in Book 7874 at Page 530 of the official records of the Salt Lake County Recorder, are deleted, terminated and eliminated, and shall have no further force or effect.

## II. INSURANCE.

Each Owner agrees to maintain, and/or cause to be maintained, at no cost to the other Owners, liability insurance insuring its interests against claims for personal injury, bodily injury, death and property damage occurring on, in or about its Parcel with a "Combined Single Limit" of not less than One Million Dollars (\$1,000,000.00) for total claims for any one occurrence. The insurance limits in this Section shall be subject to increase from time to time by such amounts as the Owners may reasonably agree is necessary or desirable, as may be evidenced by the practice of similarly situated properties. Upon request, each Owner shall cause certificates of insurance reasonably evidencing compliance with the requirements of this Article to be delivered to the other Owners.

## III. DEFAULT.

A. Right to Cure. Should any Owner fail to timely perform any of its obligations hereunder and thereafter fail to perform such obligation within thirty (30) days after its receipt of any other Owner's written demand therefor, the Owner giving such notice shall, in addition to any other remedy provided by law or in this Agreement, have the right, but not the obligation, to perform such obligation on behalf of the defaulting Owner and the defaulting Owner shall reimburse the curing Owner for the cost of performing such obligation within ten (10) days after receipt of billing therefor and proof of payment thereof, which amount shall bear interest at the rate of twelve percent (12%) per annum from the date of billing until paid, both before and after judgment. If the defaulting Owner does not reimburse the curing Owner within such ten (10) day period, the curing Owner shall have the right to exercise any and all rights which such curing Owner might have at law or in equity to collect the same.

B. Injunctive Relief. In the event of any violation or threatened violation of any provision of this Agreement, any Owner shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation.

C. Breach Shall Not Permit Termination. No breach of this Agreement shall terminate this Agreement or entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement.

**D. No Limitation of Remedies.** The various rights and remedies herein contained and reserved to the Owners, except as otherwise provided in this Agreement, shall not be considered exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other right or remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein.

**IV. NOTICES.**

Any notice or demand given or served by one Owner to another shall not be deemed to have been duly served unless in writing and personally delivered or forwarded by postage prepaid, certified or registered mail, return receipt requested, or by another commercially recognized means of delivery, addressed as follows:

City: City of South Salt Lake  
220 East Morris Avenue  
South Salt Lake, Utah 84115  
Attn: Mayor of City of South Salt Lake

Boyer: Boyer South Salt Lake Associates, Ltd.  
90 South 400 West, Suite 200  
Salt Lake City, Utah 84101  
Attn: Lynn Summerhays

Fay Case: Fay Case Nursing Home, Inc.  
255 East 400 South, Suite 200  
Salt Lake City, Utah 84111  
Attn: President

Notices and demands shall be deemed effective upon receipt. The person and place to which notices are given may be changed by any Owner by written notice to the other Owners.

**V. ATTORNEY FEES.**

In the event legal proceedings are brought or commenced to enforce any of the terms of this Agreement against any Owner or other person with an interest in the Parcels, the successful party in such action shall be entitled to receive and shall receive from the defaulting Owner, a reasonable sum as an attorney fee and costs, to be fixed by the court in the same action.

**VI. MODIFICATION.**

All negotiations and oral agreements acceptable to the Owners have been incorporated herein. Except as otherwise provided herein, this Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a writing executed by the Owners and duly recorded.

**VII. GENERAL PROVISIONS.**

**A. Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Parcels to the general public or for any public purpose whatsoever, it being the intention of the Owners that this Agreement shall be strictly limited to and for the purposes herein expressed.

**B. Severability.** If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

**C. Pronouns.** When required by context, the singular shall include the plural, and the neuter gender shall include a person, corporation, firm, association, or other business arrangement.

**D. Captions.** The captions of this Agreement are for convenience only and do not constitute a part of the provisions hereof.

**E. Not a Partnership.** The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted to create, a joint venture, a partnership, or any other similar relationship between the Owners.

**F. Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the law of the state of Utah.

**G. No Presumption.** This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any Owner.



**H. Inurement.** This Agreement and the easements, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon each Owner and its successors and assigns; provided, if any Owner conveys all of its interest in any Parcel owned by it, such Owner shall thereupon be released and discharged from any and all further obligations under this Agreement as fee owner of the property conveyed; and provided further, no such sale shall release such Owner from any liabilities, actual or contingent, existing as of the time of such conveyance. The interests in and rights concerning any portion of the Parcels held by or vested in the Owners or any other person on or after the date of this Agreement (including, without limitation, any mortgage lien holder) shall be subject and subordinate to this Agreement, and this Agreement shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this Agreement.

**I. Authority.** Each of the individuals who have executed this Agreement represents and warrants that he or she is duly authorized to execute this Agreement on behalf of the Owner concerned; that all requisite action necessary for such Owner to execute and perform the terms of this Agreement have been duly taken by such Owner; and that no other signature and/or authorization is necessary for such Owner to enter into and perform the terms of this Agreement.

**J. Governmental Immunity.** Nothing in this Agreement shall be construed to waive, modify or alter the caps on liability or privileges, immunities or other protection provided for or available to City under the Utah Governmental Immunity Act or otherwise. It is the intent and purpose of this Agreement to preserve all such defenses, immunities and liability caps that limit or minimize the risk or damage exposure to government entities.



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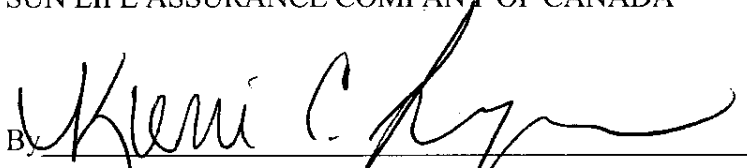


CONSENT AND SUBORDINATION  
[Sun Life Assurance Company of Canada]

THE UNDERSIGNED, SUN LIFE ASSURANCE COMPANY OF CANADA, a Canadian corporation ("Sun Life"), consents to the foregoing Agreement of Easements, with Termination of Certain Prior Easements (the "Agreement"), and agrees that (i) the interests in and rights concerning any Parcel (as defined in the Agreement) held by or vested in Sun Life on or after the date of the Agreement shall be subject and subordinate to the arrangement provided for in the Agreement (whether such interests and rights are as the beneficial holder of the deed of trust described below or reflect some greater estate), and (ii) the arrangement provided for in the Agreement shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the provisions set forth in the Agreement. (Sun Life currently holds, among other instruments, a deed of trust encumbering one of the Parcels, which deed of trust was recorded March 27, 1995 as Entry No. 6048447 in Book 7122 at Page 2056 of the official records of the Salt Lake County Recorder.)

SUN LIFE ASSURANCE COMPANY OF CANADA

By



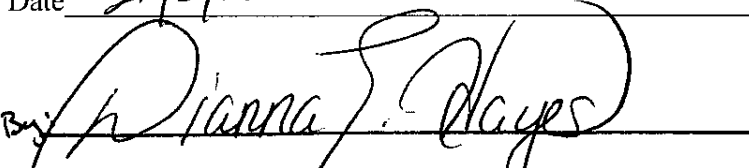
Its

Sr. Property Investment Officer

Date

2/6/03

By



Its

Property Investment Officer

Date:

2/6/03

Commonwealth of Massachusetts  
County of Norfolk

On this 6th day of February 2003 before me appeared Kerri C. Lappin and Dianna E. Hayes, both to me known to be the Senior Property Investment Officer and Property Investment Officer, respectively, of the Sun Life Assurance Company of Canada, the corporation that executed the annexed instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute this instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF. I have hereunto set my hand and affixed my official seal the day and year first above written.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires:

Cynthia L. Owens  
NOTARY PUBLIC  
My commission expires Mar. 25, 2005

[SEAL]

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EXHIBIT A

to

AGREEMENT OF EASEMENTS,  
WITH TERMINATION OF PRIOR EASEMENTS

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DRAWING

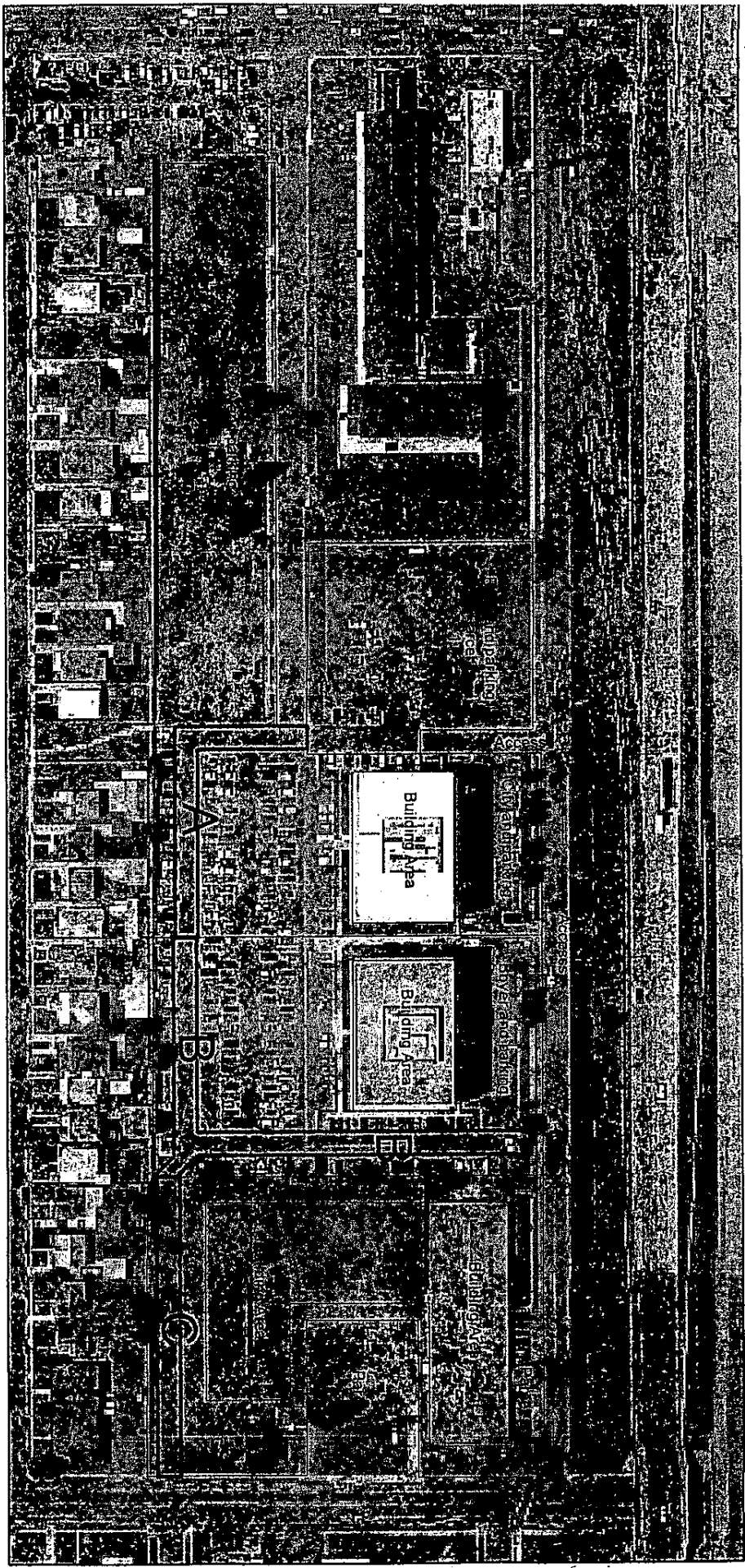
The drawing referred to in the foregoing instrument is attached and consists of one (1) page.



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- CO REPRODUCER -

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# Easement Location Map



- A South Salt Lake Easement
- B Boyer/South Salt Lake Easement
- C Fay Case Easement