

DOCUMENTS
WEBER COUNTY RECORDER
DEPT. *Eric J. [Signature]*
SEP 14

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185 South State Street, Suite 185
Salt Lake City, Utah 84111

Amelia 919071
Jette

PLATTED VERIFIED
ENTERED MICROFILMED

PARKING EASEMENT DEED

THIS PARKING EASEMENT DEED is made and entered into this 20th day of July, 1984, by and between BEN LOMOND SUITES, LTD., a Utah Limited Partnership (hereinafter, "Partnership"), and WEBER COUNTY, a political subdivision of the State of Utah (hereinafter, "County"), and is consented to by WESTERN SAVINGS AND LOAN COMPANY, a Utah corporation (hereinafter, "Western").

RECITALS:

A. Partnership and County collectively own the following described real property (hereinafter, the "Ben Lomond Property") located in Ogden City, Weber County, Utah:

A part of Lots 5 and 6, Block 17, Plat "A" of Ogden City Survey: Beginning at the Northwest corner of said Lot 6, and running thence South 0°58' West 200.0 feet; thence South 89°02' East 159.5 feet; thence North 0°58' East 100.0 feet; thence South 89°02' East 4.5 feet; thence North 0°58' East 100.0 feet; thence North 89°02' West 164.0 feet to the place of beginning.

TOGETHER WITH an easement granted by Ogden City, a municipal corporation, in that certain "Grant of Easements" executed March 5, 1927, and recorded in Book 107 of Deeds, at Page 365, in the office of the Recorder of Weber County, Utah, to maintain and continue in existence (so long as the "building" referred to therein shall stand) those certain encroachments on, over, and under the sidewalks on 25th Street from the Northwest corner of said Lot 6 East 164 feet, and on Washington Avenue from said Northwest corner of said Lot 6 South 103.5 feet, the exact location of said easement being more particularly described in said Grant of Easements.

B. Immediately following recordation of this Deed, Partnership and County shall cause to be recorded a document entitled "Declaration of Condominium of the Ben Lomond Suites Condominium Project" (hereinafter "Declaration") and an instrument styled "Record of Survey Map of the Ben Lomond Suites Condominium Project" (hereinafter, "Survey Map"). The

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Declaration and Survey Map will create a condominium project from and on the Ben Lomond Property to be known as The Ben Lomond Suites Condominium Project (hereinafter, "Project"). As more fully set forth in the Declaration and Survey Map, the Project will contain certain Common Areas and Facilities (hereinafter, "Common Areas"), which will, in general, be managed, maintained, and controlled by Ben Lomond Suites Owners Association, a Utah nonprofit corporation (hereinafter, "Association"), for the use and benefit of the Owners of Condominium Units in the Project. [All terms used herein that are defined in the Declaration shall, to the extent permitted by the context thereof, have the meanings ascribed to them in the Declaration.]

C. Partnership is the owner of the following-described real property (hereinafter, "Parking Easement Property") located contiguous to the Ben Lomond Property in Ogden City, Weber County, Utah:

A Part of Lots 5 and 6, Block 17, Plat "A" of Ogden City Survey: Beginning at a point 68.0 feet South 0°58' West and 159.5 feet South 89°02' East from the Northwest corner of said Lot 5 and running thence North 0°58' East 100.0 feet; thence South 89°02' East 112.80 feet to the West line of Ogden Avenue; thence along said West line the following two courses: South 14°50' East 67.35 feet and South 0°58' West 64.0 feet to a point North 0°58' East 35.0 feet from the Southeast corner of said Lot 5; thence North 89°02' West 131.19 feet; thence North 0°58' East 29.0 feet to the point of beginning.

In conjunction with construction and restoration of the building and improvements on the Ben Lomond Property for use as part of the Project, Partnership is constructing an automobile parking terrace (hereinafter, "Parking Terrace") on the Parking Easement Property containing one (1) "on grade" parking level and one (1) "above grade" parking level collectively containing one hundred and seven (107) parking places.

D. The Parking Easement Property constitutes a part of the Additional Land which may hereafter (at Partnership's sole option) be added to the Project as more fully described in Article XII of the Declaration.

E. By this Deed, Partnership desires to make available for the use of the Ben Lomond Property and the Project one hundred and seven (107) parking places in the Parking Terrace (or at another location on the Parking Easement Property to which said parking places may be subsequently relocated by Partnership as hereinafter described) on the terms and conditions relating to maintenance, expenses, insurance, and other matters described herein. Regardless of whether all or any portion of the Parking Easement Property is hereafter added to the Project, Partnership is retaining ownership of the Parking Terrace and the Parking Easement Property and the right to construct such additional or different buildings, structures, or other

Improvements on, over, under, around, or in place of the Parking Terrace as Partnership deems appropriate from time to time.

NOW, THEREFORE, for the foregoing purposes and in consideration of the reciprocal benefits to be derived from the easements, covenants, and requirements set forth herein, each of the parties hereto consents, acknowledges, and agrees as follows:

1. Definitions. In addition to the definitions set forth in the "Recitals" portion hereof, each of the following terms used in this Deed shall have the indicated meaning:

(a) Parking Easement Property Owner shall mean and refer to the party which at the time concerned is the owner of record (in the office of the County Recorder of Weber County, Utah) of a fee or of an undivided fee interest in the Parking Easement Property or in any portion thereof. In the event there is more than one such owner of the Parking Easement Property at the time concerned, the liability of each such Owner for performance or compliance with the applicable provisions of this Deed shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Parking Easement Property Owner shall not mean or include a mortgagee under a mortgage or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

(b) Ben Lomond Property Owner shall mean and refer to the Association (or any successor of or replacement for the Association fulfilling the roles of the "association of unit owners" and/or the "management committee" of the Project under the Utah Condominium Ownership Act (hereinafter, "Condominium Act")) so long as the Project shall be governed by and subject to the Condominium Act, and thereafter, shall mean and refer to the party which at the time concerned is the owner of record (in the office of the County Recorder of Weber County, Utah) of a fee or of an undivided fee interest in the Ben Lomond Property or in any portion thereof. In the event there is more than one such Owner of the Ben Lomond Property at the time concerned, the liability of each such Owner for performance or compliance with the applicable provisions of this Deed shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Ben Lomond Property Owner shall not mean or include a mortgagee under a mortgage or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

(c) Mortgage shall mean and refer to both a mortgage and a deed of trust, and Mortgagee shall mean and refer to both the mortgagee under a mortgage and the beneficiary under a deed of trust.

(d) Parking Place shall mean and refer, to any automobile parking space which meets the minimum Ogden City requirements for such a space and is included in the Parking Terrace or at any future time situated at any other location on the Parking Easement Property. Parking Places may be under or above ground and covered or uncovered.

(e) The terms appurtenant Parking Places, Parking Places appurtenant to, and like nomenclature shall mean and have reference to the one hundred and seven (107) Parking Places, and the vehicular and pedestrian accesses thereto, which under the provisions of this Deed are to be usable in conjunction with and for the benefit of the Ben Lomond Property.

2. Easement for Use of Parking Places Appurtenant to Ben Lomond Property. The Ben Lomond Property shall have appurtenant thereto and be benefitted by an easement for the use (for vehicular parking purposes only) of one hundred and seven (107) Parking Places and for vehicular and pedestrian access to and from said Parking Places. The Parking Easement Property Owner shall have the right, in its sole and absolute discretion, to designate and redesignate from time to time the exact Parking Places, and the exact locations of the pedestrian and vehicular accesses thereto, which are the subject of said easement at any time. The Ben Lomond Property Owner shall take such measures as are reasonably necessary or required to ensure that Owners and occupants of, and invitees to, the Project and the Ben Lomond Property do not use any other Parking Places, pedestrian or vehicular accesses, or other facilities now or hereafter located on the Parking Easement Property. In furtherance of its rights under the second sentence of this Section 2, the Parking Easement Property Owner may (but need not) prepare and record from time to time a map or maps designating the exact location of the appurtenant Parking Places at any point in time. The Parking Easement Property Owner reserves and retains the right in its sole and absolute discretion to construct and/or locate any buildings, structures, or other improvements it now or hereafter deems appropriate on, over, under, around, or in place of the Parking Terrace or at any other location on, or in any way related to, the Parking Easement Property so long as there are one hundred and seven (107) Parking Places located anywhere on the Parking Easement Property which are usable in conjunction with the Ben Lomond Property in accordance with the foregoing portion of this Section 2. During the period(s) that any such buildings, structures, or other improvements are under construction on the Parking Easement Property, the Parking Easement Property Owner may temporarily interrupt the use of the appurtenant Parking Places so long as said Owner makes available for temporary use in conjunction with the Ben Lomond Property one hundred and seven (107) parking stalls or

places located anywhere within five hundred (500) feet of the Ben Lomond Property.

3. Insurance. The Ben Lomond Property Owner shall cause the appurtenant Parking Places, the Parking Terrace (and any other structure now or hereafter containing any of the appurtenant Parking Places), and the entirety of the Parking Easement Property (excluding structural improvements unrelated to the appurtenant Parking Places) to be insured under the fire and casualty insurance, public liability and property damage insurance, and workmen's compensation insurance described in Paragraphs (a), (b), and (c) of Section 9.01 of the Declaration. In addition to the other requirements of Article IX of the Declaration, such insurance shall list as named additional insureds the Parking Easement Property Owner and any Mortgagees of the Parking Easement Property which so request. Such insurance shall provide coverage on terms and conditions and with limits reasonably satisfactory to both the Ben Lomond Property Owner and the Parking Easement Property Owner. Notwithstanding which parties may be named as insureds, as loss payees, or as Mortgagees under the fire and casualty insurance policy covering the improvements insured pursuant to this Section 3, however, any proceeds of such insurance shall be payable to the Parking Easement Property Owner and/or to the first-position Mortgagee of the Parking Easement Property, as trustee(s) for all parties interested under said insurance policy, for use and application pursuant to Section 6 of this Deed. The Ben Lomond Property Owner, upon the written request of any party which has an interest in either the Ben Lomond Property or the Parking Easement Property, shall furnish such party with written evidence that the insurance required by this Section 3 is in force. The Ben Lomond Property Owner shall pay the premiums on, and any other costs necessary to keeping in force, the insurance coverage contemplated by the foregoing portion of this Section 3; provided, however, that if the Parking Easement Property Owner hereafter constructs improvements on the Parking Easement Property which are unrelated to the appurtenant Parking Places, the Parking Easement Property Owner may: (i) maintain liability and casualty insurance coverage (subject to substantially the same conditions and restrictions as set forth in the foregoing portion of this Section 3 and in Article IX of the Declaration) on all improvements on the Parking Easement Property and be reimbursed by the Ben Lomond Property Owner for the portion thereof related to improvements to be insured under the foregoing portion of this Section 3; or (ii) maintain such additional or different insurance as it deems appropriate on such unrelated improvements and continue permitting the liability and casualty insurance described in the foregoing portion of this Section 3 to be maintained by the Ben Lomond Property Owner in accordance therewith. The Parking Easement Property Owner shall at all times be deemed to have elected option (ii) in the foregoing sentence unless and until written notice is given by such Owner to the Ben Lomond Property that it has for a specific period elected option (i). It is the intent of the foregoing portions of this Section 3 that the Ben Lomond Property Owner shall bear all costs of insurance in any way relating to the improvements described in the first sentence of this Section.

4. Payment of Taxes on Parking Easement Property. Unless and until the Parking Easement Property Owner constructs and places into service any improvements on the Parking Easement Property unrelated to the appurtenant Parking Places, all ad valorem taxes and assessments, whether regular or special (such taxes and assessments being referred to hereinafter as "Taxes"), in any way related to the Parking Easement Property and improvements thereon shall be paid by the Ben Lomond Property Owner. Thereafter, all taxes relating to the Parking Easement Property shall be divided between the Ben Lomond Property Owner and the Parking Easement Property Owner based upon the current appraised value of the portion of all such improvements necessary or convenient to the appurtenant Parking Places (including, without limitation, the entirety of the Parking Terrace, or any replacement structure therefor, and even though such Terrace or replacement structure supports other unrelated improvements), on the one hand, and the current appraised value of the unrelated improvements, on the other hand, respectively.

5. Operation and Maintenance of Parking Terrace. Unless and until the Parking Easement Property Owner constructs and places into service any improvements on the Parking Easement Property unrelated to the appurtenant Parking Places, the Parking Terrace (or any replacement structure) and the entirety of the Parking Easement Property shall be kept in reasonably clean, orderly, attractive, and usable condition and in a good state of maintenance and repair by, and at the sole expense of, the Ben Lomond Property Owner. The operating costs (hereinafter, "Operating Costs") to be paid by the Ben Lomond Property Owner under the immediately foregoing sentence shall include (without limitation) charges payable to utilities, costs of cleaning, services, repairs, security, ice and snow removal, and maintenance, costs of lighting, resurfacing, repainting, restriping, replacing damaged or worn-out improvements, sweeping, and janitorial services, costs of traffic and parking regulation and control, costs of management, costs of personnel necessary to perform any of the foregoing, and depreciation allowance on any machinery and equipment owned by the Parking Easement Property Owner and used in conjunction with the Parking Terrace or any replacement structure. Thereafter, the appurtenant Parking Places will be jointly managed by Ben Lomond Property Owner and the Parking Easement Property Owner and the Operating Costs will be equitably divided between them based, in general, upon the number of appurtenant Parking Places benefitting the Ben Lomond Property and the number of other Parking Places located on the Parking Easement Property benefitting the Parking Easement Property Owner, respectively, at any point in time.

6. Damage, Destruction, and Restoration. In the event any of the appurtenant Parking Places, the Parking Terrace (or any replacement structure containing appurtenant Parking Places), or other improvement on the Parking Easement Property described in the first sentence of Section 3 hereof is damaged or destroyed by casualty, the damaged or destroyed improvement shall be rebuilt and restored by the Parking Easement Property Owner (unless within the three (3) month period following the casualty a

written agreement providing for another course of action is agreed to by the Parking Easement Property Owner and the Ben Lomond Property Owner (which consent of the Ben Lomond Property Owner, if requested during any period that the Ben Lomond Property remains subject to the Condominium Act, shall be given if such other course of action is approved by Owners and first-position Mortgagees owning and encumbering, respectively, sixty-six and two-thirds percent (66 2/3%) of the undivided ownership interests in the Common Areas of the Project). All proceeds of the casualty insurance contemplated by Section 3 hereof shall be held by the Parking Easement Property Owner and/or by the first-position Mortgagee of the Parking Easement Property, and shall be paid out and disbursed (with reasonable and customary safeguards and controls) as reconstruction occurs in payment of the various costs and expenses associated therewith. To the extent insurance proceeds are insufficient to pay all of the costs and expenses entailed in reconstruction, the Ben Lomond Property Owner shall be obligated to contribute the total deficiency. The estimated amount of said deficiency shall be paid by the Ben Lomond Property Owner to the Parking Easement Property Owner within thirty (30) days after written demand is made therefor. If it reasonably appears that the aggregate of the costs and expenses required to accomplish restoration exceeds by any significant amount the insurance proceeds relative to the damage or destruction, then the reconstruction need not be commenced, at the option of the Parking Easement Property Owner, until such time as the Ben Lomond Property Owner has paid such estimated amount. Any additional amounts required for restoration shall also be due within thirty (30) days following written demand therefor. Any amount not paid when due hereunder shall bear interest at eighteen percent (18%) per annum from the date due until paid. Any casualty insurance proceeds which are not required for restoration, either because insurance proceeds exceed the cost of restoration or because restoration does not occur, shall be the property of the Parking Easement Property Owner.

7. Covenants to Run with Land. This Deed and all of the provisions hereof shall constitute covenants running with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the parties hereto, any other party which has, acquires, or comes to have any interest in or which occupies or comes to occupy any part of the Ben Lomond Property or the Parking Easement Property, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. This Deed and all of the provisions hereof shall be binding upon both such Properties, and all interests in both such Properties shall be subject to all of the terms and provisions hereof. By acquiring, in any way coming to have an interest in, or occupying either of such Properties, the party so acquiring, coming to have such interest, or occupying consents to, and agrees to be personally bound by and liable for, each and every provision of this Deed.

8. Enforcement. If any action is brought because of a breach of or to enforce or interpret any of the provisions, covenants, or requirements of this Deed, the party prevailing in such action shall be entitled to recover

from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

9. Amendments. Any provision contained in this Deed may be amended by, but only by, an instrument filed for record with the County Recorder of Weber County, Utah which is executed by and consented to by the Parking Easement Property Owner and the Ben Lomond Property Owner (which consent of and execution by the Ben Lomond Property Owner, if requested during any period that the Ben Lomond Property remains subject to the Condominium Act, shall be given and accomplished if such proposed amendment is approved by Owners and first-position Mortgagees owning and encumbering, respectively, sixty-six and two-thirds percent (66 2/3%) of the undivided ownership interests in the Common Areas of the Project).

10. Partial Invalidity. The invalidity or enforceability of any portion of this Deed shall not affect the validity or enforceability of the remainder hereof, and if any provision of this Deed or the application thereof to any party, any other person or entity, or circumstances should to any extent be invalid, the remainder of this Deed or the application of such provision to such party, other person or entity, or circumstances other than those as to which a holding of invalidity is reached shall not be affected thereby (unless necessarily conditioned or dependent upon the provisions or circumstances as to which a holding of invalidity is reached), and each provision of this Deed shall be valid and enforceable to the fullest extent permitted by law.

11. Effective Dates and Duration. This Deed and any amendment or supplement hereto shall take effect upon its being filed for record with the County Recorder of Weber County, Utah. This Deed and all of the provisions hereof shall thereafter remain in force and effect until terminated in a recorded instrument executed by all parties necessary to amend this Deed; provided, however, that this Deed, and all the conditions, restrictions, easements, terms, and effects hereof, shall be automatically terminated and be of no further force or effect if the appurtenant Parking Places (as they may exist at the time concerned) and any structure, or portion thereof, in which the appurtenant Parking Places are located are added to the Project pursuant to Article XII of the Declaration.

12. Interpretation. The captions which precede the Sections of this Deed are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. This Deed shall be governed by and construed in accordance with the laws of the State of Utah.

EXECUTED on this 20th day of JULY, 1984.

BEN LOMOND SUITES, LTD.,
a Utah Limited Partnership,
By Its General Partner, DCA
Development Corporation, a
Montana corporation

ATTEST:

By [Signature]
Its SECRETARY

By [Signature]
Its PRESIDENT

WEBER COUNTY, a political subdivision of
the State of Utah

By [Signature]
County Commissioner

By [Signature]
County Commissioner

By [Signature]
County Commissioner

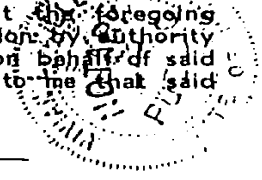
STATE OF UTAH)
) ss.
COUNTY OF WEBER)

On this 20th day of July, 1984, personally appeared before me DONALD FISHER and DARWIN COOK, who each being by me duly sworn did say that they are the SECRETARY and PRESIDENT, respectively, of DCA Development Corporation, a Montana corporation, that said corporation, is the General Partner of BEN LOMOND SUITES, LTD., a Utah Limited Partnership, that the foregoing Parking Easement Deed was signed on behalf of said corporation by authority of its bylaws or a resolution of its Board of Directors and on behalf of said Partnership by proper authority, and did each acknowledge to me that said Partnership executed the same.

My Commission Expires:

OCT. 86

Virgil A. Miller
NOTARY PUBLIC
Residing at: WVBEAC



STATE OF UTAH)
) ss.
COUNTY OF WEBER)

On this 20th day of July, 1984, personally appeared before me ROBERT HUNTER and RODGE EAWLSON, and WILLIAM BAILEY, who each being by me duly sworn did say that they constitute the Board of County Commissioners of WEBER COUNTY, a political subdivision of the State of Utah, that they signed the foregoing Parking Easement Deed on behalf of said County by proper authority, and did each acknowledge to me that said County executed the same.

My Commission Expires:

OCT. 86

Virgil A. Miller
NOTARY PUBLIC
Residing at: WVBEAC

