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DATE 22-SEP-1994 4:07PM FEE 31.00
MICHAEL L GLEED, RECORDER - FILED BY DB
CACHE COUNTY, UTAH
For HILLYARD ANDERSON & OLSEN

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is made effective the 22 day of September, 1994, by and between BADGER DEVELOPMENT, L.L.C., a Utah limited liability company, STERLING DEVELOPMENT, L.L.C., a Utah limited liability company, and HYRUM STORE, INC., a Utah corporation, in contemplation of the following facts and circumstances:

A. The Parties are the owners of certain real property located in Cache County, State of Utah, which is specifically described on Exhibit "A" which is attached hereto. "Parcel 1, Parcel 2, and Parcel 3", as shown on Exhibit "A", may be referred to either by their respective parcel numbers or shall be collectively referred to herein as the "Property."

B. Parcel 1, Parcel 2, and Parcel 3 (collectively the "Property") form one contiguous parcel of real property and the Parties desire to enter into this Declaration to provide for (i) the orderly development and operation of the Property, (ii) the construction of compatible improvements on the Property, (iii) common easements for ingress and egress of pedestrian and vehicular traffic, (iv) reciprocal parking rights, and (v) such other matters as are provided herein.

NOW, THEREFORE, it is mutually covenanted and agreed as follows:

ARTICLE I

Definitions

The following terms when used in this Declaration shall have the meanings set forth in this section.

1.1 "Building" shall mean any building to be constructed upon any portion of the Property.

1.2 "Building Area" shall mean all areas of the Property upon which a Building either has been constructed or is designated to be utilized for the construction of a Building.

1.3 "Common Area" shall mean all portions of the Property except the Building Area. Canopies or other roof extensions which extend over the Common Area, together with any columns or posts supporting same, shall be deemed to be a part of the Building to which they are attached and not a part of the Common Area.

1.4 "Owner" shall mean the record holder of fee simple title to a Parcel, its heirs, personal representatives, successors and assigns, or when designated by the fee owner in a writing delivered to all other Owners, a long-term lessee. In the event that fee simple title to a portion of a Parcel is conveyed, then for the

purposes of this Declaration the "Owner" of that Parcel shall be the record holder of fee simple title to the largest portion of that Parcel.

1.5 "Parcel" or "Parcels" shall mean Parcel 1, Parcel 2, and Parcel 3 of the Parties, as said Parcels are described on Exhibit "A" attached hereto.

1.6 "Party" or "Parties" shall mean Badger Development, L.L.C., a Utah limited liability company, Sterling Development, L.L.C., a Utah limited liability company, and Hyrum Store, Inc., a Utah corporation.

ARTICLE II

Easements

2.1 Ingress, Egress and Parking. Each owner, as grantor, hereby grants to the other Owners and their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, during the term hereof, for the benefit of each Parcel belonging to the other Owners, as grantees, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic (including delivery trucks, vans and other vendor and supply vehicles) and vehicular parking upon, over and across that portion of the Common Area located on the grantor's Parcel(s).

2.2 Utility Lines and Facilities. Each Owner, as "grantor", hereby grants to the other Owners, for the benefit of each Parcel belonging to each other Owner, as "grantee", a nonexclusive easement, for the term hereof, under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains and other public or private utilities. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any Buildings or improvements located in the Property). The installation, operation, maintenance, repair and replacement of such utility facilities shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in the Property.

2.3 Costs and Expenses. Each respective grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such utility facilities. Such grantee

shall also be responsible to repair to the original specifications any and all Common Areas damaged by reason of the construction, installation, operation or repair of any utilities and shall provide "as-built" plans for all such facilities to the owner of each Parcel upon which such utility lines and facilities are located within thirty (30) days after the date of completion of construction of such utilities.

2.4 Relocation. At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any utility line or facility installed pursuant to the foregoing grant of easement which is then located on the land of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days prior written notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish utility service to the Parcels served by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Owner or occupant of any other Parcel, (v) shall provide for the original and relocated area to be restored to the original specifications, and (vi) except in an emergency situation, no construction shall be commenced or be ongoing during the period in each year from November 1st to the ensuing January 2nd. The Owner performing such relocation shall provide "as-built" plans for all such relocated utility lines and facilities to the Owner of each Parcel served by such utility lines and facilities within thirty (30) days after the date of completion of such relocation.

2.5 Additional Easements. Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing, repairing, upgrading, replacing and maintaining the utility lines and facilities described herein, provided such easements are not otherwise inconsistent with the provisions of this Declaration.

2.6 Building Encroachments. Each owner, as "grantor", hereby grants to each other Owner, for the benefit of each Parcel belonging to the other Owner, as "grantee", an easement for any portion of any Building located on any such Parcel which may encroach into or over the grantor's adjoining Parcel, provided the easement for footings, piers, piles, grade beams and building encroachments does not exceed two (2) feet, and the easement for canopies, eaves and roof overhangs does not exceed four (4) feet. The easements granted in this section shall survive this Declaration and shall last so long as the encroaching Building is standing following its initial construction or following its reconstruction where such Building is substantially restored to its prior condition following a casualty or condemnation.

2.7 Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenances to the affected

portions of the Property and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions. For the purposes of such easements and rights, the particular areas of the Property which are benefitted by such easements shall constitute the dominant estate, and the particular areas of the Property which are burdened by such easements and rights shall constitute the servient estate. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration create a mutual equitable servitude upon each Parcel in favor of the person or entity having any fee, leasehold or other interest in any portion of the Property at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction, or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

2.8 Additional Area. It is intended that additional improvements shall be constructed on Parcel 2 and Parcel 3 and each Owner agrees to designate additional Common Area on said Parcels as necessary to conform to the location of the buildings.

ARTICLE III

General Provisions

3.1 Covenants Run With the Land. Each Restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof, and shall run with the land.

3.2 Successors and Assigns. This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

3.3 Duration. Except as otherwise provided herein, the term of this Declaration shall be for forty-five (45) years from the date hereof. The term hereof shall extend automatically for periods of ten (10) years each, but not to exceed four (4) such terms, unless prior to the expiration of the initial term or any extension thereof, any Owner shall give notice in the records of Cache County and to the other Owners pursuant to this Declaration that it elects to terminate the term when the then current term or extended term expires. Notwithstanding any termination of this Declaration, so long as any Owner shall continue to occupy any Building upon its Parcel, there shall be deemed to continue to exist an easement for any utilities which shall be in existence as of the date of termination which were constructed in reliance upon the utility easements granted in Article II hereof.

3.4 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

3.5 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, 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 Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise effective on the date of such acquisition.

3.6 Entire Agreement. This Declaration contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof.

3.7 Recordation. This Declaration shall be recorded in the office of the Cache County Recorder.

EXECUTED as of the day and year first above written.

BADGER DEVELOPMENT, L.L.C.

By Brent Parker
Member

By Chris Sopp
Member

STERLING DEVELOPMENT, L.L.C.

By Brent Parker
Member

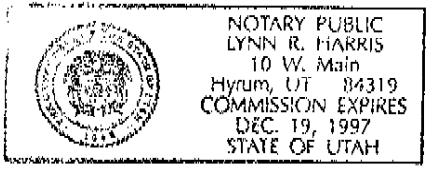
By Chris Sopp
Member

HYRUM STORE, INC.

By Chris Sopp
President

STATE OF UTAH)
: ss.
County of Cache)

On the 22 day of September, 1994, personally appeared before me BRENT D. PARKER and CRAIG A. POPPLETON, the signers of the foregoing document and the Members of BADGER DEVELOPMENT, L.L.C., who acknowledged that they executed the above instrument in behalf of said limited liability company.

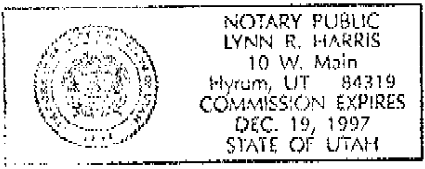


Lynn R. Harris

NOTARY PUBLIC

STATE OF UTAH)
: ss.
County of Cache)

On the 22 day of September, 1994, personally appeared before me BRENT D. PARKER and CRAIG A. POPPLETON, the signers of the foregoing document and the Members of STERLING DEVELOPMENT, L.L.C., who acknowledged that they executed the above instrument in behalf of said limited liability company.

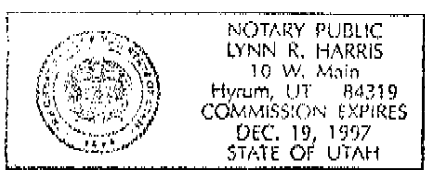


Lynn R. Harris

NOTARY PUBLIC

STATE OF UTAH)
: ss.
County of Cache)

On the 22 day of September, 1994, personally appeared before me CRAIG A. POPPLETON, the signer of the foregoing document, who duly acknowledged to me that he executed the same.

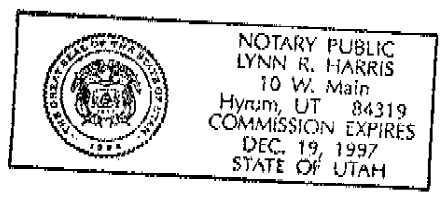


Lynn R. Harris

NOTARY PUBLIC

STATE OF UTAH)
): ss.
County of Cache)

On the 22 day of September, 1994, personally appeared before me CRAIG A. POPPLETON, who, being by me duly sworn, did say that he is the president of HYRUM STORE, INC., a Utah corporation, that said instrument was signed in behalf of said corporation by authority of its board of directors, and said CRAIG A. POPPLETON acknowledged to me that said corporation executed the same.



Lynn R. Harris

NOTARY PUBLIC

EXHIBIT "A"

PARCEL 1:

Part of Lots 8 and 9, Block 26, Plat "D" HYRUM CITY SURVEY, described as follows: Beginning 110 feet West of the Northeast Corner of said Block 26 and running thence South 155 feet; thence East 110 feet; thence North 155 feet; thence West 110 feet to the point of beginning. Excepting therefrom that portion of lot 9 conveyed to the Utah State Department of Transportation (Road Commission).

PARCEL 2:

PARCEL 1: Part of Lot 6, Block 26, PLAT "D" HYRUM CITY SURVEY, described as follows: Beginning 106 feet East of the Northwest Corner of said Lot 6, and running thence South 113.3 feet; thence West 106 feet; thence South 6.7 feet; thence East 165 feet; thence North 120 feet; thence West 59 feet to the point of beginning.

PARCEL 2: Beginning 71.5 feet East of the Southwest Corner of Lot 6, Block 26, Plat "D", HYRUM CITY SURVEY, and running thence North 125 feet; thence East 162.5 feet; thence South 125 feet; thence West 162.5 feet to the point of beginning.

PARCEL 3: Beginning 185 feet West and 75 feet North of the Southeast Corner of Lot 9, Block 26, Plat "D" HYRUM CITY SURVEY, and running thence North 50 feet; thence East 110 feet; thence South 50 feet; thence West 110 feet to the point of beginning.

PARCEL 3:

Part of Lots 6, 7, 8, and 9, Block 26, Plat "D" HYRUM CITY SURVEY, described as follows:

Beginning at the Southwest Corner of said Lot 6 and running thence North 210 feet; thence East 200 feet; thence North 120 feet, more or less to the North line of said Lot 7; thence East 270 feet, more or less to a point of record 110 feet West of the Northeast Corner of said Block 26; thence South 155 feet; thence East 110 feet; thence South 109 feet to a point 66 feet North of the Southeast Corner of said Lot 9; thence West 125 feet; thence South 66 feet to the South line of Lot 8; thence West 221 feet; thence North 125 feet; thence West 162.5 feet; thence South 125 feet; thence West 71.5 feet, more or less to the point of beginning.

Excepting therefrom the following: Part of Lots 8 and 9, Block 26, Plat "D" HYRUM CITY SURVEY, described as follows:

Beginning 185 feet West and 75 feet North of the Southeast Corner of said Lot 9, and running thence North 50 feet; thence East 110 feet; thence South 50 feet; thence West 110 feet to the point of beginning.