

2250

4550286
13 NOVEMBER 87 03:52 PM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
SECURITY TITLE
REC BY: JANET WONG DEPUTY

RECORDED AT THE REQUEST OF,
AND WHEN RECORDED RETURN TO:

Town & Country Home Furnishings
c/o Jardine, Linebaugh, Brown & Dunn
370 East South Temple, 4th Floor
Salt Lake City, Utah 84111

Attn: Wm. Shane Topham, Esq.

4550286

DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENTS (this "Declaration") is made effective the 11th day of August 1987, between TOWN & COUNTRY HOME FURNISHINGS, a Utah corporation ("Town & Country") whose address is 5420 Green Street, Murray, Utah 84107, and 5300 SOUTH GREEN STREET ASSOCIATES, a Utah general partnership whose address is 428 South State Street, Suite 2, Salt Lake City, Utah 84111 ("Associates").

R E C I T A L S :

A. Town & Country is the fee title owner of a parcel of real property (the "Town & Country Parcel") located in Salt Lake County, State of Utah, which Town & Country Parcel is described more particularly on Exhibit "A" that is attached hereto.

B. Associates is the fee title owner of a parcel of real property (the "Associates Parcel") located in Salt Lake County, State of Utah, which Associates Parcel is contiguous with the northern boundary line of the Town & Country Parcel and is described more particularly on Exhibit "B" that is attached hereto.

C. Associates desires to create certain rights-of-way and easements benefiting the Town & Country Parcel (with respect to which the Associates Parcel would be subject) on the terms and conditions hereinafter set forth.

A G R E E M E N T :

NOW, THEREFORE, for the foregoing purposes, for Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt and legal sufficiency of which consideration is

SECURITY TITLE CO.
FHK No. E249735

BOOK 5979 PAGE 2701

hereby acknowledged, and in consideration of the benefits to be derived from the rights-of-way and easements described herein, Town & Country and Associates hereby agree as follows:

ARTICLE I Definitions

Section 1.1. Green Street. As used in this Declaration, the term "Green Street" means that certain public dedicated road (or its replacement, by whatever name) presently running along the east side of the Town & Country Parcel and the Associates Parcel. The parties acknowledge that the location of Green Street with respect to the Parcels will be changed as part of the proposed development of the Associates Parcel.

Section 1.2. Parcel. As used in this Declaration, the term "Parcel" shall mean the Town & Country Parcel or the Associates Parcel where no distinction between the two is required by the context in which the term is used.

Section 1.3. Parcels. As used in this Declaration, the term "Parcels" means the Town & Country Parcel and the Associates Parcel, collectively.

ARTICLE II Easements

Section 2.1. Grant of Town & Country's Ingress and Egress Easements. Associates hereby conveys and grants to Town & Country (subject to all matters described on Exhibit D attached hereto and by this reference incorporated herein) non-exclusive rights-of-way and easements, appurtenant to the Town & Country Parcel, across the portions of the Associates Parcel as described more particularly as Easement Property I and as Easement Property II (collectively referred to herein as the "Easement Properties") on Exhibit "C" that is attached hereto, for the purpose of vehicular and pedestrian ingress and egress between the Town & Country Parcel and Green Street with respect to Easement Property II and vehicular and pedestrian ingress only with respect to Easement Property I.

Section 2.2. Limitation. The rights-of-way and easements granted hereinabove shall be limited to use for such purposes and to such extent as may be customary in the use of the Town & Country Parcel for general commercial purposes, which shall include reasonable and customary deliveries.

Section 2.3. No Interference; Maintenance. Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication thereof, or the accrual of any rights to the public therein, no fence, wall, barricade or other obstruction, whether temporary or permanent in nature, which materially limits or impairs the free and unimpeded access to or across the rights-of-way and easements granted hereinabove shall be constructed or erected on the Easement Properties, nor shall Associates in any other manner obstruct or interfere with the free flow of vehicular or pedestrian traffic on any portion of such rights-of-way and easements. Town & Country shall maintain the areas on the Associates Parcel across which such rights-of-way and easements are located in reasonably good condition and repair, free from snow, ice, rubbish and other debris and shall take such other actions in connection therewith as are commercially reasonable under the circumstances. Associates shall not have any responsibility for maintenance or repair with respect to the Easement Properties.

Section 2.4. Relocation. The parties expressly acknowledge that their intent is to provide continual access between Green Street and the Town & Country Parcel. Accordingly, Associates and Town & Country agree (a) to relocate the Easement Properties to meet the requirements of the Utah Department of Transportation in connection with the realignment of Green Street so long as no such modifications shall have a material adverse impact on the nature of the access easements or the rights of ingress and egress between Green Street and the Town & Country Parcel intended by this Agreement; and (b) to relocate the Easement Properties or to modify the legal description(s) thereof so as to provide the desired access between the Town & Country Parcel and Green Street, notwithstanding any subsequent realignment of Green Street or the fact that Green Street is not ultimately realigned as presently proposed.

Section 2.5. Partial Release of Associates Parcel. Upon the consummation of the realignment of Green Street and the public dedication thereof, and upon the relocation or modification (if any) of the Easement Properties as provided for herein so as to provide the desired access between the Town & Country Parcel and Green Street, Town & Country shall, on Associates' written request, amend Exhibit "B" of this Agreement to change the legal description of the Associates Parcel from the gross legal description thereof to the legal description of the Easement Properties; provided, however, that notwithstanding any such modification, the responsibilities of

Associates hereunder shall be continuing in nature and binding upon Associates and its successors-in-interest as provided in Section 3.3 below.

ARTICLE III
Duration and Nature

Section 3.1. Duration. This Declaration and each right-of-way, easement and other right and obligation set forth herein shall be perpetual.

Section 3.2. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Parcels to or for the general public or for any public purposes whatsoever, it being the intention of Town & Country and Associates that this Declaration be strictly limited to and for the purposes expressed herein.

Section 3.3. Appurtenance to Parcel; Covenants Run with Land.

a. Appurtenances to Parcel. All of the rights-of-way, easements and restrictions granted or created hereby are appurtenances to the Town & Country Parcel benefited thereby and none of such rights-of-way, easements or restrictions may be transferred, assigned or encumbered except as an appurtenance to such Parcel; provided, however, that Associates shall have the right to encumber the Easement Properties subject to the rights of Town & Country therein as provided for in this Declaration. For the purposes of such rights-of-way, easements and restrictions, the Town & Country Parcel benefited thereby shall constitute the dominant estate and the Associates Parcel burdened thereby shall constitute the servient estate.

b. Covenants Run with Land. All of the rights-of-way, easements, rights and obligations contained in this Declaration (whether affirmative or negative in nature) (a) shall create equitable servitudes upon the Associates Parcel burdened thereby in favor of the Town & Country Parcel benefited thereby; (b) shall constitute covenants running with the land; (c) shall bind every person having any fee, leasehold or other interest in any portion of the respective Parcel at any time or from time to time to the extent that such portion is affected or bound by the right-of-way, easement or restriction in question, or to the extent that such right-of-way, easement or restriction is to be performed on such portion; and (d)

shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns as to the Parcels, as well as their respective customers, guests, licensees, tenants, subtenants and concessionaires, and the customers, invitees, guests and licensees of all such persons.

Section 3.4. No Partnership. Town & Country and Associates do not by this Declaration, in any way or for any purpose, become partners or joint venturers of each other in the conduct of their respective businesses or otherwise.

ARTICLE IV Additional Provisions

Section 4.1. Integration; Modification. This Declaration contains the entire agreement of Town & Country and Associates with respect to the matters set forth herein. This Declaration and any right-of-way, easement, right or obligation contained herein may be terminated, extended or modified or amended as to the whole of the Parcels or any portion thereof with the written consent of both Town & Country and Associates, or their successors-in-interest, and any such termination, extension, modification or amendment shall be effective upon proper recordation of a written document evidencing the same, executed and acknowledged by Town & Country and Associates, or their successors-in-interest, in the office of the Recorder of Salt Lake County, Utah.

Section 4.2. Force Majeure. Associates shall be excused for any period of any delay in the performance of any obligations hereunder when prevented from so doing by any cause beyond Associates control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or services or by act of God.

Section 4.3. Notice. Any notice required to be given under this Declaration must be writing. Except when actual receipt is expressly required by the terms hereof, notice is considered given either (a) when delivered in person to the recipient named at the address set forth above, or (b) upon the third business day after being properly placed in the United States mail, either registered or certified, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or person intended. Either party hereto may, by notice given at any time or from time to time, require subsequent notices to be given to another individual, whether an office or representative, or to a different address

BOOK 5979 PAGE 2705

or both. Notices given before actual receipt of notice of change shall not be invalidated by the change. If more than one recipient is named, delivery of notice to any one such recipient shall be sufficient.

Section 4.4. Titles and Captions. Titles or captions to this Declaration are for convenience only and shall not be deemed to be part of this Declaration, and in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts of this Declaration.

Section 4.5. Pronouns and Plurals. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. Each of the foregoing genders and plurals is understood to refer to a corporation, partnership or other legal entity when the context so requires.

Section 4.6. Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forebear from all such action as may be necessary or appropriate to achieve the purposes of this Declaration.

Section 4.7. Applicable Law. This Declaration shall be construed in accordance with, and governed by, the laws of the State of Utah.

Section 4.8. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty or condition of this Declaration or to exercise any rights or remedies consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, duty or condition. Any party may, by notice delivered in the manner provided in this Declaration, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder or any covenant or duty of any other party. No waiver shall affect or alter the remainder of this Declaration, but each and every other covenant, duty and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

Section 4.9. Severability. In the event that any provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Declaration and shall in no way affect any other provision herein contained. If such provision shall be deemed invalid due to its scope or breadth,

such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

Section 4.10. Attorneys' Fees. In the event that it becomes necessary for any party hereto to employ the services of an attorney in connection herewith, either with or without litigation, the losing party to such controversy shall pay to the successful party reasonable attorneys' fees and, in addition, such costs and expenses as are incurred in enforcing this Declaration.

Section 4.11. Authorization. Each individual executing this Declaration does thereby represent and warrant to each other so signing (and each other entity for which another person may be signing) that he has been duly authorized to execute and to deliver this Declaration in the capacity and for the entity indicated.

Section 4.12. Exhibits. All exhibits referred to herein and attached hereto are hereby incorporated herein by this reference.

Section 4.13. Rights and Remedies. The rights and remedies of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions of this Declaration shall not preclude the exercise of any other provisions. Each party confirms that its damages at law may be an inadequate remedy for a breach or threatened breach hereof. The respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction or other equitable remedy, but nothing contained herein is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other party for a breach or threatened breach of any provision hereof. It being the intention of the parties by this section to make clear their agreement that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

Section 4.14. Survival. All agreements, covenants, representations and warranties contained herein are continuing obligations of the respective parties hereto and shall survive the contemplated acquisition by Associates from Town & Country (and its co-owner) of the Associates Parcel and the execution and delivery of the General Warranty Deed and other documents undertaken in connection therewith.

IN WITNESS WHEREOF, this Declaration is executed effective the date first above written.

TOWN & COUNTRY HOME FURNISHINGS,
a Utah corporation

By: *Ralph O. Bradley*
Ralph O. Bradley
Its President

5300 SOUTH GREEN STREET
ASSOCIATES, a Utah general
partnership

By: *Hooper W. Archibald, III*
Hooper W. Archibald, III
Its General Partner

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

On the 11th day of August 1987, personally appeared before me RALPH O. BRADLEY, who, being by me duly sworn, did say that he is the President of TOWN & COUNTRY HOME FURNISHINGS, a Utah corporation, and that the foregoing DECLARATION OF EASEMENTS was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said RALPH O. BRADLEY acknowledged to me that said corporation executed the same.

W. S. P. P. L.
Notary Public
Residing in: *Salt Lake Canyon*

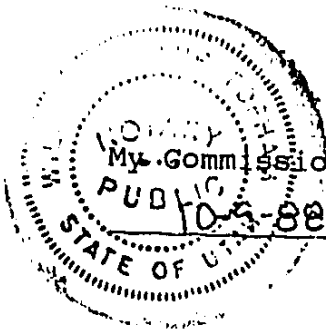
My Commission Expires:
10-9-88

BOOK 5979 PAGE 2708

STATE OF)
) :ss
COUNTY OF)

On this 11th day of August 1987, personally appeared before me HOOPER T. KNOWLTON, III as General Partner of 5300 SOUTH GREEN STREET ASSOCIATES, who duly acknowledged to me that he executed the foregoing DECLARATION OF EASEMENTS as a general partner in, and on behalf of, 5300 SOUTH GREEN STREET ASSOCIATES, a Utah general partnership.

W.S.O.
Notary Public
Residing in: Salt Lake County



My Commission Expires: _____

BOOK 5979 PAGE 2709

EXHIBIT "A"
TO
DECLARATION OF EASEMENTS

LEGAL DESCRIPTION OF THE TOWN & COUNTRY PARCEL

BEGINNING at a point South 1.4 chains East 440.2 feet to the Westerly line of the Denver and Rio Grande Railroad right of way, and South $16^{\circ}34'$ West 418.7 feet along said Westerly line, and West 1285 feet from the Northeast corner of the Northwest quarter of Section 13, Township 2 South, Range 1 West, Salt Lake Base and Meridian and running thence North along a line of fence 188.5 feet; thence East 399.5 feet, more or less, to property of State Road Commission of Utah; thence South $4^{\circ}25'$ West along the Westerly line of State Road Commission property 189.1 feet to line of fence; thence West along said fence 387.0 feet, more or less, to the place of BEGINNING.

EXHIBIT "B"
TO
DECLARATION OF EASEMENTS

LEGAL DESCRIPTION OF THE ASSOCIATES PARCEL

BEGINNING at the Northwest corner of the Bradley Sleep Center property on the westerly line of Green Street which corner is South 305.219 feet and West 564.684 feet from the north quarter corner of Section 13, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South $04^{\circ}29'39''$ West 27.298 feet to a point on the arc of a 62.500-foot radius curve whose center bears $65^{\circ}08'09''$ West; thence Northwesterly 36.298 feet along the arc of said curve through a central angle of $33^{\circ}16'31''$; thence West 374.117 feet; thence North 5.597 feet; thence West 116.560 feet; thence North 432.980 feet; thence North $79^{\circ}49'00''$ West 11.30 feet; thence South $86^{\circ}55'00''$ West 87.498 feet; thence North $84^{\circ}00'03''$ East 103.000 feet; thence South $70^{\circ}53'21''$ East 214.880 feet; thence North $01^{\circ}20'0''$ West 21.139 feet; thence South $68^{\circ}55'00''$ East 47.783 feet; thence North $73^{\circ}35'15''$ East 7.891 feet; thence South $70^{\circ}00'00''$ East 51.107 feet; thence South $68^{\circ}55'00''$ East 89.534 feet; thence South 66.374 feet; thence East 115.824 feet; thence South $07^{\circ}35'33''$ East 148.232 feet; thence South $04^{\circ}29'39''$ West 119.876 feet to the point of beginning. (Containing 4.278 acres)

8307 5979 PAGE 2711

EXHIBIT "C"
TO
DECLARATION OF EASEMENTS

LEGAL DESCRIPTION OF EASEMENTS
ACROSS THE ASSOCIATES PARCEL

EASEMENT PROPERTY I:

BEGINNING at a point on the north line of the Bradley Sleep Center property which is South 305.219 feet and West 910.684 feet from the north quarter corner of Section 13, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence East 21.842 feet to a point on the arc of a 8.933-foot radius curve whose center bears North 52°32'27" East; thence North-easterly 21.641 feet along the arc of said curve through a central angle of 138°48'19" to a point on the arc of a 215.000-foot radius curve whose center bears North 11°20'00" East; thence Northwesterly 50.701 feet along the arc of said curve through a central angle of 13°30'41" to a point on the arc of a 30.000-foot radius curve whose center bears South 24°50'42" West; thence Southeasterly 34.115 feet along the arc of said curve through a central angle of 65°09'18"; thence South 2.675 feet to the point of BEGINNING. (Containing 489.8 square feet or 0.0112 acre)

EASEMENT PROPERTY II:

BEGINNING at a point on the north line of the Bradley Sleep Center property which is South 305.219 feet and West 754.357 feet from the north quarter corner of Section 13, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence East 35.518 feet to a point on the arc of a 6.750-foot radius curve whose center bears North 61°13'04" East; thence North-easterly 13.994 feet along the arc of said curve through a central angle of 118°46'56"; thence West 63.795 feet to the beginning of a 30.000-foot radius curve whose center bears due South; thence South-easterly 25.232 feet along the arc of said curve through a central angle of 48°11'24" to the point of BEGINNING. (Containing 426.2 square feet or 0.0098 acre)

WSTD605

EXHIBIT D

Permitted Exceptions

1. Easements and controlled access provisions in those certain deeds to the State Road Commission of Utah recorded September 14, 1961 as Entry No. 1799676 and November 7, 1961 as Entry No. 1809998 and February 8, 1962 as Entry No. 1826928 and June 22, 1962 as Entry No. 1853317 of Official Records. Said deeds recite as follows:

The grantors also hereby grant to the grantee permission to locate and construct within the grantors land and outside the limits of the highway right of way all irrigation and/or waste water ditches made necessary by the construction of said project. After the above described ditches are constructed, the grantee is thereafter relieved of all responsibility for the maintenance of said ditches.

To enable the grantee to construct and maintain a public highway as a freeway, as contemplated by Chapter 63, Laws of Utah, 1945, said highway to consist of inner through traffic lanes and adjacent frontage road _____, the grantor(s) hereby release(s) and relinquish(es) to the grantee, any and all rights or easements appurtenant to the grantors remaining property by reason of the location thereof with reference to said highway, including, without limiting the foregoing, all rights of ingress to or egress from the grantors remaining property contiguous to the lands hereby conveyed to or from said inner lanes; provided, however, that such remaining property of the grantor(s) shall abut upon and have access to said frontage road which will be connected with said inner through traffic lanes only at such points as may be established by public authority.

2. A right of way easement for communication facilities and incidental purposes as created in favor of The Mountain States Telephone and Telegraph Company by instrument recorded January 27, 1964 as Entry No. 1975232 in Book 2148 at Page 14 of Official Records, over the following described property:

COMMENCING 559.7 feet West and 241.7 feet South from North Quarter corner of Section 13, Township 2 South, Range 1 West, Salt Lake Meridian; South 4°25' West 71.2 feet; West 127.5 feet; North 71 feet; East 133 feet to BEGINNING. (Exact location not disclosed.)

3. A right of way easement for communication facilities and incidental purposes as created in favor of The Mountain States Telephone and Telegraph Company by instrument recorded March 6, 1964 as Entry No. 1984313 in Book 2163 at Page 348 of Official Records, described as follows:

COMMENCING 579.1 feet West and 38.78 feet South from North Quarter corner Section 13, Township 2 South, Range 1 West,

BOOK 5979 PAGE 2713

Salt Lake Meridian; South 5'28' East 203.9 feet; West 5 feet; North 5'28' West 254 feet more or less; East 5 feet; South 5'28' East 50.1 feet more or less to point of BEGINNING.

4. An easement recorded October 20, 1966 as Entry No. 2175601 in Book 2502 at Page 291 of Official Records, in favor of the State Road Commission of Utah as follows:

An easement upon part of an entire tract of property in the Southeast 1/4 Southwest 1/4 of Section 12 and the Northeast 1/4 Northwest 1/4 of Section 13, Township 2 South, Range 1 West, Salt Lake Base & Meridian in Salt Lake County, Utah, for the purpose of constructing thereon a drainage facility and appurtenant parts thereof incident to the construction of a freeway known as Project No. 01-7.

Said part of an entire tract is a strip of land adjacent to the Westerly right of way line of highway known as Project No. 01-7. Said strip of land is 20.0 feet wide, 10.0 feet on both sides of the following described center line:

BEGINNING on the Westerly right of way line at a point approximately 587.5 feet West and 1.3 feet North from the South 1/4 corner of said Section 12; thence West 102 feet, more or less, to the West boundary line of said entire tract of property. The above described strip of land contains 0.047 acre, more or less.

ALSO:

A temporary work easement to facilitate the construction of said drainage facility and appurtenant parts thereof, being a strip of land 10 feet wide and adjoining Southerly the Southerly side line of the above described strip of land, containing 0.023 acre, more or less.

After said drainage facility is constructed on the above described part of an entire tract at the expense of said Stat Road Commission said State Road Commission is thereafter relieved of any further claim or demand for costs, damages or maintenance charges which may accrue against said drainage facility and appurtenant parts thereof.

5. A right of way easement for communication facilities and incidental purposes as created in favor of The Mountain States Telephone and Telegraph Company by instrument recorded March 12, 1980 as Entry No. 3409990 in Book 5065 at Page 222 of Official Records, described as follows:

An easement six (6) feet in width described by a center line with three (3) feet on each side as follows:

COMMENCING South 38.78 feet and West 690.7 feet and South 268 feet from North Quarter corner Section 13, Township 2

BOOK 5979 PAGE 2714

South, Range 1 West, Salt Lake Base & Meridian; thence West
269 feet; thence North 23 feet; thence West 101.33 feet to
end.

BOOK 5979 PAGE 2715