

DTE 6105

AFTER RECORDING RETURN TO

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ENT 44232 BK 3979 PG 543
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1996 MAY 28 11:52 AM FEE 24.00 BY JD
RECORDED FOR PRO-TITLE AND ESCROW INC

DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS (this "Declaration") is made effective this 24th day of May, 1996, by and between S. KIM BONNETT and SHELLEY J. BONNETT of 270 North Main, Lindon, Utah, 84042 ("Bonnett") and ROBERT W. MOFFITT and CAROL L. MOFFITT, Trustees, and any Successor Trustees of THE MOFFITT FAMILY TRUST, dated February 7, 1985, of 129 East South Field Road, Spanish Fork, Utah, 84660 ("Moffitt").

WHEREAS, Bonnett owns legal title to a parcel of real property situated at approximately 833 North Main, Spanish Fork, Utah, 84660, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Bonnett Property").

WHEREAS, Moffitt owns legal title to a parcel of real property situated at approximately 891 North Main, Spanish Fork, Utah, 84660, which is more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference (the "Moffitt Property"), that is contiguous to, and is situated to the north of the Bonnett Property.

WHEREAS, Bonnett desires to grant to Moffitt an easement across a portion of the Bonnett Property, and Moffitt desires to grant to Bonnett an easement across a portion of the Moffitt Property, on the terms and conditions set forth in this Declaration.

NOW, THEREFORE, in consideration of the above premises, the mutual covenants and conditions set forth herein, and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I: DEFINITIONS

1. Definitions. As used in this Declaration, each of the following terms shall have the indicated meaning:

- A. "Easement Area" means the real property located on a portion of the Bonnett Property and on a portion of the Moffitt Property situated in the City of Spanish Fork, Utah County, State of Utah, which is more particularly described in Exhibit "C" attached hereto and incorporated herein by this reference.
- B. "Mortgage" means a Mortgage or a Deed of Trust recorded in the Official Records.
- C. "Mortgagee" means the Mortgagee under a Mortgage, or the Beneficiary of a Deed of Trust, recorded in the Official Records.
- D. "Official Records" means the Official Records of the Utah County Recorder, State of Utah.

- E. **"Owner"** means the person that at the time concerned is the legal owner of record in the Official Records of a whole or undivided fee interest in the described property. If there is more than one Owner of the same property at any time concerned, the obligations and liabilities of each such Owner for performance and compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the property concerned pursuant to foreclosure and/or any arrangement or proceeding in lieu of foreclosure.

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ARTICLE II: EASEMENT

1. **Grant of Easement.** Bonnett (as the Owner of the Bonnett Property) hereby grants to Moffitt (as the Owner of the Moffitt Property) a right-of-way and easement on, over, and across the Easement Area, and Moffitt (as the Owner of the Moffitt Property) hereby grants to Bonnett (as the Owner of the Bonnett Property) a right-of-way and easement on, over, and across the Easement Area on the terms and conditions set forth herein (the "Easement").

2. **Nature of the Easement.** The Easement consists of a forty (40) foot wide (twenty (20) feet on the Bonnett Property and twenty (20) feet on the Moffitt Property) pedestrian and vehicular ingress and egress right-of-way (but not parking) on, over, and across the Easement Area to access the Bonnett Property and the Moffitt Property by Bonnett and Moffitt and their respective tenants, invitees, licensees, agents, and employees. The surface of the Easement shall consist of asphalt, cement, or other similar material.

3. **Bonnett Canopy.** The parties acknowledge that there is presently a canopy attached to the building on the Bonnett Property that extends over the Bonnett's Property boundary line and onto the Moffitt Property (the "Bonnett Canopy"). The parties further acknowledge that the extension of the Bonnett Canopy falls within the Easement Area. Accordingly, Moffitt (as the Owner of the Moffitt Property) hereby grants to Bonnett (as the Owner of the Bonnett Property) an easement over the Easement Area for the construction, replacement, maintenance, and repair of the Bonnett Canopy, and an easement over the Easement Area for the rain water, snow, and ice that is discharged off of the Bonnett Canopy.

4. **No Interference.** Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, or to prevent a public dedication thereof or the accrual of any rights of the public therein, no fence, gate, wall, barricade, or other obstruction which materially limits or impairs the free and unimpeded use of the Easement granted herein, shall be constructed or erected on the Easement Area.

5. **Maintenance.** The Owner of the Bonnett Property and the Owner of the Moffitt Property, respectively, shall, at their own expense, perform all normal maintenance on the portion of the Easement Area that lies on their respective property throughout the term of this Declaration. Such maintenance shall include, without limitation, paving or repaving, surfacing or resurfacing, repairing, and maintaining the roadway located on the Easement Area, and keeping the Easement Area free from debris, rubbish, snow, ice, and other materials.

6. **Improvements.** Bonnett and Moffitt, or their respective successor(s)-in-interest, may mutually agree to make necessary and reasonable improvements to the Easement Area, and the costs of such improvements shall be apportioned between the parties as mutually agreed.

7. **Duration.** This Declaration and each right-of-way, easement, covenant, and restriction set forth in this Declaration shall be perpetual.

8. **Not a Public Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of any of the properties described herein or the Easement Area to or for the general public or for any public purposes whatsoever, it being the parties' intention that this Declaration be strictly limited to and for the purposes expressed herein.

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9. **Appurtenance to Parcels.** Each right-of-way, easement, covenant, and restriction created by this Declaration is an appurtenance to the property benefitted by such right-of-way, easement, covenant, and restriction, and may not be transferred, assigned, or encumbered except as an appurtenance to such benefitted property. For purposes of each such right-of-way, easement, covenant, and restriction, each benefitted property shall constitute the dominate estate and each burdened property shall constitute the subservient estate.

10. **Covenants Run With Land.** Each right-of-way, easement, covenant, and restriction contained in this Declaration shall: (a) create an equitable servitude on each burdened property in favor of each benefitted property; (b) shall constitute a covenant running with the land; (c) shall benefit and bind every person having any fee, leasehold, Mortgage lien, or other interest in any portion of the property concerned to the extent that such portion is affected or bound by the right-of-way, easement, covenant, or restriction in question, or to the extent that such right-of-way, easement, covenant, or restriction is to be performed on such portion; (d) shall inure to the benefit and bind any Owner whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise; and (e) shall be binding upon Bonnett and Moffitt, and their respective successor(s) and assign(s) as to their respective property, as well as their respective tenants, invitees, licensees, agents, and employees.

11. **Transfer of Property.** If any Owner transfers all or any portion of the property owned by such Owner, the transferee shall automatically be deemed to have assumed and agreed to be personally bound by the covenants of such Owner contained in this Declaration, and if the transferring Owner has by such transfer transferred all of such Owner's ownership interest in such property, such transferring Owner shall be released and discharged from all obligations under this Declaration that accrue after the date of recordation in the Official Records of the instrument effecting such transfer.

12. **No Partnership.** Bonnett and Moffitt do not by this Declaration in any way or for any purpose become partners or joint venturers with each other.

13. **Subordination by Lenders.** The parties recognize the need promptly to obtain recordable subordination agreements from the Mortgagees or other lien holders of the parties hereto (the "Lenders") holding Mortgages or other liens (the "Security Documents") on the Bonnett Property and on the Moffitt Property, whereunder the Lenders will subordinate the effect of their respective Security Documents to the effect of this Declaration. Following execution and delivery of this Declaration, the parties expeditiously shall seek (and thereafter shall use their best, good faith efforts to obtain and record) such subordination agreements from their respective Lenders.

ARTICLE III
GENERAL PROVISIONS

1. **Binding Agreement.** This Declaration shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

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2. **Captions.** The headings used in this Declaration are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope, or interpretation of any of the terms or provisions of this Declaration or the intent hereof.

3. **Severability.** In the event that any provision(s) 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(s) herein contained. If such provision(s) shall be deemed invalid due to its scope or breadth, such provision(s) shall be deemed valid to the extent of the scope or breadth permitted by law.

4. **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Declaration. To be effective, any waiver must be signed by all the parties hereto.

5. **Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively. In general, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained 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 this Paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

6. **Modification.** This Declaration and any easement, condition, or restriction contained in this Declaration may not be terminated, extended, modified, or amended without the consent of all of the parties hereto, and any such termination, extension, modification, or amendment shall be effective on recordation in the Official Records of a written document effecting the same, executed and acknowledged by each Owner; provided, however, that no such termination, extension, modification, or amendment shall affect the rights of any Mortgagee holding a Mortgage consisting a lien on any property unless such Mortgagee consents to the same in writing.

7. **Governing Law, Jurisdiction, and Venue.** This Declaration shall be interpreted, construed, and enforced according to the laws of the State of Utah, and jurisdiction and venue shall be in the Courts of Utah County, State of Utah.

8. **Costs and Expenses of Enforcement.** In the event of the failure of either party hereto to comply with any provisions of this Declaration, the defaulting party shall pay any and all costs and expenses, including reasonable attorney's fees, arising out of or resulting from such default (including any incurred in connection with any appeal or in bankruptcy court) incurred by the injured party in enforcing its rights and remedies, whether such right or remedy is pursued by filing a lawsuit or otherwise.

9. **Notice.** Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received upon personal delivery or actual receipt thereof by hand delivery or by facsimile transmission, or within three (3) days after such notice is deposited in the United States mail, postage prepaid and certified or registered and addressed to the respective addresses set forth above or to such other address(es) as may be supplied by a party to the other from time to time in writing.

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10. **Time of Essence.** Time is of the essence of this Declaration.

11. **Exhibits.** Each of the Exhibits that is referred to herein and that is attached hereto is an integral part of this Declaration and is incorporated herein by this reference.

12. **Additional Acts.** The parties hereto shall do such further acts and things and shall execute and deliver such additional documents and instruments as may be necessary or desirable to carry out the intent to this Declaration or as the other party, or its counsel, may reasonably require in order to consummate, evidence, or confirm the provisions that are contained herein.

13. **Integration Clause.** There are no representations, warranties, covenants, or agreements between the parties as to the subject-matter of this Declaration except as are specifically set forth in this Declaration. This Declaration contains the entire agreement between the parties hereto pertaining to the matters that are set forth herein and supersedes all prior verbal or written agreements of the parties relating thereto.

THE PARTIES have executed this Declaration as of the date first set forth above.

"BONNETT"

"MOFFITT"

S. Kim Bonnett
S. KIM BONNETT

THE MOFFITT FAMILY TRUST,
dated February 7, 1985


Shelley J. Bonnett
SHELLEY J. BONNETT

By: *Robert W. Moffitt*
ROBERT W. MOFFITT, Trustee

By: *Carol L. Moffitt*
CAROL L. MOFFITT, Trustee

STATE OF UTAH)
)
) :ss.
)
COUNTY OF UTAH)

On the 24th day of May, 1996, personally appeared before me, a Notary Public in and for the State of Utah, S. KIM BONNETT and SHELLEY J. BONNETT, the signers of the above instrument, who duly acknowledged to me that they executed the same.

Residing In:  My Commission Expires: **COMM. EXP. 1-5-00**

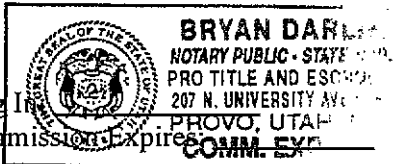
Bryan Darling
NOTARY PUBLIC

STATE OF UTAH)
) :SS
COUNTY OF UTAH)

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On the 24th day of May, 1996, personally appeared before me, a Notary Public in and for the State of Utah, ROBERT W. MOFFITT and CAROL L. MOFFITT, who represented to me that they are the Trustees of THE MOFFITT FAMILY TRUST, dated February 7, 1985, the signer of the above instrument, who duly acknowledged to me that they executed the same on behalf of said Trust.

Residing In
My Commission Expires



Bryan Darby
NOTARY PUBLIC

EXHIBIT "A"
Bonnett Property

The following described tract of land situated in the City of Spanish Fork, Utah County, State of Utah,
to wit:

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BEGINNING AT THE SOUTHEAST CORNER OF BLOCK 135, PLAT "A", SPANISH FORK CITY SURVEY; THENCE WEST 198.00 FEET; THENCE NORTH 168.00 FEET; THENCE WEST 56 FEET; THENCE NORTH 30.00 FEET; THENCE EAST 56.00 FEET; THENCE NORTH 28.00 FEET; THENCE EAST 74.00 FEET; THENCE SOUTH 10.00 FEET; THENCE EAST 124.00 FEET; THENCE SOUTH 216.00 FEET TO THE POINT OF BEGINNING. CONTAINING: 1.04 ACRES

EXHIBIT "B"
Moffitt Property

The following described tract of land situated in the City of Spanish Fork, Utah County, State of Utah,
to wit:

BEGINNING AT THE NORTHEAST CORNER OF BLOCK 135, PLAT "A", SPANISH FORK CITY SURVEY: THENCE SOUTH 180.00 FEET; THENCE WEST 124.00 FEET; THENCE NORTH 10.00 FEET; THENCE WEST 74.00 FEET; THENCE SOUTH 28.00 FEET; THENCE WEST 90.00 FEET; THENCE NORTH 66.00 FEET; THENCE EAST 90.00 FEET; THENCE NORTH 132.00 FEET; THENCE EAST 198.00 FEET TO THE POINT OF BEGINNING. CONTAINING: 0.94 ACRES

EXHIBIT "C"
Easement Area

A forty (40) foot wide Easement that is located twenty (20) feet on the Bonnett Property and twenty (20) feet on the Moffitt Property. The centerline of said Easement is situated in the City of Spanish Fork, Utah County, State of Utah, and is described as follows:

BEGINNING AT A POINT 216.00 FEET NORTH OF THE SOUTHEAST CORNER OF BLOCK 135, PLAT "A", SPANISH FORK CITY SURVEY; THENCE WEST 124.00 FEET; THENCE NORTH 10.00 FEET; THENCE WEST 74.00 FEET; THENCE SOUTH 28.00 FEET; THENCE WEST 56 FEET.