

After Recording
Return to:

Strong and Henni
Attn: JOHN RILEY, Esq.
Suite 600, Boston Building
#9 EXCHANGE PLACE
Salt Lake City, Utah 84111

17
Rebecca Gray
REBECCA GRAY

Oct 25 3 22 PM '85
Strong & Henni

KALLEN BRADY
RECORDER
SALT LAKE COUNTY,
UTAH

4155438

RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT

THIS RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT made this 9th day of October, 1985, between FOX CROSSING ASSOCIATES, a Utah general partnership (ASSOCIATES), and ANDERSON LUMBER COMPANY, a Utah corporation (ANDERSON), sometimes collectively referred to as "Declarants".

WHEREAS, ASSOCIATES is the owner of that certain tract of land more fully described in Exhibit "A" attached hereto and ANDERSON is the owner of that certain tract of land more fully described in Exhibit "B" attached hereto.

WHEREAS, the combined tract is more fully described on Exhibit "C" attached hereto, and made a part hereof; and

WHEREAS, ASSOCIATES intends to construct and lease freestanding buildings and other improvements related thereto on Parcel "A"; and

WHEREAS, ANDERSON presently operates a building materials center and other improvements related thereto on Parcel "B"; and

WHEREAS, Declarants desire to impose upon the ASSOCIATES Tract and the ANDERSON Tract (hereinafter referred to jointly as the Combined Tract) certain protective conditions and restrictions for the mutual benefit of each property and subject to which each property shall be held, improved, sold, conveyed, leased, hypothecated or otherwise transferred subject to the

BOOK 5703 PAGE 1753

following easements, covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of and which shall run with the Combined Tract and shall be binding on all parties having any right, title or interest in the Combined Tract or any part thereof, their heirs, successors, and assigns, and which shall inure to the benefit of the respective owners and lessees thereof;

1. Easements for the Ingress and Egress. The Declarants, their respective successors, assigns, legal representatives, tenants, customers, invitees, licensees, and employees shall have and are hereby granted an irrevocable non-exclusive right of way and easements for ingress and egress for vehicular and pedestrian traffic over, upon and across those certain driveways, access ways, roadway entrances, exits and sidewalks and common areas of the Combined Tract as particularly shown on the site plan attached as Exhibit "C" hereunto (hereinafter called the "Common Areas"). Changes may be made by ASSOCIATES for the use of Common Areas by persons acting under this easement agreement or the attached site plan to conform to final architectural/engineering site plan drawings, as approved by ANDERSON. Declarants agree that at all times there shall be independently maintained on the Combined Tract not less than the minimum number of parking spaces for the Combined Tract as required from time to time by the municipal authority.

The consideration for the rights, covenants and easements, by each party herein above granted to the other is the mutual and reciprocal grant of similar rights, covenants and easements by the other party.

The term "Common Area" includes exterior service areas, sidewalks, driveways, areas of ingress and egress, parking lots and landscaped areas.

2. Expenses of Maintaining Common Areas. The respective owners of each of the properties shall be responsible for and shall bear all costs of maintaining their Respective Tracts in an orderly and responsible manner and shall include, but not be limited to the following:

a. Maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitutes as shall be equal in quality, use and durability.

b. Removing all papers, debris, filth and refuse, and sweeping the areas to the extent reasonably necessary to keep said areas in a neat, clean and orderly condition.

c. Placing, keeping in repair, and replacing any necessary appropriate directional signs, markers, lines and operating, keeping in repair, and replacing, when necessary, such artificial lighting facilities as shall exist from time to time.

d. Maintaining all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping said areas at all times adequately weeded, fertilized and watered.

3. Utility Easements. The Declarants, their respective successors and assigns shall have non-exclusive rights of way and easements for the installation, repair, maintenance and replacement of underground sewer, water, gas and electric service across the driveways and parking areas of the Combined Tract. All repairs of said utilities shall be made promptly and shall be made in a proper and workmanlike manner. Any cost and expense incurred in connection with the maintenance of utilities within the Common Area after initial construction for the mutual benefit of both parties hereto including repair or expansion of existing utilities, shall be the sole responsibility of each party on their respective parcel. Said excavation and construction work relative to said utilities shall be made so as to not unreasonably interfere with parking on or use of the Combined Tract and shall be completed in a timely and workmanlike manner.

4. Signage. The Declarants, their respective successors and assigns shall have a non-exclusive right and interest in and to the use of various signs on Parcels A and B and shall have the right from time to time to list and locate their respective buildings and their tenants. The style, locations and colors of the signs shall be approved by each respective party or their respective successors or assigns which approval shall not be unreasonably withheld.

5. General Provisions.

a. This Declaration shall be subject to all easements heretofore, and (provided the same do not unreasonably interfere with rights granted hereunder) hereafter, granted by the respective Declarants and their successors and assigns for the installation and maintenance of utilities and drainage facilities that are reasonably necessary to the development of their respective properties.

b. Each Declarant, its respective successors and assigns shall have the right to enforce by any proceeding at law or in equity the restrictions, covenants, conditions, easements and liens now or hereafter imposed by the provisions of this Declaration. Failure to enforce any restriction, covenant, condition, easement or lien herein contained shall in no event be deemed a waiver of the right to do so thereafter. All remedies provided herein at law or equity shall be cumulative and not exclusive. Invalidation of any provision of the Declaration by judgment or court order shall in no way affect any of the other provisions hereof which shall remain in full force and effect. This Declaration and every provisions hereof shall continue in full force and effect unless amended, modified or terminated in accordance with the provisions hereof.

c. This Declaration or any provision hereof may be amended, modified or terminated, as to all or any portion of the Combined Tract only with the written consent of the owners of the land area subject to this Declaration except as set forth herein. No such amendment, modification, termination or extension shall be effective until a proper instrument in

writing has been executed, acknowledged, and recorded in the Office of the County Recorder of Salt Lake County, Utah.

d. The Declarants, their respective successors and assigns, shall execute such amendments to this Declaration as may be reasonably required by any institutional lender in connection with any current or future financing on the Combined Tract so long as the rights of any party under this Declaration are not adversely affected to any material extent and so long as such amendments are consistent with the intention of the Declaration.

e. In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the party or parties against whom judgment is rendered shall pay the attorney's fees of the prevailing party or parties in such amount as may be fixed by the court in such proceeding.

f. The easements, rights and privileges provided in this agreement shall run with the property; provided, however, that in the event of the sale or transfer by either party of its interest in the respective property, the selling party shall be freed and relieved of all of the obligations set forth in this Declaration (and, as used herein, "sale or transfer" shall include, but not be limited to, a sale or transfer consequent upon foreclosure or conveyance by deed in lieu of foreclosure) but the obligations and liabilities arising or accruing after such sale or transfer shall be binding upon the then owner or owners of the subject property.

g. Any notice which a party is required or may desire to give

the other shall be in writing, and may be personally delivered or given by United States registered or certified mail, return receipt requested, addressed as follows:

FOX CROSSING ASSOCIATES
C/O RONALD A. HATFIELD
286 WEST 1060 SOUTH
DREN, UTAH 84058

ANDERSON LUMBER COMPANY
P.O. BOX 9459
ORDEN, UTAH 84409

h. It is understood that nothing herein shall be construed to mean that the "Common Areas" are jointly owned by the parties. Each party retains ownership of its own tract and is therefore responsible to purchase and maintain on its own parcel comprehensive liability insurance in an amount of not less than \$5,000,000 covering injuries to person or property within the area of its respective parcel, and each party shall include the other party as "Named Insured" on their policy. Each party shall indemnify and hold harmless the other party from damages arising out of any accident occurring on its parcel except where caused by negligence of the other party.

i. The provisions of this agreement shall be binding upon the heirs, successors, assigns and legal representatives of the parties hereof.

EXHIBIT A

BEGINNING 768 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 3, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 380.6 FEET; THENCE EAST 318 FEET; THENCE NORTH 380.6 FEET; THENCE WEST 318 FEET TO THE POINT OF BEGINNING. 2.779 ACRES.

LESS AND EXCEPTING THEREFROM ANY AND ALL PROPERTY DEEDED TO UDOT.

ALSO: BEGINNING 460 FEET SOUTH FROM THE EAST QUARTER CORNER OF SECTION 3, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 200 FEET MORE OR LESS TO THE NORTH LINE OF RIVER RIDGE SUBDIVISION #1; THENCE WEST ALONG SAID SUBDIVISION 315 FEET; THENCE NORTH 200 FEET; THENCE EAST 315 FEET MORE OR LESS TO THE POINT OF BEGINNING. 1.446 ACRES.

LESS AND EXCEPTING THEREFROM ANY AND ALL PROPERTY DEEDED FOR STREET PURPOSES.

Exhibit B
Reciprocal Easement &
Maintenance Agreement

EXHIBIT "B"

Legal Description Anderson Lumber Company West Jordan Yard #430

Beginning at the Northeast corner of the Southeast Quarter of Section 3, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence S 89° 53' 45" W 450.0 feet; thence S 00° 01' 25" W 380.6 feet; thence S 89° 53' 45" W 318.0 feet; thence S 00° 01' 25" W 55.0 feet; thence S 89° 53' 45" W 200.0 feet; thence S 00° 01' 25" W 59.40 feet; thence S 89° 53' 45" W 352.0 feet; thence S 00° 01' 25" W 165.0 feet; thence N 89° 53' 45" E 1,005 feet; thence N 00° 01' 25" E 200.0 feet; thence N 89° 53' 45" E 315.0 feet; thence N 00° 01' 25" E 427.0 feet to the point of beginning. Less and excepting all property deeded to the UDOT or any other property deeded for street purposes.

EXHIBIT C

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE WEST 142.82 FEET; THENCE SOUTH 610 FEET; THENCE EAST 142.82 FEET; AND THENCE NORTH 610 FEET, TO THE PLACE OF BEGINNING.

SUBJECT TO THE RIGHT-OF-WAY OF 9000 SOUTH STREET OVER THE NORTH 33 FEET, AND THE RIGHT-OF-WAY OF 1300 WEST STREET OVER THE EAST 33 FEET THEREOF.

BEGINNING 142.82 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE WEST 825.18 FEET; THENCE SOUTH 495 FEET; THENCE WEST 352 FEET; THENCE SOUTH 165 FEET; THENCE EAST 80 RODS; THENCE NORTH 50 FEET; THENCE WEST 142.82 FEET; THENCE NORTH 610 FEET TO THE POINT OF BEGINNING.