

AFTER RECORDING, PLEASE RETURN TO:

Salt Lake City Public Utilities Dept.
Attn: Ms. Karryn Greenleaf
1530 South West Temple
Salt Lake City, Utah 84115

6208148
11/07/95 3:07 PM 30.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
REC BY: D KILPACK DEPUTY - WI

6208148

SPECIAL WARRANTY DEED
[Conveying Relocated Canal Strip, and
Reserving Certain Easements and Rights]

THIS DEED, dated the 26th day of October, 1995, is executed by ZML-SOUTH TOWNE MARKETPLACE LIMITED PARTNERSHIP (formerly known as ZML-SOUTH TOWNE VACANT LIMITED PARTNERSHIP), an Illinois Limited Partnership (hereinafter referred to as "Grantor"), whose address is Two North Riverside Plaza, Suite 1000, Chicago, Illinois 60606, in favor of SALT LAKE CITY CORPORATION, a municipal corporation and body politic of the State of Utah (hereinafter referred to as "Grantee"), whose principal mailing address is 451 South State Street, Salt Lake City, Utah 84111.

WITNESSETH:

IN CONSIDERATION of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby CONVEYS AND WARRANTS against (but only against) all claiming by, through, or under it unto Grantee the following-described realty situated in Salt Lake County, State of Utah:

The following-described strip of land, within which there is currently situated a portion of the Jordan & Salt Lake Canal, as relocated:

BEGINNING at a point on the Westerly right of way line of State Street, which point is North 89°50'56" East 41.33 feet from the Northeast Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of bearing being South 00°01'50" East 2599.11 feet along the monument line of State Street between the monuments found marking the intersections of 10600 South & 10200 South Streets), said Northeast Corner of Section 13 being South 89°53'20" West 92.33 feet from the monument at the intersection of 10200 South and State Streets, and running thence South 00°01'50" East 142.94 feet along said line; thence North 45°00'00" West 32.77 feet to a point on a 116.00 foot radius curve to the right; thence Southwesterly 38.99 feet along the arc of said curve through a central angle of 19°15'29" (chord bears South 39°19'27" West 38.81 feet); thence South 41°02'50" East 28.93 feet; thence South 50°28'54" West 7.88

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feet to a point of curvature with a 102.00 foot radius curve to the left; thence Southwesterly 89.92 feet along the arc of said curve through a central angle of 50°30'43"; thence South 13°14'00" West 71.92 feet; thence South 00°01'50" East 190.71 feet to a point of curvature with a 17.00 foot radius curve to the left; thence Southeasterly 18.24 feet along the arc of said curve through a central angle of 61°29'08"; thence South 61°30'58" East 67.84 feet; thence North 00°01'50" West 308.03 feet to a point of curvature with a 50.00 foot radius curve to the right; thence Northeasterly 44.08 feet along the arc of said curve through a central angle of 50°30'43"; thence North 50°28'54" East 2.33 feet to said westerly right of way line of State Street; thence South 00°01'50" East 367.99 feet along said line; thence South 00°50'43" East 66.61 feet along said line; thence North 61°30'58" West 86.65 feet to a point on a 25.00 foot radius curve to the right; thence Southwesterly 36.21 feet along the arc of said curve through a central angle of 82°58'40" (chord bears South 48°31'41" West 33.12 feet); thence North 89°59'14" West 63.53 feet; thence North 00°01'50" West 590.56 feet; thence North 89°52'57" East 89.62 feet; thence North 00°07'35" West 469.81 feet to a point of curvature with a 113.00 foot radius curve to the right; thence Northeasterly 89.42 feet along the arc of said curve through a central angle of 45°20'24"; thence North 45°12'48" East 56.83 feet to said westerly right of way; thence South 00°07'35" East 550.60 feet to the point of BEGINNING.

INCLUDING ownership of all canal improvements and water-control facilities heretofore installed within the above-described strip of land.

THE CONVEYANCE HEREBY ACCOMPLISHED IS SUBJECT TO all of the following:

- (1) Taxes and assessments for the year 1995 and for subsequent years. (However, Grantor covenants and agrees with and in favor of Grantee that Grantor shall pay taxes for the year 1995 that affect the above-described strip of land.)
- (2) The fact that the above-described realty is located within the boundaries of both Sandy City and the Salt Lake County Sewerage Improvement District No. 1, and is subject to charges and assessments levied by reason thereof.
- (3) Reservations or exceptions in patents or in acts authorizing the issuance thereof.

(4) Any and all discrepancies, conflicts in boundary lines, shortage in area, encroachments, easements, rights of way, exceptions, matters, and state of facts revealed or shown or that would be revealed or shown by a thorough, complete, and accurate examination, inspection, and survey of the realty hereby conveyed, including, without limitation, any and all matters shown by that certain Survey by DeMass and Associates certified under date of February 4, 1991 by J. Michael DeMass, a Registered Land Surveyor holding License No. 8326, or by that certain Survey by Bingham Engineering, Inc., certified under date of August 2, 1995 by James D. Pitkin, a Registered Land Surveyor holding License No. 171546.

(5) Notice of Rollback Tax Lien, recorded August 16, 1995, as Entry No. 6143145 in Book 7207 at Page 1610. (However, Grantor covenants and agrees with and in favor of Grantee that Grantor shall cause the rollback taxes that constitute such lien to be discharged by the due date of such taxes.)

(6) Easement in favor of The Mountain States Telephone and Telegraph Company, recorded October 5, 1917, as Entry No. 384843 in Book 2-W of Liens & Leases at Page 452.

(7) Any rights or claims associated with irrigation ditches referred to in easement instruments recorded January 9, 1936 as Entry No. 773971 in Book 155 of Liens & Leases at Page 515, as Entry No. 773972 in Book 157 of Liens & Leases at Pages 191-192, and as Entry No. 773977 in Book 157 of Liens & Leases at Page 193.

(8) Easement for an irrigation facility, as provided for in License and Easement recorded September 15, 1956, as Entry No. 1502512 in Book 1347 at Page 30.

(9) The fact that a portion of the realty hereby conveyed lies within the entire tract of land (but not within the leased premises) described in an unrecorded Lease, dated October 17, 1984, as amended, between South Towne Investors Limited Partnership, as Lessor, and Zions Cooperative Mercantile Institution, dba ZCMI, as Lessee, as disclosed by Subordination, Non-Disturbance and Attornment Agreement recorded October 13, 1992 as Entry No. 5350492 in Book 6535 at Page 1174.

(10) Easement in favor of Salt Lake County Sewerage Improvement District No. 1, recorded March 7, 1986, as Entry No. 4211899 in Book 5742 at Page 2849.

(11) Each of the easements, rights-of-way, rights, interests, restrictions, and limitations that is reserved unto Grantor or otherwise created or described in the following provisions of this Deed.

(12) Any matters that may have arisen or may arise by or through the acts of Grantee.

THERE IS HEREBY RESERVED UNTO GRANTOR, and there is excepted from Grantor's conveyance of the above-described realty, each of the easements, rights-of-way, rights, and interests described in the following Paragraphs (a) through (d):

(a) An exclusive right-of-way and easement, for purposes of access to and from the "Served Parcel" (which "Served Parcel" is described below) by pedestrian and vehicular traffic and for purposes of the laying, installation, operation, servicing, and maintenance of utility lines, wires, conduits, and facilities serving or to service the Served Parcel, including, without limitation, an electrical power line serving a sign located or to be located on the Served Parcel at a point near State Street and Southerly from the tract burdened by the right-of-way and easement provided for in this Paragraph (a). Said right-of-way and easement shall be an appurtenance of the Served Parcel and shall burden and affect the following-described tract, said tract being a portion of the realty conveyed by this Deed:

BEGINNING at a point North 89°50'56" East 41.33 feet from the Northeast Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of bearing being South 00°01'50" East 2599.11 feet: along the monument line of State Street between the monuments found marking the intersections of 10600 South & 10200 South Streets), said Northeast Corner of Section 13 being South 89°53'20" West 92.33 feet from the monument at the intersection of 10200 South and State Streets, and running thence South 00°01'50" East 39.66 feet; thence South 89°58'10" West 73.93 feet; thence North 00°07'35" West 84.00 feet; thence North 89°52'25" East 74.00 feet; thence South 00°07'35" East 44.46 feet to the point of BEGINNING.

A bridge over the relocated Jordan & Salt Lake Canal is currently situated on the above-described easement tract or on a portion thereof. As regards each part of said tract that is occupied by such bridge or a bridge structure, the right-of-way and easement hereby reserved shall affect only such bridge or bridge structure, and not the underlying canal.

(b) The right to maintain, repair, reconstruct, and replace the bridge and bridge structure referred to in the foregoing Paragraph (a) (including any part of such bridge or bridge structure that may be located beyond the boundaries of the easement tract described in said Paragraph (a)), as may be reasonably necessary to enable or facilitate the use of such bridge and bridge structure for their intended purposes. Such right shall be an appurtenance of the Served Parcel and shall continue as long as the right-of-way and easement referred to in the foregoing Paragraph (a) remains in effect. In exercising the

rights reserved to it by this Paragraph (b), Grantor shall comply with the following requirements:

(i) If the measures to be taken by Grantor are expected in any way to affect or interfere with the canal that underlies such bridge or with the water flow in such canal, Grantor shall take the measures involved during a period when the canal does not contain water (i.e., not during the irrigation season), unless such measures need to be taken due to circumstances requiring immediate attention;

(ii) If the measures involved are in response to circumstances requiring immediate attention and potentially may affect or interfere with water flow in the canal, Grantor before taking such measures shall notify Grantee of the circumstances involved and of Grantor's planned course of action, unless an emergency situation makes such notification not reasonably possible; and

(iii) If, within a reasonable period following the notification contemplated by the foregoing item (ii), Grantee specifies reasonable safeguards to be used by Grantor for purposes of avoiding or minimizing effects on water flow in the canal, Grantor shall utilize such safeguards in taking the measures involved.

So long as the right-of-way and easement referred to in the foregoing Paragraph (a) remains in effect, Grantee shall have no right to do any work on or change in any way said bridge or bridge structure, except in accordance with the provisions of the following items (A) through (C):

(A) If Grantee becomes aware that the condition of said bridge or bridge structure is interfering with or has the potential to interfere with the canal underlying such bridge or with the water flow therein, then Grantee shall notify Grantor of the condition in question, unless an emergency situation makes such notification not reasonably possible;

(B) If Grantor fails to rectify the condition in question within a reasonable time following such notification by Grantee, or if notification by Grantee is not reasonably possible due to the existence of an emergency situation, Grantee shall have the right itself to accomplish as regards the bridge or bridge structure the matters reasonably necessary to prevent interference with the canal or with the water flow therein; and

(C) The cost of any such measures taken by Grantee shall be reimbursed to it by Grantor, together with interest at 10% per annum until paid.

All maintenance, repair, reconstruction, and/or replacement of the bridge and bridge structure accomplished by Grantor shall be done at its own expense, except that the cost of any required work shall be paid by Grantee if the need for the work is a result of gross negligence or wilfulness on the part of Grantee or its agents, employees, or contractors (including gross negligence or wilfulness occurring in connection with canal operations or by canal maintenance).

(c) An easement for an existing irrigation line, culvert, or conduit and the operation, servicing, maintenance, and replacement of the same. Said easement shall be an appurtenance of the Served Parcel (but may be utilized and enjoyed by the owner(s) and user(s) of the water that is conveyed through such irrigation line, culvert, or conduit, which said owner(s) and user(s) consist of persons other than Grantor) and shall burden and affect the following-described part of the realty conveyed by this Deed:

A 20.00 foot wide strip of land located in the Northeast quarter of Section 13, Township 3 South, Range 1 West, Salt Lake Base & Meridian, and in the Northwest quarter of Section 18, Township 3 South, Range 1 East, Salt Lake Base and Meridian, being 10.00 feet on each side of the following described center line, with the sidelines extended to meet the boundary lines of the realty conveyed by this Deed:

BEGINNING at a point North 89°49'53" West 121.87 feet along the Section line and South 00°01'07" West 100.96 feet from the Northeast Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of bearing being South 00°01'50" East 2599.11 feet along the monument line of State Street between the monuments found marking the intersections of 10600 South & 10200 South Streets), said Northeast Corner of Section 13 being South 89°53'20" West 92.33 feet from the monument at the intersection of 10200 South and State Streets, and running thence North 57°07'47" East 115.84 feet; thence North 89°59'26" East 44.82 feet; thence South 08°07'26" East 98.57 feet to the END.

The easement reserved in this Paragraph (c) shall automatically terminate at such time as the irrigation line, culvert, or conduit supported by such easement goes unused for two (2) years.

(d) An easement for Dry Creek and the water flow thereof to cross the realty conveyed by this Deed, and to pass under the relocated Jordan & Salt Lake Canal situated on such realty by means of water control facilities heretofore installed on such realty. Said easement shall be an appurtenance of the Served Parcel (but may be utilized and enjoyed by the party(s) having a right to operate and control Dry Creek or the water flow thereof, which said

party(s) consist of persons other than Grantor) and shall burden and affect the following-described part of the realty conveyed by this Deed:

BEGINNING at a point South $00^{\circ}54'30''$ West 546.88 feet along the Section line from the Northeast Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of bearing being South $00^{\circ}01'50''$ East 2599.11 feet along the monument line of State Street between the monuments found marking the intersections of 10600 South & 10200 South Streets), said Northeast Corner of Section 13 being South $89^{\circ}53'20''$ West 92.33 feet from the monument at the intersection of 10200 South and State Streets, and running thence South $61^{\circ}30'58''$ East 22.22 feet; thence South $02^{\circ}00'00''$ West 73.75 feet; thence North $61^{\circ}30'58''$ West 47.59 feet to a point on a 25.00 foot radius curve to the right; thence Southwesterly 36.21 feet along the arc of said curve through a central angle of $82^{\circ}58'40''$ (chord bearing South $48^{\circ}31'41''$ West 33.12 feet); thence North $89^{\circ}59'00''$ West 21.97 feet; thence North $28^{\circ}50'37''$ East 107.60 feet; thence South $61^{\circ}30'58''$ East 22.47 feet to the point of BEGINNING.

GRANTOR AGREES TO INDEMNIFY, hold harmless, and defend Grantee, its agents and employees, from and against all claims, mechanics' liens, demands, damages, actions, liabilities, charges, and expenses, including attorneys' fees, for personal injury or property damage arising out of or occurring by reason of the use, maintenance, repair, reconstruction, replacement, or other activities by Grantor or its agents, contractors, or invitees of the easement, bridge, or bridge structure referred to in the foregoing Paragraphs (a) and (b).

THE "SERVED PARCEL" of realty consists of the following-described realty situated in Salt Lake County, State of Utah, including any portion of the realty described below that may not currently be owned by Grantor, so long as title to any such unowned portion is obtained by Grantor (or by Grantor's successor in title to such part of the following-described realty as is currently owned by Grantor) within five (5) years after the date of this Deed:

"Served Parcel":

BEGINNING at a point on the Westerly right of way line of State Street, which point is North $89^{\circ}50'56''$ East 41.33 feet from the Northeast Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of bearing being South $00^{\circ}01'50''$ East 2599.11 feet along the monument line of State Street between the monuments found marking the intersections of 10600 South & 10200 South Streets), said Northeast Corner of Section 13 being South $89^{\circ}53'20''$ West 92.33 feet from the monument at the intersection of 10200 South and State Streets, and running thence South $00^{\circ}01'50''$ East 583.24 feet along said line; thence South $00^{\circ}50'43''$ East

70.31 feet along said line; thence South 00°01'50" East 53.16 feet along said line to the Northerly line of an access road and a point on a 25.00 foot radius curve to the right; thence running along said Northerly line for the next five courses, Southwesterly 21.60 feet along the arc of said curve through a central angle of 49°30'41" (chord bearing South 65°15'40" West 20.94 feet); thence North 89°59'00" West 192.15 feet to the point of tangency with a 306.00 foot radius curve to the left; thence Southwesterly 162.31 feet along the arc of said curve through a central angle of 30°23'31"; thence South 59°37'30" West 74.04 feet to the point of tangency with a 25.00 foot radius curve to the right; thence Northwesterly 37.15 feet along the arc of said curve through a central angle of 85°08'19" to the point of tangency with a 758.00 foot radius curve to the left and being the north line of the South Towne Mall Ring Road; thence Northwesterly 712.45 feet along the arc of said curve through a central angle of 53°51'11" along said line; thence North 00°00'36" East 1300.81 feet; thence South 89°57'20" East 519.88 feet; thence North 86°50'50" East 266.48 feet; thence South 89°59'01" East 280.57 feet to said West right of way line of State Street; thence South 00°07'35" East 847.85 feet along said line to the point of BEGINNING.

LESS AND EXCEPTING from the foregoing the realty conveyed by this Deed.

The "Served Parcel" as described above shall be the property to which is appurtenant and/or which is to be benefitted by each of the easements, rights-of-way, rights, interests, restrictions, and reservations referred to in the foregoing provisions of this Deed as being appurtenant to or benefitting, or as intended to be enforceable by the owner of, the Served Parcel.

EACH PROVISION of this Deed which is to be performed or observed by Grantor or Grantee is intended to and shall constitute a covenant running with the land (the land, in the case of Grantor, being the Served Parcel) and is intended to and shall be binding upon and enforceable against not only Grantor and Grantee, but also their respective grantees, transferees, successors, and assigns. The provisions of this Deed are intended to and shall inure to the benefit of the respective grantees, transferees, successors, and assigns of Grantor and Grantee. In the event Grantor or any successor in title to Grantor conveys the Served Parcel, the conveying party shall be relieved of all liability under its covenants and obligations contained in this Deed arising out of any act, occurrence, or omission occurring after such conveyance, and all such liability shall thereafter belong to the new owner of the Served Parcel.

THIS DEED IS BEING EXECUTED AND DELIVERED at or about the same time as another Special Warranty Deed, whereby Grantee herein conveys to Grantor herein a strip of land within which a portion of the Jordan & Salt Lake Canal was situated prior to the relocation thereof. It is recognized that the legal description contained in this Deed overlaps the legal description contained in such other Special Warranty Deed. It is the intention of Grantor and Grantee that the conveyance accomplished by this Deed be deemed to have taken place after the conveyance accomplished by such other Special Warranty Deed.

IN WITNESS WHEREOF, Grantor has executed this Deed on or as of the day and year first above written.

"Grantor":

ZML-SOUTH TOWNE MARKETPLACE LIMITED PARTNERSHIP (formerly known as ZML-SOUTH TOWNE VACANT LIMITED PARTNERSHIP), an Illinois Limited Partnership

By: Its General Partner, ZML-SOUTH TOWNE MARKETPLACE, INC. (formerly known as ZML-SOUTH TOWNE VACANT, INC.), an Illinois corporation

By: [Signature]
Name: JAMES M. PHIPPS
Title: VICE PRESIDENT

STATE OF ILLINOIS)
)
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 26th day of October, 1995, by JAMES M. PHIPPS, the VICE PRESIDENT of ZML-SOUTH TOWNE MARKETPLACE, INC. (formerly known as ZML-SOUTH TOWNE VACANT, INC.), an Illinois corporation, in such corporation's capacity as the General Partner in, and on behalf of, ZML-SOUTH TOWNE MARKETPLACE LIMITED PARTNERSHIP (formerly known as ZML-SOUTH TOWNE VACANT LIMITED PARTNERSHIP), an Illinois Limited Partnership.

My Commission Expires:

"OFFICIAL SEAL"
Geraldine Nicholas
Notary Public, State of Illinois
My Commission Expires 2/3/98

[Signature]
Notary Public
Residing at: Two N. Riverside Plaza
Chicago, IL 60606

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