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10/16/96 3:00 PM 28-00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
HOLME ROBERTS & OWEN LLC
REC BY: V ASHBY DEPUTY - MP

28
WHEN RECORDED PLEASE RETURN TO:

6482056
Holme Roberts & Owen LLC
111 East Broadway, Suite 1100
Salt Lake City, Utah 84111
Attn: McKay Marsden

CONFIRMATION AND PARTIAL EXTINGUISHMENT OF EASEMENT

This Confirmation and Partial Extinguishment of Easement (this "Agreement") is entered into this 7th day of October, 1996 between Child Investment Co., a Utah limited partnership ("CIC"), and Richard Glen Thomas, an individual ("Thomas").

Recitals

A. CIC is the fee owner of two parcels of real property located in Salt Lake County, State of Utah, and more particularly described in Exhibit A attached hereto and incorporated herein. CIC's two parcels as described in Exhibit A are referred to in this Agreement as Parcel 1 and Parcel 2.

B. Thomas is the fee owner of a parcel of real property located in Salt Lake County, State of Utah, and more particularly described in Exhibit B attached hereto and incorporated herein (the "Thomas Parcel"). The Thomas Parcel is located adjacent to and immediately to the north of Parcel 1 and Parcel 2.

C. CIC maintains that an easement and right of way exists pursuant to previously recorded documents, which extends ten feet on either side of the property line between Parcel 1, Parcel 2 and the Thomas Parcel, for a total width of such easement and right of way of twenty feet (the "Easement"). The Easement is described in Exhibit C attached hereto and incorporated herein.

D. CIC is currently planning on constructing an addition to its existing building located on real property immediately to the south of Parcel 1 and Parcel 2. When completed, the addition will extend to the northernmost boundary of Parcel 1 and will encroach upon a portion of the area covered by the Easement. The existing building (together with any addition thereto, referred to herein as the "Building") is being leased to R.C. Willey Home Furnishings, a Utah corporation ("R.C. Willey") for use in its business.

E. CIC and Thomas have discussed their respective interests in this matter and desire to (a) confirm the existence of the Easement as described in Exhibit C; (b) extinguish that portion of the Easement relating to Parcel 1 and that portion of the Easement on the Thomas Parcel that is adjacent to Parcel 1; and (c) resolve any and all remaining differences concerning the Easement and the above-described addition to the Building.

Agreement

In exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CIC and Thomas hereby agree as follows:

1. Confirmation of Easement. CIC and Thomas hereby acknowledge and confirm the existence of the Easement as described in Exhibit C, subject to the extinguishment of a portion of the Easement pursuant to paragraph 2 below. CIC and Thomas further acknowledge and confirm that the Easement is intended to provide a right of way for pedestrian and vehicular ingress to and egress from their respective real property. If for any reason it is determined that the Easement was not properly created or in existence pursuant to previously recorded documents, then CIC and Thomas hereby create and establish the Easement with respect to Parcel 2 and that portion of the Thomas Parcel adjacent to Parcel 2 pursuant to this Agreement.

2. Extinguishment of Easement. Effective upon the execution of this Agreement, CIC and Thomas hereby extinguish (a) that portion of the Easement relating to Parcel 1, and (b) that portion of the Easement on the Thomas Parcel that is adjacent to Parcel 1. By taking this act, CIC and Thomas do not intend to effect any change in the remainder of the Easement. The Easement is extinguished only as it relates to Parcel 1 and that portion of the Thomas Parcel adjacent to Parcel 1, and shall continue without interruption or diminution as to Parcel 2 and that portion of the Thomas Parcel adjacent to Parcel 2.

3. Construction of Addition to Building. Thomas hereby agrees that CIC shall be entitled to complete construction of an addition to the Building located on real property immediately to the south of Parcel 1 and Parcel 2, which will be leased to R.C. Willey. Thomas acknowledges that the addition will extend to the northernmost boundary of Parcel 1 and will occupy real property which was previously subject to the Easement.

4. Use. CIC and Thomas shall cooperate in good faith to exercise their respective rights under the remaining portion of the Easement in a manner that does not unnecessarily or unreasonably interfere with the use of Parcel 2 or the Thomas Parcel adjacent to Parcel 2 by the owners thereof. Neither party hereto shall at any time physically block or barricade the area covered by the Easement or otherwise take any action which prevents the other party from exercising its respective rights under the Easement. If the area covered by the Easement is damaged by either party or any third party, the party who damaged such area or who benefitted from the hire of such third party or otherwise invited such third party to use the area, shall pay all costs of repairing such damage.

5. Maintenance. CIC shall keep and maintain the area comprising Parcel 2 covered by the Easement in good order, condition and repair, and Thomas shall keep and maintain the area comprising the Thomas Parcel adjacent to Parcel 2 covered by the Easement in good order, condition and repair. Each party hereto shall have the right to enter upon and bring workmen, equipment and materials upon the area covered by the Easement for the purpose of maintaining and repairing such area.

6. Taxes. CIC and Thomas shall not separate and share any taxes, levies or assessments made on any improvements to the real property covered by the Easement. Each party hereto shall bear the taxes, levies and assessment made for their respective parcels and any improvements thereon, regardless of whether the improvements are commonly shared or not.

7. Third Party Claims. If either CIC or Thomas's use of the area covered by the Easement results in the assertion or enforcement of any claim by any third party, the party whose conduct gave rise to the claim shall be solely liable to such third party and shall take such action as may be necessary to defend and discharge the claim.

8. Indemnification. Each party hereto (for purposes of this paragraph, an "Indemnifying Party") agrees to indemnify and hold harmless the other party from and against any and all claims, damages, causes of action, costs, including, without limitation, attorneys' fees and court costs, judgments and liabilities incurred or suffered by the other party that arise out of any act or wrongful failure to act by the Indemnifying Party or any of its agents, invitees or visitors in connection with the Easement. If any third party alleges or asserts any claim which arises out of the wrongdoing of either CIC or Thomas, the alleged offending party shall take all appropriate actions to defend or settle the claim without prejudicing the non-offending party. If one party receives notice of a claim for which it is or may be entitled to be indemnified by the other party, such party shall promptly notify the other party of the claim. Failure to provide such notice, however, shall not impair the right of the party to indemnification under this paragraph 8 unless the failure materially prejudices the ability of the Indemnifying Party to defend against the claim. Upon receipt of knowledge or notice by one party of any claim for which it is or may be obligated to indemnify the other party under this paragraph 8, such party shall inform the other of the actions that it intends to take in response to the claim. If any claim is asserted against one party which would interfere with the other party's use of its property, then the affected party may intervene at its option to protect its interest.

9. Continuity of Easement. Except as extinguished with respect to Parcel 1 and that portion of the Thomas Parcel adjacent to Parcel 1, the Easement shall run with the land and shall remain as an encumbrance upon Parcel 2 and that portion of the Thomas Parcel adjacent to Parcel 2.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of CIC and Thomas, including all future owners of Parcel 1, Parcel 2 or the Thomas Parcel.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

12. Enforcement. Attorneys' Fees. In addition to all other remedies which may exist for the breach of this Agreement, each party hereto, and each subsequent owner of Parcel 1, Parcel 2 or the Thomas Parcel, shall have the right to specifically enforce the terms and provisions hereof. In the event either party or any subsequent owner of Parcel 1, Parcel 2 or the Thomas Parcel breaches this Agreement, the other party or its successors or assigns shall have

the right to recover its costs and reasonable attorneys' fees incurred in enforcing this Agreement or otherwise asserting its rights hereunder.

13. **Recording.** The parties hereto acknowledge and confirm that this Agreement will be filed for recording in the real property records of Salt Lake County, Utah promptly after it has been executed.

In witness whereof, the parties have executed this Agreement as of the day and year set forth above.

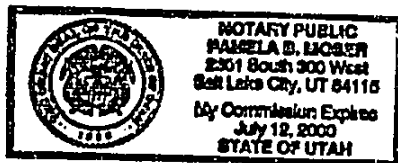
Child Investment Co., a Utah
limited partnership

By: *William H. Child*
William H. Child, general partner

Richard Glen Thomas
Richard Glen Thomas, an individual

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

The foregoing instrument was acknowledged before me this 7th day of Oct. August, 1996, by William H. Child, the general partner of Child Investment Co., a Utah limited partnership.



Pamela B. Eicher
Notary Public
My Commission Expires: 7/12/00
Residing at: *SL, UT*

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

The foregoing instrument was acknowledged before me this 17th day of Oct, 1996,
by Richard Glen Thomas, an individual.

Mark J Crawford
Notary Public
My Commission Expires: _____
Residing at: _____

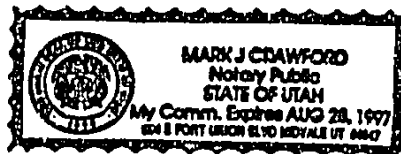


EXHIBIT A
(Description of Parcel 1 and Parcel 2)

Parcel 1

Beginning at a point North 131.57 feet and East 1179.75 and North 412.13 feet from the West 1/4 corner of Section 20, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence North 80.00 feet; thence North 89°35'54" East 276.01 feet more or less; thence South 00°19'30" West 81.94 feet more or less; thence West 275.54 feet more or less to the point of beginning.

Parcel 2

Beginning at a point on the West line of 900 East Street said point being 627.43 feet North and 1678.53 feet East from the West 1/4 corner of Section 20, Township 2 South, Range 1 West, Salt Lake Base and Meridian, running thence South 00°19'30" West 100.00 feet to the North line of the property conveyed to Half Moon, Ltd., a Utah Limited Partnership by that certain Quit Claim Deed recorded January 20, 1993 as Entry No. 5417914 in Book 6591, at Page 331 of the Official Records; thence along said Half Moon, Ltd., property South 89°12' West 195 feet (bearing in said Quit Claim Deed = North 89°12' West); thence North 00°19'30" East 18.0 feet; thence South 89°12' West 27.8 feet; thence North 00°19'30" East 82.00 feet; thence North 89°12' East 222.8 feet, more or less, to the point of beginning.

EXHIBIT B
(Description of Thomas Parcel)

Beginning at a point that is North 131.569 feet, East 1179.75 feet to the center of 6600 South Street and North 492.136 feet from the West Quarter Corner of Section 20, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence North 80.002 feet to the South line of Silver Shadows Subdivision; thence North 89°12' East along said South line 479.665 feet to the West line of 900 East Street (as determined by S.L.A.T.S.) thence along said West line, parallel with and 53 feet West of the Monument line on 900 East Street, South 0°19'30" West 83.351 feet; thence South 89°36' West 479.165 feet to the point of beginning.

EXHIBIT C
(Description of Easement)

A perpetual easement and right of way twenty feet in width, the center line of which is coincident with the north property line of Parcel 1 and Parcel 2 and the south property line of the Thomas Parcel, as such terms are defined in the foregoing Agreement.

SURVEYOR'S CERTIFICATE

I, W. CARL LARSON, SURVEYOR, being duly sworn, certify that I have examined the above described plat and find it to be a correct and true representation of the land and improvements thereon as shown by the field notes and other documents filed in my office in accordance with the provisions of the laws of the State of Utah and that I have made a return of the same to the County Clerk of the County of Salt Lake, Utah, in accordance with the provisions of the laws of the State of Utah.

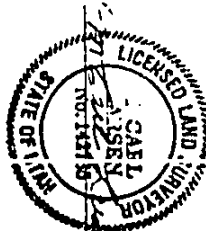
I, DANIEL C. GIBSON, being duly sworn, certify that I have examined the above described plat and find it to be a correct and true representation of the land and improvements thereon as shown by the field notes and other documents filed in my office in accordance with the provisions of the laws of the State of Utah and that I have made a return of the same to the County Clerk of the County of Salt Lake, Utah, in accordance with the provisions of the laws of the State of Utah.

PARCEL 1

Beginning at a point north 112.2 feet and east 117.75 feet from the southwest corner of Section 2, Township 26 North, Range 1 East, Salt Lake and Meridian and thence north 80.00 feet, west 275.50 feet, east 117.00 feet, south 275.50 feet, east 117.00 feet, north 80.00 feet, west 275.50 feet, north on U.S.S. to the point of beginning.

PARCEL 2

Beginning at a point on the west line of 800 East Street and point 817.43 feet north and 149.33 feet east from the west 1/4 corner of Section 2, Township 26 North, Range 1 East, Salt Lake and Meridian and thence north 80.00 feet, west 275.50 feet, east 117.00 feet, south 275.50 feet, east 117.00 feet, north 80.00 feet, west 275.50 feet, north on U.S.S. to the point of beginning.



W. CARL LARSON, S
LICENSED LAND SURVEYOR
NO. 14416

7-22-96



Scale 1" = 30'

FOUND SALT LAKE COUNTY BRASS CAP

NO. 14416

