

Recorded at request of *Albertson's, Inc.* Fee Paid \$ *22.50*...
Date **AUG 17 1984** at *4:06* PM CAIKO DEAN PAGE Recorder Davis County
By *Grace Tom Swenden* Deputy Book *1002* Page **934**

680624

EASEMENT AGREEMENT

1039 NMC

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into as of the 3rd day of August, 1984, by and between Prowswood, Ltd., a Utah Corporation ("Prowswood") and Albertson's, Inc., a Delaware corporation, and GFI Ltd. II, a Utah limited partnership (collectively "Albertson's").

RECITALS:

A. On February 29, 1980, Turtle Creek Shopping Center, a venture under the laws of the State of Utah ("Turtle Creek") entered into an Agreement and Easement ("Original Easement") with Rocky Mountain Investment Company, a Utah general partnership ("Bank") granting the Bank an easement for the installation, operation, repair and maintenance of a storm sewer drain in, under, through and across that certain real property located in the City of Bountiful, County of Davis, State of Utah described in Schedule I attached hereto and incorporated herein by this reference ("Original Easement Area"). A copy of the Original Easement is attached to the Right-of-Way Agreement dated March 7, 1980, and recorded March 19, 1981, in Book 860, Page 984 as Entry No. 588295, Official Records of Davis County, Utah.

B. On February 7, 1984, the Bank entered into an Easement with Albertson's ("Albertson's Easement") granting Albertson's a perpetual easement for the installation, operation, maintenance and replacement of an underground storm drainage system and appurtenant facilities in, under, through and across the Original Easement Area. The Albertson's Easement was recorded on March 12, 1984, in Book 981, Page 857 as Entry No. 666408, Official Records of Davis County, Utah.

C. The parties desire to relocate the storm drainage easement which is the subject of the Albertson's Easement from the Original Easement Area to that certain real property located in the City of Bountiful, County of Davis, State of Utah described in Schedule II attached hereto and incorporated herein by this reference ("Revised Easement Area").

D. Prowswood is the successor-in-interest of Turtle Creek's interest in the Original Easement Area and the record holder of fee simple title to the Revised Easement Area.

- Abstracted
- Indexed
- Entered
- Platted
- On Margin
- Compared

*Case - 4585 d. 700 #210
JLC 8/11/7*

AGREEMENTS:

Now, therefore, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1. Simultaneously with the execution and delivery of this Easement Agreement, Albertson's shall quit claim and release to Prowswood all of its right, title and interest in and to the Original Easement Area arising under the Albertson's Easement.

2. Prowswood hereby conveys and warrants to Albertson's in accordance with the provisions hereof for the use and benefit of that certain real property located in the City of Bountiful, County of Davis, State of Utah described in Schedule III attached hereto and incorporated herein by this reference ("Albertson's Parcel") a perpetual non-exclusive easement for the installation, operation, maintenance, repair and replacement of an underground storm drainage line and appurtenant facilities in, under, through and across the Revised Easement Area, together with the right to enter in and upon Prowswood's adjacent property for ingress and egress to and from the Revised Easement Area (and to the extent reasonably possible or where contiguous to the Revised Easement Area, through existing lanes, paths and roadways) for the purpose of exercising the rights and privileges granted herein. With the exception of manholes and cleanouts and except as otherwise agreed to by Prowswood, all facilities shall be installed beneath the present elevations of the property. Upon exercising the rights granted herein, Albertson's shall restore the Revised Easement Area to its condition prior to exercise of the rights granted herein.

3. Albertson's agrees that its right to use the Revised Easement Area is non-exclusive and is conditioned upon its installation of an underground storm drainage line and appurtenant facilities sufficient for the discharge of storm drain waters for the Albertson's Parcel and that second parcel of real property presently owned by Bank and located in the City of Bountiful, County of Davis, State of Utah, described in Schedule IV attached hereto and incorporated herein by this reference ("Adjacent Parcel"). In the event that Bank, its successors and assigns, desires to use the underground storm drainage line and appurtenant facilities installed by Albertson's in, under, through and across the Revised Easement Area, which usage shall be limited solely to discharge of storm drain waters collected upon the Adjacent Parcel in combination with the discharge

of storm drain waters for the Albertson's Parcel, Bank, its successors and assigns, shall be precluded from such usage until satisfaction of the following conditions:

(i) Bank, its successors and assigns, and the City of Bountiful, a municipal corporation organized and existing under the laws of the State of Utah, shall grant, release and quit claim to Prowswood all of their respective right, title and interest in and to the Original Easement Area as described herein;

(ii) Prowswood shall grant to Bank, its successors and assigns, and to the City of Bountiful, for the benefit of the Adjacent Parcel only, a non-exclusive easement in, under, through and across the Revised Easement Area for the discharge of storm drainage through the then existing lines and facilities, co-extensive with the use granted by Albertson's as provided herein.

Nothing herein shall be construed as permitting Bank, its successors and assigns, to use the storm drainage system and facilities installed by Albertson's upon the Revised Easement Area without consent and agreement of Albertson's, which Agreement shall provide that Bank's use of the facilities shall be conditioned only upon paying for certain costs of the system as defined herein and agreeing to pay for a percentage of the costs of maintenance as limited herein. Albertson's agrees that it shall not require Bank, its successors and assigns, as a condition to such use to pay more than the actual cost incurred by it in installing a system and facilities with a capacity larger than that necessary for the Albertson's Parcel alone together with such costs or increased costs as shall be incurred for facilities (i.e. inlet boxes or culverts) which are enhanced for or are installed exclusively for the benefit of the Adjacent Parcel. In addition to the foregoing, Albertson's shall not require Bank, its successors and assigns, to be responsible for maintenance, repair and replacement of the common storm drain pipe and facilities in amounts greater than twenty-four percent (24 %) of the total costs of such maintenance, repair and replacement.

4. All storm drainage lines and appurtenant facilities installed within the Revised Easement Area pursuant to this Agreement shall remain the property of the party installing same. Each party shall at all times safely keep and maintain said party's property located within the Revised Easement Area and shall promptly repair and restore to its prior condition any paving, parking lot striping, landscaping or other improvements (excluding, however, any building or structure located within the Revised Easement

Area) which are damaged or destroyed in the exercise of any of the rights and privileges granted herein.

5. Prowswood retains the right to full use of the surface of the Revised Easement Area except where Albertson's is otherwise required by the applicable governmental agency regulating installation to install manholes and/or cleanouts for such system on the surface of the Revised Easement Area; provided, however, that Prowswood shall not erect any building or major structure within the Revised Easement Area.

6. Albertson's, in the exercise of any of the rights and privileges granted herein, shall not unreasonably interfere, obstruct or delay Prowswood, its agents, contractors, subcontractors or employees in the construction of any building or other improvement located on Prowswood's adjacent property or unreasonably interfere with or delay the operation of any business located thereon. Albertson's agrees to coordinate the construction and installation of the storm drain facilities to be installed by it with Prowswood's present development of its property. Installation shall commence as soon as reasonably possible subsequent to the execution of this Agreement.

7. The provisions of this Agreement shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns. Except as permitted herein with respect to the Adjacent Parcel, nothing herein shall be construed as permitting Albertsons to grant or convey any rights to the Revised Easement Area for the benefit of any other real property.

8. Each party agrees to indemnify and hold harmless the other parties from any and all liability, claims, damages, expenses (including reasonable attorneys' fees), judgments, proceedings and causes of action of any kind whatsoever arising out of or in any way connected with the exercise of any of the rights and privileges granted herein.

9. In the event any party is required to initiate or defend any legal action or proceeding to enforce or interpret any of the terms, covenants, conditions or agreements contained in this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees (including reasonable costs and attorneys' fees on any appeal) as determined by the court in the same or any subsequent proceeding.

10. Any party hereto shall be deemed to be in default upon the expiration of thirty (30) days (ten (10) days in the event of failure to pay money) from the date of receipt of written notice from any other party specifying the particulars of such default unless, prior to expiration of said thirty (30) days (ten (10) days in the event of failure to pay money) such party has rectified the particulars specified in said notice. However, such party shall not be deemed to be in default if such failure (except the failure to pay money) cannot be rectified within said thirty (30) day period and said party is using good faith and its best efforts to rectify the particulars specified in said notice of default.

11. All notices given pursuant to this Agreement shall be in writing and shall be given by hand delivery or by United States Certified or Registered Mail, return receipt requested, postage prepaid, properly addressed to the party intended to be notified as follows:

Albertson's: Albertson's, Inc.
 250 Parkcenter Boulevard
 P.O. Box 20
 Boise, Idaho 83726

Attention: Legal Department

With Copy to:

GFI Ltd. II
c/o Peterson-Gasser & Associates, Inc.
220 South 200 East, Suite 150
Salt Lake City, Utah 84111

Prowswood: Prowswood, Ltd.
 4885 South 900 East
 Salt Lake City, Utah 84117

Attention: Michael Holmes

12. This Agreement will be recorded in the Official Records of Davis County, Utah.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Prowswood, Ltd.,
a Utah Corporation

BY: [Signature]

BY: Vice President

BA Albertson's Inc.,
a Delaware corporation

BY: [Signature]
Senior Vice President

BY: [Signature]
Secretary

GFI Ltd II,
a Utah limited partnership

BY: [Signature]

BY: _____

STATE OF Utah)
) : SS
County of Salt Lake)

On this 17 day of August, 1984, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael Holmes and _____, to me known to be the Vice President and _____, respectively, of Prowswood, Ltd., a Utah Corporation, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

April 12, 1985

Dennis R. Tule
Notary Public in and for the
State of Utah
Residing at South Lake City, UT.

STATE OF IDAHO)
) : SS
County of Ada)

On this 7th day of August, 1984, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael F. Harding and Minnie O. Armstrong, to me known to be the Senior Vice President and the Secretary, respectively, of Albertson's, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

Notary Public Carol L. Wood
My Commission Expires Boise, Idaho 83705
Lifetime

Carol L. Wood
Notary Public in and for the
State of Idaho.
Residing at Boise, Idaho.

STATE OF UTAH)
) : SS
County of SALT LAKE)


On this 6th day of August, 1984, before me, the undersigned, a Notary Public in and for said State, personally appeared G. WALTER GASSER to me known to be a General Partner of GFI Ltd. II, a Utah limited partnership, the limited partnership that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said

partnership, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

11/09/87


Notary Public in and for the
State of Utah
Residing at SALT LAKE

CONSENT AND JOINDER

Comes now the undersigned, American Equity Corporation, a Utah corporation, the owner and holder of the indebtedness secured by, and the beneficiary under (a) that certain Multifamily Trust Deed dated November 29, 1983, and recorded November 29, 1983, in Book 969, Page 693 as Entry No. 658413, Official Records of Davis County, Utah, and (b) that certain Multifamily Trust Deed dated December 28, 1983, and recorded December 29, 1983, in Book 973, Page 808 as Entry No. 661015, Official Records of Davis County, Utah, and consents to and joins in the execution of the foregoing Easement Agreement for the purpose of subordinating the lien of the deeds of trust hereinabove described and all right, title and interest of the present and all future holders of the indebtedness secured thereby to the lien of said Easement Agreement.

EXECUTED at of the 10th day of August, 1984.

American Equity Corporation,
a Utah Corporation

BY: *Gary W. Jense, President*

BY: _____

STATE OF UTAH)
 : SS
County of Salt Lake)

On this 10th day of August, 1984, before me, the undersigned, a Notary Public in and for said State, personally appeared GARY W. JENSE ~~XXXX~~ _____, to me known to be the PRESIDENT ~~and~~ _____, respectively, of American Equity Corporation, a Utah corporation, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

01/18/88

Lisa Grant
Notary Public in and for the
State of Utah.
Residing at Salt Lake City.

SCHEDULE I

CENTERLINE DESCRIPTION OF A
10-FOOT STORM SEWER EASEMENT

Beginning at a point North $0^{\circ}28'35''$ West 20.0 feet and South $89^{\circ}31'25''$ West 5.00 feet from the Southwest corner of the Rocky Mountain State Bank property, said point also being East 1070.74 feet and South 396.23 feet from the Northwest corner of Lot 4, Block "L", North Mill Creek Plat, Bountiful Townsite Survey, in the City of Bountiful and running thence South $0^{\circ}28'35''$ East 214.06 feet parallel to the West line of Main Street (as constructed) to the Northerly line of Mill Creek.

SCHEDULE II

DRAIN EASEMENT THROUGH PROSWOOD LTD. PROPERTY

A 10.00 ft. wide easement being 5.00 ft. on each side of the following described centerline:

Beginning at a point which is $N0^{\circ}36'11''W$ 5.00 ft. along the property line from the Southwest Corner of the Rocky Mountain State Bank Property, said point being also $N89^{\circ}44'04''E$ 1,287.00 ft. along the South line of 500 South Street and $S0^{\circ}36'11''E$ 411.19 ft. along said West line of Main Street and $S89^{\circ}35'45''W$ 212.85 ft. from the Northwest Corner of Block L of North Mill Creek Plat, Bountiful Townsite Survey, Bountiful, Utah, and running thence $S89^{\circ}35'45''W$ 5.00 ft.; thence $S0^{\circ}36'11''E$ 103.00 ft. along a line which is parallel to and 217.85 ft. west of the west line of said Main Street; thence $S23^{\circ}36'20''W$ 50.00 ft. to a point on the North bank of Mill Creek.

Block L
P. 03-23-1007

SCHEDULE III

Parcel No. 2:

Beginning at a point on the South right-of-way line of 500 South Street, said point being North 89°48'05" East 110.00 feet from the Southeast corner of the intersection of Main Street and 500 South Street in Bountiful City, Utah, and said point of beginning also being South 89°48'05" West 263.89 feet from the Northeast corner of Lot 4, Block "L", Bountiful Townsite Survey and running thence North 89°48'05" East along said South line 158.52 feet; thence South 0°10'30" East 121.04 feet; thence North 89°49'30" East 178.36 feet; thence North 0°10'30" West 9.30 feet; thence North 89°48'05" East 81.525 feet to the West right-of-way line of 100 East Street; thence South 0°10'30" East along said West right-of-way line 222.52 feet to an extension of the North line of Millstream Garden Apartments; thence North 87°52'35" West along said extension and North line of said Millstream Garden Apartments 368.28 feet to the Northwest corner of said apartments; thence North 0°43'18" East 1.52 feet to that certain old fence line described in Decree No. 61341, recorded in Book "F" of Decrees, Page 136 in the Davis County Recorders Office; thence West along said fence line 160.36 feet to the East line of Main Street; thence North 0°11'05" West along said East line 207.32 feet; thence North 89°48'05" East 110.00 feet; thence North 0°11'05" West 110.00 feet to the point of beginning. Contains 128,404.36 square feet or 2.948 acres.

together with the following described real property:

Beginning at a point on the West right-of-way line of 100 East Street, said point being South 0°10'30" East 111.80 feet from the Southwest corner of the intersection of 500 South Street and 100 East Street in Bountiful City, Utah, said point of beginning also being North 89°48'05" East 154.515 feet and South 0°10'30" East 111.80 feet from the Northeast corner of Lot 4, Block "L", North Millcreek Plat, Bountiful Townsite Survey, and running thence North 89°48'05" East 19.30 feet to a point 1.0 foot West of a concrete sidewalk; thence South 0°10'30" East parallel with and 1.0 foot perpendicularly distant Westerly from said sidewalk for a distance of 223.30 feet to an extension of the North line of Millstream Garden Apartments; thence North 87°52'35" West along said extension 19.32 feet to the West right-of-way line of said 100 East Street; thence North 0°10'30" West along said West right-of-way line 222.52 feet to the point of beginning. Contains 4303.1 square feet or 0.099 acre.

Parcel No. 3:

Beginning at a point on the South right-of-way line of 500 South Street, said point being North 89°48'05" East 268.52 feet from the Southeast corner of the intersection of Main Street and 500 South Street in Bountiful City, Utah, and said point of beginning also being South 89°48'05" West 105.37 feet from the Northeast corner of Lot 4, Block "L", Bountiful Townsite Survey, and running thence North 89°48'05" East along said South line 149.36 feet; thence South 0°10'30" East 111.80 feet; thence North 89°48'05" East 29.00 feet; thence South 0°10'30" East 9.30 feet; thence South 89°49'30" West 178.36 feet; thence North 0°10'30" West 121.04 feet to the point of beginning. Contains 18,353.93 square feet or 0.421 acres.

03-036-0073 211 2439

Parcel No. 4:

Beginning at a point on the South right-of-way line of 500 South Street, said point being North 89°48'05" East 417.88 feet from the Southeast corner of the intersection of Main Street and 500 South Street in Bountiful City, Utah, and said point of beginning also being North 89°48'05" East 43.99 feet from the Northeast corner of Lot 4, Block "L", Bountiful Townsite Survey, and running thence North 89°48'05" East along said South line 110.525 feet to the Southwest corner of the intersection of 500 South Street and 100 East Street; thence South 0°10'30" East along the West right-of-way line of said 100 East Street 111.80 feet; thence South 89°49'30" West 110.525 feet; thence North 0°10'30" West 111.80 feet to the point of beginning. Contains 12,356.695 square feet or 0.284 acres.

03-036-0094 211 39

and the following described real property:

Beginning at the Southwest corner of the intersection of 500 South Street and 100 East Street in Bountiful City, Utah, said point of beginning also being North 89°48'05" East 154.515 feet from the Northeast corner of Lot 4, Block "L", North Millcreek Flat, Bountiful Townsite Survey, and running thence North 89°48'05" East 19.30 feet to a point 1.0 foot West of a concrete sidewalk; thence South 0°10'30" East parallel with and 1.0 foot perpendicularly distant Westerly from said sidewalk for a distance of 111.80 feet; thence South 89°48'05" West 19.30 feet to the West right-of-way line of said 100 East Street; thence North 0°10'30" West along said West right-of-way line 111.80 feet to the point of beginning. Contains 2157.7 square feet or 0.050 acres.

03-036-0094 211 39

SCHEDULE IV

PROPERTY DESCRIPTION FOR
ROCKY MOUNTAIN STATE BANK
BOUNTIFUL, UTAH

948

602 L
03-036-0031, 0032, 0033

Beginning at a point 1074.15 feet East and 204.60 feet South of the Northwest corner of Lot 4, Block "L", North Mill Creek Plat, Bountiful Townsite Survey, in the City of Bountiful, and running thence Southerly parallel to the West line of a 6-rod street (Main Street) 211.59 feet; thence East 212.85 feet to said West line of Main Street; thence Northerly along said West line of Main Street 211.59 feet; thence West 212.85 feet to the Point of Beginning.