

AFTER RECORDING, PLEASE RETURN TO:

Dennis K. Poole, Esq.
Poole & Associates, L.C.
4543 South 700 East, Suite 200
Salt Lake City, Utah 84107

12235629
3/7/2016 2:37:00 PM \$38.00
Book - 10409 Pg - 1008-1021
Gary W. Ott
Recorder, Salt Lake County, UT
LANDMARK TITLE
BY: eCASH, DEPUTY - EF 14 P.

Parcel Nos.: 16-05-308-014
16-05-308-063

Space above for Recorder's Use

DECLARATION OF EASEMENT
(With Disclaimer of Interest)

THIS DECLARATION OF EASEMENTS (the "**Declaration**") is executed this 15th day of December, 2015, by **LIBERTY BLVD ASSOCIATES, LLC**, a Utah limited liability company ("**Liberty**") and **LOUIS CORSILLO**, an individual ("**Corsillo**"), and **RENEE LURAS**, an individual ("**Luras**") and together with Corsillo, collectively "**CL**").

RECITALS:

A. Liberty owns the Housing Parcel. All capitalized terms in this Declaration not defined above are defined in Section 1 below.

B. CL owns the Seventh East Parcel. The Seventh East Parcel is improved with a business operated using the name "My X-Wife's Place" (the "Current Use").

C. CL has encroached upon the Housing Parcel for the support of and placement of a small portion of a patio located on the Seventh East Parcel and notwithstanding the encroachment, Liberty is willing to grant an easement for such encroachment in accordance with the terms of this Declaration.

D. Liberty and CL desire to establish with respect to the Parcels, certain rights and an easement on the terms and conditions set forth in this Declaration.

NOW, THEREFORE, for the foregoing purposes, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Liberty and CL make the following declarations, create the following easement and establish the following covenants, all of which apply to, bind, affect and run with title to each Parcel.

1. Definitions. Certain capitalized terms which are used in this Declaration are defined in this Declaration prior to this Section. In addition to those previously defined capitalized terms, the following capitalized terms shall have the meanings indicated:

"**Benefitted Parties**" means, with respect to a Parcel, the Owner and Occupants of such Parcel and their respective employees, customers, guests and invitees.

“Encroachment Area” means the area on the Housing Parcel which is depicted on Exhibit “A-1” attached hereto and described on Exhibit “A-2” attached hereto. The height of the Encroachment Area is limited to ten (10) feet. Notwithstanding any other provision of this Declaration, Liberty reserves the right to use and construct buildings and improvements in the air space above ten (10) feet, subject to compliance with applicable laws and ordinances.

“CL Parcel” means that certain parcel of real property located in Salt Lake County, Utah as more particularly described on Exhibit “B” attached hereto.

“Current Use” means the operation of a duly licensed bar upon the CL Parcel, and excludes (a) the use of the CL Parcel for any other business operation; and (b) the introduction of the following services to those currently provided at the bar, namely food services, live entertainment (including but not limited to exotic dancers and/or karaoke performances), exhibitions, contests, or similar activities which may in the sole discretion of Liberty become disruptive to the operation of the Housing Parcel.

“Housing Parcel” means that certain parcel of real property located in Salt Lake County, Utah as more particularly described on Exhibit “C” attached hereto and incorporated herein by this reference.

“Mortgage” means a recorded mortgage, deed of trust, fixture filing or other security agreement creating and/or perfecting a lien on a Parcel or a portion of a Parcel as security for the payment of indebtedness.

“Mortgagee” means a Person which is the mortgagee, beneficiary or other secured party under a Mortgage.

“Occupant” means any Person that, pursuant to a lease, a rental arrangement, a license or any other instrument, agreement, contract, document, understanding or arrangement is entitled to or does occupy, possess or use any Parcel or any portion of a Parcel.

“Owner” means the Person that, at a specified time, is the owner of record in the office of the County Recorder of Salt Lake County, Utah of a fee or an undivided fee interest in a Parcel or portion of a Parcel. In the event that, at any time, there is more than one Owner of a Parcel, the liability of each such Owner for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory or law relating to a mortgage, deed of trust, or like instrument, the term “Owner” shall not mean or include a Mortgagee unless and until such Person has acquired fee title to the Parcel encumbered by a Mortgage pursuant to foreclosure, trustee's sale or any deed, agreement, arrangement or proceeding in lieu thereof. Except as set forth above in this definition, a ground lessee or other long term tenant shall not be deemed to be an Owner for purposes of this Declaration.

“Parcel” means any one of the Parcels.

“Parcels” means the CL Parcel and the Housing Parcel.

“Person” means a natural person, legal entity or trust.

2. **Grant of Easements.** Liberty hereby creates the following easement with respect to the Housing Parcel for the benefit of the Benefitted Parties of the CL Parcel, which easement shall be appurtenant to the CL Parcel:

a. **Encroachment Easement.** Non-exclusive easement across the surface of the Encroachment Area for placement, support, maintenance and operation of an existing patio structure for the benefit of the Benefitted Partners that is primarily located upon the CL Parcel.

b. **Term of Encroachment Easement.** The term of the Encroachment Easement shall expire on the earliest to occur of the following: (a) seven (7) years from the Effective Date of this Declaration; (b) failure of CL or their tenants to operate the CL Parcel for its Current Use for a continuous period of one hundred twenty (120) days; (c) destruction of fifty percent (50%) or more of the improvements currently located upon the CL Parcel; (d) taking by eminent domain of any portion of the CL Parcel which results in termination of the Current Use; or (e) sale or transfer of the CL Parcel to any Person. Upon the expiration of the term of the Encroachment Easement, CL and its successors and assigns, at their own cost and expense shall be obligated to immediately remove the patio structure and any other structure, improvement or material that encroaches upon the Housing Parcel.

c. **No Public Dedication.** The easement, rights and privileges created in this Section 2 are not intended, and shall not be construed, as a dedication of any portion of the Housing Parcel for public use, and the Owner of the Housing Parcel shall have the right to take from time to time whatever steps as may be necessary to avoid such dedication.

CL acknowledges that Liberty or its successor-in-interest intends to construct a building or buildings on the Housing Parcel which will most likely be used for multi-family housing but which may be used for other purposes. The Encroachment Area will be part of the setback area related to such building or buildings, and will otherwise be used for fire and emergency access and for maintenance access to such building or buildings. CL shall use commercially reasonable efforts to avoid any adverse impact to the day-to-day use of the Housing Parcel by Liberty or its successors and their respective Occupants. The Owner of the Housing Parcel shall have the right to construct and maintain utility lines above or below the surface of the Encroachment Area but such utility lines shall not interfere with the use of the Encroachment Area except for short periods required to install, maintain or replace such utility lines.

3. **Title and Mortgage Protection.** No amendment to this Declaration shall in any way affect the rights of any Mortgagee pursuant to a Mortgage that is recorded at the time of the recordation of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, unless such Mortgagee consents in writing to such amendment. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other

interest in a Parcel. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair or render invalid the lien of or other rights under any Mortgage; provided, a lien arising under this Declaration shall have priority over the Mortgage if a notice of such lien is recorded prior to the date of recordation of a Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure, trustee's sale or any deed, arrangement or proceeding in lieu thereof, a Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration except the obligation to subordinate its lien or security interest to this Declaration.

4. Disclaimer of Interest in Housing Parcel. CL disclaims any right, title and interest in and to any portion of the Housing Parcel or the right to encroach upon the same and hereby quit claims to Liberty its interest, if any, in and to the Housing Parcel. CL acknowledges that except for the easement created by Section 2 of this Agreement, neither it nor any other Person has (a) the right to pedestrian, vehicular or utility access to and/or from the CL Parcel across the Housing Parcel, or (b) the right to encroach upon any portion of the Housing Parcel.

5. Amendment or Termination; Duration of Declaration. Except as provided in Section 2 b, this Declaration may be amended or terminated by, but only by, an instrument filed for record in the office of the County Recorder of Salt Lake County, Utah that is executed by all of the Owners of all of the Parcels. In the event one or more of the conditions set forth in Section 2 b has occurred the Owner of the Housing Parcel may record a document in the office of the County Recorder to provide notice of the same.

6. Covenants to Run with Land. This Declaration and the easement and covenants created by this Declaration are intended by the Declarant to be and shall constitute covenants running with the land as to each of the Parcels, and shall be binding upon and shall inure to the benefit of each Owner any Person who acquires or comes to have any interest in any Parcel or portion thereof, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. Each Owner shall comply with, and all interests in all Parcels shall be subject to, the terms of this Declaration. By acquiring, in any way coming to have an interest in, or occupying a Parcel or portion thereof, the Person so acquiring, coming to have such interest in, or occupying a Parcel or portion thereof, shall be deemed to have consented to, and shall be bound by, each and every provision of this Declaration.

7. Enforcement. The Owner of a Parcel or any portion of a Parcel shall have the right to enforce, through any permitted proceeding at law or in equity, the terms, provisions, restrictions and requirements of this Declaration. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Declaration shall not result in or be construed to be an abandonment or termination of this Declaration or any waiver of the right to insist upon such performance or compliance with the terms of this Declaration in the future. If any action or proceeding is brought because of a default under, or to enforce or interpret any of the covenants, provisions, or requirements of, this Declaration, the party prevailing in such action or arbitration shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court or the arbitrator and made a part of any judgment rendered.

8. Effective Date. This Declaration, any amendment or termination hereof, and any supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

9. Miscellaneous.

a. Titles, Captions and References. All section titles or captions in this Declaration are for convenience only, shall not be deemed part of this Declaration and in no way define, limit, extend or describe the scope or intent of any provisions of this Declaration. When this Declaration refers to a Section by number or other designation, such reference shall be deemed to be to the correspondingly numbered Section of this Declaration unless the context refers to another agreement, document or instrument.

b. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Declaration shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

c. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Utah, without reference to its choice of law rules that would apply the law of another jurisdiction.

d. Exhibits. All exhibits attached to this Declaration are hereby expressly made a part of and incorporated into this Declaration by reference as fully as though completely set forth in this Declaration.

e. Time of Essence. Time is of the essence of this Declaration.

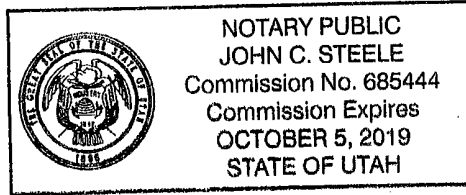
(Signature on the following page)

"CL"

LOUIS CORSILLO

[Handwritten Signature]

RENEE LURAS



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

The foregoing instrument was acknowledged before me this 24th day of November, 2015 by ~~LOUIS CORSILLO~~ and RENEE LURAS.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Handwritten Signature]

NOTARY PUBLIC

My Commission Expires: 10/05/2019

EXHIBIT "A-1"

TO

DECLARATION OF EASEMENTS

Depiction of EBT Easement Area

[Attached]

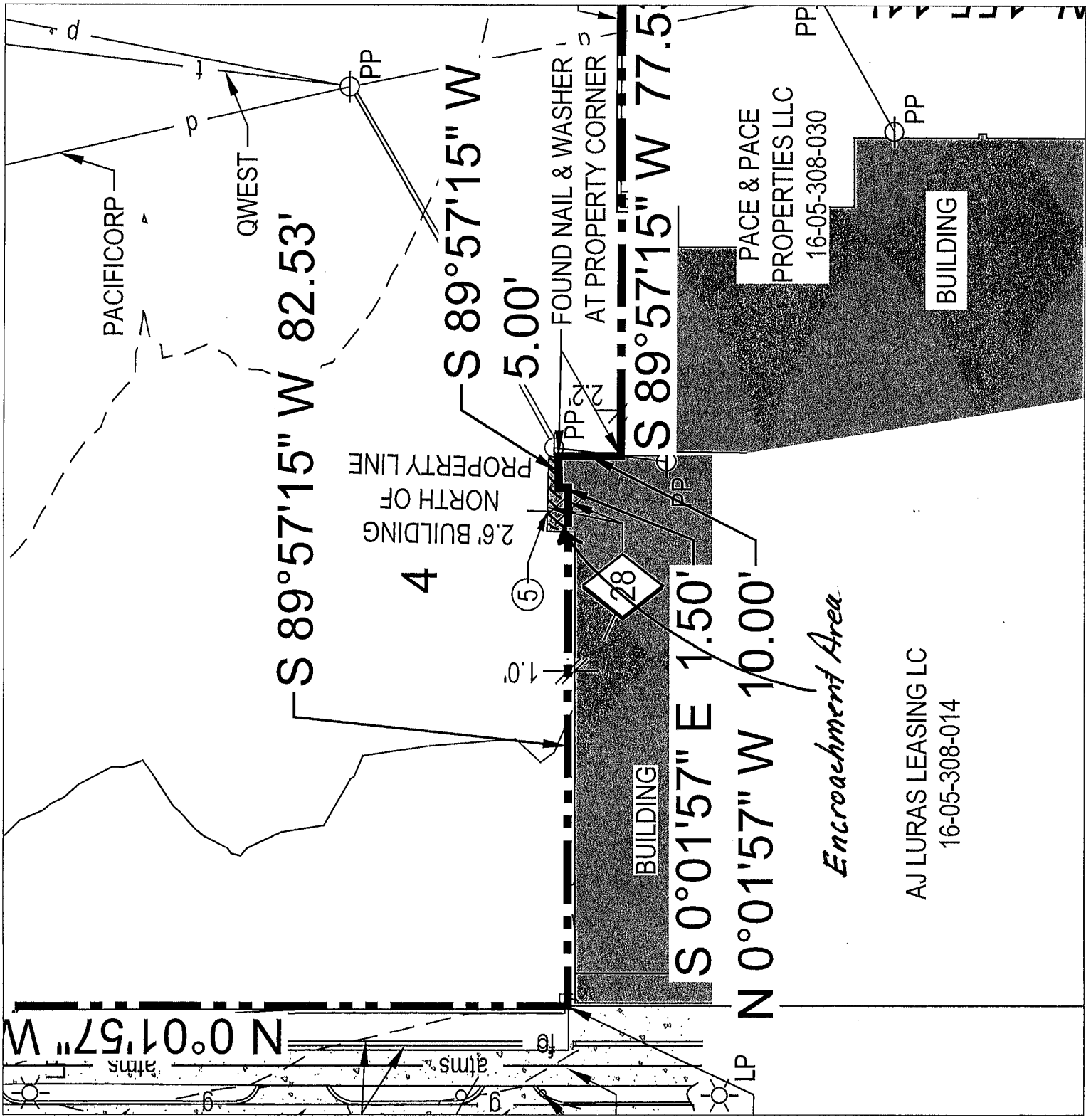


EXHIBIT "A-2"

TO

DECLARATION OF EASEMENTS

Legal Description of Encroachment Area

BEGINNING AT A POINT ON THE WESTERLY FACE OF AN EXISTING BUILDING, SAID POINT BEING SOUTH 0°01'57" EAST ALONG THE WESTERLY LINE OF BLOCK 31, PLAT "B", SALT LAKE CITY SURVEY 166.50 FEET AND NORTH 89°57'15" EAST 75.50 FEET FROM THE NORTHWEST CORNER OF LOT 4 OF SAID BLOCK 31, AND RUNNING THENCE ALONG THE FACE OF SAID BUILDING THE FOLLOWING THREE COURSES: 1) NORTH 0°30'20" EAST 3.37 FEET, 2) SOUTH 88°41'43" EAST 12.00 FEET, 3) SOUTH 0°01'57" EAST 1.59 FEET; THENCE SOUTH 89°57'15" WEST 5.00 FEET; THENCE SOUTH 0°01'57" EAST 1.50 FEET; THENCE SOUTH 89°57'15" WEST 7.03 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

TO

DECLARATION OF EASEMENTS

Legal Description of CL Parcel

Beginning 96 feet North from the Southwest Corner of Lot 4, Block 31, Plat B, Salt Lake City Survey; running thence North 67.5 feet; thence East 87.5 feet; thence South 46.5 feet, thence West 25.5 feet; thence South 21 feet; thence West 62 feet to the point of beginning.

Parcel No.: 16-05-308-014

EXHIBIT "C"

TO

DECLARATION OF EASEMENTS

Legal Description of the Housing Parcel

Beginning at a point on the Southerly line of Block 31, Plat "B", Salt Lake City Survey, said point being North 89°57'49" East along said Southerly line 2.59 feet from the Southeast corner of Lot 3 of said Block 31, and running thence South 89°57'49" West along said Southerly line 167.58 feet to the Southwest corner of said Lot 3; thence North 0°01'56" West along the Westerly line of said Lot 3 a distance of 155.11 feet; thence South 89°57'15" West 77.53 feet; thence North 0°01'57" West 8.50 feet; thence South 89°57'15" West 87.53 feet to a point on the Westerly line of said Block 31; thence North 0°01'57" West along said Westerly line 166.50 feet to the Northwest corner of Lot 4 of said Block 31; thence North 89°57'15" East along the Northerly line of said Lot 4 a distance of 102.00 feet; thence North 0°01'56" West 4.50 feet; thence North 89°57'15" East 63.07 feet to a point on the Easterly line of Lot 5 of said Block 31; thence North 0°01'56" West along said Easterly line and line extended 330.61 feet to a point on the Southerly right of way line of 400 South Street, said point being North 0°01'56" East along said Easterly line extension 5.00 feet from the Northeast corner of said Lot 5; thence North 89°56'41" East along said right of way line 165.07 feet to a point on the Easterly line extension of Lot 6 of said Block 31, said point being North 0°01'55" West along said Easterly line extension 5.00 feet from the Northeast corner of said Lot 6; thence South 0°01'55" East along said Easterly line and line extended 525.25 feet to a point on the Easterly line of said Lot 3; thence North 89°57'49" East 2.51 feet; thence South 0°01'55" East 140.03 feet to the point of beginning.