

11960869  
12/12/2014 01:06 PM \$28.00  
Book - 10281 Pg - 4753-4761  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
AFFILIATED FIRST TITLE  
321 E STATE ST  
AMERICAN FORK UT 84660  
BY: TCP, DEPUTY - WI 9 P.

When Recorded, Mail To:

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

GRANTEE'S ADDRESS:

LIBERTY CREST ASSOCIATES, LLC  
6440 S. Wasatch Blvd., Suite 100  
Salt Lake City, Utah 84124

Space above for County Recorder's Use

#21732-14

### DECLARATION OF EASEMENT

THIS DECLARATION OF EASEMENT ("Declaration") is made as of this 5th day of December, 2014, by and between **BOYER 102, L.C.**, a Utah limited liability company (hereinafter referred to as "Boyer"), and **LIBERTY CREST ASSOCIATES, LLC**, a Utah limited liability company ("LCA"), and **FERREIRA PROPERTY ASSOCIATES, LLC**, a Utah limited liability company ("FPA" and together with LCA collectively the "LCA Owners."

### RECITALS

A. Boyer is the present owner of the real property described in Exhibit A attached hereto and incorporated herein by reference (the "Boyer Property").

B. The LCA Owners are the present owners of the real property described in Exhibit B attached hereto and incorporated herein by reference (the "LCA Property").

C. The Boyer Property and the CLA Property are sometimes collectively referred to as the "Parcels" and the Owner(s) of any Parcel is referred to as an "Owner" and all of the Owners are referred to as the "Owners."

D. The LCA Property is adjacent to the Boyer Property.

E. The LCA Owners intend to construct a multi-family residential housing project on the LCA Property and desires to obtain the agreement of Boyer not to make any above ground improvements upon the Boyer Property as it abuts the north boundary of the LCA Property, more particularly described below as the No Build Area.

F. Boyer is willing to grant and convey to the LCA Owners an easement agreeing to restrict the improvement of the No Build Area, all in accordance with the provisions hereinafter contained.

NOW, THEREFORE, in consideration of the foregoing recitals, Ten Dollars (\$10.00) paid to Boyer by the LCA Owners, and other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. Grant of No Build Easement. Boyer hereby grants, bargains, sells, transfers and conveys to the LCA Owners, a perpetual No Build Easement upon the No Build Area more particularly described on Exhibit C attached hereto, subject to the terms, conditions and restrictions contained herein.

2. Restrictions on Use of the No Build Area. Boyer's use of the No Build Area is permanently restricted to installation, maintenance and replacement of improvements for the following limited uses (a) on- grade pedestrian and vehicular ingress and egress to the balance of the Boyer Property and any other real property authorized by Boyer; (b) on-grade vehicular parking; and/or (c) installation, maintenance and replacement of utility lines below the surface of the No Build Area. The on-grade surfaces of the No Build Area may be improved and finished with concrete and/or asphalt incident to the installation and maintenance of sidewalks, curbs, gutters, driveways, parking facilities, parking gates, and directional signs.

3. No Alteration or Amendment. The terms, conditions, restrictions, and covenants contained herein shall not be altered or amended unless such alteration or amendment shall be made with the written consent of Boyer and the LCA Owners, or their respective successors or assigns.

4. Restrictions Binding on Successors. Boyer and the LCA Owners agree that the terms, conditions, restrictions, and covenants contained herein shall be binding upon Boyer, its agents, assigns, and all other successors in interest to the Boyer Property and possessors of the Boyer Property, and shall be permanent terms, conditions, restrictions, covenants, servitudes, and easements running with and perpetually binding the Boyer Property for the benefit of the LCA Property.

5. No Affirmative Obligations; Indemnification. The LCA Owners, in acquiring the easement granted herein, assume no affirmative obligations whatsoever for the management, supervision or control of the No Build Area or of any activities occurring thereon or on the Boyer Property. Boyer and/or its successors in interest shall indemnify the LCA Owners and hold the LCA Owners harmless from all damages, costs (including, but not limited to, reasonable attorneys' fees and other costs of defense incurred by the LCA Owners), and other expenses of every kind arising from or incident to any claim or action for damages, injury, or loss suffered or alleged to have been suffered on or with respect to the No Build Area or the Boyer Property. This provision shall be binding upon Boyer for so long as it holds fee title to the Boyer Property, and shall bind their successors in interest to the fee title to the Boyer Property.

6. Amendment or Termination; Duration of Declaration. 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. The term of this Declaration is perpetual and shall be and remain in force and effect until terminated pursuant to this Section. Notwithstanding the foregoing in this Section 6, in the event no building exists on the LCA Property for a period of twenty-four (24) months after the recordation of this Declaration, or from time to time, this Declaration shall automatically terminate. In such event, the Parties shall cooperate in filing an instrument of record evidencing such termination in the County Recorder of Salt Lake County.

7. Covenants to Run with Land. This Declaration and the easements and covenants created by this Declaration are intended by the Parties 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 Owners, 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.

8. **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.

9. **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.

10. **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.

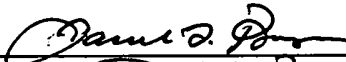
***(Signatures on the following pages)***

EXECUTED as of the date and year first above written.

"Boyer"

**BOYER 102, L.C.**, a Utah limited liability company

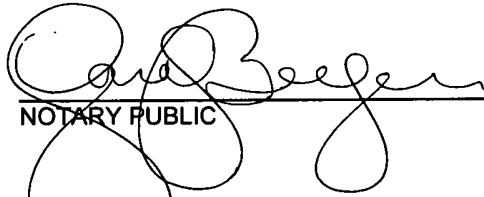
By its Manager, **THE BOYER COMPANY, L.C.**, a Utah limited liability company

By:   
Name: Jacob L. Boyer  
Title: Manager

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

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of December, 2014, by Jacob L. Boyer, a Manager of The Boyer Company, L.C., a Utah limited liability company, which is the manager of BOYER 102, L.C., a Utah limited liability company.




  
NOTARY PUBLIC

"LCA"

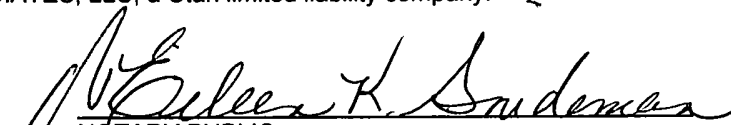
**LIBERTY CREST ASSOCIATES, LLC**, a Utah limited liability company

By its Manager, **COWBOY PARTNERS, L.C.**, a Utah limited liability company

By:   
Mark R. Cornelius  
Vice President

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

The foregoing instrument was acknowledged before me this 5 day of December, 2014, by Mark R. Cornelius, the Vice President of Cowboy Partners, L.C., a Utah limited liability company, which is the manager of LIBERTY CREST ASSOCIATES, LLC, a Utah limited liability company.

  
NOTARY PUBLIC



"FPA"

FERREIRA PROPERTY ASSOCIATES, LLC, a Utah limited liability company

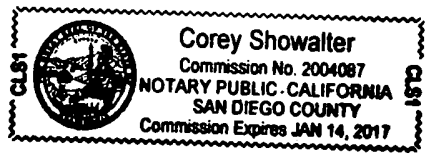
By: [Signature]  
Steven J. Ferreira, one of its Managers

And by: [Signature]  
Sheri Ferreira, its remaining Manager

STATE OF California )  
COUNTY OF San Diego ) ss.

The foregoing instrument was acknowledged before me this 1 day of December, 2014, by Steven J. Ferreira and Sheri Ferreira, the Managers of FERREIRA PROPERTY ASSOCIATES, LLC, a Utah limited liability company.

[Signature]  
NOTARY PUBLIC



**EXHIBIT A**

(Boyer Property)

A PORTION OF THE PARCEL RECORDED IN CONSOLIDATION QUITCLAIM DEED ENTRY NO. 11697647, OFFICIAL RECORDS, IN THE CITY OF SALT LAKE CITY, SALT LAKE COUNTY, UTAH, BEING A PART A PART OF BLOCK 71, PLAT "A", SALT LAKE CITY SURVEY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF LOT 3, OF SAID BLOCK 71, BEING N00°01'43"W ALONG SAID EAST LINE OF STATE STREET 165.00 FEET, AND N89°58'22"E 176.50 FEET, FROM THE SOUTHWEST CORNER OF SAID BLOCK 71, SAID POINT OF BEGINNING ALSO BEING N00°01'43"W 227.71 FEET ALONG THE MONUMENT LINE IN STATE STREET AND N89°58'22"E 244.60 FEET FROM A SALT LAKE CITY MONUMENT IN THE INTERSECTION OF STATE STREET AND 200 SOUTH STREET, AND RUNNING; THENCE N00°01'43"W 165.40 FEET; THENCE S89°58'22"W 11.50 FEET; THENCE N00°01'43"W 73.10 FEET; THENCE N89°58'22"E 82.50 FEET; THENCE N00°01'43"W 9.00 FEET; THENCE N89°58'22"E 247.50 FEET; THENCE N00°01'43"W 19.50 FEET; THENCE S89°58'22"W 10.50 FEET; THENCE N00°01'43"W 63.00 FEET, TO THE NORTH LINE OF LOT 7, OF SAID BLOCK 71; THENCE S89°58'22"W ALONG SAID NORTH LINE 35.50 FEET; THENCE N00°01'43"W 165.00 FEET, TO THE SOUTH LINE OF 100 SOUTH (NORTH LINE OF SAID BLOCK 71); THENCE N89°58'22"E 211.00 FEET, TO THE NORTHEAST CORNER OF SAID BLOCK 71, SAID POINT BEING THE INTERSECTION OF THE EAST LINE OF 200 EAST AND THE SOUTH LINE OF 100 SOUTH; THENCE S00°01'43"E ALONG THE EAST LINE OF 200 EAST 278.99 FEET; THENCE S89°58'22"W 194.80 FEET; THENCE S00°01'43"E 216.01 FEET, TO THE SOUTH LINE OF LOT 8, OF SAID BLOCK 71; THENCE S89°58'22"W ALONG THE SOUTH LINE OF LOT 8 AND THE SOUTH LINE LOT 3, OF SAID BLOCK 71, A DISTANCE OF 288.70 FEET, TO THE POINT OF BEGINNING.

**EXHIBIT B**

(LCA Property)

BEGINNING THE NORTHEAST CORNER OF LOT 1, BLOCK 71, PLAT "A" SALT LAKE CITY SURVEY AND RUNNING THENCE S 0°01'43" E 74.00 FEET ALONG THE WEST RIGHT OF WAY OF 200 EAST STREET; THENCE S 89°58'22" W 88.00 FEET; THENCE N 0°01'43" W 8.00 FEET; THENCE S 89°58'22" W 85.50 FEET; THENCE N 0°01'43" W 66.00 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 1; THENCE S 89°58'22" W 21.30 FEET ALONG SAID LINE; THENCE N 0°01'43" W 216.01 FEET; THENCE N 89°58'22" E 194.80 FEET TO A POINT ON THE WEST RIGHT OF WAY OF 200 EAST STREET; THENCE S 0°01'43" E 216.01 FEET ALONG SAID LINE TO THE POINT OF BEGINNING.

CONTAINS 1.245 ACRES MORE OR LESS.

PARCEL NO. 16-06-107-036



**EXHIBIT C**

(No Build Area)

BEGINNING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 71, PLAT "A", SALT LAKE CITY SURVEY AND RUNNING THENCE N 0°01'43" W 216.01 FEET ALONG THE WEST RIGHT OF WAY OF 200 EAST STREET, SAID POINT BEING THE POINT OF BEGINNING; THENCE S 89°58'22" W 194.80 FEET; THENCE N 0°01'43" W 15 FEET; THENCE S 89°58'22" E 194.80 FEET MORE OR LESS TO A POINT ON THE WEST RIGHT OF WAY OF 200 EAST STREET; THENCE S 0°01'43" E 15 FEET MORE OR LESS TO THE POINT OF BEGINNING.