

12306374
06/23/2016 01:00 PM \$24.00
Book - 10445 Pg - 265-272
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: SSP, DEPUTY - WI 8 P.

AFTER RECORDING, RETURN TO:

Parr Waddoups Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attn: Robert A. McConnell, Esq.

(Space above for Recorder's use only.)

DECLARATION OF ENCROACHMENT EASEMENT

This Declaration of Encroachment Easement (this "**Declaration**") is executed this 23rd day of June, 2016 by Gateway Associates, Ltd., a Utah limited partnership ("**Declarant**"), whose address is 101 South 200 East, Suite 200, Salt Lake City, Utah 84111.

RECITALS

A. Declarant owns that certain tract of real property ("**Lot 6A**") located in Salt Lake County, State of Utah, which is more particularly described as follows:

Lot 6A, Boyer Gateway Lot 6 Amended, according to the official plat thereof on record as Entry No. 12306373 in Book 2016P at Page 136 in the Salt Lake County, Utah, Recorder's Office.

[Tax Parcel No. 08-36-376-013]
(2016 PARENT NUMBER)

B. Declarant owns that certain tract of real property ("**Lot 6B**") that is adjacent to Lot 6A and is located in Salt Lake County, State of Utah, and more particularly described as follows:

Lot 6B, Boyer Gateway Lot 6 Amended, according to the official plat thereof on record as Entry No. 12306373 in Book 2016P at Page 136 in the Salt Lake County, Utah, Recorder's Office.

[Tax Parcel No. 08-36-376-013]
(2016 PARENT NUMBER)

C. Declarant desires to establish certain easements in favor of Lot 6A as more fully set forth below.

DECLARATION

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Declarant hereby grants and establishes the following easements, rights, covenants and restrictions, which apply to, bind, affect and run with title to Lot 6A and Lot 6B, and declares as follows:

1. Definitions. As used in this Declaration, each of the following terms shall have the indicated meaning:

“**Lot 6A Owner**” means the Owner(s) of Lot 6A.

“**Lot 6A Building**” means that certain mixed use building located on Lot 6A and pictorially depicted on the Site Plan.

“**Lot 6B Owner**” means the Owner(s) of Lot 6B.

“**Easement Area**” means that portion of Lot 6 B more particularly described on **Exhibit “A”** attached hereto.

“**Mortgage**” means a mortgage, deed of trust or other security agreement creating a lien on a Parcel or a portion of a Parcel as security for the payment of indebtedness recorded in the Official Records.

“**Mortgagee**” means a Person which is the mortgagee, beneficiary, secured party or other Person holding the lien or security interest under a Mortgage.

“**Official Records**” means the official records of the Salt Lake County Recorder, State of Utah.

“**Owner**” means the Person that at the time concerned is the legal owner of record in the Official Records of the fee interest in any Parcel or portion of any Parcel. If there is more than one Owner of a Parcel at the time concerned, the obligations and liabilities of each such Owner for performance under, and compliance with, the applicable provisions of this Declaration shall be joint and several. In the event that the Lot 6A Building is the subject of a declaration of condominium, then for the duration of such condominium project, the term “Owner” shall mean with respect to Lot 6A the applicable condominium association created in connection with such condominium project. Notwithstanding any applicable theory relating to a Mortgage, the term “Owner” shall not mean or include a Mortgagee unless and until such Mortgagee has acquired fee title of record to the Parcel concerned pursuant to foreclosure or trustee’s sale or any deed, arrangement or proceeding in lieu of thereof.

“**Parcels**” means Lot 6A and Lot 6B, collectively, and “**Parcel**” means either Lot 6A or Lot 6B, individually, where no distinction is required by the context in which such term is used.

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

“**Site Plan**” means the site plan attached as **Exhibit “B”**, incorporated in this Declaration by this reference.

“**Underground Improvements**” means that portion of the Lot 6A Building that encroaches onto Lot 6B below the surface of Lot 6B, together with all utility facilities located and operated therein, which subsurface encroachment and related utilities are located within the Easement Area and are pictorially depicted on the Site Plan.

2. Grant of Rights-of-Way and Easements. Declarant grants and creates the following easements: Subject to the provisions of Section 3 below, Lot 6A (but no other real property) shall have appurtenant thereto and shall be benefited by, and the Easement Area shall be subject to and shall be burdened by, a perpetual easement for the existing subsurface encroachment of the Underground Improvements below and within the Easement Area, including, without limitation, the right to use, operate, inspect, service, maintain, repair, replace and remove the Underground Improvements below and within the Easement Area.

3. Maintenance of Underground Improvements. In connection with any operation, inspection, servicing, maintaining, repairing or removal of the Underground Improvements in the Easement Area, the Lot 6A Owner shall promptly repair any damage to the surface of the Easement Area caused by such activities and restore the same to a condition at least as good as the condition such surface area was in prior to such activities.

4. Duration. This Declaration and each easement, covenant and restriction set forth in this Declaration shall be perpetual.

5. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Parcels for the general public or for any public purpose whatsoever, it being the intention of the undersigned that this Declaration be strictly limited to the purposes expressed in this Declaration.

6. Appurtenances to Parcels; Covenants Run with Land; Various Events.

6.1. Appurtenances to Parcels. Each easement, covenant and restriction created by this Declaration is an appurtenance to the Parcel benefited by such easement, covenant and restriction (but no other real property) and may not be transferred, assigned or encumbered except as an appurtenance to such Parcel. For the purposes of each such easement, covenant and restriction, the benefited Parcel shall constitute the dominant estate and the burdened Parcel shall constitute the subservient estate.

6.2. Covenants Run with Land; Various Events.

6.2.1. Covenants Run with Land. This Declaration and each easement, covenant and restriction contained in this Declaration (whether affirmative or negative in nature) shall (a) create an equitable servitude on the burdened Parcel in favor of the benefited Parcel (but no other real property), (b) constitute a covenant running with the land, (c) benefit and bind every Person having any fee, leasehold, Mortgage lien or other interest in any portion of the Parcel concerned, and (d) benefit and bind any Owner whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means.

6.2.2. Transfer of Parcel. If any Owner transfers all or any portion of the Easement Area owned by such Owner, the transferee shall automatically be deemed to have assumed and agreed to be personally bound by the covenants of such Owner contained in this Declaration, and if the transferring Owner has by such transfer transferred all of such Owner's ownership interest in the Easement Area, such transferring Owner shall be released and discharged from all obligations under this Declaration with respect to the Easement Area that accrue after (but not before) the date of recordation in the Official Records of the instrument effecting such transfer.

6.2.3. Effect of Breach. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration (but such limitation shall not affect any other right or remedy or limit any obligation that any Owner may have under this Declaration by reason of any such breach), or defeat or render invalid the lien of any Mortgage made in good faith and for value as to any Parcel.

6.2.4. Identical Ownership. The ownership of both Parcels by the same Person shall not result in the termination of this Declaration.

6.2.5. Priority of Declaration. The interests in and rights concerning any portion of the Parcels held by or vested in the undersigned or any other Person on or after the date of this Declaration (including, without limitation, any Mortgage lien) shall be subject and subordinate to this Declaration, and this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this Declaration.

7. Mortgagee Protection. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Parcels shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Declaration.

8. Indemnification. Each Owner shall indemnify, defend and hold harmless any other Owner, and such other Owner's agents, employees, officers, members, directors, managers, and/or affiliates, from and against any and all loss (including loss of use), claim, action, proceeding, liability, damage, demand, cost and expense (including reasonable attorneys' fees) arising out of the use of the Easement Area by the indemnifying Owner or its agents, employees, affiliates or invitees.

9. Modification. This Declaration and any easement, covenant or restriction contained in this Declaration may not be terminated, extended, modified or amended without the consent of each Owner, and any such termination, extension, modification or amendment shall be effective on recordation in the Official Records of a written document effecting the same, executed and acknowledged by each Owner.

30. Attorneys' Fees. If any Owner brings suit to enforce or interpret this Declaration or for damages on account of the breach of any provision of this Declaration, the prevailing Owner shall be entitled to recover from the other Owner its reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing Owner is entitled.

41. General Provisions. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This Declaration shall inure to the benefit of, and shall be binding on, each Owner and the heirs, personal representatives, successors and assigns of each Owner. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration.


[Signature appears on the next page.]

DECLARANT:

GATEWAY ASSOCIATES, LTD., a Utah limited partnership, by its general partner

BOYER GATEWAY, L.C., a Utah limited liability company, by its Manager

THE BOYER COMPANY, L.C., a Utah limited liability company

By: 
Name: BRIAN GAHNOUR
Title: Manager

STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 15th day of June, 2016, by Brian Gahnour, a manager of The Boyer Company, L.C., which is the manager of Boyer Declarant, L.C., which is the general partner of Declarant Associates, Ltd.

[SEAL]


Notary Public

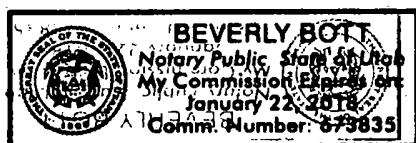


EXHIBIT A
TO
DECLARATION

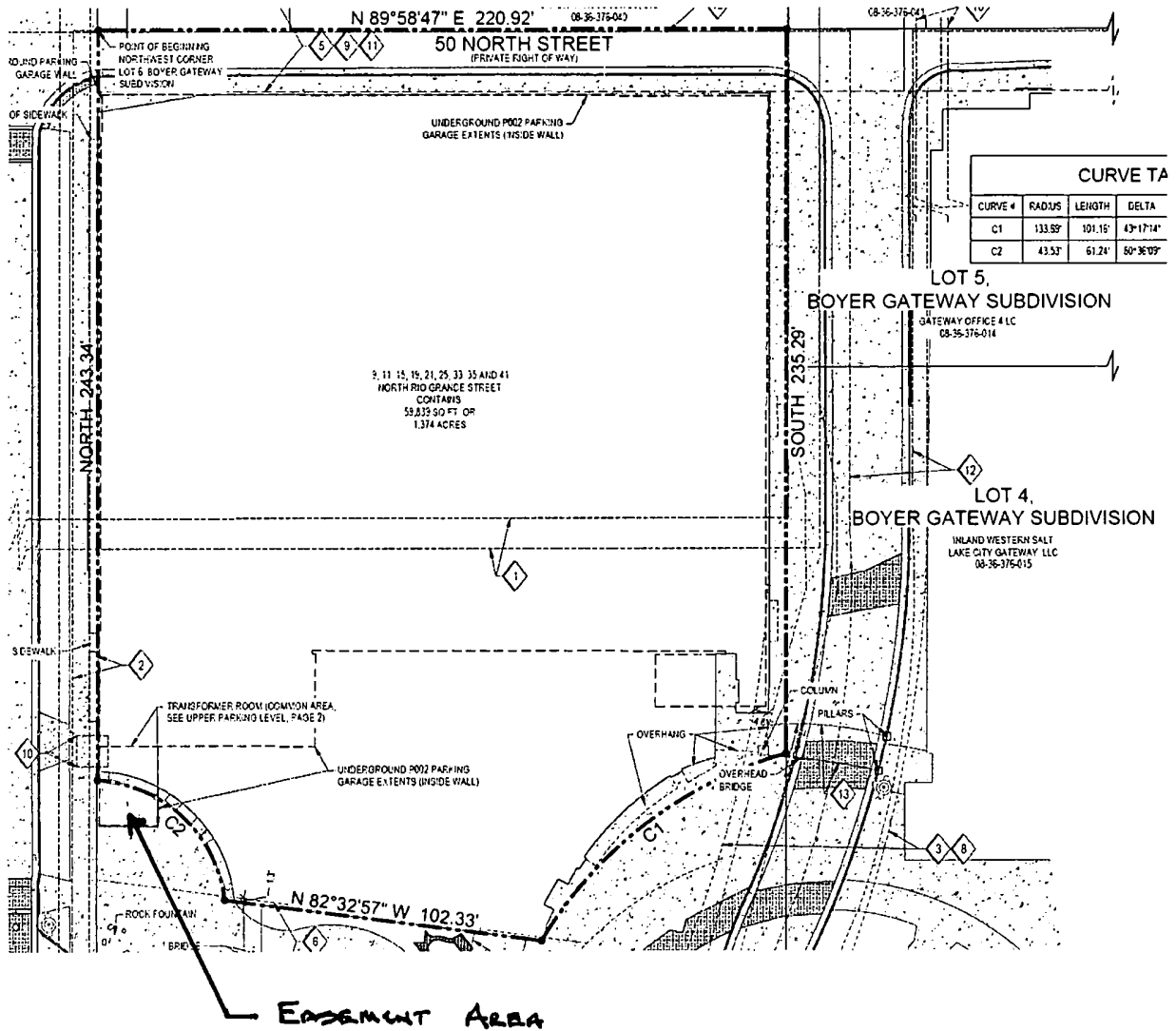
(Legal Description of Easement Area)

The "Easement Area" referred to in the foregoing Declaration is located in Salt Lake County, Utah, and is more particularly described as follows:

BEGINNING AT THE NORTHWEST CORNER OF LOT 6B OF THE PROPOSED BOYER GATEWAY LOT 6 AMENDED SUBDIVISION, SAID POINT BEING ON THE ON THE ARC OF A 43.53 FOOT NON TANGENT RADIUS CURVE TO THE RIGHT, SAID POINT BEING ON THE WEST LINE OF LOT 6, BOYER GATEWAY SUBDIVISION, AS RECORDED WITH THE OFFICE OF THE SALT LAKE COUNTY RECORDER IN BOOK 2001P OF PLATS AT PAGE 37, SAID POINT ALSO BEING NORTH ALONG SAID WEST LINE 201.53 FEET FROM THE SOUTHWEST CORNER OF SAID LOT 6, AND RUNNING THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 28°40'05" A DISTANCE OF 21.78 FEET, CHORD BEARS SOUTH 72°41'18" EAST 21.55 FEET; THENCE SOUTH 0°09'00" WEST 9.16 FEET; THENCE NORTH 89°51'00" WEST 20.55 FEET TO A POINT ON SAID WEST LINE; THENCE NORTH ALONG SAID WEST LINE 15.52 FEET TO THE POINT OF BEGINNING

**EXHIBIT B
TO
DECLARATION**

(Site Plan)



4844-7615-5440, v. 1