

WHEN RECORDED, RETURN TO:

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ADAM GARDINER

Recorder, Salt Lake County, UT

FOUNDERS TITLE LAYTON

BY: eCASH, DEPUTY - EF 10 P.

DECLARATION OF SIGN COVENANTS AND EASEMENTS

THIS DECLARATION OF SIGN COVENANTS AND EASEMENTS (this "**Declaration**") is executed as of the 12th day of April, 2018, by **EAST BAY ASSOCIATES NO. 2 LTD**, a Utah limited partnership ("**Boyer East Bay**") and **BOYER BANGERTER, L.C.**, a Utah limited liability company ("**Boyer Bangerter**") and together with Boyer East Bay, individually and collectively, as the context may require, the "**Declarant**").

RECITALS:

A. Declarant owns certain tracts of real property located in Salt Lake County, Utah, the legal description of which is set forth on the attached Exhibit "A" (the "**Property**").

B. Declarant previously recorded with respect to the Property a Grant of Access and Parking Easement dated March 21, 2017 and recorded March 24, 2017 as Entry No. 12501722 in the Official Records of the Salt Lake County Recorder (the "**Grant of Easements**").

C. By this Declaration, Declarant intends to set forth certain additional covenants, conditions and easements in connection with certain monument and pylon signage on the Property.

NOW, THEREFORE, for the foregoing purposes, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant makes the following declarations, creates the following easements and establishes the following covenants, all of which apply to, bind, affect and run with title to each Lot.

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

"**Governmental Authorities**" means all governmental or quasi-governmental units, commissions, councils, boards, agencies, staffs or similar bodies having jurisdiction over the use, operation, maintenance or development of a specified matter.

"**Governmental Requirements**" means all laws, ordinances, rules, codes, requirements, resolutions, policy statements and regulations of Governmental Authorities in respect of a specified matter including, without limitation, such items relating to land use, subdivision, zoning, environmental, hazardous materials or other toxic substance, occupational health and safety, water, earthquake hazard reduction, and building and fire codes.

"**Hotel Sign Panels**" is defined in Section 3.

“Initial Control Period” means the period commencing upon the recordation of this Declaration in the Recorder’s Office and continuing until the first to occur of the following: (i) sixty (60) days after the date that neither Declarant nor any Person which is owned by or controlled by or under common ownership or control with Declarant is Owner of any Lot; or (ii) Declarant records in the Recorder’s Office a notice of the termination of its rights as Declarant under this Declaration.

“Lot” means any one of the Lots.

“Lots” means all of the subdivided portions of the Property depicted on the Plat, including Lots 1 through 3, in 136 Center Office Plat according to the Official Plat thereof filed in the Office of the Salt Lake County Recorder, and any legal lots that result from a subdividing or re-subdividing the enumerated Lots.

“Maintenance and Operating Costs” means, with respect to a Pylon Sign, the costs and expenses incurred by Declarant in connection with the operation, maintenance, repair and replacement of such Pylon Sign including, without limitation, all license fees, taxes, utility costs, and insurance premiums.

“Monument Sign” means a freestanding sign that is low to the ground containing elements of masonry or masonry like product constructed by the Owner of a Lot on its Lot to designate and advertise the business or businesses of an Occupant of the Lot.

“Mortgage” means a recorded mortgage, deed of trust or other security agreement creating a lien on a Lot or a portion of the Property as security for the payment of indebtedness.

“Mortgagee” means a Person constituting 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 Lot or any portion of the Property.

“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 Lot or portion of a Lot and expressly does not include the owner of a leasehold interest in the Lot. In the event that, at any time, there is more than one Owner of a Lot or portion of a Lot, 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 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 Lot or portion of the Property encumbered by a Mortgage pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof.

“Owner’s Percentage” means, as to a Pylon Sign and for each Owner which has a Sign Panel on such Pylon Sign, a fraction, the numerator of which is the number of square inches of the Sign Panel of such Owner and the denominator of which is the total square number of square inches of all Sign Panels on the Pylon Sign. By way of clarification, the Owner’s Percentage shall be determined separately for each of the Pylon Sign.

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

“Pylon Sign” means a tall sign with separate panels constructed by Declarant that advertises the businesses or activities of the Occupants of more than one Lot.

“Sign License” is defined in Section 4.

“Sign Panel” means an advertising panel on the Pylon Sign.

“Sign Rights Successor” means the successor of Declarant named pursuant to Section 8.

2. **Grant of Signage Easements for Pylon Sign.** Declarant hereby reserves to the Declarant and its Sign Rights Successor, a perpetual, non-exclusive easement, for the purpose of ingress and egress over the Lots on which a Pylon Sign is located for the construction, use, maintenance, operation, repair and replacement of the Pylon Sign, together with an exclusive easement for use of the areas within ten (10) feet of the bases of the Pylon Sign. The Declarant is hereby granted the exclusive right to control the use of the Sign Panels depicted on the Pylon Sign. The rights of the Declarant under this Section 2 shall be appurtenant to, and shall run with the land. Declarant or its Sign Rights Successor shall control all Sign Panels.

3. **Signs.**

a. **Pylon Sign.** It is anticipated that there will be one (1) Pylon Sign for all of the Property. Declarant may proceed to develop and erect a Pylon Sign when it deems appropriate, at its sole discretion. Declarant shall not be required to construct a Pylon Sign if approvals and permits from Governmental Authorities cannot be obtained or the Governmental Authorities impose conditions that Declarant, at its discretion, deems to be unreasonable. If Declarant applies for and obtains approvals to construct a Pylon Sign, it shall do so in a location as permitted by Governmental Authorities and in accordance with plans and specifications approved by Governmental Authorities, and, except as set forth below in this Section 3 with respect to Hotel Sign Panels, no Owner or Occupant shall have a right to placement on the Pylon Sign and each Owner or Occupant advertising on the Pylon Sign shall be determined in writing in the sole discretion of the Declarant or Sign Rights Successor. At any time and from time to time, Declarant or Sign Rights Successor may grant to an Owner of a specified Lot a written license agreement permitting such Owner to use a Sign Panel on a specified Pylon Sign on such terms and conditions, but subject to this Declaration, as the Declarant or Sign Rights Successor shall establish at its sole discretion (each, a **“Sign License”**). One (1) hotel located on Lot 1 (or a subdivided part of Lot 1) South of the Access Road (as used herein, “Access Road” means that certain east-west road that connects from 200 West Street to Lot 2, through and across Lot 1, and which crosses over the canal immediately east of Lot 1) shall have the right, but not the

obligation, to one (1) Sign Panel location on both sides of the Pylon Sign, and one (1) hotel located on Lot 1 (or a subdivided part of Lot 1) North of the Access Road shall have the right, but not the obligation, to one (1) Sign Panel location on both sides of the Pylon Sign, but neither hotel shall have the right to the topmost or largest Sign Panel location, nor shall the hotel Sign Panels be smaller or less visible than any other Sign Panel (each such panel a "**Hotel Sign Panel**" or collectively, the "**Hotel Sign Panels**"). The right to place or maintain a Hotel Sign Panel may only be assigned to and used by a hotel, motel or similar transient lodging facility, and shall not be available for other use. If additional Pylon Signs are approved by Governmental Authorities and are constructed by Declarant along either or both of Interstate 15 and Bangerter Highway (either in addition to the currently authorized Pylon Sign or in lieu of the currently authorized Pylon Sign), each of the Owners of the hotels referenced above shall have the same rights as to each such Pylon Sign as set forth above. If the Owner of a Lot on which a hotel is located exercises its rights to a Hotel Sign Panel as set forth herein, it shall pay its proportionate share of the cost of constructing and maintaining the Pylon Sign structure in accordance with Section 4(a).

b. **Monument Signs.** Each of the two (2) hotels on subdivided portions of Lot 1 may have a Monument Sign on its Lot if permitted by and in all events subject to approval by Governmental Authorities and in full compliance with Governmental Requirements. The Owner of each Lot on which a hotel is located shall pay the entire cost of constructing and maintaining the Monument Sign on its Lot.

4. **Sign Construction and Maintenance; Maintenance Costs.**

a. **Construction of Pylon Sign.** If Declarant elects to install a Pylon Sign, Declarant shall construct the structure of the Pylon Sign (not including the Sign Panels) in accordance with plans established by Declarant and subject to applicable Governmental Requirements. Such plans shall set forth the exact location of the Pylon Sign. If an Owner or Occupant entitled to a Sign Panel on a Pylon Sign pursuant to Section 3 exercises its rights to signage as set forth herein, it shall pay a portion of the cost of constructing the structure of the Pylon Sign based on its Owner's Percentage and shall pay all of the cost of acquiring and installing its Sign Panel. The design and installation of all Sign Panels shall be subject to the approval of Declarant or Sign Rights Successor, as applicable, which approval shall not be unreasonably withheld. No Person other than Declarant may authorize or construct a Pylon Sign.

b. **Maintenance.** Declarant shall maintain, repair, and replace, or cause those Occupants advertising on each Pylon Sign to maintain, repair, and replace, the individual Sign Panels located on such Pylon Sign. With the exception of the individual Sign Panels on such Pylon Sign, Declarant shall operate and maintain, at the cost and expense of the Owners and Occupants advertising on such Pylon Sign pursuant to Section 4(c), all other parts of the Pylon Sign, including related utilities and illumination and, if required as part of the approvals, landscaping and irrigation, if any, in accordance with applicable Governmental Requirements. Declarant shall maintain such casualty and liability insurance with respect to the Pylon Sign as it deems commercially reasonable.

c. **Charges to Owners.** From and after the date an Owner places its Sign Panel on a

Pylon Sign, Declarant may invoice the Owner, on a regular monthly, quarterly or annual basis, as Declarant determines, for the Maintenance and Operating Costs of such Pylon Sign based on the Owner's Percentage and such Owner shall be obligated to pay its Owner's Percentage for such Maintenance and Operating Costs. Each Owner that is obligated to pay its Owner's Percentage of the Maintenance and Operating Costs for a Pylon Sign shall pay such costs within fifteen (15) days after such Owner's receipt of an invoice therefor from Declarant.

5. Default and Remedies.

a. Default; Failure to Perform; Self-Help Remedy. If an Owner fails to perform or comply with any term, condition or obligation of this Declaration, and such failure continues for thirty (30) days after receipt of written notice from Declarant (or such longer period as may be reasonable under the circumstances if the failure cannot be cured within thirty (30) days and the Owner failing to perform commences to cure within such time period and diligently and continuously prosecutes such cure to completion), then the Owner failing to perform shall be in default of this Declaration. Upon such default, Declarant, providing written notice hereunder may irrevocably terminate the Sign License and any right to a Sign pursuant to this Agreement; provided, however, if a dispute exists, the rights of an Owner of a Lot on which a hotel is located to the use of the Hotel Sign Panels as set forth in Section 3 above, shall not be terminated until a final order or judgment terminating such rights is entered by a court having jurisdiction and all appeal rights have expired.

6. Title and Mortgage Protection.

a. Mortgagee Rights Not Affected by Amendment to Declaration. No amendment to this Declaration shall in any manner 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.

b. Default/Priority of Liens. 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 Lot. 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 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.

7. Amendment or Termination; Duration of Declaration. This Declaration may be amended or terminated only by an instrument filed for record in the office of the County Recorder of Salt Lake County, Utah that is executed by Declarant or Sign Rights Successor, as applicable, and the Owner of

each Lot on which a hotel is located. The term of this Declaration is perpetual; this Declaration shall be and remain in force and effect until terminated pursuant to this Section 7 by written approval of all Owners.

8. Designation of Sign Rights Successor. Upon expiration of the Initial Control Period, Declarant shall designate the Sign Rights Successor in writing. The Sign Rights Successor must be an Owner. If Declarant does not designate a Sign Rights Successor within one (1) year after the expiration of the Initial Control Period, then the Owner of Lot 3 shall automatically become the Sign Rights Successor.

9. Covenants to Run with Land. Except as provided in Section 3, this Declaration and the easements 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 Lots, and shall be binding upon and shall inure to the benefit of each Owner or any Person who acquires or comes to have any interest in any Lot, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the easements, covenants, provisions, and requirements hereof shall also inure to the benefit of each Person owning any interest in or occupying any portion of a Lot. Each Owner shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration. By acquiring, in any way coming to have an interest in, or occupying a Lot, the Person so acquiring, coming to have such interest in, or occupying a Lot, shall be deemed to have consented to, and shall be bound by, each and every provision of this Declaration.

10. Enforcement. In addition to, and not in limitation of, the provisions set forth in Section 5 of this Declaration, the Owner of each Lot on which a hotel is located, and the Declarant or its Sign Rights Successor 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 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.

11. 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.

12. 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.

13. Pronouns and Plurals. Whenever the contest 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.

14. 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.

15. Counterparts. This Declaration may be executed in any number of counterparts. Each such counterpart of this Declaration shall be deemed to be an original instrument, and all such counterparts together shall constitute but one agreement and may be recorded as one document.

16. Exhibits. All exhibits annexed to this Declaration are expressly made a part of and incorporated in this Declaration as fully as though completely set forth in this Declaration.

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


[Signatures and acknowledgments on following page]

IN WITNESS WHEREOF, Declarant has executed this Sign Agreement to be effective as of the date first written above.

DECLARANT


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

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

By: 
Name: Nathan R. Boyer
Title: Manager

EAST BAY ASSOCIATES NO. 2 LTD, a Utah limited partnership, by its General Partner

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

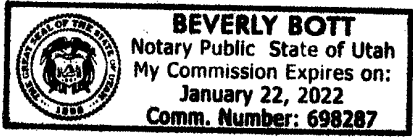
By: 
Name: Nathan R. Boyer
Title: Manager

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

On this 12th day of April, 2018, personally appeared before me Nathan R. Boyer, the person who executed the within instrument as a Manager of The Boyer Company, L.C., a Utah limited liability company, Declarant of Boyer Bangerter, L.C., a Utah limited liability company, and acknowledged to me that he executed the within instrument on behalf of said company.

Beverly Bott
Notary Public

My Commission Expires: 1/22/22



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

On this 12th day of April, 2018, personally appeared before me Nathan R. Boyer, the person who executed the within instrument as a Manager of The Boyer Company, L.C., a Utah limited liability company, the General Partner of East Bay Associates No. 2, Ltd., a Utah limited partnership, and acknowledged to me that he executed the within instrument on behalf of said company.

Beverly Bott
Notary Public

My Commission Expires: 1/22/22

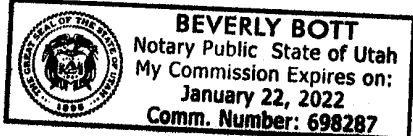


EXHIBIT "A"

(Description of Real Property)

Property located in Salt Lake County, Utah more particularly described as follows:

Parcel 1

Lot 1, 136 Center Office Plat, according to the official plat thereof filed in the office of the Salt Lake County Recorder, State of Utah.

33-01-252-006

Parcel 2

Lot 2, 136 Center Office Plat, according to the official plat thereof filed in the office of the Salt Lake County Recorder, State of Utah.

33-01-276-021

Parcel 3

Lot 3, 136 Center Office Plat, according to the official plat thereof filed in the office of the Salt Lake County Recorder, State of Utah.

33-01-276-022