



E# 2450189 PG 1 OF 6
ERNEST D ROWLEY, WEBER COUNTY RECORDER
17-DEC-09 3:15 PM FEE \$22.00 DEP KA
REC FOR: LANDMARK TITLE COMPANY
ELECTRONICALLY RECORDED

**Prepared By and Upon
Recording Return to:**
David Gee, Esq.
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84111

15-495-0001, 15-495-0002, 15-495-0003

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (this "Declaration") is executed to be effective as of the 7th day of October, 2009, by BOYER GSA WAREHOUSE, L.C., a Utah limited liability company ("Declarant"), whose address is 90 South 400 West Suite 200, Salt Lake City, Utah 84101.

RECITALS:

A. WHEREAS, Declarant is the owner of three (3) separate parcels of land which are more particularly described on Exhibit A attached hereto and made a part hereof (each such parcel being referred to herein individually as a "Parcel", and collectively as the "Property").

B. WHEREAS, Declarant desires to subject the Property to the covenants, conditions, restrictions, easements and charges set forth in this Declaration for the benefit of the Property and its present and subsequent owners.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and charges, which shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof.

AGREEMENT:

The undersigned, being the sole owner of the Property, hereby declares as follows:

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

"Affiliate" means a Person which controls, is controlled by or under common control with any Person.

"Easement Area" means all those certain portions of the Property that are from time to time designed and/or otherwise designated for non-building or landscaping uses (i.e. areas designated for the parking of motor vehicles and for vehicular and pedestrian movement, including, without limitation, parking areas, roads, driveways, walkways and sidewalks).

48209

“Improvement” means every structure or improvement of any kind, including but not limited to a fence, wall, curb cuts, walkways, traffic lanes, driveways, building, storage shelter or other product of construction efforts on or in respect to the Property.

“Mortgage” means a mortgage or a deed of trust recorded in the Official Records.

“Mortgagee” means the mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the Official Records.

“Official Records” means the official records of the Weber 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 a whole or undivided fee interest in a 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. Notwithstanding any applicable theory relating to a Mortgage, the term “Owner” shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the Parcel concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

“Person” means a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

2. **Grant of Rights-of-Way and Easements.** Declarant hereby grants and establishes for the Owner of each Parcel and such Owner’s employees, agents, contractors, invitees, tenants and licensees, and for the benefit of each Parcel, a perpetual, non-exclusive easement of ingress and egress over the Easement Area. The easement granted hereby may be used at any time and from time to time as traffic lanes, driveways, sidewalks, walkways or similar areas for ingress and egress of vehicles and pedestrians and for vehicular parking.

3. **No Interference.** Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the rights-of-way and easements granted in Paragraph 2 shall be constructed or erected, nor shall any Owner in any other manner obstruct or interfere with the use of such rights-of-way and easements. Notwithstanding the foregoing, an Owner may from time to time modify or relocate the Easement Area so long as such modification or relocation does not substantially interfere with the rights granted to other Owners as set forth herein.

4. **Maintenance of Easement Area.** Each Owner, at its sole expense, shall maintain the Easement Area located on its Parcel and all Improvements to such Easement Area including, without limitation, all paved areas, curbs and landscaping, in a safe, clean and attractive condition and shall keep the Easement Area located on its Parcel free from any accumulations of dirt, trash and other debris.

5. Indemnification. Each Owner (the "Indemnifying Owner") shall indemnify, defend and hold the other Owners, and their respective agents, employees and Affiliates harmless from and against any and all losses (including loss of use), costs, expenses, claims, demands, suits, actions, judgments, orders, injuries or damages, including without limitation reasonable attorneys' fees, as well as bodily injury, death and property damage claims, arising directly or indirectly out of the negligence or willful misconduct of (a) the Indemnifying Owner, (b) the Indemnifying Owner's tenants, licensees, employees, agents or contractors and/or (c) any person utilizing the Easement Area pursuant to the express or implied permission of the Indemnifying Owner.

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

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

6.2 Covenants Run with Land; Various Events.

6.2.1 Covenants Run with Land. Each right-of-way, 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 Property concerned to the extent that such portion is affected or bound by the right-of-way, easement, covenant or restriction in question, or to the extent that such right-of-way, easement, covenant or restriction is to be performed on such portion, 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 Parcel 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 such Parcel, such transferring Owner shall be released and discharged from all obligations under this Declaration that accrue after 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 all Parcels by the same Person shall not result in the termination of this Declaration unless such Owner terminates this agreement and records a copy of such termination in the Official Records of Weber County.

7. Modification. This Declaration and any right-of-way, 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; provided, however, that no such termination, extension, modification or amendment shall affect the rights of any Mortgagee holding a Mortgage constituting a lien on any Parcel unless such Mortgagee consents to the same in writing.

8. 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 party shall be entitled to recover from the other party 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 party is entitled.

9. 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 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.

10. Recitals and Exhibits. The Recitals set forth above and the exhibits attached hereto are hereby incorporated into this Declaration by this reference.

11. Duration. This Declaration and each right-of-way, easement, covenant and restriction set forth in this Declaration shall be perpetual.

12. 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 Property 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.

[Signatures appear on the next page.]

IN WITNESS WHEREOF, intending to be legally bound, the Declarant has executed this Declaration as of the date and year first above written.

DECLARANT:

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

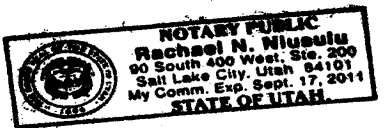
BOYER PROJECT COMPANY, L.C., a Utah limited liability company, by its Manager

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

By: [Signature]
Name: Donna M. Glenn
Its: Manager

STATE OF UTAH)
 ss.
County of SALT LAKE)

The foregoing instrument was acknowledged before me this 5th day of ~~September~~ ^{October}, 2009, by Donna M. Glenn, the manager of The Boyer Company, L.C., a Utah limited liability company, the manager of Boyer Project Company, L.C., a Utah limited liability company, the manager of Boyer GSA Warehouse, L.C., a Utah limited liability company.



Rachael Niessulu
NOTARY PUBLIC
Residing in Salt Lake City

My Commission Expires:
9-17-11

EXHIBIT A

(Legal Description of Parcels)

Parcel 1

Lot 1 of the Boyer Twelfth Street Subdivision, according to the official plat thereof, filed July 30, 2009, as Entry No. 2427157, in book 70 of Plats, at Page 28, in the office of the Weber County Recorder, Weber County, Utah

Tax Parcel Id: 15-495-0001 *jd*

Parcel 2

Lot 2 of the Boyer Twelfth Street Subdivision, according to the official plat thereof, filed July 30, 2009, as Entry No. 2427157, in book 70 of Plats, at Page 28, in the office of the Weber County Recorder, Weber County, Utah

Tax Parcel Id: 15-495-0002 *jd*

Parcel 3

Lot 3 of the Boyer Twelfth Street Subdivision, according to the official plat thereof, filed July 30, 2009, as Entry No. 2427157, in book 70 of Plats, at Page 28, in the office of the Weber County Recorder, Weber County, Utah

Tax Parcel Id: 15-495-0003 *jd*