

Ent 364139 Bk 1024 Pg 1101-1111
ELIZABETH M PALMIER, Recorder
WASATCH COUNTY CORPORATION
2010 NOV 02 12:13pm Fee 35.00 JP
FOR LANDMARK TITLE COMPANY
ELECTRONICALLY RECORDED

WHEN RECORDED, MAIL TO:

Wade Williams
The Boyer Company
90 West 400 South, Suite 200
Salt Lake City, Utah 84101

CROSS ACCESS AND TEMPORARY CONSTRUCTION EASEMENT,
TERMINATION OF RIGHT-OF-WAY AND RIGHT OF FIRST REFUSAL AGREEMENT

THIS CROSS ACCESS AND TEMPORARY CONSTRUCTION EASEMENT, TERMINATION OF RIGHT-OF-WAY AND RIGHT OF FIRST REFUSAL AGREEMENT ("Agreement") is made effective as of the 30th day of September, 2008 by and between BOYER HEBER CITY, L.C., a Utah limited liability company ("Boyer") and RITA'S FINE MEXICAN FOOD, INC, a Wyoming corporation ("Don Pedro").

WHEREAS, Boyer owns a certain parcel of real property located in Wasatch County, Utah as described on attached Exhibit "A" (the "Boyer Property"); and

WHEREAS, Don Pedro owns a certain parcel of real property located in Wasatch County, Utah as described on attached Exhibit "B" (the "Don Pedro Property"); and

WHEREAS, SFP-B LIMITED PARTNERSHIP ("Schwab") owns a certain parcel of real property located in Wasatch County, Utah as described on attached Exhibit "C" (the "Schwab Property"); and

WHEREAS, the Don Pedro Property is benefited by a certain right-of-way over and across the Boyer Property, as described on attached Exhibit "D" (the "Right-of-Way"), which currently provides access to U.S. Highway 40 from the Don Pedro Property; and

WHEREAS, the Utah Department of Transportation will be modifying U.S. Highway 40 which will include closure of the access point to the Don Pedro Property provided by the Right-of-Way; and

WHEREAS, Don Pedro desires to terminate the Right-of Way and obtain access to U.S. Highway 40 pursuant to the easement granted herein; and

WHEREAS, Boyer and Don Pedro desire to create a cross access easement for ingress and egress across portions of the parties' respective properties for the benefit of the other parties' property as more fully described and on the terms and conditions set forth below; and

WHEREAS, the parties further desire to enter into an agreement whereby Don Pedro will grant Boyer a temporary easement to allow Boyer to enter on to the Don Pedro Property for the purpose of constructing improvements to parking, drive aisles and landscaped areas; and

WHEREAS, the parties further desire to enter into an agreement whereby Don Pedro will grant Boyer a right of first refusal to purchase the Don Pedro Property,

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant, grant and agree as follows:

1. Termination of Right-of-Way. The Right-of-Way described on attached Exhibit "D" is hereby terminated.

2. Easements.

(a) Boyer Property Access Easement. Boyer hereby grants to Don Pedro, a perpetual, non-exclusive easement for vehicular and pedestrian access, ingress and egress by invitees and guests of the Don Pedro Property, over and across those portions of Boyer Property which are now improved, or will be improved with roadways, as shown on the Site Plan attached hereto as Exhibit "E" (the "Boyer Property Easement"). The Boyer Property Easement shall not apply to any portion of Boyer Property upon which a building or other improvements are located or constructed pursuant to any applicable permits and approvals of the governing municipality nor shall it apply to any portion of Boyer Property consisting of vehicle parking or landscaped areas. The Boyer Property Easement shall burden the Boyer Property and shall be for the benefit of and appurtenant to the Don Pedro Property. Boyer has previously granted to Schwab a non-exclusive easement over the same Boyer Property Easement area.

(b) Don Pedro Property Easement. Don Pedro hereby grants the following easements:

(i) To Boyer and Schwab: A perpetual, non-exclusive easement for vehicular and pedestrian access, ingress and egress by invitees and guests of the Boyer Property and the Schwab Property, over and across those portions of the Don Pedro Property which are now improved, or will be improved with roadways, as shown on the Site Plan attached hereto as Exhibit "E";

(ii) To Boyer: A temporary non-exclusive easement over and across the Don Pedro Property, as shown on the Site Plan attached hereto as Exhibit "E", as may be necessary for Boyer's construction of improvements to parking, drive aisles and landscaped areas. Boyer agrees that it shall construct all such improvements within twelve (12) months from the date of this Agreement. Boyer shall obtain all governmental approvals necessary for such construction and perform such construction in compliance with all applicable laws, rules and regulations. Don Pedro shall have the right to approve all plans relating to such construction. This temporary easement shall terminate upon the earlier of (1) completion of the above-described improvements, or (2) twenty-four (24) months from the date of this Agreement.

The above-described easements are collectively referred to herein as the "Don Pedro Property Easement"). The Don Pedro Property Easement shall not apply to any portion of the Don Pedro Property upon which a building or other improvements are located or constructed pursuant to any applicable permits and approvals of the

governing municipality nor shall it apply to any portion of the Don Pedro Property consisting of vehicle parking or landscaped areas. The Don Pedro Property Easement shall burden the Don Pedro Property, and shall be for the benefit of and appurtenant to the Boyer Property and the Schwab Property.

(c) Easement Areas. The Boyer Property Easement and Don Pedro Property Easement are collectively referred to herein as the "Easement Areas".

(d) Parking and Placement. The easements granted herein do not include parking easements and do not preclude the placement by the owners of the Boyer Property or the Don Pedro Property of raised landscaping, curbs, parking bumpers or raised sidewalks on their respective properties so long as reasonable vehicular and pedestrian access along the common boundary between the respective properties is maintained as a general driveway and accessway between the properties in substantial conformity to the layout approved by Heber City as currently shown on the Site Plan attached hereto as Exhibit "E".

(e) Maintenance and Improvements. Each party, at its sole cost and expense, shall maintain, repair and construct improvements as may be reasonably necessary to maintain the easement area on its property in a manner consistent with the first-class nature, use and occupancy of the properties as an integrated retail and integrated commercial development.

(f) No Barriers. Except for landscaping, curbing and other common area and common facility improvements as may be required by municipalities, no walls, fences or barriers of any kind shall be constructed or maintained on the Easement Areas, or any portions thereof, by any party which shall prevent or impair the use or exercise of the easements granted herein, or the free access and movement, including without limitation, of pedestrians and vehicular traffic across the Easement Areas; provided, however, reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic may be installed so long as the Easement Areas are not unreasonably closed or blocked. The only exceptions to this provision shall be for (i) incidental, temporary encroachments upon the Easement Areas which may occur as a result of the use of the ladders, scaffolding, barricades and similar facilities, (ii) incidental, immaterial and temporary encroachments upon the Easement Areas which may occur in conjunction with the construction, maintenance or repair of buildings and improvements, provided such construction, maintenance or repair is being diligently pursued, or (iii) temporary blockage of certain areas deemed necessary by the parties to prevent a public dedication of an easement or access right.

3. Right of First Refusal. Subject to Don Pedro's right to sell or otherwise convey the Don Pedro Property to a related individual or entity, Don Pedro hereby grants Boyer the right of first refusal to purchase the Don Pedro Property. In the event Don Pedro elects to sell the Don Pedro Property to an unrelated individual or entity, Don Pedro shall provide written notice to Boyer of any acceptable offer to purchase Don Pedro may receive (the "Offer to Purchase"). Such written notice shall include all of the terms and conditions contained in the Offer to Purchase. Boyer shall have thirty (30) days from the date of Don Pedro's notice in which to match the terms and conditions contained in the Offer to Purchase.

4. Limited Representations and Warranties. Each party represents and warrants to the other that it is the owner of its respective property, that it has authority to grant the easement contained herein without the need for any notice to, consent of or subordination by, any other person or entity, and that such easement is free and clear of all liens, encumbrances and restrictions except those appearing of record.

5. Indemnity.

(a) By Boyer. Boyer hereby agrees to indemnify, defend and hold Don Pedro harmless from and against any claims, liabilities, damages or costs (collectively "Claims") arising out of or relating to the use of the Don Pedro Property Easement by Boyer, its invitees, guests or customers unless and to the extent that such Claims are the result of the negligence of Don Pedro, its their invitees, guests or customers.

(b) By Don Pedro. Don Pedro hereby agrees to indemnify, defend and hold Boyer harmless from and against any Claims arising out of or relating to the use of the Boyer Property Easement by Don Pedro, its invitees, guests or customers unless and to the extent that such Claims are the result of the negligence of Boyer, its invitees, guests or customers.

6. Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Easement Areas to the general public or for the general public or for any public purposes whatsoever, it being the intention of the parties that this Agreement be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Easement Areas or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of the parties. Notwithstanding any other provisions herein to the contrary, the parties may periodically restrict ingress and egress from the Easement Areas on their respective properties in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such at time as to have a minimum effect on the parties.

7. Insurance. The parties covenant and agree to maintain in full force and effect at all times a policy of commercial general liability insurance (including coverage for contractual liability hereunder) with a liability limit in an amount reasonably agreed upon by the parties, but at least One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate, but not less than an amount which is customary and reasonable for the activities of the type conducted by the parties on their respective properties. Upon request at any time, the parties shall deliver to each other a certificate of insurance evidencing the coverage required to be maintained hereunder; and each such certificate shall provide that the policy coverage shall not be modified or terminated without providing at least thirty (30) days prior written notice to the other parties.

8. No Merger. The easements granted herein shall not be extinguished based on merger of the title or common ownership of the Boyer Property or the Don Pedro Property unless expressly terminated by the owners of the Boyer Property and the Don Pedro Property by recorded instrument.

9. Miscellaneous.

(a) Covenants Running with the Land. This Agreement and all of the terms and conditions contained herein shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns, and shall be "covenants running with the land".

(b) Duration. The easements, rights and privileges created herein shall continue for a period of fifty (50) years and thereafter for successive ten (10) year periods unless all parties benefiting from a specific easement execute and record a statement terminating such right within sixty (60) days of the expiration of any such period.

(c) No Waiver. A delay in enforcing or a failure to enforce any breach or violation of any restriction contained herein shall not be deemed to be a waiver or abandonment of any such restriction or a waiver of the right to enforce any subsequent breach or violation of such restriction. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) had knowledge of the breach or violation.

(d) Severability. If any one or more of the provisions of this Agreement or the applicability of any such provision to a specific situation shall be held invalid or unenforceable by a court of competent jurisdiction, the validity and enforceability of all the provisions of this Agreement and all other applications of such provisions shall not be affected thereby.

(e) Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

(f) Successors and Assigns. This Agreement shall not impair the right of any party to hereafter convey any interest in any or all of the property burdened or benefited by the easements granted herein, provided that any such conveyance is subject to this Agreement. The easements shall not be conveyed or assigned separately from the benefited property to which it is appurtenant. This Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.

(g) Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date set forth above.

[Signature Page Follows]

BOYER: BOYER HEBER CITY, L.C.,
a Utah limited liability company

By: THE BOYER COMPANY
Its: Manager

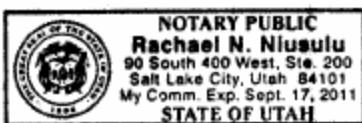
By: Don G. Boyer
Its: Manager

DON PEDRO: RITA'S FINE MEXICAN FOOD, INC.
a Wyoming corporation

By: Pedro Mena
Its: President

STATE OF UTAH
COUNTY OF SALT LAKE

On the 13th day of September 2010, personally appeared before me
Rachael N. Niisulu, who duly acknowledged to me that he executed the
foregoing Agreement as Manager, of THE BOYER COMPANY, the manager
of BOYER HEBER CITY, L.C.



Rachael N. Niisulu
Notary Public

STATE OF Wy.,
COUNTY OF Uinta

On the 1st day of September 2010, personally appeared before me
Pedro Mena, who duly acknowledged to me that he executed the foregoing Agreement as
the President of Rita's Fine Mexican Food, Inc.



MaryKim Bateman
Notary Public

8/13/2014

EXHIBIT "A"
Legal Description – Boyer Property

Lots 5 and 6 of VALLEY STATION SUBDIVISION, recorded in the State of Utah, County of Wasatch, on August 20, 2008, Book 972, Page 2269 Official Records of Wasatch County, Utah.

COURTESY RECORDING

This document is being recorded solely as a courtesy and an accommodation to the parties named therein. LANDMARK TITLE COMPANY hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.

TAX SERIAL # OVS-0005 AND # OVS-0006

EXHIBIT "B"
Legal Description – Don Pedro Property

Beginning at a point which is 393.02 feet West and North $0^{\circ}48'$ East 400 feet and East 500 feet from the Southeast corner of Section 6, Township 4 South, Range 5 East, Salt Lake Base and Meridian; and running thence West 172 feet; thence North (by survey North $0^{\circ}48'$ East) 102 feet; thence East 55 feet; thence North (by survey North $0^{\circ}48'$ East) 48 feet; thence East 117 feet; thence South $0^{\circ}48'$ West 150 feet, more or less, to the place of beginning.

The above parcel has also been described by survey as follows:

A part of the Southwest Quarter of Section 5, and the Southeast Quarter of Section 6, Township 4 South, Range 5 East, Salt Lake Base and Meridian, U.S. Survey in Wasatch County, Utah:

Beginning at a point 106.98 feet North $89^{\circ}51'40''$ East along the Section Line; and 399.74 feet North $0^{\circ}48'00''$ East from the Southwest Corner of said Section 5, Township 4 South, Range 5 East, Salt Lake Base and Meridian; and running thence West 172.00 feet; thence North $0^{\circ}48'00''$ East 102.00 feet; thence East 55.00 feet; thence North $0^{\circ}48'00''$ East 48.00 feet; thence East 117.00 feet; thence South $0^{\circ}48'00''$ West 150.00 feet to the point of beginning.

TAX SERIAL # OHE-1346

EXHIBIT "C"
Legal Description -Schwab Property

A part of the Southwest Quarter of Section 5, and the Southeast Quarter of Section 6, Township 4 South, Range 5 East, Salt Lake Base and Meridian, U.S. Survey in Wasatch County, Utah:

Beginning at the Southeast Corner of said Section 6, Township 4 South, Range 5 East, Salt Lake Base and Meridian; and running thence West 135.69 feet; thence North $37^{\circ}40'03''$ West 65.00 feet; thence Northeasterly along the arc of a 240.00 foot radius curve to the left a distance of 162.62 feet (Center bears North $51^{\circ}04'54''$ West; Central Angle equals $38^{\circ}49'20''$ and Long Chord bears North $19^{\circ}30'26''$ East 159.52 feet) to a point of tangency; thence North $0^{\circ}05'46''$ East 72.30 feet; thence North $89^{\circ}49'46''$ East 93.44 feet; thence South $0^{\circ}10'14''$ East 25.50 feet; thence North $89^{\circ}49'46''$ East 207.33 feet to the West Line of State Highway 40 as it exists at 60.00 foot half-width; thence along said West Line of the Highway the following two courses: South $0^{\circ}25'51''$ West 149.81 feet to a point of curvature; and Southwesterly along the arc of a 172.00 foot radius curve to the right a distance of 106.23 feet (Central Angle equals $35^{\circ}23'13''$ and Long Chord bears South $18^{\circ}07'27''$ West 104.55 feet) to the Section Line; thence South $89^{\circ}51'40''$ West 145.18 feet along said Section Line to the point of beginning.

Contains 80,329 sq. ft.
or 1.844 acres

TAX SERIAL # OHE-1347

EXHIBIT "D"
Legal Description – Terminated Right-Of-Way

Beginning at a point which is 505.02 feet West and North $0^{\circ}48'$ East 400 feet and East 612 feet from the Southeast corner of said Section 6, Township 4 South, Range 5 East, Salt Lake Base and Meridian; thence North $0^{\circ}48'$ East 250.0 feet; thence East 60.0 feet to the West boundary of Highway 40; thence South along said West boundary line of Highway 40, 250.0 feet; thence West 60 feet, more or less, to the place of beginning.

EXHIBIT "E"
Site Plan

