

WHEN RECORDED, MAIL TO:

Wade Williams
The Boyer Company, L.C.
101 South 200 East, Suite 200
Salt Lake City, Utah 84111

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.

Parcel ID Nos. 00-0020-8253, OVS-0003-0-006-045
00-0020-8254, OVS-0004-0-006-045
00-0020-8256, OVS-0006-0-005-045
00-0020-8257, OVS-0007-0-007-045
00-0020-8258, OVS-0008-0-007-045
00-0009-2275, OHE-1671-0-008-045
00-0020-5661, OHE-1568-0-007-045

**AMENDMENT TO
CROSS ACCESS AND UTILITY EASEMENT AGREEMENT**

THIS AMENDMENT TO CROSS ACCESS AND UTILITY EASEMENT AGREEMENT (“**Amendment**”) is made this 21st day of September, 2017 by and between BOYER HEBER CITY, L.C., a Utah limited liability company, and HEBER GATEWAY OFFICE 1, L.C., a Utah limited liability company, whose address is 101 South 200 East, Suite 200, Salt Lake City, Utah 84111 (collectively, “**Boyer**”) and HEBER STATION, LC, a Utah limited liability company, whose address is 3762 South 150 East, Salt Lake City, Utah 84115 (“**Heber Station**”).

WHEREAS Boyer and Heber Station entered into that certain Cross Access and Utility Easement Agreement which was recorded on June 10, 2009 as Entry No. 349092 in the Official Records of Wasatch County (the “**Easement Agreement**”) against the Boyer Property and the Heber Station Property as defined in Exhibit “A” and Exhibit “B” attached to the Easement Agreement; and

WHEREAS Boyer and Heber Station desire to amend the Easement Agreement and exhibits as set forth herein,

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

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the meanings given them in the Easement Agreement.
2. Legal Description. Exhibit “A” and Exhibit “B” to the Easement Agreement, providing the legal descriptions for the Boyer Property and Heber Station Property, respectively, are hereby deleted in their entirety and replaced with the Exhibit “A” attached hereto, and incorporated by this reference.
3. Boyer Easement Area. Section 1(a) of the Easement Agreement is hereby deleted in its entirety and replaced with the following:

(a) Boyer Easement Area. Boyer hereby grants to Heber Station, a perpetual, nonexclusive easement for vehicular and pedestrian access, ingress and egress by invitees and guests of the Heber Station Property, over and across those portions of Boyer Property, which are now improved, or will be improved with driveways, as shown on the Site Plan attached hereto as Exhibit "C" ("**Boyer Easement**"), as such may be modified from time to time, provided however, that any such modification shall not unreasonably restrict access to the public road. The access to the Boyer Property will be constructed in accordance with Heber City regulations as applicable. The Boyer Easement shall not apply to any portion of the Boyer Property upon which a building or other improvement is located or constructed pursuant to any applicable permits and approvals of the governing municipality nor shall it apply to any portion of the Boyer Property consisting of vehicle parking or landscaped areas. The Boyer Easement shall burden the Boyer Property, and shall be for the benefit of and appurtenant to the owner of Heber Station Property, and its heirs successors and assigns.

4. Option to Acquire Second Access Easement. The parties acknowledge and agree that Heber Station has exercised its right to acquire the Option Access Easement granted in Section 1(c) of the Easement Agreement. Heber Station shall have no further options under the Easement Agreement. However, Heber Station's non-exclusive right for general ingress and egress over and across that portion of the Boyer Property depicted on attached Exhibit "C" as the Option Access Easement Area shall remain in full force and effect.

5. Additional Easements Granted. The Easement Agreement is hereby amended to include the following as Section 10:

10. (a) Improvements. Boyer hereby grants Heber Station and its agents, employees and contractors, a non-exclusive easement over and across that portion of the Boyer Property depicted on attached Exhibit "C" as the "**Improvement and Access Easement**") for the purpose of constructing certain improvements including, but not limited to, rough grading, asphalt, curbing and drainage systems (collectively, the "**Improvements**"), and for providing access to and from the Heber Station Property via the Boyer Easement Area as shown on Exhibit "C". Heber Station shall be solely responsible for all costs, including all permit and applicable fees, related to the design, construction and installation of the Improvements. Heber Station's plans and specifications for the Improvements shall be subject to Boyer's prior written approval which shall not be unreasonably withheld, conditioned or delayed.

(b) Gas Line. Boyer hereby grants Heber Station and its agents, employees and contractors, a non-exclusive easement over and across that portion of the Boyer Property described on attached Exhibit "B" (to be incorporated herein and replace Exhibit "B" to the original Easement Agreement) (the "**Gas Line Easement Area**") for the purpose of installing and maintaining a gas line (the "**Gas Line**") for the benefit of the Heber Station Property. Heber Station's plans and specification for the Gas Line shall be subject to Boyer's prior written approval, which

shall not be unreasonably withheld, conditioned or delayed. Heber Station, at its sole cost, shall restore the Boyer Property to substantially the same condition as existed prior to Heber Station's installation and maintenance activities. Heber Station shall be solely responsible for all costs, including all permit and applicable fees, related to installation of the Gas Line.

- (c) Indemnification. Heber Station agrees to indemnify, defend and hold Boyer and its managers, members, agents, contractors, subcontractors, tenants, employees, successors and assigns harmless from and against any claims, including but not limited to personal injury or property damage, liability, damages or costs, including but not limited to attorneys' fees and costs ("**Claims**") arising out of or relating to or in connection with the Improvements and/or the Gas Line unless caused by the Boyer's negligence or misconduct.
- (d) Maintenance.
 - (i) Heber Station shall at all times be solely responsible for maintaining the Gas Line.
 - (ii) Until such time as Boyer constructs a building and parking facilities on the Boyer Property, Heber Station shall be solely responsible for maintaining the Improvements. When Boyer constructs a building and parking facilities on the Boyer Property, Boyer shall be responsible for maintaining the Improvements and Heber Station shall reimburse Boyer for one-half (1/2) of all costs of such maintenance.

6. Ingress and Egress to Heber Station Property. The Easement Agreement is hereby amended to include the following as Section 11:

- 11. Ingress and Egress to Heber Station Property. Heber Station has been unable to obtain a permit from the Utah Department of Transportation for construction of an access for ingress onto the Heber Station Property from the adjacent highway. Boyer hereby acknowledges and agrees that only an access for egress from the Heber Station Property, as shown on attached Exhibit "C", is, or will be constructed, on the Heber Station Property and that ingress to the Heber Station Property will be made pursuant to the Boyer Easement, the Improvement and Access Easement and the Option Access Easement shown on Exhibit "C" attached hereto. Heber Station has already granted Boyer the right to an easement over the Heber Station Property Easement, which Boyer may use for egress from the Boyer Property. If at any time Heber Station obtains ingress onto the Heber Station Property from the adjacent highway, Boyer shall have the right to utilize such ingress.

7. Depiction of Easement Areas. The depiction of the Easement Areas attached as Exhibit "C" to the Easement Agreement is hereby deleted in its entirety and replaced with Exhibit "C" attached

hereto, depicting the Boyer Easement Area, Heber Station Property Easement Area, Option Access Easement Area, and Improvement and Access Easement Area.

8. Remaining Provisions. Except as otherwise expressly set forth herein, the Easement Agreement is hereby ratified and confirmed and remains in full force and effect.

IN WITNESS WHEREOF the parties have executed this Amendment as of the date set forth above.

[Signature Pages and Lender Consent Follow]

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


By: THE BOYER COMPANY, L.C.
Its: Manager



By: Brian Gochnour
Its: Manager

HEBER GATEWAY OFFICE 1, L.C.
a Utah limited liability company

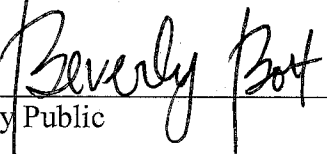
By: THE BOYER COMPANY, L.C.
Its: Manager



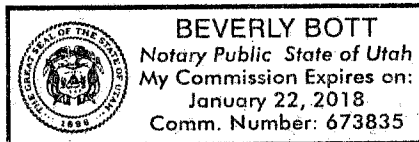
By: Brian Gochnour
Its: Manager

STATE OF UTAH
COUNTY OF SALT LAKE

On the 18th day of September 2017, personally appeared before me Brian Gochnour, who duly acknowledged to me that he executed the foregoing document as manager of THE BOYER COMPANY, L.C., the manager of BOYER HEBER CITY, L.C.

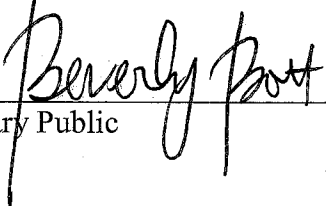


Notary Public

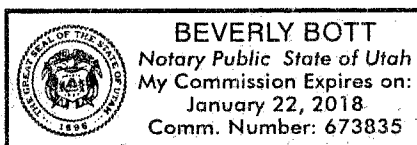


STATE OF UTAH
COUNTY OF SALT LAKE

On the 18th day of September 2017, personally appeared before me Brian Gochnour, who duly acknowledged to me that he executed the foregoing document as manager of THE BOYER COMPANY, L.C., the manager of HEBER GATEWAY OFFICE 1, L.C.

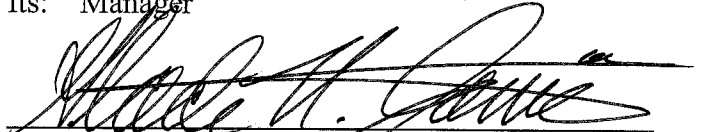


Notary Public



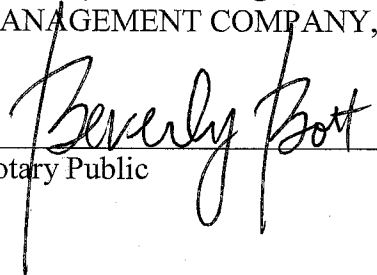
HEBER STATION, LC
a Utah limited liability company

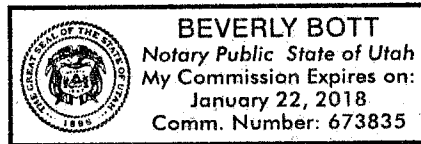
By: JAMES MANAGEMENT COMPANY, LC
Its: Manager


By: GLADE N. JAMES
Its: PRESIDENT

STATE OF UTAH
COUNTY OF SALT LAKE

On the 15th day of September 2017, personally appeared before me GLADE N. JAMES, who duly acknowledged to me that he executed the foregoing document as manager of JAMES MANAGEMENT COMPANY, LC, the manager of HEBER STATION, LC.


Notary Public



CONSENT AND SUBORDINATION BY LENDER

As of the date set forth below, the undersigned "Lender", as the holder of an indebtedness encumbering the Boyer Property arising under the following document (including all amendments and/or modifications thereto):

Deed of Trust with absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated March 28, 2008, executed by BOYER HEBER CITY, L.C., a Utah limited liability company, and BOYER HEBER LAND, L.C., a Utah limited liability company, as Trustors, and WELLS FARGO BANK NATIONAL ASSOCIATION, a national banking association, as Beneficiary and LANDMARK TITLE COMPANY, as Trustee, recorded April 4, 2008 as Entry No. 334157 in Book 963 at Page 2397 of the Official Records of the Wasatch County Recorder;

hereby consents to the recording of this Amendment (and the original Easement Agreement referenced herein) and agrees that the indebtedness evidenced by, and all other rights and interests of the Lender and its successors and assigns arising under, the foregoing documents shall be and are hereby subordinated to the easements described herein.

WELLS FARGO BANK NATIONAL ASSOCIATION,
a national banking association

Ben Bliss

By: Ben Bliss

Its: Vice President

Date: 9/21/17

STATE OF Utah
COUNTY OF Salt Lake

On the 21st day of Sept 2017, personally appeared before me Ben Bliss, who duly acknowledged to me that he executed the foregoing document as VP of WELLS FARGO BANK NATIONAL ASSOCIATION.

Ranae Darman
Notary Public

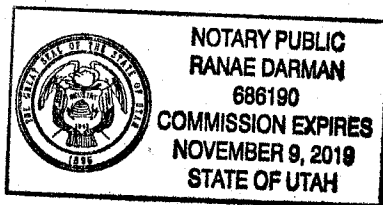


EXHIBIT "A"

Legal Description – Boyer Property and Heber Station Property

Boyer Property:

Lots 3, 4, 6, 7 and 8 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.

Heber Station Property (Final Overall Glade James Boundary):

A part of the Northeast Quarter of Section 7, and the Northwest Quarter of Section 8, Township 4 South, Range 5 East, Salt Lake Base & Meridian, U.S. Survey in Wasatch County, Utah:

Beginning at the Northwest Corner of said Section 8; and running thence North 89°51'40" East 135.73 feet along the Section Line to the Northwesterly Line of U.S. Highway 189 as it is to be widened; thence along said Northwesterly Line the following two courses: Southwesterly along the arc of 523.50 foot radius curve to the left a distance of 117.75 feet (Center bears South 29°40'08" East; Central Angle equals 12°53'14" and Long Chord bears South 53°53'15" West 117.50 feet) to a point of tangency; and South 47°26'38" West 83.75 feet; thence North 37°48'38" West 158.94 feet; thence East 118.32 feet to the point of beginning. Contains 15,135 sq. ft.

EXHIBIT "B"Description of Gas Line Easement Area

Gas Easement Narrative:

The gas easement is from the US Highway 189 right-of-way to the centerline of the 26 foot access and utility easement in Valley Station along the east lot lines for Valley Station Lots 7 and 8. The gas easement is 10 feet in width.

Easement Description

BEGINNING AT THE FOUND MONUMENT FOR THE NORTHEAST CORNER OF SECTION 7, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN. THENCE SOUTH 00°06'02" EAST 106.22 FEET ALONG THE SECTION LINE TO A POINT ON THE HIGHWAY RIGHT-OF-WAY FOR US HIGHWAY 189; THENCE SOUTH 47°26'38" WEST 28.61 FEET ALONG THE RIGHT-OF-WAY TO A POINT ON LOT 7 OF THE VALLEY STATION SUBDIVISION, SAID POINT BEING THE TRUE POINT OF BEGINNING FOR THE GAS EASEMENT;

THENCE FOLLOWING THE EAST LOT LINE OF VALLEY STATION LOTS 7 AND 8 THE FOLLOWING FOUR (4) COURSES TO THE CENTERLINE OF A 26.0 FOOT ACCESS AND UTILITY EASEMENT. SAID EASEMENT IS 10 FEET IN WIDTH FROM THE EAST LOT LINE;

THENCE NORTH 37°48'38" WEST 117.07 FEET ALONG THE EAST LINE OF LOT 7;
THENCE NORTH 37°48'38" WEST 41.87 FEET ALONG THE EAST LINE OF LOT 8;
THENCE WEST 17.36 FEET ALONG THE EAST LINE OF LOT 8;
THENCE NORTH 37°40'03" WEST 90.79 FEET ALONG THE EAST LINE OF LOT 8 TO THE CENTERLINE OF A 26.0 FOOT ACCESS AND UTILITY EASEMENT.

EXHIBIT "C"
Site Plan

300 West Street

Ent 443351 Bk 1202Pg 1758

1300 South Street

Walmart

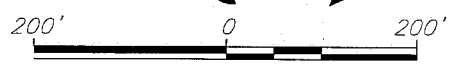
1000 South Street

U.S. Highway 189

Improvement and Access Easement Area
Option Access Easement Area
Boyer Easement Area

Heber Station Property Easement Area

U.S. Highway 40



AWA

ANDERSON WAHLEN & ASSOCIATES

2010 North Redwood Road, Salt Lake City, Utah 84116
801.521-8529 - AWAengineering.net

Exhibit C

Valley Station

U.S. Highway 189 and Highway 40
Heber City, Utah

Sheet No.

EX-C

Designed By: DA

Drafted By: DC

Client Name:
Boyer Company
13-126 Exhibit C

23 Aug, 2017