

**AFTER RECORDING, PLEASE RETURN TO:**  
Pattie S Christensen, Esq  
12903 S 300 E  
Draper, Utah 84020

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3/7/2016 2:37:00 PM \$51.00  
Book - 10409 Pg - 1022-1038  
Gary W. Ott  
Recorder, Salt Lake County, UT  
LANDMARK TITLE  
BY: eCASH, DEPUTY - EF 17 P.

Parcel Nos.: 16-05-308-003; 16-05-308-007; 16-05-308-041  
16-05-308-042; 16-05-308-043;  
16-05-308-044; 16-05-308-048;  
16-05-308-057; 16-05-308-063

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*Space above for Recorder's Use*

### **DECLARATION OF EASEMENT**

THIS DECLARATION OF EASEMENT (the "**Declaration**") is executed this 24th day of February, 2016, by **LIBERTY BLVD ASSOCIATES, LLC**, a Utah limited liability company ("**Liberty**") and **DON C HALE INVESTMENT COMPANY, LLC**, a Utah limited liability company ("**DCHI**") formerly known as Don C. Hale Investment Company, a Utah limited partnership.

#### **RECITALS:**

A. Liberty owns the Housing Parcel. All capitalized terms in this Declaration not defined above are defined in Section 1 below.

B. DCHI owns the DCHI Parcel. The DCHI Parcel is improved with a building which is operated using the name "Litza's Pizza".

C. DCHI has encroached upon the Housing Parcel for the support of and placement of a small portion of the building located upon the DCHI Parcel and notwithstanding the encroachment, Liberty is willing to grant an easement for such encroachment in accordance with the terms of this Declaration.

D. Liberty intends to develop the Housing Parcel and has requested from DCHI temporary construction easements.

E. Liberty and DCHI desire to establish with respect to the Parcels, certain rights and easements on the terms and conditions set forth in this Declaration.

NOW, THEREFORE, for the foregoing purposes, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Liberty and DCHI make the following declarations, create the following easements and establish the following covenants, all of which apply to, bind, affect and run with title to each Parcel.

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

**“Benefitted Parties”** means, with respect to a Parcel, the Owner and Occupants of such Parcel and their respective contractors, agents, employees, customers, guests and invitees.

**“Construction Easement Area”** means the following two areas: (a) the area designated as the “Litza’s Easement” on “Exhibit “D” attached hereto, and intended to cover the roof of the building occupied by Litza’s Pizza, running roughly 100 feet north to south along the west boundary of the Housing Parcel (the “Litza’s Easement”) and (b) the area south of the Litza’s Pizza building along the west boundary of the Housing Parcel designated as the “Demolition Easement” on Exhibit “D” attached hereto, and being ten feet in width and west of the common property line between the Housing Parcel and the DCHI Parcel (herein the “Demolition Easement”), both areas as more particularly described on Exhibit “D” attached hereto and incorporated herein.

**“DCHI Parcel”** means that certain parcel of real property located in Salt Lake County, Utah as more particularly described on Exhibit “B” attached hereto.

**“Demolition Easement”** means a portion of the Construction Easement Area as defined in the Construction Easement Area.

**“Demolition Easement Use Hours”** means the hours of midnight to 10:00 a.m. on all days of the week other than Sunday, and for Sunday, all hours of the day beginning at midnight extending to the following midnight.

**“Encroachment Area”** means the area Encroachment Area located on the Housing Parcel and depicted on Exhibit “A-1” attached hereto and described on Exhibit “A-2” attached hereto. The encroachment into the Housing Parcel shall not exceed 0.2 feet and the height of the Encroachment Area above the improved surface is limited to sixteen (16) feet. Notwithstanding any other provision of this Declaration, Liberty reserves the right to use and construct buildings and improvements in the air space above the Encroachment Area, subject to compliance with applicable laws and ordinances.

**“Housing Parcel”** means that certain parcel of real property located in Salt Lake County, Utah as more particularly described on Exhibit “C” attached hereto and incorporated herein by this reference.

**“Litza’s Easement”** means a portion of the Construction Easement Area as defined in the Construction Easement Area.

**“Mortgage”** means a recorded mortgage, deed of trust, fixture filing or other security agreement creating and/or perfecting a lien on a Parcel or a portion of a Parcel as security for the payment of indebtedness.

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

“**Official Records**” means the record and copies of all recorded documents and instruments maintained by the Salt Lake County Recorder

“**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 Parcel or any portion of a Parcel.

“**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 Parcel or portion of a Parcel. In the event that, at any time, there is more than one Owner of a Parcel, 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 or law 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 Parcel encumbered by a Mortgage pursuant to foreclosure, trustee's sale or any deed, agreement, arrangement or proceeding in lieu thereof. Except as set forth above in this definition, a ground lessee or other long term tenant shall not be deemed to be an Owner for purposes of this Declaration.

“**Parcel**” means any one of the Parcels.

“**Parcels**” means the DCHI Parcel and the Housing Parcel.

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

2. Grant of Easement. Liberty hereby creates the following easement with respect to the Housing Parcel for the benefit of the Benefitted Parties of the DCHI Parcel, which easement shall be appurtenant to the DCHI Parcel:

(a) Encroachment Easement. Liberty creates a non-exclusive easement under and across the surface of the Encroachment Area for placement, support, maintenance and operation of the existing building for the benefit of the Benefitted Partners which building is primarily located upon the DCHI Parcel.

(b) Term of Encroachment Easement. The Encroachment Easement shall run in perpetuity.

(c) No Public Dedication. The easement, rights and privileges created in this Section 2 are not intended, and shall not be construed, as a dedication of any portion of the Housing Parcel for public use, and the Owner of the Housing Parcel shall have the right to take from time to time whatever steps as may be necessary to avoid such dedication.

DCHI acknowledges that Liberty or its successor-in-interest intends to construct a building or

buildings on the Housing Parcel which will most likely be used for multi-family housing but which may be used for other purposes. The Encroachment Area will be part of the setback area related to such building or buildings, and will otherwise be used for fire and emergency access and for maintenance access to such building or buildings. DCHI shall use commercially reasonable efforts to avoid any adverse impact to the day-to-day use of the Housing Parcel by Liberty or its successors and their respective Occupants. The Owner of the Housing Parcel shall have the right to construct and maintain footings, foundations and utility lines above or below the surface of the Encroachment Area so long as such owners do not damage the existing building noted in Section 2(b) above but such utility lines shall not interfere with the use of the Encroachment Area except for short periods required to install, maintain or replace such improvements and utility lines.

3. Construction Easement.

(a) DCHI hereby creates and grants to Liberty for the benefit of the Benefitted Parties of the Housing Parcel, and subject to the further provisions contained herein, a non-exclusive temporary construction easement across, over and under the Construction Easement Area for purpose of facilitating construction of improvements upon the Housing Parcel. With respect to the Litza's Easement, the temporary construction easement is limited to (i) the placement of protection materials upon the roof of the Litza's Pizza building to provide protection during construction upon the Housing Parcel (work on the surface of the building limited to placing and removing such protection materials), and (ii) using boom lifts and scaffolding in the air space over the Litza's Pizza building (which may be stabilized in part by the Litza's Pizza building) in order to perform construction activities upon the Housing Parcel. With respect to the Demolition Easement, the temporary construction easement may only be utilized during Demolition Easement Use Hours and is limited to (i) installing temporary barricades on the west of the Demolition Easement to create a safety area during the demolition of the existing building upon the Housing Parcel; (ii) upon completion of demolition the installation of a temporary fence along the common property line between the Housing parcel and the DCHI Parcel, (iii) excavation upon and below the surface of the Demolition Easement only at the common property line between Liberty and DCHI and any destruction or disturbance by Liberty of DCHI's parking stalls west of the common property line shall be repaired (limited to a temporary repair if circumstances do not reasonably permit a permanent repair) the same day as the destruction or disturbance so as to allow DCHI's parking stalls to be operational for its business purposes (not including the footprint of the building in which Litza's Pizza is located) to remove retaining walls, foundations and/or footings other improvements currently located upon the property boundary line or which may encroach beyond the property boundary line; and (iv) any incidental use of the Demolition Easement while installing a permanent fence upon the property boundary line during construction of the Project. At the end of each period of use during the Demolition Easement Use Hours, all barricades, debris, and dirt shall be removed from the Demolition Easement to permit the use of the DCHI Parcel by DCHI or its authorized tenants. Upon the completion of the construction work, repairs and restoration of the Construction Easement as specified in Section 3(c) below, the temporary construction easement granted herein shall automatically terminate for all areas, except to the extent of any minimal encroachment needed for the construction of the permanent fence. Upon the installation of such fence all aspects of the temporary construction easement granted herein shall terminate.

(b) Liberty's contractor shall conduct a coordination meeting with a representative of DCHI on a weekly basis during periods of potential use of the Construction Easement Area to coordinate and advise DCHI of the anticipated work in the Construction Easement Area.

(c) Liberty shall be solely responsible for the repair of the Construction Easement Area on a day to day basis such that DCHI remains fully operational at all times for its business purpose, including but not limited to (i) repairs to the roof or other components of the building in which Litza's Pizza is located, which repairs are necessitated by the acts or omissions of Liberty, as the Owner of the Housing Parcel, or its agents; (ii) the replacement of any utilities that may have been displaced, (iii) the replacement and grading of soil to the original elevations, and (iv) for areas damaged by construction or demolition, paving or patching of the parking lot area located within the Construction Easement Area with asphalt to a condition that was equal to or better than the condition which exists as of the date of this Amendment. To the extent that only temporary repairs can be made, Liberty shall be responsible to make all final repairs as soon as conditions permit.

(d) In the event that DCHI asserts that Liberty or its contractor has breached any of the terms of this Section 3 with respect to the use of the Litza's Easement or the Demolition Easement, DCHI shall provide to Liberty written notice of such alleged breach. Liberty shall have two (2) days to cure such breach after receiving notice pursuant to Section 10 below. If Liberty breaches the terms of this Section 3 more than three (3) times with accompanying notice, DCHI shall have the right to terminate the Construction Easement and may not terminate the remaining provisions of this Declaration. In the event that DCHI elects to terminate the Construction Easement as a result of these three (3) breaches and notices, DCHI shall provide five (5) day's prior notice of termination to Liberty which notice shall be binding upon Liberty.

4. Title and Mortgage Protection. No amendment to this Declaration shall in any way 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. 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 Parcel. 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 deed, 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.

5. Disclaimer of Interest in Other's Parcels. DCHI disclaims any interest in and to the Housing Parcel (except for the Easement granted to DCHI as provided in Section 2 above) or the right to encroach upon the same and hereby quit claims to Liberty its interest, if any, in and to the

Housing Parcel. DCHI acknowledges that except for the easement created by Section 2 of this Declaration, neither it nor any other Person has (a) the right to pedestrian, vehicular or utility access to and/or from the DCHI Parcel across the Housing Parcel, or (b) the right to encroach upon any portion of the Housing Parcel. Liberty disclaims any interest in and to the DCHI Parcel (except for the Construction Easement granted to Liberty as provided in Section 3 above) or the right to encroach upon the same and hereby quit claims to DCHI its interest, if any, in and to the DCHI Parcel. Liberty acknowledges that except for the Construction Easement created by Section 3 of this Declaration, neither it nor any other Person has (a) the right to pedestrian, vehicular or utility access to and/or from the Housing Parcel across the DCHI Parcel, or (b) the right to encroach upon any portion of the DCHI Parcel.

6. Amendment or Termination; Duration of Declaration. Except as provided in Section 2(b), this Declaration may be amended or terminated by, but only by, an instrument filed for record in the Official Records that is executed by all of the Owners of all of the Parcels. In the event one or more of the conditions set forth in Section 2(b) has occurred, the Owner of the Housing Parcel may record a document in the Official Records to provide notice of the same.

7. Covenants to Run with Land. This Declaration and the easement and covenants created by this Declaration are intended by the parties to be and shall constitute covenants running with the land as to each of the Parcels, and shall be binding upon and shall inure to the benefit of each Owner any Person who acquires or comes to have any interest in any Parcel or portion thereof, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. Each Owner shall comply with, and all interests in all Parcels shall be subject to, the terms of this Declaration. By acquiring, in any way coming to have an interest in, or occupying a Parcel or portion thereof, the Person so acquiring, coming to have such interest in, or occupying a Parcel or portion thereof, shall be deemed to have consented to, and shall be bound by, each and every provision of this Declaration.

8. Enforcement. The Owner of a Parcel or any portion of a Parcel 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 or arbitration (provided that no lender or insurer to the interest of an Owner shall be required to arbitrate any dispute) 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.

9. 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.

10. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally mailed via first class mail and/or email, and shall be deemed received upon the date of receipt thereof if received prior to 5:00 p.m. (Utah local time) of the recipient's business day, and if not so received, shall be deemed received upon the following business day.

To Liberty: Liberty Blvd Associates  
c/o Cowboy Properties, L.C.  
6440 South Wasatch Blvd., Suite 100  
Holladay, Utah 84121  
Email address: [safford@cowboy.us](mailto:safford@cowboy.us) and [mcornelius@cowboy.us](mailto:mcornelius@cowboy.us)

To DCHI: Don C. Hale Investments, LLC  
PO BOX 902020  
Sandy, Utah 84090-2020  
Email address: [mark@hiresbigh.com](mailto:mark@hiresbigh.com)

Notice of change of address shall be given by written notice in the manner detailed in this Section 10.

11. Miscellaneous.

(a) 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.

(b) Pronouns and Plurals. Whenever the context 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.

(c) 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.

(d) Exhibits. All exhibits attached to this Declaration are hereby expressly made a part of and incorporated into this Declaration by reference as fully as though completely set forth in this Declaration.


(e) Time of Essence. Time is of the essence of this Declaration.






"DCHI"

DON C HALE INVESTMENT COMPANY, LLC, a  
Utah limited liability company

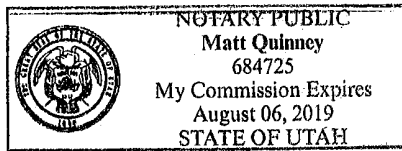
By:   
Jon Martin Hale  
Manager

And By:   
Mark Robert Hale  
Manager

STATE OF UTAH

COUNTY OF SALT LAKE

)  
: SS.  
)



The foregoing instrument was acknowledged before me this 24 day of February, 2016 by  
Jon Martin Hale and Mark Robert Hale, Managers of Don C Hale Investment Company, LLC, a Utah  
limited liability company.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year  
in this certificate first above written.

  
NOTARY PUBLIC

My Commission Expires: 8/6/19

**EXHIBIT "A-1"**

**TO**

**DECLARATION OF EASEMENTS**

Depiction of Encroachment Easement Area

[Attached]



**EXHIBIT "A-2"**

**TO**

**DECLARATION OF EASEMENTS**

Legal Description of Encroachment Area

Beginning at a point on the Southerly right of way line of 400 South Street, said point being North 0°01'56" East 5.00 feet from the Northeast corner of Lot 5, Block 31, Plat "B", Salt Lake City Survey; thence South 0°01'56" East 100 Feet, along the easterly line of said Lot 5; thence N 89°56'45" East 0.2 feet; then North 0°01'56" West approximately 100 feet to the southerly right of way line of 400 South Street; then N 89°56'41" West 0.2 feet to the point of beginning.

**EXHIBIT "B"**

**TO**

**DECLARATION OF EASEMENTS**

Legal Description of DCHI Parcel

Parcel No. 16-05-308-003:

Commencing at the Northeast corner of Lot 5, Block 31, Plat B, Salt Lake City Survey, and running thence North 5 feet; thence West 3 rods; thence South 120.5 feet; thence East 3 rods; thence North 7 rods to the point of beginning.

Parcel No. 16-05-308-007:

Beginning 4 rods North from the Southwest corner of Lot 5, Block 31, Plat B, Salt Lake City Survey, and running thence North 3 rods; thence East 10 rods; thence South 3 rods; thence West 10 rods to the point of beginning.

Parcel No. 16-05-308-041:

Beginning 90.5 feet East from the Northwest corner of Lot 5, Block 31, Plat B, Salt Lake City Survey, and running thence North 5 feet; East 25 feet; South 5 feet; and West 25 feet to the point of beginning.

Parcel No. 16-05-308-042:

Beginning 90.5 feet East from the Northwest corner of Lot 5, Block 31, Plat B, Salt Lake City Survey, and running thence South 99 feet; thence East 25 feet; thence North 99 feet; thence West 25 feet to the point of beginning.

Parcel No. 16-05-308-043:

Beginning 4.5 feet North from the Northwest corner of Lot 4, Block 31, Plat B, Salt Lake City Survey, and running thence North 61.5 feet; thence East 165 feet; thence South 61.5 feet; thence West 165 feet to the point of beginning.

Parcel No. 16-05-308-044:

Beginning at the Northwest corner of Lot 4, Block 31, Plat B, Salt Lake City Survey, and running thence North 4.5 feet; thence East 102 feet; thence South 4.5 feet; thence West 102 feet to the point of beginning.

Parcel No. 16-05-308-048:

Beginning North 5 feet and North  $89^{\circ}57'53''$  East 21.99 feet from the Northwest corner of Lot 5, Block 31, Plat B, Salt Lake City Survey; thence South  $0^{\circ}02'11''$  East 1.1 feet; thence Southwesterly along a 22.9 foot radius curve to the left 29.5 feet; thence South 86.38 feet; thence East 90.5 feet; thence North 104 feet; thence West 68.51 feet to the point of beginning.

Parcel No. 16-05-308-057:

Beginning South 99 feet from the Northwest corner of Lot 5, Block 31, Plat B, Salt Lake City Survey, and running thence South 66 feet; thence East 165 feet; thence North 49.5 feet; thence West 49.5 feet; thence North 16.5 feet; thence West 115.5 feet to the point of beginning. ALSO beginning North 115.5 feet from the Southwest corner of Lot 5, Block 31, Plat B, Salt Lake City Survey, and running thence North 49.5 feet; thence East 165 feet; thence South 49.5 feet; thence West 165 feet to the point of beginning.

**EXHIBIT "C"**

**TO**

**DECLARATION OF EASEMENTS**


Legal Description of the Housing Parcel


Beginning at a point on the Southerly line of Block 31, Plat "B", Salt Lake City Survey, said point being North 89°57'49" East along said Southerly line 2.59 feet from the Southeast corner of Lot 3 of said Block 31, and running thence South 89°57'49" West along said Southerly line 167.58 feet to the Southwest corner of said Lot 3; thence North 0°01'56" West along the Westerly line of said Lot 3 a distance of 155.11 feet; thence South 89°57'15" West 77.53 feet; thence North 0°01'57" West 8.50 feet; thence South 89°57'15" West 87.53 feet to a point on the Westerly line of said Block 31; thence North 0°01'57" West along said Westerly line 166.50 feet to the Northwest corner of Lot 4 of said Block 31; thence North 89°57'15" East along the Northerly line of said Lot 4 a distance of 102.00 feet; thence North 0°01'56" West 4.50 feet; thence North 89°57'15" East 63.07 feet to a point on the Easterly line of Lot 5 of said Block 31; thence North 0°01'56" West along said Easterly line and line extended 330.61 feet to a point on the Southerly right of way line of 400 South Street, said point being North 0°01'56" East along said Easterly line extension 5.00 feet from the Northeast corner of said Lot 5; thence North 89°56'41" East along said right of way line 165.07 feet to a point on the Easterly line extension of Lot 6 of said Block 31, said point being North 0°01'55" West along said Easterly line extension 5.00 feet from the Northeast corner of said Lot 6; thence South 0°01'55" East along said Easterly line and line extended 525.25 feet to a point on the Easterly line of said Lot 3; thence North 89°57'49" East 2.51 feet; thence South 0°01'55" East 140.03 feet to the point of beginning.

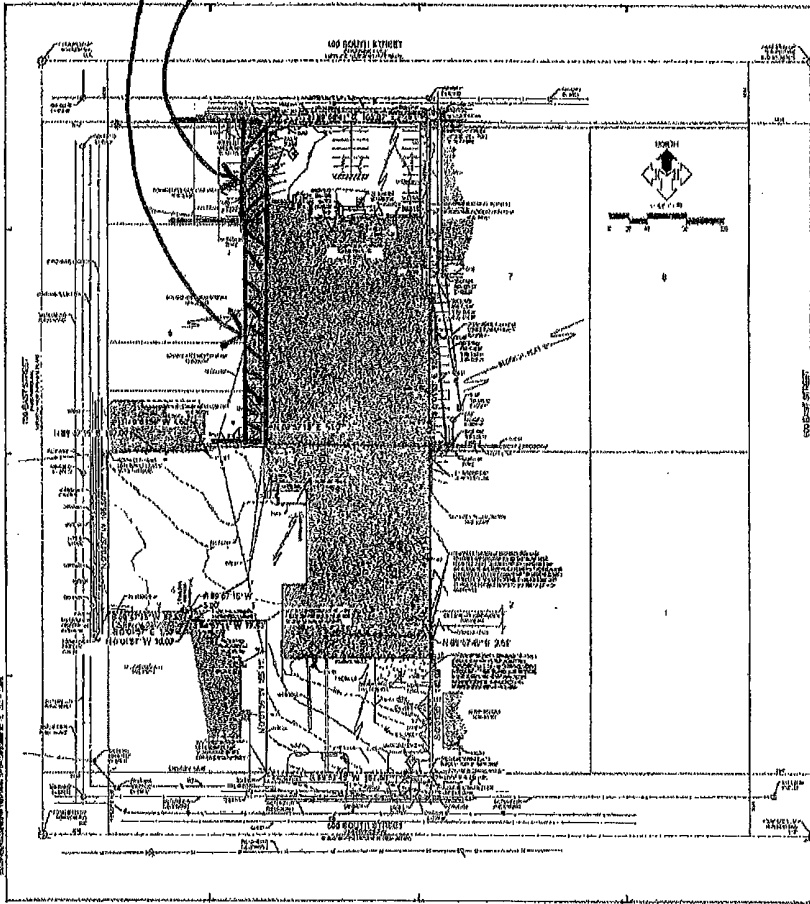
Parcel No. 16-05-308-063

**EXHIBIT "D"**  
**TO**  
**DECLARATION OF EASEMENTS**  
Construction Easement Area



Demolition Easement 

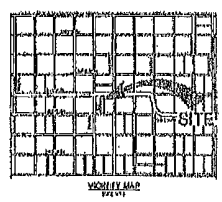
Litza's Easement 



**DESCRIPTION OF THE REPORT**  
 This report was prepared for the purpose of...  
**SURVEY DATA**  
 The survey was conducted on...  
**GENERAL NOTES**  
 1. The survey was conducted in accordance with the...  
 2. The survey was conducted in accordance with the...  
 3. The survey was conducted in accordance with the...

**SURVEYOR CERTIFICATE**  
 I, the undersigned, being a duly licensed Surveyor...  
**TITLE INFORMATION**  
 This survey was conducted for the purpose of...  
**LEGEND**  
 Solid line: Boundary  
 Dashed line: Easement  
 Hatched area: Demolition Easement  
 Hatched area: Litza's Easement

NO.	DESCRIPTION	DATE	BY
1	...	...	...
2	...	...	...
3	...	...	...
4	...	...	...
5	...	...	...



**MCNEIL ENGINEERING**  
 481 S. 467<sup>th</sup> AVE., SUITE 100, WYOMING, NEBRASKA 68150  
 PHONE: (402) 486-1111  
 FAX: (402) 486-1112  
 LIBERTY BOULEVARD  
 481 S. 467<sup>th</sup> AVE., SUITE 100, WYOMING, NEBRASKA 68150  
 PHONE: (402) 486-1111  
 FAX: (402) 486-1112  
 AUTOMATIC LAND TITLE SURVEY  
 1 OF 1