

When recorded return to:
Burton Lumber & Hardware Co.
Attn: Dan Burton
1170 South 4400 West
Salt Lake City, Utah 84104

ENT 49577:2014 PG 1 of 4
Jeffery Smith
Utah County Recorder
2014 Jul 18 10:29 AM FEE 23.00 BY EO
RECORDED FOR Backman FPTP
ELECTRONICALLY RECORDED

CONSENT AND SUBORDINATION AGREEMENT

This Agreement is made this 17th day of July, 2014, by and between Bank of American Fork (the "Bank") and Burton Lumber & Hardware Co., a Utah corporation ("Burton").

RECITALS

A. Burton owns the following described real property (the "Property") situated in Utah County, State of Utah, to-wit:

Commencing at a point located South 89°28'50" West along the Section line 317.33 and North 441.29 feet from the South quarter corner of Section 21, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 25°42'37" West 12.53 feet thence North 64°08'12" East 17.82 feet; thence North 89°40'04" East 19.49 feet; thence along the arc of a 95.00 foot radius curve to the left 41.80 feet (chord bears North 77°03'44" East 41.47 feet); thence North 28°09'48" West 434.58 feet; thence North 25°51'48" West 128.19 feet; thence South 89°56'07" West 136.08 feet; thence North 29°01'20" West 395.37 feet, more or less, to a Boundary Line Agreement; thence North 89°09'38" East along said Boundary Line Agreement 615.69 feet more or less to a railroad right-of-way line; thence along a railroad right-of-way the following 4 courses: thence South 30°12'55" East 332.40 feet; thence South 33°26'49" East 193.89; thence South 33°26'40" East 462.67 feet; thence South 30°13'01" East 47.52 feet; thence South 89°28'00" West 467.95 feet; thence North 00°32'00" West 0.03 feet; thence South 89°40'04" West 83.64 feet; thence along the arc of a 133.00 foot radius curve to the right 71.94 feet (chord bears South 74°10'23" West 71.06 feet); thence North 89°57'40" West 30.19 feet; thence North 00°20'22" West 18.79 feet more or less to the point of beginning.

Basis of bearing is South 89°28'50" West along the Section line from the South quarter corner of Section 21 to the Southwest corner of Section 21.

Parcel No.: 18-027-0177, 18-027-0178, 18-027-0180, 18-027-0182, 49-524-0010, 49-524-0011, 49-526-0011 and 18-027-0149.

B. Effective July 18, 2012, Burton entered into a Cross-Easement Agreement with Parkway Properties, Inc., a Utah corporation, and Tri-Lakes Associates, L.C. a Utah limited liability company. The 2012 Cross-Easement Agreement was recorded July 23, 2012 as Entry No. 61007:2012 and amended by an Amendment No. 1 recorded August 24, 2012 as Entry No. 72341:2012 in the official records of the Utah County Recorder (The 2012 Cross-Easement Agreement and the Amendment No. 1 are collectively referred to hereinafter as the "2012 Cross-Easement Agreement").

C. Pursuant to the 2012 Cross-Easement Agreement, fee title to a roadway parcel ("Roadway Parcel") was conveyed to Burton and an easement ("Easement") was granted to Burton over a utility easement area (the "Easement Area"). The Roadway Parcel was conveyed to Burton by a Quit Claim Deed recorded July 23, 2012 as Entry No. 61008:2012.

D. On February 7, 2014, Parkway Properties, Inc., a Utah corporation, and Tri-Lakes Associates, L.C. a Utah limited liability company (collectively "Parkway"); conveyed its property, which, by inadvertent mistake, included the Roadway Parcel and the Easement, to Nelson Brothers University Downs, LLC, a Delaware limited liability company ("Nelson"). The Special Warranty Deed from Parkway to Nelson was recorded as Entry No. 8578:2014. Nelson then pledged the property it received (the "Nelson Parcel") to the Bank as evidenced by a Deed of Trust recorded February 7, 2014 as Entry No. 8579:2014 (the "Bank Trust Deed").

E. Subsequent to the recordation of the 2012 Cross-Easement Agreement, Burton discovered that there were errors in the description of the Roadway Parcel and the Easement. The corrected descriptions are:

Roadway Parcel: Commencing at a point located South 89°28'50" West along the Section line 218.646 feet and North 440.97 feet from the South quarter corner of Section 21, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along the arc of a 133.00 foot radius curve to the right 71.94 feet (chord bears South 74°10'23" West 71.06 feet); thence North 89°57'40" West 30.19 feet; thence North 00°20'22" West 18.79 feet; thence North 89°40'04" East 98.67 feet more or less to the point of beginning. Part of Parcel No. 18-027-0149.

Easement: Commencing at a point located South 89°28'50" West along the Section line 391.90 feet and North 231.57 feet from the South quarter corner of Section 21, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 00°29'20" West along 1250 West Street 209.98 feet; thence North 89°40'04" East 192.87 feet; along the arc of a 143.00 foot radius curve to the right 92.66 feet (chord bears South 71°06'19" West 91.05 feet); thence South 89°40'04" West 72.43 feet; thence along the arc of a 20.00 foot radius curve to the left 31.47 feet (chord bears South 44°35'22" West 28.32 feet); thence South 00°29'20" East 160.89 feet; thence South 89°27'11" West 14.00 feet more or less to point of beginning. Part of Parcel No. 18-027-0149.

F. At Burton's request that the Bank release its interest in the Roadway Parcel, the Bank issued a partial reconveyance from the Bank Trust Deed recorded on April 14, 2014 as Entry No. 24524:2014 ("Partial Reconveyance").

G. Because Nelson failed to cooperate in correcting and modifying the 2012 Cross-Easement Agreement, Burton obtained a court order, among other things, quieting its fee interest in the Roadway Parcel and its interest in the Easement. The Default Judgment was entered June 23, 2014 and recorded July 2, 2014 as Entry No. 45481:2014 in the official records of the Utah County Recorder (the Default Judgment and the 2012 Cross-Easement Agreement and Amendment No. 1, as modified and corrected by the Default Judgment, are collectively referred to hereinafter as the "Revised 2012 Cross-Easement Agreement").

H. Burton now needs the Bank to acknowledge that it has no interest in the Roadway Parcel and that it is willing to consent to and subordinate its interest in the Easement to Burton's interest in the Easement.

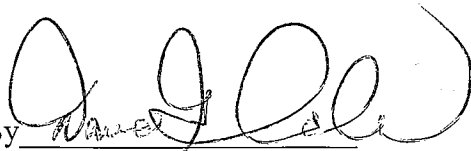
I. In recognition of the Revised 2012 Cross-Easement Agreement, the Bank is willing to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, it is hereby declared, understood and agreed as follows:

- (1) The Bank has no legal or equitable interest whatsoever in the Roadway Parcel.
- (2) The Bank consents to the Revised 2012 Cross-Easement Agreement.
- (3) The Bank Trust Deed and the obligations secured thereby shall unconditionally be and remain at all times a lien or charge on the Easement Area junior and subordinate to Burton's interest in the Easement and Burton's rights under the Revised 2012 Cross-Easement Agreement.
- (4) Except as otherwise provided in this Agreement and the Partial Reconveyance, the Bank Trust Deed shall retain its position of priority on the Nelson Parcel (but excluding the Roadway Parcel) pledged to the Bank.

IN WITNESS WHEREOF, this Agreement is executed the day and year first above written.

Bank of American Fork

By 

David G. Anderson,
Senior Vice President

Burton Lumber & Hardware Co., a Utah Corporation

By 

Daniel S. Burton, President

State of Utah)
:ss
County of Utah)

The foregoing instrument was acknowledged this 17 day of July, 2014, by David G. Anderson, a Senior Vice-President of the Bank of American Fork.

My Commission Expires:

9/17/14

Marla Fackrell
Notary Public
Residing at: *American Fork UT*



State of Utah)
:ss
County of Salt Lake)

The foregoing instrument was acknowledged this 18th day of July, 2014, by Daniel S. Burton, the President of Burton Lumber & Hardware Co., a Utah corporation.

My Commission Expires:

8-13-17

Daniel S. Burton
Notary Public
Residing at: *Mapleton UT*

