

WHEN RECORDED, PLEASE RETURN TO:

Parr Brown Gee & Loveless
101 South 200 East Suite 700
Salt Lake City, Utah 84111
Attention: Lamont Richardson

45-629-0001
45-629-0002

DECLARATION OF PEDESTRIAN WALKWAY EASEMENTS

THIS DECLARATION OF PEDESTRIAN WALKWAY EASEMENTS (this "Declaration") is executed as of May 17, 2019, by and between LEHI SPECTRUM OFFICE 1, L.C., a Utah limited liability company ("Office 1") and LEHI SPECTRUM OFFICE 2, L.C., a Utah limited liability company ("Office 2"). Office 1 and Office 2 are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, Office 1 is the owner of certain real property located in Utah County, Utah as more particularly described on Exhibit A attached hereto and made a part hereof (the "Office 1 Parcel") (the Office 1 Parcel, together with any and all buildings and improvements now or hereafter located thereon, being hereinafter referred to collectively as the "Office 1 Property");

WHEREAS, Office 2 is the owner of certain real property located in Utah County, Utah as more particularly described on Exhibit B attached hereto and made a part hereof (the "Office 2 Parcel"; and together with the Office 1 Parcel, each a "Parcel," and collectively, the "Parcels") (the Office 2 Parcel, together with any and all buildings and improvements now or hereafter located thereon, being hereinafter referred to collectively as the "Office 2 Property" and collectively with the Office 1 Property, the "Property"), which Office 2 Property is adjacent to the Office 1 Property;

WHEREAS, Podium Corporation, Inc., a Delaware corporation (together with its permitted successors and/or assigns "Podium"), has entered into a lease (the "Office 1 Lease") with Office 1 for all of the space in the building located on the Office 1 Parcel (the "Office 1 Building"), and Podium has entered into a lease (the "Office 2 Lease") with Office 2 for a portion of the space in the building located on the Office 2 Parcel (the "Office 2 Building"; and together with the Office 1 Building, collectively, the "Buildings");

WHEREAS, pursuant to the Office 2 Lease, Office 2 has agreed to construct a free-standing covered walkway (the "Covered Walkway"), which Covered Walkway shall provide for pedestrian access to and from the Office 1 Building and the Office 2 Building;

WHEREAS, Office 1 has agreed to permit Office 2 to construct a portion of the Covered Walkway on the Office 1 Parcel and connect such Covered Parkway to the Office 2 Building on the terms set forth herein.

NOW THEREFORE, the parties hereby agree as follows:

ARTICLE I

CERTAIN DEFINED TERMS

Section 1.1. Definitions. In addition to the terms defined elsewhere in this Declaration, the following words, unless the context otherwise requires, shall have the following meanings:

“Easement Facilities” shall mean and include all components of the Covered Walkway including, without limitation, the concrete sidewalk and the freestanding structure constructed over the sidewalk to provide a covering for such sidewalk.

“First Mortgage” shall mean a Mortgage encumbering the Office 1 Property or the Office 2 Property, as applicable, that has the highest priority in relation to all of the other mortgages, liens and encumbrances affecting the Office 1 Property or the Office 2 Property, as applicable.

“Interest Rate” shall mean the prime lending rate as published in The Wall Street Journal from time to time, plus four percent (4%), with such rate changing with each change in the prime lending rate published by The Wall Street Journal.

“Mortgage” shall mean any mortgage, deed of trust or similar lien that is Recorded, secures the payment of any indebtedness, and encumbers all or any part of the Office 1 Parcel or the Office 2 Parcel or any interest therein.

“Mortgagee” shall mean the holder of any Mortgage and/or the holder or holders from time to time of a promissory note or notes executed, as the case may be, by the Owner of a Parcel evidencing a loan payable to the order of a Person and secured by a deed of trust or mortgage and security agreement, as the case may be, upon the applicable Parcel.

“Owner” shall mean the Person that, at the time concerned, is the owner of record in the Recording Office of a fee interest in any Parcel or portion of a Parcel. In the event that, at any time, more than one Person owns the fee interest in a Parcel, they shall constitute one (1) Owner, and liability of each such Person for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory 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 arrangement or proceeding in lieu thereof.

“Person” or “person” shall mean any one or more natural persons, corporations, partnerships, firms, trusts, trustees, governments, governmental authorities or other entities.

“Recorded” shall mean filed for record in the land records of Utah County, Utah.

“Recording Office” shall mean the office of the County Recorder for Utah County, Utah

“Walkway Easements” shall mean and include the easements and licenses granted in Article II of this Agreement, inclusive.

“Walkway Easement Parcel” shall mean that portion of each Parcel generally depicted on Exhibit C attached hereto.

ARTICLE II

WALKWAY EASEMENTS

Section 2.1. Grant of Walkway Easements. The Parties hereby grant and declare to and for the benefit of the Owner of each Parcel a perpetual non-exclusive right and easement upon, over, under and across the Walkway Easement Parcel: (a) for, subject to the terms hereof, the construction, installation, maintenance, repair, replacement and use of the Easement Facilities; and (b) for pedestrian ingress and egress to, from and between the Buildings.

Section 2.2. License to Connect. Office 2 shall be solely responsible, at its sole cost and expense, for the design and construction of the Easement Facilities. Office 2 is hereby granted a license to make such connections to the Office 1 Building as are reasonably necessary for the integration of the Covered Walkway with the Office 1 Building. Before making any such connection, Office 2 shall first provide to Office 1 a copy of the construction drawings, plans and specifications for the Covered Walkway. Upon Office 1’s receipt of such drawings, plans and specifications, Office 1 shall have twenty (20) days to review and approve the same, or to provide Office 2 with a notice that the drawings, plans and specifications are unacceptable, which notice shall further specify those corrections that are required for such drawings, plans and specifications to be acceptable to Office 1. Office 1’s failure to notify Office 2 of Office 1’s acceptance or rejection of the drawings, plans and specifications shall be deemed an acceptance of such drawings, plans and specifications. Upon Office 1’s acceptance or deemed acceptance of the drawings, plans and specifications, Office 2 shall be free to make such connections to the Office 1 Building as are set forth in the drawings, plans and specifications pursuant to the license granted herein. If the surface of the ground or any improvements located on Office 1 Parcel are disturbed or damaged in the course of the construction of any of the Easement Facilities by the Owner of the Office 2 Parcel, or its agents or contractors, the Owner of the Office 2 Parcel shall, at its sole cost and expense, promptly restore any disturbed area and repair all damage to any improvements to the condition existing prior to such disturbance or damage, except to such extent as such conditions are reasonably modified in connection with the construction of the Easement Facilities.

Section 2.3. Maintenance and Repair. Upon completion of construction of the Easement Facilities, each Owner of a Parcel shall, at its sole cost and expense, maintain the Easement Facilities located on its parcel in good condition and repair and shall make all repairs, replacements and renewals necessary to maintain such condition (including, without limitation, any repair necessitated by fire or other casualty). In the event of any damage to the Easement

Facilities each Owner shall restore the Easement Facilities located on its Parcel to substantially the same condition they existed in prior to such damage. If such damage is to the Easement Facilities located on both Parcels, each Owner will reasonably cooperate in performing such repairs and replacements so as to maintain the Easement Facilities as an integrated unit. Each Owner may elect to jointly engage a third Person to maintain, replace or repair such Easement Facilities, in which case, the costs payable to such third Person shall be split evenly between the Owners.

Section 2.4. Lien Free Completion. The Owner of the Office 2 Parcel shall not suffer, create or permit any mechanic's, materialmen's, laborer's or other similar liens to be filed against the Office 1 Parcel by reason of any work, labor, services or materials supplied or claimed to have been supplied in connection with the construction of the Easement Facilities. The Office 1 Parcel shall not be subject to liens for improvements made by the Owner of the Office 2 Parcel or any party claiming by, through or under the Owner of the Office 2 Parcel. If any such mechanic's or laborer's liens or materialman's lien shall be recorded against the Office 1 Parcel as a result of the construction of the Easement Facilities, then within thirty (30) days after notice of the filing thereof, the Owner of the Office 2 Parcel shall cause such lien to be removed, or will transfer the lien to bond pursuant to applicable Utah law. If the Owner of the Office 2 Parcel in good faith desires to contest the lien, the Owner of the Office 2 Parcel shall be privileged to do so, but in such case the Owner of the Office 2 Parcel hereby agrees to indemnify and save the Owner of the Office 1 Parcel harmless from all liability for damages, including attorneys' fees and costs, occasioned thereby and shall, in the event of a judgment of foreclosure upon any mechanic's lien, cause the same to be discharged and removed prior to the execution of such judgment. The Owner of the Office 1 Parcel may, in its sole discretion, require that the lien be transferred to bond as a condition precedent to the Owner of the Office 2 Parcel's privilege to contest any lien.

ARTICLE III

GENERAL PROVISIONS

Section 3.1. General Easement Provisions. As long as any of the easements, covenants or agreements granted and/or declared in Article II remain in effect, then the Office 1 Parcel, the Office 2 Parcel, and each Owner of such Parcels, are subject to all of the following:

(a) Covenants Run With the Land. The rights and easements granted, declared and created herein and the various terms, conditions, restrictions and agreements set forth herein shall be: (i) easements and covenants running with the land; and (ii) binding upon and inure to the benefit of Owners and its respective heirs, successors and assigns and all those claiming by, through or under each such owner or its or his/her heirs, successors and assigns.

(b) Additional Users. The rights and easements granted and declared herein for the benefit of the Owners are intended to create a property interest or right only in the Owners and their respective successors and assigns; provided, however, the Owners may permit their respective tenants, subtenants, partners, members, managers, officers, directors, employees, agents, contractors, invitees, licensees and other occupants

of any portion of a Parcel to use and enjoy the easements and easement rights granted and declared herein.

(c) No Public Dedication. Nothing contained herein shall be construed or deemed to constitute a dedication, express or implied, of any real property to or for any public use or purpose whatsoever.

(d) Compliance With Law. In connection with the use and enjoyment of the easements and rights granted and declared herein for the benefit of the each Parcel, each Owner shall comply with all applicable laws, regulations, orders and requirements of all governmental entities having jurisdiction over the same whether Federal, state or local.

(e) Eminent Domain. In the event that all or any portion of the Walkway Easement Parcel described in this Declaration are taken by the exercise of the power of eminent domain or are transferred or conveyed in a negotiated transaction to a person vested with the power of eminent domain, then the easements granted above with respect to the portion thereof taken or conveyed, shall terminate at the effective time of the taking or conveyance, or, if earlier, the date that the condemning authority takes possession of any of the Walkway Easement Parcel or such part thereof. Each Owner shall be entitled to such portion of the award or other compensation payable with respect to any such taking or conveyance as to the Parcel owned by such Owner.

(f) Termination. In the event Podium is no longer a tenant of both Buildings, either Owner may, at such Owner's sole cost and expense, deliver written notice to the other Owner terminating this Declaration, in which case each Owner may elect to remove the Easement Facilities from its Parcel (provided, if the other Owner is not electing to remove the Easement Facilities, any removal by an Owner shall be done in a manner as permit the Easement Facilities on the other Owner's Parcel to remain in place and structurally sound). Following such termination, each Owner agrees to execute such documents as is reasonably necessary to modify the termination of this Agreement.

(g) Default; Remedies. In the event that an Owner is in breach of its obligations under this Declaration, the non-defaulting Owner may provide written notice of such breach to the defaulting Owner. Upon the expiration of thirty (30) days following the giving of such notice, if the defaulting Owner (i) has failed to cure such breach, or (ii) in the case of a breach (other than the payment of money) which by its nature cannot be completely cured within such thirty (30) day period, and defaulting Owner does not within such period commence to cure the breach and diligently pursue and complete the cure in a reasonable period of time, then in either such event, the non-defaulting Owner may do all things necessary or desirable to remedy such breach and perform the obligations of the defaulting Owner that have not been fully or promptly performed. The defaulting Owner shall immediately on demand reimburse the non-defaulting Owner for all costs and expenses incurred by the non-defaulting Owner in connection with the cure of any breach of the defaulting Owner of its obligations under this Declaration, plus interest at the Interest Rate, or if less, the highest rate permitted under applicable law.

(h) Effect of Breach on Mortgage. No breach of the covenants, conditions and restrictions contained herein shall defeat or render invalid the lien of any Mortgage now or hereinafter executed upon any portion of the land subject to this Declaration; provided, however, that the rights of any Mortgagee shall be subject to all of the covenants, conditions and restrictions of this Declaration, and if any portion of such property subject to any Mortgage is sold under a foreclosure of any Mortgage or is conveyed to the Mortgagee or any other Person in lieu of foreclosure, any purchaser at such sale or any such grantee and his successors and assigns shall hold any and all property so purchased and acquired subject to all of the covenants, conditions and restrictions of this Declaration.

Section 3.2. Covenants Running with the Land; Enforcement and Remedies. The agreements provided for herein shall inure to the benefit of and be binding upon each Owner and their respective successors and assigns. Irreparable harm will result to an Owner by reason of any breach of the agreements, covenants and restrictions as set forth in this Declaration, and, therefore, each Owner shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Declaration, as well as any other relief available at law or in equity. The failure of an Owner in any one or more instances, to insist upon compliance with any of the terms and conditions of this Declaration, or to exercise any right or privilege conferred in this Declaration, shall not constitute or be construed as the waiver of such or any similar restriction, right, option or privilege, but the same shall continue and remain in full force and effect as if no such forbearance had occurred.

Section 3.3. Fees and Expenses. In the event the an Owner fails to perform any of its respective obligations under this Declaration or in the event a dispute arises concerning the meaning or interpretation of any provision herein, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder including, without limitation, court costs and reasonable attorneys' fees.

Section 3.4. Amendment, Etc. This Declaration or any provisions hereof, or any covenants and conditions contained herein, may be terminated, extended, modified or amended, but only by a written instrument duly executed by each Owner and all Mortgagees. No such termination, extension, modification or amendment shall be effective until an appropriate instrument has been properly executed by the each Owner and all Mortgagees.

Section 3.5. No Merger. The easements and easement rights set forth herein shall not be terminated or extinguished by merger of title or otherwise unless the Owner of each Parcel and all Mortgagees execute a consent to the termination of such easements and easement rights and such consent is Recorded.

Section 3.6. Severability. If any term or provision of this Declaration, or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Declaration, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

Section 3.7. Governing Law: Legal Requirements. This Declaration shall be governed, construed and enforced in accordance with the laws of the State of Utah

Section 3.8. Exhibits. All exhibits referred to herein are attached hereto and made a part hereof.

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IN WITNESS WHEREOF, the Parties have executed the forgoing instrument on the day and year first above written.

OFFICE 1:

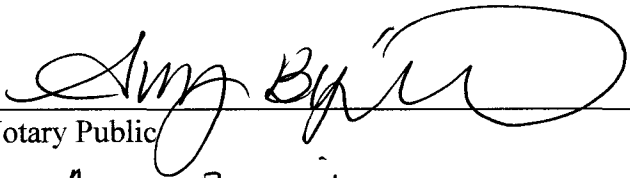
LEHI SPECTRUM OFFICE 1, L.C., a Utah limited liability company, by its manager

The Boyer Company, L.C., a Utah limited liability company

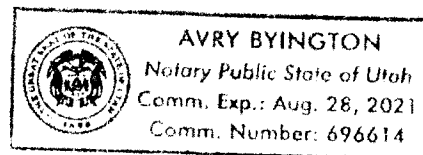
By: 
Name: Brian Gochnour
Title: Manager

STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

The foregoing Declaration of Pedestrian Walkway Easements was acknowledged before me this 17 day of May, 2019, by Brian Gochnour, a manager of The Boyer Company, L.C., a Utah limited liability company, a manager of Lehi Spectrum Office 1, L.C., a Utah limited liability company, who executed the foregoing instrument on behalf of said company


Notary Public
Avry Byington
(Printed Name)

My Commission Expires:
8/28/2021



OFFICE 2:

LEHI SPECTRUM OFFICE 2, L.C., a Utah limited liability company, by its manager

The Boyer Company, L.C., a Utah limited liability company



By: _____
Name: Brian Gochnour
Title: Manager

STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

The foregoing Declaration of Pedestrian Walkway Easements was acknowledged before me this 17 day of May, 2019, by Brian Gochnour, a manager of The Boyer Company, L.C., a Utah limited liability company, a manager of Lehi Spectrum Office 2, L.C., a Utah limited liability company, who executed the foregoing instrument on behalf of said company



Notary Public

My Commission Expires:
8/28/2021

Avry Byington

(Printed Name)

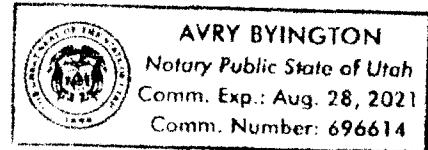


EXHIBIT A

OFFICE 1 PARCEL

Lot 1, Plat "A", Lehi Spectrum Subdivision, according to the official plat thereof and of record in the office of the Utah County Recorder, recorded July 26, 2017 as Entry No. 71391:2017 and Map Filing No. 15632

Tax Parcel Id No: 45-629-0001

EXHIBIT B

OFFICE 2 PARCEL

Lot 2, Plat "A", Lehi Spectrum Subdivision, according to the official plat thereof and of record in the office of the Utah County Recorder, recorded July 26, 2017 as Entry No. 71391:2017 and Map Filing No. 15632

Tax Parcel Id No: Tax Parcel Id No: 45-629-0002

EXHIBIT C

DEPICTION OF WALKWAY EASEMENT PARCEL

