

WHEN RECORDED RETURN TO:
Salt Lake County Real Estate Section
2001 South State Street, S3-120
Salt Lake City, Utah 84114-4575

12439869
12/22/2016 10:31 AM \$0.00
Book - 10513 Pg - 8271-8282
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
SL CO REAL ESTATE
SUITE 93200
BY: CRA, DEPUTY - WI 12 P.

Parcel No. 1:PE
Tax Serial No.: 16-20-207-013
County Project No. FP140002
Surveyor WO: SU20160074

PERPETUAL ACCESS EASEMENT AGREEMENT

This Perpetual Access Easement Agreement (the "Agreement") is made and entered into as of this 22nd day of December, 2016 (the "Effective Date"), by and between The Commons at Sugarhouse, L.C., a Utah limited liability company (the "Grantor") and Salt Lake County, a body corporate and politic of the State of Utah, (the "County"). Grantor and the County are sometimes referred to herein singularly as a "Party" and collectively as the "Parties" with respect to the following:

Recitals:

- A. Grantor owns a parcel of land located at 1165 East Wilmington Avenue in Salt Lake City, identified as Tax ID No. 16-20-207-013 (the "Property"). A legal description of the Property is attached as Exhibit A.
- B. The County maintains a culvert and related flood control facilities (the "Hidden Hollow Culvert") located on adjacent property owned by Salt Lake City known as Hidden Hollow Park. A legal description of Hidden Hollow Park is attached as Exhibit B.
- C. The County desires to obtain a perpetual access easement on, over and across a portion of the Property (the "Easement Area") to allow the County to access the Hidden Hollow Culvert so that it can maintain this flood control facility. A legal description of the Easement Area is attached as Exhibit C and depicted in Exhibit D.
- D. Grantor is willing to grant and convey to the County this perpetual access easement over the Property in accordance with the terms and conditions of this Agreement.

Agreement:

1. Grant of Easement. Grantor grants the County a non-exclusive, perpetual access easement on, over, and across the Easement Area for the purpose of vehicular, machinery and pedestrian access for County employees/contractors to reach the Hidden Hollow Culvert located in Hidden Hollow Park so that the County, at its sole cost, can maintain this flood control facility and to install related improvements and landscaping elements in the Easement Area.
2. Improvements and Landscaping. At its sole cost, the County agrees to construct certain site, stormwater, and landscape improvements on, over, and across a portion of the Easement Area as provided in the Site Plan attached hereto as Exhibit E. These

improvements shall be subject to the approval of Grantor, which approval shall not be unreasonably withheld. Grantor approves the site plans, identifying these improvements, attached hereto as Exhibit E.

3. Plans. The initial landscaping and site work in the Easement Area shall be substantially in accordance with the Site Plan shown in Exhibit E. Any material modifications to the landscaping and site work shall not result in Easement Area becoming a more secluded area which could be more attractive to vagrants.
4. Use by Grantor. Grantor reserves the right to use the Easement Area for any use not inconsistent with the County's use of the Easement Area provided such use shall not materially interfere with or endanger the County's perpetual easement or improvements constructed thereon. Grantor shall be responsible for maintaining its Property, including the Easement Area. The County shall be responsible for maintaining its facilities located on the Property.
5. Relocation. Grantor reserves the right to relocate the Easement Area at Grantor's expense to a new location on Grantor's Property, subject to the County's consent, which shall not be unreasonably withheld, conditioned or delayed. If such relocation occurs, Grantor and the County shall execute an amendment to this instrument setting forth the revised Easement Area.
6. Access. The County and its agents, employees, consultants and contractors (the "Permitted Users") shall have the right to enter upon the Easement Area for the purposes permitted by this Agreement.
7. Prior Easements. This easement is granted subject to all easements and encumbrances of record as of the date hereof.
8. Condition of the Easement Area. The County accepts the Easement Area and all aspects thereof in "AS IS", "WHERE IS" condition, without warranties, either express or implied, "with all faults," including but not limited to both latent and patent defects, and the existence of hazardous materials, if any. The County hereby waives all warranties, express or implied, regarding the title, condition, and use of the Easement Area, including but not limited to any warranty of merchantability or fitness for a particular purpose.
9. Construction of Improvements. The County shall conduct all construction and maintenance activities related to the improvements within the Easement Area in a good and workmanlike manner in compliance with all laws, rules, and ordinances respecting the construction. The County and its agents and contractors, in performance of any work within the Easement Area, shall restore all property through which work traverses, to as near its original condition as is reasonably possible, subject to the Site Plan.
10. Indemnification. Subject to the monetary limitations set forth in Utah Code Ann. §63G-7-101 *et. seq.*, the County, its successors and assigns, shall use the Easement Area at its own

risk and agrees to indemnify, defend and hold harmless Grantor and Grantor's officers, agents, employees, successors and assigns (the "Indemnified Parties") for, from and against all liabilities, claims, damages, losses, suits, judgments, causes of action, liens, fines, penalties, costs, and expenses (including, but not limited to, court costs, attorney's fees, and costs of litigation), of any person or entity, directly or indirectly arising out of, caused by, or resulting from (i) the breach by the County of any provision of this Agreement (ii) the County's or the County's agents, employees, invitees or trespassers use and occupation of the Easement Area, or (iii) any act or omission of the County, its agents, or any independent contractor retained by the County. The County's indemnification obligations under this Agreement shall not include an obligation to indemnify, defend, or hold Grantor harmless to the extent any liability is caused by any negligent or willful act or failure to act of the Grantor. All personal property and fixtures of the County located within the Easement Area shall be maintained and used at the risk of the County and the Indemnified Parties shall not be liable for any damage thereto or theft thereof.

11. Governmental Immunity. The County is a body corporate and politic of the State of Utah, subject to the Utah Governmental Immunity Act ("Act"), Utah Code Ann. §§ 63G-7-101, et. seq. (1953, as amended). Nothing contained in this Easement shall be construed in any way to modify (i) the limits of liability set forth in that Act or (ii) the liability protections for both Grantor and the County set forth in Section 78B-4-509 of the Utah Code.
12. Insurance. The County is a self-insured governmental entity, and as such it will provide and maintain liability insurance pursuant to the Act.
13. Assignment. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective heirs, successors, and assigns. The rights and obligations set forth in this Agreement are intended to run with the land and succeeding interests therein. Provided the County remains liable for the performance of any assignee, the County may assign its rights and obligations under this Agreement to any party acquiring the County's rights and obligations regarding the Hidden Hollow Culvert.
14. Miscellaneous.
 - a. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah.
 - b. Modification and Termination. This Agreement may not be modified or amended except by a written instrument executed by the parties hereto or their respective successors and assigns.
 - c. Authorization. Each individual executing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the Party for which he or she signs to execute and deliver this Agreement and that as result of his/her signature, this Agreement shall be binding upon the Party for which he/she signs.

- d. Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.
- e. Entire Agreement. This Agreement contains the entire agreement between the parties hereto regarding the access easement granted herein and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

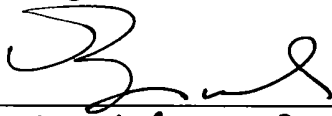
[Signature Pages Follow]

Dated 22 Dec, 2016.

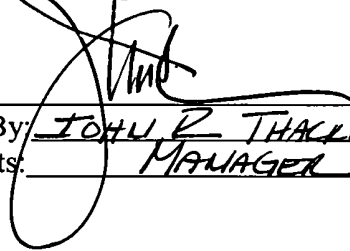
GRANTOR:
THE COMMONS AT SUGARHOUSE, L.C.
a Utah limited liability company

By: BOYER POST OFFICE PLACE, L.C.
Its: Manager

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

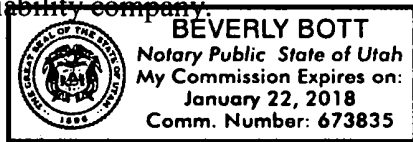

By: BRIAN GOCHNOUR
Its: MANAGER

By: JT COMMONS AT SUGAR HOUSE, L.C.
Its: Manager


By: JOHN R. THACKERAY
Its: MANAGER

STATE OF UTAH
COUNTY OF SALT LAKE

On the 21st day of December, 2016 personally appeared before me Brian Gochnour who duly acknowledged to me that he executed the foregoing document as Manager of THE BOYER COMPANY, the Manager of BOYER POST OFFICE PLACE, L.C., one of the Managers of THE COMMONS AT SUGARHOUSE, L.C., a Utah limited liability company.

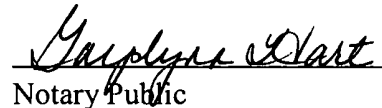



Notary Public

STATE OF UTAH
COUNTY OF SALT LAKE

On the 21st day of DECEMBER, 2016 personally appeared before me JOHN R. THACKERAY who duly acknowledged to me that he executed the foregoing document as MANAGER of JT COMMONS AT SUGARHOUSE, L.C., one of the Managers of THE COMMONS AT SUGARHOUSE, L.C., a Utah limited liability company.




Notary Public

SALT LAKE CITY COUNTY

Kimberly Barnett
Mayor or Designee

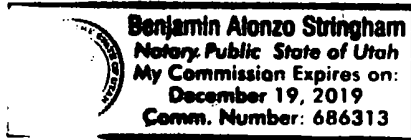
STATE OF UTAH)

ss.

County of Salt Lake)

On this 22 day of December, 2016, personally appeared before me Kimberly Barnett, who being duly sworn, did say that s/he is the Associate Deputy Mayor of Salt Lake County, Office of Mayor, and that the foregoing instrument was signed on behalf of Salt Lake County, by authority of law.

[SEAL]



Benjamin Alonzo Stringham
Notary Public
Residing in Salt Lake County

APPROVED AS TO FORM
District Attorney's Office

By: R. Christopher Preston
Attorney

R. CHRISTOPHER PRESTON

Date: 12/13/2016

EXHIBIT A
Legal Description of the Property

Parcel No. 16-20-207-013

Lot 1, Commons at Sugarhouse.

EXHIBIT B
Legal Description of Hidden Hollow Park

Parcel No. 16-20-229-053

LOT 4, HOMESTEAD VILLAGE SUB. 7829-0313

Parcel No. 16-20-229-057

BEG S 89°51'27" E 680.63 FT & S 0°01'04" E 294.39 FT FR NW
COR LOT 9, BLK 46, 10 AC PLAT A, BF SUR; S 0°01'04" W 69.10 FT TO CREEK; S 83°08'27" W 3.71 FT; N
74°05'20" W 37.84 FT; N 65°01'59" W 10.93 FT; S 86°10'27" W 29.78 FT; S 61°11'30" W 30.62 FT; N
78°47'31" W 9.67 FT; N 53°24'41" W 52.50 FT; S 89°01'26" W 8.35 FT; N 3°55'19" E 4.56 FT; N 44°31'00"
E 47.29 FT; E 133.02 FT TO BEG. 0.211 AC.

Parcel No. 16-20-229-059

BEG N 89°51'27" E 18 FT & S 0°01'04" E 12 FT & N 89°51'27" E 720.199 FT & S 0°01'04" E 105.19 FT & N
89°58'56" E 4 FT & S 0°01'04" E 152.31 FT & S 89°51'27" W 3.94 FT & S 0°01'04" E 15.1 FT & S 89°51'27"
W 15.09 FT FR NW COR LOT 9, BLK 46, 10 AC PLAT A, BF SUR; S 0°01' E 63.23 FT TO CENTERLINE OF
CREEK ; S 70°02'22" W 5.62 FT; S 65°34'17" W 20.01 FT; S 73°42'56" W 19.82 FT; N 0°01'04" E 78.88 FT;
N 89°51'27" E 42.54 FT TO BEG. 0.07 AC M OR L.

Parcel No. 16-20-229-062

BEG N 88°06'20" E 463.17 FT & N 0°02'58" W 26.72 FT FR SE COR LOT 6, BLK 8, UNION HEIGHTS SUB; N
84°21'22" E 50.52 FT MOR L; N 0°20'37" E 19.97 FT; N 88°06'19" E 75.06 FT; N 0°20'37" E 157.72 FT; S
89°50'42" W 96.11 FT TO CREEK; S 0°01' E 6 FT; S 87°50' W 168.36 FT; S 52°45'55" W 47.1 FT; S
75°57'50" W 84.52 FT; N 52°06'13" W 117.21 FT; N 82°37'27" W 61.98 FT; S 0°01' E 18.92 FT; S 70°02'22"
W 5.62 FT; S 65°34'17" W 20.01 FT; S 73°42'56" W 19.82 FT; S 83°08'27" W 3.71 FT; N 74°05'20" W 37.84
FT; N 65°01'59" W 10.93 FT; S 86°10'27" W 29.78 FT; S 61°11'30" W 30.62 FT; N 78°47'31" W 9.67 FT; N
53°24'41" W 52.5 FT; S 89°01'26" W 8.35 FT; S 3°55'19" W 7.05 FT; S 33°11'50" E 72.31 FT; E 117.96 FT; S
104.26 FT; S 89°42'22" E 463.24 FT; S 0°45'36" W 25.22 FT; S 0°02'58" E 26.72 FT TO BEG. 2.12 AC M OR
L.

EXHIBIT C

A perpetual easement being part of Lot 1, The Commons at Sugarhouse per that plat recorded September 8, 2000 as Entry No. 7715320 in Book 2000 of plats, at Page 242 in the Office of the Salt Lake County Recorder, said subdivision is located in the Northeast Quarter of Section 20, Township 1 South, Range 1 East, Salt Lake Base and Meridian; said Lot 1 was conveyed to The Commons at Sugarhouse L.C. per that Special Warranty Deed and Assignment recorded on September 8, 2000 as Entry No. 7715322 in Book 8386, at Page 6109 in the Office of said Recorder. The boundary of said perpetual easement is described as follows:

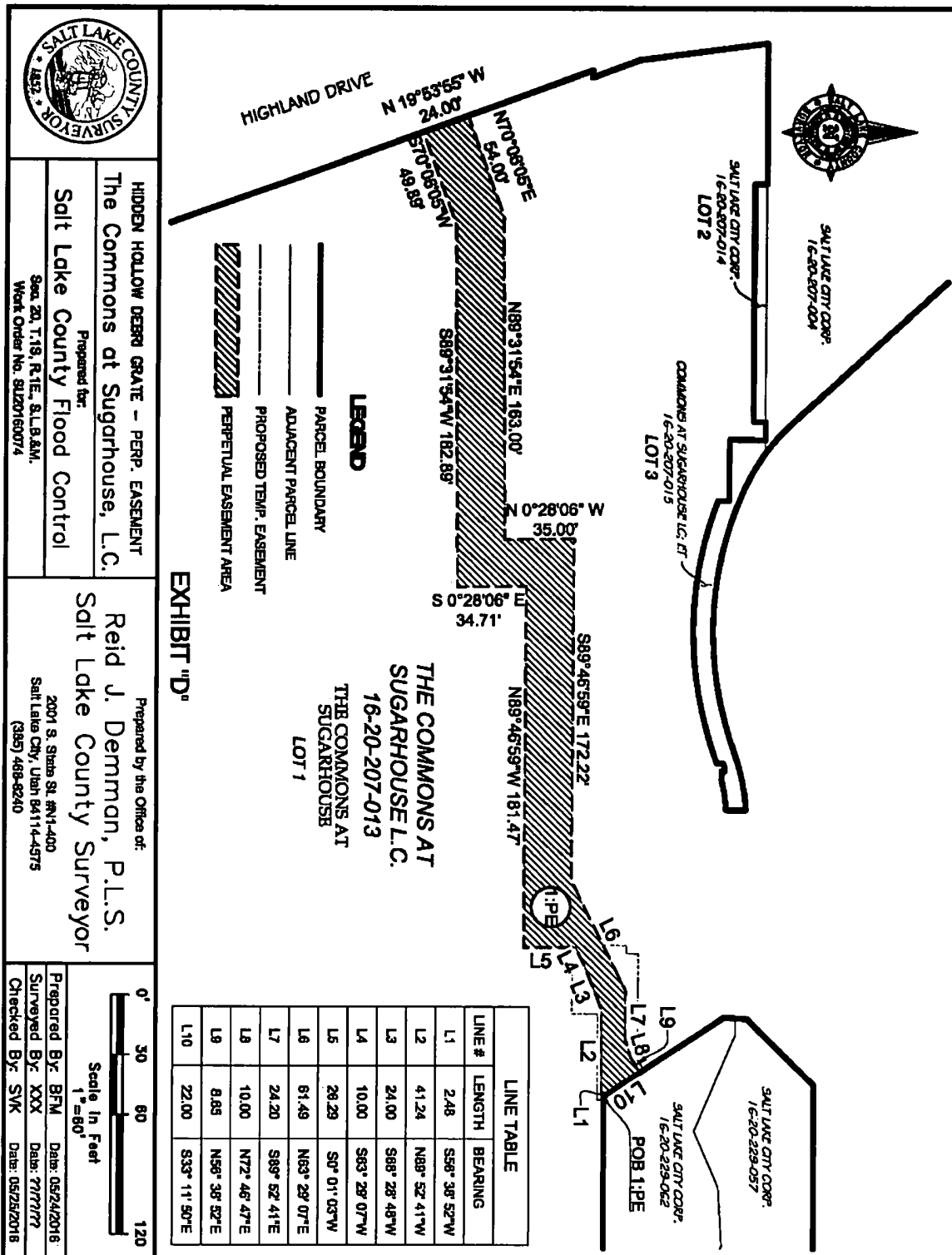
Beginning at a northeasterly interior corner of said Lot 1, said interior corner being 433.90 feet S. 89°38'21" E. and 340.50 feet N. 00°00'00" E. from the Salt Lake City brass street monument at the intersection of Wilmington Avenue (2200 South) and Highland Drive; thence S. 56°38'52" W. 2.48 feet; thence N. 89°52'41" W. 41.24 feet; thence S. 68°28'48" W. 24.00 feet; thence S. 63°29'07" W. 10.00 feet; thence S. 00°01'03" W. 26.29 feet; thence N. 89°46'59" W. 181.47 feet; thence S. 00°28'06" E. 34.71 feet; thence S. 89°31'54" W. 182.89 feet; thence S. 70°06'05" W. 49.89 feet to a westerly line of said Lot 1; thence N. 19°53'55" W. 24.00 feet along said westerly line of Lot 1; thence departing said westerly line N. 70°06'05" E. 54.00 feet; thence N. 89°31'54" E. 163.00 feet; thence N. 00°28'06" W. 35.00 feet; thence S. 89°46'59" E. 172.22 feet; thence N. 63°29'07" E. 61.49 feet; thence S. 89°52'41" E. 24.20 feet; thence N. 72°46'47" E. 10.00 feet; thence N. 56°38'52" E. 8.65 feet to a northeasterly line of said Lot 1; thence S. 33°11'50" E. 22.00 feet along said northeasterly line of Lot 1 to the **Point of Beginning**.

The above described perpetual easement contains 12,172 square feet in area or 0.279 acres, more or less.

EXHIBIT "D": By this reference, made a part hereof.

BASIS OF BEARING: The Basis of Bearing is N. 89°37'39" W. along the monument line of Wilmington Avenue as per The Commons at Sugarhouse subdivision plat.

EXHIBIT D
Depiction of Easement Area



HIDDEN HOLLOW DEBRIS GRATE - PERP. EASEMENT
The Commons at Sugarhouse, L.C.
Salt Lake County Flood Control
Prepared for:
99c. 20, T.19, R.1E, S.L.B. & M.
Work Order No. SU20160074

Prepared by the Office of:
Reid J. Demman, P.L.S.
Salt Lake County Surveyor
2001 S. State St. #N1-400
Salt Lake City, Utah 84114-4975
(385) 468-8240

Prepared By: BFM Date: 05/24/2016
Surveyed By: XXX Date: 7/7/77/72
Checked By: SVK Date: 05/28/2018

EXHIBIT E
Site Plan

