

10100577
 5/15/2007 12:40:00 PM \$35.00
 Book - 9464 Pg - 3063-3075
 Gary W. Ott
 Recorder, Salt Lake County, UT
 LEGACY LAND TITLE
 BY: eCASH, DEPUTY - EF 13 P.
 5/15/2007 12:40 PM

WHEN RECORDED, PLEASE RETURN TO:

David Gee
 Parr Waddoups Brown Gee & Loveless
 185 South State Street, Suite 1300
 Salt Lake City, Utah 84111

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (this "Declaration") is executed to be effective as of the ____ day of April, 2007, by BOYER LIFE CENTER ASSOCIATES II, L.C., a Utah limited liability company ("Life Center II"), whose address is 90 South 400 West Suite 200, Salt Lake City, Utah 84101, and BOYER LIFE CENTER ASSOCIATES, LTD., a Utah limited partnership ("Life Center Associates") whose address is 90 South 400 West Suite 200, Salt Lake City, Utah 84101. Life Center II and Life Center Associates are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS:

- A. WHEREAS, Life Center Associates is the owner of certain real property located in Salt Lake County, Utah, more particularly described on Exhibit A attached hereto (the "Unit 1 Property").
- B. WHEREAS, Life Center II is the owner of certain real property located in Salt Lake County, Utah, more particularly described on Exhibit B attached hereto (the "Unit 2 Property"; and together with the Unit 1 Property, the "Property").
- C. WHEREAS, Life Center II and Life Center Associates are affiliates and desire to develop all or portions of the Property as high-quality medical offices (the "Development").
- D. WHEREAS, the Parties desires to subject the Property to the covenants, conditions, restrictions, easements and charges set forth in this instrument for the benefit of the Property and its present and subsequent owners.

NOW, THEREFORE, the Parties hereby declare that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and charges, which

shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof.

AGREEMENT:

FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the undersigned agree as follows:

1. **Definitions.** As used in this Declaration, each of the following terms shall have the indicated meaning:

"Affiliate" means a Person which controls, is controlled by or under common control with any Person.

"Easement Area" means all those certain portions of the Unit 1 Property that are from time to time designed and/or otherwise designated for non-building or landscaping uses (i.e. areas designated for the parking of motor vehicles and for vehicular and pedestrian movement, including, without limitation, parking areas, roads, driveways, walkways and sidewalks).

"Improvement" means every structure or improvement of any kind, including but not limited to a fence, wall, curb cuts, walkways, traffic lanes, driveways, building, storage shelter or other product of construction efforts on or in respect to the Property.

"Mortgage" means a mortgage or a deed of trust recorded in the Official Records.

"Mortgagee" means the mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the Official Records.

"Official Records" means the official records of the Salt Lake County Recorder, State of Utah.

"Owner" means the person that at the time concerned is the legal owner of record (in the Official Records) of a whole or undivided fee interest in either of the Unit 1 Property or the Unit 2 Property. If there is more than one Owner of the Unit 1 Property or the Unit 2 Property at the time concerned, the obligations and liabilities of each such Owner for performance under, and compliance with, the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the unit concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

"Person" means a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

2. **Grant of Rights-of-Way and Easements.** Life Center Associates hereby conveys to Life Center II a perpetual, non-exclusive easement of ingress and egress over the Easement Area.

The easement granted hereby may be used at any time and from time to time as traffic lanes, driveways, sidewalks, walkways or similar areas for ingress and egress of vehicles and pedestrians and for vehicular parking.

3. No Interference. Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the rights-of-way and easements granted in Paragraph 2 shall be constructed or erected, nor shall any Owner in any other manner obstruct or interfere with the use of such rights-of-way and easements. Notwithstanding the foregoing, Life Center Associates may from time to time modify or relocate the Easement Area so long as such modification or relocation does not substantially interfere with Life Center II's access to the Unit 2 Property.

4. Maintenance of Easement Area. Life Center Associates, at its sole expense, shall maintain the Easement Area and all improvements to the Easement Area including, without limitation, all paved areas, curbs, landscaping, in a safe, clean and attractive condition and shall keep the Easement Area free from any accumulations of dirt, trash and other debris. Life Center Associates may delegate its rights to for such maintenance and construction by dedicating any such easements to the applicable governmental authority.

5. Indemnification. Life Center II shall indemnify, defend and hold Life Center Associates and its agents, employees and Affiliates harmless from and against any and all losses (including loss of use), costs, expenses, claims, demands, suits, actions, judgments, orders, injuries or damages, including without limitation reasonable attorneys' fees, as well as bodily injury, death and property damage claims, arising directly or indirectly out of the negligence or willful misconduct of (a) Life Center II, (b) Life Center II's tenants, licensees, invitees, employees, agents or contractors or (c) any person utilizing the Easement Area pursuant to the express or implied permission of Life Center II. Without limiting the generality of the foregoing, Life Center II agrees to promptly reimburse Life Center Associates for any and all costs required to be paid by Life Center Associates in connection with any and all damage to the Easement Area and the Improvements on the Easement Area caused by any construction vehicles used in connection with the construction of the Improvements on the Unit 2 Property. The obligations of Life Center II set forth in this Paragraph 5 shall survive the termination or expiration of this Agreement

6. Restrictions and Covenants Regarding Unit 2 Property.

6.1 Development Plan. Prior to the construction of any Improvements on the Unit 2 Property, Life Center II shall deliver to Life Center Associates the development and building plans for the Improvements to the Unit 2 Property, including, without limitation, a construction schedule (the "Development Plans"). The initial Development Plans shall include all access, traffic lanes and curb cuts between the Unit 1 Property and the Unit 2 Property. Life Center Associates shall have a period of ten (10) business days following Life Center Associates' receipt of a complete set of the Development Plans to approval of

disapprove of the Development Plans, which approval shall not be unreasonably withheld, conditioned or delayed. In the event Life Center Associates disapproves of the proposed Development Plan, such disapproval shall be in writing and shall specify the reasons for disapproval and what changes, if made, would cause Life Center Associates to give its approval. In the event Life Center Associates fails to disapprove of a Development Plan prior to such ten (10) business day period, Life Center Associates shall be deemed to have approved of the Development Plan. Upon receipt of any objections by Life Center Associates, Life Center II shall revise the Development Plan and resubmit it to Life Center Associates for review and approval in accordance with the procedure set forth above. In the event the Parties cannot, after good faith efforts, agree to a Development Plan, the matter shall be submitted to dispute resolutions as provided in Section 16 hereof. It shall not be unreasonably for Life Center Associates to withhold its consent to any Development Plans if (a) such Development Plans violate this Agreement, (b) are inconsistent with the appearance and design of the Improvements located on the Unit 1 Property, or (c) violates any applicable law, rule regulation or ordinance.

6.2 Construction of Improvements. Life Center II shall construct, at Life Center II's sole cost and expense, the Improvements in accordance with the approved Development Plans and otherwise in accordance with all applicable laws, rules, regulations, ordinances and other instruments affecting the Unit 2 Property (the "Plans and Specifications").

6.3 Change Orders. In the event during the completion of the Improvements on the Unit 2 Property, Life Center II or Life Center II's contractor requires that a substantial change be made to the Plans and Specifications, Life Center II shall propose such modification (each a "Change Order") to Life Center Associates for Life Center Associates' approval, which approval shall not be unreasonably withheld, conditioned or delayed. Life Center Associates shall have a period of five (5) business days from the receipt of such Change Order to approve or disapprove of such Change Order. In the event Life Center Associates does not disapprove of such Change Order within such five (5) business day period, Life Center Associates shall be deemed to have approved of the Change Order. In the event Life Center Associates disapproves such Change Order, such disapproval shall be in writing and include a reasonably detailed explanation of the corrections or changes which, if made, would cause Life Center Associates' approval of the Change Order. In the event Life Center Associates disapproves of a Change Order as required by the immediately preceding sentence, Life Center II shall use good faith efforts to revise such Change Order to the extent necessary to cause Life Center Associates to approve of such Change Order and shall resubmit such modified Change Order to Life Center Associates to be approved in accordance with the procedure set forth above. In the event Life Center Associates and Life Center II are unable to agree on such Change Order, such dispute shall be resolved pursuant to Section 9 below. In the event Life Center Associates and Life Center II approve or are deemed to have approved of such Change Order, the Plans and Specifications shall be deemed to be the Plans and Specifications as modified by such approved Change Order. Notwithstanding the foregoing to the contrary, Life Center II shall not be required to seek Life Center Associates' consent for any Change Order which is necessary to cause Life

Center II's completion of Improvements to be in accordance with any applicable laws, rules, regulations or ordinances, provided, however, Life Center II shall give Life Center Associates notice of any such Change Order.

6.4 Designated Representative. Prior to the construction of any Improvements on the Unit 2 Property, each Party shall designate a representative to represent and bind such Party with respect to Change Orders. Any delivery of a request for Life Center Associates' approval of a Change Order shall be deemed effective if delivered to such representative. Each Party may at any time change the identity of such representative by delivering notice to the other Party of the same.

6.5 Inspection of Work. During the construction of the Improvements on the Unit 2 Property, Life Center Associates and its authorized agents may enter and inspect the Improvements for the limited purpose of determining whether the work performed or being performed conforms with the Plans and Specifications, as modified by approved Change Orders. Life Center Associates and its authorized agents are also entitled to inspect and make copies of all plans, specifications, progress reports, opinions, communications and other documentation to, from and among the Life Center II, the architect, contractors, surveyor, engineers, and/or governmental officials, and Life Center II agrees to make such documentation available to Life Center Associates and its authorized agents upon reasonable request. Entry and inspection by Life Center Associates shall be made in a manner at such times as shall not interfere with the work being performed by or for Life Center II.

6.6 Correction of Deficiencies. If, during construction of the Improvements on the Unit 2 Property, Life Center Associates or its authorized agents shall reasonably determine that construction of the Improvements on the Unit 2 Property is not proceeding substantially in accordance with the Plans and Specifications, as modified by approved Change Orders, if any, Life Center Associates shall give written notice to Life Center II specifying the particular deviation, deficiency or omission. Life Center II shall forthwith take such steps as shall be necessary to verify the accuracy of Life Center Associates' assertion. If Life Center II does not agree that a deviation, deficiency or omission exists, Life Center II shall so notify Life Center Associates in writing. If the Parties are not able to agree whether a deviation, deficiency or omission exists, such disagreement shall be submitted to and resolved by an arbitrator in accordance with the provisions of Section 9 below, whose determination shall be final. Life Center II shall promptly correct, or cause to be corrected, any deviation, deficiency or omission which is finally determined to exist.

7. Use of the Unit 2 Property. Life Center II hereby agrees that for a period of four (4) years commencing upon the issuance of a certificate of occupancy for office building on the Unit 2 Property (the "No Lease Period"), Life Center II shall not enter into any lease, license, or other instrument giving the right of possession or use of the Unit 2 Property to any Person that is or was a tenant or licensee of the Unit 1 Property, or an Affiliate of such tenant or licensee, during the No Lease Period, without Life Center Associates' prior written consent, which may be withheld in Life Center Associates' sole and absolute discretion. In connection with the foregoing, Life Center

Associates shall, within five (5) business days of Life Center Associates receipt of a request from Life Center II, certify that any potential tenant, licensee or other user of the Unit 2 Property is not subject to the restrictions set forth in this Section 7.

8. Appurtenances to Unit Properties; Covenants Run with Land; Various Events.

8.1 Appurtenances to Unit Properties. Each right-of-way, easement, covenant and restriction created by this Declaration is an appurtenance to the Property benefited by such right-of-way, easement, covenant and restriction (but no other real property) and may not be transferred, assigned or encumbered except as an appurtenance to the benefited Property. For the purposes of each such right-of-way, easement, covenant and restriction, the benefited Property shall constitute the dominant estate and the burdened Property shall constitute the servient estate.

8.2 Covenants Run with Land; Various Events.

8.2.1 Covenants Run with Land. Each right-of-way, easement, covenant and restriction contained in this Declaration (whether affirmative or negative in nature) shall (a) create an equitable servitude on the burdened Property in favor of the benefited Property (but no other real property), (b) constitute a covenant running with the land, (c) benefit and bind every person having any fee, leasehold, Mortgage lien or other interest in any portion of the Property concerned to the extent that such portion is affected or bound by the right-of-way, easement, covenant or restriction in question, or to the extent that such right-of-way, easement, covenant or restriction is to be performed on such portion, and (d) benefit and bind any Owner whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means.

8.2.2 Transfer of Unit. If any Owner transfers all or any portion of the unit owned by such Owner, the transferee shall automatically be deemed to have assumed and agreed to be personally bound by the covenants of such Owner contained in this Declaration, and if the transferring Owner has by such transfer transferred all of such Owner's ownership interest in such unit, such transferring Owner shall be released and discharged from all obligations under this Declaration that accrue after the date of recordation in the official records of the instrument effecting such transfer.

8.2.3 Effect of Breach. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration (but such limitation shall not affect any other right or remedy or limit any obligation that any Owner may have under this Declaration by reason of any such breach), or defeat or render invalid the lien of any Mortgage made in good faith and for value as to any unit, except as provided in this Paragraph 8.

8.2.4 Identical Ownership. The ownership of both units by the same person shall not result in the termination of this Declaration.

9. Deadlock. A deadlock shall be deemed to exist (a "Deadlock") if, at any time, any matter including, without limitation, a Change Order is required to be approved by Life Center Associates pursuant to Section 6 of this Agreement, and Life Center Associates withholds its approval. The Deadlock shall be resolved by mutual written agreement of the Parties or, if the Parties cannot agree within ten (10) business days after the dispute first arises, either Party may submit the dispute to an arbitrator selected by the Parties. The determination of the arbitrator shall be final and shall not be subject to appeal. The prevailing party of such arbitration shall be entitled to recover from the other party its reasonable attorneys' fees and costs.

10. Modification. This Declaration and any right-of-way, easement, covenant or restriction contained in this Declaration may not be terminated, extended, modified or amended without the consent of each Owner, and any such termination, extension, modification or amendment shall be effective on recordation in the official records of a written document effecting the same, executed and acknowledged by each Owner; provided, however, that no such termination, extension, modification or amendment shall affect the rights of any Mortgagee holding a Mortgage constituting a lien on any unit in the Subdivision unless such Mortgagee consents to the same in writing.

11. Attorneys' Fees. If any Owner brings suit to enforce or interpret this Declaration or for damages on account of the breach of any provision of this Declaration, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled.

12. General Provisions. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This Declaration shall inure to the benefit of, and be binding on, each Owner and the heirs, personal representatives, successors and assigns of each Owner. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration.

13. Recitals and Exhibits. The Recitals set forth above and the exhibits attached hereto are hereby incorporated into this Declaration by this reference.

14. Duration. This Declaration and each right-of-way, easement, covenant and restriction set forth in this Declaration shall be perpetual.

15. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Subdivision for the general public or for any public

purpose whatsoever, it being the intention of the undersigned that this Declaration be strictly limited to the purposes expressed in this Declaration.

[Signatures appear on the next page.]

THE UNDERSIGNED have executed this Declaration to be effective as of the date first set forth above.

UNIT 1 OWNER:

BOYER LIFE CENTER ASSOCIATES, LTD., a Utah limited partnership, by its General Partner

THE BOYER COMPANY, L.C., a Utah limited liability company

By:


Name: *Donna J. Boyer*

Title: Manager

UNIT 2 OWNER:

BOYER LIFE CENTER ASSOCIATES II, L.C., a Utah limited liability company, by its Manager

THE BOYER COMPANY, L.C., a Utah limited liability company

By:


Name: *Donna J. Boyer*

Title: Manager

ACKNOWLEDGMENTS

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 15th day of ~~April~~^{May}, 2007, by Devon M. Quinn, the Manager of The Boyer Company, L.C., a Utah limited liability company, a manager of Boyer Life Center Associates II, L.C., a Utah limited liability company.

[SEAL] 

Rachael N. Niusulu
NOTARY PUBLIC
Residing in Salt Lake City

My Commission Expires:
8.20.07

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 15th day of ~~April~~^{May}, 2007, by Devon M. Quinn, the Manager of The Boyer Company, L.C., a Utah limited liability company, a general partner of Boyer Life Center Associates, Ltd. a Utah limited partnership.

[SEAL] 

Rachael N. Niusulu
NOTARY PUBLIC
Residing in Salt Lake City

My Commission Expires:
8.20.07

Exhibit A
to
Declaration of Easements, Covenants and Restrictions

LEGAL DESCRIPTION OF UNIT 1 PROPERTY

The following tract of real property located in Salt Lake County, State of Utah:

Beginning at a point on the existing west line of 1300 East Street, said point being North 89°45'46" West along the Quarter Section Line 28.29 feet from the East Quarter Corner of Section 8, Township 3 South, Range 1 East, Salt Lake Base and Meridian. Thence South 0°03'00" East along said West line 450.00 feet; thence North 89°45'46" West 385.00 feet; thence North 0°03'00" West 450.00 feet to said Quarter Section Line; thence South 89°45'46" East along said Quarter Section Line 385.00 feet to the point of BEGINNING.

Exhibit B
to
Declaration of Easements, Covenants and Restrictions

LEGAL DESCRIPTION OF UNIT 2 PROPERTY

The following tract of real property located in Salt Lake County, State of Utah:

BEGINNING North 89°45'46" West 25.29 feet and South 0°03' East 450 feet from the East quarter corner of Section 8, Township 3 South, Range 1 East, Salt Lake Base and Meridian; thence South 0°03' East 209.58 feet; thence North 89°46'30" West 197.998 feet; thence North 0°03' West 55.265 feet; thence Northwesterly along curve to left 38.03 feet; thence North 0°03' West 119.353 feet; thence South 89°45'46" East 210.63 feet to the point of BEGINNING.

Tax ID #28-08-434-021-0000

CONSENT AND SUBORDINATION TO DECLARATION OF EASEMENTS

GENWORTH LIFE INSURANCE COMPANY formerly known as GENERAL ELECTRIC CAPITAL ASSURANCE COMPANY, a Delaware corporation (the "Lender"), being the owner and holder of that certain Deed of Trust, Assignment Of Rents and Leases and Security Agreement, dated as of December 5, 2005, executed by BOYER LIFE CENTER ASSOCIATES, LTD., a Utah limited partnership (the "Borrower"), in favor of LANDMARK TITLE COMPANY as trustee, and recorded on December 5, 2005, as Entry No. 9572459, in Book 9226 at Pages 269 to 300, in the Official Records of the Salt Lake County Recorder, Salt Lake County, Utah (as amended, restated, consolidated, supplemented or otherwise modified from time to time, the "Trust Deed"), hereby acknowledges and consents to the Declaration to which this Consent and Subordination is attached and agrees that its security title in and to the Property (as defined in the Trust Deed) and any interest in Lender given pursuant to the instruments described in the Trust Deed, is subordinate to the Declaration to which this Consent and Subordination is attached.

This instrument shall be binding on the legal representatives, successors, successors-in-title and assigns of Lender.

IN WITNESS WHEREOF, Administrative Agent has executed this instrument under seal by and through its duly authorized representative as of this ____ day of May, 2007.

GENWORTH LIFE INSURANCE COMPANY, a
 Delaware corporation
 By: Cindy J. Heidel
 Name Cindy J. Heidel
 Title: INVESTMENT OFFICER

STATE OF Virginia)
 :ss.
 COUNTY OF Henrico)

The foregoing instrument was acknowledged before me this 11th day of May 2007, by Cindy J. Heidel, the Investment Officer of GENWORTH LIFE INSURANCE COMPANY, a Delaware corporation.

[SEAL]

Rose Macdonald
 NOTARY PUBLIC
 Residing in Henrico County

My Commission Expires: 10-31-09