

**When Recorded, Return To:**

Scrap, LLC  
 c/o Artspace  
 325 West Pierpont Avenue  
 Salt Lake City, UT 84101

10573592

12/4/2008 3:56:00 PM \$30.00

Book - 9663 Pg - 883-893

Gary W. Ott

Recorder, Salt Lake County, UT

FIRST AMERICAN NCS

BY: eCASH, DEPUTY - EF 11 P.

**EASEMENT AGREEMENT**

This Easement Agreement is made and entered into as of December 3, 2008 by and between Scrap, LLC, a Utah limited liability company ("Scrap"), and Barrel, LLC, a Utah limited liability company ("Barrel").

**BACKGROUND:**

A. Scrap owns certain property in Salt Lake City more particularly described on Exhibit A attached hereto ("Scrap's Property");

B. Barrel owns certain adjoining property in Salt Lake City County to the south of Scrap's Property more particularly described on Exhibit B attached hereto ("Barrel's Property");

C. Scrap, in developing Scrap's Property, desires to have the right to use a portion of Barrel's Property for the purposes of access and underground utilities;

D. Barrel, in developing Barrel's Property, desires to have the right to use a portion of Scrap's Property for the purposes of access and underground utilities;

E. Barrel is willing to grant an easement over and across Barrel's Property in order for Scrap to construct, operate and maintain such access and utilities, all on the terms and conditions contained herein; and

F. Scrap is willing to grant an easement over and across Scrap's Property in order for Barrel use such access and to tie into and use such utilities, all on the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

1. Grant of Access Easement by Barrel.

(a) Barrel does hereby grant to Scrap a non-exclusive right-of-way and easement over and across the northernmost 38.5 feet of Barrel's Property as depicted on Exhibit C attached hereto ("Scrap's Easement Area") for the purpose of ingress and egress of vehicular and pedestrian traffic to and from Scrap's Property from and to 400 West Street.

(b) Except to the extent necessary for reasonable construction, for repair and maintenance, for traffic regulation and control (including as shown on Exhibit C), 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 Subsection 1(a) above shall be constructed or erected on Scrap's Easement Area.

(c) Notwithstanding the provisions of Subsections 1(a) and (b) above, Barrel may park vehicles within the portion of Scrap's Easement Area that is shown being used for parking on Exhibit C.

(d) Scrap agrees to keep the surface of Scrap's Easement Area and Barrel's Easement Area (as defined below) in reasonably good repair and condition and shall keep it reasonably free from ice and snow. Barrel agrees to reimburse Scrap for Barrel's pro-rata share of the costs of such maintenance within thirty (30) days of the date an invoice is sent by Scrap, which invoices may be sent from time to time. Any invoice not paid within such thirty (30) day period shall bear interest at the rate (the "Contract Rate") of eight percent (8%) above the "prime rate" (as published in the Wall Street Journal or comparable publication) until paid in full.

## 2. Grant of Utilities Easements by Barrel.

(a) Barrel does hereby grant to Scrap a non-exclusive right-of-way and easement over and across Scrap's Easement Area to lay, maintain, operate, repair, inspect, protect, remove and replace underground sanitary sewer, storm drain, electrical, water, gas, telephone, fiber optic, communications and other utility lines (the "Utilities"). Scrap shall have the right of ingress and egress to and from Scrap's Easement Area to lay, maintain, operate, repair, inspect, protect, remove and replace the Utilities. During temporary periods, Scrap may make incidental use of such other portions of Barrel's Property as may be reasonably necessary in connection herewith, provided that any such incidental use can be accomplished without causing injury and shall not materially reduce or unreasonably impair the usefulness or function to any improvements located on Barrel's Property.

(b) Scrap shall give fifteen (15) days written notice of its intent to construct, maintain, remove or replace any Utilities which would involve any disturbance of the surface, and Scrap agrees that any such construction, maintenance, repair, removal or replacement will be done in the most expeditious manner reasonably possible. In the event the surface of Barrel's Property is disturbed by Scrap pursuant hereto, Scrap agrees to promptly restore such surface to its reasonably equivalent existing condition prior thereto.

(c) Scrap shall keep the Utilities in reasonably good repair and condition at all times. Scrap shall, as promptly as is reasonable under the circumstances, repair any Utilities which are broken or leaking, but in no event shall Scrap be liable for

any damages to Barrel as a result of any broken or leaking Utility, Barrel's sole remedy being the right to cure as provided below.

(d) Barrel shall not build or construct any building or other improvement over or across the Utilities in Scrap's Easement Area.

(e) Scrap intends to construct certain Utilities in connection with the initial development of Scrap's Property, and may construct other Utilities in the future. Scrap agrees that Barrel may, at Barrel's expense, tie into and use the sanitary sewers, storm drains, water lines and other such Utilities that can be reasonably shared, provided that (i) such usage will not adversely affect Scrap's ability to use the Utilities as planned for the development of Scrap's Property, (ii) Scrap approves the engineering plans and specifications therefor (such approval not to be unreasonably withheld) and (iii) Barrel reimburses Scrap for the original construction costs of the Utilities as shall be determined by Scrap (such determination not to be unreasonable) prior to tying into any Utility. Barrel shall provide to Scrap at least thirty (30) days prior to date of any planned construction copies all engineering plans and specifications for such tie-in. Scrap makes no representation or warranty as to whether the size or capacity of any such Utilities will be sufficient for Barrel's intended development of Barrel's Property.

(f) In the event that Barrel ties into any Utility, Barrel agrees to thereafter (commencing with the first day of the month following the date that the first certificate of occupancy is issued for a building on Barrel's Property) share in the cost of the maintenance of such Utility on a pro-rata basis reasonably determined by Scrap.

3. Grant of Access Easement by Scrap.

(a) Scrap does hereby grant to Barrel a non-exclusive right-of-way and easement over and across the southernmost 34.2 feet of Scrap's Property as depicted on Exhibit C attached hereto ("Barrel's Easement Area") for the purpose of ingress and egress of vehicular and pedestrian traffic to and from Barrel's Property from and to 400 West Street.

(b) Except to the extent necessary for reasonable construction, for repair and maintenance, for traffic regulation and control (including as shown on Exhibit C), 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 Subsection 3(a) above shall be constructed or erected on Barrel's Easement Area.

(c) Notwithstanding the provisions of Subsections 3(a) and (b) above, Scrap may park vehicles within the portion of Barrel's Easement Area that is shown being used for parking on Exhibit C.

4. Grant of Utilities Easements by Scrap.

(a) Provided that Barrel has satisfied the conditions set forth in Section 2(e) above with respect to any Utility which Barrel desires to tie into, Scrap does hereby grant to Barrel a non-exclusive right-of-way and easement over and across Scrap's Easement Area to use such Utility.

(b) Scrap shall not build or construct any building or other improvement over or across the Utilities in Scrap's Easement Area.

5. Nature of Easements. For the purpose of the easements, rights and privileges provided under Sections 1 and 2 above, Scrap's Property, or any part thereof, shall constitute the dominant estate and Barrel's Property shall constitute the servient estate. For the purpose of the easements, rights and privileges provided under Section 3 and 4, Barrel's Property, or any part thereof, shall constitute the dominant estate and Scrap's Property shall constitute the servient estate. Each of the easements, rights, privileges, covenants, restrictions, conditions and provisions granted or created herein create servitudes upon the servient estate in favor of the dominant estate; are appurtenances to the dominant estate; may not be transferred, assigned or encumbered except as an appurtenance of the dominant estate; and shall be covenants which run to the benefit of the owners of all or any portion of the dominant estate, their successors and assigns. As used herein, the term "Barrel" shall mean Barrel, LLC and its successors and assigns in the ownership of Barrel's Property, and the term "Scrap" shall mean Scrap, LLC and its successors and assigns in the ownership of Scrap's Property.

6. Indemnification. Each party (the "Indemnifying Party") agrees to defend, indemnify and hold the other party (the "Indemnified Party"), together with all of its tenants, agents, or employees, harmless from and against all liability, loss or costs incurred, including without limitation reasonable attorneys' fees, arising out of, related to or caused by the Indemnifying Party's acts or omissions to act, use of, or occupancy of Scrap's Property or Barrel's Property, as the case may be. The Indemnified Party shall give to the Indemnifying Party prompt and timely notice of any claim or suit instituted coming to its knowledge which in any way, directly or indirectly, contingently or otherwise, affects or might affect the Indemnifying Party. Each party shall have the right to participate in the defense of the same to the extent of its own interest.

7. Insurance. Each party shall secure and maintain commercial general liability insurance, property insurance, employers' liability insurance, and such other insurance coverage or properly reserved self-insurance, in such forms and amounts as may be reasonable and appropriate under this Agreement. Each party agrees to cause the other party and such other party's lender(s) to be added as additional insureds under its policies. Upon request, each party shall provide to the other party certificates of proof of the insurance coverage required herein. To the extent permitted by their respective policies of insurance, each party hereby waive any right of recovery against the other and the authorized representatives of the other for any loss or damage that is covered by any

policy of insurance maintained by either party. If any policy of insurance relating to this Agreement does not permit the foregoing waiver, or if the coverage under any such policy would be invalidated as a result of any such waiver, the party maintaining such policy shall, if possible, obtain from the insurer under such policy a waiver of all right of recovery by way of subrogation against either party in connection with any claim, loss or damage covered by such policy. If either party is not able to obtain such waiver, then such party shall have the other party named as an additional insured on all such policies of insurance.

8. Right to Cure. With respect to any default hereunder by a party (the "Defaulting Party"), the other party (the "Curing Party") shall have the right, but not the obligation, in addition to any remedy available at law or in equity, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party upon fifteen (15) days prior written notice to the Defaulting Party; provided, however, that in the event the default shall constitute an emergency condition involving an immediate and imminent threat of substantial injury or harm to persons or property, the Curing Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, due to such emergency, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Curing Party shall have the right to enter upon the property of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each party shall be responsible for the non-performance or default of any person claiming by, through or under such party. In the event any Curing Party shall cure a default, the Defaulting Party shall reimburse the Curing Party for all costs and expenses incurred in connection with such curative action, plus interest at the Contract Rate, within fifteen (15) days of receipt of demand, together with reasonable documentation supporting the expenditures made.

10. Perpetual. This Agreement and each right-of-way, easement, covenant, and restriction set forth in this Agreement shall be perpetual.

11. Modifications, Termination, Interpretation and Amendments. Modification, termination or amendments of this Agreement shall take place only by the written agreement of each of the parties hereto, and shall be effective upon recording such modification, termination or amendment with the Salt Lake County Recorder. The invalidity or unenforceability of any portion of this Agreement shall not affect the validity or enforceability of the remainder hereof. This Agreement shall be liberally construed to effect all of its purposes. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties hereto relative to the subject matter hereof. Any prior negotiations, correspondence, or understandings relative to the subject matter hereof shall be deemed to be merged in this Agreement and shall be of no force or effect.

12. Enforcement. Each party hereto shall have the right to enforce, by any proceeding at law or in equity, including injunctive relief, all agreements herein contained. The failure of a party to enforce any agreement herein contained shall not be deemed a waiver of the right to do so thereafter. In the event that any party hereto commences legal proceedings to enforce any of the terms of this Agreement, the prevailing party shall receive from the other party a reasonable sum as attorneys' fees and costs.

13. Notices. Any notices or other communications required or permitted hereunder to any party shall be sufficiently given if hand-delivered or sent by certified mail, return receipt requested, postage prepaid, addressed to the address as shown on the Salt Lake County Assessor's records for such party.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the day and year first-above written.

**SCRAP, LLC**

By: Artspace, its Manager

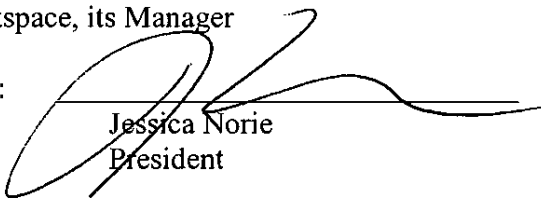
By:

  
\_\_\_\_\_  
Jessica Norie  
President

**BARREL, LLC**

By: Artspace, its Manager

By:

  
\_\_\_\_\_  
Jessica Norie  
President

STATE OF UTAH )

: ss

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 3rd day of December, 2008, by Jessica Norie, the President of Artspace, a Utah nonprofit corporation, the Manager of Scrap, LLC., a Utah limited liability company.



Beth A. Jepsen  
NOTARY PUBLIC  
Residing at: 170 S. Main St., Ste. 1500  
SLC, UT. 84101

My Commission Expires:

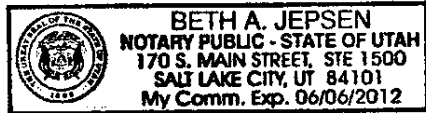
June 6th, 2012

STATE OF UTAH )

: ss

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 3rd day of December, 2008, by Jessica Norie, the President of Artspace, Inc., a Utah nonprofit corporation, the Manager of Barrel, LLC., a Utah limited liability company.



Beth A. Jepsen  
NOTARY PUBLIC  
Residing at: 170 S. Main St., Ste. 1500  
SLC, UT. 84101

My Commission Expires:

June 6th, 2012

EXHIBIT A

LEGAL DESCRIPTION OF SCRAP'S PROPERTY

That certain real property located in Salt Lake County more particularly described as follows:

All of Lots 7 and 8, Block 8, Plat "A", SALT LAKE CITY SURVEY, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

Parcel No. 15-12-176-013-0000:



EXHIBIT B

LEGAL DESCRIPTION OF BARREL'S PROPERTY

That certain real property located in Salt Lake County more particularly described as follows:

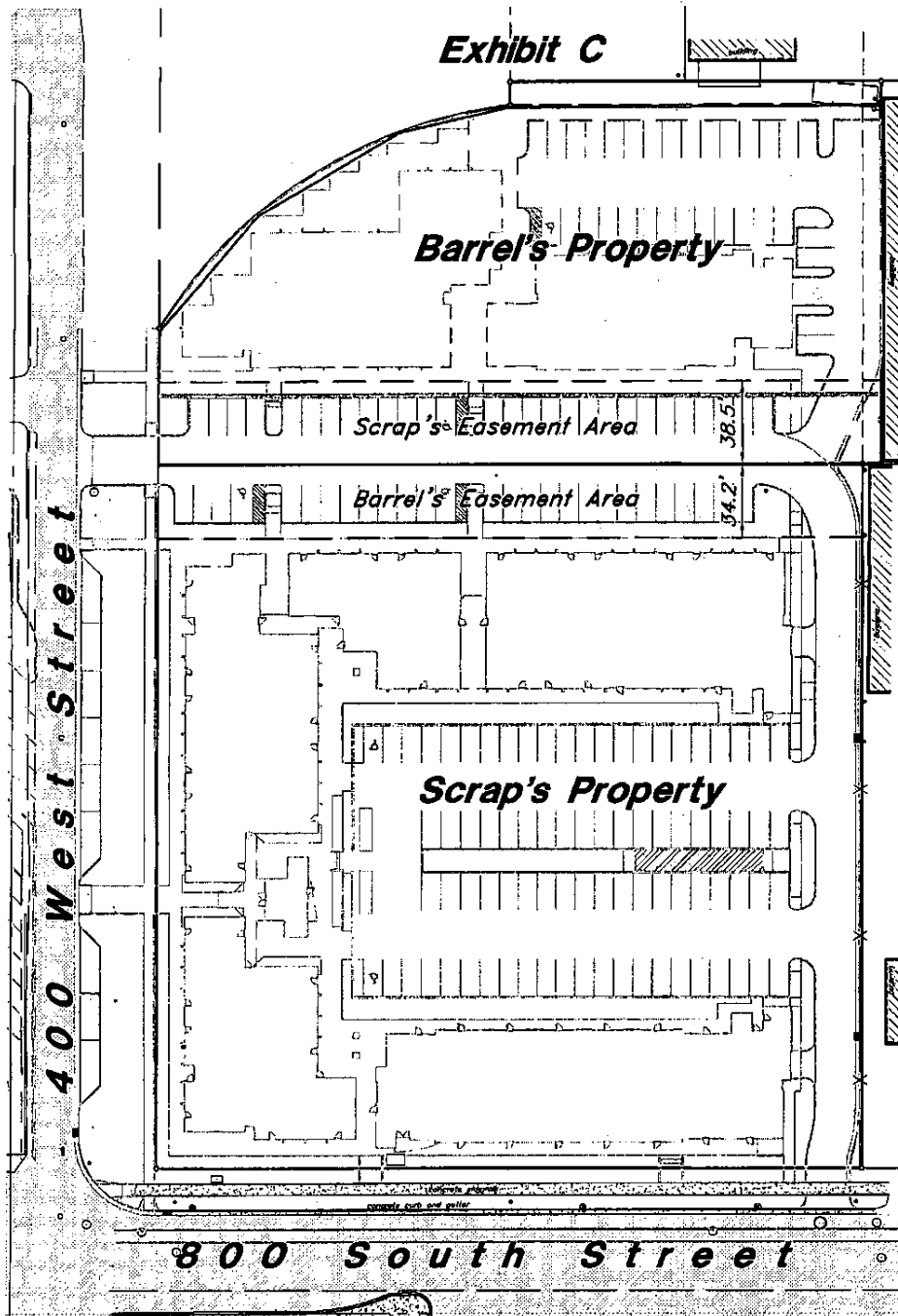
A parcel of land lying North of an existing screen wall being part of Lots 1, 2 and 3, Block 8, Plat "A" Salt Lake City Survey in Salt Lake County, Utah:

Beginning at the Northeast Corner of said Lot 1 and running thence South  $0^{\circ}00'16''$  West 64.12 feet (61.08 feet record) along the East Line of said Lot 1 also being the West Line of 400 West Street; thence Southwesterly along the arc of a 231.10 feet (230.99 feet record) radius curve to the right a distance of 200.73 feet (200.68 feet record)(Center bears North  $56^{\circ}49'12''$  West; Central Angle equals  $49^{\circ}46'00''$  and Long Chord bears South  $58^{\circ}03'49''$  West 194.48 feet) to a point on the Lot Line common to Lots 1 and 2 of said Block 8; thence South  $0^{\circ}00'14''$  East 0.65 feet along said Lot Line to the South edge of an existing block screen wall; thence South  $89^{\circ}49'17''$  West 173.49 feet to a point 8.45 feet West of the Lot Line common to Lots 2 and 3 of said Block 8; thence North  $0^{\circ}00'11''$  East 167.12 feet to the Lot Line common to Lots 3 and 6 of said Block 8 at a point 8.45 feet North  $89^{\circ}57'38''$  West along the Lot Line from the corner common to Lots 2, 3, 6 and 7 of said Block 8; thence South  $89^{\circ}57'38''$  East 8.45 feet along said Lot Line to said common Lot Corner; thence continuing South  $89^{\circ}57'38''$  East 165.04 feet (165.0 feet record) along the Lot Line common to Lots 2 and 7 of said Block 8 to the Lot Corner common to said Lots 1, 2, 7 and 8; thence continuing South  $89^{\circ}57'38''$  East 165.04 feet (165.0 feet record) along the Lot Line common to Lots 1 and 8 of said Block 8 to the Northeast Corner of said Lot 1 on the West Line of 4000 West street and the point of beginning.

Parcel No. 15-12-176-014-0000:

EXHIBIT C

DEPICTION OF  
SCRAP'S EASEMENT AREA AND  
BARREL'S EASEMENT AREA

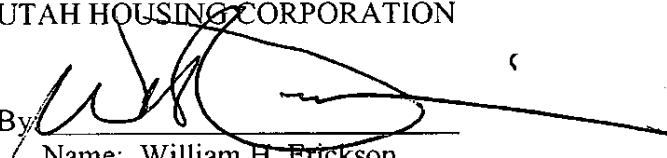


CONSENT AND SUBORDINATION

(Deed of Trust, Security Agreement and Assignment of Rents and Leases)

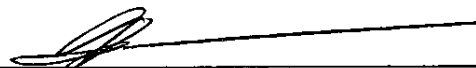
Utah Housing Corporation, a public corporation of the State of Utah ("Lender"), is beneficiary under that certain Deed of Trust, Security Agreement and Assignment of Rents and Leases ("Deed of Trust") dated November 9, 2007 executed by Scrap, L.L.C. (the "Trustor") and recorded against the property described in Exhibit A thereto (the "Real Property") on November 13, 2007, as Entry No. 10273679 in Book 9536 at Page 6049-6066 in the Official Records of Salt Lake County, Utah which secures certain indebtedness of the Borrower as specified therein (the "Indebtedness"). Lender hereby expressly consents to the execution of the foregoing Easement Agreement and the recordation of the Easement Agreement against the Real Property and hereby agrees that it or any other person that acquires the Real Property by foreclosure of either of the Deed of Trust or by other means shall be bound by the provisions of the Easement Agreement.

UTAH HOUSING CORPORATION

By   
Name: William H. Erickson  
Title: President and CEO

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

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of December, 2008, by William H. Erickson, the President and CEO of Utah Housing Corporation, a public corporation of the State of Utah.

  
NOTARY PUBLIC  
Residing at: Salt Lake

My Commission Expires: Dec. 7, 2011

