

**WHEN RECORDED, MAIL TO:**

Stephen K. Christensen  
Nelson Christensen & Helsten, P.C.  
68 South Main Street, 6th Floor  
Salt Lake City, Utah 84101

**CROSS ACCESS AND UTILITY  
EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT ("**Agreement**") is made this 23 day of April, 2009 by and between BOYER HEBER CITY, L.C., a Utah limited liability company, whose address is 90 South 400 West, Suite 200, Salt Lake City, UT 84101 ("**Boyer**") and HEBER STATION, LC, a Utah limited liability company, whose address is 3762 South 150 East, Salt Lake City, Utah 84115 ("**Heber Station**") (each may also be referred to as "**Party**" or collectively as "**Parties**").

WHEREAS, Boyer is the owner of a certain parcel of real property located in Wasatch County, Utah ("**Boyer Property**") legally described on Exhibit "A"; and

WHEREAS, Heber Station is the owner of certain adjoining real property located in Wasatch County, Utah ("**Heber Station Property**") legally described on Exhibit "B"; and

WHEREAS, Boyer and Heber Station desire to create a cross-easement for ingress and egress across a portion of the Parties' respective properties for the benefit of the other Party's property as more fully described and on the terms and conditions set forth below; and

WHEREAS, Boyer desires to grant Heber Station an easement for utility installation and maintenance over and across a portion of the Boyer Property.

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant, grant and agree as follows:

1. Cross-Access Easements.

(a) Boyer Property Access Easement. Boyer hereby grants to Heber Station, a perpetual, nonexclusive easement for vehicular and pedestrian access, ingress and egress by invitees and guests of the Heber Station Property, over and across those portions of Boyer Property, which are now improved, or will be improved with driveways, as shown on the Site Plan attached hereto as Exhibit "C" ("**Boyer Property Easement**"), as such may be modified from time to time, provided however, that any such modification shall not unreasonably restrict access to the public road. Boyer will construct the access to the Boyer Property at its expense in accordance with Heber City regulations as applicable. The Boyer Property Easement shall not apply to any portion of the Boyer Property upon which a building or other improvement is located or constructed pursuant to any applicable permits and approvals of the governing municipality nor shall it apply to any portion of the Boyer Property consisting of vehicle parking or landscaped areas. The Boyer Property Easement shall burden the Boyer Property,

and shall be for the benefit of and appurtenant to the owner of Heber Station Property, and its heirs successors and assigns.

(b) Heber Station Property Access Easement. Heber Station hereby grants to Boyer, a perpetual, nonexclusive easement for vehicular and pedestrian access, ingress and egress by invitees and guests of the Boyer Property, over and across those portions of the Heber Station Property, which are now improved, or will be improved with driveways or approaches, as such configuration exists or is actually constructed and altered from time to time by Heber Station in compliance with any applicable permits and approvals of the governing municipality, ("**Heber Station Property Easement**"). The Heber Station Property Easement shall not apply to any portion of the Heber Station Property upon which a building is located or constructed pursuant to any applicable permits and approvals of the governing municipality nor shall it apply to any portion of the Heber Station Property consisting of the exterior apron of a building, vehicle parking areas, landscaping and other related building improvements. The Heber Station Property Easement shall burden the Heber Station Property, and shall be for the benefit of and appurtenant to the owner of the Boyer Property, and its heirs successors and assigns.

(c) Option to Acquire Second Access Easement. At Heber Station's option Boyer shall grant Heber Station a perpetual, non-exclusive access easement for general ingress and egress or, at Heber Station's option, egress only, purposes, including but not limited to, vehicular and pedestrian travel across the Boyer Property in the location shown on the Site Plan as the "**Option Access Easement**". Heber Station shall provide Boyer with thirty (30) days written notice of its election to exercise the option to acquire the Option Access Easement, which notice must be given within 50 years of the date hereof, at which time the option to acquire the Option Access Easement will expire if not exercised. Upon receipt of such notice, Boyer shall prepare and record an easement agreement reasonably acceptable to both parties. Heber Station shall reimburse Boyer for the cost of construction of improvements or physical modifications (and not including any reimbursement for loss of parking on the Boyer Property) to the Boyer Property caused by Heber Station's exercise of the Option Access Easement.

(d) Purposes. The easements created hereby shall provide for access, ingress, egress, by guests and invitees of the Parties and for general pedestrian and motorized vehicular traffic by the Parties, their invitees, guests and customers for access, passing and repassing through and across the driveways, approaches and roadways of the Boyer Property Easement and the Heber Station Property Easement (collectively the "**Easement Area**") in the areas shown on Exhibit "C" as constructed or a reconstructed from time to time for the purposes of ingress and egress to and from the benefited and burdened properties.

(e) The easements granted in this Section 1 do not include parking easements and do not preclude the placement by the owners of the Boyer Property and the Heber Station Property of raised landscaping, curbs, parking bumpers or raised sidewalks on a Party's own property so long as reasonable vehicular and pedestrian access along the common boundary between the two (2) properties is maintained as a general driveway and accessway between the properties in substantial conformity to the layout approved by Heber City as currently shown on Exhibit "C".

(f) Maintenance and Improvements. Each Party shall, at its own expense, perform such repairs, maintenance, and construct improvements, as may be reasonably necessary to

maintain the Easement Area on its own property in a manner consistent with the first class nature, use and occupancy of the properties as an integrated retail and integrated commercial development.

(g) Non-Exclusive. The Easements granted hereby shall be non-exclusive; provided that neither Party shall use or permit any use of its own Easement Area which unreasonably interferes with the other Party's use of the Easement Area as permitted hereunder.

(h) No Barriers. Except for landscaping, curbing and other common area and common facility improvements as may be required by municipalities, no walls, fences or barriers of any kind shall be constructed or maintained on the Easement Area, or any portion thereof, by any Party which shall prevent or impair the use or exercise of the easements granted herein, or the free access and movement, including without limitation, of pedestrians and vehicular traffic across the Easement Area; provided, however, reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic may be installed so long the Easement Area is not unreasonably closed or blocked. The only exceptions to this provision shall be for incidental, temporary encroachments upon the Easement Areas which may occur as a result of the use of the ladders, scaffolding, barricades and similar facilities, or for incidental, immaterial and temporary encroachments upon the Easement Area which may occur in conjunction with the construction, maintenance or repair of buildings and improvements, so long as such construction, maintenance or repair is being diligently pursued, and/or for temporary blockage of certain areas deemed necessary by the parties to prevent a public dedication of an easement or access right.

2. Utility Easement. Boyer hereby grants Heber Station, its agents, employees and contractors, a non-exclusive easement and right-of-way for installation, operation, maintenance, service, repair, improvement, replacement, of utilities through the Boyer Property, in the location shown on the Site Plan attached hereto as Exhibit "D" ("**Utility Easement**") subject to the following:

(a) Boyer shall have the right to construct, maintain, operate, repair and replace (or cause the same to be done) pavement, curbing, sidewalks, landscaping and such other improvements (except buildings and large trees whose root zones would interfere with the Utility Easement) over and adjacent to such Utility Easement that do not unreasonably interfere with Heber Station's rights hereunder;

(b) Any operation, maintenance, or repair of the Utility Easement shall be exercised so as to minimize the disruption to Boyer's occupation of the Utility Easement area, including providing to Boyer reasonable written notice prior to entering the Utility Easement area which shall provide the times, description, and estimated duration of any work to be performed in connection with the easement, unless the work is deemed an emergency and immediate action is required, in such an event Heber Station will notify Boyer within as reasonable time as the emergency will allow;

(c) Heber Station shall be obligated to repair and restore any damage to property or crops caused by such construction, operation, maintenance, or repair (including without limitation the restoration of pavement, and curbing removed or damaged by such work).

3. Parking Easement. Boyer hereby grants Heber Station, its agents, employees and contractors, a perpetual non-exclusive easement for Heber Station's use of five (5) parking stalls (the "**Parking Stalls**") on the Boyer Property. Boyer shall have the right, in its sole discretion, to relocate the Parking Stalls from time to time (but not to reduce the number of Parking Stalls) provided that the Parking Stalls are located in Valley Station and within two hundred fifty (250) feet of the Heber Station Property.

4. Limited Representations and Warranties. Each Party represents and warrants to the other Party that it is the owner of its respective property, that it has authority to grant the easements without the need for any notice to, consent of or subordination by, any other person or entity, and that such easement is free and clear of all liens, encumbrances and restrictions except those appearing of record.

5. Indemnity. Each Party agrees to indemnify, defend and hold harmless the other Party from and against any claims, liability, damages or costs ("**Claims**") arising out of or relating to the use by the Party, its invitees, guests or customers of the other Party's portion of the Easement Area unless and to the extent that such Claims are the result of the negligence of the other Party.

6. Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Easement Areas to the general public or for the general public or for any public purposes whatsoever, it being the intention of the Parties that this Agreement be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the easement areas herein affected, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of Boyer and Heber Station. Notwithstanding any other provisions herein to the contrary, the Parties may periodically restrict ingress and egress from the easement areas on their respective properties in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such at time as to have a minimum effect on the Parties.

7. Insurance. The Parties covenant and agree to maintain in full force and effect at all times a policy of commercial general liability insurance (including coverage for contractual liability hereunder) with a liability limit in an amount reasonably agreed upon by the Parties, but at least \$1,000,000 each occurrence and \$2,000,000 aggregate, but not less than an amount which is customary and reasonable for the activities of the type conducted by the Parties on their respective properties. Upon request at any time, the Parties hereto shall deliver to each other a certificate of insurance evidencing the coverage required to be maintained hereunder; and each such certificate shall provide that the policy coverage shall not be modified or terminated without providing at least thirty (30) days prior written notice to the other Party.

8. No Merger. The easements granted herein shall not be extinguished based on merger of the title or common ownership of Boyer Property and Heber Station Property unless expressly terminated by the owners of Boyer Property and Heber Station Property by recorded instrument.

9. Miscellaneous.

(a) Covenants Running with the Land. This Agreement and all of the terms and conditions contained herein shall inure to the benefit of, and be binding upon the Parties hereto and their respective successors and assigns, and shall be "covenants running with the land".

(b) Duration. The easements, rights and privileges created hereby shall continue for a period of fifty (50) years and shall be automatically renewed for successive ten (10) year periods unless both Parties shall execute and record a statement terminating such easements, rights and privileges within sixty (60) days of the expiration of such statutory period or any ten (10) year renewal thereof.

(c) No Waiver. A delay in enforcing or a failure to enforce any breach or violation of any restriction herein contained shall not be deemed to be a waiver or abandonment of any such restriction, or a waiver of the right to enforce any subsequent breach or violation of such restriction. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) had knowledge of the breach or violation.

(d) Severability. If any one or more of the provisions of this Agreement or the applicability of any such provision to a specific situation shall be held invalid or unenforceable by a court of competent jurisdiction, the validity and enforceability of all the provisions of this Agreement and all other applications of such provisions shall not be affected thereby.

(e) Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

(f) Successors and Assigns. This Agreement shall not impair the right of either Party to hereafter convey any interest in any or all of the property burdened or benefited by the easements granted herein, provided that any such conveyance is subject hereto. The easements shall not be conveyed or assigned separately from the benefited property to which it is appurtenant. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.

(g) Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

DATED and EFFECTIVE as of the date first set forth herein.

[Signature Page Follows]

BOYER HEBER CITY, L.C.,  
a Utah limited liability company

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

Jacob L. Boyer  
By: Jacob L. Boyer  
Its: Manager

HEBER STATION, LC  
a Utah limited liability company

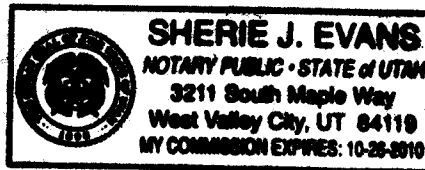
By: JAMES MANAGEMENT COMPANY, LC  
Its: Manager

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF UTAH  
COUNTY OF SALT LAKE

On the 24<sup>th</sup> day of APRIL 2009, personally appeared before me JACOB L. BOYER,  
who duly acknowledged to me that he executed the foregoing document as Manager of  
THE BOYER COMPANY, L.C., the manager of BOYER HEBER CITY, L.C.

[Signature]  
\_\_\_\_\_  
Notary Public



STATE OF UTAH  
COUNTY OF SALT LAKE

On the \_\_\_\_ day of \_\_\_\_\_ 2009, personally appeared before me GLADE N. JAMES,  
who duly acknowledged to me that he executed the foregoing document as manager of JAMES  
MANAGEMENT COMPANY, LC, the manager of .HEBER STATION, LC

\_\_\_\_\_  
Notary Public

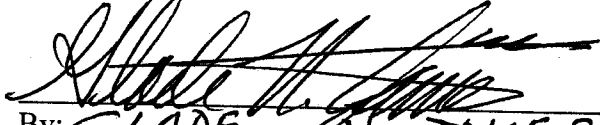
BOYER HEBER CITY, L.C.,  
a Utah limited liability company

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

By: \_\_\_\_\_  
Its: \_\_\_\_\_

HEBER STATION, LC  
a Utah limited liability company

By: JAMES MANAGEMENT COMPANY, LC  
Its: Manager

  
By: GLADE N. JAMES  
Its: President

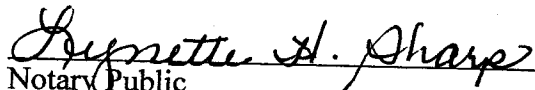
STATE OF UTAH  
COUNTY OF SALT LAKE

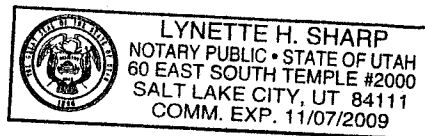
On the \_\_\_\_ day of \_\_\_\_\_ 2009, personally appeared before me \_\_\_\_\_,  
who duly acknowledged to me that he executed the foregoing document as \_\_\_\_\_ of  
THE BOYER COMPANY, L.C., the manager of BOYER HEBER CITY, L.C.

\_\_\_\_\_  
Notary Public

STATE OF UTAH  
COUNTY OF SALT LAKE

On the 23 day of April 2009, personally appeared before me GLADE N. JAMES,  
who duly acknowledged to me that he executed the foregoing document as manager of JAMES  
MANAGEMENT COMPANY, LC, the manager of .HEBER STATION, LC

  
Notary Public



**EXHIBIT "A"**  
Legal Description – Boyer Property

Lots 7, 8, 10 and 11 of VALLEY STATION SUBDIVISION recorded in the State of Utah, County of Wasatch on August 20, 2008, Book 972, Page 2269, official records of Wasatch County, Utah.



**EXHIBIT "B"**  
Legal Description - Heber Station Property

**Boyer- Heber**  
**Final Overall Glade James Boundary**

A part of the Northeast Quarter of Section 7, and the Northwest Quarter of Section 8, Township 4 South, Range 5 East, Salt Lake Base & Meridian, U.S. Survey in Wasatch County, Utah:

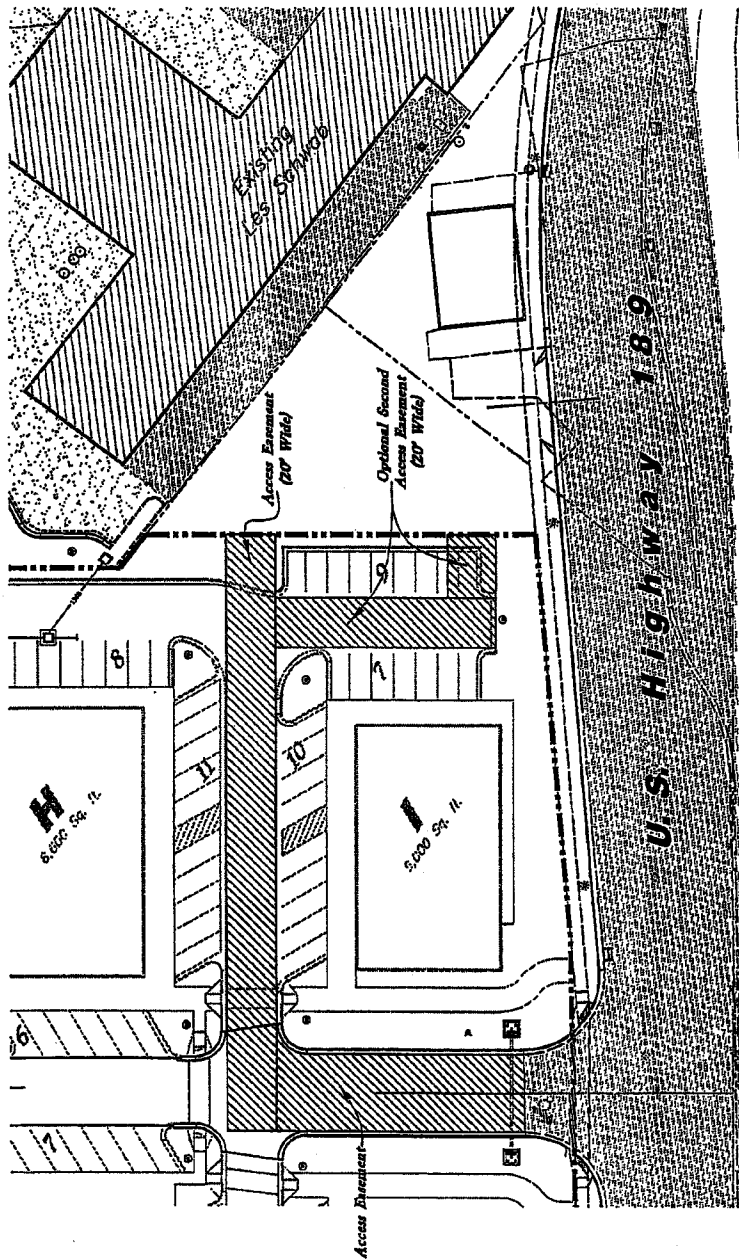
Beginning at the Northwest Corner of said Section 8; and running thence North  $89^{\circ}51'40''$  East 135.73 feet along the Section Line to the Northwesterly Line of U.S. Highway 189 as it is to be widened; thence along said Northwesterly Line the following two courses: Southwesterly along the arc of 523.50 foot radius curve to the left a distance of 117.75 feet (Center bears South  $29^{\circ}40'08''$  East; Central Angle equals  $12^{\circ}53'14''$  and Long Chord bears South  $53^{\circ}53'15''$  West 117.50 feet) to a point of tangency; and South  $47^{\circ}26'38''$  West 83.75 feet; thence North  $37^{\circ}48'38''$  West 158.94 feet; thence East 118.32 feet to the point of beginning.

**Contains 15,135 sq. ft.**

Tax Serial No.s      0VS-0007, 0VS-0008  
                                 0VS-0010, 0VS-0011  
                                 OHE-1671, OHE-1568

**EXHIBIT "C"**  
Boyer Easement and Heber Station Easement

<p><b>GREAT BASIN ENGINEERING - SOUTH</b>          CONSULTING ENGINEERS AND LAND SURVEYORS          2010 North Platte Road, P.O. Box 18247          Omaha, Nebraska 68118          402-491-1111</p>		<p><b>EX23</b>          18 Dec 2009</p>	
<p><b>Access Easement Exhibit</b></p>		<p><b>Glade James Access Easements</b></p>	



**EXHIBIT "D"**  
Utility Easement

