

ENTRY NO. 00278160

03/17/2015 04:51:55 PM B: 0564 P: 0763

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CRAIG J. SPERRY, JUAB COUNTY RECORDER

FEE \$ 42.00 BY JUAB TITLE & ABSTRACT COMPANY



When recorded, return to:

J. Craig Smith

Smith Hartvigsen, PLLC

175 South Main St, Suite 300

Salt Lake City, UT 84111

XA3A-0500-1

Parcel Number: XA3A-0500-1

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into this 16 day of March, 2015 by and between PATRICK PAINTER AS TRUSTEE OF THE J.L. AND Z.D.W. PAINTER IRREVOCABLE TRUST DATED JANUARY 1, 1986 ("Painter") and ENSIGN DEVELOPMENT GROUP, LLC, a Utah limited liability company ("Ensign") (collectively referred to hereafter as "Parties").

RECITALS:

WHEREAS, Painter owns certain real property located in Nephi, Utah as described on Exhibit 4, attached hereto (the "Painter Parcel"); and

WHEREAS, Ensign owns certain real property located in Nephi, Utah as described on Exhibit 3, attached hereto (the "Shopko Parcel"); and

WHEREAS, the Painter Parcel and the Shopko Parcel (together, the "Parcels") are adjacent to one another; and

WHEREAS, the Painter Parcel and the Shopko Parcel will each contain paved areas for parking and access to the parcels and businesses to be located thereon as well as improved areas for pedestrian access; and

WHEREAS, the Parties desire to establish with respect to their respective parcels certain reciprocal parking rights, reciprocal rights of ingress and egress, and access easements and certain covenants and restrictions, all on the terms and conditions set forth in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Incorporation of Recitals.** The Recitals set forth above are incorporated herein by this reference.
- 2. Grant of Access Easement.** Painter hereby grants to Ensign and its successors and assigns, employees, vendors, guests, invitees, and customers a perpetual nonexclusive

access easement for ingress and egress as described in **Exhibit 1** (the "**Access Easement**"). The Access Easement is labeled as EXHIBIT 1 on the Site Plan attached hereto as **Exhibit 6** (the "**Site Plan**").

3. **Grant of Cross Easement.** Painter hereby grants to Ensign and its successors and assigns, employees, vendors, guests, invitees, and customers a perpetual nonexclusive access easement as described in **Exhibit 2**, attached hereto, and labeled as EXHIBIT 2 on the Site Plan (the "**Cross Access Easement**").
4. **Grant of Ingress/Egress Easement.** Painter hereby grants to Ensign and its successors and assigns, employees, vendors, guests, invitees, and customers a perpetual nonexclusive access easement as described in **Exhibit 5**, attached hereto, and labeled on the Site Plan as EXHIBIT 8 (the "**Ingress/Egress Easement**").
5. **Grant of Reciprocal Pedestrian, Parking and Access Easement.** The Parties hereby grant to each other, and their successors and assigns, employees, vendors, guests, invitees, and customers, perpetual nonexclusive easements over the respective Parcels as follows (the "**Reciprocal Easements**"):
 - a. **Pedestrian Easements.** Nonexclusive perpetual easements for the purpose of pedestrian traffic between each Parcel and (i) the other Parcel which is contiguous thereto; (ii) the public streets and alleys now or hereafter abutting or located on any portion of the Parcels; (iii) the parking areas now and hereafter located on the Parcels; and (iv) over, upon, across and through the portions of the Parcels which are from time to time devoted primarily to parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads and other similar areas (the "**Common Areas**"); limited, however, to those portions of each Parcel which are improved by the owner thereof from time to time for pedestrian walkways and made available by such owner for general use by occupants, customers, employees, licensees and other business invitees.
 - b. **Vehicular Easements.** Nonexclusive perpetual easements for the purpose of vehicular traffic over, upon, across and between each Parcel and the public streets and alleys now and hereafter abutting or located on any portion of the Parcels; limited, however, to those portions of the Parcels which are improved by the owner thereof from time to time for vehicular accessways.
 - c. **Parking Easements.** Nonexclusive perpetual easements for the purpose of vehicular parking in any parking areas now or hereafter located on the Parcels.

6. **Acceptance of Easement.** The Parties, together with their successors and assigns, acknowledge that the real property as described above is subject to the above described easements and rights-of-way for use by the Parties, their successors and assigns, employees, vendors, guests, invitees and customers.
7. **Continuing and Perpetual Easement.** It is understood that the grants of easement contained herein shall, at all times, be deemed to be a continuing easement running with the land and shall be binding upon the heirs, successors and/or assigns of the Parties.
8. **Maintenance and Repair.** The obligation to improve, repair and/or maintain the property burdened by the Cross Access Easement and the Access Easement shall be borne by Ensign and its successors and assigns. The obligation to repair and/or maintain the property burdened by the Reciprocal Easements, excepting the property burdened by the Cross Access Easement and the Access Easement, shall be borne by the owner of the real property burdened by the Reciprocal Easements.
9. **Modification.** No modification of this Agreement shall be made unless it is done so in writing signed by the Parties or the successor owners of the respective parcels. Each of the provisions of this Agreement shall be independent of all of the other provisions. Except as stated below, the invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, which shall remain in full force and affect, and this Agreement shall be construed, to the extent possible, as if such invalid or unenforceable provision were omitted. However, if for any reason any easement is deemed to be unenforceable, then the other easement also ceases to be enforceable.
10. **Dispute Resolution.** In the event of a dispute between any or all of the Parties arising directly or indirectly out of this Agreement, the affected Parties shall submit the dispute to mediation before any judicial action may be initiated, unless an immediate court order is needed or a statute of limitations period will run before mediation can be reasonably completed. The Parties involved shall agree upon a mediator and shall mediate the matter in good faith. Each Party shall be responsible for its own costs and shall split the cost of the mediator between them by dividing the total costs of the mediator by the number of Parties involved.
11. **Governing Law.** This Agreement shall be governed by the laws of the State of Utah, both as to the interpretation and performance without regard to the principles of conflicts of law. Any action involving this Agreement or any dispute hereunder shall only be brought in the state and federal courts residing in Utah.

12. **Binding Affect.** This Agreement shall inure to the benefit of and shall be legally binding upon the Parties hereto and the heirs, executors, administrators, successors and assigns and other legal representatives of them and each of them.

13. **Attorneys' Fees.** In the event there is a default under this Agreement and it becomes necessary for any Party to enforce their or its rights hereunder, then with or without arbitration or litigation, the prevailing party shall be entitled to their or its expenses, including attorneys' fees, arising out of such enforcement of their or its rights hereunder. A Party shall be deemed to be the prevailing party if its assertion of a default by another Party, or its defense of a claim of default, is upheld regardless of whether significant damages are awarded.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

[remainder of page intentionally left blank; signature pages to follow]

DATED this 17 day of March, 2015.

**PATRICK PAINTER AS TRUSTEE OF THE
J.L. AND Z.D.W. PAINTER IRREVOCABLE
TRUST DATED JANUARY 1, 1986**

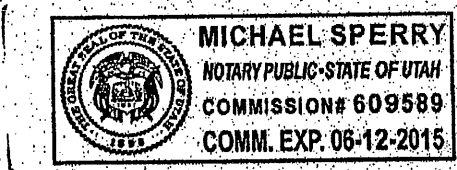
Patrick L. Painter

STATE OF UTAH)
)ss.
COUNTY OF Juab)

On this 17 day of March, 2015, Patrick Painter personally appeared before me, and being duly sworn, acknowledged that he is the trustee of the J.L. and Z.D.W. Painter Irrevocable Trust dated January 1, 1986, and has been duly authorized to and did in fact execute the foregoing instrument for the purposes stated therein.

Michael Sperry

NOTARY PUBLIC



DATED this 16th day of March, 2015.

ENSIGN DEVELOPMENT GROUP, LLC

By: M. Brett Jensen

Name: M. Brett Jensen

Title: Manager

By: Jeremy R. Terry

Name: Jeremy R. Terry

Title: Manager

STATE OF UTAH)
)
 :ss.
COUNTY OF DAVIS)

On this 16th day of March, 2015, M. Brett Jensen and Jeremy R. Terry personally appeared before me, and being duly sworn, acknowledged that he/she is they are Managers of Ensign Development Group, LLC and has been duly authorized to and did in fact execute the foregoing instrument for the purposes stated therein.

Gordon Gurr
NOTARY PUBLIC



EXHIBIT 1

to Easement Agreement

Access Easement Legal Description

(labeled as "EXHIBIT 1" on the Site Plan)

Beginning at a point on the quarter section line which is S89°51'32"W 1629.08 feet from the Northeast Corner of the Southwest Quarter of Section 33, Township 12 South, Range 1 East, Salt Lake Base and Meridian, as re-established and marked by a Juab County Survey of 1946; thence South a distance of 100.00 feet; thence S 26°30'47" W a distance of 134.41 feet; thence West a distance of 60.00 feet; thence N 26°32'29" E a distance of 134.28 feet; thence North a distance of 100.00 feet; thence N 89°51'32" E a distance of 60.00 feet to the point of beginning, having an area of 13207.43 square feet, 0.303 acres.

EXHIBIT 2

to Easement Agreement

Cross Easement Legal Description

(labeled as "EXHIBIT 2" on the Site Plan)

Beginning at a point on the quarter section line which is S89°51'32"W 1689.08 feet and S00°06'50"W 220.12 feet and West 199.81 feet from the Northeast Corner of the Southwest Quarter of Section 33, Township 12 South, Range 1 East, Salt Lake Base and Meridian, as re-established and marked by a Juab County Survey of 1946; thence West a distance of 243.15 feet; thence N 00°14'36" E a distance of 10.25 feet; thence East a distance of 34.12 feet; thence N 41°52'32" E a distance of 12.28 feet; thence North a distance of 24.74 feet; thence N 89°51'32" E a distance of 84.62 feet; thence S 69°06'19" E a distance of 124.34 feet to the point of beginning, having an area of 6791.30 square feet, 0.16 acres.

EXHIBIT 3

to Easement Agreement

Shopko Parcel Legal Description

(labeled as "EXHIBIT 3" on the Site Plan)

Beginning at a point on the quarter section line which is S89°51'32"W 1689.06 feet and South 220.12 feet from the Northeast Corner of the Southwest Quarter of Section 33, Township 12 South, Range 1 East, Salt Lake Base and Meridian, as re-established and marked by a Juab County Survey of 1946; thence South a distance of 230.70 feet to a fenceline projection, which is also the North fenceline of Painter Motor company; thence N 87°51'28" W a distance of 205.99 feet along said fenceline; thence N 87°49'17" W a distance of 238.20 feet along said fenceline to the East right of way of Highway 28; thence N 00°14'36" E a distance of 213.94 feet along said highway; thence East a distance of 442.97 feet to the point of beginning, having an area of 2.26 acres.

EXHIBIT 4

to Easement Agreement

Painter Parcel Legal Description

(labeled as "EXHIBIT 4" on the Site Plan)

Beginning at a point which is S89°51'32"W, 1689.08 feet along the Mid-section line from the Northeast Corner of the Southwest Quarter of Section 33, Township 12 South, Range 1 East, Salt Lake Base and Meridian as re-established and marked by a Juab County Survey of 1946; Thence S 89°51'32" W a distance of 317.12 feet; thence S 00°22'22" E a distance of 175.00 feet; thence S 89°51'32" W a distance of 126.80 feet; thence S 00°14'36" W a distance of 44.03 feet; thence East a distance of 442.97 feet; thence North a distance of 220.12 feet to the point of beginning, having an area of 75138.25 square feet, 1.725 acres.

EXHIBIT 5

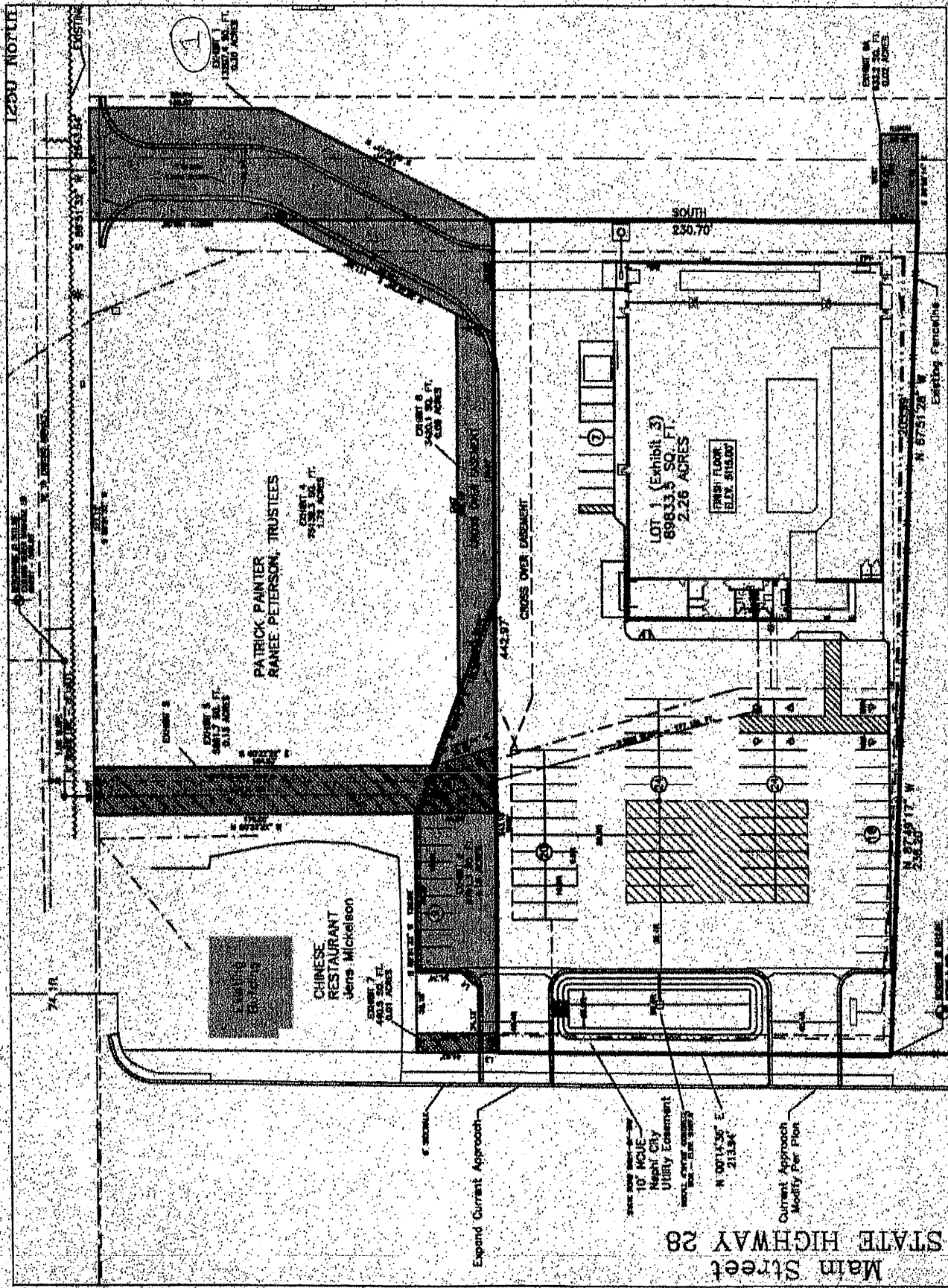
to Easement Agreement

Ingress/Egress Easement Legal Description

(labeled as "EXHIBIT 8" on the Site Plan)

Beginning at a point which is S89°51'32"W, 1689.08 feet and South 100.00 feet and S26°32'29"W, 111.92 feet from the Northeast Corner of the Southwest Quarter of Section 33, Township 12 South, Range 1 East, Salt Lake Base and Meridian, as re-established and marked by a Juab County Survey of 1946; thence S 26°32'29" W a distance of 22.36 feet; thence West a distance of 139.81 feet; thence N 69°06'19" W a distance of 56.08 feet; thence East a distance of 202.19 feet to the point of beginning, having an area of 3420.05 square feet, 0.079 acres.

EXHIBIT 6
to Easement Agreement
Site Plan



Main Street
 STATE HIGHWAY 28

Expand Current Approach

CHOOSE OVER EASEMENT

LOT 1 (Exhibit 3)
 89833.5 SQ. FT.
 2.26 ACRES

LOT 2 (Exhibit 1)
 12827.4 SQ. FT.
 0.30 ACRES

CHINESE RESTAURANT
 Jens Mickelson
 EXHIBIT 7
 4943 SQ. FT.
 0.11 ACRES

PATRICK PAINTER
 RANEE PETERSON, TRUSTEES
 EXHIBIT 4
 2938 SQ. FT.
 0.07 ACRES

EXISTING FENCING

CHOOSE OVER EASEMENT

EXPAND CURRENT APPROACH

10' ACQUIE
 NASHI CITY
 UTILITY EASEMENT

N 00°14'30" E
 213.84'

Current Approach
 Modify Per Plan