

Entry 2013002443
Book 1322 Page 240-248 \$26.00
05-MAR-13 02:54
RANDY SIMMONS
RECORDER, UINTAH COUNTY, UTAH
ADVANCED TITLE CO INC
71 N 100 W VERNAL, UT 84078
Rec By: DEBRA ROOKS , DEPUTY

WHEN RECORDED, PLEASE RETURN TO:

Robert A. McConnell
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84111

Tax Parcel Nos.
05-078-0026 (Lot A)
05-078-0032, 05-078-0035 & 05-078-0036 (Lot G)

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**DECLARATION
OF
EASEMENTS, COVENANTS AND RESTRICTIONS**

THIS DECLARATION (this "Declaration") is executed to be effective as of the ___ day of March, 2013, by Gardner Towne Center, LLC ("Grantor"), whose address for the purposes hereof is 90 South 400 West, Suite 330, Salt Lake City, Utah 84101.

RECITALS:

- A. Grantor owns two (2) separate but adjoining parcels of real property located in Uintah County, State of Utah
- B. Grantor desire to create certain rights-of-way, easements and restrictions in favor of one of the said parcels.

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:

"Easement Area" means all that portion of Lot G that is more particularly described as follows:

BEGINNING AT A POINT THAT IS 1214.54 FEET N. 9°47'37" E. FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, S.L.B.&M.

THENCE N. 45°59'50" W. PERPENDICULAR TO THE SOUTHEAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 40, 170.99 FEET; THENCE N. 44°00'10" E. ALONG THE SAID

HIGHWAY RIGHT-OF-WAY LINE 24.00 FEET; THENCE S. 45°59'50" E.
PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 168.50 FEET;
THENCE S. 38°04'47" W. 24.13 TO THE POINT OF BEGINNING.

The above described Easement Area contains 0.094 acres in area more or less and is pictorially depicted on the Site Plan.

"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 Weber 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 any portion of any Parcel. If there is more than one Owner of a Parcel 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 Parcel concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

"Parcel A" means the real property located in Uintah County, Utah, described as follows:

BEGINNING AT A POINT THAT IS 1214.54 FEET N. 9°47'37" W. FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M: THENCE N. 45°59'50" W. PERPENDICULAR TO THE SOUTHEAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 40, 170.99 FEET; THENCE S. 44°00'10" W. ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 302.23 FEET; THENCE S. 45°59'50" E. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 199.20 FEET; THENCE N. 44°00'10" E. PARALLEL WITH SAID HIGHWAY RIGHT-OF-WAY LINE 29.33 FEET; THENCE N. 38°06'04" E. 274.35 FEET TO THE POINT OF BEGINNING.

The above described Parcel contains 1.294 acres in area more or less and is pictorially depicted on the Site Plan.

"Parcel G" means the real property located in Uintah County, Utah, described as follows:

BEGINNING AT A POINT THAT IS 1214.54 FEET N. 9°47'37" W. FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M: THENCE N. 45°59'50" W. PERPENDICULAR TO THE SOUTHEAST RIGHT-OF-WAY

LINE OF U.S. HIGHWAY 40, 170.99 FEET; THENCE N. 44°00'10" E. ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 24.00 FEET; THENCE S. 45°59'50" E. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 372.87 FEET; THENCE S. 2°23'02" E. ALONG THE EAST LINE OF THE SOUTHWEST QUARTER 353.33 FEET; THENCE S. 87°36'58" W. PERPENDICULAR TO SAID EAST LINE OF SOUTHWEST QUARTER 218.56 FEET; THENCE N. 2°23'02" W. PARALLEL WITH THE SAID EAST LINE OF THE SOUTHWEST QUARTER 189.75 FEET; THENCE N. 45°59'50" W. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 144.01 FEET; THENCE N. 38°06'04" E. 248.39 FEET TO THE POINT OF BEGINNING.

The above described Parcel contains 2.540 acres in area more or less and is pictorially depicted on the Site Plan.

"Parcels" means Parcel A and Parcel G collectively, and "Parcel" means either Parcel A or Parcel G, individually, where no distinction is required by the context in which such term is used.

"Site Plan" means the Site Plan attached as Exhibit A, incorporated in this Declaration by this reference.

2. Grant of Rights-of-Way and Easements. Parcel A (but no other real property) shall have appurtenant thereto and shall be benefited by, and the Easement Area shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for vehicular and pedestrian ingress and egress and parking on, over and across the Easement Area. The foregoing right-of-way and easements shall be limited to use for such purposes and to such extent as may be customary to the use of the Parcels for general commercial purposes, which shall include reasonable and customary deliveries and 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 above 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.

4. Construction and Maintenance. Promptly after execution of this Declaration (but only to the extent that such improvements are not already in existence), the Owner of Parcel A, at its sole cost and expense, shall cause the hard-surface improvements to the Easement Area to be paved with a surfacing material of asphalt, concrete, or other hard-surface paving material as contemplated by the Site Plan, and the Owner of Parcel G hereby grants to the Owner of Parcel A and its contractors a license to enter upon Parcel G for such purpose. The cost and expense of such improvements shall be paid by the Owner of the Parcel A. The Owner of Parcel G shall not be required to reimburse the Owner of Parcel G for the initial installation of the hard-surface improvements to the Easement Area. The Owner of Parcel A shall at all times maintain or cause to be maintained the Easement Area in a

reasonably good, clean and safe condition and repair, reasonably free from debris, rubbish, snow, ice and other materials; provided, however, the Owners may coordinate in the selection of a contractor who they may jointly utilize in order to complete the foregoing maintenance of the Easement Area in conjunction with the maintenance of Parcel G. Each Owner shall provide such parking spaces on its Parcel as is required by law given the particular use of such Parcel as conducted and in existence from time to time. If any Owner fails to comply with the provisions of this Section 4, any other Owner may (but is not obligated to), after giving twenty (20) days' written notice to the non-complying Owner, perform or cause to be performed such work as is necessary to cause the Easement Area to so comply. In such event, all sums reasonably expended and all costs and expenses reasonably incurred by such other Owner in connection with such work shall bear interest from the date expended or incurred (as the case may be) at the rate of twelve percent (12%) per annum until paid or otherwise satisfied in full, and shall be paid promptly to such other Owner by the non-complying Owner on written demand.

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

6. 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 Parcels 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.

7. Appurtenances to Parcels; Covenants Run with Land; Various Events.

7.1 Appurtenances to Parcels. Each right-of-way, easement, covenant and restriction created by this Declaration is an appurtenance to the Parcel 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 Parcel. For the purposes of each such right-of-way, easement, covenant and restriction, the benefited Parcel shall constitute the dominant estate and the burdened Parcel shall constitute the subservient estate.

7.2 Covenants Run with Land; Various Events.

7.2.1 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 Parcel in favor of the benefited Parcel (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 Parcel 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.

7.2.2 Transfer of Parcel. If any Owner transfers all or any portion of the Parcel 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 Parcel, 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.

7.2.3 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 Parcel, except as provided in Paragraph 9.

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

7.2.5 Priority of Declaration. The interests in and rights concerning any portion of the Parcels held by or vested in the undersigned or any other person on or after the date of this Declaration shall be subject and subordinate to the arrangement provided for in this Declaration, and the arrangement provided for in this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this Declaration.

8. Lien. If the failure to timely pay any sum when due under this Declaration is not cured within ten (10) days after written notice is given by any Owner to the defaulting Owner, such sum and any subsequent delinquencies may be secured by a lien against all or any portion of the defaulting Owner's Parcel. Such lien shall be evidenced by a notice of lien or similar instrument filed for record by the nondefaulting Owner in the official records. A copy of such notice of lien or similar instrument shall be given by the nondefaulting Owner to the defaulting Owner within ten (10) days following recordation in the official records. Such notice of lien or similar instrument shall set forth the unpaid amount, the date such amount was due and a description of the property subject to such lien, and shall be signed by the nondefaulting Owner. Any such lien may be foreclosed in the same manner as is provided under applicable law for the foreclosure of Mortgages, but shall be subject and subordinate to (a) each Mortgage affecting the defaulting Owner's Parcel at the time such notice of lien or similar instrument is recorded, (b) this Declaration, (c) each (recorded or unrecorded) utility easement, right-of-way or similar interest affecting the defaulting Owner's Parcel at the time such notice of lien or similar instrument is recorded, (d) the interest of the tenant or lessee under each lease, rental agreement or similar instrument (whether recorded or unrecorded) affecting the defaulting Owner's Parcel at the time such notice of lien or similar instrument is recorded, and (e) the lien for general taxes and other governmental assessments, but shall be prior and superior to all other interests or estates (whether recorded or unrecorded at the time such notice of lien or similar instrument is recorded) in or respecting the defaulting Owner's Parcel.

9. 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 Parcel unless such Mortgagee consents to the same in writing.

10. 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.

11. 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.

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

[Signatures appear on the following page.]


Grantor:

GARDNER TOWNE CENTER, LLC,
a Utah limited liability company

By: *Rulon C. Gardner*
Rulon C. Gardner, Manager

STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

On the 21 day of March, 2013, personally appeared before me Rulon C. Gardner, the signer of the above instrument, who duly acknowledged to me that he executed the same, as a Manager of Gardner Towne Center, LLC.

[SEAL]


Constance Miller
Notary Public

Exhibit A
to
Declaration of Easements, Covenants and Restrictions

[See attached Site Plan]

