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BRENDA MCDONALD
RECORDER, UINTAH COUNTY, UTAH
PARR BROWN GEE AND LOVELESS
101 SOUTH 200 EAST SUITE 700, SALT LAKE CITY, UTAH 84111
Rec By: Wanda Merkley, Deputy Recorder
Electronic Recording

PREPARED BY AND
WHEN RECORDED MAIL TO:

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221 NW Fifth Street
Evansville, IN 47708

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Book 1551 Pg 715

ASSIGNMENT AND ASSUMPTION AGREEMENT

In Reference to Tax ID Numbers:

05-078-0026
05-078-0038
05-078-0046
05-078-0044
05-078-0040 & 05-078-0048
05-078-0036, 05-078-0041 & 05-078-0042
05-078-0046
05-078-0034
05-080-0036
05-081-0028 & 05-080-0037

Cross Reference to Prior Instrument: Entry No. 2013000530, Book 1313, page 730

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Agreement**”) is made and entered into as of February 2, 2018 (the “**Effective Date**”), by and between GARDNER TOWNE CENTER, LLC, a Utah limited liability company, whose address is 201 South Main Street, Suite 200, Salt Lake City, Utah 84111 (“**Assignor**”), and REGENCY VERNAL LLC, a Delaware limited liability company, whose address is 380 Cross Pointe Boulevard, Evansville, Indiana 47715 (“**Assignee**”, and together with the Assignor, the “**Parties**”).

RECITALS

A. Assignor is the declarant under that certain Declaration of Easements, Covenants and Restrictions dated January 17, 2013, recorded in the office of the Recorder of Uintah County, Utah on January 17, 2013, as Entry No. 2013000530, in Book 1313, page 730 (the “**Declaration**”), which Declaration imposes certain restrictive covenants, conditions, restrictions and stipulations on certain real property which partially comprises the development more commonly known as “Vernal Towne Center” as more fully described in the Declaration (the “**Property**”). Assignor is the owner of that portion of the Property legally described on Exhibit A attached hereto (the “**Gardner Property**”).

B. Assignee is the owner of that portion of the Property legally described on Exhibit B attached hereto (the “**Regency Property**”) subject to the Declaration by virtue of that certain Special Warranty Deed dated May 30, 2017, recorded in the office of the Uintah County Recorder on May 31, 2017, as Entry No. 2017003913 in Book 1521, at page 582.

C. Pursuant to Section 1.17 of the Declaration, notwithstanding Section 3 of that certain Assignment of Permits and Entitlements and Intangible Property dated May 30, 2017, by and between the Parties, Assignor desires to assign, and Assignee is willing to accept, certain of Assignor’s rights and duties under the Declaration as more fully set forth in this Agreement.

D. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Declaration.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Incorporation of Recitals. The foregoing recitals are, by this reference, incorporated herein this Agreement and deemed to be a part hereof.

2. Assignment of Manager’s Duties Regarding Common Area. Assignor hereby assigns, transfers and sets over to Assignee all of Assignor’s right, obligation, and interest in, to and under the duties set forth in Sections 4, 5, and 11.5 of the Declaration (the “**Assumed Manager Duties**”).

3. Assumption of Obligations. Assignee hereby assumes and agrees to perform all of the obligations, terms and covenants of Assignor under the Assumed Manager Duties which obligations, terms and covenants accrue on and after the Effective Date.

4. Indemnification by Assignor. Assignor hereby agrees to indemnify, defend and hold harmless Assignee from, of and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of or relating to the breach by Assignor of any of the obligations, terms and/or covenants of Assignor under or pursuant to the Assumed Manager Duties, which obligations, terms and/or covenants accrue prior to the Effective Date. The provisions of this Section 4 shall survive the termination of this Agreement.

5. Indemnification by Assignee. Assignee hereby agrees to indemnify, defend and hold harmless Assignor from, of and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of or relating to the breach by Assignee of any of the obligations, terms and/or covenants of Assignee under or pursuant to the Assumed Manager Duties, which obligations, terms and/or covenants accrue on or subsequent to the date hereof. The provisions of this Section 5 shall survive the termination of this Agreement.

6. Insurance. As set forth in Section 7 of the Declaration, Assignee, in discharging its duties as Manager, shall be named as an additional insured with respect to all commercial liability insurance maintained pursuant to the Lowe's Declaration (defined below). Assignor covenants and agrees to cooperate with Assignee in obtaining certificates of coverage as Assignee may reasonably request from any Owner.

7. Amendment of the Declaration. Notwithstanding anything to the contrary set forth in the Declaration, specifically and without limitation Section 13 thereof, Assignor agrees and covenants that it shall, in its remaining capacity as Manager, provide Assignee no less than thirty (30) days' prior written notice of any amendment to the Declaration, and shall not enter into any amendment to the Declaration as Manager without Assignee's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

8. Termination. This Agreement shall terminate at such time that Assignee no longer holds fee title to the Regency Property, in which event such termination shall be automatic upon the conveyance of the Regency Property to a third party, without the need of recording a termination instrument. Assignee covenants and agrees to provide Assignor or Assignor's designated party with sufficient information as Assignor and/or its designated party may request in their commercially reasonable discretion so as to allow Assignor or its designated party to resume the Assumed Manager Duties, (y) Assignee shall provide a full accounting to Assignor and/or its designated party of the Common Expenses as of the date of termination and turn over any sums held by Assignee in connection therewith, and (z) Assignee shall be relieved of the Assumed Manager Duties and this Agreement shall be of no further force or effect except for those provisions which survive its termination. In the event that Assignee holds a lien against any Owner's Parcel upon termination, Assignee may continue to hold such lien and exercise its rights at law and in equity as Assignee may determinate, or Assignor or its designated party may pay Assignee an amount equal to any such lien and Assignee, upon receipt of such payment and at Assignee's sole cost and expense, shall cause such lien to be assigned to Assignor or its designated party.

9. Lowe's Declaration. Assignor shall at all times remain and shall act as the "Consenting Owner" pursuant to the terms and conditions of those certain Easements, Covenants, Conditions and Restrictions dated May 2, 2007, and recorded in the office of the Uintah County Recorder or May 2, 2007, as Entry No. 2007005122 in Book 1030 at page 458 (the "Lowe's Declaration"); provided that Assignee shall be responsible for the maintenance of Driveway 1 and Driveway 2 (as described in the Lowe's Declaration).

10. Limited Assignment and Assumption; No Declaration. The Parties acknowledge and agree that this Agreement is limited in its scope as to rights and obligations assigned and assumed hereby. Except as expressly set forth in this Agreement, and notwithstanding anything to the contrary as may be set forth in the Declaration, Assignor shall remain the Manager under the Declaration subject to the terms thereof. This Agreement shall not constitute a separate declaration regarding the Property and no relationship other than that of assignor and assignee is created hereby.

11. No Conflict. In the event of any conflict or inconsistency between the Declaration and this Agreement, the terms of this Agreement shall control.

12. Notices. Any notices, requests, elections or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by either courier (including Federal Express or other such courier services) or deposited with the United States Postal Service for delivery by registered or certified mail, return receipt requested, postage fully prepaid and properly addressed to the Party to whom the communication is directed at its address set forth below:

To Assignor: Gardner Towne Center, LLC
201 South Main Street, Suite 2000
Salt Lake City, UT 84111
Attn: Rulon C. Gardner
Telephone: 801-456-1280

With Copy To: Lamont R. Richardson, Esq.
Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, UT 84111
Telephone: 801-532-7840

To Assignee: Regency Vernal LLC
380 Cross Pointe Boulevard
Evansville, IN 47715-4027
Attn: Kevin L. Hammett
Telephone: 812-424-9200

With Copy To: Christopher L. Lucas, Esq.
Jackson Kelly, PLLC
221 N.W. Fifth Street
P.O. Box 1507

Evansville, IN 47706
Telephone: 812-422-9444

13. **Force Majeure.** As used in this Section 13, the term "Force Majeure" means delay resulting from the following causes beyond a party's reasonable control: acts of God such as fire, windstorm, flood or earthquake; industry wide inability to obtain materials or merchandise; war; riot or civil commotion; governmental laws or regulations, including a building moratorium (hereinafter "governmental matters"), provided that governmental matters shall exclude planning and building permits, governmental inspections, permanent or temporary certificates of occupancy (or their equivalent in the applicable local jurisdiction) and similar governmental approvals. The party obliged to perform, but unable to so perform due to Force Majeure, shall give notice to the other as soon as reasonably possible after the onset of such delay stating the cause and an estimate of the duration thereof. If, as a result of an event of Force Majeure, either party shall be delayed or hindered or prevented from the performance of any act required hereunder (other than the making of payments) within the time period set forth herein, the performance of such act shall be excused for the period of delay not to exceed sixty (60) days, and the period of performance of such act shall be extended for a period equivalent to the period of such delay, not to exceed sixty (60) days, unless a provision of this Lease expressly states that Force Majeure is not applicable. Financial inability to perform shall not constitute an event of Force Majeure.

14. **Successors and Assigns.** This Agreement and the provisions contained herein shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

15. **Attorneys' Fees.** If Assignor or Assignee is the prevailing party in any legal proceeding brought under or with relation to this Agreement or transaction, such prevailing party shall be additionally entitled to recover court costs and reasonable attorney fees, and all other litigation expenses, including deposition costs, travel, and expert witness fees, from the non-prevailing party. The provisions of this Section 15 shall survive the termination of this Agreement.

16. **Governing Law.** The laws of the state in which the Property is located shall govern the validity, performance and enforcement of this Agreement. Venue of and jurisdiction over any action brought by any party in respect of any such validity, performance or enforcement is stipulated to be any of the courts of general jurisdiction in the county in which the Property is located, or in a case involving diversity of citizenship, the United States District Court for the district in which the Property is located. Service of any summons and complaint or other process in any such action or proceeding may be made by registered or certified mail and directed to a party hereto at the addresses set forth herein, the Parties hereto hereby waiving personal service thereof.

17. **Waiver of Jury Trial.** The Parties each hereby agrees not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this agreement or any claim, counterclaim or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and voluntarily by each party, and is intended to encompass individually each

instance and each issue as to which the right to a trial by jury would otherwise accrue. Assignor or Assignee, as applicable, is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by Assignor or Assignee, as applicable. The provisions of this Section 17 shall survive the termination of this Agreement.

18. Entire Agreement; Amendment. This Agreement sets forth all of the covenants, representations, warranties, agreements, conditions and undertakings between the Parties with respect to the subject matter of this Agreement, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written. This Agreement may not be changed orally but only by an agreement in writing, duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent or discharge is sought. The failure of either party to exercise any right given hereunder or to insist upon strict compliance with any term, condition or covenant specified herein, shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with such term, condition, or covenant.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original. The signatures to this Amendment may be executed and notarized on separate pages, and when attached to this Agreement, shall constitute one complete document.

20. Cooperation. Assignor hereby agrees to and shall execute and deliver to Assignee any and all documents, agreements and instruments reasonably necessary to consummate the transactions contemplated by this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.


"ASSIGNOR":

GARDNER TOWNE CENTER, LLC, a Utah limited liability company, by its Manager

By: 
Name: Rulon C. Gardner
Its: Manager

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

On this 2 day of February, 2018, personally appeared before me Rulon C. Gardner the Manager of Gardner Towne Center, LLC, a Utah limited liability company, on behalf of said company.


NOTARY PUBLIC
Residing at: DAVIS COUNTY, UT

My Commission Expires: 10.16.20



[ASSIGNOR SIGNATURE PAGE – ASSIGNMENT AND ASSUMPTION AGREEMENT – VERNAL TOWNE CENTER]

EXHIBIT A

GARDNER PROPERTY

LOT F AMENDED:

Beginning at a point that is 987.65 feet North 30°31'10" West from the South quarter corner of Section 28, Township 4 South, Range 21 East, Salt Lake Base and Meridian; thence North 44°00'10" East parallel with the Southeast right-of-way line of U.S. Highway 40, 180.91 feet; thence North 38°06'04" East 36.14 feet; thence South 46°01'35" East 223.33 feet; thence South 43°58'25" West 19.26 feet; thence South 46°01'35" East 175.29 feet; thence South 87°36'58" West 392.89 feet; thence North 02°23'02" West 36.16 feet to the point of tangency of a curve concave to the Southwest having an internal angle of 43°36'47" and a radius of 115.00 feet and an arc length of 87.54 feet, and a chord direction of North 24°12'30" West, chord length of 85.44 feet; thence along curve 87.54 feet; thence North 45°59'50" West perpendicular to the said right-of-way line 217.60 feet; thence North 44°00'10" East along said highway right-of-way line 30.00 feet; thence South 45°59'50" East perpendicular with said highway right-of-way line 199.20 feet to the point of beginning.

LOT G AMENDED:

Beginning at a point that is 1069.52 feet North 19°18'19" West from the South quarter corner of Section 28, Township 4 South, Range 21 East, Salt Lake Base and Meridian; thence North 38°06'04" East 238.22 feet; thence North 45°59'50" West perpendicular to the Southeast right-of-way line of U.S. Highway 40, 170.99 feet; thence North 44°00'10" East along said highway right-of-way line 24.00 feet; thence South 45°59'50" East perpendicular with said highway right-of-way line 376.22 feet; thence South 43°58'25" West 115.72 feet; thence South 46°01'35" East 42.46 feet; thence South 43°58'25" West 145.14 feet; thence North 46°01'35" West 223.33 feet to the point of beginning.

EXHIBIT B

REGENCY PROPERTY

PARCEL 1:

LOT A AMENDED:

Beginning at a point that is 1214.54 feet North 09°47'37" West from the South quarter corner of Section 28, Township 4 South, Range 21 East, Salt Lake Base and Meridian; thence North 45°59'50" West perpendicular to the Southeast right-of-way line of U.S. Highway 40, 170.99 feet; thence South 44°00'10" West along the said highway right-of-way line 302.23 feet; thence South 45°59'50" East perpendicular to the said highway right-of-way line 199.20 feet; thence North 44°00'10" East parallel with said highway right-of-way line 29.33 feet; thence North 38°06'04" East 274.35 feet to the point of beginning.

LOT C AMENDED:

Beginning at a point that is 810.27 feet North 55°18'44" West from the South quarter corner of Section 28, Township 4 South, Range 21 East, Salt Lake Base and Meridian; thence North 45°59'50" West perpendicular to the Southeast right-of-way line of U.S. Highway 40, 351.45 feet; thence North 44°00'10" East along the said highway right-of-way line 173.21 feet; thence South 45°59'50" East perpendicular with said highway right-of-way line 199.57 feet; thence South 44°00'10" West parallel with said highway right-of-way line 28.51 feet; thence South 02°23'02" East 209.77 feet to the point of beginning.

LOT D AMENDED:

Beginning at a point that is 952.39 feet North 43°27'58" West from the South quarter corner of Section 28, Township 4 South, Range 21 East, Salt Lake Base and Meridian; thence North 45°59'50" West perpendicular to the Southeast right-of-way line of U.S. Highway 40, 199.57 feet; thence North 44°00'10" East along the said highway right-of-way line 161.51 feet; thence South 45°59'50" East perpendicular to said highway right-of-way line 199.57 feet; thence South 44°00'10" West parallel with said highway right-of-way line 161.51 feet to the point of beginning.

EXCEPTING THEREFROM the following:

A parcel of land being part of an entire tract located in the Southeast quarter of the Southwest quarter of Section 28, Township 4 South, Range 21 East, Salt Lake Meridian, the boundary lines of said parcel are described as follows: Beginning at a point situated on the Northwest line of said entire tract, said point also being situated on the Southeasterly right of way line of U.S. Highway 40, as it presently exists, said point also being South 88°01'08" West 679.19 feet and North 02°23'15" West 938.09 feet from the South quarter corner of said Section 28, said point also being located at the Engineers Station 45+25.00, 51.00 feet right of the control line for U.S. Highway 40 for the Utah Department of Transportation Project S-0040(138)114; thence North

44°00'18" East 45.00 feet along said right of way line of U.S. Highway 40 to the Northerly corner of said entire tract; thence South 45°59'47" East 18.31 feet along the Northeasterly line of said entire tract; thence North 77°02'01" West 5.82 feet; thence South 44°00'18" West 15.16 feet; thence South 70°24'54" West 29.97 feet to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation.

LOT K AMENDED:

Beginning at a point on the quarter section line that is 220.00 feet North 02°23'02" West from the South quarter corner of Section 28, Township 4 South, Range 21 East, Salt Lake Base and Meridian; thence North 88°00'48" East parallel with the South line of the Southeast quarter of said section, 254.00 feet; thence North 02°23'02" West parallel with the South line of said quarter section, 441.62 feet, thence North 88°04'33" East along the aliquot part line 410.68 feet; thence North 02°12'24" West along the aliquot part line 661.17 feet; thence South 88°08'17" West along the aliquot part line 266.02 feet; thence North 00°46'58" West 184.88 feet; thence South 89°26'11" West 114.06 feet; thence North 45°54'35" West 91.61 feet; thence South 44°00'10" West parallel to the Southeast right-of-way line of U.S. Highway 40, 235.67 feet; thence North 45°59'50" West perpendicular to the said highway right-of-way line 145.50 feet; thence North 44°00'10" East parallel to said highway right-of-way line, 7.00 feet; thence North 45°59'50" West perpendicular to the said highway right-of-way line 23.00 feet; thence South 44°00'10" West along the said highway right-of-way line 67.00 feet; thence South 45°59'50" East perpendicular to the said highway right-of-way line 168.50 feet; thence South 44°00'10" West parallel with said highway right-of-way line 215.00 feet; thence South 45°59'50" East perpendicular to the said highway right-of-way line 207.72 feet; thence South 43°58'25" West 115.72 feet; thence South 46°01'35" East 42.46 feet; thence South 43°58'25" West 164.40 feet; thence South 46°01'35" East 175.29 feet; thence North 87°37'11" East 50.12 feet; thence South 02°23'02" East along the quarter section line 501.46 feet to the point of beginning.

PARCEL 1A:

A non-exclusive right-of-way and easement for vehicular and pedestrian ingress and egress as established in the Declaration of Easements, Covenants and Restrictions for Vernal Towne Center and recorded as Entry No. 2013000530 in Book 1313 at Page 730.

Tax Id No.: 05-078-0026, 05-078-0038, 05-078-0046, 05-081-0028 and 05-080-0037