

WHEN RECORDED RETURN TO:

Bountiful City Attorney  
790 South 100 East  
Bountiful, Utah 84010

03-225-0002  
03-279-0009

**PARKING EASEMENT AGREEMENT**

THIS PARKING EASEMENT AGREEMENT ("Easement") is executed as of the 10/17 day of October, 2018, by and between the CITY OF BOUNTIFUL, UTAH, as "Grantor", and TOWN CENTER, LLC, a Utah limited liability company, and its successors and assigns, as "Grantee".

**1. GRANTOR OWNERSHIP; SUCCESSOR TO MUNICIPAL BUILDING AUTHORITY APPROVAL**

The Grantor, as successor to the Municipal Building Authority of the City of Bountiful (the "Authority") holds legal and equitable title to the approximately four hundred and ninety-three (493) public parking stalls located within that certain parking structure facility located at approximately 1551 South Main Street, Bountiful, Davis County, Utah and more particularly described on Exhibit "A" attached hereto and incorporated herein (the "Parking Structure"). Pursuant to that certain Development Agreement between Grantor and Grantee dated as of October 17, 2017 (the "Development Agreement"), Grantor agreed to grant and convey to Grantee, and its successors and assigns as developer of the "Project" described in Section 2 below, a perpetual parking easement with respect to certain parking stalls within the Parking Structure.

**2. GRANT OF EASEMENT AND DESCRIPTION OF PROPERTY**

As authorized by the Development Agreement, Grantor hereby grants and conveys to Grantee, its successors and assigns as owners of the "Project" described below, a perpetual easement for the use and occupancy of forty (40) undesignated parking stalls in the lower and middle levels of the Parking Structure (the "Easement Stalls"), for the benefit of Grantee's adjacent property located in Bountiful City, Davis County, Utah, more particularly described on Exhibit "B" attached hereto and incorporated herein, and known as the "Renaissance Place" mixed use commercial and residential building (the "Project"). The location of the Easement Stalls shall be located as determined by Grantor's designated manager of the Parking Structure, and may be relocated in whole or in part from time to time as determined by the manager. Grantee shall have the right to peacefully and quietly enjoy the Easement Stalls pursuant to this Easement. The use and occupation of the Easement Stalls by Grantee shall include the use in common with others entitled thereto of the access areas, entrances, exits, parking ramps, driveways, traffic lanes, walkways and other common areas of the Parking Structure. It is contemplated that Grantee will assign or license its rights under this Easement to an affiliated

single purpose entity which shall assume the obligations of the Grantee under this Easement, and which will develop and construct the Project. The right to use and occupy the Easement Stalls as set forth herein will run with the land and benefit all future owners of the Project.

### 3. GRANTEE PAYMENT

Pursuant to the "Supplemental Declaration To Declaration of Covenants, Conditions, Easements and Restrictions For Renaissance Towne Centre" recorded June 22, 2018 as Entry No. 3100681 in the Official Records of the Davis County, Utah Recorder's Office (the "Supplemental Declaration"), and pursuant to the terms of the "Supplemental Plat" and the "Master Declaration" referenced therein, the real property described on Exhibit "B" hereto was incorporated into Renaissance Towne Centre (a Commercial Mixed Use Planned Unit Development) and thereby became liable to pay Assessments to the Renaissance Towne Centre Master Association (the "Master Association"), which Assessments include provision for payment of an equitable portion of the operating costs of the Parking Structure. Grantee's obligation to pay Master Association Assessments is set forth in Section 4 of the above referenced Supplemental Declaration, and constitutes good and valuable consideration for this Easement.

### 4. USE OF PROPERTY

4.1. The Easement Stalls may be used only for the purpose of parking motor vehicles in connection with the ingress and egress to and from the Parking Structure, the use by residents, tenants, guests and invitees of the Project, and the conduct of business at the Project and for no other purpose or purposes without Grantor's prior written consent. Grantee's use of the Easement Stalls shall be subject to the following conditions:

- (a) Grantee shall not do or permit anything to be done in or about the Easement Stalls, or bring or keep anything in the Easement Stalls that will in any way increase the premiums for or necessity of fire insurance upon the Parking Structure.
- (b) Grantee will not perform any act or carry on any practices that may damage the Parking Structure or be a nuisance or menace to persons utilizing the Parking Structure.
- (c) Grantee shall not cause, maintain or permit any outside storage on or about the Easement Stalls.
- (d) Grantee shall not commit or suffer any waste upon or about the Easement Stalls, or any nuisance, or other act or thing which may disturb the quiet enjoyment of any other patrons or uses of the Parking Structure.
- (e) Grantee shall not permit the parking of any trailer, boat, all-terrain vehicle, off road vehicle, or recreational vehicle on any of the Easement Stalls. Easement Stalls shall be used only for the parking of motor vehicles which for the purposes of this

agreement shall be limited to automobiles, personal trucks with a gross vehicle weight of less than 12,000 pounds and motorcycles licensed for operation on public streets.

4.2. Grantee hereby agrees and acknowledges that all parking stalls in the Parking Structure which are not subject to this Easement shall remain public parking stalls, specifically subject to the rights of the general public to use, access, enjoy and occupy any such non-reserved parking stalls on a non-exclusive, first-come, first-served basis unless otherwise designated by Grantor.

## 5. ACCEPTANCE OF PROPERTY

Grantee has inspected the Easement Stalls and accepts them "as is" with no representation or warranty by Grantor regarding the condition of the Easement Stalls or their suitability for Grantor's use.

## 6. ALTERATIONS; MISUSE

6.1. Grantee agrees not to make or permit or suffer to be made any alterations, improvements or additions to the Easement Stalls or any part thereof without prior written consent of Grantor except such repairs, if any, as Grantee is required to make by the provisions of this Easement.

6.2. Throughout the period hereof, Grantee shall keep the Easement Stalls utilized by Grantee or the Project in good condition, and all appurtenances, fixtures, and equipment relating thereto, and shall not drill into, disfigure, or deface any part of the buildings, grounds, or any part or portion of the Parking Structure of which the Easement Stalls are a part, or suffer the same to be done. While Grantor and Grantee hereby agree and acknowledge that Grantee has no obligation for the maintenance and repair of the Easement Stalls or any other portion of the Parking Structure, Grantee shall repair any damage to an Easement Stall, its appurtenances, fixtures, and equipment, whenever needed as a result of the misuse or neglect of Grantee and/or its successors, assigns, licensees, and designees. In the event that Grantee fails to make or commence making any such repairs (which shall be diligently pursued until completion) within (30) days following notice from Grantor of the need for such repairs, Grantor may, at its option, perform such repairs for Grantee and bill Grantee for the cost thereof, which shall be payable to Grantor within thirty (30) days of delivery of Grantor's statement setting forth such costs.

## 7. DESTRUCTION

If the whole or any material part (e.g., more than fifty percent) of the Easement Stalls shall be damaged or destroyed, and are not capable of being rebuilt from insurance proceeds or otherwise within twenty-four (24) months, this Easement and the rights granted herein shall terminate with respect to such damaged or destroyed portion as of the date of such damage or destruction, and any unusable stalls shall be relocated in the Parking Structure. Grantor shall be entitled to any and all proceeds of insurance payable on account of such damage or destruction, and Grantee shall have no right, title, or interest whatsoever therein.

## 8. INDEMNIFICATION BY GRANTEE

Grantee shall indemnify, defend and hold Grantor, Grantor's management company, and their respective officers, directors, members, managers, partners, agents and employees harmless from any and all loss, costs, damages, expenses and liability (including, without limitation, court costs and attorneys' fees) incurred in connection with or arising in any way from (a) the use of the Easement Stalls by Grantee or any of its employees, agents, subcontractors, licensees or invitees, (b) the exercise of Grantee's rights under this Easement, or (c) any breach by Grantee of the terms hereof, except if any such loss is caused or alleged to be caused by the negligence or fault of Grantor or its agents, or such loss arises from the gross negligence or willful misconduct of Grantor or its agents. If any proceeding is filed for which indemnity is required hereunder, Grantee agrees, upon request therefore, to defend the indemnified party in such proceeding at its sole cost with counsel satisfactory to the indemnified party or, at the option of Grantor, Grantee shall reimburse the indemnified party for any legal fees, costs, or other expenses incurred by the indemnified party in any such proceeding or action. Notwithstanding the foregoing, to the extent that the operating costs of the Parking Structure that are reimbursed by Grantee include the amounts paid by Grantor or its property manager as premiums for public liability insurance, casualty insurance, or other types of insurance, Grantee shall be named as an additional insured under such policies of insurance.

## 9. ENTRY BY GRANTOR

Grantee shall permit Grantor and Grantor's agents and property manager to inspect the Easement Stalls at any time for the purpose of inspecting or making repairs, alterations, or additions to any portion of the Parking Structure or the Easement Stalls so long as such entry does not unreasonably interfere with Grantee's, or it's successors, assigns, licensees and designees, use, occupancy and enjoyment of the Easement Stalls.

## 10. ASSIGNMENT, SUBLetting AND LICENSING

Grantee shall have the right to assign or license its rights under this Easement to an affiliate, a related party or successor-in-interest as owner of the Project, and to occupants, tenants, customers, invitees, and guests, of or on the Project, and to encumber or collaterally assign such rights as security, to a construction or long term lender to the Project without the consent of Grantor. Grantee shall not otherwise assign this Easement or any interest in this Easement. Grantee shall have the right to license the use of all or any portion of the Easement Stalls and permit the use of the Easement Stalls by any person or persons other than Grantee, who are occupants, tenants, customers, invitees, or guests of the Project.

## 11. BREACH BY GRANTEE AND REMEDIES

11.1. In the event Grantee breaches any of the terms, covenants, and conditions of this Easement, this Easement shall remain in full force and effect and Grantor may specifically enforce all its rights and remedies under this Easement by appropriate legal proceedings.

11.2. Grantee shall not be in default unless Grantee fails to perform obligations within a reasonable time. Grantor or its property manager shall give written notice of any failure by Grantee to perform any of its obligations under this Easement to Grantee and to any mortgagee or beneficiary under any deed of trust encumbering the adjacent property benefited by this Easement whose name and address have been furnished to Grantor in writing. Grantee shall not be in default under this Easement unless Grantee (or such mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Grantor's notice of default. However, if such non-performance reasonably requires more than thirty (30) days to cure, Grantee shall not be in default if such cure is commenced within such 30-day period and thereafter diligently pursued to completion.

## 12. DEFAULT BY GRANTOR AND REMEDIES

Grantor shall not be in default unless Grantor fails to perform obligations required of Grantor within a reasonable time. Grantee shall give written notice of any failure by Grantor to perform any of its obligations under this Easement to Grantor and Grantor shall not be in default under this Easement unless Grantor fails to cure such non-performance within thirty (30) days after receipt of Grantee's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Grantor shall not be in default if such cure is commenced within such 30-day period and thereafter diligently pursued to completion. Upon default by Grantor after such 30-day notice and opportunity to cure, Grantee shall have all remedies available at law or in equity, but in no event shall Grantee seek or obtain a monetary judgment against Grantor.

## 13. NOTICES

All notices shall be in writing and shall be sufficiently given and served upon the other party if sent by commercial overnight courier or certified mail, return receipt requested, postage prepaid, and addressed as follows:

To Grantee, addressed to: Town Center, LLC  
1560 S. Renaissance Towne, Drive, Suite 104  
Bountiful, Utah 84010

To Grantor, addressed to: City of Bountiful  
790 South 100 East  
Bountiful, Utah 84010  
Attention: City Manager

or to such other place as Grantor or Grantee may from time to time designate by notice to the other party. Any notice, demand, or other communication under this Easement shall be in writing and shall be sufficient for all purposes if personally served, sent by commercial courier, sent by facsimile transmission with confirmation receipt, or if sent by certified or registered U.S. Mail, return receipt requested, postage prepaid, and address to the Grantor or to the Grantee as the case may be, at their respective addresses specified above. Notices, demands, and other

communications under this Easement shall be deemed to have been given and received if and when personally served, when transmitted electronically and reception is electronically confirmed, if sent via commercial courier upon receipt, and if and when deposited in the U.S. Mail.

#### 14. INSURANCE

14.1. During the term of this Easement, the Grantor or its designated property manager shall maintain policies of insurance covering liability and loss of or damage to the Parking Structure in the full amount of its replacement value. Grantor agrees and acknowledges that Grantee shall be named as an additional insured on all liability insurance policies maintained by Grantor. Grantee agrees and acknowledges that Grantor shall be named as an additional insured on Grantee's commercial general liability policy, for ongoing and completed operations, with limits of not less than \$1 million for each occurrence. Grantee, at its sole expense, shall have the right to procure any additional liability insurance policies relating to the Easement Stalls that it shall determine are necessary in its sole and exclusive discretion. Nothing herein shall negate, or constitute a waiver or relinquishment of Grantor's "governmental immunity" pursuant to Utah Code 63G-7-604, et seq., or otherwise.

14.2. Grantor and Grantee, and their respective successors and assigns, each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to it or the others under its control, if such loss or damage is covered under any insurance policy in force (whether or not described in this Easement) at the time of such loss or damage. If necessary, all property insurance policies required under this Easement shall be endorsed to so provide for such mutual waiver of subrogation.

#### 15. COMPLIANCE WITH LAWS

Grantee shall not do anything nor suffer anything to be done in or about the Easement Stalls which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated (collectively, "Applicable Laws"). Grantee shall, at its sole cost and expense, promptly comply with any Applicable Laws which relate to Grantee's use of the Parking Structure. Should any standard or regulation now or hereafter be imposed on Grantee by any federal, state or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards, then Grantee agrees, at its sole cost and expense, to comply promptly with such standards or regulations.

#### 16. SEVERABILITY

In the event any provision of this Easement is determined to be invalid or unenforceable, then the remainder of this Easement, and Grantee's right to use and occupancy of the Easement Stalls, shall not be affected thereby, and it is the intention of the parties that there shall be

substituted for such provision as is invalid or unenforceable a provision as similar to such provision as may be possible and yet be valid and enforceable.

#### 17. BINDING EFFECT

The covenants, conditions, and terms of this Easement shall be binding upon and inure to the benefit of Grantor and Grantee and their respective successors, assigns, tenants, customers, invitees and guests.

#### 18. GOVERNING LAW

This Easement shall be governed by and construed in accordance with the laws of the State of Utah.

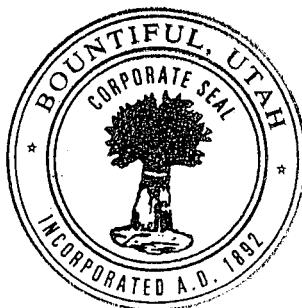
#### 19. ENFORCEMENT

In the event of a dispute resulting in legal proceedings as further described in Sections 11 and 12 of this Parking Easement Agreement, the prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorney's fees incurred in enforcing this Parking Easement Agreement.

#### 20. RELATIONSHIP

Nothing in this Agreement shall create between the Parties, or be relied upon by others as creating, any relationship, partnership, association, joint venture or otherwise.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement as of the day and year first above written. Individuals signing on behalf of a party represent and warrant that they have the authority to bind such party.



#### GRANTOR:

CITY OF BOUNTIFUL, UTAH, a Utah municipal corporation

By:

Randy Lewis  
Mayor

*Kendalyn Harris*  
Kendalyn Harris  
Mayor pro Tem

ATTEST: *Shawna Andrus*  
Shawna Andrus, City Recorder

STATE OF UTAH )

: ss.

COUNTY OF DAVIS

)

*Kimberly Harris*

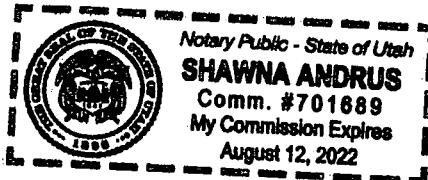
*Broadhead*

On the 29th day of October, 2018, personally appeared before me ~~Randy Lewis~~, who acknowledged to me that he executed the foregoing instrument as the duly authorized Mayor of the City of Bountiful, Utah, a Utah municipal corporation.

*Shawna Andrus*

Notary Public

SEAL



GRANTEE:

TOWN CENTER, LLC,  
a Utah limited liability company

By: Bruce V. Broadhead

Bruce V. Broadhead  
Manager

STATE OF UTAH

)

: ss.

COUNTY OF DAVIS

)

On the 29th day of October, 2018, personally appeared before me Bruce V. Broadhead, who acknowledged to me that he executed the foregoing instrument as the duly authorized Manager of Town Center, LLC, a Utah limited liability company.

*Shawna Andrus*

Notary Public

SEAL



**EXHIBIT "A"**  
**To**  
**Parking Easement Agreement**

Legal Description of Parking Structure

Boundary Description of Lot #2  
07-16-2018

Beginning at the most Northerly Corner of Lot #2 of Renaissance Towne Centre, a commercial mixed use Planned Unit Development, Phase 1, Plat 1 Amended which point is also N89°53'57"E 991.07 ft. along the Section Line and North 555.60 ft. from the Southwest Corner of Section 30, T.2N., R.1E., S.L.B.& M. and running thence S58°50'32"E 182.00 ft.; thence S31°09'28"W 324.50 ft.; thence N58°50'32"W 182.00 ft.; thence N31°09'28"E 324.50 ft. to the point of beginning.

03-225-0002

**EXHIBIT "B"**  
**To**  
**Parking Easement Agreement**

Legal Description of Grantee's Property

Boundary Description of Lot #9  
07-16-2018

Beginning at the most Northerly Corner of Lot #2 of Renaissance Towne Centre, a commercial mixed use Planned Unit Development, Phase 1, Plat 1 Amended which point is also N89°53'57"E 991.07 ft. along the Section Line and North 555.60 ft. from the Southwest Corner of Section 30, T.2N., R.1E., S.L.B.& M. and running thence S31°09'28"W 61.50 ft. along the boundary of said Phase 1, Plat 1 Amended; thence N58°50'32"W 29.61 ft.; thence S31°09'28"W 5.76 ft.; thence N58°50'32"W 70.39 ft.; thence N31°09'28"E 75.47 ft.; thence N61°09'28"E 5.05 ft.; thence S28°50'16"E 6.14 ft.; thence N61°09'44"E 13.02 ft.; thence N28°50'16"W 6.14 ft.; thence N61°09'28"E 4.28 ft.; thence S88°50'15"E 119.39 ft.; thence S31°09'28"W 79.09 ft.; thence N58°50'32"W 14.57 ft.; thence S31°09'28"W 8.17 ft. to the point of beginning.

03 - 279 - 9