

11-3

When recorded, return to:

Parcel ID: 21-26-276-006

Midvale City
7505 South Holden Street
Midvale, UT 84047
Attn: Midvale City Recorder

12159054
10/27/2015 01:20 PM \$33.00
Book - 10374 Pg - 67-77
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
GARDNER COMPANY
90 S 400 W #360
SALT LAKE CITY UTAH 84101
BY: LHP, DEPUTY - WI 11 P.

**EASEMENT AGREEMENT
(CHG PROJECT)
Midvale City, Utah**

THIS EASEMENT AGREEMENT (this "Agreement") is made this 20 day of OCTOBER, 2015 by Arbor Gardner Bingham Junction Holdings, L.C., a Utah limited liability company ("Owner"), in favor of Midvale City Corporation, a Utah municipal corporation ("Midvale City" or "City"). Owner and City are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties."

A. Property. Owner is the owner of certain real property within Midvale City (as more particularly defined on **Exhibit A** attached hereto, the "Property").

B. Amended Plat. The Property constitutes all of the lots created by that certain subdivision plat entitled "View 72 Retail Subdivision 3rd Amended, Amending Lot 10 Parcel A of View 72 Retail Subdivision 2nd Amended" recorded with the County Recorder for Salt Lake County, Utah on July 27, 2015 as Entry No. 12099886 in Book 2015P at Page 165, a copy of which is attached hereto as **Exhibit B** (the "Amended Plat").

C. CHG Project. Developer intends to construct on the Property Class A office buildings with parking (as more particularly defined below, the "CHG Project").

D. Master Development Agreement and Junction Agreement. The Property is subject to that certain Master Development Agreement for the Bingham Junction Project between Littleson, Inc. and Midvale City, dated April 6, 2005 and recorded on March 10, 2006 in Book 9265 at Page 4838 as Entry No. 9659803 (the "MDA"), and to that certain Development Agreement for The Junction at Midvale Project between Arbor Gardner Bingham Junction Holdings, L.C. and Midvale City dated November 14, 2007 and recorded on March 16, 2012 in Book 9999 at Page 8618 as Entry No. 11351482 (the "Junction Agreement").

E. Large Scale Master Plan. The Midvale City Planning Commission (the "Planning Commission") approved a Large Scale Master Plan for the overall CHG Project on May 27, 2015 (the "Large Scale Master Plan"). The conditions of approval of

the Large Scale Master Plan are set forth in a letter dated May 28, 2015 from the City to Developer.”).

F. Small Scale Master Plan. The Planning Commission approved a Small Scale Master Plan for Phase I of the CHG Project on June 24, 2015 (the “Small Scale Master Plan”). The conditions of approval of the Small Scale Master Plan are set forth in a letter dated June 29, 2015 from the City to Developer.

G. Development Agreement. Pursuant to the Large Scale Master Plan and the Small Scale Master Plan, and in accordance with the City’s zoning ordinances, City and Owner entered into that certain Development Agreement dated as of the _____ day of October, 2015 recorded with the County Recorder for Salt Lake County, Utah on _____, 2015 as Entry No. _____ in Book _____ at Page _____ (the “Development Agreement”).

H. Final Site Plan. In connection with the execution of the Development Agreement, the City approved the Final Site Plan for Phase I of the CHG Project on _____, a copy of which is attached to the Development Agreement (the “Final Site Plan”).

I. Easement Agreement. In consideration of the benefits to Owner as a result of City agreeing to enter into the Development Agreement and in consideration of the benefits to Owner as a result of City agreeing to allow Owner to continue to own the areas on the Amended Plat designed as the Perpetual Open Space Public Use Easement, in the dimensions shown on the Amended Plat and the Final Site Plan (the “Easement Areas”), rather than dedicating such areas to City. Owner has agreed to grant City an easement over and across the Easement Areas and to construct thereon the Perimeter Open Space Improvements (as such term is defined in the Development Agreement). Pursuant to the terms of the Development Agreement, Owner has agreed to enter into an easement agreement in the form hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, for themselves and their successors and assigns, hereby covenant as follows:

1. EASEMENT

1.1. ***Perpetual Public Open Space Easement***. Subject to the terms of this Agreement, Owner hereby grants and conveys to City a perpetual non-exclusive easement and right-of-way on and over the Easement Areas to provide pedestrian access by City and the public (the “**Easement**”).

1.2. ***Design and Construction of Easement Areas***. Owner shall construct (and reconstruct, if applicable) the Perimeter Open Space Improvements on the Easement Areas in accordance with the Development Agreement and the Final Site Plan.

1.3. **No Interference.** Owner shall not construct any wall, impediment, or other structure on any portion of the Easement Areas, or engage in any other act, which would unreasonably obstruct the right granted herein to the general public for access over, across and through the Easement Areas. Notwithstanding the foregoing, Owner may temporarily close portions of the Easement Area to ensure the safety of pedestrians during periods of snow removal, maintenance and repairs within the Easement Areas. In the event of any such closure, Owner shall use commercially reasonable efforts to cure the condition requiring closure in a reasonable time and provide alternate access routes to pedestrian traffic during the closure.

2. MAINTENANCE AND REPAIR

2.1. **Maintenance.** Owner shall at its sole cost and expense: repair, replace, restore and maintain the Easement Areas and the Perimeter Open Space Improvements in a good condition and repair; keep the Easement Areas and the Perimeter Open Space Improvements reasonably clean and free of rubbish, debris, filth, refuse, snow, ice, standing water, graffiti, and hazards to persons using the Easement Areas and the Perimeter Open Space Improvements on a regular basis in order to detect needed repairs or maintenance; and provide all security necessary and appropriate to protect the health and safety of persons using the Easement Areas and the Perimeter Open Space Improvements. Except to the extent of damage caused by the City or its employees or contractors, City shall have no obligation whatsoever to repair, replace, restore, or maintain the Easement Areas or the Perimeter Open Space Improvements.

2.2. **Repair.** If the Easement Areas or the Perimeter Open Space Improvements are damaged or destroyed by any cause whatsoever, Owner shall proceed with diligence to reconstruct the Easement Areas and/or the Perimeter Open Space Improvements affected to substantially its condition prior to such damage or destruction. The foregoing shall not prevent Owner from seeking reimbursement from any party that has damaged or destroyed such Perimeter Open Space Improvements.

3. DEFAULT

3.1. **Right to Cure.** Should Owner fail to timely perform any of its obligations hereunder and such failure shall continue for ninety (90) days after its receipt of notice from City (or, if a cure reasonably takes longer than ninety (90) days to effect, such longer period as may be required to cure if the cure is commenced within ninety (90) days and thereafter diligently prosecuted to completion) then City shall, in addition to any other remedy provided by law or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of Owner. Owner shall reimburse City, as the case may be, for the actual cost incurred by City in performing Owner's obligations, together with interest on all amounts advanced at the rate of six percent (6%) per annum over the "Federal Reserve Discount Rate" as set by the Federal Reserve Bank from time to time (the "**Default Rate**") within thirty (30) days after receipt of billing therefor and proof of payment thereof.

3.2. **Enforcement.** In the event Owner does not reimburse City within such thirty (30) days, City shall have the right to exercise any and all rights which such curing party might have by law or in equity to collect the same. In the event of any violation or threatened violation of any provision of this Agreement, City shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation.

3.3. **Attorneys' Fees.** In the event legal proceedings are brought or commenced to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to receive and shall receive from the defaulting party, a reasonable sum as attorneys' fees and costs.

4. NOTICES

All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall be either hand delivered or mailed by United States mail, registered or certified with return receipt requested and postage prepaid, addressed as follows:

Owner:

Arbor Commercial Real Estate L.L.C.
126 West Sege Lily Drive, Suite 275
Sandy, Utah 84070
Attention: John Gust

With a copy to:

K.C. Gardner Company, L.C.
90 South 400 West, Suite 360
Salt Lake City, Utah 84101-1365
Attention: Christian Gardner

If to City:

Midvale City Manager
Midvale City
7505 South Holden Street
Midvale, Utah 84047

Midvale City Attorney
Midvale City
7505 South Holden Street
Midvale, Utah 84047

Notices and demands shall be deemed effective upon receipt if hand delivered, or three (3) days after the date postmarked, if properly mailed. The person and place to which

notices are to be given may be changed by a Party by notice to the other Parties pursuant to this Section.

5. INDEMNIFICATION

Owner shall release, indemnify, defend, and hold harmless City from and against any and all judgements, claims, expenses, causes of action, damages, and liabilities (including reasonable attorneys' fees and actual costs) (the "Claims and Actions"), directly or indirectly arising out of the willful misconduct, acts, negligence, errors, or omissions of Owner (or any other party acting by, through or under Owner, including without limitation a tenant) in connection with the Easement and the Easement Areas and the Perimeter Open Space Improvements including, without limitation, any Claims or Actions relating to Owner's (or any such other party's) design, construction, use, operation, maintenance, repair or security of the Easement or the Easement Area of the Perimeter Open Space Improvements, or the permitting, prohibiting or regulating the use or non-use of, the Easement or the Easement Areas or the Perimeter Open Space Improvements for activities that are protected by the United States Constitution or the Utah State Constitution; provided, such indemnification shall not extend to or be applied with respect to any Claims or Actions arising out of the willful misconduct or gross negligence of City.

6. GENERAL PROVISIONS

6.1 **Nuisance.** Owner shall not cause, maintain, or permit any nuisance or waste in or about the Easement Areas.

6.2 **Constructive Notice and Acceptance.** Every person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to be bound by every covenant, condition, and restriction contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person or entity acquired an interest in the Property.

6.3 **Headings.** The headings used herein are for convenience only and are not intended to be a part of this Agreement or in any way to define, limit, or describe the scope and intent of the sections to which they refer.

6.4 **Effect of Invalidation.** If any provision (by reference or otherwise) of this Agreement is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

6.5 **Amendments.** This Agreement may not be modified or rescinded, in whole or in part, except by a writing executed by Owner and City. Any such written amendment shall become valid when recorded with the Salt Lake County Recorder's Office against the Property.

6.6 **Binding Effect.** It is intended and agreed that the covenants set forth herein shall run with the land and that they shall be binding on the Owner, as provided herein, to the fullest extent permitted by law and equity. This Agreement and the covenants, conditions and the rights of City set forth in this Agreement shall run in favor of City regardless of whether City owns any real property adjoining or near the Property.

6.7 **Governing Law.** This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Utah.

[The remainder of this page was purposely left blank, signature pages to follow.]

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

OWNER:

ARBOR GARDNER BINGHAM HOLDINGS, L.C., a Utah limited liability company, by its Managers

By: K.C. Gardner Company, L.C., a Utah limited liability company

By: *Ken C. Gardner*

Name: *Ken C. Gardner*

Its: *Manager*

By: Arbor Commercial Real Estate L.L.C., a Utah limited liability company

By: *John Busch*

Name: *John Busch*

Its: *Manager*

CITY:

MIDVALE CITY CORPORATION

By: *JoAnn B. Seghini*
JoAnn B. Seghini, Mayor

ATTEST:

Rofi L. Andreason
Rofi L. Andreason, MMC
City Recorder



APPROVED AS TO FORM:

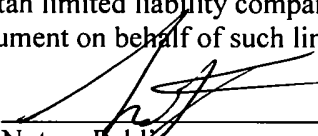
Chad Woolley
Print Name: *Chad Woolley*
City Attorney

CHG EASEMENT AGREEMENT

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the 20 day of OCTOBER, 2015, personally appeared before me

KEM GARDNER, who being by me duly sworn did say he/she is the MANAGER of K.C. Gardner Company, L.C., a Utah limited liability company, and that he/she had signed the within and foregoing instrument on behalf of such limited liability company.



Notary Public

Residing at: DAVIS COUNTY, UT

My Commission Expires:


10.16.16



STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the 21 day of Oct, 2015, personally appeared before me

John Gust, who being by me duly sworn did say he/she is the manager of Arbor Commercial Real Estate L.L.C., a Utah limited liability company, and that he/she had signed the within and foregoing instrument on behalf of such limited liability company.



Notary Public

Residing at: _____

My Commission Expires:



STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the 22nd day of October, 2015, personally appeared before me JoAnn Seghini, who being by me duly sworn did say she is the Mayor of Midvale City Corporation, and that the within and foregoing instrument was signed on behalf of such Corporation.

Rori L Andreason
Notary Public
Residing at: Midvale, UT

My Commission Expires:

11-01-2016



Legal Description of Property

That certain real property located in Salt Lake County, Utah, as more particularly described as follows:

All of Lot 1, 2, 3, & 4 of the “View 72 Retail Subdivision 3rd Amended” recorded with the County Recorder for Salt Lake County, Utah on July 27, 2015 as Entry No. 12099886 in Book 2015P at Page 165, containing a total of 564,922 square feet or 12.969 acres.

Amended Plat

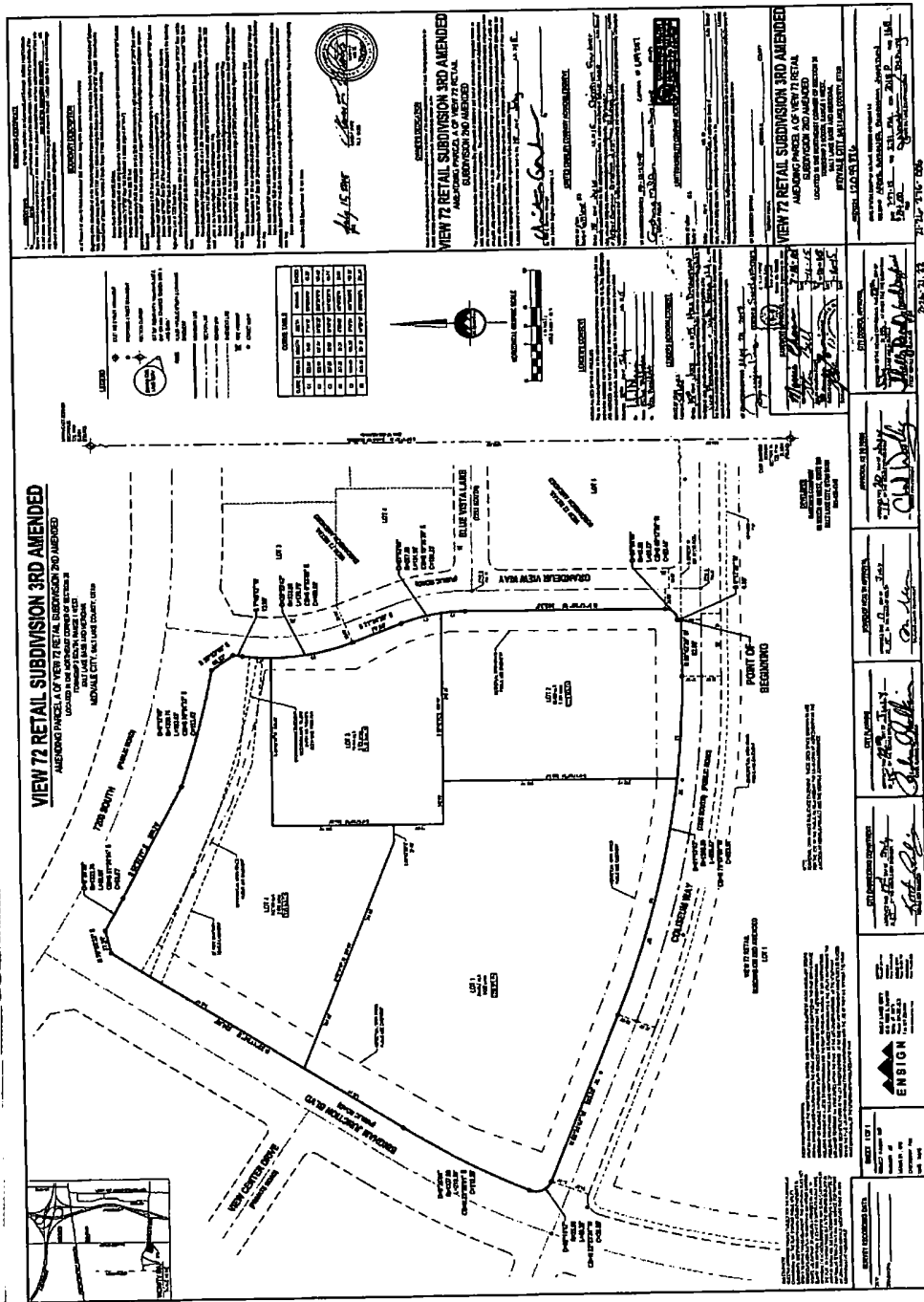


Exhibit B