

After Recording, Return to:

SimonCRE JC ASU V, LLC  
6900 East 2nd Street  
Scottsdale, Arizona 85251  
Attention: Joshua Simon

E 3304404 B 7616 P 3018-3026  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
10/14/2020 4:55:00 PM  
FEE \$40.00 Pgs: 9  
DEP eCASH REC'D FOR FIRST AMERICAN TITLE-N

Tax Parcel No.  
12-092-0146  
12-780-0001

### DUMPSTER ENCLOSURE EASEMENT AGREEMENT

This DUMPSTER ENCLOSURE EASEMENT AGREEMENT (the "Agreement") is made this 29<sup>th</sup> day of September, 2020, by and between **SimonCRE JC ASU V, LLC**, an Arizona limited liability company ("Simon"), and **Syracuse Family Fun Center, LLC**, a Utah limited liability ("SFFC") and **Gailey Tree, LLC**, a Utah limited liability company ("Gailey"), (SFFC and Gailey are collectively referred to herein as "Family Fun Center").

### WITNESSETH:

WHEREAS, Simon is the owner of that certain tract or parcel of land situated in the City of Syracuse, County of Davis, State of Utah, being more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference (hereinafter referred to as the "Simon Parcel"); and

WHEREAS, Family Fun Center is the owner of that certain tract or parcel of land contiguous to the Simon Parcel and situated in the City of Syracuse, County of Davis, State of Utah, being more particularly described on Exhibit "B" attached hereto and made a part hereof by this reference (hereinafter referred to as the "Family Fun Center Parcel"); and

WHEREAS, the Simon Parcel and the Family Fun Center Parcel, each being herein sometimes referred to collectively as the "Parcels," are depicted on Exhibit "C" attached hereto and made a part hereof by this reference (the "Site Plan"); and

WHEREAS, the parties desire to clarify the obligations of Simon and Family Fun Center with regard to construction of a dumpster enclosure on Family Fun Center's Property to be made by Simon.

THEREFORE, the parties agree as follows.

1. Benefited Parties/Binding Effect. The rights, easements and obligations established in this Agreement shall run with the land and be for the benefit of the Parcels and be binding upon the Parcels. The owners of the Parcels may delegate the right to use and maintain the easements granted herein to their respective invitees, employees, agents, contractors and licensees, successors and assigns.

2. Dumpster Enclosure. Upon Simon's receipt of a City of Syracuse permit for the dumpster enclosure installation, and upon commencement of work on Simon's Property, Family Fun Center shall allow Simon, at Simon's sole cost and expense, to construct a dumpster enclosure and associated appurtenances and improvements on Family Fun Center's Property, to be located in that area depicted on the Site Plan (the "Dumpster Enclosure Easement Area").

3. Construction Easement. Family Fun Center hereby grants ingress and egress rights to be used non-exclusively by Simon's agents, contractors, and employees to survey, construct, repair, remove, replace, reconstruct, inspect, and improve the above mentioned Dumpster Enclosure Easement Area, for the purpose of exercising the rights herein granted.

4. General Maintenance/Indemnity. It is specifically understood and agreed that Simon shall have no obligation whatsoever in connection with the ownership, maintenance or management of the dumpster enclosure. It is specifically understood by the parties that Family Fun Center shall manage, operate and maintain the dumpster enclosure in good condition and repair or cause such to be done on its behalf. Family Fun Center shall indemnify and hold Simon harmless for, from and against any and all loss, costs, damages, liability or expense (including reasonably attorney's fees actually incurred and court costs) incurred by Simon in connection with the exercise of the easements and rights created herein, except to the extent caused by the negligence or willful act of Simon, its employees, tenants, contractor, agents or licensees.

5. Compliance with Laws and Regulations- Indemnification. Simon and Family Fun Center covenant and agree, with respect to their own property, to comply with all laws, rules, regulations and requirements of all public authorities, including the payment of all real estate taxes and assessments on their respective parcels and to indemnify, defend and hold each other harmless against all claims, demands, loss, damage, liabilities and expense and all suites, actions and judgments (including, but not limited to, costs and attorneys' fees) arising out of, or in any way related to, Simon's or Family Fun Center's failure to maintain their respective properties in a safe condition. Simon and Family Fun Center shall give prompt and timely notice of any claim made or suite or action commenced against the other party which in any way would result in indemnification.

6. Default. If there is a failure by either party to perform, fulfill or observe any agreement to be performed, fulfilled or observed by it, continuing for thirty (30) days or in situations involving potential danger to the health or safety of persons in, on or about or substantial deterioration of Simon's Parcel or Family Fun Center's Parcel, or any portion or any part thereof, in each case after written notice, the other party may, at its election, cure such failure or breach on behalf of the defaulting party. Any amount which the party so electing shall expend for such purpose, or which shall otherwise be due by either party to the other, shall be paid to the party to whom due on demand, without contest, upon delivery of its invoice, together with interest at the rate of ten percent (10%) per annum, from the date of the expenditure or the date when it shall have become due to the date of payment in full. The provisions of this paragraph shall be in all respects subject and subordinate to the lien of any mortgages or deeds of trust any time or from time to time on the land of the defaulting party and the rights of the holder or holders of any mortgages or deeds of trust. Simon will have all remedies at law and in equity and will have the

right of setoff against the payment of the dumpster enclosure installation for any amounts that remain unpaid from Family Fun Center to Simon.

7. Termination of Liability. Whenever a transfer of ownership of either Parcel takes place, the transferor will not be liable for a breach of this Agreement occurring after a transfer.

8. Construction. The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction so that the intention of the parties to convey a commercially usable right of enjoyment to Simon and Family Fun Center is carried out. This Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns, and the tenants, sub-tenants, license, concessionaires, mortgagees in possession, customers and business invitees of such parties or successors or assigns.

9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

10. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Utah.

[SIGNATURES BELOW]



IN WITNESS WHEREOF, Syracuse Family Fun Center, LLC has caused this Declaration to be executed as of the date set forth above.

SFFC:

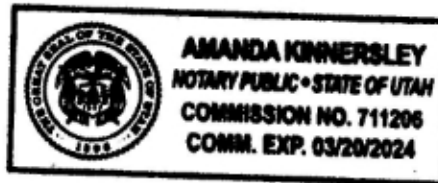
Syracuse Family Fun Center, LLC,  
a Utah limited liability company

By: *Matthew Gertge*  
Name: Matthew Gertge  
Its: Manager

STATE OF Utah )  
  ) ss.  
County of Davis )

The foregoing instrument was acknowledged before me this 14 day of September, 2020 by Matthew Gertge, the Manager of Syracuse Family Fun Center, LLC, for and on behalf thereof.

*Amanda Kinnersley*  
Notary Public



IN WITNESS WHEREOF, Gailey Tree, LLC has caused this Declaration to be executed as of the date set forth above.

GAILEY:

Gailey Tree, LLC, a Utah limited liability company

By: *Matthew Gailey*  
Name: *Matthew Gailey*  
Its: *Manager*

STATE OF *Utah* )  
County of *Davis* ) ss.

The foregoing instrument was acknowledged before me this *24* day of *September*, 2020 by *Matthew Gailey*, the *Manager* of Gailey Tree, LLC, for and on behalf thereof.

*Amanda Kinnersley*  
Notary Public



EXHIBIT A  
Simon Parcel

BEGINNING 5 CHAINS WEST FROM THE NORTHEAST CORNER OF SECTION 16, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 5 CHAINS; THENCE WEST 2 CHAINS; THENCE NORTH 5 CHAINS; THENCE EAST 2 CHAINS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING PORTION OF THE PROPERTY CONVEYED IN THAT CERTAIN WARRANTY DEED RECORDED AUGUST 07, 2008, AS ENTRY NO. 2384694, IN BOOK 4589, AT PAGE 705 OF OFFICIAL RECORDS,

ALSO AS DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED SEPTEMBER 11, 2008, AS ENTRY NO. 2391787, IN BOOK 4613, AT PAGE 169 OF OFFICIAL RECORDS,

ALSO AS DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED OCTOBER 16, 2008, AS ENTRY NO. 2398903, IN BOOK 4637, AT PAGE 506 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID ENTIRE TRACT, WHICH POINT IS 330.00 FEET NORTH  $89^{\circ}11'50''$  WEST FROM THE NORTHEAST CORNER OF SAID SECTION 16; AND RUNNING THENCE SOUTH  $00^{\circ}48'10''$  WEST 33.00 FEET; THENCE NORTH  $89^{\circ}11'50''$  WEST 132.00 FEET TO THE WESTERLY BOUNDARY LINE OF SAID ENTIRE TRACT, AT A POINT 35.85 FEET RADIALLY DISTANT SOUTHERLY FROM THE CENTERLINE OF SAID PROJECT, OPPOSITE APPROXIMATE ENGINEERS STATION 31+87.66; THENCE NORTH  $00^{\circ}48'10''$  EAST 33.00 FEET TO THE NORTHERLY BOUNDARY LINE OF SAID ENTIRE TRACT; THENCE SOUTH  $89^{\circ}11'50''$  EAST 132.00 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING THEREFROM LOT 2, GERTGE BUSINESS PARK AND LOT 1 OF GERTGE BUSINESS PARK LOT 1 & RAMPTON MEDICAL PLAZA LOT 2 AMENDED, ACCORDING TO THE OFFICIAL PLATS THEREOF.

EXHBIT B  
Family Fun Center Parcel

ALL OF LOT 1, GERTGE BUSINESS PARK, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF DAVIS COUNTY, STATE OF UTAH.

TOGETHER WITH THOSE AREAS OF ACCESS AND PUBLIC UTILITY EASEMENTS WHICH ARE DELINEATED ON THE OFFICIAL PLAT OF GERTGE BUSINESS PARK AND AS DESCRIBED IN THAT CERTAIN "SHARED ACCESS AND AGREEMENT" RECORDED JULY 14, 2009, AS ENTRY NO. 2467327 IN BOOK 4817 AT PAGE 1356 OF OFFICIAL RECORDS.



EXHIBIT C  
Site Plan

