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 Book - 9532 Pg - 8884-8890  
 GARY W. OTT  
 RECORDER, SALT LAKE COUNTY, UTAH  
 HOLLAND & HART  
 60 E SOUTH TEMPLE STE 2000  
 SLC UT 84111  
 BY: SAM, DEPUTY - WI 7 P.

When recorded please return to:

Matthew T. Wirthlin  
 Holland & Hart LLP  
 60 E. South Temple, #2000  
 Salt Lake City, UT 84111

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## EASEMENT AGREEMENT

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This **EASEMENT AGREEMENT** is made and entered into as of the 18<sup>th</sup> day of October, 2007, by and between Sinclair Oil Corporation, a Wyoming corporation ("Grantor"), and Gardiner Properties 1100 East, LLC, a Utah limited liability company ("Grantee"). Grantor and Grantee are referred to collectively herein as the "Parties."

### RECITALS

- A. Grantor is the owner of that certain parcel of real property located in Salt Lake County, Utah, and more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Burdened Property").
- B. Grantee is the owner of real property located in Salt Lake County, and is more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference (the "Benefited Property"). Grantee is developing the Benefited Property into a residential condominium project (the "Project").
- C. In order to appropriately access a portion of the Benefited Property for the Project, Grantee desires to have access over a portion of the Burdened Property.
- D. Grantor desires to grant to Grantee an easement (the "Easement") across a portion of the Burdened Property. The terms of the Easement are as provided below.

### TERMS OF AGREEMENT

Therefore, for ten (\$10) dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee a non-exclusive perpetual appurtenant Easement over and across a portion of the Burdened Property as a means of ingress and egress to the Benefited Property, at the location more particularly described on Exhibit "C" attached hereto and incorporated herein by this reference.
2. Purpose of Easement. The purpose of the Easement is to allow Grantee and Grantee's representatives, employees, tenants, subtenants, successors, assigns, lenders, independent

contractors, agents, invitees, guests, customers, etc. to have and to exercise rights of ingress and egress across the Burdened Property for the purpose of lawful residential development of the Benefited Property and any lawful purposes related thereto. The rights granted to Grantee herein shall also extend to any and all tenants and/or subtenants of the Grantee or the Grantee's successors and/or assigns.

3. Covenants of Grantor. Grantor irrevocably covenants to allow the continued use of the Easement hereby granted and agrees not to take any actions which would materially reduce or curtail the effectiveness of the use of the Easement described above or that would unreasonably interfere with Grantee's residential use of, and access to the Benefited Property in any material way. Grantor warrants that: (a) Grantor will allow access across the Easement at all times (except where closing access is necessary due to an emergency situation), and (b) that Grantor will not obstruct or block the use of the Easement at any time in any way, except as is reasonably necessary for temporary work such as repair, maintenance and resurfacing of the Easement, or installation, maintenance and repair of utilities lines in and under the property subject to the Easement.

4. Term. The Easement shall run with the land and be binding upon all current and future owners of the Burdened Property. The Easement granted pursuant to this Agreement and the covenants of Grantor and all other terms hereof shall remain in full force and effect and shall not be amended or modified or terminated in any way.

5. Condemnation. If all or any part of the Burdened Property is condemned or sought to be condemned, Grantee shall be entitled, in its sole discretion, to do any one or more of the following:; (b) to relocate the Easement on the portion of the Burdened Property not condemned or sought to be condemned subject to the respective Grantor's approval, which approval shall not be unreasonably withheld; (c) to terminate this Agreement; (e) to recover from the condemnor to the maximum extent otherwise allowable by law. "Condemned" and "condemnation" for purposes of this Agreement shall include any transfer of possession, title or right relating to the Burdened Property, or any portion thereof, in favor of or for the benefit of any entity exercising the power of eminent domain, including, but not limited to, sale or lease. No right of termination set forth anywhere in this Agreement may be exercised by or for the benefit of any entity having the power of eminent domain. In the event of such condemnation, Grantor may terminate this Agreement if such condemnation is a partial condemnation and after such proceeding Grantor is left with a smaller parcel of land.

6. Successors and Grantee Real Property. This Agreement, including but not limited to the covenants of Grantor set forth above, shall constitute a covenant running with the land referred to herein as the Burdened Property, and shall be binding upon Grantor and its successors and assigns, and the provisions hereof shall be specifically enforceable against Grantor and Grantor's successors and assigns. Without limiting the foregoing, Grantee shall have the remedy of specific performance to enforce this Agreement.

7. Grantee's Waivers. Grantee shall accept and use the Easement in its present "as is" condition and at Grantee's own risk, and Grantee hereby waives and releases any claims against Grantor, and further agrees to defend, indemnify and hold Grantor harmless, from any and all claims, suits and causes of action, including claims for attorneys' fees, arising from or relating to Grantee's

and Grantee's representatives, employees, tenants, subtenants, successors, assigns, lenders, independent contractors, agents, invitees, guests, customers, etc. (or its successors and assigns, including the public's) use of the Easement. Grantee shall at all times maintain at Grantee's expense, a broad form commercial general public liability insurance policy, in a commercially reasonable amount, insuring Grantee, its successors and assigns, against liability claims and suits arising from or related to use of the Easement by Grantee and its successors and assigns, including the public.

8. Project Completion. If the Project is not approved by Salt Lake City and completed within three years of the date of this Agreement, then this Agreement, along with the easement granted hereunder, shall automatically terminate.

9. Miscellaneous. This Agreement is to be governed by and interpreted under the laws of the State of Utah. If any of the provisions of this Agreement are deemed to be not enforceable, in whole or in part, the remaining provisions shall be enforceable notwithstanding the invalidity of any other provision. Any provision not enforceable in part shall be enforceable to the extent valid and enforceable. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

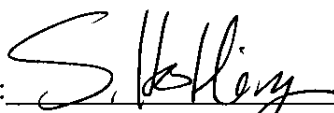
10. Easement Relocation. In the event Grantor requires a relocation of the Easement over another portion of Grantor's property, Grantee shall cooperate with and approve of such relocation if such alternative site is acceptable to Grantee, which acceptance shall not be unreasonably withheld.

**IN WITNESS WHEREOF**, the Parties have executed and delivered this Agreement on the dates set forth below, to be effective as of the date first set forth above.

GRANTOR:

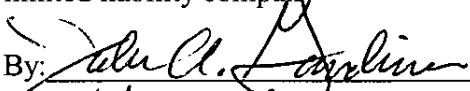
Sinclair Oil Corporation, a Wyoming corporation

Date: 10/11/07

By:   
Its: VICE PRESIDENT

GRANTEE:

Gardiner Properties 1100 East, LLC, a Utah limited liability company

By:   
Its: Manager

STATE OF UTAH                    )  
  : ss.

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of October, 2007, by S.E. Holdings, as the authorized representative of Sinclair Oil Corporation, a Wyoming corporation.



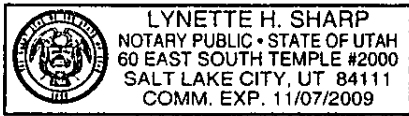
Trudy G. Case  
NOTARY PUBLIC

STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of October, 2007, by John A. Gardiner, as the authorized representative of Gardiner Properties 1100 East, LLC, a Utah limited liability company.



Lynette H. Sharp  
NOTARY PUBLIC

**EXHIBIT A**

Description of the Burdened Property

**SINCLAIR OIL CORPORATION – RECORD DESCRIPTION**

Beginning at the Southeast Corner of Lot 19, Block 1, 5-Acre Plat A, Big Field Survey and running thence South 00°04'07" West 27.06 feet along the westerly line of ELEVENTH EAST STREET; thence West 90.88 feet; thence North 00°00'20" East 19.19 feet; thence South 89°25'18" West 44.99 feet to the easterly line of a 14.75 foot wide right-of-way; thence North 05°04'09" East 83.02 feet along said easterly line to the southerly line of HOLLYWOOD AVENUE; thence South 89°55'18" East 128.65 feet along said southerly line to said westerly line of ELEVENTH EAST STREET; thence South 00°04'07" West 74.19 feet along said westerly line of ELEVENTH EAST STREET to the point of beginning.

Containing 12,620 square feet or 0.290 acres.

Together with a right-of-way over the 14.75 foot by 85.459 foot right-of-way adjoining on the-west, going north to Hollywood Avenue.

Subject to and together with restrictions, rights-of-way and easements of record and use.

**EXHIBIT B**

Legal Description of Benefited Property

**GARDINER – RECORD DESCRIPTIONS**

**PARCEL 1:**

(Condominium Parcel)

A parcel of land, part of Lot 20, Block 1, Five Acre Plat "A", Big Field Survey located in the Southeast Quarter of Section 17, Township 1 South, Range 1 East, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, more particularly described as follows:

BEGINNING at a point, which is 27.06 feet South 00°04'07" West from the Northeast corner of said Lot 20 and running thence South 00°04'07" West 63.50 feet; thence North 89°55'47" West 143.07 feet; thence North 05°04'09" East 82.38 feet; thence North 89°25'18" East 44.99 feet; thence South 00°00'20" East 19.19 feet; thence East 90.88 feet to the POINT OF BEGINNING.

Containing 9,765 square feet or 0.224 acres.

**PARCEL 2:**

(corrected to match title search/records)

BEGINNING at a point, which is South 05°03'51" West 12.05 feet from the Southeast corner of Lot 4, Block 4, Evergreen Park Subdivision and running thence South 89°55'47" East 30.01 feet; thence South 05°04'09" West 60.50 feet; thence North 89°55'47" West 30.00 feet; thence North 05°03'51" East 17.92 feet; thence North 89°55'18" West 12.16 feet to the Southeast corner of Lot 5, Block 4, Evergreen Park Subdivision; thence North 05°03'30" East 48.66 feet; thence South 89°55'18" East 12.17 feet; thence South 05°03'51" West 6.08 feet to the POINT OF BEGINNING.

Contains 2,398 square feet or 0.055 acres.

**PARCEL 2A:**

A right of way as disclosed by that certain Warranty Deed Recorded January 21, 1944, as Entry No. 9679955, In Book 369, at Page 475 over the following described property:

Beginning at a point South 89°55'47" East, 30 feet from the Southeast corner of Lot 4, Block 4, Evergreen Park, A Subdivision; and running thence South 5°04'09" West 72.49 feet; thence South 89°55'47" East 14.75 feet; thence North 5°04'09" East to the South line of Hollywood Avenue; thence North 89°55'47" West 14.75 feet; thence South 5°04'09" West to the point of beginning.

## **EXHIBIT C**

### Legal Description of Easement

An easement for ingress and egress over, across and through a parcel of land, part of Lot 19 and 20, Block 1, Five Acre Plat "A", Big Field Survey, located in the Southeast Quarter of Section 17, Township 1 South, Range 1 East, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, more particularly described as follows:

BEGINNING at a point, which is 8.24 feet South 00°04'07" West and 127.89 feet West from the Northeast corner of said Lot 20 and running thence South 89°25'18" West 8.00 feet; thence North 05°04'09" East 12.00 feet; thence South 30°18'22" East 13.75 feet to the POINT OF BEGINNING.

Contains 48 square feet or 0.001 acres.