

MAST 10179

WHEN RECORDED, RETURN TO:

Michael W. Christopherson, Esq.  
 STOEL RIVES LLP  
 201 South Main Street, Suite 1100  
 Salt Lake City, Utah 84111

10852512

12/7/2009 9:16:00 AM \$23.00

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Gary W. Ott

Recorder, Salt Lake County, UT

METRO NATIONAL TITLE

BY: eCASH, DEPUTY - EF 5 P.

***DECLARATION AND NOTICE***

This Declaration and Notice, dated as of the 7<sup>th</sup> day of December, 2009, is by SINCLAIR OIL CORPORATION, a Wyoming corporation, in favor of GARDINER PROPERTIES 1100 EAST, LLC, a Utah limited liability company. Sinclair owns certain real property located in Salt Lake County, Utah (see attached Exhibit "A"). Gardiner Properties owns certain other real property located in Salt Lake County, Utah (see attached Exhibit "B"), which is adjacent to the Sinclair property. For and in consideration of the terms, conditions and agreements in this Declaration and Notice, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree, as of the date hereof, that:

1. Height Restrictions; Term. The construction or installation of any improvements on the Sinclair property for the purpose of improving, repairing, replacing, modifying, or supplementing any existing structure or improvement located on the Sinclair property shall not cause or result in any such structure to exceed the existing height of such structure as of the date hereof. No new structure, improvement or other facility of any kind or nature constructed or installed on the Sinclair property shall exceed twenty feet (20') in height, measured from the height of the back of the public sidewalk at its highest point adjacent to Sinclair's property along 1100 East, as of the date hereof, to the highest point of any such structure, improvement or other facility. These restrictions shall apply through December 15, 2024 and shall expire without further action of the parties to this Declaration and Notice.

2. Covenants Run With the Land. All restrictions, rights, conditions and covenants in this Declaration and Notice shall run with, be appurtenant to, and inure to the benefit of the Gardiner Property and shall run with, bind and burden the Sinclair property as covenants running with the land and shall be binding on any persons having or acquiring any interest in the Sinclair property or any part thereof.

3. Governing Law; Incorporation of Recitals. This Declaration and Notice shall be governed by, and construed in accordance with, the laws of the State of Utah. The recitals stated above and the exhibit attached to this Declaration and Notice shall be and hereby are incorporated in and made an integral part of this Declaration and Notice by this reference.

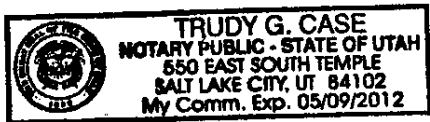
4. Enforcement; Attorneys' Fees. Because Gardiner Properties may not have an adequate remedy at law for the breach or threatened breach thereof, Gardiner Properties may (a) take or cause to be taken such actions as may be necessary or appropriate to satisfy any such covenants, agreements, conditions, and/or obligations, and/or (b) file a suit in equity to enjoin the breach or threatened breach of the restrictions, rights, conditions and covenants in this Declaration and Notice and/or for specific performance thereof. Failure to enforce any provision of this Declaration and Notice does not waive the right to enforce that provision or any other provision of this Declaration and Notice. In the event of any legal action or proceeding in any way connected with this Declaration and Notice, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal).

SINCLAIR OIL CORPORATION,  
a Wyoming corporation

By: M. Blackmore  
Its: Sin. V.P. Marketing & Supply

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

The foregoing instrument was acknowledged before me this 4 day of December, 2009, by M.C. Blackmore, the V.P. Marketing & Supply of SINCLAIR OIL CORPORATION, a Wyoming corporation.



Trudy G. Case  
NOTARY SIGNATURE AND SEAL

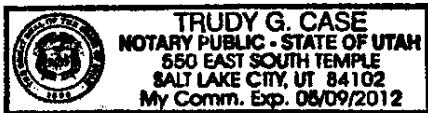
GARDINER PROPERTIES 1100 EAST, LLC,  
a Utah limited liability company

By: Gardiner Properties, LLC,  
a Utah limited liability company,  
Managing Member

By: John A. Gardiner  
John A. Gardiner, Manager

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

The foregoing instrument was acknowledged before me this 4 day of December, 2009, by John A. Gardiner, the Manager of GARDINER PROPERTIES, LLC, a Utah limited liability company.



Trudy G. Case  
NOTARY SIGNATURE AND SEAL

***Exhibit "A"***

***(Legal Description of Sinclair property)***

**PARCEL 1:** BEGINNING AT THE SOUTHEAST CORNER OF LOT 19, BLOCK 1, 5-ACRE PLAT A, BIG FIELD SURVEY; AND RUNNING THENCE SOUTH 00 DEG. 04'07" WEST 27.06 FEET ALONG THE WESTERLY LINE OF ELEVENTH EAST STREET; THENCE WEST 90.88 FEET; THENCE NORTH 00 DEG. 00'20" EAST 19.19 FEET; THENCE SOUTH 89 DEG. 25'18" WEST 44.99 FEET TO THE EASTERLY LINE OF A 14.75 FOOT WIDE RIGHT OF WAY; THENCE NORTH 05 DEG. 04'09" EAST 83.02 FEET ALONG SAID EASTERLY LINE TO THE SOUTHERLY LINE OF HOLLYWOOD AVENUE; THENCE SOUTH 89 DEG. 55'18" EAST 128.65 FEET ALONG SAID SOUTHERLY LINE TO SAID WESTERLY LINE OF ELEVENTH EAST STREET; THENCE SOUTH 00 DEG. 04'07" WEST 74.19 FEET ALONG SAID WESTERLY LINE OF ELEVENTH EAST STREET TO THE POINT OF BEGINNING.

**PARCEL 1A:** TOGETHER WITH A RIGHT OF WAY, AS DISCLOSED BY THAT CERTAIN WARRANTY DEED RECORDED FEBRUARY 17, 1919, AS ENTRY NO. 407392, IN BOOK 10I, AT PAGE 356, OVER THE 14.75 FOOT BY 85.459 FOOT RIGHT OF WAY ADJOINING ON THE WEST, GOING NORTH TO HOLLYWOOD AVENUE.

Tax Parcel No. 16-17-456-029

**Exhibit "B"**

**(Legal Description of Gardiner Property)**

**PARCEL 1:** 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 DEG. 04'07" WEST FROM THE NORTHEAST CORNER OF SAID LOT 20; AND RUNNING THENCE SOUTH 00 DEG. 04'07" WEST 63.50 FEET; THENCE NORTH 89 DEG. 55'47" WEST 143.07 FEET; THENCE NORTH 05 DEG. 04'09" EAST 82.38 FEET; THENCE NORTH 89 DEG. 25'18" EAST 44.99 FEET; THENCE SOUTH 00 DEG. 00'20" EAST 19.19 FEET; THENCE EAST 90.88 FEET TO THE POINT OF BEGINNING.

**PARCEL 1A:** TOGETHER WITH THE RIGHTS OF INGRESS AND EGRESS AS DISCLOSED BY THAT CERTAIN EASEMENT AGREEMENT RECORDED NOVEMBER 1, 2007 AS ENTRY 10264943, IN BOOK 9532, AT PAGE 8884, BEING DESCRIBED AS FOLLOWS:

AN EASEMENT FOR INGRESS AND EGRESS OVER, ACROSS AND THROUGH A PARCEL OF LAND, PART OF LOT~~s~~ 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 DEG. 04'07" WEST AND 127.89 FEET WEST FROM THE NORTHEAST CORNER OF SAID LOT 20; AND RUNNING THENCE SOUTH 89 DEG. 25'18" WEST 8.00 FEET; THENCE NORTH 05 DEG. 04'09" EAST 12.00 FEET; THENCE SOUTH 30 DEG. 18'22" EAST 13.75 FEET TO THE POINT OF BEGINNING.

**PARCEL 2:** 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" EAST 42.16 FEET; THENCE NORTH 05°03'30" EAST 17.92 FEET TO THE SOUTHEAST CORNER OF LOT 5, BLOCK 4, EVERGREEN PARK SUBDIVISION AS RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER; THENCE NORTH 00°26'29" EAST 5.31 FEET; THENCE SOUTH 89°33'31" EAST 2.74 FEET; THENCE NORTH 00°26'29" EAST 21.33 FEET; THENCE NORTH 89°33'31" WEST 0.59 FEET; THENCE NORTH 05°03'30" EAST 21.93 FEET; THENCE SOUTH 89 DEG. 55'18" EAST 12.17 FEET; THENCE SOUTH 05° 03'51" WEST 6.08 FEET TO THE POINT OF BEGINNING.

**PARCEL 2A:** A RIGHT OF WAY AS DISCLOSED BY THAT CERTAIN WARRANTY DEED RECORDED JANUARY 21, 1944, AS ENTRY NO. 967995, IN BOOK 369, AT PAGE 475, OVER THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT SOUTH 89 DEG. 55'47" EAST, 30 FEET FROM THE SOUTHEAST CORNER OF LOT 4, BLOCK 4, EVERGREEN PARK, A SUBDIVISION; AND RUNNING THENCE SOUTH 5 DEG. 04'09" WEST 72.49 FEET; THENCE SOUTH 89 DEG. 55'47" EAST 14.75 FEET; THENCE NORTH 5 DEG. 04'09" EAST TO THE SOUTH LINE OF HOLLYWOOD AVENUE;

THENCE NORTH 89 DEG. 55'47" WEST 14.75 FEET; THENCE SOUTH 5 DEG. 04'09" WEST TO THE POINT OF BEGINNING.

Tax Parcel No. 16-17-456-030

The parties to this Declaration and Notice acknowledge that the forgoing legal descriptions of the Sinclair and Gardiner properties are for illustrative purposes only and are not intended to establish property boundaries for the properties described above.