

Entry 2010004196
Book 1190 Page 625-634 \$32.00
10-MAY-10 03:00
RANDY SIMMONS
RECORDER, UINTAH COUNTY, UTAH
LAW OFFICE OF STEVEN FRANSWORTH
480 W 800 N STE 204 OREM, UT 84057
Rec By: DEBRA ROOKS , DEPUTY

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

VERNAL VALLEY LODGING & ASSOCIATES, LLC
P.O. Box 185
Orem, Utah 84059

Entry 2010004196
Book 1190 Page 625

(Space above for Recorder's use only)

GRANT OF EASEMENT AND AGREEMENT

THIS GRANT OF EASEMENT AND AGREEMENT (the "Agreement") is entered into this 5th day of February 2010, by and between Uinfah Plaza, LLC, a Utah limited liability company ("Grantor"), and Vernal Valley Lodging & Associates, LLC, a Utah limited liability company, its successors and/or assigns ("Grantee").

RECITALS

- A. Grantor owns a parcel of land located in Vernal, Utah (the "Grantors' Parcel"), further described on Exhibit "A" attached hereto.
- B. Grantee owns property adjacent to Grantor's Parcel (the "Grantee's Parcel") further described on Exhibit "B" attached hereto.
- C. Grantee desires to acquire an easement across a portion of Grantor's Parcel, a private road known as 1170 West, Vernal, Utah (the "Easement"), which easement is described on Exhibit "C" attached hereto.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual promises and subject to the conditions set forth below, the parties agree as follows:

1. **Grant of Easement.** Subject to Paragraph 4 below, Grantor hereby grants to Grantee the Easement across Grantor's Parcel located as illustrated and described on Exhibit C for so long as said Easement is used exclusively for the purpose(s) of ingress and egress from Grantor's parcel to Grantee's parcel. Grantor expressly reserves for itself and its successors and assigns, the right to use the Easement or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights herein granted.
2. **Curb and Gutter.** Grantee has installed curb and gutter bordering the Easement which is part of the consideration for this Agreement.

3. Maintenance of Easement.

(a) **Maintenance Standards.** Grantor, or its successor, shall maintain the Easement Parcel. The Easement Parcel shall be maintained at all times in good and clean condition and repair and to a level comparable to the standard of maintenance generally maintained in other shopping centers of similar size and tenant-mix, in the Vernal, Utah, metropolitan area, said maintenance to include, without limitation, the following:

(1) Maintaining, repairing and resurfacing, when necessary, all sidewalks and all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability, and restriping when necessary;

(2) Removing all ice and snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition and keeping the Common Area free from any obstructions including those caused by snow and ice and the sale or display of merchandise;

(3) Maintaining, repairing, restriping and replacing, when necessary, all traffic directional signs, markers and lines;

(4) Maintaining appropriate lighting fixtures for the roadways; and

(5) Performing any and all such other duties as are necessary to maintain such Easement Parcel in a clean, safe and orderly condition.

Notwithstanding the foregoing, any damage to any easement, which is caused by intentional or negligent acts of Grantor or Grantee or their respective permittee, shall be promptly repaired at the sole cost of such party.

(b) Grantor, or its assignee, shall maintain, repair, and replace the Easement Parcel in a manner consistent with the standards set forth in Section 3(a) above. To reimburse Grantor for the costs incurred to maintain, repair, and replace the Easement Parcel ("Easement Charges"), Grantee shall reimburse Grantor one-third (1/3) of the reasonable costs incurred in connection therewith, within thirty (30) days after receipt of an invoice therefor. The one-third (1/3) allocation of the Easement Charges to Grantee shall be the actual expenses incurred by the Grantor in maintaining the Easement Parcel. For any Easement Charge in excess of \$1,000 (an "Excess Easement Charge") in any single calendar month Grantor shall provide Grantee advance written notice together with the applicable bids. If Grantee does not give advance written consent for an Excess Easement Charge then Grantee shall not be obligated for such Excess Easement Charge.

4. Landscaping Maintenance. Grantor and Grantee for their respective parcels and at their own cost and expense shall maintain, repair and replace all landscaped areas; operating, maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and replacing shrubs and other landscaping as necessary.

5. **Notices.** Any notice required or desired to be given under this Agreement shall be considered given either: (i) when delivered in person to the recipient named below, (ii) three (3) days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage prepaid, addressed by name to the person and party intended. All notices shall be given at the following addresses:

If to Grantors:

Uintah Plaza, LLC
c/o Westerra Corporation
265 East 100 South, #308
Salt Lake City, Utah 84111
Attn: Richard Forsyth
Telephone No.: 801-533-9900
Telecopy No.: 801-521-3322

If to Grantee:

VERNAL VALLEY LODGING & ASSOCIATES, LLC
P.O. Box 185
Orem, Utah 84059
Attn: Michael Bingham
Telephone No.: (801) 932-0312
Telecopy No.: (801) 221-4966

with a copy to:

Steven W. Farnsworth, Esq.
Law Office of Steven W. Farnsworth
480 West 800 North, Suite 204
Orem, UT 84057
Telephone No.: (801) 437-4565
Telecopy No.: (801) 437-4566

Either party may designate a different individual or address for notices, by giving written notice thereof in the manner described above.

6. **Indemnification.** Grantee shall indemnify and hold Grantor and its respective permittees harmless from and against all claims, liabilities, damages, penalties, costs, demands and expenses (including reasonable attorneys' fees and legal costs) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of the other, its contractors, employees, agents, or others acting on behalf of such Grantor as the case may be.

7. **Miscellaneous.**

7.1 **Interpretation.** Section titles and captions to this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part of this Agreement. The parties acknowledge and agree that all of the terms and conditions of this Agreement are contractual in nature and shall be interpreted under any applicable law as contractual obligations, and each party waives any claims or defenses to the contrary.

7.2 **Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Utah.

7.3 **Run with the Land/Successors.** Subject to the terms and conditions of this Agreement, the easement granted herein shall be perpetual and shall run with the land, and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns. Provided, however, the rights granted in this easement may not be assigned by Grantee to anyone other than the fee title owner(s) of the Grantee Parcel without the express written consent of Grantors.

7.4 **Integration.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto. No covenant, representation, or condition not expressed in this Agreement shall affect or be deemed to interpret, change, or restrict the express provision hereof. Any amendment or modification to this Agreement shall be in writing and signed by authorized agents or officers of the parties.

7.5 **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any rights or remedy for a breach of this Agreement shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term, or condition.

7.6 **Rights and Remedies.** The rights and remedies of any of the parties stated herein are not intended to be exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

7.7 **Enforceability and Litigation Expenses.** If any action, suit, or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement or if a party finds it necessary to retain an attorney to enforce its rights under this Agreement, all costs and expenses of the prevailing party incident to such proceeding or retention, including reasonable attorneys' fees, shall be paid by the non-prevailing party.

7.8 **Authorization.** Each individual executing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the party for which he/she signs to execute and deliver this Agreement in the capacity and for the entity set forth where he/she signs and that as a result of his/her signature, this Agreement shall be binding upon the party for which he/she signs.

7.9 **Termination.** In the event Grantee makes a decision that it will no longer use the easement granted herein, Grantee shall upon request of Grantor deliver a recordable instrument terminating this Easement.

7.10 **Assignment.** The rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

GRANTOR:

Uintah Plaza, LLC

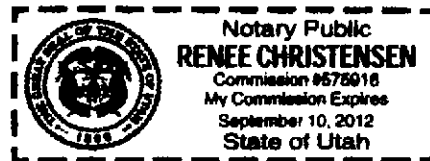
By:

Name: Richard A Forsyth, pres Westerra Corp, dba Westerra Realty
Its: agent & Management

STATE OF UTAH)
) : ss
COUNTY OF Salt Lake)

On this 7th day of April, 2010, personally appeared before me Richard Forsyth, known or satisfactorily proved to me to be the agent of Uintah Plaza, LLC, a Utah limited liability company, who acknowledged to me that he signed the foregoing instrument as agent for said limited liability company.

Renee Christensen
Notary Public



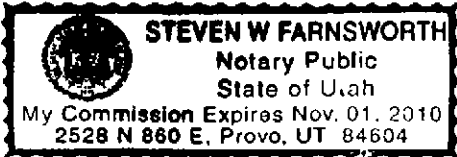
GRANTEE:

Vernal Valley Lodging & Associates, LLC, a Utah limited liability company

By: *Michael Bingham*
Name: Michael Bingham
Its: Manager

STATE OF UTAH)
 : ss
COUNTY OF UTAH)

On this 4th day of May, 2010, personally appeared before me, Michael Bingham, known or satisfactorily proved to me to be the Manager of Vernal Valley Lodging & Associates, LLC, a Utah limited liability company, who acknowledged to me that he signed the foregoing instrument as Manager for said limited liability company.



Steven W Farnsworth
Notary Public

EXHIBIT "A"

(Grantor's Parcel Description)

Exhibit "A"

05-012-0016 *NO W 5-12-33 SE SW*

Beginning N 2°04'26" W 721.01 feet from the South 1/4 corner of Section 22, Township 4 South, Range 21 East, Salt Lake Base & Meridian; thence N 75°50' E 48.40 feet; thence N 14°10' W 5.0 feet; thence N 75°50' W 173 feet; thence N 46°01'58" W 217 feet; thence N 43°58'02" E 181.36 feet; thence N 46°01'58" W 60 feet; thence N 87°59'26" E 272.89 feet to the North-South 1/4 Section line; thence S 2°04'26' E 391.70 feet along the North-South 1/4 Section line to the point of beginning.

05-012-0017 *NO W 5-12-34 SE SW*

Beginning N 2°04'26" W 588.73 feet from the South 1/4 corner of Section 22, Township 4 South, Range 21 East, Salt Lake Base & Meridian; thence S 43°58'02" W 370.81 feet; thence S 88°02'49" W 189.64 feet; thence N 46°01'58" W 388.17 feet; thence N 2°04'26" W 180.77 feet more or less to the South Right of Way line of US Highway 40; thence N 43°58'02" E Along the Southerly Right of Way line of US Highway 40 for a distance of 351.10 feet; thence S 46°01'58" E 143.39 feet; thence N 43°58'02" E 16.59 feet; thence S 46°01'58" E 217 feet; thence S 75°50' E 48.40 feet to the point of beginning.

05-012-0035 *SE SW*

Beginning S 88°02'49 W 726 feet and N 2°04'26" W 297.79 feet from the South 1/4 corner of Section 22, Township 4 South, Range 21 East, Salt Lake Base & Meridian; and thence N 2°04'26" W 278.85 feet; thence S 46°01'58" E 388.17 feet; thence S 88°02'49" W 269.44 feet to beginning.

05-012-0029 *SE SW*

Beginning at a point on the North-South Right of Way line of 500 South Street, said point being S 88°02'49 W along the Section line 726.00 feet and N 2°04'26" W 33.00 feet from the South 1/4 corner of Section 22, Township 4 South, Range 21 East, Salt Lake Meridian and running thence N 2°04'26' W 297.79 feet; thence N 88°02'49" E 40.00 feet; thence S 2°04'26" E 297.79 feet to the North right-of-way line of said 500 South Street; thence S 88°02'49" W 40.00 feet to the point of beginning.

EXHIBIT "B"

(Grantee's Parcel Description)

SERIAL NUMBER: 05:012:0112

Lot 2 of Vernal Valley Lodging Subdivision, Vernal City, Uintah County, Utah, according to the official plat thereof on file and of record in the office of the Uintah County Recorder.

EXHIBIT "C"

(Easement Parcel Description)

ACCESS EASEMENT

SITUATED IN THE STATE OF UTAH, COUNTY OF UINTAH, CITY OF VERNAL AND KNOWN AS BEING PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SALT LAKE BASE AND MERIDIAN. FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A COPPER WELD LOCATED IN 500 SOUTH STREET BEING THE SOUTH 1/4 CORNER OF SECTION 22, TOWNSHIP 4 SOUTH, RANGE 21 EAST, OF THE SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 88°02'49" WEST ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 726.00 FEET AND NORTH 02°04'26" WEST 32.91 FEET TO THE POINT OF BEGINNING; NORTH 02°04'26" WEST 344.51 FEET; THENCE NORTH 87°55'34" EAST 40.50 FEET; THENCE SOUTH 02°04'26" EAST 344.60 FEET; THENCE SOUTH 88°02'49" WEST 40.50 FEET TO THE POINT OF BEGINNING.

