

AFTER RECORDING, RETURN TO:

Holland & Hart LLP  
Attention: Steven J. Vuyovich  
222 South Main Street, Suite 2200  
Salt Lake City, Utah 84101

Entry 2013006442  
Book 1339 Page 149-163 \$42.00  
03-JUL-13 09:36  
RANDY SIMMONS  
RECORDER, UTAH COUNTY, UTAH  
HOLLAND & HART LLP ATTN: STEVEN VUJ  
222 S MAIN STM STE 2200 SLC, UT  
Rec By: CARADIE ASH , DEPUTY

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### EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is entered into and effective as of the \_\_\_\_ day of June, 2013, by and between GARDNER TOWNE CENTER, LLC, a Utah limited liability company (the "Grantor") whose address for the purposes of this Agreement is 90 South 400 West, Salt Lake City, Utah 84101 and JEFFRY JENKINS and PEGGY L. JENKINS (collectively "Grantee") whose address for the purposes of this Agreement is 1108 South 1500 West, Vernal, Utah 84078. Grantor and Grantee are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Grantor is the owner in fee of certain real property located in Uintah County, Utah, more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Grantor Property").

B. Grantee is the owner in fee of certain real property located in Uintah County, Utah, more particularly described in Exhibit B attached hereto and incorporated herein by reference (the "Grantee Property").

C. Grantee owns existing irrigation facilities located on the Grantor Property that Grantor desires to modify and relocate in connection with Grantor's development of the Grantor Property.

D. Grantee desires to obtain easements over portions of the Grantor Property for the modified and relocated irrigation facilities, and Grantor is willing to grant the easements described in this Agreement on the terms and conditions set forth below.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants terms, conditions, and restrictions contained herein, Grantor hereby grants the Easements, as defined herein, to Grantee over, along, and under those portions of the Grantor Property identified herein as follows:

1. **Grant of Easements.** Grantor hereby grants, bargains, sells and quitclaims without representation or warranty, to Grantee the following easement over, along, and under those portions of the Grantor Property described on Exhibit C hereto (the "Easement"):

A perpetual nonexclusive easement fifteen feet (15') in width for surveying, laying, constructing, maintaining, repairing, renewing, replacing, protecting, inspecting and operating a single pipeline consisting of twelve inch (12") and fifteen inch (15") diameter pipe (the "Pipeline") in the Easement for the transportation of irrigation water, together with such surface and subsurface appurtenances and facilities as are necessary or required for the operation of said Pipeline, including, but not limited to, irrigation boxes, headgates, valves or other control structures and fittings. The Pipeline and related appurtenances and facilities are collectively referred to herein as the "Pipeline Facilities."

2. **Rights & Obligations Conveyed.** The rights and corresponding obligations conveyed by the Easement are as follows:

(a) Grantee shall have unrestricted access to any irrigation boxes, headgates, valves or other control structures initially installed by Grantor on the Grantor Property as provided in Section 4 herein. Grantee shall otherwise have the limited right of ingress and egress to, from, over and across the Grantor Property using such routes and at such times as may be designated and changed by Grantor from time to time for all other purposes; provided, however, Grantee's rights of ingress and egress shall not unreasonably interfere with the operations of Grantor on the Grantor Property.

(b) The rights of Grantee hereunder are nonexclusive and are subject to all other easements, exceptions, reservations, rights, and encumbrances of record, enforceable in equity or evidenced physically on the Grantor Property. GRANTEE ACCEPTS THE PROPERTY UNDERLYING THE EASEMENT IN ITS AS-IS AND WHERE-IS CONDITION.

(c) Grantee shall be obligated, at its sole cost and expense, to operate, repair, maintain and replace the Pipeline Facilities in a good and workmanlike manner, and in compliance with all applicable legal requirements.

(d) Grantee shall not unreasonably interfere with or impair Grantor's use or occupancy of the remainder of the Grantor Property.

(e) Grantee shall not have any right to increase the size of the Pipeline or to install more than one pipeline in the Easement.



(f) Grantee shall be responsible, at its sole cost and expense, for the maintenance, repair or replacement of any utilities or other improvements damaged or otherwise disturbed in Grantee's use of the Easement.

(g) Except for the Easement, Grantee shall have no further right to survey, lay, construct, maintain, repair, renew, replace, protect, inspect, operate, or remove any existing pipelines owned by Grantee and any easements or rights-of-way that Grantee may have over the Grantor Property, whether arising by prescription or otherwise, are hereby terminated and vacated in their entirety and shall be of no further force or effect.

3. **Limitation on Use of the Easement.** Notwithstanding any other provision of this Agreement, Grantee shall be subject to the following limitations in the use of the Easement as follows:

(a) Grantee agrees that access to the Easement may be restricted or temporarily denied due to operations on the Grantor Property for safety or environmental protection purposes, all of which shall have priority over Grantee's access to and use of the Easement.

(b) In the event Grantee desires to install any above-ground Pipeline Facilities, Grantee shall first obtain the written consent of Grantor, which consent shall not be unreasonably withheld.

(c) Grantee shall deliver to Grantor notice at least 24 hours prior to performing any work on the Grantor property in connection with the Easement herein granted. In the event an emergency situation arises which requires immediate repairs to be made to the Pipeline Facilities within the Easement, then in such emergency situations, Grantee will not be in default of its notification obligations referred to previously, so long as Grantee: (i) immediately notifies Grantor, (ii) utilizes personnel or contractors that are qualified to perform the work required, (iii) all such work is limited to only that work which must be performed to eliminate the emergency, and (iv) all such work is performed in a good and workmanlike manner and in a manner designed to minimize the disruption to the other uses of the Grantor Property.

4. **Engineering Modification and Relocation of Pipeline Facilities.** Grantor shall at Grantor's cost and expense, engineer, modify, relocate and construct the Pipeline Facilities within the Easement. Such engineering, modification, relocation and construction shall be completed by Grantor in a good and workmanlike manner, in accordance with plans and specifications attached hereto as **Exhibit D** (the "Plans and Specifications") and in compliance with all requirements of law, and once completed, shall be reasonably acceptable to Grantee. Upon completion, Grantee shall provide to Grantor a written acceptance of the engineered, modified, relocated and constructed Pipeline Facilities and shall be responsible for ongoing maintenance and repair of the Pipeline Facilities as set forth in more detail in Section 2 and 3 herein, commencing on the date of the written acceptance.

5. **Grantor's Representations.** Grantor represents that it is the current owner in fee title to the Property, and that it has full legal authority to grant this Easement to Grantee, free of



liability for any lien or encumbrance previously placed thereon by Grantor, and without the approval or consent of any third party.

6. **Retained Rights.** Grantor hereby reserves the right to use the Grantor Property for any and all purposes that do not unreasonably interfere with the use of the Easement by Grantee for the purposes specified in this Agreement. In addition, the Grantor Property may be used for any purposes by such person or entity as Grantor may designate at any time, so long as such uses do not unreasonably interfere with the use of the Easement by the Grantee for the purposes specified in this Agreement.

7. **Discharge of Storm Water.** Grantee hereby grants to Grantor for the benefit of the Grantor Property the perpetual right to discharge storm water from the Grantor Property into the Pipeline at the locations shown on the Plans and Specifications. Any such discharge of storm water shall occur: (i) only after the storm water is passed through the oil and water separator identified on the Plans and Specifications (which separator shall be properly maintained by Grantor or its successors or assigns); and (b) only as needed to handle excess storm water generated on the Grantor Property, which need shall be deemed to occur when the storm creating such excess storm water is a storm event having an intensity equal to or greater than a 10 year, 24 hour storm event. Upon discharge of the storm water into the Pipeline, Grantor shall be deemed to have abandoned any interest Grantor may have in such storm water and Grantee may utilize such storm water for Grantee's sole purposes subject to the requirements of applicable law.

8. **Covenants Run With Land/Breach Will Not Terminate.**

(a) This Agreement and all of the provisions contained herein: (i) are made for the direct benefit of the Grantee Property and the Grantor Property; and (ii) shall constitute covenants that run with the land, and shall bind and benefit the Parties to this Agreement, any other party which at anytime acquires any interest in, or occupies any portion of, the Grantor Property and the Grantee Property, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. By acquiring any interest in, or by occupying the Grantor Property or the Grantee Property, the party so acquiring or occupying hereby agrees to be bound by the terms of this Agreement;

(b) No breach or violation of any provision of this Agreement will entitle any Party to cancel, rescind, or otherwise terminate this Agreement, but this limitation will not affect, in any manner, any other rights or remedies to which the Parties and their respective successors and assigns may be entitled by reason of a breach of this Agreement.

9. **Grantee's Personal Property.** Unless the parties otherwise agree in writing, the Pipeline Facilities shall at all times remain the personal property of Grantee, notwithstanding that they may be annexed or fixed to the land and may at any time and from time to time be removed in whole or in part by Grantee.

10. **Not A Public Dedication.** Nothing contained in this Agreement will be deemed to constitute a gift or dedication of any portion of the Grantor Property to the general public or



for the general public or for any public purpose whatsoever, it being the intention of the Parties that this Agreement will be strictly limited to and for the purpose expressed here.

11. **Property Tax.** Nothing contained in this Agreement is intended to relieve the fee owner of the Grantor Property, or any portion thereof, from timely satisfying all property and other taxes assessed against all or any portion of the Grantor Property.

12. **Notices.** All notices and other communications required under this Agreement shall be in writing and delivered personally or sent certified mail or via facsimile to the party at the address first set forth above. Notice will be deemed received: (i) on the date of delivery if delivered in person, (ii) on the third (3rd) business day, if mailed, and (iii) on the date transmitted, if transmitted by facsimile, provided that oral or written confirmation of receipt is obtained by the sender from a party at the location where the facsimile has been received. Any change in address may be accomplished by delivery of notice in compliance with this Section.

13. **Entire Agreement/Amendments.** This Agreement constitutes the entire agreement between the Parties hereto relating to this Pipeline and the Pipeline Facilities and may only be amended by a writing specifically referencing this Agreement and signed by Grantor or Grantee or their successors, legal representatives, assignees or transferees.

14. **Relationship of Parties.** This Agreement does not create any fiduciary or other relationship between the Parties except as grantor and grantee.

15. **Governing Law.** This Agreement shall be construed under and shall be enforceable in accordance with the laws of the State of Utah.

16. **Dispute Resolution.** In the event of any dispute, claim, question or disagreement ("Claim") arising out of or related to this Agreement or the breach thereof, the Parties shall use their best efforts to settle such Claim. To this effect they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a solution satisfactory to both Parties. If the Parties are unable to reach a solution, then upon notice by either Party to the other, the Parties agree to meet and consider submitting said Claim to mediation or binding arbitration pursuant to the applicable rules of the American Arbitration Association. Any arbitration shall be held at a location mutually agreed upon by the Parties or, failing such agreement, in Vernal, Utah. If the Parties do not agree to mediate or arbitrate, any judicial proceeding shall be exclusively filed and maintained in the applicable federal or state court located in the State of Utah.

17. **Attorney's Fees.** If any court action or arbitration action is brought to enforce or interpret any of the provisions, covenants, or requirements of this Agreement, the Party prevailing in such action, whether in suit or arbitration, shall be entitled to recover from the unsuccessful party reasonable attorney's fees and costs.

18. **Enforcement.** This Agreement may be enforced by any means or remedy available at law or in equity, including the remedy of specific performance.

19. **Acceptance.** By the signatures set forth herein below, Grantee hereby accepts the foregoing grant of the Easement and agrees to accept the discharge of excess storm water pursuant to Section 7 above subject to the terms and conditions herein contained.

20. **Recording.** This Agreement shall be recorded promptly upon execution hereof by each Party hereto. All costs relating to the recording shall be paid by Grantor.

21. **Counterparts.** This Agreement may be executed by the Parties in counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement to be effective as of the date first set forth above.

*[Remainder of This Page Intentionally Left Blank]*

**GRANTOR:**

**GARDNER TOWNE CENTER, LLC**

By: R. C. Gardner

Title: manager

Date: June 11, 2013.

STATE OF UTAH )  
 ) SS:  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 11 day of June, 2013, by Rulon C. Gardner, a Manager of GARDNER TOWNE CENTER, LLC.

Constance Miller  
Notary Public



My commission expires: 10-13-2015





GRANTEE:

Peggy L. Jenkins  
Peggy L. Jenkins

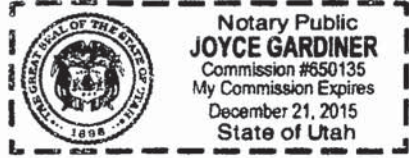
6-26-2013  
Date

STATE OF UTAH )  
COUNTY OF Uintah ) SS.

The foregoing instrument was acknowledged before me this 26 day of June, 2013, by PEGGY L. JENKINS.

Joyce Gardiner  
Notary Public

My commission expires: 12-21-15



**EXHIBIT A**

**Description of the Grantor Property**

**(Tax I.D. No. 05-075-0114)**

A parcel of property situated in Section 28, T. 4 S., R. 21 E., S.L.B.M. described as follows:

BEGINNING AT A POINT THAT IS 220.00 FEET N. 02°23' 21" W. FROM THE SOUTH QUARTER CORNER OF SECTION 28:  
THENCE N. 88°02'48" E., 253.90 FEET;  
THENCE N. 2°22'22" W., 441.72 FEET;  
THENCE N. 88°01'05" E., 410.68 FEET;  
THENCE N. 02°12'24" W., 660.81 FEET;  
THENCE S. 88°08'13" W., ALONG THE ALIQUOT PART LINE 266.02 FEET;  
THENCE N. 0°46'58" W., 184.88 FEET;  
THENCE S. 89°26'11" W., 114.06 FEET;  
THENCE N. 45°54'35" W., 91.61 FEET;  
THENCE S. 44°00'10" W. PARALLEL TO THE SAID HIGHWAY RIGHT-OF-WAY LINE, 235.67 FEET;  
THENCE N. 45°59'50" W. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 168.50 FEET;  
THENCE N. 44°00'10" E. PARALLEL TO THE SAID HIGHWAY RIGHT-OF-WAY LINE, 67.00 FEET;  
THENCE S. 45°59'50" E. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 23.00 FEET;  
THENCE S. 44°00'10" W. PARALLEL TO THE SAID HIGHWAY RIGHT-OF-WAY LINE, 7.00 FEET;  
THENCE S. 45°59'50" E. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 145.50 FEET;  
THENCE S. 44°00'10" W. PARALLEL WITH SAID HIGHWAY RIGHT-OF-WAY LINE 215.00 FEET;  
THENCE S. 45°59'50" E. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 207.72 FEET;  
THENCE S. 43°58'25" W., 115.72 FEET;  
THENCE S. 46°01'35" E., 42.46 FEET;  
THENCE S. 43°58'25" W., 164.40 FEET;  
THENCE S. 46°01'35" E., 175.29 FEET;  
THENCE N. 87°37'11" E., 50.12 FEET;  
THENCE S. 2°23'02" E., PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER 501.46 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 15.656 ACRES IN AREA MORE OR LESS.

05-081-0027      05-075-0017  
PT 05-080-0013      05-078-0032  
PT 05-078-0036

RECORDER NOTE:  
INCOMPLETE DESCRIPTION



**EXHIBIT B**

**Description of the Grantee Property**

**Parcel No. 1 (Tax I.D. No. 05:079:0007):**

Beginning on the West bank of Steinaker Canal 315 feet South and 570 feet West of the East corner of Section 28, Township 4 South, Range 21 East, Salt Lake Meridian; thence Southeasterly 400 feet; thence West 660 feet; thence North 375 feet; thence East to the West right of way line of Steinaker Service Canal to beginning. Contains 6.68 acres, more or less.

**Parcel No. 2: (Tax I.D. No. 05:079:0008):**

BEGINNING at a point 672.00 feet South of the East quarter corner of Section 28, Township 4 South, Range 21 East, Salt Lake Base & Meridian and running thence South 257.00 feet; thence West 160 feet; thence South 100.00 feet; thence West 236.10 feet more or less to the East right of way line of U.S. Service Canal; thence Southwesterly along the said right of way 274.50 feet more or less to a point on the said right of way line 16.50 feet North of the South line of the Northeast quarter of the Southeast quarter of said Section 28; thence West 939.00 feet more or less; thence North along the 1/16th line 631.50 feet; thence East 80 rods to the point of beginning.

**Parcel No. 3 (Tax I.D. No. 05:079:0011):**

Beginning 493.5 feet South of the East quarter corner of Section 26, Township 4 South, Range 21 East, Salt Lake Meridian; thence South 178.5 feet; thence West 370 feet, more or less, to the East line of Steinaker Service Canal Right of Way; thence Northerly along said right of way line to a point 493.5 feet South of the East-West quarter Section line; thence East 409 feet, more or less, to the place of beginning. Contains 1.6 acres, more or less.

**Parcel No. 4 (Tax I.D. No. 05:079:0015):**

Beginning at a point on the North line of the Southeast quarter of Section 28, Township 4 South, Range 21 East, Salt Lake Base and Meridian which bears South  $88^{\circ}15'41''$  West 747.46 feet from the Northeast corner of the said Southeast quarter. Thence North  $88^{\circ}15'41''$  East along the said North line of the Southeast quarter 202.56 feet to the centerline of the Steinaker Service Canal; thence South  $00^{\circ}48'$  East along the said canal centerline 180.10 feet tangent to and to a curve to the left having a Delta Angle of  $15^{\circ}37'17''$  and a radius of 500.00 feet; thence Southerly along said curve being the canal centerline a distance of 136.32 feet to a point which bears South  $01^{\circ}40'21''$  East parallel to the East line of the said Southeast quarter 315.00 feet from the said North line of the Southeast quarter; thence South  $88^{\circ}15'41''$  West parallel to the said North line of the Southeast quarter 214.28 feet; thence North  $02^{\circ}01'45''$  West parallel to the West line of the Northeast quarter Southeast quarter of said Section 315.00 feet to the point of beginning. Basis of bearings is the East line of the Northeast quarter of said Section which is taken from the Uintah County Surveyor's Section breakdown to bear North  $01^{\circ}40'39''$  West.

**EXHIBIT C**

**Description of the Easement**

(New Irrigation Easement):

BEGINNING AT A POINT THAT IS 220.00 FEET N. 02°23' 02" W. FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SALT LAKE BASE AND MERIDIAN:

THENCE N. 88°02'48" E., 253.90 FEET;  
THENCE N. 2°22'22" W., 441.72 FEET;  
THENCE N. 88°01'05" E., 410.68 FEET;  
THENCE N. 02°12'24" W., 660.81 FEET;  
THENCE S. 88°08'13" W., ALONG THE ALIQUOT PART LINE 15.00 FEET;  
THENCE S. 02°12'24" E., 645.84 FEET;  
THENCE S. 88°01'05" W., 410.72 FEET;  
THENCE S. 02°22'22" E., 441.71 FEET;  
THENCE S. 88°02'48" W., 238.90 FEET;  
THENCE S. 02°23' 02" E., 15.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 0.6033 ACRES IN AREA MORE OR LESS.



**EXHIBIT D**

Plans and Specifications

[See attached.]





