

WHEN RECORDED MAIL TO:

James C. Ziter, Attorney at Law  
4885 South 900 East, Suite 104  
Salt Lake City, Utah 84117

14-266-0014  
14-266-0015

**EASEMENT AGREEMENT**

This EASEMENT AGREEMENT (this "Agreement"), is dated as of the 9<sup>th</sup> day of June, 2021 (the "Effective Date"), and is by and between SB CLINTON L.C. ("SBC") and EMIC Properties a California Limited Partnership ("EMIC"). For convenience, each of the parties may be referred to as a "Party", and collectively the "Parties". The Parcel Legal Descriptions are Attached as Exhibit "B" hereto.

**RECITALS**

21-4416AB  
A. SBC owns Lot 10 in the Clinton Towne Center with the legal description: **Lot 10, Clinton Towne Center, according to the plat thereof on file and of record in the Davis County Recorder's Office ("Lot 10").**

B. EMIC owns Lot 12 in the Clinton Town Center with the legal description: **Lot 12, Clinton Towne Center, according to the plat thereof on file and of record in the Davis County Recorder's Office ("Lot 12").**

C. Lot 10 and Lot 12 are adjoining parcels formerly owned by SBC. SBC sold Lot 12 to SBH Checker L.C. ("Checker") on or about June 16, 2004. Checker sold to the Gilchi Sakurai 2005 Trust (the "Trust") on or about March 10, 2006. The Trust sold to EMIC on or about March 31, 2016.

D. During SBC's ownership of Lot 12, SBC created a 21 foot wide egress only driveway over the South 24 feet of Lot 12 allowing egress from Lot 10 to the Permanent Service Drive located East of Lot 12 (the "Egress Easement"). For purposes of this Agreement, EMIC is the Grantor of the Egress Easement and SBC is the Grantee of the Egress Easement.

E. During Checker's ownership of Lot 12, Checker constructed a building (the "Building") on Lot 12 which is now used as an O'Reilly's Auto Parts Store. The West wall of the Building is essentially on the boundary line between Lots 10 and 12. The Building's power inlet and protective infrastructure located at the South West corner of the Building is located on Lot 10 (the "Power Infrastructure Easement"). For purposes of this Agreement, SBC is the Grantor of the Power Infrastructure Easement and EMIC is the Grantee of the Power Infrastructure Easement.

F. Lot 12's dumpster is in a designated dumpster area which is located on the North East corner of Lot 10 (the "Dumpster Easement"). For purposes of this Agreement, SBC is the Grantor of the Dumpster Easement and EMIC is the Grantee of the Dumpster Easement.

G. Neither the Egress Easement, nor the Power Infrastructure Easement, nor the Dumpster Easement (collectively the "Three Easements") are shown in any formal Davis County record and the parties wish to memorialize the acknowledgement of the same in this Agreement.

H. The Three Easements are shown in the diagram attached as Exhibit "A" hereto.

#### **Terms**

NOW, THEREFORE, for good and valuable consideration the and the mutual covenants, terms, and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Grant of Egress Easement.** EMIC which is the Grantor under the Egress Easement grants to Grantee SB Clinton L.C., its heirs, legal representatives, successors, and assigns, and to any future owners of Lot 10, a perpetual, non-exclusive easement in, upon, about, over, and through the Egress Easement only for egress from Lot 10 to the Permanent Service Road located East of Lot 10. The Egress Easement shall serve the purpose of an easement for egress from Lot 10. Nothing contained herein shall be construed to grant the Grantee of the Egress Easement any mineral rights to any portion of Lot 12.

**2. Grant of Power Infrastructure Easement.** SB Clinton L.C. which is the Grantor under the Power Infrastructure Easement grants to Grantee EMIC its heirs, legal representatives, successors, and assigns, and to any future owners of Lot 12, a perpetual, non-exclusive easement to maintain, repair and protect the existing electrical power infrastructure servicing the Building which infrastructure is located on Lot 10. Nothing contained herein shall be construed to grant the Grantee of the Power Infrastructure Easement any mineral rights to any portion of Lot 10.

**3. Grant of Dumpster Easement.** SB Clinton L.C. which is the Grantor under the Dumpster Easement grants to Grantee EMIC its heirs, legal representatives, successors, and assigns, and to any future owners of Lot 12, a perpetual, non-exclusive easement to maintain, a garbage dumpster in its current size, in its current location on Lot 10. Nothing contained herein shall be construed to grant the Grantee of the Power Infrastructure Easement any mineral rights to any portion of Lot 10.

**4. Payment.** In consideration for each of the Three Easements, Grantee shall pay to Grantor the sum of \$1.00 and other good and valuable consideration upon execution of this Agreement.

**5. Non-Interference.** No Grantor under the Three Easements nor Grantor's grantees, heirs, successors, or assigns shall interfere with the respective Easements recited herein or permit interference with the respective Easements.

**6. Improvements.** Grantee shall have access to and may construct improvements over, under, in, along, across, and upon the Easement Area that are reasonably related to both the purpose of the Easement and Grantee's use and enjoyment of the Easement (the "Improvements"). The Grantee of each respective Easement shall be responsible for maintenance of the easement provided Grantee is the only party using or accessing the easement. In the event Grantor conveys, devises, allows or in any manner permits another party to use the easement, as a condition to the use of the easement, said party or parties shall be responsible for sharing the cost of maintenance. If the party or parties fail or refuse to pay for or be responsible for their share of maintenance, that party or parties shall be precluded from using the easement until they pay for or perform their share of maintenance. This maintenance provision shall be included in any grant of easement to any other party or parties.

**7. Relocation.** Grantor may not relocate the Easement unless prior written consent is obtained from Grantee which may be given or withheld in the non-requesting party's sole and absolute discretion. If the parties agree to relocate the Easement and/or Easement Area, then this Agreement shall be amended to reflect same. Both Grantor and Grantee, hereby acknowledge and agree that the party requesting the relocation shall be responsible for the all costs and expenses, including reasonable attorneys' fees of the other party, incurred in connection with relocating the Easement and/or Easement Area.

**8. Reservation of Rights.** All right, title, and interest in and to the Easement Area under this Agreement, which may be used and enjoyed without interfering with the rights conveyed by this Agreement are reserved to Grantor, provided, however, that Grantor shall not erect or maintain any improvements which may cause damage to or interfere with the purpose of any of the Three Easements.

**9. Representations and Warranties.** Each respective Grantor represents and warrants to the respective Grantee that (a) it has the full right, power, title, and interest to grant the Easement to Grantee; (b) such grant of Easement and any rights granted under this Agreement may be fully and thoroughly enjoyed and utilized by Grantee pursuant to the terms hereof; and (c) Grantee's easement rights hereunder shall not be impaired, or adversely affected by superior title.

**10. Covenants Running with the Land.** The Easement and other rights conferred by this Agreement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective grantees, heirs, successors, and assigns.

**11. Liability.** Upon completion of the Improvements described in Paragraph 4 herein, Grantee shall insure against any claims for general liability occurring on the easement. Grantee shall indemnify and hold Grantor harmless from any and all claims arising from or related to the existence of the easement or damages alleged sustained from the easement.

**12. Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Utah, without regard to principles of conflicts of laws.

13. **Attorney Fees.** In the event of a dispute arising out of his Agreement, the prevailing party or parties shall be entitled to his, her, its, or their costs and expenses, including reasonable attorney fees.

14. **Integration.** This Agreement supersedes all prior agreements, discussions, understandings, offers, and negotiations between the Grantor and Grantee with respect to the subject hereof.

15. **Amendment.** This Agreement shall not be amended or modified, except in a writing signed by all the parties hereto, or the successors to all the parties hereto.

16. **Further Assurances.** Each party hereto and their successors agree to do such things, perform such acts, and make, execute, acknowledge, and deliver such documents as may be reasonably necessary and customary to carry out the intent and purposes of this Agreement.

17. **Counterparts.** This Agreement may be executed electronically and in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SB CLINTON L.C.

By: Eldon V. Naacke

Its: MANAGER

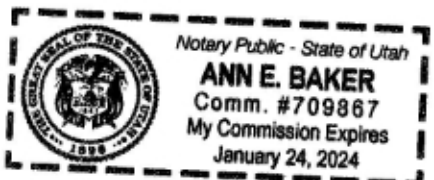
State of Utah  
County of Salt Lake

On June 9<sup>th</sup>, 2021 before me, Ann E. Baker,  
notary public, personally appeared Eldon V. Naacke, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,


Ann E. Baker  
Signature of Notary Public



EMIC Properties, a California Limited Partnership

By: RMIC Assets, Inc.

It's General Partner

By:   
Its: President

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
notary public, personally appeared \_\_\_\_\_, who proved to  
me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal,

See Attached  
Signature of Notary Public

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

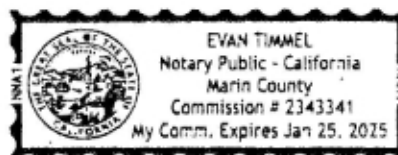
County of Marin }

On 06-07-2021 before me, Evan Timmel, Notary Public  
(Here insert name and title of the officer)

personally appeared Nancy S Conger  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.  
Evan Timmel  
Notary Public Signature



(Notary Public Seal)

### ADDITIONAL OPTIONAL INFORMATION

#### DESCRIPTION OF THE ATTACHED DOCUMENT

Easement Agreement

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

#### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)  
 Corporate Officer

\_\_\_\_\_  
(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

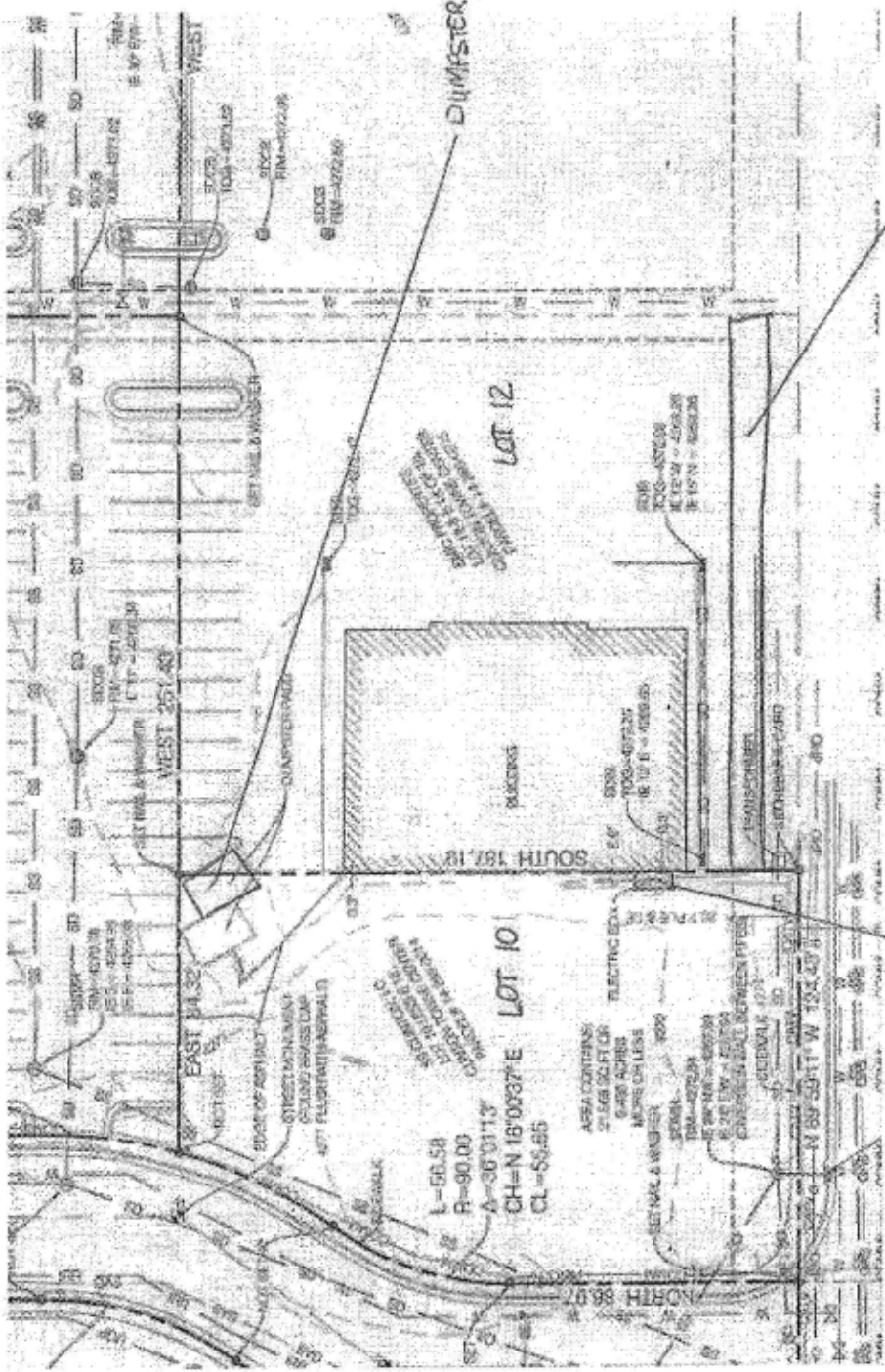
### INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

**EXHIBIT "A"**

**MAP OF THE THREE EASEMENTS**



EGRESS EASEMENT

POWER INFRASTRUCTURE EASEMENT



**EXHIBIT "B"**

**LEGAL DESCRIPTIONS OF THE TWO PARCELS**

**Lot 10, Clinton Towne Center, according to the plat thereof on file and of record in the Davis County Recorder's Office**

**Lot 12, Clinton Towne Center, according to the plat thereof on file and of record in the Davis County Recorder's Office**