

Entry 2011009105  
Book 1259 Page 49-60 \$33.00  
19-DEC-11 01:28  
RANDY SIMMONS  
RECORDER, UTAH COUNTY, UTAH  
ASHLEY CREEK VILLAGE LLC  
180 N UNIVERSITY AVE PROVO UT 84601  
Rec By: SYLENE ACCUTTOROOP , DEPUTY

RETURN RECORDED DOCUMENT TO:

Law Office of Steven Farnsworth  
Pinehurst Business Park  
480 West 800 North, Ste. 204  
Orem, UT 84057

Entry 2011009105  
Book 1259 Page 49

## RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS

THIS RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS (the "Agreement") is executed this 19<sup>th</sup> day of December, 2011, by ASHLEY CREEK VILLAGE, LLC, a Utah limited liability company ("Owner #1), and ASHLEY CREEK VILLAGE II, LLC, a Utah limited liability company ("Owner #2"). Owner #1 and Owner #2 shall sometimes hereinafter be referred to individually as a "Party," and collectively as the "Parties."

A. Owner #1 is the owner of certain real property situated in the City of Vernal, Uintah County, State of Utah ("Property #1") (Property #1 is more particularly described on Exhibit "A," which is attached hereto and incorporated herein by this reference).

B. Owner #2 is the owner of certain real property situated in the City of Vernal, Uintah County, State of Utah ("Property #2") (Property #2 is more particularly described on Exhibit "B," which is attached hereto and incorporated herein by this reference).

C. Each Owner intends to install amenities that may include a tot lot, sport court and clubhouse that will be available for use of tenants and their guests of both Property #1 and Property #2 (the "Amenities")

D. Even though Property #1 and Property #2 (individually a "Property" and collectively the "Properties") are separate parcels, the Parties desire that the Properties be utilized by tenants and their guests for ingress and egress and for use of the Amenities.

E. The Parties desire to establish non-exclusive easements over, across and upon all driveways, drive aisles and access ways located from time to time on the Properties (collectively, the "Common Areas") for the mutual and reciprocal benefit of the Properties and the present and future owners, tenants and invitees thereof.

F. The Parties also desire to establish certain covenants, conditions and restrictions with respect to the use of the Properties now and in the future pursuant to this Agreement and in addition to the Master Covenants.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Parties covenant and agree that the Properties and all present and future owners, occupants and invitees of the Properties shall be and hereby are subject to the terms, easements, covenants, conditions and restrictions as follows:

1. **DEFINITIONS.** For purposes hereof:

1.1 The term "HUD" shall mean the United States Department of Housing and Urban Development.

1.2 The term "HUD Regulatory Agreement" shall mean the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

1.3 The term "Lender" means Keycorp Real Estate Capital Markets, Inc., its successors and assigns.

1.4 The term "Mortgage Loan" shall mean the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

1.5 The term "Mortgage Loan Documents" shall mean the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

1.6 The term "Owner" or "Owners" shall mean Owner #1, Owner #2 and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the Properties, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such Properties or any portion thereof.

1.7 The term "Permittees" shall mean the tenant(s) or occupant(s) of the Properties, and the respective invitees and licensees of (a) the Owners of such Properties, and/or (b) such tenant(s) or occupant(s).

1.8 The term "Program Obligations" shall have the meaning set forth in the Security Instrument.

1.9 The term "Security Instrument" shall mean the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

1.10 The term "Surplus Cash" shall have the meaning specified in the HUD Regulatory Agreement.

1.11 The term "Residual Receipts" shall have the meaning specified in the HUD Regulatory Agreement.

## 2. EASEMENTS.

2.1 Grant of Reciprocal Easements. Subject to any express conditions, limitations or reservations contained herein, each Owner hereby grants, establishes, covenants and agrees that the Properties, and all Owners and Permittees of the Properties, shall be benefited and burdened by the following nonexclusive, perpetual and reciprocal easements which are hereby imposed upon the Properties and all present and future Owners and Permittees of the Properties:

(a) An easement for reasonable access, ingress and egress to from, upon, over and across all of the Common Areas now and from time to time existing on the Properties for the purpose of vehicular and pedestrian ingress and egress between all portions of the Common Areas, and to and from all abutting streets or rights of way furnishing access to the Properties. This access easement shall not prohibit the right of the Owners to reconfigure or construct roadways and vehicular passageways, driveways, and

driving lanes, or to construct and maintain, within the area affected by this easement, traffic and parking control islands and other such facilities, on their respective portion of the Properties, so long as any such action does not unreasonably prevent the passage by motor vehicles and service and delivery vehicles between each of the Properties, and to the public roads, as appropriate. No person shall be permitted to construct or maintain any building, barrier or sign of any sort, which would limit or otherwise interfere with the traversing of vehicular and/or pedestrian traffic within the Properties upon the Common Areas.

(b) A use easement granted by each Owner to the other Owner for the use and enjoyment of the Amenities located on the other Property.

## 2.2 Reasonable Use of Easements.

(a) The easements granted herein shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Property including, without limitation, public access to and from said Property.

(b) Once commenced, any construction, maintenance, repair or replacement undertaken in reliance upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with any other Owner and its Permittees. Except in cases of emergency, the right of any Owner to enter upon a Property of another Owner for the exercise of any right pursuant to the easements set forth, or to prosecute work on such Owner's own Property if the same interferes with easements of ingress, egress or access to or in favor of another Owner's Property, shall be undertaken only in such a manner so as to minimize any interference with other Owner and its Permittees, and only following reasonable notice under the circumstances to the other Owner and its Permittees. The Owner performing any such construction, maintenance, repair or replacement shall have the obligation at its own expense (except as set forth in Section 3.3) to promptly restore the other Owner's Property to the same condition as was present prior to such construction, maintenance, repair or replacement.

(c) Each Owner shall have the right to alter, modify, reconfigure, and/or relocate the Common Areas on its Property, subject to the following conditions: (i) the reciprocal easements between the Properties pursuant to Section 2.1(a) shall not be closed or materially impaired, and (ii) the access ways, driveways and passageways, and ingress and egress thereto, and to and from the Properties and adjacent streets and roads, shall not be so altered, modified, relocated, blocked and/or removed without the express written consent of all Owners, which consent shall not be unreasonably withheld.

3. **INSTALLATION, MAINTENANCE AND REPAIR.**

3.1 **Amenities.** With respect to proposed Amenities, notwithstanding anything to the contrary in this Agreement, neither Owner is obligated to install any certain type of Amenity whatsoever. Provided, however, once an Amenity has been installed, then such Amenity shall be made available for the use and enjoyment of all Permittees.

3.2 **Maintenance of Common Areas, Amenities and Easements.** Each Owner shall at all times be responsible for the regular maintenance, repair and replacement of the Common Areas and Amenities and all of the easements located on its own Property including, without limitation, all of the physical improvements associated with such easements. Such obligations shall include, without limitation: maintaining and repairing all sidewalks and the surface of the roadway areas; removing all papers, debris and other refuse from and periodically sweeping all sidewalk areas to the extent necessary to maintain the same in a clean, safe and orderly condition; maintaining appropriate lighting fixtures for the roadways; maintaining marking, directional signs, lines and striping as needed; maintaining signage in good condition and repair; and performing any and all such other duties as are necessary to maintain such Common Areas, Amenities and easements in a clean, safe and orderly condition. Notwithstanding the foregoing, any damage to any easement, which is caused by intentional or negligent acts of one of the Owners or its Permittees, shall be promptly repaired at the sole cost of such Owner.

3.3 **Failure to Maintain the Common Areas, Amenities and Easements.** If any Owner defaults under its regular maintenance, repair and replacement obligations as described in Section 3.2 above, the other Owner(s) shall give such defaulting Owner written notice of the claimed default, and such defaulting Owner shall have ten (10) days following the receipt of such written notice to cure such default. If the default remains uncured following the ten (10) day period, or if such default is not curable within the ten (10) day period and the defaulting Owner has failed to begin to cure such default within the ten (10) day period, the other Owner(s) may, but shall not be required to, cure the default itself, and then bill the defaulting Owner for the reasonable costs incurred in curing such default. Each such bill shall contain an itemized description of the work performed and the total costs and expenses incurred for such work. The defaulting Owner shall pay all such bills within thirty (30) days after receipt of the bill. In the event the defaulting Owner fails to timely pay any bill, the unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the due date until the date such amount is paid in full.

4. **COVENANTS, CONDITIONS AND RESTRICTIONS.**

4.1 **Term.** The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Uintah County Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of all of the Properties in accordance with Section 6.2 hereof.

4.2 **Use Restrictions.** Each Property shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Property that is illegal.

4.3 **No Rights in Public; No Implied Easements.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion

of the Properties. No easements, except those expressly set forth in Section 2, shall be implied by this Agreement.

4.4 Right of First Offer.

(a) Neither Party shall sell or agree to sell (the "Selling Party") its Property without first offering to sell it to the non-selling Party (the "Non-Selling Party"). The word "sell" shall include any transfer, conveyance, or assignment, except for a lease, hypothecation, or pledge of all or any portion of such Property or the Selling Party's interest in such Property.

(b) Prior to the Selling Party entering into an agreement for the marketing of its Property or otherwise selling or agreeing to sell its Property, the Selling Party shall offer in writing ("First Offer") to sell the Property to the Non-Selling Party on the same terms and conditions that the Selling Party would then be willing to offer to a third party. The First Offer shall, at a minimum, include the following information:

- (i) the purchase price;
- (ii) the method of payment of the purchase price;
- (iii) the amount and terms of any Selling Party financing;
- (iv) the amount of the required earnest money deposit; and
- (v) the time and location for the close of escrow.

(c) The Non-Selling Party shall have fifteen (15) days from the date of the First Offer to accept the First Offer ("Acceptance Period") by delivering to the Selling Party acceptance on or before 5:00 p.m. Mountain Time on the last day of the Acceptance Period. If the Non-Selling Party fails to accept the First Offer before the Acceptance Period ends, the First Offer shall be deemed rejected.

(d) If the Non-Selling Party responds to the First Offer with anything other than an unequivocal, unconditional acceptance or rejection, the right of first offer shall terminate and the response shall be deemed an offer to purchase the Property on the terms and conditions in the response ("Counter Offer"). The Selling Party shall be entitled to accept or reject the Counter Offer at the Selling Party's sole discretion, and if the Selling Party rejects the Counter Offer, the Selling Party shall have no further obligations under this Agreement.

(e) If the Non-Selling Party accepts the First Offer, the Non-Selling Party shall have thirty (30) days following acceptance of the First Offer ("Closing Period") to consummate the purchase of the Property pursuant to the terms and conditions of the First Offer. If the Non-Selling Party fails to consummate the purchase of the Property within the Closing Period, any earnest money paid by the Non-Selling Party pursuant to the acceptance shall be paid to the Selling Party as the Selling Party's liquidated damages, and the agreement to purchase the Property together with this Agreement shall be terminated. After the termination, the Selling Party shall be free to enter into an agreement for the sale of the Property with a third party on whatever terms the Selling Party may choose to offer without further obligation under this Agreement.

(f) If after the Non-Selling Party rejects the First Offer, the Selling Party negotiates with a third party and is otherwise willing to enter into an agreement with that party on terms substantially less favorable to the Selling Party than those contained in the First Offer, the Selling Party shall offer to sell the Property to the Non-Selling Party on those new terms by giving the Non-Selling Party written notice ("Second Offer"). The Non-Selling Party shall have five (5) business days from receipt of the Second Offer to accept the new terms. If the Non-Selling Party fails to accept the new terms or rejects the new terms in writing, the Selling Party shall be free to consummate the transaction with the third party without any liability to the Non-Selling Party. If the Non-Selling Party accepts the new terms, the Non-Selling Party shall then immediately consummate the transaction with the Selling Party on the terms and conditions in the Second Offer on the later of:

(i) the time for consummation in the Second Offer, or

(ii) fifteen (15) days following the date of the Second Offer.

(g) Termination. This Agreement shall automatically terminate and have no further effect upon the first of the following events to occur:

(i) the Non-Selling Party, in contravention of this Agreement, assigns or attempts to assign the Non-Selling Party's rights under this Agreement;

(ii) the Non-Selling Party rejects a First Offer or a Second Offer and the Selling Party subsequently consummates a sale of the Property to a third party pursuant to the terms of this Agreement; or

(iii) The purchase of the Property by the Non-Selling Party.

(h) Notwithstanding anything in this Section 4, Covenants, Conditions, and Restrictions, to the contrary, the provisions hereof are expressly subordinate to (i) the Security Instrument, (ii) the HUD Regulatory Agreement and (iii) Program Obligations. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the Security Instrument, HUD Regulatory Agreement, or Program Obligations, the provisions of the Mortgage Loan Documents and Program Obligations shall control and supersede the enforcement of the Restrictive Covenants.

(i) In the event of foreclosure, the requirements of this Section 4 (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, unless otherwise approved by HUD.

(j) In enforcing this Section 4, the parties will not file any claim against the Project or any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

(i) Available surplus cash, if the Borrower is a for-profit entity;

(ii) Available distributions and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or

(iii) Available residual receipts authorized by HUD, if the Borrower is a non-profit entity

(iv) A HUD-approved collateral assignment of any HAP contract.

5. **REMEDIES AND ENFORCEMENT.**

5.1 **All Legal and Equitable Remedies Available.** In the event of a default or threatened default by any Owner or its Permittees of any of the terms, easements, covenants, conditions or restrictions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

5.2 **Remedies Cumulative.** The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

5.3 **No Termination for Default.** Notwithstanding the foregoing to the contrary, no default hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Property made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Property covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

6. **MISCELLANEOUS.**

6.1 **Attorneys' Fees.** In the event a Party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing Party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

6.2 **Amendment.** The Parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Properties, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the Uintah County Recorder. For so long as the Mortgage Loan is outstanding, Owner #1 shall not further amend this Agreement without HUD's prior written consent.

6.3 **No Waiver.** No waiver of any default of any obligation by any Party shall be implied from any omission by the other Party to take any action with respect to such default.

6.4 **No Agency.** Nothing in this Agreement shall be deemed or construed by any person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between any persons.

6.5 **Covenants to Run with Land.** It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the Properties and create equitable servitudes in favor of the Property(ies) benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the Parties and their respective successors, assigns, heirs, and personal representatives.



6.6 Grantee's Acceptance. The grantee of any of the Properties, or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Owner or from any subsequent Owner of such Properties, or any portion thereof, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions, duties and obligations contained herein. By such acceptance, any such grantee shall for itself and its successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other affected persons, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the portion of the Properties so acquired by such grantee.

6.7 Severability. Each provision of this Agreement and the application thereof to the Properties are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of all of the Properties by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

6.8 Time of Essence. Time is of the essence of this Agreement.

6.9 Entire Agreement. This Agreement contains the complete understanding and agreement of the Parties with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

6.10 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery at the Party's last known address. Notice shall be deemed given upon receipt or refusal to accept delivery. Each Party may change from time to time their respective address for notice hereunder by like notice to the other Parties.

6.11 Governing Law. The laws of the State of Utah shall govern the interpretation, validity, performance, and enforcement of this Agreement.

6.12 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Property, this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the affecting Property(ies) land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

6.13 Benefits to Permittees. Notwithstanding anything contained herein to the contrary, any provision creating a right or benefit for an Owner shall be deemed to also create a similar right or benefit for such Owner's tenants and subtenants.

[SIGNATURES FOLLOW ON NEXT PAGES]



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

“OWNER #1”

ASHLEY CREEK VILLAGE, LLC


  
By: Michael C. Bingham  
Its: Manager

STATE OF UTAH )

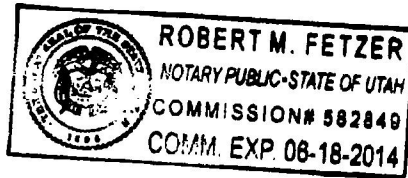
: ss

COUNTY OF UTAH )

On the 19<sup>th</sup> day of December 2011, personally appeared before me Michael C. Bingham, the Manager of ASHLEY CREEK VILLAGE, LLC, a Utah limited liability company and the signer of the foregoing instrument, who duly acknowledged to me that he executed the same on behalf of said limited liability company for its stated purpose.

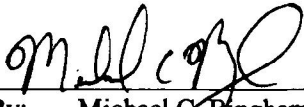
  
Notary Public of the State of Utah

Commission Expires: 6/18/2014



"OWNER #2"

ASHLEY CREEK VILLAGE II, LLC

  
By: Michael C. Bingham  
Its: Manager

STATE OF UTAH )

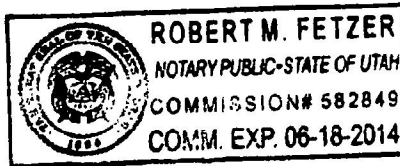
: ss

COUNTY OF UTAH )

On the 19<sup>th</sup> day of December 2011, personally appeared before me Michael C. Bingham, the Manager of ASHLEY CREEK VILLAGE II, LLC, a Utah limited liability company and the signer of the foregoing instrument, who duly acknowledged to me that he executed the same on behalf of said limited liability company for its stated purpose.

  
Notary Public of the State of Utah

Commission Expires: 6/18/2014



**EXHIBIT "A"**

(Legal Description of Property #1)

SERIAL NUMBER 05:052:0203

LOT 3 OF ASHLEY CREEK VILLAGE 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 "B"**

(Legal Description of Property #2)

SERIAL NUMBER 05:052:0204

LOT 4 OF ASHLEY CREEK VILLAGE 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.