

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Shepard's Creek Homes, L.C.  
132 South 600 East  
Salt Lake City, Utah 84102  
Attention: Mark B. Cohen

E 1669623 B 2832 P 562  
SHERYL L. WHITE, DAVIS CNTY RECORDER  
2001 JUN 21 2:32 PM FEE 21.00 DEP DJW  
REC'D FOR MERRILL TITLE COMPANY

*Shepard Creek SW*

*Parcels A + B*

*08-283-0008,  
0003*

CROSS-PROJECT TRAIL EASEMENT

THIS CROSS-PROJECT TRAIL EASEMENT (the "Easement") is granted effective as of June 1, 2001, by Shepard's Creek Homes, L.C., a Utah limited liability company ("Grantor"), on the basis of the following facts:

RECITALS

A. Grantor owns all of that certain land in Farmington City, Davis County, Utah, further described on Exhibit "A" hereto (the "Property").

B. The Property is located within a master development project known as the Farmington Preserve Project (the "Project").

C. The Property is subject to a number of senior governing documents including, but not limited to the following (collectively, the "Governing Documents"):

1. The Master Development Agreement dated as of October 16, 1996, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1248 and Entry No. 1306717.

2. The First Amendment to Certain Governing Documents Farmington Preserve Project dated as of July 1, 1998, and recorded in the Official Records of Davis County on August 3, 1998, at Book 2336, Page 400, and Entry No. 1428481.

3. The Second Amendment to Governing Documents Farmington Preserve Project recorded in the Official Records of Davis County on November 16, 1998, at Book 2394, Page 959, and Entry No. 1459721.

4. The Third Amendment and Release of Governing Documents Farmington Preserve Project recorded in the Official Records of Davis County on April 19, 2001, at Book 2791, Page 334, and Entry No. 1654902.

D. The land immediately to the south of the Property (the "Rose Cove Parcel") is also subject to that certain Development Agreement for Rose Cove Apartments a Planned Unit Development dated as of June 1, 2001 and recorded in the Official Records of Davis County on about the same date that this Easement is recorded (the "Rose Cove Development Agreement"). This Easement is intended to satisfy all of the requirements for Cross-Project Trails in the Rose Cove Development Agreement.

E. Pursuant to the Governing Documents, the Rose Cove Development Agreement, and the terms and conditions herein (collectively, the "Documents"), Grantor desires to establish a permanent cross-project trail easement across the Property (the "Cross-Project Trail") for the benefit of the general public and all the owners of all or any portion of the Project and their respective successors, assigns, users, agents, guests, and invitees. All of the foregoing beneficiaries are hereinafter sometimes collectively called the "Grantees."

## A G R E E M E N T

IN CONSIDERATION of the covenants set forth in this Easement and other good and valuable consideration heretofore received, Grantor hereby agrees as follows:

1. **Grant.** Grantor hereby grants to the Grantees a permanent easement appurtenant to all portions of the Project to the Cross-Project Trail. That easement shall be non-exclusive except for the uses contemplated in Section 4 below. All rights and obligations associated with Cross-Project Trails under the Documents shall be hereby applicable to the Cross-Project Trail, Grantor, Grantees, and any subsequent owners of the Property ("Owner").

2. **Location.** Initially the Cross-Project Trail shall be temporarily located on the entire Property. Within 12 months following the recordation of this Easement, the Cross-Project Trail shall be permanently designated in a specific location pursuant to a written amendment to this Easement all as approved by Farmington City (the "City") and Owner

3. **Construction, Maintenance, and Governance.** Owner shall take all actions and pay all costs necessary to construct, maintain in good condition, relocate, and otherwise deal with, the Cross-Project Trail all in compliance with the Documents and the laws applicable to the Cross-Project Trail. Owner shall, in Owner's sole discretion, decide all aspects of the Cross-Project Trail including the size, configuration, materials, and landscaping associated therewith in compliance with the Documents. Owner shall have the right to adopt and enforce reasonable rules and post signs respecting the use of the Cross-Project Trail consistent with the laws and guidelines adopted by the City from time to time. The City shall have the right to modify any of those rules or signs so long as that the City Owner shall not be obligated to repair any damage to the Cross-Project Trail to the extent caused by the City or its employees or agents.

4. **Use.** Grantees shall be required to use the Cross-Project Trail exclusively for pedestrian purposes, and for no other purposes. Grantees shall be required to use the Cross-Project Trail in compliance with the Documents and the laws applicable to the Cross-Project Trail. Grantees shall be required to stay on the Cross-Project Trail and not stray off thereof. Grantees shall be required to not engage in any activity that directly or indirectly, entirely or in part, damages, injures, creates a nuisance, or otherwise has an adverse impact upon the Grantor, any Owner, any other Grantee or Grantee "Related Party" (defined below), the Cross-Project Trail and/or the Property. Grantees shall be required to not make any alterations to the Cross-Project Trail. Any Grantee or Grantee Related Party that steps off of the Perimeter Trail and onto any portion of the Property that is not designated as common area may be found to be trespassing on that portion of the Property unless such person has a valid legal defense to that trespass.

5. **Limitations Upon Liability.**

a. The past, present, and future owners, directors, trustees, officers, employees, agents (including lawyers), affiliates, lenders, contractors, successors and assigns (collectively, the "Related Parties") of Grantor and each Owner shall have no personal, deficiency or recourse

liability in connection with this Easement, the Cross-Project Trail, any Grantee, and/or any of Grantee's Related Parties except to the extent that (a) such Related Party of Grantor or any Owner has executed a separate agreement undertaking that liability; or (b) such liability is caused by the negligence or intentional misconduct of such Related Party.

b. Grantor and each Owner shall have no liability in connection with Grantee's Related Parties except to the extent that (a) Grantor or the Owner in question has executed a separate agreement undertaking that liability; or (b) such liability is caused by the negligence or intentional misconduct of Grantor or such Owner.

c. Grantor and each Owner's liability in connection with this Easement, the Cross-Project Trail, the Property, any Grantee, and/or any of Grantee's Related Parties shall be limited solely to the interest of Grantor and/or the Owner in the Property. Each Grantee shall indemnify Grantor, each Owner, and/or their respective Related Parties from and against any and all liabilities, claims and/or expenses, including attorneys' fees, incurred by Grantor, each Owner, and/or their respective Related Parties which are caused by the negligence or willful misconduct of Grantee and/or such Grantee's Related Parties, except to the extent caused solely by the negligence or intentional misconduct of Grantor or an Owner without any negligence or willful misconduct by a Grantee or its Related Parties.

d. Risk Acceptance. Each Grantee and/or its Related Parties shall use the Cross-Project Trail voluntarily and at its own risk and shall assume all responsibility and risk for injury, death, illness, or damage to itself or its property arising from any of their activities associated with the Cross-Project Trail.

6. Release. To the fullest extent permitted by law, each Grantee, on its behalf and on behalf of its Related Parties, hereby waives all claims, demands, and/or actions (in law, equity and/or otherwise) against Grantor, each Owner, and their respective Related Parties, arising directly or indirectly out of, and knowingly and voluntarily assumes the risk of, and agrees that Grantor, each Owner, and their respective Related Parties shall not be liable to any Grantee or its Related Parties for, any of the following except to the extent caused by the negligence or willful misconduct of those seeking to be released under this Section: (i) injury, illness, damage, or death involving Grantee, any of Grantee's Related Parties, or any person associated with the foregoing; or (ii) loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic loss, and consequential or resulting damage of any kind caused by Grantee and/or Grantee's Related Parties. The obligations under this Section shall survive the expiration or earlier termination of this Easement for any reason until all claims within the scope of this Section are fully, finally and absolutely barred by the applicable statutes of limitations.

7. Duty to Defend. Every indemnification under this Easement includes the right, but not the obligation, of the indemnified party to give the indemnifying party written notice demanding that the indemnifying party provide the indemnified party with competent legal counsel acceptable to the indemnified party. The indemnifying party shall take all actions and pay all reasonable costs necessary to provide such counsel within five days following delivery of such request. The indemnifying party shall pay all ongoing costs associated with that counsel's representation of the indemnified party. Alternatively, the indemnified party shall have the right, in its sole discretion, to select its own legal counsel to represent the indemnified party in any such action. Within 15 days following delivery to the indemnifying party of a written request for reimbursement of the reasonable costs of such counsel, the indemnifying party shall deliver to the indemnified party full reimbursement of those costs.

8. Term. This Easement shall commence as of the date that this Easement is recorded in the Official Records of Davis County and shall continue thereafter in perpetuity.

9. Transfer. This Easement and the rights and obligations hereunder shall be binding upon and inure to the benefit of Grantor and the Grantees. This Easement shall run with, and be appurtenant to, the land associated with the Property and may be transferred, assigned, sold, encumbered, or otherwise conveyed along with all or any portion of the Property without the consent of any other person or entity.

10. Miscellaneous. This Easement is also governed by the following: In addition to any other remedies available, any violation of this Easement may be enjoined by appropriate proceedings. Any party's failure to enforce any provision of the Easement shall not constitute a waiver of the right to enforce such provision. The provisions of the Easement may be waived only in a writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by another party shall not be construed as a waiver of any succeeding breach of the same or other provisions. This Easement may be modified only in a writing signed by the City and Owner and recorded in the Official Records of Davis County. The prevailing party shall be entitled to be reimbursed by the non-prevailing party for all costs, including reasonable attorneys' fees, incurred by the prevailing party in any action or defense involving this Easement. If any portion of this Easement is held to be unenforceable, any enforceable portion thereof and the remaining provisions shall continue in full force and effect. The interpretation and enforcement of this Easement shall be governed by Utah law without giving effect to those principles of conflict of laws that might otherwise require the application of the laws of another jurisdiction. No rule of strict construction shall be applied against any party. In the event of any conflict between the terms of this Easement and those of any Document entered into prior to this Easement, that prior Document shall govern. In the event that any legal action is instituted in connection with this Easement, the same shall be brought and tried in the judicial jurisdiction of Davis County. The Parties hereby consent to that jurisdiction. Nothing in this Easement shall be construed to create any partnership, joint venture, or fiduciary relationship among Grantor, Owner, the Grantees, and/or the City. This Easement, together with the Documents referred to herein, set forth the only and entire agreement respecting the subject matter set forth herein; and all other prior agreements, whether oral or written, shall be deemed terminated and of no further force and effect.

IN WITNESS WHEREOF, Grantor has executed this Easement as of the date first set forth above.

SHEPARD'S CREEK HOMES, L.C.,  
a Utah limited liability company

By: PCH Investments, L.C.,  
a Utah limited liability company, Managing Member

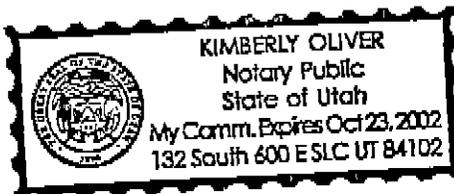
By: PSC Development Company,  
a Utah corporation, Manager

By: *Mark B. Cohen*  
Mark B. Cohen, President

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

On the 5 day of June, 2001, personally appeared before me Mark B. Cohen, who being by me duly sworn, did say that he is the President of PSC Development Company, a Utah corporation, which is the Manager of PCH Investments, L.C., a Utah limited liability company, which is the Managing Member of Shepard's Creek Homes, L.C., a Utah limited liability company, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

*Kimberly Oliver*  
NOTARY PUBLIC



My Commission Expires: 10/23/02 Residing at: 132 S. 600 E .  
SLC, UT 84102

EXHIBIT "A"

DESCRIPTION OF PROPERTY

TAX SERIAL NUMBERS: \_\_\_\_\_  
\_\_\_\_\_

ALL OF PARCELS A AND B, SHEPARD CREEK SOUTHWEST SUBDIVISION A PLANNED UNIT DEVELOPMENT, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.