

24  
8

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (hereinafter "Agreement") is made this \_\_\_\_ day of October, 2003, by and between Bankhead Leaver, LC, (hereinafter "Bankhead") a Utah limited liability company, Argonaut Properties, LC, (hereinafter "Argonaut") a Utah limited liability company and Spartan Properties, LC, (hereinafter "Spartan" and together hereinafter collectively referred to "Spartan") also a Utah limited liability company.

ENT 12961; 2004 PG 1 of 8  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2004 Feb 04 4:30 pm FEE 24.00 BY SN  
RECORDED FOR L & T CONSTRUCTION

### RECITALS

**WHEREAS**, Spartan currently owns certain rental properties, which properties include or assert certain rights of egress and ingress thereto located in Orem, Utah County, Utah, that is more particularly described in Exhibit "A" attached hereto (hereinafter "the Spartan Property") and incorporated herein; and

**WHEREAS**, Bankhead owns certain commercial property known and identified as Troon Park, (the Bankhead Property) which property adjoins the Spartan Property and includes certain rights of egress and ingress thereto, also located in Orem, Utah, Utah County, Utah; and

**WHEREAS**, Bankhead seeks a formal declaration of an easement in the rights of egress and ingress which are shared and/or common to the Spartan and Bankhead Properties; (hereinafter referred to as the "the Reciprocal Easement Property") and

**WHEREAS**, Spartan, has initiated a quiet title action, Civil No. 030402554, (hereinafter "Action") pending in Fourth Judicial District Court, Provo, Utah, which Action seeks to close a gap in the Spartan Property and relates to or may affect the Reciprocal Easement Property and other right(s) of way connected thereto; and

**WHEREAS**, it is contemplated that a judgment in said Action (hereinafter "Judgment") will further clarify and augment the Reciprocal Easement Property; and

**WHEREAS**, Bankhead and Spartan desire and intend that said Judgment (a copy of which will be later attached hereto as Exhibit "B") be and is hereby specifically included in the Reciprocal Easement Property; and

**NOW, THEREFORE**, in consideration of the mutual agreements contained herein, the parties covenant and agree for themselves, their successors and assigns as follows:

1. **Ingress and Egress Easement to Bankhead.** Subject to the provisions of this Agreement, Spartan does hereby grant, convey and transfer and assign to Bankhead a non-exclusive easement over, upon and across the Reciprocal Easement Property for the purpose of ingress and egress of vehicular and pedestrian traffic to and from the Spartan Property. However, Spartan reserves the right to be exercised jointly with Bankhead, to issue reasonable rules and

restrictions to govern the use by Bankhead of the easement granted herein, including without limitation, rules that restrict the directional flow and speed of vehicles. Spartan also reserves the right for itself and others, including owners, tenants, or their business clientele, to use the Reciprocal Easement Property for ingress and egress of vehicular and pedestrian traffic consistent with the easement granted herein to Bankhead. Bankhead shall use the easement granted herein with due regard to the rights of others and their use of the Property shall not in any way impair the rights of Spartan to use it jointly.

2. **Reciprocal Parking Easement.** Each of the parties to this Agreement for which this easement serves has independent parking pertaining to their respective properties and nothing herein contained shall constitute a grant of a reciprocal easement for parking.

3. **Costs, Improvements & Maintenance.** Upon execution of this Agreement by the parties and payment from Spartan to Bankhead in the amount of \$6500.00, Bankhead shall perform at Bankhead's sole cost and expense the improvements identified in Exhibit "C" hereto. Said improvements shall be completed within forty-five (45) days of the execution of this Agreement, weather permitting.

(a) Thereafter, Bankhead and Spartan each shall maintain one-half ( $\frac{1}{2}$ ) of the Reciprocal Easement Property and keep said property free from snow, trash and debris and in a clean, good condition. For purposes of this Agreement, Bankhead shall maintain the Reciprocal Easement Property from State Street to the west side of the west entry of the Bankhead Property. Spartan shall maintain the balance of the Reciprocal Easement Property.

(b) In conjunction with the execution of this Agreement Spartan will use its best efforts on behalf of itself and Bankhead to secure a one (1) year license agreement for use of the Reciprocal Easement Property with certain adjoining landowners. Sundancer Properties, L.C., (hereinafter "Sundancer") and the Brent Richard Sumner Marital & Family Trust (hereinafter "Sumner") who will pay a license fee. Other adjoining landowners may obtain a similar license by payment of the fee. The License Agreement assesses a yearly fee in the amount of \$<sup>to be</sup>~~to be~~ <sup>to be</sup> ~~to be~~ to Sundancer, Sumner and others using the easment. Spartan shall share equally with Bankhead all license fees collected. License fees collected shall be reserved in a separate bank account for the purpose of maintaining the easement.

4. **Duration.** This easement, and any others acquired, or to be acquired pursuant to the Action and each right-of-way, easement, covenant and restriction set forth in this Agreement shall be perpetual.

5. **Maintenance.** Bankhead and Spartan shall each respectively maintain their rights of egress and ingress in a good, safe, and clean condition consistent with the maintenance standards for such rights of egress and ingress in the Orem, Utah area.

6. **Indemnification.** Bankhead and Spartan shall defend, indemnify and hold the other harmless from and against all liability, loss or costs incurred, including without limitation reasonable attorney's fees, arising out of or related to or caused by the negligence or willful misconduct of the other, its owners, guests, employees or agents on its own respective property.

7. **Covenants Run With the Property.** Each right and obligation in this Agreement (whether affirmative or negative in nature) shall: (a) constitute a covenant running with the land; and (b) shall benefit and bind every person having any fee, leasehold or other interest in a portion of the Reciprocal Easement Property; and (c) shall benefit and be binding upon any persons whose title is acquired by either purchase, judicial foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

8. **Election to Share Costs & Expenses.** Given the common interests and use of the Reciprocal Easement Property, Bankhead and Spartan may elect to combine their resources for the purpose of promulgating uniform rules and regulations concerning the use and maintenance of the Reciprocal Easement Property.

9. **Miscellaneous.**

a. Should either party breach or default in any of the covenants or obligations contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney's fees, which may arise or accrue by reason of the enforcement of this Agreement or the pursuit of any remedy provided hereunder by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the offending party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee incurred on appeal, in bankruptcy, or otherwise.

b. It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.

c. The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

d. This Agreement shall inure to the benefit of and bind all parties hereto, their assigns, heirs, personal representatives and other successors.

e. This Agreement shall be interpreted and enforced according to the laws of the State of Utah.

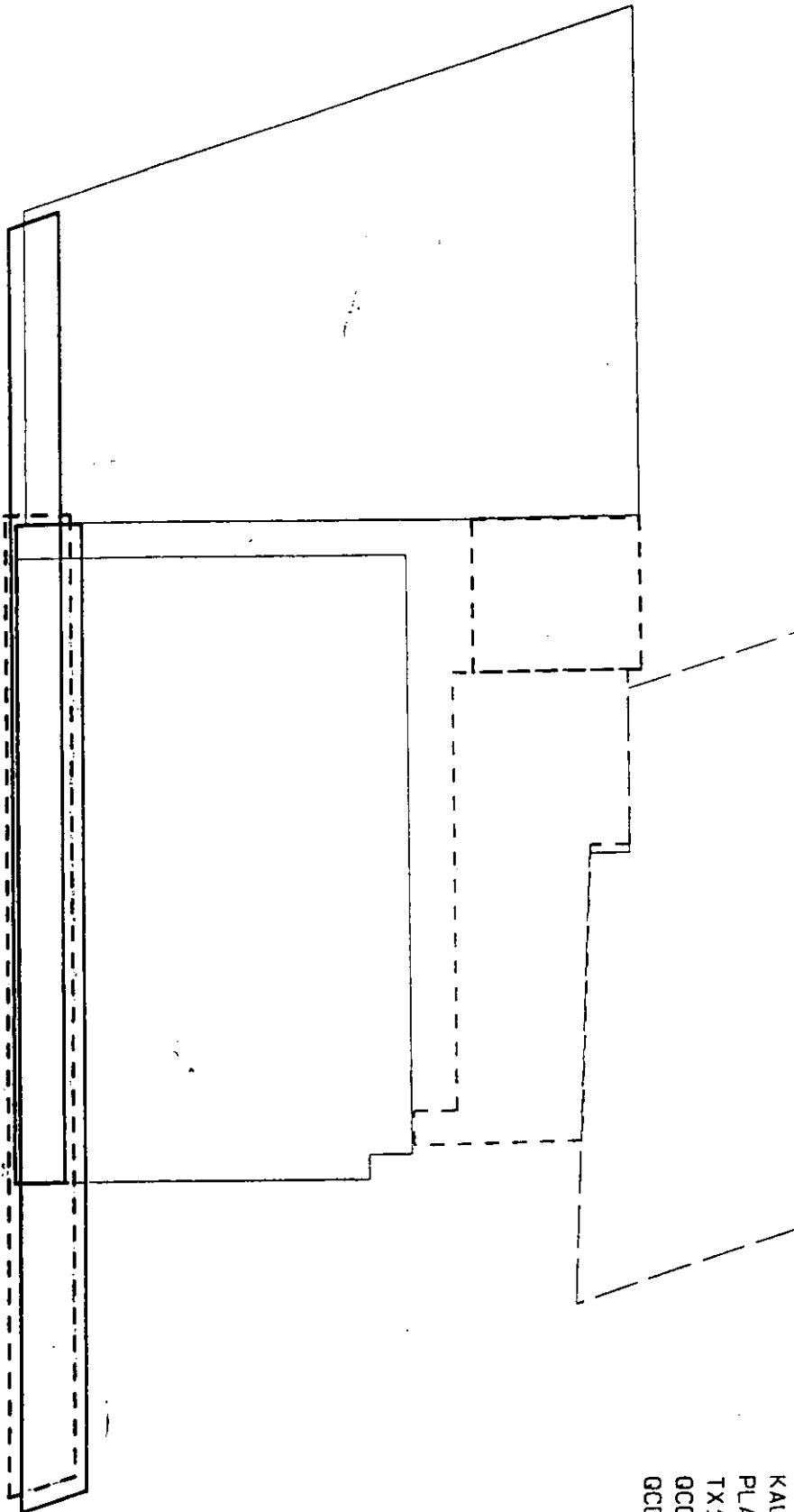
f. Any modification of this Agreement shall be in writing.

10. **Tenants & Subowners.** Each party may assign, lease, or sell all or a part of their respective properties to which this easement shall pertain and such assignee, lessee or buyer

### 30 FOOT RIGHT OF WAY NORTH OF TROON PARK

Commencing at a point located South 1088.89 feet and East 867.16 feet from the Northwest corner of Section 23, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 00 deg. 46 min. 42 sec. West 30.00 feet; thence North 89 deg. 46 min. 00 sec. East 447.80 feet; thence South 18 deg. 29 min. 50 sec. East along State Street 31.59 feet; thence South 89 deg. 46 min. 00 sec. West along Troon Park Subdivision 457.42 feet to the point of beginning.

Exhibit "A"



G:/APPS/  
FASTMAP/  
FILES/  
M-2X000/  
M-29066/  
30FT-RM  
CASCADE  
CASCADEB  
KAUFER  
PLAT  
TX184972  
QCD10508  
QCD17006



shall have a proportionate interest to use such easement subject to the terms and conditions of this Agreement.

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

**Bankhead Leaver, LC:**

**Spartan Properties, LC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**Argonaut Properties, LC:**

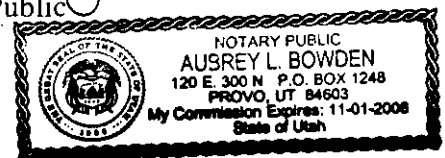
By: Jackson Howard

Its: General Partner

On the 30 day of January, 2004, ~~Thomas L. Bankhead~~ and Jackson Howard, signers of the foregoing document personally appeared before me and acknowledged to me that he executed the same.

SUBSCRIBED AND SWORN to before me this 30 day of January, 2004.

Ausrey Bowden  
Notary Public



shall have a proportionate interest to use such easement subject to the terms and conditions of this Agreement.

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

**Bankhead Leaver, LC:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Spartan Properties, LC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Argonaut Properties, LC:**

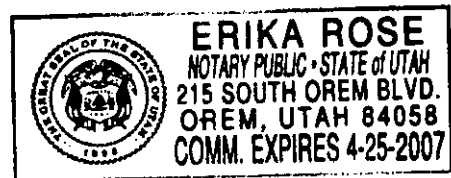
By: \_\_\_\_\_

Its: \_\_\_\_\_

On the 30 day of January, 2004, Thomas L. Bankhead, a signer of the foregoing document personally appeared before me and acknowledged to me that he executed the same.

SUBSCRIBED AND SWORN to before me this 30 day of January, 2004.

Erika Rose  
Notary Public



shall have a proportionate interest to use such easement subject to the terms and conditions of this Agreement.

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

**Bankhead Leaver, LC:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Spartan Properties, LC**

By: [Signature]

Its: MEMBER

**Argonaut Properties, LC:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

On the 30 day of January, 2004, Dan Fish, a signer of the foregoing document personally appeared before me and acknowledged to me that he executed the same.

SUBSCRIBED AND SWORN to before me this 30 day of January, 2004.

Erika Rose

Notary Public

