

E 150521 B 0631 P 0842
Date 27-JUL-2000 3:56pm
Fee: 43.00 Check
CALLEN B. PESHELL, Recorder
Filed By NAM
For FIRST AMERICAN TITLE INS CO
TOOELE COUNTY CORPORATION

When recorded, return to:
Remington Park Associates
c/o Campbell-Hogue & Associates, Inc.
1200-112th Ave. NE, Ste C-143
Bellevue, WA 98004-3708

62543-MJ

JOINT USE AND MAINTENANCE AGREEMENT

This JOINT USE AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered into this 31st day of March, 2000, by and between Remington Park Associates, L.C., a Utah Limited Liability Company ("Parcel A Owner"), and Remington Park Associates II, L. C., a Utah Limited Liability Company ("Parcel B Owner").

RECITALS:

- I. Parcel A Owner is the fee owner of certain real property and improvements located in Tooele, Utah, legally described on Exhibit A, attached hereto and made a part hereof ("Parcel A"), upon which Parcel A Owner will constructed a 48-unit multifamily housing project ("Parcel A Project").
- II. Parcel B Owner is the fee owner of certain real property and improvements located in Tooele, Utah, legally described on Exhibit B, attached hereto and made a part hereof ("Parcel B"), upon which Parcel B Owner will constructed a 24-unit multifamily housing project ("Parcel B Project").
- III. Parcel A and Parcel B (collectively, the "Property") and the Parcel A Project and Parcel B Project (collectively, the "Project") are adjacent to and contiguous with each other.
- IV. Each party desires to grant to the other easements and rights concerning the Shared Facilities (as defined below) and to establish uniform procedures for the management and maintenance of the Project, as more particularly provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Parcel A Owner and Parcel B Owner hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:
1. "Building Areas" shall mean any areas of the Property designated for the construction of buildings, as the same are shown on any site plan or plat approved by the appropriate governmental authority in conjunction with the development of the Property.
 2. "Common Areas" shall mean all areas of the Property that are not Building Areas.
 3. "Cost Share" shall mean the percentage used in this Agreement for the allocation of shared costs to each Parcel, based on a fraction, the numerator of which is the number of Habitable Dwelling Units on the applicable Parcel and the denominator of which shall be the total number of Habitable Dwelling Units located in the Project, as follows:
 - 3.1 Parcel A 66.6% (48/72)
 - 3.2 Parcel B 33.4% (24/72)
 4. "Habitable Dwelling Unit" shall mean an apartment unit, the construction of which is sufficiently complete that it would be possible to obtain a certificate of occupancy or equivalent governmental certification for such unit, and shall also mean any apartment unit for which a certificate of occupancy or equivalent governmental certification has been issued at any prior time.
 5. "Parcel A Shared Facilities" shall mean the recreational and common facilities and buildings, parking spaces and driveways constructed on Parcel A for use by the Parcel A Tenants.
 6. "Parcel A Tenants" shall mean tenants of any Habitable Dwelling Units located on Parcel A and their guests and invitees.
 7. "Parcel B Shared Facilities" shall mean certain recreational and common facilities and buildings, parking spaces and driveways constructed on Parcel B for use by the Parcel B Tenants.
 8. "Parcel B Tenants" shall mean tenants of any Habitable Dwelling Units located on Parcel B and their guests and invitees.
 9. "Shared Facilities" shall mean the Parcel A Shared Facilities and the Parcel B Shared Facilities.

10. "Owners" shall mean the Parcel A Owner and the Parcel B Owner.
 11. "Tenants" shall mean the Parcel A Tenants and the Parcel B Tenants.
2. Grant of Easements by Parcel A Owner. Parcel A Owner does hereby grant, assign and set over to Parcel B Owner, as the owner of Parcel B, its successors and assigns, their employees, licensees, contractors and agents, and the Parcel B Tenants, following ("Parcel A Easements"):
1. A perpetual non-exclusive easement for use of the Parcel A Shared Facilities as the same are located or may be located from time to time on Parcel A;
 2. A perpetual non-exclusive easement for pedestrian and vehicular ingress and egress upon, across and over any Common Areas located on Parcel A for access to and from: (1) the Parcel A Shared Facilities; and (2) any rights-of-way dedicated for public use located on, adjacent to or contiguous to Parcel A.
 3. A perpetual non-exclusive easement upon, across, beneath and over the Common Areas of Parcel A for ingress and egress to, and connection, maintenance, repair and construction of, utilities servicing Parcel B, including without limitation electric, gas, water, sewer, and drainage. Parcel A Owner shall not charge Parcel B Owner any fee to connect or tap into any utility lines located on Parcel A, but Parcel B Owner shall be responsible for any and all charges made by any utility company for any such connection and shall repair any damage to improvements on Parcel A resulting from such connection.
3. Grant of Easements by Parcel B Owner. Parcel B Owner does hereby grant, assign and set over to Parcel A Owner, as the owner of Parcel A, its successors and assigns, their employees, licensees, contractors and agents, and the Parcel A Tenants, the following ("Parcel B Easements"):
1. A perpetual non-exclusive easement for use of the Parcel B Shared Facilities as the same are located or may be located from time to time on Parcel B;
 2. A perpetual non-exclusive easement for pedestrian and vehicular ingress and egress upon, across and over any Common Areas located on Parcel B for access to and from: (1) the Parcel B Shared Facilities; and (2) any rights-of-way dedicated for public use located on, adjacent to or contiguous to Parcel B.
 3. A perpetual non-exclusive easement upon, across, beneath and over the Common Areas of Parcel B for ingress and egress to, and connection, maintenance, repair and construction of, utilities servicing Parcel A, including without limitation electric, gas, water, sewer, and drainage. Parcel B Owner shall not charge Parcel A Owner any fee to connect or tap into any utility lines located on Parcel B, but Parcel A Owner shall be responsible for any and all charges made by any utility

company for any such connection and shall repair any damage to improvements on Parcel B resulting from such connection.

- 4 Obstructions. Neither the Parcel A Owner nor the Parcel B Owner shall build, locate or maintain, or permit to be built, located or maintained, any fence, wall, gate, structure, improvement, vehicle or piece of equipment that would prevent, obstruct or impair the free and unrestricted use of either the Parcel A Easements or the Parcel B Easements, without the prior written consent of the other Owner.
- 5 Construction Matters. If in the exercise of any of the rights described in Sections 2 and 3 above, an Owner needs to engage in construction on the Parcel owned by the other Owner, the Owner undertaking such construction (the "Constructing Owner") shall give the other Owner written notice thereof at least five (5) business days prior to the commencement of such construction. In the event of any emergency in which the Constructing Owner has a reasonable belief that work must be commenced immediately in order to avoid damage to persons or property, such written notice shall be given to the other Owner as soon as possible after commencement of such work. Any such construction shall be undertaken in a manner so as to minimize disruption to the business operation of the other Parcel and to minimize disruption to the Tenants of the other Parcel. All such work shall be done in a good and workmanlike manner, in conformance with all governmental requirements, and any damage to the facilities, improvements or landscaping of the other Owner shall be repaired by the Constructing Owner at the Constructing Owner's sole expense. The Constructing Owner shall not allow any liens relating to such work to be filed against the other Owner's Parcel, and shall immediately remove or bond over such liens if such liens arise.
- 6 Maintenance. Regardless of whether or not the Project has unified management, each Parcel shall be maintained in a condition consistent with high-quality apartment complexes in the Tooele City area, and in particular the Shared Facilities and the Common Areas shall be maintained in a clean, safe and unobstructed condition, in compliance with all applicable governmental laws, rules, ordinances, regulations and requirements, including without limitation, the paving, repairing, maintaining, resurfacing thereof when necessary, the removal of debris and waste materials and the washing and sweeping of paved area as required. The intent of the Owners is that each Parcel shall bear the costs and expenses attributable to its operation, and any shared expenses shall be allocated on the basis of the Cost Share. Each Owner shall be responsible for the cost of maintenance and repair of the Common Areas and Shared Facilities located on its Parcel based on the Cost Share. Notwithstanding the above, In the event that real property taxes are assessed prior to the creation of a separate tax parcels for Parcel A and Parcel B, such real property taxes shall be divided between Parcel A and Parcel B based on the ratio of the gross square footage of each Parcel.

7 Management of Property.

1. Unified Management. The parties agree that it is in the best interests of the Project to use a single property manager to maintain, operate and lease the Project. The Owners shall, acting in good faith, use their best efforts to agree upon and select a single property manager. Upon selection the Owners shall enter into a written agreement with the property manager containing such provisions as are customary in the Tooele area for such agreements, as well as specific provisions requiring the property manager to:
 - 1.1 undertake the leasing of the Project as if the Project were a single, integrated complex, without preference for Parcel A or Parcel B subject only to the need, if applicable, to differentiate between market rate Units and Units subject to tenant restrictions related to affordable housing regulations and requirements;
 - 1.2 maintain separate security deposit accounts, replacement reserve accounts, and other accounts as required by any Project lenders or regulatory agencies having jurisdiction over the Project;
 - 1.3 to maintain separate policies for each Parcel, [each naming the other Parcel Owner as an additional insured].
2. The property manager shall maintain separate operating accounts for each Parcel. All expenses that can be readily attributed to a Parcel, for example repairs to a specific Unit, shall be paid from the Parcel's operating account. Expenses that cannot be readily attributed to a specific Parcel, such as promotional expenses or Project wide landscaping contracts, shall be allocated to each Parcel on according to the Cost Share. Each allocable invoice shall be paid with two checks, one from each Parcel operating account. The property manager may also maintain a joint account for ease of payment of Project-wide contractors or vendors; however, any payment from such joint account shall be immediately reimbursed by a pro-rata payment from each Parcel operating account so that the joint account will therefore maintain a constant balance. Any bank charges for such account will in turn be allocated based on the Cost Share.
3. Separation of Management. If either the Parcel A Owner or the Parcel B Owner reasonably believes that the property manager is engaging in preferential leasing or otherwise acting in a manner that is harmful or damaging to either Parcel or the Project as a whole, such Owner shall immediately give written notice to the other Owner. Upon receipt of such written notice, the Owners agree to attempt to resolve any such concerns in good faith. If the Owners are unable to resolve such concerns, either Owner may terminate the property manager as to its Parcel and engage a new property manger for such Parcel only. In such event, if the Project leasing offices are located on one Parcel only, at the written request of the other

Parcels' Owner, a second leasing space or office shall be created on such Parcel in the same location as the existing leasing office. If such action requires the conversion of a Habitable Dwelling Unit, the Owner upon whose Parcel the Habitable Dwelling Unit is located shall be compensated at market rent (reduced by a reasonable vacancy factor) for the loss of such Habitable Dwelling Unit. Notwithstanding separate management, the Owners shall have a duty to reasonably cooperate with each other in the operation of their respective Parcels and the exercise of the rights granted by this Agreement, and under no circumstances shall an Owner take any action that would intentionally interfere or impede the business operation of the other Owner's Parcel or the exercise of the rights granted by this Agreement.

- 8 Insurance. Each Owner, with respect to the Shared Facilities located on its Parcel, shall fully insure such facilities against casualty loss or damage. Any repairs or replacements to such Facilities caused by any casualty shall be made by the Owner of the Parcel on which the Facilities are located. If the insurance proceeds are insufficient to make such repairs or replacements then the insufficient portion shall be borne by the respective Owner and shall not be a shared expense. Each Owner shall also maintain general public liability insurance, with a financially responsible insurance company authorized in the state where the Property is located, against claims for bodily injury or death and property damage occasioned by an accident occurring upon or in connection with its Parcel, with limits not less than One Million Dollars (\$1,000,000) with respect to injury or death of one person, not less than Two Hundred Fifty Thousand Dollars (\$250,000) with respect to any injury or death to any number of persons arising out of one incident, and not less than One Million Dollars (\$1,000,000) with respect to property damage, and each Owner shall name the other as an additional insured. Such policies may be purchased by a property manager if the Project has unified management.
- 9 Indemnification. Parcel A Owner shall indemnify, defend and hold Parcel B Owner harmless for, from and against each and every loss, cost, damage and expense, including without limitation, reasonable attorneys' fees and costs, arising out of any accident or other occurrence causing injury to or death of any person or damage to property on Parcel A except to the extent caused by the willful or negligent act of the Parcel B Owner, its employees or agents or by the Parcel B Tenants. Parcel B Owner shall indemnify, defend and hold Parcel A Owner harmless for, from and against each and every loss, cost, damage and expense, including without limitation, reasonable attorneys' fees and costs, arising out of any accident or other occurrence causing injury to or death of any person or damage to property on Parcel A except to the extent caused by the willful or negligent act of the Parcel A Owner, its employees or agents or by the Parcel A Tenants.
- 10 Default. If either Parcel A Owner or Parcel B Owner (the "Defaulting Owner") shall fail or refuse to perform any of the respective covenants, obligations or duties herein contained, and such failure or refusal shall continue for twenty (20) days after the Defaulting Owner receives written notice thereof from the other Owner, unless within such twenty (20) day period the Defaulting Owner has commenced and is diligently

pursuing the performance of the obligation or duty specified in such notice, the Owner giving such written notice shall have the right (but not the obligation) to perform or pay the obligation which the Defaulting Owner has failed or refused to perform or pay, and, in connection therewith, each Owner hereby grants to the other, and their respective agents, employees and independent contractors the full right and privilege to perform such obligations or duties. All costs and expenses incurred by the non-defaulting Owner in connection with the performance of the Defaulting Owner's obligation or duty shall be repaid by the Defaulting Owner within twenty (20) days after written demand therefor, together with interest thereon from the date of demand until repaid at an interest rate equal to five percent (5%) in excess of the "prime rate" of interest as published in the "Money Rates" section of the Wall Street Journal as the base rate on corporate loans posted by at least seventy-five percent (75%) of the nation's thirty (30) largest banks.

- 11 Enforcement. The covenants, easements and conditions herein contained may be enforced by either Owner, and any violation thereof may be restrained or enforced by any court of competent jurisdiction and/or damages may be awarded for any violation; provided, however, that nothing herein shall be construed as meaning that damages are an adequate remedy where equitable relief is sought. In the event either Owner files suit or employs an attorney to enforce any of the covenants, easements or conditions herein contained and prevails in such action or suit, such prevailing party shall be entitled to recover from the other party its costs and reasonable attorneys' fees incurred in connection with such action.
- 12 Subsequent Conveyances. Deeds, leases or other conveyances of either Parcel A or Parcel B, or any part or parts thereof, may contain the covenants, easements and conditions herein set forth by reference to this instrument; but regardless of whether any such reference is made in any instrument of conveyance, each and all the covenants, easements and conditions herein set forth shall run with the land and shall be binding upon and inure to the benefit of Parcel A Owner and Parcel B Owner and their successors and assigns.
- 13 Notices. Any notice which may be given in connection with the terms and provisions of this instrument shall be in writing and shall be sent by certified mail, return receipt requested, postage prepaid, overnight delivery or personal delivery, addressed to the parties (or to such other persons or entity or different address as either party from time to time subject hereto may designate in writing) as follows:

1.1 Parcel A Owner:

Remington Park Associates, L.C.
1200 112th Avenue N.E.; Suite C-143
Bellevue, WA 98004-3708
ATTN: Terry N. Campbell

1.2 Parcel B Owner:

Remington Park Associates II, L.C.
1200 112th Avenue N.E.; Suite C-143
Bellevue, WA 98004-3708
ATTN: James H. Hogue

Notices shall be deemed given on the date deposited in the United States mail or with an overnight courier service or personal delivery messenger.

- 14 Successors and Assigns. This Agreement shall be binding upon the owners of Parcel A and Parcel B, their successors and assigns, but shall give no independent and enforceable rights to any Tenants.
- 15 Termination. This Agreement may be terminated or amended, either in whole or in part, upon the mutual consent in writing of the Owners of the Parcels affected by such termination or amendment and the mortgagees of such Parcels, if any, without any consent from the Tenants.
- 16 Recitals. The recital provisions set forth above are hereby incorporated into the body of this Agreement as if fully set forth herein.
- 17 Covenants Running with the Land. The agreements herein contained shall be deemed to be covenants running with the land.
- 18 Counterparts. This Agreement may be executed in several counterparts, and so executed shall constitute one agreement, binding on all the parties hereto, even though all the parties are not signatory to the original or the same counterpart.
- 19 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this Agreement. The remaining provisions shall be fully severable, and this Agreement shall be construed and enforced as if the invalid provision had never been included in this Agreement.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

"Parcel A" Owner

Remington Park Associates, L.C.

By: [Signature]
Terry N. Campbell,
Managing Member

"Parcel B" Owner

Remington Park Associates II, L.C.

By: [Signature]
James H. Hogue,
Managing Member

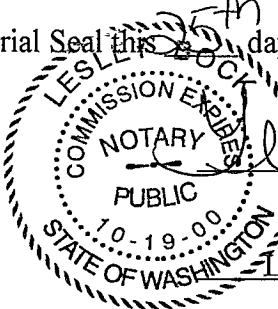
STATE OF WASHINGTON)
)S:
COUNTY OF KING)

Personally appeared before me, a Notary Public, in and for said County and State, Terry N. Campbell, the Managing Member of Remington Park Associates, L.C., a Utah limited liability company and who acknowledged that the execution of the within instrument was on behalf of said company, for the purposes contained therein as his voluntary act and deed.

WITNESS my hand and Notarial Seal this 25th day of July, 2000.

My commission expires:
10/19/00

My county of residence is: King


[Signature]
Notary Public - Signature
Lesley Bock
Notary Public - Printed

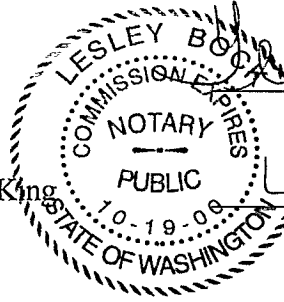
STATE OF WASHINGTON)
)S:
COUNTY OF KING)

Personally appeared before me, a Notary Public, in and for said County and State, James H. Hogue, the Managing Member of Remington Park Associates II, L.C., a Utah limited liability company and who acknowledged that the execution of the within instrument and on behalf of said company, for the purposes contained therein as his voluntary act and deed.

WITNESS my hand and Notarial Seal this 25th day of July, 2000.

My commission expires:
10/19/2000

My county of residence is: King



Lesley Bock
Notary Public - Signature

Lesley Bock
Notary Public - Printed

EXHIBIT "A"

Lot 2, REMINGTON SUBDIVISION, according to the official plat thereof, as recorded in the office of the Tooele County Recorder.

Together with a perpetual, nonexclusive easement for the purpose of constructing, maintaining and repairing a water line and water connection across the real property and as described in the Easement and Agreement dated July 13, 2000 and recorded in the office of the Tooele County Recorder's Office on July 21, 2000 as Entry No. 150356, in Book 631, and on Page 368.

Together with a non-exclusive easement for pedestrian and vehicular traffic as disclosed in that certain Cross-Access and Easement agreement, dated June 14, 2000 and recorded June 15, 2000 as Entry No. 148898 in Book 626 at Page 303 of official records, over and across the following:

↓ Beginning at the Northwest corner of Lot 1, REMINGTON SUBDIVISION, said point being on the South right of way line of 200 North Street (Utah Avenue); running thence South $00^{\circ}49'28''$ West 175.72 feet along the West line of said Lot 1: thence North $88^{\circ}58'24''$ West 50.00 feet to the West line of Lot 2 of said subdivision; thence North $00^{\circ}49'28''$ East 175.72 feet along said West line to said right of way line; thence South $88^{\circ}58'24''$ East 50.00 feet along said right of way line to the point of beginning.

Tax ID No. 12-112-0-0002

Also described as:

↓ Beginning at a point which is East 150.04 feet and South 785.70 feet from the Northwest corner of Section 28, Township 3 South, Range 4 West, Salt Lake Base and Meridian; to the South right of way line of Utah Avenue; thence South $00^{\circ}49'28''$ West 233.50 feet; thence South $88^{\circ}58'24''$ East 280.00 feet; thence South $00^{\circ}49'28''$ West 362.07 feet; thence North $88^{\circ}58'24''$ West 330.00 feet; thence North $00^{\circ}49'28''$ East 595.57 feet to said Southern right of way line of Utah Avenue; thence South $88^{\circ}58'24''$ East 50.00 feet along the aforementioned Southern right of way line of Utah Avenue to the point of beginning.

Together with a perpetual, nonexclusive easement for the purpose of constructing, maintaining and repairing a water line and water connection across the real property and as described in the Easement and Agreement dated July 13, 2000 and recorded in the office of the Tooele County Recorder's Office on July 21, 2000 as Entry No. 150356, in Book 631, and on Page 368.

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√ Beginning at the Northwest corner of Lot 1, REMINGTON SUBDIVISION, said point being on the South right of way line of 200 North Street (Utah Avenue); running thence South $00^{\circ}49'28''$ West 175.72 feet along the West line of said Lot 1; thence North $88^{\circ}58'24''$ West 50.00 feet to the West line of Lot 2 of said subdivision; thence North $00^{\circ}49'28''$ East 175.72 feet along said West line to said right of way line; thence South $88^{\circ}58'24''$ East 50.00 feet along said right of way line to the point of beginning.

EXHIBIT "B"

√ Lot 1, REMINGTON SUBDIVISION, according to the official plat thereof, as recorded in the office of the Tooele County Recorder.

Together with a perpetual, nonexclusive easement for the purpose of constructing, maintaining and repairing a water line and water connection across the real property and as described in the Easement and Agreement dated July 13, 2000 and recorded in the office of the Tooele County Recorder's Office on July 21, 2000 as Entry No. 150356, in Book 631, and on Page 368.

Together with a non-exclusive easement for pedestrian and vehicular traffic, and access to 200 North Street, as disclosed in that certain Cross-Access and Easement agreement, dated June 14, 2000 and recorded June 15, 2000 as Entry No. 148898 in Book 626 at Page 303 of official records, over and across the following:

√ Beginning at the Northwest corner of Lot 1, REMINGTON SUBDIVISION, said point being on the South right of way line of 200 North Street (Utah Avenue); running thence South $00^{\circ}49'28''$ West 175.72 feet along the West line of said Lot 1; thence North $88^{\circ}58'24''$ West 50.00 feet to the West line of Lot 2 of said subdivision; thence North $00^{\circ}49'28''$ East 175.72 feet along said West line to said right of way line; thence South $88^{\circ}58'24''$ East 50.00 feet along said right of way line to the point of beginning.

Tax ID No. 12-112-0-0001

Also described as:

√ Beginning at a point which is East 150.04 feet and South 785.70 feet from the Northwest corner of Section 28, Township 3 South, Range 4 West, Salt Lake Base and Meridian; to the South right of way line of Utah Avenue; thence South $88^{\circ}58'24''$ East 280.00 feet; thence South $00^{\circ}49'28''$ West 233.50 feet; thence North $88^{\circ}58'24''$ West 280.00 feet; thence North $00^{\circ}49'28''$ East 233.50 feet to the point of beginning.

Together with a perpetual, nonexclusive easement for the purpose of constructing, maintaining and repairing a water line and water connection across the real property and as described in the Easement and Agreement dated July 13, 2000 and recorded in the office of the Tooele County Recorder's Office on July 21, 2000 as Entry No. 150356, in Book 631, and on Page 368.

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