

When recorded please return to:

**RINEHART SIMONSEN & FETZER, P.C.**

Attn: Mark E. Rinehart  
3 Triad Center; Suite 175  
345 West North Temple  
Salt Lake City, UT 84180

9410245  
06/21/2005 02:39 PM \$20.00  
Book - 9147 Pg - 8464-8469  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
SUTHERLAND TITLE  
BY: SBM, DEPUTY - WI 6 P.

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**APPURTEnant ACCESS EASEMENT AGREEMENT**

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This APPURTEnant ACCESS EASEMENT AGREEMENT is made and entered into as of the 17<sup>th</sup> day of June, 2005, by and between **BLUFFDALE MOUNTAIN HOMES II, LLC**, a Utah limited liability company ("Grantor"), and **D&K LENDING GROUP, LLC**, ("Grantee"). Grantor and Grantee are referred to collectively herein as the "Parties."

**RECITALS**

A. Grantor is the owner of property located in Salt Lake County, Utah, and more particularly described on Exhibit "A" attached hereto (the "Burdened Property").

B. Grantee is a lender who has a first priority deed of trust on ten acres of property (the "Adjacent Property") that is adjacent to the Burdened Property.

C. The Adjacent Property does not have an independent means of access to it, and in the event that Grantee should acquire ownership of the Adjacent Property, the property might be inaccessible to Grantee unless an easement is granted.

D. Grantee is only willing to loan funds to the owner of the Adjacent Property if Grantor grants to Grantee an appurtenant access easement across the Burdened property so that the Adjacent Property would be accessible to Grantee in the event of foreclosure of the deed of trust described above.

E. Grantor desires to grant to Grantee an appurtenant easement (the "Easement") across the Burdened Property. The terms of the Easement are as provided below.

**TERMS OF AGREEMENT**

Therefore, for ten (10) dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee an appurtenant Easement on and

across the Burdened Property as a means of access to the Adjacent Property.

2. Purpose of Easement. The purpose of the Easement is to allow Grantee and Grantee's representatives, employees, tenants, subtenants, successors, assigns, lenders, independent contractors, agents, invitees, guests, customers, etc. to have and to exercise rights of ingress and egress across the Burdened Property for any and all purposes. The rights granted to Grantee herein shall also extend to any and all tenants and/or subtenants of the Grantee or the Grantee's successors and/or assigns.

3. Covenants of Grantor. Grantor irrevocably covenants to allow the continued use of the Easement hereby granted and agrees not to take any actions which would reduce or curtail the effectiveness of the use of the Burdened Property for the purposes of the Easement described above or that would interfere with Grantee's residential or commercial use of, and access to the Benefited Property in any way. Grantor warrants that: (a) Grantor will allow access across the Easement at all times, and (b) that Grantor will not obstruct or block the use of the Easement at any time in any way. Grantee shall be entitled (but not required) to grade, pave, improve or modify the land subject to the Easement so as to insure that Grantee can exercise rights of access, ingress and egress over and across the land subject to the Easement.

4. Relocation. If, as a result of governmental action, administration or regulation, (a) any of the Benefited Property is required to be relocated or (b) Grantee loses access to any or all of the Benefited Property for any reason, in each case in order for the Benefited Property purposes to be reasonably continued or for the purposes of Grantee Real Property on property in the vicinity to be continued and for Grantee to continue to enjoy the purposes and benefits of the Easement, then, subject to the approval of Grantor, which approval shall not be unreasonably withheld, Grantee may relocate the Easement to another location on the Burdened Property. Such relocation shall provide the same or substantially the same rights and benefits to Grantee as described herein, including without limitation the rights of access, ingress and egress from an adjacent street.

5. Term. Unless prior written consent is obtained from Grantee, the Easement granted pursuant to this Agreement and the covenants of Grantor and all other terms hereof shall remain in full force and effect and shall not be amended or modified or terminated in any way by Grantor for as long as Grantor owes any amount to Grantee. The Burdened Property or any portion thereof may only be dedicated as a public road as long as the public road will at all times, including, without limitation during construction of the public road, provide Grantee with all of the access and other rights granted under this Agreement. If the public road is ever closed or condemned, the Easement shall be reinstated and shall again become fully effective and in full force and effect.

6. Condemnation. If all or any part of the Burdened Property is condemned or sought to be condemned, Grantee shall be entitled, in its sole discretion, to do any one or more of the following: (a) to contest the condemnation; (b) to relocate the Easement on the portion of the Burdened Property not condemned or sought to be condemned in the same manner as provided in Section 4 above and subject to Grantor's approval, which approval shall not be unreasonably withheld; (c) to terminate this Agreement; (d) to receive compensation from the condemnor for the value of Grantee's interest in the Burdened Property and for the reduced value of Grantee's interest in the Burdened Property and in any Grantee Real Property that are not acquired (whether located on

the Burdened Property or not) which results from the acquisition or condemnation or threatened condemnation; and/or (e) to recover from the condemnor to the maximum extent otherwise allowable by law. "Condemned" and "condemnation" for purposes of this Agreement shall include any transfer of possession, title or right relating to the Burdened Property, or any portion thereof, in favor of or for the benefit of any entity exercising the power of eminent domain, including, but not limited to, sale or lease. No right of termination set forth anywhere in this Agreement may be exercised by or for the benefit of any entity having the power of eminent domain.

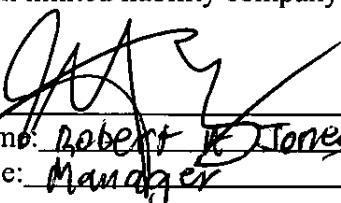
7. Successors and Grantee Real Property. This Agreement, including but not limited to the covenants of Grantor set forth above, shall constitute a covenant running with the land referred to herein as the Burdened Property, and shall be binding upon Grantor and its successors and assigns, and the provisions hereof shall be specifically enforceable against Grantor and Grantor's successors and assigns. Without limiting the foregoing, Grantee shall have all remedies available at law or in equity to enforce this Agreement, including suits for damages and/or specific performance. In the event Grantee seeks an injunction based upon Grantor breach, it is specifically agreed that no bond shall be required.

8. Miscellaneous. This Agreement is to be governed by and interpreted under the laws of the State of Utah. If any of the provisions of this Agreement are deemed to be not enforceable, in whole or in part, the remaining provisions shall be enforceable notwithstanding the invalidity of any other provision. Any provision not enforceable in part shall be enforceable to the extent valid and enforceable.

**IN WITNESS WHEREOF**, the Parties have executed and delivered this Agreement on the dates set forth below, to be effective as of the date first set forth above.

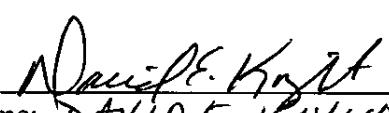
**BLUFFDALE MOUNTAIN HOMES II, LLC, a**  
Utah limited liability company

Date: 6-17-05

By:   
Name: Robert R. Jones  
Title: Manager

**D&K LENDING GROUP, LLC.**

Date: 6/21/05

By:   
Name: DAVID E. KNIGHT  
Title: MANAGER

STATE OF UTAH )

: ss.

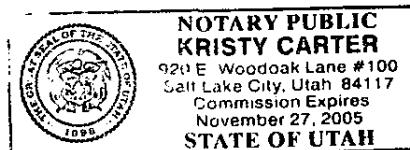
COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of June, 2005, by Robert A. Jones, an individual residing in the State of Utah, as the authorized representative of **BLUFFDALE MOUNTAIN HOMES II, LLC**, a Utah limited liability company. Said Robert A. Jones acknowledged before me that he executed the foregoing on behalf of **BLUFFDALE MOUNTAIN HOMES II, LLC**, a Utah limited liability company.

My Commission Expires: Kristy Carter

NOTARY PUBLIC

Residing at:



STATE OF UTAH )

: ss.

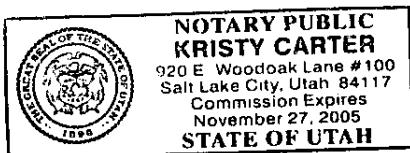
COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of June, 2005, by David E. Knight, an individual residing in the State of Utah, as the authorized representative of D&K LENDING GROUP, LLC. Said David E. Knight acknowledged before me that he executed the foregoing on behalf of D&K LENDING GROUP, LLC.

My Commission Expires: Kristy Carter

NOTARY PUBLIC

Residing at:



**EXHIBIT "A"**  
**Burdened Property**

**LEGAL DESCRIPTION**

Beginning at the East Quarter corner of Section 17, Township 4 South, Range 1 West, Salt Lake Base and Meridian; thence South  $0^{\circ}24'16''$  West 700 feet; thence North  $89^{\circ}39'44''$  West 600 feet; thence South  $0^{\circ}24'16''$  West 450 feet; thence South  $89^{\circ}35'44''$  East 300 feet; thence North  $0^{\circ}24'16''$  East 150 feet; thence South  $89^{\circ}35'44''$  East 300 feet; thence South  $0^{\circ}24'16''$  West 320 feet; thence West 1320 feet more or less; thence North 1380 feet more or less; thence East 1320 feet more or less; thence South  $0^{\circ}26'31''$  West 60 feet to the point of beginning. LESS AND EXCEPTING therefrom any portion lying within the bounds of 3200 West Street.

Tax Parcel No.: 33-17-400-006