

10-2-11
This instrument filed by
Security Land Title Company

3481261

See Amendment 1
for Section 3

Assoc.

EASEMENT AND LICENSE AGREEMENT

THIS EASEMENT AND LICENSE AGREEMENT is entered into as of September 25, 2002 by and between Deer Creek Apartments, LLC, a Kansas limited liability company ("Apartments") and Deer Creek Reserve, a not for profit Kansas corporation ("Home Association").

A. Apartments is the Owner of a multifamily community located at 12849 Metcalf Avenue, Overland Park, Johnson County, Kansas, legally described as set forth in **Exhibit A** attached hereto (the "Apartment Property"), and wishes to grant and convey to the Home Association and to its members in good standing: a license for the Home Association members to have the non-exclusive use of the clubhouse and swimming pool facilities on the Apartment Property (the "Facilities"); a license for the Home Association's placement on the Apartments' computer of certain software related to the operation of the gates owned by the Home Association; together with a non-exclusive perpetual access easement for passenger vehicle traffic to travel over and across the designated driveways and drives on the Apartment Property.

B. Home Association is comprised of members who are homeowners in the Deer Creek Reserve Development. The Home Association and its members own certain common areas and the private residences generally located at 131st Street & Metcalf Avenue, Overland Park, Johnson County, Kansas and legally described as set forth in **Exhibit B** attached hereto (the "HOA Property").

C. Home Association wishes to secure the use of the Facilities on the Apartment Property and obtain a non-exclusive perpetual access easement for passenger vehicle traffic on portions of the Apartment Property.

D. Apartments and Home Association desire to evidence their agreements as herein provided.

NOW THEREFORE, in recognition of the mutual covenants and agreements herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties hereto, the undersigned agree to the following terms and conditions.

1. **Grant of Perpetual, Non-Exclusive Ingress and Egress Easement.** Apartments hereby grants and conveys to the Home Association and to its members, by reason of their ownership of the private residences forming a part of the HOA Property, a non-exclusive, perpetual easement for the sole purpose of passenger vehicle ingress, egress, passage and traffic over and across the designated drives and driveways located on the Apartment Property for the sole purpose of providing such passenger vehicles with access through the Apartment Property to the public street system of Overland Park, Kansas (the "Easement"). Except as herein specified in connection with the hereinafter granted license to use the Facilities, this grant of Easement does not include: (a) any right of or for parking of vehicles, even on a temporary basis, on any of the Apartment Property; or, (b) any right to use any of

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the Apartment Property drives and driveways for access to the HOA Property by any moving vans, delivery trucks, construction vehicles or any other similar, commercial or private trucks and vehicles.

2. **Grant of Non-Exclusive License.** Apartments grants to Home Association and its members in good standing a non-exclusive right and license to use the "Facilities" designated by the Apartments as clubhouse and swimming pool facilities during the normal operating hours of the Facilities on the same terms and conditions, and pursuant to the rules and regulations to which the residents of the Apartment Property are subject; provided, however, that only the members in good standing (including any immediate family permanently residing with such member) of the Home Association shall enjoy such license to use the Facilities, but said license shall not extend to any other person, including guests. Neither the Home Association nor any of its members shall have the right to use the clubhouse facilities for private parties, gatherings or other special occasions. While temporarily using the Facilities, the Home Association Members shall have a license to park their passenger vehicles in the designated parking spaces in the clubhouse parking lot.
3. **Apartment Property Maintenance.** To offset the cost of additional Apartment Property maintenance due to Home Association's Easement and use of the Facilities, Home Association shall pay to Apartments an annual fee of \$5,100.00 for the calendar year of 2003 and an annual fee of \$10,200.00 for the calendar year of 2004 ("the Annual Dues") no later than January 15, 2003, and January 15, 2004, respectively. Thereafter, the amount of the Annual Dues shall increase by the amount of three percent (3.0%) per annum over the previous year's Annual Dues. The Annual Dues for each year shall be due and payable in advance and without notice to the Home Association no later than January 15th of the subject year.
4. **Entrance Gate System.**
 - (a) The Apartment Property and the HOA Property each has a separate entrance gate system with separate hardware, the maintenance of which hardware shall be the separate obligation of the respective owners of same. However the software for the two gate systems is currently located on the Apartments' computer located in the Apartment Property clubhouse for which the Apartments hereby grants to Home Association a temporary license for the placement and operation of same.
 - (b) The entrance gates, along with the entrances to the Apartment Property clubhouse, are controlled by the use of a keychain transmitter ("transmitter"). Apartments have furnished the Home Association with seventy-five (75) transmitters for use by the members of the Home Association. As the membership of the Home Association changes, the identity and transmitter code for each member of the Home Association must be entered into the software system for the gate operation. The Home Association shall appoint not more than three (3) officers of the Home Association who shall have the responsibility to inform the Apartment Property in writing of any changes in the Home Association

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membership for the purposes of having the entrance gate software updated. No change in the entrance gate software shall be made without written notice from one of the three persons appointed by the Home Association.

(c) In the event Home Association needs additional transmitters or replacement transmitters (including any batteries or other parts), Home Association shall either purchase the transmitters separately, or at the option of the Apartment Property, purchase the transmitters from Apartments and shall promptly reimburse Apartments for the actual cost of the transmitters (including any shipping charges, sales taxes or related costs, but excluding any service fees or profit).

(d) In the event the entrance gate software is replaced, Home Association shall pay its prorated cost of same based on the number of private residences in the HOA Property in relation to the number of apartment units in the Apartment Property.

(e) Each party shall pay for the cost of any repairs, changes, modifications, replacement or other operating or capital expense relating to its separate entrance gate hardware system.

(f) This license is terminable by Apartments upon ninety (90) days prior notice provided, however, that Apartments shall provide Home Association, at Apartments' cost, a copy of the gate software package, a computer to operate the software, along with telephone wiring from the gate to the exterior of any home within 250 feet of the gate on Metcalf Avenue, which shall enable Home Association to operate its gate hardware independently of the Apartments.

5. **Default & Remedies.**

(a) If Home Association does not pay any sum hereunder when due, interest on such delinquent amount shall accrue from the due date to and including the date such payment is received by Apartments at the lesser of (i) the highest rate permitted by law to be paid on such type of obligation, or (ii) at the rate of 12% per annum. If Home Association fails to make any payment required to be made hereunder within ten (10) days after written notice by Apartments, stating the amount due, the delinquent obligation may be enforced by the Apartments as a lien against the common property portion of the HOA Property.

(b) Apartments shall have the right to prosecute any proceedings at law or in equity against the Home Association in order to recover damages for any such default. The remedies permitted or available under this Agreement, at law or in equity shall be cumulative and not alternative, and the pursuit of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

(c) No breach of this Agreement shall (i) entitle either party to cancel, rescind, or otherwise terminate the Easement, or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the properties described herein. However, such limitation

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shall not affect in any manner the right to terminate or limit the licenses herein granted and any other rights or remedies which Apartments may have hereunder by reason of any such breach.

(d) No waiver by a party of any default under this Agreement shall be effective or binding on the other party unless made in writing by the notifying party and no such waiver shall be implied from any omission by either party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Agreement.

6. **Estoppel Certificate.** Upon written request of Apartments, Home Association (and its individual members) will issue to Apartments or its prospective mortgagee, lessee, transferee or successor, an estoppel certificate stating to the Home Association's actual knowledge as of such date (a) whether it knows of any default under this Agreement by the requesting Person, and if there are known defaults, specifying the nature thereof, (b) whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and (c) whether this Agreement is in full force and effect.
7. **Condemnation.** If any portion of the Apartment Property shall be condemned, or conveyed under threat of condemnation, Home Association and each member thereof hereby waives and releases any right to recover any value attributable to the property interest so taken and the Home Association nor its members shall have a right hereunder to seek an award for the taking thereof.
8. **Notices.** All notices, demands and requests required or permitted to be given hereunder must be in writing and given by certified or registered mail, postage prepaid, return receipt requested, or overnight air courier or express delivery service with proof of delivery acknowledged. Notice shall be deemed given as of the date such notice is delivered to the party intended or delivered to the then designated address of the party intended. The initial addresses of the parties shall be:

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Apartments: Deer Creek Apartments, LLC
c/o Price Management Company, Inc.
9401 Santa Fe Drive, Suite 200
Overland Park, KS 66212
Attention: Kent A. Price

Home Association: Deer Creek Reserve, a not for profit Kansas Corporation
(and its members) c/o Price Residential Builders, Inc.
9401 Santa Fe Drive, Suite 200
Overland Park, KS 66212
Attention: Kent A. Price

Upon at least ten (10) days prior written notice given in the manner provided above, each party shall have the right to change its address to any other address within the United States of America.

9. **Successors & Assigns.** The Easement granted herein shall constitute a covenant running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon each party and its respective successors and assigns who become owners of any property encumbered hereby. The Easement shall be an encumbrance on the Apartment Property, and shall be prior and superior to any mortgage, deed of trust, or similar instrument creating a lien upon any portion of the Apartment Property. Any person foreclosing any such mortgage or similar instrument or acquiring title by deed in lieu thereof shall acquire title subject to all of the terms and provisions of the Easement.
10. **Construction.** Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of nonlimitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter. This Agreement is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.
11. **Amendments.** This Agreement, or any provision hereof, may be terminated, extended, modified or amended with the written consent of the parties hereto.
12. **Term.** This Agreement shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on December 31, 2095. Upon termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement shall terminate and have no further force or effect; provided, however,

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that the termination of this Agreement shall not limit or affect any remedy at law or in equity that either party may have with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination.

13. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one complete document.
14. **Third Party Interests.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Apartment Property to the general public, or for any public use or purpose whatsoever. Nothing in this Agreement shall be construed to require the consent of any person other than the Apartments and Home Association where required as set forth above, nor shall any person other than the Apartments and Home Association have any right to enforce any of the provisions hereof. No right, privileges or immunities shall inure to the benefit of any third-party person, nor shall any third-party person be deemed to be a beneficiary of any of the provisions contained herein.

(Remainder of this page is left intentionally blank)

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(Signature Page for Easement and License Agreement)

IN WITNESS WHEREOF, the parties have executed this Easement and License Agreement as of the date first written above.

APARTMENTS:

Deer Creek Apartments, LLC, a Kansas limited liability company

By: [Signature]
Its: Manager

HOME ASSOCIATION:

Deer Creek Reserve, a not for profit Kansas corporation

By: [Signature]
Kent A. Price, President

STATE OF KANSAS }
COUNTY OF JOHNSON } SS
FILED FOR RECORD
\$ 22.00
\$ 18.00
2002 SEP 30 P 2: 20 PM
REBECCA L. DAVIS
REGISTER OF DEEDS

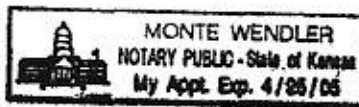
STATE OF KANSAS)
COUNTY OF JOHNSON)

On this 25th day of Sept, 2002, before me, a Notary Public in and for said County and State, personally appeared Kent A. Price, to me known to be the Manger of Deer Creek Apartments, LLC, and who executed as such Manager on behalf of the company the foregoing Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last written above.

[Signature]
Notary Public

My Commission Expires: 4/25/05



STATE OF KANSAS)
COUNTY OF JOHNSON)

On this 25th day of September, 2002, before me, a Notary Public in and for said County and State, personally appeared Kent A. Price to me known to be the President of Deer Creek Reserve, a not for profit Kansas corporation, and who executed as such President on behalf of the corporation the foregoing Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last written above.

[Signature]
Notary Public

My Commission Expires: 4/25/05

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Exhibit A

Lot 1, DEER CREEK APARTMENTS, a tract of land in Overland Park, Johnson County, Kansas
according to the recorded plat thereof.

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Exhibit B

Lot 1, DEER CREEK RESERVE, a tract of land in Overland Park, Johnson County, Kansas
according to the recorded plat thereof.

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