

9126414
07/21/2004 04:29 PM 39.00
Book - 9016 Pg - 7239-7252
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
BY: EHB, DEPUTY - WT 14 P.

M

EASEMENT AGREEMENT

This Easement Agreement (the "Agreement") is made and entered into as of the 20 day of July, 2004, by and between REED P. and HOPE F. NESSEN, as trustees for the Nesson Family Trust dated the 15th day of March, 2000 ("Grantee"), and ARCUTMWE LLC, a Delaware limited liability company ("Grantor").

RECITALS:

A. Grantor is the owner of certain real property located in the City of West Valley City, County of Salt Lake, State of Utah, more particularly described on Exhibit A attached hereto ("Easement Property").

B. Grantee is the owner of certain real property located in the City of West Valley City, County of Salt Lake, State of Utah, adjacent to the Easement Property, more particularly described on Exhibit B attached hereto (the "Benefited Property") upon which the as "The Reeds Health & Cultural Learning Center" ("Cultural Center") is located.

C. Grantor desires to grant Grantee an easement over the Easement Property for the benefit of the Benefited Property.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The above recitals are true and correct and incorporated herein.

2. Grant of Easement. Grantor does hereby grant and convey unto Grantee, it successors, assigns, lessees, licensees, and agents, an easement upon and beneath the surface of the Easement Property for ingress and egress from the real estate entrance at 7200 West via Appaloosa Drive to the entrance of Cultural Center (the "Easement"). Grantor further grants Grantee a perpetual license for use of existing Reed's Learning & Cultural signage located at the park entrance and at the entrance of the Cultural Center as indicated upon Exhibit A (the "License") The signage will not be changed or altered without Grantor's consent, which consent shall not unreasonably be withheld. Said License shall be subject to Grantee's continued maintenance and upkeep of the Cultural Center and the signage in their current form and use. The Easement shall be perpetual, but can be terminated by Grantor in the event that Grantee ceases the operation of the Cultural Center (which uses shall include but not limited to receptions, weddings, funerals and general gatherings) or materially changes its usage, or changes its usage in a manner that materially increases the traffic through the Real Estate (for purposes of this agreement, a "material change" will be a change from the current uses of the Cultural Center, or an increase in the number of vehicles to more than an average of 10 per day over a 6 month period, or the occurrence of any event that has more than 150 people at the

Cultural Center at any one time). Grantor acknowledges that the Cultural Center is open to the public, and that the public shall have the right to use the Easement, subject to the limitations contained therein. The Easement and License shall be further conditioned upon Grantee obtaining and maintaining liability insurance in an amount of at least \$1,000,000, with Grantor named as an additional insured, insuring Grantor against any loss, claim or damage associated with Grantee's operation of the Cultural Center or the use of the Easement and the License. Grantee agrees that Park residents shall continue to have access to Cultural Center on a no charge basis as long as residents abide by "Center Rules & Regulations". Rules and Regulations are to be subject to change at any time by Grantee. Further, Grantee may charge fees for private event use of Cultural Center Building, Train Rides, and visits to the animal park for residents and nonresidents. Grantor agrees to provide Grantee any necessary utility easements necessary for all utilities now in place and servicing the Cultural Center. Grantor agrees that for a twenty (20) year period following the Closing to charge the Cultural Center only its actual costs in excess of \$100 per month (adjusted by an amount equal to the adjustments, if any, in the consumer price index for Salt Lake City Utah, beginning in January of 2006) associated with allowing the Cultural Center to use water, sewer, & trash removal services and on the same terms as to those which are provided to its residents as part of transaction. Grantee shall be solely responsible for maintaining the utilities at the Cultural Center.

5. Permanent Duration. The Easement established and created under this Agreement shall not terminate except upon a merger of ownership between the Benefited Property and the Easement Property or upon conveyance of the easement from Grantee or its successors to Grantor or its successors.

6. Indemnification. Grantee, shall indemnify, defend, protect and hold harmless Grantor, its successors and assigns from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees, arising out of or resulting from the injury to or death of any person, or damage to the property of any person relating to use of the Easement Property, including the area covered by the Easement, by Grantee or its permittees, or any mechanic's liens or claims by reason of the exercise of the rights and easements granted hereunder; however, the foregoing obligation shall not apply to claims caused by the negligence or willful act or omission of Grantor, its licensees, concessionaires, agents, servants or employees, or the agents, servants or employees of any licensee or concessionaire thereof.

7. Maintenance. Grantor shall be responsible, at Grantor's sole cost, for maintaining, repairing, replacing and reconstructing (including without limitation paving, striping and sealing of pavement) the Easement and all improvements, fixtures, equipment and facilities therein, as may be appropriate to maintain the same in condition not less than (in the case of existing improvements) the current condition thereof, except as the same may be caused or required by Grantee's use, in which case Grantee shall bear all such costs. All such maintenance, repair, replacement and reconstruction shall be performed in accordance with at least then current maintenance standards. Following completion of any maintenance or repair to the Easement, the party making the repair shall repair and restore the Easement and any affected portion of the Easement Property and any improvements located thereon to substantially the same condition as it existed prior to the commencement of such activities.

8. Attorneys' Fees. If any legal action or any arbitration or other proceedings are brought for the enforcement or interpretation of this Agreement or the provisions hereof, the prevailing party in such action, whether by final judgment or out-of-court settlement, shall be entitled to recover from the losing party, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorneys' fees.

9. Successors and Assigns. The terms and provisions of this agreement shall operate as covenants running with the land and shall inure to the benefit of and be binding upon Grantor and Grantee and their respective successors and assigns; provided, however, any owner selling or transferring its interest in its property shall automatically be released from any liability hereunder subsequent to such sale or transfer but not as to any liability for periods during its ownership.

10. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, then the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which shall be legal, valid and enforceable.

11. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which shall constitute one and the same instrument.

12. Governing Law. The terms and conditions of this Agreement shall be governed and construed under the laws of the State of Utah.

13. Entire Agreement. This Agreement and the exhibits hereto contain all of the representations and the entire agreement between the parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements between the parties or any of them with respect to the subject matter hereof are merged herein and replaced by this Agreement.

14. Failure to Comply with Terms. Grantee acknowledges that Grantee's failure to comply with any of Grantee's obligations hereunder, or Grantee's discontinued use of the Cultural Center in substantially its current form of operation shall be grounds for Grantor to terminate this Easement and License. In the event of such failure, upon Grantor's written notice of the same and Grantee's failure to cure within ten (10) days, Grantor shall be entitled, but not obligated, at any time thereafter, to file a notice of termination with respect to this Easement, and upon the filing of the same in the records of Salt Lake County Utah, the Easement and the License shall be void and of no further force and effect.

15. Notices. All notices, demands and requests required or permitted to be given under this Agreement must be in writing and must be sent by hand delivery, U.S. Certified Mail return receipt requested, postdate pre-paid, or by overnight courier, and shall be deemed to have been given as of the date such notice is received or rejected. The initial addresses of the parties shall be:

Grantor: ARCUTMWE LLC
 c/o Affordable Residential Communities
 600 Grant Street, Suite 900
 Denver, CO 80230
 Attn: George McGeeney

Grantee: Reed Nessen
 809 Simpson Avenue
 Salt Lake City, UT 80406

The balance of this page intentionally left blank.

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

GRANTOR:

ARCUTMWE LLC

By: 

Scott L. Gessell

Its:

Vice President

GRANTEE:

Reed P. Nessen and Hope F. Nessen, Trustees of the Nessen Family Trust, dated the 15th day of March 2000

By: 

Reed P. Nessen, Trustee

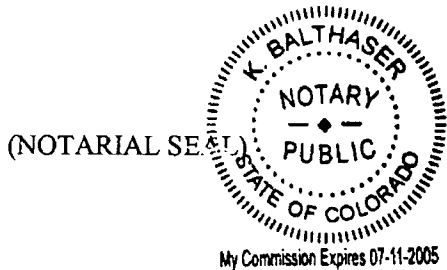
By: 

Hope F. Nessen, Trustee

STATE OF COLORADO :
 :
 : SS
CITY AND COUNTY OF DENVER :

ON THIS, the 17 day of June, 2004, before me, a Notary Public in and for the City and County aforesaid, the undersigned officer, personally appeared SCOTT L. GESELL, who acknowledged himself to be the Vice President of ARCUTMWE LLC, a Delaware limited liability company, and that he as such officer of such corporation, being authorized to do so, executed the foregoing instrument on behalf of such corporation in its capacity as such Manager of such limited liability company, for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my official hand and seal.



K. Balthaser
Notary Public K. Balthaser

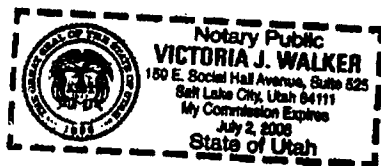
My Commission Expires: 7-11-2005

STATE OF UTAH :
 :
 : SS
COUNTY OF Salt Lake :

ON THIS, the 20 day of June, 2004, before me, a Notary Public in and for the City and County aforesaid, the undersigned REED P. & HOPE F. NESSEN, as trustees of the Nessen Family Trust, dated the 15th day of March 2000, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my official hand and seal.

(NOTARIAL SEAL)



Victoria J. Walker
Notary Public

My Commission Expires: 7/2/08

Easement description for Reed P. Nessen

A right of way and access easement over the paved surface of Appaloosa, Drive (2615 South), a private roadway of varied width, being within Western Mobile Estates Mobile Home Park, from the centerline of 7200 West Street, to the Westerly line of Reed's Health and Cultural Learning Center (approx. 7000 West), said right of way and access easement being more particularly described as follows:

Beginning at a point 714.92 feet North 00°08'06"U+201D West from the Southwest corner of Section 22, Township 1 South, Range 2 West, Salt Lake Base and Meridian, and running thence North 89°11'36"U+201D East 233.73 feet to a 153 foot radius curve to the left; thence along said curve 51.41 feet, having an included angle of 19°15'12"U+201D; thence North 69°56'24"U+201D East 10.00 feet to a 78.00 foot radius curve to the left; thence along said curve 31.20 feet, having an included angle of 22°55'06"U+201D; thence North 47°01'18"U+201D East 12.97 feet to a 47.00 foot radius curve to the right; thence along said curve 34.43 feet, having an included angle of 41°58'08"U+201D; thence North 88°59'26"U+201D East 470.75 feet to a 150.00 foot radius curve to the left; thence along said curve 61.83 feet, having an included angle of 23°36'59"U+201D; thence North 68°22'27"U+201D East 374.14 feet; thence North 00°38'19"U+201D East 41.92 feet to a 30.00 foot radius curve to the right; thence along said curve 37.60 feet, having an included angle of 71°49'03"U+201D feet; thence North 72°27'22"U+201D East 69.54 feet to the 40 acre line, as defined on that Kopperview View Mobile Home Park Subdivision, recorded as Entry No. 3479895 in Book 80-9 at Page 149, of Official Records; thence North 72°27'22" West 10.55 feet to a fence line; thence along said fence line North 00°36'35" West 16.36 feet; thence South 72°10'24" East 10.80 feet to the 40 acre line; thence South 72°10'24"U+201D West 76.52 feet to a 50.00 foot radius curve to the left; thence along said curve 53.90 feet, having an included angle of 61°45'44"U+201D; thence South 10°24'40"U+201D West 18.74 feet to a 30.00 foot radius curve to the right; thence along said curve 29.38 feet, having an included angle of 56°06'34"U+201D; thence South 66°31'14"U+201D West 351.45 feet to a 75.00 foot radius curve to the right; thence along said curve 29.41 feet, having an included angle of 22°28'12"U+201D; thence South 88°59'26"U+201D West 480.35 feet to a 75.00 foot radius curve to the left; thence along said curve 54.94 feet, having an included angle of 41°58'08"U+201D; thence South 47°01'18"U+201D West 12.97 feet to a 50 foot radius curve to the right; thence along said curve 20.00 feet, having an included angle of 22°55'06"U+201D; thence South 69°56'24"U+201D West 10.00 feet to a 125.00 foot radius curve to the right; thence along said curve 42.00 feet, having an included angle of 19°15'12"U+201D; thence South 89°11'36"U+201D West 233.40 feet to the centerline of 7200 West Street; thence along said centerline South 00°08'06"U+201D East 28.00 feet to the point of beginning.

Contains 37,007 square feet or 0.85 acres

14-22-352-006 Portion of

EXHIBIT A

BURDENED PROPERTY

The rights granted hereunder shall be for ingress and egress for the real estate entrance at 7200 West via Appaloosa Drive to the entrance of Cultural Center located at the following described property:

Legal Description
Western Mobile Estates MHP

Beginning at a point on the centerline of 7200 West Street 280.50 feet North 00°08'06" West from the Southwest Corner of Section 22, Township 1 South, Range 2 West, Salt Lake Base and Meridian; and running thence North 00°08'06" West 100.08 feet; thence North 89°51'54" East 140.67 feet; thence North 00°08'06" West 60.00 feet; thence South 89°51'54" West 140.67 feet to said centerline of 7200 West Street; thence along said centerline North 00°08'06" West 4.32 feet; thence North 89°51'54" East 140.08 feet; thence North 00°08'06" West 55.68 feet; thence North 89°51'54" East 0.59 feet; thence North 00°08'06" West 60.00 feet; thence South 89°51'54" West 140.67 feet to the centerline of said street; thence along said centerline North 00°08'06" West 3.46 feet to the projection of an existing chain-link fence; thence along said fence and the projection thereof South 89°20'13" East 140.09 feet to an existing wood fence; thence along said fence North 00°08'06" West 92.49 feet to an existing chain-link fence; thence along said fence South 89°51'54" West 140.08 feet to the centerline of said street; thence along said centerline North 00°08'06" West 238.63 feet to the Southerly line of the Ritter Canal property; thence along said Southerly line North 89°00'00" East 834.15 feet; thence continuing along said Southerly line North 65°30'00" East 545.50 feet to an existing fence line; thence along said fence line South 00°36'35" West 95.61 feet to the Northerly line of the KOPPER VIEW MOBILE HOME PARK, recorded as Entry No. 3479895 in Book 80-9 at Page 149 of Subdivision Plats; thence along said Northerly line South 89°58'11" West 10.04 feet to the 40 acre line as defined by the KOPPER VIEW MOBILE HOME PARK, recorded as Entry No. 3479895 in Book 80-9 at Page 149 of Subdivision Plats; thence along said 40 acre line South 00°08'56" East 848.74 feet to the Northerly line of the aforementioned plat; thence along said Northerly line North 89°58'57" West 1319.88 feet to the point of beginning.

Contains 838,243 square feet or 19.24 acres.

Less and Excepting there from any portion of the property described above contained within the bounds of 7200 West Street the acreage contained within said street when defined as having a 33.00 foot half-width is 11,437 square feet or 0.26 acres.

Subject to the right of way and access easement over the paved surface of Appaloosa Drive (2615 South), a private roadway of varied width, from the centerline of 7200 West Street to the Westerly line of Reed's Health and Cultural Learning Center (approx. 7000 West), said right of way retained by Reed P. Nessen.

Together With any interest the seller may have in and to the property between the 40 acre line defined by KOPPER VIEW MOBILE HOME PARK, recorded as Entry No. 3479895 in Book 80-9 at Page 149 of Subdivision Plats, said 40 acre line being a boundary of said subdivision, and a fence constructed and maintained East of said line, more particularly described as follows:

Beginning at the Westerly Corner of that portion of the aforementioned subdivision which projects Northerly, said corner being 893.71 feet North 00°08'06" West, 834.15 feet North 89°00'00" East, 545.50 feet North 65°30'00" East, and 95.61 feet South 00°36'35" West, and 10.04 feet South 89°58'11" West from the Southwest Corner of Section 22, Township 1 South, Range 2 West, Salt Lake Base and Meridian, and running thence South 00°08'56" East 423.28 feet to the Northwest Corner of Lot 89 of said subdivision; thence North 89°51'04" East 4.44 feet to a fence line; thence North 00°36'35" East 423.30 feet along said fence line; thence South 89°58'11" West 10.04 feet to the beginning.

Contains 3,064 sq. ft. or 0.07 acres.

Being a portion of the same property described in the First American Title Insurance Company Title Report, order No. NCS-84532SLC, having an effective date of April 21, 2004 at 7:30 a.m.

Portion of 14-22-352-001
Portion of 14-22-352-006

EXHIBIT B

BENEFITED PROPERTY DESCRIPTION

Legal Description for Cultural Center

The North 280.5 feet of the Southeast Quarter of the Southwest Quarter of Section 22, Township 1 South, Range 2 West, Salt Lake Base and Meridian.

Less and Excepting therefrom any portion lying within the bounds of the Ritter Canal Tract and also any portion lying within the bounds of the Siegel Tract

Also Less and Excepting therefrom that portion deeded to ARCUTWME, LLC, a Delaware limited liability company, more particularly described as follows:

Beginning at a point on the centerline of 7200 West Street 280.50 feet North 00°08'06" West from the Southwest Corner of Section 22, Township 1 South, Range 2 West, Salt Lake Base and Meridian; and running thence North 00°08'06" West 100.08 feet; thence North 89°51'54" East 140.67 feet; thence North 00°08'06" West 60.00 feet; thence South 89°51'54" West 140.67 feet to said centerline of 7200 West Street; thence along said centerline North 00°08'06" West 4.32 feet; thence North 89°51'54" East 140.08 feet; thence North 00°08'06" West 55.68 feet; thence North 89°51'54" East 0.59 feet; thence North 00°08'06" West 60.00 feet; thence South 89°51'54" West 140.67 feet to the centerline of said street; thence along said centerline North 00°08'06" West 3.46 feet to the projection of an existing chain-link fence; thence along said fence and the projection thereof South 89°20'13" East 140.09 feet to an existing wood fence; thence along said fence North 00°08'06" West 92.49 feet to an existing chain-link fence; thence along said fence South 89°51'54" West 140.08 feet to the centerline of said street; thence along said centerline North 00°08'06" West 238.63 feet to the Southerly line of the Ritter Canal property; thence along said Southerly line North 89°00'00" East 834.15 feet; thence continuing along said Southerly line North 69°30'00" East 545.50 feet to an existing fence line; thence along said fence line South 00°36'35" West 95.61 feet to the Northerly line of the KOPPER VIEW MOBILE HOME PARK, recorded as Entry No. 3479895 in Book 80-9 at Page 149 of Subdivision Plats; thence along said Northerly line South 89°58'11" West 10.04 feet to the 40 acre line as defined by the KOPPER VIEW MOBILE HOME PARK, recorded as Entry No. 3479895 in Book 80-9 at Page 149 of Subdivision Plats; thence along said 40 acre line South 00°08'56" East 848.74 feet to the Northerly line of the aforementioned plat; thence along said Northerly line North 89°58'57" West 1319.88 feet to the point of beginning.

Less and Excepting there from any portion of the property described above contained within the bounds of 7200 West Street the acreage contained within said street when defined as having a 33.00 foot half-width is 11,437 square feet or 0.26 acres.

Subject to the right of way and access easement over the paved surface of Appaloosa Drive (2615 South), a private roadway of varied width, from the

centerline of 7200 West Street to the Westerly line of Reed's Health and Cultural Learning Center (approx. 7000 West), said right of way retained by Reed P. Nessen.

Together With any interest the seller may have in and to the property between the 40 acre line defined by KOPPER VIEW MOBILE HOME PARK, recorded as Entry No. 3479895 in Book 80-9 at Page 149 of Subdivision Plats, said 40 acre line being a boundary of said subdivision, and a fence constructed and maintained East of said line, more particularly described as follows:

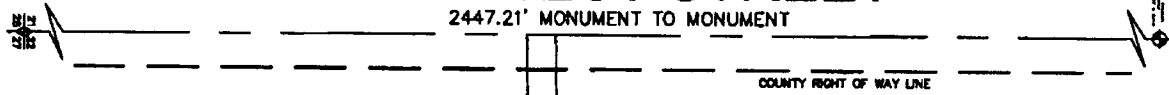
Beginning at the Westerly Corner of that portion of the aforementioned subdivision which projects Northerly, said corner being 893.71 feet North 00°08'06" West, 834.15 feet North 89°00'00" East, 545.50 feet North 65°30'00" East, and 95.61 feet South 00°36'35" West, and 10.04 feet South 89°58'11" West from the Southwest Corner of Section 22, Township 1 South, Range 2 West, Salt Lake Base and Meridian, and running thence South 00°08'56" East 423.28 feet to the Northwest Corner of Lot 89 of said subdivision; thence North 89°51'04" East 4.44 feet to a fence line; thence North 00°36'35" East 423.30 feet along said fence line; thence South 89°58'11" West 10.04 feet to the beginning.

Portion of 14-22-352-006

SHEET 1 OF 1

7200 WEST STREET

BASIS OF BEARING N00°08'06"W
2447.21' MONUMENT TO MONUMENT



Right of Way Exhibit

ALTA
SURVEYING

(801) 268-4445
FAX 288-0354

ALTA SURVEYING, INC. IS AN EQUAL OPPORTUNITY EMPLOYER. MINORITIES AND WOMEN ARE ENCOURAGED TO APPLY.

INTEGRAL
SITES, Inc.

A National Land Services Group

208 LAURELES CONSERVING TRUST SURVEY CONTRACT
6888 COMMONWEALTH COURT - SUITE 100
VIRGINIA BEACH, VIRGINIA 23067
PHONE: (840) 428-8860
FAX: (840) 428-8860

PROJECT NAME: ARC - Western Mobile Estates PROJECT No.: 1046-04-0078.003
ADDRESS: 7200 West 2615 South CITY: West Valley City STATE: Utah

