

W/12 13 SW1W

Homes at Shepard Creek 1  
Units 1-40 & Common

08-051-0125, 08-222 0001 thru 0041

After Recording, Return To:  
Shepard's Creek Homes, L.C.  
132 South 600 East  
Salt Lake City, Utah 84102  
Attention: Mark B. Cohen

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~~E 1444113 B 2364 P 595~~  
1998 SEP 30 12:50 PM FEE 22.00 DEP REC  
REC'D FOR MERRILL TITLE COMPANY

E 1444113 B 2364 P 595  
JAMES ASHAUER, DAVIS CNTY RECORDER  
1998 SEP 30 12:50 PM FEE 142.00 DEP REC  
REC'D FOR MERRILL TITLE COMPANY

### EASEMENT AGREEMENT

This EASEMENT AGREEMENT is made this 28<sup>TH</sup> day of September, 1998, by and between SHEPARD'S CREEK HOMES, L.C., a Utah limited liability company, acting in its capacity as "Declarant" under that certain Declaration of Covenants, Conditions and Restrictions of The Homes at Shepards Creek Homeowners Association, Inc., as Grantor, and SHEPARD'S CREEK HOMES, L.C., a Utah limited liability company, as Grantee, with respect to the following.

### RECITALS

A. Grantor is the "Declarant" under that certain Declaration of Covenants, Conditions and Restrictions of The Homes at Shepards Creek Homeowners Association, Inc., dated as of June 12, 1997, and recorded in the Official Records of Davis County, Utah, on June 30, 1997, as Entry No. 1331828, in Book 2147, at Page 130 (the "Declaration").

B. The real property described in the Declaration is also described in the Record of Survey Map of The Homes at Shepard Creek Phase 1, a Condominium Development, recorded in the Official Records of Davis County, Utah, on June 30, 1997, as Entry No. 1331827, in Book 2147, at Page 129 (the "Plat Map"), and is more fully described in Exhibit "A" attached hereto (which real property is hereinafter described as the "Phase One Property").

C. Certain portions of the property made subject to the Declaration and the Plat Map comprise private streets.

D. Grantee is the owner of certain parcels of real property located adjacent to and in the vicinity of the Phase One Property, which parcels comprise the "Additional Property" described in the Declaration. These parcels are more particularly described in Exhibit "B" attached hereto.

E. Pursuant to the Declaration, all or any portion of the Additional Property may hereafter be added to the condominium development comprised of the Phase One Property.

F. Pursuant to Article 4.15 of the Declaration and other provisions of and powers granted to the Grantor under the Declaration, Grantor desires to convey to Grantee certain easements over the private streets located in the Phase One Property and for utilities, upon the following terms and conditions.

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

1. Grant of Easement. Grantor hereby conveys and grants to Grantee, its heirs, successors and assigns, a non-exclusive easement over the private streets located within the Phase One Property for ingress and egress to the Additional Property, and each portion thereof, subject to all the terms, covenants, conditions and restrictions hereinafter set forth. The private streets may be used for vehicular and pedestrian traffic consistent with the terms of the Declaration. Grantee agrees, for itself, its successors and assigns, to pay a proportionate share of the cost of repairing, maintaining, and replacing the private streets.

2. Utility Easement. Grantor hereby grants and conveys to Grantee, its heirs, successors and assigns, a non-exclusive right to use the utility easements to the extent reasonably necessary for the installation and maintenance of utilities to the Additional Property, and each portion thereof.

3. Term. Unless terminated pursuant to the provisions hereof, the easements granted herein shall be perpetual. The easements granted herein shall automatically terminate as to the Additional Property, and/or any portion of the Additional Property, if and when such parcels become part of the Shepards Creek Condominium Project, pursuant to the expansion provisions of the Declaration.

4. No Restriction of Declarant's Rights. The easements granted herein shall in no way limit, restrict modify, terminate, or abate the rights of Declarant (and Declarant's successors and assigns) to use of the private roads and other common areas of the Project pursuant to the terms of the Declaration.

5. Successors and Assigns. The easements granted herein shall run with and bind the Phase One Property and the Additional Property and shall inure to the benefit and be binding upon the parties hereto and their respective transferees, successors and assigns, and all persons claiming under them, subject to the limitations contained herein.

6. Lender's Agreement of Subordination. By its execution of this Easement Agreement, IndyMac Mortgage Holdings, Inc., a Delaware corporation, successor by merger to Independent Lending Corporation, dba Construction Lending Corporation of America ("Lender"), hereby agrees that this Easement Agreement shall be senior in priority to that certain Construction Trust Deed with Assignment of Rents, Security Agreement, Fixture Filing and Financing Statement dated as of January 24, 1997, executed by Grantor as trustor, to


Lender as trustee and beneficiary, recorded in the Official Records of Davis County, Utah, as Entry No. 1306729, in Book 2099, at Page 1448 (the "Trust Deed"), and that the Trust Deed shall be subordinate and subject to this Easement Agreement notwithstanding the fact that this Easement Agreement is recorded later in time than the Trust Deed. This Easement Agreement is executed by Lender solely with respect to this subordination provision, and Lender shall have no other covenants, obligations or liabilities under this Easement Agreement.

GRANTOR:

SHEPARD'S CREEK HOMES, L.C.,  
a Utah limited liability company

By: PCH Investments, L.C.,  
a Utah limited liability company  
Managing Member

By: PSC Development Company,  
a Utah corporation  
Managing Member

By   
Mark B. Cohen, Vice President

GRANTEE:

SHEPARD'S CREEK HOMES, L.C.,  
a Utah limited liability company

By: PCH Investments, L.C.,  
a Utah limited liability company  
Managing Member

By: PSC Development Company,  
a Utah corporation  
Managing Member

By   
Mark B. Cohen, Vice President

LENDER:

INDYMAC MORTGAGE HOLDINGS, INC.,  
a Delaware corporation, successor in merger to  
Independent Lending Corporation of America, Inc.  
d.b.a. Construction Lending Corporation of  
America

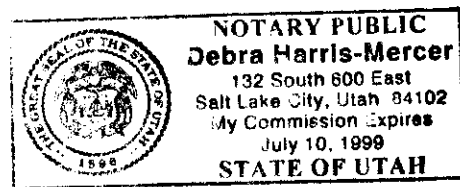
By [Signature]  
Its Vice President

STATE OF UTAH )  
: ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of September, 1998, by Mark B. Cohen, as Vice President of PSC Development Company, a Utah corporation, as Managing Member of PCH Investments, L.C., a Utah limited liability company, as Managing Member of Shepard's Creek Homes, L.C., a Utah limited liability company.

[Signature]  
NOTARY PUBLIC  
Residing at Salt Lake City, Utah

My Commission Expires:  
10 July 1999



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

The foregoing instrument was acknowledged before me this 29 day of September, 1998, by David Nilsson, as Vice President of IndyMac Mortgage Holdings, Inc., a Delaware corporation, successor in merger to Independent Lending Corporation of America, Inc. d.b.a Construction Lending Corporation of America.

William R. Roeder  
NOTARY PUBLIC  
Residing at S-L-C, UT

My Commission Expires:

10-10-98

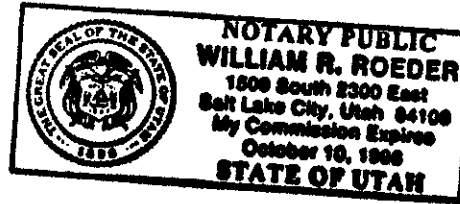


EXHIBIT "A"

E 1444113 B 2364 P 600

Unit No.'s 1 thru 40, inclusive, in Buildings 1 thru 8 and 38 thru 41, inclusive, contained within the THE HOMES AT SHEPARD CREEK PHASE 1, A CONDOMINIUM DEVELOPMENT, a Utah condominium project as identified in the Record of Survey Map recorded June 30, 1997 as Entry No. 1331827, in Book 2147, at Page 129 of Plats, (as said Record of Survey Map may have been amended and/or supplemented) and as further defined and described in the Declaration of Condominium of the THE HOMES AT SHEPARD CREEK PHASE 1, A CONDOMINIUM DEVELOPMENT, recorded June 30, 1997 as Entry No. 1331828, in Book 2147, at Page 130 (as said Declaration may have been amended and/or supplemented) in the Office of the Recorder of Davis County, Utah.

Together with the appurtenant undivided interest in and to the common areas and facilities more particularly described in said Declaration and any amendments and/or supplements thereto.

EXHIBIT "B"

E 1444113 B 2364 P 601

All that certain real property situate, lying and being in Davis County, State of Utah, described as follows:

All that fractional portion of Section 13 and 14, Township 3 North, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

BEGINNING at the Northwest corner of said Section 13; thence South  $00^{\circ}12'06''$  East, along the West line of said Section 13, a distance of 1482.87 feet to a point on the South line of 60 foot wide 1060 North Street; thence along the South line of said 1060 North Street, South  $88^{\circ}52'42''$  East 3.67 feet to the Easterly boundary of Oakridge Country Club Estates Plat III, and the POINT OF BEGINNING of the Parcel herein described; thence South  $88^{\circ}52'42''$  East 343.94 feet; thence North  $72^{\circ}22'00''$  East 21.21 feet to a point on a non-tangent curve to the left, having a radius of 330.50 feet, a central angle of  $19^{\circ}55'16''$  and from which the radius point bears North  $71^{\circ}02'45''$  East; thence Southeasterly along the arc of said curve, 114.91 feet; thence South  $38^{\circ}52'31''$  East 463.63 feet; to the beginning of a curve to the right having a radius of 267.50 feet, and a central angle of  $39^{\circ}59'36''$ ; thence Southeasterly along the arc of said curve 186.72 feet; thence South  $01^{\circ}07'05''$  West 1344.20 feet; thence North  $55^{\circ}30'34''$  West 280.00 feet; thence North  $00^{\circ}17'17''$  East 252.04 feet; thence North  $89^{\circ}42'43''$  West 260.00 feet; thence North  $19^{\circ}47'39''$  West 276.83 feet; thence North  $89^{\circ}42'40''$  West 34.84 feet; thence North  $21^{\circ}15'51''$  West 357.98 feet to a point of intersection of the South line of 60 foot wide 900 North Street at the Easterly boundary of Oakridge County Club Estates Plat III; thence along the Easterly boundary of said Oakridge Country Club Estates Plat III the following three courses: 1) North  $00^{\circ}00'18''$  East 327.89 feet; 2) North  $00^{\circ}15'42''$  West 332.80 feet; 3) North  $01^{\circ}07'18''$  East 311.60 feet to the point of BEGINNING.

LESS AND EXCEPTING THEREFROM THE FOLLOWING:

Unit No.'s 1 thru 40, inclusive, in Buildings 1 thru 8 and 38 thru 41, inclusive, contained within the THE HOMES AT SHEPARD CREEK PHASE 1, A CONDOMINIUM DEVELOPMENT, a Utah condominium project as identified in the Record of Survey Map recorded June 30, 1997 as Entry No. 1331827, in Book 2147, at Page 129 of Plats, (as said Record of Survey Map may have been amended and/or supplemented) and as further defined and described in the Declaration of Condominium of the THE HOMES AT SHEPARD CREEK PHASE 1, A CONDOMINIUM DEVELOPMENT, recorded June 30, 1997 as Entry No. 1331828, in Book 2147, at Page 130 (as said Declaration may have been amended and/or supplemented) in the Office of the Recorder of Davis County, Utah.

Together with the appurtenant undivided interest in and to the common areas and facilities more particularly described in said Declaration and any amendments and/or supplements thereto.

ALSO LESS AND EXCEPTING FROM THE PROPERTY FIRST DESCRIBED ABOVE that portion dedicated to FARMINGTON CITY in that certain Road Dedication Plat of Shepard Creek Parkway, dated March 10, 1998, recorded July 9, 1998, Entry No. 1421193, in Book 2323 at Page 303 of Official Records.