

RETURNED
MAY 15 2012

2661691
BK 5522 PG 138

09-037-0115
09-037-0110
EASEMENT AGREEMENT

E 2661691 B 5522 P 138-146
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
05/15/2012 10:24 AM
FEE \$28.00 Pgs: 9
DEP RTT REC'D FOR BEYOND SPA

This Easement Agreement (the "Agreement") is made to be effective as of the ^{15th} day of May _____, 2012, by and between Northridge Associates, L.C., a Utah limited liability company ("Northridge") and Beyond Spa, Inc., a Utah corporation, Lori Wayland, and Travis Wayland (collectively "Beyond Spa").

RECITALS

- A. Northridge is the owner of property located in Davis County, Utah, more particularly described in Exhibit "A" attached hereto (the "Northridge Parcel").
- B. Beyond Spa is the owner of property adjacent to and east of the Northridge Parcel, more particularly described in Exhibit "B" attached hereto (the "Beyond Spa Parcel").
- C. As requested by Beyond Spa, Northridge is willing to grant Beyond Spa a non-exclusive easement to install a 12 inch reinforced concrete pipe for the purpose of carrying storm water to a Detention Pond adjacent to and west of the Northridge Parcel and to install the concrete box described in paragraph 2 below.

NOW, THEREFORE, in consideration of the promises and covenant contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated in this Agreement by reference.
2. **Grant of Non-Exclusive Easement to Beyond Spa.** Northridge hereby grants, transfers, and conveys to Beyond Spa, its successors and permitted assigns ("Beyond Spa, et al."), a non-exclusive easement and right-of-way over and across a part of the Northridge Parcel as the easement is more particularly described and depicted in Exhibit C attached hereto (the "Easement") for the limited purpose of installing, maintaining, servicing, and repairing a reinforced concrete pipe, not to exceed twelve (12) inches in diameter (the "Concrete Pipe"), to transport storm water drainage from the Beyond Spa Parcel to a 2 foot by 2 foot concrete box with metal grate (the "Concrete Box"), and then to the Detention Pond located immediately west of and adjacent to the Northridge Parcel, where it shall be tied into the Detention Pond in full compliance with all specifications and requirements of Layton City. The Concrete Box shall be constructed, installed, serviced, and repaired by Beyond Spa, et al., also in full conformity with all applicable specifications and requirements of Layton City.

The Easement and its limited use is appurtenant to the Beyond Spa Parcel.

Beyond Spa acknowledges and agrees that its use of the Easement shall not limit or otherwise impair the joint use of the Easement by Northridge or its successors and assigns ("Northridge et al.") for the purpose of installing and using a pipe or pipes, at such time(s) as determined by Northridge et al. to transport storm water drainage from the Northridge Parcel to

the Detention Pond through the Concrete Box. Beyond Spa hereby grants to Northridge et al. the use of the Concrete Box for that purpose. Beyond Spa agrees that the Easement and its use by Beyond Spa shall not preclude or impair, in any way, the use by Northridge, et al. of the ground above and below the Concrete Pipe so long as that use does not unreasonably interfere with Beyond Spa's access to the Concrete Pipe or the Concrete Box for necessary servicing, repairs, or replacements.

3. **Construction, Maintenance, and Repairs.** The costs to install, maintain, service and repair the Concrete Pipe and the Concrete Box shall be borne, solely, by Beyond Spa, which shall also be responsible, at its costs, for the removal of any blockage or clogging of the Concrete Pipe or the Concrete Box, as well as the costs incurred to restore the Northridge Parcel to the condition it was in before any excavations, repairs, or maintenance are undertaken by Beyond Spa et al. with respect to the Easement, the Concrete Pipe, or the Concrete Box, including, but not limited to, the replacement of landscaping, concrete, asphalt, utilities, improvements, and the like. The contractor selected by Beyond Spa to undertake the construction, installation, maintenance, service, and repair of the Concrete Pipe and the Concrete Box shall be subject to the written approval of Northridge, which approval may be given or withheld in Northridge's sole discretion.

4. **Consideration for Easement.** In consideration of Northridge's grant to Beyond Spa of the Easement for the purpose described in this Agreement, Beyond Spa shall pay Northridge, concurrently with the execution of this Agreement, the sum of \$ 7200⁰⁰.

5. **Indemnification.** Beyond Spa shall indemnify, defend, and hold Northridge harmless from and against all claims, demands, losses, damages, liabilities and expenses and all suits, actions, and judgments, including costs and reasonable attorney's fees, arising out of or in any way related to Beyond Spa's use of the Easement, or the negligent or willful misconduct of Beyond Spa.

6. **Running of Benefits and Burdens.** The Easement and the covenants of this Agreement shall run with the Beyond Spa Parcel, shall be binding on the Beyond Spa et al., and shall inure to the benefit of Northridge et al. Beyond Spa agrees that its use of the Easement shall be with due regard to the rights of Northridge and will not prevent or unreasonably interfere with the proper and reasonable use by Northridge of the Northridge Parcel.

7. **Non-Public Grant.** Nothing contained in this Agreement shall be construed or interpreted to constitute a grant of any use, easement, or right-of-way to the public, any public agency or governmental authority.

8. **Notice.** Each party shall give written notice to the other party relating to this Agreement or the use of the Easement, by either personal service, certified mail, return receipt requested, or next day delivery by a nationally recognized overnight courier such as UPS, addressed as follows or to such other address as a party may hereafter specify in writing. The party receiving notice shall have ten (10) days following the receipt of notice to respond to the notice.

If to Northridge: Northridge Associates, L.C.
c/o JRDH Development, LC
670 W. Shepard Lane, Ste 101
Farmington, Utah 84025

If to Beyond Spa: Beyond Spa, Inc.
70 S. Fairfield, #1
Layton, Utah 84041

9. **Default.** If either party defaults in the performance of any of its obligations required under this Agreement, and if at the end of ten (10) days, after written notice from the non-defaulting party stating the nature and extent of the default, the defaulting party has not cured the default, or if a diligent effort is not being made to cure it, then the non-defaulting party, in addition to all other remedies it may have at law or in equity shall have the right to perform such obligation on behalf of the defaulting party and be reimbursed by the defaulting party for the cost thereof with interest at the rate of 18% per annum. Notwithstanding the foregoing provisions, it shall be deemed to be a default by Beyond Spa, et al. if it fails to act promptly to avert to the extent reasonably possible any conditions relating to the Concrete Pipe and Concrete Box that poses a hazard to the Northridge Parcel or to persons, and person occupying premises.

10. **Interpretation.** The rule of strict construction and interpretation does not apply to this Agreement. The language creating the Easement and the covenants, undertakings, and agreements in this Agreement shall be given a reasonable construction so that the intention of the parties to convey reasonable rights, use and enjoyment is carried out.

11. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and may not be amended or modified except by an agreement in writing signed by each of the parties.

12. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, their successors, assigns and legal representatives.

13. **Construction and Interpretation.** Each party has been afforded the opportunity to participate in the drafting of this Agreement and conferring with the party's own attorney. Accordingly, the rule of construction/and interpretation that any ambiguities are to be resolved against the drafting party shall not be followed.

14. **Representation and Comprehension of Documents.** In entering into this Agreement the parties represent and acknowledge that they have read and fully understand and voluntarily accept its terms.

15. **Governing Law.** This Agreement shall be interpreted, performed and enforced according to the laws of the State of Utah and Davis County shall be the venue of any action to arbitrate or otherwise enforce or interpret the provisions of this agreement.

16. **Attorney's Fees.** If either party brings an action to interpret or enforce the terms and conditions of this Agreement, the non-prevailing party shall pay all costs and expenses, including reasonable attorney's fees incurred by the other party in enforcing or interpreting the terms of this Agreement, whether through legal action or otherwise, and shall include such costs and fees incurred in any appeal.

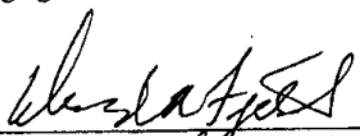
17. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions of this Agreement and it shall be construed in all respects if such invalid portion were omitted.

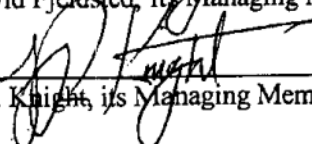
18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall be deemed to be one and the same agreement. The execution of any counterpart may be communicated by e-mail or by facsimile transmission.

19. **Authority.** Each person executing this Agreement warrants that he or she has sole and legal authority to execute it on behalf of the party for which it is signed, and that no further approval or consent of any other person is necessary. Further, each covenants and represents that the execution of this Agreement is not contravention of and will not result in a breach of any other agreement, contract, instrument, order, judgment, or decree.

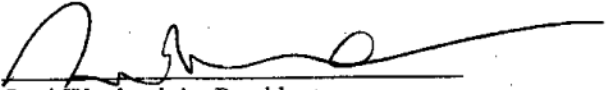
20. **Modification.** This Agreement may not be modified or amended in whole or in part, unless by the written agreement of all Parties, executed and delivered with the necessary formalities of a deed, duly recorded in the appropriate public records where the parcels are located. No waiver of any term, provision or condition of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

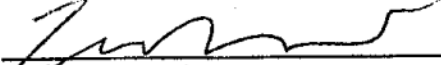
NORTHRIDGE ASSOCIATES, L.C.
a limited liability company, by its
Managing Member JRDH Development, LC

By: 
David Fjeldsted, its Managing Member

By: 
J.R. Knight, its Managing Member

BEYOND SPA, INC.
a Utah corporation

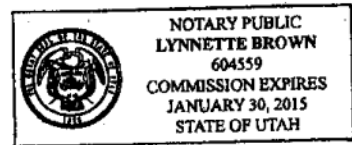
By: 
Lori Wayland, its President

By: 
Travis Wayland

STATE OF UTAH)
)
 :SS
)
COUNTY OF DAVIS)

On this 15th day of ~~April~~ ^{MAY}, 2012, personally appeared before me David Fjeldsted and J.R. Knight, who duly acknowledged to me that he executed the foregoing instrument on behalf of Northridge Associates, L.C. and swore or affirmed to me that his signature is voluntary and the document is truthful.

Lynnette Brown
Notary Public



STATE OF UTAH)
)
 :SS
)
COUNTY OF DAVIS)

On this 15th day of ~~April~~ ^{MAY}, 2012, personally appeared before me Lori Wayland and Travis Wayland, who duly acknowledged to me that she executed the foregoing instrument on behalf of Beyond Spa, Inc. and swore or affirmed to me that her signature is voluntary and the document is truthful.

Lynnette Brown
Notary Public

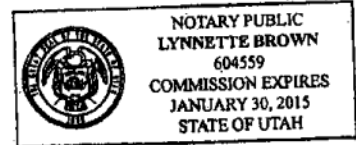


EXHIBIT A

NORTHRIDGE PARCEL

Beginning at a point which is North $0^{\circ}07'52''$ East 1320.72 feet and South $89^{\circ}53'38''$ West 1591.73 feet from the Southeast Corner of Section 8, Township 4 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah, (Basis of Bearing is South $60^{\circ}18'54''$ East from the found witness corner of said Southeast Corner to "Radar") and running thence South $89^{\circ}53'38''$ West 188.10 feet; thence North $29^{\circ}49'09''$ East 111.66 feet to the South Line of Willow Bend Way; thence North $77^{\circ}06'09''$ East 75.89 feet along said line to a point of curvature to a 420.00-foot radius curve to the right; thence along the arc of said curve for a distance of 59.65 feet, (central angle = $08^{\circ}08'13''$, chord bearing and distance = North $81^{\circ}10'15''$ East 59.60 feet); thence South $0^{\circ}08'09''$ West 122.62 feet to the point of beginning, containing 0.40 acres.

EXHIBIT B

BEYOND SPA PARCEL

A part of the Southeast Quarter of Section 8, Township 4 North, Range 1 West, Salt Lake Base and Meridian: Beginning at a point which bears North $0^{\circ}07'52''$ East 1320.71 feet (North 80 rods) along Section line and South $89^{\circ}53'38''$ West 1400.74 feet (West 1385.25 feet), more or less, to the West line of (400 West Street) State HWY U-232 (Which point is the Southeast corner of owners land) from the Southeast corner of said Quarter Section and running thence South $89^{\circ}53'38''$ West (West 191 feet) 190.00 feet; thence North $0^{\circ}08'09''$ East (North) 122.62 feet, more or less, to the South boundary of Willow Bend of Layton Subdivision Phase 1 (said point being on a curve) thence 34.12 feet along the arc of a 420.00 foot radius curve to the right (long chord bears North $89^{\circ}34'01''$ East 34.12 feet) along said Phase 1; thence North $89^{\circ}53'38''$ East 156.92 feet along and beyond said Phase 1 to a point which bears North $0^{\circ}08'09''$ East of the point of beginning; thence South $0^{\circ}08'09''$ West 10.00 feet to the Northeast corner of Book 63, Page 154 of Davis County records; thence South $0^{\circ}08'09''$ West 114.00 feet to the point of beginning.

09-037-0110

EXHIBIT C

EASEMENT

A 10-foot wide easement for storm drain, being 5 feet on both sides of the below described centerline of property located in Davis County, Utah:

Beginning at a point which is North $0^{\circ}07'52''$ East 1320.72 feet and South $89^{\circ}53'38''$ West 1591.73 feet and North $0^{\circ}08'09''$ East 112.58 feet from the Southeast Corner of Section 8, Township 4 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah (basis of bearing is South $60^{\circ}18'54''$ East from the found witness corner to said Southeast Corner to radar) and running thence South $79^{\circ}54'56''$ West 139.94 feet to the Easterly line of the property given for a storm drain detention pond.