



When recorded, return to:
City of St. George
Attn: Legal Department
175 East 200 North
St. George, Utah 84770

Tax ID: SG-GRAY-1 and SG-5-2-27-344012

AMENITY USE AGREEMENT
(Redhawk | Grayhawk Apartments, St. George, Utah)

THIS AMENITY USE AGREEMENT (“**Agreement**”) is effective as of September 20, 2019, by and between Grayhawk Apartments at River’s Edge, LLC, a Utah limited liability company (“**Grayhawk LLC**”); and Bach Rentals, LLC, a Utah limited liability company (“**Bach**”), as current owner of all property comprising the Redhawk Subdivision (as defined below).

RECITALS

A. Grayhawk LLC owns that certain 244 unit residential apartment project known as Grayhawk Apartments located at 2271 Dinosaur Crossing Drive, St. George, Utah (“**Grayhawk Apartments**”), and legally described on Exhibit A attached hereto (the “**Grayhawk Parcel**”). Grayhawk Apartments has a designated pool area and related amenities for the use of its residents (such pool area and the amenities located within such pool area are referred to herein as the “**Amenities**”). Use of the Amenities is subject to the rules and regulations promulgated from time to time by Grayhawk LLC and/or its apartment complex manager (the “**Amenity Rules**”).

B. Bach owns that certain 19 lot subdivision known as Redhawk, which is located adjacent to Grayhawk Apartments (the “**Redhawk Subdivision**”), and legally described on Exhibit B attached hereto (the “**Redhawk Parcel**”). For purposes of this Agreement, “**Redhawk Licensees**” means each owner of a lot within the Redhawk Subdivision, and each such owner’s tenants, guests, and invitees. St. George City has authorized residential units located within the Redhawk Subdivision (each, a “**Redhawk Unit**”) to provide short term rentals. As a result, the term “**Redhawk Licensees**” specifically includes those persons staying short term in any such Redhawk Unit for the duration of their stay. A person will cease to be considered a Redhawk Licensee upon the termination of ownership or authorized occupancy of a Redhawk Unit.

C. Pursuant to that certain Declaration of Access Easement dated January 8, 2019, and recorded on January 9, 2019 in the Washington County Recorder’s Office as Document No. 20190000981 (as amended, the “**Cross Access Easement**”), cross vehicular and pedestrian access exists between the Redhawk Subdivision and Grayhawk Apartments.

D. Subject to the terms hereof, Grayhawk LLC is willing to grant to each Redhawk Unit a perpetual license to use the Amenities.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

AGREEMENT

1. Use of Amenities by Licensees. Subject to (i) payment of the monthly fees required hereunder and (ii) the Redhawk Licensees' compliance with the Amenity Rules; Grayhawk LLC grants to Bach, each Redhawk Unit, and the applicable Redhawk Licensees, a permanent nonexclusive license to access and use the Amenities on the Property (the "License"). For the avoidance of doubt, such License is deemed irrevocable and permanent so long as no default occurs as described in Section 6 below (i.e., upon a default, the License granted hereunder to the Redhawk Licensees of the applicable Redhawk Unit may be suspended or temporarily revoked). The License is severable, meaning that it is granted to each independent Redhawk Unit, and thus the suspension of Redhawk Licensees of one Redhawk Unit will not adversely affect Redhawk Licensees of a different Redhawk Unit; *provided, however*, that suspension of one Redhawk Licensee will also result in suspension of all Redhawk Licensees associated with the same Redhawk Unit. If the License of a Redhawk Unit is suspended or temporarily revoked, that Redhawk Unit automatically loses its right to use the Unit for short term rentals, because short term rental rights are specifically conditioned on access to Amenities. When the License of a Redhawk Unit is reinstated after cure of a default, the Redhawk Unit automatically regains its right to use the Unit for short term rentals. Grayhawk LLC shall enforce the Amenity Rules, and access to the Amenities, by temporary suspension of key card access to the Amenities. The City of St. George ("City") shall not monitor in any way the temporary suspension of access to the Amenities due to enforcement of Amenity Rules. Bach (and each of its successors in interest that own a Redhawk Unit) hereby agrees to use good faith efforts to assist Grayhawk LLC in the enforcement of the Amenity Rules. For the avoidance of doubt, the License does not grant Bach nor any Redhawk Licensee the right to occupy or possess any property located within Grayhawk Apartments, but instead, just the right to use the Amenities during operating hours. Except in the event of maintenance, cleaning, or emergencies, Grayhawk LLC shall cause the Amenities to be open at such times as are customary for such facilities in the St. George metropolitan area.

2. Redhawk Units' Short Term Rental Rights. Pursuant to approvals by City, the right of all Redhawk Units to be utilized as short term rentals is dependent on perpetual access to Grayhawk LLC Amenities. Temporary suspension of an individual Licensee's use right, or key card access to the Amenities due to enforcement of Amenity Rules, shall not be monitored in any way by City, and does not impair the short term rental rights of all Redhawk Units. Grayhawk LLC and Bach may terminate this Agreement, and the right of all the Redhawk Units to use the Amenities at Grayhawk LLC, upon written notice to City, and all Redhawk Units will automatically lose the right to use the Units for short term rentals. The perpetual access to Amenities shall be maintained for all Redhawk Units, or all short term rental rights are automatically terminated for Redhawk.

3. Clubhouse Parking Easement. Subject to the parking use restrictions below, Grayhawk LLC hereby grants to Bach and its tenants, customers, invitees, employees, licensees, successors and assigns a perpetual non-exclusive parking easement for those parking stalls located near any clubhouse or amenities located on the Grayhawk Parcel, subject to the following limitations: (i) parking rights are provided to the same extent parking rights for parking stalls located near the clubhouse and pool amenities are available to residents/occupants of Grayhawk Apartments, (ii) such parking is for short term use only (no overnight parking), and (iii) such parking may not be used for recreational vehicles or trailers.

4. Maintenance of Amenities. Grayhawk LLC agrees to maintain, repair, keep in good, serviceable and useable condition and replace the Amenities and all components, parts and systems in the Amenities for the use described in this Agreement. Grayhawk LLC shall be responsible for compliance with all applicable governmental laws, regulations, ordinances and rules regarding the maintenance, repair and condition of the Amenities. Grayhawk LLC hereby reserves the right, from time to time, to change or alter the improvements that comprise the Amenities, in Grayhawk LLC's reasonable discretion based on market conditions, subject to any approvals required by applicable governmental agencies.

5. Monthly Access Fees. Each owner of a Redhawk Unit shall pay to Grayhawk LLC a monthly fee for shared use of the Amenities (as determined by Grayhawk LLC from time to time, the "**Monthly Access Fee**"). Use of the Amenities for all Redhawk Licensees associated with any such Grayhawk Unit is conditioned upon payment of the Monthly Access Fee. The Monthly Access Fee for 2019 is \$40 per month for each Redhawk Unit.

6. Default and Remedies.

6.1. General. If either party defaults in the performance of its obligations under this Agreement (including parking fines) and such default continues for ten (10) business days after written notice thereof is given by the non-defaulting party to the defaulting party, then the non-defaulting party shall be granted and entitled to all remedies available to it at law or in equity. The right to seek equitable relief will not be considered or construed to be in lieu of or to preclude the right to seek a remedy at law.

6.2. Redhawk Unit Default. Notwithstanding anything herein to the contrary, the license granted hereunder to each Redhawk Unit, and the Redhawk Licensees associated with such Redhawk Unit, is expressly conditioned upon (i) the payment of the applicable Monthly Access Fee to Grayhawk LLC (or its property management company), and (ii) such Redhawk Licensees' compliance with the Amenity Rules.

6.3. Payment Default. If the Monthly Access Fee payable by the owner of a Redhawk Unit is not paid in full within 15 days of the due date, then interest at the rate of twelve percent (12%) per year shall accrue for all unpaid amounts until paid. If such monthly fee is not paid in full within 30 days of the due date, then Grayhawk LLC may suspend access to the Amenities for such Redhawk Unit (and its applicable Redhawk Licensees) until the delinquent payment is made to Grayhawk LLC.

6.4. Violation of Amenity Rules; Suspension of Rights. Notwithstanding anything herein to the contrary, Grayhawk LLC hereby reserves the right to immediately suspend individual Redhawk Licensees' access to the Amenities for any of the following reasons: (i) failure to comply with the Amenity Rules, (ii) damage to any of the Amenities caused by such Redhawk Licensee(s) or resulting from such Redhawk Licensee(s)' actions or inaction, (iii) threatening or unsafe behavior exhibited by Redhawk Licensee(s), (iv) any other reason that is deemed by Grayhawk LLC (in its reasonable discretion) to present a danger to the Amenities or occupants of the Amenities. Notwithstanding Grayhawk LLC's right to suspend individual Redhawk Licensee's access to the Amenities, such right does not in any way impose any duty on Grayhawk LLC (or obligation) to actually suspend an individual Redhawk Licensee or any other person from using the Amenities.

7. Attorneys' Fees and Costs. Should either party institute a legal action or an arbitration proceeding to enforce any of its rights set forth in this Agreement, then the prevailing party shall be entitled to reimbursement of its cost, expenses and reasonable attorneys' fees incurred in such action or proceeding as determined by the arbitrator or the court in any such action.

8. Indemnification. Each owner of a Redhawk Unit shall indemnify, defend and hold harmless Grayhawk LLC and its current and former owners, members, managers, directors, officers, employees, attorneys, other agents, affiliates, successors and assignees ("**Grayhawk Parties**") from and against all judgments, liabilities, losses, damages (including consequential damages), costs, expenses (including reasonable attorneys' fees), repairs, and other amounts suffered or incurred by the Grayhawk Parties as the result of the use of the Amenities by Redhawk Licensees, including without limitation, any cause of action, lawsuit, claim or other assertion of any right, whether or not meritorious ("**Claim**") made by any person that arises out of (a) a Redhawk Licensee's breach of this Agreement, or (b) any negligent or intentionally wrongful act or omission by or on behalf of a Redhawk Licensee. The applicable Grayhawk

Party will have the right to select and approve the legal counsel that defends such Grayhawk Party. Bach, on behalf of itself and all Redhawk Licensees and owners of Redhawk Units, hereby waives any claim against Grayhawk Parties for injury or damage that occurs at the Amenities, unless caused solely by the gross negligence or intentional misconduct of a Grayhawk Party, and then, such liability shall only extend to the person responsible for such gross negligence or intentional misconduct. Grayhawk LLC reserves the right to require Redhawk Licensees to sign a release form from time to time that is consistent with this paragraph.

9. Term. The term of this Agreement is perpetual and shall be binding on each party and their successors in interest.

10. Miscellaneous.

10.1. Amendment. This Agreement may be amended, modified or revoked only by an instrument in writing reciting such revocation or amendment, bearing the signatures of all parties hereto, or their successors and assigns; *provided, however that the terms upon which access to the Grayhawk Apartments' Amenities is made available to Redhawk Unit(s) hereunder cannot be amended, modified, or revoked without the express, written consent of the City of St. George; provided further, that any such amendment will not be effective until it is recorded in the office of the Washington County Recorder.*

10.2. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto.

10.3. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument. Any fax, pdf or other electronic signature to this Agreement shall be deemed to be an original signature for all purposes.

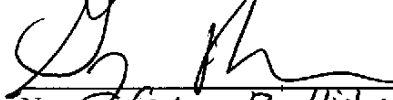
10.4. Governing Law. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the State of Utah, without giving effect to its conflict of laws principles.

[SIGNATURES ON FOLLOWING PAGE]

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


GRAYHAWK LLC:

GRAYHAWK APARTMENTS AT RIVER'S EDGE, LLC, a Utah limited liability company


Name: Greg Rindlisbacher
Title: Managing Member

BACH:

BACH RENTALS, LLC, a Utah limited liability company

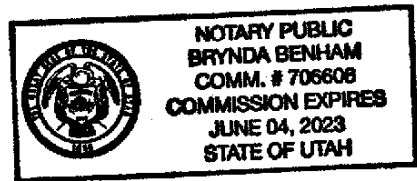

Name: Greg Rindlisbacher
Title: Managing Member

STATE OF UTAH)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this 20th day of September, 2019, by Greg Rindlisbacher as an authorized agent of Grayhawk Apartments at River's Edge, LLC, on behalf of such company.

Brynda Benham
Notary Public

STATE OF UTAH)
) ss.
County of Salt Lake)



The foregoing instrument was acknowledged before me this 20th day of September, 2019, by Greg Rindlisbacher as an authorized agent of Bach Rentals, LLC, on behalf of such company.

Brynda Benham
Notary Public

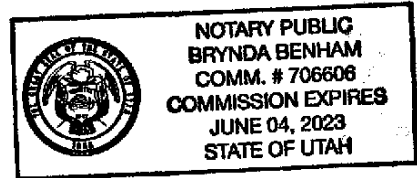


EXHIBIT A
LEGAL DESCRIPTION OF GRAYHAWK PARCEL

GRAYHAWK APARTMENTS, according to the official plat thereof recorded with the office of the Washington County Recorder, State of Utah.

EXHIBIT B
LEGAL DESCRIPTION OF REDHAWK PARCEL

Lots 1-19, REDHAWK, a residential planned unit development, according to the official plat thereof recorded with the office of the Washington County Recorder, State of Utah.