



**After Recording Return To:  
Cimmaron Terrace HOA, Inc.  
P O Box 288  
Washougal, WA 98671**

State of Oregon County of Umatilla	
Instrument received and recorded on 10/29/2019 11:47:15 AM	
in the record of instrument code type DE-EAS	
Instrument number 2019-6920816 \$111.00	
Office of County Records	
 Records Officer P4	

**BUILDING MAINTENANCE AND PRIVATE ACCESS EASEMENT FOR  
Cimmaron Terrace, Phase One, Hermiston, OREGON**

WITNESSETH:

Whereas American Development Co. #100, LLC, Hanes-Zoller Joint Venture, and Vestcapital Fund III, LLC (collectively the "Owner"), and developer (Declarant); Legally Described as:

Lots 1 through 74 Cimmaron Terrace, Phase One, City of Hermiston, County of Umatilla and State of Oregon ("Property"),

has developed 74 attached, zero lot line, Townhomes on the Property.

Whereas, the elements as specified herein will be maintained by the owners and/or the Homeowners Association (Association) of the Property.

Now, therefore, it is agreed as follows:

- 1) The word "Elements" as referred to in this agreement includes, but is not limited to, the property line firewalls, roof overhangs, structural connections, footing, roofing, siding crossing the property lines of the parcels, and the water lines, storm sewers, sanitary sewers, rain drains, footing drains, drainage lines and fences within the property lines of the parcels necessary for the construction of the Townhomes on the Property, together with all parts and/or portions of property defined as common elements under Oregon law.
- 2) Each owner of the Property, together with and subject to duties and obligation of established Association of record, shall maintain the Elements in a good and safe condition and in compliance with the appropriate State of Oregon building codes, including specialty codes. Structural Elements identified as or necessary for lateral stability, including but not limited to horizontal and vertical strapping, foundation tie downs, and plywood sheathing, shall not be altered without the analysis and written approval of a structural engineer registered in the State of Oregon and by permit from all governing jurisdictions.
- 3) The cost of reasonable repair and maintenance of the Elements shall be shared by the owners who make use of the Elements in proportion to such use, or as otherwise provided by the Homeowners Association. Absent evidence to the contrary, it shall be presumed that the owners of the Property use the Elements in equal proportions. If an owner or his agent acts or fails to act in a manner that requires repaid of the Elements other than through normal wear, such owner shall

bear the full cost and responsibility of returning the Elements to their condition prior to such act or omission. In the event such owner refuses or neglects to restore said elements, and other Property owner may have such repairs made and assess the Property owner causing the need for the repairs with the reasonable cost of such repairs. In the event the owner causing the need for repairs fails to pay the cost of such repairs within ten days following written demand for payment, the owner who paid for the repairs may claim a lien on the portion of the Property owned by the noncomplying owner for the amount of the repairs, together with interest thereon from the date of payment at 12% per annum until paid, together with the reasonable attorney fees in all forums incurred by the owner demanding payment. Such lien shall be foreclosed in accordance with Oregon law.

4) An owner or Association maintaining, repairing and /or reconstructing one or more Elements shall have the right of access over the adjacent owner's parcel to the extent reasonably necessary to affect the same.

5) If any portion of the party wall or other part of the building or structure now or hereafter constructed upon said Property encroaches upon any part of the parcel or parcels used or designated for use by another owner, an easement the encroachment and the maintenance of same is hereby granted to all present and future owners of such encroaching building or structure for the purpose of occupying and maintaining the same; in the event a unit becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements are granted to each owner and reserved by each owner on and upon each unit and parcel for the foregoing purposes.

6) All lots are subject to a public utility easement of record for installation, maintenance, repair and replacement of all utilities, serving the Property, as necessary for utility storm sewer purposes. All utilities using these easements shall promptly return the Property at the utility's sole expense to the property's original finished condition prior to the utility's repair or installation.

7) These access and maintenance easements created herein shall burden, benefit and attach to the Property, shall run in perpetuity with the Property and shall be binding on all successors in interest to Owner.

8) This agreement may be amended at any time by all owners of said lots with the exception of those elements required by the state building code as defined in ORS 455.010, which elements shall be maintained without exception. A copy of the amended agreement shall be supplied to and reviewed by the governing jurisdiction's building official. The amended agreement shall be recorded following such review with the county recorder's office.

9) The parties shall hold harmless, defend and indemnify the City of Hermiston, Oregon, American Development Co. #100, LLC, Hanes-Zoller Joint Venture, the Association, and their officers, directors, members, agents and employees against all claims, demands, actions and suits including attorney's fees and cost brought against any of them arising out of and/or related to the Elements, including without limitation failure to properly design, locate and construct, repair and/or maintain the Elements.

10) The parties acknowledge that this agreement is executed in part to comply with the appropriate State of Oregon specialty code.

11) Each Lot that shares a common driveway access, grants a non-exclusive Private Access Easement to the adjoining Lot solely for ingress and egress across that portion of the neighboring lot extending 10.00 feet on each side of the common boundaries between Lots and extending from

the front property line to the existing or proposed residential townhome, for the purpose of access and shared maintenance. The Shared Access easement is limited to access and maintenance and is not an easement to reside or occupy across a neighboring property line. Each easement shall run with the land in perpetuity. All decisions concerning the repair, maintenance, and replacement of a Shared Access Easement shall be vested with the common neighboring owners of adjoining Lots and not the Association, all of whom are obligated to contribute on an equal pro rata basis to the repair, maintenance and/or replacement costs of the Shared Access. If not otherwise allowed by law, all Owners or the governing Association, shall make all decisions unanimously relating to the foregoing Shared Access Easements with respect to all reasonable and necessary maintenance, repair and/or replacement expenses. All such decisions shall be in writing and signed by all owners or board approving such expenses. Notwithstanding the foregoing, at all times the Shared Access shall be maintained in safe condition and shall comply with all applicable municipal codes and ordinances. In the event that the parties are unable to agree as to any matter covered by this paragraph, including specifically but not limited to the necessity for access repair or maintenance work, the dispute shall be settled by binding arbitration. The arbitrator shall be appointed by a presiding Judge of the Umatilla County Circuit Court upon request of any party bound by this agreement. The prevailing party, or parties, shall recover reasonable attorney fees, in arbitration, at trial, and on appeal.

12) All Owners of record hereby agree to the foregoing and upon notarized signature(s), shall cause this agreement to be recorded in the Umatilla County records.

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[signature Page]

IN WITNESS WHEREOF, the undersigned being the Declarant and 100% of ownership of record, have executed this instrument this 25 day of OCTOBER, 2019

Declarant/Owner(s) of record:

American Development Co. No. 100, LLC

By: Mark H Zoller

Mark H Zoller, M H Zoller Co. LLC, for Hanes-Zoller managing member.

Hanes-Zoller Joint Venture

By: Mark H Zoller

Mark H Zoller, M H Zoller Co. LLC, managing partner

Vestcapital Fund III, LLC

By: Mark H Zoller

Mark H Zoller, Hanes-Zoller JV, for Vestcapital Funds III Management, LLC

WASHINGTON

COUNTY OF CLACK

I certify that I know or have satisfactory evidence that Mark H Zoller, is the managing member and the person(s) authorized to sign for the entities herein, who appeared before me, and said person(s) acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes therein mentioned in this instrument.

Dated: Oct 25, 2019

Kacey L Souki  
Notary

Notary Public in and for the State of Washington

Residing at: Cummins, WA

My appointment expires: 12/15/21 State of Washington

KACEY L SOUKI  
NOTARY PUBLIC  
STATE OF WASHINGTON  
COMMISSION EXPIRES  
DECEMBER 15, 2021