

MONROE COUNTY CLERK'S OFFICE

Return To:

BOX 30

Index DEEDS

Book 10269 Page 0562

No. Pages 0010

Instrument EASEMENT AGRMNT

Date : 3/15/2006

Time : 5:19:00

Control # 200603151026

ROCHESTER INSTITUTE OF TECHNOLOGY
RIVERS RUN LLC

TT# TT 0000 016090

ROCHESTER INSTITUTE OF TECHNOLOGY
RIVERS RUN LLC

Employee ID BZ40

MORTGAGE TAX

FILE FEE-S	\$	19.00	MORTGAGE AMOUNT	\$	.00
FILE FEE-C	\$	8.00	BASIC MORTGAGE TAX	\$	.00
REC FEE	\$	30.00	SPEC ADDIT MTG TAX	\$	.00
TRANS TAX	\$	.00	ADDITIONAL MTG TAX	\$	.00
MISC FEE-C	\$	5.00	Total	\$	.00
	\$	.00			
	\$	.00			
	\$	.00			
	\$	.00			
Total:	\$	62.00			

STATE OF NEW YORK
MONROE COUNTY CLERK'S OFFICE

TRANSFER AMT

WARNING - THIS SHEET CONSTITUTES THE CLERKS ENDORSEMENT, REQUIRED BY SECTION 317-a(5) & SECTION 319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH OR REMOVE.	TRANSFER AMT	\$	.00
	TRANSFER TAX	\$	.00

Cheryl Dinolfo
Monroe County Clerk



D102690562

ACCESS AND UTILITY EASEMENT

THIS ACCESS AND UTILITY EASEMENT, dated as of March 15, 2006, is by and between ROCHESTER INSTITUTE OF TECHNOLOGY, a New York educational corporation having an office at Five Lomb Memorial Drive, Rochester, New York 14623 ("Grantor") and RIVERS RUN, LLC, a New York limited liability company having an office at 50 Fairwood Drive, Rochester, New York 14623 ("Grantee").

WITNESSETH:

WHEREAS, Grantor owner of in fee of a certain parcel of land located in the Town of Henrietta, Monroe County, New York, located on the northwesterly corner of Fairwood Drive and East River Road, constituting tax map number 174.001-02-58.1, as more particularly bounded and described in Exhibit "A" attached hereto (the "Grantor's Land"); and

WHEREAS, Grantee is the owner in fee simple of a certain parcel of land in the Town of Henrietta, Monroe County, New York, having tax map number 174.01.02-58.2, as more particularly bounded and described in Exhibit "B" attached hereto ("Grantee's Land"), having acquired such land from Grantor, pursuant to a deed intended to be recorded in the Monroe County Clerk's Office prior to the recording of this Access and Utility Easement; and

WHEREAS, Grantee intends to develop, construct and operate a senior housing project on the Grantee's Land and related support services and common facilities (collectively, the "Project"); and

WHEREAS, the parties desire to create a non-exclusive easement over, under and across a portion of Grantor's Land, as more particularly bounded and described in Exhibit "C" attached hereto (the "Easement Premises"), (a) for vehicular and pedestrian access to and from the Grantee's Land along a portion of a certain non-dedicated road known as Fairwood Drive and (b) to lay, relay, maintain, repair, operate and remove water transmission lines, natural gas transmission lines, electricity transmission lines, telephone transmission lines, television cable transmission lines, sanitary sewer lines and other utility service lines to provide such utility services to the Project;

NOW, THEREFORE, in consideration of ONE AND NO/100 DOLLARS (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- Grantor grants to Grantee a non-exclusive easement over, under and across the Easement Premises (a) for vehicular and pedestrian access to and from the Grantee's Land along a portion of a certain non-dedicated road known as Fairwood Drive (the "Access Road") and (b) to lay, relay, maintain, repair, operate and remove water transmission lines, natural gas transmission lines, electricity transmission lines, telephone transmission lines, television cable transmission lines, sanitary sewer lines and other utility service lines to provide such utility services to the Project (collectively, the "Utility Facilities").

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2. Grantor shall maintain and repair the Access Road at Grantor's sole cost and expense including, without limitation, resurfacing of the asphalt surface when reasonably necessary and removal of snow and ice. In the event that Grantor fails to perform Grantor's obligations under this Section 2, Grantee may, after reasonable prior notice to Grantor, perform such obligations. In that event, Grantee shall submit a detailed statement to Grantor for the actual costs incurred by Grantee in performing such obligations, and Grantor shall reimburse Grantee for such actual costs incurred by Grantee within 30 days after receipt by Grantor of such statement.

3. This easement is non-exclusive to Grantee, and Grantor reserves the right, power and privilege to utilize the Easement Premises from time to time to the extent it deems necessary for any of its own present or future purposes so long as such utilization does not unreasonably obstruct (except on a temporary basis) use of the Easement Premises by Grantee pursuant to the terms of this easement. This easement does not convey any rights of use of air space above the Easement Premises (except for that air space needed for vehicular and pedestrian passage and maintenance and repair pursuant to the terms of this easement).

4. Grantee shall have the right to relocate all or any portion of the Easement Premises and the Access Road on a one-time basis in connection with the initial development of the Project to other premises owned by Grantor (such relocated Easement Premises and such relocated Access Road being hereinafter referred to, respectively, as the "Relocated Easement Premises" and the "Relocated Access Road"), at Grantee's sole cost and expense, provided that: (a) any such relocation shall not unreasonably interfere with or obstruct Grantor's access to or use of other lands or improvements owned by Grantor; (b) any such relocation shall not unreasonably interfere with or obstruct access to or use of other lands or improvements owned by third parties who have the right to use the Access Road or the Utility Facilities; (c) Grantee shall have submitted to Grantor and Grantor shall have approved, which approval shall not be unreasonably withheld, plans and specifications for the Relocated Access Road; (d) the Relocated Easement Premises and the Relocated Access Road shall each have approximately the same width as the Easement Premises or the Access Road, as the case may be; (e) Grantee shall, at Grantee's sole expense, obtain and deliver to Grantor for Grantor's review and approval in Grantor's reasonable discretion (i) an instrument survey map of the Relocated Easement Premises (the "Relocated Easement Premises Survey") and (ii) a complete metes and bounds description of the Relocated Easement Premises (the "Relocated Easement Premises Legal Description"), and Grantor shall approve the Relocated Easement Premises Survey and the Relocated Easement Premises Legal Description; (f) to the extent necessary, Grantee shall, at Grantee's sole cost and expense: (i) construct the Relocated Access Road in a good and workmanlike manner in accordance with sound engineering standards to accommodate the reasonably anticipated vehicular and pedestrian traffic over the Relocated Access Road following completion of construction of the Project; and (ii) lay or arrange for the laying of the Utility Facilities within the Relocated Easement Premises to provide such facilities under reasonably similar conditions as the facilities located within the Easement Premises immediately prior to such relocation; (g) Grantee shall obtain, at Grantee's sole cost and expense, all necessary governmental land use approvals and permits for the relocation of the Easement Premises and the Access Road and, to the extent necessary, for the construction of the Relocated Access Road and the laying of the Utility Facilities within the Relocated Easement Premises; (h) Grantee shall obtain, at Grantee's sole cost and expense, all necessary approvals for the

relocation of the Access Road and the Utility Facilities from any other persons who have the right to use the Access Road or the Utilities Facilities; (i) Grantee shall prepare and deliver to Grantor, at Grantee's sole cost and expense, an amendment to this easement, for execution by Grantor and Grantee, which substitutes the Relocated Easement Premises for the Easement Premises, and (j) Grantee shall arrange for the recording, at Grantee's sole cost and expense, of such amendment to this easement in the Monroe County Clerk's Office.

5. Grantee shall indemnify, defend, and hold harmless Grantor from all claims of loss, damage or injury of any kind and nature whatsoever arising in connection with the use of the Easement Premises or the Access Road by Grantee, its agents, servants, employees and contractors, except to the extent that such claims of loss, damage or injury are caused by the negligence or willful misconduct of Grantor, its agents, employees or contractors.

6. Grantor shall indemnify, defend, and hold harmless Grantee from all claims of loss, damage or injury of any kind and nature whatsoever caused by Grantor, its employees or agents acting within the scope of their employment or agency, as the case may be, and arising in connection with the use of the Easement Premises or the Access Road by Grantor, its agents or employees (collectively, "Damages"), except to the extent that the Damages are caused by the negligence or willful misconduct of Grantee, its agents, employees, contractors, residents, visitors or invitees.

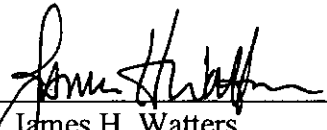
7. With the prior written consent of Grantor in its sole discretion, and subject to such conditions as Grantor may, in its sole discretion, impose, Grantee may, at Grantee's sole cost and expense, apply to the Town of Henrietta for, and obtain, dedication of any or all of the Access Road to the Town of Henrietta. If Grantor shall have consented to any such application by Grantee, Grantor shall, to the extent required by applicable law, join in any such application; provided, however, that Grantee shall reimburse Grantor for all of Grantor's costs and expenses in joining in any such application, including, without limitation, the reasonable fees and disbursements of Grantor's attorneys, engineers and other consultants.

8. This easement shall run with the land and shall be binding on and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first above written.

GRANTOR:

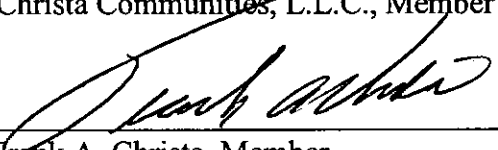
ROCHESTER INSTITUTE OF TECHNOLOGY

By: 
Name: James H. Watters
Title: Senior Vice President, Finance and Administration

GRANTEE:

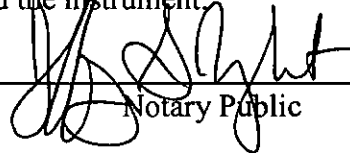
RIVERS RUN, LLC

By: Living Communities, L.L.C., Sole Member
By: Christa Communities, L.L.C., Member

By: 
Frank A. Christa, Member

STATE OF NEW YORK)
SS:
COUNTY OF MONROE)

On March 14, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared James H. Watters, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

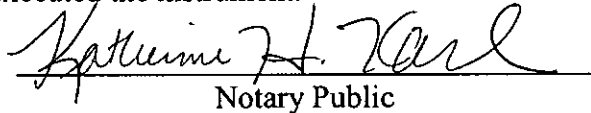


Notary Public

JEFFREY G. WRIGHT
Notary Public, State of New York
Registration #: 02WR6086753
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires: 02/03/20 02

STATE OF NEW YORK)
SS:
COUNTY OF MONROE)

On March 15, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Frank A. Christa, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.



Notary Public

KATHERINE H. KARL
Notary Public, State of New York
Qualified in Monroe County
Commission Expires November 14, 20 06

Exhibit "A"

Metes and Bounds Description of Grantor's Land

RIVERS RUN SUBDIVISION - LOT 1(Athenaeum Parcel)

Tax Map #174.01-02-58.1

ALL THAT TRACT OR PARCEL OF LAND situate and being part of Town Lot 13, Sixth Range, Township 12, Range 7, Town of Henrietta, County of Monroe and State of New York and being more particularly described as follows:

- 1.) **BEGINNING AT A POINT** on the westerly highway boundary of East River Road, County Route 84 (66 feet wide), said point being on the southerly property line of lands now or formerly owned by Rochester Institute of Technology (Tax map #174.01-02-58) as filed in the Monroe County Clerk's office as liber 7244 of deeds page 4; thence,
- 2.) Westerly, along the southerly property line of said lands of the Rochester Institute of Technology, a distance of 950.33 feet to a point; thence,
- 3.) N 02°25'17" W, a distance of 186.71 feet, to a point; thence,
- 4.) N 24°47'43" E, a distance of 253.41 feet, to a point; thence,
- 5.) N 56°06'01" E, a distance of 252.93 feet, to a point; thence,
- 6.) N 01°48'32" W, a distance of 224.79 feet, to a point on the northerly boundary line of lands now or formally owned by Rochester Institute of Technology (Tax map# 174.01-02-58); thence,
- 7.) N 88°11'28" E, a distance of 414.33 feet, to a point; thence,
- 8.) S 03°22'32" E, a distance of 349.08 feet, to a point; thence,
- 9.) N 86°37'28" E, a distance of 189.25 feet, to a point on the westerly highway boundary of East River Road; thence,
- 10.) Southerly, along westerly highway boundary of East River Road, a distance of 418.66 feet, to the **PLACE AND POINT OF BEGINNING, BEING 12.416 ACRES** of land, more or less.

All as shown as Lot 1 on a map titled "Rivers Run Subdivision Plat" prepared by Environmental, Design & Research, P.C. and filed in the Monroe County Clerk's Office on December 8, 2004 at Liber 322 of Maps, Page 60.

Exhibit "B"

Metes and Bounds Description of Grantee's Land

ALL THAT TRACT OR PARCEL OF LAND situate and being part of Town Lot 13, Sixth Range, Township 12, Range 7, Town of Henrietta, County of Monroe and State of New York and being more particularly described as follows:

COMMENCING at a point on the westerly highway boundary of East River Road, County Route 84 (66 feet wide), said point being on the southerly property line of lands now or formerly owned by Rochester Institute of Technology (Tax map #174.01-02-58) as filed in the Monroe County Clerk's Office as liber 7244 of deeds page 4; thence, Westerly, along the southerly property line of said lands of the Rochester Institute of Technology, a distance of 950.33 feet to the **POINT OF BEGINNING**; thence,

- 1.) S 87°34'43" W, a distance of 1457.31, to a point; thence,
- 2.) N 22°40'45"W, a distance of 84.54 feet, to a point on the southerly boundary line of lands now or formally owned by Rochester Institute of Technology (Tax map #174.01-02-59); thence,
- 3.) N 88°11'28"E, a distance of 163.00 feet, to a point; thence,
- 4.) N 04°48'55"W, a distance of 439.63 feet, to a point on the southerly boundary line of lands now or formally owned by Rochester Institute of Technology; thence,
- 5.) S 88°11'28"W, a distance of 202.80 feet, to a point; thence,
- 6.) N 05°52'42"E, a distance of 40.36 feet, to a point; thence,
- 7.) N 04°11'03"E, a distance of 80.44 feet, to a point; thence,
- 8.) N 88°11'28"E, a distance of 182.70 feet, to a point; thence,
- 9.) N 04°48'55" W, a distance of 150.21 feet, to a point; thence,
- 10.) N 88°11'28" E, a distance of 58.39 feet, to a point; thence,
- 11.) N 11°16'38" E, a distance of 401.74 feet, to a point; thence,
- 12.) N 50°09'58"E, a distance of 23.27 feet, to a point; thence,
- 13.) N 88°01'28"E, a distance of 1070.78 feet, to a point; thence,
- 14.) S 02°02'47"E, a distance of 408.76 feet, to a point; thence,
- 15.) N 88°11'28"E, a distance of 447.20 feet, to a point; thence,
- 16.) S 01°48'32"E, a distance of 224.79 feet, to a point; thence,

- 17.) S 56°06'01"W, a distance of 252.93 feet, to a point; thence,
- 18.) S 24°47'43"W, a distance of 253.41 feet, to a point; thence,
- 19.) S 02°25'17"E, a distance of 186.71 feet, to the **PLACE AND POINT OF BEGINNING, BEING 38.028 ACRES** of land, more or less.

All as shown as Lot 2 on a map titled "Rivers Run Subdivision Plat" prepared by Environmental, Design & Research, P.C. and filed in the Monroe County Clerk's Office on December 8, 2004 at Liber 322 of Maps, Page 60.

Exhibit "C"

Metes and Bounds Description of Easement Premises

Access and Utility Easement

ALL THAT TRACT OR PARCEL OF LAND situate and being part of Town Lot 13, Sixth Range, Township 12, Range 7, Town of Henrietta, County of Monroe and State of New York and being more particularly described as follows:

BEGINNING at a point on the westerly highway boundary of East River Road, County Route 84 (66 feet wide), said point being on the southerly property line of lands now or formerly owned by Rochester Institute of Technology (Tax map #174.01-02-58) as filed in the Monroe County Clerk's office as liber 7244 of deeds page 4; thence,

- 1.) Westerly, along the southerly property line of said lands of the Rochester Institute of Technology, a distance of 950.33 feet to a point; thence,
- 2.) N 02°25'17" W, a distance of 50.00, to a point; thence,
- 3.) N 87°34'43" E, a distance of 950.54 feet, to a point on the westerly highway boundary of East River Road; thence,
- 4.) Southerly, along the westerly highway boundary of East River Road, a distance of 49.95 feet, to the **PLACE AND POINT OF BEGINNING**, BEING 1.090 ACRES of land, more or less.

All as shown on a map titled "Rivers Run Subdivision Plat" prepared by Environmental, Design & Research, P.C. and filed in the Monroe County Clerk's Office, on December 8, 2004 at Liber 322 of Maps, Page 60.