

When Recorded, Mail To:  
Eastside Investors, LLC  
180 N University Ave., Suite 820  
Provo, UT 84601

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Gary W. Ott  
Recorder, Salt Lake County, UT  
FOUNDERS TITLE  
BY: eCASH, DEPUTY - EF 29 P.

(Space above for Recorder's use only)

**AMENDED AND RESTATED DECLARATION OF EASEMENTS,  
COVENANTS AND RESTRICTIONS  
[EMIGRATION COURT]**

THIS AMENDED AND RESTATED DECLARATION (the "**Declaration**") is made as of this 6<sup>th</sup> day of SEPTEMBER, 2011 (the "**Effective Date**"), by and among TGM Emigration LLC, a Delaware limited liability company (the "**Phase I Owner**"), Broadway Place Investors, LLC, a Utah limited liability company (the "**Phase II Owner**"), and Eastside Investors, LLC, a Utah limited liability company (the "**Phase III Owner**"), each in its capacity as the sole owner of its respective Phase in the hereinafter described Development in Salt Lake City, Utah.

**RECITALS:**

- A. Salt Lake Apartment Builders, LLC, a Utah limited liability company (the "Original Declarant") owned approximately 4.588 acres of real property located between 500 East and 600 East, and between 300 South and 400 South, in Salt Lake City, Utah, which real property is more particularly described on **Exhibit A** attached hereto (the "**Property**"). The Original Declarant divided the Property into three phases as shown on the site plan (the "**Original Site Plan**") attached hereto as **Exhibit B** (to be known herein as "Phase I", "Phase II" and "Phase III"). The Original Declarant constructed on Phase I an apartment project known as the "Emigration Court Apartments" containing approximately 238 residential apartment units, approximately 4,000 square feet of related additional space and improvements.
- B. Phase I Owner acquired Phase I on or about March 30, 2009, from a successor in interest to the Original Declarant.
- C. Phase II Owner acquired Phase II on or about November 15, 2010, from a successor in interest to the Original Declarant and will develop and construct an apartment complex containing approximately 73 residential apartment units in accordance with and as shown on the New Site Plan attached hereto as **Exhibit C**.
- D. Phase III Owner acquired Phase III on or about November 15, 2010, from a successor in interest to the Original Declarant and will develop and construct an apartment complex containing approximately 180 residential apartment units in accordance with and as shown on the New Site Plan attached hereto as **Exhibit C**.

ACCOMMODATION RECORDING ONLY  
FOUNDERS TITLE COMPANY MAKES NO  
REPRESENTATION AS TO CONDITION  
OF TITLE NOR DOES IT ASSUME  
ANY RESPONSIBILITY FOR VALIDITY  
SUFFICIENCY OR AFFECT OF THIS  
DOCUMENT OR THE RECORDING THEREOF

- E. Phase I, Phase II and Phase III are sometimes referred to collectively herein as the "**Development**."
- F. The Original Declarant subjected the Development to the conditions, covenants, restrictions and easements set forth in that certain Declaration of Easements, Covenant and Restrictions [EMIGRATION COURT], dated May 26, 2006, and recorded on May 26, 2006, as Entry No. 9735475 in Book 9299 at Pages 6002 to 6024 of the official record of the Salt Lake County Recorder (the "**Original Declaration**").
- G. Phase II Owner and Phase III Owner have prepared a conceptual plan, which appears on the New Site Plan attached hereto as **Exhibit C**, for the financing and construction of improvements on Phase II and Phase III, which affect some of the provisions of the Original Declaration.
- H. Phase I Owner, Phase II Owner and Phase III Owner desire to amend and restate the Original Declaration in its entirety upon the terms, covenants, and conditions set forth herein and agree that as of the date hereof, the Original Declaration shall be deemed to have been terminated and the provisions of this Declaration shall supersede and supplant all prior agreements between Phase I Owner, Phase II Owner, and Phase III Owner with respect to the subject matter set forth herein.
- I. All conditions, covenants, restrictions and easements herein stated shall run with the land comprising the Development and all Owners (defined below), including their successors and assigns, Occupants (defined below) and Permittees (defined below), shall all be conclusively deemed to have consented and agreed to conform to and observe the same.

NOW, THEREFORE, the undersigned Owners declare that the Property and the Development is held and shall be owned, sold, conveyed, leased, occupied, resided upon, mortgaged and held subject to the following restrictions, conditions, covenants and easements:

#### **ARTICLE 1** **DEFINITIONS**

1.1 "**Amenities**" means the improvements constructed by the Original Declarant and located on the surface of the top level above the on-grade parking facility located on Phase I.

1.2 "**Applicable Law**" means all applicable laws, statutes, ordinances, building codes and other relevant codes, rules, regulations, orders, permits, licenses, directions, requirements, and applicable judicial decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities, including, without limitation, building, zoning, and land use laws.

1.3 "**Business Day**" means any day other than a day on which banks in the state of Utah shall be permitted or required to close.

1.4 **“Drive Aisles”** means collectively the North Drive Aisle and the South Drive Aisle, both as defined herein, as depicted on the New Site Plan, and as described as follows: (i) the two on-grade drive aisles that now exist on the north and south sides of the building located on Phase I and that will exist on the south side of Phase II and the north and south sides of Phase III and running east and west between 500 East and 600 East in order to facilitate traffic flow throughout the Development, (ii) the on-grade drive aisle running south to north between the Phase I building and the Parking Garage (the **“Drive Aisles Connection”**), and (iii) the sidewalks running contiguous or parallel to the North Drive Aisle, the South Drive Aisle, and the Drive Aisles Connection. The drive aisle that now exists on the south side of the building located on Phase I and that will exist on the south side of the buildings to be constructed on Phase III of the Development is referred to herein as the **“South Drive Aisle,”** and the drive aisle that now exists on the north side of the building located on Phase I and that will exist on the south side of Phase II and on the north side of Phase III of the Development is sometimes referred to herein as the **“North Drive Aisle.”** The North Drive Aisle, the South Drive, and the Drive Aisles Connection are more particularly located and depicted on the New Site Plan.

1.5 **“Governmental Authorities”** means any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any departmental agency, commission or board thereof) exercising jurisdiction over a particular subject matter.

1.6 **“Improvements”** means all improvements of every kind and nature within the applicable portion of the Development.

1.7 **“New Site Plan”** means the site plan depicting the Development that is attached hereto as **Exhibit C** and replaces the Original Site Plan in its entirety.

1.8 **“Occupant”** means any Person or Persons, from time to time, entitled to the use and occupancy of any portion of the Development under any deed (as to a condominium unit in the Development), lease, sublease, license, concession or other similar agreement.

1.9 **“Original Site Plan”** has the meaning set forth above.

1.10 **“Owner”** means the owner of any one or more of the Phases of the Development, or the homeowners’ association with respect to any Phase constructed as a condominium project under Utah law; provided, however, that the term does not include those having an interest merely as security for the performance of an obligation unless and until they acquire fee simple title thereto through judicial or non-judicial foreclosure or conveyance in lieu thereof. The term **“Owners”** means collectively all Owners in the Development.

1.11 **“Parking Garage”** means the below-grade parking garage facility constructed under the apartment building located on Phase I, under the Drive Aisles Connection, and under the on-grade parking facility located on Phase I.

1.12 **“Permittee”** means all Occupants and the partners, members, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees and licensees of Owners and Occupants.

1.13 “**Person**” means any individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

1.14 “**Phase**” means any of the three single phases comprising a part of and located in the Development, as depicted and identified on the New Site Plan; “**Phases**” means more than one Phase within the Development.

1.15 “**Phase I**” means that portion of the Development that includes the apartment building in which approximately 238 apartments and its related improvements have been constructed, as more particularly described on **Exhibit A** attached hereto, and as depicted on the New Site Plan.

1.16 “**Phase II**” means that unimproved portion of the Development that is more particularly described as Phase II on **Exhibit A** attached hereto, and as depicted on the New Site Plan, which is unimproved as of this date.

1.17 “**Phase III**” means that unimproved portion of the Development that is more particularly described as Phase III on **Exhibit A** attached hereto and as depicted on the New Site Plan, which is unimproved as of this date.

1.18 “**Unavoidable Delay**” means any delay caused at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of any Owner, then the time for performance as herein specified shall be appropriately extended only by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse any Owner from the prompt payment of any monies required by this Declaration.

## **ARTICLE 2** **ACCESS**

Covenants, conditions, restrictions and easements relating to access to and through the Development shall be as follows:

2.1 **Reciprocal Grant of Access Easements.** Subject to any reasonable restrictions established by the respective Owner of various portions of the Drive Aisles such as a “one-way” designation, each of the Owners and their respective Permittees shall have, and is hereby granted, a non-exclusive easement for vehicular and pedestrian ingress and egress on, over and through all of the Drive Aisles in the Development to, from, and between the Phases, and for such other purposes as specifically enumerated herein. Owners shall not permit any use of the Drive Aisles which is inconsistent with the uses contemplated herein.

2.2 **Other Access Agreements.** For the avoidance of doubt, nothing in this Declaration is intended, nor shall any provision hereof be deemed or construed, to grant to the Owners of Phases II and III or their respective Permittees any easement, license or other right to access, use or enjoy any portion of the parking structure on Phase I, absent a separate written

instrument expressly granting any such rights which has been executed by the Phase I Owner and which may be granted or withheld in the Phase I Owner's sole and absolute discretion.

### **ARTICLE 3** **PARKING**

Covenants, conditions, restrictions and easements relating to the use of any parking areas located in the Development, shall be as follows:

3.1 **No Cross-Parking Rights.** Permittees for each Phase shall have rights only to park in parking stalls located on that Phase, and specifically and without limitation, the Permittees of Phases II and III shall not be permitted to park on Phase I, and the Permittees of Phase I shall not be permitted to park on Phases II or III, notwithstanding any other provisions contained herein. There shall exist no cross-parking rights between any Phases in the Development. Each of the respective Owners shall use good faith efforts and cooperate with each other in effecting compliance with the foregoing provisions.

3.2 **Sufficiency of Parking.** Each of the respective Phases of the Development shall contain sufficient parking stalls, without reliance on parking stalls that may be available in other Phases of the Development, in order to comply with Applicable Law.

3.3 **Other Parking Agreements.** Nothing in this Declaration is intended, nor shall any provision hereof be deemed or construed, to limit, preclude or otherwise prohibit an Owner from granting to one or more of the other Owners or to other Persons unrelated to Owners who are not Occupants, the right to use parking stalls within such Owner's Phase, but only on such Owner's Phase.

### **ARTICLE 4** **AMENITIES**

Covenants, conditions and restrictions relating to the construction, maintenance and use of the Amenities for the Development, shall be as follows:

4.1 **Construction of Access to Amenities from Phase III.** The Phase III Owner shall, at its sole cost and expense, design and construct such facilities and improvements as are necessary to provide access to and use of the Amenities from Phase III (the "**Phase III Amenities Access Improvements**"), subject to the requirements of Section 7.4 herein and subject to the prior consent of the Phase I Owner, which consent shall not be unreasonably withheld; provided, however, the Phase III Owner acknowledges that any review or approval by the Phase I Owner of any plans and/or specifications with respect to the Phase III Amenities Access Improvements is solely for the Phase I Owner's benefit, and without any representation or warranty whatsoever to the Phase III Owner with respect to the adequacy, correctness or efficiency thereof or otherwise. The Phase III Owner shall complete the construction of the Phase III Amenities Access Improvements no later than the date on which the apartment building and other improvements to be constructed on Phase III shall be complete, as evidenced by the issuance of final certificates of occupancy for the units or apartments included on Phase III. The Phase III Amenities Access Improvements shall be located and constructed on the east side of

the Amenities and the west side of the Phase III parcel, as more particularly depicted on the New Site Plan. Both Phase II Owner and Phase III Owner and their respective Permittees shall have the right to access the Amenities through the Phase III Amenities Access Improvements. Except for the Phase III Amenities Access Improvements, nothing herein shall be construed as granting an easement across any portion of Phase I for other access points to the Amenities by the Phase II Owner, the Phase III Owner, or their respective Permittees.

#### 4.2 Parking Garage Waterproofing.

(a) Simultaneously and in connection with the construction of Phase II, the Phase II Owner shall cause an Approved Contractor (as defined in subsection 4.2(d) below) to waterproof the north side of the Parking Garage located on Phase I so as to prevent any permeation or leakage of water into the Parking Garage (the "North Side Waterproofing Work") in accordance with specifications, plans, and procedures that will be prepared by the Phase II Owner which are subject to the approval of the Phase I Owner, which approval shall not be unreasonably withheld. Should the Phase I Owner withhold its approval of such specifications, plans, and/or procedures, the Phase I Owner and the Phase II Owner shall cooperate in finalizing such specifications, plans, and procedures as are reasonably acceptable to both parties. The North Side Waterproofing Work will be performed at the sole cost and expense of the Phase II Owner and shall be completed no later than August 31, 2011, subject to extensions for the time period, if any, needed to reach agreement on any such specifications, plans, and/or procedures not initially approved by the Phase I Owner, and except that the Phase I Owner will reimburse the Phase II Owner for the actual out-of-pocket cost of the waterproof material and installation; provided, however, the Phase I Owner shall not be obligated to pay more than \$7,500.00 therefor. The Phase II Owner shall pay for all excavation and other costs related to such North Side Waterproofing Work.

(b) In connection with the excavation work and prior to the pouring of any foundations of Improvements for Phase III, the Phase II Owner, at its sole cost and expense (including, without limitation, the waterproofing and excavation costs), shall cause its Approved Contractor to waterproof the east side of the Parking Garage located on Phase I so as to prevent any permeation or leakage of water into the Parking Garage (the "East Side Waterproofing Work") in accordance with specifications, plans, and procedures that will be prepared by the Phase II Owner which are subject to the approval of the Phase I Owner, which approval shall not be unreasonably withheld. Should the Phase I Owner withhold its approval of such specifications, plans, and/or procedures, the Phase I Owner and the Phase II Owner shall cooperate in finalizing such specifications, plans, and procedures as are reasonably acceptable to both parties. The East Side Waterproofing Work will be performed at the sole cost and expense of the Phase II Owner and shall be completed no later than February 1, 2012, subject to reasonable extensions for the time period, if any, needed for the Phase I Owner and the Phase II Owner to reach agreement on any such specifications, plans, and/or procedures not initially approved by the Phase I Owner.

(c) In connection with the excavation work and prior to the pouring of any foundations of Improvements for Phase III, the Phase II Owner shall cause its Approved Contractor to waterproof the south side of the Parking Garage located on Phase I so as to prevent any permeation or leakage of water into the Parking Garage (the "South Side Waterproofing Work") in accordance with specifications, plans, and procedures that will be prepared by the

Phase II Owner which are subject to the approval of the Phase I Owner, which approval shall not be unreasonably withheld. Should the Phase I Owner withhold its approval of such specifications, plans, and/or procedures, the Phase I Owner and the Phase II Owner shall cooperate in finalizing such specifications, plans, and procedures as are reasonably acceptable to both parties. The South Side Waterproofing Work will be performed at the sole cost and expense of the Phase II Owner and shall be completed expeditiously, subject to an agreement of the Phase I Owner and the Phase II Owner on any such specifications, plans, and/or procedures not initially approved by the Phase I Owner, and except that the Phase I Owner will reimburse the Phase II Owner for the actual out-of-pocket cost of the waterproof material and installation; provided, however, the Phase I Owner shall not be obligated to pay more than \$7,500.00 therefor. The Phase II Owner shall pay for all excavation and other costs related to such South Side Waterproofing Work. The South Side Waterproofing Work will be performed at the sole cost and expense of the Phase II Owner and shall be completed no later than February 1, 2012, subject to reasonable extensions for the time period, if any, needed for the Phase I Owner and the Phase II Owner to reach agreement on any such specifications, plans, and/or procedures not initially approved by the Phase I Owner.

(d) All North Side Waterproofing Work, all East Side Waterproofing Work, and all South Side Waterproofing Work shall be performed by an Approved Contractor (as defined herein below) under the direction of the Phase II Owner in a good, diligent, and workmanlike manner, shall be done so as to minimize interference with the Occupants of Phase I and with the ownership, structural integrity, and operation of the Improvements on Phase I, and shall be subject to the provisions of Section 7.4 hereof. All or portions of the South Side Waterproofing Work, the North Side Waterproofing Work, and the East Side Waterproofing Work is sometimes collectively referred to herein as the "**Waterproofing Work**." Each and all of the three (3) phases or portions of the Waterproofing Work shall be performed hereunder pursuant to one or more third-party construction contracts each containing the following terms and conditions: (i) plans, specifications, scope of work and procedures for the work; (ii) a fixed completion date for the work; (iii) a requirement for payment and performance bonds necessary to complete the applicable portion of the Waterproofing Work specified in the contract; (iv) a representation that the general contractor is a bonded contractor, licensed in the State of Utah to perform the applicable portion of the Waterproofing Work and that during the period of such Waterproofing Work, such contractor will remain so licensed; (v) that the Phase I Owner is a third-party beneficiary of the contract but shall not have any obligations or liability thereunder; and (vi) that the Waterproofing Work to be performed as specified in the scope of the work of the contract will be fully warranted by the contractor and by the Phase II Owner (or in lieu of the Phase II Owner, a third party acceptable to the Phase I Owner in its sole discretion) against defects in material or workmanship for a period of twelve (12) months from the completion of such Waterproofing Work (each of such three third-party construction contracts is referred to herein as a "**Waterproofing Contract**"). Each of the Waterproofing Contracts shall be subject to the Phase I Owner's prior review and written approval, which shall not be unreasonably withheld. The Phase II Owner shall deliver the final drafts of each of the proposed written Waterproofing Contracts covering any portion of the Waterproofing Work and the Phase I Owner shall, with respect to each of such Waterproofing Contracts, (i) review the terms and conditions contained therein and (ii) approve or reasonably object to the terms of such Waterproofing Contracts. If the Waterproofing Contract is approved by the Phase I Owner, the contractor identified therein shall be deemed to be an "Approved Contractor" for that portion of the Waterproofing Work

designated in the Waterproofing Contract. If the Phase I Owner objects to the terms of any such Waterproofing Contract, the Phase II Owner shall address and rectify such objections, shall resubmit a revised draft of the applicable Waterproofing Contract to the Phase I Owner for its review and approval, and shall continue to cooperate with the Phase I Owner in good faith to address any of the Phase I Owner's objections until the Phase I Owner is satisfied with the applicable Waterproofing Contract. After the Phase I Owner approves each Waterproofing Contract and prior to commencing the applicable Waterproofing Work, the Phase II Owner shall deliver to the Phase I Owner a fully executed counterpart of the applicable Waterproofing Contract. Once the form of a Waterproofing Contract has been agreed upon between the Phase I Owner, the Phase II Owner and an Approved Contractor, the form of such contract (excluding plans, specifications, scope of work, procedures and completion dates and any other items which shall be specific to each project) shall be used for subsequent Waterproofing Contracts with respect to the remaining portions of the Waterproofing Work.

4.3 Maintenance of the Amenities and of Amenities Access Improvements/ Payment of Real Property Taxes. The Phase I Owner shall have the responsibility to operate and maintain the Amenities. Each Phase Owner shall be obligated to pay a share of the cost to operate, maintain, repair, and replace the Amenities (the "**Amenities Operating Expenses**") in the following proportions: Phase I Owner - 50%; Phase II Owner - 10%; and Phase III Owner - 40% (collectively, the "**Amenities Expense Shares**"). In addition, each Phase Owner shall be obligated to pay its respective Amenities Expense Shares of all real property taxes and assessments for and assessed against the Amenities (the "**Amenities Tax Amount**"). The Owners shall each pay their respective Amenities Expense Shares of the Amenities Operating Expenses and the Amenities Tax Amount, in each instance in accordance with the provisions of this Declaration (See Section 8.9.5 hereof) and commencing from the date that the Phase III Owner or any of its Permittees first begins constructing the Phase III Amenities Access Improvements. The Amenities Tax Amount shall be determined or based on the amount of real property taxes assessed against the Amenities, as stated in each annual notice of property tax valuation issued by Salt Lake County, if such amount is an itemized therein. If such amount is not so itemized, the Amenities Tax Amount shall be based on the mutual agreement of the Owners no later than August 1 of the calendar year in question. If the Owners are not able to unanimously agree to such amount, the Phase I Owner shall obtain such amount from an MAI appraiser selected by the Phase I Owner in its sole discretion, and all of the Owners shall share the cost of such MAI appraiser equally. Notwithstanding anything to the contrary contained herein, the determination made by such MAI appraiser shall be deemed to be conclusive and binding on all of the Owners as to the Amenities Tax Amount for such applicable calendar year.

4.4 Ownership of the Amenities. The Amenities shall continue to be owned by the Phase I Owner, and nothing herein shall be construed to grant any ownership rights in the Amenities to any other Owner.

4.5 Easements. The Phase II Owner and the Phase III Owner, for their benefit and for the benefit of their respective Permittees, shall each have a perpetual, non-exclusive easement to access and use the Amenities, provided, however their access to such Amenities shall be solely over the Phase III Amenities Access Improvements, and such easement rights shall further be subject to such other reasonable rules and procedures for use, as established and amended by the Phase I Owner, the Phase II Owner and the Phase III Owner from time to time.



4.6 Redesign and Reconstruction of Amenities. The Amenities may be redesigned, refurbished, and/or reconstructed by the Phase I Owner, with the consent of the Phase II Owner and Phase III Owner, which consent may not be unreasonably withheld, conditioned, or delayed. The Phase I Owner may not change the fundamental nature of the Amenities as a recreational/sports gathering place nor may the Phase I Owner remove the Amenities in their entirety, subject, however, to Applicable Law. The Phase I Owner, the Phase II Owner, and the Phase III Owner each shall pay its respective Amenities Expense Shares with respect to the costs of any such redesign, reconstruction, and/or modernization of the Amenities.

## **ARTICLE 5**

### **MAINTENANCE OF DRIVE AISLES**

Covenants, conditions and restrictions relating to the maintenance of the Drive Aisles shall be as follows:

5.1 Drive Aisles. The Phase I Owner shall maintain, or cause to be maintained, the portion of the Drive Aisles located on Phase I and, if, as, and when the same are fully constructed by the Phase II Owner and the Phase III Owner, the portion of the Drive Aisles located on Phases II and III, in good and clean condition and repair, which maintenance shall include:

- (a) Maintaining the paved surfaces in a level, smooth, and evenly covered condition with the type of surface material originally installed or such substitute as shall in all respects be equal or superior in quality, use, and durability;
- (b) Snow removal;
- (c) Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition; and
- (d) Placing, keeping in repair, and replacing any necessary or appropriate directional traffic signs, markers and striping.

The Owners shall pay their respective Proportionate Shares of the costs of operating and maintaining the Drive Aisles in accordance with the provisions of this Declaration (See Section 8.9.5 hereof). For purposes of this Section, the term "Proportionate Share" means a fraction, the numerator of which is the actual number of apartments or dwelling units then existing in each Phase, and the denominator of which is the actual total number of apartments or dwelling units then existing in all Phases. Evidence of the number of existing apartments or dwelling units then in effect in any Phase shall be based on final certificates of occupancy issued by Salt Lake City.

5.2 Damages Caused by Owner or its Permittees. Notwithstanding anything herein to the contrary, if the Amenities or the Drive Aisles, as defined herein, are damaged at any time by an Owner or Permittees other than the Owner and/or Permittees of Phase I, then the Phase I

Owner shall cause the repairs that the Phase I Owner deems appropriate at the sole cost and expense of the Owner who caused or whose Permittees caused the damage as follows:

(a) Within ten (10) days after the occurrence of such damage and subsequent to a determination by the Phase I Owner of the responsible party, the Owner responsible for causing such damage (the "**Responsible Owner**") shall file a claim for coverage under the appropriate policy of insurance required under Section 8.3 hereof, with such Responsible Owner being obligated to pay any and all deductibles on any such policy or policies of insurance, and such Responsible Owner shall cause the repair of such damage under a Repair Contract (as such term is defined in Section 7.4 hereof) in accordance with the terms, conditions, and approval and procedures set forth in Section 7.4 hereof, including, without limitation, the time periods, the guaranties, the twelve (12) month warranties, and the Phase I Owner's remedies if the Responsible Owner does not timely enter into a Repair Contract;

(b) Intentionally Deleted Prior to Execution.

(c) If for any reason, such insurance policy or policies does not cover any or all of the cost of the repair work contemplated by such Repair Contract, or if the Responsible Owner is in breach of Section 8.3 hereof by failing to carry such insurance, such Responsible Owner shall be obligated and responsible to pay the difference necessary to perform and complete the repairs in accordance with the terms, conditions, and completion date set forth in such Repair Contract;

(d) If, for any reason, (x) the Responsible Owner has not received the insurance proceeds from the policy or policies contemplated by Section 8.3 hereof for the repair of such damage on the date that is forty (45) days after the occurrence of such damage or (y) if applicable, the Responsible Owner has not reimbursed the Phase I Owner for a Repair Contract pursuant to Section 7.4 hereof, then in either such instance, the Phase I Owner may impose an assessment against such Responsible Owner in an amount necessary to repair such damage under a Repair Contract, and such Responsible Owner shall pay such assessment in full within thirty (30) days thereafter. If, for any reason, such Responsible Owner fails to pay the full amount of such assessment within such thirty (30) day period, the Phase I Owner may file a lien against the Phase of the Development owned by such Responsible Owner and may proceed, upon ten (10) days additional written notice to such Responsible Owner to foreclose such lien in the manner provided in the Utah trust deed foreclosure statute. Such lien shall have the same priority as the priority of this Declaration, which is expressly intended to have the same priority as the Original Declaration. The Phase I Owner hereby agrees to provide, concurrently with notice to such Responsible Owner, written notice of the assessment to the secured lender(s) of the Phase II Owner and the Phase III Owner at the addresses set forth herein, and such secured lender(s) shall have a right to perform such Responsible Owner's obligations under this Section 5.2 in accordance with the terms, conditions, and dates set forth herein; and

(e) The provisions of this Section 5.2 are not intended to limit the Phase I Owner's rights or remedies with respect to such damage or with respect to the enforcement of this Declaration.

**ARTICLE 6**  
**INTENTIONALLY DELETED**

**ARTICLE 7**  
**FUTURE DEVELOPMENT**

Development of Phase II and Phase III shall be subject to the following conditions:

7.1 Construction. While it is acknowledged and agreed that no Person has an obligation to commence construction of any building on either Phase II or Phase III, once construction of any building or other Improvements has commenced thereon, such construction shall be accomplished in an expeditious and diligent manner and completed within a reasonable time.

7.2 Completion of Drive Aisles on Phase II. Upon the commencement of construction of Phase II, the Phase II Owner shall construct and pave, at its sole cost and expense, those portions of the Drive Aisles located on Phase II, as shown on the New Site Plan. Such Drive Aisles shall be constructed in the locations shown on the New Site Plan, shall be paved in accordance with the paving specifications that were employed in constructing the Drive Aisles constructed on Phase I, and shall provide direct access to and from the public streets adjacent thereto, as depicted on the New Site Plan.

7.3 Completion of Drive Aisles on Phase III. Simultaneously with its development of Phase III, the Phase III Owner shall construct and pave, at its sole cost and expense, those portions of the Drive Aisles located on Phase III, as shown on the New Site Plan. Such Drive Aisles shall be constructed in the locations shown on the New Site Plan, shall be paved in accordance with the paving specifications that were employed in constructing the Drive Aisles on Phase I, and shall provide direct access drives to and from the public streets adjacent thereto, as depicted on the New Site Plan.

7.4 Construction Work Generally.

(a) All construction activities performed or authorized within the Development shall be performed in compliance with Applicable Law. All construction shall utilize new materials and shall be performed in a good, safe, and workman-like manner. The Owner undertaking such work shall take appropriate measures to minimize any disruption or inconvenience caused by such work to the other Owners and their Permittees, and such Owner shall make adequate provisions or shall cause adequate provisions to be made for the safety and convenience of all Owners and Permittees of the Development. Without prior written approval of the other Owners, no construction work shall commence before 7:00 a.m. or continue after 7:00 p.m., nor shall there be any construction work on Sundays, Memorial Day, July 4, Labor Day, Thanksgiving and the day after, December 24, December 25 or January 1. Dust, noise and other effects of such work shall be controlled by the Owner undertaking the work using appropriate methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area and shall be subject to compliance with Applicable Law. The Owner undertaking such work shall repair or cause to be repaired, at its own sole cost and expense, any and all damage directly or indirectly caused by such work and shall restore the

affected portion of the Phase upon which such work is performed to a condition equal to or better than the condition existing prior to beginning such work. Construction traffic for the Phase III Amenities Access Improvements, Phase II or Phase III shall enter from 300 South Street or 500 East Street. No construction traffic consisting of cement trucks, dump trucks or other heavy construction equipment shall use the Drive Aisles. There shall be no construction parking on Phase I in connection with construction of the Phase III Amenities Access Improvements or construction of Phase II or Phase III, and construction debris from such work shall be removed on a daily basis. The construction of any of the Improvements on Phase II and Phase III, and the Phase III Amenities Access Improvements, shall not affect the structural integrity of any existing Improvements. Further, no construction shall be staged within ten (10) feet of the boundary of any other Phase.

(b) Notwithstanding anything to the contrary contained herein, if the Phase II Owner or the Phase III Owner or any of their respective Permittees at any time shall cause damage of any nature whatsoever, directly or indirectly, to any portion of Phase I or the Improvements erected thereon, then such Owner who caused, or whose Permittees caused (herein referred to as a "**Responsible Owner**"), the damage shall cause such damage to be repaired as follows: (i) such repairs shall be accomplished pursuant to a third-party construction contract with a reputable bonded contractor that is licensed in Utah to perform and complete such repair work; (ii) such construction contract shall contain plans, specifications, scope of work, procedures, a fixed completion date, a requirement for payment and performance bonds necessary to complete such repair work; (iii) that the Phase I Owner is a third-party beneficiary of the contract but shall not have any obligations or liability thereunder; and (vi) that the work to be performed as specified in the scope of the work of the contract will be fully warranted by the contractor and by the Responsible Owner against defects in material or workmanship for a period of twelve (12) months from the completion of such repair work (the "**Repair Contract**"). The Repair Contract shall be subject to the Phase I Owner's prior review and written approval, which shall not be unreasonably withheld. In each instance of such damage, the Responsible Owner shall deliver the final draft of the written Repair Contract to the Phase I Owner within fifteen (15) days after the occurrence of such damage, and the Phase I Owner shall review the plans, specifications, procedures, fixed completion date, scope of work, the foregoing bonding requirements, and such other terms and conditions contained therein and shall approve or reasonably object to the terms of such Repair Contract. If the Phase I Owner objects to the terms of any such Repair Contract, the Responsible Owner shall address and rectify such objections, shall resubmit a revised draft of the applicable Repair Contract to the Phase I Owner for its review and approval, and shall continue to cooperate with the Phase I Owner in good faith to address any of the Phase I Owner's objections until the Phase I Owner is satisfied with the applicable Repair Contract. After the Phase I Owner approves the Repair Contract and prior to starting the repair work contemplated thereunder, (x) the Responsible Owner shall deliver to the Phase I Owner a fully executed counterpart of the applicable Repair Contract and (y) the Responsible Owner and the contractor under the Repair Contract shall execute and deliver a guaranty to the Phase I Owner containing terms and conditions acceptable to the Phase I Owner. In addition to such guaranties, the Responsible Owner which is a party to each Repair Contract shall, at its sole cost, obtain for the Phase I Owner a twelve (12) month warranty of the repair work contemplated thereby from the contractor performing such work or from a third party acceptable to the Phase I Owner, as determined in the Phase I Owner's sole discretion. Notwithstanding the foregoing, if the Responsible Owner fails to provide a final draft of the Repair Contract to the Phase I Owner

within the aforementioned fifteen (15) day period or fails to enter into the Repair Contract within ten (10) days after it has been approved by the Phase I Owner, then the Phase I Owner may enter into a Repair Contract, at the sole cost of the Responsible Owner and the Phase I Owner may engage the contractor under the Repair Contract to perform the repair work contemplated thereby and in accordance therewith. If the Phase I Owner enters into a Repair Contract pursuant to the immediately preceding sentence and the Responsible Owner does not reimburse the Phase I Owner within ten (10) days after demand therefor, then the Phase I Owner shall have the right to impose an assessment for the amount owed pursuant to Section 5.2(d) hereof and shall be entitled to exercise all of its rights provided for thereunder in the event of non-payment of the assessment.

7.5 Appearance of Improvements. The exterior design of Improvements on Phase II and Phase III shall be architecturally harmonious and compatible with the Improvements constructed on Phase I existing at the time of commencement of construction of such Improvements.

7.6 Permitted Uses. The Improvements constructed from time to time on Phase II and Phase III may be used solely for the following purposes and no others ("Permitted Uses"): parking, office, retail and residential (including, without limitation, apartments and condominiums and uses ancillary to such residential use), excluding however those uses listed on Exhibit D.

## **ARTICLE 8 OTHER PROVISIONS**

8.1 Taxes. Owners shall pay all taxes and assessments levied against each Owner's real property and Improvements in the Development.

8.2 Obligation to Maintain. Except as set forth in Section 5.1 hereof, each Owner, at its sole cost and expense, shall maintain and repair all Improvements existing in its Phase of the Development, in good order, repair and condition. Each Owner shall promptly repair any damage to its Phase (including, without limitation, any and all landscaping, trees, fences, water and/or irrigation pipes, lines and ditches, curbs, gutters, asphalt surfaces, fences, signs, lighting, etc.) caused by that Owner or the Owner's Permittees, and shall restore the Phase and the Improvements thereon to the same or better condition as they existed prior to any entry onto or work performed. In the event an Owner needs to perform construction or maintenance work on that Owner's Phase that impacts another Phase of the Development, the Owner shall: (a) provide the impacted Owners with at least thirty (30) days' prior written notice of such work, except in the event of an emergency when no prior notice shall be necessary, (b) use good faith efforts to ensure that there is continual pedestrian and vehicular access to the Development, (c) use reasonable efforts to minimize any interference or disruption to Owners and such Owners' Permittees use and occupancy of the Development; (d) perform any such work at its sole cost and expense; and (e) perform such work expediently and in a good and workmanlike manner. If an Owner breaches this provision, any other Owner may notify such defaulting Owner and may, upon at least ten (10) days prior written notice to such defaulting Owner, perform the unperformed maintenance and/or repair. The defaulting Owner shall pay the cost therefor upon demand from such other Owner that provides such notice and cures such default.

8.3 Insurance. Each Owner shall obtain and maintain a policy of general commercial liability insurance insuring said Owner's interests in the Development against claims for personal injury, bodily injury, death, property damage occurring on, in or about the applicable Development and the Drive Aisles located in the Development, with a "Combined Single Limit" covering personal injury liability, bodily injury liability, property damage liability, and casualty of not less than Five Million Dollars (\$5,000,000.00) on a per occurrence basis, which policy shall over time be adjusted to a higher limit as is commercially reasonable for similar projects in Salt Lake City, Utah. Any required policy of insurance shall provide that such policy may not be cancelled or materially modified without at least thirty (30) days' prior written notice to the other named insureds. Each Owner shall furnish to the other Owners on or before the effective date of any policy of insurance required to be carried under this Declaration, a certificate thereof stating that such insurance is in full force and effect, that the premiums therefor have been paid, that the other Owners have been named an additional insureds, and that such insurance may not be cancelled or materially modified without at least thirty (30) days' prior written notice to the other Owners. Each Owner shall provide evidence of such insurance to all other Owners each year no later than December 31.

8.4 Mutual Release/Waiver of Subrogation. Each Owner for itself, and, to the extent it is legally possible for it to do so, on behalf of its insurer and without affecting the coverage provided by insurance required under Section 8.3 hereof, hereby releases and waives any right to recover against the other Owners from any liability for: (a) damages for injury to or death of persons, (b) any loss or damage to property, including without limitation the property of any party, occupant, or user located upon or in the Property, (c) any loss or damage to buildings or other Improvements or the contents thereof, (d) any risks, which loss or damage is of the type generally covered by standard casualty insurance coverage, or (e) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims under clauses (a) through (e) of this sentence are covered (and only to the extent of such coverage) by insurance actually carried by each Owner. Each Owner shall, to the extent such insurance endorsement is available, obtain or cause to be obtained, for the benefit of the other Owners, at its own expense, a waiver of any right of subrogation which the insurer of such Owner may acquire against the other parties by virtue of the payment of any such loss covered by such insurance.

8.5 Liens. Each Owner of a Phase (herein the "**First Owner**") shall not allow, cause or permit others to file or record any mortgage, deed of trust, security agreement, lien, or other encumbrance (herein collectively referred to as a "**lien**") against the real property or Improvements of one or more of the other Owners of the remaining Phases located within the Development (individually, a "**Remaining Owner**" or collectively, the "**Remaining Owners**"), including but not limited to liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under such First Owner's or its agent's or contractor's direction or instruction. If a claim of lien is recorded which affects the real property or Improvements of one or more of the Remaining Owners as a result of the breach by the First Owner of the foregoing covenant and obligation, the First Owner shall, within thirty (30) calendar days of such recording or within fifteen (15) calendar days of a Remaining Owner's demand, whichever occurs first: (a) pay and discharge the claim of lien; (b) effect the release of such lien by recording or delivering to the lien claimant a notice of release of lien and substitution of alternate security in accordance with the provisions of *Utah Code Annotated*, Section 38-1-28 (2010 Replacement), or successors provisions thereto; (c) effect the release of

such lien by recording or delivering to the affected Remaining Owners a surety bond in sufficient form and amount; or (d) provide the affected Remaining Owners with other assurances which such Remaining Owners each deem, in its respective reasonable discretion, to be satisfactory for the payment of such claim of lien and for the full and continuous protection of the Remaining Owners from the effect of such lien. Subject to the foregoing requirements, nothing herein shall preclude the First Owner from contesting the validity of any lien in any manner such First Owner chooses so long as such contest is pursued with reasonable diligence. In the event that the lien is released as provided in clause (b) of the second sentence of this Section 8.5 and in the event such contest is determined adversely (allowing for appeal to the highest appellate court), such First Owner or its surety, shall promptly pay in full the required amount, together with any interest, costs, or other charges necessary to release such lien of record from the Phases of the other Owners. Failure of a First Owner to strictly perform the covenants and obligations of this Section 8.5 shall be deemed a material breach of this Declaration. Nothing in this Section 8.5 shall preclude an Owner from granting any mortgage, deed of trust, security agreement, lien, or other encumbrance which encumbers such Owner's real property and Improvements at any time, and the Owners of the other Phases shall not have any consent rights with respect thereto.

8.6 Compliance with Laws. Each Owner, as to its Phase and as to its rights to use other portions of the Development, shall comply with all Applicable Law.

8.7 Reservation by Owners. Each Owner, as to that Owner's Phase, hereby reserves the right to use its respective Phase of the Development for any Permitted Use that is permitted by Applicable Law and will not use its Phase for purposes that are inconsistent with the Permitted Uses of the Development. Without limiting the above, each Owner, for itself, its successors, and its Permittees, hereby reserves the right: (a) for direct pedestrian and vehicular ingress to and egress from its respective Phase of the Development to and from public streets, which rights shall be in addition to the easement rights granted hereunder, subject to any reasonable restrictions in existence on the Drive Aisles; (b) for the placement and maintenance of landscaping, signs, light standards, sidewalks, curbs and gutters, ditches, irrigation pipes and related appurtenances, and asphalt roadways and driveways within its respective Phase of the Development, but without altering or interrupting any of the easement or other rights granted hereunder; (c) to relocate or modify the easements in its respective Phase of the Development at any time at its own cost and expense, provided that such relocation does not diminish or interfere with the other Owners' rights under this Declaration; and (d) to grant other non-exclusive easements, licenses, and rights within its respective Phase of the Development.

8.8 Notices. Any notice required or desired to be given under this Declaration shall be considered given when either delivered or delivery is refused by any of the following methods: (a) in person, (b) United States mail, either registered or certified mail, return receipt requested, postage prepaid, or (c) national overnight delivery service such as Federal Express or United Parcel Service, in each instance addressed by name to the person and party intended. For purposes of the notices required hereunder, notices shall be delivered as follows:

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If to the Phase I Owner: TGM Emigration LLC  
c/o TGM Associates L.P.  
650 Fifth Avenue  
New York, New York 10019  
Attention: John Gochberg

With a copy to: Moses & Singer LLP  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174-1299  
Attention: Alan E. Linder, Esq.

And with a copy to: Holland & Hart LLP  
222 South Main Street  
Suite 2200  
Salt Lake City, Utah 84101  
Attention: Carl W. Barton, Esq.

If to the Phase II Owner: Broadway Place Investors, LLC  
180 N University Ave, Suite 820  
Provo, UT 84606

With a copy to: Law Office of Steven Farnsworth  
480 W 800 N, Suite 204  
Orem, UT 84057

If to the Phase III Owner: Eastside Investors, LLC  
180 N University Ave, Suite 820  
Provo, UT 84606

With a copy to: Dennis Poole & Associates  
4343 S 700 E, Suite 200  
Salt Lake City, UT 84107  
Attn: Dennis Poole

If to a secured lender of  
Phase II Owner: Wells Fargo Middle Market Real Estate  
299 S Main Street, 6<sup>th</sup> Floor  
Salt Lake City, UT 84111  
Attn: Steven Somers



If to a secured lender of  
Phase III Owner:

Wells Fargo Multifamily Capital  
1801 13<sup>th</sup> Street, Suite 200  
Boulder, CO 80302  
Attn: Jennifer Quigley

Any Owner may provide written notice of a change to the above addresses to the other Owners and other parties listed above in the manner set forth in this Section 8.8.

8.9 Miscellaneous.

- 8.9.1. Interpretation. Section titles and captions to this Declaration are for convenience only and shall not be deemed part of this Declaration and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part of this Declaration.
- 8.9.2. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.
- 8.9.3. Runs with the Land. This Declaration, as well as all of the rights, covenants, conditions, restrictions and benefits described herein, shall run with the land.
- 8.9.4. Waiver. No failure by any Owner to insist upon the strict performance of any covenant, duty, agreement, or condition of this Declaration, or to exercise any rights or remedy for a breach of this Declaration shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term, or condition.
- 8.9.5. Billings/Charges/Lien/Interest. All billings of operation and maintenance charges shall be no more frequently than quarterly and shall be due and payable within ten (10) business days after receipt. If any Owner (the "**Defaulting Party**") is required to make payment to any other non-defaulting Owners ("**Payee**") under this Declaration and fails to make such payment, the Payee shall have the right, upon ten (10) days prior written notice, to deduct the amount due to it against any other payment due from the Payee to the Defaulting Party under this Declaration. Any amount due under this Declaration from one Owner to another Owner shall, without further act of the Owners, be deemed to constitute a lien against the Phase of the Development obligated to pay the same, subordinate to all existing and future liens and encumbrances thereon, provided that the holder of such lien was not in possession or control of the Phase(s) liened by this Section 8.9.5 at the time the obligation was to be performed. If not paid as and when due, sums payable to an Owner shall to the extent permitted by Applicable Law, bear interest from the date due until paid at the lesser of (i) the rate of ten percent (10%) per

annum, and (ii) the maximum rate of interest then permissible under Applicable Law.

- 8.9.6. Rights and Remedies. The rights and remedies stated herein are not intended to be exclusive, and the exercise of one or more of the provisions of this Declaration shall not preclude the exercise of any other provisions. Damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the Declaration that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise, but in no event shall any Owner be liable for punitive damages or for any lost rents, profits, "benefit of the bargain," business opportunities or any form of consequential damage in connection with any claim, liability, demand or cause of action in any way or manner relating to this Declaration and any liability of any Owner shall be limited to its interest in the respective Phase owned by such Owner.
- 8.9.7. No Public Use/Dedication. The Phases and the Development are and shall at all times remain the private property of the respective Owners. The use of the Phases and the Development is permissive and shall be limited to the express purposes contained herein by the respective Owners. None of the Owners, nor each Owner's successors and assigns, nor the public, shall acquire nor be entitled to claim or assert any rights to the Phases or the Development beyond the express terms and conditions of this Declaration.
- 8.9.8. Relationship of Parties. Other than the relationships, if any, previously or subsequently established by separate instrument, the Owners are independent and nothing contained in this Declaration shall be construed to create a partnership or joint venture between or among any of them or their successors or assigns.
- 8.9.9. Estoppel Certificate. Each Owner agrees that within thirty (30) days following receipt of a written request (which shall not be more frequent than three (3) times during any calendar year) from any other Owner, it will issue, without cost, to the requesting Owner, or its existing or prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date (a) whether it knows of any default under this Declaration by the requesting Owner and if there are known defaults, specifying the nature thereof, (b) whether this Declaration has been assigned, modified or amended in any way by it and if so, then stating the nature thereof, (c) whether any sums are currently due and payable, and (d) whether this Declaration is in full force and effect.

8.9.10 Consent to Assignment and Obligations of Owner's Assignee. By execution hereof, each Owner (a "**Non-Mortgagor**") hereby consents to any assignment or the conveyance of any mortgage or deed of trust (herein collectively called a "**Mortgage**") by any other Owner (a "**Mortgagor**") to any mortgagee (or beneficiary of a deed of trust) (a "**Mortgagee**") holding a Mortgage granted by such Mortgagor of its rights and obligations under this Declaration. If any Mortgagee shall succeed to the rights of such Mortgagor hereunder pursuant to an exercise of its rights under any Mortgage on all or part of such Mortgagor's property, the Mortgagee shall be bound by the terms hereof and the Non-Mortgagor shall have the same rights and remedies against the Mortgagee for a breach hereof as such Non-Mortgagor would have against such Mortgagor but for the assignment or conveyance; provided, however, that such Mortgagee shall not be liable to the Non-Mortgagor for any act or omission of the Mortgagor including, without limitation, such Mortgagor's failure to pay any amounts owing or to be paid hereunder or to perform any act or obligation required to be performed by such Mortgagor hereunder, arising prior to the date such Mortgagee succeeds to such Mortgagor's rights hereunder and takes possession of all or any portion of such Mortgagor's property. The Mortgagee shall assume the obligations and be liable to the Non-Mortgagor under this Declaration only for matters and obligations arising or to be performed from and after the date the Mortgagee succeeds to a Mortgagor's rights hereunder and takes possession of all or any portion of such Mortgagor's property and during such period of ownership by the Mortgagee of all or any portion of the Mortgagor's property, and any further or additional liability shall terminate upon the transfer by such Mortgagee of all of its interest in such property; provided, however, such Mortgagee shall have no personal liability for any of the matters under this Declaration except to the extent of; and such Mortgagee's liability shall be limited to, such Mortgagee's estate and interest in such property.

- 8.9.10. Amendment. This Declaration may be cancelled, changed, modified, amended or terminated in whole or in part only by written instrument executed by the Owner or Owners owning 75% of the land area in the Development.
- 8.9.11. Disclaimer of Derivative Rights. No consent to the modification, from time to time, or to the termination of the provisions of this Declaration shall ever be required from any Occupant or Permittee, nor shall any such Occupant or Permittee have any right to enforce any of the provisions contained in this Declaration.
- 8.9.12. Litigation Expenses. If any Owner shall bring an action against any other party to this Declaration by reason of the breach or alleged violation of any covenant, term or obligation hereof, or for the enforcement of any provision hereof or otherwise arising out of this Declaration, the

prevailing party in such suit shall be entitled to its costs of suit and reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" shall include, without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or considered substantially equal to the relief sought in the action.

- 8.9.13. Non-Merger. The ownership, at any time during the term of this Declaration, of more than one parcel and/or any adjacent land by the same Owner or by an Owner and/or an affiliate entity of such Owner, shall not create a merger of title, estate, or other merger, including any merger of the dominant estate with respect to easements granted in this Declaration, and shall therefore not terminate any of the easements, restrictive covenants or other terms or provisions of this Declaration as they apply to the parcels, and all such easements, restrictive covenants, and other terms and provisions shall remain in full force and effect for the period provided in this Declaration regardless of any of the aforesaid common ownerships now or hereafter existing of any parcels.
- 8.9.14. Transfer. An Owner transferring all or any portion of its fee interest in its interest in the Development shall give notice to all other Owners of such transfer and shall include in such notice at least the following information: (a) the name and address of the new Owner; and (b) a copy of the legal description of the portion of the Development transferred by such Owner.
- 8.9.15. Time of the Essence. Time is of the essence to this Agreement and to all dates and time periods set forth herein.
- 8.9.16. Consents. Prior to and as a condition to the execution and recording hereof, the parties shall each obtain written consent to this Declaration from each of their respective lenders whose loan documents require such lenders' consent hereto.
- 8.9.17. Encroachment/Waiver. Some of the principals of the current Phase II Owner and the current Phase III Owner were principals of the Original Declarant under the Original Declaration, which Original Declarant constructed the Improvements located on Phase I, including, without limitation, the Parking Garage and on-grade and above-grade parking facility (collectively, the "**Parking Facility**"). Such construction of the Parking Facility resulted in a slight encroachment (from approximately 0.04 feet on the southwest corner of the Parking Facility and approximately 0.05 feet on the southeast corner of the Parking Facility to approximately 0.19 feet on the northeast corner of the Parking Facility and approximately 0.08 feet on the northwest corner of the Parking Facility), which encroachment is more particularly depicted on that certain ALTA/ACSM Survey of Phase I, dated February 27, 2009, certified by

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Gregory A. Cates of Stantec Consulting Inc. (as so depicted on such survey, the "Encroachment"). The Phase II Owner and the Phase III Owner, for themselves, their successors, and assigns, hereby agree to: (i) irrevocably waive any claims either or both of them, their successors, and assigns may have relating to: (x) the Encroachment; and/or (y) any obligation the Phase I Owner might otherwise have to correct or eliminate all or any portion of such Encroachment; and (ii) unconditionally release any and all liabilities and claims either or both of them, their successors, and assigns has or may have or may be able to assert against the Phase I Owner or any of its successors or assigns relative to all or any portion of such Encroachment. The foregoing waiver and release shall include, without limitation, any claim or assertion by either the Phase II Owner and/or the Phase III Owner (for themselves and their successors and assigns) for damages and/or for requiring the relocation of all or any portion of the Parking Facility. Further, all three (3) Owners, for themselves and their successors and assigns, hereby agree to cooperate with each other in satisfying the requirements of any of their respective lenders or any agency with jurisdiction over the Development, including Salt Lake City, to confirm the foregoing waiver and release and eliminate the effect of the Encroachment, including, without limitation, the execution and delivery of a letter confirming such waiver and release by the Phase II Owner and the Phase III Owner and a lot-line agreement under which the Owners agree to adjust the boundaries of the parcels constituting the Property in such a way as to correct and account for such Encroachment.

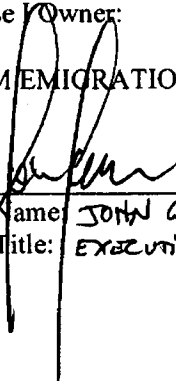
*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Owners have executed this Declaration to be effective as of the Effective Date.

Phase I Owner:

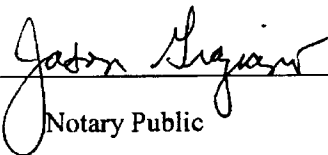
TGM/EMIGRATION LLC

By:

  
Name: JOHN KOCHBORSKI  
Title: EXECUTIVE VICE PRESIDENT

STATE OF NEW YORK    )  
                                  ): ss.:  
COUNTY OF NEW YORK )

On the 6<sup>th</sup> day of September in the year 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared JOHN KOCHBORSKI, 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 person(s), or the entity upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

JASON GRAZIANO  
Notary Public, State of New York  
No. 01GR0113176  
Qualified in Queens County  
Commission Expires 7/19/2012

Phase II Owner:

Broadway Place Investors, LLC, a Utah limited liability company

By: [Signature]  
Cameron Gunter, Manager

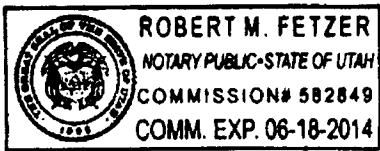
Phase III Owner:

Eastside Investors, LLC, a Utah limited liability company

By: [Signature]  
Cameron Gunter, Manager

STATE OF UTAH            )  
                                      ):ss  
COUNTY OF UTAH        )

Duly acknowledged before me this 2<sup>nd</sup> day of September, 2011, by Cameron Gunter, in the capacity indicated.



[Signature]  
Notary Public

**EXHIBIT A**

[Legal Description of the Property]

**PHASE I:**

PHASE I, EMIGRATION COURT MINOR SUBDIVISION, as disclosed by that certain Notice of Minor Subdivision Approval recorded April 22, 2003, at Entry No. 8621060, in Book 8782, at Page 2495 of the Official Records, being more particularly described as follows:

Beginning at the Northwest corner of Lot 4, Block 38, Plat "B", Salt Lake City Survey, said point also lying on the East line of 500 East Street; thence North 89°57'40" East 361.114 feet along the North line of said Lot 4 and Lot 7 of said Block 38; thence south 24.585 feet; thence East 153.750 feet; thence south 181.083 feet; thence West 153.750 feet; thence South 17.736 feet; thence South 89°57'40" West 361.028 feet, to a point on the East line of 500 East Street; thence North 0°01'19" West 223.404 feet along said East line to the point of beginning.

Together with a perpetual easement for the use of a power transformer as described in the Easement recorded May 26, 2006, in Book 9299, page 5996, as Entry No. 9735474.

Situate in Salt Lake City, State of Utah.

For reference purposes only: Tax Parcel No. 16-06-426-009

**PHASE II:**

**DESCRIPTION:**

All of Lot 2 of the Emigration Court Minor Subdivision as recorded in that certain Notice of Minor Subdivision Approval as recorded as Entry No. 8621060 in Book 8782 at Page 2495 in the Salt Lake County Recorders Office, being more particularly described in the title report as follows:

Record Description (from title report):

Beginning at the Northwest Corner of Lot 6, Block 38, Plat "B", Salt Lake City Survey, said point also lying on the South Line of 300 South Street; thence N89°57'38"E 181.496 feet along said South Line; thence S00°01'22"E 190.346 feet to a point on the North Line of Phase I; thence, along the Northerly Boundary of said Phase I, the following three courses: West 151.056 feet; thence North 24.585 feet; thence S89°57'40"W 30.450 feet to a point on the West Line of said Lot 6; thence N00°01'22"W 165.657 feet along said West Line to the Point of Beginning.



Together with that certain Declaration of Easements, Covenants and Restrictions (Emigration Court) recorded May 26, 2006 as Entry No. 9735475 in Book 9299 at Page 6002 of Official Records, and the amendments thereto.

Contains: 33,788 Square Feet or 0.78 Acres.

PHASE III:

Record Description:

All of Lot 3 of the Emigration Court Minor Subdivision as recorded in that certain Notice of Minor Subdivision Approval as recorded as Entry No. 8621060 in Book 8782 at Page 2495 in the Salt Lake County Recorders Office, being more particularly described as follows:

**PHASE 3 BOUNDARY:**

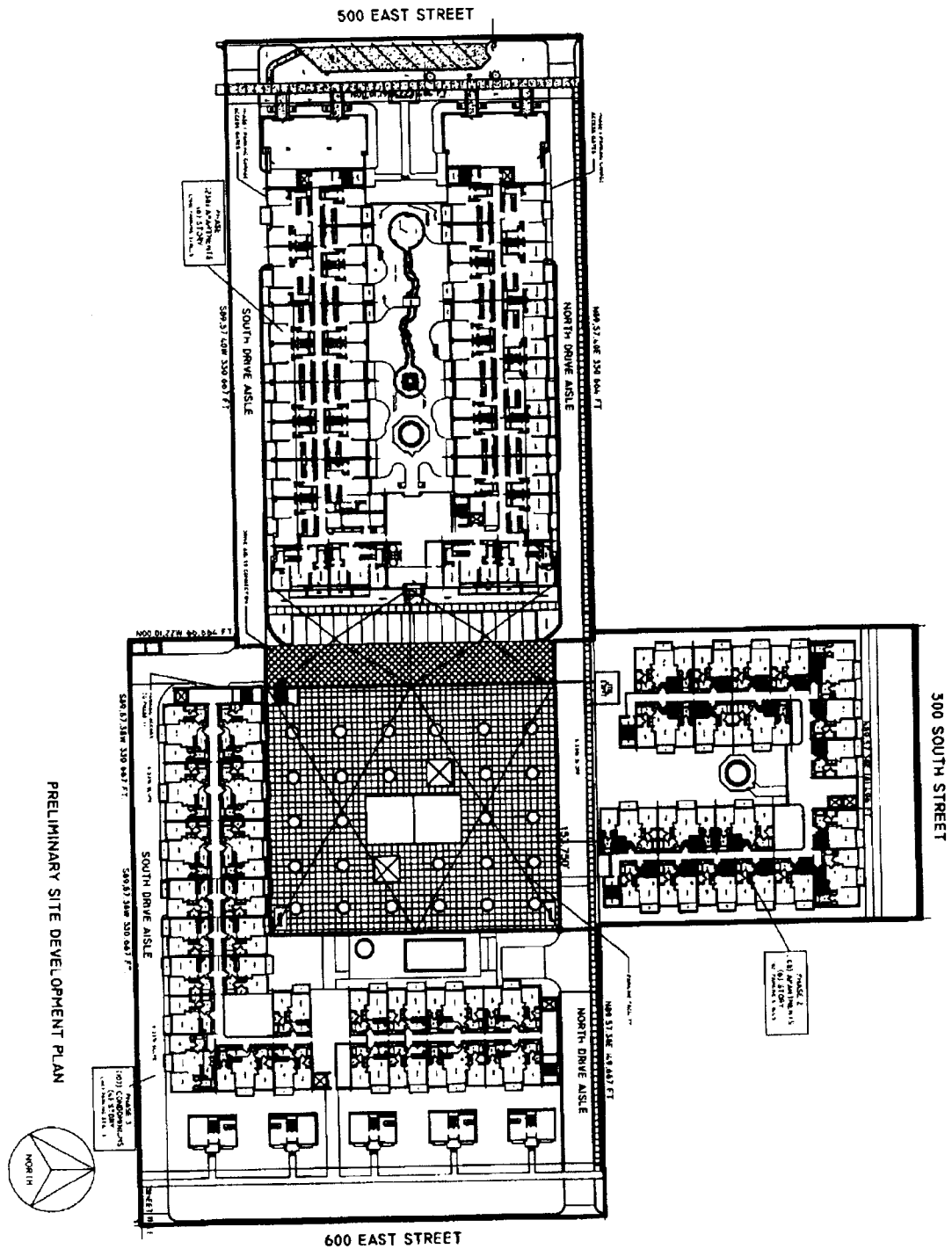
Beginning at the Southeast Corner of Lot 6, Block 38, Plat "B", Salt Lake City Survey, said point also lying on the West Line of 600 East Street; thence South 0°01'25" East 290.06 feet along said West Line to a set rebar and cap #158397; thence South 89°57'38" West 330.67 feet to the East Line of Lot 3 of said Block 38; thence North 0°01'22" West 66.66 feet along said East Line to the Northeast Corner of said Lot 3, said point also lying on the South Line of Phase I; thence along the Southerly and Easterly Boundary of said Phase I the following five courses: North 89°57'40" East 30.36 feet; thence North 17.74 feet; thence East 153.75 feet; thence North 181.08 feet; thence West 2.69 feet to the Southeast Corner of Phase 2; thence North 0°01'22" West 24.68 feet along the East Line of said Phase 2 to a point on the South Line of the aforementioned Lot 6; thence North 89°57'38" East 149.17 feet along said South Line to the Point of Beginning.

Contains: 57,543 Square Feet or 1.32 Acres.

Address: 600 East Street, a/k/a/ South 600 East.

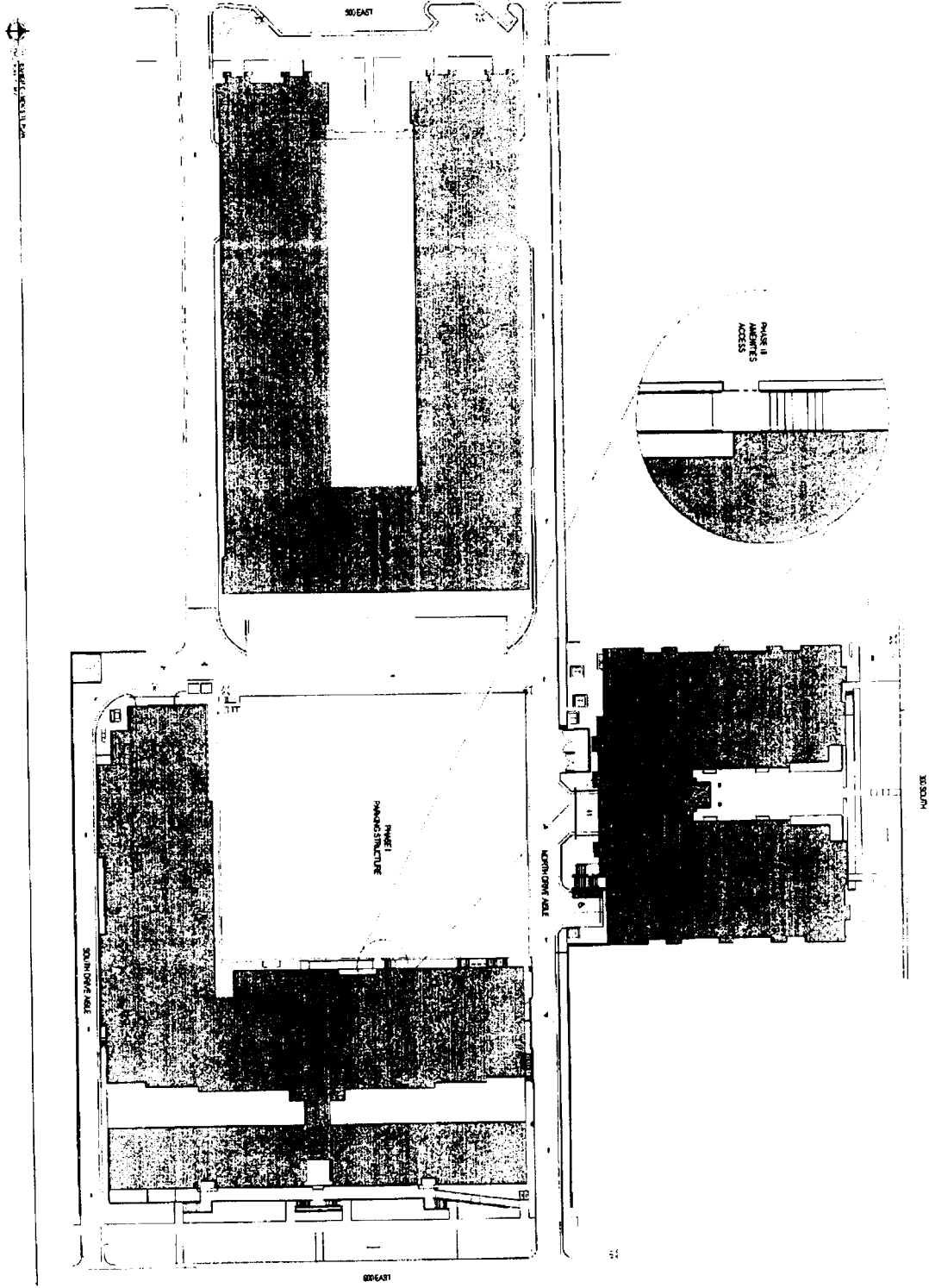
(Parcel No. 16-06-427-038)

**EXHIBIT B**  
 [Original Site Plan]



PRELIMINARY SITE DEVELOPMENT PLAN

**EXHIBIT C**  
**[New Site Plan]**



## EXHIBIT D

### [Prohibited Uses]

- (a) Any use which emits an obnoxious odor, noise or sound that can be heard or smelled outside of any building in the Development.
- (b) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.
- (c) Any "second hand" store, "surplus" store, or pawn shop.
- (d) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.
- (e) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any building.
- (f) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.
- (g) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation.
- (h) Any bowling alley or skating rink.
- (i) Any movie theater or live performance theater.
- (j) Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops.
- (k) Any mortuary or funeral home.
- (l) Any establishment selling or exhibiting "obscene" material.
- (m) Any establishment selling or exhibiting either live or by other means to any degree, nude or partially clothed dancers or wait staff.
- (n) Any bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds thirty percent (30%) of the gross revenues of such business.
- (o) Any massage parlors or similar establishments.

- (p) Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall.
- (q) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Development.
- (r) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the Occupant.