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9/25/2013 12:51:00 PM \$25.00
Book - 10180 Pg - 2701-2708
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 8 P.

Recording requested by
and when recorded return to:

Ward | Molloy, P.C.
800 McIntyre Building
68 South Main St. 8th Floor
Salt Lake City, Utah 84101
Attn: Matthew L. Molloy, Esq.

APN Nos. 16-06-283-009 and 16-06-426-009

NCS - 614847

(Space Above This Line For Recorder's Use)

SHARED USE AGREEMENT

THIS SHARED USE AGREEMENT (this "**Agreement**") is made and entered into as of September 25, 2013, by and between **BROADWAY TPG LLC**, a Delaware limited liability company ("**Broadway Apartments Owner**") and **EASTSIDE INVESTORS, LLC**, a Utah limited liability company ("**Eastside Apartments Owner**"); individually, a "**Party**", and, collectively, the "**Parties**".

RECITALS:

- A. Eastside Apartments Owner is the owner of certain real property located in the City of Salt Lake, County of Salt Lake, State of Utah, which property is more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Phase III Property**").
- B. Broadway Apartments Owner is the owner of that certain real property adjacent to the Phase III Property and more particularly described on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Broadway Apartments Property**").
- C. The Parties desire to set forth their agreement with respect to, among other things, the shared use of a certain telecommunication line and payment of certain telecommunications services provided to the Parties' respective properties through such line, all as more particularly herein after set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. SHARED USE OF TELECOMMUNICATIONS LINE.

1.1 **Use of Line.** The Parties acknowledge that, as of the date hereof, the Broadway Apartments Property and the Phase III Property receive internet service and/or other telecommunications services from Integra Telecom, Inc., by and through its subsidiaries, including Electric Lightwave, LLC and Eschelon Telecom, Inc. (hereinafter, collectively "Integra"), through a telecommunications line and/or other equipment and facilities, and any additions, replacements modification or upgrades thereto (the "Line") located on the Broadway Apartments Property. Subject to the terms and conditions of this Agreement, Broadway Apartments Owner grants to Eastside Apartments Owner the right to utilize the Line to receive internet and/or other telecommunications services offered by Integra together with access to Broadway Apartments Owner's telecom closets for access to head end equipment in case of failure or need to repair.

1.2 **Payment.** Eastside Apartments Owner hereby agrees to promptly pay to Broadway Apartments Owner, within ten (10) days after written request therefor, Eastside Apartments Owner's Proportionate Share (defined below) of the recurring costs of such internet service, and reasonable maintenance costs related to the Line, as invoiced to Broadway Apartments Owners by Integra. As used herein, "Eastside Apartments Owner's Proportionate Share" shall mean an equitable portion of all monthly service, use and/or license fees imposed and collected by Integra, based on the total number of individual apartment units in the Phase III Property (i.e., 180 units), as compared with the total number of individual apartment units in the Broadway Apartments Property (i.e., 73). Broadway Apartments Owner shall reasonably calculate Eastside Apartments Owner's Proportionate Share, and such calculation shall be deemed binding absent manifest error. Broadway Apartments Owner shall invoice Eastside Apartments Owner from time to time for Eastside Apartments Owner's Proportionate Share of the costs of the services provided by Integra including any required and reasonable maintenance costs related to the upkeep and or routine maintenance of the Line, and Broadway Apartments Owner shall promptly remit full payment to Integra.

1.4 **Lien Rights.** In the event Eastside Apartments Owner fails or refuses to pay when due Eastside Apartments Owner's Proportionate Share, which failure continues for a period of thirty (30) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against Eastside Apartments Owner for reimbursement (if such amount is paid by Broadway Apartments Owner) plus interest. Interest shall accrue from the date said bill was due and payable to and including the date said bill is paid at a rate equal to twelve percent (12%) per annum. Furthermore, Broadway Apartments Owner shall have a lien on the Phase III Property for the amount of said expenses plus accrued interest as set forth above; provided, however, that if there is a bona fide dispute as to the existence of such default or of the amount due pursuant to Eastside Apartments Owner's Proportionate Share and all undisputed amounts are paid, there shall be no right to place a lien on such property until ten (10) days after such dispute is settled by final court decree or mutual agreement and payment thereof by Eastside Apartments Owner has not been made. The lien described in this Section for the payment of any amounts owing hereunder shall be automatically subordinate to the lien of any mortgage lender which was recorded prior to the date any such amount hereunder becomes due.

1.5 Interruption. Eastside Apartments Owner hereby agrees that Broadway Apartments Owner shall not be liable to Eastside Apartments Owner (or to any of its tenants, occupants or other invitees) for any interruption or other disruption of service, unless caused by the gross negligence or willful misconduct of Broadway Apartments Owner. Broadway Apartments Owner hereby disclaims any representations or warranties regarding the availability or quality of the services offered by Integra and Eastside Apartments Owner's use of the Line shall be on an "as-is" "where-is" basis subject to any latent or patent defects in the Line.

1.6 Changes to Integra Agreement. No changes to the Integra agreement including any renewals to the Integra agreement shall be made without the express written consent of Eastside Apartments Owner.

2. COVENANTS RUN WITH LAND. This Agreement and the restrictions, covenants, benefits and obligations created hereby shall be binding upon and shall inure to the benefit of all present and future holders of interests in the Phase III Property and the Broadway Apartments Property and shall be deemed a covenant running with the land for so long as Integra is providing internet services and/or other telecommunications services to the Phase III Property through the Line located on the Broadway Apartments Property. At such times as Integra is no longer providing services to the Phase III Property through the Line on the Broadway Apartments Property, the Parties agree to promptly execute a deliver a recordable termination of this Agreement to be recorded against the Phase III Property and the Broadway Apartments Property.

3. NOTICES.

3.1 Manner. All notices, requests, demands, and other communications hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner:

If to Eastside Apartments Owner:
Eastside Investors, LLC
180 N. University Ave., Ste. 200
Provo, UT 84601
Attn: Cameron Gunter

If to Broadway Apartments Owner:
c/o Timberlane Partners LLC
734 20th Avenue East
Seattle, WA 98112
Attn: David Enslow

3.2 Delivery. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery.

4. MISCELLANEOUS.

4.1 Authority. All individuals executing this Agreement represent and warrant that they have the power and authority to do so and to bind the respective Party on whose behalf they are executing this document.

4.2 Entire Agreement. This Agreement constitutes a complete and final description of the Parties entire agreement, as to all matters referenced herein.

4.3 Invalidity, Modification, Governing Law. If any provision of this Agreement is held invalid later, it will not affect the validity of the remainder of this Agreement. This Agreement cannot be changed, modified, or canceled except through a writing that is signed by all Parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

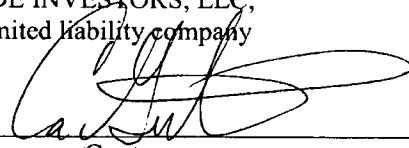
4.4 Successors and Assigns. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

4.5 Attorneys' Fees. In the event either Party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party, to be fixed by the court in the same action.

[Signatures on following pages]

[Signature page to Shared Use Agreement]

EASTSIDE INVESTORS, LLC,
a Utah limited liability company

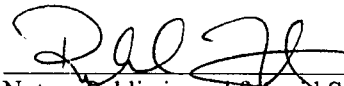
By: 
Name: Cameron Gunter
Its: Manager

"Eastside Apartments Owner"

STATE OF Utah)
) SS.
COUNTY OF Utah)

On Sept 25, 2013, personally appeared before me, a Notary Public, Cameron Gunter, the Manger of EASTSIDE INVESTORS, LLC, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he/she executed the above instrument on behalf of EASTSIDE INVESTORS, LLC.

WITNESS my hand and official Seal.


Notary Public in and for said State
My commission expires: 6-18-14

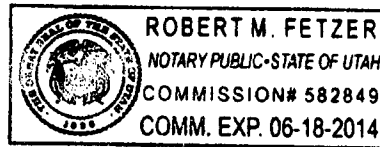


EXHIBIT A

LEGAL DESCRIPTION OF PHASE III PROPERTY

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

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 $0^{\circ} 01' 25''$ East 290.06 feet along said West Line to a set rebar and cap #158397; thence South $89^{\circ} 57' 38''$ West 330.67 feet to the East Line of Lot 3 of said Block 38; thence North $0^{\circ} 01' 22''$ 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 $89^{\circ} 57' 40''$ 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 $0^{\circ} 01' 22''$ 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 $89^{\circ} 57' 38''$ East 149.17 feet along said South Line to the Point of Beginning.

EXHIBIT B

LEGAL DESCRIPTION OF BROADWAY APARTMENTS PROPERTY

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

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 NORTH 89°57'38" EAST 181.496 FEET ALONG SAID SOUTH LINE; THENCE SOUTH 00°01'22" EAST 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 SOUTH 89°57'40" WEST 30.450 FEET TO A POINT ON THE WEST LINE OF SAID LOT 6; THENCE NORTH 00°01'22" WEST 165.657 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.