

When Recorded, Mail To:  
Salt Lake Apartment Builders, LLC  
Attn: Craig Nielsen  
750 East 9000 South, Suite A  
Sandy, Utah 84094

Tax Parcel Numbers: 16-06-426-009  
16-06-283-009  
16-06-427-038

~~MNT-05042276~~

(Space above for Recorder's use only)

~~16-06-426-009~~

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

THIS DECLARATION (the "**Declaration**") is made this 26<sup>th</sup> day of May, 2006 (the "**Effective Date**"), by Salt Lake Apartment Builders, LLC ("**Declarant**"), in its capacity as the owner and developer of the hereinafter described Development in Salt Lake City, Utah.

**RECITALS**

A. Declarant owns 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**"). Declarant has tentatively divided the Property into three phases as shown on the site plan (the "**Site Plan**") attached hereto as **Exhibit B** (to be known herein as Phase I, Phase II and Phase III). Declarant has constructed on Phase I an apartment project known as the "Emigration Court Apartments" (defined below) containing approximately 238 residential apartment units, approximately 4,000 square feet of commercial retail space and other related improvements. Declarant intends to construct additional improvements on Phase II (defined below) and Phase III (defined below). Phase I, Phase II and Phase III are sometimes referred to collectively herein as the "**Development**."

B. Pursuant to a general plan of improvement, and to preserve the values of the Development, Declarant intends to subject the Development to the conditions, covenants, restrictions and easements as set forth herein.

C. 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 Declarant declares 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:

9735475  
5/26/2006 11:49:00 AM \$56.00  
Book - 9299 Pg - 6002-6024  
Gary W. Ott  
Recorder, Salt Lake County, UT  
METRO NATIONAL TITLE  
BY: eCASH, DEPUTY - EF 23 P.

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

Some significant terms in this Declaration are defined below, and other definitions appear throughout the Declaration.

1.1 “**Amenities**” mean the plaza, park and/or other garden and walkway improvements yet to be built by the Declarant, such to be located above and on top of the Parking Facility.

1.2 “**Amenities Completion Deadline**” means October 16, 2006, subject to extension for a period equal to the period of any Unavoidable Delay.

1.3 “**Applicable Law**” shall mean all applicable laws, statutes, ordinances, 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.

1.4 “**Business Day**” shall mean any day other than a day on which banks in the state of Utah shall be permitted or required to close.

1.5 “**City Approved Parking Date**” shall mean the first day Governmental Authorities permit resumption of parking in the Parking Garage and Parking Facility following completion of the Amenities.

1.6 “**Drive Aisles**” means collectively, and as shown on the Site Plan, (i) the two on grade drive aisles that exist between 500 East and 600 East on the north and south sides of the Development that serve to facilitate traffic flow throughout the Development, (ii) the on grade drive aisle between the Phase I building and the Parking Facility (the “**Drive Aisles Connection**”), and (iii) the sidewalks running contiguous or parallel to the North Drive Aisle (defined below), the South Drive Aisle (defined below) and the Drive Aisles Connection. The drive aisle on the south side of the Development is sometimes referred to herein as the “**South Drive Aisle**” and the drive aisle on the north side of the Development is sometimes referred to herein as the “**North Drive Aisle**.”

1.7 “**Garage Access Ways**” means collectively, the entrances, ramps, driveways and drive aisles (other than the Drive Aisles) upon, within and/or beneath Phase I.

1.8 “**Governmental Authorities**” shall mean 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.

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

1.10 “**North Parking Area**” means the north half of that portion of the Parking Garage that is under the Parking Facility.

1.11 “**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.

1.12 “**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. Declarant shall be deemed an Owner so long as (but only so long as) it owns any one or more of the Phases of the Development.

1.13 “**Parking Facility**” means the second, on grade, parking facility located immediately east of the Drive Aisles Connection, as depicted on the Site Plan.

1.14 “**Parking Garage**” means the first, below grade parking garage facility constructed underneath the apartment building, the Drive Aisles Connection and the Parking Facility on Phase I.

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

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

1.17 “**Phase**” means a phase within the Development, as depicted on the Site Plan; “**Phases**” means more than one Phase within the Development.

1.18 “**Phase I**” means the portion of the Development that includes the building wherein approximately 238 apartments and its related improvements have been constructed, as described on Exhibit A and as depicted on the Site Plan.

1.19 “**Phase II**” means the portion of the Development described as Phase II on Exhibit A and as depicted on the Site Plan, which is unimproved as of this date.

1.20 “**Phase III**” means the portion of the Development described as Phase III on Exhibit A and as depicted on the Site Plan, which is unimproved as of this date.

1.21 “**Plan Approval Date**” means the date Declarant receives notice that the Owner of Phase I has approved the plans and specifications for the work to construct the Amenities.

1.22 “**Site Plan**” means the site plan depicting the Development that is attached hereto as Exhibit B.

1.23 “South Parking Area” means the south half of that portion of the Parking Garage that is under the Parking Facility.

1.24 “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 Declarant or 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. 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 Grant of Access Easement to Phase II. Without limiting the rights of the Owner of Phase II pursuant to Section 2.1 above, the Owner of Phase II and its Permittees shall have, and is hereby granted, a non-exclusive easement for vehicular and pedestrian ingress and egress on, over and through the Garage Access Ways, and for such other purposes, if any, specifically enumerated herein. The Owners of Phases I and II shall not permit any use of the Garage Access Ways which is inconsistent with the uses contemplated herein.

2.3 Access to Phases II and Phase III. Without limiting the rights of the Owner of Phases II pursuant to Sections 2.1 and 2.2 above, it is noted that the only accesses, ingresses and egresses into and from the parking for Phase II (other than access ways constructed wholly to and from Phase II from 300 South Street, if any), which it is contemplated will be underground parking, are (1) at the entrance to the underground parking on Phase I, as shown on the Site Plan, (2) at the exit from the underground parking on Phase I, as shown on the Site Plan, (3) on the north boundary of the Parking Facility, and (4) on the north boundary of the Parking Garage directly under the Parking Facility.

Without limiting the rights of the Owner of Phases III pursuant to Section 2.1 above, the only access, ingress and egress into and from the parking for Phase III (in addition to any access ways constructed wholly to and from Phase III from 600 East Street), which it is contemplated will be underground parking, is at the location on the South Drive Aisle as depicted on the Site Plan.

2.4 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 Owner of Phase III or its Permittees any easement, license or other right to access, use or enjoy the Garage Access Ways absent a separate written instrument executed by and between the Owners of Phases I and III.

### **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 Phase II shall not be permitted to park on Phase I notwithstanding the access rights granted under Section 2.3, and the Owner of Phase II agrees to expressly state this restriction in all leases, subleases, licenses, concessions or other similar agreements. There shall exist no cross-parking rights between 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 Amenities. At Declarant's sole cost and expense, Declarant shall construct, or cause to be constructed, the Amenities subject, however, to the following:

- (a) Construction of the Amenities and the re-grading of the area to the east of the Parking Garage and the Parking Facility shall commence within ten (10) days after the Plan Approval Date. Declarant shall complete the Amenities on or before the Amenities Completion Deadline and shall complete the re-grading of the area to the east of the Parking Garage and the Parking Facility ("**East Area**") within thirty (30) days after the Effective Date ("**East Area Deadline**").

- (b) Only new materials shall be utilized in completing the Amenities and all work performed in connection with the Amenities shall be performed in a good, safe, workman-like manner.
- (c) Subject to Declarant's obligation to provide alternative parking on Phase II in accordance with Section 4.1(d), below, Declarant shall have the right upon two weeks prior written notice to the Owner of Phase I, to close: a) the North Parking Area for a total of 13 consecutive days, but in any event the last day for such closure shall be July 25, 2006, such day being referred to as the "**North Deadline**"; b) so long as the North Area is open for parking, the South Parking Area for a total of 13 consecutive days, but in any event the last day for such closure shall be August 17, 2006, the last day of such period being referred to as the "**South Deadline**"; and c) the Parking Facility for a period of time commencing two weeks after receipt by the Owner of Phase I of written notice from Declarant and expiring on the City Approved Parking Date. During such closure periods neither the Owner of Phase I nor its Permittees shall park in such closed areas.
- (d) During the period of construction of the Amenities, Declarant shall (i) take appropriate measures to minimize any disruption or inconvenience caused by such work to the Owner of Phase I and its Permittees, including, as necessary manning the closed parking areas, (ii) make adequate provisions or shall cause adequate provisions to be made for the safety and convenience of the Owner of Phase I and its Permittees, and (iii) during any period of time which the Owner of Phase I and its Permittees are restricted from parking in the North Area or South Area or the Parking Facility pursuant to Section 4.1(c) above, the Declarant shall, at no cost to the Owner of Phase I or its Permittees, make available to the Owner of Phase I and its Permittees alternative parking on Phase II, which alternative parking site shall be properly graded, paved, striped and numbered and shall contain no less than 73 parking spaces ("**Alternate Parking**"). Notwithstanding anything to the contrary contained herein, the Alternate Parking shall be complete and ready for use one week prior to the date that Seller's two week notice (as specified above in Section 4.1 (c)) requires closure of the Parking Facility, the North Parking Area and the South Parking Area.
- (e) Declarant shall indemnify and hold harmless the Owner of Phase I from any loss, cost, expense, damage or claim of any nature related to the construction of the Amenities or the Alternate Parking.
- (f) Declarant shall deliver or make available to the Owner of Phase I on or before three (3) Business Days after the date of this Declaration, copies of the plans and specifications for the Amenities. Such plans and specifications shall comply with all applicable building codes, and shall be reviewed and approved by the Owner of Phase I prior to Declarant commencing construction, which approval will not be unreasonably delayed or withheld and shall be given to Declarant three (3) Business Days after receipt of a complete set of such plans and

specifications. During construction Declarant from time to time may deliver updates of such plans and specifications or change orders, which updates and change orders shall comply with all applicable building codes, and shall be reviewed and approved by the Owner of Phase I prior to Declarant commencing such work, which approval will not be unreasonably delayed or withheld and shall be given to Declarant five (5) Business Days after receipt of a complete set of such plans and specifications.

- (g) The construction of the Amenities shall be in compliance with all of the applicable provisions of Article 7 and Sections 8.3 and 8.5 of this Declaration.
- (h) If Declarant fails to re-grade the East Area by the East Area Deadline, or fails to complete the construction in the North Parking Area by the North Deadline in order that parking can resume in such Area or fails to complete the construction in the South Parking Area by the South Deadline in order that parking can resume in such Area or fails to complete the Amenities before the Amenities Completion Deadline, Declarant shall pay the Owner of Phase I within ten (10) Business Days after written demand, \$1,000 for each day beyond such deadlines that such construction is not completed ("Late Fee"). Further if Declarant fails to pursue construction of the Amenities or the grading of the East Area in an expeditious and diligent manner or fails to complete the Amenities before the Amenities Completion Deadline or complete the grading of the East Area before the East Area Deadline, upon five (5) Business Days' written notice, the Owner of Phase I may eject Declarant from the job, and complete the Amenities or the re-grading of the East Area itself or have such work completed by others, and Declarant shall no longer have the right to perform such work. The cost of completion by the Owner of Phase I, including reasonable reimbursement for additional executive and administrative expense, shall be charged to Declarant. Such Late Fee costs and other sums of such construction shall be repayable by Declarant to the Owner of Phase I on demand, shall bear interest at the rate of ten percent (10%) per annum from the date of such demand and shall be secured by a lien which shall automatically attach to any property within the Development owned by Declarant on the date of such demand. The Owner of Phase I may file such lien of record in the form permitted or otherwise required under Applicable Law and such lien may be foreclosed in any manner permitted or required by Applicable Law.
- (i) Provided Declarant shall deliver to the Owner of Phase I the plans and specifications for the Amenities on or before May 22, 2006, then if the Owner of Phase I shall not have approved such plans and specifications by May 25, 2006, there shall be added to the dates stated for the Amenities Completion Deadline, East Area Deadline, the North Deadline and the South Deadline one day for every day beyond May 25, 2006 that the Owner of Phase I shall not have so approved such plans and specifications.

4.2 Maintenance of the Amenities. The Owner of Phase I shall have the responsibility to operate and maintain the Amenities. The Owner of Phase II shall pay to the

Owner of Phase I twenty percent (20%) of the costs of operating and maintaining the Amenities and real property taxes for the Amenities, and (ii) the Owner of Phase III shall pay to the Owner of Phase I thirty percent (30%) of the costs of operating and maintaining the Amenities and real property taxes for the Amenities, in each instance in accordance with the provisions of this Declaration and commencing from the date of this Declaration. Real property taxes for the Amenities shall be calculated as follows: the amount of taxes for the Amenities shall be deemed to be that amount which is determined by multiplying the total real property tax amount for Phase I by a fraction the numerator of which is the amount it costs to complete construction and open the Amenities for business and the denominator shall be the sum of the amount of the purchase price paid for Phase I at closing and the costs to complete construction ("**Amenities Tax Amount**"). Each Owner's share shall be determined by multiplying the Amenities Tax Amount by the percentage for each Phase set forth above.

4.3 **Ownership of the Amenities.** The Amenities shall at all times be owned by the Owner of Phase I.

4.4 **Reciprocal Easements.** The Owners of Phase II and Phase III, respectively, and their Permittees, are hereby each granted a perpetual, non-exclusive easement to access and use the Amenities pursuant to the terms of this Declaration and other reasonable rules and procedures for use as established by the Owners from time to time.

4.5 **Rules and Regulations.** The Owner of Phase I shall promulgate from time to time reasonable rules and regulations regarding the use of the Amenities, which rules and regulations shall not be applicable until the same have been approved by the Owners of Phase II and Phase III, which approvals shall not be unreasonably withheld or delayed.

4.6 **Redesign and Reconstruction.** The Amenities may be redesigned and reconstructed only by the Owner of Phase I (which rights the Owner of Phase I may assign or delegate to another Owner), but only with the approval of all Owners, which approval may be withheld for any reason in the sole discretion of each Owner if the redesign constitutes a material change in the nature, use or functionality of the existing Amenities, but which approval shall not be unreasonably withheld if the redesign or reconstruction simply modernizes or upgrades the existing Amenities without changing the fundamental concept of the existing Amenities. Notwithstanding anything herein to the contrary or apparently to the contrary, the Owner of Phase I shall have the right to add parking with the Amenities subject only to (i) approval by all requisite Governmental Authorities, and (ii) approval of the design by the Owners of Phases II and III, such approval not to be unreasonably withheld. In the event that parking is added to the Amenities, then the cost of construction of such parking and the use of such parking spaces shall be shared by the Owners in the following percentages: Owner of Phase I, 50%, Owner of Phase II, 20% and the Owner of Phase III, 30%.

**ARTICLE 5**  
**MAINTENANCE OF DRIVE**  
**AISLES AND GARAGE ACCESS WAYS**

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



5.1 Drive Aisles. The Owner of Phase I shall maintain, or cause to be maintained, the Drive Aisles located on Phase I and, if, as and when the same are constructed by the respective Owner(s) thereof, 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 surfacing 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;
- (d) Placing, keeping in repair, and replacing any necessary or appropriate directional signs, markers and striping; and
- (e) Operating, keeping in good repair, and replacing where necessary, such artificial lighting facilities as shall be reasonably required.

The Owner of Phase II shall pay to the Owner of Phase I twenty percent (20%) of the costs of operating and maintaining the Drive Aisles, and (ii) the Owner of Phase III shall pay to the Owner of Phase I thirty percent (30%) of the costs of operating and maintaining the Drive Aisles, in each instance in accordance with the provisions of this Declaration and commencing as to Phase II and Phase III on the date a certificate of occupancy is issued for each such Phase.

5.2 Garage Access Ways. The Owner of Phase I shall maintain, or cause to be maintained, the Garage Access Ways at all times 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 surfacing 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;
- (d) Placing, keeping in repair, and replacing any necessary or appropriate directional signs, markers and striping; and
- (e) Operating, keeping in good repair, and replacing where necessary, such artificial lighting facilities as shall be reasonably required; and

- (f) Maintaining free and unobstructed access to and from the Garage Access Ways to streets adjacent thereto.

The Owner of Phase II shall pay to the Owner of Phase I twenty-five percent (25%) of the costs of operating and maintaining the Garage Access Ways in accordance with the provisions of this Declaration.

5.3 Damages Caused by Owner or its Permittees. Notwithstanding anything herein to the contrary, if the Amenities, the Drive Aisles, the Garage Access Ways or the Access Gates are damaged at any time by the gross negligence or willful misconduct of the Owner of another Phase or its Permittees, then repairs thereto shall be borne solely by the Owner who caused, or whose Permittees caused, the damage.

## **ARTICLE 6**

### **INSTALLATION AND MAINTENANCE OF ACCESS GATES**

6.1 Parking Access Gates. (a) The Owner of Phase I has installed, as its sole cost and expense, access gates between the Parking Garage and the North Drive Aisle, and between the Parking Garage and the South Drive Aisle (collectively, the "**Phase I Parking Garage Access Gates**"). (b) At such time as the Owner of Phase II has constructed the parking facilities on Phase II, the Owner of Phase II shall install, on Phase II, access gates between the Parking Garage and the Phase II parking facilities, and between the Parking Facility and the Phase II parking facilities (collectively, the "**Phase II Access Gates**"). (c) The Owner of Phase I shall have the right but not the obligation to install, on Phase I, an access gate or gates between the Parking Facility and the Drive Aisles Connection (collectively, the "**Phase I Parking Facility Access Gates**"), with the selection of such equipment to be agreed upon by the Owners of Phases I and II. The Phase I Parking Garage Access Gates, Phase I Parking Facility Gates and the Phase II Access Gates are sometimes referred to collectively herein as the "**Access Gates.**"

6.2 Ownership of the Access Gates. The Phase I Parking Garage Access Gates and the Phase I Parking Facility Gates (collectively, the "**Phase I Access Gates**") shall at all times be owned by the Owner of Phase I. The Phase II Access Gates shall at all times be owned by the Owner of Phase II.

6.3 Operation and Maintenance of Access Gates. The Phase I Access Gates shall be operated and maintained by the Owner of Phase I. The Owner of Phase II shall pay to the Owner of Phase I twenty-five percent (25%) of the costs of operating and maintaining the Phase I Access Gates in accordance with the provisions of this Declaration.

6.4 Access Cards. Provided that the Owner of Phase II or its Permittees first makes any requisite deposit, upon receipt of a written request from the Owner of Phase II and such other information regarding the parking patron as the Owner of Phase I customarily requests, the Owner of Phase I will issue an access card, parking sticker and/or other entry device to the Owner of Phase II or its Permittee, and to the Permittees of Phase I as applicable. Any charge for access cards to residents of Phase II shall be commercially reasonable and customary, and the residents of Phase II shall not pay a higher charge for lost cards than the cost to residents of Phase I.

6.5 Lost Access Cards. There will be a replacement charge payable by the Owner of Phase II or its Permittees equal to the amount posted from time to time by the Owner of Phase I for loss of any access card, parking sticker and/or other entry device issued by the Owner of Phase I.

6.6 Ownership of Access Cards. Access cards, parking stickers or any other device or form of identification supplied by the Owner of Phase I shall remain the property of the Owner of Phase I and shall not be transferable.

6.7 List of Authorized Persons. The Owner of Phase II shall maintain a current inventory of authorized persons who possess such access cards, parking stickers or other entry devices, and shall provide to the Owner of Phase I copies of each such inventory, as it is updated from time to time.

6.8 Damages Caused by Owner or its Permittees. Notwithstanding anything herein to the contrary, if the Amenities, the Drive Aisles, the Garage Access Ways or the Access Gates are damaged at any time by the gross negligence or willful misconduct of the Owner of another Phase or its Permittees, then repairs thereto shall be borne solely by the Owner who caused, or whose Permittees caused, the damage.

## **ARTICLE 7**

### **FUTURE DEVELOPMENT**

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

7.1 Future 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 Access Ways on Phase II. Simultaneously with its development of Phase II, the Owner of Phase II shall construct and pave, at its sole cost and expense, those portions of the Access Ways located on Phase II as shown on the Site Plan. Such Access Ways shall be configured approximately as shown on the Site Plan, shall be paved with reinforced concrete in accordance with the paving specifications that were employed in constructing the Access Ways constructed on Phase I, and shall provide direct access drives to the public streets adjacent thereto.

7.3 Conversion of Parking Stalls on Phase I for Access to Phase II. Simultaneously with the development of Phase II, the Owner of Phase I (a) shall surrender three (3) parking stalls at a mutually acceptable location on the north boundary line of the Parking Garage to allow for a drive aisle to access Phase II, and such drive aisle shall thereafter be part of the Garage Access Ways, and (b) shall surrender three (3) parking stalls at a mutually acceptable location on the north boundary line of the Parking Facility to allow for a drive aisle to access Phase II, and such drive aisle shall thereafter be part of the Garage Access Ways. During construction of Improvements on Phase II, the Owner of Phase II shall use reasonable, good faith efforts to minimize any interference with parking in the Parking Garage and the Parking

Facility by the Phase I Owner and its Permittees. Prior to the commencement of construction of Improvements on Phase II which impact the Parking Garage or the Parking Facility, the Owner of Phase I shall have the right to review and approve the plans and specifications with respect to any such proposed Improvements to be constructed on Phase II relating to the Parking Garage or the Parking Facility, as well as the timing and staging of construction for such Improvements, which approval may be withheld if, in the reasonable opinion of the Owner of Phase I, the Improvements to be constructed on Phase II affect the structural integrity of the improvements then existing on Phase I, but which approval shall not otherwise be unreasonably withheld provided the Owner of Phase II uses reasonable, good faith efforts to minimize any interference with parking in the Parking Garage and the Parking Facility by the Phase I Owner and its Permittees.

7.4 Completion of Access Ways on Phase III. Simultaneously with its development of Phase III, the Owner of Phase III shall construct and pave, at its sole cost and expense, those portions of the Access Ways located on Phase III as shown on the Site Plan. Such Access Ways shall be configured approximately as shown on the Site Plan, shall be paved with reinforced concrete in accordance with the paving specifications that were employed in constructing the Access Ways on Phase I, and shall provide direct access drives to the public streets adjacent thereto.

7.5 Construction Work Generally. 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, 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. 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. The Owner undertaking such work shall repair or shall cause such repair at its own cost and expense any and all damage 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, including, but not limited to power washing, cleaning and restriping, as necessary, the Parking Garage and Parking Facility. Construction traffic for the Amenities, 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 Garage Access Ways or the Drive Aisles. There shall be no construction parking on Phase I in connection with construction of the Amenities or construction of Phase II or Phase III, and construction debris from such work shall be removed on a daily basis. Further no construction shall be staged within ten feet of the boundaries of any other Phase.

7.6 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.

7.7 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 C.

## **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. 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: (i) 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; (ii) use good faith efforts to ensure that there is continual pedestrian and vehicular access to the Development; (iii) use reasonable efforts to minimize any interference or disruption to Owners and such Owners’ Permittees use and occupancy of the Development; (iv) perform any such work at its sole cost and expense; and (v) perform such work expediently and in a good and workmanlike manner.

8.3 Liability 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 ways immediately adjoining the Development, with a “Combined Single Limit” covering personal injury liability, bodily injury liability and property damage liability of not less than Two Million Dollars (\$2,000,000.00), 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.

8.4 Mutual Release. 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 to be maintained by any Owner hereunder, hereby releases and waives any right to recover against the other Owner 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 in the Property 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 (a) through (e) 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 shall keep the Development free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under that Owner's direction or instruction, and shall indemnify, hold harmless and agree to defend the other respective Owners from any liens that may be placed on the Development and/or the property pertaining to any work performed, materials furnished or obligations incurred by, through, for, or under that Owner's, or any of that Owner's Permittees', actions. Nothing herein shall prevent the Owner permitting or causing such lien to be recorded from contesting the validity thereof in any manner such Owner chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Owner shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien of record.

8.6 Compliance with Laws. Each Owner, as to its Phase, 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 with a use that is inconsistent with the Permitted Uses of the Development. Without limiting the above, each Owner hereby reserves the right: (a) for pedestrian and vehicular ingress to and egress from its respective Phase of the Development as described in the Site Plan and in this Declaration; (b) for the placement and maintenance of landscaping, signs, light standards, sidewalks, curbs and gutters, ditches, irrigation pipes and related appurtenances, fences, gates, and asphalt roadways and driveways within its respective Phase of the Development as described in the Site Plan and in the Declaration; (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 either: (i) when delivered in person, or (ii) five (5) days after deposit in the

United States mail, either registered or certified mail, return receipt requested, postage prepaid, addressed by name to the person and party intended. All notices shall be given at the address for the Owner of each Phase as said addresses are maintained by Salt Lake County for the giving of real property tax notices and any other addresses to which an Owner has been given written notice.

## 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 Declarant or 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 Declarant or any Owner be liable 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. Further the Owner of Phase I initially shall be Emigration Tower LLC ("**Emigration Tower**") and Declarant and any Owner agree that they shall have no recourse against any other property or assets of Emigration Tower, Metropolitan Life Insurance Company ("**MetLife**"), the general account of MetLife, any separate account of MetLife, any assets of the BlackRock Realty Advisors, Inc, ("**Advisor**"), or to any of the past, present or future, direct or indirect, shareholders, partners, members, managers, principals, directors, officers, agents, incorporators, affiliates or representatives of or the Advisor (collectively, "**Emigration Tower Parties**"), except for Emigration Tower's interest in the Phase I, or of any of the assets or property of any of the Emigration Tower Parties for the payment or collection of any amount, judgment, judicial process, arbitral award, fee or cost or for any other obligation or claim arising out of or based upon this Declaration and requiring the payment of money by Emigration Tower, except for Emigration Tower's interest in the Phase I. The Emigration Parties shall not be subject to levy, lien, execution, attachment or other enforcement procedure for the satisfaction of any of Declarant's or other Owner's rights or remedies under or with respect to this Declaration, at law, in equity or otherwise. In connection with this Declaration, Advisor is acting as the investment adviser to Emigration Tower and shall not have any individual liability hereunder.

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 by any



other Owner (a "mortgagor") to any 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; 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.

8.9.11 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.

8.9.12 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 Parking Third Party, nor shall any such Occupant or Parking Third Party have any right to enforce any of the provisions contained in this Declaration.

8.9.13 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.

8.9.14 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.

8.9.15 Transfer. An Owner transferring all or any portion of its fee 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: (i) the name and address of the new Owner; and (ii) a copy of the legal description of the portion of the Development transferred by such Owner.

8.9.16 Time of the Essence. Time is of the essence to this Agreement and to all dates and time periods set forth herein.

*[Remainder of page intentionally left blank]*

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

DECLARANT:

Salt Lake Apartment Builders, LLC, a Utah limited liability company

By: Craig D. Nielsen  
Craig D. Nielsen, Manager

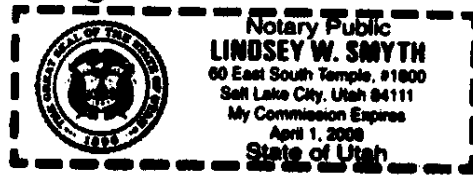
By: E. Duff Ellsworth  
E. Duff Ellsworth, Manager

STATE OF UTAH )  
 ) :SS  
COUNTY OF SALT LAKE )

Duly acknowledged before me this 25<sup>th</sup> day of May, 2006, by Craig D. Nielsen, in the capacity indicated.

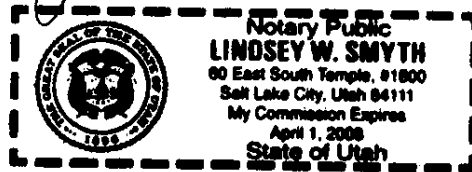
Lindsey W. Smyth  
Notary Public

STATE OF UTAH )  
 ) :SS  
COUNTY OF SALT LAKE )



Duly acknowledged before me this 25<sup>th</sup> day of May, 2006, by E. Duff Ellsworth, in the capacity indicated.

Lindsey W. Smyth  
Notary Public



**EXHIBIT A**

**[Legal Description of the Property]**

PHASE I, EMIGRATION COURT MINOR SUBDIVISION, as disclosed by that certain Notice of Notice of Minor Subdivision Approval recorded April 22, 2003, as 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.

PHASE II:

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 deg. 57'38" East 181.496 feet along said South line; thence South 0 deg. 01'22" East 190.346 feet to a point on the North line of proposed Lot 1; thence along the Northerly boundary of said proposed Lot 1 the following three courses: West 151.056 feet; thence North 24.585 feet; thence South 89 deg. 57'40" West 30.450 feet to a point on the East line of said Lot 6; thence North 0 deg. 01'22" West 165.657 feet along said East line to the point of beginning.

PHASE III:

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 deg. 01'25" East 290.061 feet along said West line; thence South 89 deg. 57'38" West 330.667 feet to the East line of Lot 3 of said Block 38; thence North 0 deg. 01'22" West 66.664 feet, said point lying on the South line of proposed Lot 1; thence along the Southerly and Easterly boundary of said proposed Lot 1 the following five courses: North 89 deg. 57'40" East 30.361 feet; thence North 17.736 feet; thence East 153.750 feet; thence North 181.083 feet; thence West 2.694 feet to the Southeast corner of proposed Lot 2; thence North 0 deg. 01'22" West 24.682 feet along the East line of said proposed Lot 2 to a point on the South line of the aforementioned Lot 6; thence North 89 deg. 57'38" East 149.167 feet along said South line to the point of beginning.



## EXHIBIT C

### [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.

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- (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.