

**Andrea Allen**

**Utah County Recorder**

2021 Jul 30 04:43 PM FEE 256.00 BY SM

RECORDED FOR Cottonwood Title Insurance Agency, Inc.

ELECTRONICALLY RECORDED

WHEN RECORDED MAIL TO:

YARD AF, LLC  
c/o Invictus Title Ins. Agency, LLC  
1985 North 1120 West  
Provo, UT 84604

File No.: 145888-DMP

## AMENDED SHARED AMENITIES EASEMENT AGREEMENT

In Reference to Tax ID Number(s):

38-642-0004

After recording return to:  
 YARD AF, LLC  
 c/o Invictus Title Ins. Agency, LLC  
 1985 N 1120 W  
 Provo, UT 84604

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**AMENDED SHARED AMENITIES EASEMENT AGREEMENT**

**THIS AMENDED SHARED AMENITIES EASEMENT AGREEMENT** (this “**Agreement**”), is made effective as of this 29<sup>th</sup> day of July, 2021 (the “**Effective Date**”), by and between TACE, LLC a Utah limited liability company, including its successors and assigns (“**Grantor**”), The Yard AF, LLC, a Utah limited liability company, and its successors in interest, Passaro Leasing, LLC, a Utah limited liability company and its successors in interest, and the Yard Owners’ Association Inc., a Utah Nonprofit Corporation (collectively, the “**Grantees**”). Both the Grantor and the Grantees may be referred to collectively herein as the “**Parties**” or individually as a “**Party**.”

This Agreement amends, restates and replaces in its entirety that certain Easement Agreement entered into by The Yard AF, LLC, a Utah limited liability company, Passaro Leasing, LLC, a Utah limited liability company and The Yard Owners’ Association, Inc., a Utah nonprofit corporation, together as Grantees, and TACE, LLC, a Utah limited liability company, as Grantor, recorded in the records of Utah County as Entry No. 107102:2021 on June 11, 2021.

Grantor is the current fee simple owner of the real property described in Exhibit A, which is comprised of 242 residential townhome lots (collectively, the “**Townhome Lots**,” and each a “**Townhome Lot**”) and one additional lot as described in Exhibit C (the “**Shared Amenities Lot**”) upon which Grantor (or its successor-in-interest) covenants to construct a clubhouse and swimming pool and other related improvements (collectively, the “**Shared Amenities**”).

The Yard AF, LLC, as current fee simple owner of the real property described in Exhibit B (the “**Apartments Parcel**”), intends to develop said property into a 216 unit apartment complex known as “The Yard Apartments,” which is located to the north of the Shared Amenities Lot.

Grantor (or its successor in interest) intends to form a Utah non-profit corporation that will serve as the owners association for the Townhome Lot project to be developed on the property described in Exhibit B (the “**Association**”), pursuant to a declaration of covenants, conditions and restrictions (the “**Declaration**”) to be recorded in the office of the Recorder of Utah County, Utah. Following the construction and completion of the Shared Amenities by Grantor, Grantor shall convey, transfer and assign to the Association the Shared Amenities Lot and the Shared Amenities, and the Association shall then own, operate, manage and maintain the Shared Amenities and fulfill the obligations of the Association pursuant to the Declaration. The Association shall also have the obligation to establish and enforce rules and regulations pertaining to the use of the Shared Amenities by all the authorized users thereof (the “**Shared Amenity Rules and Regulations**”).

In the event of any conflict between the terms of the Declaration and this Agreement, the latter shall control. Furthermore, the Association shall not (i) amend the Declaration or any bylaws in any manner that would conflict with the terms hereof or (ii) create any rule or regulation governing the use of the Shared Amenities that are not evenly applied to both the Apartment Designees (defined below) and all of the members of the Association.

The Association, once formed and functioning, will, at its own cost and expense, but expressly subject to the Apartment Parcel owners' obligation to timely pay the Monthly Fee, operate, own, manage, maintain and repair the Shared Amenities as required by the Declaration. If the Shared Amenities are damaged or destroyed by fire or other casualty, the Shared Amenities shall be repaired or reconstructed by the Association to substantially the same condition and appearance as existed immediately before the damage or destruction, subject to such modifications as may be approved by the Association in its sole discretion; provided, however, that the obligation of the Association to repair or reconstruct the Shared Amenities shall be limited solely to the extent of the insurance proceeds actually received by the Association as the result of such damage or destruction, which insurance proceeds shall be utilized by the Association to pay for such repair or reconstruction.

Grantor hereby grants to Grantees and their successors in interest, a perpetual easement over, across and through the Shared Amenities Lot for the purpose of allowing the Apartment Designees use of the Shared Amenities, subject to the provisions, limitations and conditions contained in this Agreement. The use of said easement shall be limited to no more than 216 (plus 12 building owners, and Passaro Leasing staff) specified rental units (and in each case the permitted occupants of such rental unit), within the Apartments Parcel (collectively, the "**Apartment Units**") as designated by the owner of the Apartments Parcel (the "**Apartment Designees**"). Access to the Shared Amenities by the Apartment Designees shall be attained by use of a key fob or access card ("**Access Card**") issued by the Association. The Association shall deliver to the owner of the Apartments Parcel a total of 238 Access Cards (i.e., one for each of the Apartment Unit, 12 building owners, and 10 for Passaro Leasing, LLC staff).

Additionally, Grantor hereby grants to Passaro Leasing, LLC a perpetual easement to two (2) offices located within the future clubhouse for use by Passaro Leasing, LLC for its leasing and property management offices for The Yard Apartments; provided, however, that Passaro Leasing, LLC shall not access or use such office space until after Grantor and Passaro Leasing, LLC have entered into a mutually agreeable and commercially reasonable lease agreement, which lease agreement shall contain a rental rate of no more than Ten and No/100 Dollars (\$10.00) per year, and shall include provisions which, among other things, protect the Association from any loss, cost, damages or claims resulting from Passaro Leasing LLCs use of the clubhouse. The lease agreement shall provide for commercially reasonable leasing office hours.

The use of the Shared Amenities shall at all times be subject to the Shared Amenity Rules and Regulations as established from time to time by the Association. All such rules, regulations and limitations shall be uniformly applied to all permitted users of the Shared Amenities, which shall include the members of the Association as owners of Townhome Lots and other authorized users provided for in the Declaration (e.g., guests of the members of the Association) as well as the Apartment Designees. The Parties agree that all rules and regulations for the use of the Shared Amenities shall be equally applied to both the Apartment Designees and the members of the Association.

Passaro Leasing, LLC shall collect usage charges from rents on behalf of the Apartment Parcel owners (The Yard AF, LLC, as current owner, and its successors and assigns) and shall pay a monthly usage charge (the "**Monthly Fee**") to the Association in an amount determined from time to time by the Association, which amount shall be no more than the actual costs to maintain the Shared Amenities. The initial amount of the Monthly Fee is estimated to be \$5,400.00 (\$25.00 x 216 units) that has been issued by the Association to the owner of the Apartments Parcel). The Association shall deliver a monthly invoice to the Apartments Parcel property manager, which shall become due and payable no later than 30 days after receipt of same. A Monthly Fee is not charged for access cards held by 12 future Apartment building owners, and Passaro Leasing staff.

The Monthly Fee shall not begin until after the Shared Amenities have been completed and American Fork City has issued an occupancy permit for the same. Notwithstanding the foregoing, the Monthly Fee shall

be prorated during the construction of the Apartment Units as a rate of \$25.00 per Apartment Unit that has been constructed, leased, and occupied by a renter.

Invoices shall be sent to the following location, which may be changed by the Grantees upon 5 day's prior written notice:

Passaro Leasing, LLC  
1983 N 1120 W  
Provo, UT 84604  
801-704.3440 ext 1102  
[info@passaroleasing.com](mailto:info@passaroleasing.com)  
[brianlbird@gmail.com](mailto:brianlbird@gmail.com)

The Yard AF, LLC, as the current owner of the Apartments Parcel, shall also pay to Grantor \$273,240.00 (the "**Capital Improvements Fee**"), which has been negotiated as its share of the cost of the Shared Amenities, which shall be paid within 30 days after the later to occur of: (a) the date on which the clubhouse, pool, and associated sitework are finished, (b) the date on which American Fork City issues an occupancy permit for the same and (c) a mutually agreeable and commercially lease agreement is in place.

If the Monthly Fee any time becomes delinquent, the Association may recover all of the following: interest on the delinquent fee at the rate of 10% per annum or the maximum rate authorized by law, whichever is lesser.

If the Capital Improvements Fee any time becomes delinquent, the Association may recover all of the following: the reasonable costs incurred in collecting such fee(s), including reasonable attorneys' fees and interest on the delinquent fee at the rate of 10% per annum or the maximum rate authorized by law, whichever is lesser.

The Monthly Fee and the Capital Improvements Fee may collectively be referred to herein as the "**Fees.**"

Subject to the Passaro Leasing Notice and Cure Period (defined below), access to and use of the Shared Amenities by the Grantees (including the Apartment Designees) will abate until all Monthly Fee payment obligations are brought current and all delinquent Fees owed by the owner of the Apartments Parcel are paid in full (including the payment of any late fees and penalties as provided herein), at which time access to the Shared Amenities by the Grantees (including the Apartment Designees) shall promptly be restored. In no event shall the Association be permitted to charge more to the Owner of the Apartment Parcel for the maintenance costs of the Shared Amenities per Apartment Unit than the Association charges to each member of the Association.

In the event that the Owner of the Apartments Parcel defaults in the performance of any other of its duties and obligations under this Agreement beyond all applicable notice and cure periods, then the Association shall have the right immediately upon any such default to deactivate and disable the Access Cards that have been delivered to the owner of the Apartment Parcel until the time such defaults are sufficiently cured in Grantor's reasonable discretion.

Notwithstanding anything in this Agreement to the contrary, in the event that the Apartment Units become subject to the Utah Condominium Ownership Act, no individual condominium owner shall be deemed to be a permitted successor or assign to this Agreement, but instead the owners' association for all such condominiums shall be deemed the permitted successor, assign and beneficiary of this Agreement, and each condominium owner shall have the same rights and be subject to the same rules and regulations as if they were one of the Apartment Designees.

Neither Grantor nor the Association shall have any duty to provide security to the Shared Amenities. Each Apartment Designee using the Shared Amenities assumes all risks in accessing and using the Shared Amenities and waives and releases to the fullest extent authorized by law any claim against Grantor (and its successors-in-interest), the Association, and their officers, directors, members or agents based on any injury to any person or damage to property from the acts or omissions of any other person using the Shared Amenities for lawful or unlawful purposes, except to the extent of the gross negligence or willful misconduct of Grantor or the Association.

The Association shall obtain and maintain a general liability insurance policy against liability for bodily injury, death and damage to property occurring or resulting from an occurrence in, on or about the Shared Amenities or incident to the use of the Shared Amenities by the Association members. The Apartment Designees shall be named as additional insured under the policy evidencing such insurance and reflecting a combined single limit coverage in an amount of not less than \$1,000,000 for bodily injury and property damage liability. Such policy shall provide that the coverage cannot be cancelled without at least ten (10) days prior written notice to the Apartment Parcels / Passaro Leasing, and the Association shall cause such insurance to remain in full force and effect during the term of this Agreement. The Association shall also obtain and maintain a property insurance policy on insurable Shared Amenities, if insurance is available at commercially reasonable rates, which cost shall be added to the Monthly Fee and such insurance shall be in such amounts as the Association reasonable selects after consultation with a qualified insurance consultant.

The owner of the Apartments Parcel shall obtain and maintain a general liability insurance policy against liability for bodily injury, death and damage to property occurring or resulting from an occurrence in, on or about the Shared Amenities or incident to the use of the Shared Amenities by the Apartment Designees. The Association shall be named as an additional insured under the policy, and the owner of the Apartments Parcel shall deliver to the Association a copy of the policy evidencing such insurance and reflecting a combined single limit coverage in an amount of not less than \$1,000,000 for bodily injury and property damage liability. Such policy shall provide that the coverage cannot be cancelled without at least ten (10) days prior written notice to the Association, and the owner of the Apartments Parcel shall cause such insurance to remain in full force and effect during the term of this Agreement.

The owner of the Apartments Parcel and its successors in interest as the owner of the Apartments Parcel shall indemnify, defend and hold Grantor and the Association harmless from and against any and all claims for injuries (including death) to persons and/or damages to property occurring in, upon or about the Shared Amenities caused by the acts or omissions of: (a) the owner of the Apartments Parcel and its successors in interest as the owner of the Apartments Parcel, and (b) the Apartment Designees, except to the extent such injury or death is cause by the gross negligence or intentional misconduct of the Grantor and/or the Association.

The Grantor, and its successors in interest, and Association shall indemnify, defend and hold Grantees and the owner of the Apartments Parcel harmless from and against any and all claims for injuries (including death) to persons and/or damages to property occurring in, upon or about the Shared Amenities caused by the acts or omissions of: (a) the Grantor, and its successors in interest, and (b) the Association members, except to the extent such injury or death is cause by the gross negligence or intentional misconduct of the Grantees and/or the owner of the Apartments Parcel and provided that Grantor's indemnity obligations shall be limited to the amount of proceeds Grantor receives from the applicable insurance coverage then in effect.

Any notice given under this Agreement must be in writing and shall be deemed given (a) when deposited with a reputable overnight courier service, provided that any such notice shall not be deemed received until the next business day after deposit; (b) when deposited in the U.S. mail, postage prepaid, certified or

registered mail, return receipt requested, provided that any such notice shall not be deemed received until three (3) business days after deposit; or (c) when sent by electronic mail before 5:00 p.m. on a business day and the sender receives confirmation of transmission thereof (otherwise, any notice sent after 5:00 p.m. shall be deemed received on the next business day). All notice must be properly addressed to the Parties as follows:

**If to Grantees:**

Passaro Leasing, LLC  
1983 N 1120 W  
Provo, UT 84604  
801-704.3440 ext 1102  
[info@passaroleasing.com](mailto:info@passaroleasing.com)

**If to Grantor:**

Tace, LLC  
5255 W 11000 N Ste 125  
Highland, Utah 84003  
801.310.7789  
[bart@r2ventures.com](mailto:bart@r2ventures.com)

Any Party may change its address for notice with five (5) days' advanced written notice to the other Party.

Each Party shall be given a thirty (30)-day written notice and opportunity to cure any default and any failure to meet a deadline under this Agreement before the other Party may exercise any remedy provided for in this Agreement; provided, however, that any enforcement of the rules and regulations governing the use of the Shared Amenities as promulgated by the Association shall not be subject to any such notice and cure period (e.g., if an Apartment Designee or member of the Association violates any rule regarding safety, the Association may take such action to immediately remove such offender according to said rules and regulations). Notwithstanding the foregoing, all Monthly Fees and the Capital Improvements Fee must be paid within the specific timelines provided above, and failure to do so shall be deemed a default upon the expiration of such timeline; provided, however, that in the event of any failure to timely pay any amounts owed hereunder, the Passaro leasing staff shall nonetheless be given thirty (30)-day written notice and opportunity to cure any such failure to pay before Grantor (or its successors and assigns) may abate access to the two (2) leasing offices by Passaro Leasing, LLC (the "**Passaro Leasing Notice and Cure Period**").

This Agreement shall be governed by the laws of the State of Utah.

Any determination by any court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Grantor and its successors in interest, retains the right to use Grantor's Property in any manner provided such use shall not unreasonably interfere with the exercise of Grantee's rights granted herein.

The rights and obligations granted herein shall inure to the benefit and be binding upon the respective successors, and assigns of Grantor and Grantee.

*[Signatures Appear on Following Pages]*

In Witness whereof, this Agreement is executed by Grantor and Grantee(s) on the date shown below.

**Grantor:**  
TACE, LLC, a Utah limited liability company

By: [Signature]  
Title: MBR/COO  
Date: 7/30/21

**Grantee:**  
The Yard Owners' Association, Inc. a Utah Nonprofit Corporation

By: [Signature]  
Title: Auth. Agent  
Date: 7/30/2021

**Grantee:**  
The Yard AF, LLC a Utah limited liability company

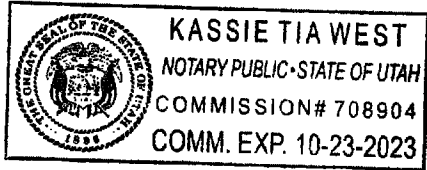
By: [Signature]  
Title: Auth. Agent  
Date: 7/30/2021

**Grantee:**  
Passaro Leasing, LLC

By: [Signature]  
Title: Auth. Agent  
Date: 7/30/2021

STATE OF UTAH )  
 ) ss  
COUNTY OF UTAH )

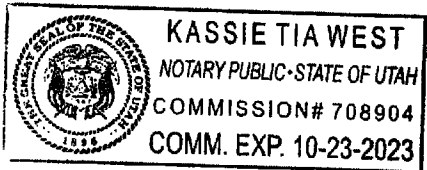
This instrument was acknowledged before me on this 30<sup>th</sup> day of July 2021 by Bart Brockbank the manager of TACE, LLC a Utah limited liability company – known to me or satisfactory proven, and acknowledged that he executed the above instrument for the purposes therein stated, and that he is authorized to sign in this capacity.



Kassie West  
Notary Public  
My Commission Expires: 10/23/2023

STATE OF UTAH )  
 ) ss  
COUNTY OF UTAH )

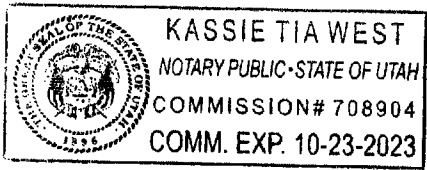
This instrument was acknowledged before me on this 30<sup>th</sup> day of July 2021 by Brian Bird authorized agent for The Yard AF, LLC a Utah limited liability company – known to me or satisfactory proven, and acknowledged that he executed the above instrument for the purposes therein stated, and that he is authorized to sign in this capacity.



Kassie West  
Notary Public  
My Commission Expires: 10/23/2023

STATE OF UTAH )  
 ) ss  
COUNTY OF UTAH )

This instrument was acknowledged before me on this 30<sup>th</sup> day of July 2021 by Brian Bird authorized agent for Passaro Leasing, LLC, a Utah limited liability company – known to me or satisfactory proven, and acknowledged that he executed the above instrument for the purposes therein stated, and that he is authorized to sign in this capacity.

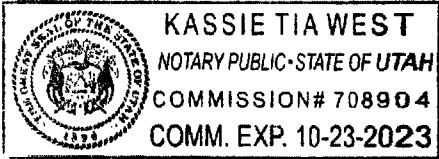


Kassie West  
Notary Public  
My Commission Expires: 10/23/2023



STATE OF UTAH )  
 ) ss  
COUNTY OF UTAH )

This instrument was acknowledged before me on this 30<sup>th</sup> day of July 2021 by Brian Bird authorized agent for The Yard Owners' Association Inc., a Utah nonprofit corporation – known to me or satisfactory proven, and acknowledged that he executed the above instrument for the purposes therein stated, and that he is authorized to sign in this capacity.



Kassie West  
Notary Public  
My Commission Expires: 10/23/2023

**EXHIBIT A**

The Townhome Lots:

Real property described below is situated in Utah County, State of Utah:

Lots 1 through 32, inclusive, EDGEWATER TOWNHOMES AT AMERICAN FORK PLAT 1, according to the official plat thereof as recorded in the office of the Utah County Recorder, State of Utah on November 30, 2020 as Entry No. 188976:2020.

Parcel ID: 38:654:0001 through 38:654:0032, inclusive

Lots 33 through 56, inclusive, EDGEWATER TOWNHOMES AT AMERICAN FORK PLAT 2, according to the official plat thereof as recorded in the office of the Utah County Recorder, State of Utah on November 30, 2020 as Entry No. 188977:2020.

Parcel ID: 38:655:0033 through 38:655:0056, inclusive

Lots 57 through 102, inclusive, EDGEWATER TOWNHOMES AT AMERICAN FORK PLAT 3, according to the official plat thereof as recorded in the office of the Utah County Recorder, State of Utah on November 30, 2020 as Entry No. 188978:2020

Parcel ID: 38:656:0057 through 38:656:0102, inclusive

**EXHIBIT B**

The Apartments Parcel:

All of lots 1 through 13, inclusive, THE YARD SUBDIVISION PLAT, a Vacation of Lots 1 & 3 of Edgewater North Subdivision Plat, American Fork, Utah, according to the official plat thereof on file in the office of the Utah County Recorder.

Parcel ID: 56:040:0001 through 56:040:0019, inclusive.

**EXHIBIT C**

The Shared Amenities Lot:

Real property described below is situated in Utah County, State of Utah;

LOT 4, EDGEWATER NORTH SUBDIVISION, according to the official plat thereof as recorded in the office of the Utah County Recorder, State of Utah on July 20, 2020 as Entry No. 103481:2020.

Parcel ID: 38:642:0004

Commonly Known Address: 1105 West 300 South American Fork, UT