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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: MMA, DEPUTY - WI 9 P.

WHEN RECORDED RETURN TO:

WASATCH ACQUISITIONS AND CAPITAL, INC.
ATTN: ROBERT B. FUNK
595 SOUTH RIVERWOODS PARKWAY, SUITE 400
LOGAN, UTAH 84321

PROHIBITION AGAINST CONDOMINIUM CONVERSION AGREEMENT

THIS PROHIBITION AGAINST CONDOMINIUM CONVERSION AGREEMENT (the "**Condominium Agreement**") is made and entered into as of the 14th day of October, 2016, by and between WASATCH 5TH EAST HOLDINGS, LLC, a Utah limited liability company ("**Seller**") and ENCORE APARTMENTS, INC., a Delaware corporation ("**Purchaser**").

WITNESSETH:

WHEREAS, Seller and Purchaser have entered into that certain Purchase and Sale Agreement dated September 23, 2016 (the "**Sale Agreement**") relating to the sale by Seller to Purchaser of that certain parcel of real property, located in Salt Lake City, Utah, and more particularly described on Exhibit "A" attached hereto (the "**Land**") together with certain apartment buildings and related personal property and other rights located thereon and relating thereto (the "**Improvements**" and the Land and the Improvements collectively referred to herein as the "**Property**").

WHEREAS, as a condition to Seller conveying the property to Purchaser and in consideration of Seller accepting the purchase price and conveying the Property as set forth in the Sale Agreement to Purchaser, Purchaser has agreed with Seller to execute and record this Condominium Agreement providing for certain restrictions relating to the future use of the Property for a period of time after the date of this Condominium Agreement as more fully set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Seller and the Purchaser hereby agree as follows:

1. Definitions and Interpretation. The following terms shall have the meanings assigned to them in this Section 1 unless the context in which they are used clearly requires otherwise:

"**Condominium Conversion**" - Shall mean the filing or recording of any document providing for the conversion of the Property to a form of condominium ownership under any state or local statute or ordinance.

"**Event of Default**" - As defined in Section 11 hereof.

“Hazardous Materials” or “Hazardous Substances” - Shall mean (i) hazardous wastes, hazardous materials, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as “hazardous wastes,” “hazardous materials,” “hazardous substances,” “toxic substances,” “pollutants,” “contaminants,” “radioactive materials”, “toxic pollutants”, or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9601 et seq.; the Toxic Substance Control Act (“TSCA”), 15 U.S.C. § 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1802; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 9601, et seq.; the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Clean Air Act (“CAA”), 42 U.S.C. § 7401 et seq.; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinance now or hereafter in effect relating to environmental matters; and (ii) any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any environmental law, now or hereafter in effect, including but not limited to (A) petroleum, (B) refined petroleum products, (C) waste oil, (D) waste aviation or motor vehicle fuel and their byproducts, (E) asbestos, CO lead in water, paint or elsewhere, (G) radon, (H) Polychlorinated Biphenyls (PCB’s), (I) ureaformaldehyde, (J) volatile organic compounds (VOC), (K) total petroleum hydrocarbons (TPH), (L) benzene derivative (BTEX), and (M) petroleum byproducts.

“Improvements” - As defined in the Recitals hereof.

“Indemnified Parties” - As defined in Section 3 hereof.

“Land” - As defined in the Recitals hereof.

“Property” - As defined in the Recitals hereof.

“Purchaser” - As defined in the Preamble hereof.

“Residential Rental Property” - Shall mean property used for the rental of apartments to the general public under leases providing for residential use by any occupant of any apartment (provided, however, that such shall also include leases to corporate housing or similar tenants, so long as the actual occupant of the apartment will utilize same for residential purposes).

“Seller” - As defined in the Preamble hereof.

“Term” - As defined in Section 7 herein.

“Units” - Shall mean any portion of the Property created in connection with any Condominium Conversion.

“Wasatch Entities” - As defined in Section 3 hereof.

2. Residential Rental Property. The Purchaser hereby acknowledges and agrees that during the Term of this Condominium Agreement:

(a) The Property shall at all times be used as Residential Rental Property.

(b) The Property shall not be subject to any Condominium Conversion and neither shall any portion of the Property be converted to Units for sale in connection with a Condominium Conversion nor shall the title to any such Units be transferred to any party.

(c) No part of the Property will at any time be owned or used as a cooperative housing corporation, community apartment property or stock corporation.

3. Indemnification. In the event the provisions of Section 2 hereof are breached, Purchaser agrees to indemnify, defend and hold harmless the Seller, and each of its members, managers, partners, officers, directors, trustees, affiliates, including but not limited to Wasatch Property Management, Inc. and Wasatch Residential Builders, LLC (the "*Wasatch Entities*") parents, subsidiaries, shareholders, managers, beneficiaries, employees and agents (collectively, the "*Indemnified Parties*") from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever, whether in tort, contract or otherwise (including without limitation, court costs and attorneys' fees and disbursements) arising out of, or in any way relating to: (a) claims made or brought by any party or parties who acquire or contract to acquire any ownership interest in the Property following the date hereof, their agents, employees and successors and assigns in connection with or related to the physical condition of the Property including, without limitation, latent or patent defects, and claims relating to the existence of asbestos, any other construction defects, claims relating to mold, all structural and seismic elements, all mechanical, electrical, plumbing, sewage, heating, ventilating, air conditioning and other systems; and (b) a breach of any of the covenants, terms and conditions of this Condominium Agreement by Purchaser or its successors and assigns. Purchaser and any successor or assignee of Purchaser does now and shall at all times consent to the right of Indemnified Parties to approve and appoint defense counsel and to participate in or assume the defense of any claim under this Section 3.

4. Consideration. In consideration of the Seller's acceptance of the purchase price for the Property from Purchaser and the delivery of the deed for the Property from Seller to Purchaser, Purchaser has entered into this Condominium Agreement and has agreed to restrict the uses to which the Property can be put on the terms and conditions set forth herein.

5. Reserved.

6. Term. This Condominium Agreement and all and several of the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect until October 9, 2025 (the "*Term*"), upon which this Condominium Agreement shall automatically terminate and be of no further force and effect. Notwithstanding the foregoing, at the request of either party, the parties shall execute, deliver and record reasonable and customary instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of

such instruments shall not be necessary or a prerequisite to the termination of this Condominium Agreement in accordance with its terms.

7. Covenants to Run With the Land. The Purchaser and Seller hereby subjects the Property to the covenants, reservations and restrictions set forth in this Condominium Agreement. The Purchaser and the Seller hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Purchaser's successors in title to the Property; provided, however, that on the termination of this Condominium Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

8. Uniformity: Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Property in order to establish and carry out a common plan for the use of the Property.

9. Enforcement. If the Purchaser or any successor or assign of Purchaser defaults in the performance or observance of any covenant, agreement or obligation of the Purchaser and its successors or assigns set forth in this Condominium Agreement, and if such default remains uncured for a period of thirty days after notice thereof shall have been given by the any of the Indemnified Parties to the Purchaser, then the Seller or any of the Indemnified Parties may declare an "*Event of Default*" to have occurred hereunder, and, at any of said Parties option, it may take anyone or more of the following steps:

(a) by mandamus or other suit, action or proceeding at law or in equity, to require the Purchaser or its successors and assigns to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of the Seller hereunder;

(b) have access to and inspect, examine and make copies of all of the books and records of the Purchaser pertaining to the Property; and/or

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Purchaser hereunder.

All rights and remedies as set forth herein shall be cumulative and non-exclusive to the extent permitted by law.

10. Recording and Filing. The Purchaser shall cause this Condominium Agreement and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the County of Salt Lake, Utah. The Purchaser shall pay all fees and charges incurred in connection with any such recording.

11. Attorney Fees. In the event that a party to this Condominium Agreement brings an action against any other party to this Condominium Agreement by reason of the breach of any condition or covenant, representation or warranty in this Condominium Agreement, or otherwise arising out of this Condominium Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable attorney fees to be fixed by the court which shall render a judgment, as well as the costs of suit.

12. Governing Law. This Condominium Agreement shall be governed by the laws of the State of Utah.

13. Amendments. This Condominium Agreement shall be amended only with the express written consent of (a) the Seller, or by any one (1) of the Wasatch Entities for or on behalf of the Seller, and (b) the Purchaser, by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Salt Lake.

14. Execution of Termination. Any one (1) of the Wasatch Entities is authorized and empowered to execute a termination of this Condominium Agreement with the full force and effect as though it had been executed by the Seller.

15. Notice. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

TO SELLER: Wasatch 5th East Holdings, LLC
Attn: Jeff Nielson
299 South Main Street, Suite 2400
Salt Lake City, Utah 84111
Email: jeffn@wresgroup.com

with a copy to: Robert B. Funk, Esq.
Wasatch Acquisitions and Capital, Inc.
595 South Riverwoods Parkway, Suite 400
Logan, Utah 84321
Email: rfunk@netwasatch.com

TO PURCHASER: Encore Apartments, Inc.
Invesco³Advisers, Inc.
Attn: Scott Wyatt
2001 Ross Avenue, Suite 3400
Dallas, Texas 75201
Email: scott.wyatt@invesco.com

with a copy to: Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Miami, Florida 33131

Email: giustor@gtlaw.com and
gonzalezda@gtlaw.com


Notice shall be deemed given three business days after the date of mailing, by certified mail, postage prepaid, return receipt requested, or, if personally delivered, when received.

16. Severability. If any provision of this Condominium Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

17. Multiple Counterparts. This Condominium Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

[Signature Pages Follow]

ENCORE APARTMENTS, INC.,
a Delaware corporation

By: 
Name: RON RAGSDALE
Title: VICE PRESIDENT

or

STATE OF TEXAS §
 § ss:
COUNTY OF DALLAS §

Sworn to and acknowledged before me, a Notary Public in and for said state, by Ron Ragsdale, the Vice President of Encore Apartments, Inc., a Delaware corporation, for and on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunder subscribed my name and affixed my notarial seal on this 21 day of October, 2016.


Notary Public

My Commission Expires:
8-21-2018

Laura Kay Reinhold
Printed/Typed Name of Notary

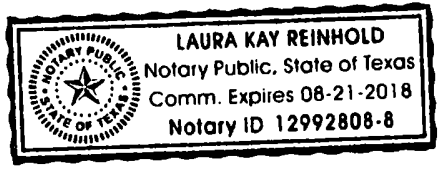


EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Beginning at the Southeast corner of Lot 1, Block 37, Plat "B", Salt Lake City Survey, said Southeast corner being also South 89°57'54" West along the Centerline 64.00 feet and North 00°01'50" West 66.54 feet from the Brass Cap Monument at the intersection of 400 South and 500 East Streets; and running thence along the South Line of said Block 37, South 89°58'10" West 305.00 feet to the East Right-of-Way Line of Denver Street; thence along said East Right-of-Way Line North 00°01'50" West 275.00 feet; thence North 89°58'10" East 140.00 feet to the West Line of said Lot 1, Block 37; thence along said West Line South 00°01'50" East 110.00 feet; thence North 89°58'10" East 165.00 feet to the East Line of said Block 37; thence along said East Line South 00°01'50" East 165.00 feet to the point of beginning.