

**Parking and Occupancy Restrictions Agreement**



For

Timp Towers – 1918 N Canyon Road

ENT 14225:2023 PG 1 of 6  
ANDREA ALLEN  
UTAH COUNTY RECORDER  
2023 Mar 08 10:25 am FEE 0.00 BY MC  
RECORDED FOR PROVO CITY CORPORATION

THIS PARKING AND OCCUPANCY RESTRICTIONS AGREEMENT (“Agreement”) is made and entered into as of the 27<sup>th</sup> day of February, 2022 (the “Effective Date”), by and between PROVO CITY, a Utah municipal corporation (the “City”), and Timp Towers, LLC, a Utah limited liability company (the “Property Owner”). The City and Property Owner are hereinafter collectively referred to as “Parties.”

**RECITALS**

A. Property Owner is the owner of property located at within the Provo City at approximately 1918 N Canyon Road (the “Property”).

B. Property Owner desires to obtain a building permit for a multiple residential project over two (2) dwelling units. In order to do so, the zoning ordinances require that Property Owner enter into this Agreement with the City, which shall be an enforceable agreement that is recorded and shall run with the land.

C. The City has authority to enter into this Agreement pursuant to Utah Code Section 10-9a-102(2) and relevant municipal ordinances, and desires to enter into this Agreement with the Property Owner for the purpose of memorializing the Property Owner’s guarantees to restrict occupancy based on the off street parking requirements of Provo City Code Chapters 14.14E and 14.37.

D. This Agreement is consistent with the City’s General Plan, Zoning Ordinances, and Subdivision Ordinances, and any permits issued by the City pursuant to City Ordinances and regulations.

**AGREEMENT**

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

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.
2. Property Owner’s Obligations. As an integral part of the consideration for this agreement, the Property Owner voluntarily agrees to the following:
  - a. Restrict occupancy at the Property to family occupancy for 121 units based on 182 parking spots; and

- b. Place a permanent notice on the electrical box within each unit indicating the maximum allowable occupancy of each unit based on the approved occupancy consistent with this Agreement. This notice must be a six (6) by six (6) inch metal or plastic plate that is permanently attached to the electrical box with minimum one-half (1/2) inch engraved letters.

3. City's Obligations. In exchange for Property Owner's compliance with its obligations set forth above, Provo City agrees to acknowledge compliance with Provo City Code Section 14.14E.100 (1) and issue all building permits to which the property owner is otherwise entitled.

4. Amendments to Agreement. At any time during the term of this Agreement, the City or the Property Owner may propose amendments to this Agreement by giving thirty (30) calendar days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall negotiate, within a reasonable time, in good faith in an effort to agree upon mutually satisfactory amendment(s). All such amendments must conform to the current Provo City Code at the time of amendment. This Agreement may be amended only in writing signed by the Parties hereto.

5. Remedies. In the event that Property Owner fails to perform its obligations under this agreement, such failure shall be considered unlawful, per Provo City Code 14.14E.100 (3). Actions considered unlawful under Provo City Code are punishable by a fine up to one thousand dollars (\$1,000) and/or up to six (6) months jail, per Provo City Code 1.03.010(1).

Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to termination of this Agreement shall be rescinded or limited in any manner.

6. General Terms and Conditions.

a. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a "successor" includes a party that succeeds to the rights and interests of the Property Owner as evidenced by, among other things, such party's submission of land use applications to the City relating to the Property or the Project.

b. Non-Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Property Owner, or any successor in interest or assignee of the Property Owner, for any default or breach by the City, or for any amount which may become due to the Property Owner, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

c. Third Party Rights. Except for the Property Owner, the City and other parties that may succeed the Property Owner on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements.

d. Agreement to Run with the Land. This Agreement shall be recorded in the Office of the Utah County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on and shall benefit all successors in the ownership of any portion of the Property.

e. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement and the City Ordinances.

f. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date of this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

7. Assignability. The rights and responsibilities of Property Owner under this Agreement may be assigned by Property Owner with the consent of the City as provided herein.

a. Notice. Property Owner shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

b. Grounds for Denying Assignment. The City may only withhold its consent if the City is not reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of Property Owner proposed to be assigned.

c. Assignee Bound by this Agreement. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.

8. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

9. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

10. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both parties.

11. Governing Law. This Agreement and any action related to this Agreement will be governed the laws of the State of Utah.

12. Joint Drafting. The Parties acknowledge that this Agreement has been drafted jointly by the Parties and agree that this Agreement will not be construed against either Party as a result of any role such Party may have had in the drafting process.

13. Force Majeure. Neither party shall be held in default or noncompliance with the provisions of the Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control, but the Property Owner shall not be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure of the City to enforce prompt compliance. Nothing herein shall be construed as to imply that City waives any right, payment, or performance based on future legislation where said legislation impairs this contract in violation of the United States or Utah Constitutions.



Legal Description

LOT 1, PLAT A, TIMP TOWERS SUB AREA 1.182 AC.