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E# 2808278 PG 1 OF 6
Leann H. Kiltz, WEBER COUNTY RECORDER
10-Aug-16 10:16 AM FEE \$22.00 DEP DAI
REC FOR: FOUNDERS TITLE COMPANY - LAYTON
ELECTRONICALLY RECORDED

D53207

Grant of Easement and Joint Use Declaration

This Grant of Easement and Joint Use Declaration ("Declaration") is made this 3 day of August, 2016, by Midland Partners One, LLC ("Midland"), through its managing member Benchmark Asset Management, LLC (collectively "Declarant").

RECITALS:

WHEREAS, Midland is the owner of real property located in Weber County, Utah, and more particularly described in Exhibit "A" attached hereto (the "Master Tract"); and

WHEREAS, Midland intends to develop and improve the Master Tract into apartment buildings with amenities available for the common use of residents, guests and tenants (collectively "Residents") of the apartments. The Master Tract will be developed in multiple phases, with each phase containing various common improvements. Phase 1 (more particularly described in Exhibit "B" attached) will contain common improvements, including a clubhouse and pool (hereinafter the "Common Amenities") that will be available for the use of the Residents of all phases within the Master Tract. Declarant, by execution of this Declaration, ensures that Residents of all future phases of development within the Master Tract shall be granted a right of access to and the right to jointly use the Common Amenities; and

WHEREAS, because the Master Tract is being developed in multiple phases, this Declaration is being recorded to ensure that the Common Amenities will be maintained by Declarant and will be open and available for the joint use of all Residents who reside in the apartments constructed within any portion of the Master Tract; and

WHEREAS, lenders, financial institutions, mortgagees and entities (hereinafter referred to as "Lenders") providing secured construction lending and/or permanent financing ("Secured Loans") for development of apartment buildings and/or improvements on any phase or portion of the Master Tract, desire assurance, and Midland desires to provide assurance, that the Common Amenities shall be available for joint use by Residents of each apartment building constructed within the Master Tract; and

WHEREAS, Declarant has authority to enter into this Declaration and to grant the cross access easements and joint use rights described herein.

NOW, THEREFORE, Declarant, for good and valuable consideration and intending to be bound hereby, declares that the Master Tract and all future phases of development contained therein shall be held subject to and be bound by the following terms, conditions and covenants:

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08-028-0078, 0079

Grant and Declaration

1. **Grant of Easement.** Declarant hereby grants a permanent non-exclusive cross easement over, through and across all driveways, walkways and parking areas within the Master Tract, for the use and benefit of Residents of any portion or phase of the Master Tract, including but not limited to an easement to access the Common Amenities. This grant of easement is to be interpreted liberally to the end that no Resident of one portion, part or phase of the Master Tract shall be prohibited from gaining access to any another portion, part or phase of the Master Tract, and all Residents shall have common use of and may gain access to the Common Amenities, subject to the reasonable rules established by Declarant.
2. **Joint Use.** The Common Amenities constructed in Phase 1 shall be equally available for the joint use and benefit of all Residents of each and every apartment building constructed within the Master Tract, which joint use shall be in a manner consistent with the apartment rules established by Declarant. Declarant shall not take any action or enter into any agreement restricting Residents of any phase or portion of the Master Tract from using the Common Amenities in a manner inconsistent with the use of Residents in any other part, phase or section of the Master Tract.
3. **Non Liability.** No right of use or easement granted herein shall be construed to: (a) create a joint venture between Lenders on one section or phase of the Master Tract and Lenders on another section or phase of the Master Tract; (b) create Lender liability for actions or activities that occur on a section or phase of the Master Tract which is separate from the section or phase for which a Lender holds a secured interest; or (c) place any Lender or any Secured Loan at risk of loss due to actions or activities occurring in a section or phase of the Master Tract in which the Lender has no Secured Loan.
4. **Sole Benefit of Lenders.** The easements and joint use rights granted herein are intended solely to protect a Lender's Secured Loan on those sections or phases of the Master Tract that do not contain Common Amenities, and may be enforceable as such by any Lender holding a Secured Loan on any portion of the Master Tract. The easements and joint use rights granted herein are not intended to and do not grant any easements or joint use rights to Residents. Any easement or joint use rights of a Resident shall be set forth solely in lease agreements entered into between Declarant and Residents.
5. **Lenders Bound.** Each Lender who provides a Secured Loan on any portion or phase of the Master Tract hereby agrees to be bound by the terms and conditions herein set forth and to cooperate in all respects in the furtherance of the objectives set forth herein to the end that all phases of development within the Master Tract can enjoy economy of scale in the operation, maintenance and improvement of the Common Amenities and so Residents of the Master Tract may enjoy the Common Amenities thereof to the fullest extent.
6. **Covenant.** This Declaration shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and inure to the benefit of each Lender for such time as the Lender has a Secured Loan on any portion of the Master

J. C. Morris
NOTARY PUBLIC

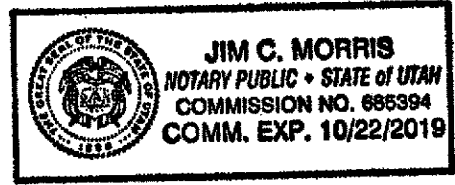


EXHIBIT "A"**MASTER TRACT**

(Legal Description of the Entire Project)

PHASE 1

PART OF THE WEST HALF OF SECTION 2, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF MIDLAND DRIVE, SAID POINT BEING NORTH 00°51'40" EAST 891.01 FEET AND SOUTH 89°08'20" EAST 2417.79 FEET FROM THE WEST QUARTER CORNER OF SAID SECTION 2; THENCE SOUTH 44°09'52" EAST 344.87 FEET; THENCE SOUTH 00°41'05" WEST 695.65 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF HINCKLEY DRIVE (SR 79); THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES (1) SOUTH 34°21'17" WEST 6.08 FEET (2) SOUTH 77°38'44" WEST 206.47 FEET AND (3) SOUTH 86°00'00" WEST 204.79 FEET; THENCE NORTH 04°00'00" WEST 82.80 FEET; THENCE SOUTH 86°40'43" WEST 19.63 FEET; THENCE NORTH 03°19'17" WEST 26.64 FEET; THENCE SOUTH 85°22'02" WEST 41.76 FEET; THENCE NORTH 00°31'13" WEST 118.73 FEET; THENCE NORTH 03°19'17" WEST 155.07 FEET; THENCE ALONG A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 130.55 FEET, A RADIUS OF 188.00 FEET, A CHORD BEARING OF NORTH 23°12'55" WEST AND A CHORD LENGTH OF 127.94 FEET; THENCE SOUTH 46°53'29" WEST 28.84 FEET; THENCE NORTH 45°04'30" WEST 152.26 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MIDLAND DRIVE; THENCE NORTH 45°50'00" EAST ALONG SAID EASTERLY RIGHT OF WAY, 606.90 FEET TO THE POINT OF BEGINNING.

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PHASE 2

PART OF THE WEST HALF OF SECTION 2, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY. DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF MIDLAND DRIVE, SAID POINT BEING NORTH 00°51'40" EAST 465.10 FEET (461.66 FEET BY RECORD) AND SOUTH 89°08'20" EAST 1985.31 FEET (1988.85 FEET BY RECORD) FROM THE WEST QUARTER CORNER OF SAID SECTION 2; AND RUNNING THENCE SOUTH 45°04'30" EAST 157.20 FEET (152.26 FEET BY RECORD); THENCE NORTH 46°53'29" EAST 28.84 FEET; THENCE ALONG A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 130.55 FEET, A RADIUS OF 188.00 FEET, A CHORD BEARING OF SOUTH 23°12'55" EAST, AND A CHORD LENGTH OF 127.94 FEET; THENCE SOUTH 03°19'17" EAST 155.07 FEET; THENCE SOUTH 00°31'13" EAST 118.73 FEET; THENCE NORTH 85°22'02" EAST 41.67 FEET; THENCE SOUTH 03°19'17" EAST 26.54 FEET; THENCE NORTH 86°40'43" EAST 19.63 FEET; THENCE SOUTH 04°00'00" EAST 82.80 FEET TO THE NORTHERLY RIGHT OF WAY LINE, 244.50 FEET; THENCE NORTH 44°10'20" WEST 348.54 FEET; THENCE NORTH 44°55'30" EAST 208.81 FEET; THENCE NORTH 45°04'30" WEST 92.01 FEET (88.77 FEET BY RECORD) TO THE EASTERLY RIGHT OF WAY LINE OF MIDLAND DRIVE; THENCE NORTH 45°20'43" EAST 201.12 FEET ALONG SAID EASTERLY RIGHT OF WAY LINE (N45°50'00"E 201.14 FEET BY RECORD) TO THE POINT OF BEGINNING.

Part of Tax ID No's 08-028-0080, 08-028-0071 & 08-022-0090

EXHIBIT "B"

PHASE 1 PROPERTY

(Legal Description of the Property Containing Common Amenities)

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PART OF THE WEST HALF OF SECTION 2, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF MIDLAND DRIVE, SAID POINT BEING NORTH 00°51'40" EAST 891.01 FEET AND SOUTH 89°08'20" EAST 2417.79 FEET FROM THE WEST QUARTER CORNER OF SAID SECTION 2; THENCE SOUTH 44°09'52" EAST 344.87 FEET; THENCE SOUTH 00°41'05" WEST 695.65 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF HINCKLEY DRIVE (SR 79); THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES (1) SOUTH 34°21'17" WEST 6.08 FEET (2) SOUTH 77°38'44" WEST 206.47 FEET AND (3) SOUTH 86°00'00" WEST 204.79 FEET; THENCE NORTH 04°00'00" WEST 82.80 FEET; THENCE SOUTH 86°40'43" WEST 19.63 FEET; THENCE NORTH 03°19'17" WEST 26.64 FEET; THENCE SOUTH 85°22'02" WEST 41.76 FEET; THENCE NORTH 00°31'13" WEST 118.73 FEET; THENCE NORTH 03°19'17" WEST 155.07 FEET; THENCE ALONG A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 130.55 FEET, A RADIUS OF 188.00 FEET, A CHORD BEARING OF NORTH 23°12'55" WEST AND A CHORD LENGTH OF 127.94 FEET; THENCE SOUTH 46°53'29" WEST 28.84 FEET; THENCE NORTH 45°04'30" WEST 152.26 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MIDLAND DRIVE; THENCE NORTH 45°50'00" EAST ALONG SAID EASTERLY RIGHT OF WAY, 606.90 FEET TO THE POINT OF BEGINNING.

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