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9/25/2013 12:51:00 PM \$24.00  
Book - 10180 Pg - 2693-2700  
Gary W. Ott  
Recorder, Salt Lake County, UT  
FIRST AMERICAN NCS  
BY: eCASH, DEPUTY - EF 8 P.

Recording requested by  
and when recorded return to:

Ward | Molloy, P.C.  
800 McIntyre Building  
68 South Main St. 8<sup>th</sup> Floor  
Salt Lake City, Utah 84101  
Attn: Matthew L. Molloy, Esq.

APN Nos. 16-06-283-009 and 16-06-426-009

NCS-614847

(Space Above This Line For Recorder's Use)

**ACCESS EASEMENT AGREEMENT  
(FOR ADA ACCESS TO "AMENITIES")**

THIS ACCESS EASEMENT AGREEMENT (this "**Agreement**") is made and entered into as of September 25, 2013, by and between **BROADWAY TPG LLC**, a Delaware limited liability company ("**Broadway Apartments Owner**") and **EASTSIDE INVESTORS, LLC**, a Utah limited liability company ("**Eastside Apartments Owner**"); individually, a "**Party**", and, collectively, the "**Parties**".

**RECITALS:**

- A.** Eastside Apartments Owner is the owner of certain real property located in the City of Salt Lake, County of Salt Lake, State of Utah, which property is more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Phase III Property**").
- B.** Broadway Apartments Owner is the owner of that certain real property adjacent to the Phase III Property and more particularly described on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Broadway Apartments Property**").
- C.** In order to accommodate and maintain ADA access to certain portions of "Phase I" as defined in and pursuant to that certain Declaration of Easements, Covenants and Restrictions (Emigration Court) Recorded May 26, 2006 as Entry No. 9735475 in Book 9299 at Page 6002, as amended by that certain Amended and Restated Declaration of Easements, Covenants and Restrictions (Emigration Court) recorded September 14, 2011 as Entry No. 11243405 in Book 9950 at Page 853 of Official Records, as the same may be amended from time to time (collectively, the "**CC&Rs**") (i.e., for ADA access to and from the "Amenities" located on "Phase I" as those terms are defined in the CC&Rs), Eastside Apartments Owner desires to grant to Broadway Apartments Owner, for the benefit of the Broadway Apartments Property, an access easement burdening the Phase III Property as more particularly described herein.

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

**1. ACCESS EASEMENT.**

**1.1 Grant of Easement.** Eastside Apartments Owner hereby grants to Broadway Apartments Owner (and its successors and assigns) for use by its tenants, occupants, and other invitees specifically needing and reasonably requesting ADA access or other wheelchair, walker, scooter or other mobility accommodations (collectively, the "**Broadway Apartments ADA Users**"), upon the terms and conditions contained herein, a perpetual non-exclusive access easement and right of way ("**Access Easement**") on, over, and across those portions of the main floor level of the Phase III Property via the drive aisles, driveways, access ramps, entryways and lobby areas located on the Phase III Property as they exist or may be modified by Eastside Apartments Owner from time to time. The Access Easement granted herein may be reasonably utilized by the Broadway Apartments ADA Users for the purposes of pedestrian (including wheelchair, walker, scooter, or other mobility assistance device) ingress and egress to and from the Broadway Apartments Property to the "Amenities" located on "Phase I", as defined in and contemplated by the CC&Rs.

**1.2 Nature of Access Easement.** The Broadway Apartments ADA Users' right of access through the Phase III Property via the Access Easement granted herein shall be reasonably convenient and available at all times. Eastside Apartments Owner may install and maintain reasonable access controls on the Phase III Property so long as a reasonable number of functioning access cards to such reasonable controls are provided to Broadway Apartments Owner to allow access at all times to the Broadway Apartments ADA Users. Broadway Apartments Owner agrees to keep an accurate list of those certain Broadway Apartments ADA Users to whom an access card has been given, and to promptly provide such list to Eastside Apartments Owner upon request therefor. Eastside Apartments Owner agrees not to materially modify the applicable portion of the Phase III Property, e.g, the access ramps, doors, and entryway located thereon, in a manner that unreasonably interferes with the ability of the Broadway Apartments ADA Users to access the "Amenities" through the Phase III Property as contemplated hereby.

**1.3 Non-exclusivity.** Broadway Apartments Owner agrees that use of the Access Easement and the Phase III Property by the Broadway Apartments ADA Users shall be non-exclusive and that the Broadway Apartments ADA Users shall have no right to improve, modify, block, obstruct, or otherwise unreasonably interfere with Eastside Apartments Owner's use of the Phase III Property or perform any work on the Phase III Property or install any improvements, equipment, or personal property on the Phase III Property without the prior written consent of Eastside Apartments Owner, which consent may be withheld or denied in Eastside Apartments Owner's sole discretion.

**1.4 Modifications to Access Easement.** Broadway Apartments Owner further acknowledges and agrees that, so long as reasonable construction and maintenance access and ingress and egress to the Phase III Property as contemplated hereby is maintained by Eastside Apartments Owner, Eastside Apartments Owner shall have the right to improve the Phase III Property and place thereon curbing, sidewalks, landscaping, driveways and drive aisles, ramps, and such other improvements, and equipment as Eastside Apartments Owner may desire. In addition, during the course of development, redevelopment or other construction on the Phase III Property and adjacent property owned by Eastside Apartments Owner, Eastside Apartments Owner may temporarily relocate the Access Easement and related ADA improvements as necessitated by, or convenient for, such work, provided that at all times the Broadway Apartments ADA Users shall have reasonable ADA access and ingress and egress to "Amenities" through the Phase III Property as contemplated hereby.

**2. MAINTENANCE AND REPAIR.** Eastside Apartments Owner shall be responsible for the maintenance and repair of the Access Easement and all related improvements located thereon to accommodate ADA access and shall maintain the same in a neat, clean and safe condition and in compliance with all applicable Laws (defined below), except for any damage caused to the Phase III Property by the Broadway Apartments ADA Users which shall be the responsibility of Broadway Apartments Owner. As used herein, "Laws" shall mean all applicable laws, ordinances, codes, orders, rules, regulations and requirements of any governmental entity having jurisdiction over the Phase III Property.

**3. COVENANTS RUN WITH LAND.** The Access Easement together with each of the restrictions, covenants and agreements contained herein shall be appurtenant to and for the benefit of the Broadway Apartments Property, shall be a burden upon the Phase III Property, and shall run with the land. The Access Easement, this Agreement and the restrictions, covenants, benefits and obligations created hereby shall be binding upon and shall inure to the benefit of all present and future holders of interests in the Phase III Property and the Broadway Apartments Property and shall be deemed a covenant running with the land.

**4. NOTICES.**

**4.1 Manner.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner:

If to Eastside Apartments Owner:  
Eastside Investors, LLC  
180 N. University Ave., Ste. 200  
Provo, UT 84601  
Attn: Cameron Gunter

If to Broadway Apartments Owner:  
c/o Timberlane Partners LLC  
734 20th Avenue East  
Seattle, WA 98112  
Attn: David Enslow

**4.2 Delivery.** Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery.

**5. MISCELLANEOUS.**

**5.1 Authority.** All individuals executing this Agreement represent and warrant that they have the power and authority to do so and to bind the respective Party on whose behalf they are executing this document.

**5.2 Entire Agreement.** This Agreement constitutes a complete and final description of the Parties entire agreement, as to all matters referenced herein.

**5.3 Invalidity, Modification, Governing Law.** If any provision of this Agreement is held invalid later, it will not affect the validity of the remainder of this Agreement. This Agreement cannot be changed, modified, or canceled except through a writing that is signed by all Parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

**5.4 Successors and Assigns.** This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

**5.5 Attorneys' Fees.** In the event either Party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party, to be fixed by the court in the same action.

*[Signatures on following pages]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**BROADWAY TPG LLC,**  
a Delaware limited liability company

By: Timberlane Partners Growth LLC,  
a Washington limited liability company,  
its Manager

By: Timberlane Holdings LLC,  
a Washington limited liability company,  
its Manager

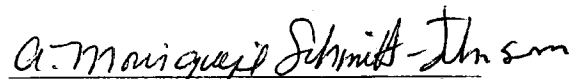
By:   
David R. Enslow, Managing Member

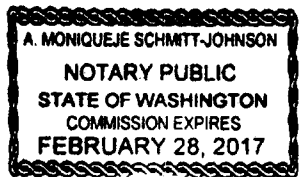
“Broadway Apartments Owner”

STATE OF WA )  
 ) SS.  
COUNTY OF KING )

On September 20, 2013, personally appeared before me, a Notary Public, David R. Enslow, the Managing Member of Timberlane Holdings LLC, a Washington limited liability company, the Manager of Timberlane Partners Growth LLC, a Washington limited liability company, the Manager of BROADWAY TPG LLC, a Delaware limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he/she executed the above instrument on behalf of said limited liability company.

WITNESS my hand and official Seal.

  
Notary Public in and for said State WA.  
My commission expires: 2-28-17



[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[Signature page to Access Easement Agreement]

EASTSIDE INVESTORS, LLC,  
a Utah limited liability company

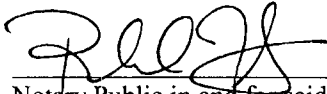
By:   
Name: Cameron Gunter  
Its: Manager

**"Eastside Apartments Owner"**

STATE OF Utah )  
 ) SS.  
COUNTY OF Utah )

On Sept 25, 2013, personally appeared before me, a Notary Public, Cameron Gunter, the Manger of EASTSIDE INVESTORS, LLC, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he/she executed the above instrument on behalf of EASTSIDE INVESTORS, LLC.

WITNESS my hand and official Seal.

  
Notary Public in and for said State  
My commission expires: 6-18-14

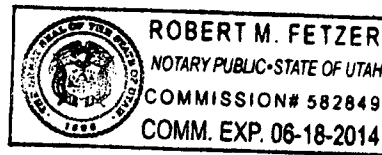


EXHIBIT A

LEGAL DESCRIPTION OF PHASE III PROPERTY

PHASE III, EMIGRATION COURT MINOR SUBDIVISION, as disclosed by the certain Notice of Minor Subdivision Approval recorded April 22, 2003, as Entry No. 8621060, in Book 8782, at Page 2495 of the Official Records, County of Salt Lake, State of Utah, being more particularly described as follows:

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  $0^{\circ} 01' 25''$  East 290.06 feet along said West Line to a set rebar and cap #158397; thence South  $89^{\circ} 57' 38''$  West 330.67 feet to the East Line of Lot 3 of said Block 38; thence North  $0^{\circ} 01' 22''$  West 66.66 feet along said East Line to the Northeast Corner of said Lot 3, said point also lying on the South Line of Phase I; thence along the Southerly and Easterly Boundary of said Phase I the following five courses: North  $89^{\circ} 57' 40''$  East 30.36 feet; thence North 17.74 feet; thence East 153.75 feet; thence North 181.08 feet; thence West 2.69 feet to the Southeast Corner of Phase 2; thence North  $0^{\circ} 01' 22''$  West 24.68 feet along the East Line of said Phase 2 to a point on the South Line of the aforementioned Lot 6; thence North  $89^{\circ} 57' 38''$  East 149.17 feet along said South Line to the Point of Beginning.

EXHIBIT B

LEGAL DESCRIPTION OF BROADWAY APARTMENTS PROPERTY

PHASE II, EMIGRATION COURT MINOR SUBDIVISION, as disclosed by the certain Notice of Minor Subdivision Approval recorded April 22, 2003, as Entry No. 8621060, in Book 8782, at Page 2495 of the Official Records, County of Salt Lake, State of Utah, being more particularly described as follows:

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°57'38" EAST 181.496 FEET ALONG SAID SOUTH LINE; THENCE SOUTH 00°01'22" EAST 190.346 FEET TO A POINT ON THE NORTH LINE OF PHASE 1; THENCE ALONG THE NORTHERLY BOUNDARY OF SAID PHASE 1 THE FOLLOWING THREE COURSES: WEST 151.056 FEET; THENCE NORTH 24.585 FEET; THENCE SOUTH 89°57'40" WEST 30.450 FEET TO A POINT ON THE WEST LINE OF SAID LOT 6; THENCE NORTH 00°01'22" WEST 165.657 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.