

WHEN RECORDED MAIL TO:

University Place Parking Phase 1 L.L.C.
c/o Woodbury Corporation
2733 East Parleys Way, Suite 300
Salt Lake City, Utah 84109
Attn: Office of the General Counsel

Space above for Recorder's use only

AIR RIGHTS EASEMENT AGREEMENT

This AIR RIGHTS EASEMENT AGREEMENT (this "**Agreement**") is entered into this 8 day of JANUARY 2018 (the "**Effective Date**"), by and between University Place Parking Phase 1 L.L.C., a Utah limited liability company ("**Grantor**"), and University Mall Shopping Center, L.C., a Utah limited liability company ("**Grantee**").

RECITALS

A. The parties hereto desire that Grantee be granted (i) a non-exclusive perpetual air rights easement on that certain portion of the Parking Garage Property, as defined below, depicted on **Exhibit A** attached hereto, and legally described in **Exhibit B** attached hereto (the "**Easement Area**"), for balconies on multiple levels of the building to be constructed on Grantee's Apartments Property, as defined below, that will extend over the Parking Garage Property (the balconies are hereinafter referred to as the "**Improvements**"). Grantor is willing to grant such easements to Grantee and permit Grantee such access as is necessary for the work to be performed in conjunction with the Improvements on the terms and conditions set forth in this Agreement.

B. Grantor is the owner of certain real property located in Orem, Utah legally described in the attached **Exhibit C** (the "**Parking Garage Property**"). Grantor is in the process of constructing a parking garage structure on the Parking Garage Property.

C. Grantee is the owner of certain real property located in Orem, Utah legally described in the attached **Exhibit D** ("**Apartments Property**"). Grantee intends to construct an apartment building on the Apartments Property.

AGREEMENT

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

1. Grant, Purpose and Use of Easements.

- a. Grant of Easements. Grantor hereby grants to Grantee (i) a non-exclusive perpetual easement to the Easement Area for balconies on multiple levels of the building to be constructed on Grantee's Apartments Property that will extend over the Parking Garage Property (the "**Air Rights Easement**"). In the event that Grantee undertakes any work within the Easement Area that causes any damage to grading or any other work previously accomplished by Grantor, Grantee shall (at Grantee's cost and expense) repair and restore such to the same condition as before the damage was caused. The Improvements shall be constructed, repaired, maintained and replaced when necessary in a good and workmanlike manner so as not to unreasonably interfere with the operations of Grantor on the Property. All Improvements shall be lien free.

 - b. Access Easement. Subject to all of the terms and provisions hereof, Grantor hereby grants to Grantee a non-exclusive access easement (the "**Access Easement**") for ingress and egress on, in, over and through the Parking Garage Property to the Easement Area by all means of vehicular and pedestrian traffic to allow access for the purpose of constructing, repairing, maintaining or replacing the Improvements, which Access Easement shall be limited to the minimum area and frequency necessary to accomplish that purpose. Grantee shall not unreasonably interfere with the operations of Grantor on the Property in connection with the use of the Access Easement.

 - c. Construction and Staging Easement. Grantor hereby grants to Grantee the right to enter the Property for purposes of staging and construction of the Improvements, including, but not limited to, the right to install temporary shoring and scaffolding on the Property. Grantee shall not unreasonably interfere with the operations of Grantor on the Property in connection with the use of the foregoing construction and staging easement.
2. Termination of Easements. The easements granted in this Agreement shall automatically terminate and be of no further force or effect at such time as the Improvements permanently cease to provide service to Grantee's property. Upon request of Grantor, Grantee shall execute and deliver such documents as Grantor may require in its reasonable discretion effectuating or confirming the termination of such easements.
3. Restoration. Grantee shall restore (as near as practicable) to its previous condition, at no cost to Grantor, any pavement, landscaping, curb and gutter or any other improvement damaged in constructing, maintaining, repairing, removing or replacing the Improvements.

Grantor shall not build or construct, nor permit to be built or constructed, any building or other improvement over, across, within or under the Easement Area, nor change the contour thereof, without written consent of Grantee. Provided, however, that nothing contained herein shall prohibit Grantor from building or constructing, or permitting to be built or constructed, curb and gutter, sidewalks, pavements, landscaping, or similar improvements over and across such easements, so long as said improvements do not damage the Improvements. The easements granted in this Agreement shall be binding upon and inure to the benefit of the successors and assigns of Grantor and the successors and assigns of Grantee, and may be assigned in whole or in part by Grantee.

4. Mechanics Liens, Indemnity and Insurance.
 - a. Mechanics Liens. Grantee shall keep the Easement Area free and clear of any mechanics liens and/or materialmen's liens arising out of any of Grantees activities on the Parking Garage Property.

5. Indemnity Related to Access.
 Grantee shall indemnify, defend and hold Grantor harmless from any and all claims, liabilities, cost or expense (including such as may be attributable to Grantee's actions or passive negligence) arising in any manner out of Grantee's use of and/or entry onto the Parking Garage Property. The indemnification obligations of Grantee as contained in this Section 4 shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance).

6. Miscellaneous
 - a. Captions; Incorporation by Reference. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof. Each of the exhibits attached to this Agreement is hereby incorporated into this document as if set forth in full herein.

 - b. Interpretation; Governing Law. This Agreement shall be construed as if prepared by all parties hereto. This Agreement shall be governed by and construed under the laws of the State of Utah.

 - c. Attorneys' Fees. In the event of any legal action or other proceeding between the parties regarding this Agreement (an "**Action**"), the prevailing party shall be entitled to the payment by the losing party of its reasonable attorneys, fees, court costs and litigation expenses, as determined by the court.

 - d. Post-Judgment Attorneys' Fees. The prevailing party in any Action shall be entitled, in addition to and separately from the amounts recoverable under Section 5(c), to the payment by the losing party of the prevailing party's reasonable attorneys' fees, court costs and litigation expenses incurred in connection with (i) any appellate review of the judgment rendered in such Action or of any other ruling in such Action, and (ii) any proceeding to enforce a judgment in such Action. It is the intent of the parties that the provisions of this subsection 5(d) be distinct and severable from the other rights of the parties under this Agreement, shall survive the entry of, judgment in any Action and shall not be merged into such judgment.

 - e. Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

- f. Gender and Number. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural include one another.
- g. Injunctive Relief. In the event of any violation or threatened violation of this Agreement, either party shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, written notice of such violation shall be given to the other party.
- h. Further Actions. The parties shall execute and deliver such further documents and shall take such further actions as may be reasonably necessary to effectuate the terms of this Agreement.
- i. Recordation. This Agreement shall be recorded in the real property records of Utah County, Utah.
- j. Notices. Unless otherwise provided for herein any notice to be given or other documents to be delivered by either party shall either be delivered in person or deposited in the United States mail with postage prepaid addressed to the party for whom intended as follows:

If to Grantor, to:

University Place Parking Phase 1 L.L.C.
 Attn: Property Management
 c/o Woodbury Corporation
 2733 E. Parleys Way, Suite 300
 Salt Lake City, Utah 84109

With a copy to: Woodbury Corporation

Attn: Office of General Counsel
 2733 E. Parleys Way, Suite 300
 Salt Lake City, Utah 84109

If to Grantee, to:

University Mall Shopping Center, L.C.
 Attn: Property Management
 c/o Woodbury Corporation
 2733 E. Parleys Way, Suite 300
 Salt Lake City, Utah 84109

With a copy to: Woodbury Corporation


Attn: Office of General Counsel
 2733 E. Parleys Way, Suite 300
 Salt Lake City, Utah 84109

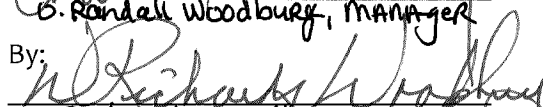
[Signature Pages to Follow]

GRANTOR:

University Place Parking Phase 1 L.L.C,
a Utah limited liability company

By: Woodbury Management Company, L.C., a
Utah limited liability company, its Manager


By: 
O. Randall Woodbury, MANAGER

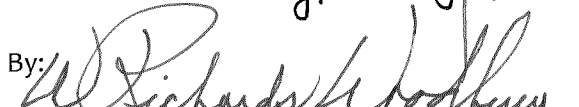
By: 
W. Richards Woodbury, MANAGER

GRANTEE:

University Mall Shopping Center, L.C.,
a Utah limited liability company

By: Woodbury Management Company, L.C., a
Utah limited liability company, its Manager

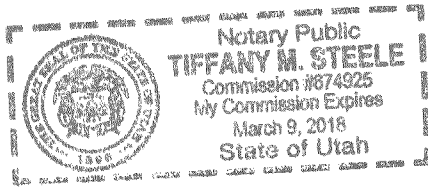
By: 
O. Randall Woodbury, MANAGER

By: 
W. Richards Woodbury, MANAGER

ACKNOWLEDGMENT OF GRANTOR

STATE OF UTAH)
)
) : SS.
COUNTY OF Salt Lake)

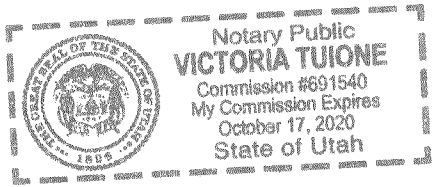
On this 8th day of Jan. 2018, before me personally appeared D. Randall Woodbury, to me personally known, who being by me duly sworn did say that he is the Area Manager of WOODBURY MANAGEMENT COMPANY, L.C. a Utah limited liability company, Manager of UNIVERSITY PLACE PARKING PHASE 1 L.L.C, a Utah limited liability company, the company that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement.



Tiffany M. Steele
Notary Public

STATE OF UTAH)
)
) : SS.
COUNTY OF Salt Lake)

On this 6th day of January 2018, before me personally appeared W. Richards Woodbury, to me personally known, who being by me duly sworn did say that he is the Manager of WOODBURY MANAGEMENT COMPANY, L.C. a Utah limited liability company, Manager of UNIVERSITY PLACE PARKING PHASE 1 L.L.C, a Utah limited liability company, the company that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement.



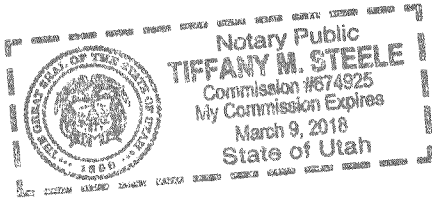
Victoria Tuione
Notary Public

WR

ACKNOWLEDGEMENT OF GRANTEE

STATE OF UTAH)
 : SS.
COUNTY OF Salt Lake)

On this 8th day of Jan. 2018, before me personally appeared O. Randall Woodbury, to me personally known, who being by me duly sworn did say that he is the ~~Woodbury~~ Pres. Manager of WOODBURY MANAGEMENT COMPANY, L.C. a Utah limited liability company, Manager of UNIVERSITY MALL SHOPPING CENTER L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement.



[Signature]
Notary Public

STATE OF UTAH)
 : SS.
COUNTY OF Salt Lake)

On this 5th day of January 2018, before me personally appeared W. Richards Woodbury, to me personally known, who being by me duly sworn did say that he is the manager of WOODBURY MANAGEMENT COMPANY, L.C. a Utah limited liability company, Manager of UNIVERSITY MALL SHOPPING CENTER L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement.

[Signature]
Notary Public

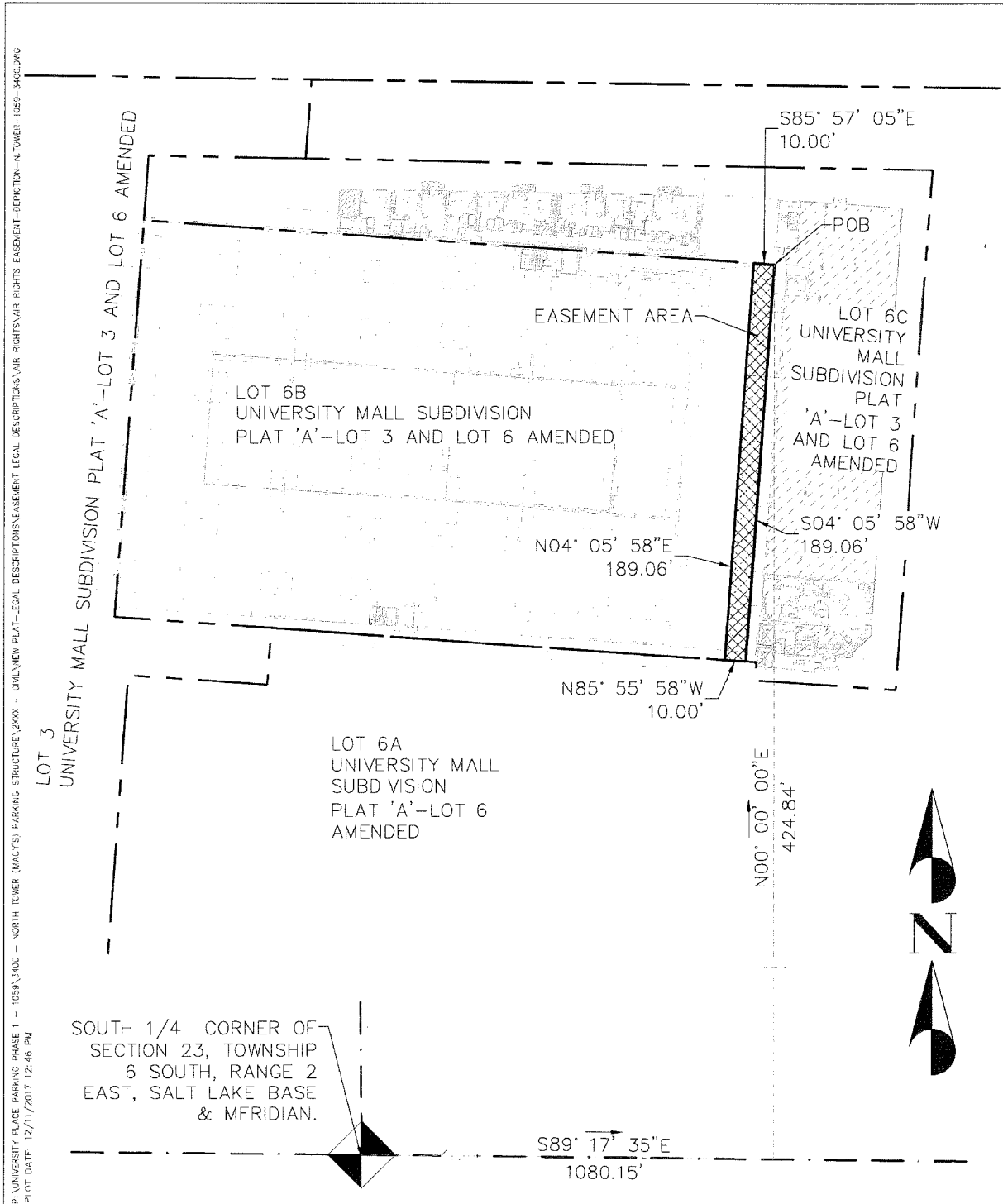
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EXHIBIT A

DEPICTION OF EASEMENT AREA

[Exhibit "A" Continues on Following Page]





DRAWN BY: K. ENGSTROM
 DATE: 12/11/2017
 SCALE: 1"=60' (8.5"X11")
 ENTITY NO: 1059
 SHEET: 1 OF 1

AIR RIGHTS EASEMENT
 N. TOWER PARKING STRUCTURE
 & ASTON PARKSIDE
 OREM, UT



WOODBURY
CORPORATION

2733 EAST PARKWAY, SUITE 300
 SALT LAKE CITY, UTAH 84109
 (801) 485-7770

[End of Exhibit "A"]



EXHIBIT B

LEGAL DESCRIPTION OF EASEMENT AREA

This legal description describes a portion of Tax ID No. 57:090:0007, situate in the Southeast Quarter (SE 1/4) of Section 23, Township 6 South, Range 2 East, Salt Lake Base and Meridian, and described as follows:

Beginning at the northeast corner of Lot 6B of the to-be-filed University Mall Subdivision Plat 'A'-Lot 3 and Lot 6 Amended, said corner being South 89°17'35" East along the south section line of the Southeast Quarter of said Section 23 1080.15 feet and North 424.84 feet from the south quarter corner of said Section 23 and running thence along the easterly property line of said Lot 6B South 04°05'58" West 189.06 feet to the southeast corner of said Lot 6B; thence along the southerly property line of said Lot 6B North 85°55'58" West 10.00 feet; thence leaving said southerly property line North 04°05'58" East 189.06 feet to the northerly property line of said Lot 6B; thence along said northerly property line South 85°57'05" East 10.00 feet to the **Point of Beginning**.

The above-described portion contains 1,891 square feet or 0.043 acres.

BASIS OF BEARING

South 89°17'35" East, being the bearing of the south section line of the Southeast Quarter of said Section 23.

End of description.

*Ken Engstrom, P.E.
Professional Engineer
Utah License No. 260810-2203*

EXHIBIT C

LEGAL DESCRIPTION OF PARKING GARAGE PROPERTY

Lot 6B, University Mall Subdivision Plat 'A' – Lot 3 and Lot 6 Amended, according to the official plat thereof and on file in the office of the Utah County Recorder's Office, recorded December 27, 2017, as Entry No.: 128638:2017, and as Map Filing No. 15823.



EXHIBIT D

LEGAL DESCRIPTION OF APARTMENTS PROPERTY

Lot 6C, University Mall Subdivision Plat 'A' – Lot 3 and Lot 6 Amended, according to the official plat thereof and on file in the office of the Utah County Recorder's Office, recorded December 27, 2017, as Entry No.: 128638:2017, and as Map Filing No. 15823.

[End of Exhibits"][End of Document]

