

WHEN RECORDED, RETURN TO

Riverton West Land, LLC
Atten: Corey Johnson
299 South Main Street, Ste 2400
Salt Lake City, UT 84111

#7558

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12/23/2016 4:31:00 PM \$187.00
Book - 10514 Pg - 7404-7415
Gary W. Ott
Recorder, Salt Lake County, UT
VANGUARD TITLE INS
BY: eCASH, DEPUTY - EF 12 P.

JOINT USE AND CROSS EASEMENT AGREEMENT

DATED: December 22, 2016

This Joint Use and Cross Easement Agreement ("Agreement") is entered into as of the above date by and among the Towers Owners Association, Inc. ("Towers"), Timp Land Holdings, LLC ("TLH"), and Wasatch Land Company ("Wasatch Land") (individually each a "Party" and collectively the "Parties"), with Riverton West Land, LLC ("Riverton West") consenting to this Agreement as a non-party.

RECITALS

- A. Towers is a Utah nonprofit corporation governing a residential planned unit development and its common areas in Salt Lake County, Utah ("Towers Project"), consisting of single family homes and townhome units, as more fully described in the development's Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Towers ("Declaration") recorded with the Salt Lake County Recorder's Office on August 11, 2016 as entry number 12340556, as amended or supplemented. The Towers Project is located on land referred to herein as the "Towers Land," which real property is more particularly described as Exhibit A attached hereto.
- B. TLH and Wasatch Land are the owners of a portion of land that is the proposed site for an apartment complex located in Salt Lake County, Utah, as more fully depicted on the Plat [defined later], and legally described in Exhibit B attached hereto ("Apartment Parcel").
- C. The Apartment Parcel adjoins the Towers Project. Riverton West is under contract to purchase the Apartment Parcel from TLH and Wasatch Land.
- D. After closing, Riverton West shall be the owner of the Apartment Parcel, which includes certain land legally described in Exhibit C attached hereto ("Open Space"). The Open Space is located adjacent to the Towers Project, and at the east end of the Apartment Parcel.
- E. The Apartment Parcel, Open Space, and a portion of the Towers Project (The

Towers Phase 1), are depicted on The Towers Phase 1 Plat Map, recorded with the Salt Lake County Recorder on July 13, 2016, as entry number 12319434, Book 2016P, Page 157 ("Plat").

- F. TLH, or its affiliate, is currently completing storm water drainage and detention facilities and open space recreation facilities improvements (collectively, "Improvements") to the Open Space.
- G. The Parties desire to further define the rights and obligations of the Parties, and to establish an agreement for the maintenance and upkeep of the Open Space, including any improvements installed therein in accordance with this Agreement.

AGREEMENT/EASEMENT

In consideration of the foregoing and the mutual covenants of the Parties contained in this Agreement, the receipt and adequacy of which are hereby acknowledged, the Parties agree follows:

1. **Grant of Easement.** Subject to the rights and restrictions set forth in this Agreement and all rights, restrictions, easements, and other matters existing of record as of the date hereof, TLH and Wasatch Land hereby grant and convey to Towers a permanent and nonexclusive easement to use and enjoy the Open Space (the "Park Easement") for construction, operation, maintenance, repair, replacement, and use of the Improvements. TLH and Wasatch Land grant the Park Easement to Towers as a benefit and right appurtenant to the Towers Land. The Park Easement is granted for the right, benefit and use of Towers and Towers' successors, members, tenants, and guests (collectively, the "Towers Permitted Users"), subject to the provisions of this Agreement.

Nothing in the foregoing grant shall limit those authorized by the owner of the Apartment Parcel, including successors, members, tenants, and guests (collectively, the "TLH Permitted Users"), from using the Park Easement together with Towers Permitted Users, subject to the provisions of this Agreement.

2. **Open Space Maintenance, Repair, and Replacement.** Towers shall maintain, repair, and replace, in good condition and repair and in accordance with all applicable laws, ordinances, rules, regulations, covenants, conditions and restrictions and governmental requirements, the Open Space and the Improvements. TLH and the TLH Permitted Users agree not to interfere in the maintenance of the Improvements and the Open Space. All maintenance, repair and replacement obligations shall be performed in a prompt, diligent and regular manner. Towers shall perform, or cause its contractors to perform, the maintenance work contemplated by this Section 2 and TLH shall reimburse Towers its portion of the actual costs of such maintenance, repair, or replacement work within thirty (30) days of the submission of receipts showing

the payment of such maintenance work, provided however, that TLH shall not be responsible for sharing in any costs related to upgrades of the Improvements or other part of the Open Space which Towers may elect to install or have installed after the initial completion of the Improvements and the Open Space. The Parties shall be responsible for the payment of such maintenance, repair, or replacement costs in accordance with the following proportionate amounts (determined on an approximate acreage basis: (i) Towers: Seventy Percent (70%); and (ii) TLH: Thirty Percent (30%). Towers shall annually present a budget for projected maintenance, repair, or replacement costs under this Section to TLH for approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

In the event that Towers shall fail to perform its maintenance, repair, and replacement obligations under this Section 2 or otherwise under this Agreement, TLH may notify Towers and shall specify the failure. If such failure or failures is/are not cured within thirty (30) days after receipt of such notice, then TLH shall have the right to cure the failure or breach and perform the maintenance, repair, and replacement obligations, and recover all actual and reasonable costs and expenses related thereto from Towers in accordance with the assigned percentages above. The Parties may change the maintenance, repair, and replacement responsibilities by amendment pursuant to Section 16.

3. **Interest; Administrative Fee.** Any reimbursement amounts which become owing under this Agreement to Towers or TLH and which are not paid when due shall (i) incur an administrative fee in an amount equal to ten percent (10%) of the amount due; and (ii) bear interest at the rate of twelve percent (12%) per annum from the date due until paid. Towers covenants that the Declaration shall include the maintenance, repair, and replacement obligations of Towers under this Agreement and that Towers' responsibility for costs under this Agreement shall be a joint obligation of Towers and that all such costs shall be assessable to Towers' members under the Declaration.
4. **Damage.** If damage to the Open Space beyond ordinary wear and tear is directly attributable to TLH or TLH Permitted Users, then TLH shall repair such damage as soon as reasonably possible, at its sole expense without any right of partial reimbursement from Towers. Likewise, if damage to the Open Space beyond ordinary wear and tear is directly attributable to the Towers or Towers Permitted Users, then the Towers shall repair such damage as soon as reasonably possible, at its sole expense without any right of partial reimbursement from TLH.
5. **Restriction on Use.** Neither Towers nor TLH, nor any of the Parties' respective Permitted Users shall park any vehicle or otherwise place any obstruction on the Open Space whatsoever, except as is necessary in connection with the Parties' maintenance and repair obligations set forth in this Agreement. The Parties' respective Permitted Users shall be bound by any posted or published reasonable rules governing the Open Space, which the Towers' association's

board of directors shall have the authority to adopt and publish, subject to the rights and obligations of this Agreement.

6. **Condemnation.** In the event the Open Space or any portion thereof is taken by power of eminent domain, or is conveyed under threat of condemnation, the Park Easement shall terminate and each Party shall be responsible for seeking just compensation from such condemning entity.
7. **Non-Use.** No right or obligations granted or created under this Agreement shall lapse because of non-use.
8. **Indemnification.** Each of the Parties shall indemnify, defend, and hold harmless the other Parties and their affiliates, members, managers, agents, tenants, and representatives for, from, and against all claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities, and judgments on account of injury to persons, loss of life, or damage to property resulting from the negligent or willful act or omission of the indemnifying Party or its Permitted Users, the indemnifying Party's or its Permitted Users' default in any of the obligations set forth in this Agreement, the indemnifying Party's or its Permitted Users' use of the Open Space, except to the extent such claims are due solely to the gross negligence or willful act or omission another Party or its Permitted Users.
9. **Easements Run with the Land.** The Park Easement shall run with the land, burden the Open Space, and benefit the remainder of the Apartment Parcel and the Towers Land. The rights, covenants and obligations contained in this agreement shall bind, burden, and benefit the Parties and their respective successors, assigns, heirs, lessees, mortgagees, and beneficiaries under any deeds of trust.
10. **No Public Dedication.** The provisions of this Agreement are not intended to and do not constitute a dedication for public use of any portion of the easements created hereby.
11. **Conformance with Governmental Requirements.** The Parties shall cause all their respective uses of the Open Space to be in conformance with all applicable federal, state, county and municipal laws, ordinances, rules, regulations and requirements.
12. **Recording.** This Agreement shall be recorded in the official records of Salt Lake County, Utah.
13. **Waiver.** Failure of a Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall any waiver of breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or waiver of such provision itself.

14. **Attorney Fees.** If a suit, action or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement or to enforce any rights hereunder, the prevailing party shall be entitled to recover its attorney fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.
15. **Remedies/Restriction on Amendment of Declaration.** In the event that a Party fails to perform any obligation under this Agreement, the other Parties shall be entitled to require specific performance of such obligation, to obtain appropriate injunctive relief (without the necessity of showing inadequate remedies at law), to cure the default of such obligation and recover the costs thereof from the Party breaching such obligation, or to pursue any other remedy available at law or equity. The remedies authorized throughout this Agreement are not mutually exclusive and may be maintained independently of each other. Towers agrees for itself and its association not to allow any amendment to the power to assess those who are members and subject to the Declaration, including the provision in Article V of the Declaration, without the prior written consent of TLH, or its successors-in-title.
16. **Amendment and Termination.** This Agreement may be amended and/or terminated only by a written agreement signed by representatives of the association created by the Declaration for the Towers Project and the representative of the owner of the Apartment Parcel, their successors or assigns. Said amendment and/or notice of termination shall be recorded in the official records of Salt Lake County, Utah.
17. **Completion Assurance.** TLH and Wasatch Land each individually covenants to the owner of the Towers Land and the owner of the Apartment Parcel that it will complete the Improvements required by the governmental authorities on the Open Space in such time as not to delay any permitting by the owners of the foregoing parcels. TLH and Wasatch Land have entered into a warranty bond with Riverton City in relation to the Improvements and TLH and Wasatch Land agree that to the extent that governmental authorities make any claim related to the Improvements secured by the bond, TLH and Wasatch Land will comply with such demands consistent to Wasatch Land and TLH's obligations under said bond. The foregoing completion obligations shall be individual to TLH and Wasatch Land and the provisions of Section 9 of this Agreement shall not be applicable to this Section 17. Notwithstanding any limitation in the foregoing to the contrary, the representations and assurances made in this Section 17 are expressly for the benefit of Riverton West, which is an intended third-party beneficiary.

IN WITNESS WHEREOF, the Parties have executed this as of the date first set forth above.

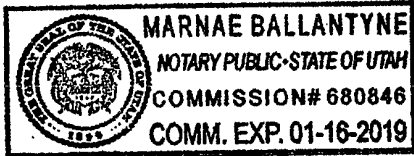
Towers Owners Association, Inc.

By: [Signature] GORDON JONES

Its: PRESIDENT OF THE DECLARANT WASATCH LAND CO., LLC

STATE OF UTAH)
COUNTY OF Utah) SS:

On the 3rd day of December 2016, personally appeared before me Gordon Jones, President of, who by me being duly sworn did say that s/he is an authorized representative of the Towers Owners Association, Inc., and that s/he is authorized to execute this Agreement. Wasatch Land Co, LLC



Marnae Ballantyne
Notary Public

Timp Land Holdings, Inc. LLC MA

By: [Signature] GORDON JONES

Its: Managers

STATE OF UTAH)
COUNTY OF Utah) SS:

On the 2nd day of December 2016, personally appeared before me Gordon Jones, Manager, who by me being duly sworn did say that s/he is an authorized representative of Timp Land Holdings, Inc., and that s/he is authorized to execute this Agreement. LLC



Marnae Ballantyne
Notary Public

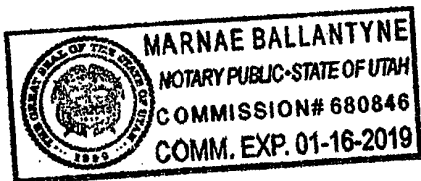
Wasatch Land Company

By: [Signature] GORDON JONES

Its: PRESIDENT

STATE OF UTAH)
COUNTY OF Utah) SS:

On the 22nd day of December 2016, personally appeared before me Gordon Jones, President who by me being duly sworn did say that s/he is an authorized representative of Wasatch Land Company, and that s/he is authorized to execute this Agreement.



[Signature]
Notary Public

The following non-party, but third-party beneficiary, consents to the foregoing Agreement:

Riverton West Land, LLC

By: _____

Its: _____

STATE OF UTAH)
COUNTY OF _____) SS:

On the ____ day of _____ 2016, personally appeared before me _____, who by me being duly sworn did say that s/he is an authorized representative of Riverton West Land, LLC, and that s/he is authorized to execute this Agreement.

Notary Public

Wasatch Land Company

By: _____

Its: _____

STATE OF UTAH)
) SS:
COUNTY OF _____)

On the ____ day of _____ 2016, personally appeared before me _____, who by me being duly sworn did say that s/he is an authorized representative of Wasatch Land Company, and that s/he is authorized to execute this Agreement.

Notary Public

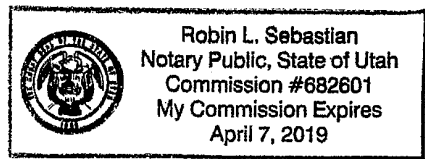
The following non-party, but third-party beneficiary, consents to the foregoing Agreement:

Riverton West Land, LLC

By: Jeff Nielson

Its: Manager

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



On the 22nd day of December 2016, personally appeared before me Jeff Nielson, Manager, who by me being duly sworn did say that s/he is an authorized representative of Riverton West Land, LLC, and that s/he is authorized to execute this Agreement.

Robin L. Sebastian

Notary Public

EXHIBIT A

LEGAL DESCRIPTION – TOWERS PROJECT ON THE TOWERS LAND

LEGAL DESCRIPTION

Towers Phase 1

Lots 1 through 17, Lots 32 through 42, Units 1 through 14, Units 49 through 57, Units 100 through 109, and Common Area of The Towers Phase 1, which plat map was recorded on July 13, 2016 as entry number 12319434, Book 2016, Page 157, which is also described as:

Parcel Numbers: 26-36-426-007;
26-36-427-001 through 26-36-427-016;
26-36-428-001 through 26-36-428-035; and
26-36-429-001 through 26-36-429-011.

Towers Phase 2

Lots 18 through 31, Lots 43 through 52, Units 15 through 33, and Common Area of The Towers Phase 2, which plat map was recorded on November 18, 2016 as entry number 12415676, Book 2016, Page 296, which is also described as:

A parcel of land located in the Southeast Quarter of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian described as follows:

Beginning North 0°32'22" East 2209.22 feet along the Section Line and North 89°27'38" West 168.60 feet from the Southeast Quarter Corner of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running

thence South 78°30'47" West 80.45 feet;

thence North 89°44'44" West 522.59 feet to the East line of The Towers Phase 1 and running along the said East line the following 7 courses: thence North 0°15'16" East 83.50 feet, thence South 89°44'44" East 29.71 feet, thence North 0°15'16" East 130.00 feet, thence South 89°44'44" East 277.23 feet, thence North 0°15'16" East 95.00 feet, thence South 89°44'44" East 4.96 feet, thence North 0°21'27" East 149.39 feet to the Quarter Section Line;

thence South 89°37'15" East 296.05 feet along the Quarter Section Line;

thence South 07°18'40" East 211.87 feet;

thence South 11°29'13" East 136.71 feet;

thence South 78°30'47" West 81.00 feet;

thence South 11°29'13" East 82.24 feet to the point of beginning.

Parcel contains 205,570 Sq. Ft. or 4.719 Acres, 24 Lots and 19 Units.

Towers Phase 3

Units 34 through 48, Units 58 through 78, Units 136 through 145, and Common Area of The Towers Phase 3, which plat map was recorded on November 18, 2016 as entry number 12415682, Book 2016, Page 297, which is also described as:

A parcel of land located in the Southeast Quarter of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian described as follows:

Beginning North 0°32'22" East 2032.27 feet along the Section Line and North 89°27'38" West 48.09 feet from the Southeast Quarter Corner of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running

thence South 78°30'47" West 81.00 feet;

thence South 11°29'13" East 17.84 feet;

thence South 78°30'47" West 35.00 feet;

thence North 89°43'52" West 586.23 feet to the East line of The Towers Phase 1 Subdivision;

thence South 89°56'40" West 25.51 feet along said East line;

thence North 0°15'16" East 83.74 feet along said East line;

thence South 89°44'44" East 24.48 feet along said East line;

thence North 0°15'16" East 118.50 feet along said East line to the South Line of The Towers Phase 2 Subdivision;

thence South 89°44'44" East 498.80 feet along said South line;

thence North 78°30'47" East 80.45 feet along said South line;

thence North 11°29'13" West 82.24 feet along said South line;

thence North 78°30'47" East 81.00 feet along said East line;

thence South 11°29'13" East 280.42 feet to the point of beginning.

Parcel contains 147,018 Sq. Ft. or 3.375 Acres.

EXHIBIT B

LEGAL DESCRIPTION – APARTMENT PARCEL

A parcel of land located in the Southeast Quarter of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian described as follows:

Beginning North $0^{\circ}32'22''$ East 1388.00 feet along the Section Line from the Southeast Quarter Corner of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running

Thence North $89^{\circ}38'33''$ West 965.95 feet to a point of curvature;

Thence 23.61 feet along the arc of a 15.00 foot radius curve to the right through a central angle of $90^{\circ}10'50''$ (Long Chord Bears North $44^{\circ}33'08''$ West 21.25 feet);

Thence North $0^{\circ}32'17''$ East 235.66 feet to a point of curvature;

Thence 71.88 feet along arc of a 73.00 foot radius curve to the right through a central angle of $56^{\circ}24'49''$ (Long Chord Bears North $28^{\circ}44'41''$ East 69.01 feet) to a point of reverse curvature;

Thence 107.09 feet along the arc of a 127.00 foot radius curve to the left through a central angle of $48^{\circ}18'53''$ (Long Chord Bears North $32^{\circ}47'39''$ East 103.95 feet);

Thence South $89^{\circ}44'44''$ East 892.92 feet;

Thence South $0^{\circ}32'22''$ West 400.75 feet to the point of beginning.

Parcel contains 385,584 Sq. Ft. 8.851 acres;

also described as: Parcel Numbers 26-36-428-036 through 26-36-428-038

EXHIBIT C

LEGAL DESCRIPTION – OPEN SPACE

A parcel of land located in the Southeast Quarter of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian described as follows:

Beginning North 0°32'22" East 1388.00 feet along the Section Line from the Southeast Quarter Corner of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running

Thence North 89°38'33" West 173.86 feet;
Thence North 0°28'19" East 28.02 feet;
Thence North 03°20'06" West 244.02 feet;
Thence North 11°15'58" East 131.28 feet;
Thence South 89°44'44" East 165.75 feet;
Thence South 0°32'17" West 400.75 feet to the point of beginning.

Parcel contains 72,139 Sq. Ft. 1.656 acres;

also described as: Parcel Number 26-36-428-038