

WHEN RECORDED RETURN TO:
South Temple Apartments LLC
1245 E Brickyard Rd., Ste. 70
Salt Lake City, Utah 84106

14143973 B: 11440 P: 314 Total Pages: 11
08/22/2023 03:26 PM By: Jattermann Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: FNT UTAH DOWNTOWN SLC - 170 MAIN ST STE 135 UT 84
170 MAIN ST STE 135 SALT LAKE CITY, UT 84101

UT003119

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT ("Agreement") is entered into effective as of the 18th day of August, 2023, by and between 515 TOWER LLC, a Utah limited liability company ("Owner") and SOUTH TEMPLE APARTMENTS LLC, a Utah limited liability company ("Grantee"). Owner and Grantee are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS:

A. Owner owns certain real property in Salt Lake City, Salt Lake County, Utah, more particularly described on Exhibit "B" attached hereto and made a part hereof ("Owner's Property");

B. Grantee owns and intends to develop certain real property located adjacent to Owner's Property, having an address of 508 E South Temple Street, Salt Lake City, Utah, and further identified as County Tax Parcel No. 16-06-226-001 ("Grantee's Property"), and in doing so desires to temporarily access and utilize Owner's Property within the Access Area, Tieback Area and Swingway Area (each as defined below);

C. Owner and Grantee desire to enter into this Agreement to facilitate the construction and development of Grantee's Property.

WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Grant of Easement.** Subject to the terms and conditions set forth in this Agreement, Owner hereby grants to Grantee and its contractors, sub-contractors, employees, agents, successors and assigns (collectively, "Permittees") a temporary construction easement ("Easement") (i) in, over, under, across and upon that certain premises identified in Exhibit "A-1" attached hereto and made a part hereof ("Access Area") for the purpose of performing construction activities, including without limitation soil excavation, and temporarily attaching excavated utility lines and a shoring (soil retention) wall to the parking structure located on Owner's Property, in connection with the construction of certain building improvements to be located on Grantee's Property, (ii) in, over, under, across and upon that certain premises identified in Exhibit "A-1" ("Tieback Area") for temporarily installing and utilizing underground tiebacks and/or

other soil retention anchoring equipment, and (iii) over and above that certain premises identified in Exhibit "A-2" ("Swingway Area") for the purpose of operating and swinging a crane, however no loads shall be transported within the Swingway Area or otherwise above Owner's Property. The Easement shall expire upon the earlier to occur of (a) completion of the development of Grantee's Property, as evidenced by the issuance of a certificate of occupancy with respect to Grantee's Property by Salt Lake City; (b) the date on which the Easement is no longer needed for the purposes granted herein, as reasonably determined by Grantee; (c) Grantee ceases work on Grantee's Property for a period of more than 180 days; or (d) that date which is 540 days after the date of this Agreement (as applicable, the "Term"). No vertical or horizontal loads shall be placed on the Owner's Property.

2. Restoration of Owner's Property. Upon completion of the Term, Grantee shall, at Grantee's sole cost and expense, promptly restore, and repair any damage to the Owner's Property caused by Grantee and/or its Permittees pursuant to the Easement, to a condition substantially similar to that existing immediately prior to Grantee's commencement of construction activity on Owner's Property. Grantee shall also, upon the date that is not later than 180 days after the completion of construction (as evidenced by the issuance of a certificate of occupancy with respect to Grantee's Property by Salt Lake City) provide as-built drawings and survey to Owner showing no permanent encroachment by Grantee on Owner's Property. Owner and Grantee acknowledge and agree that piles and/or tiebacks may be abandoned in place within the Tieback Area. As a covenant to survive the termination of this Agreement, promptly following receipt of written notice thereof from Owner, and in all events within thirty (30) days after receipt of such notice, Grantee shall, at Grantee's expense, remove from Owner's Property any such abandoned piles and/or tiebacks as are requested to be removed by Owner.

3. Reservation by Owner. It is understood and agreed that the Easement is non-exclusive and Owner reserves and retains the right to use the Access Area, Tieback Area and Swingway Area in any manner whatsoever not inconsistent with the Easement granted herein.

4. Liens. Grantee shall keep the Owner's Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Grantee or any of its Permittees pursuant to this Agreement, and shall indemnify, hold harmless and agree to defend Owner from any liens that may be placed on Owner's Property to the extent arising from any work performed, materials furnished or obligations incurred by, through, for, or under Grantee or any of its Permittees pursuant to this Agreement.

5. Indemnification. Grantee shall indemnify, defend and hold Owner and America First Federal Credit Union dba America First Credit Union ("Lender") and their officers, directors and employees (collectively, "Indemnitees") harmless from and against any loss, damage, injury, accident, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property (collectively, "Claims" or a "Claim"), arising during the Term of this Agreement from or relating to Grantee's and its Permittees' use of the Access Area, Tieback Area and Swingway Area, provided, however, that the foregoing indemnity shall not apply to the extent any such Claim is due to the negligence or willful misconduct of the Indemnitees.

6. Restoration and Indemnification for Use of Access Area, Tieback Area, and Swingway Area under Easement from Prior Owner. Grantee agrees that the no loading, restoration, and indemnification obligations set forth in Sections 1, 2 and 5 above shall also apply to work performed within and/or use made of the Access Area, Tieback Area, and Swingway Area by Grantee and its Permittees under grant of easement or license from the prior owner of the Owner's Property.

7. Insurance. Prior to commencing any work within or otherwise exercising any rights with respect to the Easement granted herein, Grantee or its contractor shall first provide general liability insurance in an amount of not less than \$2 million per incident and \$5 million in the aggregate, which policy shall also name Owner and Lender as additional insureds.

8. Runs With The Land; Right to Assign. The Easement herein granted and the agreements herein contained in connection therewith will be easements and covenants running with the Owner's Property and will inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns, including, without limitation, all subsequent owners of the Owner's Property. Grantee may not assign this Agreement to any person or party that is not the fee title owner of the Grantee's Property. For the avoidance of doubt, Grantee may assign this Easement to a person or party who holds fee title to the Grantee's Property in which event Grantee shall be released from any further liability under this Agreement, except as to obligations incurred by Grantee prior to such assignment.

9. Notice. All notices which may be permitted or are required to be sent under this Agreement shall be in writing and shall be sent (i) by overnight courier delivery, or (ii) by certified or registered U.S. mail, postage prepaid, return receipt requested, and sent to the party at the address below such party's signature or such other address as any party shall hereafter inform the other party by written notice given as set forth above.

10. Miscellaneous. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties hereto. This Agreement may be signed in multiple counterparts, all of which taken together shall constitute one and the same agreement. In the event any party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the non-prevailing party in any such action or proceeding its reasonable costs and attorney fees (including its reasonable costs and attorney fees on appeal).

11. Recording. Either Party may record this Agreement with the Salt Lake County Recorder.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Temporary Construction Easement as of the Effective Date.

GRANTEE:

515 TOWER LLC
a Utah limited liability company

By: The Perpetual Housing Fund of Utah LLC
Its: Member

By: Perpetual Housing Fund
Its: Manager

By: Christopher Alden Parker
Its: Executive Director

Grantee's Address: ATTN: Chris Parker & Ashley Atkinson
350 East 400 South
Salt Lake City, UT 84111

OWNER:

SOUTH TEMPLE APARTMENTS LLC
a Utah limited liability company

By: The Ritchie Group, L.C.,
Its: Manager

By: Paul W. Ritchie
Paul W. Ritchie, Manager

By: United Solutions Group, Inc.
Its: Manager

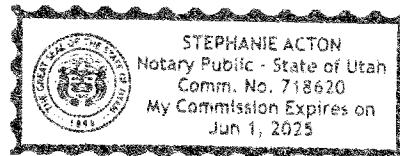
By: 
Chris Webb, Vice President

Owner's Address: 1248 E. Brickyard Road, Ste. 70
Salt Lake City, Utah 84106

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

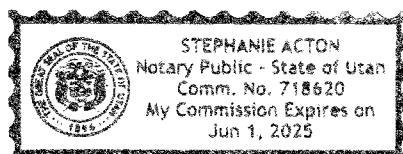
On this 17th day of August, 2023, before me personally appeared Paul W. Ritchie, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged that he executed the same as the Manager of The Ritchie Group, L.C., the Manager of South Temple Apartments LLC, a Utah limited liability company.

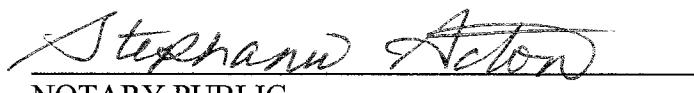

NOTARY PUBLIC



STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

On this 15th day of August, 2023, before me personally appeared Chris Webb, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged that he executed the same as the Vice President of United Solutions Group, Inc., the Manager of South Temple Apartments LLC, a Utah limited liability company.



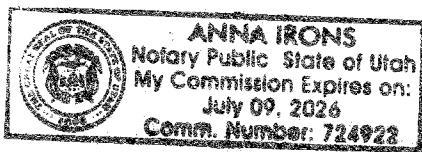

NOTARY PUBLIC

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

On this 16th day of August, 2023, before me personally appeared Christopher Alden Parker, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged that he executed the same as the Executive Director of Perpetual Housing Fund, the Manager of Perpetual Housing Fund of Utah LLC, the Member of 515 Tower LLC, a Utah limited liability company.



NOTARY PUBLIC



LENDER CONSENT AND SUBORDINATION

The undersigned, as holder of the beneficial interest in that certain Deed of Trust recorded on August 18, 2023, as Entry No. 14142875 of the official records of Salt Lake County, Utah, including any amendments thereto (the "Deed of Trust"), made by America First Federal Credit Union dba America First Credit Union, as the Lender and Beneficiary therein, which Deed of Trust encumbers the Owner's Property (as defined in the Temporary Construction Easement to which this Lender Consent and Subordination is attached), does hereby consent to the execution and delivery of such Temporary Construction Easement by 515 Tower LLC and does unconditionally subordinate the lien of the Deed of Trust to such Temporary Construction Easement.

Executed this 18th day of August, 2023.

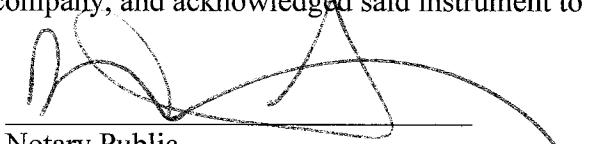
AMERICA FIRST FEDERAL CREDIT UNION dba AMERICA FIRST CREDIT UNION

By: Shari Cheney
Name: Shari Cheney
Title: Commercial Lending Manager

STATE OF Utah)

COUNTY OF Salt Lake) ss

On this 21 day of Aug, 2023, Shari Cheney, who, being by me duly sworn, did say that he/she is the Commercial Lending Manager of America First Federal Credit Union, and that the foregoing Lender Consent and Subordination was signed on behalf of said company, and acknowledged said instrument to be the free act and deed of said company.


Notary Public

Print Name: Blake Ginnis

My commission expires: 12-28-2024

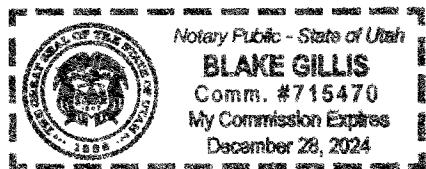


EXHIBIT A-1

Access Area and Tieback Area

[insert map/depiction]

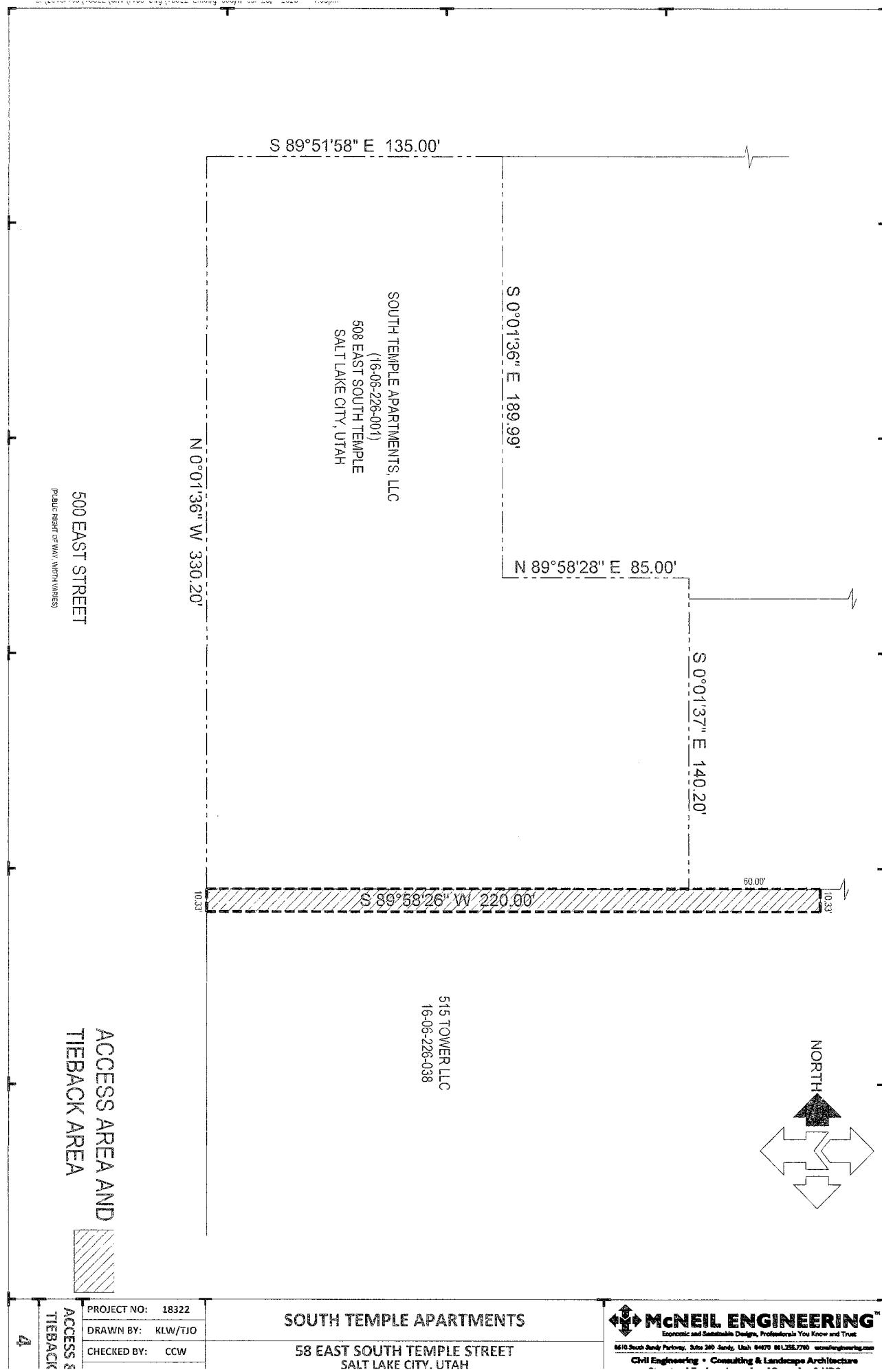


EXHIBIT A-2

Swingway Area

[insert map/depiction]

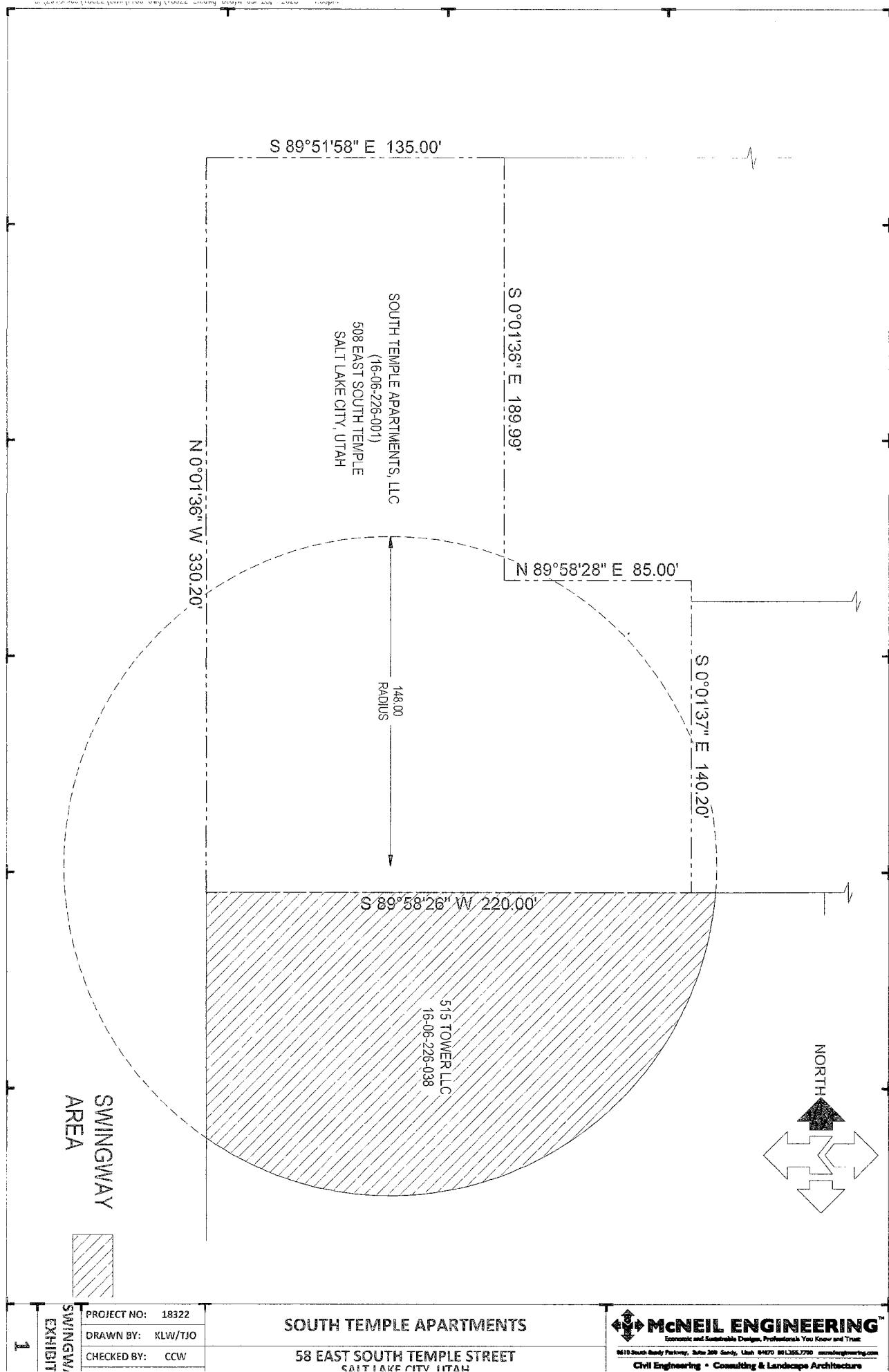


EXHIBIT B

Owner's Property

Salt Lake County, Utah:

Commencing at the Southwest Corner of Lot 4, Block 61, Plat "B", Salt Lake City Survey, and running thence East 259.5 feet; thence North 330 feet; thence West 259.5 feet; thence South 330 feet to the point of beginning.

Parcel # 16-06-226-038