



06-567

**PERMANENT UNDERGROUND DETENTION/WATER QUALITY VAULT WITH OUTLET PIPE EASEMENT AND INDEMNITY AGREEMENT**

THIS EASEMENT AND INDEMNITY AGREEMENT ("Agreement") is made and entered into this 27<sup>th</sup> day of JUNE, 2006, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", and 1800 MARKET INVESTORS, LLC, a Colorado limited liability company, whose address is c/o Corum Real Estate Group, Inc., 5251 DTC Parkway, Greenwood Village, Colorado 80111, hereinafter referred to as the "Owner".

WITNESSETH:

WHEREAS, the Owner is the owner of the property described in EXHIBIT "A", attached hereto, and by this reference made a part hereof (the "Property"); and

WHEREAS, the Owner is constructing the project (the "Project") known as "18th & Market Residences" on the Property in the location as shown on EXHIBIT "B", attached hereto, and by this reference made a part hereof. The Project will contain buildings located within the legal description set forth on Exhibit "A" which will be served by a privately owned permanent underground detention/water quality vault with outlet pipe, which will render the Owner responsible for the maintenance and service of such privately owned permanent underground detention/water quality vault with outlet pipe, or in the event of Owner's failure to do so, by the City at its option; and

WHEREAS, the City is a municipal corporation within which the Property is located and which currently provides emergency and other municipal services to premises within the City using the publicly owned storm sewer facilities; and

WHEREAS, the Owner is desirous of providing ingress and egress to the City to enable the City to provide emergency and other municipal services in, to, and over the said Property and to assure the access of any other owner within the Property to the privately owned permanent underground detention/water quality vault with outlet pipe as necessary; and

WHEREAS, the Owner desires to provide that the Owner and the future owners of any interest in the Property (collectively, the "Owner(s)"), shall be bound to perform the obligations set forth herein, on the conditions set forth herein; and

WHEREAS, the Owner will cause this Agreement to be recorded.

NOW, THEREFORE, in consideration of the premises and in consideration of the Owner(s): (1) being excused from the lawful requirement to construct separate connections to publicly owned storm sewer facilities for each individual property, and (2) receiving the benefits of emergency and other municipal services from the City, the Parties hereto agree as follows:

RETURN TO: MARK D. CARAPPELLA, P.E.  
PW/ENGINEERING - DES (SURVEY)  
201 W. COLFAX AVE, DEPT. 507  
DENVER, CO 80202

08-03-34.2

## **SECTION ONE – CONVEYANCE OF EASEMENT.**

1. The Owner(s) hereby grant(s) and convey(s) a non-exclusive easement to each of the Owner(s) and to the City, for ingress and egress over private property contained within the Project, above referred to, for purposes of providing in the Project emergency privately owned permanent underground detention/water quality vault with outlet pipe repairs, together with any and all rights-of-way, easements or rights of ingress and egress, necessary or convenient to the Owner(s) and/or the City to accomplish such purposes. PROVIDED, HOWEVER, that in non-dedicated driveways or privately maintained systems existing within the Project, the City shall not be obligated or expected to perform any construction, re-construction, maintenance, repair, cleaning, snow removal, street lighting, traffic control or regulation or any other services on property contained within the Project which it does not or can not perform on any other private property within the City and County of Denver.
2. It is the desire of the Owner(s) that the Owners and/or the City have the use of these private driveways, to provide emergency privately owned permanent underground detention/water quality vault with outlet pipe repairs within the Project.
3. The term Owner(s) as used herein shall be deemed to include heirs, successors, and assigns of the original Owner(s). All duties and liabilities of the Owner(s) hereunder shall be joint and several among original Owner(s), their successors, and assigns; provided that if an occurrence giving rise to a claim hereunder is proven to be proximately caused by defined action or omission by Owner(s), its agents, servants or employees which occurred during a specific period of time, then only those Owner(s) holding fee title to the Project, or any portion thereof, during such specific period of time shall be jointly and severally liable hereunder.

## **SECTION TWO – CONSTRUCTION AND MAINTENANCE.**

4. It shall be the duty of the Owner(s) to construct, reconstruct, repair and maintain all private driveways and privately owned permanent underground detention/water quality vault with outlet pipe contained within the Project in such condition so as to be usable by the other Owner(s) and/or the City for provisions of services as set out herein.
5. If, in the sole opinion of the City, the private driveways or privately owned permanent underground detention/water quality vault with outlet pipe are not properly maintained or are closed, blocked or vacated, the City shall give notice to the Owner(s) and if repairs or corrections are not made within the time designated in such notice, the City is authorized to make or have made repairs or corrections and will charge and collect the cost thereof from the Owner(s).
6. The Owner(s) shall in no way consider or hold the City or its personnel guilty of trespass in the performance of any of the municipal services, duties or responsibilities referred to herein.

7. The Owner(s) shall neither (a) alter the Project nor (b) close, block or vacate the private driveways or privately owned permanent underground detention/water quality vault with outlet pipe contained within the Project so that as a result of (a) or (b) the provision of the above-stated services to the Project is rendered impassible or materially impaired.
8. The Owner(s) shall pay for and be responsible for all costs of installation and maintenance of the privately owned permanent underground detention/water quality vault with outlet pipe and their access fittings and associated facilities contained within the Project as determined necessary by and according to the specifications of the Department of Public Works of the City and County of Denver. While the City assumes no obligation for the maintenance or operation of such privately owned permanent underground detention/water quality vault with outlet pipe, in the event of a malfunction of such privately owned permanent underground detention/water quality vault with outlet pipe and the failure of the Owner(s) to correct the malfunction, the Owners(s) authorizes the City to make or have made the corrections or repairs and to charge and collect the cost thereof from the Owner(s), jointly and severally pursuant to Section Two, Article 5 hereof.

### **SECTION THREE – INDEMNITY AGREEMENT.**

9. The Owner(s) agree to: defend, indemnify, and hold harmless the City, its officers, agents, and employees against any and all claims for damage to property or injuries to or death of any person or persons which may result from the City service operations at the Project, provided, however that Owner(s) need not indemnify, defend, or hold harmless the City, its officers, agents, and employees from their own negligence, recklessness, or willful misconduct. By all claims for damages this Agreement specifically includes, but it is not limited to:
  - (A) Any driveway deterioration or damage on the Project.
  - (B) Any structural damage to buildings contained within the Project caused by City vehicle weight or size, by vibrations generated by City vehicles, or by any other cause not specifically described.
  - (C) Any damage to utilities such as water pipes, sewer pipes, gas pipes, electrical power lines, and any other communication lines, conduits, or cables.
  - (D) Any damage to landscaping including but not limited to shrubbery, trees and lawn.
  - (E) Any bodily injury to any person except a City employee, which is caused directly or indirectly by City service operations at the Project, or by delays or complication or prevention of provision of such services due to closure, blocking, vacation, disrepair of the private driveways or privately owned permanent underground detention/water quality vault with outlet pipe referred to herein.
10. The Owner(s) further agrees jointly and severally to reimburse the City for any bodily injury to City personnel, or damages to the City property caused by defective and dangerous condition of the Project.

11. It is understood that the Owner(s) intends to cause the formation of one or more Property Owner's Associations ("Association") to hold title to and/or administer the use and maintenance of the private roads and streets and other common facilities contained within the Project.

(A) IT IS FURTHER UNDERSTOOD THAT THE "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS" OR ANY SIMILAR INSTRUMENT FOR ANY SUCH ASSOCIATION SHALL CLEARLY STATE THAT THE PROPERTY OWNER'S HAVE JOINT AND SEVERAL FINANCIAL RESPONSIBILITY FOR THE MAINTENANCE AND REPAIR OF SUCH PRIVATE ROADS, STREETS, SEWERS, OR OTHER DRAINAGE FACILITIES, AND THE INDEMNITY PROVISIONS OF THIS AGREEMENT. THE OWNER(S) SHALL HAVE A COPY OF SUCH DECLARATION READILY AVAILABLE IN ITS SALES FACILITY AND SHALL PROVIDE A COPY TO EACH PURCHASER AT THE TIME OF EXECUTION OF EACH SALES AGREEMENT. THE OWNER(S) SHALL ALSO RECORD THE PROPERTY OWNER'S DECLARATION WITH THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, AND PROVIDE SATISFACTORY EVIDENCE OF SUCH RECORDATION TO THE CITY.

(B) Upon conveyance of the Project to the Association and the Association's members ("Members"), the Association and Members shall be bound by the obligations of "Owner(s)" hereunder with respect to the Project so conveyed to the Association and Members and shall have financial responsibility for the maintenance and repair of the privately owned permanent underground detention/water quality vault and, as partial consideration for the execution of this Agreement, and to the extent permitted by law, the indemnity provisions set forth in Section Three of this Agreement. It is expressly understood and agreed that the City is entering into this Agreement as it pertains to the Association and Members in reliance upon the Association's and Member's undertaking to indemnify as set out herein. Upon such conveyance of the Project by the Owner(s) to the Association and Members, City acknowledges that Owner(s), as defined in the introductory paragraph of this Agreement, shall thereupon be released from all obligations under this Agreement with respect to, but only with respect to, the privately owned permanent underground detention/water quality vault so conveyed.

#### **SECTION FOUR – DISPUTES.**

12. Disputes regarding any aspect of this Agreement shall be resolved by administrative hearing pursuant to D.R.M.C. Section 56-106.

#### **SECTION FIVE – AGREEMENT TO RUN WITH THE LAND.**

13. The grant of easement and duties contained herein shall run with the land and shall be binding upon, jointly and severally, and shall inure to the benefit of, the parties hereto,

their heirs, successors, or assigns, and the Owner(s) agrees to that upon sale of any portion of the above-described Property a copy of this Agreement will be given to the purchaser.

14. The Owner(s) agrees to the terms of this Agreement and gives evidence of its voluntary agreement by having the individual(s) below sign their name to this Agreement. The person or persons signing and executing this Agreement on behalf of the Owner(s) do hereby warrant and guarantee that he, she or they have been fully authorized by the Owner(s) to execute this Agreement on behalf of the Owner(s) and to validly and legally bind the Owner(s) to all terms, performances, provisions and conditions herein set forth.
15. This Agreement shall become effective upon its execution by the parties hereto.
16. This Agreement shall be binding upon any and all heirs, successors, assigns, or transferees of the Parties hereto and shall be considered a covenant running with the land.

**SECTION SIX – NO DISCRIMINATION IN EMPLOYMENT: NO THIRD PARTY BENEFICIARIES.**

17. In connection with the performance of work under this Agreement, the Owner(s) agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, and further agrees to insert the foregoing provision in all subcontracts hereunder.
18. It is expressly understood and agreed upon that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Owner(s), and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement, including but not limited to subcontractors, sub-consultants, and suppliers. It is the express intention of the City and Owner(s) that any person other than the City or the Owners receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

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

ATTEST:

By: \_\_\_\_\_

WAYNE E. VADEN, City Clerk  
Recorder, Ex-Official Clerk of the  
City and County of Denver



APPROVED AS TO FORM:

COLE FINEGAN, Attorney for the City and  
County of Denver

By: \_\_\_\_\_

Assistant City Attorney

CITY AND COUNTY OF DENVER

By: \_\_\_\_\_

Mayor

RECOMMENDED AND APPROVED:

By: \_\_\_\_\_

Manager of Public Works

REGISTERED AND COUNTERSIGNED:

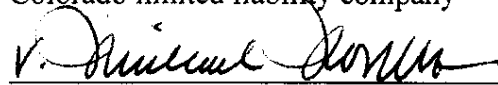
By: \_\_\_\_\_

Auditor

Contract Control No. XC6A066

"OWNER(S)"

1800 MARKET INVESTORS, LLC, a  
Colorado limited liability company



By: V. Michael Komppa, Manager

STATE OF Colorado )

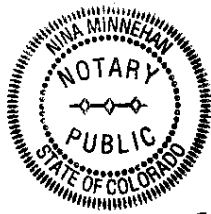
CITY OF Denver )

COUNTY OF Arapahoe )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of May,

2006, by V. Michael Komppa as Manager of 1800 Market Investors, LLC, a Colorado limited liability company, as "Owner(s)".

Witness my hand and official seal.



My commission expires: 01-26-2010

Nina Minnehan  
Notary Public

5251 DTZ Parkway #200  
Greenwood Village, Co 80111  
Address

**PARCEL DESCRIPTION:**

LOTS 1 THROUGH 16, INCLUSIVE, BLOCK 49, EAST DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

CONTAINING 50,152 SQUARE FEET (1.151 ACRES), MORE OR LESS.



WILLIAM G. BUNTROCK, P.L.S. 35585  
COLORADO PROFESSIONAL LAND SURVEYOR  
FOR AND ON BEHALF OF V3 COMPANIES OF COLORADO  
PROJ. NO. D04045 V01



*Engineers*  
*Scientists*  
*Surveyors*

2399 Blake Street, Suite 130  
Denver, CO 80205  
303.989.8588 voice  
303.989.9932 fax  
V3consultants.com

COMPANIES OF COLORADO, LTD.

EXHIBIT "A" PROPERTY LEGAL DESCRIPTION  
Lodo Housing 18th and Market  
May 19, 2006

Denver

Colorado





PROPERTY LINE

PROPERTY LINE

PROPOSED 525,000 SF  
BUILDING  
FF VARIES

PROPOSED  
INLET

PROPOSED  
WATER  
LINE

PROPOSED SANITARY  
SEWER

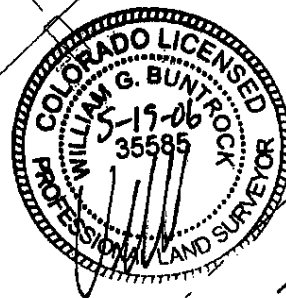
PROPOSED WATER QUALITY  
DETENTION VAULT

PROPOSED STORM  
SEWER SYSTEM

PROPOSED SANITARY  
SEWER

PROPERTY  
LINE

PROPERTY  
LINE



CONNECT TO  
EXISTING  
STORM SEWER  
MANHOLE

PROPOSED  
WATER LINE

MARKET STREET  
(60' R.O.W.)

19TH STREET W  
(60' R.O.W.)

18TH STREET  
(60' R.O.W.)

LARIMER STREET



Engineers  
Scientists  
Surveyors

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COMPANIES OF COLORADO, LTD.

EXHIBIT "B" - PROJECT SITE PLAN  
Lodo Housing 18th and Market

May 19, 2006

1" = 60'

Denver

Colorado