

**WHEN RECORDED, RETURN TO:**

Security National Life Insurance Company  
5300 South 360 West, Suite 250  
Salt Lake City, Utah 84123  
Attention: Bryce Baker

12272352  
5/3/2016 3:48:00 PM \$32.00  
Book - 10427 Pg - 7452-7461  
Gary W. Ott  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 10 P.

(Space above for County Recorder's Use)

**Tax I.D. Numbers:** All or portions of 21-12-327-008;  
21-12-327-009; 21-12-327-015; 21-12-376-014;  
21-12-376-016; 21-12-376-018

**MAINTENANCE AGREEMENT FOR LANDSCAPED MEDIANS AND SIDEWALKS**

THIS MAINTENANCE AGREEMENT FOR LANDSCAPED MEDIANS AND SIDEWALKS ("Agreement") is made and entered into this 4 day of March, 2016 ("Effective Date"), by and between SECURITY NATIONAL LIFE INSURANCE COMPANY, a Utah corporation ("Security National"), and MEMORIAL ESTATES, INC., a Utah corporation ("Memorial Estates", who together with Security National is referred to collectively as the "Owner"), and the MURRAY CITY CORPORATION, a municipal corporation of the State of Utah ("Murray City"). Except as otherwise specifically provided in this Agreement, the Owner and Murray City are referred to in this Agreement, collectively, as the "Parties" and, individually, as a "Party".

**RECITALS**

A. Security National and Memorial Estates are the current owners of certain real property located in Salt Lake County, Utah, being more particularly described on Exhibit "A" attached hereto and incorporated herein (the "Property"). The Property has been or will be subdivided into five (5) separate lots pursuant to that certain Ascension at 53<sup>rd</sup> Subdivision Plat ("Plat"), as recorded or to be recorded in the official records of the Salt Lake County Recorder's Office prior to, concurrently with, or following the recordation of this Agreement.

B. Murray City owns or anticipates receiving certain right-of-way interests to portions of the Property, as set forth in the Plat or as otherwise previously dedicated, which have been or will be dedicated for the use and benefit of the general public, which include certain landscaped medians and sidewalks that fall within and relate to the Project (as defined below).

C. Owner plans to develop a multi-phased, mixed-use commercial development project on the Property (the "Project"), which Project contemplates, among other things, multiple office buildings, retail buildings, and other commercial improvements, together with common areas, parking structures, landscaped areas, utilities, and other infrastructure improvements.

D. In connection with the review and approvals granted by Murray City for the Owner to subdivide the Property as set forth on the Plat and develop the Project, Murray City, by way of its planning commission and staff, imposed certain conditions of approval which requires the Owner to maintain certain dedicated portions and/or rights-of-way on the Property that relate to landscaped medians ("Medians") and sidewalks within the Project ("Sidewalks"), which Medians are or will be owned by Murray City and which Sidewalks are or will be owned by Owner, but will be located adjacent to dedicated roadways within the Project and are intended to be made available to Owner and their respective tenants, guests, agents, representatives, invitees, and licensees.

E. The Parties have agreed to enter into this Agreement to specify the terms and conditions under which the Medians and Sidewalks will be constructed, maintained, repaired, and replaced, when necessary, and to ensure that the conditions of approval imposed by Murray City in connection with the Medians and Sidewalks have been satisfied.

F. In addition, the Parties join in this Agreement for the purpose of Murray City granting Owner, and its successors and assigns, a non-exclusive easement and right-of-way on, over, across, through, and under those applicable portions of the Property where the Medians will be located in order for Owner to construct, maintain, repair, and replace the Medians in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant of Easement for Medians. Murray City hereby grants to Owner a non-exclusive easement ("Easement") on, over, across, through, and under those applicable portions of the Property that have previously been or will be dedicated to Murray City (in those location set forth in the Plat or as otherwise previously dedicated) where the Medians are or will be located in connection with the Project, which easement shall permit Owner and its Permittees (as defined below) to access and use those portions of the Property where Medians are located for any and all lawful purposes that are necessary or desirable to construct, maintain, repair, and replace the Medians in accordance with this Agreement. For purposes of this Agreement, the term "Permittees" shall mean the Owner and all of their respective owners, members, managers, persons, entities, employees, contractors, consultants, agents, representatives, successors, or assigns who will assist or undertake in efforts to construct, maintain, repair, and replace the Medians in accordance with this Agreement. Murray City intends for the Easement to be construed as broadly and inclusive as necessary for Owner to construct, maintain, repair, and replace the Medians in accordance with this Agreement; provided, however, Owner shall not be permitted to impair or unreasonably interfere with the ownership and right-of-way interests of Murray City and the intended benefits for the general public.

2. Maintenance Obligation and Standards. To the extent the Property is improved with Medians and Sidewalks, the fee title owner(s) of the respective portions of the Property where Medians and Sidewalks are located shall maintain, repair, and replace, when necessary, such respective Medians and Sidewalks at their sole cost and expense and at all times in good condition and repair and to a level comparable to the standard of maintenance generally

maintained in other commercial mixed-use projects similar in terms of age, quality, size, location, quality of construction, and appearance within the Murray City, Utah area, with said maintenance, repair, and replacement to include and be subject to, without limitation, the following:

(i) Maintaining, repairing, and replacing, when necessary, all improvements pertaining to the Medians and Sidewalks in a condition with the type of materials originally approved by Murray City or using substitute materials as approved by Murray City.

(ii) Maintaining and watering all landscaped areas, improvements, and plants within the Medians, including, any sprinkler systems, water lines, vegetation, and related improvements in a condition with the type of materials and vegetation originally approved by Murray City or using substitute materials or plants that are in all reasonable respects equal or superior in quality, use, and durability;

(iii) Undertaking commercially reasonable efforts to remove ice, snow, papers, debris, filth, and refuse from the Medians and Sidewalks to the extent reasonably necessary to keep the Medians and Sidewalks in a clean and orderly condition and free from any unreasonable obstructions;

(iv) All work to be performed on the Medians and Sidewalks under this Agreement will be performed in such a way as to minimize to the extent possible the impact on businesses and operations conducted within the Project and traffic to and from the Property, including ensuring that all dedicated streets, roadways, and rights-of-way applicable or adjacent to the Medians and Sidewalks will be unobstructed and substantially accessible at all times;

(v) All work to be performed on the Medians and Sidewalks under this Agreement will be performed in a safe, lien-free manner and condition and in compliance with all applicable governmental laws, Murray City Standards and right-of-way permit requirements; and

(vi) Prior to the final completion of work to be performed on the Medians and Sidewalks under this Agreement, those disturbed and impacted areas of the Property will promptly be restored to a condition substantially similar to what the Property was in prior to the commencement of such work.

3. Indemnification. Owner hereby indemnifies and agrees to hold harmless and defend Murray City for, from, and against all claims, damages, expenses (including, without limitation, attorneys' fees and reasonable investigative and discovery costs), liabilities, and judgments on account of injury to persons, loss of life, or damage to property occurring on the Medians and Sidewalks, caused directly by the active or passive negligence of Owner or their respective agents, guests, and invitees that are controlled by or under common control of Owner and who are authorized to access the Medians and Sidewalks in accordance with this Agreement, or the breach by Owner of any of its obligations under this Agreement; provided, however, this indemnification does not apply to the extent any loss of life, injury to any person, or damage to any property is caused by the active or passive negligence of Murray City, or its respective employees, contractors, consultants, agents, representatives, successors, or assigns or caused by

parties that are not controlled by Owner or not authorized to access the Medians and Sidewalks under this Agreement.

4. Liens. Owner will not permit any mechanic's lien, materialmen's lien, or other lien of any kind on those portions of the Property where the Medians will be located by anyone claiming by reason of any act or omission of Owner, or any of its employees, agents, representatives, contractors, subcontractors, successors, or assigns, and Owner indemnifies, defends, and holds Murray City harmless for, from, and against all claims, damages, expenses (including, without limitation, attorneys' fees and reasonable investigative and discovery costs), liabilities, and judgments on account of any such liens.

5. Reservation of Rights. Subject to the terms and conditions of this Agreement, Owner reserves unto itself forever, the right to cross over, through, and under the Property, including those areas of the Property where Sidewalks will be located, the right to place or grant other easements along, across, or under the Property, the right to relocate the Easement, and to otherwise make improvements to the Property for purposes of developing the Project, so long as such additional easements, uses, and improvements do not materially and unreasonably impair or diminish the rights of Murray City under this Agreement.

6. Default. In the event any Party fails to perform any provision of this Agreement, which failure continues for a period of ten (10) days after receipt of written notice specifying the particulars of that failure, that failure will constitute a default and any other Party may thereafter institute legal action against the defaulting Party for specific performance, declaratory or injunctive relief, monetary damages, or any other remedy provided by law; provided, however, that the defaulting Party will not be deemed to be in default if the failure to perform cannot be rectified within the ten (10) day period and that Party is diligently proceeding to rectify the particulars of that failure and rectifies the failure as soon as practicable.

7. Attorneys' Fees. In the event any Party commences litigation to enforce this Agreement, the unsuccessful Party to that litigation will pay, within ten (10) days of the date when any judgment becomes final and all rights of appeal therefrom have expired, all costs and expenses, including attorneys' fees, incurred by the successful Party (which costs and expenses will be included in the amount of the judgment).

8. Notices. Any notice or demand to be given by a Party to another Party must be given in writing by personal delivery; electronic transmittal (with a duplicate copy also given by any other delivery method permitted); express mail, FedEx, UPS, or any other similar form of delivery service that keeps delivery receipts; or United States mail, postage prepaid, certified and return receipt requested, and addressed to that Party at the address specified on that Party's signature page. Any Party may change the address at which it desires to receive notice on written notice of that change to the other Party. Any notice will be deemed to have been given, and will be effective, on delivery to the notice address then applicable for the Party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated will not defeat or delay the giving of a notice.

9. Covenants Run With the Land. The terms and conditions of this Agreement and the Easement are a burden on those portions of the Property where the Medians and Sidewalks are located, are appurtenant to and for the benefit of the Property and each part thereof, and run with the land.

10. Injunctive Relief. In the event of any violation or threatened violation of this Agreement, any Party has the right to enjoin that violation or threatened violation in court. The right of injunction is in addition to all other remedies set forth in this Agreement or provided by law or in equity.

11. Breach Will Not Permit Termination. No breach of this Agreement will entitle a Party to terminate this Agreement, but that limitation does not affect in any manner any other rights or remedies which a Party may have by reason of any breach of this Agreement.

12. Governing Law. This Agreement is governed by the laws of the State of Utah.

13. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns.

14. Captions; Interpretation. The section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement. All Exhibits referenced in and attached to this Agreement are incorporated in this Agreement. Unless otherwise specifically indicated, any references in this Agreement to paragraphs are to paragraphs in this Agreement.

15. Further Assurances. Each Party will use reasonable efforts and exercise reasonable diligence to accomplish and effect the easements, grants, and rights contemplated by this Agreement and will execute and deliver all further documents as may be reasonably requested by the other Party in order to fully carry out the easements, grants, and rights contemplated by this Agreement.

16. Counterparts. This Agreement may be executed in counterpart originals.

17. Waiver. Failure of any Party to exercise any right under this Agreement or to insist upon strict compliance with regard to any provision of this Agreement, will not constitute a waiver of that Party's right to exercise that right or to demand strict compliance with this Agreement.

18. Severability. The invalidity or unenforceability of a particular term or provision of this Agreement does not affect the other provisions of this Agreement, and this Agreement will be construed in all respects as if the invalid or unenforceable provision were omitted.

19. Construction. The Parties acknowledge that (i) each Party is of equal bargaining strength; (ii) each Party has actively participated in the drafting, preparation, and negotiation of this Agreement; (iii) each Party has consulted with its own independent counsel, and those other professional advisors as it has deemed appropriate, relating to any and all matters contemplated under this Agreement; (iv) each Party and its counsel and advisors have reviewed this Agreement; (v) each Party has agreed to enter into this Agreement following that review and the

rendering of that advice; and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting Parties does not apply in the interpretation of this Agreement.

20. Relationship of Parties. This Agreement will not be deemed or construed, either by the Parties or by any third-party, to create the relationship of principal and agent or create any partnership, joint venture, or other association between the Parties.

21. Authorization. Each individual executing this Agreement represents that they have been duly authorized to execute and deliver this Agreement in the capacity and for the entity for whom that individual signs.

22. Entire Agreement. This Agreement (including Exhibits attached hereto) sets forth the entire understanding of the Parties with respect to the matters addressed in this Agreement and cannot be amended except pursuant to an instrument in writing signed by the Parties.

***[Intentionally Blank – Signature Pages and Acknowledgments to Follow]***







MURRAY CITY SIGNATURE PAGE

THIS AGREEMENT has been signed by Murray City to be effected as of the Effective Date.

**Murray City Information:**

MURRAY CITY CORPORATION  
5025 South State Street  
Murray, Utah 84107

**MURRAY CITY:**

MURRAY CITY CORPORATION,  
a municipal corporation of the State of Utah

**With a copy to:**

City Attorney's Office  
Murray City Corporation  
5025 South State Street  
Murray, Utah 84107

By: David Ted Eyre  
Print Name: David Ted Eyre  
Title: Mayor



**ATTEST**  
Murray City Recorders Office

Jennifer Kennedy

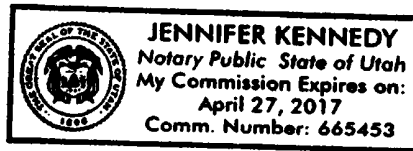
STATE OF Utah )  
: ss.  
COUNTY OF Salt Lake )

JTS

The foregoing instrument was acknowledged before me this 3 day of March, 2016, by David Ted Eyre, the Mayor of Murray City Corporation, a municipal corporation of the State of Utah.

Jennifer Kennedy  
NOTARY PUBLIC  
Residing at: Salt Lake County

My Commission Expires:  
April 27, 2017



**Finance Approved**  
[Signature]

**APPROVED AS TO FORM**  
Murray City Attorneys Office

**EXHIBIT "A"**  
**TO**  
**MAINTENANCE AGREEMENT FOR LANDSCAPED MEDIANS AND**  
**SIDEWALKS**

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**LEGAL DESCRIPTION OF PROPERTY**

The real property referenced in the foregoing Maintenance Agreement for Landscaped Medians and Sidewalks as the "Property" is located in Salt Lake County, Utah and is more particularly described as follows:

ALL OF LOTS 1 THROUGH 5, ACCORDING TO THE ASCENSION AT 53RD SUBDIVISION PLAT, PREPARED BY STANTEC CONSULTING SERVICES INC., RECORDED ON May 3<sup>rd</sup>, 2016, AS DOCUMENT NO. 12272158, IN BOOK 2016P OF PLATS AT PAGE 102, IN THE OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER'S OFFICE, STATE OF UTAH.