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Gary W. Ott
Recorder, Salt Lake County, UT
KIRTON & MCCONKIE
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WHEN RECORDED, PLEASE RETURN TO:

Robert C. Hyde
Kirton McConkie
50 E. South Temple
Salt Lake City, Utah 84111

FIRST AMENDMENT TO
AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
OF
99 WEST CONDOMINIUMS
[a leasehold condominium project]

Executed March 4, 2014

**FIRST AMENDMENT TO
AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
OF
99 WEST CONDOMINIUMS**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OF 99 WEST CONDOMINIUMS (this “**Amendment**”) is executed this 4th day of March, 2014, by City Creek Living, LLC, a Utah limited liability company (“**CCL**”).

RECITALS

A. Declarant previously subjected that certain real property described in Exhibit A attached hereto (the “**Real Property**”) to that certain Declaration of Condominium of Promontory on South Temple Condominiums, recorded in the Recorder’s Office of Salt Lake County, State of Utah, as Entry No. 11124992, in Book 9901, beginning at Page 7021, on January 28, 2011, as amended by that certain Amended and Restated Declaration of Condominium of 99 West Condominiums, recorded in the Recorder’s Office of Salt Lake County, State of Utah, as Entry No. 11690025, in Book 10162, beginning at Page 486, on July 23, 2013 (the “**Declaration**”).

B. Declarant deems it necessary and desirable to amend Declaration as set forth in this Amendment.

DECLARATION

NOW, THEREFORE, Declarant hereby amends the Declaration as set forth below:

1. **Definitions.** Sections 1.1, 1.21, 1.22, 1.23 and 1.74 of the Declaration are hereby deleted in their entirety.

2. **Razing Costs.** Section 1.62 of the Declaration is hereby deleted in its entirety and replaced with the following:

1.62 “**Razing Costs**” shall have the meaning assigned such term in Section 9.5.3.

3. **Property Insurance Proceeds.** Section 9.2 of the Declaration is hereby deleted in its entirety and replaced with the following:

9.2 **Property Insurance Proceeds.** For purposes of the Lease and this Declaration, “**Property Insurance Proceeds**” shall mean any and all proceeds or compensation of any kind in connection with, related to, or provided as a result of, any and all property insurance or similar insurance policies required to be obtained and maintained under the Lease and this

Declaration, whether actually received or not, and any and all claims for such proceeds or compensation, less all actual and reasonable costs and expenses of obtaining same. In the event that the Association shall fail to obtain and maintain any applicable insurance policies required under the Lease or this Declaration, the Association and the Owners shall be obligated to pay to Airspace Lessor (by imposing the necessary assessments, including, without limitation, Special Assessments), as Property Insurance Proceeds, the amount equal to the Property Insurance Proceeds that would have been payable under such policies had such policies been obtained and maintained. Except as may be otherwise specifically provided herein, Airspace Lessor shall be entitled to receive all Property Insurance Proceeds. The Association and each Owner shall (i) use their best and most diligent efforts to promptly acquire all Property Insurance Proceeds and immediately deliver all such Property Insurance Proceeds received or payable by the Association (or as applicable any Owner) to Airspace Lessor, (ii) cause all insurance providers and any other applicable third parties to immediately deliver all Property Insurance Proceeds to Airspace Lessor, and (iii) cooperate in all respects with Airspace Lessor to aid Airspace Lessor in obtaining all Property Insurance Proceeds, including without limitation, the execution and delivery of any documentation, letters or other agreements requested by Airspace Lessor.

4. **Repair and Reconstruction.** Section 9.3 of the Declaration is hereby deleted in its entirety and replaced with the following:

9.3 **Repair and Reconstruction.** For purposes of the Lease and this Declaration, “**Repair and Reconstruction**” of the applicable improvements shall mean repairing, restoring, and/or reconstructing, as applicable, the applicable improvements to substantially the same condition in which such improvements existed prior to the damage or destruction, with all aspects of the Project and the Common Areas having substantially the same vertical and horizontal boundaries as before (subject to any modifications required by then-applicable law).

5. **Scope of Damage or Destruction.** Section 9.4 of the Declaration is hereby deleted in its entirety and replaced with the following:

9.4 **Scope of Damage or Destruction.** The rights of the parties in the event of damage or destruction shall be determined based on the scope of such damage or destruction, which shall be determined as follows:

9.4.1 **Total Damage or Destruction.** Any damage or destruction that causes the Building to be deemed by Airspace Lessor, in Airspace Lessor’s reasonable judgment, to be so structurally compromised or otherwise damaged that (i) the then-current Building structure should or must be demolished, or (ii) even if the Building could be repaired, the cost

of doing so cannot be economically justified, again in Airspace Lessor's reasonable judgment, shall be deemed a "**Total Destruction**" of the Project and the Building. In the event of a Total Destruction, Airspace Lessor shall terminate the Lease and the entire Project as more fully set forth in Section 9.5.2 below.

9.4.2 Partial Damage or Destruction. Any damage or destruction that causes the Building to be deemed by Airspace Lessor, in Airspace Lessor's reasonable judgment, to not be a Total Destruction, shall be deemed a "**Partial Destruction**" of the Project and the Building. In the event of a Partial Destruction, the Property Insurance Proceeds shall be used to pay all costs and expenses of the applicable Repair and Restoration and Association shall perform, or cause to be performed, all Repair and Reconstruction of the Project. The Association shall be responsible to promptly collect Special Assessments from the Owners to pay for any amounts needed to repair the Partial Destruction above the amount of the Property Insurance Proceeds. Notwithstanding the foregoing, in the event of a Partial Destruction where the cost of repair is reasonably estimated to be in excess of fifty percent (50%) of the then-fair market value of the Project, regardless of the amount of the Property Insurance Proceeds, the Association shall have the right and option, in its sole and absolute discretion, to terminate the Lease and the Project in the same manner as described and set forth in Section 9.5.2 below.

6. Procedures in the Event of Damage or Destruction. Section 9.5 of the Declaration is hereby deleted in its entirety and replaced with the following:

9.5 Procedures in the Event of Damage or Destruction. In the event of any damage or destruction to the Project, whether a Total Destruction or a Partial Destruction, the rights and obligations of the parties shall be as follows:

9.5.1 Repair and Reconstruction. In the event of a Partial Destruction, the Association shall promptly perform, or caused to be performed, all Repair and Reconstruction of the Project.

9.5.2 Termination of Lease and the Project. In the event the Lease and the Project are terminated pursuant to the provisions of Section 9.4 above: (i) the Lease shall immediately be terminated with respect to the Property, and no party shall have any further obligations to the other except as otherwise expressly set forth therein, (ii) the Property shall no longer be subject to the Lease, the Project, the Plat or this Declaration, (iii) to the extent required by applicable law, or requested by Airspace Lessor, all applicable parties (including, without limitation, all Owners and the Association) shall promptly execute, deliver and record a termination of the Lease, the Project, the Plat, and/or the Declaration, with respect to the

Property, (iv) all easements, rights, licenses and benefits granted to Tenant, any Owners and/or the Association in the Lease, to the extent same are appurtenant to the Property, shall be terminated, and (v) the Property and/or improvements related thereto shall immediately revert back, in fee simple, to Airspace Lessor in the same manner as described in Section 3.4 of the Lease.

9.5.3 Reimbursement to Owners. In the event the Lease and the Project are terminated pursuant to the provisions of Section 9.4 above, all of the Property Insurance Proceeds, less an amount sufficient to pay for the total razing, clearing, removing, and disposing of the Project (the “**Razing Costs**”), shall be paid to the Association (the “**Net Insurance Proceeds**”), and the Association shall disburse the Net Insurance Proceeds to all of the Owners on a pro rata basis in accordance with the Ownership Interests. Airspace Lessor shall be entitled to retain from the Property Insurance Proceeds the amount of the Razing Costs.

7. Continuation of Lease. Section 9.6 of the Declaration is hereby deleted in its entirety and replaced with the following:

9.6 Continuation of Lease. In the event of any damage or destruction to the Project as set forth above, unless Airspace Lessor or the Association terminates the Lease as set forth in the Lease, the Lease shall not terminate, be forfeited, or be affected in any other manner. Unless and until the Lease has been validly terminated, all of Tenant’s obligations under the Lease, including, without limitation, the obligation to pay any and all rental or other payments, shall continue unabated, subject to all other terms and provisions of the Lease.

8. Use by Airspace Lessor of Property Removed from the Lease. Section 9.7 of the Declaration is hereby deleted in its entirety and replaced with the following:

9.7 Use by Airspace Lessor of Property Removed from the Lease. If Airspace Lessor or the Association terminates the Lease as set forth above, then Airspace Lessor, at any time, and from time to time, thereafter may (but shall not be obligated to) construct other buildings, structures or improvements on, within, around, or near the previous location of the Property (the “**New Improvements**”). The New Improvements and/or the Property removed from the Lease may be used for any purpose whatsoever in Airspace Lessor’s sole and absolute discretion and shall not be subject to the Lease or this Declaration, or any conditions, covenants, or restrictions in same.

9. Leasing and/or Renting of Units. Section 12.5 of the Declaration is hereby deleted in its entirety and replaced with the following:

12.5 **Leasing and/or Renting of Units.** Owners may lease or rent their Units subject to reasonable restrictions set forth by the Association. This Section 12.5 may be amended only upon the affirmative vote or written approval of Owners holding at least sixty six percent (66%) of the Ownership Interests within the Association.

10. **Defined Terms.** Except as otherwise expressly provided herein, capitalized terms used in this Amendment shall have the meanings given them in the Declaration.

11. **Conflicting Provisions; Ratification.** Declarant reserves any and all rights and interests existing pursuant to the Declaration which are not affected by this Amendment and except as expressly modified herein, the Declaration remains in full force and effect in accordance with its terms. This Amendment amends the Declaration. In the event of any conflict or inconsistency between the terms of this Amendment and the terms of the Declaration, the terms of this Amendment shall control.

[SIGNATURES TO FOLLOW]

SIGNATURE PAGE

This Declaration is signed and executed as of the date first set forth above.

CITY CREEK LIVING, LLC,
a Utah limited liability company

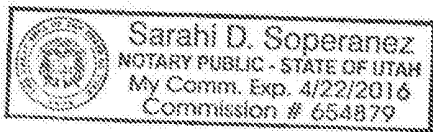
By:  _____


Name: Mark B. Gibbons

Its: Manager

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 4th day of March, 2014, personally appeared before me Mark B. Gibbons, who being by me duly sworn, did say that he is the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity as the Manager of City Creek Living, LLC, a Utah limited liability company, for and on behalf of said limited liability company.





NOTARY PUBLIC

ACKNOWLEDGEMENT OF AIRSPACE LESSOR

On this 4th day of March, 2014, the undersigned, as the current fee simple owner of the Real Property subject to this Declaration, hereby acknowledges and consents, solely for the purposes of submitting a leasehold interest in the Real Property to the Condominium Act, to the encumbrance of this Declaration on the Property. Without limiting the generality of the foregoing, the undersigned is not signing this Declaration for any other purpose except as set forth above, and the undersigned specifically disclaims any responsibilities, duties, obligations, warranties, representations, or certifications of "Declarant" or any other party set forth herein.

CITY CREEK RESERVE, INC.,
a Utah nonprofit corporation

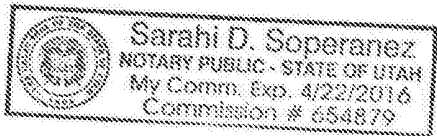
By: 

Name: Mark B. Gibbons

Its: President

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 4th day of March, 2014, personally appeared before me Mark B. Gibbons who, being by me duly sworn, did say that he is the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity as President of City Creek Reserve, Inc. a Utah nonprofit corporation, for and on behalf of said corporation.





NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

Project Boundary Description (Level 2 and Above)

That certain volume of airspace located in Lot 5 of Block 76, Plat 8 of the Official Survey of Plat "A" Salt Lake City Survey, being also in the Northeast Quarter of Section 1, Township 1 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

The airspace from and above Elevation 4336.00' within the following horizontal boundaries.

Beginning at the Northwest Corner of said Block 76; and running thence, along the North Line of said Block 76, N89°59'41"E 91.58 feet to the Westerly Line of that certain "Memorandum of Amended and Restated Retail Center Airspace Lease (Block 76-Level 1-Revised 12-14-09)" recorded in Book 9848 at Page 3144 in the Salt Lake County Recorder's Office; thence, along said Westerly Line, the following fourteen (14) courses: (1) South 6.62 feet, (2) East 0.25 feet, (3) Southeasterly 9.08 feet along the arc of a 5.79 foot radius curve to the right, chord bears S44°42'52"E 8.18 feet, (4) South 0.19 feet, (5) East 1.67 feet, (6) South 41.63 feet, (7) Southeasterly 5.47 feet along the arc of a 3.77 foot radius curve to the right, chord bears S45°15'09"E 5.00 feet, (8) South 8.18 feet (9) East 1.45 feet, (10) South 58.16 feet (11) West 0.50 feet, (12) Southwesterly 11.03 feet along the arc of a 7.03 foot radius curve to the right, chord bears S45°50'10"W 9.93 feet, (13) South 0.59 feet, (14) West 96.58 feet to the West Line of said Block 76; thence, along said West Line of Block 76, N00°01'22"W 131.61 feet to the Point of Beginning.

P1 Level Boundary Description

That certain volume of airspace located in Lot 5 of Block 76, Plat 8 of the Official Survey of Plat "A", Salt Lake City Survey, being also in the Northeast Quarter of Section 1, Township 1 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

The airspace from elevation 4296.50 to elevation 4307.25 within the following horizontal boundaries.

Beginning at a point East 2.13 feet and South 1.98 feet from the Northwest Corner of said Block 76; and running thence East 48.11 feet; thence South 42.75 feet; thence East 19.06 feet; thence South 39.83 feet; thence East 1.01 feet; thence South 24.60 feet; thence West 12.61 feet; thence South 8.50 feet; thence West 12.75 feet; thence North 1.67 feet; thence West 1.09 feet; thence North 30.17 feet;

thence West 19.10 feet; thence South 30.17 feet; thence East 11.23 feet; thence South 11.90 feet; thence West 17.87 feet; thence North 106.17 feet; thence West 15.97 feet; thence North 19.75 feet to the Point of Beginning.

Level 1 Boundary Description

That certain volume of airspace located in Lot 5 of Block 76, Plat 8 of the Official Survey of Plat "A" Salt Lake City Survey, being also in the Northeast Quarter of Section 1, Township 1 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

The airspace from elevation 4311.75 to elevation 4335.10 within the following horizontal boundaries.

Beginning at a point on the North Line of said Block 76, said point being N89°59'41"E 68.73 feet, along said North Line, from the Northwest corner of said Block 76; and running thence, along said North Line of Block 76, N89°59'41"E 22.85 feet; thence South 6.62 feet; thence East 0.25 feet; thence Southeasterly 9.08 feet along the arc of a 5.79 foot radius curve to the right, chord bears S44°42'52"E 8.18 feet; thence South 0.19 feet; thence East 1.67 feet; thence South 41.63 feet; thence Southeasterly 5.47 feet along the arc of a 3.77 foot radius curve to the right, chord bears S45°15'09"E 5.00 feet; thence South 8.18 feet; thence East 1.45 feet; thence South 19.85 feet; thence West 27.28 feet; thence North 13.02 feet; thence West 7.68 feet; thence South 11.79 feet; thence West 7.17 feet; thence North 1.23 feet; thence West 5.13 feet; thence South 1.23 feet; thence West 7.25 feet; thence North 1.23 feet; thence West 5.58 feet; thence South 1.23 feet; thence West 9.21 feet; thence North 39.83 feet; thence East 8.85 feet; thence North 9.59 feet; thence East 5.18 feet; thence North 6.42 feet; thence East 21.39 feet; thence North 12.37 feet; thence West 1.65 feet; thence North 16.36 feet to the Point of Beginning.

FOR INFORMATIONAL PURPOSES ONLY THE FOLLOWING TAX PARCELS ARE INCLUDED WITHIN THE ABOVE LEGAL DESCRIPTIONS:

15-01-232-001, 15-01-232-002, 15-01-232-003, 15-01-232-004, 15-01-232-005, 15-01-232-006, 15-01-232-007, 15-01-232-008, 15-01-232-009, 15-01-232-010, 15-01-232-011, 15-01-232-012, 15-01-232-013, 15-01-232-014, 15-01-232-015, 15-01-232-016, 15-01-232-017, 15-01-232-018, 15-01-232-019, 15-01-232-020, 15-01-232-021, 15-01-232-022, 15-01-232-023, 15-01-232-024, 15-01-232-025, 15-01-232-026, 15-01-232-027, 15-01-232-028, 15-01-232-029, 15-01-232-030, 15-01-232-031, 15-01-232-032, 15-01-232-033, 15-01-232-034, 15-01-232-035, 15-01-232-036, 15-01-232-037, 15-01-232-038, 15-01-232-039, 15-01-232-040, 15-01-232-041, 15-01-232-042, 15-01-232-043, 15-01-232-044, 15-01-232-045, 15-01-232-046, 15-01-232-047, 15-01-232-048, 15-01-232-049, 15-01-232-050,

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