

Ent 1192447 Bk 1997 Pg 1805
Date: 28-Mar-2018 01:14 PM Fee \$23.00
Cache County, UT
Michael Gleed, Rec. - Filed By TJ
For MTN VIEW RETIREMENT HOA

**AMENDMENT TO
DECLARATION OF PLANNED UNIT DEVELOPMENT OF MOUNTAIN VIEW
RETIREMENT COMMUNITY HOMEOWNERS ASSOCIATION**

This Amendment to Declaration of Planned Unit Development of Mountain View Retirement Community Homeowners Association (the “**Amendment**”) is made and entered by the Mountain View Retirement Community Homeowners Association, a Utah non-profit corporation (the “**Association**”).

RECITALS

A. The DECLARATION OF PLANNED UNIT DEVELOPMENT OF MOUNTAIN VIEW RETIREMENT COMMUNITY, LLC was recorded on December 9, 1977 in the Cache County Recorder’s Office as Entry No. 672550 in Book 780 beginning at Page 614.

B. The SECOND AMENDMENT TO DECLARATION OF PLANNED UNIT DEVELOPMENT OF MOUNTAIN VIEW RETIREMENT COMMUNITY LLC was recorded on October 17, 2000 in the Cache County Recorder’s Office as Entry No. 747010 in Book 967 beginning at Page 835.

C. The AMENDED DECLARATION OF PLANNED UNIT DEVELOPMENT OF MOUNTAIN VIEW RETIREMENT COMMUNITY HOMEOWNERS ASSOCIATION was recorded on November 10, 2011 in the Cache County Recorder’s Office as Entry No. 1053024 in Book 1687 beginning at Page 1112 (the “**Declaration**”).

D. This Amendment affects real property located in Cache County, Utah described with particularity on Exhibit A hereto and incorporated herein by this reference and defined in the Declaration as the “PUD Project.”

E. The Owners of PUD Units in the PUD Project desire to amend the Declaration to revise, clarify, and add to the provisions in the Declaration concerning the 55 years of age or older nature of the PUD Project and to reaffirm that the PUD Project is a community of housing for older persons under the Housing for Older Persons Act of 1995.

F. Unless otherwise set forth herein, the capitalized terms herein shall have their same meanings and definitions as stated in the Declaration.

G. As evidenced by this instrument, the Association has obtained the necessary approval of the Owners to amend the Declaration.

AMENDMENT

NOW, THEREFORE, pursuant to the foregoing, the Association, through its Management Committee, hereby executes the following amendments to the Declaration, which shall be effective as of its recording date in the office of the Cache County Recorder:

1. Replacement of Subsection 20(a). Subsection 20(a) of the Declaration is deleted in its entirety and replaced with the following. This Amendment does not amend any other subsections of Section 20 of the Declaration.

(a) PUD Units Occupied by Persons 55 Years of Age or Older. The PUD Project is a community of housing for older persons as defined in the Housing for Older Persons Act (“**HOPA**”) of 1995. This Subsection 20(a) sets forth covenants, conditions, and restrictions intended to maintain the status of the PUD Project as a community of housing for older persons. The provisions of this Subsection 20(a) are intended to comply with HOPA, as may be amended; the federal Fair Housing Act, as may be amended; and Utah’s Fair Housing Act, as may be amended (collectively the “**Housing Acts**”). If any provision herein is inconsistent with any provision of the Housing Acts, the provision of the Housing Acts shall supersede any such inconsistent provision to the extent necessary to ensure that the PUD Project complies with the Housing Acts and to maintain the PUD Project’s status as a community of housing for older persons under HOPA.

(1) As used in this Subsection 20(a):

(A) “**Occupy**” (whether singular or plural) and “**Occupying**” shall mean living, residing, or staying in a PUD Unit in the PUD Project.

(B) “**Occupant**” shall mean any person Occupying a PUD Unit in the PUD Project.

(C) “**Qualified Occupant**” shall mean any person Occupying a PUD Unit in the PUD Project who is 55 years of age or older.

(D) “**Unqualified Occupant**” shall mean any person Occupying a PUD Unit in the PUD Project who is under 55 years of age.

(2) Pursuant to HOPA, except as otherwise provided in this Subsection 20(a), each person occupying a PUD Unit in the PUD Project must be a Qualified Occupant.

(3) Notwithstanding Subsection 20(a)(2), the following Unqualified Occupants may occupy a PUD Unit in the PUD Project:

(A) A child or grandchild of a Qualified Occupant with a disability under the Americans with Disabilities Act who must live with the Qualified Occupant because of the disability;

(B) A person living with a Qualified Occupant for the sole purpose of providing live-in long term or hospice care to a Qualified Occupant. For purposes of this exception, the care provided must be

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substantial in nature and must provide assistance to the Qualified Occupant as to necessary daily activities or medical treatment;

(C) A spouse of a Qualified Occupant, provided however, that in the event of a divorce, separation, or the spouse's inheritance of a PUD Unit upon the Qualified Occupant's death, such a spouse under 55 years of age at the time of any such event may only continue to occupy the PUD Unit if 90% of the other PUD Units in the PUD Project are occupied by at least one Qualified Occupant, and only the spouse may occupy the PUD Unit as an Unqualified Occupant unless another Unqualified Occupant of the PUD Unit qualifies for one of the exceptions in this Subsection 20(a);

(D) A guest of a Qualified Occupant, so long as the Qualified Occupant also occupies the PUD Unit and the Unqualified Occupant does not occupy the PUD Unit for more than ninety (90) days in any calendar year;

(E) Any person identified in the Management Committee's September 2017 age survey as an Unqualified Occupant of a PUD Unit and who occupies the PUD Unit at the time this Amendment is recorded in the Cache County Recorder's Office; provided, however, that once any such person no longer occupies the PUD Unit that he or she occupied at the time of the age survey, the subsequent Occupants of that PUD Unit must be Qualified Occupants or otherwise fall within one of the exceptions contained in this Subsection 20(a) for Unqualified Occupants;

(F) Other persons as determined by the Management Committee on a case by case basis in its sole and absolute discretion, so long as at least 90% of the PUD Units are occupied by at least one Qualified Occupant.

(4) At least every two (2) years, the Management Committee shall determine the percentage of PUD Units with at least one Qualified Occupant. At the Management Committee's request, each Owner, Occupant, perspective Owner, or perspective Occupant of any PUD Unit shall promptly complete a survey in a form determined by the Management Committee to verify the age of all persons occupying the PUD Unit and to attest to the Occupant(s)'s qualifications to reside in the PUD Unit pursuant to this Subsection 20(a). Further, upon the Management Committee's request, each Owner and Occupant of a PUD Unit shall provide the Management Committee with reliable documentation (such as a birth certificate, driver's license, passport, immigration card, military identification, state issued identification, or similar government issued identification) of his or her age.

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(5) The Management Committee may, but is not required to, adopt Rules with respect to the PUD Project's intended nature as a community of housing for older persons under HOPA, including, but not limited to, Rules designed to maintain the PUD Project's compliance with HOPA and Rules governing the presence of any persons under 55 years of age at the PUD Project.

(6) In its sole discretion, the Management Committee is authorized to enforce compliance with this Subsection 20(a), including by, but not limited to, requiring Unqualified Occupants of a PUD Unit to no longer occupy the PUD Unit.

(7) Notwithstanding any other provision of the Declaration, upon the unanimous consent of the Management Committee's members, the Management Committee shall be entitled to amend this Subsection 20(a) as may be necessary to comply with and conform to provisions of federal and state law necessary to retain the PUD Project's status as a community of housing for older persons under HOPA; provided, however, that the Management Committee has obtained a written opinion from an attorney licensed in Utah with a regular practice in the area of community association law stating that the proposed amendment is necessary to retain the PUD Project's status as a community of housing for older persons under HOPA. The Management Committee shall be entitled to make such amendments without Owner approval.

2. Replacement of Section 28. Section 28 of the Declaration is deleted in its entirety and replaced with the following:

Section 28. Enforcement. Each Unit Owner shall comply strictly with the provisions of this Declaration and with the administrative rules and regulations drafted pursuant thereto as they may be amended from time to time. The failure to comply shall be grounds for an action to recover sums due for damages, injunctive relief or both, maintainable by the Management Committee or Manager on behalf of the Owners, or in a proper case, by an aggrieved Owner. If the Association utilizes legal counsel to enforce any term of the Declaration or any rule or regulation adopted pursuant thereto after notice to the Owner that it intends to enforce any such term or after the Owner communicates or demonstrates an intent not to comply, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not. The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.

3. Conflicts. Except as expressly amended hereby, all other provisions of the Declaration and any prior amendments not specifically amended in this Amendment shall remain

in full force and effect. In the case of any conflict between the provisions of this document and the provisions of the Declaration or any prior amendments thereto, the provisions of this documents shall in all respects govern and control.

4. Incorporation and Supplementation of Declaration. This document is supplemental to the Declaration, which by reference is made a part hereof, and all terms, definitions, covenants, conditions, restrictions, and provisions thereof, unless specifically modified herein, are to apply to this document and are made a part hereof as though expressly rewritten, incorporated, and included herein.

IN WITNESS THEREOF, the undersigned officer or agent of the Association hereby certifies that the Management Committee has obtained the affirmative written vote or consent of the Owners of PUD Units holding at least sixty-seven percent (67%) of the voting interests in the Association consistent with the requirements of Section 23 of the Declaration. This AMENDMENT TO DECLARATION OF PLANNED UNIT DEVELOPMENT OF MOUNTAIN VIEW RETIREMENT COMMUNITY HOMEOWNERS ASSOCIATION is executed as of the day and year written below.

DATED this 26 day of March, 2018

MOUNTAIN VIEW RETIREMENT COMMUNITY HOMEOWNERS ASSOCIATION, INC.

By: Marla D. Minor
(Signature)

Name: Marla Dee Minor
(Printed)

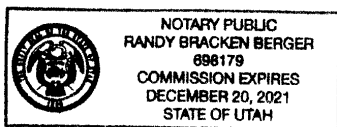
Its: President
(Title)

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STATE OF UTAH)
) ss.
CACHE COUNTY)

The foregoing instrument was acknowledged before me this 26 day of March, 2018, by Marla De Mingo, who by me being duly sworn, did say that he/she is the President of the Mountain View Retirement Community Homeowners Association.

Randy Bracken Berger
Notary Public



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EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

The following is the legal description of the Property as contained in Exhibit A to the Declaration. This Amendment does not affect the legal description in the Declaration.

MOUNTAIN VIEW RETIREMENT COMMUNITY HOMEOWNERS ASSOCIATION

Property Description from survey
AREA = 4.05 ACRES

PHASE I

Survey Description:

BEGINNING AT A POINT 721.68 FT EAST OF THE SOUTH WEST CORNER OF LOT 2, BLOCK 35, PLAT "A" OF PROVIDENCE FARM SURVEY.
THENCE N 0D00'00" W A DISTANCE OF 264.00 FT TO A POINT;
THENCE N 90D00'00" E A DISTANCE OF 407.00 FT TO A POINT;
THENCE N 00D00'00" W A DISTANCE OF 301.93 FT TO A POINT;
THENCE N 89D49'06" W A DISTANCE OF 501.31 FT TO A POINT;
THENCE S 00D00'42" E A DISTANCE OF 567.52 FT TO A POINT;
THENCE S 89D59'59" E A DISTANCE OF 94.19 FT TO A POINT;
TO THE POINT OF BEGINNING CONTAINING 4.05 ACRES MORE OR LESS

The amount of common area of phase #1 consisting of the 20 two bedroom units and the 8 three bedroom units (28 Units total) is a total of 74,030.00 square feet. The amount per unit averages 2,644 square feet for phase i.

PHASE II

Survey Description:

A part of the Northeast Quarter of Section 10, Township 11 North, Range 1 East of the Salt Lake Base and Meridian; also a Part of Block 35, Plat "A" of the PROVIDENCE FARM SURVEY, described as follows:

BEGINNING AT A POINT EAST 312.96 FEET FROM THE SOUTHWEST CORNER OF LOT 2 OF SAID BLOCK 35, SAID POINT BEING THE NORTH ROW LINE OF 200 NORTH STREET, AND RUNNING THENCE N 00°19'30" W 1014.89 FEET (N 00°21'58" W 1014.50 FEET B.R.) ALONG A FENCE; THENCE N 89°23'14" E 351.47 FEET (N 89°11'24" E 351.90 FEET B.R.) ALONG A FENCE; THENCE S 00°45'38" E 451.27 FEET (S 00°39'10" E 452.08 FEET B.R.) ALONG A FENCE, THENCE N 89°49'08" W 37.27 FEET (36.12 FEET B.R.); THENCE S 00°00'42" E 65.75 FEET; THENCE WEST 206.99 FEET; THENCE S 05°43'22" WEST 87.41 FEET; THENCE S 43°10'39" W 91.99 FEET; THENCE S 00°21'58" E 347.72 FEET TO A POINT IN THE NORTH ROW LINE OF 200 NORTH STREET; THENCE WEST 38.00 FEET TO THE POINT OF BEGINNING. CONTAINING 4.74 ACRES, MORE OR LESS.

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