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Gary W. Ott  
Recorder, Salt Lake County, UT  
PARK CITY TITLE CO  
BY: eCASH, DEPUTY - EF 10 P.

After Recording Return To:  
The Law Offices of Kirk A. Cullimore  
644 East Union Square  
Sandy, UT 84070

**AMENDMENT TO THE  
AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**This Amendment to the Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions (“Declaration”) that established a condominium community known as The One & Nine Condominiums is executed on the date set forth below by the Declarant.**

RECITALS

A. Certain real property in Salt Lake County, Utah, known as The One & Nine Condominiums was subjected to certain covenants, conditions, and restrictions pursuant to an Amended and Restated Declaration recorded August 28, 2008, as Entry No. 10509710, records of Salt Lake County, Utah (the “Declaration”);

B. This amendment shall be binding against the property described in EXHIBIT A and the Declaration and any annexation or supplement thereto;

C. This amendment is intended to incorporate certain provisions required by the Department of Housing and Urban Development to qualify the Project for FHA financing;

D. Pursuant to Article X, Section 10.02 of the Declaration, the Declarant as sole owner of all Units has approved this amendment;

**NOW, THEREFORE**, the Declarant, hereby amends the Declaration as follows:

**Article I, shall be amended to add Section 2.10A “Eligible Mortgagee,” which shall read as follows:**

2.10A Eligible Mortgagee shall mean and refer to a holder, insurer or guarantor of a first mortgage on a Unit or the beneficiary, insurer or guarantor of a first deed of trust on a Unit, which has made a written request for notice in accordance with this Declaration. Any Mortgagee failing to provide the Association with a written request for notice shall not be an Eligible Mortgagee and shall lose its entitlement to notice, and any other rights extended to Eligible Mortgagees in the Project Documents until such time as it provides the Association with a proper written request for notice.

**Article I, Section 2.13, shall be amended to change the definition of “Mortgagee” in its entirety, the definition of “Mortgagee” shall now read as follows:**

Mortgagee shall mean and refer to an Eligible Mortgagee.

**Article III, shall be amended to add Section 3.03 “Computation of Percentage Interest after Partial**

**Condemnation or Destruction,” which shall read as follows:**

3.03 Computation of Percentage Interest after Partial Condemnation or Destruction. After partial condemnation or destruction of the Project, the proportionate share of the Unit Owner’s interest in the Common Areas shall be based on the number of Units remaining within the Project. Each remaining Unit shall have an equal undivided interest in the Common Areas. To calculate the undivided interest of a Unit, the Association shall divide 100 by the number of Units in the Project.

**Article IV, Section 4.03, shall be amended in its entirety to read as follows:**

4.03 Enforcement Powers. The Association shall have the power to enforce this Declaration by levying fines, by actions in law or equity brought in its own name, the power to retain professional services needed for the enforcement of these covenants and to incur expenses for that purpose. The Trustees of the Association shall have the exclusive right to initiate enforcement actions in the name of the Association, however, this shall not limit the individual rights of Unit Owners to personally enforce this Declaration in their own name.

**Article IV, Section 4.06, shall be amended in its entirety to read as follows:**

4.06 Assessments. The Association has the power to levy assessments against each Unit as necessary to carry out its functions. Assessments will be determined annually to meet the anticipated and recurring expenses of the Association including, but not limited to, the costs of landscape maintenance, taxes, water, snow removal, insurance, common area utility service, reimbursement of expenses incurred by the Trustees and Architectural Committee in performance of their obligations, and enforcement of this Declaration. Notice of the Assessment and the proposed amount of the Assessment will be given in advance along with the notice of the annual meeting of the Association, provided that the amount of the proposed assessment may be increased or decreased at the meeting in which it is approved by the Owners.

The Association may also levy special assessments to cover unanticipated expenses or shortfalls. No special assessment will be levied without approval of a majority of the Owners in a meeting called for that purpose.

**Article IV, Section 4.11, shall be amended in its entirety to read as follows:**

4.11 Liability for Assessments. All owners of Units shall be obligated to pay the assessments imposed by the board of trustees or managing agent of the Association to meet the common expenses. The assessments shall be made equally according to each owner’s ownership interests in and to the common areas and facilities which is 1/309<sup>th</sup> per Parking Unit, and 1/44<sup>th</sup> per Unit for the remaining 43 Units. Assessments for the common expenses, including insurance, shall be due on a monthly basis, in advance on the first day of each month, or as the board may otherwise direct. The managing agent or board of trustees shall prepare and deliver or mail to each owner an itemized annual statement showing the various estimated or actual expenses for which the assessments are made. Contribution for monthly assessments shall be prorated if the ownership of a condominium Unit commences on a day other than the first day of a month.

No owner may exempt himself from liability for their contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas or facilities, or by abandonment of their Unit.

**Article IV, Section 4.12(a), shall be amended in its entirety to read as follows:**

(a) Initial Assessments. Upon closing of the purchase of any Unit, the purchaser thereof shall pay an initial assessment, in an amount to be determined by the Trustees. Said initial assessment shall be in addition to and not as a replacement for any annual or monthly assessment later assessed pursuant hereto. The Declarant shall not be required to pay any initial assessments, and shall not be required to pay any annual or monthly assessments until sixty percent (60%) of the Units have been sold.

**Article IV, Section 4.12(c), shall be amended in its entirety to read as follows:**

(c) Notice and Payment. The Association shall furnish to each Owner a copy of the budget and notify each Owner as to the amount of the monthly Assessment with respect to their Condominium on or before December 15 each year for the calendar year following such date. Any installments of any Assessment that remains unpaid for more than ten (10) days shall be assessed a late fee of FIFTEEN DOLLARS (\$15.00) per days. In addition, any such unpaid installments shall bear interest at the rate of one & one-half percent (1-1/2%) per month (or at such lesser rate equal to the maximum interest rate allowed by applicable law) from the date each such installment is due until paid. All late fees and interest shall be and become a part of the assessment, and shall constitute a lien against the delinquent owner's Unit. The failure of the Association to give timely notice of any Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment.

**Article IV, Section 4.13, shall be amended in its entirety to read as follows:**

4.13 Liability for Common Expense Upon Transfer of Condominium Unit. Upon payment of a reasonable fee and upon the written request of any owner or any mortgagee or prospective mortgagee of a condominium Unit, the Association, by its managing agent or board of trustees, shall issue a written statement setting forth the amount of the unpaid common expenses, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which should be conclusive upon the association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness is complied with within fifteen (15) days, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for their proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided however, that upon payment of a reasonable fee, and upon written request, any prospective grantee shall be entitled to a statement from the managing agent or board of trustees, setting forth the amount of the unpaid assessments, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within fifteen (15) days of such request, then such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the subject Unit.

**Article VI, shall be amended to add Section 6.05 "Easement for Encroachment," which shall read as follows:**

6.05 Easement for Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either to the Common Areas or to the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building(s) on the tract, by error in the appropriate Record of Survey Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

**Article VII, Section 7.03(a) shall be amended in its entirety to read as follows:**

(a) No animals, livestock, or poultry of any kind shall be permitted on any Unit or within any residence except domesticated dogs and cats not in violation of city ordinance. No pets shall be permitted in any Unit by any guest or renter of any Unit. No "exotic" pets shall be allowed. Exotic pets shall include but not be limited to any snakes, reptiles, pigs, birds, or wild animals. No aggressive dogs, including but not limited to, pit bulls, rottweilers, dobermans, shall be allowed. Any domesticated household pets allowed hereunder shall be kept indoors during the hours of 10:00 p.m. to 6:00 a.m. Pet owners are required to immediately pick up and properly dispose of all feces left by any household pet. Any damage or destruction caused by any household pet shall be the sole responsibility of the Unit owner allowing such pet in the Unit.

**Article VII, Section 7.03, last paragraph shall be amended in its entirety to read as follows:**

Any Owner violating or allowing violation of the Declaration, Bylaws, or rules and regulations shall be subject to a fine in an amount to be determined by resolution of the Board. Upon receipt of a notice of such violation from the Association, such Owner shall immediately commence whatever steps are necessary to remedy the violation. At such time as the remedy of the violation is complete, the Owner shall so certify to the Association. In the event such Owner shall not remedy the violation, Declarant or the Association, as the case may be, shall have the right, at its election, (i) to seek injunctive relief from a court of competent jurisdiction, and/or (ii) shall be entitled to remedy the violation. Any and all fines provided for in this paragraph, together with all amounts expended by Declarant or the Association, as the case may be, including reasonable costs and attorneys fees, to remedy any violation hereunder, shall be, constitute, and remain: (a) a charge and continuing lien upon the Unit until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Unit at the time the violation occurs.

**Article VIII, shall be amended to add Section 7.04 "Leases," which shall read as follows:**

7.04 Leases. Units may be rented only to a single Family.

(a) All leases and lessees shall be subject to the provisions of the Act and the Project Documents. Any owner who leases his/her Unit shall be responsible for assuring the Residents' compliance with the Act and the Project Documents.

(b) The leasing and renting of Units by Owners shall be in accordance with this Section. "Leasing or renting" of a Unit means the granting of a right to use or occupy a Unit for a specific term or an indefinite

term (with rent stated on a periodic basis), in exchange for the payment of rent (money, property or other goods or services of value); but shall not mean and include joint ownership of a Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

(i) Rental-Lease Limit. Owners, and Units shall be subject to the following restrictions:

1) No Owner may lease or rent less than their entire Unit and no Owner may lease or rent any Unit for a period of less than six (6) consecutive months.

2) No Unit may be rented or leased if the rental or lease results in more than forty-nine percent (49%) of Units (the "Rental-Lease Limit") being rented or leased at any given time, except Hardship Exemptions.

(ii) Application and Approval. Each Owner desiring to rent or lease a Unit shall apply to the Board for approval. The Board shall review the application and make a determination of whether the proposed lease will exceed the Lease Limit expressed above. The Board shall:

1) Approve the application if it determines that the rental or lease will not exceed the Rental-Lease Limit; or

2) Deny the application if it determines that the rental or lease of the Unit will exceed the Rental-Lease Limit.

(iii) Hardship Exemption. Notwithstanding the above, in order to avoid undue hardships or practical difficulties such as the Owner's job relocation, disability, military service, charitable service, or other similar circumstances, the Board shall have discretion to approve an Owner's application to temporarily rent or lease the Owner's Unit.

The Board may not approve an application to rent or lease less than the Owner's entire Unit or to rent or lease the Unit for a period of less than six (6) consecutive months. Dormitory, hotel, hostel or similar type rentals are strictly prohibited.

(iv) Multiple Unit Ownership Limitation. An Owner who owns more than one Unit is not eligible to rent more than one Unit until the pending applications of:

1) All Owners who are not currently renting or leasing a Unit have been approved; and

2) All Owners who are currently renting or leasing fewer Units than the applicant have been approved.

(v) Review of Rental Applications. Applications from an Owner for permission to rent or lease shall be reviewed and approved or denied by the Board pursuant to the following:

1) The Board shall review applications for permission to rent or lease in chronological order based upon the date of receipt of the application. Within ten (10) business days of receipt, the Board shall approve or deny an application and shall notify the Owner of the result, and, if permission is not given,

the reason for the denial within fifteen (15) business days of receipt of the application.

2) If an Owner's application is denied, the applicant may be placed on a waiting list according to the date the application was received so that the Owner whose application was earliest received will have the first opportunity to rent or lease.

(vi) Application Form; Approval Process; Waiting List. An application form, the application and approval process, a waiting list, and any other rules deemed necessary by the Board to implement this section shall be established by rules adopted by resolution of the Board.

(vii) Lease Agreements – Required Terms. All Owners shall use and provide the Board with a copy of a written lease agreement. All lease agreements shall be kept on file with the books and records of the Association so that the Association may determine the number of Units rented or leased. All lease agreements shall contain terms subjecting the resident to the terms, conditions, and restrictions of the Project Documents, as amended.

(viii) Violations of Rental Restrictions. If an Owner fails to submit the required application, fails to use and submit a copy of a written lease agreement with the required terms, and rents or leases any Units, and/or rents or leases any Unit after the Board has denied the Owner's application, the Board may assess fines against the Owner and the Owner's Unit in an amount to be determined by the Board pursuant to a schedule of fines adopted by the Board. In addition, regardless of whether any fines have been imposed, the Board may proceed with any other available legal or equitable remedies, including but not limited to, an action to terminate the rental or lease agreement and removal of any tenant or lessee.

(ix) Failure to Take Legal Action. Failure by an Owner to take legal action against his Resident who is in violation of the Act or Project Documents within ten (10) days after delivery of written demand to so do from the Board, shall entitle the Association to take any and all such action for and in behalf of said Owner and as his or her agent, including but not limited to the institution of legal proceedings on behalf of such Owner against his or her Resident for eviction, injunctive relief or damages. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the Owner or Resident for any legal action commenced under this Section that is made in good faith. Any expenses incurred by the Association, including reasonable attorneys' fees and costs of suit, shall be repaid to it by such Owner. The amount of the costs and expenses an Individual Assessment.

(x) Recovery of Costs and Attorney Fees; Owner Liable. The Association shall be entitled to recover from the offending Owner its costs and attorney's fees incurred for enforcement of this Subsection, regardless of whether any lawsuit or other action is commenced. The Association may assess such costs and attorney's fees against the Owner and the Unit as an assessment pursuant to this Declaration. Additionally, the Owner shall be liable for all fines, assessments, or other penalties levied due to violations of their tenant. The Owner shall be personally liable for any violations caused by their tenant. Any assessments, fines or penalties levied under this Paragraph shall be an Individual Assessment.

(xi) Requesting Unpaid Assessments from Tenant. In the event that a unit is leased or rented, and the absentee owner fails to pay their regular, special or any other assessment, the Board may demand

that the tenant pay his or her rental payment to the Association until such time as the delinquent assessment is cured.

(xii) Owner Obligation to Inform Tenant and Association. Rental and lease agreements shall comply with the following:

1) The Owner shall provide the tenant or lessee with a copy of the Project Documents then in effect and shall take a receipt for delivery of the Project Documents. In the event the Project Documents are amended, revised, changed, or supplemented by the Association, the Owner shall provide the tenant or lessee with a copy of the amendments, revisions, changes, or supplements within ten (10) calendar days of adoption by the Association, its Board, or its membership.

2) Upon the commencement of the rental or lease period, the Owner shall provide the Association with a copy of the Approved Lease Agreement and a copy of the receipt specified above. If the Owner fails to provide the receipt, the Association shall provide a copy of the Project Documents to the tenant or lessee and take a receipt therefor, and shall assess a reasonable charge therefor to the Owner as an assessment consistent with this Declaration.

(xiii) Termination of Lease or Rental Agreement for Violations. In addition to any other remedies available to the Association, the Board may require the Owner to terminate a lease or rental agreement if the Board determines that any lessee or tenant has violated any provision of the Project Documents, or any amendments thereto.

Notwithstanding anything contained herein to the contrary, the Association shall have legal and equitable standing as a third party beneficiary to enforce the provisions of the Project Documents against a tenant, including without limitation, the right to file a civil action to terminate the lease agreement. In addition to any other remedy herein, the Association shall have right to levy fines against the Owner for any violations of this Section.

(xiv) Voidable Transactions. Any transaction which does not comply with this Section shall be voidable at the option of the Board.

**Article X, Section 10.02, shall be amended in its entirety and shall read as follows:**

10.02 Amendment. The consent of Owners representing at least sixty-seven percent (67%) of the undivided interest ownership in the Common Areas shall required to amend this declaration. The approval of fifty-one percent (51%) of Eligible Mortgagees shall be required to materially amend any provision of the Project Documents, or to add any material provision thereto. A provision shall be considered material if it establishes, provides for, governs or regulates any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of liens;
- (c) Reserves for maintenance, repair, and replacement of Common Areas;
- (d) Insurance or Fidelity Bonds;
- (e) Rights to use the Common Areas;
- (f) Responsibility for maintenance and repair of the Units, Limited Common Area, or Common Area;
- (g) Expansion or contraction of the Project;
- (h) Boundaries of Units;
- (i) The interests in the Common Areas and Limited Common Areas;
- (j) Convertibility of Units into Common Areas or Common Areas into Units;
- (k) Leasing of Units;
- (l) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit;
- (m) Establishment of self-management by the Association where professional management has been required by any governmental agency or lending institution;  
Any provision for the express benefit of Eligible Mortgagees.

In addition, such right of amendment shall be subject to the following qualification: no amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant) shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant.

IN WITNESS WHEREOF, One & Nine Condominiums, by and through the Declarant, has executed this Amendment to the Declaration as of the 5 day of December, 2008.

**DECLARANT:**  
**THE ONE & NINE CONDOMINIUMS, L.L.C.**


  
\_\_\_\_\_  
By: Blake Heifderson  
Its: Manager



EXHIBIT "A"

Legal Description of Property

BEGINNING AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 58, PLAT "B", SALT LAKE CITY SURVEY, SAID POINT OF BEGINNING BEING SOUTH 89° 58'22" WEST 64.35 FEET AND NORTH 00°01'38" WEST 63.58 FEET FROM THE MONUMENT AT THE INTERSECTION OF 900 EAST AND 100 SOUTH STREETS, SAID POINT OF BEGINNING ALSO BEING THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF 100 SOUTH STREET AND THE WEST RIGHT OF WAY LINE OF 900 EAST STREET; RUNNING THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF 100 SOUTH STREET SOUTH 89°58'28" WEST 222.78 FEET; THENCE NORTH 00°01'27" WEST 210.24 FEET; THENCE NORTH 89°58'36" EAST 222.76 FEET TO THE WEST RIGHT OF WAY LINE OF 900 EAST STREET; THENCE ALONG SAID WEST RIGHT OF WAY LINE SOUTH 00°01'42" EAST 210.23 FEET TO THE POINT OF BEGINNING.

CONTAINS: 46,834.39 SQUARE FEET OR 1.075 ACRES.

Tax Parcel ID# 16-05-126-063

STATE OF UTAH )

County of Summit )  
:SS

On the 5<sup>th</sup> day of December, 2008, personally appeared Blake Henderson who, being first duly sworn, did that say that he is the manager of Declarant and that said instrument was signed and sealed in behalf of said Declarant by authority of the members thereof; and acknowledged execution of said instrument to be his voluntary act and deed.



Diann Greer  
Notary Public for Utah