

When Recorded, Mail To:
Kirton McConkie
50 E. South Temple St., 4th Floor
Salt Lake City, UT 84111
Attention: William A. Meaders

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7/1/2015 10:39:00 AM \$34.00
Book - 10339 Pg - 4911-4920
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 10 P.

(Above space reserved for recording information)

**AMENDMENT TO PROTECTIVE COVENANTS, EASEMENTS,
RESTRICTIONS, AND UNIFORM PLAN FOR
THE POINTE**

THIS AMENDMENT TO PROTECTIVE COVENANTS, EASEMENTS, RESTRICTIONS, AND UNIFORM PLAN FOR THE POINTE (“Amendment”) is made as of the 30 day of June, 2015, by SORENSON ASSOCIATES, THE POINTE, LLC, a Utah limited liability company (“SATP”) and TP BUILDING I, LLC, a Utah limited liability company (“TP I”).

Recitals:

A. On or about March 24, 2009, SATP executed an instrument titled Protective Covenants, Easements, Restrictions, and Uniform Plan for The Pointe (the “Declaration”) and caused the same to be recorded as Entry No. 10655243, in Book 9701, at page 1566 in the office of the Salt Lake County Recorder.

B. The Declaration affects certain real property commonly known as the The Pointe, a Commercial Subdivision (the “Project”), located in Salt Lake County, Utah. The Project is more particularly described on Exhibit “A” attached hereto and incorporated by reference herein.

C. The Declaration provides that it may be amended by an instrument signed by then “Property Owners” (as defined in the Declaration) possessing three-fourths (3/4th) of the assessed value of The Pointe according to the real property tax assessment records of Salt Lake County, Utah. The Declaration further provides that so long as any debt remains outstanding under that certain loan (the “Transamerica Loan”) made by Transamerica Life Insurance Company in the original principal amount of \$15,000,000 and secured by that certain Deed of Trust, Security Agreement and Fixture Filing dated February 16, 2007, executed by TP Building I, LLC and SATP, as Trustor, in favor of First American Title Insurance Company, as Trustee, and Transamerica Life Insurance Company, as Beneficiary and recorded February 16, 2007 as Entry No. 10006596 in the Office of the Salt Lake County Recorder, the Declaration may not be amended without the prior written consent of the holder of the Transamerica Loan.

D. SATP and TP I are Property Owners now owning, collectively, at least three-fourths (3/4th) of the assessed value of The Pointe according to the real property tax assessment

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records of Salt Lake County, Utah. SATP and TP I desire to amend the Declaration in certain respects. SATP and TP I have obtained the prior written consent of the holder of the Transamerica Loan to the amendments contained herein, as evidenced by the Consent of Lender hereinafter set forth.

Terms and Conditions:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SATP and TP I amend and modify the Declaration as follows:

1. Changes to Building Envelopes. The following provisions are hereby added at the end of Section 1.5 of the Declaration: “Notwithstanding the foregoing, a Property Owner may eliminate or relocate the Building Envelope(s) on its Lot(s), with the consent of the City of Draper (if legally required) and the prior written approval of the Architectural Control Committee. The elimination of a Building Envelope on a Lot may be evidenced by the Property Owner of the Lot recording an instrument referring to the Declaration, identifying the Lot, stating that the approvals of the City (if required) and the Architectural Control Committee have been obtained, and stating that the Building Envelope has been eliminated. The relocation of a Building Envelope on a Lot may be evidenced by the Property Owner of the Lot recording an instrument referring to the Declaration, identifying the Lot, stating that the approvals of the City (if required) and the Architectural Control Committee have been obtained, stating that the Building Envelope has been relocated, and including a drawing of the Lot showing the relocated Building Envelope.”

2. Developer’s Right to Construct a Parking Structure. The following Subsection (c) is hereby added at the end of Section 2.1 of the Declaration:

“(c) Developer reserves the right, and may, at its option, construct a parking structure on any of the Lots owned by Developer, with the consent of the City of Draper, and the prior written approval of the Architectural Control Committee.”

3. Separate Parking for Lots 1, 2 and Part of Lot 3. BG Scenic Pointe Office 2, L.C., a Utah limited liability company (“BG 2”) has entered into a contract to purchase Lot 1 from SATP. BG Scenic Pointe Office 1, L.C. (“BG 1”) has entered into a contract to purchase Lot 2 and part of Lot 3 (collectively, “Modified Lot 2”) from SATP. Effective upon completion of both the conveyance of Lot 1 to BG 2 and the conveyance of Modified Lot 2 to BG 1, the Parking Easement described in subsection 6.3(a) of the Declaration will no longer apply to Lot 1 and Modified Lot 2. In other words, Lot 1 and Modified Lot 2 will no longer be subject to a Parking Easement in favor of Lots 4 through 7 and that portion of Lot 3 not conveyed to BG 1 (the “Remaining Lots”), nor will the Remaining Lots be subject to a Parking Easement in favor of Lot 1 and Modified Lot 2. Instead, parking on Lots 1 and Modified Lot 2 will be reserved for the Property Owners of said Lots, their tenants, occupants and licensees, and parking on the Remaining Lots will be reserved for the Property Owners of the Remaining Lots and their tenants, occupants and licensees. However, the provisions of subsection 6.3(b) prohibiting walls, fences or barriers will continue to apply to the parking areas on all Lots so that free access of movement of pedestrians and vehicular traffic is preserved across said parking areas. In

addition, the Parking Easement described in subsection 6.3(a) of the Declaration will continue to apply between all of the Remaining Lots so that the Property Owners, tenants, occupants and licensees of the Remaining Lots will continue to enjoy cross-parking rights between their Lots.

4. Definition of Common and Community Improvements. Section 3.2 of the Declaration is amended to read in its entirety as follows:

“3.2 Common and Community Improvements shall be defined as and shall be limited to include:

- (a) Signs identifying The Pointe;
- (b) Decorative fountains, flag poles, ponds and landscaping at intersections or frontages of Streets not for the exclusive use of or enjoyment by a Property Owner as part of a Lot;
- (c) Streets and adjoining curbs, gutters, and sidewalks;
- (d) Street lighting;
- (e) The Storm Drain System;
- (f) Any additional improvements installed by the Developer along frontages of streets which are intended to benefit the image of The Pointe through identification or beautification and which, at the time of installation, are so designated in a written notice recorded in the office of the Salt Lake County Recorder’s office describing the improvements and their location whether or not the improvements are installed on a Lot or on other ground;
- (g) Utility lines, including without limitation lines for electric power, gas, water, sewer, cable telephone and other communications, which benefit and are used by all of the Lots; and
- (h) All reasonable administrative and out-of-pocket expenses and overhead incurred in connection with any of the foregoing.

If any of the foregoing improvements are installed on a Lot, the designation that they are Common or Community Improvements shall have no effect on the ownership of the property upon which they are installed.”

5. Priority of Liens for Delinquent Assessments. Subsection 3.7(b) of the Declaration is amended to read in its entirety:

“(b) Bona fide Deeds of Trust, Security Agreements, Mortgages and/or other liens recorded prior to the date that the Notice of Delinquent Assessment was recorded and held by unrelated third parties.”

6. A new Section 3.11 is hereby added to the Declaration to read as follows:

3.11 Utility Lines Serving Multiple Lots But Not All Lots. In addition to the other rights and easements granted to the Architectural Control Committee herein, the Architectural Control Committee is authorized and empowered, in its discretion, to install, operate, maintain, and repair underground utility lines (including without limitation lines for electric power, gas, water, sewer, cable telephone and other communications) within the Utility Easement areas described in Section 6.6 and subject to all of the restrictions set forth in Section 6.6, which serve and will be used by more than one but not all of the Lots (a “Limited Common Utility”). Each Property Owner of a Lot benefited by a Limited Common Utility shall be assessed a proportionate amount of the costs of installation, operation, maintenance and repair of the Limited Common Utility, except that if a Property Owner or its tenant causes damage to a Limited Common Utility, that Property Owner alone will pay for the cost of the repair. If, after reasonable efforts, the Architectural Control Committee is unable to collect the cost of the repair from the Property Owner who caused (or whose tenant caused) the damage, then the Architectural Control Committee may assess all Property Owners benefited by the Limited Common Utility for their proportionate share of the repair cost. Each individual Property Owner’s proportionate amount of the assessment for a Limited Common Utility shall be determined by dividing the assessed value of the individual property (for property tax purposes) by the total assessed value of all of the Lots benefited by that Limited Common Utility and multiplying the costs for the installation, operation, maintenance and repair by the resulting ratio. If separate assessed values are not available for Lots, the Architectural Control Committee may, at its option, use an estimated value for the purpose of determining proportionate shares. All of the provisions of Sections 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, and 3.10 of this Declaration governing expenditures and assessments for Common or Community Improvements shall also apply to expenditures and assessments for Limited Common Utilities.

7. Elimination of Basic Landscape Plan and Correction of Certain References.

(a) Section 1.3 (definition of “Basic Landscape Plan”) is hereby deleted from the Declaration.

(b) Section 1.9 of the Declaration is amended by placing a period after the word “materials” in the third (3rd) line, and deleting the words “as more particularly described in the Basic Landscape Plan”.

(c) Section 1.11 of the Declaration is amended to read in its entirety as follows:

“1.11 ‘Green Area’ shall mean and refer to an area reserved (on a nonexclusive basis) for pedestrian use, landscaping, or both, and shall contain trees and grass or other landscape materials. Green Areas may be located entirely or partially (a) within one (1) or more setback areas established herein, including, without limitation, a Parkway Strip, or (b) elsewhere within a Lot as required by these Basic Restrictions.

(d) Subsection 2.1(a) of the Declaration is amended by deleting the words “in accordance with the Basic Landscape Plan” from the 6th line thereof.

(e) Subsection 4.3(a) is amended by deleting the words “or the Basic Landscape Plan” from the 3rd line thereof.

(f) Subsection 4.3(b) is amended by deleting the words “in accordance with the Basic Landscape Plan” from the 9th and 10th lines thereof, and by deleting the words “permitted or specified in the Basic Landscape Plan” from the 11th line.

(g) Clause (iii) of Subsection 4.5(e) is amended by deleting the words “signs and markers shown in the Basic Landscape Plan” from the 3rd line.

(h) Subsection 4.7(a) is amended by deleting the comma after the word “Draper” in the 5th line, inserting a period in lieu thereof, and deleting the remainder of the Paragraph.

(i) The two (2) references in Subsection 4.8(a) to “section 4.7(a)” are hereby corrected and amended to read “section 4.8(a)”.

(j) Subsection 4.9(a) is amended by deleting the words “in accordance with the Basic Landscaping Plan” in the 2nd line.

(k) The first sentence of Subsection 4.9(b) is amended to read: “Subject only to reasonable adjustment for seasonal planting requirements, all Landscape Areas designated in Section 4.9(a) above and in this Section 4.9(b), shall be completed within ninety (90) days after occupancy or completion of the building or buildings erected on the respective Lots, whichever first occurs.”

(l) Subsection 4.9(d) is deleted from the Declaration.

(m) Subsection 4.9(e) is deleted from the Declaration.

(n) The words and numerals “Section 4.1(f), 4.8(a), 4.8(b), 4.8 (d), or 4.8(e)” in the 3rd line of Section 4.11 are deleted and replaced with the following words and numerals: “Section 4.9(a), 4.9(b), 4.9(d), or 4.9(e)”.

(o) The two (2) references in Subsection 4.11(c) to “Section 4.10” are hereby corrected and amended to read “Section 4.11”.

8. Restrictions on Utility Easement. Section 6.6 of the Declaration is amended to read in its entirety as follows:

“6.6 There is hereby reserved, and each Property Owner hereby grants to each other Property Owner, the Developer, and the Architectural Control Committee, a non-exclusive easement for the installation and maintenance and repair of underground utility lines, including without limitation underground lines for electric power, gas, water, sewer, cable, telephone and other communications (the “Utility Easement”) over and across all portions of the granting Property Owner’s Lot other than the Building Envelopes, the areas within four (4) feet of a Building Envelope, and those portions of the Lot, if any, upon which there is located (prior to

installation of the utility line) a building, the exterior apron of a building, or other related building improvements. The installation, maintenance or repair of utility lines (a) shall not unreasonably interfere with the use of a Lot or with the normal operation of any business on a Lot; (b) shall not unreasonably interfere with or diminish utility service to the businesses served by the utility lines; (c) shall not reduce or unreasonably impair the usefulness or functionality of the utility lines of the other Property Owners; (d) shall be performed without cost or expense to the other Property Owners; (e) shall be performed in a good and workmanlike manner, with due care, and in compliance with all laws; (f) shall not unreasonably interfere with the pedestrian and vehicular access or parking on a Lot; and (g) shall be completed lien free. In the event that a Property Owner shall desire to relocate a utility line on the Property Owner's Lot, the Property Owner shall have the right to do so at the Property Owner's sole expense and upon thirty (30) days prior written notice to the Owners of all Lots served by such line(s) (the "Utility Users"), provided that such relocation: (a) shall not be commenced during the months of November, December or January; (b) shall not interfere with or diminish the utility service during business hours and if an electrical line/computer line is being relocated, then the Property Owner shall coordinate such interruption with each Utility User to eliminate any detrimental effects; (c) shall not reduce or unreasonably impair the usefulness or function of such utility line; (d) shall be performed without cost or expense to the Utility Users; (e) shall be completed using materials and design standards which equal or exceed those originally used; and (f) shall have been approved by the provider of such utility service and the appropriate governmental authorities. Documentation of the relocated utility line, including the furnishing of an "as-built" survey to all Utility Users, shall be made at the relocating Property Owner's expense and shall be accomplished as soon as possible following completion of such relocation."

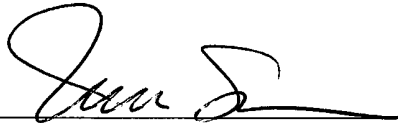
9. Address of Developer. The address of Developer set forth in Section 8.8 is amended to read as follows:

Sorenson Associates, The Pointe, LLC
299 S. Main Street, Suite 2200
Salt Lake City, Utah 84111

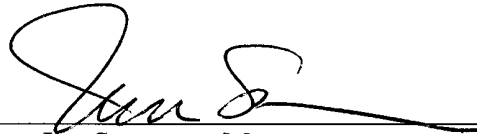
10. Miscellaneous. All capitalized terms used in this Amendment and not defined herein shall have the meanings attributed to such terms in the Declaration. This Amendment may be executed in any number of counterparts, provided each counterpart is identical in its terms. Each such counterpart, when executed and delivered will be deemed to be an original, and all such counterparts shall be deemed to constitute one and the same instrument. For convenience in recording, signature pages from different counterparts may be detached from the original counterparts and attached to one counterpart and recorded. To the extent that the provisions of this Amendment are inconsistent with the provisions of the Declaration, the provisions of this Amendment shall control and the Declaration is modified accordingly. Except as amended herein, the terms and conditions of the Declaration shall remain the same and in full force and effect. All exhibits attached to this Amendment are incorporated herein by reference. This Amendment shall become effective upon recording at the office of the Salt Lake County Recorder.

IN WITNESS WHEREOF, Sorenson Associates, The Pointe, LLC has caused this Amendment to Protective Covenants, Easements, Restrictions, and Uniform Plan for The Pointe to be executed as of the day and year first above written.

SORENSEN ASSOCIATES, THE POINTE, LLC,
a Utah limited liability company

By: 
Jim Sorenson, Manager

TP BUILDING I, LLC,
a Utah limited liability company

By: 
Jim Sorenson, Manager

STATE OF UTAH)
 ss.
COUNTY OF SALT LAKE)

On this 30 day of June, 2015, before me, a Notary Public, personally appeared Jim Sorenson, known or proved to me to be the Manager of Sorenson Associates, The Pointe, LLC, a Utah limited liability company, the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same in the name and on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Honey Ann Shill
Notary Public
Residing at Salt Lake City, UT
My Commission expires June 11, 2017

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

On this ____ day of _____, 2015, before me, a Notary Public, personally appeared Jim Sorenson, known or proved to me to be the Manager of TP Building I, LLC, a Utah limited liability company, the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same in the name and on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public
Residing at _____
My Commission expires _____

CONSENT OF LENDER

Transamerica Life Insurance Company ("Lender") is the present owner and holder of the beneficial interest under that certain Deed of Trust, Security Agreement and Fixture Filing (the "Trust Deed") in the original principal amount of \$15,000,000, between TP Building I, LLC and SATP, as Trustor, First American Title Insurance Company, as Trustee, and Transamerica Life Insurance Company, as Beneficiary, dated February 16, 2007, and recorded February 16, 2007, as Entry No. 10006596, in the office of the Salt Lake County Recorder. Lender hereby consents to the foregoing Amendment to Protective Covenants, Easements, Restrictions, and Uniform Plan for The Pointe and agrees that the lien of the Trust Deed will be subordinate and junior to the provisions of said Amendment.

LENDER:
Transamerica Life Insurance Company

By: Steph Nor

Title: VICE PRESIDENT

Date: 06-29-2015 *edt*

EXHIBIT "A"

Legal Description of the Project

Lots 1, 2, 3, 4, 5, 6, and 7 of The Pointe, a Commercial Subdivision located in the Southwest Quarter of Section 7, Township 4 South, Range 1 East and the Southeast Quarter of Section 12, Township 4 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah.

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