

**When Recorded, Return To:**

Kirton McConkie  
Attn: Tyler Buswell  
50 East South Temple, Suite 400  
Salt Lake City, Utah 84111

13343755  
7/29/2020 3:54:00 PM \$392.00  
Book - 10988 Pg - 7445-7457  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
KIRTON & MCCONKIE  
BY: eCASH, DEPUTY - EF 13 P.

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**PARTY WALL AND EASEMENT AGREEMENT**

THIS PARTY WALL AND EASEMENT AGREEMENT (“**Agreement**”) is made this 21<sup>st</sup> day of July, 2020, by and between **CITY CREEK RESERVE, INC.**, a Utah nonprofit corporation (“**CCRI**”) and **RICHARDS COURT CONDOMINIUMS OWNERS ASSOCIATION, INC.**, a Utah nonprofit corporation (the “**Association**”). CCRI and the Association are at times referred to herein individually as a “**Party**,” and collectively as the “**Parties**.”

**RECITALS**

A. The Association is the owners association for the owners of condominium units in the Richards Court Condominiums (the “**Condominium Project**”). The Condominium Project, among other assets, consists of two high rise buildings. This Agreement pertains to the West building of these two buildings (the “**West Building**”) constructed and located in that airspace described on Exhibit A, attached hereto and incorporated herein by reference (the “**Richards Court Property**”).

B. CCRI is the owner of the air space (the “**CCRI Airspace**”) located immediately over and above that certain rooftop area over a portion of the third floor of the West Building, the horizontal boundaries of which portion are depicted with cross-hatching on Exhibit B, attached hereto and incorporated herein by this reference (the “**Third Floor Rooftop Area**”), and the vertical boundaries of which run from the surface of the roof of that portion of the West Building upward without limitation on height.

C. Further, CCRI is the owner of that certain real property located immediately west of and adjacent to the West Building, as more particularly described on Exhibit C (the “**Adjacent Property**,” and together with the CCRI Airspace, the “**Benefitted Property**”).

D. The Third Floor Rooftop Area encompasses and includes the exterior surface of the coterminous boundary between the CCRI Airspace and rooftop area over that portion of the third floor of the West Building as depicted on Exhibit B.

E. CCRI and the Association previously entered into that certain Residential Tower Airspace Lease, recorded in the Recorder’s Office of Salt Lake County, State of Utah, as Entry No. 10877767, in Book 9796, beginning at Page 5253, on January 12, 2010, as amended by that

certain Amended and Restated Residential Tower Airspace Lease, recorded in the Recorder's Office of Salt Lake County, State of Utah, as Entry No. 11622282, in Book 10129, beginning at Page 3744, on April 19, 2013 (the "**Lease**").

F. CCRI and the Association have agreed that CCRI shall take legal ownership of the Third Floor Rooftop Area.

G. In order to accomplish the parties' agreement to fully vest legal ownership of the Third Floor Rooftop Area in CCRI and establish the parties' responsibilities related to the Boundary Improvements (defined below), the Parties have agreed to enter into this Agreement.

H. In addition to entering into this Agreement, the parties are concurrently entering into a First Amendment to Amended and Restated Residential Tower Airspace Lease (the "**Amendment**").

## TERMS AND CONDITIONS

NOW, THEREFORE, it is mutually covenanted and agreed, in consideration of the foregoing facts and circumstances, the covenants and conditions and mutual promises contained herein, by the Parties as follows:

1. **Declaration of Party Wall.** It is mutually agreed and declared by the Parties that the rooftop improvements located on the Third Floor Rooftop Area (the "**Boundary Improvements**") shall be a "party wall" for the common benefit of both Parties, and the Parties covenant and agree one to the other that they shall not hereafter take a position or make any claims of right, title or interest in and to the Boundary Improvements, which is inconsistent with the declaration herein contained, nor shall they bring any action or make any claim for encroachment of the Boundary Improvements on the West Building or the CCRI Airspace. Notwithstanding anything herein provided to the contrary, it is mutually agreed that no part of the fee title ownership of the West Building or CCRI Airspace shall be transferred or conveyed in or by this Agreement.

2. **Grant of Easement; Use.** It is the parties' intent that CCRI is and shall be the legal owner of the Third Floor Rooftop Area. The Association hereby grants to CCRI a perpetual easement on, over and across the Boundary Improvements for CCRI's exclusive use, as more particularly described herein (the "**Easement**"). The Parties agree that the Boundary Improvements and the Third Floor Rooftop Area shall be and may only be accessed by CCRI through the Benefitted Property and not through the West Building. CCRI shall be permitted to use the Boundary Improvements, the Easement, and the Third Floor Rooftop Area for any purpose permitted by law, including installing improvements and placing personal property on the Boundary Improvements and the Third Floor Rooftop Area, except that CCRI shall not allow any of the following to be done, or conditions to exist, on the Boundary Improvements or within the Third Floor Rooftop Area: (a) installation of any pool or hot tub; (b) any public or private nuisance; or (c) any violation of applicable federal, state and local laws, rules, regulations, ordinances, codes, statutes, decrees, mandates, edicts, or similar jurisdictional

requirements. Subject to the terms and conditions of this Agreement, CCRI shall have the right to maintain, repair, alter, add to, and remodel the Boundary Improvements; provided, however, that any such activities shall not negatively affect (i) the functioning of the Boundary Improvements as a roof to the West Building or (ii) the interior surface or structural stability of the West Building, without the Association's prior written consent which may be withheld for any reason or no reason at all.

3. **Maintenance.** CCRI shall be solely responsible to maintain the Boundary Improvements and Third Floor Rooftop Area in good working order and in a condition equal to the condition as of the date of this Agreement. The Association shall be solely responsible for maintaining and repairing any structural element of the West Building, including, without limitation, those included in the Third Floor Rooftop Area which may cause injury or deterioration to the Boundary Improvements, unless such maintenance or repair is necessary to remedy or correct damage or a condition resulting from any action or inaction of CCRI, in which case CCRI shall be responsible for such maintenance or repair.

4. **Alterations and Additions.** Either Party may insert, join or otherwise fasten to or through the Boundary Improvements, its beams, cables, plaster, exterior finish, joists or other structural supports as may be necessary or desirable in connection with such Party's use, renovation or occupancy of its property described in this Agreement and any additions thereto so long as no such actions impair the structural soundness and integrity of the Boundary Improvements or the West Building as initially constructed and do not negatively affect the interior surface of the other Party unless such other Party's consent has been given in writing prior to any such action.

5. **Destruction, Removal and Rebuilding.** No Party shall have the right to tear down or otherwise remove the Boundary Improvements without the express written consent of the other. It is further agreed that in the case of damage or destruction of the Boundary Improvements by fire, accident or any other cause, including acts of God, this Agreement shall survive.

6. **Insurance.** The Association agrees to acquire and maintain Fire and Extended Coverage policies of insurance with a company or companies licensed and qualified to do business in the State of Utah, insuring the West Building as required by the Lease. CCRI shall maintain a commercial general liability insurance policy with a combined single limit covering bodily injury, personal injury and property damage and liability insurance (which insurance shall be primary and non-contributing) in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. CCRI shall be permitted to fulfill its insurance obligations described in this Section 6 via self-insurance.

7. **Covenants Running with the Land.** The Parties mutually agree that this Agreement, and the covenants and agreements herein contained, shall be perpetual and shall at all times be construed as covenants running with the Benefitted Property and the Richards Court Property, and that without further deed or act, the rights, duties and obligations herein contained shall pass to the person entitled by the terms hereof as an appurtenance to the Benefitted Property

and the Richards Court Property; provided, however, that no part of the fee title to the land upon which the Boundary Improvements is erected shall pass to or from either Party to the other. Moreover, the covenants and easements created herein shall benefit the Benefitted Property and burden the Richards Court Property as described in this Agreement only so long as the Benefitted Property is owned or controlled by CCRI or a related entity.

**8. General.**

**8.1 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors in title, mortgagees, lessees and assigns.

**8.2 Headings and Interpretation.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof, and whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter, and vice versa.

**8.3 Utah Law.** This Agreement shall be construed under and in accordance with the laws of the State of Utah as an agreement between residents and domiciliaries of the State of Utah and an agreement with respect to Utah real property.

**8.4 Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**8.5 Time of Essence.** Time is of the essence of this Agreement and for performance of the covenants and agreements herein contained.

**8.6 Remedies and Attorneys' Fees.** Should any Party hereto fail or neglect to perform in accordance with the terms of this Agreement, the non-defaulting Party shall be entitled to all remedies as may be available at law or in equity, including, but not limited to, specific performance, injunctive relief, contribution, the right of set-off, the return of money advanced and damages, all of which shall be cumulative, and should any Party hereto employ an attorney or attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, or to recover damages for the breach of this Agreement, the non-prevailing party shall pay to the prevailing party all reasonable costs, damages and expenses, including attorneys' fees, expended or incurred in connection therewith.

**8.7 Recording of Agreement.** This Agreement shall be recorded in the Salt Lake County Recorder's office.

**8.8 Amendment.** This Agreement may be amended only in writing by the signatures the owners of the Benefitted Property and by the Association. Such Amendment shall be valid from and after the date it is recorded in the office of the Salt Lake County Recorder.

*[Signatures and Acknowledgments Follow]*

IN WITNESS WHEREOF, the Association and CCRI have executed this Agreement as of the year and date written above.

**CCRI:**

**CITY CREEK RESERVE, INC.,**  
a Utah nonprofit corporation

By: Ashley Powell  
Name: Ashley Powell  
Its: President

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF Salt Lake )

On this 21st day of JUN, 2020, personally appeared before me Ashley Powell, known or satisfactorily proved to me to be the person who signed the foregoing instrument, and acknowledged to me that he/she is the President of City Creek Reserve, Inc., a Utah nonprofit corporation, and acknowledged to me that said company executed the same.



Lynette Asay  
Notary Public

**Association:**

**RICHARDS COURT CONDOMINIUMS  
OWNERS ASSOCIATION, INC.,**  
a Utah nonprofit corporation

By: [Signature]

Name: Donald C. Sterling

Its: President

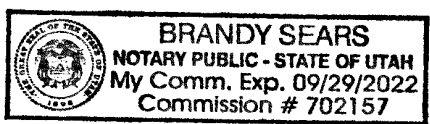
By: [Signature]

Name: BRENT BRATTWAITE

Its: SECRETARY

STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.


On this 17<sup>th</sup> day of July, 2020, personally appeared before me Donald C. Sterling known or satisfactorily proved to me to be the person who signed the foregoing instrument, and acknowledged to me that he/she is the President of Richards Court Condominiums Owners Association, Inc., and acknowledged to me that said company executed the same.

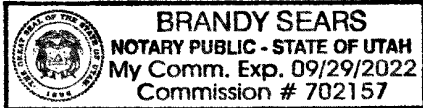


[Signature]  
Notary Public

STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.

Brent Brathwaite On this 17<sup>th</sup> day of July, 2020, personally appeared before me known or satisfactorily proved to me to be the person who signed the foregoing instrument, and acknowledged to me that he/she is the Secretary of Richards Court Condominiums Owners Association, Inc., and acknowledged to me that said company executed the same.

  
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Notary Public





## EXHIBIT A

(Legal Description of the Richards Court 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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15-01-232-181, 15-01-232-182, 15-01-232-183, 15-01-232-184, 15-01-232-185,  
15-01-232-186

**EXHIBIT B**

(Legal Description of the Benefitted Property)

Beginning at a point that is N89°59'41"E 169.65 feet from the Northwest corner of Block 76, Plat "A", Salt Lake City Survey, Section 1, Township 1 South, Range 1 West, Salt Lake Base and Meridian said point also being a point on the North line of said Block 76 and running thence South 100.08 feet; thence N89°59'16"E 8.11 feet; thence South 8.83 feet; thence West 0.65 feet; thence South 1.76 feet; thence N89°59'16"E 23.53 feet; thence North 1.99 feet; thence West 1.00 feet; thence North 8.60 feet; thence N89°59'16"E 29.52 feet; thence North 11.19 feet; thence East 2.50 feet; N00°08'40"E 88.89 feet to a point on the North line of said Block 76; thence S89°59'41"W along said North line 62.24 feet to the point of beginning.

Contains 6,423.43 sq. ft. or 0.15 acres.

FOR INFORMATIONAL PURPOSES ONLY THE FOLLOWING TAX PARCEL IS INCLUDED WITHIN THE ABOVE LEGAL DESCRIPTION:

15-01-227-059

**EXHIBIT C**

(Depiction of the Third Floor Rooftop Area and the Boundary Improvements)

