

**FIFTH AMENDMENT TO THE
DECLARATION OF CONDOMINIUM OF EASTVIEW CONDOMINIUMS**

THIS AMENDMENT TO THE DECLARATION OF CONDOMINIUM OF EASTVIEW CONDOMINIUMS is made and executed on the date set forth below and shall be effective upon recording in the Utah County Recorder's Office.

RECITALS

A. Whereas, the Declaration of Condominium of Eastview Condominiums was recorded in the office of the County Recorder of Utah County, Utah on May 16, 1990 as Entry No. 15441 of the Official Records (the "Declaration").

B. Whereas, the Declaration was first amended by the first Amendment to the Declaration of Condominium of Eastview Condominiums Phase I and III, recorded in the office of the County Recorder of Utah County, Utah on February 20, 1991 as Entry No. 6631 of the Official Records;

C. Whereas, the Declaration was next amended by the second Amendment to the Declaration of Condominium of Eastview Condominiums Phase I, II, and III, recorded in the office of the County Recorder of Utah County, Utah on May 29, 1991 as Entry No. 20074 of the Official Records;

D. Whereas, Declaration was next amended by the third Amendment to the Declaration of Condominium of Eastview Condominiums Phase I, II, III, IV, and V, recorded in the office of the County Recorder of Utah County, Utah on May 4, 1992 as Entry No. 21662 of the Official Records;

E. Whereas, Declaration was next amended by the fourth Amendment to the Declaration of Condominium of Eastview Condominiums Phase I, II, III, IV, V, and VI, recorded in the office of the County Recorder of Utah County, Utah on May 7, 1993 as Entry No. 28421 of the Official Records;

F. Whereas, pursuant to Article III, Section 24 of the Declaration, this Fifth Amendment to the Declaration has been duly adopted by the affirmative vote or written consent, or combination thereof, of voting Members representing at least two-thirds (2/3) of the total votes of the Association;

G. Now therefore, the Association hereby amends the Declaration as follows:

AMENDMENT

Part One

Article I, Section 3 of the Declaration is hereby revised and amended to read as follows:

3. Map shall mean and refer to any subdivision plat, any plat of a condominium project, or any plat or map similar to any of the foregoing: (a) which covers the Property; (b) which describes or creates one or more Units, buildings, or improvements; (c) on which or in an instrument recorded in conjunction therewith is expressed the intent that the Units, buildings, or improvements created by the Map shall comprise the Project; and (d) which is filed for record in the office of the County Recorder of Utah. Subdivision plats are recorded in the Utah County Recorder's Office on May 16, 1990 as Entry No. 15440; on May 29, 1991 as Instrument No. 20073; on August 12, 1991 as Entry No. 31547; on May 4, 1992 as Entry No. 21660; on May 4, 1992 as Entry No. 21661; and on April 2, 1993 as Entry No. 19667. Each of the foregoing subdivision plats constitute a Map.

Part Two

Article I, Section 14 of the Declaration is hereby revised and amended to read as follows:

14. Unit Owner or Owner shall mean and refer to one or more persons or entities who are alone or collectively the record owner of fee simple title to a Unit, including Declarant, and the purchaser under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

Part Three

Article I of the Declaration is hereby revised and amended to include Section 19, which reads as follows:

19. Assessment shall mean and refer to any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in this Declaration or the Bylaws, regardless of whether said assessment is identified as a regular assessment, special assessment, capital improvement assessment, individual assessment, reconstruction assessment, fine, or other charge.

Part Four

Article I of the Declaration is hereby revised and amended to include Section 20, which reads as follows:

20. Capital Improvement shall mean and refer to any new improvement intended to add to, enhance, or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

Part Five

Article III, Section 10 of the Declaration is hereby revised and amended to read as follows:

10. Unit Maintenance.

(a) Each Owner shall at his own cost and expense maintain, repair, paint, tile, wax, paper or otherwise refinish and decorate the interior walls and trim the interior surfaces of the walls, ceilings, floors, and windows and doors forming the boundaries of his Unit and all walls, ceilings, floors, windows, and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair, or replacement of any plumbing fixtures, water heater, heating equipment, air conditioned, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in or connected with his Unit.

(b) In the event any Owner fails properly to keep his Unit in good repair and in a clean and sanitary condition or to perform his or her maintenance, repair, or replacement responsibilities regarding plumbing fixtures, water heater, heating equipment, air conditioned, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in or connected with his Unit, the Association may cause such maintenance to be accomplished as hereinafter set forth. These provisions do not grant the Association any authority to determine or control aspects of Unit interiors that are only aesthetic.

i. Upon finding by the Management Committee of a deficiency in such maintenance, the Management Committee shall give notice of deficiency to the responsible Owner which shall briefly describe the deficiency and set a date for hearing before the Management Committee or a committee selected by the Management Committee for such purpose.

ii. Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

iii. If the Management Committee or any committee renders a decision against the responsible Owner, it shall further set a date by which the deficiency is to be corrected by the responsible Owner.

iv. If a deficiency continues to exist after the time limitation imposed by a final decision of the Management Committee or any such committee, the Management Committee or such committee shall have a right of entry upon such Unit and Limited Common Areas and may cause such maintenance to be accomplished.

v. In the event the Management Committee or such committee elects to cause such maintenance to be accomplished and the Association pays for all or any portion of such maintenance, such amount shall be an Individual Assessment to the affected Owner and Unit.

Part Six

Article III, Section 18(b) of the Declaration is hereby revised and amended to read as follows:

(b) Composition of Committee, Election, Vacancy. The Management Committee shall be composed of five (5) members, with Committee members elected to a three (3) year term following the initial term of 1 = 1 year, 2 = 2 years, 2 = 3 years. Members shall serve on the Committee until their successors are elected. Only Unit Owners or spouses of Unit Owners and officers, directors, agents, and employees of Owners shall be eligible for Committee Membership.

At the annual meeting, each Unit Owner has one vote for as many candidates or committee memberships as there are seats on the committee to be filled. Cumulative voting shall not be permitted. In the event a Committee seat becomes vacant prior to expiration of the term associated with the vacated seat, the remaining Committee members shall elect a replacement to sit on the Committee for the duration of the term.

Part Seven

Article III, Section 20(g) of the Declaration is hereby revised and amended to read as follows:

(g) Personal Obligation for Assessments. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Management Committee. Suit to recover money judgment for such personal obligation may be maintained by the Management Committee without waiving the lien securing the same or the right to foreclose on such lien. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit

Part Eight

Article III, Section 20(h) of the Declaration is hereby revised and amended to read as follows:

*(h) **Individual Assessments.** In addition to any other Assessments authorized herein, the Association also may levy an Individual Assessment against any owner individually and against such Owner's Unit to reimburse the Association for costs incurred in repairing damage to Common Areas and Facilities caused by such Owner or in bringing such Owner and his Unit into compliance with the provisions of this Declaration, the Articles, the Bylaws or Association Rules, together with attorney's fees, interest and other charges related thereto which Individual Assessment may be levied by the Association after notice to an Owner and an opportunity for a hearing.*

Part Nine

Article III, Section 22(d) of the Declaration is hereby revised and amended to include subsection (7), which reads as follows:

(7) At the Management Committee's discretion, the Association may obtain Directors' and Officers' (D&O) liability insurance protecting the Association, Management Committee, Architectural Review Committee, other committees, and the officers thereof, against claims, including without limitation, wrongful acts, mismanagement, failure to maintain adequate reserves, and failure to maintain books and records.

Part Ten

Article III, Section 27 of the Declaration is hereby revised and amended to read as follows:

*27. **Mortgage Protection.** Notwithstanding anything to the contrary in the Declaration:*

(a) An adequate reserve fund for replacement of the Common Areas must be established.

(b) Any management agreement for the Project shall be terminable by the Management Committee for cause upon thirty (30) days written notice thereof, and the term of any such agreement shall not exceed one year, renewable by agreement of the parties for successive one year periods.

(c) Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

Part Eleven

Article III, Section 30 of the Declaration is hereby revised and amended to read as follows:

*30. **Indemnification.***

*(a) **Indemnification – Third Party Actions.** The Association shall indemnify any person who was or is a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Management Committee Member or officer of the Association, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an order or settlement, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he*

reasonably believed to be in the best interests of the Association or with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his conduct was unlawful.

(b) Indemnification – Association Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association by reason of the fact that he is or was a Management Committee Member or officer of the Association, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or intentional misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability and in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) Determination. To the extent that a person who is or was a Management Committee Member or officer of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections (a) or (b) of Section 30 hereof, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under subsections (a) or (b) hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances and that he has met the applicable standard of conduct set forth respectively in subsections (a) or (b) hereof. Such determination shall be made by a quorum of Management Committee Members. If the Management Committee cannot authorize indemnification because the number of Management Committee Members who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of Management Committee Members who are not parties to that proceeding, the disinterested Management Committee Members shall, in their sole discretion, either (i) appoint independent legal counsel who shall make the determination regarding indemnification in a written opinion, or (ii) cause that the determination regarding indemnification be made by the Members of the Association by the affirmative vote of more than fifty percent (50%) of the total votes of the Association at a meeting duly called for such purpose.

(d) Insurance. The Management Committee, in its discretion, may direct that the Association purchase and maintain insurance on behalf of any person who is or was a Management Committee Member, officer, or employee of the Association or is or was serving at the request of the Association as a Management Committee Member, officer, employee or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Section 30.

(e) Settlement by the Association. The right of any person to be indemnified shall be subject always to the right of the Association by the Management Committee, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

Part Twelve

Article III of the Declaration is hereby revised and amended to include Sections 36, 37, 38, 39, and 40, which read as follows:

36. *Notwithstanding any provision of this Declaration to the contrary, any proceeding, suit or action as may be deemed necessary to recover a money judgment respecting any assessments levied or fixed by the Management Committee shall be maintained on behalf of the Association at the instance and suit of the Management Committee.*

37. *Covenants to run with Land: Compliance.* *This Declaration and all the provisions hereof shall constitute covenants to run with them, and/or equitable servitude, as the case may be, and shall be binding upon and inure to the benefit of Declarant, all parties who thereafter acquire any interest in a Unit or in the Project, and their respective Grantee, transferee, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a unit shall comply with and all interests in all Units shall be subject to, the terms of the Act, the terms of this Declaration, the Bylaws, and the provisions of any rules, regulations, agreements, instruments, and determination contemplated by this Declaration, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Committee on behalf of the Unit Owners, or, in a proper case, by an aggrieved Unit Owner. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to, be bound by each and every provision of this Declaration.*

38. *Waiver.* *No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.*

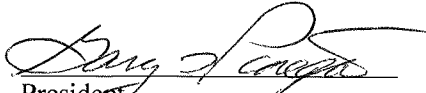
39. *Attorneys' Fees.* *In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be an Individual Assessment with respect to the Unit involved in the action.*

40. *Reinvestment Fee.* *If the Association has recorded a Notice of Reinvestment Fee Covenant separate from this Declaration, within thirty (30) days after the effective date of any transfer of legal title to a Unit, the new Owner shall pay to the Association, in addition to any other required amounts, a reinvestment fee, in an amount determined by the Management Committee from time to time. However, notwithstanding the foregoing, the following are not subject to the above referenced reinvestment fee:*

- (a) *an involuntary transfer;*
- (b) *a transfer that results from a court order;*
- (c) *a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity, or to a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) for estate planning purposes;*
- (d) *a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or*
- (e) *the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of the Association's costs directly related to the transfer of the burdened property, not to exceed \$250.*

On behalf of the Management Committee, the undersigned officer of the Association hereby certifies that, pursuant to Article III, Sections 24 of the Declaration, this Amendment has been approved by the affirmative vote of at least two-thirds (2/3) of the undivided ownership interest in the Common Areas and Facilities.

Eastview Condominiums


President

STATE OF UTAH)
 :SS
County of Salt Lake)

On the 26 day of MARCH, 2019, personally appeared GARY PINEGAR who, acknowledged and executed the foregoing instrument.




Notary Public for Utah

EASTVIEW CONDOMINIUMS
EXHIBIT A

Commencing at a point located South 0 29'00" East along the Section line 1370.59 feet and East 859.78 feet from the Northwest corner of Section 14, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 89 57'34" East along the south side of 200 North Street 341.88 feet; thence South 4 31'00" East 391.08 feet; thence South 0 05'01" East 105.00 feet; thence South 89 56'01" West 369.47 feet; thence North 0 09'25" West 93.58 feet; thence South 89 50'35" West 2.00 feet; thence North 0 09'25" West 401.49 feet to the point of beginning.
AREA = 4.085 ACRES TOTAL PROJECT.

PHASE I

Commencing at a point located South 0 29'00" East along the Section line 1370.45 feet and East 1059.23 feet from the Northwest corner of Section 14, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 89 57'34" East along 200 North Street 142.43 feet; thence South 4 31'00" East along Milestone Condominiums 217.54 feet; thence South 85 29'00" West 142.00 feet; thence North 4 31'00" West 228.66 feet to the point of beginning.
AREA = 0.727 ACRE

PHASE II

Commencing at a point located South 00 29'00" East along the section line 1370.52 feet and East 959.47 feet from the N.W. corner of Section 14, Township 6 South, Range 2 East Salt Lake Base and Meridian; thence North 89 57'34" East 99.76 feet along 200 North Street; thence South 4 31'00" East 241.93 feet along Phase I Eastview Condominiums; thence South 85 29'00" West 85.00 feet; thence North 82 38'55" West 26.29 feet; thence North 2 20'30" West 42.12 feet; thence North 17 17'51" West 7.74 feet; thence North 89 50'35" East 4.00 feet; thence North 2 20'30" West 195.11 feet to the point of beginning.

PHASE III

Commencing at a point located South 0 29'00" East along the section line 1598.41 feet and East 1075.31 feet from the N.W. corner of Section 14, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 85 29'00" East 142.00 feet along Phase I Eastview Condominiums; thence South 4 31'00" East 173.54 feet along Milestone Condominiums; thence South 0 05'01" East 105.00 feet along Milestone Condominiums; thence South 89 56'01" West 164.28 feet along Vermont Subdivision; thence North 0 03'59" West 21.00 feet; thence North 89 56'01" East 6.49 feet; thence Arc Length 23.57 feet CHD. Bears North 44 55'30" East 21.22 feet R=15.00 feet; thence North 0 05'01" West 58.59 feet; thence arc length 29.71 feet CHD. Bears North 2 18'00" West 29.70 feet R=384.00 feet; thence North 4 31'00" West 143.15 feet to the point of beginning.

PHASE IV

Commencing at a point located South 0 29'00" East along the section line 1615.43 feet and East 968.99 feet from the N.W. corner of Section 14, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 82 38'55" East 22.68 feet along Phase II Eastview Condominiums; North 85 29'00" East 85.00 feet along Phase II Eastview Condominiums; South 04 31'00" East 129.87 feet along Phase III Eastview Condominiums; Arc Length 29.71 feet CHD. bears South 2 18'00" East 29.70 feet R=384.00; South 00 05'01" East 58.59 feet along Phase III Eastview Condominiums; Arc Length 23.57 feet CHD. bears South 44 55'30" West 21.22 feet R=15.00; South 89 56'01" west 6.49 feet along Phase III Eastview Condominiums; South 00 03'59" East 21.00 feet along Phase III Eastview Condominiums; South 89 56'01" West 76.56 feet along Vermont Subdivision; North 1 28'14" West 162.99 feet; North 61 50'49" West 15.06 feet; North 2 20'12" West 80.09 feet to the point of beginning.
AREA = 0.577 ACRES

PHASE V

Commencing at a point located South 00 29'00" East along the section line 1370.59 feet and East 859.78 feet from the N.W. corner of Section 14, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 89 57'34" East 99.69 feet along 200 North Street; South 2 20'30" East 195.11 feet along Phase II Eastview Condominiums; South 89 50'35" West 4.00 feet along Phase II Eastview Condominiums; South 17 17'51" East 7.74 feet along Phase II Eastview Condominiums; South 2 20'30" East 42.12 feet along Phase II Eastview Condominiums; North 82 38'55" West 19.08 feet; South 89 50'35" West 88.10 feet; North 00 09'25" West 242.17 feet along 130 East Street to the point of beginning.
AREA = 0.578 ACRE

PHASE VI

Commencing at a point located South 00 29'00" East along the section line 1612.77 feet and East 858.40 feet from the N.W. corner of Section 14, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 89 50' 35" East 88.10 feet along phase V Eastview Condominiums; South 82 38' 55" East 22.70 feet along Phase V Eastview Condominiums; South 2 20' 12" East 80.09 feet along Phase IV Eastview Condominiums; South 61 50" 49" East 15.06 feet along Phase IV Eastview Condominiums; South 1 50' 49" East 162.99 feet along Phase IV Eastview Condominiums; South 89 56' 01" West 128.64 feet along Vermont Subdivision; North 00 09' 25" West 93.58 feet along Royal Gem Subdivision; South 89 50' 35" West 2.00 feet; North 00 09' 25" West 159.31 feet along 130 East Street to the point of beginning.

AREA = 0.7096 ACRE