

Ent 548613 Bk 945 Pg 12-18
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JOHN ALAN CORTES, Recorder
GRAND COUNTY CORPORATION
For: NIESEN MATTHEW

AMENDMENT
TO THE
DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS OF
KANE CREEK CONDOMINIUMS

This Amendment to the Declaration of Covenants, Conditions, and Restrictions of Kane Creek Condominiums ("Amendment") is made and executed on the date shown below by KANE DEVCO, LLC, a Utah Limited Liability Company (the "Declarant"). The Declarant currently owns 100% of the Units within the Project.

RECITALS

WHEREAS, the Declaration of Covenants, Conditions and Restrictions of Kane Creek Condominiums was recorded in the office of the Grand County Recorder on June 10, 2021, as entry number 541118 ("Declaration"); and

WHEREAS, Declarant desires to amend portions of the Mortgagee protections contained in the Declaration; and

WHEREAS, the Declarant desires to add rental restrictions to the Project;

WHEREAS, Declarant desires to adopt this Amendment and record the same against the Units and real property located in Grand County, Utah, known as the Kane Creek Condominiums and more fully described on Exhibit "A" attached hereto; and

NOW THEREFORE, to accomplish the Unit Owners' objectives, the following amendment is adopted. If there is any conflict between this Amendment and any provision of the Declaration, this Amendment shall prevail. This Amendment shall become effective upon recording. The words defined in Article I of the Declaration shall have the same meaning when used herein unless the context clearly requires a different meaning. The Declaration is amended as follows:

ARTICLE I
MORTGAGEE PROTECTIONS

1.1 **Declaration Control Period.** Paragraph 1.16 of the Declaration, titled "Declarant Control Period," is hereby deleted and replaced with the following:

1.16 **"Declarant Control Period"** means the period commencing on the date the Declaration was recorded in the office of the Grand County Recorder, and ending on the date which is the latest of (a) 120 Days after the date 75% of the Units in

the Project have been conveyed to Unit Owners, or (b) three years after the completion of the Project as evidenced by the first conveyance to a Unit owner. Notwithstanding any language herein to the contrary, the Declarant may terminate the Declarant Control Period at an earlier date by executing a document that provides notice to the Members that the Declarant Control Period is being terminated.

1.2 **Notice to Mortgagees.** Paragraph 11.1 of the Declaration, titled "Eligible Mortgagees," is hereby deleted and replaced with the following:

11.1 **Notice to Mortgagees.** Each Mortgagees and guarantor of a mortgage on any Unit in the Project shall be given timely written notice of the following:

- (a) **Condemnation Loss or Award.** Any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage.
- (b) **Delinquency.** Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds a mortgage.
- (c) **Lapse of Insurance.** Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- (d) **Consent Required.** Any proposed action that requires the consent of a specified percentage of Mortgagees.

1.3 **Mortgagee Priority.** Notwithstanding any language to the contrary in the Declaration, a first Mortgagee of a Unit shall have priority over a Unit owner to any (a) insurance proceeds related to a damaged Unit or Common Area, or (b) a condemnation award related to a taking of any Unit or Common Area.

ARTICLE II RENTAL RESTRICTIONS

2.1 **Leasing Prohibited.** The leasing of a Unit within Kane Creek Condominiums is prohibited unless the leasing is consistent with this Amendment.

2.2 **Twenty Three Unit Cap.** Not more than fifty percent (50%) of the Units at Kane Creek Condominiums shall be occupied by non Unit Owners at any one time.

2.3 **Notification to Board.** Any Unit Owner desiring to lease his or her Unit or to have his or her Unit occupied by a non-Unit Owner shall notify the Board in writing of their intent

to lease their Unit. The Board shall maintain a list of those Unit Owners who have notified it of an intent to lease their Unit and shall grant permission to Unit Owners to lease their Unit in the same order the Board receives the written notice of intent to lease a Unit from the Unit Owners. No permission shall be granted to lease a Unit until less than fifty percent (50%) of the Units at Kane Creek Condominiums are occupied by non-Unit Owners.

2.4 Exceptions. The restrictions herein shall not apply:

- (a) To a Unit Owner who is a member of the military and is temporarily deployed out of the State of Utah, and by reason of the temporary deployment is required to move from the Unit during the period of temporary military deployment. The Unit Owner who is temporarily deployed may lease their Unit during the period of temporary military deployment. However, if the Unit Owner moves from the Unit due to a permanent change of station (PCS) the rental restrictions shall continue to apply to that Unit and Unit Owner;
- (b) To a parent, grandparent, or child who is a Unit Owner and leases their Unit to a family member who is a parent, grandparent, child, grandchild, or sibling of the Owner;
- (c) To a Unit Owner who moves for a period of less than two years at least 40 miles away from the Unit by reason of being relocated by the Unit Owner's employer, if relocation of the Owner is necessary for purposes of employment;
- (d) To a Unit owned by an entity that is occupied by an individual who has voting rights under the entity's organizing documents; and has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or
- (e) To a Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:
 - (i) the estate of a current resident of the Unit; or
 - (ii) the parent, child, or sibling of the current resident of the Unit;

2.5 Tracking. The Board shall create by rule or resolution, procedures to determine and track the number of rentals and Units in Kane Creek Condominiums subject to the provisions described in this Article, and shall ensure consistent administration and enforcement of the rental restrictions in this Amendment.

2.6 No Partial or Short-Term Rentals. Renting or Leasing less than 100% of the Unit is Prohibited. An Owner may not rent or lease a portion of a Unit, or an individual room,

on a short-term basis (for less than 30 days), even if the Owner continues to occupy a portion of his or her Unit. No short-term, Airbnb, or overnight type rentals are permitted within the Project. Even when renting a Unit under one of the exceptions outlined in Article 2.4 above, all short-term rentals of less than 30-days are prohibited within the Project. Nothing contained in this Article shall be read to permit short-term rentals at any time.

- 2.7 **Governing Documents.** The Owner, lessees, and the lease itself shall be subject to the conditions and provisions of the Declaration, Bylaws, and Rules and Regulations of the Association.
- 2.8 **Violation.** Any Owner who violates this Article shall be subject to a complaint for damages and/or an injunction and Order seeking to terminate the Lease in violation of this Article. If the Association is required to retain legal counsel to enforce this Article, with or without the filing of legal process, the violating Owner shall be liable for all costs and expenses incurred by the Association, including but not limited to attorney fees and court costs incurred by the Association, in enforcing this Article. Failure of an Owner to make repayment of said costs within thirty (30) calendar days after receipt of written demand, shall entitle the Board to (a) levy and add to the assessment against such Owner all expenses incurred by the Association; (b) foreclose the assessment lien according to Utah State Law; and (c) to file suit to collect the amounts due and owing or both.
- 2.9 **Guest Permitted.** Nothing herein shall prohibit an Owner from permitting a guest or visitor from residing in his or her Unit, while the Owner is present.
- 2.10 **Definitions.**
- (a) **Rent Defined.** As used herein, "Rent" (or any variation of the word) of "Lease" (or any variation of the word) means a Unit that is owned by an Owner that is Occupied by one or more Non-Owners while no Owner occupies the Unit as the Owner's primary residence. The payment of remuneration to an Owner by a Non-Owner shall not be required to establish that the Non-Owner is leasing a Unit. Failure of a Non-Owner to pay remuneration of any kind to the Owner shall not be considered when determining if a Unit is a Rental Unit. The terms "Rent" and "Lease" shall also include short term or overnight, Airbnb style rentals, even if an Owner continues to occupy the Unit while renting out a portion of the Unit.
 - (b) **Non-Owner Defined.** As used herein, "Non-Owner" or "Non-Unit Owner" means an individual or entity that does not hold any interest in the title to the Unit as shown on the records of the Grand County Recorder.
 - (c) **Occupied Defined.** As used herein, "Occupied" means to reside in the Unit for 14 or more days in any thirty (30) day period. A Unit is deemed to be Occupied by

Non-Owner if the Unit is Occupied by an individual(s) other than the Unit Owner and the Owner is not occupying the Unit as the Owner's primary residence.

**ARTICLE III
REPEAL OF CONFLICTING LANGUAGE**

- 3.1 **Repeal.** If any language or requirements contained in the Declaration, or any other of the Association's governing documents contradicts or violates any provision contained in this Amendment, such provisions are hereby repealed and shall no longer be enforceable.

- 3.2 **Severable.** The provisions of this Amendment shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

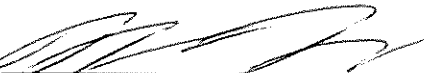
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CERTIFICATION

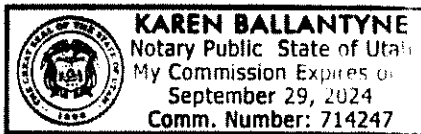
It is hereby certified that the Declarant owns 100% of the Units within the Project, and is amending the Declaration in compliance with the requirements found in the Declaration.

KANE DEVCO, LLC
a Utah Limited Liability Company.

By 
Name: Matthew Nielsen
Title: Manager

STATE OF UTAH)
) :SS
COUNTY OF Grand)

The forgoing instrument was acknowledged before me this 21 day of December 2022, by Matthew Nielsen, Manager of Kane Devco, LLC, a Utah limited liability company.



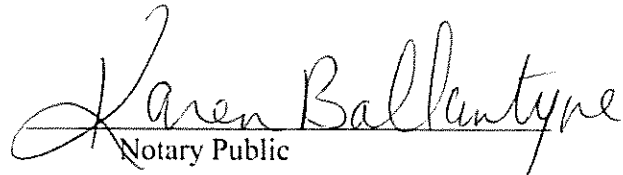

Notary Public

EXHIBIT A
Project legal description

All of Units B101 through B113, Kane Creek Condos Ph 1 Building B, Moab City, Grand County, Utah
[01-0KCC-001 through 0013]

All of Units B201 through B214, Kane Creek Condos Ph 1 Building B, Moab City, Grand County, Utah
[01-0KCC-0014 through 0027]

All of Units B301 through B307, Kane Creek Condos Ph 1 Building B, Moab City, Grand County, Utah
[01-0KCC-0028 through 0034]

All of Units A101 through A106, Kane Creek Condos Ph 2 Building A, Moab City, Grand County, Utah
[01-0KCC-0035 through 0040]

All of Units A201 through A207, Kane Creek Condos Ph 2 Building A, Moab City, Grand County, Utah
[01-0KCC-0041 through 0047]