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Gary W. Ott
Recorder, Salt Lake County, UT
KIRTON & MCCONKIE
BY: eCASH, DEPUTY - EF 12 P.

WHEN RECORDED, PLEASE RETURN TO:

Robert C. Hyde
Kirton McConkie
50 E. South Temple
Salt Lake City, Utah 84111

**FIRST AMENDMENT TO
AMENDED AND RESTATED
RESIDENTIAL TOWER AIRSPACE LEASE**

by and between

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

and

CITY CREEK LIVING, LLC,
a Utah limited liability company

**99 WEST CONDOMINIUMS
SALT LAKE CITY, UTAH**

Executed March 4, 2014

**FIRST AMENDMENT TO
AMENDED AND RESTATED
RESIDENTIAL TOWER AIRSPACE LEASE
(99 West Condominiums)**

This **FIRST AMENDMENT TO AMENDED AND RESTATED RESIDENTIAL TOWER AIRSPACE LEASE** (this “**Amendment**”) is executed this 4th day of March, 2014, by and between **CITY CREEK RESERVE, INC.**, a Utah nonprofit corporation (“**Landlord**”), and **CITY CREEK LIVING, LLC**, a Utah limited liability company (“**Tenant**”).

RECITALS

A. Landlord and Tenant 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. 11124889, in Book 9901, beginning at Page 6595, on January 28, 2011, 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. 11690023, in Book 10162, beginning at Page 404, on July 23, 2013 (the “**Lease**”) to lease the three dimensional portion of airspace described on **Exhibit A** attached hereto (the “**Airspace**”).

B. Landlord and Tenant deem it necessary and desirable to amend the Lease as set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, Landlord and Tenant, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, agree as follows:

1. **Definitions**. Sections 1.22, 1.23, 1.24, and 1.25 of the Lease are hereby deleted in their entirety.

2. **Razing Costs**. Section 1.87 of the Lease is hereby deleted in its entirety and replaced with the following:

1.87 “**Razing Costs**” shall have the meaning given in Section 0.1.

3. **Property Insurance Proceeds**. Section 16.2 of the Lease is hereby deleted in its entirety and replaced with the following:

16.2 **Property Insurance Proceeds**. For purposes of this Lease, “**Property Insurance Proceeds**” shall mean any and all proceeds or compensation of any kind in connection with, related to, or provided as a result of, any and all property insurance or similar insurance policies required to be obtained and maintained under this Lease or the

Condominium Declaration, whether actually received or not, and any and all claims for such proceeds or compensation, less all actual and reasonable costs and expenses of obtaining same. In the event that Tenant shall fail to obtain and maintain any applicable insurance policies required under this Lease or the Condominium Declaration, Tenant shall be obligated to pay to Landlord (by imposing the necessary assessments and/or special assessments on the Unit Owners), as Property Insurance Proceeds, the amount equal to the Property Insurance Proceeds that would have been payable under such policies had such policies been obtained and maintained. Except as may be otherwise specifically provided herein, Landlord shall be entitled to immediately receive all Property Insurance Proceeds. Tenant shall (i) use its best and most diligent efforts to promptly acquire all Property Insurance Proceeds and immediately deliver all such Property Insurance Proceeds received or payable by Tenant to Landlord, (ii) cause all of Tenant's insurance providers and any other applicable third parties to immediately deliver all Property Insurance Proceeds to Landlord, and (iii) cooperate in all respects with Landlord to aid Landlord in obtaining all Property Insurance Proceeds, including without limitation, the execution and delivery of any documentation, letters or other agreements requested by Landlord.

4. **Repair and Reconstruction.** Section 16.3 of the Lease is hereby deleted in its entirety and replaced with the following:

16.3 **Repair and Reconstruction.** For purposes of this Lease, "**Repair and Reconstruction**" of the applicable improvements shall mean repairing, restoring, and/or reconstructing, as applicable, the applicable improvements to substantially the same condition in which such improvements existed prior to the damage or destruction, with all aspects of the Condominium Project and the Use Areas having substantially the same vertical and horizontal boundaries as before (subject to any modifications required by then-applicable law).

5. **Scope of Damage or Destruction.** Section 16.4 of the Lease is hereby deleted in its entirety and replaced with the following:

16.4 **Scope of Damage or Destruction.** The rights of the parties in the event of damage or destruction shall be determined based on the scope of such damage or destruction, which shall be determined as follows:

16.4.1 **Total Damage or Destruction.** Any damage or destruction that causes the Building to be deemed by Landlord, in Landlord's reasonable judgment, to be so structurally compromised or otherwise damaged that (i) the then-current Building structure should or must be demolished, or (ii) even if the Building could be repaired, the cost of doing so cannot be economically justified, again in Landlord's reasonable judgment, shall be deemed a "**Total Destruction**" of the Condominium Project. In the event of a Total Destruction, Landlord shall

terminate this Lease and the entire Condominium Project, as more fully set forth in Section 0.2 below.

16.4.2 Partial Damage or Destruction. Any damage or destruction that causes the Building to be deemed by Landlord, in Landlord's reasonable judgment, to not be a Total Destruction, shall be deemed a "**Partial Destruction**" of the Premises and the Building. In the event of a Partial Destruction, the Property Insurance Proceeds shall be used to pay all costs and expenses of the Repair and Reconstruction of the Building and Tenant shall perform, or cause to be performed, all Repair and Reconstruction of the Building. Tenant shall be responsible to promptly collect special assessments from the Unit Owners to pay for any amounts needed to repair the Partial Destruction above the amount of the Property Insurance Proceeds. Notwithstanding the foregoing, in the event of a Partial Destruction where the cost of repair is reasonably estimated to be in excess of fifty percent (50%) of the then-fair market value of the Condominium Project, regardless of the amount of the Property Insurance Proceeds, Tenant shall have the right and option, in its sole and absolute discretion, to terminate this Lease and the Condominium Project in the same manner as described and set forth in Section 16.5.2 below.

6. **Procedures in the Event of Damage or Destruction**. Section 16.5 of the Lease is hereby deleted in its entirety and replaced with the following:

16.5 **Procedures in the Event of Damage or Destruction**. In the event of any damage or destruction to the Condominium Project, whether a Total Destruction or a Partial Destruction, the rights and obligations of the parties shall be as follows:

16.5.1 Repair and Reconstruction. In the event of a Partial Destruction, Tenant shall promptly perform, or caused to be performed, all Repair and Reconstruction of the Condominium Project.

16.5.2 Termination of Lease and the Condominium Project. In the event this Lease and the Condominium Project are terminated pursuant to the provisions of Section 16.4 above, (i) this Lease shall immediately be terminated with respect to the Premises, and neither party shall have any further obligations to the other except as otherwise expressly set forth herein, (ii) the Premises shall no longer be subject to this Lease, the Condominium Project, the Plat or the Condominium Declaration, (iii) to the extent required by applicable law, or requested by Landlord, all applicable parties (including, without limitation, all Unit Owners and the Owners Association) shall promptly execute, deliver and record a termination of this Lease, the Condominium Project, the Plat, and/or the Condominium Declaration, with respect to the Premises, (iv) all easements, rights, licenses and benefits granted to Tenant herein or in

connection herewith, to the extent same are appurtenant to the Premises, shall be terminated, and (v) the Premises and/or improvements related thereto shall immediately revert back, in fee simple, to Landlord in the same manner as described in Section 3.4 of this Lease.

16.5.2.1 Reimbursement to Tenant. In the event this Lease and the Condominium Project are terminated pursuant to the provisions of Section 16.4 above, all of the Property Insurance Proceeds, less an amount sufficient to pay for the total razing, clearing, removing, and disposing of the Condominium Project (the “**Razing Costs**”), shall be paid to Tenant (the “**Net Insurance Proceeds**”), and Tenant shall disburse the Net Insurance Proceeds to all of the Unit Owners on a pro rata basis in accordance with the “Ownership Interests,” as such term is defined in the Condominium Declaration. Airspace Lessor shall be entitled to retain from the Property Insurance Proceeds the amount of the Razing Costs.

7. Continuation of Lease. Section 16.6 of the Lease is hereby deleted in its entirety and replaced with the following:

16.6 Continuation of Lease. Unless Landlord or Tenant terminates all of this Lease as set forth herein, this Lease shall not terminate, be forfeited, or be affected in any other manner, and to the fullest extent permitted by applicable law, Tenant hereby waives any right to quit or surrender the Premises or any part of the Premises, because of any damage or destruction or any resulting untenability or inhabitability. Unless and until this Lease has been validly terminated, all of Tenant’s obligations under this Lease, including, without limitation, the obligation to pay Rent, shall continue unabated, subject to all other terms and provisions of this Lease.

8. Use by Airspace Lessor of Property Removed from the Lease. Section 16.7 of the Lease is hereby deleted in its entirety and replaced with the following:

16.7 Use by Landlord of Airspace Removed from the Lease. If Landlord or Tenant terminates this Lease as set forth above, then Landlord, at any time, and from time to time, thereafter may (but shall not be obligated to) construct other buildings or improvements on, within, around, or near the previous location of the Premises (the “**New Improvements**”). The New Improvements and/or the Airspace removed from the Lease may be used for any purpose whatsoever in Landlord’s sole and absolute discretion and shall not be subject to this Lease, the Condominium Declaration or any conditions, covenants, or restrictions of same.

9. Defined Terms. Except as otherwise expressly provided herein, capitalized terms used in this Amendment shall have the meanings given them in the Lease.

10. **Conflicting Provisions; Ratification.** Landlord and Tenant reserve any and all rights and interests existing pursuant to the Lease which are not affected by this Amendment and except as expressly modified herein, the Lease remains in full force and effect in accordance with its terms. This Amendment amends the Lease. In the event of any conflict or inconsistency between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control.


[Signature Page Follows]

SIGNATURE PAGE

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first written above.

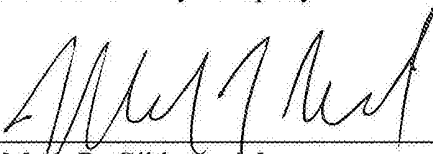
LANDLORD:

CITY CREEK RESERVE, INC.,
a Utah nonprofit corporation

By: 
Mark B. Gibbons, President

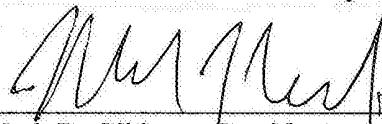
TENANT UNDER THE ORIGINAL LEASE:

CITY CREEK LIVING, LLC,
a Utah limited liability company

By: 
Mark B. Gibbons, Manager

**SUCCESSOR TENANT UNDER
SECTION 18.6 OF THE LEASE:**

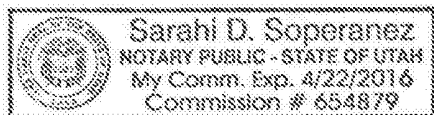
**99 WEST CONDOMINIUMS OWNERS
ASSOCIATION, INC.,** a Utah nonprofit corporation


By: 
Mark B. Gibbons, President

By: 
Dale K. Bills, Board Member

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

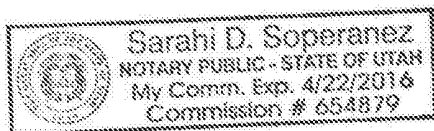
On this 13th day of March, 2014, personally appeared before me Mark B. Gibbons who, being by me duly sworn, did say that he is the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity as President of City Creek Reserve, Inc., a Utah nonprofit corporation, for and on behalf of said corporation.




NOTARY PUBLIC

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

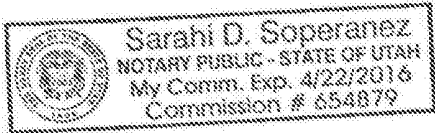
On this 13th day of March, 2014, personally appeared before me Mark B. Gibbons, who being by me duly sworn, did say that he is the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity as the Manager of City Creek Living, LLC, a Utah limited liability company, for and on behalf of said limited liability company.




NOTARY PUBLIC

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

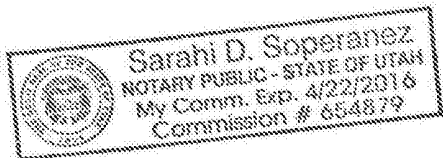
On this 4th day of March, 2014, personally appeared before me Mark B. Gibbons who, being by me duly sworn, did say that he is the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity as President of 99 West Condominiums Owners Association, Inc., a Utah nonprofit corporation, for and on behalf of said corporation.




NOTARY PUBLIC

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

On this 4th day of March, 2014, personally appeared before me Dale K. Bills who, being by me duly sworn, did say that he is the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity as a Board Member of 99 West Condominiums Owners Association, Inc., a Utah nonprofit corporation, for and on behalf of said corporation.



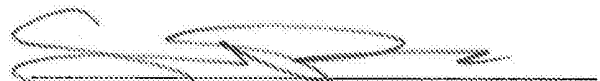

NOTARY PUBLIC

EXHIBIT A

Description of Airspace

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, 15-01-232-051, 15-01-232-052, 15-01-232-053, 15-01-232-054, 15-01-232-055,

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