

RECORDING REQUESTED BY
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RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 18 P.

LIBERTY SKY ASSOCIATES, LLC
6440 South Wasatch Blvd., Suite 100
Salt Lake City, Utah 84121
Attn: Mark Cornelius.

CT-100828-CAF

(Space Above for Recorder's Use Only)

TIN 16-06-107-040 in 16-06-107-041

TENANT IN COMMON AGREEMENT

THIS TENANT IN COMMON AGREEMENT (the "Agreement") is made as of the 27th day of August, 2019, by and among LIBERTY SKY ASSOCIATES, LLC, a Utah limited liability company (hereinafter referred to as the "LSA") as to an undivided interest as identified in this Agreement), and LIBERTY ON MAIN ASSOCIATES, LLC, a Utah limited liability company ("LMA") as to an undivided interest identified in this Agreement (the LSA and LMA, each referred to as an "Owner", and collectively the "Owners").

RECITALS

WHEREAS, LSA entered into that Real Estate Purchase Agreement with Boyer 151, L.C., a Utah limited liability company, dated June 1, 2019 (the "**Purchase Agreement**"), whereby LSA acquired the right to purchase certain real property rights known as the Residential Unit and the Residential Parking Unit within the Block 71 Condominiums, located in Salt Lake City, Salt Lake County, State of Utah, more particularly described on Exhibit "A" attached hereto (hereinafter, the "**Property**"), with the intention of constructing within the boundaries of each Unit of the Property, a multi-story residential apartment project and an appurtenant parking garage (collectively, and including the Property where the context requires, the "**Project**"); and

WHEREAS, in anticipation of acquiring the Property, LSA has entered into a Standard Form of Agreement Between Owner and Construction Manager as Constructor, AIA document A1133-2009, with Jacobsen Construction Company, Inc. ("**Jacobsen**") dated March 15, 2019, which was amended as of July 1, 2019, to designate LMA as an additional Owner, and pursuant thereto Jacobsen will act as construction manager and

general contractor for the construction of the improvements for the Project (the “**Construction Agreement**”); and

WHEREAS, LMA took a partial assignment of the Purchase Agreement from LSA, and acquired an undivided interest in the Project pursuant to the Purchase Agreement pursuant to Section 1031 of the Internal Revenue Code (a “**1031 Exchange**”); and

WHEREAS, the Owners are the owners, holding tenant-in-common interests (“**Interests**”) in the Project located upon the Property, holding their respective Interests as more particularly set forth in this Agreement; and

WHEREAS, the Owners desire to enter into this Agreement to provide for the orderly administration of the Project, and to delegate authority and responsibility for the development, operation and management of the Project; and

WHEREAS, in order to develop the Project upon the Property, the Owners intend to obtain a mortgage loan from TRANSAMERICA LIFE INSURANCE COMPANY, an Iowa corporation (“**Lead Lender**”), for itself as lead lender and as agent for ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, a Minnesota corporation (“**Allianz**”), as co-lenders (including their successors and assigns, the “**Lender**”), in the original principal amount of Fifty-Seven Million Dollars (\$57,000,000.00) (the “**Loan**”). The Loan is to be evidenced by two (2) Promissory Notes in the original aggregate principal amount of the Loan payable to the Lender (collectively, the “**Note**”), a Deed of Trust, Security Agreement and Fixture Filing (the “**Deed of Trust**”), and other documents evidencing or securing the Loan (collectively, the “**Loan Documents**”).

NOW, THEREFORE, the parties hereto act and agree as follows:

1. **Development.**

1.1 Pursuant to the terms of this Agreement, the Owners have agreed and by their execution of this Agreement, do hereby affirm that the Project shall be developed by the construction of a multi-family residential apartment project and related parking garage in accordance with plans and specifications prepared by Smallwood, Reynolds, Stewart, Stewart & Associates, Inc., of Atlanta Georgia, a copy of which index to the plans and specifications is attached hereto as Exhibits B and C respectively. The Owners have previously agreed and by their execution of this Agreement, do hereby affirm that Liberty Sky Development, LLC, a Utah limited liability company, has been retained as the developer (the “**Developer**”) of the Project with respect to all development obligations identified in that certain Development Agreement dated as of July 1, 2019 (the “**Development Agreement**”), a copy of which is incorporated by reference. The Owners have also entered into the Construction Agreement providing for the construction of the Project, which Construction Agreement is hereby affirmed by the Owners. The Developer will be responsible for the day-to-day administration of the Construction Agreement during the development and construction of the Project. Except as expressly provided otherwise in this Agreement, the Development Agreement, or the Construction

Agreement, the Developer's powers shall include all those necessary to develop, preserve, protect, and maintain the Project during development and construction. Without limiting the generality of the foregoing, the Developer on behalf of the Owners shall have the right to:

(a) have the authority to act on behalf of all Owners with respect to the administration of the Construction Agreement, provided the Developer shall seek the approval of the Owners' Representative as designated in Section 3 for matters which are not considered routine or day-to-day;

(b) assist in the administration of the Loan, including but not limited to making a request for draws and disbursement of funds from the Lender to satisfy development and construction costs, portions of which have been incurred by Cowboy Partners, L.C., a Utah limited liability company ("Cowboy Partners"), the Developer, or their affiliates; provided, however, that all applications for draws and disbursement of funds shall be approved in writing by one or more individuals designated in the loan documents for such purpose by the Owners;

(c) assist in servicing each Owner's share of the liens, mortgages, trust deeds, and other obligations against the Project with such Owner's share of the proceeds of the Loan, and, if necessary, Additional Cash collected from the Owners in accordance with Section 6 hereof, and negotiate modifications of any such indebtedness, subject to the prior approval of the Owners as provided in Section 6 hereof;

(d) employ or discharge such agents, employees, independent contractors, attorneys, and/or accountants on behalf of the Owners as the Developer recommends and LSA, as Owners' Representative, approves and is reasonably necessary for the development of the Project upon such terms and for such compensation as the Developer recommends and Owners' Representative approves on behalf of the Owners;

(e) maintain full and complete books and records relating to the development of Project, which books and records shall be made available to each of the Owners or their authorized representatives upon request at all reasonable times, and which books and records shall be in form and substance sufficient to allow each Owner to calculate separately its share of costs, net income or loss from the Project; provided, however, Developer shall not maintain or provide either an Owner capital account or a Project balance sheet as part of the books and records, and entity-level accounting shall not be maintained;

(f) make emergency expenditures reasonably necessary to prevent imminent injury, harm or damage to persons or property, with funds collected in accordance with subparagraph (b) above, or at Developer's or Owners' election as determined by the Owners' Representative, Developer and/or Owners' Representative may make such expenditures with other funds, and the amount of any such expenditures shall be prorated and reimbursed to the Owners' Representative and/or Developer by all of the Owners in accordance with Section 6 hereof; and

(g) take all actions reasonably necessary to comply with any and all orders or requirements affecting the Project by any federal, state, county or municipal authority having jurisdiction over the Project.

1.2 The Owners hereby designate Cowboy Partners as the contact for and on behalf of the Owners with respect to communications with the Developer and the exercise of powers reserved to the Owners pursuant to the Development Agreement. Such designation shall continue through the completion of the Developer's obligations as specified in the Development Agreement, unless the Owners specify otherwise by an amendment to this Agreement. The powers and obligations granted to the Developer shall be governed by the terms and conditions of the Development Agreement. In the event of a conflict between the provisions of this Agreement and the Development Agreement, the provisions of the Development Agreement shall be controlling. The Development Agreement shall be subordinate to the rights of the Lender under the Loan Documents so long as the Loan is outstanding.

2. **Management.**

2.1 Subsequent to "Final Completion" of the development and construction of the Project (as defined in the Construction Agreement), and for all matters related to leasing of individual apartment units within the Project, the Project shall be managed by a professional property manager (the "Manager") as from time to time is recommended by Owners' Representative and is approved by the Owners in accordance with this Agreement. The Manager shall be responsible for the day-to-day administration of the Project for periods subsequent to Final Completion of the Project. In accordance with the recommendation of Owners' Representative, the Owners have appointed Cowboy Properties, L.C., a Utah limited liability company, as the initial Manager of the Project for periods subsequent to Final Completion, pursuant to the terms of that certain Management Agreement dated July 1, 2019, by and between Cowboy Properties, L.C., and the Owners (the "Management Agreement"). The Owners by their execution of this Agreement, hereby confirm and ratify such appointment and Management Agreement. The Management Agreement is incorporated herein by this reference. Except as expressly provided otherwise in this Agreement, the Manager's powers shall include all those necessary to preserve, protect, and maintain the Project for periods subsequent to Final Completion. Without limiting the generality of the foregoing, the Manager shall have the right to:

(a) at such time as apartment units are available for rental, collect each Owner's share of income from the Project, hold the same in a common bank account pending payment of such Owner's share of Project Expenses and disburse the remainder thereof to the Owners not less than three (3) months from the date of receipt of such income subject to any limitations imposed by Lender;

(b) pay each Owner's share of Project Expenses with such Owner's share of income from the Project and, if necessary, Additional Cash collected from the Owners in accordance with Section 6 hereof;

(c) service each Owner's share of the liens, mortgages, trust deeds, and other obligations against the Project with such Owner's share of income from the Project and, if necessary, Additional Cash collected from the Owners in accordance with Section 6 hereof, and negotiate modifications of any such indebtedness, subject to the approval of the Owners as provided in Section 6.1 hereof;

(d) employ or discharge such agents, employees, independent contractors, attorneys, and/or accountants as the Manager deems reasonably necessary for the preservation and maintenance of the Project upon such terms and for such compensation as the Manager shall determine;

(e) maintain full and complete books and records relating to the Project, which books and records shall be made available to each of the Owners or their authorized representatives upon request at all reasonable times, and which books and records shall be in form and substance sufficient to allow each Owner to calculate separately its net income or loss from the Project; provided, however, the Manager shall not maintain or provide either an Owner capital account or a Project balance sheet as part of the books and records, and entity-level accounting shall not be maintained;

(f) make emergency expenditures reasonably necessary to prevent imminent injury, harm or damage to persons or property, with funds collected in accordance with subparagraph (a) above, or at the Manager's election, the Manager may make such expenditures with other funds, and the amount of any such expenditures shall be prorated and reimbursed to the Manager by all of the Owners in accordance with Section 6 hereof;

(g) take all actions reasonably necessary to comply with any and all orders or requirements affecting the Project by any federal, state, county or municipal authority having jurisdiction over the Project; and

(h) negotiate modifications of any leases, subject to Section 4 hereof.

2.2 The Management Agreement shall (i) have an initial term of one (1) year from the first occupancy by a tenant, (ii) be renewable for successive one (1) year periods upon the approval of holders of not less than less than seventy five percent (75%) of the Interests, and (iii) be modified or renegotiated upon the approval of holders of not less than seventy-five percent (75%) of the Interests; provided, however, that the Management Agreement may not be amended or modified, and the Manager may not be removed by the Owners, without the prior written consent of the Lender as long as the Loan is outstanding. The Management Agreement shall be subordinate to the rights of the Lender under the Loan Documents so long as the Loan is outstanding. If the appointed Manager is unable or unwilling to serve as such, its replacement shall be appointed with the consent of holders of not less than seventy-five percent (75%) of the Interests. The Owners shall pay a management fee to the Manager pursuant to the terms of the Management Agreement.

2.3 The Owners hereby designate the Owners' Representative as specified in Section 3 as the contact for and on behalf of the Owners with respect to communications with the Manager and such designation and powers reserved to the Owners pursuant to the Management Agreement shall continue with the Owners' Representative during the term of the Management Agreement unless the Owners specify otherwise by an amendment to this Agreement. The powers and obligations granted to the Manager shall be governed by the terms and conditions of the Management Agreement. In the event of a conflict between the provisions of this Agreement and the Management Agreement, the provisions of the Management Agreement shall be controlling. The Management Agreement shall be subordinate to the rights of the Lender under the Loan Documents so long as the Loan is outstanding.

3. Owner Representative.

For purposes of this Agreement, including communications with the Manager, the Lender, and any third party for which communication is necessary and such matter has not been delegated to Cowboy Partners (with respect to the Development Agreement), or the Manager, the Owners designate LSA as the Owners' Representative. LSA shall use reasonable commercial efforts to keep all Owners informed with respect to any such communications and correspondence between LSA and the Manager, the Lender, or any applicable third party. The Owners also acknowledge that notwithstanding the designation of LSA as the representative of the Owners, Cowboy Partners serves as the sole Manager of LSA pursuant to the Operating Agreement of LSA and will carry out the duties of LSA as such Manager.

4. Leases.

Pursuant to the terms of the Management Agreement, the Manager may enter into leases of apartment units or other facilities in the Project without the consent of the Owners provided that each such lease conforms with the leasing guidelines set forth in Exhibit "A" attached to the Management Agreement and is substantially in the form of the form lease attached as Exhibit "B" to the Management Agreement.

5. Loan Liability.

If, as a result of any action taken by a lender or one or more Owners, one or more other Owners (collectively, "Paying Owner") without the application of this Section 5, would otherwise bear more than its pro rata share of liability ("Excess Liability") under any loan encumbering the Project (as compared to its respective Interest), whether due to a default under such loan or otherwise, each Owner (but not its member or members) that did not bear its pro rata share of the Excess Liability (as compared to its respective Interest) shall be liable, in proportion to its respective Interest, to the Paying Owner for the Excess Liability.

6. Additional Funds.

Except as provided herein, each Owner will be responsible for a pro rata share (based on each Owner's respective Interests) of any future cash ("Additional Cash")

needed in connection with the construction, rental, operation, management and maintenance of the Project. Each Owner agrees that in the event (a) the Developer determines that Additional Cash is needed to pay for additional construction costs not funded by Owner equity or the proceeds of the Loan or are in excess of those costs anticipated by the construction budget for the Project, (b) the Manager determines that Additional Cash is needed to pay expenses for the ownership, rental, management and maintenance of the Project that are contemplated by the budget approved in accordance with the Management Agreement (“**Budget**”), or (c) the Manager or Owners who own more than 50% of the Project determine that Additional Cash is needed to pay expenses not contemplated by the Budget, each Owner will contribute a pro rata share (based on each Owner’s respective Interests) of such Additional Cash. In addition, if any loan secured by the Project provides for recourse liability to any of the Owners and if any Owner pays more than its pro rata share of the liability related to the loan (as compared to its ownership interest except as provided below) as a result of such recourse liability (“**Excess Payment**”), each Owner, and each manager of such Owner if the Owner is a limited liability company and any guarantor of the non-recourse carve outs of such Owner under such loan agrees to reimburse the other Owners on a fully recourse basis for such Owner’s pro rata share of such Excess Payment within thirty-one (31) days of such Excess Payment; provided that no Owner shall be entitled to reimbursement for an Excess Payment if such Owner caused such recourse liability to be incurred and such Owner’s pro rata share of such recourse liability shall be 100% and all other Owner’s pro rata share of such recourse liability shall be zero.

To the extent any Owner fails to pay its share of Additional Cash within thirty-one (31) days after the Manager or Owners who own more than 50% of the Project deliver notice that Additional Cash is required, (i) the Manager or the Owner(s) may advance such funds to the nonpaying Owner(s), who shall be liable on a limited basis as provided herein to repay the paying Manager or Owner(s) the amount of any such advance, or (ii) in the alternative, the Owner(s) may advance, in such proportions as they may agree, such funds as additional equity funds from such paying Owner(s) and the Interests of the Owners shall be adjusted as specified in Section 20 of this Agreement. If alternative (i) above is elected, the Manager is hereby authorized and directed to pay itself or the Owner(s) entitled to be repaid the sum advanced (with interest thereon at the interest rate specified in the Loan) out of future cash from operations or from sale or refinancing of the Project or other distributions due the nonpaying Owner(s). If, however, payment is not made within sixty (60) days of completion of the Project, the contributing Owners may treat their loan as a contribution and the undivided Interest of the Owners shall be adjusted to take into account their respective equity contributions as specified in Section 20 below. The remedies against a nonpaying Owner provided for herein are the exclusive remedies available to the Owner arising out of the non-paying Owner’s failure to make the payments required herein. By executing this Agreement, each Owner agrees (i) that any such advance made by the Manager or the Owners will be made on a fully recourse basis subject to the remedies provided herein, and (ii) to repay such advance according to the provisions hereof, unless the remaining Owners elect to treat such advances as equity contributions as specified above.

7. Sale or Encumbrance of Project.

7.1 **Sale and Financing.** Subject to the terms of the Development Agreement which charge the Developer with the obligation to seek, negotiate and obtain the Loan on behalf of the Owners as a condition to commencing construction of the Project, after Final Completion of the Project, the Owners' Representative shall be entitled to seek and negotiate the terms of any modification or extension of the Loan, any other loan to be secured by a lien against the Project, including any refinancing, and the sale of the Project (or portions thereof) to third-party purchasers. Any such loan modification, new loan, or any sale of the Project shall be subject to unanimous approval by the Owners, which approval shall be communicated to the Owners' Representative by written response to a written request by the Owners' Representative for approval. Any such written request for loan or sale approval shall be accompanied by a summary thereof setting forth the material terms of the proposed loan or sale.

7.2 **Distribution of Loan or Sales Proceeds.** Notwithstanding any other provisions of this Agreement, proceeds of a loan (other than the Loan to develop the Project) or sale shall be distributed at the closing of the loan or the sale as follows:

(a) To the extent necessary, the proceeds shall first be used to pay in full any loans encumbering title to the entire Project, including but not limited to the Loan, if outstanding.

(b) To the extent necessary, the proceeds shall next be used to pay in full any unsecured loans advanced for the benefit of the Project.

(c) The proceeds shall next be used to pay all outstanding costs and expenses incurred in connection with the holding, marketing and sale of the Project.

(d) Any proceeds remaining shall be paid to each Owner in accordance with their respective Interests.

8. Transfer or Encumbrance.

Subject to compliance with the specific terms of this Agreement, applicable securities laws and compliance with the terms of the Loan, after completion of development of the Project, each Owner may sell, transfer, convey, pledge, encumber or hypothecate the Interests (or any part thereof). Any such transferee shall take such Interests subject to this Agreement and the transferor and transferee shall execute and cause to be recorded an assignment and assumption agreement whereby (i) transferor assigns to transferee all of his right, title and interest in and to this Agreement and the Management Agreement; and (ii) transferee assumes and agrees to perform faithfully and to be bound by all of the terms, covenants, conditions, provisions and agreements of this Agreement and the Management Agreement with respect to the Interests to be transferred. Upon execution and recordation of such assumption agreement, the transferee shall become a party to this Agreement without further action by the other Owners. Notwithstanding the foregoing, (a) the total number of Owners owning the Project at any one time shall not exceed thirty-five (35), and any transfer that would

result in there being more than thirty-five (35) Owners shall be null and void, and (b) except as otherwise provided in the Loan Documents, so long as the Loan is outstanding, no Owner may transfer its interest in the Project without the Lender's prior written consent.

9. **Right of Partition.**

The Owners agree that subject to the terms, conditions and restrictions contained herein, any Owner (and any of its successors-in-interest) shall have the right, while this Agreement remains in effect, to file a complaint or institute any proceeding at law or in equity to have the Project partitioned in accordance with and to the extent provided by applicable law. The Owners acknowledge and agree that partition of the Project may result in a forced sale by all of the Owners. To avoid the inequity of a forced sale and the potential adverse effect on the investment by the other Owners, the Owners agree that, as a condition precedent to entering into this Agreement, each of the non-partitioning Owners shall have the right to buy all of the Interest owned by the partitioning Owner pursuant to the terms set forth in Section 11 below. Notwithstanding the foregoing provisions, except as otherwise provided in the Loan Documents, so long as the Loan is outstanding, no Owner may seek to partition the Project without the Lender's prior written consent.

10. **Bankruptcy.**

The Owners agree that the following shall constitute an Event of Bankruptcy with respect to any Owner: (a) if a receiver, liquidator or trustee is appointed for any Owner; (b) if any Owner becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; (c) if any petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law shall be filed by or against, consented to, or acquiesced in by, any Owner; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Owner then, upon the same not being discharged, stayed or dismissed within thirty (30) days thereof. To avoid the inequity of a forced sale and the potential adverse effect on the investment of the other Owners, the Owners agree that, as a condition precedent to entering into this Agreement, each of the Owners not subject to an Event of Bankruptcy shall have the right to buy all of the Interest owned by the Owner subject to an Event of Bankruptcy pursuant to the terms set forth in Section 11 below.

11. **Purchase and Sale.**

Purchase Option. Upon an Owner (a) filing a complaint or instituting any proceeding at law or in equity to have the Property partitioned, (b) being subject to an Event of Bankruptcy, (c) having committed any act or omission resulting in a default under the Loan or (d) failing to consent to any action which requires the unanimous approval of the Owners or approval of 75 % of the Interests, if Owners who own 50% or more of the Project approve such action (any Owner described in (a) through (d) being hereinafter referred to as a "Defaulting Owner"), the other Owners (the "Nondefaulting

Owners) shall have the option to purchase the entire Interest owned by the Defaulting Owner by providing written notice ("**Default Call Notice**") to the Defaulting Owner and the other Nondefaulting Owners, if any. Upon receipt of the Default Call Notice, the Defaulting Owner shall be obligated to sell to the Nondefaulting Owners who have provided Default Call Notices the entire Interest in the Project owned by the Defaulting Owner for the Appraised Value of the Defaulting Owner's Interest as determined by Section 12 below. The purchasing Nondefaulting Owners shall be entitled to purchase a portion of the Defaulting Owner's Interest in proportion to their undivided interest in the Project. If any Nondefaulting Owner elects not to purchase its share of the Defaulting Owner's Interest, the other Nondefaulting Owners shall be entitled to purchase additional interests based on their undivided interest in the Project.

12. Appraised Value.

The purchaser(s) of any Interest pursuant to Section 11 above ("**Buyer**"), in their sole discretion, will select an MAI certified appraiser (the "**Qualified Appraiser**") with at least five (5) years of experience in the city or county where the Property is located to perform an MAI appraisal of the Project. The Qualified Appraiser shall not be an affiliate of the Buyer, the Manager, any affiliate of the Manager or any Owner, and will be paid by the Buyer. The Qualified Appraiser shall notify the Buyer of its determination of the fair market value of the entire Project without a discount for the tenant in common ownership arrangement ("**Appraised Value**"). The Appraised Value shall be reduced by the imputed costs of sale that ordinarily would be associated with the sale of the Project to a third party, including any broker's commission.

The selling Owners by unanimous vote shall have the right to approve or reject the Appraised Value within ten (10) days of receiving the notification of Appraised Value. If they reject the Appraised Value within ten (10) days of receiving the notification, the selling Owners shall have the right to select their own Qualified Appraiser within ten (10) days of notifying the Buyer of their rejection of the Appraised Value. The Qualified Appraiser selected by the selling Owners shall be required to satisfy the same requirements as described above and shall render its determination of Appraised Value within twenty (20) days of appointment. The average of the two appraisals shall then be deemed the Appraised Value unless there is more than a twenty percent (20%) difference between the highest and lowest Appraised Value, in which case a third Qualified Appraiser (with the qualification described above) shall be selected within ten (10) days by mutual agreement of the first two appraisers. Such Qualified Appraiser shall render its determination of Appraised Value within twenty (20) days of appointment. The average of the three appraisals shall be deemed the Appraised Value.

If the selling Owners fail to select a Qualified Appraiser within such period, the Appraised Value determined by the Qualified Appraiser selected by Buyer shall be final and binding and shall be the Appraised Value for all purposes of this Section 12.

The Buyer and the selling Owners shall each pay for one-half of the first appraisal and, if applicable, half of the third appraisal. The selling Owners, on a pro rata basis in

accordance with their ownership of the Project, shall pay, if applicable, for the second appraisal and half of the third appraisal.

If the Buyer is acquiring a portion of the Project, the purchase price shall be equal to ninety-five percent (95%) of the result obtained by determining the pro rata amount of the Appraised Value, less the reductions described above and a pro rata amount of the outstanding principal balance of the Loan, for the portion of the Project being purchased. The Appraised Value as determined above shall be final and binding on the parties.

Once the Appraised Value has been determined, the Buyer shall have up to ninety (90) days in which to purchase the Project for all cash or such other terms as may be approved by the selling Owners as described above. The purchase price will first be applied to satisfy any liens encumbering the Interest of the selling Owner (other than the Loan), with the remainder paid to the selling Owner; provided that if such purchase price is not sufficient to extinguish all liens encumbering the Interest of the selling Owner (other than the Loan); such selling Owner, and its owner if the selling Owner is a single member limited liability company, shall be responsible, on a recourse basis, for extinguishing such liens.

At the closing, each of the parties shall bear their share of all ordinary proratable items (including reserve accounts), closing costs and expenses in accordance with local real estate practice. If the Buyer does not complete the purchase of the Project for any reason other than the default of the selling Owners within the ninety (90) day period described above, that option shall lapse unless extended by mutual agreement of the parties. If the Buyer or an affiliate elects to exercise any option granted by Section 11 in the future, it shall be required to begin again the process of selecting the Qualified Appraiser to determine the Appraised Value.

13. Proportionate Sharing of Profits and Losses.

Upon Final Completion of construction of the Project, all Owners shall share in all revenues generated from the Project and all costs associated with the Project, including mortgage loan payments required by the Loan Documents, in proportion to their interest in the Project, including in connection with any sale, transfer of the Project or refinancing of any indebtedness secured by the Project. No distribution of revenues from the Project shall be made to any Owner except out of excess cash flow after payment of all sums then due to the Lender under the Loan Documents or due others for development of the Project.

14. Proportionate Sharing of Debt/Compliance with Loan Documents.

14.1 All Owners shall share in the Loan in proportion to their interest in the Project, unless otherwise specified herein. Each Owner shall execute such instruments as are reasonably requested by the Developer or the Owners' Representative in connection with the Loan; provided, that between the Owners, the Loan with respect to LMA shall be recourse only with respect to such Owner's Interest in the Project. LSA shall indemnify LMA with respect to any obligation satisfied which exceeds such Interest. All

Owners shall comply with all of the terms and conditions of the Loan Documents, including but not limited to the execution of any document, consent or modification requested by the Lender which (i) does not change any substantive terms of the Loan, or (ii) which is otherwise approved by holders of not less than fifty-one percent (51%) of the Interests.

14.2 Without limiting the generality of the foregoing, so long as the Loan is outstanding, the Owners shall cause the Project to be constructed and maintained and otherwise conduct themselves in accordance with the Loan Documents. Without limitation of the foregoing, insofar as the Loan Documents require an Owner to be a so-called special purpose bankruptcy remote entity (an "SPE"), each Owner covenants and agrees at all times to maintain its status as such in accordance with the SPE requirements of the Loan Documents. In addition, the Interests of each Owner in the Project and the membership interests in any Owner may not be transferred or encumbered except in compliance with the Loan Documents. So long as the Deed of Trust constitutes a lien against the Property, no Owner shall exercise against any other Owner or the Interest of any other Owner any right, remedy, or indemnity such Owner may have pursuant to this Agreement, at law, equity, or otherwise. In addition, this Agreement and all rights, remedies, and indemnities of each Owner against any other Owner or in the Interests of any Owner pursuant to this Agreement, at law, in equity, or otherwise, are hereby made expressly subordinate and inferior to the Loan and the lien of the Deed of Trust.

15. Other Decisions.

All decisions affecting the Project, or its operation not specifically addressed in this Agreement shall be subject to the approval by holders of not less than fifty-one percent (51%) of the Interests.

16. Term of Agreement.

This Agreement shall continue for a period of twenty-five (25) years after the date hereof, or until such earlier times as the Owners shall sell their interests in the Project.

17. Absence of Partnership and Business Activities.

This Agreement creates a contractual relationship between the Owners as tenants-in-common with respect to the Project. The Owners (other than any trade name associated with the operation of the Project) shall not conduct business in a common name, or otherwise hold themselves out as a partnership. This Agreement does not create, nor shall it be interpreted as creating a partnership, joint venture or similar relationship among the Owners. The Owners shall not file a partnership tax return with respect to their co-ownership of the Project.

18. Covenants Run With Land.

This Agreement and all of the covenants, provisions and requirements of this Agreement are intended to be and shall constitute covenants running with the land and shall be binding upon and shall inure to the benefit of each Owner, any other party who

acquires or comes to have any interest in the Project, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors and assigns. By acquiring, in any way coming to have an interest in, or occupying an interest in the Project, the party so acquiring, coming to have such interest or occupying, consents to, and agrees to be bound by, each and every provision of this Agreement. The provisions of this Section 18 shall not be deemed to modify any prohibitions against or limitations upon assignment or transfer set forth elsewhere in this Agreement.

19. Loan Document Requirements.

Each Owner acknowledges that the documents related to the Loan prohibit their rights to partition and certain other requirements. Accordingly, the following are additional covenants of each Owner hereunder, applicable during the term of the Loan: (i) no partition actions shall be filed against the Project by any Owner during the term of the Loan, (ii) each Owner irrevocably waives its right of partition with respect to the Project during the term of the Loan, (iii) each Owner irrevocably waives the ability to exercise any lien rights against the Project during the term of the Loan, and (iv) the Lender, together with its successors and assigns, is an express third party beneficiary of this Agreement so long as the Loan is outstanding.

20. Adjustment of Interests.

Until completion of construction and development of the Project, the Owners' respective Interests in the Project are subject to adjustment as specified herein. Under the terms and conditions of the Loan, the Owners are first required to expend their respective equity investment funds for the construction and development of the Project. As the total amount of equity may be modified during construction and development of the Project, it may be necessary to adjust the respective Interests in the Project based upon the amount of contributions of equity contributed during construction. Consequently, and notwithstanding the allocation of Interests in any deed which initially or subsequently conveys Interests to the Owners, at the each of each monthly period during construction of the Project, the undivided Interest of each Owner, including LSA and LOM, in and to the Project shall be adjusted as required and shall be equal to a fraction, expressed as a percentage, where the numerator is that portion of the equity contributed for the purchase of the Property and the construction and development of the Project (without taking into account any portion of the Loan which has been advance), and the denominator of which is the aggregate amount of all equity funds expended by all Owners (including LSA and LOM) for acquisition of the Property and the construction of the Project as of such applicable date. For purposes of the foregoing computations, any portion of the Loan proceeds advanced for construction shall be disregarded when determining the respective Interests of the Owners. (As an example of the foregoing computation, in the event that Owner A purchased an interest in the Project by paying \$1,000,000 for an undivided interest in the Property, and as of the end of the twenty-fourth measuring month, the total amount of equity funds (not including loan proceeds) expended by all Owners to purchase the Property and to funding of construction is equal to \$47,000,000, Owner A's Interest shall be equal to \$1,000,000 divided by \$47,000,000 or 2.128%.) In the event that the Interest of the Owners as determined herein above differs from the Interest shown

on any deed or other instrument of record in the records of the Salt Lake County Recorder, each of the Owners consents and agrees to execute and deliver such deeds or other instruments in such form as shall correct the respective Interests as determined herein above.

21. **Miscellaneous.**

(a) This Agreement represents the entire agreement between the parties hereto concerning the Project, its development and operations, and supersedes all prior oral and written arrangements and agreements. This Agreement may not be modified or amended, except by further written instrument or by an amendment to this Agreement signed by all of the parties hereto and, so long as the Loan is outstanding, the written consent of the Lender.

(b) This Agreement shall be governed by and be construed in accordance with the laws of the State of Utah.

(c) This Agreement may be executed in two or more counterparts, which when taken together shall constitute one and the same instrument.

(d) If any legal action or arbitration or other proceedings are brought for the enforcement of this Agreement, or because of an alleged dispute or default in connection with any of the provisions of this Agreement, the successful and prevailing party or parties shall be entitled to recover reasonable attorneys' fees, expert witness fees, appraisal costs and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

(e) Each of the parties covenant and agree that it shall execute, acknowledge and deliver all further deeds, assignments, consents, transfers and other instruments which are reasonably required to protect and permit the enjoyment of the rights, benefits and interests pursuant to the terms of this Agreement and to appropriately carry out and perform the transactions contemplated thereby. Any Owner may cause to be recorded this Agreement or a notice of interest with the appropriate recorder's office so that notice of this Agreement is given.

(f) This Agreement shall be binding upon and inure to the benefit of the successors, assigns and heirs of the parties hereto.

(g) No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and (a) signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought and (b) if required, is consented to the Lender so long as the Loan is outstanding.

(h) Any notice to be given or other document or payment to be delivered by any party to any other party hereunder may be delivered in person, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery

service, or by facsimile transmission and addressed or sent to the Owner at the addresses or facsimile number set forth under its name on the signature page hereof. Any party hereto pay from time to time, by written notice to be others, designate a different address which shall be substituted for the one above specified. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given and received (a) upon personal delivery, (b) as of the date sent by facsimile (if sent prior to 5:00 p.m. eastern time and if receipt has been acknowledged by the receiving machine), or (c) as of the third business day after mailing by United States registered or certified mail, return receipt requested, posted prepaid, addressed as set froth above, or (d) the immediately succeeding business day after deposit with Federal Express or other similar overnight delivery system.

(i) No act of any Owner shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Owner affected. Any Owner hereto may specifically waive any breach of this Agreement or by any other Owner, but no such waiver shall constitute a continuing waiver of similar or other breaches.

(j) If any portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

(k) THE UNDIVIDED INTERESTS IN THE PROJECT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, OR BY THE SECURITIES REGULATORY AUTHORITY OF ANY STATE, NOR HAS ANY COMMISSION OR AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THE OFFERING OR THE ACCURACY OR ADEQUACY OF ANY DISCLOSURE MADE IN CONNECTION THEREWITH. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THE INTERESTS MAY NOT BE RESOLD WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED AND APPLICABLE STATE SECURITIES LAWS OR EXEMPTION THEREFROM.

(l) Time is of the essence of each and every provision of this Agreement.

(m) Each of the Owners hereby agree that all of the provisions of this Agreement shall be subject to, and subordinate to, the terms and conditions of the Loan for so long as the Loan is outstanding.

[Remainder of page intentionally left blank.]

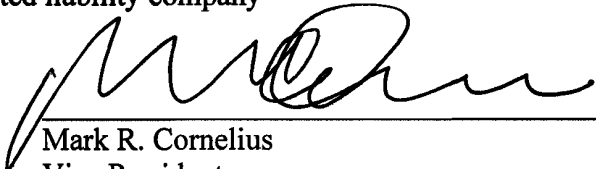
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

LSA:

LIBERTY SKY ASSOCIATES, LLC, a Utah limited liability company

By its Manager, Cowboy Partners, L.C., a Utah limited liability company


By:


Mark R. Cornelius
Vice President

STATE OF UTAH)
 : ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me by Mark R. Cornelius, as the Vice President of Cowboy Partners, L.C., a Utah limited liability company, the Manager of LIBERTY SKY ASSOCIATES, LLC, a Utah limited liability company, this 19 day of August, 2019.

In witness whereof, I hereunto set my hand and official seal.


Notary Public

My Commission Expires:



EXHIBIT "A"

(Legal Description)

Condominium units located in Salt Lake County, State of Utah, more particularly described as follows, to wit:

PARCEL 1:

The Residential Unit and the Residential Parking Unit, contained within the Block 71 Condominiums as the same are identified in the Condominium Plat recorded in the office of the Recorder of Salt Lake County, Utah, on August 9, 2019 as Entry No. 13048893 in Book 2019P of Plats, at Page 221 (as said Condominium Plat shall have heretofore been amended or supplemented) and in the Declaration of Condominium for Block 71 Condominiums, recorded in Salt Lake County, Utah on August 9, 2019 as Entry No. 13048894, in Book 10814 at Page 6330 (as said Declaration may have heretofore been amended or supplemented).

TOGETHER WITH the undivided ownership interest in said Project's Common Elements that is appurtenant to said Units as more particularly described in said Declaration.

PARCEL 1A:

The non-exclusive easements for vehicular and pedestrian access, ingress and egress, and for utilities, appurtenant to Parcel 1 described herein, as provided for in that certain Reciprocal Easements Agreement recorded in the official records of the Salt Lake County Recorder on June 4, 2014, as Entry No. 11860095, in Book 10235, at Page 7647, as amended by that certain Amendment to Reciprocal Easements Agreement dated December 6, 2017 and recorded in the official records of the Salt Lake County Recorder on December 12, 2017 as Entry No. 12677786 in Book 10628 at Page 8361.

PARCEL 1B:

The non-exclusive easements, appurtenant to Parcel 1 described herein, as provided for in that certain Access Agreement dated August 7, 2019 and recorded in the official records of the Salt Lake County Recorder on August 9, 2019 as Entry No. 13048898, in Book 10814 at Page 6428.

Tax ID Nos. 16-06-107-040 and 16-06-107-041