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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
08/23/2017 09:50 AM
FEE \$84.00 Pas: 10
DEP RTT REC'D FOR NAYON HEIGHTS CO
NDOMINIUM HOA

When Recorded Return To:
VIAL FOTHERINGHAM, LLP
515 South 400 East #200
Salt Lake City, Utah 84111

**FOURTH AMENDMENT TO
DECLARATION OF CONDOMINIUM
OF NAYON HEIGHTS CONDOMINIUM**

This Fourth Amendment to the Declaration of Condominium of Nayon Heights Condominium (hereinafter "Fourth Amendment") hereby amends that certain Declaration of Condominium of Nayon Heights Condominium, recorded in the Davis County Recorder's Office on June 15, 1973, as Entry No. 381846, as amended ("Declaration"), and is hereby adopted by the Board of Directors for Nayon Heights Condominium Association ("Association"), for and on behalf of its members, and made effective as of the date recorded in the Davis County Recorder's Office.

RECITALS:

- A. This Fourth Amendment affects and concerns real property located in Davis County, Utah, and more particularly described on **Exhibit "A"** attached hereto ("Property").
- B. On or about June 15, 1973, a Declaration of Condominium of Nayon Heights Condominium was recorded in the Davis County Recorder's Office as Entry No. 381846.
- C. On or about December 31, 1975, an Amended Plat Map of Nayon Heights Condominium depicting the project was recorded in the Davis County Recorder's Office as Entry No. 425565
- D. On or about October 21, 1992, an Amendment to Declaration of Condominium of Nayon Heights Condominium and to the Bylaws attached thereto was recorded in the Davis County Recorder's Office as Entry No. 997830 (hereinafter the "First Declaration").
- E. On or about November 21, 2014, a Second Amendment to the Declaration of Condominium of Nayon Heights Condominium was recorded in the Davis County Recorder's Office as Entry No. 2835293 (hereinafter "Second Amendment").
- F. On or about October 4, 2016, a Third Amendment to the Declaration of Condominium of Nayon Heights Condominium was recorded in the Davis County Recorder's Office as Entry No. 2971299 (hereinafter "Third Amendment").

CERTIFICATION

As evidenced by this instrument, the Association has obtained the approval or written consent of Owners of Units holding at least sixty-seven percent (67%) of the undivided interest in the Common Areas as required by Article 12 of the Declaration approving and consenting to the recording of this Fourth Amendment.

_____ and _____, of the Board, hereby certify and swear that the above requisite approval was obtained accepting and approving of the recording of this Fourth Amendment.

Board Member

Board Member

NOW, THEREFORE, pursuant to the foregoing, the Board of Directors of the Association hereby makes and executes this Fourth Amendment to the Declaration, which shall be effective as of its recording date.

COVENANTS, CONDITIONS AND RESTRICTIONS

1. Recitals. The above Recitals are incorporated herein by reference and made a part hereof.
2. No Other Changes. Except as otherwise expressly provided in this Fourth Amendment, the Declaration, as amended, remain in full force and effect.
3. Authorization. The individuals signing for the respective entities make the following representations: (i) he/she has read the Fourth Amendment, (ii) he/she has authority to act for the entity designated below, and (iii) he/she shall execute the Fourth Amendment acting in said capacity.
4. Conflicts. In the case of any conflict between the provisions of this Fourth Amendment and the provisions of the Declaration or any prior amendments, the provisions of this Fourth Amendment shall in all respects govern and control. In the case of any existing provision with the Declaration, or prior amendments that could be interpreted as prohibiting the modifications set forth in this Fourth Amendment, such provision is hereby modified in order to accomplish the purpose and intent of this Fourth Amendment.

AMENDMENTS

5. Section 22 of the Second Amendment is hereby deleted in its entirety and replaced with the following:

22. Leases. Notwithstanding anything to the contrary contained in the Declaration, the leasing or renting of any Unit within the project shall be governed by this section.

22.01 Definition of "Lease" and "Rent". As used in this Fourth Amendment, the terms "Lease" or "Rent" shall mean allowing another the right to occupy the Unit, whether or not there has been an exchange for something of value.

22.02 Restrictions on Rentals and Leases. A Unit eligible to be rented is subject to the following restrictions:

(a) No Unit may be rented if the rental or lease results in more than thirty-eight percent (38%) of the Units ("Rental-Lease Limit"), or twenty-one (21) Units, being rented or leased at the same time (including Grandfathered Units).

(b) No Unit may be rented or leased for a period of less than twelve (12) consecutive months, and an Owner may not rent or lease less than the entire Unit.

(c) The Board of Trustee may adopt policies and procedures to track the number of Units rented within the Property. Notwithstanding, the Second Amendment is hereby amended to confirm that an eligible Unit does need to receive the consent of the Management Committee to rent or lease an eligible Unit.

22.03 Owner Occupancy and Rental-Lease Limit Exceptions.

(a) Immediate Family Exception. Occupancy by the immediate family members of an Owner is not be counted as a rental or lease. As used in this section 22, "immediate family members" means an Owner's spouse, child, parent, or sibling.

(b) Grandfather Exception. As of the date of recording this amendment, any Owner currently renting or leasing a Unit ("Grandfathered Owner") may continue to rent or lease their Unit until such time as the Grandfathered Owner no longer has an interest in the Unit, or when the Grandfathered Owner occupies the Unit. The successor in interest to the Unit has no rights under this section and is subject to the restrictions contained herein. This Grandfather Exception applies to each and every provision within this Fourth Amendment.

(c) Military Deployment Exception. An Owner of a Unit who is deployed with the military. Military personnel, not deployed, are otherwise subject to the requirements and restrictions this Fourth Amendment.

(d) Employment Relocation Exception. An Owner of a Unit whose employer has relocated the Owner for no less than two (2) years.

(e) Trust or Entity for Estate Planning Exception. If the trust or estate planning entity was created for (a) the estate of a current resident of the Unit; or (b) the parent, child or sibling of a current resident of the Unit, the entity or trust will be allowed

to continue renting until an officer, owner, member, trustee, beneficiary, director or other person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Lot, occupies the Unit.

(f) Hardship Exception. If an Owner's application to lease their Unit is denied by the Management Committee, to avoid undue hardships or practical difficulties such as the Owner's death, job relocation, charitable service, extended vacation, disability, or difficult in selling the Unit due to market conditions in the area or other similar circumstances, the Management Committee has discretion to approve an Owner's hardship application to temporarily rent or lease the Owner's Unit. However, the Management Committee may not approve a hardship application to rent or lease a Unit under this section for a time period of more than two (2) years.

22.04 Multiple Lot Ownership. An Owner is not eligible to rent or lease more than one (1) Unit until the pending applications of: (1) All Owners who are not currently renting or leasing a Unit have been approved; and (2) All Owners who are currently renting or leasing fewer Units than the application have been approved.

22.05 No Security Deposit Required. An Owner of a Unit that is being leased is not required to pay a security deposit to the Association.

22.06 Application and Approval. Prior to renting or leasing any Unit, an Owner shall apply to the Management Committee in order to determine whether the rental or lease will exceed the Rental-Lease Limit or violate any other restriction in this Fourth Amendment. Notwithstanding, the Management Committee shall not make any inquiry into the approval or denial of a specific tenant outside of the requirements in this Fourth Amendment.

22.07 Rules and Regulations Regarding the Application and Approval to Rent or Lease a Unit. The Management Committee shall adopt by resolution Rules and Regulations that establish the application and approval process, a waiting list, the contents or exact form of lease agreements, and any other Rules deemed necessary by the Management Committee to implement this Fourth Amendment.

22.08 Remedies.

(a) If an Owner rents or leases a Unit in violation of this Fourth Amendment, or violates other Rules and Regulations imposed by the Management Committee, including leasing a Unit after the Management Committee denies such application, the Management Committee may:

- i. Assess fines against the Owner and Owner's Unit in an amount to be determined by the Management Committee pursuant to a schedule of fines adopted by the Management Committee in accordance with Utah Condominium Ownership Act.

- ii. Regardless of whether any fines have been imposed, proceed with any other available legal remedy, including, without limitation, an action to require the Owner to terminate the rental or lease agreement and remove the tenant.

(b) Pursuant to Rules adopted under this section, if the Management Committee determines that a tenant has violated a provision of the Declaration, Bylaws, any amendments thereto, or Rules and Regulations, after notice and an opportunity for a hearing as provided in Utah Condominium Ownership Act, the Management Committee may require an Owner to terminate a lease or rental agreement.

22.09 Costs and Attorney Fees.

(a) Fines, charges, and expenses incurred in enforcing the Declaration, amendments thereto, the Bylaws and any Rules and Regulations with respect to the tenant, and for any costs incurred by the Association in connection with any enforcement effort or action, including reasonable attorney fees, are assessments against the Owner and Unit which may be collected and foreclosed by the Association as provided in the Declaration and pursuant to Utah Condominium Ownership Act.

(b) The Association is entitled to recover from an Owner that violates the Declaration, as amended, its costs and attorney fees incurred for enforcement, regardless of whether any lawsuit or other action is commenced. The Association may assess the costs and attorney fees against the Owner and the Unit as an assessment as provided in the Declaration and pursuant to the Utah Condominium Ownership Act.

22.10 Utah Landlord-Tenant Code Not Applicable. Nothing in this Fourth Amendment may be construed to impose on the Association the duties, responsibilities, or liabilities of a landlord under Utah Code.

In addition, any qualifying Unit, or exempted Unit pursuant to Article 4.04(b), must comply with the following restrictions:

(ii) A copy of any lease or other agreement for non-owner occupancy shall be delivered to the Association at least ten (10) days prior to occupation of the Unit by the non-owner occupant.

(iv) The Owner(s) of a Unit shall be responsible for the occupant's or any guest's compliance with the Governing Documents. In addition to any other remedy for noncompliance with this Declaration, the Association, following notice to the Owner, shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending non-owner occupant. The Association, the Board of Directors, and the Manager shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the

defense costs of the Association, the Board of Directors, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph. For purposes of this subparagraph, each Owner in accepting the deed to a Unit expressly consents to such authority and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments and pursue any and all remedies available to remove the offending Non-Owner occupant.

(c) Permitted Rules. The Board of Directors may adopt Rules requiring:

- (i) Reporting and procedural requirement related to non-owner occupied Units and the occupants of those Units, including requiring informational forms to be filled out by Owners and/or residents identifying non-owner occupants, vehicles, phone numbers, etc.; and
- (ii) Other reasonable administrative provisions consistent with, and as it deems appropriate to enforce, the requirements of this Declaration.

Comment [BW1]: Brad, just a couple other provisions to consider.

(d) Tenant Selection. It shall be landlord's sole responsible to properly screen tenants, which shall include, at a minimum, the below listed categories. The landlord shall attest to the Board that the following criteria were completed by landlord prior to commencement of any lease.

- Occupancy. No Owner shall occupy or lease his Unit to more than four (4) unrelated individuals in a two (2) bedroom Unit or as allowed by _____ City Zoning Code.
- False Information. Provides false information to the landlord on the Application or otherwise.
- Convictions. Have been convicted of multiple (more than one) drug or alcohol related crimes in the past four years. (Landlord may deny rental at their discretion for a single conviction); any crime related property damage, prostitution, violence of any kind, assault, or crimes that involve weaponry of any kind in the past four years.
- Sex Offender Registry. Appear on the sex offender registry and it is within four years of the date of conviction. Landlords leasing to a sex offender(s) whose conviction is over 4 years old must comply with UCA 77-27-21.7 related to "Protected Areas."
- Controlled Substance. Have been convicted of distribution of a controlled substance within the past four years.
- Probation and / or Parole. Are on court or Board of Pardons-ordered probation or parole for one of the disqualifying offenses listed above.

Comment [BW2]: Brad, this is a provision that some communities like. It should not violate FHA requirements. However, I can't guarantee that they like it.

NAYON HEIGHTS CONDOMINIUM ASSOCIATION

By:

By: _____
Its: Board Member

STATE OF UTAH)
 : SS
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, _____, who by me being duly sworn, did say that he/she is a Board Member of Nayon Heights Condominium Association.

Notary Public

NAYON HEIGHTS CONDOMINIUM ASSOCIATION

By:

Viki Bowman

By: VIKI Bowman

Its: Board Member

STATE OF UTAH)

: SS

COUNTY OF)

The foregoing instrument was acknowledged before me this 7th day of April, 2017, Viki Bowman who by me being duly sworn, did say that he/she is a Board Member of Nayon Heights Condominium Association.

Marsha Weller
Notary Public

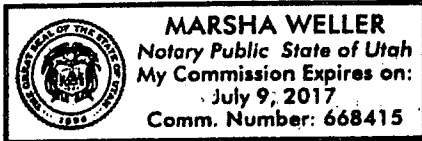


EXHIBIT "A"

Legal Description
of Units at
Nayon Heights Condominiums

All Units and common area in the Nayon Heights Condominiums, Davis County, Utah.

Parcel ID Numbers 100120001 through 100120057

Beginning at a point South 89-30'40" West 621.88 feet and North 0-27'15" West 27.43 feet from the Southeast corner of the Southwest Quarter of Section 15, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. survey, and running thence North 0-27'15" West 600.43 feet; thence West 219.85 feet; thence South 0-17' East 137.42" feet; thence West 171.15 feet; thence South 0-24' East 462.43 feet; thence South 89-55' East 391.85 feet to the point of beginning, containing 4.85 acres .
EXCEPTING THEREFROM, Nayon Street therein, which is a public street.