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ANDREA ALLEN  
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RECORDED FOR BARNHILL, BRIAN R

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## **AMENDED AND RESTATED JOINT USE AND CROSS EASEMENT AGREEMENT**

This **AMENDED AND RESTATED JOINT USE AND CROSS EASEMENT AGREEMENT ("Agreement")** is entered into by and between Mount Timpanogos Village Condominium Association Corporation (f/k/a Mira Vista Condominium Owners Association or Mira Vista Owners Association d/b/a Mt. Timpanogos Village) (the "**Condo Association**"), Mira Vista P.U.D., Inc. (the "**PUD Association**"), and Mira Vista IV Condominiums Owners Association and Four Amigos Development, LLC (collectively "**MVIV Association**") for good and valuable consideration, receipt of which is hereby acknowledged. The Condo Association, the PUD Association, and the MVIV Association may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

### **RECITALS**

- A. The Condo Association is a Utah condominium association, which governs the Mira Vista Condominiums Phases I, II, and III (as amended) project located in American Fork, Utah (the "**Condo Project**"), subject to the Amended and Restated Declaration of Condominium for Mount Timpanogos Village Condominiums (formerly known as Mira Vista Condominiums) recorded with the Utah County Recorder on October 23, 2019, as Entry Number 109304:2019, as may be amended from time to time (the "**Condo Declaration**").
- B. The PUD Association is a Utah homeowner's association, which governs the Mira Vista townhomes planned unit development located in American Fork, Utah (the "**PUD Project**"), subject to the Amended and Restated Declaration of Easements, Covenants, Conditions, and Restrictions of Mira Vista P.U.D., recorded with the Utah County Recorder on May 2, 2019 as Entry Number 38415:2019, as may be amended from time to time (the "**PUD Declaration**").
- C. The MVIV Association is a Utah Condominium association, which governs the Mira Vista condominium development located in American Fork, Utah (the "**MVIV Project**"), subject to the Declaration of Easements, Covenants, Conditions, and Restrictions of Mira Vista IV, recorded with the Utah County Recorder on March 4, 2021 as Entry Number 41255:2021, may be amended from time to time (the "**MVIV Declaration**").

- D. The MVIV Project is currently owned by and will be developed by Four Amigos Development, LLC.
- E. The Condo Project, the PUD Project, and the MVIV Project are adjacent to each other.
- F. The Condo Association and the PUD Association entered into the Joint Use and Cross Easement Agreement recorded with the Utah Country Recorder on May 2, 2019 as Entry Number 3841:2019 (the "Original Joint Use Agreement").
- G. The Original Joint Use Agreement stated that it may be amended to incorporate a third association or development which may have access to the areas and amenities identified in the Original Joint Use Agreement on condition that such third association participate in paying its pro-rata share of the expenses for the easement areas subject to the Original Joint Use Agreement.
- H. The MVIV Association is and was the third association contemplated under the Original Joint Use Agreement.
- I. The Condo Association desires to grant the owners and residents of the PUD Association and the MVIV Association the right to access and use certain common areas and amenities within the Condo Project.
- J. The PUD Association desires to grant the owners and residents of the Condo Association and the MVIV Association the right to access and use certain common areas within the PUD Project.
- K. The Parties desire to further define the rights and obligations of the Parties, and to establish an agreement for the maintenance and upkeep of the easement areas subject to this Agreement, including any improvements installed thereon in accordance with this Agreement and the Condo Declaration, the PUD Declaration, and the MVIV Declaration.
- L. This Agreement affects the real property located in Utah County, State of Utah, described with particularity on Exhibit A, which exhibit is attached hereto and incorporated herein by reference.
- M. This Agreement shall amend and restate the Original Joint Use Agreement and the Parties shall be bound solely by this Agreement.

## **AGREEMENT**

In consideration of the foregoing recitals and the mutual covenants of the Parties contained in this Agreement, the receipt and adequacy of which are hereby acknowledged, the Parties agree and are bound as follows:

1. Definitions. In addition to those terms defined elsewhere within this Agreement, as used in this Agreement, each of the following terms shall have the indicated meaning:

- (a) **"Condo Board"** means the Condominium Association's governing body.
- (b) **"Condo Benefited Parties"** means any Owner or Occupant of a Condominium Unit at any time (including their guests and invitees).
- (c) **"Condo Project Amenities"** means collectively the indoor swimming pool/spa, fitness or exercise room, library, kitchen, arts and crafts room, beauty room, and the great room or "Falls" room located in the Condo Project.
- (d) **"Condo Project Easement"** means the easement granted to the PUD Benefited Parties and to the MVIV Benefited Parties as to the Condo Project and described in Section 2(a) of this Agreement.
- (e) **"Condominium Unit"** means a private condominium dwelling unit located within the Condo Project.
- (f) **"Dispute Resolution Procedure"** means the procedure for resolving disputes between the Parties related to this Agreement set forth in Section 14 of this Agreement.
- (g) **"Easement Areas"** means collectively, the areas within the Condo Project that are subject to the Condo Project Easement (including the Condo Project Amenities) and the areas within the PUD Project that are subject to the PUD Easement.
- (h) **"MVIV Board"** means the MVIV Association's governing body.
- (i) **"MVIV Benefited Parties"** means any Owner or Occupant of a MVIV Unit at any time (including their guests, and invitees).
- (j) **"MVIV Unit"** means a private condominium dwelling unit located within the MVIV Project for which a certificate of occupancy has been issued.
- (k) **"Occupant"** means any person that at the time concerned, as a family member of an Owner, pursuant to a lease, a rental agreement, a license or any other instrument, agreement contract, document, understanding or arrangement, is entitled to or does occupy, possess, or use any Condominium Unit, PUD Lot, or MVIV Unit.

- (l) **"Owner"** means the person(s) that at the time concerned is the legal owner of record (in the official records) of a whole or undivided fee interest in any portion of a Condominium Unit, PUD Lot, or MVIV Unit.
- (m) **"PUD Board"** means the PUD Association's governing body.
- (n) **"PUD Project Easement"** means the easement granted to the Condo Benefited Parties and to the MVIV Benefited Parties as to the PUD Project and described in Section 2(b) of this Agreement.
- (o) **"PUD Benefited Parties"** means any Owner or Occupant of a PUD Lot at any time (including their guests, and invitees).
- (p) **"PUD Lot"** means a private lot within the PUD Project.

2. **Grants of Easements.** The Condo Association and the PUD Association hereby create, grant, and convey the following respective non-exclusive easements:

- (a) **Condo Project Easement.** Subject to the terms of this Agreement, the PUD Benefited Parties and the MVIV Benefited Parties shall have a perpetual, non-exclusive easement, right, and license over and across and for the use and enjoyment of the Condo Project Amenities (defined above) and the following Condo Project's Common Areas (identified in the Condo Declaration and by the Condo Project's plat): the private roadways, walkways, and visitor parking areas for the purposes temporary parking, and pedestrian and vehicular access. This easement shall not include, however, Limited Common Areas in the Condo Project that are designated for the exclusive use of a Condominium Unit Owner, Common Area components of the Condominium building or the Condominium Units, parking areas, and any hallway that provides access to a Condo Unit.
- (b) **PUD Project Easement.** Subject to the terms of this Agreement, the Condo Benefited Parties and the MVIV Benefited Parties shall have a perpetual, non-exclusive easement, right, and license over and across and for the use and enjoyment of the PUD Project's Common Areas, including the private roadways, walkways, visitor parking areas, RV parking area, open space, park, and other common area recreational amenities (as defined in the PUD Declaration and by the PUD Project's plat) for the purposes temporary parking, and pedestrian and vehicular access. This easement shall not include, however, Limited Common Areas in the PUD Project that are designated for the exclusive use of a

particular PUD Lot Owner or Common Area components of any structure in the PUD Project.

3. **Easement Areas Rules.** The Parties may adopt, apply, and enforce rules governing the Easement Areas as follows:

(a) **Condo Project Easement.**

- (1) **Rules.** So long as such rules do not unreasonably interfere with the rights granted to the PUD Benefited Parties and the MVIV Benefited Parties by the Condo Project Easement and do not conflict with any provision or term of this Agreement, the Condo Association (a) may enforce rules the Condo Association has adopted prior to the Effective Date of this Agreement related to the areas of the Condo Project that are subject to the Condo Project Easement, including the Condo Project Amenities, and (b) may adopt rules after the Effective Date of this Agreement to govern the Condo Project Easement and those areas of the Condo Project subject to the Condo Project Easement, including the Condo Project Amenities (collectively "**Condo Project Easement Rules**"). All Condo Project Easement Rules shall apply to the PUD Benefited Parties, the MVIV Benefited Parties, and all members of the Condo Association and shall be consistently enforced.
- (2) **Rule Violations.** The Joint Commons Committee (as defined herein) and/or the Condo Association may use any lawful enforcement mechanism (including, but not limited to, fines, restrictions or prohibitions on access or use, and pursuing claim for damages caused to the Condo Project) to enforce any Condo Project Easement Rule against the PUD Benefited Parties, the MVIV Benefited Parties, and the members of the Condo Association (a "**Condo Project Easement Rule Violation Penalty**"). Any Condo Project Easement Rule Violation Penalty shall apply to members of the Condo Association, the PUD Benefited Parties, and the MVIV Benefited Parties and shall be consistently applied. As further set forth in subsections 3(a)(4)-(5) of this Agreement, the PUD Association and the MVIV Association shall cooperate with the Joint Commons Committee and the Condo Association to the extent necessary to impose and collect any such fine imposed against a PUD Benefited Party or a MVIV Benefited Party or violation of a Condo Project Easement Rule.
- (3) **Consent to Be Bound by Rules and Subject to Enforcement.** Each PUD Benefited Party's and MVIV Benefited Party's use of the Condo Project Easement shall constitute consent by that

person to (a) be subject to and abide by all Condo Project Easement Rules, and (b) be subject to and abide by any Condo Project Easement Rule Violation Penalty.

**(4) Enforcement.**

- (i) The Joint Commons Committee shall have the authority to enforce all Condo Project Easement Rules and to impose Condo Project Easement Rule Violation Penalties against all Owners. The Condo Board grants this enforcement power to the Joint Commons Committee as its managing agent in accordance with Utah Code § 57-8-37(6). All enforcement costs incurred shall be considered a shared Easement Cost. Any funds recovered from a violating Owner shall first be used to repair property damage caused by the violation (if any), and the remaining funds shall be used to offset the Shared Easement Costs. If an action is filed pursuant to an alleged violation of a Condo Project Easement Rule, then the prevailing party in such action shall be entitled to recover its attorney fees and costs and all other expenses reasonably incurred in connection therewith, in addition to all other amounts provided by law.**
- (ii) If the Joint Commons Committee has not been formed, or if the Joint Commons Committee decides not to take any enforcement action, then the Condo Board shall have the authority to enforce any Condo Project Rule and to impose (with the cooperation of the PUD Board and/or the MVIV Board where necessary) any Condo Project Easement Rule Violation Penalty. The Condo Board may elect to provide notice to the PUD Board or the MVIV Board (as appropriate) of a violation of a Condo Project Easement Rule by a PUD Benefited Party or a MVIV Benefited Party and request that the PUD Board or the MVIV Board (as appropriate) take action to fine or otherwise take action to enforce a Condo Project Easement Rule Violation Penalty. If the Condo Board requests that the PUD Board fine a PUD Benefited Party, then the PUD Association will be entitled to retain any funds recovered from the PUD Benefited Party for the fine unless the recovered funds are necessary to repair property damage caused by the PUD Benefited Party to the Condo Project or the Condo Association was previously compensated for such property damage. If the Condo Board requests that the MVIV Board fine a MVIV Benefited Party, then the MVIV Association will be entitled to retain any funds recovered from the MVIV Benefited Party for the fine unless the recovered funds are necessary to repair property damage caused by the MVIV Benefited Party**

to the Condo Project or the Condo Association was previously compensated for such property damage. If the Condo Association files an action against a PUD Benefited Party or a MVIV Benefited Party, then the prevailing party in such action shall be entitled to recover its attorney fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, in addition to all other amounts provided by law.

- (5) Inclusion of Condo Project Easement Rules in PUD Association's Governing Documents and in MVIV Association's Governing Documents. The PUD Association agrees to include in its governing documents that the PUD Benefited Parties shall be subject to and bound by the Condo Project Easement Rules. The MVIV Association agrees to include in its governing documents that the MVIV Benefited Parties shall be subject to and bound by the Condo Project Easement Rules. The PUD Association and the MVIV Association further agree to include in their respective fine policies such fine amounts reasonably calculated to deter PUD Benefited Parties and MVIV Benefited Parties, as appropriate, from violating the Condo Project Easement Rules, which fines may be levied against a PUD Benefited Party or a MVIV Benefited Party for violating the Condo Project Easement Rules.
- (b) PUD Project Easement.
- (1) Rules. So long as such rules do not unreasonably interfere with the rights granted to the Condo Benefited Parties and the MVIV Benefited Parties by the PUD Project Easement and do not conflict with any provision or term of this Agreement, the PUD Association (a) may enforce rules the PUD Association has adopted prior to the Effective Date of this Agreement related to the areas of the PUD Project that are subject to the PUD Project Easement, and (b) may adopt rules after the Effective Date of this Agreement to govern the PUD Project Easement and those areas of the PUD Project subject to the PUD Project Easement (collectively "**PUD Project Easement Rules**"). All PUD Project Easement Rules shall apply to the Condo Benefited Parties, the MVIV Benefited Parties, and all members of the PUD Association and shall be consistently enforced.
- (2) Rule Violations. The Joint Commons Committee and/or the PUD Association may use any lawful enforcement mechanism (including, but not limited to, fines, restrictions or prohibitions on access or use, and pursuing claim for damages caused to the PUD Project) to enforce any PUD Project Easement Rule against the Condo Benefited Parties, the MVIV Benefited Parties, and the members of

the PUD Association (a "**PUD Project Easement Rule Violation Penalty**"). Any PUD Project Easement Rule Violation Penalty shall apply to members of the PUD Association, the Condo Benefited Parties, and the MVIV Benefited Parties and shall be consistently applied. As further set forth in subsections 3(b)(4)-(5) of this Agreement, the Condo Association and the MVIV Association shall cooperate with the Joint Commons Committee and the PUD Association to the extent necessary to impose and collect any such fine imposed against a Condo Benefited Party or a MVIV Benefited Party for violation of a PUD Project Easement Rule.

- (3) **Consent to Be Bound by Rules and Subject to Enforcement.** Each Condo Benefited Party's and MVIV Benefited Party's use of the PUD Project Easement shall constitute consent by that person to (a) be subject to and abide by all PUD Project Easement Rules, and (b) be subject to and abide by any PUD Project Easement Rule Violation Penalty.

(4) **Enforcement**

- (i) The Joint Commons Committee shall have the authority to enforce all PUD Project Easement Rules and to impose PUD Project Easement Rule Violation Penalties against all Owners. The PUD Board grants this enforcement power to the Joint Commons Committee as its managing agent in accordance with Utah Code § 57-8a-208(6). All enforcement costs incurred shall be considered a shared Easement Cost. Any funds recovered from a violating Owner shall first be used to repair property damage caused by the violation (if any), and the remaining funds shall be used to offset the Shared Easement Costs. If an action is filed pursuant to an alleged violation of a PUD Project Easement Rule, then the prevailing party in such action shall be entitled to recover its attorney fees and costs and all other expenses reasonably incurred in connection therewith, in addition to all other amounts provided by law.
- (ii) If the Joint Commons Committee has not been formed, or if the Joint Commons Committee decides not to take any enforcement action, then the PUD Board shall have the authority to enforce any PUD Project Easement Rule and to impose (with the cooperation of the Condo Board and/or the MVIV Board, where necessary) any PUD Project Easement Rule Violation Penalty. The PUD Board may elect to provide notice to the Condo Board or the MVIV Board (as appropriate) of a violation of a PUD Project Easement Rule by a Condo Benefited Party or a MVIV Benefited Party and request that the Condo Board



or the MVIV Board (as appropriate) take action to fine or otherwise take action to enforce a PUD Project Easement Rule Violation Penalty. If the PUD Board requests that the Condo Board fine a Condo Benefited Party, then the Condo Association will be entitled to retain any funds recovered from the Condo Benefited Party for the fine unless the recovered funds are necessary to repair property damage caused by the Condo Benefited Party to the PUD Project or the PUD Association was previously compensated for such property damage. If the PUD Board requests that the MVIV Board fine a MVIV Benefited Party, then the MVIV Association will be entitled to retain any funds recovered from the MVIV Benefited Party for the fine unless the recovered funds are necessary to repair property damage caused by the MVIV Benefited Party to the PUD Project or the PUD Association was previously compensated for such property damage. If the PUD Association files an action against a Condo Benefited Party or a MVIV Benefited Party, then the prevailing party in such action shall be entitled to recover its attorney fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, in addition to all other amounts provided by law.

- (5) Inclusion of PUD Project Easement Rules in Condo Association's Governing Documents and in MVIV Association's Governing Documents. The Condo Association agrees to include in its governing documents that the Condo Benefited Parties shall be subject to and bound by the PUD Project Easement Rules. The MVIV Association agrees to include in its governing documents that the MVIV Benefited Parties shall be subject to and bound by the PUD Project Easement Rules. The Condo Association and the MVIV Association agree to include in its fine policy such fine amounts, reasonably calculated to deter Condo Benefited Parties and MVIV Benefited Parties, as appropriate, from violating the PUD Project Easement Rules, which may be levied against a Condo Benefited Party or a MVIV Benefited Party for violating the PUD Project Easement Rules.

**4. Easement Area Maintenance and Repair Obligations.** Subject to the cost allocation/sharing provisions contained in Section 6 of this Agreement, the Parties shall have the following maintenance and repair obligations as to the Condo Project Easement and the PUD Project Easement:

- (a) **Condo Association.** The Condo Association shall keep those areas of the Condo Project that are subject to the Condo Project Easement in reasonably good condition, order, and repair.
- (b) **PUD Association.** The PUD Association shall keep those areas of the PUD Project that are subject to the PUD Project Easement in reasonably good condition, order, and repair.
- (c) **Equipment in Fitness/Exercise Room.** Notwithstanding any other provision in this Agreement, neither the Condo Association nor the PUD Association nor the MVIV Association shall have the responsibility to repair, replace, or maintain any of the equipment in the fitness or exercise room. The Parties acknowledge that the equipment in the fitness, or exercise, room has been donated. Moreover, the Condo Benefited Parties, the PUD Benefited Parties, and the MVIV Benefited Parties use the equipment in the fitness, or exercise, room at their own risk.

5. **Joint Commons Committee.** The Condo Association, the PUD Association, and the MVIV Association may form a Joint Commons Committee. If formed, the Joint Commons Committee shall be comprised of three (3) members of the Condo Board, three (3) members of the PUD Board, and three (3) members of the MVIV Board. The Joint Commons Committee shall determine, calculate, and allocate the costs and expenses related to the Easement Areas as described in Section 6 of this Agreement. In addition, the Joint Commons Committee may perform any other task or function related to the Condo Project Easement or the PUD Project Easement that the Condo Board, the PUD Board, and the MVIV Board jointly decide and agree to assign to the Joint Commons Committee. If necessary, the Joint Commons Committee may retain professionals, including, without limitation, attorneys, accountants, managers, and bookkeepers to assist in any task or function assigned to the Joint Commons Committee.

- (a) **Manner of Action.** All decisions and actions by the Joint Commons Committee shall require the affirmative vote of a majority of the Condo Board serving on the Joint Commons Committee, a majority of the PUD Board serving on the Joint Commons Committee, and a majority of the MVIV Board serving on the Joint Commons Committee. The Joint Commons Committee may only act as permitted in this Agreement. The Joint Commons Committee may take action without a meeting if written consents for the action are obtained for a majority of the members of each of the Board of Directors of the Parties
- (b) **Meetings.** The Joint Commons Committee may hold meetings in its discretion. Meeting notices may be delivered personally, by email, or by telephone to all the members of the Joint Commons Committee. Meetings of the Joint Commons Committee shall comply with the open meetings requirements set forth in Utah

Code Ann. §§ 57-8-57 and 57-8a-226, respectively applicable to the Condo Association, the PUD Association, and the MVIV Association.

**6. Allocation of Costs of Pressurized Irrigation Water and the Maintenance, Repair, and Operation of the Easement Areas.** The expenses for the pressurized irrigation water used in the Easement Areas and in the Limited Common Areas of the PUD Association shall be paid as follows: the PUD Association shall pay two-thirds (2/3)(equal to eight-twelfths (8/12)), the Condo Association shall pay one-fourth (1/4)(equal to three-twelfths (3/12)) of the pressurized irrigation water expenses, and the MVIV Association shall pay one-twelfth (1/12) of the pressurized irrigation water expenses. The remaining costs associated with the maintenance, repair and operation of the Easement Areas (collectively the "**Easement Costs**") shall be paid in accordance with the provisions of this Section 6. The intent of this Section 6 and of this Agreement is that the Easement Costs, except for the pressurized irrigation water as noted above, ultimately be shared equally between the Owners of the Condo Units, the Owners of the PUD Lots, and the Owners of the MVIV Units, meaning that each Owner in the three (3) associations will pay an equal share of the Easement Costs. The Easements Costs shall be allocated and paid by the Parties according to the following procedure:

- (a) The Condo Association and the PUD Association shall separately and individually pay the Easement Costs related to their respective Easement Areas in the first instance, subject to the equalizing allocation provisions in Section 6(c).
- (b) The Condo Board, or Joint Commons Committee, shall track if reasonably possible, and/or reasonably determine if tracking is not reasonably possible or practicable, the Easement Costs incurred by the Condo Association for the Condo Project Easement (the "**Condo Easement Costs**"). The PUD Board, or the Joint Commons Committee, shall track if reasonably possible, and/or reasonably determine if tracking is not reasonably possible or practicable, the Easement Costs incurred by the PUD Association for the PUD Project Easement (the "**PUD Easement Costs**"). The total sum of the Condo Easement Costs and the PUD Easement Costs at any point in time are the Easement Costs.
- (1) The Parties may determine a specific date by which each Party will submit in writing to the other Parties its calculation of its respective payment of the Condo Easements Costs or PUD Easement Costs during the prior year, or other time period as determined by the Parties. Unless otherwise determined by the Parties, the date to exchange this

information shall be February 1<sup>st</sup> for payments of the respective Condo Easement Costs or PUD Easement Costs made during the months of January-December of the prior year.

- (2) Within fifteen (15) days of receiving a Party's calculation of its respective Easement Costs, a receiving Party may request in writing to receive documentation from the submitting Party to substantiate the calculation of the submitting Party's Easement Costs.
  - (3) Within thirty (30) days of receiving the other Party's calculation of its respective share of the Easement Costs, a receiving Party may submit a written objection or dispute of the other Party's calculation. The Parties shall then seek to resolve the dispute pursuant to Section 14 of this Agreement.
- (c) At least once per calendar year, to equally allocate the Easement Costs, the Parties or the Joint Commons Committee, if one is formed, shall:
- (1) Divide the Easement Costs by the total number of Condo Units, PUD Lots, and MVIV Units to determine the per unit/lot Easement Costs ("**per unit/lot Easement Costs**").
  - (2) Multiply the per unit/lot Easement Costs by the number of Condo Units to determine the amount of the Easement Costs that are the responsibility of the Condo Association ("**Condo Association Responsibility Amount**").
  - (3) Multiply the per unit/lot Easement Costs by the number of PUD Lots to determine the amount of the Easement Costs that are the responsibility of the PUD Association ("**PUD Association Responsibility Amount**").
  - (4) Multiply the per unit/lot Easement Costs by the number of MVIV Units to determine the amount of the Easement Costs that are the responsibility of the MVIV Association ("**MVIV Association Responsibility Amount**").
  - (5) Calculate any under or overpayment by the Condo Association by subtracting the Condo Easement Costs from the Condo Association Responsibility Amount.
  - (6) Calculate any under or overpayment by the PUD Association by subtracting the PUD Easement Costs from the PUD Association Responsibility Amount

- (7) Because the MVIV Association has no easement costs associated with the MVIV Project that are subject to this Agreement, it is anticipated that the MVIV Association will always have an underpayment equal to the MVIV Association Responsibility Amount.
- (8) After all underpayments or overpayments of the respective Responsibility Amounts have been calculated, the Joint Commons Committee, or an overpaying Party, shall then assess any underpaid amount to the underpaying Party so that, in the end, the Condo Association shall have paid the Condo Association Responsibility Amount, the PUD Association shall have paid the PUD Association Responsibility Amount, and the MVIV Association shall have paid the MVIV Association Responsibility Amount.
- (9) Any underpaying Party shall pay any underpayment within thirty (30) days, or such greater time set by the Parties or the Joint Commons Committee, of when the underpayment is assessed, which must be reasonable and shall be no later than the end of each calendar year. Late payments shall accrue interest at the rate of eighteen percent (18%) per annum in favor of the Party to which an underpayment is owed.

**7. Joint Commons Committee Costs.** Any cost or expense incurred by the Joint Commons Committee in performing its obligations under this Agreement (the "**Joint Commons Committee Costs**") shall be allocated proportionally to each Condominium Unit, PUD Lot, and MVIV Unit which the respective Party may assess as an assessment or other charge as allowed under the Party's governing documents. The Joint Commons Committee shall determine the allocation of the Joint Commons Committee Costs by dividing the Joint Commons Committee Costs by the total number of Condominium Units, PUD Lots, and MVIV Units (the "**per unit/lot Joint Commons Committee Costs**"). The Joint Commons Committee shall then multiply the per unit/lot Joint Commons Committee Costs by the total number of Condominium Units and assess that amount to the Condo Association. The Joint Commons Committee shall multiply the per unit/lot Joint Commons Committee Costs by the total number of PUD Lots and assess that amount to the PUD Association. Likewise, the Joint Commons Committee shall multiply the per unit/lot Joint Commons Committee Costs by the total number of MVIV Units and assess that amount to the MVIV Association. The Joint Commons Committee may assess Joint Commons Committee Costs as frequently as it determines in its discretion, but must do so at least once per calendar year. Any assessment of Joint Commons Committee Costs to a Party shall be paid to the Joint Commons Committee within the time set by the Joint Commons Committee at the time of the assessment, which must be reasonable and shall be no later than the end of the

calendar year. Any late payment of assessed Joint Commons Committee Costs shall accrue interest at eighteen percent (18%) per annum.

**8. Additional Payments by the MVIV Association.** To offset the upfront costs expended by the Condo Association for the Condo Project Amenities and the Condo Project Easement, and expended by the PUD Association for the PUD Association Easement, and in addition to the amounts owed by the MVIV pursuant to Section 6, the MVIV Association shall pay to the Condo Association and to the PUD Association additional payments as follows:

- (a) Within thirty (30) days of a certificate of occupancy being issued for a MVIV Unit, or within some other timeframe as the respective Parties may agree, the MVIV Association shall pay \$550 to the Condo Association ("**Condo Additional Payment**") and \$450 to the PUD Association ("**PUD Additional Payment**").
- (b) A Condo Additional Payment and a PUD Additional Payment shall be paid as described in Section 8(a) after a certificate of occupancy is issued for each MVIV Unit.
- (c) After a Condo Additional Payment and a PUD Additional Payment has been paid by the MVIV Association for each MVIV Unit, no more Condo Additional Payments or PUD Additional Payments shall be required.
- (d) Any late Condo Additional Payment shall accrue interest at the rate of eighteen percent (18%) per annum in favor of the Condo Association. Any late PUD Additional Payment shall accrue interest at the rate of eighteen percent (18%) per annum in favor of the PUD Association.

**9. Damage.** If damage to the Easement Areas beyond ordinary wear and tear is directly attributable to a Condo Benefited Party, a PUD Benefited Party, or a MVIV Benefited Party, that person shall pay all reasonable costs to repair the damage. If the Condo Association, the PUD Association, or the MVIV Association retains an attorney to pursue a claim against the Condo Benefited party, the PUD Benefited Party, or the MVIV Benefited Party that is responsible for the damage then the Condo Association, the PUD Association, or the MVIV Association (as appropriate) is entitled to recover the reasonable attorney's fees and costs incurred in asserting and pursuing the claim.

**10. No Interference with Easements.** Except to the extent as may be provided in Section 12 of this Agreement, neither the Condo Association nor the PUD Association nor the MVIV Association, nor any of the Condo Benefited Parties, the PUD Benefited Parties, or the MVIV Benefited Parties shall place any fence, gate, wall barricade or other

obstruction, whether temporary or permanent in nature, which unreasonably limits or impairs the free and unimpeded use of the easement rights granted in Section 2 of this Agreement, except as follows:

- (a) In an emergency to prevent harm to persons or property;
- (b) With the prior written consent of all Parties, which consent shall not be unreasonably withheld, conditioned, or delayed, for reasonable construction, repair, maintenance or safety measures;
- (c) For traffic regulation and control to the extent required by applicable code, ordinances, and other legal requirements; or
- (d) On a temporary basis to the extent reasonably necessary to prevent a public dedication or the accrual of rights to the public.

11. **Condemnation.** In the event the Condo Project, the PUD Project, or the MVIV Project or any portion thereof is taken by power of eminent domain, or is conveyed under threat of condemnation, the obligations hereunder of the Party owning such property shall be abated to the extent of the taking. Proceeds from any taking of the Condo Project, the PUD Project, or the MVIV Project shall belong exclusively to the Parties subject to the taking.

12. **Non-Use.** No obligation arising out of or right granted under this Agreement shall lapse because of non-use of the Condo Project Easement or the PUD Project Easement.

13. **Modifications to Easement Areas.** To the extent permitted by the Party's Declaration (e.g., the Condo Declaration, the PUD Declaration, or the MVIV Declaration), a Party may modify, remove, eliminate, or replace any part, component, or structure within the Easement Area of their respective project upon obtaining written consent of a majority of the Condo Board members serving on the Joint Commons Committee and a majority of the PUD Board members serving on the Joint Commons Committee and a majority of the MVIV Board members serving on the Joint Commons Committee. As to the Condo Project Easement, this Section shall apply to all of the Condo Project Amenities.

14. **Dispute Resolution.** Unless the Parties agree otherwise in a writing signed by all Parties, any dispute arising under the Agreement shall be resolved by the following Dispute Resolution Procedure:

- (a) Good Faith Attempt to Resolve Disputes. In the event of a dispute arising under this Agreement, the Condo Board, the PUD Board, and the MVIV Board shall attempt in good faith

to promptly resolve the dispute by negotiation between designated representatives with authority to resolve the dispute.

- (b) **Mediation.** If the Parties are unable to resolve a dispute pursuant to Section 14(a), prior to exercising any other remedies available or required under this Agreement or otherwise available at law or equity, the Parties shall first attempt in good faith to settle any dispute arising out of or related to this Agreement or its breach by mediation in accordance with the Utah Uniform Mediation Act, Utah Code Ann. § 78B-10-101 ("**Mediation**"). Any Party may demand Mediation by written notice to the other Parties. The Mediation is to be administered by an impartial, neutral mediator agreed upon by the Parties. The Parties shall agree upon a mediator within seven (7) days of the demand for Mediation and shall hold the Mediation as soon as practicable thereafter, but no later than thirty (30) days after the Parties have agreed upon a mediator. If Mediation does not resolve the dispute, any Party to the dispute may then file a lawsuit in the Fourth District Court, Utah County, Utah to resolve the dispute.
- (c) **Costs of Dispute Resolution.** The Parties shall equally share all costs and fees charged by a mediator with respect to any Mediation under this Agreement. Each Party shall promptly pay their respective share of the costs and fees charged by the mediator. Except for the shared mediator costs and fees, the Parties shall each bear their respective other costs and attorney fees related to any Mediation under this Agreement, including attorney fees.

15. **Insurance.** The Condo Association and the PUD Association shall each maintain Comprehensive General Liability Insurance for the Easement Areas within their respective projects. The coverage limit under such policies shall be at least \$2,000,000. Each Party shall cause the other Parties to be named as "additional insureds" under their respective Comprehensive General Liability policies.

16. **Easements Run with the Land.** The Condo Project Easement and the PUD Project Easement shall run with the land as to all property benefited and burdened thereby, including any partition or division of such property. The rights, covenants and obligations contained in this Agreement shall bind, burden, and benefit the Condo Association members, the PUD Association members, and the MVIV Association Members, and their respective successors, assigns, heirs, lessees, mortgagees, and beneficiaries under any deeds of trust.

17. **No Public Dedication.** The provisions of this Agreement are not intended to and do not constitute a dedication for public use of any portion of the Easement Areas or easements created hereby.



18. **Conformance with Governmental Requirements.** The Parties shall cause all their respective uses of the Easement Areas to be in conformance with all applicable federal, state, county and municipal laws, ordinances, regulations, and requirements.

19. **Recording.** This Agreement shall be recorded in the office of the Utah County Recorder.

20. **Governing Law.** This Agreement shall be governed by and be construed in accordance with the laws of the State of Utah.

21. **Cooperation.** The Parties shall cooperate with one another in executing all documents required to complete or give effect to this Agreement.

22. **Severability.** If and to the extent that any court of competent jurisdiction holds any provision or any part of this Agreement to be invalid or unenforceable, such holding shall in no way affect the validity of the remainder of this Agreement, unless such provision is a material term of the Agreement, in which case the entire Agreement shall be null and void.

23. **Authority.** Each Party represents and warrants to the other Party that it has the unencumbered right and full authority to enter this Agreement.

24. **Waiver.** No failure by either Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or remedy upon the breach thereof, shall constitute a waiver of any breach of this Agreement.

25. **Attorney Fees.** Subject to the Dispute Resolution Procedure in Section 14 above, which provides that the Parties shall incur their own attorney fees as to a mediation commenced pursuant to Section 14, if a suit, action, or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement or to enforce any rights hereunder, the prevailing Party shall be entitled to recover its attorney fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, in addition to all other amounts provided by law.

26. **Remedies.** Subject to the Dispute Resolution Procedure in Section 14 above, in the event that either Party fails to perform any obligation under this Agreement, the other Party shall be entitled to demand specific performance of such obligation, to obtain appropriate injunctive relief (without the necessity of showing inadequate remedies at law), to cure the default of such obligation and recover the costs thereof from the Party reaching such obligation, or to pursue any other remedy available at law or equity. The remedies authorized throughout this Agreement are not mutually exclusive and may be maintained independently of each other.

27. **Restriction on Amendment of Governing Documents.** Each Party agrees not to allow any amendment to their governing documents that would prevent

such Party's power to assess its members for the Shared Costs as contemplated in Section 6 of this Agreement without the prior written consent of the other Parties, or its successors-in-title.

28. **Term.** The term of this Agreement will begin on the date it is recorded in the office of the Utah County Recorder and shall continue in full force and effect in perpetuity, or until amended or terminated pursuant to the terms set forth herein.

29. **Amendment and Termination.** This Agreement may be amended only by a majority vote of the Condo Board, a majority vote of the PUD Board, and by a majority vote of the MVIV Board. This Agreement may be terminated by a written agreement signed by a member of the Board of Directors for each of the Parties certifying that the amendment was approved by a vote of at least sixty-seven percent (67%) of the interests of their respective association. If amended, such signers must be authorized in accordance with their governing documents. Any amendment and/or notice of termination must be recorded in the official records of Utah County before becoming effective.

30. **Acknowledgement.** The Parties respectively acknowledge that the terms of this Agreement accurately reflect their understanding and agreement and that they are signing this Agreement freely and voluntarily.

31. **Drafting.** This Agreement shall be construed without regard to the Party responsible for its preparation.

32. **Headings.** The headings in the paragraphs of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect the construction or interpretation of any terms of this Agreement.

33. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original.

34. **Effective Date.** The Effective Date of this Agreement shall be the date on which the last signature necessary to make this Agreement effective has been affixed hereto.

35. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties, and may not be amended or modified without a writing signed by each Party specifically amending this Agreement. This Agreement supersedes any and all prior or contemporaneous agreements, discussions, negotiations or representations, oral or written, and no party is relying on any prior or contemporaneous agreements, discussions, negotiations or representations, oral or written, with respect to the subject matter of this Agreement.

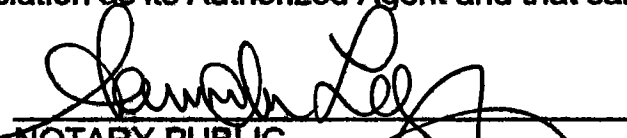
IN WITNESS WHEREOF, the Parties have executed this Amended and Restated Joint Use and Cross Easement Agreement as set forth below.

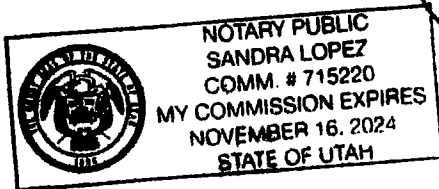
**MOUNT TIMPANOGOS VILLAGE  
CONDOMINIUM ASSOCIATION CORPORATION  
f/k/a Mira Vista Condominium Owners Association or  
Mira Vista Owners Association d/b/a Mt. Timpanogos Village**

By: Maria Ober  
Its: President

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

On this 14<sup>th</sup> day of AUGUST, 2023, personally appeared before me, MARIA OBER, Authorized Agent for Mount Timpanogos Village Condominium Association Corporation f/k/a Mira Vista Condominiums or Mira Vista Owners Association, Inc. d/b/a Mt. Timpanogos Village, who being by me duly sworn, did say that he/she signed the written instrument on behalf of the Association as its Authorized Agent and that said company executed the same.

  
NOTARY PUBLIC



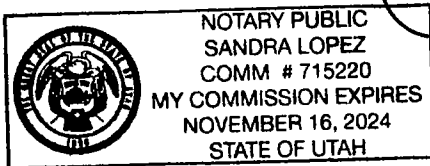
**MIRA VISTA P.U.D., INC.**

By: *Henry Sava*  
Its: President

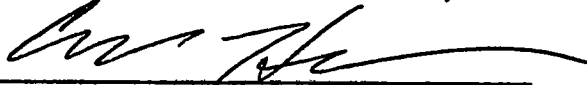
STATE OF UTAH            )  
  : ss.  
COUNTY OF UTAH    )

On this 14<sup>th</sup> day of AUGUST, 2023, personally appeared before me, HENRY SAVA, Authorized Agent for Mira Vista P.U.D., Inc., who being by me duly sworn, did say that he/she signed the written instrument on behalf of the Association as its Authorized Agent and that said company executed the same.

*Sandra Lopez*  
NOTARY PUBLIC



**FOUR AMIGOS DEVELOPMENT, L.L.C.**



Regency Funding & Development, LLC, Member  
By: Chris Haertel, Its Manager and Authorized Agent

STATE OF UTAH )

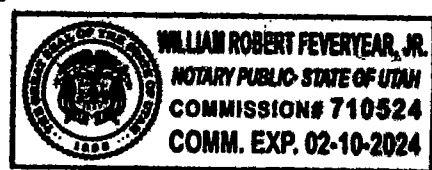
: ss.

COUNTY OF UTAH )

On this 23<sup>rd</sup> day of August, 2023, personally appeared before me, Chris Haertel, Manager of Regency Funding & Development, LLC, who being by me duly sworn, did say that he signed the written instrument on behalf of Four Amigos Development, LLC, as its Member and Authorized Agent and that said company executed the same.



NOTARY PUBLIC



**MIRA VISTA IV CONDOMINIUMS OWNERS ASSOCIATION**




By: Chris Haertel  
Its: President

STATE OF UTAH )

: ss.

COUNTY OF UTAH )

On this 23<sup>rd</sup> day of August, 2023, personally appeared before me, Chris Haertel, President of Mira Vista IV Condominium Owners Association, who being by me duly sworn, did say that he signed the written instrument on behalf of the Association, as its President and that said company executed the same.



NOTARY PUBLIC



**EXHIBIT A  
LEGAL DESCRIPTION**

**Condo Project:**

All of Mira Vista Condominiums Phase I, according to the official plat thereof, on file in the office of the Utah County Recorder.

**Parcel Numbers: 46:587:0101  
46:587:0112 through 46:587:0122  
46:587:0160  
46:587:0213 through 46:587:0224**

All of Mira Vista Condominiums Phase II, according to the official plat thereof, on file in the office of the Utah County Recorder.

**Parcel Numbers: 46:673:0100  
46:673:0124 through 46:673:0136  
46:673:0225 through 46:673:0237**

All of Mira Vista Condominiums Phase III, First Amendment, according to the official plat thereof, on file in the office of the Utah County Recorder.

**Parcel Numbers: 46:736:0101  
46:736:0137 through 46:736:0151  
46:736:0238 through 46:736:0253**

**PUD Project:**

All of Mira Vista P.U.D. Plat "B" Third Amendment, according to the official plat thereof, on file in the office of the Utah County Recorder.

**Parcel Numbers: 46:864:0001 through 46:864:0008**

All of Mira Vista P.U.D. Plat "C" Second Amendment, according to the official plat thereof, on file in the office of the Utah County Recorder.

**Parcel Numbers: 46:887:0008 through 46:887:0065**

**MVIV Project:**

PART LOT 4, PLAT A, MIRA VISTA AMENDED SUBDV.DESCRIBED AS FOLLOWS; COM S 1227.97 FT & E 447.03 FT FR W 1/4 COR. SEC. 19, T5S, R2E, SLB&M.; W 106.75 FT; N 113.54 FT; W 52.77 FT; N 106 FT; E 51.92 FT; S 10 FT; E 29.71 FT; N 20 FT; E 37.4 FT; S 28.21 FT; S 45 DEG 0' 0" E 11.37 FT; E 15.94 FT; S 8.6 FT; E 3.75 FT; S 34.71 FT; E 12.77 FT; S 149.98 FT TO BEG. AREA 0.631 AC.

**Parcel Number: 46:569:0009**

PART LOT 4, PLAT A, MIRA VISTA AMENDED SUBDV.DESCRIBED AS FOLLOWS; COM S 1014.14 FT & E 447.02 FT FR W 1/4 COR. SEC. 19, T5S, R2E, SLB&M.; S 63.85 FT; W 12.75 FT; N 34.71 FT; W 3.75 FT; N 8.6 FT; W 15.94 FT; N 45 DEG 0' 0" W 11.37 FT; N 20.24 FT; S 45 DEG 0' 0" E 10.95 FT; E 32.74 FT TO BEG. AREA 0.032 AC.

**Parcel Number: 46:569:0010**