WHEN RECORDED RETURN TO:
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REQUEST: HIGH COUNTRY TITLE

NINTH AMENDMENT TO CONDOMINIUM DECLARATION FOR PARK AVENUE CONDOMINIUMS

This Ninth Amendment to Condominium Declaration for Park Avenue Condominiums is made and executed by the Park Avenue Condominium Association, Inc., a Utah non-profit corporation, of 175 South Main Street, Suite 1300, Salt Lake City, Utah 84111 (the "Association").

RECITALS

A. The original Declaration of Condominium for Park Avenue Condominiums was recorded on the 1st day of June, 1973 as Entry No. 119741 in Book M47 at Pages 543-570 of the official records of the County Recorder of Summit County, Utah (the "Declaration"). A Record of Survey Map was recorded concurrently.

B. Management and control of the Project has been transferred by the Declarant or its successors in interest to the Association.

C. This document affects the real property located in Summit County, Utah, described with particularity on Exhibit "A," attached hereto and incorporated herein by this reference.

D. U.C.A., §57-8-7(3) (2000) states that: "Except as otherwise expressly provided by the act, the undivided interest of each unit owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of *two-thirds* of the unit owners expressed in an amended declaration duly recorded."

E. Article XV, Section 15.1 of the Declaration, as amended, provides that the Declaration shall not be amended unless the Owners representing an aggregate ownership interest of 65% or more of the aggregate ownership interests as reflected on the real estate records of Summit County, Utah consent and agree to such amendment by instruments duly recorded.

F. The consent of more than two-thirds of the Owners has been obtained to: (1) change common area into private ownership; (2) authorize the amendment of the Condominium Plat to reflect this change; (3) authorize a corresponding amendment of the Declaration to empower and regulate the use and improvement of such privately owned property; and (4) facilitate an internal administrative method for the reallocation of the undivided ownership interests in the common areas, if necessary.

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160.00

G. All of the voting requirements of the Declaration and the Act have been satisfied.

AMENDMENT

NOW, THEREFORE, for the reasons recited above, and for the benefit of the Project and the Unit Owners thereof, the Association hereby executes this Ninth Amendment to Condominium Declaration for Park Avenue Condominiums for and in behalf of all of the Unit Owners.

1. **Priority**. In the event of any conflict, incongruity or inconsistency between the provisions of this amendment and the original Declaration as amended, the former shall in all respects govern and control.

2. **Definitions.** Article I of the Declaration, entitled *DEFINITIONS*, is amended to add the following subsections:

1.16 The term **"Amended Condominium Plat" or Amended Map"** shall mean and refer to the Amended Condominium Plat or Condominium Plat being executed and recorded in the official records of Summit County, Utah, in connection with the execution and recording of this Ninth Amendment to Condominium Declaration for Park Avenue Condominiums. The Amended Condominium Plat was prepared by Robert W. Pohl of Park City Surveying, a registered Utah land surveyor, holding Certificate No. 173736.

1.17 The term **"City"** shall mean and refer to Park City Municipal Corporation.

1.18 The term **"Private Ownership Area A"** shall mean and refer to all of the previously existing privately owned property prior to the Private Ownership Area B Effective Date, as shown on the original Map or Maps.

1.19 The term **"Private Ownership Area B"** shall mean and refer to that portion of the property changed from Common Area to private ownership which, hereafter, shall for all purposes be considered part of each Unit, as shown on the Amended Map, including by way of illustration but not limitation for purposes of private ownership, taxes, assessments, insurance, liability, maintenance, repair and replacement.

1.20 The term **"Private Ownership Area B Effective Date"** shall mean and refer to the date when the last of the following events has occurred: (a) all of the necessary written consents of the Owners have been obtained and (b) both (1) the Amended Map and (2) this Ninth Amendment to the Declaration have been recorded in the Office of the County Recorder of Summit County, Utah.

1.21 The term **"Reduced Common Area"** shall mean and refer to the Common Area as reduced by the creation of Private Ownership Area B.

1.22 The term **"Structural Alteration to Private Ownership Area B"** shall mean and refer to any structural alteration, modification, change, improvement, addition, upgrade, enhancement, or the like to Private Ownership Area B.

2. Article IX of the Declaration is amended to delete Section 9.21 and replace it with the provisions set forth below, add the following new Sections, and correct the numbering of the Sections and Subsections, inadvertently changed over time with the several amendments to the original Declaration:

9.21 **Structural Alterations to Private Ownership Area B.** Each Owner shall have a conditional right but not the obligation to physically improve his Private Ownership Area B as shown on the Amended Map, subject to the written approval of the Management Committee and the issuance of a building permit by the City.

9.21.1 **Reservation of Rights.** The Management Committee hereby expressly reserves the right to deny, condition or delay any such application.

9.21.2 **Prohibited Work.** No Owner shall do any work or make any structural alterations which may in the opinion of the Management Committee impair or threaten to impair either (a) the integrity of the project, (b) uniformity of appearance, or (c) quality of construction, or any combination.

9.21.3 **Lockout Use Not Allowed.** An Owner may not construct a new additional room with a door or separate access in Private Ownership Area B and treat it as a separate rental, lockout space, or the equivalent.

9.21.4 **Additional Consent Required.** No Owner shall do any work or make any structural alterations which may jeopardize the soundness or safety of the property, reduce its value, or impair any easement or hereditament without in every such case the unanimous consent of the other Owners being first had and obtained.

9.21.5 **Conditions.** No Owner shall make or permit to be made any Structural Alterations to Private Ownership Area B until the following conditions are satisfied and he has:

(a) Submitted all applications required by the Management Committee;

(b) Paid all fees;

(c) Submitted all architectural and engineering designs, drawings, plans and specifications required to the Management Committee, including by way of illustration but not limitation the dimensions of the addition, all fixtures, utility systems -- mechanical, plumbing, electrical, HVAC -- construction materials, colors, exterior features, name of contractor, contractor's licenses, insurance, and projected construction time;

(d) Satisfied all other conditions imposed by the Management Committee;

(e) Obtained the express written consent of the Management Committee; and

(f) Procured all building permits, licenses and inspections from the City.

9.22 **Snyderville Basin Water Reclamation District Requirements.** No Management Committee approval shall be issued for any proposed structural alteration within Private Ownership Area B unless and until a receipt from the Snyderville Basin Water Reclamation District (the "SBWRD") is submitted. This receipt must indicate payment of additional Impact Fees required as a result of the alteration, or if no additional fees are required, written evidence of SBWRD review; and

9.23 **Cross Easements.** Private Ownership Area B is subject to described easements and rights of way, together with an easement or right of way for laterals which may cross said Area affecting more than one Owner, and other similar easements, rights of way, and appurtenances to or accompanying the authorized improvement of said Area, which rights are hereby expressly reserved.

9.24 **"As Built" Survey, Non-Conforming Work and Enforcement.** The Management Committee may require Owner to provide at his cost an "as built" survey when the construction work has been completed on Structural Alterations to Private Ownership Area B. Any work not completed strictly in accordance with the approved plans and specifications shall be deemed non-conforming. The Owner shall upon the request of the Management Committee remove any non-comforming Structural Alterations to Private Ownership Area B, and restore the property to its original condition, at Owner's sole expense. The Management Committee shall also be entitled to all other remedies at law or equity, such as injunctive relief and/or

damages, including the recovery of a reasonable attorneys fee and costs. To secure payment, the Association may file a lien against the interest of the Owner in the property in accordance with U.C.A., §57-8-20 (1986).

9.25 **No Waiver of Future Approvals.** The approval of the ManagementCommittee of any applications, proposals, plans and specifications, or drawings for any work done or proposed in the Private Ownership Area B, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar applications, proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

9.26 **Variance.** The Management Committee may authorize variances from compliance with any of the provisions of the applicable architectural and design guidelines for Structural Alterations to Private Ownership Area B when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of financing shall not be considered a hardship warranting a variance.

9.27 **Contractors**. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions hereof, conditions of approval, and/or architectural and design guidelines may be excluded by the Management Committee from doing work at the Project.

9.28 **Limitation of Liability.** Neither the Association, Management Committee or Members of the Management Committee, nor any of their employees, agents, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions hereof, nor for any structural or other defects in any work done according to such plans and specifications, or for disallowing a contractor, and they shall in all instances be saved, held harmless, defended and indemnified by the Association against such claims, losses, or liabilities.

9.29 **Ratification**. All structural alterations within Private Ownership Area B pre-existing and prior to the Private Ownership Area B Effective Date are hereby ratified and approved.

9.30 **Percentage of Ownership Interest.** It is the intent of the Association that the Amended Map and creation of Private Ownership Area B not alter the established percentages of ownership interest, unless required by U.C.A.§57-8-24 (1975) and, if so, the Management Committee is hereby authorized to prepare and record a "Revised Exhibit "A" reflecting the necessary changes.

3. **Effective Date**. The effective date of this Amendment is the date it is recorded in the office of the County Recorder of Summit County, Utah.

IN WITNESS WHEREOF, Declarant has executed this instrument the 10 day of December, 2003.

PARK AVENUE CONDOMINIUM ASSOCIATION

By: Larry J Butterfield President
Name:
Title: President

By: Richard K. Nelson Secretary
Name:
Title: Secretary

ACKNOWLEDGEMENT

STATE OF UTAH)
ss:
COUNTY OF SUMMIT)

On the 10 day of December, 2003, personally appeared before me Richard K. Nelson and Larry J. Butterfield, who by me being duly sworn, did say that they are the President and Secretary of the Park Avenue Condominium Association, Inc. and that the within and foregoing instrument was signed in behalf of said Association by authority of its Articles of Incorporation or a resolution of its Board of Trustees, and said Richard K. Nelson and Larry J. Butterfield duly acknowledged to me that said Association executed the same.

Susan Yoshinaga
NOTARY PUBLIC
Residing At:
Commission Expires:

NOTARY PUBLIC
Susan Yoshinaga
2001 So State Street
Salt Lake City, Utah 84190
My Commission Expires
September 23 2006
STATE OF UTAH

EXHIBIT "A"
LEGAL DESCRIPTION

The land described in the foregoing document is located in Summit County, Utah and is described more particularly as follows:

Unit No.	Parcel No.
1	PAC-1
2	PAC-2
3	PAC-3
4	PAC-4
5	PAC-5
6	PAC-6
6-A	PAC-6-A
6-B	PAC-6-B
7	PAC-7
8	PAC-8
9	PAC-9
10	PAC-10
11	PAC-11
12	PAC-12
13	PAC-13
14	PAC-14
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28	PAC-28
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30	PAC-30
31	PAC-31
32	PAC-32
33	PAC-33
34	PAC-34
35	PAC-35

Unit No.	Parcel No.
36	PAC-36
37	PAC-37
38	PAC-38
39	PAC-39
40	PAC-40
41	PAC-41
42	PAC-42
43	PAC-43
44	PAC-44
45	PAC-45
46	PAC-46
47	PAC-47
48	PAC-48
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Unit No.	Parcel No.
79	PAC-79
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114	PAC-114
115	PAC-115
116	PAC-116
117	PAC-117
118	PAC-118
119	PAC-119
120	PAC-120
121	PAC-121

Unit No.	Parcel No.
122	PAC-122
123	PAC-123
124	PAC-124
125	PAC-125
126	PAC-126
127	PAC-127
128	PAC-128
129	PAC-129
130	PAC-130
131	PAC-131
132	PAC-132