BEFORE THE BOARD OF EQUALIZATION
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

In the matter of: **Todd Lee Blatt and Christine Eve Blatt, Trustees of the Blatt Family Trust**	:	**BOARD OF EQUALIZATION'S FINDINGS OF FACT AND CONCLUSIONS OF LAW** May 13, 2020

This matter came before the Board of Equalization of Summit County ("Board") on a request by Todd Lee Blatt and Christine Eve Blatt, Trustees of the Blatt Family Trust ("Taxpayer") for a primary residential property tax exemption(s) under Utah Code Annotated ("UCA") §§ 59-2-103 and 59-2-103.5 and Summit County Code §1-12B-1 et. seq. "Article B. Residential Property Tax Exemptions." Having considered the evidence presented by all interested parties and the entire record relating to this issue, the Board rendered its decision following discussion and deliberation as part of its regularly scheduled agenda on May 6, 2020, adopting a motion to DENY Taxpayer's request for a primary residential property tax exemption with that decision to become final following the adoption of these findings and conclusions. In support of that decision, the Board adopts the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1) Taxpayer is the record owner of Summit County Tax Id. PNW-2-27 (the "Subject Property"), acquiring ownership on or about August 28, 2018.

2) On or about March 9, 2020, the Summit County Assessor's Office received a cover letter

from Taxpayer's attorney, Mark Gaylord of Ballard Spahr, LLP, along with an application for primary residential property tax exemption for the Subject Property. On said application, Taxpayer declared that they have no other permanent residences in the state of Utah and that they live at the Subject Property at least 183 consecutive days per calendar year.

3) The Subject Property is located within the Promontory Specially Planned Area, which is subject to Summit County Ordinance 406, an "Ordinance Approving and Adopting the Development Agreement for the Promontory [Specially Planned Area]" (hereinafter referred to as the "Promontory DA"). The Promontory DA was recorded against the Subject Property on February 27, 2001 in the Office of the Summit County Recorder as Entry Number 583272, in Book 1355 starting at Page 1154.

4) The Subject Property is located within the Promontory Nicklaus West Phase 2 subdivision and the associated plat was recorded in the Office of the Summit County Recorder on August 2, 2016 as Entry Number 1050646 (the "Plat"). On the Plat, the Subject Property is indicated by an "R," which means that it is a "Resort Unit" as defined by the Promontory DA.

5) The Promontory DA at §1.48 defines "Resort Units" as "…a dwelling located in the immediate vicinity of a hotel or club facility and offered for rent or overnight stay as a part of the operations of the hotel or club facility."

6) The Promontory DA at §4.4.1 ("Resort Units") states that "[w]hile these units may be owned by the hotel operator or condominiumized, there will be restrictions **that these**

units will be used for short term occupancy not to exceed six months. In the case of individual cottage ownership, these cottage units must be part of the rental pool managed by the hotel for overnight rental in order to ensure their treatment as resort-type units and shall be designed **and set up to ensure that they will not be permanent residences.**" (emphasis added).

7) The Promontory DA at §1.37 defines "Permanent Occupancy" as "the occupancy of a Residential Unit within the Community for more than six months of a calendar year or where the owner has claimed a primary residential property tax benefit under applicable law." "Secondary Occupancy" is defined at §1.49 as "occupancy of a Residential Unit which is not Permanent Occupancy."

8) The Subject Property is also subject to a note on the Plat which states as follows under note #12, "**Resort Units shall be used for short-term occupancy not to exceed six (6) months by any resident in a single calendar year period. Resort Unit owners are ineligible to qualify for permanent resident status based upon the Resort Unit ownership**" (emphasis added). The Plat note further states that "[i]n the event that a court or similar official government decision making body determines that [this] is not enforceable and after such determination an owner of a Resort Unit is violating [this] by using such unit for permanent occupancy, an impact fee in the amount of $10,000 will be payable to the County by the Resort Unit Owner."

9) To date, the above-noted restriction on the Plat has never been challenged or deemed unenforceable by a court or similar official government decision making body.

CONCLUSIONS OF LAW

1) The Utah Constitution permits the legislature to provide by law, exemptions from taxation for residential property as long as they do not exceed 45% of the fair market value. *See* Utah Const. art. XIII, § 3(2)(a)(iv).

2) Pursuant to UCA §59-2-103, the fair market value of real property which is used as a primary residence, defined as residency for 183 or more consecutive calendar days in a given year, is allowed a primary residential tax exemption equal to a 45% reduction in the value of the property.

3) UCA §59-2-103.5 allows a county to adopt an ordinance that requires a property owner to file an application with the county's board of equalization before a primary residential tax exemption is granted, and Summit County has adopted such an ordinance, which has been codified as Summit County Code §1-12B-1 et. seq., "Article B. Residential Property Tax Exemptions."

4) Summit County Code §1-12B-2, requires the filing of an application prior to granting a primary residential property tax exemption and, consistent with Utah Administrative Rule R884-24P-52, has criteria for determining whether a property owner qualifies for a primary residential property tax exemption.

5) Utah's Recording Statute provides that documents and instruments filed with the county recorder "impart notice to all persons of their contents" (UCA §57-3-102(1)), and the Utah Supreme Court has held that constructive notice can take two forms (*See First Am. Title Ins. Co. v. J.B. Ranch,* 966 P.2d 834 (Utah 1998)). First the recording statute

provides that constructive notice is imparted when documents are properly recorded (*Id*. at 837). This is known as record notice. Second, constructive notice may arise from a duty to inquire when one has "knowledge of certain facts and circumstances" that are sufficient to give rise to a duty to inquire further. *Id*. This is known as inquiry notice.

6) Taxpayer, as owner of the Subject Property, was on record notice of the existence of the Promontory DA and the Plat because they were properly recorded in the Office of the Summit County Recorder in 2001 and 2016 respectively; all *prior* to Taxpayer's purchase of the Subject Property.

7) The Promontory DA and Plat note #12, with their restrictions and conditions contained therein, operate similarly to a "restrictive covenant" as the Promontory DA and Plat run with the land and are binding on subsequent purchasers (*See Flying Diamond Oil Corp. v. Newton Sheep Co.,* 776 P.2d 618 (Utah 1989)). It is well established under Utah law that covenants, conditions and restrictions constitute a contractual relationship and that restrictive covenants are enforceable against property owners who purchase land subject to such restrictions. (*Workman v. Brighton Properties Inc.,* 976 P.2d 1209, 1212 (Utah 1999) (*citing, Turner v. Hi-Country Homeowners Ass'n,* 910 P.2d 1223, 1225 (Utah 1996); *Fink v. Miller,* 896 P.2d 649, 652 (Utah App. 1995)).

8) There is no ambiguity as to the meaning of Section 4.4.1 of the Promontory DA, which states that the Resort Units "**will be used for short term occupancy not to exceed six months** . . . [and they] **will not be permanent residences."** (emphasis added).

9) Neither is there ambiguity in Plate note #12 which definitively states, "**Resort Unit**

owners are ineligible to qualify for permanent resident status based upon the Resort Unit ownership." (emphasis added).

10) Moreover, the Promontory DA's definitions of "Permanent Occupancy" and "Secondary Occupancy" make it clear and unmistakable that the intent of the Promontory DA is to limit occupancy of the Resort Units to less than six months and limit the ability of said owner to claim a primary residential property tax benefit.

11) Therefore, by purchasing the Subject Property with the unambiguous restrictions found within the recorded Promontory DA and the Plat, the Taxpayer clearly and unmistakably waived its right to a primary residential property tax exemption. *See Pioneer Builders Company of Nevada, Inc. v. KDA Corporation*, 437 P.3d 539, 542 (Utah App. 2018) (there must be a "clear and unmistakable" waiver of a statutory right).

This is the final administrative decision of the Summit County Board of Equalization. As such, it may be appealed to the Utah State Tax Commission by filing a notice of appeal with the Clerk of the Board within 30 days of this written decision pursuant to UCA §59-2-1006.

DATED this 13th day of May 2020.

BOARD OF EQUALIZATION
OF SUMMIT COUNTY

BY:_____
Douglas Clyde, Chair

ATTEST:

_____
Michael Howard
Clerk to the Board of Equalization

APPROVED AS TO FORM:

_____

David L. Thomas
Chief Civil Deputy

BEFORE THE BOARD OF EQUALIZATION
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

In the matter of: **Sean Hagerty and Terese Hagerty, Trustees of the Sean D. Hagerty and Terese S. Hagerty Family Trust**	:	**BOARD OF EQUALIZATION'S FINDINGS OF FACT AND CONCLUSIONS OF LAW** May 13, 2020

This matter came before the Board of Equalization of Summit County ("Board") on a request by Sean Hagerty and Terese Hagerty, Trustees of the Sean D. Hagerty and Terese S. Hagerty Family Trust ("Taxpayer") for a primary residential property tax exemption(s) under Utah Code Annotated ("UCA") §§ 59-2-103 and 59-2-103.5 and Summit County Code §1-12B-1 et. seq. "Article B. Residential Property Tax Exemptions." Having considered the evidence presented by all interested parties and the entire record relating to this issue, the Board rendered its decision following discussion and deliberation as part of its regularly scheduled agenda on May 6, 2020, adopting a motion to DENY Taxpayer's request for a primary residential property tax exemption with that decision to become final following the adoption of these findings and conclusions. In support of that decision, the Board adopts the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1) Taxpayer is the record owner of Summit County Tax Id. PNW-4-36 (the "Subject Property"), acquiring ownership on or about September 23, 2019.

2) On or about March 9, 2020, the Summit County Assessor's Office received a cover letter

from Taxpayer's attorney, Mark Gaylord of Ballard Spahr, LLP, along with an application for primary residential property tax exemption for the Subject Property. On said application, Taxpayer declared that they have no other permanent residences in the state of Utah and that they live at the Subject Property at least 183 consecutive days per calendar year.

3) The Subject Property is located within the Promontory Specially Planned Area, which is subject to Summit County Ordinance 406, an "Ordinance Approving and Adopting the Development Agreement for the Promontory [Specially Planned Area]" (hereinafter referred to as the "Promontory DA"). The Promontory DA was recorded against the Subject Property on February 27, 2001 in the Office of the Summit County Recorder as Entry Number 583272, in Book 1355 starting at Page 1154.

4) The Subject Property is located within the Promontory Nicklaus West Phase 4 subdivision and the associated plat was recorded in the Office of the Summit County Recorder on February 8, 2018 as Entry Number 1086266 (the "Plat"). On the Plat, the Subject Property is indicated by an "R," which means that it is a "Resort Unit" as defined by the Promontory DA.

5) The Promontory DA at §1.48 defines "Resort Units" as "…a dwelling located in the immediate vicinity of a hotel or club facility and offered for rent or overnight stay as a part of the operations of the hotel or club facility."

6) The Promontory DA at §4.4.1 ("Resort Units") states that "[w]hile these units may be owned by the hotel operator or condominiumized, there will be restrictions **that these**

units will be used for short term occupancy not to exceed six months. In the case of individual cottage ownership, these cottage units must be part of the rental pool managed by the hotel for overnight rental in order to ensure their treatment as resort-type units and shall be designed **and set up to ensure that they will not be permanent residences.**" (emphasis added).

7) The Promontory DA at §1.37 defines "Permanent Occupancy" as "the occupancy of a Residential Unit within the Community for more than six months of a calendar year or where the owner has claimed a primary residential property tax benefit under applicable law." "Secondary Occupancy" is defined at §1.49 as "occupancy of a Residential Unit which is not Permanent Occupancy."

8) The Subject Property is also subject to a note on the Plat which states as follows under note #12, "**Resort Units shall be used for short-term occupancy not to exceed six (6) months by any resident in a single calendar year period. Resort Unit owners are ineligible to qualify for permanent resident status based upon the Resort Unit ownership**" (emphasis added). The Plat note further states that "[i]n the event that a court or similar official government decision making body determines that [this] is not enforceable and after such determination an owner of a Resort Unit is violating [this] by using such unit for permanent occupancy, an impact fee in the amount of $10,000 will be payable to the County by the Resort Unit Owner."

9) To date, the above-noted restriction on the Plat has never been challenged or deemed unenforceable by a court or similar official government decision making body.

CONCLUSIONS OF LAW

1) The Utah Constitution permits the legislature to provide by law, exemptions from taxation for residential property as long as they do not exceed 45% of the fair market value. *See* Utah Const. art. XIII, § 3(2)(a)(iv).

2) Pursuant to UCA §59-2-103, the fair market value of real property which is used as a primary residence, defined as residency for 183 or more consecutive calendar days in a given year, is allowed a primary residential tax exemption equal to a 45% reduction in the value of the property.

3) UCA §59-2-103.5 allows a county to adopt an ordinance that requires a property owner to file an application with the county's board of equalization before a primary residential tax exemption is granted, and Summit County has adopted such an ordinance, which has been codified as Summit County Code §1-12B-1 et. seq., "Article B. Residential Property Tax Exemptions."

4) Summit County Code §1-12B-2, requires the filing of an application prior to granting a primary residential property tax exemption and, consistent with Utah Administrative Rule R884-24P-52, has criteria for determining whether a property owner qualifies for a primary residential property tax exemption.

5) Utah's Recording Statute provides that documents and instruments filed with the county recorder "impart notice to all persons of their contents" (UCA §57-3-102(1)), and the Utah Supreme Court has held that constructive notice can take two forms (*See First Am. Title Ins. Co. v. J.B. Ranch,* 966 P.2d 834 (Utah 1998)). First the recording statute

provides that constructive notice is imparted when documents are properly recorded (*Id*. at 837). This is known as record notice. Second, constructive notice may arise from a duty to inquire when one has "knowledge of certain facts and circumstances" that are sufficient to give rise to a duty to inquire further. *Id*. This is known as inquiry notice.

6) Taxpayer, as owner of the Subject Property, was on record notice of the existence of the Promontory DA and the Plat because they were properly recorded in the Office of the Summit County Recorder in 2001 and 2018 respectively; all *prior* to Taxpayer's purchase of the Subject Property.

7) The Promontory DA and Plat note #12, with their restrictions and conditions contained therein, operate similarly to a "restrictive covenant" as the Promontory DA and Plat run with the land and are binding on subsequent purchasers (*See Flying Diamond Oil Corp. v. Newton Sheep Co.,* 776 P.2d 618 (Utah 1989)). It is well established under Utah law that covenants, conditions and restrictions constitute a contractual relationship and that restrictive covenants are enforceable against property owners who purchase land subject to such restrictions. (*Workman v. Brighton Properties Inc.,* 976 P.2d 1209, 1212 (Utah 1999) (*citing, Turner v. Hi-Country Homeowners Ass'n,* 910 P.2d 1223, 1225 (Utah 1996); *Fink v. Miller*, 896 P.2d 649, 652 (Utah App. 1995)).

8) There is no ambiguity as to the meaning of Section 4.4.1 of the Promontory DA, which states that the Resort Units "**will be used for short term occupancy not to exceed six months** . . . [and they] **will not be permanent residences."** (emphasis added).

9) Neither is there ambiguity in Plate note #12 which definitively states, "**Resort Unit**

owners are ineligible to qualify for permanent resident status based upon the Resort Unit ownership." (emphasis added).

10) Moreover, the Promontory DA's definitions of "Permanent Occupancy" and "Secondary Occupancy" make it clear and unmistakable that the intent of the Promontory DA is to limit occupancy of the Resort Units to less than six months and limit the ability of said owner to claim a primary residential property tax benefit.

11) Therefore, by purchasing the Subject Property with the unambiguous restrictions found within the recorded Promontory DA and the Plat, the Taxpayer clearly and unmistakably waived its right to a primary residential property tax exemption. *See Pioneer Builders Company of Nevada, Inc. v. KDA Corporation*, 437 P.3d 539, 542 (Utah App. 2018) (there must be a "clear and unmistakable" waiver of a statutory right).

This is the final administrative decision of the Summit County Board of Equalization. As such, it may be appealed to the Utah State Tax Commission by filing a notice of appeal with the Clerk of the Board within 30 days of this written decision pursuant to UCA §59-2-1006.

DATED this 13th day of May 2020.

BOARD OF EQUALIZATION
OF SUMMIT COUNTY

BY:_____
Douglas Clyde, Chair

ATTEST:

_____
Michael Howard
Clerk to the Board of Equalization

APPROVED AS TO FORM:

_____

David L. Thomas
Chief Civil Deputy

BEFORE THE BOARD OF EQUALIZATION
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

In the matter of: **Marc Patrick Lehmann and Kaylyn Lehmann, Trustees to the Lehmann Family Trust**	:	**BOARD OF EQUALIZATION'S FINDINGS OF FACT AND CONCLUSIONS OF LAW** May 13, 2020

This matter came before the Board of Equalization of Summit County ("Board") on a request by Marc Patrick Lehmann and Kaylyn Lehmann, Trustees to the Lehmann Family Trust ("Taxpayer") for a primary residential property tax exemption(s) under Utah Code Annotated ("UCA") §§ 59-2-103 and 59-2-103.5 and Summit County Code §1-12B-1 et. seq. "Article B. Residential Property Tax Exemptions." Having considered the evidence presented by all interested parties and the entire record relating to this issue, the Board rendered its decision following discussion and deliberation as part of its regularly scheduled agenda on May 6, 2020, adopting a motion to DENY Taxpayer's request for a primary residential property tax exemption with that decision to become final following the adoption of these findings and conclusions. In support of that decision, the Board adopts the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1) Taxpayer is the record owner of Summit County Tax Id. PNW-2-31 (the "Subject Property"), acquiring ownership on or about October 8, 2018.

2) On or about March 9, 2020, the Summit County Assessor's Office received a cover letter

from Taxpayer's attorney, Mark Gaylord of Ballard Spahr, LLP, along with an application for primary residential property tax exemption for the Subject Property. On said application, Taxpayer declared that they have no other permanent residences in the state of Utah and that they live at the Subject Property at least 183 consecutive days per calendar year.

3) The Subject Property is located within the Promontory Specially Planned Area, which is subject to Summit County Ordinance 406, an "Ordinance Approving and Adopting the Development Agreement for the Promontory [Specially Planned Area]" (hereinafter referred to as the "Promontory DA"). The Promontory DA was recorded against the Subject Property on February 27, 2001 in the Office of the Summit County Recorder as Entry Number 583272, in Book 1355 starting at Page 1154.

4) The Subject Property is located within the Promontory Nicklaus West Phase 2 subdivision and the associated plat was recorded in the Office of the Summit County Recorder on August 2, 2016 as Entry Number 1050646 (the "Plat"). On the Plat, the Subject Property is indicated by an "R," which means that it is a "Resort Unit" as defined by the Promontory DA.

5) The Promontory DA at §1.48 defines "Resort Units" as "…a dwelling located in the immediate vicinity of a hotel or club facility and offered for rent or overnight stay as a part of the operations of the hotel or club facility."

6) The Promontory DA at §4.4.1 ("Resort Units") states that "[w]hile these units may be owned by the hotel operator or condominiumized, there will be restrictions **that these**

units will be used for short term occupancy not to exceed six months. In the case of individual cottage ownership, these cottage units must be part of the rental pool managed by the hotel for overnight rental in order to ensure their treatment as resort-type units and shall be designed **and set up to ensure that they will not be permanent residences.**" (emphasis added).

7) The Promontory DA at §1.37 defines "Permanent Occupancy" as "the occupancy of a Residential Unit within the Community for more than six months of a calendar year or where the owner has claimed a primary residential property tax benefit under applicable law." "Secondary Occupancy" is defined at §1.49 as "occupancy of a Residential Unit which is not Permanent Occupancy."

8) The Subject Property is also subject to a note on the Plat which states as follows under note #12, "**Resort Units shall be used for short-term occupancy not to exceed six (6) months by any resident in a single calendar year period. Resort Unit owners are ineligible to qualify for permanent resident status based upon the Resort Unit ownership**" (emphasis added). The Plat note further states that "[i]n the event that a court or similar official government decision making body determines that [this] is not enforceable and after such determination an owner of a Resort Unit is violating [this] by using such unit for permanent occupancy, an impact fee in the amount of $10,000 will be payable to the County by the Resort Unit Owner."

9) To date, the above-noted restriction on the Plat has never been challenged or deemed unenforceable by a court or similar official government decision making body.

CONCLUSIONS OF LAW

1) The Utah Constitution permits the legislature to provide by law, exemptions from taxation for residential property as long as they do not exceed 45% of the fair market value. *See* Utah Const. art. XIII, § 3(2)(a)(iv).

2) Pursuant to UCA §59-2-103, the fair market value of real property which is used as a primary residence, defined as residency for 183 or more consecutive calendar days in a given year, is allowed a primary residential tax exemption equal to a 45% reduction in the value of the property.

3) UCA §59-2-103.5 allows a county to adopt an ordinance that requires a property owner to file an application with the county's board of equalization before a primary residential tax exemption is granted, and Summit County has adopted such an ordinance, which has been codified as Summit County Code §1-12B-1 et. seq., "Article B. Residential Property Tax Exemptions."

4) Summit County Code §1-12B-2, requires the filing of an application prior to granting a primary residential property tax exemption and, consistent with Utah Administrative Rule R884-24P-52, has criteria for determining whether a property owner qualifies for a primary residential property tax exemption.

5) Utah's Recording Statute provides that documents and instruments filed with the county recorder "impart notice to all persons of their contents" (UCA §57-3-102(1)), and the Utah Supreme Court has held that constructive notice can take two forms (*See First Am. Title Ins. Co. v. J.B. Ranch,* 966 P.2d 834 (Utah 1998)). First the recording statute

provides that constructive notice is imparted when documents are properly recorded (*Id*. at 837). This is known as record notice. Second, constructive notice may arise from a duty to inquire when one has "knowledge of certain facts and circumstances" that are sufficient to give rise to a duty to inquire further. *Id*. This is known as inquiry notice.

6) Taxpayer, as owner of the Subject Property, was on record notice of the existence of the Promontory DA and the Plat because they were properly recorded in the Office of the Summit County Recorder in 2001 and 2016 respectively; all *prior* to Taxpayer's purchase of the Subject Property.

7) The Promontory DA and Plat note #12, with their restrictions and conditions contained therein, operate similarly to a "restrictive covenant" as the Promontory DA and Plat run with the land and are binding on subsequent purchasers (*See Flying Diamond Oil Corp. v. Newton Sheep Co.,* 776 P.2d 618 (Utah 1989)). It is well established under Utah law that covenants, conditions and restrictions constitute a contractual relationship and that restrictive covenants are enforceable against property owners who purchase land subject to such restrictions. (*Workman v. Brighton Properties Inc.,* 976 P.2d 1209, 1212 (Utah 1999) (*citing, Turner v. Hi-Country Homeowners Ass'n,* 910 P.2d 1223, 1225 (Utah 1996); *Fink v. Miller,* 896 P.2d 649, 652 (Utah App. 1995)).

8) There is no ambiguity as to the meaning of Section 4.4.1 of the Promontory DA, which states that the Resort Units "**will be used for short term occupancy not to exceed six months** . . . [and they] **will not be permanent residences."** (emphasis added).

9) Neither is there ambiguity in Plate note #12 which definitively states, "**Resort Unit**

owners are ineligible to qualify for permanent resident status based upon the Resort Unit ownership." (emphasis added).

10) Moreover, the Promontory DA's definitions of "Permanent Occupancy" and "Secondary Occupancy" make it clear and unmistakable that the intent of the Promontory DA is to limit occupancy of the Resort Units to less than six months and limit the ability of said owner to claim a primary residential property tax benefit.

11) Therefore, by purchasing the Subject Property with the unambiguous restrictions found within the recorded Promontory DA and the Plat, the Taxpayer clearly and unmistakably waived its right to a primary residential property tax exemption. *See Pioneer Builders Company of Nevada, Inc. v. KDA Corporation*, 437 P.3d 539, 542 (Utah App. 2018) (there must be a "clear and unmistakable" waiver of a statutory right).

This is the final administrative decision of the Summit County Board of Equalization. As such, it may be appealed to the Utah State Tax Commission by filing a notice of appeal with the Clerk of the Board within 30 days of this written decision pursuant to UCA §59-2-1006.

DATED this 13th day of May 2020.

BOARD OF EQUALIZATION
OF SUMMIT COUNTY

BY:_____
Douglas Clyde, Chair

ATTEST:

_____
Michael Howard
Clerk to the Board of Equalization

APPROVED AS TO FORM:

_____

David L. Thomas
Chief Civil Deputy

BEFORE THE BOARD OF EQUALIZATION
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

In the matter of: **Kristine Marie Morley, Trustee of the Kristine Marie Morley Revocable Trust**	:	**BOARD OF EQUALIZATION'S FINDINGS OF FACT AND CONCLUSIONS OF LAW** May 13, 2020

This matter came before the Board of Equalization of Summit County ("Board") on a request by Kristine Marie Morley, Trustee of the Kristine Marie Morley Revocable Trust ("Taxpayer") for a primary residential property tax exemption(s) under Utah Code Annotated ("UCA") §§ 59-2-103 and 59-2-103.5 and Summit County Code §1-12B-1 et. seq. "Article B. Residential Property Tax Exemptions." Having considered the evidence presented by all interested parties and the entire record relating to this issue, the Board rendered its decision following discussion and deliberation as part of its regularly scheduled agenda on May 6, 2020, adopting a motion to DENY Taxpayer's request for a primary residential property tax exemption with that decision to become final following the adoption of these findings and conclusions. In support of that decision, the Board adopts the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1) Taxpayer is the record owner of Summit County Tax Id. PNW-2-26 (the "Subject Property"), acquiring ownership on or about December 7, 2018.

2) On or about March 9, 2020, the Summit County Assessor's Office received a cover letter

from Taxpayer's attorney, Mark Gaylord of Ballard Spahr, LLP, along with an application for primary residential property tax exemption for the Subject Property. On said application, Taxpayer declared that they have no other permanent residences in the state of Utah and that they live at the Subject Property at least 183 consecutive days per calendar year.

3) The Subject Property is located within the Promontory Specially Planned Area, which is subject to Summit County Ordinance 406, an "Ordinance Approving and Adopting the Development Agreement for the Promontory [Specially Planned Area]" (hereinafter referred to as the "Promontory DA"). The Promontory DA was recorded against the Subject Property on February 27, 2001 in the Office of the Summit County Recorder as Entry Number 583272, in Book 1355 starting at Page 1154.

4) The Subject Property is located within the Promontory Nicklaus West Phase 2 subdivision and the associated plat was recorded in the Office of the Summit County Recorder on August 2, 2016 as Entry Number 1050646 (the "Plat"). On the Plat, the Subject Property is indicated by an "R," which means that it is a "Resort Unit" as defined by the Promontory DA.

5) The Promontory DA at §1.48 defines "Resort Units" as "…a dwelling located in the immediate vicinity of a hotel or club facility and offered for rent or overnight stay as a part of the operations of the hotel or club facility."

6) The Promontory DA at §4.4.1 ("Resort Units") states that "[w]hile these units may be owned by the hotel operator or condominiumized, there will be restrictions **that these**

units will be used for short term occupancy not to exceed six months. In the case of individual cottage ownership, these cottage units must be part of the rental pool managed by the hotel for overnight rental in order to ensure their treatment as resort-type units and shall be designed **and set up to ensure that they will not be permanent residences.**" (emphasis added).

7) The Promontory DA at §1.37 defines "Permanent Occupancy" as "the occupancy of a Residential Unit within the Community for more than six months of a calendar year or where the owner has claimed a primary residential property tax benefit under applicable law." "Secondary Occupancy" is defined at §1.49 as "occupancy of a Residential Unit which is not Permanent Occupancy."

8) The Subject Property is also subject to a note on the Plat which states as follows under note #12, "**Resort Units shall be used for short-term occupancy not to exceed six (6) months by any resident in a single calendar year period. Resort Unit owners are ineligible to qualify for permanent resident status based upon the Resort Unit ownership**" (emphasis added). The Plat note further states that "[i]n the event that a court or similar official government decision making body determines that [this] is not enforceable and after such determination an owner of a Resort Unit is violating [this] by using such unit for permanent occupancy, an impact fee in the amount of $10,000 will be payable to the County by the Resort Unit Owner."

9) To date, the above-noted restriction on the Plat has never been challenged or deemed unenforceable by a court or similar official government decision making body.

CONCLUSIONS OF LAW

1) The Utah Constitution permits the legislature to provide by law, exemptions from taxation for residential property as long as they do not exceed 45% of the fair market value. *See* Utah Const. art. XIII, § 3(2)(a)(iv).

2) Pursuant to UCA §59-2-103, the fair market value of real property which is used as a primary residence, defined as residency for 183 or more consecutive calendar days in a given year, is allowed a primary residential tax exemption equal to a 45% reduction in the value of the property.

3) UCA §59-2-103.5 allows a county to adopt an ordinance that requires a property owner to file an application with the county's board of equalization before a primary residential tax exemption is granted, and Summit County has adopted such an ordinance, which has been codified as Summit County Code §1-12B-1 et. seq., "Article B. Residential Property Tax Exemptions."

4) Summit County Code §1-12B-2, requires the filing of an application prior to granting a primary residential property tax exemption and, consistent with Utah Administrative Rule R884-24P-52, has criteria for determining whether a property owner qualifies for a primary residential property tax exemption.

5) Utah's Recording Statute provides that documents and instruments filed with the county recorder "impart notice to all persons of their contents" (UCA §57-3-102(1)), and the Utah Supreme Court has held that constructive notice can take two forms (*See First Am. Title Ins. Co. v. J.B. Ranch,* 966 P.2d 834 (Utah 1998)). First the recording statute

provides that constructive notice is imparted when documents are properly recorded (*Id*. at 837). This is known as record notice. Second, constructive notice may arise from a duty to inquire when one has "knowledge of certain facts and circumstances" that are sufficient to give rise to a duty to inquire further. *Id*. This is known as inquiry notice.

6) Taxpayer, as owner of the Subject Property, was on record notice of the existence of the Promontory DA and the Plat because they were properly recorded in the Office of the Summit County Recorder in 2001 and 2016 respectively; all *prior* to Taxpayer's purchase of the Subject Property.

7) The Promontory DA and Plat note #12, with their restrictions and conditions contained therein, operate similarly to a "restrictive covenant" as the Promontory DA and Plat run with the land and are binding on subsequent purchasers (*See Flying Diamond Oil Corp. v. Newton Sheep Co.,* 776 P.2d 618 (Utah 1989)). It is well established under Utah law that covenants, conditions and restrictions constitute a contractual relationship and that restrictive covenants are enforceable against property owners who purchase land subject to such restrictions. (*Workman v. Brighton Properties Inc.,* 976 P.2d 1209, 1212 (Utah 1999) (*citing, Turner v. Hi-Country Homeowners Ass'n,* 910 P.2d 1223, 1225 (Utah 1996); *Fink v. Miller,* 896 P.2d 649, 652 (Utah App. 1995)).

8) There is no ambiguity as to the meaning of Section 4.4.1 of the Promontory DA, which states that the Resort Units "**will be used for short term occupancy not to exceed six months** . . . [and they] **will not be permanent residences."** (emphasis added).

9) Neither is there ambiguity in Plate note #12 which definitively states, "**Resort Unit**

owners are ineligible to qualify for permanent resident status based upon the Resort Unit ownership." (emphasis added).

10) Moreover, the Promontory DA's definitions of "Permanent Occupancy" and "Secondary Occupancy" make it clear and unmistakable that the intent of the Promontory DA is to limit occupancy of the Resort Units to less than six months and limit the ability of said owner to claim a primary residential property tax benefit.

11) Therefore, by purchasing the Subject Property with the unambiguous restrictions found within the recorded Promontory DA and the Plat, the Taxpayer clearly and unmistakably waived its right to a primary residential property tax exemption. *See Pioneer Builders Company of Nevada, Inc. v. KDA Corporation*, 437 P.3d 539, 542 (Utah App. 2018) (there must be a "clear and unmistakable" waiver of a statutory right).

This is the final administrative decision of the Summit County Board of Equalization. As such, it may be appealed to the Utah State Tax Commission by filing a notice of appeal with the Clerk of the Board within 30 days of this written decision pursuant to UCA §59-2-1006.

DATED this 13th day of May 2020.

BOARD OF EQUALIZATION
OF SUMMIT COUNTY

BY:_____
Douglas Clyde, Chair

ATTEST:

_____
Michael Howard
Clerk to the Board of Equalization

APPROVED AS TO FORM:

_____

David L. Thomas
Chief Civil Deputy

BEFORE THE BOARD OF EQUALIZATION
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

In the matter of: **Rochlin Investment Group, LLC**	:	**BOARD OF EQUALIZATION'S FINDINGS OF FACT AND CONCLUSIONS OF LAW** May 13, 2020

This matter came before the Board of Equalization of Summit County ("Board") on a request by Rochlin Investment Group, LLC ("Taxpayer") for a primary residential property tax exemption(s) under Utah Code Annotated ("UCA") §§ 59-2-103 and 59-2-103.5 and Summit County Code §1-12B-1 et. seq. "Article B. Residential Property Tax Exemptions." Having considered the evidence presented by all interested parties and the entire record relating to this issue, the Board rendered its decision following discussion and deliberation as part of its regularly scheduled agenda on May 6, 2020, adopting a motion to DENY Taxpayer's request for a primary residential property tax exemption with that decision to become final following the adoption of these findings and conclusions. In support of that decision, the Board adopts the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1) Taxpayer is the record owner of Summit County Tax Id. PNW-1-3 (the "Subject Property"), acquiring ownership on or about April 12, 2019.

2) On or about March 9, 2020, the Summit County Assessor's Office received a cover letter from Taxpayer's attorney, Mark Gaylord of Ballard Spahr, LLP, along with an

application for primary residential property tax exemption for the Subject Property. On said application, Taxpayer declared that they have no other permanent residences in the state of Utah and that they live at the Subject Property at least 183 consecutive days per calendar year.

3) The Subject Property is located within the Promontory Specially Planned Area, which is subject to Summit County Ordinance 406, an "Ordinance Approving and Adopting the Development Agreement for the Promontory [Specially Planned Area]" (hereinafter referred to as the "Promontory DA"). The Promontory DA was recorded against the Subject Property on February 27, 2001 in the Office of the Summit County Recorder as Entry Number 583272, in Book 1355 starting at Page 1154.

4) The Subject Property is located within the Promontory Nicklaus West Phase 1 subdivision and the associated plat was recorded in the Office of the Summit County Recorder on October 10, 2014 as Entry Number 1004651 (the "Plat"). On the Plat, the Subject Property is indicated by an "R," which means that it is a "Resort Unit" as defined by the Promontory DA.

5) The Promontory DA at §1.48 defines "Resort Units" as "…a dwelling located in the immediate vicinity of a hotel or club facility and offered for rent or overnight stay as a part of the operations of the hotel or club facility."

6) The Promontory DA at §4.4.1 ("Resort Units") states that "[w]hile these units may be owned by the hotel operator or condominiumized, there will be restrictions **that these units will be used for short term occupancy not to exceed six months.** In the case of

individual cottage ownership, these cottage units must be part of the rental pool managed by the hotel for overnight rental in order to ensure their treatment as resort-type units and shall be designed **and set up to ensure that they will not be permanent residences.**" (emphasis added).

7) The Promontory DA at §1.37 defines "Permanent Occupancy" as "the occupancy of a Residential Unit within the Community for more than six months of a calendar year or where the owner has claimed a primary residential property tax benefit under applicable law." "Secondary Occupancy" is defined at §1.49 as "occupancy of a Residential Unit which is not Permanent Occupancy."

8) The Subject Property is also subject to a note on the Plat which states as follows under note #12, "**Resort Units shall be used for short-term occupancy not to exceed six (6) months by any resident in a single calendar year period. Resort Unit owners are ineligible to qualify for permanent resident status based upon the Resort Unit ownership**" (emphasis added). The Plat note further states that "[i]n the event that a court or similar official government decision making body determines that [this] is not enforceable and after such determination an owner of a Resort Unit is violating [this] by using such unit for permanent occupancy, an impact fee in the amount of $10,000 will be payable to the County by the Resort Unit Owner."

9) To date, the above-noted restriction on the Plat has never been challenged or deemed unenforceable by a court or similar official government decision making body.

CONCLUSIONS OF LAW

1) The Utah Constitution permits the legislature to provide by law, exemptions from taxation for residential property as long as they do not exceed 45% of the fair market value. *See* Utah Const. art. XIII, § 3(2)(a)(iv).

2) Pursuant to UCA §59-2-103, the fair market value of real property which is used as a primary residence, defined as residency for 183 or more consecutive calendar days in a given year, is allowed a primary residential tax exemption equal to a 45% reduction in the value of the property.

3) UCA §59-2-103.5 allows a county to adopt an ordinance that requires a property owner to file an application with the county's board of equalization before a primary residential tax exemption is granted, and Summit County has adopted such an ordinance, which has been codified as Summit County Code §1-12B-1 et. seq., "Article B. Residential Property Tax Exemptions."

4) Summit County Code §1-12B-2, requires the filing of an application prior to granting a primary residential property tax exemption and, consistent with Utah Administrative Rule R884-24P-52, has criteria for determining whether a property owner qualifies for a primary residential property tax exemption.

5) Utah's Recording Statute provides that documents and instruments filed with the county recorder "impart notice to all persons of their contents" (UCA §57-3-102(1)), and the Utah Supreme Court has held that constructive notice can take two forms (*See First Am. Title Ins. Co. v. J.B. Ranch,* 966 P.2d 834 (Utah 1998)). First the recording statute

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6) Taxpayer, as owner of the Subject Property, was on record notice of the existence of the Promontory DA and the Plat because they were properly recorded in the Office of the Summit County Recorder in 2001 and 2014 respectively; all *prior* to Taxpayer's purchase of the Subject Property.

7) The Promontory DA and Plat note #12, with their restrictions and conditions contained therein, operate similarly to a "restrictive covenant" as the Promontory DA and Plat run with the land and are binding on subsequent purchasers (*See Flying Diamond Oil Corp. v. Newton Sheep Co.,* 776 P.2d 618 (Utah 1989)). It is well established under Utah law that covenants, conditions and restrictions constitute a contractual relationship and that restrictive covenants are enforceable against property owners who purchase land subject to such restrictions. (*Workman v. Brighton Properties Inc.,* 976 P.2d 1209, 1212 (Utah 1999) (*citing, Turner v. Hi-Country Homeowners Ass'n,* 910 P.2d 1223, 1225 (Utah 1996); *Fink v. Miller,* 896 P.2d 649, 652 (Utah App. 1995)).

8) There is no ambiguity as to the meaning of Section 4.4.1 of the Promontory DA, which states that the Resort Units "**will be used for short term occupancy not to exceed six months** . . . [and they] **will not be permanent residences."** (emphasis added).

9) Neither is there ambiguity in Plate note #12 which definitively states, "**Resort Unit**

owners are ineligible to qualify for permanent resident status based upon the Resort Unit ownership." (emphasis added).

10) Moreover, the Promontory DA's definitions of "Permanent Occupancy" and "Secondary Occupancy" make it clear and unmistakable that the intent of the Promontory DA is to limit occupancy of the Resort Units to less than six months and limit the ability of said owner to claim a primary residential property tax benefit.

11) Therefore, by purchasing the Subject Property with the unambiguous restrictions found within the recorded Promontory DA and the Plat, the Taxpayer clearly and unmistakably waived its right to a primary residential property tax exemption. *See Pioneer Builders Company of Nevada, Inc. v. KDA Corporation*, 437 P.3d 539, 542 (Utah App. 2018) (there must be a "clear and unmistakable" waiver of a statutory right).

This is the final administrative decision of the Summit County Board of Equalization. As such, it may be appealed to the Utah State Tax Commission by filing a notice of appeal with the Clerk of the Board within 30 days of this written decision pursuant to UCA §59-2-1006.

DATED this 13th day of May 2020.

BOARD OF EQUALIZATION
OF SUMMIT COUNTY

BY:_____
Douglas Clyde, Chair

ATTEST:

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Michael Howard
Clerk to the Board of Equalization

APPROVED AS TO FORM:

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David L. Thomas
Chief Civil Deputy