

ENTRY NO. 01005488

10/23/2014 10:26:24 AM B: 2262 P: 1113

Encroachment PAGE 1/7

MARY ANN TRUSSELL, SUMMIT COUNTY RECORDER

FEE 79.00 BY NEW CLAIM CONDOMINIUM OWNERS ASSOCIATION



WHEN RECORDED, MAIL TO:
Prospector Square Property Owner's Association
P.O. Box 680344
Park City, Utah 84068

New Claim Condos
P.O. Box 61
Kamas UT 84036

ENCROACHMENT AGREEMENT

AGREEMENT made this 1st day of October, 2014, by and between

PROSPECTOR SQUARE PROPERTY OWNER'S ASSOCIATION ("Prospector Square") and
THE NEW CLAIM CONDOMINIUM HOMEOWNER'S ASSOCIATION, a Utah non-profit
corporation ("New Claim").

WHEREAS, Prospector Square owns and controls the use of all common areas and
facilities in the Prospector Square Subdivision ("Subdivision"), as designated on the official plat
map thereof, for the benefit of the owners of property within the Subdivision;

AND WHEREAS, the interior common areas and facilities of the New Claim
Condominiums are owned in common by the owners of the units at said Condominium
("Owners");

AND WHEREAS, New Claim is the duly authorized representative of the Owners, as
well as manager of the common areas within the Condominium premises, which is located at
Lots 20A and 20B of the Subdivision;

AND WHEREAS, the respective properties of Prospector Square and New Claim share a
common boundary at the northern property line of the Condominium, which is located at 2000
Prospector Avenue, Park City, Utah;

AND WHEREAS, New Claim wishes to install an exterior water line, concrete water
vault and riser for its fire suppression system, which will be located on Prospector Square
common area, as depicted in Exhibit A, attached and incorporated herein ("Facilities");

AND WHEREAS, the Facilities will encroach over and upon the Subdivision's adjacent common area;

AND WHEREAS, there are existing mature trees growing upon the Subdivision common area adjacent to the northern boundary of the Condominium which New Claim desires to remove in order to install the water line;

AND WHEREAS, New Claim desires to replace the existing concrete walkway which provides pedestrian access to the Condominium and which is also located on Subdivision common area, as depicted in Exhibit A;

AND WHEREAS, the parties wish to establish the conditions for Prospector Square's consent to the subject encroachments, the maintenance of the Facilities, the replacement of the sidewalk and the liability for any damage or loss caused thereby;

NOW THEREFORE and in consideration of the terms, conditions and covenants hereinafter set forth, the parties agree as follows:

1. New Claim acknowledges that the placement of the Facilities will constitute otherwise non-consensual encroachments onto the common area of the Subdivision, and that the location and dimension of those encroachments are accurately described on Exhibit A, which may be subsequently modified to reflect actual location after installation.

2. Prospector Square hereby consents to the encroachment of the Facilities, and grants New Claim an encroachment therefor, relinquishing right to prevent or remove such encroachment, presently and prospectively, but expressly subject to, and only for so long as, the rights and obligations established hereunder are observed.

3. New Claim shall install the Facilities in an expeditious fashion, in accordance with applicable building codes, and shall promptly repair any damage or disruption to the

surrounding common area surface and subsurface, restoring same to at least its previous condition, or as otherwise required by government authority. In addition, such trees and other landscape features removed from common area by New Claim shall be replaced, at New Claim's sole expense, per landscape design, materials and contractor selected by Prospector Square. New Claim agrees to Prospector Square's replacement landscaping plan, and herewith deposits the \$3,700 estimated cost thereof. In the event the cost of the replacement landscaping project exceeds said deposit amount, New Claim shall pay the additional expense with fifteen (15) days following written notice from Prospector Square; in the event the project cost is less, Prospector Square shall refund the difference to New Claim within fifteen (15) days following final billing from contractor. Prospector Square shall have sole responsibility for irrigation and maintenance of the replacement landscaping, unless an expense is incurred incident to the restoration thereof, as set for in Section 4, which expense shall be paid by New Claim.

4. New Claim shall have sole obligation for the timely maintenance, repair and/or replacement of the Facilities, which shall be maintained in a safe and unobtrusive condition. New Claim shall have reasonable right of temporary access across and upon Association common area to fulfill said maintenance obligation. New Claim shall not, however, have right to expand or add to the Facilities without the written approval of Prospector Square, prior to replacement.

5. New Claim shall have right to replace the northerly access sidewalk to the Condominium, and to integrate a new step along the course thereof in order to minimize ice formation, upon condition that: (i) any necessary government permit for such flatwork and step feature is secured prior to installation; and (ii) the materials and installation technique utilized are fully compliant with applicable building code and any inspection attendant thereto. In the event

said sidewalk deteriorates prematurely due to improper material or workmanship, New Claim shall be obligated for the cost to correct such failure.

6. Except as may be necessary to preserve Prospector Square property, or in the event of an emergency, or to comply with any law, Prospector Square shall not act or fail to act in the use of its property so as to cause loss or damage to the facility or its functions as designated in this Agreement. Prospector Square shall otherwise retain all lawful right to enter upon the subject common area for all lawful purposes.

7. New Claim shall bear all risk of personal injury and property loss arising from the installation and use of the Facilities. New Claim shall establish and maintain, at its sole expense, public liability insurance coverage against risk of injury to persons and property loss in such amounts and coverage conditions as are acceptable to Prospector Square in its sole discretion. Prospector Square shall be named as an Additional Insured concerning such coverage, to the reasonable extent of the risk of damage posed by the encroachments to the property of Prospector Square or that of any private party, as well to the risk of injury to persons using the Facilities or in any way exposed thereto. New Claim shall provide suitable rider or other evidence of such coverage to Prospector Square at least annually upon the renewal by New Claim of its property insurance or at the request of Prospector Square.

New Claim shall further indemnify and hold harmless Prospector Square, its agents, employees, officers, lot owners and members from any and all claims and liability for injury and loss arising from the existence of the encroachments and/or use of any object, facility or thing thereon, including but not limited to personal injury to New Claim's guests and invitees, as well as to the public at large, and including any attorney fees incurred by the Association in

connection with any claim arising from injuries sustained upon or on account of the installation, operation and maintenance of the subject water line and associated facilities.

8. In the event either party incurs attorney fees or court costs in order to enforce this Agreement, with or without judicial intervention, the prevailing party in such adjudication shall be awarded its reasonable costs and attorney fees, including those incurred on appeal.

9. The provisions of this Agreement shall create no rights nor obligations of use, access or permit beyond that expressly stated, and which are reasonably necessary to accomplish the purposes and intent hereof.

10. The provisions hereof shall be binding upon the parties and their successors, however designated or in whatever representative capacity for the owners of the respective properties named herein.

The properties affected hereby are identified as: NC-102, NC-101, NC-104, NC-105, NC-106, NC-107, NC-108, NC-109, NC-110, NC-111, NC-113, NC-114, NC-115, NC-201, NC-301, NC-401, NC-202, NC-302, NC-402, NC-203, NC-303, NC-403, NC-204, NC-304, NC-404, NC-205, NC-305, NC-405, NC-206, NC-306, NC-406, NC-207, NC-307, NC-407, NC-208, NC-308, NC-408, NC-209, NC-309, NC-409, NC-210, NC-310, NC-410, NC-211, NC-311, NC-411, NC-212, NC-312, NC-412, NC-213, NC-313, NC-413, NC-214, NC-314, NC-414, NC-215, NC-315, NC-415.

THE NEW CLAIM CONDOMINIUM
HOMEOWNER'S ASSOCIATION,
a Utah non-profit corporation

By: Karen C. Supple

Its: President

PROSPECTOR SQUARE PROPERTY
OWNER'S ASSOCIATION, a Utah non-
profit corporation

By: Dean S. Murlett

Its: President

STATE OF UTAH)
 : ss.
County of Summit)

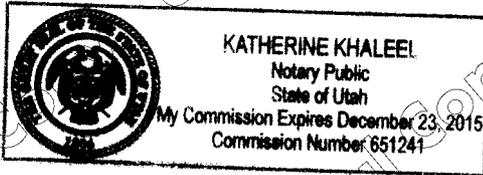
The foregoing instrument was duly acknowledged before me this 1st day of October, 2014, by Karen C. Hepler, as President of Prospector Square Property Owner's Association.



[Signature]
Notary Public

STATE OF UTAH)
 : ss.
County of Summit)

The foregoing instrument was duly acknowledged before me this 1st day of October, 2014, by Deans Berrett, as President of The New Claim Condominium Homeowner's Association, who avowed his/her authority to do so pursuant to the resolution or bylaws of said entity.



[Signature]
Notary Public

POISON CREEK

