

Return

Name and Address:

Julia R. Pettit
Eric F. Mosher
P.O. Box 2118
Park City, Utah 84060

ENTRY NO. 01093104

06/11/2018 11:22:40 AM B: 2465 P: 1739

Easements PAGE 1/14
MARY ANN TRUSSELL, SUMMIT COUNTY RECORDER
FEE 37.00 BY ALEXANDER BARNETT COHEN



**AMENDED AND RESTATED
EASEMENT AGREEMENT**

THIS AMENDED AND RESTATED EASEMENT AGREEMENT (this "Agreement") is made and entered into as of this ____ day of June, 2018, and is effective as of December 13, 2013, by and between Alexander Cohen and Elizabeth Cohen, husband and wife ("Grantor") and Eric F. Mosher and Julia R. Pettit, husband and wife ("Grantee").

RECITALS

A. Grantor is the owner of all that certain real property in Summit County, Utah, described in Exhibit A attached hereto (the "Servient Property");

B. Grantee is the owner of all that certain real property in Summit County, Utah, described in Exhibit B attached hereto (the "Dominant Property");

C. Grantor and Grantee acknowledge and agree that there exists a shared wood railroad tie retaining wall that runs north and south along the east property line of both properties in the general area as depicted in Exhibit D (the "Retaining Wall").

D. Grantor and Grantee entered into that certain Easement Agreement dated as of December 13, 2013 (the "Original Agreement"); and

E. The parties now desire to amend and restate the Original Agreement and to acknowledge, confirm and reflect of record an easement over and across the Servient Property for the purposes hereinafter set forth.

AGREEMENT

1. **Grant of Easement.** Grantor, for themselves and for their heirs and

successors in interest to the Servient Property or any portion thereof, hereby grants, establishes and conveys to Grantee, their assigns and successors in interest to the Dominant Property and all portions thereof, an easement (the "Easement") over, under and across that portion of the Servient Property depicted on Exhibit C attached hereto (the "Easement Area") for the purposes of maintaining, repairing, improving and occupying the Grantee's existing garage (the "Garage"), and Grantee hereby accepts such Easement on the terms and conditions herein contained. The Easement herein granted shall be exclusive (in favor of Grantee) as to that portion of the Easement Area presently occupied by the Garage. The Easement agreed to herein is granted upon condition of the continued existence of the Encroachment by the Garage. If the Encroachment ceases by removal of the Garage (i) by Seller or Sellers' successors without replacing it with another structure reasonably promptly, or (ii) by fire, casualty or Act of God, and another structure is not built on the Encroachment by Sellers or Sellers' successors reasonably promptly, then the Easement granted herein shall lapse and be of no further force and effect.

Except as expressly provided herein, Grantee shall have no right to in any manner improve, or place additional improvements on, the portion of Servient Property burdened by the Easement.

2. Maintenance and Repair of Garage and Retaining Wall; Relocation of the Fence.

(a) A portion of Garage is currently located on the Servient Property as shown on Exhibit C. Grantee shall be solely responsible for maintaining, and repairing the Garage.

(b) Subject to the terms hereof, Grantor and Grantee mutually agree to repair and maintain each party's respective portion of the Retaining Wall for the benefit of both parties. Any property of the Grantor or Grantee that is damaged or destroyed by the failure of the other party's portion of the Retaining Wall, including without limitation, damage to or destruction of vegetation, landscaping, personal property or structures on either properties, shall be repaired, replaced, or restored by the failing party within thirty (30) days of being notified in writing of such damage or destruction by the other party. However, in the event the damaged property is vegetation, the repair/replacement shall occur on or before July 1 of the next succeeding year. This obligation shall survive any termination of this Agreement.

(c) A currently encroaching structure consists of a wooden fence that runs east and west over the north property line of the Servient Property in the general area as depicted in Exhibit D (the "Fence"). The Grantor and Grantee mutually agree to work together to modify the Fence by moving it so that it no longer encroaches upon the Servient Property.

3. **Benefits and Burdens.** The benefits and burdens of the Easement granted by and covenants contained in this Agreement shall run with the property so benefited and burdened, including any division or partition of such property. The rights, covenants and obligations contained in this Agreement shall bind, burden, and benefit each party's successors and assigns, lessees, mortgagees, or beneficiaries under a deed of trust. Any reference to Grantor under this Agreement shall apply only so long as Grantor owns the fee title to Servient Property, and thereafter such reference shall apply to Grantor's successor or assign. Any reference to Grantee under this Agreement shall apply only so long as Grantee owns the fee title to the Dominant Property, and thereafter such reference shall apply to Grantee's successor or assign. Any transferee of the Servient Property or the Dominant Property shall automatically be deemed, by acceptance of title to such property, to have assumed all of the obligations set forth in this Agreement imposed on the owner of such property. The transferor shall, once such transfer is consummated, be relieved of liability that arises thereafter under this Agreement, but such transferor shall not thereby be relieved of liability that arose before such time and which remains unsatisfied.

4. **Grantee's Assumption of Risk.** Grantee assumes all risks related to the portion of the Garage located within the Easement Area and the use thereof. During the term of this Agreement, Grantee shall also be responsible for insuring the Garage and shall carry and maintain in force for the entire duration of this Agreement insurance coverages with respect to the Garage.

5. **No Implied Termination.** This Easement shall not be terminated by implication, nonuse or abandonment and no release of this Easement shall arise by waiver or course of conduct unless such termination or release is evidenced by a recorded agreement to such effect executed by all of the then owners of the Dominant Property. The Easement herein granted shall be exclusive (in favor of Grantee) as to that portion of the Easement Area presently occupied by the Garage. The Easement agreed to herein is granted upon condition of the continued existence of the Encroachment by the Garage. If the Encroachment ceases by removal of the Garage (i) by Seller or Sellers' successors without replacing it with another structure reasonably promptly, or (ii) by fire, casualty or Act of God, and another structure is not built on the Encroachment by Sellers or Sellers' successors reasonably promptly, then the easement granted herein shall lapse and be of no further force and effect.

6. **Enforcement.** This Agreement is specifically enforceable and in the event either party brings any action to so enforce this Agreement or recover any damages as a result of any breach hereof the prevailing party shall be reimbursed by the losing party for its costs and reasonable attorneys' fees therein incurred.

7. **Successors and Assigns.** The terms, covenants and conditions contained in this Agreement shall run with the Dominant Property and Servient Property and bind and inure to the benefit of Grantor and Grantee and their respective successors in interest to the Dominant Property and Servient Property as the case may be; provided, however, no person

who was an owner of the Dominant Property or Servient Property shall be liable for any acts or omissions under this Agreement which occur after the date such owner conveys the Dominant Property or Servient Property (as applicable) to any other person.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may not be modified except through a recorded agreement executed by such parties or their respective successors in interest.

9. **Recording Costs; Execution in Counterparts.** Grantor shall promptly cause this Easement Agreement to be recorded with the Summit County Recorder and Grantor and Grantee shall each pay fifty percent (50%) any recording costs due in connection with this Agreement. This Agreement may be executed in counterparts, each of which shall constitute but one and the same grant and contract.

10. **Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws and decisions of the state of Utah. In the event of litigation, exclusive venue shall lie in Summit County, Utah. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(Signatures follow on next page)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

GRANTOR:

Alexander Cohen

Elizabeth Cohen

GRANTEE:

Julia R. Pettit

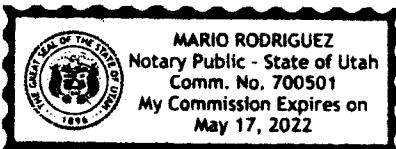
Eric F. Mosher

SEE ATTACHMENT FOR
OFFICIAL NOTARIZATION

STATE OF Utah)
COUNTY OF Summit)
)ss.
)

On this day personally appeared before me ALEXANDER COHEN, to me known to be the individual or individuals described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 11 day of June, 2013.



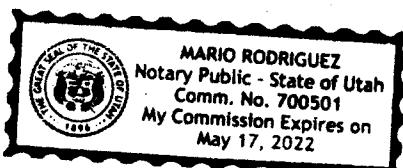
Signature: Wes G.

Name (Print): Mario Rodriguez

NOTARY PUBLIC in and for the State
of UT, residing at Summit
My appointment expires: May 17, 2022

On this day personally appeared before me ELIZABETH COHEN, to me known to be the individual or individuals described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 11 day of June, 2013.



Signature: W. K. S.

Name (Print): Mario Rodriguez

NOTARY PUBLIC in and for the State
of UT, residing at Summit
My appointment expires: May 17, 2022

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

)

COUNTY OF SAN DIEGO)

On 6/2/2018 before me Maritza Q. Palafox, Notary Public personally appeared JULIA R. PETTIT and ERIC F. MOSHER, who proved to me on the basis of satisfactory evidence to be persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature: Maritza Q. Palafox

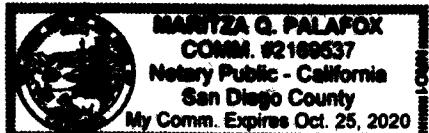


EXHIBIT A

[SERVIENT PROPERTY - 243 Daly Avenue]

Legal Description (include acreage): A PARCEL OF LAND ON THE E SIDE OF DALY AVE IN THE WASHINGTON MILLSITE RESERVATION PREVIOUSLY DESC AS THE 29THHOUSE ON THE E SIDE OF EMPIRE CANYON; ALSO DESC AS BEG AT A PT WH IS S 89*57'W ALONG THE N BOUNDARY OF THE WASHINGTON MILLSITE RESERVATION 86.12 FT & S 18*57'58" W 84.886 FT FROM THE NE COR OF SD RESERVATION SD PT ALSO BEING S 1400.04 FT & W 1053.30 FT FROM THE SE COR OF SEC 16 T2SR4E SLBM (BASIS OF BEARING SE CORSEC 16 TO E1/4 COR SEC 16 N); & RUN TH N 70*46'21" W 52.45 FT; TH N 66*02'02" W21.80 FT TO THE E LINE OF DALY AVE; TH N 18*57'58" E ALONG SD E LINE 27.80 FT; TH S 71*02'02" E 28.00 FT; TH N 18*57'58" E 5.00 FT; TH S 71*02'02" E 46.166 FT; TH S 18*57'58" W 34.939 FT TO THE PT OF BEG CONT 2419.2 SQ FT OR 0.06 AC

Parcel #: PC627A

EXHIBIT B

[DOMINANT PROPERTY - 239 Daly Avenue]

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF PARK CITY, COUNTY OF SUMMIT, STATE OF UTAH, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT A POINT ON THE NORTH LINE OF WASHINGTON MILLSITE RESERVATION, SAID POINT BEING SOUTH 89° 57' WEST ALONG SAID NORTH LINE, 86.12 FEET FROM THE NORTHEAST CORNER OF SAID WASHINGTON MILLSITE RESERVATION, AND MORE SPECIFICALLY DESCRIBED AS BEING SOUTH 1320.012 FEET, AND WEST 1025.669 FEET FROM THE SOUTHEAST CORNER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 18° 57'58" WEST 49.947 FEET; THENCE NORTH 71° 02'02" WEST 46.166 FEET; THENCE SOUTH 18° 57'58" WEST 5.00 FEET; THENCE NORTH 71° 02'02" WEST 28.00 FEET TO THE EAST LINE OF DALY ROAD; THENCE NORTH 18° 57'58" EAST ALONG SAID EAST LINE 29.386 FEET TO THE NORTH LINE OF THE WASHINGTON MILLSITE RESERVATION; THENCE NORTH 89° 57' EAST ALONG SAID NORTH LINE, 78.447 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

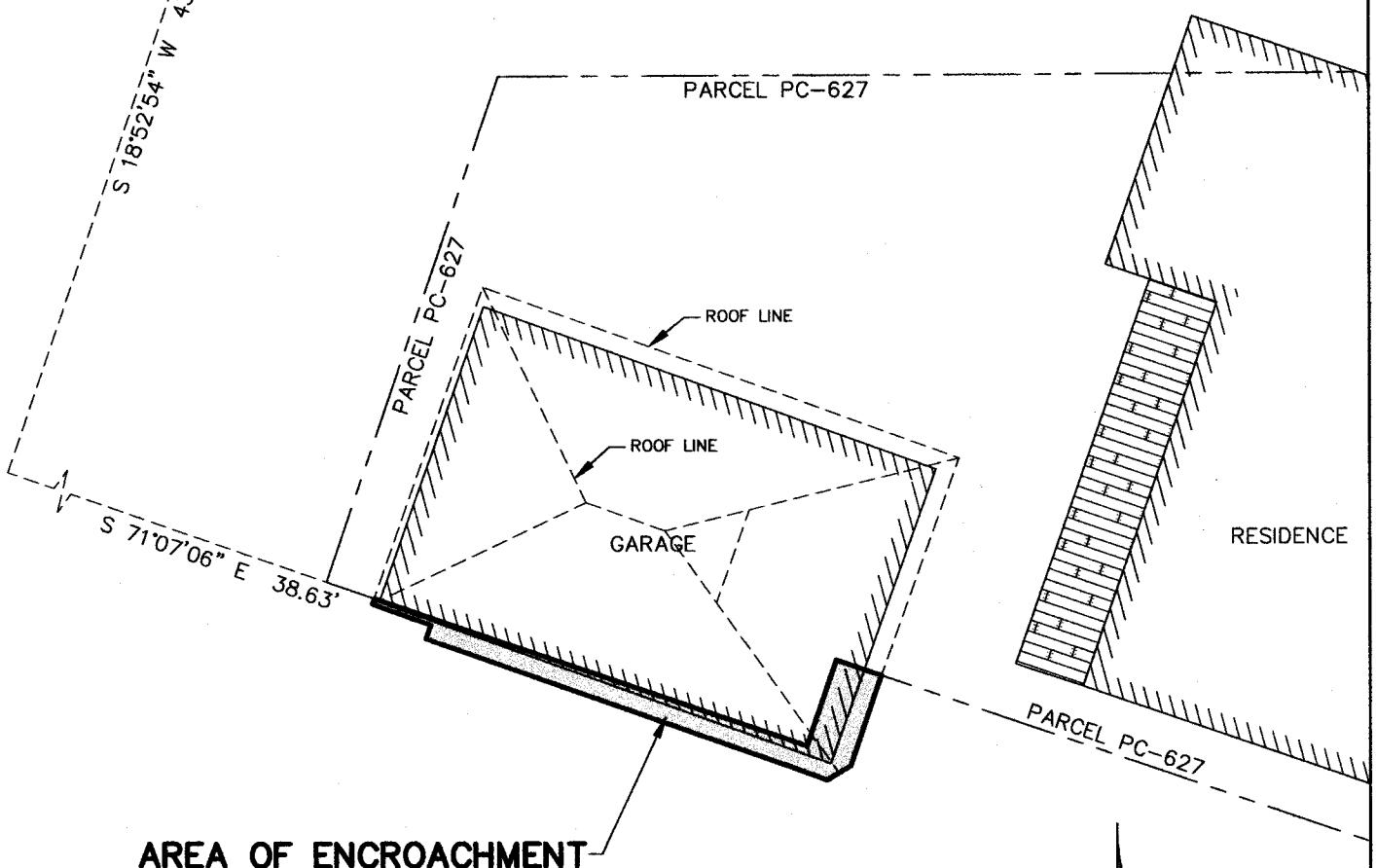
BEGINNING AT A POINT ON THE NORTH LINE OF WASHINGTON MILLSITE RESERVATION, SAID POINT BEING SOUTH 89° 57' WEST ALONG SAID NORTH LINE 86.12 FEET FROM THE NORTHEAST CORNER OF SAID WASHINGTON MILLSITE RESERVATION, SAID POINT ALSO BEING EAST 21.88 FEET FROM THE SOUTHWEST CORNER OF LOT 36, BLOCK 73, MILLSITE RESERVATION TO PARK CITY AND MORE SPECIFICALLY DESCRIBED AS BEING SOUTH 1319.94 FEET AND WEST 1025.67 FEET FROM THE SOUTHEAST CORNER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 89° 57'00" WEST 78.447 FEET; THENCE NORTH 18° 57'58" EAST 64.104 FEET; THENCE 67° 21'16" EAST 75.00 FEET; THENCE SOUTH 20° 07'13" WEST 33.737 FEET TO THE POINT OF BEGINNING.

PARCEL ID: PC-627

EXHIBIT C

[DEPICTION OF EASEMENT AREA ON FOLLOWING PAGE]

FOUND SURVEY MONUMENT
DALY AVENUE
ADJACENT TO LOT 27, BLOCK 73



SCALE: 1"=10'

LEGAL DESCRIPTION
239 DALY AVENUE
GARAGE ENCROACHMENT

August 31, 2015

Located in the northeast quarter of Section 21, Township 2 South, Range 4 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point that is South $18^{\circ}52'54''$ West 433.47 feet and South $71^{\circ}07'06''$ East 38.63 feet from a street monument in Daly Avenue adjacent to Lot 27, Block 73, Park City Survey, said point being the intersection of a roof overhang and the southerly boundary of parcel PC-627; and running thence along the boundary of parcel PC-627 the following three (3) courses; 1) South $71^{\circ}07'06''$ East 25.21 feet; thence 2) North $18^{\circ}52'54''$ East 5.00 feet; thence 3) South $71^{\circ}07'06''$ East 2.64 feet to the easterly edge of a roof overhang on an existing garage; thence along said roof overhang the following six (6) courses: 1) South $18^{\circ}43'41''$ West 5.27 feet; thence 2) South $59^{\circ}34'43''$ West 1.52 feet; thence 3) North $70^{\circ}33'36''$ West 23.45 feet; thence 4) North $19^{\circ}35'13''$ East 0.81 feet; thence 5) North $70^{\circ}12'53''$ West 3.43 feet; thence 6) North $19^{\circ}20'31''$ East 0.32 feet to the point of beginning.

Description contains 46 sq.ft.

Parcel # PC-627

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EXHIBIT D

[DEPICTION OF RETAINING WALL AND FENCE]

