

**WHEN RECORDED MAIL TO:**

Prospector Square Property  
Owners Association  
P.O. Box 3273  
Park City, Utah 84060

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ALAN SPRIGGS, SUMMIT COUNTY RECORDER  
1998 NOV 03 15:34 PM FEE \$33.00 BY DMG  
REQUEST: FIRST AMERICAN TITLE CO UTAH

**AGREEMENT**

**THIS AGREEMENT** is entered effective this 21st day of October, 1998, by and between KAHLER E & P PARTNERS, L.P.I, a Delaware limited partnership (the "Company") and the Prospector Square Property Owner's Association, a Utah non-profit corporation (the "Association").

**Recitals**

- A. The Company owns a hotel which currently operates as the "Olympia Park Hotel" (the "Hotel"), located at 1895 Sidewinder Drive in Park City, Utah. The legal description of the land on which the Hotel is located is more particularly described as follows: All of Lots 10-A, 10-B, 10-C, 10-D, 11, 12-A, 12-B and 12-C, AMENDED PLAT OF PROSPECTOR SQUARE, according to the official plat thereof, recorded December 26, 1974 as Entry No. 1254433, in the office of the Summit County Recorder (the "Hotel Property").
- B. On or about August 22, 1997, a survey of the Hotel Property was prepared by SCHUCHERT & ASSOCIATES ((the "Survey"). A copy of the Survey is filed as File No. S-2813 in the Office of the Summit County Recorder, and is, by this reference, incorporated into this Agreement.
- C. The Association owns "Lot B" (which, at present, is a parking lot), and certain "Subdivision Common Area". Lot B and the Subdivision Common Area are located contiguous to the Hotel Property and are identified on the Survey. Lot B and the Subdivision Common Area are sometimes collectively referred to below as the "Association Property". The Association owns both the surface and subsurface of Lot B and the Subdivision Common Area.
- D. Surface and underground parking is currently being used by Members of the Association, and by their respective tenants, employees, guests and patrons. There is surface parking on Lot B (the "Surface Parking"), and there is subsurface parking located beneath Lot B, the Subdivision Common Area, and Lots 10-A, 10-B, 10-C and 10-D (the "Subsurface Parking"). The Subsurface Parking is currently accessed by a ramp located on Lot B as shown on the Survey.
- E. The Company desires to: (i) remodel the Hotel; (ii) change the location of the access ramp; (iii) make landscaping improvements to Lot B and the Subdivision Common Area; and (iv) make other changes and improvements

FIRST AMERICAN TITLE CO.  
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to the Hotel, Lot B, and the Subdivision Common Area. The plans and specifications for the remodel of the Hotel (including the landscape improvements and the changes in location of the access ramp) are shown on construction drawings prepared by Smith-Layton & Associates in Salt Lake City, Utah, entitled "A Renovation of the Olympia Park Hotel". The construction drawings referenced above have been filed with Planning Department of Park City Municipal Corporation and are collectively referred to below as the "Remodel Plans". The Remodel Plans have been reviewed and approved by the Company and the Association and are incorporated into this Agreement by this reference. Although the Association has reviewed and approved the Remodel Plans, the Company acknowledges and agrees that the review and approval by the Association was limited in scope, and the Association accepts no liability or responsibility for the technical content of the Remodel Plans.

- F. The Association and the Company have determined that it is in their mutual best interest to enter into this Agreement in order to clarify the rights and obligations of the parties with respect to the subject matter set forth herein.

**NOW THEREFORE**, for Ten Dollars (\$10.00) and other good and valuable consideration, the adequacy and sufficiency of which the parties do hereby acknowledge, the Company and the Association do hereby agree as follows:

1. **RECITALS**. The above Recitals are incorporated herein by this reference.
2. **OWNERSHIP OF SURFACE & SUBSURFACE**. The Company and the Association agree that: (a) the Company owns the surface and subsurface of the Hotel Property; and (b) the Association owns the surface and subsurface of the Association Property.
3. **CROSS-EASEMENTS**. The Company hereby grants, conveys, and warrants to the Association, and to its Members and their respective employees, guests, tenants, and patrons, a non-exclusive easement for vehicular and pedestrian ingress and egress over and through the Subsurface Parking located under the Hotel Property, for access to and from the Association Property. The Association hereby grants, conveys, and warrants to the Company, and to the owners, employees, guests, tenants, and patrons of the Company, a non-exclusive easement for vehicular and pedestrian ingress and egress over and through the Association Property, for access to and from the Hotel Property, and for the construction and use of the New Ramp. The Association and the Company also grant, convey and warrant to each other, and to their respective owners, employees, guests, tenants and patrons, a parking easement as defined in Section 4.F. below. The Company may also use a portion of Lot B for a waste disposal bulk container as shown on the Remodel Plans (the "Lot B Container"). The Company agrees the Lot B Container may be used by other members of the Association.

4. **PARKING.** The Company and the Association agree as follows:

- A. **Elimination of Old Access Ramp.** The access ramp currently located on Lot B (the "Old Ramp") will be closed in accordance with the construction schedule of the Company associated with the Remodel Plans. Upon closing the Old Ramp, the Company will rebuild Lot B, and place certain landscaping on Lot B as shown on the Remodel Plans. All costs associated with: (1) eliminating the Old Ramp; (2) rebuilding and landscaping Lot B; and (3) repairing any damage to Lot B created by eliminating the Old Ramp, shall be the exclusive responsibility of the Company.
- B. **Construction of New Access Ramp.** The Company desires to build a new access ramp within the Subdivision Common Area (the "New Ramp"), which will access the Subsurface Parking from Poison Creek Lane as shown on the Remodel Plans. All costs associated with: (1) construction of the New Ramp; (2) repairing any damage to the Subdivision Common Area and the Subsurface Parking created by building the New Ramp, shall be the responsibility of the Company. Except for snow removal, all costs of maintaining the New Ramp shall be the responsibility of the Company.
- C. **Number of Parking Spaces.** There is currently a combined total of one hundred sixty-five (165) parking spaces located on the Surface Parking and the Subsurface Parking (collectively referred to below as "Parking Spaces"). Upon completion of the work referenced in the Remodel Plans the Company agrees that there will be no net loss of Parking Spaces.
- D. **Maintenance of Surface Parking and New Ramp.** The Association shall be responsible for providing snow removal from the Surface Parking and the New Ramp. Snow removal from the sidewalks adjacent to the Hotel on Sidewinder Drive and Poison Creek Lane, and the private sidewalk on Lot B which is located immediately next to the Hotel shall be the responsibility of the Company. The Company and the Association shall share, on a 50/50 basis, all costs associated with the application, repair and maintenance of any surface membrane or other surface finish applied to the Surface Parking and the New Ramp. Such obligation shall however, require that the Company and the Association agree, in advance and in writing, upon the actual amount to be expended.
- E. **Maintenance of Subsurface Parking.** The Company shall be responsible for the costs of all repairs and maintenance of the Subsurface Parking, including, but not limited to: (1) all lighting and lighting upgrades; (2) repair and replacement of subsurface drains; (3) repair of any damage to the Subsurface Parking caused by leaking of rain water or snow-melt from the surface onto the Subsurface Parking; and (4) repair and maintenance expenses which are incurred to minimize any such leaking. The Company

may continue to use the existing locked storage and mechanical rooms in the Subsurface Parking. The Company may add additional storage in the Subsurface Parking area so long as there is no net loss of Parking Spaces. The Company is not obligated to reconstruct or renovate the structural components of the Subsurface Parking, and makes no warranty or representation regarding the structural condition of the Subsurface Parking. Provided however, any damage to the Surface and/or Subsurface Parking caused by completion of the Remodel Plans shall be the responsibility of the Company.

- F. **Parking Privileges.** The Company and the Association agree that some of the Parking Spaces in the Subsurface Parking are located on property owned by the Company and others are located on property owned by the Association. The Company and the Association also agree that it is generally impractical to designate Parking Spaces for the exclusive use of either the Association or the Company. Based on the above, the Company and the Association agree as follows: (i) except as provided in subsection 4.F.(ii) below, no Parking Spaces in the Surface Parking or the Subsurface Parking shall be designated for the exclusive use of the Company, and shall be available for parking, on a "first-come first-served" basis, by the Association, the Company, and their respective owners, employees, tenants, guests, and patrons; and (ii) the Company, may, in its discretion, designate not to exceed five (5) Parking Spaces (including surface and subsurface) for "Guest Registration Only", and for the Hotel's exclusive use. The Company may re-stripe and re-orient parking and driveways in the Subsurface Parking, so long as there is no net loss of Parking Spaces.
- G. **Insurance.** The Company and the Association each agree to maintain general liability and casualty insurance in such amounts as each deems reasonable, to protect against damage, injury, and claims which may occur at any location in the Surface Parking and Subsurface Parking. Each such policy shall name the other as an additional insured party.
- H. **Fire Protection.** The Company acknowledges that there is presently a pressurized water sprinkler fire protection system located in the Subsurface Parking. The Company agrees to be responsible for maintenance of that system, and for all upgrades, modifications, or replacement of that system deemed appropriate by the Company and/or required by Park City Municipal Corporation and the Park City Fire Service District.
- I. **Security.** The Company may implement, and is responsible for any security measures it desires to take with respect to the Surface Parking or the Subsurface Parking, but the Company is not obligated to provide security. The Association shall not be responsible to provide any security for any Surface or Subsurface Parking. The Company may adopt and enforce

reasonable parking rules consistent with this Agreement, and consistent with the existing restrictive covenants of record adopted by the Association.

5. **LANDSCAPING.** The Company, at its expense, agrees to install and maintain, in an attractive manner, all of the landscaping as shown on the Remodel Plans. The Company shall be responsible for the maintenance of all landscaping located between the Hotel Property and the sidewalks which run along Poison Creek Lane and Sidewinder Drive. The Association agrees to maintain, in an attractive manner, the landscaping strip which is located between the two driveway entrances to Lot B, and to the north of the public sidewalk adjacent to Sidewinder Drive.

6. **ENCROACHMENTS.** On the Survey, under the title of "Statement of Encroachments", there is a listing of locations in which the Hotel improvements encroach onto the Association Property. The Association and the Company acknowledge that the satellite dish shown on the southwest corner of the Hotel also encroaches onto the Association Property. Conditioned upon the Company's compliance with its obligations under this Agreement, the Association hereby grants and conveys to the Company an encroachment easement for the Satellite Dish, and for the Statement of Encroachments items B, D, E, F, H, I, K, L and N, and for certain mechanical/sprinkler pipes and equipment, certain electrical transformer boxes and equipment, certain gas lines and equipment, and certain air vents and water drains now existing or which will exist after the remodel of the Hotel, which all encroach upon Association Property. Statement of Encroachments item P is acknowledged by the Company and the Association and an access easement is granted and conveyed by the Association to the Company as provided in Section 3 above. In reference to the Statement of Encroachments items A, C, G, J & M, the terms of Section 8 below shall apply.

7. **LIABILITY.** The Company and the Association acknowledge that, due to the contiguous nature of the Association Property and the Hotel Property, each of their respective properties is and will be used by owners, guests, members, tenants, and patrons of both the Company and the Association. In that context, the potential of injury on the Hotel Property and the Association Property is of concern to both the Company and the Association. Based on the above, the Company and the Association agree as follows: (a) the Association and the Company will each carry liability insurance coverage in such amounts as each deems reasonable and prudent, and each such policy will name the other as an additional insured party.

8. **PARTY WALL.**

A. **Encroachments.** The Company and the Association acknowledge that certain portions of the Hotel Property (described on the Survey as the "Statement of Encroachments") encroach onto either Lot B and/or the Subdivision Common Area. Based on the Remodel Plans for the Hotel, the Company intends to modify various portions of the Hotel which include Statement of Encroachments items A, C, G, J & M. The specific locations of

these existing and proposed encroachments are more particularly described in the Remodel Plans. Those improvements described on the Remodel Plans which will be built by the Hotel on the Association Property, are, for purposes of this Section 8, specifically referred to below as the "Improvements". As stated, those Improvements will encroach onto the Association Property.

- B. **Sale and Leaseback of Improvements.** The Association hereby consents to construction or installation of the Improvements on the Association Property. Upon completion or installation of the Improvements, the Company agrees to sell the Improvements to the Association, and the Association agrees to purchase the Improvements from the Company, for One Dollar (\$1.00). Simultaneously with such purchase and sale, the Association agrees to lease the Improvements to the Company for a term equal to the life of the Hotel on the Hotel Property, for the total price of Ten Dollars (\$10.00). Although the Improvements shall be owned by the Association, nothing contained in this Agreement shall restrict the right of the Company, and its employees, clients and patrons, from accessing the Hotel Property by means of any Association Property, including, but not limited to, the Improvements.
- C. **Construction.** All costs, of any kind or nature, associated with construction or installation of the Improvements shall be the responsibility of the Company. The Association hereby grants to the Company a right of ingress and egress over the Association Property, as necessary, for purposes of completion or installation of the Improvements.
- D. **Maintenance.** Upon completion or installation of the Improvements, the Company, and all successors in interest to the Company, agree to maintain the Improvements in an attractive manner, and in a good state of repair. If the Company fails to meet the Company's maintenance obligations under this Agreement, which failure continues for a period of more than thirty (30) days after written notice from the Association, specifying such failure to maintain (or as to any failure to maintain which requires more than thirty (30) days to remedy, if such cure is not commenced promptly and pursued diligently or continues beyond the time reasonably necessary therefor) the Association may, at its option, upon written notice, incur any expense reasonably necessary to perform the obligation of the Company specified in such notice, and then charge the same to the Company. Except as provided below, this maintenance obligation shall continue so long as the Improvements shall be located on the Association Property. In the event the Improvements are removed from the Association Property, or the land on which the Improvements are located is purchased from the Association by the Company, or the Company's successor in interest, this maintenance obligation shall cease.

E. **Alterations.** Upon completion or installation of the Improvements, the Company shall not make or cause to be made any other alterations or additions to the Improvements (except in the form of standard maintenance), without first obtaining a building permit from the City (when applicable) and the prior written consent of the Association, which consent shall not be unreasonably withheld. Any alterations or additions consented to by the Association, will be made by the Company, at the Company's sole cost and expense, according to plans and specifications approved by the Association.

F. **Insurance.** Upon completion or installation of the Improvements, the Company shall, at all times and at the Company's sole cost and expense, maintain liability insurance coverage on the Improvements. The liability insurance shall name the Association as an additional insured party and shall initially be in an amount not less than Five Million Dollars (\$5,000,000.00). Evidence of such insurance shall be provided to the Association upon request.

9. **SPECIAL EVENTS.** In consideration of the Company's installation and maintenance obligations set forth in Sections 4, 5, and 8.D. above, the Association agrees that for periods not to exceed seven (7) days each, the Company may: (a) limit access to the Subsurface Parking; and (b) use the Subdivision Common Area and the Subsurface Parking, without charge, to host special events. Any access limitations and use of those areas, beyond that specified in the preceding sentences, shall require the prior written consent of the Association and prior payment to the Association of a fee mutually agreed upon by the Association and the Company.

10. **ENTIRE AGREEMENT.** This Agreement represents the entire Agreement of the parties hereto. There are no oral agreements, understandings or communications or any kind with respect to the subject matter contained herein which are not set forth in this Agreement. This Agreement shall be binding upon the heirs, successors, and assigns of the parties hereto. The easements granted herein are appurtenant to and shall run with the benefited properties. This Agreement may not be modified or amended except by a writing signed by all Parties. The Company shall have all rights as a Member of the Association so long as it owns the Hotel Property.

11. **GOVERNING LAW.** This Agreement shall be governed by and interpreted pursuant to the laws of the State of Utah.

12. **SEVERABILITY.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable or unenforceable, such void, voidable or unenforceable provision shall not affect any other portion or provision of this Agreement.

13. **NON-WAIVER.** Any waiver by either party hereto of any breach of any kind or character whatsoever by the other party, whether such waiver be direct or implied, shall

not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement on the part of the other party.

14. **ATTORNEY FEES.** In the event any action or proceeding is brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover attorney's fees in such amount as the court may adjudge reasonable.

IN WITNESS WHEREOF, the Agreement has been executed effective as of the date first above written.

THE ASSOCIATION:

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

by: 

its: Pres.

~~THE COMPANY:~~

~~KAHLER E & P PARTNERS L.P.I., a Delaware limited partnership~~

~~by: Sunstone E & P Corporation I, a Delaware corporation,  
its general partner~~

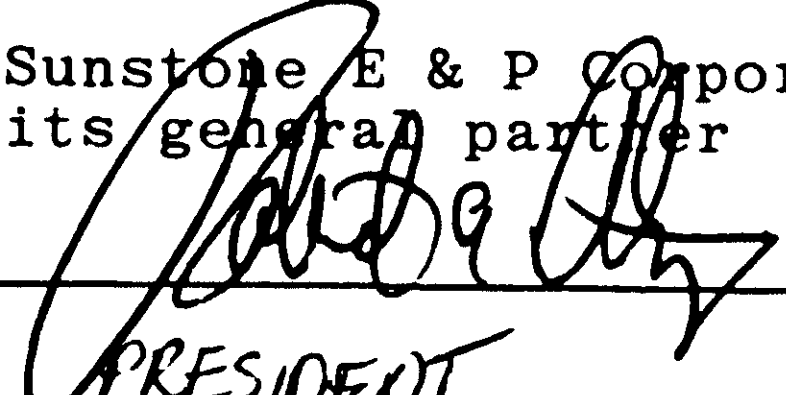
~~by: ~~

~~its: Gen Mgr.~~

THE COMPANY:

KAHLER E & P PARTNERS L.P.I., a Delaware limited partnership

by: Sunstone E & P Corporation I, a Delaware corporation,  
its general partner

by: 

its: PRESIDENT

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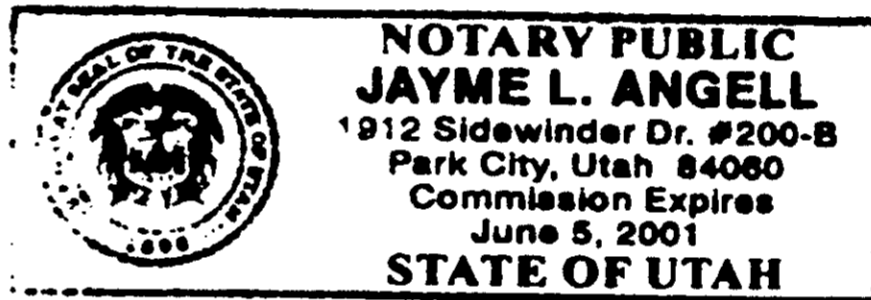


ACKNOWLEDGEMENT

STATE OF UTAH )  
 )  
 ) ss.  
COUNTY OF SUMMIT )

On the 21st day of October, 1998, personally appeared before me Mark Cohen, the President of the PROSPECTOR SQUARE PROPERTY OWNER'S ASSOCIATION, a Utah Non-Profit Corporation, who duly acknowledged to me that he executed the foregoing as President of the PROSPECTOR SQUARE PROPERTY OWNER'S ASSOCIATION, by authority of its bylaws.

Jayne L. Angell  
NOTARY PUBLIC  
Residing at: Summit County  
Commission Expires: June 5, 2001

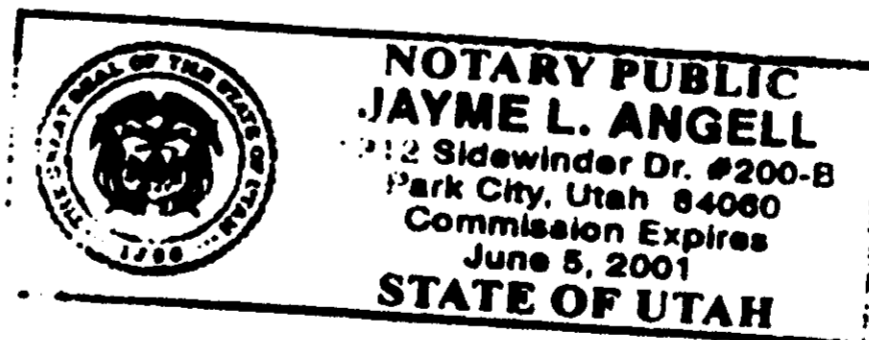


ACKNOWLEDGEMENT

STATE OF UTAH )  
 )  
 ) ss.  
COUNTY OF SUMMIT )

On the 26th day of October, 1998, personally appeared before me Paul Christensen, as the General Managers of Sunstone E & P Corporation I, a Delaware corporation authorized to do business in the State of Utah, as General Partner of Kahler E & P Partners L.P.I, a Delaware limited partnership, who duly acknowledged to me that he executed the foregoing as General Managers of Sunstone E & P Corporation I, a Delaware corporation authorized to do business in the State of Utah, as General Partner of Kahler E & P Partners L.P.I, a Delaware limited partnership, by authority of its bylaws.

Jayne L. Angell  
NOTARY PUBLIC  
Residing at: Summit County  
Commission Expires: June 5, 2001



ACKNOWLEDGEMENT

STATE OF CALIFORNIA )

COUNTY OF ORANGE )  
ss.

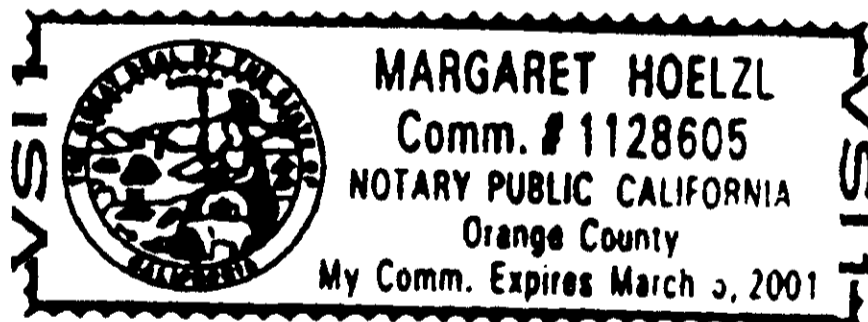
On the 28th day of October, 1998, personally appeared before me Robert A. Alter, as the PRESIDENT of Sunstone E & P Corporation I, a Delaware corporation authorized to do business in the State of Utah, as General Partner of Kahler E & P Partners L.P.I, a Delaware limited partnership, who duly acknowledged to me that he executed the foregoing as PRESIDENT of Sunstone E & P Corporation I, a Delaware corporation authorized to do business in the State of Utah, as General Partner of Kahler E & P Partners L.P.I, a Delaware limited partnership, by authority of its bylaws.

*Margaret Hoelzl*

NOTARY PUBLIC

Residing at: 2063 MAPLE AVE, COSTA MESA, CA 92627

Commission Expires: 3-5-01



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