

WHEN RECORDED, MAIL TO:  
Prospector Square Property Owners Association  
P.O. Box 3273  
Park City, Utah 84060

**ENTRY NO. 00885106**

10/27/2009 09:27:37 AM B: 2007 P: 0511

Encroachment PAGE 1/7

ALAN SPRIGGS, SUMMIT COUNTY RECORDER

FEE 29.00 BY SCOTT C WELLING ESQ



## ENCROACHMENT AGREEMENT

This ENCROACHMENT AGREEMENT (this "Agreement"), made on the last signature date written below, is by and between PROSPECTOR SQUARE PROPERTY OWNERS ASSOCIATION ("Association") and SUNSTONE SIDEWINDER, LLC, a Delaware limited liability company ("Owner").

WHEREAS, the Association 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, Owner is the owner of record of Lots 10A, 10B, 10C, 10D, 11, 12A, 12B and 12C of the Subdivision and the hotel building located thereon ("Premises");

AND WHEREAS, the parties' respective properties share common boundaries at or in the vicinity of the rear (south side) of the hotel, located at 1895 Sidewinder Drive, Park City, Utah;

AND WHEREAS, Owner wishes to construct substantially the following improvements upon or adjacent to the Premises (collectively, "Facilities"): (1) a second-story level expansion of interior meeting space, approximately 2,100 square feet in total area, projecting approximately 30 feet from the existing vertical surface of the hotel structure out over the adjacent common area, supported by five steel columns wrapped with wood veneer and affixed to the underlying common area surface; and (2) a fire pit, water feature, planters, walkways, curbing and other landscape features;

AND WHEREAS, said improvements will encroach over and upon both the airspace above the Subdivision's common area, as well the surface level of adjacent common areas; and

AND WHEREAS, the parties wish to establish the conditions for the Association's consent to the encroachments and the maintenance of the Facilities installed by Owner thereon 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. Owner acknowledges that the Facilities above described constitute otherwise non-consensual encroachments onto the common area of the Association, and that the approximate location of the Facilities is accurately described on Exhibit "A", attached hereto and incorporated herein.

2. The Association hereby consents to the encroachment of the Facilities, and grants Owner an encroachment easement therefor, relinquishing right to prevent the installation or cause the subsequent removal of same as encroachments, but expressly subject to, and only for so long as, the rights and obligations established hereunder are strictly observed; provided, however, that Owner may, in its sole discretion, make non-material changes to the Facilities, either before, during or after installation, upon review thereof by the Association.

3. The Facilities shall be made available for use by members of the Association for meetings on an occasional, space-available basis. Use of the Facilities by Association members shall be subject to: (i) priority of use by Owner; (ii) Owner's rules and regulations, as well as applicable governmental ordinances; and (iii) reasonable charges for the provision of seating and related equipment, food and beverage service and information presentation equipment, as Owner may be willing to provide. No charge shall be imposed for use of the meeting space itself by Owner or members of the Association. Owner and Association shall, from time-to-time, develop specific policies and schedules for such use of the Facilities by the Association or its members.

4. Owner shall expeditiously construct and install the Facilities in accordance with applicable building codes and permits, and shall promptly repair any damage or disruption to the surrounding or

adjacent common areas, including the subsurface parking structure below, restoring same to at least previously existing condition. Should Owner fail to do so, the Association may, upon prior written notice to Owner and expiration of a sixty (60) day cure period, repair any disturbed, damaged or unmitigated common area adjacent to the Facilities, and Owner shall be liable for the reasonable cost thereof.

5. Owner shall, at its sole expense, maintain the Facilities and adjacent landscaping in a safe and attractive condition, including provision for irrigation, power and other utility services, and be solely responsible for both the daily and long-term maintenance of the affected common areas, as well as the timely repair and/or replacement thereof, including damage to the underground garage. Owner shall be responsible for snow removal from the affected common areas.

Owner shall have reasonable right of temporary access across and upon Association property adjacent to the encroachment area, as well as the affected common area, to accomplish such purposes. Owner shall not, however, have right to expand or add to the Facilities, or to further extend the encroachments, or to replace the Facilities with dissimilar ones, without the written approval of the Association prior to replacement.

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

7. Owner shall maintain a policy of comprehensive general liability insurance, which shall designate the Association as an additional insured with respect to any and all liability of the Association arising or resulting from operations upon Owner's premises, as well as the obligations established by this Agreement. The endorsement therefor shall provide that not less than thirty (30)

days prior written notice of any modification, cancellation or other termination shall be delivered to the Association at the address specified below. .

Further, Owner shall indemnify and hold harmless the Association, its agents, employees, lot owners and members from any and all claims and liability for injury and property loss occurring at or within the Facilities, including but not limited to personal injury to Owner's guests and invitees, as well as to the public at large.

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

This Agreement shall not expand, nor restrict, the rights and duties of the parties pursuant to that certain "Agreement" between them or their predecessors, dated October 21, 1998. This Agreement constitutes the consent of the Association to the construction, maintenance and encroachment of the Facilities as may otherwise be required under said prior "Agreement".

9. In the event either party to this Agreement commences legal proceedings against the other to enforce this Agreement, the prevailing party in such adjudication shall be awarded its reasonable litigation costs and attorneys' fees. Notwithstanding the foregoing, in no event shall either party be liable to the other party for any special, indirect, incidental, punitive or consequential damages; provided, however, in the event of a personal injury claim brought by a third party, including an Association member when acting in an individual capacity, and where said third party is awarded consequential or punitive damages from the Association by a court having competent jurisdiction over the matter, the Association may bring a claim against the Owner to recover, among other damages, the consequential or special damages awarded to the third party claimant (but not any consequential or punitive damages associated with a loss suffered by the Association).

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

The parcels affected hereby are identified as: PSA-10-A, PSA-10-B, PSA-10-C, PSA-10-D, PSA-11, PSA-12-A, PSA-12-B, PSA-12-C.

SUNSTONE SIDEWINDER, LLC,  
a Delaware limited liability company

PROSPECTOR SQUARE PROPERTY  
OWNERS ASSOCIATION, a Utah non-  
profit corporation

By: [Signature]

By: Hallene Ligare

Its: CEO

Its: Secretary

Dated: SEPTEMBER 30, 2009

Dated: Oct. 23, 2009

STATE OF \_\_\_\_\_ )  
: ss.  
County of \_\_\_\_\_ )

The foregoing instrument was duly acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, as \_\_\_\_\_ of Sunstone Sidewinder, LLC.

*see attached*

\_\_\_\_\_  
Notary Public

STATE OF UTAH )  
: ss.  
County of Summit )

The foregoing instrument was duly acknowledged before me this 23rd day of October, 2009, by Hallene Ligare, as acting officer of Prospector Square Property Owners Association.



[Signature]  
Notary Public

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of ORANGE

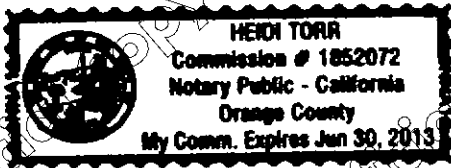
On 9/30/09 before me, HEIDI TORR, NOTARY PUBLIC  
Date Here Insert Name and Title of the Officer

personally appeared KENNETH E. CRUSE  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.



Place Notary Seal Above

Signature [Handwritten Signature]  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

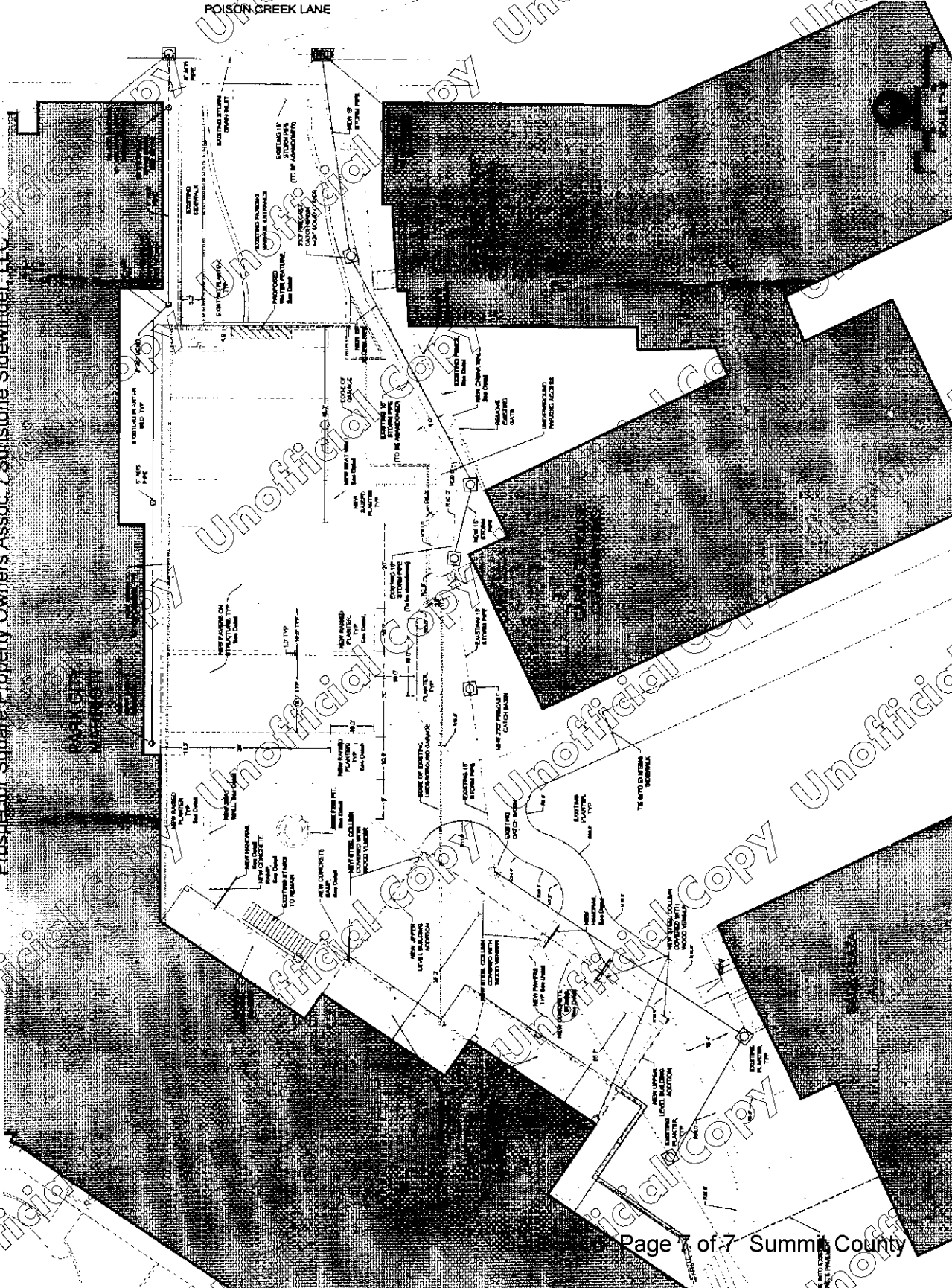
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**EXHIBIT A**  
**Prospector Square Property Owners Assoc. / Sunstone Sidewinder, LLC**  
**to Encroachment Agreement**



**PERMIT**

**Jack Johnson**  
REGISTERED PROFESSIONAL ARCHITECT

**SUNSTONE HOTEL PROPERTIES, INC.**  
MARRIOTT CONFERENCE  
CENTER ADDITION  
1005 SIDEWINDER DR  
SALT LAKE CITY, UTAH

**C300**

DATE: APR 28 2014  
DRAWN BY: [REDACTED]  
CHECKED BY: [REDACTED]  
PROJECT: [REDACTED]  
SCALE: AS SHOWN

**SUBMITTALS:**

1	SET	1
2	CONTRACT	1

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Unofficial Copy

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