

**Exhibit B**

**Form of Maintenance Covenants to be Recorded**

**WHEN RECORDED MAIL TO:**

Jeffrey T. Colemere, Esq.  
WRONA LAW OFFICES, P.C.  
1745 Sidewinder Drive  
Park City, UT 84060

**MAINTENANCE COVENANTS FOR LOT D AND UNDERGROUND PARKING STRUCTURE WITHIN THE PROSPECTOR SQUARE PROPERTY**

**THESE MAINTENANCE COVENANTS FOR LOT D AND UNDERGROUND PARKING STRUCTURE WITHIN THE PROSPECTOR SQUARE PROPERTY** (the "Agreement") is entered into on this 24<sup>th</sup> day of February, 2011 by and between **PROSPECTOR SQUARE PROPERTY OWNER'S ASSOCIATION**, a Utah non-profit corporation ("Prospector Square") and **THE NEW CLAIM CONDOMINIUM HOMEOWNER'S ASSOCIATION**, a Utah non-profit corporation ("New Claim")

**RECITALS**

**A.** Prospector Square owns Parking Lot D, which is described as follows:

All of Parking Lot D of the Prospector Square Supplemental Amended Plat, a subdivision in Park City, Summit County, Utah, the plat of which being recorded February 1, 1994, as Entry No. 397064 in the Summit County Recorder's Office.

Tax Parcel #: PSA-D-98

(Hereinafter "Lot D"). There is surface parking on Lot D on the roof of the subsurface parking structure (the "Surface Parking Area"), and there is subsurface parking located beneath Lot D and the Subdivision Common Area on the interior floor of the concrete subsurface parking structure, (the "Subsurface Parking Area"). The description of Lot D also includes an asphalt paved parking area located on the northwest end of Lot D. There is "Subdivision Common Area" in the form of sidewalks and landscaping generally located around the perimeter of Lot D as identified above. Lot D and the Subdivision Common Area are located contiguous to the New Claim Property (defined below) as identified on the official plat. Lot D and the Subdivision Common Area are sometimes collectively referred to below as the "Prospector Square Property".

B. New Claim owns a condominium building (the "Condominium") located at 2000 Prospector Avenue in Park City, Utah. The legal description of the land on which the Condominium is located is more particularly described as follows:

All of Lot 20A and Lot 20B of the Prospector Square Supplemental Amended Plat, a subdivision in Park City, Summit County, Utah, the plat of which being recorded February 1, 1994, as Entry No. 397064 in the Summit County Recorder's Office.

Tax Parcel #: See Attached Exhibit "g"

(Hereinafter the "New Claim Property").

C. Pursuant to a Settlement Agreement between the parties, dated February 24, 2011, the parties have agreed to the following perpetual covenants which shall run with the land and be recorded against the New Claim Property and the Prospector Square Property identified above.

### AGREEMENT

**NOW THEREFORE**, for good and valuable consideration, the adequacy and sufficiency of which the parties do hereby acknowledge the parties do hereby covenant as follows:

1. The Recitals above are hereby incorporated into this Agreement by this reference.
2. Prospector Square and New Claim covenant and agree as follows:

**A. COMMITTEE.** Prospector Square and New Claim shall establish a committee consisting of three members (the "Committee"). One member shall be appointed by Prospector Square and shall be a member of the Prospector Square Board. One member shall be appointed by New Claim and shall be a member of the New Claim Management Committee. A structural engineer who has experience in working with underground parking structures jointly retained by Prospector Square and New Claim shall be the third member. The parties agree that Steve Cospers, S.E. shall be the initial third member of the Committee. Steve Cospers's replacement shall be a structural engineer who has experience in working with underground parking structures. In the event that Prospector Square and New Claim cannot agree on who Steve Cospers's replacement will be, then Mr. Cospers will cast the tie breaking vote on who his replacement will be, and the same tiebreaking method shall be used in the future if Prospector Square and New Claim cannot agree on who the replacement will be. Mr. Cospers, and any engineer who subsequently acts as the third committee member, shall be bound by a duty to make decisions in the best interest of the property, without loyalties to either New Claim or Prospector Square. The parties agree to provide a copy of this Agreement to Mr. Cospers, and any engineer who subsequently acts as the third committee member, and to inform them of their duty to make decisions in the best interest of the property, without loyalties

to either New Claim or Prospector Square. The Committee will determine what maintenance and repairs shall be reasonably required and performed, and when and how such maintenance and repairs shall be performed, on the Surface Parking Area and Subsurface Parking Area located on Lot D, as well as only the floor of the Easement area (the access ramp located on the New Claim Property off of Poison Creek Lane that provides vehicular access to the Subsurface Parking Area). From time to time, this maintenance will likely include, but not be limited to the replacement of the surface membrane ( which is located on the Surface Parking Area and helps form a portion of the roof of the Subsurface Parking Area, reinforcement of the joints, posts and pillars with steel plates and other structural repairs, routine maintenance (e.g. surface and subsurface striping and cleaning), alterations or improvements, and repair and replacement of curbing and the entrances and exits to the Surface Parking Area and Subsurface Parking Area (including the automated garage doors, entrance and key card system located on the New Claim Property), and any engineering studies that the Committee deems necessary. For purposes hereof, Lot D shall be deemed to include the sidewalks and landscaping surrounding Lot D, only to the extent maintenance and repair of the sidewalks and landscaping impact the maintenance and repair of the Subsurface Parking Area or subsurface parking structure. In the event of disagreement between Prospector Square and New Claim on Committee votes or any matters set forth in Section B below that require agreement between Prospector Square and New Claim, Steve Cosper, or his replacement, shall be the deciding vote and the parties agree to abide by the outcome of the vote.

**B. MAINTENANCE AND REPAIR RESPONSIBILITIES.**

**Maintenance of Surface Parking Area.** Prospector Square shall be solely responsible for providing all snow removal from Lot D, including without limitation the Surface Parking Area and the access ramp located on a portion of the New Claim Property off of Poison Creek Lane that provides vehicular access to the Subsurface Parking Area, and shall be responsible for snow removal, repair and maintenance of the asphalt-paved section located on the northwest end of Lot D at its own expense. All other maintenance, repair, replacement and improvement of the Surface Parking Area and Subsurface Parking Area located on Lot D (including the landscaping and sidewalk areas, and excluding the asphalt paved area on the northwest end and other items specifically assigned to one party herein) shall be the responsibility of the Committee and the costs shall be shared equally (50/50) between Prospector Square and New Claim. New Claim, at its own expense, shall be responsible for snow removal from the New Claim Property, except for the access ramp area described above. New Claim and Prospector Square shall share equally in the cost of repairing or replacing all damaged light poles, lights or lighting upgrades on Lot D as determined to be necessary or desirable by the Committee.

**Maintenance of Subsurface Parking Area.** New Claim shall be solely responsible for the diligent upkeep and for the costs of repair, replacement and maintenance of a portion of the fire suppression system, as more specifically described below, and, except for the floor surface area of the access ramp (which repair and maintenance cost shall be shared equally by Prospector Square and New Claim), all of the structure and other items within

the boundaries of the New Claim Property. All other repairs, replacement and maintenance to the underground parking structure within the Prospector Square Property, as well as repairs, replacement and maintenance to the surface floor area of the access ramp, the automatic garage door and the keycard access system, shall be the responsibility of the Committee and the costs shall be shared equally between Prospector Square and New Claim.

**Miscellaneous Covenants.** The doors to the underground parking structure shall remain in place and Prospector Square shall be able to issue access keys or access cards to the underground structure. New Claim, its members, guests and invitees shall have the same nonexclusive right to access and use the underground parking structure as other Prospector Square members and their respective tenants and guests, and on the same terms and conditions. Prospector Square shall determine what those terms and conditions of use of the underground parking structure shall be and how access passes/keys shall be issued and shall update the Prospector Square parking policy accordingly. Prospector Square shall also determine what security, if any, shall be implemented in the underground parking structure. The parties understand and agree that Prospector Square may, within its sole discretion, require that the users of the underground parking structure pay parking or use fees in an amount to be determined solely by Prospector Square for the use of the Subsurface Parking Area (hereinafter "Use Fees"). In the event that Prospector Square requires the payment of Use Fees, any money obtained by Prospector Square from the Use Fees shall be used solely for the purpose of paying for any shared maintenance and repair obligations contemplated by this Agreement before an assessment is made to either party for the shared costs of any shared maintenance and repair obligations contemplated by this Agreement. By this provision, the parties intend to decrease, if possible, the cost to the parties of any shared maintenance and repair obligations as contemplated by this Agreement. The Surface Parking Area will remain open at night; provided however, that Prospector Square may close the Surface Parking Area for reasonable periods of time for maintenance, snow removal or other reasons and in such event shall give reasonable notice of such temporary closure to New Claim. In the event that Park City Municipal Corporation attempts to require that the doors to the underground parking structure be removed or left open, the parties agree to cooperate and work together to oppose any such requirement or demand by the City.

**Parking Privileges.** Prospector Square and New Claim and their respective members, tenants and guests shall be entitled to use the Subsurface Parking Area only on the terms and conditions determined by Prospector Square, which terms and conditions shall be incorporated into Prospector Square's parking policies (together with any necessary amendments or modifications to the Prospector Square or New Claim CC&Rs and rules and regulations), all of which may be further amended or modified from time to time by Prospector Square as they deem necessary or appropriate. In no event, however, shall such modifications deprive New Claim, its members, guests and invitees of the same non exclusive rights to access and park in the underground parking structure as other Prospector Square members and their tenants and guests.

**Insurance.** Prospector Square agrees to maintain general liability and casualty insurance in such amounts as the Committee deems reasonable, to protect against damage, injury

and claims which may occur at any location owned by Prospector Square in the Surface Parking Area, Subsurface Parking Area, subsurface parking structure, on Subdivision Common Area located on Lot D, or on the concrete floor portion of the access ramp easement area. The portion of Prospector's insurance premium that is related to the insurance of the Surface Parking Area, Subsurface Parking Area subsurface parking structure, Subdivision Common Area located on Lot D, and the concrete floor portion of the access ramp easement area shall be deemed a joint expense and shall be split on a 50/50 basis as outlined above. Except as specifically mentioned herein, Prospector Square and New Claim shall each insure at their own expense all other areas respectively owned by them in such amount as are deemed appropriate to cover their respective risks.

**Fire Protection.** New Claim acknowledges that there is presently a pressurized water sprinkler fire protection system located in the Subsurface Parking Area that services the New Claim Condominiums as well as the Subsurface Parking Area. New Claim agrees to be responsible for maintenance of the portion of that system that services the New Claim Condominiums, and for all upgrades, alterations or replacement of that system deemed appropriate by New Claim and/or required by Park City Municipal Corporation and the Park City Fire Service District at its own expense; provided, however, that to the extent that a portion of the system directly services the Subsurface Parking Area, the cost of maintenance, repair and replacement of the portion of the system that serves only the underground parking structure shall be shared equally (50/50) by New Claim and Prospector Square as determined by the Committee, and any repair, maintenance or replacement of that portion of the system shall be approved in advance by the Committee. The fire suppression system and controls to the Subsurface Parking Area and the New Claim building may, at the sole discretion of New Claim, remain located where they are currently located in the underground parking structure; however, if New Claim desires to move such controls or system components, it must obtain the permission of the Committee to do so and must do so at its own expense and in a way that is satisfactory to the Committee and that continues to provide adequate fire suppression protection for the Subsurface Parking Area as determined by the Committee.

**Landscaping.** New Claim shall be responsible for and maintain, in an attractive manner, all of the landscaping on the New Claim Property at its own expense. Except for repair and maintenance of the asphalt paved area on the northwest end of Lot D, which shall be done by Prospector Square at its own expense, all other repairs, maintenance and improvement of all of the landscaping on Lot D and its outer perimeter areas, and landscaping and sidewalk areas that is necessary to maintain the integrity of the underground parking structure shall be the responsibility of the Committee, and expenses for those landscaping repairs, maintenance or improvements shall be shared 50/50 by Prospector Square and New Claim. The repair and maintenance of all Lot D landscaping not determined by the Committee to be necessary to maintain the integrity of the underground parking structure shall be done in an attractive manner by Prospector Square at its own expense.

**Utilities.** The parties hereto acknowledge the presence of a trash receptacle (the "Dumpster") located on the southwest corner of Lot D on Subdivision Common Area. Prospector Square and New Claim together with other Association Members utilize that

Dumpster. The parties hereto agree that under no circumstances shall the Dumpster be used by any of the parties to this Agreement, their members, owners, employees, guests, tenants and patrons, in any fashion that would alter or cause damage to the integrity of the Surface Parking Area or of any Subdivision Common Area. The parties acknowledge that some water for Prospector Square landscaping may come from New Claim meters and that some water for New Claim landscaping may come from Prospector Square meters. The parties agree that they shall not reimburse or owe each other any money for any such water used by either party in the past or future, and hereby consent to the status quo of the water meters and usage unless and until the parties jointly fix the water pipes such that the water for each of their respective landscaping areas comes from their own meter. New Claim and Prospector Square shall share equally (50/50) the cost of the electricity bill for only the underground parking structure, which includes any expense for lighting in the Surface Parking Area or the Subsurface Parking Area, but expressly excludes the electricity costs for the Easement area or for any area constituting New Claim property.

**Responsibility for Maintenance Costs.** Except as specifically set forth otherwise herein, the cost of all maintenance and repairs to the surface and subsurface of Lot D and the underground parking structure located within the Prospector Square Property and related improvements and systems shall be shared equally (50/50) by Prospector Square and New Claim, including, but not limited to, replacement of the surface membrane, reinforcement of the joints, posts and pillars with steel plates and other structural repairs, routine maintenance (e.g. surface and subsurface striping and cleaning), alterations or improvements, and repair and replacement of curbing and the entrances to the underground parking structure (including the automated garage doors, entrance and key card system on the New Claim Property), any engineering studies that the Committee deems necessary and all expense items above not specifically assigned to one party herein.

Each party shall pay its respective portion of such costs within thirty (30) days of work being completed or service being provided and an invoice being provided by the service provider.

The Committee shall use reasonable efforts to balance the respective budget constraints of each party against the maintenance determined to be needed by the committee in order to reasonably and safely meet the maintenance and repair needs of the improvements and systems.

The parties acknowledge and agree that there are currently significant maintenance and repairs necessary, and Prospector Square and New Claim agree that if they cannot agree on such items that the recommendations of the engineer member of the Committee shall be decisive and the parties agree to abide by and implement his recommendations. Notwithstanding anything to the contrary contained in the New Claim Record of Survey Map, or the Prospector Square or New Claim CC&Rs, rules and regulations or parking policies, and except as specifically stated otherwise herein, the parties acknowledge and agree that this Agreement shall control with respect to the maintenance, repair and expense responsibilities contained herein.

The parties acknowledge and agree that due to New Claims' proximity to Lot D, problems relating to the maintenance and repair of the Surface Parking Area and Subsurface Parking Area may have a unique impact on New Claim. For instance, in the event the automated garage doors malfunction, cold air is likely to enter the underground parking structure and may damage pipes that service New Claim. For this reason, the parties acknowledge the need to allow New Claim to make emergency repairs to the garage doors under certain circumstances. In the event New Claim becomes aware of the need for such repairs, it shall make reasonable efforts to contact the Committee and obtain approval prior to making repairs. If it is not able to do so, it shall be entitled to make such repairs as are reasonably necessary and shall be entitled to seek reimbursement for 50% of the cost of those repairs. The Committee shall require Prospector to reimburse New Claim for 50% of the cost of the repairs, unless it cannot be shown that the repairs were reasonable and necessary under the circumstances

3. The duration of these covenants shall be perpetual.
4. This Agreement is intended by the parties to be and shall be a covenant running with the land and shall be binding upon the parties hereto, their heirs, designees, representatives, successors and assigns; and the rights privileges and authorities herein granted shall be assignable together or separately and in whole or part.
5. This Agreement may only be amended by a writing executed and recorded by the parties, their respective heirs, successors or assigns, or the duly appointed and authorized agent or representative of any of the preceding.
6. This Agreement shall be governed by and interpreted pursuant to the laws of the State of Utah.
7. Any waiver by a party hereto of any breach of any kind or character whatsoever by the another 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.
8. In the event any action or proceeding is brought by any party against any other party hereto, the prevailing party shall be entitled to recover attorney's fees in such amount as the court may adjudge reasonable.
9. This Agreement and any amendments hereto may be executed in counterparts, which taken together shall constitute one document.

**IN WITNESS WHEREOF**, the undersigned have set their hands on the date first above written.

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

By 

Its President

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

By Karen C. Snyder

Its President

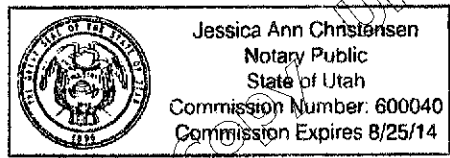


**ACKNOWLEDGEMENTS**

STATE OF UTAH )  
 )  
 ss.  
COUNTY OF SUMMIT )

On the 24<sup>th</sup> day of February, 2011, personally appeared before me Paul Christensen, 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.

[Signature]  
NOTARY PUBLIC  
Residing at: 8/25/14  
Commission Expires: SUMMIT COUNTY



STATE OF UTAH )  
 )  
 ss.  
COUNTY OF SUMMIT )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, the President of THE NEW CLAIM CONDOMINIUM HOMEOWNER'S ASSOCIATION, a Utah non-profit corporation, who duly acknowledged to me that he executed the foregoing as President of the THE NEW CLAIM CONDOMINIUM HOMEOWNER'S ASSOCIATION, by authority of its bylaws.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_



### Exhibit "1"

Units 101; 102S thru 115S, inclusive; 201S thru 215S, inclusive; and 301S thru 311S, inclusive; 312; 313S thru 314S, inclusive; 315; 401; 402S thru 403S, inclusive; 404; 405S thru 408S, inclusive; 409; and 410S thru 415S, inclusive, contained within the NEW CLAIM CONDOMINIUM, a Utah condominium project, according to the official plat thereof, as recorded in the office of the Summit County Recorder.

Parcel Identification Nos:	101: NC-101	201S: NC-201
	102S: NC-102	202S: NC-202
	103S: NC-103	203S: NC-203
	104S: NC-104	204S: NC-204
	105S: NC-105	205S: NC-205
	106S: NC-106	206S: NC-206
	107S: NC-107	207S: NC-207
	108S: NC-108	208S: NC-208
	109S: NC-109	209S: NC-209
	110S: NC-110	210S: NC-210
	111S: NC-111	211S: NC-211
	112S: NC-112	212S: NC-212
	113S: NC-113	213S: NC-213
	114S: NC-114	214S: NC-214
	115S: NC-115	215S: NC-215
	301S: NC-301	401: NC-401
	302S: NC-302	402S: NC-402
	303S: NC-303	403S: NC-403
	304S: NC-304	404: NC-404
	305S: NC-305	405S: NC-405
	306S: NC-306	406S: NC-406
	307S: NC-307	407S: NC-407
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	309S: NC-309	409: NC-409
	310S: NC-310	410S: NC-410
	311S: NC-311	411S: NC-411
	312: NC-312	412S: NC-412
	313S: NC-313	413S: NC-413
	314S: NC-314	414S: NC-414
	315: NC-315	415S: NC-415