



"W2315107"

AFTER RECORDING, RETURN TO:
Wolf Creek Properties, LLC
3923 North Wolf Creek Drive
Eden, Utah 84310

E# 2315107 PG 1 OF 7
ERNEST D ROWLEY, WEBER COUNTY RECORDER
11-JAN-08 1240 PM FEE \$22.00 DEP SBY
REC FOR: WOLF CREEK PROPERTIES

22-016-0053

ENCROACHMENT AGREEMENT
(Moose Hollow Ponds)

THIS ENCROACHMENT AGREEMENT (the "Agreement") is entered into as of December 24, 2007 between **MOOSE HOLLOW HOMEOWNERS ASSOCIATION**, a Utah non-profit corporation (the "Association"), whose address for the purposes hereof is P.O. Box 660, Eden, Utah 84310, and **WOLF CREEK PROPERTIES, LC**, a Utah limited liability company ("Wolf Creek"), its successors and assigns, whose address for the purposes hereof is 3900 North Wolf Creek Drive, Eden, Utah 84310.

Recitals:

A. The Association has been organized, among other things, for the purpose of entering into contracts concerning the Moose Hollow Condominium Project (the "Project"), created pursuant to a certain Declaration of Condominium recorded on February 15, 1999 as Entry No. 1615984 in Book 1994 at Page 2063 in the official records of the Weber County Recorder, as amended and supplemented from time to time.

B. Wolf Creek is the owner of property located adjacent to the Project and more particularly described on Exhibit A hereto (the "Powder Canyon Property").

C. In connection with the construction of the Project, two (2) small ponds and adjacent paths (collectively, the "Ponds") have been installed for aesthetic purposes along the western boundary of the Project and the eastern boundary of the Powder Canyon Property, and such Ponds encroach on the Powder Canyon Property as depicted on the site plan attached as Exhibit B hereto (the "Encroachment Area").

D. Wolf Creek is willing to allow the Ponds to remain in their current location in the Encroachment Area, subject to the terms and conditions of this Agreement.

E. In the absence of this Agreement, the Association would be required to remove the Ponds from the Powder Canyon Property.

Agreement:

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the Parties agree as follows:

1. Encroachment Right. Wolf Creek hereby grants unto the Association, a right (the "Encroachment Right") on, over and across those portions of the Encroachment Area currently occupied by the Ponds for the purpose of maintaining and keeping the existing Ponds in good repair and condition and free from debris and obstructions. The Encroachment Right is automatically subject and subordinate to any mortgages, security interests, covenants, conditions or restrictions applicable to the Powder Canyon Property, whether entered into or recorded before or after the date of this Agreement.

2. Obligations Relating to Encroachment Area. In consideration of the grant set forth in Section 1 hereof, the Association agrees as follows:

a. The Ponds will not be expanded from their current location as depicted on the Site Plan and no additional improvements to the Encroachment Area shall be installed without the prior written consent of Wolf Creek in each instance. Wolf Creek may at any time and from time to time reduce the size or relocate the Ponds in connection with the development, improvement and use of the Powder Canyon Property.

b. Neither the Encroachment Area nor the Ponds will be used by the Association or its members or invitees for any purpose other than aesthetic purposes. No recreational use of the Encroachment Area or Ponds is permitted. Without limiting the foregoing, the Ponds shall not be used by the Association for storm drainage retention or detention for the Project without the prior written consent of Wolf Creek in each instance.

c. The Association, at its expense, shall be solely responsible to manage, maintain and repair the Encroachment Area in a safe, clean and attractive condition and free from debris and obstructions, all pursuant to standards acceptable to Wolf Creek in its sole discretion. Such obligation shall include, but not be limited to, maintaining the water in the Ponds at a level consistent with historical practices and free of algae, odors and other vegetation except as approved in writing by Wolf Creek. Wolf Creek shall have no obligation or liability associated with the Ponds. Wolf Creek shall have the right, but not the obligation, at any time and from time to time upon written notice to the Association to step in and maintain and repair the Encroachment Area at the Association's cost and expense if the Association fails to do so, and the Association shall promptly reimburse Wolf Creek for its costs and expenses incurred in connection therewith.

3. Payments to Wolf Creek. All amounts payable to Wolf Creek hereunder shall be paid within thirty (30) days after date of invoice. Past due amounts shall bear interest at 18% per annum from the date due until paid in full. Failure to timely pay any such amounts shall be a material default and, among other things, Wolf Creek shall have the right to terminate this instrument upon written notice to the other parties hereto and commence an action to recover such amounts, together with interest, costs and reasonable attorneys' fees.

4. Indemnification. The Association hereby agrees to indemnify, defend and hold harmless Wolf Creek, Powder Canyon, LLC and Powder Canyon Holdings, LLC, and their respective managers, members, officers, employees, agents, representatives, successors and assigns (the "Wolf Creek Indemnified Parties"), from and against any claim, action, proceeding, obligation, liability, injury, loss or damage, expense or cost, including attorneys' fees, relating to, arising out of or in any way connected with the design, construction maintenance, use or presence of the Ponds or the Encroachment Area, including but not limited to, personal injury or death to any person or property damage, except to the extent caused by the gross negligence or willful misconduct of any of the Wolf Creek Indemnified Parties.

5. Insurance. The Association shall at all times during the term hereof maintain a standard policy of commercial general liability insurance, naming the Wolf Creek Indemnified Parties, as defined below, as additional insured parties, providing coverage against any and all claims for bodily injury and property damage relating to, arising out of or in any way connected

with the use of the Ponds by the Association, its members, agents, employees, invitees or any trespasser. Such insurance shall have a limit of not less than One Million Dollars (\$1,000,000) per occurrence and a general aggregate limit of not less than One Million Dollars (\$1,000,000). In no event shall the limits of such insurance limit the liability of the Association or any other person or entity. The Association shall provide Wolf Creek with evidence of such insurance upon request.

6. No Dedication or Other Restrictions. Nothing contained in this instrument shall be deemed to be a gift or dedication of fee title to any portion of the Encroachment Area or the Powder Canyon Property to or for the general public. Nothing in this instrument shall impose any restrictions or limitations on the Powder Canyon Property other than the Encroachment Right.

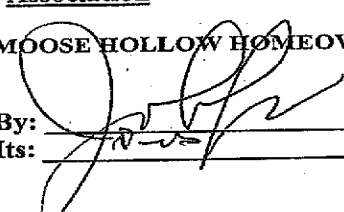
7. Termination. In the event that the Association does not perform its obligations hereunder within thirty (30) days after written demand therefor, Wolf Creek shall have the right to terminate this Agreement upon written notice to the Association. Upon such termination, at Wolf Creek's request, the Association will completely and properly remove the Ponds and return such land to its native condition and, if it fails to do so, Wolf Creek may do so at the Association's cost and expense.

8. Miscellaneous. This instrument does not create any fiduciary relationship between the Parties. This Agreement shall be construed under and shall be enforceable in accordance with the laws of the State of Utah. This Agreement may be signed in any number of counterparts, each of which shall constitute but a single instrument. This instrument shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. All payment and indemnity obligations relating to events occurring prior to the termination of this Agreement shall survive any such termination.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

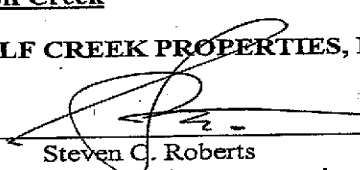
"Association"

MOOSE HOLLOW HOMEOWNERS ASSOCIATION

By: 
Its: _____

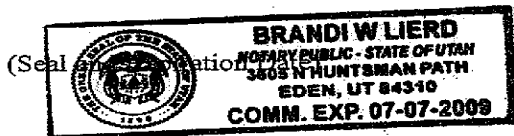
"Wolf Creek"

WOLF CREEK PROPERTIES, LC

By 
Steven C. Roberts
Authorized Representative

STATE OF UTAH)
) ss:
County of WEBER)

On this 3rd day of ~~November~~ ^{Dec}, 2007 personally appeared before me John Lewis, who being duly sworn, did say that he is the President of The Moose Hollow Homeowners Association, a Utah non-profit corporation, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same on behalf of and with full authority of said corporation.

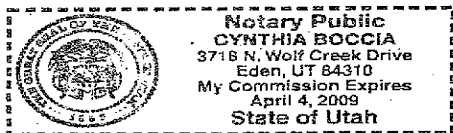


Brandi W. Lierd
Notary Public

STATE OF UTAH)
) ss.
County of WEBER)

On this 24 day of ~~November~~ ^{December}, 2007 personally appeared before me Steven C. Roberts who being duly sworn, did say that he is the authorized representative of Wolf Creek Properties, LC, a Utah limited liability company, the signer of the foregoing Agreement, who duly acknowledged to me that he executed the same on behalf of and with full authority of said limited liability company.

(Seal and Expiration Date)



Cynthia Boccia
Notary Public

**EXHIBIT A
TO
ENCROACHMENT AGREEMENT**

Powder Canyon Property

The "Powder Canyon Property" referred to in the foregoing Agreement is located in Weber County, Utah and is more particularly described as follows:

A part of the Southwest Quarter of Section 22, T7N, R1E, SLB&M, Beginning at the Northwest corner of Moose Hollow Condominiums Phase 2, said point is on the Southerly Right of Way of Moose Hollow Drive, point being South 2,064.88 feet and West 291.76' from the Center Quarter Corner of said Section 22 (Basis of Bearing N 89°14'39" W from said Quarter Corner to the West Corner of said Section 22); thence as follows:

- S 45°18'01" W 180.35 feet along said Moose Hollow Condominium Phase 2 Boundary to Moose Hollow Phase 4 Boundary and along said Phase 4 Boundary the following three courses:
- S 45°26'32" W 119.26 feet; thence
- S 49°48'25" W 243.22 feet; thence
- S 35°29'01" W 123.17 feet; thence
- S 08°00'36" W 130.85 feet along said Phase 4 Boundary and an extension of said boundary to an existing fence; thence
- N 89°14'28" W 223.67 feet along an existing fence; thence
- N 85°28'50" W 149.48 feet along an existing fence to an existing wood fence; thence
- N 00°45'07" W 178.63 feet along an existing wood fence, not following the fence where the fence deviates around an existing ditch; thence
- N 82°25'13" W 89.91 feet along an existing wood fence to the Easterly Right of Way of SR 158 and along said Right of Way the following three courses:
- Northeasterly 78.46 feet along a non-tangent curve to the right (R=1159.60', D=3°52'35", T=39.24', CH=78.44', CHB=N 17°07'33" E) to a compound curve; thence
- Northeasterly 457.23 feet along said Right of Way which is a curve to the right (R=865.42', D=30°16'16", T=234.08', CH=451.93'; thence
- N 49°20'06" E 112.55 feet to the Southern Right of Way of Moose Hollow Drive and along said Right of Way the following three courses:
- S 41°49'00" W 75.71 feet (75.28' Record) to a tangent curve to the right; thence
- Southeasterly 252.63 feet (R=280.00', D=51°41'42", T=135.65', CH=244.15', CHB=S 67°39'51" E) to a tangent line; thence
- N 86°29'18" E 314.62 feet to the Point of Beginning.

22-016-0053 ✓

EXHIBIT B
TO
ENCROACHMENT AGREEMENT

Site Plan and Encroachment Area

