

01095464 B: 2471 P: 1877

WHEN RECORDED RETURN TO:

Matthew B. Hutchinson  
**HOGGAN LEE HUTCHINSON**  
1225 Deer Valley Drive, Suite 201  
Park City, Utah 84060

Page 1 of 4

Summit County Utah Recorder  
07/20/2018 02:46:29 PM Fee \$18.00

By Park City Title  
Electronically Recorded

## **ENCROACHMENT AGREEMENT**

THIS ENCROACHMENT AGREEMENT (this "**Agreement**") made this 19 day of July 2018, by and between PROSPECTOR SQUARE PROPERTY OWNER'S ASSOCIATION, a Utah non-profit corporation ("**PSPOA**") and SMP-1791, LLC, a Massachusetts limited liability company ("**SMP**").

### **RECITALS**

1. WHEREAS, the PSPOA owns and controls the use of all common areas and facilities (the "**Common Areas**") in the Prospector Square Subdivision (the "**Subdivision**"), as the same is designated on the official plat thereof, for the benefit of the owners of the property within the Subdivision;

2. WHEREAS, SMP is the current record title owner of that certain real property commonly known as 1791 Prospector Avenue, Lot G, Park City, Utah (the "**Property**");

3. WHEREAS, SMP desires to build a multi-unit residential building on the Property together with subterranean parking areas for residents of the building;

4. WHEREAS, in order for the subterranean parking area to have enough space to create a safe turning radius for parking cars, it is necessary for SMP to encroach ten (10) feet under the Common Areas;

5. WHEREAS, the parties wish to establish conditions for PSPOA's consent to the encroachment, the maintenance of the facilities and features installed therein and the liability for any damage or loss caused thereby;

NOW THEREFORE and in consideration of the terms, conditions and covenants hereafter set forth, the parties agree as follows:

### **AGREEMENT**

1. SMP acknowledges that the Encroachment constitutes an encroachment onto the underground section of the Common Areas and that the location of said Encroachment is depicted on **Exhibit A**.

2. PSPOA hereby consents to the encroachment depicted in Exhibit A, and grants SMP, and its successors and assigns, an easement therefor, relinquishing any right PSPOA would have to

prevent or remove said Encroachment, presently and prospectively, but expressly subject to and only for so long as the rights and obligations established hereunder are observed.

3. SMP (or its successors) in accordance with applicable building codes, shall maintain all Encroachments and shall promptly repair any damage or disruption to the surrounding Common Area. Should SMP (or its successors) fail to do so, the PSPOA may repair any disturbed, damaged or unmitigated common area, by any means determined suitable in PSPOA's sole discretion, and SMP or its successors shall be liable for the cost thereof.

4. SMP (or its successors) shall have the sole obligation for the timely maintenance, repair and/or replacement of the facilities comprising the Encroachment, which shall be maintained in a safe and attractive condition. SMP (or its successors) shall have reasonable right of temporary access across and upon the Common Areas to accomplish such purposes. Neither SMP nor its successors shall have the right to expand, add or extend the Encroachments, nor to replace any existing facilities and features with dissimilar ones, without application to, and express written approval of PSPOA prior to replacement, which approval may be granted or denied in PSPOA's sole discretion.

5. Except as may be necessary to preserve PSPOA property, or in the event of an emergency or to comply with any law, PSPOA shall not act or fail to act in the use of its property so as to cause loss or damage to the Encroachment designated in this Agreement. PSPOA shall otherwise retain all lawful right to enter upon the Common Area for all lawful purposes.

6. SMP (or its successors) shall bear all risk of personal injury and property loss arising from the installation and/or use of the facilities and features comprising the Encroachment. SMP (and its successors) shall establish and maintain, at its sole expense, public liability insurance coverage against risk of injury to persons and property loss in such amounts and coverage conditions as are acceptable to PSPOA in its reasonable discretion. PSPOA shall be named as an Additional Insured concerning such coverage, to the reasonable extent of the risk of damage posed by the Encroachment to the property of PSPOA or that of any private party, as well as to the risk of injury to persons using the facilities or in any way exposed thereto.

SMP (and its successors) shall further indemnify and hold harmless PSPOA, its agents, employees, officers, lot owners and members from any and all claims and liability for injury and loss arising from the existence of the Encroachment and/or use of any object, facility or thing thereon, including but not limited to personal injury to SMP, its successors, or its tenants' guests and invitees, as well as to the public at large, and including any attorney fees incurred by PSPOA in connection with any claim arising from injuries sustained upon or on account of the Encroachment.

7. In the event either party incurs attorneys' fees or court costs in order to enforce this Agreement, with or without judicial intervention, the prevailing party in such adjudication shall be awarded its reasonable costs and attorneys' fees, including those incurred on appeal.

8. The provisions hereof shall be binding upon the parties and their successors, however designated or in whatever representative capacity for the owners of the respective properties named herein.

9. The property affected hereby is identified as follows:

ALL OF LOTS 48A, 48B AND 48C, PROSPECTOR SQUARE SUPPLEMENTAL AMENDMENT TO LOT G SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE OFFICE OF THE SUMMIT COUNTY RECORDER, SUMMIT COUNTY, UTAH

Parcels No. PSA-48A-SP-AM, PSA-48B-SP-AM and PSA-48C-SP-AM

SMP 1791, LLC, a Massachusetts limited liability company

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

*Zac Wright*

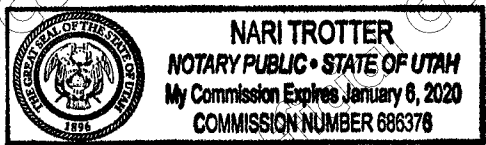
*Dean S. Berrett*

By: Zac Wright  
Its: VP of Real Estate Operations

By: *Dean S. Berrett*  
Its: *Secretary*

State of Utah )  
                                  :SS  
County of Summit )

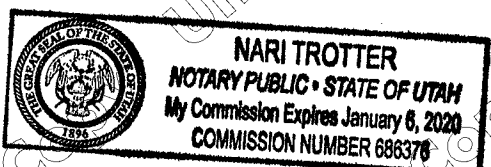
The foregoing instrument was duly acknowledged before me this 20<sup>th</sup> day of July 2018, by Zac Wright as Vice President of SMP 1791, LLC.



*Nari Trotter*  
Notary Public

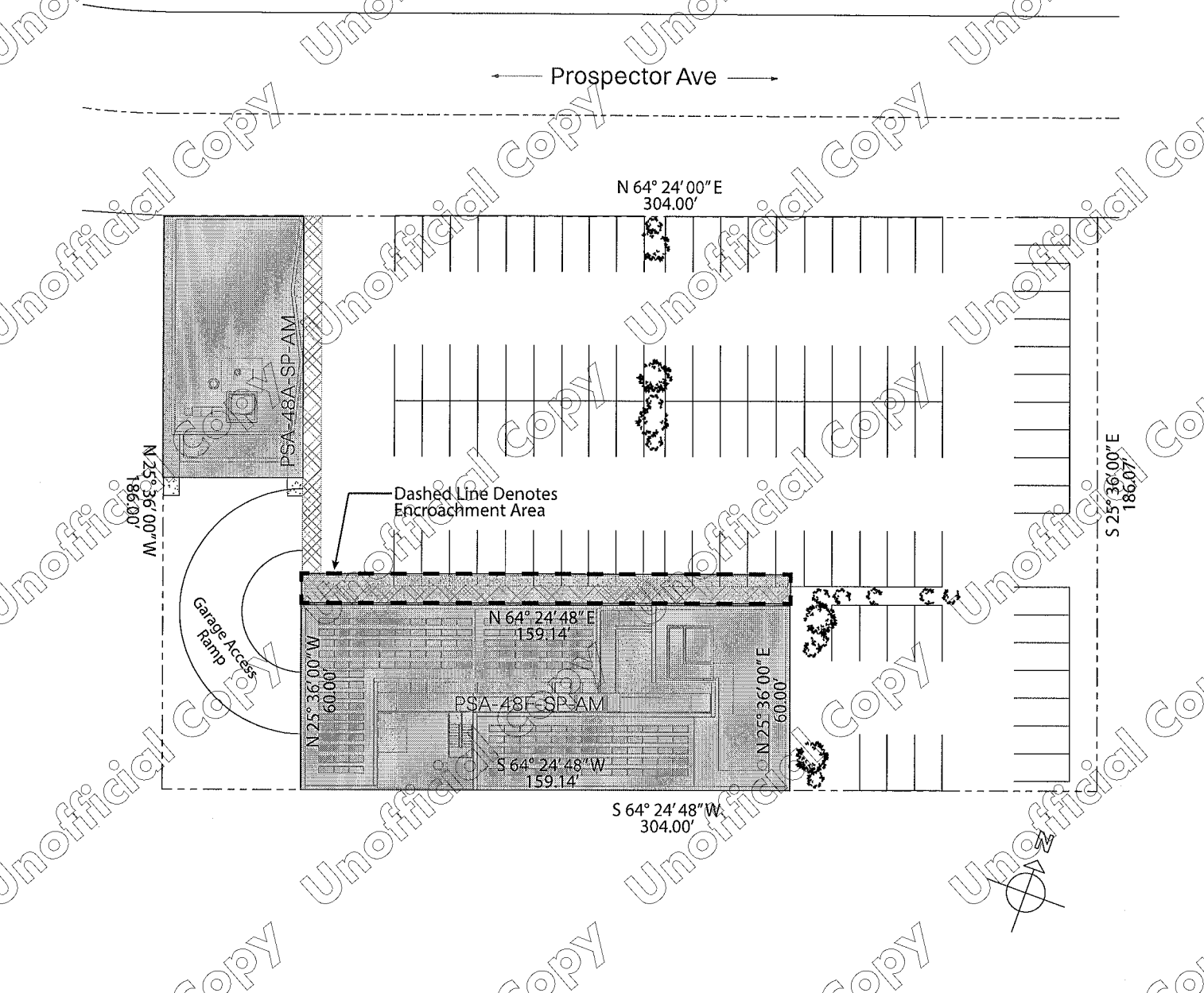
State of Utah )  
                                  :SS  
County of Summit )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of July 2018, by Dean S. Berrett as Secretary of Prospector Square Property Owner's Association.



*Nari Trotter*  
Notary Public

# Exhibit A



## Encroachment Dimensions

