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Rhonda Francis Summit County Recorder

05/30/2019 11:17:18 AM Fee \$40.00

By Park City Title

Electronically Recorded

WHEN RECORDED, MAIL TO:

HOGGAN LEE HUTCHINSON

Matthew B. Hutchinson

1225 Deer Valley Drive, Suite 201

Park City, Utah 84060

EASEMENT AGREEMENT

This Easement Agreement (this “**Agreement**”), is by and between PROSPECTOR SQUARE PROPERTY OWNERS ASSOCIATION, a Utah non-profit corporation (“**Grantor**”), and SMP 1791, LLC, a Delaware limited liability company (“**Grantee**”), and is effective as of this 22 day of May 2019 (the “**Effective Date**”). Grantor and Grantee are referred to collectively herein as “**Parties**” and individual as “**Party**.”

RECITALS

A. WHEREAS, Grantor is the current record title owner and controls the use of all common areas and facilities in the Prospector Square subdivision, as the same is designated on the official plat maps recorded with the Summit County, including that portion of said subdivision assigned Summit County Parcel ID No. PSA-G-SP-AM and more particularly described on **Exhibit A** hereto (the “**Grantor Parcel**”);

B. WHEREAS, Grantee is the current record title owner of certain parcels of real property located in Summit County, Utah assigned Summit County Parcel ID Nos. PSA-48A-SP-AM and PSA-48F-SP-2AM and more particularly described on **Exhibit B** hereto (the “**Grantee Parcel**”);

C. WHEREAS, Grantee intends to cause two (2) electrical transformers to be installed on the Grantor Parcel to serve improvements to be constructed in the Grantee Parcel (the “**Transformers**”);

D. WHEREAS, Grantee desires to obtain from Grantor an easement for the installation, construction, repair, patrol, replacement, operation, and maintenance of the Transformers on those portions of Grantor’s Parcel depicted as “Commercial Transformer” and “Residential Transformer” on **Exhibit C** hereto (collectively, the “**Easement Property**”); and

E. WHEREAS, Grantor is willing to grant to Grantee and its successors such an easement in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as provide herein, and Grantor hereby creates, conveys and grants to Grantee and its successors and assigns the following easement:

AGREEMENT

1. **Grant of Utility Easement.** Grantor hereby grants and conveys to Grantee, and its successors-in-interest in fee title to Grantee's Parcel, and their respective contractors and individual/entities providing Grantee Parcel requested services, an easement and a right-of-way over, under, and across the Easement Property for sole purpose of the construction, reconstruction, operation, maintenance, repair, replacement, enlargement, and removal of the Transformers and all reasonably necessary accessories and appurtenances thereto, together with the right of reasonable access thereto (the "**Easement**"). Notwithstanding anything to the contrary contained herein, in the event Grantee permanently or indefinitely discontinues the use of all or any part of that portion Easement Property relating to the Commercial Transformer or of that portion of the Easement Property relating to the Residential Transformer for the purposes described above, then the Easement pertaining to the discontinued portion shall expire automatically.

2. **Transformer Placement; Restoration; Maintenance.** Grantee shall cause the Transformers to be installed and constructed on the Easement Property at Grantee's sole cost and expense, in accordance with the terms of this Agreement. For so long as the Easement remains in effect, Grantee shall be solely responsible, at no cost to Grantor, for the maintenance, repair and upkeep of the Easement Property, and for the repair of all damage including landscaping, asphalt, and any and all other damages, caused by, through or under Grantee to other real property used to access the Easement Property.

3. **No Interference.** Grantor shall not engage in any activity or use within the Easement Property that interferes with Grantee's use of the Easement Property as contemplated hereunder.

4. **Grant Reservation.** Subject to Article 3 above, Grantor hereby expressly reserves and shall have the right to use and enjoy the Easement Property for itself and/or its successors, assigns, and permittees, including the right at all times and for any purpose to go upon, across, and to use the real property encumbered by the Easement in a manner consistent with the existing nature of the property so long as it is not inconsistent with this Agreement. Nothing in this Agreement will be deemed to be a gift or dedication of any portion of the Grantor Parcel to or for the general public or for any public purposes, it being the intention of the Parties that this Agreement be strictly limited to and for the purposes expressed.

5. **Running of Benefit and Burden; Duration.** All provisions of this Agreement, including, without limitation the benefit and burden hereof, shall run with the land and are binding upon and shall inure to the benefit of the Parties or their respective successors, assigns, tenants, and representatives of the Parties, it being intended that the Easement is appurtenant to Grantee's Parcel. Except as specifically provided otherwise herein, this Agreement and the Easement granted hereunder shall be perpetual.

6. **Notice.** All required notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if signed by the respective persons giving them or by their attorneys and delivered by hand, or deposited in the mail, certified, return receipt requested, properly addressed and postage prepaid as follows:

GRANTEE:
SMP 1791, LLC
347 Congress St.
Boston, MA 02210

GRANTOR:
Prospector Square Property Owners' Association
PO Box 680344
Park City, Utah 84068

7. Preamble and Recitals. The Parties agree that the preamble and the Recitals to this Agreement are accurate and are incorporated by reference into the Agreement, as if fully set forth herein.

8. Attorney Fees. In the event that this Agreement or any provision hereof shall be enforced by an attorney retained by either Party, whether by suit or otherwise, the fees and costs of such attorney shall be paid by the Party who breaches or defaults hereunder, including any fees or costs incurred in court, on appeal, or in bankruptcy court.

9. Time of Essence. Time is of the essence of this Agreement and each and every term and provision hereof.

10. Modification; Waiver. A modification of any provision herein contained, or any other amendment to this Agreement, shall be effective only if the modification or amendment is in writing and signed by both Parties. No waiver by any party hereto of any breach or default shall be considered to be waiver of any other breach or default. Any and all waivers or consents to this Agreement shall be effective only if in writing and signed by both Parties. The waiver of any condition shall not constitute a waiver of any breach or default with respect to any covenant, representation or warranty. No failure or delay of either party in the exercise of such right has expired, nor shall single or partial exercise of any right preclude other or further exercise thereof or of any other right.

11. Successors and Assigns; Survival. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, successors and assigns.

12. Governing Law. The Agreement shall be governed by, interpreted under, and construed and enforced in accordance with, the laws of the State of Utah applicable to agreements made and to be performed wholly within the State of Utah.

13. Venue and Jurisdiction. Each Party, by execution of the Agreement, consents to venue in, the courts of the State of Utah in and for Summit County, Utah, regarding any legal action arising from, or otherwise related to, this Agreement.

14. Severability. In the event any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Agreement.

15. Duplicate Originals; Counterparts. This Agreement and any originals or exhibits referred to herein may be executed in any number of duplicate originals or counterparts, each of which, when the original signatures are affixed, shall be an original but all of which shall constitute one and the same instrument.

16. **Indemnity.** Grantee hereby agrees to indemnify, defend, save, and hold harmless Grantor from any and all liability, loss, claim, or damage Grantor may suffer as a result of any and all actions, claims, damages, costs, and expenses on account of or in any way arising out of or from this Agreement, including, without limitation, to indemnify, save, and hold harmless Grantor from any and all losses, claims, actions, or judgments for damages or injuries to persons or property arising out of or from, or caused by Grantee's use of the Easement Property and/or the Easement and any rights-of-way by Grantee or its successors, assigns, or agents. This indemnity shall continue so long as this Agreement is in effect.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subjects contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged into this Agreement. No supplement, modification, or amendment of this Agreement will be binding unless in writing and executed by both Parties and recorded in the records of the Summit County Recorder.

IN WITNESS WHEREOF, PROSPECTOR SQUARE PROPERTY OWNER'S ASSOCIATION, INC., has duly executed this Agreement, effective as of the Effective Date set forth above, as follows:

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

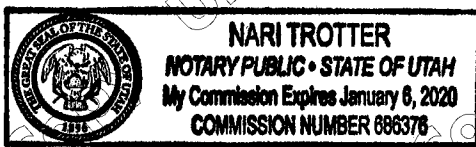
Dean S. Berrett
By: Dean S. Berrett
Its: Secretary

Acknowledgement

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

On the 20th day of May, 2019, personally appeared before me, Dean S. Berrett, who being by me duly sworn, warrants and represents that he executed the above and foregoing instrument and that he executed the foregoing instrument in his capacity as the secretary of PROSPECTOR SQUARE PROPERTY OWNER'S ASSOCIATION, INC., and that he did so of her/his own voluntary act for its stated purpose.

Nari Trotter
NOTARY PUBLIC



IN WITNESS WHEREOF, SMP 1791, LLC, has duly executed this Agreement, effective as of the Effective Date set forth above, as follows:

SMP 1791, LLC, a Delaware limited liability company

By: Ed Lewis
Its: Manager

Acknowledgement

STATE OF Utah
COUNTY OF Summit

On the 29th day of May, 2019, personally appeared before me, Ed Lewis, who being by me duly sworn, warrants and represents that he executed the above and foregoing instrument and that he executed the foregoing instrument in his capacity as the Manager of SMP 1791, LLC, and that he did so of his own voluntary act for its stated purpose.

[Signature]
NOTARY PUBLIC

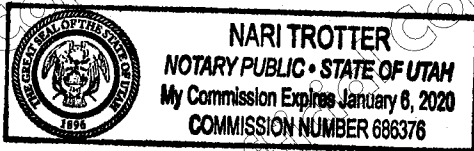


EXHIBIT A
[Legal Description of the Grantor Parcel]

All of Lot G, 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.

Parcel No. PSA-G-SP-AM

EXHIBIT B
[Legal Description of the Grantee Parcel]

All of Lot 48A, 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.

Parcel No. PSA-48A-SP-AM

All of Lot 48F, PROSPECTOR SQUARE SECOND SUPPLEMENTAL AMENDMENT TO LOT G AMENDING LOT 48B & 48C, according to the official plat thereof, on file and of record in the office of the Summit County Recorder, Summit County, Utah.

Parcel No. PSA-48F-SP-2AM

**EXHIBIT C
(Legal Description and Drawing of the Easement)**

**PROSPECTOR SQUARE SECOND SUPPLEMENTAL AMENDMENT TO LOT G
AMENDING LOT 48B & LOT 48C**

LOCATED IN THE NORTHEAST QUARTER OF SECTION 9
TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
PARK CITY, SUMMIT COUNTY, UTAH

<p>SMOKYVILLE BASIN WATER RECLAMATION DISTRICT REVIEWED FOR CONFORMANCE TO SMOKYVILLE BASIN WATER RECLAMATION DISTRICT STANDARDS ON THIS DAY OF August, 2017 BY: [Signature] S.E.W.R.D.</p>	<p>PLANNING COMMISSION APPROVED BY THE PARK CITY PLANNING COMMISSION THIS DAY OF August, 2017 BY: [Signature] CHAIR</p>	<p>ENGINEER'S CERTIFICATE I FIND THIS PLAN TO BE IN ACCORDANCE WITH INFORMATION ON FILE IN MY OFFICE THIS DAY OF August, 2017 BY: [Signature] PARK CITY ENGINEER</p>	<p>APPROVAL AS TO FORM APPROVED AS TO FORM THIS DAY OF January, 2016 BY: [Signature] PARK CITY ATTORNEY</p>	<p>CERTIFICATE OF ATTEST I CERTIFY THIS PLAN WAS APPROVED BY PARK CITY COUNCIL THIS 31ST DAY OF AUGUST, 2017 BY: [Signature] PARK CITY RECORDER</p>	<p>COUNCIL APPROVAL AND ACCEPTANCE RECORDED AND ACCEPTANCE BY THE PARK CITY COUNCIL THIS 31ST DAY OF August, 2017 BY: [Signature] MAYOR</p>	<p>SHEET 1 OF 1 RECORDED STATE OF UTAH, COUNTY OF SUMMIT, AND FILED AT THE REQUEST OF Park City, Utah \$400 BY: [Signature] FEE THE 12:00 pm DATE OF 2017 ENTRY NO. 1562115 PROSPECTOR SQUARE SECOND SUPPLEMENTAL AMENDMENT TO LOT G AM 48B & 48C</p>
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**EASEMENT AGREEMENT
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