

WHEN RECORDED, MAIL TO:

Paxton R. Guymon, Esq.
Miller Guymon, P.C.
165 South Regent Street
Salt Lake City, Utah 84111

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ALAN SPRIGGS, SUMMIT CO RECORDER
2005 APR 08 16:34 PM FEE \$19.00 BY GGB
REQUEST: MILLER GUYMON PC

RETAINING WALL AGREEMENT

This Retaining Wall Agreement ("Agreement") is made and executed this 8th day of April, 2005, by MM&G Investments, a Utah limited liability company ("MM&G"); Michael C. Posner, an individual ("Posner"); and the Michael Posner Special Needs Irrevocable Trust (the "Trust"). MM&G, Posner and the Trust, as the current owners of the subject properties, are the "Parties" to this Agreement.

RECITALS

- a. MM&G holds title to the real property located at 365 Deer Valley Drive, Park City, Utah, which property is further described as Parcel A in Exhibit "A" hereto.
- b. Posner holds title to the real property located at 355 Deer Valley Drive, Park City, Utah, which property is further described as Parcel B in Exhibit "A" hereto.
- c. The Trust holds title to the real property located at 345 Deer Valley Drive, Park City, Utah, which property is further described as Parcel C in Exhibit "A" hereto.
- d. All of the parcels of real property described in Exhibit "A" hereto are collectively referred to as the "Property."
- e. The Parties desire to develop the Property into a condominium project consisting of three (3) buildings, each building containing two (2) condominium units (the "Project").
- e. To construct the Project, a retaining wall must be installed along the western boundaries of all three properties.
- f. The Parties desire to enter into a binding agreement that shall run with the land for the maintenance and repair of the retaining wall, which obligations shall be binding on the owners of the Property until such time as the obligation to maintain and repair the retaining wall is assumed by the owners association of the Project.
- g. The obligations and covenants contained in this Agreement shall be enforceable equitable servitudes and shall run with the land and be binding upon any and all future owners of the Property. If and when any parcels comprising the Property are sold, the new owners shall be

responsible for fulfilling the obligations under this Agreement, and the prior owners shall be released of such obligations. The obligations under this Agreement are binding on any and all owners of record of the Property only during the time such owners hold title to the Property.

AGREEMENT

NOW, THEREFORE, for the foregoing purposes, the parties hereby covenant and agree as follows:

1. Recitals. The foregoing Recitals are incorporated herein and made a part of this Agreement.

2. Retaining Wall Obligation. The parties hereto covenant and agree that the owners of the properties described in Exhibit "A" hereto shall be jointly and severally liable and responsible for the maintenance and repair of the retaining wall to be constructed and installed along the western boundaries of the Property.

3. Cessation of Obligation. The owners of the Property shall be required to fulfill their obligations under the preceding paragraph 2 until such time as the obligations are assumed by an owners' association. The owners' association shall assume the obligations for the maintenance and repair of the retaining wall by recordation of a written instrument reflecting such assumption of obligations (which may be in the form of a Declaration of Condominium or other recorded instrument).

MM&G INVESTMENTS, LLC, a Utah limited liability company

By: Payton Guymon
Title: Member

Michael C. Posner
Michael C. Posner, an individual

Michael C. Posner
Michael C. Posner, as Trustee of the Michael Posner Special Needs Irrevocable Trust

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 8 day of April, 2005, by Paxton R. Guymon, as authorized Member of MM&G Investments, LLC, a Utah limited liability company, and by Michael C. Posner, individually and on behalf of the Michael Posner Special Needs Irrevocable Trust.

Carrie A. Blair
NOTARY PUBLIC

SEAL:



EXHIBIT A

Parcel A:

The real property located at 365 Deer Valley Drive, in Park City, Summit County, State of Utah, is further described as follows:

Lot A of the Ski Down Subdivision, according to the official plat thereof on file with the Summit County Recorder's Office

Parcel I.D. No. SKIDWN-A

Parcel B:

The real property located at 355 Deer Valley Drive, in Park City, Summit County, State of Utah, is further described as follows:

Lot B of the Ski Down Subdivision, according to the official plat thereof on file with the Summit County Recorder's Office

Parcel I.D. No. SKIDWN-B

Parcel C:

The real property located at 345 Deer Valley Drive, in Park City, Summit County, State of Utah, is further described as follows:

The Westerly ½ of Lot 16, all of Lots 17 and 18, and the westerly ½ of Lot 19, Block 65, Amended Plat of Park City Survey, according to the official plat thereof on filed in the Summit County Recorder's Office, excepting therefrom that portion of the above described property lying within the bounds of abandoned railroad rights of way.

Parcel I.D. Nos. PC-519-B-1 and PC-519-B-3