

WHEN RECORDED, MAIL TO:
City Recorder
Park City Municipal Corporation
P. O. Box 1480
Park City, Utah 84060

ENTRY NO. 00949515

07/18/2012 11:02:08 AM B: 2137 P: 1177

Agreement PAGE 1/9

ALAN SPRIGGS, SUMMIT COUNTY RECORDER

FEE 26.00 BY PARK CITY MUNICIPAL CORPORATION



**ENCUMBRANCE AND AGREEMENT FOR
HISTORIC PRESERVATION FOR 335 WOODSIDE AVENUE**

PROJECT ADDRESS/PARCEL NUMBER: 335-1

**APPLICANTS' NAME: JOHN K. WATKINGS, a married person, and ERICH W.
JOINER, an unmarried man, as tenants in common**

**APPLICANTS' MAILING ADDRESS: 520 5TH STREET, MANHATTAN BEACH, CA
90266**

APPLICANT'S PHONE: 323.833.5573

HISTORIC PRESERVATION PLAN APPROVED BY: FRANCISCO ASTORGA

DATE OF AGREEMENT: JULY 11, 2012

HISTORIC PRESERVATION GUARANTEE AMOUNT: \$140,140

**Exhibits A (Historic Preservation Plan) and B (Trust Deed Note and Trust Deed) must be
attached prior to signing this Agreement. Guarantee Amount Determination may be
attached as Exhibit C.**

This Agreement is made by and between **JOHN K. WATKINGS, a married person,
and ERICH W. JOINER, an unmarried man, as tenants in common** ("Applicant") and Park
City Municipal Corporation ("City") (collectively the "Parties"). Applicant has proposed a
building, construction, or development project affecting a historic structure. Applicant's project
has a street address of **335 Woodside Avenue, Park City, Utah** and a legal description:

**LOT 1 335 WOODSIDE AVENUE SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT
ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE. CONT 3750 SQ FT OR 0.09
AC, Parcel number: 335-1**

Applicant has requested that the City grant the necessary permit, or permits, required by
the Municipal Code and the Land Management Code ("LMC") for the building, construction, or
development project to proceed. Pursuant to the LMC, all construction shall be completed
according to the approved building plans on which the building permits are issued. In order to
secure and ensure that all reconstruction, development, demolition or other activity that affects a
historic structure is conducted according to the provisions of the International Building Code,
Municipal Code and the LMC, the City requests, and the Applicant agrees to provide, a sufficient
financial guarantee ensuring the satisfactory completion of the development.

WHEREAS 335 Woodside Avenue has been identified as a Landmark Structure in the Historic Site Inventory; and

WHEREAS the Parties intend that the Applicant will have an obligation to ensure that the building project be completed according to approved Historic Preservation Plan, the Historic District Design Review (HDDR) and the Building Plans; and

WHEREAS the Applicant desires to completely renovate the structure, front porch and stairway access from the street to its 20th century presence. The rotting foundation will be replaced with a new concrete foundation with full basement and a single car garage. The proposal does *not* include relocation/reorientation, disassembly/reassembly (panelization), or reconstruction. The final floor elevation will remain the same. The existing structure will have to be structurally braced and raised intact in order to facilitate the proposed construction of the basement/garage portion of the project. Upon completion of the basement, the structure will be set back down to its original position. A new addition is proposed behind the existing historic structure consisting of three (3) stories.

WHEREAS the City will not permit a portion of the existing structure to be removed without security to guarantee that the portion of the structure to be demolished does not damage the historic structure and that the structure will be reconstructed and will accept an encumbrance against the land to satisfy the security requirement; and

WHEREAS the Applicant is willing to grant such an encumbrance with the provision that the encumbrance will be reconveyed if Applicant, its assigns or successors post a cash deposit, escrow agreement or a letter of credit in the future for the historic preservation guarantee amount;;

NOW THEREFORE, in consideration of the mutual promises, terms, and conditions hereof, City and Applicant agree as follows:

1. Applicant covenants and warrants to perform all construction, development, demolition or other activity affecting the historic structure in accordance with the specific measures set forth in the Historic Preservation Plan attached hereto as Exhibit A and incorporated into this Agreement by reference. Applicant, for itself and for its successors and assigns, grants to the Chief Building Official, or his designee, the right of entry on the project for the purposes of inspecting the project and assessing compliance with the approved Historic Preservation Plan.
2. The Historic Preservation Plan has been approved by the Planning Director and the Chief Building Official, or their designees. The Historic Preservation Plan documents the historic character of the structure and the specific aspects of the structure that Applicant

will preserve.

3. In addition to making the foregoing covenants, Applicant herewith grants the City an encumbrance in the amount of \$140,140 against LOT 1 335 WOODSIDE AVENUE SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE. CONT 3750 SQ FT OR 0.09 AC, Parcel number: 335-1, as evidenced by a copy of the Trust Deed Note and Trust Deed in Exhibit B. This encumbrance shall satisfy the Applicant's guarantee and security obligation to the City and shall apply to any subsequent heirs, assignees or successors. The encumbrance will be released if Applicant, its assigns or successors post a cash deposit, escrow agreement or a letter of credit for this amount in the future.
4. After project is complete, and prior to the Certificate of Occupancy, the Chief Building Official, his designee, will determine whether the Applicant has complied with the Historic Preservation Plan. If the Applicant has complied with the Historic Preservation Plan to the City's satisfaction, the City will, upon written request by the Applicant, release all claim to the funds described in the encumbrance.
5. If, at the completion of the project, or at any time prior to that point, the Chief Building Official, or his designee, determines that the Applicant has not complied with the Historic Preservation Plan, the Chief Building Official, or his designee, shall give written notice that the building project is in a state of non-compliance, or that the Applicant has defaulted on the terms of this Agreement, or both.
6. The Chief Building Official, or his designee, may also declare default or non-compliance if the Applicant does not have Certificate of Occupancy in accordance with the Historic Preservation Plan within 18 months of obtain a building permit for the structure.
7. The Parties agree that a strict liability standard will apply to any failure to comply with the Historic Preservation Plan which leads to a determination of non-compliance or default. The applicant will have 20 calendar days after receiving notice of default or non-compliance to cure the default or non-compliance.
8. In the event of a declaration of default or non-compliance, the Applicant agrees that the City shall have right and claim to all of the funds described by the encumbrance. It is the intent of the Parties that all funds claimed by the City because of default or non-compliance shall be used, in the City's discretion, for historic preservation projects within the City or to enhance the Applicant's project.
9. It is the intent of the Parties that the Applicant will have the obligation to ensure that the building project be completed according to the Historic Preservation Plan. The Applicant accepts responsibility for the actions or omissions of any contractors, sub-contractors, or

other individuals working on or for the building project which result in a declaration of default or non-compliance.

10. The Parties agree that the Applicant will make written demand for the release of the encumbrance within one year from the date that the City issues a Certificate of Occupancy.
11. Applicant agrees to make the conditions of this Agreement applicable to its successors and assigns. If Applicant sells, assigns or otherwise transfers ownership of 335 Woodside Avenue, the encumbrance will be converted at the time of sale to a cash deposit, escrow agreement, a letter of credit or a new lien agreement. The conditions of this Agreement shall continue to apply.
12. Applicant will record this Agreement with the Summit County Recorder within ten (10) business days after executing this Agreement. A Building Permit will not be issued until proof of recordation is provided.
13. The Parties understand that none of the terms herein abrogate or affect the City's right to pursue criminal sanctions for any violation or violations of City ordinances.
14. This Agreement is made for the benefit of the City. Subsequent purchasers of interest in the project, lien holders and other third parties shall have no interest of any kind in the proceeds of the encumbrance. The Applicant agrees to hold harmless and indemnify the City for any damage or loss suffered by the City because of any judgment or cause of action against the City by any person or property, including the Applicant, as a result of damage, loss or personal injury to any person or property, including the Applicant, as a result of the work of any contractor hired by the Applicant on behalf of the City. The Applicant further agrees to indemnify the City for any loss or judgment suffered by the City from enforcement of a mechanic's or materialman's lien as a result of the work of any contractor (including subcontractors and materialmen of any such contractor) hired by the City on behalf of the Applicant
15. In the event the City gives written notice of non-compliance or default, the City shall be entitled thirty (30) days after any cure period to seize the property secured hereby and sell it at public auction to satisfy the Trust Deed Note created in the amount of \$140,140.
16. The person conducting the sale for the City may, for any cause he deems expedient postpone the sale from time to time until it shall be completed and in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale, notice thereof shall be given in the same

manner as the original notice of sale. The City's agent shall execute and deliver to the purchaser the Deed for the property without any covenant of warranty, express or implied. The City's agent shall apply the proceeds of the sale to payment of (1) costs and expenses of the sale including attorneys' fees; (2) the \$140,140 to the City; and (3) the remainder of the funds shall go to the Applicant.

- 17. Upon the occurrence of any default hereunder, the City may proceed in the manner provided by law for the foreclosure of mortgages on real property and the City shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorneys' fee.
- 18. This Agreement, together with all documents incorporated herein by reference, constitutes the entire and only agreement between the Parties and cannot be altered except by written instrument signed by both Parties

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed this

12 day of July 2012

APPLICANTS

Sign: [Signature]

Sign: [Signature]

Print Name: John K. Watkins

Print Name: ERICH JOINER

Title: co-owner

Title: CO-OWNER

Mailing Address:

ACKNOWLEDGMENT

^{California}
 STATE OF ~~UTAH~~)
 Los Angeles) ss.
 COUNTY OF ~~SUMMIT~~)

On this 12th day of July, 2012, before me, Michael O'Hannessian, the undersigned notary public, personally appeared John K. Watkins, personally known to me / proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he ~~or she~~ executed the same.



[Signature]

Notary Public

STATE OF ~~UTAH~~ *California*)
 Los Angeles) ss.
COUNTY OF ~~SUMMIT~~)

On this *13th* day of *July*, 2012, before me, *Michael Ohannesian*, the undersigned notary public, personally appeared *Erich Joines*, personally known to me / proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he ~~or she~~ executed the same.



[Signature]

Notary Public

PARK CITY MUNICIPAL CORPORATION

Sign: *[Signature]*

Print Name: FRANCISCO ASTORGA
Title: PLANNER

I have attached Exhibits A (Approved Historic Preservation Plan) and B (Trust Deed and Trust Deed Note) to this Agreement. F.D. (initial)

TRUST DEED NOTE

DO NOT DESTROY THIS NOTE: When paid, this note, with Trust Deed securing same, must be surrendered to Trustee for cancellation, before re-conveyance will be made.

\$140,140

Park City, Utah

WHEREAS, John K. Watkins, a married person, and Erich W. Joiner, an unmarried man, as tenants in common, "Grantor" has entered into an Encumbrance and Agreement for Historic Preservation ("Agreement") and a Historic Preservation Plan which this trust deed is attached hereto, with PARK CITY MUNICIPAL CORPORATION, "Grantee"; and

WHEREAS 335 Woodside Avenue has been identified as a Landmark Structure; and

WHEREAS the Parties intend that the Grantor will have an obligation to ensure that the building project be completed according to approved Historic Preservation Plan, the Historic District Design Review (HDDR) and the Building Plans; and

WHEREAS the Grantor desires to completely renovate the structure, front porch and stairway access from the street to its 20th century presence. The rotting foundation will be replaced with a new concrete foundation with full basement and a single car garage. The proposal does *not* include relocation/reorientation, disassembly/reassembly (panelization), or reconstruction. The final floor elevation will remain the same. The existing structure will have to be structurally braced and raised intact in order to facilitate the proposed construction of the basement/garage portion of the project. Upon completion of the basement, the structure will be set back down to its original position. A new addition is proposed behind the existing historic structure consisting of three (3) stories..

WHEREAS the City will not permit the historic structure to be structurally braced and raised intact in order to facilitate the proposed construction of the basement/garage portion of the project without security to guarantee that the historic structure to be damaged and that the structure will be placed in its current elevation once the lower level is completed and will accept an encumbrance against the land to satisfy the security requirement; and will accept an encumbrance against the land to satisfy the security requirement; and

WHEREAS the Grantor is willing to grant such an encumbrance with the provision that the encumbrance will be reconveyed if Grantor, its assigns or successors post a cash deposit, escrow agreement or a letter of credit in the future;

NOW, THEREFORE, the undersigned Grantor, FOR VALUE RECEIVED, promises to pay to the order of PARK CITY MUNICIPAL CORPORATION, the amount set forth below, pursuant to the Agreement:

\$140,140 (One Hundred Forty Thousand, One Hundred Forty Dollars)

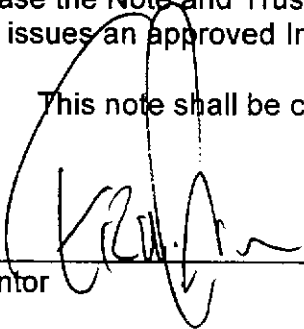
This note shall inure to the benefit of and shall be binding upon respective successors and assigns of the Grantor and Grantee.

If this note is collected by an attorney after default in the payment of principal or interest, either with or without suit, the undersigned agrees to pay all costs and expenses of collection including a reasonable attorney's fee.

The makers, sureties, guarantors and endorsers hereof severally waive presentment for payment, demand and notice of dishonor and nonpayment of this note, and consent to any and all extensions of time, renewals, waivers or modifications that may be granted by the holder hereof with respect to the payment or other provisions of this note, and the release of any security, or any part thereof, with or without substitution.

This note is secured by a Trust Deed of even date herewith. Grantee shall release the Note and Trust Deed upon a written demand for release by Grantor after the City issues an approved Inspection Report in accordance with the Agreement.

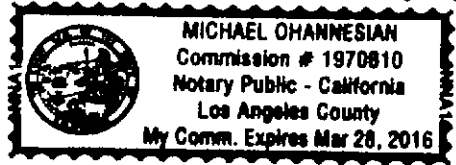
This note shall be construed in accordance with the laws of the State of Utah.




Grantor ERIC W JOINER

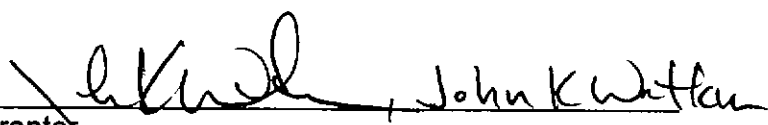
California
STATE OF UTAH)
Los Angeles) SS
COUNTY OF SUMMIT)

On this 12th day of JULY, 2012, before me, the undersigned notary, personally appeared Eric W. Joiner personally known to me/proved to me through identification documents allowed by law, to be the person(s) whose name(s) is/are signed on the preceding or attached document, and acknowledged that he/she/they signed it voluntarily for its stated purpose.





Notary Public



Grantor
California
STATE OF UTAH)

Los Angeles SS
COUNTY OF SUMMIT)

On this 12TH day of JULY, 2012, before me, the undersigned notary,
personally appeared John K. Watkins ~~known to me~~ ^{personally} proved to me through identification documents allowed by law, to be the
person(s) whose name(s) is/are signed on the preceding or attached document, and
acknowledged that he/she/they signed it voluntarily for its stated purpose.



Notary Public

