

When recorded please return to:
Park City Municipal Corporation
Attn: Engineering Department
PO Box 1480
Park City UT 84060

Affects Parcel No(s): _____

ENCROACHMENT AGREEMENT

This Encroachment Agreement (“**Agreement**”) is between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation (“**PCMC**”), and _____

_____ (“**Owner**”), the

owner(s) of certain real property located at _____, Park City, Utah 84060, to set forth the terms and conditions under which PCMC will permit the Owner to build, maintain, and use certain improvements on PCMC property and right-of-way,

including _____ (the “**Right-of-Way**”).

The parties therefore agree as follows:

1. **Property.** This Agreement shall be associated with the parcel(s) identified above and the adjacent Right-of-Way, as described below.

2. **Transferability and Recordation.** This Agreement is not transferable to any other property, but is freely transferable with the title to the Property. This Agreement will be recorded against the Property and is binding on the successors in title or interest of Owner.

3. **Scope.** The modifications permitted within the Right-of-Way shall consist of and be limited to those generally described below and depicted in the scaled drawings with all related elements in **Exhibit A** (the “**Modifications**”). The Modifications consist of the following

element(s): _____

_____.

Owner shall not make any alterations to the Modifications without written permission from PCMC. Owner shall obtain all required permits prior to installation of the Modifications.

4. **Removal.** PCMC may remove the Modifications at its own cost for any reason whatsoever, including but not limited to street improvements, installing utilities (or permitting such installation), or modifying the street section, in its sole determination without compensating Owner. Owner understands and agrees that PCMC may remove, relocate, replace, or destroy the

Modifications at PCMC's sole discretion. Owner hereby waives any right to compensation for the loss of investment or the cost of installing or reinstalling the Modifications.

PCMC will make a reasonable attempt to notify Owner prior to commencing work that may damage, destroy, or require removal of the Modifications, but PCMC makes no warranties or promises to give Owner any notice prior to commencing such work. Owner and PCMC agree that failure to notify Owner prior to the commencement of any work in the Right-of-Way does not constitute a breach of contract. PCMC and its franchised utilities will attempt to save as much of the Modifications as possible but in no way guarantees any salvage value whatsoever.

5. **Repairs.** Owner is responsible for all repairs to the Right-of-Way where the Modifications are installed. Owner shall coordinate with PCMC and other providers or users of the Right-of-Way, including utilities, when any cuts or excavations will be made. Unless otherwise expressly permitted by written agreement, installation, repairs, or maintenance of the Modifications shall be limited to the same section of the Right-of-Way where the Modifications are initially installed, as shown on **Exhibit A**. Owner and successors shall maintain the Modifications in a good state of repair at all times and, upon notice from PCMC, shall repair any damaged, weakened, or failed sections of the Right-of-Way. If Owner fails to repair the Right-of-Way within 30 days of notice from PCMC, PCMC reserves the right to repair the Right-of-Way, remove the Modifications, and terminate this Agreement in its sole discretion. Owner shall pay PCMC for all of PCMC's reasonable costs to repair the Right-of-Way and remove the Modifications if Owner fails to make repairs within 30 days after notice from PCMC.

6. **License.** No permanent right, title, or interest of any kind shall vest in Owner in the Right-of-Way by virtue of this Agreement. The interest hereby created is a revocable license, and not an easement or other perpetual interest. Owner will not obtain any interest in the Right-of-Way under the doctrines of adverse possession, prescription, or other similar doctrines of law based on adverse use, as the use permitted by this Agreement is entirely permissive in nature. PCMC does not consent to a waiver of governmental immunity under the Governmental Immunity Act of Utah as codified in Title 63G, Chapter 7, of the Utah Code (or successor provision).

7. **Snow and Ice Removal.** Owner shall remove snow from any affected sidewalks and stairways in compliance with Park City Code section 14-4-9. Additionally, Owner shall be responsible for the removal of any snow, ice, or related buildup that occurs in the modified area or adjacent areas as a result of the Modifications.

8. **Indemnification.** Owner will indemnify and defend PCMC and its elected officials, employees, and volunteers from and against any and all claims, loss, damage, expense, liabilities, and costs (including reasonable attorneys' fees, litigation costs, and court costs) related to any third-party claim for property damage, personal injury, or death arising out of or in connection with (i) the Modifications, (ii) Owner's installation, maintenance, operation, or repair of the Modifications, and (iii) Owner's failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of PCMC.

PCMC will give prompt written notice to Owner of any claim or threatened claim no later than 15 calendar days after PCMC receives written notice of the action, suit, or proceeding, or threat of the same. PCMC's failure to give the required notice will not relieve Owner from its obligation to indemnify PCMC unless, and only to the extent that, Owner is materially prejudiced by such failure.

9. **No Joint Venture.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with each other.

10. **Entire Agreement.** This Agreement constitutes the entire understanding between the parties regarding the subject matter of this Agreement.

11. **Revocation.** This Agreement shall be in effect until revoked by PCMC, which may occur for any reason in PCMC's sole discretion. Revocation shall be effected by PCMC with a notice of revocation to be recorded with the Summit County Recorder and sending notice to Owner or Owner's successor. If Owner removes all Modifications from the Right-of-Way, PCMC shall record a notice of revocation at Owner's request.

12. **Governing Law, Jurisdiction, Venue.** Utah law governs all adversarial proceedings arising out of this Agreement or the subject matter of this Agreement. As the exclusive means of bringing adversarial proceedings to resolve any dispute arising out of this Agreement or the subject matter of this Agreement, a party may bring such a proceeding in courts of competent jurisdiction in Summit County, Utah.

13. **Breach.** In the event Owner fails to fulfill any of its respective obligations under this agreement, PCMC shall have a breach of contract claim and remedy against Owner, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this agreement shall become effective without such action that would be necessary to formally amend the Agreement.

14. **Severability.** The parties acknowledge that if a dispute between the parties arises out of this Agreement or the subject matter of this Agreement, it would be consistent with the wishes of the parties for a court to interpret this Agreement as follows: (1) with respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; (2) if an unenforceable provision is modified or disregarded in accordance with this section, by holding that the rest of the Agreement will remain in effect as written; (3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this Agreement, by holding the entire Agreement unenforceable.

15. **No Non-Party Rights.** Nothing in this Agreement is intended to grant rights of any kind to any non-party or create third-party beneficiary rights of any kind.

PARK CITY MUNICIPAL CORPORATION:
PO Box 1480
Park City, UT 84060

Date: _____ Signature: _____

Name (Printed): _____

Title: _____

STATE OF _____)

ss

COUNTY OF _____)

On this _____ day of _____, 20____, personally appeared

before me _____, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, acknowledged that they executed the same, and acknowledged that they are an authorized representative of Park City Municipal Corporation.

(Notary Official Seal)

Notary Public Signature

EXHIBIT A