AGREEMENT FOR PURCHASE
AND SALE OF REAL PROPERTY
[Treasure Hill]

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (this "**Agreement**") is entered into this ___ day of _____, 2018, by and among Sweeney Land Company, LLC ("**SLC**"), Park City II, LLC ("**PC II**", and together with SLC, the "**Seller**"), and PARK CITY MUNICIPAL CORPORATION, a political subdivision of the State of Utah ("**Purchaser**") and the remaining parties defined below as part of the Sweeney Parties.

WHEREAS, SLC and PC II each own a fifty percent (50%) undivided interest as tenants in common in those two certain real estate parcels (the "**Treasure Hill Parcels**") located on what is commonly known as Treasure Hill in Park City, Utah, legal descriptions of which are attached as Exhibit A (the "**Property**"); and

WHEREAS, the Property is the subject of a Conditional Use Permit Application ("CUP Application") filed by MPE, Inc. ("**MPE**") with the City, and MPE and SLC are owned by Mike Sweeney, Patrick J. Sweeney and Edward Sweeney (collectively, the "**Sweeney Brothers**").

WHEREAS, the MPE, Inc. filed the CUP Application in accordance with the Sweeney Master Plan ("**SMP**"), which SMP was approved by the City's Planning Commission in 1985 and the City Council in October of 1986.

WHEREAS, The SMP included various parcels of property consisting of a total of approximately 125.6 acres as more fully described therein and assigned the MPD Overlay Zoning Designation.

WHEREAS, pursuant to the SMP, approximately 42.7 acres of open space was conveyed to the City and future development was intended to be primarily clustered on the remainder of the property covered by the SMP.

WHEREAS, over the years, disputes have arisen with respect to the interpretation of the SMP in relation to the CUP Application.

WHEREAS, in an effort to address and resolve these disputes and to ensure that the Property will remain as open space upon the consummation of purchase and sale contemplated by this Agreement, the Parties are entering into this Agreement, and Seller desires to sell and Purchaser wishes to purchase the Property pursuant to the terms and conditions hereinafter set forth.

WHEREAS, Seller, Purchaser and the other parties thereto have contemporaneously herewith executed an agreement dated of even date herewith (the "**Three-Way Settlement Agreement**") in the form of Exhibit B attached hereto, which shall govern Seller's resumption of the CUP Application process and Purchaser's purchase of ten-percent of the SMP Master Planned Development density, all as provided in the Three-Way Settlement Agreement, in the event the parties do not close on the purchase of the Property as provided herein.

WHEREAS, for ease of reference, MPE, SLC, Brothers III, LLC and the Sweeney Brothers are referred to herein as the "**Sweeney Parties**".

NOW, THEREFORE, for Ten and No/100 Dollars ($10.00) in hand paid and in consideration of the mutual promises of the parties as set forth herein, Seller does hereby agree to sell to Purchaser and Purchaser agrees to purchase from Seller in fee simple the Property pursuant to the following covenants, conditions, terms and obligations:

1. RECITALS. The recitals above are incorporated herein by this reference and constitute a part of this Agreement.

2. PURCHASE AND SALE AND TRANSACTION DOCUMENTS. Purchaser desires to purchase, and Seller desires to sell, the Property strictly in accordance with the terms and conditions set forth below. As a part of the transaction described in this Agreement, Purchaser and Seller intend to execute, or cause the appropriate party to execute, the below agreements prior to or contemporaneously with the execution of this Agreement or prior to or contemporaneously with Closing:

2(a) Contemporaneously with the execution of this Agreement, Purchaser and Seller shall execute the Three-Way Settlement Agreement, which shall become effective as provided therein.

2(b) Prior to or contemporaneously with the closing ("**Closing**") of the sale of the Property to Purchaser, each of SLC and PC II shall execute and deliver Special Warranty Deeds in the form of Exhibit C attached hereto (the "**Deeds**"), which shall contain a covenant running with the land requiring that the Property shall be perpetually kept, preserved and maintained as open space, all as provided therein.

2(c) Prior to or contemporaneously with Closing, Purchaser shall grant easements against the unplatted portion of the Treasure Hill side, i.e., the Treasure Hill Parcels, for the benefit of Lots 3 and 4, Treasure Hill Subdivision Phase 1, and Lot 8, Treasure Hill Subdivision Phase 3. These easements are for the purpose of allowing secondary intermittent construction access and, in the case of Lot 8, maintenance access and construction access to the existing home on Lot 8 and also for the existing utilities located elsewhere that serve Lot 8, all as anticipated by the SMP regarding the Treasure Hill Parcels and as otherwise provided therein. The form of these easements shall be as set forth in Exhibits D, E and F. Such easements shall only be subject to the Permitted Exceptions, the Assignment of Rights and Obligations Under Town Lift Agreement and Amendments 1-4 incorporated herein and attached hereto as Exhibit G (the "**Assignment of Rights and Obligations Under Town Lift Agreement**").

2(d) Contemporaneously with Closing, SLC shall assign, and shall cause MPE and Brothers III to assign, to Purchaser without warranty, their rights and obligations that relate to the Property only under the Town Lift

Agreement and Amendments 1-4, pursuant to the Assignment of Rights and Obligations Under Town Lift Agreement.

3. ISSUANCE OF OPEN SPACE BOND

3(a) Purchaser shall timely prepare for the City Council of Park City's consideration a resolution to place on the November __, 2018 general election ballot the question of whether Purchaser should issue a general obligation bond in an amount sufficient to enable Purchaser to pay an additional (in addition to the Earnest Money Deposit referenced below), Fifty-Eight Million Dollars ($58,000,000) to Seller on or before April 1, 2019.

3(b) Purchaser shall determine the amount of the proposed bond no later than the date the resolution is put before the City Council of Park City.

3(c) In the event the City Council does not approve such a resolution voter approval of the bond is not obtained; or voter approval is obtained but Purchaser is prohibited by law from issuing and selling the proposed bond, then Seller agrees that such events shall operate to terminate this Agreement and the rights and obligations of the parties under this Agreement shall terminate and the Three-Way Agreement shall become operative as provided therein.

4. PURCHASE PRICE AND CLOSING. The purchase price for the Property is Sixty-Four Million Dollars ($64,000,000) (the "**Purchase Price**"). The Purchase Price shall be paid by Purchaser as follows:

4(a) Contemporaneously with the execution of this Agreement, Purchaser shall irrevocably and unconditionally pay to MPE, in good funds, Four Million Dollars ($4,000,000) to SLC, in good funds, One Million Dollars ($1,000,000), and to the PC II Parties, as directed by the PC II Parties, One Million Dollars ($1,000,000). Seller and Purchaser agree that the payment of the Six Million Dollars ($6,000,000) as provided above shall be the equivalent of an earnest money deposit for the purposes of closing on the purchase of the Property (the "**Earnest Money Deposit**").

4(b) Upon Closing, the Earnest Money Deposit shall be applied against the Purchase Price, and the balance of the Purchase Price shall be paid to Seller in immediately available funds. The balance of the Purchase Price (Fifty-Eight Million Dollars ($58,000,000)) is to be allocated and paid as follows: Twenty-Seven Million Dollars ($27,000,000) to SLC, as it may direct, and Thirty-One Million Dollars ($31,000,000) to PC II, as it may direct.

4(c) The Closing shall occur on or before April 1, 2019 (the "**Closing Date**"), on a date mutually acceptable to Purchaser and Seller. The Closing shall be held at the offices of Coalition Title or such other location as the parties shall mutually designate. Seller and Purchaser shall have the right to

extend the Closing Date by written agreement. In the event that Closing does not occur by the Closing Date or any extension agreed to in writing by Seller and Purchaser, this Agreement shall terminate, in which case the Earnest Money Deposit shall remain in possession of the Seller, and the parties shall be relieved of further liability hereunder with the exception of Purchaser's obligations to Seller that survive any termination of this Agreement as specifically provided in this Agreement.

4(d) The termination date of this Agreement shall, unless agreed to otherwise in writing by Purchaser and Seller, be the effective date of the Three-Way Settlement Agreement, as that term is defined therein.

5. TITLE.

5(a) At the Closing, Seller shall cause Coalition Title Company (the "**Title Company**"), at Seller's expense (to be shared by SLC and PC II equally), to issue a standard form ALTA 2006 owner's title insurance policy (the "**Title Policy**") pursuant to and in accordance with the title commitment issued by the Title Company as its File No. 27524 (1st Amendment) (the "**Title Commitment**"), in accordance with the terms of paragraph 5(c) below, subject to the standard printed exceptions and the following exceptions set forth in Schedule B, Part II (the "**Permitted Exceptions**"):

(1) the Findings of Fact, Conclusions of Law, Order and Final Judgment in Case No. 130500442 filed in the Third Judicial District Court of Summit County, Utah, dated April 4, 2016 (the "Kienzle Judgment") a copy of which is attached as Exhibit H;

(2) real property taxes which are a lien but not yet due and payable or delinquent;

(3) Exceptions 1-8, 12-21 and 23-26 as shown in Schedule B, Part II of the Title Commitment;

(4) Restrictions imposed by ordinance; and

(5) The Assignment of Rights and Obligations Under Town Lift Agreement.

5(b) The Escrow Agent shall cause to be issued at Closing an ALTA title insurance policy as to the Property and a standard coverage owner's form title policy (the "**Title Policy**"), in the amount of the Purchase Price, insuring that fee simple title to the Property is vested in Purchaser subject only to the Permitted Exceptions, and (ii) provide such endorsements (or amendments) to such Title Policy as Purchaser may reasonably require; provided that (a) any endorsements thereto shall be at no cost to, and shall impose no additional liability on, Seller, (b) Purchaser's obligations under this

Agreement shall not be conditioned upon Purchaser's ability to obtain such endorsements to the Title Policy, and (c) the Closing shall not be delayed, unless agreed to in writing by Seller and Purchaser, as a result of Purchaser's aforementioned request. Purchaser may, at its sole expense, purchase an extended coverage policy, but the issuance of an extended coverage policy shall not be a condition to Closing.

5(c) Prior to or contemporaneously with Closing, Seller shall also cause the documents identified in Exceptions 9, 10, 11 and 22 of the Title Commitment to be terminated.

5(d) At the Closing, SLC and PC II shall each convey to Purchaser, their one-half tenant in common interest in the Property by the Deeds, subject to the Permitted Exceptions, other than Exception 7 shown on the Commitment, which shall not be a Permitted Exception in the Deeds.

5(e) If applicable, Purchaser shall have the right to deliver to Seller a written notice ("**New Title Exception Notice**") at any time prior to the Closing Date, but not more than five (5) days after the date of Purchaser's discovery of any title exception which (i) first comes to Purchaser's attention following the expiration of the Seller Response Period, (ii) was not created due to the acts of Purchaser, (iii) has not been consented to by Purchaser, and (iv) materially adversely affects the Property (each, a "**New Title Exception**"), stating that a New Title Exception has arisen and that such New Title Exception is unacceptable to Purchaser. If Purchaser timely delivers a New Title Exception Notice to Seller, the following provisions shall apply:

(1) Upon Purchaser's delivery to Seller of the New Title Exception Notice, Seller may, but shall not be obligated to: (A) remove or correct the New Title Exception to Purchaser's reasonable satisfaction on or prior to the Closing Date; or (B) cause Escrow Agent to provide, at Closing, title insurance with respect to the New Title Exception.

(2) Seller shall have the unilateral right, based on Seller's discretion or for the purpose of performing Seller's obligations or exercising Seller's rights under this Paragraph 5(f), to extend the Closing Date for a period of up to sixty (60) days by delivery to Purchaser of written notice to such effect not more than five (5) business days after Seller's receipt of a New Title Exception Notice. The period of any such unilateral extension by Seller pursuant to this subparagraph shall run concurrently with any other extension periods provided for in this Agreement. Notwithstanding any election by Seller to extend the Closing Date as set forth above, Purchaser may elect at any time to waive Purchaser's objection to such New Title Exception by giving written notice thereof to Seller, in which case Seller and Purchaser shall proceed to Closing on or before the Closing Date in accordance with the provisions of this Agreement (and such New Title Exception will be a Permitted Exception for all purposes hereunder).

6. CONDITIONS PRECEDENT TO CLOSING.

6(a) Purchaser's Conditions Precedent. The obligation of Purchaser to purchase the Property shall be conditioned upon satisfaction of the following at or prior to Closing, any of which may be waived by Purchaser in its sole and absolute discretion (the "**Purchaser Conditions Precedent to Closing**"):

(i) All conditions of title have been met pursuant to Paragraph 5(c) hereof;

(ii) Seller is not in default of this Agreement;

(iii) All Transaction Documents listed in Paragraph 2(a)-(d) have been executed and delivered;

(iv) The representations, warranties and covenants of Seller set forth in this Agreement shall be true and correct as of the Closing Date; and

(v) Purchaser has issued and sold bonds in an amount sufficient to pay the Purchase Price.

In the event that any of the foregoing Purchaser Conditions Precedent to Closing are not satisfied on or prior to the Closing Date, then Purchaser shall, as its sole remedy, either (i) waive the applicable unsatisfied Purchaser Conditions Precedent to Closing and proceed to Closing on the scheduled Closing Date or (ii) immediately terminate this Agreement by written notice to Seller, in which case the parties shall be relieved of further liability hereunder and, unless Seller and Purchaser agree to otherwise in writing, the termination date of this Agreement shall be the effective date of the Three-Way Settlement Agreement as that term is defined therein. If Seller has breached the Agreement, Purchaser is entitled to the remedy described in Paragraph 8(a).

6(b) Seller's Conditions Precedent. The obligation of Seller to sell the Property shall be conditioned upon satisfaction of the following at or prior to Closing, any of which may be waived in writing by Seller in its sole and absolute discretion (the "**Seller Conditions Precedent to Closing**"):

(i) The representations, warranties and covenants of Purchaser set forth in this Agreement shall be true and correct as of the Closing Date.

In the event that any of the foregoing Seller Conditions Precedent to Closing are not satisfied on or prior to the Closing Date, then Seller shall, as its sole remedy, either (i) waive the applicable unsatisfied Seller Conditions Precedent to Closing and proceed to Closing on the scheduled Closing Date or (ii) immediately terminate this Agreement by written notice to Purchaser, in which case the parties shall be relieved of further liability hereunder and, unless Seller and Purchaser agree to otherwise in writing, the termination date of this Agreement shall be the effective date of the Three-Way Settlement Agreement as that term is defined therein. If Purchaser has breached the Agreement, Purchaser is entitled to the remedy described in Paragraph 8(b) below.

7. CLOSINGS, CONVEYANCE AND TITLE.

7(a) Title to the Property is to be conveyed hereunder subject to the Permitted Exceptions.

7(b) Any escrow fee shall be equally shared between Purchaser and Seller. Any transfer or conveyance taxes or fees, filing fees and/or costs associated with the recordation of the Deeds and/or Purchaser's financing shall be at Purchaser's expense. Seller shall pay all costs and expenses associated with Seller's procurement of title insurance, including, without limitation, the Title Policy. Purchaser shall pay all costs and expenses associated with a survey and/or an extended coverage title policy and any endorsements requested by Purchaser. Except as otherwise provided for in this Agreement, Seller and Purchaser will each be solely responsible for and bear all of their own respective expenses.

7(c) Seller shall be responsible for all real estate taxes, assessments or other charges accruing prior to the date of the Closing and Purchaser shall be responsible for such real estate taxes, assessments and other charges accruing on or after the date of the Closing. At Closing, real estate taxes and other charges payable on an annual or periodic basis shall be prorated to the date of Closing based on the most recent available tax information.

7(d) At or prior to Closing, if requested by Escrow Agent, Seller shall deliver to Purchaser a "Certification of Non-Foreign Status" which meets the requirements of Section 1445 of the Internal Revenue Code and Internal Revenue Regulations for the purpose of informing the transferee that withholding of Federal taxes is not required.

8. DEFAULT; LIABILITY OF PARTIES.

8(a) In the event of any breach, failure or default by Purchaser under the terms of this Agreement (which breach, failure or default is not remedied or cured by Purchaser pursuant to any applicable provisions hereof), Seller shall be entitled to terminate this Agreement and retain the Earnest Money Deposit. After Seller termination of this Agreement, the Earnest Money Deposit defined herein shall comprise the payment referenced in Paragraph 2 of the Three-Way Settlement Agreement. Purchaser shall be relieved of further liability hereunder with regard to its purchase of the Property, at law or in equity, it being the agreement of the parties that in no event shall Seller be entitled to any other remedies other than those expressly provided herein.

8(b) Notwithstanding anything to the contrary contained herein, in the event Seller breaches this Agreement (which breach, failure or default is not remedied or cured by Seller pursuant to any applicable provisions hereof) Purchaser shall have the right, as its sole and exclusive remedy, to either: (i) commence an action against Seller for specific performance of this

Agreement or similar legal or equitable action; or (ii) terminate this Agreement and proceed with Seller under the terms of the Three-Way Settlement Agreement, executed by Purchaser and Seller contemporaneously with this Agreement, and unless Seller and Purchaser agree to otherwise in writing, the termination date of this Agreement shall be the effective date of the Three-Way Settlement Agreement as that term is defined therein. After Purchaser has exercised its applicable remedy as described above, Seller shall be relieved of further liability hereunder, at law or in equity, it being the agreement of the parties that in no event shall Purchaser be entitled to any other remedies other than those expressly provided herein.

8(c) Seller and Purchaser acknowledge and represent that Seller and Purchaser have dealt with no brokers in connection with the Property and entering into this Agreement. Should any other claim for commission be asserted or established, the party in breach of its representation in this paragraph hereby expressly agrees to hold the other harmless with respect to all costs relating thereto (including reasonable attorneys' fees) to the extent that the breaching party is shown to have been responsible for the creation of such claim. Anything to the contrary in this Agreement notwithstanding, such agreement of each party to hold the other harmless shall survive the Closing and any termination of this Agreement.

8(d) No failure(s) or default(s) by Purchaser or Seller shall result in the termination or limitation of any right hereunder or the exercise of any rights or remedies with respect to such failure(s) or default(s) unless and until the defaulting party shall have been notified in writing of such default and shall have failed to remedy the specified failure(s) or default(s) within fifteen (15) days after the receipt of said written notice (or, if the cure thereof cannot be completed within fifteen (15) days, then a reasonable period of time, not to exceed an additional thirty (30) days provided the party diligently and continuously pursues such cure). If Seller breaches this Agreement, and the breach is discovered prior to Closing, Purchaser's sole remedy is described in Paragraph 8(b) of this Agreement. Except as to a breach by Seller of any warranty, representation or covenant contained in 9(a) of this Agreement, if Seller breaches this Agreement, and such breach is discovered after Closing, Purchaser shall have no remedy or recourse against Seller. Purchaser has factored this risk into its decision to purchase. If and only if it is determined within six (6) months after Closing that Seller breached any warranty, representation or covenant contained in Paragraph 9(a) of this Agreement, and if Purchaser notifies Seller in writing of any such breach within six (6) months of the Closing, Purchaser's sole remedy shall be one of the following: (i) cure of the breach by or on account of Seller; or (ii) payment of appropriate monetary compensation by Seller to Purchaser for such breach, provided that the maximum total liability for which Seller shall be responsible with respect to all representations, warranties and covenants under this Agreement shall not exceed $150,000.00.

9. REPRESENTATIONS, WARRANTIES AND COVENANTS.

9(a) Each of SLC and PC II, as to itself only, hereby represents, warrants and covenants to Purchaser that:

(i) Except as otherwise provided in this Agreement, such Seller has granted no person any contract right or other right to possession of any portion of the Property.

(ii) Except as may be required by law or agreed to by Purchaser, such Seller shall not materially alter the condition of the Property during the term of this Agreement.

(iii) Such Seller has the full right, power, and authority to sell the Property to Purchaser as provided in this Agreement and all required action necessary to authorize Seller to enter into this Agreement has been or will have been taken prior to the Effective Date. Such Seller shall have, on or before the Closing Date, the full right, power, and authority to carry out its obligations hereunder and all required action necessary to authorize such Seller to carry out its obligations hereunder has been or will have been taken prior to the Closing Date.

(iv) There are no rights or obligations related to the McIntosh Mill settlement being assigned to Purchaser.

9(b) Subject to the limitations of Section 2(d), the Sweeney Parties hereby consent to the renegotiation of the Town Lift Agreements and Amendments 1-4 by City and GPCC's successors-in-interest with respect to all matters related to the Property, provided, however, that no renegotiated term of the Town Lift Agreement and Amendments 1-4 shall require substantive changes to the Town Lift Base that are not already anticipated in the Town Lift Agreements or Amendments 1-4, unless such changes are necessary to fulfill the intent of the Restrictive Covenants.

9(c) Purchaser warrants, represents and covenants to Seller that:

(i) Purchaser has the full right, power, and authority to purchase the Property from Seller as provided in this Agreement and all required action necessary to authorize Purchaser to enter into this Agreement has been or will have been taken prior to the Effective Date. Purchaser shall have, on or before the Closing Date, the full right, power, and authority to carry out its obligations hereunder and all required action necessary to authorize Purchaser to carry out its obligations hereunder has been or will have been taken prior to the Closing Date.

(ii) The consummation of Closing shall constitute Purchaser's acknowledgment that it has independently inspected and investigated the Property and has acquired the Property based upon such inspection and investigation and its own examination of the condition of the Property.

9(d) Except as specifically set forth in this Section 9, or in a Closing Document, neither Seller nor Purchaser has made, makes or authorizes anyone to make, any warranty or representation with respect to itself, the Property or the transactions contemplated hereby.

10. DISCLAIMER AS TO THE PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN A CLOSING DOCUMENT, SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE SALE OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON AN "**AS IS, WHERE IS**" BASIS. SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY OR ANY OTHER MATTER WHATSOEVER EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN A CLOSING DOCUMENT.

11. PHYSICAL AND ENVIRONMENTAL MATTERS. Purchaser, upon closing, shall be deemed to have waived, relinquished and released Seller (and seller's officers, members, employees and agents) from and against any and all claims, demands, causes of action (including causes of action in tort) losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) of any and every kind or character, known or unknown, which Purchaser might have asserted or alleged against Seller (and Seller's officers, members, employees and agents) at any time by reason of or arising out of any latent or patent defects or physical conditions, violations of any applicable laws and any and all other acts, omissions, events, circumstances or matters regarding the condition of the Property.

12. RELEASE. Subject to the covenants, representations and warranties of Seller contained in this Agreement, effective as of Closing, Purchaser waives its right to recover from, and forever releases and discharges, Seller and its affiliates, property managers, partners, trustees, beneficiaries, owners, members, managers, officers, employees and agents and representatives, and their respective heirs, successors, personal representatives and assigns from any and all claims, whether direct or indirect, known or unknown, suspected or unsuspected, foreseen or unforeseen, that may arise on account of or in any way be connected with: (i) the physical condition of the Property, title and survey matters with respect to the Property; and the environmental condition of the Property and the presence of any Hazardous Materials on, under or about the Property; (ii) any and all statements or opinions heretofore or hereafter made, or information furnished, by Seller to Purchaser; (iii) any implied or statutory warranties or guaranties of fitness, merchantability or any other statutory or implied warranty or guaranty of any kind or nature regarding or relating to the Property; and (iv) any law or regulation applicable to the Property, including, without limitation, any Environmental Laws and any other federal, state or local law.

13. ASSIGNMENT; THIRD PARTY BENEFICIARIES; SURVIVAL. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties hereto permitted under the Agreement provided that consent to assign is obtained from the non-assigning parties and provided further that in the event of any such assignment, the assigning Party or Parties shall continue to remain liable hereunder. Except as provided in the preceding sentence, nothing herein expressed or implied shall confer upon any person or entity other than the Parties any right or remedy of any nature or kind whatsoever. Except as provided in the Deeds, there are no third-party beneficiaries of this Agreement. The provisions of this Agreement and the obligations of the parties shall survive the execution and delivery of the Deeds executed hereunder and shall not be merged therein, except that any representations and warranties of Seller hereunder shall survive Closing for six (6) months.

14. ESCROW AGENT. The terms and conditions set forth in this Agreement shall constitute both an agreement between Seller and Purchaser and instructions for Escrow Agent, which Escrow Agent shall acknowledge and agree to be bound by, as evidenced by its execution of this Agreement. Seller and Purchaser shall promptly execute and deliver to Escrow Agent any separate or additional escrow instructions requested by Escrow Agent which are consistent with the terms of this Agreement. Any separate or additional instructions shall not modify or amend the provisions of this Agreement unless otherwise expressly agreed by mutual consent of Purchaser and Seller. Purchaser and Seller both hereby acknowledge and agree that Escrow Agent shall hold and deliver the Earnest Money Deposit and all other deposits which may be made under this Agreement in accordance with the terms and conditions of this Agreement and that Escrow Agent shall be relieved of all liability and held harmless by both Seller and Purchaser in the event Escrow Agent makes any disbursement of such monies in accordance with the terms and provisions of this Agreement. Escrow Agent shall be relieved from any responsibility or liability and held harmless by both Purchaser and Seller in connection with the discharge of Escrow Agent's duties hereunder provided that Escrow Agent exercises ordinary and reasonable care in the discharge of such duties.

15. EFFECTIVE DATE. This Agreement shall become effective on the date signed by the last of Purchaser and Seller ("**Effective Date**").

16. MISCELLANEOUS.

16(a) All notices and other communications hereunder shall be in writing, and be deemed duly given: (i) when given, if personally delivered; (ii) three (5) days after mailing, if mailed by certified mail, return receipt requested, postage prepaid; (iii) one business (1) day after shipping via FedEx or other nationally recognized overnight courier service; and (iv) upon the recipient's reply to the sender's Email after sending by Email, to the following addresses:

If to Purchaser: Park City Municipal Corporation
P.O. Box 1480
Park City, Utah 84060
Attention: Office of the Mayor
Email: andy@parkcity.org

with a copy to:	Park City Municipal Corporation P.O. Box 1480 Park City, Utah 84060 Attention: Thomas Daley, Esq. Email: tdaley@parkcity.org

If to Seller or other Sweeney Parties:

To SLC:	Sweeney Land Company, LLC Attn.: Patrick J. Sweeney P.O. Box 2429 (if USPS) Park City, Utah 84060 (if delivery is by another courier service) 445 King Road Park City, Utah Email: psbro23@me.com
with a copy to:	Geoffrey W. Mangum Parsons Behle & Latimer 201 South Main Street, Suite 1800 Salt Lake City, Utah 84111 Email: GMangum@parsonsbehle.com
To PC II:	PC II, LLC Attn.: Elizabeth Rad 250 Royal Palm Way Palm Beach, FL 33480 Email: erad237@gmail.com
with a copy to:	Craig Call Anderson Call & Wilkinson, P.C. Northern Utah Office 999 North Washington Blvd. Ogden, UT 84404 Email: ccall@andersoncall.com
If to Escrow Agent:	Coalition Title Agency 2200 Park Ave., #C100 Park City, Utah 84060 Attention: Roger Cater Email: roger@coalitiontitle.com

The parties hereto shall be responsible for notifying each other of any change of address.

16(b) If any term, covenant or condition of this Agreement, or the application thereof to any party or circumstance, shall be invalid or unenforceable, the Agreement shall not be affected thereby, and each term shall be valid and enforceable to the fullest extent permitted by law.

16(c) It is the intention of the parties hereto that all questions with respect to the construction of this Agreement, and the rights or liabilities of the parties hereunder, shall be determined in accordance with the laws of the State of Utah, without regard to conflicts of law rules. Time is hereby declared to be of the essence in the performance of each of Seller's and Purchaser's obligations hereunder.

16(d) This Agreement, together with the Exhibits attached hereto, contains the final and entire agreement between the parties hereto. The recitals set forth in the beginning of this Agreement are incorporated herein as if restated in full. No change or modification of this Agreement, or any waiver of the provisions hereof, shall be valid unless the same is in writing and signed by the parties hereto. Waiver from time to time of any provision hereunder will not be deemed to be a full waiver of such provision, or a waiver of any other provisions hereunder. The terms of this Agreement are mutually agreed to be clear and unambiguous and shall be considered the workmanship of all of the parties and shall not be construed against the drafting party. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

16(e) Titles to Paragraphs and Subparagraphs are for convenience only and are not intended to limit or expand the covenants and obligations expressed thereunder.

16(f) This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

16(g) In addition to any other relief to which it may be entitled, the prevailing party in any dispute or controversy relating to this Agreement shall be entitled to recover its attorneys' fees and costs incurred in regard to such dispute or controversy.

16(h) For purposes of this Agreement and any document delivered at Closing, all references to Seller's knowledge, including, without limitation, whenever the phrase "to Seller's actual knowledge," or the "knowledge" of Seller or words of similar import are used, they shall be deemed to refer to facts within the actual, personal knowledge of Seller's Representative only, and no others, only at the times indicated, without investigation or inquiry, or obligation to make investigation or inquiry, and in no event shall the same include any knowledge imputed to Seller by any other person or entity.

"**Seller's Representative**" means and shall be limited to Patrick J. Sweeney and Elizabeth Rad, it being understood and agreed that such individual shall have no personal liability in any manner whatsoever hereunder or otherwise related to the transactions contemplated hereby.

16(i) Neither this Agreement nor a memorandum thereof shall be filed or recorded by Seller or Purchaser.

16(j) THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF UTAH. PURCHASER AND SELLER AGREE THAT THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

(SIGNATURES FOLLOW ON NEXT PAGE)

WITNESS, the following signatures.

SELLER:

SWEENEY LAND COMPANY, LLC

By: _____
Patrick J. Sweeney
Its: _____

PARK CITY II, LLC

By: _____
_____
Elizabeth Rad
Its: _____

Other Sweeney Parties only, for the purpose of Agreement in Section 9(b).

MPE, INC.:

By: _____
Its: _____

Brothers III, LLC:

By: _____
Its: _____

_____
Mike Sweeney

_____
Patrick J. Sweeney

_____
Edward Sweeney

(SIGNATURES CONTINUE ON NEXT PAGE)

PURCHASER:

PARK CITY MUNICIPAL CORPORATION,
a political subdivision of the State of Utah

By: _____
Name: _____
Title: _____
Date: _____

Attest:

_____
City Recorder

(SIGNATURES CONTINUE ON NEXT PAGE)

Escrow Agent executes this Agreement for the sole purpose of evidencing its agreement to act as Escrow Agent at provided herein.

ESCROW AGENT:

COALITION TITLE AGENCY

By: _____
Name: _____
Title:_____
Date: _____

EXHIBITS

A -- Property Description
B – Three-Way Settlement Agreement
C – Form of Special Warranty Deeds
D, E and F-- Form of Easements
G -- Assignment of Rights and Obligations under Town Lift Agreement and Amendments 1-4
H – Kienzle Judgment

10682589_1.docx

EXHIBIT A
LEGAL DESCRIPTION

A boundary consisting of two (2) parcels of land located in Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said boundary being more particularly described as follows:

Parcel 1:

Beginning at the center of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being South 16°50'13" East, 74.98 feet, more or less from a Park City Monument at the intersection of Lowell Avenue and Shepard Street as shown on the Silver Hill ALTA Property Survey recorded December 29, 1994, as Survey No. S-1870 on file and of record in the office of the County Recorder, Summit County, Utah, thence South 35°16'39" East, 42.58 feet to the point of curvature of a curve to the left, of which the radius point bears North 54°04'32" East, a radial distance of 125.00 feet; thence easterly along the arc of said curve a distance of 275.37 feet, through a central angle of 126°13'13" to a point on the quarter section line of said Section 16; thence along said quarter section line North 89°56'24" East, 141.17 feet; thence South 27°00'12" East, 15.89 feet; thence South 42°57'14" East, 3.40 feet; thence South 55°53'00" West, 93.90 feet; thence South 57°40'08" East, 109.20 feet; thence North 60°08'27" East, 11.21 feet; thence South 38°06'27" East, 39.16 feet; thence South 57°40'08" East, 94.35 feet; thence North 33°32'19" East, 86.59 feet; thence North 23°38'00" West, 40.92 feet; thence South 66°22'00" West, 10.00 feet; thence North 20°02'58" East, 14.48 feet; thence South 69°44'50" East, 41.63 feet; thence South 70°15'52" East, 48.98 feet; thence South 66°22'00" West, 18.75 feet; thence South 32°43'26" West, 24.33 feet; thence South 14°07'38" West, 27.12 feet; thence South 23°38'00" East, 17.00 feet; thence South 45°11'38" East, 54.42 feet; thence South 23°38'00" East, 404.45 feet; thence North 66°52'00" East, 75.00 feet to the Northwest corner of Lot 14, Block 28 of the Park City Survey Amended Plat; thence South 23°38'00" East, 103.87 feet; to a point on the North boundary of the Treasure Hill Subdivision Phase 2 according to the official plat thereof recorded on August 20, 2003, as Entry No. 669916 in the office of the recorder, Summit County, Utah, thence along said boundary the following two (2) courses: 1) South 66°22'00" West, 224.99 feet; thence 2) South 23°38'00" East, 395.57 feet to the North boundary of the Treasure Hill Subdivision Phase 1 according to the official plat thereof recorded on April 15, 1996 as Entry No. 452295 in the office of the recorder, Summit County, Utah; thence along said boundary the following four (4) courses: 1) South 52°00'00" West, 223.20 feet; thence 2) South 84°00'00" West, 112.53 feet; thence 3) South 79°00'00" West, 825.00 feet; thence 4) South 33°32'19" West, 600.01 feet; thence North 47°25'46" West, 856.74 feet; thence North 08°56'27" East, 845.30 feet; thence North 02°31'24" West, 503.18 feet more or less to a point on the quarter section line of Section 16; thence along said section line North 89°56'30" East, 1,081.16 feet more or less to the point of beginning.

Containing 62.110 acres, more or less.

(Tax Serial Nos. PC-321, PC-325-B, PC-338-A, PC-351, Part of PC-364-A, PC-800-1 and PC-800-1-A)

Parcel 2:

Beginning at a point that is North 89°56’24” East, 61.20 feet from the center of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being South 49°08’54” East, 109.62 feet, more or less from a Park City Monument at the intersection of Lowell Avenue and Shepard Street as shown on the Silver Hill ALTA Property Survey recorded December 29, 1994, as Survey No. S-1870 on file and of record in the office of the County Recorder, Summit County, Utah; thence North 89°56’24” East, 129.05 feet to a point on a non tangent curve to the right, of which the radius point lies North 59°13’03” West, a radial distance of 75.00 feet; thence westerly along the arc of said curve a distance of 148.30 feet, through a central angle of 113°17’34”; thence North 35°16’39” West, 6.72 feet to the POINT OF BEGINNING.

Containing 0.076 acres, more or less.

(Part of Tax Serial No. PC-364-A)

The basis of bearing for the above described parcels is South 23°38’00” East between the Park City Monuments located at the intersection of Park Avenue and Fourth Street and the intersection of Park Avenue and Sixth Street as shown on the Park City Monument Control Map prepared by Bush & Gudgell Inc. dated June,1981.

THREE-WAY SETTLEMENT AGREEMENT

This Three-Way Settlement Agreement ("Agreement") is dated, for reference purposes only, _____, 2018, and is by and among MPE, Inc. ("MPE"), Sweeney Land Company, LLC ("SLC"), Brothers III, LLC ("III"), Patrick J. Sweeney, Mike Sweeney and Ed Sweeney (collectively, the "Sweeney Brothers"), and together with MPE, SLC and III (the "Sweeney Parties"), Park City II, LLC ("PC II") and Elizabeth Rad (collectively, the "PC II Parties"), and Park City Municipal Corporation (the "City", and together with the Sweeney Parties and the PC II Parties, the "Parties"), as follows:

RECITALS

A. SLC and PC II each own a fifty percent (50%) undivided interest as tenants in common in those two certain real estate parcels (the "Treasure Hill Parcels") located on what is commonly known as Treasure Hill in Park City, Utah, legal descriptions of which are attached as Exhibit A;

B. Simultaneously herewith, the City, SLC and PC II have entered into an Agreement for Purchase and Sale of Real Property of even date herewith (the "Purchase Agreement") for the sale of the Treasure Hill Parcels to the City, subject to the terms and conditions set forth therein.

C. The Parties acknowledge and agree that, except as specifically provided in Section 4 hereof, the operative terms of this Agreement shall become implemented only in the event the City's acquisition of the Treasure Hill Parcels does not occur as provided in the Purchase Agreement.

D. The Treasure Hill Parcels are currently the subject of a Conditional Use Permit Application ("CUP Application") filed by MPE with the City. Both MPE and SLC are owned by the Sweeney Brothers. The CUP Application was filed as anticipated by the Sweeney Master Plan ("SMP"), which SMP was approved by the City's Planning Commission in 1985 and the City Council in October of 1986.

E. The SMP included various parcels of property consisting of a total of approximately 125.6 acres as more fully described therein and assigned the MPD Overlay Zoning Designation. Pursuant to the SMP, approximately 42.7 acres of open space was conveyed to the City and future development was intended to be primarily clustered on the remainder of certain portions of the property covered by the SMP. Over the years, disputes have arisen with respect to the interpretation of the SMP in relation to the CUP Application.

F. The City, acting pursuant to its authority under Utah Code Ann. (Section 10-9a-101, et seq.), and in furtherance of its land use policies, goals, objectives, ordinances, resolutions and regulations has made certain determinations with respect to the Treasure Hill Parcels and has elected to approve this Agreement both as a separate land use decision and for the purpose of settling and resolving the disputes referenced above to the extent provided herein.

G. Simultaneously herewith, the Sweeney Parties and the PC II Parties are executing a settlement agreement ("Two-Way Settlement Agreement"), resolving certain issues among

them related to or arising out of the previously anticipated development of the Treasure Hill Parcels. Neither this Agreement, the Purchase Agreement nor the Two-Way Settlement Agreement shall be effective unless each of such agreements are executed and delivered by the parties thereto.

H. The Sweeney Parties and the PC II Parties, on the one hand, and the City, on the other, desire to resolve any differences between them to the extent and as provided herein.

NOW THEREFORE, the Parties agree as follows:

1. Recitals. The recitals above are incorporated herein by this reference and constitute a part of this Agreement.

2. Payment. The Parties acknowledge that the City has paid to certain of the Sweeney Parties, Five Million Dollars ($5,000,000) and to the PC II Parties, One Million Dollars ($1,000,000), as the Earnest Money Deposit required under the Purchase Agreement. Inasmuch as the Purchase Agreement has been terminated in accordance with its terms, said amount shall be retained by the Sweeney Parties and the PC II Parties as additional consideration for the 10% reduction of density in the Project as provided for in paragraph 3 of this Agreement (the "10% Density Reduction").

3. Options if Purchase of Bonds Is Not Approved or The Treasure Hill Parcels Are Not Acquired by City.

(a) If the City Council does not approve a resolution to place on the November __, 2018 general election ballot the question of whether the City should issue a general obligation bond (the "Bond") in an amount sufficient to purchase the Treasure Hill Parcels as provided in the Purchase Agreement, if the Bond is not timely approved by the City's electorate, or if the Treasure Hill Parcels are not acquired by the City as provided in the Purchase Agreement, then the processing of the currently pending CUP Application, which was placed on hold by the Planning Commission, effective as of December 8, 2017, shall, without further action being required, automatically recommence, but approval shall initially only be sought by MPE and PC II for a project ("Project") that reflects 90% of the currently vested 2004 CUP application, known as "17.2" ("90% Density Design"). No re-application or fees shall be required, and the 90% Density Design shall not be considered a substantive amendment triggering a new master plan development amendment nor application. MPE and PC II may request a vote to approve or deny the 17.2 90% Density Design without further modification, other than removing the 10% in a location they determine appropriate. In the event that this provision is triggered, the intent of the parties is to expedite a prompt resumption by the Planning Commission of the consideration and a decision based on the existing record before the Planning Commission (as it may be supplemented by the parties) and its subsequent review of the 90% Density Design shall resume in the same status and review posture that the Planning Commission continued and tabled in December 2017. Furthermore, neither the scope of review under the LMC nor the original MPD shall be materially different or adversely affected by said reduction.

(b) If the 90% Density Design is subsequently approved by the City, SLC and PC II will cooperate to assign to the City without warranty, the remaining 10% density in the

Project, as such density was established by the SMP (as amended). If approval by the City of the Project as so modified (and which approval must be acceptable to MPE and PC II), is not obtained by April 1, 2019, MPE and PC II shall have the option to either extend this date while they explore solutions with the City or to demand a vote of the Planning Commission upon 45 days' notice, as envisioned by state law. If the Planning Commission does not approve the 90% Density Design on terms acceptable to MPE and PC II, MPE shall then have the option to (i) appeal the City's decision and litigate, or (ii) make such additional presentations to the Planning Commission as it chooses regarding the 90% Density Design or any variation thereof (subject to the reasonable approval of PC II), and then demand and obtain a vote on such design. No re-application or fees shall be required if a variation is pursued and the variation shall not be considered a substantive amendment triggering a new master plan development amendment nor application.

(c) In order for the City to close on the 10% density, as part of approval of a 90% Density Design or modified option, or successful appeal approving a 90% Density Design or modified option, the Planning Commission or court order must approve a deed restriction retiring the 10% density pursuant to LMC 15-2.24-5 Sending Site Procedure as part of the 90% Density Design or modified option or court order. Both parties will cooperate to jointly request such approval. Until such approvals are jointly obtained, the City may not close on the 10% density.

(d) Unless otherwise agreed by all parties, the Planning Commission shall consider the CUP application in no more than three public hearings and the existing Planning Commission membership, including former Planning Commissioner and current Council member Steve Joyce, may be specially appointed for the recommencement of the CUP application. No updated application submittals may be required by the City.

(e) In the event that either (1) the Planning Commission does not render a final decision on the 90% Density Reduction by March 20, 2019; or (2) a final decision is not rendered on any appeal of a final decision of the Planning Commission by the Hearing Appeal Panel within six (6) months of any appeal that is filed challenging the Planning Commission's final decision, SLC and PC II shall be relieved of any obligation to convey the remaining 10% density to the City.

(f) Nothing herein shall preclude MPE and PC II from subsequently applying for an amendment to the re-zone of the 11 acres and a MPD/CUP amendment in accordance with the City's LMC in effect at that time of application.; provided, however, that any such designs for the development shall be subject to the 10% Density Reduction.

4. <u>Release Upon Consummation of Purchase of Treasure Hill Parcels</u>. Simultaneously with the consummation of the purchase and sale of the Treasure Hill Parcels pursuant to the Purchase Agreement, and only in such event, the Sweeney Parties and the PC II Parties, on the one hand, and the City, on the other, shall be deemed to have released and agreed to hold harmless one another and their respective agents, owners, attorneys and consultants from and against any and all claims they might otherwise assert (including attorneys' fees and costs), known or unknown, related to or arising out of any aspect of the attempt by the Sweeney Parties and PC II to develop the Treasure Hill Parcels. The Sweeney Parties, the PC II Parties and the

City severally warrant to one another that they have not previously assigned to third parties, their respective claims being released hereunder, and further severally (and not jointly) covenant that they will not hereafter assign to third parties any claims anticipated to be released hereunder upon the Real Estate Closing Effective Date.

5. Assignment of this Agreement. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties hereto permitted under the Agreement provided that consent to assign is obtained from the non-assigning parties and provided further that in the event of any such assignment, the assigning Party or Parties shall continue to remain liable hereunder. Except as provided in the preceding sentence, nothing herein expressed or implied shall confer upon any person or entity other than the Parties any right or remedy of any nature or kind whatsoever. There are no third-party beneficiaries of this Agreement.

6. Amendment. This Agreement may be amended only by writing signed by the Parties.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah without regard to principles of conflict of law.

8. Attorneys' Fees. In the event of a default hereunder, the non-prevailing Party or Parties shall pay to the prevailing Party or Parties all reasonable legal fees and expenses incurred by the Prevailing Parties in enforcing this Agreement or in seeking any other remedy whether at law or equity.

9. Integration. This Agreement, including its Exhibits, reflect the entire agreement of the Parties with respect to the subject matter hereof.

10. Further Assurances. The Parties shall undertake such further action as may reasonably be necessary to achieve the objectives of this Agreement.

11. Authority. Each individual executing this Agreement in a representative capacity warrants to the other Parties that he/she has been duly authorized to execute and deliver this Agreement in the capacity and for the entity set forth above his/her signature.

12. Notice. All notices and other communications hereunder shall be in writing, and be deemed duly given: (i) when given, if personally delivered; (ii) three (5) days after mailing, if mailed by certified mail, return receipt requested, postage prepaid; (iii) one business (1) day after shipping via FedEx or other nationally recognized overnight courier service; and (iv) upon the recipient's reply to the sender's Email after sending by Email, to the following addresses:

If to the City:	Park City Municipal Corporation P.O. Box 1480 Park City, Utah 84060 Attention: Office of the Mayor Email: andy@parkcity.org
with a copy to:	Park City Municipal Corporation

P.O. Box 1480
Park City, Utah 84060
Attention: Thomas Daley, Esq.
Email: tdaley@parkcity.org

If to Sweeney Parties: Sweeney Land Company, LLC
MPE, Inc., and Brothers III, LLC
Attn.: Patrick J. Sweeney
P.O. Box 2429 (if USPS)
Park City, Utah 84060
(if delivery is by another courier service)
445 King Road
Park City, Utah
Email: psbro23@me.com

with a copy to: Geoffrey W. Mangum
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Email: GMangum@parsonsbehle.com

To PC II Parties: PC II, LLC
Attn.: Elizabeth Rad
250 Royal Palm Way
Palm Beach, FL 33480
Email: erad237@gmail.com

with a copy to: Craig Call
Anderson Call & Wilkinson, P.C.
Northern Utah Office
999 North Washington Blvd.
Ogden, UT 84404
Email: ccall@andersoncall.com

13. Counterparts. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

MPE, INC.

By: _____
Patrick J. Sweeney
Its: President

SWEENEY LAND COMPANY, LLC

By: _____
Patrick J. Sweeney
Its: Managing Member

BROTHERS III, LLC

By: _____
Patrick J. Sweeney
Its: Managing Member

_____
Patrick J. Sweeney

_____
Mike Sweeney

_____
Ed Sweeney

PARK CITY II, LLC

By: _____
Elizabeth Rad
Its: _____

_____
Elizabeth Rad

PARK CITY MUNICIPAL CORPORATION,
a political subdivision of the State of Utah

By: _____
Name: _____
Title: _____

Date: _____

Attest:

_____
City Recorder

EXHIBIT A

[INSERT LEGAL DESCRIPTIONS OF TREASURE HILL PARCELS]

DRAFT
February 14, 2018

WHEN RECORDED, MAIL TO:

Park City Recorder
_____
_____

Space Above for Recorder's Use

SPECIAL WARRANTY DEED

Sweeney Land Company, LLC, a limited liability company organized and existing under the laws of the State of Utah, County of Summit, State of Utah, Grantor, formerly known as Sweeney Land Co., a Utah partnership, hereby CONVEYS AND WARRANTS against all claiming by, through or under it to Park City Municipal Corporation ("City"), Grantee, 445 Marsac Avenue, P.O. Box 1480, Park City, Utah,84060-1480, for the sum of $10.00 and other good and valuable consideration, its one-half undivided interest in the following described tract of land ("Property") in Summit County, State of Utah:

SEE ATTACHED EXHIBIT "A",

SUBJECT TO THE TERMS OF EXHIBIT B AND THE EASEMENTS, COVENANTS, RESTRICTIONS AND OTHER MATTERS OF RECORD, AND THAT ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER TOWN LIFT AGREEMENT AND AMENDMENTS 1-4" ("ASSIGNMENT"),

which Assignment, as it pertains to the Town Lift Agreement and Amendments 1-4, was entered into among MPE, Inc. ("MPE"), Sweeney Land Company, LLC ("SLC") and Brothers III, LLC ("Brothers III", and collectively, with MPE and SLC, (the "Assignors") and Park City Municipal Corporation, (the "Assignee"), and which Assignment is on file with the Park City Recorder.

IN WITNESS WHEREOF, the Grantor and Grantee have caused their names to be hereunto affixed by their duly authorized representatives this _____ day of _____, _____.

SWEENEY LAND COMPANY, LLC

By:_____
Patrick J. Sweeney
Its: Managing Member

STATE OF UTAH)
: ss.
COUNTY OF _____)

On the _____ day of _____, _____, personally appeared before me, Patrick J. Sweeney, who being by me duly sworn, did say, each for himself, that he, the said Managing Member of Grantor, and that the within and foregoing instrument was signed in behalf of said Grantor by proper authority, and said Patrick J. Sweeney duly acknowledged to me that said Grantor executed the same.

_____
Notary Public
My Commission Expires: Residing at: _____

_____

PARK CITY MUNICIPAL CORPORATION

By:_____
Its: Mayor

ATTEST:

_____
_____
City Recorder

APPROVED AS TO FORM:

_____
Mark Harrington, City Attorney

STATE OF UTAH)
: ss.
COUNTY OF _____)

On the _____ day of _____, _____, personally appeared before me, _____, who being by me duly sworn, did say, that he is the Mayor of PARK CITY MUNICIPAL CORPORATION, and that the foregoing instrument as signed on behalf of said corporation by authority, and said _____ acknowledged to me that said corporation executed the same.

_____
Notary Public
My Commission Expires: Residing at: _____

_____

EXHIBIT A

LEGAL DESCRIPTION

A boundary consisting of two (2) parcels of land located in Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said boundary being more particularly described as follows:

Parcel 1:

Beginning at the center of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being South 16°50'13" East, 74.98 feet, more or less from a Park City Monument at the intersection of Lowell Avenue and Shepard Street as shown on the Silver Hill ALTA Property Survey recorded December 29, 1994, as Survey No. S-1870 on file and of record in the office of the County Recorder, Summit County, Utah, thence South 35°16'39" East, 42.58 feet to the point of curvature of a curve to the left, of which the radius point bears North 54°04'32" East, a radial distance of 125.00 feet; thence easterly along the arc of said curve a distance of 275.37 feet, through a central angle of 126°13'13" to a point on the quarter section line of said Section 16; thence along said quarter section line North 89°56'24" East, 141.17 feet; thence South 27°00'12" East, 15.89 feet; thence South 42°57'14" East, 3.40 feet; thence South 55°53'00" West, 93.90 feet; thence South 57°40'08" East, 109.20 feet; thence North 60°08'27" East, 11.21 feet; thence South 38°06'27" East, 39.16 feet; thence South 57°40'08" East, 94.35 feet; thence North 33°32'19" East, 86.59 feet; thence North 23°38'00" West, 40.92 feet; thence South 66°22'00" West, 10.00 feet; thence North 20°02'58" East, 14.48 feet; thence South 69°44'50" East, 41.63 feet; thence South 70°15'52" East, 48.98 feet; thence South 66°22'00" West, 18.75 feet; thence South 32°43'26" West, 24.33 feet; thence South 14°07'38" West, 27.12 feet; thence South 23°38'00" East, 17.00 feet; thence South 45°11'38" East, 54.42 feet; thence South 23°38'00" East, 404.45 feet; thence North 66°52'00" East, 75.00 feet to the Northwest corner of Lot 14, Block 28 of the Park City Survey Amended Plat; thence South 23°38'00" East, 103.87 feet; to a point on the North boundary of the Treasure Hill Subdivision Phase 2 according to the official plat thereof recorded on August 20, 2003, as Entry No. 669916 in the office of the recorder, Summit County, Utah, thence along said boundary the following two (2) courses: 1) South 66°22'00" West, 224.99 feet; thence 2) South 23°38'00" East, 395.57 feet to the North boundary of the Treasure Hill Subdivision Phase 1 according to the official plat thereof recorded on April 15, 1996 as Entry No. 452295 in the office of the recorder, Summit County, Utah; thence along said boundary the following four (4) courses: 1) South 52°00'00" West, 223.20 feet; thence 2) South 84°00'00" West, 112.53 feet; thence 3) South 79°00'00" West, 825.00 feet; thence 4) South 33°32'19" West, 600.01 feet; thence North 47°25'46" West, 856.74 feet; thence North 08°56'27" East, 845.30 feet; thence North 02°31'24" West, 503.18 feet more or less to a point on the quarter section line of Section 16; thence along said section line North 89°56'30" East, 1,081.16 feet more or less to the point of beginning.

Containing 62.110 acres, more or less.

(Tax Serial Nos. PC-321, PC-325-B, PC-338-A, PC-351, Part of PC-364-A, PC-800-1 and PC-800-1-A)

Parcel 2:

Beginning at a point that is North 89°56’24” East, 61.20 feet from the center of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being South 49°08’54” East, 109.62 feet, more or less from a Park City Monument at the intersection of Lowell Avenue and Shepard Street as shown on the Silver Hill ALTA Property Survey recorded December 29, 1994, as Survey No. S-1870 on file and of record in the office of the County Recorder, Summit County, Utah; thence North 89°56’24” East, 129.05 feet to a point on a non tangent curve to the right, of which the radius point lies North 59°13’03” West, a radial distance of 75.00 feet; thence westerly along the arc of said curve a distance of 148.30 feet, through a central angle of 113°17’34”; thence North 35°16’39” West, 6.72 feet to the POINT OF BEGINNING.

Containing 0.076 acres, more or less.

(Part of Tax Serial No. PC-364-A)

The basis of bearing for the above described parcels is South 23°38’00” East between the Park City Monuments located at the intersection of Park Avenue and Fourth Street and the intersection of Park Avenue and Sixth Street as shown on the Park City Monument Control Map prepared by Bush & Gudgell Inc. dated June,1981.

EXHIBIT B

- Open Space Restriction: Except to the extent otherwise specifically contemplated herein or contemplated by the Assignment of Rights and Obligations under Town Lift Agreement and Amendments 1-4, the City covenants and agrees that the Property shall be perpetually kept, preserved and maintained as open space in its current undeveloped state, and shall be kept free and clear of all liens and encumbrances except as contemplated herein or as may exist as of the date hereof.

- The City shall be allowed in its reasonable discretion to grant temporary construction licenses subject to the Open Space Restriction, whether held by Purchaser or a third party, and to all applicable ordinances for the purpose of facilitating reasonable construction access, safe construction conditions, fire and safety egress and grading to accommodate ski and trail access, but no permanent improvement shall be allowed other than natural landscaping (that does not, in the City's reasonable judgment, create unsafe ski conditions) and in particular, no signs (other than ski, bike and trail way-finding), sculptures, lampposts, sprinklers, lighting, patios and furnishing, ski hutches and fireplaces, or any other similar items or structures temporary or otherwise shall be allowed on the Property (other than the existing historic tram towers and ski-related facilities as approved or may be approved by the City and other structures permitted by easements of record, for example waterlines and power facilities) .

- The City may grant a lot line adjustment in any future planning process of the Property for the purpose of facilitating safer and less impactful access to properties adjacent to the Property, but in no event shall the City allow new year-round unpaved or paved driveways on the Property, and in all events, with respect to any lot line adjustment, no such adjustment shall be allowed unless an equivalent amount of open space which is contiguous to the Property, is acquired in return for the lot line adjustment.

- After the passage of 720 days' time from the date of recording of this Special Warranty Deed or the successful re-negotiation of the Town Lift Agreement and Amendments 1-4, whichever first occurs, and not before then, the City may convey the entirety of the Property in perpetuity to a "Qualified Organization" as defined pursuant to the provisions of Section 170(b) of Internal Revenue Code, subject to the terms and restrictions of this Special Warranty Deed.

WHEN RECORDED, MAIL TO:
Wilton D. Hill
P.O. Box 341789
Memphis, TN 38184-1789

SECONDARY ACCESS EASEMENT AGREEMENT [LOT 3]

THIS SECONDARY ACCESS EASEMENT AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2018 among Park City Municipal Corporation ("Grantor"), and Wilton D. Hill ("Grantee").

Recitals

A. Grantor owns those two certain parcels of real property located in Summit County, Utah more particularly described in Exhibit A, attached hereto ("Grantor's Property").

B. Grantee owns that certain parcel of real property located in Summit County, Utah more particularly described in Exhibit B, attached hereto ("Grantee's Property").

C. Grantor and Grantee desire to create an easement for secondary vehicular access purposes upon Grantor's Property for the benefit of Grantee's Property in accordance with and subject to the terms and conditions hereof.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and benefits contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Grant of Secondary Access Easement. Subject to all of the terms and conditions hereof and to existing easements and restrictions of record, Grantor, as owner of Grantor's Property, hereby grants to Grantee, as the owner and for the benefit of Grantee's Property, a perpetual, non-exclusive easement upon and across the vehicular trails on Grantor's Property (the "Easement"), as the same may exist from time to time, for the purpose of secondary vehicular and equipment access to Grantee's Property ("Secondary Access") in connection with construction and reconstruction activities; provided, however, that such access shall be limited to access by vehicles and equipment for purposes which cannot reasonably be served by the normal, primary means of access to Grantee's Property ("Primary Access").

2. Notice and Consent. Grantee shall not enter upon the Easement except upon reasonable prior notice to and with the written consent of Grantor, which consent shall not be unreasonably withheld. Grantee acknowledges that access may not be available from time to time due to construction and/or maintenance activities on Grantor's Property.

3. Grantee's Use. Grantee shall not allow any smoking or other fire on the Easement in connection with Grantee's use, and shall exercise due regard for, and shall avoid unnecessary interference with and disturbance of, Grantor's use of Grantor's Property and any residence or other building that may be located thereon.

4. Grantor's Use. Grantor shall not construct improvements, plant trees or shrubs or otherwise modify the Easement in a manner which would prevent Grantee's use of the Easement for secondary vehicular access purposes. Grantor shall otherwise be free to landscape and use the Easement for all lawful purposes. Grantor may install fences with gates across the Easement to control access to Grantor's property, provided that Grantor provides to Grantee a key or combination to any lock placed on the gates.

5. Reclamation and Restoration by Grantee. Grantee shall not have any right to grade, improve or change the surface contours of the Easement, and Grantee shall promptly repair and restore any damage caused by Grantee's use of the Easement.

6. Relocation of Easement. Grantor reserves the right to amend this Agreement to relocate the Easement to another location on Grantor's Property by recording and delivering to Grantee a notice of relocation setting forth the new legal description of the Easement; provided that the new location provides reasonable secondary vehicular access to Grantee's Property.

7. Limitations. Grantee's use of the Easement for construction and reconstruction purposes shall be limited to delivery and construction vehicles, equipment and loads which are too large or cumbersome to use the Primary Access.

8. Grantee's Indemnity. Grantee shall use the Easement and exercise all of Grantee's rights hereunder at Grantee's sole risk and expense. Grantee shall indemnify, defend and hold Grantor harmless from and against all claims and liabilities, including reasonable attorneys' fees, arising out of or related to Grantee's use of the Easement.

9. Covenants Running with the Land. The parties hereby declare the rights, benefits and obligations contained herein to be covenants running with, benefiting and burdening Grantor's Property and Grantee's Property. Upon the conveyance by either party or by any successor of either party of all of such party's interest in Grantor's Property or Grantee's Property, as applicable, the rights and obligations of the conveying party shall automatically pass to and bind the new owner, and the conveying party shall not be liable for any obligations accruing hereunder after the effective date of the conveyance.

10. Miscellaneous Provisions.

(a) This Agreement embodies the entire understanding among the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) This Agreement shall be recorded in the office of the Summit County Recorder, Summit County, Utah.

(c) This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

(d) Each individual executing this Agreement in a representative capacity represents and warrants to the other parties that he has been duly authorized to execute and deliver this Agreement in the capacity and for the entity set forth above his signature.

(e) The exhibit(s) attached to this Agreement are expressly made a part of this Agreement as fully as though completely set forth in it. All references to this Agreement shall be deemed to refer to and include all such exhibits.

(f) This Agreement shall be deemed effective as of the date hereof and upon the execution of this Agreement by all of the parties hereto.

(g) Time is of the essence in the performance by the parties hereto of the terms, covenants and conditions under this Agreement.

(h) Each party hereto agrees that should it default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorneys' fees, which may arise or accrue from enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes or other law of the State of Utah, whether such remedy is pursued by filing a suit or otherwise and whether such costs and expenses are incurred with or without suit or before or after judgment. A waiver by any party of a breach of any term or condition of this Agreement shall not constitute a waiver of any further breach of a term or condition.

(i) The parties hereto agree to execute any and all other documents and to take any further actions reasonably necessary to effectuate the purposes of this Agreement.

GRANTOR: PARK CITY MUNICIPAL CORPORATION

By:_____

Its: _____

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me on the ____ day of _____, 2018, by _____, as the _____ of Park City Municipal Corporation.

_____
Notary Public
Residing at _____

GRANTEE:

_____
Wilton D. Hill

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me on the ____ day of _____, 2018, by Wilton D. Hill.

_____
Notary Public
Residing at _____

EXHIBIT A

Grantor's Property

A boundary consisting of two (2) parcels of land located in Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said boundary being more particularly described as follows:

Parcel 1:

Beginning at the center of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being South 16°50'13" East, 74.98 feet, more or less from a Park City Monument at the intersection of Lowell Avenue and Shepard Street as shown on the Silver Hill ALTA Property Survey recorded December 29, 1994, as Survey No. S-1870 on file and of record in the office of the County Recorder, Summit County, Utah, thence South 35°16'39" East, 42.58 feet to the point of curvature of a curve to the left, of which the radius point bears North 54°04'32" East, a radial distance of 125.00 feet; thence easterly along the arc of said curve a distance of 275.37 feet, through a central angle of 126°13'13" to a point on the quarter section line of said Section 16; thence along said quarter section line North 89°56'24" East, 141.17 feet; thence South 27°00'12" East, 15.89 feet; thence South 42°57'14" East, 3.40 feet; thence South 55°53'00" West, 93.90 feet; thence South 57°40'08" East, 109.20 feet; thence North 60°08'27" East, 11.21 feet; thence South 38°06'27" East, 39.16 feet; thence South 57°40'08" East, 94.35 feet; thence North 33°32'19" East, 86.59 feet; thence North 23°38'00" West, 40.92 feet; thence South 66°22'00" West, 10.00 feet; thence North 20°02'58" East, 14.48 feet; thence South 69°44'50" East, 41.63 feet; thence South 70°15'52" East, 48.98 feet; thence South 66°22'00" West, 18.75 feet; thence South 32°43'26" West, 24.33 feet; thence South 14°07'38" West, 27.12 feet; thence South 23°38'00" East, 17.00 feet; thence South 45°11'38" East, 54.42 feet; thence South 23°38'00" East, 404.45 feet; thence North 66°52'00" East, 75.00 feet to the Northwest corner of Lot 14, Block 28 of the Park City Survey Amended Plat; thence South 23°38'00" East, 103.87 feet; to a point on the North boundary of the Treasure Hill Subdivision Phase 2 according to the official plat thereof recorded on August 20, 2003, as Entry No. 669916 in the office of the recorder, Summit County, Utah, thence along said boundary the following two (2) courses: 1) South 66°22'00" West, 224.99 feet; thence 2) South 23°38'00" East, 395.57 feet to the North boundary of the Treasure Hill Subdivision Phase 1 according to the official plat thereof recorded on April 15, 1996 as Entry No. 452295 in the office of the recorder, Summit County, Utah; thence along said boundary the following four (4) courses: 1) South 52°00'00" West, 223.20 feet; thence 2) South 84°00'00" West, 112.53 feet; thence 3) South 79°00'00" West, 825.00 feet; thence 4) South 33°32'19" West, 600.01 feet; thence North 47°25'46" West, 856.74 feet; thence North 08°56'27" East, 845.30 feet; thence North 02°31'24" West, 503.18 feet more or less to a point on the quarter section line of Section 16; thence along said section line North 89°56'30" East, 1,081.16 feet more or less to the point of beginning.

Containing 62.110 acres, more or less.

(Tax Serial Nos. PC-321, PC-325-B, PC-338-A, PC-351, Part of PC-364-A, PC-800-1 and PC-800-1-A)

Parcel 2:

Beginning at a point that is North 89°56’24” East, 61.20 feet from the center of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being South 49°08’54” East, 109.62 feet, more or less from a Park City Monument at the intersection of Lowell Avenue and Shepard Street as shown on the Silver Hill ALTA Property Survey recorded December 29, 1994, as Survey No. S-1870 on file and of record in the office of the County Recorder, Summit County, Utah; thence North 89°56’24” East, 129.05 feet to a point on a non tangent curve to the right, of which the radius point lies North 59°13’03” West, a radial distance of 75.00 feet; thence westerly along the arc of said curve a distance of 148.30 feet, through a central angle of 113°17’34”; thence North 35°16’39” West, 6.72 feet to the POINT OF BEGINNING.

Containing 0.076 acres, more or less.

(Part of Tax Serial No. PC-364-A)

The basis of bearing for the above described parcels is South 23°38’00” East between the Park City Monuments located at the intersection of Park Avenue and Fourth Street and the intersection of Park Avenue and Sixth Street as shown on the Park City Monument Control Map prepared by Bush & Gudgell Inc. dated June, 1981.

EXHIBIT B

Grantee's Property

Lot 3, Treasure Hill Subdivision Phase 1, according to the official plat thereof recorded in the office of the Summit County Recorder.

(Serial No. THILL-3-AM)

WHEN RECORDED, MAIL TO:
Wilton D. Hill
P.O. Box 341789
Memphis, TN 38184-1789

SECONDARY ACCESS EASEMENT AGREEMENT [LOT 4]

THIS SECONDARY ACCESS EASEMENT AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2018 among Park City Municipal Corporation ("Grantor"), and Wilton D. Hill ("Grantee").

Recitals

A. Grantor owns those two certain parcels of real property located in Summit County, Utah more particularly described in Exhibit A, attached hereto ("Grantor's Property").

B. Grantee owns that certain parcel of real property located in Summit County, Utah more particularly described in Exhibit B, attached hereto ("Grantee's Property").

C. Grantor and Grantee desire to create an easement for secondary vehicular access purposes upon Grantor's Property for the benefit of Grantee's Property in accordance with and subject to the terms and conditions hereof.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and benefits contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Grant of Secondary Access Easement. Subject to all of the terms and conditions hereof and to existing easements and restrictions of record, Grantor, as owner of Grantor's Property, hereby grants to Grantee, as the owner and for the benefit of Grantee's Property, a perpetual, non-exclusive easement upon and across the vehicular trails on Grantor's Property (the "Easement"), as the same may exist from time to time, for the purpose of secondary vehicular and equipment access to Grantee's Property ("Secondary Access") in connection with construction and reconstruction activities; provided, however, that such access shall be limited to access by vehicles and equipment for purposes which cannot reasonably be served by the normal, primary means of access to Grantee's Property ("Primary Access").

2. Notice and Consent. Grantee shall not enter upon the Easement except upon reasonable prior notice to and with the written consent of Grantor, which consent shall not be unreasonably withheld. Grantee acknowledges that access may not be available from time to time due to construction and/or maintenance activities on Grantor's Property.

3. Grantee's Use. Grantee shall not allow any smoking or other fire on the Easement in connection with Grantee's use, and shall exercise due regard for, and shall avoid unnecessary

interference with and disturbance of, Grantor's use of Grantor's Property and any residence or other building that may be located thereon.

4. Grantor's Use. Grantor shall not construct improvements, plant trees or shrubs or otherwise modify the Easement in a manner which would prevent Grantee's use of the Easement for secondary vehicular access purposes. Grantor shall otherwise be free to landscape and use the Easement for all lawful purposes. Grantor may install fences with gates across the Easement to control access to Grantor's property, provided that Grantor provides to Grantee a key or combination to any lock placed on the gates.

5. Reclamation and Restoration by Grantee. Grantee shall not have any right to grade, improve or change the surface contours of the Easement, and Grantee shall promptly repair and restore any damage caused by Grantee's use of the Easement.

6. Relocation of Easement. Grantor reserves the right to amend this Agreement to relocate the Easement to another location on Grantor's Property by recording and delivering to Grantee a notice of relocation setting forth the new legal description of the Easement; provided that the new location provides reasonable secondary vehicular access to Grantee's Property.

7. Limitations. Grantee's use of the Easement for construction and reconstruction purposes shall be limited to delivery and construction vehicles, equipment and loads which are too large or cumbersome to use the Primary Access.

8. Grantee's Indemnity. Grantee shall use the Easement and exercise all of Grantee's rights hereunder at Grantee's sole risk and expense. Grantee shall indemnify, defend and hold Grantor harmless from and against all claims and liabilities, including reasonable attorneys' fees, arising out of or related to Grantee's use of the Easement.

9. Covenants Running with the Land. The parties hereby declare the rights, benefits and obligations contained herein to be covenants running with, benefiting and burdening Grantor's Property and Grantee's Property. Upon the conveyance by either party or by any successor of either party of all of such party's interest in Grantor's Property or Grantee's Property, as applicable, the rights and obligations of the conveying party shall automatically pass to and bind the new owner, and the conveying party shall not be liable for any obligations accruing hereunder after the effective date of the conveyance.

10. Miscellaneous Provisions.

(a) This Agreement embodies the entire understanding among the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) This Agreement shall be recorded in the office of the Summit County Recorder, Summit County, Utah.

(c) This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

(d) Each individual executing this Agreement in a representative capacity represents and warrants to the other parties that he has been duly authorized to execute and deliver this Agreement in the capacity and for the entity set forth above his signature.

(e) The exhibit(s) attached to this Agreement are expressly made a part of this Agreement as fully as though completely set forth in it. All references to this Agreement shall be deemed to refer to and include all such exhibits.

(f) This Agreement shall be deemed effective as of the date hereof and upon the execution of this Agreement by all of the parties hereto.

(g) Time is of the essence in the performance by the parties hereto of the terms, covenants and conditions under this Agreement.

(h) Each party hereto agrees that should it default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorneys' fees, which may arise or accrue from enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes or other law of the State of Utah, whether such remedy is pursued by filing a suit or otherwise and whether such costs and expenses are incurred with or without suit or before or after judgment. A waiver by any party of a breach of any term or condition of this Agreement shall not constitute a waiver of any further breach of a term or condition.

(i) The parties hereto agree to execute any and all other documents and to take any further actions reasonably necessary to effectuate the purposes of this Agreement.

GRANTOR: PARK CITY MUNICIPAL CORPORATION

By:_____

Its: _____

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me on the ____ day of _____, 2018, by _____ as the _____ of Park City Municipal Corporation.

_____
Notary Public
Residing at _____

GRANTEE:

_____
Wilton D. Hill

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on the ____ day of _____, 2018, by Wilton D. Hill.

_____
Notary Public
Residing at _____

EXHIBIT A

Grantor's Property

A boundary consisting of two (2) parcels of land located in Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said boundary being more particularly described as follows:

Parcel 1:

Beginning at the center of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being South 16°50'13" East, 74.98 feet, more or less from a Park City Monument at the intersection of Lowell Avenue and Shepard Street as shown on the Silver Hill ALTA Property Survey recorded December 29, 1994, as Survey No. S-1870 on file and of record in the office of the County Recorder, Summit County, Utah, thence South 35°16'39" East, 42.58 feet to the point of curvature of a curve to the left, of which the radius point bears North 54°04'32" East, a radial distance of 125.00 feet; thence easterly along the arc of said curve a distance of 275.37 feet, through a central angle of 126°13'13" to a point on the quarter section line of said Section 16; thence along said quarter section line North 89°56'24" East, 141.17 feet; thence South 27°00'12" East, 15.89 feet; thence South 42°57'14" East, 3.40 feet; thence South 55°53'00" West, 93.90 feet; thence South 57°40'08" East, 109.20 feet; thence North 60°08'27" East, 11.21 feet; thence South 38°06'27" East, 39.16 feet; thence South 57°40'08" East, 94.35 feet; thence North 33°32'19" East, 86.59 feet; thence North 23°38'00" West, 40.92 feet; thence South 66°22'00" West, 10.00 feet; thence North 20°02'58" East, 14.48 feet; thence South 69°44'50" East, 41.63 feet; thence South 70°15'52" East, 48.98 feet; thence South 66°22'00" West, 18.75 feet; thence South 32°43'26" West, 24.33 feet; thence South 14°07'38" West, 27.12 feet; thence South 23°38'00" East, 17.00 feet; thence South 45°11'38" East, 54.42 feet; thence South 23°38'00" East, 404.45 feet; thence North 66°52'00" East, 75.00 feet to the Northwest corner of Lot 14, Block 28 of the Park City Survey Amended Plat; thence South 23°38'00" East, 103.87 feet; to a point on the North boundary of the Treasure Hill Subdivision Phase 2 according to the official plat thereof recorded on August 20, 2003, as Entry No. 669916 in the office of the recorder, Summit County, Utah, thence along said boundary the following two (2) courses: 1) South 66°22'00" West, 224.99 feet; thence 2) South 23°38'00" East, 395.57 feet to the North boundary of the Treasure Hill Subdivision Phase 1 according to the official plat thereof recorded on April 15, 1996 as Entry No. 452295 in the office of the recorder, Summit County, Utah; thence along said boundary the following four (4) courses: 1) South 52°00'00" West, 223.20 feet; thence 2) South 84°00'00" West, 112.53 feet; thence 3) South 79°00'00" West, 825.00 feet; thence 4) South 33°32'19" West, 600.01 feet; thence North 47°25'46" West, 856.74 feet; thence North 08°56'27" East, 845.30 feet; thence North 02°31'24" West, 503.18 feet more or less to a point on the quarter section line of Section 16; thence along said section line North 89°56'30" East, 1,081.16 feet more or less to the point of beginning.

Containing 62.110 acres, more or less.

(Tax Serial Nos. PC-321, PC-325-B, PC-338-A, PC-351, Part of PC-364-A, PC-800-1 and PC-800-1-A)

Parcel 2:

Beginning at a point that is North 89°56’24” East, 61.20 feet from the center of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being South 49°08’54” East, 109.62 feet, more or less from a Park City Monument at the intersection of Lowell Avenue and Shepard Street as shown on the Silver Hill ALTA Property Survey recorded December 29, 1994, as Survey No. S-1870 on file and of record in the office of the County Recorder, Summit County, Utah; thence North 89°56’24” East, 129.05 feet to a point on a non tangent curve to the right, of which the radius point lies North 59°13’03” West, a radial distance of 75.00 feet; thence westerly along the arc of said curve a distance of 148.30 feet, through a central angle of 113°17’34”; thence North 35°16’39” West, 6.72 feet to the POINT OF BEGINNING.

Containing 0.076 acres, more or less.

(Part of Tax Serial No. PC-364-A)

The basis of bearing for the above described parcels is South 23°38’00” East between the Park City Monuments located at the intersection of Park Avenue and Fourth Street and the intersection of Park Avenue and Sixth Street as shown on the Park City Monument Control Map prepared by Bush & Gudgell Inc. dated June, 1981.

EXHIBIT B

Grantee's Property

Lot 4, Treasure Hill Subdivision Phase 1, according to the official plat thereof recorded in the office of the Summit County Recorder.

(Serial No. THILL-4-AM)

WHEN RECORDED, MAIL TO:
Patrick J. Sweeney
P.O. Box 2429
Park City, UT 84060

SECONDARY ACCESS EASEMENT AGREEMENT [LOT 8]

THIS SECONDARY ACCESS EASEMENT AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2018 among Park City Municipal Corporation ("Grantor"), and Patrick J. Sweeney, ("Grantee").

Recitals

A. Grantor owns those two certain parcels of real property located in Summit County, Utah more particularly described in Exhibit A, attached hereto ("Grantor's Property").

B. Grantee owns that certain parcel of real property located in Summit County, Utah more particularly described in Exhibit B, attached hereto ("Grantee's Property" or "Lot 8").

C. Grantor and Grantee desire to create an easement for secondary vehicular access purposes upon Grantor's Property for the benefit of Grantee's Property in accordance with and subject to the terms and conditions hereof.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and benefits contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Grant of Secondary Access Easement. Subject to all of the terms and conditions hereof and to existing easements and restrictions of record, Grantor, as owner of Grantor's Property, hereby grants to Grantee, as the owner and for the benefit of Grantee's Property, a perpetual, non-exclusive easement upon and across the vehicular trails and ski trails located on Grantor's Property (the "Easement"), as the same may exist from time to time, for the purpose of secondary vehicular and equipment access to (a) the home, guest house, and appurtenant structures currently built or to be built hereafter, located or to be located on Grantee's Property (collectively, "Home") and (b) utilities serving the Home (such access, "Secondary Access") for the purpose of construction, reconstruction, and/or maintenance of the Home and utilities serving the Home, including electric, sewer, telecom, water and a water pump station ("Utilities") located (i) at the bottom of Quit'n Time Ski Trail on what is commonly known as the City Open Space Parcel (all of which utilities are located on the City Open Space Parcel, more specifically identified as Lot 5, Treasure Hill Subdivision, Phase 1, Tax I.D. No. THILL-5-X), and (ii) on Lot 8 (excepting buried electrical service which crosses the upper most westerly portion of Grantor's Property); provided, however, that such Secondary Access shall be limited to access by vehicles and equipment which are too large or cumbersome to use the normal, primary means of access to Grantee's Property ("Primary Access") or specifically for the purpose of construction, reconstruction, and/or maintenance of the Utilities.

2. Limitations. Grantee acknowledges that access may not be available from time to time due to construction and/or maintenance activities on Grantor's Property.

3. Grantee's Use. Grantee shall not allow any smoking or other fire on the Easement in connection with Grantee's use, and shall exercise due regard for, and shall avoid unnecessary interference with and disturbance of, Grantor's use of Grantor's Property and any residence or other building that may be located thereon.

4. Grantor's Use. Grantor shall not construct improvements, plant trees or shrubs or otherwise modify the Easement in a manner which would prevent Grantee's use of the Easement for secondary vehicular access purposes. Grantor shall otherwise be free to landscape and use the Easement for all lawful purposes. Grantor may install fences with gates across the Easement to control access to Grantor's property, provided that Grantor provides to Grantee a key or combination to any lock placed on the gates or allows Grantee to place its own lock on any such gates.

5. Reclamation and Restoration by Grantee. Grantee shall not have any right to grade, improve or change the surface contours of the Easement, and Grantee shall promptly repair and restore any damage caused by Grantee's use of the Easement.

6. Relocation of Easement. Grantor reserves the right to amend this Agreement to relocate the Easement to another location on Grantor's Property by recording and delivering to Grantee a notice of relocation setting forth the new legal description of the Easement; provided that the new location provides reasonable secondary vehicular access to Grantee's Property.

7. Limited Use. Grantee's use of the Easement shall be for construction, reconstruction and maintenance purposes only, and shall be limited to delivery and construction vehicles, equipment and loads which are too large or cumbersome to use the Primary Access or specifically for the purpose of construction, reconstruction, and/or maintenance of the Utilities.

8. Grantee's Indemnity. Grantee shall use the Easement and exercise all of Grantee's rights hereunder at Grantee's sole risk and expense. Grantee shall indemnify, defend and hold Grantor harmless from and against all claims and liabilities, including reasonable attorneys' fees, arising out of or related to Grantee's use of the Easement.

9. Covenants Running with the Land. The parties hereby declare the rights, benefits and obligations contained herein to be covenants running with, benefiting and burdening Grantor's Property and Grantee's Property. Upon the conveyance by either party or by any successor of either party of all of such party's interest in Grantor's Property or Grantee's Property, as applicable, the rights and obligations of the conveying party shall automatically pass to and bind the new owner, and the conveying party shall not be liable for any obligations accruing hereunder after the effective date of the conveyance.

10. Miscellaneous Provisions.

(a) This Agreement embodies the entire understanding among the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) This Agreement shall be recorded in the office of the Summit County Recorder, Summit County, Utah.

(c) This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

(d) Each individual executing this Agreement in a representative capacity represents and warrants to the other parties that he has been duly authorized to execute and deliver this Agreement in the capacity and for the entity set forth above his signature.

(e) The exhibit(s) attached to this Agreement are expressly made a part of this Agreement as fully as though completely set forth in it. All references to this Agreement shall be deemed to refer to and include all such exhibits.

(f) This Agreement shall be deemed effective as of the date hereof and upon the execution of this Agreement by all of the parties hereto.

(g) Time is of the essence in the performance by the parties hereto of the terms, covenants and conditions under this Agreement.

(h) Each party hereto agrees that should it default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorneys' fees, which may arise or accrue from enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes or other law of the State of Utah, whether such remedy is pursued by filing a suit or otherwise and whether such costs and expenses are incurred with or without suit or before or after judgment. A waiver by any party of a breach of any term or condition of this Agreement shall not constitute a waiver of any further breach of a term or condition.

(i) The parties hereto agree to execute any and all other documents and to take any further actions reasonably necessary to effectuate the purposes of this Agreement.

GRANTOR: PARK CITY MUNICIPAL CORPORATION

By: _____

Its: _____

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me on the ____ day of _____, 2018, by _____ as the _____ of Park City Municipal Corporation.

_____
Notary Public
Residing at _____

GRANTEE:

_____
Patrick J. Sweeney

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on the ____ day of _____, 2018, by Patrick J. Sweeney.

_____
Notary Public
Residing at _____

EXHIBIT A

Grantor's Property

A boundary consisting of two (2) parcels of land located in Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said boundary being more particularly described as follows:

Parcel 1:

Beginning at the center of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being South 16°50'13" East, 74.98 feet, more or less from a Park City Monument at the intersection of Lowell Avenue and Shepard Street as shown on the Silver Hill ALTA Property Survey recorded December 29, 1994, as Survey No. S-1870 on file and of record in the office of the County Recorder, Summit County, Utah, thence South 35°16'39" East, 42.58 feet to the point of curvature of a curve to the left, of which the radius point bears North 54°04'32" East, a radial distance of 125.00 feet; thence easterly along the arc of said curve a distance of 275.37 feet, through a central angle of 126°13'13" to a point on the quarter section line of said Section 16; thence along said quarter section line North 89°56'24" East, 141.17 feet; thence South 27°00'12" East, 15.89 feet; thence South 42°57'14" East, 3.40 feet; thence South 55°53'00" West, 93.90 feet; thence South 57°40'08" East, 109.20 feet; thence North 60°08'27" East, 11.21 feet; thence South 38°06'27" East, 39.16 feet; thence South 57°40'08" East, 94.35 feet; thence North 33°32'19" East, 86.59 feet; thence North 23°38'00" West, 40.92 feet; thence South 66°22'00" West, 10.00 feet; thence North 20°02'58" East, 14.48 feet; thence South 69°44'50" East, 41.63 feet; thence South 70°15'52" East, 48.98 feet; thence South 66°22'00" West, 18.75 feet; thence South 32°43'26" West, 24.33 feet; thence South 14°07'38" West, 27.12 feet; thence South 23°38'00" East, 17.00 feet; thence South 45°11'38" East, 54.42 feet; thence South 23°38'00" East, 404.45 feet; thence North 66°52'00" East, 75.00 feet to the Northwest corner of Lot 14, Block 28 of the Park City Survey Amended Plat; thence South 23°38'00" East, 103.87 feet; to a point on the North boundary of the Treasure Hill Subdivision Phase 2 according to the official plat thereof recorded on August 20, 2003, as Entry No. 669916 in the office of the recorder, Summit County, Utah, thence along said boundary the following two (2) courses: 1) South 66°22'00" West, 224.99 feet; thence 2) South 23°38'00" East, 395.57 feet to the North boundary of the Treasure Hill Subdivision Phase 1 according to the official plat thereof recorded on April 15, 1996 as Entry No. 452295 in the office of the recorder, Summit County, Utah; thence along said boundary the following four (4) courses: 1) South 52°00'00" West, 223.20 feet; thence 2) South 84°00'00" West, 112.53 feet; thence 3) South 79°00'00" West, 825.00 feet; thence 4) South 33°32'19" West, 600.01 feet; thence North 47°25'46" West, 856.74 feet; thence North 08°56'27" East, 845.30 feet; thence North 02°31'24" West, 503.18 feet more or less to a point on the quarter section line of Section 16; thence along said section line North 89°56'30" East, 1,081.16 feet more or less to the point of beginning.

Containing 62.110 acres, more or less.

(Tax Serial Nos. PC-321, PC-325-B, PC-338-A, PC-351, Part of PC-364-A, PC-800-1 and PC-800-1-A)

Parcel 2:

Beginning at a point that is North 89°56’24” East, 61.20 feet from the center of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being South 49°08’54” East, 109.62 feet, more or less from a Park City Monument at the intersection of Lowell Avenue and Shepard Street as shown on the Silver Hill ALTA Property Survey recorded December 29, 1994, as Survey No. S-1870 on file and of record in the office of the County Recorder, Summit County, Utah; thence North 89°56’24” East, 129.05 feet to a point on a non tangent curve to the right, of which the radius point lies North 59°13’03” West, a radial distance of 75.00 feet; thence westerly along the arc of said curve a distance of 148.30 feet, through a central angle of 113°17’34”; thence North 35°16’39” West, 6.72 feet to the POINT OF BEGINNING.

Containing 0.076 acres, more or less.

(Part of Tax Serial No. PC-364-A)

The basis of bearing for the above described parcels is South 23°38’00” East between the Park City Monuments located at the intersection of Park Avenue and Fourth Street and the intersection of Park Avenue and Sixth Street as shown on the Park City Monument Control Map prepared by Bush & Gudgell Inc. dated June, 1981.

EXHIBIT B

Grantee's Property

Lot 8, Treasure Hill Subdivision Phase 3, according to the official plat thereof recorded in the office of the Summit County Recorder.

(Serial No. THILL-3-8-1AM)

ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER TOWN LIFT AGREEMENT AND AMENDMENTS 1-4

MPE, Inc. ("MPE"), Sweeney Land Company, LLC ("SLC") and Brothers III, LLC ("Brothers III", and collectively, with MPE and SLC, (the "Assignors"), in accordance with that certain Agreement for Purchase and Sale of Real Property ("Purchase Agreement") with an effective date of _____, among Sweeney Land Company, LLC and Park City II, LLC, hereby assign to Park City Municipal Corporation, (the "Assignee"), their rights and obligations under the Town Lift Agreement and Amendments 1-4 as follows:

All capitalized terms herein shall have the meaning referenced in the Purchase Agreement.

In the event of any conflict between the terms of this Assignment and the Purchase Agreement, the terms of this Assignment shall govern.

WHEREAS, Park City Depot Corporation, SLC, Tramway Properties, and Greater Park City Company ("GPCC") previously executed on November 30, 1981, an agreement commonly known as the "Town Lift Agreement" or the "Tram Agreement."

WHEREAS, Since the execution of the Town Lift Agreement, SLC has converted to a limited liability company, and the rights and obligations of Tramway Properties, which previously owned or controlled land on which the Quit'n Time Ski Run and the Creole Ski Run, among other runs and trails, are located, have since been acquired by SLC.

WHEREAS, the Town Lift Agreement has been modified by (i) First Amendment to Tram Agreement dated October 5, 1982, (ii) Second Amendment to Tram Agreement dated August 14, 1984, (iii) Third Amendment to Tram Agreement dated February 25, 1997, and (iv) the Fourth Amendment to Agreement dated February 1, 1999, among SLC, MPE, Brothers III, LLC, the Caledonian Condominium Association, Inc., the Caledonian Company LLC, Greater Park City Company, Edmund J. Beaulieu, and Clyde Carlig (the Fourth Amendment individually, the "Fourth Amendment" and collectively with Amendments 1-3, "Amendments 1-4").

WHEREAS, two further amendments, the Amendment to Section 6 of Fourth Amendment, executed as of March 1, 2006, and the Amendment to Section 6 Agreement, executed as of March 29, 2008, will be terminated simultaneously herewith, or have been terminated by the parties thereto pursuant to the terms of the Purchase Agreement.

WHEREAS, the Town Lift Agreement granted GPCC the right to construct and maintain a ski lift ("Town Lift") on Treasure Hill and Amendments 1-4 provided for maintaining and, if elected by GPCC, realigning the Town Lift, constructing an "Upper Lift", and other matters.

WHEREAS, the Town Lift traverses the "Property" as that term is defined in the Purchase Agreement.

NOW, WHEREFORE, Assignors desire to convey to Assignee their respective undivided one-half tenant in common interests in the Property as provided in the Purchase Agreement and subject to the assignment of the 1981 Town Lift Agreement and Amendments 1 through 4, as follows:

A. Assignment

1. Concurrently and in connection with Closing, as defined in the Purchase Agreement, Assignors hereby assign their rights and obligations under the Town Lift Agreement and Amendments 1-4 to the Assignee, but only to the extent such rights and obligations affect only the Property and not other parcels located on or at the base of Treasure Hill.

2. Assignors shall not assign, and Assignee shall not assume, any obligations under the Section 6 Amendments which will be or have been terminated by all parties thereto prior to Closing.

B. The Sweeney Assignment Exception

1. The assignment made herein is qualified as follows: At the Real Estate Closing, SLC and MPE shall assign to the City without warranty, their rights and obligations under the Town Lift Agreement and Amendments 1-4, subject to the Sweeney Assignment Exception, as follows:

2. Assignors are not assigning and Assignee shall not acquire any ownership interest in the Town Lift Base (owned by Brothers III), or Lots 6 and 7 (commonly known as the Fifth Street Lots), and Lot 8, owned by Patrick J. Sweeney individually.

3. To the extent the Town Lift Agreement and/or Amendments 1-4 impose obligations on or with respect to properties other than the Property, or grant rights with respect to properties other than the Property, the owners thereof are not assigning such rights or obligations to Assignee hereunder.

4. Further, Assignor acknowledges and agrees that the right to amend the Fourth Amendment as provided in the last sentence of Section 6 thereof is being assigned only to the extent any such amendment would not have a material, adverse impact on other properties owned by MPE, SLC and Brothers III and located on or at the base of Treasure Hill, including what is commonly known as the Town Lift Base.

The foregoing assignment qualifications are hereafter referenced as the "Sweeney Assignment Exception."

C. Assignee's Right to Modify, Amend, or Supersede the Town Lift Agreement

The foregoing notwithstanding, neither this Assignment nor the Sweeney Assignment Exception shall be applied to restrict, in any way, any modification of the Town Lift Agreement or any other agreement that the City may enter into with respect to the Town Lift, and Assignor hereby consents to the renegotiation of the Town Lift

Agreements and Amendments 1-4 by Assignee and GPCC's successors-in-interest with respect to all matters related to the Property, provided such modification and/or renegotiation does not eliminate or diminish ski access to the Town Lift Base via the Property, require substantive changes to the Town Lift Base that are not already anticipated in the Town Lift Agreement and/or Amendments 1-4, unless such changes are necessary to fulfill the intent of the open space restriction ("Open Space Restriction") referenced in Section 2(b) of the Purchase Agreement, or conflict with the Open Space Restriction or would have a material, adverse impact on other properties owned by MPE, SLC and Brothers III, and located on or at the base of Treasure Hill, including what is commonly known as the Town Lift Base.

D. Regulatory Authority

Assignor acknowledges and agrees that no right or obligation assigned under the Town Lift Agreement and/or Amendments 1-4, whether affecting the Property or other parcels, shall abrogate or limit Assignee's regulatory authority in accordance with applicable laws, regulations, codes and/or prior regulatory approvals. In addition, any assignment made herein shall not create an affirmative requirement under Assignee's regulatory and permitting authority and any proposed activity on the Property pursuant to the Town Lift Agreement and/or Amendments 1-4 would require all approvals and permits under then-applicable codes. By way of example, any relocation of the Town Lift would require the approval of a conditional use permit under current codes.

E. Indemnification and Warranty

1. MPE, SLC and Brothers III shall jointly and severally indemnify and hold the City harmless from and against any and all claims, causes of action, or liabilities (including legal fees and expenses), known or unknown, arising out of the Town Lift Agreement and Amendments 1-4 prior to the date on which PC II bought an undivided 50% interest in the Property.

2. MPE, SLC, and Brothers III and Park City II shall jointly and severally indemnify and hold the City harmless from and against any and all claims, causes of action or liabilities (including legal fees and expenses), known or unknown, arising out of the Town Lift Agreement and Amendments 1-4 between the date on which Park City II bought an undivided 50% interest in the Property up to the Real Estate Closing.

3. City shall indemnify and hold MPE, SLC, and Brothers III harmless from and against any and all claims, causes of action, or liabilities (including legal fees and expenses), known or unknown, arising out of the Town Lift Agreement and Amendments 1-4 after the Real Estate Closing.

4. Assignor acknowledges and warrants that all obligations attributed to them under the Town Lift Agreement and Amendments 1-4 have been satisfied and that no such obligations are being assigned to Assignee with the exception of: 1) the

obligation set forth in Section 1 of the Town Lift Agreement for Assignee to lease to the successor-in-interest to GPCC, for the term stated therein, the property identified in the incorporated Exhibit A, which obligation shall be limited to the extent that the Property that Assignee is purchasing pursuant to the Purchase Agreement is located within the property identified in said Exhibit A; 2) any implied obligation of good faith to cooperate with rights of other parties thereto; and 3) Assignee's responsibility for its affirmative acts of negligence with respect to the Property.

5. In addition to accepting assignment of the aforementioned obligations, Assignee agrees that it shall not take any action with respect to the use of the Property that impedes or limits access to the Town Lift Base.

6. Assignors, jointly and severally, make the following warranty which is material to the City and which is effective as of the Effective Date and will be effective as of the date of the Real Estate Closing, and shall survive the Real Estate Closing for one year: There are no monetary obligations under the Town Lift Agreement and Amendments 1-4 except as may be referenced therein.

F. Miscellaneous

1. This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

2. This Assignment may not be altered, waived, amended, or extended except by a written agreement signed by the parties.

3. This Assignment shall be construed under the laws of the State of Utah, without regard to its principles of conflicts of law.

4. This Assignment may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which will together constitute one and the same instrument. Delivery of an executed signature page of this Assignment by facsimile or e-copy transmission shall be effective as delivery of a manually executed counterpart thereof.

5. The section headings used in this Assignment are for reference only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Assignment.

ASSIGNORS:

MPE, INC.

By: _____
Patrick J. Sweeney
Its: President

SWEENEY LAND COMPANY, LLC

By: _____
Patrick J. Sweeney
Its: Managing Member

BROTHERS III, LLC

By: _____
Patrick J. Sweeney
Its: Managing Member

ASSIGNEE:

PARK CITY MUNICIPAL CORPORATION, a political subdivision of the State of Utah

By: _____
Andy Beerman, Mayor

The Order of the Court is stated below:
Dated: April 04, 2016 04:37:44 PM
/s/ Kara Pettit
District Court Judge

IN THE THIRD JUDICIAL DISTRICT COURT

SUMMIT COUNTY, STATE OF UTAH

SWEENEY LAND COMPANY, a Utah general partnership, Plaintiff, vs. RICHARD A. KIENZLE, an individual, and CYNTHIA J. KIENZLE, an individual, Defendants.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND FINAL JUDGMENT** Case No. 130500442 Judge Kara Pettit
PARK CITY II, LLC, a New York limited liability company, Involuntary Plaintiff, vs. RICHARD A. KIENZLE, an individual, and CYNTHIA J. KIENZLE, an individual, Defendants.	

The Complaint of plaintiff Sweeney Land Company, LLC ("Sweeney Land") and involuntary plaintiff Park City II, LLC ("Park City II") and the Counterclaim of defendants Richard A. Kienzle and Cynthia J. Kienzle ("Kienzles") came on regularly for a bench trial on December 7, 8 and 9, 2015. The Honorable Kara Pettit presided. Sweeney Land was represented Paul D. Veasy and David M. Bennion of Parsons Behle & Latimer. Park City II was represented by Victor Copeland of Ballard Spahr LLP. Kienzles were represented by Steven W. Dougherty and John A. Bluth of Anderson & Karrenberg.

Having reviewed and considered the pleadings on file herein, the briefs of the parties, the exhibits presented at trial, the testimony of the witnesses, and good cause appearing, the Court now enters the following:

FINDINGS OF FACT

(Parties)

I.

1. Sweeney Land is a limited liability company owning real property and doing business in Summit County, Utah.
2. Park City II is a limited liability company owning real property and doing business in Summit County, Utah.
3. Defendant Richard A. Kienzle is an individual residing in Park City, Utah and Malvern, Pennsylvania and is one of the owners of real property located at 808 Empire Road, Park City, Utah, also known as the "Sheen Parcel."
4. Defendant Cynthia J. Kienzle is an individual residing in Park City, Utah and Malvern, Pennsylvania and is one of the owners of real property located at 808 Empire Road, Park City, Utah.

(Treasure Hill Development)

I.

1. Sweeney Land and Park City II each own an undivided fifty percent (50%) interest in approximately 64 acres of real property located off of Lowell Avenue, Park City, Utah (the "Sweeney Property").
2. Sweeney Land has owned its interest in the Sweeney Property since 1979 and Park City II has owned its interest in the Sweeney Property since 2006.
3. Since 1986, the Sweeney Property has been part of the Sweeney Properties Master Plan approved by Park City Municipal Corporation for development of a resort complex known as the "Treasure Hill Development." *See* Exhibits 9-16, 21, 22 and 24.

(Sheen Parcel)

I.

1. Sweeney Land conveyed the Sheen Parcel by Quit Claim Deed to Frederick C. Moore ("Moore") on October 19, 1990, expressly subject to a Ski Run Easement, an Aerial Tramway Right-of-Way, Waterline Easement and "EXPRESSLY SUBJECT TO THE CONDITIONS

OF APPROVAL FOR THE SWEENEY PROPERTIES MASTER PLAN AS SET FORTH IN THE ATTACHED EXHIBIT A." Exhibit A to the Quit Claim Deed states, in part, as follows:

6.3 SHEEN SINGLE FAMILY LOT APPROVAL SUMMARY.

The following in concert with Sheets 8 and 13 defines the specific conditions of approval for the Sheen portion of the Sweeney Properties Master Plan as submitted by MPE Inc. and approved by Park City Municipal Corporation on October 16, 1986 and subsequently amended on October 14, 1987.

* * *

6.3.5 ACCESS. The lot shall be accessed from the north by a 320 foot private driveway originating off the Lowell-Empire switchback and hence via Lowell and Empire Avenues from highways U-224 and U-228.

* * *

6.3.11.5 DRIVEWAY EASEMENT. An easement for a driveway across the eastern edge of the Creole Site shall be required.

The Quit Claim Deed was recorded on October 26, 1990, at 3:29 p.m., as Entry No. 332028, Book 584, Pages 460-65, in the records of the Summit County Recorder. *See* Exhibit 1.

I.

1. On October 19, 1990, under a Grant of Easement, Sweeney Land conveyed to Frederick C. Moore, his successors and assigns, the following non-exclusive easement ("Driveway Easement"):

a permanent non-exclusive easement to construct, repair, replace and maintain a driveway, associated retaining walls, cuts and fills, drainage features, and lighting, on, across and through the following described parcel of real property, located in Summit County, State of Utah:

DRIVEWAY EASEMENT PARCEL. Beginning at a point on the East-West ¼ Section line of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian which is North 89°56'24" East, 244.79 feet, more or less, from the Center of said Section 16 said point also being South 35°55'28" East, 88.58 feet and North 89°56'24" East, 214.54 feet, more or less, from a Park City Monument at the Intersection of Lowell Avenue and 9th Street;
and running thence North 89°56'24" East, 32.27 feet; thence South 30°27'31" East, 80.28 feet; thence South 57°40'08" East, 109.20 feet; thence North 60°08'27" East, 11.21 feet; thence South 38°06'27" East, 39.16 feet; thence South 57°40'08" East, 89.35 feet; thence South 33°32'19" West, 30.00 feet; thence North 57°40'08" West, 207.16 feet; thence North 82°22'58" West, 220.49 feet to a point on a 125.00 foot radius curve to the left (radius point bears North 7°37'02" East); thence running easterly along the arc of said curve 174.01 feet (Delta = 79°45'43") to the point of beginning.
Containing 0.41 Acres, more or less.

All construction, repair, replacement, and maintenance, activities associated with the above easement shall be carried out in a workmanlike and timely manner and meet all state, local, and city code requirements.

This Easement shall be expressly limited to a driveway serving the appurtenant to the following described parcel of real property, located in Summit County, State of Utah:

SHEEN PARCEL. Beginning at a point which is North 23°38' West, 11.10 feet and South 66°22' West, 30.00 feet from the Southwest Corner of Block 26, Park City Survey, Amended Plat said point also being South 23°38' East, 193.16 feet and South 66°22' West, 5.00 feet from a Park City Monument at the Intersection of Norfolk Avenue and 8th Street;
and running thence South 33°32'19" West, 86.58 feet; thence North 57°40'08" West, 94.35 feet; thence North 59°47'16" East, 49.25 feet; thence North 29°10'28" West, 0.71 feet; thence North 63°20'00" East, 20.27 feet; thence North 62°50'00" East, 36.54 feet; thence North 66°22'00" East, 20.00 feet; thence South 23°38' East, 40.92 feet to the point of beginning.
Containing 0.157 Acres, more or less.

The Grant of Easement was recorded on October 26, 1990, at 3:29 p.m., as Entry No. 332029, Book 584, Pages 466-67, in the records of the Summit County Recorder. *See* Exhibit 2.

I.

1. By Personal Representative's Deed dated June 8, 2006, Brian K. Malliet and Pamela Guevara obtained ownership of the Sheen Parcel from the Estate of Frederick C. Moore. Exhibit A to the Personal Representative's Deed states, in part, as follows:

Sheen Parcel. Beginning at a point which is North 23°38' West 11.10 feet and South 66°22' West 30.00 feet from the Southwest Corner of Block 26, Park City Survey, Amended Plat said point also being South 23°38' East 193.16 feet and South 66°22' West 5.00 feet from a Park City Monument at the intersection of Norfolk Avenue and 8th Street; and running thence South 33°32'19" West 86.58 feet; thence North 57°40'08" West 94.35 feet thence North 59°47'16" East 49.25 feet thence North 29°10'28" West 0.71 feet; thence North 63°20'00" East 20.27 feet; thence North 62°50'00" East 36.54 feet; thence North 66°22'00" East 20.00 feet; thence South 23°38' East 40.92 feet to the point of beginning.

Together with a non exclusive easement for a driveway as descirbed [sic] and set forth in Easement recorded October 26, 1990 as Entry No. 332029, in Book 584 at Page 466, Summit County Recorder's Office.

The Personal Representative's Deed was recorded on June 8, 2006, as Entry No. 00780236, Book 01796, Pages 00230-232, in the records of the Summit County Recorder. *See* Exhibit 10.

I.

1. By Grant Deed dated December 28, 2007, bkm Park City, LLC obtained ownership of the

Sheen Parcel from Brian K. Malliet and Pamela Guevara. Exhibit A to the Grant Deed states, in part, as follows:

> Sheen Parcel. Beginning at a point which is North 23°38' West 11.10 feet and South 66°22' West 30.00 feet from the Southwest Corner of Block 26, Park City Survey, Amended Plat said point also being South 23°38' East 193.16 feet and South 66°22' West 5.00 feet from a Park City Monument at the intersection of Norfolk Avenue and 8th Street; and running thence South 33°32'19" West 86.58 feet; thence North 57°40'08" West 94.35 feet thence North 59°47'16" East 49.25 feet thence North 29°10'28" West 0.71 feet; thence North 63°20'00" East 20.27 feet; thence North 62°50'00" East 36.54 feet; thence North 66°22'00" East 20.00 feet; thence South 23°38' East 40.92 feet to the point of beginning.
>
> Together with a non-exclusive easement for a driveway as descirbed [sic] and set forth in Easement recorded October 26, 1990 as Entry No. 332029, in Book 584 at Page 466, Summit County Recorder's Office.

The Grant Deed was recorded on December 31, 2007, as Entry No. 00833670, in Book 1907, Pages 0423-425, in the records of the Summit County Recorder. *See* Exhibit 11.

I.

1. By Warranty Deed dated May 15, 2013, the Kienzles obtained ownership of the Sheen Parcel from bkm Park City, LLC, "Subject to easements, restrictions and rights of way currently of record and general property taxes for the year 2013 and thereafter." The Warranty Deed was recorded on May 16, 2013, as Entry No. 00970371, Book 2186, Pages 1086-87, in the records of the Summit County Recorder. *See* Exhibit 4.
2. In Exhibit A to the Warranty Deed, the Kienzles took ownership of the Sheen Parcel located at 808 Empire Road, Park City, Utah, and their interest in the Driveway Easement as follows:

> SHEEN PARCEL. BEGINNING AT A POINT WHICH IS NORTH 23 DEGREES 38 MINUTES WEST, 11.10 FEET AND SOUTH 66 DEGREES 22 MINUTES WEST, 30.00 FEET FROM THE SOUTHWEST CORNER OF BLOCK 26, PARK CITY SURVEY, AMENDED PLAT SAID POINT ALSO BEING SOUTH 23 DEGREES 38 MINUTES EAST, 193.16 FEET AND SOUTH 66 DEGREES 22 MINUTES WEST, 5.00 FEET FROM A PARK CITY MONUMENT AT THE INTERSECTION OF NORFOLK AVENUE AND 8TH STREET; AND RUNNING THENCE SOUTH 33 DEGREES 32 MINUTES 19 SECONDS WEST, 86.58 FEET; THENCE NORTH 57 DEGREES 40 MINUTES 08 SECONDS WEST, 94.35 FEET; THENCE NORTH 59 DEGREES 47 MINUTES 16 SECONDS EAST, 49.25 FEET; THENCE NORTH 29 DEGREES 10 MINUTES 28 SECONDS WEST, 0.71 FEET; THENCE NORTH 63 DEGREES 20 MINUTES 00 SECONDS EAST, 20.27 FEET; THENCE NORTH 62 DEGREES 50 MINUTES 00 SECONDS EAST, 36.54 FEET; THENCE NORTH 66 DEGREES 22 MINUTES 00

SECONDS EAST, 20.00 FEET; THENCE SOUTH 23 DEGREES 38 MINUTES EAST, 40.92 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR A DRIVEWAY AS DESCRIBED AND SET FORTH IN EASEMENT RECORDED OCTOBER 26, 1990 AS ENTRY NO. 332029, IN BOOK 584, AT PAGE 466, SUMMIT COUNTY RECORDER'S OFFICE.

(Tax Serial No. PC-364-A-4). The ("Kienzle Property"). *See* Exhibit 4.

I.

1. Prior to the Kienzles' ownership of the Sheen Parcel and their interest in the Driveway Easement, a driveway was constructed. Pat Sweeney performed the initial excavation of the driveway and thereafter, Frederick Moore completed its construction. The Kienzles use the driveway to access their property. Thereafter, additional structures or improvements were placed on the Driveway Easement Parcel described in the Grant of Easement, by either Moore or Brian Malliet, specifically a gate, stone pillars, paved parking (a/k/a the "parking return area") and a snowmelt system (collectively the "Improvements"). *See* Exhibits 8 and A.

II. CONCLUSIONS OF LAW

1. This Court has proper jurisdiction over the subject matter of this action pursuant to Utah Code Ann. § 78A-5-102(1)(2010).
2. Jurisdiction over the Kienzles is proper under Utah Code Ann. § 78B-3-205(4) (2008).
3. Venue properly lies in this Court pursuant to Utah Code Ann. § 78B 3 301(1)(b)(2008).
4. All the parties, including the Kienzles, had record notice of what the Court determines are the three pertinent documents. First, the 1986 Sweeney Properties Master Plan for the Treasure Hill Development, second, the October 19, 1990 Quit Claim Deed from Sweeney Land to Moore, and, third, the Grant of Easement also executed on October 19, 1990.
5. In interpreting contracts Utah law requires that the Court must first look to the four corners of the agreements to determine the intentions of the parties and the use of extrinsic evidence to determine the parties intent is only permitted if the documents appear to incompletely express the parties agreement or if they're ambiguous in expressing that agreement.
6. The Court does not find ambiguity with respect to any of the provisions at issue with respect to

the parties' claims in this case. The Court is not considering extrinsic evidence to consider intent.

(Complaint – First Cause of Action – Declaratory Judgment)

I.

1. With an easement, there is a balancing between the rights of the servient and dominant estates. There cannot be unreasonable interference on either side.
2. On the one hand it is to be realized that the owner of the fee title, because of his general ownership, should have the use and enjoyment of his property to the highest degree possible, not inconsistent with the easement. On the other, the owner of the easement should likewise have the right to use and enjoy his easement to the fullest extent possible not inconsistent with the rights of the fee owner. *North Union Canal Company v. Newell*, 550 P.2d 178, 179 (Utah 1976).
3. The holder of an easement is entitled to use the servient estate in a manner that is reasonably necessary for the convenient enjoyment of the servitude. The manner, frequency and intensity of the use may change over time to take advantage of developments and technology and to accommodate normal development of the dominant estate. The holder is not entitled to cause unreasonable damage to the servient estate or interfere unreasonably with its enjoyment. Because there are two parties' interests involved, the right of the easement owner and the right of the land owner are not absolute, irrelative and uncontrolled but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. *Big Cottonwood Tanner Ditch Co. v. Moyle*, 174 P.2d 148, 158 (Utah 1946).
4. The easement holder also enjoys the privilege to do such acts as are necessary to make effective his or her enjoyment of the easement. That is, the easement holder has the right to make incidental uses beyond the express easement and does not exceed the easement's scope if those uses are made in a reasonable manner and they do not cause unnecessary injury to the servient owners. *Conatser v. Johnson*, 2008 UT 48, ¶ 21, 194 P.3d 897.
5. Under the incidental use law with easements, the first thing that the Court needs to consider is

whether the incidental uses are reasonable and necessary for the convenient enjoyment of the servitude.

6. Lights are expressly allowed in the language of the Grant of Easement. *See* Exhibit 2. The fact that the lights happen to be affixed to stone pillars that are also used for a gate does not negate the express provision that lights in and of themselves are allowed. At the time of trial, the lights in their location atop the pillars were not unreasonably interfering with the servient estate's enjoyment of its property nor had they caused unreasonable damage to the servient estate.
7. As constructed at the time of trial, the snowmelt system was a drainage feature expressly allowed in the Grant of Easement. *See* Exhibit 2. At the time of trial, the snowmelt system was not unreasonably interfering with the servient estate's enjoyment of its property nor had it caused unreasonable damage to the servient estate.
8. The gate and parking return area are not expressly provided for in the language of the Grant of Easement. *See* Exhibit 2. The Court's analysis is whether or not they are incidental uses under the Grant of Easement.
9. At the time of trial, the gate was an incidental use under the Grant of Easement and was not causing unreasonable damage to the servient estate and was not causing unreasonable interference with Sweeney Land and Park City II's use of the Sweeney Property. At the time of trial, the gate was reasonably necessary for the convenient enjoyment of the servitude for a driveway so that the public is not using the driveway in an unauthorized way so that it is a safe and effective use of the Driveway Easement by the Kienzles.
10. At the time of trial, the parking return area or turnaround area was a widening of the entrance portion of the driveway, but was within the metes and bounds description for the Driveway Easement Parcel. The dominant owners, the Kienzles, use it right now for turnaround for the use of the driveway. There is no grant of specific parking spaces or turnaround area in the Grant of Easement, so there is no right or entitlement to parking or a turnaround area within the Driveway Easement Parcel. But right now, with the configuration of this widened area for

the parking return area, it is being used in a way that is reasonably necessary for the convenient enjoyment of the Sheen Property. At this time it does not currently unreasonably interfere with Sweeney Land and Park City II's use of the Sweeney Property.

11. However, if the servient estate moves forward with constructing the Treasure Hill Development as depicted in the development plan presented at trial, the Improvements on the Driveway Easement Parcel, including the stone pillars, the snowmelt system, the gate and the parking or turnaround area will unreasonably interfere with the Sweeney Property and Sweeney Land and Park City II's use of the Sweeney Property, and the Improvements will need to be either removed or relocated. Accordingly, if the Kienzles wish to relocate and use the pillars and gate at the spur or the split (i.e., where the driveway to the Sheen Parcel splits off the driveway to the Treasure Hill Development), then it is the Kienzles' burden and cost to bear that relocation cost. *See* Exhibit 22.

12. If the snowmelt system, the stone pillars and the gate are simply being dug up when Sweeney Land and Park City II excavate with the actual construction of the Treasure Hill Development to build the modified road, then Sweeney Land and Park City II will bear the cost of the excavation and construction, but not the cost of relocating the snowmelt system, the stone pillars and the gate.

13. The Grant of Easement is non-exclusive. It is a "non-exclusive easement to construct, repair, replace and maintain a driveway, associated retaining walls, cuts, fills, drainage features and lighting on, across and through the following described parcel"; all of which is non-exclusive. The Grant of Easement does not grant the dominant estate an exclusive right to locate the driveway. Nor does it grant the dominant estate an exclusive right to construct, repair, replace and maintain a driveway. Sweeney Land and Park City II also have the ability to construct, repair, replace and maintain the driveway so long as it does not unreasonably interfere with the dominant estate's use of their servitude.

14. With respect to Plaintiff's request for a declaration that the dominant estate is prohibited from impeding the Treasure Hill Development, such a request is too broad under the law. However,

the law is that the dominant estate has the right to make incidental uses beyond the express easement, and such does not exceed the easement's scope so long as those uses are "made in a reasonable manner and they do not cause unnecessary injury to the servient owners." *Conatser,* 2008 UT 48, ¶ 21.

(Complaint – Second Cause of Action – Quiet Title)

I.

1. Contracts should be construed so as to give effect to the parties' intentions and such intent should be determined, if possible, by examining the written agreement executed by the parties. When agreements are executed substantially, contemporaneously and are clearly interrelated, they must be construed as a whole and harmonized, if possible. *HCA Health Servs. of Utah, Inc. v. St. Mark's Charities*, 846 P.2d 476, 484 (Utah App. 1993). When an agreement between parties is contained in more than one instrument, those instruments must be construed together as though they comprised a single document. *Id.* Multiple writings must be considered together when part of the same contract. *Id.*
2. There is nothing ambiguous in the 1990 Grant of Easement and it must be interpreted in conjunction with the 1990 Quit Claim Deed. The Grant of Easement and Quit Claim Deed were executed by the same people at the same time and recorded at the same time and they refer to each other. *See* Exhibits 1 and 2. The Quit Claim Deed was executed by John Sweeney and then the Grant of Easement executed by John Sweeney as well. The two documents need to be interpreted together.
3. The 1990 Quit Claim Deed expressly refers to and is subject to the grant of an easement for a driveway (Ex. A at 6.3.11.5) and the Court must construe the 1990 Quit Claim Deed and the 1990 Grant of Easement together. There is only one reasonable interpretation when the Court does that, specifically, that the Grant of Easement is a non-exclusive easement to construct, repair, replace and maintain a driveway. That does not mean that there was only one party that could locate the driveway. The parties clearly intended the driveway would serve not only the Sheen Parcel but also the Mid-Station and Creole Sites, as demonstrated by the 1990 Quit

Claim Deed and express records on Exhibit A to Sheet 8 in the Master Plan. *See* Exhibits 1 and 21.

4. The fact that the Sheen Parcel had a non-exclusive easement to construct the driveway does not mean that the Sweeney Property later did not have the ability to reconstruct or modify the driveway. Logically, the house was going first. The driveway would serve the house first until the Treasure Hill Development was constructed.

(Kienzles' Counterclaim for Declaratory Judgment)

I.

1. As to the Kienzles' Counterclaim, the Court denies the declaratory judgment that the owners of the Sweeney Property may not relocate the driveway without the consent of the Kienzles or their successors.
2. The Court does not find any basis in the express language in the 1990 Quit Claim Deed or the 1990 Grant of Easement that would create the Kienzles' alleged right for consent. Sweeney and Park City II may modify or relocate the driveway within the metes and bounds of the Driveway Easement Parcel so long as it does not unreasonably interfere with the Kienzles use of their servitude. *See* Exhibits 1 and 2. *Union Pac. R.R. v. Utah Dep't. of Transp.*, 2013 UT 39, ¶ 27, n. 5-6, 310 P.3d 1024.
3. The law also provides that the driveway may be able to be relocated slightly outside of the Driveway Easement Parcel so long as no significant lessening of the utility occurs, it does not increase the burdens on the dominant estate's use or enjoyment, and does not frustrate the purpose by doing so. *See Restatement Third of Property, Servitudes § 4.8; Union Pacific v. UDOT,* 2013 UT 39, ¶ 27, n. 5 and 6; *Wycoff v. Barton*, 646 P.2d 756 (Utah 1982); and *D'Abracci v. Shaw Bastian,* 117 P.3d 1032 (Or. Ct. App. 2005).
4. The law provides: "On the one hand, it is to be realized that the owner of the fee title, because of his general ownership, should have the use and enjoyment of his property to the highest degree possible, not inconsistent with the easement. On the other, the owner of the easement should likewise have the right to use and enjoy his easement to the fullest extent possible not

inconsistent with the rights of the fee owner." *N. Union Canal Co. v. Newell*, 550 P.2d 178, 179 (Utah 1976).

5. Although the Kienzles obviously have rights regarding providing input and participating in the planning process with Park City as it relates to their property and the driveway easement, the Grant of Easement does not require their consent. However, the Kienzles do have rights and those rights are that they are able to use and enjoy their easement to the fullest extent possible not inconsistent with the rights of the fee owners. Conversely, Sweeney Land and Park City II should have the use and enjoyment of their property to the highest degree possible, not inconsistent with the easement.

II. ORDER AND FINAL JUDGMENT

1. The Court GRANTS in part and DENIES in part, Sweeney Land and Park City II's first claim for relief for declaratory judgment and second claim for relief for quiet title.
2. Specifically, as to the claim for declaratory judgment in ¶ 23(i)-(iv) of Plaintiff's Complaint, the Court declares, adjudges and decrees: i) Sweeney Land and Park City II are the fee title owners of the real property subject to the Grant of Easement; ii) Under the Grant of Easement, the Kienzles and any successor owners are entitled solely to a nonexclusive easement to construct, repair, replace and maintain a driveway to the Kienzle Parcel (Sheen Parcel), associated retaining walls, cuts and fills, drainage features, and lighting; iii) The lights and drainage feature (snowmelt system) currently in place are expressly allowed by the Grant of Easement and the gate, pillars and turnaround area are incidental uses. None of these improvements are currently causing unreasonable damage to Sweeney Land and Park City II and are not currently unreasonably interfering with Sweeney Land and Park City II's use or enjoyment of their property. However, if the servient estate moves forward with constructing the Treasure Hill Development as depicted in the development plan presented at trial, the Improvements on the Driveway Easement Parcel, including the stone pillars, the snowmelt system, the gate and the parking or turnaround area will unreasonably interfere with Sweeney Land and Park City II's use of the Sweeney Property, and the Improvements will need to be

either removed or relocated. Accordingly, if the Kienzles wish to relocate and use the pillars and gate at the spur or the split (i.e., where the driveway to the Sheen Parcel splits off the driveway to the Treasure Hill Development), then it is the Kienzles' burden and cost to bear that relocation cost. If the snowmelt system, the stone pillars and the gate are simply being dug up when Sweeney Land and Park City II excavate with the actual construction of the Treasure Hill Development to build the modified road, then Sweeney Land and Park City II will bear the cost of the excavation and construction, but not the cost of relocating the snowmelt system, the stone pillars and the gate; and iv) With respect to Plaintiff's request for a declaration that the Kienzles may not now or in the future impede the existing and future Treasure Hill Development, such a request is too broad under the law. However, the Court declares that the law provides the dominant estate has the right to make incidental uses beyond the express easement, so long as those uses are made in a reasonable manner and they do not cause unnecessary injury to the servient owners. The law further provides: "On the one hand, it is to be realized that the owner of the fee title, because of his general ownership, should have the use and enjoyment of his property to the highest degree possible, not inconsistent with the easement. On the other, the owner of the easement should likewise have the right to use and enjoy his easement to the fullest extent possible not inconsistent with the rights of the fee owner." *N. Union Canal Co. v. Newell*, 550 P.2d 178, 179 (Utah 1976).

3. As to Plaintiff's Second Cause of Action for Quiet Title, the Court quiets title to the Sweeney Property in Sweeney Land and Park City II. The Kienzles interest is limited to a "non-exclusive easement to construct, repair, replace and maintain a driveway, associated retaining walls, cuts, fills, drainage features and lighting on, across and through the" Driveway Easement Parcel set forth in the 1990 Grant of Easement. The Grant of Easement does not grant the dominant estate an exclusive right to locate the driveway. Nor does it grant the dominant estate an exclusive right to construct, repair, replace and maintain a driveway. Sweeney Land and Park City II also have the ability to construct, repair, replace and maintain the driveway so long as it does not unreasonably interfere with the dominant estate's use of

their servitude.

4. The remainder of the relief sought by Plaintiffs is DENIED and dismissed.
5. For the reasons set forth above, the Kienzles' Counterclaim requesting declaratory judgment that the owners of the Sweeney Property may not relocate the Driveway without the consent of the Kienzles or their successors is DENIED and dismissed.
1. The rights and obligations under this Order and Final Judgment are deemed to run with the land, benefit the dominant estate, burden the servient estate, and are binding on the successors and assigns of Sweeney Land, Park City II, and the Kienzles.
2. Each party to pay their own attorneys' fees and costs.

IT IS SO ORDERED.

*****END OF ORDER*****

In accordance with the Utah State District Courts E-filing Standard No. 4, and URCP Rule 10(e), this Order will be entered by the Court's signature at the top of the first page of this Order.