

After Recording, Return To:
Mark E. Hamilton, Esq.
Holland & Hart LLP
600 E. Main St., Suite 104
Aspen, CO 81611

**EASEMENT AGREEMENT
(Snowmass Water and Sanitation District)**

This Easement Agreement (the "Agreement") is made and is effective this ____ day of _____, 20__, by and between SNOWMASS WATER AND SANITATION DISTRICT, a Colorado special district ("SWSD"), and _____ ("Property Owner"), [OR INSERT NAMES OF OFF-SITE OWNER(S)].

WITNESSETH:

1. Grant of Easement. Property Owner is the owner of that certain real property located in the Town of Snowmass Village, Colorado, more particularly described on Exhibit A attached hereto (the "Property"). Property Owner hereby conveys, assigns, transfers and grants to the SWSD, free and clear of all encumbrances, a permanent, non-exclusive easement for installation, maintenance, alteration, repair, replacement and operation of underground pipelines, underground pumping equipment and other underground facilities, and above ground appurtenances thereto used for and in connection with the potable water and sanitary sewer systems owned and operated by the SWSD ("Easement"), upon, over, under and across that portion of the Property more particularly described on Exhibit B attached hereto (the "Easement Area"), and warrants title to the same, subject only to any exceptions accepted by SWSD as listed on Exhibit C.

2. Access to Easement. The SWSD shall also have a non-exclusive right of ingress and egress to and from the Property, for equipment, vehicles, and persons over and across the Property to and from the Easement Area and established public roadways, as reasonably necessary to access the Easement Area, provided that the SWSD shall use public streets to the extent possible.

3. Use of Property. Property Owner's use of the Property shall not unreasonably hinder, conflict, or interfere with SWSD's rights in the Easement herein granted. Property Owner (and Property Owner's heirs, executors, administrators, personal representatives, successors, successors-in-interest, and assigns) shall not bore, drill, tunnel or undertake any digging or excavation on or under the Easement or impair the lateral or subjacent support of the Easement. Any existing improvements or landscaping within the Easement Area (other than potable water or sanitary sewer system components owned by SWSD), shall be at the risk of the Property Owner, and in the event that any such improvements or landscaping are damaged or destroyed in the course of SWSD's proper exercise of its rights pursuant to this Easement Agreement, any damages or repairs to the same shall be at the expense of the Property Owner, and SWSD shall have no liability therefore. No additional improvements, including any buildings, structures, retaining walls, fences, lakes, ponds, drainage ditches, exaction, streets,

driveways, sidewalks, pipelines, natural gas or oil lines, electric lines, telephone lines, cable lines or other utilities of any kind, whether above ground or underground, or other improvements of any kind (each, an “Improvement”), nor any additional landscaping, including any trees, shrubs, bushes, plantings (excluding shallow root crops), or other vegetation (other than naturally growing grasses or shallow root shrubbery or plants) (collectively “Landscaping”) shall be placed over or across the Easement, nor change the contour or grade of, or add or remove dirt from, the Easement, without, in each case, first obtaining the prior written consent of SWSD, which consent will not be unreasonably withheld, provided that each of the following are satisfied: (i) the safety and integrity of the SWSD’s water and sewer system and related equipment and lines are not impaired by the applicable Landscaping or Improvement, (ii) the applicable Landscaping or Improvement does not unreasonably diminish the utility or usefulness of the Easement to SWSD, and (iii) the applicable Landscaping or Improvement does not materially impair the ability of or increase the cost to SWSD to undertake any of the activities described or allowed in this Agreement, or the SWSD and the Property Owner enter into a separate written agreement whereby Property Owner assumes liability for the Improvement and/or Landscaping, including any additional expenses that SWSD may incur due to the same. In the event items (i) through (iii) above have not been satisfied, as reasonably determined by SWSD, then SWSD may withhold its consent at its sole discretion. SWSD’s consent to any Landscaping or Improvement shall not constitute any agreement, representation, or warranty by SWSD about the safety, condition, or sufficiency of any such Landscaping or Improvement or compliance with laws and regulations for any such Landscaping or Improvement, and such risks, which shall remain solely with the Property Owner. In the event that SWSD consents to the replanting of any Landscaping, or installation of any Improvements, that may have been disturbed, damaged or destroyed by SWSD’s exercise of its rights hereunder, such replanting or installation shall not interfere with the maintenance or integrity of SWSD’s water and sewer system and shall be at Property Owner’s sole cost and expense. SWSD shall have the right, but not the obligation, to notify and require Property Owner, at Property Owner’s cost, to immediately remove any such unauthorized Improvement or Landscaping from the Easement, and if Property Owner fails to remove such unauthorized Improvement or Landscaping within thirty (30) days after receipt of SWSD’s notice, then SWSD shall have the right to remove them at Property Owner’s cost.

4. Abandonment of Easement. Non-use shall not constitute abandonment of the easement and other rights granted herein, shall have no effect on their validity, and shall not be grounds for termination of the Agreement. However, if the Easement is no longer useful to SWSD for the purposes stated herein, as determined by SWSD in its sole discretion, SWSD may execute and record a termination of this Agreement. SWSD may, but shall have no obligation to, remove SWSD’s water and sewer lines from the Easement Area in connection with such termination. If SWSD decides to remove said lines, SWSD agrees that within a reasonable time following the completion of removal, SWSD shall grade the Easement back to the ground level and contour as existed immediately prior to such removal, and SWSD shall comply with all federal, state, or local laws applicable to abandonment of the lines.

5. Insurance. SWSD shall be required to obtain and keep in full force and effect at all times during the term of this Agreement, and to pay the costs and premiums of, broad form general commercial liability insurance with respect to the use and operation of a potable water

and/or sewer system within the Easement Area, with limits of not less than \$1,000,000.00 combined single limit of liability.

6. Damages Limitation. Any damages awarded to either party under this Agreement shall be limited to only the actual damages directly incurred by such party and neither party shall be liable for consequential, incidental, punitive, exemplary or indirect damages in tort or in contract, or under any legal theory, and all such damages are hereby excluded and waived by the parties hereto with respect to this Agreement and/or the exercise of rights hereunder.

7. Mechanic's Liens. Nothing contained herein shall authorize a party or person or entity acting through, with or on behalf of SWSD to subject the Easement or the Property or any portion thereof to mechanic's liens. If any such lien shall be filed against the Easement or the Property by anyone performing work for SWSD, SWSD shall cause such lien to be discharged or otherwise released from record.

8. Notices. Any notice, demand, or document which either party is required or may desire to give, deliver or make to the other party shall be in writing and may be personally delivered or given by facsimile transmission or given by United States certified mail, return receipt requested, addressed as follows:

To Property Owner(s): Name
 Address
 Snowmass Village, CO 81615
 Attn:
 Facsimile:

To SWSD: SNOWMASS WATER AND SANITATION DISTRICT
 P.O. Box 5700
 Snowmass Village, Colorado 81615
 Attn: District Manager
 Facsimile:

Any notice, demand or document delivered or made by United States mail shall be deemed to have been received on the earlier of the date actually received or the third business day after the same is deposited in the United States mail as certified matter, addressed as above provided, with postage prepaid. Notice by facsimile transmission shall be deemed given upon receipt of a confirmation by sender.

9. Miscellaneous.

a. Notice of Default, Right to Cure. In the event of any default under the provisions of this Agreement, the non-defaulting party shall, prior to the exercise of any right or remedy, give the party alleged to be in default written notice of such default together with right for a period of ten days after receipt of such notice to cure said default. If a default is not cured within the time provided or any extension thereof (which right to cure period shall not under any circumstances exceed in the aggregate twenty days), the non-defaulting party shall then and thereafter be free to pursue any right or remedy allowed by this Agreement or otherwise by law.

b. Remedies. Each party shall have the right and power to bring suit in its own name for any legal or equitable relief due to lack of compliance with any provisions of this Agreement. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in the Agreement, the prevailing party shall be entitled to reimbursement of its costs and expenses, including reasonable attorneys' fees, in connection therewith.

c. Waiver. Failure of any party hereto to insist upon the strict performance of any provision of this Agreement shall not be construed as a waiver for the future of any such provision.

d. Amendments in Writing. This Agreement may not be amended, nor may any rights hereunder be waived, except by an instrument in writing executed by the parties hereto and duly recorded in the real estate records of Pitkin County, Colorado (the "Pitkin County Records").

e. Colorado Law. The interpretation, enforcement or any other matters relative to this Agreement shall be construed and determined in accordance with the laws of the State of Colorado.

f. Run With the Land. All the provisions of this Agreement, including the benefits and burdens created thereby, shall run with the Property. This Agreement is made subject to any existing easements, reservations, restrictions or rights of way.

g. Correction Documents. In the event any clerical or other errors are found in this Agreement or any legal descriptions or other exhibits hereto, or in the event any exhibit shall be missing, the parties agree to promptly execute, acknowledge, initial and/or deliver as necessary and documentation in order to correct the erroneous document, description, exhibit or to provide any missing exhibit.

h. Binding Effect. All provisions of this Agreement inure to the benefit of and are binding upon the parties hereto, their heirs, successors, assigns and personal representatives.

i. Prior Easement.

j. Governmental Immunity Act. Notwithstanding anything to the contrary herein, SWSD shall not be deemed to have waived in any manner the rights, obligations, and protections afforded or imposed on SWSD by law including the Colorado Governmental Immunity Act or the Colorado Constitution.

k. The acceptance of this Agreement by SWSD in no way obligates the SWSD to install any underground pipelines, underground pumping equipment or other underground or above-ground facilities within the Easement Area.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year first written above.

SWSD:

SNOWMASS WATER AND SANITATION DISTRICT

By: _____
Signature
Print Name:
Title: District Manager

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

The foregoing Easement Agreement was acknowledged before me on _____,
20__ by Kit Hamby as District Manager of the Snowmass Water and Sanitation District.

WITNESS MY HAND AND OFFICIAL SEAL.
My commission expires:

Notary Public

[Signatures Continue on Next Page]

PROPERTY OWNER:

Company/Property Owner: _____

By: _____

Signature

Print Name:

Title:

STATE OF COLORADO)

) **ss.**

COUNTY OF PITKIN)

The foregoing Easement Agreement was acknowledged before me on October __, 2009 by Dwayne Romero as President for Base Village Owner, LLC.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

Notary Public

[INSERT LENDER SUBORDINATION IF APPLICABLE]

Exhibit A
(Property)

[ADJUST DEPENDING UPON OWNERSHIP OF VARIOUS PORTIONS OF PROPERTY FOR EACH SPECIFIC EASEMENT GRANTED OR PORTION OF OFFSITE PROPERTY AFFECTED]

Exhibit B
(Easement Area)

Exhibit C

Title Exceptions
(if any)