

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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Vail, CO 81657
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(Space above this line for recorder's use)

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement dated as of March 3, 2011 (the "Effective Date"), is made by CREEKVIEW PROPERTY, LLC, a Colorado limited liability company ("Creekview" or "the Gallardos") and THE WELLES-VAIL, LLC, a Colorado limited liability company ("Welles").

RECITALS

A. "Vail Townhouses Condominiums" ("VTC"), situated in Vail, Colorado, is a condominium project and association (the "VTC Association") existing pursuant to the Amended and Restated Declaration for Vail Townhouses Condominiums, recorded at Reception No: 915809, in the Eagle County, Colorado, and as thereafter amended (the "Declaration"), and the "Third Amended and Restated Condominium Plat for Vail Townhouse Condominiums" recorded at Reception No: 200924515, Eagle County Public Records (the "VTC Map"). Creekview is acquiring Unit 6A of VTC (the "Gallardos Unit" or "Unit 6A"). Welles is the vested owner of Unit 6B, VTC (the "Welles Unit" or "Unit 6B"). Unit 6A and Unit 6B are collectively referred to as the "Units." The Units are situated on Lot 6 of VTC and comprise all the Units being a part of Lot 6 of VTC.

B. The Gallardos have proposed extensive renovations to Unit 6A (the "Gallardos Renovations") and lesser renovations to be performed on the Welles Unit (the "Welles Renovations"). The Gallardos Renovations, together with the Welles Renovations, are referred to as the "Project." Welles and Creekview entered into the "Project Agreement" of even date herewith, pursuant to which the Project to complete the Renovations will be undertaken (the "Project Agreement").

C. Pursuant to the Project Agreement, the parties agreed to record this memorandum to notify third parties of certain terms and conditions upon which the Project is being undertaken. Capitalized terms not defined in this Memorandum shall have the meaning ascribed to them in the Project Agreement.



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1. **Adjacent Owner Agreements.** Any agreement of the Gallardos, whether written or otherwise, with an adjacent owner of Lot 6 that in any way impacts Lot 6 must be approved in advance by Welles (each such agreement being an "Adjacent Owner Agreement"), and no Adjacent Owner Agreement shall be binding on Welles without Welles' prior written approval. Any amendment or modification to an Adjacent Owner Agreement must be approved in advance by Welles in writing.

2. **Shared Limited Common Element.** The area that includes the surrounding walls and all of the area and landscaping within the walls on the southerly side of the Units between the Welles Unit and the Gallardos Unit shall be a shared "Limited Common Element" (as that term is defined in the Declaration) by Unit 6A and Unit 6B. The Gallardos shall undertake an amendment to the VTC Map as part of the Project (the "Amended Map") designate the Shared LCE as a "Limited Common Element" under Declaration appurtenant to Units 6A and 6B in perpetuity. The owners shall share in the costs and maintenance of the Limited Common Element, which shall contain a stately evergreen of first class quality and condition (such as a blue spruce) to be approved by Welles. Either party may remove and replace the evergreen if deteriorated and the parties shall share in all costs of replacing the evergreen. The Amended map shall designated the area a Limited Common Element appurtenant to Unit 6A and Unit 6B.

3. **Landscape/Tree Height Restrictions.** The landscape in the Unit 6A courtyard on the southerly side of Lot 6 shall be height restricted and maintained to no greater than 6 feet. Newly planted trees or vegetation on the northerly side of the Units on Lot 6 shall be height restricted and maintained at no greater than 6 feet and no existing trees shall be removed.

4. **North Side of Units.** On the northerly side of the Units (being the Gore Creek side), the parties agree that no existing trees shall be removed and no improvements, including hardscape, softscape, hot tub or otherwise shall be built into the "general common elements" (the "GCE") of Lot 6 VTC. In no event shall any future improvements, if permitted into any portion of the GCE of Lot 6 VTC, notwithstanding approval of Welles or anything in the Declaration to the contrary, result in the extension or expansion of the limited common elements appurtenant to Unit 6A beyond the boundaries as they currently exist in accordance with the current VTC Map (existing as of the Effective Date). The provisions of this Section shall survive termination of the Agreement.

5. **The Construction Period.** The construction period shall commence April 24, 2011 (the "Commencement Date"). "Substantial Completion" of the Welles Unit shall occur no later than November 16, 2011, meaning that all work to the Welles Unit and Welles Parking Space shall have been completed and accepted by the Welles Architect, subject to "punch list" type items only (the "Welles Completion Date"). All Work for the Gallardo Renovations and any punch list items remaining for the Welles Renovations shall be "Completed" (meaning that all inspections and approvals shall have occurred and a certificate of occupancy (or temporary certificate for Unit 6A), shall have been issued no later than April 23, 2012, with no punch list items outstanding for the Welles Renovations and no materials punch list items remaining for the Gallardo Renovations (the "Completion Date"). The period beginning on the Commencement Date and ending on the Completion Date is referred to as the "Construction Period."

6. No lien Rights to Welles Unit. In no event shall any contractor, subcontractor, supplier, architect, surveyor, worker, the Town, VTC Association or any other person or entity of any nature, including any lender or insurer, have the right to lien the Welles Unit for any reason, the occurrence of which shall be a material default by Creekview. Any lien placed upon the Welles Unit shall be caused to be released by Creekview, whether by bonding, payment or otherwise, within ten (10) days of being placed upon the Welles Unit.

7. General Contractor Requirements. The general contractor for the Project and its subcontractors expressly waive all rights to lien the Welles Unit, which shall be acknowledged in the general contractor contract and all subcontracts providing any Work on or for the Project (including suppliers, professionals, architects and the like), as a condition of any subcontractor or professional performing any Work on the Project or any supplier providing materials for the Project.

8. Recourse Restricted to Gallardos. The general contractor for the Project contract and all subcontractor contracts shall provide that all contractors, subcontractors, suppliers and workers for the Project shall look solely to the Gallardos and rely solely upon lien rights against the Gallardos Unit for any and all recourse, insurance claims, liability and payments due or other claims due for the Project, notwithstanding that a portion of the Project requires work and improvements to the Welles Unit.

9. Indemnity of Welles. The general contractor contract shall contain an indemnity provision providing that the general contractor for the Project shall directly hold harmless and indemnify Welles for all losses, costs, attorney fees, expenses and other costs of every nature resulting from any lien filed against the Welles Unit related to the Project and for any and all damages or losses, of every nature, including legal fees and expenses, resulting to Welles from the Work. The general contractor for the Project shall cause all subcontractor contracts to contain a similar provision.

10. All Expenses of Project Paid By the Gallardos. All costs of every nature associated with the Renovations and the Project, including without limitation architectural, engineering, legal and otherwise, shall be at the sole cost and expense of the Gallardos

11. Indemnification, Guaranty and Lien Rights. Creekview, its successors and assigns, shall fully indemnify and defend Welles and its members, their successors and assigns (collectively, the "Indemnified Parties"), and shall hold each of the Indemnified Parties harmless from all expenses incurred with respect to or in connection with the Project and against any and all claims, causes of action, suits, liabilities, damages or losses and expenses of whatever kind or nature that arise or are sustained by the Indemnified Parties as a result of any personal injury, bodily injury, sickness, disease, death or property loss or damage, including lost profits, occasioned by or resulting from the undertaking of the Project or any negligence or willful misconduct occurring in relation to the Project, and by action or inaction of any contractor or employee, agent or servant of any contractor engaged by, through or under Creekview or the general contractor for the Project, or any breach of Creekview's obligations under this memorandum or the Project Agreement or the Project Agreement. This indemnity will also cover and include costs and expenses, including reasonable attorneys' fees and consultant's fees

and expenses, caused by, relating to or arising out of any matter indemnified under the foregoing provisions, together with any liens asserted against the Welles Unit as a result of Work performed by or for Creekview or the Project pursuant to the rights and privileges granted to Creekview by this memorandum or the Project Agreement and any related damage, loss, claim, expense or lien caused in whole or in part by the act, omission, error, professional error, mistake, negligence or other fault of Creekview, the general contractor for the Project, its contractors or subcontractors or any employee or agent of the foregoing. Notwithstanding any implications to the contrary in the foregoing provisions, the foregoing shall not be construed to waive or limit any requirements imposed upon the Indemnified Parties by law to mitigate damages, and this indemnity shall not apply to matters stemming solely or in part from the gross negligence or willful misconduct by Welles or any member of Welles, to the extent of losses resulting from the acts or omissions of Welles and the law precludes indemnification of the Indemnified Parties. All sums owed and obligations to be performed by Creekview may be enforced against "Guarantor," Gela Larrea-De Gallardo (pursuant to a separately delivered unconditional guaranty).

12. Welles Lien Rights Against Unit 6A. Welles shall have first priority lien rights against Unit 6A for all sums due to Welles under the Project Agreement, including sums due to the Welles Professionals or otherwise and for all claims that may arise with respect to the Project, including all matters for which Creekview is obligated to indemnify Welles or the Indemnified Parties, with such lien rights being subject only to property taxes and super priority lien rights for assessments. Creekview shall keep and maintain Unit 6A free of all liens during the Construction Period and any lien rights granted or pertaining to Unit 6A, whether by statute or otherwise, except taxes and assessments, shall be contractually subordinated to the lien rights of Welles and any lien (or claim of lien right) filed against Unit 6A shall be bonded off or otherwise caused to be released by Creekview within ten (10) days of being filed, so to keep Unit 6A otherwise lien free during the Construction Period. Welles shall further have the right to file a lien for all sums due to Welles not paid within twenty (20) days of written demand by Welles and the priority of such lien shall date back to the Effective Date of this memorandum. Any lien filed by Welles may be foreclosed in the same manner as a mortgage or by judicial foreclosure, as Welles may elect. Welles shall be reimbursed for all legal fees incurred in any such action. Failure of Creekview to keep Unit 6A lien free during the Construction Period shall constitute a material default and require thereupon that a bond for completion of the Project to be obtained, with Welles being a named beneficiary.

13. Remedies; Attorneys' Fees. The rights and obligations under this memorandum and the Agreement and the Project Agreement may be enforced by any remedies available at law or equity, including, without limitation, the recovery of damages, and where appropriate, injunctive or other equitable relief to prevent the occurrence or continuance of any default hereunder, or to enforce the performance and observance of the terms of this memorandum and the Project Agreement. All remedies shall be cumulative with and in addition to, and not exclusive of, one another; any and all remedies may be pursued by the non-defaulting party either successively or concurrently; and the exercise of any one remedy shall not be construed as or constitute a bar to the exercise of any other remedy. All unpaid balances due to Welles under this memorandum and the Project Agreement shall bear interest at the rate of eighteen percent (18%) per annum or such lesser sum allowed by law. In the event any legal fees are incurred by

either party to enforce the terms of this memorandum or the Project Agreement, whether or not legal proceedings are instituted, all legal fees incurred to enforce the terms shall be reimbursed to the non-breaching party, and in the event that legal proceeding are instituted, the prevailing party shall be entitled to recover from the other party all of the prevailing party's costs and expenses incurred in connection therewith, including reasonable attorneys' fees (and any presiding court will be bound to make this award).

14. Creekview Rights Non-transferable; Successors in Interest. Creekview may not transfer its rights under the Project Agreement to any third party and any attempt to do so shall constitute a material breach of this Project Agreement. Notwithstanding the foregoing, any successor to Creekview shall be bound by all obligations of Creekview under the Project Agreement, which obligations, including Welles lien rights, shall touch and concern and run with the land as a benefit and burden to the ownership of the Gallardos Unit.

15. Governing Law. The Project Agreement is governed by and construed in accordance with the laws of the State of Colorado. Venue for all actions brought under the Project Agreement shall be Eagle County, Colorado.

16. Notices; Business Days. Any notice delivered under this memorandum shall be in writing, may be given by the parties hereto or such parties' respective legal counsel, and shall be deemed given and received (i) when hand delivered to the intended recipient, by whatever means; (ii) three (3) business days after the same is deposited in the United States mails, with adequate postage prepaid, and sent by registered or certified mail, with return receipt requested; (iii) one (1) business day after the same is deposited with an overnight courier service of national or international reputation having a delivery area encompassing the address of the intended recipient, with the delivery charges prepaid; or (iv) when received via facsimile to the below facsimile number provided (provided such facsimile delivery and receipt is confirmed on the facsimile facilities of the noticing party).

If to Creekview or Guarantor:

Kursten Canada, Esq.
Garfield & Hecht, P.C.
P.O. Box 5450
Avon, Colorado 81620
Phone: (970) 949-0707
Fax: (970) 949-1810

If to Welles:

The Welles-Vail, LLC.
Attn: Debbie Welles
4950 Sanford Circle W.
Englewood, CO 80113

With a copy to:

Wendy R. St. Charles, Esq.
Sherman & Howard L.L.C.
1000 S. Frontage Rd. W., Suite 200
Vail, CO 81657
Direct Dial: 970-790-1612
Fax: 970-476-7118

Either party may change its address or fax information by written notice which is given in accordance with the terms hereof.

[Signature Page Follows]

Executed as of the Effective Date set forth above.

CREEKVIEW PROPERTY, LLC, a
Colorado limited liability company

By: *Gayle Gallardo*
Name: _____
Its: _____

WELLES:

THE WELLES-VAIL, LLC, a
Colorado limited liability company

By: _____
Name: Virginia C. Welles, as Manager

The foregoing instrument was acknowledged before me this _____ day of
_____, 2011, by _____ as _____
of Creekview Properties, LLC..

Witness my hand and official seal.

My commission expires: _____

Notary Public

The foregoing instrument was acknowledged before me this ___ day of
_____, 2011, by Virginia C. Welles, as Manager of The Welles-Vail, LLC.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Executed as of the Effective Date set forth above.

**CREEKVIEW PROPERTY, LLC, a
Colorado limited liability company**

By: _____
Name: _____
Its: _____

WELLES:

**THE WELLES-VAIL, LLC, a
Colorado limited liability company**

By: Virginia C Welles
Name: Virginia C. Welles, as Manager

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____ as _____ of Creekview Properties, LLC..

Witness my hand and official seal.

My commission expires: _____

Notary Public

The foregoing instrument was acknowledged before me this 18th day of MARCH, 2011, by Virginia C. Welles, as Manager of The Welles-Vail, LLC.

Witness my hand and official seal.

My commission expires: 11/15/13

Notary Public

Margis A. Chowdhury
MARGIS A. CHOWDHURY
Notary Public
Commonwealth of Massachusetts
My Commission Expires November 10, 2013