

Final 5-2-2013

EASEMENT AND AGREEMENT REGARDING SHARED USE OF MECHANICAL ROOM

THIS EASEMENT AND AGREEMENT REGARDING SHARED USE OF MECHANICAL ROOM (this "Agreement") is entered into as of April 26, 2013 (the "Effective Date"), by and between CREEKVIEW PROPERTY, LLC, a Colorado limited liability company, its successors and/or assigns ("Grantor"), and THE WELLES-VAIL, LLC, a Colorado limited liability company, its successors and/or assigns ("Grantee").

RECITALS

1. Grantor owns Unit 6A, Vail Townhouses Condominiums, in Vail, Colorado ("Unit 6A"), and Grantee owns Unit 6B, Vail Townhouses Condominium, in Vail, Colorado, which condominium unit is situated immediately above Unit 6A ("Unit 6B"). Unit 6A and Unit 6B may collectively be referred to herein as the "Units."
2. The parties entered into that certain Project Agreement dated March 3, 2011, and amendment thereto dated of even date herewith (collectively, the "Project Agreement") with respect to the full remodel of Unit 6A (the "Project").
3. The below grade "River Level" (as referred to on the Fifth Amended Condominium Plat Vail Townhouses Condominiums) area immediately beneath the entry to Unit 6B has historically been used for installation and maintenance of utilities serving Unit 6B and has generally been accessible through Unit 6A. During the course of the Project, Grantor excavated and created an improved, below grade area as depicted and designated as "Shared L.C.E. Units 6A& 6B Mechanical," on the Fifth Amended Condominium Plat Vail Townhouses Condominiums (the "Mechanical Room").
4. The Mechanical Room shall be shared equally by the parties, with all utilities serving Unit 6A now or in the future being owned by Unit 6A (the "Unit 6A Utilities"), and all utilities serving Unit 6B now or in the future being owned by Unit 6B (the "Unit 6B Utilities"). The purpose of the Mechanical Room is to house mechanical equipment and utilities servicing Unit 6A and Unit 6B and use of the Mechanical Room shall be limited to such purposes.
5. As constructed, the sole means of access to the Mechanical Room for Unit 6B is over an easement through Unit 6A in the location labeled "Easement Area" and depicted on Exhibit 1, attached hereto and incorporated herein by this reference. The Easement Area is established for the benefit of Unit 6B and the Mechanical Room is a shared limited common element serving Unit 6A and Unit 6B.

NOW, THEREFORE, in consideration of the Recitals set forth above and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and subject to the terms and conditions hereof, the parties agree as follows:

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COVENANTS AND AGREEMENTS

1. Grant of Easement. Grantor hereby grants to Grantee and its successors, together with Grantee's service providers and contractors, a perpetual, non-exclusive easement (the "Easement"), over and upon Unit 6A in the location depicted on Exhibit 1, from the front gate of Unit 6A into the Mechanical Room, for ingress and egress in, to and through a portion of Unit 6A (the "Easement Area"), for use only insofar as is necessary for access for the installation, repair, maintenance, upgrade and replacement of utilities and mechanical equipment serving Unit 6B (collectively, the "Unit 6B Utilities") and for emergency repairs to the New Snowmelt Equipment (defined below). Grantee shall provide not less than twenty four (24) hours prior notice to Grantor, except in the case of an emergency with respect to the repair, replacement or maintenance of the Unit 6B Utilities, prior to seeking access to the Mechanical Room. In the event the Unit 6B Utilities, other than the "New Snowmelt Equipment" (defined below), require emergency repair, maintenance or replacement, Grantor shall permit and arrange for immediate access to the Mechanical Room for repair, maintenance or replacements, as the case may be, upon notice from Grantee.

2. Utilities Maintenance Expenses; Mechanical Room Modifications. All repairs, upgrades, maintenance and replacements required for the continuous and uninterrupted provision of service of the Unit 6B Utilities to Unit 6B shall be undertaken by Grantee at Grantee's sole cost, except with respect to the New Snowmelt Equipment installed in conjunction with the Project. All repairs, upgrades, maintenance and replacements required for Unit 6A Utilities and the New Snowmelt Equipment installed with the Project shall be undertaken by Grantor at Grantors' sole cost and expense. To the extent Grantor fails to undertake necessary repairs and maintenance to the New Snowmelt Equipment, as needed, Grantee may undertake same upon not less than thirty-six (36) hours prior notice to Grantor. Grantor shall have such thirty-six (36) hour period following notice to undertake necessary repairs or maintenance to the New Snowmelt Equipment and Grantor shall provide notice of having completed same to Grantee, failing which Grantee may proceed with the required repairs or maintenance, as determined by the appropriate professionals. All repairs, maintenance and replacement with respect to the New Snowmelt Improvements, (whether undertaken by Grantor or Grantee in an emergency scenario) shall be at Grantor's sole cost and expense. Repairs, replacements and upgrades to the Mechanical Room shall be at the expense of the owner desiring the work. Neither party shall make any modification to the Mechanical Room without the prior written consent of the other party. Costs and expenses, including legal fees related to requests for modification, shall be borne by the party seeking the request.

In the event Grantor is unable to complete the servicing of the New Snowmelt Equipment within thirty-six (36) hours after notice by Grantee, provided Grantor has commenced servicing within such period, Grantor shall be given a reasonable amount of time, as determined by the service contractor, to remedy such issue at Grantor's expense. In such event, Grantor shall provide Grantee with the estimated time to correct such servicing issues, which shall be undertaken with diligence. Necessary structural repairs to the Mechanical Room, as determined by a third party engineer, shall be made at the joint and equal cost and expense of Grantor and Grantee.

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3. Operation and Expenses of New Snowmelt. The New Snowmelt Equipment consists of: (i) all snowmelt equipment, pumps, tubing, sensors, boilers and other related installations and equipment providing snowmelt for the entire exterior entryway, parking area and north (creek side) balcony as to Unit 6B and (ii) all snowmelt equipment and related installations serving Unit 6A. A shutoff switch for the New Snowmelt Equipment servicing Unit 6B is installed on the switch for the existing Unit 6B snowmelt in the entryway of Unit 6B. All other New Snowmelt Equipment is housed in the Mechanical Room or outside the Units. All costs for electric, gas, other utilities, glycol, maintenance, service, repair, upgrades, replacement of the New Snowmelt Equipment shall be paid by Unit 6A, which obligation shall be perpetual into the future and shall run with the land.

4. No Impediments; Blockage; Usage. Neither Grantee nor Grantor shall impede, block or obstruct the Easement or Easement Area in any way. Further, neither party hereto shall construct or place any structure or impediment, whether temporary or permanent, within the Mechanical Room such that unimpeded access to the Unit 6B Utilities and Unit 6A Utilities is available. Any impediment, whether temporary or permanent, to access the Easement Area or the Mechanical Room shall be removed by and at the sole expense of the party so placing such impediment. Unit 6A is hereby granted the right to utilize sixty percent (60%) of the area within the Mechanical Room, and Unit 6B is hereby granted the right to utilize forty percent (40%) of the area within the Mechanical Room, provided that in no event shall Unit 6A be required to relocate the audio video tower, hot water storage tanks, boiler equipment, electric power lines, gas lines or sewer lines installed in the Mechanical Room as of the Effective Date (the "Excluded Equipment"). To the extent either party exceeds such usage and the other party desires to install additional utilities or mechanical equipment, the party exceeding usage shall relocate excess equipment, with the exception of the Excluded Equipment which shall not be required to be relocated, to an area outside the Mechanical Room and within the respective party's unit at the relocating party's sole cost and expense.

5. Reciprocal Indemnification. Grantee and Grantor shall each indemnify and hold the other, its members, successors and assigns, service providers, agents, employees and contractors and the like (collectively, the "Indemnified Parties") harmless from and against any and all claims, causes of action, suits, liabilities, damages or losses and expenses of whatever kind or nature (collectively, "Claims") that arise or are sustained by Grantor or Grantee, as the case may be, as a result of the other party's use or misuse of the Easement, the Easement Area and the Mechanical Room. This indemnity also covers and includes costs and expenses, including reasonable attorneys' fees and consultant's fees and expenses, caused by, relating to or arising out such Claims, together with any liens asserted against the other party's property, including the Mechanical Room. This indemnification shall further extend to any Claims or liens caused in whole or in part by the act, omission, error, professional error, mistake, negligence or other fault of Grantee or Grantor, or the employees, contractors, agents or service providers of same. Notwithstanding any implications to the contrary, 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 the other party, its service providers, agents, contractors or employees, to the extent that the losses result from such acts or omissions of such party, its

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service providers, contractors, agents or employees to the extent the law precludes indemnification of the Indemnified Parties.

6. Binding Effect. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, administrators, successors and assigns of Grantor and Grantee.

7. Run with the Land; Benefit and Burden. The rights and responsibilities set forth in this Agreement shall touch, concern and run with the land in perpetuity.

8. Insurance. Each party shall maintain reasonable liability and property insurance to cover any and all losses such party may sustain or inflict by virtue of the ownership, granting of access and use of the Easement, Easement Area and Mechanical Room, including potential harm to persons and property, including service providers, as applicable, such that each party shall rely solely on its own insurance coverage and its own insurer to provide coverage for any and all losses that may be sustained by such party, with a waiver of subrogation as to the other party contained within each policy of insurance procured and maintained by the parties. Failure to maintain such coverage by either party shall be deemed a breach by such party failing to insure against such potential losses related to access and use of the Mechanical Room, which breach shall preclude recovery against the other party, except to the extent such losses result from the gross negligence or willful misconduct by the other party. Evidence of such insurance policies shall be provided by each party hereto to the other upon written request. Such policies shall name the other party as an additional insured thereunder with respect to the Mechanical Room, Easement and Easement Area.

9. Notice; Business Days. Any notice required or permitted under the terms of this Agreement 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 within a delivery area encompassing the address of the intended recipient, with the delivery charges prepaid; or (iv) when received via facsimile or email to the below facsimile or email number provided (provided such facsimile or email delivery shall be confirmed by receipt of delivery by the noticing party). Any notice delivered under this Agreement shall be delivered to the appropriate address, email or to the facsimile number set forth below:

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If to Grantor: Creekview Property, LLC
Attn: Gela Gallardo, Manager
303 Gore Creek Drive, Unit 6A
Vail, CO 81657

With a copy to: Kursten Canada, Esq.
Garfield & Hecht, P.C.
P.O. Box 5450
Avon, Colorado 81620
(970) 949-1566 (Phone)
(970) 949-1810 (Facsimile)

If to Grantee: 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.
37347 US Highway 6, Suite 210
Avon, CO 81620
(970) 790-1612 (Phone)
970-790-1612 (Facsimile)
Email to: wstcharles@shermanhoward.com

10. Remedies; Attorneys' Fees. Failure of either party to perform obligations as required herein shall be deemed a default if not cured within 10 days of written notice (except as otherwise provided herein for emergency situations). The rights and obligations under this Agreement may be enforced by any remedies available at law or in 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 this 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. In the event legal fees are incurred by either party to enforce the terms of this Agreement, whether or not legal proceedings are instituted, all such reasonable legal fees shall be reimbursed to the non-breaching party. In the event legal proceedings 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 is obligated to make this award).

11. Recordation. This Agreement and attached exhibit shall be recorded in the records of the Clerk and Recorder for Eagle County, Colorado, at Grantor's expense upon the execution hereof.

12. Severability. If any term, covenant, condition or provision of this Agreement shall, at any time or to any extent, be invalid or unenforceable, the remainder of

this Agreement shall not be affected thereby, it being the intent of the parties that this Agreement and each provision hereof shall be enforceable and enforced to the fullest extent permitted by law.

13. Entire Agreement. This Agreement and exhibit attached hereto represent the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior or extrinsic agreements, understandings or negotiations shall be deemed merged herein.

14. Rules of Construction. The headings which appear in this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the paragraphs in which they appear. References herein to the singular shall include the plural, and to the plural shall include the singular, and any reference to any one gender shall be deemed to include and be applicable to all genders.

15. Governing Law. This Agreement shall be governed by and constructed in accordance with the laws of the State of Colorado. Venue for all actions brought under this Agreement shall be Eagle County, Colorado, and all parties to this Agreement hereby submit to the jurisdiction of the District Court of the State of Colorado located in Eagle County in any action brought under this Agreement.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

DATED the year and day first above written.

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

By: Virginia C Welles
Name: VIRGINIA C WELLES
Title: Manager

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 6th day of May, 2013, by Virginia C Welles ss Manager of THE WELLES-VAIL, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: December 19, 2019

[Signature]
Notary Public



MARINA KVITMAN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
December 19, 2019

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EXHIBIT 1

Mechanical Room Easement Area

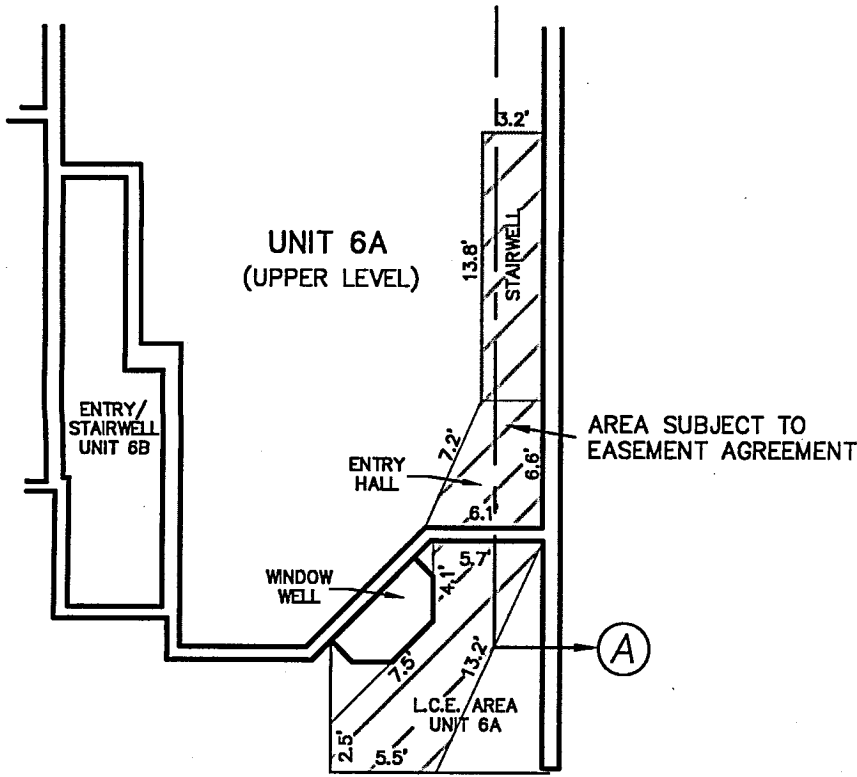
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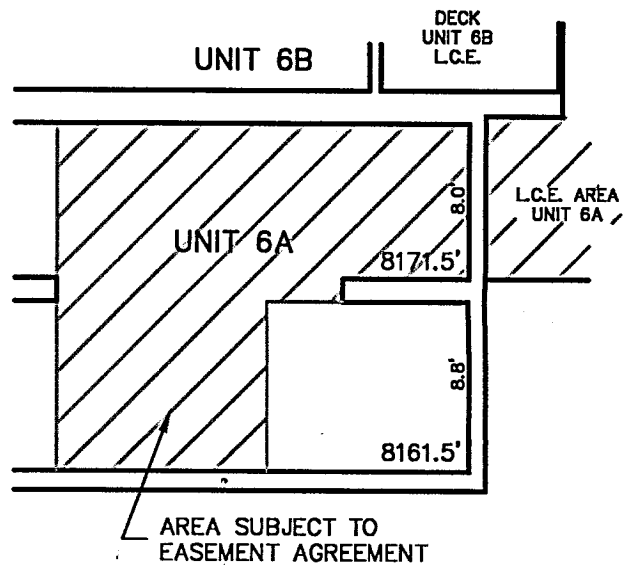
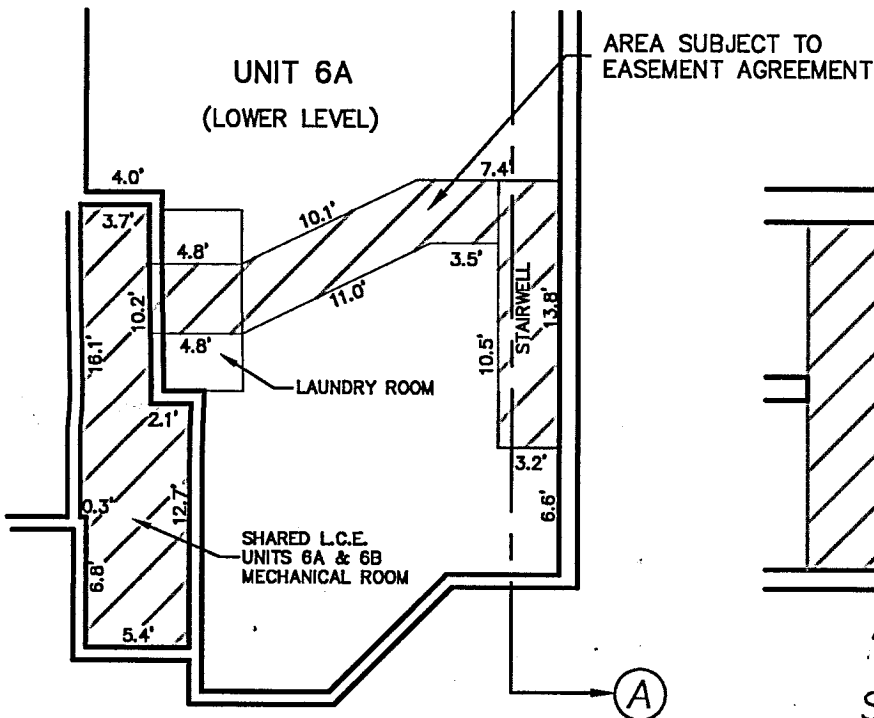
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EXHIBIT 1

UNIT 6A, VAIL TOWNHOUSE CONDOMINIUMS
TOWN OF VAIL, EAGLE COUNTY, COLORADO



SCALE: 1" = 10'



SECTION A

Gore Range Surveying, LLC

P.O. Box 15
Avon, CO 81620
(970) 479-8698 • fax (970) 479-0053

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