

**EASEMENT AGREEMENT
(Pedestrian, Vehicle and Plaza Use)**

THIS EASEMENT AGREEMENT (“**Agreement**”) is made as of April 5th, 2016 (“**Effective Date**”) by the Blue Mesa Lodge Condominium Association, a Colorado non-profit corporation (“**Grantor**”) and Town of Mountain Village, a Colorado municipal corporation and political subdivision of the State of Colorado (“**Grantee**”). Grantor and Grantee are sometimes each individually referred to as a “**Party**” and sometimes collectively as the “**Parties**”.

RECITALS

A. Grantor is homeowners association for the Blue Mesa Lodge Condominiums according to the Map recorded on September 15, 1994 in Plat Book 1 at page 1740 and the Amended Map recorded October 5, 1998 in Plat Book 1 at page 2423 (“**Grantor Property**”) in the Official Records of the Clerk and Recorder for San Miguel County, Colorado (“**Official Records**”).

B. Grantee is the owner of certain real property known as OSP-3X and the Lost Creek Lane Road right of Way, Mountain Village, CO (“**Grantee Property**”). Grantee provides amenities to the residents, guests and invitees of the Town of Mountain Village.

C. Grantee seeks and Grantor is willing to grant and convey to Grantee a plaza area easement and subsurface snowmelt easement (collectively the “**Easement**”) over a portion of Grantor Property as depicted on Exhibit A attached hereto and incorporated herein (“**Easement Area**”).

D. Grantor agrees to undertake certain improvements to the Easement Area as further described below (the “**Easement Area Improvements**”).

E. Grantee agrees to pay to Grantor a certain amount to be used by Grantor for the Easement Area Improvements.

F. Subject to the terms and conditions set forth herein, the Easement authorizes each of the Authorized Users (defined below) to undertake certain Authorized Uses (defined below).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements made and entered into by the Parties, the sufficiency of which is hereby acknowledged, the undersigned Parties hereby agree as follows:

1. **Grant of Easement.**

1.1. Subject to the terms and conditions set forth herein, Grantor hereby grants and conveys the Easement, which is deemed to be a perpetual, non-exclusive easement, on, over, and across the Easement Area, to the following persons or entities (“**Authorized Users**”):

1.1.1. Grantee and its designees, including but not limited to, its contractors, agents, consultants, the residents, guests and invitees of the Town of Mountain Village;

1.1.2. Grantor and its designees, including but not limited to its contractors, agents and consultants retained to undertake the Authorized Uses allowed by this Agreement;

1.2. The Easement and the Easement Area may be used by an Authorized User for any or all of the following purposes (“**Authorized Uses**”), which Authorized Uses must conform to the applicable provisions of the Town Approvals and Town Laws:

1.2.1. To enable pedestrian access;

1.2.2. To enable Grantee’s vehicular access to surrounding plaza areas for deliveries via hand trucks and motorized carts, maintenance, snow removal and repair of plaza areas;

1.2.3. To enable use of the plaza portion of the Easement Area for plaza uses as allowed by the Grantee’s Community Development Code; and

1.2.4. To enable the installation, operation and maintenance of a snowmelt system in the Easement Area and a subsurface easement to connect a snowmelt system which may be installed on the Grantor’s Property at a future date.

1.3. The Easement is granted for the limited purposes specified herein and Grantee shall have no right to use the Easement Area for any other or additional use or purpose, except as may be authorized from time to time by other written agreement.

1.4. Each Party hereby represents and warrants to the other Party that the Authorized Uses shall be undertaken in accordance with all governing laws, rules and regulations and this Agreement.

1.5. Grantor expressly reserves unto itself, the right to: (A) use and enjoy the land covered by the Easement Area for the Easement Area Improvements, including access and use by Grantor’s contractors, (B) use and enjoy the land covered by the Easement Area for all lawful purposes that will not unreasonably interfere with the rights and interests hereby granted to Grantee; and (C) grant additional licenses, easements or rights-of-way upon or across the Easement Area to other persons or entities. In exercising these reserved rights, Grantor acknowledged and agrees that such usage or authorizations will not unreasonably interfere with or disturb the rights granted to Grantee hereunder.

1.6. The Easement Area shall consist solely of the surface area from the bottom of the installed pavers to thirty feet above such surface area, and shall not consist of any subsurface areas. Notwithstanding the foregoing, Grantee may elect to, but has no obligation to, install a snowmelt system below the pavers. If Grantee elects to install such snowmelt system, the Easement Area shall extend to the bottom of the installed system rather than the bottom of

the installed pavers. The Grantor shall remain responsible for the maintenance and care of all areas below the Easement Area and Grantee shall have no obligation for any repairs, maintenance or damage to the subsurface below the Easement Area.

2. **Easement Area Improvements.** Grantor anticipates performing various construction projects and improvements to the Grantor Property commencing in April of 2016 (the “**Grantor Improvement Project**”). As part of the Grantee Improvement Project, Grantor agrees to perform the Easement Area Improvements as described herein. The Easement Area Improvements which shall be a project to better waterproof the Easement Area and address drainage in the easement area and shall consist of the following improvements:

- 2.1. Removal of planters located on the west side of the Grantor Property including metal lids down to decking of the plaza.
- 2.2. Removal of all pavers and sand on the eastern side of the Grantor Property in the “Breezeway” between Blue Mesa Lodge Condominium Building and the Blue Mesa Condominiums Building.
- 2.3. Drill three holes through the deck on the western side of the Grantor property and install three new Z-150 Prom deck drains and connect drains to the existing cistern located in the Grantor Property parking garage.
- 2.4. Supply and install 1-1/2 rigid insulation over drainage mats.
- 2.5. Supply and install new geotextile fabric over plaza areas
- 2.6. Supply and install sand base
- 2.7. Re- install existing pulled pavers
- 2.8. Install new pavers to areas where pavers did not exist and where pulled pavers are not usable.
- 2.9. Installation of snowmelt system components consisting of tubing, manifolds and necessary connections in the Easement Area and on the Grantor Property pursuant to a April 5th, 2016 Construction License Agreement (the “Construction License Agreement”).
- 2.10. Installation of 2 penetrations of the existing subsurface concrete wall on the south east boarder of the Easement Area bordering the Grants Property and the installation of two ten inch conduit sleeves though the concrete wall and sealing of such sleeves for the future connection of snowmelt systems on the Grantor Property (work done on Grantor Property Pursuant to the Construction License Agreement): _____.

2.11. **Timeline for Completion of Easement Area Improvements.** . Grantor shall commence performance of such Easement Area Improvements by no later than April 10th, 2016 (the “**Commencement Date**”), and complete such Easement Area Improvements on or before June 15th, 2016 (the “**Completion Date**”).

2.12. Prior to commencing construction of the Easement Area Improvements, Grantor shall supply Grantee with all plans for the Easement Area Improvements for Grantee’s review and approval. Grantee shall have 10 days to comment and/or approve the plans.

2.13. Grantee may inspect the Easement Area Improvements at any time during the construction of such.

2.14. Grantor shall notify Grantee when it has completed the Easement Area Improvements. Grantor may elect to inspect the completed Easement Area Improvements in a reasonable time following the notice from Grantor. Should Grantee identify any additional measures reasonably required to bring the Easement Area Improvements into conformance with this Agreement, with the approved plans or applicable building codes. Grantee shall notify Grantor of that determination and the specific remediation activities required to be undertaken, which work Grantor shall undertake as soon as practicable at its sole cost and expense. If Grantee has not undertaken any inspection and/or sent notice to Grantor requiring any further remediation within thirty (30) days of the date Grantor has sent notice of completion to Grantee, then Grantee shall be deemed to have accepted and approved the conditions associated with the Grantor Property as a result of the Easement Area Improvements.

2.15. While undertaking the Easement Area Improvements, Grantor agrees to maintain the Easement Area in a clean, safe, and orderly condition, consistent with general construction trade practices in the area. Grantor shall also have and use a construction plan to allow for access to nearby businesses during construction of the Easement Area Improvements and Grantor Improvement Project.

2.16. Grantor shall install appropriate safety measures and devices, including signage, at appropriate locations.

2.17. The Easement Area Improvements will be performed in a professional and workmanlike manner. Grantor shall comply with all applicable federal, state and local laws, rules, regulations and safety standards when undertaking the Easement Area Improvements.

2.18. Grantor is responsible for promptly paying for all of the costs and expenses of designing, constructing, manufacturing, delivering, installing and maintaining the Easement Area Improvements. Grantor shall not allow any liens to be placed on any portion of the Easement Area or Grantor Property and shall indemnify and hold harmless Grantee from and against any claims for payments due in connection with the Easement Area Improvements undertaken by the Grantor, including any liens or other claims, and any legal costs or attorneys fees incurred by Grantor in connection therewith.

3. **Improvement Contribution.** In exchange for the easement rights granted by Grantor to Grantee in this Agreement, Grantee agrees to pay to Grantor a total amount of \$25,599.78 (the "**Improvement Contribution**"). The Improvement Contribution shall be payable in installments as set forth herein. Grantee shall pay to Grantor fifty percent (50%) of the Improvement Contribution on or before the Commencement Date. Grantee shall pay to Grantor the remaining fifty percent (50%) of the Improvement Contribution by the later of the Completion Date (or such later date if Grantor fails to complete the Easement Area Improvements by the Completion Date) or completion of the remediation activities pursuant to Section 2.12, if applicable.

3.1. The Parties understand and agree that Grantee's payment of the Improvement Contribution is for only a certain portion of the Easement Area Improvements. The Improvement Contribution shall cover the following Easement Area Improvements, which shall be performed by Grantor or its contractor:

- 3.1.1. Removal of planters and metal lid down to decking: \$2,640.00
- 3.1.2. Removal of all pavers and sand base in between buildings: \$660.00
- 3.1.3. Drilling of three holes through the west side deck: \$477.13 (which represents ½ of the total for this work with Grantor responsible for remaining costs)
- 3.1.4. Supply and install three new 2-150 Prom deck drains: \$1,587.58 (which represents ½ of the total for this work with Grantor responsible for remaining costs)
- 3.1.5. Connect drains to existing cistern in parking garage: \$675.54 (which represents ½ of the total for this work with Grantor responsible for remaining cost)
- 3.1.6. Supply and install 1-1/2 rigid insulation over drainage mat: \$1,220.45
- 3.1.7. Supply and install new geotextile fabric: \$1,249.88
- 3.1.8. Supply and install sand base: \$588.50
- 3.1.9. Install existing pavers: \$2,788.50
- 3.1.10. Install new pavers: \$2,200.00
- 3.1.11. Install snowmelt system components in Easement Area and Grantor Property pursuant to the Construction License Agreement, penetrations into Grantor's garage and related components (represents 40% of total cost for this work with Grantor responsible for remaining costs): \$3,964.00.
- 3.1.12. Remove pavers and sand, dig trench line, supply and install new sand base and reinstall brick pavers on Grantor Property: \$4,585.00
- 3.1.13. Regrade subsurface with class six slope to new drain, relocate drain, supply and install ridged insulation and new 4x4 wire mesh (represents 40% of total costs for this work with Grantor responsible for remaining costs): \$2963.20

3.2. Grantee also agrees to waive the building permit fee that would be charged for the Grantor Improvement Project, which includes the Easement Area Improvements which are a benefit to the Grantee and its constituents. The Grantee does not waive any use taxes imposed by Grantee or San Miguel County or any other fees due for the Grantor Improvement Project or the Easement Area Improvements.

4. **Release by Grantor** Except to the extent caused by Grantee's willful misconduct, Grantor, for itself, its successors and assigns, and for each of its specifically designated designees, contractors and consultants who are undertaking some or all of the Authorized Uses at the direction of Grantor, does hereby release Grantee and its elected and appointed officials, employees, agents, representatives, assignees, attorneys, successors and assigns from all claims for damages, including, but not limited to, all mechanics' lien(s), expense, claim, action, liability, loss, damage, or suit (including attorney's fees and costs), and costs of any kind arising out of, or in any way connected with the Authorized Uses and Grantee's prior use of the Easement Area.

5. **Insurance.**

5.1. **Grantor Policy.** Grantor shall keep and maintain, at its sole cost and expense, a commercial general liability insurance coverage for itself and for each of its specifically designated designees, contractors and consultants who are undertaking some or all of the Authorized Uses at the direction of Grantor, containing minimum limits per occurrence of \$1,000,000 and \$2,000,000 in the aggregate (“**Grantor Policy**”). Within seven (7) days of the Effective Date, Grantor shall provide Grantee with certificates of insurance naming Grantee as an additional insured. Grantor shall provide a minimum of thirty (30) days notice to Grantee of any change or cancellation to the Grantor Policy. Said insurance coverage shall commence and continue for the full term of the easement. The amount of the coverage shall be reviewed as necessary and any changes mutually agreed upon, at least every five years, and adjusted to keep pace with the market for similar coverages, but in no event will the amount of the coverage be less than the amount stated above. Grantor shall require any of its contractors performing the Easement Area Improvements to keep and maintain a construction liability insurance policy for itself containing minimum limits per occurrence of \$1,000,000 and \$2,000,000 in the aggregate, and shall name Grantee as an additional insured (the “**Contractor Policies**”). Grantor shall ensure that such Contractor Policies remain in effect for the full period in which such contractor is performing the Easement Area Improvements. Grantor shall review the amount of the coverage periodically, but at least every five years, and ensure such Contractor Policy is adjusted to keep pace with the market for similar coverages.

5.2. **Grantee Policy.** Grantee shall keep and maintain, at its sole cost and expense, a commercial general liability insurance coverage for itself and for each of its specifically designated designees, contractors and consulting who are undertaking some or all of the Authorized Uses, containing minimum limits per occurrence of \$1,000,000 and \$2,000,000 in the aggregate (“**Grantee Policy**”). Within seven (7) days of the Effective Date, Grantee shall provide Grantor with certificates of insurance naming Grantor as an additional insured. Grantee shall provide a minimum of thirty (30) days notice to Grantor of any change or cancellation to the Grantee Policy. Said insurance coverage shall commence and continue for the full term of the easement. The amount of the coverage shall be reviewed as necessary and any changes mutually agreed upon, at least every five years, and adjusted to keep pace with the market for similar coverages, but in no event will the amount of the coverage be less than the amount stated above.

6. **Miscellaneous**

6.1. **Runs with the Land, Successors and Assigns.** The easements, benefits and rights granted and agreed to herein and the burdens, duties and obligations imposed and agreed to herein shall run with the land and shall be a benefit of and burden upon Grantor Property on the one hand, and the Grantee Property on the other hand, as applicable, during the term of this

Agreement. Further, the easements, benefits and rights granted and agreed to herein and the burdens, duties and obligations imposed and agreed to herein shall be binding upon and shall inure to the benefit of, and be a burden upon, the designees, successors, and assigns of all of the Parties to this Agreement during the term of this Agreement.

6.2. **Recording.** This Agreement will be recorded in the Official Records.

6.3. **Performances.** Time is of the essence of this Agreement and for the performance of each of the duties and obligations provided herein.

6.4. **Default. Notice and Cure.** In all instances under this Agreement, at such time as a Party ("**Claiming Party**") claims that any other Party ("**Responding Party**") has violated or breached any of the terms, conditions or provisions of this Agreement ("**Default**"), the Claiming Party shall promptly prepare and deliver to the Responding Party a written notice ("**Notice of Default**") claiming or asserting that the Claiming Party is in default under a term or provision of this Agreement, which notice shall clearly state and describe: (a) each section(s) of the Agreement which the Responding Party has allegedly violated, (b) a summary of the facts and circumstances being relied upon to establish the alleged violation, (c) the specific steps ("**Cure Events**") that must be undertaken to come into compliance with the Governing Documents, and (d) the reasonable timeframe, not less than ten days for a monetary default and not less than thirty days for a non-monetary default (unless emergency circumstances require a shorter response time), within which time the alleged violation should be cured ("**Cure Completion Date**").

6.5. **Governing Law. Remedies. Costs and Expenses.** This Agreement shall be construed under and governed by the laws of Colorado, with jurisdiction and venue restricted to a court of competent jurisdiction in San Miguel County, Colorado. A Party may pursue any and all available remedies under applicable law, including, without limitation, injunctive relief and specific performance. All of the rights and remedies of the Parties under this Agreement shall be cumulative. In any action to enforce or construe the terms of this Agreement, the substantially prevailing Party shall recover all legal and related court costs, including all reasonable attorneys' fees and expert witness fees, costs and expenses.

6.6. **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement shall be found invalid or unenforceable, this shall not affect the validity of the remaining provisions of this Agreement, and the remaining provisions shall remain in full force and effect.

6.7. **Parties' Representations.** In entering into this Agreement, the Parties acknowledge and agree and represent and warrant to each other as follows: (a) that they will perform their duties and obligations in a commercially reasonable and good faith manner and that this commitment is being relied upon by each other Party; (b) that the Party is a duly qualified and existing entity, capable of doing business in the state of Colorado; and (c) that the Party has actual and express authority to execute this Agreement, has taken all actions necessary to obtain such authorization, the Agreement constitutes a binding obligation of the Party and the person signing below is duly authorized and empowered to execute this Agreement.

6.8. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and no other representations, promises, agreements or understandings or obligations with respect to the payment of consideration or agreements to undertake other actions regarding the subject matter hereof shall be of any force or effect unless in writing, executed by all Parties hereto and dated after the date hereof.

6.9. **Modifications and Waiver.** No amendment, modification or termination of this Agreement or any portion thereof shall be valid or binding unless it is in writing, dated subsequent to the date hereof and signed by each of the Parties hereto. No waiver of any breach, term or condition of this Agreement by any party shall constitute a subsequent waiver of the same or any other breach, term or condition.

6.10. **Counterparts and Facsimile Copies.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Facsimile copies of any party's signature hereon shall be deemed an original for all purposes of this Agreement.

6.11. **Notice.** All notices, demands or writings in this Agreement provided to be given or made or sent that may be given or made or sent by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and delivered either by Fax, Email or United States Mail (certified, return receipt requests and postage pre-paid), and addressed to the party, at the below stated mailing address, email address or fax number. The mailing address, email address or fax number to which any notice, demand or writing may be changed by sending written notice to each party notifying the party of the change.

<p><u>Grantor:</u> Blue Mesa Lodge Condominium Association Attention: Keith Brown P.O. Box 325 Telluride, CO 81435</p>	<p><u>Grantee:</u> Town of Mountain Village Attention: Town Manager 455 Mountain Village Blvd., Suite A Mountain Village, CO 81435</p>
<p><u>With a Copy to:</u></p>	<p><u>With copy to:</u> J. David Reed, Esquire PO Box 196 Montrose, CO 81402</p>

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, intending it to be effective as of the Effective Date.

GRANTOR:

Blue Mesa Lodge Condominium Association,
a Colorado non-profit corporation

By: Keith Brown Date: April 5, 2018

Printed Name: KEITH BROWN
Title: Treasurer

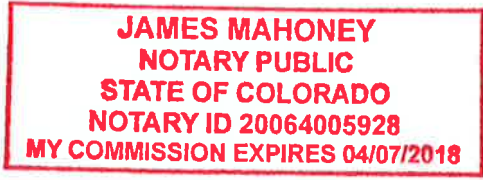
STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

Subscribed to and acknowledged before me this 5th day of April, 2018, by Keith Brown as the Authorized Agent of Blue Mesa Lodge Condominium Association, a Colorado non-profit corporation.

Witness my hand and official seal.

[Signature]
Notary Public

My commission expires: 4/7/2018



GRANTEE:

Town of Mountain Village,
a Colorado municipal corporation and
political subdivision of the State of Colorado

By: [Signature] Date: 4/11/16

Printed Name: Kim Montgomery
Title: Town Manager

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

The foregoing instrument was acknowledged before me this 11 day of ^{April} ~~March~~, 2016 by Kim Montgomery as the Town Manager of the Town of Mountain Village, a Colorado municipal corporation and political subdivision of the State of Colorado.

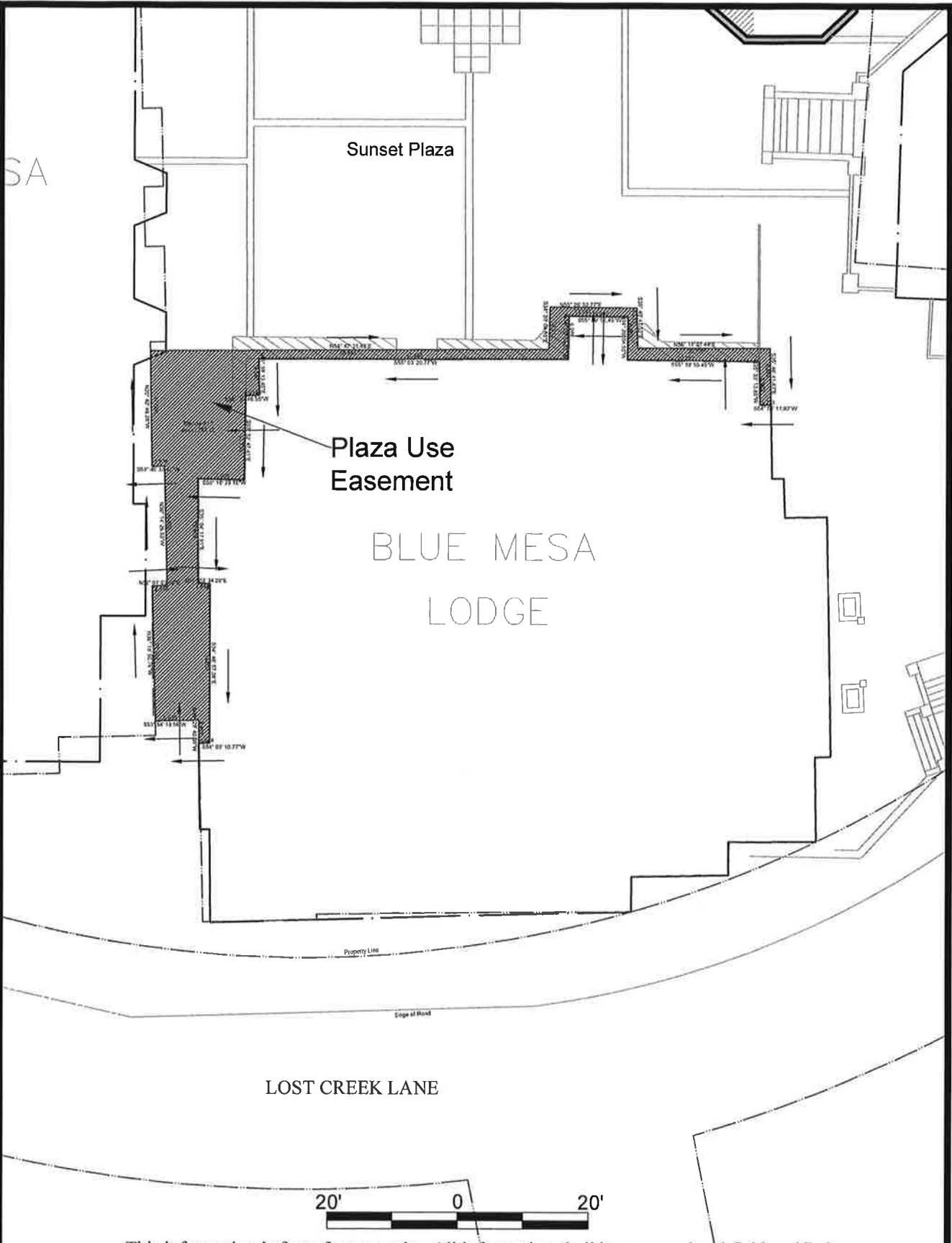
Witness my hand and official seal.

[Signature]
Notary Public

My commission expires: 04/07/18.

**JAMES MAHONEY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20064005928
MY COMMISSION EXPIRES 04/07/2018**

EXHIBIT "A"
(Depiction of Easement Area)



This information is for reference only. All information shall be surveyed and field verified.

Exhibit A



Town of Mountain Village
 Geographical Information System
 & CAD Design Office
 411 Mountain Village Blvd.
 Mountain Village, CO 81435
 ph (970) 336-8201
 Rcheroske@mtnvillage.org

1" = 20'
 3-15-16