

LAWSON LASKI CLARK & POGUE, PLLC
ATTORNEYS AT LAW

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September 27, 2013

VIA EMAIL

Email: mhofman@svidaho.org

Mark Hofman
Community Development Director
City of Sun Valley
P.O. Box 416
Sun Valley, Idaho 83353

Re: DR 2013-15 Pettric Willis
DR 2013-16 Tingue
Request for Modification of Conditions of Design Review Approval

Dear Mark:

I represent the New Villager Condominium Association ("Association"). The Association has been working with the Applicants in the two referenced Design Review Approvals, particularly with respect to the condition requiring the submittal of a plan amendment application to the City prior to the issuance of a certificate of occupancy. As we have previously discussed, as a result of the formation documentation of the New Villager Condominium project and Idaho Condominium Law it is my opinion as Association counsel that any plat amendment under the present documentation, would need to be signed by 100% of the New Villager Condominium Owners, a task that is unlikely to occur.

Accordingly, by this Application on behalf of the Association and the Applicants, I respectfully request that the City amend its conditions of approval to withdraw the condition requiring submittal of a plat amendment application and substitute it with a condition requiring a formal recorded easement from the Association documenting the authority the Applicants to build in limited common area as defined in the easement. The Association has the legal authority to enter into such easements, which effectively provide the legal authority to the Applicants to build within the defined easement area.

Mark Hofman
Community Development Director
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Page 2

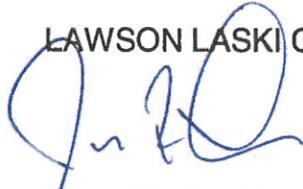
Similar easements have been utilized by local jurisdictions, including Ketchum, to address expansions beyond property lines where replatting is impractical or impossible.

Attached are proposed easements for each of the two Applications which have been approved by the Association as well as the pertinent Applicants.

Please be advised as to whether you will need any additional information to process the requests and process you would like to follow to consider this request.

Sincerely,

LAWSON LASKI CLARK & POGUE, PLLC



James R. Laski

JRL/dle
Enclosures
cc: Mark Gilbert (w/encl.)(via email)

After recording return to:

James R. Laski
Lawson Laski Clark & Pogue, PLLC
P.O. Box 3310
Ketchum, ID 83340

This space reserved for recording purposes.

COUNTY OF BLAINE, IDAHO

EASEMENT COMEMORATING PERMITTED
ENROACHMENT INTO LIMITED COMMON AREA
FOR PURPOSE OF UNIT EXPANSION

THIS EASEMENT COMEMORATING PERMITTED ENCROACHMENT INTO LIMITED COMMON AREA (this "Agreement"), is made and entered into this ___ day of _____ 2013, by and among the **NEW VILLAGER CONDOMINIUM ASSOCIATION, INC.**, an Idaho nonprofit corporation (the "Association"), whose mailing address is P. O. Box 7, Sun Valley, ID 83353; and **VICTOR B. PETTRIC and LYNN WILLIS** ("Grantee") whose mailing address is PO Box 2840, Sun Valley, ID 83353.

RECITALS

A. The Association is the Management Body charged with the managing the New Villager Condominium Project ("Project") pursuant to the Condominium Declaration recorded as Instrument No. 134343, records of Blaine County, Idaho (the "Declaration") and, pursuant to Section 8.2 of the Declaration, the party responsible for management and control of the Common Area, including Limited Common Area (the "Servient Estate"), as those terms are defined in the Declaration.

B. Grantee is the Owner of New Villager Condominium Unit 68, as shown on the Condominium Plat recorded as Instrument No. 134344, records of Blaine County, Idaho (the "Benefited Property"), which includes exclusive rights to use Limited Common Area appurtenant thereto.

C. The Association, as Manager of the Common Area, has the authority to allow encroachments into and over the Limited Common Area appurtenant to a Condominium Unit for the limited purpose of allowing construction in the Limited Common Area for approved expansions to a Condominium Unit.

D. Pursuant to Section 4.10 of the Declaration, where a Unit encroaches or shall hereafter encroach upon the Common Area, an easement for such encroachment and for maintenance of the same shall and does exist.

E. The Association now desires to allow Grantee to encroach upon the limited common area of the Benefited Property and thereby create an Easement over the Easement Area on the terms and conditions set forth in this Agreement for the limited purpose of allowing the construction, installation, maintenance, and use of certain improvements as more particularly set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated into this Agreement, the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions. Any capitalized terms used but not otherwise defined in this Agreement shall have the meanings given to them in the Declaration.

2. Grant of Right of Encroachment and Easement. The Association hereby grants to Grantee, as owner of the Benefited Property, and to Grantee's contractors, employees, agents, licensees, and invitees (collectively, the "Permittees"), for the benefit of the Benefited Property, a right of encroachment (the "Encroachment"). The Encroachment and the associated exclusive, perpetual easement that results pursuant to Section 4.10 of the Declaration (the "Resulting Easement") are for the limited purpose of allowing Grantee the right to construct, install, maintain, repair, and use improvements consisting of a condominium unit expansion as approved by the Association (the "Improvements"), on, over, and across a portion of the Servient Estate as depicted as "Area A" on **Exhibit A** (the "Easement Area") attached hereto. Grantee hereby acknowledges and agrees that the Encroachment and Resulting Easement: (a) are for the limited purposes and on the terms and conditions as described herein and shall not be deemed to grant any rights in or to the Easement Area or the Servient Estate other than those specifically identified in this Agreement; and (b) remains subject to all of the terms and provisions of the Declaration (including the rights of the Association thereunder), except as expressly provided herein. The Association consents to and authorizes Grantee to obtain appropriate building permits for construction consistent herewith over the Easement Area.

3. Construction, Maintenance and Repair.

3.1. Approval of Plans; Construction. The parties hereby agree and acknowledge that the architectural plans and specifications for the Improvements have been approved by the Association in accordance with the Declaration. Grantee agrees to perform, at Grantee's sole cost and expense, all work necessary in connection with the construction and installation the Improvements on the Easement Area, subject to the terms and conditions of the approval, this Agreement and the Declaration.

3.2. Maintenance and Repair. The parties hereby acknowledge and agree that, upon completion of the Improvements, the Association shall maintain the exterior of the Improvements within the Easement Area in the same manner and to the same extent it maintains

the buildings within the Project. Notwithstanding the foregoing, from the date of this Agreement, Grantee, at its sole expense, shall be responsible for all maintenance and repair of the of the Improvements that the Association has expressly declined to maintain and/or repair, including, without limitation, the maintenance, repair, and replacement of the interior surfaces and any other improvements or equipment within the Easement Area. Grantee shall, at its sole cost and expense, promptly repair or restore any area on the Servient Estate that is damaged or otherwise affected by the use of or entry onto the Easement Area or the Servient Estate by Grantee or its Permittees to the same or better condition as existed immediately prior to such use of or entry onto the Servient Estate.

3.3. Compliance with Laws. Any and all work conducted by Grantee pursuant to this Section 3 shall be completed in a good and workmanlike manner and in accordance with all applicable laws, local ordinances and the rules and regulations of the Association, and shall not disrupt or otherwise interfere with the Association's use of the Servient Estate.

4. **Insurance.** Prior to conducting any construction or installation of the Improvements on the Easement Area, Grantee shall furnish a certificate of insurance evidencing that Grantee and/or its contractor carries general commercial liability insurance with a combined single limit of liability of not less than \$1,000,000.00 for bodily or personal injury or death or for property damage, arising out of any one occurrence. Such insurance policy shall name the Association as an "additional insured" and be procured from a company licensed in the state of Idaho and rated by Best's Insurance Reports not less than A/VII. Grantee or its contractor (as applicable) shall maintain or cause to be maintained in full force and effect such insurance policy for the duration of any construction, installation, maintenance or repair of the Easement Area and/or any of the Improvements thereon.

5. **Liens.** Grantee shall keep the Easement Area free of any and all mechanics' or materialmen's liens arising out of or in connection with Grantee's use of the Easement Area. In the event any such lien is filed, Grantee shall cause such lien to be removed within thirty (30) days from the filing of such lien, either by paying the indebtedness which gave rise to such lien or by posting a bond or other security as required by law to obtain such release and discharge. In the event that Grantee does not timely obtain a release of such lien, the Association, at its option, shall have the right to bond for or otherwise obtain a release of the lien and collect all expenses incurred in connection therewith from Grantee, which shall be paid within fifteen (15) days from the Association's delivery of an invoice to Grantee therefor.

6. **Indemnification and Release.** Grantee hereby discharges and releases and agrees to indemnify, defend (with counsel acceptable to the Association), and hold the Association harmless from and against any and all claims, losses, liabilities, damages, actions, proceedings, or judgments of whatever kind or nature, liens, penalties, fines, and any and all costs and expenses (including, without limitation, reasonable attorneys' and experts' fees and costs of suit) arising from or related to Grantee's or its Permittees': (a) construction, installation, use, or maintenance of the Improvements; (b) use of or activities on, over, under, or otherwise within the Easement Area; or (c) performance or non-performance of any of the terms of this

Agreement; provided, however, that the foregoing indemnification shall not apply to any such claims based solely on the willful or negligent acts or omissions of the Association.

7. No Warranties. THE ASSOCIATION MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT EITHER THE ENCROACHMENT, RESULTING EASEMENT OR THE EASEMENT AREA IS CURRENTLY, NOR WILL IT IN THE FUTURE BE, ADEQUATE, SUITABLE, OR SUFFICIENT FOR GRANTEE'S INTENDED USE. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE ASSOCIATION IS UNDER NO OBLIGATION TO, AND THE ASSOCIATION SHALL HAVE NO CURRENT OR FUTURE RESPONSIBILITY TO PROVIDE TO GRANTEE ANY RIGHTS (INCLUDING WATER OR OTHER UTILITY RIGHTS) IN CONNECTION WITH THE INSTALLATION, CONSTRUCTION, USE, OR MAINTENANCE OF THE IMPROVEMENTS ON THE EASEMENT AREA. THE PARTIES FURTHER ACKNOWLEDGE THAT THE ASSOCIATION MAKES NO REPRESENTATION OR WARRANTY TO GRANTEE THAT THERE CURRENTLY ARE, OR AT ANY POINT IN THE FUTURE WILL BE (EVEN IF SUCH RIGHTS OR SERVICES CURRENTLY EXIST), SUFFICIENT UTILITY OR WATER RIGHTS OR SERVICES TO INSTALL, CONSTRUCT, MAINTAIN, OR USE THE EASEMENT AREA OR THE IMPROVEMENTS THEREON. GRANTEE HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT GRANTEE AND ITS PERMITTEES SHALL USE THE ENCROACHMENT, RESULTING EASEMENT AND THE EASEMENT AREA AT THEIR OWN RISK, AND THAT THE ASSOCIATION SHALL HAVE NO LIABILITY THEREFOR, EXCEPT FOR ANY CLAIMS ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE ASSOCIATION. FURTHERMORE, IN THE EVENT THAT THE EASEMENT AREA IS DAMAGED, DESTROYED, OR OTHERWISE BECOMES INOPERATIVE OR INACCESSIBLE FOR ANY REASON (INCLUDING BUT NOT LIMITED TO, AS A RESULT OF A REDUCTION IN OR ELIMINATION OF ACCESS TO UTILITY LINES OR WATER SERVICES ON THE EASEMENT AREA) OTHER THAN THROUGH THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE ASSOCIATION, THE ASSOCIATION SHALL NOT HAVE OR BE SUBJECT TO ANY LIABILITY FOR GRANTEE'S INABILITY TO USE THE EASEMENT AREA OR MAINTAIN OR REPAIR THE IMPROVEMENTS THEREON CONSISTENT WITH GRANTEE'S INTENDED PURPOSE.

8. Default. In the event of a default hereunder, each party shall have all rights and remedies available to it at law, in equity, or as otherwise set forth in this Agreement or the Declaration, including without limitation, the right to seek specific performance and/or obtain an injunction to enforce the terms and conditions of this Agreement. Upon an event of default by Grantee that is not cured within thirty (30) days from the noticing party's written notice to Grantee of such default, the Association shall have the right (but shall not be obligated) to terminate this Agreement by providing Grantee with written notice of same. Upon such termination, (i) the Association will execute and cause to be recorded in the real property records of Blaine County, Idaho a Termination of Easement Agreement to evidence such termination; and (ii) the noticing party may, in such party's sole discretion, remove the Improvements from

the Easement Area, and Grantee shall reimburse the removing party for any and all costs incurred by such party for such work within ten (10) days after such party's written request therefor.

9. General Provisions.

9.1. Attorneys' Fees. If either party commences legal proceedings for any relief against the party arising out of this Agreement, the prevailing party shall be entitled to an award of legal costs and expenses, including, but not limited to, reasonable attorneys' fees as determined by a court of competent jurisdiction. The prevailing party shall be that party receiving substantially the relief sought in the proceeding, regardless of whether such proceeding was brought to final judgment.

9.2. Amendment and Waiver. Except as otherwise provided herein, no amendment, modification, waiver, discharge, or termination of this Agreement shall be valid unless the same is in writing, duly executed and acknowledged by all of the parties hereto, or their respective designees or successors-in-interest, and recorded in the official records of Blaine County, Idaho. No failure or delay on the part of any party in exercising any right granted to it under this Agreement, regardless of the length of time for which such failure or delay shall continue, will operate as a waiver of or impair any such right. No waiver of any breach or condition of this Agreement will or shall be deemed to operate as a waiver of any other or subsequent breach or condition.

9.3. Computation of Time Periods. Unless otherwise specifically provided in this Agreement, all periods of time referred to in this Agreement shall include all Saturdays, Sundays, and state or national holidays; provided, however, that if the date or last date to perform any act or give any notice or approval shall fall on Saturday, Sunday, or state or national holiday, such act or notice may be timely performed or given on the next succeeding business day.

9.4. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original when executed, but which counterparts together shall constitute one and the same instrument.

9.5. Entire Agreement. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the parties with respect to the Encroachment and Resulting Easement described herein and supersedes all prior and contemporaneous agreements and/or understandings, whether written or oral, between the parties hereto relating to the subject matter hereof; provided, however, that this Agreement is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument recorded in the official records of Blaine County, Idaho against either the Benefitted Property or the Servient Estate including the Declaration. In the event of a conflict between the provisions contained in the Declaration and this Agreement, the provisions contained in the Declaration shall govern. The Recitals set forth above and all exhibits referred to herein and attached to this Agreement are incorporated into this Agreement as if set forth in full.

9.6. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, without regard to the choice-of-law or conflicts-of-laws principles of such state.

9.7. Interpretation and Construction. In construing the provisions of this Agreement and whenever the context so requires, the use of the singular shall include the plural, and the use of the plural shall include the singular. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions, or agreements contained herein.

9.8. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Servient Estate, Benefited Property, or the Easement Area to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

9.9. No Third Party Beneficiary Rights. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person or entity not a party or successor or assign of a party hereto.

9.10. Negotiated Terms. This Agreement has been fully negotiated at arms' length among the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto. No such signatory shall be deemed the scrivener of this Agreement, and this Agreement and the exhibits attached hereto shall be construed as a whole according to their common meaning and not strictly for or against either Party.

9.11. Notices. Whenever a party to this Agreement is required or permitted under this Agreement to provide the other party with any notice, request, demand, consent, or approval ("Notices"), the Notices must be given in writing and delivered to the other party at the address or facsimile number set forth below: (a) personally; (b) by a reputable overnight courier service; (c) by certified mail, postage prepaid, return receipt requested; or (d) by e-mail or facsimile transmission. Either party may change its address for Notices by written notice to the other party delivered in the manner set forth above. Notices will be deemed to have been duly given: (i) on the date personally delivered; (ii) one (1) business day after delivery to an overnight courier service with next-day service requested; (iii) on the third (3rd) business day after mailing, if mailed using certified mail; or (iv) on the date sent when delivered by facsimile or e-mail (so long as a copy of the Notice is sent by one of the other means permitted hereunder on or before the next business day).

IF TO THE
ASSOCIATION: New Villager Condominium Association, Inc.
P. O. Box 7
Sun Valley, ID 83353

IF TO GRANTEE: Victor B Pettric and Lynn Willis
PO Box 2840
Sun Valley, ID 83353

9.12. Recordation. This Agreement shall be recorded in the real property records of Blaine County, Idaho.

9.13. Runs with Land; Successors and Assigns. This Agreement shall run with the land and shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. At such time as a party or its successor ceases to have an interest in such party's parcel, such party or successor shall thereupon be deemed released and discharged from any and all obligations under this Agreement accruing thereafter.

9.14. Survival. The obligations of Grantee hereunder shall survive any replat of the Project.

9.15. Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise make ineffective any other provision of this Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

ASSOCIATION:

NEW VILLAGER CONDOMINIUM
ASSOCIATION, INC., an Idaho nonprofit
corporation

By: _____
Mark Gilbert, President

GRANTEE:

By: Victor B. Pettric

By: Lynn Willis

STATE OF IDAHO)
)ss.
COUNTY OF BLAINE)

On this ____ day of _____, 2013, before me, a Notary Public, personally appeared Mark Gilbert, known or proved to me to be the President of New Villager Condominium Association, Inc., the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public
Residing at _____
Comm. Expires _____

STATE OF IDAHO)
) ss.
COUNTY OF BLAINE)

On this ____ day of _____, 2013, before me, a Notary Public, personally appeared Victor B. Pettric and Lynn Willis, the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public
Residing at _____
Comm. Expires _____

EXHIBIT A
Depiction of Resulting Easement Area

**EASEMENT COMEMORATING PERMITTED
ENROACHMENT INTO LIMITED COMMON AREA
FOR PURPOSE OF UNIT EXPANSION - 10**

After recording return to:

James R. Laski
Lawson Laski Clark & Pogue, PLLC
P.O. Box 3310
Ketchum, ID 83340

This space reserved for recording purposes.

COUNTY OF BLAINE, IDAHO

EASEMENT COMEMORATING PERMITTED
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FOR PURPOSE OF UNIT EXPANSION

THIS EASEMENT COMEMORATING PERMITTED ENCROACHMENT INTO LIMITED COMMON AREA (this "Agreement"), is made and entered into this ___ day of _____ 2013, by and among the **NEW VILLAGER CONDOMINIUM ASSOCIATION, INC.**, an Idaho nonprofit corporation (the "Association"), whose mailing address is P. O. Box 7, Sun Valley, ID 83353; and **WILLIAM J. TINGUE** ("Grantee") whose mailing address is 475 Harris Road, Bedford Hills, NY 10507 _____.

RECITALS

A. The Association is the Management Body charged with the managing the New Villager Condominium Project ("Project") pursuant to the Condominium Declaration recorded as Instrument No. 134343, records of Blaine County, Idaho (the "Declaration") and, pursuant to Section 8.2 of the Declaration, the party responsible for management and control of the Common Area, including Limited Common Area (the "Servient Estate"), as those terms are defined in the Declaration.

B. Grantee is the Owner of New Villager Condominium Unit 8, as shown on the Condominium Plat recorded as Instrument No. 134344, records of Blaine County, Idaho (the "Benefited Property"), which includes exclusive rights to use Limited Common Area appurtenant thereto.

C. The Association, as Manager of the Common Area, has the authority to allow encroachments into and over the Limited Common Area appurtenant to a Condominium Unit for the limited purpose of allowing construction in the Limited Common Area for approved expansions to a Condominium Unit.

D. Pursuant to Section 4.10 of the Declaration, where a Unit encroaches or shall hereafter encroach upon the Common Area, an easement for such encroachment and for maintenance of the same shall and does exist.

E. The Association now desires to allow Grantee to encroach upon the limited common area of the Benefited Property and thereby create an Easement over the Easement Area on the terms and conditions set forth in this Agreement for the limited purpose of allowing the construction, installation, maintenance, and use of certain improvements as more particularly set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated into this Agreement, the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions. Any capitalized terms used but not otherwise defined in this Agreement shall have the meanings given to them in the Declaration.

2. Grant of Right of Encroachment and Easement. The Association hereby grants to Grantee, as owner of the Benefited Property, and to Grantee's contractors, employees, agents, licensees, and invitees (collectively, the "Permittees"), for the benefit of the Benefited Property, a right of encroachment (the "Encroachment"). The Encroachment and the associated exclusive, perpetual easement that results pursuant to Section 4.10 of the Declaration (the "Resulting Easement") are for the limited purpose of allowing Grantee the right to construct, install, maintain, repair, and use improvements consisting of a condominium unit expansion as approved by the Association (the "Improvements"), on, over, and across a portion of the Servient Estate as depicted as "Area A" on **Exhibit A** (the "Easement Area") attached hereto. Grantee hereby acknowledges and agrees that the Encroachment and Resulting Easement: (a) are for the limited purposes and on the terms and conditions as described herein and shall not be deemed to grant any rights in or to the Easement Area or the Servient Estate other than those specifically identified in this Agreement; and (b) remains subject to all of the terms and provisions of the Declaration (including the rights of the Association thereunder), except as expressly provided herein. The Association consents to and authorizes Grantee to obtain appropriate building permits for construction consistent herewith over the Easement Area.

3. Construction, Maintenance and Repair.

3.1. Approval of Plans; Construction. The parties hereby agree and acknowledge that the architectural plans and specifications for the Improvements have been approved by the Association in accordance with the Declaration. Grantee agrees to perform, at Grantee's sole cost and expense, all work necessary in connection with the construction and installation the Improvements on the Easement Area, subject to the terms and conditions of the approval, this Agreement and the Declaration.

3.2. Maintenance and Repair. The parties hereby acknowledge and agree that, upon completion of the Improvements, the Association shall maintain the exterior of the Improvements within the Easement Area in the same manner and to the same extent it maintains

**EASEMENT COMEMORATING PERMITTED
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FOR PURPOSE OF UNIT EXPANSION - 2**

the buildings within the Project. Notwithstanding the foregoing, from the date of this Agreement, Grantee, at its sole expense, shall be responsible for all maintenance and repair of the of the Improvements that the Association has expressly declined to maintain and/or repair, including, without limitation, the maintenance, repair, and replacement of the interior surfaces and any other improvements or equipment within the Easement Area. Grantee shall, at its sole cost and expense, promptly repair or restore any area on the Servient Estate that is damaged or otherwise affected by the use of or entry onto the Easement Area or the Servient Estate by Grantee or its Permittees to the same or better condition as existed immediately prior to such use of or entry onto the Servient Estate.

3.3. Compliance with Laws. Any and all work conducted by Grantee pursuant to this Section 3 shall be completed in a good and workmanlike manner and in accordance with all applicable laws, local ordinances and the rules and regulations of the Association, and shall not disrupt or otherwise interfere with the Association's use of the Servient Estate.

4. **Insurance.** Prior to conducting any construction or installation of the Improvements on the Easement Area, Grantee shall furnish a certificate of insurance evidencing that Grantee and/or its contractor carries general commercial liability insurance with a combined single limit of liability of not less than \$1,000,000.00 for bodily or personal injury or death or for property damage, arising out of any one occurrence. Such insurance policy shall name the Association as an "additional insured" and be procured from a company licensed in the state of Idaho and rated by Best's Insurance Reports not less than A/VII. Grantee or its contractor (as applicable) shall maintain or cause to be maintained in full force and effect such insurance policy for the duration of any construction, installation, maintenance or repair of the Easement Area and/or any of the Improvements thereon.

5. **Liens.** Grantee shall keep the Easement Area free of any and all mechanics' or materialmen's liens arising out of or in connection with Grantee's use of the Easement Area. In the event any such lien is filed, Grantee shall cause such lien to be removed within thirty (30) days from the filing of such lien, either by paying the indebtedness which gave rise to such lien or by posting a bond or other security as required by law to obtain such release and discharge. In the event that Grantee does not timely obtain a release of such lien, the Association, at its option, shall have the right to bond for or otherwise obtain a release of the lien and collect all expenses incurred in connection therewith from Grantee, which shall be paid within fifteen (15) days from the Association's delivery of an invoice to Grantee therefor.

6. **Indemnification and Release.** Grantee hereby discharges and releases and agrees to indemnify, defend (with counsel acceptable to the Association), and hold the Association harmless from and against any and all claims, losses, liabilities, damages, actions, proceedings, or judgments of whatever kind or nature, liens, penalties, fines, and any and all costs and expenses (including, without limitation, reasonable attorneys' and experts' fees and costs of suit) arising from or related to Grantee's or its Permittees': (a) construction, installation, use, or maintenance of the Improvements; (b) use of or activities on, over, under, or otherwise within the Easement Area; or (c) performance or non-performance of any of the terms of this

Agreement; provided, however, that the foregoing indemnification shall not apply to any such claims based solely on the willful or negligent acts or omissions of the Association.

7. No Warranties. THE ASSOCIATION MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT EITHER THE ENCROACHMENT, RESULTING EASEMENT OR THE EASEMENT AREA IS CURRENTLY, NOR WILL IT IN THE FUTURE BE, ADEQUATE, SUITABLE, OR SUFFICIENT FOR GRANTEE'S INTENDED USE. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE ASSOCIATION IS UNDER NO OBLIGATION TO, AND THE ASSOCIATION SHALL HAVE NO CURRENT OR FUTURE RESPONSIBILITY TO PROVIDE TO GRANTEE ANY RIGHTS (INCLUDING WATER OR OTHER UTILITY RIGHTS) IN CONNECTION WITH THE INSTALLATION, CONSTRUCTION, USE, OR MAINTENANCE OF THE IMPROVEMENTS ON THE EASEMENT AREA. THE PARTIES FURTHER ACKNOWLEDGE THAT THE ASSOCIATION MAKES NO REPRESENTATION OR WARRANTY TO GRANTEE THAT THERE CURRENTLY ARE, OR AT ANY POINT IN THE FUTURE WILL BE (EVEN IF SUCH RIGHTS OR SERVICES CURRENTLY EXIST), SUFFICIENT UTILITY OR WATER RIGHTS OR SERVICES TO INSTALL, CONSTRUCT, MAINTAIN, OR USE THE EASEMENT AREA OR THE IMPROVEMENTS THEREON. GRANTEE HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT GRANTEE AND ITS PERMITTEES SHALL USE THE ENCROACHMENT, RESULTING EASEMENT AND THE EASEMENT AREA AT THEIR OWN RISK, AND THAT THE ASSOCIATION SHALL HAVE NO LIABILITY THEREFOR, EXCEPT FOR ANY CLAIMS ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE ASSOCIATION. FURTHERMORE, IN THE EVENT THAT THE EASEMENT AREA IS DAMAGED, DESTROYED, OR OTHERWISE BECOMES INOPERATIVE OR INACCESSIBLE FOR ANY REASON (INCLUDING BUT NOT LIMITED TO, AS A RESULT OF A REDUCTION IN OR ELIMINATION OF ACCESS TO UTILITY LINES OR WATER SERVICES ON THE EASEMENT AREA) OTHER THAN THROUGH THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE ASSOCIATION, THE ASSOCIATION SHALL NOT HAVE OR BE SUBJECT TO ANY LIABILITY FOR GRANTEE'S INABILITY TO USE THE EASEMENT AREA OR MAINTAIN OR REPAIR THE IMPROVEMENTS THEREON CONSISTENT WITH GRANTEE'S INTENDED PURPOSE.

8. Default. In the event of a default hereunder, each party shall have all rights and remedies available to it at law, in equity, or as otherwise set forth in this Agreement or the Declaration, including without limitation, the right to seek specific performance and/or obtain an injunction to enforce the terms and conditions of this Agreement. Upon an event of default by Grantee that is not cured within thirty (30) days from the noticing party's written notice to Grantee of such default, the Association shall have the right (but shall not be obligated) to terminate this Agreement by providing Grantee with written notice of same. Upon such termination, (i) the Association will execute and cause to be recorded in the real property records of Blaine County, Idaho a Termination of Easement Agreement to evidence such termination; and (ii) the noticing party may, in such party's sole discretion, remove the Improvements from

the Easement Area, and Grantee shall reimburse the removing party for any and all costs incurred by such party for such work within ten (10) days after such party's written request therefor.

9. General Provisions.

9.1. Attorneys' Fees. If either party commences legal proceedings for any relief against the party arising out of this Agreement, the prevailing party shall be entitled to an award of legal costs and expenses, including, but not limited to, reasonable attorneys' fees as determined by a court of competent jurisdiction. The prevailing party shall be that party receiving substantially the relief sought in the proceeding, regardless of whether such proceeding was brought to final judgment.

9.2. Amendment and Waiver. Except as otherwise provided herein, no amendment, modification, waiver, discharge, or termination of this Agreement shall be valid unless the same is in writing, duly executed and acknowledged by all of the parties hereto, or their respective designees or successors-in-interest, and recorded in the official records of Blaine County, Idaho. No failure or delay on the part of any party in exercising any right granted to it under this Agreement, regardless of the length of time for which such failure or delay shall continue, will operate as a waiver of or impair any such right. No waiver of any breach or condition of this Agreement will or shall be deemed to operate as a waiver of any other or subsequent breach or condition.

9.3. Computation of Time Periods. Unless otherwise specifically provided in this Agreement, all periods of time referred to in this Agreement shall include all Saturdays, Sundays, and state or national holidays; provided, however, that if the date or last date to perform any act or give any notice or approval shall fall on Saturday, Sunday, or state or national holiday, such act or notice may be timely performed or given on the next succeeding business day.

9.4. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original when executed, but which counterparts together shall constitute one and the same instrument.

9.5. Entire Agreement. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the parties with respect to the Encroachment and Resulting Easement described herein and supersedes all prior and contemporaneous agreements and/or understandings, whether written or oral, between the parties hereto relating to the subject matter hereof; provided, however, that this Agreement is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument recorded in the official records of Blaine County, Idaho against either the Benefitted Property or the Servient Estate including the Declaration. In the event of a conflict between the provisions contained in the Declaration and this Agreement, the provisions contained in the Declaration shall govern. The Recitals set forth above and all exhibits referred to herein and attached to this Agreement are incorporated into this Agreement as if set forth in full.

9.6. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, without regard to the choice-of-law or conflicts-of-laws principles of such state.

9.7. Interpretation and Construction. In construing the provisions of this Agreement and whenever the context so requires, the use of the singular shall include the plural, and the use of the plural shall include the singular. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions, or agreements contained herein.

9.8. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Servient Estate, Benefited Property, or the Easement Area to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

9.9. No Third Party Beneficiary Rights. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person or entity not a party or successor or assign of a party hereto.

9.10. Negotiated Terms. This Agreement has been fully negotiated at arms' length among the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto. No such signatory shall be deemed the scrivener of this Agreement, and this Agreement and the exhibits attached hereto shall be construed as a whole according to their common meaning and not strictly for or against either Party.

9.11. Notices. Whenever a party to this Agreement is required or permitted under this Agreement to provide the other party with any notice, request, demand, consent, or approval ("Notices"), the Notices must be given in writing and delivered to the other party at the address or facsimile number set forth below: (a) personally; (b) by a reputable overnight courier service; (c) by certified mail, postage prepaid, return receipt requested; or (d) by e-mail or facsimile transmission. Either party may change its address for Notices by written notice to the other party delivered in the manner set forth above. Notices will be deemed to have been duly given: (i) on the date personally delivered; (ii) one (1) business day after delivery to an overnight courier service with next-day service requested; (iii) on the third (3rd) business day after mailing, if mailed using certified mail; or (iv) on the date sent when delivered by facsimile or e-mail (so long as a copy of the Notice is sent by one of the other means permitted hereunder on or before the next business day).

IF TO THE

ASSOCIATION: New Villager Condominium Association, Inc.
P. O. Box 7
Sun Valley, ID 83353

IF TO GRANTEE: William J. Tingue
475 Harris Road
Bedford Hills, NY 10507

9.12. Recordation. This Agreement shall be recorded in the real property records of Blaine County, Idaho.

9.13. Runs with Land; Successors and Assigns. This Agreement shall run with the land and shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. At such time as a party or its successor ceases to have an interest in such party's parcel, such party or successor shall thereupon be deemed released and discharged from any and all obligations under this Agreement accruing thereafter.

9.14. Survival. The obligations of Grantee hereunder shall survive any replat of the Project.

9.15. Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise make ineffective any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

ASSOCIATION:

NEW VILLAGER CONDOMINIUM
ASSOCIATION, INC., an Idaho nonprofit
corporation

By: _____
Mark Gilbert, President

GRANTEE:

By: William J. Tingue

STATE OF IDAHO)
)ss.
COUNTY OF BLAINE)

On this ____ day of _____, 2013, before me, a Notary Public, personally appeared Mark Gilbert, known or proved to me to be the President of New Villager Condominium Association, Inc., the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public
Residing at _____
Comm. Expires _____

STATE OF IDAHO)
) ss.
COUNTY OF BLAINE)

On this ____ day of _____, 2013, before me, a Notary Public, personally appeared William J. Tingue, the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public
Residing at _____
Comm. Expires _____

EXHIBIT A
Depiction of Resulting Easement Area

**EASEMENT COMEMORATING PERMITTED
ENROACHMENT INTO LIMITED COMMON AREA
FOR PURPOSE OF UNIT EXPANSION - 9**