

# Cover letter



December 10, 2010

Chris Conrad  
Planning Director  
Town of Snowmass Village  
PO Box 5010  
Snowmass Village, CO 81615

Dear Chris:

Please find attached our submission for a request for a change of conditions for the Fanny Hill Townhomes. This submission is for a Minor Amendment to the Fanny Hill PUD. We are requesting a change of Condition #1 of Ordinance 23 of 2004, which requires that Phase 2B of the Base Village PUD be substantially complete prior to any building permits being issued for this project.

As the Base Village is not currently under construction and we have no indication that it will be any time soon, we request that this condition be waived. We feel that this project is a benefit to the community. It will stimulate the economy by creating jobs in many sectors and creating income for the Town by way of permit, building and planning fees, as well as, real estate transfer taxes.

Please call with any questions.

Sincerely,

A handwritten signature in black ink, appearing to be "Don Schuster", with a large, stylized flourish at the end.

Don Schuster  
Vice President

Fanny Hill Title Page

ASPEN  SNOWMASS

**Minor PUD Amendment to**  
**Fanny Hill**  
**Parcel 7 of Tract F in Woodrun V PUD**

*Submitted To:*

Town of Snowmass Village  
Post Office Box 5010  
Snowmass Village, CO 81615

*Applicant:*

Donald Schuster  
Aspen skiing Company  
Post Office Box 1248  
Aspen, CO 81612

*January 2011*

# Tab 1- Applicant Info

December 17, 2010

**Re: Minor PUD Amendment to Fanny Hill Property  
Parcel 7 of Tract F in Woodrun V PUD**

**Applicant is:**

**Brush Creek Land Company LLC  
117 Aspen Airport Business Center  
Aspen, CO 81611**

**Contact is:**

**Don Schuster  
Aspen Skiing Company  
PO Box 1248  
Aspen, CO 81612  
970-923-0930**

# Tab 2 - Legal Description

## COMMITMENT for TITLE INSURANCE

issued by



**TITLE COMPANY**  
of the rockies

as agent for

**FIRST AMERICAN TITLE INSURANCE COMPANY**

**Reference:**

**Commitment Number:** 0703151-C

**Commitment Ordered By:**

Donna Davis

Aspen Skiing Company

P.O. Box 1248

Aspen, CO 81612

Phone: (970) 923-8737 Fax: (970) 923-9617

email: ddavis@aspensnowmass.com

**Inquiries should be directed to:**

Title Company of the Rockies

220 East Cody Lane

Basalt, CO 81621

Phone: (970) 927-9299 Fax: (970) 927-8288

email:

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**Reference Property Address:**

See File 0701374, Snowmass Village, CO 81615

### SCHEDULE A

- Effective Date:** November 19, 2010, 7:00 am **Issue Date:** December 13, 2010
- Policy (or Policies) to be issued:**  
**ALTA Owner's Policy (6-17-06)** **Policy Amount:**  
**Proposed Insured:** **A Buyer to be Determined** **Premium:**
- The estate or interest in the Land described or referred to in this Commitment is:**  
**Fee Simple**  
**and Title to said estate or interest is at the Effective Date vested in:**  
**Brush Creek Land Company, LLC, a Colorado limited liability company**
- The Land referred to in this Commitment is located in the County of Pitkin, State of Colorado, and is described as follows:**  
**PARCEL A:**  
**Parcel 7,**  
**WOODRUN UNIT 5, according to the Plat thereof filed June 30, 1980, in Plat Book 9 at Page 80**  
**PARCEL B:**  
**WOODRUN UNIT 5 SUBDIVISION OF PARCEL 4, according to the Plat thereof filed July 25, 1985, in Plat Book 17 at Page 54.**

Tab 3 - Disclosure of Ownership

December 1, 2010

Mr. Chris Conrad  
Planning Director  
Town of Snowmass Village  
PO Box 5010  
Snowmass Village, CO 81615

Re: Fanny Hill Minor PUD Amendment

Dear Chris:

The Town of Snowmass Village Land Use Code requires a certification from an attorney licensed to practice in Colorado regarding the ownership of the subject property and consent to the application. I am an attorney licensed to practice law in the State of Colorado. I hereby certify that the property subject to the application (condominium units, common elements, and grounds comprising the Fanny Hill Townhomes is owned in fee simply by Brush Creek Land Company, LLC. Policies of title insurance further evidencing such ownership are included in this application.

I am an officer and authorized representative of Brush Creek Land Company, LLC. And hereby consent to the filing of the referenced application for an amendment of the Fanny Hill PUD.

As always, please feel free to call me if you wish to discuss any of the contents of this letter.

Sincerely,



David E. Bellack  
VP/General Counsel

cc: Don Schuster

# Tab 3 Title Commitment



## TITLE COMPANY of the rockies

220 East Cody Lane  
Basalt, CO 81621  
Phone: (970) 927-9299 Fax: (970) 927-8288  
[www.titlecorockies.com](http://www.titlecorockies.com)

### INVOICE

To: Aspen Skiing Company  
Attn: Donna Davis  
P.O. Box 1248  
Aspen, CO 81612

Invoice Date: 12/14/2010  
File No.: 0703151  
67745962  
Reference:

RE: Brush Creek Land Company LLC, a Colorado limited liability company / A Buyer to be Determined  
Property: See File 0701374, Snowmass Village, CO 81615  
Parcels A, B, c and D of Tract 1, Tracts IV-A, IV-B, V-A and V-B, Snowmass Village, Colorado

Description of Charge	Amount	Quantity	Total
TBD Commitment	\$500.00	1	\$500.00
		<b>Total Invoice:</b>	<b>\$500.00</b>

Please Remit To:  
The Title Company of the Rockies  
220 East Cody Lane  
Basalt, CO 81621  
Phone: (970) 927-9299 Fax: (970) 927-8288

*Thank you!*



**TITLE COMPANY**  
of the rockies

220 East Cody Lane  
Basalt, CO 81621  
Phone: (970) 927-9299 Fax: (970) 927-8288  
www.titlecorockies.com

**COMMITMENT TRANSMITTAL**

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**Commitment Ordered By:**

Donna Davis  
Aspen Skiing Company  
P.O. Box 1248  
Aspen, CO 81612  
Phone: (970) 923-8737 Fax: (970) 923-9617  
email: ddavis@aspensnowmass.com

**Inquiries should be directed to:**

Title Company of the Rockies  
220 East Cody Lane  
Basalt, CO 81621  
Phone: (970) 927-9299 Fax: (970) 927-8288  
email:

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**Commitment Number:**

0703151-C

**Buyer's Name(s):**

A Buyer to be Determined

**Seller's Name(s):**

Brush Creek Land Company LLC, a Colorado limited liability company

**Property:**

See File 0701374, Snowmass Village, CO 81615  
Parcels A, B, c and D of Tract 1, Tracts IV-A, IV-B, V-A and V-B, Snowmass  
Village, Colorado

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**COPIES / MAILING LIST**

A Buyer to be Determined

Brush Creek Land Company LLC, a Colorado limited liability  
company



# TITLE COMPANY of the rockies

220 East Cody Lane  
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Phone: (970) 927-9299 Fax: (970) 927-8288  
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Basalt, CO 81621  
Phone: (970) 927-9299 Fax: (970) 927-8288  
email:

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**Commitment Number:** 0703151-C  
**Buyer's Name(s):** A Buyer to be Determined  
**Seller's Name(s):** Brush Creek Land Company LLC, a Colorado limited liability company  
**Property:** See File 0701374, Snowmass Village, CO 81615  
Parcels A, B, c and D of Tract 1, Tracts IV-A, IV-B, V-A and V-B, Snowmass Village,  
Colorado

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## TITLE CHARGES

These charges are based on issuance of the policy or policies described in the attached Commitment for Title Insurance, and includes premiums for the proposed coverage amount(s) and endorsement(s) referred to therein, and may also include additional work and/or third party charges related thereto.

If applicable, the designation of "Buyer" and "Seller" shown below may be based on traditional settlement practices in Pitkin County, Colorado, and/or certain terms of any contract, or other information provided with the Application for Title Insurance.

Owner's Policy Premium:	\$0.00
Loan Policy Premium:	\$0.00
Additional Lender Charge(s):	
Additional Other Charge(s):	
Tax Certificate:	
Total Endorsement Charge(s):	
TBD Charge(s):	\$500.00
<b>TOTAL CHARGES:</b>	<b>\$500.00</b>

## COMMITMENT FOR TITLE INSURANCE

ISSUED BY



**TITLE COMPANY OF THE ROCKIES**  
220 East Cody Lane  
Basalt, CO 81621

agent for



**FIRST AMERICAN TITLE INSURANCE COMPANY**

### AGREEMENT TO ISSUE POLICY

**FIRST AMERICAN TITLE INSURANCE COMPANY** referred to this Commitment as the Company, through its agent, identified above, referred to in this Agreement as the Agent, agrees to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment date, our obligation under this Commitment will end. Also our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligations under this Commitment is limited by the following:

The Provisions in Schedule A.

The Requirements in Schedule B-1.

The Exceptions in Schedule B-2.

The Conditions on the reverse side of this page.

This Commitment is not valid without SCHEDULE A and Sections 1 and 2 of SCHEDULE B.

***First American Title Insurance Company***

By:

Dennis J. Gilmore  
President

Attest:

Timothy Kemp  
Secretary



**1005149 -**

## CONDITIONS

### 1. DEFINITIONS

- (a) "Mortgage" means mortgage, deed of trust or other security instrument.
- (b) "Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

### 2. LATER DEFECTS

The Exceptions in Schedule B Section 2 may be amended to show any defects, liens or encumbrances that appear for the first time in public records or are created or attached between the Commitment Date and the date on which all of the Requirements of Schedule B - Section 1 are met. We shall have no liability to you because of this amendment.

### 3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

### 4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section 1

or

eliminate with our written consent any Exceptions shown in Schedule B - Section 2.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

### 5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.

- 6. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>.*

**COMMITMENT for TITLE INSURANCE**

issued by



**TITLE COMPANY**  
of the rockies

as agent for

**FIRST AMERICAN TITLE INSURANCE COMPANY**

**Reference:**

**Commitment Number:** 0703151-C

**Commitment Ordered By:**

Donna Davis

Aspen Skiing Company

P.O. Box 1248

Aspen, CO 81612

Phone: (970) 923-8737 Fax: (970) 923-9617

email: ddavis@aspensnowmass.com

**Inquiries should be directed to:**

Title Company of the Rockies

220 East Cody Lane

Basalt, CO 81621

Phone: (970) 927-9299 Fax: (970) 927-8288

email:

---

Reference Property Address:  
See File 0701374, Snowmass Village, CO 81615

**SCHEDULE A**

1. **Effective Date:** November 19, 2010, 7:00 am **Issue Date:** December 13, 2010

2. **Policy (or Policies) to be issued:**

ALTA Owner's Policy (6-17-06)

**Policy Amount:**

**Premium:**

**Proposed Insured:** A Buyer to be Determined

3. **The estate or interest in the Land described or referred to in this Commitment is:**

**Fee Simple**

and Title to said estate or interest is at the Effective Date vested in:

**Brush Creek Land Company, LLC, a Colorado limited liability company**

4. **The Land referred to in this Commitment is located in the County of Pitkin, State of Colorado, and is described as follows:**

**PARCEL A:**

**Parcel 7,**

**WOODRUN UNIT 5, according to the Plat thereof filed June 30, 1980, in Plat Book 9 at Page 80**

**PARCEL B:**

**WOODRUN UNIT 5 SUBDIVISION OF PARCEL 4, according to the Plat thereof filed July 25, 1985, in Plat Book 17 at Page 54.**

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COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION I  
REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to wit:

1. Certified copy of the Resolution by Brush Creek Land Company, LLC, a Colorado limited liability company authorizing the sale or encumbrance must be on file with the Company or its duly authorized agent, but need not be recorded.

NOTE: Review Operating Agreement for authority of party(ies) to act on behalf of said limited liability company and complete the transaction contemplated herein.

2. Deed from Brush Creek Land Company, LLC, a Colorado limited liability company to A Buyer to be Determined.

NOTE: Duly executed real property transfer declaration, executed by either the Grantor or Grantee, to accompany the Deed mentioned above, pursuant to Article 14 of House Bill No. 1288-CRA 39-14-102.

3. Evidence satisfactory to the Company or its duly authorized agent that all dues and/or assessments levied by the Homeowners Association have been paid through the date of closing.
4. Evidence satisfactory to the Company or its duly authorized agent either (a) that the "real estate transfer tax" imposed by Ordinance No. 5, (Series of 1986), of the Town of Snowmass Village, Colorado, recorded July 30, 1986, in Book 515 at Page 515, has been paid, and that the lien imposed by Section 11 thereof has been fully satisfied, or (b) that a Certificate of Exemption has been issued pursuant to Section 6 thereof.

THE COMPANY RESERVES THE RIGHT TO CONDUCT AN ADDITIONAL SEARCH OF THE RECORDS IN THE OFFICE OF THE CLERK AND RECORDER FOR PITKIN COUNTY, COLORADO FOR JUDGMENT LIENS, TAX LIENS OR OTHER SIMILAR OR DISSIMILAR INVOLUNTARY MATTERS AFFECTING THE GRANTEE OR GRANTEES, AND TO MAKE SUCH ADDITIONAL REQUIREMENTS AS IT DEEMS NECESSARY, AFTER THE IDENTITY OF THE GRANTEE OR GRANTEES HAS BEEN DISCLOSED TO THE COMPANY.

NOTE: THIS COMMITMENT IS ISSUED UPON THE EXPRESS AGREEMENT AND UNDERSTANDING THAT THE APPLICABLE PREMIUMS, CHARGES AND FEES SHALL BE PAID BY THE APPLICANT IF THE APPLICANT AND/OR ITS DESIGNEE OR NOMINEE CLOSES THE TRANSACTION CONTEMPLATED BY OR OTHERWISE RELIES UPON THE COMMITMENT, ALL IN ACCORDANCE WITH THE RULES AND SCHEDULES OF RATES ON FILE WITH THE COLORADO DEPARTMENT OF INSURANCE.

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**COMMITMENT FOR TITLE INSURANCE****SCHEDULE B - SECTION II  
EXCEPTIONS**

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

Any loss or damage, including attorney fees, by reason of the matters shown below:

1. Any facts, rights, interests, or claims which are not shown by the Public Records but which could be ascertained by an inspection of said Land or by making inquiry of persons in possession thereof.
2. Easements or claims of easements, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
4. Any lien, or right to a lien for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the Public Records or attaching subsequent to the effective date hereof, but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. Right of the Proprietor of a Vein or Lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as reserved in United States Patent recorded January 19, 1900, in Book 55 at Page 93 and January 30, 1917, in Book 55 at Page 545.
8. Right of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patent recorded January 30, 1917, in Book 55 at Page 545.
9. Easement Agreement between Snowmass American Corporation, a Delaware corporation and Snowmass Water and Sanitation District, a Colorado quasi-municipal corporation recorded April 22, 1971, in Book 254 at Page 837.
10. Agreement between Snowmass American Corporation, a Delaware corporation and The Snowmass Water and Sanitation District, a quasi-municipal corporation recorded September 28, 1971, in Book 258 at Page 164.
11. Easement and right of way for skiing purposes, as contained in Easement Grant by Snowmass American Corporation, a Delaware corporation to Snowmass Skiing Corporation, a Colorado corporation by instrument recorded November 24, 1972, in Book 269 at Page 162, as amended by Revision to Easement Grant Recitals recorded September 20, 1978, in Book 355 at Page 142, and as further amended by Exchange of Easements recorded March 28, 1985, in Book 483 at Page 586 and March 29, 1985, in Book 483 at Page 637 and Amendment to Easement Agreement recorded March 29, 1985, in Book 483 at Page 642.

12. Town of Snowmass Village, Board of Trustees Ordinance No. 13, Series of 1980 recorded June 20, 1980, in Book 390 at Page 450 and re-recorded June 23, 1980, in Book 390 at Page 475.
13. Easement and right of way for access, utility services and drainage purposes, as granted by The Snowmass Company, Ltd., a Colorado limited partnership to Woodrun Associates, Ltd., a Colorado limited partnership by instrument recorded July 8, 1982, in Book 428 at Page 976.
14. Snowcat Access Agreement between The Snowmass Company, Ltd., a Colorado limited partnership and Aspen Skiing Company recorded July 12, 1982, in Book 429 at Page 134.
15. Town of Snowmass Village, Town Council Ordinance No. 7, Series of 1985 recorded March 29, 1985, in Book 483 at Page 647.
16. Easements, rights of way and other matters as shown on the Final Planned Unit Development Plan for West Village Expansion/Woodrun V filed June 20, 1980, in Plat Book 9 at Page 78 and as shown on the Plat of Woodrun Unit Five filed June 20, 1980, in Plat Book 9 at Page 80 and as shown on the Plat of Woodrun Unit Five Subdivision of Parcel 4 filed July 25, 1985, in Plat Book 17 at Page 54.
17. Town of Snowmass Village, Town Council Ordinance No. 10, Series of 1987 recorded September 14, 1988, in Book 573 at Page 205.
18. Ski Easement and Development Restriction Agreement recorded April 23, 2003, at Reception No. 481750.
19. Town of Snowmass Village Town Council Ordinance No. 18, Series of 2004 recorded November 11, 2004, at Reception No. 504092.
20. Purchase and Sale Agreement as evidenced by Memorandum of Purchase and Sale Agreement between Brush Creek Land Company, LLC, a Colorado limited liability company and Fanny Hill LLC, a Delaware limited liability company recorded March 2, 2007, at Reception No. 535000.
21. Amended and Restated Joint Resolution of Base Village Metropolitan District No. 1 and Base Village Metropolitan District No. 2 to Establish a Capital Facility Fee recorded August 20, 2008, at Reception No. 552130.
22. Drainage Easement Agreement recorded July 24, 2008, at Reception No. 551383.

## DISCLOSURE STATEMENTS

**Note 1:** Colorado Division of Insurance Regulations 3-5-1, Paragraph C of Article VII, requires that

"Every Title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the Title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed." (Gap Protection)

**Note 2:** Exception No. 4 of Schedule B, Section 2 of this Commitment may be deleted from the Owner's Policy to be issued hereunder upon compliance with the following conditions:

- A. The Land described in Schedule A of this commitment must be a single-family residence, which includes a condominium or townhouse unit.
- B. No labor or materials may have been furnished by mechanics or materialmen for purpose of construction on the Land described in Schedule A of this Commitment within the past 13 months.
- C. The Company must receive an appropriate affidavit indemnifying the Company against unfilled mechanic's and materialmen's liens.
- D. Any deviation from conditions A through C above is subject to such additional requirements or information as the Company may deem necessary, or, at its option, the Company may refuse to delete the exception.
- E. Payment of the premium for said coverage.

**Note 3:** The following disclosures are hereby made pursuant to §10-11-122, C.R.S.:

- (i) The subject real property may be located in a special taxing district;
- (ii) A certificate of taxes due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent; and
- (iii) Information regarding special districts and the boundaries of such districts may be obtained from the County Commissioners, the County Clerk and Recorder, or the County Assessor.

**Note 4:** If the sales price of the subject property exceeds \$100,000.00, the seller shall be required to comply with the disclosure or withholding provisions of C.R.S. §39-22-604.5 (Non-resident withholding).

**Note 5:** Pursuant to C.R.S. §10-11-123 Notice is hereby given:

- (a) If there is recorded evidence that a mineral estate has been severed, leased or otherwise conveyed from the surface estate then there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property, and
- (b) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

**Note 6:** Effective September 1, 1997, C.R.S. §30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one-half inch the clerk and recorder may refuse to record or file any document that does not conform.

**Note 7:** Our Privacy Policy:

We will not reveal nonpublic personal customer information to any external non-affiliated organization unless we have been authorized by the customer, or are required by law.

**Note 8:** Records:

Regulation 3-5-1 Section 7 (N) provides that each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10 of the Colorado Revised Statutes for a period of not less than seven (7) years, except as otherwise permitted by law.

**Note 9:** Pursuant Regulation 3-5-1 Section 9 (F) notice is hereby given that

"A title entity shall not earn interest on fiduciary funds unless disclosure is made to all necessary parties to a transaction that interest is or has been earned. Said disclosure must offer the opportunity to receive payment of any interest earned on such funds beyond any administrative fees as may be on file with the division. Said disclosure must be clear and conspicuous, and may be made at any time up to and including closing."

Be advised that the closing agent will or could charge an Administrative Fee for processing such an additional services request and any resulting payee will also be subjected to a W-9 or other required tax documentation for such purpose(s).

Be further advised that, for many transactions, the imposed Administrative Fee associated with such an additional service may exceed any such interest earned.

Therefore, you may have the right to some of the interest earned over and above the Administrative Fee, if applicable (e.g., any money over any administrative fees involved in figuring the amounts earned).

**Note 10:** Pursuant to Regulation 3-5-1 Section 9 (G) notice is hereby given that

"Until a title entity receives written instructions pertaining to the holding of fiduciary funds, in a form agreeable to the title entity, it shall comply with the following:

1. The title entity shall deposit funds into an escrow, trust, or other fiduciary account and hold them in a fiduciary capacity.
2. The title entity shall use any funds designated as "earnest money" for the consummation of the transaction as evidenced by the contract to buy and sell real estate applicable to said transaction, except as otherwise provided in this section. If the transaction does not close, the title entity shall:
  - a. Release the earnest money funds as directed by written instructions signed by both the buyer and seller; or
  - b. If acceptable written instructions are not received, uncontested funds shall be held by the title entity for 180 days from the scheduled date of closing, after which the title entity shall return said funds to the payor.
3. In the event of any controversy regarding the funds held by the title entity (notwithstanding any termination of the contract), the title entity shall not be required to take any action unless and until such controversy is resolved. At its option and discretion, the title entity may:
  - a. Await any proceeding; or
  - b. Interplead all parties and deposit such funds into a court of competent jurisdiction, and recover court costs and reasonable attorney and legal fees; or
  - c. Deliver written notice to the buyer and seller that unless the title entity receives a copy of a summons and complaint or claim (between buyer and seller), containing the case number of the lawsuit or lawsuits, within 120 days of the title entity's written notice delivered to the parties, title entity shall return the funds to the depositing party."

# Tab 4 Written Description

## **Written Description of Proposed Amendment**

The Fanny Hill Townhomes project was approved separately from Base Village as it is a part of the Wood Run V PUD. The project includes a total of ten residential units and one restricted housing unit, which combine to cover 24, 425 square feet of floor area in a total of six structures. Each structure, with the exception of the stand alone restricted unit, contains two condominium units. In addition there will be an underground parking facility containing 27 parking spaces as well as three surface "lay-by" parking spaces in front of the property.

The purpose of this application is to request removal of Condition #1 in the Town of Snowmass Village Ordinance 23 Series of 2004, which approved the project. No other changes are requested. Condition #1 states that "no building permits will be issued for any Buildings in the Project until Phase 2B of the Base Village PUD is substantially complete," Based on Section 16A-5-390 of the TOSV municipal code "Amendment of a final PUD" the applicant is requesting that this amendment be treated as a minor amendment.

The applicant is submitting this application as a result of changed conditions within the Town of Snowmass Village from the date of the original approval. With the pending foreclosure of Snowmass Base Village and the uncertainty that surrounds the future of that project we are requesting that the town allow us to commence construction of the project subject to the remaining conditions as stated in Ordinance 23 Series of 2004. Additionally there is ambiguity in the language in reference to what Phase 2B means. In the PUD guide for the Fanny Hill Townhomes Phase 2B of Base Village is called out as Buildings 11 and 13B while the final approval of Base Village calls out Phase 2B to include buildings 4, 5, 9 and the Aqua Center.

The revised Development Agreement, the Restricted Housing Agreement and the Subdivision Improvement Agreement are located under the "Agreements" tab of this submission. These will be executed with the Town upon approval of the PUD Amendment.

The applicant also requests that the re-subdivision plat execution required per Resolution No. 52, Series 2004, be extended.

## **Review Standards**

As outlined in Section 16A-5-390 (3) of the Municipal Code the following Review Standards shall be considered by the planning commission and town council in reviewing this proposed amendment:

- a. Consistent with the original PUD: No changes in the appearance, mass or scale of the project are proposed to change with this amendment.

- b. No Substantially adverse impact: Since no changes to the character or appearance of the originally approved project are requested there should be no adverse impact on the neighboring properties.
- c. Not change character: No change to the basic character of the PUD will occur with the approval of this proposed amendment.
- d. Compliance with Section 16A-5-310 Review Standards for a PUD:
1. Consistency with the Comprehensive Plan: there are no proposed changes from the original approval that are inconsistent with the Comp Plan in place at the time of approval or the newly adopted Comp Plan.
  2. Preservation of Community Character: the building design, mass and scale is not being changed from the original approval which was found compatible with the character of existing land uses in the area.
  3. Creative Approach; No changes in the approach for development is anticipated from the original approval. Enhancing the ski in and ski out trails for Wood Run Place as originally approved will be maintained.
  4. Landscaping: No changes to the originally approved landscaping plan are proposed with this amendment. The preservation of the wetlands area between Wood Run Place and the project will be maintained.
  5. Comply with development evaluation standards. No changes are proposed.
  6. Suitability for development: The physical and environmental attributes of the property have not changed since the original approval that might affect is development potential.
  7. Adequate facilities: the project will continue to comply with the provisions of the original approval in relationship with utilities, fire protection, circulation, roads and transit.
  8. Spatial patterns: no inefficiencies in providing public services will be caused by removing this condition.
  9. Phasing: we anticipate that the project will be completed in a single phase and all required infrastructure will be completed as part of the project construction.

**Community Benefit for amending this PUD:**

This project will stimulate the economy of Snowmass Village by providing many jobs in the architectural, engineering, construction and other associated fields. It will also provide increased traffic to local businesses by bringing more people into the area. The Town of Snowmass Village will benefit from Plan Check Fees, Permit Fees, Occupancy Fees and RETT fee collection which will exceed \$500,000. The finished project will also result increased Property Taxes from the 10 units. The town will also realize an increase in sales tax from the owners and guests incremental spending within the town.


While we cannot force completion of the Base Village we feel that by allowing this project to move forward now we can demonstrate our commitment to Snowmass Village and will be in the best interest best interest of the community.

## Bing Maps

My Notes

 **FREE!** Use Bing 411 to find movies, businesses & more: 800-BING-411



 Bird's eye view maps can't be printed, so another map view has been substituted.



# Tab 7 Fee Information

## TOWN OF SNOWMASS VILLAGE PLANNING DEPARTMENT

### Snowmass Village Development Application Fee Agreement

The Town of Snowmass Village has established a fee structure for the processing of land use applications as described in the Base Rate Fee Schedule attached hereto. A flat rate fee is collected for land use applications based on the type of application submitted. Referral fees for other Town departments, agencies and Town consultants reviewing the application will also be collected. Applications will not be accepted for processing without the payment of the required base rate fee.

The fees vary depending upon the land use application type and the complexity of the case. The determination whether an application is major or minor for purposes of establishing the Base Rate Fee shall be at the sole discretion of the Planning Director based upon the estimated number of hours required to process the application. The Base Rate Fee for applications which fall into more than one category shall be cumulative unless found that it may be excessive in relation to the estimated number of hours required to process the consolidated application. The consolidated Base Rate Fee may then be adjusted at the sole discretion of the Planning Director.

The accrual of staff time commences at the time of the pre-application conference and this time is then deducted following receipt of the flat fee amount provided at the time application is made. The base rate fee is not refundable.

More extensive staff review may be required, beyond the hourly rate and time allotted by the base rate fee, as the review time is likely to vary substantially from one application to another. Actual staff and consultant review time of the application will be charged when the hourly rate and review time exceeds the base rate fee amount. A brief description of the charge and review time incurred will be provided on the invoice.

After the base fee has been exceeded, the applicant will be billed monthly in arrears for actual review time incurred. Current billings must be paid within 30 days or processing of the application will be suspended. An applicant may accrue and be billed additional administrative or review time following the final land use approval up to issuance of a Certificate of Completion or a Certificate of Occupancy or until the terms and conditions of the approval have been satisfied, whichever occurs later. If an applicant has previously failed to pay application fees as required, no new or additional applications will be accepted for processing until the outstanding fees are paid. **No new land use applications will be accepted, building permit(s) issued or documents recorded with the Pitkin County Clerk and Recorder until all costs associated with the processing of the land use application to date have been paid.**

As the Applicant or Authorized Representative, I am responsible for paying all fees associated with this development review application and shall be the person designated to receive all billings under this Agreement.

READ, ACCEPTED AND AGREED TO:

Application(s): Farmy Hill

Print Name: Donna Davis

Minor Pub

[Signature] Date: 12/15/10  
Applicant or Authorized Representative

Amendment 2010

Applicant billing address: PO Box 1248  
Aspen CO 81612

BASE RATE FEE: \$ 3000.00  
RECEIPT NO. \_\_\_\_\_

The Applicant is responsible for notifying the Town Planning Department by U.S. Mail for any change in billing person or billing address: Snowmass Village Planning Department P.O. Box 5010, Snowmass Village, CO 81615

# SNOWMASS VILLAGE PLANNING DEPARTMENT

## BASE RATE FEE SCHEDULE

EFFECTIVE: JANUARY 1, 2008

<u>TYPE OF REVIEW</u>	<u>BASE RATE FEE</u>
<input type="checkbox"/> AEU Registration – Initial.....	\$ 300.00
<input type="checkbox"/> AEU Registration – Annual.....	\$ 100.00
<input type="checkbox"/> ACU Registration – Initial.....	\$ 200.00
<input type="checkbox"/> Administrative Modification .....	\$ 600.00
<input type="checkbox"/> Annexations.....	\$ 5,000.00
<input type="checkbox"/> Appeal of Decision.....	\$ 600.00
<input type="checkbox"/> Comprehensive Sign Plan.....	\$ 500.00
<input type="checkbox"/> Excise Tax Application.....	\$ 500.00
<input type="checkbox"/> Floor Area Calculation (Per Hour).....	\$ 180.00
<input type="checkbox"/> Rezoning.....	\$ 1,000.00
<input type="checkbox"/> SPA or PUD Pre-Sketch Plan.....	\$ 750.00
<input type="checkbox"/> SPA or PUD Sketch Plan.....	\$ 3,500.00
<input type="checkbox"/> SPA or PUD Preliminary Plan - Minor.....	\$ 5,000.00
<input type="checkbox"/> SPA or PUD Preliminary Plan - Major.....	\$ 6,500.00
<input type="checkbox"/> SPA or PUD Final Plan – Minor.....	\$ 2,000.00
<input type="checkbox"/> SPA or PUD Final Plan – Major.....	\$ 3,000.00
<input type="checkbox"/> SPA or PUD Minor Amendment.....	\$ 3,000.00
<input type="checkbox"/> SPA or PUD Major Amendment.....	\$ 5,000.00
<input type="checkbox"/> Special Review - Administrative.....	\$ 1,000.00
<input type="checkbox"/> Special Review - Other.....	\$ 1,500.00
<input type="checkbox"/> Subdivision Exemption.....	\$ 1,250.00
<input type="checkbox"/> Subdivision Preliminary Plan.....	\$ 1,500.00
<input type="checkbox"/> Subdivision Final Plat.....	\$ 1,000.00
<input type="checkbox"/> Subdivision Plat Amendment.....	\$ 1,500.00
<input type="checkbox"/> Temporary Use Permit - Administrative .....	\$ 300.00
<input type="checkbox"/> Temporary Use Permit - Annual .....	\$ 500.00
<input type="checkbox"/> Temporary Use Permit - Annual Renewal.....	\$ 200.00
<input type="checkbox"/> Sign Permit .....	\$ 100.00
<input type="checkbox"/> Variance.....	\$ 600.00
<input type="checkbox"/> Vacation of Recorded Plat.....	\$ 1,000.00
<input type="checkbox"/> Zoning Plan Review – Minor.....	\$ 700.00
<input type="checkbox"/> Zoning Plan Review – Major.....	\$ 1,500.00
<input type="checkbox"/> Development, design, or other review not covered above.....	At Hourly Rates

**Hourly Rates When Review Costs Exceed Base Fee:**

Town Staff.....	\$ 180.00
Town Attorney.....	\$ 275.00
Town Engineer .....	\$ 155.00
Planning Dept. Secretary.....	\$ 65.00

**Notes:**

1. Base Rate Fees do not include recording costs, which are at the applicant's expense.
2. Mailing, shuttle transportation for site visits, long distance phone charges, courier and copying expenses will be billed at Town cost.
3. Outside consultants or contract services retained as needed by the Town to process, review or administer the application will be reimbursed by the applicant.
4. The determination whether an application is major or minor for purposes of establishing the Base Rate Fee shall be at the sole discretion of the Planning Director based upon the nature of the application and/or the estimated number of hours required to process it.



# TOWN OF SNOWMASS VILLAGE PUD AMENDMENT APPLICATION

PLANNED UNIT DEVELOPMENT (PUD) AMENDMENT MEANS A CHANGE(S) IN USE OF A FINAL PUD OR SPA PLAN, OR SUBSTANTIAL CHANGES IN FLOOR AREA, HEIGHT, PARKING REQUIREMENTS, SETBACK REQUIREMENTS, OR OTHER MAJOR ADJUSTMENTS THAT CHANGE THE NATURE OF THE FINAL PUD OR SPA PLAN.

## GENERAL DATA REQUIREMENTS

Date: 12/15/10  
 Name of Owner: Brush Creek Land Co  
 Address: PO Box 1248, Aspen CO 81611 Phone: 970 923 0950 E-mail: dochester@aspen.snowmass.com  
 Name of Applicant (if different than owner): Don Schuster  
 Address: \_\_\_\_\_ Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_  
 Address/Location of Property: Fanny Hill  
 Legal Description (Lot, Block, Subdivision, Filing): Parcel 7 of Tract F in Woodrun V PUD

## EXISTING CONDITION INFORMATION

Original PUD Approval Date: \_\_\_\_\_ Present Zoning: \_\_\_\_\_  
 Lot Area (sq. ft.): \_\_\_\_\_ Building Setbacks (ft.): \_\_\_\_\_  
 Allowable Floor Area Ratio per Zoning or PUD Plan: \_\_\_\_\_  
 Square Footage of All Areas Calculated as Floor Area by LUC: \_\_\_\_\_  
 Square Footage of Exempted Areas: \_\_\_\_\_  
 Existing Building Height: \_\_\_\_\_  
 # of Parking Spaces and/or Parking Space/Bedroom Ratio: \_\_\_\_\_  
 Percent Open Space: \_\_\_\_\_

## PROPOSAL DATA

Zoning (if requesting changes): \_\_\_\_\_  
 Proposed Building Setbacks: \_\_\_\_\_  
 Proposed Floor Area Ratio: \_\_\_\_\_  
 Proposed Total Square Footage of Improvements: \_\_\_\_\_  
 Proposed Square Footage of Exempted Areas: \_\_\_\_\_  
 Proposed Building Height: \_\_\_\_\_  
 Proposed # of Parking Spaces and/or Parking Space/Bedroom Ratio: \_\_\_\_\_  
 Proposed Percent Open Space: \_\_\_\_\_

## GENERAL DESCRIPTION OF PROPOSED AMENDMENT(S):

Change in condition # 1 of TOSV ordinance 23 of 2004.

## **SUBMISSION DATA REQUIREMENTS**

- \_\_1. Completed application, including statements demonstrating consistency or compliance with the applicable review standards.
- \_\_2. Base Application Fee (see Fee Schedule). The base fee is the minimum fee for the type of review. The actual fee will be computed by the Planning Department based upon a staff hourly rate determined by the Town Planner to be an estimate of the fully allocated hourly cost of review of the application by the Town staff, plus the actual costs incurred by the Town in employing consultants, including attorneys and engineers performing services for the Town directly related to the application. The applicant shall reimburse the Town for such amounts in excess of the base fee as determined by the town Planner. Snowmass Village Municipal Code, Section 16-A-5-40.
- \_\_3. Authorization letter for owner's representative
- \_\_4. Owner's permission and/or letter of consent from the owners in fee simple of the property to be affected.
- \_\_5. Certificate of title or disclosure of ownership.
- \_\_6. Legal description (metes and bounds if re-zoning involved).
- \_\_7. Vicinity map.
- \_\_8. Improvement and topographical Survey prepared by a licensed surveyor within the last two years.
- \_\_9. Site plan, including existing features, contours at two-foot (2') intervals showing both existing and proposed finished grades, existing improvements, setbacks, building envelopes, property lines, general location of existing vegetation and proposed plant material, which may be submitted by separate landscape plans. Also include critical dimensioning (lengths, widths, heights, setbacks, etc.).
- \_\_10. Development plan including proposed improvements, access, parking, landscaping, property lines, walkways, etc.
- \_\_11. Building elevations and floor plans, sections, and roof plan overlaid onto combination existing and proposed finish grading plans.
- \_\_12. Verification that the proposed improvements are not in primary constraint areas (e.g. 30% slopes, drainage ways, wetlands, Brush Creek impact areas, other geological hazards, wildlife impact areas, etc.).
- \_\_13. If rezoning is being requested, a petition in favor of the rezoning signed by either real property owners representing 80% of the land area included in the application, or certified board of directors of homeowners association representing the interests of the property(s) in question.

- \_\_14. Note: Affidavit of mailing and posting, copy of information mailed and the names and addresses of the owners to whom said information was mailed (required prior to the public hearing).

ADDITIONAL INFORMATION MAY BE REQUESTED BY THE PLANNING DEPARTMENT TO MAKE A FAIR AND WELL INFORMED DECISION. NO APPLICATION WILL BE PROCESSED UNTIL ALL REQUIRED INFORMATION IS PROVIDED.

## **RULES OF PROCEDURE**

### **PRE-APPLICATION CONFERENCE**

Prior to formal submission of a request, the applicant shall meet with the Planning Department staff in order to review the nature of the submission and the procedures that will be required in order to process the application.

### **INITIAL PUBLIC MEETING**

Upon receipt of the completed application and application fee, the Planning Department shall refer the application for review and tentatively set a public meeting date to be held before the Planning Commission.

### **PUBLIC HEARING NOTICE**

1. Following Planning Commission review and their action upon a resolution providing recommendations to the Town Council, the Planning Department shall tentatively set public meeting and hearing dates to be held before the Town Council.
2. The Planning Department shall publish notice of the public hearing in the Snowmass Sun at least thirty (30) days prior to the scheduled hearing.
3. The applicant shall mail notice of the hearing at least thirty (30) days in advance of the public hearing to all property owners within three hundred feet (300') of the affected property. The notice shall contain the following information:
  - a. A description of the proposal with reference to the appropriate section of the Code pursuant to which the application will be processed and the name of the decision making body.
  - b. A description of the property affected.
  - c. Any drawings or plans that detail the proposed amendment.
  - d. A vicinity map showing the location of the property in the Town.
  - e. A Notice of Public Hearing from the Planning Department, including the date, time and place of the hearing.
  - f. If the proposed action is a rezoning, the notice shall indicate what the present zoning is and what the new zoning will be and shall set forth the area and bulk requirements for the proposed zone as set forth in the area and build requirements set forth in Section 16A-3-50 and Table 3-2 of the

Municipal Code. Such notice shall also indicate the increase or decrease in gross residential density proposed and the increase or decrease in commercial space proposed.

- g. If the proposed action is for approval of a subdivision, the notice shall contain a description of the types of uses proposed and shall specify the gross residential density proposed.
4. The applicant shall submit to the Planning Department, an affidavit of mailing and posting, copy of information mailed and the names and addresses of the owners to whom said information was mailed.

#### **DETERMINING PROPERTY OWNERS**

The party responsible for such mailing shall utilize as the source of names and addresses of such owners the most current list of property owners on file with the Pitkin County Tax Assessor or an official list of owners maintained by condominium and homeowners association which is current within thirty (30) days prior to mailing, or such other sources as approved in advance by the Town Planning Department. If any party responsible to give such notice follows the indicated procedures in good faith, the failure of any particular property owner or owners to receive actual notice shall not affect the validity of proceedings which require such notice.

#### **POSTING OF PROPERTY**

Posting of a public hearing notice shall be made by the applicant. A sign noticing the public hearing date, time, location, purpose and the name of the decision making body conducting the hearing, shall be located in a conspicuous place on the property. The sign shall be made of suitable waterproof material, shall not be less than twenty-two inches (22") wide by twenty-six inches (26") high, and shall be composed of letters not less than one inch (1") in height.

#### **REVIEW AND ACTION**

1. Note: A proposed change that is not consistent with or an enhancement of the Final PUD Land Use Plan shall be subject to Sketch and/or Preliminary Plan review in addition to Final Plan review and approval.
2. Upon receipt and review of the complete application by the Planning Department staff, the Planning Department shall refer the application for review by affected Town Departments and Referral Agencies and then submit the complete application to the Planning Commission for review. The Planning Commission shall review the proposed amendment and make a recommendation for approval, approval with conditions, or denial by resolution prior to the Town Council public hearing.
3. Following receipt of the Planning Commission's recommendations and the review of the application, Town Council shall either act upon an ordinance on first reading approving or approving with conditions the PUD or SPA amendment, or subsequently adopt a resolution denying the amendment request citing specific reasons therefore.
4. Prior to second reading and final adoption of an ordinance, the Town Council shall hold a public hearing. The PUD or SPA amendment ordinance shall be introduced for final adoption on second reading.

## **REVIEW STANDARDS**

**IT IS RECOMMENDING APPROVAL BY THE PLANNING COMMISSION AND IN GRANTING APPROVAL BY THE TOWN COUNCIL, EACH SHOULD FIND COMPLIANCE WITH THE FOLLOWING STANDARDS (Sec. 16A-390(3)):**

1. Review standards. An application for a minor amendment to a final PUD shall comply with the following standards:
  - a. Consistent with original PUD. The proposed amendment shall be consistent with, or an enhancement of, the original PUD.
  - b. No substantially adverse impact. The proposed amendment shall not have a substantially adverse effect on the neighborhood surrounding the land where the amendment is proposed, or have a substantially adverse impact on the enjoyment of land abutting upon or across the street from the subject property.
  - c. Not change character. The proposed amendment shall not change the basic character of the PUD or surrounding areas.
  - d. Comply with other applicable standards. The proposed amendment shall comply with the other applicable standards of this Division 3, Planned Unit Development, including but not limited to Section 16A-5-300(c), General Restrictions and Section 16A-5-310, Review Standards.

**BRUSH CREEK LAND COMPANY LLC**

P.O. Box 1248 Aspen CO 81612-1248

JPMorgan Chase Bank NA  
 BCLC Commercial Disbursement Account  
 Chicago Illinois 60670  
 USA  
 www.jpmchase.com

2-1  
 710

Check Number **00015241**

Date	Amount
12/13/10	\$*****3,000.00

**Account:**

**Pay THREE THOUSAND AND 00/100 \*\*\*\*\***

**To** Town of Snowmass Village  
**The** PO Box 5010  
**Order** Snowmass Village CO 81615  
**Of** USA

6837

*[Signature]*  
 Michael D. Kaplan  
*[Signature]*  
 Counter Signature Required Over \$1,000.00

⑈00015241⑈ ⑆071000013⑆ 10 37084⑈

**Contact Us:**

✉ BRUSH CREEK LAND COMPANY LLC / ACCTS PAYABLE DEPT  
 POST OFFICE BOX 1248  
 ASPEN COLORADO USA 81612-1248

☎ (970) 300-7161 voice  
 (970) 300-7178 fax

<b>Supplier Account</b>	
<b>Check Number</b>	00015241
<b>Check Date</b>	12/13/10
<b>BCLC Supplier ID</b>	6837

**Supplier Payment Detail**

Stub 1 of 1

Invoice/Reference	Date	Name/Remarks	Amount	Discount	Net Amount
12/2/10	12/02/10	Fanny Hill TH/Minor PUD Amend	3,000.00		3,000.00
<b>TOTALS</b>			<b>3,000.00</b>		<b>3,000.00</b>

PLEASE DETACH  
 BEFORE DEPOSITING

ATTACHED CHECK IS IN FULL  
 PAYMENT OF ITEMS LISTED ABOVE

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is dated as of November 4, 2004 between INTRAWEST/BRUSH CREEK DEVELOPMENT COMPANY I.L.C, a Delaware limited liability company ("**Developer**"), and the TOWN OF SNOWMASS VILLAGE, COLORADO, a Colorado municipal corporation (the "**Town**").

WHEREAS Developer intends to develop that real property situated in the Town known as Parcel 7, Woodrun V PUD (the "**Property**");

WHEREAS Developer has proposed to develop the Property, as more particularly described in the Final PUD Plan Application for Fanny Hill submitted to the Town on August 30, 2004 (the "**Application**"), and has agreed to provide or contribute to the provision of certain facilities within the Town for the Town's benefit as more particularly described below;

WHEREAS the Town Council of the Town granted approval of the development of the Property proposed in the Application by enacting Ordinance No. 23, Series of 2004 (the "**Ordinance**");

WHEREAS the Town Land Use and Development Code (the "**Code**") authorizes the execution of "development agreements" by the Town and the execution of this Agreement is contemplated by the Ordinance;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I  
VESTED RIGHTS

1.1 Vested Property Rights.

(a) The Town and Developer agree that all rights of Developer granted, recognized and confirmed in the Ordinance and this Agreement constitute "Vested Property Rights", as such term is defined in the Code. By way of illustration, and not limitation, "Vested Property Rights" include the right to develop, plan and engage in land uses on the Property in accordance with the provisions of the Ordinance for the period described in Section 1.2 below.

(b) The Town shall not enforce against Developer or the Property any amendment to the Code adopted after the date hereof, or any other zoning, land use or other legal, administrative rule, regulation, ordinance, resolution or requirement that does not apply to the Property as of the date hereof, or otherwise take any other action that would directly or indirectly have the effect of impairing, preventing, diminishing, imposing a moratorium on development, or otherwise delaying the development or use of the Property in accordance with this Agreement or the Ordinance. Except for those conditions contemplated in the Ordinance, the Code in effect as of the date hereof, and any other

agreements related to the development or use of the Property executed between the Town and Developer contemporaneously with the execution of this Agreement, the Town shall not subject development or use of the Property to any exactions, payments, dedication or reservation requirements, obligations for constructing on-site or off-site public improvements or facilities, or the payment of any fees in lieu of any of the foregoing in connection with the development, construction, use or maintenance of the Property as described in the Ordinance or any other exercise of the Vested Property Rights.

(c) Notwithstanding the foregoing, the Vested Property Rights recognized herein shall not exempt Developer from requirements for building permits, other necessary permits or other approvals required subsequent to the approval of the development of the Property (as required by the Code in effect as of the date hereof). The establishment of the Vested Property Rights shall not preclude the application of the requirements of the building code, fire code, plumbing code, electrical code, the mechanical code or of any regulations specifically adopted to correct or mitigate natural or man-made hazards on or in the immediate vicinity of the Property, which hazards could not reasonably have been discovered at the time of the Ordinance was approved, and which hazards, if uncorrected, would pose a serious threat to the public health, safety, and welfare.

#### 1.2 Condition Subsequent to Continued Existence of Vested Property Rights.

(a) Developer has agreed to provide or contribute to the provision of certain facilities within the Town for the benefit of the community pursuant to the terms of the following agreements (collectively, the “Other Agreements”):

(i) Subdivision Improvements Agreement for the Fanny Hill Planned Units Development dated effective as of November 4, 2004 between Developer and the Town;

(ii) Restricted Housing Agreement dated effective as of November 4, 2004 between Developer and the Town; and

(iii) any of the agreements listed in Section 1.2(a) of the Development Agreement dated effective as of November 4, 2004 between Developer and the Town for the development of the property within the Town commonly known as “Base Village.”

(b) The continued existence and duration of the Vested Property Rights recognized in this Agreement is subject to the condition that no Material Default by Developer shall occur. If a Material Default shall occur, then, as provided in Section 16A-5-90(c) of the Town municipal code, the Vested Property Rights shall be forfeited. For purposes hereof, “Material Default” shall mean a failure by Developer to perform any of its obligations under any of the Other Agreements or the Ordinance in any material result that remains uncured after the expiration of any applicable cure period as such default is conclusively determined by a court of competent jurisdiction in a final, non-appealable judgment or order.

1.3 Duration.

In consideration of Developer's performance of the Commitments and in recognition of the time and expense required to complete the development of the Property and the effect of varying economic cycles and market conditions, the Town has concluded and agrees that the Vested Property Rights shall be vested and continue for a period commencing on the date hereof and expiring on November 4, 2014. Unless expressly provided to the contrary therein, all modifications and amendments to the development rights contained in the Ordinance or any other material related to the development of the Property shall become part of the Vested Property Rights recognized hereunder automatically upon approval by the Town and such vesting shall last throughout the term of the vested rights.

ARTICLE II  
DEFAULT

2.1 Default by Developer.

If Developer shall commit a default under the terms of any of the Other Agreements or fail to perform any of its obligations under the Ordinance, which default or failure to perform extends beyond the expiration of any applicable grace and cure period, Developer shall not be entitled to receive additional building permits for the construction of any of the buildings described in the Ordinance until such time as the default or failure to perform is cured or the Town otherwise agrees to issue such a building permit. In addition, (a) the Town shall be entitled to all rights and remedies set forth in such Other Agreements upon such an uncured default, and (b) as noted in Section 1.2(b) above, upon a Material Default, the Vested Property Rights recognized hereunder shall be forfeited as provided in Section 16A-5-90(c) of the Town municipal code.

2.2 Default by the Town.

If the Town is in default in the performance of its obligations under this Agreement, the Town shall have the right to cure such default within 60 days after written notice by Developer of the default to the Town. If the Town fails to cure such default within 60 days after written notice is given from Developer to the Town specifying the nature of the default, then Developer shall have all rights available to it at law or in equity, specifically including the right to specific performance, injunctive relief and/or damages. Upon a default hereunder by the Town, the Vested Property Rights shall be extended for a period of time equal to the duration of such default by the Town, which extension shall specifically include all applicable cure period enjoyed by the Town under this Section 2.2.

ARTICLE III  
ASSIGNMENT

3.1 Assignment by Developer.

(a) Except as set forth below in Section 3.1(b) below, Developer may not assign any of its rights or obligations under this Agreement without the prior written consent of the Town.

(b) Developer may assign its rights and obligations under this Agreement, or any portion thereof, without the Town's consent by a written recorded instrument expressly assigning such rights and powers to any of the following entities:

(i) any Affiliate of Developer;

(ii) Aspen Skiing Company, LLC, a Colorado limited liability company or any of its Affiliates; or

(iii) any entity which succeeds to substantially all of Developer's remaining development rights with respect to the Property as described in the Ordinance.

For purposes hereof, "Affiliate" shall mean any natural person or entity that owns or controls, is owned or controlled by, or is under common ownership with an entity. "Ownership" or "control" means (A) direct or indirect ownership or control of at least 50 percent of all outstanding equity interests in an entity, or (B) the ability to direct or cause the direction of the management of an entity by ownership of equity interests, agreement or otherwise.

(c) Upon an assignment by Developer of any of its rights or obligations under this Agreement to any entity listed in Section 3.1(b)(i) through (iii) above, and an assumption of those rights and obligations by such assignee, Developer shall be released of all liabilities arising under this Agreement with respect to such rights or obligations.

#### ARTICLE IV MISCELLANEOUS

##### 4.1 Binding Effect.

This Agreement shall be binding upon the parties and shall inure to the benefit of each party's successors and assigns, as designated by a written assignment recorded in the Pitkin County Clerk and Recorder's Office.

##### 4.2 Burden and Benefits.

Each of the benefits, burdens, terms, covenants, agreements and conditions of this Agreement shall be construed as covenants running with the land benefiting and burdening the Property or any applicable portion thereof, and it is the intent of the parties that such benefits, burdens, terms, covenants, agreements and conditions touch and concern such property.

4.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

4.4 Scope of Agreement.

The rights granted to Developer by this Agreement are in addition to any other rights held by Developer under applicable law.

4.5 Interpretation.

Unless the context of this Agreement clearly requires otherwise:

- (a) terms defined in the singular may be used in the plural, and terms defined in the plural may be used in the singular;
- (b) “including” and “such as” are not limited;
- (c) “or” has the inclusive meaning represented by the phrase “and/or”;
- (d) the words “hereof,” “herein,” “hereby,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (e) Article, Section, clause, paragraph and Exhibit references are to this Agreement unless otherwise specified; and
- (f) references to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

All of the exhibits to this Agreement are hereby incorporated into this Agreement by reference. In the event of any conflict between a term, condition or provision of this Agreement and a provision of the Town’s Municipal Code, the terms of this Agreement shall control.

4.6 Severability.

If any provision of this Agreement shall be invalid, illegal, void or unenforceable, it shall not affect or impair the validity, legality or enforceability of this Agreement or any other provision hereof, and a court shall enforce this Agreement to the maximum extent legally possible to give effect as nearly as possible to the original intent of the Town and Developer as expressed in this Agreement. If any provision of this Agreement is invalid, illegal, void or unenforceable not in its entirety but as applied to a particular act, thing or circumstance, such provision shall not affect or impair the validity, legality or enforceability of this Agreement or any provision hereof as applied to any other act, thing or circumstance, and a court shall apply such provision and enforce this Agreement to the maximum extent legally possible to give effect as nearly as possible to the original intent of the Town and Developer as expressed in this Agreement.

4.7 Termination; Amendment; Waivers.

This Agreement may not be terminated, modified or amended, nor may waivers hereunder be granted, except in writing and only with the consent and approval of Developer and the Town.

4.8 Notices.

Any notice to be given to Developer or the Town under this Agreement shall be given by registered or certified mail, overnight courier, telecopy, telegram or hand delivered to the address of the party to whom notice is being given. Any notice sent by registered or certified mail will be deemed to have been received three business days following the date of mailing. Any notice sent by overnight courier will be deemed to have been received one business day following the date of delivery to the overnight courier. Either party may change its address for notice by advising the other party in writing of such change, and until the other party is so advised, it will be entitled to continue sending notices to the last address it is advised of in writing

If to the Town:           Town of Snowmass Village  
                                  P.O. Box 5010  
                                  0016 Kearns Road  
                                  Snowmass Village, Colorado 81615  
                                  Attention: Town Manager  
                                  Telephone: (970) 923-3777  
                                  Facsimile: (970) 923-6083

If to Developer:         Brush Creek Land Company, LLC  
                                  P.O. Box 1248  
                                  Aspen, CO 81612  
  
                                  Attention: Dave Bellack  
                                  Telephone: (970) 300-7150

with a copy to:         Stephen P. Sandler Esq.  
                                  Gould & Ratner  
                                  222 N. LaSalle  
                                  Chicago, Illinois 60601  
                                  Telephone: (312) 899- 1626

4.9 Recording.

Developer and the Town each shall have the right to record this Agreement in the records of the office of the Clerk and Recorder of Pitkin County, Colorado.

4.10 Captions and Titles.

All captions and titles of headings of Articles and Sections in this Agreement are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

4.11 Attorney Fees.

Notwithstanding anything to the contrary contained in this Agreement, if either party institutes legal proceedings against the other with respect to this Agreement, the non-prevailing party shall pay to the prevailing party an amount equal to all attorneys' fees and disbursements and all other costs and expenses incurred by the prevailing party in connection therewith, including, without limitation, the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party, whether incurred before or at trial, on appeal, in bankruptcy or in post-judgment collection.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the date set forth below to be effective as of the date written above.

TOWN:

TOWN OF SNOWMASS VILLAGE,  
COLORADO, a Colorado municipal corporation

By: \_\_\_\_\_  
Russ Forrest, Town Manager

Date: \_\_\_\_\_

DEVELOPER:

BRUSH CREEK LAND COMPANY LLC, a  
Colorado limited liability company

By: \_\_\_\_\_  
David Bellack, Authorized  
Representative

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
John Dresser, Town Attorney

STATE OF COLORADO )  
 ) ss.  
COUNTY OF PITKIN )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by Russ Forrest as Town Manager of the Town of Snowmass Village, Colorado.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF PITKIN )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by David Bellack as authorized representative of Brush Creek Land Company.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

\_\_\_\_\_  
Notary Public

**RESTRICTED HOUSING AGREEMENT**

THIS RESTRICTED HOUSING AGREEMENT (this "**Agreement**") is made effective as of the \_\_\_\_th day of \_\_\_\_\_, 2011 between BRUSH CREEK LAND COMPANY LLC, a Colorado limited liability company (the "**Developer**"), and the TOWN OF SNOWMASS VILLAGE, COLORADO, a Colorado municipal corporation (the "**Town**").

**RECITALS**

WHEREAS Developer intends to develop that certain real property located in the Town known as Parcel 7, Woodrun V PUD (the "**Property**");

WHEREAS Developer has received approval from the Town to develop the Property (the "**Project**") as more particularly described in Town Ordinance No. 23, Series of 2004 (the "**Ordinance**");

WHEREAS in conjunction with the development of the Project, Developer is required to mitigate a required amount of Restricted Housing (as defined below);

WHEREAS this Agreement specifies the methods by which Developer shall mitigate such Restricted Housing;

WHEREAS execution of this Agreement by the Town and Developer is contemplated by the Ordinance;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration the sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I  
RESTRICTED HOUSING**

1.1. **Restricted Housing Mitigation Requirement.** As part of the development of the Project, the Town Land Use and Development Code (the "**Code**") requires Developer to mitigate 1,230 square feet of Restricted Housing (the "**Restricted Housing Requirement**"). The Restricted Housing Requirement has been calculated by multiplying (i) the number of employees assumed to be generated by the Project at the rates set forth in Table 4-5 of the Code by (ii) 448 square feet of net interior floor area per generated employee (iii) by a required mitigation rate of 45% minus (iv) any applicable Restricted Housing redevelopment credit, as such formula is more particularly described in Section 16A-4-400 *et seq.* of the Code. For purposes of this Agreement, "Restricted Housing" means one or more residential dwelling units that is intended to be used to house employees generated by the Project or other individuals employed within the Town and is subject to a Declaration of Restrictive Covenants as described in Section 1.5 below.

1.2. **Satisfaction of Restricted Housing Requirement.** Developer shall construct 610 square feet of Restricted Housing on the Property in conjunction with the development

of the Project and the remainder of the Restricted Housing Requirement shall be satisfied by application of 620 square feet of the Restricted Housing credit held by Bush Creek Land Company, LLC, as of the date Developer applies for a building permit for the Project. Developer shall complete construction of and receive a certificate of occupancy for the on-site Restricted Housing described above prior to the issuance of a certificate of occupancy for the tenth and final free market unit in the Project.

1.3. Ownership of Restricted Housing. The Restricted Housing to be constructed on the Property shall be sold by Developer to an eligible individual in the Town, as such eligibility is determined by the Declaration of Restrictive Covenants described in Section 1.5 below.

1.4. Initial Sales Price. The initial sales price of the Restricted Housing unit to be sold by Developer pursuant to Section 1.3 above shall be consistent with the then-current sales prices, on a dollar per square foot basis, for comparable units in the Daly Townhomes project.

1.5. Restrictive Covenant. Prior to the sale or leasing of the Restricted Housing unit, Developer shall cause to be executed and recorded in the real property records of Pitkin County, Colorado a "Declaration of Restrictive Covenants" against such Restricted Housing unit. The form and substance of the Declaration of Restrictive Covenants shall be approved by the Town, acting reasonably, and shall be consistent with the terms of Chapter 17 of the Town municipal code regarding the individuals eligible to purchase such Restricted Housing units.

1.6. Fulfillment of Obligations. This Agreement and the parties' performance of their respective obligations hereunder constitute the complete satisfaction of Developer's Restricted Housing mitigation requirements under the Ordinance, the Code or otherwise.

## ARTICLE II DEFAULT

2.1. Default. The failure by either party to observe or perform any of its obligations set forth above in any material respect and the continuance of such failure beyond the Cure Period shall constitute an "Event of Default."

2.2. Notice of Default. Upon the occurrence of a default, the non-defaulting party shall provide the defaulting party a written notice of such default specifying the breach ("Notice of Default"). The defaulting party shall have 60 days after receipt of the Notice of Default (the "Cure Period") to cure the breach specified in the Notice of Default (or if such default cannot be cured within the 60 day period, if such defaulting party shall fail to promptly commence to cure the same and thereafter diligently proceed with such cure). During the Cure Period, Developer and the Town shall seek diligently and in good faith to negotiate a settlement of any dispute set forth in the Notice of Default, using the services of a neutral mediator if either party so requests. The conduct of such negotiations, or the failure of such negotiations to achieve a settlement, shall not affect the other rights and remedies of the parties under this Agreement.

2.3. Remedies.

2.3.1. In the event of an Event of Default by Developer, Developer shall not be entitled to receive a building permit for any of the buildings approved for the Project (as more particularly described in the Ordinance) until such Event of Default has been cured. In addition, upon an Event of Default by Developer, the Town shall have all rights available to it at law or in equity, specifically including the right to injunctive relief or damages.

2.3.2. Upon an Event of Default by the Town, Developer shall have all rights available to it at law or in equity, specifically including the right to injunctive relief or damages.

ARTICLE III  
ASSIGNMENT

3.1 Assignment by Developer.

(a) Except as set forth below in Section 3.1(b) below or as expressly provided to the contrary above, Developer may not assign any of its rights or obligations under this Agreement without the prior written consent of the Town.

(b) Developer may assign its rights and obligations under this Agreement, or any portion thereof, without the Town's consent by a written recorded instrument expressly assigning such rights and powers to any of the following entities:

(i) any Affiliate of Developer;

(ii) Aspen Skiing Company, LLC, a Colorado limited liability company, or any of its Affiliates; or

(iii) any entity which succeeds to substantially all of Developer's remaining development rights with respect to the Property as described in the Ordinance.

For purposes hereof, "Affiliate" shall mean any natural person or entity that owns or controls, is owned or controlled by, or is under common ownership with an entity. "Ownership" or "control" means (A) direct or indirect ownership or control of at least 50 percent of all outstanding equity interests in an entity, or (B) the ability to direct or cause the direction of the management of an entity by ownership of equity interests, agreement or otherwise.

(c) Upon an assignment by Developer of any of its rights or obligations under this Agreement to an entity listed in Section 3.1(b)(i) through (iii) above, and an assumption of those rights or obligations by such assignee, Developer shall be released of all liabilities arising under this Agreement with respect to such rights or obligations.

ARTICLE IV  
MISCELLANEOUS

4.1 Binding Effect. This Agreement shall be binding upon the parties and shall inure to the benefit of each party's successors and assigns, as designated by a written assignment recorded in the Pitkin County Clerk and Recorder's Office.

4.2 Burden and Benefits. Each of the benefits, burdens, terms, covenants, agreements and conditions of this Agreement shall be construed as covenants running with the land benefiting and burdening the Property or any applicable portion thereof, and it is the intent of the parties that such benefits, burdens, terms, covenants, agreements and conditions touch and concern the Property.

4.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

4.4 Interpretation. Unless the context of this Agreement clearly requires otherwise:

(a) terms defined in the singular may be used in the plural, and terms defined in the plural may be used in the singular;

(b) "including" and "such as" are not limited;

(c) "or" has the inclusive meaning represented by the phrase "and/or";

(d) the words "hereof," "herein," "hereby," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) Article, Section, clause, paragraph and Exhibit references are to this Agreement unless otherwise specified; and

(f) references to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

All of the exhibits to this Agreement are hereby incorporated into this Agreement by reference. In the event of any conflict between a term, condition or provision of this Agreement and a provision of the Code, the terms of this Agreement shall control.

4.5 Severability. If any provision of this Agreement shall be invalid, illegal, void or unenforceable, it shall not affect or impair the validity, legality or enforceability of this Agreement or any other provision hereof, and a court shall enforce this Agreement to the maximum extent legally possible to give effect as nearly as possible to the original intent of the Town and Developer as expressed in this Agreement. If any provision of this Agreement is invalid, illegal, void or unenforceable not in its entirety but as applied to a particular act, thing or circumstance, such provision shall not affect or impair the validity, legality or enforceability of this Agreement or any provision hereof as applied to any other act, thing or circumstance, and a court shall apply such provision and enforce this

Agreement to the maximum extent legally possible to give effect as nearly as possible to the original intent of the Town and Developer as expressed in this Agreement.

4.6 Amendment; Waivers. This Agreement may be modified or amended, and waivers hereunder granted, only in writing and only with the consent and approval of Developer and the Town. Notwithstanding the foregoing, if Developer loses its right to develop the Project for any reason other than a failure of Developer to meet its obligations under the Ordinance or any agreements, including this Agreement, entered into in connection therewith, then Developer shall immediately be relieved of all obligations hereunder and the parties shall execute a written termination of this Agreement.

4.7 Notices. Any notice to be given to Developer or the Town under this Agreement shall be given by registered or certified mail, overnight courier, telecopy, telegram or hand delivered to the address of the party to whom notice is being given. Any notice sent by registered or certified mail will be deemed to have been received three business days following the date of mailing. Any notice sent by overnight courier will be deemed to have been received one business day following the date of delivery to the overnight courier. Either party may change its address for notice by advising the other party in writing of such change, and until the other party is so advised, it will be entitled to continue sending notices to the last address it is advised of in writing

If to the Town:           Town of Snowmass Village  
                                  P.O. Box 5010  
                                  0016 Kearns Road  
                                  Snowmass Village, Colorado 81615  
                                  Attention: Town Manager  
                                  Telephone: (970) 923-3777  
                                  Facsimile: (970) 923-6083

If to Developer:           Brush Cree Land Company, I.I.C  
                                  P.O. Box 1248  
                                  Aspen, Colorado 81612  
                                  Attention: David Bellack  
                                  Telephone: (970) 300-7150

with a copy to:           Stephen P. Sandier, Esq.  
                                  Gould & Ratner  
                                  222 North LaSalle  
                                  Chicago, Illinois 60601  
                                  Telephone: (312) 899-1626

4.8 Recording. Developer and the Town each shall have the right to record this Agreement in the records of the office of the Clerk and Recorder of Pitkin County, Colorado.

4.9 Captions and Titles. All captions and titles of headings of Articles and Sections in this Agreement are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

4.10. Attorney Fees. Notwithstanding anything to the contrary contained in this Agreement, if either party institutes legal proceedings against the other with respect to this Agreement, the nonprevailing party shall pay to the prevailing party an amount equal to all attorneys' fees and disbursements and all other costs and expenses incurred by the prevailing party in connection therewith, including, without limitation, the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party, whether incurred before or at trial, on appeal, in bankruptcy or in post-judgment collection.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the date set forth below to be effective as of the date written above.

TOWN:

TOWN OF SNOWMASS VILLAGE,  
COLORADO, a Colorado municipal corporation

By: \_\_\_\_\_  
Russ Forrest, Town Manager

Date: \_\_\_\_\_

DEVELOPER:

Brush Creek Land Company, a Colorado LLC

\_\_\_\_\_  
David Bellack, Authorized Representative

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
John Dresser, Town Attorney

Tab 8

**SUBDIVISION IMPROVEMENTS AGREEMENT  
FOR  
FANNY HILL PLANNED UNIT DEVELOPMENT**

THIS AGREEMENT (this "Agreement") is made as of November 4, 2004 by and between THE TOWN OF SNOWMASS VILLAGE, COLORADO, a Colorado home rule municipal corporation (the "Town"), and BRUSH CREEK LAND COMPANY LLC, a Colorado limited liability company ("BCLC").

**RECITALS:**

A. BCLC intends to develop that real property situated in the Town (the "Property"), which Property is commonly known as the Fanny Hill Planned Unit Development (the "PUD").

B. BCLC has proposed to develop the Property as more particularly described in the Final PUD Application for Fanny Hill (the "Application") submitted to the Town on August 30, 2004 and approved by the Town on October 20, 2004 by Town Ordinance No. 23, Series of 2004 (the "Ordinance").

C. BCLC has further submitted to the Town plans (collectively, the "Plans") for certain (i) public infrastructure improvements (the "Public Improvements"), and (ii) landscape improvements (the "Landscape Improvements," together with the Public Improvements sometimes referred to herein collectively as the "Improvements") being constructed by BCLC in connection with the development and improvement of the Property pursuant to the Application. The Plans, the Public Improvements and the Landscape Improvements, together with the estimated construction costs and completion schedules for the Improvements, are all as more particularly described on Exhibit "A" attached hereto.

D. The Town Council of the Town has approved the Application submitted by BCLC, subject to certain requirements and conditions which involve the installation and construction of the Improvements.

E. Pursuant to the provisions of Section 16A-5-360(c)(2)(e) of the Snowmass Village Municipal Code (the "Code"), BCLC is obligated to construct, install and guarantee the Improvements.

NOW, THEREFORE, in consideration of the premises and the terms and conditions herein stated and for other good and valuable consideration, the receipt and adequacy of which is acknowledged by the parties hereto, it is agreed as follows:

1. BCLC's Guarantee and Warranty. BCLC hereby guarantees the installation, as hereafter provided and as necessary to serve the Property, and payment therefor, of all the Improvements. BCLC hereby warrants all Improvements constructed or installed by BCLC against defects in materials and workmanship for a period of two (2) years after acceptance or until July 1<sup>st</sup> of the year during which the second (2<sup>nd</sup>) winter terminates after acceptance, whichever is later, of the Improvements by the Town or the utility companies as described in Section 16A-5-360(c)(2)(e)(4) of the Code. BCLC agrees to promptly correct any deficiencies in installation in

order to meet the requirements of the Plans applicable to such installation. In the event such installation is not completed substantially within the applicable schedules (as set forth on Exhibit "A" attached hereto), if any, and according to the specific Plans therefor, the Town shall have the right to cause such work to be done as is necessary to complete the installation in such manner and BCLC shall be liable for the cost of such work.

2. Public Improvements. BCLC shall install or construct, as applicable, all Public Improvements in accordance with the plans and specifications attached hereto or referenced on Exhibit "A" attached hereto. BCLC acknowledges that, as required by the Ordinance, it is required to submit additional civil drawings to the Town for the Town's review and approval and that such civil drawings will include information relating to the Public Improvements.

(a) Water Lines and Sanitary Sewer Collection Lines.

(i) BCLC and Snowmass Water and Sanitation District (the "District") shall enter into an agreement providing for the installation of all water lines, sanitary sewer lines, and appurtenant facilities, whether such lines and other facilities are actually on the Property, bordering the Property, or on other lands connecting the Property to the existing water distribution and sewage collection system, in accordance with the standard specifications of the District.

(ii) The cost of all such lines shall be borne by BCLC and/or the District in such manner as BCLC and the District may determine pursuant to an agreement between BCLC and the District. BCLC shall enter into a separate guaranty and warranty to the District for such facilities.

(b) Electric, Gas, Telephone and Cable TV Facilities.

(i) BCLC has entered into agreements with Holy Cross Energy to provide for the engineering and installation of all electrical distribution lines and facilities required for the Property, and BCLC will pay the cost of installation of such facilities in accordance with its agreements with Holy Cross Energy.

(ii) BCLC shall enter into such agreements with SourceGas as may be reasonable and appropriate to provide for the engineering and installation of all gas lines and distribution facilities required for the Property, and BCLC shall pay the cost of installation of such facilities in accordance with its agreements with SourceGas.

(iii) BCLC has entered into agreements with Qwest to provide for the engineering and installation of all telephone lines and facilities required for the Property, and BCLC will pay the cost of installation of such facilities in accordance with its agreements with Qwest.

(iv) BCLC shall enter into such agreements with Comcast as may be reasonable and appropriate to provide for the engineering and installation of all cable television distribution lines and facilities required for the Property, and BCLC shall pay the cost of installation of such facilities in accordance with its agreements with Comcast.

(c) Storm Drainage Improvements. BCLC shall install all storm sewer lines and storm water drainage facilities described in the Plans. The final design of all storm drainage facilities shall be subject to the review and approval of the Town engineer.

(d) Trails.

(i) BCLC agrees to construct the trails on the Property as described on that certain Pedestrian Circulation and Mobility Map attached hereto as Exhibit "B" (the "Mobility Map").

(ii) BCLC agrees to grant easements for all existing and proposed trails, or portions thereof, to be constructed on the Property for those easements that do not yet exist and as shown in the Plans and/or the Mobility Map.

(iii) The Town agrees to grant easements, or to cause such easements to be granted, where necessary for IBC to satisfy its obligations under this Section 2(d).

(e) Heated Storage Room. BCLC shall install a centrally-located heated storage room on the Property that is at least 10' by 10' in size. Such storage room shall be equipped with specialized fire fighting equipment to be designated and approved by the Snowmass-Wildcat Fire Protection District, the cost of which shall not exceed \$10,000.

3. Landscape Improvements. BCLC shall install all Landscape Improvements in accordance with the final landscape plans and specifications approved in connection with the final PUD and pursuant to the phased schedule set forth on Exhibit "A" attached hereto.

4. Traffic Control. During the construction of any Improvements described in this Agreement, BCLC shall be responsible for controlling and expediting the movement of vehicle and pedestrian traffic through and around all construction sites and activity.

5. Maintenance and Repair. The Town acknowledges that BCLC's construction traffic will accelerate the normal wear and tear of the Town's roadways. The Town acknowledges that any such accelerated wear and tear to the Town's roadways caused by normal construction traffic will be repaired using funds generated by the Occupancy Assessment imposed by the Town under Section 18-42 of the Code in connection with the development of the Project. The Town hereby releases BCLC from any responsibility for such accelerated wear and tear. BCLC agrees that it shall repair or pay for any extraordinary damage beyond the scope of any such accelerated wear and tear. The Town shall notify BCLC within a reasonable time after discovery of any claim hereunder, and BCLC shall have a reasonable period of time within which to make any required repairs.

6. Security for Improvements; Release of Security.

(a) On or before the date of recording of the final PUD, BCLC shall deliver (i) a letter of credit, (ii) a payment and performance bond, or (iii) other security which is reasonably acceptable to the Town (hereinafter, the "Performance Guaranty") for purposes of assuring the final completion of the Improvements; provided, however, that notwithstanding the foregoing, the Performance Guaranty for the Landscape Improvements may be obtained in phases corresponding with the construction schedule described on Exhibit "A" attached hereto. The amount of the Performance Guaranty shall be one hundred percent (100%) of the cost of constructing the Improvements, which estimated Improvements costs are set forth on Exhibit "A" attached hereto. Upon acceptance by the Town Manager of the Town (the "Town Manager"), or his designee, of a final Certification of Completion of Improvements from an engineer licensed in Colorado (hereinafter the "Acceptance"), the Performance Guaranty shall be released and the Town will

execute any such documents as are reasonably necessary to accomplish the release of the Performance Guaranty.

(b) The Performance Guaranty, (i) if in the form of a letter of credit, shall be issued by a state or national banking institution in a form reasonably acceptable to the Town, or (ii) if in the form of a payment and performance bond, shall be issued by a national surety company in a form reasonably acceptable to the Town.

(c) The Performance Guaranty must be valid for the time period anticipated for completion of the Improvements as set forth on Exhibit "A" attached hereto. Any extension of the time period for completion of the Improvements shall cause the Performance Guaranty to be extended for an equal amount of time. Any such extension shall be in writing.

(d) No more frequently than once every month, BCLC shall be entitled to partial releases of the Performance Guaranty with respect to the Public Improvements as portions of the Public Improvements are completed. In order to obtain a partial release or reduction of the Performance Guaranty, BCLC shall submit a Certificate of Partial Completion (the "Certificate") signed by an engineer licensed in the State of Colorado describing the portion of the Public Improvements completed and the cost allocation associated with such completed Public Improvements. Such Certificate shall include a summary of the actual costs for the Public Improvements incurred to the date of the Certificate. After delivery of a Certificate, the Town Manager, or his designee, shall have a period of fifteen (15) days within which to accept the Certificate, as evidenced by a written notice to BCLC, or provide written notice to BCLC of any deficiencies in the Public Improvements. Any such notice of deficiencies shall describe the deficiency between the Public Improvements as constructed and the approved Plans. If the Town Manager, or his designee, provides BCLC written notice of acceptance of the Certificate, then the Town shall release the appropriate amount of the Performance Guaranty as relates to such completed Public Improvements. If the Town Manager, or his designee, provides BCLC a letter of deficiency with respect to any portion of the Public Improvements for which BCLC has filed a Certificate, then the Town's engineer shall meet with BCLC's engineer to discuss and agree on any requirements necessary to bring such Public Improvements into conformity with the Plans. Upon compliance with any requirements delineated by the Town's engineer for compliance with the Plans, the Town shall release that portion of the Performance Guaranty allocated for the cost of such portion of the Public Improvements. Upon the Town's initial acceptance of an Improvement and the commencement of the two-year warranty described in paragraph 1 above, (i) the Town shall release that portion of the Performance Guaranty attributable to that Improvement as provided above, and (ii) subject to the requirements of paragraph 6(b) above, BCLC shall deliver a letter of credit or payment and performance bond to the Town in an amount equal to 5% of the cost of that Improvement for the purpose of securing the warranty for that Improvement. Such letter of credit or payment and performance bond shall be maintained by BCLC for the warranty period described in paragraph 1 above for that Improvement and, upon the expiration of such warranty period, the Town shall release such letter of credit or payment and performance bond. BCLC shall reimburse the Town all fees for Town's engineer to inspect the Public Improvements and approve or provide a notice of deficiency with respect to any Certificate. Nothing herein shall preclude the parties from mutually establishing a different procedure for obtaining partial releases from the Performance Guaranty.

(e) The Acceptance shall not be unreasonably withheld or delayed, provided that, in the event weather or other factors beyond the reasonable control of BCLC delay the

installation of those Improvements sensitive to weather or such other factors, the applicable Performance Guaranty shall remain in full force and effect.

(f) The Town may, at its sole option, permit BCLC to substitute other collateral acceptable to the Town for the collateral originally given by BCLC to secure the completion of the Improvements.

(g) In the event all the Improvements secured by the applicable Performance Guaranty will not be completed prior to the expiration of such Performance Guaranty, BCLC shall replace or secure an extension of such Performance Guaranty on terms acceptable to the Town, at least thirty (30) days prior to expiration of such Performance Guaranty. Should BCLC fail to do so, the Town may draw on such Performance Guaranty funds necessary to complete the Improvements and place the funds directly into an escrow account under the control of the Town, and such funds shall be used to complete the Improvements required hereunder.

(h) The estimated costs of the Improvements are an estimated amount mutually agreed at this time by BCLC and the Town as set forth on Exhibit "A" attached hereto. In the event the cost of the Improvements exceeds the estimated cost, BCLC shall be solely responsible for the actual cost. The purpose of the cost estimate is solely to determine the amount of security and shall be revised every twelve (12) months to reflect the actual costs, and the applicable Performance Guaranty required by this Agreement shall be adjusted accordingly. No representations are made as to the accuracy of these estimates, and the BCLC agrees to pay the actual costs of all such Improvements.

7. Default. Subject to the provisions of Section 16A-5-360(c)(2)(e)(5), if BCLC fails to observe or perform any of its obligations set forth above in any material respect, BCLC shall have the right to cure said default after written notice by the Town of the default to BCLC. If BCLC fails to cure such default within sixty (60) days after written notice is given from the Town to BCLC (or if such default cannot be cured within the sixty (60) day period of time, if BCLC shall fail to promptly commence to cure the same and thereafter diligently proceed with such cure), then the Town shall be entitled to undertake such work as may be necessary and appropriate to cure such default. The Town shall be entitled to full reimbursement for the reasonable costs of all such work. Notwithstanding the foregoing, upon an event of default by BCLC as described above that remains uncured beyond the cure period described above, BCLC shall not be entitled to receive a building permit for the construction of any of the buildings described in the Ordinance remaining to be constructed until such default has been cured. Any written notice required to be given to BCLC shall be given by first class mail, postage prepaid, and by certified mail, return receipt requested, to the following addresses:

If to the Town: Town of Snowmass Village  
P.O. Box 5010  
0016 Kearns Road  
Snowmass Village, Colorado 81615  
Attention: Town Manager  
Telephone: (970) 923-3777  
Facsimile: (970) 923-6083

If to IBC: Brush Creek Land Company LLC  
P.O. Box 1248  
Aspen, Colorado 81612  
Attention: Dave Bellack  
Telephone: (970) 300-7150

with a copy to: Stephan P. Sandler, Esq.  
Gould & Ratner  
222 North LaSalle  
Chicago, Illinois 60601  
Telephone: (312) 899-1626

BCLC may notify the Town in writing of any change in address to which this notice shall be given.

8. Assignment. BCLC may assign its rights and obligations under this Agreement, or any portion thereof, without the Town's consent by a written recorded instrument expressly assigning such rights and powers to any of the following entities: (i) any Affiliate of BCLC; (ii) Aspen Skiing Company, LLC, or any of its Affiliates. Upon an assignment by BCLC of any of its rights or obligations under this Agreement an assumption of those rights or obligations (including substitution of financial assurances) by such assignee, and, evidence from a reputable banking institution or surety company that the Affiliate is bondable (subject to any guaranties from BCLC or another third party required to be posted by such banking institution or surety company), BCLC shall be released of all liabilities arising under this Agreement with respect to such rights or obligations. Notwithstanding the foregoing, if BCLC assigns any of its rights or obligations under this Agreement to any entity described above which is not an Affiliate of BCBC, or Aspen Skiing Company, LLC, and at the time of such assignment security for the obligations so-assigned has not yet been posted with the Town, then BCLC shall not be released of its liabilities arising under this Agreement with respect to such rights or obligations until the applicable security described in paragraph 6 above has been posted. For purposes hereof, "Affiliate" shall mean any natural person or entity that owns or controls, is owned or controlled by, or is under common ownership with an entity. "Ownership" or "control" means (A) direct or indirect ownership or control of at least 50 percent of all outstanding equity interests in an entity, or (B) the ability to direct or cause the direction of the management of an entity by ownership of equity interests, agreement or otherwise.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of BCLC and its respective successors and assigns.

10. Burden and Benefits. Each of the benefits, burdens, terms, covenants, agreements and conditions of this Agreement shall be construed as covenants running with the land benefiting and burdening the Property or any applicable portion thereof, and it is the intent of the parties that such benefits, burdens, terms, covenants, agreements and conditions touch and concern such property.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

12. Interpretation. Unless the context of this Agreement clearly requires otherwise:

(a) terms defined in the singular may be used in the plural, and terms defined in the plural may be used in the singular;

(b) "including" and "such as" are not limited;

(c) "or" has the inclusive meaning represented by the phrase "and/or";

(d) the words "hereof," "herein," "hereby," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) Article, Section, clause, paragraph and Exhibit references are to this Agreement unless otherwise specified;

(f) references to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; and

(g) all of the exhibits to this Agreement are hereby incorporated into this Agreement by reference. In the event of any conflict between a term, condition or provision of this Agreement and a provision of the Code, the terms of this Agreement shall control.

13. Severability. If any provision of this Agreement shall be invalid, illegal, void or unenforceable, it shall not affect or impair the validity, legality or enforceability of this Agreement or any other provision hereof, and a court shall enforce this Agreement to the maximum extent legally possible to give effect as nearly as possible to the original intent of the Town and IBC as expressed in this Agreement. If any provision of this Agreement is invalid, illegal, void or unenforceable not in its entirety but as applied to a particular act, thing or circumstance, such provision shall not affect or impair the validity, legality or enforceability of this Agreement or any provision hereof as applied to any other act, thing or circumstance, and a court shall apply such provision and enforce this Agreement to the maximum extent legally possible to give effect as nearly as possible to the original intent of the Town and BCLC as expressed in this Agreement.

14. Amendment; Waivers. This Agreement may be modified or amended, and waivers hereunder granted, only in writing and only with the consent and approval of BCLC and the Town. Notwithstanding the foregoing, if BCLC loses its right to develop the Project for any reason other than a failure of BCLC to meet its obligations under the Ordinance or any agreements, including this Agreement, entered into in connection therewith, then (a) BCLC shall immediately be relieved of all obligations hereunder, (b) within 30 days after such action the Town shall release or return, as applicable, any sums paid or posted by BCLC pursuant to this Agreement, and (c) the parties shall execute a written termination of this Agreement.

15. Recording. BCLC and the Town each shall have the right to record this Agreement in the records of the office of the Clerk and Recorder of Pitkin County, Colorado.

16. Captions and Titles. All captions and titles of headings of Articles and Sections in this Agreement are for the purpose of reference and convenience and are not to be deemed to limit,

modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed on the date set forth below to be effective as of the date written above.

TOWN:

TOWN COUNCIL OF SNOWMASS VILLAGE,  
COLORADO, a Colorado municipal corporation

By: \_\_\_\_\_  
Russ Forrest, Town Manager

Date: \_\_\_\_\_

BCLC:

BRUSH CREEK LAND COMPANY, a Colorado limited  
liability company

By: \_\_\_\_\_  
David E. Bellack, authorized representative

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
John Dresser, Town Attorney

STATE OF COLORADO )  
 ) ss.  
COUNTY OF PITKIN )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2011,  
by Russ Forrest as Town Manager of the Town of Snowmass Village, Colorado.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

---

Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF PITKIN )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2011,  
by David E. Bellack, as authorized representative of Brush Creek Land Company..

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

---

Notary Public

EXHIBIT "A"

Improvements

**Public Improvements:**

<u>Type</u>	<u>Plans/Description</u>	<u>Estimated Cost</u>	<u>Estimated Completion Schedule</u>
Water & Sewer	C-2 Site Plan	100k	2012
Electric, gas Telephone & cable	C-2 Site Plan	10k	2012
Storm Drainage	C-3 Grading & Drainage	10k	2012
Trails	L1.3	2k	2012

**Fanny Hill Cabins Landscape Improvements:**

<u>Type</u>	<u>Plans/Description</u>	<u>Estimated Cost</u>	<u>Estimated Completion Schedule</u>
Phase 3	L3-2 Phases 2,3,4 & 5 Planting Plan	100k	2012

EXHIBIT "B"

Pedestrian Circulation and Mobility Map