

WHEN RECORDED, RETURN TO:

Summit Mountain Holding Group, L.L.C.
3632 N. Wolf Creek Drive
Eden, Utah 84310
Attention: M. Thomas Jolley

**EASEMENT AGREEMENT
FOR SKI TUNNEL
(Summit Pass)**

This EASEMENT AGREEMENT ("Agreement") is made this _____ day of _____ 2013, by and between Weber County Corporation, a political subdivision of the State of Utah ("Grantor"), and SMGH Phase I, LLC, a Delaware limited liability company, its successors and assigns ("Grantee").

R E C I T A L S

A. Grantor is the owner of a public road located in Weber County, Utah, commonly known as "Summit Pass."

B. Grantee is the owner of certain real property adjacent to Summit Pass, located in Weber County, Utah, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("Grantee's Property"). **[Drafting note: include all of Phase 1]**

C. To provide use of a tunnel under Summit Pass ("Ski Tunnel") for year round access between portions of Grantee's Property, Grantee desires an easement under a portion of Summit Pass. The location in which the Ski Tunnel is or shall be constructed is more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference (the "Easement Property"). The Easement Property is also depicted visually on Exhibit "C" which is attached hereto and incorporated herein by this reference.

D. On the terms provided for in this Agreement, Grantor has agreed to provide Grantee with an easement over, across and through the Easement Property.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

AGREEMENT

1. Grant of Easement. Grantor hereby grants to Grantee and the Benefited Parties (defined below) a perpetual non-exclusive easement over, across, and through the Easement Property for pedestrian and vehicular ingress, egress and access as may be reasonably necessary for trail construction, maintenance and grooming, and skiing, cycling, hiking, and other

recreational activities (the “Easement”). As necessary for construction, maintenance, and grooming of any trails, the Easement shall include use of and access to Summit Pass.

2. Bridge Construction and Maintenance. Grantor shall construct the Ski Tunnel within the Easement Property of sufficient size and quality to provide for the uses described in Section 1 above. Grantor shall coordinate the timing and design of all construction and maintenance of the Ski Tunnel with Grantee so as not to unreasonably interfere with Grantee’s use of the Easement Property. Grantor shall maintain the Ski Tunnel in good condition and repair at its sole expense.

3. Easement Appurtenant to Grantee’s Property. The Easement shall be appurtenant to and run with the land and constitute a portion of the Grantee’s Property and each part thereof. It is anticipated that the trails through the Ski Tunnel will be part of the ski and trail facilities for the Powder Mountain ski resort (“Ski Resort”). Moreover, Grantee’s Property may be subdivided into multiple, separately owned residential lots. Accordingly, the Easement shall be for the use and benefit of the following parties (the “Benefited Parties”): (a) Grantee and its transferees, successors and assigns, including all future owners of Grantee’s Property and any homeowners association owning any portion of Grantee’s Property; (b) all employees, contractors, subcontractors, agents, licensees, and invitees of Grantee, its transferees, successors and assigns; and (c) the owner and/or operator of the Ski Resort and its employees, contractors, subcontractors, agents, licensees, and invitees. In furtherance of the foregoing, Grantee has the right to convey, transfer, and assign the Easement, or grant sub-easements in gross to the owners association governing the owners of the residential lots within Grantee’s Property, and the owner or operator of the Ski Resort for the purposes of allowing for the use of this Easement as part of the recreational facilities within the Ski Resort. In the event Grantee assigns all of its rights and obligations hereunder to the owners association governing the owners of the residential lots within Grantee’s Property, Grantee shall be relieved of its duties and obligations hereunder.

4. Notices. All notices made pursuant to this Agreement shall be in writing and shall be given by personal delivery to a responsible person, by electronic transmission, by deposit in the United States mail (certified mail, return receipt requested, postage prepaid), or by express delivery service, freight prepaid. Notices shall be delivered or addressed to Grantor and Grantee at the following addresses, or at such other address as a party may designate in writing:

Grantor: Weber County Corporation
2380 Washington Blvd.
Ogden, Utah 84401
Attn: Weber County Attorney

Grantee: SMHG Phase I, LLC
c/o Summit Mountain Holding Group, L.L.C.
3632 N. Wolf Creek Drive
Eden, Utah 84310
Attention: M. Thomas Jolley
Tom@summit.co

With a copy to: Thomas G. Bennett, Esq.
Ballard Spahr LLP
201 S. Main Street, Suite 800
Salt Lake City, UT 84111
Bennett@ballardspahr.com

The date notice is deemed to have been given, received and become effective shall be the date on which the notice is delivered, if notice is given by personal delivery or electronic transmission, or the date of actual receipt if the notice is sent through the United States mail or by express delivery service.

5. Covenants to Run with the Land. The Easement, rights and interests granted herein shall constitute covenants running with the land, and shall burden the Easement Property as the servient estate, and benefit the Grantee's Property as the dominant estate, and shall be binding upon Grantor, its successors, assigns and any person acquiring, leasing or otherwise owning an interest in the Easement Property, and shall inure to the benefit of Grantee and the Benefited Parties.

6. Enforcement. In the event either party fails to cure any violation of the terms of this Agreement within ten (10) days after written notice from the other, the non-defaulting party shall have the right to injunctive relief, to require specific performance of this Agreement, to collect damages from the defaulting party, and to take such actions as may be necessary in the non-defaulting party's discretion to cure such violation and charge the defaulting party with all reasonable costs and expenses incurred by the non-defaulting party as a result of such violation (including, without limitation, the non-defaulting party's reasonable attorneys' fees and related costs). All rights and remedies provided under this Agreement are cumulative and may be pursued singularly, in any combination, and in any order. The failure to enforce any of the terms and provisions contained herein shall in no event be deemed to be a waiver of the right to thereafter strictly enforce the terms and provisions hereof.

7. General Provisions.

7.1 Recitals Incorporated. The Recitals set forth above are true and correct and are incorporated herein by this reference.

7.2 Construction. This instrument shall be construed in accordance with the laws of the State of Utah without giving effect to its conflict of laws principles.

7.3 Amendment. The parties may amend this Agreement only by a written instrument executed by the parties and recorded in the Office of the Weber County Recorder.

7.4 Partial Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

7.5 Counsel. Both Grantor and Grantee have been represented by their own counsel in connection with the negotiation and preparation of this Agreement and, consequently, both Grantor and Grantee waive the application of any rule of law that would otherwise be applicable in connection with the interpretation of this Agreement, including any rule of law to the effect that any provision of this Agreement will be interpreted or construed against the party whose counsel drafted that provision.

7.6 Counterparts. This instrument may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

[Signatures on Following Pages]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement Agreement for Ski Tunnel as of the date first indicated above.

GRANTOR:

WEBER COUNTY CORPORATION, a political subdivision of the State of Utah

By: _____
Name: _____
Its: _____

ATTEST:

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

Weber County Attorney Date

GRANTEE:

SMHG Phase I, LLC, a Delaware limited liability company

By: SMHG Investments LLC, a Delaware limited liability company
Its: Sole Member

By: _____
Name: Elliott Bisnow
Its: Manager

By: _____
Name: Gregory Vincent Mauro
Its: Manager

EXHIBIT "A"
Grantee's Property

EXHIBIT "B"

Easement Property

A 35 FOOT WIDE EASEMENT FOR THE PURPOSES OF RECREATIONAL USE BENEATH THE ROADWAY SURFACE AND SPANNING THE 66 FOOT WIDE RIGHT-OF-WAY OF SUMMIT PASS ROAD, LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 7 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH RIGHT-OF-WAY LINE OF SUMMIT PASS ROAD, SAID POINT BEING SOUTH 89°55'51" EAST 6,969.20 FEET AND SOUTH 4,465.62 FEET FROM THE NORTHEAST CORNER OF SECTION 1, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, (BASIS-OF-BEARING IS NORTH 89°55'51" WEST FROM THE NORTHEAST CORNER OF SAID SECTION 1 TO A BRASSCAP MONUMENT ON THE WEBER COUNTY LINE SET BY THE WEBER COUNTY SURVEYOR), AND RUNNING THENCE SOUTH 47°55'31" EAST 35.00 FEET ALONG SAID NORTH R.O.W. LINE OF SUMMIT PASS ROAD; THENCE SOUTH 42°04'29" WEST 66.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID SUMMIT PASS ROAD; THENCE NORTH 47°55'31" WEST 35.00 FEET ALONG SAID SOUTH LINE OF SUMMIT PASS ROAD; THENCE NORTH 42°04.29" EAST 66.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT "C"

Depiction of Easement Property

