

MEMORANDUM OF AGREEMENT

The following terms of settlement would be deemed effective and binding upon the parties if the Parties are able to secure all necessary right-of-way permits and related easements to allow for a sixty foot (60') wide road and utility easement/access corridor from the terminus of that existing public road right-of-way (Coal Creek Road) to the South boundary of the subject property as provided for below (including all necessary rights-of-way across pertinent Forest Service roads). If the Parties are unable to secure such easement/access rights within the time period specified, Plaintiffs may elect to terminate this Agreement and resume the pending litigation reserving all rights and remedies thereunder as the same currently exist as of the date of this Agreement or grant a further extension of time to satisfy the above.

Terms of Settlement:

1. Condition Precedent - Easements/Right of Way Permits:

A. Utility Line Easements: The District shall be responsible to act as the lead agency, with full cooperation of the Plaintiffs, for purposes of obtaining all utility-related rights of way, easements, and permits, including related environmental review, necessary for purposes of enabling construction of the utility line extensions as set forth herein, provided, however, that to the extent it becomes necessary to exercise the power of eminent domain, as allowed by law, in order to acquire the rights-of-way for the utilities, the District alone is vested with that authority and, as such, shall be responsible for exercising the same in order to implement the terms of this agreement. In such a circumstance, the Plaintiffs shall cooperate fully in an eminent domain action brought for purposes of acquiring utility rights of way, which the parties acknowledge is of public use and necessity to the District in order

to serve District customers. The District shall be solely responsible for all costs associated with the acquisition of utility rights-of-way, including without limit those associated with any eminent domain action necessary to implement the terms of this Agreement.

B. Roadway/Access Easements: The Plaintiffs shall be responsible to act as the lead agency, with full cooperation of the District as allowed by law, for purposes of obtaining all easements and permits relating to obtaining a sixty foot (60') wide road access to the subject property meeting all applicable County requirements for development purposes.

C. Time for Satisfaction of Condition Precedent: The Parties shall have eighteen (18) months from the date of the execution of this agreement to secure and record all such necessary permits and easements as set forth above in a form satisfactory to Kittitas County for purposes of satisfying all road and utility easement/access requirements associated with a plat application or related land use development.

Subject to satisfaction of that condition precedent set forth above on or before expiration of the time period set forth therein and/or waiver of said condition by Plaintiffs, the following shall apply:

2. Allocation of Additional Sewer ERU Connections: Immediately upon satisfaction of that condition precedent set forth above on or before the time period stated therein and/or written waiver of the same by Plaintiffs, the District will assign to plaintiffs 192 additional sewer ERU connections (having an equivalent value of \$298,560.00 based upon a connection charge of \$1,555.00 per sewer connection ERU) as consideration for entering into this agreement and dismissing that pending lawsuit referenced herein.

3. Duration of Sewer/Water Rights: Concurrent with the issuance of the 192 additional sewer ERU connections the District will grant to Plaintiffs a "Certificate of Availability" similar to the

form attached hereto as Exhibit A and incorporated herein by this reference (hereinafter “COA”) confirming the right and availability of the subject property to receive 230 water ERU and 230 sewer ERU connections without further system development charges such as connection charges and/or general or capital facilities charges, latecomer fees, or increase in any assessment or connection charges (other than such usual and customary fees associated with meter installation costs imposed upon all customers within the District); provided, however, this provision shall not be construed as precluding the District from imposing such charges or assessments duly adopted by the District for any new capital facilities projects arising on or after the date of this Agreement which benefit the subject property and are imposed on other similarly benefited properties within the District. Such COA shall remain valid and vested for a period of fifteen (15) years from the date the Parties obtain all necessary right-of-way permits and other permits necessary to enable the construction of said water and sewer line extensions and the easements for road and utility access to the subject property (as discussed in paragraph 1 above) during which time the District shall reserve sufficient capacity to provide 230 ERU’s of water and sewer service to the subject property. The District covenants and agrees that it shall in no way restrict or limit the actual consumptive water use of any unit or lot’s hookup within the subject property unless such restrictions are imposed on all service areas within the District, as authorized by RCW 57.08.170. Such COA shall contain the right to transfer or assign as set forth below and shall be deemed to incorporate all terms of this Agreement pertaining thereto.

4. Unused Water/Sewer ERU’s: Upon or after expiration of any COA described herein, Plaintiffs shall retain their unused water and sewer ERUs. Plaintiffs’ right to utilize such ERUs shall be subject to any then-existing COA requirements of the district applicable to all similarly situated holders of sewer and water ERUs. Plaintiffs shall retain a monetary credit of \$710.00

for each water ERU and \$1,555.00 for each sewer ERU to be applied to the system connection charge in effect at the time of any application for a new COA to connect to the District's water and/or sewer system utilizing such ERUs. Following expiration of any COA, the District shall not be required to reserve capacity for any unused sewer or water ERU connections retained by Plaintiffs and any subsequent application to utilize said ERU connections shall be subject to system capacity availability.

5. Transferability/Assignment of Water and Sewer ERU Connections: At any time prior to the expiration of the COAs as set forth herein, Plaintiffs shall have the right to transfer, sell or otherwise assign their unused certificated sewer and/or water ERU connections to any other property located within the District boundaries; provided, however, as to those 192 additional sewer ERU connections allocated to plaintiffs as set forth in paragraph 2 above, said right of transfer shall be limited as follows:

A. If the Plaintiffs, or their assigns and/or other parties with whom Plaintiffs enter into a joint development agreement, shall have constructed the water and sewer line extensions to the boundary of the subject property within seven (7) years from the date all necessary easements and permits are obtained for the purpose of proceeding therewith, subject to that tolling provision set forth in paragraph 10 below, Plaintiffs shall be entitled to use and/or sell, transfer or assign any or all of said additional 192 sewer ERU connections as Plaintiffs may elect on or after the date of completion of said line extensions upon such terms and conditions as Plaintiffs may deem appropriate; provided, however, the District shall have a right of first refusal to purchase some or all of the sewer ERU connections offered for sale by Plaintiffs upon the same terms and conditions as offered for sale by Plaintiffs or at the District's then existing rate for new sewer ERU system connection charges, at the District's option.

B. If Plaintiffs, or their assigns and/or other parties with whom Plaintiffs enter into a joint development agreement, shall not have constructed the water and sewer line extensions to the boundary of the subject property within seven (7) years from the date all necessary easements and permits are obtained for the purpose of proceeding therewith, subject to that tolling provision set forth in paragraph 10 below, Plaintiffs may thereafter elect to sell, transfer or assign upon such terms and conditions as Plaintiffs may deem appropriate any or all of said additional 192 sewer ERU connections; provided, however, the District shall have a right of first refusal to purchase some or all of the additional sewer ERU connections offered for sale by Plaintiffs based upon a base price of \$1,555.00 per sewer ERU connection together with interest at a variable rate equal to two percent (2%) over the prime rate, at the time of purchase, as published in the Wall Street Journal but not less than eight percent (8%) per annum from and after the date the COA certificates are issued by the District to Plaintiffs as provided for in paragraph 3 above, or at the District's then existing rate for new sewer ERU system connection charges, at the District's option.

C. For purposes of the right of first refusal provided for herein, Plaintiffs shall give prior written notice to the District advising as to the number and terms of sale for any offer to sell those additional sewer ERU connections to the District's Manager whereafter the District shall have thirty (30) calendar days within which to give written notice of its intent to exercise its option hereunder. If the District elects to exercise such option, all payments due and owing to Plaintiffs shall be made within an additional thirty (30) days following the District's issuance of its written notice to exercise this option. Failure of the District to give written notice exercising its option hereunder and/or failure to issue payment within the time periods set forth above shall cause the District's option to lapse and be of no further force or effect.

6. **Utility Line Extension:** It is recognized and understood that Plaintiffs or their assigns and/or other parties with whom Plaintiffs enter into a joint development agreement shall be solely responsible for the cost of any line extension of that water and/or sewer line from the existing termini of said lines to the boundary of the subject property in accordance with the District's applicable line extension requirements; provided, however, to the extent the Plaintiffs elect and/or are required to upsize said lines from 8-inch to 12-inch diameter pipelines, the District covenants and agrees to enter into a Developer Extension Agreement/Participation Contract substantially in the form attached hereto as Exhibit B providing for reimbursement to Plaintiffs of fifty percent (50%) of the costs of said line extension(s) to the boundary of the subject property. Said reimbursement shall be made from latecomers fees to be collected by the District on a pro-rata basis from property owners who did not contribute to the original cost of the line extension(s), and who subsequently tap onto or use the same, including but not limited to those directly connected to said line extension(s) and users connected to laterals or branches connected thereto. Said Developer Extension Agreement/Participation Contract shall remain in effect for a period of 15 years from the date said line extensions are formally accepted by the District. The costs to be reimbursed there under shall include, but not limited to, design, engineering, construction, installation, easement and right of way acquisition costs and administrative costs. Should the Plaintiffs be privately compensated for acquisition of easements across the subject property or other costs for purposes of extension of the utility lines to property beyond the subject property and/or costs associated with construction of those lines located upon the subject property, such compensation shall not constitute latecomer fees or other reimbursement to be credited hereunder.

A. Limited Guarantee to Reimburse: If Plaintiffs or their assigns and/or other parties with whom Plaintiffs work cooperatively complete construction of the line extension(s) to the boundary of the subject property within sixty (60) months from the date of the issuance of the COA's as set forth in paragraph 3 above, the District agrees to guarantee reimbursement to Plaintiffs of any deficiency in the latecomer fees at the end of said fifteen (15) year period as necessary to reimburse to Plaintiffs 50% of the total costs of said line extension(s) up to a maximum deficiency of \$200,000.00 (without interest).

B. District Request to Up-Size Line: If the District requires as a condition of any line extension that the line be up-sized from 8-inches to 12-inches the District shall be responsible for all additional project costs associated with upsizing the line including, but not limited to, increased material costs, site preparation and related construction costs attributable to the cost difference of installing an 8-inch line versus a 12-inch line (hereinafter "Additional Upsizing Costs"). The Additional Upsizing Cost increase shall be determined by comparing the engineer's estimate on the project utilizing an 8" pipe and engineer's estimate utilizing a 12" pipe. If the District disagrees with the engineer's estimate of Additional Upsizing Costs, the parties shall utilize the procedures set forth in paragraph 7(A) for resolving such dispute.

The District shall reimburse to Plaintiffs said Additional Upsizing Costs as the same are incurred by Plaintiffs within thirty (30) days of receipt of a verified billing or invoice for the same from Plaintiffs. Said Additional Upsizing Costs reimbursed by the District hereunder shall be included in that 50% of the total project costs to be reimbursed from those latecomer fees provided for in Paragraph 6 above.

C. Election not to Proceed: In the event Plaintiffs determine that the extension of the water and/or sewer lines to the boundary of the subject property is not practical

or feasible (i.e. because of design/development feasibility constraints, excessive costs, etc.), the District, unless precluded by law, shall issue a written statement, if requested by Plaintiffs, declaring that sewer and/or water service is unavailable to the subject property, and will otherwise not object to any application by Plaintiffs to construct a private on-site sewer and/or water system.

7. **Latecomers' Agreement:** Plaintiffs or their assigns and/or other parties with whom Plaintiffs work cooperatively shall submit their proposed design for the utility line extension(s) to the District for its prior review and approval in accordance with adopted District policy and applicable law. Prior to executing a contract for actual construction, Plaintiffs shall submit the engineer's estimate of the cost to complete said improvements including those Additional Upsizing Costs attributable to any upsizing of the lines to the extent requested by the District under paragraph 6(B) above, and the proposed construction contract itself for the District's review in accordance with adopted District policy and applicable law. The District shall have fifteen (15) days from the date of receipt to disapprove the contract in whole or in part. The District's failure to comment in writing within the prescribed period of time shall be deemed to be the District's approval of the submittal, and constitute a waiver of any objections that might otherwise have been raised. If, during performance of the contract, any construction-related change orders or modifications to the scope of the contract should become necessary, Plaintiffs shall submit such proposed changes in writing for the District's review in accordance with adopted District policy and applicable law. The District shall have fifteen (15) days from the date of receipt to disapprove the proposed changes in whole or in part. The District's failure to comment in writing within the prescribed period of time shall be deemed to be the District's approval of the proposed changes, and constitute a waiver of any objections that might otherwise

have been raised. Any disapproval of the contract, or proposed changes thereto, or performance thereunder, shall cause the performance obligations arising under this Agreement to be tolled until the dispute is resolved. Any and all requests, invoices, or submissions by the contractor to Plaintiffs for progress or final payments shall be submitted to the District Manager for review and approval prior to payment by Plaintiffs of any funds to the contractor.

A. Determination of Costs: Upon completion of the water and/or sewer line extension improvements to the boundary of the subject property, proof of the plaintiffs' reimbursable costs shall be submitted to the District for purposes of determining the reimbursable amount for purposes of the Developer Extension Agreement/Participation Contract set forth above in paragraph 6. To the extent the District has not waived its objections to the terms of the original contract, construction-related change orders or modification to the scope of the contract, and believes that any final costs submitted are not reasonable, the parties shall each designate a civil engineer licensed in Washington, who shall then jointly select a third, independent licensed civil engineer to review the costs submitted. That engineer shall review the reimbursable costs and made a final and binding determination as to the reasonableness of said costs, specifically taking into consideration, without limit, any benefits resulting from the use of a Developer Extension Agreement to construct the project, and all other information deemed relevant by either of the parties. The parties shall share equally in the costs associated with the engineer's review.

B. Benefited Properties Assessment Roll: Pursuant to Chapter 57.22 RCW, District shall then prepare rolls of the properties in the reimbursement area for the subject water and sewer lines and latecomer agreements utilizing the reimbursable costs as determined in accordance herewith. The reimbursement area shall include all property owners who did not

contribute to the original cost of the line extension(s), and who subsequently tap onto or use the same, including but not limited to those directly connected to said line extension(s) and users connected to laterals or branches connected thereto. The reimbursable costs of the improvements shall be distributed among the properties on the rolls based upon their lineal front footage pro rata share of the costs or such other method as the District deems appropriate. For the fifteen (15) year term of the latecomers' agreements, which shall commence on the date of the District's final acceptance of the subject water and sewer lines, all properties connecting to the subject water and sewer lines (or any branch or lateral connected thereto) shall be subject to the latecomers' connection charges, which shall be collected by the District and remitted in full to the Plaintiffs, except for any District administrative fees and charges assessed by the District to the owners of the properties relative to the latecomer agreements. Following the execution of the latecomer agreements by the District and the Plaintiffs, the latecomer agreements shall be recorded in the Kittitas County Auditor's Office. As used in this Agreement, the term "reimbursable costs" shall include all construction costs relating to the installation of the water and sewer line extensions, all permitting and easement acquisition costs relating thereto, and all design, engineering, installation, administrative, legal and related fees associated therewith, all as allowed by law.

8. Liquidated Damages for Construction Delays Caused by the Parties' Dispute: Solely for purposes of this Settlement Agreement, the District acknowledges that Plaintiffs have experienced damages in the form of increased construction costs attendant to the delay occasioned by the dispute giving rise to the underlying litigation. Upon satisfaction or other expiration of the condition precedent and time period (as described in paragraph 1 above), the District agrees to pay to Plaintiffs the sum of \$50,000.00 which shall be immediately tendered by

Plaintiffs to the District to defer the District's cost of acquiring all necessary easements, permits, and other expenses under this agreement.

9. **Developer Extension Agreement:** All utility extension(s) to the boundary of the subject property and reimbursement will be made under the terms of a "Developer Extension Agreement" specifying that the sewer and water line extensions be dedicated to and become the property of the District, after which the District would assume all responsibility for operation and maintenance thereof. The Developer Extension Agreement shall be on the forms customarily utilized by the District for developer extension agreements and in substantially similar form as that attached hereto as Exhibit B.

10. **Tolling; effect:** The parties' respective duties and obligations arising hereunder, including any time periods or deadlines for performance, shall be tolled during the pendency of any administrative or judicial actions and by any act, event or condition that materially and adversely affects the ability of such party to perform any obligation hereunder provided that such act, event, or condition a) is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of that party under this Agreement; (b) is not the result of the willful or negligent act, error, or omission of that party; and (c) such act, event, or condition could not have been prevented by the exercise of reasonable diligence.

11. **Controlling Language:** To the extent that the terms and conditions of this Agreement conflict or are inconsistent with the terms and conditions of any exhibit appended hereto, the language of the body of this Agreement shall control. Unless specified herein, the terms and conditions of this Agreement shall control over any contrary District policy.

12. **Dismissal and Release:** The parties hereto agree to stay all proceedings under Kittitas

County Superior Court Cause No. 04-2-00411-2 pending satisfaction by the Parties of those conditions set forth above. If the Parties are able to secure all permits and easements as provided for as set forth above on or before the expiration of said period, or as may be extended by mutual agreement and/or if Plaintiffs waive in writing such condition precedent, this Agreement shall become final and binding and incorporated by reference in an Order of Dismissal With Prejudice and Without Costs of the above referenced action; Provided, however, the Court shall retain jurisdiction over the parties for purposes of the enforcement of this Agreement.

In the event the Parties are unable to secure such permits and easements as provided for in paragraph 2 above on or before the expiration of said period, or as may be extended by mutual agreement, this Agreement shall become null and void unless otherwise waived by Plaintiffs. If this Agreement shall become void, the Parties shall retain and otherwise reserve all rights and remedies under that action currently pending in Kittitas County Superior Court, Cause No. 04-2-00411-2 and Plaintiffs shall be entitled to resume prosecution of the same upon ten (10) days written notice to the District.

Concurrent with the stipulation or other execution of this Agreement, and upon request by the District, Plaintiffs shall obtain from Richard Kloss a sworn statement that he has not made any representation to persons other than Plaintiffs that the assessments paid by property owners under ULID Nos. 4 and/or 7 constitute guaranteed water and/or sewer hook-ups, or that the District made any contractual promises that water and/or sewer lines would be extended to the boundaries of any other property as part of ULID Nos. 4 and 7.

13. Correspondence and Notice: All notices or communications required to implement this Agreement must be in writing, and may either be delivered personally, or by certified mail or by express delivery, return receipt requested. Such notices or communications shall be deemed to be

received by the date indicated on the return receipt. Any party may, by giving 10 days written notice to the other party, designate any other address to substitute for any address contained in this Agreement, either for a particular duration or permanently. Such notices and communications shall be given to the parties at their addresses set forth below:

To the District: Snoqualmie Pass Utility District
Attn: General Manager
P.O. Box 131
Snoqualmie, WA 98068

With a copy to: John Milne, Esq., Inslee Best et al.
777 – 108th Ave. NE, Suite 1900
Bellevue, WA 98009-9016

To the Plaintiffs: Michael Darland (insert address)
2021 – 102 Place SE
Bellevue, WA 98004

With a copy to: Louis Leclezio
c/o Julin & McBride, P.S.
16088 NE 85th Street
Redmond, WA 98052-3530

14. Binding on Successors: This Agreement, and the rights, duties, entitlements and obligations contained herein, shall run with the land and be binding on and inure to the benefit of the parties, and be fully assignable to their respective heirs, successors and assigns, save and except for such of those certificated sewer and/or water ERU connections which may have been or may be assigned, as per the terms of this agreement, to parties other than those who may be the owners of the subject land.

15. Attorneys' Fees and Costs: In any judicial or administrative action, or in any arbitration proceeding, to enforce or determine a party's rights under this Agreement, the prevailing party (or the substantially prevailing party if no one party prevails entirely) shall be entitled to

reasonable attorney's fees and costs, including any fees and costs incurred in the appeal of any ruling or decision.

16. **Confidentiality**: Except as required to be disclosed by court order or as necessary to cooperate with prospective purchasers'/investors' right to make due diligence inquiries, the parties agree that they will maintain in the strictest confidence, and not disclose to any third-party, orally or in writing, the negotiations and discussions leading to the execution, or the specific terms and conditions, of this Agreement. The parties agree that if they receive any inquiry concerning this matter, they shall state that all issues between them have been resolved and make no further comment; provided, however, that with respect to any prospective purchasers'/investors/ due diligence inquiries, Plaintiffs shall obtain, prior to any disclosure, an executed confidentiality agreement by such prospective purchasers/investors acknowledging that disclosure is made only pursuant to this Agreement and that such prospective purchasers/investors are bound by this Agreement to the fullest extent. A copy of said confidentiality agreement shall be provided to the District's Manager. The confidentiality provisions of this section shall apply only to statements or disclosures that can be shown to have occurred on or after the date of this Agreement.

17. **Severability**: In the event that any term, condition, provision, clause, or portion of this Agreement is deemed by a court of competent jurisdiction to be unlawful, in excess of authority, void, unconstitutional, or unenforceable or in conflict with any other applicable provision, condition, clause or other provision of this Agreement, it is the intent of the parties that the remainder of the Agreement shall be unaffected and shall continue in full force and effect to carry out the intent of the parties. To this end, in the event any term, condition, provision, clause, or portion of this Agreement is deemed invalid or otherwise unenforceable as provided

for above, the parties shall confer in good faith to draft substitute language as may be necessary to remedy or otherwise cure the unenforceable language or provision in such a manner so as to carry out the intent of the parties hereto. If the parties cannot agree upon such substitute language, the parties agree to submit such language to the court retaining jurisdiction hereunder for the purpose of imposing an alternate or substitute language or provision which, to the greatest extent possible consistent with applicable law, gives effect to the intent of the parties as it relates to the term, condition, provision, clause, or portion of this Agreement deemed invalid.

APPROVED AND ADOPTED by the Board of Commissioners of Snoqualmie Pass Utility District, King and Kittitas County, at a special meeting thereof held on the ____ day of September, 2005.

Snoqualmie Pass Utility District

By: _____
Terry Lenihan, General Manager

As Ratified and Approved by the Board of Commissioners:

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

APPROVED AND ACCEPTED:

Michael Darland

Myrna Darland

Louis Leclezio