

ORDINANCE NO. 2024-__

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE,
COLORADO APPROVING A MAJOR PLANNED UNIT DEVELOPMENT AMENDMENT
FOR LOT 38-50-51R**

WHEREAS, the Town owns certain real property in San Miguel County located at 568 Mountain Village Boulevard, Mountain Village, Colorado, Assessor Parcel No. 477903106105 (the “Property”), which is subject to the Lot 38-50-51R Planned Unit Development (“PUD”); and

WHEREAS, as part of the Town’s approval of the Lot 38-50-51R PUD, as governed by the Second Amended and Restated Development Agreement between the Town and Madeline Property Owner, LLC (“MPO”), recorded in the San Miguel County Clerk and Recorder’s Office at Reception No. 439952 (“Development Agreement”), the Town approved a replat of OS-1A-MVB (“Replat Approval”), previously owned by the Town, into Lot 38-50-51R to be incorporated into the Telluride Mountain Village Resort Condominiums (“Community”) and to be used for the construction of a porte cochere, elevated outdoor pool, and pool deck for the Community in accordance with plans approved by the Town’s Design Review Board (“DRB”); and

WHEREAS, in conjunction with the Replat Approval, the Town conveyed OS-1A-MVB to MPO pursuant to a Special Warranty Deed recorded on March 25, 2015, and in accordance with that certain OS-1A-MVB Conveyance Agreement recorded at Reception No. 436899 (“Conveyance Agreement”); and

WHEREAS, the Conveyance Agreement was amended by the First Amended and Restated OS-1A-MVD Conveyance Agreement dated December 23, 2016, a copy of which was recorded at Reception No. 445639 (“Amended Conveyance Agreement”); and

WHEREAS, on November 24, 2022, the Town and AUBERGE, Madeline Hotel Operator, LLC (“AMHO”) entered into a Mountain Village Ice Rink Lease (“Ice Rink Lease”) providing for the shared use and operation of an ice rink owned by the Town that is within the PUD and adjacent to the Madeline Hotel; and

WHEREAS, _____ (“Current Owner”) is the successor and assignee of MPO with respect to the Amended Conveyance Agreement and the Development Agreement, and _____ (“Current Operator”) is the successor and assignee of AMHO with respect to the Ice Rink Lease;

WHEREAS, the Town has submitted an application to allow for private rentals of the ice rink and to amend the terms and conditions of the Ice Rink Lease, the Development Agreement, and the Amended Conveyance Agreement as reflected in the documents referenced in Exhibit B to this Ordinance; which application consists of the materials submitted and itemized on Exhibit A attached hereto, plus all statements, representations, and additional documents of the Town and its representatives as reflected in the minutes of the public hearings before the DRB and Town Council (collectively, “Application”); and

WHEREAS, the DRB held a public hearing regarding the Application on April 4, 2024, and voted 7-0 to issue a recommendation of approval to the Town Council concerning the Application; and

WHEREAS, the Town Council has considered the Application, the DRB’s recommendation, and testimony and comments presented at the public meetings and public hearings where this Ordinance was considered by the Town Council, as well as the criteria set forth in Section 17.4.12.E of the Town’s Community Development Code (“CDC”) and finds that each of the following has been satisfied or will be

satisfied upon compliance with the conditions of this Ordinance set forth below and in the Combined First Amendment to Development Agreement and Conveyance Agreement:

1. The proposed PUD is in general conformity with the policies, principles and standards set forth in the Comprehensive Plan;
2. The proposed PUD is consistent with the underlying zone district and zoning designations on the site or to be applied to the site unless the PUD is proposing a variation to such standards;
3. The development proposed for the PUD represents a creative approach to the development, use of land and related facilities to produce a better development than would otherwise be possible and will provide amenities for residents of the PUD and the public in general;
4. The proposed PUD is consistent with and furthers the PUD purposes and intent;
5. The PUD meets the PUD general standards;
6. The PUD provides adequate community benefits;
7. Adequate public facilities and services are or will be available to serve the intended land uses;
8. The proposed PUD shall not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion; and
9. The proposed PUD meets all applicable Town regulations and standards unless a PUD is proposing a variation to such standards.

WHEREAS, the Town Council now desires to approve the Application, subject to the terms and conditions set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, as follows:

Section 1. Recitals. The above recitals are hereby incorporated as findings of the Town Council in support of the enactment of this Ordinance.

Section 2. Approvals. The Town Council hereby approves the Application, subject to the conditions set forth below. The Town Council also approves those documents listed on the attached Exhibit B, which the Mayor and Town Clerk are authorized to sign on behalf of the Town subject to, prior to execution and recordation, edits relative to timing and order of recordation of documents as determined by the Town Manager and ministerial edits by Town Staff. All exhibits to this Ordinance are available for inspection at the Town Clerk's Office.

Section 3. Conditions. The approval of the Application is subject to the following terms and conditions:

- 3.1. [Insert any conditions imposed by Town Council.]

Section 4. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

Section 5. Public Hearing. A public hearing on this Ordinance was held on the ___ day of _____, 2024, in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado 81435.

Section 6. Publication. The Town Clerk or Deputy Town Clerk shall post and publish notice of this Ordinance as required by the Town Charter.

INTRODUCED, READ, AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado this __ day of _____, 2024.

TOWN OF MOUNTAIN VILLAGE:

**TOWN OF MOUNTAIN VILLAGE, COLORADO,
A HOME-RULE MUNICIPALITY**

By: _____
Martinique Prohaska, Mayor

ATTEST:

Susan Johnston, Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this __ day of _____, 2024.

TOWN OF MOUNTAIN VILLAGE:

**TOWN OF MOUNTAIN VILLAGE, COLORADO,
A HOME-RULE MUNICIPALITY**

By: _____
Martinique Prohaska, Mayor

ATTEST:

Susan Johnston, Town Clerk

Approved as to Form:

David McConaughy, Town Attorney

I, Susan Johnston, the duly qualified and acting Town Clerk of the Town of Mountain Village, Colorado ("Town") do hereby certify that:

1. The attached copy of Ordinance No. 2024-__ ("Ordinance") is a true, correct, and complete copy thereof.
2. The Ordinance was introduced, read by title, approved on first reading and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on _____, 2024, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Martinique Prohaska, Mayor				
Scott Pearson, Mayor Pro-Tem				
Harvey Mogenson				
Peter Duprey				
Jack Gilbride				
Tucker Magid				
Huascar Gomez				

3. After the Council's approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on _____, 2024 in accordance with the Town of Mountain Village Home Rule Charter.
4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on _____, 2024. At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Martinique Prohaska, Mayor				
Scott Pearson, Mayor Pro-Tem				
Harvey Mogenson				
Peter Duprey				
Jack Gilbride				
Tucker Magid				
Huascar Gomez				

5. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this ___ day of _____, 2024.

Susan Johnston, Town Clerk
(SEAL)

Exhibit A

List of Application Materials

Exhibit B

1. Mountain Village Ice Rink and Skate Center Lease and Management Agreement in the form attached hereto as Exhibit B-1.
2. Combined First Amendment to Third Amended and Restated Development Agreement for Lot 38-50-51R Planned Unit Development and Second Amended and Restated OS-1A-MVB Conveyance Agreement in the form attached hereto as Exhibit B-2

**MOUNTAIN VILLAGE ICE RINK AND SKATE CENTER
LEASE AND MANAGEMENT AGREEMENT**

THIS MOUNTAIN VILLAGE ICE RINK AND SKATE CENTER LEASE AND MANAGEMENT AGREEMENT (“Lease”) is made this ___ day of _____, 2024 (“Effective Date”), by and between TOWN OF MOUNTAIN VILLAGE, a Colorado home rule municipality (“Landlord” or “Town”), and Telluride Resort Partners LLC (“Tenant,” and together with Landlord, the “Parties”).

WHEREAS, Landlord owns certain real property in San Miguel County located at 568 Mountain Village Boulevard, Mountain Village, Colorado, Assessor Parcel No. 477903106105 (collectively, the “Premises”); and

WHEREAS, the Parties entered into a Commercial Lease and Management Agreement dated June 19, 2015 (“Original Lease”), whereby Landlord leased to Tenant the Premises according to terms and conditions therein; and

WHEREAS, the Parties subsequently entered into a temporary lease agreement in 2022 (“2022 Lease”), which contemplated the negotiation and execution of a long-term agreement including a revenue-sharing provision, and second temporary lease agreement (“2023 Lease”) to continue Tenant’s lease and management of the Premises pending the PUD Amendment (defined below); and

WHEREAS, by this Lease, the Parties desire to enter into a long-term agreement as contemplated by the 2022 and 2023 Leases and according to the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein, including the above recitals, and for good and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Previous Lease Agreements Superseded. This Lease supersedes and replaces the Original Lease, 2022 Lease, and 2023 Lease.

2. Premises. Landlord, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the Tenant, does hereby lease to the Tenant the Premises.

3. Term. The term of this Lease shall be from the Effective Date until April 30, 2027 (“Term”), unless otherwise terminated as provided herein. This Lease shall automatically renew for successive one-year terms, unless either party provides written notice of termination to the other at least 90 days prior to the expiration of the then-current term.

4. Rent. In consideration of the revenues to be shared pursuant to Section 6 below, the rent for the Term shall be \$1.00 per month.

5. Use of Premises. The Premises are to be used and occupied by Tenant for the primary purpose of operating a skate rental and retail shop, and Tenant shall manage and operate the ice rink on the Premises (“Ice Rink”) in such a manner that does not exclude the guests, residents, or invitees of the Town, except during blackout dates or special events per Section 9. The Ice Rink shall be open and available to the public and free to users who bring their own skates, subject to all applicable ordinances and regulations of the Town, as applied generally to Town property during the Term of this Lease. Tenant shall be responsible for controlling access to the Ice Rink. The hours of operation for the Premises shall be from 12:00 p.m. to 8:00 p.m., weather conditions permitting. Tenant may adjust the length of the hours of operation with written consent of Landlord. During operational hours, Tenant shall have adequate staff on the Premises to manage the Premises. Use of the Premises shall at all times comply with applicable local, state, and federal laws.

6. Profit and Loss Sharing. The net profits or losses generated at the Premises during the Term of this Lease shall be shared equally by the Parties. Net profits include all revenues minus actual operating expenses, as outlined in 6.A. and 6.B. including the costs of labor and equipment leases, incurred by both Parties. For purposes of calculating net profits,

operating expenses shall not include capital improvements or equipment purchases. The Parties agree to maintain and provide to the other party financial records, including receipts and invoices, and such other documentation as may be reasonably required to calculate net profits or losses, including actual operating expenses. Upon receipt of a written request, a party shall provide said financial records to the other for this purpose. Tenant shall remit the necessary financial records and net profits applicable to Landlord no later May 31st of each year.

- A. For Landlord, operating expenses shall be defined as actual utility costs for natural gas and utilities for creation and maintenance of ice, actual costs for equipment leases, and actual cost for Parks & Recreation labor.
- B. For Tenant, operating expenses shall be defined as the actual cost of labor for Ice Rink staff and actual utility costs of the Ice Rink building.

7. PUD Amendment. The Parties agree to work together in good faith to apply to the Town for an amendment of the Lot 38-50-51R Planned Unit Development (“PUD Amendment”), as governed by the Second Amended and Restated Development Agreement, recorded in the San Miguel County Clerk and Recorder’s Office as Reception No. 439952. If the PUD Amendment is approved by the Town, the revenue-sharing arrangement outlined in Section 6 shall be applied retroactively to the 2022/2023 and 2023/2024 winter seasons and payment to Landlord shall be made in arrears accordingly. If the PUD Amendment is denied, this Agreement shall be void ab initio, and the 2023 Lease shall continue in full force and effect.

8. Skate Rentals. Guests of the Hotel Madeline who are under the age of 12 may receive a token for one free skate rental during their stay. Tenant shall keep track of and account for all skate rentals provided to guests of the Hotel Madeline free of charge.

9. Special Events.

- A. By Tenant. Tenant shall be permitted to rent out the Premises for up to eight private events each winter season. Each event shall last no more than one day. Tenant may charge a rental fee of \$500 per hour, or \$4,000 per day, with the Tenant’s ability to increase or decrease the rental fee by 25%, at Tenant’s discretion. Tenant may provide further rental fee reductions for non-profit use of the Premises. Tenant shall not impose food and beverage minimums as a requirement of private rental use, nor shall Tenant provide rental fee adjustments in exchange for food and beverage services.
- B. By Landlord. Landlord shall be permitted to rent out the Premises, without paying any private event rental or skate fees, for up to six public or private events each winter season. These events may either be held by Landlord or by a third party, subject to the Town’s special event permit regulations. Landlord or third-party use of the Premises may be subject to a fee of \$_____ per hour to cover Ice Rink staff costs, at Landlord’s discretion.
- C. Blackout Dates. Blackout dates during which the Parties may not rent out the Premises to hold a special event include: December 20 through January 5; Friday through Monday of Martin Luther King, Jr. weekend; and Friday through Monday of Presidents’ Day weekend.

10. Social Purpose Days. For up to two days each year, Tenant shall be allowed to name a “Social Purpose” Day, on which 100% of the net profits generated at the Premises will be donated to a 501(c)(3) non-profit of Tenant’s choice. Tenant must obtain Landlord’s approval regarding its selection of the 501(c)(3) non-profit prior to the Social Purpose Day. For up to two days each year, Landlord shall also be allowed to name a Social Purpose Day, on which 100% of the net profits generated at the Premises will be donated to a 501(c)(3) non-profit of Landlord’s choice. The Social Purpose Days may not conflict with blackout dates and the other party’s special events, as permitted by Section 9.

11. Maintenance. Tenant, at its expense, shall be responsible for routine maintenance and repair of the Premises and agrees to keep the Premises in good, clean condition and to commit no waste thereon. Tenant shall not be responsible for damage caused by unauthorized users of the

Premises that occurs outside the operational hours as set forth herein. Landlord shall be responsible for set up, ice maintenance, and breakdown of the Ice Rink infrastructure to allow for use of the Premises as an ice skating rink during the Term; repair, maintenance, and replacement of all mechanical equipment necessary for the creation, maintenance, and cooling of the ice and any water facilities such as fountains or mechanical facilities related to ice making, water, and plumbing facilities necessary for providing water and cooling for the Ice Rink; and any capital repairs necessary for the Premises. For purposes of this Lease, "capital repairs" shall mean such repairs that Landlord deems in its discretion are necessary to the existing infrastructure of the Premises and shall not include any repairs or additions to the Premises or finishes made by Tenant. Notwithstanding, Landlord shall not be responsible for maintaining or repairing any damage caused by the intentional or negligent acts or omissions of Tenant, which damage shall be Tenant's responsibility.

12. Improvements.

- A. Improvements Generally. Tenant and/or Landlord shall have the right to make such temporary improvements and install such equipment on the Premises as may be necessary to make use of the Premises for the purposes described herein; provided, however, that Landlord must approve in writing such improvements before the same are constructed or installed. No permanent improvements shall be installed by either party except pursuant to further written agreement addressing each party's rights and obligations with respect to such improvements. Tenant shall have the right to install and maintain informational signage to promote use of the Premises, subject to compliance with the Town sign code. Tenant shall keep the Premises free and clear of all liens and encumbrances of any type or nature, including, but not limited to, mechanic's liens.
- B. Public Restrooms. The Parties agree that the public restrooms on the Premises need to be remodeled. The Town Manager hereby waives the formal bid process, finding that such process would cause undue delay or hardship and that it is in the best interest of the Town to proceed with the remodel as provided herein. Landlord shall contribute up to \$355,000 to remodel the public restrooms on the Premises to current remodel standards. Tenant shall provide to Landlord all receipts, invoices, and such other documentation as Landlord may reasonably require to determine actual costs of the remodel and the amount due to Tenant for same.
- C. Ice Rink Shade Structure. The Parties acknowledge that Tenant has contributed \$15,305.57 as of the Effective Date for the Ice Rink's shade structure. Tenant shall pay to Landlord the remaining \$2,544.00 for the initial shade structure. The Parties agree that Tenant shall also provide one full replacement of the Ice Rink's shade structure at actual cost not to exceed \$92,150.43, and that Tenant shall no longer be responsible for providing excess funds to be used for additional repairs and maintenance purposes. The Parties agree to confer regarding the need for a new shade structure at least six months in advance of the next winter season to allow each enough time to budget for said structure. The Parties agree to amend the First Amended and Restated OS-1A-MVB Conveyance Agreement, recorded in the San Miguel County Clerk and Recorder's Office as Reception No. 445639, accordingly.

13. Utilities.

- A. Utilities Generally. Tenant shall pay for the utility expenses incurred in the operation of the Premises as an Ice Rink, including electrical, gas, water and sewer expenses, homeowners' dues, and shared facilities costs ("Utilities"). The Utilities shall not include the cost of electrical, water, sewer, and gas used to generate and maintain the surface of the Ice Rink during the winter season. Utilities shall be billed directly to Tenant; however, in the event Utilities are not billed directly to Tenant, they shall be due and payable within five business days of receipt of any invoice for Utilities delivered by Landlord to Tenant.

B. Water Feature Mechanical Room Overage. In 2022, a valve leak in the Town water feature mechanical room caused an overage of \$16,700.00 in Tenant's water bill. The Parties agree to split the cost of that overage such that, within 30 days of execution of this Agreement, Landlord shall pay to Tenant \$8,350.00. By such agreement, neither party admits fault, and Landlord does not intend to waive any provision of the Colorado Governmental Immunity Act.

14. Insurance. Tenant agrees to maintain at its expense at all times during the Term a comprehensive general liability insurance policy in the minimum amount of Two Million Dollars (\$2,000,000.00) combined single limit for bodily injury and property damage. Landlord shall be named as an additional insured thereon. Upon execution of this Lease, Tenant shall deliver to Landlord a certificate of insurance, which shall declare that the insurer may not cancel the same without giving Landlord at least 30 days' advanced written notice.

15. Indemnification. Tenant shall indemnify and hold harmless Landlord and Landlord's elected and appointed officials, staff members, employees, contractors, and agents (collectively "Releasees") from and against any and all claims arising from Tenant's use of the Premises for the conduct of its business or from any activity, work, or other thing done, permitted, or suffered by Tenant in or about the Premises, and shall further indemnify and hold harmless Releasees from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of Tenant or any agent, employee, guest, or licensee of Tenant, and from and against all cost, attorneys' fees, expenses, and liabilities incurred as a result of any such claim or any action or proceeding brought thereon or action or proceeding brought against Landlord. Tenant hereby assumes all risk of damage to property or injury to persons (including death), in, upon, or about the Premises, from any cause other than Landlord's intentional misconduct or gross negligence, or failure to perform any of its covenants under this Lease, and Tenant hereby waives all claims in respect thereof against Landlord. Landlord or its agents shall not be liable for any damage to property entrusted to employees of the Premises. Tenant shall give prompt notice to Landlord in case of fire or accident or defects in the Premises or in the fixtures or equipment located therein. The provisions of this paragraph shall survive the expiration or termination of this Lease.

16. No Subletting; No Assignment. No part of the Premises will be sublet, nor will this Lease be assigned, without the written consent of the Landlord being first obtained.

17. Default. In the event that either party is in default of any provision of this Lease, and if such default is not cured within 10 business days after written notice thereof to the breaching party, then the non-defaulting party shall have all rights available to it at law or in equity, including, but not limited to, termination of this Lease and forcible entry and detainer proceedings. In the event of any action or proceeding brought by one party against the other under this Lease, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees from the non-prevailing party. Jurisdiction and venue for any legal action arising from or related to this Lease shall be in the state courts of San Miguel County, Colorado.

18. Additional Terms and Conditions.

A. If any term or provision of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and shall be valid and enforceable to the full extent permitted by law.

B. This Lease shall only be modified by amendment signed by both Parties.

C. This Lease shall be binding on the Parties, their personal representatives, successors, and assigns.

D. Nothing herein shall be deemed a waiver or limitation of the Town's governmental immunity under statute or at common law.

E. All financial obligations of the Town under this Lease shall be subject to annual budgeting and appropriation.

F. This Lease represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

SO AGREED as of the Effective Date.

LANDLORD

Town of Mountain Village, Colorado

TENANT

Telluride Resort Partners LLC

By: _____

Name:

Title:

Name:

Title:

**COMBINED FIRST AMENDMENT TO
THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR LOT 38-
50-51R PLANNED UNIT DEVELOPMENT AND SECOND AMENDED AND
RESTATED OS-1A-MVB CONVEYANCE AGREEMENT**

THIS COMBINED FIRST AMENDMENT (“Agreement”) is made this ____ day of _____, 2024 (“Effective Date”), by and between TOWN OF MOUNTAIN VILLAGE, a Colorado home rule municipality (“Town”), and Telluride Resort Partners LLC (“Owner,” and together with the Town, the “Parties”).

WHEREAS, the Town owns certain real property in San Miguel County located at 568 Mountain Village Boulevard, Mountain Village, Colorado, Assessor Parcel No. 477903106105 (the “Property”), which is subject to the Lot 38-50-51R Planned Unit Development (“PUD”); and

WHEREAS, as part of the Town’s approval of the Lot 38-50-51R PUD, as governed by the Second Amended and Restated Development Agreement, recorded in the San Miguel County Clerk and Recorder’s Office at Reception No. 439952 (“Development Agreement”), the Town approved a replat of OS-1A-MVB (“Replat Approval”), previously owned by the Town, into Lot 38-50-51R to be incorporated into the Telluride Mountain Village Resort Condominiums (“Community”) and to be used for the construction of a porte cochere, elevated outdoor pool, and pool deck for the Community in accordance with plans approved by the Town’s Design Review Board (“DRB”); and

WHEREAS, in conjunction with the Replat Approval, the Town conveyed OS-1A-MVB to Owner pursuant to a Special Warranty Deed recorded on March 25, 2015, and in accordance with that certain OS-IA-MVB Conveyance Agreement recorded at Reception No. 436899 (“Conveyance Agreement”); and

WHEREAS, pursuant to Ordinance No. _____, the Town approved a major amendment to the Lot 38-50-51R PUD to allow for private rentals of the ice rink and to reduce Owner’s contribution concerning the shade structure in accordance with the terms and conditions of the Parties’ long-term lease agreement for the Property; and

WHEREAS, in accordance with said ordinance, the Parties desire to modify portions of the Development Agreement and Conveyance Agreement in the manner provided herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein, including the above recitals, and for good and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing Recitals are incorporated herein by reference.
2. Amendment to Development Agreement. The Parties hereby amend Section 5 of the Development Agreement to read as follows:

5. PERMITTED USES

B. The permitted uses for the Plaza Unit and Ice Rink Unit shall be the same as for the Full Use Active Open Space Zone District as set forth in the CDC; provided, however, that the Ice Rink Unit may be available for private rental and closed to the public pursuant to the terms of the lease agreement between the Parties.

10. ADDITIONAL COMMUNITY BENEFITS

B. The Parties acknowledge that the Owner has contributed \$15,305.57 as of the Effective Date for the design and construction of shade structure improvements over the ice rink (“Shade Structure”) located within the Community. The Owner shall pay to the Town the remaining \$2,544.99 for the initial Shade Structure. The Parties agree that the Owner shall also provide one full replacement of the Shade Structure at actual cost not to exceed \$92,150.43, and that the Owner shall no longer be responsible for providing excess funds to be used for additional repairs and maintenance purposes. The Parties

agree to confer regarding the need for a new Shade Structure at least six months in advance of the next winter season to allow each enough time to budget for said structure.

3. Amendment to Conveyance Agreement. The Parties hereby amend Section 1.2 of the Conveyance Agreement to read as follows:

1.2 Ice Rink Shade Structure. The Parties acknowledge that the Owner has contributed \$15,305.57 as of the Effective Date for the design and construction of shade structure improvements over the ice rink (“Shade Structure”) located within the Community. The Owner shall pay to the Town the remaining \$2,544.99 for the initial Shade Structure. The Parties agree that the Owner shall also provide one full replacement of the Shade Structure at actual cost not to exceed \$92,150.43, and that the Owner shall no longer be responsible for providing excess funds to be used for additional repairs and maintenance purposes. The Parties agree to confer regarding the need for a new Shade Structure at least six months in advance of the next winter season to allow each enough time to budget for said structure.

4. This Amendment Controls. In the event that any terms, conditions, and provisions contained in this Agreement are inconsistent with or otherwise conflict with any terms, conditions, and provisions contained in the Development Agreement, Conveyance Agreement, and/or any amendments thereto, the terms, conditions, and provisions contained in this Agreement shall control.

5. No Other Modifications. No other amendments, modifications, or alterations to the Development Agreement or Conveyance Agreement, other than the amendments specifically stated herein, are contemplated or made by the execution of this Agreement. All other terms, conditions, provisions, rights, duties, and benefits stated in the Development Agreement and Conveyance Agreement shall continue in full force and effect.

6. Counterparts; Electronic Signatures. This Agreement may be executed in multiple counterparts or by legible electronic copy, each of which shall constitute original, but all of which, taken together, shall constitute one and the same instrument. The electronic transmission of a signed copy of this Agreement shall be considered valid and constitute a signed original.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth above.

TOWN
Town of Mountain Village, Colorado

OWNER
Telluride Resort Partners LLC

By: _____
Name:
Title:

Name:
Title: