

**INTERGOVERNMENTAL AGREEMENT WITH RESPECT TO PLATTED
OPEN SPACE REQUIREMENTS WITHIN THE TOWN OF
MOUNTAIN VILLAGE**

THIS INTERGOVERNMENTAL AGREEMENT with respect to Platted Open Space within the Town of Mountain Village (“Agreement”) is made and entered into this 17th day of January, 2013, by and between the **COUNTY OF SAN MIGUEL**, a body politic and corporate of the State of Colorado (“the County”) and the **TOWN OF MOUNTAIN VILLAGE**, a home rule municipality and political subdivision of the State of Colorado (the “Town”).

RECITALS

WHEREAS, the Town acquired police power authority, including the authority to regulate land use, including zoning, planning and other land use restrictions, upon its incorporation in 1995. This power was recognized by the 1999 Stipulation in BOCC v. Town of Mountain Village, 97 CV 133 (the “County Settlement”).

WHEREAS, the County Settlement incorporated as a condition, the approval of the 11th Amendment to the General Declaration for the Telluride Mountain Village (the “General Declaration”), including amendment of Section 9.2 (now 8.2) of the General Declaration (the 11th Amendment”) to read as follows:

Active and Passive Open Space shall be preserved as to acreage and general location, as it presently exists in the Town, and as it is shown on the Town Open Space Map, dated June 16, 1999. ...Platted Open Space within the Original P.U.D. shall not be less than sixty percent (60%) of the total acreage within the Original P.U.D., exclusive of the Village Core, which consists of those parcels of real property described in Exhibit D-2 ...Passive Open Space within the original PUD shall not be reduced below the one hundred fifty one and three hundred thirty four thousandths (151.334) acres platted as of July 1, 1999 within the original PUD, but Active Opens Space may be reduced if it is replatted as Passive Open Space. **Lot line adjustments that affect Open Spaces are permitted, subject to approval of the Town Council of the Town of Mountain Village and the owner(s) of the affected property, but only to the extent there is no net loss of Open Space within the original PUD.** (Emphasis added)

WHEREAS, on June 16, 2011, the Town Council adopted the Mountain Village Comprehensive Plan (the "Comprehensive Plan") as an advisory document for future growth and development of the Town. The Comprehensive Plan consists of eight elements, one of which is a Land Use Plan.

WHEREAS, the Land Use Plan within the Comprehensive Plan provides the overall framework for the physical development of Mountain Village with specific land use guidance for the Town as a whole and for specific subareas. There are three Subarea Plans included in the Comprehensive Plan; Mountain Village Center, Town Hall Center, and Meadows. Implementation of the Comprehensive Plan's stated land use objectives would necessitate rezoning of Active Open Space. As one of its land use policies, the "Comprehensive Plan states as one of the criteria for rezoning open space, the following:

"A proposal that involves rezoning open space, as envisioned by the Comprehensive Plan, shall provide an equal or greater amount of replacement open space within the original County PUD boundary in accordance with the terms of the County Settlement Agreement and LUO and Design Guidelines."

WHEREAS, during the course of many public meetings and hearings, the San Miguel Board of County Commissioners (the "BOCC") weighed in on the proposed Comprehensive Plan relative to the County Settlement focusing specifically on sections of the 11th Amendment. Pertinent to this discussion is the BOCC's stated position on Section 8.2 Open Space, of the Amended and Restated General Declaration for the Telluride Mountain Village.

WHEREAS, in a letter dated May 27, 2011, from the BOCC to Mayor Bob Delves and the Town Council, the BOCC stated, *inter alia*, the following:

"8.2 Open Space: This section of the General Declaration states in part that "Active and Passive Open Space shall be preserved as to acreage and general location, as it presently exists in the Town, and as it is shown on the Town Open Space Map, dated June 16, 1999..." It is our understanding that the COMP has been revised so that Policy LG. 4. concerning the replacement of Active Open Space now states that "A proposal that involves rezoning open space, as envisioned by the Comprehensive Plan, will provide an equal or greater amount of replacement active open space within the corporate limits of the Town of Mountain Village in accordance with the terms of the County Settlement Agreement and town codes." It is also the BOCC's understanding that the COMP no longer identifies sites that would be provided as replacement active open space.

While the County very much appreciates these changes to the COMP and the elimination of the proposed development on tracts zoned and platted as active open space, previously referred to as the Boomerang-Comanche "hotbed" site, the BOCC is compelled to provide the Town with the County's interpretation of Section 8.2 Open Space of the Eleventh Amendment to the General Declaration and SSO so the Town and public are aware of the County's opinion concerning future changes to active open space within the original PUD.

It is the BOCC's interpretation that Section 8.2 of the General Declaration provides an objective benchmark for both the location and acreage of Open Space, and both the location and acreage must be preserved as identified on the June 16, 1999 Town Open Space Map. The BOCC is also of the opinion that the phrase "shall be preserved as to acreage and general location" was utilized in the General Declaration in recognition of the fact that limited Lot Line Adjustments could be made between existing active open space tracts and surrounding lots. In that regard, the last sentence in Section 8.2 provides that "Lot line adjustments that affect Open Space are permitted, subject to approval of the Town Council of the Town of Mountain Village and the owner(s) of the affected property, but only to the extent that there is no net loss of Open Space within the Original P.U.D."

San Miguel County requests that the Town in adopting this COMP include a policy or provision regarding a referral process between the Town and the County that would give the County an opportunity to review Land Use applications involving changes to Open Space. Specifically, if there is a Land Use Ordinance (LUO) amendment or Land Use application that pertains to the rezoning or replatting of active open space within the boundaries of the original PUD, San Miguel County requests that we be given an opportunity to review and comment on such proposed LUO amendment or Land Use application before it is formally considered and acted on by the Town Design Review Board and/or Town Council. Such a referral would provide the County with an opportunity to advise the Town and applicant of any concerns or opinions the County may have regarding proposed changes to active open space specifically with regard to such changes being consistent with the SSO."

WHEREAS, notwithstanding the BOCC's interpretation and position with respect to Section 8.2 as set forth in the foregoing quote from the BOCC's May 27th letter, the Town's legal position with respect to the rezoning of Active Open Space has been stated as follows:

- Section 8.2 clearly contemplates that changes to Active Open Space are permitted, within the overall constraints that such open space be preserved as to acreage and general location, measured against the June 16, 1999 Town Open Space Map.
- Preservation as to "acreage and general location" does not mean "no change."
- The Comprehensive Plan contemplates rezoning between eight and eleven acres of Active Open Space which represents less than one percent of the total area of Active Open Space. Proposed replacement open space provides a greater amount of replacement open space than that being rezoned, thus meeting the acreage requirement of Section 8.2.
- This change is insignificant and does not amount to a change in the "acreage and general location" of Active Open Space within the entire original PUD as governed by the PUD document and General Declaration.
- The General Declaration Section 8.2 reference to lot line adjustments is not a limitation on adjustments to acreage and general location, but instead, a separate restriction on the use of lot line adjustments.

WHEREAS, notwithstanding the two disparate positions between the Town and the County, the respective staffs of the two were directed by their elected officials to commence a series of meetings to determine whether or not, without waiving the respective legal positions, "common ground" could be found regarding the issues of "same general location" and "lot line adjustments".

WHEREAS, the parties have, without waiving their respective legal positions, found "common ground" which was originally proposed to be memorialized in the form of an amendment to the Amended and Restated General Declaration for the Telluride Mountain Village and a subsequent stipulated clarification between all of the parties to the County Settlement, including Telluride Ski & Golf Company ("TSG") and the Telluride Mountain Village Owners Association ("TMVOA").

WHEREAS, the County and the Town agree, but TSG does not with respect to the proposed stipulated clarification's provisions regarding Lot 420, as set forth hereinbelow in section 1.10 Lot 420 Rezone.

WHEREAS, TMVOA has indicated to the Town, the County, and TSG, that it would only consider approval of the proposed stipulated clarification to the County Settlement if TSG, the Town, and the County, had each previously taken formal action approving the proposed stipulated clarification.

WHEREAS, time is of the essence to the Town in memorializing the mutual understanding between the Town and the County relative to the issues set forth herein because of the Town's desire to adopt its new Community Development Code (the "CDC") in early 2013, in which the terms of this Agreement will be codified in the CDC.

WHEREAS, because of the unresolved issue with TSG and the essence of time to the Town, the County and the Town wish to enter into this Agreement to memorialize the understanding between them with respect to the issues set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and stipulations hereinafter set forth, the County and the Town stipulate and agree as follows:

I.

OPEN SPACE

- 1.1 **Preservation as to Acreage and General Location.** Active and Passive Open Space shall be preserved as to acreage and general location as depicted on the 2012 Open Space Map and documented in the associated Open Space Table as recorded at Reception Numbers 426872 and 426871, respectively ("2012 Open Space Map").
- 1.2 **Open Space Percentage Requirement.** Active and Passive Open Space within the Original PUD Boundary as depicted on the 2012 Open Space Map shall not be less than sixty percent (60%) of the total acreage within the Original PUD Boundary, excluding Village Core Open Space unless such open space has otherwise been provided as Replacement Open Space as provided for in Section 1.5.
- 1.3 **Prohibition on Rezoning of Passive Open Space.** Passive Open Space within the Original PUD Boundary as shown on the 2012 Open Space Map shall be maintained and shall not be rezoned, nor shall the acreage of such Passive Open Space be reduced below 151.3 acres.
- 1.4 **Rezoning of Active Open Space Permitted.** Active Open Space as depicted on the 2012 Open Space Map may be rezoned and replatted as envisioned in the Town of Mountain Village Comprehensive Plan adopted on June 16, 2011 (the "Comprehensive Plan") provided:
 - A. Any such rezoning or replatting is contemplated by and consistent with the Comprehensive Plan.

- B. The Active Open Space to be rezoned or replatted is replaced by an equal amount of acreage that is not depicted as such on the 2012 Open Space Map, with such replacement acreage to be zoned as Active Open Space (“Replacement Open Space”);
- C. The Replacement Open Space is provided through either (a) a simultaneous land use application; or (b) the Replacement Open Space acreage has previously been designated by the Town as Replacement Open Space;
- D. The Replacement Open Space is located within any Subarea as depicted on the 2012 Open Space Map or Lot 420, subject to compliance with the provisions of section 1.10, below, in which case the Replacement Open Space shall be deemed to be in the same general location as the Active Open Space parcels that have been rezoned and replatted for resort development purposes; and,
- E. San Miguel County receives a courtesy referral of any such application and has 21 days following such referral to provide comments to the Town.

1.5 Village Core Replacement Open Space. Village Core Open Space as depicted on the 2012 Open Space Map may be used as Replacement Open Space within the Mountain Village Center Subarea provided:

- A. All of the foregoing criteria are met; and
- B. The 2012 Open Space Map is amended to depict the Replacement Open Space.

1.6 Replacement Open Space Outside of a Subarea. Replacement Open Space for rezonings or replattings meeting the foregoing criteria may be proposed to be located outside of any Subarea provided that:

- A. Following delivery of the courtesy referral set forth in Section 1.4(E) above, the Town and San Miguel County enter into negotiations to determine if agreement can be reached on whether or not the proposed Replacement Open Space is within the “same general location” as contemplated in Section A above.
- B. Failure of the Town and San Miguel County to agree on whether or not the proposed Replacement Open Space is within the “same general location” shall not preclude the Town from processing and approving any such application in accordance with the Town’s Land Use Ordinance, or its successor, however any such processing and approval shall be subject to the rights of the parties to the 1999 Stipulated Settlement Order in *BOCC v. Town of Mountain Village*, 97 CV 133, as recorded at reception number 329093 on September 8, 1999, in the public records of the San Miguel County Clerk and Recorder’s Office (the “Stipulated Settlement Order”).

1.7 Reduction of Active Open Space. Active Open Space may be reduced if it is rezoned to Passive Open Space.

- 1.8 **Lot Line Adjustments.** Lot line adjustments that affect Open Space are permitted, subject to the approval of the Town, but only to the extent that there is no net loss of Open Space as required herein.
- 1.9 **Governance of Land Use Matters.** Notwithstanding the provisions of this Agreement, this Agreement is not intended to govern land use matters within the Town except as to certain enforcement rights granted to the County by virtue of the Stipulated Settlement Order, and certain restrictions with respect to Open Space within the Town and which are reflected herein. The Town's Land Use Ordinance, as amended from time to time or its successor is and shall continue to be the land use law of the Town and governs the use and development of land within the Town. Notwithstanding future amendments to the Land Use Ordinance or the adoption of its successor, which remains wholly within the purview of the Town, no amendment or future adoption shall contain any provision which conflicts with or otherwise purports to repudiate the provisions of this Agreement without the express written consent of the County.
- 1.10 **Lot 420 Rezone.** Subject to and in accordance with the Town's Land Use Ordinance or its successor then in effect, TSG, or its successor in interest, shall be eligible to rezone that portion of Lot 420 that does not retain the current single family residential zoning, approximately 30 acres, to passive open space subject to the condition that the rezoned passive open space shall be conveyed to the Town. Upon the rezoning of Lot 420 to open space and TSG's conveyance of the portion of Lot 420 rezoned to open space to the Town, TSG, subject to and in accordance with the Town's Land Use Ordinance or its successor then in effect, shall then be eligible for the rezoning and replatting of the following TSG owned designated active open space parcels for development purposes consistent with the Comprehensive Plan: Parcel A-1, Lots 122, 123, and 128; Parcel A-3 Peaks Northwest Addition; Parcel A-4 Telluride Conference Center Expansion; Parcel D Pond Lots; Parcel G Gondola Station; Parcel J Recreation Center/Multipurpose Facility; Parcel K Meadows Magic Carpet; Parcel O TSG Clubhouse; Parcel E Ski School; Parcel F Town Hall East; Parcel E Big Billie's Apartments. The Town's approval of any proposed rezoning and replatting of the Lot 420 to open space, as well as its approval of the rezoning and replatting of the TSG active open space parcels specified in this paragraph shall be expressly contingent upon TSG's development application to the Town satisfying the parameters set forth in the Comprehensive Plan in Table 7, Mountain Village Center Development Table, Table 8, Town Hall Center Development Table or Table 9, Meadows Development Table, as applicable. Should the Town find and determine that TSG's development application(s) satisfy the provisions of this paragraph, and the requirements of the Town's Land Use Ordinance, or its successor then in effect, then the open space resulting from the rezoning and replatting of Lot 420 shall be used to offset the open space required to allow a parcel to be rezoned from open space to another zoning classification. The parties expressly understand and acknowledge that the provisions of this section 1.10 is an exception to the County's stated position regarding changes to the "acreage and general location"

of platted open space as set forth in sections 1.1 through 1.9 and that nothing in this Agreement, shall limit or impair San Miguel County's enforcement rights granted to it pursuant to the "Stipulated Settlement Order".

II.

MISCELLANEOUS PROVISIONS

- 2.1 Waiver.** The waiver of any breach of any of the provisions of this Agreement, by either Party, shall not constitute a continuing waiver of any subsequent breach by that Party, either of the same, or of another provision of this Agreement.
- 2.2 Severability.** Invalidation of any of the provisions of this Agreement, or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof, in any given circumstance, shall not affect the validity of the remainder of this Agreement.
- 2.3 Legal Fees and Costs.** In the event of litigation or arbitration between the parties concerning or arising out of this Agreement, the primarily prevailing party shall be entitled to recover reasonable attorneys' fees and legal costs incurred in such litigation or arbitration.
- 2.4 Binding Effect.** Upon its execution by the parties hereto, this Agreement shall be immediately binding upon and inure to the benefit of each Party, and shall remain binding until and unless terminated in writing by mutual agreement of the parties.
- 2.5 Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Colorado.
- 2.6 No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give any person other than the Parties hereto, any right, remedy or claim, under or by reason of this Agreement.
- 2.7 Notices.** All notices, requests, demands, consents and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered or sent by first class United States mail, postage prepaid, addressed to the Parties as follows:

San Miguel County Board of County Commissioners
 Miramonte Building
 333 W. Colorado Ave
 PO Box 2676
 Telluride, CO 81435

Town of Mountain Village
Town Manager
455 Mountain Village Blvd.
Mountain Village, CO 81435

Either Party may change the address at which it receives written notice, by so notifying the other party in writing in the manner provided herein.

IN WITNESS WHEREOF, the Parties to this Agreement have caused their names to be affixed by the appropriate authorities thereof, as of the date and year first above written.

COUNTY OF SAN MIGUEL, a body politic and corporate of the State of Colorado.

Jan May *X dated 1/16/13*
Chair

TOWN OF MOUNTAIN VILLAGE COLORADO, a Home Rule Municipality and political subdivision of the state of Colorado.

Daniel Spamer *1/17/13*
Mayor

