

ORDINANCE NO. 2015-07

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO APPROVING MAJOR PUD AMENDMENT TO EXTEND THE LENGTH OF VALIDITY AND VESTED PROPERTY RIGHTS FOR A SITE SPECIFIC DEVELOPMENT PLAN FOR LOT 109R FROM DECEMBER 8, 2015 TO DECEMBER 8, 2020

RECITALS

A. MV Colorado Development Partners, LLC ("**Applicant**") is the owner of record of real property described as Lots 109R, Town of Mountain Village as further described on the plat recorded on March 18, 2011 at Reception Number 416994 ("**Property**").

B. The Town Council approved a PUD development for the Property ("**PUD Approval**") evidenced by Town Council Resolution Number 2010-1208-31 on December 8, 2010 as recorded at Reception Number 415339. The PUD Approval was valid through December 8, 2015.

C. In connection with the Town's PUD Approval, the Applicant and the Town executed a certain Development Agreement for the Property, which was recorded in Reception Number 416997 ("**Development Agreement**").

D. The PUD Approval and the Development Agreement further evidenced the granting and creation of a vested property right for a site specific development plan for the Property for a period of five (5) years that is valid until December 8, 2015 ("**Vested Property Right**").

E. The Applicant submitted its development application for a major PUD amendment seeking Town approval to extend the PUD Approval and the Vested Property Right until December 8, 2020 ("**PUD Extension Application**").

F. The PUD Extension Application has been processed and evaluated pursuant to the Town of Mountain Village Community Development Code ("**CDC**").

G. The Design Review Board ("**DRB**") conducted a public hearing on the PUD Extension Application in accordance with the CDC Public Hearing Noticing Requirements on May 7, 2015, with public notice of such application as required by the public hearing noticing requirements of the CDC.

H. The Town Council finds the proposed PUD Extension Application meets the PUD criteria for decision contained in CDC Section 17.4.12.E as follows:

- I. The proposed rezoning is in general conformance with the goals, policies and provisions of the Mountain Village Comprehensive Plan ("**Comprehensive Plan**") because, without limitation:
 - a. The PUD requires 40 hotbed units in efficiency lodge units that must remain with the hotel property owner subject to specific condo-hotel regulations, which will increase the hotbed base.
 - b. The projects additional 26 efficiency lodge units, 38 lodge units and 20 condominium units above the 40 required efficiency lodge units will further infuse vibrancy, activity and vitality into the Village Center.
 - c. The infill development will provide a restaurant and limited commercial space that will help revitalize the North Village Center area.

2. The proposed PUD is consistent with the underlying zone district and zoning designations on the site or to be applied to the site because, without limitation:
 - a. The uses are permitted in the Village Center Zone District.
 - b. The proposed rezoning complies with the zoning designations on the property; the density limitation; platted open space requirements; building height; and lot coverage requirements outlined in the Zoning Regulations.
 - c. The development is consistent with the Development Agreement.
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 because, without limitation:
 - a. The PUD extension will allow for the creative development of a high density hotbed project that would not be possible without the variances granted under the Development Agreement.
 - b. The project will provide improved plaza areas, public parking, pedestrian connectivity, conference space, commercial development and other amenities.
 - c. The density allowed under the Development Agreement has been transferred to the Property and can only be creatively fit on the site through the variances granted by the Town through the Development Agreement.
 - d. The Town received Lot 644 in the Meadows in exchange for land conveyed to the Applicant that is now included in the Property, thus, both the Town and the Applicant have received creative benefits that cannot be extinguished.
4. The proposed PUD is consistent with and furthers the PUD purposes and intent because, without limitation:
 - a. It will allow for flexibility, creativity and innovation in land use planning and project design.
 - b. The original PUD public benefits will continue to be provided.
 - c. The amendment furthers the land use principles of the Comprehensive Plan.
 - d. Efficient land use is being encouraged through a high density infill development that is consistent with the Comprehensive Plan.
 - e. The development continues to allow for integrated planning for the Village Center, Lot 109R and surrounding development in order to achieve the PUD purposes.
5. The proposed PUD amendment meets the PUD general standards contained in CDC section 17.4.12(I), including but not limited to the authority to initiate a PUD amendment, landscaping and buffering and adequate infrastructure.
6. The PUD will continue to provide adequate community benefits, such as public parking, mitigation payments and 40 deed restricted hotbed units subject to specific condo-hotel regulations.
7. Adequate public facilities and services are available to serve the intended land uses because, without limitation:
 - a. Police protection and water and sewer services will be provided by the Town.
 - b. Fire protection will be provided by the Telluride Fire Protection District.
8. The proposed PUD amendment will not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion.
9. The proposed PUD meets all applicable Town regulations and standards except for the variations allowed by the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Town Council approves the PUD Extension Application, including an extension of the PUD Approval and the Vested Property Right until December

8, 2020 Vested Property Right until December 8, 2020, and the draft PUD development agreement, a copy of which is set forth on attached Exhibit A, subject to the condition set forth in Section 1 below.

Section 1. Conditions of Approval

1. The Mayor is authorized to review and approve the final PUD Development Agreement and other legal instruments which may be required to be amended concurrently with the PUD.

Section 2. Ordinance Effect

- A. This Ordinance shall have no effect on pending litigation, if any, and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided and the same shall be construed and concluded under such prior ordinances.
- B. All ordinances, of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed, replaced and superseded to the extent only of such inconsistency or conflict.

Section 3. Severability

The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause or portion of this Ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of this Ordinance.

Section 4. Effective Date

This Ordinance shall become effective on July 25, 2015.


Section 5. Public Hearing

A public hearing on this Ordinance was held on the 25th day of June, 2015 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd, Mountain Village, Colorado 81435.

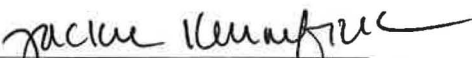
INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 21st day of May 2015.

TOWN OF MOUNTAIN VILLAGE

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

By: 
Dan Jansen, Mayor

ATTEST:


Jackie Kennefick, Town Clerk


HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village,
Colorado this 25th day of June, 2015.

TOWN OF MOUNTAIN VILLAGE


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

By: 
Dan Jansen, Mayor

ATTEST:


Jackie Kennefick, Town Clerk

Approved As To Form:


Jim Mahoney, Assistant Town Attorney

I, Jackie Kennefick, 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.2015-07 ("Ordinance") is a true, correct and complete copy thereof.

2. The Ordinance was introduced, read by title, approved on first reading with minor amendments 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 May 21, 2015, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Dan Jansen, Mayor			X	
Cath Jett, Mayor Pro-Tem	X			
Jonette Bronson	X			
John Howe	X			
Michelle Sherry	X			
Martin McKinley	X			
Dave Schillaci	X			

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 May 29, 2015 in accordance with Section 5.2b of 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 June 25, 2015. 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
Dan Jansen, Mayor	X			
Cath Jett, Mayor Pro-Tem	X			
Jonette Bronson	X			
John Howe	X			
Michelle Sherry			X	
Martin McKinley	X			
Dave Schillaci	X			

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 25th day of June, 2015.

(SEAL)



Jackie Kennefick
 Jackie Kennefick, Town Clerk

Exhibit A: Development Agreement Amendment

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
Lot 109R, Town of Mountain Village, Planned Unit Development**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“**Amendment**”), made effective as of June 25, 2015 (“**Effective Date**”), is made by and between Town of Mountain Village, a Colorado Home Rule Municipality and Political Subdivision of the State of Colorado (“**Town**”) and MV Colorado Development Partners, LLC, a Texas limited liability company or its successor in interest (“**Owner**”). Town and Owner are sometimes each individually referred to as a “**Party**” and sometimes collectively as the “**Parties**”. The Parties agree as follows:

1. The Parties entered into that certain Development Agreement Lot 109R, Town of Mountain Village, Planned Unit Development (“**Development Agreement**”) recorded on March 18, 2011 in Reception No. 416997.
2. Owner is the current fee simple owner of certain real property described as Lots 109R, Town of Mountain Village as further described on the plat recorded on March 18, 2011 at Reception Number 416994 (“**Property**”).
3. The Town Council approved a PUD development for the Property (“**PUD Approval**”) evidenced by Town Council Resolution Number 2010-1208-31 on December 8, 2010 as recorded at Reception Number 415339. The PUD Approval was valid through December 8, 2015.
4. In connection with the Town PUD Approval, the Owner and the Town executed a certain Development Agreement for the Property, which was recorded in Reception Number 416997 (“**Development Agreement**”).
5. The PUD Approval and the Development Agreement evidenced the granting and creation of a vested property right for a site specific development plan for the Property for a period of five (5) years that is valid until December 8, 2015 (“**Vested Property Right**”).
6. The Owner submitted its development application for a major PUD amendment seeking Town approval to extend the PUD Approval and the Vested Property Right until December 8, 2020 (“**PUD Extension Application**”).
7. The PUD Extension Application was reviewed and approved by the Town, evidenced by a certain Town Council Ordinance 2015-_____, recorded in Reception No. _____ (“**Town PUD Extension Ordinance**”).
8. The Parties wish to modify portions of the Development Agreement in the manner provided for in this Amendment consistent with the Town PUD Extension Ordinance.
9. Section 12.16 of the Development Agreement is amended and restated to read as follows

12.16. **Term of Agreement.** This Agreement and the Town Approvals as they relate to the Applications, except for the Replat, shall expire as of December 8, 2020 unless Owner has either: (a) obtained a building permit and commenced construction of the Project Condominium; or (b) applied for and obtained an approval to extend this Agreement and the Town Approvals. If construction has not timely commenced or an extension not obtained prior to December 8, 2020, the Town Approvals shall expire, except that the Replat and the density assigned to the Property shall remain in place, but prior to any use and development of the Property, the Owner of the

Property must reapply for and obtain necessary approvals of applications for rezoning, PUD, waivers/variations and design review approval for any project contemplated for the Property, which will be reviewed in accordance with LUO and Design Regulations in place at the time of the submission of any such application.

10. The Vested Property Right is extended to December 8, 2020.

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

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

13. This Amendment may be executed in multiple counterparts or by legible facsimile copy, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument. The facsimile transmission of a signed copy of this Amendment shall be considered valid and constitute a signed original.

IN WITNESS THEREOF, the Parties have executed this Agreement intending that it become effective as of the Effective Date.

TOWN:

Town of Mountain Village, a Colorado
Home Rule Municipality and Political
Subdivision of the State of Colorado

By: _____
Dan Jansen, Mayor

Date: _____

Attest: _____

By: _____
Kim Montgomery, Town Manager

Date: _____

STATE OF _____)
) ss
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this ____ day of _____, 2015 by Dan Jansen as the Mayor of The Town of Mountain Village.

Witness my hand and official seal.

Notary Public

My commission expires: _____.

STATE OF _____)
) ss
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this ____ day of _____, 2015 by Kim Montgomery as the Town Manager of The Town of Mountain Village.

Witness my hand and official seal.

Notary Public

My commission expires: _____.

OWNER:

MV Colorado Development Partners, LLC,
a Texas limited liability company

By: _____

Date: _____

Printed Name: _____

Title: _____

State of _____)

)ss

County of _____)

Subscribed to and acknowledged before me this ____ day of _____, 2015 by
_____ as _____ of MV
Colorado Development Partners, LLC.

Witness my hand and official seal.

Notary Public

My commission expires: _____