

ORDINANCE NO. 2015-01

ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO TO APPROVING: (1) A MAJOR PUD AMENDMENT TO: (A) ALLOW FOR THE CONSTRUCTION OF A POOL AND PORTE COCHERE ADDITION ON THE WEST SIDE OF HOTEL MADELINE ON LOT OS-1A-MVB AND LOT 38-50-51R; (B) BRING A PORTION OF OS-1A-MVB AND LOT 38-50-51R INTO THE PUD; AND (C) AMEND AND RESTATE THE PUD DEVELOPMENT AGREEMENT; AND (2) REZONING A PORTION OF OS-1A-MVB AND LOT 38-50-51R FROM THE FULL USE ACTIVE OPEN SPACE ZONE DISTRICT TO THE VILLAGE CENTER ZONE DISTRICT.

RECITALS

- A. Madeline Property Owner, LLC, ("Owner") has submitted to the Town a detailed Planned Unit Development amendment and rezoning development applications ("**Applications**") pursuant to the requirements of the Community Development Code ("**CDC**").
- B. The Town owns certain real property described as Lot OS-1A-MVB and the following condominium units in the Telluride Mountain Village Resort Condominiums located on Lot 38-50-51R: Plaza Unit, Unit CC-1145 (Zamboni Storage); CC-1104 (Bathroom); CC-1106 (Bathroom); CC-1142 (Ice Rink Retail); Ice Rink Retail-1143; CC-139, CC-140 and CC-141 (Bathroom); CC-141 and Ice Rink Unit CC-1147 (Compressor Room); CC-1201, 1203-ST3 (Stairs); CC-1204 (Elevator Machine Room); CC-1126 (Passenger and Service Elevator Lobby); CC-1131 (Water Feature Mechanical); CC-1132 *(Town Loading Dock) and Town Parking Condominium (122 spaces) that are collectively referred to as the "**Town Property**".
- C. The Owner owns the remainder of certain real property within the Telluride Mountain Village Resort Condominiums ("**Owner Property**") except the Telluride Adaptive Sports Program Space in Unit Retail-112 ("**TASP Property**") and the TMVOA space, Unit Retail-138 ("**TMVOA Property**").
- D. The Town Property, Owner Property, TMVOA Property and TASP Property are collectively referred to as the "**Property**".
- E. The Owner owns at least sixty seven percent (67%) of the Property which allows the Owner to apply for an amendment to the Lot 38-50-51R PUD. However, The Town provided consent for the inclusion of Town Property into the Applications (as defined below).
- F. The Owner received approval for a Planned Unit Development Plan from the Town on March 18, 2004 by Resolution No. 2004-0318-02 recorded at Reception No. 366172 in the records of the San Miguel County Clerk and Recorder ("**Public Records**") as amended by Resolution No. 2005-1108-27 recorded at Reception No. 379630 in the Public Records as memorialize in the Development Agreement for Lots 50 and 51 Mixed Use Development Agreement (the "Original Development Agreement") as recorded at Reception Number 379631 in the Public Records (collectively, the "**Original PUD**").
- G. The Original PUD was amended by Resolution No. 2006-0227-01 and by the First Amendment to the Original Development Agreement as recorded at Reception Number 384823 in the Public Records ("**First Amendment**").

- H. The Original PUD was amended by Resolution No. 2006-0613-6A and by the Second Amendment to the Original Development Agreement as recorded at Reception Number 402009 in the Public Records (“**Second Amendment**”).
- I. The Original PUD was amended by a Town Council action at the February 5, 2009 special meeting and by the Third Amendment to the Original Development Agreement as recorded at Reception Number 405663 in the Public Records (“**Third Amendment**”).
- J. The Original PUD was amended by a Town Council action at the May 21, 2009 meeting and by the Fourth Amendment to the Original Development Agreement as recorded at Reception Number 407360 in the Public Records (“**Fourth Amendment**”).
- K. Lot 38 received approvals for the development which currently sits on the location of former Lot 38. Lot 38 was replatted into the Lot 38-50-51R by a replat recorded February 2, 2009 at reception number 405678 in the Official Records (“Replat”), which combined Lot 38 with Lots 50/51 into one Lot 38-50-51R. The density and permitted uses on the former area of Lot 38 are set forth in Resolution No. 2001-0814-11 (“Lot 38 Resolution”). The Owner desires to officially incorporate the former Lot 38 and the Lot 38 Resolution into the 38-50-51 PUD.
- L. The Property has the following zoning designations pursuant to adopted resolutions as noted:

Resolution No.	Lot No.	Zoning Designation	Actual Units	Person Equivalent per Actual Unit	Total Person Equivalent Density
2004-0318-02 2005-1108-27	38-51-51R				
		Condominium	34	3	102
		Efficiency Lodge	100	0.5	50
		Employee Condo	8	3	24
		Commercial		28,372	
2001-0814-11					
		Condominium	4	3	12
		Lodge	20	0.75	15
		Efficiency Lodge	2	0.5	1
		Employee Apt.	2	3	6

- M. The Owner desires to construct a porte cochere and pool on the western façade of Hotel Madeline on a portion of the Plaza Unit and a portion of OS-1A-MVB (“**Improvements**”). The owner also desires to receive certain approvals related variations and variances to the requirements of the CDC (the “**Variations**”) as set forth in the Applications (as defined below).
- N. The Town owns OS-1A-MVB.
- O. The Improvements and Variations require a major amendment to the PUD pursuant to the requirements of the Community Development Code (“**CDC**”) Planned Unit Development Regulations.
- P. Lot 38-50-51R was divided into separate condominium units by the Condominium Map for Telluride Mountain Village Resort Condominiums as recorded at Reception Number 405678 in the Public Records (“**Hotel Madeline Condominium Map**”).

- Q. The Hotel Condominium Map shows the open plaza areas and breezeways up to the exterior building façade as a “Plaza Unit”, with the Town owning the Plaza Unit.OS-1A-MVB and the Plaza Unit are zoned Full Use Active Open Space and must be rezoned to the Village Center Zone District to allow for the Improvements.
- R. The Owner and the Town desire to (1) include the former area of Lot 38 into the PUD since the development on this lot it is a part of Hotel Madeline; (2) amend and restate the Development Agreement, First Amendment, Second Amendment, Third Amendment and Fourth Amendment which shall also include to the approvals, requirements and conditions related to the Applications (as defined below); (3) delete prior previously satisfied requirements from the Original PUD; and (4) clarify and refine the Lot 38-50-51R PUD.
- S. After completing a conceptual work session with both the Town Council and the Town’s DRB, the Applications.
- T. The DRB considered the Applications, testimony and public comment and recommended to the Town Council that the Applications be approved with conditions pursuant to the requirement of the CDC at a public hearing held on December 4, 2014.
- U. The Town Council approved the Applications at a public hearing and meeting held on December 11, 2014.
- V. This Ordinance establishes the zoning on the Property as shown in Exhibit A and zoning designations as follows:

Lot No.	Zoning Designation	Actual Units	Person Equivalent per Actual Unit	Total Person Equivalent Density
38-51-51RR	Condominium	38	3	114
	Efficiency Lodge	102	0.5	51
	Lodge	20	0.75	15
	Efficiency Lodge	2	0.5	1
	Employee Condo	10	3	30
	Commercial	Permitted on first floor plaza level spaces and for the spa		

- W. The public hearings referred to above were preceded by notice as required by the CDC Public Hearing Noticing Requirements, including but not limited to notification of all property owners within 400 feet of the Property, posting of a sign and posting on the applicable agendas.
- X. The Town Council approved the Applications with the following findings:
- Rezoning Findings
1. The proposed rezoning is in general conformance with the goals, policies and provisions of the Comprehensive Plan because, without limitation:
 - a. The addition will promoted land use pattern envisioned in the Comprehensive Plan.
 - b. The addition will infuse vibrancy into the Mountain Village Center.
 - c. The addition will create amenities that are needed for a 4 and 5 star hotel.

2. The proposed rezoning is consistent with the Zoning and Land Use Regulations 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 variation to CDC Section 17.7.12(C)(5)(m) to allow for snowmelt of the new sidewalk, pool deck area and related spaces is warranted because the current access drive, sidewalks and plaza areas are melted; the pool deck would be a safety hazard without snowmelt, and the Town desires to create a more vibrant and attractive resort destination.
3. The proposed rezoning meets the Comprehensive Plan project standards because, without limitation:
 - a. The visual impacts have been minimized and mitigated with the one-story addition since the pool and porte cochere are located in an area that will not adversely impact views.
 - b. Environmental and geotechnical impacts will be avoided.
 - c. The concurrent Design Review Process development application will ensure site specific issues are addressed.
 - d. The addition does not impact a ski run.
4. The proposed rezoning is consistent with public health, safety and welfare, as well as efficiency and economy in the use of land and its resources because, without limitation:
 - a. The design will ensure proper vehicular and pedestrian sight distance.
 - b. The Owner has agreed to mitigate pool activity noise through the design and operation of the swimming pool and spa area.
 - c. The Applications have been reviewed and approved by the Telluride Fire Protection District.
 - d. The Applications have been reviewed and approved by the Town Public Works and Police departments.
 - e. The proposed addition is also a very efficient use of limited land to provide for a porte cochere and swimming pool consistent with a 4 or 5 star hotel.
5. The proposed rezoning is justified because:
 - a. There have been changes in conditions in the vicinity and due to specific policies in the Comprehensive Plan that contemplate the rezoning, with Hotel Madeline needing a proper porte cochere and outdoor pool in order to be a true 4 or 5 star hotel.
 - b. The improvements will (A) help to provide economic and social vibrancy; (B) promote and focus economic and social vibrancy for visitors and residents; and (C) infuse vibrancy into the town's economic center.
6. 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.
 - c. Hotel Madeline will be responsible for maintaining the sidewalk areas and other plaza spaces on OS-1A-MVB.
7. The proposed rezoning will not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion because, without limitation:
 - a. Adequate sight distance for vehicles and pedestrians will be provided.
 - b. Parking and access for the porte cochere will meet Town standards.

- c. Trash and delivery areas for the Property are not impacted.
8. The proposed rezoning meets all applicable Town regulations and standards.

Major PUD Amendment Criteria

1. The proposed rezoning is in general conformance with the goals, policies and provisions of the Comprehensive Plan because, without limitation:
 - a. The addition will promote land use pattern envisioned in the Comprehensive Plan.
 - b. The addition will infuse vibrancy into the Mountain Village Center.
 - c. The addition will create amenities that are needed for a 4 and 5 star hotel.
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 zoning designations on the site are established by the Town's approval of resolutions 2004-0318-02, 2005-1108-27 and 2001-0814-11, with this ordinance providing the new permitted zoning and zoning designations allowed on the Property.
 - d. The variation to CDC Section 17.7.12(C)(5)(m) to allow for snowmelt of the new sidewalk, pool deck area and related spaces is warranted because the current access drive, sidewalks and plaza areas are melted; the pool deck would be a safety hazard without snowmelt, and the Town desires to create a more vibrant and attractive resort destination.
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 development will provide amenities for residents of the PUD and the public in general.
 - b. The PUD amendment is a very creative way to provide for needed amenities that are associated with a 4 and 5 star hotel.
 - c. The Improvements would not be possible without amending the PUD, and will provide amenities for hotel guests.
 - d. The PUD will continue to provide for the community benefits for the general public.
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 proposed addition will benefit the community because it will allow for a better destination hotel with 4 and 5 star hotel amenities.
 - d. The amendment furthers the land use principles of the Comprehensive Plan
 - e. Efficient land use is being encouraged through a creative, minor addition
 - f. The development continues to allow for integrated planning for all of the Hotel Madeline property 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, additional employee units, improved Village Core pedestrian and vehicular access and a public ice rink. The proposed addition will, in the opinion of staff, also provide for a better destination resort and create more economic activity and vibrancy as envisioned in the Comprehensive Plan. The Applicant is also providing the following community benefits/conveyance consideration:
 - a. Owner shall contribute up to \$60,000 to be used by the Town to replace the cooling unit for the Ice Rink located within the Community as set forth in the attached conveyance agreement.
 - b. Owner shall, at Owner's sole cost and expense, design and construct a shade structure improvements over the Ice Rink in substantially the same dimensions and design as set forth in the attached conveyance agreement.
 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.
 - c. Hotel Madeline will be responsible for maintaining the sidewalk areas and other plaza spaces on OS-1A-MVB.
 8. The proposed rezoning will not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion because, without limitation:
 - a. Adequate sight distance for vehicles and pedestrians will be provided.
 - b. Parking and access for the porte cochere will meet Town standards.
 - c. Trash and delivery areas for the Property are not impacted.
 9. The proposed PUD meets all applicable Town regulations and standards except for the variation noted herein.

NOW, THEREFORE, BE IT RESOLVED that the Town Council approves the Applications, the rezoning of the Property as set forth in Exhibit A, the draft PUD development agreement and the conveyance agreement for OS-1-MVC as set forth in Exhibit B, subject to the conditions 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, the associated conveyance agreement and other legal instruments which may be required to be amended concurrently with the PUD.
2. The zoning map shown in Exhibit A shall include the following elements in the Village Center Zone District: structural columns and the exterior material facing and the porte cochere and pool addition air space. The plaza area below the porte cochere at ground level and surrounding plaza areas and the access drive shall remain a part of the Full Use Active Open Space Zone District. The final zoning map shall be created by the Town working with the applicant based on the future condominium map, with such final map amended into the Official Zoning Map and signed by the Mayor.
3. The PUD development agreement or a separate legal instrument shall include the pool hours.
4. The Owner shall work with the Town to amend the applicable easements and/or license agreements to ensure the operation and maintenance of the sidewalks and plaza areas, including the proposed snowmelt system.

5. The Owner shall enter into a construction license and mitigation agreement prior to the construction of the porte cochere and pool addition.
6. The applicant will provide the cost estimates for replacing the panels and associated hardware to town staff for review and approval.

Section 2. Amendment to Official Zoning Map

The Official Zoning Map is hereby amended as set forth in Exhibit A, with direction to the Planning Division to amend the Official Zoning Map for the Mayor’s signature as outlined in Condition No. 2 above.

Section 3. Ordinance Effect

- A. The following resolutions, PUD agreements and PUD amendments are hereby repealed, replaced and superseded:

Legal Document Name	Reception Number
Resolution No. 2001-0814-11	Unrecorded
Resolution No. 2004-0318-02	366172
Resolution No. 2005-1108-27	379630
Development Agreement for Lots 50 and 51 Mixed Use Development Agreement	379631
Resolution No. 2006-0227-01	384748
First Amendment to the Original Development Agreement	384823
Resolution No. 2006-0613-6A	384748
Second Amendment to the Original Development Agreement	402009
Third Amendment to the Original Development Agreement	405663
Fourth Amendment to the Original Development Agreement	407360

- B. 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.
- C. 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 4. 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 5. Effective Date

This Ordinance shall become effective on February 14, 2015.

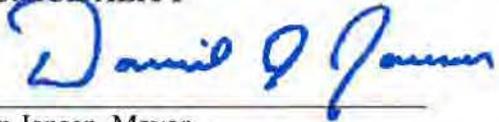
Section 6. Public Hearing

A public hearing on this Ordinance was held on the 15th day of January, 2015 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd, Mountain Village, Colorado 81435.

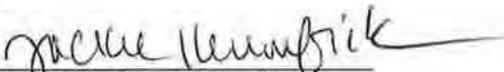
INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 11th day of December, 2014.

TOWN OF MOUNTAIN VILLAGE

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

By: 
Dan Jansen, Mayor

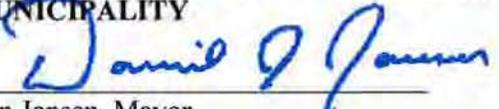
ATTEST:


Jackie Kennefick, Town Clerk

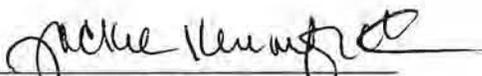
HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this 15th day of January, 2015.

TOWN OF MOUNTAIN VILLAGE

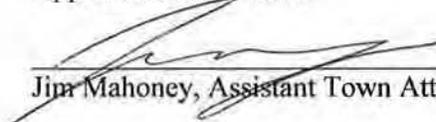
**TOWN OF MOUNTAIN VILLAGE,
COLORADO, A HOME-RULE
MUNICIPALITY**

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.2015-01 ("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 December 11, 2014, 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 December 17, 2014 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 January 15, 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 15th day of January, 2015.

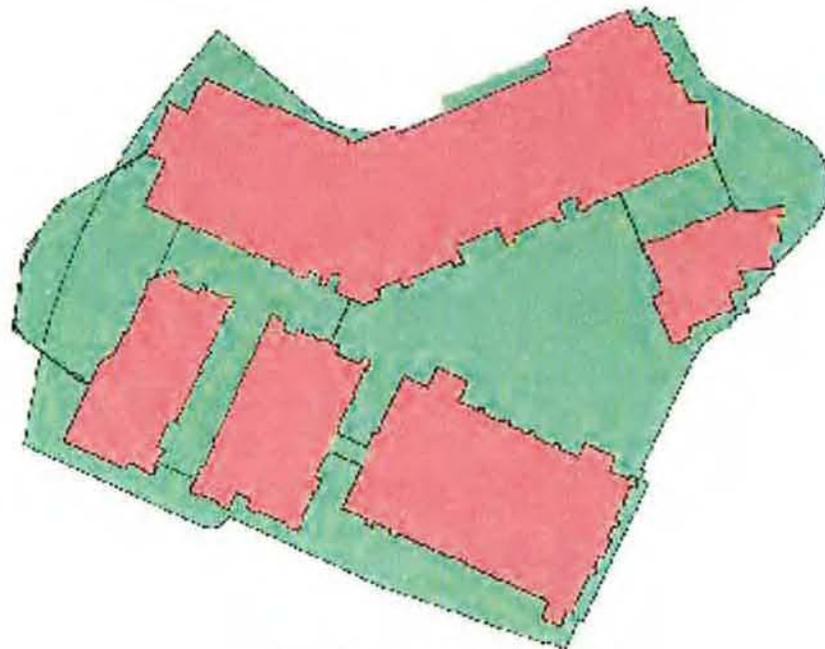


Jackie Kennefick
 Jackie Kennefick, Town Clerk

(SEAL)

Exhibit A: Official Zoning Map Amendment

Exhibit A: Zoning Map



50-51R

Plaza Level Zoning - Lot 50-51R

**FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT
FOR LOT 38-50-51R PLANNED UNIT DEVELOPMENT**

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("**Agreement**" or "**Development Agreement**") for the Lot 38-50-51R Planned Unit Development ("**Lot 38-50-51R PUD**" or "**PUD**") is made and entered into by and between the Town of Mountain Village, a home rule municipality and political subdivision of the State of Colorado ("**Town**"), and Madeline Property Owner, LLC, a Delaware limited liability company and its successors, assigns ("**Owner**"). The Town and the Owner are sometimes also referenced hereinafter individually as a "**Party**" and collectively as "**Parties**."

RECITALS

- A. The Town granted approval for a Planned Unit Development Plan for Lots 50 and 51 on March 18, 2004 by Resolution No. 2004-0318-02 recorded at Reception No. 366172 in the records of the San Miguel County, Colorado Clerk and Recorder ("**Public Records**"), as amended by Resolution No. 2005-1108-27 recorded at Reception No. 379630 in the Public Records; as memorialize in the Development Agreement for Lots 50 and 51 Mixed Use Development Agreement (the "**Original Development Agreement**") recorded at Reception Number 379631 in the Public Records (collectively, the "**Original PUD**").
- B. The Original PUD was amended by Resolution No. 2006-0227-01 and by the First Amendment to the Original Development Agreement recorded at Reception Number 384823 in the Public Records ("**First Amendment**").
- C. The Original PUD was further amended by Resolution No. 2006-0613-6A and by the Second Amendment to the Original Development Agreement recorded at Reception Number 402009 in the Public Records ("**Second Amendment**").
- D. The Original PUD was further amended by Town Council action at the February 5, 2009 special meeting and by the Third Amendment to the Original Development Agreement recorded at Reception Number 405663 in the Public Records ("**Third Amendment**").
- E. The Original PUD was further amended by Town Council action at the May 21, 2009 meeting and by the Fourth Amendment to the Original Development Agreement as recorded at Reception Number 407360 in the Public Records ("**Fourth Amendment**").
- F. The Town granted approval for a development on Lot 38 on August 14, 2001 pursuant to Resolution No. 2001-0814-11 ("**Lot 38 Approval**").
- G. The development approved under the Original PUD for Lots 50 and 51 and the development approved under the Lot 38 Approval were constructed and received final certificates of occupancy in 2009, with two primary buildings: Lot 50/51 Building and the Lot 38 Building.
- H. Lots 38, 50 and 51 and certain open space parcels owned by the Town were replatted into one lot now known as "**Lot 38-50-51R**" pursuant to the replat recorded on February 2, 2009 at Reception Number 405678 in the Public Records.
- I. A Colorado common interest community known as the "**Telluride Mountain Village Resort Condominiums**" ("**Community**") was created on Lot 38-50-51R by the recordation of a Declaration of Covenants, Conditions and Restriction for Telluride Mountain Village Resort Condominiums on February 11, 2009 at Reception No. 405677 ("**Original Declaration**") and the

Exhibit B

Condominium Map for Telluride Mountain Village Resort Condominiums recorded on February 11, 2009 at Reception No. 405678 ("**Community Map**").

- J. The Declaration was amended and restated by that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Telluride Mountain Village Resort Condominiums recorded on November 23, 2011 at Reception No. 420677 ("**Amended and Restated Declaration**"). The Original Declaration and the Amended and Restated Declaration and any further amendments or supplements thereto shall be referred to herein as the "Declaration."
- K. The Town owns certain condominium units within the as follows: (i) Plaza Unit, (ii) Ice Rink Unit; (iii) Town Parking Condominium (containing approximately 122 spaces); and (iv) Civic Units: CC-1145 (Zamboni Storage); CC-1104 (Bathroom); CC-1106 (Bathroom); CC-1142 (Ice Rink Retail); Ice Rink Retail-1143; CC-139, CC-140 and CC-141 (Bathroom); CC-141 and Ice Rink Unit CC-1147 (Compressor Room); CC-1201, 1203-ST3 (Stairs); CC-1204 (Elevator Machine Room); CC-1126 (Passenger and Service Elevator Lobby); CC-1131 (Water Feature Mechanical); and CC-1132 (Town Loading Dock), which are collectively referred to herein as the ("**Town Property**").
- L. The Owner owns all of the condominium units within the Community ("**Owner Property**"), except for: (i) the Town Property; (ii) Retail Unit 112 which is owned by the Telluride Adaptive Sports Program Space ("**TASP Unit**") and (iii) Retail Unit 136 which owned by the Telluride Mountain Village Owners Association ("**TMVOA Unit**").
- M. The Town Property, Owner Property, TMVOA Unit and TASP Unit are collectively referred to as the "**Property**".
- N. Owner submitted an application to the Town for a Major PUD Amendment to: (i) officially incorporate the former Lot 38 and the Lot 38 Approval into the Lot 38-50-51 PUD; (ii) update and revise the PUD Development Agreement to reflect the current status of the PUD; (iv) expand the boundaries of the PUD to include OS-1A-MVB; (v) expand the PUD to include the construction of a porte cochere and outdoor pool and pool deck ("**Entry and Pool Improvements**") on the western façade of the Community on a portion of the Plaza Unit and OS-1A-MVB; (vi) revise and update the current zoning within the Community; and (vi) memorialize the Town's approval of certain variations and variances to the requirements of the CDC for the Lot 38-50-51R PUD ("**Variations**").
- O. The Condominium Map shows the open plaza areas and breezeways up to the exterior building façade as a "Plaza Unit", with the Town owning the Plaza Unit. OS-1A-MVB and the Plaza Unit are currently zoned Full Use Active Open Space and must be rezoned to the Village Center Zone District to allow for the Entry and Pool Improvements.
- P. OS-1A-MVB must be replatted to incorporate OS-1-MVB into Lot 38-50-51R to allow for the construction of the Entry and Pool Improvements which shall be incorporated within the PUD and the Community. Therefore, OS-1A-MVB must be conveyed from the Town to the Owner subject to the terms and conditions of this Agreement and the OS-1A-MVB Conveyance Agreement dated _____, 2015 attached hereto as **Exhibit "B"**, and incorporated herein ("**Conveyance Agreement**").
- Q. The Town and Owner desire to amend the Original PUD to: (i) include the former area of Lot 38 into the Lot 38-50-51R PUD since the development on Lot 38 has been included within the Community; (ii) amend and restate the Original Development Agreement, First Amendment,

Exhibit B

Second Amendment, Third Amendment and Fourth Amendment; (iii) memorialize the approvals, requirements and conditions related to the Applications(defined below); (iv) delete the conditions of the Original PUD that have been completed; and (v) clarify the remaining terms and conditions of the Lot 38-50-51R PUD.

- R. Hereafter, the boundaries of the Lot 38-50-51R PUD and the boundaries of the Community shall at all times be the same.
- S. The Owner owns at least sixty seven percent (67%) of the Property within the PUD which allows the Owner to apply for a Major Amendment to the PUD pursuant to Section 17.4.12(N)(3) of the Community Development Code ("**CDC**"). In addition, the Town provided consent for the inclusion of certain property owned by the Town (OS-1A-MVB) into the Applications.
- T. After completing a conceptual work session with both the Town Council and the Town's Design Review Board ("**DRB**") on October 16 and October 23, 2014, respectively, the Owner submitted to the Town a Major PUD Amendment Application, Rezoning Application, Minor Subdivision Application and Design Review Application (collectively the "**Applications**") pursuant to the requirements of the CDC.
- U. The DRB considered the Applications, testimony and public comment and recommended to the Town Council that the Major PUD Amendment Application and Rezoning Applications be approved with conditions pursuant to the requirement of the CDC at a public hearing held on December 4, 2014.
- V. The Town Council approved the first reading of an ordinance approving the Major PUD Amendment Application and Rezoning Application and set the second reading of the ordinance and public hearing for January 15, 2015.
- W. The Town Council approved the Minor Subdivision Application subject to conditions at a public hearing held on December 4, 2015.
- X. The DRB approved the Design Review Application for the Entry and Pool Improvements subject to conditions at a public hearing held on January 8, 2015.
- Y. The Town Council considered the Major PUD Amendment Application and Rezoning Application, testimony and public comment and adopted an ordinance approving the Major PUD Amendment Application and Rezoning Application with conditions pursuant to the requirement of the CDC at a public hearing held on January 15, 2015.
- Z. The public hearings referred to above were preceded by notice as required by the CDC Public Hearing Noticing Requirements, including but not limited to notification of all property owners within 400 feet of the Property, posting of a sign and posting on the applicable agendas.

NOW, THEREFORE, in consideration of the above premises, the Town Council's approval of the Applications upon all terms and conditions contained herein, and the covenants, mutual obligations and promises as hereinafter set forth, it is agreed by and between the Parties as follows:

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1. **INCORPORATION OF RECITALS.** The Parties confirm and incorporate the foregoing recitals into this Agreement.

2. **INCORPORATION OF LOT 38 IN THE PUD.** Lot 38, including the Lot 38 Approval, is hereby incorporated into and made a part of the Lot 38-50-51R PUD and subject to the terms and conditions of this Agreement.

3. **CONVEYANCE OF OS-1A-MVB TO OWNER AND INCORPORATION INTO THE PUD.**

The Town agrees to convey all of OS-1A-MVB to the Owner in order to allow for the construction of the Entry and Pool Improvements and incorporation into the Property, Community and PUD, subject to the terms and conditions of this Agreement and the Conveyance Agreement recorded at Reception No _____ in the Public Records attached hereto as **Exhibit "B"**.

4. **RELATIONSHIP TO COMMUNITY DEVELOPMENT CODE**

To the extent of any conflict between this Agreement and the CDC, the terms, conditions, regulations and standards contained in this Agreement shall supersede the provisions of the CDC to the extent of conflict. Where this Agreement does not address specific CDC standards, the specific provisions contained in the CDC shall apply as determined by the Town Planning Division, subject to a final determination by the relevant review authority. In making this determination, the Planning Division and review authority shall consider the original intent of the PUD, the type of use, intensity of use, type of structure and similar factors to identify the situation covered by the CDC closest in comparison to the situation in the PUD. Notwithstanding the foregoing, when possible, the PUD and the CDC should be read to be consistent with one another.

5. **PERMITTED USES**

A. The permitted uses within the Property shall be the same as for the Village Center Zone District as set forth in the CDC.

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.

C. Commercial and retail uses are permitted, without limitation, on floor areas in any location on the first floor and plaza level of the Community and on the first and second floor levels of the "Hotel Unit" as the same is depicted on the Community Map.

D. All plaza level spaces shall comply with the CDC Plaza Level Use Limitations, unless a conditional use permit has been issued by the Town in accordance with such limitations and the CDC.

E. Home occupations shall be allowed pursuant to the CDC Home Occupation Regulations.

6. **PERMITTED ZONING AND DENSITY**

The following table establishes the zoning designations and density within the PUD and the Community based on the Original PUD and Resolution No. 2001-0814-11:

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Zoning Designation	Actual Units	Person Equivalent per Actual Unit	Total Person Equivalent Density
Condominium	38	3	114
Efficiency Lodge Units	102	0.5	51
Lodge	20	0.75	15
Employee Condo	10	3	30
Commercial	NA	NA	NA

7. BUILDING HEIGHT

Building height allowed by this Agreement shall be as follows:

Maximum Building Height:	86 feet 6 inches
Maximum Average Building Height:	64 feet 1 inch

8. PERMITTED VARIATIONS TO THE CDC

- A. The DRB as part of the Original PUD approved the certain variations to the CDC Design Regulations, to allow the following:
- 1) The use of stained cementitious vertical plank.
 - 2) No recession for plaza level windows for retail spaces.
 - 3) The use of copper accent roof materials.
 - 4) The use of 2:12 roof form.
- B. Town Council, based on a recommendation for approval from the DRB, granted variations to allow the following:
- 1) Allowing the Entry and Pool Improvements to be located in close proximity to a lot line, with a specific variation to CDC Section 17.3.14.H that allow the DRB to impose a setback of up to 20 feet for swimming pools and hot tubs since noise will be mitigated and buffered. (2015 PUD Variation)
 - 2) Increase the allowed maximum building height and maximum average building height under the CDC to the following (Original PUD Variation):

Maximum Building Height:	86 feet 6 inches
Maximum Average Building Height:	64 feet 1 inch
 - 3) Remove the requirement that a parking space must be allocated to a specific unit (Original PUD Variation).
 - 4) Allow a width reduction for 22 of the parking spaces located in the subsurface parking garage from the required 9-feet to 8-feet 6-inches; and, to allow a reduction in the 20-foot required backup space to 19-feet 7-inches for the four (4)

Exhibit B

parking spaces that the DRB required be 10-feet wide under the Design Regulations (Original PUD Variation).

- 5) Allowance for the construction of the Pedestrian Bridge connecting the two major buildings within the Community, which shall be used only for pedestrian access within the Community for use as housekeeping and maintenance access between the buildings connected by the Pedestrian Bridge. In servicing the interior buildings and other portions of the Community, all housekeeping and maintenance carts shall access the Community buildings only by the Pedestrian Bridge and/or the underground garage/basement facilities within the Community. Housekeeping and Maintenance carts shall not use the Plaza Unit for access (Original PUD Variation).
- 6) Allow for snowmelt area in excess of the allowed square footage in the CDC (2015 PUD Variation).

9. ORIGINAL PUD COMMUNITY BENEFITS

The Town Council determined that the Lot 38-50-51R PUD achieves one or more Community Purposes (referred to as Community Benefits in the CDC) by providing the public benefits listed below. Any elimination, cessation or change to any of these enumerated Community Benefits shall require a PUD Major Amendment pursuant to the CDC.

- 1) Addition of public parking managed by the Town to maximize all public parking spaces for the benefit of the public, with the land provided by the Owner;
- 2) Addition of three units of Employee Housing beyond the five units platted and required on Lots 50 and 51;
- 3) Improved vehicular entry to the Village Core;
- 4) Improved pedestrian entry to the Village Core with land provided by the Owner;
- 5) Plaza improvements that include the addition of the snowmelt system to the plaza beyond what is required and the space in the proposed structure to contain the necessary boilers for the snowmelt system; a fire pit area, plaza access and connections to adjacent plazas through the site;
- 6) Space, guaranteed by the Owner to be used for the Telluride Adaptive Sports Program (TASP) directly adjacent to the ski run, in a development that is handicap accessible;
- 7) A public ice rink and public performance space owned by the Town that is designed to provide a dynamic entryway area to the Mountain Village Core, on land provided by the Owner, which connects to the adjacent Village core plazas and is integrated to and visible from Heritage Plaza;
- 8) Addition of public, plaza level bathroom services including baby changing stations in all bathrooms;

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- 9) A central loading dock area owned by the Town for the Village Core with land provided by the Owner; and
- 10) Increase in the Short-Term Bed Base through the creation of a “Hotel”, subject to a recorded deed restriction placed on the use of the 100 Efficiency Lodge Units located within the Lot 50/51 Building to be operated and managed as a four or five star hotel.

10. ADDITIONAL 2015 COMMUNITY BENEFITS.

The Town Council has determined that the Applications achieve one or more Community Benefits by providing the public benefits listed below. Any elimination, cessation or change to any of these enumerated Community Benefits shall require a Major PUD Amendment pursuant to the CDC.

A. Owner shall contribute up to \$60,000 to be used by the Town to replace/convert the cooling unit for the Ice Rink located within the Community in accordance with the terms and conditions of the Conveyance Agreement (“**Cooling Cost Contribution**”).

B. Owner shall, at Owner’s sole cost and expense, design and construct shade structure improvements over the Ice Rink in accordance with the Conveyance Agreement (“**Ice Rink Improvements**”).

11. HOTEL AND RECONFIGURATION DEED RESTRICTIONS.

The Property is subject to the Amended and Restated Hotel Deed Restriction recorded at Reception Number 430163 and the Reconfiguration Deed Restriction recorded at Reception Number 384749, as may be amended from time to time by the Town and the Owner, which require: (1) the hotel to be operated and managed as a four or five star hotel according to the requirements set forth therein; (2) the provision of 100 Efficiency Lodge Units; (3) the restriction of the reconfiguration of the 100 Efficiency Lodge Units to the configurations approved by the Town in the Final PUD Plan and the construction drawings submitting in connection therewith; (4) the provision of a sufficient number of rooms as hotel rooms within the 100 Efficiency Lodge Units; (5) the hotel rating of four or five stars shall be maintained at all times and that cash damages be assessed in the event of non-compliance with this deed restriction; and (6) the Town Council to approve the specific hotel operator as set forth in the Hotel Deed Restriction. Any elimination, cessation or change to any of these enumerated requirements shall require a Major PUD Amendment pursuant to the CDC

12. EMPLOYEE HOUSING

A total of ten (10) workforce housing units shall be maintained within the Community in accordance with and subject to the Town of Mountain Village Employee Housing Deed Restriction as recorded at Reception Number 406966.

13. COMPLIANCE WITH PUD REQUIRED AGREEMENTS.

Pursuant to the Original PUD and approval of the Applications, the Owner and Town shall comply with the following agreements, as may be amended from time-to-time by the mutual agreement of Owner and the Town:

- A. Amended and Restated Hotel Deed Restriction recorded at Reception Number 430163.

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- B. Reconfiguration Deed Restriction recorded at Reception Number 384749. .
- C. Parking Management Agreement dated October 31, 2006 (unrecorded).
- D. Loading and Facilities Easement Agreement as recorded at Reception Number 407365.
- E. Community Entrance Driveways and Landscaping Easement Agreement as recorded at Reception Number 405671.
- F. First Amended and Restated Fire Lane Easement Agreement as recorded at Reception Number 405673.
- G. Garage Access Ramp and Tunnel Easement Agreement as recorded at Reception Number 405669.
- H. Ski/Golf Resort Operations, Stairways and Irrigation System Easements Agreement as recorded at Reception Number 405854.
- I. The Lot 38R Access Easement Agreement as recorded at Reception Number 346442.
- J. The Lot 38R Parking Easement Agreement as recorded at Reception Number 346443.
- K. Common Underground Garage Agreement as Recorded at Reception Number 346444.
- L. Community and Public Use and Access Easements Agreement as recorded at Reception Number 407366.
- M. Ice rink systems easement as recorded at Reception Number 407368.
- N. Loading Facilities and Management Plan dated June 15, 2009 (unrecorded).
- O. Plaza Unit Food and Beverage Operations License Agreement dated June 15, 2009 (unrecorded).
- P. Reflection Plaza MOU dated December 17, 2013 (unrecorded).
- Q. OS-1A-MVB Conveyance Agreement as recorded at Reception Number _____.

14. APPROVAL OF FINAL PUD PLAN AND DENSITY TRANSFER.

A. Town Council approved the Final PUD Plan as a part of the Original PUD which shall consist of the documents itemized in **Exhibit "A"** (hereinafter collectively referred to as "**Final PUD Plans**"). The final DRB approved plans for the Entry and Pool Improvements shall be deemed to be part of and included in the Final PUD Plans. The final construction plans and drawings for the PUD are incorporated into this Agreement by this reference and included in the definition of the Final PUD Plans.

B. Town Council, based on a recommendation for approval from the DRB, approved density transfers and density reallocations for the Property as part of the Original PUD follows:

- 1) Transfer of 25.33 Condominium Units, seventy-six (76) condominium density, to the Density Bank for the benefit of the Applicant.
- 2) Transfer of three (3) Employee Condominiums, nine (9) density to Lot 50-51R from the Town's Housing Authority to accommodate the three (3) additional deed restricted Employee Condominiums.

15. CONSTRUCTION OF ICE RINK IMPROVEMENTS AND DELIVERY OF COMMUNITY BENEFITS AND CONSTRUCTION LICENSE.

A. The Owner shall commence and complete construction of the Ice Rink Improvements in accordance with the terms and conditions of the Conveyance Agreement. The Ice Rink Improvements, and the public improvements associated with the Entry and Pool Improvements (sidewalks, landscaping, plaza areas, etc.) shall be public improvements (the "**Public Improvements**"). The Public Improvements shall be completed, issued certificates of occupancy and inspected by the Town to ensure compliance with the Town approved plans for such Public Improvements and deeded to the Town free and clear of all liens

Exhibit B

and encumbrances prior to the issuance of any certificate of occupancy for the Entry and Pool Improvements

B. The Owner shall enter into an improvements agreement for the Public Improvements in accordance with CDC Section 17.4.13(L), prior to and as a condition of the issuance of a building permit for the Entry and Pool Improvements.

C. Prior to the issuance of a building permit for the Entry and Pool Improvements and the Public Improvements, the Owner shall enter into a construction license and staging agreement for and construction of the Entry and Pool Improvements and the Public Improvements and their impact on existing infrastructure.

16. MISCELLANEOUS.

A. REMEDIES FOR BREACH OR DEFAULT.

In the event Owner, or its successor in interest, should fail to perform or adhere to its obligations as set forth herein, and such failure continues for a period of thirty (30) days after the Owner receives written notice by registered mail, return receipt requested from the Town describing the failure in reasonable detail, then the Town shall have the following remedies against the Owner which remedies are cumulative and non-exclusive unless such failure is of a nature that it is not capable of being cured with 30 days in which case it shall be commenced within the 30 day period and diligently pursued to completion:

- 1) Specific performance;
- 2) Injunctive relief, both mandatory and/or prohibitory;
- 3) Denial, withholding, or cancellation of any building permit or any other authorization authorizing or implementing the development of the PUD and/or any structure or improvement to be constructed on the Property;
- 4) In the event of a material breach of this Agreement or default hereunder, denial or withholding of any Certificate of Occupancy for any structure or improvement to be constructed on the Property; and/or
- 5) Treat the default as a violation of the CDC and proceed to impose fines as set forth in the CDC as a violation of the CDC.

In the event that the Town should fail to perform or adhere to its obligations as set forth herein, including but not limited to any rezoning, land use or other action or inaction, direct or indirect, or pursuant to an initiated measure, taken without the Owner's consent, that alters, impairs, prevents, diminishes, imposes a moratorium on development, delays or otherwise materially and adversely affects any development, use or other rights under this Agreement, then the Owner shall have the following remedies:

- 1) Specific performance; and/or
- 2) Injunctive relief, both mandatory and or prohibitory;

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B. **INDEMNITY.** Except as otherwise set forth herein, the Owner shall defend and hold the Town, harmless from and against any and all claims, demands, liabilities, actions, costs, damages, and reasonable attorney's fees that may arise out of or result directly or indirectly from the Owner's failure to comply with the terms and conditions of this Agreement, including without limitation, Owner's defective design or construction of the Public Improvements or Owner's failure to construct or complete the same; provided, however, that the provisions of this subsection b. shall not apply to loss, or damage or claims therefore attributable to the negligent acts or omissions of the Town, Metro District or TMVOA their agents, employees or contractors. After inspection and acceptance by the Town, and after expiration of any applicable warranty period, this Agreement of indemnity shall expire and be of no future force or effect.

C. **ATTORNEY FEES.** In the event of any action, proceeding or litigation between the Town and the Owner concerning this Agreement, the prevailing party shall be entitled to collect its reasonable legal fees and costs, including the reasonable value of salaried attorney's time. Any state court litigation to enforce the terms of this Agreement shall be commenced in San Miguel County, Colorado and venue shall be restricted to such county.

D. **BINDING EFFECT.** This Agreement shall extend to, inure to the benefit of, and be binding upon the Town and its successors and assigns and, except as otherwise provided herein, upon the Owner, its successors (including subsequent owners of the Property, or any part thereof), legal representatives and assigns. Owners of the Efficiency Lodge, Condominium and Employee Condominium units permitted under the Approval Resolution shall be bound by those provisions of this Agreement which specifically apply only to those units. This Agreement shall constitute an agreement running with the Property until: (a) modification or release by mutual agreement of the Town and the Owner or their successors and assigns; or (b) expiration of the term hereof. Upon the conveyance of the Property by Owner to a different entity or person, and provided that the Owner is not in default hereunder at the time of conveyance, then upon the conveyance of the Property the Owner shall have no liability under this Agreement for any act or omission occurring after the date of such conveyance; provided, that the third party transferee shall assume all liability for any act or omission arising under this Agreement.

E. **AUTHORIZATION.** The Parties hereto warrant they are fully authorized to execute this Agreement and have taken all actions necessary to obtain such authorization.

F. **WAIVER.** No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

G. **AMENDMENT OF AGREEMENT.** Except as otherwise set forth in this Agreement, this Agreement may be amended or terminated only by mutual consent in writing of the Town and the Owner.

H. **GOOD FAITH OF PARTIES.** In performance of this Agreement, or in considering any requested extension of time, the Parties agree that each will act in good faith and will not unreasonably withhold, delay or condition any approval or consent required or contemplated by this Agreement.

I. **FURTHER ASSURANCES.** Each Party shall execute and deliver such documents or instruments and take such action as may be reasonably requested by the other Party to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof. If all or any portion of the PUD, the Final Plat, or this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties shall cooperate in the joint defense of such

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documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that the Owner and the Town receive the benefits that they would have received under this Agreement.

J. **CERTIFICATIONS.** Each Party agrees to execute such documents or instruments as the other Party shall reasonably request to verify or confirm the status of this Agreement and of the performance of the obligations hereunder and such other matters as the requesting Party shall reasonably request.

K. **RIGHTS OF LENDERS AND INTERESTED PARTIES.** The Town is aware that financing for acquisition, development and/or construction of the Property may be provided in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders, major tenants, hotel operators or managers and purchasers or developers of portions of the Property. In the event of an Event of Default by the Owner, the Town shall provide notice of such Event of Default, at the same time notice is provided to Owner, to any such interested party previously identified in writing to the Town. If such interested Parties are permitted, under the terms of its agreement with the Owner to cure the Event of Default and/or to assume Owner's position with respect to this Agreement, the Town agrees to recognize such rights of interested parties and to otherwise permit such interested parties to assume all of the rights and obligations of Owner under this Agreement.

L. **NOTICES.** All notices required hereunder shall be deemed delivered to the parties five (5) calendar days after posting the same postage prepaid by certified mail, return receipt requested, and addressed as follows:

To the Town:

Town of Mountain Village
Attn: Town Manager and Town Attorney
455 Mountain Village Blvd., Unit A
Mountain Village, Colorado 81435

To the Owner:

Madeline Property Owner, LLC
c/o Northview Hotel Group
36 Narrow Rocks Road
Westport, CT 06880

M. **SEVERABILITY.** If any term or provision or Article of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the applications or such term or provision or Article to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

N. **DEFINED TERMS.** All capitalized but undefined terms used in this Agreement shall have the meanings set forth in the CDC.

EXHIBIT A
FINAL PUD PLANS

EXHIBIT B
OS-1B-MVB CONVEYANCE AGREEMENT

OS-1A-MVB CONVEYANCE AGREEMENT

THIS OS-1A-MVB CONVEYANCE AGREEMENT (this "**Agreement**") is made and entered into this _____ day of _____, 2015 ("**Effective Date**"), by and between Madeline Property Owner, LLC, a Delaware limited liability company ("**Owner**") and the Town of Mountain Village, a home rule municipality and political subdivision of the State of Colorado ("**Town**").

Recitals:

A. Owner has submitted an application to the Town to replat all of OS-1A-MVB owned by the Town ("**Open Space**") into Lot 38-50-51R to be incorporated into the Telluride Mountain Village Resort Condominiums, a Colorado common interest community, which located on Lot 38-50-51R ("**Community**"), to be used for the construction of a porte cochere and elevated outdoor pool and pool deck for the Community ("**Entry and Pool Improvements**") in accordance with plans approved by the Town's Design Review Board.

B. After a public hearing and careful consideration, the Town desires to grant and convey fee title ownership in the Open Space to Owner to be incorporated into Lot 38-50-51R.

C. The Town and Owner desire to enter into this Agreement to address the conditions and consideration for conveyance of the Open Space by the Town to Owner.

NOW, THEREFORE, for valuable consideration, consisting of the mutual promises, covenants and conditions contained herein, the sufficiency of which is acknowledged by the parties, the parties agree as follows:

1. **CONSIDERATION.** In consideration of the conveyance of the Open Space by the Town to Owner to be incorporated into Lot 38-50-51R, Owner shall provide the following:

1.1 **Cooling Upgrades.** Owner shall contribute up to \$60,000 to be used by the Town to replace the cooling unit for the Ice Rink located within the Community (the "**Cooling Upgrades**"). Upon presentment of invoices for the Cooling Upgrades to Owner from the Town, Owner shall forward funds to the Town within fifteen (15) days of receipt of the invoices.

1.2 **Ice Rink Shade Structure.** Owner shall, at Owner's sole cost and expense, design and construct shade structure improvements over the Ice Rink in substantially the same dimensions and design as the conceptual design set forth in Exhibit "A," (the "**Shade Structure**") subject to customary design review approval by the Town Design Review Board. Prior to submitting for final Town Design Review Board Approval, Owner shall submit the design and specifications of the Shade Structure to the Town's Recreation Department for review and approval of the Shade Structure, which shall not be unreasonably withheld. The completion of the Shade Structure shall be finished in accordance with the following provisions:

- (a) If the building permit for the Pool and Entry Improvement is issued prior to July 1, then the Shade Structure shall be completed by no later than November 30th of the year of issuance of the building permit;
- (b) If the building permit for the Pool and Entry Improvements is issued after July 1, then the Shade Structure shall be completed by November 30 of the year following the year of issuance of the building permit. Owner shall not interrupt the Ice Rink operations in

Exhibit B

the winter seasons (December 15 through April 5) in connection with the construction and installation of the Shade Structure.

- 12.1.1 Following completion of installation of the Shade Structure, the Owner shall notify the Town of such completion and the Town shall have ten (10) business days to inspect the Shade Structure for any defects. If such defects are noted, the Owner shall have ten (10) business days to correct any defects. Upon acceptance of the Shade Structure, the Owner shall provide the Town with a Bill of Sale for such Shade Structure along with an assignment of all warranties for the products and construction of the Shade Structure. Upon acceptance of the Bill of Sale for the Shade Structure, the Town shall be responsible for the ongoing operation, maintenance and repair of the Shade Structure, which shall be undertaken by the Town in the Town's reasonable discretion.

1.3 **Conditions for Issuance Certificate of Occupancy.** The certificate of occupancy for the Entry and Pool Improvements shall not be issued until the Town has accepted the Shade Structure and the Town has received reimbursement for the Cooling Upgrades. Provided, however, if the Town has not completed the Cooling Upgrades by the date of completion of the Shade Structure by Owner, then the certificate of occupancy shall be issued by the Town and the Owner shall be obligated to reimburse the Town (up to \$60,000) at such time as the Cooling Upgrades are completed and proper invoices are submitted to Owner.

2. **AMENDMENT TO CONDOMINIUM MAP.** By no later than sixty (60) days after the date of issuance of a certificate of occupancy by the Town for the Entry and Pool Improvements, Owner shall submit an amendment to the Community Condominium Map, which shall include the new units or expansion of existing units created by the Entry and Pool Improvements as well as all new ground level plaza space to be included within the existing Plaza Unit (owned by the Town) for review and approval by the Town in accordance with the Town's Community Development Code. As a condition of the Community Condominium Map amendment approval process, Owner shall submit an amendment to the Community and Public Use and Access Easements recorded at Reception No. 407366 for review and approval by the Town, which shall amend the description of the Community Entrance Easement Area to incorporate the newly constructed plaza areas.

3. **RECONVEYANCE OF PLAZA SPACE.** In connection with the amendment to the Community Condominium Map, all newly created ground level plaza space shall be incorporated into the Plaza Unit (owned by the Town) free and clear of all liens and encumbrances.

4. **GENERAL PROVISIONS.**

4.1 **Indemnity.** Owner shall indemnify and hold the Town harmless from any and all liability, damage, judgments and costs by reason of death or injuries sustained by or property damage suffered by any person on the Property in connection with Owner's activities contemplated by this Agreement, unless such claims arise from the negligence or intentional acts of the Town and/or Town's contractors, agents, representatives or invitees. If the Town is made a party to any litigation on account of any such claim, Owner shall pay all damages, cost and expenses recovered against the Town as determined by a final judgment by a court of competent jurisdiction. Such damages, costs and expenses shall be due forthwith after notice thereof from the Town. Owner shall also pay to the Town all reasonable out of pocket attorneys' fees, expert witness fees, expenses, costs and losses which the Town may incur in connection with such claim.

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4.2 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, addressed to the recipient at their address listed below their signature hereto. Any notice of a change of address shall be given as set forth in this provision to be effective.

4.3 Waiver. The waiver of a breach of any of the covenants contained in this Agreement, or the failure of a party to insist on the strict performance of any provision, rule or regulation shall not be construed to be a waiver of any succeeding breach of the same covenant, provision, rule or regulation.

4.4 Written Modifications. Any modification of this Agreement shall be effective only if it is in writing and signed by all parties hereto.

4.5 Entire Agreement. This Agreement contains the entire agreement between the parties as of this date, and the execution hereof has not been induced by either party by representations, promises, or understandings not expressed herein and there are no collateral agreements, stipulations, promises, or undertakings whatsoever upon the respective parties in any way touching the subject matter of this instruments which are not expressly contained in this instrument.

4.6 Severance and Validity. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

4.7 Attorneys' and Expert Witness Fees. In the event that either party hereto has to retain counsel and/or expert witnesses to enforce any of the rights and duties created hereunder, then the prevailing party shall be awarded its reasonable attorneys' and expert witness fees and costs from the non-prevailing party, whether or not litigation is actually commenced and upon appeal.

4.8 Relationship of Parties. The parties shall not be considered or deemed to be joint venturers or partners and neither shall have the power to bind or obligate the other except as may be expressly set forth herein.

4.9 Applicable Law. This Agreement shall be construed and enforced in all respects in accordance with the laws of the State of Colorado.

4.10 Time of Essence. Time is of the essence with respect to all provisions of this Agreement.

4.11 Dispute Resolution, Venue, Remedies. The exclusive venue for resolution of disputes under this Agreement shall be in the Courts of San Miguel County, Colorado. Pursuit of any remedies provided for under this Agreement shall not preclude pursuit of any other remedies prescribed in other sections of this Agreement and other remedies provided at law or in equity, including injunctive relieve, and all remedies shall be cumulative.

4.12 Covenants Running with Land, Rights, Recordation. All covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the land and shall attach and bind and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns, except as otherwise provided herein. This Agreement shall be recorded in the real property records of San Miguel County, Colorado.

4.13 Counterparts. This Agreement may be executed in counterparts.

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