

**RESOLUTION OF THE TOWN COUNCIL  
OF MOUNTAIN VILLAGE, RESOLUTION ACCEPTING UPPER BENCHMARK DRIVE  
(ACCESS TRACTS F-37A AND 24-B)**

**RESOLUTION NO. 2020-0116-3**

- A. TSG Ski and Golf, LLC currently own Upper Benchmark Drive (Access Tracts F-37A and 24-B).
- B. Upper Benchmark Drive currently serves as the access to at least 8 Lots within the Town of Mountain Village.
- C. Upper Benchmark Drive is currently only partially improved.
- D. The owners of Lots 386DR, 374R, and 373R have asked the Town to accept Upper Benchmark Drive from TSG Ski and Golf, LLC.
- E. The Town may accept access tracts if such access tracts meet the criteria as set forth in Section 17.6.6.C.2 including that the Town determined that it is in the Town's best interest to accept such access tract.
- F. The Town finds it in its best interest to accept Upper Benchmark Drive as it serves as key access to several lots within the Town of Mountain Village and through an agreement with the owners of Lots 386DR, 374R, and 373R, the Town can ensure that the access tract is constructed at such owner's costs, to the Town's standards for accepting access tracts.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE AS FOLLOWS:**

- 1. The Town Council approves accepting deeds for Access Tracts F-37A and 24-B from TSG Ski and Golf, LLC for Upper Benchmark Drive, subject to the owners of Lots 386DR, 374R, and 373R completing the conditions as set forth in the Access Tract Improvement Agreement attached hereto as Exhibit A, and authorizes the Mayor to sign such Agreement in form substantially similar to the attached Exhibit A.

**Section 1. Resolution Effect**

- A. This Resolution 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and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the resolutions repealed or amended as herein provided and the same shall be construed and concluded under such prior resolutions.
- B. All resolutions, of the Town, or parts thereof, inconsistent or in conflict with this Resolution, are hereby repealed, replaced and superseded to the extent only of such inconsistency or conflict.

**Section 2. Severability**

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

**Section 3. Effective Date**

This Resolution shall become effective on January 16, 2020 (the "Effective Date") as herein referenced throughout this Resolution.

**Section 4. Public Meeting**

A public meeting on this Resolution was held on the 16th day of January 2020 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd, Mountain Village, Colorado 81435.

**Approved and Adopted** by the Town Council at a public meeting held on January 16, 2020.


**Town of Mountain Village, Town Council**

By:   
Laila Benitez, Mayor

**Attest:**

By:   
Susan Johnston, Deputy Town Clerk

Approved as to Form:

  
James Mahoney, Assistant Town Attorney

**UPPER BENCHMARK DRIVE  
(ACCESS TRACT 24-B, ACCESS TRACT F-37A AND TRACT OSP-55)  
IMPROVEMENT AGREEMENT**

This Improvement Agreement (this “**Agreement**”) dated as of January 16, 2020 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 (the “**Town**”); and

Calvin Akin (“**Akin**”), DAMB Properties, LLC, a Colorado limited liability company (“**DAMB**”) and All Views LLC, a Colorado limited liability company (“**All Views**”) (collectively “**Applicants**”).

**RECITALS**

- A. Akin owns Lot 386B, aka 536 Benchmark Drive.
  - B. DAMB owns Lot 374R, aka 539 Benchmark Drive.
  - C. All Views owns Lot 373R, a vacant lot.
  - D. TSG Ski and Golf, LLC (“**TSG**”) currently owns Access Tract 24-B and Access Tract F-37A, Town of Mountain Village, Colorado.
  - E. The Town of Mountain Village currently owns Tract OSP-55.
  - F. Access Tract 24-B, Access Tract F-37A and Tract OSP-55 may hereafter be referred to as “**Upper Benchmark Drive.**”
  - G. Upper Benchmark Drive currently serves as the access to seven (7) lots within the Town of Mountain Village, specifically:
    - 1. Lot 347, aka 529 Benchmark Drive;
    - 2. Lot 386CR, aka 524 Benchmark Drive;
    - 3. Lot 386A, aka 535 Benchmark Drive;
    - 4. Lot 386DR, aka 538 Benchmark Drive;
    - 5. Lot 386B, aka 536 Benchmark Drive;
    - 6. Lot 374R, aka 539 Benchmark Drive; and
    - 7. Lot 373R, a vacant lot.
- Collectively, the “**Properties**” or the “**Accessing Lots.**”
- H. Access and utilities serving the Properties is provided from Benchmark Drive, a Town owned road right of way, up and to Upper Benchmark Drive.
  - I. The Applicants have requested that the Town accept Upper Benchmark Drive from TSG.

J. The Town finds it in its best interest to accept ownership of Access Tract 24-B and Access Tract F-37A and to establish Tract OSP-55 subject to the terms and conditions set forth in this Agreement, as it benefits multiple lots within the Mountain Village.

Now therefore, the parties, for good and valuable consideration, do hereby acknowledge and agree as follows:

## AGREEMENT

1. Acceptance of Access Tract 24-B and Access Tract F-37A. The Town agrees to accept via Quit Claim Deed, which is attached hereto as **Exhibit A** and incorporated herein, Access Tract 24-B and Access Tract F-37A from TSG (the “**Deed**”) subject to the Applicants completing improvements required to bring Upper Benchmark Drive into compliance with Town standards for access tracts as set forth in the Town’s Community Development Code at applicants sole cost and expense as set forth in section 4 below.

2. Tract OSP-55. The Town agrees that Upper Benchmark Road will be a publicly accessed access tract upon satisfaction of the conditions of acceptance as set forth herein and recording of the Deed.

3. Use of Upper Benchmark Drive. Upper Benchmark Drive shall be a public Access Tract, and shall not be a private drive. Upper Benchmark Drive may be used to provide vehicular and pedestrian access as well as for the installation of utilities as approved by the Town of Mountain Village, for the use and benefit of the Properties (“**Access Tract Improvements**”), as well the Accessing Lots, or any other lot the Town deems, in its sole and absolute discretion, appropriate to use Upper Benchmark Drive. The right for the owners of the Accessing Lots and other lots deemed appropriate by the Town to use Upper Benchmark Drive to use the Access Tract Improvements is perpetual and non-exclusive in nature. Nothing in the Agreement shall be construed to provide the owners of the Accessing Lots or any other lot owner any rights in Upper Benchmark Drive other than to use the Access Tract Improvements for the purposes set forth in this Agreement. The Town shall determine in its discretion and when funds are appropriated, as to when and how Upper Benchmark Drive is maintained similar to other public roads within the Mountain Village including but not limited to repair and maintenance and seasonal snow removal. If requested by one or more owners of the Accessing Lots and approved by the Town in writing, such an owner or owners may elect to cause snow removal to occur on Upper Benchmark Drive outside of Town services at such an owner’s or owners’ cost and expense. In the event such an owner causes, or owners cause, snow removal to occur, such an owner or owners specifically causing such snow removal shall indemnify and hold harmless the Town, its employees, agents and board members from any and all liability, damages (including physical damage to Upper Benchmark Drive as a result of the work), and costs and attorney’s fees directly resulting from such snow removal on Upper Benchmark Drive.

4. Completion of Improvements to Access Tract 24-B and Access Tract F-37A. The Applicants are required to design, construct and install certain Access Tract Improvements according to the current applicable Town road design and utility standards for Access Tract 24-B

and Access Tract F-37A prior to the Town accepting and recording the Deed and prior to the Town performing any maintenance obligations on Access Tract 24-B and Access Tract F-37A. Attached hereto as **Exhibit A** are the applicable Town road design and utility standards. The Applicants shall be required to cause their contractor to provide the Town with a standard two (2) year warranty, approved by the Town prior to construction, for the Access Tract Improvements. The Applicants shall be required to assign such warranties and receive a certificate of completion for the Access Tract Improvements relating to the road improvements prior to the Town accepting and recording the Deed.

5. Improvement Guarantee. In order to guarantee that necessary Access Tract Improvements shall occur, the Applicants shall be required to either: a) post a nonrevocable bond or other acceptable form of collateral in a form acceptable to the Town in an amount equal to one hundred and twenty percent (120%) of the estimated costs to complete the Access Tract Improvements relating to the road improvements on Access Tract 24-B and Access Tract F-37A; or, b) deposit into escrow with a financial institution agreed upon by the parties, an amount equal to one hundred and twenty percent (120%) of the costs for Access Tract Improvements which shall be released upon completion of the Access Tract Improvements, with completion determined at the reasonable discretion of Town. Either of the above options shall be required prior to the issuance of a development permit for the Access Tract Improvements. The Town shall be granted access to such collateral fund if the Access Tract Improvements once initiated are not completed within twelve months of the commencement of construction of the Access Tract Improvements, or such other mutually agreeable date between the parties.

6. Runs with the Land. This Agreement shall run with the land and shall be applicable to, binding upon and inure to the benefit of the parties, their respective transferees, representatives, successors and assigns. This Agreement shall be recorded.

7. Complete Agreement. This Agreement represents the complete understanding of the parties, and any prior understanding and agreements are superseded by this Agreement.

8. Expiration of Agreement. If the Applicants fail to complete the improvements and warranties outlined in paragraph 4 above within five (5) years of the date of approval, this Agreement shall be null and void.

9. Attorney's Fees. In the event of any dispute related to this Agreement, the substantially prevailing party shall be entitled to an award of its costs, including reasonable attorney's fees. Venue for any related to this Agreement shall be proper in San Miguel County, State of Colorado.



State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

DAMB Properties, LLC, a Colorado limited liability company

By: \_\_\_\_\_  
David C. Baldwin, Manager

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by David C. Baldwin, Manager, DAMB Properties, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_  
Notary Public \_\_\_\_\_

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

All Views LLC, a Colorado limited liability company

By: \_\_\_\_\_  
David C. Baldwin, Manager

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by David C. Baldwin, Manager, All Views LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_  
Notary Public \_\_\_\_\_

**TOWN OF MOUNTAIN VILLAGE:**

State of Colorado                    )  
  ) ss.  
County of San Miguel                )

By: \_\_\_\_\_  
Laila Benitez, Mayor

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Laila Benitez, Mayor of the Town of Mountain Village.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Approved as to Form:

\_\_\_\_\_  
Jim Mahoney, Town Attorney