

## **ORDINANCE NO. 2020-16**

### **AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO APPROVING A MAJOR SECOND PLANNED UNIT DEVELOPMENT (PUD) AMENDMENT TO LOT 109R EXTENDING THE LENGTH OF VALIDITY AND VESTED PROPERTY RIGHTS FOR A SITE SPECIFIC DEVELOPMENT PLAN FROM DECEMBER 8, 2020 TO DECEMBER 8, 2022**

#### **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 ("First PUD Extension Application").
- F. The First 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 First 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 approved the First PUD Extension Application the Vested Property Rights for a site specific development plan by Ordinance 2015-07 at reception No. 438753 and the First Amendment to Development Agreement at Reception No. 438754 to December 8, 2020.
- I. The Applicant submitted a Second Major PUD Amendment application to extend the PUD Approval and Vested Property right until December 8, 2022.
- J. The DRB conducted a public hearing on the Second Major PUD Amendment Application in accordance with the CDC Public Hearing Noticing Requirements on November 5, 2020, with public notice of such application as required by the public hearing noticing requirements of the CDC. The DRB recommended to Town Council unanimously to approve the application.
- K. The Town Council approved on first reading of an Ordinance the application on November 19, 2020.

- L. The Town Council considered on second reading of an Ordinance the application on December 3, 2020.
- M. The Town Council finds the proposed Second PUD Extension Application meets the PUD criteria for decision contained in CDC Section 17.4.12.E as follows:
1. The proposed rezoning is in general conformance with the goals, policies and provisions of the Mountain Village Comprehensive Plan ("Comprehensive Plan") because, without limitation:
  2. 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.
  3. 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.
  4. The infill development will provide a restaurant and limited commercial space that will help revitalize the North Village Center area.
  5. 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:
  6. The uses are permitted in the Village Center Zone District.
  7. 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.
  8. The development is consistent with the Development Agreement.
  9. 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.
  10. 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 I 09R and surrounding development in order to achieve the PUD purposes.
  11. The proposed PUD amendment meets the PUD general standards contained in CDC section 17.4.12(1), including but not limited to the authority to initiate a PUD amendment, landscaping and buffering and adequate infrastructure.

12. 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.
13. 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.
14. The proposed PUD amendment will not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion.
15. The proposed PUD meets all applicable Town regulations and standards except for the variations allowed by the Development Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, THAT THE TOWN COUNCIL APPROVES THE SECOND PUD EXTENSION APPLICATION, INCLUDING THE EXTENSION OF THE PUD APPROVAL AND THE VESTED PROPERTY RIGHTS UNTIL DECEMBER 8, 2022 AND THE SECOND MAJOR PUD AGREEMENT AMENDMENT IS HEREBY ATTACHED AS EXHIBIT A.**

#### **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 thirty days after the public hearing which is December 3, 2020; effective date January 2, 2021.

#### **Section 5. Public Hearing**

A public hearing on this Ordinance was held on the 3rd day of December 2020 in a virtual Zoom meeting.

**INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 19<sup>th</sup> Day of November 2020**

**TOWN OF MOUNTAIN VILLAGE:**

ATTEST:

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

  
Susan Johnston, Town Clerk

By:   
Laila Benitez, Mayor

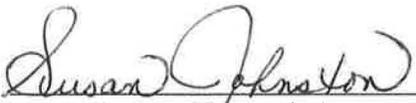
**HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village,  
Colorado this 3<sup>rd</sup> Day of December 2020.**

**TOWN OF MOUNTAIN VILLAGE:**

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

By:   
Laila Benitez, Mayor

ATTEST:

  
Susan Johnston, Town Clerk

Approved As To Form:

  
Paul Wisor, Town Attorney

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

- 5. The attached copy of Ordinance No. 2020-16 (“Ordinance”) is a true, correct and complete copy thereof.
- 5. 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 via virtual Zoom meeting, on November 19, 2020, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	“Yes”	“No”	Absent	Abstain
Laila Benitez, Mayor	X			
Dan Caton, Mayor Pro-Tem	X			
Martinique Davis Prohaska	X			
Peter Duprey	X			
Patrick Berry	X			
Natalie Binder	X			
Jack Gilbride	X			

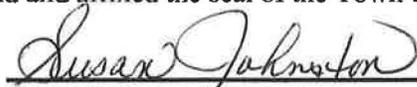
- 5. After the Council’s approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on November 26, 2020 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 via virtual Zoom meeting, Mountain Village, Colorado, on December 3, 2020. 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
Laila Benitez, Mayor	X			
Dan Caton, Mayor Pro-Tem	X			
Martinique Davis Prohaska	X			
Peter Duprey	X			
Patrick Berry	X			
Natalie Binder			X	
Jack Gilbride	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 3<sup>rd</sup> day of December 2020.

  
\_\_\_\_\_  
Susan Johnston, Town Clerk

(SEAL)



EXHIBIT A

**ADDENDUM/NARRATIVE TO PUD EXTENSION/AMENDMENT**

August 27, 2020

MV Colorado Development Partners, LLC, a Texas limited liability company or its successor in interest (“**Owner**”) secured certain approvals (“**Town Approvals**”) by the Town of Mountain Village (“**Town**”), authorizing the Owner to pursue a mixed use development project (“**Project**”) on Lot 109R, Town of Mountain Village. The documents reflect the Town Approvals include, without limitation, the following documents:

1. Town Council PUD Approval Resolution
2. Replat
3. Development Agreement and First Amendment (extending the expiration date)
4. Final PUD Plan

We will establish a dropbox account and place documents relating to the Town Approvals at that site for your access to documents.

The Town Approvals and vesting period was initially granted through December 8, 2015 (“**Town Approvals Expiration Date**”), at which time they would expire 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.

In 2015, Owner submitted its application seeking to extend the Town Approvals Expiration Date to December 8, 2020, which was approved by the Town.

The within application is being submitted by Owner to amend the Town Approvals, including the Final PUD approval for the Project, for the purpose of further extending the Town Approvals Expiration Date from December 8, 2020 to December 8, 2022 and the period of extended vesting for the Project through December 8, 2022 for reasons set forth herein.

The project as reflected in the Town Approvals allowed for the following uses and densities, which would be allowed in a building allowed to build up to maximum height of 88’-9” and a maximum average height of 65’-2.9” with a total of approximately 270,000 sf of buildable space. The project includes a sizable hotel component.

<b>Approved Density/Commercial SF</b>			
	<b># Units</b>	<b>Density Per</b>	<b>Total Density</b>
Efficiency Lodge Units	66	.5	33
Lodge Units	38	.75	28.5
Unrestricted Condominium Units	20	3	60
Employee Apartment	1	3	3
Commercial SF	20,164		
	<b>Total Density</b>		<b>124.5</b>

Since the granting of the Town Approvals, much has changed in the Mountain Village and with the Owner. Due to the unfortunate death of a principal of the Owner who was heading up the development team for this project, the owner shifted the focus of its development program from resort projects to other

development uses. Since that event, the Owner has been actively marketing the property for sale to qualified purchasers. These marketing efforts over recent years have not proven successful.

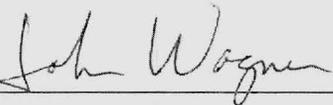
Based upon feedback from potential parties interested in purchasing and developing Lot 109R, Owner learned that there is not interest in the marketplace to develop the property as a resort/hotel project, consistent with its approvals. The Owner consulted with its marketing consultants and learned that there would be stronger interest from potential buyers/developers of the site should it be developed as a largely residential project, similar in mass/scale and uses to the surrounding developments. Starting in the fall of 2019, the Owner began discussions with the Town about modifying the approved plans to largely remove the PUD approvals and return the development of the property to more of a "use by right" project in terms of mass and scale and develop the property generally in line with those uses (residential) and densities (25 to 30) that was allowed on the property prior to the PUD approvals. A more traditional residential project would be designed to allow for and embrace short-term rental opportunities (VRBO AIRBNB, etc) which is a growing trend among owners of residential units in Mountain Village and proving to be a viable way to provide units for guests/visitors looking for accommodation units.

As Owner was getting ready to start the formal review process with the Town to amend the Town Approvals to convert it to a "use by right" project, the COVID pandemic hit and the Owner has suspended its pursuit of the application until such time as the Town was able to meet in person and not remotely. As things stand now, the Owner still wants to pursue these amendments with the Town, but would prefer to hold these meetings/hearings on the amendments with the Town in the course of in person meeting.

Should the Town Approvals expire without some type of controlled provisions in place, it would cause much confusion over the status of the project in terms of uses, densities, allowable mass/scale, etc. It was this reason that the Owner wanted to work with the Town on an amendment to the approvals to enable the "use by right" project, which would allow for an orderly change to the allowable development of Lot 109R. The approvals currently are set to expire December 8, 2020. Owner is seeking Town approval for a two-year extension to PUD expiration date to enable Owner and Town to work through a revised land use plan for Lot 109R for the "use by right" plan. Given the uncertainties surrounding the COVID circumstances and how that will affect the manner in which the Town will conduct hearings on land use applications, the Owner thought it prudent to seek the two-year extension just in case 2021 proves to be similar to 2020. The Owner is anxious to submit and have the Town review a formal amendment to the land use approvals for the revised "use by right" project, so as to enable the Owner to be able to market the property to buyers who are much more interested in pursuing a development that does not have the hotel component.

Respectfully Submitted,

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

By:  \_\_\_\_\_

Printed Name: John A Wagner

Title: VP

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

**THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (“Amendment”)**, made effective as of \_\_\_\_\_, 2020 (“**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 as amended by the First Amendment to the Development Agreement recorded on \_\_\_\_\_ in Reception No. \_\_\_\_\_ (“**First Amendment to Development Agreement**”)

2. Owner is the current fee simple owner of certain real property described as Lot 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 adopted on December 8, 2010, as recorded at Reception Number 415339. The PUD Approval was valid through December 8, 2015 and subsequently was extended through December 8, 2020.

4. 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**”). The First Amendment to Development Agreement extended the term of the Vested Property Right for an additional five (5) years through December 8, 2020.

5. The Owner submitted its development application (“**PUD Extension Application**”) seeking Town approval to extend the PUD Approval and the Vested Property Right until December 8, 2022.

6. The PUD Extension Application was reviewed and approved by the Town, evidenced by a certain Town Council Ordinance \_\_\_\_\_, recorded in Reception No. \_\_\_\_\_ (“**Town PUD Extension Ordinance**”).

7. 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.

8. 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, 2022 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, 2022, 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.

9. The Vested Property Right is extended to December 8, 2022.

10. 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.

11. 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.

12. 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 or scanned/emailed of a signed copy of this Amendment shall be considered valid and constitute a signed original.



**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 \_\_\_\_\_, 2020 by  
\_\_\_\_\_ as \_\_\_\_\_ of MV  
Colorado Development Partners, LLC.

Witness my hand and official seal.

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

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

4-16997

Page 1 of 39

SAN MIGUEL COUNTY, CO

M. KATHLEEN ERIE, CLERK-RECORDER

03-18-2011 01:27 PM Recording Fee \$201.00

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

**THIS DEVELOPMENT AGREEMENT** (“**Agreement**”), dated and made effective as of 3/18, 2011 (“**Effective Date**”), is entered into by and between the 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**”.

**DEFINITIONS**

Unless otherwise provided for herein, all capitalized but undefined terms used in this Agreement shall have the meanings set forth in the LUO and/or the Design Regulations (defined below). In addition, the Parties acknowledge and agree to the following definitions (“**Definitions**”) and further agree that each of the Definitions: (a) form a portion of the basis of this Agreement; and (b) are incorporated in this Agreement. As used herein, the following Definitions shall be given the meaning ascribed to the term as the same are stated below.

- A. “**Act**” shall mean the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319.
- B. “**Application**” shall collectively mean the various land use applications, including plans, drawings, specification, narratives, reports, studies and other materials prepared by Owner and submitted to the Town concerning the development of the Project on the Property, inclusive of: (1) Planned Unit Development (Conceptual, Sketch and Final PUD Plan)(“**PUD**”) pursuant to Section 3-5 of the LUO; (2) Replat pursuant to Section 4-4 of the LUO; (3) Rezone pursuant to Section 4-3 of the LUO; (4) Density Transfer pursuant to Section 4-2 of the LUO; (5) Variations/waivers for certain sections of the LUO and Design Regulations pursuant to Section 4-601(2) of the LUO; and (6) Extended Vested Rights.
- C. “**Commercial Condominium Units**” shall mean each of those particular Condominium Units specifically designed for commercial uses by the Project Condominium Documents and the Town Approvals.
- D. “**Common Elements**” shall mean the common elements, including any limited common elements formed in the Condominium and designated as such pursuant to the Project Condominium Documents.
- E. “**Condominium Units**” shall mean the individual condominium units formed in the Project Condominium and designated as such pursuant to the Project Condominium Documents, which are designated for separate ownership by the Unit Owners and shall consist of the Residential Condominium Units and Commercial Condominium Units.
- F. “**Contributed Town Property**” means certain land owned by the Town, which the Town agreed to allow Owner to include in the Replat and incorporated into the Property and Project pursuant to the Land Exchange Agreement.
- G. “**Design Regulations**” shall mean the Mountain Village Design Regulations adopted by the Town, as amended through the Effective Date.

H. **"DRB"** or **"Design Review Board"** shall mean the Town of Mountain Village Design Review Board.

I. **"Efficiency Lodge Units"** shall mean each of those Residential Condominium Units included in the Project that are zoned and designated as an Efficiency Lodge Unit (within the meaning of the LUO) in the Town Approvals.

J. **"Final PUD Plans"** shall mean the final plans, drawings and specifications for the Property for the Property and Project that have been approved by the DRB and the Town Council, as reflected in the Town Council Approval Resolution, which plans, drawings and specifications consist of each of the documents are listed and described on attached Exhibit "A".

K. **"Furniture Package"** shall mean those certain standard furnishing packages specified by Owner and the Hotel Operator for the Residential Condominium Units.

L. **"Hotel Covenant"** shall mean that certain Declaration of Covenants and Restrictions (Hotel Operator and Hotel Amenities, Facilities and Services Covenant) recorded in Reception No. 416997 in the Official Records.

M. **"Hotel Guests"** shall mean those persons who are staying in any of the Hotel Rooms or any of the Residential Condominium Units for short-term accommodation usage purposes as part of the Rental Management Program.

N. **"Hotel Operator"** means the company initially retained by the Owner and approved by the Town in the manner provided for in this Agreement and the Hotel Covenant to operate and manage the Rental Management Program in the Project Condominium.

O. **"Hotel Rooms"** means each of those forty (40) Efficiency Lodge Units located in the Project and designated and dedicated only for use and occupancy by Hotel Guests in the Rental Management Program that are deemed to be part of the Hotel Facilities Unit and will be held in the common ownership with the other portions of the Project denoted as the Hotel Facilities Unit. The location of the Hotel Rooms shall be generally consistent with the Final PUD Plans and be designated on the building permit plans and later designated on the Project Condominium Documents.

P. **"Hotel Facilities Unit"** means the Hotel Rooms, lobby area, front desk and associated office, and similar areas of the Project that are necessary for the operation of the hotel. The Hotel Facilities Unit will be owned by one entity that may change from time-to-time.

Q. **"Lock-Off Unit"** shall mean a Condominium Unit in the Project consisting of Lodge Units and Efficiency Lodge Units that shall be separated from an adjacent unit by a common keyed door.

R. **"Lodge Units"** shall mean each of those Residential Condominium Units included in the Project that are zoned and designated as a Lodge Unit (within the meaning of the LUO) in the Town Approvals.

S. **"LUO"** shall mean the Land Use Ordinance adopted by the Town of Mountain Village, as amended through the Effective Date.

T. **"Official Records"** shall mean the Official Records of the Clerk and Recorder for San Miguel County, Colorado.

U. **“Owner”** shall mean MV Colorado Development Partners, LLC, a Texas limited liability company, its successors, assigns and transferees.

V. **“Parking Condominium Units”** shall mean those particular Condominium Units designed for parking uses by the Project Condominium Documents.

W. **“Project”** shall mean the development of a certain mixed-use hotel, residential condominium and commercial project on the Property, which was approved by the Town as reflected in the Town Council Approval Resolution. The Project shall consist of: (1) a minimum of the 40 Hotel Rooms zoned Efficiency Lodge Units to be operated and deed restricted as part of the hotel and included as part of the Hotel Facilities Unit as required by this Agreement and as shown on the Final PUD Plans; (2) 26 additional Efficiency Lodge Units; (3) 38 Lodge Units; (4) 20 Unrestricted Condominium Units; and (5) approximately 20,000 sq. ft. of commercial space.

X. **“Project Association”** shall mean the non-profit corporation formed to manage the Project Condominium as contemplated by the Project Condominium Documents.

Y. **“Project Condominium”** shall mean the condominium regime to be established on the Property in accordance with the Act and the Project Condominium Documents. The Condominium consists of certain Condominium Units and Common Elements as established and designated by Project Condominium Documents.

Z. **“Project Condominium Documents”** shall mean the documents prepared in connection with the formation and operation of the Project Condominium, which are anticipated to consist of the following instruments: (1) Condominium Declaration; (2) Condominium Map; (3) The Articles of Incorporation and Bylaws for the Project Association; (4) any Rules and Regulations for the Project Condominium; and (5) any and all such other pertinent documents, as the same may be amended and/or supplemented from time to time.

AA. **“Project Operational Standards”** means the standards for operating the Project as determined by the Hotel Operator, in consultation with the Owner and Project Association, consistent with the terms and conditions of the Town Approvals and the operating standards customarily followed by the Hotel Operator for similar projects managed by Hotel Operator located in mountain resort locations which are intended to promote a high standard of quality. The Project Operational Standards are intended to be followed for purposes of promoting the use and operation of the Project as a full service Hotel within the Hotel Facilities Unit and those Residential Condominium Units participating in the Rental Management Program. When developing and implementing the Operational Standards, the Hotel Operator shall exercise its good faith, commercially reasonable judgment and adhere to industry standards for similar projects located in mountain resort locations as well as the actual operational needs of the Hotel and/or Hotel Guest. It is recognized and agreed that the Project Operational Standards may vary from time to time given due consideration to winter periods, summer periods and shoulder seasons between winter and summer periods.

BB. **“Project PUD Resolution”** shall mean that certain resolution duly adopted by the Town concerning the Project Approvals for the Property and Project recorded in Reception No. 415 339 in the Official Records concerning the Development of the Project and shall include the Final PUD Plan approved by the Town.

CC. **"Property"** shall mean Lot 109R, Town of Mountain Village, San Miguel County, Colorado according to the Replat.

DD. **"Rental Management Program"** means the short-term rental management and accommodations styled program (for usage periods of less than 30 days) operated in the Condominium Project by the Hotel Operator consisting of some or all of the Condominium Units and/or the Common Elements.

EE. **"Replacement Town Property"** shall mean Lot 644, Town of Mountain Village or other mutually acceptable property to be transferred and conveyed to the Town by the Owner pursuant to the terms and conditions of this Agreement.

FF. **"Replat"** shall mean that certain Replat entitled "*Replat of Lot 109R and Tract OS-3BR-2*" establishing the boundaries of the Property recorded on March 18, 2011 in Plat Book 1, Page 4455 Reception No. 416994 in the Official Records concerning the development of the Project.

GG. **"Residential Condominium Units"** shall mean those particular Condominium Units that are zoned as Lodge Units, the Efficiency Lodge Units and the Unrestricted Condominium Units, specified for residential uses by the Project Condominium Documents and the Town Approvals.

HH. **"Town"** shall mean the Town of Mountain Village, Colorado.

II. **"Town Approvals"** shall mean those certain land use entitlement approvals concerning the Property and the Project that have been granted by the Town, including, without limitation, approvals for PUD, Variance, Rezone, Replat and Density Transfer and any other plans or permits granted by the Town for the Property and the Project. The Town Approvals are further reflected in the Project PUD Resolution, the Project Development Agreement, the Replat, The Land Exchange Agreement and this Agreement.

JJ. **"Town Council"** shall mean the Town of Mountain Village Town Council.

KK. **"Town Council Approval Resolution"** shall mean Resolution No. 2010-1208-31 adopted by the Town Council, approving the Application for the Project, which was recorded on December 10, 2010 at Reception No. 415339 in the Official Records.

LL. **"Town Enforceable Restriction"** shall mean those provisions established in the Project Condominium Documents that also run to the benefit of the Town, that may be specifically enforced by the Town and may not be modified without the prior written consent of the Town.

MM. **"Town Laws"** shall mean the Town of Mountain Village Land Use Ordinance, Town of Mountain Village Building Code, Town of Mountain Village Charter and the Town of Mountain Village Municipal Code.

NN. **"Town /Owner Land Exchange"** means the transfer and conveyance of the Contributed Town Property by the Town to Owner in exchange for the transfer and conveyance of the Replacement Town Property by the Owner to the Town in accordance with the terms and conditions of this Agreement.

OO. **"Unit Owners"** shall mean the respective owners of each of the Condominium Units.

PP. **“Unrestricted Condominium Units”** shall mean each of those Residential Condominium Units included in the Project that are zoned and designated as a Condominium Unit (within the meaning of the LUO) in the Town Approvals.

**RECITALS**

The Parties acknowledge and agree to the following recitals (“**Recitals**”) and further agree that each of the Recitals: (a) form a portion of the basis of this Agreement; and (b) are incorporated in this Agreement.

- A. Owner is the current, fee simple owner of the Property.
- B. Owner submitted the Application to the Town, which was reviewed and considered by the Town in accordance with applicable law, including but not limited to, the LUO and Design Regulations.
- C. The Town authorized the Owner to include the Contributed Town Property in the Application and to pursue the contemplated development of the Project on the Property, including portions affecting the Contributed Town Property, provided that Owner has transferred and conveyed the Replacement Town Property in the manner and timeframe required by this Agreement.
- D. The Parties acknowledge and agree that the proposed use and development of the Contributed Town Property are exempt from the Temporary Moratorium Prohibiting the Rezoning of Active Open Space adopted by the Town (Ordinance No. 2009-03) in accordance with its provisions.
- E. Nothing contained herein or in the Land Exchange Agreement is intended to establish any joint venture between Owner and Town with respect to the ownership, operation, management and development of the Project.
- F. At a duly noticed and conducted public hearing on March 28, 2008, the DRB recommended to the Town Council that the Application for Conceptual PUD Plan be approved with conditions pursuant to LUO Section 4-606.
- G. At a duly noticed and conducted public hearing on March 11, 2010, the Town Council granted Conceptual PUD Plan approval to the Application pursuant to LUO Section 4-606.
- H. At a duly noticed and conducted public hearings held on June 24, 2010 and again on July 22, 2010, the DRB granted Sketch PUD Plan approval to the Application pursuant to LUO Section 4-607.
- I. At a duly noticed and conducted public hearing on October 28, 2010, the DRB recommended to the Town Council that the Application for Final PUD Plan be approved pursuant to LUO Section 4-608 as well as other components of the Application.
- J. At a duly noticed and conducted public hearing on November 18, 2010, the Town Council considered Final PUD approval and continued the matter to December 8, 2010.
- K. At a duly noticed and conducted public hearing on December 8, 2010, the Town Council granted Final PUD Plan approval to the Application pursuant to LUO Section 4-609 as well as other components of the Application, including, specifically and without limitation, the request for Extended Vesting Rights.

L. After conducting the respective public hearings, receiving evidence and taking testimony and comment thereon, the DRB and the Town Council respectively found that: (i) the Property achieves one (1) or more of the applicable purposes listed in Section 4-616 of the LUO, and (ii) the resulting development will be consistent with the provisions of Section 4-617 of the LUO.

M. The public hearings referred to above were preceded by publication of public notice of such hearing(s) on such dates and/or dates from which such hearings were continued in the *Telluride Watch* and by mailing of public notice to property owners located within four hundred feet (400') of the Property, as required by the LUO.

N. The publication of the granting of the Extended Vested Rights for the Project was accomplished with placement of public notice in the Daily Planet on December 31, 2010, as required by the LUO.

O. The Town Council has adopted the Town Council Approval Resolution, the terms and conditions of which are incorporated herein by this reference.

P. Owner has now met all requirements for: (1) Final PUD approval and has addressed conditions 1 through 9 of Final PUD approval as set forth by the DRB and Town Council in the Town Council Approval Resolution, the remaining conditions are ongoing conditions that are set forth in this Agreement; and (2) final approval for the components of the Application relating to the Replat, Rezone, Density Transfer, variations/waivers and Extended Vesting Rights.

Q. This Agreement shall be recorded with the Replat.

### AGREEMENTS AND CONSIDERATION

**NOW THEREFORE**, in consideration of the foregoing Recitals and Definitions, which are incorporated into this Agreement and the mutual agreements, obligations and promises set forth below and in further consideration of the Town Approvals upon all terms and conditions contained herein, the obligations and expenditures of development undertaken by Owner and the mutual obligations and promises set forth below, the receipt and sufficiency of which consideration is hereby acknowledged, the Owner and the Town covenant and agree as follows:

1. **General.** This Agreement establishes the land uses and density that shall be permitted within the Property, a general development plan, development standards and conditions that must be adhered to by Owner. This Agreement also specifies improvements that must be made, and conditions, which must be fulfilled in conjunction with the development of the Property. Where this Agreement does not address a specific development standard or requirement of the Town, the provisions of the LUO or Charter shall apply. Where this Agreement addresses a specific development standard or requirement, the provisions of this Agreement shall supersede the provisions of the LUO. In all cases the provisions of the Charter shall supersede the provisions of the Agreement.

2. **Town Approval.** Subject to the conditions herein, Town does hereby approve this Agreement, the Replat, the rezone, the variances, the density transfer, the extended vesting and the Final PUD Plans. This Agreement shall be incorporated by reference on the Replat. These instruments shall constitute the complete approval of the Application for the Project. The Replat and this Agreement shall be recorded, at the Owner's expense, in the records of the San Miguel County Clerk and Recorder and shall run with the Property. The Final PUD Plans shall be filed of record with the Town of Mountain

Village Community Development Department. For purposes of this Agreement, the term “**Town Approvals**” shall mean those certain land use entitlement approvals concerning the Property and the Project that have been granted by the Town, including, without limitation, approvals for the Applications, the Final PUD Plans and any other plans or permits granted by the Town for the Property and the Project. The Town Approvals are further reflected in the Town Council Approval Resolution, the Replat, the Hotel Operator and Hotel Amenities, Facilities and Services Covenant and this Agreement.

3. **Approval of Replat; Town/Owner Land Exchange; and Recordation of Easements.**

3.1. **Approval and Recordation of Replat.** Pursuant to the terms and conditions of the Land Exchange Agreement, the Town agreed to transfer and convey the Contributed Town Property to Owner in exchange for the agreement of Owner to transfer and convey the Replacement Town Property to the Town. In addition, the Town authorized Owner to include the Contributed Town Property in the Application, including the unrecorded Replat, prior to the consummation of the exchanges contemplated by the Land Exchange Agreement. The DRB and Town Council have approved the Replat, which shall be recorded simultaneous with this Agreement. Upon recordation of the Replat, Lot 109R will be owned by Owner and Tract OS-3BR-2 will be owned by the Town. The term Property as used in this Agreement refers to Lot 109R as reconfigured and replatted pursuant to the Replat, but not Tract OS-3BR-2, which is not intended to be burdened by this Agreement except for the condominium space below such land that is utilized for the parking garage, which shall be subject to the terms of this Agreement. In addition, this Agreement establishes certain responsibilities outside the Property, such as the need to maintain the drainage system, the need to maintain the snowmelt system in the plaza area, and the need to remove snow from Mountain Village Boulevard.

3.2. **Town/Owner Land Exchange.**

3.2.1. The Town has determined that the Replacement Town Property is suitable and acceptable to the Town as replacement for the Contributed Town Property. Owner is obligated to transfer and convey the Replacement Town Property to the Town in full satisfaction of its obligation to provide the Town with Replacement Town Property.

3.2.2. The Town/Owner Land Exchange shall occur simultaneously with the recordation of the Replat.

3.2.3. At the closing of the Town/Owner Land Exchange (“**Town/Owner Land Exchange Closing**”), the Parties shall proceed as follows:

A. The Town/Owner Land Exchange Closing shall be conducted by a title company mutually agreeable to the Parties (“**Title Company**”).

B. The Town shall convey fee simple title, vesting good and merchantable title to the Contributed Town Property, to Owner or its designee, by special warranty deed, free and clear of all monetary liens and encumbrances and subject only to those exceptions accepted by Owner in a current commitment for title insurance to be obtained and provided by Owner by the Title Company. The Town will cooperate and assist Owner in seeking to modify, amend or delete a title exception for which Owner has interposed its reasonable objection and if the objection can not be resolved to the satisfaction of Owner.

C. Owner shall cause fee simple title to be conveyed to the Town, vesting good and merchantable title to the Replacement Town Property, to the Town or its

designee, by special warranty deed, free and clear of all monetary liens and encumbrances and subject only to those exceptions noted in a current commitment for title insurance to be obtained and provided by Owner by the Title Company. The cost and expense of procuring the title insurance shall be incurred by Owner.

D. Owner shall pay all recording costs, closing fees and costs due to the Title Company.

E. To the extent applicable and required, Owner shall pay any Real Estate Transfer Assessments (**RETA**), if any, that may arise in connection with the Town/Owner Land Exchange. The Parties shall cooperate and assist each other in providing information that may support the granting of a full or partial exemption from the RETA.

F. Charges for any real estate property taxes and/or homeowner associations' dues and assessments for the property being exchanged hereunder shall be prorated through the date of Closing.

G. The Parties acknowledge and agree that no real estate brokerage commissions shall become due and payable as a result of the completion of the Town/Owner Land Exchange.

3.2.4. The Parties acknowledge and agree that no other consideration is due and owing for the completion of the Town/Owner Land Exchange.

3.3. **Recordation of Easements.** At such time as Owner records the Replat, Owner and Town shall also simultaneously execute and record easements necessary and appropriate for the Project, on mutually acceptable terms and conditions.

4. **Approval of Rezoning.**

4.1. Prior to the Town Approvals, the Property was zoned and platted as follows:

**Table 1 - DESIGNATED EXISTING LAND USE FOR THE PROPERTY:**

Lot	Acreage	Zone District	Zoning Designation	Units	Density Per Unit	Total Density
73-76R	.141	Village Center	Condo	12	3	36
			Commercial			
			Employee Condo	1	3	3
109	.092	Village Center	Condo	8	3	24
			Commercial			
110	.077	Village Center	Condo	6	3	18
			Commercial			
89A	.020	Village Center	Commercial			
OS3-BR	2.489	Open Space	Active Open Space			
<b>Total</b>				<b>27</b>		<b>81</b>

4.2. The zoning and platting of the Property as a result of the Town Approvals and reflected in the Town Council Approval Resolution is as follows:

**Table 2 - APPROVED ZONING/LAND USES/DENSITY FOR THE PROPERTY:**

<b>Approved Density/Commercial SF</b>			
	<b># Units</b>	<b>Density Per</b>	<b>Total Density</b>
Efficiency Lodge Units	66	.5	33
Lodge Units	38	.75	28.5
Unrestricted Condominium Units	20	3	60
Employee Apartment	1	3	3
Commercial SF	20,164		
	<b>Total Density</b>		<b>124.5</b>

5. **Approval of Density Transfer and Zoning.**

5.1. The zoning designations and appurtenant density currently approved for the Property (prior to the approval of the Replat) is the same as is set forth in Table 1 of Section 4.1 above.

5.2. Certain density transfers for and among the Property were recommended for approval by the DRB and approved by the Town Council as reflected in the Town Council Approval Resolution as the same is set forth in Table 2 of Section 4.2 above.

5.3. Upon approval of and recordation of this Agreement and the Replat, the Zoning, Zoning Designations and appurtenant Density for the same shall be as set forth in Table 2 of Section 4.2 above.

5.4. The Town authorized Owner to include the Contributed Town Property in the Application, including the Density Transfer, prior to the consummation of the exchanges contemplated by the Land Exchange Agreement, contingent upon compliance with the applicable terms and conditions of the Land Exchange Agreement.

5.5. The Town authorized the Property to be zoned "Village Center" subject to the applicable provisions of the LUO. The Official Zoning Map for the Town of Mountain Village has therefore been amended to show the Property with the Village Center zoning designation.

5.6. The Town authorized OS-3BR-2 to be zoned as Active Open Space subject to the applicable provisions of the LUO. The Official Zoning Map for the Town of Mountain Village has therefore been amended to show OS-3BR-2 with the Active Open Space zoning designation.

6. **Approval of LUO and Design Regulation Waivers and Variations.**

6.1. At the request of the Owner, in the course of the consideration of the Final PUD, the DRB and Town Council have approved certain waivers and variations to the LUO and the Design Regulations for the Project, as appropriately granted by the Town through the authority arising generally from Section 4-6(2) of the LUO, as the same are reflected in the Town Council Approval Resolution, including, the following:

6.1.1. Variation/waiver to LUO Section 2-416 to allow Lot 109 and 110, Building Footprint Lots, to expand by more than 25%.

6.1.2. Variation/waiver to LUO Section 4-308-9 to allow an increase in

maximum to 88' – 9" and maximum average height of 65' – 2.9".

6.1.3. Variation/waiver to LUO Section 4-308-2 to allow for permitted uses (parking, pedestrian paths, etc. as shown in plans) in Active Open Space as shown on the Final PUD Plans to be approved pursuant to the PUD process and not the special use permit process.

6.1.4. Variation/waiver to LUO Section 4-308-2(f) to allow for conference and meeting space on the plaza level.

6.1.5. Variation/waiver to LUO Section 2-466 to allow for the proposed lock-off unit configuration as shown in the Final PUD Plans.

6.1.6. Variation/waiver to LUO Section 4-609-5 to extend the PUD vesting period from three (3) to five (5) years.

6.1.7. Variation/waiver to LUO Section 9-13 through 9-16 to allow for the "festoon" lights over the plaza area.

6.2. At the request of the Owner, in the course of the consideration of the PUD, the DRB and Town Council granted certain specific approvals and authorizations concerning the Project as required by the LUO and the Design Regulations for the Project, as the same are reflected in the Town Council Approval Resolution, including, the following:

6.2.1. Specific approval from the Town Council to allow residential occupancy on the plaza level for an Employee Housing Apartment (LUO Section 4-308-4).

6.2.2. Specific approval from the DRB to allow tandem parking to be included as required parking (Design Regulations Section 7-306-2).

6.2.3. Specific approval from the DRB to allow for modification of the tile roofing material, not design (Design Regulations Section 8-211-5).

6.2.4. Specific approval from the DRB to allow for 2:12 roof pitch (Design Regulations Section 8-202)

## 7. Public Benefits/Community Purposes.

7.1. Findings Relating to Community Purposes. The DRB and Town Council have determined that the Project achieves one or more Community Purposes in accordance with LUO Section 4-616 by providing certain public benefits as found and determined by the DRB and Town Council and stated in the Town Council Approval Resolution. The DRB and Town Council have determined that the Project complies with the Review Standards set forth in LUO Section 4-617 as found and determined by the DRB and Town Council and stated in the Town Council Approval Resolution.

7.2. Provision of Certain Public Benefits. Owner agrees to provide and/or undertake each of the following public benefits, proffered by Owner and accepted by the Town, which establish that the Project would meet the Community Purpose requirements for the PUD as required by the LUO: Any elimination, cessation, or change to any of these enumerated public benefits shall require a major amendment to the Final PUD Plans in accordance with the LUO.

7.2.1. **Hot Beds.** In order to achieve the community purpose relating to the creation of "hot beds" in the Project, Owner agrees as follows:

A. **Provision of Dedicated Hotel Rooms.** Owner shall provide the forty Hotel Rooms, consisting of certain Efficiency Lodge Units denoted on the Final PUD Plans, which will be owned, operated and dedicated for use only as hotel rooms as part of the operation of the hotel and not as condo-hotel units owned by third parties. The Hotel Rooms are part of the Hotel Facilities Unit and may be condominiumized to enable common ownership with other components of the Hotel Facilities Unit, provided that all of the Hotel Facilities Unit will be under one common ownership, which may change from time to time. The Hotel Facilities Unit shall be made available for exclusive use by hotel guests for only short-term occupancy (30 days or less) and may not be occupied by the individual owner of the Hotel Room. These requirements will be reflected in the Project Condominium Documents in the form of an enforceable covenant that must be established and recorded prior to or simultaneously with the issuance of the initial certificate of occupancy for the Project. The form and content of the covenant shall be subject to the Town's approval. The covenant shall be designated as a Town Enforceable Restriction in the Project Condominium Documents. The location of the Hotel Rooms must be in general conformance with the Final PUD Plans, with minor changes in locations allowed by an administrative approval during the building permit process.

B. **Retention of a Hotel Operator.** The Project shall be either: (i) operated and managed by, and/or (ii) franchised as an internationally or nationally recognized full service hotel operator/brand (as applicable) with significant experience in full service operations with existing broad marketing distribution capabilities ("**Hotel Operator**") for the life of the Project. The Hotel Operator shall be capable of operating the Project in a manner consistent with the Project Operational Standards. The Hotel Operator should have a high level of name, brand awareness and marketing breadth with the general public and offer customers incentives such as a customer loyalty program. Examples of internationally or nationally recognized full service hotel operators and brands include (but are not limited to) the following: Westin, Marriott (all full service brands), Hyatt (all full service brands), Hilton (all full service brands, including Waldorf Astoria), Fairmont, Intercontinental (all full service brands), Morgans Hotel Group, Wyndham, Le Meridien, Luxury Collection (Starwood), and similarly styled operators, as recognized by accepted industry standards and brands from time to time. Prior to, and as a condition of the issuance of a building permit, the Owner will notify the Town of the proposed Hotel Operator which notice shall contain written confirmation from the Hotel Operator. The Town Council shall promptly (within 30 days) send Owner written notice advising that the Hotel Operator is not acceptable and the grounds for such determination based on the standards and guidelines for the Hotel Operator as set forth in this section. Thereafter, the Owner may meet with the Town Council to discuss and attempt to resolve the Town's rejection of any proposed Hotel Operator. In the event that the Owner or Project Association elects to terminate the approved Hotel Operator at any time, the Owner or Project Association shall provide the Town with: (a) 30 days prior written notice of such termination including the reasons for such termination (which shall be held in confidence by the Town); and (b) within 180 days of termination of the Hotel operator, notice of the replacement Hotel Operator, which notice shall include a letter of intent from the replacement Hotel Operator. The Town shall promptly provide notice of acceptance or non-acceptance within 30 days of receipt of the notice and the failure to provide a response shall be deemed to be an approval of the replacement Hotel Operator by the Town. In considering the acceptability of the Replacement Hotel Operator, the Owner and Town shall adhere to the standards and guidelines of this Section. In the event of a dispute between the Owner and Town concerning the adequacy of the designation of a Hotel Operator consistent with

this Section, the Parties shall mutually identify a qualified, neutral third party recognized as an authority in the hospitality industry to mediate and resolve this dispute through a binding mediation process.

C. **Hotel Operator and Hotel Amenities, Facilities and Services Covenant.** Owner shall provide certain full service amenities, facilities and services within the Project, consistent with the Final PUD Plans and the Project Operational Standards which are intended to help promote "hot beds" for the Residential Condominium Units. These requirements will be reflected in the Hotel Covenant, which shall be recorded in the Official Records simultaneously with this Agreement.

D. **Rental Management Program.** The Hotel Operator will manage and operate the Rental Management Program consistent with the Project Operational Standards. All of the Hotel Rooms must be included in the Rental Management Program and may not be used or occupied or blocked off for use and occupancy by the owner of the Hotel Facilities Unit. The Project Condominium Documents and the management contract with the Hotel Operator must allow each of the Residential Condominium Units to be included in the Rental Management Program, provided, however, that nothing herein is intended to require or obligate an owner to place their Residential Condominium Units (other than the Hotel Rooms) in the Rental Management Program or to use the Hotel Operator to rent their Residential Condominium Unit if they elect to rent the unit. Subject to reasonable and actual demand requirements as determined by Owner in consultation with the Hotel Operator, the placement of the Residential Condominium Units, other than the Unrestricted Residential Condominium Units, will be placed in the Rental Management Program until such time as the Residential Condominium Unit is sold to a third party purchaser. The Owner and Hotel Operator shall provide the Rental Management Program documents and any modifications or amendments to the Town for review of compliance with the terms of this Agreement. In the event the Town determines there is non-compliance the Town shall provide written notice of such non-compliance and specify the modifications that must be made in order to achieve compliance, which notice shall be provided within 30 days of receipt of such documents and if no notice is timely received, the Rental Management Program documents shall be deemed acceptable.

E. **Standard Furnishing Package for All Lodge and Efficiency Lodge Units.** The Owner, in consultation with the Hotel Operator, will establish uniform Furniture Packages that will be provided for each of the Residential Condominium Unit (exclusive of the Unrestricted Condominium Unit). The Furniture Packages will be developed to insure a quality of decor, furniture, furnishings and appliances suitable to meet the Project Operational Standards, which may include, without limitation, appropriate and suitable fixtures (including bathroom fixtures), cabinetry, carpeting, floor covering, paint, wall covering, furniture (including built-in furniture, if any), lighting, mirrors, decor items, color television, clock, radio, drapes, shades and other window treatments and any and all other fixtures, equipment, utilities and decorative accessories within the Residential Condominium Unit (collectively, the "FF&E"). The design and content of the Furniture Packages will be offered in different variations and themes intended to achieve the Project Operational Standards. As part of the purchase contract for a Residential Condominium Unit (exclusive of the Unrestricted Condominium Unit), a Unit Owner will be required to select one of the variations of the Furniture Package to be included in their unit. The purchase price for each Residential Condominium Unit (exclusive of the Unrestricted Condominium Unit) sold by Owner will reflect the cost for the provision of the items included in the Furniture Package for the Residential Condominium Unit, which each Unit Owner will be required to pay at closing on the Residential

Condominium Unit. The Unit Owner purchasing a Residential Condominium Unit (exclusive of the Unrestricted Condominium Unit) will not be allowed to opt out of paying for Furniture Package assigned to their Residential Condominium Unit. It is expected that the Unit Rental Agreement for each Residential Condominium Unit included in the Rental Management Program shall also provide for, among other things, that the Unit Owner must: (a) obtain and maintain a certain Furniture Package designated for their Residential Condominium Unit by the Hotel Operator, (b) not add or remove elements of the Furniture Package without the prior written approval of the Hotel Operator (which may be granted or withheld in the sole and exclusive discretion of the Hotel Operator), and (c) authorize the escrowing of funds by the Hotel Operator for the repair and replacement of elements of the Furniture Package when deemed necessary as determined by the Hotel Operator. In the event a Unit Owner fails to adhere to the terms and conditions of the Unit Rental Agreement, including those provisions relating to the provision of the required Furniture Package, the Hotel Operator may exclude the noncompliant Residential Condominium Unit from participation in the Rental Management Program. There are no requirements for the provision of a Furniture Package in Unrestricted Condominium Units, provided, however, that the purchaser of an Unrestricted Condominium Unit shall be offered the opportunity to purchase a Furniture Package. The cost of the Furniture Package will not be included in the purchase price of the Unrestricted Condominium Unit.

7.2.2. **Cash Payment.** Owner agrees to make a one time payment to the Town in the total amount of \$996,288.00 (“**Mitigation Payment**”), which shall be payable simultaneously with the issuance of the initial building permit, excluding a standalone excavation permit for the Project. The Town shall use the Mitigation Payment for public purposes as determined by the Town and consistent with the Town Council Approval Resolution. The Mitigation Payment is being paid by Owner to, among other things; offset a portion of the housing, parking and transit needs of employees working at the Project. The Town may elect to use a portion of these mitigation funds to relocate the trash facility up to \$250,000.

7.2.3. **Employee Mitigation.** On the second anniversary of the initial Certificate of Occupancy for the Project, Owner shall provide a certified statement indicating the actual number of full time equivalent employees for the operation of the Project. The certified statement shall confirm to the Town the number of full time equivalents employees based upon time cards, income tax reporting and such other and similar employment records, which shall be reviewed, evaluated, discussed and otherwise held in a confidential manner by the Town. In addition to the Cash Payment, Owner shall elect in its sole discretion to either: (a) pay the Town a one time payment in the total amount equal to the sum of \$4018.52 (“**One Time Payment**”) per full time equivalent employee averaged over the two year period from the initial Certificate of Occupancy for the Project which is in excess of the 90 full time equivalent employees estimated by the Owner; or (b) build employee housing for its usage to further offset employee housing needs generated by the Project for each full time equivalent employee averaged over the two year period from the initial Certificate of Occupancy for the Project which is in excess of the 90 full time equivalent employees estimated by the Owner. The One Time Payment shall be due on the date that is the thirty month anniversary of the initial Certificate of Occupancy for the Project. Thereafter, Owner is not responsible for paying any further or additional One Time Payment or Mitigation Payment to offset a portion of the housing, parking and transit needs of employees working at the Project. In the event that the certified statement indicates that the Project is employing less than the anticipated 90 full time equivalents employees, the Town shall not be required to refund any portion of the One Time Payment or Mitigation Payment to Owner.

7.2.4. **Employee Housing Unit.** The Employee Housing Restriction on one Unit in the Project is considered a public benefit and shall not include language terminating the

Employee Housing Restriction in the event of a foreclosure on such unit. The unit may be rented by and to an employee of the Project who is a qualified employee under the Town's Employee Housing Restriction.

7.2.5. **Public Restrooms.** Owner shall construct and make available to the general public, for at least 16 hours per day, 365 days per year, restrooms in the Project reflected in the Final PUD Plans that are accessible from the plaza, without cost to the Town. During peak seasons, the restroom will be open not later than 7 AM. Owner will install directional signage for the bathroom, which signage will include content and be placed at a highly visible location to the plaza areas acceptable to the Town. Ongoing operation and maintenance of the public restroom will be undertaken by the Project Association, at the cost and expense of the Project Association. Owner shall cause easements to be established in the Project Condominium Documents enabling access to the public restrooms through the Project to the extent necessary. The Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. These provisions will be designated as a Town Enforceable Restriction in the Project Condominium Documents.

7.2.6. **Plaza Improvements.** Owner shall construct certain "Plaza Improvements" reflected in the Town Council Approval Resolution, without cost and expense to the Town. The Plaza Improvements as shown on the Final PUD Plans are generally located in the area depicted on attached "**Exhibit C**". As detailed on the Final PUD Plans, the Plaza Improvements shall also include a snow melt system and drainage system to be installed, operated and maintained by the Project Association. The design of the snow melt and drainage systems which will be reviewed and approved by the Town prior to the issuance of any building permits. The cost of repairing and maintaining the Plaza Improvements shall be funded by the Project Association, which obligation will be established in the Project Condominium Documents. The Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. These provisions will be designated as a Town Enforceable Restriction in the Project Condominium Documents. Failure to operate the snow melt system and maintain the plazas that Owner is required to maintain pursuant to this Agreement shall entitle the Town to enter into the Project for the purpose of operating the snow melt system and to maintain the Plaza Improvements. All costs associated with the Town's operation of the snow melt system and maintenance of the Plaza Improvements required to be maintained by Owner shall be reimbursed by the Project Association within 30 days of a receipt of an invoice for such costs. Failure to reimburse the Town for such costs shall entitle the Town to place a mechanics lien on the Property for collection of such costs. The Owner shall defend and hold the Town harmless from and against any and all claims, demands, liabilities, actions, costs, damages, and attorney's fees that may arise out of or result directly or indirectly from the Owner's actions or omissions in connection with the ongoing maintenance and snowmelt operations required of Owner as set forth herein, including but not limited to Owner's improper maintenance and operation of the Plaza Improvements and snowmelt system. Any new drainage through the Westermere parking garage shall require the Owner to provide a letter of permission from Westermere HOA for the drainage system along with requisite public easements for this drainage system. If Owner is unable to secure any required authorizations and consents for such work by Westermere on commercially reasonable terms and conditions, Owner and Town shall meet and discuss alternatives and if no reasonable and comparable alternatives can be identified, then the Owner shall be released from this requirement and any related requirements. For purposes of clarification, the Plaza Improvements will be owned by the Town.

7.2.7. **Town Parking Spaces.**

A. The development of the Project will result in the loss of 32 existing surface parking spaces currently located on the Contributed Town Property, inclusive of the three (3) parking spaces that will be disrupted to the north of the current Town operated trash facility. Owner is required to construct and convey 32 covered, garage parking spaces to the Town ("**Replacement Parking Spaces**").

B. Owner, as an additional public benefit, has agreed to convey an additional 16 covered, garage parking spaces (beyond the Replacement Parking Spaces) to the Town ("**Additional Parking Spaces**").

7.2.8. **Westermere Façade Improvements.** The Owner shall improve the Westermere Breezeway and the associated path through such breezeway in substantial accordance with the Final PUD Plans, provided that the Westermere HOA has provided its written authorization and consent to such work on commercially reasonable terms and conditions and within thirty days from when Owner has submitted its request for such authorization. The Owner shall submit the authorization and consent to the Town at the time of applying for the building permit. If the Westermere HOA fails to provide the authorization and consent in form, content or timeframe contemplated by this Agreement, the Owner shall be fully released from its obligation to improve the façade and the associated walkway as shown on the Final PUD Plans.

7.3. **Review of Plans for the Public Benefits.** Owner shall submit a report to the Community Development Department and, if determined it is necessary be referred to the Town Council demonstrating how its construction plans for the Project have been prepared to insure that the required public benefits have been designed to achieve applicable construction standards and requirements and will function and operate in a manner that is consistent with the customary goals and objectives for which the public benefit was accepted by the Town. The report and plans will be reviewed by the Community Development Department to determine compliance with this requirement. In the event that the Community Development Department determines that the report fails to adequately demonstrate compliance, the matter shall be referred to the Town Council for further review and appropriate action. If the matter is not resolved to the mutual agreement of the Town Council and Owner, the dispute will be referred to mediation for resolution by a mutually acceptable mediator. Any such mediation shall be scheduled to occur as expeditiously as possible.

8. **Provisions to be Addressed in the Project Condominium Documents.** Owner shall comply with the following requirements, which will be addressed in the Project Condominium Documents. The Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. These provisions will be designated as a Town Enforceable Restriction in the Project Condominium Documents.

8.1. **Town Parking Space.**

8.1.1. Owner shall construct the 48 Town Parking Spaces and convey them to the Town at the location indicated in the Final PUD Plans, with the public parking area located at the top level of the parking structure above the Project's parking. The Town Parking Spaces, including all operational equipment as well as all structural elements, maneuvering aisles, pedestrian areas, stairwells, elevators, ceiling, walls, floors, mechanical, HVAC, exhaust, electrical, plumbing, life/health welfare systems and facilities directly serving the Town Parking Spaces ("**Town's Parking Spaces Support Facilities**"), shall be designed as one or more Condominium Units in the Project Condominium Documents. Title to the Town Parking Spaces shall be deeded to the Town at no cost to the Town. The

Town may own, use, sell or lease some or all of the Town Parking Spaces, which ownership and usage shall be subject to the terms and conditions of the Town Approvals, this Agreement and the Project Condominium Documents.

8.1.2. Owner shall be responsible for all capital construction costs associated with the design and construction of the Town Parking Spaces, including, without limitation, the installation of the Town-approved gate(s), parking ticket access machine, server, software and required electronic equipment, all compatible with the Town's existing parking system for the heritage parking garage and communications for the electronic ticket machine, parking area stripping, interior parking area signage and exterior parking area signage (including directional signage on the Project building and at Mountain Village Boulevard), lighting, required handicap parking spaces and required aisles and electrical service to each parking space suitable to power an electric car.

8.1.3. The Town shall review and approve the final designs of the Town Parking Spaces and all construction, design and signage related to such spaces prior to issuing a building permit which approval will not be unreasonably delayed, withheld or conditioned.

8.1.4. The Owner may approach the Town to enter into a legal agreement to operate and manage the public parking garage on behalf of the Town on mutually agreeable terms and conditions, including allocations of costs and revenues.

8.1.5. The Project Condominium Documents shall clearly establish that the Town, as the owner of the Town's Parking Spaces and owner or beneficiary of the Town's Parking Spaces Support Facilities, shall only be responsible for those certain costs and expenses directly associated with the ownership, management and operation of the Town's Parking Spaces and the Town's Parking Spaces Support Facilities, which shall include by way of example, property taxes, insurance, utilities, maintenance and repair of such areas ("**Allocated Town's Parking Spaces Costs**"). The Project Condominium Documents shall establish a mechanism satisfactory to the Town establishing that the Allocated Town's Parking Spaces Costs shall be allocated to the Town as the owner of the Town's Parking Spaces either as limited common expenses as part of a master association that covers the Town's Parking Spaces or, if elected by the Town, as part of a separate sub-association.

8.1.6. In all events, the Project Condominium Documents shall provide that a draft budget showing the Allocated Town's Parking Spaces Costs shall be sent to the Town to review and approve, which shall not be unreasonably withheld, conditioned or delayed, with the Town having 45 days to comment. It is the intent of the parties that the actual costs incurred in connection with the Allocated Town's Parking Spaces Costs will be allocated to the Town, which will be billed to the Town on a quarterly basis. The Parking Budget shall not include for any costs that would not be included in a standalone parking garage, including but not limited to costs for sophisticated roof forms, plaza paver installation, complex heating systems or any exterior improvements not related to the Town's Parking Spaces. Further, such expenses shall not include any overhead, management fees, accounting fees or similar expenses passed through by the Project Association, Owner or Hotel Operator. The Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. These provisions will be designated as a Town Enforceable Restriction in the Project Condominium Documents. In addition, the Town Staff, Owner and Project Association shall enter into an agreement providing for the management of the Town Parking Spaces and the private parking units included in the Project prior to issuance of a Certificate of Occupancy, a mutually agreeable parking management plan will be developed between the Town staff and the Owner that may change from time-to-time.

8.2. **Conference Rooms.** The Owner shall construct two conference rooms in the Project in general accordance with the Final PUD Plans, which shall be available for use by owners and guests in the Project and non-owner guests. The two conference rooms will be designed, constructed and operated in a manner that will enable them to be broken up into four smaller rooms by sound-proof, industry standard dividers. The conference rooms shall be offered for market rent to the public at comparable rates to room rates at the Telluride Conference Center. Public access to and from the conference rooms shall be provided for in the Project Condominium Documents. The owner of the conference rooms will be responsible to maintain and repair the conferences rooms and keep them in good repair and order as provided for in the Project Condominium Documents. The owner of the conference rooms shall arrange for an entity to book and manage the conference rooms in accordance with the Town Approvals and industry standards. The conference rooms shall be available for rental in concert with other conferences or special events occurring in the Town when not booked for other functions, provided that the Owner, Project Association and Management Company may establish commercially reasonable rules, regulations and other restrictions that will govern the use of the conference rooms in a uniform manner.

8.3. **Lock-Off Units.** Each Lock-Off Unit shall meet the following requirements:

8.3.1. Lock-Off Unit doors that lock-off one unit or room from another unit or room shall be maintained as a separate, lockable door, and shall not be removed for any reason.

8.3.2. Each Lock-Off Unit entry shall maintain a separately keyed entry from the other attached Lock-Off Units and its own unit number.

8.3.3. Each Lock-Off Unit shall be shown as a separate condominium unit on the project's condominium map, with an owner allowed up to own up to a maximum of three units in a Lock-Off Unit configuration.

8.3.4. Each lock-off unit shall maintain a separate, unique unit designation in the common hallway.

8.3.5. Each lock off unit shall contain a bed or sleeper sofa for lodging accommodations.

8.4. **Valet Parking.** When the tandem parking spaces shown on the Final PUD Plan are utilized, the Owner or condominium association will provide 24 hour per day valet parking services for the Tandem Parking Spaces through the provision of attendants who take, park and later return vehicles to owners and guests. Such valet services shall provided for in the Project Condominium Documents and designated as a Town Enforceable Restriction. The Town Parking Spaces shall not include any Tandem Parking Spaces.

8.5. **Snow Removal.** The Project Association shall be responsible for removing and/or relocating snow from the south side of upper Mountain Village Boulevard.

8.6. **Grant of Easements by Town to Owner.** The Town agrees to grant and convey necessary easements to the Owner ("Lot 109R Project Easements") to enable Owner to develop, construct, operate, use, repair and maintain the Project in accordance with the Town Approvals. The easements shall, at a minimum, provide for the following:

Lot 109R Project	Authorized Uses	Timing for Grant
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<b>Easements</b>		
Plaza Usage	*snowmelt system *Plaza lighting *Landscaping *Hardscaping *Signage *Pedestrian Access *Access to repair and maintain Project, including vehicles and equipment *Drainage systems *Vehicular and pedestrian access to undertake authorized uses *Slope stabilization	Replat
Permanent Underground Structures	* Below grade structural elements (inclusive of, without limitation, footers, walls, foundations, columns, supports and other like components) * Below grade structures (inclusive of, without limitation, commercial space, residential space, storage space, parking garages, parking spaces, snowmelt systems, HVAC systems, mechanical systems, phone systems, boilers, exhaust systems, lights, elevators, stairs, ramps, drains, pipes, utilities and other like components) *Pedestrian Access *Vehicular and pedestrian access to undertake authorized uses	Replat
Vehicular Access	*Vehicular Access	Replat
Mt Village Blvd	*Snow storage *Landscaping *Vehicular and pedestrian access to undertake authorized uses	Replat
Utilities	*Utilities *Vehicular and pedestrian access to undertake authorized uses	Replat
Shoring, Grading, Excavation	*Temporary Shoring, Grading and Excavation *Vehicular and pedestrian access to undertake authorized uses	Building Permit

The use of these easements shall be in a reasonable location designated by Owner and Town and shall be granted and conveyed and used consistent with the Town Approvals, which usage may be made subject to any further reasonable rules and regulations of Owner and Town.

8.7. **Grant of Easements by Owner to Town.** Owner agrees to grant and convey to the Town certain necessary and suitable easements, licenses or leases for the benefit of the Town and general public as listed below ("**Owner Granted Public Easements**"). The Owner Granted Public Easements shall be in a form and content acceptable to the Town and Owner. Some of the Owner Granted Public Easements will be established in the Project Condominium Documents. The use of the Owner Granted Public Easements shall be in a reasonable location designated by Owner and Town and shall be subject to reasonable rules and regulations of Owner and Town. The Owner Granted Public Easements shall, at a minimum, provide for the following:

<b>Owner Granted Public Easements</b>	<b>Authorized Uses</b>	<b>Timing for Grant</b>
Interim Utility License	*operate, repair and maintain existing utilities located on the Property	Replat

Modification of Surface Parking Lease Agreement	*lease to enable continued use of Town Parking Lot on Property	Replat
Permanent Utilities	*operate, repair and maintain existing utilities located on the Property	Recordation of Project Condominium Documents
Conference Room Access	*public access and use of Conference Room	Recordation of Project Condominium Documents
Public Rest Room Access	*public access and use of Public Rest Room	Recordation of Project Condominium Documents
Town Parking Spaces Access	*public access and use of Town Parking Spaces	Recordation of Project Condominium Documents
Pedestrian Access through breezeways	*public access and use of pedestrian breezeways	Recordation of Project Condominium Documents

9. **Further Requirements by Owner**

9.1. **Owner to Comply With Conditions of Approval.** Owner agrees to comply with the terms, conditions, requirements and obligations placed upon Owner in the Town Approvals, including, without limitation, the payment of funds, dedication of lands, creation of easements, construction of improvements and the like as the same are set forth herein and in the Town Council Approval Resolution. The corresponding terms, conditions, requirements and obligations established in the Town Approvals are hereby incorporated into this Agreement by this reference. All representations of the Owner concerning the Project, whether within the submittal or at the DRB hearing and/or the Town Council hearing for the Project, are deemed to be specific obligations of the Owner under this Agreement.

9.2. **Other Requirements and Undertakings.** In addition to the foregoing, the Owner shall also comply with the following additional requirements:

9.2.1. **Provision of Improvement Location Certificate.** Prior to pouring concrete into the building's footers, the Owner shall cause a Colorado Professional Land Surveyor ("**Surveyor**") to prepare and submit an Improvement Location Certificate ("**ILC**") for the location of all footers to ensure that such are located within the platted boundaries of the Property as established by the Replat, except for those structures, facilities and other components that have been authorized by the Final PUD Plans to be placed outside of the Property in easements. Prior to the issuance of a Certificate of Occupancy, Owner will cause a Surveyor to prepare and submit to the Town an ILC demonstrating that all structures, facilities and other components of the buildings associated with the Project have been constructed such that they are located within the platted boundaries of the Property as established by the Replat, except for those structures, facilities and other components that have been authorized to be placed outside of the Property within the boundaries of easements granted to the Owner in connection with the Project. The ILC shall be certified to the Town by the surveyor. Any encroachment outside the Property not authorized by the Final PUD Plans shall require the Owner to submit for an amendment to the Replat or for Town Council authorization of an encroachment agreement, with Town Staff determining the appropriate process to remedy any unauthorized encroachment.

9.2.2. **Drainage System and Maintenance.** The Project Condominium shall be responsible for the maintenance and repair of all drainage improvements on the Property and on Tract OS-3-BR-2 leading up to the Town's existing drainage system as indicated on the Final PUD Plan. Such requirement shall be reflected in the Project Condominium Documents. The Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. These provisions will be

designated as a Town Enforceable Restriction in the Project Condominium Documents.

9.2.3. **Drainage Plan Details.** Prior to issuing any building permits, Owner shall submit a drainage plan to address permanent dewatering, the provision of sand and oil traps, drainage of the patios, drainage of the garage vents, drainage of the gutter system and other necessary drainage, with such plan submitted for Staff review and approval concurrent with the required building permit review.

9.2.4. **SMPA Review and Approval of Utility Plans.** Prior to the issuance of any building permits, the SMPA shall review and approve the final utility plan.

9.2.5. **Composite Utility Plans.** Prior to the issuance of any building permits, Owner shall submit a composite utility plan for Town review and approval that shows: (1) the proposed utility meter and utility pedestal locations with appropriate screening, (2) plans that conform to the Town's Cable Television Regulations; and (3) Qwest and Source gas approved utility and meter locations.

9.2.6. **Venting Plans.** Prior to the issuance of any building permits, Owner shall submit detailed venting plans for Staff-DRB Chair review and approval as construction documents are developed for review and approval by Staff and the DRB Chair.

9.2.7. **Snow Removal Devices and Snow Retention Systems.** Prior to the issuance of any building permits, Owner shall submit engineered plans for the snow retention devices, and include one anchor at the roof hatch and other anchors on the roof as required for a safe snow removal system. Building permit plans shall show the snow removal mechanical and safety device requirements consistent with Design Regulation Section 8-210-4.

9.2.8. **Stucco Details.** Prior to the issuance of any building permits, Owner shall submit Stucco details concurrent with the building permit application consistent with the stucco design details outlined in the exterior materials of Section the Design Regulations.

9.2.9. **Plan Notation.** Prior to the issuance of any building permits, Owner shall submit building permit plans that include a note that states all concrete, exterior walls shall have a stone, stucco or wood finish as deemed appropriate by the Town since it is not possible to see every exterior surface on the submitted elevations.

9.2.10. **Window Design.** Prior to the issuance of any building permits, Owner shall submit Details on window design consistent with the Design Regulations.

9.2.11. **Revised Geotechnical Reports and Design.** Prior to the issuance of any building permits, Owner shall submit revised geotechnical reports prepared by a Colorado Registered Professional Engineer that are based on the proposed building permit building design. Owner shall incorporate revised geotechnical report recommendations into the building's design prior to submitting for a building permit for the project.

9.2.12. **Miscellaneous Civil Engineering Concerns.** Prior to issuing a building permit, the Owner will submit plans that address the comments in the letter from the Town's consultant, Professional Land Consultants, dated Thursday, September 23, 2010 attached hereto as **Exhibit "D"**.

9.2.13. **Construction Mitigation Plan.** Prior to the issuance of any building

permits, Owner shall submit a revised detailed construction mitigation plan for Staff review and approval. Key considerations of the construction mitigation plan shall include, but are not limited to: (1) allowing through access to See Forever on the current access path to the extent possible; (2) the location of the crane(s) and avoiding movements of construction materials or equipment over neighboring properties; (3) construction parking; (4) truck ingress and egress from the job site; (5) ensuring minimal to no power or other utility interruptions; (6) the need to obtain a plaza access permit for the area south of Westermere; (7) protection of air and water quality; (8) maintaining traffic and pedestrian flows around the project in a safe manner and (9) an engineered plan for construction shoring and/or soil nailing that ensures adjoining properties will be protected.

9.2.14. **Grease Trap Plumbing Design.** Prior to the issuance of any building permits, Owner shall submit engineering drawings for the plumbing system that includes grease traps prior to the issuance of a building permit Per Design Regulation 11-102. The grease trap access will be located in the parking garage loading dock area.

9.2.15. **Westermere Courtesy Notice.** Prior to the issuance of any building permits, Owner shall notify the Westermere HOA or its property management company when building permit plans are submitted to the Town as a courtesy, provided that the foregoing is not intended to establish any requirement for Westermere to approve such plan as a condition to the issuance of a building permit by the Town

9.2.16. **Colors and Materials.** Prior to the issuance of any building permits, the Town will ensure that the colors and materials presented with the building permit are substantially the same as shown on the model presented as a part of the Final PUD Plan public hearings, with a mock up of all materials and colors presented to Staff and the DRB Chair prior to the issuance of a building permit. Stone will be set with a recessed grout and a tight pattern substantially in accordance with the mock up presented at the October 28, 2010 meeting.

9.2.17. **Garage Vents Along See Forever Walkway.** Prior to the issuance of any building permits, Owner shall provide more detail on the design of the garage vent louver venting to the plaza area along the See Forever walkway to ensure such is screened to the extent practical. To the extent practical, the design of the garage vents shall be based on the size and scale of the windows to the south to provide for a congruent design.

9.2.18. **Final Exterior Door Designs.** Prior to the issuance of any building permits, Owner shall provide final exterior door design details based on the Design Regulations, with such plans submitted concurrent with the building permit application.

9.2.19. **Acknowledge of the Town Trash Facility.** The Owner shall cause the Project Condominium Documents to reflect the existence of the Town trash facility in proximity to the Project to ensure that future property owners are put on notice of this facility and its potential impacts (noise, smell, aesthetics, etc). The Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. These provisions will be designated as a Town Enforceable Restriction in the Project Condominium Documents.

9.2.20. **Damage to Town Trash Facility.** The Owner shall be financially responsible for the repair of any damage to the Town Trash Facility caused by the construction of the Project.

9.2.21. **Landscape Plan.** The Owner shall salvage mature trees located on the

Property to the extent practical and the final landscape plan shall reflect this requirement. In addition, Owner shall maintain the required landscape planting as shown in the Town Approvals, including but not limited to replacing dead trees, pruning, irrigation and mowing in perpetuity.

10. **Construction of Public Improvements or Infrastructure Improvements.**

10.1. **Construction of Public Improvements.** The Owner agrees to complete, at Owner's sole cost and expense, the construction of those certain public improvements or infrastructure improvements set forth on attached **Exhibit "B"** and as shown on the Final PUD Plans ("**Public Improvements**") and as more fully detailed in the Final PUD Plans. The Owner agrees to enter into a Site Plan Improvements Agreement ("**SPIA**") that outlines the actual costs of the Public Improvements at the time a building permits application is submitted. The SPIA will include a clause that states that the cost of the Public Improvements are estimates only, and if the actual cost of the materials or labor exceeds such estimate, the Owner shall nevertheless be responsible therefore. Such agreement shall be substantially based on the terms of this Section of the Agreement and be in a form or manner acceptable to the Town.

10.2. **Owner's Construction Obligation and Standards.** The Owner shall timely construct and complete all required Public Improvements in accordance with the Final PUD Plans, the provisions of this Agreement and in compliance with all laws, regulations, standards, specifications and requirements of the United States, the State of Colorado, the Town of Mountain Village, and all their pertinent agencies.

10.3. **Completion of Public Improvements.** All of the Public Improvements shall be fully completed and result in Final Acceptance as outlined herein, prior to and shall be a condition of the issuance of the final Certificate of Occupancy for the non-public improvement portions of the Project unless a financial guarantee of 200% of the remaining costs for the uncompleted public improvements is provided to the Town as provided for in the SPIA.

10.4. **Collateral.** To secure and guarantee performance of its obligations as set forth herein, Owner, at the time of issuance of the building permit, shall provide the Town with collateral in the sum that is equal to 125% of the cost of the public improvements in the SPIA ("**Collateral**") which may be posted for the sole benefit and protection of the Town in the form of either: (i) a certified check, (ii) an irrevocable letter of credit from a lending or financial institution in good standing in the state of Colorado and in a form satisfactory to the Town Manager and Town Attorney; (iii) cash or some acceptable combination of the foregoing; and (iv) a performance bond, provided that the Town Manager and Town Attorney, have satisfied themselves that the bonding company and form of the performance bond will satisfactorily protect the interest of the Town consistent with this Agreement. If cash is provided as the Collateral, it shall be deposited by the Town in a separate interest-bearing account with any interest accruing to the benefit of Owner. The Collateral shall be posted as a condition of and shall be due upon issuance of an initial building permit for the physical improvements associated with the Project.

10.5. **Use of Collateral By Town.** If the Town Manager determines that reasonable grounds exist to believe that the Owner is failing or will fail to construct or install the Public Improvements as required by this Agreement, the Town Manager shall notify the Owner in writing that: (i) the Town intends to draw on the Collateral for the purpose of completing the Public Improvements; (ii) the specific reasons therefore; and (iii) Owner may request a hearing before the Town Council on the matter, such request to be made no less than fifteen (15) days from the date of the notice. Should a hearing not be requested within (15) fifteen days, or should the Town Council conduct a hearing and

thereafter determine that the Owner is failing or has failed to satisfactorily install the required Public Improvements, the Town may thereafter draw on the Collateral as necessary to construct the Public Improvements. In such event the Town shall be entitled to recover such costs as are reasonable to administer the construction of the Public Improvements. In no event shall the Owner take any action which shall impair the ability of the Town to draw on the Collateral during the term of this agreement, including after receipt of notice of intent to draw on Collateral by the Town.

10.6. **Acceptance and Release of Collateral.**

10.6.1. Final acceptance of the Public Improvements or any portion or phase thereof shall only be made by the Town (“**Final Acceptance**”).

10.6.2. Upon issuance of final Certificate of Occupancy for the Public Improvements, a Town representative shall, within 15 days, inspect all such Public Improvements for Final Acceptance. If based on such inspection the Public Improvements are not acceptable to the Town, the reasons for non-acceptance shall be prompted, reduced to writing and a notice shall be sent to Owner stating the defects and the required corrective measures necessary to come into compliance with the Final PUD Plans, and the SPIA specifications (the “**Punch List**”) at which time the Owner shall have 30 days to complete the corrective measures necessary for Final Acceptance as set forth in the Punch List. The Town shall not be required to make inspections during any period when climatic conditions make thorough inspections impractical.

10.6.3. Upon final inspection by the Town correction of any Punch List items which results in Final Acceptance by the Town, the Town shall promptly release all Collateral and shall assume normal maintenance responsibilities, excepting warranty work and maintenance as required under the terms of this Agreement, for the Public Improvements.

10.6.4. The SPIA may allow for partial releases of Collateral equivalent to the costs assigned to a completed Public Improvement, provided that the Town is satisfied that the remaining balance of the Collateral is adequate to fund any remaining Public Improvements.

10.7. Pursuant to LUO Section 4-618-5, Owner shall warrant to the Town the quality, workmanship and function of all the Public Improvements for a period of two (2) years after Final Acceptance by the Town, or until July 1 of the year during which the winter terminates after Final Acceptance by the Town, whichever is greater.

10.8. Owner agrees at its sole cost and expense to repair or restore any existing improvements or facilities damaged during construction of the Project to its pre-existing conditions.

10.9. Prior to the issuance of a building permit for the occupiable space in the Project, Owner and the Town shall enter into an agreement allocating the obligations to undertake ongoing repair and maintenance of the Public Improvements. Any obligations of the Town to repair or maintain Public Improvement shall be subject to the Town budget process and annual appropriations by the Town for such maintenance and repair.

11. **Vested Rights.**

11.1.1 **Intent.** Development of the Property in accordance with the terms and conditions of this Development Agreement will provide for orderly and well planned growth, promote economic development and stability within the Town, ensure reasonable certainty, stability and fairness

in the land use planning process, secure the reasonable investment-backed expectations of the Owner, foster cooperation between the public and private sectors in the area of land use planning, and otherwise achieve the goals and purposes of the Vested Property Rights Statute, C.R.S. §24-68-101, et. seq., the LUO and the Design Regulations. In exchange for these benefits and the other benefits to the Town contemplated by the Development Agreement, together with the public benefits served by the orderly and well planned development of the Property, the Owner desires to receive the assurance that development of the Property may proceed pursuant to the terms and conditions of the Development Agreement.

11.1.2 **Site Specific Development Plan.** The Replat, Final PUD Plans and this Agreement constitute a "Site Specific Development Plan", pursuant to LUO Section 6-201.

11.1.3 **Vested Real Property Right.** Accordingly, this final approval has created for Owner's benefit a "vested real property right" as defined by C.R.S. § 24-68-101 et seq.

11.1.4 **Duration.** For purposes of this Agreement, the above-referenced vested real property right shall remain vested for five (5) years after December 8, 2010 (the date of the Town Council Approval Resolution approving the Project).

11.1.5 **Publication.** A notation of such vested real property right has been made on the Final PUD Plans and a notice has been published in a newspaper of general circulation within the Town on December 31, 2010.

11.1.6 **Reliance.** The Owner has relied upon the creation of such vested real property right in entering into this Agreement.

11.1.7 **Future Legislation.** During the five (5) year period in which the vested real property right shall remain vested, the Town shall not impose by legislation or otherwise any zoning or land use requirement or obligations upon Owner or their successors or assigns which would alter, impair or diminish the development or uses of the Property as set forth in this Agreement, except:

- i. With the consent of the Owner; or
- ii. Upon the discovery of natural or man-made hazards on or in the immediate vicinity of the Property, which could not reasonably have been discovered at the time of vested rights approval, and which, if not corrected, would pose a serious threat to the public health, safety and welfare; or
- iii. To the extent that compensation is paid, as provided in Title 24, Article 68, CRS.

The establishment of such vested real property right shall not preclude the application of ordinances or regulations which are general in nature and applicable to all property subject to land use regulation by the Town, including, but not limited to, fee assessments and building, fire, plumbing, electrical, mechanical, water and sewer codes and ordinances.

## 12. **Miscellaneous.**

12.1. **Recording.** This Agreement will be recorded in the Official Records.

12.2. **Default, Notice and Cure.** In all instances under this Agreement, at such time

as a Party (“**Claiming Party**”) claims that any other Party (“**Responding Party**”) has violated or breached any of the terms, conditions or provisions of this Agreement (“**Default**”), the Claiming Party shall promptly prepare and deliver to the Responding Party a written notice (“**Notice of Default**”) claiming or asserting that the Claiming Party is in default under a term or provision of this Agreement, which notice shall clearly state and describe: (a) each section(s) of the Agreement which the Responding Party has allegedly violated, (b) a summary of the facts and circumstances being relied upon to establish the alleged violation, (c) the specific steps (“**Cure Events**”) that must be undertaken to come into compliance with the Governing Documents, and (d) the reasonable timeframe, not less than ten days for a monetary default and not less than thirty days for a non-monetary default (unless emergency circumstances require a shorter response time), within which time the alleged violation should be cured (“**Cure Completion Date**”).

12.3. **Remedies For Breach Or Default.** In the event Owner should fail to perform or adhere to its obligations as set forth herein, or fail to meet specified performance timelines, the Town shall have the following remedies against the Owner, or its successors and assigns, which remedies are cumulative and non-exclusive and which may be exercised after the provision of written notice stating that Owner is in breach, the specific steps required to cure the breach and a reasonable timeframe within which to cure the breach:

12.3.1. Specific performance;

12.3.2. Injunctive relief, both mandatory and or prohibitory;

12.3.3. Withdrawal or cancellation of PUD approval;

12.3.4. Injunction prohibiting the transfer or sale of any lot or unit created under the PUD approval;

12.3.5. Denial, withholding, or cancellation of any building permit, certificate of occupancy or any other authorization authorizing or implementing the development of the Property and/or any structure or improvement to be constructed on the Property; or

12.3.6. The Town shall have enforcement powers for violations of this Agreement as if they are violations of the LUO including the power to assess fines and penalties as set forth in the LUO.

12.4. **Governing Law, Costs and Expenses.** This Agreement shall be construed under and governed by the laws of Colorado, with jurisdiction and venue restricted to a court of competent jurisdiction in San Miguel County, Colorado. In addition to the remedies of the Town pursuant to Section 12.4, a Party may pursue any and all available remedies under applicable law, including, without limitation, injunctive relief and specific performance. All of the rights and remedies of the Parties under this Agreement shall be cumulative. In any action to enforce or construe the terms of this Agreement, the substantially prevailing Party shall recover all legal and related court costs, including all reasonable attorneys’ fees and expert witness fees, costs and expenses.

12.5. **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 attorney’s fees that may arise out of or result directly or indirectly from the Owner’s actions or omissions in connection with this Agreement, including but not limited to Owner’s improper design or construction of the Public Improvements required thereunder, or Owner’s failure to construct or

complete the same. After inspection and acceptance by the Town of the Public Improvements, and after expiration of any applicable warranty period, this agreement of indemnity shall expire and be of no future force or effect.

12.6. **Binding Effect.** This Agreement shall extend to, inure to the benefit of, and be binding upon the Town and its successors and assigns and upon the Owner, its successors (including subsequent owners of the Property, or any part thereof), legal representatives and assigns. This Agreement shall constitute an agreement running with the Property until: (a) modification or release by mutual agreement of the Town and the Owner (subsequent transferee owners' consent to modification(s) or release(s) shall not be required unless the modification(s) directly limit or restrict the zoning or development rights awarded to a subsequent transferee owner's specific lot); or (b) expiration of the term hereof. This Agreement may be amended or supplemented by the Town and Owner without any requirement for Owner to obtain the approval of any Unit Owners or the Association, except that notice of any amendment shall be duly noticed in accordance with the LUO and each Unit Owner and the Association shall be entitled to attend any hearing and comment on any proposed amendment to this Agreement.

12.7. **Parties Representations.** In entering into this Agreement, the Parties acknowledge and agree and represent and warrant to each other as follows: (a) that they will perform their duties and obligations in a commercially reasonable and good faith manner and that this commitment is being relied upon by each other Party; (b) that parties will promptly provide a response to a notice when required, the response will be provided within the timeframe established and if no timeframe is stated, it shall be deemed to be 30 days and the failure to timely provide a response shall be deemed to be an approval; (c) that the Party is a duly qualified and existing entity, capable of doing business in the state of Colorado; and (d) that the Party has actual and express authority to execute this Agreement, has taken all actions necessary to obtain such authorization, the Agreement constitutes a binding obligation of the Party and the person signing below is duly authorized and empowered to execute this Agreement.

12.8. **Severability and Further Assurances.** 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. 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.

12.9. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and no other representations, promises, agreements or understandings or obligations with respect to the payment of consideration or agreements to undertake other actions regarding the subject matter hereof shall be of any force or effect unless in writing, executed by all Parties hereto and dated after the date hereof.

12.10. **Modifications and Waiver.** No amendment, modification or termination of this Agreement or any portion thereof shall be valid or binding unless it is in writing, dated subsequent to the date hereof and signed by each of the Parties hereto. No waiver of any breach, term or condition of this Agreement by any party shall constitute a subsequent waiver of the same or any other breach, term or condition.

12.11. **Counterparts and Facsimile Copies.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Facsimile copies of any party's signature hereon shall be deemed an original for all purposes of this Agreement.

12.12. **Notice.** All notices, demands or writings in this Agreement provided to be given or made or sent that may be given or made or sent by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and delivered either by Fax, Email or United States Mail (certified, return receipt requests and postage pre-paid), and addressed to the party, at the below stated mailing address, email address or fax number. The mailing address, email address or fax number to which any notice, demand or writing may be changed by sending written notice to each party notifying the party of the change.

<p><b><u>Town:</u></b> Town of Mountain Village Attention: Town Manager 455 Mountain Village Blvd., Suite A Mountain Village, CO 81435</p>	<p><b><u>Owner:</u></b> MV Colorado Development Partners, LLC Attn: Robert Harper 1601 Elm Street, Suite 4000 Dallas, Texas 75201 Fax: (214)720-1662</p>
<p><b><u>With a Copy to:</u></b> J. David Reed, Esquire PO Box 196 Montrose, CO 81402</p>	<p><b><u>With copy to:</u></b> MV Colorado Development Partners, LLC Attn: Alan Tompkins, Esq. 1601 Elm Street, Suite 4000 Dallas, Texas 75201 Fax: (214)720-1662</p>
	<p><b><u>And a Copy to:</u></b> Thomas G. Kennedy, Esquire P.O. Box 3081 Telluride, CO 81435 Fax: (970)728-9439</p>

12.13. **Exhibits And Attachments.** All exhibits and attachments to this Agreement shall be incorporated herein and deemed a part of this Agreement.

12.14. **Rights of Lenders.** The Town is aware that financing for acquisition, development and/or construction of the Project ("**Owner Loan**") may be provided in whole or in part, from time to time, by one or more lenders. In the event of an event of default by the Owner under this Agreement, the Town shall provide notice of such event of default, at the same time notice is provided to Owner, to any lender previously identified in writing to the Town ("**Registered Lender**") pursuant to this Paragraph 12.14. If a Registered Lender is permitted under the terms of any agreements with Owner to cure the event of default and/or to assume Owner's position with respect to this Agreement, the Town agrees to recognize the right of such Registered Lender and to otherwise permit such Registered Lender to assume all of the rights and obligations of Owner under this Agreement, provided that nothing contained in this Agreement shall not create any duty, obligation or other requirement on the part of the Registered Lender to assume any of the duties and obligations of Owner under this Agreement unless the Registered Lender takes fee simple title to the Project through foreclosure, deed in lieu or other legal instrument in which case the lender shall be bound by the terms and conditions of this Agreement. For so long as the Owner Loan remains outstanding, Owner and Town recognize and agree that this Agreement may only be modified or amended with the prior written approval of each Registered Lender.

12.15. **No Further Rights; No Third Party Rights.** Nothing contained herein shall be construed as creating any rights in any third persons or parties other than the parties specifically intended to be benefited or burdened by this Agreement.

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, 2015 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, 2015, 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.

12.17. **Conflicts Between Hotel Covenant and Development Agreement.** Any conflicts between the terms of this Agreement and the Hotel Covenant shall be resolved in favor of the most restrictive applicable term in either document.

12.18. **Industry Standards and Norms.** Customary industry practices, standards and norms shall be relied upon if and when necessary for purposes of interpreting, applying and enforcing the terms and conditions established in this Agreement.

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: [Signature]  
Robert H. Delves, Mayor

Date: 3/17/11

Attest: [Signature]

By: [Signature]  
Gregory L. Sparks, Town Manager

Date: 3/16/11

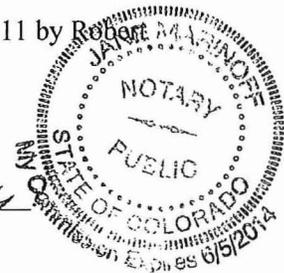
STATE OF COLORADO )  
 ) ss  
COUNTY OF SAN MIGUEL )

Acknowledged, subscribed and sworn to before me this 17<sup>th</sup> day of MARCH, 2011 by Robert H. Delves as the Mayor of The Town of Mountain Village.

Witness my hand and official seal.

[Signature]  
Notary Public

My commission expires: 6/5/2014



STATE OF COLORADO )  
 ) ss  
COUNTY OF SAN MIGUEL )

Acknowledged, subscribed and sworn to before me this 16<sup>th</sup> day of MARCH, 2011 by Gregory L. Sparks as the Town Manager of The Town of Mountain Village.

Witness my hand and official seal.

[Signature]  
Notary Public

My commission expires: 6/5/2014





**Exhibit "A"**  
**Sheet Index:**

Cover Sheet/Index	
A0.00	Sheet Index & Project Information
Civil Drawings	
C0.00	Sheet Index & Project Information
DM1	Demolition Plan
SP1	Site Plan
SP2	Site Plan
OU1	Overall Utility Plan
GR1	Grading Plan
EC1	Erosion Control Plan
SD1	Storm Drain Plan and Profile
SD2	Storm Drain Plan and Profile
SS01	Sanitary Sewer Plan and Profile
WT01	Water Main Plan and Profile
UR1	SMPA Utility Relocation Plan
UR2	Qwest Utility Relocation Plan
UR3	Cable TV Utility Relocation Plan
DT1	Details – Grading and Erosion Control
DT2	Details – Storm Drainage
DT3	Details – Storm Drainage and Roadway
DT4	Details – Sanitary Sewer
DT5	Details - Water
Landscape Drawings	
L1.01	Landscape Plan
L1.01a	Landscape Plan
L1.01b	Landscape Plan
L1.01c	Landscape Plan
L1.01d	Landscape Plan
L1.02	Westermere Improvement Plan
L1.03	Landscape Details
11.01	Irrigation Plan
12.01	Irrigation Details
12.02	Irrigation Details
Architectural Drawings	
A1.01	Site Plan
A1.01a	Garbage Truck Circulation Plan
A1.01b	Construction Staging Plan
A1.01c	Snow Melt Plan
A1.01d	Site Photos
A1.01e	Site Ownership Diagram
A1.01f	Site Density Diagram
A1.01g	Site Circulation Diagram
A1.02	Parking Diagram Plan (reference only)
A1.03	Loading Dock Detail Plan
A1.04	Erosion Control Plan
A1.05	Upper Garage Lighting Plan
A1.06	Ground Floor Lighting Plan
A1.07	Level 1 Lighting Plan
A1.08	Level 2 Lighting Plan
A1.09	Level 3 Lighting Plan

A1.10	Level 4 Lighting Plan
A1.11	Level 5 Lighting Plan
A1.12	Level 6 Lighting Plan
A1.13	Level 7 Lighting Plan
E1.00	Lighting Cut Sheets
E1.06	Garage Basement Floor Plan - Overall
E1.07	Level 1 Lighting Plan
E1.08	Level 1 Lighting Plan
PTP.200	Garage Basement Point to Point
PTP.201	Lower Garage Point to Point
PTP.202	Upper Garage Point to Point
A2.00	Garage Basement Floor Plan – Overall
A2.01	Lower Garage Floor Plan – Overall
A2.02	Upper Garage Floor Plan – Overall
A2.03	Ground Floor Plan - Overall
A2.04	Level 1 Floor Plan – Overall
A2.05	Level 2 Floor Plan – Overall
A2.06	Level 3 Floor Plan – Overall
A2.07	Level 4 Floor Plan – Overall
A2.08	Level 5 Floor Plan – Overall
A2.09	Level 6 Floor Plan – Overall
A2.10	Level 7 Floor Plan – Overall
A2.11	Roof Plan – Overall
A2.12	Average Height Targa Plan
A2.13	Maximum Height Plan
A3.02	Site Circulation Plan
A4.01	Exterior Elevation – Overall
A4.02	Exterior Elevation – Overall
A4.03	Exterior Elevation – Overall
A4.04	Exterior Elevation – Overall
A4.05	Exterior Elevation – Overall
A4.06	Exterior Elevation – Overall
A4.07	Exterior Elevation – Overall
A4.08	Exterior Elevation – Overall
A4.09	Exterior Elevation – Overall
A4.10	Exterior Elevation – Overall
4.21	Exterior Elevation – Snow Melt Study
4.22	Exterior Elevation – Snow Melt Study
4.23	Exterior Elevation – Snow Melt Study
4.24	Exterior Elevation – Snow Melt Study
4.25	Exterior Elevation – Snow Melt Study
4.26	Exterior Elevation – Snow Melt Study
4.27	Exterior Elevation – Snow Melt Study
4.28	Exterior Elevation – Snow Melt Study
4.29	Exterior Elevation – Snow Melt Study
4.30	Exterior Elevation – Snow Melt Study
A5.01	Building Section
A5.02	Building Section
A5.03	Building Section
A5.04	Building Section
A5.05	Building Section
A6.01	Typical Exterior Details
A6.01a	Typical Exterior Details

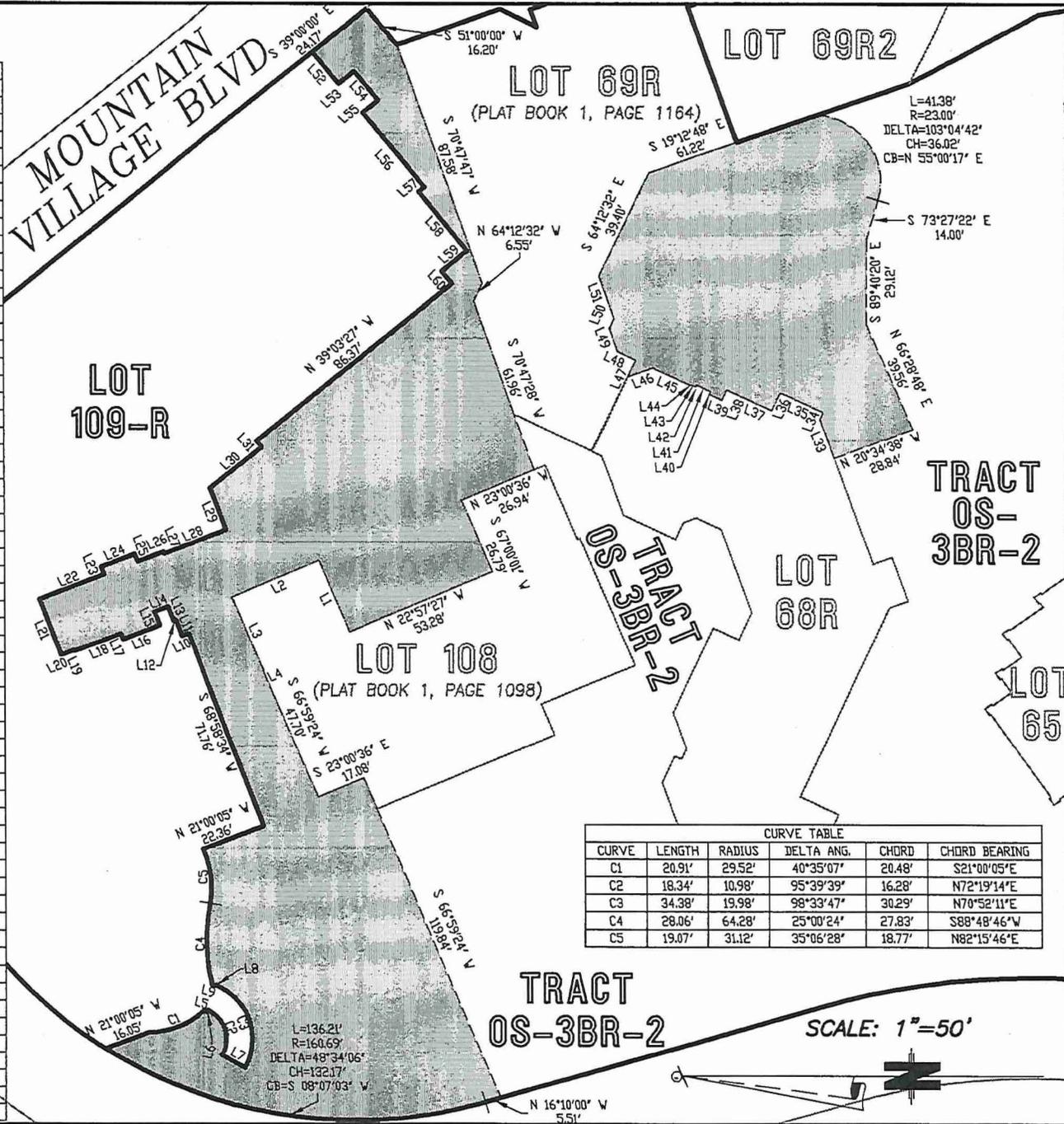
A6.01b	Typical Exterior Details
A6.02	Miscellaneous Details
A6.03	Service Diagram
A6.04	Upper Mountain Village Blvd Site Details
A6.05	Upper Mountain Village Site Details

**Exhibit "B"**  
**(Schedule of Improvements)**

<b>Public Improvement</b>
Provision of 40 efficiency lodge units to be dedicated to hotel use.
Provision for public restrooms
Plaza improvements
Improvements to the Westermere Breezeway Plaza.
Provision of Conference Rooms facilities.
16 covered, garage parking spaces
A \$996,288.00 cash contribution toward Town public purposes

**Exhibit "C"**  
**(Area of Plaza Improvements)**

LINE	BEARING	LENGTH
L1	N 66°58'47" E	26.74'
L2	N 23°00'36" W	32.44'
L3	S 66°58'13" W	27.74'
L4	N 23°00'22" W	0.25'
L5	N 17°58'24" E	1.37'
L6	N 72°01'36" W	0.68'
L7	N 30°09'04" E	9.00'
L8	S 68°24'43" E	0.21'
L9	S 17°58'24" W	1.25'
L10	S 21°00'05" E	2.50'
L11	S 68°59'23" W	5.83'
L12	S 21°02'52" E	0.83'
L13	S 68°57'08" W	5.33'
L14	S 21°00'05" E	5.00'
L15	N 68°59'55" E	4.95'
L16	S 21°00'05" E	13.62'
L17	S 68°59'55" W	2.12'
L18	S 21°00'05" E	17.00'
L19	S 69°00'25" W	0.33'
L20	S 21°00'05" E	4.75'
L21	S 68°59'55" W	20.67'
L22	N 21°00'05" W	23.71'
L23	S 68°59'56" W	2.83'
L24	N 21°00'05" W	12.33'
L25	N 68°59'55" E	2.84'
L26	N 21°00'05" W	9.76'
L27	N 68°59'37" E	0.66'
L28	N 21°00'23" W	23.15'
L29	S 68°59'54" W	15.26'
L30	N 38°58'10" W	22.86'
L31	S 51°01'50" W	2.74'
L33	N 70°03'20" E	14.47'
L34	S 64°56'40" E	2.61'
L35	N 25°03'20" E	16.00'
L36	N 64°56'40" W	6.83'
L37	N 25°03'20" E	17.03'
L38	N 64°56'40" W	3.92'
L39	N 25°03'20" E	4.76'
L40	S 64°56'40" E	1.01'
L41	N 25°03'20" E	5.40'
L42	N 64°56'40" W	0.68'
L43	N 25°03'20" E	1.78'
L44	N 64°56'40" W	0.33'
L45	N 25°03'20" E	14.37'
L46	N 19°56'40" W	8.98'
L47	S 64°12'32" E	6.34'
L48	N 25°47'28" E	6.86'
L49	N 70°27'23" E	8.58'
L50	S 64°12'32" E	3.77'
L51	N 70°47'28" E	15.22'
L52	S 50°56'33" W	14.32'
L53	S 39°03'27" E	6.83'
L54	S 50°56'33" W	13.00'
L55	N 39°03'27" W	6.83'
L56	S 50°56'33" W	33.36'
L57	N 39°03'27" W	2.50'
L58	S 50°56'44" W	26.00'
L59	N 39°01'35" W	11.12'
L60	S 50°56'33" W	5.38'



CURVE	LENGTH	RADIUS	DELTA ANG.	CHORD	CHORD BEARING
C1	20.91'	29.52'	40°35'07"	20.48'	S21°00'05"E
C2	18.34'	10.98'	95°39'39"	16.28'	N72°19'14"E
C3	34.38'	19.98'	98°33'47"	30.29'	N70°52'11"E
C4	28.06'	64.28'	25°00'24"	27.83'	S88°48'46"W
C5	19.07'	31.12'	35°06'28"	18.77'	N82°15'46"E

**PLAZA USAGE EXHIBIT 1**

Contract

Client

**FOLEY**  
ARCHITECTS  
PLANNERS  
ENGINEERS  
EXHIBIT 1

FOLEY ARCHITECTS, P.C.  
1000 15th St, Suite 1000  
Denver, CO 80202  
Phone: 303.733.1111  
Fax: 303.733.1112  
www.foleyarchitects.com

Project No. 08

Drawn By: ME

Checked By:

Scale: 08/18/2010

See also 13010 Main/LAS

Sheet No.

1 of 6

Project # 08018



**Exhibit "D"**  
**(Miscellaneous Civil Engineering Concerns)**

***Professional Consultants Incorporated***  
*2121 Academy Circle, Suite 202*  
*Colorado Springs, Colorado 80909*  
*Tel.: 719-380-8857 Fax: 719-380-8858*

Thursday, September 23, 2010

Chris Hawkins  
Community Dev. Dept. TMV  
455 Mountain Village Blvd.  
Mountain Village, CO 82435

Re: Final PUD Plans for Lots 73-76R, 89A, 109, 110 at 628 and 632 Mtn. Village Blvd., Town of Mountain Village, Colorado.

Dear Chris,

This letter is in response to your request for comments to the above-referenced project on behalf of the Town of Mountain Village. Professional Consultants Incorporated has previously reviewed this project and submitted comments. So, the comments below have to do with this latest submittal only.

Comments:

1. Sheet DM1 – It is evident that several, if not all, utilities are being removed and relocated. It is not clear how the interim service to the existing users of the Town would be accomplished while the infrastructure is configured to the proposed layout. I do not believe that this is something that should be left to the project owner and/or contractor to decide. The TMV is likely not interested in suspending services while the project is constructed, so, it is important to require that the logistics of interim service be presented in this approval process to recognize and avert any problems.
2. Sheet SP1 – There are significant common areas located above an under-ground parking garage. After all the recent experiences between the TMV and certain locations in the village core, it is important to cover all aspects of the existence of public facilities located over underground structures before any plans are approved. Issues of liability, maintenance responsibility, replacement responsibility, etc. need to be sorted out.
3. Sheet SP1 – The layout seems to be silent about or not indicate where the hotel intends to accommodate larger supply vehicles while loading and unloading. Is this activity planned to be done by parking on the street? If so, where?
4. OU1 - Specific comments for each infrastructure component will be made below. However, even though the overall utilities seem to follow a cleaner layout than the current, there's not enough information provided to evaluate a) whether or not some utilities are too close to building foundations so as to deserve to be sleeved; b) whether the historic capacity of the storm and sewer lines has been maintained through the site with the alternative alignments proposed, and c) Who will own the lines located inside the buildings? As more information is provided, I am sure more questions will arise. **It may desirable for the TMV to require that all lines located within the perimeter of any new building in the Village Core be owned and maintained by the building owner and that a perpetual license be granted to the town to flow all its tributary storm water, water and sewer through the lines.** This would prevent any issue

related to access to the facilities and/or having to deal with the building owner in the event of a failure within the structure. In addition, the quality of the infrastructure that will be installed is likely to be much better because no owner wants to have sewer problems inside an underground garage. Maintenance access to many of the utilities is going to be quite difficult. Generally, pipe joints must be minimized or eliminated through the village core. That means that for water, the lines should be welded steel or restrained joints ductile iron pipe. For storm and sanitary sewers, the piping should be water pressure rated, high density polyethylene with fused joints. Sanitary sewers inside structure should also be sleeved and protected from impact with independent members that would deflect damage to the pipes.

5. GR1 and EC1 - No comment, except to say that the plans are not complete. There are references to sheets that are not labeled as specified, such as "DTX".
6. SD1 and SD2 – Designer should be asked to specifically answer how the proposed piping system protects and improves the current storm water conveyance capacity that the TMV has in place. There also seems to be many floor drains which are not shown as connected to the storm drain. Storm drain sizing of the inlets and conveyance pipes has to recognize that these pipes are in a publicly transited area and are subject to larger debris, sand and gravel influx than a pipe located purely within a building. It seems that the main drainage conveyance and multiple inlet collection lines for storm flows should not be any smaller than 12" in diameter at 75% of depth maximum flow capacity with a Manning's coefficient  $n=0.015$ . Again, as stated earlier, the piping used should have no joints (i.e. fused HDPE type). A detention facility is shown with no details as to what flows it will retain and how it will release to historic levels. Who will own and maintain the detention pond? My recommendation is that said box is retaining the projects excess flows and must be owned and maintained by the project's owner. It is not a regional facility. The SD1 and SD2 plans are missing a few details that are necessary for a thorough review. The profile in SD1 is incomplete. There's reference to an elevation for the piping located in the building, but no indication of what's at the bottom of the reference, i.e. floor of the garage. If it is the floor of the garage, is the vertical clearance constant throughout the length of the pipe, i.e. the garage floor is dropping at the same grade (doubtful). No turns of the storm sewer should be allowed unless inside a concrete box inlet appropriately sized for maintenance access or a standard sized manhole. Several inlets are not connected to the storm drain. All storm sewer collection lines must start with an inlet box or a manhole for maintenance access. This is true for all 8" to 12" inlet collection lines also. Is the slotted drain proposed for ground water dewatering or surface water conveyance? The storm drain line between manholes MH-4 and AD-4 may be in conflict with the adjacent building foundation. Finally, the storm drain piping system inside the building must be protected against vehicular impacts. No details are available to evaluate this condition. The earlier comment about ownership of the line and licensing back to the TMV also apply. There's a portion of storm drain flowing into MH-12 that is being demolished and not replaced with an alternative.
7. SS01 – Manhole SS-7 falls approximately 15' into a 16' General Easement, it is shown to be over 15' deep to the bottom. The concern is that the current easement is too limited to allow for proper construction and maintenance of this line due to the depth of trench requirement and side slope stability, even if using construction boxes. So, as a minimum, there will be encroachment into lot 89-1C with construction and for the long term there's no room to repair or maintain the line without encroachment into that lot once more. So, an easement is needed for construction now and for ownership, access and maintenance later. The designer must provide information to support the sizing of the sewer lines such that it is demonstrated that the carrying capacity of the existing TMV lines at 75% of depth and  $n=0.013$  is retained and or improved upon. It is doubtful that this is taking place because the lines shown through the

- building are at 0.5% slope and yet retain the same minimum sizing of 8" diameter. My earlier comments about materials for the lines and possible ownership within the building's limits still apply. It is recommended that manholes deeper (rim to bottom of base) than 16', but not deeper than 28', be 5' in diameter. After 30' deep they should be 6' in diameter. Also, the 4' diameter manholes should be limited to pipes 16" in diameter or less, when one inlet and one outlet exist. If multiple inlets to one outlet, less than 16" in diameter, or single inlet/outlet for pipe diameters between 18" and 30" exist the manhole should be a minimum of 5' in diameter.
8. WT01 – Water lines within 10' of any foundation should be sleeved by steel encasement. In addition, earlier comments about pipe materials and joint restraints or steel welded pipe apply.
  9. DT2 – Pipe sizing recommendation by manufacturer "Nyloplast" conflict with recommendations made here for outside drains that would be conveyed to the TMV.
  10. ST3 – Manhole detail needs to be changed to reflect that manhole inside diameter needs to be 4' for pipes up to 16" with single inlet and outlet and 5' I.D. for pipes between 18" and 30" with single inlet and outlet. All concrete for manholes must be 4,000 psi. Refer to earlier reference for depth to diameter of manholes specifications.
  11. In summary, I do not know if this is the last time the TMV gets to see these plans before approving construction. If that's the case, the plans are not complete. Too many details are missing and certain items must be proven not to cause detriment to the current TMV's system capacity.

I hope the information provided assists you I your review of the application. If we can be of further service, please advise. Thanks you.

Cordially,



Alvaro J. Testa, Ph.D., P.E.

415337  
Page 1 of 10  
SAN MIGUEL COUNTY, CO  
PEGGY NERLIN CLERK-RECORDER  
12-10-2010 10:29 AM Recordings Fee \$56.00

**RESOLUTION OF THE TOWN COUNCIL  
OF THE TOWN OF MOUNTAIN VILLAGE,  
MOUNTAIN VILLAGE, COLORADO  
APPROVAL OF FINAL PLANNED UNIT DEVELOPMENT APPLICATION  
MOUNTAIN VILLAGE HOTEL PLANNED UNIT DEVELOPMENT**

**Resolution No. 2010-1208-31**

**WHEREAS**, MV Development Partners, LLC, a Texas limited liability company (“Applicant”) is the owner of record of certain real property described as Lots 73-76R, Lot 109, Lot 110 and Lot 89-A (“Applicant Property”);

**WHEREAS**, the Town of Mountain Village (“Town”) is the owner of certain unimproved property known as OS-3-BR-1 (“Town Property”);

**WHEREAS**, the Applicant Property and the Town Property are collectively referred to herein as the “Property”;

**WHEREAS**, the Town authorized the Applicant to include a portion of the Town Property with the Applicant Property in an application seeking (1) Final Planned Unit Development (“PUD”) Plan pursuant to Section 4-6 of the Mountain Village Land Use Ordinance (“LUO”), (2) replat, rezone and density transfer pursuant to Sections 4-4 and 4-5 of the LUO; and (3) a site specific development plan and associated vested property rights pursuant to Article 6 of the LUO (“Application”);

**WHEREAS**, the Application includes the following variations/waivers pursuant to the PUD process:

1. Variation/waiver to LUO Section 2-416 to allow Lot 109 and 110, Building Footprint Lots, to expand by more than 25%.
2. Variation/waiver to LUO Section 4-308-9 to allow an increase in maximum to 88’ – 9” and maximum average height of 65’ – 2.9”.
3. Variation/waiver to LUO Section 4-308-2 to allow for permitted uses (parking, pedestrian paths, etc. as shown in plans) in Active Open Space as shown on the Final PUD Plans to be approved pursuant to the PUD process and not the special use permit process.
4. Variation/waiver to LUO Section 4-308-2(f) to allow for conference and meeting space on the plaza level.
5. Variation/waiver to LUO Section 4-308-2 to allow for permitted uses (parking, pedestrian paths, etc. as shown in plans) in Active Open Space to be approved pursuant to the PUD process and not the special use permit process.
6. Variation/waiver to LUO Section 2-466 to allow for the proposed lock-off unit configuration as shown in the Final PUD Plans.
7. Variation/waiver to LUO Section 4-609-5 to extend the PUD vesting period from three (3) to five (5) years.

8. Variation/waiver to LUO Section 9-13 through 9-16 to allow for the “festoon” lights over the plaza area.

**WHEREAS**, the Application includes the following specific approvals pursuant to the PUD process:

1. Specific approval from the Town Council to allow residential occupancy on the plaza level for an Employee Housing Condominium (LUO Section 4-308-4).
2. Specific approval from the DRB to allow tandem parking to be included as required parking (Design Regulations Section 7-306-2).
3. Specific approval from the DRB to allow for modification of the tile roofing material, not design (Design Regulations Section 8-211-5).
4. Specific approval from the DRB to allow for 2:12 roof pitch (Design Regulations Section 8-202)

**WHEREAS**, the duly recorded plats of the Property designates the following land uses and density:

**Table 1 - DESIGNATED EXISTING LAND USE FOR THE PROPERTY:**

Lot	Acres	Zone District	Zoning Designation	Units	Density Per Unit	Total Density
73-76R	.141	Village Center	Condo	12	3	36
			Commercial			
			Employee Condo	1	3	3
109	.092	Village Center	Condo	8	3	24
			Commercial			
110	.077	Village Center	Condo	6	3	18
			Commercial			
89A	.020	Village Center	Commercial			
OS3-BR-1	2.489	Open Space	Active Open Space			
Total				27		81

**WHEREAS**, the Applicant proposes a certain Rezoning and Density Transfer for the Property as a part of the Application as follows:

**Table 2 - PROPOSED ZONING/LAND USES/DENSITY FOR THE PROPERTY:**

<b>Approved Density/Commercial SF</b>				
	<b># Units</b>	<b>Density Per</b>	<b>Total Density</b>	<b>Density Transfer</b>
Efficiency Lodge Units	66	.5	33	
Lodge Units	38	.75	28.5	
Unrestricted Condominium Units	20	3	60	
Employee Apartment	1	3	3	
Commercial SF	20,164			
	<b>Total Density</b>		<b>124.5</b>	
				43.5

**WHEREAS**, the Applicant is proposing to transfer 43.5 units owned by the Applicant from the Density Bank as a part of the Application;

**WHEREAS**, the Applicant is proposing to replat the Property into two lots - Lot 109R and Tract OS-3BR-2 ("Replat"), with the Applicant retaining Lot 109 and the Town retaining OS-3-BR-2

**WHEREAS**, the Applicant Property contains 14,374.8 sq. ft.;

**WHEREAS**, the Replat shall include 21,562.2 sq. ft. of the Town Property ("Contributed Town Property") with the Applicant Property creating Lot 109 that contains 35,928 sq. ft.;

**WHEREAS**, Lot 109R will contain 0.825 acre and Tract OS-3BR-2 contains 1.969 acre;

**WHEREAS**, The Town authorized the Applicant to include the Contributed Town Property in the Application provided that Applicant transfers and conveys replacement property, which property has been deemed acceptable to the Town (the "Replacement Town Property"), alternatively, in lieu of the conveyance of the Replacement Town Property, the Applicant and Town may agree to the payment of cash or other consideration deemed acceptable to the Town ("**Replacement Town Property Payment**") on mutually acceptable terms and conditions;

**WHEREAS**, the Town Council elected to receive Lot 644 as Replacement Town Property in lieu of the Replacement Town Property Payment; -;

**WHEREAS**, the Applicant is proposing to rezone the new Lot 109R to "Village Center" subject to the applicable provisions of the LUO with the density outlined in Table 2. The Official Zoning Map for the Town of Mountain Village will be amended to show Lot 109 with

the "Village Center" zoning designation upon recordation of this resolution, the Replat, and the Lot 109 Town of Mountain Village, Planned Unit Development;

**WHEREAS**, the Applicant is proposing to rezone the new tract OS-3BR-2 as "Active Open Space" subject to the applicable provisions of the LUO. The Official Zoning Map for the Town of Mountain Village will be amended to show OS-3BR-2 with the Active Open Space zoning designation;

**WHEREAS**, the Application has been reviewed and considered by the Town in accordance with applicable law, including but not limited to, the LUO and Design Regulations;

**WHEREAS**, at a duly noticed and conducted public hearing on October 28, 2010, the DRB recommended to the Town Council that the Application for Conceptual PUD Plan be approved with conditions pursuant to LUO Section 4-606;

**WHEREAS**, at a duly noticed and conducted public hearing on March 11, 2010, the Town Council granted Conceptual PUD Plan approval to the Application pursuant to LUO Section 4-606;

**WHEREAS**, at a duly noticed and conducted public hearings held on June 24, 2010 and again on July 22, 2010, the DRB granted Sketch PUD Plan approval to the Application pursuant to LUO Section 4-607;

**WHEREAS**, at a duly noticed and conducted public hearing on October 28, 2010, the DRB recommended to the Town Council that the Application for Final PUD Plan be approved pursuant to LUO Section 4-608 as well as other components of the Application;

**WHEREAS**, at a duly noticed and conducted public hearing on December 8<sup>th</sup> 2010, the Town Council granted Final PUD Plan approval to the Application pursuant to LUO Section 4-609 as well as other components of the Application, including, specifically and without limitation, the request for Extended Vesting Rights;

**WHEREAS**, after conducting the respective public hearings, receiving evidence and taking testimony and comment thereon, the DRB and the Town Council respectively found that: (i) the Property achieves one (1) or more of the applicable purposes listed in Section 4-616 of the LUO, and (ii) the resulting development will be consistent with the provisions of Section 4-617 of the LUO;

**WHEREAS**, the public hearings referred to above were preceded by publication of public notice of such hearing(s) on such dates and/or dates from which such hearings were continued in the *Telluride Daily Planet* and by mailing of public notice to property owners located within one hundred and fifty feet (150') of the Property, as required by the LUO;

**WHEREAS**, the Applicant has now met all requirements for: (1) Final PUD approval and has addressed all conditions of Final PUD approval as set forth by the DRB and Town Council, except as provided herein; and (2) final approval for the components of the Application

relating to the Replat, Rezone, Density Transfer, variations/waivers and Extended Vesting Rights;

**WHEREAS**, after the public hearings referred to above, the DRB and the Town Council each individually considered the Application submittal materials, and all other relevant materials, public letters and public testimony, and found as follows: (1) the PUD complies with all LUO and Town of Mountain Village Design Regulations ("Design Regulations") provisions applicable to the Property; (2) the PUD achieves one or more of the applicable community purposes/benefits listed in LUO Section 4-616; and, (3) the PUD is consistent with and substantially complies with the applicable review standards and requirements listed in LUO Section 4-617;

**WHEREAS**, the Applicant has met all requirements for Final PUD Plan approval under LUO Section 4-6 and the Design Regulations, and has addressed, or agreed to address, all conditions of Final PUD Plan approval imposed by Town Council based upon a recommendation for approval by the DRB;

**WHEREAS**, the Applicant has specifically complied with Section 4-616, Community Purposes, in the following manner:

4-616-2 Development of, or a contribution to the Development of either: (i) public facilities, such as public parking and transportation facilities, public recreation facilities, public cultural facilities, and other public facilities; or (ii) public benefits as either may be identified by the DRB or the Town Council. The public facilities or source of the public benefits may be located within or outside of the PUD but shall be public facilities or public benefits that meet the needs not only of the PUD residents or property owners, but also of other residents, property owners and visitors of the Town.

The Applicant shall provide the following public benefits, the provision of which shall be a condition of this Resolution:

- A. The Applicant shall provide at least forty dedicated hotel rooms according to the terms and conditions of the Development Agreement.
- B. The Applicant shall require that the Project shall be either: (i) operated and managed by, and/or (ii) franchised as an internationally or nationally recognized full service hotel operator/brand (as applicable) with significant experience in full service operations with existing broad marketing distribution capabilities ("**Hotel Operator**") for the life of the Project according to the terms and conditions of the Development Agreement Section 7.2.1.B of the Development Agreement shall provide for mediation between the parties in the event the Applicant and the Town are unable to agree on a Hotel Operator and shall further provide that the approved Hotel Operator shall have programs in place that demonstrate broad market exposure.
- C. The Applicant shall impose a hotel operator, hotel amenities, services and facilities covenant, enforceable by the Town, on the Property according to the terms and conditions of the Development Agreement.
- D. The Applicant shall impose a covenant on the Property requiring all purchase contracts concerning the initial sale of Lodge and Efficiency Lodge Units that require a buyer to

- select a standard furniture package developed by the Hotel Operator and the price for purchasing the unit shall include the cost of the furniture package and such covenant may not be waived by the parties.
- E. The Applicant shall provide for an employee housing mitigation payment to the Town in the sum of \$996,288 (“Mitigation Payment”), which shall be payable simultaneously with the issuance of the initial building permit, excluding a standalone excavation permit for the Project. The Town may use the Mitigation Payment for any public purpose as determined by the Town, which may include, but shall not be limited to, employee housing, transportation or trash facility relocation, provided that not less than 60% of the Mitigation Payment shall be used for employee housing purposes. On the second anniversary of the initial Certificate of Occupancy for the Project, Owner shall provide a certified statement indicating the actual number of full time equivalent employees employed at the Project. The certified statement shall confirm to the Town the number of full time equivalent employees based upon time cards, income tax reporting and such other and similar employment records, which shall be reviewed, evaluated, discussed and otherwise held in a confidential manner by the Town. As a further offset to employee housing needs generated by the Project, Owner shall pay the Town a one time payment of \$4,018.52 for each full time equivalent employee averaged over the two year period dating from the issuance of the initial Certificate of Occupancy for the Project in excess of the 90 full time equivalent employees estimated by the Owner (“One Time Payment”). The payment shall be due on the date that is the thirty month anniversary of the initial Certificate of Occupancy for the Project. In the event that the certified statement indicates that the Project is employing less than the anticipated 90 full time equivalent employees, the Town shall not be required to refund any portion of the Mitigation Payment to Owner. The Owner may propose to mitigate any added employees by providing on-site or off site employee units as an alternative to the One Time Payment.
- F. Employee Housing Unit. The Employee Housing Restriction on one Unit in the Project is considered a public benefit and shall specifically provide that the Employee Housing Restriction does not terminate in the event of a foreclosure on such unit.
- G. Owner shall construct and make available to the general public, for at least 16 hours per day, 365 days per year, restrooms in the Project reflected in the Final PUD Plans that are accessible from the plaza and associated easements, without cost to the Town according to the terms and conditions of the Development Agreement. The Town and Owner shall meet and confer to establish opening times, which may vary seasonally.
- H. Owner shall construct certain “Plaza Improvements” reflected in the Final PUD Plans and shall maintain such Plaza Improvements according to the terms and conditions of the Development Agreement.
- I. The Owner shall construct, and convey to the Town 48 parking spaces in the project according to the terms and conditions of the Development Agreement. Following conveyance of the 48 parking spaces, the Town may elect, in its sole and absolute discretion, to sell, lease, or further convey the 48 parking spaces. The Owner will improve the Westermere Breezeway and the associated path through such breezeway in substantial accordance with the Final PUD Plans, provided that the Westermere HOA has provided its written authorization and consent to such work on commercially reasonable terms and conditions and within thirty days following Owner’s submission of its request for such authorization. The Owner shall submit the authorization and consent to the Town with its application for the building permit. If the Westermere HOA fails to

provide the authorization and consent in form, content or timeframe contemplated by this Resolution, the Owner shall be fully released from its obligation to improve the façade and the associated walkway as shown on the Final PUD Plans.

- J. The Owner shall construct two conference rooms in the Project in general accordance with the Final PUD Plans, which shall be available for use by owners and guests in the Project and non-owner guests according to the terms and conditions of the Development Agreement.
- K. In order to utilize the tandem parking spaces shown on the Final PUD Plan, the Owner or condominium association shall provide 24 hour per day valet parking services for the tandem parking spaces by providing attendants who receive, park and return vehicles to owners and guests as further detailed in the Development Agreement.
- L. The owners association for the Project shall be responsible for removing and/or relocating snow from the south side of upper Mountain Village Boulevard to allow for adequate snow storage for plowing of upper Mountain Village Boulevard.

*The Town Council found that the foregoing proposed Community Benefits satisfy Section 4-616 of the Land Use Ordinance.*

**WHEREAS**, the Applicant has specifically complied with Section 4-617, Review Standards, in the following manner:

(1) The Development proposed for the PUD is generally consistent with the underlying purposes and goals of the LUO and the Design Regulations because, without limitation: (A) it was processed in accordance with the PUD process of the LUO; (B) the project will promote the public health, safety and welfare due to the extensive design review process that assured an appropriate massing that fits within the context of the Village Center while also achieving some envisioned goals of the pending Comprehensive Plan; (C) the project will preserve open space and protect the environment since Active Open Space in the Village Center was always envisioned to be developed by the expansion of footprint lots and the project avoids areas with environmental constraints; (D) the project will enhance and be compatible with the natural beauty of the Town and its surrounding since it will allow for resort development in an area that is currently covered in parking lots and poor vegetation, with the development designed to fit into the context of the site and the Village Center; (F) the project will foster a sense of community because it will provide for more activity and vitality in the Village Center area and provide more hot bed base to the community, with more traffic and activity created for the town as a whole; (G) the project's design will promote good civic design and development because it has been found to meet the Design Regulations and the PUD Regulations for the Town, with numerous public meetings to shape the final design; (H) the project will help to create and preserve an attractive community due to the attention to massing, the stepping of heights, varying wall planes, attractive design, and the modern, high alpine design theme; (I) the project will promote the economic vitality of the town, promote the resort nature and tourism trade of the town and promote property values in the towns due to the hot bed requirements of the PUD, the conference center and by adding more people to the Village Center that support more business and commercial ventures;

(2) The Development proposed for the PUD represents a creative approach to the development and use of land and related physical facilities to produce a better development than would otherwise be possible under the strict application of the requirements of the underlying Zoning Designation, Zone District and Land Use and Density and will provide amenities for residents of the PUD and the public in general. The PUD allows for the creative use of some low quality active open space and the combination of private lots to create a development that provides for a flag hotel site that would not be possible without the PUD process since such process allows for expanding footprint lots, increased heights, unique lot combinations, and other variations.

(3) The Development proposed for the PUD is designed to be compatible with the surrounding environment, neighborhood and area relative to, but not limited to, architectural design, scale, bulk, building height, buffer zones, character, and orientation and shall not unreasonably affect existing land uses and the future development of the surrounding neighborhood and area. The Applicant has worked with its consultants, the DRB and the Council to create a high density hot bed development that fits into the high density nature of the Village Center. The buildings bulk, scale, building height, landscaping and architectural design have been shaped to be compatible with surrounding area development. The requested maximum building height is found on only one location, with the roof heights cascading down to the south while stepping in a more linear, albeit lower height to the north and west, with specific attention paid to stepping the building towards Westermere. The building's design also breaks up the mass by extensive roof articulation, wall articulation, color changes, material changes, decks and the large open plaza area to the west.

(4) The landscaping and public spaces proposed for the PUD provides sufficient buffering of uses from one another to minimize adverse impacts and create attractive public spaces consistent with the character of the surrounding environment, neighborhood and area. The project has created a very unique plaza area that will stand out from other plaza areas due to unique paver design, lighting integrated into the pavers, festoon lighting, landscaped planters and commercial facades that are designed to have large glass areas. The building's heavy stone base will provide the vertical walls up from the plaza and create an attractive, high alpine setting. In addition, the plans call for an outdoor dining area which will help create an activity center in the area, which combined with the Westermere and Palmyra retail shops, creates the potential for a very active public place that spills out to the pond. When the pond lots are developed to the south, the whole potential of this area as an attractive, vital place with lots of pedestrian interest should be realized.

(5) The Development proposed for the PUD provides sufficient parking and traffic circulation. The final PUD plans provide for more parking spaces than required by the Design Regulations. Traffic and pedestrian circulation patterns have been extensively analyzed for this project, with the Applicant submitting a traffic analysis that shows good levels of service for the drive intersection.

(6) There is only one phase for this PUD project.

- (7) The PUD is not proposing a rezoning of a single family lot.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council hereby grants the following land use approvals for the Property in accordance with the provisions of the LUO: (1) Final Plan Approval pursuant to Section 4-6 LUO, and (2) replat, rezone and density transfer pursuant to Sections 4-4 and 4-5 of the LUO; with authorization for the Mayor to sign the Resolution, subject to conditions set forth herein, and the requirements of the Development Agreement for the Property in a form substantially similar to the draft development agreement presented at the December 8, 2010 Town Council meeting ("Development Agreement").

Conditions of this Final PUD Plan Approval are as follows:

1. Prior to recording the final plat, the plat shall be revised to show easements for the utilities currently traversing through Lot 109R, with notation thereon or by other legal instrument, allowance for the Applicant to relocate the easements in accordance with the composite utility plan that is a part of the building permit application.
2. The Applicant shall provide the Replacement Town Property or payment in lieu as set forth herein in accordance with the terms and conditions of the Development Agreement.
3. The Applicant shall provide all public benefits as set forth herein and in accordance with the terms and conditions of the Development Agreement.
4. Such other terms and conditions as set forth in the Development Agreement.
5. All representations of the Applicant, whether within the submittal or at the DRB hearing, are conditions of this approval.
6. Per Section 2-1307 of the Town of Mountain Village Design Regulations, this approval does not allow any violation to the LUO and/or Design Regulations or imply approval of any errors that may be contained in this Application that violate the LUO and/or the Design Regulations.
7. The landscaping plan shall be revised to include a requirement to salvage existing trees located on the Property to the extent practical.
8. The Development Agreement shall contain a mediation clause for the purpose of resolving any issues that may arise as a result of the design or construction of the public benefits.
9. The Development Agreement shall contain a clause that requires the Applicant to submit a report to the Community Development Department, with a copy to Town Council, demonstrating how its construction plans for the project have been prepared to insure that the required public benefits have been designed to achieve applicable construction standards and requirements and will function and operate in a manner that is consistent with the customary goals and objectives for which the public benefit was accepted by the Town. The report and plans will be reviewed by the Community Development Department to determine compliance with this requirement. In the event that the Community Development Department determines that the report fails to adequately demonstrate compliance, the matter shall be referred to the Town Council for further review and appropriate action.

**BE IT FURTHER RESOLVED** that pursuant to Section 3-511 the Town Council has received a draft of the Development Agreement. The Town Council authorizes the Mayor to

appoint a committee consisting of the Mayor and one or more Town Councilors, who shall, in consultation with the Town Manager, legal counsel and the Director of Community Development, finalize and authorize the Mayor to execute the Development Agreement consistent with the terms and conditions of this Resolution No. 2010-1208-31

**BE IT FURTHER RESOLVED** that the approval of the Final PUD Plan for the Property as set forth in this Resolution constitutes a Site Specific Development Plan and upon appropriate publication shall create a vested property right for an extended vesting period of five years pursuant to C.R.S. § 24-68-101-106 and Article 6 of the LUO.

**BE IT FURTHER RESOLVED** that the Property may be developed as submitted in accordance with this Resolution, the Development Agreement and the applicable provisions of the LUO and the Design Guidelines.

APPROVED by the Town Council at a public meeting held on December 8, 2010.

TOWN OF MOUNTAIN VILLAGE, TOWN COUNCIL



Robert Delves  
2010.12.09  
16:24:36 -07'00'

By: \_\_\_\_\_  
Robert H. Delves, Mayor

Attest:



Kim Montgomery  
2010.12.09 16:25:12  
-07'00'

By: \_\_\_\_\_  
Kim Montgomery, Town Clerk

