

**ORDINANCE NO. 2022-10**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO APPROVING A THIRD MAJOR PLANNED UNIT DEVELOPMENT AMENDMENT TO LOT 109R EXTENDING THE LENGTH OF VALIDITY AND VESTED PROPERTY RIGHTS FOR A SITE-SPECIFIC DEVELOPMENT PLAN FROM DECEMBER 8, 2022 TO SEPTEMBER 8, 2023**

WHEREAS, Tiara Telluride, LLC (“Owner”) is the owner of record of certain real property in San Miguel County described as Lot 109R, Town of Mountain Village according to the plat recorded as Reception No. 416994 (“Property”); and

WHEREAS, the Town Council of the Town of Mountain Village (“Town Council”) previously approved a Planned Unit Development (“PUD”) for the Property (“PUD Approval”) by Resolution No. 2010-1208-31 on December 8, 2010, recorded as Reception No. 415339, and, in connection therewith, the Town and Owner’s predecessor entered into a Development Agreement dated March 18, 2011, recorded as Reception No. 416997 (“Development Agreement”); and

WHEREAS, the PUD Approval and Development Agreement created vested property rights for a site-specific development plan for the Property for a period of five (5) years, valid until December 8, 2015 (“Vested Property Right”); and

WHEREAS, Owner applied for, and Town Council approved, an extension of the PUD Approval by Ordinance No. 2015-07, recorded as Reception No. 438753, and the First Amendment to the Development Agreement, recorded as Reception No. 438754, extending the vested property rights until December 8, 2020; and

WHEREAS, Owner applied for, and Town Council approved, a second extension of the PUD Approval by Ordinance No. 2020-16, recorded as Reception No. 467309, and the Second Amendment to the Development Agreement, recorded as Reception No. 467310, extending the vested property rights until December 8, 2022; and

WHEREAS, Vault Management LLC (“Developer”), with consent of Owner, applied for a third extension of the PUD Approval to extend the vested property rights until December 8, 2024 as reflected in the application that consists of the materials submitted to the Town and itemized on Exhibit A, plus all statements, representations, and additional documents of Developer and its representatives as reflected in the minutes of the public hearings before DRB and Town Council (the “Extension Application”); and

WHEREAS, Developer submitted the Extension Application concurrent with Developer’s application for a Class 4 Major PUD Amendment to include a portion of Town open space parcel known as OS-3BR-2 and to make adjustments to density, height, design, and other matters for the purpose of developing a five-star luxury brand hotel on the Property (the “Six Senses Major PUD Amendment Application”) to preserve the vested property rights in the event that the Six Senses Major PUD Amendment Application is not approved prior to the December 8, 2022 expiration of the PUD Approval; and

WHEREAS, the Mountain Village Design Review Board (“DRB”) held a public hearing on the Extension Application on August 4, 2022 and voted 6-1 to recommend that Town Council approve the Extension Application but with a nine-month extension of the PUD Approval, instead of the two-year extension requested by Developer; and

WHEREAS, Town Council has considered the Extension Application, the DRB’s recommendation, and testimony and comments from the Developer, Town Staff, and members of the public at a public meeting on August 18, 2022 and at a duly noticed public hearing on September 22, 2022; and

WHEREAS, Town Council has considered the criteria set forth in Section 17.4.12.E of the Town's Community Development Code ("CDC") and finds that, to the extent applicable, an extension to the PUD Approval is consistent with said criteria; and

WHEREAS, Town Council has also considered the criteria set forth in Section 17.4.17.D of the CDC and finds that, to the extent applicable, an extension to the PUD Approval is warranted and meets the applicable standards; and

WHEREAS, Town Council now desires to approve the Extension Application, subject to the terms and conditions set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, as follows:

Section 1. Recitals. The above recitals are hereby incorporated as findings of the Town Council in support of the enactment of this Ordinance.

Section 2. Approval. Town Council hereby approves the Extension Application such that the PUD Approval and associated vested property rights shall be extended for a period of nine months, valid until September 8, 2023 ("Third Extension Approval"). In connection therewith, Town Council also approves the Third Amendment to the Development Agreement, attached hereto as Exhibit B. Should Developer's separate, concurrent Six Senses PUD Amendment Application be approved by Town Council, this Ordinance and the Third Extension Approval granted herein shall be void.

Section 3. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

Section 4. Effective Date. This Ordinance shall become effective on October 22, 2022 and shall be recorded in the official records of the Town kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

Section 5. Public Hearing. A public hearing on this Ordinance was held on the 22<sup>nd</sup> day of September 2022 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd, Mountain Village, Colorado 81435.

Section 6. Publication. The Town Clerk or Deputy Town Clerk shall post and publish notice of this Ordinance as required by Article V, Section 5.8 of the Charter.

**INTRODUCED, READ, AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 18<sup>th</sup> day of August 2022.**

**TOWN OF MOUNTAIN VILLAGE:**

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



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

Laila Benitez, Mayor

ATTEST:

  
Susan Johnston, Town Clerk

**HEARD AND FINALLY ADOPTED** by the Town Council of the Town of Mountain Village, Colorado this 22<sup>nd</sup> day of September 2022

**TOWN OF MOUNTAIN VILLAGE:**

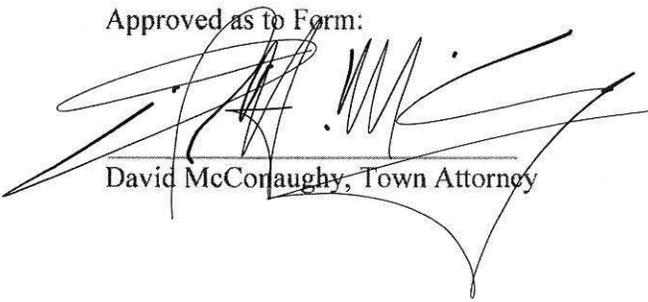
**TOWN OF MOUNTAIN VILLAGE, COLORADO  
A HOME-RULE MUNICIPALITY**

By   
Laila Benitez, Mayor

ATTEST:

  
Susan Johnston, Town Clerk

Approved as to Form:

  
David McConaughy, Town Attorney

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

1. The attached copy of Ordinance No. 2022-10 ("Ordinance") is a true, correct, and complete copy thereof.
2. The Ordinance was introduced, read by title, approved on first reading and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on August 18, 2022, 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			
Marti Prohaska	X			
Harvey Mogenson	X			
Patrick Berry			X	
Peter Duprey	X			
Jack Gilbride	X			

3. After the Council's approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on August 26, 2022 in accordance with Section 5.2(d) of the Town of Mountain Village Home Rule Charter.
4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on September 22, 2022. 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			
Marti Prohaska	X			
Harvey Mogenson	X			
Patrick Berry			X	
Peter Duprey			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 22<sup>nd</sup> day of September 2022.

  
 Susan Johnston, Town Clerk  
 (SEAL)



**EXHIBIT A**

[List of Extension Application Materials]

**EXHIBIT B**

[Third Amendment to the Development Agreement]

## **Town of Mountain Village Ordinance 2022-10**

### **Exhibit A – Application Materials**

1. Tiara Telluride Extension Narrative 7/22/2022
2. Town Council PUD Approval Resolution
3. Development Agreement
4. Ordinance 2015-07
5. 1<sup>st</sup> Amendment to Development Agreement
6. Ordinance 2020-16
7. 2<sup>nd</sup> Amendment to Development Agreement
8. Final PUD Plan Set 12/08/2010
9. Application Materials – 7/5/2022

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

**THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT** (“Third Amendment”), made effective as of September 22, 2022 (“Effective Date”), is made by and between Town of Mountain Village, a Colorado home rule municipality (“Town”), and Tiara Telluride, LLC, a Colorado limited liability company (“Owner”). Town and Owner are sometimes each individually referred to as a “Party” and sometimes collectively as the “Parties.”

**RECITALS**

1. Owner is the current fee simple owner of certain real property in San Miguel County described as Lot 109R, Town of Mountain Village according to the plat recorded as Reception No. 416994 in the office of the San Miguel County Clerk and Recorder (“Property”).

2. The Town approved a site-specific planned unit development (“PUD”) for the Property by Resolution No. 2010-1208-31, recorded as Reception No. 415339 (“PUD Approval”), and, in connection therewith, the Town and the Property’s previous owner entered into a Development Agreement for the Property, recorded as Reception No. 416997 (“Development Agreement”), as amended by the First Amendment to the Development Agreement, recorded as Reception No. 438754 (“First Amendment”), and by the Second Amendment to the Development Agreement, recorded as Reception No. 467310 (“Second Amendment”).

3. Pursuant to the Second Amendment, the PUD Approval was extended to December 8, 2022.

4. By and through its agent Vault Management LLC, Owner applied for a third extension of the PUD Approval and associated vested property rights.

5. Pursuant to the Ordinance No. 2022-10 (the “Third PUD Extension Ordinance”), the Town approved a third extension of the PUD Approval and associated vested property rights for an additional nine months until September 8, 2023.

6. In accordance with the Third PUD Extension Ordinance, the Parties wish to modify portions of the Development Agreement in the manner provided for in this Third Amendment.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration of the mutual covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The foregoing Recitals are incorporated herein by reference.
2. **Amendment.** The Parties hereby amend and restate Section 12.16 of the Development Agreement 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 September 8, 2023, 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 September 8, 2023,

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 processed in accordance with the Mountain Village Community Development Code and Design Regulations in place at the time of the submission of any such application.

3. **Third Amendment Controls.** 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.

4. **Modifications.** 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.

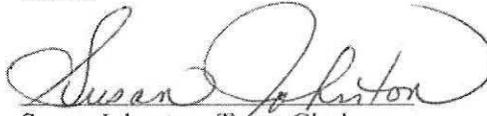
5. **Counterparts; Electronic Signatures.** This Amendment may be executed in multiple counterparts or by legible facsimile copy, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument. The facsimile transmission or scanned/emailed of a signed copy of this Amendment shall be considered valid and constitute a signed original.

IN WITNESS THEREOF, the Parties have executed this Third Amendment as of the Effective Date set forth above.

**TOWN:**  
TOWN OF MOUNTAIN VILLAGE, COLORADO

By:   
Laila Benitez, Mayor

Attest:

  
Susan Johnston, Town Clerk

OWNER:  
TIARA TELLURIDE, LLC

By: [Signature]  
Name: ANKUR PATEL  
Title: MGR

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 11 day of OCTOBER, 2022 by ANKUR PATEL, as MANAGER on behalf of Tiara Telluride, LLC.

Witness my hand and official seal:

[Signature]  
Notary Public

My commission expires:

