

**TOWN OF MOUNTAIN VILLAGE TOWN  
COUNCIL SPECIAL MEETING  
THURSDAY, MARCH 30, 2022, 5:00 PM  
ZOOM MEETING  
AGENDA **REVISED****

[https://us06web.zoom.us/webinar/register/WN\\_PifRMg5IS2SqrE2B77N9Yw](https://us06web.zoom.us/webinar/register/WN_PifRMg5IS2SqrE2B77N9Yw)

**Please note that times are approximate and subject to change.**

	Time	Min	Presenter	Type	
1.	5:00				Call to Order
2.	5:00	5	Ward Haynes	Action	Second Reading, Public Hearing and Council Vote on an Ordinance Adopting Community Development Code Amendments at CDC Section 17.7.12.7.h International Energy Conservation Code and CDC Section 17.5.12.11.a. Lighting Regulations
3.	5:05	15	Wisor Haynes	Action	Consideration of Approval of the Village Court Apartment Development Agreement
4.	5:20	10	Foster Wisor Haynes	Informational	Lot 644 Update
5.	5:30	5	Ward Haynes	Action <i>Quasi-Judicial</i>	Continued Hearing-Lot 109R for the Purpose of Setting a Date Specific for the Following Items: a. First Reading, Setting of a Public Hearing and Council Vote on an Ordinance Regarding a Major Planned Unit Development (PUD) Amendment to the Formerly Named Mountain Village Hotel PUD, to Consider Amendments to the Existing PUD for Lot 109R for a Mixed-Use Hotel/Resort Development Including Plaza, Commercial, Hotel and Residential Use b. First Reading, Setting of a Public Hearing and Council Vote Regarding a Rezone of Portions of Town Owned Village Center Active Open Space (OS-3- BR2) to 109R PUD, and 109R PUD to Village Center Active Open Space (OS-3- BR2) Consistent with CDC Section 17.4.9 15. for a Major Subdivision to Replat Portions of Property Between Lot 109R and OS-3-BR-2 c. Consideration of a Resolution for a Major Subdivision to Replat Portions of Property Between Lot 109R and OS-3-BR-2
6.	5:35				Adjourn

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting Town Hall at 970-369-6429 or email: [mvclerk@mtnvillage.org](mailto:mvclerk@mtnvillage.org). A minimum notice of 48 hours is required so arrangements can be made to locate requested auxiliary aid(s)

<https://bit.ly/WatchMVMeetings>

**Register in advance for this webinar:**

[https://us06web.zoom.us/webinar/register/WN\\_PifRMg5IS2SqrE2B77N9Yw](https://us06web.zoom.us/webinar/register/WN_PifRMg5IS2SqrE2B77N9Yw)

After registering, you will receive a confirmation email containing information about joining the webinar.

Zoom participation in public meetings is being offered as a courtesy, however technical difficulties can happen and the Town bears no responsibility for issues that could prevent individuals from participating remotely. Physical presence in Council chambers is recommended for those wishing to make public comments or participate in public hearings.

**Public Comment Policy:**

- All public commenters must sign in on the public comment sign in sheet and indicate which item(s) they intend to give public comment on
- Speakers shall wait to be recognized by the Mayor and shall give public comment at the public comment microphone when recognized by the Mayor
- Speakers shall state their full name and affiliation with the Town of Mountain Village if any
- Speakers shall be limited to two minutes with no aggregating of time through the representation of additional people
- Speakers shall refrain from personal attacks and shall keep comments to that of a civil tone
- No presentation of materials through the AV system shall be allowed for non-agendized speakers
- Written materials must be submitted 48 hours prior to the meeting date to be included in the meeting packet and of record. Written comment submitted within 48 hours will be accepted, but shall not be included in the packet or be deemed of record



**PLANNING AND DEVELOPMENT SERVICES  
DEPARTMENT**

455 Mountain Village Blvd.  
Mountain Village, CO 81435  
(970) 369-8250

**Item No. 3**

**TO:** Town Council

**FROM:** Amy Ward, Community Development Director

**FOR:** Meeting of March 30, 2023

**DATE:** March 23, 2023

**RE:** Second Reading and Council Vote on an Ordinance Adopting Community Development Code Amendments at CDC Section 17.7.12.7.h International Energy Conservation Code and CDC Section 17.5.12.11.a. Lighting Regulations

---

**Note:** There have been no changes since the First Reading held on March 16, 2023

**BACKGROUND**

Staff is bringing two time-sensitive CDC amendments before Town Council for legislative consideration.

**DRB RECOMMENDATION**

On March 2, 2023 DRB voted **unanimously** to recommend approval to Town Council of the proposed CDC amendment, but recommends changing the remodel value noted in 17.5.12.11.a from \$50,000 to \$500,000

**On March 16, 2023 the Town Council approved the First Reading of this Ordinance by a unanimous vote**

**ATTACHMENT**

- A. Proposed Redline CDC Amendment
- B. Ordinance

**International Energy Conservation Code Amendment**

Item #1. The Town is actively pursuing building deed restricted housing. Most state and federal funding opportunities require new construction to be fully electric (commonly referred to as electrification) as part of the overall energy efficiencies requirements with new construction. Both town projects are electric only projects and we are pursuing grant and loan funding opportunities.

The International Energy Conservation Code, as adopted by the Mountain Village does not allow for electric resistance heating to be used as a buildings primary heat source. Staff recommends striking this section which would then allow for a building to be only electric heated if desired. We have many existing examples of this, such as the other 14 buildings at Village Court Apartments.

This would be applicable to not only the forthcoming Town projects, but also to any private development (ie. single-family homes) in the future that are pursuing electrification as a means to sustainability.

Recommended edit:

~~h. *Prohibition on Electric Heating.* Electric resistance heating shall not be used as the buildings primary heating source.~~

### **Lighting Regulations Amendment**

Item #2. When the lighting regulations were amended in 2020 we added a provision that required that any redevelopment or remodel valued at \$50,000 or greater shall retrofit all existing exterior lighting to comply with the lighting regulations. This requirement has created conflicts with most roofing projects. Roofs are required to be repaired in the Mountain Village, as they fall into a life/safety category. We also have a cedar shake fire mitigation replacement program that helps encourage owners to replace cedar shakes, coupled with insurance challenges for those that are required to replace roofs in order to have insurance coverage. Finally, those that have concrete tile are also required to replace roofs for a variety of reasons, as those roof tiles are no longer available. Encouraging a roof replacement has been more difficult when someone, at building permit, realizes, that it is coupled with an exterior lighting requirement. Council has indicated that life safety is more important than the secondary also important matter of exterior lighting compliance. Therefore, staff recommends amending this section to add the following exemption, specific to roof replacements. Per the DRB recommendation and agreement with this recommendation by Council at the First Reading, the trigger value was increased from \$50,000 to \$500,000. See below.

Recommended edit:

a. A redevelopment or remodel valued at  ~~fifty~~ five hundred thousand dollars (~~\$50,000~~ \$500,000) or more shall retrofit all existing exterior lighting to comply with the then current Lighting Regulations. Roof replacements are exempt from this requirement.

### **STAFF RECOMMENDATION**

Staff recommends the Town council consider the suggested edit by the DRB of 17.5.12.11.a. Lighting Regulations and discuss a remodel value trigger for lighting updates. Relatively small projects in the Mountain Village can easily exceed \$50,000 and staff has concerns that this low trigger could dis-incentivize homeowners from doing regular maintenance and needed upgrades. A \$500,000 trigger seems reasonable to achieve the goal of the lighting regulations, necessarily causing larger scale projects to complete lighting updates. Staff recommends approval of both CDC amendments with the DRB proposed edit to the lighting regulations.

### **PROPOSED MOTION**

"I move that the Town Council approve the Ordinance Adopting Community Development Code Amendments at CDC Section 17.7.12.7.h International Energy Conservation Code and CDC Section 17.5.12.11.a. Lighting Regulations as attached hereto as exhibit A. and ask the town clerk to set a public hearing for March 30, 2023.

/aw

benefit the community. Carbon reducing town projects and programs may be considered an appropriate use of REMP funds with Town Manager approval.

- e. *Engineered Heating Systems.* All detached single-family dwellings with equipment that meets the requirements for commissioning per sub-section N must have engineered heating systems. Where mechanical ventilation is required high efficiency energy recovery ventilators or heat recovery units shall be utilized for this purpose.
- f. *Direct Vent Furnace.* When the scope of the work of an addition to a dwelling or a remodel of a dwelling requires replacement of a furnace, the furnace shall be replaced with a direct vent unit that has a minimum 92 percent AFUE.
- g. *Direct Vent Boiler.* When the scope of the work of an addition to a dwelling or a remodel of a dwelling requires replacement of a boiler, the boiler shall be a direct vent unit that has a minimum 90 percent AFUE.
- h. ~~*Prohibition on Electric Heating.* Electric resistance heating shall not be used as the buildings primary heating source.~~
- i. *Fireplaces.* Fireplaces must be EPA or California certified, and have tight fitting gasketed doors. Fireplaces located in sleeping areas must have shut off timer with 90 minute maximum or thermostat setting maximum of 80 degrees. Wood burning fireplaces shall meet the Solid Fuel Burning Device Regulations.
- j. *Programmable Thermostats.* Programmable thermostats are required for forced air central heating and cooling systems.
- k. *Automatic Exhaust Fan Switches.* Timers, humidistats or motion sensors are required for bath exhaust fans.
- l. *Local Insulation Requirements.*
  - i. Headers shall be insulated full open depth.
  - ii. Framed corners must be capable of being insulated.
  - iii. Shaft and knee walls for skylights shall be insulated as exterior walls and provided with adequate backing to support the insulation.
- m. *Range Hood Ducting.* Range hoods are required and must be ducted to the exterior.
- n. *Mechanical Systems Commissioning and Completion Requirements.* Engineering and commissioning of the mechanical and hot water heating systems shall be required on all residential where any of the following apply:
  - i. The equipment input rating exceeds 200,000 btu.
  - ii. The heated water exceeds 210 deg. F

- b. An isofootcandle diagram prepared by a certified lighting professional or licensed architect as outlined above may be required and if required shall indicate the level and extent of the proposed lighting as per 17.5.12(E)(7).
10. *Additional Lighting Requirements for the Village Center.* Provisions for seasonal lighting shall be incorporated into the exterior lighting plan for all projects located within the Village Center.
- a. Additional lighting requirements for the Village Center are found within the Commercial, Ground Level and Plaza Area Design Regulations.
11. *Application.* All newly installed exterior lighting shall comply with the Lighting Regulations.
- a. A redevelopment or remodel valued at ~~forty five hundred~~ five hundred thousand dollars (~~\$50,000~~ \$500,000) or more shall retrofit all existing exterior lighting to comply with the then current Lighting Regulations. Roof replacements are exempt from this requirement.
- b. Notwithstanding the value of the redevelopment or remodel, if twenty-five percent (25%) or more of the exterior lights are to be replaced, all existing exterior lighting shall be retrofitted to comply with the then current Lighting Regulations. (Ord. No. 2022-05§1 (B) (Exh. A)).

### **17.5.13 Sign Regulations.**

A. *Purpose and Intent.* The purpose of the Sign Regulations is to preserve the Town as a desirable community in which to live, vacation and conduct business and to create a pleasing, visually attractive built environment. It is also the purpose of these regulations to promote the public health, safety and welfare and prevent visual blight and unattractiveness through a comprehensive system of reasonable, effective, consistent, content-neutral and nondiscriminatory sign standards and requirements. The Sign Regulations are further intended to achieve the following:

1. Enhance the attractiveness and economic wellbeing of the Town as a place to live, vacation and conduct business;
2. Address community desire to provide a high-quality tourist experience and retain the Town's premier status in an increasingly competitive resort market;
3. Enable the identification of places of residence and business;
4. Allow for the communication of information necessary for the conduct of commerce;
5. Encourage signs that are appropriate to the zone district in which they are located and are consistent with the category of use to which they pertain;
6. Permit signs that are compatible with their surroundings, aid orientation and ensure placement in a manner that conceals or obstructs adjacent land uses or signs;
7. Preclude signs from conflicting with the principal use of the site or adjoining sites;

**ORDINANCE NO. 2023-\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE,  
COLORADO AMENDING CHAPTERS 17.7 and 17.5 OF THE MOUNTAIN VILLAGE MUNICIPAL  
CODE CONCERNING ENERGY AND LIGHTING REGULATIONS**

WHEREAS, the Town of Mountain Village (“Town”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town of Mountain Village Home Rule Charter of 1995, as amended (“Charter”); and

WHEREAS, Pursuant to Chapter 17.7 of the Community Development Code, Title 17 of the Mountain Village Municipal Code (“CDC”), the Town has adopted the International Energy Conservation Code (“Energy Code”); and

WHEREAS, the Town is actively pursuing construction of deed-restricted housing, and most state and federal funding opportunities require new construction to be fully electric; and

WHEREAS, the trend toward sustainability in private development includes electric resistance heating; and

WHEREAS, the Energy Code does not allow for electric resistance heating to be used as a building’s primary heat source; and

WHEREAS, Section 17.5.12 of the CDC outlines the Town’s lighting regulations (“Lighting Regulations”), including the requirement that any redevelopment or remodel valued at \$50,000 or greater shall retrofit all existing exterior lighting to comply with the Lighting Regulations; and

WHEREAS, this retrofit requirement has become a deterrence for compliance with the Town’s requirements to repair roofs under certain circumstances; and

WHEREAS, the Town finds and determines that roof repairs necessary to protect the public health and safety are more important than CDC Section 17.5.12.F.11; and

WHEREAS, the Town Council desires to amend the CDC to address these issues within the Energy Code and Lighting Regulations as 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. Amendments. The Town Council hereby amends the CDC as follows:

**17.7.12 International Energy Conservation Code.**

*C. Amendments, Additions and Modifications.*

*7. Local Energy Saving Measures.*

~~*h. Prohibition on Electric Heating. Electric resistance heating shall not be used as the buildings primary heating source.*~~

Subsections (i) through (y) shall be re-lettered to accommodate the deletion of subsection (h).

**17.5.12 Lighting Regulations.**

*F. Lighting Design Regulations.*

11. *Application.*

a. A redevelopment or remodel valued at  ~~fifty 500,000~~ thousand dollars (~~\$50,000~~) \_\_\_\_\_ or more shall retrofit all existing exterior lighting to comply with the then current Lighting Regulations. Roof replacements are exempt from this requirement.

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. Safety Clause. The Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 5. Effective Date. This Ordinance shall become effective on \_\_\_\_\_, 2023 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 6. Public Hearing. A public hearing on this Ordinance was held on the \_\_\_ day of \_\_\_\_\_, 2023 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 16th day of March, 2023.**

**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 \_\_\_ day of \_\_\_\_\_, 2023.**

**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. 2023-\_\_ ("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 \_\_\_\_\_, 2023, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Laila Benitez, Mayor				
Dan Caton, Mayor Pro-Tem				
Marti Prohaska				
Harvey Mogenson				
Patrick Berry				
Peter Duprey				
Jack Gilbride				

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 \_\_\_\_\_, 2023 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 \_\_\_\_\_, 2023. 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				
Dan Caton, Mayor Pro-Tem				
Marti Prohaska				
Harvey Mogenson				
Patrick Berry				
Peter Duprey				
Jack Gilbride				

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 \_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Susan Johnston, Town Clerk  
(SEAL)

**Glenwood Springs Office**  
 910 Grand Avenue, Suite 201  
 Glenwood Springs, Colorado 81601  
 Telephone (970) 947-1936  
 Facsimile (970) 947-1937

**GARFIELD & HECHT, P.C.**

ATTORNEYS AT LAW  
 Since 1975

[www.garfieldhecht.com](http://www.garfieldhecht.com)

MEMORANDUM

TO: Town of Mountain Village  
 FROM: Garfield & Hecht, P.C.  
 RE: VCA Phase IV Construction Management Agreement  
 DATE: March 24, 2023

---

This memorandum is intended to provide an overview of the Construction Management Agreement (“Agreement”) with Triumph Development West, LLC (“Triumph”) for the project known as Village Court Apartments (“VCA”) Phase IV.

Pursuant to the Agreement, Shaw Construction, LLC (“Shaw”) will be the general contractor and Northstar Systembuilt (“Northstar”) will be the modular manufacturer. Triumph will contract directly with Shaw (“Shaw Contract”) and Northstar (“Northstar Contract”), with similar provisions regarding substantial and final completion, insurance, indemnification, lien rights, warranties, etc. We will review the Shaw Contract and Northstar Contract to make sure the foregoing topics area adequately addressed and that any changes to the scope of work or cost under those contracts is subject to Town appropriation and approval.

The date of Substantial Completion under the Agreement is March 17, 2024. The date of Final Completion is July 10, 2024. The Contract Value to be paid to Triumph includes Triumph’s \$838,000 construction management fee, plus an amount not to exceed the “Cost of the Work.” Pursuant to the Agreement, the “Cost of the Work” includes the Guaranteed Maximum Price paid to Shaw, subject to allowances, qualifications and exclusions in the Shaw Contract; the Stipulated Sum paid to Northstar, subject to allowances, qualifications and exclusions in the Northstar Contract; and all other costs and expenses incurred by Triumph, as identified on the Project Budget. Because Triumph, not the Town, will be contracting directly with the general contractor and modular manufacturer, the Town will pay the Guaranteed Maximum Price and Stipulated Sum to Triumph, and Triumph will be responsible for remitting those payments to the respective contractors. The Guaranteed Maximum Price and Stipulated Sum and related allowances, qualifications, and exclusions to be paid to Shaw and Northstar, respectively, must nonetheless be approved by the Town.

Per the Town’s Procurement Code, performance and payment bonds are required for VCA Phase IV. As such, the Agreement requires that Shaw and Northstar furnish bonds covering faithful performance of their respective contracts and payment of the obligations arising thereunder.

As part of Town Council’s approval of the Agreement, the Project Budget must be finalized and approved. All line items in the Project Budget should be sufficiently detailed such that the Town can appropriate for them.

Apart from the Agreement, in order for Shaw to obtain and maintain commercial generally liability insurance policies covering VCA Phase IV, the Town must sign a Non-Conversion Covenant. Specifically, the Town will agree not to convert the VCA Phase IV apartments to condominiums, townhomes, or single- or multi-family dwellings for a period of eight years and one business day after the date of Substantial Completion. Such covenant is in accordance with construction defect law and a typical insurance requirement.

## CONSTRUCTION MANAGEMENT AGREEMENT

THIS CONSTRUCTION MANAGEMENT AGREEMENT ("Agreement") is made effective as of this \_\_\_ day of \_\_\_\_\_, 2023 by and between:

**Owner ("Town"):**

TOWN OF MOUNTAIN VILLAGE  
a Colorado home rule municipality

411 Mountain Village Blvd.  
Mountain Village, CO 81435  
[pwisor@mtnvillage.org](mailto:pwisor@mtnvillage.org)

AND

**Construction Manager ("CM"):**

TRIUMPH DEVELOPMENT WEST, LLC  
a Delaware limited liability company

105 Edwards Village Blvd. #C201  
P.O. Box 2444  
Edwards, CO 81632  
[michael@triumphdev.com](mailto:michael@triumphdev.com)

FOR

**Project:**

Village Court Apartments Phase IV

**Architect:**

Olson Architects, LLC  
954 E 2nd Ave; Suite 105  
Durango, CO 81301  
[Rachel@olsonarch.com](mailto:Rachel@olsonarch.com)

**General Contractors ("Contractor"):**

SHAW CONSTRUCTION, LLC ("Shaw")

NORTHSTAR SYSTEMBUILT ("Northstar")

When used in this Agreement, the term "Contractor" shall refer to either Shaw or Northstar, as appropriate, depending upon which of them is providing the portion of the Work in question.

## **AGREEMENT:**

In consideration of the mutual covenants and conditions hereinafter contained and the good and valuable consideration of which is hereby acknowledged, the parties mutually agree as follows:

### **I.** **SCOPE OF SERVICES**

**1.1. Purpose.** The Town and CM previously entered into Agreements for Professional Services dated July 26, 2021 (“2021 PSA”), November 27, 2022 (“2022 PSA”), and January 30, 2023 (“2023 PSA,” and together with the 2021 PSA and the 2022 PSA, the “PSAs”), respectively, concerning the Project. The Town and CM acknowledge and agree that the purpose of this Agreement, as contemplated by the PSAs, is to set forth construction management services (the “Services”) to be performed by CM during the Term of this Agreement for the Project. To the extent that any of the PSAs conflict with this Agreement, this Agreement shall control.

For the purposes of this Agreement, the term “Project” shall mean the total construction of improvements on property owned by the Town and legally described on Exhibit A attached hereto (the “Property”) as shown on the agreed plans and specifications described on Exhibit B attached hereto (the “Plans and Specs”). The term “Work” required for the Project used in this Agreement shall mean the total construction described on the Plans and Specs to be performed under this Agreement.

**1.2. Project Schedule.** Town and CM agree to the schedule for the Project and the performance of the Work attached hereto as Exhibit C (the “Project Schedule”). CM shall update the Project Schedule as necessary throughout the performance of the Work and will advise the Town of any such updates. If the Project Schedule updates indicate that milestone dates contained in prior Project Schedules will not be met, CM shall make recommendations to the Town on options to improve upon the Project Schedule.

**1.3. Budgets.** Town and CM agree to the budget for the Project and the performance of the Work attached hereto as Exhibit D (the “Project Budget”). CM shall meet with the Town and Contractors to review any revisions to the Project Budget. In the event that the Town discovers any inconsistencies, inaccuracies or omissions in the information presented, the Town shall promptly notify CM, who shall make appropriate adjustments to the Project Budget. The Town shall then give written approval of the Project Budget. If any budget submitted to the Town exceeds previously approved budgets, CM shall notify and make recommendations to the Town on options to maintain or improvement upon the Project Budget.

**1.4. Procurement.** CM shall contract directly with such contractors including, but not limited to, Shaw Construction, LLC (“Shaw”) and Northstar Systembuilt, LLC (“Northstar”) (each a, “Contractor,” and together with any subcontractors engaged by either of them, “Contractors”) as may be necessary for construction of or supply of materials for the Project. All such contracts shall be issued consistent with the applicable provisions of this Agreement.

**1.4.1.** CM shall be responsible for securing, without limitation, all necessary approvals, authorizations, permits, agreements and licenses necessary for the construction, use and occupancy of the Project (collectively, the “Permits”).

**1.4.2.** Town hereby accepts and approves the Guaranteed Maximum Price contract (“Shaw Contract”), and all terms thereof, between CM and Shaw in the form attached hereto as Exhibit E.

**1.4.3.** Town hereby accepts and approves the Stipulated Sum contract (“Northstar Contract”), and all terms thereof, between CM and Northstar in the form attached hereto as Exhibit F.

**1.5. Project Meetings.** CM shall schedule and conduct meetings at which the Town, CM and Contractor will discuss the status of the Project. CM or a Contractor shall prepare and promptly distribute meeting minutes. CM shall provide monthly written reports to the Town on the progress of the Project. The log containing the minutes and monthly reports shall be available to the Town.

**1.6. Substantial Completion.** The Project shall be substantially complete by March 17, 2024 (“Substantial Completion”). CM shall determine when the Project and/or a phase of the Project is Substantially Complete. CM shall, prior to issuing a Certificate of Substantial Completion, prepare a list of work that does not conform to the Plans and Specs. This list shall be attached to the Certificate of Substantial Completion.

For the purposes of this Agreement, “Substantial Completion” shall mean the point in the progress of the Project, or any phase thereof, sufficiently complete in accordance with the Plans and Specs so the Town can occupy or utilize the Project and/or any phase thereof for its intended use. Upon the issuance of the Certificate of Substantial Completion for the Project and/or any phase thereof, the Town shall assume responsibility for security, maintenance, utilities and insurance for the Project and/or phase. Prior to the issuance of a Certificate of Substantial Completion, CM shall recommend the issuance of said certificate to the Town, who shall have the ultimate decision regarding acceptance of the Work as substantially complete. Upon receipt of CM’s recommendation, the Town shall either deem the Work as substantially complete or prepare a list of items to be completed in order to achieve Substantial Completion. The Town shall not unreasonably withhold acceptance of the Project, or any phase thereof, as substantially complete.

**1.7. Final Completion.** The Project shall be completed and ready for final payment by July 10, 2024 (“Final Completion”). CM shall determine when the Project and/or any phase thereof is Finally Completed and, following completion of corrections and recommendation to the Town to accept the Project and/or any phase thereof, shall issue a Certificate of Final Completion to the Town. Upon final acceptance of the Project and/or any phase thereof by the Town, CM shall prepare and publish a Notice of Final Payment, as required by C.R.S. § 38-26-107. Following the expiration of the time provided in said Notice of Final Payment, and subject to the other requirements provided by law regarding final payment, the Town shall make final payment for the Project and/or any phase thereof to CM. CM shall then make all remaining payments, if any, due to Contractors. CM shall ensure that all Contractors are paid on the Project and upon payment of any part or parcel thereof, obtain the appropriate lien waivers from Contractors, suppliers, laborers or any other person who provided labor or supplies on the Project. Nothing in this paragraph shall modify any retainage rights of the Town, as provided for elsewhere in this Agreement.

For the purposes of this Agreement, “Final Completion” shall mean the point where the Project, or any phase thereof, has been constructed in accordance with the Contract Documents, all corrective or “punch list” items have been completed to the satisfaction of the Town, and is fully operational for its intended purpose. “Final acceptance” shall mean the date which the Town, through action taken by its Town Council, accepts the Project, or any phase thereof, as finally complete. For clarification, a Certificate of Final Completion shall be issued at (1) completion of each phase of the Project and (2) completion of the overall Project. Accordingly, there shall be final acceptance by the Town for (1) each phase of the Project and (2) upon completion of the overall Project. A Certificate of Final Completion or final acceptance by the Town of a phase of the Project shall not in any way constitute an acceptance of the overall Project. If the Town does not, within forty-five

(45) days after request from CM to Finally Accept the Project or any phase thereof, either (1) accept the Project or any phase thereof as Finally Complete; (2) issue to CM a detailed written list of any items of the Work that the Town believes are incomplete and specific remedial action that the Town requires in order to accept the Project as Finally Complete; or (3) notify CM that additional time not to exceed an additional 30 days is needed to make a determination regarding acceptance of the Project or phase thereof or provide the list described in the immediately preceding clause, then the Project or phase shall be deemed Finally Complete for all purposes under this Agreement.

**1.8. Change Orders.** All proposed Town-initiated change orders shall be detailed in writing by CM or its Contractors accompanied by technical drawings and specifications. In response to a change order request, CM or its Contractors shall submit detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed change order work. CM and any appropriate Contractor shall determine the basis for the cost and time to perform the Work and, if any, the effect on the Guaranteed Maximum Price in the contract between CM and any Contractor. CM or its Contractors shall present its findings to the Town and shall prepare change order documents for signature by CM and the Town.

**1.8.1.** CM shall review any Contractor-requested change orders to determine the effect, if any, on the Guaranteed Maximum Price under the Contractor's contract. CM shall present its findings to the Town regarding the proposed changes, and at the Town's direction, shall prepare change order documents for signature by CM and the Town. Upon execution of such documents, CM shall prepare change order documents for signature by the Contractor.

**1.9. Retainage.** The Town will retain five percent (5%) from any progress payment made to CM that relate to payments under the Shaw Contract and the Northstar Contract, which shall be retained until due as provided in the Shaw Contract and the Northstar Contract, respectively. The Town will also retain five percent (5%) from any progress payment made to CM that relate to CM's fee, which shall be retained until Final Payment. There shall be no retainage on any other costs identified in the approved Project Budget. Upon receipt of an application for Final Payment by a Contractor, CM shall notify the Town regarding same. The Town shall make sufficient funds available to compensate CM in order to pay the Contractor the final amounts due on any contract of the Project. This shall not affect the amounts retained by the Town in relation to CM's progress payments made hereunder, as provided below.

**1.10. Post-Construction.** CM shall coordinate submittals of information for preparation of record drawings and specifications and shall coordinate transmittal of such documents to the Town. Prior to final completion of the Project, CM shall require its Contractors to compile manufacturers' operations and maintenance manuals, warranties and guarantees and bind such documents in an organized manner. CM shall then provide such information to the Town. The Town shall be the beneficiary of any warranties given in the contracts between CM and any Contractor, but the Town acknowledges and understands that CM shall not provide any warranties relating to the Project whatsoever.

## **II. DURATION OF CM'S SERVICES**

**2.1. Commencement.** The commencement date for CM's Services shall be the date of execution of this Agreement by Town and CM. The commencement of this Agreement shall supercede and incorporate the scopes of work and costs incurred by the Town under the PSAs.

**2.2. Term.** The duration of CM's Services under this Agreement shall be from the commencement date to Final Completion ("Term"). The Term of this Agreement can be extended upon the execution of an

amendment between the Town and CM to this Agreement.

**2.3. Liquidated Damages.** The parties agree that time is of the essence for completion of the Project and that the Town may suffer financial loss if the Work is not completed within the time limits set forth in the Contract Documents. If CM fails to achieve Substantial Completion or Final Completion by the deadlines set forth above, CM shall pay to Town as liquidated damages, and not as a penalty, the amount stipulated below per day for each calendar day that expires in excess of thirty-one (31) days after the deadline; provided, however, that if the Town is compensated for any delay by a liquidated damage provision in the Shaw Contract that is equal to or greater than the schedule below and reduces the amount payable thereunder, then no separate liquidated damages shall be owed from CM to the Town under this Section 2.3. The Town shall have the right to deduct the liquidated damages then due from any monies due to CM or to bring legal action against CM to obtain the liquidated damages. The liquidated damages herein only apply to CM's delay in performance. The parties agree that liquidated damages, at a minimum, shall be according to the following schedule:

<b>Delays Past Original Contact Time</b>		<b>Liquidated Damages per Day</b>
<b>From More Than</b>	<b>To and Including</b>	<b>On Calendar Day or Completion</b>
0 days	30 days	\$0.00/day
31 days	60 days	\$250/day
61 days	90 days	\$500/day
90 days	or more	\$1,000/day

**2.3.1.** Due account will be taken of any adjustment to the deadlines for completion of the Work granted. Permitting CM and/or the Contractor to finish the Work or any part thereof after lapse of a deadline will not operate as a waiver on the part of the Town of any of its rights under this Agreement.

**2.3.2.** Any deduction assessed as liquidated damages under this subsection shall not relieve CM from liability for any damages or costs resulting from delays to other contractors or subcontractors on the Project caused by failure of the CM to complete the Work by the applicable deadlines.

### **III. PROJECT COST AND PAYMENT**

**3.1. Contract Value.** In consideration for completion of the Services by CM, the Town shall pay CM a fee of eight hundred and thirty-eight thousand dollars (\$838,000), plus an amount not to exceed the Cost of the Work (hereinafter defined) (together the "Contract Value"). The projected Contract Value is \_\_\_\_\_.

**3.2. Cost of the Work.** The Cost of the Work is defined as the sum of: (1) the total amount due and payable under the Shaw contract, subject to the its allowances, qualifications and exclusions; plus (2) the total amount due and payable under the Northstar contract, subject to the its allowances, qualifications and exclusions; and (3) all other costs and expenses incurred by CM in connection with the performance of the Services and construction of the Project, as identified on the Project Budget.

**3.3. Statements; Payment.** CM will submit invoices to the Town monthly, which the Town shall pay within twenty (20) days' receipt. The Town has the right to withhold from any progress payment or final payment an amount necessary to protect the Town, as determined in the Town's reasonable good faith discretion, under the following circumstances: (1) defective work not remedied by CM or a Contractor; (2)

claims filed against the Project or reasonable evidence indicating the probable filing of claims; (3) failure of CM to make timely payment to a Contractor for material and/or labor; or (4) a reasonable doubt that the Project can be completed for the balance of the total Contract Value as shown on the Project Budget. CM's fee will be paid monthly in the same percentage as the amount invoiced for payment that month is of the total Contract Value.

**3.4. Suspension.** When any invoice is outstanding and unpaid forty-five (45) days after the date of billing, CM may, at its discretion, suspend its performance of the Services. CM's suspension is in addition to all other rights and remedies available to CM under this Agreement and at law or in equity.

**3.5. Changes in CM's Services.** Without invalidating this Agreement, Town and CM may make changes in CM's Services. CM shall promptly notify Town of changes that increase or decrease CM's compensation, the duration of Services, or both. CM may receive additional compensation and additional time when the scope of CM's Services is increased or extended through no fault of CM. CM shall make a written request to Town for additional compensation within thirty (30) days of the occurrence of the event giving rise to such request. Any additional compensation to be paid and any extension of the duration of this Agreement shall be determined on the basis of CM's cost, a customary and reasonable adjustment in CM's fee consistent with the provisions of this Article III and a determination of the length of the extensions of the duration of this Agreement.

**3.6 Delays and Force Majeure.** If CM is delayed at any time in the commencement or progress of the Work by labor disputes, fire, unusual delay in deliveries, pandemics, epidemics, governmental order, unavoidable casualties, adverse weather conditions or other causes beyond the CM's control, then CM shall be entitled to an extension of the duration of this Agreement. If CM is delayed at any time in the commencement or progress of the Work by an act or neglect of the Town, its employees or anyone for whom the Town is responsible, then CM shall be entitled to additional compensation, which amount shall be agreed to by the Town and CM, and an extension of the duration of this Agreement.

### **III. TOWN'S RESPONSIBILITIES**

**3.1.** The Town shall provide all information regarding the Project to CM in a reasonably timely manner so that CM can perform its Services. If the Town becomes aware of any matter, condition or development in the Project that could affect CM's performance of the Services, Town shall give notice to CM of such condition as soon as a reasonably possible.

**3.2.** The Town shall provide reasonable access to the Project so that CM can perform its Services.

**3.3.** The Town has engaged the Architect to prepare the Project's Plans and Specs in order to receive all required Permits and shall furnish to CM, without charge to the CM, copies of drawings, specifications and any other documentation in connection with the Project reasonably necessary for CM's performance of the Services.

**3.4.** The Town shall provide evidence to CM that sufficient funds are available and have been appropriated for the Project.

### **IV. MISCELLANEOUS**

**4.1. Insurance.** Before commencing its services and as a condition precedent to payment, CM shall, as a direct Cost of the Work, procure and maintain in force at all times during the Term of this Agreement: Workers' Compensation Insurance or Employers' Liability Insurance in the amount required by Colorado law; Commercial Automobile Liability Insurance; and Commercial General Liability Insurance ("CGL"), with bodily injury and property damage coverage in accordance with such limits set forth by the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §§ 24-10-114, *et seq.*, as amended, or in amounts otherwise acceptable to Town. CM shall provide to the Town a certificate evidencing such coverage within 30 days of execution of this Agreement and attach such certificate hereto as Exhibit G. The Town and CM waive all rights against each other and against the Contractors for damage occurring during construction and covered by any property insurance required for this Project. CM shall require appropriate similar waivers for all Contractors in amounts not less than such limits set forth by the CGIA.

**4.2. Bonds.** CM shall require both Shaw and Northstar to furnish bonds covering faithful performance of the Shaw Contract and Northstar Contract, respectively, and payment of the obligations arising thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Stipulated Sum. CM shall deliver the required bonds from Shaw and Northstar to the Town at least three (3) days prior to commencement of any Work at the Project.

**4.3. Indemnity.** CM shall indemnify and hold harmless the Town, its officers, directors, members, consultants, agents and employees from all claims for bodily injury and property damage including reasonable attorneys' fees, costs and expenses incurred by the Town caused by negligent or intentionally wrongful acts or omissions of CM, its officers, employees, and representatives, and any other party for whom CM is legally liable. CM shall cause any Contractor to indemnify and hold harmless the Town and CM from and against any and all claims, demands, suits and damages, including consequential damages and reasonable attorneys' fees, resulting from personal injury or property damages, costs, expenses and fees that are asserted against the Town and CM that arise out of or result from negligent or intentionally wrongful acts or omissions or the breach of the contract by Contractor, its employees, agents and representatives in performing work for the Project.

**4.4. Termination.** This Agreement may be terminated by either the Town or CM upon a material breach of any provision of this Agreement by the other party. In the event of a material breach any provision of this Agreement, the non-breaching party shall give written notice of such breach to the breaching party. The breaching party shall have thirty (30) days from receipt of such notice to cure its breach. If the breach is not so cured, the non-breaching party may terminate this Agreement immediately upon written notice to the breaching party. In the event of a termination of this Agreement, the Town shall pay CM all amounts due by Town under this Agreement for Services actually performed prior to such termination in addition to any amounts due to any Contractor for Work actually completed.

**4.5. Limitation on Damages.** Neither party shall be liable to the other for, and the parties waive all claims for, any consequential, incidental, indirect or special damages of whatever kind or nature in connection with this Agreement or the Project.

**4.6. Assignment.** Neither party may, without the other party's prior written approval (which shall not be unreasonably withheld, conditioned or delayed), voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber all or any portion of its interests in this Agreement.

**4.7. Notices.** Whenever under the provisions of this Agreement it shall be necessary or desirable for one party to serve any notice to the other party, such notice shall be addressed as follows:

To the Town: Town of Mountain Village  
Attn: Paul Wisor, Town Manager  
411 Mountain Village Blvd.  
Mountain Village, CO 81435  
[pwisor@mtnvillage.org](mailto:pwisor@mtnvillage.org)

To CM: Triumph Development West, LLC  
Attn: Michael O'Connor  
105 Edwards Village Blvd. #C201  
P.O. Box 2444  
Edwards, CO 81632  
[michael@triumphdev.com](mailto:michael@triumphdev.com)

with a copy to: Wear Travers Perkins LLC  
Attn: Gregory Perkins  
97 Main Street, Suite E202  
Edwards, Colorado 81632  
[gperkins@wtpvail.com](mailto:gperkins@wtpvail.com)

Any notice, request, demand, report or other communication served personally shall be deemed delivered upon receipt, if served by mail or independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt, and if served by email shall be deemed delivered on the date of the original email provided the notice is thereafter delivered as aforesaid.

**4.8. Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

**4.9. Waiver.** No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. No waiver of any term, covenant or condition of this Agreement shall be valid unless affirmed in writing.

**4.10. No Third-Party Beneficiary.** This Agreement is not intended to create any right in, and shall not create any right in, any third party. The parties hereto disclaim any claimed rights of any third party in and to this Agreement.

**4.11. Governing Law; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Any litigation arising in connection with this Agreement shall be commenced only in the District Court for San Miguel County, Colorado.

**4.12. Severability.** If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**4.13. Entire Agreement; Amendment.** This Agreement constitutes the entire and exclusive agreement between the parties relating to the specific matters covered in this Agreement. All prior and

contemporaneous written and oral agreements and understandings between the parties are hereby merged into this Agreement. This Agreement may be altered, amended or revoked only by an instrument in writing signed by the parties hereto.

**4.14. Survival.** Any provision of this Agreement that (i) is expressly stated to survive the expiration or termination of this Agreement, and (ii) by its nature, sense and context could reasonably be expected to survive the expiration or termination of this Agreement, shall be enforced accordingly.

**4.15. Counterparts/Electronic Signatures.** This Agreement may be executed in multiple counterparts, each of which, when taken together, shall constitute one and the same instrument. Electronic signatures shall be deemed binding.

**4.16. Appropriation.** By executing below, the Town states that it has appropriated money equal to or in excess of the cost of the Contract Value. The parties acknowledge and agree that no change order which requires additional compensation and causes the aggregate amount payable under this Agreement to exceed the appropriated amount shall be issued unless appropriation for the costs thereof has been made. CM acknowledges that no Town employee has the authority to bind the Town with regard to any payment for any work which exceeds the amount appropriated for and payable pursuant to this Agreement. No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate Town to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 16 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by the Town to or in aid of any person, company or corporation within the meaning of the Colorado Constitution.

**4.17. Immunity.** Nothing herein shall be construed as a waiver, or partial waiver, by the Town of any portion of the CGIA.

**[Signature Page to Follow]**

The Parties have executed Agreement on the date first written above.

**OWNER:**

**TOWN OF MOUNTAIN VILLAGE,**  
a Colorado home rule municipality

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

Name:

Title:

**CM:**

**TRIUMPH DEVELOPMENT WEST, LLC,**  
a Delaware limited liability company

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

Name:

Title:

**EXHIBIT A**

Legal Description of the Property

**EXHIBIT B**

Plans and Specs

**EXHIBIT C**

Project Schedule







**EXHIBIT D**

Project Budget

**TOMV VCA4  
Development Budget**

**Exhibit D  
3.24.23**

<b>Budget Item</b>	<b>Total</b>	<b>Spent To Date</b>
Shaw Contract	\$ 11,154,839	\$ -
Shaw Bond	\$ 114,045	
Northstar Modular Contract	\$ 6,287,379	\$ 294,147
Modular Bonding	\$ 94,311	\$ -
Transportation Allowance	\$ 675,494	\$ -
Set/Stitch Proposal	\$ 440,169	\$ -
Shuttling Allowance	\$ 45,000	\$ -
Staging Area Allowance	\$ 40,000	\$ -
Solar	\$ -	\$ -
Sales & Use Taxes	\$ -	\$ -
Builder Risk Insurance	\$ 179,896	\$ -
OCIP Insurance	\$ 291,879	\$ -
Electric Hookups	\$ 104,660	\$ -
Data Hookups (TOMV)	\$ -	\$ -
Onsite Owner Items	\$ 23,000	\$ -
Testing	\$ 27,290	\$ -
<b>Hardcost</b>	<b>19,477,962</b>	<b>294,147</b>
Planning & Entitlement Fees	\$ -	\$ -
Building Permit Fees	\$ -	\$ -
<b>Entitlement, Permit &amp; Impact Fees</b>	<b>-</b>	<b>-</b>
CA Architecture	\$ 70,000	\$ -
ADA Consultant	\$ 1,500	\$ -
Design Reimbursable	\$ 15,000	\$ -
Survey	\$ 5,000	\$ -
Project Legal	\$ 10,000	\$ -
Estimated Developer Reimbursables	\$ 24,000	\$ 2,022
<b>Total Soft Cost</b>	<b>125,500</b>	<b>2,022</b>
<b>Developer Fixed Fee</b>	<b>\$ 838,000</b>	<b>\$ 80,000</b>
Owner Hardcost Contingency	\$ 486,949	\$ -
Owner Softcost Contingency	\$ 12,550	\$ -
<b>Total Contingency</b>	<b>499,499</b>	<b>-</b>
<b>Total Financing</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Total After Contingency</b>	<b>\$ 20,940,961</b>	<b>\$ 376,169</b>

**EXHIBIT E**

Shaw Contract

**EXHIBIT F**

Northstar Contract

**EXHIBIT G**

Certificate of Insurance



**Agenda Item No. 5**

455 Mountain Village Blvd. Mountain Village, CO 81435  
(970) 369-6429

---

**TO:** Mountain Village Town Council  
**FROM:** Susan Johnston, Town Clerk  
**DATE:** **Friday, March 24, 2023**  
**RE:** Lot 644 Update

---

**Executive Summary**

The Town continues to pursue the development of community housing on town-owner parcel known as Lot 644. Triumph Development West will be providing a verbal update on the current status of the Lot 644 Community Housing Development Project.



Agenda Item No. 6  
**PLANNING AND DEVELOPMENT SERVICES  
DEPARTMENT**  
455 Mountain Village Blvd.  
Mountain Village, CO 81435  
(970) 369-8250

**TO:** Mountain Village Town Council

**FROM:** Amy Ward, Community Development Director

**FOR:** Town Council Meeting; March 30, 2023

**DATE:** March 24, 2023

**RE:** Continued Hearing-Lot 109R for the Purpose of Setting a Date Specific for the Following Items:

- a. First Reading, Setting of a Public Hearing and Council Vote on an Ordinance Regarding a Major Planned Unit Development (PUD) Amendment to the Formerly Named Mountain Village Hotel PUD, to Consider Amendments to the Existing PUD for Lot 109R for a Mixed-Use Hotel/Resort Development Including Plaza, Commercial, Hotel and Residential Use
- b. First Reading, Setting of a Public Hearing and Council Vote Regarding a Rezone of Portions of Town Owned Village Center Active Open Space (OS-3- BR2) to 109R PUD, and 109R PUD to Village Center Active Open Space (OS-3- BR2) Consistent with CDC Section 17.4.9 15. for a Major Subdivision to Replat Portions of Property Between Lot 109R and OS-3-BR-2
- c. Consideration of a Resolution for a Major Subdivision to Replat Portions of Property Between Lot 109R and OS-3-BR-2

**BACKGROUND:** At the March 16, 2023 regular Town Council meeting, this item was continued to March 30, 2023 solely for the purpose of giving staff and the applicant time to discuss how much time was needed to work through outstanding issues related to this application prior to any new submittal as well as the requested 60 day period for staff review after the submittal.

The applicant maintains that it is important to have this item heard by the existing Council for continuity. In order to achieve this a June hearing is necessary. It should be noted that this will not give staff the requested 60 day review period and Staff will also have to make adjustments to the currently proposed planning schedule in order to accommodate this timeline. The applicant has requested that this item be continued to the regular Town Council meeting on June 15, 2023.

This memo is being provided not to open the public hearing but solely for the purpose of the Town Council providing a motion to continue to the June 15, 2023 meeting date.

Council also has the ability to table the item, which would require the applicant to re-notice the project at a time in the future.

**RECOMMENDED MOTION:**

I move to continue, a. First Reading, Setting of a Public Hearing and Council Vote on an Ordinance Regarding a Major Planned Unit Development (PUD) Amendment to the Formerly Named Mountain Village Hotel PUD, to Consider Amendments to the Existing PUD for Lot 109R for a Mixed-Use Hotel/Resort Development Including Plaza, Commercial, Hotel and Residential Use

b. First Reading, Setting of a Public Hearing and Council Vote Regarding a Rezone of Portions of Town Owned Village Center Active Open Space (OS-3- BR2) to 109R PUD, and 109R PUD to Village Center Active Open Space (OS-3- BR2) Consistent with CDC Section 17.4.9 15. for a Major Subdivision to Replat Portions of Property Between Lot 109R and OS-3-BR-2

c. Consideration of a Resolution for a Major Subdivision to Replat Portions of Property Between Lot 109R and OS-3-BR-2 to the regular Town Council meeting of June 15, 2023

/AW

**From:** [Christopher Steiner](#)  
**To:** [council](#)  
**Subject:** Tiara Telluride - Lot 109R  
**Date:** Friday, March 17, 2023 7:50:49 AM

---

Christopher Steiner  
96 Palmyra Drive  
Mountain Village, CO 81435

Dear Town Council:

The development team of Tiara Telluride has been laboring for more than a year to provide the best use for the property located at Lot 109R aka the Mountain Village Hotel. They have designed within their approved height limits and created a beautiful and location-appropriate five-star project. They are accomplishing the following to truly help the community in contrast to the previously approved PUD:

- Reduced density, which helps alleviate traffic in the village core
- Adding approximately 14,000 sq ft of Workforce Housing, which, while costing them additional funds, is unique to the project and much needed by whole area. This space will house up to 56 employees.
- Proposing the first commercial LEED-certified building in Mountain Village.
- A commitment from Six Sense to donate ½% of gross revenue annually to local non-profits.
- Redeveloping the area around the Trash facility including the facility itself. The plans presented significantly alleviate the current and any future challenges of that area.
- Building extensive new sidewalks to help people move around the core safely and increases the pedestrian-friendly concept of the Village Core.
- Replacing all public parking on the site today with new, garage parking spaces.

There are numerous additional benefits that this project intends to bring to the area. The variances being requested only work to improve the project as a whole. The increase in public benefits and improvements completely justifies the ask and are above and beyond those offered by comparable projects in the area.

Sincerely,

Chris Steiner

**From:** [Eric Madden](#)  
**To:** [Laila Benitez](#)  
**Cc:** [council](#)  
**Subject:** RE: Lot 109R  
**Date:** Sunday, March 19, 2023 10:26:49 AM

---

Dear Mayor Benitez:

We own a cabin in See Forever Village, and we've written to you before about the proposed Six Senses hotel development on Lot 109R. As you noted during the Town Council's meeting on Thursday, this developer has had multiple opportunities to address numerous issues raised by the town's staff over the past 14 months, but it has consistently failed to do so. This pattern of behavior should raise serious concerns for the Town Council and its constituents not only about whether this is the right development (with its many variances from the original PUD), but also whether this is the right development team for our community to entrust such a significant project.

Please trust your gut here. This development and developer simply aren't the right fit.

Best regards,  
Eric and Emily Madden

---

**From:** Eric Madden  
**Sent:** Tuesday, June 21, 2022 10:07 AM  
**To:** [lailabenitez@mtnvillage.org](mailto:lailabenitez@mtnvillage.org)  
**Cc:** [council@mtnvillage.org](mailto:council@mtnvillage.org)  
**Subject:** Lot 109R

Dear Mayor Benitez:

My wife and I recently bought a cabin in See Forever Village, and we've been spending more and more time in Mountain Village (in fact, we'll be there again this weekend), with the goal of a more permanent move soon. However, we have been very concerned about the proposal for Lot 109R, which is adjacent to our cabin.

I want to thank you and the entire Town Council for listening to your constituents, enforcing the integrity of the current Mountain Village Zoning and Development vision, and not allowing the Council to be bullied by an aggressive developer regarding Lot 109R. Several of our friends attended the Town Council meeting in person. They were extremely impressed with your focus on the facts and calm and logical demeanor and assessment of the situation.

As you and other council members indicated, the local community does not want the

proposed development built. It does not fit with the image of Mountain Village and violates several important elements of the PUD that was granted. We are comfortable, and even enthusiastic, about measured development, but only development that is consistent with the current regulations, guidelines, and ambiance of Mountain Village.

Mayor Benitez, thank you for serving as such an effective representative for us.

Sincerely,  
Eric Madden

**Eric D. Madden**, *Partner*

**reid | collins**

---

Reid Collins & Tsai LLP  
1601 Elm Street, Suite 4200  
Dallas, Texas 75201  
214.420.8900 (*Main*)  
214.420.8901 (*Direct*)  
214.420.8909 (*Fax*)

[website](#) | [bio](#) | [vcard](#)

---

AUSTIN | DALLAS | NEW YORK | WASHINGTON, D.C. | WILMINGTON

**From:** [Laila Benitez](#)  
**To:** [Paul Wisor](#); [mvclerk](#)  
**Subject:** FW: Lot 109-R  
**Date:** Monday, March 27, 2023 9:43:52 AM

---

-----Original Message-----

From: Bill Nictakis <[bill.nictakis@gmail.com](mailto:bill.nictakis@gmail.com)>  
Sent: Monday, March 27, 2023 9:38 AM  
To: Laila Benitez <[LailaBenitez@mtnvillage.org](mailto:LailaBenitez@mtnvillage.org)>  
Cc: Bill Nictakis <[bill.nictakis@gmail.com](mailto:bill.nictakis@gmail.com)>  
Subject: Lot 109-R

Dear Mayor Benitez

I am a resident in See Forever, and serve as the HOA president of the See Forever 2 association of 28 owners. I have been monitoring the Lot 109R project for the past year, and watched as the developer originally attempted to change the PUD to allow an even greater height (above that which had already been granted over a decade ago in the current PUD), rework trash storage to an area detrimental to other associations, etc. My wife has personally attended several of the meetings, especially the early ones in 2022, so I am aware of the challenging personality you are dealing with on this project. On a personal level, as an owner who spends 5-7 months in Mountain Village on average, I very much appreciate your willingness to listen to my concerns, and those of the many owners I represent in See Forever as well as the other Mountain Village residents who have expressed their concern.

Frankly, I appreciate your POV that there has been so much noise on this proposal that it should be resubmitted. That makes a lot of sense, and the reality is that DRB did not take a stand that reflects resident opinions....only you did. I speak for myself, and for the other See Forever 2 owners in saying that we are good with development if it adheres to the current PUD. No increase in height from what is currently approved (we would prefer to go back to the original PUD and not the current amended one but understand that challenge). Make the new development aesthetically consistent with Mountain Village. Work to determine a labor strategy that enables the hiring of 400+ hourly workers to handle the Four Seasons and Six Senses 5 start developments, etc. We are comfortable with development but honestly, are concerned with the current, extended process and the developer's adherence to agreed upon zoning and building stipulations. Of critical importance to See Forever is the maintenance of the easement that allows residents to walk from See Forever under the bridge directly to the Village core.

I very much support your decision to resubmit the entire project so it can be assessed in its entirety and a proper decision can be made regarding a very significant new development in our community

Sincerely

Bill Nictakis  
See Forever Village #119

Sent from my iPad