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1.0 INTRODUCTION

This report presents the results of the geotechnical engineering study we conducted for the proposed Six Senses Hotel structure. The study was conducted at the request of Ankur Patel,

Tiara Telluride LLC, in general accordance with our proposal for geotechnical engineering

services dated March 2, 2022.

The conclusions, suggestions and recommendations presented in this report are based on the

data gathered during our site and laboratory study and on our experience with similar soil

conditions. Factual data gathered during the field and laboratory work are summarized in

Appendices A and B.

1.1 Proposed Construction

It is our understanding the proposed construction is to include a hotel structure and associated

utilities and parking and drive areas.

1.2 Scope of Services

Our services included geotechnical engineering field and laboratory studies, analysis of the

acquired data and report preparation for the proposed site. The scope of our services is

outlined below.

The field study consisted of describing and sampling the soil materials encountered in

five (5) small diameter continuous flight auger advanced test borings.

The materials encountered in the test borings were described and samples retrieved

for the subsequent laboratory study.

The laboratory study included tests of select soil samples obtained during the field

study to help assess:

. the soil strength potential (internal friction angle and cohesion) of samples tested,

the swell and expansion potential of the samples tested,

the settlement/consolidation potential of the samples tested,

the moisture content and density of samples tested,

Atterberg Limits of the soil sample tested,

- This report presents our geotechnical engineering comments, suggestions and recommendations for planning and design of site development including:
- . viable foundation types for the conditions encountered,
- . allowable bearing pressures for the foundation types,
- . lateral earth pressure recommendations for design of laterally loaded walls,
- geotechnical engineering considerations and recommendations for concrete slab on grade floors, and
- . geotechnical engineering considerations and recommendations for compacted structural fill.
- Our comments, suggestions and recommendations are based on the subsurface soil and ground water conditions encountered during our site and laboratory studies.
- Our study did not include any environmental or geologic hazard issues.

2.0 SITE CHARACTERISTICS

Site characteristics include observed existing and pre-existing site conditions that may influence the geotechnical engineering aspects of the proposed site development.

2.1 Site Location

The site is located on Lot 109R Telluride Mountain Village, Colorado.



 Indicates Approximate Project Location

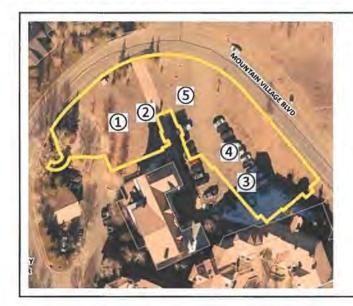
Figure 1. Project Location Sketch

2.2 Site Conditions

The eastern portion of the site is currently occupied by a parking lot. The western portion of the site is currently vacant. An existing concrete sidewalk/path exists on the site. The site exhibits positive surface drainage in the western direction. The site is bordered to the north and east by Mountain Village Boulevard and to the south by existing commercial structures.

2.3 Subsurface Conditions

The subsurface exploration consisted of observing, describing and sampling the soil materials encountered in five (5) small diameter auger advanced test borings. The approximate locations of the test borings are shown on Figure 2.



 Indicates approximate test boring location

Figure 2. Test Boring Location Sketch

The logs describing the soil materials encountered in the test excavations are presented in Appendix A.

The soil materials encountered within the test borings generally consisted of sandy clay fill materials underlain by sandy clay with rock fragments material. The sandy clay with rock fragment materials were encountered at approximate depths of one (1) to eight (8) feet below existing site grades and extended to the depths explored. Free subsurface water was encountered in Test Boring Nos. 2, 3 and 4 at approximate depths of eleven (11) to thirteen (13) feet below existing site grades.

At the time of our field study the proposed development site was not irrigated. It has been our experience that after the site is developed and once landscape irrigation begins the free

subsurface water level may tend to rise. In some cases the free subsurface water level rise, as a result of landscape irrigation and other development influences, can be fairly dramatic

and the water level may become shallow.

It is difficult to predict if unexpected subsurface conditions will be encountered during

construction. Since such conditions may be found, we suggest that the owner and the

contractor make provisions in their budget and construction schedule to accommodate

unexpected subsurface conditions.

2.4 Site Geology

A brief discussion of the general geology of the area near the site is presented in Appendix

C. The surface geology of the site was determined by observation of the surface conditions

at the site and observing the soils encountered in the test borings on the site.

2.5 Seismicity

According to the International Building Code, 2018 Edition, and ASCE Standard ASCE/SEI

7-10, Table 20.3-1 Site Classification, based on the subsurface conditions encountered and the assumption that the soils described in the test borings are likely representative of the top

100 feet of the soil profile, we recommend that the site soil profile be Sp, Stiff soil.

3.0 PLANNING AND DESIGN CONSIDERATIONS

A geologic hazard study was not requested as part of the scope of this report.

All of the suggestions and design parameters presented in this report are based on high

quality craftsmanship, care during construction and post construction cognizance of the

potential for swell or settlement of the site support materials and appropriate post construction

maintenance.

All construction excavations should be sloped to prevent excavation wall collapse. We

suggest that as a minimum the excavation walls should be sloped at an inclination of one-and-

one-half (1-1/2) to one (1) (horizontal to vertical) or flatter. The area above the foundation

excavations should be observed at least daily for evidence of slope movement during

construction. If evidence of slope movement is observed we should be contacted immediately.

We anticipate that excavation and fill placement operations may be associated with the

proposed site development. Excavations in the area which generate vertical or sloped

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exposures should be kept to a minimum.

Excavations which result in cut slopes with a vertical height greater than about four (4) feet or with a slope or structure above should be analyzed on a site specific basis. Temporary excavation cut slopes in competent material should not exceed a one-and-one-half to one (1-1/2 to 1) (horizontal to vertical) inclination. All construction excavations should conform to Occupational Safety and Health Administration (OSHA) standards or safer. All permanent slopes should be constructed with inclinations of three to one or flatter.

Generally, fill material placed on a site surface which will be used to support structures or additional fill material should be placed so that the contact between the existing site surface and the added fill material will be strong enough to support the added load. This should be addressed on a site and fill area specific basis. The technique recommended will be based on the site configuration, the finished fill configuration the actual material to be used for the fill material and the size of the area thus constructed. Frequently the preparation of the site area to receive fill material will include removing organic and loose near surface native material in the area to receive fill material, placing the material in thin horizontal lifts which are compacted at the appropriate moisture content. Some fill areas could benefit from the installation of a subsurface drain system at the fill material/natural material contact. We are available to, and recommend that, we discuss this with you and provide site and fill specific recommendations when this portion of your development plan merits the additional study.

4.0 ON-SITE DEVELOPMENT CONSIDERATIONS

We anticipate that the subsurface water elevation may fluctuate with seasonal and other varying conditions. Excavations may encounter subsurface water and soils that tend to cave or yield. If water is encountered it may be necessary to dewater construction excavations to provide more suitable working conditions. Excavations should be well braced or sloped to prevent wall collapse. Federal, state and local safety codes should be observed. All construction excavations should conform to Occupational Safety and Health Administration (OSHA) standards or safer.

The site construction surface should be graded to drain surface water away from the site excavations. Surface water should not be allowed to accumulate in excavations during construction. Accumulated water could negatively influence the site soil conditions. Construction surface drainage should include swales, if necessary to divert surface water away from the construction excavations.

Organic soil materials in areas to receive fill material or structure components should be

removed. The organic soil materials are not suitable for support of the structure or structural components.

Man placed fill material exists on the site. The quality of any man placed fill encountered is not known and may not be suitable for support of the structure or structural components. The man placed fill should be removed and replaced with compacted structural fill prior to supporting building or building components on the fill.

The soil materials exposed in the bottom of the excavation may be moist and may become yielding under construction traffic during construction. It may be necessary to use techniques for placement of fill material or foundation concrete which limits construction traffic in the vicinity of the very moist soil material. If yielding should occur during construction it may be necessary to construct a subgrade stabilization fill blanket or similar to provide construction traffic access. The subgrade stabilization blanket may include over excavating the subgrade soils one (1) to several feet and replacing with aggregate subbase course type material. The stabilization blanket may also include geotextile stabilization fabric at the bottom of the excavation prior to placement of aggregate subbase course stabilization fill. Other subgrade stabilization techniques may be available. We are available to discuss this with you.

It has been our experience that sites in developed areas may contain existing subterranean structures or poor quality man placed fill. If subterranean structures or poor quality man placed fill are suspected or encountered, they should be removed and replaced with compacted structural fill as discussed under COMPACTED STRUCTURAL FILL below.

5.0 FOUNDATION RECOMMENDATIONS

Geotechnical engineering considerations which influence the foundation design and construction recommendations presented below are discussed in Appendix D.

We have analyzed grouted micro piles, driven piles, helical piles and post tensioned slab on grade as potential foundation systems for the proposed structure. These are discussed below. Due to the number of possible foundation types available and design and construction techniques there may be design alternatives which we have not presented in this report. We are available to discuss other foundation types.

We recommend that the entire structure be supported on only one foundation type. Combining foundation types will result in differential and unpredictable foundation performance between the varying foundation types. We recommend that the structure footprint not be traversed by the cut/fill contact which would result in a portion of the structure underlain by fill

material and part of the structure underlain by materials exposed by excavated cut. If this condition will exist please contact us so that we can revise our recommendations to

accommodate the cut/fill contact scenario.

All of the design parameters presented below are based on techniques performed by an experienced competent contractor and high quality craftsmanship and care during construc-

experienced competent contractor and high quality craftsmanship and care during construction. We recommend post construction cognizance of the volume change potential of the near

surface soil materials and the need for appropriate post construction maintenance.

The foundation recommendations include recommended design and construction techniques

to reduce the influence of movement of the soil materials supporting the foundation but should

not be interpreted as solutions for completely mitigating the potential for movement from the

support soil material volume change.

Exterior column supports should be supported by foundations incorporated into the foundation

system of the structure not supported on flatwork. Column supports placed on exterior con-

crete flatwork may move if the support soils below the concrete slab on grade become wetted and swell or freeze and raise or settle. Differential movement of the exterior columns may

cause stress to accumulate in the supported structure and translate into other portions of the

structure.

5.1 Grouted Micro Piles

Grouted micro piles may be used to support the structure.

We suggest the hollow bar/pressure grout method be used to install the micro piles, we

suggest that the micro piles be designed using an allowable design capacity of 1,750 pounds

per foot of bond length in the underlying granular materials with a minimum annulus of four (4)

inches.

We suggest a minimum bond length of twenty (20) feet in the underlying native soil materials.

The micro piles should be designed with as high a minimum dead load as possible. The steel

tendon diameter should be determined by the structural engineer based on the required load

criteria. The grout strength used should have a minimum compressive strength of 4,000 psi

after twenty-eight (28) days. The micro pile ultimate capacity will not be achieved until the

grout has properly cured.

If the micro piles are designed and constructed as discussed above we anticipate that the post

construction settlement potential of each pile may be less than approximately one (1) inch.

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We recommend load testing of control piles be conducted before actual production piles.

The structural engineer should be consulted to provide structural design recommendations for

the micro pile foundation system.

In our analysis it was necessary to assume that the material encountered in the test borings extended throughout the building site and to a depth below the maximum depth of the influence of the foundations. We should be contacted to observe the soil materials exposed in the

foundation excavations prior to placement of foundations to verify the assumptions made

during our analysis.

5.2 Driven Piles

Driven piles may be used to support the structure. Driven piles should be designed as end bearing piles supported by the underlying site soil materials or formational material. Pile

capacity is a function of the pile type chosen, equipment used to install the piles, installation procedure and building loads on the piles. The pile types that are suitable for this project are

discussed below.

The structural engineer should be consulted for structural requirements of the piles. Once a

pile type, hammer, and contractor have been selected we should be contacted for specific geotechnical design and construction criteria. We suggest that the piles be installed with a pile driving hammer that has a minimum rated energy of 24,000 foot pounds per stroke. Any

tendency for the piles to deviate from their required driving alignment during the installation

operations should be corrected at the on set of the deviation.

We suggest that during driving operations the pile set used to determine the bearing depth of

the pile be several blows per inch greater than the set criteria determined by an appropriate dynamic formula. This is to help reduce the potential for post construction settlement of the piles. We are available to assess the pile load/set criteria and develop the appropriate curves

for reference during construction once the pile type and specific hammer are chosen. We

suggest that the pile load/set criteria be assessed prior to the beginning of the construction

operation.

We suggest that your geotechnical consultant be present during the installation of the piles to

provide geotechnical engineering consultation and provide a pile driving record for each pile

installed for the as-built records. We are available to discuss this with you.

Steel "H" piles have proven successful for pile installations where the piles extend to a hard

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bearing stratum. The steel H-piles will withstand hard driving with limited damage and are easily handled. "H" piles may be spliced without loss of bending strength and point reinforcement may be used to decrease tip damage when driving through boulders or obstacles. Prefabricated splices and point reinforcement are available.

For design purposes and budgeting estimates for "H" piles we suggest you consider piles with a minimum allowable capacity of 9,000 psi based upon the cross section area of the pile. We anticipate, based on existing information, that the piles will be about 25 to 50 feet long. We anticipate that the surface of the bearing strata may undulate. Piles can be typically designed for loads of about 100 Kips each. If a larger hammer is used the "H" pile capacity may be significantly increased. For pile groups to support concentrated loads we suggest spacing individual piles no closer than three (3) diameters to each other spaced on centers.

Pipe piles will carry heavy loads when founded on a high bearing capacity stratum. Prefabrication splices and point reinforcement are available for pipe piles.

For design and budgeting estimates for pipe piles we suggest that you consider piles about ten (10) inches in diameter driven closed end, and backfilled with concrete. The concrete backfill will allow reinforcing steel to be cast into the pile to tie the pile and structure together. We anticipate, based on existing information, that pipe piles will be about 25 to 50 feet long. The pile length may be variable. The estimated pile lengths provided above are estimates only. Varying site, construction and pile installation equipment conditions may result in installed pile lengths significantly longer or shorter than estimated above. Pipe piles typically can be designed to support 100 Kips per pile. If a larger hammer is used the pipe pile capacity may be significantly increased. Pile clusters or groups for concentrated loads should be spaced no closer than three (3) diameters to each other, center to center.

We anticipate pile lengths will vary when founded in the underlying site soil materials because of the anticipated non-uniform resistance to driving due to varying density of the material. The estimated pile lengths provided above are estimates only. Varying site, construction and pile installation equipment conditions may result in installed pile lengths significantly longer or shorter than estimated above. The bottom of the piles should be at least twenty five (25) feet below the lowest grade of the building or the landscape adjacent to the building, whichever is lower. If the piles are shorter than the twenty five (25) feet as discussed above the pile capacities may be less.

We anticipate that the proposed piles will be about twenty five (25) to fifty (50) feet below the existing ground surface. It may be necessary to splice the piles to obtain the proper length to the bearing strata. We suggest that the pile be spliced to the proper length prior to beginning the driving operation. Pile splices made during the driving operation may result in delays of

the driving and may allow sufficient time for the pore pressures incurred during driving to

dissipate and cause difficulties in completion of the driving of the pile.

Grade beams between piles should be provided with void spaces between the soil and the

grade beam. The grade beam should not come in contact with the soils. Separation is to help

reduce the potential for heave of the foundations should the soils swell.

5.3 Helical Piles

Helical piles may be used to support the structure.

The structural engineer and helical pile provider should be consulted for structural

requirements of the helical piles and installation torque requirements.

Several conditions impact the load bearing capacity of the helical pile. These conditions

include, but are not limited to, the number of helix, diameter of the helix, depth of helix and the

soil type the helix bears within.

We suggest that helical piles with a minimum of two (2) helix per pile be used. We suggest

the helical piles be extended such that the helix bear a minimum of twenty five (25) feet below

bottom of grade beam grade. Helix diameter and spacing should be specified by the structural

engineer.

We estimate that helical pile capacities of 50 to 70 kips each can be obtained by helical piles

bearing within the encountered native soil materials a minimum of twenty five (25) feet below

the bottom of the grade beams.

The actual pile capacity should be determined during construction using pile load tests. The

load tests should be conducted using actual materials designed for use in the piles and with

the equipment and contractor anticipated to install the piles. We recommend load testing of

control piles be conducted before actual production piles.

Helical pile clusters or groups for concentrated loads should be spaced no closer than three

(3) diameters to each other, center to center.

We suggest that during installation operations the pile set torque be monitored in accordance

to the manufacturer and designer's specifications.

We suggest that your geotechnical consultant be present during the installation of the piles to

provide geotechnical engineering consultation and provide a pile installation record for each

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pile installed for the as-built records. We are available to discuss this with you.

We are available to provide material testing services for soil and concrete and provide foundation excavation observations during construction. We recommend that Lambert and Associates, the geotechnical engineer, for the project provide material testing services to maintain continuity between design and construction phases.

5.4 Post Tensioned Slabs

The structure may be supported by a post tensioned slab foundation system.

Based upon our experience, the post tensioned slab foundation system does limit distress to interior floors and living spaces, however, this alternative may not minimize potential foundation movement as effectively as a deep foundation system.

In our analysis it was necessary to assume that the material encountered in the test borings extended throughout the building site and to a depth below the maximum depth of the influence of the foundations. We should be contacted to observe the soil materials exposed in the foundation excavations prior to placement of foundations to verify the assumptions made during our analysis.

The bottom of the foundation excavations should be thoroughly cleaned and observed when excavated. Any loose or disturbed material exposed in the foundation excavation should be removed or compacted prior to placing foundation concrete.

The bottom of the foundation excavations should be compacted prior to placing compacted structural fill or foundation concrete. We suggest the materials exposed be compacted to at least ninety (90) percent of the materials moisture content-dry density relationship (Proctor) test, ASTM D1557. Excavation compaction is to help reduce the influence of any disturbance that may occur during the excavation operations. Any areas of loose, low density or yielding soils evidenced during the excavation compaction operation should be removed and replaced with compacted structural fill. Caution should be exercised during the excavation compaction operations. Excess rolling or compacting may increase pore pressure of the subgrade soil material and degrade the integrity of the support soils. Loose or disturbed material in the bottom of the foundation excavations which are intended to support structural members will likely result in large and unpredictable amounts of settlement, if the loose or disturbed material is not removed or compacted.

The design of the shallow post tensioned slab should consider the following:

Bearing Strata: Engineered Fill Material or Approved

Native Material

Maximum Net Allowable Bearing Pressure: 3,000 psf

Modulus of Subgrade Reaction, k: 460 pci

Edge Moisture Variation Distance, e...: 9.0 feet Center (shrink)

6.0 feet Edge (swell)

Differential Soil Movement, y_m: -1.05 inches Center (shrink)

1.55 inches Edge (swell)

Our post tensioned slab parameter analysis was performed using VOLFLO 1.5 by Geostructural Tool Kit, Inc.

The minimum depth below grade for the exterior edge grade beam/footing should exceed the regions minimum design frost depth.

It should be noted that the y_m values presented above are the estimated vertical movement at the edges of a uniformly loaded slab. These are theoretical values that are used in the design of post-tensioned slabs-on-grade and do not represent the movements or overall settlement that would be expected from the actual loading conditions.

The calculated theoretical estimated post construction settlement potential may be reduced by placing the post tensioned slab system on a blanket of compacted structural fill. The calculated theoretical estimated post construction settlement and associated thickness of compacted structural fill are presented below.

THICKNESS OF	CALCULATED THEORETICAL ESTIMATED POST
COMPACTED STRUCTURAL FILL	CONSTRUCTION SETTLEMENT FOR
SUPPORTING SLAB	POST TENSIONED SLAB SYSTEM (INCHES)
0	3-3/8 to 4-5/8
2 feet	2-3/4 to 3-7/8
4 feet	2-1/4 to 3
6 feet	1-5/8 to 2-3/8
8 feet	1-1/4 to 1-7/8

The calculated settlement estimates are theoretical only. Actual settlement could vary throughout the site and with time.

6.0 INTERIOR FLOOR SLAB DISCUSSION

If a deep foundation system is utilized, the floor may be either a concrete slab on grade or a supported structural floor. The natural soils that will support interior floor slabs are stable at their natural moisture content. However, the owner should realize that when wetted, the site soils may experience volume changes. The site soil samples tested had measured swell pressures of less than 100 to approximately 300 pounds per square foot and associated magnitudes of up to 0.6 percent of the wetted soil volume at a surcharge load of 100 pounds per square foot and the actual swell pressure could be greater.

The recommendations in this report do not address a monolithic floor slab/footing combination. The design and construction characteristics of the monolithic floor slab need geotechnical engineering design parameters tailored specifically for a monolithic slab and integral footing. Generally this type foundation/floor combination in this area with these site conditions does not perform as well as other choices.

Conditions which vary from those encountered during our field study may become apparent during excavation. We should be contacted to observe the conditions exposed at concrete slab on grade subgrade elevation to verify the assumptions made during the preparation of this report and to provide additional geotechnical engineering suggestions and recommendations as needed.

Engineering design dealing with swelling soils is an art which is still developing. The owner is cautioned that the soils on this site may have swelling potential and concrete slab on grade floors and other lightly loaded members may experience movement when the supporting soils become wetted. We suggest you consider floors suspended from the foundation systems as structural floors or a similar design that will not be influenced by subgrade volume changes. If the owner is willing to accept the risk of possible damage from swelling soils supporting concrete slab on grade floors, the following recommendations to help reduce the damage from swelling soils should be followed. These recommendations are based on generally accepted design and construction procedures for construction on soils that tend to experience volume changes when wetted and are intended to help reduce the damage caused by swelling soil materials. Lambert and Associates does not intend that the owner, or the owner's consultants should interpret these recommendations as a solution to the problems of swelling soils, but as measures to reduce the influence of swelling soils.

The shallow soil materials tested have a low volume change potential under light loading

conditions. Concrete slab on grade floors may experience movement when supported by the natural onsite soils. Concrete slab on grade floors will perform best if designed to tolerate movement introduced by the subgrade soil materials.

Concrete flatwork, such as concrete slab on grade floors, should be underlain by compacted structural fill. The layer of compacted fill should be at least one (1) foot thick or thicker and constructed as discussed under COMPACTED STRUCTURAL FILL below. A one (1) foot thick or thicker blanket of structural fill material beneath the concrete flatwork is not sufficient to entirely mask the settlement or swell potential of the subgrade soil material but will only provide better subgrade conditions for construction. The concrete slab on grade should be designed by a structural engineer to be compatible with the site soil conditions.

The natural soil materials exposed in the areas supporting concrete slab on grade floors should be kept very moist during construction prior to placement of concrete slab on grade floors. This is to help increase the moisture regime of the potentially expansive soils supporting floor slabs and help reduce the expansion potential of the soils. We are available to discuss this concept with you.

Concrete slab on grade floors should be provided with a positive separation, such as a slip joint, from all bearing members and utility lines to allow their independent movements and to help reduce possible damage that could be caused by movement of soils supporting interior slabs. The floor slab should be constructed as a floating slab. All water and sewer pipe lines should be isolated from the slab. Any equipment placed on the floating floor slab should be constructed with flexible joints to accommodate future movement of the floor slab with respect to the structure. We suggest partitions constructed on the concrete slab on grade floors be provided with a void space above or below the partitions to relieve stresses induced by elevation changes in the floor slab.

Floor slabs should not contact/extend directly over foundations or foundation members. Floor slabs which directly contact foundations or foundation members will likely experience post construction movement as a result of foundation movements. We are available to discuss this with you.

The concrete slabs should be scored or jointed to help define the locations of any cracking. We recommend that joint spacing be designed as outlined in ACI 224R. In addition joints should be scored in the floors a distance of about three (3) feet from, and parallel to, the walls.

It should be noted that when curing fresh concrete experiences shrinkage. This shrinkage almost always results in some cracks in the finished concrete. The actual shrinkage depends on the configuration and strength of the concrete and placing and finishing techniques. The

recommended joints discussed above are intended to help define the location of the cracks but should not be interpreted as a solution to shrinkage cracks. The owner must understand that concrete flatwork will contain shrinkage cracks after curing and that all of the shrinkage cracks may not be located in control joints. Some cracking at random locations may occur.

If moisture migration through the concrete slab on grade floors will adversely influence the performance of the floor or floor coverings we suggest that a moisture barrier may be installed beneath the floor slab to help discourage capillary and vapor moisture rise through the floor slab. The moisture barrier may consist of a heavy plastic membrane, six (6) mil or greater, protected on the top and bottom by clean sand. The clean sand will help to protect the plastic from puncture. The layer of clean sand on the top of the plastic membrane will help the overlying concrete slab cure properly. According to the American Concrete Institute, proper curing requires at least three (3) to six (6) inches of clean sand between the plastic membrane and the bottom of the concrete. The plastic membrane should be lapped and taped or glued and protected from punctures during construction.

If the moisture content of the slab on grade floor will be influencial to the performance of the future floor coverings then the moisture content of the slab can be measured. We are available to monitor the floor slab moisture content prior to the installation of the floor covering. If this service is needed please contact us during the construction phase of the project.

The Portland Cement Association suggests that welded wire reinforcing mesh is not necessary in concrete slab on grade floors when properly jointed. It is our opinion that welded wire mesh may help improve the integrity of the slab on grade floors. We suggest that concrete slab on grade floors should be reinforced, for geotechnical purposes, with at least $6 \times 6 - W2.9 \times W2.9$ ($6 \times 6 - 6 \times 6$) welded wire mesh positioned midway in the slab. The structural engineer should be contacted for structural design of floor slabs.

7.0 COMPACTED STRUCTURAL FILL

Material characteristics desirable for compacted structural fill are discussed in Appendix D. Areas that are over excavated or slightly below grade should be backfilled to grade with properly compacted structural fill or concrete, not loose fill material. If backfilled with other than compacted structural fill material or concrete there will be significant post construction settlement proportional to the amount of loose material.

The natural on site soils are not suitable for use as compacted structural fill material supporting building or structure members because of their clay content. The natural on-site soils may be used as compacted fill in areas that will not influence the structure such as to establish general site grade. We are available to discuss this with you.

All areas to receive compacted structural fill should be properly prepared prior to fill placement. The preparation should include removal of all organic or deleterious material. The areas to receive fill material should be compacted after the organic deleterious material has been removed prior to placing the fill material. The area may need to be moisture conditioned for compaction. Any areas of soft, yielding, or low density soil, evidenced during the excavation compaction operation should be removed. The area excavated to receive fill should be moisture conditioned to wet of optimum moisture content as part of the preparation to receive fill. Fill should be moisture conditioned, placed in thin lifts not exceeding six (6) inches in compacted thickness and compacted to at least ninety (90) percent of maximum dry density as defined by ASTM D1557, modified moisture content-dry density (Proctor) test.

After placement of the structural fill the surface should not be allowed to dry prior to placing concrete or additional fill material. This may be achieved by periodically moistening the surface of the compacted structural fill as needed to prevent drying of the structural fill. We are available to discuss this with you.

The soil materials exposed in the bottom of the excavation may be very moist and may become yielding under construction traffic during construction. It may be necessary to use techniques for placement of fill materials or foundation concrete which limit construction traffic in the very moist soil materials. If yielding should occur during construction it may be necessary to construct a subgrade stabilization fill blanket or similar to provide construction traffic access. We are available to discuss this with you.

We recommend that the geotechnical engineer or his representative be present during the excavation compaction and fill placement operations to observe and test the material.

8.0 LATERAL EARTH PRESSURES

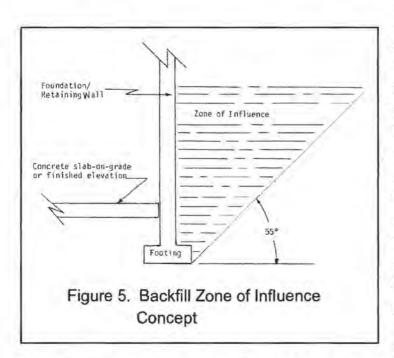
Laterally loaded walls supporting soil, such as basement walls, will act as retaining walls and should be designed as such. Walls that are designed to deflect and mobilize the internal soil strength should be designed for active earth pressures. Walls that are restrained so that they are not able to deflect to mobilize internal soil strength should be designed for at-rest earth pressures. The values for the lateral earth pressures will depend on the type of soil retained by the wall, backfill configuration and construction technique. If the backfill is not compacted the lateral earth pressures will be very different from those noted below.

Lateral earth pressure (L.E.P.) values are presented below:

Level Backfill with on-site soils

(pounds per cubic foot per foot of depth)

Active L.E.P.	64
At-rest L.E.P.	84
Passive L.E.P.	246



The soil samples tested had measured swell pressures of less than 100 to approximately 300 pounds per square foot however the actual swell pressure of the backfill material could be greater. If the retained soils should become moistened after construction the soil may swell against retaining walls. The walls should be designed to resist the swell pressure of the soil materials if these are used as part of the backfill within the zone of influence. The zone of influence concept is presented on Figure 5.

The above lateral earth pressures may

be reduced by overexcavating the wall backfill area beyond the zone of influence and backfilling with crushed rock type material. The zone of influence concept is presented below.

The lateral earth pressure design parameters may change significantly if the area near the wall is loaded or surcharged or is sloped. If any of these conditions occur we should be contacted for additional design parameters tailored to the specific site and structure conditions.

Suggested lateral earth pressure (L.E.P.) values if the backfill is overexcavated beyond the zone of influence and backfilled with crushed rock are presented below.

Level Backfill
with crushed rock material
(pounds per cubic foot per foot of depth)

Active L.E.P. 25 At-rest L.E.P. 40

If the area behind a wall retaining soil material is sloped we should be contacted to provide

lateral earth pressure design values tailored for the site specific sloped conditions.

Resistant forces used in the design of the walls will depend on the type of soil that tends to resist movement. We suggest that you consider a coefficient of friction of 0.24 for the on site soil.

The lateral earth pressure values provided above, for design purposes, should be treated as equivalent fluid pressures. The lateral earth pressures provided above are for level well drained backfill and do not include surcharge loads or additional loading as a result of compaction of the backfill. Unlevel or non-horizontal backfill either in front of or behind walls retaining soils will significantly influence the lateral earth pressure values. Care should be taken during construction to prevent construction and backfill techniques from overstressing the walls retaining soils. Backfill should be placed in thin lifts and compacted, as discussed in this report to realize the lateral earth pressure values.

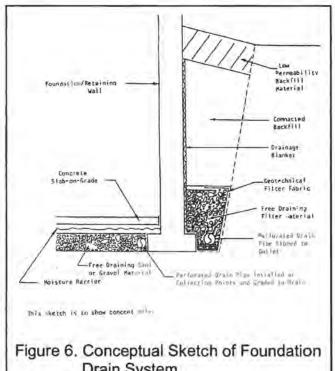
Walls retaining soil should be designed and constructed so that hydrostatic pressure will not accumulate or will not affect the integrity of the walls. Drainage plans should include a subdrain behind the wall at the bottom of the backfill to provide positive drainage. Exterior retaining walls should be provided with perimeter drain or weep holes to help provide an outlet for collected water behind the wall. The ground surface adjacent to the wall should be sloped to permit rapid drainage of rain, snow melt and irrigation water away from the wall backfill.

Sprinkler systems should not be installed directly adjacent to retaining or basement walls.

9.0 DRAIN SYSTEM

A drain system should be provided around building spaces below the finished grade and behind any walls retaining soil. The drain systems are to help reduce the potential for hydrostatic pressure to develop behind retaining walls. A sketch of the drain system is presented on Figure 6.

Subdrains should consist of a three (3) or four (4) inch diameter perforated rigid pipe surrounded by a filter. The filter should consist of a filter fabric or a graded material such as washed concrete sand or pea



Drain System

gravel. If sand or gravel is chosen the pipe should be placed in the middle of about four (4) cubic feet of aggregate per linear foot of pipe. The drain system should be sloped to positive gravity outlets. If the drains are daylighted, the drains should be provided with all weather outlets and the outlets should be maintained to prevent them from being plugged or frozen. We do not recommend that the drains be discharged to dry well type structures. Dry well structures may tend to fail if the surrounding soil material becomes wetted and swells or if the ground water rises to a elevation of or above the discharge elevation in the dry well. We should be called to observe the soil exposed in the excavations and to verify the details of the drain system.

10.0 BACKFILL

Backfill areas and utility trench backfill should be constructed such that the backfill will not settle after completion of construction, and that the backfill is relatively impervious for the upper few feet. The backfill material should be free of trash and other deleterious material. It should be moisture conditioned and compacted to at least ninety (90) percent relative compaction using a modified moisture content-dry density (Proctor) relationship test (ASTM D1557). Only enough water should be added to the backfill material to allow proper compaction. Do not pond, puddle, float or jet backfill soil materials.

Improperly placed backfill material will allow water migration more easily than properly recompacted fill. Improperly compacted fill is likely to settle, creating a low surface area which further enhances water accumulation and subsequent migration to the foundation soils.

Improperly placed backfill will allow water to migrate along the utility trench or backfill areas to gain access to the subgrade support soils with subsequent mobilization of the swell or settlement mechanism resulting in movement of the supported structure. Moisture migration could also result in the inconvenience of free water in the crawl space.

Backfill placement techniques should not jeopardize the integrity of existing structural members. We recommend recently constructed concrete structural members be appropriately cured prior to adjacent backfilling.

11.0 SURFACE DRAINAGE

The foundation soil materials should be prevented from becoming wetted after construction. Post construction wetting of the soil support soil materials can initiate swell potential or settlement potential as well as decrease the bearing capacity of the support soil materials. Protecting the foundation from wetting can be aided by providing positive and rapid drainage of surface water away from the structure.

The final grade of the ground surface adjacent to the structure should have a well defined slope away from the foundation walls on all sides. The ability to establish proper site surface drainage away from the structure foundation system may be influenced by the existing topography, existing structure elevations and the grades and elevations of the ground surface adjacent to the proposed structure. We suggest where possible a minimum fall of the surface grade away from the structure be that which will accommodate other project grading constraints and provide rapid drainage of surface water away from the structure. If there are no other project constraints we suggest a fall of about one (1) foot in the first ten (10) feet away from the structure foundation. Appropriate surface drainage should be maintained for the life of the project. Future landscaping plans should include care and attention to the potential influence on the long term performance of the foundation and/or crawl space if improper surface drainage is not maintained.

Roof runoff should be collected in appropriate roof drainage collection devices, such as eve gutters or similar, and directed to discharge in appropriate roof drainage systems. Roof runoff should not be allowed to fall on or near foundations, backfill areas, flatwork, paved areas or other structural members. Downspouts and faucets should discharge onto splash blocks that extend beyond the limits of the backfill areas. Splash blocks should be sloped away from the foundation walls. Snow storage areas should not be located next to the structure. Proper surface drainage should be maintained from the onset of construction through the proposed project life.

If significant water concentration and velocity occurs erosion may occur. Erosion protection may be considered to reduce soil erosion potential. A landscape specialist or civil engineer should be consulted for surface drainage design, erosion protection and landscaping considerations.

12.0 LANDSCAPE IRRIGATION

An irrigation system should not be installed next to foundations, concrete flatwork or paved areas. If an irrigation system is installed, the system should be placed so that the irrigation water does not fall or flow near foundations, flatwork or pavements. The amount of irrigation water should be controlled.

We recommend that wherever possible xeriscaping concepts be used. Generally, the xeriscape includes planning and design concepts which will reduce irrigation water. The reason we suggest xeriscape concepts for landscaping is because the reduced landscape water will decrease the potential for water to influence the long term performance of the structure foundations and flatwork. Many publications are available which discuss xeriscape. Colorado State University Cooperative Extension has several useful publications and most

landscape architects are familiar with the subject.

Due to the expansive nature of the soils tested we suggest that the owner consider

landscaping with only native vegetation which requires only natural precipitation to survive. Additional irrigation water will greatly increase the likelihood of damage to the structure as a

result of volume changes of the material supporting the structure.

Impervious geotextile material may be incorporated into the project landscape design to

reduce the potential for irrigation water to influence the foundation soils.

13.0 SOIL CORROSIVITY TO CONCRETE

Our scope of services did not include performing chemical tests to help identify the potential

for soil corrosivity to concrete.

It has been our experience that much of the soils in the area contain sufficient water soluble

sulfate content to be corrosive to concrete. We suggest sulfate resistant cement be used in concrete which will be in contact with the on-site soils. American Concrete Institute

recommendations for sulfate resistant cement based on the water soluble sulfate content

should be used.

If it is desirable by you or your design team to help identify the potential for corrosivity to

concrete at the proposed development site we suggest that site specific chemical tests be per-

formed.

14.0 RADON CONSIDERATIONS

Our experience indicates that many of the soils in western Colorado produce small quantities

of radon gas. Radon gas may tend to collect in closed poorly ventilated structures. Radon

considerations are presented in Appendix D.

15.0 POST DESIGN CONSIDERATIONS

The project geotechnical engineer should be consulted during construction of the project to

observe site conditions and open excavations during construction and to provide materials

testing of soil and concrete.

This subsurface soil and foundation condition study is based on limited sampling; therefore,

it is necessary to assume that the subsurface conditions do not vary greatly from those

encountered in the field study. Our experience has shown that significant variations are likely

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to exist and can become apparent only during additional on site excavation. For this reason, and because of our familiarity with the project, Lambert and Associates should be retained to observe foundation excavations prior to foundation construction, to observe the geotechnical engineering aspects of the construction and to be available in the event any unusual or unexpected conditions are encountered. The cost of the geotechnical engineering observations and material testing during construction or additional engineering consultation is not included in the fee for this report. We recommend that your construction budget include site visits early during construction schedule for the project geotechnical engineer to observe foundation excavations and for additional site visits to test compacted soil.

We recommend that the observation and material testing services during construction be retained by the owner or the owner's engineer or architect, not the contractor, to maintain third party credibility. We are experienced and available to provide material testing services. It is our opinion that the owner, architect and engineer be familiar with the information. If you have any questions regarding this concept please contact us.

We suggest that your construction plans and schedule include provisions for geotechnical engineering observations and material testing during construction and your budget reflect these provisions.

It is difficult to predict if unexpected subsurface conditions will be encountered during construction. Since such conditions may be found, we suggest that the owner and the contractor make provisions in their budget and construction schedule to accommodate unexpected subsurface conditions.

15.1 Structural Fill Quality

It is our understanding that the proposed development may include compacted structural fill. The quality of compacted structural fill will depend on the type of material used as structural fill, fill lift thickness, fill moisture condition and compactive effort used during construction of the structural fill. Engineering observation and testing of structural fill is essential as an aid to safeguard the quality and performance of the structural fill.

Fill materials placed on sloped areas require special placement techniques that key the fill materials unto the underlying support materials. These techniques include a toe key at the toe contact of the slope fill and benching the fill/natural contact up the slope into the competent natural material. The placing technique will also include subdrains at several locations to intercept subsurface water and route it away from the fill materials. We are available to discuss these techniques with you and your earthwork contractor.

Testing of the structural fill normally includes tests to determine the grain size distribution, swell potential and moisture-density relationship of the fill material to verify the material suitability for use as structural fill. As the material is placed the in-place moisture content and dry density are tested to indicate the relative compaction of the placed structural fill. We recommend that your budget include provisions for observation and testing of structural fill during construction.

Testing of the compacted fill material should include tests of the moisture content and density of the fill material placed and compacted prior to placement of additional fill material. We suggest that a reasonable number of density tests of the fill material can best be determined on a site, material and construction basis although as a guideline we suggest one test per about each 300 to 500 square feet of each lift of fill material. Utility trench backfill may need to be tested about every 100 linear feet of lift of backfill.

15.2 Concrete Quality

It is our understanding current plans include reinforced structural concrete for foundations and walls and may include concrete slabs on grade and pavement. To insure concrete members perform as intended, the structural engineer should be consulted and should address factors such as design loadings, anticipated movement and deformations.

The quality of concrete is influenced by proportioning of the concrete mix, placement, consolidation and curing. Desirable qualities of concrete include compressive strength, water tightness and resistance to weathering. Engineering observations and testing of concrete during construction is essential as an aid to safeguard the quality of the completed concrete.

Testing of the concrete is normally performed to determine compressive strength, entrained air content, slump and temperature. We recommend that your budget include provisions for testing of concrete during construction. We suggest that a reasonable frequency of concrete tests can best be determined on a site, materials and construction specific basis although as a guideline American Concrete Institute, ACI, suggests one test per about each fifty (50) cubic yards or portion thereof per day of concrete material placed.

16.0 LIMITATIONS

It is the owner's and the owner's representatives' responsibility to read this report and become familiar with the recommendations and suggestions presented. We should be contacted if any questions arise concerning the geotechnical engineering aspects of this project as a result of

the information presented in this report.

The scope of services for this study does not include either specifically or by implication any environmental or biological (such as mold, fungi, bacteria, etc.) Assessment of the site or identification or prevention of pollutants, hazardous materials or conditions. If the owner is concerned about the potential for such contamination or pollution, other studies should be performed.

The recommendations outlined above are based on our understanding of the currently proposed construction. We are available to discuss the details of our recommendations with you and revise them where necessary. This geotechnical engineering report is based on the proposed site development and scope of services as provided to us by Katsia Lord, AIA, Principal, Vault Design, the type of construction planned, existing site conditions at the time of the field study, and on our findings. Should the planned, proposed use of the site be altered, Lambert and Associates must be contacted, since any such changes may make our suggestions and recommendations inappropriate. This report should be used ONLY for the planned development for which this report was tailored and prepared, and ONLY to meet information needs of the owner and the owner's representatives. In the event that any changes in the future design or location of the building are planned, the conclusions and recommendations contained in this report shall not be considered valid unless the changes are reviewed and conclusions of this report are modified or verified in writing. recommended that the geotechnical engineer be provided the opportunity for a general review of the final project design and specifications in order that the earthwork and foundation recommendations may be properly interpreted and implemented in the design and specifications.

This report does not provide earthwork specifications. We can provide guidelines for your use in preparing project specific earthwork specifications. Please contact us if you need these for your project.

This report presents both suggestions and recommendations. The suggestions are presented so that the owner and the owner's representatives may compare the cost to the potential risk or benefit for the suggested procedures.

This report contains suggestions and recommendations which are intended to work in concert with recommendations provided by the other design team members to provide somewhat predictable foundation performance. If any of the recommendations are not included in the design and construction of the project it may result in unpredictable foundation performance or performance different than anticipated. We recommend that we be requested to provide

geotechnical engineering observation and materials testing during the construction phase of the project as discussed in this report. The purpose for on site observation and testing by us during construction is to help provide continuity of service from the planning of the project through the construction of the project. This service will also allow us to revise our recommendations if conditions occur or are discovered during construction that were not evidenced during the initial study. We suggest that the owner and the contractor make provisions in their construction budget and construction schedule to accommodate unexpected subsurface conditions.

We represent that our services were performed within the limits prescribed by you and with the usual thoroughness and competence of the current accepted practice of the geotechnical engineering profession in the area. No warranty or representation either expressed or implied is included or intended in this report or our contract. We are available to discuss our findings with you. If you have any questions please contact us. The supporting data for this report is included in the accompanying figures and appendices.

This report is a product of Lambert and Associates. Excerpts from this report used in other documents may not convey the intent or proper concepts when taken out of context, or they may be misinterpreted or used incorrectly. Reproduction, in part or whole, of this document without prior written consent of Lambert and Associates is prohibited.

This report and information presented can be used only for this site, for this proposed development, and only for the client for whom our work was performed. Any other circumstances are not appropriate applications of this information. Other development plans will require project specific review by us.

Please call when further consultation or observations and tests are required.

If you have any questions concerning this report or if we may be of further assistance, please contact us.

Respectfully submitted:

LAMBERT AND ASSOC

Daniel R. Lambert, For

CONSULTING GEOTECHNICAL ENGINEERS
AND MATERIAL TESTING

APPENDIX A

The field study was performed on April 25, 2022. The field study consisted of logging and sampling the soils encountered in five (5) test borings. The approximate locations of the test borings are shown on Figure 2. The log of the soils encountered in the test borings are presented on Figures A2 through A6.

The test borings were logged by Lambert and Associates and samples of significant soil types were obtained. The samples were obtained from the test borings using a Modified California Barrel sampler and bulk disturbed samples were obtained. Penetration blow counts were determined using a 140 pound hammer free falling 30 inches. The blow counts are presented on the logs of the test borings such as 11/6 where 11 blows with the hammer were required to drive the sampler 6 inches.

The engineering field description and major soil classification are based on our interpretation of the materials encountered and are prepared according to the Unified Soil Classification System, ASTM D2488. The description and classification which appear on the test boring log is intended to be that which most accurately describes a given interval of the test boring (frequently an interval of several feet). Occasionally discrepancies occur in the Unified Soil Classification System nomenclature between an interval of the soil log and a particular sample in the interval. For example, an interval on the test boring log may be identified as a silty sand (SM) while one sample taken within the interval may have individually been identified as a sandy silt (ML). This discrepancy is frequently allowed to remain to emphasize the occurrence of local textural variations in the interval.

The stratification lines presented on the logs are intended to present our interpretation of the subsurface conditions encountered in the test boring. The stratification lines represent the approximate boundary between soil types and the transition may be gradual.

KEY TO LOG OF TEST BORING Date Drilled: Field Engineer: **Boring Number:** Location: Elevation: Total Depth: Depth to Water at Time of Drilling: Diameter: Depth Symbo Sample Soil Description **Laboratory Test Results** Type N Sand, silty, medium dense, moist, tan Notes in this column indicate tests performed and test results if not plotted. Unified Soil Classification DD: Indicates dry density in pounds per Indicates Bulk Bag Sample cubic foot MC: Indicates moisture content as percent Indicates Drive Sample of dry unit weight 5 Incicates Sampler Type: LL: Indicates Liquid Limit C - Modified California PL: Indicates Plastic Limit SS - Standard Split Spoon PI: Indicates Plasticity Index H - Hand Sampler 7/6 Indicates seven blows required to drive the sampler six (6) inches with a hammer that weighs one hundred forty pounds and is dropped thirty inches. 10 BOUNCE: Indicates no further penetration occurred with additional blows with the hammer NR: Indicates no sample recovered CAVED: Indicates depth the test boring caved after drilling 15 Indicates the location of free subsurface water when measured CLAY Note: Symbols are often used only to help visually SILT identify the described information presented on 20 SAND the log. GRAVEL **FORMATION** SANDSTONE 25

Project Name: Lot 109R - Telluride Mountain Village Project Number: M22015GE Figure: A1

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LOG OF TEST BORING Date Drilled: April 25, 2022 Field Engineer: DRL TB Number: Location: See test boring location diagram Elevation: Total Depth: 16 feet Diameter: 4 inch Depth to Water at Time of Exc: None Encountered Depth Sample Soil Description **Laboratory Test Results** Type N 0 Fill Material - Clay, sandy, rock fragments 5 cX 11/6" 16/6" Clay, sandy, rock fragments, stiff, moist, brown, tan 10 8/6" Swell/Consolidation Test: 10/6" DD: 110 pcf MC: 10.7% 15 8/6" Swell/Consolidation Test: cX 9/6" DD: 123 pcf MC: 12.7% Bottom of Test Boring at 16 feet 20 25

Project Name: Lot 109R - Telluride Mountain Village

Project Number:

M22015GE

Figure: A2

Lambert and Associates

LOG OF TEST BORING Date Drilled: April 25, 2022 Field Engineer: DRL TB Number: Location: See test boring location diagram Elevation: Total Depth: 16 feet Diameter: 4 inch Depth to Water at Time of Exc: 13 feet Sample Soil Description **Laboratory Test Results** Type N Fill Material - Clay, sandy, rock fragments Clay, sandy, rock fragments, stiff, moist to wet, brown, tan 5 cX 6/6" 10/6" 10 Swell/Consolidation Test: 5/6" cX DD: 107 pcf MC: 19.5% 6/6" * Increased Rock Fragments 15 3/6" c X 4/6" Bottom of Test Boring at 16 feet 20 25

Lambert and Associates

Lot 109R - Telluride Mountain Village

Project Name:

Project Number:

M22015GE

A3

Figure:

LOG OF TEST BORING Date Drilled: April 25, 2022 Field Engineer: DRL TB Number: 3 Location: See test boring location diagram Elevation: Total Depth: 16 feet Diameter: 4 inch Depth to Water at Time of Exc: 11 feet Sample Soil Description Laboratory Test Results Type N 0 Approx. 1 inch Asphalt Granular Fill Material Clay, sandy, silty, med stiff, moist, dark brown, gray 5 cX 8/6" LL: 30 PL: 14 9/6" Clay, sandy, rock fragments, stiff, PI: 16 moist to wet, brown, tan - #200: 65.2% 10 4/6" Direct Shear Test: 5/6" DD: 109 pcf MC: 15.4% 15 4/6" Swell/Consolidation Test: cX 5/6" DD: 117 pcf MC: 13.6% Bottom of Test Boring at 16 feet 20 25

Project Name: Lot 109R - Telluride Mountain Village Project Number: M22015GE Figure: A4

Lambert and Associates

LOG OF TEST BORING Date Drilled: April 25, 2022 Field Engineer: DRL TB Number: Location: See test boring location diagram Elevation: Total Depth: 24-1/2 feet Diameter: 4 inch Depth to Water at Time of Exc: 11 feet Depth Sample Soil Description **Laboratory Test Results** Type N 0 Approx. 1 inch Asphalt Granular Fill Material Clay, sandy, rock fragments, stiff, moist to wet, brown, gray, tan 5 10 * Intermittent Stiff/Very Stiff Lenses 15 * Increased Rock Fragments 20 25 Auger Refusal at 24-1/2 feet

Lambert and Associates

Lot 109R - Telluride Mountain Village

Project Name:

Project Number:

M22015GE

Figure:

A5

LOG OF TEST BORING Date Drilled: April 25, 2022 DRL Field Engineer: TB Number: 5 Location: See test boring location diagram Elevation: Total Depth: 15 feet Diameter: 4 inch Depth to Water at Time of Exc: None Encountered Sample Soil Description **Laboratory Test Results** Type N 0 Approx. 1 inch Asphalt Granular Fill Material Clay, sandy, rock fragments, stiff, moist, brown, tan 5 cX 3/6" **Direct Shear Test:** 2/6" DD: 108 pcf MC: 13.2% 10 6/6" Swell/Consolidation Test: cX 2/6" DD: 119 pcf MC: 9.3% 15 Bottom of Test Boring at 15 feet 20 25

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Lot 109R - Telluride Mountain Village

Project Name:

Project Number:

M22015GE

A6

Figure:

APPENDIX B

The laboratory study consisted of performing:

- Moisture content and dry density tests,
- . Swell-consolidation tests,
- . Direct Shear Strength tests, and
- . Atterberg Limits tests.

It should be noted that samples obtained using a drive type sleeve sampler may experience some disturbance during the sampling operations. The test results obtained using these samples are used only as indicators of the in situ soil characteristics.

TESTING

Moisture Content and Dry Density

Moisture content and dry density were determined for each sample tested of the samples obtained. The moisture content was determined according to ASTM Test Method D2216 by obtaining the moisture sample from the drive sleeve. The dry density of the sample was determined by using the wet weight of the entire sample tested. The results of the moisture and dry density determinations are presented on the logs of borings, Figures A2 through A6.

Swell Tests

Loaded swell tests were performed on drive samples obtained during the field study. These tests are performed in general accordance with ASTM Test Method D2435 to the extent that the same equipment and sample dimensions used for consolidation testing are used for the determination of expansion. A sample is subjected to static surcharge, water is introduced to produce saturation, and volume change is measured as in ASTM Test Method D2435. Results are reported as percent change in sample height.

Consolidation Tests

One dimensional consolidation properties of drive samples were evaluated according to the provisions of ASTM Test Method D2435. Water was added in all cases during the test. Exclusive of special readings during consolidation rate tests, readings during an increment of load were taken regularly until the change in sample height was less than 0.001 inch over a two hour period. The results of the swell-consolidation load test are summarized

on Figures B1 through B5, swell-consolidation tests.

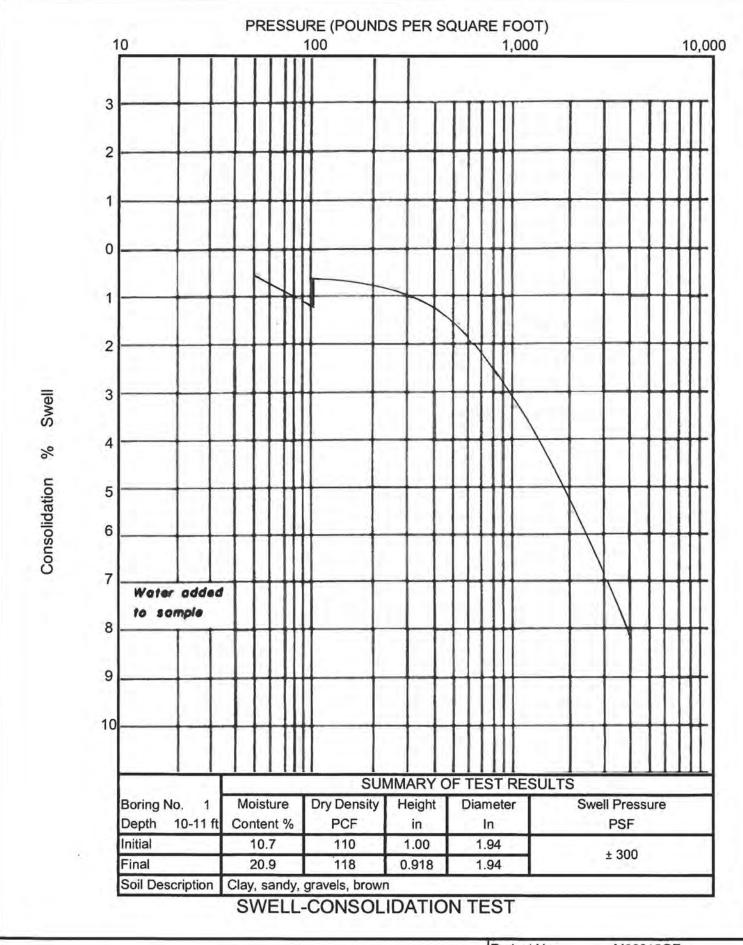
It should be noted that the graphic presentation of consolidation data is a presentation of volume change with change in axial load. As a result, both expansion and consolidation can be illustrated.

Direct Shear Strength Tests

Direct shear strength properties of drive samples were evaluated in general accordance with testing procedures defined by ASTM Test Method D3080. The results of the direct shear strength test are summarized on Figures B6 and B7, direct shear test.

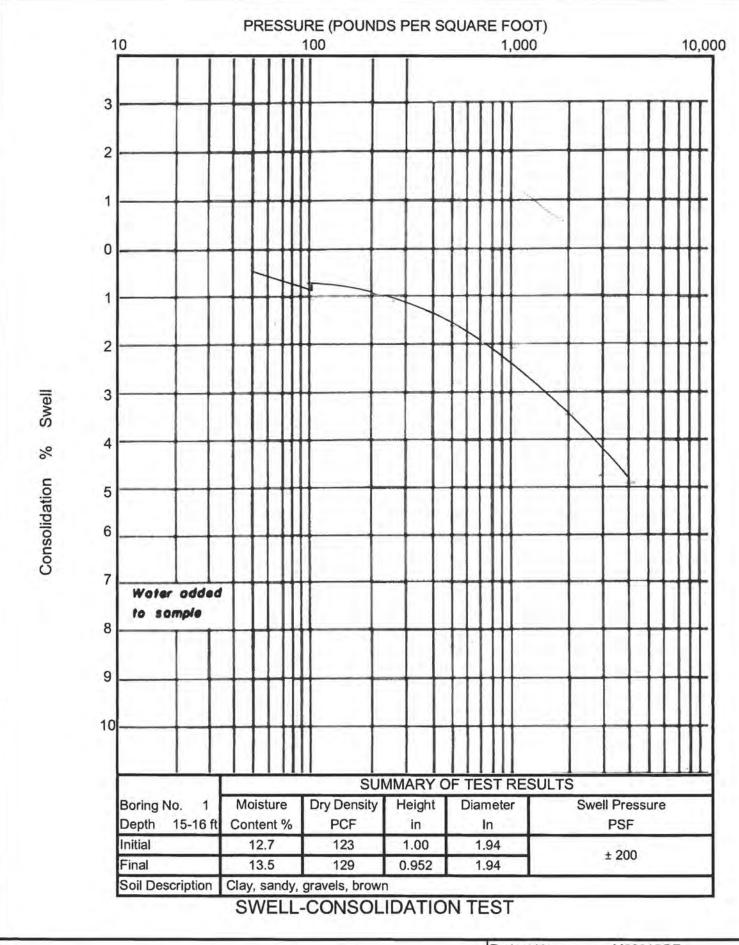
Atterberg Limits Tests

Atterberg limits tests were conducted on samples obtained during our field study. The Atterberg limits tests were conducted in general accordance with ASTM Test Method D4318. The results of the Atterberg limits test are presented on Figure A4.

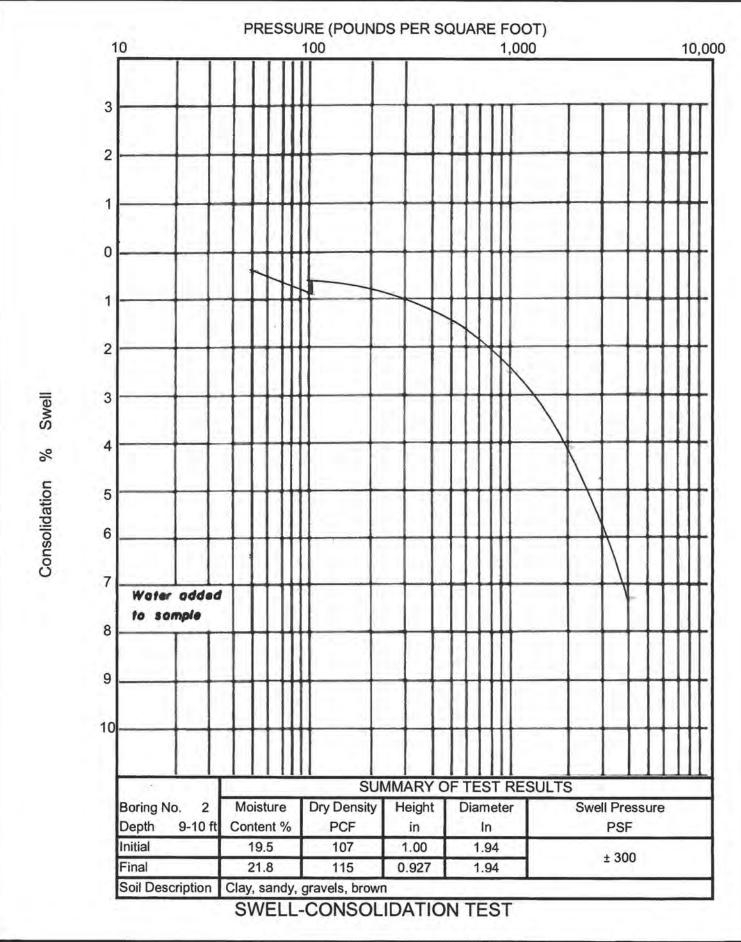


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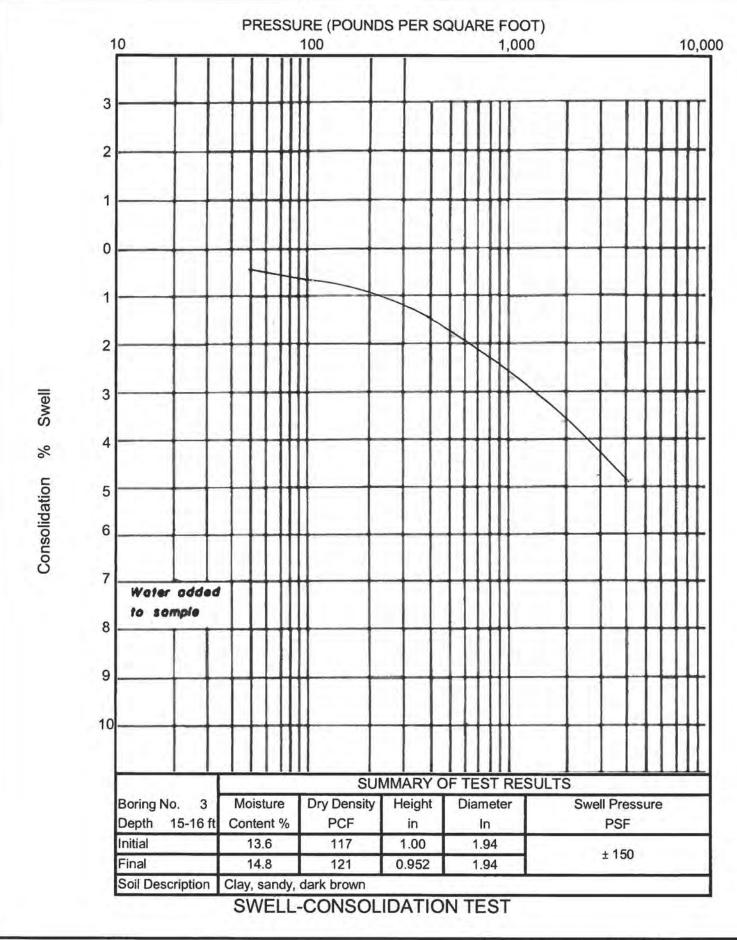
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Figure:	B1	



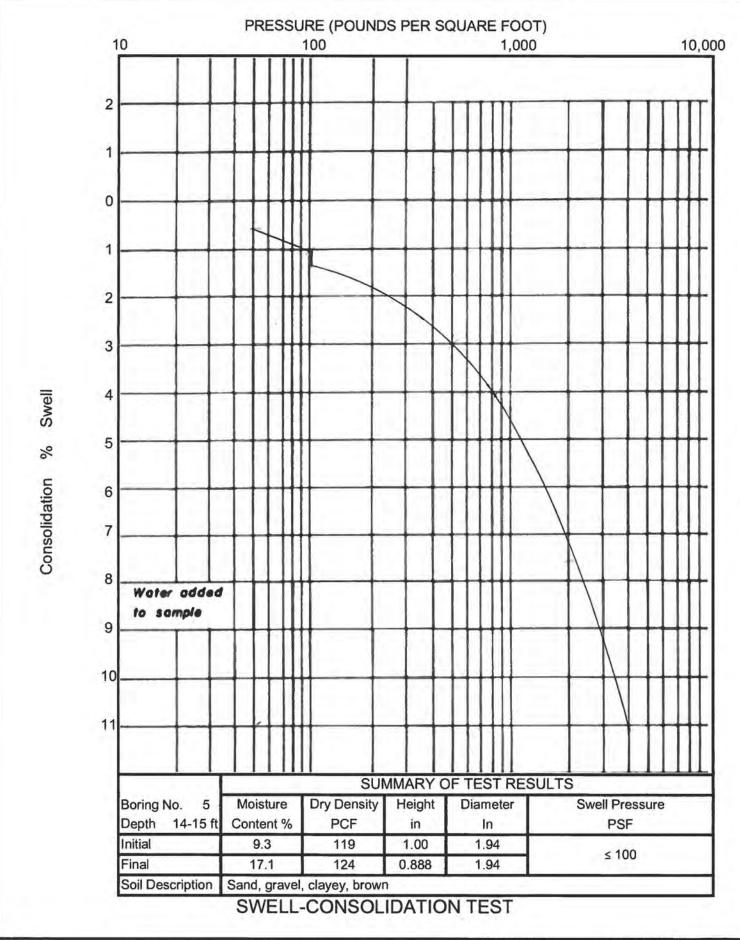
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Date:	August 4, 2022	
Figure:	B2	



Project No.	M22015GE	
Date:	August 4, 2022	.01
Figure:	B3	7



Project No. M22015GE		ij
Date:	August 4, 2022	Q
Figure:	B4	



Project No.	M22015GE		
Date:	August 4, 2022		
Figure:	B5		

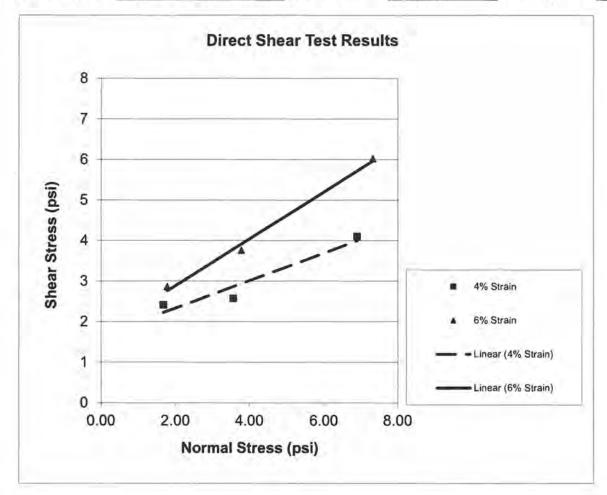
CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING

4/25/2022

Project: Lot 109R Telluride Project Number: M22015GE Date Sampled:

Location: Telluride, CO Sample Source: TB 3 @ 10-11 ft Lab Sample #: 4390

Sample Description: Clay, sandy, gravels, brown Date Tested: 5/16/2022 Tested By: AC



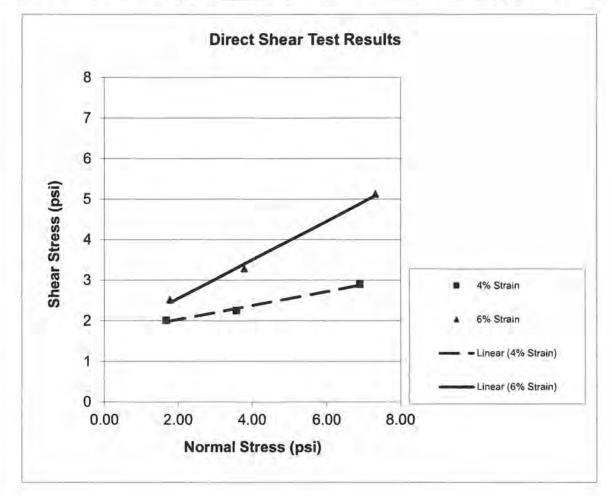
% Strain	Cohesion (psf)	Friction Angle (deg)
4	239	19
6	249	30

Project No.:	M22015GE	
Date:	August 4, 2022	
Figure:	B6	

CONSULTING GEOTECHNICAL ENGINEERS AND MATERIAL TESTING

Lot 109R Telluride Project Number: M22015GE Project: Date Sampled:

4/25/2022 Location: Telluride, CO Sample Source: TB 5 @ 9-10 ft Lab Sample #: 4390 Sample Description: Clay, sandy, gravels, brown Date Tested: 5/17/2022 Tested By: AC



% Strain	Cohesion (psf)	Friction Angle (deg)
4	243	10
6	231	25

Project No.:	M22015GE	
Date:	August 4, 2022	
Figure:	B7	

APPENDIX C

GEOLOGY DISCUSSION SOUTHWEST COLORADO GEOLOGY

Southwest Colorado exhibits many geologic features formed by a multitude of geologic processes. Regional inundation, uplift, volcanism and glaciation are responsible for some of the complex geology of the region. Many theories and speculations concerning the mode of occurrence of the regions's geology have been presented over the years. This cursory discussion of the geology of southwest Colorado presents some theories accepted by the geologic community, but is only intended to introduce the basic concepts and restraints that arise due to geologic activity.

Prior to the formation of the Rocky Mountains southwest Colorado was a primarily a flat lying region with little topographic expression. The North American continent was experiencing many episodes of deposition. The Transcontinental Sea was transgressing and regressing across the continent, these transgressions and regressions are the cause for such diverse rock types. The stratigraphic column in southwestern Colorado expresses rock types from variable depositional environments. Limestones are formed in deeper water, sandstones are formed in beach and tidal flat environments, while arkosic sandstone and conglomerates are formed in alluvial plains and fans. Particle size and mineralogic content in rock units are related to the depositional environment. A sandstone or conglomerate would not be likely to form in a deep sea environment because there would not be enough energy to carry such large particles a great distance from the source lands. As one observes the stratigraphic column of southwest Colorado a siltstone may be overlain by a sandstone which is in turn overlain by a siltstone. This represents a regressional then transgressional sequence. Many such sequences or combinations of other rock units are exhibited throughout southwest Colorado.

The final regression of the sea may have been caused by orogenic activity and uplift. This uplift was not confined to Colorado, it was a regional uplift that occurred in many stages. The uplift is what caused the formation of the ancestral rockies. The Larimide Orogenic episode is responsible for the formation of the San Juan dome. (Note: The San Juan dome theory is not accepted by the entire geologic community. It is used here for descriptive purposes). The San Juan dome was essentially an upwarp of the stratigraphy formed by sedimentation during the Transcontinental Sea. An actual dome probably never

existed due to erosion during the uplift. The idea being that a dome of sediments and rock units would have existed had erosion and diastrophism not taken place. The orientation of bedding planes forms a radial pattern around the San Juan region which seems to vindicate this theory.

The stresses need to "upwarp" this large area were obviously tremendous. Locally occurring stresses may not be sufficient to move this quantity of material, global tectonics, directly or indirectly, may have been involved. Compression of the entire North American plate could have occurred. The magnitude of the stresses and the deep seated origin of these stresses also have caused extensive volcanism. Colorado has many large remnants of Calderas that were active during the orogenic activity. The Silverton and Lake City Calderas are the largest in the San Juan region. Activity in the Silverton Caldera has been estimated (radiometrically) to have occurred 22 million years ago. Calderas of this magnitude are believed to have formed by the collapse of epierogenic magma chambers. Volcanic and metamorphic rock bodies are common in the San Juan region, many of these units are related to the orogenic activity in the region.

Faults associated with local orogenic activity are another common geologic feature found in southwestern Colorado. As stated previously, extreme stresses were probably associated with the formation of the San Juan Mountains and may be responsible for deep-seated volcanic and metamorphic processes. These stresses had to be released, the geologic mode for stress release is faulting. Diastrophic activity in the area today is quite low, the lack of seismic activity indicates that stresses are not currently being released. An explanation for the loss of stresses is through faulting.

The last episode of regional geologic activity in the area was glaciation. The most recent period of glacial activity ended approximately 10,000 years ago. Glacial activity is responsible for much of the topographic expression in the area. "U-Shaped" valleys, moraine deposits, tarns, (glacial formed lakes), and rock glaciers are the most prominent features which are found in southwestern Colorado as a result of glacial activity. The valley configurations are a result of the erosional activity of the glaciers. Moraine deposits developed during the glacial activity. Rock glaciers are moving masses of rock which are thought to have an ice core which may be the last remnant of glacial ice. As the surbsurface ice core moves and melts, the overlying mass of rock also moves.

APPENDIX D

GENERAL GEOTECHNICAL ENGINEERING CONSIDERATIONS

D1.0 INTRODUCTION

Appendix D presents general geotechnical engineering considerations for design and construction of structures which will be in contact with soils. The discussion presented in this appendix are referred to in the text of the report and are intended as tutorial and supplemental information to the appropriate sections of the text of the report.

D2.0 FOUNDATION RECOMMENDATIONS

Two criteria for any foundation which must be satisfied for satisfactory foundation performance are:

- contact stresses must be low enough to preclude shear failure of the foundation soils which would result in lateral movement of the soils from beneath the foundation, and
- settlement or heave of the foundation must be within amounts tolerable to the superstructure.

The soils encountered during our field study have varying engineering characteristics that may influence the design and construction considerations of the foundations. The characteristics include swell potential, settlement potential, bearing capacity and the bearing conditions of the soils supporting the foundations. The general discussion below is intended to increase the readers familiarity with characteristics that can influence any structure.

D2.1 Swell Potential

Some of the materials encountered during our field study at the anticipated foundation depth may have swell potential. Swell potential is the tendency of the soil to increase in volume when it becomes wetted. The volume change occurs as moisture is absorbed into the soil and water molecules become attached to or adsorbed by the individual clay platlets. Associated with the process of volume change is swell pressure. The swell pressure is the force the soil applies on its surroundings when moisture is absorbed into the soil. Foundation design considerations concerning swelling soils include structure tolerance to movement and dead load pressures to help restrict uplift. The structure's tolerance to movement should be addressed by the structural engineer and is dependent upon many facets of the design including the overall structural concept and the building material. The uplift forces or pressure due to wetted clay soils can be addressed by designing the foundations with a minimum dead load and/or placing the foundations on a blanket of compacted structural fill. The compacted structural fill blanket will increase the dead load on the swelling foundations soils and will

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increase the separation of the foundation from the swelling soils. Suggestions and recommendations for design dead load and compacted structural fill blanket are presented below. Compacted structural fill recommendations are presented under COMPACTED STRUCTURAL FILL below.

D2.2 Settlement Potential

Settlement potential of a soil is the tendency for the soil to experience volume change when subjected to a load. Settlement is characterized by downward movement of all or a portion of the supported structure as the soil particles move closer together resulting in decreased soil volume. Settlement potential is a function of;

- foundation loads,
- . depth of footing embedment,
- . the width of the footing, and
- . the settlement potential or compressibility of the influenced soil.

Foundation design considerations concerning settlement potential include the amount of movement tolerable to the structure and the design and construction concepts to help reduce the potential movement. The settlement potential of the foundation can be reduced by reducing foundation pressures and/or by placing the foundations on a blanket of compacted structural fill. The anticipated post construction settlement potential and suggested compacted fill thickness recommendations are based on site specific soil conditions and are presented in the text of the report.

D2.3 Soil Support Characteristics

The soil bearing capacity is a function of;

- . the engineering properties of the soil material supporting the foundations,
- . the foundation width,
- . the depth of embedment of the bottom of the foundation below the
- lowest adjacent grade,
- . the influence of the ground water, and
- . the amount of settlement tolerable to the structure.

Soil bearing capacity and associated minimum depth of embedment are presented in the text of the report.

The foundation for the structure should be placed on relatively uniform bearing conditions. Varying support characteristics of the soils supporting the foundation may result in nonuniform or differential performance of the foundation. Soils encountered at foundation depths may contain cobbles and boulders. The cobbles and boulders encountered at foundation depths

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may apply point loads on the foundation resulting in nonuniform bearing conditions. The surface of the formational material may undulate throughout the building site. If this is the case it may result in a portion of the foundation for the structure being placed on the formational material and a portion of the foundation being placed on the overlying soils. Varying support material will result in nonuniform bearing conditions. The influence of nonuniform bearing conditions may be reduced by placing the foundation members on a blanket of compacted structural fill. Suggestions and recommendations for constructing compacted structural fill are presented under COMPACTED STRUCTURAL FILL below and in the text of the report.

D3.0 COMPACTED STRUCTURAL FILL

Compacted structural fill is typically a material which is constructed for direct support of structures or structural components.

There are several material characteristics which should be examined before choosing a material for potential use as compacted structural fill. These characteristics include;

- . the size of the larger particles,
- . the engineering characteristics of the fine grained portion of material matrix,
- the moisture content that the material will need to be for compaction with respect to the existing initial moisture content,
- . the organic content of the material, and
- . the items that influence the cost to use the material.

Compacted fill should be a non-expansive material with the maximum aggregate size less than about two (2) inches and less than about twenty five (25) percent coarser than three quarter (3/4) inch size.

The reason for the maximum size is that larger sizes may have too great an influence on the compaction characteristics of the material and may also impose point loads on the footings or floor slabs that are in contact with the material. Frequently pit-run material or crushed aggregate material is used for structural fill material. Pit-run material may be satisfactory, however crushed aggregate material with angular grains is preferable. Angular particles tend to interlock with each other better than rounded particles.

The fine grained portion of the fill material will have a significant influence on the performance of the fill. Material which has a fine grained matrix composed of silt and/or clay which exhibits expansive characteristics should be avoided for use as structural fill. The moisture content of the material should be monitored during construction and maintained near optimum moisture content for compaction of the material.

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Soil with an appreciable organic content may not perform adequately for use as structural fill material due to the compressibility of the material and ultimately due to the decay of the organic portion of the material.

D4.0 RADON CONSIDERATIONS

Information presented in "Radon Reduction in New Construction, An Interim Guide: OPA-87-009 by the Environmental Protection Agency dated August 1987 indicates that currently there are no standard soil tests or specific standards for correlating the results of soil tests at a building site with subsequent indoor radon levels. Actual indoor levels can be affected by construction techniques and may vary greatly from soil radon test results. Therefore it is recommended that radon tests be conducted in the structure after construction is complete to verify the actual radon levels in the home.

We suggest that you consider incorporating construction techniques into the development to reduce radon levels in the residential structures and provide for retrofitting equipment for radon gas removal if it becomes necessary.

Measures to reduce radon levels in structures include vented crawl spaces with vapor barrier at the surface of the crawl space to restrict radon gas flow into the structure or a vented gravel layer with a vapor barrier beneath a concrete slab-on-grade floor to allow venting of radon gas collected beneath the floor and to restrict radon gas flow through the slab-on-grade floor into the structure. These concepts are shown on Figure D1.

If you have any questions or would like more information about radon, please contact us or the State Health Department at 303-692-3030.



(*Updated 2023.5.5*)

Legal Table of Contents

- Consolidated Application Narrative for Major PUD Amendment, Major Subdivision and Rezoning
- Amended and Restated Development Agreement

 updated draft included in attachment 3a.
- Amended and Restated Hotel Covenant
 draft on file with staff, provided at second reading
- Easement and License Documents
 - Easement Amendment (Plaza Usage)
 -documents indicate staff can review and approve unless
 - Easement Amendment (Permanent Structures) council would like to see these drafts at second reading
 - Easement Amendment (Vehicular Access)
 - Easement Agreement (Utilities)
 - License Amendment/Partial Termination (Utilities)
 - Termination of Easement (Mountain Village Boulevard Work)
 - Termination of Easement (Pedestrian Access)

Consolidated Major PUD Amendment Application, Major Subdivision and Rezoning Application – Narrative Lot 109R, Town of Mountain Village, San Miguel County, Colorado

Submitted May 2, 2023

Tiara Telluride, LLC, a Colorado limited liability company ("Tiara") submits this consolidated development narrative (this "Development Narrative") in connection with its Major PUD Amendment Application ("Application") with respect to Lot 109R, Town of Mountain Village, San Miguel County, Colorado ("Lot 109R"), according to the plat recorded in the office of the Clerk and Recorder of San Miguel County (the "Clerk's Office") March 18, 2011 at Plat Book 1, Page 4455, Reception No. 416994 (the "2011 Replat"). Tiara is the current owner of Lot 109R. The Application seeks to amend an existing PUD originally known as the Mountain Village Hotel Planned Unit Development and approved by the Town pursuant to Resolution No. 2010-1208-31 (the "2010 PUD"). The Town of Mountain Village (the "Town") is the owner of an immediately adjacent parcel identified as Tract OS-3-BR-2 ("OS-3-BR-2") on the 2011 Replat. A Major Subdivision Application for Lot 109R and OS-3-BR-2 (the "Subdivision") and a Design Review Process Application (the "DRB Application") for Lot 109R has been previously submitted in connection with the Application and is addressed by this consolidated Development Narrative.

As a supplement to previously-provided information, this updated Development Narrative is being submitted to highlight changes to the previously submitted Application, and specific issues raised by staff. The concepts set forth herein are explained in detail in the draft Development Agreement submitted with this Application.

Summary

Tiara has met with Staff at least twice weekly since the March Council meeting. Tiara has listened and responded to staff's direction and requests in incorporating changes in this submission. Tiara is confident that this submission achieves the Town's goals for this project, which will provide significant Public Benefits and Public Improvements in exchange for a limited request as to use of Town-owned land and minimal variations from Community Development Code ("CDC") requirements.

PUD AMENDMENT

Question of Ownership and Maintenance of Snowmelt Boilers, Parking Area, Stormwater and Sewer

Tiara will own and maintain all snowmelt boilers, parking areas (except for parking in the trash area, which the town owns), stormwater and sewer lines at its sole cost and expense. The Town will be granted an easement or license to be able to access and maintain such items.

Encroachments

Tiara has significantly reduced its requested encroachments from prior submissions, which include only retail overhang awnings in the plaza area. Utilities are located in areas designated by staff and are in areas either (a) designated for utilities or (b) on private land specifically approved by such private land owner. Tiara acknowledges the location of utilities is subject to the review of staff and approval of Council.

Snowmelting All Traffic/Circulation Areas

Tiara has agreed to snowmelt all traffic and circulation areas, including those on OS-3BR-2 and will own, operate and maintain the snowmelt systems at its sole cost and expense. All snowmelt systems will comply with CDC guidelines and will not use any electrical heating elements.

Town Trash Shed and Boilers

Tiara has removed the boilers from the Town Trash Shed and relocated them to an area within Tiara's property, reducing the size of the trash shed, and allowing for additional parking in this area. Tiara will continue to look for a new location for the trash shed, which would require an acquisition of land elsewhere in Town. In the event Tiara can identify and acquire a suitable alternative site acceptable to the Town, the Development Agreement will provide for a process by which the trash shed can be relocated without having an effect on the rest of the project approvals.

Parking

Tiara has restructured the parking area to provide for 48 public parking spaces. In order to accomplish this, some of the commercial parking spaces will be accessed through a vehicle elevator system that can accommodate passenger vehicles and SUVs, as well as tandem parking. Both tandem parking and vehicle elevator parking will be managed by a valet company and not subject to public use (i.e. only for commercial uses). Up to five commercial spaces can be removed for a fee of \$100,000 per space to accommodate structural columns or other structure/engineering related changes to the garage area, should that prove necessary in connection with final engineering and building permit issuance. Public Parking will not be reduced below 48 spaces.

COMMERCIAL	SQUARE FOOTAGE	AMOUNT PER	TOTAL REQ'D		TOTAL PROVIDED
COMMERCIAL LOW INTENSITY (RETAIL, SPA,	Contract of	Total Control			
MARKET)	17,000	1/1000	17		17
COMMERCIAL HIGH USEAGE (RESTAURANT,	E 000	4/500	44.040		40
LOUNGE, WEDDING VENUE, OFFICE)	5,609	1/500	11.218	2.02	12
	SUB-TOTAL	REQUIRED	29	SUB- TOTAL	29
The state of the s	OOD TOTAL	AMOUNT	TOTAL	TOTAL	TOTAL
FER 2011 DOGS	QUANTITY	PER	REQ'D		PROVIDE
PUBLIC	48		48		48
DEDICATED HOA MAINTENANCE	1		1		1
				SUB-	
	SUB-TOTAL	REQUIRED	49	TOTAL	49
EMPLOYEE	,				
DEDICATED EMPLOYEE DORM SPACES	18	1	18		18
DEDICATED EMPLOYEE APARTMENT SPACES	2	1	2		2
				SUB-	
	SUB-TOTAL	REQUIRED	20	TOTAL	20
SOTEL					
1 SPACE PER CONDO TOTAL CONDOS	20	1	20		20
LODGE	31	0.5	15.5		16
EFFICIENCY	50	0.5	25		25
	SUB-TOTAL	REQUIRED	60.5	SUB- TOTAL	61
TOTAL LOT 109R2 PARKING R	FOURED /	PROVIDED	158.5		159

ACCESS/BLE	REQ'D	1106.5 VAN SPACES	TOTAL REQ'D	TOTAL PROVIDED
IBC TABLE 1106.1				
151 to 200	6		6	6
1106.5 For every six or fraction of six accessible				
parking spaces, at least one shall be a van accessible	1/6		1	111
parking space.				
TOTAL LOT 109R AG	CESSIB	E PARKING	1	6

COMPACT	ALLOWED	TOTAL	TOTAL ALLOWED	TOTAL PROVIDED
17.5.8 Parking Regulations c. Up to ten percent (10%) of the required parking may be provided in designated compact motor vehicle spaces that measure nine feet in width (9') and sixteen feet in length (16'). Compact motor vehicle spaces shall be designated as a general common element and be signed as compact parking spaces.	10%	158.5	15.85	13

Public Improvements and Public Benefits

The most recent staff-approved public improvements and public benefits charts are included as $\underbrace{Exhibit\ A}$... Tiara has had a third party prepare value estimates but is comfortable if the Town pursues a third party analysis of the valuation.

Deed Restriction- Employee Units and Hotel Covenant

Cyndi Stovall of Sherman and Howard has communicated with David McConaughy and provided drafts of these documents for review.

Legal Agreements

Staff and Town Attorney have agreed with Tiara on a list of all required legal documents and a timeline for submission. Tiara has worked within that timeline and submitted all necessary documents for a First Reading. These documents are subject to further negotiation prior to First Reading. These documents contemplate the application of all terms and conditions of the PUD, as amended, and the Development Agreement to all land that will be included in Lot 109R at the conclusion of the approval process for the PUD Amendment, re-subdivision and rezoning.

Drawing Inconsistencies

Tiara has prepared an entire new set of design documents for review by the Town. This new set should be the basis of Town review and staff should not look to prior drafts for consistency.

Criteria

The PUD Application meets the criteria for approval set forth in the CDC as follows:

- 1. The proposed PUD Amendment is in general conformity with the policies, principles and standards set forth in the Comprehensive Plan.
 - The Comprehensive Plan provides the following subarea goals for the Village Center Subarea:
 - Focus high density, mixed-use development in Mountain Village Center by significantly increasing the hotbed inventory to improve the overall economic viability and activity in Mountain Village Center and the town as a whole.
 - Develop additional spa and restaurant spaces designed to fit the needs of each hotbed project
 - Prioritize pedestrian circulation to and within Mountain Village Center
 - Integrate deed restricted dorm units into future hotbed projects
 - Provide a coordinated, combined development plan between multiple property owners on Parcel D Pond Lots, Parcel E Le Chamonix, Parcel F Lot 161-CR and Parcel G Gondola Station to maximize the number of hotbed units, attract a significant flagship hotel operator and provide enhanced retail, restaurant, open space and recreational amenities
 - Provide direct, year-round, at-grade pedestrian connection for all hotbed projects in Mountain Village Center by sidewalks and appropriate dark-sky lighting
 - Develop an improved wayfinding program specifically to direct visitors to key activity centers such as Mountain Village Center
 - This Application is certainly in conformity with the comprehensive plan for the Village Center Subarea, in that it directly advances each and every one of these goals.

- 2. The proposed PUD Amendment is consistent with the underlying zone district and zoning designations on the site or to be applied to the site unless the PUD is proposing a variation to such standards.
 - Lot 109R is currently zoned "Village Center" which allows for the construction of multifamily dwellings, including lodge units, efficiency lodge units, condominium units, workforce housing units, hotel units, hotel efficiency units, commercial uses, resort support uses, conference uses, plaza uses, special events, tramways, ski resort uses and other similar uses.
 - The proposed use is consistent with the underlying zone district, and variations to CDC standards are addressed in the Development Agreement.
- 3. The development proposed for the PUD Amendment 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 Amendment area and the public in general.
 - This is certainly a unique and creative approach to the development of a very challenging site, especially as it incorporates more employee housing than required within the hotbed project
 - This project can only be accomplished through a PUD
 - As discussed, in addition to the legally defined public benefits, there are significant amenities available to residents and the public.
- 4. The proposed PUD Amendment is consistent with and furthers the PUD purposes and intent.
 - The stated intent in 17.4.12.A.1-6 is to:
 - Permit variations from the strict application of certain standards of the CDC in order to allow for flexibility, creativity and innovation in land use planning and project design;
 - Allow for a creative planning approach to the development and use of land and related physical facilities to produce a better development;
 - Provide for community benefits:
 - Promote and implement the Comprehensive Plan;
 - Promote more efficient use of land, public facilities and governmental services; and
 - Encourage integrated planning in order to achieve the above purposes.
 - The project is consistent with and furthers each of these elements.
 - Certain variations from the strict application of CDC standards is necessary.
 - The project involves is a creative approach to the development of the property, which is particularly reflected in the unique design that complements the natural environment.
 - The project provides significant community benefits as identified in the public benefits chart, as well as additional benefits described in the Application.

- The project promotes and implements a number of important objectives of the Comprehensive plan, particularly relating to the development of the Mountain Village Center Subarea, and the delivery of hotbeds.
- The project promotes the more efficient use of land, public facilities and governmental services, including, without limitation, through snowmelt and trash shed improvements.
- The project involves integrated planning, including by, without limitation, improving pedestrian circulation through the Village Core.

5. The PUD Amendment meets the PUD general standards.

- The General Standards are found at 17.4.12.I, and are met as follows:
 - i. This Application was filed by the landowner
 - ii. The property is eligible as it is a single parcel of land controlled by a single landowner (as replatted)
 - iii. There is no minimum size of land area required
 - iv. Minimum density of fifty units is met
 - v. Rezoning requests have been filed
 - vi. Application meets the requirements of a prior-approved PUD.
 - vii. Concurrent Density application has been made
 - viii. Landscaping and Buffering is part of the project and utilized to create attractive public spaces consistent with the surrounding environment
 - ix. Sufficient Infrastructure has been presented as part of the application
 - x. There is no phasing requested for construction of the Hotel Building. Construction of the town owned trash facility shall be phased to not interrupt usage of the trash facility and surrounding property.

6. The PUD Amendment provides adequate community benefits.

- The Community Benefits Table is attached hereto as **Exhibit A**.
- These benefits go above and beyond those presented in the 2010 PUD, and justify the amendment to the 2010 PUD and inclusion of small portions of OS-3BR-2 into the PUD.

7. Adequate public facilities and services are or will be available to serve the intended land uses.

- Applicant has presented its plan for expanding public facilities at its expense to serve the intended land uses as necessary.
- 8. The proposed PUD Amendment shall not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion.
 - Through this project, pedestrian circulation is improved and the new trash facility decreases congestion;

- Parking is no longer surface parking subject to congestion, but inside of a covered garage with a detailed circulation plan;
- Tiara's traffic engineer has presented a vehicular circulation plan that does not create any hazards;
- Service delivery is contemplated within the new parking area and improved over existing surface-only locations.
- 9. The proposed PUD Amendment meets all applicable Town regulations and standards unless a PUD Amendment is proposing a variation to such standards.
 - The proposed PUD meets all current Town regulations, except for specified variation requests to current standards as set forth in the Development Agreement or previously approved pursuant to the 2010 PUD.

MAJOR SUBDIVISION AND REZONING

Tiara proposes a design for the building with a more rounded shape sensitive to the topography of the land and surrounding properties within the Village Center. In order to accommodate this new shape, Tiara proposes a subdivision of portions of OS-3-BR-2 and 109R in accordance with **Exhibit B** attached hereto. Tiara has also submitted an Application for Rezoning requesting that the land that is replatted to 109R is also rezoned consistent with all terms and conditions of the applicable PUD Amendment.

Purchase of Additional Land

The Subdivision involves a land swap resulting in the Town receiving a net positive amount of land. Additionally, at the request of staff, Tiara has agreed to purchase an additional piece of land that will allow for boilers and parking ventilation to be located on property owned by Tiara, rather than on land that is owned by the Town and subject to easements granted to Tiara. This land is depicted in **Exhibit B**. It consists of 551 sf, and will be purchased at a market rate price of \$194.00 per square foot, for a total of \$106,894.

Easements

In connection with the proposed subdivision Tiara also proposes to modify certain easements benefiting and burdening Lot 109R as depicted in <u>Exhibit C</u>.

Plats

There are two versions of the Plats attached hereto as **Exhibit D**. The first version (page E-2) would apply in the event the pending resubdivision application of OS-3-BR-2 by the Lot 161CR owner <u>is not</u> approved prior to the recording of the Plat submitted by Tiara. The second version (page E-4) would apply in the event the pending resubdivision application of OS-3-BR-2 by the Lot 161CR owner <u>is</u> approved prior to the recording of the Plat submitted by Tiara.

Another replat of OS-3BR-2 is currently being processed. If that other replat is completed, the revised OS-3BR-2 will be designated as OS-3BR-2R-1R when replatted pursuant to our proposal. If the other replat has not been completed, the revised OS-3BR-2 will be designated as OS-3BR-2R pursuant to our proposal. References herein to OS-3BR-2 include the applicable revised version of OS-3BR-2. Following our proposed replat, regardless of the status of the other pending replat of OS-3BR-2, the existing site designated Lot 109R will be designated Lot 109R2, and references herein to Lot 109R include Lot 109R2.

Criteria

The Subdivision Application meets the criteria for approval set forth in the CDC § 7.4.13(E)(1). as follows:

1. The proposed subdivision is in general conformance with the goals, policies and provisions of the Comprehensive Plan;

The proposed subdivision is in general conformance with the goals, policies, and provisions of the Mountain Village Comprehensive Plan ("MVCP"). The proposed development conforms to the landscape, incorporates a neutral palette, and integrates natural elements. These design choices allow the structure to yield to Mountain Village's Elysian backdrop, deliquescing with seasonal variations in color and texture. The subdivision promotes connectivity and economic vitality, providing conference facilities, employee housing, hotbeds, and pedestrian connections, together creating an environment consistent with MVCP's focus on destination marketing, group sales, and transportation. The proposal is also consistent with the nearby redevelopment plan for Parcel B SHIRANA as set forth in the MVCP, which contemplates redevelopment to provide hotbeds and inclusion into the Mountain Village PUD in order to provide the efficient and holistic development of the entire area.

2. The proposed subdivision is consistent with the applicable Zoning and Land Use Regulations and any PUD development agreement regulating development of the property;

The proposed subdivision is consistent with applicable Zoning and PUD development agreements regulating development of the property, as they would be amended in accordance with PUD Amendment Application.

3. The proposed density is assigned to the lot by the official land use and density allocation, or the applicant is processing a concurrent rezoning and density transfer;

124.5 total units of density have been allocated to the Project pursuant to the Lot 109R PUD and, per the PUD Amendment Application, Lot 109R would include 132.25 units of density. In the PUD Amendment Application Tiara has requested a transfer to the Project of 21 units of density from the Town's density bank and/or the creation and allocation to Lot 109R of 21 units of bonus density for an added Employee Apartment and 18 added Employee Dorms. The Employee Apartments and Employee Dorms will be made subject to Workforce Housing Restrictions in accordance with CDC Section 17.3.9.B and the definition of such term set forth in

CDC Section 17.8.1. Pursuant to CDC Section 17.3.7.B.3 and the definition of Density Limitation set forth in Section 17.8.1, new Workforce Housing density created by the Town subject to the Workforce Housing Restriction (as defined in CDC Section 17.3.9.B) is not included in the density limitation calculation established by agreement between San Miguel County and the Town.

As noted above, the Supplemental Rezoning Application has been submitted concurrently with this Application to rezone those portions of OS-3BR-2 to be incorporated into Lot 109R to PUD consistent with the PUD Amendment Application. The Supplemental Rezoning Application does not contemplate any additional density being created or transferred to Lot 109R beyond the density requested in the PUD Amendment Application.

4. The proposed subdivision is consistent with the applicable Subdivision Regulations;

The subdivision is consistent with applicable Subdivision Regulations as set forth under CDC § 7.4.13.

5. Adequate public facilities and services are available to serve the intended land uses;

There are adequate public facilities and services available to serve the intended land uses.

6. The applicant has provided evidence to show that all areas of the proposed subdivision that may involve soil or geological conditions that may present hazards or that may require special precautions have been identified, and that the proposed uses are compatible with such conditions;

See the geological report submitted with the Application.

7. Subdivision access is in compliance with Town standards and codes unless specific variances have been granted in accordance with the variance provisions of this CDC; and

The subdivision complies with all applicable Town standards and codes, as amended by the Lot 109R PUD and as would be further amended in accordance with PUD Amendment Application.

8. The proposed subdivision meets all applicable Town regulations and standards.

The proposed subdivision meets all applicable Town regulations and standards, as amended by the Lot 109R PUD and as would be further amended in accordance with PUD Amendment Application.

EXHIBIT A

Public Benefits and Public Improvements Tables

PUBLIC BENEFITS

Item		Value	Notes
1.	Onsite deed restricted housing of 2 employee apartments and 18 employee dormitories and 14,455 square feet Mitigation Payment	\$9,950,250 estimated value (kept in one ownership unit). One employee apartment was provided before. \$996,288 (\$250,000 can	
2.	willigation Fayment	be used for the trash enclosure costs)	
3.	One Time Payment per FTE employee		No change from original PUD
4.	48 Public Parking Spaces	\$4,800,000	*work through public parking easement agreement – fees/times/management
5.	50 dedicated hotel rooms	(Kept in one ownership unit)	
6.	Hotel Covenant	Hotel Covenant	Please reference Covenant Documents
7.	Furniture Package		Please reference Covenant Documents
8.	Hotel Operator Requirements		Please reference Covenant Documents
9.	5-star luxury hotel operator	n/a	Please reference Covenant Documents
10.	Public Restroom	\$154,781	
11.	Conference Room Space – use for public at market rates	n/a	
12.	Public Access from Port Cochere to See Forever Plaza through the building (easement)	\$75,000	Access direct from Porte Cochere into See Forever Plaza
13.	Westermere Façade/Breezeway Improvements*	\$75,000	Note in development agreement a lump sum could be provided in lieu of Westermere consent.
14.	Valet Parking	n/a	*Applicant to clarify – different or same as development agreement

15.	Shuttle Service to the Montrose airport for hotel for guests	n/a	
16.	Various easements (See forever and town access to see forever)	n/a	In dev agreement – ok if it's a pub benefit or not.
17.	Stairway to Port Cochere		Public access thru the bldg. to village center
18.	Lodge Units		Can be individually owned, required to be in the rental pool, not an owner's primary residence. Define primary residence and whether length of stay is limited for owners
19.	Additional housing mitigation payment		Depends on worksheet outcome
ТОТ	AL	\$16,171,319	

Public Improvements that are considered public benefits pursuant to the 2010 PUD agreement:

Item		Value
20.	Plaza Improvements (See Forever walkway and Shirana area)	\$1,109,561
21.	,	\$840,625 for Trash Enclosure (1,070 SF) \$400,405 for Surface Improvements (Boilers not included; includes only the 2010 PUD area north of the trash enclosure)
22.	Snowmelting and improving the fire lane	\$189,871
TO	TAL	\$2,140,057.00

Public Improvements also considered a public benefit 2023:

Item		Value
23.	Stairway Access for 89 Lots on Town owned OS-3-BR2 (proposed to be relocated and used for public, not just 89 lot, access and 109R building egress)	\$150,000
24.	Village Pond Improvement Payment	\$250,000

25.	Sidewalk from Shirana to MV Blvd	\$81,146
TOT	AL	\$589,871.00

TOTAL PUBLIC BENEFITS \$_18,901,247

Provided Amenities of note but do not constitute public benefits:

Sustainability Fund committed to be spent	\$350,000*
locally (A Six Senses requirement)	
Silver LEED Certified (a Six Senses	\$2,460,000
requirement)	
TOTAL	\$2,810,000

Other Considerations as part of the PUD agreement

Adding additional approx.: 551 sf of land	Paid for at same rate as the original PUD
to the subdivision	\$194 a square foot
TOTAL	\$106,894

Public Improvements pursuant to the major subdivision – required:

- abile improvemente parcaant to the in	
Item	Value
Sidewalk, lighting and a snowmelted sidewalk Along MV Blvd	\$612,030
Utility relocations/installations as approved by Town Council	\$2,500,000
Repaving Mountain Village Blvd	Replacing a top course of asphalt over 2,309 square yards of asphalt at \$79,213
TOTAL	\$ 3,191,243

Other public improvements – required:

Item	Value
Snowmelting OS-3BR-2 (access area	\$382,575
near trash enclosure; south of the trash	
enclosure)	
Repaving OS-3BR-2 (access area near	\$276,129
trash enclosure; south of the trash	
enclosure)	
Village Center improvements that extend	\$829,219
beyond the original boundary identified in	
the 2010 PUD	
TOTAL	\$ 1,487,923

TOTAL PUBLIC IMPROVEMENTS (ESTIMATE TO DATE) \$ 4,679,166



EXHIBIT B

Subdivision

TRANSFER OF LAND:

OS-3B2-1R TO LOT 109R2 & LOT 109R2 TO OS-3BR2-1R

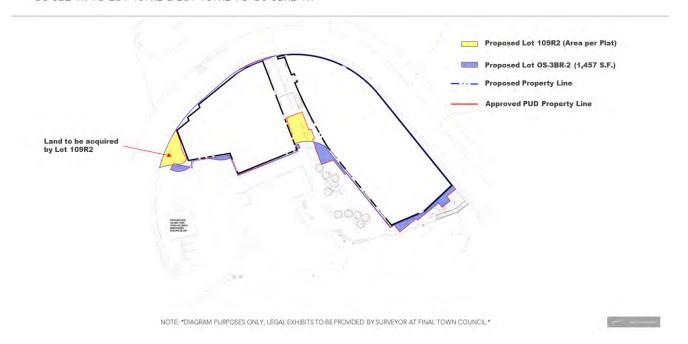
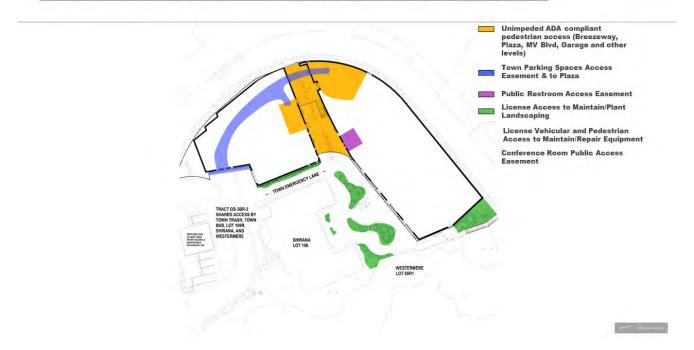


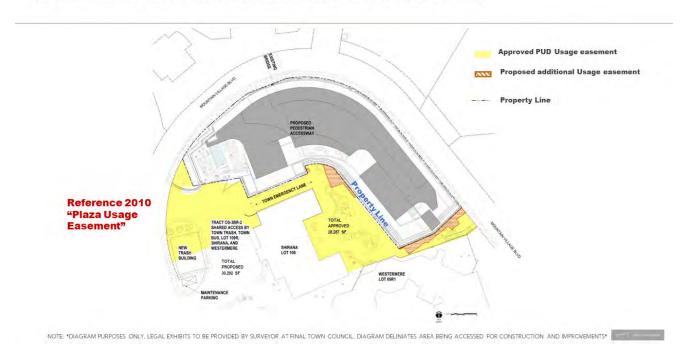
EXHIBIT C

Easements

EASEMENTS & LICENSING GRANTED TO TOWN FROM DEVELOPER:



EASEMENT AGREEMENT (OS-3BR-2 USAGE/SITE UTILITIES):

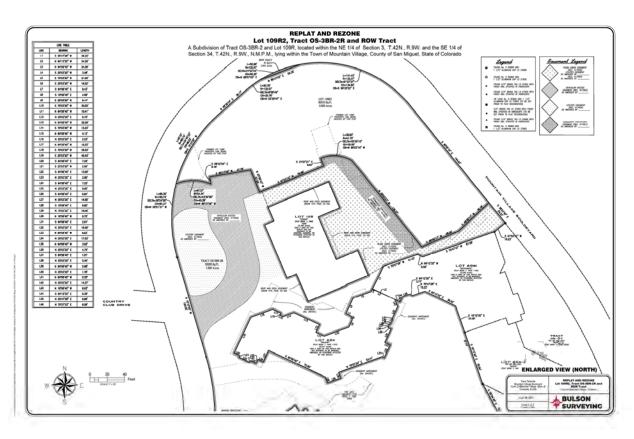


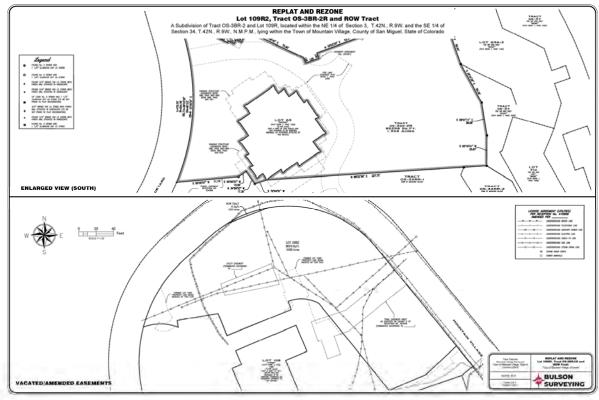
EASEMENT AGREEMENT (PERMANENT UNDERGROUND STRUCTURES): Proposed Permanent Underground Structure Approved Permanent Underground Structure Approved Permanent Underground Structure overlap **Property Line Property Line** TRACT OS-3BR-2 SHARED ACCESS BY TOWN TRASH, TOWN BUS, LOT 109R, SHIRANA, AND WESTERMERE WESTERMERE LOT 69R1 NOTE: *DIAGRAM PURPOSES ONLY, LEGAL EXHIBITS TO BE PROVIDED BY SURVEYOR AT FINAL TOWN COUNCIL. AREAS ARE APPROXIMATE *

EXHIBIT D

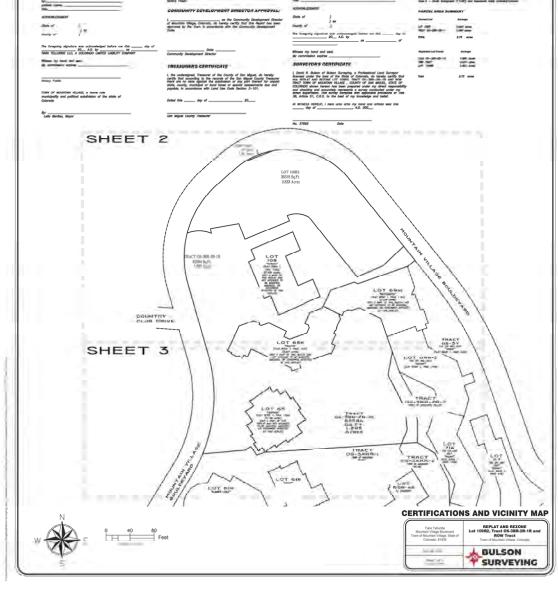
Plats

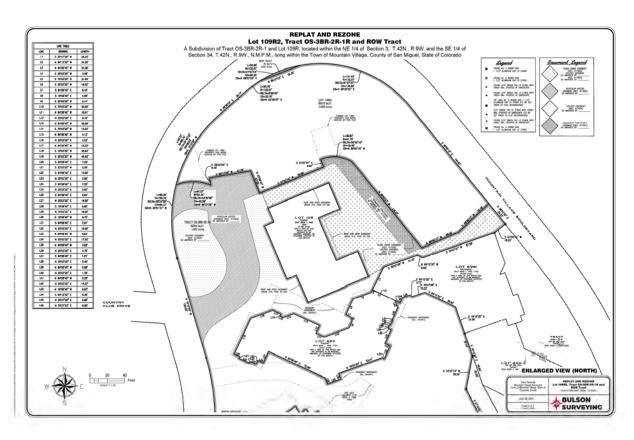
	REPLAT AN		
A. Subdivision of Trac	Lot 109R2, Tract OS-3	BR-2R and ROW Tract in the NE 1/4 of Section 3, T.42N., R IIV	V and the SE 1/4 of
		Mountain Village, County of San Migue	
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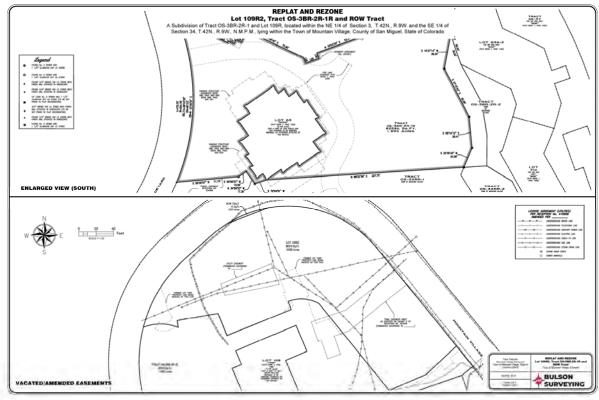




This version reflects the configuration of Open Space surrounding Lot 109R if existing application for replat of Town Open Space is approved REPLAT AND REZONE Lot 109R2, Tract OS-3BR-2R-1R and ROW Tract A Subdivision of Tract OS-3BR-2R-1 and Lot 109R, located within the NE 1/4 of Section 3, T.42N., R.9W. and the SE 1/4 of Section 34, T.42N., R.9W., N.M.P.M., lying within the Town of Mountain Village, County of San Miguel, State of Colorado SINTE OF COLONDO) as. COUNTY OF SAM MICKE.) Subscribed and servin to before an title discuss, and day of the Types of between the titles of an annual titles, as there is the Types of This Rights was filed for record in the office of the Son Miguel County Out and Research on this day of the Son Miguel County of the Son Miguel Co THAN TELLIFICE, LLC — (Title Commitment Percel A) THAT Time Tellurida, LLC, a Colorodo Smited Roblity company ("THAN TELLIFICE"), is the owner in fee simple of: Approved of this plot map create a medial property right pursuant to Article 68 of 150 ± 24 , C.R.S., as amended. Pidelly National Title Company, Order Number 150-F17790-EE dated October 5, 2022 of 08:00 AM on to Lot 100R Signal and representations Son Might Grady Dark and Recorder TITLE INSURANCE COMPAN SKSCI OF BENERICS. The bearing from monoment "Drespose" to monoment. "Rim", as shown monomented hereon, was assumed to bear NSI'16'24'W according to Bunner Associates, Inc. project Searings. Notice is hereby given that the area statuted in the plot described herein is subject to the regulations of the Land Use Ordinance, of the Town of Mountain Village, December 2003 on amended. The Late 10002, FOW THACT and TOACT Of -300-30-10; The Rollwing Into/house how been deleted by this paid. Let 10002 THACT OS -300-20-1 The approved of this Flot Amendment vocates all prior plats and Lot boundary lines for the area described in the Legal Description as shown hereon in the carathoots of Chimeraly. NOTICE According to Colorado law you must commence any legal action obtains upon artists: In this extrapy attains stress places with you found distance guide affects: It is a securi day may before putter to be part of the putter of the putter of the guide of the (, ..., or the Community Development Director of Hunton Hillips, Cobrook, do hardy cardly that this Replat has been ejerved by the Corn. In administrate with the Community Development E and checked aroun network and seein projected society my areast responsibility in an array conducted society my direct appearance. This survey complete sittle applicable society my direct appearance. This survey complete sittle applicable provisions or little 38, Artitus 51, CARS, to the best of my knowledge and belief. IN MINESS MEREOF, I have unto office my hand and official No. 37863 SHEET 2 LOT 109R2 36319 Sq.Ft. 0.833 Acres CLUB DRIVE SHEET 3







REVISIONS KEY NOTES INDEX

CLOUDS DELINEATE AREAS THAT HAVE BEEN REVISED AND ARE NO LONGER CURRENT IN MOST RECENT SUBMISSION

- 1. SUBMITTAL DATE IS CLOUDED TO REFLECT SHEETS WITH REVISIONS FROM SUBMITTAL DATED 05.02.2023. (PER STAFF REQUEST IN LIEU OF RESUBMITTING FINAL SUBMITTAL RE-DATED WITH CONSISTENT DATES ON ALL SHEETS.)
- 2. REVISION CHANGED ORDER TO INCLUDE DESIGN VARIATIONS BEFORE DESIGN NARRATIVE PER STAFF REQUEST.
- 3. ADJUSTED AREA PLANS TO FIX ERRORS. (FOR EXAMPLE, FIXED COLOR ON GRAPHIC TO CLARIFY BOH AT LEVEL 3 ON NET AREA PLAN IS INCLUDED IN NET AREA CALCULATION).
- 4. REVISION CLARIFIES EMPLOYEE DORM INCLUDES 3 BEDS.
- 5. REVSION RESPONDS TO STAFF COMMENT ON CDC ALLOWED PITCH (CIVIL HAS REVIEWED WITH CHAD HILL AT SGM, ALIGNMENT AND PROFILE ARE TAKEN AT GUTTER, THE CENTERLINE SLOPE AND GRADE IS LISTED ON PLAN).
- 6. REVISION RESPONDS TO STAFF COMMENT ON COMMERCIAL INGRESS PROFILE LOCATIONS
- 7. REVISION RESPONDS TO STAFF ACCEPTANCE OF BLACK HILLS GAS AND DIRECTOR OF PUBLIC WORKS APPROVED GAS REGULATOR LOCATION.
- 8. REVISION RESPONDS TO STAFF COMMENT FOR DEVELOPPER TO PROVIDE ADDITIONAL SNOWMELTED SIDEWALK (REMOVED TEXT "HEATED SIDEWALK BY TMV")
- 9. ADDED NOTE TO CLARIFY BOILER VAULT ACCESS (REMOVABLE CONCRETE LID WITH LANDSCAPING ON TOP. VAULT TO BE SIMILAR TO BELOW GROUND VAULTS TYPICAL THROUGHOUT MOUNTAIN VILLAGE.)
- 10. CLOUDED DIMENSION CLARIFIES STAFF REQUEST OF AASHTO COMPLIANCE FOR 18 FOOT DRIVE AISLE REDUCTION AT VEHICLE CIRCULATION WHERE THERE IS NO PARKING, THUS 24 FOOT BACKUP SPACE IS NOT CODE REQUIRED.
- 11. SHEET REPLACED FOR IMPROVED GRAPHIC QUALITY.
- 12. REVISION CLARIFIES QUANTITY AND DURATION OF PARKING AT HERITAGE OR GPC.
- 13. REVISION CLARIFIES FUNCTION OF TEMPORARY LIFT AT SHIRANA.
- 14. REVISION CLARIFIES TEMPORARY PEDESTRIAN PATH TO SEE FOREVER.
- 15. REVISION CLARIFIES NO LOADS ARE SWUNG OVER MOUNTAIN VILLAGE BLVD.
- 16. LIGHTING VARIATION VERBIAGE REVISED PER STAFF'S REQUEST.
- 17. NEW SHEET ADDED TO CONSTRUCTION MITIGATION NARRATIVE.
- 18. INCORPORATED SURVEY UPDATE FOR TOPOGRAPHY ON NORTH SIDE OF MOUNTAIN VILLAGE BLVD MATCHING CIVIL DRAWINGS.

COUNCIL SUBMITTAL
06.07.2022
LOT 109R PUD AMENDMENT TOWN
COUNCIL CONTINUANCE SUBMITTAL
08.08.2022

LOT 109R PUD AMENDMENT FINAL DRB SUBMITTAL 10.21.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022 LOT 109R PUD AMENDMENT TOWN COUNCIL FIRST READING

06.01.2023

2

Design Table of Contents

- Design Variations
- Design Narrative
- Replat and Rezone
- Design Documents
- Final DRB Approved Design Documents with Cloud Revisions
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 - A Drive Aisle Reduction
 - B Fireplace Permit
 - C Solar Panel
 - D Bird Glass
 - E Traffic Circulation Study
 - F Bird Glass Spec
 - G Car Elevator Spec
 - H Diagram of Suburban Vehicle Elevator Access
 - I − Lot 109R2 Gas Reg
 - J Plaza Improvements
 - K Proposed Switchgear and Gas Reg Location
- Will Serve Letters
 - Water and Sewer
 - Gas
 - Electric
- 3D Viewer Link
- Construction Mitigation Narrative
- Construction Mitigation Exhibits
 - C-1 PROTECTED PEDESTRIAN ACCESS & LOT 109R2 CONSTRUCTION FENCING/BARRICADE & ACCESS
 - C-2 TEMPORARY CRANE SWING AND OS-3BR2 PHASING
 - C-3 SHORING
 - C-4 TEMPORARY SHORING SECTIONS
 - C-5 TEMPORARY SHORING NAILS
 - C-6 CONSTRUCTION FACILITIES
 - C-7 EXISTING CONDITIONS PHASING AND CIRCULATION
 - C-7A Trash Truck AutoTurn Movement Entering Parking Position from Southern Access
 - C-7B Trash Truck AutoTurn Movement Repositioning to Exit Parking Position
 - C-7C Trash Truck AutoTurn Movement Exiting the Parking Position
- Geotech Report



17.5.6.I.1 DECKS AND BALCONIES shall be designed to enhance the overall architecture of the building by creating variety and detail on exterior elevations. Combinations of covered decks, projecting balconies and bay windows shall be used.

We are requesting removal of the requirement to incorporate bay windows as this requirement negatively impacts the architecture. The balconies may require a variance if deemed long and continuous bands.

17.5.8.C.3 PARKING REGULATIONS

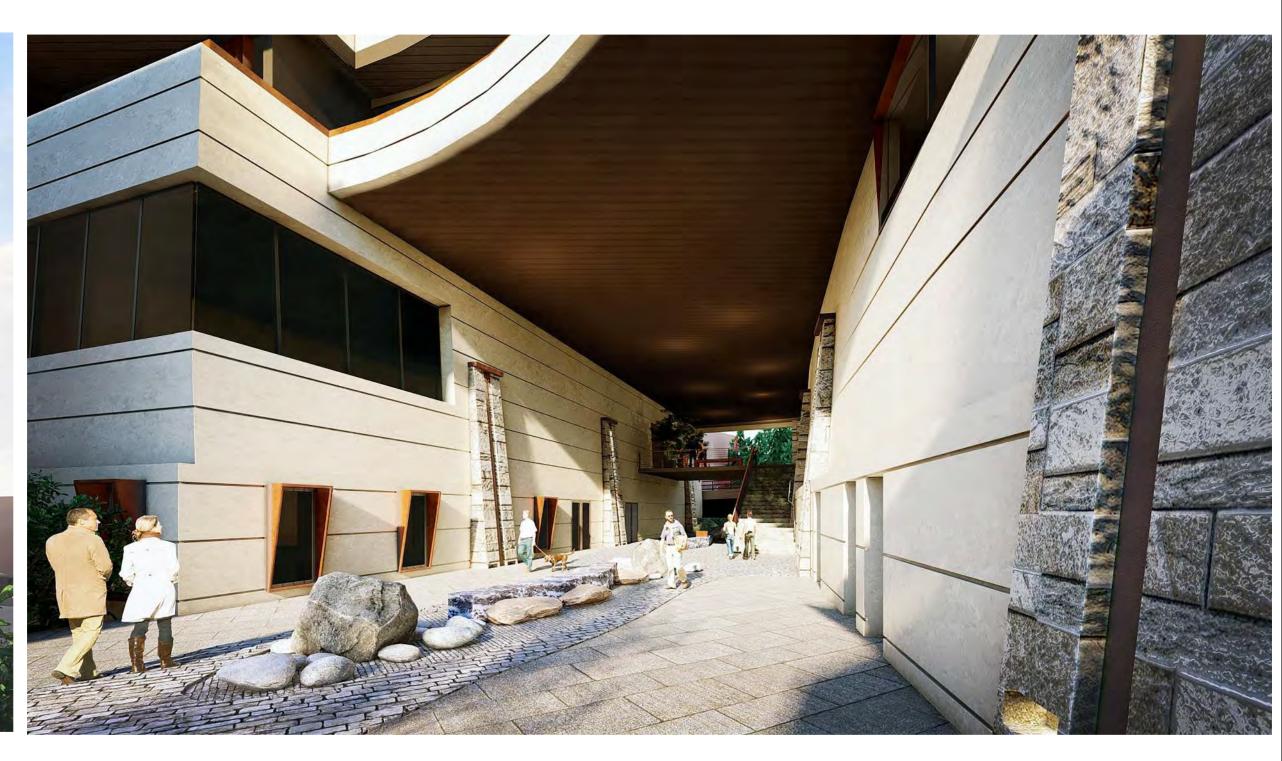
Aisle Width. The driveway and aisle width for either surface lots or parking garages shall be twenty-two feet (22').

We are requesting approval of a reduction of this requirement to 18' min. for aisles without parking spaces as is a standard garage drive aisle width. Fire Marshal approval has been provided.

17.5.12 LIGHTING

Per DRB condition #30 for any lighting variations.

16



PROJECT INFORMATION

PROJECT LOCATION

MOUNTAIN VILLAGE, CO

ZONING AND DESIGNATION:

ZONE DISTRICT - VILLAGE CENTER

LOT 109R2 - MAJOR PUD AMENDMENT

LOT 109R2 TELLURIDE MOUNTAIN VILLAGE ACCORDING TO THE REPLAT OF LOTS 73-76R, 109, 110, TRACT 89-A AND TRACT OS-3BR-1 RECORDED MARCH 18, 2011 IN PLAT BOOK 1 AT PAGE 4455, COUNTY OF SAN MIGUEL, STATE OF COLORADO

PROPOSED PUD AREA:

0.833 ACRES - 36,319 SQ. FT.

<u>17.8.1 LOT COVERAGE:</u> (INCLUSIVE OF COVERED WALKWAYS, PATIOS & DECKS)

34,489 SF /36,319 SF x 100 = 95%

(17.8.1 FLOOR AREA, GROSS) BUILDING AREA:

179,091 SF TOTAL CONDITIONED

84,011 SF PARKING & MECHANICAL - TEMPERED

263,102 SF COMBINED CONDITIONED + TEMPERED

BUILDING HEIGHTS:

MAXIMUM BUILDING HEIGHT: 88' - 9" **AVERAGE BUILDING HEIGHT: 63.61'**

*ADDITIONAL HEIGHT INFORMATION CAN BE FOUND ON SHEETS A-1.11, A-1.12. A-2.02, A-2.03, A-2.04, & A-2.05

PER MOUNTAIN VILLAGE CDC SECTION 1601:

GRND SNOW LOAD: 130 lbs. MIN (standard plus elevation per SEAC Guide) WIND SPEED: 90 MPH (3 sec wind gust) WIND EXPOSURE: C CLIMATE ZONE: 6B SEIMSMIC DESIGN: CLASS C FROST LINE DEPT: 48" TERMITES: SLIGHT TO MODERATE

VICINITY MAP PROJECT LOCATION

SCOPE OF WORK

THE PROPOSED CONCEPT DESIGN IS COMPRISED OF HOTEL WITH EMPLOYEE HOUSING, APARTMENTS, AND CONDOS. THE COMMERCIAL SPACE INCLUDES RETAIL SPACES, RESTAURANTS, BAR, SPA, WEDDING VENUE, MEETING SPACE, AND POOL DECK.

	SHEET NUMBER	SHEET NAME	DRB SUBMITTAL #1 04.24.2022	SPECIAL HEARING SUBMITTAL 05.19.2022	TOWN COUNCIL SUBMITTAL #1 06.07.2022	TOWN COUNCIL SUBMITTAL 08.08.2022	FINAL DRB SUBMITTAL 10.21.2022	TOWN COUNCIL SUBMITTAL 12 16 2022/01 09 2033	TOWN COUNCIL FIRST RD'G FIRST SUBMITTAL 05.02.23 (X) STAFF REQUESTED REVISED SHEETS REDATED 06.01.23 (X1)	SHEET NUMBER
_	GENERAL	OHEET TV WIE	# T 04.24.2022	00.10.2022	00.01.2022	00:00:2022	10.21.2022			A-1.02
0.		COVER SHEET	Х	X	Х	Х	X	X	[X1]	A-1.03
	G-001	FLOOR AREA GROSS	, , , , , , , , , , , , , , , , , , ,						{X1}	71.00
		NET FLOOR AREA							X1 }	A-1.04
	G-003	PLAN DIAGRAMS						X	\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	A-1.05
02	-CIVIL									A-1.06
F-		SITE GRADING WITH GARAGE ACCESS PROFILE	Х	X	Х	Х	Х	X	EX13	A-1.07
	C2.2	SITE GRADING WITH PORTE COCHERE LEVEL	,	,		,	,		{X1}	A-1.08
	C2.3	PROFILES							{X1}	A-1.09
		SNOWMELT DIAGRAM		Х	Х	Х			\(\tau_{\tau}\)	A-1.10
	C3	UTILITY PLAN	Х	X	X	X			<u></u>	A-1.11
	C3.1	UTILITY & STORM DRAIN PLAN					Х	X	\$X13	A-1.12
	C4	CONSTRUCTION MITIGATION PLAN					Х	Х	X	A-2.00
	C5	CONSTRUCTION MITIGATION PLAN					Х	Х	X	A-2.01
	C6	AREA OF POTENTIAL WORK IN TOWN						Х	X	A-2.02
		RIGHT-OF-WAY								A-2.03
03	-LANDSCAP	PE								A-2.04
	L0.02	EXISTING TREE PLAN & REPORT					Х	Х	X	A-2.05
	L1.01	PLAZA LANDSCAPE PLAN					Х	X	X	A-2.10
	L1.02	PLAZA LANDSCAPE MATERIALS					Х	X	X	A-2.21
	L1.03	LANDSCAPE FLOORS 2-5					X	X	X	A-2.22
	L1.04	LANDSCAPE FLOORS 6-7					X	X	X	A-2.23
	L2.01	PLAZA LANDSCAPE BOULDER PLAN					X	X	X,	
	L2.02	SNOWMELT DIAGRAM					Χ	X	₹ <u>X</u> 13	A-2.24
	L2.03	PLAZA IRRIGATION PLAN					Χ	X	X	A-3.00
	L2.04	PLAZA OUTDOOR LIGHTING DIAGRAM					Х			A-111
	L2.05	OUTDOOR LIGHTING DIAGRAM FLOORS 6-7					Х			22 51 5255124
	L4.01	PLAZA PLANTING PLAN					Х	X	X	08-ELECTRICA
05	-ARCHITEC	TURAL							<u></u>	E.100
	A-0.00	ARCHITECTURAL SITE PLAN	X	X	X	X	X	X	₹ <u>X</u> 13	E.101
	A-0.P1	PERSPECTIVE RENDERINGS	X	X	X	X	Χ	X	X	E.102
	A-0.P2	PERSPECTIVE RENDERINGS				X	Х	X	X	E.200
	A-0.P3	PERSPECTIVE RENDERINGS				X	Х	X	X	E.201
	A-0.P4	PERSPECTIVE RENDERINGS					Х	Х	X	E.202
	A-0.P5	PERSPECTIVE RENDERINGS					Х	Х	X	
	A-1.00	FLOOR PLAN - LEVEL G3 OVERALL							X	
	A-1.01	FLOOR PLAN - LEVEL G2 - OVERALL	Х	X	Х	Х	X	X	(X1)	

		SPECIAL REARING	TOWN COUNCIL	TOWN COUNCIL	FINAL DRD		FIRST SUDIVITIAL US.UZ.ZS (A)				SPECIAL REARING	5 TOWN COUNCIL	TOWN COUNCIL	FINAL DRD	TOWN COUNCIL (FIRST SUBMITTAL 03.02.23 (A)
	DRB SUBMITTAL	SUBMITTAL	SUBMITTAL #1	SUBMITTAL	SUBMITTAL		STAFF REQUESTED REVISED)	SHEET		DRB SUBMITTAL	SUBMITTAL	SUBMITTAL #1	SUBMITTAL	SUBMITTAL		STAFF REQUESTED REVISED
SHEET NAME	#1 04.24.2022	05.19.2022	06.07.2022	08.08.2022	10.21.2022		SHEETS REDATED 06.01.23 (X1)	NUMBER	SHEET NAME	#1 04.24.2022	05.19.2022	06.07.2022	08.08.2022	10.21.2022	12.16.2022/01.09.202	SHEETS REDATED 06.01.23 (X1)
								A-1.02	FLOOR PLAN - LEVEL G1 PLAZA - OVERALL	Х	Х	Х	X	X	Χ	(X13)
	Χ	X	X	Х	Χ	X	ξ χ 1}	A-1.03	FLOOR PLAN - LEVEL 1/G1A PARKING -	X	Χ	X	X	X	Χ	ξ χ 1 }
GROSS							\$x1}		OVERALL							£ }
REA							\$X1}	A-1.04	FLOOR PLAN - LEVEL 1 MEZZANINE - OVERALL	X	Х	X	X	X	X	{X1 }
MS						X	ζX1}	A-1.05	FLOOR PLAN - LEVEL 2 - OVERALL	X	Х	X	X	X	X	{X1 }
							₩,	A-1.06	FLOOR PLAN - LEVEL 3 - OVERALL	X	Х	X	X	X	X	{X1 }
WITH GARAGE ACCESS PROFILE	Х	Х	Х	Х	Χ	X	{X1}	A-1.07	FLOOR PLAN - LEVEL 4 - OVERALL	X	X	X	X	X	X	{x1 }
WITH PORTE COCHERE LEVEL							{X1}	A-1.08	FLOOR PLAN - LEVEL 5 - OVERALL	X	X	X	X	X	X	{X1 }
							(X1)	A-1.09	FLOOR PLAN - LEVEL 6 - OVERALL	X	X	X	X	X	X	ξ X 1 }
AGRAM		Х	Х	Х			<u> </u>	A-1.10	FLOOR PLAN - LEVEL 7 - OVERALL	X	X	X	X	X	X	ξ χ 1 }
	X	Х	Х	Х			<u></u>	A-1.11	OVERALL ROOF & MAX HEIGHT PLAN	X	Χ	X	X	X	Χ	X
RM DRAIN PLAN					Х	X	(X13)	A-1.12	AVERAGE HEIGHT PLAN	X	Χ	X	X	X	Χ	X
ON MITIGATION PLAN					Χ	X	X	A-2.00	EXTERIOR MATERIAL ELEVATIONS					X	X	{X1'}
ON MITIGATION PLAN					Χ	X	X	A-2.01	EXTERIOR MATERIAL ELEVATIONS					X	Χ	{X1}
ENTIAL WORK IN TOWN						X	X	A-2.02	NORTH & EAST ELEVATIONS	X	Χ	X	X	X	Χ	X
Y								A-2.03	SOUTHEAST & WEST ELEVATIONS	X	Χ	X	X	X	Χ	Χ
								A-2.04	3D MAX HEIGHT WITH EXISTING TOPO	X	Х	X	Х	Х	Х	X
E PLAN & REPORT					Χ	X	X	A-2.05	3D MAX HEIGHT WITH PROPOSED TOPO	X	Х	X	Х	Х	X	Х
CAPE PLAN					Χ	X	X	A-2.10	GARAGE UTILITY DIAGRAM		Х	X	Х	Х	Х	
CAPE MATERIALS					Χ	X	X	A-2.21	EXTERIOR ELEVATION: SNOW MELT STUDY	X	Х	X	Х	Х	Х	X
LOORS 2-5					Χ	X	X	A-2.22	EXTERIOR ELEVATION: SNOW MELT STUDY	X	Х	X	Х	Х	Х	X
LOORS 6-7					Χ	X	X	A-2.23	TYPICAL DETAILS, WINDOW LEGEND AND DOOR	X	Х	Х	Х	Х	Х	X
CAPE BOULDER PLAN					Χ	X	X		SCHEDULE							
AGRAM					Χ	X	(X1)	A-2.24	TYPICAL DETAILS						X	Χ
TION PLAN					Χ	X	X	A-3.00	BUILDING SECTION		X	X	X	X	X	Χ
OR LIGHTING DIAGRAM					Χ			A-111	OS-3BR2-1R TRASH HOLDING PLANS &				X	X	Χ	Χ
HTING DIAGRAM FLOORS 6-7					Χ				ELEVATIONS							
NG PLAN					Χ	X	X	08-ELECTRI								
								E.100	LIGHTING SITE PLAN					X	X	X
RAL SITE PLAN	Х	Х	Х	Х	Χ	X	(X1)	E.101	PHOTOMETRIC SITE PLAN					X	X	X
RENDERINGS	Х	Х	Х	Х	Χ	X	X	E.102	POOL DECK & BALCONY PHOTOMETRIC					Х	X	X
RENDERINGS				Х	Χ	X	X	E.200	PHOTOMETRIC SCHEDULES					X	X	Χ
RENDERINGS				Х	Χ	X	X	E.201	PHOTOMETRIC CUTSHEETS					Х	X	Χ
RENDERINGS					Χ	X	X	E.202	PHOTOMETRIC CUTSHEETS					X		
RENDERINGS					X	X	X									
		1				+	**									

\ X-### /

VIEW NAME
1/8" = 1'-0"

SHEET INDEX

 $\sim\sim\sim$

PROJECT TEAM

<u>OWNER</u> **ARCHITECT**

TIARA TELLURIDE 450 S OLD DIXIE HWY

JUPITER, FL 33458

ELECTRICAL ENGINEER

AE DESIGN 1900 WAZEE ST, #205 **DENVER, CO 80202**

LIGHTING DESIGNER

G2J DESIGN NEW YORK 2287 JOHNSON AVE SUTE #15 H RIVERDALE, NY 10463

CIVIL ENGINEER

VAULT DESIGN, LLC **UPCOMPAHGRE** 520 W FIR WAY ENGINEERING, LLC LOUISVILLE CO 80027 P.O.BOX 3945 TELLURIDE, CO 81435

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MARPA LANDSCAPE ARCHITECTURE 1539 PEARL ST BOULDER, CO 80302

LEED & ENERGY **MODELER**

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STRUCTURAL ENGINEER

ANCHOR ENGINEERING 2535 17TH ST DENVER, CO 80211

MECHANICAL/PLUMBING **ENGINEER**

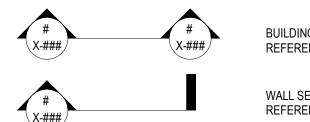
MCGRATH INCORPORATED 5353 W DARTHMOUTH AVE SUITE 506 **DENVER, CO 80227**

BUILDING ENVELOPE

ARCHITECTURAL CONSULTING & FORENSICS, PLLC 4739 N LUNE AVE CHICAGO, IL 60630

DRAWING SYMBOLS

SPECIAL HEARING TOWN COUNCIL TOWN COUNCIL FINAL DRB TOWN COUNCIL FIRST SUBMITTAL 05.02.23 (X)



BUILDING SECTION REFERENCE WALL SECTION REFERENCE

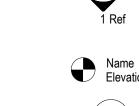
DETAIL SECTION

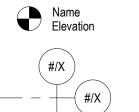
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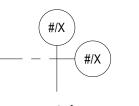
VIEW NUMBER

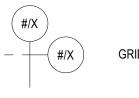
- VIEW NAME

VIEW SCALE











REFERENCE





EXTERIOR ELEVATION

VERTICAL ELEVATION

REFERENCE

NORTH ARROW

(# X-### #)

TOWN COUNCIL FIRST RD'G

DETAIL CALLOUT

CENTERLINE

WINDOW TAG

KEYNOTE REFERENCE

INTERIOR ELEVATION

REFERENCE

CASEWORK TAG WALL FINISH TAG

SPECIALTY EQUIPMENT TAG

FLOOR FINISH TAG

X#x — INTERIOR PARTITION TYPE

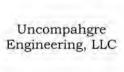
DOOR TAG

REVISION CLOUD AND TAG

VAULT DESIGN GROU VAULT DESIGN, LLC 520 W FIR WAY











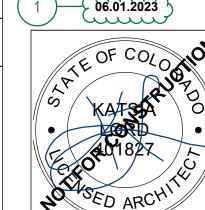
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DO NOT SCALE FROM DRAWING. VERIFY ALL DIMENSIONS **LOT 109R MAJOR PUD AMENDMENT** SPECIAL HEARING SUBMITTAL 05.19.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 06.07.2022 **LOT 109R PUD AMENDMENT TOWN COUNCIL CONTINUANCE SUBMITTAL** 08.08.2022 **LOT 109R PUD AMENDMENT FINAL**

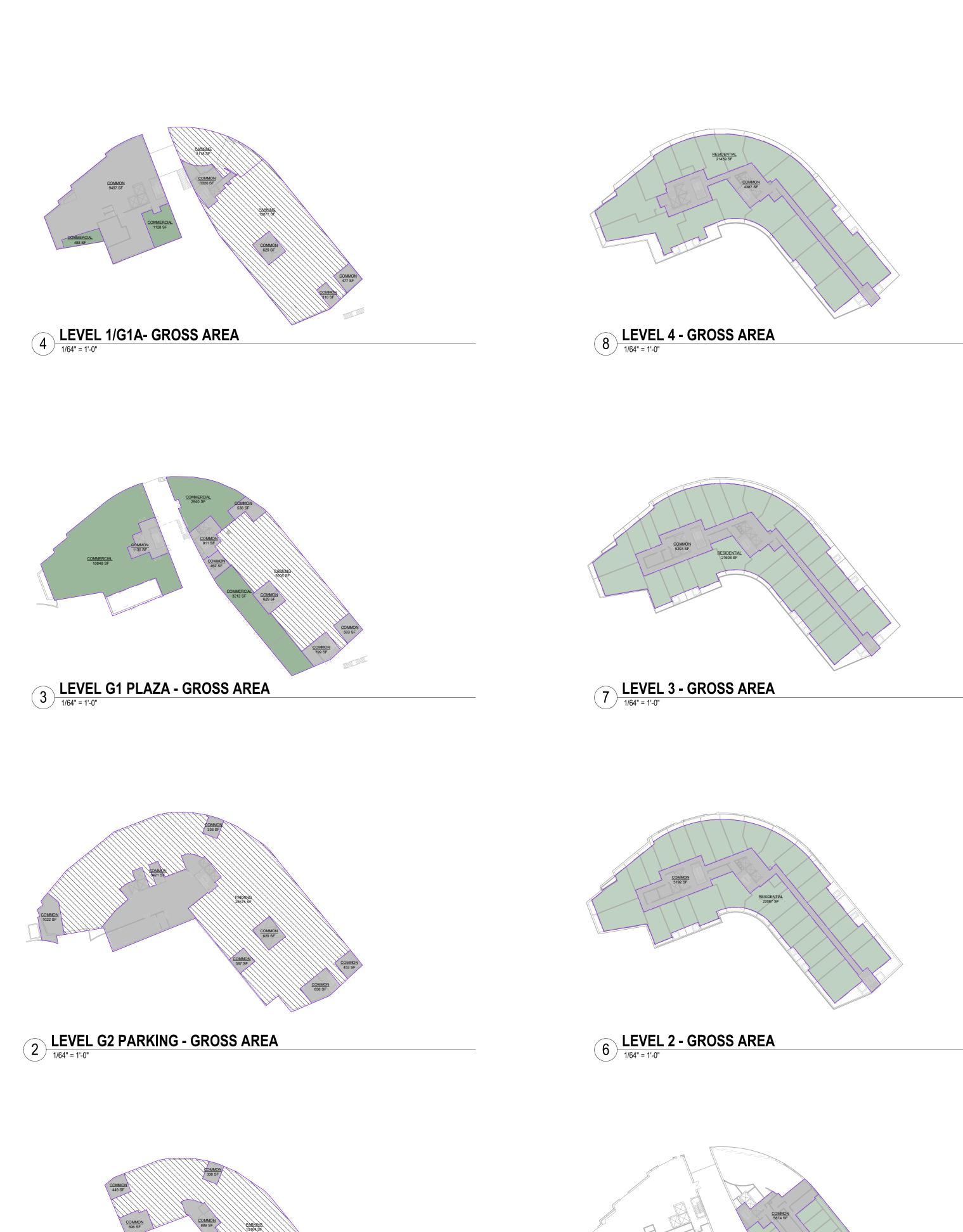
DRB SUBMITTAL 10.21.2022 LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022 **LOT 109R PUD AMENDMENT TOWN** OUNCIL FIRST READING
1 06.01.2023



JOB NO.

COVER SHEET

G-000



1 LEVEL G3 PARKING (9500')

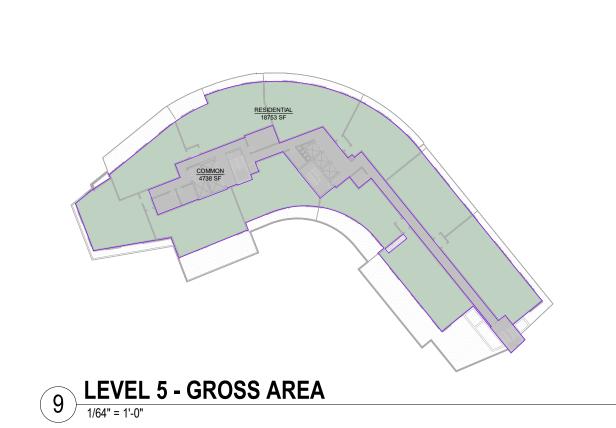
5 LEVEL 1 MEZZANINE - GROSS AREA





(10)	LEVEL 6 - GROSS AREA
10	1/64" = 1'-0"

11 LEVEL 7 - GROSS AREA



17.8.1 FLOOR AREA, GROSS

Building Area Legend

COMMERCIAL

PARKING

RESIDENTIAL

COMMON AREA

1. FLOOR AREA, GROSS. THE SUM OF ALL AREA(S) WITHIN THE EXTERIOR WALLS OF A BUILDING OR PORTION THEREOF, MEASURED FROM THE EXTERIOR FACES OF THE EXTERIOR WALLS, EXCLUDING THE AREA WITHIN ATTACHED OR DETACHED GARAGES AND ATTICS OR CRAWL SPACES PROVIDED THAT SUCH AREAS MEET THE FOLLOWING FLOOR AREA EXCLUSIONS:

1. ATTIC AREAS. ATTIC AREAS SHALL HAVE WITH A CEILING HEIGHT OF FIVE FEET (5') OR LESS AS MEASURED FROM THE TOPSIDE OF THE STRUCTURAL MEMEBERS OF THE FLOOR TO THE UNDERIDE OF THE STRUCTURAL MEMBERS OF THE

ROOF DIRECTLY ABOVE. 2. ATTIC AREAS WITH TRUSSES. ATTIC AREAS CREATED BYU CONSTRUCITON OF A ROOF WITH STRUCTURAL TRUSS TYPE

MEMBERS PROVIDED THE TRUSSES ARE SPACED NO

GREATER THAN THIRTY INCHES (30") APART.

3. ATTIC AREAS WITH NONTRUSS SYSTEM. ATTIC AREAS CREATED BY CONSTRUCTION OF A ROOF STRUCTURE UTILIZING A NONTRUSS SYSTEM WITH SPACES GREATER THAN FIVE FEET (5') IN HEIGHT IF ALL OF THE FOLLOWING CRITERIA ARE MÈT:

I. THE AREA CANNOT BE ACCESSED DIRECTLY FROM A HABITABLE AREA WITHIN THE SAME BUILDING LEVEL; AND II. THE AREA SHALL HAVE ONLY THE MINIMUM ACCESS REQUIRED BY THE BUILDING CODES FROM THE LEVEL BELOW; AND

III. THE ATTIC SPACE SHALL NOT HAVE A STRUCTURAL FLOOR CAPABLE OF SUPPORTING A "LIVE LOAD" GREATER THAN 40 POUNDS PER SQUARE FOOT, AND THE "FLOOR" OF THE ATTIC SPACE SHALL NOT BE IMPROVED WITH DECKING.

5. STAIRWAYS. STAIRS WITHIN A DWELLING UNIT SHALL ONLY BE COUNTED ON EVERY OTHER LEVEL.

LEVEL	NAME	AREA
LEVEL G3 PARKING (9500')	COMMON	889 SF
LEVEL G3 PARKING (9500')	COMMON	336 SF
LEVEL G3 PARKING (9500')	COMMON	696 SF
LEVEL G3 PARKING (9500')	COMMON	657 SF
LEVEL G3 PARKING (9500')	COMMON	449 SF
LEVEL G3 PARKING (9500')	PARKING	15164 SF
LEVEL G2 PARKING (9510')	COMMON	6421 SF
LEVEL G2 PARKING (9510')	COMMON	1022 SF
LEVEL G2 PARKING (9510')	COMMON	336 SF
LEVEL G2 PARKING (9510')	COMMON	836 SF
LEVEL G2 PARKING (9510')	COMMON	453 SF
LEVEL G2 PARKING (9510')	COMMON	367 SF
LEVEL G2 PARKING (9510')	COMMON	629 SF
LEVEL G2 PARKING (9510')	PARKING	26575 SF
LEVEL G1 PLAZA MAIN LEVEL (9520')	COMMON	1135 SF
LEVEL G1 PLAZA MAIN LEVEL (9520')		911 SF
LEVEL G1 PLAZA MAIN LEVEL (9520')		538 SF
LEVEL G1 PLAZA MAIN LEVEL (9520')	COMMON	503 SF
LEVEL G1 PLAZA MAIN LEVEL (9520')	COMMON	799 SF
LEVEL G1 PLAZA MAIN LEVEL (9520')	COMMON	629 SF
LEVEL G1 PLAZA MAIN LEVEL (9520')	COMMON	452 SF
LEVEL G1 PLAZA MAIN LEVEL (9520')	PARKING	9206 SF
LEVEL 1 (9535')	COMMON	9497 SF
LEVEL 1 (9535')	COMMON	1320 SF
LEVEL 1 (9535')	COMMON	477 SF
LEVEL 1 (9535')	COMMON	310 SF
LEVEL 1 (9535')	COMMON	629 SF
LEVEL 1 (9535')	PARKING	12877 SF
LEVEL 1 (9535')	PARKING	3118 SF
LEVEL 1 MEZZANINE (9540')	COMMON	5874 SF
LEVEL 2 (9550')	COMMON	5192 SF
LEVEL 3 (9560.5')	COMMON	5293 SF
LEVEL 4 (9571')	COMMON	4387 SF
LEVEL 5 (9581.5')	COMMON	4738 SF
LEVEL 6 (9592')	COMMON	5993 SF
LEVEL 7 (9603.5')	COMMON	2696 SF

GROSS RESIDENTIAL A LEVEL LEVEL 1 MEZZANINE (9540')		131404 SF				
	GROSS RESIDENTIAL AREA SCHEDULE					
LEVEL 1 MEZZANINE (05/10')	NAME	AREA				
LLVLL I WILZZAINIINL (3340)	RESIDENTIAL	4552 SF				
LEVEL 1 MEZZANINE (9540')	RESIDENTIAL	4029 SF				
LEVEL 2 (9550')	RESIDENTIAL	22087 SF				
LEVEL 3 (9560.5')	RESIDENTIAL	21608 SF				
LEVEL 4 (9571')	RESIDENTIAL	21459 SF				
LEVEL 5 (9581.5')	RESIDENTIAL	18753 SF				
LEVEL 6 (9592')	RESIDENTIAL	5161 SF				
LEVEL 6 (9592')	RESIDENTIAL	3323 SF				
LEVEL 7 (9603.5')	RESIDENTIAL	8023 SF				

		108995 SF
GROSS COMMERCIAL A	REA SCHEDULE	
LEVEL	NAME	AREA
LEVEL G1 PLAZA MAIN LEVEL (9520')	COMMERCIAL	10848 SF
LEVEL G1 PLAZA MAIN LEVEL (9520')	COMMERCIAL	2940 SF
LEVEL G1 PLAZA MAIN LEVEL (9520')	COMMERCIAL	3212 SF
LEVEL 1 (9535')	COMMERCIAL	1128 SF
LEVEL 1 (9535')	COMMERCIAL	488 SF
LEVEL 6 (9592')	COMMERCIAL	937 SF
LEVEL 6 (9592')	COMMERCIAL	3056 SF

VAULT DESIGN, LLC 520 W FIR WAY

VAULT DESIGN GROU

LOUISVILLE, CO 80027







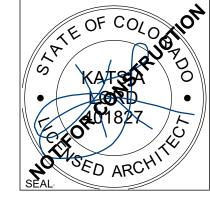
HOTEL 00 **MOUNTAIN VILL** 109R $\frac{S}{X}$

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LOT 109R MAJOR PUD AMENDMENT SPECIAL HEARING SUBMITTAL 05.19.2022 LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 06.07.2022 LOT 109R PUD AMENDMENT TOWN

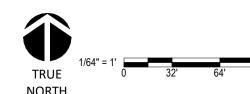
COUNCIL CONTINUANCE SUBMITTAL 08.08.2022 **LOT 109R PUD AMENDMENT FINAL DRB SUBMITTAL 10.21.2022** LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022

COUNCIL FIRST READING

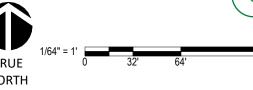


JOB NO. FLOOR AREA GROSS

G-001







17.8.1 NET FLOOR AREA

7. NET FLOOR AREA. THE FLOOR AREA AS MEASURED FROM THE EXTERIOR WALL ASSEMBLY AND EXCLUDES COMMERCIAL SPACE, SPAS, DORM ROOMS AND COMMON AREAS.

LEVEL	NAME	AREA
LEVEL G3 PARKING (9500')	NET AREA G3	17063 SF
LEVEL G2 PARKING (9510')	NET AREA G2	34789 SF
LEVEL G1 PLAZA (9522')	NET AREA PLAZA	10622 SF
LEVEL 1 (9535')	NET AREA LEVEL 1	17248 SF
LEVEL 1 (9535')	NET AREA LEVEL 1	2221 SF
LEVEL 2 (9550')	NET AREA LEVEL 2	22318 SF
LEVEL 2 (9550')	NET AREA LEVEL 2	374 SF
LEVEL 3 (9560.5')	NET AREA LEVEL 3	21955 SF
LEVEL 3 (9560.5')	NET AREA LEVEL 3	363 SF
LEVEL 4 (9571')	NET AREA LEVEL 4	21709 SF
LEVEL 5 (9581.5')	NET AREA LEVEL 5	19513 SF
LEVEL 6 (9592')	NET AREA LEVEL 6	5161 SF
LEVEL 6 (9592')	NET AREA LEVEL 6	3421 SF
LEVEL 6 (9592')	NET AREA LEVEL 6	785 SF
LEVEL 7 (9603.5')	NET AREA LEVEL 7	9523 SF

VAULT DESIGN GROUP

VAULT DESIGN, LLC
520 W FIR WAY

VAULT DESIGN, LLC 520 W FIR WAY LOUISVILLE, CO 80027







SIX SENSES HOTEL
LOT 109R MOUNTAIN VILLAGE, CO

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LOT 109R MAJOR PUD AMENDMENT SPECIAL HEARING SUBMITTAL 05.19.2022

05.19.2022

LOT 109R PUD AMENDMENT TOWN
COUNCIL SUBMITTAL
06.07.2022

LOT 109R PUD AMENDMENT TOWN
COUNCIL CONTINUANCE SUBMITTAL
08.08.2022

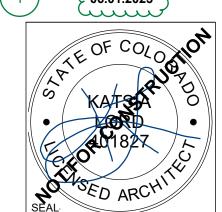
08.08.2022

LOT 109R PUD AMENDMENT FINAL

DRB SUBMITTAL 10.21.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022

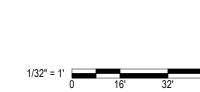
LOT 109R PUD AMENDMENT TOWN
COUNCIL FIRST READING
1
06.01.2023



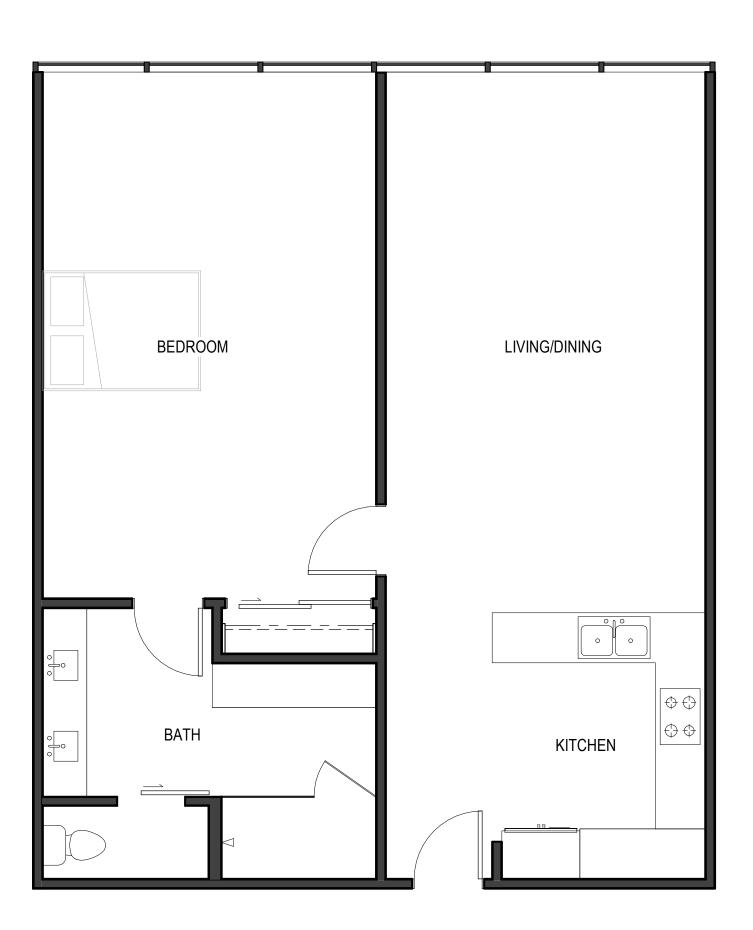
NET FLOOR AREA

G-002

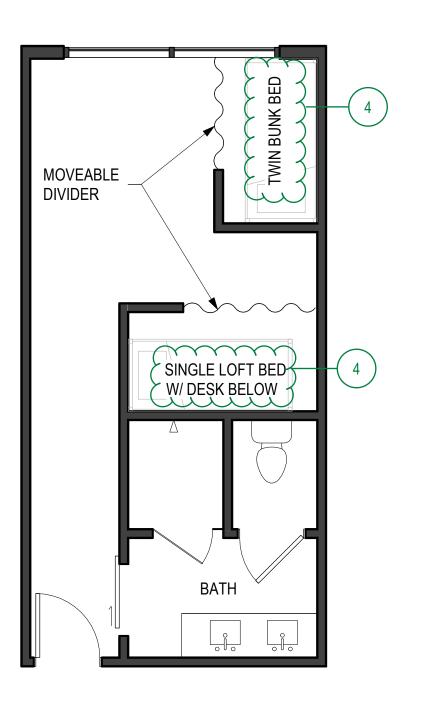
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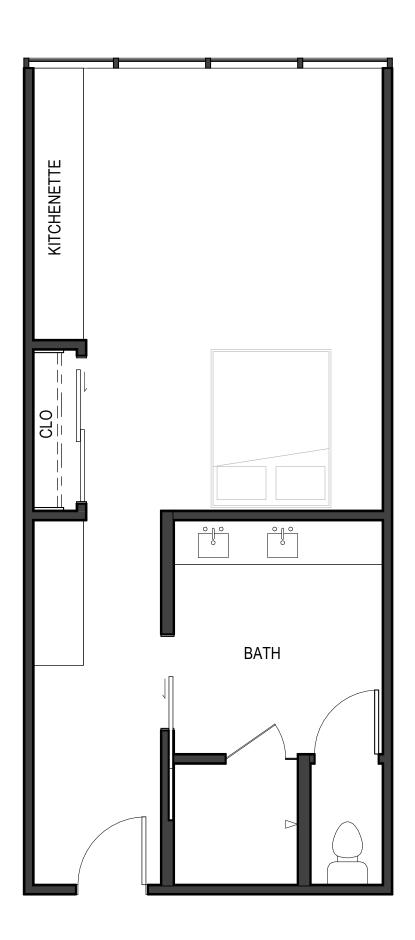
TRUE NORTH



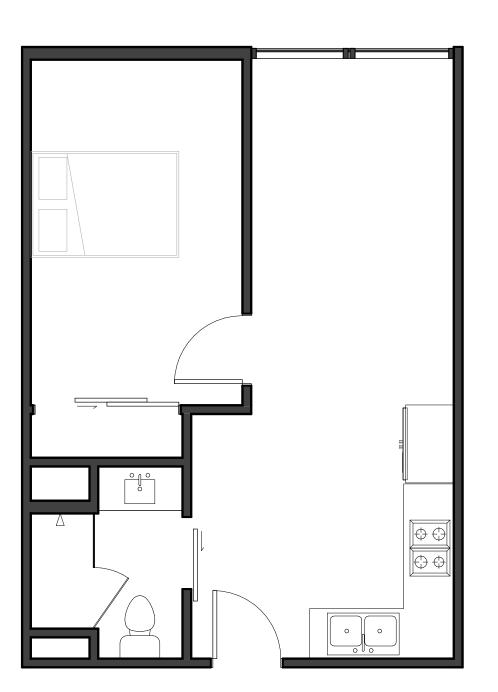
LODGE DIAGRAMMATIC ONLY **DESIGN TBD**



EMPLOYEE DORM DIAGRAMMATIC ONLY **DESIGN TBD**



EFFICIENCY LODGE DIAGRAMMATIC ONLY **DESIGN TBD**



EMPLOYEE APT. DIAGRAMMATIC ONLY **DESIGN TBD**

DIAGRAMATIC INTERIOR DESIGN IS PROVIDED PER STAFF REQUEST.

PER 17.8.1 DEFINITIONS
Efficiency Lodge. A zoning designation that means a habitable, one (1) room space with separate bath and limited kitchen facilities used for Short-Term Accommodations. Limited kitchen facilities may include a sink, microwave, two-element burner, and six (6) cubic foot (maximum) refrigerator trash compactor and garbage disposal. These units may be in a condominium

Employee Apartment. A zoning designation that means employee apartment multifamily dwelling units that cannot be separately subdivided or conveyed as individual condominium units the occupancy of which is limited to employees and are encumbered by the workforce housing restriction. Employee Dorm. A zoning designation that means employee dorm units that are within a building with individual sleeping rooms that provide sleeping and living accommodations with shared kitchen and recreational facilities and that cannot be separately subdivided or conveyed as individual units, the occupancy of which is limited to employees that are encumbered by the workforce housing restriction. Lodge. A zoning designation that means a two (2) room space plus a mezzanine with up to two separate baths and a full kitchen. These units may be in a condominium community.

Uncompahgre Engineering, LLC MARPA

VAULT DESIGN GROU

VAULT DESIGN, LLC 520 W FIR WAY LOUISVILLE, CO 80027

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LOT 109R MAJOR PUD AMENDMENT SPECIAL HEARING SUBMITTAL

05.19.2022 **LOT 109R PUD AMENDMENT TOWN** COUNCIL SUBMITTAL **LOT 109R PUD AMENDMENT TOWN**

08.08.2022 LOT 109R PUD AMENDMENT FINAL **DRB SUBMITTAL 10.21.2022**

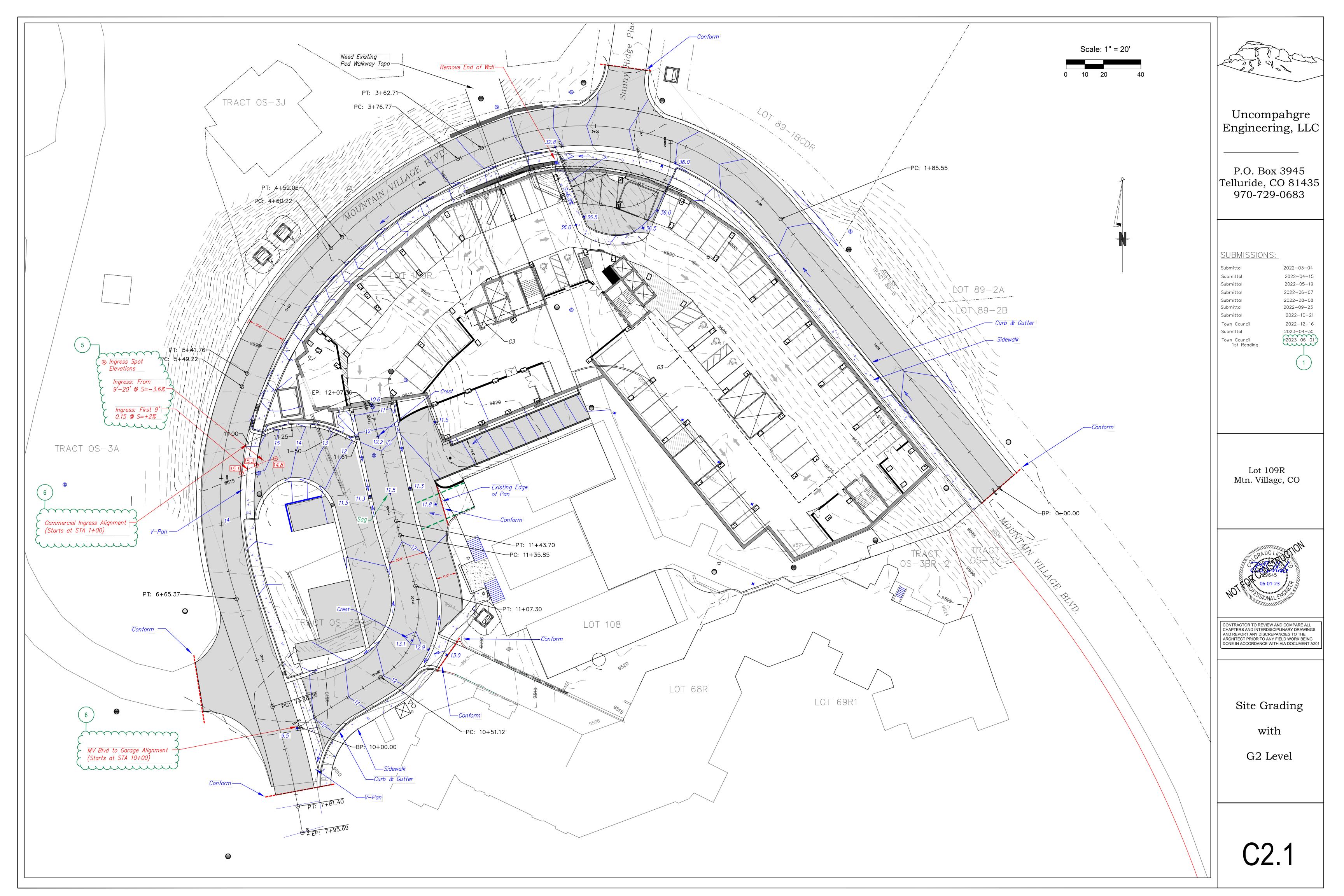
COUNCIL CONTINUANCE SUBMITTAL

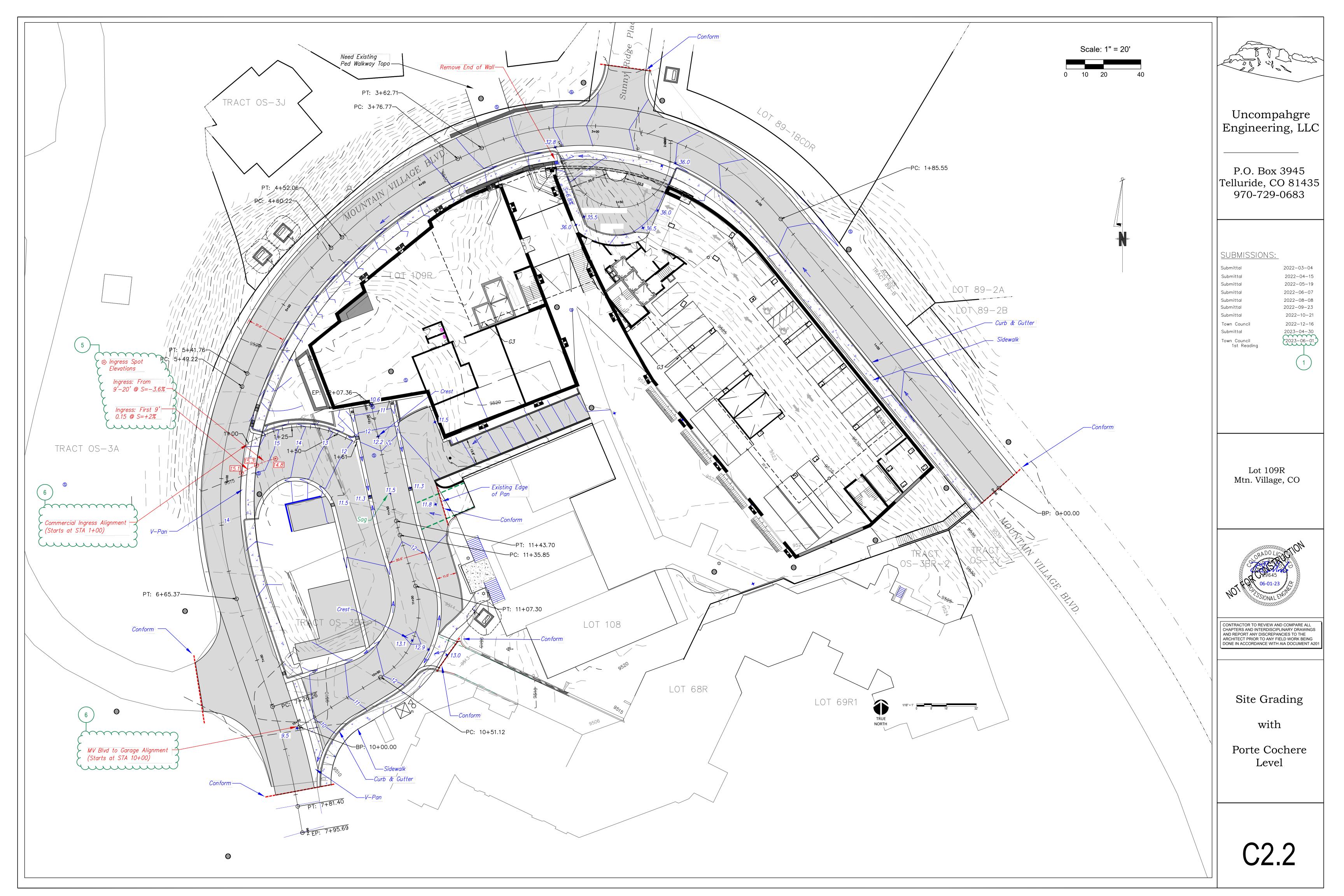
LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022 COUNCIL FIRST READING
06.01.2023

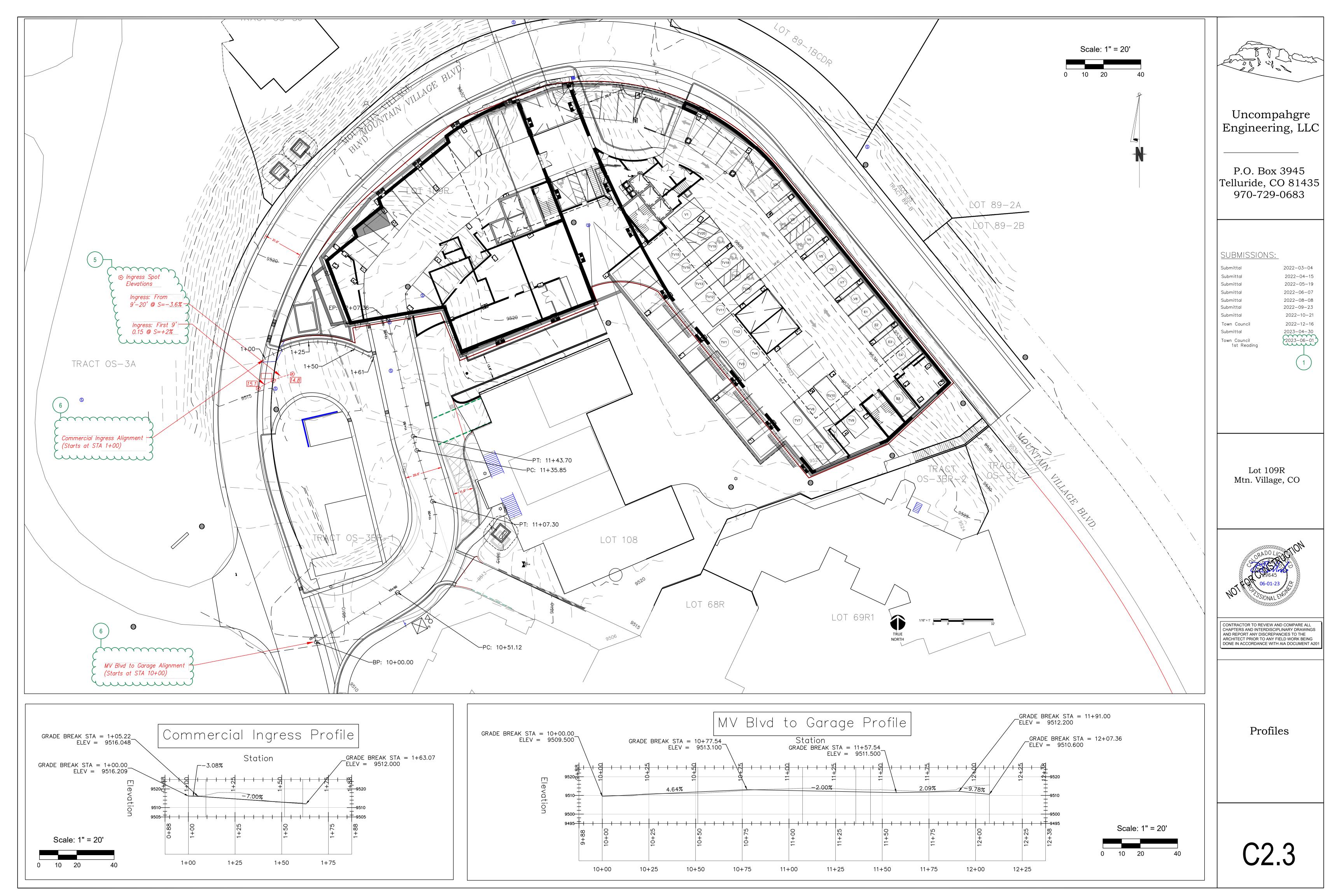
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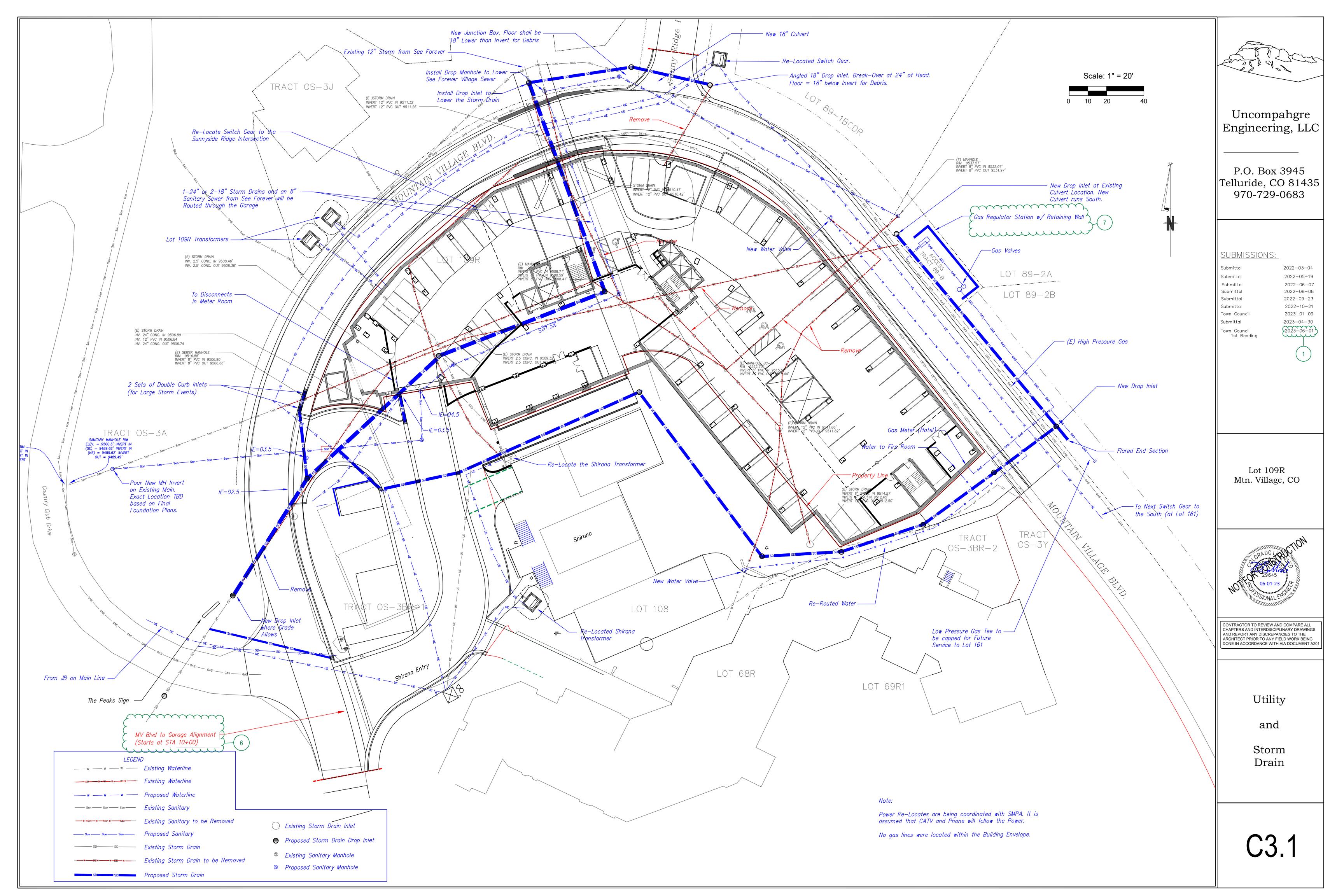
PLAN DIAGRAMS

G-003











LOUISVILLE, CO 80027

Uncompahgre Engineering, LLC



AE DESIGN
Integrated Lighting and Electrical Solutions
1900 Wazee Street #205 | Denver, CO 80202 | 303,296,3034
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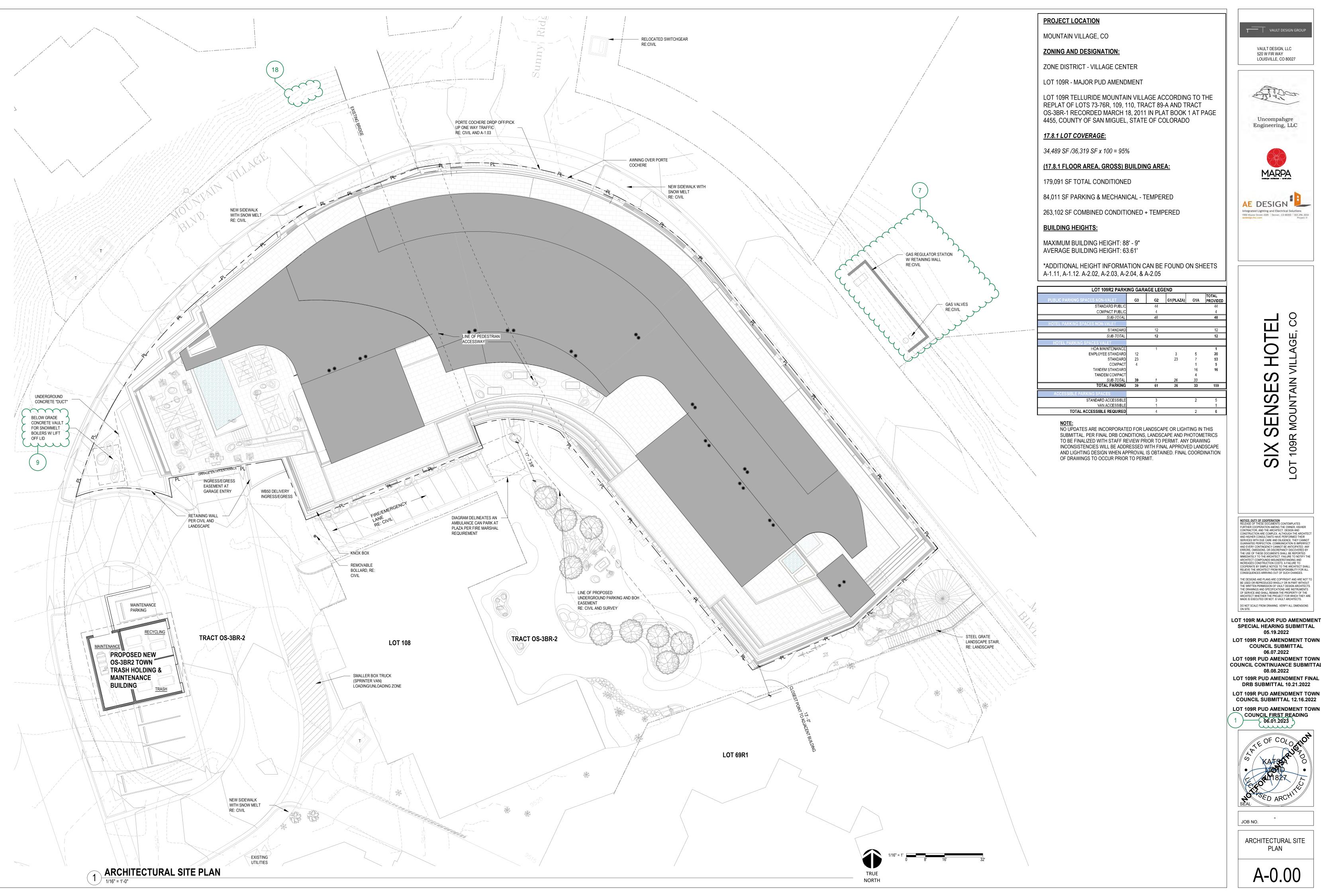
LOT 109R MAJOR PUD AMENDMENT SPECIAL HEARING SUBMITTAL 05.19.2022 **LOT 109R PUD AMENDMENT TOWN**

COUNCIL SUBMITTAL 06.07.2022 LOT 109R PUD AMENDMENT TOWN COUNCIL CONTINUANCE SUBMITTAL 08.08.2022

LOT 109R PUD AMENDMENT FINAL DRB SUBMITTAL 10.21.2022 **LOT 109R PUD AMENDMENT TOWN**

COUNCIL FIRST READING

Diagram



520 W FIR WAY LOUISVILLE, CO 80027



Engineering, LLC





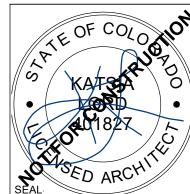
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COUNCIL SUBMITTAL 06.07.2022 **LOT 109R PUD AMENDMENT TOWN** COUNCIL CONTINUANCE SUBMITTAL 08.08.2022

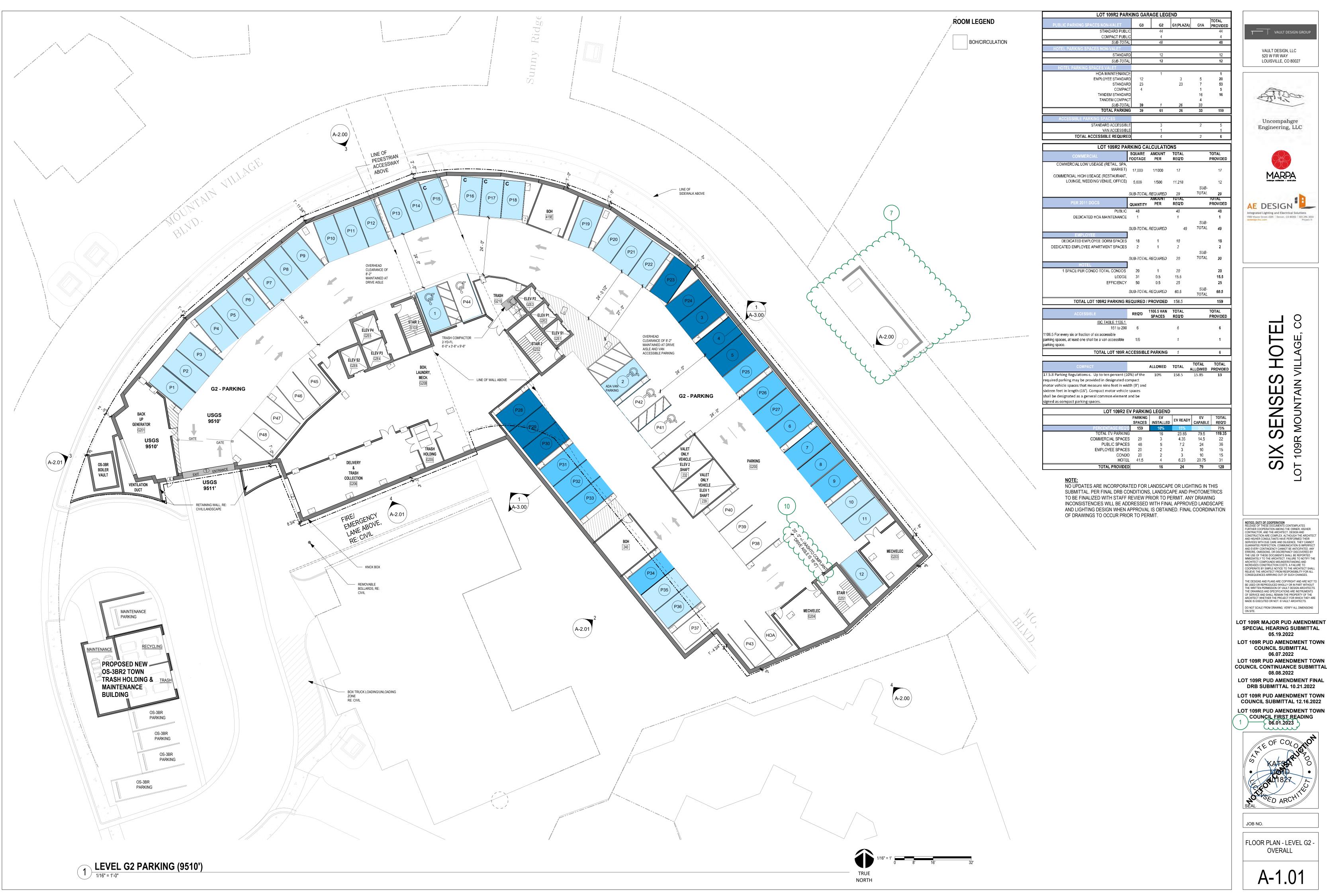
LOT 109R PUD AMENDMENT FINAL DRB SUBMITTAL 10.21.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022 COUNCIL FIRST READING 06.01.2023



JOB NO.

ARCHITECTURAL SITE



520 W FIR WAY LOUISVILLE, CO 80027

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109R MOUNTAIN VILLAGE,

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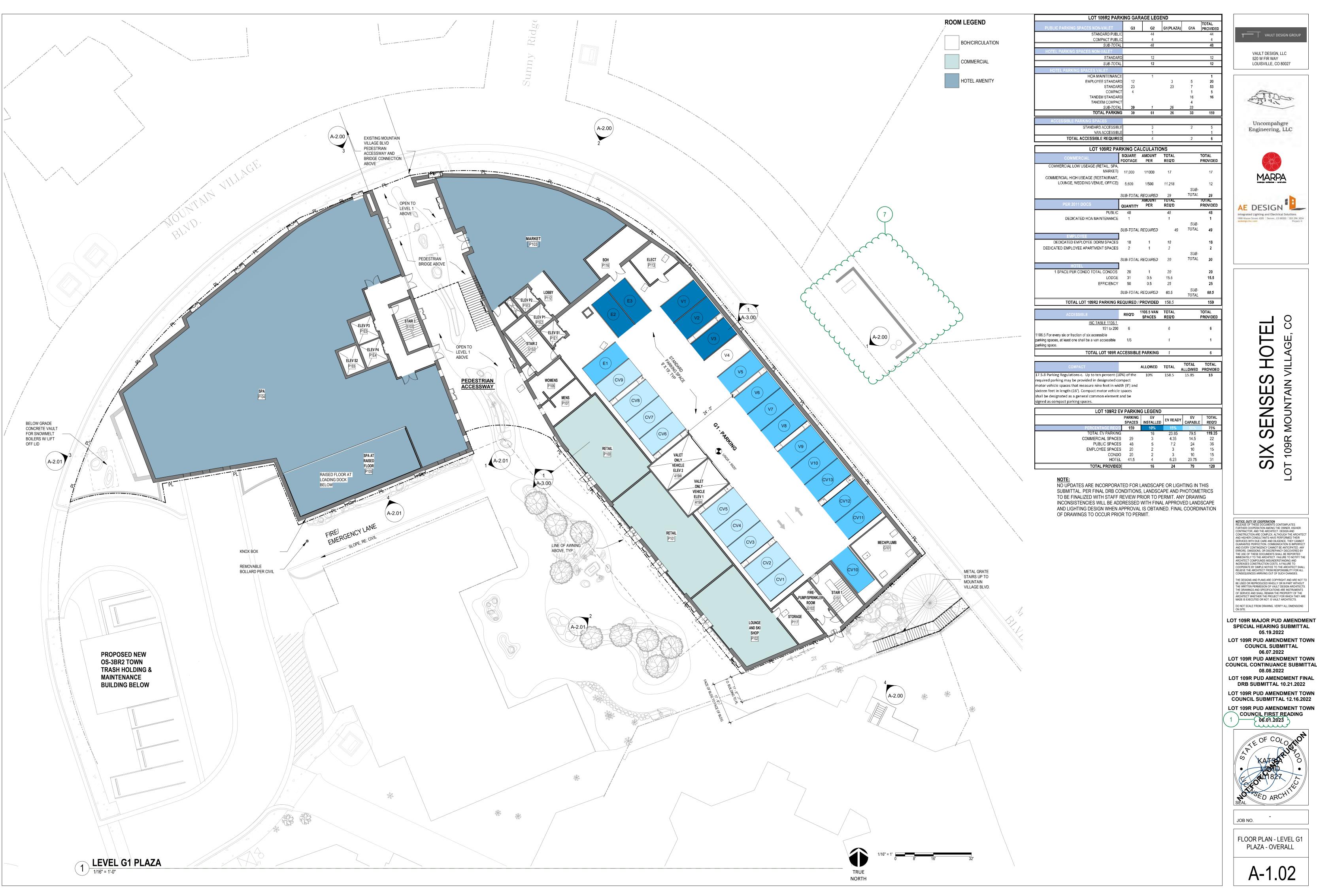
LOT 109R MAJOR PUD AMENDMENT SPECIAL HEARING SUBMITTAL 05.19.2022

COUNCIL SUBMITTAL 06.07.2022 LOT 109R PUD AMENDMENT TOWN **COUNCIL CONTINUANCE SUBMITTAL** 08.08.2022

LOT 109R PUD AMENDMENT FINAL **DRB SUBMITTAL 10.21.2022** LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL FIRST READING

FLOOR PLAN - LEVEL G2 -OVERALL



520 W FIR WAY LOUISVILLE, CO 80027

Uncompangre





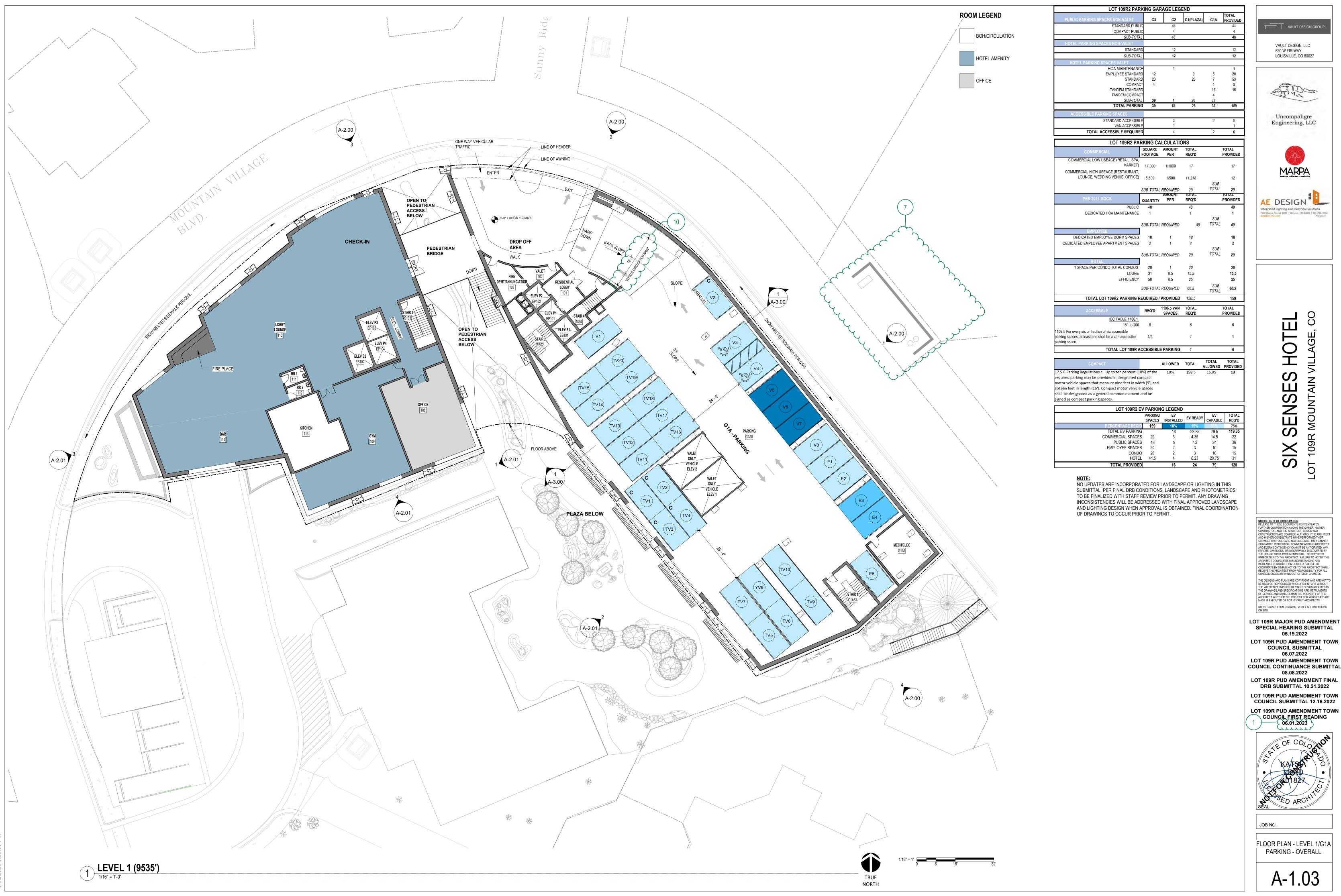
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LOT 109R MAJOR PUD AMENDMENT SPECIAL HEARING SUBMITTAL 05.19.2022

06.07.2022 LOT 109R PUD AMENDMENT TOWN **COUNCIL CONTINUANCE SUBMITTAL** 08.08.2022 LOT 109R PUD AMENDMENT FINAL

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022 **LOT 109R PUD AMENDMENT TOWN** COUNCIL FIRST READING

FLOOR PLAN - LEVEL G1 PLAZA - OVERALL



520 W FIR WAY LOUISVILLE, CO 80027

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109R MOUNTAIN VILL

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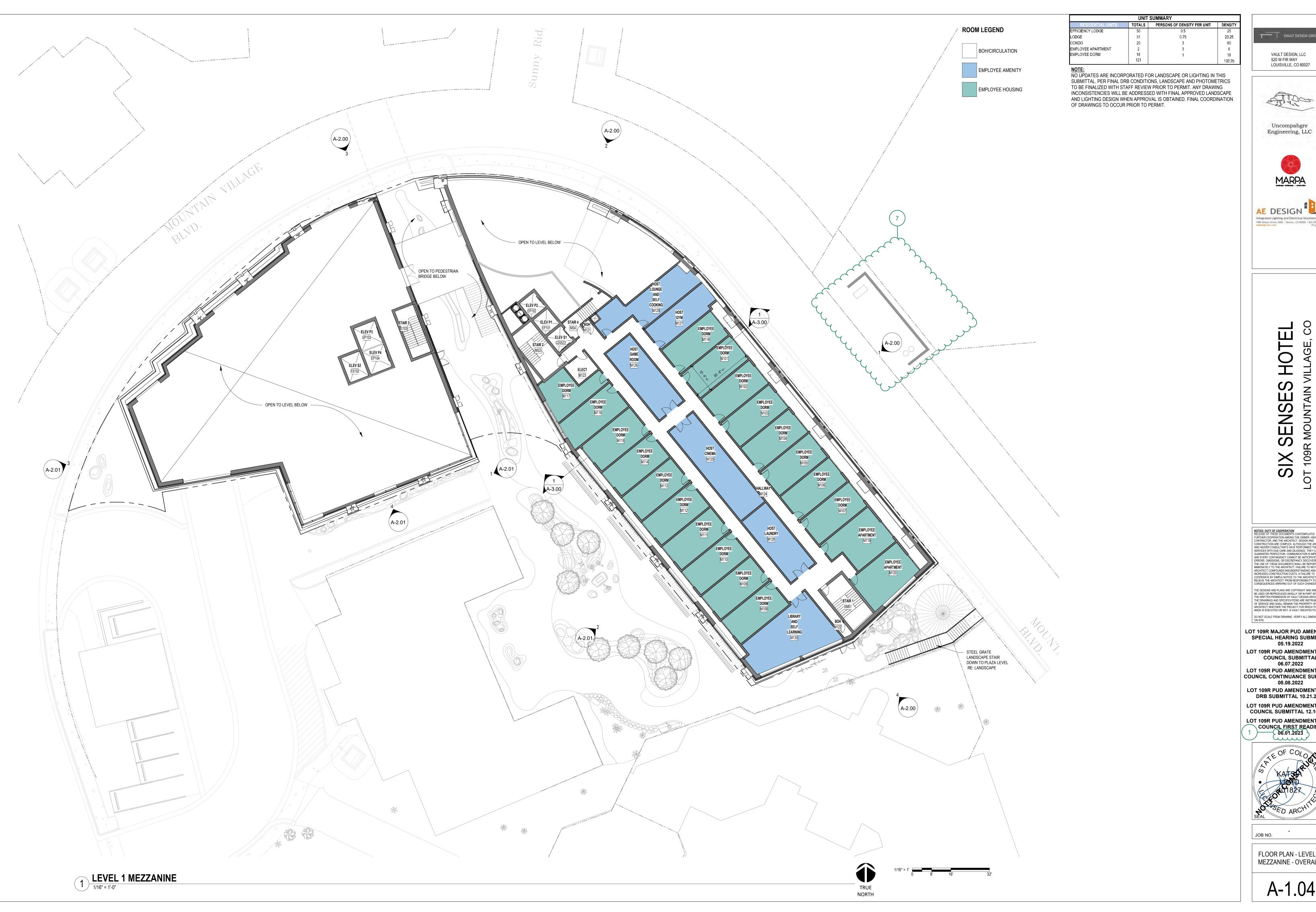
COUNCIL SUBMITTAL 06.07.2022 LOT 109R PUD AMENDMENT TOWN **COUNCIL CONTINUANCE SUBMITTAL** 08.08.2022

LOT 109R PUD AMENDMENT FINAL **DRB SUBMITTAL 10.21.2022** LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL FIRST READING

JOB NO.

FLOOR PLAN - LEVEL 1/G1A PARKING - OVERALL



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> IX SENSES HOTEL
>
> 109R MOUNTAIN VILLAGE, CO $\frac{S}{X}$

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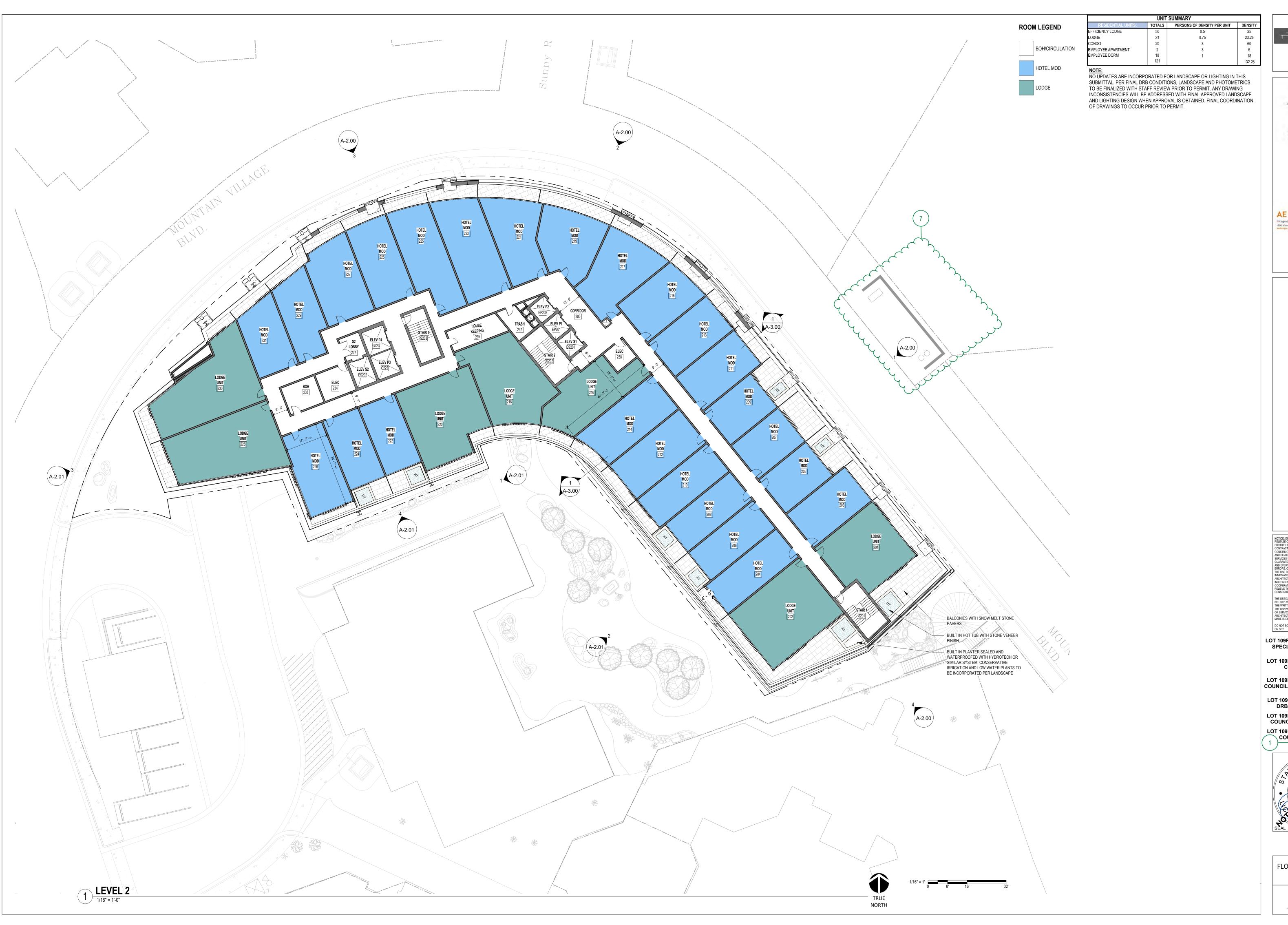
LOT 109R PUD AMENDMENT TOWN **COUNCIL SUBMITTAL** 06.07.2022 LOT 109R PUD AMENDMENT TOWN COUNCIL CONTINUANCE SUBMITTAL

08.08.2022 LOT 109R PUD AMENDMENT FINAL **DRB SUBMITTAL 10.21.2022**

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022 **LOT 109R PUD AMENDMENT TOWN** COUNCIL FIRST READING

JOB NO.

FLOOR PLAN - LEVEL 1 MEZZANINE - OVERALL



VAULT DESIGN GROUP

VAULT DESIGN, LLC
520 W FIR WAY
LOUISVILLE, CO 80027

Uncompandere Engineering, LLC





SIX SENSES HOTEL
LOT 109R MOUNTAIN VILLAGE, CO

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COUNCIL SUBMITTAL
06.07.2022
LOT 109R PUD AMENDMENT TOWN
COUNCIL CONTINUANCE SUBMITTAL

08.08.2022 LOT 109R PUD AMENDMENT FINAL DRB SUBMITTAL 10.21.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL FIRST READING

1 06.01.2023

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FLOOR PLAN - LEVEL 2 -OVERALL



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LOT 109R MOUNTAIN VILLAGE, CO

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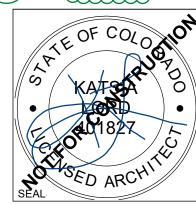
LOT 109R PUD AMENDMENT TOWN
COUNCIL SUBMITTAL
06.07.2022
LOT 109R PUD AMENDMENT TOWN
COUNCIL CONTINUANCE SUBMITTAL

08.08.2022
LOT 109R PUD AMENDMENT FINAL DRB SUBMITTAL 10.21.2022

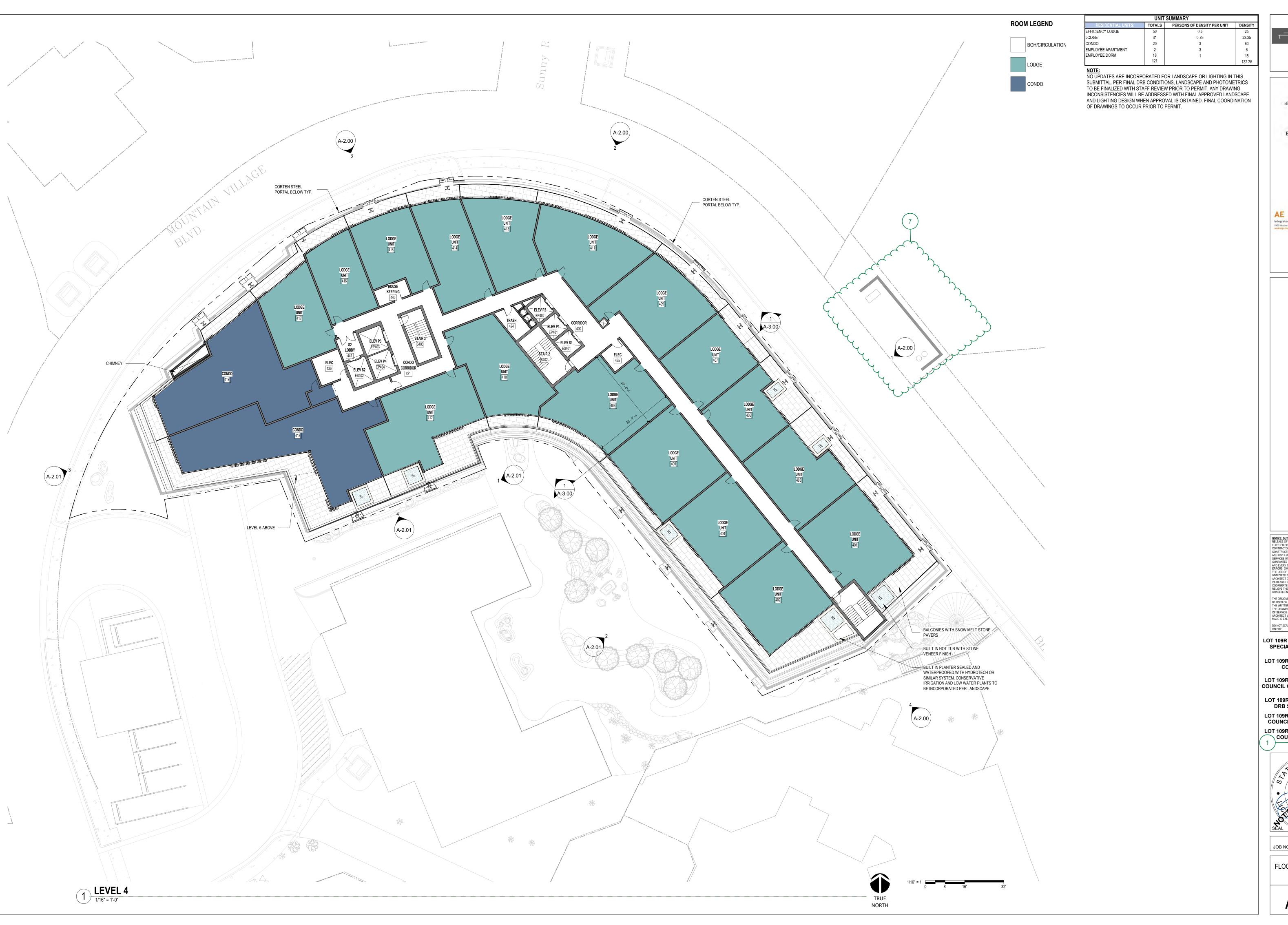
LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL FIRST READING

1 06.01.2023



FLOOR PLAN - LEVEL 3 -OVERALL



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> SIX SENSES HOTEL
> T 109R MOUNTAIN VILLAGE, CO $\frac{S}{X}$

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LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 06.07.2022 LOT 109R PUD AMENDMENT TOWN COUNCIL CONTINUANCE SUBMITTAL 08.08.2022

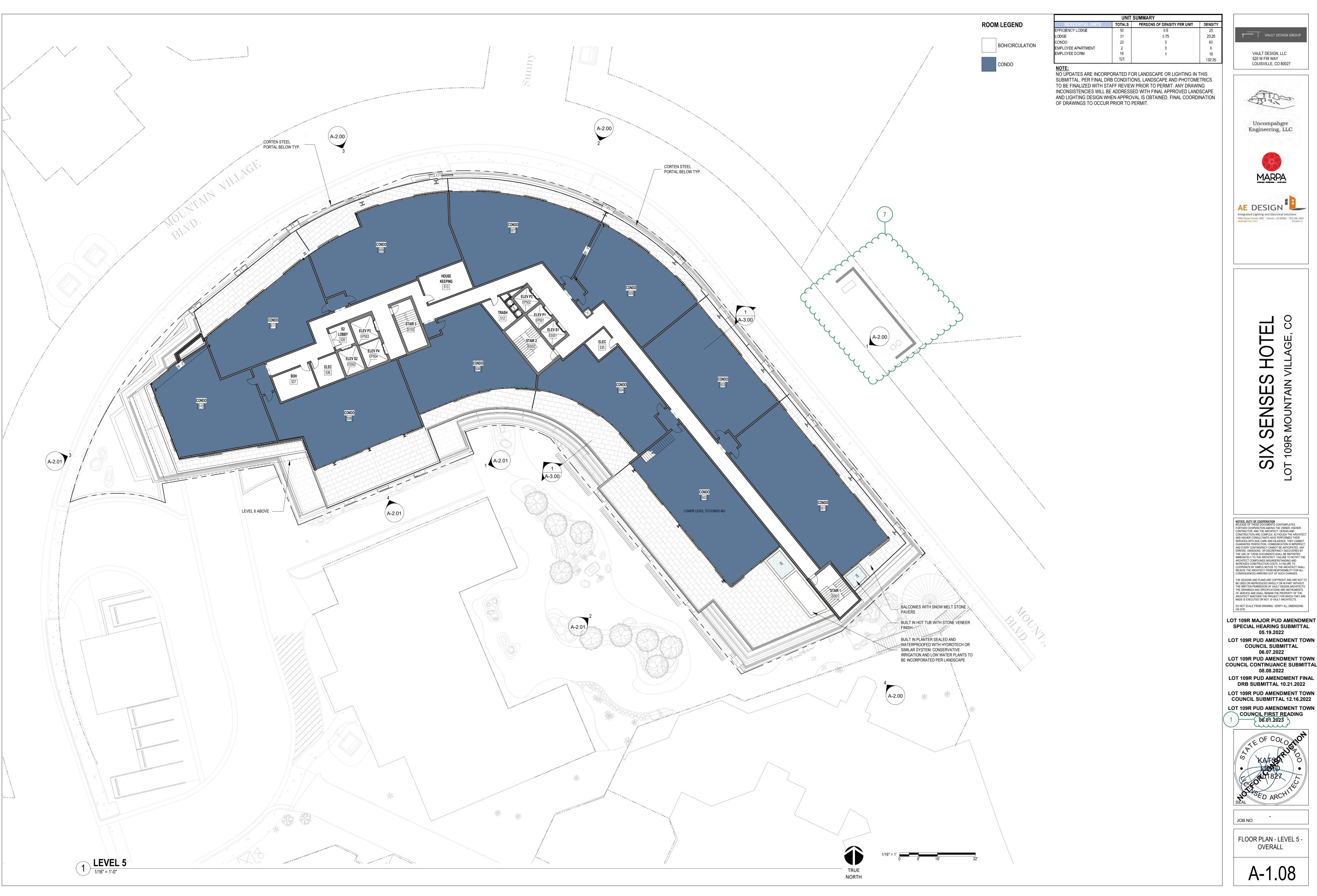
LOT 109R PUD AMENDMENT FINAL **DRB SUBMITTAL 10.21.2022**

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022 **LOT 109R PUD AMENDMENT TOWN**

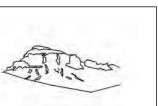
COUNCIL FIRST READING
06.01.2023

JOB NO.

FLOOR PLAN - LEVEL 4 -OVERALL



520 W FIR WAY LOUISVILLE, CO 80027



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IX SENSES HOTEL

109R MOUNTAIN VILLAGE, CO $\frac{S}{X}$

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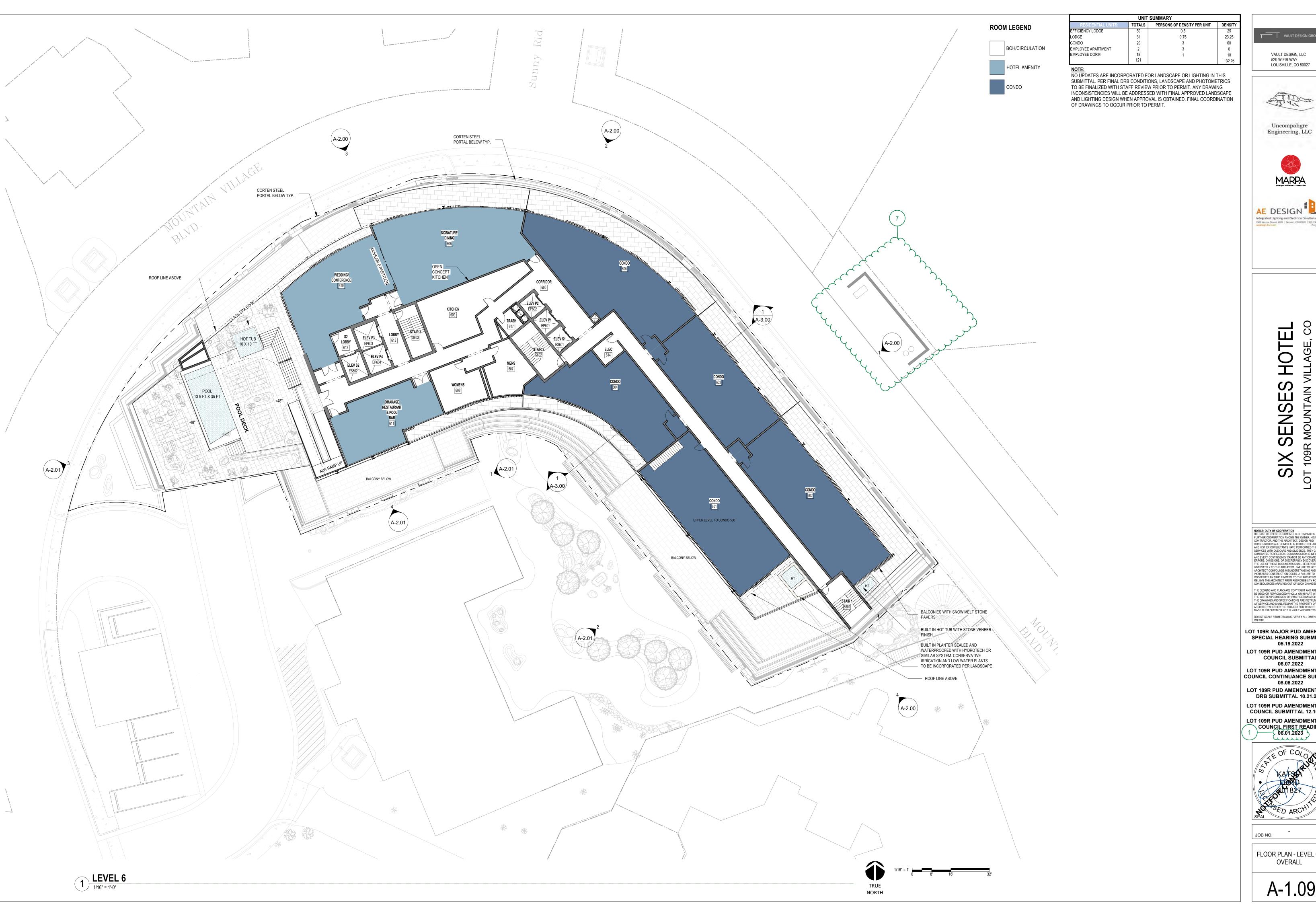
COUNCIL SUBMITTAL 06.07.2022 LOT 109R PUD AMENDMENT TOWN COUNCIL CONTINUANCE SUBMITTAL

08.08.2022 LOT 109R PUD AMENDMENT FINAL **DRB SUBMITTAL 10.21.2022**

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022 **LOT 109R PUD AMENDMENT TOWN** COUNCIL FIRST READING

JOB NO.

FLOOR PLAN - LEVEL 5 -OVERALL



520 W FIR WAY LOUISVILLE, CO 80027





IX SENSES HOTEL

109R MOUNTAIN VILLAGE, CO $\frac{S}{X}$

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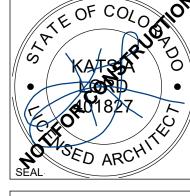
LOT 109R MAJOR PUD AMENDMENT SPECIAL HEARING SUBMITTAL 05.19.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 06.07.2022 LOT 109R PUD AMENDMENT TOWN COUNCIL CONTINUANCE SUBMITTAL 08.08.2022

LOT 109R PUD AMENDMENT FINAL **DRB SUBMITTAL 10.21.2022**

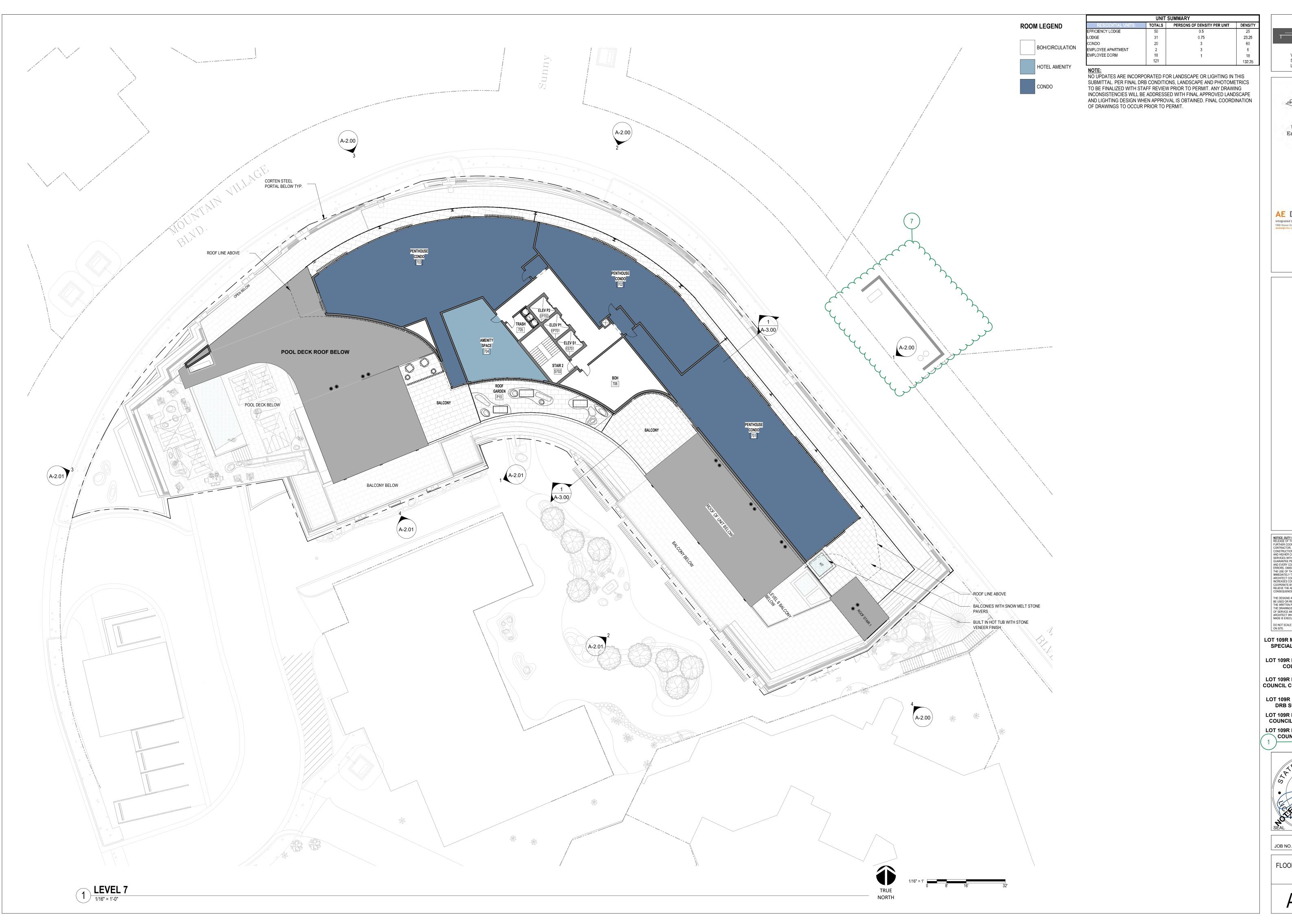
LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022 **LOT 109R PUD AMENDMENT TOWN**

COUNCIL FIRST READING



JOB NO.

FLOOR PLAN - LEVEL 6 -OVERALL



520 W FIR WAY LOUISVILLE, CO 80027

Uncompangre Engineering, LLC



AE DESIGN Integrated Lighting and Electrical Solutions 1900 Wazee Street #205 | Denver, CO 80202 | 303,296,3034 aedesign-inc.com Project #:

> IX SENSES HOTEL
>
> 109R MOUNTAIN VILLAGE, CO $\frac{S}{X}$

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LOT 109R MAJOR PUD AMENDMENT SPECIAL HEARING SUBMITTAL 05.19.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 06.07.2022 LOT 109R PUD AMENDMENT TOWN COUNCIL CONTINUANCE SUBMITTAL 08.08.2022

LOT 109R PUD AMENDMENT FINAL DRB SUBMITTAL 10.21.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022 LOT 109R PUD AMENDMENT TOWN
COUNCIL FIRST READING
1 06.01.2023

JOB NO.

FLOOR PLAN - LEVEL 7 OVERALL

Uncompangre Engineering, LLC

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LOT 109R MAJOR PUD AMENDMENT SPECIAL HEARING SUBMITTAL 05.19.2022 LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 06.07.2022

LOT 109R PUD AMENDMENT TOWN COUNCIL CONTINUANCE SUBMITTAL 08.08.2022 LOT 109R PUD AMENDMENT FINAL **DRB SUBMITTAL 10.21.2022**

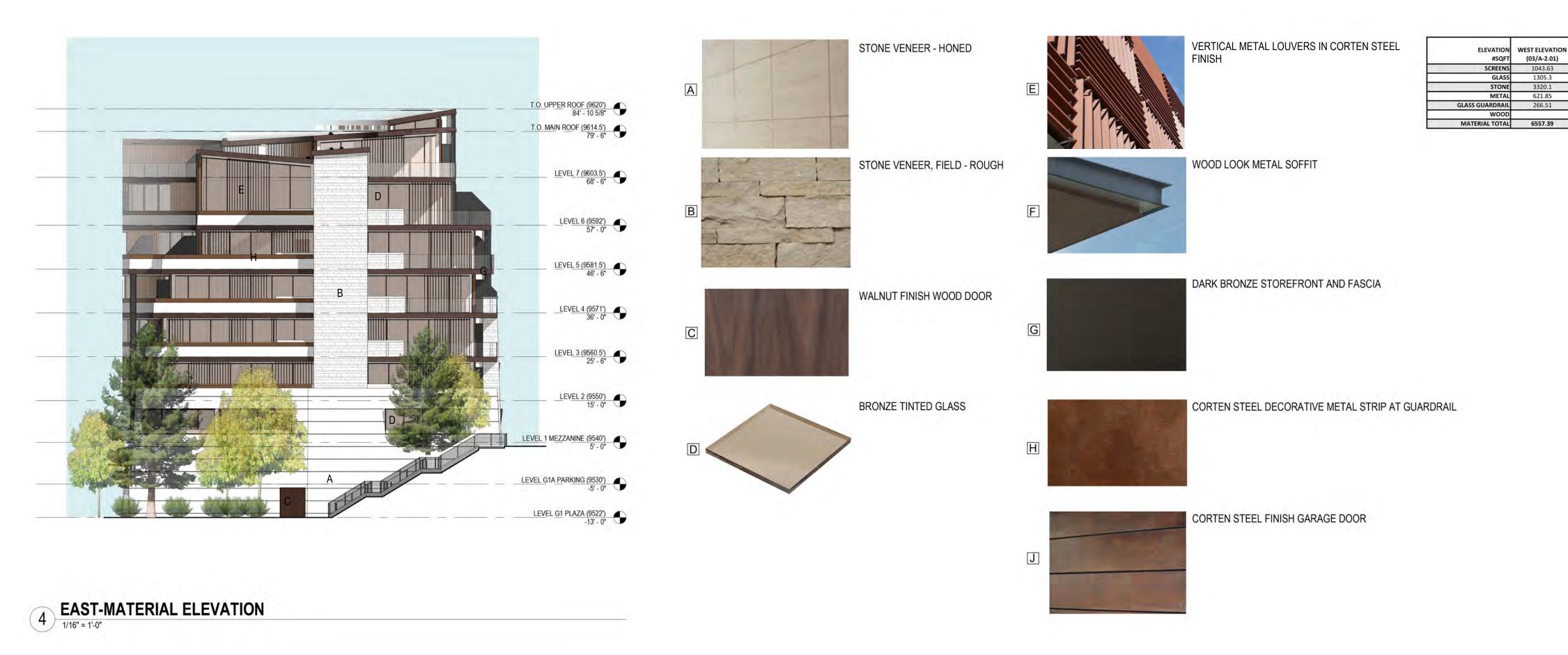
LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022 **LOT 109R PUD AMENDMENT TOWN** COUNCIL FIRST READING

mund STE OF COLOGIA

> JOB NG **EXTERIOR MATERIAL ELEVATIONS**

minum







ELEVATION

(01/A-2.00)

ELEVATION

(03/A-2.00)

NORTH ELEVATION

(02/A-2.00)

EAST ELEVATION

(04/A-2.00)

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WEST ELEVATION

SOUTHEAST MATERIAL ELEVATION 2 300 IF

OPEN TO Z

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ENTRY

MOUNTAIN VILLAGE BLVD

EXISTING

TUNNEL

PEDESTRIAN

0.0

T.O. UPPER ROOF (9620') 84' - 10 5/8" T.O. LOWER ROOF (9611.5') 77' - 9" LEVEL 6 (9592') 57' - 0" LEVEL 4 (9571') LEVEL 3 (9560.5') 25' - 6" MOUNTAIN VILLAGE BLVD PEDESTRIAN ACCESSWAY EXISTING TO PLAZA/SEE FOREVER PEDESTRIAN TUNNEL

LEVEL 6 RAISED POOL DECK (9596')
61' - 0"
LEVEL 6 (9592')
57' - 0" LEVEL 5 (9581.5') 46' - 6" LEVEL 4 (9571')
36' - 0" LEVEL 3 (9560.5') 25' - 6" LEVEL 2 (9550') 15' - 0" LEVEL 1 (9535')
0' - 0" LEVEL G1 PLAZA (9522') EMERGENCY ACCESS LANE LEVEL G2 PARKING (9510')
-25' - 0" **G2 GARAGE** WB 40/50 DELIVERY VAULT BEYOND BEYOND 3 WEST MATERIAL ELEVATION
1/16" = 1'-0"

CONDOS BEYOND

RESTAURANT, BAR, & BANQUET

T.O. LOWER ROOF (9611.5')
77' - 9"

T.O POOL DECK ROOF (9607.5')
72' - 6"

CONDOS BEYOND T.O POOL DECK ROOF(9607.5') 72' - 6" LEVEL 7 (9603.5') 68' - 6" RESTAURANT & BAR BEYOND LEVEL 6 RAISED POOL DECK (9596')
61' - 0" LEVEL 6 (9592') 57' - 0" LEVEL 5 (9581.5') 46' - 6" LEVEL 4 (9571') 36' - 0" LEVEL 3 (9560.5') 25' - 6" OPEN TO PEDESTRIAN BRIDGE CONNECTION

LEVEL 2 (9550') 15' - 0" LEVEL 1 MEZZANINE (9540') 5' - 0" LEVEL G1A PARKING (9530')
-5' - 0" LEVEL G2 PARKING (9510') -25' - 0" 4 SOUTHWEST MATERIAL ELEVATION
1/16" = 1'-0" ROOFS-BEYOND T.O. MAIN ROOF (9614.5') 79' - 6"

VAULT DESIGN, LLC 520 W FIR WAY LOUISVILLE, CO 80027

Uncompahgre Engineering, LLC



T.O. UPPER ROOF (9620') 84' - 10 5/8"

T.O. LOWER ROOF (9611.5') 77' - 9"



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HOTEL //LAGE, CO T 109R MOUNTAIN VILLAGE, SIX

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LOT 109R MAJOR PUD AMENDMENT SPECIAL HEARING SUBMITTAL 05.19.2022 LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL

06.07.2022 LOT 109R PUD AMENDMENT TOWN COUNCIL CONTINUANCE SUBMITTAL 08.08.2022 **LOT 109R PUD AMENDMENT FINAL DRB SUBMITTAL 10.21.2022**

LOT 109R PUD AMENDMENT TOWN COUNCIL SUBMITTAL 12.16.2022 COUNCIL FIRST READING

LEVEL 3 (9560.5') 25' - 6"

LEVEL 2 (9550') 15' - 0"

LEVEL 1 MEZZANINE (9540') 5' - 0"

LEVEL G1A PARKING (9530')
-5' - 0"

LEVEL G1 PLAZA (9522') -13' - 0"

JOB NC EXTERIOR MATERIAL **ELEVATIONS**

 $A-2.0^{\circ}$

As well, we have developed preliminary mitigation plans with feedback from the neighbors and are committed to the following:

- 1. A plan to ensure access throughout construction and a commitment to provide a contact for a site supervisor at all hours.
- 2. Reimbursement of the cost of an engineer to do an existing conditions survey (with consistent survey monitoring points to monitor for building movement)
- 3. Owner Controlled Insurance Program for the project to provide adequate protections for adjacent properties.
- 4. Continuous access to the trash buildings for trash removal and ongoing support to the neighbors when we are replacing the entrances to their parking structures.

5. Adherence to Town standards for construction hours and noise mitigation measures.

- We expect that 15-20 parking passes will be purchased on a daily or as needed basis while entrances are replaced at the Shirana/Westemere parking structures. This is a preliminary estimate of Shirana/Westemere Owners that will require replacement of their individual parking spaces while their entrance is shut down. Our goal will be to limit these shutdowns to days once we have a refined plan for placement of the new concrete drive.
 - We are proposing placing a temporary platform lift at the West Entrance of Shirana to allow for materials to be hoisted to the plaza level of the Shirana to allow direct access to the businesses at this level. This allows deliveries that are currently taken at the northeast lot to be shifted to the lot on the west side of Shirana.

EXCAVATION

13

During early site mobilization, excavated materials will be hauled off site to a location to be provided by awarded earthwork contractor. There are minimal trees on the lot which will allow for early removal of those impacted and executed per town requirements. As the site is excavated for foundations and underground parking, excavation soils and rock will be hauled off site with a portion of the soil to be brought back on site to be used as backfill.

A shoring and lagging system is anticipated at the property line, along proposed foundation walls along Mountain Village road, dying off in board of the site. A comprehensive shoring plan will be provided for review and approval once the final scope of the project has been determined.

Excavation volume and frequency will vary throughout the different phases of the excavation process, with 10-20 trucks per day on average anticipated. Consistent road sweeping of dirt and debris, and dust control removal will be ongoing during construction. We expect to coordinate truck counts and routes with the Town after we have developed a more concise plan with the excavator.

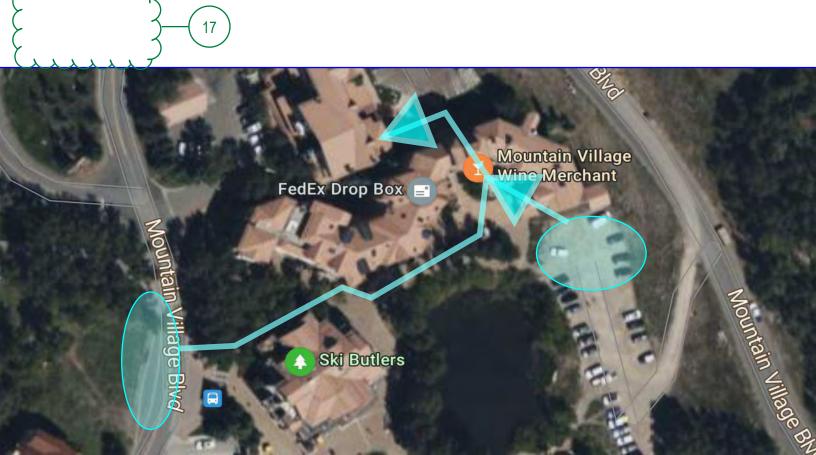
SAFETY AND CONSTRUCTION OPERATIONS

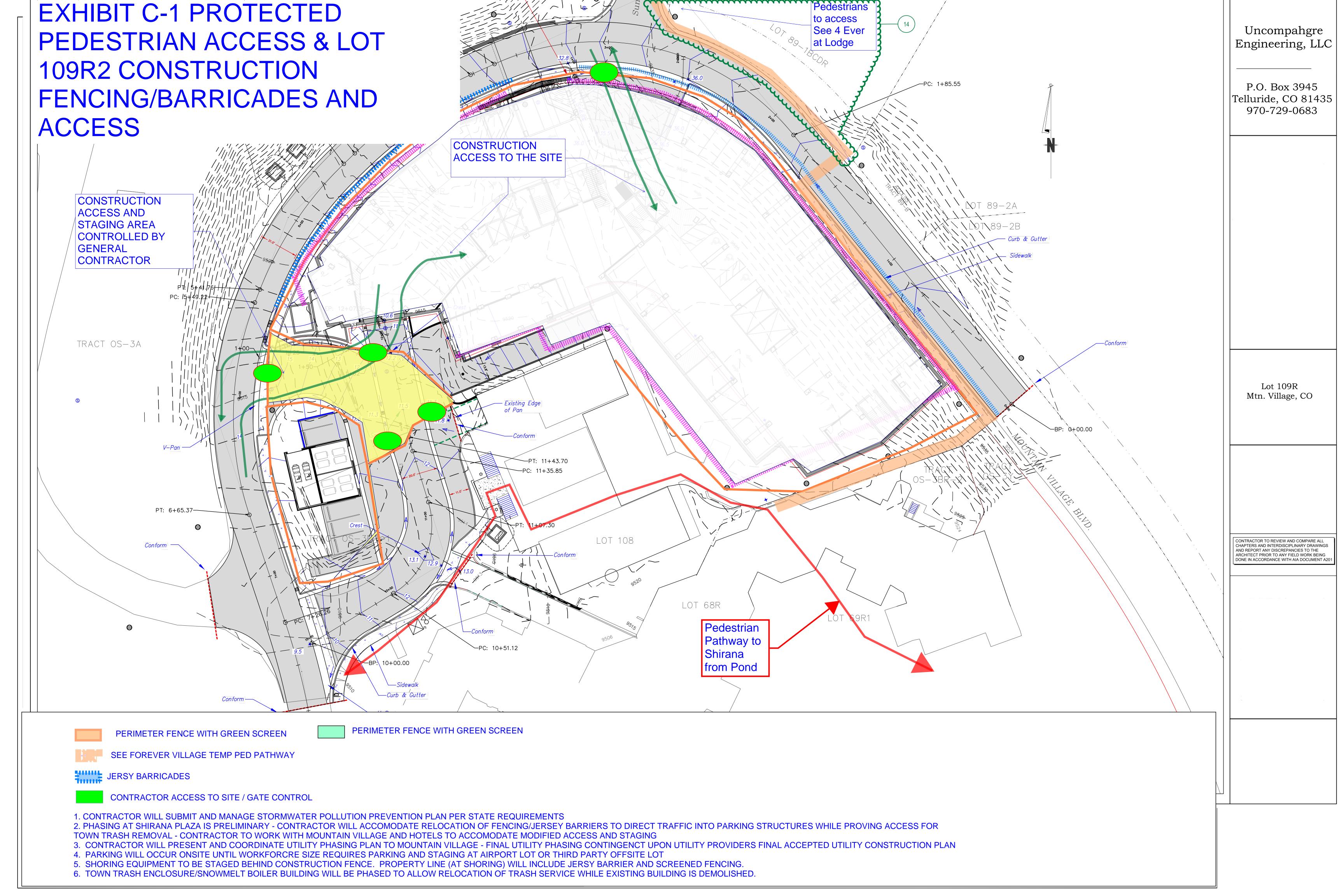
The construction of Lot 109 presents multiple challenges to existing logistics of the surrounding properties.

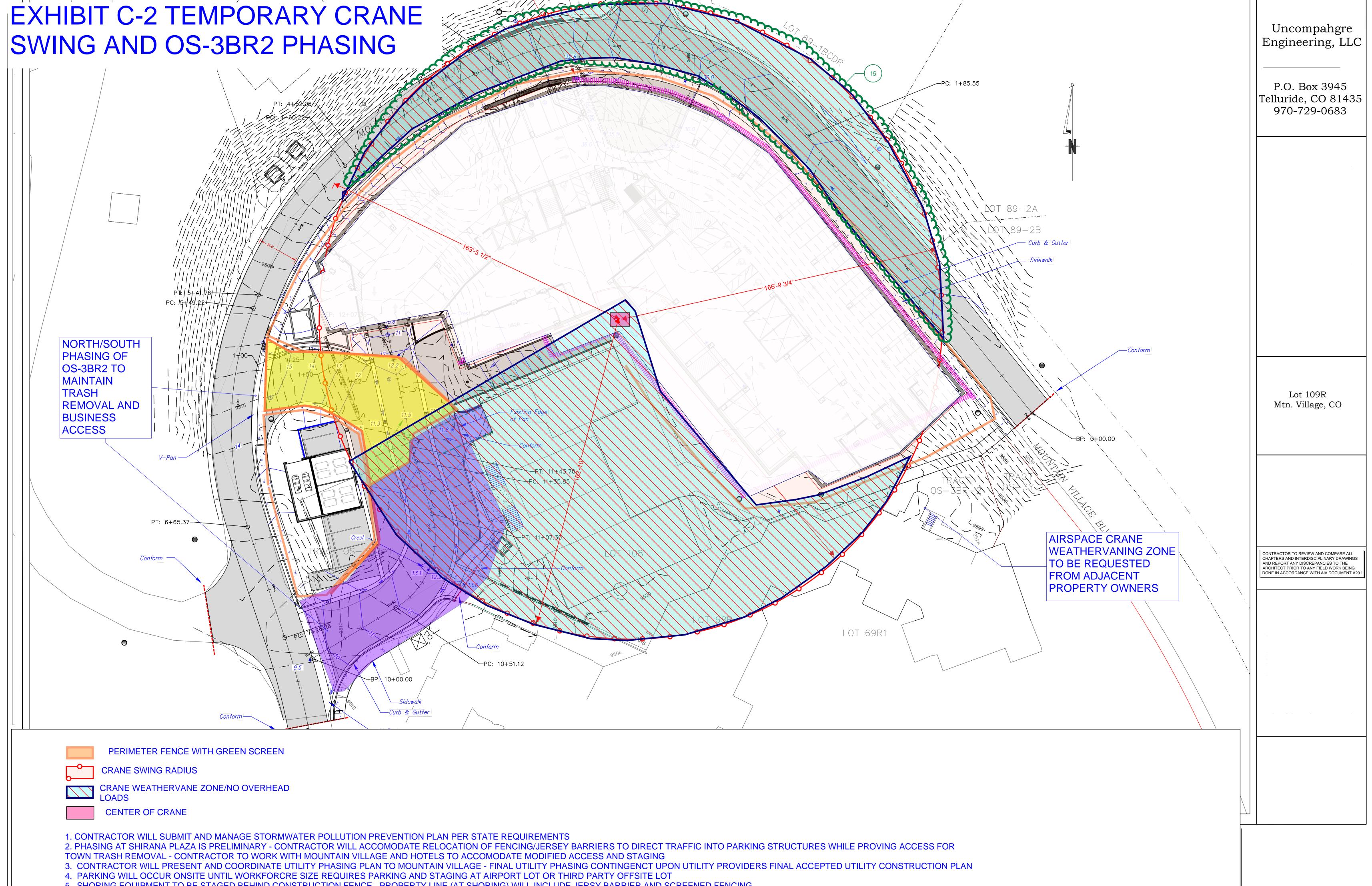
This mitigation plan highlights the separation of the construction site from the Shirana/Westemere properties and anticipates multiple efforts that we will undertake to ensure access to current operations as noted. The strategies noted below are under continual review with neighboring properties and the Town of Mountain Village. Contractor coordination of access will be closely coordinated with the Building and Fire Department. All areas under construction will be protected by construction fence. Traffic patterns impacted by construction will be developed and reviewed by Mountain Village Public Works and construction flagging will be provided to manage the entrance. Contractor will continually monitor and manage the construction entrance.

The access to the Trash Enclosure and parking area will be addressed in multiple phases:

- 1. Utilities installation multiple crossings impact parking. Work to be phased in short time frames and prior to rebuild of trash enclosure. Temporary trash removal can be arranged with bear proof containers on an as needed and coordinated basis with Bruin or the waste removal vendor.
- 2. Regrade of north entrance The area in yellow will be reworked to new grades to accommodate staging for the rebuild of the trash enclosure. A temporary road for egress will be maintained throughout construction with controlled access to the north through the gates.
- 3. Construction of the Trash Enclosure A temporary enclosure will be developed to shift current trash collection with the intent of maintaining current operations utilizing the established preconstruction trash truck movement. Trash traffic will be shifted accordingly when the north drive is established to allow access from the north.
- 4. Reconstruction of the Drive construction of the drive will likely start on the north and phase to the south. The area in front of the trash enclosure will be phased to allow for trash removal from the north while the south drive is being demoed and repaved. Once the trash removal is relocated to the north, the south drive will be divided again for phasing to maintain access for Shirana/Westemere. We are in agreement to provide parking passes at Heritage for the HOA unit owners during this time when the entrances to each parking structures is under reconstruction. We expect that 15-20 parking passes will be purchased on a daily or as needed basis while entrances are replaced at the Shirana/Westemere parking structures. This is a preliminary estimate of Shirana/Westemere Owners that will require replacement of their individual parking spaces while their entrance is shut down. Our goal will be to limit these shutdowns to days once we have a refined plan for placement of the new concrete drive.
- 5. This applicant is prepared to support the delivery of product to merchants via the loading zones at the west and east side of the core as noted on the diagram below. This plan is based on review and acceptance with Public Works and the permitting authority to achieve delivery permits and with Telski to gain access to the 'Pond Lot" to allow for deliveries. We are also prepared to provide a lift on the west side of Shirana to provide access for 'Linen and Supply delivery' up to their elevated deck (see green box on west side of Shirana).







5. SHORING EQUIPMENT TO BE STAGED BEHIND CONSTRUCTION FENCE. PROPERTY LINE (AT SHORING) WILL INCLUDE JERSY BARRIER AND SCREENED FENCING.
6. TOWN TRASH ENCLOSURE/SNOWMELT BOILER BUILDING WILL BE PHASED TO ALLOW RELOCATION OF TRASH SERVICE WHILE EXISTING BUILDING IS DEMOLISHED.

ORDINANCE NO. 2023-__

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, CONDITIONALLY APPROVING A MAJOR PLANNED UNIT DEVELOPMENT AMENDMENT FOR LOT 109R AND PORTIONS OF VILLAGE CENTER OPEN SPACE TO BE CONVEYED TO THE DEVELOPER

WHEREAS, Tiara Telluride, LLC ("Developer") is the owner of certain real property described as Lot 109R, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 416994 ("Lot 109R") and

WHEREAS, the Town of Mountain Village ("Town") is the owner of certain real property adjacent to Lot 109R described as open space parcel OS-3BR-2, according to the plat recorded as Reception No. 416994 (the "Town Property"); and

WHEREAS, the Developer has submitted an application to replat Lot 109R and the Town Property (the "Major Subdivision Application") for the purpose of a land exchange where the Town would convey portions of the Town Property described in Exhibit A to become part of Lot 109R (the "Contributed Town Property") and the Developer would convey portions of the current Lot 109R also described in Exhibit A to become part of the Town Property (the "Replacement Town Property") (Lot 109R and the Contributed Town Property as combined may be referred to herein as the "Property," and the Town Property and the Replacement Town Property combined may be referred to herein as the "Town Open Space Parcel"); and

WHEREAS, the purpose of this Ordinance is to act on the Developer's application for a Major Planned Unit Development ("PUD") Plan for the Property, and the Town Council will simultaneously be considering a separate ordinance concerning the required rezoning of the Replacement Town Property to bring the Replacement Town Property into the same zoning designation as the Town Property (the "Rezoning Ordinance"); and

WHEREAS, the Town Council will consider acting on the Major Subdivision Application by resolution to coincide with second reading of this Ordinance; and

WHEREAS, the Town previously approved a PUD Plan for Lot 109R by Resolution 2010-1208-31 (the "2010 PUD") and, in connection therewith, the Town and Developer's predecessor-owner of Lot 109R entered into a Development Agreement dated March 18, 2011, which was recorded as Reception No. 416997 (the "2011 Development Agreement"); and

WHEREAS, pursuant to Ordinance 2015-07, the Town approved a First Amendment to the 2011 Development Agreement extending vested rights relating to the 2010 PUD until December 8, 2020; and

WHEREAS, pursuant to Ordinance 2020-16, the Town approved a Second Amendment to the 2011 Development Agreement extending vested rights relating to the 2010 PUD until December 8, 2022; and

WHEREAS, pursuant to Ordinance 2022-10, the Town approved a Third Amendment to the 2011 Development Agreement extending vested rights relating to the 2010 PUD until September 8, 2023¹; and

¹ Ordinance 2022-10 has been challenged in pending litigation. *See Scythian Ltd, et al. v. Town of Mountain Village, et al.*, Case No. 2022 CV 30045, San Miguel County District Court. If Ordinance 2022-10 is found by the court to be invalid, such a finding will not invalidate or otherwise affect the approval of this Ordinance. This Ordinance and the Amended and Restated Development Agreement will supersede the Third Amendment to the 2010 PUD and related

WHEREAS, the Developer has applied to the Town for approval of a Major Amendment to the 2010 PUD to include the Town Contributed Property and to make adjustments to density, height, design, and other matters for the development of a mixed-use project consisting of hotel rooms, employee housing, public amenities including restaurants and a spa, along with commercial and retail space, underground parking garage, outdoor landscaped areas, plazas, and related improvements to be operated by a five-star luxury brand hotel operator (the "Project") as more particularly described in the application, which consists of the materials submitted to the Town and itemized on Exhibit B, plus all statements, representations, and additional documents of the Developer and its representatives (the "Major PUD Amendment Application") at the public hearings before the Design Review Board ("DRB") and Town Council, which are incorporated herein by reference; and

WHEREAS, the DRB held public hearings regarding the Major PUD Amendment Application on May 5, 2022 and May 31, 2022, and voted 3-1 to issue a recommendation of approval to the Town Council concerning the Application, subject to further consideration by the DRB for final design review and for its recommendation regarding the related Major Subdivision Application; and

WHEREAS, the Town Council considered this Ordinance on first reading at its regular meetings on June 16, 2022 and August 18, 2022, and consented to including the Contributed Town Property in the Developer's Major PUD Amendment Application and Major Subdivision Application, but voted to continue the matter to November 17, 2022 so as to allow the Developer time to submit the Major Subdivision Application and final design review materials; and

WHEREAS, the Town Council again considered this Ordinance on first reading at its regular meeting on November 17, 2022, but voted to continue the matter to January 19, 2023 so as to allow the DRB to conduct a further public meeting regarding final design review and the Major Subdivision Application before the Town Council would make a decision as to the Major PUD Amendment Application; and

WHEREAS, following a DRB meeting held on December 1, 2022, the DRB recommended to the Town Council approval of the Major PUD Amendment Application and the Major Subdivision Application, subject to conditions; and

WHEREAS, the design plans provided to Town Council replace plans considered by the DRB at its December 1, 2022 meeting with the intent to address conditions of approval and requests from the Town, and Town Council has determined that no further DRB review or approval is required as a condition of proceeding with the June 15, 2023, Council meeting, provided, however, all of the DRB conditions from December 1, 2022, still apply, and further DBR review and approval may be required prior to building permit to the extent required by the CDC; and

WHEREAS, at its January 19, 2023, regular meeting, the Town Council again considered this Ordinance on first reading, but voted 6-1 to direct Town staff to prepare a resolution denying the Major PUD Amendment Application to be considered at the March 16, 2023, regular meeting; and

WHEREAS, at its March 16, 2023, regular meeting, the Town Council voted to continue the matter to June 15, 2023 so as to allow the Developer to address outstanding issues with the Major PUD Amendment Application; and

Third Amendment to the 2011 Development Agreement, thus rendering the approval of the third extension of vested rights moot.

WHEREAS, the Town Council has considered the Major PUD Amendment Application, the DRB's recommendations, and testimony and comments from the Developer, Town staff, and members of the public at a public meeting on June 15, 2023 and at a duly noticed public hearing on June 26, 2023; and

WHEREAS, the Town Council has considered the criteria set forth in Section 17.4.12 of the Town's Community Development Code ("CDC") and finds that each of the following has been satisfied or will be satisfied upon compliance with the conditions of this Ordinance set forth below and in the Amended and Restated Development Agreement:

- 1. The proposed PUD is in general conformity with the policies, principles and standards set forth in the Comprehensive Plan. (Because the Major PUD Amendment Application was submitted before November 1, 2022, the 2011 version of the Comprehensive Plan applies);
- 2. The proposed PUD is consistent with the underlying zone district and zoning designations on the site or to be applied to the site unless the PUD is proposing a variation to such standards;
- 3. The development proposed for the PUD represents a creative approach to the development, use of land and related facilities to produce a better development than would otherwise be possible and will provide amenities for residents of the PUD and the public in general;
- 4. The proposed PUD is consistent with and furthers the PUD purposes and intent;
- 5. The PUD meets the PUD general standards;
- 6. The PUD provides adequate community benefits;
- 7. Adequate public facilities and services are or will be available to serve the intended land uses;
- 8. The proposed PUD shall not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion; and
- 9. The proposed PUD meets all applicable Town regulations and standards unless a PUD is proposing a variation to such standards.

WHEREAS, the Town Council has considered the criteria set forth in CDC Section 17.4.17.D and finds that the submittal material and the proposed development substantially comply with the following vested property right review criteria:

- 1. A vested property right is warranted in light of relevant circumstances, such as the size and phasing of the development, economic cycles and market conditions;
- 2. The site-specific development plan is consistent with public health, safety and welfare;
- 3. The site-specific development plan provides for the construction and financing of improvements and facilities needed to support the proposed development;
- 4. The site-specific development plan meets the criteria for decision for concurrent, required development application(s); and
- 5. The proposed vested property right meets all applicable Town regulations and standards.

WHEREAS, the Town Council now desires to approve the Major PUD Amendment Application, with vested property rights, 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:

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

Section 2. Approvals. The Town Council hereby approves the Major PUD Amendment Application, subject to the conditions set forth below ("Final PUD Approval"). The Town Council also approves the Amended and Restated Development Agreement, in the form attached hereto as Exhibit C (the "Amended and Restated Development Agreement"), which the Mayor and Town Clerk are authorized to sign on behalf of the Town. All exhibits to this Ordinance are available for inspection at the Town Clerk's Office. Further, subject to Condition #1 below and Developer's execution of the Amended and Restated Development Agreement, the Town Council authorizes conveyance of the Contributed Town Property to the Developer and agrees to accept the conveyance of the Replacement Town Property from the Developer. These approvals include the following variations from the presumptive standards in the CDC or from the 2010 PUD:

2.1. **Zoning and Density**. The Town Council approves the rezoning of and density for the Property as follows:

Table 1. Current Zoning and Density Under the 2010 PUD.

Type of Zoning	Total Zoning	Person	Total Person Equivalents
Designation Unit	Designation Units	Equivalent per	
		Unit Type	
Efficiency Lodge	66	.5	33
Lodge	38	.75	28.5
Condominiums	20	3	60
Employee	1	3	3
Apartments			
Commercial	20,164 sq ft	0	0
Total			124.5

Table 2. Approved Zoning and Density for the Property.

Type of Zoning Designation Unit	Total Zoning Designation Units	Person Equivalent per Unit Type	Total Person Equivalents
Efficiency Lodge	50	.5	25
Lodge	31	.75	23.25
Condominiums	20	3	60
Employee Apartments	2	3	6
Employee Dormitory	18	1	18
Commercial	22,609 sq ft*		0
Total			132.25

- * Commercial space will be memorialized in square footage on the final condominium map to be approved and recorded following construction as addressed in the separate resolution for the Major Subdivision Application.
 - a. *Rezone and Density Transfers*. To create the zoning and density in Table 2 above, the Developer will place the following density into the Town's Density Bank:

Table 3. Approved Density Bank Transfers.

Zoning Designations	Person Equivalents	Total Number of Zoning Designation Type of Units to be Placed into Density Bank	Total Person Equivalents
Efficiency Lodge	.5	16	8
Lodge	.75	7	5.25
Total Units and Person Equivalents	N/A	23	13.25

b. *Employee Housing Density*. At the request of the Developer, the Town will create the employee housing density needed for the Developer to provide an additional Employee Apartment and 18 Employee Dormitories. The Town will utilize the remainder of Town Density Certificate #27, a portion of which is already committed to the 161C-R Four Seasons project, with a small amount of density to be created by the Town called "Bonus Density," which will not count against the Town's density limitations.

Table 4. Approved Additional Employee Density.

Zoning Designations	Person Equivalents	Total Number of Zoning Designation Types to be Created	Total Person Equivalents
Employee Apartment	3	1	3
Employee Dormitory	1	18	18
Total Person			21
Equivalents			

Table 5. Approved Changes to Density Certificate #27.

Zoning Designation	Person Equivalent	Number of Unit Types	Total Person Equivalents
Employee	3	13	36
Condominium			
Employee	3	-9	-27
Condominium Rezoned			
to Employee Apartment			
for 161C-RR Four			
Seasons			
Employee	3	-4	-12
Condominum Rezoned			
to Employee Dormitory			
for 109R			

Total (Density	0	0	0
Certificate #27 would			
be retired and voided)			

Table 6. Approved Bonus Density.

Zoning Designation	Person Equivalent	Number of Unit Types	Total Person
			Equivalents
Employee Dormitory	1	6	6
Employee Apartment	3	1	3
Total	N/A	7	9

c. Limited Modification of Employee Units. Notwithstanding the provisions of CDC Section 17.4.12(O)(2), the type, mix, or configuration of individual Employee Apartments and Employee Dormitories, only to the extent that such changes result in increases in density used at the Project or in changes to use designations, may be initiated by the owner of fee title to the Employee Housing Unit (defined in section 3.9(b) below), without any requirement that such change be initiated or joined by owners of fee title to at least 67% of the real property within the PUD or an individual or entity having the written permission of owners of fee title to at least 67% of the real property within the PUD, provided the Employee Housing Unit continues to be used for Employee Apartment, Employee Dormitory, and Employee Amenities (an "Employee Housing Unit PUD Amendment"). An Employee Housing Unit PUD Amendment cannot otherwise reduce the number of allocated parking spaces for deed restricted housing, as outlined below, and all other regulations still apply. An Employee Housing Unit PUD Amendment will be reviewed by the Town's planning division as a Class 1 Application, consistent with CDC Section 17.4.3(K)(1). Any proposed decrease in the number of employee units or changes in square footage will be reviewed as a Class 4 Application, consistent with CDC Section 17.4.3(K)(3).

2.2. **Parking**. The Town Council approves the parking requirements for the Property as follows:

Table 7. Approved Parking for the Property.

Parking	Requirement	Number of	Required	Provided
	per Type	Units		
Commercial Space	1 per 500 sq ft of high intensity use; 1 per 1,000 sq ft of low intensity use*	22,608 sq ft	29	29
Condo	1 per unit	20	20	20
Efficiency Lodge	.5 per unit	50	25	25
Lodge	.5 per unit	31	15.5	16
Public Parking	(48 per 2010 PUD)	48	48	48
Employee Dormitory	1 per unit	18	18**	18
Employee Apartment	1 per unit	2	2	2

HOA	1-5 spaces	1	1-5	1
Maintenance				
Vehicles				
Total			158.5	159

^{*}The 2010 PUD only required one (1) parking space per 1,000 square feet of commercial space and did not calculate commercial parking per intensity of use, which, pursuant to the CDC, is one (1) parking space per 500 square feet of high intensity commercial use (e.g., restaurant versus an office). The Developer shall provide commercial parking pursuant to the CDC.

- a. Reduction in Total Parking Spaces. In exchange for a payment of \$100,000 for each space, the Developer may remove up to five (5) parking spaces at the Property from the total in Table 7 above; provided, however, that the spaces allocated for Public Parking, Employee Dormitory, and Employee Apartment are not affected. Any such payment-in-lieu must be made to the Town prior to issuance of building permit.
- 2.3. **Design Variations**. The Town Council approves variations to the CDC's Design Regulations for the Property as follows:
 - a. Roof form per CDC Section 17.5.6.C
 - b. Wall material not meeting the required 25% stucco per CDC Section 17.5.6.E
 - c. Glazing uninterrupted areas of glass that exceed 16 sq. ft. per CDC Section 17.5.6.G.5
 - d. Decks and balconies long continuous bands per CDC Section 17.5.6.I
 - e. Commercial, ground level, and plaza areas storefront design and color selection per CDC Section 17.5.15
 - f. Commercial, ground level, and plaza areas ski locker private use on a Primary Pedestrian Route
 - g. Road and driveway driveway grade

DRB Specific Approvals:

- h. Materials TPO membrane roof; metal fascia and soffit
- i. Solar roof tiles in the Village Center
- j. Road and driveway two curb cuts
- k. Tandem parking
- 2.4 **CDC Variations**. The Town Council approves variations to the CDC's general requirements as follows:
 - a. *Height*. The maximum height shall be 88'9" and the maximum average height shall be 65'2.9".
 - b. Bonus Density. The Town shall create Bonus Density pursuant to Table 6 above.
 - c. *PUD Amendments*. Notwithstanding CDC Section 17.4.12(O)(2), further amendments to the PUD Plan approved by this Ordinance, the impacts of which would apply to a specific unit or units or common elements allocated thereto (by way of example and not limitation, the Hotel Facilities Unit, Employee Housing Unit, a Commercial Unit or a Residential Condominium Unit, as such terms are defined in the Amended and Restated Development Agreement) may be initiated by the owner or owners of the impacted unit or units without the prior written consent of 67% of all owners of units within the project (including condominium owners or the association); provided, however, all such owners within the

^{**}The DRB established dormitory parking at one (1) space per Employee Dormitory at its May 31, 2022 meeting.

- project shall be provided written notice of any proposed amendments and the right to provide public comments, and no approvals are guaranteed.
- d. *Encroachments*. The Town shall grant to the Developer easements for certain building overhangs and encroachments as well as emergency access for the Employee Housing Unit as provided in the Amended and Restated Development Agreement. Upon submittal of a building permit application, Town staff will evaluate any new encroachments and will have the ability to elevate such encroachments to the Town Council for a one-step review as a PUD amendment with a public notice requirement via a Class 5 Application.
- e. *Conference Center*. The Developer agrees that the conference center proposed as part of the Project will be offered to the public at market rate.
- f. Garage Drive Aisle. The garage drive aisle is reduced from 22 feet to 18 feet, subject to approval by the fire marshal per Code section 17.5.8(C)(3).
- g. *Use of Active Open Space*. Permitted uses (parking, pedestrian paths, etc., as shown in the Final PUD Plans) in Active Open Space as shown on the Final PUD Plans are approved pursuant to the PUD and not the Conditional Use Process.
- h. *Employee Housing Requirements*. The Employee Housing Covenant shall control over any conflicting provisions of the CDC.

<u>Section 3. Conditions</u>. The approval of the Major PUD Amendment Application is subject to the following terms and conditions:

- 3.1. The Town Council must separately approve the related Major Subdivision Application and Rezoning Ordinance, which respectively concern the re-subdivision of Lot 109R and replat of the Town Property to create the Contributed Town Property and the Replacement Town Property ("Property Replat"). If the amended subdivision plats are not approved within 90 days after second reading of this Ordinance, this Ordinance shall become null and void.
- 3.2. All conditions of approval of the Major Subdivision Application as set forth in Resolution 2023-__ ("Subdivision Approval") and as set forth on the Property Replat and in the DRB's final design review on December 1, 2022, are incorporated as conditions of this Final PUD Approval.
- 3.3. The land swap involving the Contributed Town Property and the Replacement Town Property must be completed as provided by the Amended and Restated Development Agreement.
- 3.3. The Town and Developer shall enter into the Amended and Restated Development Agreement, attached hereto as Exhibit C.
- 3.4. **Public Benefits**. The Developer agrees to provide the following as "Public Benefits," as that term is defined by the CDC:

Table 8. Approved Public Benefits.

Public Benefit	Value
50 dedicated hotel rooms held in common ownership as a single	
condominium unit, which cannot be further subdivided or	
condominiumized	
Hotel operator requirements – letter of intent with Six Senses	
Furniture package	
Mitigation Payment	\$996,288 (\$250,000 of
	which may be used for
	trash enclosure costs)

Existing trash facility to be replaced by the Developer, which includes Town consent that the Developer rebuild the trash building ("Relocated Trash Facility")	\$840,625
Using the remaining \$746,288 of the Mitigation Payment for employee housing	
Hotel Covenant	
On the 2 nd anniversary of a certificate of occupancy, the Hotel Operator will provide actual full time equivalent employee information, and the Hotel Owner shall pay \$4,018.52 per employee in excess of the 90 full time equivalent employees estimated	
Two (2) Employee Apartments. Eighteen (18) Employee Dormitories, each comprised of individual sleeping rooms accommodating three (3) people with common amenities, such as a shared kitchen, recreational facilities, and a laundry. Minimum total commitment of 14,455 square feet of employee housing ("Employee Housing Unit")	\$9,950,250
Public restroom of no less than 381 square feet ("Public Restroom")	\$154,781
Contribution to the Town for improvements to the Village Pond Plaza ("Village Pond Improvements")	\$250,000
Improving emergency access to Plaza Area, i.e., the fire line, including snowmelt ("Fire Lane Improvements")	\$189,871
Construction of a sidewalk from Shirana to Mountain Village Blvd. including snowmelt ("Shirana Sidewalk")	\$81,146
Plaza improvements including See Forever walkway, with a pedestrian access easement that connects See Forever through Lot 109R to the Village Center to be granted ("Plaza Improvements")	\$1,109,561
48 public parking spaces that the Developer will own and maintain but grant to the Town an easement for use thereof ("Public Parking"). The Developer may charge fees for use of public parking spaces consistent with Town-established rates with reference to those at the Heritage Parking Garage, as set forth in the Amended and Restated Development Agreement.	\$4,800,000
Conference room available to the public	
Public access via the port cochere through the building to the See Forever walkway plaza ("Westermere Façade Improvements"), which is assured via an easement agreement	\$75,000
Valet parking provided for commercial uses. Shuttle service between Telluride and Montrose airports and the hotel for guests.	

3.5. **Public Amenities**. The Developer agrees to provide the following public amenities:

Table 9. Approved Public Amenities.

1 dote 7. Approved 1 done 1 differences.		
Public Amenity	Value	
Sustainability Fund committed to be spent locally	.5% of gross profits (estimated at \$350,000)	
(a Hotel Operator requirement)		
Silver LEED Certified (a Hotel Operator	\$2,460,000	
requirement)		

3.6. **Public Improvements**. The Developer agrees to provide the following "Public Improvements," as that term is defined by the CDC:

Table 10. Approved Public Improvements.

Item	Value
Plaza Improvements	\$1,109,561
Relocated Trash Facility	\$840,625
Fire Lane Improvements	\$189,871
Village Pond Improvements	\$250,000
Snowmelting OS-3BR-2 for access and use	\$382,575
Repaying OS-3BR-2	\$276,129
"Village Center Improvements" that extend	\$829,219
beyond the original boundary identified in the	
2010 PUD	

- 3.7. All Public Improvements to be conveyed or dedicated to the Town shall be constructed by the Developer at its expense pursuant to plans and specifications approved by the Town Engineer, and the Developer shall provide a letter of credit or other security, in a form subject to approval by the Town Attorney, to secure the construction and completion of such improvements based on engineering cost estimates to be approved by the Town Engineer. The procedures for providing and releasing security, inspection and acceptance of conveyance or public dedications, and construction warranties for the Public Improvements shall be addressed in the Amended and Restated Development Agreement and/or a supplement thereto to be executed prior to issuance of a building permit.
- 3.8. The housing mitigation requirements for the Project are being satisfied by the construction of 2 Employee Apartments and 18 Employee Dormitories, as shown on the final plans in the Major PUD Amendment Application. A final housing mitigation based upon the construction drawings will be submitted with the building permit application to verify compliance with the housing mitigation requirements pursuant to the housing mitigation ordinance in effect as of the date of approval of this Ordinance.
- 3.9. The 1997 Employee Housing Restriction outlined in Chapter 16.01 of the Code shall apply to the Employee Housing Unit with the following modifications:
 - a. The deed restriction cannot be lost in foreclosure (lender subordination may be required).
 - b. The 2 Employee Apartments and 18 Employee Dormitories shall be condominiumized as a single condominium unit (the "Employee Housing Unit") and cannot be rezoned or further diminished at without approval by the Town Council.
 - c. The deed restriction will not sunset in 50 years.
 - d. There will be no reduction in the number of dwelling units or committed floor area of 14,445 square feet, except that the floor area may vary between final design and building permit by 3%.
- 3.10. A deed restriction in substantially the same form as Exhibit __ shall be recorded in the San Miguel County Clerk and Recorder contemporaneously with the recordation of the condominium map and prior to the issuance of any certificate of occupancy for the Project, and any prior lienholder must agree to subordinate to this deed restriction. In the event of any conflict between Exhibit __ and the recorded deed restrictions, the recorded version shall control.
- 3.11. The Employee Housing Unit must be constructed concurrently with the free-market portions of the Property.

- 3.12. The 50 Efficiency Lodge Units constructed as hotel rooms on the Property shall be condominiumized as a single condominium unit (the "Hotel Rooms Unit") and cannot be further condominiumized.
- 3.13. The Employee Housing Unit shall be owned by either the Owner (as defined in the Development Agreement), or an affiliate of the Owner, of the Hotel Facilities Unit, or the Hotel Operator (or both).
- 3.14. The Developer shall provide the Town with written confirmation of the five-star operator's commitment to operate and manage the hotel prior to building permit.
- 3.15. In the event that a five-star operator does not continue to operate and manage the hotel constructed on the Property, the Developer shall be required to process a Class 4 Application to amend this Final PUD Approval to allow for an operator with less than five stars.
- 3.16 The condominium regulations of CDC Section 17.6.3 do not strictly apply to the Project. Nevertheless, the Developer shall provide incentives for including Lodge Units in the rental pool per the Amended and Restated Development Agreement.
- 3.17. **Construction Mitigation**. The Developer shall demonstrate it has consent from all nearby property owners or their representatives or associates for any direct impacts during construction, including any properties that will be used for construction access, staging, or storage or which will be underneath the overhead load area of the construction crane, which may include the Town, Shirana, and Westermere. The Developer shall indemnify all such parties against any damage to such property and shall provide proof of adequate insurance coverage protecting such owners. A construction mitigation and communications plan must be submitted to Town staff for approval in order to mitigate construction impacts in the Project area. Specifically, details concerning the management and maintenance of the construction area including Town property and the See Forever walkway must be finalized prior to submittal of a building permit application. During construction, Bruin waste services to the Village Center will be uninterrupted. Mountain Village Blvd. must always have at least one (1) lane of traffic open, except for the standard periodic lane closures that are issued and approved by the Town's public works department.
- 3.18. Shirana or Westermere shall have the right and ability to remove landscaping installed or maintained by the Developer or its successors on the Property or on the Town Open Space Parcel (if applicable) to the extent that such landscaping interferes with access from the plaza for maintenance to their buildings.
- 3.19. Upon submittal of a building permit application, Town staff will evaluate any new encroachments and will have the ability to elevate such encroachments to the Town Council for a one-step review as a PUD amendment with a public notice requirement via a Class 5 Application.
- 3.20. **Conditions of Building Permit**. Prior to issuance of any building permit, the Developer shall:
 - a. Provide an enlarged detail of storefront areas to clarify how the steel louver detail is used in these areas.
 - b. Revise the parking plan to indicate that Town staff's recommendation of providing 10% EV installed, 15% EV Ready, and 50% EV Capable parking spaces is being met.
 - c. Provide a product specification for glass railings that is specific to avoiding bird/glass impacts.

- d. Provide additional details regarding proposed solar panels, including the method of mounting and any/all materials associated with the panels for Town staff review.
- e. Provide a revised door schedule that indicates all exterior door type locations as well as door design, dimensions, and materiality for staff and one DRB member to review.
- f. Provide a drainage study with stormwater run-off calculations and/or update the original study as applicable.
- g. Provide a current geotechnical report consistent with the major PUD application requirements.
- h. Revise the landscaping plans to reduce the area of planting beds, creating at least one open plaza space capable of having small special events and allowing for better access to the plazas for maintenance and EMS services with a 13' 8" minimum path. The Developer shall also revise specified plaza furniture to be moveable in nature. Firepits shall be designed such that they can be utilized as planting beds in summer months. Irrigation calculations are required for building permit.
- i. Revise trash building plans to amend the shape of the trash enclosure building while preserving the area needed for Town use and necessary turn radius and opening up sight lines. Such plan should also provide a parking space for maintenance of the trash enclosure area and/or boilers for staff review.
- j. Provide details of engineered anchor points for sunshades and/or bistro lighting over the plaza areas for special events.
- k. Revise the Town trash building location/orientation to eliminate the site line impediment to Mountain Village Blvd. and to show venting for the boilers.
- Continue to work with the Town, utility providers, and possibly other developments to develop final locations for transformers, switch box, and gas substation and identify easements that would be necessary to accommodate utility infrastructure. The Developer should also indicate the plan for disposition of abandoned utilities.
- m. Obtain an approved CMP from Town staff.
- n. Enter into an agreement with the Town for landscaping and plaza maintenance.
- o. Show dimensions of the required trash compactor on the plan set in order to reduce the number of pick-ups.
- p. Provide a revised lighting plan for Town staff and two DRB members to review.
- q. Provide an address monument design for Town staff review.
- r. Pay applicable REMP fees.
- s. Pay required Mitigation Payment.
- t. Make any payment-in-lieu required for reduction of total number of parking spaces.
- u. Relocation of EV installed parking spaces as close to garage entry as reasonably possible given engineering limitations relating to the provision of power to charging stations.
- 3.21. **Conditions of Certificate of Occupancy**. Prior to issuance of any certificate of occupancy, the Developer shall:
 - a. Repave the surface of Mountain Village Blvd. adjacent to the Project to the satisfaction of the Town.
 - b. Complete the required Westermere Façade Improvements consistent with the Amended and Restated Development Agreement and to the satisfaction of the Town.
 - c. Coordinate a civic wayfinding program with Town staff.
 - d. Enter into any necessary easement or encroachment agreements with the Town, as determined by the Town Attorney.
 - e. Receive Town approval of a Class 3 Application, Sign Plan.
 - f. Completion and acceptance by the Town of all Public Improvements in accordance with the Amended and Restated Development Agreement.

- 3.22. As soon as practicable and prior to the recordation of the condominium documents, Town staff will designate a new Primary Pedestrian Route through this project and update the relevant Appendix 3-1, along with the Appendix 8-1 Village Center Emergency Access Routes in the CDC accordingly.
- 3.23. Consistent with Town building codes, unenclosed accessory structures attached to buildings with habitable spaces and projections, such as decks, shall be constructed as either non-combustible, heavy timber, or exterior grade ignition resistant materials such as those listed as WUIC (Wildland Urban Interface Code) approved products.
- 3.24. A monumented land survey of the footers will be provided prior to pouring concrete to determine there are no additional encroachments into the setbacks or across Property lines.
- 3.25. A monumented land survey shall be prepared by a Colorado public land surveyor to establish the maximum building height and the maximum average building height.
- 3.26. Prior to the Town's building division conducting the required framing inspection, a four-foot (4') by eight-foot (8') materials board will be erected on site consistent with this Final PUD Approval to show:
 - a. The stone, setting pattern, and any grouting with the minimum size of four feet (4') by four feet (4').
 - b. Wood that is stained in the approved color(s).
 - c. Any approved metal exterior material.
 - d. Roofing material(s) and any other approved exterior materials.
- 3.27. It is incumbent upon the Developer to understand whether above-grade utilities and Town infrastructure (e.g., fire hydrants and electric utility boxes), whether placed in the right of way or general easement, are placed in an area that may encumber access to the Property. Any relocation of such above-grade infrastructure appurtenances will occur at the Developer's sole expense and in coordination with the appropriate entity (e.g., fire department, SMPA, and/or the Town) so that the relocated position is satisfactory and in compliance with applicable regulations.
- 3.28. The Replat, which is subject to ministerial edits by Town Staff prior to recordation, shall depict the See Forever easement.
- 3.29. All representations of the Developer, whether within the Major PUD Amendment Application submittal materials or at the DRB or Town Council public hearings from and after the December 1, 2022, DRB meeting are conditions of this Final PUD Approval.
- 3.30. [Conditions of the DRB's final approval from December 1, 2022, that are not explicitly stated herein.]
- 3.31. [Additional conditions based on staff recommendations as further refined by Town Council.]
- <u>Section 4. Severability</u>. 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 5. Effective Date. This Ordinance shall become effective on, 2023 ("Effective
Date") 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 26th day of June, 2023 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado 81435
Section 7. Vested Rights. This Final PUD Approval constitutes a vested property right and site-specific development plan pursuant to Code Section 17.4.17.E.5. Additional details concerning the scope and duration of the vested rights granted by this Ordinance are set forth in the Amended and Restated Development Agreement. Pursuant to CDC Section 17.4.17.E.5, Town Council finds a longer vesting period is appropriate based on the scale of the development application. Pursuant to CDC Section 17.4.17.E.4, at the Developer's expense, the Town Clerk or Deputy Town Clerk shall publish notice of the vested property rights.
<u>Section 8. Recordation</u> . This Ordinance shall be recorded with the San Miguel County Clerk and Recorder contemporaneously with the recordation of the Property Replat and the Amended and Restated Development Agreement.
<u>Section 9. Publication</u> . The Town Clerk or Deputy Town Clerk shall post and publish notice of this Ordinance as required by Article V, Section 5.9 of the Charter.
INTRODUCED, READ, AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado this 15 th day of June, 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 26^{th} day of June, 20223.

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 Tov ("Town") do hereby certify that:	vn Clerk o	of the Tov	vn of Moun	tain Village, Colorado
1. The attached copy of Ordinance No. 2023("Or	dinance")	is a true, c	correct, and	complete copy thereof.
2. The Ordinance was introduced, read by title, appropriate the Town Council the Town ("Council") at a regular Blvd., Mountain Village, Colorado, on January 1 Town Council as follows:	lar meetin	g held at	Town Hall,	455 Mountain Village
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				
Home Rule Charter.4. A public hearing on the Ordinance was held by Council held at Town Hall, 455 Mountain Village At the public hearing, the Ordinance was consider the Town Council, by the affirmative vote of a que	Blvd., Mo ed, read by	ountain Vi y title, and	llage, Color l approved v	ado, on June 26, 2023. without amendment by
Council Member Name	"Yes"	"No"	Absent	Abstain
Laila Benitez, Mayor	res	NO	Absent	Aostain
Dan Caton, Mayor Pro-Tem				
Marti Prohaska				
Harvey Mogenson				
Patrick Berry				
Peter Duprey				
Jack Gilbride				
5. The Ordinance has been signed by the Mayor, seal and duly numbered and recorded in the official recorded in the offici	cords of th	e Town.		
Susan Johnston, Town Clerk (SEAL)				

Exhibit A

[Legal Descriptions of Town Contributed Property and Replacement Town Property]

Exhibit B

[List of Major PUD Amendment Application Materials]

Exhibit C

[Amended and Restated Development Agreement]

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

Lot 109R2, Town of Mountain Village, Planned Unit Development

THIS AMENDED AND RESTATI	ED DEVELOPMENT AGREEMENT ("Agreement"),
dated and made effective as of	, 2023 ("Effective Date"), is entered into by and
between the Town of Mountain Village, a	Colorado home rule municipality ("Town"), and Tiara
Telluride, LLC, a Colorado limited liabili	ity company ("Developer"). Town and Developer 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 CDC (defined below). In addition, the following terms shall have the meanings for them set forth below ("**Definitions**"). Each of the Definitions: (a) form a portion of the basis of this Agreement; and (b) are incorporated in this Agreement.

- A. "Act" shall mean the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-402, as amended and supplemented from time to time, or any successor legislation to these statutes.
- B. "Affiliate" means with respect to any specified Person, any other Person controlling, controlled by or under common control with such Person. For the purposes of this definition, "control" means the power to direct the management and policies of a Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.
- C. "Application" shall collectively mean the various land use applications including the Major PUD Amendment Application and the Major Subdivision Application, as those terms are defined in the Town Council Approval Ordinance, as well as plans, drawings, specifications, narratives, reports, studies and other materials prepared by Developer and submitted to the Town, plus all statements and representations of Developer and its representatives at the public hearings before the DRB and Town Council, concerning the development of the Project on the Property.
- D. "Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of Colorado are authorized or required by law or other governmental action to close.
- E. "CDC" or "Community Development Code" shall mean the Mountain Village Municipal Code Title 17 Community Development Code, adopted by the Town of Mountain Village by Ordinance No. 2013-01, as amended through the Effective Date.
 - F. "Charter" means the Town of Mountain Village Home Rule Charter, as amended.
- G. "Code" shall mean the Mountain Village Municipal Code, inclusive of the CDC, as amended.

- H. "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.
- I. "Common Elements" shall mean the common elements, including any limited common elements formed in the Project Condominium and designated as such pursuant to the Project Condominium Documents.
 - J. "Condominium Unit" shall mean a
- K. "Contributed Town Property" shall have the meaning for such term set forth in Section 4.1 and shall mean and refer to the property which the Town agreed to allow Developer to include in the Replat and incorporate into the Property and the Project.
- L. "**Design Regulations**" shall mean the Mountain Village Design Regulations adopted by the Town, as amended through the Effective Date, set forth in Section 17.5 of the CDC, as amended through the Effective Date.
- M. "**Developer**" shall mean Tiara Telluride, LLC, a Colorado limited liability company ("**Tiara**") and its successors and assigns; provided, however, no party other than Tiara shall exercise the rights and privileges reserved herein to Developer unless such party shall receive and record in the Official Records a written assignment of all or a portion of such rights, privileges and obligations pursuant to Section 14.18 below.
- N. "DRB" or "Design Review Board" shall mean the Town of Mountain Village Design Review Board.
- O. "Efficiency Lodge Units" shall mean each of those Hotel Rooms included in the Project that are zoned and designated as an Efficiency Lodge Unit (within the meaning of the CDC) in the Town Approvals. Each of the Efficiency Lodge Units in the Project will be Hotel Rooms and all will be included in the Hotel Facilities Unit.
- P. "Employee Apartment" shall mean each of those two (2) Employee Apartments included in the Project that are zoned and designated as an Employee Apartment (within the meaning of the CDC) in the Town Approvals. The Employee Apartments are not Residential Condominium Units.
- Q. "**Employee Dorm**" shall mean each of those eighteen (18) Employee Dorms included in the Project that are zoned and designated as Employee Dormitory (within the meaning of the CDC) in the Town Approvals. Each Employee Dorm may contain up to three (3) individual beds. The Employee Dorms are not Residential Condominium Units.
- R. "Employee Housing Restriction" shall mean that certain Employee Housing Restriction attached to this Agreement as Exhibit "D," which shall be recorded in the Official Records as an encumbrance on the Employee Housing Unit concurrently with the Project Condominium Declaration and Condominium Map.

- S. "Employee Housing Unit" means the Employee Apartments, the Employee Dorms and associated Employee Amenities that are necessary for operation of the employee housing in the Project. The Employee Housing Unit will be condominiumized pursuant to the Project Condominium Documents as one Condominium Unit and encumbered by the Employee Housing Restriction.
- T. "**Final PUD Plans**" shall mean the final plans, drawings and specifications for the Property and Project that have been approved by the DRB and the Town Council, as reflected in the Town Council Approval Ordinance, which plans, drawings and specifications consist of each of the documents are listed and described on attached Exhibit "A".
- U. "Furniture Package" shall mean those certain standard furnishing packages specified by Developer (and upon creation of the Condominium Project, by the Owner of the Hotel Facilities Unit) and the Hotel Operator pursuant to the Hotel Covenant for the Hotel Rooms and other Residential Condominium Units (exclusive of the Unrestricted Condominium Units).
- V. "Hotel Covenant" shall mean that certain Amended and Restated Declaration of Covenants and Restrictions (Hotel Operator and Hotel Amenities, Facilities and Services Covenant) recorded concurrently with this Agreement in the Official Records.
- W. "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 condominiumized pursuant to the Project Condominium Documents as one Condominium Unit which may be owned by one entity that may change from time-to-time.
- X. "Hotel Guests" shall mean those persons who are staying in any of the Hotel Rooms or any of the other Residential Condominium Units for short-term accommodation (30 days or less) usage purposes as part of the Rental Management Program.
- Y. "Hotel Operator" means the company initially retained by the Developer and approved by the Town in the manner provided for in this Agreement to operate and manage the Hotel Facilities Unit.
- Z. "Hotel Rooms" means each and all of those fifty (50) Efficiency Lodge Units located in the Project. Each and all of the Efficiency Lodge Units in the Project will be owned, operated, designated and dedicated only for use and occupancy for short-term accommodation (30 days or less) by Hotel Guests in the Rental Management Program. The Efficiency Lodge Units will 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.
- AA. "Individual Airspace Unit" means that portion of a Condominium Unit designated for separate ownership by a Unit Owner as depicted on the Condominium Map included within the Project Condominium Documents.
- BB. "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 CDC) in the Town Approvals.

- CC. "Official Records" shall mean the Official Records of the Clerk and Recorder for San Miguel County, Colorado.
 - DD. "Owner" shall initially mean Tiara.
- EE. "**Person**" shall mean any individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.
- FF. "**Project**" shall mean the development of a certain mixed-use hotel, residential condominium and commercial project on the Property in accordance with the Town Approvals. The Project shall consist of: a minimum of the fifty (50) Hotel Rooms zoned Efficiency Lodge Units to be operated 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; thirty-one (31) Lodge Units; twenty (20) Unrestricted Condominium Units; approximately 22,609 sq. ft. of commercial space; and two (2) Employee Apartments and eighteen (18) Employee Dorms to be owned and operated as part of the Employee Housing Unit and subjected to the Employee Housing Restriction, each as shown on the Final PUD Plans.
- GG. "**Project Association**" shall mean the non-profit corporation formed to manage the Project Condominium as contemplated by the Project Condominium Documents.
- HH. "**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 Individual Airspace Units and Common Elements as established and designated by Project Condominium Documents.
- II. "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.
- JJ. "Project Operational Standards" means the standards for operating the Project as determined by the Hotel Operator, in consultation with the Developer (and upon creation of the Condominium Project, by the Owner of the Hotel Facilities Unit) 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 that 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, updating 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 seasonally given due

consideration to winter periods, summer periods and shoulder seasons between winter and summer periods.

- KK. "**Property**" shall mean Lot 109R2, Town of Mountain Village, San Miguel County, Colorado according to the Replat.
- LL. "Rental Management Program" means the rental management and accommodations styled program operated in the Project by the Hotel Operator consisting of the Hotel Rooms and those Residential Condominium Units the Unit Owners of which have elected to participate in the Rental Management Program.
- MM. "**Replacement Town Property**" shall have the meaning for such term set forth in Section 3.1 and shall mean and refer to the property to be transferred and conveyed to the Town by the Developer pursuant to the terms and conditions of this Agreement.
- NN. "Replat" shall mean that certain Replat entitled "Replat of Lot 109R and Tract _____" recorded [concurrently with this Agreement] [or] [on ______, 2022 in Plat Book _____, Page ______, Reception No. ______ in the Official Records], establishing the boundaries of the Property.
- OO. "Residential Condominium Units" shall mean those particular Condominium Units that are zoned as Lodge Units and the Unrestricted Condominium Units, specified for residential uses by the Project Condominium Documents and the Town Approvals.
- PP. "**Rezone**" shall mean the rezoning of the Property to PUD pursuant to the Town Council Approval Ordinance and Section 4 below.
 - QQ. "Town" shall mean the Town of Mountain Village, Colorado.
- RR. "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 a major PUD amendment, variations/waivers, Replat, Rezone, the transfer of density to the Town density bank and creation of bonus density for workforce housing 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 Ordinance, the Hotel Covenant, the Replat, and this Agreement.
 - SS. "Town Council" shall mean the Town of Mountain Village Town Council.
- TT. "Town Council Approval Ordinance" shall mean Ordinance No. _____ adopted by the Town Council, approving the Application for the Project, which was recorded on _____, 2023 at Reception No. _____ in the Official Records.
- UU. "Town Enforceable Restriction" shall mean those provisions established in the this Agreement and incorporated by reference into the Hotel Covenant and the Project Condominium Documents that run to the benefit of the Town and may be specifically enforced by the Town and may not be modified without the prior written consent of the Town.

- VV. "**Town Engineer**" shall mean an outside consultant hired by the Town or such other member of Town Staff designated by the Town Manager to perform such function.
- WW. "Town/Developer Land Exchange" means the transfer and conveyance of the Contributed Town Property by the Town to Developer in exchange for the transfer and conveyance of the Replacement Town Property and the payment of the Venting Parcel Purchase Price by the Developer to the Town in accordance with the terms and conditions of this Agreement.
 - XX. "Town Open Space Parcel" means Tract OS-3BR of the Replat.
- YY. "Unit Owners" shall mean the respective owners, whether one or more persons, of fee simple title to each of the Condominium Units.
- ZZ. "Unrestricted Condominium Units" shall mean each of those Residential Condominium Units included in the Project that are zoned and designated as a "Condominium" (within the meaning of CDC Section 17.8.1, which refers to a "zoning designation that means multifamily dwellings located in condominium community) 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. Developer is the current, fee simple owner of Lot 109R ("Lot 109R"), Town of Mountain Village, San Miguel County, Colorado according to the "2011 Replat" recorded on March 18, 2011, in Plat Book 1, Page 4455 at Reception No. 416994 in the Official Records. Tract OS-3BR-2, [then] owned by the Town, was also platted on the 2011 Replat ("Tract OS-3BR-2").
- B. In 2010 the Town Council approved a PUD development for a project on Lot 109R (the "2010 Lot 109R PUD") by Resolution 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, recorded in the Official Records on December 10, 2010 under Reception No. 415339 (the "2010 PUD Approval"). In connection with the 2010 PUD Approval, the then owner of Lot 109R, MV Colorado Development Partners, LLC, a Texas limited liability company ("Original Developer") entered into a Development Agreement for Lot 109R, which was recorded in the Official Records on March 18, 2011 under Reception No. 415339 (as amended, the "2011 Development Agreement"). As required by the 2010 PUD Approval and 2011 Development Agreement, the Original Developer also made and entered into that certain Declaration of Covenants and Restrictions (Hotel Operator and Hotel Amenities, Facilities and Services Covenant) recorded March 18, 2011 at Reception No. 416998 in the Official Records (the "2011 Hotel Covenant").
- C. The vested property right created by the 2010 Lot 109R PUD was subsequently extended for a period of five (5) years, expiring December 8, 2020, pursuant to Ordinance No. 2015-07 recorded in the Official Records on August 5, 2015 under Reception No. 438753 and First Vesting Period Extension Ordinance by First Amendment to Development Agreement recorded in the Clerk's Office August 5, 2015 under Reception No. 438754. Such vested property right was

further extended for an additional period of two (2) years, expiring December 8, 2022, pursuant to Ordinance No. 2020-16 recorded in the Official Records on December 21, 2020 under Reception No. 467309 and Second Amendment to Development Agreement recorded in the Official Records December 21, 2020 under Reception No. 467310. The vested property right was further extended for an additional period of nine (9) months, expiring September 8, 2023, pursuant to Ordinance No. 2022-10 recorded in the Official Records on October 25, 2022 under Reception No. 478297 and Third Amendment to Development Agreement recorded in the Clerk's Office on October 25, 2022 under Reception No. 478928.

- D. Developer 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 CDC and Design Regulations.
- E. The Town authorized Developer 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 Developer has transferred and conveyed the Replacement Town Property in the manner and timeframe required by this Agreement.
- F. 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.
- G. Nothing contained herein is intended to establish any joint venture between Developer and Town with respect to the ownership, operation, management and development of the Project.
- H. At a duly noticed and conducted public hearing on December 1, 2022, the DRB recommended to the Town Council that the Application for Final PUD Plan be approved with conditions.
- I. At a duly noticed and conducted public hearing on June 16, 2022, the Town Council considered the Application and continued the matter to August 18, 2022, November 17, 2022, January 19, 2023, March 16, 2023, and June 15, 2023, at which the Town Council conditionally approved the Application for Final PUD Plan and held the first reading with respect to the Town Approvals.
- J. At a duly noticed and conducted public hearing on June 26,2023, the Town Council held the second reading with respect to the Town Approvals and conditionally approved the Application for Final PUD Plan and this Agreement.
- K. The public hearings referred to above were proceeded by public notice of such hearing as required by CDC Section 17.4.4(I)(2)(c).
- L. The Town Council has adopted the Town Council Approval Ordinance, the terms and conditions of which are incorporated herein by this reference.

- M. Developer has now met all requirements for: (1) approval of the Application; and (2) final approval for the components of the Application relating to the Replat, the transfer of density to the Town density bank and creation of bonus density for workforce housing, and variations/waivers.
- N. The Town and Developer intend that this Agreement shall amend and restate and supersede and replace in its entirety the 2011 Development Agreement.

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 Developer and the mutual obligations and promises set forth below, the receipt and sufficiency of which consideration is hereby acknowledged, the Town and Developer covenant and agree as follows:

- 1. General. The purpose of this Agreement is to set forth terms and conditions to be met by Developer in connection with developing the Property in accordance with the Town Approvals. All terms and conditions contained herein are in addition to all terms and conditions in the Town Approvals, the Code, and applicable state and federal statutes. This Agreement amends and restates and supersedes and replaces in its entirety the 2011 Development Agreement. Where this Agreement does not address a specific development standard or requirement of the Town, the provisions of the Code or Charter shall apply. Where this Agreement addresses a specific development standard or requirement, the provisions of the Agreement shall supersede the provisions of the Code. In all cases, the provisions of the Charter shall supersede the provisions of the Agreement.
- **2.** Representations. Developer shall comply with all representations made by Developer or its agents or representatives at the public meetings and hearings before the DRB and Town Council regarding the Application since the December 1, 2022, DRB meeting.
- **Recordation**. The Replat, Hotel Covenant and this Agreement shall be recorded, at Developer's expense, in the records of the San Miguel County Clerk and Recorder and shall run with the Property. The Replat shall be recorded simultaneous with, but immediately prior to, this Agreement. This Agreement shall be incorporated by reference on the Replat. The Final PUD Plans shall be filed of record with the Town of Mountain Village Community Development Department.

4. Town/Developer Land Exchange.

4.1. Pursuant to the Town Approvals, Developer shall convey certain portions of Lot 109R to the Town and the Town conveying certain portions of Tract OS-3BR-2 to Developer, the resulting parcels being the Property and the Town Open Space Parcel. The property to be conveyed by Developer to the Town is referred to in this Agreement as the "**Replacement Town Property**." The Replacement Town Property includes the Venting Parcel (defined below). The property to be conveyed by the Town to Developer is referred to in this Agreement as the "**Contributed Town Property**."

4.2. <u>Town/Developer Land Exchange</u>.

- 4.2.1 For and in consideration of a one-time payment in the amount of \$106,894.00 (the "Venting Parcel Purchase Price"), pursuant to the Town Approvals, the Town shall sell and convey to Developer, and Developer shall purchase from the Town, that portion of the Contributed Town Property 551 square feet in size located on the west end of Lot 109R and referred to in this Agreement as the "Venting Parcel."
- 4.2.2 The exchange of the Contributed Town Property and the Replacement Town Property shall occur simultaneously with the recordation of the Replat.
- 4.2.3 At the closing of the exchange of the Contributed Town Property and the Replacement Town Property ("**Town/Developer Land Exchange Closing**"), the Parties shall proceed as follows:
- A. The Town/Developer 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 to the Contributed Town Property to Developer or its designee by bargain and sale deed, vesting good and merchantable title to the Contributed Town Property in Developer or its designee. Such conveyance shall be made free and clear of all monetary liens and encumbrances and subject only to those exceptions accepted by Developer in a current commitment for title insurance to be obtained from the Title Company at Developer's sole cost and expense. The Town will cooperate and assist Developer in seeking to modify, amend or delete a title exception for which Developer reasonably objects.
- C. Developer shall convey fee simple title to the Replacement Town Property to the Town by bargain and sale deed, vesting good and merchantable title to the Replacement Town Property in the Town. Such conveyance shall be made 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 from the Title Company at Developer's sole cost and expense, which commitment shall be for the Replacement Town Property, as conveyed. At the Town/Developer Land Exchange Closing Developer shall, at its sole cost and expense, provide the Town with a title insurance policy, which may be for the whole of the Town Open Space Parcel or only the Replacement Town Property.
- D. Developer shall pay to the Town the Venting Parcel Purchase Price in immediately available funds.
- E. Developer shall pay all recording costs, closing fees and costs due to the Title Company.
- F. To the extent applicable and required, Developer shall pay any Real Estate Transfer Assessments (**RETA**), if any, that may arise in connection with the Town/Developer 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.

- G. 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.
- H. 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/Developer Land Exchange.
- 4.2.4 The Parties acknowledge and agree that, other than the Venting Parcel Purchase Price, no consideration is due and owing for the completion of the Town/Developer Land Exchange.
- **5. Public Benefits**. Pursuant to the Town Approvals, Developer shall provide the following "**Public Benefits**":
- 5.1. <u>Hot Beds</u>. In order to achieve the community purpose relating to the creation of "hot beds" in the Project, Developer agrees as follows:
- A. <u>Provision of Dedicated Hotel Rooms</u>. In accordance with the Hotel Covenant, Developer shall provide fifty (50) 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.
- Retention of a Hotel Operator. Developer expressly agrees В. that the continued operation of the Project by a five-star luxury brand hotel operator ("Hotel **Operator**") for the life of the Project is an essential requirement of the Town Approvals and this Agreement. 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: Six Senses, 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, Developer shall provide the Town with written confirmation from Six Senses (or an equivalent Hotel Operator, subject to Town approval) of its commitment to operate the Project. Should Six Senses, or an equivalent Hotel Operator as approved by the Town, discontinue operation of the Project at any time thereafter, , Developer shall immediately find a similar five-star luxury brand Hotel Operator, subject to approval by the Town. In the event Developer is unable to contract with a five-star luxury brand Hotel Operator consistent with this Agreement, Developer must apply to the Town for an amendment to the Final

PUD Plans via a Class 4 Application under the CDC for approval of an operator with fewer than five stars.

C. <u>Hotel Operator and Hotel Amenities, Facilities and Services</u>
<u>Covenant</u>. The Owner of the Hotel Facilities Unit 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 Hotel Rooms and Residential Condominium Units participating in the Rental Management Program in accordance with the Hotel Covenant.

D. Rental Management Program. The Hotel Operator will manage and operate the Rental Management Program in accordance with the Hotel Covenant. All of the Hotel Rooms must be included in the Rental Management Program. Developer shall provide incentives to Owners of Lodge Units to include such units in the Rental Management Program as set forth in the Hotel Covenant. Nothing herein is intended to require or obligate Unit Owners to place their Residential Condominium Units in the Rental Management Program provided that the Project Condominium Documents and the Hotel Management Agreement as well as the Hotel Operator, Declarant and Project Association must allow each of the Unit Owners of Residential Condominium Units to do so subject to continuing compliance with the Unit Rental Agreement. Developer and Hotel Operator shall provide the Rental Management Program documents, including the Hotel Covenant, and any modifications or amendments to the Town for review and approval of compliance with the terms of this Agreement.

E. <u>Standard Furnishing Package for All Lodge and Efficiency</u>
<u>Lodge Units</u>. Pursuant to the Hotel Covenant, Developer, in consultation with the Hotel Operator, will establish uniform Furniture Packages that will be provided for each of the Hotel Rooms and Residential Condominium Units (exclusive of the Unrestricted Condominium Units) and will abide by the applicable terms and provisions of the Hotel Covenant.

5.1.2 <u>Cash Payment</u>. In accordance with the Town Approvals, Developer shall 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.

5.1.3 Employee Mitigation. On the second anniversary of the initial Certificate of Occupancy for the Project: (a) the Owner of the Hotel Facilities Unit will (or will cause the Hotel Operator to) provide a certified statement indicating the actual number of full time equivalent employees for the operation of the Hotel Facilities Unit and the Rental Management Program; and (b) the Project Association will provide a certified statement indicating the actual number of full time equivalent employees for the operation of the Project Condominium; provided, however, that there shall be no double counting of employees involved in both the operation of the Hotel Facilities Unit and the Rental Management Program and those involved in the Project Condominium. As an alternative to two separate statements, a consolidated statement may be provided by a Person authorized to provide such statement on behalf of both Persons. 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. Each of the (x) Owner of the Hotel Facilities Unit (or the Hotel Operator) and (y) the Project Association will elect, in its sole discretion, to either: (a) pay the Town a one-time payment in the total amount

equal to the sum of \$4,018.52 ("One Time Payment") per full time equivalent employee averaged over the two (2) year period from the initial Certificate of Occupancy for the Project which is in excess of the ninety (90) full time equivalent employees estimated by the Developer; 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 (2) year period from the initial Certificate of Occupancy for the Project which is in excess of the ninety (90) full time equivalent employees estimated by the Owner. For purposes of the foregoing, the ninety (90) full time equivalent employees will be prorated between the Owner of the Hotel Facilities Unit (or the Hotel Operator) and the Project Association based on the total number of full time equivalent employees employed by each divided by the total number of full time equivalent employees employed by both collectively. The One Time Payment shall be due on the date that is the thirty (30) month anniversary of the initial Certificate of Occupancy for the Project. Subject to the requirements of this Section 11.2.3 above and the provisions of Section 11.2.4 below regarding the Employee Housing Unit, neither the Developer, the Owner of the Hotel Facilities Unit (or the Hotel Operator) nor the Project Association will be 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. The obligations under this Section to make the One Time Payment or build additional employee housing shall be in addition to the obligation of Developer to make the Cash Payment pursuant to Section 11.2.2 above. In the event that the certified statement or statements indicate that the Project is employing less than the anticipated ninety (90) full time equivalents employees, the Town shall not be required to refund any portion of the One Time Payment or Mitigation Payment to either payor.

5.1.4 Employee Housing Unit.

A. The Project will include an Employee Housing Unit, approximately 14,455 square feet in size, consisting of two (2) Employee Apartments, 18 Employee Dorms each consisting of three (3) beds, and employee amenities for the use of employee residents of the Project, such as shared kitchen and recreational facilities and a laundry ("Employee Amenities"), and generally consistent with the location and area designated in the Final PUD Plans. The Employee Housing Unit will be subject to the Employee Housing Restriction limiting the use of such Individual Airspace Unit as described in the immediately preceding sentence and including other requirements, restrictions and rights as more specifically set forth in the CDC and the Employee Housing Restriction.

B. The Employee Housing Unit shall be owned by either the Owner, or an Affiliate of the Owner, of the Hotel Facilities Unit or the Hotel Operator (or both).

5.1.5 <u>Public Restrooms</u>. Developer shall construct and make available, and, upon creation of the Condominium Project the Project Association will make available, to the general public, for at least sixteen (16) hours per day, three hundred sixty-five (365) days per year, restrooms in the Project reflected in the Final PUD Plans as public restrooms that are accessible from the plaza, without cost to the Town. During peak seasons, the restroom will be open not later than 7 AM. The Project Association will install directional signage for the bathroom, which signage shall be consistent with Village Center civic wayfinding signage and be approved by the Town. Ongoing operation and maintenance, as well as future capital improvements including repairs and remodels, of the public restroom will be undertaken by the Project Association, at the

cost and expense of the Project Association. Developer shall cause easements to be established in the Project Condominium Documents enabling access to the public restrooms through the Project to the extent necessary consistent with the terms of this Section. The requirements of this Section will be incorporated by reference into the Project Condominium Documents and identified therein as a "**Town Enforceable Restriction**" encumbering the Common Elements.

5.1.6 Plaza Improvements.

A. Developer shall construct certain "Plaza Improvements" and sidewalk improvements along the south side of Mountain Village Boulevard (the "Sidewalk Improvements"), each as reflected in the Town Approvals, 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 and Sidewalk Improvements shall also include a snow melt system and drainage system. The design of the snow melt and drainage systems shall be reviewed and approved by the Town prior to the issuance of any building permits for the Project. The snowmelt system will be operated and maintained by the Project Association at the Project Association's cost and expense in accordance with the Easement Agreement for Plaza Usage (defined in Section 12.3 below).

The requirements of this Section will be incorporated by В. reference into the Project Condominium Documents. and identified therein as a "Town Enforceable Restriction." Failure to operate the snow melt system and maintain the Plaza Improvements and Sidewalk Improvements pursuant to this Agreement shall entitle the Town to enter into the Project for the purpose of operating such snow melt system and maintaining the Plaza Improvements and Sidewalk Improvements. If the Plaza Improvements and Sidewalk Improvements are not properly operated or maintained by the Project Association, the Town may deliver notice of same to the Project Association and if operation is not resumed or maintenance performed within thirty (30) days thereafter, the Town is authorized, but not required, to resume operations or perform the required maintenance. If the Town resumes operations or performs such maintenance, all costs incurred by the Town shall be reimbursed by the Project Association within thirty (30) days of a receipt of an invoice for such costs. Failure to reimburse the Town for such costs shall entitle the Town to pursue all remedies at law or equity, including but not limited to placing a mechanic's lien on the Common Elements for collection of such costs, as well as attorneys' fees and costs. The Project Association 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 Project Association's actions or omissions in connection with the ongoing maintenance and snowmelt operations required of as set forth herein, including but not limited to the Project Association's improper maintenance and operation of the Plaza Improvements, Sidewalk Improvements and snowmelt system.

C. In addition, simultaneously with the issuance of the initial building permit, Developer shall deposit with the Town \$250,000.00 to be applied to the improvement of that portion of the Town Open Space Parcel to the south of the Westermere project and adjacent to the pond near the Village Core by the Town, or another party, at the appropriate time for the making of such improvements.

- 5.1.7 <u>Town Parking Spaces</u>. Developer shall construct forty-eight (48) covered, garage parking spaces to be allocated for public parking pursuant to Section 6.1 below ("**Town Parking Spaces**").
- 5.1.8 Westermere Facade Improvements. Developer 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. Developer 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, the Developer shall instead pay to Westermere HOA the cost of completing said improvements as represented in Exhibit B.
 - 6. Provisions to be Addressed in the Project Condominium Documents. The requirements of this Section will be incorporated by reference into the Project Condominium Documents and identified therein as a "Town Enforceable Restriction" binding on the Condominium Units and the Project Association as forth below. The Town shall have the right to review and approve the Project Condominium Documents, which approval will not be unreasonably delayed, withheld or conditioned.

6.1. Town Parking Spaces.

- 6.1.1 Developer shall construct the forty-eight (48) Town Parking Spaces at the location indicated in the Final PUD Plans. None of the Town Parking Spaces will be tandem parking spaces and all will be self-parked. Of the forty-eight (48) Town Parking Spaces, five (5) will be served by installed electric vehicle charging stations, seven (7) will be electric vehicle-ready, and twenty-four (24) will be electric vehicle capable. Developer shall be responsible for all capital construction costs associated with the design and construction of the Town Parking Spaces parking area stripping, interior parking area signage and exterior parking area signage (including Village Center civic wayfinding signage on the Project building and at Mountain Village Boulevard), lighting, required handicap parking spaces and required aisles. 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.
- 6.1.2 Developer shall construct and make available to the general public, 24 hours per day, 365 days per year, the Town Parking Spaces without cost to the Town. The Project Association will maintain directional signage for the Town Parking Spaces, which shall be consistent with Village Center civic wayfinding signage and be approved by the Town. Ongoing operation and maintenance of the Town Parking Spaces will be undertaken by Developer, at the cost and expense of Developer. Developer shall utilize a parking management system that aligns with the Town system then in place. Developer may collect from users of the Town Parking Spaces all parking fees and other charges for use of the Town Parking Facility, which may be offered for market rent to the public at hourly, daily and overnight rates comparable to those charged for garaged facilities of a comparable quality and located in the Village Core, as reasonably determined by Developer, but, in any event, not more 20% in excess of those rates charged for the Heritage Parking Garage located at 568 Mountain Village Boulevard. If parking fees and charges

are insufficient to cover the costs of operation and maintenance, Developer may apply to the Town via a Class 5 Application to renegotiate parking fees and charges, approval of which is not guaranteed and shall be at the sole discretion of the Town Council.

- 6.1.3 Developer shall cause easements to be established in the Project Condominium Documents enabling access to the Town Parking Spaces through the Project to the extent necessary consistent with the terms of this Section. The requirements of Section 12.1.2 and 12.1.3 will be incorporated by reference into the Project Condominium Documents and identified therein as a "**Town Enforceable Restriction**" encumbering the Common Elements.
- 6.2. Conference Rooms. Developer shall construct a conference room 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 conference room will be designed, constructed and operated in a manner that will enable it to be broken up into at least two smaller rooms by sound-proof, industry standard dividers. The conference room shall be offered for market rent to the public at rates comparable to those charged for facilities of a comparable quality, located in an upper floor (6th floor or above) of the building in which they are located, with views comparable to those available from the proposed conference facility in the Project, and in similar caliber resort communities ("Market Rates"). Developer, and upon creation of the Condominium Project, the Owner of the Condominium Unit in which the conference room is located (or Project Association if the conference room comprises a Common Element), will be responsible to maintain and repair the conference room and keep it in good repair and order and shall arrange for an entity to book and manage the conference room (the "Management Company") in accordance with the Town Approvals and industry standards. The conference room 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 Developer, and upon creation of the Condominium Project, the Owner of the Condominium Unit in which the conference room is located (or Project Association if the conference room comprises a Common Element) and Management Company may establish commercially reasonable rules, regulations and other restrictions that will govern the use of the conference room in a uniform manner. The Conference Center shall be available under such circumstances for rental at Market Rates.
- 6.2.1 <u>Valet Parking</u>. When the tandem parking spaces and level G3 parking spaces, accessible via two (2) proposed vehicle elevators, shown on the Final PUD Plan are utilized, valet parking for such spaces will be provided by the Owner of the Hotel Facilities Unit (or Hotel Operator) or the Project Association.
- 6.3. Easements from Town Benefiting the Property. In connection with the 2010 Lot 109R PUD, the Town granted and conveyed certain easements to Developer ("Lot 109R Project Easements") to enable the development, construction, operation, use, repair and maintenance of the Project in accordance with the Town Approvals. As of the Effective Date, Developer has recorded the following termination and/or modification of the Lot 109R Project Easements as follows:

Lot 109R Project Easement	Reception No.
Easement Agreement (Plaza Usage) recorded as Reception No. 417000	

Easement Agreement (Permanent Structures) recorded as Reception	
No. 417001	
Easement Agreement (Vehicular Access) recorded as Reception No.	
417002	
Easement Agreement (Mountain Village Boulevard Work) recorded as	
Reception No. 417003	
Easement Agreement (Utilities) recorded as Reception No. 417004	

Easements etc. Benefiting Town and Encumbering the Property. In 6.4. connection with the 2010 Lot 109R PUD, a license encumbering Lot 109R was granted and conveyed to the Town for certain utilities as provided below. Lot 109R is also encumbered by a pedestrian access easement granted prior to the approval of the 2010 Lot 109R PUD. The Town and Developer will amend such license to reflect the reconfiguration of the Town Open Space, Property and Project per the Town Council Approval Ordinance and terminate such easement as provided below. In addition, Developer 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 ("Developer Granted Public Easements"). The Developer Granted Public Easements shall be in a form and content acceptable to the Town and Developer. Some of the Developer Granted Public Easements will be established in the Project Condominium Documents. The use of the Developer Granted Public Easements shall be in a reasonable location designated by Developer and Town and shall be subject to reasonable rules and regulations of Developer and Town. The Developer Granted Public Easements shall, at a minimum, provide for the following:

Owner Granted		Timing for
Public Easements	Authorized Uses	Grant/Termination
In connection with the 2010 Lot 109R PUD, the Town was granted an Interim Utility License pursuant to License Agreement (Utilities) recorded 3.18.2011 Rec. 416999*	Existing Authorized Uses: *operate, repair and maintain existing utilities located on the Property Amendments to Authorized Uses: •None Other Changes: Will be amended to reflect the reconfiguration of the Town Open Space, Property and Project per the Town Council Approval Ordinance	Replat
Termination of pedestrian access easement reserved in deed from The Telluride Company dated March 2, 1987	Town will consent to and join in a Termination and Relinquishment of Easement executed by TSG Ski & Golf, LLC, as successor in interest to The Telluride Company	Replat

and recorded March 2, 1987 in Book 434, Pages 475-478 for the benefit of all with an ownership interest in the Mountain Village Unit (sic.) Planned Development

Termination of Surface Parking Lease Agreement	*lease of town Parking Lot on Property	Prior to issuance of building permit for Project
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
Access to and use of Town Parking Spaces	*public access to and use of Town Parking Spaces	Recordation of Project Condominium Documents
Pedestrian Access as shown on Final PUD Plans	*public access as shown on Final PUD Plans	Recordation of Project Condominium Documents

6.5. <u>Pedestrian Access Easement Benefiting Parcels to East Across Mountain Village Boulevard.</u> The Town and Developer acknowledge and agree that the owners of the parcels benefited by that certain Pedestrian Access Easement Agreement dated October 1, 2007 and recorded October 12, 2007 under Reception No. 397446 in the Official Records (the "2007 Pedestrian Access Easement Agreement") have delivered a fully executed Termination and Release of Easement Agreement for recording in the Official Records.

7. Further Requirements by Developer.

7.1.1 <u>Provision of Improvement Location Certificate</u>. Prior to pouring concrete into the building's footers, the Developer 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 the initial Certificate of Occupancy for the Project, Developer 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 Developer 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 Developer 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.

- 7.1.2 <u>Drainage System and Maintenance</u>. The Project Condominium shall be responsible for the maintenance and repair of all drainage improvements on the Property and leading up to the Town's existing drainage system as indicated on the Final PUD Plan. The requirements of this Section will be incorporated by reference into the Project Condominium Documents and identified therein as a "**Town Enforceable Restriction**" encumbering the Common Elements.
- 7.1.3 <u>Drainage Plan Details</u>. Prior to the issuance of any building permits, Developer shall submit a drainage plan to address 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 review and approval by the Director of Public Works and Town Engineer concurrent with the required building permit review.
- 7.1.4 <u>Utility Provider Review and Approval of Utility Plans</u>. Prior to the issuance of any building permits, the applicable utility provider to the Project shall review and approve the final utility plan.
- 7.1.5 <u>Composite Utility Plans</u>. Prior to the issuance of any building permits, Developer 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 Town and utility company requirement for each applicable utility, and; and (3) utility provider approved utility and meter locations.
- 7.1.6 <u>Venting Plans</u>. Prior to the issuance of any building permits, Developer 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.
- 7.1.7 <u>Window Design</u>. Prior to the issuance of any building permits, Developer shall submit details on window design consistent with the Design Regulations.
- 7.1.8 <u>Revised Geotechnical Reports and Design</u>. Prior to the issuance of any building permits, Developer shall submit revised geotechnical reports prepared by a Colorado Registered Professional Engineer that are based on the proposed building permit building design.

Developer shall incorporate revised geotechnical report recommendations into the building's design prior to submitting for a building permit for the project.

- 7.1.9 Construction Mitigation Plan. Prior to the issuance of any building permits, Developer 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) the location of the crane(s) and avoiding movements of construction materials or equipment over neighboring properties; (2) construction parking; (3) truck ingress and egress from the job site; (4) ensuring minimal to no power or other utility interruptions; (5) protection of air and water quality; (6) maintaining traffic and pedestrian flows around the project in a safe manner and (7) an engineered plan for construction shoring and/or soil nailing that ensures adjoining properties will be protected.
- 7.1.10 <u>Grease Trap Plumbing Design</u>. Prior to the issuance of any building permits, Developer shall submit engineering drawings for the plumbing system that includes grease traps per Sections 8.02.030.G and 13.04.030.A.4.a(i) through (vi) of the CDC. The grease trap access will be located in the parking garage loading dock area.
- 7.1.11 Westermere Courtesy Notice. Prior to the issuance of any building permits, Developer 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.
- 7.1.12 <u>Colors and Materials</u>. Prior to the issuance of any building permits, Developer shall provide a mock-up of all materials and colors, which shall be reviewed and approved by Town Staff and the DRB Chair to 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.
- 7.1.13 <u>Final Exterior Door Designs</u>. Prior to the issuance of any building permits, Developer shall provide final exterior door design details based on the Design Regulations, with such plans submitted concurrent with the building permit application
- 7.1.14 <u>Acknowledgment of Trash Facility</u>. The Developer shall cause the Project Condominium Documents to reflect the existence of the Replacement 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.). These provisions will be designated as a "**Town Enforceable Restriction**" in the Project Condominium Documents.

7.1.15 Replacement of Existing Town Trash Facility.

A. On the Town Open Space Parcel, adjacent to the east of Lot 109R, there is located an existing trash facility housing two (2) 3-yard dumpsters. Developer will replace the existing Trash Facility with an enhanced facility in accordance with the Final PUD Plans (the "**Replacement Trash Facility**"). In order to accommodate the replacement of the Existing Trash Facility with the Replacement Trash Facility, prior to the issuance of any building

permits, Developer will submit for review and approval by the Town and Bruin Waste Management a plan for the disposal, separation, storage, movement and collection of all waste streams handled at the Existing Trash Facility over the course of construction pending commissioning of the Replacement Trash Facility.

- B. Notwithstanding anything to the contrary set forth in this Section above, in the event the Town is able to provide an alternative location for the Replacement Trash Facility, then related amendments to the Town Approvals and this Agreement may be made and entered into with the approval of the Town without the requirement for a Major PUD amendment. In such case, Developer shall pay to the Town the cost of constructing the Replacement Trash Facility as represented in Exhibit B.
- C. The Town shall grant easements or licenses to the Owner for the construction of the Replacement Trash Facility as reasonably necessary.
- 7.1.16 <u>Landscape Plan</u>. Developer shall salvage mature trees located on the Property to the extent practical and the final landscape plan shall reflect this requirement. In addition, Developer 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.

8. <u>Public Improvements.</u>

- 8.1. The "**Public Improvements**" required by this Agreement for development of the Project are listed on attached <u>Exhibit "B</u>," and the estimated costs for construction of such improvements are set forth therein.
- 8.2. <u>Developer's Construction Obligation and Standards</u>. Developer 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 (together, the "**Plans and Specifications**").

8.3. <u>Construction Observation and Inspection.</u>

- 8.3.1 <u>Pre-Construction Meeting</u>. Developer shall hold a pre-construction meeting with the Town Engineer and Developer and Developer's engineer and contractor(s) for the purpose of discussing all construction issues related to the Project.
- 8.3.2 <u>Construction Inspection by the Developer</u>. Developer shall be responsible for ensuring that its engineer provides construction inspection services as necessary to allow Developer's engineer to provide, when Public Improvements are submitted to the Town for acceptance, a stamped certification that the Public Improvements have been constructed in accordance with the Plans and Specifications approved by the Town.
- 8.3.3 <u>Construction Observation by the Town</u>. The Town shall have the right to make engineering inspections at reasonable intervals, at Developer's expense, during construction of the Public Improvements. Observation, acquiescence in, or approval by any

engineering inspector of the construction of any physical facilities, at any particular time, shall not constitute Town acceptance of any Public Improvements. Town approvals shall be made only after completion of construction and in the manner hereinafter set forth. To assist the Town in monitoring the installation of the Public Improvements, a supervisor employed by Developer shall inspect the Public Improvements on at least a weekly basis and shall provide the Town Engineer with the supervisor's field and inspection notes relating to the installation of the Public Improvements. The supervisor shall regularly apprise the Town Engineer of the status of the work on the Public Improvements. Further, Developer, at its own expense, shall have an approved geotechnical engineer monitor the methods of construction and backfill to ensure such work is being completed in conformance with the approved Plans and Specifications, and accepted standards for such work. The geotechnical engineer shall conduct inspections and testing as reasonably directed by the Town Engineer. The Town agrees to respond to requests for interim inspections in a timely manner and to respond not later than ten (10) business days after a request for a final inspection. Nothing in this paragraph shall be construed to constitute an acceptance by the Town of the Public Improvements, which approval and acceptance shall only occur pursuant to Section 7.5 below.

8.4. <u>Completion of Public Improvements</u>. Developer shall complete construction of, and the Town shall approve and accept, all Public Improvements prior to and as a condition of the issuance of a Certificate of Occupancy by the Town for the Project.

8.5. Approval and Acceptance by Town.

8.5.1 Request for Final Inspection. Upon Developer's construction of the Public Improvements, Developer or its engineer shall certify in writing to the Town Manager that the Public Improvements have been completed in conformance with the Plans and Specifications and request inspection of said improvements by the Town. Within ten (10) business days of Developer's request for final inspection, the Town Engineer shall inspect the Public Improvements and notify the Parties, in writing and with specificity, of their conformity or lack thereof to the Plans and Specifications including any corrective measures to be taken by Developer. Developer, at its expense, shall make all corrections necessary to bring the Public Improvements into conformity with the Plans and Specifications. Developer shall thereafter request re-inspection of the Public Improvements. The Town Engineer shall not be required to make inspections during any period when weather conditions make thorough inspections impractical.

8.5.2 Engineering Acceptance. Developer, at its expense, shall have "asbuilt" drawings of the Public Improvements prepared by a professional engineer and a registered land surveyor, which drawings shall include all legal descriptions the Town may require. Developer shall also prepare a summary of the actual construction costs of all Public Improvements to be dedicated to the Town for review and approval. Once the as-built drawings and costs summary are approved, and any and all corrections are completed, the Town Engineer shall promptly notify the Parties in writing that all Public Improvements are in conformity with the Plans and Specifications, and the date of such notification shall be known as the "Engineering Acceptance Date." The Town shall be under no obligation to provide water and/or sewer service to the Project until any water/sewer Public Improvements are brought into conformance with the Plans and Specifications as determined by the Town Engineer.

- 8.5.3 <u>Final Acceptance and Conveyance</u>. Within thirty (30) days of the Engineering Acceptance Date, Developer shall execute a bill of sale conveying the Public Improvements to the Town, free and clear of all liens and encumbrances. As a condition precedent to the Town's acceptance of the Public Improvements, the Developer shall provide the Town with a policy of title insurance for at least \$25,000.00 to insure any real property, if any, dedicated to the Town. The effective date of the bill of sale shall be known as the "**Final Acceptance Date**."
- 8.6. <u>Warranty</u>. Developer shall warrant any and all Public Improvements conveyed to the Town pursuant to this Agreement for a period of two (2) years from the Final Acceptance Date. Specifically, but not by way of limitation, Developer shall warrant:
 - a. Any and all improvements conveyed shall be free from any security interest or other lien or encumbrance;
 - b. Any and all improvements conveyed shall be free of any defects in materials or workmanship for a period of two (2) years as stated above; and
 - c. The title conveyed shall be good and its transfer rightful.
- 8.7. <u>Damage to Existing Facilities</u>. Developer, at its expense, agrees to repair any existing improvements or facilities in the Town damaged during construction of the Public Improvements and such other items as the Town deems appropriate.
- 8.8. <u>Performance Guarantee</u>. In accordance with Section 17.4.13(L) of the Code, the total amount of required security for the Public Improvements shall be one hundred twenty-five percent (125%) of the cost estimates set forth in <u>Exhibit B</u> (the "**Performance Guarantee**").
- 8.8.1 Form of Security. To secure the construction and installation of the Public Improvements for which Developer is responsible, Developer shall, prior to issuance of building permit, provide the Town with an irrevocable letter of credit issued or confirmed by a commercial banking institution whereby the Town shall have the unconditional and irrevocable right upon default by Developer to withdraw or acquire funds upon demand to partially or fully complete and/or pay for any of the Public Improvements. Said letter of credit shall be valid for at least two (2) months longer than the Completion Date for the Public Improvements, as defined in Section 9.5. If the time of completion of the Public Improvements is extended, the letter of credit shall be similarly extended. Under the terms of the letter of credit, the Town shall be allowed to present drafts and accompanying documents to the issuing institution by overnight courier. The Town shall have the right to review and approve all terms and conditions of the letter of credit prior to accepting it.
- 8.8.2 <u>Developer Responsible for Actual Costs</u>. The Parties agree that the Performance Guarantee does not necessarily reflect the Town Engineer's estimate of what the actual costs to the Town would be if the Town were required to fund construction of the Public Improvements. In the event that the actual costs of the Public Improvements exceed the amount of the Performance Guarantee, Developer shall be responsible for the actual costs. The purpose of <u>Exhibit B</u> is solely to determine the amount of security and shall be revised as necessary to reflect the actual costs, and the Performance Guarantee required by this Agreement shall be adjusted

accordingly. No representations are made as to the accuracy of these estimates, and Developer agrees to pay the actual costs of all Public Improvements.

- 8.8.3 <u>Default</u>. The Parties expressly agree that Developer's preparation and submission to the Town of as-built drawings and a summary of actual construction costs for the Public Improvements to be dedicated to the Town are essential requirements of this Agreement. In the event that Developer fails to provide the as-built drawings and costs summary to the Town fifteen (15) business days prior to the expiration of the Performance Guarantee or any extension thereof, such failure shall constitute a default of this Agreement with regard to the completion of the Public Improvements, damages for which are impossible to ascertain, entitling the Town to liquidated damages in the amount of \$15,000.00, which the Town may collect pursuant to Section 14.1 of this Agreement.
- 8.8.4 <u>Use of Performance Guarantee</u>. If the Town Manager determines that reasonable grounds exist to believe that Developer is failing or will fail to construct or install the Public Improvements as required by this Agreement, the Town may draw on the Performance Guarantee 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 Developer take any action which shall impair the ability of the Town to draw on the Performance Guarantee during the term of this Agreement.
- 8.9. Release of Performance Guarantee. Upon acceptance of all Public Improvements by the Town, but no earlier than the Final Acceptance Date, the Town shall release the Performance Guarantee and shall assume normal maintenance responsibilities for the Public Improvements. A portion of the Performance Guarantee may be released as specific improvements are completed in accordance with Section 17.4.13(L)(5) of the CDC; provided, however, that no such partial or final release shall be granted until the Public Improvements guaranteed have been inspected and accepted by the Town, as evidenced by a written correspondence confirming completion.
- 8.10. <u>Reduction in Security Not Approval of Public Improvements</u>. Neither approval of any reduction to the approved form of security nor any other reduction in security shall be construed as the approval or acceptance of any of the Public Improvements, which approval and acceptance shall only occur pursuant to Section 8.5 above.

9. <u>Grading and Excavation</u>. No grading or excavation shall occur until the Replat has been recorded and the Performance Guarantee has been provided for all Public Improvements.

10. <u>Vested Rights</u>.

- 10.1. <u>Intent.</u> Development of the Property in accordance with the terms and conditions of this 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 Developer, 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 Rights Statute**," C.R.S.§ 24-68-101, *et. seq.*, and the CDC. In exchange for these benefits and the other benefits to the Town contemplated by this Agreement, together with the Public Benefits served by the orderly and well planned development of the Property, Developer desires to receive the assurance that development of the Property may proceed pursuant to the terms and conditions of this Agreement.
- 10.2. <u>Site Specific Development Plan</u>. The Town Approvals, Replat, Final PUD Plans and this Agreement constitute a "Site Specific Development Plan" pursuant the Vested Rights Statute and CDC Section 17.4.12.D.1.g.
- 10.3. <u>Vested Real Property Right</u>. Accordingly, this final approval has created for Developer's benefit a "vested real property right" as defined by C.R.S. § 24-68-101, *et seq.*, and this Agreement shall be considered a "Development Agreement" as that term is used in C.R.S. § 24-68-104; provided, however, Developer acknowledges that the Town does not represent, warrant or guarantee that the duration of this Site Specific Development Plan will be extended beyond three (3) years by the Town, subject to Section 10.5 below.
- 10.4. <u>Required Plan Notation</u>. Pursuant to CDC Section 17.4.17, the Parties set forth the following required plan notation:

Approval of this site-specific development plan may create a vested property right pursuant to C.R.S. § 24-68-101-106 and subject to the Town of Mountain Village's Community Development Code.

property right shall remain vested until the date that is three (3) years after the date on which Final Approval occurs. For purposes of this Agreement: (i) "Final Approval" will occur with respect to each of the Town Approvals: (A) if no Legal Challenge is filed prior to such date, on the thirty-fifth (35th) day after the date the ordinances approved as part of the Town Approvals are published (the "Publication Date"); or (B) if a Legal Challenge is filed against one or more of the Town Approvals prior to the thirty-fifth (35th) day after the Publication Date, and unless the Parties agree otherwise, all such Legal Challenges are resolved in a manner that is final, not subject to appeal, and upholds the validity of the Town Approvals that were subject to the Legal Challenge; and (ii) "Legal Challenge" means: (A) any third party's commencement of a legal proceeding, pursuant to C.R.C.P. Rule 106 or otherwise, that directly or indirectly challenges, or seeks to reverse or nullify, any of the Town Approvals; or (B) the submission of a valid petition under the Charter for a referendum seeking to reverse or nullify any of the Town Approvals. The foregoing is intended

to extend the vesting period in the event that a Legal Challenge remains pending, because the Parties recognize that the pendency of a Legal Challenge could interfere with Developer's ability to complete the Project.

- 10.6. <u>Publication</u>. A notation of such vested real property right has been made on the Final PUD Plans. The Town shall promptly cause to be published, at Developer's expense, a notice of such vested rights in the *Telluride Daily Planet*.
- 10.7. <u>Reliance</u>. Developer has relied upon the creation of such vested real property right in entering into this Agreement.
- 10.8. <u>Future Legislation</u>. Except as the Vested Rights Statute expressly provides otherwise, no initiated or referred zoning, subdivision, land use or other legal or administrative action that would directly or indirectly have the effect of adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise adversely affecting any of Developer's rights set forth in this Agreement shall apply to or be effective against the Property. Thus, during the period in which the vested real property right shall remain vested, the Town shall not impose by legislation or otherwise cause or permit any initiate or referred zoning, land use requirement or obligations, or Town charter amendment upon Developer or their successors or assigns which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise adversely affect any of Developer's rights to development or use of the Property as set forth in the Final PUD Plans, except:

10.8.1 With the consent of Developer; or

10.8.2 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

10.8.3 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 Town 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.

- 11. <u>Conditions of Building Permit</u>. In addition to all requirements of the Code, the Town's Building Regulations, and any requirements imposed by operation of state, federal or local law, no building permit shall be issued for the Property until:
 - The Replat and this Agreement have been approved by Town Staff and the Town Manager, signed by all required Parties, and recorded in the Official Records.
 - Exhibit B outlining the Performance Guarantee has been completed and approved by the Town after Final PUD Plans and cost estimates are complete.
 - The Performance Guarantee has been provided to the Town.

- Final housing mitigation based upon construction drawings has been verified by Town Staff for compliance with CDC requirements.
- Developer has provided written confirmation from Six Senses (or an equivalent Hotel Operator) of its commitment to operate the Project per Section 5.1(B).
- Mitigation Payment to the Town per Section 5.1.2.
- The Town has approved design of snow melt and drainage systems per Section 5.1.6(A).
- Payment to the Town of \$250,000 for certain improvements to area south of Westermere per Section 5.1.6(D).
- Developer has provided either authorization and consent of Westermere HOA for improvements to Breezeway or the payment-in-lieu per Section 5.1.8.
- The Town has approved final designs of Town Parking Spaces per Section 6.1.1.
- Termination of Surface Parking Lease Agreement per Section 6.4.
- The Town has approved drainage plan per Section 7.1.3.
- Utility provider(s) has approved final utility plan per Section 7.1.4.
- The Town has approved composite utility plan per Section 7.1.5.
- The Town has approved venting plans per Section 7.1.6.
- Developer has provided details on window design per Section 7.1.7.
- Developer has provided revised geotechnical reports per Section 7.1.8.
- Developer has provided revised construction mitigation plan per Section 7.1.9.
- Developer has provided drawings for grease trap plumbing design per Section 7.1.10.
- Developer has provided proof of courtesy notice to Westermere HOA per Section 7.1.11.
- Developer has provided mock-up of colors and materials per Section 7.1.12.
- Developer has provided final exterior door design details per Section 7.1.13.
- The Town and Bruin Waste Management have approved the Replacement Trash Facility or Developer has provided the payment-in-lieu per Section 7.1.15.
- Developer has submitted to the Town a Class 3 Application for its sign plan.
- Developer has paid all required tap fees for the Project.
- All conditions of the Town Council Approval Ordinance have been addressed and resolved, as applicable, to the satisfaction of Town Staff.
- All conditions of the resolution approving the Major Subdivision Application have been addressed and resolved, as applicable, to the satisfaction of Town Staff.
- Developer has paid all then-outstanding invoices from the Town.
- **12.** Conditions of Certificate of Occupancy. In addition to all requirements of the Code, the Town's Building Regulations, and any requirements imposed by operation of state, federal or local law, no Certificate of Occupancy shall be issued for the Property until:
 - Developer has provided the ILC for the location of all footers per Section 7.1.1.
 - If applicable, execution and recordation of any remaining easement agreements contemplated herein.
 - Execution of Exhibit D.
 - Installation of civic wayfinding signage for public access areas.

- The Town has approved the Project Association governing documents.
- The Town has approved Developer's Class 3 Application for its sign plan.
- The Town has accepted all Public Improvements.
- All conditions of the Town Council Approval Ordinance have been addressed and resolved, as applicable, to the satisfaction of Town Staff.
- All conditions of the resolution approving the Major Subdivision Application have been addressed and resolved, as applicable, to the satisfaction of Town Staff.
- Developer has paid all then-outstanding invoices from the Town.
- 13. Order of Recordation. Documents relevant to the Town Approvals, the Replat, and this Agreement shall be recorded in the Official Records in the following order:

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14. Miscellaneous.

14.1. Remedies For Breach or Default. In the event of any default by Developer of any term, condition, covenant or obligation under this Agreement, the Town Council shall be immediately notified. The Town may take such action as it deems necessary to protect the public health, safety and welfare and to protect the citizens of the Town from hardship against Developer, or its successors and assigns, which remedies are cumulative and non-exclusive. The Town's remedies include any one or more of the following:

14.1.1 Refusing to issue to Developer any Building Permit or Certificate of Occupancy; provided, however, that this remedy shall not be available to the Town until after the affidavit described below has been recorded;

14.1.2 Recording with the San Miguel County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Manager or designee, stating that the terms and conditions of this Agreement have been breached by the Developer. At the next regularly scheduled Town Council meeting, the Town Council shall either ratify the recordation of said affidavit or direct the Town Manager to record an affidavit stating that the default has been cured. Upon the recording of such an affidavit, no further development may occur on the Property until the default has been cured. An affidavit signed by the Town Manager or designee and approved by the Town Council stating that the default has been cured shall remove the restriction on further development;

- 14.1.3 A demand that the Performance Guarantee be paid or honored;
- 14.1.4 The refusal to consider further development plans on the Property;

and/or

14.1.5 Any other remedy available at law or under the CDC.

Unless necessary to protect the immediate health, safety and welfare of the Town or its citizens, the Town shall provide Developer with twenty-one (21) days' written notice of its intent to take any action under this Section during which period Developer may cure the default described

in said notice and prevent any further action by the Town. Furthermore, unless an affidavit as described above has been recorded with the San Miguel County Clerk and Recorder, any person or entity dealing with Developer shall be entitled to assume that no default by Developer has occurred hereunder unless a notice of default has been served upon Developer as described above, in which event Developer shall be expressly responsible for informing any such third party of the claimed default by the Town.

- 14.2. 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 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. Regardless of the prevailing party in any such dispute, Developer shall reimburse the Town for any fees and costs incurred by the Town in relation to the review and approval of the Final PUD Plans, including but not limited to fees and costs for legal, engineering and surveying services by outside consultants.
- 14.3. <u>Indemnity</u>. Except as otherwise set forth herein, Developer 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 development of the Property and all the Town Approvals, including but not limited to any claims regarding insufficient notice of any public meeting or hearing concerning the Applications, Developer or Owner's failure to comply with the terms and conditions of this Agreement, Developer or Owner's improper design or construction of the Public Improvements required thereunder, or Developer or Owner's failure to construct or complete the same; provided, however, such indemnification shall not apply to loss, damage or claims attributable to the negligent acts or omissions of the Town or its agents, employees or contractors. This provision shall survive expiration or termination of this Agreement.
- 14.4. <u>Binding Effect</u>. This Agreement shall inure to the benefit of the Town and its successors and assigns and shall be binding upon Developer, its successors and assigns as provided in Definition M, and the Owners as provided in Definition DD. This Agreement shall constitute an agreement running with the Property until modification or release by mutual agreement of the Town and Developer. This Agreement may be amended or supplemented by the Town and Developer without any requirement for Developer to obtain the approval of any Unit Owners (other than the Owner of the Hotel Facilities Unit) or the Association, except that notice of any amendment shall be duly noticed in accordance with the CDC and each Unit Owner and the Association shall be entitled to attend any hearing and comment on any proposed amendment to this Agreement.
- 14.5. <u>Voluntary Agreement</u>. Notwithstanding any provision of the Code, this Agreement is the voluntary and contractual agreement of Developer and the Town. Developer agrees that the terms and conditions of this Agreement, including specifically the payment of all fees, and the completion and satisfaction of all terms and conditions of the Town Approvals are agreed to and constitute the voluntary actions of Developer.

- 14.6. 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 thirty (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.
- 14.7. 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.
- 14.8. 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.
- 14.9. <u>Modifications and Waiver</u>. 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.
- 14.10. <u>Counterparts and Electronic Copies</u>. 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. Electronic copies of any Party's signature hereon shall be deemed an original for all purposes of this Agreement.
- 14.11. Notice. Any notice to be given hereunder shall be in writing, addressed to the Town or the appropriate Party, and shall be delivered in person; by overnight delivery or courier service; or by the United States Postal Service (or any official successor thereto), certified mail, return receipt requested, with adequate postage prepaid. Such notice shall be deemed delivered at the time of personal delivery, or, if mailed, on the date postmarked, but if mailed the time period for any required response shall run from the date of receipt by the addressee, as evidenced by the return receipt. Rejection or other failure by the addressee to accept the notice, or

the inability to deliver the notice because of a change of address of which no notice was given, shall be deemed receipt of the notice on the third day following the date postmarked. The addresses of the Town and Developer to which notice is to be sent shall be those set forth below. The addresses of all other Unit Owners to which notice is to be sent shall be the address on file with the San Miguel County Assessor with respect to such Unit Owner's Condominium Unit.

Such addresses may be changed by the Town or Developer by written notice to the other delivered in accordance with this Section.

Town:

Town of Mountain Village Attn: Town Manager 455 Mountain Village Blvd., Suite A Mountain Village, CO 81435

With copy to:

Garfield & Hecht, P.C. Attn: David H. McConaughy 910 Grand Ave., Suite 201 Glenwood Springs, CO 81601

Developer:

Tiara Telluride, LLC Attn: Avani Patel 450 S. Old Dixie Hwy Jupiter, FL 33458

With copy to:

Sherman & Howard, LLC Attn: Cynthia M. Stovall 675 15th St. #2300 Denver, CO 80202

- 14.12. <u>Exhibits and Attachments</u>. All exhibits and attachments to this Agreement shall be incorporated herein and deemed a part of this Agreement.
- 14.13. <u>Rights of Lenders</u>. The Town is aware that financing for acquisition, development and/or construction, reconstruction or remodeling of the Project or portions thereof ("**Developer 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 Developer under this Agreement, the Town shall provide notice of such event of default, at the same time notice is provided to Developer, as applicable, to any lender to Developer previously identified in writing to the Town ("**Registered Lender**") pursuant to this Section at the address provided in such writing (which may be updated by delivery of written notice to the Town pursuant to this Section). If a Registered Lender is

permitted under the terms of any agreements with Developer to cure the event of default and/or to assume Developer'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 Developer under this Agreement, provided that nothing contained in this Agreement shall create any duty, obligation or other requirement on the part of the Registered Lender to assume any of the duties and obligations of Developer 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 Registered Lender shall be bound by the terms and conditions of this Agreement. Notwithstanding anything to the contrary set forth in this Section, in no event shall the beneficiary of any deed of trust encumbering the Property or any other purchaser at foreclosure have any liability for sums due and payable under this Agreement prior to its acquisition of title to the Property. Any lenders or other lienholders shall be required to subordinate their interests to the terms of this Agreement, the Replat, and the Town Approvals.

- 14.14. No Further Rights; No Third Party Rights. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Town, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person, including but not limited to other Owners or the Project Association. It is the express intention of the Town and Developer that any person other than the Town receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 14.15. Term of Agreement. This Agreement and the Town Approvals as they relate to the Applications, except for the Replat, shall expire as of the date that is three (3) years after the date on which Final Approval occurs unless Developer 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 the date that is three (3) years after the date on which Final Approval occurs, 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, Developer of the Property must reapply for and obtain necessary approvals of applications for rezoning, PUD, variations/waivers and design review approval for any project contemplated for the Property, which will be reviewed in accordance with CDC and Design Regulations in place at the time of the submission of any such application.
- 14.16. <u>Conflicts Between Hotel Covenant and Development Agreement</u>. 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.
- 14.17. <u>Industry Standards and Norms</u>. 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.
- 14.18. <u>Assignment.</u> This Agreement may not be assigned by Developer from issuance of building permit to the completion and acceptance of the Public Improvements by the Town, without the prior written consent of the Town, which consent shall not be unreasonably withheld and shall be based, among other things, upon the financial capability of the proposed

assignee to perform the terms of this Agreement. In the event Developer desires to assign its rights and obligations herein, it shall so notify the Town in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein. This Section shall not preclude the right of Developer to procure a construction loan, provided that any lender agrees to be bound by the provisions of this Agreement, subject to Section 14.13 above.

14.19. <u>Appropriation</u>. No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate the 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.

14.20. <u>Immunity</u>. Nothing herein nor in any related documents relating to the Approvals shall be construed as a waiver, or partial waiver, by the Town of any portion of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq*.

[Signature pages to follow]

IN WITNESS THEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN:

Town of Mountain Village, a Color home rule municipality	rado			
By: Laila Benitez, Mayor		Date:		
Lana Benntez, Mayor			·	
Attest:				
Bv:		Date:		
By: Paul Wisor, Town Manager				
STATE OF COLORADO)) ss.			
COUNTY OF SAN MIGUEL)			
Acknowledged, subscribed and swo Benitez as the Mayor of Town of M	_	day of	, 20	by Laila
Witness my hand and official seal.				
Mataria Dalilla	My comm	nission expires:		
Notary Public				
STATE OF COLORADO COUNTY OF SAN MIGUEL)) ss.)			
Acknowledged, subscribed and swo Wisor as the Town Manager of Tow	orn to before me this _ vn of Mountain Village	day of	, 20	_ by Paul
Witness my hand and official seal.				
Notary Public	My comm	nission expires:		

DEVELOPER:

Tiara Telluride, LLC, a Colorado limited liability company	
By:	Date:
Printed Name:	<u></u>
Title:	
STATE OF)	
) ss.	
COUNTY OF)	
U .	Fore me this day of, 20 by tride, LLC, a Colorado limited liability company.
Witness my hand and official seal.	
	My commission expires:
Notary Public	

Exhibit "A" Final PUD Plans



Exhibit "B" (Schedule of Improvements)

Public Improvement

Plaza improvements to See Forever walkway and Town Plaza area between Lot 109R2 and Westermere/Shirana

Village Core Transfer Station (Replacement Trash Facility) on Town Open Space Parcel including all surface improvements, snowmelt and a portion of sidewalk and resurfacing of Town Open Space Parcel

Snow melting and improving the fire lane

Stairway access from Mountain Village Blvd on the east connecting Lot 89-1BCD-R, Tract 89-B, and Lots 89-2A, 89-3B, and 89-3D Town of Mountain Village, to Plaza Improvements.

Cash contribution to improvements to parcel to the south of the Westermere project and adjacent to the pond near the Village Core Sidewalk from Shirana to Mountain Village Blvd

Exhibit "C" (Area of Plaza Improvements)



Exhibit "D"

Employee Housing Restriction

[To be inserted. D. McConaughy drafting.]



A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO DENYING A MAJOR PLANNED UNIT DEVELOPMENT AMENDMENT FOR LOT 109R

RESOLUTION NO. 2023-__

WHEREAS, Tiara Telluride, LLC (the "Developer") is the owner of certain real property described as Lot 109R, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 416994 ("Lot 109R") and

WHEREAS, the Town of Mountain Village (the "Town") is the owner of certain real property adjacent to Lot 109R described as open space parcel OS-3BR-2, according to the plat recorded as Reception No. 416994 (the "Town Property"); and

WHEREAS, the Town previously approved a PUD Plan for Lot 109R by Resolution 2010-1208-31 (the "2010 PUD") and, in connection therewith, the Town and Developer's predecessor-owner of Lot 109R entered into a Development Agreement dated March 18, 2011, which was recorded as Reception No. 416997 (the "2011 Development Agreement"); and

WHEREAS, pursuant to Ordinance 2015-07, the Town approved a First Amendment to the 2011 Development Agreement extending vested rights relating to the 2010 PUD until December 8, 2020; and

WHEREAS, pursuant to Ordinance 2020-16, the Town approved a Second Amendment to the 2011 Development Agreement extending vested rights relating to the 2010 PUD until December 8, 2022; and

WHEREAS, pursuant to Ordinance 2022-10, the Town approved a Third Amendment to the 2011 Development Agreement extending vested rights relating to the 2010 PUD until September 8, 2023; and

WHEREAS, the Developer has applied to the Town to replat Lot 109R and the Town Property (the "Major Subdivision Application") for the purpose of a land exchange where the Town would convey portions of the Town Property to become part of Lot 109R (the "109R Adjustment Parcels") and the Developer would convey portions of the current Lot 109R to become part of the Town Property (the "Open Space Adjustment Parcels," and together with the Town Property, the "Adjusted Town Property"); and

WHERAS, the Developer has applied to the Town to rezone the Adjusted Town Property as open space (the "Rezoning Application") in connection with its application for approval of a Major Amendment to the 2010 PUD the "Major PUD Amendment Application") to develop a mixed-use project including a five-star luxury hotel (the "Project"); and

WHEREAS, the Design Review Board ("DRB") held public hearings regarding the Major PUD Amendment Application on May 5, 2022 and May 31, 2022, and voted 3-1 to issue a recommendation of approval to the Town Council concerning the Application, subject to further consideration by the DRB for final design review and for its recommendation regarding the related Major Subdivision Application; and

WHEREAS, the Town Council considered an ordinance approving the Major PUD Amendment Application (the "Major PUD Amendment Ordinance") on first reading at its regular meetings on June 16, 2022 and August 18, 2022, and consented to including the 109R Adjustment Parcels in the Developer's Major PUD Amendment Application and Major Subdivision Application, but voted to continue the matter to November 17, 2022 so as to allow the Developer time to submit the Major Subdivision Application and final design review materials; and

WHEREAS, the Town Council again considered the Major PUD Amendment Ordinance on first reading at its regular meeting on November 17, 2022, but voted to continue the matter to January 19, 2023 so as to allow the DRB to conduct a further public meeting regarding final design review and the Major Subdivision Application before the Town Council would make a decision as to the Major PUD Amendment Application; and

WHEREAS, following a DRB meeting held on December 1, 2022, the DRB recommended to the Town Council approval of the Major PUD Amendment Application and the Major Subdivision Application, subject to conditions; and

WHEREAS, the Town Council considered the Major PUD Amendment Application, the DRB's recommendations, and testimony and comments from the Developer, Town staff, and members of the public at a public meeting on January 19, 2023 and voted 6-1 to direct Town staff to prepare this Resolution denying the Major PUD Amendment Application; and

WHEREAS, the public hearings and meetings to consider the Major PUD Amendment Application were duly noticed and held in accordance with the Town's Community Development Code ("CDC"); and

WHEREAS, the Town Council held a public meeting on March 16, 2023, to consider this Resolution and voted to continue the matter to June 15, 2023; and

WHEREAS, the Town Council again considered this matter following additional review and consideration of the Major PUD Amendment Application at its public meeting on June 15, 2023, and voted to approve this Resolution, denying the Major PUD Amendment Application for the reasons set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Mountain Village, Colorado, that:

<u>Section 1. Recitals</u>. The above recitals are hereby incorporated as findings of the Town Council in support of the enactment of this Resolution.

Section 2. Definition of the Application. The "Major PUD Amendment Application" means and consists of the materials submitted to the Town and itemized on Exhibit A, plus all statements, representations, and additional documents of the Developer and its representatives made or submitted at the public hearings before the DRB and Town Council, but taking into account changes to the Application following the December 1, 2022, DRB meeting. Copies of all exhibits to this Resolution and the Major PUD Amendment Application materials are available for inspection at the office of the Town Clerk. In the event of any conflict between this definition of the Application and the official record of the subject hearings as maintained or prepared by the Town Clerk, the official record shall control.

Section 3. Summary of Application. The Major PUD Amendment Application proposes the construction of 50 Efficiency Lodge Units, 31 Lodge Units, 20 Condominiums, 6 Employee Apartments, 18 Employee Dormitories, as well as public plaza improvements, public bathrooms, an underground parking garage, and approximately 22,609 square feet of commercial space, all as presented and described in the documents submitted to and considered by the Town Council at its June 15, 2023, public meeting. In the event of any conflict between this summary of the Application and the official record of the subject hearings as maintained or prepared by the Town Clerk, the official record shall control.

Section 4. Review Criteria. The Major PUD Amendment Application was originally submitted in April 2022. In December 2022, the Town adopted Resolution 2022-1208-17, amending the 2011 Comprehensive

Plan. Because the Major PUD Amendment Application was submitted before the effective date of Resolution 2022-1208-17, it is being considered under the 2011 Comprehensive Plan. Additionally, the Major PUD Amendment Application is being considered under following criteria set forth in CDC Section 17.4.12.E:

- 1. The proposed PUD is in general conformity with the policies, principles and standards set forth in the Comprehensive Plan;
- 2. The proposed PUD is consistent with the underlying zone district and zoning designations on the site or to be applied to the site unless the PUD is proposing a variation to such standards;
- 3. The development proposed for the PUD represents a creative approach to the development, use of land and related facilities to produce a better development than would otherwise be possible and will provide amenities for residents of the PUD and the public in general;
- 4. The proposed PUD is consistent with and furthers the PUD purposes and intent;
- 5. The PUD meets the PUD general standards;
- 6. The PUD provides adequate community benefits;
- 7. Adequate public facilities and services are or will be available to serve the intended land uses;
- 8. The proposed PUD shall not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion; and
- 9. The proposed PUD meets all applicable Town regulations and standards unless a PUD is proposing a variation to such standards.

<u>Section 5. Decision</u>. The Town Council finds that the Major PUD Amendment Application does not meet the requirements of the CDC set forth above, including, without limitation, satisfaction of Sections 17.4.12 and 17.3.4.H.7 of the CDC and compliance with the 2011 Comprehensive Plan. The Town Council, therefore, denies the Major PUD Amendment Application. The following is an illustrative but not exhaustive list of the reasons why the Major PUD Amendment Application does not satisfy the applicable review criteria:

- a. The proposed development includes Town-owned land, use of which is in the sole discretion of the Town Council and which approval is not guaranteed. The Town Council cannot find the Major PUD Amendment Application would produce a better development per CDC Sections 17.4.12.E.3 and 17.4.12.A.2. Based on the current proposal, the Town Council is not willing to convey Town-owned property to the Developer to be used for the proposed development, which makes the development unfeasible.
- b. The proposed development does not create a more efficient use of land, public facilities, and government services as required by CDC Section 17.4.12.A.5, because the Developer has chosen to maximize development to the point where there are so many encroachments on what would remain as Town-owned land to meet the needs of the development in terms of utilities, access, etc. Specifically, the proposed development does not efficiently use the Town Property for trash and access, and there will be interruption to trash use/service during construction; and the addition of a boiler room to the existing trash facility does not create a more efficient use of the facility, which would hinder the Comprehensive Plan's goal of relocation of the facility.
- c. The proposed development does not include sufficient infrastructure as required by CDC Section 17.4.12.I.9, because much of the development's utilities will be placed on neighboring properties; mass transit, although raised as a concern by Town Staff, was never adequately addressed in the Applications; the Developer has not demonstrated that vehicular and pedestrian access actually works; and the parking and traffic circulation are unknown.

- d. The proposed development does not provide adequate community benefits, which includes public benefits and public improvements per CDC Section 17.4.12.G.
- e. The proposed development does not provide adequate public facilities and services as required by CDC Section 17.4.12.E.7.
- f. The proposed development creates pedestrian circulation hazards contrary to CDC Section 17.4.12.E.8.
- g. All other grounds reflected in the record regarding the Major PUD Amendment Application.

Section 6. Effective Date. This Resolution shall be in full force and effect upon its passage and adoption.

ADOPTED AND APPROVED by the Town Council at a regular public meeting held on March 16, 2023.

TOWN OF MOUNTAIN VILLAGE TOWN COUNCIL

ATTEST:	By: Laila Benitez, Mayor
Susan Johnston, Town Clerk	
APPROVED AS TO FORM:	
David McConaughy, Town Attorney	

Exhibit A

[LIST OF MAJOR PUD AMENDMENT APPLICATION MATERIALS]

<u>Public Benefits Variations and Specific Approvals Comparison 2010 PUD and 2023 PUD amendment</u>

For illustrative purposes only see Ordinance for a complete list of variations, specific approvals

Rev. 6.15.23	Original PUD	Amendment Request
Public Benefits		
	40 dedicated hotel rooms	50 dedicated hotel rooms held in common ownership as a condominium unit and cannot be further condominiumized
	Hotel Operator requirements	Hotel Operator requirements – letter of intent with Six Senses – also see hotel covenant
	Furniture package	Furniture package
	A Mitigation payment of \$996,288	A Mitigation payment of \$996,288
	Hotel Covenant	Hotel Covenant
	Up to \$250,000 of the mitigation payment referenced above, can be used to relocate the trash facility	Existing Trash Facility to be replaced a applicant estimated total cost of \$840,625. This includes town consent that Tiara Telluride rebuild the trash building.
	60% (\$590,625) of the mitigation payment to be used for employee housing.	The remaining \$746,288 of the mitigation payment, to be placed in dedicated Employee Housing Fund
	On the 2 nd anniversary of a Certificate of Occupancy, the operator will provide actual full time equivalent employee information. The owner shall pay \$4,018.52 per employee in excess of the 90 full time equivalent employees estimated by the owner.	On the 2 nd anniversary of a Certificate of Occupancy, the operator will provide actu full time equivalent employee information. The owner shall pay \$4,018.52 per employee in excess of the 90 full time equivalent employees estimated by the owner.
	One (1) employee apartment	Two (2) employee apartments total (meaning one additional employee apartment) and 18 employee dormitories, each comprised of individual sleeping rooms accommodating three people with common amenities such as a shared kitchen and recreational facilities and a laundry within a minimum commitment of 11,700 square feet of employee housing. Applicant estimated cost \$9,950,250 with cumulative sale value of approximately \$20,000,000 if sold individually and not subjected to employee housing restrictions).
	Public Restroom	Public Restroom
	Plaza Improvements	Plaza Improvements to the Village Pond Plaza cash in lieu of \$250,000. The existing easement for use and access would be terminated.
<u> </u>	Emergency access to Plaza Area	Emergency access to Plaza Area

	TI D : (A : (' '11	1. (11.6) (4. 21. 11. 2. 1.
	The Project Association responsible	Installation of two new sidewalks improved
	for removing and/or relocating snow	with snow melt systems: (1) Shirana to MV
	from the south side of upper	Blvd (2) From where the four seasons
	Mountain Village Boulevard	sidewalk ends continuous along MV Blvd
	, and the second	to the entrance to OS-3BR-2 (109R back
		of house and town short term parking area)
	San Foreyor Wallaway A nadostrian	See Forever Walkway. A pedestrian
	See Forever Walkway. A pedestrian	
	access easement will be drafted	access easement will be drafted that
	that connects See Forever through	connects See Forever through Lot 109R to
	Lot 109R to the Village Center	the Village Center with the major
		subdivision plat
	48 public parking spaces in the	48 public parking spaces provided in the
	parking garage	parking garage
	Westermere Breezeway	Westermere breezeway improvements and
	Improvements	Westermere path improvements consistent
	improvements	
		with their proposed development plan and
		subject to 7.2.8 of the proposed
		development agreement.
	Conference Room space rentable	Conference Room space rentable by the
	by the public	public
	20,164 square feet commercial	22,608 square feet commercial density
	density	
		Public Access via the port cochere through
		the building to the See Forever walkway
		plaza
	24 hour valet service in exchange	valet parking provided for commercial
	for tandem parking	
	I for tangem narking	
	ioi tandom parking	uses. Tandem parking is requested.
	To tandem parking	Shuttle service between Montrose and the
		Shuttle service between Montrose and the hotel for guests.
	Original PUD	Shuttle service between Montrose and the
Variations		Shuttle service between Montrose and the hotel for guests.
Variations	Original PUD Variation/waiver to LUO Section 2-	Shuttle service between Montrose and the hotel for guests. Amendment Request
Variations	Original PUD Variation/waiver to LUO Section 2-416 to allow Lot 109 and 110,	Shuttle service between Montrose and the hotel for guests. Amendment Request
Variations	Original PUD Variation/waiver to LUO Section 2-416 to allow Lot 109 and 110, Building Footprint Lots, to expand	Shuttle service between Montrose and the hotel for guests. Amendment Request
Variations	Original PUD Variation/waiver to LUO Section 2-416 to allow Lot 109 and 110, Building Footprint Lots, to expand by more than 25%.	Shuttle service between Montrose and the hotel for guests. Amendment Request n/a
Variations	Original PUD Variation/waiver to LUO Section 2- 416 to allow Lot 109 and 110, Building Footprint Lots, to expand by more than 25%. Variation/waiver to LUO Section 4-	Shuttle service between Montrose and the hotel for guests. Amendment Request n/a Variation/waiver to LUO Section 4-308-9 to
Variations	Original PUD Variation/waiver to LUO Section 2- 416 to allow Lot 109 and 110, Building Footprint Lots, to expand by more than 25%. Variation/waiver to LUO Section 4- 308-9 to allow an increase in	Shuttle service between Montrose and the hotel for guests. Amendment Request n/a Variation/waiver to LUO Section 4-308-9 to allow an increase in maximum to 88' —
Variations	Original PUD Variation/waiver to LUO Section 2- 416 to allow Lot 109 and 110, Building Footprint Lots, to expand by more than 25%. Variation/waiver to LUO Section 4- 308-9 to allow an increase in maximum to 88' – 9"and maximum	Shuttle service between Montrose and the hotel for guests. Amendment Request n/a Variation/waiver to LUO Section 4-308-9 to allow an increase in maximum to 88' — 9"and maximum average height of 65' —
Variations	Original PUD Variation/waiver to LUO Section 2-416 to allow Lot 109 and 110, Building Footprint Lots, to expand by more than 25%. 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".	Shuttle service between Montrose and the hotel for guests. Amendment Request n/a 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".
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	1	Tarra
	Variation/waiver to LUO Section 4-	N/A. Applicant proposes to create a
	609-5 to extend the PUD vesting	vested property right in the PUD as
	period from three (3) to five (5)	amended for the standard 3-year vesting
	years.	period.
	Variation/waiver to LUO Section 9-	n/a
	13 through 9-16 to allow for the	
	"festoon" lights over the plaza area.	
New Requests	ighte ever the plaza area.	A request for Town Council to create
New requests		bonus density or MV density in the density
		bank to be transferred to the property for
		employee apartment or employee
		dormitory use, as needed.
		A variation to CDC Section 17.4.12.(O)(2)
		to the 67% prior written consent of 67% of
		all owners of a unit to a PUD application.
		Conference Center to be offered to the
		public at market rate rather than
		comparable to the Conference Center.
		Easement for awnings and overhangs
		Roof Form per CDC 17.5.6.C.
		Wall material (no stucco proposed) per
		CDC 17.5.6.E.
		Glazing – uninterrupted areas of glass that
		exceed 16 square feet per CDC 17.5.6.G.5
		Decks and Balconies – long continuous
		bands per CDC 17.5.6.I.
		Commercial, Ground Level and Plaza Area
		Design Regulations – Storefront Design,
		Color Selection per CDC 17.5.15
		Garage Drive Aisle reduced from 22 feet to
		18 feet approved by the fire marshal per
		CDC 17.5.8.C.3
		Exterior Lighting Variations
		Commercial, Ground Level and Plaza Area
		Design Regulations To allow for a ski
		locker private unit on a Primary Pedestrian
		Plaza
		Driveway Grade
	Original PUD	Amendment Request
Specific	Specific approval from the Town	N/A
Approvals	Council to allow residential	
''	occupancy on the plaza level for an	
	Employee Housing Condominium	
	(LUO Section 4-308-4).	
	(======================================	
	Specific approval from the DRB to	Requesting tandem parking
	allow tandem parking to be included	
	as required parking (Design	
	Regulations Section 7-306-2).	
		N/A
	Specific approval from the DRB to	N/A
	allow for modification of the tile	
	roofing material, not design (Design	
	Regulations Section 8-211-5).	

	Specific approval from the DRB to allow for 2:12 roof pitch (Design Regulations Section 8-202)	N/A
New Specific Approvals	regulations occurred and	Materials- TPO membrane roof, metal fascia and soffit
		Solar roof tiles in the Village Center
		Road and Driveway Standards – 2 curb cuts
		Tandem Parking
Finding		
		The DRB established a one parking space per dormitory unit on May 31sth per CDC 17.5.8.A.5 (May 31, 2022 meeting)



DRAFT E-mail: chadh@sgm-inc.com

May 26, 2023

To: Michelle Haynes, MPA

Assistant Town Manager

From: Chad Hill

Project Manager

RE: **Engineering Review Comments Regarding Lot 109R**

Dear Michelle.

SGM has reviewed the plans relative to utility, site, storm drainage, and traffic/circulation contained in the Council First Reading package dated May 2, 2023.

Please note that that the review was to provide input regarding the conceptual plans and was not engineering quality control review of the conceptual design. Review of final design details is still required.

Summary

Overall, the plans are still at the conceptual stage and there are many design details yet to be fully developed. Review is consequently limited to a conceptual nature.

The following is a summary of items needed before issuing a building permit.

- Plan and profiles of the storm drain system.
- Further evaluation of the routing of the storm drain and sewer under the building.
- Utility design details, connections, and plans for all utility (electric, gas, water, sewer, and storm drain) switchovers to avoid interruptions.
- Drainage report.
- Road plan and profiles and sections.
- Final design drawing and specifications for the entire project for review and approval.

Comments regarding the summary are provided below.

Drainage Report

- 1. A drainage report is needed to take the conceptual civil drain design to the final design level by the Consultant. Please note that the offsite and all onsite drainage must be addressed within the report and meet current drainage standards and regional best practices.
- 2. SGM will then review the report and provide review comments or recommend approval.

Site and Utilities

General



- 1. Detailed design was not submitted.
- 2. Final plans must also address ADA compliance.

Sheets C2.1- C3.1

- 1. Access to Back of House and Porte Cachere areas and garage ramps.
 - a. Maintain 1-4% cross slopes on access.
 - b. The plans generally lack slope information for the parking structure. Typical level transition ramp slopes should be 5%-6% per the International Parking and Mobility Institute standards.
 - The access to the G2 (Public) parking garage entry is shown at 9.78%, to the structure face. The plan lacks additional information for this area at the gate immediately inside the structure and beyond.
 - ii. The access to the G1A (Hotel) parking garage entry is shown at 6%. The plan lacks additional information for this area at the gate immediately inside the structure and beyond.
 - iii. Parking structure internal connectivity and access grade is unclear per A-1.00-A1.03 (pp42-45). Structure levels appear to be connected by two car elevators.
- 2. It is understood that the Town is working with the developer regarding easements and setbacks.
- 3. The water, sewer, and storm drain realignments are acceptable with additional requirements as noted in item 5 below. The Town reported that rerouting of the electrical and gas services has been coordinated with SMPA and BHE.
- 4. The sewer and storm drain services cannot be interrupted so temporary facilities must be in place prior to utility switch over.
- 5. The storm drain and sewer, where routed under the building, are required to be ductile iron pipe and concrete encased. Alternatives to route these services outside the building should be evaluated. If the pipes must remain routed under the building, evaluate moving the manholes outside the building in the event of surcharging. If the manholes are located in the garage then sealed manhole lids should be utilized.
- 6. Roof and area drains shall not be connected to sanitary sewer.
- 7. Is an oil and grease trap planned in the parking area?
- 8. Both the storm drain and sewer systems should be hydraulically modeled to determine pipe sizing and establish other related design criteria.
- 9. Pipes routed under retaining walls must be encased in concrete.
- 10. Pipes routed under structures must consider building loads, swell and differential settlement.
- 11. The final design drawing and specification documents are to be provided for review by the Town prior to initiation of any construction or material orders.
- 12. There is insufficient information to review roof drain piping system.
- 13. Because no set back from lot line is provided, street plowing will place snow against the building. The facility design should accommodate the side load and related potential damage.

Sheet L2.02

14. The snow melt coverage for public areas are acceptable.

Storm Water Drainage

1. Detailed design was not submitted.



2. The storm drainage concept presented is consistent with SGMs' conversation with the Consultant and, once technically validated, could provide the needed stormwater management to address this "infill" project. Storm drain routed under the building is not preferred. The Consultant will need to work with the TMV staff to determine what maintenance access requirements would allow this concept.

Traffic and Circulation

LSC Traffic Memo dated 4/28/23

- 1. At the Back of House / Trash /G2 (Public) parking area.
 - a. Provide Autoturn exhibit matching current Civil linework and revise the modeling to address the following.
 - i. Refine the Public Bus Autoturn model to remain in roadway rather than cutting across sidewalk and / or curb ramp areas.
 - ii. Consider providing a narrower ingress that accommodates the Public Bus model and provides a mountable curb or 2" curb lip on the south radius with reinforced colored concrete to accommodate the tracking of the rear wheels of the WB-50 design vehicle. This would further inhibit passenger vehicle egress at this location due to deficient sight distance.
 - b. Provide signage and wayfinding plan, specifically addressing.
 - i. Existing building garage access(es)
 - ii. Commercial / Bus only ingress access (Do Not Enter, east side)
 - iii. Primary vehicle access (Stop, WB egress)
 - iv. General wayfinding signage for Public parking, Porte Cachere / check-in, Delivery, Transit, and Trash pick-up.
- 2. At the Porte Cachere area
 - a. Define circulation considering.
 - i. Sunny Ridge Place intersection location and existing and proposed traffic volumes
 - ii. Parking structure access
 - b. Provide sight distance analysis for egress movement.
 - c. Provide Autoturn exhibit matching current Civil linework using passenger design vehicle.
- 3. Provide updated Estimated Trip Generation considering the split between the Back of House and Porte Cachere areas, including existing trips in those locations.
- 4. Detailed design of road plan, profile and sections was not submitted for review.

This concludes SGM's review comments for this submittal. Future submittal with final design details is expected. Please feel free to contact me with any questions, thoughts, or comments on this review.

Sincerely,

SGM

From: <u>Dale Reed</u>
To: <u>Amy Ward</u>

Subject: Gas Regulator Station 161C-R

Date: Thursday, May 25, 2023 7:54:07 AM

Amy,

Just wanted to follow up from our conversation earlier this week. Merrimac Fort Partners, LLC has no problems with the gas regulator station being located at lot 89B if that is where Black Hills and Town Staff prefer it to be located.

Regards,

Dale

Dale Reed Chief Operating Officer

Merrimac Ventures 17 NE 4th ST Fort Lauderdale, FL 33301

Direct: 954-591-6272

Email: dale@merrimacventures.com

 From:
 Amy Ward

 To:
 Finn KJome

 Cc:
 Michelle Haynes

 Subject:
 RE: Lot 109 R referral

Date: Thursday, May 25, 2023 3:43:45 PM

Thanks Finn, some response below in blue

Amy Ward

Community Development Director Town of Mountain Village

O:: 970.369.8248 M:: 970.729.2985

We are experiencing high volumes of development review and have limited staffing. Please be patient regarding our response time.

Website | Facebook | Twitter | Instagram | Email Signup | Careers We make Mountain Village a great place to live, work & visit.

From: Finn KJome < FKJome@mtnvillage.org>

Sent: Thursday, May 25, 2023 2:31 PM **To:** Amy Ward <award@mtnvillage.org>

Subject: Lot 109 R referral

Hi Amy,

I don't have a lot of comments, but here are a few.

The new location of the utilities is acceptable to Public Works.

The Construction Mitigation plan still needs a lot of flushing out. Agreed, there will be many stages of construction mitigation and at each step the Town will need to be reviewing I don't see access to See Forever addressed in this version? You mean the actual stairway that connects up to MV BLvd? I think they understand that and improved stairway will be necessary, but you're correct that hasn't been flushed out yet. Not sure if the pedestrian routes follow ADA guidelines. Good point, should be verified.

Looks like with the addition of the sidewalk from Wells Fargo to Shirana the existing light pole will need to go away. I believe this lights the Shirana stairs. Is there a location there that it can be moved to, or do you anticipate they would have to add lighting in the stairs themselves?

Under the legal submittal document.

The Question of ownership and maintenance of snowmelt boiler, parking area storm water and sewer is confusing to me. Sounds like they will own and maintain but then give the Town an easement so we can maintain? I think they are putting in the easement language so that we could maintain in an emergency situation if necessary, however that needs to be clarified. I let legal know that it is important in the legal documents that its clear that ownership and maintenance is on the developer.

This project has a long way to go to get to construction documents but has come along way since the last time we reviewed it. Agreed!

Finn



DEVELOPMENT REFERRAL FORM

Planning & Development Services
Planning Division

455 Mountain Village Blvd. Ste. A Mountain Village, CO 81435 (970) 728-1392

Referral Agency Comments Lot 109R, TBD Mountain Village Blvd.:

Rodney Walters, Town Forrester_

L4.01 Plaza Planting Plan -or- in legal plaza maintenance agreement: Needs to state that "snowmelt will cause trees to exit dormancy prematurely and cause premature decline and death. Owner agrees to replace trees as necessary to maintain the landscape plan and to keep the plaza in a desirable condition", or something to this effect.

L4.01 Plaza planting Plan: The proposed planters must have soil composition and soil volume specifications appropriate for the plant materials that will be installed. Planters with trees must specify the use of locally native topsoil (topsoil should be removed and preserved from the site for this purpose) with 4-6% organic matter mixed in and installed at a minimum depth of 3-4 feet to support tree health and growth.

The plan needs to specify balled and burlapped trees and the size of the trees to be planted (2 inch caliper for deciduous trees and 8-10 foot tall, minimum for the evergreen tree).

The plan needs to specify that all materials, including burlap, wire, and strapping is to be removed from the root balls during the planting process.

A two-year replacement warranty for the planted trees needs to be specified to guarantee the trees will be nurtured through the establishment period.

LO.02 Existing Tree Plan: Tree Protection fencing ideally will specify the use of a minimum 4' high chainlink fencing material (this is because orange polyethylene material invariably gets knocked down during the construction phase, which renders the protection fencing ineffective). In either case, whether polyethylene or chainlink fencing is utilized for tree protection fencing. The plan needs to state "unless approved by the town forester or staff, in no case shall any material, including soils, be stored within the tree protection fencing areas. The tree protection fencing shall be maintained in good condition so no materials or traffic whatsoever (including foot traffic) will occur within the tree protection areas. Failure to adhere to these tree protection requirements constitutes a violation of the CDC and may be subject to fines of up to \$5000 per violation and up to \$5000 per day for each day the violation continues to exist (CDC 17.1.18)".

Scott Heidergott, Fire Marsal

EV charging shall be placed in the first available spaces entering the garage, or in an approved location from the Fire Marshal.

 From:
 Dale Boden

 To:
 cd

 Cc:
 Dale Boden

 Subject:
 Lot 109 R

Date: Monday, May 29, 2023 6:59:59 AM

Dear DRB and Town Council,

Please let me begin by thanking you for your service. I appreciate the time commitment and work required of you to serve the community. It is significant.

I am writing in opposition to the Tiara Telluride's proposal for acceptance of their development plan using the existing 2010 PUD with some additional variances. The building is too tall and density is too great.

Our current Community Plan requires a maximum 60' in height and an average of 45' in height. That is an appropriate size for the totality of the core of the Mountain Village. I encourage you to require Tiara Telluride to reduce their development to an appropriate scale as determined by the Mountain Village community.

If you require Tiara Telluride to meet requirements of the development envelope the community supports, they will figure it out. The project will go forward. If they are unable to figure it out, another developer will. You are not required to protect the profitability of the developer. Respectfully, it is your responsibility to protect the integrity of the community's built environment.

I have been a part time resident of Telluride for 35 years with the last approximate 20 years at See Forever Village. The design principals and restrictions that have protected Telluride and the Mountain Village over the past 35 years have insured the quality of life and uniqueness of this community. Please continue that protection by denying Tiara Telluride's proposal.

Thank you, Dale Boden

Dale J Boden B F Capital, Inc. 333 East Main Street Suite 310 Louisville, KY 40202 (502)587-1860

Alpine Planning, LLC

P.O. Box 654 | Ridgway, CO 81432 | 970.964.7927 | chris@alpineplanningllc.com



Mountain Village Town Council
Sent via email to: mvclerk@mtnvillage.org

Dear Town Council Members,

My firm consults with Winston Kelly on land use planning for Lots 104, 89-2C and 89-2B ("Kelly Properties"). The Kelly Properties are located across from the Sixth Senses Hotel project site that proposes a Major PUD Amendment, Rezoning and Subdivision to reconfigure the Mountain Village Hotel PUD currently pending before the Town Council. This memo analyzes the proposed hotel parking requirements, employee generation and some public benefits for the Sixth Senses Hotel proposed on Lot 109R in the Town of Mountain Village.

Hotel Parking

The proposed hotel is required by the Mountain Village Community Development Code ("CDC") to provide 116 spaces for the proposed hotel, condo, employee housing, and commercial uses ("Hotel Uses") as shown in Table 1. The parking shown in the plan set provides only 111 spaces for the Hotel Uses so there is a CDC required parking deficiency of four (4) spaces. The reason for this deficiency is because the applicant has not included all the floor areas for high intensity uses, including the kitchen and lounge/bar area on Level GIA, or the kitchen on Level 6. The total of high intensity use is estimated to be approximately 8,703 sq. ft as shown in Table 2, with the hotel lobby/restaurant lounge space on Level G1A potentially larger than estimated off the floorplans. The applicant should be required to include all the kitchen areas and the area dedicated to the bar/lounge area on Level G1A to ensure there is adequate parking for all the floor area dedicated to the high intensity uses, with the floor plans revised to clearly show the areas and square feet dedicated to high intensity and low intensity commercial uses.

Table 1. CDC Parking Requirements

Land Use	Units or Floor Area	Required Number of Parking Spaces Per Unit, or Per Sq. ft.*	Required Parking
Efficiency Lodge	50	0.5	25
Lodge	31	0.5	15.5
Condo	20	1	20
Employee Condo	2	1	2
Employee Dorm*	18	1	18
High Intensity Commercial Use	8703	500	17
Low Intensity Commercial Uses	16850	1000	17
Total Required Parking			115

^{*}Town established dorm parking requirement through PUD process.

Table 1. CDC Parking Requirements

Commercial Uses	
Level G1	
Spa	10,220
Market	2629
G1 Retail No. 1	918
G1 Retail No. 2	1159
G1 Lounge + Ski Shop No. 3	914
Level G2	
Est. Bar+ Restaurant Area Next to Lobby	3962
Sotheby's Vault Office	1010
Level 6	
Signature Dining, W,edding Conference + Kitchen	3838
Omakase Restaurant + Bar	903
High Intensity Uses Est. Floor Area	8703
Low Intensity Uses	16,850
Total Commercial Area	25553

It is also important to note that the CDC Parking Regulations in Section 17.5.8 do not establish parking requirements for dorm units, with this use and zoning designation not listed in Table 5-2. CDC Section 17.5.8(A)5 states:

"For uses not listed, the parking requirements shall be determined by the review authority based upon the parking requirements of a land use that is similar to the proposed use, other Town parking requirements or professional publications. A parking study may also be submitted by an applicant to assist the review authority in making this decision."

The Applicant's narrative states that the proposed 18 employee dorm rooms and 2 employee apartments will house over 50 employees as shown in Figure 1. The applicant's Summary of Community Benefits indicates that there will be 56 employees living in the 18 dorms and 2 employee condos, with three (3) people per dorm room. Where will the other 36 plus employees park with only 20 on-site parking spaces designated for employees?

Figure 1. Snapshot of Applicant Narrative

project includes an industry-leading five-star hotel, premium condominium units, best in class food and beverage outlets, a one-of-a-kind spa, and unique and exciting retail boutiques. The hotel and related amenities will be scheduled to operate year-round. Additionally, the project will include employee apartments and dormitories providing housing opportunities for over 50 employees, addressing a significant need for the continued growth of the Town.

The applicant is only providing one (1) parking space per each of the 18 dorm rooms that clearly is not adequate with three (3) employees per dorm room per the applicant's provided

information. The parking requirements for a dorm room should be higher than an employee apartment because the dorm units will have three (3) employees in each dorm unit.

The CDC parking requirements do not require parking for the actual number of employees generated by a proposed land use. The actual number of employees generated by the hotel is significantly higher as shown in Table 3, with the Town of Mountain Village housing mitigation spreadsheet's generation rates indicating a very low employee generation rate of 95 employees for the entire hotel. Telluride and San Miguel County employee generation rates estimate 148 total employees. Industry standards for a five-star hotel are typically in the range of 2 to 2.5 employees per hotel room that results in an estimate of approximately 200 employees for the hotel looking at lodge and efficiency lodge units only (assumes condos are not in the rental pool). It is estimated that there will be approximately 150 to 200 employees for the hotel based on regional employee generation rates shown in Exhibit B and industry standards. This estimate could be higher if some of the penthouse condo units are included in the hotel unit rental program, and due to the large amount of proposed commercial uses that may not be captured in the industry standard parking requirements.

Table 3. Employee Housing Generation Rates

	Number of Units	Employees	Emp. Generation	Employees
Jurisdiction/Use	or Area	Generated	Rate	Generated
Mountain Village				
Efficiency Lodge/Lodge	81	0.50 emps / unit	0.5	40.5
Condo	20	0.19 emps / unit	0.19	3.8
Commercial Use	25553	2 emps / 1,000 sq. ft.	2	51.106
				95
Telluride and San Miguel County H	lousiing Mitigation	n		
Efficiency Lodge/Lodge	81	0.33 emps / unit	0.33	26.73
Condo	20	0.33 emps / unit	0.33	6.6
Commercial Use	25553	4.5 emps / 1,000 sq. ft	4.5	115
				148
Five Star Hotel Emp. Housing Requ	uirement			
	81	>2.5 : 1 room	202.5	

Assuming two (2) day shifts, there would be approximately 75 to 100 employees working at the property throughout the day. Where will these employees park with only 20 on-site parking spaces? The Gondola Parking Garage is not an option since it is already over capacity during the ski season. There will be a loss of public parking spaces if employees park in the hotel's 48 public spaces. The Applicant should therefore be required to document the exact number of employees working at the hotel, the maximum number working one shift and where they will be parked. If not, the skier and visitor experience will be further degraded due to the lack of parking in Mountain Village.

CDC Section 17.5.8(B)(1) states:

"All parking shall be contained within the lot(s) upon which the proposed development is located and off of public and private rights-of-way and the general easement. The use of the road right-of-way for the parking of vehicles is strictly prohibited."

This provision mandates that all required parking be located on the same lot as development. The Applicant has not met this requirement because there is not enough on-site parking for the dorm rooms with a deficiency of at least 36 employee spaces, or for the high intensity commercial uses where there is a deficiency of approximately four (4) parking spaces. This creates a parking deficiency of approximately 40 spaces.

Employee Housing

The proposed PUD states that the proposed employee housing is a community benefit when it is less than mitigation for 40% of the employees generated. The proposed hotel should be subject to the Town's affordable housing requirements. The Town's minimum affordable housing requirements establish standards for mitigating 40% of the employees generated by the project, with the Town's spreadsheet shown in Exhibit A indicating the total required mitigation for the new hotel is 15,569 sq. ft. excluding all the phase in reductions over time and the 30% discount for in-town units. The Town phase in reductions cuts the housing mitigation down to only 2,725 sq. ft. for a development application submitted in 2022 which is interesting given the employee housing impacts to the Telluride Region and all down valley towns. The employee housing mitigation requirement would be approximately 25,051 sq. ft. if the hotel were proposed in Telluride. If the Town's housing mitigation was truly at 40% then the required mitigation would be over 15,000 sq. ft. of floor area and more than provided by the applicant. The Town 30% discount for in-town units combined with the percent reductions to phase in the housing mitigation over time make it seem like the provided housing is a public benefit when the developer should be required to provide at least 40% mitigation. Otherwise, the number of employees generated by the hotel further exacerbates the regional housing crisis.

The applicant proposes to provide approximately 13,000 sq. ft. in housing on the Level 1 Mezzanine excluding stairs, back of house, and electric space as shown on Sheet A-104 and as measured in Figure 2. The Applicant states that they are providing 14,455 gross sq. ft. in housing mitigation; however, this includes a stair corridor and elevator shafts that do not appear to be accessible to the employee level and back of house space that should not count as housing mitigation floor area. The Applicant should be required to provide the actual floor area used for housing since it is including space not accessible or useable by employees.

Figure 2. Housing Mitigation Area



Building Height

The applicant continues to state that the current PUD allows for a maximum height of 88'-9" across the whole of the property, which is incorrect. The current PUD only allows for this height along the highest roof ridge on the west side of the building. The current PUD limits building massing the to approved site-specific development plan with stepping as shown in prior correspondence. The applicant is increasing the maximum height by spreading it out across the whole of the site and not maintaining the height approved under the current PUD.

The average height calculations are also very questionable. All the highest measuring points except one are to the top of guardrails and not to the top of a roof. These guardrails clearly are not the highest roof above the grade and are not roofs. The guardrails are on the side of a deck next to the building. Since when are deck railings considered roofs? Average height is measured from "...finished grade to a point on the roof plane midway between the eave and ridge". The highest roof points are not the highest roof above in numerous locations. Not one of the average height measuring points is measured to the highest roof element. How can this be when that is the highest roof over several areas, including the main plaza? There must be more of an explanation on how average height was measured and what appears to be several highly questionable measuring points on the plans. A comparison of the current PUD Mountain Village Hotel plans and the proposed plans shows way more massing than the approved hotel. It seems impossible to have an average height comparable to the Mountain Village Hotel PUD when the building mass is so much higher across the property. We therefore believe that the actual

average height is much higher than presented and should be fully explored by the Town Counci prior to any approval.
We sincerely appreciate the Town Council's time and consideration of all public comments.
Thank you.
Chris Hawkins, AICP



AFFORDABLE HOUSING MITIGATION CALCULATOR

INSTRUCTIONS

- 1. Input project details and size for relevant development type(s) in green boxes
- 2. Resultant required housing mitigation/fee-in-lieu can be found in yellow boxes (total) and blue boxes (by mitigation type)
- 3. Enter amount of housing to be mitigated/fee to be paid by mitigation type in green boxes
- 4. Ensure total mitigation amount, accounting for all types, totals 100% of requirement

1. PROJECT & APPLICA	ANT				
Project Title	Sixth Senses		Project Address		
Applicant Name			Applicant Address		
Applicant Phone			Applicant Email		
Date					
Year of land use application	submittal (select one)		2022	25% of mitigation required	
Net floor area of commerci	al space proposed:		25,553	lsa. ft.	
Number of hotel/accommo				units	
	tifamily residential units pro	posed:		units	
Net floor area of multifamil	y additions proposed:			sq. ft.	
Net floor area of single fam	nily residential unit(s) propos	ed:		sq. ft.	
2. CALCULATION OF M For commercial uses: 25,553 x 2 net floor area or increase (s For hotel and accommodation 81 number of units	2.00 employees / 1,000 sq.ft.	x 400 sq.ft./employee	x 40% mitigation		sq. ft. employee housing sq. ft. employee housing
For multi-family residential a	and mixed-use residential us	es:			
20	x 0.19 employees / unit	x 400 sq.ft./employee	x 60% mitigation	= 912	sq. ft. employee housing
number of units 0 x 0 net floor area increase (sq.	1.13 employees / 1,000 sq.ft. ft.)	x 400 sq.ft./employee	x 60% mitigation	= 0	sq. ft. employee housing
For single family residential	uses:				
	.12 employees / 1,000 sq.ft.	x 400 sq.ft./employee	x 60% mitigation	= 0	sq. ft. employee housing
	TOTAL MINIMUM AF	FORDABLE HOUSIN	IG REQUIREMENT	= 15,569	sq. ft. employee housing

3. MITIGATION OPTIONS AND REQUIREMENTS

(Note that blue boxes represent mitigation required if all requirement is mitigated using that method)

	Total Employee Housing Required*		Net Required Mitigation
Units in Town Commercial:	2,044 sq. ft.	-30% discount	1,431 sq. ft.
Hotel and accommodation:	1,620 sq. ft.	-30% discount	1,134 sq. ft.
Multi-family residential and mixed-use residential:	228 sq. ft.	-30% discount	160 sq. ft.
Single family residential:	0 sq. ft.	-30% discount	0 sq. ft.
TOTAL MINIMUM AFFORDABLE HOUSING REQUIREMENT	3,892 sq. ft.	-30% discount	2,725 sq. ft.
Units Out of Town			
Commercial:	2,044 sq. ft.	-15% discount	1,738 sq. ft.
Hotel and accommodation:	1,620 sq. ft.	-15% discount	1,377 sq. ft.
Multi-family residential and mixed-use residential:	228 sq. ft.	-15% discount	194 sq. ft.
Single family residential:	0 sq. ft.	-15% discount	0 sq. ft.
TOTAL MINIMUM AFFORDABLE HOUSING REQUIREMENT	3,892 sq. ft.	-15% discount	3,308 sq. ft.
Fee in Lieu			
For commercial uses:	2,044 sq. ft.	0% discount	x \$606 /sq.ft. \$1,238,809
For hotel and accommodation uses:	1,620 sq. ft.	0% discount	x \$606 /sq.ft. \$981,720
For multi-family residential and mixed-use residential uses:	228 sq. ft.	0% discount	x \$606 /sq.ft. \$138,168
For single family residential uses:	0 sq. ft.	0% discount	x \$606 /sq.ft. \$0
TOTAL MINIMUM AFFORDABLE HOUSING REQUIREMENT	3,892 sq. ft.	0% discount	x \$606 /sq.ft. \$2,358,697

^{*} Accounts for phase-in of requirements, based on year of land use application submittal

4. PROPOSED METHODS OF MEETING AFFORDABLE HOUSING MINIMUM REQUIREMENTS

		% of	Remainder to
Fill in all that apply:		Requirement	reach 100%
To be constructed within the Town of Mountain Village	sq. ft.	0%	2,725 sq. ft.
To be constructed outside of the Town limits	sq. ft.	0%	3,308 sq. ft.
Fees in Lieu to be paid		<u>0%</u>	\$2,358,697
4. Mitigation Requirement Met		0%	

June 8, 2023

To: Mountain Village Town Council

Re: Major PUD Amendment to 109R

We are homeowners at Shirana, located at Lot 108 directly adjacent to both Lot 109R and Tract OS-3-BR2. As we have previously stated in prior correspondence and public comments at Town Council meetings, we are not opposed to the development of Lot 109R, but the development must proceed in accordance with the PUD and the Town of Mountain Village Community Development Code.

Since the first work session regarding the proposed Amendment in September of 2021, numerous questions and concerns have been raised by both Town staff and the community about parking, employee housing, and traffic, among other issues. We acknowledge the efforts that the applicant has made to finally fulfill the parking requirements of the PUD; however, the applicant has failed to resolve other issues.

CDC Section 17.4.12.E sets forth the criteria for approving a Major PUD Amendment Application. One criterion is that the proposal shall not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion. Concerns about circulation hazards and traffic congestion have been consistently raised since the beginning of the Amendment process, and the applicant has failed to adequately address these concerns.

The proposed circular drive and parking lot on Tract OS-3-BR2 would function as the hotel's back of house and need to accommodate garbage trucks and delivery vehicles, for both the hotel and neighboring buildings, as well as the Town bus and emergency vehicles. Mountain Village Public Works Director Finn Kjome has previously stated: "The entire back of house, garage entrance and trash facility is insufficient for a hotel of this size." JD Wise, former Assistant Public Works Director, raised similar concerns: "Can a delivery truck access the loading bay if a trash truck is servicing the trash facility? If the UPS truck shows up when there is a semi-truck in the loading bay where do they park? Can a public transit bus pull through while a delivery or trash pickup is happening? What happens if two delivery trucks show up at the same time? I am concerned that this area will be frequently clogged up. If vehicles are not able to pull through this will be problematic as currently this represents the last best place to turn around large vehicles/trucks/RVs traveling on MV Blvd." Transit and Recreation Director Jim Loebe has said: "[W]e're just trying to fit too much stuff in too small of a space in this turnaround area." Mr.

¹ Finn Kjome, 4/20/22: "The entire back of house, garage entrance and trash facility is insufficient for a hotel of this size. Applicant should show how this all functions together during the height of the seasons.... Consideration of what will actually be needed for a Hotel of this size should be considered."

² Jim Loebe, 5/23/22: "After reviewing the updated PUD plans for 109R I would like to echo my initial comments from the first draft.... The proposed traffic flow diagram shows two-way traffic through the area we currently call Short Term parking. Maybe the Chief should weigh in on this, but it just seems like too much activity in a small space. We use this as a bus turnaround and transit feels it should be oneway flow, counterclockwise. Hopefully it will work for delivery trucks to enter counterclockwise and back into the loading dock. It actually looks like an easier maneuver on paper than what they are proposing."

Kjome had also requested an operational plan on how the area would function with multiple vehicles using it at the same time, on both a normal day and peak times.³ This request is consistent with the Town Council's prior request for a comprehensive impact study⁴; to date, no such plan or study has been provided. Applicant's retained traffic consultant LSC Transportation Consultants issued a memorandum on February 14, 2023 concluding that the proposed hotel would triple the number of daily trips in the lot. LSC issued an updated memorandum on April 28, 2023 with the stated purpose "to evaluate sight distance along Mountain Village Boulevard from the two proposed site access points, evaluate internal site vehicle circulation for various vehicle-types, and to estimate the existing and total trip generation potential that could impact the circulation area of the site." This memorandum does not fulfill the Town's request for a comprehensive study showing how the site would function with several vehicles of various types using the site concurrently. The concerns raised by Town staff are justified; see attached for a photo taken during the off-season of a garbage truck servicing Westermere, blocking not just another garbage truck attempting to service the Mountain Village trash building, but also the entire southern entrance/exit to the lot. If there is congestion on a random weekday in April, we can only imagine the hazards created by garbage trucks (for the proposed hotel, Westermere, and Shirana), delivery trucks (for the proposed hotel and other buildings in the area), Town bus, and parked vehicles during a holiday week (not to mention potential issues with traffic blocking the emergency lane).

The applicant's proposal also includes plans to use lot OS-3BR-2 for staging during construction. The applicant proposes to construct a temporary trash enclosure just south of the existing trash building to allow the existing building to be demolished. However, the applicant also designates that space for 5 temporary parking spaces. In looking at the attached photo, it does not seem physically possible to accommodate both the temporary trash enclosure as well as any parking spaces. During the construction period, it is possible that there would be anywhere from zero to only 5 parking spaces available at any given time. Zoe Dohnal, former Director of Operations and Development, has stated the

Jim Loebe 11/17/22: "We just need to ensure that it remains a viable bus turnround and that the bus has a place to safely pick up and drop off in the loop.... I've been of the vocal opinion that we're just trying to fit too much stuff in too small of a space in this turnaround area.... The traffic in the north core is going to go off the charts.... This piece of land to the south of 109 is such an important interface for the community."

³ Finn Kjome, 5/23/22: "I have the same comment as last time. The delivery area is insufficient in size. Please provide the square footage calculations on how the delivery area was derived. Please provide an operational plan on how this functions on a normal day and also during the peak times of the years such as Christmas Holiday. Please provide an operational plan that explains what happens with hotel delivery trucks when the loading dock is full and a second truck shows up or what the delivery truck does when the Town trash pickup is going on."

⁴ Prior to the 8/18/22 meeting, Town Council required conducting a traffic, circulation study and an impact study, stating "[w]e would expect the traffic study to better address the use interface in this area." On page 75 of the 8/18/22 packet, the Town Council reiterated that "[t]he town needs to see how the circulation plans will work" in order to avoid creating vehicular or pedestrian circulation hazards or parking, trash or service delivery congestion, and on page 77, further stated that the traffic study is necessary to understand circulation for the various uses within the area of the Trash Building.

importance of prioritizing parking near the Village Center for businesses⁵, a concern shared by Mr. Wise.⁶ Although the applicant has committed to 48 parking spaces in the hotel as required by the original PUD, the loss of public parking during the lengthy construction period will have a detrimental effect on businesses in the area. In addition, the construction staging will also disrupt trash pickup and parking at Shirana and Westermere, as well as the turnaround area for the Town bus.

Along with traffic circulation and parking, another issue that has been discussed at length is employee housing. We have previously expressed support for the applicant's efforts to provide some housing, but the number of employees required by applicant's proposal far exceeds the housing that it is being provided, thereby exacerbating, not alleviating, the lack of employee housing.

The public comments in favor of the proposed hotel have been specifically in favor of a Six Senses hotel, but the applicant has not been forthcoming about the status of the hotel operator. The original LOI from April 12, 2022 states that binding definitive agreements were anticipated to be executed within 45 days; we are now more than one year out, with no updates. The latest documents filed by the applicant include other potential hotel operators, and in addition, the applicant still has not committed to having the hotel spa and restaurants be open and available to the public.

Change is inevitable and development is expected in our community, and the Town Council has a fiduciary duty to ensure that it is done safely, in compliance with laws and regulations, and for the benefit of the people of the community. The 2010 PUD pre-dates the Mountain Village Comprehensive Plan and would not be approved under today's standards; the mass and scale of the proposed hotel (built out to lot lines) are not in sync with the other buildings in the area. The applicant's proposal has not met the standards of a Major PUD Amendment and should be denied, and the applicant should proceed with a project aligned with the Comprehensive Plan (which prioritizes relocation of the trash shed, which would solve for many of the ongoing issues).

Thank you for your consideration.

Jackie and Alan Kadin, Shirana homeowners

⁵ Zoe Dohnal, Director of Operations and Development 5/23/22: "the loss of... public parking spaces available at the north end of the village... will impact current businesses and attracting new businesses to that area, as staff and patron parking is already a concern for many."

⁶ JD Wise, Assistant Public Works Director 5/23/22: "This effectively eliminates all public parking on the north end of the Village Center which will cause a reduction of pedestrian foot-traffic on this end of the plazas."



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June 13, 2022

Via Email: cd@mtnvillage.org

Town Council Town of Mountain Village 455 Mountain Village Blvd, Suite A Mountain Village, CO 81435

Re: Major PUD Amendment to the Lot 109R PUD approved in 2010 and granted two amendments extending the approvals to December of 2022.

Town Council June 16, 2022: Public Hearing

Dear Town Council:

I appear before you as legal counsel for the owner of Lot102 and Lot 89 2C (and owners of other properties negatively impacted by the Lot 109 R PUD. These residential lots were planned by the Town for homes with spectacular views. The Town is one of the "best of the best" ski areas because its views are known throughout the world. One does not become the "best of the best" by chance.

I. Background

Spectacular views are essential to the Town's well-earned status; however, EVEN MORE IMPORTANT THAN THE VIEWS are two factors. *First*, the Town Founders had to have both foresight and the tenacity to put their plans into a Code that would guide future Town planner and the future members of the Council. *Second*, and most important for long terms success, future Council members had to be willing to trust and adhere to a plan that has been unbelievably successful. I was fortunate to represent the ski company (during its ownership by Joe Zoline and later during the spectacular growth period fostered by Ron Allred and Jim Wells); plus, I worked for the Mountain Village Metropolitan District (prior to formation of the Town itself).

I have seen and been impressed by the dedication and tenacity of Council members who, throughout the years, have avoided the temptation to change the Town, under the guise of "more modern" or be swayed by "grandiose" promises from developers. Rather, they have trusted and been guided by the Comp Plans Town residents and prior Council members approved. Has Council always made the right decisions (or have attorneys always been right?) Of course not; mistakes occur.

My request is that this Council view the Lot 109R "variances" for what they are: practically a complete repudiation of what has made the Town of Mountain Village what it is. Take a deep breath; close your eyes and ask yourself:

Does the current Lot 109R plan harm current neighbors who sent millions purchasing lots and building homes or condominium based on faith that the Town Council would enforce the same building restrictions that made the Town great, and which these owners have or will have to comply with?

Are your convictions to act in accord with the public statements and resume assurances you gave to secure votes for Council strong enough to resist developer arguments for "modernization of the Allred/Wells vision" and disregard for the design limits that made the Town the 'best of the best' ski area, with an ever-growing summer reputation.

II. Prior DRB Proceedings.

I appeared at each DRB hearing for this Lot 109R plan. Worthy of note are two undisputed facts. Twice the DRB directly advised the developer that they did not like the height of the proposed structure. More indirectly, but just as significant, the DRB also felt the 'mass' of the development was excessive on this approximate Eight Tenths (.8) of an acre tract of land. The developer simply ignored the DRB.

Even if the flat roof "Miami" design had better fit the character of the Town, the development was too intense; better suited for Miami or Las Vegas, than the Town of Mountain Village. Rather than repeat all the arguments previously presented on behalf of my client, I request that you consider my May 28, 2022, letter to the DRB. See Appendix 1.

I also attach several photographs of the site, and a photo taken from the Gondola Station so you can envision what a near 100-foot building would do to the Town's skyline. You are residents of the Telluride and thus also know what perpetual shade will do to significant areas of the Village Center, if a building some 100 feet tall (with an *average height* of 82 feet, massively beyond the 45-foot limit and much taller than surrounding buildings). The developer had not presented the DRB with any reliable information as to the "real world height impact" to enable the DRB to envision what a 98-foot building would do to the Town views. Many in the Town (including those on the Gondola Plaza) will never see the view that made the Town the 'best of the best'.

Photos could have been presented by the developer to show the height, they are inexpensive and real-life information. All the photo's required were a few dollars and early morning absence of wind. The DRB should have done more than continue the first hearing (to allow the developer more time to submit information responsive to their height concerns). The DRB should not have advanced this Lot 109R project in light of the developer's refusal to lower the height. Great towns do not grow out of indecisive action; more important, great town do not remain great by indecisive action. Call a 'spade a spade'; the building is too tall. Do not encourage the developer (and future developers) to continue with plans that include buildings that are too tall. Be decisive, as prior boards have had to be to keep the Town what it is. If the developer insists on his design; on his density, they build somewhere else.

III. Photographs.

Five (5) photos are attached (labeled "A' through "E") as **Appendix 2.** These and many additional photos were taken and shared with the Town attorney and the public on May 31st. Wind conditions dictated the date and time when accurate photo could be taken, needing minimal wind disruption. The string was placed on the ground on Lot 109R or near the boundary between Westermere and Lot 109R. The photos were taken from the surrounding area to show how massive the proposed structure would appear. The attached five photo's demonstrate significant facts (not opinions or guesses).

All Photo's involve the same 100-foot string with attached balloons filled with helium. A simple, inexpensive way to visualize where a 100-foot building top would be located. No more avoiding the obvious; a 100-foot building will dwarf the surrounding structures which were either built to Code height limits or for reasons tied to the specific development, were given a reasonable 'variance' (as opposed to a massive disregard of the Code limit). The Photo's show color coded balloons, "Red" at 100-feet, "Blue" at 90-feet, "Yellow" at 80-feet, "Pink" at 70-feet, and "Green" at the Code limits of 60-foot maximum building height and again at the 45-feet maximum average building height.

Photo A was taken from a deck on the private residence at Lot 102 to demonstrate what Lot 109R will do to the view from private residents built and to be built along Mountain Village Blvd. The lots will immediately transform from desirable to unsaleable lots simply to maximize Lot 109R profits.

Photo B was taken from another residential lot, Lot 89 2A, located on Mountain Village Blvd. The photo again depicts the impact a 98-foot structure would have on the view. The 45-foot balloon incorrectly appears to make the Westermere look a little shorter than it is (because of the angle of the photo from the elevation of Lot 89 2A). If the photo could have been taken from a balcony elevation on this (currently vacant) lot, the photo would have been totally accurate. Still, the photos is reasonably accurate and something the developer should have presented at its initial request for approval of 98-foot maximum height and 82 foot excessive average height.

Photo C shows the Westermere average height in the range of the Code's 45-foot average limit and the 60-foot maximum limit. Again, the photos are for demonstrative purposes and do not purport to measure Westermere.

Photo D was taken from the highest elevation on Lot 89 2A. A massive, flat roof building that fails to match anything else in sight, is not appropriate between the private residences on Mountain Village Blvd and the Westermere.

Photo E was taken based on concerns of certain DRB members relative to what impact the proposed highrise would have on residents and visitors attempting to enjoy the view of the mountains from the Village Center as they exit the gondola. The answer is: What mountains? If a 98-foot structure is built on Lot 109R. The "best of the best' impression that the Town of Mountain Village currently leaves with all visitors will be lost forever, just to enrich a single developer. Why?

III. PUD IS NOT AVAILABLE.

The developer has no desire to build per the 12-year-old PUD (that was probably designed years earlier than that). The developer is wise not to adhere to the 2010 PUD. No one can force him to pursue someone else's outdated PUD.

Conversely, once a new developer decides the PUD is not what he wants, a developer cannot "pick and choose' what he wants from the earlier PUD and disregard what he does not want. A PUD is negotiated 'as a package' and changing it some 12 years later must start with current Code provisions and whether the new project complies. If the changes trend to make the project better, some variance from the current zoning Code can be considered. The entire package must show that the proposed project has more good than bad changes from the Code requirements.

In that context, intentionally proposing a project that will generate significantly more employees housing demands than what the project itself will provide is a detriment to the Town and all existing employers who already suffer from a shortage of employees because of a shortage of employee housing.

The Town recognizes the crisis of inadequate employees because of inadequate employee housing. This Council should take the lead. The developer must present good faith estimate of the total number of employees its proposed project will require, then supply the entire employee housing need that the project itself generates. Absent such action, the coming crisis will arrive soon, existing businesses will suffer even more and the Lot 109R project just makes matters worse.

IV. MISCELLANEOUS INFORMATION.

Appendix 3 is a page from the County GSI mapping showing Lot 109R (outlined in "Pink"), residential lots along Mountain Village Blvd that I am speaking for (outlined in "yellow") and Westermere. because it is in many photos (outlined in 'blue ink").

The assessor's photos of the quality of residences that will be harmed by a near 100-foot 'wall' between the residences and views of the Town and mountains (and even the sky) and assessor picture of Westermere (for comparison to Photo's A -D) are attached as **Appendix 4**.

The attached photos and many other photo's (previously shared with the Town attorney) will be available to the public at the Council hearing. If the Council wants to see the additional photo's, they are available upon request.

V. CONCLUSION.

Council has no easy issues, but it can at least look the developer in the eye and say, the project is too high; the project does not fit the Town; and the Town is not interested in a Miami looking high rise in the center of the Town Village. Many other money-making alternatives exist, without abandoning the Town mystic that has made the Town great. The current plan has one goal, to advance a developer's natural desire for more money, with little concern for the future of the Town and inadequate provision for employee housing. The Lot 109B plan is short- sighted.

Remember, prior Council Members faced similar pressure from developers and even the ski company, but they looked at the big picture, which is continuity in the Village Center, views, and at least started to face the ever-increasing shortage of employees. Mr. Allred and Mr. Wells made money by not selling out the Town and its 'trillion-dollar views'. They and later Councils refused projects that were incompatible with views because they were too tall for the Town, even if they were appropriate as a high rise in Florida.

Give the developer directives to come back with a shorter building. Do not 'kick the can down the road" by approving with a recommendation that the building be lowered. That gentlemen's approach was taken by the DRB and the developer never reduced the unacceptable height. Time to get real; lower the building and justify ever foot that exceed the 60- foot maximum height, and, even more important, stop with the high rise 82-foot average where the town sets a 45-foot average limit. Developer can learn from the 5- star Madeline Hotel (that is not a Florida design); at 5-Star ski areas like the Town of Mountain Village must adhere to long-standing and successful design limits.

Thank you for your consideration.

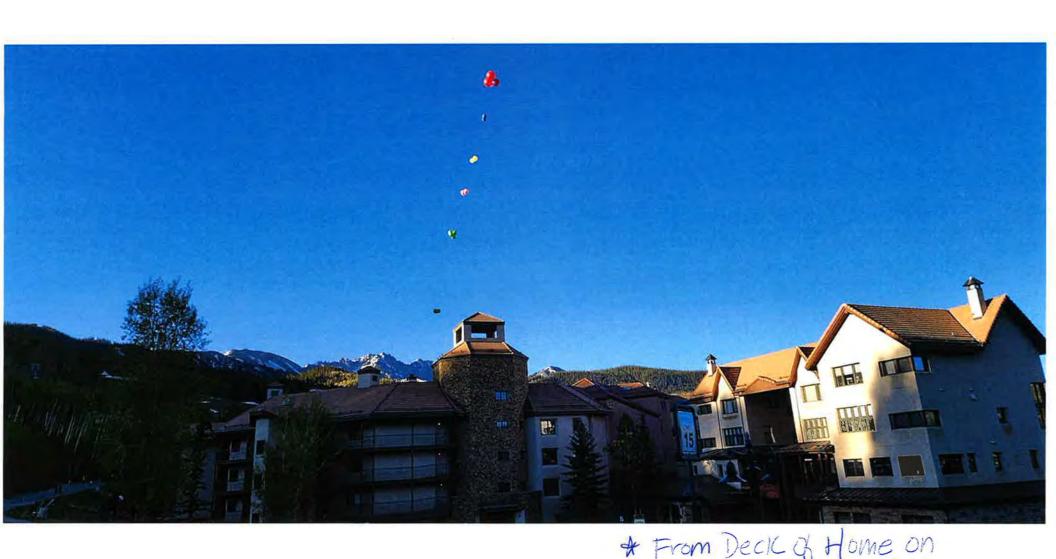
Sincerely,

CQLEMAN, & QUIGLEY, LLC

/s/Joseph Coleman
Joseph Coleman

joe@cqlawfirm.net

xc: Clients



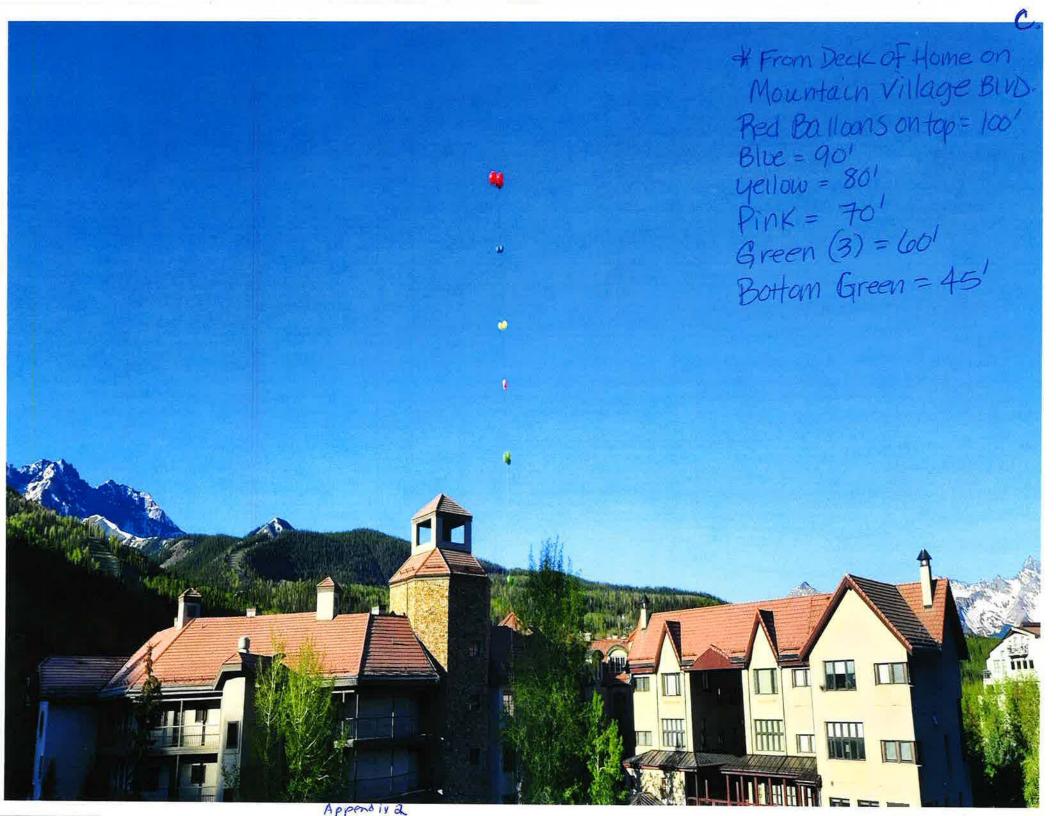
* From Deck & Home on Mountain Village BVD Red Balloans 100; Blue 90' Yellow 80', Pink 70', 3 Green 60' Bottom Green 45'

Appendix 2



* From Highest Point of Another Lot. Red Balloons 100', then 90', Then 80', then 70', 60', 45'

Appendix 2





* From Highest point is Lot directly above The "Pond Lots."

Red = 1001

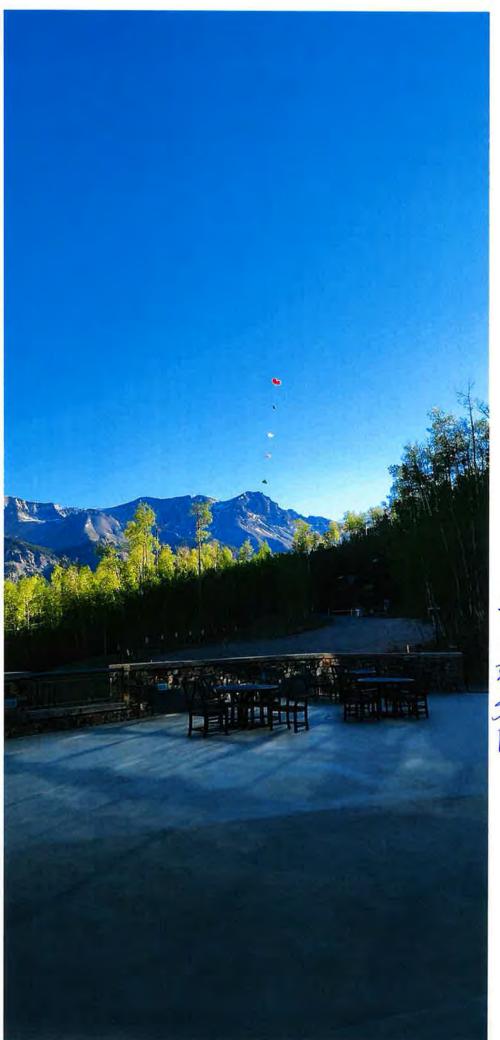
Blue = 90'

Yellow = 80'

PinIC = 70'

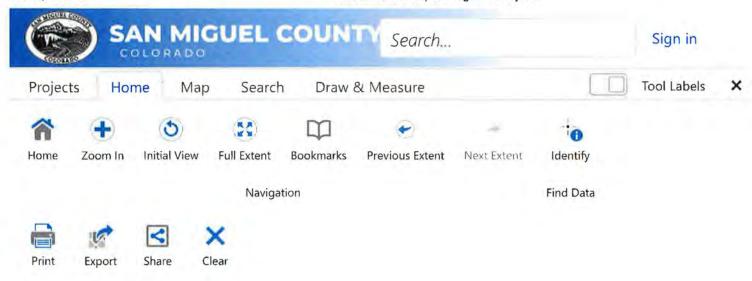
3 green = Loo'

Z green = 45'



* From
Gondola,
Balloons are
Still on Pond
Lots.

Append ix 2



Tasks

viewer. How-to videos are available on YouTube.

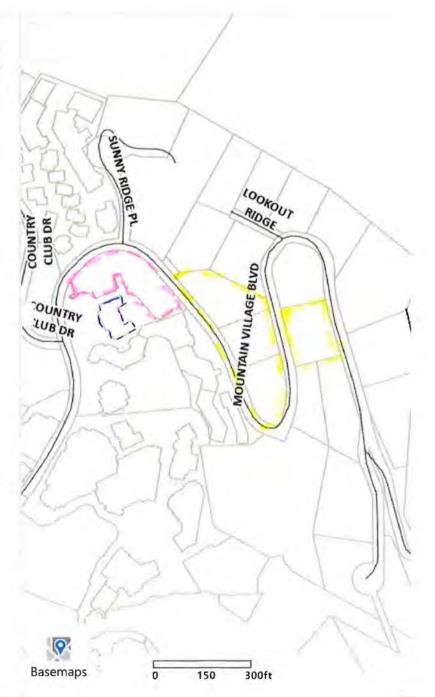
Use the Search box in the upper right to search by tax parcel owner name, parcel ID number, tax ID number, street name, place name or property address.

Click on the Search tab above to search by lot number and more.



Add pre-configured layers from the Layer Catalog

(wildlife habitat, districts, boundaries, Town of Telluride layers and Town of Norwood zoning)









Sarah Enders P.O. Box 506, Telluride, CO, 81435

More Information

Phone 970 728-3174 Fax 970 369-1007 Email assessor@sanmiguelcountyro.gov

← Search Results

Property Details

Account Information

Property Report

GIS Map

Other Sales

ACCOUNT NUMBER

R1080000102

PARCELNUMBER

456534401009

OWNER NAME

CLOUD 9 INVESTMENTS LLC A TX LLC

PROPERTY ADDRESS

710 MOUNTAIN VILLAGE BLVD

CITY

MOUNTAIN VILLAGE

LEGAL SUMMARY LOT 102 TELLURIDE MOUNTAIN VILLAGE FILING 1 ACC TO PLAT BK 1 PG 476 CONT

59 AC

SUBDIVISION

MOUNTAIN VILLAGE-2010

SECTION

Section 34 Township 43 Range 09

TOWNSHIP RANGE

OWNER MAIL

710 MOUNTAIN VILLAGE BLVD MOUNTAIN

VILLAGE CO 81435 - 9526

CLASS

Residential, Residential

DESCRIPTION **PROPERTY**

1112-SINGLE FAM RES.-LAND,1212-SINGLE

CODES

FAM.RES-IMPROVEMTS

TAXAREAID

108,108

OCCUPANCY

Single Family Residential

NEIGHBORHOOD

2010

ARCHITECTURAL

Single Family Residential

STYLE



Additional Owners













© 2022 ValueWest, 5125 S. K.p. ing Parkway, Suite 301, Littleton, CO 86127. Last Updated on 06/12/2022







Sarah Enders PO, Box 506 Tellunde CO, 81/35 More Information

Phone 970 728-3174 Fax 970 S69-1007 Email assessor@sammguolcountyco.gov

< Search Results

Property Details

Account Information

Property Report

GIS Map

Other Sales

ACCOUNT

R1080000103

NUMBER

456534401010

OWNER NAME

PARCELNUMBER

BROADFIELD ASSET LLC A CO LLC

PROPERTY **ADDRESS**

702 MOUNTAIN VILLAGE BLVD

CITY

MOUNTAIN VILLAGE

LEGAL SUMMARY LOT 103 TELLURIDE MOUNTAIN VILLAGE FILING 1 ACC TO PLAT BK 1 PG 476 CONT

.60 AC NKA TOWN OF MOUNTAIN VILLAGE" AGREEMENT DATED 5 31 00

SUBDIVISION

MOUNTAIN VILLAGE-2010

SECTION

Section 34 Township 43 Range 09

TOWNSHIP RANGE

86 MAPLE AVE MORRISTOWN NJ 0/960

OWNER MAIL

CLASS

DESCRIPTION

Residential, Residential

PROPERTY

1112-SINGLE FAM RES.-LAND, 1212-SINGLE

CODES

FAM.RES-IMPROVEMTS

TAXAREAID

108,108

OCCUPANCY

Single Family Residential

NEIGHBORHOOD

2010

ARCHITECTURAL

STYLE

Single Family Residential



Phone 970 728-31 20

Sarah Enders PO Box 505, refluedo, 00, 81xl35

More information Email assessor@sanmiguelcountyco.gov

✓ Search Results

Property Details

Account Information

Property Report

GIS Map

Other Sales

ACCOUNT NUMBER

R1080000101

PARCELNUMBER

456534401008

OWNER NAME

PAC 1 CO 2021 LLC A CO LLC

PROPERTY **ADDRESS**

692 MOUNTAIN VILLAGE BLVD

MOUNTAIN VILLAGE

LEGAL

CITY

LOT 101 TELLURIDE MOUNTAIN VILLAGE

SUMMARY

FILING 1 CONT 42 AC

SUBDIVISION

MOUNTAIN VILLAGE-2010

SECTION TOWNSHIP

Section 34 Township 43 Range 09

RANGE

OWNER MAIL

18 E 4TH ST CINCINNATI OH 45202

CLASS

DESCRIPTION

Residential Residential

PROPERTY

1112-SINGLE FAM RES,-LAND, 1212-SINGLE

CODES

FAM RES-IMPROVEMTS

TAXAREAID

108.108

OCCUPANCY

Single Family Residential, Single Family

Residential

NEIGHBORHOOD

2010,2010

ARCHITECTURAL

STYLE

Single Family Residential, Single Family

Residential

Additional Owners

Accept

COOKIE POLICY

03/07/2000 15:21















COOKIE POLICY

the and anti-end-on-relative territories burger

Accept

Sarah Enders

P.O. Box 506, Tellunde, CO, 8 1435

More Information Fax 970 369-1007 Email assesso @sanmiguelcountyco gov

< Search Results

Property Details

Account Information

Property Report

GIS Map

Other Sales

ACCOUNT NUMBER

R1080091079

456534402011

OWNER NAME

PARCELNUMBER

PALMYRA PROPERTIES LLC A CO LLC

PROPERTY

622 MOUNTAIN VILLAGE BLVD 412

ADDRESS

MOUNTAIN VILLAGE

LEGAL SUMMARY

CITY

UNIT 412 WESTERMERE CONDOS LOT 69R 1 TELLURIDE MOUNTAIN VILLAGE ACC TO

PLAT BK 1 PG 1168 THRU 72 AND PARKING

UNIT 5

SUBDIVISION

WESTERMERE-7232

SECTION

Section 34 Township 43 Range 09

TOWNSHIP RANGE

OWNER MAIL

3307 EAST JAEGER CIRCLE MESA AZ 85213

CLASS DESCRIPTION Residential

PROPERTY

1230-CONDOS-IMPROVEMENTS

CODES TAXAREAID

108

OCCUPANCY

Condominium Unit

NEIGHBORHOOD

M0007232

ARCHITECTURAL

Condominium Unit

STYLE



Additional Owners

COLEMAN & QUIGLEY, LLC Attorneys at Law

Joseph Coleman Isaiah Quigley Timothy E. Foster Stuart R. Foster 2454 Patterson Road, Suite 200 Grand Junction, CO 81505 Telephone: (970) 242-3311

May 28, 2022

Via Email: cd@mtnvillage.org

Town of Mountain Village Design Review Board 455 Mountain Village Blvd, Suite A Mountain Village, CO 81435

Re: Major PUD Amendment to the lot 109R PUD approved in 2010 and granted two amendments extending the approvals to December of 2022.

Design Review Board May 31, 2022, Public Hearing

Dear Members of the Design Review Board:

I have appeared before you on behalf of the owner of multiple residential lots generally adjacent (across Mountain Village Boulevard) to the proposed development. I was also contacted by three HOA's who oppose the height of the proposed project (but I have yet to be retained by the HOA's, pending conflict checks).

The height of the project is engendering significant opposition and no clear data exists as to the complete deprivation of views from many Town Center locations, in addition to the destruction of views from my client on Mountain Village Boulevard. I hope to have an actual photo to enable the Board and the public to see the extent of the lost view. This material will only be available, at the earliest, Tuesday morning, the day of the DRB hearing.

Some main point to consider.

1. 2010 PUD. This 12-year-old PUD was approved for a different project and at a different time. While the current owner and its successors have legal rights to build per the 2010 PUD, no one has the right to choose not to build per the specifics of the approved PUD, but still use the discarded plan as a benchmark to obtain further deviation from the existing Code. This statement of the legal rights should not be surprising to anyone. The 2010 DRB and Council were asked to consider specific facts and based on the conditions that existed in 2010, the DRB and Council considered Public Benefits in deciding to approve the specific terms of the 2010 PUD.

The staff notes: (the proposed 2022 PUD) "contemplates minor adjustments to the density, significant design changes inclusion of an increase in the height request from 88' 9" to 98' 8" and also an increase in the average height from 65'2.9" to 82' 4.6".

[page 1 of staff report] (And let us not forget, the Code sets the limits, for a 2022 PUD application, at 60 max height and 45 max average height.)

The current developer has a right to reject the 2010 PUD terms and submit a Major Subdivision Application if it wishes to build something other than the 2010 PUD. The Town would monitor, through the building permits and the actual inspections, to ensure compliance with all 2010 PUD provisions. However, the developer already decided, and has admitted, it does not plan to build per the 2010 PUD. The 2010 PUD became irrelevant with that developer decision. The current developer knows of these legal and factual issues, explaining why it filed a Major Subdivision Application and is not pursuing building rights under the 2010 PUD.

I was retained to ensure that, if the 2010 PUD were to be built, it would be built per the terms of that 2010 PUD. With the developer having no such intention on building per the 2010 PUD, my role is now to view the dictates of the current Town Code to see if the 2022 PUD complies with the Code (all parties realize it does not). Then, based on 2022 conditions, has the developer (for example) presented evidence of Public Benefits to support a 98-foot height (where the Code mandates 60-foot limit (and more egregious, an 82-foot average height (where the Code mandates a 45 foot limit?).

CONSIDERATION OF THE TOWN CODE PROVISIONS HAVE NEEDLESSLY BEEN CONFUSED BY RELYING ON THE 2010 PUD WHICH THE DEVELOPER ITSELF FINDS TO BE UNACCEPTABLE.

Before you compare the 2010 PUD provisions with the Code provisions governing the new 2022 PUD, consider that Town building department and code enforcement would never allow the current 2022 Plan to be build in place of the 2010 Plan. The 2010 PUD was a site-specific plan that had to be adhered to or abandoned. The current developer should be so told that his obligation is to comply with the current Code or else show significant Public Benefit for each deviation from the Code.

2. Staff Noticed Areas of Proposed Code Violations. The Staff report is thorough, which is good. The Staff report is long, which runs the risk of important Code violations being lost in the paperwork. Staff are the experts; thus, I will rely on issues their report raise as concerns. Admittedly, if the staff had applied the current Code to the current 2022 PUD application, one can conclude that the staff would have noted many more problems with the 2022 PUD. The developer should have been held to the 2022 Code for a 2022 PUD. To the extent the Staff assumed a developer can 'cherry pick' portions of the 2010 PUD which the developer likes, and not be bound by the Code, a legal issue is created that could delay any development for years on account of legal questions. That result benefits no one. The DBR can lessen the risk of such delay by telling the developer to comply with the 2022 Code for a 2022 PUD application.

In addition to this significant problem with the process of review, staff did list numerous objections to the 2022 PUD (even though the staff's point of refence was a rejected (by the owner/developer) 2010 PUD..

(a) Staff recognizes that heigh weighs against any public benefit. [page 5 of staff report].

- (b) The Town "established design themes aimed at creating a strong image and sense of place for the community". New construction should "embrace nature and traditions in a way that respects the design context of the neighborhoods surrounding the site". [page 7 of staff report]. The DRB should respect the 'neighboring' projects that established the design theme traditions that make the Village Center what is, a stunning success, beautiful and unique. [pages 6-7 of staff report]. Height is a critical component of design tradition. Santa Fe, New Mexico has survived through changes in architecture and height and mass but adhered to its 'nature and traditions' by restricting construction of 'contemporary high buildings'. That has not marked the demise of Santa Fe. The DRB should preserve what decades of effort has created; don't sacrifice the Town Center and its existing owners just to place too much construction on a 0.817-acre lot.
- (c) "The roof as proposed is three flat surfaces, therefore does not meet the criterial for 'emphasizing sloped planes'. The stepping of the roof form doesn't correspond with the slope of the natural topography." [page 9 of staff report].
- (d) Staff does not support the large overhanging pools which adds to the perceived height of the massive structure. [page 9 of staff report].
- (e) Solar panels have their place; is it in the Village Center? [page 9 of staff report]. When a standard is breached, the next developer uses the lower standard as a starting point and proposes even more, less expensive solar panels.
- (f) The TPO membrane and other materials require specific approval. [page 10 of staff report]. A design variation is required if the project proceeds without any stucco. [page 11 of Staff report].
- (g) The staff recognizes the value of views to allows windows that the Code frowns upon [page 11 of staff report] but fails to give proper attention to the residential lots looking at near continuous wall of windows. The 2022 PUD seeks to exceed the glass areas allowed by the Code. [page 11 of Staff report].
- (h) "Balconies do present as long continuous bands, so if approve as proposed a design variation to this code section would be required." [Staff report page 12]. Such a variation further damages the view from my client's residential lots.
- (i) The 2022 PUD fails to provide even the historic number of parking spaces needed for employee dormitories. Staff seems to recommend that between 12 and 18 parking spaces be included for the employee dormitories. [page 12 of Staff report]
- (j) Trash is a concern for many owners in the area. The Staff recognizes deficiencies in the current plan. [pages 18-19 of Staff report].
- **3. Employee Housing.** Decisions seldom **only** impact the land being developed. Decisions for one project do need to other similar developments in the area so the DRB considers 'big picture'. This Lot 109R proposal is advanced at the same time a large development is being advanced for Lot 161 CR/ Pond lots. In total, one can expect the addition of some 400 or more employees if the promise of '5-Star' hotel quality is to be met by both projects. Other

governmental officials concede that the current employee housing crisis is traceable to prior governmental boards, councils, and commissioners. The 2022 PUD is an occasion for this Board to make a meaningful step toward addressing the problem.

All know that to 'get out of a hole, the first step is to stop digging". The first step for this board is to require the developer to state an accurate number of employees needed to serve the development. In this case, 200 is deemed a conservative number. Then why would DRB approve a plan that makes NO ATTEMPT to house 200 newly created employee positions? If this Board approves plans without requiring: (i) credible calculation of number of employees and (ii) credible plan for at least taking care of all or most of the housing needs of the newly created employee opportunity, approval of this development must be deferred. Allow the developer the first go round on the employee housing issue.

If this proposal is recommended for approval, this Board knowingly and intentionally joins with past boards which approved plans that created the current employee housing crisis. I urge you to start being part of the solution to this problem, not someone who digs the "hole deeper" by adding 200 plus employees knowing they have no place to live.

4. **Proposed DRB action**. As noted by the Staff, the DRB can approve with conditions, continue with conditions, or recommend denial to the Town Counsel. Since major changes have been 'suggested' in the past to address heigh (with no movement by developer), a continuance seems the fairest. The Developer should be required to show: (i) why it can reject the 2010 PUD but rely on it to support a 2022 PUD that violates many Code provisions; and (ii) give the developer an opportunity to confirm the number of new employees the development will need and where they will live. This essential information will inform the DRB as to whether, *in* 2022, the developer is proposing such significant public benefits that the mass and height limits in the Code are not just exceeded; they are completely disregarded.

A variance provision in any Code is wise to afford some flexibility IN COMPLYING WITH THE CODE. A plan that is governed by a 60-foot max height and 45-foot average height can support a variance of 5 feet or so. Such a change is a true variance, that still respects the purpose of the limitation. If demonstrative Public Benefits supports such a variance, it can be approved. An approximate 40-foot increase to a 60-foot limit is a bold-faced disregard of the Code and the Village Center design purpose. Similarly, the 'average height' is intended to allow for height variation to reflect the mountain environment. But an 82-foot average height is far greater than the max height and creates a 'wall'. Approaching double the allowed average height is not a variation; it is a repudiation of the Cod and a repudiation of the tradition of the Village Center. Why would the DRB allow such for unknown reasons (because the developer and staff never applied the Code to the 2022 PUD but instead relied on a 2010 PUD that even the developer has abandoned).

5. Conclusion. Humans are aggressive and often selfish. Developers are "here and gone" in a flash; but failed promises hurt the Town for decades. Yes, the developer and seller of the land can make more money, if more and higher development is allowed on a small tract of land. However, helping the seller of the land and the developer to make more money is not a "Public Benefit".

May 28, 2022 Page 5

The Town residents rely on the DRB as the first line of defense for rejecting such conduct. I hope to be able to show you directly the detriment that a near 100 high and 82 foot "wall of a structure" does to the private residence and the Town Center itself. I hope to be able to get photographs to show the views, both before and after the 100-foot structure is built. Hopefully, copes of pics will be available for you and the public at the May 31st hearing.

Sincerely, COLEMAN & QUIGLEY, LLC

/s/Joseph Coleman

Joseph Coleman joe@cqlawfirm.net

xc: Clients

EMPLOYEE HOUSING DEED RESTRICTION LOT 109R, MOUNTAIN VILLAGE

THIS EMPLOYEE HOUSING DEED RESTRICTION ("Deed Restriction") is made and
entered into this day of, 20 ("Effective Date"), by and between
("Declarant") and TOWN OF MOUNTAIN VILLAGE, a Colorado
home rule municipality (the "Town," and together with Declarant, the "Parties").
WHEREAS, Declarant owns certain real property in San Miguel County, Colorado described as Lot 109R, Mountain Village, according to the plat recorded as Reception No. 416994 ("Lot 109R"); and
WHEREAS, Lot 109R contains two units designated as "Employee Apartments" and 18 units designated as "Employee Dormitory," which have been condominiumized as a single unit (the " Property "); and
WHEREAS, pursuant to Ordinance No. 2023, recorded as Reception No, Declarant has agreed to place certain restrictions on the use of the Property for the benefit of the Town by requiring occupancy to be limited to persons, their spouses and children, who are employed within the Telluride R-1 School District, as further defined below.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

COVENANTS

- 1. **Restriction; Recording.** The Property is hereby burdened with the covenants and restrictions specified in this Deed Restriction, which the Town shall record against the Property at Declarant's expense.
- **2. Amendment to 1997 Ordinance.** The Parties agree that the Property shall be subject to the "Employee Housing Restriction" contained in the Town of Mountain Village Ordinance No. 1997-05, recorded as Reception No. 329779 (the "**1997 Ordinance**"), with the following modifications:

Section 1(I)(A) of the 1997 Ordinance is hereby amended to read:

The use and occupancy of the Property is hereby limited exclusively to such employees who are employed or can show intent to be employed within the Telluride R-1 School District, and their spouses and children.

The foregoing restriction on use and occupancy constitutes a covenant that runs with the title to the Property as a burden thereon and shall be binding on the owner, and its heirs, successors, representatives, assigns, lessees, licensees and any transferee, in perpetuity. This restriction and covenant shall be administered by the Town Council, or its designee, and shall be enforceable by any appropriate legal or equitable action including but not limited to specific performance,

injunction, abatement or eviction of non-complying owners, users or occupants, or such other remedies and penalties as may be provided by Colorado law or the ordinances of the Town.

Section 1(II)(K) of the 1997 Ordinance is hereby amended to read:

In the event of foreclosure, acceptance of a deed-in-lieu of foreclosure, or assignment, the use and occupancy restrictions contained herein shall remain in full force and effect.

- 3. Single Unit; Same Ownership. The Property is condominiumized as one unit, and the Parties agree that said unit cannot be individually condominiumized. The Parties further agree that the Property, as a single unit, must remain in the same ownership as the 50 Efficiency Lodge Units labeled as "Hotel Rooms" on Lot 109R.
- **4. Further Modifications.** The Parties agree that any further modifications to this Deed Restriction shall be effective only when made in writing, signed by both Parties, and recorded with the Clerk and Recorded of San Miguel County, Colorado.

IN WITNESS WHEREOF, the Parties have executed this Deed Restriction on the Effective Date above.

DECLARANT:	-	
By:		
By:Name, Title		
STATE OF)	
COUNTY OF) 55.	
Subscribed, sworn to, and acknown, as, as,	wledged before me on this day of of	, 20, by
Witness my hand and seal. My commission expires:		
	Notary Public	
TOWN : TOWN OF MOUNTAIN VILLA	GE, COLORADO	
By:		

ATTEST:		
Town Clerk		

S&H 10.21.2022 DRAFT

FIRST AMENDMENT TO AND PARTIAL TERMINATION AND RELINQUISHMENT OF EASEMENT AGREEMENT

(Plaza Usage)

This First Amendment to and Partial Termination and Relinquishment of Easement
Agreement (Plaza Usage) ("Amendment") is made and entered into this
202 ("Effective Date") by and between the Town of Mountain Village, a Colorado municipal
corporation and political subdivision of the State of Colorado ("Grantor" or "Town") and Tiara
Telluride, LLC, a Colorado limited liability company ("Grantee"). Grantor and Grantee are
sometimes each individually referred to as a "Party" and sometimes collectively as the "Parties."

RECITALS

- A. Grantor is the current fee simple owner of Tract OS-3BR-2, Tract OS-3BR-2B1, Tract OS-3BR-2C1, Tract OS-3BR-2D1, Tract OS-3BR-2E1, Tract OS-3BR-2F1, Tract OS-3BR-2G1 of that certain "Replat of Lot 109R and Tract _______, Town of Mountain Village, San Miguel County, Colorado" ("Grantor Property") recorded on _______, 202___, in Plat Book ____, Page _____ at Reception No. ______ (the "Replat") in the Official Records of the Clerk and Recorder for San Miguel County, Colorado ("Official Records").
- B. Grantee is the current fee simple owner of certain real property described as Lot 109R2, Town of Mountain Village, San Miguel County, Colorado ("Grantee Property") according to the Replat, on which Grantee intends to construct a mixed-use, luxury hotel and residential condominium project on the Grantee Property (the "Project"). The Project consists of certain buildings, structures and other improvements (the "Project Improvements").
- C. Grantor authorized Grantee to develop the Project as evidenced by the Town's approval of the Replat as well as that certain Resolution Ordinance of Town Council of the Town recorded on _______, 202___ at Reception No. ______ and the Amended and Restated Development Agreement recorded on _______, 202___ at Reception No. ______, both in the Official Records (collectively, the "Town Approvals"). The use and development of the Project is further subject to applicable provisions of the Town of Mountain Village Municipal Code Title 17 Community Development Code, adopted by the Town of Mountain Village by Ordinance No. 2013-01, as amended through the Effective Date (the "CDC") (which superseded and replaced the Town of Mountain Village Land Use Ordinance referenced in the 2011 Plaza Usage Easement Agreement (defined below)), the Town of Mountain Village Charter and the Town of Mountain Village Municipal Code ("Town Laws").
- D. Prior to the Replat, portions of the Grantor Property and the Grantee Property were platted as Lot 109R and Tract OS-3BR-2, Town of Mountain Village, San Miguel County, Colorado according to the "2011 Replat" recorded on March 18, 2011, in Plat Book 1, Page 4455 at Reception No. 416994 in the Official Records.
- E. Concurrently with the 2011 Replat, Grantor and Grantee's predecessor in title, MV Colorado Development Partners, LLC, a Texas limited liability company, entered into that certain Easement Agreement (Plaza Usage) dated March 18, 2011 and recorded March 18, 2011 under

56840694.1

Reception No. 417000 in the Official Records (the "2011 Plaza Usage Easement Agreement") pursuant to which Grantor granted an easement over a portion of Tract OS-3BR-2 for certain Authorized Uses as set forth therein (the "Plaza Usage Easement").

- F. The Plaza Usage Easement Agreement was entered into pursuant to the 2010 approval by Town Council for the Town of a PUD development for a project on Lot 109R (the "2010 Lot 109R PUD") by Resolution 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, recorded in the Official Records on December 10, 2010 under Reception No. 415339 (the "2010 PUD Approval") and in connection with (i) that certain Development Agreement, Lot 109R, Town of Mountain Village, Planned Unit Development recorded March 18, 2011 under Reception No. 416997 in the Official Records (the "2011 Development Agreement") and (ii) the Replat. The 2010 PUD Approval, 2011 Development Agreement, and Replat contemplated an earlier iteration of the Project on Lot 109R which the 2011 Plaza Usage Easement Agreement was entered into to accommodate. The 2010 PUD Approval and 2011 Development Agreement have been superseded and replaced in their entirety by the Town Approvals and the subject property replatted pursuant to the 2011 Replat.
- G. In view of the above-described changes to the Project and related Town Approvals, Grantor and Grantee desire to amend the 2011 Plaza Usage Easement Agreement as set forth in this Amendment, including terminating and releasing it from title to certain parcels of land originally encumbered thereby. The 2011 Plaza Usage Easement Agreement as amended by this Amendment is referred to in this Amendment as the "Agreement."

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and agreements made and entered into by the Parties, the sufficiency of which is hereby acknowledged, the undersigned Parties hereby agree as follows:

- 1. <u>Interpretation</u>. This Amendment amends the 2011 Plaza Usage Easement Agreement. In the event of any inconsistency between the provisions of this Amendment and the provisions of the 2011 Plaza Usage Easement Agreement, the provisions of this Amendment shall control. Capitalized terms used and not otherwise defined in this Amendment have the meaning given to them in the 2011 Plaza Usage Easement Agreement.
- 2. Easement Area. The description of the "Easement Area" set forth in the 2011 Plaza Usage Easement Agreement is hereby amended and restated in its entirety. Accordingly, Exhibit "A" depicting the Easement Area and Exhibit "B" legally describing the Easement Area, each as attached to the 2011 Plaza Usage Easement Agreement, are superseded and replaced in their entirety by the attached Exhibit "A" depicting the Easement Area and Exhibit "B" legally describing the Easement Area, in each case as amended by this Amendment. To the extent property located within the Easement Area defined in the 2011 Plaza Usage Easement Agreement is not within the boundaries of the Easement Area as defined in this Amendment, the burdens of the 2011 Plaza Usage Easement Agreement as modified by this Amendment pertaining to the Easement Area are terminated and released from same. Notwithstanding the foregoing, the

Pparties acknowledge and agree that in no event will the foregoing impact or modify the effect of Section 43 below.

- 3. Burdened and Benefited Properties. The legal description of the "Grantor Property" set forth in the 2011 Plaza Usage Easement Agreement is hereby superseded and replaced in its entirety with the legal description set forth in Recital A of this Amendment above. The legal description of the "Grantee Property" set forth in the 2011 Plaza Usage Easement Agreement is hereby superseded and replaced in its entirety with the legal description set forth in Recital B of this Amendment above. The easements, benefits and rights granted and agreed to in the 2011 Plaza Usage Easement Agreement as modified by this Amendment and the burdens, duties and obligations imposed and agreed to the in the 2011 Plaza Usage Easement Agreement as modified by this Amendment shall run with the land and shall be a benefit of and burden upon Grantor Property (as defined in Recital A above) on the one hand, and the Grantee Property (as defined in Recital B above) on the other hand, as applicable, during the term of the Agreement. Further, the easements, benefits and rights granted and agreed to in the 2011 Plaza Usage Easement Agreement as modified by this Amendment and the burdens, duties and obligations imposed and agreed to in the 2011 Plaza Usage Easement Agreement as modified by this Amendment shall be binding upon and shall inure to the benefit of, and be a burden upon, the designees, successors, and assigns of all of the Parties to the Agreement during the term of the Agreement.
- 4. <u>Authorized Uses</u>. The list of "**Authorized Uses**" set forth in Section 1.2 of the 2011 Plaza Usage Easement Agreement is hereby amended as follows:
- 4.1. Section 1.2.2 is amended and restated in its entirety to incorporate the addition of the underlined language below to read as follows:

To install, operate, use, repair and maintain plaza lighting and other lighting attached to the exterior of the building comprising the Project (inclusive of, without limitation and/or exclusion, necessary poles, fixtures, switches, utilities and other components) and to upgrade the plaza lighting for changing needs of the Project.

4.2. The reference to "artwork" is hereby stricken from Section 1.2.4.

To install, operate, use, repair and maintain hardscaping (inclusive of, without limitation and/or exclusion, pavers, bollards, planters, artwork, benches, ramps, stairs, rails, walls and other facilities contemplated by the Town Approvals) and, subject to receiving Town approval, to upgrade such hardscaping for changing needs of the Project.

4.3. The following new Section 1.2.11 is hereby added to Section 1.2:

To install, operate, use, repair and maintain other Project Improvements projecting on the or over the Easement Area, including, but not limited to, awnings, signs (to the extent not covered by Section 1.2.5), pavers, bollards, planters, benches, ramps, stairs, rails, walls and other facilities contemplated by the Town Approvals)

and, subject to receiving Town approval, to upgrade such Project Improvements for changing needs of the Project.

4.4. The following new Section 1.2.12 is hereby added to Section 1.2:

With respect to the Village Core Transfer Station replacement trash facility located southwest of Lot 109R on the western portion the abutting Town Open Space Parcel, during the construction period, Grantee shall be responsible for the construction of the snowmelt system and the resurfacing of a portion of the sidewalk and Town Open Space Parcel as contemplated in the Development Agreement and Town Approvals, but thereafter shall be responsible only for the operation of such snowmelt system.

- 5. <u>Land Use Ordinance and Design Regulations</u>. All references to the Town Land Use Ordinance and Design Regulations set forth in the 2011 Plaza Usage Easement Agreement are hereby replaced with the "CDC."
- 6. Project Association as Successor to Grantee. The Pparties acknowledge and agree that the 2011 Plaza Usage Easement Agreement as modified by this Amendment contemplate that the Project will be subjected to a Condominium formed in accordance with applicable law and existing pursuant to certain Condominium Documents and that a Condominium Association will be formed in accordance with the Condominium Documents which shall manage and operate the Condominium and administer the Common Elements. With the foregoing in mind, if the Project is ever made subject Condominium Documents, then for the purposes of the Agreement, the 'Grantee' shall be deemed to be the Condominium Association created pursuant to such Condominium Documents, and the Condominium Association shall have the burdens and benefits imposed and afforded under this Amendment with respect to such parcel, and no individual Unit Owner within such common interest community shall have any of such burdens or benefits, except insofar as they constitute "Authorized Users" and then only in their capacity as such.
- 7. <u>Indemnification</u>. The first sentence of Section 4 of the 2011 Plaza Usage Easement Agreement is hereby amended and restated in its entirety to read as follows:

Grantee does hereby indemnify and save harmless Grantor and its elected and appointed officials, employees, agents, representatives, assignees, attorneys, successors and assigns from any and all mechanics' lien(s), expense, claim, action, liability, loss, damage, or suit (including attorney's fees and costs), and costs of any kind arising out of, or in any way connected with the exercise of the Authorized Uses by Grantee and Grantee's specifically designated designees, contractors and consultants who are undertaking some or all of the Authorized Uses for Grantee.

Notwithstanding any provisions in the Agreement requiring Grantee to avoid any liens against the Grantor Property, the Parties agree and acknowledge that the Grantor Property is immune from mechanics' liens, and nothing in the Agreement shall be deemed to be a waiver or limitation of Grantor's governmental immunity in any respect.

Commented [CG1]: David - same issue as in Vehicular Access Easement. Want to change this and just make the agreement assignable instead?

8. <u>Insurance</u>. Section 5 of the 2011 Plaza Usage Easement Agreement is hereby amended and restated in its entirety to read as follows:

Throughout the term of the Agreement, Grantee shall keep and maintain, at its sole cost and expense, commercial general liability insurance ("CGL") in amounts per occurrence and in the aggregate not less than the Statutory Liability Limits for all claims of relief that accrue on or after January 1, 2022 and before January 1, 2026 as stated below, such amounts to be adjusted every four (4) years as provided below. The liability limits of the CGL insurance required pursuant to this Section will be reviewed as necessary and any changes mutually agreed upon every four years commencing January 1, 2026 to an amount not less than (a) the liability limits established by the Colorado Secretary of State from time to time for the immediately succeeding four year period pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-114 and (b) the liability limits generally maintained by businesses of similar size engaged in similar activities in the same or similar locales as the Project, whichever is greater, but in no event will the amount of the coverage be less than the Statutory Liability Limits for all claims of relief that accrue on or after January 1, 2022 and before January 1, 2026. The Parties acknowledge and agree that, as of the Effective Date, the Statutory Liability Limits for all claims of relief that accrue on or after January 1, 2022 and before January 1, 2026 is \$424,000 for any injury to one person in a single occurrence and \$1,195,000 for any injury to two or more persons in any single occurrence, except that in such instance no person may recover more than \$424,000.

CGL insurance shall be written on ISO occurrence form and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, property damage, and liability assumed under an insured contract. Each Condominium Association which is a successor to Grantee pursuant to Section 6 of the Amendment shall cause its CGL policy to insure against liabilities incurred by each of its members in connection with their use of the easements granted pursuant to this Agreement. Such insurance shall be maintained under a policy pursuant to which the Grantor shall be named as an additional insured, or, alternatively, as a contractual insured. Within seven (7) days of the Effective Date, Grantee shall provide Grantor with a certificate of insurance showing compliance with the insurance requirements set forth above. To the extent commercially available, the certificates shall include a provision requiring a minimum of thirty (30) days' notice to Grantor of any change or cancellation.

Grantor waives all rights against Grantee (and its Authorized Users) for recovery of damages to the extent such damages are covered by the CGL insurance maintained by Grantee pursuant to Section 8 of the Agreement.

- 9. <u>Remedies</u>. Section 6.5 of the 2011 Plaza Usage Easement Agreement is hereby supplemented by the addition of the following:
 - A Default under the Agreement by the Responding Party shall not give the Claiming Party the right to terminate the Easement granted in the Agreement.

10. <u>Notice</u>. Section 6.11 of the 2011 Plaza Usage Easement Agreement is hereby amended and restated in its entirety to read as follows:

Any notice or other communication to any party given under this Agreement will be effective only if in writing and shall be deemed received (i) upon receipt when personally delivered; (ii) on the next business day after deposit when sent by a nationally recognized overnight courier service, charges prepaid and properly addressed, for next business day delivery; or (iii) upon confirmation of successful transmission to each recipient's electronic mail, when sent by electronic mail and if confirmed in writing sent by the methods specified in clauses (i) or (ii) of this Section), respectively, to whichever of the following addresses is applicable:

Grantor:	With copy to:
Town of Mountain Village	Garfield & Hecht
Attention: Town Manager	Attn: David H. McConaughy
455 Mountain Village Blvd.,	625 E. Hyman 910 Grand Avenue, Suite
Suite A	201
Mountain Village, CO 81435	AspenGlenwood Springs, CO 816041
Email:	
Grantee:	With copy to:
Tiara Telluride, LLC	Sherman & Howard L.L.C.
c/o Lalchandani Simon PL	Attn: Cynthia M. Stovall
25 SE 2nd Avenue, Suite 1020	675 15th Street #2300
Miami, FL 33131	Denver, CO 80202
Email:	

Notices must be addressed as set forth above, but each party may change its address by written notice in accordance with this Section.

- 11. <u>Effect.</u> Except as provided in this Amendment, the 2011 Plaza Usage Easement Agreement remains unmodified and in full force and effect.
- 12. <u>Recordation.</u> This Amendment shall be recorded in the real property records of San Miguel County, Colorado.
- 13. <u>Counterparts</u>. This Amendment 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.

[This space intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment effective as of the Effective Date. **GRANTOR**: Town of Mountain Village, a Colorado Home Rule Municipality and Political Subdivision of the State of Colorado By: Date: Printed Name: Paul Wisor Title: Town Manager State of Colorado)ss County of San Miguel Subscribed to and acknowledged before me this ___ day of _____, 202__X, by as the _____ of the Town of Mountain Village.

My commission expires:

Witness my hand and official seal.

Notary Public

Ву:	Date:	
Printed Name:		
State of)		
State of) ss County of)		
Subscribed to and acknowledged before me this	day of	, 202 <u></u> X , by
Telluride, LLC, a Colorado limited liability compa	anv.	01 11414

EXHIBIT "A" (Depiction of Easement Area)

EXHIBIT "B"

(Description of Easement Area)

[To be added.]

S&H 10.21.2022 DRAFT

FIRST AMENDMENT TO AND PARTIAL TERMINATION AND RELINQUISHMENT OF EASEMENT AGREEMENT (Permanent Structures)

This First Amendment to and Partial Termination and Relinquishment of Easement Agreement (Permanent Structures) ("Amendment") is made and entered into this ______, 202___ ("Effective Date") by and between the Town of Mountain Village, a Colorado municipal corporation and political subdivision of the State of Colorado ("Grantor" or "Town") and Tiara Telluride, LLC, a Colorado limited liability company ("Grantee"). Grantor and Grantee are sometimes each individually referred to as a "Party" and sometimes collectively as the "Parties."

RECITALS

- A. Grantor is the current fee simple owner of Tract OS-3BR-2, Tract OS-3BR-2B1, Tract OS-3BR-2C1, Tract OS-3BR-2D1, Tract OS-3BR-2E1, Tract OS-3BR-2F1, Tract OS-3BR-2G1 of that certain "Replat of Lot 109R and Tract _______, Town of Mountain Village, San Miguel County, Colorado" ("Grantor Property") recorded on _______, 202___, in Plat Book ____, Page _____ at Reception No. ______ (the "Replat") in the Official Records of the Clerk and Recorder for San Miguel County, Colorado ("Official Records").

 B. Grantee is the current fee simple owner of certain real property described as Lot
- B. Grantee is the current fee simple owner of certain real property described as Lot 109R2, Town of Mountain Village, San Miguel County, Colorado ("Grantee Property") according to the Replat, on which Grantee intends to construct a mixed-use, luxury hotel and residential condominium project on the Grantee Property (the "Project"). The Project consists of certain buildings, structures and other improvements (the "Project Improvements").
- C. Grantor authorized Grantee to develop the Project as evidenced by the Town's approval of the Replat as well as that certain Resolution Ordinance of Town Council of the Town recorded on _______, 202__ at Reception No. ______ and the Amended and Restated Development Agreement recorded on _______, 202__ at Reception No. ______, both in the Official Records (collectively, the "Town Approvals"). The use and development of the Project is further subject to applicable provisions of the Town of Mountain Village Municipal Code Title 17 Community Development Code, adopted by the Town of Mountain Village by Ordinance No. 2013-01, as amended through the Effective Date (the "CDC") (which superseded and replaced the Town of Mountain Village Land Use Ordinance referenced in the 2011 Permanent Structures Easement Agreement (defined below)), the Town of Mountain Village Charter and the Town of Mountain Village Municipal Code ("Town Laws").
- D. Prior to the Replat, portions of the Grantor Property and the Grantee Property were platted as Lot 109R and Tract OS-3BR-2, Town of Mountain Village, San Miguel County, Colorado according to the "2011 Replat" recorded on March 18, 2011, in Plat Book 1, Page 4455 at Reception No. 416994 in the Official Records.
- E. Concurrently with the 2011 Replat, Grantor and Grantee's predecessor in title, MV Colorado Development Partners, LLC, a Texas limited liability company, entered into that certain

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Easement Agreement (Permanent Structures) dated March 18, 2011 and recorded March 18, 2011 under Reception No. 417001 in the Official Records (the "2011 Permanent Structures Easement Agreement") pursuant to which Grantor granted an easement over a portion of Tract OS-3BR-2 for certain Authorized Uses as set forth therein (the "Permanent Structures Easement").

- F. The Permanent Structures Easement Agreement was entered into pursuant to the 2010 approval by Town Council for the Town of a PUD development for a project on Lot 109R (the "2010 Lot 109R PUD") by Resolution 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, recorded in the Official Records on December 10, 2010 under Reception No. 415339 (the "2010 PUD Approval") and in connection with (i) that certain Development Agreement, Lot 109R, Town of Mountain Village, Planned Unit Development recorded March 18, 2011 under Reception No. 416997 in the Official Records (the "2011 Development Agreement") and (ii) the Replat. The 2010 PUD Approval, 2011 Development Agreement, and Replat contemplated an earlier iteration of the Project on Lot 109R which the 2011 Permanent Structures Easement Agreement was entered into to accommodate. The 2010 PUD Approval and 2011 Development Agreement have been superseded and replaced in their entirety by the Town Approvals and the subject property replatted pursuant to the 2011 Replat.
- G. In view of the above-described changes to the Project and related Town Approvals, Grantor and Grantee desire to amend the 2011 Permanent Structures Easement Agreement as set forth in this Amendment, including terminating and releasing it from title to certain parcels of land originally encumbered thereby. The 2011 Permanent Structures Easement Agreement as amended by this Amendment is referred to in this Amendment as the "Agreement."

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and agreements made and entered into by the Parties, the sufficiency of which is hereby acknowledged, the undersigned Parties hereby agree as follows:

- 1. <u>Interpretation</u>. This Amendment amends the 2011 Permanent Structures Easement Agreement. In the event of any inconsistency between the provisions of this Amendment and the provisions of the 2011 Permanent Structures Easement Agreement, the provisions of this Amendment shall control. Capitalized terms used and not otherwise defined in this Amendment have the meaning given to them in the 2011 Permanent Structures Easement Agreement.
- 2. <u>Easement Area</u>. The description of the "**Easement Area**" set forth in the 2011 Permanent Structures Easement Agreement is hereby amended and restated in its entirety. Accordingly, <u>Exhibit "A"</u> depicting the Easement Area and <u>Exhibit "B"</u> legally describing the Easement Area, each as attached to the 2011 Permanent Structures Easement Agreement, are superseded and replaced in their entirety by the attached <u>Exhibit "A"</u> depicting the Easement Area and <u>Exhibit "B"</u> legally describing the Easement Area, in each case as amended by this Amendment. To the extent property located within the Easement Area defined in the 2011 Permanent Structures Easement Area as defined in this Amendment, the burdens of the 2011 Permanent Structures Easement Agreement as modified by

this Amendment pertaining to the Easement Area are terminated and released from same. Notwithstanding the foregoing, the parties acknowledge and agree that in no event will the foregoing impact or modify the effect of Section 3 below.

- 3. Burdened and Benefited Properties. The legal description of the "Grantor Property" set forth in the 2011 Permanent Structures Easement Agreement is hereby superseded and replaced in its entirety with the legal description set forth in Recital A of this Amendment above. The legal description of the "Grantee Property" set forth in the 2011 Permanent Structures Easement Agreement is hereby superseded and replaced in its entirety with the legal description set forth in Recital B of this Amendment above. The easements, benefits and rights granted and agreed to in the 2011 Permanent Structures Easement Agreement as modified by this Amendment and the burdens, duties and obligations imposed and agreed to the in the 2011 Permanent Structures Easement Agreement as modified by this Amendment shall run with the land and shall be a benefit of and burden upon Grantor Property (as defined in Recital A above) on the one hand, and the Grantee Property (as defined in Recital B above) on the other hand, as applicable, during the term of the Agreement. Further, the easements, benefits and rights granted and agreed to in the 2011 Permanent Structures Easement Agreement as modified by this Amendment and the burdens, duties and obligations imposed and agreed to in the 2011 Permanent Structures Easement Agreement as modified by this Amendment shall be binding upon and shall inure to the benefit of, and be a burden upon, the designees, successors, and assigns of all of the Parties to the Agreement during the term of the Agreement.
- 4. <u>Authorized Uses</u>. The list of "**Authorized Uses**" set forth in Section 1.2 of the 2011 Permanent Structures Easement Agreement is hereby amended as follows:
- 4.1. Section 1.2.1 is amended and restated in its entirety to incorporate the addition of the underlined language below to read as follows:

For temporary layback of excavated materials and to install, extend, operate, use, repair and maintain tower crane foundation systems. Following completion of the Project, Grantee shall not be required to remove any tower crane foundation systems installed on the Grantor Property pursuant to this Agreement. After substantial completion of the Project, any tower crane foundation system(s) that extend into and under the Easement Area shall be deemed permissibly abandoned by Grantee and Grantor may remove, destroy, cut through, or leave them in place.

4.2. Section 1.2.2 is amended and restated in its entirety to incorporate the addition of the underlined language below to read as follows:

To install, extend, operate, use, repair and maintain those elements of the Project Improvements located below grade (inclusive of, without limitation, commercial space, residential space, storage space, parking garages, parking spaces, snowmelt systems, HVAC systems, mechanical systems, phone systems, boilers, intake and exhaust systems, electrical systems, low voltage systems, fire risers, fire pumps, generators, lights, elevators, stairs, ramps, drains, pipes, utilities and other like components as well as rooms housing same) and to upgrade these elements for changing needs of the Project and Project Improvements.

- 5. <u>Land Use Ordinance and Design Regulations</u>. All references to the Town Land Use Ordinance and Design Regulations set forth in the 2011 Permanent Structures Easement Agreement are hereby replaced with the "CDC."
- 6. Project Association as Successor to Grantee. The parties acknowledge and agree that the 2011 Permanent Structures Easement Agreement as modified by this Amendment contemplate that the Project will be subjected to a Condominium formed in accordance with applicable law and existing pursuant to certain Condominium Documents and that a Condominium Association will be formed in accordance with the Condominium Documents which shall manage and operate the Condominium and administer the Common Elements. With the foregoing in mind, if the Project is ever made subject Condominium Documents, then for the purposes of the Agreement, the "Grantee" shall be deemed to be the Condominium Association created pursuant to such Condominium Documents, and the Condominium Association shall have the burdens and benefits imposed and afforded under this Amendment with respect to such parcel, and no individual Unit Owner within such common interest community shall have any of such burdens or benefits, except insofar as they constitute "Authorized Users" and then only in their capacity as such.
- 7. <u>Indemnification</u>. The first sentence of Section 4 of the 2011 Permanent Structures Easement Agreement is hereby amended and restated in its entirety to read as follows:

Grantee does hereby indemnify and save harmless Grantor and its elected and appointed officials, employees, agents, representatives, assignees, attorneys, successors and assigns from any and all mechanics' lien(s), expense, claim, action, liability, loss, damage, or suit (including attorney's fees and costs), and costs of any kind arising out of, or in any way connected with the exercise of the Authorized Uses by Grantee and Grantee's specifically designated designees, contractors and consultants who are undertaking some or all of the Authorized Uses for Grantee.

Notwithstanding any provisions in the Agreement requiring Grantee to avoid any liens against the Grantor Property, the Parties agree and acknowledge that the Grantor Property is immune from mechanics' liens, and nothing in the Agreement shall be deemed to be a waiver or limitation of Grantor's governmental immunity in any respect.

8. <u>Insurance</u>. Section 5 of the 2011 Permanent Structures Easement Agreement is hereby amended and restated in its entirety to read as follows:

Throughout the term of the Agreement, Grantee shall keep and maintain, at its sole cost and expense, commercial general liability insurance ("CGL") in amounts per occurrence and in the aggregate not less than the Statutory Liability Limits for all claims of relief that accrue on or after January 1, 2022 and before January 1, 2026 as stated below, such amounts to be adjusted every four (4) years as provided below. The liability limits of the CGL insurance required pursuant to this Section will be reviewed as necessary and any changes mutually agreed upon every four years commencing January 1, 2026 to an amount not less than (a) the liability limits established by the Colorado Secretary of State from time to time for the

Commented [CG1]: Same comment as in other agreements. Change and just make assignable?

immediately succeeding four year period pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-114 and (b) the liability limits generally maintained by businesses of similar size engaged in similar activities in the same or similar locales as the Project, whichever is greater, but in no event will the amount of the coverage be less than the Statutory Liability Limits for all claims of relief that accrue on or after January 1, 2022 and before January 1, 2026. The parties acknowledge and agree that, as of the Effective Date, the Statutory Liability Limits for all claims of relief that accrue on or after January 1, 2022 and before January 1, 2026 is \$424,000 for any injury to one person in a single occurrence and \$1,195,000 for any injury to two or more persons in any single occurrence, except that in such instance no person may recover more than \$424,000.

CGL insurance shall be written on ISO occurrence form and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, property damage, and liability assumed under an insured contract. Each Condominium Association which is a successor to Grantee pursuant to Section 6 of the Amendment shall cause its CGL policy to insure against liabilities incurred by each of its members in connection with their use of the easements granted pursuant to this Agreement. Such insurance shall be maintained under a policy pursuant to which the Grantor shall be named as an additional insured, or, alternatively, as a contractual insured. Within seven (7) days of the Effective Date, Grantee shall provide Grantor with a certificate of insurance showing compliance with the insurance requirements set forth above. To the extent commercially available, the certificates shall include a provision requiring a minimum of thirty (30) days' notice to Grantor of any change or cancellation.

Grantor waives all rights against Grantee (and its Authorized Users) for recovery of damages to the extent such damages are covered by the CGL insurance maintained by Grantee pursuant to Section 8 of the Agreement.

9. <u>Remedies</u>. Section 6.5 of the 2011 Permanent Structures Easement Agreement is hereby supplemented by the addition of the following:

A Default under the Agreement by the Responding Party shall not give the Claiming Party the right to terminate the Easement granted in the Agreement.

10. <u>Notice</u>. Section 6.11 of the 2011 Permanent Structures Easement Agreement is hereby amended and restated in its entirety to read as follows:

Any notice or other communication to any party given under this Agreement will be effective only if in writing and shall be deemed received (i) upon receipt when personally delivered; (ii) on the next business day after deposit when sent by a nationally recognized overnight courier service, charges prepaid and properly addressed, for next business day delivery; or (iii) upon confirmation of successful transmission to each recipient's electronic mail, when sent by electronic mail and if confirmed in writing sent by the methods specified in clauses (i) or (ii) of this Section), respectively, to whichever of the following addresses is applicable:

Grantor: Town of Mountain Village Attention: Town Manager 455 Mountain Village Blvd., Suite A Mountain Village, CO 81435 Email:	With copy to: Garfield & Hecht Attn: David H. McConaughy 625 E. Hyman 910 Grand Avenue, Suite 201 Aspen Glenwood Springs, CO 816 01
Grantee: Tiara Telluride, LLC c/o Lalchandani Simon PL 25 SE 2nd Avenue, Suite 1020 Miami, FL 33131 Email:	With copy to: Sherman & Howard L.L.C. Attn: Cynthia M. Stovall 675 15th Street #2300 Denver, CO 80202

Notices must be addressed as set forth above, but each party may change its address by written notice in accordance with this Section.

- 11. <u>Effect.</u> Except as provided in this Amendment, the 2011 Permanent Structures Easement Agreement remains unmodified and in full force and effect.
- 12. <u>Recordation.</u> This Amendment shall be recorded in the real property records of San Miguel County, Colorado.
- 13. <u>Counterparts</u>. This Amendment 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.

[This space intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment effective as of the Effective Date.

GRANTOR:

Town of Mountain Village, a Colorado Home Rule Municipality and Political Subdivision of the State of Colorado		
Ву:	Date:	
Printed Name: Paul Wisor Title: Town Manager		
State of Colorado)		
County of San Miguel)		
Subscribed to and acknowledged before me this _ as the	day of	, 202 X , by of the Town
of Mountain Village.		
Witness my hand and official seal.		
	My commission expires:	
Notary Public		

GRANTEE:		
Tiara Telluride, LLC, a Colorado limited liability company		
By:	Date:	
Printed Name:		
State of)		
State of) ss County of)		
Subscribed to and acknowledged before me this as the	day of	, 202 <mark>X</mark> , by of Tiara
Telluride, LLC, a Colorado limited liability compa	any.	
Witness my hand and official seal.		
	My commission expires: _	
Notary Public		

EXHIBIT "A" (New Easement Area)

EXHIBIT "B"

(Description of Easement Area)

[To be added.]

$\frac{\textbf{FIRST AMENDMENT TO AND PARTIAL TERMINATION AND RELINQUISHMENT OF}}{\underline{\textbf{EASEMENT AGREEMENT}}}$

(Vehicular Access)		
This First Amendment to and Partial Termination and Relinquishment of Easement Agreement (Vehicular Access) ("Amendment") is made and entered into this, 202 ("Effective Date") by and between the Town of Mountain Village a Colorado municipal corporation and political subdivision of the State of Colorado ("Grantor" or "Town") and Tiara Telluride, LLC, a Colorado limited liability company ("Grantee"). Granton and Grantee are sometimes each individually referred to as a "Party" and sometimes collectively as the "Parties."		
RECITALS		
A. Grantor is the current fee simple owner of Tract OS-3BR-2R, Tract OS-3BR-2B1 Tract OS-3BR-2C1, Tract OS-3BR-2D1, Tract OS-3BR-2E1, Tract OS-3BR-2F1 and Tract OS-3BR-2G1 of that certain "Replat of Lot 109R and Tract, Town of Mountain Village, San Miguel County, Colorado" ("Grantor Property") recorded on 202, in Plat Book, Page at Reception No (the "Replat") in the Official Records of the Clerk and Recorder for San Miguel County, Colorado ("Official Records"). B. Grantee is the current fee simple owner of certain real property described as Lo 109R2, Town of Mountain Village, San Miguel County, Colorado ("Grantee Property") according to the Replat, on which Grantee intends to construct a mixed-use, luxury hotel and residential condominium project (the "Project"). The Project consists of certain buildings structures and other improvements (the "Project Improvements").		
C. Grantor authorized Grantee to develop the Project as evidenced by the Town's approval of the Replat as well as that certain Ordinance of Town Council of the Town recorded or, 202 at Reception No and the Amended and Restated Development Agreement recorded on, 202 at Reception No, both in the Officia Records (collectively, the "Town Approvals"). The use and development of the Project is further subject to applicable provisions of the Town of Mountain Village Municipal Code Title 17 Community Development Code, adopted by the Town of Mountain Village by Ordinance No 2013-01, as amended through the Effective Date (the "CDC") (which superseded and replaced the Town of Mountain Village Land Use Ordinance referenced in the 2011 Vehicular Access Easement Agreement (defined below)), the Town of Mountain Village Charter and the Town of Mountain Village Municipal Code ("Town Laws"). D. Prior to the Replat, portions of the Grantor Property and the Grantee Property were		
platted as Lot 109R and Tract OS-3BR-2, Town of Mountain Village, San Miguel County Colorado according to the "2011 Replat" recorded on March 18, 2011, in Plat Book 1, Page 4455 at Reception No. 416994 in the Official Records.		

Colorado Development Partners, LLC, a Texas limited liability company, entered into that certain

Concurrently with the 2011 Replat, Grantor and Grantee's predecessor in title, MV

Easement Agreement (Vehicular Access) dated March 18, 2011 and recorded March 18, 2011 under Reception No. 417002 in the Official Records (the "2011 Vehicular Access Easement Agreement") pursuant to which Grantor granted an easement over a portion of Tract OS-3BR-2 for certain Authorized Uses as set forth therein (the "Vehicular Access Easement").

- F. The Vehicular Access Easement Agreement was entered into pursuant to the 2010 approval by Town Council for the Town of a PUD development for a project on Lot 109R (the "2010 Lot 109R PUD") by Resolution 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, recorded in the Official Records on December 10, 2010 under Reception No. 415339 (the "2010 PUD Approval") and in connection with (i) that certain Development Agreement, Lot 109R, Town of Mountain Village, Planned Unit Development recorded March 18, 2011 under Reception No. 416997 in the Official Records (the "2011 Development Agreement") and (ii) the 2011 Replat. The 2010 PUD Approval, 2011 Development Agreement, and 2011 Replat contemplated an earlier iteration of the Project on Lot 109R which the 2011 Vehicular Access Easement Agreement was entered into to accommodate. The 2010 PUD Approval and 2011 Development Agreement have been superseded and replaced in their entirety by the Town Approvals and the subject property replatted pursuant to the Replat.
- G. In view of the above-described changes to the Project and related Town Approvals, Grantor and Grantee desire to amend the 2011 Vehicular Access Easement Agreement as set forth in this Amendment, including terminating and releasing it from title to certain parcels of land originally encumbered thereby. The 2011 Vehicular Access Easement Agreement as amended by this Amendment is referred to in this Amendment as the "Agreement."

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements made and entered into by the Parties, the sufficiency of which is hereby acknowledged, the undersigned Parties hereby agree as follows:

- 1. <u>Interpretation</u>. This Amendment amends the 2011 Vehicular Access Easement Agreement. In the event of any inconsistency between the provisions of this Amendment and the provisions of the 2011 Vehicular Access Easement Agreement, the provisions of this Amendment shall control. Capitalized terms used and not otherwise defined in this Amendment have the meaning given to them in the 2011 Vehicular Access Easement Agreement.
- 2. Approval of Drawings; Installation/Construction of the Work. The definition of "Work" set forth in the 2011 Vehicular Access Easement Agreement is hereby amended to refer mean and refer to the design, installation and/or construction of the facilities, structures, improvements and other elements associated with the Authorized Uses set forth in the Agreement. The definition of "Work Plans" set forth in the 2011 Vehicular Access Easement Agreement is hereby amended to mean and refer to the plans and plats reflected in the Town Approvals (as defined in this Amendment) and any such other plans, drawings or specifications relating to the Authorized Uses, if any. Subject to the foregoing, Grantee's obligations for Approval of Drawings and Installation/Construction of the Work as set forth in Section 2 and Section 3 of the 2011 Vehicular Access Easement Agreement, respectively, are in addition to all conditions and requirements for

installation, construction and maintenance as set forth in the Town Approvals (as such term is defined in this Amendment). To the extent of any conflict between the provisions of the Agreement and the Town Approvals and Town Laws, the Town Approvals and Town Laws shall control.

- 3. <u>Easement Area.</u> The description of the "Easement Area" set forth in the 2011 Vehicular Access Easement Agreement is hereby amended and restated in its entirety. Accordingly, <u>Exhibit</u> "A" depicting the Easement Area and <u>Exhibit</u> "B" legally describing the Easement Area, each as attached to the 2011 Vehicular Access Easement Agreement, are superseded and replaced in their entirety by the attached <u>Exhibit</u> "A" depicting the Easement Area and <u>Exhibit</u> "B" legally describing the Easement Area, in each case as amended by this Amendment. To the extent property located within the Easement Area defined in the 2011 Vehicular Access Easement Agreement is not within the boundaries of the Easement Area as defined in this Amendment, the burdens of the 2011 Vehicular Access Easement Agreement as modified by this Amendment pertaining to the Easement Area are terminated and released from same. Notwithstanding the foregoing, the parties acknowledge and agree that in no event will the foregoing impact or modify the effect of Section 4 below.
- 4. <u>Burdened and Benefited Properties</u>. The legal description of the "Grantor Property" set forth in the 2011 Vehicular Access Easement Agreement is hereby superseded and replaced in its entirety with the legal description set forth in Recital A of this Amendment above. The legal description of the "Grantee Property" set forth in the 2011 Vehicular Access Easement Agreement is hereby superseded and replaced in its entirety with the legal description set forth in Recital B of this Amendment above. The easements, benefits and rights granted and agreed to in the 2011 Vehicular Access Easement Agreement as modified by this Amendment and the burdens, duties and obligations imposed and agreed to the in the 2011 Vehicular Access Easement Agreement as modified by this Amendment shall run with the land and shall be a benefit of and burden upon Grantor Property (as defined in Recital A above) on the one hand, and the Grantee Property (as defined in Recital B above) on the other hand, as applicable, during the term of the Agreement. Further, the easements, benefits and rights granted and agreed to in the 2011 Vehicular Access Easement Agreement as modified by this Amendment and the burdens, duties and obligations imposed and agreed to in the 2011 Vehicular Access Easement Agreement as modified by this Amendment shall be binding upon and shall inure to the benefit of, and be a burden upon, the designees, successors, and assigns of all of the Parties to the Agreement.
- 5. <u>Land Use Ordinance and Design Regulations</u>. All references to the Town Land Use Ordinance and Design Regulations set forth in the 2011 Vehicular Access Easement Agreement are hereby replaced with the "**CDC**."
- 6. Project Association as Successor to Grantee. The parties acknowledge and agree that the 2011 Vehicular Access Easement Agreement as modified by this Amendment contemplate that the Project will be subjected to a Condominium formed in accordance with applicable law and existing pursuant to certain Condominium Documents and that a Condominium Association will be formed in accordance with the Condominium Documents which shall manage and operate the Condominium and administer the Common Elements. With the foregoing in mind, if the Project is ever made subject Condominium Documents, then for the purposes of the Agreement, the "Grantee" shall be deemed to be the Condominium Association created pursuant to such Condominium Documents, and the Condominium Association shall have the burdens and benefits

imposed and afforded under this Amendment with respect to such parcel, and no individual Unit Owner within such common interest community shall have any of such burdens or benefits, except insofar as they constitute "Authorized Users" and then only in their capacity as such.

7. <u>Indemnification</u>. The first sentence of Section 4 of the 2011 Vehicular Access Easement Agreement is hereby amended and restated in its entirety to read as follows:

Grantee does hereby indemnify and save harmless Grantor and its elected and appointed officials, employees, agents, representatives, assignees, attorneys, successors and assigns from any and all mechanics' lien(s), expense, claim, action, liability, loss, damage, or suit (including attorney's fees and costs), and costs of any kind arising out of, or in any way connected with the exercise of the Authorized Uses by Grantee and Grantee's specifically designated designees, contractors and consultants who are undertaking some or all of the Authorized Uses for Grantee.

Notwithstanding any provisions in the Agreement requiring Grantee to avoid any liens against the Grantor Property, the Parties agree and acknowledge that the Grantor Property is immune from mechanics' liens, and nothing in the Agreement shall be deemed to be a waiver or limitation of Grantor's governmental immunity in any respect.

8. <u>Insurance</u>. Section 5 of the 2011 Vehicular Access Easement Agreement is hereby amended and restated in its entirety to read as follows:

Throughout the term of the Agreement, Grantee shall keep and maintain, at its sole cost and expense, commercial general liability insurance ("CGL") in amounts per occurrence and in the aggregate not less than the Statutory Liability Limits for all claims of relief that accrue on or after January 1, 2022 and before January 1, 2026 as stated below, such amounts to be adjusted every four (4) years as provided belowlimits set forth by the Colorado Governmental Immunity Act, C.R.S. § 24-10-114, as adjusted every four years by the Colorado Secretary of State. The liability limits of the CGL insurance required pursuant to this Section will be reviewed as necessary and any changes mutually agreed upon every four year commencing January 1, 2026 to an amount not less than (a) the liability limits established by the Colorado Secretary of State from time to time for the immediately succeeding four year period pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-114 and (b) the liability limits generally maintained by businesses of similar size engaged in similar activities in the same or similar locales as the Project, whichever is greater, but in no event will the amount of the coverage be less than the Statutory Liability Limits for all claims of relief that accrue on or after January 1, 2022 and before January 1, 2026. The parties acknowledges and agree that, as of the Effective Date, the Statutory Liability Limits for all claims of relief that accrue on or after January 1, 2022 and before January 1, 2026 is \$424,000 for any injury to one person in a single occurrence and \$1,195,000 for any injury to two or more persons in any single occurrence, except that in such instance no person may recover more than \$424,000.

CGL insurance shall be written on ISO occurrence form and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, property damage, and liability assumed under an insured contract. Each Condominium Association which is a successor to Grantee pursuant to Section 6 of the Amendment shall cause its CGL policy to insure against liabilities incurred by each of its members in connection with their use of the easements granted pursuant to this Agreement. Such insurance shall be maintained under a policy pursuant to which the Grantor shall be named as an additional insured, or, alternatively, as a contractual insured. Within seven (7) days of the Effective Date, Grantee shall provide Grantor with a certificate of insurance showing compliance with the insurance requirements set forth above. To the extent commercially available, the certificates shall include a provision requiring a minimum of thirty (30) days' notice to Grantor of any change or cancellation.

Grantor waives all rights against Grantee (and its Authorized Users) for recovery of damages to the extent such damages are covered by the CGL insurance maintained by Grantee pursuant to the Agreement.

9. <u>Remedies</u>. Section 6.5 of the 2011 Vehicular Access Easement Agreement is hereby supplemented by the addition of the following:

A Default under the Agreement by the Responding Party shall not give the Claiming Party the right to terminate the Easement granted in the Agreement.

10. <u>Notice.</u> Section 6.11 of the 2011 Vehicular Access Easement Agreement is hereby amended and restated in its entirety to read as follows:

Any notice or other communication to any party given under this Agreement will be effective only if in writing and shall be deemed received (i) upon receipt when personally delivered; (ii) on the next business day after deposit when sent by a nationally recognized overnight courier service, charges prepaid and properly addressed, for next business day delivery; or (iii) upon confirmation of successful transmission to each recipient's electronic mail, when sent by electronic mail and if confirmed in writing sent by the methods specified in clauses (i) or (ii) of this Section), respectively, to whichever of the following addresses is applicable:

Grantor: Town of Mountain Village Attention: Town Manager 455 Mountain Village Blvd., Suite A Mountain Village, CO 81435 Email:	With copy to: Garfield & Hecht Attn: David H. McConaughy 910 Grand Avenue, Suite 201 Glenwood Springs, CO 81601
Grantee:	With copy to:
Tiara Telluride, LLC	Sherman & Howard L.L.C.

c/o Lalchandani Simon PL 25 SE 2nd Avenue, Suite 1020	Attn: Cynthia M. Stovall 675 15th Street #2300
Miami, FL 33131	Denver, CO 80202
Email:	

Notices must be addressed as set forth above, but each party may change its address by written notice in accordance with this Section.

- 11. <u>Effect.</u> Except as provided in this Amendment, the 2011 Vehicular Access Easement Agreement remains unmodified and in full force and effect.
- 12. <u>Recordation.</u> This Amendment shall be recorded in the real property records of San Miguel County, Colorado.
- 13. <u>Counterparts</u>. This Amendment 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.

[This space intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment effective as of the Effective Date.

GRANTOR:

Town of Mountain Village, a Colorado Home Rule Municipality and Political Subdivision of the State of Colorado		
By:	Date:	
Printed Name: <u>Paul Wisor</u> Title: <u>Town Manager</u>		
State of Colorado)		
County of San Miguel)ss		
Subscribed to and acknowledged before me this _ as the	day of	, 202X, by of the Town
of Mountain Village.		
Witness my hand and official seal.		
	My commission expires:	
Notary Public		

GRANTEE:

EXHIBIT "A"

(New Easement Area)

EXHIBIT "B" (Description of Easement Area)

[To be added.]

S&H 10.21.2022 DRAFT

FIRST AMENDMENT TO AND PARTIAL TERMINATION AND RELINQUISHMENT OF **EASEMENT AGREEMENT**

(Utilities)

This First Amendment to and Partial Termination and Relinquishment of Easement Agreement (Utilities) ("Amendment") is made and entered into this ("Effective Date") by and between the Town of Mountain Village, a Colorado municipal corporation and political subdivision of the State of Colorado ("Grantor" or "Town") and Tiara Telluride, LLC, a Colorado limited liability company ("Grantee"). Grantor and Grantee are sometimes each individually referred to as a "Party" and sometimes collectively as the "Parties."

RECITALS

- Grantor is the current fee simple owner of Tract OS-3BR-2, Tract OS-3BR-2B1, A. Tract OS-3BR-2C1, Tract OS-3BR-2D1, Tract OS-3BR-2E1, Tract OS-3BR-2F1, Tract OS-3BR , Town of Mountain Village, 2G1 of that certain "Replat of Lot 109R and Tract San Miguel County, Colorado" ("Grantor Property") recorded on , 202__, in Plat at Reception No. _ (the "Replat") in the Official Records of the Book ____, Page Clerk and Recorder for San Miguel County, Colorado ("Official Records").
- Grantee is the current fee simple owner of certain real property described as Lot 109R2, Town of Mountain Village, San Miguel County, Colorado ("Grantee Property") according to the Replat, on which Grantee intends to construct a mixed-use, luxury hotel and residential condominium project on the Grantee Property (the "Project"). The Project consists of certain buildings, structures and other improvements (the "Project Improvements").
- Grantor authorized Grantee to develop the Project as evidenced by the Town's approval of the Replat as well as that certain Resolution Ordinance of Town Council of the Town _____, 202__ at Reception No. recorded on and the Amended and Restated Development Agreement recorded on _______, 202_at Reception No. _____, both in the Official Records (collectively, the "Town Approvals"). The use and development of the Project is further subject to applicable provisions of the Town of Mountain Village Mountain Village Municipal Code Title 17 Community Development Code, adopted by the Town of Mountain Village by Ordinance No. 2013-01, as amended through the Effective Date (the "CDC") (which superseded and replaced the Town of Mountain Village Land Use Ordinance referenced in the 2011 Utilities Easement Agreement (defined below)), the Town of Mountain Village Charter and the Town of Mountain Village Municipal Code ("Town Laws").
- Prior to the Replat, portions of the Grantor Property and the Grantee Property were D. platted as Lot 109R and Tract OS-3BR-2, Town of Mountain Village, San Miguel County, Colorado according to the "2011 Replat" recorded on March 18, 2011, in Plat Book 1, Page 4455 at Reception No. 416994 in the Official Records.
- Concurrently with the 2011 Replat, Grantor and Grantee's predecessor in title, MV Colorado Development Partners, LLC, a Texas limited liability company, entered into that certain Easement Agreement (Utilities) dated March 18, 2011 and recorded March 18, 2011 under

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Reception No. 417004 in the Official Records (the "2011 Utilities Easement Agreement") pursuant to which Grantor granted an easement over a portion of Tract OS-3BR-2 for certain Authorized Uses as set forth therein (the "Utilities Easement").

- F. The Utilities Easement Agreement was entered into pursuant to the 2010 approval by Town Council for the Town of a PUD development for a project on Lot 109R (the "2010 Lot 109R PUD") by Resolution 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, recorded in the Official Records on December 10, 2010 under Reception No. 415339 (the "2010 PUD Approval") and in connection with (i) that certain Development Agreement, Lot 109R, Town of Mountain Village, Planned Unit Development recorded March 18, 2011 under Reception No. 416997 in the Official Records (the "2011 Development Agreement") and (ii) the Replat. The 2010 PUD Approval, 2011 Development Agreement, and Replat contemplated an earlier iteration of the Project on Lot 109R which the 2011 Utilities Easement Agreement was entered into to accommodate. The 2010 PUD Approval and 2011 Development Agreement have been superseded and replaced in their entirety by the Town Approvals and the subject property replatted pursuant to the 2011 Replat.
- G. The Project is intended to be subjected to a condominium regime ("Condominium") formed in accordance with applicable law and existing pursuant to certain "Condominium Documents.". The Condominium will consist of certain "Units" and "Common Elements.". Including "Limited Common Elements.". A certain "Condominium Association" will be formed in accordance with the Condominium Documents, which shall manage and operate the Condominium and administer the Common Elements. The Units will be owned by individual "Unit Owners" consistent with their rights, duties and obligations arising under the Condominium Documents.
- H. In view of the above-described changes to the Project and related Town Approvals, Grantor and Grantee desire to amend the 2011 Utilities Easement Agreement as set forth in this Amendment, including terminating and releasing it from title to certain parcels of land originally encumbered thereby. The 2011 Utilities Easement Agreement as amended by this Amendment is referred to in this Amendment as the "Agreement."

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and agreements made and entered into by the Parties, the sufficiency of which is hereby acknowledged, the undersigned Parties hereby agree as follows:

- 1. <u>Interpretation</u>. This Amendment amends the 2011 Utilities Easement Agreement. In the event of any inconsistency between the provisions of this Amendment and the provisions of the 2011 Utilities Easement Agreement, the provisions of this Amendment shall control. Capitalized terms used and not otherwise defined in this Amendment have the meaning given to them in the 2011 Utilities Easement Agreement.
- 2. <u>Easement Area</u>. The description of the "Easement Area" set forth in the 2011 Utilities Easement Agreement is hereby amended and restated in its entirety. Accordingly, <u>Exhibit "A"</u>

depicting the Easement Area and <u>Exhibit "B"</u> legally describing the Easement Area, each as attached to the 2011 Utilities Easement Agreement, are superseded and replaced in their entirety by the attached <u>Exhibit "A"</u> depicting the Easement Area and <u>Exhibit "B"</u> legally describing the Easement Area, in each case as amended by this Amendment. To the extent property located within the Easement Area defined in the 2011 Utilities Easement Agreement is not within the boundaries of the Easement Area as defined in this Amendment, the burdens of the 2011 Utilities Easement Agreement as modified by this Amendment pertaining to the Easement Area are terminated and released from same. Notwithstanding the foregoing, the parties acknowledge and agree that in no event will the foregoing impact or modify the effect of Section 3 below.

- 3. Burdened and Benefited Properties. The legal description of the "Grantor Property" set forth in the 2011 Utilities Easement Agreement is hereby superseded and replaced in its entirety with the legal description set forth in Recital A of this Amendment above. The legal description of the "Grantee Property" set forth in the 2011 Utilities Easement Agreement is hereby superseded and replaced in its entirety with the legal description set forth in Recital B of this Amendment above. The easements, benefits and rights granted and agreed to in the 2011 Utilities Easement Agreement as modified by this Amendment and the burdens, duties and obligations imposed and agreed to the in the 2011 Utilities Easement Agreement as modified by this Amendment shall run with the land and shall be a benefit of and burden upon Grantor Property (as defined in Recital A above) on the one hand, and the Grantee Property (as defined in Recital B above) on the other hand, as applicable, during the term of the Agreement. Further, the easements, benefits and rights granted and agreed to in the 2011 Utilities Easement Agreement as modified by this Amendment and the burdens, duties and obligations imposed and agreed to in the 2011 Utilities Easement Agreement as modified by this Amendment shall be binding upon and shall inure to the benefit of, and be a burden upon, the designees, successors, and assigns of all of the Parties to the Agreement during the term of the Agreement.
- 4. <u>Land Use Ordinance and Design Regulations</u>. All references to the Town Land Use Ordinance and Design Regulations set forth in the 2011 Utilities Easement Agreement are hereby replaced with the "CDC."
- 5. Project Association as Successor to Grantee. The parties acknowledge and agree that the 2011 Utilities Easement Agreement as modified by this Amendment contemplate that the Project will be subjected to a Condominium formed in accordance with applicable law and existing pursuant to certain Condominium Documents and that a Condominium Association will be formed in accordance with the Condominium Documents which shall manage and operate the Condominium and administer the Common Elements. With the foregoing in mind, if the Project is ever made subject Condominium Documents, then for the purposes of the Agreement, the "Grantee" shall be deemed to be the Condominium Association created pursuant to such Condominium Documents, and the Condominium Association shall have the burdens and benefits imposed and afforded under this Amendment with respect to such parcel, and no individual Unit Owner within such common interest community shall have any of such burdens or benefits, except insofar as they constitute "Authorized Users" and then only in their capacity as such.
- 5.1. <u>Association as Authorized User</u>. Section 1.1 is supplemented with the addition of the following new Section 1.1.4 adding additional Authorized Users:

Commented [CG1]: Same comment. Change and make assignable?

The Condominium Association and its designees, including its managers, contractors and consultants retained to undertake the Authorized Uses allowed by this Agreement.

6. <u>Indemnification</u>. The first sentence of Section 5 of the 2011 Utilities Easement Agreement is hereby amended and restated in its entirety to read as follows:

Grantee does hereby indemnify and save harmless Grantor and its elected and appointed officials, employees, agents, representatives, assignees, attorneys, successors and assigns from any and all mechanics' lien(s), expense, claim, action, liability, loss, damage, or suit (including attorney's fees and costs), and costs of any kind arising out of, or in any way connected with the exercise of the Authorized Uses by Grantee and Grantee's specifically designated designees, contractors and consultants who are undertaking some or all of the Authorized Uses for Grantee.

Notwithstanding any provisions in the Agreement requiring Grantee to avoid any liens against the Grantor Property, the Parties agree and acknowledge that the Grantor Property is immune from mechanics' liens, and nothing in the Agreement shall be deemed to be a waiver or limitation of Grantor's governmental immunity in any respect.

7. <u>Insurance</u>. Section 6 of the 2011 Utilities Easement Agreement is hereby amended and restated in its entirety to read as follows:

Throughout the term of the Agreement, Grantee shall keep and maintain, at its sole cost and expense, commercial general liability insurance ("CGL") in amounts per occurrence and in the aggregate not less than the Statutory Liability Limits for all claims of relief that accrue on or after January 1, 2022 and before January 1, 2026 as stated below, such amounts to be adjusted every four (4) years as provided below. The liability limits of the CGL insurance required pursuant to this Section will be reviewed as necessary and any changes mutually agreed upon every four years commencing January 1, 2026 to an amount not less than (a) the liability limits established by the Colorado Secretary of State from time to time for the immediately succeeding four year period pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-114 and (b) the liability limits generally maintained by businesses of similar size engaged in similar activities in the same or similar locales as the Project, whichever is greater, but in no event will the amount of the coverage be less than the Statutory Liability Limits for all claims of relief that accrue on or after January 1, 2022 and before January 1, 2026. The parties acknowledge and agree that, as of the Effective Date, the Statutory Liability Limits for all claims of relief that accrue on or after January 1, 2022 and before January 1, 2026 is \$424,000 for any injury to one person in a single occurrence and \$1,195,000 for any injury to two or more persons in any single occurrence, except that in such instance no person may recover more than \$424,000.

CGL insurance shall be written on ISO occurrence form and shall cover liability arising from premises, operations, independent contractors, products-completed

operations, personal injury, property damage, and liability assumed under an insured contract. Each Condominium Association which is a successor to Grantee pursuant to Section 6 of the Amendment shall cause its CGL policy to insure against liabilities incurred by each of its members in connection with their use of the easements granted pursuant to this Agreement. Such insurance shall be maintained under a policy pursuant to which the Grantor shall be named as an additional insured, or, alternatively, as a contractual insured. Within seven (7) days of the Effective Date, Grantee shall provide Grantor with a certificate of insurance showing compliance with the insurance requirements set forth above. To the extent commercially available, the certificates shall include a provision requiring a minimum of thirty (30) days' notice to Grantor of any change or cancellation.

Grantor waives all rights against Grantee (and its Authorized Users) for recovery of damages to the extent such damages are covered by the CGL insurance maintained by Grantee pursuant to Section 8 of the Agreement.

- 8. <u>Remedies</u>. Section 7.5 of the 2011 Utilities Easement Agreement is hereby supplemented by the addition of the following:
 - A Default under the Agreement by the Responding Party shall not give the Claiming Party the right to terminate the Easement granted in the Agreement.
- 9. <u>Notice</u>. Section 7.11 of the 2011 Utilities Easement Agreement is hereby amended and restated in its entirety to read as follows:

Any notice or other communication to any party given under this Agreement will be effective only if in writing and shall be deemed received (i) upon receipt when personally delivered; (ii) on the next business day after deposit when sent by a nationally recognized overnight courier service, charges prepaid and properly addressed, for next business day delivery; or (iii) upon confirmation of successful transmission to each recipient's electronic mail, when sent by electronic mail and if confirmed in writing sent by the methods specified in clauses (i) or (ii) of this Section), respectively, to whichever of the following addresses is applicable:

Grantor:	With copy to:
Town of Mountain Village	Garfield & Hecht
Attention: Town Manager	Attn: David H. McConaughy
455 Mountain Village Blvd.,	625 E. Hyman 910 Grand Avenue, Suite
Suite A	201
Mountain Village, CO 81435	AspenGlenwood Springs, CO 816041
Email:	
Grantee:	With copy to:
Tiara Telluride, LLC	Sherman & Howard L.L.C.
c/o Lalchandani Simon PL	Attn: Cynthia M. Stovall
25 SE 2nd Avenue, Suite 1020	675 15th Street #2300

Miami, FL 33131	Denver, CO 80202
Email:	

Notices must be addressed as set forth above, but each party may change its address by written notice in accordance with this Section.

- 10. <u>Effect.</u> Except as provided in this Amendment, the 2011 Utilities Easement Agreement remains unmodified and in full force and effect.
- 11. <u>Recordation.</u> This Amendment shall be recorded in the real property records of San Miguel County, Colorado.
- 12. <u>Counterparts</u>. This Amendment 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.

[This space intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment effective as of the Effective Date.

GRANTOR:

Town of Mountain Village, a Colorado Home Rule Municipality and Political Subdivision of the State of Colorado		
By:	Date:	
Printed Name: Paul Wisor Title: Town Manager		
State of Colorado)		
County of San Miguel)		
Subscribed to and acknowledged before me this as the	day of	, 202X, by of the Town
of Mountain Village.		
Witness my hand and official seal.		
Notary Public	My commission expires:	

GRANTEE:		
Tiara Telluride, LLC, a Colorado limited liability company		
By:	Date:	
Printed Name:Title:		
State of)) Ss County of)		
County of)		
Subscribed to and acknowledged before me this as the		, 202 <mark>X</mark> , by of Tiara
Telluride, LLC, a Colorado limited liability comp	any.	
Witness my hand and official seal.		
Notary Public	My commission expires: _	
indiary rudiff		

EXHIBIT "A" (New Easement Area)

EXHIBIT "B" (Description of Easement Area)

[To be added.]

FIRST AMENDMENT TO AND PARTIAL TERMINATION AND RELINQUISHMENT OF LICENSE AGREEMENT

(Utilities)

This First Amendment to and Partial Termination and Relinquishment of	License
Agreement (Utilities) ("Amendment") is made and entered into this	, 2022
("Effective Date") by and between the Town of Mountain Village, a Colorado r	nunicipal
corporation and political subdivision of the State of Colorado ("Licensee" or "Town") a	ınd Tiara
Telluride, LLC, a Colorado limited liability company ("Licensor"). Licensee and Lic	ensor are
sometimes each individually referred to as a "Party" and sometimes collectively as the "	Parties."

sometimes each marvidually referred to as a Tarry and sometimes concentrely as the Tarries .
RECITALS
A. Licensee is the current fee simple owner of Tract OS-3BR-2R, Tract OS-3BR-2B1, Tract OS-3BR-2C1, Tract OS-3BR-2D1, Tract OS-3BR-2E1, Tract OS-3BR-2F1 and Tract OS-3BR-2G1 of that certain "Replat of Lot 109R and Tract, Town of Mountain Village, San Miguel County, Colorado" ("Licensee Property") according to the "Replat" recorded on, 202, in Plat Book, Page at Reception No in the Official Records of the Clerk and Recorder for San Miguel County, Colorado ("Official Records").
B. Licensor is the current fee simple owner of certain real property described as Lot 109R2, Town of Mountain Village, San Miguel County, Colorado ("Licensor Property") according to the Replat, on which Licensor intends to construct a mixed-use, luxury hotel and residential condominium project (the "Project"). The Project consists of certain buildings, structures and other improvements (the "Project Improvements").
C. Licensee authorized Licensor to develop the Project as evidenced by the Town's approval of the Replat as well as that certain Ordinance of Town Council of the Town recorded on, 202 at Reception No and the Amended and Restated Development Agreement recorded on, 202 at Reception No, both in the Official Records (collectively, the "Town Approvals").
D. Prior to the Replat, portions of the Licensee Property and the Licensor Property

- D. Prior to the Replat, portions of the Licensee Property and the Licensor Property were platted as Lot 109R and Tract OS-3BR-2, Town of Mountain Village, San Miguel County, Colorado according to the "**2011 Replat**" recorded on March 18, 2011, in Plat Book 1, Page 4455 at Reception No. 416994 in the Official Records.
- E. Concurrently with the 2011 Replat, Licensee and Licensor's predecessor in title, MV Colorado Development Partners, LLC, a Texas limited liability company, entered into that certain License Agreement (Utilities) dated March 18, 2011 and recorded March 18, 2011 under Reception No. 416999 in the Official Records (the "2011 License Agreement") pursuant to which Licensee was granted a temporary license over Licensor's Property for certain Authorized Uses as set forth therein (the "License"). The License was granted in anticipation of the replacement of Existing Public Utilities on Licensor's Property with Replacement Public Utilities and the future granting of Replacement Utilities Easements therefor.

- F. The License Agreement was entered into pursuant to the 2010 approval by Town Council for the Town of a PUD development for a project on Lot 109R (the "2010 Lot 109R PUD") by Resolution 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, recorded in the Official Records on December 10, 2010 under Reception No. 415339 (the "2010 PUD Approval") and in connection with (i) that certain Development Agreement, Lot 109R, Town of Mountain Village, Planned Unit Development recorded March 18, 2011 under Reception No. 416997 in the Official Records (the "2011 Development Agreement") and (ii) the 2011 Replat. The 2010 PUD Approval, 2011 Development Agreement, and 2011 Replat contemplated an earlier iteration of the Project on Lot 109R with which the 2011 License Agreement was entered into to accommodate. The 2010 PUD Approval and 2011 Development Agreement have been superseded and replaced in their entirety by the Town Approvals and the subject property replatted pursuant to the Replat.
- G. In view of the above-described changes to the Project and related Town Approvals, Licensee and Licensor desire to amend the 2011 License Agreement as set forth in this Amendment, including terminating and releasing it from title to certain parcels of land originally encumbered thereby. The 2011 License Agreement as amended by this Amendment is referred to in this Amendment as the "Agreement."

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements made and entered into by the Parties, the sufficiency of which is hereby acknowledged, the undersigned Parties hereby agree as follows:

- 1. <u>Interpretation</u>. This Amendment amends the 2011 License Agreement. In the event of any inconsistency between the provisions of this Amendment and the provisions of the 2011 License Agreement, the provisions of this Amendment shall control. Capitalized terms used and not otherwise defined in this Amendment have the meaning given to them in the 2011 License Agreement.
- 2. <u>License Area</u>. The depiction of the "**License Area**" set forth in the 2011 License Agreement is hereby amended and restated in its entirety. Accordingly, <u>Exhibit "A"</u> depicting the License Area, as attached to the 2011 License Agreement, is superseded and replaced in its entirety by the attached <u>Exhibit "A"</u> depicting the License Area as amended by this Amendment. To the extent property located within the License Area defined in the 2011 License Agreement is not within the boundaries of the License Area as defined in this Amendment, the burdens of the 2011 License Agreement as modified by this Amendment pertaining to the License Area are terminated and released from same. Notwithstanding the foregoing, the parties acknowledge and agree that in no event will the foregoing impact or modify the effect of Section 3 below.
- 3. <u>Burdened and Benefited Properties</u>. The legal description of the "Licensee Property" set forth in the 2011 License Agreement is hereby superseded and replaced in its entirety with the legal description set forth in Recital A of this Amendment above. The legal description of the

"Licensor Property" set forth in the 2011 License Agreement is hereby superseded and replaced in its entirety with the legal description set forth in Recital B of this Amendment above. The easements, benefits and rights granted and agreed to in the 2011 License Agreement as modified by this Amendment and the burdens, duties and obligations imposed and agreed to the in the 2011 License Agreement as modified by this Amendment shall run with the land and shall be a benefit of and burden upon Licensee Property (as defined in Recital A above) on the one hand, and the Licensor Property (as defined in Recital B above) on the other hand, as applicable, during the term of the Agreement. Further, the license, benefits and rights granted and agreed to in the 2011 License Agreement as modified by this Amendment and the burdens, duties and obligations imposed and agreed to in the 2011 License Agreement as modified by this Amendment shall be binding upon and shall inure to the benefit of, and be a burden upon, the designees, successors, and assigns of all of the Parties to the Agreement during the term of the Agreement.

- 4. Third-Party Private Utilities. The Parties acknowledge and agree that certain utilities and other related improvements, including, but not limited to, stormwater and drainage facilities, water, sewer, telephone, internet, electrical, gas, cable television utility that serve third-party private property owners ("Third-Party Private Utilities") may be located within portions of the License Area or other portions of the Licensee Property impacted by the Project. The definition of the term "Existing Public Utilities" set forth in Recital D of the 2011 License Agreement is hereby supplemented to include any Third-Party Private Utilities located within the License Area. The Parties acknowledge and agree that to the extent there are any Third-Party Private Utilities located on the Licensee Property either before or after the Project has been constructed, the intent is that Licensee will enter into easements or licenses with private the third-parties benefited by those Third-Party Private Utilities for the use, operation, maintenance, repair and replacement of same.
- 5. <u>Indemnities and Insurance</u>; <u>Governmental Immunity</u>. Any purported obligations of Licensee to provide any indemnities to Licensor or any other person or entity in the Agreement, and any other financial obligations of Licensee under the Agreement, shall at all times be subject to annual budgeting and appropriation by the Town Council in its discretion and shall not be deemed to be multiple-fiscal year direct or indirect debt or other prohibited financial obligations within the meaning of Article X, Section 20(4) of the Colorado Constitution. Section 3 of the 2011 Agreement is deleted. Licensee agrees to maintain such policies of insurance as deemed appropriate by the Mountain Village Town Council from time to time, which shall be in policy amounts not less than the applicable liability limits in the Colorado Governmental Immunity Act. Licensee agrees to provide Licensor with written proof of current insurance coverage upon reasonable request. Nothing in the Agreement shall be construed as a waiver or limitation on Licensee's governmental immunity.
- 6. <u>Remedies</u>. Section 4.5 of the 2011 License Agreement is hereby supplemented by the addition of the following:
 - A Default under the Agreement by the Responding Party shall not give the Claiming Party the right to terminate the License granted in the Agreement.
- 7. <u>Notice</u>. Section 4.11 of the 2011 License Agreement is hereby amended and restated in its entirety to read as follows:

Any notice or other communication to any party given under this Agreement will be effective only if in writing and shall be deemed received (i) upon receipt when personally delivered; (ii) on the next business day after deposit when sent by a nationally recognized overnight courier service, charges prepaid and properly addressed, for next business day delivery; or (iii) upon confirmation of successful transmission to each recipient's electronic mail, when sent by electronic mail and if confirmed in writing sent by the methods specified in clauses (i) or (ii) of this Section), respectively, to whichever of the following addresses is applicable:

Licensee: Town of Mountain Village Attention: Town Manager 455 Mountain Village Blvd., Suite A Mountain Village, CO 81435 Email:	With copy to: Garfield & Hecht Attn: David H. McConaughy 910 Grand Avenue, Suite 201 Glenwood Springs, CO 81601
Licensor: Tiara Telluride, LLC c/o Lalchandani Simon PL 25 SE 2nd Avenue, Suite 1020 Miami, FL 33131 Email:	With copy to: Sherman & Howard L.L.C. Attn: Cynthia M. Stovall 675 15th Street #2300 Denver, CO 80202

Notices must be addressed as set forth above, but each party may change its address by written notice in accordance with this Section.

- 8. <u>Effect.</u> Except as provided in this Amendment, the 2011 License Agreement remains unmodified and in full force and effect.
- 9. <u>Recordation.</u> This Amendment shall be recorded in the real property records of San Miguel County, Colorado.
- 10. <u>Counterparts</u>. This Amendment 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment, intending it to be effective as of the Effective Date.

LICENSEE:

Town of Mountain Village, a Colorado Home Rule Municipality and Political Subdivision of the State of Colorado		
By:	Date:	
Printed Name: <u>Paul Wisor</u> Title: <u>Town Manager</u>		
State of Colorado)		
County of San Miguel)ss)		
Subscribed to and acknowledged before me this as the		
of Mountain Village.		
Witness my hand and official seal.		
	My commission expires:	
Notary Public		

LICENSOR:

EXHIBIT "A"

(License Area)