

ORDINANCE NO. 2023-13

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 presently described as open space parcel OS-3BR-2 according to the plat recorded as Reception No. 416994 but which has been previously approved by the Town Council to be replatted as open space parcel Tract OS-3BR-2R-1 according to the replat recorded on September 26, 2023, in Plat Book 1, Page _____ at Reception No. 482496 (the "**Town Property**")¹; and

WHEREAS, the Developer has submitted an application (the "**Major Subdivision Application**") to replat Lot 109R and the Town Property (the "**Replat**") for the purpose of a land exchange whereby Developer shall convey certain portions of Lot 109R to the Town and the Town shall convey certain portions of Tract OS-3BR-2R-1 to Developer, the resulting parcels being the Property, the Town Open Space Parcel and the ROW Tract (each as defined below). The property to be conveyed by Developer to the Town is referred to in this Ordinance as the "**Replacement Town Property**." The Replacement Town Property includes both (a) those portions of Lot 109R immediately adjacent to Tract OS-3BR-2R-1 being incorporated by the Replat into and made a part of the Town Open Space Parcel, and (b) that portion of Lot 109R being approximately .001 acres in size and identified on the Replat as "ROW Tract" (the "**ROW Tract**"). The property to be conveyed by the Town to Developer is referred to in this Ordinance as the "**Contributed Town Property**." The Contributed Town Property includes the Venting Parcel (defined in Section 4.2 of the Amended and Restated Development Agreement attached as Exhibit B-1). The parties acknowledge and agree that the Replat describes and depicts (a) the "**Property**" (being Lot 109R as supplemented by the Contributed Town Property and exclusive of the Replacement Town Property); (b) the "**Town Open Space Parcel**" (being Tract OS-3BR-2R-1 as supplemented by the Replacement Town Property (exclusive of the ROW Tract) and exclusive of the Contributed Town Property; and (c) the ROW Tract; and; 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

¹ Town Staff is authorized to fill in the recording information when available. The draft replat is available for inspection at the office of the Town Clerk.

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, 2023²; and

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 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 A, 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 the plans considered by the DRB at its December 1, 2022 meeting with the intent to address the DRB final design plans, so long as it is also understood that all of the DRB conditions from December 1, 2022, still apply. Further, DRB review and approval may be required prior to building permit to the extent required by the CDC. The final DRB review has been provided as evidenced by the December 1, 2022 meeting, and a re-review is not necessary; 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

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

² 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 Third Amendment to the 2011 Development Agreement, thus rendering the approval of the third extension of vested rights moot.

public meeting on June 15, 2023, and voted to continue the matter for further consideration at its meeting regular meeting on August 17, 2023, at which time the Council further considered this matter including evidence presented at such meeting; 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:

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

Section 2. 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 those documents listed on the attached Exhibit B (the “**Approval Documents**”) and such other instruments as the Town Manager, with the reasonable approval of Applicant, determines to be necessary or advisable to carry out the intent and purposes of the Final PUD Approval, all of which the Mayor and Town Clerk are authorized to sign on behalf of the Town subject to, prior to execution and recordation, edits relative to timing and order of recordation of documents as determined by the Town Manager and ministerial edits by Town Staff, in each case with the reasonable approval of Applicant. 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 as contemplated in the Amended and Restated Development Agreement, including execution and recordation of the Replat pursuant to the Subdivision Approval (defined in Section 3.1) provided all the conditions of the Subdivision Approval have been satisfied, and such other instruments as the Town Manager, with the reasonable approval of Applicant, determines to be necessary or advisable to carry out the exchange. 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 Designation Unit	Total Zoning Designation Units	Person Equivalent per Unit Type	Total Person Equivalents
Efficiency Lodge	66	.5	33
Lodge	38	.75	28.5
Condominiums	20	3	60
Employee Apartments	1	3	3
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.

- 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 proposed by the developer.

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 Equivalents			21

Table 5. Approved Changes to Density Certificate #27.

Zoning Designation	Person Equivalent	Number of Unit Types	Total Person Equivalents
Employee Condominium	3	13	39
Employee Condominium Rezoned to Employee Apartment for 161C-RR Four Seasons	3	-9	-27
Employee Condominium Rezoned to Employee Dormitory for 109R	3	-4	-12

Total (Density Certificate #27 would be retired and voided)	0	0	0
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Table 6. Approved Bonus Density created by the Town.

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

Table 7. Density to be transferred into the density bank and owned by Tiara Telluride, LLC- a new density certificate will be issued.

Zoning Designation	Number of Units	Person Equivalent	Total Person Equivalent
Efficiency Lodge	16	.5	8
Lodge	7	.75	5.25

c. *Limited Modification of Employee Housing Unit or Hotel Covenant.*

Employee Housing Unit. Notwithstanding the provisions of CDC Section 17.4.12(O)(2), the type, mix, or configuration of individual Employee Apartments, Employee Dormitories and employee amenities, only to the extent that such changes do not 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 Project (including condominium owners or the association), provided the Employee Housing Unit continues to be used for Employee Apartment, Employee Dormitory, and related employee amenities (an “**Employee Housing Unit PUD Amendment**”). An Employee Housing Unit PUD Amendment cannot otherwise reduce the number of allocated parking spaces for Employee Apartments and Employee Dormitories as provided in Section 2.2 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 17.4.12(N)(1)(a). 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 17.4.12(N)(1)(b).

Hotel Covenant. Similarly, any proposed amendment to the Hotel Covenant, including but not limited to changes to the Required Facilities and Services the type, mix or configuration of the Required Facilities and Services, but only to the extent that such changes do not result in increases in density used at the Project or in changes to use designations, may be initiated following recordation of the condominium documents by the owner of fee title to the Hotel Facilities Unit (defined in Section 3.11 below) and shall not require initiation or joinder by owners of at least 67% of the real property within the Project or an individual or entity having the written permission of owners of fee title to at least 67% of the real property within the Project (including condominium owners or the association) as a prerequisite for submittal or entering into an amendment, but otherwise the type of application and procedures for such application to amend the Hotel Covenant shall be determined in accordance with the CDC. Notwithstanding the foregoing, any proposed amendment to the Hotel Covenant that changes the responsibilities and obligations of the association thereunder or directly impacts general common elements shall also require the consent of the association and the association being a party to the amendment.

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

Table 7. Approved Parking for the Property.

Parking	Requirement per Type	Number of Units	Required	Provided
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 Maintenance Vehicles	1-5 spaces	1	1-5	1
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.

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

- 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. Exterior lighting, some variations subject to staff and DRB approval
- h. Road and driveway – driveway grade

DRB Specific Approvals:

- i. Materials – TPO membrane roof; metal fascia and soffit
- j. Solar roof tiles in the Village Center
- k. Road and driveway – two curb cuts
- l. 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 feet, 9 inches, and the maximum average height shall be 63.61 feet.
- 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 limited 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 fee title to the impacted unit or units without any requirement that such change be initiated or joined by the owners of fee title to at least 67% of the real property within the Project or an individual or entity having the written permission of owners of fee title to at least 67% of the real property units within the Project (including condominium owners or the association); provided, however, all such owners within the project shall be provided written notice of any proposed amendments and the right to provide public comments, and no approvals are guaranteed.

In addition, notwithstanding CDC Section 17.4.12(O)(2), further amendments to the PUD Plan approved by this Ordinance, the impacts of which would result in changes the responsibilities and obligations of the association thereunder or directly apply to general common elements within the Project (by way of example and not limitation, the Public Restroom, Town Parking, various easements including those that are the subject of the Lot 109R Project Easement Amendments, the Lot 109R Utility License Amendment, the See Forever Easement, and the Tract 89-A Pedestrian Access Easement Amendment) may be initiated by the association without any requirement that such change be initiated or joined by the owners of fee title to at least 67% of the real property within the Project or an individual or entity having the written permission of owners of fee title to at least 67% of the real property within the Project (including condominium owners); provided, however, all such owners within the project shall be provided written notice of any proposed amendments and the right to provide public comments, and no approvals are guaranteed.

Notwithstanding the foregoing, the lot coverage of the building comprising the Project as set forth in the Final PUD Plans may vary between final design and building permit in the form of a reduction by not more than 5%, with associated reductions in square footage of the various use areas; provided, however, in no event may such an amendment increase the lot coverage of the building comprising the Project as set forth in the Final PUD Plans, reduce the number of Employee Apartments or Employee Dormitories, reduce the number of lodge units, efficiency lodge units or condominium units below those numbers set forth in Section 2.1 above. As clarification, in the event Developer elects to take a reduction in the lot coverage of the building comprising the Project pursuant to this paragraph, in no event may Developer also exercise its right pursuant to Section 3.8(d) to reduce the total square footage of the Employee Housing Unit by 2%. A Class 1 application shall be required to vary the lot coverage of the building comprising the Project as set forth in the Final PUD Plans between final design and building permit in the form of a reduction by not more than 5% in accordance with this paragraph. The foregoing variation of 5% or less shall be deemed to be in substantial conformance with the Major PUD Amendment Application.

All other proposed changes or amendments to the Final PUD Approval shall be processed in accordance with the CDC provisions in effect as of the date of approval of this Ordinance; provided, however, in the event of any disagreement between the Developer and Town Staff as to the applicable process, including but not limited to what constitutes a "minor" vs. "major" change to the Final PUD Approval, the Developer shall be entitled to have the dispute resolved via a Class 2 application to determine the applicable process for the proposed amendment or change. If it is

determined pursuant to the Class 2 application process that the change is not “minor,” the Developer shall be required to submit a Class 5 application for the proposed Final PUD Approval amendment.

- d. *Encroachments.* The Town shall grant to the Developer easements for certain building overhangs and encroachments identified in the Major PUD Amendment Application as provided in the Amended and Restated Development Agreement. In the event additional encroachments are determined to be proposed as disclosed in the building permit application, or are subsequently determined to exist, Developer shall be required to submit for additional encroachment approvals. Town Staff will determine the appropriate process to remedy any such additional encroachment. Any dispute as to such process may be resolved in the same manner described above in subsection (c). In the event that the Town approves any such additional encroachment, which is not guaranteed, the Town Attorney will determine the appropriate legal instrument to document such approval.
- 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, access, 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. Special events or use of the plaza areas outside of the scope of the Plaza Agreement are otherwise processed pursuant to the CDC.
- h. *Employee Housing Requirements.* The Employee Housing Restriction shall control over any conflicting provisions of the CDC.
- i. *Condominium Hotel Regulations.* The Hotel Covenant is approved. Section 17.6.3 of the CDC does not apply but some of its current provisions have been expressly incorporated into the Hotel Covenant as contractual terms. Without limiting the foregoing, unit-owners’ participation in the hotel management and marketing program shall be strongly encouraged but not mandated, and the use of lodge and efficiency lodge units as the primary residence of the owner shall not be prohibited.
- j. *Road and Driveway Grades.* Design variations to road and driveway grades are approved as shown in the Major PUD Amendment Application.

Section 3. Conditions. 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 the Town Property pursuant to the Replat to create the Property and the Town Open Space Parcel and the rezoning of the Replacement Town Property. If the Replat and rezoning are not approved by majority vote of the Town Council 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 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 Town and Developer shall enter into the Amended and Restated Development Agreement, attached hereto as Exhibit B-1.

3.4. **Public Benefits.** The Developer agrees to provide the following as “Public Benefits,” as that term is defined by the CDC:

Table 8. Public Benefits.

Item	Value	Notes
Onsite deed restricted housing an additional 1 employee apartment and 18 dormitory units that sleep up to 3 employees	\$9,950,250	
Mitigation Payment	\$996,288	Note requirements for additional payment per employee after the second anniversary of Certificate of Occupancy
48 Public Parking Spaces	\$4,800,000	
Hotel Covenant		
<ul style="list-style-type: none"> 50 dedicated hotel rooms 		
<ul style="list-style-type: none"> 5 star luxury hotel operator assured via the hotel covenant 		See hotel covenant
<ul style="list-style-type: none"> Furniture Package 		See hotel covenant
<ul style="list-style-type: none"> Hotel Operator and amenity space requirements 		See hotel covenant
Westernmere Façade Improvements	\$75,000	
Shuttle service to the Montrose and Telluride airports for hotel guests and employees		
Village Pond Improvements Payment	\$250,000	
Public Restroom	\$154,781	
Conference Room Space - use for the public at market rates	n/a	
Public Access from Port Cochere to See Forever Plaza through the building (easement)	\$75,000	
Valet parking	n/a	
Various easements (like the See Forever and town access to See Forever)	n/a	
Additional 38 Lodge Units	n/a	

*Other than the cash payments, the values listed above are estimates and are for illustrative purposes only. The Developer has agreed to provide these public benefits regardless of whether the actual cost is more or less than listed in Table 8.

In addition to the items listed above in Table 8, certain public improvements required to be constructed and dedicated to the Town under the 2010 PUD were considered to qualify as public benefits, which are noted as “**2010 Public Benefit**” in Table 10, below. Further, the Council finds certain additional public improvements listed under Table 10 may be considered as public benefits, and these items are noted as “**2023 Public Benefit**” in Table 10. Taken together, Council finds that these public benefits are adequate for purposes of CDC Section 17.4.12.

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

Table 9. Approved Public Amenities.

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

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	Items Also Considered Public Benefits
Plaza Improvements (See forever walkway and Shirana Area)	\$1,109,561	2010 Public Benefit
Trash Facility/ Enclosure on OS-3BR-2 (see development agreement in the event of an alternative location)	\$840,625	2010 Public Benefit
Fire Lane Improvements including snowmelt	\$189,871	2010 Public Benefit
Village Pond Improvements Payment	\$250,000	2023 Public Benefit
Stairway from the 89 lots to OS-3BR-2	\$150,000	
Snowmelting OS-3BR-2 for access and use	\$382,575	
Repaving OS-3BR-2	\$276,129	
“Village Center Improvements” that extend beyond the original boundary identified in the 2010 PUD	\$829,219	
Stairway to OS-3BR-2	\$150,000	2023 Public Benefit
Sidewalk from Shirana to Mountain Village Blvd.	\$81,146	2023 Public Benefit
A new sidewalk along MV Blvd including snowmelt and safety lighting	\$613,00	
Utility relocations/installation as approved by Town Council	\$2,500,000	
Repaving Mountain Village Blvd replacing a top course of asphalt over a 2,309 square yards of asphalt	\$79,213	
A four way stop sign at the porte cochere/Sunny Ridge Intersection	TBD	

The list of required public improvements and the estimated costs thereof will be reviewed by Town Staff and may be updated by Town Staff when construction drawings are complete. Other street improvements may be determined

necessary by the town following the town's review of final construction drawings for the project described by the subdivision application.

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 Manager, 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 approved by the Town Manager to be executed prior to issuance of a building permit.

The Town shall have the right, but not the obligation, to maintain any of the Public Improvements that are to be maintained by the Developer, in the event Developer fails to do so. If the Town causes any damage to any Public Improvements during the course of the Town's operations, then the Town shall be responsible for the costs and repairs necessitated by the Town's actions, provided that such repairs shall be made in the time and manner determined by the Town in its reasonable discretion, and further provided that nothing herein will be construed as a waiver of the Town's governmental immunity.

3.8. The 1997 Employee Housing Restriction outlined in Chapter 16.01 of the Code shall apply to the Employee Housing Unit with the following modifications as reflected in the form of deed restriction attached as an exhibit to the Amended and Restated Development Agreement:

- a. The deed restriction cannot be lost in foreclosure (lender subordination may be required).
- b. The 2 Employee Apartments, 18 Employee Dormitories and employee amenities 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 the Employee Housing Unit of 14,445 square feet, except that the floor area may vary between final design and building permit by 2%.

3.9. A deed restriction in substantially the same form as an exhibit to the Amended and Restated Development Agreement as Exhibit "D" 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 the Amended and Restated Development Agreement's exhibit and the recorded deed restrictions, the recorded version shall control.

3.10. The Employee Housing Unit must be constructed concurrently with the free-market portions of the Property.

3.11. The 50 Efficiency Lodge Units constructed as hotel rooms on the Property shall be condominiumized together with the lobby/reception area, front desk and associated office, and similar areas of the Project that are necessary for the operation of the hotel as a single condominium unit (the "**Hotel Facilities Unit**") and cannot be further condominiumized.

3.12. The Employee Housing Unit shall be owned by either the Owner (as defined in the Amended and Restated Development Agreement), or an Affiliate (as defined in the Amended and Restated Development Agreement) of the Owner, of the Hotel Facilities Unit, or the Hotel Operator (or both).

3.13. 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.

3.14. In the event that a five-star operator does not continue to operate and manage the hotel constructed on the Property and is not replaced with another five-star operator pursuant to Section 6.1.B of the Development Agreement, 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.

3.15 As provided in Section 2.4(i), 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 and subject to Section 2.4(i).

3.16. **Construction Mitigation.** The requirements of this Section 3.16 are in addition to all requirements of CDC Section 17.7.20. 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 any construction crane, if applicable, 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 insurance coverage of types and amounts customary to protect against tort liability arising in connection with the construction of similar projects in similar Colorado resort markets paid for by the Developer to protect such owners. A construction mitigation and related communications plan shall be submitted to Town staff for approval in order to mitigate construction impacts in the Project area. The construction mitigation plan shall include such elements reasonably determined necessary by Town Staff to protect persons and property and the continued use and operation of other nearby businesses and residences that may be impacted as determined by staff. The plan shall address, without limitation, (a) details concerning the management and maintenance of the construction area including Town property and the See Forever walkway, (b) provisions to avoid any interruption of waste services to the Village Center, including continuous access to existing trash buildings; (c) a traffic control plan under which at least one (1) lane of traffic on Mountain Village Blvd. shall remain open at all times, (d) support to neighboring properties including a complimentary vehicle and driver to assist residents and business owners during times when the entrances to their parking structures are being replaced and parking access is temporarily unavailable, (e) facilitating deliveries to merchants, and (f) such other requirements as Town Staff reasonably determines.

3.17. 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.

3.18. Upon submittal of a building permit application, in the event that encroachments are determined to exist other than those for which the Town has already agreed to grant the Developer easements or licenses pursuant to this Ordinance and/or the Development Agreement, Developer shall be required to submit for additional encroachment approvals in accordance with Section 2.4, approval of which is not guaranteed.

- 3.19. **Conditions of Building Permit.** Prior to issuance of any building permit, the Developer shall:
- a. Provide and obtain staff approval of the construction mitigation plan required by Section 3.16, above.
 - b. Comply with all conditions of building permit established by the DRB.
 - c. Relocation of EV installed, EV ready and EV capable parking spaces as close to garage entry as reasonably possible given engineering limitations relating to the provision of power to charging stations and also pursuant to the Fire Marshall's request.
 - d. Other conditions as set forth in the Amended and Restated Development Agreement.
 - e. Other conditions pursuant to the applicable building codes.

3.20. **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 Breezeway Improvements consistent with the Amended and

Restated Development Agreement and to the satisfaction of the Town or if the Westermere HOA fails to provide the written authorization and consent, the Developer shall instead pay to Westermere HOA the cost of completing said improvements as set forth in Exhibit "B-1" to the Amended and Restated Development Agreement pursuant to Section 5.1.8 of the Development Agreement.

- c. Coordinate a civic wayfinding program with Town staff.
- d. In the event encroachments are determined to exist other than those for which the Town has already granted written approval, Developer shall be required to submit for additional encroachment approvals in accordance with Section 2.4, approval of which is not guaranteed. All required agreements or instruments to document encroachment approvals shall be signed prior to issuance of the certificate of occupancy.
- 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.
- g. Other conditions as required by the DRB or as stated in the Amended and Restated Development Agreement.

3.21. 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.

3.22. 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.

3.23. 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.

3.24. A monumented land survey shall be prepared by a Colorado public land surveyor setting forth the maximum height of the building as constructed in USGS datum.

3.25. 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.

3.26. 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.

3.27. A depiction of the See Forever Easement will be added to the Replat, which is subject to ministerial edits by Town Staff prior to execution and recordation pursuant to Section 2 above.

3.28. 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.

3.29. Conditions of the DRB's final approval from December 1, 2022, that are not explicitly stated herein.

Section 4. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

Section 5. Effective Date. This Ordinance shall become effective 30 days following re-publication after second reading ("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 20th day of September, 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.

Section 8. Recordation. 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.

Section 9. Publication. 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 17th day of August 2023.


TOWN OF MOUNTAIN VILLAGE:

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



By: _____
Martinique Prohaska, Mayor

ATTEST:


Susan Johnston, Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this 20th day of September 2023.

TOWN OF MOUNTAIN VILLAGE:

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

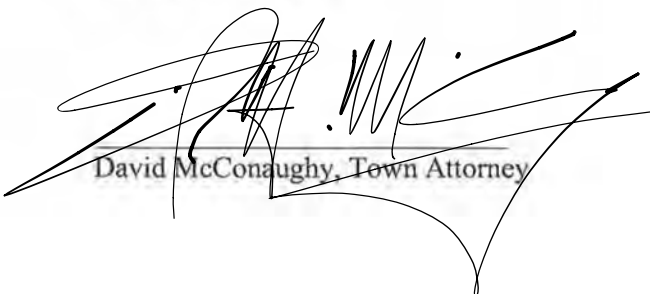


By: _____
Martinique Prohaska, Mayor

ATTEST:


Susan Johnston, Town Clerk

Approved as to Form:


David McConaughy, Town Attorney

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

1. The attached copy of Ordinance No. 2023-13 ("Ordinance") is a true, correct, and complete copy thereof.
2. The Ordinance was introduced, read by title, approved on first reading and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on August 17, 2023, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Marti Prohaska, Mayor	X			
Scott Pearson, Mayor Pro-Tem		X		
Harvey Mogenson		X		
Patrick Berry	X			
Peter Duprey		X		
Jack Gilbride	X			
Tucker Magid	X			

3. After the Council's approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on August 23, 2023 in accordance with Section 5.2(d) of the Town of Mountain Village Home Rule Charter.
4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on September 20, 2023. At the public hearing, the Ordinance was considered, read by title, and approved with amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Marti Prohaska, Mayor	X			
Scott Pearson, Mayor Pro-Tem		X		
Harvey Mogenson		X		
Patrick Berry	X			
Peter Duprey		X		
Jack Gilbride	X			
Tucker Magid	X			

5. After the Council's approval of the second reading of the Ordinance with amendments, the Ordinance was published in full within 7 days of final passage in the Telluride Daily Planet, a newspaper of general circulation in the Town, on September 27, 2023 in accordance with Section 5.2(f) of the Town of Mountain Village Home Rule Charter.
6. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this 20th day of September 2023.



 Susan Johnston, Town Clerk
 (SEAL)



Exhibit A

List of Major PUD Amendment Application Materials

2018-2019

2018-2019 PUD Amendment Applications

- 1. [Faint text]
- 2. [Faint text]
- 3. [Faint text]
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2019-2020

2019-2020 PUD Amendment Applications

2020-2021

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Exhibit A - Lot 109R Major PUD Amendment Application Materials

May 5, 2022, Design Review Board Recommendation to the Town Council regarding the Major PUD Amendment inclusive of the initial design review

1. Applicant Revised PUD Narrative dated 4.24.22
 - a. Applicant public benefits table
2. Applicant revised design narrative dated 4.20.22
3. Applicant Architectural Drawings dated 4.04.22 (G000, A-0.P1-5, A-0.00, A.1.01-13, A-2.01-02, A-2.11-12, A-2.21-23)
4. Existing Conditions Map
5. Utilities Plan dated 3.04.22
6. Site Grading plan dated 3.04.22
7. Trash enclosure plan dated 3.04.22
8. Landscape Plan dated 3.16.22
9. Letter of Intent, Six Senses
10. 109R Major PUD Amendment Proposed Hotel Operator, Six Senses, [Group Portfolio](#)
11. 109R Major PUD Amendment Proposed Hotel Operator, Six Senses, [Mood Boards](#)
12. 109R Major PUD Amendment Proposed Hotel Operator, Six Senses, [Mountain Village Visual Brief](#)
13. PUD Amendment Application dated 4.2.22
14. Conceptual Replat dated 3.06.22
15. Agent Letter dated 3.06.22
16. Public Improvements Cost Spreadsheet dated 3.07.33
17. Warranty Deed recorded 10.19.21

May 31, 2022, Design Review Board Recommendation to the Town Council regarding the Major PUD Amendment inclusive of the initial design review

1. Applicant revised design narrative dated May 19, 2022
2. Applicant Architectural Drawings revised 5.24.22 (G000, A-0.P1, C2.1, C2.3-.4, C3,A111, L100, L101, L401, L501, LS-401, LS-501, A-0.00, A.1.01-.13, A-2.01-.04, A-2.08-.09, A-2.11-.12, A-2.21-.23, A-3.00)
3. Proposed Subdivision Exhibit
4. Existing Conditions Map
5. Conceptual Replat dated 3.06.22
6. Summary of Community Benefits dated 4.02.22
7. Draft Development Agreement Redlin dated 4.02.22
8. Easements to be modified, Created or Extinguished dated 3.17.22
9. Initiation Letter, Lambert and Associates dated 3.03.22
10. Subdivision Application dated 3.11.22
11. 2007 Geotech Report from Buckhorn Geotech
12. Public Improvements Cost Spreadsheet dated 3.17.22
13. Application Materials
 - a. Warranty Deed Dated 10.14.21
 - b. Agent letter naming Ankur Patel Agent for Tiara Telluride dated 3.06.22
 - c. DRB Application dated 3.01.22
 - d. Title Insurance Commitment, Fidelity National Trust dated 10.14.21
 - e. Major PUD Amendment Application dated 3.01.22

June 16, 2022, Town Council consideration on first reading of an Ordinance. This was continued to August 18, 2022.

1. Application Materials
 - a. DRB Design Review Application dated 3.01.22
 - b. PUD Amendment Application date 3.01.22
 - c. Drive Aisle Reduction Fire Marshal Approval dated 3.31.22
 - d. Conceptual Replat dated 3.07.22
 - e. Agent letter dated 3.06.22
 - f. Initiation Letter, Lambert and Associates dated 3.03.22
 - g. 2007 Geotech Report from Buckhorn Geotech
 - h. Title Insurance Commitment, Fidelity National Trust dated 10.14.21
 - i. Subdivision Narrative dated 3.17.22
 - j. Trash Enclosure Design Drawing A111 dated 3.04.22
 - k. Warranty Deed recorded 10.19.21
2. PUD Narrative, dated 6.7.22
3. Design Narrative, dated 6.7.22
14. Architectural Drawings, dated 6.7.22 (G-000, A-0.P1, C2.1, C2.3-4, C3, A111, L-100, L-101, L-401, L-501, LS-401, LS-501, A-0.00, A.1.01-.13, A-2.01-.04, A-2.08-.09, A2.10-.11, A-2.11-.12, A-2.21-.23, A-3.00)
4. Public benefits spreadsheet dated 6.7.22
5. Public improvements cost dated 6.7.22
6. Height Analysis submitted 6.07.22
 - a. A1-12 Average Height Plan
 - b. Elevations with Max Height 1
 - c. Elevations with Max Height 2
 - d. Point UU Comparison
7. Power Point Presentation dated 6.1.6.22

August 18, 2022 Continued first reading of an ordinance and ratification of consent to a major subdivision application by the Town Council that includes Village Center active open space. First reading continued to the November 17, 2022.

1. Comprehensive Comparison 2010 to 2022 PUD Dev agreement 8.7.22
2. Design Narrative Summary 8.7.22
3. Architectural Drawings, dated 8.8.22 (G-000, G-001-003, C2.1-3, C3.1, LO.02, L1.01-04, L2.01-03, L4.01, A-0.00, A0.P1-P5, A-1.00-.12, A-2.00-.05, A-2.21-.24, A-3.00, A111, E.100-102, E.200-201)
4. 3D Model revised 8.8.22
5. Subdivision Narrative dated 8.9.22
6. Geotechnical report dated 8.7.22
7. Combined Topo and Boundary Survey dated 2.10.22
8. Conceptual Replat dated 3.7.22
9. Utility Exhibit
10. Below Grade use exhibit
11. Six Senses Letter of intent dated 4.12.22
12. Executive Project Summary dated 8.8.22
13. 3D Model revised 8.8.22
14. Drive Aisle Reduction letter dated 3.31.22
15. Turning Template Exhibit C2.3 dated 8.08.22
16. Application Materials

- a. PUD Amendment application rev 8.9.22
- b. Title Insurance Commitment, Fidelity National Trust dated 10.14.21
- c. Agent letter dated 3.06.22
- d. Warranty Deed Dated 10.14.21

November 17, 2022 Continued First Reading of an ordinance continued to the January 19, 2022 regular Town Council.

- 1. No materials submitted

December 1, 2022 DRB meeting to provide recommendations to Town Council on the major subdivision, rezone and final design review.

- 1. Applicant submittal received 11.7.22
 - a. Attachment 1 -Revised design narrative dated October 21, 2022
 - b. Attachment 2 -Architectural Drawings dated 10.21.22 (G-000, G-001, G-002, C2.1, C3.1, C4, C5, L0.02, L1.0-.04, L2.01-.03, L4.01, A-0.00, A-0.P1-P5, A1.01-.12, A2.00, A-2.01-.05, A-2.10, A-2.21-.23, A-3.00, L2.04-.05, E.100-102, E.200-202, A111)
 - c. Attachment 4 – Construction Mitigation dated October 20, 2022
 - d. Attachment 5 – Applicants response to referrals
 - e. Attachment 6 – Town Council Executive Summary dated August 8, 2022
- 2. Construction Mitigation Plan dated 10.20.22 submitted 11.7.22
- 3. Applicant response to referral comments dated 11.21.22
- 4. Town Council Executive Summary dated 8.8.22 submitted 11.7.22
- 5. Application Materials
 - a. Agent letter dated 3.06.22
 - b. Warranty Deed Dated 10.14.21
 - c. DRB Design Review Application dated 3.01.22
 - d. Title Insurance Commitment, Fidelity National Trust dated 10.14.21
 - e. PUD Amendment Application dated 3.01.22

January 19, 2023 First reading of an ordinance regarding the major PUD amendment integrating the subdivision, rezone and final design review. Council voted 6-1 to direct staff to prepare a **Resolution to deny** the Ordinance to be evaluated at the March 16, 2023 regular Town Council meeting.

- 1. Application Cover sheet received 1.10.23
- 2. Applicant design narrative received 1.10.23
- 3. Design Variations Narrative received 1.10.23
- 4. Applicant Architectural Drawings
 - a. Design Docs received 1.10.23 (G-000, 001, 002, G003, L0.02, L1.01-.04, L2.01-.03, L4.01, C2.1,C3.1, C4-6, A-0.00, A-0.P1-P5, A-1.0.-12, A-2.00-.05, A-2.05, A-2.10, A-2.21-.24, A-3.00, A111, E.100-102, E.200-201)
 - b. Construction Mitigation received 1.10.23
 - c. Glass specification received 1.10.23
 - d. Exhibits and Traffic Study received 1.10.23
 - e. Gas Regulator Exhibit received 1.10.23
 - f. Switchgear Location Exhibit received 1.10.23
 - g. Existing Conditions Survey received 1.10.23
 - h. Model Link <https://autode.sk/3GrT1tR>
- 5. Applicant supplement response to questions dated 1.2.23

6. Applicant supplement response to questions dated 1.10.23
7. Geotechnical report dated 8.04.22
8. Density certificate #27
9. Final DRB Condition Responses received 1.10.23
10. Lot 109R Combined Topo and Boundary

March 16, 2023 Town Council hearing, Consideration of a Denial Resolution Regarding a Major PUD Amendment. Council voted unanimously to continue this item to June 15, 2023.

1. Construction Mitigation Plans received 2.16.23 (named with 2.14.23 date but drawing date shows 12.15.22)
2. Response to Town Staff dated 2.14.23
3. Supplemental Traffic Study dated 2.14.23
4. Exhibits Update 3.05.23
5. Summary- Final Community Benefits Cost Analysis with area diagram dated 3.05.23
6. Parking Memo dated 3.05.23

June 15, 2023 – The motion for denial was withdrawn. This item was continued to the August 17, 2023 regular Town Council Meeting.

First Reading Submittal dated May 2, 2023

- Design Narrative
- Design Variations
- Replat and Rezone
- Design Documents
- Final DRB Approved Design Documents with Cloud Revisions
- Exhibits
 - 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 dated August 4, 2022

Legal Submittal – staff edits shown in red dated May 5, 2023

Consolidated Application Narrative for Major PUD Amendment, Major Subdivision and Rezoning

- Amended and Restated Development Agreement
- Amended and Restated Hotel Covenant
- Easement and License Documents
- Easement Amendment (Plaza Usage)
- Easement Amendment (Permanent Structures)
- Easement Amendment (Vehicular Access)
- Easement Agreement (Utilities)
- License Amendment/Partial Termination (Utilities)
- Termination of Easement (Mountain Village Boulevard Work)
- Termination of Easement (Pedestrian Access)

Design Drawing Supplement dated June 1, 2023, Edits clouded

Updated Materials provided in the packet listed below (may have earlier versions listed above)

Development Agreement dated June 12, 2023

17. Employee Housing Restriction dated June 12, 2023
18. Easement Amendment Plaza Use dated April 30, 2023
19. Easement Amendment Permanent Structures dated April 30, 2023
20. Easement Amendment Vehicular Access dated April 30, 2023
21. Easement Amendment Utilities dated April 27, 2023
22. License Agreement dated May 1, 2023

August 17, 2023 First reading of an ordinance regarding the major PUD amendment and First reading of an ordinance approving a major subdivision, Density Transfer and Rezone.

August 17, 2023

Agency letter dated March 6, 2022

Title Report 150-F17796-22 effective April 6, 2023

Warranty Deed dated October 14, 2021

First Reading Applicant Design Submittal dated July 19, 2023

[Design Table of Contents](#)

- Design Variations
- Design Narrative
- Replat and Rezone
- Design Documents dated July 19, 2023

Architectural Design Documents dated July 19, 2023

01 GENERAL

G-000 COVER SHEET

G-001 FLOOR AREA GROSS

G-002 NET FLOOR AREA
G-003 PLAN DIAGRAMS

02-CIVIL

C2.1 SITE GRADING WITH GARAGE ACCESS
PROFILE
C2.2 SITE GRADING WITH PORTE COCHERE LEVEL
C2.3 PROFILES X1
C2.4 SNOWMELT DIAGRAM
C3 UTILITY PLAN
C3.1 UTILITY & STORM DRAIN PLAN
C4 CONSTRUCTION MITIGATION PLAN
C5 CONSTRUCTION MITIGATION PLAN
C6 AREA OF POTENTIAL WORK IN TOWN RIGHT-OF-WAY

03-LANDSCAPE

L0.02 EXISTING TREE PLAN & REPORT
L1.01 PLAZA LANDSCAPE PLAN
L1.02 PLAZA LANDSCAPE MATERIALS
L1.03 LANDSCAPE FLOORS 2-5
L1.04 LANDSCAPE FLOORS 6-7
L2.01 PLAZA LANDSCAPE BOULDER PLAN
L2.02 SNOWMELT DIAGRAM
L2.03 PLAZA IRRIGATION PLAN
L2.04 PLAZA OUTDOOR LIGHTING DIAGRAM
L2.05 OUTDOOR LIGHTING DIAGRAM FLOORS 6-7

L4.01 PLAZA PLANTING PLAN

05-ARCHITECTURAL

A-0.00 ARCHITECTURAL SITE PLAN
A-0.P1 PERSPECTIVE RENDERINGS
A-0.P2 PERSPECTIVE RENDERINGS
A-0.P3 PERSPECTIVE RENDERINGS
A-0.P4 PERSPECTIVE RENDERINGS
A-0.P5 PERSPECTIVE RENDERINGS

A-1.00 FLOOR PLAN - LEVEL G3 OVERALL
A-1.01 FLOOR PLAN - LEVEL G2 - OVERALL
A-1.02 FLOOR PLAN - LEVEL G1 PLAZA - OVERALL
A-1.03 FLOOR PLAN - LEVEL 1/G1A PARKING - OVERALL
A-1.04 FLOOR PLAN - LEVEL 1 MEZZANINE - OVERALL
A-1.05 FLOOR PLAN - LEVEL 2 - OVERALL
A-1.06 FLOOR PLAN - LEVEL 3 - OVERALL
A-1.07 FLOOR PLAN - LEVEL 4 - OVERALL
A-1.08 FLOOR PLAN - LEVEL 5 - OVERALL
A-1.09 FLOOR PLAN - LEVEL 6 - OVERALL
A-1.10 FLOOR PLAN - LEVEL 7 - OVERALL
A-1.11 OVERALL ROOF & MAX HEIGHT PLAN
A-1.12 AVERAGE HEIGHT PLAN
A-2.00 EXTERIOR MATERIAL ELEVATIONS
A-2.01 EXTERIOR MATERIAL ELEVATIONS

A-2.02 NORTH & EAST ELEVATIONS
A-2.03 SOUTHEAST & WEST ELEVATIONS
A-2.04 3D MAX HEIGHT WITH EXISTING TOPO
A-2.05 3D MAX HEIGHT WITH PROPOSED TOPO
A-2.10 GARAGE UTILITY DIAGRAM
A-2.21 EXTERIOR ELEVATION·SNOW MELT STUDY
A-2.22 EXTERIOR ELEVATION·SNOW MELT STUDY
A-2.23 TYPICAL DETAILS, WINDOW LEGEND AND DOOR SCHEDULE
A-2.24 TYPICAL DETAILS
A-3.00 BUILDING SECTION
A-111 OS-3BR2-1R TRASH HOLDING PLANS & ELEVATIONS

08-ELECTRICAL

E.100 LIGHTING SITE PLAN
E.101 PHOTOMETRIC SITE PLAN X X X X
E.102 POOL DECK & BALCONY PHOTOMETRIC
E.200 PHOTOMETRIC SCHEDULES
E.201 PHOTOMETRIC CUTSHEETS

• Final DRB Approved Design Documents with Cloud Revisions dated October 21, 2022

01 GENERAL

G-000 COVER SHEET
G-001 PUBLIC BENEFITS DIAGRAM
G-002 PUBLIC BENEFITS DIAGRAM

02-CIVIL

C2.1 SITE GRADING WITH GARAGE ACCESS PROFILE
C2.3 TURNING TEMPLATE EXHIBIT
C2.4 SNOWMELT DIAGRAM
C3 UTILITY PLAN
C3.1 UTILITY & STORM DRAIN PLAN
C4 CONSTRUCTION MITIGATION PLAN
C5 CONSTRUCTION MITIGATION PLAN

03-LANDSCAPE

L0.02 EXISTING TREE PLAN & REPORT
L1.01 PLAZA LANDSCAPE PLAN
L1.02 PLAZA LANDSCAPE MATERIALS
L1.03 LANDSCAPE FLOORS 2-5
L1.04 LANDSCAPE FLOORS 6-7
L2.01 PLAZA LANDSCAPE GRADING PLAN
L2.02 SNOWMELT DIAGRAM
L2.03 PLAZA IRRIGATION PLAN
L2.04 PLAZA OUTDOOR LIGHTING DIAGRAM
L2.05 OUTDOOR LIGHTING DIAGRAM FLOORS 6-7 X
L4.01 PLAZA PLANTING PLAN

05-ARCHITECTURAL

A-0.00 ARCHITECTURAL SITE PLAN
A-0.P1 PERSPECTIVE RENDERINGS
A-0.P2 PERSPECTIVE RENDERINGS

A-0.P3 PERSPECTIVE RENDERINGS
A-0.P4 PERSPECTIVE RENDERINGS
A-0.P5 PERSPECTIVE RENDERINGS
A-1.01 FLOOR PLAN - LEVEL G2 - OVERALL
A-1.02 FLOOR PLAN - LEVEL G1 PLAZA - OVERALL
A-1.03 FLOOR PLAN - LEVEL 1/G1A PARKING - OVERALL
A-1.04 FLOOR PLAN - LEVEL 1 MEZZANINE - OVERALL
A-1.05 FLOOR PLAN - LEVEL 2 - OVERALL
A-1.06 FLOOR PLAN - LEVEL 3 - OVERALL
A-1.07 FLOOR PLAN - LEVEL 4 - OVERALL
A-1.08 FLOOR PLAN - LEVEL 5 - OVERALL
A-1.09 FLOOR PLAN - LEVEL 6 - OVERALL
A-1.10 FLOOR PLAN - LEVEL 7 - OVERALL
A-1.11 OVERALL ROOF & MAX HEIGHT PLAN
A-1.12 AVERAGE HEIGHT PLAN
A-2.00 EXTERIOR MATERIAL ELEVATIONS
A-2.01 EXTERIOR MATERIAL ELEVATIONS
A-2.02 NORTH & EAST ELEVATIONS
A-2.03 SOUTHEAST & WEST ELEVATIONS
A-2.04 3D MAX HEIGHT WITH EXISTING TOPO
A-2.05 3D MAX HEIGHT WITH PROPOSED TOPO
A-2.10 GARAGE UTILITY DIAGRAM
A-2.21 EXTERIOR ELEVATION·SNOW MELT STUDY
A-2.22 EXTERIOR ELEVATION·SNOW MELT STUDY
A-2.23 TYPICAL DETAILS, WINDOW LEGEND AND DOOR SCHEDULE
A-3.00 BUILDING SECTION
A-111 TRASH ENCLOSURE FLOOR PLANS & ELEVATIONS

08-ELECTRICAL

E.100 LIGHTING SITE PLAN
E.101 PHOTOMETRIC SITE PLAN
E.102 POOL DECK & BALCONY PHOTOMETRIC
E.200 PHOTOMETRIC SCHEDULES
E.201 PHOTOMETRIC CUTSHEETS
E.202 PHOTOMETRIC CUTSHEETS

- Exhibits
 - 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
- Geotech Report

Construction Mitigation Table of Contents

- Construction Mitigation Narrative
- Construction Mitigation Diagrams
- C-1 PROTECTED PEDESTRIAN ACCESS & LOT 109R2 CONSTRUCTION FENCING/BARRICADE & ACCESS
- C-2A TEMPORARY CRANE SWING AND OS-3BR2 PHASING
- C-2B 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

Legal Applicant Submittal dated July 19, 2023 revised October 8, 2023
Consolidated Application Narrative for Major PUD Amendment, Major
Subdivision and Rezoning

- Amended and Restated Development Agreement
- Amended and Restated Hotel Covenant
- Easement and License Documents
- Easement Agreement (Pedestrian and Maintenance Access) – See Forever
- Easement Amendment (Plaza Usage)
- Easement Amendment (Permanent Structures)
- Easement Amendment (Vehicular Access)
- Easement Agreement (Utilities)
- License Amendment/Partial Termination (Utilities)
- Termination of Easement (Mountain Village Boulevard Work)
- Amendment to Pedestrian Access Easement Reserved in Deed to Tract 89-A

Exhibit B

List of Approval Documents

1. Amended and Restated Development Agreement in the form attached hereto as Exhibit B-1
2. Amended and Restated Amended and Restated Declaration of Covenants and Restrictions (Hotel Operator and Hotel Amenities, Facilities and Services Covenant) in the form attached hereto as Exhibit B-2
3. Employee Housing Restriction (as defined in and attached to the Amended and Restated Development Agreement as Exhibit "D")
4. The Lot 109R Project Easement Amendments (defined in Section 8.3 of the Amended and Restated Development Agreement and attached thereto as Exhibit "E-1" through Exhibit "E-5" inclusive):
 - a. Exhibit "E-1" - First Amendment to Easement Agreement (Plaza Usage)
 - b. Exhibit "E-2" - First Amendment to Easement Agreement (Permanent Structures)
 - c. Exhibit "E-3" - First Amendment to Easement Agreement (Vehicular Access)
 - d. Exhibit "E-4" - Termination of Easement Agreement (Mountain Village Boulevard Work)
 - e. Exhibit "E-5" - First Amendment to Easement Agreement (Utilities)
5. Lot 109R Utility License Amendment (defined in Section 8.4 of the Amended and Restated Development Agreement and attached thereto as Exhibit "E-6")
6. Tract 89-A Pedestrian Access Easement Amendment (defined in Section 8.4 of the Amended and Restated Development Agreement and attached thereto as Exhibit "F")
7. See Forever Easement (as defined in and attached to the Amended and Restated Development Agreement as Exhibit "G")

Exhibit B-1

Amended and Restated Development Agreement

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

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

THIS AMENDED AND RESTATED 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 liability 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**” or “**CCIOA**” 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, but only including such hearings occurring after the DRB meeting of December 1, 2022, 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.

F. “**Charter**” means the Town of Mountain Village Home Rule Charter, as amended.

G. “**CCIOA Condominium Unit**” shall mean a Unit Owner’s fee simple interest in and to an Individual Airspace Unit, together with an undivided interest in the Common Elements appurtenant to the Individual Airspace Unit, together with an undivided interest in the Common Elements appurtenant to the Individual Airspace Unit and shall include the Hotel Facilities Unit, Residential Condominium Units, Employee Housing Unit, and Commercial Condominium Units

H. “**Code**” shall mean the Mountain Village Municipal Code, inclusive of the CDC, as amended.

I. “**Commercial Condominium Units**” shall mean each of those particular CCIOA Condominium Units specifically designed for commercial uses by the Project Condominium Documents and the Town Approvals.

J. “**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.

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 and its successors and assigns.

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 (as defined in 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 (as defined in 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 (as defined in 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 CCIOA Condominium Unit and encumbered by the Employee Housing Restriction.

T. “**Final Approval**” shall have the meaning for such term set forth in Section 10.5.

U. “**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”.

V. “**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).

W. “**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.

X. “**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 CCIOA Condominium Unit which may be owned by one entity that may change from time-to-time.

Y. “**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 (less than 30 consecutive days) usage purposes as part of the Rental Management Program.

Z. “**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.

AA. “**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 (less than 30 consecutive days) 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.

BB. “**Individual Airspace Unit**” means that portion of a CCIOA Condominium Unit designated for separate ownership by a Unit Owner as depicted on the Condominium Map included within the Project Condominium Documents.

CC. “**Lodge Units**” shall mean each of those Residential Condominium Units included in the Project that are zoned and designated as a Lodge Unit (as defined in the CDC) in the Town Approvals.

DD. “**Official Records**” shall mean the Official Records of the Clerk and Recorder for San Miguel County, Colorado.

EE. “**Owner**” shall mean the owner of the Property. Upon recordation of the Project Condominium Documents “Owner” shall mean and refer to each of the Unit Owners of the Condominium Units created thereby.

FF. “**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.

GG. “**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.

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

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

JJ. “**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.

KK. “**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 from time to time which are intended to promote a high standard of quality. The Project Operational Standards are intended to be followed for purposes of promoting the use and operation of the Project as a full-service hotel within the Hotel Facilities Unit and those Residential Condominium Units participating in the Rental Management Program. When developing, 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 from seasonally given due consideration to winter periods, summer periods and shoulder seasons between winter and summer periods.

LL. **“Property”** shall mean Lot 109R2, Town of Mountain Village, San Miguel County, Colorado according to the Replat.

MM. **“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.

NN. **“Replacement Town Property”** shall have the meaning for such term set forth in Section 4.1 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.

OO. **“Replat”** shall mean that certain replat entitled “Replat of Lot 109R and Tract OS-3BR-2R-1” recorded *[concurrently with this Agreement] [or] [on _____, 2023 under Reception No. _____ in the Official Records]*, establishing the boundaries of the Property.

PP. **“Residential Condominium Units”** shall mean those particular CCIOA 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.

QQ. **“Rezone”** shall mean the rezoning of the Property to PUD pursuant to the Town Council Approval Ordinance.

RR. **“Town”** shall mean the Town of Mountain Village, Colorado.

SS. **“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.

TT. **“Town Council”** shall mean the Town of Mountain Village Town Council.

UU. “**Town Council Approval Ordinance**” shall mean Ordinance No. _____ adopted by the Town Council, approving the Major PUD Amendment and Conveyance of Portions of Village Center for the Project, which was recorded on _____, 2023 at Reception No. _____ in the Official Records.

VV. “**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.

WW. “**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.

XX. “**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.

YY. “**Town Open Space Parcel**” means Tract OS-3BR-2R-1R of the Replat.

ZZ. “**Unit Owners**” shall mean the respective owners, whether one or more persons, of fee simple title to each of the CCIOA Condominium Units.

AAA. “**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. The Town is the current, fee simple owner of Tract OS-3BR-2R-1, according to the replat recorded on _____, 2023, in Plat Book 1, Page _____ at Reception No. _____ in the Official Records (“**Tract OS-3BR-2R-1**”).

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. Consistent with CDC Section 17.3.10, Platted Open Space Requirements, replacement open space is not necessary as it relates to replatting portions of town owned village center open space for the purposes of this Application.

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 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, June 15, 2023 and August 17, 2023, at which the Town Council passed an ordinance on first reading conditionally approving the Application and set a hearing for second reading.

J. At a duly noticed and conducted public hearing on _____, 2023, the Town Council held the second reading with respect to the Town Approvals and conditionally approved the Application 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. Subject to Developer's compliance with the conditions of the Town Approvals including but not limited to this Agreement, 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 this 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.

3. **Recordation.** This Agreement, the Replat, Hotel Covenant, the Employee Housing Restriction, the deeds referenced in Section 4.2, the documents referenced in Section 6.3 and Section 6.4 shall be recorded, at Developer's expense, in the Official Records and shall run with the Property. The timing and order of recordation of all documents necessary to effectuate

the Town Approvals and this Agreement shall be determined by the Town Manager, with the reasonable approval of Applicant, pursuant to Section 2 of the Town Council Approval Ordinance.

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 shall convey certain portions of Tract OS-3BR- 2R-1 to Developer, the resulting parcels being the Property and the Town Open Space Parcel and the ROW Tract. 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 both (a) those portions of Lot 109R immediately adjacent to Tract OS-3BR-2R-1 being incorporated by the Replat into and made a part of the Town Open Space Parcel, and (b) that portion of Lot 109R being approximately 81 square feet in size and identified on the Replat as “**ROW Tract**” (the “**ROW Tract**”). The property to be conveyed by the Town to Developer is referred to in this Agreement as the “**Contributed Town Property.**” The Contributed Town Property includes the Venting Parcel (defined below). The parties acknowledge and agree that the Replat describes and depicts (a) the Property (being Lot 109R as supplemented by the Contributed Town Property and exclusive of the Replacement Town Property); (b) the Town Open Space Parcel (being Tract OS-3BR-2R-1 as supplemented by the Replacement Town Property (exclusive of the ROW Tract) and exclusive of the Contributed Town Property; and (c) the ROW Tract.

4.2. Town/Developer Land Exchange.

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 being approximately 551 square feet in size located on the west end of Lot 109R and referred to in this Agreement as the “**Venting Parcel.**” The cost per square foot of land equates to \$194 per square foot for purposes of this transaction.

4.2.2 The closing of the exchange of the Contributed Town Property and the Replacement Town Property (“**Town/Developer Land Exchange Closing**”) shall occur simultaneously with the recordation of the Replat.

4.2.3 At the closing of the 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. In order to effectuate the conveyances of the Replacement Town Property and Contributed Town Property, at the closing of the land exchange:

i. Developer will convey to the Town by bargain and sale deed all its right, title and interest in and to the Town Open Space Parcel and the ROW Tract, which conveyance shall be made free and clear of all monetary liens and encumbrances other than taxes for the year 2023, a lien not yet due and payable, and subject only to those exceptions accepted by the Town in a current commitment for title insurance to be obtained from the Title

Company at Developer's sole cost and expense. Such commitment shall be for (x) the whole of the Town Open Space Parcel, and (y) the ROW Tract.

ii. The Town will convey to Developer by bargain and sale deed all its right, title and interest in and to the Property, which conveyance shall be made free and clear of all monetary liens and encumbrances and subject only to those exceptions accepted by the 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. Such commitment shall be for the whole of the Property.

C. Developer shall pay to the Town the Venting Parcel Purchase Price in immediately available funds.

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

E. 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.

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

G. The Parties acknowledge and agree that no real estate brokerage commissions shall become due and payable as a result of the completion of the Town/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. Hot Beds. In order to achieve the community purpose relating to the creation of "hot beds" in the Project, Developer agrees as follows:

A. Provision of Dedicated Hotel Rooms. 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.

B. Retention of a Hotel Operator. Developer expressly agrees 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. 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 or, if the Project Condominium Documents have been recorded, the Owner of the Hotel Facilities Unit, shall immediately find a similar five-star luxury brand Hotel Operator, subject to approval by the Town. In the event Developer or the Owner of the Hotel Facilities Unit, as applicable, is unable to contract with a five-star luxury brand Hotel Operator consistent with this Agreement, such party 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.

The Town agrees and acknowledges that the Condominium-Hotel Regulations set forth in Section 17.6.3 of the CDC do not apply to the Project because the subject property is not designated as a flag hotel site as described in CDC Section 17.6.3(B). Nevertheless, any application to change the Hotel Operator shall be reviewed by the Town under the standards set forth in CDC Section 17.6.3(D)(2). To the extent, if any, that such standards expressly conflict with the terms of the Town Approvals (including this Agreement), the latter shall control.

C. Hotel Operator and Hotel Amenities, Facilities and Services Covenant. 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 the Lodge 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 Unit Rental Agreement and final Hotel Covenant and any modifications or amendments, in each with proprietary and business terms redacted, to the Town for review and approval of compliance with the terms of this Agreement. In the event the Town determines there is non-compliance the Town shall provide written notice of such non-compliance and specify the modifications that must be made in order to achieve compliance, which notice shall be provided within thirty (30) days of receipt of the Rental

Management Program documents and any modifications or amendments and if no notice is timely received, such documents shall be deemed acceptable.

E. Standard Furnishing Package for All Lodge and Efficiency Lodge Units. Pursuant to the Hotel Covenant, Developer (and after the Project Condominium Documents are recorded the Owner of the Hotel Facilities Unit), 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 Cash Payment. 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. Developer agrees and acknowledges that the Property is subject to Chapter 16.01 of the Code, the Town of Mountain Village Employee Housing Restriction Chapter 16.01 (“Chapter 16.01”). Notwithstanding the provisions of Chapter 16.02 of the Code, regarding the 2006 Affordable Housing Restriction, that Chapter shall not apply to the Property. To the extent of any conflict between Chapter 16.01 and this Agreement (including the form of Employee Housing Restriction attached as Exhibit “D”), this Agreement shall control. 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 fulltime 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 5.1.3 above and the provisions of Section 5.1.4 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 5.1.2 above. In the event that the certified statement or statements indicate that the Project is employing less than the anticipated ninety (90) full-time equivalent 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, no less than 14,455 square feet in size, consisting of two (2) Employee Apartments, 18 Employee Dorms each consisting of no more than 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. The approximate total square footage can vary within a 2% range between final approval and the building permit submittal to account for design to construction design anomalies so long as there are no changes to the number of employee units provided.

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 Public Restrooms. 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 to be purchased by the owner and 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 6.3 below).

B. The requirements of this Section will be incorporated by 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. [Intentionally deleted.]

D. In addition, simultaneously with the issuance of the initial building permit, Developer shall pay the Town \$250,000.00.

5.1.7 Town Parking Spaces. Developer shall construct forty-eight (48) covered, garage parking spaces within the Project to be allocated for public parking pursuant to Section 6.1 below (“**Town Parking Spaces**”).

5.1.8 Westermere Breezeway Improvements. Developer shall improve the Westermere Breezeway and the associated path through such breezeway in substantial accordance with the depiction attached to this Agreement as Exhibit “B-2” (the “**Westermere Breezeway Improvements**”), 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 written authorization and consent, the Developer shall instead pay to Westermere HOA the cost of completing said improvements as set forth in Exhibit “B-1”. If the Town, Developer, and Westermere HOA all mutually agree in writing to a different approach, this Section 5.1.8 may be amended without triggering a requirement for a PUD Amendment.

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 CCIOA 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 including striping, 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. The Town Parking Spaces will be established in the Project Condominium as Common Elements.

6.1.2 Developer shall construct and make available, and, upon creation of the Condominium Project, the Project Association will 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 the Project Association, at the cost and expense of the Project Association. The Project Association may collect from users of the Town Parking Spaces all parking fees and other charges such as fines and towing fees (but not including alternative rates for special events, unless the same are charged for the use of the Heritage Parking Garage, and not including resort fees) 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 the Project Association, but, in any event, not more 20% in excess of than 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 or the Project Association, as applicable, 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 Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. The requirements of Section 6.1.2 and 6.1.3 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 and in similar caliber resort communities such as Aspen, Breckenridge, Crested Butte, Steamboat, Telluride or Vail (“**Market Rates**”). Developer, and upon creation of the Condominium Project, the Owner of the CCIOA 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 CCIOA 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 Valet Parking. Valet parking shall be provided by the Owner of the Hotel Facilities Unit (or Hotel Operator) or the Project Association for all of the tandem parking spaces and level G3 parking spaces, accessible via two (2) proposed vehicle elevators, as shown on the Final PUD Plans.

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. The Town and Developer will amend such Lot 109R Project Easements to reflect the reconfiguration of the Town Open Space, Property and Project and otherwise as provided in the “**Lot 109R Project Easement Amendments**” attached to this Agreement as Exhibit “E-1” through Exhibit “E-5”. The Parties also contemplate that certain additional necessary and suitable easements, licenses or leases for the benefit of Developer will be entered into relative to the Town Open Space and Mountain Village Boulevard for the construction of the Project prior to the issuance of the building permit as follows:

Lot 109R Project Easement	<u>Reception No.</u>	Timing for Grant/Amendment/Termination
First Amendment to Easement Agreement (Plaza Usage) recorded as Reception No. 417000		Replat
First Amendment to Easement Agreement (Permanent Structures) recorded as Reception No. 417001		Replat
First Amendment to Easement Agreement (Vehicular Access) recorded as Reception No. 417002		Replat
Termination of Easement Agreement (Mountain Village Boulevard Work) recorded as Reception No. 417003		Replat
First Amendment to Easement Agreement (Utilities) recorded as Reception No. 417004		Replat
Shoring, Grading, Excavation, Staging, Crane Swing		Building Permit
Road Right of Way Agreement *Encroachments into Mountain Village Blvd such as soil nails and to construct the Sidewalk Improvements		Building Permit

6.4. Easements etc. Benefiting Town and Encumbering the Property. In 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. The Town and Developer will amend such utility license to reflect the reconfiguration of the Town Open Space, Property and Project and otherwise as provided in the “**Lot 109R Utility License Amendment**” attached to this Agreement as Exhibit “E-6”. 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 amend 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 Public Easements

Authorized Uses

Timing for 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

Replat

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

Amendment of pedestrian access easement reserved in deed from The Telluride Company dated March 2, 1987 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 (the **“Tract 89-A Pedestrian Access Easement Amendment”** attached as Exhibit “F”)

Town will consent to and join in an Amendment executed by TSG Ski & Golf, LLC, as successor in interest to The Telluride Company that would provide for the easement’s automatic termination upon construction of the metal staircase on the Town Open Space Parcel at the southwest corner of the Property as shown on the Final PUD Plans and the opening of such staircase to the public

Subsequent to this Agreement and otherwise as determined by the Town Manager, with the reasonable approval of Applicant, pursuant to Section 3 above

Easement for Pedestrian Access and Access by Small Maintenance Vehicles (the **“See Forever Easement”** attached as Exhibit “G”)

*See Forever walkway

Subsequent to this Agreement and otherwise as determined by the Town Manager, with the reasonable approval of Applicant, pursuant to Section 3 above with provisions for final location of easement area to be determined at

		Recordation of Project Condominium Documents
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
Additional Pedestrian Access as shown on Final PUD Plans	*public access as shown on Final PUD Plans (including, for example and without limitation, from the Port Cochere to See Forever Plaza through the Hotel Facilities Unit)	Recordation of Project Condominium Documents

6.5. Pedestrian Access Easement Benefiting Parcels to East Across Mountain Village Boulevard. 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 agreed that they will deliver a fully executed Termination and Release of Easement Agreement for recording in the Official Records following Town Approvals.

7. Further Requirements by Developer.

7.1.1 Provision of Improvement Location Certificate.

A. 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. In the event encroachments are determined exist other than those for which the Town has agreed to grant to the Developer easements, Developer shall be required to submit for additional encroachment approvals in accordance with Section 2.4 of the Town Council Approval Ordinance.

B. 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 encroachment approvals by legal instrument acceptable to the Town, and no approvals are guaranteed. In the event encroachments are determined exist other than those for which the Town has agreed to grant to the Developer easements, Developer shall be required to submit for additional encroachment approvals in accordance with Section 2.4 of the Town Council Approval Ordinance.

7.1.2 Drainage System and Maintenance. The Project Condominium shall be responsible for the maintenance and repair of all drainage improvements on the Property and connecting to the Town's existing drainage system as indicated on the Final PUD Plan, or as may be modified and approved by the Town in connection with final construction documents. 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 Drainage Plan Details. Prior to the issuance of any building permits, Developer shall submit a drainage plan to address temporary dewatering during construction, the provision of sand and oil traps, drainage of the patios, drainage of the garage vents, drainage of the gutter system, waterproofing of the foundation 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. Permanent dewatering is prohibited.

7.1.4 Utility Provider Review and Approval of Utility Plans. 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 Composite Utility Plans. Prior to the issuance of any building permits, Developer shall submit a composite utility plan for Town review and approval that shows, both for permanent utility facilities and for temporary utility facilities during construction: (1) the proposed utility meter and utility pedestal locations with appropriate screening for the permanent facilities, (2) plans that conform to Town and utility company requirement for each applicable utility, and (3) utility provider approved utility and meter locations.

7.1.6 Venting Plans. 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 Window Design. Prior to the issuance of any building permits, Developer shall submit details on window design consistent with the Design Regulations.

7.1.8 Revised Geotechnical Reports and Design. 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 Grease Trap Plumbing Design. Prior to the issuance of any building permits, Developer shall submit engineering drawings for the plumbing system that includes grease traps prior to the issuance of a building permit 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 Colors and Materials. Prior to the issuance of any building permits, Developer will submit to Staff and DRB Chair a mock-up of all materials and colors. The Town will verify 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, and if they are not then the Town may require Developer to resubmit the mock-up and revise the materials and colors to conform with prior representations.

7.1.13 Final Exterior Door Designs. 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 Acknowledgment of Trash Facility. 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 dumpsters which serves all of the Village Center core. 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 so as to provide ongoing service during construction.

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-1”.

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 Landscape Plan. 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.

7.1.17 Utility Covenants.

A. The Developer shall adequately address facility sites, easements, and rights of access for electrical and natural gas utility service sufficient to ensure reliable and adequate service for the Property.

B. Any utility lines that are abandoned and not relocated shall be remediated appropriately by the Developer in accordance with the conditions of the building permit issued for the Project.

8. Public Improvements.

8.1. The “**Public Improvements**” required by this Agreement for development of the Project are listed on attached Exhibit “B-1,” and the estimated costs for construction of such improvements are set forth therein.

8.2. Developer’s Construction Obligation and Standards. 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. Construction Observation and Inspection.

8.3.1 Pre-Construction Meeting. Developer shall hold a pre-construction meeting with the Community Development Director, Public Works Director, 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 Construction Inspection by the Developer. Developer shall be responsible for ensuring that its engineer provides construction inspection services as necessary to allow, 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 Construction Observation by the Town. 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 8.5 below.

8.4. Completion of Public Improvements. Developer shall complete construction of, and obtain the Town's approval and acceptance of, all Public Improvements within five (5) years of commencement of construction of the Project (the "**Completion Date**").

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 "as-built" 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 Final Acceptance and Conveyance. 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 with the Public Improvements. The effective date of the bill of sale shall be known as the "**Final Acceptance Date.**"

8.6. Warranty. 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. Damage to Existing Facilities; Damage to Public Improvements. 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. The Town shall have the right, but not the obligation, to maintain any of the Public Improvements that are to be maintained by the Developer, in the event Developer fails to do so. If the Town causes any damage to any Public Improvements during the course of the Town's operations, then the Town shall be responsible for the costs and repairs necessitated by the Town's actions, provided that such repairs shall be made in the time and manner determined by the Town in its reasonable discretion, and further provided that nothing herein will be construed as a waiver of the Town's governmental immunity.

8.8. Performance Guarantee. 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 Exhibit "B-1" (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, or multiple irrevocable letters of credit (corresponding to each of the Public Improvements), 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 letters of credit shall be valid for at least two (2) months longer than the Completion Date for the Public Improvements, as defined in Section 8.4. 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. Notwithstanding and as an alternative to the foregoing, Developer may provide a letter of credit or other security, in a form subject to approval by the Town Manager, 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 may be addressed in a supplement to this Agreement approved by the Town Manager and executed prior to issuance of a building permit.

8.8.2 Developer Responsible for Actual Costs. 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 Exhibit "B-1" 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 Default. 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 Use of Performance Guarantee. 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. Reduction in Security Not Approval of Public Improvements. 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. Grading and Excavation. No grading or excavation shall occur until the Replat has been recorded, the Performance Guarantee has been provided for all Public Improvements, and the building permit for the entire Project has been issued.

10. Vested Rights.

10.1. Intent. 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. Site Specific Development Plan. 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. Vested Real Property Right. 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. Required Plan Notation. 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.

10.5. Duration. For purposes of this Agreement, the above-referenced vested real 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. Publication. 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. Reliance. Developer has relied upon the creation of such vested real property right in entering into this Agreement.

10.8. Future Legislation. 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. Conditions of Building Permit. 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:

- This Agreement shall have been approved by Town Staff and the Town Manager, signed by all required Parties, and recorded in the Official Records.
- The Town/Developer Land Exchange Closing shall have occurred and the deeds signed by the appropriate Parties and recorded in the Official Records.

- The deeds shall have been approved by Town Staff and the Town Manager, signed by all required Parties, and recorded in the Official Records.
- The See Forever Easement (defined in Section 6.4) shall have been recorded. The Tract 89-A Pedestrian Access Easement Amendment (defined in Section 6.4) shall have been recorded.
- The Lot 109R Project Easement Amendments (defined in Section 6.3) and Lot 109R Utility License Amendment (defined in Section 6.4) shall have been recorded.
- Exhibit “B-1” outlining the Performance Guarantee amounts 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.
- 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).
- Such portions of the Mitigation Payment to the Town per Section 5.1.2 as the Town may elect in its sole discretion to apply to housing mitigation, together with the One-Time Payment to the Town per Section 5.1.2 and the inclusion in the Project of the Employee Apartments and Employee Dorms and encumbrance of the Employee Housing Unit of which they will be a part with the Employee Housing Restriction attached to this Agreement as Exhibit “D,” shall, collectively, satisfy all housing mitigation requirements including, but not limited to, Code Sections, 7.3.9 and 17.9.7.
- The Town has approved design of snow melt and drainage systems per Section 5.1.6(A).
- Payment to the Town of \$250,000.
- Developer has provided either authorization and consent of Westermere HOA for the Westermere Breezeway Improvements 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 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.
- All DRB conditions of final approval have been addressed 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 and demonstrating that all structures, facilities and other components of the Project have been constructed within the platted boundaries of the Property except for those authorized to be placed outside of the Property within the boundaries of easements, 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.
- Developer has submitted to the Town a Class 3 Application for its sign plan.
- 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.
- All DRB conditions of final approval have been addressed to the satisfaction of Town Staff.
- Developer has paid all then-outstanding invoices from the Town.

13. Order of Recordation and Closing Instructions. The Town and Developer shall cooperate in good faith to prepare a joint closing instruction letter to a title company retained by Developer providing for the conditions, prerequisites, and the order of recording in the Official Records of all documents relevant to the Town Approvals, the Replat, and this Agreement, payments and disbursements among the parties, and such other matters as necessary to effectuate the terms of the Town Approvals and this Agreement.

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 in the Official Records 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 in the Official Records, 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. Indemnity. 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. Binding Effect. 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 including, upon creation of the Condominium Project, the applicable Owners. 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. Voluntary Agreement. 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. Modifications and Waiver. No amendment, modification or termination of this Agreement or any portion thereof shall be valid or binding unless it is in writing, dated subsequent to the date hereof and signed by each of the Parties hereto. No waiver of any breach, term or condition of this Agreement by any party shall constitute a subsequent waiver of the same or any other breach, term or condition.

14.10. Counterparts and Electronic Copies. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. 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 CCIOA 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, L.L.C.
Attn: Cynthia M. Stovall
675 15th St. #2300
Denver, CO 80202

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

14.13. Rights of Lenders. 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 (each, a “**Lender**”) and consents to the collateral assignment of this Agreement to any such Lender. 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, 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). A Successor by Foreclosure (defined below), in connection with a Foreclosure Event (defined below), shall be entitled to assume all of the rights and obligations of Developer under this Agreement and the Town shall recognize and otherwise permit such Successor by Foreclosure 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 a Successor by Foreclosure to assume any of the duties and obligations of Developer under this Agreement unless the Successor by Foreclosure takes fee simple title to the Project through a Foreclosure Event, in which case the Successor by Foreclosure shall be bound by the terms and conditions of this Agreement. A “**Foreclosure Event**” means: (a) foreclosure under a Developer Loan, whether by judicial action or pursuant to nonjudicial proceedings; (b) any other exercise by a Lender of rights and remedies (whether under the deed of trust securing the Developer Loan or under applicable law, including bankruptcy law) as holder of the Developer Loan and/or as beneficiary under the deed of trust, as a result of which any Successor by Foreclosure (as hereinafter defined) becomes owner of the Property; or (c) delivery by Developer to such Lender (or its designee or nominee) of a deed or other conveyance of Developer’s interest in Property in lieu of any of the foregoing. A “**Successor by Foreclosure**” means any party that becomes owner of the Property as the result of a Foreclosure Event. Notwithstanding anything to the contrary set forth in this Section, in no event shall the Successor by Foreclosure have any liability for sums due and payable under this Agreement prior to its acquisition of title to the Property. At the time of recording this Agreement, Developer shall provide proof satisfactory to the Town Attorney that the Property is free and clear of any liens, which may be in the form of the title commitment obtained by Developer for the property in

connection with the Town/Developer Land Exchange Closing pursuant to Section 4.2.3.B.ii, or if it is not free and clear then any existing lienholders as of that time shall be required to subordinate their interests.

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

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

14.18. Assignment. This Agreement may be assigned to the successors and assigns of Developer and to any lender in connection with a loan funding development of the Project; provided, however, such assignee shall provide its written consent and agreement to be bound by this Agreement, a copy of which consent shall be provided to the Town. However, any such assignment made after a building permit has been issued for the Project and prior to the time a certificate of occupancy has been issued for the Project shall not relieve Developer of any unsecured monetary obligations to the Town under the terms of this Agreement, unless the Town Manager has approved such assignment in writing, which assignment shall not be unreasonably withheld or delayed and shall be based upon the Town's determination that the assignee is not insolvent and has the financial capability to comply with all such obligations. In making such determination the Town shall reasonably consider the creditworthiness of the proposed assignee and ability to successfully complete construction of the Project, including the Public Improvements, based on a reasonable analysis of the proposed assignee's experience in a market and/or property type, hotel and mixed-use portfolio, cash equity, net worth and liquidity, access to

additional liquidity, debt maturities, and contingent liabilities, senior management experience reputation and lender exposure.

14.19. Appropriation. 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. Immunity. 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 Colorado
home rule municipality

By: _____
Martinique Prohaska, Mayor

Date: _____

Attest: _____

By: _____
Paul Wisor, Town Manager

Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

Acknowledged, subscribed and sworn to before me this _____ day of _____, 20__ by
Martinique Prohaska as the Mayor of Town of Mountain Village.

Witness my hand and official seal.

_____ My commission expires: _____
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

Acknowledged, subscribed and sworn to before me this _____ day of _____, 20__ by Paul
Wisor as the Town Manager of Town of Mountain Village.

Witness my hand and official seal.

_____ My commission expires: _____
Notary Public

DEVELOPER:

Tiara Telluride, LLC,
a Colorado limited liability company

By: _____
Printed Name: _____
Title: _____

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this ____ day of _____, 20__ by
_____ as _____ of Tiara Telluride, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Notary Public

My commission expires: _____

Exhibit "A"
Final PUD Plans

**Exhibit “B-1”
(Schedule of Improvements)**

*[Table to be inserted consistent with Table 10 (Public Improvements)
of Town Council Approval Ordinance.]*

Exhibit "B-2"
(Westermere Breezeway Improvements)

WESTEMERE BREEZEWAY VIEW



MOUNTAIN VILLAGE HOTEL

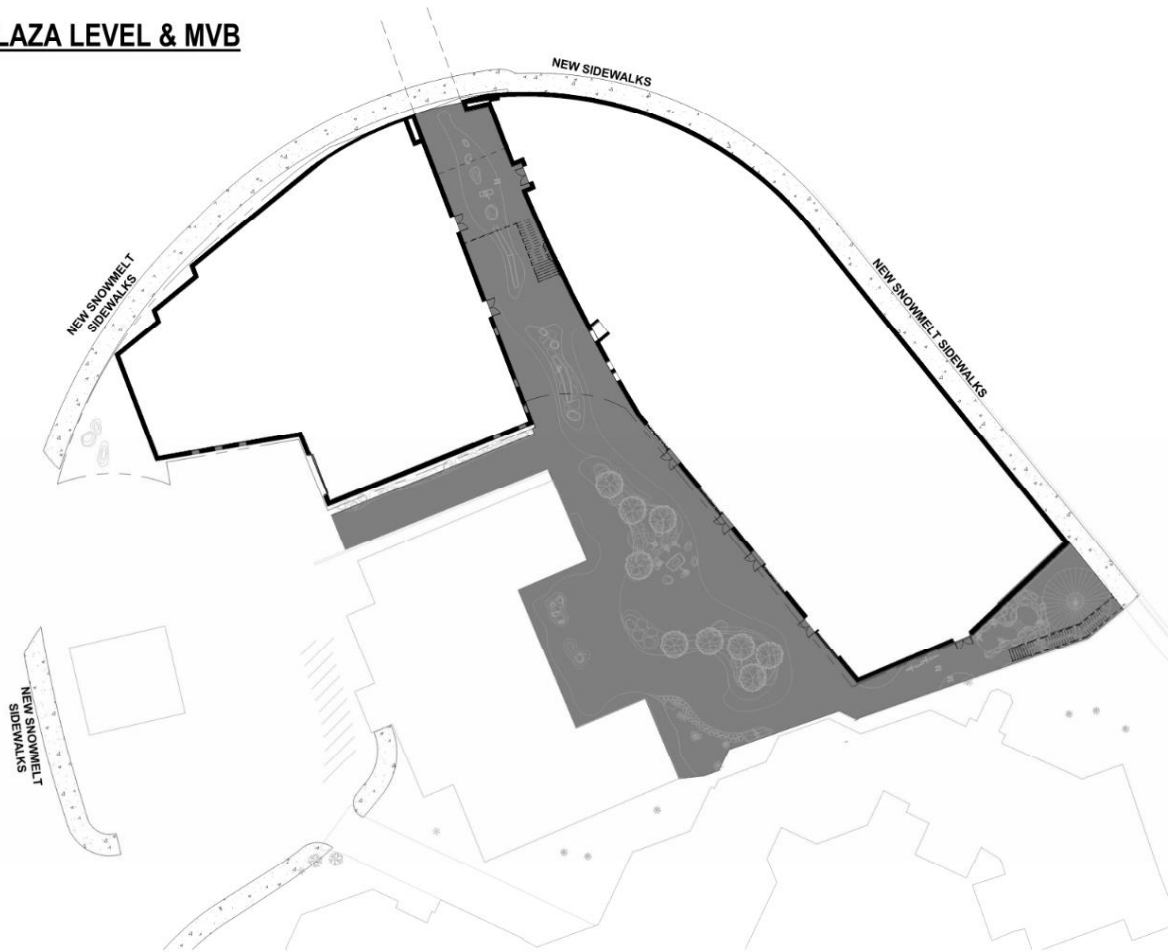


WESTEMERE IMAGE
11.18.2010

PROJECT NO: 08131.100

Exhibit "C"
(Area of Plaza Improvements)

PLAZA LEVEL & MVB



Note: Landscaping shown is to represent intent only. Final approval of revised landscape plans needs to be received prior to building permit.

Exhibit "D"

Employee Housing Restriction

EMPLOYEE HOUSING DEED RESTRICTION

UNIT ____, _____, 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, that was platted as Lot 109R2, Mountain Village ("**Lot 109R2**"), pursuant to "Replat of Lot 109R and Tract _____" recorded on _____, 20__, as Reception No. _____ with the Clerk and Recorder of San Miguel County, Colorado (the "**Official Records**") for which certain land use entitlements were approved as provided in that certain Ordinance No. 2023-__, recorded _____, 2023 as Reception No. _____ (the "**PUD Ordinance**") and that certain Amended and Restated Development Agreement recorded on _____, 20__, as Reception No. _____ (the "**Development Agreement**"), both in the Official Records; and

WHEREAS, concurrently with the recording of this Deed Restriction, Lot 109R2 has been subjected to a condominium regime;

WHEREAS, Unit _____ according to that certain Declaration of Covenants, Conditions and Restrictions for _____ recorded _____ as Reception No. _____ and that certain Map of _____ recorded _____ as Reception No. _____ in the Official Records (the "**Property**") is the Employee Housing Unit within such condominium regime referred to in the Development Agreement and is comprised of two Employee Apartments, 18 Employee Dorms and shared employee amenities; and

WHEREAS, pursuant to the PUD Ordinance and the Development Agreement, 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. **Definitions.** Defined all capitalized terms used but not otherwise defined in this Deed Restriction shall have the meaning for such terms set forth in the Development Agreement.

3. **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**”)¹, 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.

4. **Single Unit; Same Ownership.** The Property is condominiumized as one unit and the Parties agree that said unit cannot be subdivided or further condominiumized. The Parties further agree that the Property, as a single unit, must be owned by the Declarant or an Affiliate of the Declarant, an Affiliate of the owner of the Hotel Facilities Unit or an Affiliate of the Hotel Operator (or both).

5. **Binding Effect; Further Modifications.** This Deed Restriction shall inure to the benefit of the Town, the Town of Mountain Village Housing Authority, and their successors and assigns and shall be binding upon Declarant, its successors and assigns in title to the Property. This Deed Restriction shall constitute an agreement running with the Property until modification or release by mutual agreement of Declarant and either the Town or the Town of Mountain Village Housing Authority. The Parties agree that any further modifications to this Deed Restriction shall be effective only when made in writing, signed by the Declarant and by either the Town or the

¹ The 1997 Ordinance has been codified at Chapter 16.01 of the Mountain Village Municipal Code. In the event of any discrepancy between the published code and the recorded version of the 1997 Ordinance, the version recorded as Reception No. 329779 shall control, subject to the modifications herein.

Town of Mountain Village Housing Authority and recorded with the Clerk and Recorded of San Miguel County, Colorado.

6. **Additional Regulations.** This Deed Restriction is being granted by Declarant in connection with certain land use approvals as referenced in the recitals above. Any modifications may require an application under the applicable land use regulations of the Town of Mountain Village. Residents of the Property are subject to pre-qualification requirements and other rules and regulations of the Town of Mountain Village Housing Authority as may be amended or adopted from time to time.

IN WITNESS WHEREOF, the Parties have executed this Deed Restriction on the Effective Date above.

DECLARANT:

By: _____
 Name, Title

STATE OF _____)
) ss.
 COUNTY OF _____)

Subscribed, sworn to, and acknowledged before me on this ____ day of _____, 20__, by _____, as _____ of _____.

Witness my hand and seal.
 My commission expires:

 Notary Public

TOWN:
 TOWN OF MOUNTAIN VILLAGE, COLORADO

By: _____
 Mayor

ATTEST:

 Town Clerk

**Exhibit “E-1”
First Amendment to Easement Agreement (Plaza Usage)**

**Exhibit “E-2”
First Amendment to Easement Agreement (Permanent Structures)**

**Exhibit “E-3”
First Amendment to Easement Agreement (Vehicular Access)**

**Exhibit “E-4”
Termination of Easement Agreement (Mountain Village Boulevard Work)**

**Exhibit “E-5”
First Amendment to Easement Agreement (Utilities)**

**Exhibit “E-6”
Lot 109R Utility License Amendment**

**Exhibit “F”
Tract 89-A Pedestrian Access Easement Amendment**

**Exhibit “G”
See Forever Easement**

Exhibit “E-F-G”-1

Exhibit B-2

Amended and Restated Declaration of Covenants and Restrictions
(Hotel Operator and Hotel Amenities, Facilities and Services Covenant)

**AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
(Hotel Operator and Hotel Amenities, Facilities and Services Covenant)**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS (“Declaration”) is made as of _____, 2023 (“**Effective Date**”) by Tiara Telluride, LLC, a Colorado limited liability company (“**Declarant**”).

DEFINITIONS

Unless otherwise provided for herein, all capitalized but undefined terms used in this Declaration 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 Declaration; and (b) are incorporated in this Declaration.

A. “**Act**” or “**CCIOA**” 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 Declarant 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, but only including such hearings occurring after the DRB meeting of December 1, 2022, concerning the development of the Project on the Property.

D. “**Building Regulations**” shall mean the Mountain Village Building Regulations adopted by the Town set forth in Section 17.7 of the CDC, as amended through the Effective Date.

E. “**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.

F. “**CCIOA Condominium Unit**” shall mean a Unit Owner’s fee simple interest in and to an Individual Airspace Unit, together with an undivided interest in the Common Elements appurtenant to the Individual Airspace Unit and shall include the Hotel Facilities Unit, Residential Condominium Units, Employee Housing Unit and Commercial Condominium Units.

G. “**CDC**” or “**Community Development Code**” shall mean the Mountain Village Municipal Code Title 17 Community Development Code

H. “**Commercial Condominium Units**” shall mean each of those particular CCIOA 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. “**Declarant**” shall mean Tiara Telluride, LLC, a Colorado limited liability company and its successors and assigns.

K. “**Design Regulations**” shall mean the Mountain Village Design Regulations adopted by the Town set forth in the CDC.

L. “**DRB**” or “**Design Review Board**” shall mean the Town of Mountain Village Design Review Board.

M. “**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 fifty (50) Efficiency Lodge Units in the Project will be Hotel Rooms and all will be included in the Hotel Facilities Unit.

N. “**Employee Apartment**” shall mean each of those two (2) Employee Apartments included in the Project that are zoned and designated as an Employee Apartment (as defined in CDC) in the Town Approvals. The Employee Apartments are not Residential Condominium Units.

O. “**Employee Dorm**” shall mean each of those eighteen (18) Employee Dorms included in the Project that are zoned and designated as Employee Dormitory (as defined in 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.

P. “**Employee Housing Unit**” means the Employee Apartments, the Employee Dorms and associated shared kitchen, recreational facilities and laundry facilities and similar areas of the Project 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 CCIOA Condominium Unit and encumbered by the Employee Housing Restriction (as defined in the Project Development Agreement).

Q. “**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.

R. “**Furniture Package**” shall mean those certain standard furnishing packages specified by Declarant (and upon creation of the Condominium Project, by the Owner of the Hotel

Facilities Unit) and the Hotel Operator for the Hotel Rooms and other Residential Condominium Units (exclusive of the Unrestricted Condominium Units).

S. “**Hotel Facilities Unit**” means the Hotel Rooms, Lobby/Reception 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 CCIOA Condominium Unit which may be owned by one entity that may change from time-to-time.

T. “**Hotel Guests**” shall mean those persons who are staying in any of the Hotel Rooms or any of the Residential Condominium Units for short-term accommodation (30 days or less) usage purposes as part of the Rental Management Program.

U. “**Hotel Operator**” means the company initially retained by the Declarant (and upon creation of the Condominium Project, by the Owner of the Hotel Facilities Unit) and approved by the Town in the manner provided for in the Project Development Agreement to operate and manage the Hotel Facilities Unit and the Rental Management Program in the Project Condominium.

V. “**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 (less than 30 consecutive days) 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.

W. “**Individual Airspace Unit**” means that portion of a CCIOA Condominium Unit designated for separate ownership by a Unit Owner as depicted on the Condominium Map included within the Project Condominium Documents.

X. “**Lodge Units**” shall mean each of those Residential Condominium Units included in the Project that are zoned and designated as a Lodge Unit (as defined in the CDC) in the Town Approvals.

Y. “**Official Records**” shall mean the Official Records of the Clerk and Recorder for San Miguel County, Colorado.

Z. “**Owner**” shall mean the owner of the Property. Upon recordation of the Project Condominium Documents “Owner” shall mean and refer to each of the Unit Owners of the CCIOA Condominium Units created thereby.

AA. “**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.

BB. “**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 the Project Development 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 (as defined in and required by the Project Development Agreement), each as shown on the Final PUD Plans.

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

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

EE. **“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.

FF. **“Project Development Agreement”** shall mean that certain Amended and Restated Development Agreement executed by and between Declarant and the Town recorded at Reception No. _____ in the Official Records concerning the development of the Project.

GG. **“Project Operational Standards”** means the standards for operating the Project as determined by the Hotel Operator, in consultation with the Declarant (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 from time to time which are intended to promote a high standard of quality. The Project Operational Standards are intended to be followed for purposes of promoting the use and operation of the Project as a full-service hotel within the Hotel Facilities Unit and those Residential Condominium Units participating in the Rental Management Program. When developing, 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.

HH. **“Property”** shall mean Lot 109R2, Town of Mountain Village, San Miguel County, Colorado according to the Replat.

II. **“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.

JJ. **“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.

KK. **“Residential Condominium Units”** shall mean those particular CCIOA 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.

LL. **“Town”** shall mean the Town of Mountain Village, Colorado.

MM. **“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 and 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 Project Development Agreement, the Replat, and this Declaration.

NN. **“Town Council”** shall mean the Town of Mountain Village Town Council.

OO. **“Town Council Approval Ordinance”** shall mean Ordinance No. _____ adopted by the Town Council, approving the Major PUD Amendment and Conveyance of Portions of Village Center for the Project, which was recorded on _____, 2023 at Reception No. _____ in the Official Records.

PP. **“Town Enforceable Restriction”** shall mean those provisions established in the Project Development Agreement and incorporated by reference into this Declaration 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. The Town shall have the right, but no obligation, to enforce any Town Enforceable Restriction.

QQ. **“Unit Owners”** shall mean the respective owners, whether one or more persons, of fee simple title to each of the CCIOA Condominium Units.

RR. **“Unrestricted Condominium Units”** shall mean each of those Residential Condominium Units included in the Project that are zoned and designated as “Condominium” (as defined in 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 following recitals (“**Recitals**”): (a) form a portion of the basis of this Declaration; and (b) are incorporated in this Declaration.

A. Declarant is the current, fee simple owner of the Property.

B. Prior to the Replat, portions of the Property were platted as 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.

C. The 2011 Replat was entered into in connection with the approval by Town Council for the Town of a PUD development on Lot 109R consisting of a mixed-use hotel, residential condominium and commercial project (the “**2010 Project**”) 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 at Reception No. 415339 (the “**2010 PUD Approval**”). In connection with the 2010 PUD Approval, then then-current owner of Lot 109R, MV Colorado Development Partners, LLC, a Texas limited liability company (“**2010 Lot 109R Owner**”) and the Town entered into that certain Development Agreement, Lot 109R, Town of Mountain Village, Planned Unit Development recorded March 18, 2011 at Reception No. 416997 in the Official Records (the “**2011 Development Agreement**”).

D. As required by the 2010 PUD Approval and 2011 Development Agreement, the 2010 Lot 109R Owner 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 Declaration**”) placing certain covenants on Lot 109R that would restrict the use and development of Lot 109R and the 2010 Project (the “**2011 Covenants**”).

E. The Town approved the Replat and the Town Council Approval Ordinance, to accommodate certain changes to the 2010 Project. In connection with the foregoing, Tiara and the Town have entered into the Project Development Agreement, which amends and restates the 2011 Development Agreement.

F. Pursuant to the Town Approvals and the Project Development Agreement, the Town required the Declarant to amend and restate the 2011 Hotel Covenant Declaration and supersede and replace the 2011 Covenants with certain covenants on the Property that would restrict the use and development of the Property and the Project (“**Covenants**”). This request is satisfied with the execution, recordation and compliance with this Declaration by Declarant consistent with the Covenants stated herein. This is the Hotel Covenant referred to and contemplated by the Project Development Agreement.

G. The Town has executed this Declaration to acknowledge its consent to amendment and restatement of the 2011 Hotel Covenant Declaration and 2011 Covenants set forth therein and to acknowledge that the Covenants established in this Declaration satisfy the requirements for the Hotel Covenant as provided for in the Project Development Agreement and Town Approvals. The

Town is hereby deemed to be vested with an interest in the Property and Project sufficient to enable the Town to exercise its rights and remedies contained in this Declaration.

H. Nothing herein is intended to, nor shall it be construed as, forming a condominium regime for the Project under the Act.

COVENANTS/RESTRICTIONS

NOW, THEREFORE, with the consent of the Town, Declarant hereby declares that this Declaration amends and restates and supersedes and replaces in its entirety the 2011 Hotel Covenant. The Property and Project shall be owned, held, sold, used and conveyed subject to the Covenants which shall run with title to Property and Project.

1. Requirements and Restrictions Relative to Facilities and Related Services.

1.1. Required Facilities and Services. The Project must contain the required facilities and related services listed in this Section 1.1 below (“**Required Facilities and Services**”) which shall be operated and designed consistent with the Town Approvals and the Project Operational Standards. The provisions of this Section 1.1 shall, upon creation of the Project Condominium by recordation in the Official Records of the Condominium Declaration and Condominium Map, burden the Hotel Facilities Unit; the Owner of the Hotel Facilities Unit shall have the burdens imposed by this Section 1.1; and neither the Project Association nor any other Unit Owner will be responsible for compliance with this Section 1.1; provided, however, that some of the Required Facilities and Services may be accommodated within one or more Commercial Condominium Units. Notwithstanding the foregoing, certain Required Facilities and Services may be located within portions of the Project other than the Hotel Facilities Unit.

1.1.1. Lobby/Reception Area.

(a) A centrally located “**Lobby/Reception Area**”, proximate to the main lobby and entryway into the Project generally consistent with the location and area designated in the Final PUD Plans.

(b) The Lobby/Reception Area shall be appropriately designed, sized, constructed and operated to accommodate the intended use as a Lobby/Reception Area.

(c) The Lobby/Reception Area will be allocated to and for the use of the Hotel Operator to enable it to undertake the Rental Management Program operated in the Condominium Project.

(d) The Lobby/Reception Area will include a “**Front Desk**” that must be appropriately staffed on a full-time basis to accommodate Unit Owners of Residential Condominium Units and Hotel Guests.

(e) The staff at the Front Desk will be trained to offer concierge services, which shall include, at a minimum, the provision of general assistance and advisory services to Unit Owners of Residential Condominium Units and Hotel Guests concerning the

identification of and, where applicable, the provision of reservation services for local recreational, dining, transportation and other similar services.

(f) Access to all of the Hotel Rooms and each of those Residential Condominium Units that are then included in the Rental Management Program by any Unit Owner of Residential Condominium Units or Hotel Guest will require keys, access cards or similar devices available only at the Front Desk or through electronic device applications and valid only during the scheduled stay of the Unit Owner of Residential Condominium Units or Hotel Guest.

1.1.2. Operational Space for Rental Management Program.

(a) Suitable “back of house” space will be established and located in the Project to serve the operational needs of the Rental Management Program in line with industry standards and norms. The “back of house” space will be generally consistent with the location and area designated in the Final PUD Plans.

(b) Customary bellman services or, alternatively, a guest experience manager who can be contacted through an electronic device application to provide a number of services including those traditionally provided by a bellman, in line with industry standards and norms will be provided to all Hotel Guests staying in the Hotel Rooms and for Unit Owners of Residential Condominium Units or Hotel Guests for those Residential Condominium Units included in the Rental Management Program.

(c) Housekeeping/maid service, including daily housekeeping services, will be provided to all Hotel Guests staying in the Hotel Rooms and will be available for Unit Owners of Residential Condominium Units or Hotel Guests for those Residential Condominium Units included in the Rental Management Program.

1.1.3. Restaurant.

(a) One or more restaurants with appropriate areas for seating, kitchen, preparation and storage will be established and located in the Project and the restaurant will be accessible to all Unit Owners of Residential Condominium Units, Hotel Guests and the general public. The size and location of the restaurants will be generally consistent with the location and area designated in the Final PUD Plans.

(b) One or more restaurants or a separate kitchen dedicated to providing room service will operate in a coordinated manner with the Hotel Operator or an affiliate thereof to provide room service to each of the Hotel Rooms and Residential Condominium Units during the regular business hours of the restaurant or dedicated room service kitchen.

1.1.4. Bar/Lounge. A “Bar/Lounge” will be established and located in the Project and will be accessible to all Unit Owners of Residential Condominium Units, Hotel Guests and the general public. The Bar/Lounge may be located separately from the area or areas assigned to restaurant uses depending upon the requirements of the Hotel Operator or an affiliate thereof.

1.1.5. Spa and Fitness Center.

(a) A spa/fitness center will be established and located in the Project and will be accessible to all Unit Owners of Residential Condominium Units and Hotel Guests. A spa/fitness center will consist of various facilities and services appropriate for the Hotel based upon industry standards and needs, which shall include a fitness/exercise area with suitable equipment, massage and similar personal treatment services, Jacuzzi/hot tub, locker rooms. The size and location of the spa/fitness center will be generally consistent with the location and area designated in the Final PUD Plans.

(b) Some or all of the components of the spa/fitness center shall be made available to the general public.

(c) The spa/fitness center will offer preferential use and service packages for Unit Owners of Residential Condominium Units and Hotel Guests.

(d) Usage fees and charges for the use of the spa/fitness center and related services are contemplated and allowed.

1.1.6. Pool.

(a) A small social pool and potentially associated amenities will be located in the Project and will be accessible to all Unit Owners of Residential Condominium Units and Hotel Guests.

(b) Some or all of the components of the pool shall be made available to the general public, usage fees and charges for the use of the pool and related services are contemplated and allowed.

(c) Beverage service to the pool area will be made available to all Unit Owners of Residential Condominium Units, Hotel Guests and the general public.

1.1.7. Business Services. A business center will be established and located in the Project and will be accessible for Unit Owners of Residential Condominium Units and Hotel Guests or, alternatively, a guest experience manager who can be contacted through an electronic device application will coordinate accommodation of the business-related needs of Unit Owners of Residential Condominium Units and Hotel Guests.

1.1.8. Retail Store. A retail store will be established and located in the Project and will be accessible for Unit Owners of Residential Condominium Units and Hotel Guests and the general public.

1.1.9. Miscellaneous Facilities and Services. The following services and any facilities necessary to undertake the services will be provided:

(a) When the tandem parking spaces and level G3 parking spaces, accessible via two 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.

(b) Ski valet services, including storage, handling and services of ski equipment, will be provided for Unit Owners of Residential Condominium Units and Hotel Guests.

(c) Shuttle services will be available for Unit Owners of Residential Condominium Units, Hotel Guests, and employees associated with the Project for transport locally and to the Montrose and Telluride airports.

1.2. Changes to Required Facilities and Services. The Town may agree to amending the Required Facilities and Services from time to time as a major PUD amendment pursuant to the CDC and subject to the CDC variation regarding PUD Amendments set forth in Section 2.4.c of the Town Council Approval Ordinance.

1.3. Town Enforceable Restriction. The requirements of this Section 1 will be incorporated by reference into the Project Condominium Documents and identified therein as a “**Town Enforceable Restriction**” encumbering the Hotel Facilities Unit.

2. Requirements and Restrictions Relative to the Hotel Operator and Rental Management Program. The Project shall incorporate the requirements and restrictions concerning the Hotel Operator and Rental Management Program set forth in this Section 2 (“**Rental Management Restrictions**”), which shall be operated and designed by Hotel Operator consistent with the Town Approvals and the Project Operational Standards. Except as otherwise specifically provided in this Section 2, the provisions of this Section 2 shall, upon creation of the Project Condominium by recordation in the Official Records of the Condominium Declaration and Condominium Map, burden the Hotel Facilities Unit; the Owner of the Hotel Facilities Unit shall have the burdens imposed by this Section 1.2; and neither the Project Association nor any other Unit Owner will be responsible for compliance with this Section 1.2.

2.1. Requirement to Retain Hotel Operator.

2.1.1. A qualified, professional Hotel Operator meeting the requirements for the Hotel Operator set forth in the Project Development Agreement and the Town Approvals, initially appointed by Declarant (and upon creation of the Condominium Project, by the Owner of the Hotel Facilities Unit), subject to Town approval as set forth in the Project Development Agreement Section 5.1 (B), will be retained to operate and manage the Rental Management Program for all of the Hotel Rooms and for each of the participating Residential Condominium Units.

2.1.2. The terms and conditions of the appointment of the Hotel Operator will be reflected in a “**Hotel Management Agreement**”. The Hotel Management Agreement will provide that the initial term of the services to be provided by the Hotel Operator will be for a period of no less than ten (10) years, subject to termination rights for breach of the Hotel Management Agreement. Hotel Operator shall provide a written certification to the Town confirming that Hotel Operator has reviewed the Town Approvals, including the Project Development Agreement and this Declaration and is familiar with the terms and conditions of such documents as it relates to the services being undertaken by Hotel Operator.

2.1.3. The Hotel Operator shall be responsible for the implementation, management and operation of the Rental Management Program, including the marketing of each of the Hotel Rooms and those Residential Condominium Units included in the Rental Management Program consistent with the Project Operational Standards. The Rental Management Program is intended to manage, market and promote the Project and the use and occupancy of the Hotel Rooms and the Residential Condominium Units as short-term (less than 30 days) accommodation styled rooms by those Unit Owners of Residential Condominium Units who have elected to include their respective Residential Condominium Units in the Rental Management Program.

2.1.4. The Hotel Operator will have use and control of the Front Desk to undertake the Rental Management Program.

2.1.5. Priority shall be given to retain a Hotel Operator experienced in managing and marketing similar, service-intensive lodging properties.

2.1.6. The Hotel Operator or an affiliate thereof may also be retained to manage and run the Project Condominium, including the Common Elements and the Project Association consistent with the Project Condominium Documents.

2.1.7. In the event that the services of the Hotel Operator are suspended or terminated or the term of the Hotel Management Agreement expires, a qualified, professional replacement Hotel Operator meeting the requirements set forth in the Project Development Agreement will be retained subject to Town approval as required in Section 5.1.B of the Project Development Agreement.

The requirements of this Section 2.1 will be incorporated by reference into the Project Condominium Documents and identified therein as a “**Town Enforceable Restriction**” encumbering the Hotel Facilities Unit.

2.2. Rental Management Program.

2.2.1. The Project Condominium Documents shall allow for the operation of a Rental Management Program in the Project Condominium. This Section 2.2 shall be binding on the Project Association and all CCIOA Condominium Units within the Project Condominium.

2.2.2. All of the Hotel Rooms must be included in the Rental Management Program.

2.2.3. 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 include their respective Residential Condominium Units in the Rental Management Program operated by the Hotel Operator in the Condominium, subject to continuing compliance with the Unit Rental Agreement. This Section 2.2.3, to the extent it applies to the Project Condominium Documents, shall be binding on the Project Association and all CCIOA Condominium Units within the Project Condominium.

2.2.4. Nothing herein is intended to require or obligate Unit Owners to place their Residential Condominium Units in the Rental Management Program or to use the Hotel

Operator to rent their Residential Condominium Unit if they elect to rent the unit or to prohibit a Unit Owner of a Residential Condominium Unit from making such Unit Owner's Residential Condominium Unit available for rent other than through the Rental Management Program. Notwithstanding the foregoing, Unit Owners who do not elect to place their Residential Condominium Units in the Rental Management Program will not be permitted to operate, own, manage or promote the rental of such Unit Owner's Residential Condominium Unit using the Hotel Operator's name, trademark, service mark or commercial symbol designated from time to time for the Project.

2.2.5. Each Unit Owner who elects to include such Unit Owner's Residential Condominium Unit in the Rental Management Program with the Hotel Operator must execute a separate "**Unit Rental Agreement**" with the Hotel Operator. The Unit Rental Agreement for each Residential Condominium Unit included in the Rental Management Program shall authorize the Hotel Operator to include, operate and manage the Unit Owners' Residential Condominium Unit in the Rental Management Program consistent with the terms and conditions of this Declaration.

The requirements of this Section 2.2 will be incorporated by reference into the Project Condominium Documents and identified therein as a "**Town Enforceable Restriction**" binding on all the CCIOA Condominium Units and the Project Association.

2.3. Staffing. The Hotel Operator, in consultation with the Declarant (and upon creation of the Condominium Project, by the Owner of the Hotel Facilities Unit) and the Project Association, shall retain or cause to be retained sufficient staffing and equipment to operate and manage the Required Facilities and Services and the Rental Management Program consistent with this Declaration, but subject to the Project Operational Standards (defined below).

The requirements of this Section 2.3 will be incorporated by reference into the Project Condominium Documents and identified therein as a "**Town Enforceable Restriction**" encumbering the Hotel Facilities Unit.

3. Requirements and Restrictions Relative to Residential Condominium Units. Each of the Residential Condominium Units, except for the Unrestricted Residential Condominium Units, will be owned, used and operated consistent with the requirements and restrictions set forth below ("**Residential Condominium Units Use Restrictions**"). Except as otherwise specifically provided in this Section 3, the provisions of this Section 3 shall, upon creation of the Project Condominium by recordation in the Official Records of the Condominium Declaration and Condominium Map, burden each Residential Condominium Unit; the Owner of each Residential Condominium Unit shall have the burdens imposed by this Section 3 with respect to such Residential Condominium Unit; and neither the Project Association nor any other Unit Owner will be responsible for compliance with this Section 3 relative to another Residential Condominium Unit.

3.1. Standard Furnishing Package for All Lodge and Efficiency Lodge Units. Declarant (and upon creation of the Condominium Project, by the Owner of the Hotel Facilities Unit), 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). The Furniture Packages will be developed to insure a quality of decor, furniture, furnishings and appliances suitable to meet the Project Operational Standards, which may include, without limitation, appropriate and suitable fixtures (including bathroom fixtures), cabinetry, carpeting, floor covering, paint, wall covering, furniture (including built-in furniture, if any), lighting, mirrors, decor items, color television, clock, radio, drapes, shades and other window treatments and any and all other fixtures, equipment, utilities and decorative accessories within the Residential Condominium Unit. The design and content of the Furniture Packages will be offered in different variations and themes intended to achieve the Project Operational Standards. As part of the purchase contracts for a Residential Condominium Unit from Declarant (exclusive of the Unrestricted Condominium Units), a Unit Owner will be required to select one of the variations of the Furniture Package to be included in their Residential Condominium Unit. The purchase price for each Residential Condominium Unit (exclusive of the Unrestricted Condominium Units) sold by Declarant will reflect the cost for the provision of the items included in the Furniture Package for the Residential Condominium Unit, which each Unit Owner will be required to pay at closing on the Residential Condominium Unit. The Unit Owner purchasing a Residential Condominium Unit (exclusive of the Unrestricted Condominium Unit) will not be allowed to opt out of paying for Furniture Package assigned to their Residential Condominium Unit. It is expected that the Unit Rental Agreement for each Residential Condominium Unit included in the Rental Management Program shall also provide for, among other things, that the Unit Owner must, for so long as such Unit Owner's Residential Unit is participating in the Rental Management Program: (a) obtain and maintain a certain Furniture Package designated for their Residential Condominium Unit by the Hotel Operator, (b) not add or remove elements of the Furniture Package without the prior written approval of the Hotel Operator (which may be granted or withheld in the sole and exclusive discretion of the Hotel Operator), and (c) authorize the escrowing of funds by the Hotel Operator for the repair and replacement of elements of the Furniture Package when deemed necessary as determined by the Hotel Operator. In the event a Unit Owner fails to adhere to the terms and conditions of the Unit Rental Agreement, including those provisions relating to the provision of the required Furniture Package, the Hotel Operator may exclude the noncompliant Residential Condominium Unit from participation in the Rental Management Program. There are no requirements for the provision of a Furniture Package in Unrestricted Condominium Units, provided, however, that the purchaser of an Unrestricted Condominium Unit shall be offered the opportunity to purchase a Furniture Package. The cost of the Furniture Package will not be included in the purchase price of the Unrestricted Condominium Unit unless the purchaser of the Unrestricted Condominium Unit elects to purchase a Furniture Package.

3.2. Kitchens.

3.2.1. Efficiency Lodge Units may contain limited kitchen facilities, which may include a sink, microwave, two-element burner, six (6) cubic foot (maximum) refrigerator, trash compactor and garbage disposal. The use of stoves, ovens and/or dishwashers or other large kitchen appliances or equipment in an Efficiency Lodge Unit is precluded. The provisions of this Section 3.2.1 shall, upon creation of the Project Condominium by recordation in the Official Records of the Condominium Declaration and Condominium Map, burden the Hotel Facilities Unit in which the Efficiency Lodge Units are located; the Owner of the Hotel Facilities Unit shall have the burdens imposed by this Section 3.2.1; and neither the Project Association nor any other Unit Owner will be responsible for compliance with this Section 3.2.1. The requirements of this

Section 3.2 will be incorporated by reference into the Project Condominium Documents and identified therein as a “**Town Enforceable Restriction**” encumbering the Hotel Facilities Unit.

3.2.2. There are no restrictions concerning the size or types of kitchen appliances and equipment used in Unrestricted Condominium Units or the Lodge Units.

3.3. Room Size, Layout and Orientation. The provisions of this Section 3.3 shall, upon creation of the Project Condominium by recordation in the Official Records of the Condominium Declaration and Condominium Map, burden each of the Residential Condominium Units, except for the Unrestricted Condominium Units; the Owner of each of the Residential Condominium Units (except for the Unrestricted Condominium Units) shall have the burdens imposed by this Section 3.3 with respect to such Owner’s Residential Condominium Unit; and neither the Project Association nor any other Unit Owner will be responsible for compliance with this Section 3.3 with respect to a CCIOA Condominium Unit of which it is not an Owner.

3.3.1. The size, layout and orientation of each of the Residential Condominium Units, except for the Unrestricted Condominium Units, are generally indicated in the Town Approvals (“**Residential Condominium Unit Layout**”).

3.3.2. The Residential Condominium Units will be designed, constructed, owned, used and operated substantially in accordance with the Residential Condominium Unit Layout.

3.3.3. Declarant covenants and agrees with the Town, for itself and all future Owners of each of the Residential Condominium Units, that unless approved in writing in advance by the Town as a major PUD amendment pursuant to the CDC (but subject to subject to the CDC variation regarding PUD Amendments set forth in Section 2.4.c of the Town Council Approval Ordinance): (a) no material changes shall be made to the boundaries of a Residential Condominium Unit; (b) no combining or subdividing of Residential Condominium Units, shall be allowed; (c) no material change, alteration or improvement shall be made to a Residential Condominium Unit, that involves altering (other than cosmetic alterations) or removing a weight bearing wall, any interior walls, doors or doorways, adding any connecting doorways or removing or altering (other than cosmetic alterations) any hallway entry door.

The requirements of this Section 3.3 will be incorporated by reference into the Project Condominium Documents and identified therein as a “**Town Enforceable Restriction**” encumbering the Residential Condominium Units.

3.4. Provision of Dedicated Hotel Rooms. Declarant (and upon creation of the Condominium Project, the Owner of the Hotel Facilities Unit) shall provide the fifty (50) Hotel Rooms, consisting of certain Efficiency Lodge Units, which will be owned, operated and dedicated for use only as hotel rooms as part of the operation of the hotel and not as condo-hotel units owned by third parties. The Hotel Rooms are part of the Hotel Facilities Unit and may be condominiumized to enable common ownership with other components of the Hotel Facilities Unit, provided that all of the Hotel Facilities Unit will be under one common ownership, which may change from time to time. The Hotel Rooms shall be made available for exclusive use by Hotel Guests for only short-term accommodation (less than 30 days). The location of the Hotel

Rooms must be in general conformance with the Final PUD Plans, with minor changes in locations allowed by an administrative approval during the building permit process as provided in Section 17.4.7 of the CDC. The Town may agree to amendments to changes in the type, mix or configuration of the Hotel Rooms from time to time as a major PUD amendment pursuant to the CDC and subject to the CDC variation regarding PUD Amendments set forth in Section 2.4.c of the Town Council Approval Ordinance. Notwithstanding anything set forth above to the contrary, all changes pursuant to this Section must be made and subject to in compliance with the Act and the Condominium Declaration and approved by the Project Association as may be provided for in the Project Condominium Documents. The provisions of this Section 3.4 shall, upon creation of the Project Condominium by recordation in the Official Records of the Condominium Declaration and Condominium Map, burden the Hotel Facilities Unit; the Owner of the Hotel Facilities Unit shall have the burdens imposed by this Section 3.4; and neither the Project Association nor any other Unit Owner will be responsible for compliance with this Section 3.4. The requirements of this Section 3.4 will be incorporated by reference into the Project Condominium Documents and identified therein as a “**Town Enforceable Restriction**” encumbering the Hotel Facilities Unit.

4. **Application; Enforcement; Interpretation and Amendment of Covenants.**

4.1. Building Permit. Provision of the Project Required Facilities.

4.1.1. As part of its submission of an application seeking the issuance of a building permit (“**Project Building Permit**”) for the Project, Declarant shall submit necessary and appropriate construction plans and specifications for the construction of the Project (“**Project Plans**”). Declarant shall cause the Project Plans, as practical, to depict and/or describe the physical components of the Required Facilities and Services, the Hotel Rooms and the Residential Condominium Units (collectively, the “**Project Required Facilities**”).

4.1.2. Declarant shall cause the Project to be constructed in a manner that includes the Project Required Facilities in accordance with the construction plans and drawings submitted to and approved by the Town as part of the Project Building Permit.

4.2. INTENTIONALLY DELETED.

4.3. Reference of Declarations in the Project Condominium Documents. A reference to this Declaration and the Covenants relating to the provision of the Required Facilities and Services must be noted in the Project Condominium Documents. A draft of the Project Condominium Documents will be submitted to the Town for its review and approval, as a staff subdivision review per CDC Section 17.4.13.E.3 to be processed as a Class 1 application, prior to their execution and recordation in the Official Records. The review of the Project Condominium Documents by the Town shall be restricted to a determination that the Project Condominium Documents conform to these Covenants, the Project Development Agreement and the Town Approvals, unless the Town has created a new process to review and approve all condominium map subdivisions, in which case, the Town may review all of the condominium documents per any newly adopted process and associated criteria, provided that any such review is not in conflict with the Town Approvals or require Declarant to substantively alter the Project or any exactions required for the Project. In the event of a conflict, the Town Approvals shall control.

4.4. Standard of Performance. The Declarant (and upon creation of the Condominium Project, by the Owner of the Hotel Facilities Unit) and the Hotel Operator shall undertake its duties, obligations, functions and requirements hereunder in conformance with the Operational Standards, provided that Declarant (and upon creation of the Condominium Project, by the Owner of the Hotel Facilities Unit) and the Hotel Operator shall have full and complete authority and discretion, consistent with the goals and objectives of this Declaration and the terms and conditions of the Town Approvals to operate and manage the Project Required Facilities and Services, the Rental Management Program, the Residential Condominium Units Use Restrictions and to otherwise perform its duties, obligations and functions hereunder in their sole and respective discretion, based upon its good faith, commercially reasonable judgment, industry standards as well as the actual operational and/or Hotel Guest needs for the Project.

4.5. Industry Standards and Norms. Customary industry practices, standards and norms shall be relied upon if and when necessary for purposes of interpreting, applying and enforcing the Covenants established in the Declaration.

4.6. Amendment or Modification to Covenants. This Declaration and the Covenants contained herein may not be terminated, extinguished, suspended, modified or otherwise amended without the prior written approval and consent of the Declarant (and upon creation of the Condominium Project, by the Owner of the Hotel Facilities Unit), the Town and the Project Association.

4.7. Default. Remedies. Governing Law.

4.7.1. Declarant or an Owner (including the Project Association), as applicable (a “**Party**”), shall be “default” under this Declaration (and shall be a “**Defaulting Party**”) if it:

(a) breaches any Covenant contained in this Declaration and binding on such Party and, (b), after receiving written notice of the breach (“**Notice of Default**”) from the Town, fails to cure or commence diligently curing the breach within a commercially reasonable time stated in the Notice of Default (not less than five (5) days or more than thirty (30) days from the date of the Notice of Default depending on the nature of the violation). The Notice of Default contemplated by this Section shall clearly state and describe: (a) each section(s) of the Declaration which the Defaulting Party has allegedly violated, (b) a summary of the facts and circumstances being relied upon to establish the alleged violation, (c) the specific steps (“**Cure Events**”) that must be undertaken to come into compliance with this Declaration, and (d) the reasonable timeframe consistent with this Section within which time the alleged violation should be cured (“**Cure Completion Date**”).

4.7.2. Following a failure to cure the default following the applicable Cure Completion Date, the Town may: (a) initiate an action to compel compliance by the Defaulting Party with this Declaration, including injunctive relief and specific performance; (b) pursue any and all other rights and remedies available under Colorado Law; and/or (c) take the necessary action itself to cause the obligation(s) in default to be performed, in which case the Town may recover from the Defaulting Party all damages as well as all costs and expenses reasonably incurred

to perform such obligation(s). All controversies, disputes or claims which arise from or relate to this Declaration shall be first submitted to a non-binding mediation.

4.7.3. In the event of any litigation or mediation, the substantially prevailing party shall collect its reasonable costs, expenses and fees, including reasonable expert fees and attorney's fees.

4.7.4. In the event litigation is commenced in connection with this Declaration, personal jurisdiction and venue for any civil action will be deemed to be proper only if such action is commenced in District Court for San Miguel County, Colorado. Each Party expressly waives its right to bring such action in or to remove such action to any other court whether state or federal.

4.7.5. This Declaration shall be governed by and construed in accordance with the laws of the State of Colorado.

4.7.6. The failure of the Town to insist upon strict performance of any term or provision of this Declaration or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

4.8. In the event one or more CCIOA Condominium Units or Common Elements are damaged or destroyed by fire or other casualty, the provisions of this Declaration will be held in abeyance with respect to the CCIOA Condominium Units or Common Elements (or portions thereof) so damaged or destroyed; provided, however, that the provisions of this Declaration will apply with full force and effect upon the repair or reconstruction of the CCIOA Condominium Units or Common Elements (or portions thereof) so damaged or destroyed.

5. **Miscellaneous.**

5.1. Recordation. This Declaration shall be recorded in the Office of the Clerk and Recorder of San Miguel County, Colorado.

5.2. Binding Effect. This Declaration shall inure to the benefit of the Town and its successors and assigns and shall be binding upon the Declarant, its successors and assigns as provided in Definition J, and the Owners as provided in Definition Z. This Declaration shall constitute an agreement running with the Property until modification or release by mutual agreement of the Town and the Declarant (and upon creation of the Condominium Project, by the Owner of the Hotel Facilities Unit) (except for the Owner of the Hotel Facilities Unit, subsequent transferee Owners' consent to modification(s) or release(s) shall not be required unless the modification(s) directly limit or restrict the zoning or development rights awarded to a subsequent transferee Owner's specific CCIOA Condominium Unit). This Declaration may be amended or supplemented by the Town and Declarant (and upon creation of the Condominium Project, by the Owner of the Hotel Facilities Unit) as a major PUD amendment pursuant to the CDC (but subject to subject to the CDC variation regarding PUD Amendments set forth in Section 2.4.c of the Town Council Approval Ordinance.

5.3. Several Liability Among Owners. The liability of any Owner hereunder is several (and not joint). Notwithstanding any other provision of this Declaration, in no event will any Owner be liable for any other Owner's breach of such other Owner's obligations under this Declaration.

5.4. Liability of Successors in Interest to a CCIOA Condominium Unit. Upon the transfer of ownership by an Owner of a CCIOA Condominium Unit owned by such Owner, liability of the transferor for the breach of any Covenant under this Agreement occurring on or with respect to the CCIOA Condominium Unit conveyed after the transfer will automatically terminate, and any transferee of such CCIOA Condominium Unit shall, by acceptance of the conveyance thereof, be deemed to have agreed to assume such liability from and after the date of the transfer.

5.5. No Third-Party Beneficiaries Other Than Owners and the Association. It is expressly understood and agreed that enforcement of the terms and conditions of this Declaration, and all rights of action relating to such enforcement, shall be strictly reserved to the Town, other Owners and the Association and nothing contained in this Declaration shall give or allow any other claim or right of action by any other or third person. It is the express intention of the Town and Declarant that any person other than the Town, Owners and Association receiving services or benefits under this Declaration shall be deemed to be an incidental beneficiary only.

5.6. Notices. 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, Declarant and Hotel Facilities Unit Owner 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 CCIOA Condominium Unit.

Such addresses may be changed by the Town, Declarant or Hotel Facilities Unit Owner 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

Declarant:

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

With copy to:

Sherman & Howard L.L.C.
Attn: Cynthia M. Stovall
675 15th St. #2300
Denver, CO 80202
Fax: (303) 298-0940

Hotel Facilities Unit Owner:

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

Sherman & Howard L.L.C.
Attn: Cynthia M. Stovall
675 15th St. #2300
Denver, CO 80202
Fax: (303) 298-0940

5.7. Severability. If any provision of this Declaration, or the application thereof to any circumstance, shall be held to be invalid, unenforceable, or void, the remainder of this Declaration and such provisions as applied to other circumstances shall remain in full force and effect, and such provision shall be enforced to fullest extent consistent with applicable law.

5.8. Captions. Section Headings. All headings; use of different type fonts; or boldfaced, italicize, or underlined words herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Declaration.

5.9. Terms. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter as the identity of the person or persons, firm, or corporation may in

the context require. The plural may include the singular and the singular may include the plural and this Declaration shall be interpreted in this regard as the context may require.

5.10. Conflicts Between Declaration and Project Development Agreement. Any conflict between the terms of the Project Development Agreement and this Declaration shall be resolved in favor of the most restrictive applicable term in either document.

5.11. Rights of Lenders. 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 (each, a “**Lender**”) and consents to the collateral assignment of this Agreement to any such Lender. A Successor by Foreclosure (defined below), in connection with a Foreclosure Event (defined below), shall be entitled to assume all of the rights and obligations of Developer under this Agreement and the Town shall recognize and otherwise permit such Successor by Foreclosure 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 a Successor by Foreclosure to assume any of the duties and obligations of Developer under this Agreement unless the Lender by Foreclosure takes fee simple title to the Project through a Foreclosure Event, in which case the Successor by Foreclosure shall be bound by the terms and conditions of this Agreement. A “**Foreclosure Event**” means: (a) foreclosure under a Developer Loan, whether by judicial action or pursuant to nonjudicial proceedings; (b) any other exercise by a Lender of rights and remedies (whether under the deed of trust securing the Developer Loan or under applicable law, including bankruptcy law) as holder of the Developer Loan and/or as beneficiary under the deed of trust, as a result of which any Successor by Foreclosure (as hereinafter defined) becomes owner of the Property; or (c) delivery by Developer to such Lender (or its designee or nominee) of a deed or other conveyance of Developer’s interest in Property in lieu of any of the foregoing. A “**Successor by Foreclosure**” means any party that becomes owner of the Property as the result of a Foreclosure Event.

[This space intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the Effective Date.

DECLARANT:

Tiara Telluride, LLC,
a Colorado limited liability company

By: _____

Date: _____

Printed Name: _____

Title: _____

STATE OF _____)

ss.

COUNTY OF _____)

Acknowledged and subscribed to before me this _____ day of _____. By _____, the _____ of Tiara Telluride, LLC.

Witness my hand and official seal:

My commission expires: _____

THE UNDERSIGNED HEREBY ACKNOWLEDGES AND CONSENTS TO THIS DECLARATION, THE COVENANTS AND THE OTHER TERMS AND CONDITIONS STATED IN THIS DECLARATION.

Town of Mountain Village, a Colorado Home Rule Municipality and Political Subdivision of the State of Colorado

By: _____
_____, Mayor

Date: _____

Printed Name: _____

By: _____
Paul Wisor, Town Manager

Date: _____

Printed Name: _____

STATE OF _____)
ss.
COUNTY OF _____)

Acknowledged and subscribed to before me this _____ day of _____. By _____, the Mayor of the Town of Mountain Village.

Witness my hand and official seal:

_____ My commission expires: _____

STATE OF _____)
ss.
COUNTY OF _____)

Acknowledged and subscribed to before me this _____ day of _____. By Paul Wisor, the Town Manager of the Town of Mountain Village.

Witness my hand and official seal:

_____ My commission expires: _____

All exhibits are available for inspection at the Office of the Town Clerk