

**TOWN OF MOUNTAIN VILLAGE  
TOWN COUNCIL REGULAR MEETING  
THURSDAY, JANUARY 15, 2015, 8:30 AM  
2nd FLOOR CONFERENCE ROOM, MOUNTAIN VILLAGE TOWN HALL  
455 MOUNTAIN VILLAGE BLVD, MOUNTAIN VILLAGE, COLORADO  
AGENDA **REVISED****

	<b>Time</b>	<b>Min</b>	<b>Presenter</b>	<b>Type</b>	
1.	8:30				Call to Order
2.	8:30	5			Public Comment on Non-Agenda Items
3.	8:35	5	Johnston	Action	Approval of the Minutes of the December 11, 2014 Regular Town Council Meeting
4.	8:40	5	Kennefick	Action	Consideration of a Resolution Designating Posting Locations for the Town's Ordinances and Public Notices
5.	8:45	15	Nuttall	Informational	Telluride Regional Airport Authority (TRAA) Bi-annual Report
6.	9:00	60	Reed Mahoney	Legal	Executive Session for the Purpose of a Personnel Matter Pursuant to C.R.S Section 24-6-402((4)(f)(I)), and for Receiving Legal Advice Pursuant to C.R.S. 24-6-402(b), and for the Purpose of Negotiations Pursuant to C.R.S. 24-6-402(4)e
7.	10:00	30	Reed Mahoney	Action	Consideration of an Agreement to Convey a Portion of Lot 1003R-1, the Medical Center Site, to the Telluride Hospital District
8.	10:30	30	Reed Mahoney	Action	Consideration of an Agreement to Sell a Portion of Lot 1003R-1, the Lofts at Mountain Village Site, to Telluride Investments, LLC, a Colorado Limited Liability Company for Purposes of Developing Work Force Housing
9.	11:00	20	Kennefick Mahoney Broady	Action	Liquor Licensing Authority: Consideration of Recertification of the Mountain Village Promotional Association and Common Consumption Area
10.	11:20	10	Council Members	Informational	Council Boards and Commissions Updates: a. Eco Action Partners – Howe/Sherry b. Telluride Historical Museum – Bronson c. San Miguel Watershed Coalition – Jett d. Colorado Flights Alliance – Jansen e. Plaza Use Committee – Jett f. Transportation & Parking - Howe/Schillaci g. Budget & Finance Committee – Jansen/McKinley h. Mayor's Update - Jansen
11.	11:30	30	Katz Lehane Montgomery	Informational	Staff Reports: a. Mountain Munchkins Preschool & Daycare b. Cable & Broadband Services c. Town Manager
12.	12:00	30			<b>LUNCH BREAK</b>
13.	12:30	15	Swain Vergari	Presentation Action	Finance: a. Presentation of the December 31, 2014 Business & Government Activity Report (BAGAR) b. Consideration of the November 2014 Financials
14.	12:45	20	Stenhammer	Informational	Presentation of the 2015 Telluride Conference Center Sales and Marketing Plan
15.	1:05	15	Hawkins	Action	Consideration of Appointments to the Town Hall Subarea

					Task Force
16.	1:20	45	Hawkins	<b>Quasi-Judicial</b>	<p>Second Reading, Public Hearing and Council Vote on an Ordinance to Approve:</p> <p>a. A Major PUD Amendment to: 1) Allow for the Construction of a Pool and Porte Cochere Addition on the West Side of Hotel Madeline on Lot OS-1A-MVB and Lot 38-50-51R; 2) Bring a Portion of OS-1A-MVB and Lot 38-50-51R into the PUD; and 3) Amend and Restate the PUD Development Agreement</p> <p>b. Rezoning a Portion of OS-1A-MVB and Lot 38-50-51R from the Full Use Active Open Space Zone District to the Village Center Zone District.</p>
17.	2:05	45	Kee Hawkins	Action	<p>Second Reading, Public Hearing and Council Vote on an Ordinance to Amend the Community Development Code at Section 17.5, Design Regulations, Concerning Snowmelt Design; Section 17.7, Building Regulations, Concerning Snowmelt Limitations and Establishing a Smart Building Program with Energy Incentives and Energy Mitigation Requirements; and at Section 17.7.20 to Establish the Maximum Time to Complete a Construction Project</p>
18.	2:50	10	Broady	Action	<p>Police Department:</p> <p>a. Swearing in of New Police Officer Krysten Gottman</p> <p>b. Re-affirm Oath of Office for Police Officers</p>
19.	3:00	15	Montgomery Drew	Action	<p>Other Business:</p> <p>a. Consideration of Support for Submitting a Letter of Intent for the 2017 American Planning Association State Conference</p> <p>b. Consideration of Moving a Previously Approved Vending Cart (Backyard BBQ) from Sunset Plaza to Heritage Plaza</p> <p>c. Other</p>
20.	3:15				Adjourn

Please note that times are approximate and subject to change.

1/7/2015

jk



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**TOWN OF MOUNTAIN VILLAGE  
MINUTES OF THE DECEMBER 11, 2014  
REGULAR TOWN COUNCIL MEETING    **AGENDA ITEM#3**  
**DRAFT****

The meeting of the Town Council was called to order by Mayor Dan Jansen at 8:31 a.m. on Thursday, December 11, 2014 in the Mountain Village Town Hall, 455 Mountain Village Town Hall Boulevard, Mountain Village, Colorado.

**Attendance:**

**The following Town Council members were present and acting:**

Dan Jansen, Mayor  
Cath Jett, Mayor Pro-Tem  
Dave Schillaci  
John Howe  
Michelle Sherry  
Marty McKinley  
Jonette Bronson

**The following Town Council members were absent:**

Also in attendance were:

Kim Montgomery, Town Manager	Aurelie Cannella
Jackie Kennefick, Director of Administration/Town Clerk	Dylan Henderson
Susan Johnston, Deputy Town Clerk	Dennis Lankes
Nichole Zangara, Community Relations Manager	Bob Delves
Laila Benitez, Community Relations Assistant	Jolana Vanek
David Reed, Town Attorney	Anton Benitez
Jim Mahoney, Assistant Town Attorney	Stephanie Fanos
Chris Hawkins, Director of Community Development	Steve Cram
Kevin Swain, Finance Director	Banks Brown
Chris Broady, Police Chief	Cristine Mitchell
Sue Kunz, Human Resources Director	Matt Mitchell
Steven Lehane, Director of Cable & Broadband Services	Gordon Reichard
Randy Kee, Building Official	Courtney Kizer
Katie Cox, Planner	John Horn
Chris Colter, Director of Transit & Recreation	Tom Kennedy
Rachelle Redmond, Lieutenant MVPD	
Deanna Drew, Director of Plaza & Environmental Services	

**Public Comment for Non-Agenda Items**

Public comment was received by Jolana Vanek.

**Approval of the Minutes of the November 20, 2014 Regular Town Council Meeting**

On a **MOTION** by Marty McKinley and seconded by John Howe, Council voted unanimously to approve the November 20, 2014 Town Council meeting minutes as presented.

**Council Boards and Commissions Updates:**

- a. **Eco Action Partners (EAP)– Howe/Sherry**  
Michelle Sherry stated that EAP approved their budget as well as the 2015 programs and goals. EAP is focusing on green business improvements and working with the Telluride School District on creating a green building expansion.
- b. **Telluride Historical Museum – Bronson**  
Jonette Bronson stated that the museum is very busy with holiday programs in full swing. The museum director recently resigned and a search for a replacement director has begun.
- c. **San Miguel Watershed Coalition – Jett**  
There was no update.
- d. **Colorado Flights Alliance – Jansen**  
Mayor Jansen stated that airline flights and seats are still trending well ahead of last year numbers. He added that room nights and flights may be in short supply due to the production and filming of the movie “The Hateful Eight”.
- e. **Plaza Use Committee – Jett**  
There was no update.
- f. **Transportation & Parking – Howe/Schillaci**  
There was no update.
- g. **Region 10 – Delves**  
Mr. Delves stated that the demographic update shows the poor economic condition of the region which is well below all the state averages. Mr. Delves will share Region 10 presentation with Council at a later date.
- h. **Budget & Finance Committee – Jansen/McKinley**  
Council thanked Mr. McKinley for his efforts with the budgeting process.
- i. **Mayor’s Update - Jansen**  
Mayor Jansen thanked Nichole Zangara for promoting the increased activity for the holidays in Mountain Village. He encouraged residents to participate in the festivities. The Mayor stated that the theme of the Intergovernmental Meeting was the need for more affordable housing options.

Dave Schillaci joined the meeting at 8:47 a.m.

**Economic Development Definition Initiative (EDDI) Update**

Bob Delves presented the update on EDDI stating that Phase one is almost complete. Monthly meetings with the Telluride Conference Center (TCC) representatives will be ongoing. Mr. Delves noted that the TCC has a great deal of untapped growth potential. Council discussion ensued. Council directed staff to research the extent of cable and broadband upgrades necessary to entice businesses to locate in Mountain Village.

**Finance:**

Finance Director Kevin Swain presented:

- a. **November 30, 2014 Business & Government Activity Report (BAGAR)**  
Real Estate Transfer Assessment (RETA) info was not included in packet but Mr. Swain provided an update. Year to date is almost double over last year with the sale of the Hotel Madeline accounting for a significant amount of the increase. Council discussion ensued.
- b. **Second Reading, Public Hearing and Final Council Vote on an Ordinance to Set Mill Levies for 2015**  
The Mayor opened the public hearing. There was no public comment. The public hearing was closed. On a **MOTION** by John Howe and seconded by Marty McKinley, Council voted unanimously to approve an Ordinance to set mill levies for 2015.
- c. **Second Reading, Public Hearing and Final Council Vote on an Ordinance to Adopt the 2015 Budget and the Revised 2014 Budget**  
Council discussion ensued. The Mayor opened the public hearing. There was no public comment. The public hearing was closed. On a **MOTION** by John Howe and seconded by Marty McKinley, Council voted unanimously to approve an Ordinance summarizing expenditures and revenues for

each fund and adopting a budget for the Town of Mountain Village, Colorado, for the calendar year beginning on the first day of January 2015 and ending on the last day of December 2015, and to revise the 2014 budget appropriating additional sums of money to defray expenses in excess of amounts budgeted for the Town of Mountain Village, Colorado.

On a **MOTION** by Cath Jett and seconded by John Howe, Council voted unanimously to convene as the Board of Directors for the Dissolved Mountain Village Metro District.

**Town Council Acting as the Board of Directors for the Dissolved Mountain Village Metro District**

Kevin Swain presented the following Resolutions:

- a. **Consideration of a Resolution Adopting the 2015 Metro District Budget**  
For the purpose of servicing the debt incurred. On a **MOTION** by Cath Jett and seconded by Dave Schillaci, the Board voted unanimously to approve a Resolution adopting the 2015 Metro District Budget as presented.
- b. **Consideration of a Resolution Appropriating Sums of Money for 2015**  
On a **MOTION** by Cath Jett and seconded by Dave Schillaci, the Board voted unanimously to approve a Resolution appropriating sums of money for 2015.
- c. **Consideration of a Resolution Revising the 2014 Budget**  
On a **MOTION** by Cath Jett and seconded by Dave Schillaci, the Board voted unanimously to approve a Resolution revising the 2014 budget.
- d. **Consideration of a Resolution Re-Appropriating Sums of Money for 2014**  
On a **MOTION** by Cath Jett and seconded by Dave Schillaci, the Board voted unanimously to approve a Resolution re-appropriating sums of money for 2014.
- e. **Consideration of a Resolution Setting the Mill Levy for 2015**  
On a **MOTION** by Cath Jett and seconded by Dave Schillaci, the Board voted unanimously to approve a Resolution setting the mill levy for 2015.

On a **MOTION** by Cath Jett and seconded by John Howe, the Board of Directors for the Dissolved Mountain Village Metro District voted unanimously to re-convene as Town Council.

**Executive Session for the Purpose of a Personnel Matter Pursuant to C.R.S. Section 24-6-402((4)(f)(I)), and for Receiving Legal Advice Pursuant to C.R.S. 24-6-402(b), and for the Purpose of Negotiations Pursuant to C.R.S. 24-6-402(4)e**

On a **MOTION** by Cath Jett and seconded by John Howe, Council agreed to enter into Executive Session for the purpose of a personnel matter pursuant to C.R.S. Section 24-6-402((4)(f)(I)), and for receiving legal advice pursuant to C.R.S. 24-6-402(b), and for the purpose of negotiations pursuant to C.R.S. 24-6-402(4)e at 9:46 a.m.

Council returned to regular session at 11:24 a.m.

**Consideration of a Request to Sell a Portion of Lot 1003R1 for Work Force Housing**

Town Manager Kim Montgomery presented the above item. Matt Mitchell of High Mark Development presented highlights of a proposed project to develop a portion of Lot 1003R1 along the Gondola Parking Garage. Mr. Mitchell presented a site plan envisioning 43 units of employee housing wrapped around the Gondola Parking Garage. The proposed structure would be four floors with two and three bedroom units. Public comment was received by Jolana Vanek and Banks Brown. Council discussion ensued. Council suggested Mr. Mitchell conduct a survey of the neighboring businesses and properties to gauge the support of the project. The anticipated completion date for the project would be October 2015. On a **MOTION** by Cath Jett and seconded by John Howe, Council voted unanimously to direct the Mayor, staff and legal counsel to negotiate with the developer and present an agreement for Council consideration at the January meeting.

**Consideration of an Agreement to Convey a Portion of Lot 1003R-1, the Medical Center Site, to the Telluride Hospital District**

Assistant Town Attorney Jim Mahoney presented the above item. Public comment was received by Jolana Vanek. On **MOTION** by Dave Schillaci and seconded by Cath Jett, Council voted unanimously to continue this item to the January 15, 2015 Town Council meeting.

**Council took a lunch break from 11:52 p.m. to 12:15 p.m.**

**Consideration of a Resolution Approving a Minor Subdivision Application to Vacate a Utility Easement on Lot 221AR – Quasi Judicial**

Planner Katie Cox presented the above item stating that this is primarily a housekeeping matter to allow the applicants to build an addition onto an existing home. No water or sewer lines go through the easement and the general easement will remain in place. Council discussion ensued. On a **MOTION** by Dave Schillaci and seconded by Michelle Sherry, Council voted unanimously to adopt a Resolution approving a minor subdivision application to vacate a utility easement on Lot 221AR.

**Consideration of a Resolution Approving a Minor Subdivision to Vacate the Lot Line Between Lot OS-1AMVB and Lot 38-50-51R**

This Resolution and the following Ordinance were discussed together. Dylan Henderson, of DH Architecture representing Northview Group, gave a recap of the changes to the application that were made per Council's direction. These included adding a seven foot sound wall to accommodate concerns of the Corcheval homeowners, opening up the archways to 10' 6" into the porte cochere, and re-engineering the side walk. Council discussion ensued. On a **MOTION** by Marty McKinley and seconded by Michelle Sherry, Council voted unanimously to adopt a Resolution approving a minor subdivision to vacate the lot line between Lot OS-1A-MVB and Lot 38-50-51R.

**First Reading, Setting of a Public Hearing and Council Vote on an Ordinance to Approve:**

- a. **A Major PUD Amendment to: 1) Allow for the Construction of a Pool and Porte Cochere Addition on the West Side of Hotel Madeline on Lot OS-1A-MVB and Lot 38-50-51R; 2) Bring a Portion of OS-1A-MVB and Lot 38-50-51R into the PUD; and 3) Amend and Restate the PUD Development Agreement**

Town conveyance will include the following public benefits:

- A contribution of up to \$60,000 for an upgraded ice rink cooling system
- New fireplace in Heritage Plaza
- Construction of pergola/trellis over the ice rink
- New sidewalk along the Hotel Madeline

- b. **Rezoning a Portion of OS-1A-MVB and Lot 38-50-51R from the Full Use Active Open Space Zone District to the Village Center Zone District.**

Director of Community Development Chris Hawkins presented the above Ordinance. Jim Mahoney will provide a red-lined version of the Ordinance to Council prior to the January Town Council meeting. Council discussion ensued. On a **MOTION** by Michelle Sherry and seconded by Jonette Bronson, Council voted unanimously to pass on first reading an Ordinance approving (1) Major PUD Amendment to (a) allow for the construction of a pool and porte cochere addition on the West Side of Hotel Madeline on lot OS-1-MVB and Lot 38-50-51R; (b) bring a portion of OS-1-MVB and Lot 38-50-51R into the PUD; and (c) Amend and restate the PUD Development Agreement; and (2) Rezoning a portion of OS-1-MVB and lot 38-50-51R from the Full Use Active Open Space Zone District to the Village Center Zone District, with direction to the Town Clerk to set the second reading, public hearing and final Council vote for January 15, 2015 with the stipulation that the applicant ensure proper corridor site distance as per the Community Development Code and with the understanding that offsite energy mitigation will be permitted.

**Consideration of a Resolution to Rescind Various Parking Promissory Notes and Issue New Parking Notes for The Ridge Development Located on Lot 161 and Related Amendments to any Corresponding Town Agreements**

Chris Hawkins presented the above item stating that St. Sophia, LLLP has requested a reduction in the parking the promissory notes held for the Ridge Development. The Agreement allows for parking promissory notes to satisfy the parking requirement until permanent parking on Lot 161C-R is completed, or the applicant pays the promissory notes. Changes since these promissory notes were issued include a conveyance of condominium units to the Ridge Homeowners Association (HOA) to be used for common areas for the HOA, and a rezone from commercial space to five efficiency lodge units and one lodge unit as detailed in the Resolution. The Community Development Code does not require parking for HOA common areas. Public comment was received by John Horn. Council discussion ensued. On a **MOTION** by Dave Schillaci and seconded by Cath Jett, Council voted unanimously to adopt a Resolution to rescind various parking promissory notes and issue new parking notes for The Ridge Development located on Lot 161 and related amendments to any corresponding town agreements and with the condition that areas being designated as common elements to the Ridge Homeowners Association shall not be used for commercial uses or new promissory notes shall have to be issued in accordance with the Agreement.

**First Reading, Setting of a Public Hearing and Council Vote on an Ordinance to Amend the Community Development Code at Section 17.5, Design Regulations, Concerning Snowmelt Design; Section 17.7, Building Regulations, Concerning Snowmelt Limitations and Establishing a Smart Building Program with Energy Incentives and Energy Mitigation Requirements; and at Section 17.7.20 to Establish the Maximum Time to Complete a Construction Project**

Building Official Randy Kee presented the above item stating that staff has made changes to the Ordinance based on previous Council input. Council discussion ensued. Council directed staff to use more inclusive language regarding offsetting energy usage “for the benefit of our citizens”. Staff will analyze two homes in Mountain Village using the 2012 energy code to show what it takes to achieve a HERS rating of 50 or below. The Ordinance and analysis will be sent to Council for review by email prior to the next meeting. On a **MOTION** by Cath Jett and seconded by Michelle Sherry, Council voted unanimously to approve on first reading an Ordinance to Amend the Community Development Code at Section 17.5, Design Regulations, Concerning Snowmelt Design; Section 17.7, Building Regulations, Concerning Snowmelt Limitations and Establishing a Smart Building Program with Energy Incentives and Energy Mitigation Requirements; and at Section 17.7.20 to Establish the Maximum Time to Complete a Construction Project and to set a public hearing, second reading, and Council vote for January 15, 2015 and to incorporate the following changes :

- Include the public benefit test analysis
- Delete the roof design incentive
- Add a renewal energy incentive
- Review the multi-family snow melt allowance
- Use more inclusive language to describe offsetting energy usage

**Other Business:**

Council directed human resources staff to provide information explaining the benefits Council members may be eligible to receive as an employee.

There being no further business, on a **MOTION** by John Howe and seconded by Marty McKinley, Council unanimously agreed to adjourn the meeting at 2:15 p.m.

Respectfully prepared,

Respectfully submitted,

Susan Johnston  
Deputy Town Clerk

Jackie Kennefick  
Town Clerk

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF  
MOUNTAIN VILLAGE, COLORADO  
REGARDING POSTING LOCATIONS FOR  
ORDINANCES AND PUBLIC MEETINGS**

**NO. 2015-0115-01**

**RECITALS:**

- A. The Open Meetings law (The Sunshine Law) was enacted by the Colorado State Legislature on April 29, 1991, which requires that the formation of public policy is public business and may not be conducted in secret; and
- B. The Town of Mountain Village, Town Council (the “Town Council”) has determined that it is in the best interest of the citizens of the Town of Mountain Village to post a listing of public meetings as provided in this resolution; and
- C. The Sunshine Law also stipulates that the public place or places for posting such notices shall be designated annually; and
- D. Article V. Section 5.9. of the Town Charter requires this Town Council to designate at least three (3) public places and at the office of the Town Clerk in the Town of Mountain Village for the posting of ordinances and other public notices.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE AS FOLLOWS:**

Posting locations to give notice of ordinances and other public notices shall be as follows:

- 1. Mountain Village Town Hall
- 2. Mountain Village Town Hall Post Office
- 3. Mountain Village Police Station Bulletin Board
- 4. Meadows Post Office

**ADOPTED AND APPROVED** by the Town Council, at a regular meeting held on the 15th day of January, 2015.

TOWN OF MOUNTAIN VILLAGE TOWN COUNCIL

By: \_\_\_\_\_  
Dan Jansen, Mayor

ATTEST:

By \_\_\_\_\_  
Jackie Kennefick, Town Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
James Mahoney, Assistant Town Attorney



# Memo

To: Mayor Jansen and Town Council  
From: J. David Reed  
Date: January 9, 2015  
Re: Consideration of an Agreement to Convey a Portion of Lot 1003R-1, the Medical Center Site, to the Telluride Hospital District

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At the December, 2014, Council meeting, the Council voted to continue this matter to the January, 2015 Council meeting with direction to the Mayor, Town Manager and legal counsel to continue negotiations with the Telluride Hospital District for the conveyance of a portion of Lot 1003R-1 for the new Telluride Medical Center.

In response to Council's direction, negotiations continued which culminated in the drafting of the Land Acquisition and Conveyance Agreement which is included in your packet for consideration.

The Board of Directors of the Telluride Hospital District has approved the Agreement in the form included in your packet.

Motion to approve: I hereby move to approve the Land Acquisition and Conveyance Agreement as presented, and authorize the Mayor to execute the Agreement on behalf of the Town.

Motion to deny: I hereby move to deny approval of the Land Acquisition and Conveyance Agreement as presented.

## LAND ACQUISITION AND CONVEYANCE AGREEMENT

**THIS LAND ACQUISITION AND CONVEYANCE AGREEMENT** (“**Agreement**”), dated as of \_\_\_\_\_, 2015 (“**Effective Date**”), is made by and between Town of Mountain Village, a Colorado municipal corporation and political subdivision of the State of Colorado (“**Town**”) and The Telluride Hospital District a political subdivision of the State of Colorado (“**District**”). Town and District are sometimes collectively referred to herein as the “**Parties**” and sometimes individually as a “**Party**”. The Parties hereby covenant and agree as follows:

### DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

A. “**Acquisition Property**” shall mean and refer to the property generally depicted on attached **Exhibit “A”**.

B. “**Acquisition Property Reversionary Procedures**” shall mean and refer to the procedures by which the District would transfer and convey title to the Acquisition Property to the Town or its designee upon the failure of the District to timely perform certain obligations, as provided for below in Section 11.

C. “**Applicable Law**” means (i) all statutes, laws, common law, rules, regulations, ordinances, codes or other legal requirements of any Governmental Authority, stock exchange, board of fire underwriters and similar quasi-Governmental Authority, and (ii) any judgment, injunction, order or other similar requirement of any court or other adjudicatory authority, in effect at the time in question and in each case to the extent the Person or property in question is subject to the same.

D. “**Developer Option**” shall mean and refer to an option that the District, in its sole discretion, may elect to pursue with a third party developer, identified by the District in its sole and reasonable discretion, reflected in a developer agreement between the District and the developer on mutually agreeable terms and conditions, by which the developer, with the review, participation and consent of the District, will coordinate the design, financing, funding, development and construction of the Project, consistent with the scoping documents provided by the District, and such other uses and activities contemplated by the developer, consistent with Town Law. The District may, but need not, elect to pursue the Developer Option.

E. “**Developer/District Joint Development Agreement**” shall mean and refer to a certain agreement made and entered into between the District and a developer selected by the District and approved by the Town as set forth herein, in the event that the District elects to pursue the Developer Option, to jointly develop the Property for and on behalf of the District on mutually agreeable terms and conditions.

F. “**Helipad**” shall mean and refer to that certain facility to be designed, installed, operated, maintained and repaired by the District in the location on Town owned land, indicated in the Helipad Easement (see Section 3.3 below). While the improvements associated with the Helipad will be located on Town land and within the Helipad Easement, such improvements shall be owned and operated by the District, subject to and in accordance with the terms and conditions of the Helipad Easement and available for its exclusive use and operation to allow for helicopter ambulatory services in connection with the operation of the Regional Medical Center. The Helipad shall be designed and operated in a manner so as to comply with Applicable Law.

G. “**Gondola Parking Garage**” means the multi-level parking facility currently located on Lot 1003R-1, which is owned and operated by the Town. The Gondola Parking Garage also includes

approved plans to expand and add additional levels of parking of up to 450 additional parking spaces. The District acknowledges that it must take into consideration the continued and uninterrupted use of the Gondola Parking Garage in the design, construction and use of the Project . The District also acknowledges that the design and construction of the Project shall not result in an overall net loss in existing parking spaces in the Gondola Parking Garage and that construction of the expansion and addition of the Gondola Parking Garage will result in extremely loud noise levels and vibrations due to the process of pounding steel for foundation support on the southern boundary of the Gondola Parking Garage.

H. **“Governmental Authority”** means any federal, state or local government or other political subdivision thereof, including, without limitation, any Person exercising executive, legislative, judicial, regulatory or administrative governmental powers or functions, in each case to the extent the same has jurisdiction over the Person or property in question.

I. **“Person”** means any natural person, corporation, general or limited partnership, limited liability company, association, joint venture, trust, estate, Governmental Authority or other legal entity, in each case whether in its own or a representative capacity.

J. **“Project”** shall mean and refer to the design, development, construction, use and operation of the Regional Medical Center on the Acquisition Property, the Helipad on the Gondola Parking Garage, physical upgrades and improvements to the Project Access as required to serve the needs of the Regional Medical Center and such other related improvements, facilities, utilities, uses and activities. The Project may occur in one or more phases, with the **“Initial Project Phase”** consisting of the portion of the Regional Medical Center deemed necessary and appropriate by the District to accommodate its initial operational needs. A later phase of the Project may consist of such portion of the improvements which may be built now or in the future to accommodate certain expansion space for the District **“Expansion Project Phase.”** If the Developer Option is elected, the developer may include other phases for the Project for other uses and activities acceptable to the Town as provided for in this Agreement.

K. **“Property”** shall collectively mean and refer to the items described in Section 1 below.

L. **“Required Development Approvals”** shall mean and refer to the various land use approvals for the Project, including, without limitation, design review plans, building permits and certificates of occupancy, and such other approvals necessary and required to enable District to develop, construct, operation, occupy and otherwise use the Project.

M. **“Project Utilities and Services”** shall mean and refer to the various utilities and supporting/facilities to serve the Project, which include, water, sewer, natural gas, electric, telephone, cable television, broadband internet, drainage, snow storage, construction staging and shoring for the construction of the Project, access and use rights to enable the maintenance and repair of the completed improvements, , accommodation for the proper grounding of the helipad,. Prior to Closing, the Parties shall: (i) mutually identify the preferred location for the delivery and provision of the Project Utilities and Services to the Project, and (ii) confirm or establish (as necessary and appropriate) perpetual easements benefitting the Project, which provide for legal and physical to enable the use of the Project Utilities and Services on mutually agreeable terms and conditions.

N. **“Project Access”** shall mean and refer to legal and physical vehicular and pedestrian access to and from the Acquisition Property and Mountain Village Blvd benefitting and serving the Acquisition Property and the Project, including, without limitation, access for construction vehicles and equipment, emergency vehicles and vehicular and pedestrian access for patients, staff and other visitors,

together with necessary and appropriate directional signage and lighting for access.

O. “**Selected Developer**” shall mean and refer to a developer selected by the District and approved by the Town upon an election by the District to exercise the Developer Option.

P. “**Town**” shall mean and refer to the Town of Mountain Village.

Q. “**Town Laws**” shall mean and refer to any and all applicable provisions of the laws and regulations of the Town which govern and regulate the Property and/or Project, including, without limitation, the Community Development Code (“**CDC**”), the Town Charter, the Town Municipal Code, and the Town Building Code as they may be amended from time to time.

### **RECITALS**

A. The District is a duly formed Colorado special district established in accordance with applicable Colorado Law. The District generally covers a geographic area consisting of the Towns of Telluride and Mountain Village as well as those portions of San Miguel County extending from Lizard Head Pass to the south, Dallas Divide to the north, and Placerville to the west. The District provides critical, high quality patient health care services and facilities to residents and guests living in or visiting within the District regardless of their ability to pay, with special attention given to family and preventative medicine, emergency and orthopedic care, high altitude medicine, sports medicine as well as the provision and operation of facilities enabling CT scans, ultrasound and laboratory services.

B. The District operates the Telluride Medical Center, which currently exists on land and in a building that it is subleasing through Town of Telluride from the Idarado Mining Company. The District has determined that the long term needs of its patients necessitate substantial infrastructure upgrades to its physical facilities to allow the District to serve the continually increasing demands on its facilities and services generated by consistently expanding regional population growth and also to enable the District to take advantage of ever increasing advances in medical technology, which expansions and advances are restricted because of current space and site constraints.

C. The District seeks to acquire land upon which the District or an affiliated or related entity or a third party developer will design, develop, construct, use and operate certain structures, buildings and facilities, including, without limitation, a portion of the parking in connection with an expanded Regional Medical Center (“**Regional Medical Center**”) which will enable the District to maximize its ability to offer regional health care services and facilities, which the District is charged with providing for the current and long term health and wellness needs of the members of the District.

D. The District deems it prudent to own the real estate and improvements upon which it will commence the construction of the Regional Medical Center. To this end, the District initiated a process designed to enable it to undertake thorough analysis of potentially available sites within the boundaries of the District that would be of a suitable size and location to accommodate the operational and logistical needs of the Regional Medical Center. In furtherance of this objective, the District published and distributed its Request for Information (RFI) advising interested owners of land, who were willing to convey to the District, of the land and development requirements of the District. The RFI invited interested and qualified land owners to provide the requisite information to the District. The accumulated information would enable the District to evaluate information in a comprehensive and uniform manner that would assist in analysis of each available site a new site location by the District, with the goal being the selection and acquisition of the best site to accommodate the Regional Medical Center.

E. The District received responses to the RFI from three qualified owners, including, a site offered by the Town of Mountain Village, a site offered by the Lawson Hill Property Owners Company

(namely Lot H/I, Lawson Hill PUD) and a site offered by Big Dog (namely certain Lots located within the HUB Subdivision within the Lawson Hill PUD).

F. After much evaluation, the District determined that the Acquisition Property, which is the site that was offered by the Mountain Village was the preferred site for the expanded Regional Medical Center, for various reasons, including, without limitation: (i) the size of the Acquisition Property, which offered the ability of developing up to approximately 50,000 sf of developable space, which would be capable of adequately serving the initial/current needs of the District, with the ability to accommodate expansion of the facilities if required for future needs, (ii) the location of the Acquisition Property, which offered the ability to install use and operate an adjacent Helipad, was provided nearby public transportation (gondola and bus service), which could adequately accommodate parking and utilities to serve the project, (iii) was made available for no consideration with a commitment from the Town to offer other incentives to the District, with respect to certain development inducements and incentives and (iv) the siting of the expanded Regional Medical Center in the Town of Mountain Village will enable it to continue to properly and effectively serve the current and future regional needs and interests of its constituents in the District.

G. The Town concurs with the above stated findings and determinations of the District.

H. The Town and the District have determined that the Property allows the District to construct the Project in the most efficient manner and allows for flexibility for expansion in the future along with an option to construct the Project in conjunction with a Developer who may offer additional features to the Project while potentially realizing cost savings to the District, which in turn may bring cost savings to the Town's and the District's constituents.

I. The Town has determined that by conveying the Property to the District, it shall provide the most efficient route to a new and much needed regional medical center that will best serve the constituents of the Town and the District.

J. The Town has determined that it is in the best interest of the Town, the Town's constituents and the overall region to donate the Property to the District for the construction of the Project and waive or reimburse fees associated with the cost of developing the Project, in order to reduce the costs of construction of a facility that shall be used by Town residents and guests along with the residents and guests of the regional community.

K. The Town desires to transfer and convey the Acquisition Property to District, and District desires to acquire the Property from Town, on and subject to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Property**. For purposes of this Agreement, the "**Property**" that is the subject of this Agreement consists of the following items:

1.1. **Real Property**. The Acquisition Property, pursuant to the Land Condominium Documents.

1.2. **Easement Interests**. The beneficial rights and interests to the Helipad Easements, the Land Condominium Easements, the Offsite Easements and such other easements contemplated by this Agreement.

1.3. **Other Interests.** The beneficial rights and interests under such other documents and instruments contemplated by this Agreement, subject to the terms, conditions and provisions thereof.

2. **Consideration; Transfer of Property.**

2.1. The Town has agreed to transfer and convey the Property to the District for no monetary consideration and the District agrees to accept title to the Property, subject to and on the terms and conditions of this Agreement.

2.2. The Parties recognize and agree that the Town has agreed to undertake certain Pre-Closing Undertakings and Post-Closing Undertakings and in connection therewith, nothing herein is intended to, nor shall it, contractually obligate the Town to approve any application that may be submitted by the Town or District with the appropriate reviewing Town persons or boards/councils in connection with the desired development of the Project. The foregoing notwithstanding, the Town, in reviewing any such applications, agrees to review the same in good faith and in the manner prescribed by Town Law and shall not unreasonably withhold its approval of any such application. Should the Town, in the course of reviewing any development application for the Project submitted to it in the manner prescribed by Town Law, fail to issue any plan approval, permit or other requested action, on terms and conditions acceptable to the District, unless the failed undertaking or condition is waived by the District, the Parties shall proceed with the Acquisition Property Reversionary Procedures as provided for in Section 11.

2.3. Subject to Town's completion of Town's Pre-Closing Undertakings and District's completion of District's Pre-Closing Undertakings as required in this Agreement, Town shall execute and deliver a good and sufficient Special Warranty Deed to District, at Closing, conveying the Property free and clear of all liens and encumbrances and all taxes, agreements, easements and covenant of record affecting and concerning the Property, which have been disclosed to the District in the Title Commitment (**Permitted Exceptions**)

2.4. Possession of the Property shall be delivered to District upon Closing and delivery of the Warranty Deed. At the time of the conveyance, the Parties shall execute and record the Development and Use Covenant.

2.5. The District shall tender the sum of \$500,000 ("**Deposit**") with the Town, which the Town shall retain in a dedicated, interests bearing account of the Town created and maintained exclusively for this Project. The Deposit shall be payable as follows: (a) \$250,000 shall be paid within three business days of mutual execution of this Contract, and (b) \$250,000 shall be payable within three business days of the District's securing of final design approvals for the Project (for purposes of this provision, final design approval shall mean the action on the part of the Town body to act on the application and the passage of any and all periods of time to challenge the decision in any manner provided by applicable law with no such challenge having been initiated). The Deposit shall be returned to the District, together with all accrued interest, as follows: (a) \$400,000 shall be returned to the District upon the issuance of a building permit for the Initial Project Phase; and (b) \$100,000 shall be returned to the District upon the issuance of a certificate of occupancy for the Initial Project Phase. The Deposit may be retained by the Town in the event of default by the District as provided for in Section 13.1.

3. **Town Pre-Closing Undertakings.** Prior to Closing and transferring title to the Property, the Town has agreed to undertake and complete the following actions, documents and instruments, to be drafted to the mutual satisfaction of the Parties. Unless otherwise indicated, the cost and expense of these undertakings will be incurred by the Town.

3.1. **Land Condominium.**

3.1.1. The Town shall prepare, execute and record appropriate land condominium declaration, maps and other appropriate documents, which cover and embrace Lot 1003R-1 (“**Land Condominium Documents**”). The Land Condominium Documents shall, among other things, duly create and establish the Acquisition Property, consistent with Town Law, in a manner and form to enable it to be legally conveyed to the District as contemplated by this Agreement.

3.1.2. In addition, the Land Condominium Documents shall establish perpetual, non-exclusive easements over other portions of Lot 1003R-1, granting and conveying legally sufficient rights and interests for the use and benefit of the Acquisition Property and serving the Project, which enable and accommodate the Project Access (including ski patrol), the Project Utilities and Services, and such other necessary and appropriate easements as may be required to enable the construction, use and operation of the Project (“**Land Condominium Easements**”). The Parties shall mutually identify the preferred location for the Land Condominium Easements and establish the Land Condominium Easements on mutually agreeable terms and conditions. In addition, the Land Condominium Documents shall address necessary and appropriate setbacks/spacing between existing improvements on adjacent property and the proposed siting of structures contemplated under the Land Condominium Documents.

3.2. **Offsite Easements.** Prior to Closing, the Town shall either establish and/or confirm (to the reasonable satisfaction of the District and Title Company) the existence of easements in place granting and conveying legally sufficient rights and interests for the use and benefit of the Acquisition Property and serving the Project at locations mutually agreeable to the Parties, which enable and accommodate the Project Access, the Project Utilities and Services, and such other such other necessary and appropriate easements as may be required to enable the construction, use and operation of the Project (“**Offsite Easements**”). In the event that such Offsite Easements are not currently in place to the reasonable satisfaction of the District and Title Company, the Town will be required to obtain the grant of any such necessary easements on terms and conditions reasonably acceptable to District. The Town agrees that in all events, should there be any challenge to or conditions arise that affect the legal sufficiency for the District to use and enjoy the Offsite Easements at any time after Closing, the Town agrees that it shall promptly take all such steps necessary and appropriate to perfect or otherwise correct and confirm the Offsite Easements to the extent required to implement the intention of this Section, which could include the exercise of the Town’s condemnation powers. The Parties shall execute an agreement at closing confirming these post-closing assurances and undertakings by the Town.

3.3. **Helipad Easement.** The Town shall prepare, execute and record an easement (“**Helipad Easement**”) granting and conveying for the use and benefit of the Acquisition Property, a perpetual, non-exclusive easement to enable the District to design, build, use, operate, repair and maintain the Helipad on a mutually agreeable portion of the Gondola Parking Garage, together with necessary utilities to operate the Helipad, connecting access ways, fire suppression infrastructure, elevators and other appropriate facilities to connect the Helipad to the Regional Medical Center (“**Helipad Facilities**”). The Helipad shall be designed to be raised in the event that the Gondola Parking Garage is expanded and in such event, the Helipad Easement shall allow that the location of the easement to be relocated to coincide with any such alteration to the Helipad and Gondola Parking Garage, provided that the Town is responsible for the cost and expense of relocating the Helipad Facilities at the relocated location.

3.4. **Consent to Helipad Operation.** The Parties anticipate that no third party consents (other than the FAA) will be required to enable the District to undertake the operation of the Helipad pursuant to the Helipad CUP. In the event that there are third party consents that are necessary, the Town shall cooperate and assist the District in securing such consents, provided that the foregoing requirement to cooperate and assist the District does not impose any financial obligation to the Town.

3.5. **Wetland Applications.** The Town shall: (a) prepare, submit and process

appropriate permit applications and secure the requisite wetland permits addressing the impacted wetlands on the Acquisition Property associated with the Project and shall undertake and complete any required wetland mitigation. The District, if requested by the Town, shall agree to be a co-applicant on the applications relating to the wetlands, provided that the Town shall incur the cost and expense of preparing and processing the applications and undertaking the required wetland mitigation, the latter of which may be a Town Post Closing Obligation. The Town's failure to obtain the appropriate permit as required under this section shall not be considered an event of default under this Agreement.

3.6. **Town/District Development Cost Agreement.** The Town and District shall execute and deliver at Closing an agreement ("**Town/District Development Cost Agreement**"), in form and content mutually agreeable to both Parties, which provides the manner and method by which the Town and the District will address the following matters:

3.6.1. **Development Fees/Taxes Reimbursements.** The Town and District agree that in lieu of the Town granting a waiver of certain fees and taxes ("**Covered Fees/Costs**"), the Town will agree to reimburse District for those certain taxes and fees imposed by the Town, which will become due and payable in connection with the development and construction of the Initial Project Phase for which the District will use and occupy for the Regional Medical Center as well as the Regional Medical Center Affiliated Uses (the "**District Portion of the Project**"), which fee reimbursements will be based on the then current fee schedules and tax ordinances adopted by the Town. The Covered Fees/Costs shall include, without limitation, the Building Permit fees, the Parking Payment, Plan Check fees, Town Use Tax, Town Road Impact Fee, Town Water and Sewer Tap Fee, Town Conceptual Work Session Fee, and Design Review Process Fee and such other fees and costs that may be imposed by the Town at the time of building permit. The Covered Fees/Costs, as adjusted, shall not be due and payable to the Town by the District or its Selected Developer under the Developer Option, unless and until the District applies for its Building Permit, and shall be reimbursed by the Town to District or its Selected Developer as an incentive for building the facility in Mountain Village within thirty (30) days from the payment of such Covered Fees/Costs. During the period between the payment of the Covered Fees/Costs by the District and the reimbursement by the Town, the Town shall hold such funds in a Town account designated for this purpose. The Town represents and warrants to District that there is sufficient capacity in the Town owned or controlled municipal water and municipal sewer system, as well as the cable television and internet system operated by the Town to accommodate the Project.

3.6.2. **Enterprise Zone Incentives.** The Town and District shall cooperate and assist each other in seeking and securing, to the extent available, any and all Enterprise Zone incentives, including property tax credits, qualifications for "Contribution Project Status," investment incentives and new employee credits and such other incentives that may from time to time become available and applicable to the Acquisition Property and the Project, including in the event the Developer Option is elected. The Parties agree to seek and pursue such incentives for the maximum coverages and terms possible and practical

3.6.3. **Parking Payment In-lieu.** The Town agrees to review, process and act upon the Payment in Lieu Application being submitted to the Town by the District as provided for in Section 6.2.1 (below). The Town agrees to waive the application fee for the Payment in Lieu Application ("**Parking Payment**"). The Town further agrees that the Parking Payment, which will become due and payable upon the Town's action on the Payment in Lieu Application, will become due and payable by the District upon the issuance of a building permit for the Initial Project Phase, which Parking Payment is deemed to be Covered Fees/Costs and subject to the reimbursement provisions set forth in Section 3.6.1. While the Payment in Lieu Application may authorize any non-District Portion of the Project to be eligible to use a parking payment in lieu rather than constructing required parking in the Project, in the event the Developer Option is selected, the Developer shall be responsible for making the parking payment in lieu required for any non-District Portion of the Project prior to issuance of a building permit



for the Project. The foregoing notwithstanding, the Town shall not be liable to pay for the cost of any onsite parking spaces proposed by the District, or for the reconstruction of any current parking spaces impacted by development of the Project.

3.6.4. **Garage Parking Fees.** The Town's current parking policy allows employees of businesses within the Town who possess a valid business license to receive, for a nominal fee, currently \$25, a yearly parking permit which allows such employee to park in the Gondola Parking Garage. The District's employees shall be deemed eligible employees and shall receive the same parking privileges afforded other employees within the Town of Mountain Village. In addition, the Town shall consider the possibility of modifying its parking policies for the Gondola Parking Garage to enable free parking for short term (around 1 hour) for all users of the Gondola Parking Garage including patients and other visitors of the medical facility.

3.7. **Development and Use Covenant.** The Town and District shall execute, deliver and record at Closing an instrument in the form of a certain "**Development and Use Covenant**" which shall be recorded against and run with title to the Acquisition Property. The final form and content of the Development and Use Covenant shall be mutually agreeable to both Parties and will address the following matters:

3.7.1. The District, may elect to take and hold title to the Acquisition Property and develop it itself or through an affiliated entity formed in connection with the District for operational, financing, Funding and/or other purpose ("**Affiliated Entity**") so long as the Affiliated Entity is approved by the Town which approval shall not be unreasonably withheld. The District may elect to convey title to some or all of the Acquisition Property to its Affiliated Entity. The Parties recognize that the District has caused the Telluride Medical Center Foundation ("**Foundation**") to be formed and operate to assist the District in fundraising and other related purposes and agree that the Foundation is deemed to be an Affiliated Entity and the Town hereby approves the ability of the District to convey title to the Acquisition Property to the Foundation. Except as provided above in this Section 3.7, the District shall not convey title to the Acquisition Property to any other person of party, without the prior written consent of the Town which the Town may grant or withhold in its sole discretion.

3.7.2. The District, in its sole discretion, may elect to pursue the Developer Option and, if required as part of a transaction involving the developer, may elect to convey title to some or all of the Acquisition Property to Selected Developer and/or an Affiliated Entity is approved by the Town which approval shall not be unreasonably withheld.

3.7.3. The District and its Selected Developer (in the event the Developer Option is selected) shall use the portion of the Acquisition Property and improvements being developed and constructed for the District only in connection with its operation of the Regional Medical Center, together with, if elected by the District, customary and related uses and activities ("**Regional Medical Center Affiliated Uses**"), including, without limitation, allied health uses and associated medical services (ie. surgical suite, physician group, visiting specialists), pharmacy, and physical therapy. In addition, the Regional Medical Center Affiliated Uses may, but need not, accommodate County Nursing facilities, detox facilities, limited employee housing for the District employees or agents, for the Telluride Fire Protection District ambulance services employees and/or such other employees as the Town may approve. In the event the Developer Option is pursued and the developer elects to develop and construct space for uses in addition to the space being devoted to the Regional Medical Center, the Regional Medical Center Affiliated Uses any such uses shall comply with applicable Town Law and must otherwise be reasonably acceptable to the Town, which acceptance will not be unreasonably withheld. In no event may the developer in connection with the exercise of the Developer Option develop improvements on the Acquisition Property without including and providing the Regional Medical Center as determined necessary and appropriate for its needs by the District.

3.7.4. The Development and Use Covenant shall further provide as follows:

A. Following the acquisition of the Acquisition Property, the District agrees to secure the Required Development Approvals and to initiate and materially complete Project consistent with this Agreement.

B. The Parties intend that in the event that the District fails or refuses to timely complete these undertakings as required by this Agreement, then the Town may elect to require that the District pursue the Acquisition Property Reversionary Procedures, following the provision of written notice alleging the default and a reasonable opportunity for the District to cure the default in the same manner as provided under Section 13.1 of this Agreement.

C. Any material change in use of the Acquisition Property and related improvements shall require the express, written consent of Town.

3.8. **Survey and Title.** The Town shall obtain and provide the District with a copy of the Title Commitment and Survey contemplated in Section 7 below.

4. **Town Post-Closing Undertakings.** Following Closing and transferring title to the Property, the Town in addition to any other obligation of the Town as specified herein as a Post-Closing Undertaking, shall undertake the following, without cost or expense to the District:

4.1. **Intersection Improvements.** At such time as any intersection improvements to Mt Village Blvd are required, as determined in the Town's sole and absolute discretion, including any improvements required to accommodate traffic generated by the Project or otherwise generated by development on other property in the vicinity, such improvements shall be undertaken without cost or expense to the District. For the purpose of this section, the intersection shall be considered everything within the Mt. Village Blvd road right of way (including any future relocation of such right of way) and the existing access road to the Gondola Parking Garage and shall exclude improvements for ingress and egress located within the Acquisition Parcel necessary specifically to the Project.

Comment [KM1]: What is the definition of the intersection? The vehicular entrance, ambulance entrance and pedestrian access for the medical center are not considered the intersection.

4.2. **Funding of Transit.** The Town currently manages and operates transit needs (busses, vans and the like) serving the Acquisition Property and may continue at the Town's sole discretion, to operate such transit which would, among other things, serve the Regional Medical Center when the gondola is not in operation. In all instances the provision of such transit needs shall be subject to the determination of the Town of the need to provide such services and is subject to the annual appropriations of the Town Council. Nothing herein creates a financial or other obligation of the Town to provide transportation services.

4.3. **Provision of Project Utilities and Services.** The Town shall cooperate and assist the District in securing necessary and appropriate easements to allow for the installation of service lines for the Project Utilities and Services. To the extent the Project Utilities and Services include utilities for which the Town is the provider, which currently includes water, sewer, cable television and associated broad band internet, the Town agrees to provide such utilities to the condominium land unit boundary for the Acquisition Property.

Comment [KM2]: This should read that we will provide these utilities to the lot line. It is then the projects responsibility and ownership of the service lines from the lot line to the actual project..

4.4. **Cooperation.** The Town agrees to cooperate and assist, which unless otherwise specifically agreed to by the Town under this Agreement, shall not include financial cooperation and assistance, the District in connection with the development of the Project and shall complete any of the Town's Pre-Closing Undertakings, if any, which were not completed prior to Closing, with the consent of the District, and to perform such other duties and obligations provided for hereunder or such other documents that may be executed and delivered by the Parties at Closing, which, by their terms, would be

undertaken by the Town following Closing.

5. **District Pre-Closing Undertakings.** Prior to Closing and transferring title to the Property, the District in addition to any other obligation of the District as specified herein as a Post-Closing Undertaking, shall undertake and complete the following at its cost and expense.

5.1. **Due Diligence.** The District shall undertake and complete its due diligence of the Property in the manner and form desired by the District. Any physical onsite testing, if any, shall be approved by the Town prior to any site disturbance.

5.2. **Execution of Documents.** The Town and District shall execute and deliver the Town/District Development Cost Agreement and the Development and Use Covenant at Closing, in form and content mutually agreeable to both Parties.

5.3. **Review and Approve Documents.** The District shall promptly review and send any comments or approvals to the Town concerning the Land Condominium Documents, Land Condominium Easements, Offsite Easements and such other documents that the Town is required to prepare as part of its Town Pre-Closing Undertakings.

6. **District Post-Closing Undertakings.** Following Closing and transferring title to the Property, the District or its Selected Developer (in the event the Developer Option is selected) shall undertake and substantially complete the following undertakings, without cost or expense to the Town, except for those costs and expenses ordinarily incurred by the Town in the course of its review and action on development proposals in the Mountain Village. The District agrees that once it has initiated a District Post-Closing Undertakings it will seek to complete the required item in a commercially reasonable manner and timeframe.

6.1. **Town Hall Task Force - Design Charrette Process.**

6.1.1. The District or its Selected Developer (in the event the Developer Option is selected) shall, at its sole cost and expense, submit for the Design Charrette Process as provided in the Town Hall Subarea Task Force Bylaws (“Bylaws”).

6.1.2. In advance of the review of the design concepts for the Acquisition Property as contemplated by the Design Charrette Process, the District shall first submit materials relating to its design concepts to the Town Community Development Director and Town Design Review Board (“DRB”), for their preliminary review and comment.

6.1.3. Following the initial review by the Town, the District shall proceed with the Design Charrette Process with the Town Hall Task Force.

6.1.4. Nothing herein shall limit or preclude the District from commencing and/or completing the Design Charrette Process prior to Closing. Upon such an election, the Town will provide any authorizations and consents required of the District to initiate, process and have an application for the Design Charrette Process reviewed by the Town.

6.2. **Helipad Conditional Use Permit.** The District, at its cost and expense, shall prepare and process a conditional use permit (“Helipad CUP”) which shall allow for the placement of the Helipad and the Helipad Facilities within the area of the Helipad Easement. The District, at its cost and expense, shall retain a consultant to assist in facilitating the required reviews by the FAA relative to flight in and around the Helipad at the proposed location (“FAA Consultant”). The FAA Consultant shall assist the District and the Town in evaluating the Helipad CUP. The District is responsible for the cost

and expense of designing, constructing and operating the Helipad. Nothing herein shall limit or preclude the District from commencing and/or completing the Helipad CUP prior to Closing. Upon such an election, the Town will provide any authorizations and consents required of the District to initiate, process and have an application for the Helipad CUP reviewed by the Town.

6.2.1. **Parking Payment In-lieu.** The District, at its cost and expense, shall prepare and process an appropriate application seeking Town approval enabling the District to make a parking payment in lieu pursuant to section 17.5.8(D) of the CDC (the "Payment in Lieu Application"). The Town agrees to process the Payment in Lieu Application without a full development application for the Initial Project Phase with an assumed square footage of 25,000 square feet for the District Portion of the Initial Project Phase on the basis that the Project is for a public entity and in this specific instance, the Town can determine the criteria of section 17.5.8(D) of the CDC without a full development application for the Project. The Parking Payment shall be paid and administered in the manner provided for above in Section 3.6.1. The District is responsible for the cost and expense of designing, constructing and operating the Helipad. Nothing herein shall limit or preclude the District from commencing and/or completing the Helipad CUP prior to Closing. Upon such an election, the Town will provide any authorizations and consents required of the District to initiate, process and have an application for the Helipad CUP reviewed by the Town.

6.3. **Design Review Processes.**

6.3.1. **Conceptual Design Worksession.** Following the completion of the Design Charrette Process, the District or its Selected Developer (in the event the Developer Option is selected) shall, at its sole cost and expense, submit for a conceptual worksession for the proposed design of the improvements associated with the Initial Project Phase. A conceptual worksession shall be conducted with both the DRB and Town Council, preferably in a joint meeting at the discretion of the Town and shall be reviewed, administered and acted upon by the Town in the manner prescribed by applicable Town Laws.

6.3.2. **Design Review Process.** Following the completion of the conceptual worksession, the District or its Selected Developer (in the event the Developer Option is selected) shall, at its sole cost and expense, submit a Design Review Process application for the improvements associated with the Initial Project Phase and for extended vested property rights, which shall be reviewed, administered and acted upon by the Town in the manner prescribed by applicable Town Laws.

A. The District and Town will determine the amount of required parking for the improvements associated with the Initial Project Phase as determined by the CDC based upon the actual design and size of the Initial Project Phase. Based upon such calculation, if there is an increase in the required number of spaces attributable to the District Portion of the Project previously approved, due solely to an increase in the square footage of the District Portion of the Project, the Parking Payment amount shall be increased and paid by the District with the issuance of a Building Permit by the Town. In the event there is a decrease in the required number of parking spaces attributable to the District Portion of the Project previously approved, due solely to a change in square footage of the District Portion of the Project, the Parking Payment shall be adjusted accordingly.

B. The District or its Selected Developer (in the event the Developer Option is selected) shall enter into a public improvements agreement pursuant to the CDC Public Improvement Policy for the cost of the on-site and off-site improvements, such as landscaping, internal sidewalks, paving, access and entry improvements occurring on the Acquisition Property, trash enclosure, signs and similar site improvements as required by the CDC Design Regulations and/or conditions of approvals granted through the Design Review Process attributable to the improvements associated with the Initial Project Phase.

C. In the event the Initial Project Phase does not provide for site coverage for the entire Property, as defined below, the Initial Project Phase shall include landscaping on the remaining area of the Property, which shall be maintained by the District. The Parties acknowledge that any rights of approval granted to the Town by this Agreement related to the Initial Project Phase shall also apply to any Expansion Project Phase. In addition, in the event that the site coverage or mass/scale for the Project is not being fully utilized by the District, the Parties shall meet and confer and, if requested by the Town, the District and Town shall enter into an agreement which gives the Town the right to develop the remainder of the Acquisition Property, provided, however, in such event, the Town shall grant the District an option to acquire or lease the development that the Town, or its designee, may elect to undertake to accommodate the District's expansion needs for the Expansion Project Phase. The agreement between the Parties shall account for cost reimbursements for site design and construction undertaken by District.

6.4. **Building Permit.** Following Town approval of the Design Review Process application, the District or its Selected Developer (in the event the Developer Option is selected) shall prepare and submit, at its sole cost and expense (subject to the reimbursement requirements for the Covered Fees/Costs by the Town), for one or more building permits for the work attributable to the improvements associated with the Initial Project Phase in accordance with the CDC Building Regulations and Town Laws, which shall be reviewed, administered and acted upon by the Town in the manner prescribed by applicable Town Laws.

6.5. **Construction of Project.**

6.5.1. Following issuance of a Building Permit for the Initial Project Phase, the District or its Selected Developer (in the event the Developer Option is selected) shall, at its sole cost and expense, construct the improvements associated with the Initial Project Phase in a manner compliant with the issued plan and permit approvals.

6.5.2. The District or its Selected Developer (in the event the Developer Option is selected) shall be responsible for selecting a qualified and reputable general contractor or design/build firm for the construction of the improvements associated with the Initial Project Phase ("**Work**"). The Town shall have the right to approve the District's or its Selected Developer's general contractor, design/build firm and any replacement general contractor, for the Work as well as any additional substantial improvements and/or remodel work, which approval shall not be unreasonably withheld. The general contractor or design/build firm selected shall have sufficient experience building in mountain resort environments constructing projects of similar scope and geographic locations as the Project. The general contractor shall be licensed by the Town as required by the Town Laws.

6.5.3. The District shall prepare an initial construction mitigation plan for review and approval by the Town prior to submitting the Construction Documents ("**Mitigation Plan**"). The Town and District shall meet and confer and discuss locations where staging can occur and shall cooperate and assist each other in securing consents to use such parcels for staging. The obligation of the Town to cooperate and assist the District shall not require financial cooperation of assistance.

6.5.4. The District shall design the Project in a manner that ensures the Town's ability to construct the approved expansion of the Gondola Parking Garage, which shall include designing the Project to avoid conflicts with the future foundation work needed to construct the expansion of the Gondola Parking Garage and to provide for any setbacks that may be required due to the expansion of the Gondola Parking Garage. The Town represents to the District that it is not aware of circumstances and conditions by which the District proposal to erect the Helipad on the current upper level of the Parking Garage would preclude such expansion, provided that the Helipad is designed and constructed in a manner that would enable it to be lifted and lowered into a new location as the Parking Garage expansion

occurs.

6.5.5. The District acknowledges that it must take into consideration the continued and uninterrupted use of the Gondola Parking Garage in the design, construction and use of the Project, except that the Parties recognize and agree that the placement and installation of the Helipad will cause some temporary impacts to the Gondola Parking Garage. The District also acknowledges that the design and construction of the Project shall not result in an overall net loss in existing parking spaces in the Gondola Parking Garage and that construction of the expansion and addition of the Gondola Parking Garage will result in extremely loud noise levels and vibrations due to the process of pounding steel for foundation support on the southern boundary of the Gondola Parking Garage.

6.5.6. Construction plans and specifications for the Work ("**Construction Documents**") as required by the Town Laws shall be completed by the District or its Selected Developer (in the event the Developer Option is selected), and a copy thereof provided to the Town. The District or its Selected Developer, as appropriate, shall also apply for issuance of a building permit from the Town based upon the Construction Documents.

6.5.7. The District or its Selected Developer (in the event the Developer Option is selected) shall provide the Town with notice of its intent to commence construction of the Project at least twenty (20) calendar days prior to commencement ("**Notice of Commencement**"). The Notice of Commencement shall state the date construction will begin ("**Construction Commencement Date**").

6.5.8. The District or its Selected Developer (in the event the Developer Option is selected) shall, at its sole cost and expense, diligently prosecute construction of the Project to completion in accordance with the Construction Documents, the Town approvals, and this Agreement. The Town shall endeavor to promote the general progress of the entire construction and shall not, by delay or otherwise, interfere with or hinder construction unless otherwise required or necessitated to enforce the terms of this Agreement or Town Laws. In addition to general observations and inspections done pursuant to the Town Laws which are not bound by the terms of this Agreement, the District or its Selected Developer (in the event the Developer Option is selected) shall reasonably cooperate to allow the Town to observe construction and remodel work, including periodic onsite monitoring of construction activities. In addition to general observations or inspections done pursuant to the Town Laws which are not bound by the terms of this Agreement periodic site visits shall be scheduled by mutual agreement and shall not interfere with or delay construction activities. The Project shall be deemed substantially complete for purposes of this Agreement upon the issuance of a certificate of occupancy by the Town. The District or its Selected Developer (in the event the Developer Option is selected) shall promptly provide the Town with notice of substantial completion.

6.6. **Timing for Construction.** Subject to reasonable delays for force majeure events, the District shall secure a building permit for the Initial Project Phase and issue a notice to its contractor to commence construction of the work pursuant to such building permit within five years of the Closing Date or such later date as may be agreed upon by the Parties.

6.7. **Gondola Parking Garage Continued Use.** The Mitigation Plan shall ensure the continued, uninterrupted operation of the Gondola Parking Garage during the course of construction, except that the Parties recognize and agree that the placement and installation of the Helipad will cause some temporary impacts to the Gondola Parking Garage. The Town authorizes the District to utilize the open area to the north of the Project as shown on Exhibit \_\_, which area may be used for construction staging, but in no event shall such construction staging block or impede a required high clearance access lane for the Gondola Parking Garage within such construction staging area.

6.8. **Use and Occupancy.** Following the completion of the construction of the

improvements associated with the Initial Project Phase, the District or its Selected Developer (in the event the Developer Option is selected) shall, at its sole cost and expense, submit for one or more certificates of occupancy in accordance with the CDC Building Regulations and Town Laws, which shall be reviewed, administered and acted upon by the Town in the manner prescribed by applicable Town Laws. Following the issuance of a certificate of occupancy the District shall use the District Portion of the Project (in the event the Developer Option is selected) or the entire Initial Project Phase as a Regional Medical Center operated by the District and/or for the Regional Medical Center Affiliated Uses. Any change in use from the Regional Medical Center or the Regional Medical Center Affiliated Use shall require the express written consent of the Town which consent shall be made in the Town's sole and absolute discretion.

6.9. **Funding.** Unless the District is electing to pursue the Developer Option, the District agrees to proceed with Funding (defined below) for the Project in the manner reasonably determined by District. In the event that the District has elected to pursue the Developer Option, the District shall undertake Funding in the manner provided for in the Developer/District Joint Development Agreement. The District is expressly permitted to represent the Town's support and commitment to the District's Capital Campaign for the Project in accordance with the terms of this Agreement. The Town shall include a link to the District's website and information regarding the District's proposed Facility and Capital Campaign for the Initial Improvements on the Town's website. Upon securing sufficient funds and commitments to demonstrate achievement of its total funding goal, as may be adjusted, the District shall provide written notice thereof to the Town.

6.10. **Election for Developer Option.** At any time prior to the commencement of construction of the Initial Project Phase, the District may elect to pursue the Developer Option. Upon such election, the District shall notify the Town in writing of such election and identify the Selected Developer. The Town shall have the right to approve the District's Selected Developer to pursue the Developer Option, which approval shall not be unreasonably withheld. Thereafter, the District and Selected Developer shall negotiate a mutually agreeable Developer/District Joint Development Agreement, which shall be presented to the Town for its review and approval, which approval shall not be unreasonably withheld, provided that certain business terms and conditions may be redacted in the draft provided to the Town. The Town shall review and provided comments concerning the Developer/District Joint Development Agreement in a closed session, confidential meeting, unless prohibited by Applicable Law. The Developer/District Joint Development Agreement shall note any uses and activities which extend beyond the scope of the Project proposed by the District, which must be approved by the Town in the manner provided by the Town Laws. At any time following the Town's approval of the Developer/District Joint Development Agreement, the District may convey title to the Property to its Selected Developer to the extent necessary for the developer to procure necessary financing to undertake the development of the Project, which conveyance will be made and completed expressly subject to the terms, conditions and requirements of this Agreement, including each of the District Post Closing Undertakings, which the Selected Developer will agree to assume. The Town shall have the right to review and approve any and all such conveyance documents to insure that its rights and interests under this Agreement are being suitably addressed.

6.11. **Reporting to Town.** Following Closing, the District shall provide an annual report to the Town indicating its progress and anticipated scheduling for initiating and completing the design, funding and construction of the Project. If requested by either Party, the Parties shall meet and confer to discuss the matters.

7. **Title, Survey and Off Records Documents.**

7.1. **Title Commitment.** Town shall furnish to District, at Town's expense, a current title insurance commitment (**Title Commitment**) for owner's title insurance policy issued by Land Title Guaranty Company (**Title Company**) within ten days following the creation of the Land Condominium

Unit (**Title Deadline**), together with copies of all of the recorded documents shown as exceptions to title in the Title Commitment (**Title Exception Documents**). The Title Commitment and the Title Exception Documents constitute the title documents (**Title Documents**). The Title Commitment shall be in the amount reflecting the estimated value of the Property and shall show District as the proposed insured thereunder. Town will pay the title insurance premium assigned to Town at Closing and cause the Title Company to issue the final title insurance policy and deliver it to District as soon as practicable after Closing. The Title Company shall update the Title Commitment prior to Closing as circumstances dictate, noting any new exceptions that may be placed of record and affect title to the Property (**Updated Title Commitment**). Town shall cause Title Company to delete the standard exceptions No. 1-4 (**Standard Exceptions**) at the cost and obligation of Town. District may obtain at District's sole cost and expense such additional title endorsements and title coverage (**District Requested Title Coverage**) as may be desired by District, provided that Town shall reasonably cooperate with District to assist District in obtaining any desired District Requested Title Coverage, provided that in no event shall Town be obligated to: (a) incur costs or expenses or (b) assume additional liability or obligation in order for the District Requested Title Coverage to issue. District shall have the right to inspect the Title Documents. Written notice of any unsatisfactory condition(s) disclosed by the Title Documents shall be provided to the Town in accordance with Section 8.4 below. If Town does not receive District's notice by the expiration of the Study Period (defined below), District accepts title subject to the Title Documents and the other Permitted Exceptions (defined below).

7.2. **Survey.** Town shall provide District with a current ALTA survey of the Acquisition Property (**Survey**) at the cost and obligation of Town. Town shall cause the corners of the Acquisition Property to be staked in the field. The Survey shall be considered a Title Document.

7.3. **Matters not shown by the Public Records.** Town shall deliver to District by the Title Deadline true copies of any contracts or lease(s), and any reports, studies, surveys, approvals, permits, licenses, other studies or reports, if any, in Town's reasonable possession pertaining to the Property (Off Record Documents). Town hereby certifies to District, that Town is unaware of any easements, liens or other title matters affecting the Property not shown by the public records. District shall have the right to inspect the Property to determine if any third party(s) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Town or revealed by such inspection shall be provided in accordance with the Section 6 below. If Town does not receive District's notice by the expiration of the Study Period (defined below), District accepts title subject to the matters disclosed by Town pursuant to this section.

8. **Inspection, Due Diligence, Study Period:**

8.1. **Study Period, Review of Study Matters.** District shall have until April 17, 2015 at 5 PM Colorado (Mountain Time)(**Study Period**) to evaluate, study and review any and all matters related to the Property and the Project as determined by the District in its sole discretion (**Study Matters**).

8.2. **Site Investigation.** District shall have the right to undertake a physical inspection of the Property (**Physical Inspection**), subject to Town's reasonable rules concerning access and safety. Town shall cooperate with District in undertaking the Physical Inspection. District shall undertake its review of the Study Matters and the Physical Inspection of the Property at District's sole cost and expense and shall protect and indemnify Town against any mechanic liens or other claims or liabilities which may result directly therefrom.

8.3. **Property Disclosure.** No Town's Property Disclosure is required to be prepared by Town and delivered to District.



8.4. **District's Notice of Objection.** At any time during the Study Period, District shall have the right, in District's sole discretion, to send written notice to Town either: (a) noting issues or concerns with the Study Matters (**Notice of Objection**); or (b) terminating the Agreement for any reason in which case the Agreement shall immediately terminate, the Town shall return the Deposit and accrued interest to the District and the Parties shall have no further rights or obligations under this Agreement (**Notice of Termination**). In the event that the District sends its Notice of Objection, the Town and District shall promptly meet and confer to address the objections. If the Town and District are not able to resolve the issues or concerns to their mutual satisfaction within ten days of the Notice of Objection or such later time mutually agreeable to the Parties, the District may either: (i) waive the objection and proceed to Closing, or (ii) the District may terminate this Agreement in which case the Agreement shall immediately terminate, the Town shall return the Deposit and accrued interest to the District, and the Parties shall have no further rights or obligations under this Agreement.

9. **Closing Date, Closing Costs, Documents and Services.**

9.1. **Closing Date.** Closing is contingent upon the Town's completion of Town's Pre-Closing Undertakings and the District's completion of District's Pre-Closing Undertakings, unless waived in writing by the Parties. Closing shall occur on the date (**Closing Date**) that is ten days from the achievement of each of the Town's completion of Town's Pre-Closing Undertakings and District's completion of District's Pre-Closing Undertakings, provided that in any event, Closing shall occur no later than May 15, 2015 (or such earlier or later date agreed upon by the Parties) and if Closing has not occurred by that date, then District may terminate this Agreement. Closing shall occur at a time and location as determined by the Town and the District.

9.2. **Payment of Closing Costs.** District and Town shall pay, in Good Funds, their respective closing costs and all other items required to be paid at closing, except as otherwise provided herein. District and Town shall sign and complete all customary or required documents at or before closing.

9.3. **Closing Services.** Title Company shall handle closing and assist in document preparation, including Closing Instructions mutually agreed to by District, Town and Title Company. Fees for real estate closing services shall not exceed \$1,000 and shall be paid at closing equally by District and Town.

9.4. **Other Closing Fees.** Any fees, if any, incident to the transfer from Town to District assessed on or on behalf of an owners' association shall be paid by District. Any sales and use tax that may accrue because of this transaction shall be paid when due by District. Other fees and charges shall be paid and adjusted at Closing as provided for herein.

9.5. **Town and District Closing Obligations.**

9.5.1. At the Closing, Town shall deliver to Title Company the following:

9.5.1.1. A special warranty deed to the Property each properly executed and in proper form for recording so as to convey the title to the Property required by this Agreement.

9.5.1.2. Such affidavits as District's title company shall reasonably require in order to omit from its title insurance policy all exceptions for Standard Exceptions, liens, judgments, bankruptcies or the like against persons or entities whose names are the same as or similar to Town's name. Any other documents required by this Agreement to be delivered by Town.

9.5.2. At the Closing, District shall deliver to Title Company the following:

9.5.2.1. All funds and payments required to be paid by District under the Agreement and payable at the Closing, as adjusted for apportionments and prorations and any such other credits provided for by the Agreement, if any; and

9.5.2.2. Any other documents required by this Agreement to be delivered by District.

10. **Prorations.** Water charges, sewer rents, utilities, and the like, other public or governmental charges or assessments payable on an annual basis (including special district charges, assessments, liens or encumbrances for sewer, water drainage and other public improvements) if any, on the basis of the fiscal period for which assessed, except that taxes or assessments for improvements now commenced or completed, whether or not assessed, shall be prorated to date of closing. The conveyance is anticipated to be exempt from the requirement to pay RETA administered by TMVOA. The District shall prepare a RETA exemption application and the Town shall cooperate and assist the District in securing a RETA exemption from TMVOA.

11. **Acquisition Property Reversionary Procedures.**

11.1. District and Town agree that at any time following Closing hereunder, in the event that the District shall fail to have complied with any of the District Post-Closing Undertakings as provided for in Section 6 or as otherwise specifically noted as a Post-Closing Undertaking, the Town shall send written notice of such determination to the District. The District shall have not less than thirty days to cure the default or enter into mutually agreeable modifications to the issue for which the District is out of compliance. If the District fails to cure the default and/or the Parties do not execute a modification to the appropriate documents addressing the matter, the District and the Town shall proceed in the manner provided in Section 11.3 below and, in addition, the Town may pursue its other remedies as provided for in Section 13.1.

11.2. The foregoing notwithstanding, at any time following Closing, in the event that the District, in the exercise of its reasonable discretion determines after diligently pursuing the necessary development approvals and funding for the intended development of the Acquisition Property that the District cannot secure such necessary development approvals (as defined in section 2.5) and/or funding for reasons not attributable to the actions or inactions of the District, the District may send written notice of such determination to the Town and, thereafter, the District and the Town shall proceed in the manner provided in Section 11.3 below and the Town shall return the Deposit and accrued interest to the District. If after receipt of the notice, the Town disputes the diligence of the District as required under this provision the Town may elect to submit this matter to dispute resolution in order to determine whether the District's diligence was proper as provided in section 13.5.

11.3. Upon the occurrence of an event triggered under Section 11.1 or 11.2 above, the District (or the Selected Developer if title transferred to the Selected Developer) shall execute and record its special warranty deed conveying title to the Acquisition Property to the Town or its designee, subject only to the exceptions reflected in the Title Policy delivered to District at or after Closing and such other documents or instruments recorded by persons or parties after Closing, other than documents recorded by District or persons, parties or entities related to or affiliated with District ("**Permitted Exceptions**"), free and clear of all financial encumbrances placed or allowed to be placed on the Acquisition Property by District or Selected Developer (if applicable). Town and District shall each pay their own, respective attorneys' fees and any other costs incurred in connection with the implementation of this transaction. The conveyance is anticipated to be exempt from the requirement to pay RETA administered by TMVOA; the parties shall cooperate and assist each other in securing a RETA exemption from TMVOA.

12. **Construction of Agreement.** District and Town acknowledge that they have read, understand, and have had the opportunity to be advised by legal counsel as to the effect of each and every one of the terms, conditions, and restrictions of this Agreement, and each acknowledges and agrees to the enforcement thereof. Should any provision of this Agreement require judicial interpretation, it is agreed that the court shall not apply the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document. Typewritten or handwritten provisions inserted in this Agreement that are initialed by the Parties shall control over all printed provisions of this Agreement in conflict therewith.

13. **Default and Remedies.** If the event of a default by a Party under the Agreement, the following remedies shall apply.

13.1. **District Default.** If Town determines that District is in default under this Agreement, Town shall promptly send written notice to District (**Notice of Default**) stating the grounds for the alleged default, the steps which District is required to undertake to cure the alleged default and the timeframe (not less than 30 days) within which District may cure the alleged default. In the event that District has failed to cure the default stated in the Notice of Default or shall have failed to contest the Notice of Default, the Town may elect to require the District to convey the Acquisition Property to the Town in the manner provided for in Section 11 and may also elect to retain the Deposit. The Parties acknowledge and agree that the Town has given significant incentives to the District in order to develop the Project on the Acquisition Property including the full donation of the Acquisition Property, the agreement to refund significant fees and costs, the expenditure of significant good will and the expenditure of significant amounts of Town funds as required by this Agreement that would be difficult to measure; thus, the forfeiture of the Deposit represents reasonable post-closing losses and damages to the Town.

13.2. **Town Default.** If District determines that Town is in default under this Agreement, of any performances, duties and obligations of the Town which are required or otherwise contemplated to be performed after Closing, District shall promptly send written notice to Town (**Notice of Default**) stating the grounds for the alleged default, the steps which Town is required to undertake to cure the alleged default and the timeframe (not less than 15 days) within which Town may cure the alleged default. In the event that Town has failed to cure the default stated in the Notice of Default or shall have failed to contest the Notice of Default, District, as its sole and exclusive remedy, may elect to either: (a) terminate this Agreement, and secure a release of the Deposit and the Covered Fees/Costs paid by the District to the Town and reimburse District for costs and expenses incurred by the District in connection with its acquisition of the Acquisition Parcel, including actual and incurred costs and expenses, not including District staff cost allocations overhead or similar expenses, incurred in connection with preparing and processing land use applications with the Town (the District shall provide the Town actual paid invoices for all expenses and costs in connection with this section); or (b) treat this Agreement as being in full force and effect, in which event District shall have the right to pursue an action for specific performance to compel the Town's compliance with its obligations hereunder, including, any performances, duties and obligations of the Town which are required or otherwise contemplated to be performed after Closing. In no event shall any damages, including but not limited to the reimbursement to the District for costs and expenses incurred by the District in connection with the acquisition of the Acquisition Parcel, including costs incurred in connection with preparing and processing land use applications with the Town, under this provision, exceed \$500,000.

13.3. **Costs and Expenses.** Anything to the contrary herein notwithstanding, in the event of any litigation, mediation or arbitration arising out of this Agreement, including any duties or obligations of either party which are to be performed following Closing, the Court, mediator or arbitrator shall award to the substantially prevailing party all of its reasonable costs and expenses, including

attorney fees, arbitration fees and costs and expert witness fees, if applicable.

13.4. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Colorado. Venue shall be restricted to a court of competent jurisdiction in San Miguel County, Colorado.

13.5. **Alternative Dispute Resolution; Mediation.** If a dispute arises relating to this Agreement, and is not resolved, the Parties in such dispute (**Disputants**) shall first proceed in good faith to submit the matter to mediation. The Disputants will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. In the event the entire dispute is not resolved within thirty (30) calendar days from the date written notice requesting mediation is sent by one Disputant to the other(s), the mediation, unless otherwise agreed, shall terminate. This section shall not alter any date in this Agreement, unless otherwise agreed.

13.6. **Force Majeure.** The Parties time for performance of their obligations hereunder shall be extended for any delay caused by acts of God, abnormal climatic conditions, fire, unusual or unforeseeable delays in the transportation of materials, labor disputes, stoppage or delays in the progress of performance of work or other obligations as a result of the order of any court, any other public authority or any agency, instrumentality, department or official of any municipality or other governmental or quasi-governmental authority (**Force Majeure**) (except for District's requirements to complete its review of the Study Matters and provide notices as provided for in Section 6 and District and Town's obligation to Close on the Property as provided for in this Agreement).

14. **Modification of Agreement and Integration.** No waiver, amendment or modification of this Agreement or covenant, condition, undertaking or limitation herein contained shall be valid unless in writing and duly executed by the party charged therewith.

15. **Entire Agreement.** This Agreement, which includes all special stipulations, exhibits, and attachments referenced in this Agreement and attached, embodies the entire agreement between the Parties and cannot be waived or amended except in writing signed by both Parties. District agrees that District has not been induced by or relied upon any information, representation, warranties, or statements, whether oral or written, express or implied, made by Town or any other person representing or purporting to represent Town that are not expressly set forth or provided for in this Agreement.

16. **Real Estate Agents and Brokers.** The Parties acknowledge and agree that neither Party has engaged the services of a real estate broker or agent and that no real estate commissions shall become due and payable to any person, entity or other party as a result of the fulfillment of this transaction. Each Party agrees to indemnify and hold harmless the other party from any claims, expenses, fees, costs or expenses incurred should a person, entity or other party assert a right or claim to a real estate commission arising in connection with their alleged representation of the party from whom the indemnification was granted.

17. **Survival.** All provisions of this Agreement that do not, by their terms, survive a termination of this Agreement or a Closing shall be merged into the deed of conveyance at Closing and shall not survive Closing. Except to the extent that any provision hereof expressly survives Closing, this Agreement shall terminate upon Closing unless earlier terminated as provided herein. Any provision of the Agreement intended to survive Closing as stated in this Agreement, shall survive Closing and shall be deemed to be a covenant running with the land and enforceable by the party seeking enforcement through all available remedies, including, without limitation, specific performance. The prevailing party in such action shall recover their reasonable attorney fees and costs.

18. **No Waiver.** Failure of either party to insist upon compliance with any provision hereof

shall not constitute a waiver of the rights of such party subsequently to insist upon compliance with that provision or any other provision of this Agreement.

19. **Severability.** The provisions of this Agreement are intended to be independent, and in the event any provisions hereof should be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Agreement, provided that the unenforceable term is not an essential term of the Agreement.

20. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assigns. District may assign its rights under the Agreement to an entity in which principals in the District entity own a majority interest in the entity being assigned District's rights hereunder. District shall not assign this Agreement or any interest hereunder, in whole or in part, to any other person or party without the prior written consent of Town, which Town may grant or withhold in its sole and absolute discretion.

21. **Notices.** Any notice provided or permitted to be given hereunder shall be in writing and may be given by personal delivery, facsimile transmission or by depositing the notice in the United States mail, postage prepaid, certified with return receipt requested, and addressed to the party to be notified. Notice deposited in the mail in the foregoing manner shall be deemed received three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when actually received by the party to be notified. For purposes of notice, the addresses of the Parties shall be as set forth below until changed. Any Party, by notifying the other Parties hereto in the manner provided in this Section, may designate a different address for receipt of subsequent notices.

<p><b>District:</b>          Telluride Hospital District          Attention: Gordon Reichard or Executive Director          PO Box 1229          Telluride, CO 81435          Phone: (970) 728-9782          Fax: 970.728.0119           Email: greichard@tellmed.org</p>	<p><b>Town</b>          Town of Mountain Village          Attention: Kim Montgomery, Town Manager          455 Mountain Village Blvd., Suite A          Mountain Village, CO 81435          Phone: (970) 728-_____          Email: _____</p>
<p><b>With a Copy to</b>          Thomas G. Kennedy, Esquire          P.O. Box 3081          Telluride, CO 81435          Phone: (970) 728-2424          Email: tom@tklaw.net</p>	<p><b>With a Copy to</b>          Town Attorney          J. David Reed, Esquire          PO Box 196          Montrose, CO 81402          Phone: (970) 249-3806          Email: _____</p>

22. **Captions.** Captions are for convenience only and are not to be construed as defining or limiting in any way the scope of intent of the provisions of such sections.

23. **Counterparts and Facsimiles.** This Agreement may be executed in multiple counterparts or by legible facsimile copy, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument. The facsimile transmission or PDF/emailed transmission of a signed copy hereof or of any amendment to the Agreement, or of any notice to be given to the other party or his or her agent, shall be considered valid and constitute a signed original. A signed "hard copy" of the document shall not be necessary, but may be executed by the Parties.

**Accepted and agreed to by the Parties as of the Effective Date.**

**TOWN:**

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Dan Jansen, Mayor

Attest: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kim Montgomery, Town Manager

**DISTRICT:**

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

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# Memo

To: Mayor Jansen and Town Council  
From: J. David Reed  
Date: January 8, 2015  
Re: Consideration of an Agreement to Sell a Portion of Lot 1003R-1, the Lofts at Mountain Village Site, to Telluride Investments, LLC for Purposes of Developing Work force Housing

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At the December, 2014, Council meeting, the Council voted to direct the Mayor, staff and legal counsel to negotiate with the developer of a proposed workforce housing project, to sell a portion of Lot 1003R-1 for such purpose and to present an agreement for Council consideration at the January Council meeting.

In response to Council's direction, negotiations were pursued which culminated in the drafting of the Agreement that is included in your packet for consideration.

The purchaser of the property has approved the Agreement in the form included in your packet.

Please note that while the Agenda identifies the purchaser as Telluride Investments, LLC, the actual purchaser and the entity that will take title to the property is Belem Properties Co., LLC. The reason for the discrepancy between the Agenda, this memorandum, and the actual purchaser is that between the preparation of the Agenda and the drafting of this memorandum, the principals of Telluride Investments, LLC elected to change the entity in which they choose to acquire title.

Motion to approve: I hereby move to approve the Agreement as presented, and authorize the Mayor to execute the Agreement on behalf of the Town.

Motion to deny: I hereby move to deny approval of the Agreement as presented.

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS4-8-13) (Mandatory 1-14)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

CONTRACT TO BUY AND SELL REAL ESTATE (LAND)

(X) Property with No Residences ( ) Property with Residences-Residential Addendum Attached

Date: January 15, 2015

AGREEMENT

1. AGREEMENT. Buyer, identified in § 2.1, agrees to buy, and Seller, identified in § 2.3, agrees to sell, the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, Belem Properties Co. LLC, will take title to the Property described below as ( ) Joint Tenants ( ) Tenants In Common ( ) Other N/A

2.2. Assignability and Inurement. This Contract ( ) Is (X) Is Not assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract inures to the benefit of and is binding upon the heirs, personal representatives, successors and assigns of the parties.

2.3. Seller. Seller, Town of Mountain Village, is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of San Miguel, Colorado: A portion of Lot 1003R-1, TMV, as more accurately described in the land condominium document to be formed pursuant to this Agreement.

known as No. Vacant Land Mountain Village CO 81435 Street Address City State Zip

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):

2.5.1. Fixtures. All fixtures attached to the Property on the date of this Contract.

Other Fixtures: N/A

If any fixtures are attached to the Property after the date of this Contract, such additional fixtures are also included in the Purchase Price.

2.5.2. Personal Property. If on the Property, whether attached or not, on the date of this Contract, the following items are included: N/A



48 **Other Personal Property: N/A**

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The Personal Property to be conveyed at Closing must be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except N/A

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Conveyance will be by bill of sale or other applicable legal instrument.

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**2.5.3. Trade Fixtures.** With respect to trade fixtures, Seller and Buyer agree as follows:

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N/A

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The Trade Fixtures to be conveyed at Closing will be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except N/A

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. Conveyance will be by bill of sale or other applicable legal instrument.

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**2.6. Exclusions.** The following items are excluded (Exclusions): N/A

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**2.7. Water Rights, Well Rights, Water and Sewer Taps.**

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**2.7.1. Deeded Water Rights.** The following legally described water rights: N/A

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Any deeded water rights will be conveyed by a good and sufficient N/A deed at Closing.

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**2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in §§ 2.7.1, 2.7.3, 2.7.4 and 2.7.5, will be transferred to Buyer at Closing: N/A

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**2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well. Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water Well" used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permit # is N/A

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**2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing are as follows:

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N/A

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**2.7.5. Water and Sewer Taps. Note: Buyer is advised to obtain, from the provider, written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer and use of the taps.**

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**2.7.6. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other Rights Relating to Water), § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey such rights to Buyer by executing the applicable legal instrument at Closing.

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**2.8. Growing Crops.** With respect to growing crops, Seller and Buyer agree as follows:

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N/A

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**3. DATES AND DEADLINES.**

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Item No.	Reference	Event	Date or Deadline
1	§ 4.3	Alternative Earnest Money Deadline	
		<b>Title</b>	
2	§ 8.1	Record Title Deadline	<i>see addtl provisions</i>

Item No.	Reference	Event	Date or Deadline
3	§ 8.2	Record Title Objection Deadline	<i>see addtl provisions</i>
4	§ 8.3	Off-Record Title Deadline	<i>see addtl provisions</i>
5	§ 8.3	Off-Record Title Objection Deadline	<i>see addtl provisions</i>
6	§ 8.4	Title Resolution Deadline	<i>see addtl provisions</i>
7	§ 8.6	Right of First Refusal Deadline	
		<b>Owners' Association</b>	
8	§ 7.3	Association Documents Deadline	
9	§ 7.4	Association Documents Objection Deadline	
		<b>Seller's Property Disclosure</b>	
10	§ 10.1	Seller's Property Disclosure Deadline	
		<b>Loan and Credit</b>	
11	§ 5.1	Loan Application Deadline	
12	§ 5.2	Loan Objection Deadline	
13	§ 5.3	Buyer's Credit Information Deadline	
14	§ 5.3	Disapproval of Buyer's Credit Information Deadline	
15	§ 5.4	Existing Loan Documents Deadline	
16	§ 5.4	Existing Loan Documents Objection Deadline	
17	§ 5.4	Loan Transfer Approval Deadline	
18	§ 4.7	Seller or Private Financing Deadline	
		<b>Appraisal</b>	
19	§ 6.2	Appraisal Deadline	
20	§ 6.2	Appraisal Objection Deadline	
		<b>Survey</b>	
21	§ 9.1	Current Survey Deadline	<i>see addtl provisions</i>
22	§ 9.2	Current Survey Objection Deadline	<i>see addtl provisions</i>
23	§ 9.2	Current Survey Resolution Deadline	<i>see addtl provisions</i>
		<b>Inspection and Due Diligence</b>	
24	§ 10.2	Inspection Objection Deadline	04/15/2015
25	§ 10.3	Inspection Resolution Deadline	<i>see addtl provisions</i>
26	§ 10.5	Property Insurance Objection Deadline	
27	§ 10.6	Due Diligence Documents Delivery Deadline	<i>see addtl provisions</i>
28	§ 10.6	Due Diligence Documents Objection Deadline	04/15/2015
29	§ 10.6	Due Diligence Documents Resolution Deadline	<i>see addtl provisions</i>
30	§ 10.6	Environmental Inspection Objection Deadline	04/15/2015
31	§ 10.6	ADA Evaluation Objection Deadline	04/15/2015
32	§ 10.7	Conditional Sale Deadline	
33	§ 11.1	Tenant Estoppel Statements Deadline	
34	§ 11.2	Tenant Estoppel Statements Objection Deadline	
		<b>Closing and Possession</b>	
35	§ 12.3	<b>Closing Date</b>	<i>see addtl provisions</i>
36	§ 17	Possession Date	<i>upon closing and dod</i>
37	§ 17	Possession Time	<i>upon closing and dod</i>
38	§ 28	<b>Acceptance Deadline Date</b>	01/16/2015
39	§ 28	<b>Acceptance Deadline Time</b>	5:00 p.m. MST

93 **3.1. Applicability of Terms.** Any box checked in this Contract means the corresponding provision applies. Any  
94 box, blank or line in this Contract left blank or completed with the abbreviation "N/A", or the word "Deleted" means  
95 such provision, including any deadline, is not applicable and the corresponding provision of this Contract to which  
96 reference is made is deleted.

97 The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this  
98 Contract.

99 **4. PURCHASE PRICE AND TERMS.**

100 **4.1. Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$ 100,000.00	
2	§ 4.3	Earnest Money		\$
3	§ 4.5	New Loan		\$
4	§ 4.6	Assumption Balance		\$
5	§ 4.7	Private Financing		\$
6	§ 4.7	Seller Financing		\$
7				
8				
9	§ 4.4	Cash at Closing		\$ 100,000.00
10		<b>TOTAL</b>	\$ 100,000.00	\$ 100,000.00

101 **4.2. Seller Concession.** Seller, at Closing, will credit, as directed by Buyer, an amount of \$ N/A  
102 to assist with any and all of the following: Buyer's closing costs, (Seller Concession). Seller Concession is in addition  
103 to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract. Seller Concession will be reduced to the  
104 extent it exceeds the aggregate of what is allowed by Buyer's lender as set forth in the Closing Statement, Closing  
105 Disclosure or HUD-1, at Closing.

106 **4.3. Earnest Money.** The Earnest Money set forth in this section, in the form of N/A,  
107 will be payable to and held by N/A (Earnest Money Holder),  
108 in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with  
109 this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** (§ 3) for its payment. The  
110 parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if  
111 any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits  
112 transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and  
113 Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money  
114 Holder in this transaction will be transferred to such fund.

115 **4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest Money, if other than  
116 at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money Deadline** (§ 3).

117 **4.3.2. Return of Earnest Money.** If Buyer has a Right to Terminate and timely terminates, Buyer is entitled  
118 to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and,  
119 except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to  
120 Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual instructions  
121 (e.g., Earnest Money Release form), within three days of Seller's receipt of such form.

122 **4.4. Form of Funds; Time of Payment; Available Funds.**

123 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan proceeds, Cash at  
124 Closing and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer  
125 funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

126 **4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be paid by Buyer,  
127 must be paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by  
128 Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT**. Buyer represents that  
129 Buyer, as of the date of this Contract,  **Does**  **Does Not** have funds that are immediately verifiable and available  
130 in an amount not less than the amount stated as Cash at Closing in § 4.1.

131 **4.5. New Loan.**

132 **4.5.1. Buyer to Pay Loan Costs.** Buyer, except as provided in § 4.2, if applicable, must timely pay Buyer's  
133 loan costs, loan discount points, prepaid items and loan origination fees, as required by lender.

134 **4.5.2. Buyer May Select Financing.** ~~Buyer may pay in cash or select financing appropriate and acceptable~~  
135 ~~to Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 or § 30 (Additional Provisions).~~

136 ~~4.5.3. Loan Limitations.~~ Buyer may purchase the Property using any of the following types of loans:

137  ~~Conventional~~  ~~Other~~ N/A :

138 ~~4.6. Assumption.~~ Buyer agrees to assume and pay an existing loan in the approximate amount of the  
139 Assumption Balance set forth in § 4.1, presently payable at \$ N/A per N/A  
140 including principal and interest presently at the rate of N/A % per annum, and also including escrow for the  
141 following as indicated:  ~~Real Estate Taxes~~  ~~Property Insurance Premium~~ and  N/A :

142 Buyer agrees to pay a loan transfer fee not to exceed \$ N/A . At the time of assumption, the  
143 new interest rate will not exceed N/A % per annum and the new payment will not exceed  
144 \$ N/A per N/A principal and interest, plus escrow, if any. If the actual principal  
145 balance of the existing loan at Closing is less than the Assumption Balance, which causes the amount of cash required  
146 from Buyer at Closing to be increased by more than \$ N/A , then Buyer has the Right to  
147 Terminate under § 25.1, on or before ~~Closing Date~~ (§ 3), based on the reduced amount of the actual principal balance.

148 Seller  ~~Will~~  ~~Will Not~~ be released from liability on said loan. If applicable, compliance with the  
149 requirements for release from liability shall be evidenced by delivery  on or before ~~Loan Transfer Approval~~  
150 ~~Deadline~~ (§ 3)  at Closing of an appropriate letter of commitment from lender. Any cost payable for release of  
151 liability will be paid by N/A in an amount not to exceed \$ N/A :

152 ~~4.7. Seller or Private Financing.~~

153 ~~WARNING:~~ Unless the transaction is exempt, federal and state laws impose licensing, other requirements and  
154 restrictions on sellers and private financiers. Contract provisions on financing and financing documents, unless  
155 exempt, should be prepared by a licensed Colorado attorney or licensed mortgage loan originator. Brokers should not  
156 prepare or advise the parties on the specifics of financing, including whether or not a party is exempt from the law.

157 ~~4.7.1. Seller Financing.~~ If Buyer is to pay all or any portion of the Purchase Price with Seller financing  
158 (§ 4.1),  ~~Buyer~~  ~~Seller~~ will deliver the proposed Seller financing documents to the other party on or before N/A  
159 days before ~~Seller or Private Financing Deadline~~ (§ 3):

160 ~~4.7.1.1. Seller May Terminate.~~ If Seller is to provide Seller financing (§ 4.1), this Contract is  
161 conditional upon Seller determining whether such financing is satisfactory to the Seller, including its payments,  
162 interest rate, terms, conditions, cost and compliance with the law. Seller has the Right to Terminate under § 25.1, on or  
163 before ~~Seller or Private Financing Deadline~~ (§ 3), if such Seller financing is not satisfactory to the Seller, in Seller's  
164 sole subjective discretion.

165 ~~4.7.2. Buyer May Terminate.~~ If Buyer is to pay all or any portion of the Purchase Price with Seller or  
166 private financing (§ 4.1), this Contract is conditional upon Buyer determining whether such financing is satisfactory to  
167 the Buyer, including its availability, payments, interest rate, terms, conditions and cost. Buyer has the Right to  
168 Terminate under § 25.1, on or before ~~Seller or Private Financing Deadline~~ (§ 3), if such Seller or private financing is  
169 not satisfactory to Buyer, in Buyer's sole subjective discretion.

171 

TRANSACTION PROVISIONS
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172 **5. FINANCING CONDITIONS AND OBLIGATIONS.**

173 ~~5.1. Loan Application.~~ If Buyer is to pay all or part of the Purchase Price by obtaining one or more new loans  
174 (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, must make an  
175 application verifiable by such lender, on or before ~~Loan Application Deadline~~ (§ 3) and exercise reasonable efforts to  
176 obtain such loan or approval.

177 ~~5.2. Loan Objection.~~ If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is  
178 conditional upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is satisfactory to  
179 Buyer, including its availability, payments, interest rate, terms, conditions, and cost of such New Loan. This condition  
180 is for the sole benefit of Buyer. Buyer has the Right to Terminate under § 25.1, on or before ~~Loan Objection~~  
181 ~~Deadline~~ (§ 3), if the New Loan is not satisfactory to Buyer, in Buyer's sole subjective discretion. **IF SELLER IS**  
182 **NOT IN DEFAULT AND DOES NOT TIMELY RECEIVE BUYER'S WRITTEN NOTICE TO TERMINATE,**  
183 **BUYER'S EARNEST MONEY WILL BE NONREFUNDABLE,** except as otherwise provided in this Contract  
184 (e.g., Appraisal, Title, Survey).

185 ~~5.3. Credit Information.~~ If an existing loan is not to be released at Closing, this Contract is conditional (for the  
186 sole benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval will be

187 at Seller's sole subjective discretion. Accordingly: (1) Buyer must supply to Seller by ~~Buyer's Credit Information~~  
188 ~~Deadline~~ (§ 3), at Buyer's expense, information and documents (including a current credit report) concerning Buyer's  
189 financial, employment and credit condition; (2) Buyer consents that Seller may verify Buyer's financial ability and  
190 creditworthiness; and (3) any such information and documents received by Seller must be held by Seller in  
191 confidence, and not released to others except to protect Seller's interest in this transaction. If the Cash at Closing is  
192 less than as set forth in § 4.1 of this Contract, Seller has the Right to Terminate under § 25.1, on or before Closing. If  
193 Seller disapproves of Buyer's financial ability or creditworthiness, in Seller's sole subjective discretion, Seller has the  
194 Right to Terminate under § 25.1, on or before ~~Disapproval of Buyer's Credit Information Deadline~~ (§ 3):

195 **5.4. Existing Loan Review.** If an existing loan is not to be released at Closing, Seller shall deliver copies of the  
196 loan documents (including note, deed of trust, and any modifications) to Buyer by ~~Existing Loan Documents~~  
197 ~~Deadline~~ (§ 3). For the sole benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the  
198 provisions of such loan documents. Buyer has the Right to Terminate under § 25.1, on or before ~~Existing Loan~~  
199 ~~Documents Objection Deadline~~ (§ 3), based on any unsatisfactory provision of such loan documents, in Buyer's sole  
200 subjective discretion. If the lender's approval of a transfer of the Property is required, this Contract is conditional upon  
201 Buyer's obtaining such approval without change in the terms of such loan, except as set forth in § 4.6. If lender's  
202 approval is not obtained by ~~Loan Transfer Approval Deadline~~ (§ 3), this Contract will terminate on such deadline.  
203 Seller has the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective discretion, if Seller is  
204 to be released from liability under such existing loan and Buyer does not obtain such compliance as set forth in § 4.6.

## 205 6. APPRAISAL PROVISIONS:

206 **6.1. Lender Property Requirements.** If the lender imposes any requirements or repairs (Requirements) to be  
207 made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract,  
208 Seller has the Right to Terminate under § 25.1, (notwithstanding § 10 of this Contract), on or before three days  
209 following Seller's receipt of the Requirements, based on any unsatisfactory Requirements, in Seller's sole subjective  
210 discretion. Seller's Right to Terminate in this § 6.1 does not apply if, on or before any termination by Seller pursuant  
211 to this § 6.1: (1) the parties enter into a written agreement regarding the Requirements; or (2) the Requirements have  
212 been completed; or (3) the satisfaction of the Requirements is waived in writing by Buyer.

213 **6.2. Appraisal Condition.** The applicable Appraisal provision set forth below applies to the respective loan type  
214 set forth in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.

215 **6.2.1. Conventional/Other.** Buyer has the sole option and election to terminate this Contract if the  
216 Property's valuation, determined by an appraiser engaged on behalf of \_\_\_\_\_  
217 is less than the Purchase Price. The appraisal must be received by Buyer or Buyer's lender on or before ~~Appraisal~~  
218 ~~Deadline~~ (§ 3). Buyer has the Right to Terminate under § 25.1, on or before ~~Appraisal Objection Deadline~~ (§ 3), if  
219 the Property's valuation is less than the Purchase Price and Seller's receipt of either a copy of such appraisal or written  
220 notice from lender that confirms the Property's valuation is less than the Purchase Price. This § 6.2.1 is for the sole  
221 benefit of Buyer.

222 **6.3. Cost of Appraisal.** Cost of any appraisal to be obtained after the date of this Contract must be timely paid  
223 by  Buyer  Seller. The cost of the appraisal may include any and all fees paid to the appraiser, appraisal  
224 management company, lender's agent or all three.

## 225 7. OWNERS' ASSOCIATION. This Section is applicable if the Property is located within a Common Interest 226 Community and subject to such declaration.

227 **7.1. Owners' Association Documents.** Owners' Association Documents (Association Documents) consist of the  
228 following:

229 **7.1.1.** All Owners' Association declarations, articles of incorporation, bylaws, articles of organization,  
230 operating agreements, rules and regulations, party wall agreements;

231 **7.1.2.** Minutes of most recent annual owners' meeting;

232 **7.1.3.** Minutes of any directors' or managers' meetings during the six-month period immediately preceding  
233 the date of this Contract. If none of the preceding minutes exist, then the most recent minutes, if any (§§ 7.1.1, 7.1.2  
234 and 7.1.3, collectively, Governing Documents); and

235 **7.1.4.** The most recent financial documents which consist of: (1) annual and most recent balance sheet, (2)  
236 annual and most recent income and expenditures statement, (3) annual budget, (4) reserve study, and (5) notice of  
237 unpaid assessments, if any (collectively, Financial Documents).

238 **7.2. Common Interest Community Disclosure.** THE PROPERTY IS LOCATED WITHIN A COMMON  
239 INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE  
240 OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS'  
241 ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND  
242 REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND  
243 REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY,  
244 INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER  
245 DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE  
246 PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND  
247 RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING  
248 CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION  
249 (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION.  
250 PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD  
251 INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION.  
252 PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE  
253 BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

254 **7.3. Association Documents to Buyer.**

255  **7.3.1. Seller to Provide Association Documents.** Seller will cause the Association Documents to be  
256 provided to Buyer, at Seller's expense, on or before **Association Documents Deadline** (§ 3).

257  **7.3.2. Seller Authorizes Association.** Seller authorizes the Association to provide the Association  
258 Documents to Buyer, at Seller's expense.

259 **7.3.3. Seller's Obligation.** Seller's obligation to provide the Association Documents is fulfilled upon  
260 Buyer's receipt of the Association Documents, regardless of who provides such documents.

261 **Note:** If neither box in this § 7.3 is checked, the provisions of § 7.3.1 apply.

262 **7.4. Conditional on Buyer's Review.** Buyer has the right to review the Association Documents. Buyer has the  
263 Right to Terminate under § 25.1, on or before **Association Documents Objection Deadline** (§ 3), based on any  
264 unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer  
265 receive the Association Documents after **Association Documents Deadline** (§ 3), Buyer, at Buyer's option, has the  
266 Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's  
267 receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer's Notice to  
268 Terminate would otherwise be required to be received by Seller after **Closing Date** (§ 3), Buyer's Notice to Terminate  
269 must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to Terminate within such  
270 time, Buyer accepts the provisions of the Association Documents as satisfactory, and Buyer waives any Right to  
271 Terminate under this provision, notwithstanding the provisions of § 8.6 (Right of First Refusal or Contract Approval).

272

273 **8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.**

274 **8.1. Evidence of Record Title.**

275 **8.1.1.**  **Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title  
276 insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record Title**  
277 **Deadline** (§ 3), Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title  
278 Commitment), in an amount equal to the Purchase Price, or if this box is checked,  an **Abstract of Title** certified to  
279 a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at  
280 or after Closing.

281 **8.1.2.**  **Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title  
282 insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title**  
283 **Deadline** (§ 3), Buyer must furnish to Seller, a current commitment for an owner's title insurance policy (Title  
284 Commitment), in an amount equal to the Purchase Price.

285 If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

286 **8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment  **Will**  **Will Not** commit to  
287 delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3)  
288 survey matters, (4) unrecorded mechanics' liens, (5) gap period (effective date of commitment to date deed is

289 recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing (OEC). If the title  
290 insurance company agrees to provide an endorsement for OEC, any additional premium expense to obtain an  
291 endorsement for OEC will be paid by  Buyer  Seller  One-Half by Buyer and One-Half by Seller  
292  Other N/A

293 **Note:** The title insurance company may not agree to delete or insure over any or all of the standard exceptions.

294 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats, declarations,  
295 covenants, conditions and restrictions burdening the Property, and (2) copies of any other documents (or, if illegible,  
296 summaries of such documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to  
297 Buyer (collectively, Title Documents).

298 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline** (§ 3), copies of  
299 all Title Documents. This requirement pertains only to documents as shown of record in the office of the clerk and  
300 recorder in the county where the Property is located. The cost of furnishing copies of the documents required in this  
301 Section will be at the expense of the party or parties obligated to pay for the owner's title insurance policy.

302 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title covering all  
303 or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title Deadline** (§ 3).

304 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title Commitment and any  
305 of the Title Documents, as set forth in § 8.4 (Right to Object to Title, Resolution) on or before **Record Title**  
306 **Objection Deadline** (§ 3). Buyer's objection may be based on any unsatisfactory form or content of Title  
307 Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole  
308 subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are not received by Buyer, on or  
309 before the **Record Title Deadline** (§ 3), or if there is an endorsement to the Title Commitment that adds a new  
310 Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to Buyer.  
311 Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object to: (1)  
312 any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment  
313 or Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate  
314 or Notice of Title Objection, pursuant to this § 8.2 (Record Title), any title objection by Buyer is governed by the  
315 provisions set forth in § 8.4 (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's obligations, if any,  
316 to deliver to Buyer all documents required by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's  
317 Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the  
318 condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents as satisfactory.

319 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline** (§ 3), true copies  
320 of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens  
321 (including, without limitation, governmental improvements approved, but not yet installed) or other title matters  
322 (including, without limitation, rights of first refusal and options) not shown by public records, of which Seller has  
323 actual knowledge (Off-Record Matters). Buyer has the right to inspect the Property to investigate if any third party has  
324 any right in the Property not shown by public records (e.g., unrecorded easement, boundary line discrepancy or water  
325 rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed  
326 by Seller or revealed by such inspection, notwithstanding § 8.2 and § 13), in Buyer's sole subjective discretion, must  
327 be received by Seller on or before **Off-Record Title Objection Deadline** (§ 3). If an Off-Record Matter is received by  
328 Buyer after the **Off-Record Title Deadline** (§ 3), Buyer has until the earlier of Closing or ten days after receipt by  
329 Buyer to review and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of  
330 Title Objection pursuant to this § 8.3 (Off-Record Title), any title objection by Buyer and this Contract are governed  
331 by the provisions set forth in § 8.4 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to  
332 Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts title subject to such  
333 rights, if any, of third parties of which Buyer has actual knowledge.

334 **8.4. Right to Object to Title, Resolution.** Buyer's right to object to any title matters includes, but is not limited  
335 to those matters set forth in §§ 8.2 (Record Title), 8.3 (Off-Record Title) and 13 (Transfer of Title), in Buyer's sole  
336 subjective discretion. If Buyer objects to any title matter, on or before the applicable deadline, Buyer has the following  
337 options:

338 **8.4.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any title matter  
339 (Notice of Title Objection) on or before the applicable deadline, and if Buyer and Seller have not agreed to a written  
340 settlement thereof on or before **Title Resolution Deadline** (§ 3), this Contract will terminate on the expiration of **Title**

341 **Resolution Deadline** (§ 3), unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection  
342 (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on or  
343 before expiration of **Title Resolution Deadline** (§ 3). If either the Record Title Deadline or the Off-Record Title  
344 Deadline, or both, are extended to the earlier of Closing or ten days after receipt of the applicable documents by  
345 Buyer, pursuant to § 8.2 (Record Title) or § 8.3 (Off-Record Title), the Title Resolution Deadline also will be  
346 automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or

347 **8.4.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under § 25.1, on  
348 or before the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective discretion.

349 **8.5. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL**  
350 **OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX**  
351 **LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH**  
352 **DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE**  
353 **SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF**  
354 **SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL**  
355 **LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE**  
356 **PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE**  
357 **CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER**  
358 **INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND**  
359 **RECORDER, OR THE COUNTY ASSESSOR.**

360 Buyer has the Right to Terminate under § 25.1, on or before **Off-Record Title Objection Deadline** (§ 3), based  
361 on any unsatisfactory effect of the Property being located within a special taxing district, in Buyer's sole subjective  
362 discretion.

363 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property or a right to  
364 approve this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right.  
365 If the holder of the right of first refusal exercises such right or the holder of a right to approve disapproves this  
366 Contract, this Contract will terminate. If the right of first refusal is waived explicitly or expires, or the Contract is  
367 approved, this Contract will remain in full force and effect. Seller must promptly notify Buyer in writing of the  
368 foregoing. If expiration or waiver of the right of first refusal or approval of this Contract has not occurred on or before  
369 **Right of First Refusal Deadline** (§ 3), this Contract will then terminate.

370 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be  
371 reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership  
372 and use of the Property, including, without limitation, boundary lines and encroachments, set-back requirements, area,  
373 zoning, building code violations, unrecorded easements and claims of easements, leases and other unrecorded  
374 agreements, water on or under the Property, and various laws and governmental regulations concerning land use,  
375 development and environmental matters. **The surface estate may be owned separately from the underlying**  
376 **mineral estate, and transfer of the surface estate does not necessarily include transfer of the mineral rights or**  
377 **water rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on or**  
378 **under the Property, which interests may give them rights to enter and use the Property.** Such matters, and others,  
379 may be excluded from or not covered by the owner's title insurance policy. Buyer is advised to timely consult legal  
380 counsel with respect to all such matters as there are strict time limits provided in this Contract [e.g., **Record Title**  
381 **Objection Deadline** (§ 3) and **Off-Record Title Objection Deadline** (§ 3)].

## 382 9. CURRENT SURVEY REVIEW.

383 **9.1. Current Survey Conditions.** If the box in § 9.1.1 or § 9.1.2 is checked, Buyer, the issuer of the Title  
384 Commitment or the provider of the opinion of title if an Abstract of Title, and \_\_\_\_\_  
385 will receive an Improvement Location Certificate, Improvement Survey Plat or other form of survey set forth in §  
386 9.1.2 (collectively, Current Survey), on or before **Current Survey Deadline** (§ 3). The Current Survey will be  
387 certified by the surveyor to all those who are to receive the Current Survey.

388  **9.1.1. Improvement Location Certificate.** If the box in this § 9.1.1 is checked,  Seller  Buyer will  
389 order or provide, and pay, on or before Closing, the cost of an Improvement Location Certificate.

390  **9.1.2. Other Survey.** If the box in this § 9.1.2 is checked, a Current Survey, other than an Improvement  
391 Location Certificate, will be an  **Improvement Survey Plat** or  \_\_\_\_\_ *see Exhibit A* \_\_\_\_\_. The parties



392 agree that payment of the cost of the Current Survey and obligation to order or provide the Current Survey shall be as  
393 follows: *see Exhibit A*

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397 **9.2. Current Survey Objection.** Buyer has the right to review and object to the Current Survey. If the Current  
398 Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may,  
399 on or before **Current Survey Objection Deadline** (§ 3), notwithstanding § 8.3 or § 13:

400 **9.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or  
401 **9.2.2. Current Survey Objection.** Deliver to Seller a written description of any matter that was to be  
402 shown or is shown in the Current Survey that is unsatisfactory and that Buyer requires Seller to correct.

403 **9.3. Current Survey Resolution.** If a Current Survey Objection is received by Seller, on or before **Current**  
404 **Survey Objection Deadline** (§ 3), and if Buyer and Seller have not agreed in writing to a settlement thereof on or  
405 before **Current Survey Resolution Deadline** (§ 3), this Contract will terminate on the **Current Survey Resolution**  
406 **Deadline** (§ 3), unless Seller receives Buyer's written withdrawal of the Current Survey Objection before such  
407 termination, i.e., on or before expiration of **Current Survey Resolution Deadline** (§ 3).

408 **DISCLOSURE, INSPECTION AND DUE DILIGENCE**

409 **10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND**  
410 **SOURCE OF WATER.**

411 **10.1. Seller's Property Disclosure.** On or before **Seller's Property Disclosure Deadline** (§ 3), Seller agrees  
412 to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property  
413 Disclosure form completed by Seller to Seller's actual knowledge, current as of the date of this Contract.

414 **10.2. Inspection Objection.** Unless otherwise provided in this Contract, Buyer acknowledges that Seller is  
415 conveying the Property to Buyer in an "as is" condition, "where is" and "with all faults." Colorado law requires that  
416 Seller disclose to Buyer any latent defects actually known by Seller. Disclosure of latent defects must be in writing.  
417 Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the  
418 Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but  
419 not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other  
420 mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including  
421 utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any  
422 proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether  
423 on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's  
424 sole subjective discretion, Buyer may, on or before **Inspection Objection Deadline** (§ 3):

425 **10.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or  
426 **10.2.2. Inspection Objection.** Deliver to Seller a written description of any unsatisfactory physical  
427 condition that Buyer requires Seller to correct.

428 **10.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before **Inspection Objection**  
429 **Deadline** (§ 3) and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection**  
430 **Resolution Deadline** (§ 3), this Contract will terminate on **Inspection Resolution Deadline** (§ 3) unless Seller  
431 receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or before expiration  
432 of **Inspection Resolution Deadline** (§ 3).

433 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other written  
434 agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or  
435 other reports performed at Buyer's request (Work) and must pay for any damage that occurs to the Property and  
436 Inclusions as a result of such Work. Buyer must not permit claims or liens of any kind against the Property for Work  
437 performed on the Property. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability,  
438 damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes  
439 Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or  
440 expense, or to enforce this section, including Seller's reasonable attorney fees, legal fees and expenses. The provisions  
441 of this section survive the termination of this Contract. This § 10.4 does not apply to items performed pursuant to an  
442 Inspection Resolution.

443 **10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of and  
444 premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before  
445 **Property Insurance Objection Deadline** (§ 3), based on any unsatisfactory provision of the Property Insurance, in  
446 Buyer's sole subjective discretion.

447 **10.6. Due Diligence.**

448 **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver copies of the  
449 following documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before  
450 **Due Diligence Documents Delivery Deadline** (§ 3):

- 451  **10.6.1.1.** All contracts relating to the operation, maintenance and management of the Property;  
452  **10.6.1.2.** Property tax bills for the last \_\_\_\_\_ years;  
453  **10.6.1.3.** As-built construction plans to the Property and the tenant improvements, including  
454 architectural, electrical, mechanical, and structural systems, engineering reports, and permanent Certificates of  
455 Occupancy, to the extent now available;  
456  **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;  
457  **10.6.1.5.** Operating statements for the past \_\_\_\_\_ years;  
458  **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;  
459  **10.6.1.7.** All current leases, including any amendments or other occupancy agreements, pertaining  
460 to the Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as  
461 follows (Leases):

- 462  
463  
464  **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete but has not  
465 yet been completed and capital improvement work either scheduled or in process on the date of this Contract;  
466  **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims which have  
467 been made for the past \_\_\_\_\_ years;  
468  **10.6.1.10.** Soils reports, Surveys and engineering reports or data pertaining to the Property (if not  
469 delivered earlier under § 8.3);  
470  **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II environmental  
471 reports, letters, test results, advisories, and similar documents respective to the existence or nonexistence of asbestos,  
472 PCB transformers, or other toxic hazardous or contaminated substances, and/or underground storage tanks and/or  
473 radon gas. If no reports are in Seller's possession or known to Seller, Seller warrants that no such reports are in  
474 Seller's possession or known to Seller;  
475  **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning the  
476 compliance of the Property with said Act;  
477  **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any governmental  
478 authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use  
479 authorizations, if any; and  
480  **10.6.1.14.** Other documents and information: *see Exhibit A*

481  
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483  
484 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and object to Due  
485 Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory in Buyer's sole  
486 subjective discretion, Buyer, may, on or before **Due Diligence Documents Objection Deadline** (§ 3):

- 487 **10.6.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or  
488 **10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description of any  
489 unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

490 **10.6.3. Due Diligence Documents Resolution.** If a Due Diligence Documents Objection is received by  
491 Seller, on or before **Due Diligence Documents Objection Deadline** (§ 3), and if Buyer and Seller have not agreed in  
492 writing to a settlement thereof on or before **Due Diligence Documents Resolution Deadline** (§ 3), this Contract will  
493 terminate on **Due Diligence Documents Resolution Deadline** (§ 3) unless Seller receives Buyer's written withdrawal  
494 of the Due Diligence Documents Objection before such termination, i.e., on or before expiration of **Due Diligence**  
495 **Documents Resolution Deadline** (§ 3).

496 **10.6.4. Zoning.** Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence Documents**  
497 **Objection Deadline** (§ 3), based on any unsatisfactory zoning and any use restrictions imposed by any governmental  
498 agency with jurisdiction over the Property, in Buyer's sole subjective discretion.

499 **10.6.5. Due Diligence — Environmental, ADA.** Buyer has the right to obtain environmental inspections of  
500 the Property including Phase I and Phase II Environmental Site Assessments, as applicable.  Seller  Buyer will  
501 order or provide  ~~Phase I Environmental Site Assessment~~,  ~~Phase II Environmental Site Assessment~~  
502 (compliant with ASTM E1527-05 standard practices for Environmental Site Assessments) and/or  \_\_\_\_\_  
503 \_\_\_\_\_, at the expense of  Seller  Buyer (Environmental Inspection). In addition,  
504 Buyer, at Buyer's expense, may also conduct an evaluation whether the Property complies with the *Americans with*  
505 *Disabilities Act* (ADA Evaluation). All such inspections and evaluations must be conducted at such times as are  
506 mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property, if  
507 any.

508 If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the  
509 **Environmental Inspection Objection Deadline** (§ 3) will be extended by \_\_\_\_\_ days (Extended Environmental  
510 Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond  
511 the **Closing Date** (§ 3), the **Closing Date** (§ 3) will be extended a like period of time. In such event,  Seller  
512  Buyer must pay the cost for such Phase II Environmental Site Assessment.

513 Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this § 10.6.5,  
514 Buyer has the Right to Terminate under § 25.1, on or before **Environmental Inspection Objection Deadline** (§ 3), or  
515 if applicable the Extended Environmental Inspection Objection Deadline, based on any unsatisfactory results of  
516 Environmental Inspection, in Buyer's sole subjective discretion.

517 Buyer has the Right to Terminate under § 25.1, on or before **ADA Evaluation Objection Deadline** (§ 3), based  
518 on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

519 **10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of that certain  
520 property owned by Buyer and commonly known as \_\_\_\_\_ **N/A** .  
521 Buyer has the Right to Terminate under § 25.1 effective upon Seller's receipt of Buyer's Notice to Terminate on or  
522 before **Conditional Sale Deadline** (§ 3) if such property is not sold and closed by such deadline. This § 10.7 is for the  
523 sole benefit of Buyer. If Seller does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**  
524 (§ 3), Buyer waives any Right to Terminate under this provision.

525 **10.8. Source of Potable Water (Residential Land and Residential Improvements Only).** Buyer  Does  
526  Does Not acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing  
527 the source of potable water for the Property. Buyer  Does  Does Not acknowledge receipt of a copy of the  
528 current well permit.  There is No Well.

529 **Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE**  
530 **GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE**  
531 **DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S**  
532 **WATER SUPPLIES.**

533 **10.9. Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none of the Leases to be  
534 assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as  
535 disclosed in the Lease or other writing received by Buyer. Seller will not amend, alter, modify, extend or cancel any of  
536 the Leases nor will Seller enter into any new leases affecting the Property without the prior written consent of Buyer,  
537 which consent will not be unreasonably withheld or delayed.

## 538 11. TENANT ESTOPPEL STATEMENTS.

539 **11.1. Tenant Estoppel Statements Conditions.** Buyer has the right to review and object to any Estoppel  
540 Statements. Seller must obtain and deliver to Buyer on or before **Tenant Estoppel Statements Deadline** (§ 3),  
541 statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property  
542 (Estoppel Statement) attached to a copy of the Lease stating:

543 **11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;

544 **11.1.2.** That said Lease is in full force and effect and that there have been no subsequent modifications or  
545 amendments;

546 **11.1.3.** The amount of any advance rentals paid, rent concessions given, and deposits paid to Seller;

- 547 11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;  
548 11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and  
549 11.1.6. That the Lease to which the Estoppel is attached is a true, correct and complete copy of the Lease  
550 demising the premises it describes.  
551 11.2. **Tenant Estoppel Statements Objection.** Buyer has the Right to Terminate under § 25.1, on or before  
552 **Tenant Estoppel Statements Objection Deadline** (§ 3), based on any unsatisfactory Estoppel Statement, in Buyer's  
553 sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before **Tenant Estoppel**  
554 **Statements Deadline** (§ 3). Buyer also has the unilateral right to waive any unsatisfactory Estoppel Statement.  
555

556

**CLOSING PROVISIONS**

557 **12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.**

558 12.1. **Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing Company  
559 to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their  
560 designees. If Buyer is obtaining a new loan to purchase the Property, Buyer acknowledges Buyer's lender is required  
561 to provide the Closing Company, in a timely manner, all required loan documents and financial information  
562 concerning Buyer's new loan. Buyer and Seller will furnish any additional information and documents required by  
563 Closing Company that will be necessary to complete this transaction. Buyer and Seller will sign and complete all  
564 customary or reasonably required documents at or before Closing.

565 12.2. **Closing Instructions.** Colorado Real Estate Commission's Closing Instructions  Are  Are Not  
566 executed with this Contract.

567 12.3. **Closing.** ~~Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date~~  
568 ~~specified as the Closing Date (§ 3) or by mutual agreement at an earlier date. The hour and place of Closing will be as~~  
569 ~~designated by~~ See Exhibit A.

570 12.4. **Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality, and extent of service  
571 vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

572 13. **TRANSFER OF TITLE.** Subject to tender of payment at Closing as required herein and compliance by Buyer  
573 with the other terms and provisions hereof, Seller must execute and deliver a good and sufficient Special  
574 Warranty deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the  
575 general taxes for the year of Closing. Except as provided herein, title will be conveyed free and clear of all liens,  
576 including any governmental liens for special improvements installed as of the date of Buyer's signature hereon,  
577 whether assessed or not. Title will be conveyed subject to:

578 13.1. Those specific Exceptions described by reference to recorded documents as reflected in the Title  
579 Documents accepted by Buyer in accordance with **Record Title** (§ 8.2),

580 13.2. Distribution utility easements (including cable TV),

581 13.3. Those specifically described rights of third parties not shown by the public records of which Buyer has  
582 actual knowledge and which were accepted by Buyer in accordance with **Off-Record Title** (§ 8.3) and **Current**  
583 **Survey Review** (§ 9),

584 13.4. Inclusion of the Property within any special taxing district,

585 13.5. Any special assessment if the improvements were not installed as of the date of Buyer's signature hereon,  
586 whether assessed prior to or after Closing, and

587 13.6. Other N/A

588 14. **PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid will be paid at or before Closing  
589 from the proceeds of this transaction or from any other source.

590 **15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.**

591 15.1. **Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items  
592 required to be paid at Closing, except as otherwise provided herein.

593 **15.2. Closing Services Fee.** The fee for real estate closing services shall be paid at Closing by  Buyer  
594  Seller  **One-Half by Buyer and One-Half by Seller**  Other N/A.

595 **15.3. Status Letter and Record Change Fees.** Any fees incident to the issuance of Association's statement of  
596 assessments (Status Letter) must be paid by  Buyer  Seller  **One-Half by Buyer and One-Half by Seller**  
597  **None.** Any record change fee assessed by the Association including, but not limited to, ownership record transfer  
598 fees regardless of name or title of such fee (Association's Record Change Fee) must be paid by  Buyer  Seller  
599  **One-Half by Buyer and One-Half by Seller**  **None.**

600 **15.4. Local Transfer Tax.**  **The Local Transfer Tax** of 3.000 % of the Purchase Price shall be paid  
601 at Closing by  Buyer  Seller  **One-Half by Buyer and One-Half by Seller**  **None.**

602 **15.5. Private Transfer Fee.** Private transfer fees and other fees due to a transfer of the Property, payable at  
603 Closing, such as community association fees, developer fees and foundation fees, must be paid at Closing by  Buyer  
604  Seller  **One-Half by Buyer and One-Half by Seller**  **None.** The Private Transfer fee, whether one or more,  
605 is for the following association(s): N/A in the total amount  
606 of N/A % of the Purchase Price or \$ N/A.

607 **15.6. Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of this Contract, do not  
608 exceed:  
609 \$ N/A for:

610  Water Stock/Certificates  Water District  
611  Augmentation Membership  Small Domestic Water Company  N/A  
612 and must be paid at Closing by  Buyer  Seller  **One-Half by Buyer and One-Half by Seller**  **None.**

613 **15.7. Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction must be paid when  
614 due by  Buyer  Seller  **One-Half by Buyer and One-Half by Seller**  **None.**

615 **16. PRORATIONS.** The following will be prorated to the **Closing Date** (§ 3), except as otherwise provided:

616 **16.1. Taxes.** Personal property taxes, if any, special taxing district assessments, if any, and general real estate  
617 taxes for the year of Closing, based on  **Taxes for the Calendar Year Immediately Preceding Closing**  **Most**  
618 **Recent Mill Levy and Most Recent Assessed Valuation,** or  **Other** N/A

619  
620 **16.2. Rents.** Rents based on  **Rents Actually Received**  **Accrued.** At Closing, Seller will transfer or credit  
621 to Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions, and notify all tenants  
622 in writing of such transfer and of the transferee's name and address. Seller must assign to Buyer all Leases in effect at  
623 Closing and Buyer must assume Seller's obligations under such Leases.

624 **16.3. Association Assessments.** Current regular Association assessments and dues (Association Assessments)  
625 paid in advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments  
626 for deferred maintenance by the Association will not be credited to Seller except as may be otherwise provided by the  
627 Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an  
628 amount for reserves or working capital. Any special assessment assessed prior to **Closing Date** (§ 3) by the  
629 Association will be the obligation of  Buyer  Seller. Except however, any special assessment by the Association  
630 for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after  
631 Closing, will be the obligation of Seller. Seller represents that the Association Assessments are currently payable at  
632 approximately \$ N/A per N/A and that there are no unpaid regular or special assessments  
633 against the Property except the current regular assessments and N/A.  
634 Such assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request  
635 the Association to deliver to Buyer before **Closing Date** (§ 3) a current Status Letter.

636 **16.4. Other Prorations.** Water and sewer charges, propane, interest on continuing loan, and any  
637 continuing items.

638 **16.5. Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

639 **17. POSSESSION.** Possession of the Property shall be delivered to Buyer on **Possession Date** (§ 3) at **Possession**  
640 **Time** (§ 3), subject to the Leases as set forth in § 10.6.1.7. N/A

641  
642

643 If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be  
644 additionally liable to Buyer for payment of \$ 50.00 per day (or any part of a day notwithstanding  
645 § 18.1) from **Possession Date** (§ 3) and **Possession Time** (§ 3) until possession is delivered.  
646

647

**GENERAL PROVISIONS**

648 **18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.**

649 **18.1. Day.** As used in this Contract, the term “day” means the entire day ending at 11:59 p.m., United States  
650 Mountain Time (Standard or Daylight Savings as applicable).

651 **18.2. Computation of Period of Days, Deadline.** In computing a period of days, when the ending date is not  
652 specified, the first day is excluded and the last day is included (e.g., three days after MEC). If any deadline falls on a  
653 Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline  **Will**  **Will Not** be extended to  
654 the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be  
655 extended.

656 **19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION;  
657 AND WALK-THROUGH.** Except as otherwise provided in this Contract, the Property, Inclusions or both will be  
658 delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

659 **19.1. Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other perils or  
660 causes of loss prior to Closing in an amount of not more than ten percent of the total Purchase Price (Property  
661 Damage), Seller is obligated to repair the same before **Closing Date** (§ 3). Buyer has the Right to Terminate under §  
662 25.1, on or before **Closing Date** (§ 3), if the Property Damage is not repaired before **Closing Date** (§ 3) or if the  
663 damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is  
664 entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any)  
665 resulting from such damage to the Property and Inclusions, plus the amount of any deductible provided for in such  
666 insurance policy. Such credit must not exceed the Purchase Price. In the event Seller has not received such insurance  
667 proceeds prior to Closing, the parties may agree to extend the **Closing Date** (§ 3) or, at the option of Buyer, Seller  
668 must assign such proceeds at Closing, plus credit Buyer the amount of any deductible provided for in such insurance  
669 policy, but not to exceed the total Purchase Price.

670 **19.2. Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and communication  
671 services), system, component or fixture of the Property (collectively Service), e.g., heating or plumbing, fail or be  
672 damaged between the date of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the  
673 repair or replacement of such Inclusion or Service with a unit of similar size, age and quality, or an equivalent credit,  
674 but only to the extent that the maintenance or replacement of such Inclusion or Service is not the responsibility of the  
675 Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. If the failed  
676 or damaged Inclusion or Service is not repaired or replaced on or before Closing or possession, whichever is earlier,  
677 Buyer has the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), or, at the option of Buyer, Buyer is  
678 entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must not exceed  
679 the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will  
680 survive Closing. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be  
681 purchased and may cover the repair or replacement of such Inclusions.

682 **19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending condemnation  
683 action may result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing,  
684 of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), based  
685 on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract  
686 despite such diminution of value to the Property and Inclusions, Buyer is entitled to a credit at Closing for all  
687 condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions but such credit  
688 will not include relocation benefits or expenses, or exceed the Purchase Price.

689 **19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to walk  
690 through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies  
691 with this Contract.

692 **19.5. Risk of Loss – Growing Crops.** The risk of loss for damage to growing crops by fire or other casualty will  
693 be borne by the party entitled to the growing crops as provided in § 2.8 and such party is entitled to such insurance  
694 proceeds or benefits for the growing crops.

695 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller  
696 acknowledge that the respective broker has advised that this Contract has important legal consequences and has  
697 recommended the examination of title and consultation with legal and tax or other counsel before signing this  
698 Contract.

699 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence hereof. If any note or check  
700 received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due,  
701 or if any obligation hereunder is not performed or waived as herein provided, the nondefaulting party has the  
702 following remedies:

703 **21.1. If Buyer is in Default:**

704  **21.1.1. Specific Performance.** Seller may elect to treat this Contract as canceled, in which case all Earnest  
705 Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller; and Seller may recover such  
706 damages as may be proper; or Seller may elect to treat this Contract as being in full force and effect and Seller has the  
707 right to specific performance or damages, or both.

708 **21.1.2. Liquidated Damages, Applicable. This § 21.1.2 applies unless the box in § 21.1.1. is checked.**  
709 All Earnest Money (whether or not paid by Buyer) will be paid to Seller, and retained by Seller. Both parties will  
710 thereafter be released from all obligations hereunder. It is agreed that the Earnest Money specified in § 4.1 is  
711 LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and (except as  
712 provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's  
713 failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and  
714 additional damages.

715 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all Earnest Money  
716 received hereunder will be returned and Buyer may recover such damages as may be proper, or Buyer may elect to  
717 treat this Contract as being in full force and effect and Buyer has the right to specific performance or damages, or  
718 both.

719 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event of any  
720 arbitration or litigation relating to this Contract, prior to or after **Closing Date** (§ 3), the arbitrator or court must award  
721 to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.

722 **23. MEDIATION.** If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties  
723 must first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet  
724 with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose  
725 binding decisions. The parties to the dispute must agree, in writing, before any settlement is binding. The parties will  
726 jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless  
727 otherwise agreed, will terminate in the event the entire dispute is not resolved within thirty days of the date written  
728 notice requesting mediation is delivered by one party to the other at the party's last known address. This section will  
729 not alter any date in this Contract, unless otherwise agreed.

730 **24. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder must release the  
731 Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any  
732 controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money.  
733 Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any proceeding between  
734 Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction, (Earnest  
735 Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or  
736 (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and  
737 Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one  
738 hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return

739 the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not  
740 interpled the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the  
741 Order of the Court. The parties reaffirm the obligation of **Mediation** (§ 23). This Section will survive cancellation or  
742 termination of this Contract.

743 **25. TERMINATION.**

744 **25.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract (Right to Terminate),  
745 the termination is effective upon the other party's receipt of a written notice to terminate (Notice to Terminate),  
746 provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice  
747 to Terminate is not received on or before the specified deadline, the party with the Right to Terminate accepts the  
748 specified matter, document or condition as satisfactory and waives the Right to Terminate under such provision.

749 **25.2. Effect of Termination.** In the event this Contract is terminated, all Earnest Money received hereunder will  
750 be returned and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

751 **26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL.** This Contract, its exhibits and specified addenda,  
752 constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining  
753 thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of  
754 any of the terms of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed  
755 by the parties. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after  
756 termination or Closing survives the same.

757 **27. NOTICE, DELIVERY, AND CHOICE OF LAW.**

758 **27.1. Physical Delivery.** All notices must be in writing, except as provided in § 27.2. Any document, including  
759 a signed document or notice, from or on behalf of Seller, and delivered to Buyer is effective when physically received  
760 by Buyer, any signatory on behalf of Buyer, any named individual of Buyer, any representative of Buyer, or  
761 Brokerage Firm of Broker working with Buyer (except for delivery, after Closing, of the notice requesting mediation  
762 described in § 23 and except as provided in § 27.2). Any document, including a signed document or notice, from or on  
763 behalf of Buyer, and delivered to Seller is effective when physically received by Seller, any signatory on behalf of  
764 Seller, any named individual of Seller, any representative of Seller, or Brokerage Firm of Broker working with Seller  
765 (except for delivery, after Closing, of the notice requesting mediation described in § 23 and except as provided in §  
766 27.2).

767 **27.2. Electronic Delivery.** As an alternative to physical delivery, any document, including a signed document  
768 or written notice, may be delivered in electronic form only by the following indicated methods:  **Facsimile**  **Email**  
769  **Internet**. If no box is checked, this § 27.2 is not applicable and § 27.1 governs notice and delivery. Documents  
770 with original signatures will be provided upon request of any party.

771 **27.3. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed in  
772 accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract  
773 in Colorado for property located in Colorado.

774 **28. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal will expire unless accepted in writing, by  
775 Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance  
776 pursuant to § 27 on or before **Acceptance Deadline Date** (§ 3) and **Acceptance Deadline Time** (§ 3). If accepted, this  
777 document will become a contract between Seller and Buyer. A copy of this Contract may be executed by each party,  
778 separately, and when each party has executed a copy thereof, such copies taken together are deemed to be a full and  
779 complete contract between the parties.

780 **29. GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith, including  
781 but not limited to exercising the rights and obligations set forth in the provisions of **Financing Conditions and**  
782 **Obligations** (§ 5), **Title Insurance, Record Title and Off-Record Title** (§ 8), **Current Survey Review** (§ 9) and  
783 **Property Disclosure, Inspection, Indemnity, Insurability, Due Diligence and Source of Water** (§ 10).  
784



785

**ADDITIONAL PROVISIONS AND ATTACHMENTS**

786 **30. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado  
787 Real Estate Commission.)  
788 *See Exhibit A attached hereto and incorporated herein.*

791 **31. ATTACHMENTS.**

792 **31.1.** The following attachments are a part of this Contract: *Exhibit A - Additional Provisions*

796 **31.2.** The following disclosure forms are attached but are not a part of this Contract:

**SIGNATURES**

800  
801

Buyer's Name:  
Belem Properties Co. LLC

Buyer's Name: \_\_\_\_\_

Buyer's Signature \_\_\_\_\_ Date \_\_\_\_\_

Buyer's Signature \_\_\_\_\_ Date \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Electronic Address: \_\_\_\_\_

Electronic Address: \_\_\_\_\_

802 **[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]**

Seller's Name:  
Town of Mountain Village, a Colorado  
Home Rule Municipality and Political Subdivision of the State of Colorado

Seller's Name: \_\_\_\_\_  
\_\_\_\_\_

Seller's Signature Dan Jansen, Mayor Date \_\_\_\_\_

Seller's Signature \_\_\_\_\_ Date \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Electronic Address: \_\_\_\_\_

Electronic Address: \_\_\_\_\_

803

804 **32. COUNTER; REJECTION.** This offer is  Countered  Rejected.  
805 **Initials only of party (Buyer or Seller) who countered or rejected offer** \_\_\_\_\_

806

**END OF CONTRACT TO BUY AND SELL REAL ESTATE**

807 **33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE:**

808 (To be completed by Broker working with Buyer)

809 Broker  Does  Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract,  
810 agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is  
811 the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned  
812 following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release  
813 the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within  
814 five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money  
815 check has cleared:

816 Broker is working with Buyer as a  Buyer's Agent  Seller's Agent  Transaction-Broker in this transaction.  
817  This is a Change of Status:

818 Brokerage Firm's compensation or commission is to be paid by  Listing Brokerage Firm  Buyer  
819  Other \_\_\_\_\_ :

Brokerage Firm's Name: \_\_\_\_\_  
Broker's Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Electronic Address: \_\_\_\_\_  
Broker's Signature \_\_\_\_\_ Date \_\_\_\_\_

820 **34. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE:**

821 (To be completed by Broker working with Seller)

822 Broker  Does  Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract,  
823 agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is  
824 the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned  
825 following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release  
826 the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within  
827 five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money  
828 check has cleared:

829 Broker is working with Seller as a  Seller's Agent  Buyer's Agent  Transaction-Broker in this transaction.  
830  This is a Change of Status:

831 Brokerage Firm's compensation or commission is to be paid by  Seller  Buyer  
832  Other \_\_\_\_\_ :

Brokerage Firm's Name: \_\_\_\_\_  
Broker's Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Electronic Address: \_\_\_\_\_  
Broker's Signature \_\_\_\_\_ Date \_\_\_\_\_

833

## EXHIBIT A – ADDENDUM TO REAL ESTATE CONTRACT

The Town of Mountain Village, a Colorado municipal corporation and political subdivision of the State of Colorado (“**Town**” or “**Seller**”) and Belem Properties Co. LLC (“**Belem**” or “**Buyer**”) entered into a contract for the purchase and sale of real estate as set forth in such agreement (the “**Agreement**”). This Addendum to the Agreement provides additional terms and conditions related to the transaction contemplated by the Agreement. Town and Belem are sometimes collectively referred to herein as the “**Parties**” and sometimes individually as a “**Party**”.

The Parties hereby covenant and agree as follows:

### BELEM DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

A. “**Acquisition Property**” shall mean and refer to the property generally described in the Agreement.

B. “**Acquisition Property Reversionary Procedures**” shall mean and refer to the procedures by which Belem would transfer and convey title to the Acquisition Property to the Town or its designee upon the failure of Belem to timely perform certain obligations, as provided for below in Section 7.

C. “**Applicable Law**” means (i) all statutes, laws, common law, rules, regulations, ordinances, codes or other legal requirements of any Governmental Authority, stock exchange, board of fire underwriters and similar quasi-Governmental Authority, and (ii) any judgment, injunction, order or other similar requirement of any court or other adjudicatory authority, in effect at the time in question and in each case to the extent the Person or property in question is subject to the same.

D. “**Gondola Parking Garage**” means the multi-level parking facility currently located on Lot 1003R-1, which is owned and operated by the Town. The Gondola Parking Garage also includes approved plans to expand and add additional levels of parking of up to 450 additional parking spaces. Belem acknowledges that it must take into consideration the continued and uninterrupted use of the Gondola Parking Garage in the design, construction and use of the Project. Belem also acknowledges that the design and construction of the Project shall not result in an overall net loss in existing parking spaces in the Gondola Parking Garage and that construction of the expansion and addition of the Gondola Parking Garage will result in extremely loud noise levels and vibrations due to the process of pounding steel for foundation support on the southern boundary of the Gondola Parking Garage.

E. “**Governmental Authority**” means any federal, state or local government or other political subdivision thereof, including, without limitation, any Person exercising executive, legislative, judicial, regulatory or administrative governmental powers or functions, in each case to the extent the same has jurisdiction over the Person or property in question.

F. “**Person**” means any natural person, corporation, general or limited partnership, limited liability company, association, joint venture, trust, estate, Governmental Authority or other legal entity, in each case whether in its own or a representative capacity.

G. “**Project**” shall mean and refer to the design, development, construction, use and operation the Lofts at Mountain Village, an Professional Workforce housing project consisting of a minimum of 43 housing units with up to 45 housing units on the Acquisition Property, contemplated to

have 35 to 37, two bedroom, two bath units and 8 three bedroom, two bath units subject to Belem's final discretion and such other related improvements, facilities, utilities, uses and activities. All units shall have free market rate finishes and each unit shall have its own exterior deck.

H. **"Required Development Approvals"** shall mean and refer to the various land use approvals for the Project, including, without limitation, design review plans, building permits and certificates of occupancy, and such other approvals necessary and required to enable Belem to develop, construct, operate, occupy and otherwise use the Project.

I. **"Project Utilities and Services"** shall mean and refer to the various utilities and supporting/facilities to serve the Project, which include, water, sewer, natural gas, electric, telephone, cable television, broadband internet, drainage, snow storage, construction staging and shoring for the construction of the Project, access and use rights to enable the maintenance and repair of the completed improvements. Prior to Closing, the Parties shall confirm or establish (as necessary and appropriate) perpetual easements benefitting the Project, which provide for legal and physical access to enable the use of the Project Utilities and Services on mutually agreeable terms and conditions.

J. **"Project Access"** shall mean and refer to legal and physical vehicular and pedestrian access to and from the Acquisition Property and Mountain Village Blvd benefitting and serving the Acquisition Property and the Project.

K. **"Town"** shall mean and refer to the Town of Mountain Village.

L. **"Town Laws"** shall mean and refer to any and all applicable provisions of the laws and regulations of the Town which govern and regulate the Property and/or Project, including, without limitation, the Community Development Code ("**CDC**"), the Town Charter, the Town Municipal Code, and the Town Building Code as they may be amended from time to time.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Consideration; Transfer of Property.**

1.1. The Town has agreed to transfer and convey the Acquisition Property to Belem for the consideration as set forth in the Agreement and Belem agrees to accept title to the Acquisition Property, subject to and on the terms and conditions of the Agreement and this Addendum. The terms of this Addendum shall survive Closing under the Agreement.

1.2. The Parties recognize and agree that the Town has agreed to undertake certain Pre-Closing Undertakings in connection therewith, nothing herein is intended to, nor shall it, contractually obligate the Town to approve any application that may be submitted by the Town or Belem with the appropriate reviewing Town persons or boards/councils in connection with the desired development of the Project. The foregoing notwithstanding, the Town, in reviewing any such applications, agrees to review the same in good faith and in the manner prescribed by Town Law and shall not unreasonably withhold its approval of any such application.

1.3. At the time of the conveyance, the Parties shall execute an Affordable Housing Deed Restriction running with and binding the Acquisition Property which shall contain the following terms:

1.3.1. The occupancy of all units within the Project, shall be restricted to persons that are employed by Companies that do business in the R-1 School District, or participants of the Telluride Venture Accelerator Program or similar program, which is approved by the Town.

1.3.2. Belem shall retain ownership of the entire Project and shall not condominiumize the Project and offer individual units for sale until January 1, 2029.

1.3.3. Belem shall grant the Town a right of first refusal for any of the individual units offered for sale.

1.3.4. The affordable Housing Deed Restriction shall not be lost upon foreclosure by any lender on the Project or lender of any individual unit within the Project.

2. **Town Pre-Closing Undertakings.** Prior to Closing and transferring title to the Property, the Town has agreed to undertake and complete the following actions, documents and instruments, to be drafted to the mutual satisfaction of the Parties. Unless otherwise indicated, the cost and expense of these undertakings will be incurred by the Town.

2.1. **Land Condominium.**

2.1.1. The Town shall prepare, execute and record appropriate land condominium declaration, maps and other appropriate documents, which cover and embrace Lot 1003R-1 (“**Land Condominium Documents**”). The Land Condominium Documents shall, among other things, duly create and establish the Acquisition Property, consistent with Town Law, in a manner and form to enable it to be legally conveyed to Belem as contemplated by the Agreement.

2.1.2. In addition, the Land Condominium Documents shall establish perpetual, non-exclusive easements over other portions of Lot 1003R-1, granting and conveying legally sufficient rights and interests for the use and benefit of the Acquisition Property and serving the Project, which enable and accommodate the Project Access, the Project Utilities and Services, and such other necessary and appropriate easements as may be required to enable the construction, use and operation of the Project (“**Land Condominium Easements**”). The Parties shall mutually identify the preferred location for the Land Condominium Easements and establish the Land Condominium Easements on mutually agreeable terms and conditions. In addition, the Land Condominium Documents shall address necessary and appropriate setbacks/spacing between existing improvements on adjacent property and the proposed siting of structures contemplated under the Land Condominium Documents.

2.1.3. The Town acknowledges that the density for the proposed 45 workforce housing units is permitted under the CDC and that the development of the Project does not require any density or rezone of the Acquisition Property. Notwithstanding the foregoing, Belem acknowledges and understands that the CDC does require the issuance of a conditional use permit as one of the Required Development Approvals.

2.2. **Offsite Easements.** Prior to Closing, the Town shall either establish and/or confirm (to the reasonable satisfaction of Belem) the existence of easements in place granting and conveying legally sufficient rights and interests for the use and benefit of the Acquisition Property and serving the Project at locations mutually agreeable to the Parties, which enable and accommodate the Project Access, the Project Utilities and Services, and such other such other necessary and appropriate easements as may be required to enable the use and operation of the Project (“**Offsite Easements**”). With respect to the Town’s obligation to provide for Offsite Easements, such obligation shall be limited to providing easements for water, sewer, cable, and internet to the Land Condominium boundary line.

2.3. **Town/Belem Development Cost Agreement.** The Town and Belem shall execute and deliver at Closing an agreement (“**Town/Belem Development Cost Agreement**”), in form and content mutually agreeable to both Parties, which provides the manner and method by which the Town and Belem will address the following matters:

2.3.1. **Water and Sewer Tap Fees.** The Town and Belem agree that the Water and Sewer Tap fees attributable to the Project shall be the Water and Sewer Tap fees for affordable housing projects, which shall be \$5,000 per unit. Such fees shall be due and payable at the time of pulling a Building Permit for the Project.

2.3.2. **Parking Payment In-lieu.** The Town agrees to review, process and act upon the Payment in Lieu Application being submitted to the Town by Belem which shall be based on the Town’s current parking ratio of 1.5 spaces per unit in the Project. The Town further agrees that any approved “Parking Payment” shall be reduced to \$15,000 per space (the “Parking Payment in Lieu”). An initial payment towards the Parking Payment in lieu of \$75,000 shall become due and payable by Belem upon the issuance of a building permit for the Project. The remainder of the Parking Payment in Lieu shall become due and payable by Belem upon the Town determining that the Town will construct the additional parking which is approved and contemplated at the Gondola Parking Garage. The Town shall give Belem at least 180 days’ notice of its intent to construct the additional parking at the Gondola Parking Garage (“Notice of Intent to Expand GPG”). Once the Town gives its Notice of Intent to Expand GPG, Belem shall be permitted to make the remaining Parking Payment in Lieu, either in one payment or over a period of five years from 180 days after Notice of Intent to Expand GPG is delivered to Belem, subject to a reasonable interest rate during such five year period, which shall not exceed prime rate plus 1%. If Belem exercises the ability to pay the Parking Payment in Lieu over the five year period, Belem shall execute a promissory note with customary terms including default provisions and default interest rates. In the event the Town does not provide its Notice of Intent to Expand GPG within fifteen years from the date of the Agreement, the obligation to pay the remainder of the Parking Payment in Lieu shall expire. The foregoing notwithstanding, the Town shall not be liable to pay for the cost of any onsite parking spaces proposed by Belem, or for the reconstruction of any current parking spaces impacted by development of the Project.

2.3.3. **Garage Parking Fees.** The Town agrees to allow one long term parking permit for each residential unit at an initial rate of \$50 annually, subject to future adjustments in accordance with Town parking policies as may be adopted from time to time. The Town agrees that each additional parking permit per residential unit (maximum of one additional parking permit) shall be charged at an initial rate of \$100 annually, subject to future adjustments in accordance with Town parking policies as may be adopted from time to time. Parking permits shall only be issued to residents with valid lease agreements for residential units at the Lofts project.

3. **Belem Pre-Closing Undertakings.** Prior to Closing and transferring title to the Property, Belem in addition to any other obligation of Belem as specified herein as a Post-Closing Undertaking, shall undertake and complete the following at its cost and expense.

3.1. **Due Diligence.** Belem shall undertake and complete its due diligence of the Property in the manner and form desired by Belem. Any physical onsite testing, if any, shall be approved by the Town prior to any site disturbance.

3.2. **Gondola Parking Garage Snow Removal.** Belem shall work with the Town’s Public Works department to design a method for the Town to perform snow removal from the Gondola Parking Garage that does not substantially increase the time or cost for the Town to remove snow from the Gondola Parking Garage. Belem shall reasonably demonstrate to the Town that such snow removal method will work or the Town may elect to terminate the Agreement.

3.3. **Execution of Documents.** The Town and Belem shall execute and deliver the Town/Belem Development Cost Agreement and the Affordable Housing Deed Restriction Language at Closing, in form and content mutually agreeable to both Parties.

3.4. **Review and Approve Documents.** Belem shall promptly review and send any comments or approvals to the Town concerning the Land Condominium Documents, Land Condominium Easements, Offsite Easements and such other documents that the Town is required to prepare as part of its Town Pre-Closing Undertakings.

4. **Belem Post-Closing Undertakings.** Following Closing and transferring title to the Property, Belem shall undertake and substantially complete the following undertakings, without cost or expense to the Town, except for those costs and expenses ordinarily incurred by the Town in the course of its review and action on development proposals in the Mountain Village. Belem agrees that once it has initiated a Belem Post-Closing Undertakings it will seek to complete the required item in a commercially reasonable manner and timeframe.

4.1. **Town Hall Task Force - Design Charrette Process.**

4.1.1. Belem at its sole cost and expense, shall submit for the Design Charrette Process as provided in the Town Hall Subarea Task Force Bylaws (“Bylaws”).

4.1.2. In advance of the review of the design concepts for the Acquisition Property as contemplated by the Design Charrette Process, Belem shall first submit materials relating to its design concepts to the Town Community Development Director and Town Design Review Board (“DRB”), for their preliminary review and comment.

4.1.3. Following the initial review by the Town, Belem shall proceed with the Design Charrette Process with the Town Hall Task Force.

4.1.4. Nothing herein shall limit or preclude Belem from commencing and/or completing the Design Charrette Process prior to Closing. Upon such an election, the Town will provide any authorizations and consents required of Belem to initiate, process and have an application for the Design Charrette Process reviewed by the Town.

4.1.5. **Parking Payment In-lieu Application.** Belem, at its cost and expense, shall prepare and process an appropriate application seeking Town approval enabling Belem to make a parking payment in lieu pursuant to section 17.5.8(D) of the CDC (the “Payment in Lieu Application”). The Town agrees to process the Payment in Lieu Application, and to waive the application fee without a full development application for the Project based on an estimated square footage to be supplied by Belem on the basis that the Project is for a workforce housing project and in this specific instance, the Town can determine the criteria of section 17.5.8(D) of the CDC without a full development application for the Project. The Parking Payment shall be paid and administered in the manner provided for above. If the Town denies the Payment in Lieu Application, for whatever reason, Belem, at its option, may elect to terminate this Agreement and all of its rights, duties and obligations hereunder, without penalty.

4.2. **Design Review Processes.**

4.2.1. **Conceptual Design Worksession.** Following the completion of the Design Charrette Process, Belem shall, at its sole cost and expense, submit for a conceptual worksession for the proposed design of the improvements associated with the Project. A conceptual worksession shall be conducted with both the DRB and Town Council, preferably in a joint meeting at the discretion of the

Town and shall be reviewed, administered and acted upon by the Town in the manner prescribed by applicable Town Laws.

4.2.2. **Design Review Process.** Following the completion of the conceptual worksession, Belem shall, at its sole cost and expense, submit a Design Review Process application for the improvements associated with the Initial Project Phase and for extended vested property rights, which shall be reviewed, administered and acted upon by the Town in the manner prescribed by applicable Town Laws.

A. Belem and Town will determine the amount of required parking for the improvements associated with Project as determined by the CDC based upon the actual number of units of the Project. Based upon such calculation, if there is an increase in the required number of spaces attributable to the Project previously approved, due solely to an increase in the number of units the Project, the Parking Payment in Lieu amount shall be increased and paid by Belem with the issuance of a Building Permit by the Town. In the event there is a decrease in the required number of parking spaces of the Project previously approved, due solely to a change in number of units of the Project, the Parking Payment shall be adjusted accordingly.

B. Belem shall enter into a public improvements agreement pursuant to the CDC Public Improvement Policy for the cost of the on-site and off-site improvements, such as landscaping, internal sidewalks, paving, access and entry improvements occurring on the Acquisition Property, trash enclosure, signs and similar site improvements as required by the CDC Design Regulations and/or conditions of approvals granted through the Design Review Process attributable to the improvements associated with the Project.

4.3. **Building Permit.** Following Town approval of the Design Review Process application, Belem shall prepare and submit, at its sole cost and expense (subject to the reimbursement requirements for the Covered Fees/Costs by the Town), for one or more building permits for the work attributable to the improvements associated with the Project in accordance with the CDC Building Regulations and Town Laws, which shall be reviewed, administered and acted upon by the Town in the manner prescribed by applicable Town Laws.

4.4. **Construction of Project.**

4.4.1. Following issuance of a Building Permit for the Project, Belem shall, at its sole cost and expense, construct the improvements associated with the Initial Project Phase in a manner compliant with the issued plan and permit approvals.

4.4.2. Belem shall prepare an initial construction mitigation plan for review and approval by the Town prior to submitting the Construction Documents (“**Mitigation Plan**”). The Town and Belem shall meet and confer and discuss locations where staging can occur and shall cooperate and assist each other in securing consents to use such parcels for staging. The obligation of the Town to cooperate and assist Belem shall not require financial cooperation of assistance.

4.4.3. Belem shall design the Project in a manner that ensures the Town’s ability to construct the approved expansion of the Gondola Parking Garage, which shall include designing the Project to avoid conflicts with the future foundation work needed to construct the expansion of the Gondola Parking Garage and to provide for any setbacks that may be required due to the expansion of the Gondola Parking Garage.

4.4.4. Belem acknowledges that it must take into consideration the continued and uninterrupted use of the Gondola Parking Garage in the design, construction and use of the Project.



Belem also acknowledges that the design and construction of the Project shall not result in an overall net loss in existing parking spaces in the Gondola Parking Garage and that operation, repair, maintenance and use of the Gondola Parking Garage along with a potential helicopter landing pad carries inherent noises and other potential disturbances. Belem further acknowledges the construction of the expansion and addition of the Gondola Parking Garage will result in extremely loud noise levels and vibrations due to the process of pounding steel for foundation support for the Gondola Parking Garage along with other heavy construction activities. The Town acknowledges that there will be some temporary impact to specific areas of the Gondola Parking Garage during the construction period of the Lofts Project. These impacts shall consist of temporary blocking of spaces along the construction zone for public safety, temporary blocking of a portion of the top deck for construction staging and off-loading pre-manufactured units. Belem shall exercise all reasonable efforts to minimize the duration and size of these impacts areas. Prior to any creating such blockages, Belem shall provide the Town with 48 hour prior notice of its intent to do so.

4.4.5. Belem shall, at its sole cost and expense, diligently prosecute construction of the Project to completion in accordance with the Construction Documents, the Town approvals, the Agreement and this Addendum. The Project shall be deemed substantially complete for purposes of this Agreement upon the issuance of a certificate of occupancy by the Town. Belem shall promptly provide the Town with notice of substantial completion.

4.5. **Timing for Construction.** Subject to reasonable delays for force majeure events, Belem shall secure a building permit for the Project Phase and issue a notice to its contractor to commence construction of the work pursuant to such building permit and complete such work on the Project (as evidenced by receipt of a Certificate of Occupancy for all units in the Project) by no later than November 31, 2016. In the event Belem fails to complete the construction of the Project as set forth in this section 4.5, the Town may choose to initiate the Reversionary Procedures contained in section 7.2 of this Addendum.

## 5. **Closing, Title, Survey and Off Records Documents.**

5.1. Delivery of a special warranty deed from Buyer to Seller shall be at ("Closing"). Closing shall be at the early date of (a) 21 days after creation of the Land Condominium Unit or (b) May 15, 2015.

5.2. **Title Commitment.** Town shall furnish to Belem at Belem's expense, a current title insurance commitment (**Title Commitment**) for owner's title insurance policy issued by Land Title Guaranty Company (**Title Company**) within ten days following the creation of the Land Condominium Unit (**Title Deadline**), together with copies of all of the recorded documents shown as exceptions to title in the Title Commitment (**Title Exception Documents**). The Title Commitment and the Title Exception Documents constitute the title documents (**Title Documents**). The Title Company shall update the Title Commitment prior to Closing as circumstances dictate, noting any new exceptions that may be placed of record and affect title to the Property (**Updated Title Commitment**). Belem shall cause Title Company to delete the standard exceptions No. 1-4 (**Standard Exceptions**) at the cost and obligation of Belem. Belem may obtain at Belem's sole cost and expense such additional title endorsements and title coverage (**Belem Requested Title Coverage**) as may be desired by Belem, provided that Town shall reasonably cooperate with Belem to assist Belem in obtaining any desired Belem Requested Title Coverage, provided that in no event shall Town be obligated to: (a) incur costs or expenses or (b) assume additional liability or obligation in order for Belem Requested Title Coverage to issue. Belem shall have the right to inspect the Title Documents. Written notice of any unsatisfactory condition(s) disclosed by the Title Documents shall be provided to the Town in accordance with Section 6.4 below. If Town does not receive Belem's notice by the expiration of the Study Period (defined below), Belem accepts title subject to the Title Documents and the other Permitted Exceptions (defined below).

5.3. **Survey.** Town shall provide Belem with a current ALTA survey of the Acquisition Property (**Survey**) at the cost and obligation of Town. Town shall cause the corners of the Acquisition Property to be staked in the field. The Survey shall be considered a Title Document.

5.4. **Matters not shown by the Public Records.** Town shall deliver to Belem by the Title Deadline true copies of any contracts or lease(s), and any reports, studies, surveys, approvals, permits, licenses, other studies or reports, if any, in Town's reasonable possession pertaining to the Property (Off Record Documents). Town hereby certifies to Belem, that Town is unaware of any easements, liens or other title matters affecting the Property not shown by the public records. Belem shall have the right to inspect the Property to determine if any third party(s) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Town or revealed by such inspection shall be provided in accordance with the Section 6 below. If Town does not receive Belem's notice by the expiration of the Study Period (defined below), Belem accepts title subject to the matters disclosed by Town pursuant to this section.

6. **Inspection, Due Diligence, Study Period:**

6.1. **Study Period. Review of Study Matters.** Belem shall have until April 15, 2015 at 5 PM Colorado (Mountain Time)(**Study Period**) to evaluate, study and review any and all matters related to the Property and the Project as determined by Belem in its sole discretion (**Study Matters**).

6.2. **Site Investigation.** Belem shall have the right to undertake a physical inspection of the Property (**Physical Inspection**), subject to Town's reasonable rules concerning access and safety. Town shall cooperate with Belem in undertaking the Physical Inspection. Belem shall undertake its review of the Study Matters and the Physical Inspection of the Property at Belem's sole cost and expense and shall protect and indemnify Town against any mechanic liens or other claims or liabilities which may result directly therefrom.

6.3. **Property Disclosure.** No Town's Property Disclosure is required to be prepared by Town and delivered to Belem.

6.4. **Belem's Notice of Objection.** At any time during the Study Period, Belem shall have the right, in Belem's sole discretion, to send written notice to Town either: (a) noting issues or concerns with the Study Matters (**Notice of Objection**); or (b) terminating the Agreement for any reason in which case the Agreement shall immediately terminate, the Town shall return the Deposit and accrued interest to Belem and the Parties shall have no further rights or obligations under this Agreement (**Notice of Termination**). In the event that Belem sends its Notice of Objection, the Town and Belem shall promptly meet and confer to address the objections. If the Town and Belem are not able to resolve the issues or concerns to their mutual satisfaction within ten days of the Notice of Objection or such later time mutually agreeable to the Parties, Belem may either: (i) waive the objection and proceed to Closing, or (ii) Belem may terminate this Agreement in which case the Agreement shall immediately terminate, the Town shall return the Deposit and accrued interest to Belem, and the Parties shall have no further rights or obligations under this Agreement.

7. **Acquisition Property Reversionary Procedures.**

7.1. Belem and Town agree that at any time following Closing hereunder, in the event that Belem shall fail to have complied with any of Belem Post-Closing Undertakings as provided for in Section 4 or as otherwise specifically noted as a Post-Closing Undertaking, the Town shall send written notice of such determination to Belem. Belem shall have not less than ninety days to cure the default or enter into mutually agreeable modifications to the issue for which Belem is out of compliance. If Belem

fails to cure the default and/or the Parties do not execute a modification to the appropriate documents addressing the matter, Belem and the Town shall proceed in the manner provided in Section 7.2 below.

7.2. Upon the occurrence of an event triggered under Section 7.1, Belem shall execute and record its special warranty deed conveying title to the Acquisition Property to the Town or its designee, subject only to the exceptions reflected in the Title Policy delivered to Belem at or after Closing and such other documents or instruments recorded by persons or parties after Closing, other than documents recorded by Belem or persons, parties or entities related to or affiliated with Belem (“Permitted Exceptions”), free and clear of all financial encumbrances placed or allowed to be placed on the Acquisition Property by Belem or Selected Developer (if applicable). Town and Belem shall each pay their own, respective attorneys’ fees and any other costs incurred in connection with the implementation of this transaction. The conveyance is anticipated to be exempt from the requirement to pay RETA administered by TMVOA; the parties shall cooperate and assist each other in securing a RETA exemption from TMVOA.

**Accepted and agreed to by the Parties as of the Effective Date.**

**TOWN:**

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

By: \_\_\_\_\_  
Dan Jansen, Mayor

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Jackie Kennefick, Town Clerk

Date: \_\_\_\_\_

**Belem Properties Co. LLC:**

By: \_\_\_\_\_  
Authorized Signer

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



## AGENDA ITEM #9

Date: January 15, 2015  
To: Mayor & Town Council, Acting as the Local Liquor Licensing Authority  
From: Jackie Kennefick, Town Clerk  
Re: Consideration of the Local Liquor Licensing Authority

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### **Consideration of Recertification of the Mountain Village Promotional Association and Common Consumption Area**

All required documentation and fees have been received. The application has been reviewed by Assistant Town Attorney Jim Mahoney and Police Chief Chris Broady.

Mr. Mahoney and Chief Broady will be at the meeting to address any questions. Issues being addressed with the applicant include:

- Utilization of radios as part of the security plan
- Ensure sufficient number of logo cups are ordered for each participating vendor
- Designate an acceptable storage area for event fencing

### **Staff Recommendation:**

Staff recommends approving the recertification of the Mountain Village Promotional Association and Common Consumption Area

Suggested Motion: "Move to approve recertification of the Mountain Village Promotional Association and Common Consumption Area for one year and direct staff to extend the License Agreement for the same term."



**TOWN OF MOUNTAIN VILLAGE  
PROMOTIONAL ASSOCIATION/ COMMON CONSUMPTION AREA  
CERTIFICATION REQUEST**

Promotional Association Name (exactly as it appears on incorporation documents): Mountain Village Promotional Association
Description of Common Consumption Area Boundaries: The common consumption area will be defined per event and may include one or more of the plaza that make up Mountain Village Core; including Sunset Plaza, Heritage Plaza, and the Conference Center Plaza.
Mailing Address of Promotional Association: 113 Lost Creek Lane, Suite A Mountain Village, CO 81435
Primary Contact: Anton Benitez
Primary Contact Phone Number: (970) 728-1904 x1
Primary Contact Email Address: anton@tmvoa.org

The following must accompany this Promotional Association/Common Consumption Area Certification Request:

- \$500 for Initial Application Fee; OR
- \$250 for Annual Renewal Fee
- Copy of Articles of Incorporation and Bylaws
- List of all Directors and Officers of the Promotional Association
- List of all the licensed premises in the Promotional Association
- Detailed map of the Common Consumption Area including:
  - Location of physical barriers
  - Entrances and exits
  - Location of attached licensed premises
  - Identify licensed premises adjacent to but not attached to the Common Consumption Area
  - Approximate location of security personnel
- Written detailed description of Security Arrangements with the Common Consumption Area
- A list of dates and hours of operation of the Common Consumption Area for upcoming calendar year
- Documentation showing possession of the Common Consumption Area
- List of Attached Licenses listing the following information: State Liquor License number, list of any past liquor violations, and copy of any operational agreements
- Documentation of the reasonable requirements of the neighborhood, the desires of the adult inhabitants as evidenced by petitions, remonstrances or otherwise.
- Insurance Certificate of General Liability and Liquor Liability naming the Town of Mountain Village as an additional insured



**TOWN OF MOUNTAIN VILLAGE  
PROMOTIONAL ASSOCIATION/ COMMON CONSUMPTION AREA  
CERTIFICATION REQUEST**

Please mark below which days and hours the Common Consumption Area will be open and operational. *See Events Calendar*

	Mondays	Tuesdays	Wednesdays	Thursdays	Fridays	Saturdays	Sundays
January							
February							
March							
April							
May							
June							
July							
August							
September							
October							
November							
December							

Report to the Town Clerk any deviation from this schedule at least fifteen (15) days prior to the proposed new date and time.

## Entertainment District 2015 Calendar of Events

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### June 2015

Date	Event	Location	Time
6/17/2015	FirstGrass Concert	Sunset Plaza	2-6:30pm
6/24/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm

### July 2015

Date	Event	Location	Time
7/3/2015	Red, White & Blues Concert	Sunset Plaza	3-8:30pm
7/8/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm
7/10/2015	The Ride Festival Presents and Evening of Rock and Roll	Sunset Plaza	4-8pm
7/15/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm
7/22/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm
7/29/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm

### August 2015

Date	Event	Location	Time
8/5/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm
8/12/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm
8/19/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm

### September 2015

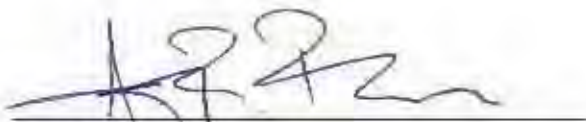
Date	Event	Location	Time
9/2/2015	Telluride Film Festival Concert	Sunset Plaza	4-8:00pm
9/17/2015	Sunset Blues Concert	Sunset Plaza	4-8:00pm



**TOWN OF MOUNTAIN VILLAGE  
PROMOTIONAL ASSOCIATION/ COMMON CONSUMPTION AREA  
CERTIFICATION REQUEST**

**CERTIFICATION OF APPLICANT**

I hereby certify that the information contained in this certification request and all attachments is true, correct, and complete to the best of my knowledge and that it is my responsibility and the responsibility of my agents/employees and Board of Directors to comply with all applicable local and state laws, rules, and regulations as they relate to the serving, selling and distribution of alcohol beverages.

  
\_\_\_\_\_  
Authorized Signature

12/31/14  
\_\_\_\_\_  
Date

Executive Director  
\_\_\_\_\_  
Title

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**REPORT AND APPROVAL OF THE LOCAL LIQUOR LICENSING AUTHORITY**

\_\_\_\_\_  
Jackie Kenefick  
Town Clerk  
Town of Mountain Village

\_\_\_\_\_  
Date





**TOWN OF MOUNTAIN VILLAGE  
PROMOTIONAL ASSOCIATION/ COMMON CONSUMPTION AREA  
CERTIFICATION REQUEST**

**PROMOTIONAL ASSOCIATION/ COMMON CONSUMPTION AREA GENERAL GUIDELINES:**

- ✓ The size of the common consumption area shall not exceed the area approved by the local licensing authority; however, the Promotional Association may make such area smaller at any time provided the new area is clearly delineated using physical barriers to close the area to motor vehicle traffic and limit pedestrian access.
- ✓ The Promotional Association shall provide an appropriate amount of security to insure compliance with the liquor code and prevent a safety risk to the neighborhood. Such security is considered part of the application for approval of the Promotional Association.
- ✓ All security within the Common Consumption area or its attached licensed premises shall complete the server and seller training program established by the Director of the Liquor Enforcement Division of the Department of Revenue.
- ✓ The Promotional Association shall obtain and maintain a properly endorsed general liability and liquor liability insurance policy that is reasonably acceptable to the Local Licensing Authority of at least one million (\$1,000,000) dollars per occurrence, which names the Town of Mountain Village as an additional insured.
- ✓ Common Consumption areas and their attached licensed premises may serve alcohol and the customers may consume alcohol until 12:00 a.m. unless further restricted by Town Council in the certification of the Promotional Association. The hours of sale and consumption may differ between the licensed premises and Common Consumption Area. It is unlawful for any attached licensed premise to serve or the Promotional Association to allow consumption of alcohol beverages in the Common Consumption area after 12:00 a.m. or as further restricted by the Town Council in the certification of the Promotional Association.
- ✓ Alcohol beverages sold or served within the Common Consumption Area shall be served in a container that is no larger than 16 ounces, is disposable and contains the name of the vendor in at least 24 point font type;
- ✓ Application for Recertification of a Promotional Association must be made two months prior to the expiration of the certification.
- ✓ Upon receipt of an application for Certification or Recertification of a Promotional Association, or Attachment of a Liquor Licensee to an existing Common Consumption Area, the Town Council will consider such application within sixty days of receipt.
- ✓ The Town Council will review the application for compliance with the requirements of this Ordinance, the Colorado Liquor Laws and the desires and needs of the community and after consideration and a public hearing, the Town Council may either approve the application with or without conditions or deny the application.
- ✓ The Town has the power to decertify a Promotional Association. The process shall be in the same manner as provided in CRS 12-47-601 as related to liquor licenses.



Colorado Secretary of State  
 Date and Time: 04/02/2014 10:42 PM  
 ID Number: 20141221775  
 Document number: 20141221775  
 Amount Paid: \$50.00

Document must be filed electronically.  
 Paper documents are not accepted.  
 Fees & forms are subject to change.  
 For more information or to print copies  
 of filed documents, visit [www.sos.state.co.us](http://www.sos.state.co.us).

ABOVE SPACE FOR OFFICE USE ONLY

**Articles of Incorporation for a Nonprofit Corporation**  
 filed pursuant to § 7-122-101 and § 7-122-102 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name for the nonprofit corporation is Mountain Village Promotional Association  
*(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)*

2. The principal office address of the nonprofit corporation's initial principal office is

Street address 113 Lost Creek Lane, Suite A  
*(Street number and name)*

Mountain Village CO 81435  
*(City) (State) (ZIP/Postal Code)*  
United States  
*(Province - if applicable) (Country)*

Mailing address  
*(leave blank if same as street address)*

(Street number and name or Post Office Box information)

(City) (State) (ZIP/Postal Code)  
(Province - if applicable) (Country)

3. The registered agent name and registered agent address of the nonprofit corporation's initial registered agent are

Name (if an individual) Solomon Joseph A.  
*(Last) (First) (Middle) (Suffix)*

**OR**

(if an entity)  
*(Caution: Do not provide both an individual and an entity name.)*

Street address 227 West Pacific Avenue, Suite A  
*(Street number and name)*

Telluride CO 81435  
*(City) (State) (ZIP Code)*

Mailing address  
(leave blank if same as street address)

PO Box 1748

(Street number and name or Post Office Box information)

Telluride

(City)

CO

(State)

81435

(ZIP Code)

(The following statement is adopted by marking the box.)

- The person appointed as registered agent above has consented to being so appointed.

4. The true name and mailing address of the incorporator are

Name  
(if an individual)

Solomon

(Last)

Joseph

(First)

A.

(Middle)

(Suffix)

**OR**

(if an entity)

(Caution: Do not provide both an individual and an entity name.)

Mailing address

PO Box 1748

(Street number and name or Post Office Box information)

Telluride

(City)

CO

(State)

81435

(ZIP/Postal Code)

United States

(Province – if applicable)

(Country)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

- The corporation has one or more additional incorporators and the name and mailing address of each additional incorporator are stated in an attachment.

5. (If the following statement applies, adopt the statement by marking the box.)

- The nonprofit corporation will have voting members.

6. Provisions regarding the distribution of assets on dissolution:

Upon dissolution, after payment of all liabilities, the assets are to be distributed to the Members of the corporation in accordance with their Membership interests.

7. (If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains additional information as provided by law.

8. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are \_\_\_\_\_.  
(mm/dd/yyyy hour:minute am/pm)

**Notice:**

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes. This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

9. The true name and mailing address of the individual causing the document to be delivered for filing are

Solomon	Joseph	A.	
<small>(Last)</small>	<small>(First)</small>	<small>(Middle)</small>	<small>(Suffix)</small>
227 West Pacific Avenue, Suite A			
<small>(Street number and name or Post Office Box information)</small>			
PO Box 1748			
<small>(Street number and name or Post Office Box information)</small>			
Telluride	CO	81435	
<small>(City)</small>	<small>(State)</small>	<small>(ZIP/Postal Code)</small>	
	United States		
<small>(Province - if applicable)</small>	<small>(Country)</small>		

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

**Disclaimer:**

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

**Mountain Village Promotional Association, a Colorado nonprofit corporation  
Bylaws**

**Article 1  
Purpose**

The purpose of the Mountain Village Promotional Association, a Colorado nonprofit corporation (the "Corporation") is to serve as a promotional association to be certified by the Town of Mountain Village (the "Town") pursuant to C.R.S. sec. 12-47-301(11) and as more fully described in Town Ordinance No. 2012-03 (the "Ordinance"). As set forth in the Ordinance, the Town has created an Entertainment District and established application procedures, fees and hours of operation for common consumption areas, to be managed by the certified promotional association.

**Article 2  
Principal Office**

The current principal office of Mountain Village Promotional Association, a Colorado nonprofit corporation (the "Corporation") is located at:

113 Lost Creek Lane, Suite A  
Mountain Village, Colorado 81435

The principal office may be changed by the Board of Directors.

**Article 3  
Board of Directors**

Section 1. Board Number and Qualifications. The Board of the Corporation must include, at a minimum, all liquor license holders who choose to participate in the Promotional Association. If a liquor license holder within Mountain Village initially chooses not to participate in the Promotional Association and then later decides to participate, they must be added to the board of directors. At the option of the members, there may also be directors elected who are not liquor license holders.

A Director must be a current Town of Mountain Village business owner, or if the business is a business entity, a duly appointed representative of such entity actively engaged in the business. Directors shall serve a term of three (3) years. Directors may be elected for successive terms. Initial terms may be staggered so as to provide for continuity in management. The initial Directors and their terms shall be:

<u>Name</u>	<u>Initial Term</u>
Stephen Roth - TSG	3 years
Adam Singer - Poachers Pub	2 years

Mountain Village Promotional Association / Bylaws p. 1 of 4

Todd Gehrke – Hotel Madeline	1 year
Stefano Canclini – La Piazza	3 years
Tom Richards – Telluride Conference Center	3 years
Greg Pope – TMVOA	3 years

Section 2. Vacancies. Vacancies on the Board of Directors may be filled for the unexpired term of the predecessor in office by a majority vote of the remaining Directors at any meeting of the Board of Directors. A vacancy created by an increase in the number of Directors may be filled for a term of office continuing only until the next election of Directors.

Section 3. Power and Duties of the Directors. The Board of Directors shall have control and general management of the affairs, property and business of the Corporation and, subject to these Bylaws, may adopt such rules and regulations for that purpose and for the conduct of its meetings as the Board of Directors may deem proper. The powers shall include but not be limited to the appointment and removal of the officers of the Corporation.

Section 4. Election of Directors. The election of Directors shall be at the annual meeting of the Board. The Board shall by majority vote elect Directors.

#### Article 4 Meetings of Directors

Section 1. Meetings. Regular and special meetings of the Board Directors shall be held on at least two (2) but no more than thirty (30) days written notice to the Directors. Directors may waive notice as provided in C.R.S. sec. 7-128-204. Agendas for meetings of the Board shall be made reasonably available for examination by the members or their representatives.

Section 2. Quorum and Voting. A quorum of the Board of Directors consists of a majority of the number of Directors in office immediately before the meeting begins. The affirmative vote of a majority of Directors present is the act of the Board of Directors unless the vote of a greater number of Directors is required by law.

Section 3. Proxies. Votes of Directors may be cast in person or by proxy. A Director may only appoint another Director to act pursuant to such Director's proxy. Every proxy must be in the form approved by the Board of Directors and must be executed in writing by the Director or such Director's duly authorized attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date of its execution, and every proxy shall automatically cease at such time as the Director granting the proxy no longer qualifies as a Director for which vote the proxy was given.

Section 4. Action Without Meeting. Any action required or permitted to be taken at a Board of Directors' meeting may be taken without a meeting in compliance with C.R.S. sec. 7-128-202.

## Article 5 Officers and Duties

Section 1. Officers. The officers of the Corporation shall consist of (1) a president, (2) a vice president, (3) a secretary, (4) other officers as determined by the Board. Any two or more offices may be held by the same person, except the offices of president and secretary. The offices of president, vice president and secretary shall be members of the Board. Officers shall be elected by the Members at the annual. A vacancy in any office may be appointed by the Board of Directors at any regular or special meeting called for that purpose.

Section 2. President. The president shall preside at all meetings of the members and the Board of Directors, and may have any other powers and duties as may be conferred by the Board of Directors. The president shall, subject to the direction and supervision of the Board of Directors, be the chief executive officer of the Corporation and shall have general and active control of its affairs and business and general supervision of its officers, agents and employees. The president shall have the authority to sign all contracts and other instruments on behalf of the Corporation, as approved by the Board of Directors from time to time.

Section 3. Vice President. The vice president shall have the duties that the Board of Directors or the president may delegate to them from time to time. In the absence of the president or the president's inability to act, the duties and powers of the office shall be performed and exercised by a vice president.

Section 4. Secretary. The secretary shall have the responsibility for the preparation and maintenance of minutes of the Directors' and members' meetings and other records and information required to be kept by the Corporation and for authenticating records of the Corporation. The secretary shall perform all duties usually incident to the office of the secretary, those duties specified in these Bylaws, and other duties that may from time to time be delegated by the Board of Directors.

Section 6. Other. The Board of Directors may appoint such other officers as it deems prudent and necessary, including a Corporation Executive Director and/or CEO. The Board may assign such reasonable duties to such officers as the Board may establish by resolution.

## Article 6 Memberships

Section 1. Members. Members of the Corporation shall be business owners in the Town of Mountain Village or, in the event the business is a business entity, a duly appointed representative of such entity. Members shall have voting rights with respect to election of Directors. Members shall not have voting rights with respect to budget approval and other matters.

Section 2. Meetings. Regular and special meetings of the members shall be held on at least ten (10) but no more than sixty (60) days written notice to the members, as more fully

described in C.R.S. sec. 7-127-104. Members may waive notice as provided in C.R.S. sec. 7-127-105.

Section 3. Action Without Meeting. Any action required or permitted to be taken at a members' meeting may be taken without a meeting in compliance with C.R.S. sec. 7-127-107 or by written ballot pursuant to C.R.S. sec. 7-127-109.

Article 7  
Budget and Fiscal Year

Section 1. Budget. The Board of Directors shall, prior to the beginning of any fiscal year, adopt a budget which shall include: (a) the estimated operating costs and expenses and proposed capital expenditures which will be chargeable to the Corporation to fulfill its obligations; (b) the estimated income and other funds which will be received by the Corporation; and (c) the estimated total amounts required to be raised by member dues to cover such costs, expenses and capital expenditures of the Corporation and to provide a reasonable reserve. Prior to adopting a budget for each fiscal year, the Board of Directors shall call a meeting of the members and provide notice of the time and place thereof to all members at least ten (10) but no more than fifty (50) days prior to such meeting. After issuance of notice of meeting, the Board of Directors shall make copies of the proposed budget available to all interested members. At such meeting, members shall have the right to be heard concerning the budget; however, the Board of Directors shall retain the sole power to approve the budget.

Section 2. Fiscal Year. The fiscal year of the Corporation shall be from January 1st through December 31st of each year.

Article 8  
Amendment of Bylaws

The Board of Directors may amend these Bylaws at any time to add, change, or delete a provision, in compliance with C.R.S. sec. 7-130-201 et seq. If any amendments require member approval pursuant to such statutes, such member approval shall be obtained.

Adopted by the Board of Directors at their first duly organized meeting on 4/4, 2014.

STEPHEN A ROTH  
President

Attest: Todd Gehrke  
Todd Gehrke Secretary



**Mountain Village Promotional Association  
Directors and Officers**

President: Stephen Roth  
Telluride Ski and Golf LLC.

Vice President: Adam Singer  
Poachers Pub

Secretary: Todd Gehrke  
Hotel Madeline Telluride

Director: Anton Benitez  
Telluride Mountain Village Owners Association

Director: Tom Richards  
Telluride Ski and Golf LLC. for the Conference Center

**List of Licensed Premises & State Liquor License Numbers**

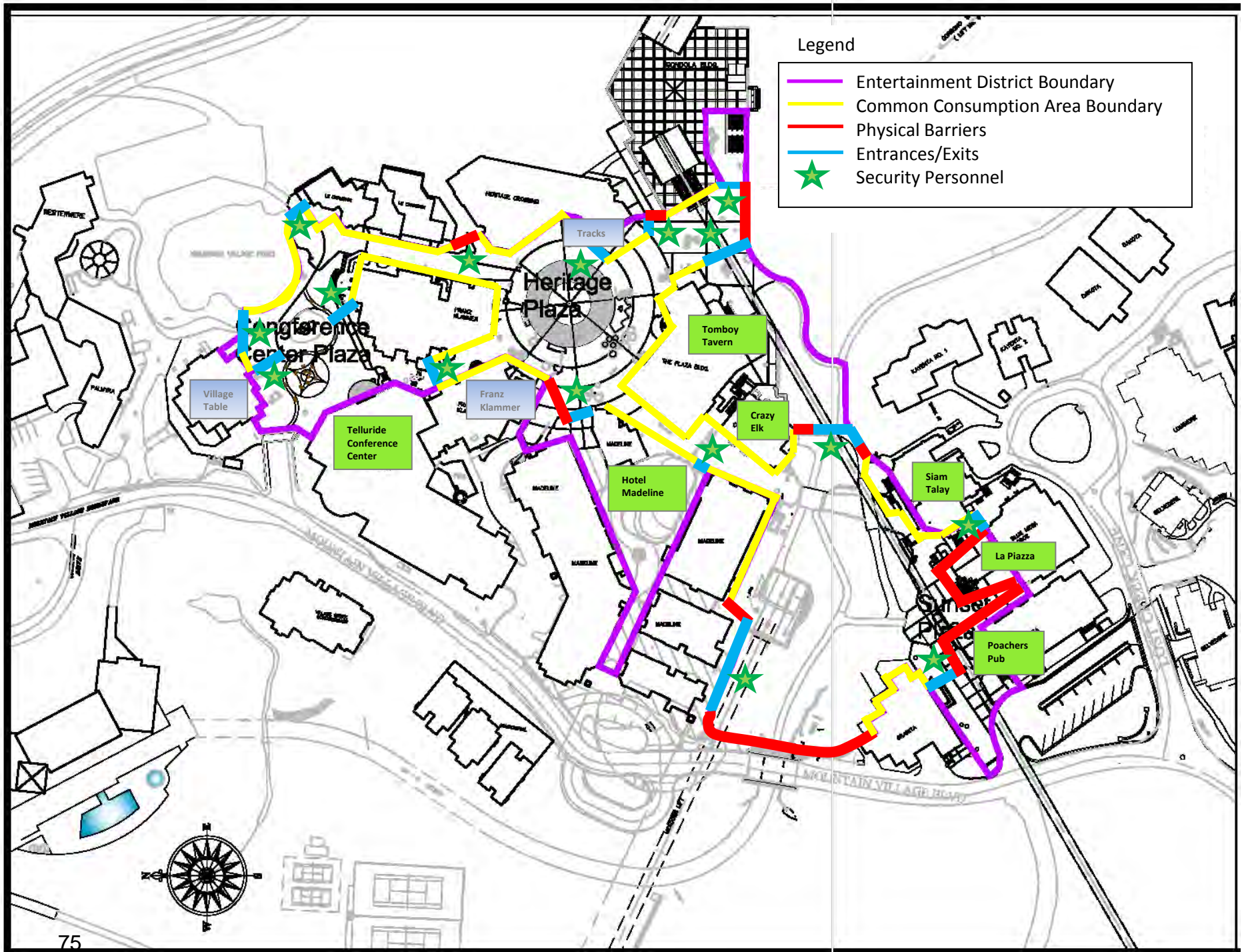
Licensed Premises in Promotional Association	State Liquor License #	Liquor Violations	Operational Agrmnts	Square Footage
Telski (Crazy Elk, Tomboy Tavern and Siam Talay)	40919590001	N/A	N/A	8474
Telluride Conference Center	4700972	N/A	N/A	7780
Poachers Pub	24934470000	N/A	N/A	1370
Hotel Madeline	42970090000	N/A	N/A	444,360

**Total Square Feet of Licensed Premises**

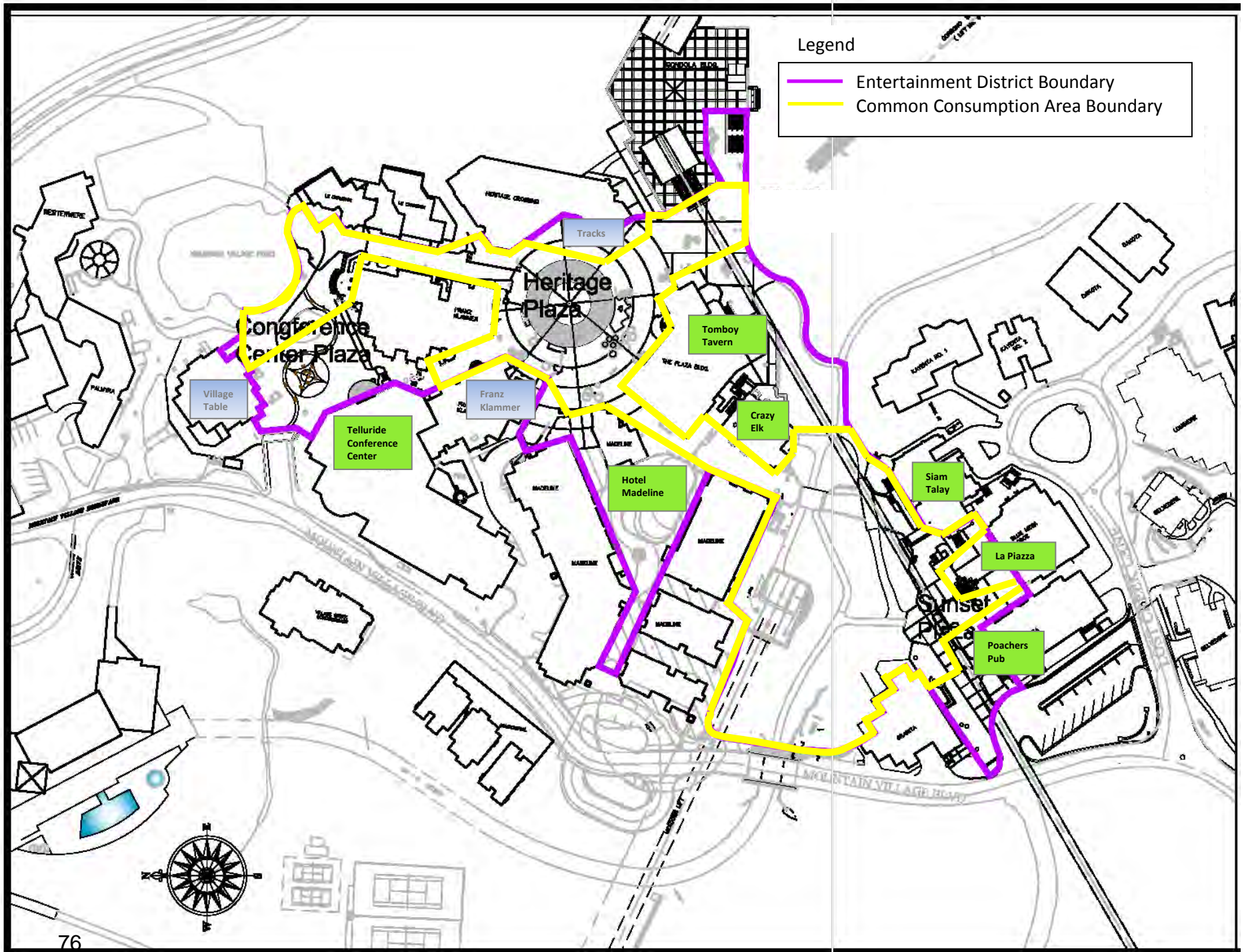
**461984**

Licensed Premises not in Promotional Association	Location
Tracks	Heritage Plaza
The Village Table	Conference Center Plaza
Franz Klammer	Heritage Plaza
La Piazza/La Pizzeria	Sunset Plaza

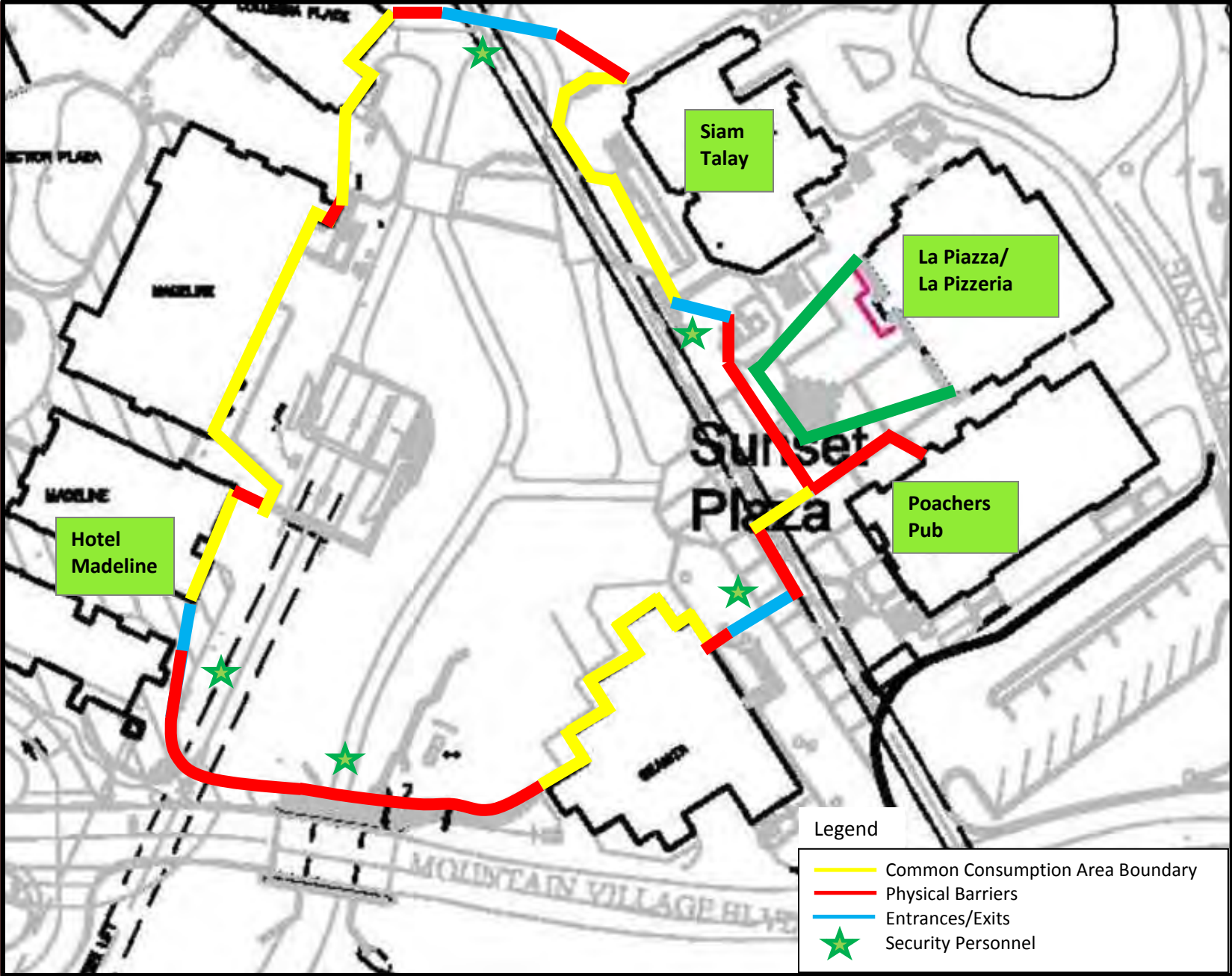
# Common Consumption Area Boundary Map with Barriers, Entrances & Security



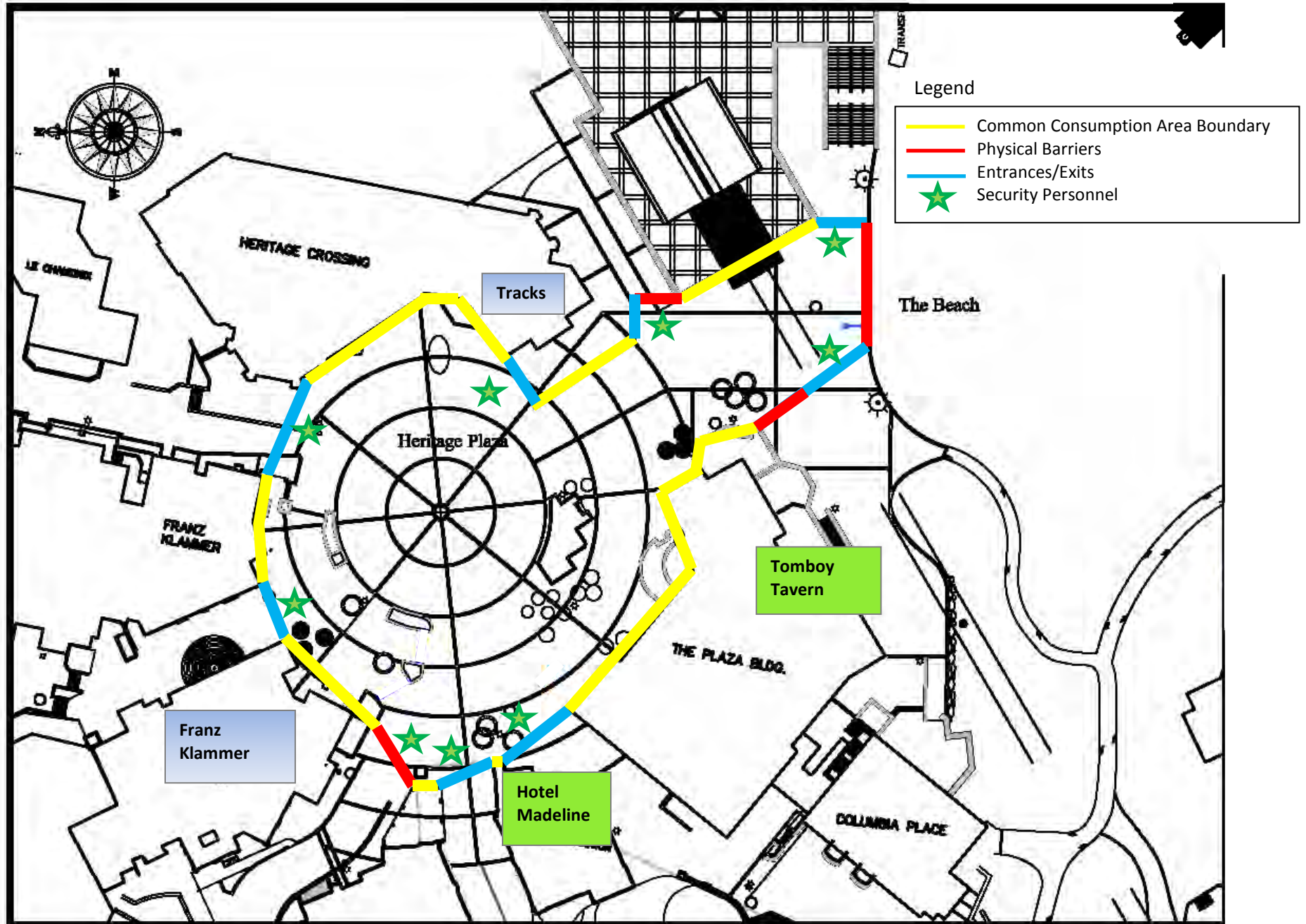
# Common Consumption Area Boundary Map with Licensed Establishments



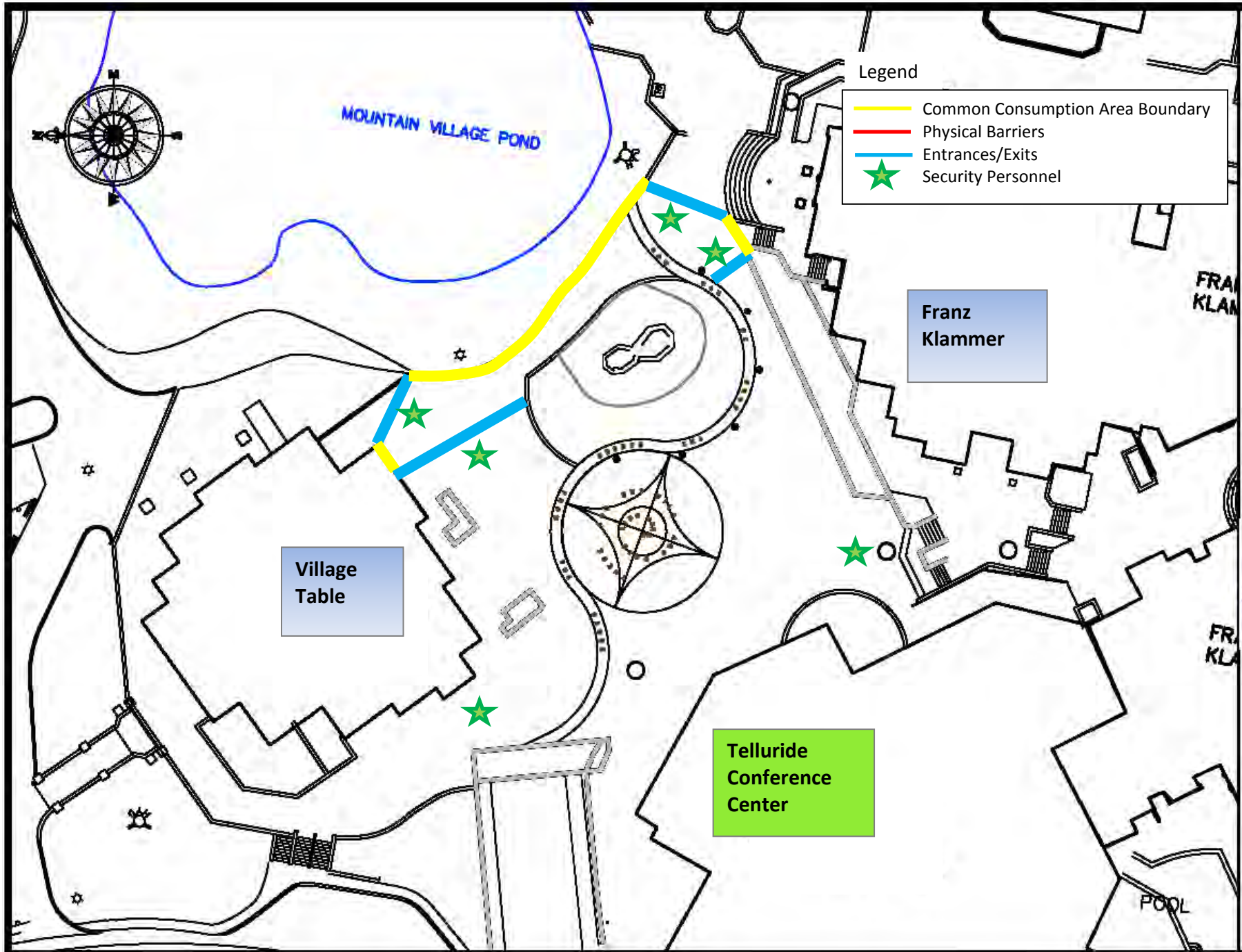
# Common Consumption Boundary for Sunset Plaza



# Common Consumption Area Boundary for Heritage Plaza



# Common Consumption Area Boundary for Conference Center Plaza



## **Mountain Village Promotional Association 2015 Security Plan**

The purpose of this document is to outline the procedures for the setup, enforcement and tear down of the barriers for the Sunset Plaza common consumption area during the following events:

- FirstGrass Concert: 6/17
- Sunset Concert Series: 6/24, 7/8, 7/15, 7/22, 7/29, 8/5, 8/12, and 8/19
- Red White and Blues Concert: 7/3
- The Ride Festival Presents an Evening of Rock and Roll Concert: 7/10
- Telluride Film Festival Concert: 9/2
- Sunset Blues Concert: 9/17

A separate security plan will be provided at least 14 days prior to any additional events that will require use of a common consumption area and are not currently listed here (see Schedule A).

Three liquor license holders will be participating in the common consumption area for the Sunset Concerts and are; Poachers Pub, Siam Talay and Hotel Madeline. Each establishment will hire the necessary security staff in house for a total of 6-8 security personnel to cover the area. Please see attached map (Schedule B) for distribution of staff. Each liquor license holder will be responsible for managing the crew on a rotational basis starting with the first concert on June 17<sup>th</sup>. The responsible manager will be named and such name will be provided to the Town at least 3 business days prior to each event. Such manager shall be the primary point of contact for the Town for each event. The responsible manager shall meet with the Town's chief of police or his designee at least 48 hours prior to the event to go over any potential issues and security concerns with the event and common consumption area.

The MVPA will develop standard operating procedures/standard talking points so that each new security personnel will be delivering a consistent message during each event.

In the event that there are issues after the first event, the Town may require all of the managers for the liquor license holder participating to meet with the Town in order to refine the security procedures for the next event and may require additional changes to this security plan based on any such issues.

All security personnel shall wear a shirt clearly identifying such person as security personnel for the event.

### **The work day schedule:**

- Set up will begin at 3:30pm.
- Responsible manager shall meet with all security personnel to go over responsibilities and duties of each person.
- Monitoring of the area will begin 1 hour prior to the beginning of the concert (see attached Calendar of Events for approximate start times). Monitoring shall include checking all early entrants to the concert area for outside alcohol and informing them of the common consumption area rules. All entrance and exit to the concert area



during the monitoring period shall be through the approved ingress and egress points to the common consumption area.

- Monitoring will continue until 30 minutes after the concert has ended (approximately 8:30pm for all concerts, see attached Calendar of Events for approximate end times). The post show monitoring shall include a sweep to insure all alcoholic beverages are removed from the common consumption by the end of the post-concert monitoring time.
- Breakdown of barriers and clean up area will be conducted.

### **Security Plan and Training:**

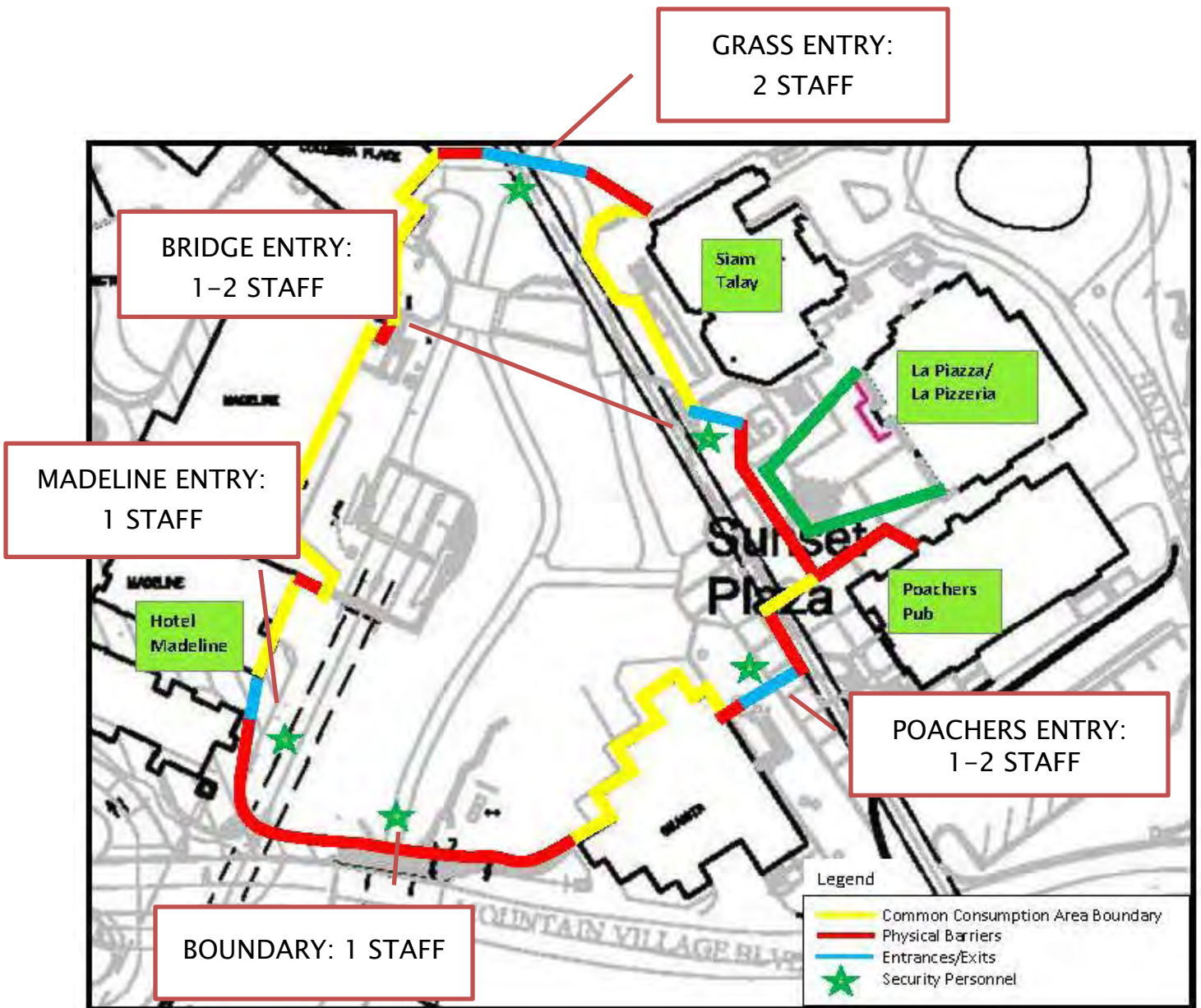
- Each Promotional Association Board Member will be scheduled a shift as Manager on Duty (M.O.D.) to coordinate the efforts of the security staff. The Promotional Association will provide the Town with the Manger on Duty Schedule and contact information for each concert at least 3 days prior to each event.
- The M.O.D. will be responsible for making sure that the barriers are properly set-up and that each entrance is properly staffed according to the map provided.
- Security staff will be provided with uniforms and will be given a list of Standard Operating Procedures prior to each event.
- All security personnel will complete the server and seller training program (TIPS or ServSafe) established by the Director of the Liquor Enforcement Division of Revenue as required by law. Each establishment will provide a list of the names and date of completion of training for their security staff.
- Security staff will be instructed to check coolers/bags to ensure no alcoholic beverages are permitted into the Common Consumption Area, and will be responsible for ensuring that no alcoholic beverages leave the Common Consumption Area. Recycling and trash cans shall be available at all entrance and exit points.
- ID's will be checked at the point-of-sale for each licensed establishment.
- Each licensed establishment will be responsible for ensuring that no alcoholic beverages from an outside establishment are brought into their licensed area.
- Per the recommendation of the insurance carrier, the Mountain Village Promotional Association will agree to comply with the loss control recommendation to post the drinking age limit in the common consumption area during all events.

### **Barriers and Signage:**

- The boundary of the Common Consumption Area will be defined using a combination of natural barrier, fencing and rope & stanchion. (See attached photos of the fencing being proposed to define the barriers.)
- Signage will be posted at the gondola stations and all entrances to the Common Consumption Area stating "Common Consumption Area in effect. No outside alcoholic beverages will be allowed into the concert."
- Additional signs will be posted in the shuttle stations and around town to inform residents and guests of the new policy.



**Schedule B  
Common Consumption Boundary and Security for Sunset Plaza**



\*\*\* In addition to this above security, a MOD will be present to facilitate where needed.

**MOUNTAIN VILLAGE PROMOTIONAL ASSOCIATION  
STANDARD OPERATING PROCEDURES FOR SECURITY**

**Supervisor Checklist**

- There is a designated Manager on Duty (M.O.D.) and the Town has been notified of the M.O.D. at least 3 business days prior to the event
- The M.O.D. has confirmed that there is adequate security personnel staffed for the event
- The M.O.D. has met with all security personnel to go over the following standard operating procedures, responsibilities and duties
- The M.O.D. has assigned each security personnel to a designated check point/entrance
- The M.O.D. has confirmed that the barriers are properly set-up and that each entrance is staffed according to the Common Consumption Boundary Map
- The M.O.D. has confirmed that all Security Personnel have completed the server and selling training program (TIPS or ServSafe)
- The M.O.D. has confirmed that all Security Personnel are in uniforms clearly identifying such person as security and has provided necessary contact information to security

**Set-up Checklist**

- The M.O.D. will review the standard operating procedures and assign staff a station for the concert in the pre-shift meeting
- Security staff will be responsible for setting up the fencing around the perimeter of the common consumption area
- Security staff will be responsible for setting up a table, signage and trash/recycling bins if applicable at their assigned station
- Security staff will be responsible for ensuring that there is adequate space for pedestrian traffic and directional signs will be set-up where needed

**Security Checklist**

- Monitoring of the area will begin 1 hour prior to the beginning of the concert
- Monitoring shall include checking all early entrants to the concert area for outside alcohol and informing them of the common consumption area rules
- All guests must enter through one of the approved ingress/egress points to the concert
- Security will inform all concert goers that outside alcohol is not allowed and will search coolers, backpacks, bags and/or other containers for illegal beverages
- If outside alcoholic beverages are found, security will inform the guest that they cannot open or consume alcoholic beverages. Food items are allowed into the common consumption area
- Security will ensure that no alcoholic beverages leave the common consumption area
- Security will notify M.O.D. of any issues with drunk/disorderly patrons, and the M.O.D. will engage the local police force for conflict resolution
- Monitoring will continue until 30 minutes after the concert ended (approximately 8:30pm)
- The post show monitoring shall include a sweep to insure that all alcoholic beverages are removed from the common consumption area

**Breakdown Checklist**

- Security staff will be responsible for breaking down the fencing around the perimeter of the common consumption area and putting in designated storage area
- Security staff will be responsible for putting away any tables, signage and trash/recycling bins if applicable from their assigned station
- Security staff will do a sweep of the grass to pick up and dispose of any trash

**MOUNTAIN VILLAGE PROMOTIONAL ASSOCIATION  
PLAZA LICENSE AGREEMENT**

This License Agreement (the “**License Agreement**”) is made, effective as of the \_\_\_ day of April, 2014 (the “**Effective Date**”), between the Mountain Village Promotional Association, a Colorado nonprofit corporation, (“**Licensee**”) and the Town of Mountain Village, a home-rule municipality and political subdivision of the State of Colorado (the “**Town**”). Licensee and the Town may be collectively referred to herein as the “**Parties**” or individually referred to herein as “**Party**”.

**RECITALS**

1. Licensee is promotional association, as defined by C.R.S. 12-47-103(24.5); which has been certified by the Town to operate a common consumption area as defined by C.R.S. 12-47-103(6.6).
2. Licensee applied and received approval from the Town for the certification as a promotional association and Common Consumption Area, a portion of which is located on Town owned Open Space Tract OS-3X (the “**Plaza**”) as depicted on Exhibit “A” attached hereto (the “**Town Plaza Area**”).
3. The Town desires to grant, and Licensee desires to accept, the license described below for purposes of allowing Licensee to (i) conduct and liquor operations in conformance with Licensees approval of a common consumption area in, on, and over the Town Plaza Area, all as further set forth below.

In consideration of the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged and accepted, Licensee and the Town hereby agree as follows:

1. GRANT OF LICENSE. The Town hereby grants Licensee a license over the Town Plaza Area, as follows:
  - a. Licensee shall be permitted to have a common consumption area in accordance with Licensees approval of such common consumption area on the dates listed in the approval of such common consumption area and dates added pursuant to requirements of the approval of the common consumption area.
  - b. Licensee shall be permitted to place barriers, trash cans and other infrastructure as required by the approval of the common consumption area in order to operate the common consumption area.
  - c. Licensee shall be allowed to permit the consumption of alcohol on the Town Plaza Area including, in connection with its approval for the common consumption area, subject to applicable Town and/or other governmental laws, ordinances, and/or regulations.
2. TERM. This License Agreement shall commence on the Effective Date and shall terminate on April 30, 2015, unless terminated earlier pursuant to Paragraph 8 below (the “**Term**”). This License Agreement shall automatically renew for additional one year terms upon the successful recertification of the promotional association and common consumption area.
3. LOCATION.
  - a. Licensee shall use signage, fencing and/or other physical markers/landmarks to designate the boundaries of the common consumption area in accordance with Licensee’s approval of the

common consumption area and shall comply with all security requirements of such approval. Such signage, fencing and or other physical markers, and other personal property of Licensee shall be removed immediately at the conclusion of each approved event.

4. USE.

- a. The Licensee shall ensure that no alcohol is sold, served or taken outside of the common consumption area.
- b. Licensee shall use and maintain the Town Plaza Area and common consumption area in accordance with all applicable health and safety laws, ordinances, and/or regulations for the protection of all users of the common consumption area and Town Plaza Area.
- c. Licensee shall ensure that adequate trash and recycling receptacles are placed in the common consumption area for each event.

5. MAINTENANCE.

- a. Licensee agrees to repair and/or replace any damage to any portion of the Town Plaza Area only to the extent any damages shall be caused by or in connection with Licensee's use thereof, (including, without limitation, the placement any personal property on the Town Plaza Area). All costs for such repair or replacement, and all work performed in connection therewith, shall be the responsibility of the Licensee. The Town, in its sole reasonable discretion, shall determine when the Town Plaza Area is in need of repair or replacement due to the activities of Licensee and/or its customers in the Town Plaza Area.
- b. Licensee shall clean the Town Plaza Area by removing debris, trash, sweeping and washing down the Town Plaza Area after each event.

6. INDEMNIFICATION. The Licensee agrees to indemnify, defend and hold harmless the Town and its agents and employees from and against all actual claims, actions, causes of action, demands, judgments, reasonable costs and expenses, and all damages of every kind and nature (exclusive of punitive damages) incurred by and on behalf of any person or other legal entity whatsoever, predicated upon injury to or death of any person or loss of or damage to property of whatever ownership, including the parties to this License Agreement and their agents and employees, arising out of or connected with, in any manner, directly or indirectly, the Licensee's operation and its use of the Town Plaza Area.

7. INSURANCE REQUIREMENTS.

- a. Licensee shall carry general liability insurance covering all, and liquor operations permitted pursuant to the License in an amount no less than \$1,000,000.00 for a single occurrence and \$1,000,000.00 in the aggregate, with the Town as a named insured on such policy. Licensee shall be required to provide to the Town a "*Certificate of Insurance*" evidencing such coverage for the Term of this License Agreement.
- b. The general liability insurance policy and the "*Certificate of Insurance*" must be effective for the Term of the License Agreement, commencing as of the Effective Date.
- c. The Licensee shall cease all operations on the Town Plaza Area and common consumption area immediately upon cancellation the insurance coverage required pursuant to this Paragraph 7, in accordance with any notice of cancellation received by Licensee.

## 8. TERMINATION.

- a. Should any Party to this License Agreement fail to perform its obligations hereunder in strict compliance with the terms, covenants and conditions of this License Agreement, or otherwise default in the performance of any obligations contained in this License Agreement, the non-defaulting Party shall provide written notice to the defaulting Party of such default or breach ("**Notice of Default**"). If the defaulting Party has failed to cure or reasonably commence curing said default or breach within 10 business days after such Notice of Default is provided (an "**Uncured Default**"), the non-defaulting Party thereafter shall have the right to terminate this License Agreement, effective immediately upon providing the defaulting Party with written notice of such termination. In addition, in the event of an Uncured Default on behalf of Licensee, the Town shall have the right to partially terminate this License Agreement (in lieu of full termination) by revoking any specific right granted to Licensee, without limitation, removing any portion of the Outside Seating Areas from the License.
- b. In addition to, and separate from, the termination provisions set forth in Paragraph 8 a. above, this License Agreement may be terminated, as follows:
  - i. In the event that the promotional association or common consumption area is decertified or is not re-certified on an annual basis this License Agreement shall be automatically terminated.
- c. Upon any termination of this License Agreement, Licensee shall restore the Town Plaza Area to their original condition existing prior to the Effective Date, less normal wear and tear. Any personal property of Licensee placed temporarily on the Town Plaza Areas pursuant to the License shall be removed at the end of the Term at Licensee's sole cost and expense.
- d. The Town shall have the right to terminate this License Agreement for convenience at the Town's sole discretion and without penalty by giving Licensee thirty (30) days written notice of termination for convenience.

## 9. HOURS OF OPERATION.

- a. Alcohol shall only be permitted in the Town Plaza Areas and common consumption areas during those hours as approved by the Town in the Licensees approval of the promotional association and common consumption area.

## 10. LICENSE FEES.

- a. To be paid by the Licensee:
  - i. During the term of this License Agreement, the Licensee shall post a \$500.00 cash performance bond to assure full compliance with the terms hereof (the "**Performance Bond**"). The Performance Bond may be applied to any unpaid fines or charges outstanding for more than 45 days at any time during the Term. The Performance Bond shall be refunded 30 days after the expiration and/or termination of this License Agreement; provided however, that the Town shall be entitled to retain the Performance Bond for an additional 45 days to secure the obligations of any unresolved pending action remaining at the end of this 30 day period.

- ii. The Licensee shall bear all costs and expenses related to the construction and/or maintenance of any utility and other amenities needed by Licensee in connection with the exercise of its rights pursuant to the License.
  - iii. The Licensee shall bear all costs for any and all improvements to the Plaza Unit, both within and surrounding the Town Plaza Areas, which are reasonably required by the Town, pursuant to applicable health and safety laws, ordinances, and/or regulations, to limit hazards or dangers and provide for the safe operation of the common consumption area Town Plaza Areas.
- b. By the Town:
- i. The Town shall not be required to make any improvements to the Town Plaza Areas, or expend any money for the benefit of the Licensee.

11. ADDITIONAL TERMS AND CONDITIONS.

- a. The Licensee shall comply with all applicable local, state and federal rules, regulations and laws.
  - b. In the event of any legal action between the parties with respect to this License Agreement and the license herein granted, the prevailing party in any such action shall be entitled to recover their costs incurred therein, including reasonable attorneys fees.
  - c. Licensee may not assign, sublet, or transfer this License Agreement, or any portion thereof without the Town's prior written approval.
  - d. This License Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
12. NOTICE. All notices, demands or writings required or permitted to be given hereunder, shall be deemed to have been fully given or made or sent when made in writing and delivered either by (i) hand delivery; (ii) facsimile transmission; (iii) electronic mail; or (iv) commercial overnight courier that guarantees next day delivery and provides a receipt, so long as these are addressed and/or delivered to the Party as follows (with the understanding that the mailing addresses, email addresses or fax numbers below may be changed by sending written notice to each Party notifying the Party of the change).

**If to Licensee:**

Mountain Village Promotional Association  
Greg Pope  
113 Lost Creek Lane, St A  
Mountain Village, CO 81416  
Email: [greg@tmvoa.org](mailto:greg@tmvoa.org)  
Phone: (970) 728-1904



**If to the Town:**

Kim Montgomery, Town Manager  
Town of Mountain Village  
455 Mountain Village Blvd., Suite A  
Mountain Village, CO 81435  
Email: kmontgomery@mtnvillage.org  
Phone: (970) 728-8000

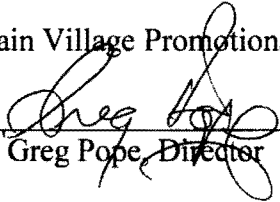
**(With a copy to):**

James Mahoney, Esq.  
J. David Reed P.C.  
1047 South 1<sup>st</sup> Street  
Montrose, CO 81401  
Email: jmahoney@jdreedlaw.com  
Phone: (970) 249-3806

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the Effective Date.

**LICENSEE:**

Mountain Village Promotional Association, a Colorado nonprofit corporation:

By:  \_\_\_\_\_  
Greg Pope, Director

**TOWN:**

TOWN OF MOUNTAIN VILLAGE,  
a Colorado home-rule municipality  
and political subdivision of the state of Colorado

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

**MOUNTAIN VILLAGE PROMOTIONAL ASSOCIATION  
TSG OPEN SPACE LICENSE AGREEMENT**

This License Agreement (the “**License Agreement**”) is made, effective as of the 25 day of June, 2014 (the “**Effective Date**”), between the Mountain Village Promotional Association, a Colorado nonprofit corporation, (“**Licensee**”) and TSG SKI & GOLF, LLC, a Delaware limited liability company (“**TSG**”). Licensee and TSG may be collectively referred to herein as the “**Parties**” or individually referred to herein as “**Party**”.

**RECITALS**

1. Licensee is promotional association, as defined by C.R.S. 12-47-103(24.5); which has been certified by the Town Of Mountain Village (“**Town**”) to operate a common consumption area as defined by C.R.S. 12-47-103(6.6).
2. Licensee applied and received approval from Town for the certification as a promotional association and Common Consumption Area, a portion of which is located on TSG owned Open Space Tract OS-3CR (“**TSG Open Space Tract**”) as depicted on Exhibit “A” attached hereto.
3. TSG desires to grant, and Licensee desires to accept, the license described below for purposes of allowing Licensee to conduct liquor operations in conformance with Licensee’s approval of a common consumption area in, on, and over the TSG Open Space Tract, all as further set forth below.

In consideration of the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged and accepted, Licensee and TSG hereby agree as follows:

1. GRANT OF LICENSE. TSG hereby grants Licensee a license over the TSG Open Space Tract, as follows:
  - a. Licensee shall be permitted to have a common consumption area in accordance with Licensee’s approval of such common consumption area on the dates listed in the approval of such common consumption area and dates added pursuant to requirements of the Town approval of the common consumption area and as approved by TSG. Currently scheduled 2014 dates are included on Exhibit “B” attached hereto.
  - b. Licensee shall be permitted to place barriers, trash cans and other infrastructure as required by the approval of the common consumption area in order to operate the common consumption area.
  - c. Licensee shall be allowed to permit the consumption of alcohol on the TSG Open Space Tract, in connection with its approval for the common consumption area, subject to applicable Town and/or other governmental laws, ordinances, and/or regulations.
2. TERM. This License Agreement shall commence on the Effective Date and shall terminate on April 30, 2015, unless terminated earlier pursuant to Paragraph 8 below (the “**Term**”). This License Agreement shall automatically renew for two additional one year terms upon the successful recertification of the promotional association and common consumption area.

3. LOCATION.

- a. Licensee shall use signage, fencing and/or other physical markers/landmarks to designate the boundaries of the common consumption area in accordance with Licensee's approval of the common consumption area and shall comply with all security requirements of such approval. Such signage, fencing and or other physical markers, and other personal property of Licensee shall be removed immediately at the conclusion of each approved event.

4. USE.

- a. The Licensee shall ensure that no alcohol is sold, served or taken outside of the common consumption area.
- b. Licensee shall use and maintain the TSG Open Space Tract and common consumption area in accordance with all applicable health and safety laws, ordinances, and/or regulations for the protection of all users of the common consumption area and TSG Open Space Tract.
- c. Licensee shall ensure that adequate trash and recycling receptacles are placed in the common consumption area for each event.

5. MAINTENANCE.

- a. Licensee shall at its sole cost and expense: (1) incur all costs associated with the promotional association, common consumption area and all events licensed under this Agreement; (2) minimize disturbance to the natural condition of the surface area of the TSG Open Space Tract; and (3) promptly cause any disturbance of the natural condition of the surface area of the TSG Open Space Tract to be reseeded, recontoured and reconstructed as may be necessary to return such area as nearly as practical to its condition prior to the event. This maintenance obligation includes the placement of any personal property on the TSG Open Space Tract. All costs for such repair or replacement, and all work performed in connection therewith, shall be the responsibility of the Licensee. TSG, in its sole reasonable discretion, shall determine when the TSG Open Space Tract is in need of repair or replacement due to the activities of Licensee and/or its customers in the TSG Open Space Tract.
- b. Licensee shall clean the TSG Open Space Tract by removing debris and trash after each event.

6. INDEMNIFICATION. The Licensee agrees to indemnify, defend and hold harmless TSG and its agents and employees from and against all actual claims, actions, causes of action, demands, judgments, reasonable costs and expenses, and all damages of every kind and nature, including attorney's fees, incurred by and on behalf of any person or other legal entity whatsoever, predicated upon injury to or death of any person or loss of or damage to property of whatever ownership, including the parties to this License Agreement and their agents and employees, arising out of or connected with, in any manner, directly or indirectly, the Licensee's operation and its use of the TSG Open Space Tract.

7. INSURANCE REQUIREMENTS.

- a. Licensee shall carry general liability insurance covering all, and liquor operations permitted pursuant to the License in an amount no less than \$1,000,000.00 for a single occurrence and \$1,000,000.00 in the aggregate, with TSG as a named insured on such policy. Licensee shall be

required to provide to the TSG a "*Certificate of Insurance*" evidencing such coverage for the Term of this License Agreement.

- b. The general liability insurance policy and the "*Certificate of Insurance*" must be effective for the Term of the License Agreement, commencing as of the Effective Date.
- c. The Licensee shall cease all operations on the TSG Open Space Tract and common consumption area immediately upon cancellation of the insurance coverage required pursuant to this Paragraph 7, in accordance with any notice of cancellation received by Licensee.

#### 8. TERMINATION.

- a. Should any Party to this License Agreement fail to perform its obligations hereunder in strict compliance with the terms, covenants and conditions of this License Agreement, or otherwise default in the performance of any obligations contained in this License Agreement, the non-defaulting Party shall provide written notice to the defaulting Party of such default or breach ("**Notice of Default**"). If the defaulting Party has failed to cure or reasonably commence curing said default or breach within 10 business days after such Notice of Default is provided (an "**Uncured Default**"), the non-defaulting Party thereafter shall have the right to terminate this License Agreement, effective immediately upon providing the defaulting Party with written notice of such termination.
- b. In addition to, and separate from, the termination provisions set forth in Paragraph 8 a. above, this License Agreement may be terminated, as follows:
  - i. In the event that the promotional association or common consumption area is decertified or is not re-certified on an annual basis this License Agreement shall be automatically terminated.
- c. Upon any termination of this License Agreement, Licensee shall restore the TSG Open Space Tract to their original condition existing prior to the Effective Date, less normal wear and tear. Any personal property of Licensee placed temporarily on the TSG Open Space Tract pursuant to the License shall be removed at the end of the Term at Licensee's sole cost and expense.
- d. Either party shall have the right to terminate this License Agreement for convenience at the party's sole discretion and without penalty by giving the other party sixty (60) days written notice of termination for convenience.

#### 9. HOURS OF OPERATION.

- a. Alcohol shall only be permitted in the TSG Open Space Tract and common consumption areas during those hours as approved in the Licensee's approval of the promotional association and common consumption area.

#### 10. ADDITIONAL TERMS AND CONDITIONS.

- a. The Licensee shall comply with all applicable local, state and federal rules, regulations and laws.
- b. In the event of any legal action between the parties with respect to this License Agreement and the license herein granted, the prevailing party in any such action shall be entitled to recover their costs incurred therein, including reasonable attorneys fees.
- c. Licensee may not assign, sublet, or transfer this License Agreement, or any portion thereof without TSG's prior written approval.

d. This License Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

11. **NOTICE.** All notices, demands or writings required or permitted to be given hereunder, shall be deemed to have been fully given or made or sent when made in writing and delivered either by (i) hand delivery; (ii) facsimile transmission; (iii) electronic mail; or (iv) commercial overnight courier that guarantees next day delivery and provides a receipt, so long as these are addressed and/or delivered to the Party as follows (with the understanding that the mailing addresses, email addresses or fax numbers below may be changed by sending written notice to each Party notifying the Party of the change).

**If to Licensee:**

Mountain Village Promotional Association  
Greg Pope  
113 Lost Creek Lane, St A  
Mountain Village, CO 81435  
Email: [greg@tmvoa.org](mailto:greg@tmvoa.org)  
Phone: (970) 728-1904

**If to the TSG:**

Jeff Proteau  
TSG Ski & Golf  
620 Mountain Village Blvd.  
Mountain Village, CO 81435  
Email:  
[jproteau@tellurideskiresort.com](mailto:jproteau@tellurideskiresort.com)  
Phone: (970) 728-7444

**(With a copy to):**


Stefanie Solomon, Esq.  
TSG Ski & Golf  
620 Mountain Village Blvd  
Mountain Village, CO 81435  
Email: [ssolomon@tellurideskiresort.com](mailto:ssolomon@tellurideskiresort.com)  
Phone: (970) 728-7318

*(Signature page attached)*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the Effective Date.

LICENSEE:

Mountain Village Promotional Association, a Colorado nonprofit corporation:

By:  \_\_\_\_\_  
Greg Pope, Director

TSG:

TSG SKI & GOLF, LLC  
a Delaware limited liability company

By:  \_\_\_\_\_  
Jeff Proteau, Vice President

# Exhibit A



PAGE 3330

## EXHIBIT B

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### June 2014

- Sunset Concert Series – Sunset Plaza
  - June 25, 2014

### July 2014

- Red, White & Blues Concert – Sunset Plaza/Heritage Plaza
  - July 3, 2014
- Sunset Concert Series – Sunset Plaza
  - July 9, July 16, July 23, July 30, 2014
- First Ride Concert – Sunset Plaza
  - July 11, 2014 4:00pm – 8:00pm

### August 2014

- Sunset Concert Series – Sunset Plaza
  - August 6, August 13, 2014

### September 2014

- Sunset Blues Concert – Sunset Plaza
  - September 10, 2014





## EVENT LICENSE AND STAGE RENTAL AGREEMENT

THIS EVENT LICENSE AND STAGE RENTAL AGREEMENT (this "Agreement") is made and entered into this 25<sup>th</sup> day of June, 2014 (the "Effective Date"), by and between TSG SKI & GOLF, LLC, a Delaware limited liability company ("TSG") and Telluride Mountain Village Owners Association, a Colorado non-profit corporation ("TMVOA").

### RECITALS

- A. WHEREAS, TSG is the record owner of Open Space Tract OS-3CR (the "TSG Open Space Tract"), a parcel of land located within the Town of Mountain Village (the "Town") as shown on Exhibit A attached hereto;
- B. WHEREAS, TMVOA provides various services, functions and amenities within the Town for the use and enjoyment of residents and guests within the Town and members/owners of TMVOA;
- C. WHEREAS, as an amenity, TMVOA desires to host and operate various Events (defined below) that benefit the members/owners of TMVOA and business owners, residents and guests of Mountain Village and TSG on portions of the TSG Open Space Tract during the summer and fall months of 2014 – 2016. Historically, the parties have entered into one (1) year annual agreements. However, TMVOA believes that a three year agreement will allow it to obtain sponsors for the events, which in turn will improve the concerts, increase revenue brought in by the concerts as well as the number of people attending the concerts.
- D. WHEREAS, TMVOA desires to obtain from TSG license rights to host and operate the Events on a portion of the TSG Open Space Tract and to lease certain equipment from TSG during the License Term (described below), and TSG has agreed to grant a license and lease equipment to TMVOA to host and operate the Events on a portion of the TSG Open Space Tract during the License Term, subject to the terms and conditions set forth herein.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. **GRANT OF LICENSE:** TSG hereby grants to TMVOA a non-exclusive license ("License") to use the TSG Open Space Tract for the Events (defined below) on the terms and conditions set forth herein. TMVOA and TSG acknowledge that the License granted herein and use of the TSG Open Space Tract during the License Term is limited to the Events described below and is provided by TSG to TMVOA free of charge for the use and enjoyment by the TMVOA general membership and the general public.
- 2. **EVENTS:** The "Events" that are the subject of this License Agreement are approved to be operated and conducted upon the TSG Open Space Tract during the License Term are as follows:

Sunset Concert Series License and Stage Rental Agreement

Page 2 of 5

- A. Red, White & Blue Concert. Musical performance and related events and programs to be held on July 3 of each year during the License Term.
  - B. Sunset Concert Series. A series of musical concerts to be held primarily on Wednesdays during the months of June, July and August. TMVOA may schedule additional Sunset Concerts only with written approval from TSG prior to the concert or event.
  - C. Additional Events: Any Additional Event from June through September, if the Event License Area (defined below) and Equipment (defined below) are both available and the Additional Event is approved in writing by TSG. If TMVOA desires an Additional Event, TMVOA must notify TSG and TSG shall have five (5) business days to respond via e-mail to TMVOA, either approving or denying the Additional Event, in TSG's sole discretion, based upon availability of the Event License Area and Equipment.
3. **TERM/TERMINATION**: The License shall be effective for a period commencing on June 25, 2014, and terminating on September 15, 2016 ("License Term") and may be terminated by either party without cause upon sixty (60) days prior written notice to the other party.
  4. **USE AREA**: The Events shall be conducted and operated upon those areas of the TSG Open Space Tract depicted as "Event License Areas" on Exhibit A attached hereto and incorporated herein. The Events involve the erection of a stage and sound and video equipment on a portion of the Event License Areas and public seating occurring on the hillside, grassy portions of the Event License. A TSG banner will be prominently displayed on or near the stage at all Events showing TSG's sponsorship of the Events.

*Existing agreement*

- 4.1 Lawn Care. TSG, for the benefit of TMVOA, shall provide weekly lawn care maintenance including but not limited to, lawn cutting, weed care, fertilization, and watering to the Event License Area using TSG employees and equipment throughout the term of the Agreement ("Lawn Care Maintenance"). In exchange for Lawn Care Maintenance, TMVOA shall pay Five-Thousand Three Hundred Dollars (\$5,300.00), per year, each year of the License Term, to TSG for provision of the Law Care Maintenance. Upon receipt of an invoice from TSG each and every license year, TMVOA shall tender payment to TSG within thirty (30) days.
5. **EQUIPMENT RENTAL**: TSG agrees to provide TMVOA the following equipment for rental: **the Marshal Austin Portable Stage and accessories** ("Equipment"), as needed and as available during the License Term. TMVOA understands and agrees that TMVOA shall contract with and hire All Phases Events Group, LLC ("All Phases"), as the sole and exclusive company to transport, set up and take down the Equipment. All Phases and its agents, employees and subcontractors are the sole authorized personnel to provide services for transport, set-up and removal of Equipment for the Events and Additional Events and that set up and removal process of the equipment must occur under the direction, operation and management of All Phases ("Installation and Removal"). TMVOA understands and agrees that TSG will not be involved or assist in any way whatsoever

with the Installation and Removal of the Stage. TMVOA further agrees and understands that any and all site fees or approvals for use of the Equipment and operation of the Event during the Term are the sole and exclusive responsibility of TMVOA. TMVOA understands, acknowledges and agrees that TSG accepts no responsibility or liability for any act, or omission or any injury or damage of any kind or nature arising from, or related to the Event, Additional Events or Equipment or Installation and Removal of the Equipment. TMVOA will reimburse TSG for out of pocket repair or moving expenses, if any.

- A. Rental Fee. A Rental Fee of \$0.00 shall be due and payable to TSG upon execution of this Agreement. Separate and apart from Rental Fee, TMVOA agrees to sign a Promissory Note payable to Lessor in the amount of \$1,000 which shall be considered as a damage deposit ("Damage Deposit"). Said Note shall be cancelled upon satisfactory inspection by TSG at the conclusion of the License Term.
- B. No Property Rights. The Equipment shall at all times remain and be the sole and exclusive property of TSG, and neither TMVOA nor All Phases shall have any right or interest in and to the property, other than the right to use and possess the same, upon the conditions contained herein during the Term. The Equipment shall be used only by TMVOA, and their agents, officers, employees, subcontractors, operatives ("Authorized Parties") in the direct employ of TMVOA. TSG and its employees and agents shall at all times have free access to the Equipment for the purpose of inspecting it or monitoring Equipment use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and TMVOA shall afford all reasonable access to facilities for this purpose.
- C. Equipment Condition; Disclaimer. TMVOA leases the Equipment from TSG "AS IS" free of any representations or warranties, express or implied, of any kind or nature by TSG as to the value, condition quality, material, workmanship, design, capacity, merchantability, durability, fitness or suitability of the Equipment for any use or purpose. TMVOA agrees that upon set up, and prior to usage for the Event, TMVOA shall inspect the Equipment for damage and wear and tear and to note same to TSG prior to the Event. Failure of TMVOA to inspect as noted herein shall release TSG of any liability or responsibility associated therewith. TMVOA shall at its sole cost and expense during the Term keep and maintain the Equipment in good state of condition and repair, reasonable wear and tear excepted, and shall not permit anyone to injure, damage or deface any portion of the Equipment. Failure to report any damage to the Equipment by TMVOA shall entitle TSG to make reasonable and necessary repairs to the Equipment at the sole discretion of TSG, with notice provided to TMVOA, and permit TSG to deduct such repairs from the Damage Deposit upon completion of such repairs.
- D. Costs for Damages/Repairs. Any damages to the Equipment incurred during the Term which is not caused by ordinary wear and tear shall be repaired at TMVOA's sole cost and expense for parts costs and at a shop rate to be determined at the sole discretion of TSG. In the event damage to the Equipment occurs, TMVOA agrees to immediately notify TSG of such damage and to document (including photography or video) such damage for the purposes of inspection by TSG for determination of costs of repair of Equipment.

6. **MAINTENANCE AND OPERATIONS:** TMVOA shall, at its sole cost and expense: (i) incur all costs associated with the Events, (ii) ensure that all construction activities related to the Events are carried out in a workmanlike and professional manner; (iii) minimize disturbance to the natural condition of the surface area of the Event License Areas; and, (iv) promptly cause any disturbance to the natural condition of the surface area of the Event License Areas to be reseeded, recontoured and reconstructed as may be necessary to return such area as nearly as practicable to its condition prior to the Events.
7. **INSURANCE:** TMVOA shall keep in full force and effect for the entire License Term a commercial general liability insurance policy (the "**Policy**") with minimum coverage limits of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence and THREE MILLION DOLLARS (\$3,000,000.00) in the aggregate. Said Policy and coverage limits shall cover all types of liability associated with this Agreement, the Equipment and the License. TMVOA shall provide to TSG within seven (7) days of execution of this Agreement a certificate of insurance naming TSG as an additional insured on the Policy. TSG shall be given thirty (30) days written notice by certified mail of any cancellation or change in the Policy.
8. **INDEMNIFICATION:** TMVOA shall indemnify, defend and hold harmless TSG Ski & Golf, LLC, its parents, subsidiaries and affiliates and their respective insurance carriers, agents, employees, representatives, assignees, directors, officers, partners, members and/or shareholders from and against any and all liability, claims, liens, demands, actions and causes of action whatsoever (including attorney's fees and expenses) arising in connection with or related to (i) the Events, including, without limitation, any use of equipment, or (ii) any negligent or intentional act, error or omission of TMVOA, its directors or any TMVOA personnel during the Term of this Agreement and related to the Event and its production.
9. **COMPLETE AGREEMENT:** This Agreement expresses the full and complete understanding of the parties with respect to the terms and conditions set forth herein, and supersedes all prior and contemporaneous proposals, agreements, representations and understandings and may not be contradicted by evidence of any prior or contemporaneous agreement.
10. **GOVERNING LAW:** The parties hereto consent and agree that all legal proceedings relating to the subject matter of this Agreement shall be maintained and venue shall be proper in state courts sitting in San Miguel County, Colorado or Federal District Court of the State of Colorado.
11. **NOTICES:** All notices, notifications and other communications required or permitted by this Agreement shall be in writing and shall be delivered by hand, sent by telecopy (with confirmation of receipt), e-mailed, or mailed by registered or certified first class mail, return receipt requested (postage prepaid) to the parties at the following addresses:

If to TMVOA:

Telluride Mountain Village Owners Association  
113 Lost Creek Lane, Suite A  
Mountain Village, CO 81435  
Attention: Greg Pope  
E-mail: greg@tmvoa.org  
Phone: (970) 728-1904

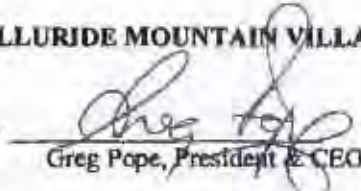
If to TSG:

TSG SKI & GOLF, LLC  
565 Mountain Village Blvd.  
Mountain Village, CO 81435  
Attention: Jeff Proteau  
Phone: (970) 728-7444  
E-mail: jproteau@tellurideskiresort.com

12. **ASSIGNMENT:** This Agreement may not be assigned by any party without the express written consent of all the other parties.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

**TELLURIDE MOUNTAIN VILLAGE OWNERS ASSOCIATION**

By:   
Greg Pope, President & CEO

**TSG SKI & GOLF, LLC**, a Delaware limited liability company

By:   
Greg Pack, President and General Manager






## Entertainment District Post Survey Report

The Entertainment District Survey was delivered by email on February 28th and again on March 4th, and was closed on March 10th. The email was sent to 1,754 email addresses and was opened by 1,005 recipients (57% open rate.) 607 of the recipients that opened the email went on to the survey page, and 360 survey responses were recorded.

### Entertainment District Survey

#### Bar Graph

Choices	Percentage	Count
<b>1. Yes, I support the creation of an Entertainment District for Special Events, including the Sunset Concert Series.</b>	 70.28%	253
<b>3. No, I do not support the creation of an Entertainment District.</b>	 18.89%	68
<b>2. I support the creation of an Entertainment District for Special Events, but not during the Sunset Concert Series.</b>	 10.83%	39
<b>Total</b>		<b>360</b>

**From:** Sara Larsen  
**To:** ["Greg Pope"](#)  
**Subject:** FW: Your opinion matters, do you support an Entertainment District?  
**Date:** Tuesday, March 11, 2014 1:21:58 PM

---

Greg,

Per our conversation, Jack Schultz, President of the Kayenta Board, called this morning to express his support of the Entertainment District. He stated that he personally spoke to 7 of the 8 owners, and they were all in favor of the ED. He said that he supports anything that helps the village and would be willing to speak on behalf of the Entertainment District. His cell phone number is 814-490-2786. Thanks!

**Sara Larsen**

Operations Manager  
Telluride Mountain Village Owners Association  
113 Lost Creek Lane, Suite A Mountain Village, CO 81435  
970-728-1904 Ext 7 (Office)  
[sara@tmvoa.org](mailto:sara@tmvoa.org)

**From:** lcalaiamd@aol.com [mailto:lcalaiamd@aol.com]  
**Sent:** Tuesday, March 11, 2014 9:59 AM  
**To:** Sara Larsen  
**Cc:** susanalaia@aol.com; lgunty@aol.com; ramonabruland@gmail.com; jrnholdingsllc@gmail.com; pyrocanski1@yahoo.com; jimkauffman@sbcglobal.net; mgunty@blackstreetcapital.com; dsmith@inxi.com; tri4kona@cox.net; patmcg6161@gmail.com; apk500@sbcglobal.net; deborahskauffman@sbcglobal.net; traceynug@aol.com; m2@alaia.net; schultzjack@icloud.com  
**Subject:** Re: Your opinion matters, do you support an Entertainment District?

Sara . . .

Your feedback has been appreciated. Since your message below, I have had a dialogue with both our Kayenta Legend House I membership (via its Board, of which I am a Director) and the BOD of Tramontana at Lost Creek (of which I am President and Director) relative to our collective opinions with regard to the ED.

At this point, I need to defer to the President of the Kayenta LH-I Board, Jack Schultz, in the case of Kayenta Legend House I, where all of our owners have reviewed your response. He will be contacting you separately on behalf of our ownership there, but I can tell you that I have received no objections from any of the Tramontana Board or membership, of which there are nine, and I expect that you will receive the same affirmation from Jack with regard to Kayenta I.

Sincerely,

Louis C. Alaia. MD  
President, Tramontana HOA, Inc.

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

**From:** Sara Larsen <[sara@TMVOA.ORG](mailto:sara@TMVOA.ORG)>  
**To:** lcalaiamd <[lcalaiamd@aol.com](mailto:lcalaiamd@aol.com)>  
**Cc:** kbrehm2000 <[kbrehm2000@aol.com](mailto:kbrehm2000@aol.com)>; schultzjack <[schultzjack@icloud.com](mailto:schultzjack@icloud.com)>; b.garland <[b.garland@ozemail.com.au](mailto:b.garland@ozemail.com.au)>; sheelahomemail <[sheelahomemail@gmail.com](mailto:sheelahomemail@gmail.com)>; m2 <[m2@alaia.net](mailto:m2@alaia.net)>; Greg Pope <[greg@TMVOA.ORG](mailto:greg@TMVOA.ORG)>  
**Sent:** Mon, Mar 3, 2014 10:10 am  
**Subject:** RE: Your opinion matters, do you support an Entertainment District?

Lou,

Thank you for your feedback. We tried to cover the main points of the Entertainment District concept without being too lengthy, and apologize if we did not provide enough detail for members to make an informed decision. I can try to address some of your concerns:

Duration of events. As mentioned, the Entertainment District would only go into effect during specific events that would be pre-defined on an Events Calendar. Right now, there aren't too many events for which this is being considered, however, the hope is that an Entertainment District will attract future events to MV. A few examples of events that would be on the current event calendar would be the future Telluride Fire Festival, the TSG Mountain Town Get Down concert in Heritage Plaza, the eight Sunset Concerts, the Red, White & Blue 4<sup>th</sup> of July event, BBQ Fest, Oktoberfest and Winter Fest.

Time of termination. There may be general hours defined as part of the approval process, but in most cases the hours would be event specific as defined through the Special Use Permit granted by the Town of Mountain Village. The vision is not for the ED to ever be very late, but during the actual event activity. In the case of the Sunset Concert Series, the ED might be in effect from 5pm to 8:30pm in Sunset Plaza. For the TSG end of season concert, the ED might be in effect from 12pm-6pm in Heritage Plaza.

The intention is for the Entertainment District to be an option for appropriate events, but not be in effect at all times. The ED could cover the entire Village Core, but in most cases would be isolated in one of the plazas. The area would need to have a defined boundary (fencing or roping, to be determined) and would have security at all entry/exit points. Because of these costs, the ED would only be in effect when it would be cost-effective to do so.

Licensed establishments have the option of participating in the ED, but they must be a currently licensed establishment within the boundary of the ED. This means that, for example, Poachers would not be allowed to set-up a remote bar for an event in Heritage Plaza, and Tomboy would not be allowed to set-up a remote bar in Sunset Plaza. We have had several meetings with the merchants, and there is strong support for the Entertainment District, however, they do have the option of opting out if they do not wish to participate.

I hope this helps to clear up some of the confusion, but I would be happy to address any additional questions you have about the Entertainment District. Thank you again for your feedback and participation in our survey!

**Sara Larsen**

Operations Manager  
Telluride Mountain Village Owners Association  
113 Lost Creek Lane, Suite A Mountain Village, CO 81435  
970-728-1904 Ext 7 (Office)  
[sara@tmvoa.org](mailto:sara@tmvoa.org)

**From:** [lcalaiamd@aol.com](mailto:lcalaiamd@aol.com) [<mailto:lcalaiamd@aol.com>]

**Sent:** Sunday, March 02, 2014 1:14 PM

**To:** Sara Larsen

**Cc:** [kbrehm2000@aol.com](mailto:kbrehm2000@aol.com); [kristilupoli@aol.com](mailto:kristilupoli@aol.com); [schultzjack@icloud.com](mailto:schultzjack@icloud.com); [b.garland@ozemail.com.au](mailto:b.garland@ozemail.com.au); [sheelahomemail@gmail.com](mailto:sheelahomemail@gmail.com); [m2@alaia.net](mailto:m2@alaia.net)

**Subject:** Re: Your opinion matters, do you support an Entertainment District?

In case you may read this, your survey was too uninclusive, which was why I voted against the ED. You really need qualify the conditions that will be involved, such as duration of events, time of termination if at



night, and the anticipated frequency . . . we went through something like this last year and had the same (unanswered) questions.

L. Alaia, director, Kayenta LH-I HOA

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

From: Telluride Mountain Village Owners Association - TMVOA <[tmvoa@tmvoa.org](mailto:tmvoa@tmvoa.org)>

To: Alaia 0046 <[calaiaamd@aol.com](mailto:calaiaamd@aol.com)>

Sent: Fri, Feb 28, 2014 7:14 pm

Subject: Your opinion matters, do you support an Entertainment District?

[Do you want an Entertainment District?](#)

[Web Version](#) | [Update preferences](#) | [Unsubscribe](#)

Owners Association"

src="http://i1.createsend1.com/ei/r/06/4AD/008/csimport/TMVOAEmailHeader.163419.png" width="620" height="300" alt="Telluride Mountain Village Owners Association Logo" style="display:block;text-decoration:none;outline-style:none;"/>

## Do you want an Entertainment District?

TMVOA is exploring the creation of an Entertainment District in Mountain Village. This would allow guests to purchase alcohol from participating businesses with an existing liquor license and move freely within the defined boundaries of a common consumption area. The Entertainment District would only go into effect during specific events that would be pre-defined on an Events Calendar.

One of the events for which the Entertainment District is being considered is the free Sunset Concert Series held during the summer months. The concert series was originated both as an amenity to owners and also to create business for our merchant members. Many concert-goers currently bring coolers to the concerts with alcoholic beverages, which is in violation of state liquor laws. Should the Entertainment District go into effect, guests would no longer be able to bring alcoholic beverages into the common consumption area, but would have the option of purchasing beverages from participating businesses (food would still be allowed.)

We hope you will take the time to complete the questionnaire so we can better determine how to best meet the needs of our homeowners and also promote Mountain Village businesses. Thank you for your input. [Take the Survey Now!](#)

Owners Association" src="http://i3.createsend1.com/ei/r/06/4AD/008/csimport/Idea.202151.png" width="620" height="310" alt="Button for Survey Taking" style="display:block;text-decoration:none;outline-style:none;max-width:100%;"/>

[Take The Survey](#)

Owners Association"

src="http://i2.createsend1.com/ei/r/06/4AD/008/csimport/footer.124437.png" width="620" height="60" alt="TMVOA Website Address" style="display:block;text-decoration:none;outline-style:none;"/>

[Edit your subscription](#) | [Unsubscribe](#)

[Entertainment District Survey](#)

1 (970) 728-1904

Telluride Mountain Village

Owners Association

113 Lost Creek Lane

Suite A

Telluride, CO 81435

1 (970) 728-1904

From: [lcalaiamd@aol.com](mailto:lcalaiamd@aol.com)  
To: [Sara Larsen](mailto:Sara Larsen)  
Cc: [susancalaia@aol.com](mailto:susancalaia@aol.com); [lgunty@aol.com](mailto:lgunty@aol.com); [ramonabruland@gmail.com](mailto:ramonabruland@gmail.com); [jrnholdingsllc@gmail.com](mailto:jrnholdingsllc@gmail.com); [pyrocanski1@yahoo.com](mailto:pyrocanski1@yahoo.com); [jimkauffman@sbcglobal.net](mailto:jimkauffman@sbcglobal.net); [mgunty@blackstreetcapital.com](mailto:mgunty@blackstreetcapital.com); [dsmith@inxi.com](mailto:dsmith@inxi.com); [tri4kona@cox.net](mailto:tri4kona@cox.net); [patmcg6161@gmail.com](mailto:patmcg6161@gmail.com); [apk500@sbcglobal.net](mailto:apk500@sbcglobal.net); [deborahskauffman@sbcglobal.net](mailto:deborahskauffman@sbcglobal.net); [traceynug@aol.com](mailto:traceynug@aol.com); [m2@alaia.net](mailto:m2@alaia.net); [schultzjack@icloud.com](mailto:schultzjack@icloud.com)  
Subject: Re: Your opinion matters, do you support an Entertainment District?  
Date: Tuesday, March 11, 2014 9:59:47 AM

---

Sara . . .

Your feedback has been appreciated. Since your message below, I have had a dialogue with both our Kayenta Legend House I membership (via its Board, of which I am a Director) and the BOD of Tramontana at Lost Creek (of which I am President and Director) relative to our collective opinions with regard to the ED.

At this point, I need to defer to the President of the Kayenta LH-I Board, Jack Schultz, in the case of Kayenta Legend House I, where all of our owners have reviewed your response. He will be contacting you separately on behalf of our ownership there, but I can tell you that I have received no objections from any of the Tramontana Board or membership, of which there are nine, and I expect that you will receive the same affirmation from Jack with regard to Kayenta I.

Sincerely,

Louis C. Alaia. MD  
President, Tramontana HOA, Inc.

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

From: Sara Larsen <sara@TMVOA.ORG>  
To: lcalaiamd <lcalaiamd@aol.com>  
Cc: kbrehm2000 <kbrehm2000@aol.com>; schultzjack <schultzjack@icloud.com>; b.garland <b.garland@ozemail.com.au>; sheelahomemail <sheelahomemail@gmail.com>; m2 <m2@alaia.net>; Greg Pope <greg@TMVOA.ORG>  
Sent: Mon, Mar 3, 2014 10:10 am  
Subject: RE: Your opinion matters, do you support an Entertainment District?

Lou,

Thank you for your feedback. We tried to cover the main points of the Entertainment District concept without being too lengthy, and apologize if we did not provide enough detail for members to make an informed decision. I can try to address some of your concerns:

Duration of events. As mentioned, the Entertainment District would only go into effect during specific events that would be pre-defined on an Events Calendar. Right now, there aren't too many events for which this is being considered, however, the hope is that an Entertainment District will attract future events to MV. A few examples of events that would be on the current event calendar would be the future Telluride Fire Festival, the TSG Mountain Town Get Down concert in Heritage Plaza, the eight Sunset Concerts, the Red, White & Blue 4<sup>th</sup> of July event, BBQ Fest, Oktoberfest and Winter Fest.

Time of termination. There may be general hours defined as part of the approval process, but in most cases the hours would be event specific as defined through the Special Use Permit granted by the Town of Mountain Village. The vision is not for the ED to ever be very late, but during the actual event activity. In the case of the Sunset Concert Series, the ED might be in effect from 5pm to 8:30pm in Sunset Plaza. For the TSG end of season concert, the ED might be in effect from 12pm-6pm in Heritage Plaza.

The intention is for the Entertainment District to be an option for appropriate events, but not be in effect at all times. The ED could cover the entire Village Core, but in most cases would be

isolated in one of the plazas. The area would need to have a defined boundary (fencing or roping, to be determined) and would have security at all entry/exit points. Because of these costs, the ED would only be in effect when it would be cost-effective to do so.

Licensed establishments have the option of participating in the ED, but they must be a currently licensed establishment within the boundary of the ED. This means that, for example, Poachers would not be allowed to set-up a remote bar for an event in Heritage Plaza, and Tomboy would not be allowed to set-up a remote bar in Sunset Plaza. We have had several meetings with the merchants, and there is strong support for the Entertainment District, however, they do have the option of opting out if they do not wish to participate.

I hope this helps to clear up some of the confusion, but I would be happy to address any additional questions you have about the Entertainment District. Thank you again for your feedback and participation in our survey!

**Sara Larsen**

Operations Manager  
Telluride Mountain Village Owners Association  
113 Lost Creek Lane, Suite A Mountain Village, CO 81435  
970-728-1904 Ext 7 (Office)  
[sara@tmvoa.org](mailto:sara@tmvoa.org)

**From:** [lcalaiamd@aol.com](mailto:lcalaiamd@aol.com) [<mailto:lcalaiamd@aol.com>]  
**Sent:** Sunday, March 02, 2014 1:14 PM  
**To:** Sara Larsen  
**Cc:** [kbrehm2000@aol.com](mailto:kbrehm2000@aol.com); [kristilupoli@aol.com](mailto:kristilupoli@aol.com); [schultzjack@icloud.com](mailto:schultzjack@icloud.com); [b.garland@ozemail.com.au](mailto:b.garland@ozemail.com.au); [sheelahomemail@gmail.com](mailto:sheelahomemail@gmail.com); [m2@alaia.net](mailto:m2@alaia.net)  
**Subject:** Re: Your opinion matters, do you support an Entertainment District?

In case you may read this, your survey was too uninclusive, which was why I voted against the ED. You really need qualify the conditions that will be involved, such as duration of events, time of termination if at night, and the anticipated frequency . . . we went through something like this last year and had the same (unanswered) questions.

L. Alaia, director, Kayenta LH-I HOA  
-----Original Message-----

From: Telluride Mountain Village Owners Association - TMVOA <[tmvoa@tmvoa.org](mailto:tmvoa@tmvoa.org)>  
To: Alaia 0046 <[lcalaiamd@aol.com](mailto:lcalaiamd@aol.com)>  
Sent: Fri, Feb 28, 2014 7:14 pm  
Subject: Your opinion matters, do you support an Entertainment District?

[Do you want an Entertainment District?](#)

[Web Version](#) | [Update preferences](#) | [Unsubscribe](#)

Owners Association"

src="http://i1.createsend1.com/ei/r/06/4AD/008/csimport/TMVOAEmailHeader.163419.png" width="620" height="300" alt="Telluride Mountain Village Owners Association Logo" style="display:block;text-decoration:none;outline-style:none;"/>

## Do you want an Entertainment District?

TMVOA is exploring the creation of an Entertainment District in Mountain Village. This would allow guests to purchase alcohol from participating businesses with an existing liquor license and move freely within the defined boundaries of a common consumption area. The Entertainment District would only go into


effect during specific events that would be pre-defined on an Events Calendar.

One of the events for which the Entertainment District is being considered is the free Sunset Concert Series held during the summer months. The concert series was originated both as an amenity to owners and also to create business for our merchant members. Many concert-goers currently bring coolers to the concerts with alcoholic beverages, which is in violation of state liquor laws. Should the Entertainment District go into effect, guests would no longer be able to bring alcoholic beverages into the common consumption area, but would have the option of purchasing beverages from participating businesses (food would still be allowed.)

We hope you will take the time to complete the questionnaire so we can better determine how to best meet the needs of our homeowners and also promote Mountain Village businesses. Thank you for your input. [Take the Survey Now!](#)

[Owners Association" src="http://i3.createsend1.com/ei/r/06/4AD/008/csimport/Idea.202151.png" width="620" height="310" alt="Button for Survey Taking" style="display:block;text-decoration:none;outline-style:none;max-width:100%;"/](#)

[Take The Survey](#)

[Owners Association" src="http://i2.createsend1.com/ei/r/06/4AD/008/csimport/footer.124437.png" width="620" height="60" alt="TMVOA Website Address" style="display:block;text-decoration:none;outline-style:none;"/](#) 

[Edit your subscription | Unsubscribe](#)  
[Entertainment District Survey](#)  
[1 \(970\) 728-1904](#)

[Telluride Mountain Village](#)  
[Owners Association](#)  
[113 Lost Creek Lane](#)  
[Suite A](#)  
[Telluride, CO 81435](#)  
[1 \(970\) 728-1904](#)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/7/2014

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Home Loan & Investment Company 205 North 4th Street Grand Junction, CO 81502	<b>CONTACT NAME:</b> Ann Heide <b>PHONE (A/C, No, Ext):</b> (970) 243-6600 <b>FAX (A/C, No):</b> (970) 243-3914 <b>E-MAIL ADDRESS:</b> annh@hlic.com
<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURER A : Allied Insurance</b>	
<b>NAIC #</b> 23787	
<b>INSURER B : Golder Bear Insurance Corporation</b>	
<b>INSURER C :</b>	
<b>INSURER D :</b>	
<b>INSURER E :</b>	
<b>INSURER F :</b>	

<b>COVERAGES</b>	<b>CERTIFICATE NUMBER:</b>	<b>REVISION NUMBER:</b>
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THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		ACP7563146485	01/01/2014	01/01/2015	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			ACP7563146485	01/01/2014	01/01/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			ACP7563146485	01/01/2014	01/01/2015	EACH OCCURRENCE \$ 1,000,000
							AGGREGATE \$ 1,000,000
							\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE    OTH-ER
							E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
B	Liquor Liability	X		GLL02114	06/01/2014	06/01/2015	Limit 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Town of Mountain Village is additional insured with regard to Liquor Liability and General Liability.

<b>CERTIFICATE HOLDER</b>  Town of Mountain Village 455 Mountain Village Unit A Mountain Village, CO 81435	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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# Golden Bear Insurance Company

POST OFFICE BOX 271  
STOCKTON, CALIFORNIA 95201

## LIQUOR LIABILITY DECLARATIONS

Policy Number	GLL 02114
Renewal of Number	New

Named Insured and Mailing Address <b>Mountain Village Promotional Association 113 Lost Creek Lane, Ste. A Mountain Village, CO 81435</b>	Producer Name and Mailing Address <b>Virtus Underwriting Group, Inc. 10397 W. Centennial Road #250 Littleton, CO 80127</b>
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POLICY PERIOD	From: <b>May 1, 2014</b>	To: <b>May 1, 2015</b>	Term: <b>Annual</b>
---------------	--------------------------	------------------------	---------------------

12:01 A.M. Standard Time at the address of the Named Insured as stated herein.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

<b>LIMITS OF INSURANCE</b>	
Each Common Cause	<u><b>\$1,000,000.</b></u>
Aggregate Limit	<u><b>\$1,000,000.</b></u>
Deductible per claim	<b>\$1,500</b>

<b>DESCRIPTION OF BUSINESS AND LOCATION PREMISES</b>
Form of Business: <b>Non-Profit</b>
Business Description: <b>Special events</b>
Locations of All Premises You own, Rent or Occupy: <b>113 Lost Creek Lane, Ste. A, Mountain Village, CO 81435</b>

<b>PREMIUM</b>				
Classification	Code No.	Premium Basis	Rate	Advanced Premium
<b>On-Sale General – Public Premises</b>	<b>48</b>	<b>Flat</b>	<b>Flat</b>	<b>\$2,250.00</b>
<b>Additional Insured (1)</b>				<b>\$100.00</b>
			Broker Fee	\$150.00
			Surplus Lines Tax	\$ 72.00
			Fully Earned Policy Fee	<b>\$100.00</b>
			Inspection Fee	<b>\$250.00</b>
			Total Advance Premium	<b>\$2,922.00</b>

25% of the Advanced Premiums are fully earned at policy inception

<b>FORMS AND ENDORSEMENTS</b>
Subject to Forms and Endorsements attached hereto: <b>IL 0017 11/98, IL 0021 07/02, CG 0033 12/07, GBR 300 01/96, GBR 306 01/96, GBR 212 07/13, GBR 320 01/96, GBR 340 09/96, CG 2173 01/08, CG 2012 07/98, GBR 218 06/13, GBR 390 05/98, GBR 102 11/10 Signed Liquor Application Dated 3/18/14</b>

**“THE COST OF INSURANCE COVERAGE PROVIDED INCLUDES A FEE OF \$150.00 PAYABLE TO A WHOLESALE INTERMEDIARY IN ADDITION TO THE PREMIUM CHARGE”**

Countersignature Date: **May 23, 2014 td**

AUTHORIZED SIGNATURE

**“THE COST OF INSURANCE COVERAGE PROVIDED INCLUDES A FEE OF \$150.00 PAYABLE TO A WHOLESALE INTERMEDIARY IN ADDITION TO THE PREMIUM CHARGE”**

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
    - c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that.

IL 00 17 11 98

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.



President



Secretary

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**GBR 212 07 13**

**EXCLUSION-ASSAULT & BATTERY**

**This endorsement modifies insurance provided under the following:**

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART

**A.** COMMERCIAL GENERAL LIABILITY COVERAGE PART, SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, a. Expected or Intended Injury and LIQUOR LIABILITY COVERAGE PART, SECTION I - LIQUOR LIABILITY COVERAGE, 2. Exclusions, a. Expected or Intended Injury are replaced by the following:

a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured.

**B.** The following exclusion is added as an item to the COMMERCIAL GENERAL LIABILITY COVERAGE PART, SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions; COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions; COVERAGE C MEDICAL PAYMENTS, 2. Exclusions, and to the LIQUOR LIABILITY COVERAGE PART, SECTION I - LIQUOR LIABILITY COVERAGE, 2. Exclusions:

**C.** This insurance does not apply to claims or "suits" to recover damages for "bodily injury," or "property damage," "personal and advertising injury," or medical payments arising from any of the following acts, allegations, or causes of action:

1. Assault;
2. Battery;
3. Harmful or offensive contact between or among two or more persons;
4. Apprehension of harmful or offensive contact between or among two or more persons;
5. Threats by words or deeds;
6. Unlawful restraint or false imprisonment;
7. Negligent hiring or retention of any employee resulting in or pertaining to any act or allegation of any act identified in 1-6 above;
8. Failure to supervise or train any employee resulting in or pertaining to any act or allegation of any act identified in 1-6 above;
9. Negligent entrustment resulting in or pertaining to any act or allegation of any act identified in 1-6 above;
10. Negligent rescue in the aiding or failing to aid any person from any act or allegation of any act identified in 1-6 above, even if the rescue was an independent cause of harm or alleged to be;
11. Negligent maintenance of the premises resulting in or pertaining to any act or allegation of any act identified in 1-6 above;
12. Any actual or alleged failure to prevent, halt, or bar any act identified in 1-6 above, or
13. Indemnity for any act identified in 1-6 above.



The above acts, allegations, or causes of action shall not be deemed an “occurrence” and we have no duty to defend or indemnify an insured regardless of the degree of culpability or intent and without regard to:

1. Whether damages sought are for “bodily injury,” “property damage,” “personal injury,” or “advertising injury”;
2. The intent or culpability of an insured, an employee, or “third party”;
3. Whether the claim, demand, or suit alleges that an insured acted directly or indirectly to cause damage;
4. Whether the claim, demand, or suit alleges that liability is based upon the doctrine of respondeat superior;
5. Whether the claim, demand, or suit alleges that the insured trained, instructed, directed, influenced, or controlled its employees or “third parties” in such a manner so as to cause damage or danger;
6. Whether the acts, allegations, or causes of action identified above occurred on or off the insured’s jobsite or designated premises or premises owned, occupied, leased or rented by the insured;
7. Whether the claim, demand, or suit alleges that the insured or his officers, employees, or agents failed to prevent, bar or halt any conduct which is the basis of any act, allegation, or cause of action listed in Section C, items 1-13 above, or
8. Whether or not the claim, demand, or suit alleges indemnity is owed pursuant to a contract.

D. This exclusion also applies to any claims, demands, or suits by any other person, firm, estate, entity or organization asserting rights derived from, or contingent upon, any person asserting a claim excluded by Section C, items 1-13 above.

E. This exclusion applies to all damages to persons or property, regardless of the damages alleged, claimed, stipulated or awarded, including costs and fees.

As defined in this exclusion, “third party” shall mean agents, independent contractors, sub-contractors, patrons, customers, lessors or leasees, security personnel, or any other persons lawfully or unlawfully on the insured’s designated premise.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**GBR 340 09 96**

**LIMITATION OF COVERAGE TO INSURED PREMISES**

This endorsement modifies insurance provided under the following:

LIQUOR LIABILITY COVERAGE FORM

**SCHEDULE**

**Location of Insured Premises:**

**113 Lost Creek Lane, Suite A, Mountain Village, CO 81435**

This insurance only applies to damage arising out of your "insured premises".

Insured premises means:

1. The premises shown in the Schedule; and
2. Any premises you acquire during the policy period for use in the conduct of your business if:
  - a. You notify us within 30 days after the acquisition, and
  - b. There is no other valid and collectible insurance applicable to the loss.

All other Terms and Conditions of this Policy remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED –  
STATE OR POLITICAL SUBDIVISIONS – PERMITS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

**SCHEDULE**

State Or Political Subdivision:	<b>Town of Mountain Village 455 Mountain Village Unit A Mountain Village, CO 81435</b>
---------------------------------	--

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**Section II – Who Is An Insured** is amended to include as an insured any state or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
2. This insurance does not apply to:
  - a. “Bodily injury,” “property damage” or “personal and advertising injury” arising out of operations performed for the state or municipality; or
  - b. “Bodily injury” or “property damage” included within the “products-completed operations hazard”.

**Additional Premium: Included**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION OF CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY

**A.** The following exclusion is added:

This insurance does not apply to:

**TERRORISM**

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

**B.** The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.

2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

- a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
- b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

GBR 300 01 96  
**TOTAL POLLUTION EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**LIQUOR LIABILITY COVERAGE FORM**

Section I - LIQUOR LIABILITY COVERAGE, number 2. Exclusions is amended to include:

**g. Total Pollution**

- (1) "Bodily Injury" or "Property Damage" which has occurred, is occurring or may occur, in whole or in part, from the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes material to be recycled, reconditioned or reclaimed.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**GBR 306 01 96**

**EXCLUSION – EMPLOYMENT RELATED PRACTICES**

This endorsement modifies insurance provided under the following:

LIQUOR LIABILITY COVERAGE PART

Section I – LIQUOR LIABILITY COVERAGE, number 2. Exclusions is amended to include:

- h. Employment – Related Practices
  - (1) Refusal to employ;
  - (2) Termination of employment;
  - (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, or other employment related practices, policies, acts or omissions; or
  - (4) Consequential bodily injury as a result of (1) through (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

All other Terms and Conditions of this Policy remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**GBR 218 06 13**

**EXCLUSION - PUNITIVE DAMAGES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCTS /COMPLETED OPERATIONS LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

This insurance does not apply to liability:

1. For punitive or exemplary damages;
2. For damages which are not compensatory damages.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**GBR 320 01 96**

**DEDUCTIBLE LIABILITY INSURANCE  
(Including Costs and Expenses)**

This endorsement modifies insurance provided under the following:

LIQUOR LIABILITY COVERAGE FORM

<b>Coverage</b>	<b>Amount of Deductible</b>
Liquor Liability	\$ 1,500.00 per claim

**Application of Endorsement:**

1. Our obligation under this policy to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated on this endorsement, and the limit of insurance applicable to "Each Common Cause" for such coverage will be reduced by the amount of such deductible. The "Aggregate" limit for such coverage shall not be reduced by the application of such deductible.
2. The deductible amount applies:
  - a. To all damages because of "bodily injury" sustained by one person; or
  - b. To all damages because of "property damage" sustained by one person or organization, as a result of any one "injury".
3. The deductible amount shown in the Schedule applies toward investigation, adjustment and legal expenses incurred in the handling and investigation of each claim, whether or not payment is made to claimant, compromise settlement is reached or claim is denied.
4. The terms of this insurance; including those with respect to our right and duty to defend "suits" seeking damages, and your duties in the event of an "injury", claim or suit, apply irrespective of the application of the deductible amount.
5. We may at our sole election and option, either:
  - a. Pay any part or all of the deductible amount to effect settlement of any claim or suit and upon notification of the action taken, you shall promptly reimburse us to such part of the deductible amount as has been paid by us; or
  - b. Upon our receipt of notice of any claim or at any time thereafter, request you to pay over and deposit with us all or any part of the deductible amount, to be held and applied per the terms o this policy

All other Terms and Conditions of this Policy remain unchanged.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**GBR 390 05 98**

**EXCLUSION – UNSCHEDULED EVENTS**

This endorsement modifies insurance provided under the following:

LIQUOR LIABILITY COVERAGE PART

In consideration of the premium charged, this policy applies only to those events reported to us prior to their happening, and for which we have provided written notice of acceptance prior to the event. All other activities are excluded.

All other Terms and Conditions of this Policy remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT**

**(Broad Form)**

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 FARM COVERAGE PART  
 LIQUOR LIABILITY COVERAGE PART  
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
 POLLUTION LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
 PROFESSIONAL LIABILITY COVERAGE PART  
 RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
 UNDERGROUND STORAGE TANK POLICY

**1. The insurance does not apply:**

**A. Under any Liability Coverage, to "bodily injury" or "property damage":**

- (1)** With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2)** Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(b)** the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.**

**C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:**

- (1)** The "nuclear material" **(a)** is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or **(b)** has been discharged or dispersed therefrom;
- (2)** The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
- (3)** The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion **(3)** applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a)** Any "nuclear reactor";
- (b)** Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

**(c)** Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

**(d)** Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

## LIQUOR LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### SECTION I – LIQUOR LIABILITY COVERAGE

#### 1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "injury" to which this insurance does not apply. We may, at our discretion, investigate any "injury" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

b. This insurance applies to "injury" only if:

- (1) The "injury" occurs during the policy period in the "coverage territory"; and

(2) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "injury" or claim, knew that the "injury" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "injury" occurred, then any continuation, change or resumption of such "injury" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Injury" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim, includes any continuation, change or resumption of that "injury" after the end of the policy period.

d. "Injury" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim:

- (1) Reports all, or any part, of the "injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "injury"; or
- (3) Becomes aware by any other means that "injury" has occurred or has begun to occur.

#### 2. Exclusions

This insurance does not apply to:

##### a. Expected Or Intended Injury

"Injury" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

##### b. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**c. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the "injury".

**d. Liquor License Not In Effect**

"Injury" arising out of any alcoholic beverage sold, served or furnished while any required license is not in effect.

**e. Your Product**

"Injury" arising out of "your product". This exclusion does not apply to "injury" for which the insured or the insured's indemnitees may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

**f. Other Insurance**

Any "injury" with respect to which other insurance is afforded, or would be afforded but for the exhaustion of the limits of insurance.

This exclusion does not apply if the other insurance responds to liability for "injury" imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.

**g. War**

"Injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**SUPPLEMENTARY PAYMENTS**

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- 1. All expenses we incur.
- 2. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- 3. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- 4. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- 5. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- 6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- 7. Expenses incurred by the insured for first aid administered to others at the time of an event to which this insurance applies.

These payments will not reduce the limits of insurance.

**SECTION II – WHO IS AN INSURED**

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
- a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:
    - (1) "Injury":
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
      - (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (a) above; or
      - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (a) or (b) above.
    - (2) "Property damage" to property:
      - (a) Owned or occupied by, or
      - (b) Rented or loaned to that "employee", any of your other "employees", by any of your partners or members (if you are a partnership or joint venture), or by any of your members (if you are a limited liability company).
  - b. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
  - b. Coverage does not apply to "injury" that occurred before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The Aggregate Limit is the most we will pay for all "injury" as the result of the selling, serving or furnishing of alcoholic beverages.
3. Subject to the Aggregate Limit, the Each Common Cause Limit is the most we will pay for all "injury" sustained by one or more persons or organizations as the result of the selling, serving or furnishing of any alcoholic beverage to any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### SECTION IV – LIQUOR LIABILITY CONDITIONS

#### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

## 2. Duties In The Event Of Injury, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "injury" which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "injury" took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any "injury".
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.  
You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury" to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

## 3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

## 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

### a. Primary Insurance

This insurance is primary. Our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **b.** below.

### b. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

## 5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

## 6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

## 7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

## 8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

## 9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## SECTION V – DEFINITIONS

1. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
2. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the "injury" occurs in the course of travel or transportation between any places included in Paragraph a. above; or
3. All other parts of the world if the "injury" arises out of:
  - (1) Goods or products made or sold by you in the territory described in Paragraph a. above; or
  - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business  
provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.
3. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
4. "Executive Officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
5. "Injury" means damages because of "bodily injury" and "property damage", including damages for care, loss of services or loss of support.
6. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
7. "Property damage" means:
  - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the occurrence that caused it.
8. "Suit" means a civil proceeding in which damages because of "injury" to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
9. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.



**10. "Your product":**

**a. Means:**

- (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a)** You;
  - (b)** Others trading under your name; or
  - (c)** A person or organization whose business or assets you have acquired; and
- (2)** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**b. Includes:**

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product", and
  - (2)** The providing of or failure to provide warnings or instructions.
- c.** Does not include vending machines or other property rented to or located for the use of others but not sold.

Bind / Issue 5-1

# Golden Bear Insurance Company

## LIQUOR LAW LIABILITY INSURANCE APPLICATION

### Applicant's Instructions:

1. Answer all questions completely. Please attach extra sheets as required. Incomplete or illegible applications may be discarded.
  2. Application must be signed and dated by the owner, partner, or officer not earlier than 60 days before the proposed effective date of coverage.
- Please read the statements at the end of this application carefully.

### 1. APPLICANT INFORMATION

Applicant Name Mountain Village Promotional Association

Mailing Address 113 Lost Creek Lane, Suite A, Mountain Village, CO 81435

Location Address: Mountain Village, Colorado

Website: \_\_\_\_\_ Contact Name: Bryce Pope Phone #: 970-728-9109 x1

A. Applicant is:  Individual  Corporation  Partnership  LLC  Other Non-Profit

Years in business: 0 Years at this location: N/A Describe owner/manager's hours and

Responsibilities: President & CEO of owners Association How many years' experience? 10+  
m-f 9am - 6pm

B. Length of time applicant has had liquor license 0 ABC license number: N/A - we are insuring

Type of liquor license:  Wholesale  Retail Code Number \_\_\_\_\_ a Promotional Association of participating

Type of liquor sold:  Beer  Wine  Liquor Hours of Serving?: Event Specific (5:30pm - 8:30pm)  
own liquor license & insurance

Seating capacity: Dining Room \_\_\_\_\_; Bar Area \_\_\_\_\_

C. How many days per week is this location open?: N/A Square foot area of establishment: Outdoor Plaza

What time does location close?: Event Specific What is the Maximum Occupancy: \_\_\_\_\_  
most 5:30-8:30pm, but would vary Defined Boundary & Security

Number of bartenders: 6 Bouncers 6 Is there any armed security? No - Paid Security  
during event

C. Limits of insurance applied for: \$ \_\_\_\_\_ Each Common Cause/General Aggregate

Proposed effective and expiration date \_\_\_\_\_ Target Premium: \$ \_\_\_\_\_

### Gross Sales Information:

	PROJECTED YEAR	CURRENT YEAR	PRIOR YEAR
Liquor Sales	\$ _____	\$ _____	\$ _____
Food Sales	\$ _____	\$ _____	\$ _____
Other	\$ _____	\$ _____	\$ _____
Total	\$ _____	\$ _____	\$ _____

Prior liquor liability insurance carrier \_\_\_\_\_ Premium \_\_\_\_\_

Name of Commercial General Liability carrier \_\_\_\_\_

G.L. Limits of liability: \_\_\_\_\_ Assault & Battery Included:  or Excluded: . If included,

What are the Assault & Battery limits? \_\_\_\_\_

## II. TYPE OF ESTABLISHMENT

### A. Type of establishment:

- Bar / Tavern                       Drive-through Daiquiri Shop                       Package Store  
 Casino                               Gentlemen's / Strip Clubs                       Restaurant  
 Catering Service                       Liquor Mfg./Microbrewery                       Wholesaler/Distributor  
 Comedy Club                       Night Clubs                       Convenience/Grocery Store  
 Other (Describe): Promotional Association for Entertainment District                      Is there a separate bar area:  Yes  No

### B. Type of clientele: Area Residents   Area Workers   Tourists   College   Other: \_\_\_\_\_

#### Area surrounding premises:

- Downtown District                       Shopping Center                       Industrial                       Resort  
 Suburban Commercial                       Residential                       Seasonal                       Rural

## III. RISK CHARACTERISTICS

### A. Do you provide entertainment?: Yes No                      is there a cover charge?: Yes No

If yes, please check the applicable types of entertainment and answer the following questions:

- DJ    Juke Box    Live Entertainment                      Type and how often?: \_\_\_\_\_

Type of music played (by DJ, Juke Box or Live Entertainment):

- Rap/R&B    Country/Western/Bluegrass    Classic Rock    Heavy Metal    Top 40s/pop  
 Other (if so, please explain): A mix of blues, jazz, reggae + above that appeals to our demographic of affluent 2nd Homeowners

### B. Is premises within city limits?: Yes   No                      Located within 5 miles of a college campus?: Yes   No

### C. Check box if location has or plans to have any of the following: N/A **Mechanical bulls, surfboards or other mechanical devices** if so, what type: \_\_\_\_\_

- Dance Floor Size: \_\_\_\_\_                       Trampolines \_\_\_\_\_                       Dunk Tanks \_\_\_\_\_  
 Pool Table(s) Number: \_\_\_\_\_                       Inflatables \_\_\_\_\_                       Climbing Walls: \_\_\_\_\_  
 Electronic Games Type: \_\_\_\_\_                       Foam Parties \_\_\_\_\_  
 Gambling \_\_\_\_\_                       Dart Board \_\_\_\_\_                       Pinball \_\_\_\_\_

### D. Are there any activities conducted that would involve patron participation and/or contact with Patrons?: Yes   No                      If yes, please describe: N/A

### E. Does the applicant ever permit or sponsor alcohol consumption games (e.g. flip cup, beer pong, etc.), or permit the use of alcohol consumption enticing equipment (e.g., funnels, shot chair, etc.)? No

### F. Do you have "Happy Hour" 2-for-1 drink specials or any other drink promotions Yes   No

### G. Is last call announced?: Yes   No                      If so, when?: N/A - participating establishments may provide happy hour pricing Are patrons allowed to bring their own alcohol?: Yes   No during event activity

**Schedule A  
Entertainment District 2015 Calendar of Events**

June 2015

Date	Event	Location	Time
6/17/2015	FirstGrass Concert	Sunset Plaza	2-6:30pm
6/24/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm

July 2015

Date	Event	Location	Time
7/3/2015	Red, White & Blues Concert	Sunset Plaza	3-8:30pm
7/8/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm
7/10/2015	The Ride Festival Presents and Evening of Rock and Roll	Sunset Plaza	4-8pm
7/15/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm
7/22/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm
7/29/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm

August 2015

Date	Event	Location	Time
8/5/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm
8/12/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm
8/19/2015	Sunset Concert Series	Sunset Plaza	5-8:30pm

September 2015

Date	Event	Location	Time
9/2/2015	Telluride Film Festival Concert	Sunset Plaza	4-8:00pm
9/17/2015	Sunset Blues Concert	Sunset Plaza	4-8:00pm



## SERVICE OF SUIT ENDORSEMENT

In the event of our failure to pay any amount claimed to be due, we, at your request, will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court.

The foregoing shall not constitute a waiver of the right of the Company to remove, remand, or transfer such suit to any other court of competent jurisdiction in accordance with the applicable statutes of the state of the United States which most properly governs the cause of action alleged.

In any suit instituted against us upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

It is further agreed that service of process in such suit may be made upon the Superintendent, Commissioner, or Director of Insurance or other person specified for that purpose by statute or his or her successor or successors in office as their true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of the Named Insured or beneficiary arising out of the contract of insurance.

The Company hereby designates Stacey A. Jackson, General Counsel of Golden Bear Insurance Company, 709 N. Center Street, Stockton, CA 95202, as the person to whom the said Superintendent, Commissioner, or Director of Insurance is authorized to mail by certified or registered mail such process or a true copy thereof, in compliance with the applicable statutes governing said service of process in the Agreed Jurisdictions.

Service of suit against us may alternatively be made by personal service upon our designated agent for service of process as follows:

Stacey Jackson, General Counsel  
Golden Bear Insurance Company  
709 N. Center Street  
Stockton, CA 95202

All other terms and conditions of this policy remain unchanged.

# Memo

To: Mayor & Town Council  
From: Dawn Katz, Director  
Date: January 2015  
Re: Mountain Munchkins Semi-Annual Staff Report

AGENDA ITEM # 11.a.

## SUMMARY

1. Mountain Munchkins Preschool is undergoing Pyramid Plus Model training. This social-emotional tool focuses on the teacher to create a positive learning environment. Certification in this nationally recognized program will not only serve to improve our programs, but also increase leverage when applying for grants.
  - a. During this 18-month training period, requirements include two full day trainings, three half day trainings, and monthly coaching sessions. These requirements have been completed.
  - b. A leadership team comprised of the coach, teachers and a parent has been formed to review our assessment and help create an action plan with strategies and goals.
  - c. Six leadership meetings and eight staff meetings have been held so far to ensure these requirements are being met.
2. Mountain Munchkins is participating in Prevent, Teach, and Reinforce for Young Children (PTR-YC) study for challenging behavior. PTR-YC is a research-based strategy designed to reduce challenging behaviors of young children in preschool, early education and child care settings. In addition, the study helps the teachers assess and evaluate their teaching practices and environment.
3. As of January 1, 2015, Director Dawn Katz has taken over the lead preschool teacher role until a replacement for Keri Sutton is found. Interviews for this position are ongoing.
4. As of November 30, 2014, revenues were down approximately five percent; however, expenses were down by nine percent.
5. The Infant Program is at 100 percent occupancy with a wait list.
6. The Toddler Program is almost full.
7. The Preschool Program is at 100 percent occupancy through the end of July. The 2015 preschool class will graduate 15 of our 23 currently enrolled children! Based on the number of toddlers eligible for preschool in the fall, the preschool is projected to remain at or close to full capacity.
8. Mountain Munchkins was awarded \$35,000 in grants from Just For Kids and the Telluride Foundation for the 2015 grant funding cycle. This funding will help to assist our scholarship program, continuing education costs and help offset our infant care. Last fall, Mountain Munchkins applied to CCAASE for the first time. They will be announcing their grant recipients in mid-January.
9. Steve Spencer and his team at VCA have begun installing the new floors in the infant/toddler center.
10. The preschool was repainted in October and looks great.

## DEPARTMENT GOALS

1. Assure facility operates within licensing guidelines.
2. All daycare operations are properly supervised.
3. Assure staff completes all continuing education requirements to ensure excellence of the programs.
4. Operate within the annual budget.

5. Continue grant funding and fund raising efforts to offset the Town subsidy.
6. Assess and evaluate each child's development in the toddler and preschool programs.
7. Create and maintain strong family partnerships within the program.
8. Replace paper towels in each facility with wash cloths to reduce waste.

**DEPARTMENT PERFORMANCE MEASURES**

1. All staff and employee files are current within 30 days of enrollment/employment. Staff to child ratios are maintained 100 percent of the time. Fire, Health and State inspections are current and on file; any violations are corrected within five business days.

**All files are current, ratios are maintained, and no violations have occurred. Mountain Munchkins is due for inspection within the next three months.**

2. Play areas and equipment are inspected daily; unsafe materials discarded immediately. Fire/Evacuation drills are conducted monthly. All policies and procedures are current with the State of Colorado Rules Regulating Child Care Centers.

**We are so excited to have new surfacing in place on the preschool playground. The same company is coming back in the spring to replace some areas in the toddler playground that are under warranty.**

3. All staff is current on required training, continuing education and formal education courses. Through grants, staff shall seek and successfully complete formal early childhood college courses.

**Dawn Katz is currently enrolled at Ashford University finishing up a Bachelor's Degree in Art, majoring in Early Childhood Education Administration. Dawn is director certified and has over 12,000 hours of classroom experience. Jodi Mahaffey (assistant director) and Whitney Harris (supervisor) are enrolled in classes to finish their associate's degree in early childhood education. They both have one semester remaining.**

4. Offset payroll expenses by staffing according to ratios and daily enrollment. Offset operational expenses through parent donated snacks, supplies, and equipment, grants, and fund raising. Department year end expenditure totals do not exceed the adopted budget.

**As of November 30, 2014, revenues were down approximately five percent; however, expenses were down by 9 percent.**

5. Pursue all grant opportunities to offset operational costs. Pursue and coordinate fund raising opportunities to offset operational costs.

**Requested grants and potential fundraiser revenue for 2015:**

<b>Telluride Foundation Grant:</b>	<b>\$30,000 (confirmed)</b>
<b>Just for Kids Grant:</b>	<b>\$5,000 (confirmed)</b>
<b>CCAASE Grant:</b>	<b>\$6,000 (requested)</b>
<b>Red Ball Fundraiser:</b>	<b>\$1,000</b>
<b>Touch-A-Truck:</b>	<b><u>\$13,000</u></b>

***TOTAL:*** ***\$55,000 (potential)***



6. All enrolled toddlers and preschoolers will be observed and assessed in all areas of development. Staff will conduct parent-teacher conferences to discuss each child's progress and pursue additional services if needed.

**This school year, Mountain Munchkins is required to assess all preschool children receiving assistance through the Colorado Preschool Program or that may qualify for special education services (using Teaching Strategies Gold) that will attend kindergarten in the fall. The Teaching Strategies Gold is a research-based, in-depth look into every developmental domain. This assessment tool guides instruction, measures growth over time and pin-points areas in a child's development that need more attention.**

**There are three checkpoints per year. Milestone checklists are used with infants and toddlers and parent conferences are encouraged, especially when there may be areas of concern. Conferences with families are offered after the final checkpoint to show a child's growth through the year.**

7. Serve as a community resource for families in our community. Offer families opportunities to be part of their child's early learning experience. Communicate with families about their child's development and how the program operates. Be available for conferences on an as needed basis. Forward all parenting education opportunities to our families. Utilize child development professionals to observe and access our program and make improvements based on their assessments.

**Through our Pyramid Plus trainings we will offer helpful parent newsletters and informational meetings to encourage and support our pyramid efforts.**

**Dawn continues to advocate for early childhood education regionally and is the board president for Bright Futures for Early Childhood and Families. This organization serves the needs of children from birth to age five in San Miguel, Ouray, Delta and Montrose counties, and supports quality childcare and education as well as health, mental health and family concerns. Dawn also sits on the Colorado Preschool Program Council. The Council assures that at-risk children in our community have access to high quality pre-school programs.**

**Programs who offer Colorado Preschool Program (CPP) spots to at-risk children must meet a set of criteria set forth by the Colorado Department of Education. Currently 30 percent of enrolled preschoolers are considered "at-risk" and are receiving CPP and Special Education services.**

8. Replace paper towels in each facility with wash cloths to reduce waste.

**Mountain Munchkins has replaced paper towels with wash cloths in both centers. The State has also approved the use of environmentally friendly cleaning products. Mountain Munchkins is moving in this direction.**

**Town of Mountain Village**  
**Cable Department**  
**Semi-Annual Report to Town Council**  
**July 2014 to December 2014**

**Department Goals**

1. Service the community with the newest technologies available for video services.
2. Service the community with the newest technologies available for Internet services
3. Full compliance with FCC guidelines and reporting requirements.
4. Provide Mountain Village the highest level of customer service.
5. Service the community with the newest technologies available for Phone services
6. Operating the enterprise does not require general tax subsidy.

**Performance Measures**

1. Maintain 80% of units in Mountain Village as video customers.
2. Maintain 75% of units in Mountain Village as data customers.
3. Complete all FCC reports on time
4. Average number of service calls per month with all calls being completed within 24 hours.
5. Average down time of phone customers to be .03% or less
6. The enterprise operates without transfers from the General Fund or other funds of the Town.

The Cable Department is responsible for the care and maintenance of 36 miles of plant which serves 2048 homes, condos, hotels, and apartments.

### **Performance Report**

1. We have maintained 82.95% (national average is 48%) of video customers of homes passed for the 2st half of 2014. We have decreased our Video customers from 1733 to 1699 .
2. We have maintained 82.61% (national average is 38%) of internet customers of homes passed for the 2st half of 2014. We have increased for Internet customers from 1661 to 1692.
3. All FCC reports are current.
4. We provide approximately 32 service calls per month all within 24 hours of request.
5. We had 1 power outages the 2st half of 2014
6. The Cable department has fully self-funded.
7. We completed 459 service truck rolls and 159 cable locates

### **Cable Department Projects and Issues**

We have completed the swapout of all cable modems to docsis 3.0 modems. We added a fiber to Bluemesa to serve a shared space and TMVOA. The average speeds for internet being offered nationally are 5.5 megs we offer 8 megs minimum. We have already increased our revenue by \$102,000.00 by upgrading internet customers to higher levels of service.



AGENDA ITEM # 11.c.

**TOWN OF MOUNTAIN VILLAGE  
TOWN MANAGER  
CURRENT ISSUES AND STATUS REPORT  
JANUARY 2015**

**1. Great Services Award Program**

▪ **Nominees for December:**

- Virginia Drew, holiday decoration efforts
- Steve Spencer, great customer service helping me get a staff member's car unstuck from VCA after heavy snow
- Jordan Houde/Patrick O'Flynn for unexpectedly taking over responsibility of running the train on Saturday and Sunday when the driver was sick; and assisting the Recreation Department with shoveling the ice rink for the ice skating performance during the snowstorm - **CO-WINNERS FOR DECEMBER**
- Corrie McMills and Michael Ruterbories for helping shovel the ice rink for the figure skating performance during the snow storm while off-duty - **CO-WINNERS FOR DECEMBER**

**2. Medical Center Site**

- The Conveyance Agreement will be presented to Council at the January meeting for consideration of approval

**3. The Lofts at Mountain Village (AKA Texas Wrap)**

- A Purchase and Sale Contract for the land will be presented to Council at the January meeting for consideration of approval


**4. Holiday Prelude and #Holiday Magic**

- Hosted the most successful Holiday Prelude event (aka Jingle Jam) in Mountain Village over the December 12<sup>th</sup> weekend. TMVOA played an integral role with the Town assisting with strong staff support (see Great Services Award above). TMVOA hosted a pizza party at the Town shop to thank staff for their extra help during the holiday season
- #HolidayMagic/Paintscaping event was received with 100 – 300 plus guests and residents staying in the Village Center to watch each night's event unfold. TMVOA, Hotel Madeline, the Town and other sponsors worked seamlessly together to make this extraordinary event happen. Stay tuned for future opportunities
  - Attended the Christmas Eve showing of this event and it was truly Holiday Magic

**5. Miscellaneous**

- All employee evaluations were complete by the second week of December and 2015 goals and measures will be completed by January 31, 2015
- Conducted a broadband follow up meeting and an update/discussion will take place at the January Council meeting as part of Steve Lehane's bi-annual report

- Achieved a record ridership on the gondola in 2014 of 2,407,193 which is an increase of 94,591 or 4.7% over 2007's total of 2,312,603. It is also an increase of 123,416 riders over the 2013 total of 2,283,778 or 5.4%
- Attended TMVOA's budget meeting on December 17<sup>th</sup> where the gondola/chondola budget was officially adopted.
- Attended TMVOA's annual meeting on December 29<sup>th</sup> where election results were announced and the new Board is comprised of the following members and Key Objectives for TMVOA were presented:
  - **Board Members**
    - Class A: Residential; Jon Dwight, Chairman and Pete Mitchell, Secretary/Treasurer
    - Class B: Lodging; Brent McLean
    - Class C: Commercial; Jeffrey Badger
    - Class D: Mountain Special Member Appointments; Jeff Proteau, Vice Chairman and Chuck Horning
  - **Key Objectives**
    - **Responsibly Fund the Gondola**
      - Development of long term plan
      - Partner with TMV; quarterly meetings
      - Ongoing communication
      - Evaluate back-up power
    - **Serve Membership**
      - Oversee & responsibly fund activities and events
      - Evaluate opportunities
      - Expand communication points
    - **Stimulate & Grow Local Economy**
      - Partner with Air-Org with goal to drive up visitation via expanded air access
      - Champion business development through merchant group collaboration
      - Event sponsorship
      - Explore affordable housing
    - **Communication**
      - Ongoing and transparent

 <b>Business and Government Activity Report</b> <b>For the month ending: December 31st</b>							
Activity	2014		2013		Variance		
	MONTH	YTD	MONTH	YTD	Variance	Variance %	
<b>Cable/Internet</b>							
# Residential & Bulk Basic Cable	914		912		2	0.2%	
# Premium Channel Residential & Bulk Subscribers	489		481		8	1.7%	
# Digital Subscribers	312		307		5	1.6%	
# Internet Subscribers	1,586		1,416		170	12.0%	
Average # Phone Subscribers	97		88		9	10.2%	
<b>Village Court Apartments</b>							
<i>Storage units are now excluded from the occupancy rates</i>							
Occupancy Rate	%	99.55%	95.53%	91.89%	87.16%	8.37%	9.6%
# Vacated Units		2	127	8	35	92	262.9%
# Work Orders Completed		34	437	14	89	348	391.0%
# on Waiting List		132		35		97	277.1%
<b>Public Works</b>							
Service Calls		484	4,922	281	4,409	513	11.6%
Snow Fall	Inches	53	305	40	248	57	23.0%
Snow Removal - Streets & Prkg Lots	Hours	822	3,583	733	3,470	113	3.3%
Roadway Maintenance	Hours	10	3,091	29	4,592	(1,501)	-32.7%
Water Billed Consumption	Gal.	38,895,000	185,777,000	46,620,000	230,062,000	(44,285,000)	-19.2%
Sewage Treatment	Gal.	7,429,000	85,202,000	7,143,000	80,853,000	4,349,000	5.4%
<b>Child Development Fund</b>							
# Infants & Toddlers Actual Occupancy		18.38	220.27	18.14	226.85	(6.58)	-2.9%
# Preschoolers Actual Occupancy		15.46	166.81	12.90	162.53	4.28	2.6%
<b>Transportation and Parking</b>							
<i>Traffic Counter was moved to the entrance as of 1/1/2014</i>							
GPG (noon snapshot)		2,661	23,494	2,642	20,337	3,157	15.5%
HPG (noon snapshot)		2,203	14,329	2,142	14,828	(499)	-3.4%
Total Parking (noon snapshot)		10,609	78,620	10,252	71,747	6,873	9.6%
Parking Utilization (% of total # of spaces occupied)		43.7%	26.6%	42.2%	24.3%	2.3%	9.5%
Paid Parking Revenues		\$39,888	\$343,346	\$39,396	\$290,755	\$52,591	18.1%
Bus Routes	# of Passengers	249	40,003	15	35,889	4,114	11.5%
Employee Shuttle	# of Passengers	1,829	16,780	1,777	20,362	(3,582)	-17.6%
Employee Shuttle Utilization Rate	%	59.5%	62.0%	59.4%	61.9%	0.08%	0.1%
Inbound (Vehicle) Traffic (Entrance)	# of Cars	67,905	713,792	-	-	#VALUE!	#VALUE!
<b>Human Resources</b>							
FT Year Round Head Count		80		76		4	5.3%
Seasonal Head Count (FT & PT)		5		2		3	150.0%
PT Year Round Head Count		18		14		4	28.6%
Gondola FT YR, Seasonal, PT YR Head Count		52		56		(4)	-7.1%
Total Employees		155		145		10	6.9%
Gondola Overtime Paid	Hours	291	2530	474	3058	(529)	-17.3%
Other Employee Overtime Paid		66	787	79	716	71	10.0%
# New Hires	Total New Hires	5	76	16	85	(9)	-10.6%
# Terminations		3	76	6	61	15	24.6%
# Workmen Comp Claims		1	11	2	7	4	57.1%
Workmen Comp Claims Costs		\$651	\$115,992	\$0	\$9,115	\$106,877	1172.5%
<b>Community Relations</b>							
<i>A description change to viewers has been made due to a change in the webcasts.</i>							
Total Users/Total Sessions		1,163/1,349	6,923/9,563	71/184	1,089/5,230	5834/4333	536%/83%
Town Hosted Meetings		4	60	4	63	(3)	-4.8%
Email Correspondence Sent		10	84	4	72	12	16.7%
E-mail List	#	3716		2092		1,624	77.6%
Press Releases Sent		1	24	0	20	4	#DIV/0!
<b>Gondola and RETA</b>							
<i>RETA revenues are unaudited</i>							
Gondola	# of Passengers	274,432	2,407,193	241,827	2,283,778	123,415	5.4%
Chondola	# of Passengers	31,512	118,232	25,415	108,156	10,076	9.3%
RETA fees collected by TMVOA		\$179,491	\$6,281,818	\$585,488	\$3,941,977	\$2,339,841	59.4%

Activity	2014		2013		Variance		
	MONTH	YTD	MONTH	YTD	Variance	Variance %	
<b>Police</b>							
Calls for Service	#	433	3,959	321	3,881	78	2.0%
Investigations	#	22	188	32	269	(81)	-30.1%
Alarms	#	6	128	9	166	(38)	-22.9%
Arrests	#	3	15	5	41	(26)	-63.4%
Traffic Contacts	#	2	146	11	152	(6)	-3.9%
Traffic Tickets Written	#	0	24	1	25	(1)	-4.0%
Parking Tickets Written	#	487	2,488	199	1,272	1,216	95.6%
Administrative Dismissals	#	28	207	9	119	88	73.9%
<b>Building/Planning</b>							
Community Development Revenues		\$69,519	\$767,349	\$34,642	\$2,006,454	(\$1,239,105)	-61.8%
# Permits Issued		14	93	8	128	(35)	-27.3%
Valuation of Building Permits Issued		\$2,077,537	\$17,782,576	\$1,037,821	\$56,574,803	(\$38,792,227)	-68.6%
# Inspections Completed		277	1,794	177	1,338	456	34.1%
# Design Review/Zoning Agenda Items		8	38	3	44	(6)	-13.6%
# Staff Review Approvals		6	123	13	101	22	21.8%
<b>Recreation</b>							
Mile of Trails Maintained		14.7	74.8	13.0	73.0	2	2.5%
Platform Tennis Registrations		35	439	35	314	125	39.8%
Ice Rink Skaters		1630	4829	1608	4202	627	14.9%
Snow Cat Hours		70	354	38	290	65	22.3%
<b>Property Maintenance</b>							
Snow Removal Plaza	Hours	641	2,079	175.75	1315	765	58.1%
Plaza Maintenance	Hours	260	2,495	154	1259	1,235	98.1%
Lawn Care	Hours	0	1,353	0.5	967	386	39.9%
Plant Care	Hours	0	2,587	0	1355	1,232	90.9%
Irrigation	Hours	4	784	0	634	150	23.7%
TMV Trash Collection	Hours	97	1,112	87	713	399	56.0%
Christmas Decorations	Hours	216	1,639	214.5	1155	484	41.9%
<b>Vehicle Maintenance</b>							
# Preventive Maintenance Performed		27	229	19	262	(33)	-12.6%
# Repairs Completed		24	329	38	411	(82)	-20.0%
Special Projects		8	74	3	62	12	19.4%
# Roadside Assists		3	14	2	18	(4)	-22.2%
<b>Finance</b>							
# Employee Based Business Licenses Issued		9	632	3	668	(36)	-5.4%
# Privately Licensed Rentals		1	62	0	56	6	10.7%
# Property Management Licensed Rentals		0	322	1	330	(8)	-2.4%
# VRBO Listings for MV		332		208		124	59.6%
# Paperless Billing Accts (YTD is total paperless customers)		14	390	14	270	120	44.4%
# of TMV AR Bills Processed		2,023	23,648	1,979	23,169	479	2.1%
<b>Accounts Receivable - Total Bad Debt Reserve/Allowance: \$21,449</b>							
Current 30+ Days 60+ Days 90+ Days over 120 days Total	TMV Operating Receivables (includes Gondola funding)		Utilities - Cable and Water/Sewer		VCA - Village Court Apartments		<b>General Fund Investment Activity</b>  Change in Value (\$13,070) Ending Balance \$5,735,600 Investment Income \$5,250 Portfolio Yield 0.94
	\$ 304,310	97.3%	\$ 229,850	93.8%	\$ (10,964)	216.2%	
	1,514	0.5%	12,879	5.3%	(1,617)	31.9%	
	2,706	0.9%	2,236	0.9%	83	-1.6%	
	53	0.0%	168	0.1%	7,427	-146.4%	
	4,217	1.3%	10	0.0%	-	0.0%	
\$ 312,800	100.0%	\$ 245,143	100.0%	\$ (5,072)	100.0%		
Current 30+ Days 60+ Days 90+ Days over 120 days Total	Other Billings - CDF, Construction Parking, Commercial Trash		Total All AR		Change Since Last Month - Increase (Decrease) in AR		<b>Other Statistics</b>  Population (estimated) 1,340 Registered Voters 1,186 Property Valuation 265,515,290
	600	47.6%	\$ 523,796	94.5%	\$ 106,810	126.6%	
	10	0.8%	12,785	2.3%	\$ (9,037)	-10.7%	
	9	0.7%	5,034	0.9%	\$ 2,190	2.6%	
	32	2.6%	7,680	1.4%	\$ (16,141)	-19.1%	
	608	48.3%	4,835	0.9%	\$ 562	0.7%	
\$ 1,260	100.0%	\$ 554,131	100.0%	\$ 84,384	100.0%		



## Memorandum

**To:** Town Council  
**From:** Kevin Swain, Finance Director  
**Date:** January 8, 2015  
**Re:** Town of Mountain Village Financial Statements through November 2014

### Mountain Village Financials Statements through November, 2014

#### General Fund Summary

These financials reflect the revised budget as adopted at the December Town Council Meeting. The General Fund currently reflects a surplus of \$1.25 million.

Development related revenues have declined from prior year but are now exceeding the revised budget. The development revenue forecast for 2014 had been reduced in budget revisions and is the primary reason for the increase in the expected shortfall. Sales taxes continue to show an increase of 5% over prior year and are over budget by 4%. Total revenues of \$7.5 million were over budget by \$377,000 due mainly to community development fees such as permit fees, use tax, road impact fees, and plan review fees exceeding revised budgeted expectations. County Road and Bridge taxes have come in under budget and prior year.

Total operating expenditures of \$6.2 million were under budget by \$531,600. Capital outlay through this period was for boilers/snowmelt/plaza improvement, trail improvements, and environmental projects.

Transfers to other funds include:

Fund	This Month	YTD Budget	YTD Actual	YTD % of Budget
Child Development Fund	\$ 3,051	\$ 76,483	\$ 57,242	74.84%
Affordable Housing Development Fund (Monthly Sales Tax Allocation)	\$ 7,854	\$ 275,615	\$ 285,621	103.63%
Conference Center Subsidy	\$ 1,682	\$ 94,951	\$ 88,778	93.50%
Parking Services	\$ 1,673	\$ 60,086	\$ 1,110	1.85%
Vehicle & Equipment Acquisition Fund	\$ -	\$ 222,374	\$ 185,994	83.64%
Capital Projects Fund	\$ 2,376	\$ 20,000	\$ 19,254	96.27%



Income transfers from other funds include:

Fund	This Month	YTD Budget	YTD Actual	YTD % of Budget
Cable System	\$ 39,012	\$ 229,292	\$ 234,886	102.44%
Debt Service Fund - specific ownership property taxes	\$ 10,064	\$ 72,703	\$ 130,293	179.21%
Overhead allocation from Cable, W/S, Gondola, VCA and Parking Services	\$ 37,649	\$ 414,330	\$ 406,172	98.03%
*Tourism Fund	\$ 467	\$ 17,564	\$ 47,750	271.86%

\*This transfer is comprised of administrative fees and penalties collected.

**Vehicle and Equipment Acquisition Fund – No Fund Income Statement Attached**

A road and bridge vehicle was purchased (\$164,000) with offsetting grant funds of \$124,000, a Hotsy pressure washer was replaced, new plaza services and Parks & Recreation ATV's were replaced, a utility truck and a crack sealing machine were purchased, and the bobcat leases have been paid. Employee Shuttles have been purchased and 80% matching grant funds will be reimbursed.

**Capital Projects Fund – No Fund Income Statement Attached**

DOJ communications expenses of \$ 83,726 have been incurred which will be paid by the grant monies for the project. \$58,946 has been spent on the Meadows improvement plan. \$51,838 has been transferred from the general fund.

**Historical Museum Fund – No Fund Income Statement Attached**

\$88,351 in property taxes were collected and \$86,581 was tendered to the historical museum. The county treasurer retained \$1,770 in treasurer's fees.

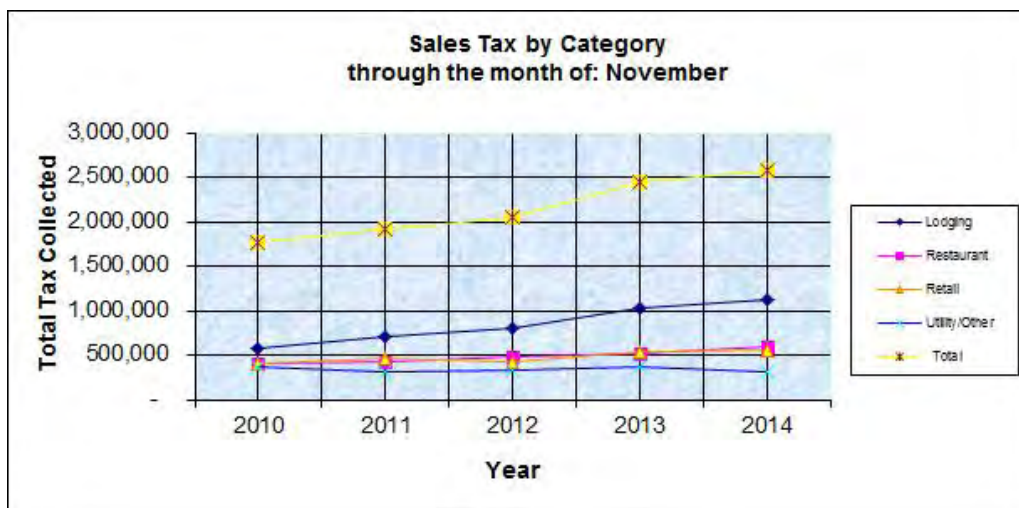
**Mortgage Assistance Fund – No Fund Income Statement Attached**

One promissory note was paid and interest of \$5,572 has been recorded.

**Sales Tax**

Sales taxes of \$2.57 million are 5% over 2013. Sales tax revenues are over budget by 4%. Restaurant shows the highest growth of 13.66% followed by lodging at 8.12%.

Actual Sales Tax Base By Class, Through November 2014										
Category	Actual 2010	Actual 2011	PY % Increase	Actual 2012	PY % Increase	Actual 2013	PY % Increase	Actual 2014	PY \$ Variance	PY % Increase
	4.5%	4.5%	2010 to 2011	4.5%	2011 to 2012	4.5%	2012 to 2013	4.5%	2013 to 2014	2013 to 2014
Lodging	12,983,811	15,846,939	22%	17,705,032	12%	22,921,017	29%	24,782,025	1,861,007	8.12%
Restaurant	8,915,998	9,429,842	6%	10,739,416	14%	11,472,831	7%	13,039,940	1,567,109	13.66%
Retail	9,192,951	10,254,121	12%	9,505,971	-7%	11,847,824	25%	12,180,992	333,168	2.81%
Utility/Other	8,060,837	6,970,793	-14%	7,365,152	6%	8,121,870	10%	7,066,845	(1,055,026)	-12.99%
<b>Total</b>	<b>39,153,597</b>	<b>42,501,695</b>	<b>9%</b>	<b>45,315,570</b>	<b>7%</b>	<b>54,363,542</b>	<b>20%</b>	<b>57,069,802</b>	<b>2,706,259</b>	<b>4.98%</b>



## Tourism Fund

2014 restaurant taxes totaling \$265,098 have been collected and \$259,796 was tendered to the airline guarantee program. \$978,944 in lodging taxes were collected and \$964,260 was tendered to the airline guarantee program and to MTI. The Town retained \$19,986 in administrative fees, and penalties and interest of \$2,434.

Lodging taxes are exceeding prior year by 9.96% and are exceeding budget by 10.67%. Restaurant taxes are also ahead of prior year and budget by 14.34% and 13.82%, respectively. For the month of November, restaurant taxes are 20% over November 2013 and lodging taxes are 76% over November 2013.

### Town of Mountain Village Colorado Lodging Tax Summary

	2010 Activity (4%)	2011 Activity (4%)	2012 Activity (4%)	2013 Activity (4%)	2014 Activity (4%)	2013 Var %	2014 Budget	Budget Var %
January	111,915	123,204	105,787	167,378	159,264	-4.85%	162,972	-2.33%
February	138,044	137,579	135,434	151,727	170,098	12.11%	148,710	12.57%
March	149,122	179,223	150,548	203,235	247,853	21.95%	196,971	20.53%
April	6,630	5,006	7,619	9,382	7,291	-22.29%	9,522	-30.59%
May	4,214	6,665	8,673	10,684	10,627	-0.53%	10,881	-2.39%
June	37,439	50,466	55,581	77,013	73,973	-3.95%	76,522	-3.45%
July	52,231	64,340	77,661	93,602	109,696	17.19%	92,286	15.87%
August	60,591	52,153	74,889	84,727	88,709	4.70%	84,488	4.76%
September	51,295	61,547	62,057	69,349	82,147	18.46%	68,746	16.31%
October	12,191	12,532	16,867	16,450	17,409	5.83%	16,731	3.89%
November	5,712	6,206	6,618	6,761	11,876	75.67%	6,695	43.63%
December	152,210	171,797	164,045	191,249	-	-100.00%	181,008	#DIV/0!
<b>Total</b>	<b>781,594</b>	<b>870,717</b>	<b>865,780</b>	<b>1,081,555</b>	<b>978,944</b>	<b>-9.49%</b>	<b>1,055,532</b>	<b>-7.82%</b>
<b>Tax Base</b>	<b>19,539,844</b>	<b>21,767,932</b>	<b>21,644,491</b>	<b>27,038,867</b>	<b>24,473,606</b>		<b>26,388,300</b>	

### Town of Mountain Village Colorado Restaurant Tax Summary

	2010 Activity (2%)	2011 Activity (2%)	2012 Activity (2%)	2013 Activity (2%)	2014 Activity (2%)	2013 Var %	2014 Budget	Budget Var %
January	31,043	31,256	28,754	34,448	38,239	11.01%	33,945	11.23%
February	36,794	37,572	34,996	41,121	48,466	17.86%	40,521	16.39%
March	42,064	45,498	42,723	47,045	53,516	13.76%	46,358	13.38%
April	1,637	1,368	3,506	2,518	1,995	-20.79%	2,482	-24.40%
May	1,789	3,402	2,469	3,913	5,154	31.71%	3,856	25.19%
June	13,669	18,235	17,098	19,116	25,270	32.19%	18,837	25.46%
July	18,436	22,524	25,929	27,921	32,661	16.98%	27,514	15.76%
August	20,710	20,044	20,958	25,645	24,884	-2.97%	25,271	-1.56%
September	15,265	17,272	17,813	19,982	23,778	19.00%	19,690	17.19%
October	3,895	6,355	7,258	5,468	5,369	-1.80%	5,388	-0.35%
November	3,203	3,487	4,524	4,668	5,765	23.49%	4,600	20.21%
December	35,772	37,737	39,565	42,983	-	-100.00%	42,033	#DIV/0!
<b>Total</b>	<b>224,278</b>	<b>244,750</b>	<b>245,593</b>	<b>274,828</b>	<b>265,098</b>	<b>-3.54%</b>	<b>270,495</b>	<b>-2.04%</b>
<b>Tax Base</b>	<b>11,213,910</b>	<b>12,237,496</b>	<b>12,279,634</b>	<b>13,741,420</b>	<b>13,254,920</b>		<b>13,524,750</b>	

Business license fees of \$268,738 are under budget by \$1,976 and over prior year \$930. \$252,614 was remitted to MTI and \$25,298 in admin fees and penalties were transferred to the General Fund.

**TOWN OF MOUNTAIN VILLAGE  
GENERAL FUND INVESTMENTS  
12/31/2014**

CUSIP	DESCRIPTION	MATURITY	DAYS TO	COUPON	PAR	PURCHASE PRICE	YTM(CALL)	MARKET PRICE	MARKET VALUE
3135G0UM37	FANNIE MAE	02/26/2016	422	0.52	250,000.00	250,302.50	0.2439	99.934	249,835.00
313378RR4	FEDERAL HOME LOAN BANK BOND	04/28/2016	483	1	250,000.00	252,267.50	0.77	100.5503	251,375.75
912833KH2	US TREASURY NOTE	05/15/2016	500	0	250,000.00	246,627.50	0.493	99.3513	248,378.25
3136G1KS7	FANNIE MAE	08/15/2016	592	0.5	250,000.00	250,000.00	0.5	99.6869	249,217.25
3135GOWL3	FANNIE MAE	10/25/2016	663	0.625	250,000.00	250,000.00	0.625	99.6848	249,212.00
3136G04R9	FANNIE MAE	02/21/2017	782	0.75	250,000.00	250,000.00	0.75	99.6602	249,150.50
313378PN5	FEDERAL HOME LOAN BANK BOND	03/02/2017	791	1.27	250,000.00	251,392.50	1.153	100.7787	251,946.75
3134G3K82	FREDDIE MAC UNNT	03/27/2017	816	0.75	250,000.00	250,000.00	0.75	99.8768	249,692.00
3133ECKL7	FED FARM CREDIT BANK BOND	04/03/2017	823	0.78	250,000.00	250,562.50	0.541	99.5455	248,863.75
3130A2TE6	FEDERAL HOME LOAN BANK BOND	08/25/2017	967	1.125	250,000.00	250,000.00	1.125	99.5779	248,944.75
3136G25J2	FANNIE MAE	09/18/2017	991	1.125	250,000.00	250,000.00	1.125	99.9326	249,831.50
3134G4Z68	FREDDIE MAC	10/16/2017	1019	1.25	250,000.00	250,000.00	1.25	100.0449	250,112.25
3130A2CZ7	FEDERAL HOME LOAN BANK BOND	12/26/2017	1090	1.25	250,000.00	250,000.00	1.25	99.7998	249,499.50
3133EDQ39	FEDERAL FARM CREDIT BANK	01/08/2018	1103	1.27	250,000.00	250,000.00	1.27	100.0097	250,024.25
3134G5BKO	FREDDIE MAC	01/17/2018	1112	1.35	250,000.00	250,000.00	1.349	99.99	249,975.00
3136G1GU7	FANNIE MAE	03/27/2018	1181	1.05	250,000.00	250,000.00	1.05	98.8473	247,118.25
3134G43V8	FREDDIE MAC UNNT	05/15/2018	1230	1.05	250,000.00	250,000.00	1.05	98.9999	247,499.75
313382Y98	FED HOME LOAN BANK BOND	05/16/2018	1231	1	250,000.00	250,000.00	1	98.669	246,672.50
313383AW1	FED HOME LOAN BANK BOND	06/13/2018	1259	1.15	250,000.00	250,000.00	1.15	98.9677	247,419.25
3130A15C8	FED HOME LOAN BANK BOND	06/20/2018	1313	1.45	250,000.00	250,000.00	1.45	99.9975	249,993.75
3133EDSL7	FED FARM CREDIT BANK BOND	08/13/2018	1367	1.6	250,000.00	250,000.00	1.6	100.125	250,312.50
3134G5QZ1	FREDDIE MAC	09/18/2018	1403	1.55	250,000.00	250,000.00	1.55	100.0262	250,065.50
3130A0WU0	FED HOME LOAN BANK BOND	02/25/2019	1563	1.83	250,000.00	250,000.00	1.779	100.1841	250,460.25
TOTALS					\$ 5,750,000.00	\$ 5,751,152.50		\$	5,735,600.25
AVERAGE		08/14/2017	987.00	1.05	\$ 250,000.00	\$ 250,050.11	1.04	99.74956957	249,373.92
BENCHMARK 3 YEAR TREASURY YIELD CURVE RATE 01/02/2015				1.07			1.07		

**Town of Mountain Village  
Monthly Revenue and Expenditure Report  
November 2014**

	2014					2013	2012	2011	
	Actual YTD	Budget YTD	Budget Variance	Budget Variance	Annual Budget	Budget Balance	Actual YTD	Actual YTD	Actual YTD
			(\$)	(%)					
<b>General Fund</b>									
<b>Revenues</b>									
Charges for Services	\$ 254,635	\$ 154,743	\$ 99,892	64.55%	\$ 175,891	\$ (78,744)	\$ 685,602	\$ 390,230	\$ 446,730
Contributions	12,504	25,122	(12,618)	-50.23%	53,648	41,144	15,432	28,233	8,360
Fines and Forfeits	3,943	5,549	(1,606)	-28.94%	6,077	2,134	2,310	(758)	5,586
Interest Income	52,356	22,917	29,439	128.46%	25,000	(27,356)	23,168	20,424	24,015
Intergovernmental	355,165	333,588	21,577	6.47%	362,529	7,364	431,599	406,885	447,611
Licenses and Permits	247,212	147,576	99,636	67.52%	158,060	(89,152)	482,704	157,008	181,263
Miscellaneous Revenues	80,192	69,540	10,652	15.32%	77,877	(2,315)	81,205	108,953	131,857
Taxes and Assessments	6,532,795	6,402,714	130,081	2.03%	6,934,226	401,431	7,993,136	6,747,190	7,365,383
<b>Total Revenues</b>	<b>7,538,802</b>	<b>7,161,749</b>	<b>377,053</b>	<b>5.26%</b>	<b>7,793,308</b>	<b>254,506</b>	<b>9,715,156</b>	<b>7,858,165</b>	<b>8,610,805</b>
<b>Operating Expenses</b>									
Legislation & Council	7,981	18,810	(10,829)	-57.57%	21,608	13,627	18,001	7,319	9,837
Town Manager	197,935	200,588	(2,653)	-1.32%	229,153	31,218	187,340	191,933	266,994
Administrative Services	293,831	322,549	(28,718)	-8.90%	358,197	64,366	284,947	269,757	272,194
Finance	696,730	698,147	(1,417)	-0.20%	767,449	70,719	689,149	697,511	728,801
Technical	136,367	157,492	(21,125)	-13.41%	176,802	40,435	138,261	137,541	135,385
Human Resources	216,388	250,263	(33,875)	-13.54%	288,168	71,780	231,303	217,975	207,443
Town Attorney	389,831	415,945	(26,114)	-6.28%	454,458	64,627	371,549	410,328	414,788
Community Relations	174,454	210,103	(35,649)	-16.97%	228,012	53,558	172,708	172,610	186,992
Municipal Court	24,413	25,991	(1,578)	-6.07%	29,859	5,446	24,322	24,255	25,426
Police Department	579,498	627,198	(47,700)	-7.61%	691,888	112,390	630,574	682,494	716,397
Community Services	41,747	44,629	(2,882)	-6.46%	50,844	9,097	46,956	39,517	42,217
Community Grants and Contributions	79,000	86,500	(7,500)	-8.67%	86,500	7,500	66,500	66,500	103,500
Roads and Bridges	833,095	906,085	(72,990)	-8.06%	1,011,628	178,533	1,454,441	875,791	660,162
Vehicle Maintenance	380,035	413,659	(33,624)	-8.13%	469,118	89,083	377,970	420,083	415,138
Municipal Bus/Dial-A-Ride	141,022	169,341	(28,319)	-16.72%	193,805	52,783	319,437	546,902	626,904
Employee Shuttle	66,090	81,953	(15,863)	-19.36%	93,821	27,731	64,945	76,809	86,757
Parks & Recreation	349,604	368,058	(18,454)	-5.01%	445,045	95,441	280,798	439,748	488,581
Plaza and Environmental Services	996,322	1,099,140	(102,818)	-9.35%	1,286,037	289,715	1,011,061	938,971	854,603
Public Refuse Removal and Residential Trash Billing Services	39,627	42,535	(2,908)	-6.84%	46,809	7,182	195,801	198,452	274,568
Building/Facility Maintenance	89,609	114,903	(25,294)	-22.01%	129,968	40,359	137,361	245,202	103,391
Community Development	4,882	8,043	(3,161)	-39.30%	9,149	4,267	3,714	6,194	65,136
Building Division	163,514	171,396	(7,882)	-4.60%	196,338	32,824	146,409	140,652	165,956
Housing Division Office	16,682	16,967	(285)	-1.68%	19,298	2,616	77,044	81,323	97,924
Planning and Zoning Division	299,379	299,388	(9)	0.00%	373,504	368,622	222,592	226,894	284,115
Contingency	-	-	-	#DIV/0!	26,575	9,893	-	-	29,624
<b>Total Operating Expenses</b>	<b>6,218,036</b>	<b>6,749,683</b>	<b>(531,647)</b>	<b>-7.88%</b>	<b>7,684,033</b>	<b>1,743,812</b>	<b>7,153,183</b>	<b>7,114,761</b>	<b>7,262,833</b>
Surplus / Deficit	1,320,766	412,066	908,700	220.52%	109,275	(1,489,306)	2,561,973	743,404	1,347,972
Capital Outlay	261,333	249,831	11,502	4.60%	258,671	(2,662)	101,882	89,705	14,609
Surplus / Deficit	1,059,433	162,235	897,198	553.02%	(149,396)	(1,208,829)	2,460,091	653,699	1,333,363
<b>Other Sources and Uses</b>									
Sale of Assets	10,568	-	10,568	#DIV/0!	-	(10,568)	1,685	5,563	2,300
Transfer (To) From Affordable Housing	(285,621)	(275,615)	(10,006)	3.63%	(330,000)	(44,379)	(273,401)	(227,104)	(223,287)
Transfer (To) From Cable	234,886	229,292	5,594	2.44%	165,628	(69,258)	133,963	224,382	254,971
Transfer (To) From Child Development	(57,242)	(76,483)	19,241	-25.16%	(96,512)	(7,734)	(42,740)	(73,043)	-
Transfer (To) From Communications	-	-	-	#DIV/0!	8,688	-	-	-	-
Transfer (To) From Capital Projects	(19,254)	(20,000)	746	-3.73%	-	(47,750)	-	-	(2,238)
Transfer (To) From Debt Service	130,293	72,703	57,590	79.21%	(420,330)	(826,502)	105,768	88,149	76,450
Transfer (To) From Mortgage Assistance	-	-	-	#DIV/0!	-	-	-	-	-
Transfer (To) From Overhead Allocation	406,172	414,330	(8,158)	-1.97%	451,996	45,824	388,145	363,149	272,925
Transfer (To) From Parking Services	(1,110)	(60,086)	58,976	-98.15%	(66,362)	(9,120)	20,998	(42,519)	(105,155)
Transfer (To) From Conference Center	(88,778)	(94,951)	6,173	-6.50%	(164,018)	(164,018)	(108,343)	(149,235)	(83,328)
Transfer (To) From Tourism	47,750	17,564	30,186	171.86%	13,011.58	(117,281)	(71,534)	(58,775)	32,503
Transfer (To) From Vehicle/Equipment	(185,994)	(222,374)	36,380	-16.36%	(216,868)	(30,874)	(113,803)	(78,289)	(371,874)

**Town of Mountain Village  
Monthly Revenue and Expenditure Report  
November 2014**

	2014						2013	2012	2011
	Actual YTD	Budget YTD	Budget Variance (\$)	Budget Variance (%)	Annual Budget	Budget Balance	Actual YTD	Actual YTD	Actual YTD
<b>Total Other Sources and Uses</b>	191,670	(15,620)	207,290	-1327.08%	(654,766)	(1,272,973)	40,738	52,278	(146,733)
Surplus / Deficit	\$ 1,251,103	\$ 146,615	\$1,104,488	753.33%	\$ (804,162)	\$ (2,481,802)	\$ 2,500,829	\$ 705,977	\$ 1,186,630
<b>Beginning Fund Balance Components</b>									
	<u>Actual YTD</u>				<u>Annual Budget</u>				
Emergency Reserve	\$ 2,689,412				\$ 2,729,032				
Property Tax Reserve	450,828				450,828				
Unreserved	3,496,956				3,457,333				
<b>Beginning Fund Balance</b>	\$ 6,637,196				\$ 6,637,193				
<b>YTD Ending Fund Balance Components</b>									
Emergency Reserve	\$ 2,689,412				\$ 2,689,410				
Property Tax Reserve	450,828				450,828				
Health Care Premium Savings Reserve	50,000				50,000				
Facility Maint Reserve	155,000				155,000				
Unreserved	4,543,060				2,487,793				
<b>Ending Fund Balance</b>	\$ 7,888,299				\$ 5,833,031				

These financials reflect the revised budget as adopted at the December Town Council Meeting.

**Revenues**

Taxes & Assessments - Specific Ownership taxes collected are on budget. Sales tax revenues are 4% over budget and 5% over prior year.

Construction use tax is now over budget but 74% below prior year. Property taxes collected are on budget.

Licenses & Permits - Construction permits are over the annual budget by \$46,761. Electrical and plumbing permits are over budget.

Intergovernmental - Road and Bridge taxes are under budget and prior year 5% and 20%.

Charges for Services - Plan review and DRB fees, energy mitigation, and road impact fees are under budget.

Fines & Forfeitures - Traffic fines, false alarms, and other miscellaneous fines are the revenues collected to date and are running under budget.

Investment Income - Interest is exceeding budget and prior year at this time.

Miscellaneous - Under budget in van rider revenues (14%).

Contributions - Green gondola receipts and TMVOA's employee shuttle contribution collected to date.

**Top Ten Budget Variances**

**Under Budget**

Plaza and Environmental Services - \$102,818 Savings are mainly in electric and natural gas, plaza maintenance, supplies, and personnel expense.

Road and Bridge - \$72,990 Savings in Gasoline, personnel, paving repair, and bridge repair.

Police - \$47,700 Savings in salaries and wages due to a vacancy.

Community Relations - \$35,649 Under budget in personnel, marketing collateral, live video streaming, and photos

Human Resources- \$33,875 Savings in personnel costs due to a temporary vacancy and life insurance costs.

Vehicle Maintenance- \$33,624 Savings in personnel, supplies and oil.

Admin Services- \$28,718 Savings in facility expenses, communications, and electric.

Municipal Bus Service - \$28,319 Savings are in personnel costs and gasoline.

Town Attorney - \$26,114 General Legal

Building/Facility Maintenance - \$25,294 Snowmelt R&M, street lights, and facility maintenance.

**Town of Mountain Village  
Monthly Revenue and Expenditure Report  
November 2014**

	2014						2013	2012	2011
	Actual YTD	Budget YTD	Budget Variance (\$)	Budget Variance (%)	Annual Budget	Budget Balance	Actual YTD	Actual YTD	Actual YTD
<b>Tourism Fund</b>									
<b>Revenues</b>									
Business Licenses Fees	\$ 268,738	\$ 270,714	\$ (1,976)	-1%	\$ 271,145	\$ 2,407	\$ 267,808	\$ 241,002	\$ 227,781
Lodging Taxes - Condos/Homes (1)	423,663	357,548	66,115	18%	474,989	51,326	397,940	292,483	279,364
Lodging Taxes - Hotels/Condos (1)	556,333	516,976	39,357	8%	580,543	24,210	492,365	409,051	420,903
Lodging Taxes - Prior Year	781	-	781	#DIV/0!	-	(781)	870	7,044	-
Penalties and Interest	11,609	2,806	8,803	314%	3,000	(8,609)	13,562	17,828	4,199
Restaurant Taxes	265,152	228,462	36,690	16%	270,495	5,343	231,845	206,027	206,655
Restaurant Taxes - Prior Year	88	-	88	#DIV/0!	-	(88)	164	1,045	-
<b>Total Revenues</b>	<b>1,526,364</b>	<b>1,376,506</b>	<b>149,858</b>	<b>11%</b>	<b>1,600,172</b>	<b>73,808</b>	<b>1,404,554</b>	<b>1,174,480</b>	<b>1,138,902</b>
<b>Tourism Funding</b>									
Additional Funding	-	-	-	#DIV/0!	25,000	25,000	100,000	105,833	-
Airline Guaranty Funding	740,511	652,410	88,101	14%	782,296	41,785	664,045	550,134	545,653
MTI Funding	738,103	706,533	31,571	4%	777,365	39,261	712,043	577,288	560,746
<b>Total Tourism Funding</b>	<b>1,478,614</b>	<b>1,358,942</b>	<b>119,672</b>	<b>92%</b>	<b>1,584,660</b>	<b>106,046</b>	<b>1,476,088</b>	<b>1,233,255</b>	<b>1,106,399</b>
Surplus / Deficit	47,750	17,564	30,186	172%	15,512	(32,238)	(71,534)	(58,775)	32,503
<b>Administrative Fees</b>									
Audit Fees	-	-	-	#DIV/0!	2,500	2,500	-	-	-
<b>Total Administrative Fees</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>#DIV/0!</b>	<b>2,500</b>	<b>2,500</b>	<b>-</b>	<b>-</b>	<b>-</b>
Surplus / Deficit	47,750	17,564	119,672	681%	13,012	(34,738)	(71,534)	(58,775)	32,503
<b>Other Sources and Uses</b>									
Transfer (To) From Other Funds	(47,750)	(17,564)	(30,186)	172%	(13,012)	34,738	71,534	58,775	(32,503)
<b>Total Other Sources and Uses</b>	<b>(47,750)</b>	<b>(17,564)</b>	<b>(30,186)</b>	<b>172%</b>	<b>(13,012)</b>	<b>34,738</b>	<b>71,534</b>	<b>58,775</b>	<b>(32,503)</b>
Surplus / Deficit	\$ -	\$ -	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -

**Town of Mountain Village  
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	2014						2013	2012	2011
	Actual YTD	Budget YTD	Budget Variance (\$)	Budget Variance (%)	Annual Budget	Budget Balance	Actual YTD	Actual YTD	Actual YTD
<b>Parking Services Fund</b>									
<b>Revenues</b>									
Contributions/Shared Facility Expenses	\$ 17,461	\$ 16,927	\$ 534	3%	\$ 18,500	\$ 1,039	\$ 17,903	\$ -	\$ -
Fines and Forfeits	13,254	12,577	677	5%	8,000	(5,254)	7,588	14,658	13,510
Gondola Parking Garage	122,107	91,068	31,039	34%	103,900	(18,207)	112,995	101,624	92,029
Heritage Parking Garage	117,652	127,587	(9,935)	-8%	143,000	25,348	130,989	100,213	97,736
Parking Meter Revenues	10,395	8,066	2,329	29%	9,500	(895)	9,475	10,036	10,368
Parking Permits	11,561	9,855	1,706	17%	12,000	439	9,510	7,320	2,506
Special Event Parking	41,743	36,000	5,743	16%	36,000	(5,743)	5,000	5,000	-
<b>Total Revenues</b>	<b>334,173</b>	<b>302,080</b>	<b>32,093</b>	<b>11%</b>	<b>330,900</b>	<b>(3,273)</b>	<b>293,460</b>	<b>238,851</b>	<b>216,149</b>
<b>Operating Expenses</b>									
Other Operating Expenses	573	3,955	(3,382)	-86%	4,600	4,027	1,139	2,361	5,320
Personnel Expenses	104,474	116,564	(12,090)	-10%	134,881	30,407	106,342	107,953	123,758
Gondola Parking Garage	34,660	49,574	(14,914)	-30%	55,592	20,932	35,533	32,923	41,483
Surface Lots	22,058	20,727	1,331	6%	22,260	202	15,942	13,738	18,192
Heritage Parking Garage	113,116	118,347	(5,231)	-4%	118,765	5,649	84,294	109,929	96,285
Contingency	-	-	-	#DIV/0!	-	-	-	(22,019)	-
Meadows Parking	2,000	-	2,000	#DIV/0!	-	(2,000)	1,000	1,188	810
<b>Total Operating Expenses</b>	<b>276,881</b>	<b>309,167</b>	<b>(32,286)</b>	<b>-10%</b>	<b>336,098</b>	<b>59,217</b>	<b>244,250</b>	<b>246,073</b>	<b>285,848</b>
Surplus / Deficit	57,292	(7,087)	64,379	-908%	(5,198)	(62,490)	49,210	(7,222)	(69,699)
<b>Capital</b>									
Capital	29,232	29,343	(111)	0%	29,343	111	-	4,627	-
Surplus / Deficit	28,060	(36,430)	64,490	-177%	(34,541)	(62,601)	49,210	(11,849)	(69,699)
<b>Other Sources and Uses</b>									
Sale of Assets	-	-	-	#DIV/0!	-	-	-	-	-
Overhead Allocation	(29,170)	(23,656)	(5,514)	23%	(31,821)	(2,651)	(28,212)	(30,670)	(35,456)
Transfer (To) From General Fund	1,110	60,086	(58,976)	-98%	66,362	65,252	(20,998)	42,519	105,155
<b>Total Other Sources and Uses</b>	<b>(28,060)</b>	<b>36,430</b>	<b>(64,490)</b>	<b>-177%</b>	<b>34,541</b>	<b>62,601</b>	<b>(49,210)</b>	<b>11,849</b>	<b>69,699</b>
Surplus / Deficit	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -	\$ -	\$ -	\$ -

Parking revenues are over budget \$32,093. HPG revenues are lagging budget but are offset by GPG and special event parking. Expenditures are under budget primarily due to personnel, utilities, and maintenance costs. The net transfer to the General Fund is \$1,110.

**Town of Mountain Village  
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	2014						2013	2012	2011
	Actual YTD	Budget YTD	Budget Variance (\$)	Budget Variance (%)	Annual Budget	Budget Balance	Actual YTD	Actual YTD	Actual YTD
<b>Gondola Fund</b>									
<b>Revenues</b>									
Event Operations Funding	\$ 5,525	\$ -	\$ 5,525	#DIV/0!	\$ -	\$ (5,525)	\$ 11,779	\$ 4,556	\$ (488)
Event Operations Funding - SMC/TOT	-	-	-	#DIV/0!	36,000	36,000	36,000	-	36,000
Grant Funding	294,773	438,404	(143,631)	-32.76%	478,259	183,486	115,353	54,996	-
Insurance Proceeds	-	-	-	#DIV/0!	-	-	3,775	2,836	2,676
Miscellaneous Revenues	3,169	4,583	(1,414)	-30.85%	5,000	1,831	25,513	94,539	172,502
Sale of Assets	558	-	558	#DIV/0!	-	(558)	-	-	-
TMVOA Operating Contributions	2,519,276	2,645,485	(126,209)	-4.77%	3,314,990	795,714	2,667,967	2,711,989	2,537,089
TMVOA Capital Contributions	366,300	382,223	(15,923)	-4.17%	699,393	333,093	25,513	94,539	173,483
TSG 1% Lift Sales	119,360	97,631	21,729	22.26%	134,230	14,870	99,601	102,792	105,512
<b>Total Revenues</b>	<b>3,308,961</b>	<b>3,568,326</b>	<b>(259,365)</b>	<b>-7.27%</b>	<b>4,667,872</b>	<b>1,358,911</b>	<b>2,985,501</b>	<b>3,066,247</b>	<b>3,026,774</b>
<b>Operating Expenses</b>									
MAARS	58,476	66,404	(7,928)	-11.94%	77,356	18,880	57,548	66,032	57,417
Chondola	138,379	153,898	(15,519)	-10.08%	187,917	49,538	128,647	127,641	159,918
Grant Success Fees	-	-	-	#DIV/0!	37,702	37,702	18,457	-	-
Operations	1,327,904	1,415,232	(87,328)	-6.17%	1,597,816	269,912	1,322,706	1,361,729	1,291,168
Maintenance	993,859	1,062,500	(68,641)	-6.46%	1,196,431	202,572	994,983	1,003,508	934,885
FGOA	424,043	488,069	(64,026)	-13.12%	543,094	119,051	437,647	412,798	409,903
Major Repairs and Replacements	272,685	287,223	(14,538)	-5.06%	288,056	15,371	15,892	79,578	173,483
Contingency	-	-	-	#DIV/0!	-	-	-	-	-
<b>Total Operating Expenses</b>	<b>3,215,346</b>	<b>3,473,326</b>	<b>(257,980)</b>	<b>-7.43%</b>	<b>3,928,372</b>	<b>713,026</b>	<b>2,975,880</b>	<b>3,051,286</b>	<b>3,026,774</b>
Surplus / Deficit	93,615	95,000	(1,385)	-1.46%	739,500		9,621	14,961	-
<b>Capital</b>									
Capital Outlay	93,615	95,000	(1,385)	-1.46%	739,500	645,885	9,621	14,961	-
Surplus / Deficit	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -	\$ -	\$ -	\$ -

The gondola fund is \$305,925 under budgeted expenditures.

MARRS is under budget in with savings in employee costs. Chondola expenses are under budget due to employee costs and utilities. Gondola operations is under budget in employee costs and supplies. Maintenance is under budget with savings in contract labors. FGOA costs are under budget with savings in employee shuttle expense, utilities, communications, and dues and fees. Capital and MR&R expense is for a snowmobile replacement, a snowcat, bathroom renovations, conveyor rebuilds and drives an motors, and cabin window buffing.



**Town of Mountain Village  
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	2014						2013	2012	2011
	Actual YTD	Budget YTD	Budget Variance (\$)	Budget Variance (%)	Annual Budget	Budget Balance	Actual YTD	Actual YTD	Actual YTD
<b>Child Development Fund</b>									
<b>Revenues</b>									
Daycare Fees	\$ 223,838	\$ 230,424	(6,586)	-2.86%	\$ 250,068	\$ 26,230	\$ 223,178	\$ 199,187	\$ 192,657
Fundraising Revenues - Daycare	10,136	6,000	4,136	68.93%	6,000	(4,136)	10,967	11,545	7,206
Fundraising Revenues - Preschool	3,980	6,000	(2,020)	-1.21%	6,000	(150,326)	3,150	-	-
Grant Revenues - Daycare	25,847	29,946	(4,099)	-13.69%	30,000	4,153	29,072	33,289	34,289
Grant Revenues - Preschool	10,673	14,620	(3,947)	-27.00%	14,620	3,947	12,430	10,585	7,003
Preschool Fees	156,326	167,614	(11,288)	-188.13%	181,475	177,495	159,766	161,014	128,485
<b>Total Revenues</b>	<b>430,800</b>	<b>454,604</b>	<b>(23,804)</b>	<b>-5.24%</b>	<b>488,163</b>	<b>57,363</b>	<b>438,563</b>	<b>415,620</b>	<b>369,640</b>
<b>Operating Expenses</b>									
Daycare Contingency	-	-	-	#DIV/0!	-	-	-	-	-
Daycare Other Expense	53,222	68,772	(15,550)	-22.61%	76,319	23,097	63,509	58,989	61,363
Daycare Personnel Expense	268,948	294,872	(25,924)	-8.79%	325,300	56,352	273,993	286,287	306,364
Preschool Contingency	-	-	-	#DIV/0!	-	-	-	-	-
Preschool Other Expense	39,480	43,855	(4,375)	-9.98%	46,939	7,459	32,175	31,460	30,269
Preschool Personnel Expense	126,392	123,588	2,804	2.27%	136,117	9,725	111,626	111,927	86,855
<b>Total Operating Expenses</b>	<b>488,042</b>	<b>531,087</b>	<b>(43,045)</b>	<b>-8.11%</b>	<b>584,675</b>	<b>96,633</b>	<b>481,303</b>	<b>488,663</b>	<b>484,851</b>
Surplus / Deficit	(57,242)	(76,483)	19,241	-25.16%	(96,512)		(42,740)	(73,043)	(115,211)
<b>Capital</b>									
Preschool Capital Outlay	-	-	-	#DIV/0!	-	-	-	-	-
<b>Total Capital</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>#DIV/0!</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
Surplus / Deficit	(57,242)	(76,483)	19,241	-25.16%	(96,512)		(42,740)	(73,043)	(115,211)
<b>Other Sources and Uses</b>									
Contributions	-	-	-	#DIV/0!	-	-	-	-	-
Transfer (To) From General Fund	57,242	76,483	19,241	25.16%	96,512	39,270	42,740	73,043	98,016
<b>Total Other Sources and Uses</b>	<b>57,242</b>	<b>76,483</b>	<b>19,241</b>	<b>25.16%</b>	<b>96,512</b>	<b>39,270</b>	<b>42,740</b>	<b>73,043</b>	<b>98,016</b>
Surplus / Deficit	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -	\$ -	\$ -	\$ (17,195)

Child Development revenues are \$17,900 under budget because of slow daycare and preschool fees. Grant revenues underages are due to timing of receipts. Operating expenses are \$43,000 under budget due mainly to daycare personnel costs although preschool employee costs are modestly over budget, caused by personnel allocations. Other savings are in the scholarship program and travel and education. The fund has required \$57,242 in funding from the General Fund compared to a budget of \$76,500.

**Town of Mountain Village  
Monthly Revenue and Expenditure Report  
November 2014**

		2014				2013	2012	2011	
Actual YTD	Budget YTD	Budget Variance (\$)	Budget Variance (%)	Annual Budget	Budget Balance	Actual YTD	Actual YTD	Actual YTD	
<b>Water &amp; Sewer Fund</b>									
<b>Revenues</b>									
Mountain Village Water and Sewer	\$ 1,950,495	\$ 1,849,295	\$ 101,200	5.47%	\$ 2,065,502	\$ 115,007	\$ 1,943,314	\$ 1,816,298	\$ 1,827,411
Other Revenues	8,388	10,789	(2,401)	-22.25%	24,050	15,662	15,440	12,783	12,701
Ski Ranches Water	120,250	114,362	5,888	5.15%	124,224	3,974	114,795	114,917	111,150
Skyfield Water	22,831	17,258	5,573	32.29%	18,595	(4,236)	21,381	20,193	17,706
<b>Total Revenues</b>	<b>2,101,964</b>	<b>1,991,704</b>	<b>110,260</b>	<b>5.54%</b>	<b>2,232,371</b>	<b>130,407</b>	<b>2,094,930</b>	<b>1,964,191</b>	<b>1,968,968</b>
<b>Operating Expenses</b>									
Mountain Village Sewer	341,801	350,201	(8,400)	-2.40%	385,871	44,070	323,416	303,026	282,498
Mountain Village Water	754,205	832,318	(78,113)	-9.38%	996,732	242,527	717,653	782,538	764,211
Ski Ranches Water	18,250	39,127	(20,877)	-53.36%	48,389	30,139	21,660	25,096	63,057
Contingency	-	-	-	#DIV/0!	28,620	28,620	-	-	-
<b>Total Operating Expenses</b>	<b>1,114,256</b>	<b>1,221,646</b>	<b>(107,390)</b>	<b>-8.79%</b>	<b>1,459,612</b>	<b>345,356</b>	<b>1,062,729</b>	<b>1,110,660</b>	<b>1,109,766</b>
Surplus / Deficit	987,708	770,058	217,650	28.26%	772,759		1,032,201	853,531	859,202
<b>Capital</b>									
Capital Outlay	299,848	305,477	(5,629)	NaN	367,388	67,540	363,460	200,873	130,798
Surplus / Deficit	687,860	464,581	223,279	48.06%	405,371		668,741	652,658	728,404
<b>Other Sources and Uses</b>									
Overhead Allocation Transfer	(123,250)	(123,250)	-	0.00%	(134,445)	(11,195)	(109,098)	(103,648)	(109,574)
Mountain Village Tap Fees	16,851	32,404	15,553	48.00%	33,075	16,224	171,392	113,536	15,356
Sale of Assets	-	-	-	#DIV/0!	-	-	-	-	-
Ski Ranches Tap Fees	10,718	5,000	(5,718)	-114.36%	5,000	(5,718)	5,000	10,697	5,000
Skyfield Tap Fees	-	-	-	#DIV/0!	2,000	2,000	-	-	-
Telski Tap Fee/Water Credit	(116,762)	(116,762)	-	0.00%	(116,762)	-	(112,271)	(107,953)	(103,801)
Transfer (To) From General Fund	-	-	-	#DIV/0!	-	-	-	-	-
<b>Total Other Sources and Uses</b>	<b>(212,443)</b>	<b>(202,608)</b>	<b>9,835</b>	<b>-4.85%</b>	<b>(211,132)</b>	<b>1,311</b>	<b>(44,977)</b>	<b>(87,368)</b>	<b>(193,019)</b>
Surplus / Deficit	\$ 475,418	\$ 261,973	\$ 213,445	81.48%	\$ 194,239		\$ 623,764	\$ 565,290	\$ 535,385

Excess water and irrigation fees are exceeding the annual budget, although irrigation fees are in line with last year. Water and sewer base fees are over budget (\$5,700 each). Ski Ranches fees are over budget due to base fees. Skyfield revenues are also over budget in excess water. Other revenues are under budget in late fees and maintenance revenues. Sewer expenditures are under budget due mainly to shared costs. MV water is under budget due to electricity. Ski Ranches water costs are under budget with savings in personnel costs and electric. Capital costs include the regional sewer payment for the solar panels and shared costs, water rights acquisition, a leak detection system, a power generator, the San Joaquin well, and the Wapiti water line.

**Town of Mountain Village  
Monthly Revenue and Expenditure Report  
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	2014				Annual Budget	Budget Balance	2013	2012	2011
	Actual YTD	Budget YTD	Budget Variance (\$)	Budget Variance (%)			Actual YTD	Actual YTD	Actual YTD
<b>Cable Fund</b>									
<b>Revenues</b>									
Cable User Fees	\$ 726,502	\$ 748,873	\$ (22,371)	-2.99%	\$ 816,489	\$ 89,987	\$ 783,928	\$ 765,398	\$ 732,194
Channel Revenues	216	395	(179)	-45.32%	416	200	463	331	449
Internet User Fees	645,717	634,850	10,867	1.71%	696,635	50,918	554,588	519,602	497,078
Other Revenues	77,129	85,864	(8,735)	-10.17%	93,088	60,428	71,914	75,852	90,389
Phone Service Fees	32,660	30,547	2,113	6.92%	33,246	(43,883)	31,448	29,701	17,530
<b>Total Revenues</b>	<b>1,482,224</b>	<b>1,500,529</b>	<b>(18,305)</b>	<b>-1.22%</b>	<b>1,639,874</b>	<b>157,650</b>	<b>1,442,341</b>	<b>1,390,884</b>	<b>1,337,640</b>
<b>Operating Expenses</b>									
Cable Direct Costs	521,977	526,262	(4,285)	-0.81%	571,724	49,747	516,611	493,001	458,520
Phone Service Costs	19,481	21,626	(2,145)	-9.92%	23,580	4,099	20,782	19,515	11,232
Internet Direct Costs	99,000	99,000	-	0.00%	108,000	9,000	93,358	83,666	83,666
Cable Operations	462,874	486,040	(23,166)	-4.77%	556,606	93,732	481,834	460,602	432,203
Contingency	-	-	-	#DIV/0!	3,000	3,000	-	-	-
<b>Total Operating Expenses</b>	<b>1,103,332</b>	<b>1,132,928</b>	<b>(29,596)</b>	<b>-2.61%</b>	<b>1,262,910</b>	<b>159,578</b>	<b>1,112,585</b>	<b>1,056,784</b>	<b>985,621</b>
Surplus / Deficit	378,892	367,601	11,291	3.07%	376,964		329,756	334,100	352,019
<b>Capital</b>									
Capital Outlay	37,365	31,668	5,697	17.99%	45,000	7,635	98,601	19,897	16,884
Surplus / Deficit	341,527	335,933	5,594	1.67%	331,964		231,155	314,203	335,135
<b>Other Sources and Uses</b>									
Sale of Assets	-	-	-	#DIV/0!	-	-	-	-	7,593
Transfer (To) From General Fund	(234,886)	(229,292)	(5,594)	2.44%	(165,628)	69,258	(133,963)	(224,382)	(254,971)
Overhead Allocation Transfer	(106,641)	(106,641)	-	0.00%	(116,336)	(9,695)	(97,192)	(89,821)	(87,757)
<b>Total Other Sources and Uses</b>	<b>(341,527)</b>	<b>(335,933)</b>	<b>(5,594)</b>	<b>1.67%</b>	<b>(281,964)</b>	<b>59,563</b>	<b>(231,155)</b>	<b>(314,203)</b>	<b>(335,135)</b>
Surplus / Deficit	\$ -	\$ -	\$ -	#DIV/0!	\$ 50,000		\$ -	\$ -	\$ -
<b>Beginning Fund Balance</b>	\$ 60,000	\$ 60,000	\$ -						
<b>Ending Fund Balance</b>	\$ 60,000	\$ 60,000	\$ -						

Cable user revenues are under budget (3%) and are under prior year (7%). This is due to the loss of a larger account in the latter part of 2013. Residential basic, premium and digital fees are under budget. Internet revenues are over budget 1.7% and 16% over prior year. Other revenues are under budget 10% due mainly to parts sales, labor, equipment rental, and late fees. Direct costs for cable are less than budget but over prior year due to increasing programming costs. Internet costs are on budget and over prior year due to increased bandwidth. Phone service revenues are over budget by 7%, while phone service expenses are under budget by 10%. Phone revenues have increased 4% over prior year and expenses are under prior year mainly due to a prior year credit posted after the year was closed. Cable operating expenses are under budget with savings in head end and plant and salaries and wages. The cable fund has returned \$341,527 to the general fund including the overhead allocation. A pick-up truck has been replaced and additional receivers have been purchased.

**Town of Mountain Village  
Monthly Revenue and Expenditure Report  
November 2014**

	2014				Annual Budget	Budget Balance	2013	2012	2011
	Actual YTD	Budget YTD	Budget Variance (\$)	Budget Variance (%)			Actual YTD	Actual YTD	Actual YTD
<b>Telluride Conference Center Fund</b>									
<b>Revenues</b>									
Beverage Revenues	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -	\$ -	\$ -	\$ -
Catering Revenues	-	-	-	#DIV/0!	-	-	-	-	-
Facility Rental	-	-	-	#DIV/0!	-	-	-	-	-
Operating/Other Revenues	920	-	920	#DIV/0!	-	(920)	-	-	14,200
<b>Total Revenues</b>	920	-	920	#DIV/0!	-	(920)	-	-	14,200
<b>Operating Expenses</b>									
Wait Staff	-	-	-	#DIV/0!	-	-	-	-	-
Food Operations	-	-	-	#DIV/0!	-	-	-	-	-
Beverage Operations	-	-	-	#DIV/0!	-	-	-	-	-
General Operations	-	-	-	#DIV/0!	-	-	7,471	6,156	4,859
Administration	78,598	79,018	(420)	-0.53%	79,018	420	59,910	67,996	75,370
Marketing	2,000	6,833	(4,833)	-70.73%	65,000	63,000	28,882	59,118	8,594
Contingency	-	-	-	#DIV/0!	-	-	-	440	-
<b>Total Operating Expenses</b>	80,598	85,851	(5,253)	-6.12%	144,018	63,420	96,263	133,710	88,823
Surplus / Deficit	(79,678)	(85,851)	6,173	-7.19%	(144,018)		(96,263)	(133,710)	(74,623)
Capital Outlay/ Major R&R	9,100	9,100	-	0.00%	20,000	10,900	12,080	15,525	8,705
Surplus / Deficit	(88,778)	(94,951)	6,173	-6.50%	(164,018)		(108,343)	(149,235)	(83,328)
<b>Other Sources and Uses</b>									
Damage Receipts	-	-	-	#DIV/0!	-	-	-	-	-
Insurance Proceeds	-	-	-	#DIV/0!	-	-	-	-	-
Sale of Assets	-	-	-	#DIV/0!	-	-	-	-	-
Transfer (To) From General Fund	88,778	94,951	(6,173)	-6.50%	164,018	75,240	108,343	149,235	83,328
Overhead Allocation Transfer	-	-	-	#DIV/0!	-	-	-	-	-
<b>Total Other Sources and Uses</b>	88,778	94,951	(6,173)	74.00%	164,018	75,240	108,343	149,235	83,328
Surplus / Deficit	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -	\$ -	\$ -	\$ -

Expenses include HOA dues and marketing.

**Town of Mountain Village  
Monthly Revenue and Expenditure Report  
November 2014**

	2014				Annual Budget	Budget Balance	2013	2012	2011
	Actual YTD	Budget YTD	Budget Variance (\$)	Budget Variance (%)			Actual YTD	Actual YTD	Actual YTD
<b>Affordable Housing Development Fund</b>									
<b>Revenues</b>									
Contributions	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -	\$ -	\$ -	\$ -
Grant Proceeds	-	-	-	#DIV/0!	-	-	-	-	-
Rental Income	10,627	11,209	582	5.19%	12,228	-	20,094	19,144	12,138
Sales Proceeds	-	-	-	#DIV/0!	-	-	(47,628)	-	-
<b>Total Revenues</b>	<b>10,627</b>	<b>11,209</b>	<b>582</b>	<b>5.19%</b>	<b>12,228</b>	<b>-</b>	<b>(27,534)</b>	<b>19,144</b>	<b>12,138</b>
<b>Operating Expenses</b>									
Coyote Court	-	-	-	#DIV/0!	5,000	5,000	4,159	8,245	183,448
RHA Funding - Moved in 2014 from the GF	69,280	69,280	-	0.00%	69,280	-	-	-	-
Timberview	-	-	-	#DIV/0!	-	-	-	-	596,754
Sunshine Valley	-	-	-	#DIV/0!	-	-	-	-	1,080,756
Foreclosure Properties	859	652	207	31.77%	7,181	6,322	13,485	7,270	9,525
Density bank	8,963	8,963	0	0.00%	8,963	(0)	8,856	11,664	9,720
Fairway Four	8,856	8,856	-	0.00%	8,856	-	-	-	-
<b>Total Operating Expenses</b>	<b>87,958</b>	<b>87,751</b>	<b>207</b>	<b>0.24%</b>	<b>99,280</b>	<b>11,322</b>	<b>26,500</b>	<b>27,179</b>	<b>1,880,203</b>
Surplus / Deficit	(77,331)	(76,542)	789	-1.03%	(87,052)	(11,322)	(54,034)	(8,035)	(1,868,065)
<b>Other Sources and Uses</b>									
Transfer (To) From MAP	-	-	-	#DIV/0!	(24,428)	-	(44,000)	-	-
Transfer (To) From General Fund - Sales Tax	285,621	275,615	(10,006)	-3.63%	330,000	44,379	273,401	227,104	223,287
Transfer (To) From Capital Projects Fund (1)	-	-	-	#DIV/0!	(61,570)	(61,570)	-	-	-
Transfer (To) From VCA (2)	-	-	-	#DIV/0!	(111,854)	-	-	-	-
<b>Total Other Sources and Uses</b>	<b>285,621</b>	<b>275,615</b>	<b>(10,006)</b>	<b>-3.63%</b>	<b>132,148</b>	<b>(17,191)</b>	<b>229,401</b>	<b>227,104</b>	<b>223,287</b>
Surplus / Deficit	\$ 208,290	\$ 199,073	\$ 10,795	5.42%	\$ 45,096	\$ (28,513)	\$ 175,367	\$ 219,069	\$ (1,644,778)
<b>Beginning Fund Equity Balance</b>	\$ 763,727	\$ 763,727	\$ -						
<b>Ending Equity Fund Balance</b>	\$ 972,017	\$ 962,800	\$ 9,217						

1. For Meadows Improvement Plan
2. To help fund the community garden and basketball court in 2014.

Expenses consist of HOA dues on town owned property and the Regional Housing Authority's 2014 funding.

**Town of Mountain Village  
Monthly Revenue and Expenditure Report  
November 2014**

	2014						2013	2012	2011
	Actual YTD	Budget YTD	Budget Vary (\$)	Budget Var (%)	Annual Budget	Budget Balance	Actual	Actual	Actual
<b>Village Court Apartments</b>									
<b>Operating Revenues</b>									
Rental Income	\$ 1,775,764	\$ 1,775,295	\$ 469	0%	\$ 1,943,231	\$ 167,467	\$ 1,604,848	\$ 1,517,692	\$ 1,536,669
Other Operating Income	354,314	338,825	15,489	5%	369,627	15,313	331,663	301,193	260,253
Less: Allowance for Bad Debt	(12,918)	(12,918)	-	0%	(12,918)	-	(806)	(7,587)	(7,494)
<b>Total Operating Revenue</b>	<b>2,117,160</b>	<b>2,101,202</b>	<b>15,958</b>	<b>1%</b>	<b>2,299,940</b>	<b>182,780</b>	<b>1,935,705</b>	<b>1,811,298</b>	<b>1,789,428</b>
<b>Operating Expenses</b>									
Office Operations	156,543	164,631	8,089	5%	178,753	22,210	158,340	152,048	149,716
General and Administrative	108,591	118,783	10,192	9%	119,275	10,684	117,957	105,530	110,498
Utilities	335,784	380,482	44,698	12%	408,531	72,747	349,511	329,204	365,815
Repair and Maintenance	316,957	311,758	(5,198)	-2%	371,985	55,028	338,369	327,172	274,000
Major Repairs and Replacement	177,928	178,973	1,045	1%	234,471	56,543	278,861	119,622	79,299
Contingency	-	-	-	0%	12,509	12,509	-	-	-
<b>Total Operating Expenses</b>	<b>1,095,802</b>	<b>1,154,628</b>	<b>58,825</b>	<b>5%</b>	<b>1,325,524</b>	<b>229,722</b>	<b>1,243,037</b>	<b>1,033,576</b>	<b>979,328</b>
<b>Surplus / (Deficit) After Operations</b>	<b>1,021,358</b>	<b>946,574</b>	<b>74,783</b>	<b>8%</b>	<b>974,416</b>		<b>692,668</b>	<b>777,722</b>	<b>810,100</b>
<b>Non-Operating (Income) / Expense</b>									
Investment Earning	(174)	(1,250)	(1,076)	-86%	(1,500)	(1,326)	(439)	(852)	(843)
Debt Service, Interest	239,744	220,674	(19,070)	-9%	248,558	8,814	244,749	249,758	270,050
Debt Service, Fees	537,333	587,633	50,300	9%	587,633	50,300	116,101	116,834	119,329
Debt Service, Principal	268,945	252,756	(16,189)	-6%	285,877	16,932	222,041	210,833	19,977
<b>Total Non-Operating (Income) / Expense</b>	<b>1,045,848</b>	<b>1,059,813</b>	<b>13,964</b>	<b>1%</b>	<b>1,120,568</b>	<b>74,720</b>	<b>582,454</b>	<b>576,573</b>	<b>408,513</b>
<b>Surplus / (Deficit) Before Capital</b>	<b>(24,491)</b>	<b>(113,238)</b>	<b>88,747</b>	<b>-78%</b>	<b>(146,152)</b>		<b>110,214</b>	<b>201,149</b>	<b>401,588</b>
Capital Spending	-	-	-	#DIV/0!	-	-	-	383,432	875,719
<b>Surplus / (Deficit)</b>	<b>(24,491)</b>	<b>(113,238)</b>	<b>88,747</b>	<b>-78%</b>	<b>(146,152)</b>		<b>110,214</b>	<b>(182,284)</b>	<b>(474,131)</b>
<b>Other Sources / (Uses)</b>									
Transfer (To)/From General Fund	(106,961)	(106,961)	-	0%	(116,685)	(116,685)	(99,281)	(92,814)	-
Sale of Assets	-	-	-	0%	-	-	-	-	-
Grant Revenues	-	150,683	(150,683)	0%	150,683	150,683	-	147,708	161,773
Transfer From AHDF	-	-	-	0%	111,854	218,815	-	-	-
<b>Total Other Sources / (Uses)</b>	<b>(106,961)</b>	<b>43,722</b>	<b>(150,683)</b>	<b>0%</b>	<b>145,852</b>	<b>369,498</b>	<b>(99,281)</b>	<b>54,894</b>	<b>161,773</b>
<b>Surplus / (Deficit)</b>	<b>(131,452)</b>	<b>(69,516)</b>	<b>(61,936)</b>	<b>89%</b>	<b>(300)</b>		<b>10,934</b>	<b>(127,389)</b>	<b>(312,359)</b>
<b>Beginning Working Capital</b>	-	-	-	#DIV/0!	-				
<b>Ending Working Capital</b>	<b>\$ (131,452)</b>	<b>\$ (69,516)</b>	<b>\$ (61,936)</b>	<b>89%</b>	<b>\$ (300)</b>				

Rent revenues are at budget after 2014 revisions have been made, they are over prior year 11%. Other revenues are over budget 5% and over prior year 7% due mainly to other miscellaneous revenues which includes a SMPA rebate for LED lighting and utility billings. Office operations are under budget 5%. Group insurance and housing allowance are under budget. General and administrative is under budget due to property insurance and credit card charges. Savings in utilities is mainly in electricity and waste disposal costs. Maintenance is over in fire system repairs. MR&R is meeting budget. Expenses include LED lighting replacement, cabinet replacement, appliances, and some carpet replacement. Operating expenditures of \$1.1 million budget were \$58,825 under budget. Debt service is meeting the revised budget.

**Town of Mountain Village  
Monthly Revenue and Expenditure Report  
November 2014**

	2014						2013	2012	2011
	Actual YTD	Budget YTD	Budget Variance (\$)	Budget Variance (%)	Annual Budget	Budget Balance	Actual YTD	Actual YTD	Actual YTD
<b>Debt Service Fund</b>									
<b>Revenues</b>									
Abatements	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -	\$ -	\$ -	\$ 32,060
Contributions	204,425	203,740	685	0.34%	203,740	(685)	203,425	207,425	228,217
Miscellaneous Revenue	-	-	-	#DIV/0!	-	-	-	235	-
Property Taxes	3,535,829	3,537,991	(2,162)	-0.06%	3,537,991	2,162	3,426,645	3,432,020	3,232,339
Reserve/Capital/Liquidity Interest	10,407	5,751	4,656	80.96%	5,910	(4,497)	9,431	11,700	11,631
Specific Ownership Taxes	130,293	72,703	57,590	79.21%	79,070	(51,223)	105,768	88,149	76,450
<b>Total Revenues</b>	<b>3,880,954</b>	<b>3,820,185</b>	<b>60,769</b>	<b>140.00%</b>	<b>3,826,711</b>	<b>(54,243)</b>	<b>3,745,269</b>	<b>3,739,529</b>	<b>3,580,697</b>
<b>Debt Service</b>									
<b>2001/2011 Bonds - Gondola - Paid by contributions from TMVOA and TSG</b>									
2001/2011 Bond Issue - Interest	99,425	99,425	-	94.69%	99,425	-	103,425	107,425	103,216
2001/2011 Bond Issue - Principal	105,000	105,000	-	#DIV/0!	105,000	-	100,000	100,000	125,000
<b>2002 Bonds - Water/Sewer/Parking (refunding 1992) - 77.5% Water/Sewer - 22.5% Parking</b>									
2002 Bond Issue - Interest	63,125	63,125	-	#DIV/0!	-	(63,125)	-	3,610	34,875
2002 Bond Issue - Principal	-	-	-	#DIV/0!	-	-	-	95,000	845,000
<b>2005 Bonds - Telluride Conference Center - (refunding portion of 1998 )</b>									
2005 Bond Issue - Interest	63,125	63,125	-	10.79%	126,250	63,125	152,050	173,850	194,450
2005 Bond Issue - Principal	585,000	585,000	-	#DIV/0!	585,000	-	645,000	545,000	515,000
<b>2006A Bonds - Heritage Parking</b>									
2006A Bond Issue - Interest	373,388	373,388	-	169.72%	373,388	-	381,788	389,988	397,788
2006A Bond Issue - Principal	220,000	220,000	-	#DIV/0!	220,000	-	210,000	205,000	195,000
<b>2007 Bonds - Water/Sewer (refunding 1997)</b>									
2007 Bond Issue - Interest	300,863	300,863	-	20.12%	300,863	-	346,988	391,425	399,425
2007 Bond Issue - Principal	1,495,000	1,495,000	-	#DIV/0!	1,495,000	-	1,230,000	1,185,000	200,000
<b>2009 Bonds - Telluride Conference Center (refunding 1998 bonds)</b>									
2009 Bond Issue - Interest	41,300	41,300	-	14.75%	41,300	-	49,050	55,800	61,000
2009 Bond Issue - Principal	280,000	280,000	-	7.72%	280,000	-	310,000	270,000	260,000
<b>Total Debt Service</b>	<b>3,626,226</b>	<b>3,626,226</b>	<b>-</b>	<b>0.00%</b>	<b>3,626,226</b>	<b>-</b>	<b>3,528,301</b>	<b>3,522,098</b>	<b>3,330,754</b>
Surplus / (Deficit)	254,728	193,959	60,769	31.33%	200,485		216,968	217,431	249,943
<b>Operating Expenses</b>									
Administrative Fees	15,259	7,917	7,342	92.74%	517,000	501,741	1,500	7,280	14,091
County Treasurer Collection Fees	106,280	104,017	2,263	2.18%	104,017	(2,263)	103,030	103,398	98,497
<b>Total Operating Expenses</b>	<b>121,539</b>	<b>111,934</b>	<b>9,605</b>	<b>8.58%</b>	<b>621,017</b>	<b>499,478</b>	<b>104,530</b>	<b>110,678</b>	<b>112,588</b>
Surplus / (Deficit)	133,189	82,025	51,164	62.38%	(420,532)		112,438	106,753	137,355

**Town of Mountain Village  
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 November 2014**

	2014					2013	2012	2011	
	Actual YTD	Budget YTD	Budget Variance (\$)	Budget Variance (%)	Annual Budget	Budget Balance	Actual YTD	Actual YTD	Actual YTD
<b>Debt Service Fund</b>									
<b>Other Sources and Uses</b>									
Transfer (To) From General Fund	(130,293)	(72,703)	(57,590)	79.21%	(79,970)	50,323	(105,768)	(88,149)	(76,450)
Transfer (To) From Other Funds	-	-	-	#DIV/0!	500,000	500,000	-	(37,500)	-
Bond Premiums	-	-	-	#DIV/0!	-	-	-	-	-
Proceeds From Bond Issuance	-	-	-	#DIV/0!	-	-	-	-	-
<b>Total Other Sources and Uses</b>	(130,293)	(72,703)	(57,590)	79.21%	420,030	550,323	(105,768)	(125,649)	(76,450)
Surplus / (Deficit)	\$ 2,896	\$ 9,322	\$ (6,426)	-68.93%	\$ (502)	\$	\$ 6,670	\$ (18,896)	\$ 60,905
<b>Beginning Fund Balance</b>	\$ 734,652	\$ 737,976	\$ (3,324)						
<b>Ending Fund Balance</b>	\$ 737,548	\$ 747,298	\$ (9,750)						





# Telluride Conference Center 2015 Sales and Marketing Overview

## 1 EXECUTIVE SUMMARY

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Telluride Ski & Golf Company (TSG) assumed the management of the Telluride Conference Center (TCC) in November of 2012. The 2013 strategy was mainly to work with the Telluride Tourism Board (TTB) and group sales team efforts through funding from TMVOA to attract national conference business. This effort was disbanded.

In 2014, a new strategic course was set for the TCC leveraging the strengths of Telluride and the Town of Mountain Village through group business, music, entertainment and events. The Conference Center hosted more than 65 events and 30,000 attendees in 2014. Telski added a dedicated salesperson to focus on regional business for the TCC; that original person did not work out. On December 1, 2014 Telski hired veteran mountain meetings salesperson Allison Grassetti (resume included) to bring business to the TCC.

Through the transitions, the TCC has lost some valuable sales momentum, however with Allison's efforts the sales "pipeline" has again began to fill. The focus for 2015 sales efforts include incentive business, association business, continuing education and leveraging Mountain Village property owners and Telski brand partners and their deep connections within the business world. The TCC revenue goal for 2015 is \$450,000 a 15% increase from 2014. The five year strategic plan includes growing revenues to \$1Million by 2018 as we fill the sales pipeline and continuously build and leverage our sales database and TCC exposure

Community collaboration is major success factor for the TCC. For larger groups, multiple property lodging blocks are required. On December 9, 2014 at TCC community stakeholders meeting was held to introduce Allison Grassetti, listen to historical perspectives and gain support and collaborative efforts for the TCC. The stakeholders meetings will continue be held on a quarterly basis to align sales efforts and pinpoint collaborative sales efforts.

The Conference Center will continue to also be utilized as multi-use community asset in order to provide economic stimulus to the Mountain Village Core. 12 successful musical events were held at the Conference Center utilizing our partnerships with the Sheridan Arts Foundation and Beyond the Groove produced ClubRED shows. This momentum will carry into 2015 as we continue to leverage the largest strengths of the Telluride destination arts culture; music and film. A sound system, retractable screen and digital projector are needed to fully leverage the TCC as the hub of entertainment for Telluride and Mountain Village.

## 2 GROUPS & CONFERENCES

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**The current sales effort is focused on building a database into Salesforce/Delphi for the following segments:**

- Past guests and past leads from tradeshow and website RFP's.
- Focus on Colorado in-state corporate, incentive association markets
  - CSAE (Colorado Society of Association Executives)
  - MPI Denver (Meeting Planner International)
  - Purchased lists of corporate and association planners
- Current TCC Sales Director personal connections
- Build regional markets leads from:
  - Arizona (Phoenix, Tucson)
  - Texas (Dallas, Houston, Austin)
  - New Mexico (Albuquerque, Farmington)
  - Utah (Salt Lake City)

**The database will be utilized for the following 2015 sales campaign:**

- Build and grow database in Delphi through organic efforts and list purchase (Jan)
- Send out direct mail postcards (Quarterly)
- Follow up sales calls to direct mail recipients (Ongoing)
- Familiarization Trip for 10-12 qualified meeting planners with interests in holding meetings in Telluride (Quarterly Fams)
- Attendance to CSAE and MPI Denver events in collaboration with TCC lodging partners (Ongoing)
- Attendance at MICE (Meeting Industry Council Executives) – (Mar)
- Advertising in Colorado Meeting and Events Magazine (Quarterly)
- Digital marketing for TellurideConference.com (Ongoing)
- Participation at Destination Colorado in Denver (Monthly)
  - Collaborative effort to represent Colorado meeting and conferences on a global level
    - IMEX (October – Las Vegas)
    - Chicago Holiday Showcase Motivation Show (Incentive Travel Market)
  - Destination Colorado Trade Shows
    - Denver (Dec)
    - Dallas (Mar)
- Capture the following meeting planner databases for Colorado (Feb):
  - Helmsbriscoe (40 planners in Colorado)
  - Conference Direct (20 planners in Colorado)
  - Experient (20 planners in Colorado)
- Attendance at Mountain Travel Symposium - Whistler
  - MICE Exchange (April)
- Lead Generation:

- Utilization of CVENT
- RFP functionality update to Tellurideconference.com
- Organic SEO and paid SEO driving traffic to tellurideconference.com
- Collaboration with TTB
  - TCC inclusion in Summer and Winter Visitor Guides
- Promote TCC Executive Retreats and Incentive Meetings to Mountain Village Homeowners

### 3 TCC PROMOTION

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TCC will also be promoted through the following channels to effectively support the 2015 campaign:

- TCC website upgrade (tellurideconference.com)
  - RFP functionality
  - SEO Content Update
  - Lead generation
  - Tie into Telski social media
  - Photo gallery
  - Video gallery
- TSG website (Tellurideskiresort.com)
- Collaboration with the TTB
- New Telluride Conference Center Brochure
  - Electronically published
  - Customizable inserts
  - Matching note cards
- Meeting and event industry media and trade show displays

### 4 2015 TOWN OF MOUNTAIN VILLAGE FUNDING REQUEST

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The 2015 TCC Mountain Village funding Request Totals \$107,750

Capital Expenditure (\$15K):

- Engineered Ceiling Grid Load Analysis \$15,000

Sales and Marketing (\$92,750)

- Quarterly Planner Fam Trips Subsidy \$25,000
- TCC Website Improvements \$10,000
- TCC Meeting Planner Direct Mail \$15,000
- TCC Digital Marketing \$15,000
- TCC Print Advertising \$17,750
- Direct Sales Expense \$10,000

**AWARD-WINNING & CONSISTENT RECORD-BREAKING SALES PERFORMANCE**

**21 Year Successful Career in Promoting & Marketing Top Resort / Hotel Destinations & Vacation Properties**

**Expertise in Transforming and Profitably Turning Around Underperforming Organizations  
Creating a Culture of Excellence Leading to Unprecedented Revenue Generation**

**Seeking a Director / Senior Level Management Position** that will capitalize on my expertise in Sales, Personnel and Operations Management in the Luxury / Resort & Tourism Industry—combined with my Passion for Inspiring and Empowering High Performance, Motivated and Client Driven Teams—Delivering the Highest Quality Service and Products.

**Core Competencies:**

- Creating Product and Sales Strategies Focused Around Client Vision and Delivering an Amazing Client Experience
- Recruiting, Hiring, Training and Cultivating High Performance Sales Teams with Leadership Potential
- Directing Multimillion Dollar Sales and Marketing Budget to Optimize Brand Visibility with Target Market
- Developing Innovative Promotional / Marketing Strategies and Events to Build VIP / High Net Worth Client Connections
- Sourcing, Following Up and Converting High Quality Leads through Social Media and Internet Research
- Reviewing / Analyzing Reports and Leads Pipeline — Determining and Taking Action to Achieve Weekly Sales Goals

**Key Strengths:**

- Attentive, Courteous and Respectful—Able to Quickly Identify Client Needs and Build Rapport, Trust and Relationships
- Exemplify Core Values of Integrity, Honesty, and Accountability with Exceptional Work Ethic / Commitment to Excellence
- Engaging, Persuasive and Articulate Presenter / Negotiator — Highest Closing Average per Initial Client Contact
- Poised, Socially Aware / Culturally Astute and Familiar with Luxury Resort Destinations throughout the US and EU

**PROFESSIONAL EXPERIENCE & KEY ACHIEVEMENTS**

**BRECKENRIDGE GRAND VACATIONS - Breckenridge, Colorado**

**Commissioned Sales Agent (2013 to Present)**

- Rookie Sales Agent of the Year in 2013—Selling \$770,000 in 2013 and trending in 2014 to sell \$1.2 Million!
- Customer Service Excellence Recognition in April 2014.

**GATEWAY CANYONS RESORT – Gateway, Colorado**

58 Room Luxury Resort owned by the founder of the Discovery Channel

**Director of Sales and Marketing Planning & Execution (2011 to 2013)**

- Achieved group sales Goal of \$1.3 Million in the year for the year.
- Managed a \$2.1 Million marketing budget employing web designer, digital media groups and Zimmerman PR agency.
- Arranged VIP guest / travel writer visits and familiarization tours of the Resort.
- Ensured SEO, SEM and web results to drive top line revenue for the Group and Transient Markets.

**CRESTED BUTTE MOUNTAIN RESORT - 500 Units & 30,000 sf of Convention / Meeting Space**

**National Sales Manager (2010 to 2011)**

- Achieved group sales goal for 2011.
- Exploited internet research, digital media, and qualified leads strategies to the Colorado market as well as the Northeastern and Western U.S.—aggressively placing 2-3 days of 30 solicitation calls to market and the Front Range.
- Planned, coordinated and hosted multiple FAMS events annually to Brand Crested Butte as a Business Destination.

**RED LION HOTEL DENVER SOUTHEAST - Largest Owned and Managed Red Lion Hotel within the Portfolio**

**Director of Sales and Marketing / Conference Services & Group Sales (2009 to 2010)**

- Member of the Executive Committee in charge of implementing the 2010 Marketing Plan and transition to Delphi system.
- Led weekly revenue meetings, mentored, empowered 6 Direct Reports and achieved Team & Personal Goals.

- Continued -

## PROFESSIONAL EXPERIENCE (Continued)

DENVER MARRIOTT CITY CENTER - 615 sleeping rooms, 24 meeting rooms and 30,000 sf of meeting space.

**Director of Sales** (2008 to 2009)

- Strategically targeted current and new high value accounts for Loyalty and Incentives to achieve annual revenue goals.
- Implemented aggressive solicitation plan through customer outreach to Top 50 accounts for each Sales Manager to grow sphere of influence and secure additional business despite a flagging economy.

COPPER MOUNTAIN RESORT - 700 units and 70,000 sf of meeting space accommodating up to 1000 attendees

**Senior Sales Manager - National Corporate Market** (2002 to 2008)

- Achieved Revenue over sales goal by 105% in FY 2002-2003; and 120% YoY each year from FY 2003 to 2007.
- Booked the largest group ever in Copper Mountain Resort's history which generated \$1 Million in revenue.
- Recipient of the Copper Mountain Resort Outstanding Performance Award for Demonstrating the IntraWest Core Value of Guest Loyalty - 2004 & 2005.

ADAMS MARK HOTEL - Largest Convention Hotel in the RM Region with 1225 rooms and 133,000 sf of meeting space.

**National Sales Manager - Washington DC Area Association Sales** (1998 to 2002)

- Top Sales Producer—Booked 55,000 room nights and \$7 Million in revenue.
- Partnered with the Denver Metro Convention and Visitors Bureau to attract large Association business to Denver.

VAIL RESORTS - Vail, Beaver Creek, Breckenridge and Keystone Resorts.

**National Sales Manager - Northeast Corporate Group Sales** (1997 to 1998)

- Managed all marketing, logistics, and event presentations at luncheon / trade short in New York City with 200+ in attendance and sales teams representing all 4 resorts—booked multiple large meetings as a result.

HILTON HOTEL - 200 room hotel with 7,000 sf of meeting space in Breckenridge, Colorado.

**Sales Manager - Denver Corporate Sales** (1995 to 1997)

- Doubled sales revenue within 2 years.
- Sales Manager of the Year in 1996.

BEAVER RUN RESORT & CONFERENCE CENTER - Breckenridge, Colorado

**Conference Services Manager / Banquet Manager** (1993 to 1995)

- Rookie Manager of the Year in 1994.

## COMMUNITY LEADERSHIP AND OUTREACH

- Fundraising Officer for the Upper Blue Elementary PTA - 2014
- Vice President of the Carriage House Child Care Board - 2005-2007
- Former President of the Breckenridge Resort Chamber Ambassadors
- Mentor of the Year - Summit County High School Optimist Club

## LICENSURE AND CERTIFICATIONS

- State of Colorado Real Estate Brokers License (Current)
- Certified Meeting Professional (CMP)

## EDUCATION AND ACTIVITIES

UNIVERSITY OF MASSACHUSETTS - Amherst, Massachusetts

**Bachelor of Science in Hotel, Restaurant and Travel Administration** 1991

- President - Future Hoteliers & Treasurer - Hotel Sales and Marketing Association

FISHER COLLEGE - Boston, Massachusetts

**Associate of Science in Travel and Tourism** 1988

- Class President



**COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**  
455 Mountain Village Blvd.  
Mountain Village, CO 81435  
(970) 728-1392

**Agenda Item No. 15**

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**TO:** Town Council  
**FROM:** Chris Hawkins, Director of Community Development  
**FOR:** Meeting of January 15, 2015  
**DATE:** January 8, 2015  
**RE:** Consideration of Appointments to the Town Hall Subarea Task Force

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The Town Hall Subarea Task Force (Task Force) is being formed pursuant to the Town Hall Subarea Task Force Bylaws (Bylaws). The Bylaws are attached to this memo in Exhibit A.

The impetus for the formation of the Task Force is the proposed Lofts at Mountain Village workforce housing project attached to the Gondola Parking Garage. The goal is to form the Task Force and have it in place in anticipation of the developer submitting plans to be reviewed by the Task Force. The Task Force will not meet until conceptual plans are presented to the Town by the developer.

The Bylaws call for seven members on the Task Force, with the following composition:

1. One member representing the owner of Parcel C.
2. One member representing the owner of Parcel D as a property owner within the Town Hall Subarea.
3. One “at large” property owner member representing the broader community selected from past members of the Comprehensive Plan Task Force.
4. Two “at large” property owners from either the broader community or the community of adjacent property owners impacted by development of the Town Hall Subarea.
5. Four members representing adjacent property owner communities (i.e., Trails Edge, Elkstone, Lorian and/or Mountain Lodge). These four Task Force members shall be appointed from a pool of candidates presented to the Town Council by the affected communities (i.e., Trails Edge, Elkstone, Lorian and Mountain Lodge).

Staff sent out an email seeking Task Force member candidates to: the surrounding property owner communities; persons that commented on the Town Hall Subarea rezoning last year; representatives that served on the Comprehensive Plan Task Force; and other potential at-large members. Town staff also asked Bob Delves if he would be willing to serve as the member representing the owner of Parcel C, which is owned primarily the Town. The TMVOA also submitted a representative as a property owner within Parcel D (Post Office Building). The following table summarizes the candidates for the various seats, with candidate background information shown in Exhibit B:

<b>Task Force Representation per Bylaws</b>	<b>Candidates</b>
Owner of Parcel C (Primarily Town)	Bob Delves
Owner of Parcel D (Primarily TMVOA)	Pete Mitchell
One at large member from Comp. Plan Task Force	Martinique Prohaska (Only member volunteering)
Two at large members from either the broader community or adjacent property owners impacted by development.	Brian Eaton Brian Kanaga (Can also represent Trails Edge) Suzanne Connolly (Can also represent Trails Edge) Penelope Gleason Dan Garner Lyn Gruss Bruce McIntyre (Can also represent Trails Edge)
Four Members Representing Adjacent Property Owner Communities	
Mountain Lodge	Steve Togni (HOA Selection)
Lorian	Marcy Pickering (HOA Selection)
Trails Edge	Bruce McIntyre, Brian Kanaga or Suzanne Connolly
Elkstone 21	Elizabeth Barth (Only Elkstone HOA candidate)

**RECOMMENDATION**

Staff recommends the Town Council appoint members to the Task Force with the following motion:

*“I move to appoint the following members to the Town Hall Subarea Task Force:*

<b>Task Force Representation per Bylaws</b>	<b>Members</b>
Owner of Parcel C (Primarily Town)	Bob Delves
Owner of Parcel D (Primarily TMVOA)	Pete Mitchell
One at large member from Comp. Plan Task Force	Martinique Prohaska
Two at large members from either the broader community or adjacent property owners impacted by development.	To Be Determined (TBD) By the Town Council
Four Members Representing Adjacent Property Owner Communities	
Mountain Lodge	Steve Togni
Lorian	Marcy Pickering
Trails Edge	TBD by Council
Elkstone 21	Elizabeth Barth

*The Task Force term shall run through the completion of the Conceptual Work Session as outlined in the Bylaws and shall automatically terminate thereafter.”*

## BYLAWS OF THE TOWN HALL CENTER SUBAREA TASK FORCE

### ARTICLE I

**Section 1 Name.** The name of this Task Force, organized by the Town of Mountain Village (“Town”), shall be the Town Hall Center Subarea Task Force (“Task Force”), which Task Force is authorized by Town Council to perform the task set forth herein. The Task Force shall not have any binding authority on the Town or Town Council and its scope of rights to provide non-binding recommendations shall be limited as specifically set forth herein.

### ARTICLE II Responsibilities

**Section 1 Tasks.** The Task Force shall complete the following tasks in general conformance with the Mountain Village Comprehensive Plan’s (“Comprehensive Plan”) Town Hall Center Subarea Plan, Principle I Policy 3 and Policy 4:

#### A. Task 1: Overall Site Development Plan

The Task Force shall carefully and efficiently evaluate and comment on the proposed use and development of new buildings greater than 500 sq. ft. or major additions to existing buildings that add 12.5% or more of additional floor area (“Improvements”) within Parcel C Town Hall Center (“Parcel C”) and Parcel D Medical Building (“Parcel D”) (as shown in the Town Hall Center Subarea Plan) by evaluating and commenting on the creation of site development plans for individual Improvements prior to any formal site-specific development plan applications for such Improvements being submitted to the Town.

- B. **Task 2: Recommendations of the Task Force.** The Task Force shall provide non-binding recommendations to both the Town’s Design Review Board (“DRB”) and Town Council, based on its evaluation of Site Plans provided through the design charrette process outlined in Article III, Task Force non-binding recommendations may include, without limitation, matters such as (i) impacts from building heights, massing, sizes, visual impacts, and light and noise pollution resulting from any proposed development; (ii) traffic, access, noise, safety and related impacts associated with any vacation and/or realignment of the existing Mountain Village Boulevard roadway improvements (including both pedestrian and existing intersection/traffic flow impacts and/or safety risks); and (iii) landscaping, berming, parking restrictions and related development impact mitigation measures.

### ARTICLE III Design Charrette Process

**Section 1 Creation of Site Plan.** The Task Force shall evaluate and assist the developer(s) (including a party with a contractual interest to acquire such property (“Acquiring Party”) for each of the individual Improvements proposed to be developed on Parcel C and Parcel D to review and refine Site Plans, using the following process steps:

- A. The developer(s) shall cause to be prepared an initial conceptual Site Plan (the “Initial Site Plan”) for the specific Improvements under consideration that includes the plan contents set forth in Article III, Section 2 below.
- B. The Town Community Development Staff (the “Town Staff”) and the owner(s) of the property or an Acquiring Party included in the Initial Site Plan initially will review with the developer this Initial Site Plan to ensure (i) each of their property interests (if any) adequately are protected, and



- (ii) that the submitted Initial Site Plan conceptually addresses the Town's big picture Design Regulations' requirements and the Comprehensive Plan Project Standards of the Town's Community Development Code (the "CDC"). To the degree changes are required to ensure these matters adequately are addressed, Town Staff and/or the owner(s) of the property or Acquiring Party included in the Initial Site Plan shall work with the developer(s) to ensure such changes are incorporated into the Initial Site Plan.
- C. Following the Town Staff review, Town Staff shall work with the developer(s) to schedule the initial Task Force design charrette review meeting, using the Initial Site Plan developed under Section A and Section B above (the "Initial Site Plan Session"). This Initial Site Plan Session shall involve a discussion of the Initial Site Plan among the Task Force, Town Staff and the developer(s), based on neighbor and/or other community concerns and the requirements of the CDC (including, without limitation, applicable Design Regulations and Comprehensive Plan Project Standards).
- D. The Initial Site Plan Session then shall be followed by the developer(s) revising the Initial Site Plan, to the extent the developer feels necessary, based on feedback at the Initial Site Plan Session, and then submitting a second Site Plan (the Final Site Plan") in cooperation with Town Staff for a follow-up Task Force charrette review meeting among the Task Force, Town Staff and the developer(s) (the "Final Site Plan Session"). This Final Site Plan Session shall continue discussions based on neighbor and/or other community concerns and the requirements of the CDC (including, without limitation, applicable Design Regulations and Comprehensive Plan Project Standards) and shall constitute the final Task Force regular meeting held with the developer(s) on the Site Plans.
- E. The Initial Site Plan Session and the Final Site Plan Session together shall constitute the Task Force's "Site Plan Meetings."
- F. The Site Plan Meetings shall be conducted through an open public process, with noticing to be provided by Town Staff (and specifically include notice provided on the Town's website, by Town email and press releases).
- G. The Site Plan Meetings process shall be held over a total of no more than two days for each for of Parcel C and Parcel D (one day for the Initial Site Plan Session and one day for the Final Site Plan Session), with the dates and times to be established and noticed, as set forth above, by Town Staff, in consultation with Task Force Members, the owner(s) of the property included in the Initial Site Plan and the developer(s).
- H. By the conclusion of the Final Site Plan Session the Task Force shall provide non-binding written recommendations to both DRB and Town Council (the "Site Plan Recommendations"). These Site Plan Recommendations shall be based only on matters approved by a majority of the Task Force (but also noting any dissenting, alternative or minority positions the Task Force deems appropriate). Such written recommendation shall be presented to DRB and Town Council at a "Conceptual Work Session" which is to occur within forty-five (45) days of the Final Site Plan Session of both the DRB and Town Council sitting in a joint meeting. This Conceptual Work Session shall occur prior to the developer(s) being allowed to submit any formal site-specific development applications for processing under the CDC.
- I. Upon conclusion of the Conceptual Work Session, for the particular parcel or Improvements under consideration the Task Force term shall be terminated as provided under Article IV, Section 3.

**Section 2 Plan Content.**

- A. The Site Plans required to be provided and processed by the developer(s) by these Bylaws shall include, at a minimum:
  - 1. An existing conditions plan with generally the same content as required for Design Review Process development applications under the Design Regulations and CDC.
  - 2. Proposed development plans with generally the same content requirements as are required for Design Review Process development applications to address the big picture requirements of the Design Regulations and CDC.
  - 3. Plans and information adequate to ensure the CDC Comprehensive Plan Project Standards adequately are being met.
  
- B. Additionally, each Site Plan shall include an overall plan that addresses building heights and massing, vehicular access, parking, pedestrian connections, service delivery and similar big picture site considerations as required by both the Design Regulations and CDC.

**ARTICLE IV  
Membership**

**Section 1 Appointments.**

- A. The Task Force shall consist of no less than nine members, each of whom shall be appointed by Town Council and reflect the following membership:
  - 1. One member representing the owner of Parcel C.
  - 2. One member representing the owner of Parcel D as a property owner within the Town Hall Subarea.
  - 3. One “at large” property owner member representing the broader community selected from past members of the Comprehensive Plan Task Force.
  - 4. Two “at large” property owners from either the broader community or the community of adjacent property owners impacted by development of the Town Hall Subarea.
  - 5. Four members representing adjacent property owner communities (i.e., Trails Edge, Elkstone, Lorian and/or Mountain Lodge). These four Task Force members shall be appointed from a pool of candidates presented to the Town Council by the affected communities (i.e., Trails Edge, Elkstone, Lorian and Mountain Lodge).
  
- B. Town Council may interview all HOA candidates prior to appointing the Task Force as an action at its regular meeting.

**Section 2 Purpose.** The responsibilities of the Task Force members are outlined in Article IV, Section 1. Town Council may add additional tasks at its discretion.

**Section 3 Term.** The Task Force term shall run through the completion of the Conceptual Work Session required above is completed and shall automatically terminate thereafter.

**Section 4 Qualifications.** A member of the Task Force shall be either (i) a full or part time resident of the Town of Mountain Village, (ii) a second homeowner of property located in the Town, or (iii) represent a business operating in the Town.

**Section 5 Replacement.** Upon the vacation of a Task Force member seat, the replacement Task Force member(s) shall be appointed by the Town Council following the same process as the original appointment set forth in Article IV, Section 1 above.

**Section 6 Removal.** A Task Force member may be removed from the Task Force by majority vote of Town Council, for good cause only. The Task Force Chair may, but need not, request that Town Council remove a Task Force member who is absent from 50% of the regularly scheduled meetings within a 12 month period.

## **ARTICLE V Officers**

**Section 1 Officers.** The Task Force may decide by majority vote to either: (1) elect a Chairperson and a Vice-Chairperson; or (2) not appoint a Chair or Vice-Chair and direct Town Staff to facilitate meetings with a Town Staff member acting as Acting Chairperson.

### **Section 2 Duties of Any Council Appointed Chair or Vice-Chair.**

- A. Chairperson. If a Chairperson is appointed, that Chairperson shall preside at all meetings of the Task Force and shall perform all duties usually incident to the office of Chairperson and such other duties as may be assigned to him or her from time-to-time by the Task Force, in accordance with these Bylaws.
- B. Vice Chairperson. If a Vice-Chairperson is appointed, in the absence or disability of the Chairperson, any appointed Vice Chairperson shall have all powers of and shall be subject to all restrictions upon the Chair. The Vice Chairperson shall perform such duties as may be assigned by the Task Force from time-to-time, in accordance with these Bylaws.

**Section 5 Staffing Support.** The Town Staff shall provide staff support to the Task Force to accomplish the tasks set forth above or as otherwise directed by Town Council. Secretarial duties for the Task Force shall be maintained by Town Staff, as follows (1) keeping of minutes of Task Force meetings and records of the Task Force; (2) attending all Task Force meetings and public events; and, (3) assisting with such other matters as the Task Force reasonably may direct to accomplish the tasks outlined above. The Task Force shall not direct any Town Staff member in any manner as to how that person performs his or her duties as a Town employee.

## **ARTICLE VI Meetings**

**Section 1 Regular Meetings.** The schedule for Task Force meetings shall be determined by Town Staff, in consultation with Task Force Members and the developer(s), as needed to accomplish the duties and tasks set forth above. Upon appointment of the Task Force Members by Town Council, which shall occur at the earlier of imminent development applications for Parcel C or D being submitted to the Town or at Town Council discretions, the Task force shall have an initial administrative meeting to elect officers and perform administrative task within 30 days of appointments by Town Council. Meetings dates shall be set, scheduled and noticed by Town Staff, as set forth above, and shall be held in an open and public setting, except with respect to any executive sessions held and noticed in accordance with applicable State law. Attendance by Task Force members at any meeting shall be in person or by telephone conference call where all parties can hear each other.

**Section 2 Special Meetings.** The Task Force shall not be allowed to call any special meetings outside of regular meetings.

**Section 3 Order of Business.** At regular meetings of the Task Force, the following outline presents the recommended order of business:

1. Approval of the meeting summary of last meeting
2. Old business
3. New business
4. Executive session (if needed)
5. Adjourn

**Section 4 Voting.** When a motion for vote is made at any Task Force meeting, all regular members of the Task Force shall vote either by voice or roll call vote. A roll call vote shall be conducted upon the request of a regular member of the Task Force or at the discretion of the presiding officer. Any action requiring a vote shall be decided by a simple majority of those Task Force members in attendance at any duly convened meeting with a quorum. Any vote of the Task Force is intended only to provide a means of creating nonbinding recommendations to DRB and/or Town Council for consideration.

**Section 5 Quorum.** A majority of the Task Force members shall be necessary to constitute a quorum for the transaction of business.

**Section 6 Rules of Order.** Unless otherwise specified in these Bylaws, the Task Force will follow procedures outlined in Robert's Rules of Order, Newly Revised.

**Section 8 Agenda.** The appointed Town Staff shall prepare the agenda, with guidance by any appointed Chairperson, and shall distributed copies of all Site Plan and/or other submissions no less than five calendar days in advance of any scheduled meeting. Other items of the agenda shall include, but not be limited to, disposition of minutes of the previous meeting and of any intervening special meetings, committee reports, as well as old and new business.

**Section 9 Open to the Public.** All meetings shall be open to the public, except for executive sessions authorized in the Colorado Open Meetings law, C.R.S. 24-6-402.

## Chris Hawkins

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**From:** Brian <brian\_kanaga@yahoo.com>  
**Sent:** Tuesday, January 06, 2015 1:40 PM  
**To:** Chris Hawkins; Kim Montgomery  
**Subject:** Re: Candidates for Town Hall Subarea Task Force

Dear Mr. Hawkins,

I am writing to express my interest in serving on the Town Hall Area Task Force in either  
The capacity as an HOA member representative OR as a citizen-at-large.

I am a full-time resident of Mountain Village, and a homeowner residing at 23 Trails Edge Lane.

I am a retired Wall Street trader with plenty of time to serve on committees day or night - weekends and powder days.

With an office window directly overlooking Town Hall, I am in a unique position to add insight to any development plans  
in this area. I welcome the opportunity to be chosen to serve the public on this committee.

Regards,  
Brian Kanaga

Sent from my iPad

## Chris Hawkins

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**From:** Brian Eaton <bingo.eaton@cox.net>  
**Sent:** Tuesday, December 30, 2014 10:11 PM  
**To:** Chris Hawkins  
**Cc:** brian kanaga; Geoffrey L. Harrison; Lauren Harrison; David Mehl  
**Subject:** Town Hall Sub-Area Task Force

Chris,

Please accept my name for inclusion in the task force force for this area which is very close to my residence.

Thank you,

Brian Eaton

104 Gold Hill Ct (since 1990)

Sent from my iPad

## Chris Hawkins

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**From:** Bruce MacIntire <brucem@luxwest.com>  
**Sent:** Tuesday, January 06, 2015 1:43 PM  
**To:** Chris Hawkins  
**Subject:** Re: Town Hall Subarea Task Force

Chris

I am currently President of the Trails Edge Homeowners Association across Mtn Village Blvd from town hall and developed the Trails Edge Condos back in 2008. As a developer, I am sensitive to the needs of a developer, but I would represent the opinions of the Trails Edge homeowners. There is a lot of concern in our subdivision, and I might be able to play a role that helps keep things in perspective and speculation to a minimum.

I moved to Telluride in the mid-70's and have watched the Town and Mtn Village take shape over the years. Most of my career was in resort development across the US with a bit of experience developing in Spain. I have been involved in many projects like this. Virtually all investments in Telluride are emotionally driven. That makes every change to someone's view particularly sensitive. My goal would be to communicate based on the facts of the zoning and building envelopes, and to offer opportunities to soften impacts if I see them. I believe the site between the Elkstone/Trails Edge subdivisions and town hall is the entry to the Mountain Village and needs to be planned with that as a guideline.

I would like to serve on the Town Hall Subarea Task Force.

- Bruce

Bruce MacIntire, Broker  
LuxWest Properties, Inc.  
[brucem@luxwest.com](mailto:brucem@luxwest.com) (970) 729-0979

## Chris Hawkins

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**From:** Dan and Greer Garner <garnerdr64@gmail.com>  
**Sent:** Thursday, January 08, 2015 7:01 AM  
**To:** Chris Hawkins  
**Subject:** Town Hall Subarea Task Force

I would like to serve as an at large member of this group looking at the workforce housing proposal at the Gondola Parking Structure.

I have been a homeowner in MV for 20 years and a full time resident for over 15 years. I have served on the MV Town Council for 8 years during the period that the Comprehensive Master Plan was developed and approved. Additionally, I served on the board of the MV Metropolitan District and participated in merging that organization into the Town of MV. I have served on the boards of the Historical Museum, Ballet and the Telluride Hospital District as well as being honored as Co-Outstanding Citizen of the Year in 2010 by the Telluride Foundation.

Dan Garner  
253 Adams Ranch Road

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**Dan and Dr. Greer Garner**  
**Telluride, CO**



## Chris Hawkins

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**From:** Elizabeth Barth <ebarth@me.com>  
**Sent:** Tuesday, January 06, 2015 1:25 PM  
**To:** Chris Hawkins  
**Cc:** Kim Montgomery  
**Subject:** Re: Town Hall Subarea Task Force  
**Attachments:** EBB Resume CS.pdf; ATT00002.htm

Thanks for your time and consideration of the task force composition. I am a member of the Elkstone Owners Association, and I am currently the treasurer on the board of the EOA. We have owned our unit (1 Elkstone) since March of 2013.

I am interested in a position on the task force for two primary reasons. First, I think the Elkstone units are highly impacted by the recent propositions for the sub area development. My goal in working through these propositions is clear and shared communication. In addition to a clear focus in my role on the task force, I would work to be a conduit of factual information with the council and the EOA (both Elkstone and Trails Edge). Secondly, it is my belief that our unit is directly the most impacted by the recent propositions. We purchased our unit with the idea of being near the gondola, so I bring a perspective of compromise to the task force.

I am attaching my resume to illustrate my background. Most recently, I worked for a group of investors running a commercial real estate investment fund.

In full disclosure, I am able to conference into any meeting, and I could attend sporadically in person. However, it is simply not a quick trip to get to Telluride from my primary residence in New York area.

Best,  
Elizabeth Barth

# ELIZABETH B. BARTH

44 Glen Avon Drive ~ Riverside, CT 06878 ~ (203) 554-5585

<b>Professional Experience</b>	<b>WILLOWGROVE ASSET MANAGEMENT</b> Managing Director, <i>March 2012-July 2013</i> <ul style="list-style-type: none"><li>Identified and analyzed commercial investment properties</li><li>Prepared financial tracking data and comparisons</li></ul>	Greenwich, CT
	<b>MERRILL LYNCH</b> Director, <i>June 2001-July 2005</i> <ul style="list-style-type: none"><li>Equities Division/US Shares Trading - Financials/Insurance Sector</li><li>Sector Manager - Financials, Insurance, REITS, Energy and Utilities</li><li>Women's Bond Club, Women's GMI Network - Steering Committee</li></ul>	New York, NY
	<b>UBS WARBURG, LLC</b> Director, <i>June 2000-June 2001</i> <ul style="list-style-type: none"><li>Equities Division/US Shares Trading – Financials/Insurance Sector</li></ul>	Stamford, CT
	<b>GOLDMAN, SACHS &amp; CO.</b> Vice President, <i>June 1999-June 2000</i> ; Associate, <i>August 1995-June 1999</i> <ul style="list-style-type: none"><li>Equities Division/US Shares Trading - <i>Sector experience includes:</i> Banking, Brokerage, Insurance, Pharmaceuticals, Healthcare, Airline, and Consumer Products</li><li><i>August 1995-November 1995 and Summer 1994:</i> Intensive Equity training program</li><li>"Best-Execution" Rating Services Project Leader for Equities Division, Financial Analyst Training team, Vanderbilt Recruiting Captain</li></ul>	New York, NY
<b>Education</b>	<b>VANDERBILT UNIVERSITY</b> <b>Owen Graduate School of Management</b> Masters in Business Administration, <i>May 1995</i> <ul style="list-style-type: none"><li>Concentration in Finance and Accounting, Dean's List, Amy Jorgensen Scholarship Recipient, Honor Council Representative, Accounting Assistant, Max Adler Investment Club</li></ul>	Nashville, TN
	<b>UNIVERSITY OF MONTANA</b> Bachelor of Arts, Mathematics, Honors Graduate, <i>May 1993</i>	Missoula, MT
<b>Volunteer Leadership</b>	<b>RIVERSIDE SCHOOL PTA</b> <i>June 2006-June 2013</i> <ul style="list-style-type: none"><li>President, VP Communications, Treasurer, Webmaster, PTAC Special Events Coordinator, Class Parent</li></ul>	Riverside, CT
	<b>ST. PAUL'S DAY SCHOOL</b> <i>September 2007-May 2014</i> <ul style="list-style-type: none"><li>Day School Executive Board, Chair and Secretary, Day School Treasurer</li></ul>	Riverside, CT
	<b>JUNIOR LEAGUE OF GREENWICH</b> <i>September 2004-June 2013</i> <ul style="list-style-type: none"><li>Letter Perfect Business Manager, Partnership in Education, Kids in the Kitchen, Environmental Education, and New Member Training</li></ul>	Greenwich, CT
<b>Interests</b>	<b>FAIRFIELD COUNTY WOMEN'S TENNIS LEAGUE</b> <i>March 2010-present</i> <ul style="list-style-type: none"><li>President, Webmaster, and Division Secretary</li><li>90 teams, 30 clubs, 1800+ participants; Filed successfully for 501c7 status</li></ul>	Greenwich, CT

Golfing - 2014 flight two 18 hole champion, Fairfield Paddle League Director/Webmaster, Greenwich Women's Tennis League Founder/Webmaster, horseback riding (former western riding instructor), alpine skiing, Elkstone HOA Vice President, completed the 1998 NYC Marathon and 2000 Half Marathon Series

## Chris Hawkins

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**From:** Gruss, Lyn (FHP) <Lyn.Gruss@Fairmont.com>  
**Sent:** Wednesday, January 07, 2015 8:54 AM  
**To:** Chris Hawkins  
**Subject:** RE: Town Hall Subarea Task Force

Good morning Chris,

Thank you very much for reaching out to me regarding the Task Force Opportunity. I am very interested in contributing to the task force. My only concern is that I will be out of the office the week of 1/26-30 for business travel. And, additional dates may arise that require travel for business.

*Lyn Gruss, Regional Director, Human Resources, Fairmont Heritage Place is uniquely qualified to participate on the Sub-area Task force. She is a 20 year San Miguel County Resident, who currently resides in Ophir. During her 20 years of residency, she has been employed entirely in Mountain Village in a Human Resources Capacity beginning at The Peaks Resort and Golden Door Spa. Lyn was part of the Franz Klammer Lodge pre-opening team. From concept to operations, and then later from independent to branded, Lyn has been involved in managing the Human Resources functions of one of the most successful Mountain Village businesses, Fairmont Heritage Place, Franz Klammer Lodge. In 2009 Lyn's role expanded to incorporate the Human Resources Management of Fairmont Heritage Place, North America which is currently comprised of 6 properties in 3 countries. Lyn is married and mother of one. Her daughter is a graduate of the Telluride school system, attending preschool through high school in Telluride.*

Please let me know if you have any questions Chris. Thank you.

Best Regards,

Lyn Gruss  
Regional Director, Human Resources  
FAIRMONT HERITAGE PLACE  
567 Mountain Village Blvd.  
Telluride, CO 81435

970 728 7107  
970 728 0160 f

## Chris Hawkins

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**From:** Marcy Pickering <marcy@peakpropertytelluride.com>  
**Sent:** Wednesday, January 07, 2015 5:01 PM  
**To:** Chris Hawkins  
**Subject:** Town Hall Subarea Task Force

Lorian at Prospect Creek HOA  
111 San Joaquin Rd.

As the HOA property manager for the Lorian HOA and the caretaking manager for several of the owners within the association, I have been asked to be the representative on the behalf of the Lorian Ownership. I graciously accepted this to keep the association and the owners best interest in mind, and be their eyes and ears for future development that would impact them in anyway.

I have owned and operated a property management company that serves the Mountain Village and Town of Telluride for 13 years. I have seen much growth of this area in those years and find it very important to be sure that all development proposals are expressed to all parties that it impacts.

Thank you for your consideration,  
Marcy Pickering  
President/Owner  
Peak Property Management & Maintenance Inc.  
100 Aspen Ridge Dr.  
Mountain Village, CO 81435  
Office 970-729-0178  
Fax 970-728-0998

## Chris Hawkins

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**From:** Marti Prohaska <martiniquedavis@gmail.com>  
**Sent:** Thursday, January 08, 2015 9:31 AM  
**To:** Chris Hawkins  
**Subject:** Re: Town Hall Subarea Task Force

To whom it may concern,

I am writing to express my interest in serving on the Town Hall Subarea Task Force. I served on the Mountain Village Comprehensive Plan Task Force, as the Vice Chair for the final months, and saw that project to completion.

I grew up in Mountain Village, graduated from Telluride High School in 1997, and returned home after college in 2001. I purchased my home in Coyote Court seven years ago and have lived here since, with my two young daughters and my husband. We own a landscaping company in the summer and I am a supervisor for the Telluride Ski Patrol in the winter. I appreciate your consideration.

Respectfully,

Martinique Davis Prohaska

## Chris Hawkins

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**From:** penelopeg@bootdoctors.com  
**Sent:** Tuesday, January 06, 2015 12:44 PM  
**To:** Kim Montgomery  
**Cc:** Chris Hawkins  
**Subject:** RE: Town Hall Subarea Task Force

Dear Kim,

This email serves as my letter of interest in serving on the Town Hall Subarea Task Force.

My husband and I are shareholders/operators of the Bootdoctors Inc. retail stores, including our largest store located in Mountain Village since 1998. We know very well the challenges of keeping a business healthy in our region, including the challenges of retaining quality employees, as well as to wisely allocate our limited land and infrastructure resources.

I have served on the TMVOA Board in the past as the commercial members' representative during the development of the Town Hall area. As a past leader of the Mountain Village Merchants' Association I have been involved in several efforts to increase our economic development and stimulus. Many of those efforts continue to enhance our community, such as the Sunset Concerts, Holiday decorations and activities, special events, increases in retail and hotel rooms. I have participated in every city-wide planning project in Mountain Village since we moved here. Most recently I sat on the Group Sales advisory committee. I have served as Board Member and President of the board for the Telluride Arts Organization. Currently I am a Board Member of the Telluride Tourism Board and of the Telluride Nordic Association Board. My husband and I stay actively involved in our community in many ways, including support of many local non-profits. Our business was the first one in Mountain Village to participate in the Green Business certification program.

My Role(s) at Bootdoctors are the V.P. of Marketing, CRM, PR and Social Media as well as a member of our Human Resources management team. We work closely with our employees to help them develop a strong career, achieve success in both work and personal life. We believe that fiscally responsible development of housing for employees as well as other shared community assets (such as parking, recreational infrastructure, health and wellness programs) through collaboration between private and governmental entities will ensure a sustainable, healthy community.

Thank you for the opportunity to offer my services to help with this important community process.

Penelope

## Chris Hawkins

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**From:** Anton Benitez <anton@TMVOA.ORG>  
**Sent:** Wednesday, January 07, 2015 4:27 PM  
**To:** Chris Hawkins  
**Cc:** Pete Mitchell  
**Subject:** RE: Town Hall Subarea Task Force

Chris,

I have spoken with Pete Mitchell, our residential Board representative, and he would be interested in being on the Task Force. As requested, below is a brief bio for Pete (directly from the last TMVOA election).

AB

**PETE MITCHELL** has served on the TMVOA Board of Directors since December 2012 as one of the Class A Residential representatives. Pete would like to continue to represent Mountain Village property owners during a second term to help protect property values, stimulate economic growth and vitality, and enhance the overall experience of living, working and playing in our resort community. Pete feels it is very important to have experienced representation on the TMVOA board and that his detailed knowledge of TMVOA issues make him the right person for this position.

Pete's background has been 33 years as licensee for McDonald's restaurants in California and Arizona. Pete was also a founder and Director of two community banks in California and Arizona and is still a Developer for commercial properties in Arizona and California. Pete attended Brown University and University of Southern California with Bachelors Degree in International Economics and a Masters Degree in Education. Pete built his home in Mountain Village in 2006 on Singletree Ridge. Pete's wife Shari is a Board Member of the Telluride Historical museum, Telluride Women's Network and President of the Adams Ranch Homeowners Association. For the past two years Pete has also served on the TMVOA Finance & Budget Committee.

## Chris Hawkins

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**From:** Steve Togni <stogni@mountainlodgetelluride.com>  
**Sent:** Friday, January 02, 2015 4:09 PM  
**To:** Chris Hawkins  
**Cc:** John Aylsworth; John Aylsworth; Steven Esparza; Nanine A' 'Odell; Lisa Nemeroff; Sharon Flynn; Huascar Gomez; Joe Solomon  
**Subject:** RE: Candidates for Town Hall Subarea Task Force

Hi Chris, hope all is well and that you and trust you enjoyed the Holidays with friends and family. Get ready for an awesome 2015!

The reason for my e-mail, pertaining to the e-mail below, is to express interest in representing the Mountain Lodge ownership and Homeowners Association on the Town Hall Subarea Task Force as requested by the Board of Directors at The Mountain Lodge.

Regards,

Steve Togni  
General Manager  
Noble House Hotels & Resorts  
457 Mountain Village Blvd.  
Telluride, CO 81435  
(O) 970-369-6011 | (F) 970-369-4317  
[stogni@mountainlodgetelluride.com](mailto:stogni@mountainlodgetelluride.com)





## Chris Hawkins

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**From:** Steve Togni <stogni@mountainlodgetelluride.com>  
**Sent:** Tuesday, January 06, 2015 1:56 PM  
**To:** Chris Hawkins  
**Subject:** FW: Town Hall Subarea Task Force

Hi Chris, I've attached an abbreviated Bio I used for another request. Hopefully this is what you're looking for. If not let me know and I can send something else.

Thx  
Steve

Steve Togni – General Manager, The Mountain Lodge at Telluride

I am responsible for leading, operating and managing every aspect of The Mountain Lodge at Telluride. Some of my responsibilities include overseeing the Sales/Reservations process, directing Front Desk and Housekeeping operations, guiding Human Resources and managing all property maintenance and capital improvement projects. I also create both the Noble House Hotels and HOA annual budgets for The Mountain Lodge at Telluride and act as the on-site liaison between homeowners, property operations and the corporate office. Prior to joining The Mountain Lodge 2004, I served various Executive Committee positions with Wyndham International within the United States and abroad. My career spans 21 years during which time I also worked for Marriot International, Renaissance Hotels & Resorts and the Melrose Hotel Company. Throughout my tenure with Wyndham International, I was regularly deployed to various parts of the country to oversee hotel conversions and rebranding. I was awarded and recognized as “Hotel Manager of the Year” at the Wyndham Bristol Hotel and was a member of the Executive Committee that earned the highly coveted “Hotel of the Year” award within Wyndham International at that hotel. I also helped Wyndham International and The Peaks Resort receive AAA’s “4-Diamond Award” rating in 2004, Condé Nast Traveler’s “Top 10 Resorts at a Ski Destination” in 2003 and Travel & Leisure’s “500 Greatest Hotels” in January 2004. Under Steve’s direction and during his tenure with Destination Hotels & Resorts, the Mountain Lodge at Telluride received various awards of recognition from DH&R including ; “Highest Internet Booking Revenue Percentage” in 2004, “Greatest RevPAR Index Gain” in 2004, “Highest Increase in Transient ADR” in 2007 and “Largest Increase in RevPAR Growth” in 2007. I also helped the Mountain Lodge earn both Conde Nast Travelers’ “Top 50 Ski Resort Hotels in North America” award in 2010 and the “Top 10 Pet Friendly Resorts” in 2011. Steve and his team were also awarded Trip Advisors Certificate of Excellence in 2012 and 2013. Most recently the Mountain Lodge was also awarded the #10 ranking in Best Hotels in Colorado by Conde Nast Traveler, under my leadership. During my time in Telluride, I have also served on the TMVOA Board (Town of Mountain Village Owners Association) as well as several other governmental task force committees and presently sit on both the CHLA Board (The Colorado Hotel and Lodging Association) as well as CFL (Colorado Flights Alliance). I have lived and worked in Telluride since 2002.

Education: Virginia Wesleyan College, Business Administration, B.S. 1991

## Chris Hawkins

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**From:** Suseconnolly <suseconnolly@yahoo.com>  
**Sent:** Tuesday, January 06, 2015 10:28 PM  
**To:** Chris Hawkins  
**Subject:** Submission

Dear Chris:

I would like to submit my name to serve on the Town Hall Re-Zoning Task Force. I would like to be considered for any relevant open position. I am a practicing commercial real estate lawyer with over 20 years experience and have extensive appearance in zoning matters. I feel that my experience in real estate and municipal codes would be valuable in helping analyze future development. Additionally, I have a working knowledge of the Comprehensive Plan and the Municipal Code of the Town of Mountain Village. I am an excellent code and survey reader. I am a full time resident residing at 23 Trails' Edge Lane.

Thank you for your consideration.

Best,

Susanne

Susanne Connolly, Esq.  
610 213 7520



**COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**  
455 Mountain Village Blvd.  
Mountain Village, CO 81435  
(970) 728-1392

**Agenda Item No. 16**

**TO:** Town Council  
**FROM:** Chris Hawkins, Director of Community Development  
**FOR:** Meeting of January 15, 2015  
**DATE:** January 7, 2015

**RE:** Consideration of a recommendation to Town Council for (1) Major PUD Amendment to (a) allow for the construction of a pool and porte cochere addition on the west side of Hotel Madeline on Lot OS-1-MVB and Lot 38-50-51R; (b) Bring a portion of OS-1-MVB and Lot 38-50-51R into the PUD; and (c) Amend and restate the PUD development agreement; and (2) Rezoning a portion of OS-1-MVB and Lot 38-50-51R from the Full Use Active Open Space Zone District to the Village Center Zone District.

**PROJECT GEOGRAPHY**

**Legal Description:** Lot 38-50-51R and OS-1-MVB, Mountain Village Filing No. 1  
**Address:** 568 Mountain Village Blvd.  
**Applicant/Agent:** Dylan Henderson  
**Owner:** Madeline Property Owner, LLC, dba Northview Hotel Group  
**Zoning:** Village Center Zone District  
**Existing Use:** Mixed Use Development  
**Proposed Use:** No change in use  
**Adjacent Land Uses:**  
➤ **North:** Franz Klammer Lodge  
➤ **South:** Meadows Ski Run & Granita  
➤ **East:** Plaza Condos and Columbia Condos  
➤ **West:** Courcheval & Heritage Parking Garage Entry  
**Lot Size:**  
➤ OS-1-MVB: 0.092 acre (3,996 sq. ft.)  
➤ Lot 38-50-51R: 1.892 acres

**ATTACHMENTS**

1. Exhibit A. Applicant Narrative
2. Exhibit B. Proposed Port Cochere and Pool Plans
3. Exhibit C. Proposed Ordinance with Attached Zoning Map. Draft PUD Development Agreement, and Draft Conveyance Agreement

**RECORD DOCUMENTS**

- Town of Mountain Village Community Development Code (as amended)
- Town of Mountain Village Home Rule Charter (as amended)
- Development Applications as maintained by the Community Development Department.

## **BACKGROUND**

The applicant is proposing a porte cochere and pool addition on the west side of Hotel Madeline over the current hotel drop off/valet area. The addition is proposed to be located on Lot 38-50-51R and OS-1-MVB. The Town owns OS-1-MVB and has consented to the application.

The porte cochere and pool addition will necessitate the following development applications that are being concurrently processed:

1. **Rezoning.** Rezoning of OS-1-MVB and a portion of the plaza areas on Lot 38-50-51R to the Village Center Zone District. The building addition will be in the Village Center Zone District while all the plaza areas below and outside the porte cochere will remain in the Full Use Active Open Space Zone District. This is matching the current zoning for Hotel Madeline, with the breezeways and plaza areas all zoned open space up to the exterior wall.
2. **Major PUD Amendment.** The addition requires a major amendment to the current Planned Unit Development on the property in order to bring the new addition into the PUD. The applicant is also seeking one new variation as outlined in the analysis section. A major PUD amendment also allows the owner and the Town to include Lot 38 into the PUD, remove already met PUD provisions, and to amend and restate the PUD agreement into a simpler and better development agreement.
3. **Minor Subdivision.** The Council is concurrently reviewing a minor subdivision to vacate the lot line between Lot 38-50-51R and OS-1-MVB as a class 5 development application. The goal is to create the larger parcel for the porte cochere and pool addition.
4. **Design Review Process.** The applicant is concurrently seeking the approval for a Design Review Process Development application from the DRB for the addition. Any DRB approval will need to include a condition that the Rezoning, Major PUD Amendment and Minor Subdivision development applications be approved or the Design Review Process development application will be null and void.

The Town originally approved a PUD on only Lot 50-51 in November of 2005 with the associated Development Agreement for Lots 50 and 51 Mixed Use Development Planned Unit Development as recorded at Reception Number 379631 ("Agreement"). Development on Lot 38 was excluded from the PUD. The variances granted by the Agreement include:

- A. The DRB has approved the grant of certain variations to the CDC Design Regulations, to allow the following:
  - 1) The use of stained cementitious vertical plank.
  - 2) No recession for plaza level windows for retail space.
  - 3) The use of copper accent roof.
  - 4) The use of 2:12 roof form.
- B. Town Council, based on a recommendation for approval from the DRB, has granted variations to allow the following:
  - 1) Increase the allowed maximum building height and maximum average building height under the CDC to the following:

Maximum Building Height:	86 feet 6 inches
Maximum Average Building Height:	64 feet 1 inch
  - 2) Remove the requirement that a parking space must be allocated to a specific unit.

- 3) Allow a width reduction for 22 of the proposed 202 parking spaces from the required 9-feet to 8-feet 6-inches; and, to allow a reduction in the 20-feet required backup space to 19-feet 7-inches for the four (4) parking spaces that the DRB required be 10-feet wide.

The Agreement requires the following community benefits:

- A. Addition of public parking managed by the Town to maximize all public parking spaces for the benefit of the public, with the land provided by the Owner;
- B. Addition of three units of employee housing beyond the five platted, required units;
- C. Improved vehicular entry to the Village Core;
- D. Improved pedestrian entry to the Village Core with land provided by the Owner;
- E. Plaza improvements that include the addition of the snowmelt system to the plaza beyond what is required and the space in the proposed structure to contain the necessary boilers for the snowmelt system; a fire pit area, plaza access and connections to adjacent plazas through the site;
- F. Space, guaranteed by the Owner to be used for the Telluride Adaptive Sports Program (TASP) directly adjacent to the ski run, in a development that is handicap accessible;
- G. A public ice rink, water feature and public performance space that is designed to provide a dynamic entryway area to the Mountain Village Core, on land provided by the Owner, which connects to the adjacent Village core plazas and is integrated to and visible from Heritage Plaza;
- H. Addition of public, plaza level bathroom services including baby changing stations in all bathrooms;
- I. Addition of a post office to serve Mountain Village core residents. The Town Council recognizes that the Applicant cannot offer a full service post office in this location, as Mountain Village does not have a zip code separate from the town of Telluride;
- J. A central loading dock area for the Village Core with land provided by the Owner; and
- K. Increase in the Short-Term Bed Base through the creation of a Hotel, subject to a recorded deed restriction placed on the use of the proposed efficiency lodge units to be operated and managed as a four or five star hotel.

The post office space envisioned for Hotel Madeline was relocated to the Town Hall Subarea, so the PUD amendment will allow for commercial and retail uses for the old post office space consistent with the Village Center Zone District. This includes a requirement for retail and restaurant uses since the old post office space directly fronts onto a primary plaza area Heritage Plaza. The ice rink, water feature and plaza areas have been dedicated to the Town for it to operate and maintain, with the water feature not utilized in several years due to water restrictions and new summer programming for Reflection Plaza.

The Town approved a replat of Lot 38, Lot 50 and Lot 51 into Lot 38-50-51R in 2009. A condo map was subsequently recorded for Lot 38-50-51R to create the Telluride Mountain Village Resort Condominiums.

### **Design Review Board Recommendation**

The Design Review Board considered the rezoning and PUD amendment applications at a public hearing on December 4<sup>th</sup> and made a unanimous recommendation for the Council to approve the development applications. Conditions of the DRB's approval have been included into the draft PUD development agreement attached to the ordinance.

## **CRITERIA FOR DECISION**

### **Rezoning Criteria**

1. The proposed rezoning is in general conformance with the goals, policies and provisions of the Comprehensive Plan;
2. The proposed rezoning is consistent with the Zoning and Land Use Regulations;
3. The proposed rezoning meets the Comprehensive Plan project standards;
4. The proposed rezoning is consistent with public health, safety and welfare, as well as efficiency and economy in the use of land and its resources;
5. The proposed rezoning is justified because there is an error in the current zoning, there have been changes in conditions in the vicinity or there are specific policies in the Comprehensive Plan that contemplate the rezoning;
6. Adequate public facilities and services are available to serve the intended land uses;
7. The proposed rezoning shall not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion; and
8. The proposed rezoning meets all applicable Town regulations and standards.

### **Major PUD Amendment Criteria**

The criteria for decision for a PUD amendment are the same as for the creation of a PUD:

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

## **ANALYSIS**

Staff believes that the proposed development applications meet the criteria for decision as outlined in the findings set forth in the ordinance. Staff believes that the key topic for deliberation concerns the final community benefit package as set forth in the PUD agreement and the conveyance agreement set forth in Exhibit C.

The applicant obtained the cost estimate for the ice rink shading and determined that it will provide: (1) \$60,000 to replace the cooling unit for the ice rink; and (2) the design and construction of shade structure over the ice rink in substantially the same dimensions and design as the conceptual design set forth in the plan set on Sheet A2.2 (Exhibit B). A

perspective view of the shade structure. will be presented to the Council at the public hearing and attached to the conveyance agreement with the site plan view.

The applicant has been working with Town staff and others to obtain cost estimates on the initially proposed three benefits (ice rink shade, replace ice rink cooling system and larger Heritage Plaza fire pit), which it originally estimated would cost \$160,000 in total. After working through different options for the design of the ice rink shade structure, the final proposed solution has resulted in a design that is significantly more attractive and functional than the concept that was originally contemplated. The enhanced shade structure will now cost approximately \$100,000 to design and construct and based on that cost, combined with the ice rink cooling system cost of \$60,000, the applicant has determined that it could not also commit to constructing a larger firepit in Heritage Plaza. Staff is supportive of the revised benefit package due to the benefits of extended ice skating season; reduced energy consumption due to shading; and the payment for a cooling system upgrade that is imminently needed due to the phase out of ozone depleting Freon. Moreover, the shading system can also be used as needed for ice rink event and activity programming in the summer.

### **RECOMMENDATION**

Staff recommends the Town Council approve the attached ordinance with the following motion:

*“I move to adopt an ordinance approving (1) Major PUD Amendment to (a) allow for the construction of a pool and porte cochere addition on the west side of Hotel Madeline on Lot OS-1-MVB and Lot 38-50-51R; (b) Bring a portion of OS-1-MVB and Lot 38-50-51R into the PUD; and (c) Amend and restate the PUD development agreement; and (2) Rezoning a portion of OS-1-MVB and Lot 38-50-51R from the Full Use Active Open Space Zone District to the Village Center Zone District.”*

**ORDINANCE NO. 2015-\_\_**

**ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO TO APPROVING: (1) A MAJOR PUD AMENDMENT TO: (A) ALLOW FOR THE CONSTRUCTION OF A POOL AND PORTE COCHERE ADDITION ON THE WEST SIDE OF HOTEL MADELINE ON LOT OS-1A-MVB AND LOT 38-50-51R; (B) BRING A PORTION OF OS-1A-MVB AND LOT 38-50-51R INTO THE PUD; AND (C) AMEND AND RESTATE THE PUD DEVELOPMENT AGREEMENT; AND (2) REZONING A PORTION OF OS-1A-MVB AND LOT 38-50-51R FROM THE FULL USE ACTIVE OPEN SPACE ZONE DISTRICT TO THE VILLAGE CENTER ZONE DISTRICT.**

**RECITALS**

- A. Madeline Property Owner, LLC, (“Owner”) has submitted to the Town a detailed Planned Unit Development amendment and rezoning development applications (“**Applications**”) pursuant to the requirements of the Community Development Code (“**CDC**”).
- B. The Town owns certain real property described as Lot OS-1A-MVB and the following condominium units in the Telluride Mountain Village Resort Condominiums located on Lot 38-50-51R: Plaza Unit, Unit CC-1145 (Zamboni Storage); CC-1104 (Bathroom); CC-1106 (Bathroom); CC-1142 (Ice Rink Retail); Ice Rink Retail-1143; CC-139, CC-140 and CC-141 (Bathroom); CC-141 and Ice Rink Unit CC-1147 (Compressor Room); CC-1201, 1203-ST3 (Stairs); CC-1204 (Elevator Machine Room); CC-1126 (Passenger and Service Elevator Lobby); CC-1131 (Water Feature Mechanical); CC-1132 \*(Town Loading Dock) and Town Parking Condominium (122 spaces) that are collectively referred to as the “**Town Property**”).
- C. The Owner owns the remainder of certain real property within the Telluride Mountain Village Resort Condominiums (“**Owner Property**”) except the Telluride Adaptive Sports Program Space in Unit Retail-112 (“**TASP Property**”) and the TMVOA space, Unit Retail-138 (“**TMVOA Property**”).
- D. The Town Property, Owner Property, TMVOA Property and TASP Property are collectively referred to as the “**Property**”.
- E. The Owner owns at least sixty seven percent (67%) of the Property which allows the Owner to apply for an amendment to the Lot 38-50-51R PUD. However, The Town provided consent for the inclusion of Town Property into the Applications (as defined below).
- F. The Owner received approval for a Planned Unit Development Plan from the Town on March 18, 2004 by Resolution No. 2004-0318-02 recorded at Reception No. 366172 in the records of the San Miguel County Clerk and Recorder (“**Public Records**”) as amended by Resolution No. 2005-1108-27 recorded at Reception No. 379630 in the Public Records as memorialize in the Development Agreement for Lots 50 and 51 Mixed Use Development Agreement (the “**Original Development Agreement**”) as recorded at Reception Number 379631 in the Public Records (collectively, the “**Original PUD**”).
- G. The Original PUD was amended by Resolution No. 2006-0227-01 and by the First Amendment to the Original Development Agreement as recorded at Reception Number 384823 in the Public Records (“**First Amendment**”).



- H. The Original PUD was amended by Resolution No. 2006-0613-6A and by the Second Amendment to the Original Development Agreement as recorded at Reception Number 402009 in the Public Records (“**Second Amendment**”).
- I. The Original PUD was amended by a Town Council action at the February 5, 2009 special meeting and by the Third Amendment to the Original Development Agreement as recorded at Reception Number 405663 in the Public Records (“**Third Amendment**”).
- J. The Original PUD was amended by a Town Council action at the May 21, 2009 meeting and by the Fourth Amendment to the Original Development Agreement as recorded at Reception Number 407360 in the Public Records (“**Fourth Amendment**”).
- K. Lot 38 received approvals for the development which currently sits on the location of former Lot 38. Lot 38 was replatted into the Lot 38-50-51R by a replat recorded February 2, 2009 at reception number 405678 in the Official Records (“Replat”), which combined Lot 38 with Lots 50/51 into one Lot 38-50-51R. The density and permitted uses on the former area of Lot 38 are set forth in Resolution No. 2001-0814-11 (“Lot 38 Resolution”). The Owner desires to officially incorporate the former Lot 38 and the Lot 38 Resolution into the 38-50-51 PUD.
- L. The Property has the following zoning designations pursuant to adopted resolutions as noted:

Resolution No.	Lot No.	Zoning Designation	Actual Units	Person Equivalent per Actual Unit	Total Person Equivalent Density
2004-0318-02 2005-1108-27	38-51-51R				
		Condominium	34	3	102
		Efficiency Lodge	100	0.5	50
		Employee Condo	8	3	24
		Commercial		28,372	
2001-0814-11					
		Condominium	4	3	12
		Lodge	20	0.75	15
		Efficiency Lodge	2	0.5	1
		Employee Apt.	2	3	6

- M. The Owner desires to construct a porte cochere and pool on the western façade of Hotel Madeline on a portion of the Plaza Unit and a portion of OS-1A-MVB (“**Improvements**”). The owner also desires to receive certain approvals related variations and variances to the requirements of the CDC (the “Variations”) as set forth in the Applications (as defined below).
- N. The Town owns OS-1A-MVB.
- O. The Improvements and Variations require a major amendment to the PUD pursuant to the requirements of the Community Development Code (“**CDC**”) Planned Unit Development Regulations.
- P. Lot 38-50-51R was divided into separate condominium units by the Condominium Map for Telluride Mountain Village Resort Condominiums as recorded at Reception Number 405678 in the Public Records (“**Hotel Madeline Condominium Map**”).

- Q. The Hotel Condominium Map shows the open plaza areas and breezeways up to the exterior building façade as a “Plaza Unit”, with the Town owning the Plaza Unit.OS-1A-MVB and the Plaza Unit are zoned Full Use Active Open Space and must be rezoned to the Village Center Zone District to allow for the Improvements.
- R. The Owner and the Town desire to (1) include the former area of Lot 38 into the PUD since the development on this lot it is a part of Hotel Madeline; (2) amend and restate the Development Agreement, First Amendment, Second Amendment, Third Amendment and Fourth Amendment which shall also include to the approvals, requirements and conditions related to the Applications (as defined below); (3) delete prior previously satisfied requirements from the Original PUD; and (4) clarify and refine the Lot 38-50-51R PUD.
- S. After completing a conceptual work session with both the Town Council and the Town’s DRB, the Applications.
- T. The DRB considered the Applications, testimony and public comment and recommended to the Town Council that the Applications be approved with conditions pursuant to the requirement of the CDC at a public hearing held on December 4, 2014.
- U. The Town Council approved the Applications at a public hearing and meeting held on December 11, 2014.
- V. This Ordinance establishes the zoning on the Property as shown in Exhibit A and zoning designations as follows:

<b>Lot No.</b>	<b>Zoning Designation</b>	<b>Actual Units</b>	<b>Person Equivalent per Actual Unit</b>	<b>Total Person Equivalent Density</b>
38-51-51RR	Condominium	38	3	114
	Efficiency Lodge	102	0.5	51
	Lodge	20	0.75	15
	Efficiency Lodge	2	0.5	1
	Employee Condo	10	3	30
	Commercial	Permitted on first floor plaza level spaces and for the spa		

- W. The public hearings referred to above were preceded by notice as required by the CDC Public Hearing Noticing Requirements, including but not limited to notification of all property owners within 400 feet of the Property, posting of a sign and posting on the applicable agendas.
- X. The Town Council approved the Applications with the following findings:

Rezoning Findings

1. The proposed rezoning is in general conformance with the goals, policies and provisions of the Comprehensive Plan because, without limitation:
  - a. The addition will promoted land use pattern envisioned in the Comprehensive Plan.
  - b. The addition will infuse vibrancy into the Mountain Village Center.
  - c. The addition will create amenities that are needed for a 4 and 5 star hotel.

2. The proposed rezoning is consistent with the Zoning and Land Use Regulations because, without limitation:
  - a. The uses are permitted in the Village Center Zone District.
  - b. The proposed rezoning complies with the zoning designations on the property; the density limitation; platted open space requirements; building height; and lot coverage requirements outlined in the Zoning Regulations.
  - c. The variation to CDC Section 17.7.12(C)(5)(m) to allow for snowmelt of the new sidewalk, pool deck area and related spaces is warranted because the current access drive, sidewalks and plaza areas are melted; the pool deck would be a safety hazard without snowmelt, and the Town desires to create a more vibrant and attractive resort destination.
  
3. The proposed rezoning meets the Comprehensive Plan project standards because, without limitation:
  - a. The visual impacts have been minimized and mitigated with the one-story addition since the pool and porte cochere are located in an area that will not adversely impact views.
  - b. Environmental and geotechnical impacts will be avoided.
  - c. The concurrent Design Review Process development application will ensure site specific issues are addressed.
  - d. The addition does not impact a ski run.
  
4. The proposed rezoning is consistent with public health, safety and welfare, as well as efficiency and economy in the use of land and its resources because, without limitation:
  - a. The design will ensure proper vehicular and pedestrian sight distance.
  - b. The Owner has agreed to mitigate pool activity noise through the design and operation of the swimming pool and spa area.
  - c. The Applications have been reviewed and approved by the Telluride Fire Protection District.
  - d. The Applications have been reviewed and approved by the Town Public Works and Police departments.
  - e. The proposed addition is also a very efficient use of limited land to provide for a porte cochere and swimming pool consistent with a 4 or 5 star hotel.
  
5. The proposed rezoning is justified because:
  - a. There have been changes in conditions in the vicinity and due to specific policies in the Comprehensive Plan that contemplate the rezoning, with Hotel Madeline needing a proper porte cochere and outdoor pool in order to be a true 4 or 5 star hotel.
  - b. The improvements will (A) help to provide economic and social vibrancy; (B) promote and focus economic and social vibrancy for visitors and residents; and (C) infuse vibrancy into the town's economic center.
  
6. Adequate public facilities and services are available to serve the intended land uses because, without limitation:
  - a. Police protection and water and sewer services will be provided by the Town
  - b. Fire protection will be provided by the Telluride Fire Protection District.
  - c. Hotel Madeline will be responsible for maintaining the sidewalk areas and other plaza spaces on OS-1A-MVB.
  
7. The proposed rezoning will not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion because, without limitation:
  - a. Adequate sight distance for vehicles and pedestrians will be provided.
  - b. Parking and access for the porte cochere will meet Town standards.

- c. Trash and delivery areas for the Property are not impacted.
8. The proposed rezoning meets all applicable Town regulations and standards.

Major PUD Amendment Criteria

1. The proposed rezoning is in general conformance with the goals, policies and provisions of the Comprehensive Plan because, without limitation:
  - a. The addition will promote land use pattern envisioned in the Comprehensive Plan.
  - b. The addition will infuse vibrancy into the Mountain Village Center.
  - c. The addition will create amenities that are needed for a 4 and 5 star hotel.
2. The proposed PUD is consistent with the underlying zone district and zoning designations on the site or to be applied to the site because, without limitation:
  - a. The uses are permitted in the Village Center Zone District.
  - b. The proposed rezoning complies with the zoning designations on the property; the density limitation; platted open space requirements; building height; and lot coverage requirements outlined in the Zoning Regulations.
  - c. The zoning designations on the site are established by the Town's approval of resolutions 2004-0318-02, 2005-1108-27 and 2001-0814-11, with this ordinance providing the new permitted zoning and zoning designations allowed on the Property.
  - d. The variation to CDC Section 17.7.12(C)(5)(m) to allow for snowmelt of the new sidewalk, pool deck area and related spaces is warranted because the current access drive, sidewalks and plaza areas are melted; the pool deck would be a safety hazard without snowmelt, and the Town desires to create a more vibrant and attractive resort destination.
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 because, without limitation:
  - a. The development will provide amenities for residents of the PUD and the public in general.
  - b. The PUD amendment is a very creative way to provide for needed amenities that are associated with a 4 and 5 star hotel.
  - c. The Improvements would not be possible without amending the PUD, and will provide amenities for hotel guests.
  - d. The PUD will continue to provide for the community benefits for the general public.
4. The proposed PUD is consistent with and furthers the PUD purposes and intent because, without limitation:
  - a. It will allow for flexibility, creativity and innovation in land use planning and project design.
  - b. The original PUD public benefits will continue to be provided
  - c. The proposed addition will benefit the community because it will allow for a better destination hotel with 4 and 5 star hotel amenities.
  - d. The amendment furthers the land use principles of the Comprehensive Plan
  - e. Efficient land use is being encouraged through a creative, minor addition
  - f. The development continues to allow for integrated planning for all of the Hotel Madeline property in order to achieve the PUD purposes.
5. The proposed PUD amendment meets the PUD general standards contained in CDC section 17.4.12(I), including but not limited to the authority to initiate a PUD amendment, landscaping

- and buffering and adequate infrastructure.
6. The PUD will continue to provide adequate community benefits, such as public parking, additional employee units, improved Village Core pedestrian and vehicular access and a public ice rink. The proposed addition will, in the opinion of staff, also provide for a better destination resort and create more economic activity and vibrancy as envisioned in the Comprehensive Plan. The Applicant is also providing the following community benefits/conveyance consideration:
    - a. Owner shall contribute up to \$60,000 to be used by the Town to replace the cooling unit for the Ice Rink located within the Community as set forth in the attached conveyance agreement.
    - b. Owner shall, at Owner's sole cost and expense, design and construct a shade structure improvements over the Ice Rink in substantially the same dimensions and design as set forth in the attached conveyance agreement.
  7. Adequate public facilities and services are available to serve the intended land uses because, without limitation:
    - a. Police protection and water and sewer services will be provided by the Town
    - b. Fire protection will be provided by the Telluride Fire Protection District.
    - c. Hotel Madeline will be responsible for maintaining the sidewalk areas and other plaza spaces on OS-1A-MVB.
  8. The proposed rezoning will not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion because, without limitation:
    - a. Adequate sight distance for vehicles and pedestrians will be provided.
    - b. Parking and access for the porte cochere will meet Town standards.
    - c. Trash and delivery areas for the Property are not impacted.
  9. The proposed PUD meets all applicable Town regulations and standards except for the variation noted herein.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council approves the Applications, the rezoning of the Property as set forth in Exhibit A, the draft PUD development agreement and the conveyance agreement for OS-1-MVC as set forth in Exhibit B, subject to the conditions set forth in Section 1 below.

### **Section 1. Conditions of Approval**

1. The Mayor is authorized to review and approve the final PUD Development Agreement, the associated conveyance agreement and other legal instruments which may be required to be amended concurrently with the PUD.
2. The zoning map shown in Exhibit A shall include the following elements in the Village Center Zone District: structural columns and the exterior material facing and the porte cochere and pool addition air space. The plaza area below the porte cochere at ground level and surrounding plaza areas and the access drive shall remain a part of the Full Use Active Open Space Zone District. The final zoning map shall be created by the Town working with the applicant based on the future condominium map, with such final map amended into the Official Zoning Map and signed by the Mayor.
3. The PUD development agreement or a separate legal instrument shall include the pool hours.
4. The Owner shall work with the Town to amend the applicable easements and/or license agreements to ensure the operation and maintenance of the sidewalks and plaza areas, including the proposed snowmelt system.

5. The Owner shall enter into a construction license and mitigation agreement prior to the construction of the porte cochere and pool addition.

**Section 2. Amendment to Official Zoning Map**

The Official Zoning Map is hereby amended as set forth in Exhibit A, with direction to the Planning Division to amend the Official Zoning Map for the Mayor’s signature as outlined in Condition No. 2 above.

**Section 3. Ordinance Effect**

- A. The following resolutions, PUD agreements and PUD amendments are hereby repealed, replaced and superseded:

<b>Legal Document Name</b>	<b>Reception Number</b>
Resolution No. 2001-0814-11	Unrecorded
Resolution No. 2004-0318-02	366172
Resolution No. 2005-1108-27	379630
Development Agreement for Lots 50 and 51 Mixed Use Development Agreement	379631
Resolution No. 2006-0227-01	384748
First Amendment to the Original Development Agreement	384823
Resolution No. 2006-0613-6A	384748
Second Amendment to the Original Development Agreement	402009
Third Amendment to the Original Development Agreement	405663
Fourth Amendment to the Original Development Agreement	407360

- B. This Ordinance shall have no effect on pending litigation, if any, and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided and the same shall be construed and concluded under such prior ordinances.
- C. All ordinances, of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed, replaced and superseded to the extent only of such inconsistency or conflict.

**Section 4. Severability**

The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause or portion of this Ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of this Ordinance.

**Section 5. Effective Date**

This Ordinance shall become effective on February 15, 2015.

**Section 6. Public Hearing**

A public hearing on this Ordinance was held on the 15<sup>th</sup> day of January, 2015 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd, Mountain Village, Colorado 81435.

**INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 11<sup>th</sup> day of December, 2014.**

**TOWN OF MOUNTAIN VILLAGE**

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

By: \_\_\_\_\_  
Dan Jansen, Mayor

ATTEST:

\_\_\_\_\_  
Jackie Kennefick, Town Clerk

**HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this 15<sup>h</sup> day of January, 2015.**

**TOWN OF MOUNTAIN VILLAGE**

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

By: \_\_\_\_\_  
Dan Jansen, Mayor

ATTEST:

\_\_\_\_\_  
Jackie Kennefick, Town Clerk

Approved As To Form:

\_\_\_\_\_  
J. David Reed, Town Attorney

I, Jackie Kennefick, 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. \_\_\_\_\_ ("Ordinance") is a true, correct and complete copy thereof.

2. The Ordinance was introduced, read by title, approved on first reading with minor amendments and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on \_\_\_\_\_, 2015, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Dan Jansen, Mayor				
Cath Jett, Mayor Pro-Tem				
Jonette Bronson				
John Howe				
Michelle Sherry				
Martin McKinley				
Dave Schillaci				

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 \_\_\_\_\_, 2015 in accordance with Section 5.2b of the Town of Mountain Village Home Rule Charter.

4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on \_\_\_\_\_, 2015. At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Dan Jansen, Mayor				
Cath Jett, Mayor Pro-Tem				
Jonette Bronson				
John Howe				
Michelle Sherry				
Martin McKinley				
Dave Schillaci				

5. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Town this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Jackie Kennefick, Town Clerk

(SEAL)



# Exhibit A: Zoning Map



Plaza Level Zoning - Lot 50-51R

**FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT  
FOR LOT 38-50-51R PLANNED UNIT DEVELOPMENT**

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“**Agreement**” or “**Development Agreement**”) for the Lot 38-50-51R Planned Unit Development (“**Lot 38-50-51R PUD**” or “**PUD**”) is made and entered into by and between the Town of Mountain Village, a home rule municipality and political subdivision of the State of Colorado (“**Town**”), and Madeline Property Owner, LLC, a Delaware limited liability company and its successors, assigns (“**Owner**”). The Town and the Owner are sometimes also referenced hereinafter individually as a “**Party**” and collectively as “**Parties**.”

**RECITALS**

- A. The Town granted approval for a Planned Unit Development Plan for Lots 50 and 51 on March 18, 2004 by Resolution No. 2004-0318-02 recorded at Reception No. 366172 in the records of the San Miguel County, Colorado Clerk and Recorder (“**Public Records**”), as amended by Resolution No. 2005-1108-27 recorded at Reception No. 379630 in the Public Records; as memorialize in the Development Agreement for Lots 50 and 51 Mixed Use Development Agreement (the “**Original Development Agreement**”) recorded at Reception Number 379631 in the Public Records (collectively, the “**Original PUD**”).
- B. The Original PUD was amended by Resolution No. 2006-0227-01 and by the First Amendment to the Original Development Agreement recorded at Reception Number 384823 in the Public Records (“**First Amendment**”).
- C. The Original PUD was further amended by Resolution No. 2006-0613-6A and by the Second Amendment to the Original Development Agreement recorded at Reception Number 402009 in the Public Records (“**Second Amendment**”).
- D. The Original PUD was further amended by Town Council action at the February 5, 2009 special meeting and by the Third Amendment to the Original Development Agreement recorded at Reception Number 405663 in the Public Records (“**Third Amendment**”).
- E. The Original PUD was further amended by Town Council action at the May 21, 2009 meeting and by the Fourth Amendment to the Original Development Agreement as recorded at Reception Number 407360 in the Public Records (“**Fourth Amendment**”).
- F. The Town granted approval for a development on Lot 38 on August 14, 2001 pursuant to Resolution No. 2001-0814-11 (“**Lot 38 Approval**”).
- G. The development approved under the Original PUD for Lots 50 and 51 and the development approved under the Lot 38 Approval were constructed and received final certificates of occupancy in 2009, with two primary buildings: Lot 50/51 Building and the Lot 38 Building.
- H. Lots 38, 50 and 51 and certain open space parcels owned by the Town were replatted into one lot now known as “**Lot 38-50-51R**” pursuant to the replat recorded on February 2, 2009 at Reception Number 405678 in the Public Records.
- I. A Colorado common interest community known as the “*Telluride Mountain Village Resort Condominiums*” (“**Community**”) was created on Lot 38-50-51R by the recordation of a Declaration of Covenants, Conditions and Restriction for Telluride Mountain Village Resort Condominiums on February 11, 2009 at Reception No. 405677 (“**Original Declaration**”) and the

Condominium Map for Telluride Mountain Village Resort Condominiums recorded on February 11, 2009 at Reception No. 405678 (“**Community Map**”).

- J. The Declaration was amended and restated by that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Telluride Mountain Village Resort Condominiums recorded on November 23, 2011 at Reception No. 420677 (“**Amended and Restated Declaration**”). The Original Declaration and the Amended and Restated Declaration and any further amendments or supplements thereto shall be referred to herein as the “Declaration.”
- K. The Town owns certain condominium units within the as follows: (i) Plaza Unit, (ii) Ice Rink Unit; (iii) Town Parking Condominium (containing approximately 122 spaces); and (iv) Civic Units: CC-1145 (Zamboni Storage); CC-1104 (Bathroom); CC-1106 (Bathroom); CC-1142 (Ice Rink Retail); Ice Rink Retail-1143; CC-139, CC-140 and CC-141 (Bathroom); CC-141 and Ice Rink Unit CC-1147 (Compressor Room); CC-1201, 1203-ST3 (Stairs); CC-1204 (Elevator Machine Room); CC-1126 (Passenger and Service Elevator Lobby); CC-1131 (Water Feature Mechanical); and CC-1132 (Town Loading Dock), which are collectively referred to herein as the (“**Town Property**”).
- L. The Owner owns all of the condominium units within the Community (“**Owner Property**”), except for: (i) the Town Property; (ii) Retail Unit 112 which is owned by the Telluride Adaptive Sports Program Space (“**TASP Unit**”) and (iii) Retail Unit 136 which owned by the Telluride Mountain Village Owners Association (“**TMVOA Unit**”).
- M. The Town Property, Owner Property, TMVOA Unit and TASP Unit are collectively referred to as the “**Property**”.
- N. Owner submitted an application to the Town for a Major PUD Amendment to: (i) officially incorporate the former Lot 38 and the Lot 38 Approval into the Lot 38-50-51 PUD; (ii) update and revise the PUD Development Agreement to reflect the current status of the PUD; (iv) expand the boundaries of the PUD to include OS-1A-MVB; (v) expand the PUD to include the construction of a porte cochere and outdoor pool and pool deck (“**Entry and Pool Improvements**”) on the western façade of the Community on a portion of the Plaza Unit and OS-1A-MVB; (vi) revise and update the current zoning within the Community; and (vi) memorialize the Town’s approval of certain variations and variances to the requirements of the CDC for the Lot 38-50-51R PUD (“**Variations**”).
- O. The Condominium Map shows the open plaza areas and breezeways up to the exterior building façade as a “Plaza Unit”, with the Town owning the Plaza Unit. OS-1A-MVB and the Plaza Unit are currently zoned Full Use Active Open Space and must be rezoned to the Village Center Zone District to allow for the Entry and Pool Improvements.
- P. OS-1A-MVB must be replatted to incorporate OS-1-MVB into Lot 38-50-51R to allow for the construction of the Entry and Pool Improvements which shall be incorporated within the PUD and the Community. Therefore, OS-1A-MVB must be conveyed from the Town to the Owner subject to the terms and conditions of this Agreement and the OS-1A-MVB Conveyance Agreement dated \_\_\_\_\_, 2015 attached hereto as **Exhibit “B”**, and incorporated herein (“**Conveyance Agreement**”).
- Q. The Town and Owner desire to amend the Original PUD to: (i) include the former area of Lot 38 into the Lot 38-50-51R PUD since the development on Lot 38 has been included within the Community; (ii) amend and restate the Original Development Agreement, First Amendment,

Second Amendment, Third Amendment and Fourth Amendment; (iii) memorialize the approvals, requirements and conditions related to the Applications(defined below); (iv) delete the conditions of the Original PUD that have been completed; and (v) clarify the remaining terms and conditions of the Lot 38-50-51R PUD.

- R. Hereafter, the boundaries of the Lot 38-50-51R PUD and the boundaries of the Community shall at all times be the same.
- S. The Owner owns at least sixty seven percent (67%) of the Property within the PUD which allows the Owner to apply for a Major Amendment to the PUD pursuant to Section 17.4.12(N)(3) of the Community Development Code (“**CDC**”). In addition, the Town provided consent for the inclusion of certain property owned by the Town (OS-1A-MVB) into the Applications.
- T. After completing a conceptual work session with both the Town Council and the Town’s Design Review Board (“**DRB**”) on October 16 and October 23, 2014, respectively, the Owner submitted to the Town a Major PUD Amendment Application, Rezoning Application, Minor Subdivision Application and Design Review Application (collectively the “**Applications**”) pursuant to the requirements of the CDC.
- U. The DRB considered the Applications, testimony and public comment and recommended to the Town Council that the Major PUD Amendment Application and Rezoning Applications be approved with conditions pursuant to the requirement of the CDC at a public hearing held on December 4, 2014.
- V. The Town Council approved the first reading of an ordinance approving the Major PUD Amendment Application and Rezoning Application and set the second reading of the ordinance and public hearing for January 15, 2015.
- W. The Town Council approved the Minor Subdivision Application subject to conditions at a public hearing held on December 4, 2015.
- X. The DRB approved the Design Review Application for the Entry and Pool Improvements subject to conditions at a public hearing held on January 8, 2015.
- Y. The Town Council considered the Major PUD Amendment Application and Rezoning Application, testimony and public comment and adopted an ordinance approving the Major PUD Amendment Application and Rezoning Application with conditions pursuant to the requirement of the CDC at a public hearing held on January 15, 2015.
- Z. The public hearings referred to above were preceded by notice as required by the CDC Public Hearing Noticing Requirements, including but not limited to notification of all property owners within 400 feet of the Property, posting of a sign and posting on the applicable agendas.

NOW, THEREFORE, in consideration of the above premises, the Town Council's approval of the Applications upon all terms and conditions contained herein, and the covenants, mutual obligations and promises as hereinafter set forth, it is agreed by and between the Parties as follows:

**1. INCORPORATION OF RECITALS.** The Parties confirm and incorporate the foregoing recitals into this Agreement.

**2. INCORPORATION OF LOT 38 IN THE PUD.** Lot 38, including the Lot 38 Approval, is hereby incorporated into and made a part of the Lot 38-50-51R PUD and subject to the terms and conditions of this Agreement.

**3. CONVEYANCE OF OS-1A-MVB TO OWNER AND INCORPORATION INTO THE PUD.**

The Town agrees to convey all of OS-1A-MVB to the Owner in order to allow for the construction of the Entry and Pool Improvements and incorporation into the Property, Community and PUD, subject to the terms and conditions of this Agreement and the Conveyance Agreement recorded at Reception No. \_\_\_\_\_ in the Public Records attached hereto as **Exhibit "B"**.

**4. RELATIONSHIP TO COMMUNITY DEVELOPMENT CODE**

To the extent of any conflict between this Agreement and the CDC, the terms, conditions, regulations and standards contained in this Agreement shall supersede the provisions of the CDC to the extent of conflict. Where this Agreement does not address specific CDC standards, the specific provisions contained in the CDC shall apply as determined by the Town Planning Division, subject to a final determination by the relevant review authority. In making this determination, the Planning Division and review authority shall consider the original intent of the PUD, the type of use, intensity of use, type of structure and similar factors to identify the situation covered by the CDC closest in comparison to the situation in the PUD. Notwithstanding the foregoing, when possible, the PUD and the CDC should be read to be consistent with one another.

**5. PERMITTED USES**

A. The permitted uses within the Property shall be the same as for the Village Center Zone District as set forth in the CDC.

B. The permitted uses for the Plaza Unit and Ice Rink Unit shall be the same as for the Full Use Active Open Space Zone District as set forth in the CDC.

C. Commercial and retail uses are permitted, without limitation, on floor areas in any location on the first floor and plaza level of the Community and on the first and second floor levels of the "Hotel Unit" as the same is depicted on the Community Map.

D. All plaza level spaces shall comply with the CDC Plaza Level Use Limitations, unless a conditional use permit has been issued by the Town in accordance with such limitations and the CDC.

E. Home occupations shall be allowed pursuant to the CDC Home Occupation Regulations.

**6. PERMITTED ZONING AND DENSITY**

The following table establishes the zoning designations and density within the PUD and the Community based on the Original PUD and Resolution No. 2001-0814-11:

Zoning Designation	Actual Units	Person Equivalent per Actual Unit	Total Person Equivalent Density
Condominium	38	3	114
Efficiency Lodge Units	102	0.5	51
Lodge	20	0.75	15
Employee Condo	10	3	30
Commercial	NA	NA	NA

## 7. **BUILDING HEIGHT**

Building height allowed by this Agreement shall be as follows:

Maximum Building Height: 86 feet 6 inches  
Maximum Average Building Height: 64 feet 1 inch

## 8. **PERMITTED VARIATIONS TO THE CDC**

- A. The DRB as part of the Original PUD approved the certain variations to the CDC Design Regulations, to allow the following:
- 1) The use of stained cementitious vertical plank.
  - 2) No recession for plaza level windows for retail spaces.
  - 3) The use of copper accent roof materials.
  - 4) The use of 2:12 roof form.
- B. Town Council, based on a recommendation for approval from the DRB, granted variations to allow the following:
- 1) Allowing the Entry and Pool Improvements to be located in close proximity to a lot line, with a specific variation to CDC Section 17.3.14.H that allow the DRB to impose a setback of up to 20 feet for swimming pools and hot tubs since noise will be mitigated and buffered. (2015 PUD Variation)
  - 2) Increase the allowed maximum building height and maximum average building height under the CDC to the following (Original PUD Variation):

Maximum Building Height: 86 feet 6 inches  
Maximum Average Building Height: 64 feet 1 inch
  - 3) Remove the requirement that a parking space must be allocated to a specific unit (Original PUD Variation).
  - 4) Allow a width reduction for 22 of the parking spaces located in the subsurface parking garage from the required 9-feet to 8-feet 6-inches; and, to allow a reduction in the 20-foot required backup space to 19-feet 7-inches for the four (4)

parking spaces that the DRB required be 10-feet wide under the Design Regulations (Original PUD Variation).

- 5) Allowance for the construction of the Pedestrian Bridge connecting the two major buildings within the Community, which shall be used only for pedestrian access within the Community for use as housekeeping and maintenance access between the buildings connected by the Pedestrian Bridge. In servicing the interior buildings and other portions of the Community, all housekeeping and maintenance carts shall access the Community buildings only by the Pedestrian Bridge and/or the underground garage/basement facilities within the Community. Housekeeping and Maintenance carts shall not use the Plaza Unit for access (Original PUD Variation).
- 6) Allow for snowmelt area in excess of the allowed square footage in the CDC (2015 PUD Variation).

## **9. ORIGINAL PUD COMMUNITY BENEFITS**

The Town Council determined that the Lot 38-50-51R PUD achieves one or more Community Purposes (referred to as Community Benefits in the CDC) by providing the public benefits listed below. Any elimination, cessation or change to any of these enumerated Community Benefits shall require a PUD Major Amendment pursuant to the CDC.

- 1) Addition of public parking managed by the Town to maximize all public parking spaces for the benefit of the public, with the land provided by the Owner;
- 2) Addition of three units of Employee Housing beyond the five units platted and required on Lots 50 and 51;
- 3) Improved vehicular entry to the Village Core;
- 4) Improved pedestrian entry to the Village Core with land provided by the Owner;
- 5) Plaza improvements that include the addition of the snowmelt system to the plaza beyond what is required and the space in the proposed structure to contain the necessary boilers for the snowmelt system; a fire pit area, plaza access and connections to adjacent plazas through the site;
- 6) Space, guaranteed by the Owner to be used for the Telluride Adaptive Sports Program (TASP) directly adjacent to the ski run, in a development that is handicap accessible;
- 7) A public ice rink and public performance space owned by the Town that is designed to provide a dynamic entryway area to the Mountain Village Core, on land provided by the Owner, which connects to the adjacent Village core plazas and is integrated to and visible from Heritage Plaza;
- 8) Addition of public, plaza level bathroom services including baby changing stations in all bathrooms;

- 9) A central loading dock area owned by the Town for the Village Core with land provided by the Owner; and
- 10) Increase in the Short-Term Bed Base through the creation of a “Hotel”, subject to a recorded deed restriction placed on the use of the 100 Efficiency Lodge Units located within the Lot 50/51 Building to be operated and managed as a four or five star hotel.

#### **10. ADDITIONAL 2015 COMMUNITY BENEFITS.**

The Town Council has determined that the Applications achieve one or more Community Benefits by providing the public benefits listed below. Any elimination, cessation or change to any of these enumerated Community Benefits shall require a Major PUD Amendment pursuant to the CDC.

A. Owner shall contribute up to \$60,000 to be used by the Town to replace/convert the cooling unit for the Ice Rink located within the Community in accordance with the terms and conditions of the Conveyance Agreement (“**Cooling Cost Contribution**”).

B. Owner shall, at Owner’s sole cost and expense, design and construct shade structure improvements over the Ice Rink in accordance with the Conveyance Agreement (“**Ice Rink Improvements**”).

#### **11. HOTEL AND RECONFIGURATION DEED RESTRICTIONS.**

The Property is subject to the Amended and Restated Hotel Deed Restriction recorded at Reception Number 430163 and the Reconfiguration Deed Restriction recorded at Reception Number 384749, as may be amended from time to time by the Town and the Owner, which require: (1) the hotel to be operated and managed as a four or five star hotel according to the requirements set forth therein; (2) the provision of 100 Efficiency Lodge Units; (3) the restriction of the reconfiguration of the 100 Efficiency Lodge Units to the configurations approved by the Town in the Final PUD Plan and the construction drawings submitting in connection therewith; (4) the provision of a sufficient number of rooms as hotel rooms within the 100 Efficiency Lodge Units; (5) the hotel rating of four or five stars shall be maintained at all times and that cash damages be assessed in the event of non-compliance with this deed restriction; and (6) the Town Council to approve the specific hotel operator as set forth in the Hotel Deed Restriction. Any elimination, cessation or change to any of these enumerated requirements shall require a Major PUD Amendment pursuant to the CDC

#### **12. EMPLOYEE HOUSING**

A total of ten (10) workforce housing units shall be maintained within the Community in accordance with and subject to the Town of Mountain Village Employee Housing Deed Restriction as recorded at Reception Number 406966.

#### **13. COMPLIANCE WITH PUD REQUIRED AGREEMENTS.**

Pursuant to the Original PUD and approval of the Applications, the Owner and Town shall comply with the following agreements, as may be amended from time-to-time by the mutual agreement of Owner and the Town:

- A. Amended and Restated Hotel Deed Restriction recorded at Reception Number 430163.



- B. Reconfiguration Deed Restriction recorded at Reception Number 384749. .
- C. Parking Management Agreement dated October 31, 2006 (unrecorded).
- D. Loading and Facilities Easement Agreement as recorded at Reception Number 407365.
- E. Community Entrance Driveways and Landscaping Easement Agreement as recorded at Reception Number 405671.
- F. First Amended and Restated Fire Lane Easement Agreement as recorded at Reception Number 405673.
- G. Garage Access Ramp and Tunnel Easement Agreement as recorded at Reception Number 405669.
- H. Ski/Golf Resort Operations, Stairways and Irrigation System Easements Agreement as recorded at Reception Number 405854.
- I. The Lot 38R Access Easement Agreement as recorded at Reception Number 346442.
- J. The Lot 38R Parking Easement Agreement as recorded at Reception Number 346443.
- K. Common Underground Garage Agreement as Recorded at Reception Number 346444.
- L. Community and Public Use and Access Easements Agreement as recorded at Reception Number 407366.
- M. Ice rink systems easement as recorded at Reception Number 407368.
- N. Loading Facilities and Management Plan dated June 15, 2009 (unrecorded).
- O. Plaza Unit Food and Beverage Operations License Agreement dated June 15, 2009 (unrecorded).
- P. Reflection Plaza MOU dated December 17, 2013 (unrecorded).
- Q. OS-1A-MVB Conveyance Agreement as recorded at Reception Number \_\_\_\_.

**14. APPROVAL OF FINAL PUD PLAN AND DENSITY TRANSFER.**

A. Town Council approved the Final PUD Plan as a part of the Original PUD which shall consist of the documents itemized in **Exhibit "A"** (hereinafter collectively referred to as "**Final PUD Plans**"). The final DRB approved plans for the Entry and Pool Improvements shall be deemed to be part of and included in the Final PUD Plans. The final construction plans and drawings for the PUD are incorporated into this Agreement by this reference and included in the definition of the Final PUD Plans.

B. Town Council, based on a recommendation for approval from the DRB, approved density transfers and density reallocations for the Property as part of the Original PUD follows:

- 1) Transfer of 25.33 Condominium Units, seventy-six (76) condominium density, to the Density Bank for the benefit of the Applicant.
- 2) Transfer of three (3) Employee Condominiums, nine (9) density to Lot 50-51R from the Town's Housing Authority to accommodate the three (3) additional deed restricted Employee Condominiums.

**15. CONSTRUCTION OF ICE RINK IMPROVEMENTS AND DELIVERY OF COMMUNITY BENEFITS AND CONSTRUCTION LICENSE.**

A. The Owner shall commence and complete construction of the Ice Rink Improvements in accordance with the terms and conditions of the Conveyance Agreement. The Ice Rink Improvements, and the public improvements associated with the Entry and Pool Improvements (sidewalks, landscaping, plaza areas, etc.) shall be public improvements (the "**Public Improvements**"). The Public Improvements shall be completed, issued certificates of occupancy and inspected by the Town to ensure compliance with the Town approved plans for such Public Improvements and deeded to the Town free and clear of all liens

and encumbrances prior to the issuance of any certificate of occupancy for the Entry and Pool Improvements

B. The Owner shall enter into an improvements agreement for the Public Improvements in accordance with CDC Section 17.4.13(L), prior to and as a condition of the issuance of a building permit for the Entry and Pool Improvements.

C. Prior to the issuance of a building permit for the Entry and Pool Improvements and the Public Improvements, the Owner shall enter into a construction license and staging agreement for and construction of the Entry and Pool Improvements and the Public Improvements and their impact on existing infrastructure.

**16. MISCELLANEOUS.**

**A. REMEDIES FOR BREACH OR DEFAULT.**

In the event Owner, or its successor in interest, should fail to perform or adhere to its obligations as set forth herein, and such failure continues for a period of thirty (30) days after the Owner receives written notice by registered mail, return receipt requested from the Town describing the failure in reasonable detail, then the Town shall have the following remedies against the Owner which remedies are cumulative and non-exclusive unless such failure is of a nature that it is not capable of being cured with 30 days in which case it shall be commenced within the 30 day period and diligently pursued to completion:

- 1) Specific performance;
- 2) Injunctive relief, both mandatory and/or prohibitory;
- 3) Denial, withholding, or cancellation of any building permit or any other authorization authorizing or implementing the development of the PUD and/or any structure or improvement to be constructed on the Property;
- 4) In the event of a material breach of this Agreement or default hereunder, denial or withholding of any Certificate of Occupancy for any structure or improvement to be constructed on the Property; and/or
- 5) Treat the default as a violation of the CDC and proceed to impose fines as set forth in the CDC as a violation of the CDC.

In the event that the Town should fail to perform or adhere to its obligations as set forth herein, including but not limited to any rezoning, land use or other action or inaction, direct or indirect, or pursuant to an initiated measure, taken without the Owner's consent, that alters, impairs, prevents, diminishes, imposes a moratorium on development, delays or otherwise materially and adversely affects any development, use or other rights under this Agreement, then the Owner shall have the following remedies:

- 1) Specific performance; and/or
- 2) Injunctive relief, both mandatory and or prohibitory;

B. **INDEMNITY**. Except as otherwise set forth herein, the Owner shall defend and hold the Town, harmless from and against any and all claims, demands, liabilities, actions, costs, damages, and reasonable attorney's fees that may arise out of or result directly or indirectly from the Owner's failure to comply with the terms and conditions of this Agreement, including without limitation, Owner's defective design or construction of the Public Improvements or Owner's failure to construct or complete the same; provided, however, that the provisions of this subsection b. shall not apply to loss, or damage or claims therefore attributable to the negligent acts or omissions of the Town, Metro District or TMVOA their agents, employees or contractors. After inspection and acceptance by the Town, and after expiration of any applicable warranty period, this Agreement of indemnity shall expire and be of no future force or effect.

C. **ATTORNEY FEES**. In the event of any action, proceeding or litigation between the Town and the Owner concerning this Agreement, the prevailing party shall be entitled to collect its reasonable legal fees and costs, including the reasonable value of salaried attorney's time. Any state court litigation to enforce the terms of this Agreement shall be commenced in San Miguel County, Colorado and venue shall be restricted to such county.

D. **BINDING EFFECT**. This Agreement shall extend to, inure to the benefit of, and be binding upon the Town and its successors and assigns and, except as otherwise provided herein, upon the Owner, its successors (including subsequent owners of the Property, or any part thereof), legal representatives and assigns. Owners of the Efficiency Lodge, Condominium and Employee Condominium units permitted under the Approval Resolution shall be bound by those provisions of this Agreement which specifically apply only to those units. This Agreement shall constitute an agreement running with the Property until: (a) modification or release by mutual agreement of the Town and the Owner or their successors and assigns; or (b) expiration of the term hereof. Upon the conveyance of the Property by Owner to a different entity or person, and provided that the Owner is not in default hereunder at the time of conveyance, then upon the conveyance of the Property the Owner shall have no liability under this Agreement for any act or omission occurring after the date of such conveyance; provided, that the third party transferee shall assume all liability for any act or omission arising under this Agreement.

E. **AUTHORIZATION**. The Parties hereto warrant they are fully authorized to execute this Agreement and have taken all actions necessary to obtain such authorization.

F. **WAIVER**. No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

G. **AMENDMENT OF AGREEMENT**. Except as otherwise set forth in this Agreement, this Agreement may be amended or terminated only by mutual consent in writing of the Town and the Owner.

H. **GOOD FAITH OF PARTIES**. In performance of this Agreement, or in considering any requested extension of time, the Parties agree that each will act in good faith and will not unreasonably withhold, delay or condition any approval or consent required or contemplated by this Agreement.

I. **FURTHER ASSURANCES**. 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. If all or any portion of the PUD, the Final Plat, or this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties shall cooperate in the joint defense of such

documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that the Owner and the Town receive the benefits that they would have received under this Agreement.

J. **CERTIFICATIONS.** Each Party agrees to execute such documents or instruments as the other Party shall reasonably request to verify or confirm the status of this Agreement and of the performance of the obligations hereunder and such other matters as the requesting Party shall reasonably request.

K. **RIGHTS OF LENDERS AND INTERESTED PARTIES.** The Town is aware that financing for acquisition, development and/or construction of the Property may be provided in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders, major tenants, hotel operators or managers and purchasers or developers of portions of the Property. In the event of an Event of Default by the Owner, the Town shall provide notice of such Event of Default, at the same time notice is provided to Owner, to any such interested party previously identified in writing to the Town. If such interested Parties are permitted, under the terms of its agreement with the Owner to cure the Event of Default and/or to assume Owner's position with respect to this Agreement, the Town agrees to recognize such rights of interested parties and to otherwise permit such interested parties to assume all of the rights and obligations of Owner under this Agreement.

L. **NOTICES.** All notices required hereunder shall be deemed delivered to the parties five (5) calendar days after posting the same postage prepaid by certified mail, return receipt requested, and addressed as follows:

To the Town:

Town of Mountain Village  
Attn: Town Manager and Town Attorney  
455 Mountain Village Blvd., Unit A  
Mountain Village, Colorado 81435

To the Owner:

Madeline Property Owner, LLC  
c/o Northview Hotel Group  
36 Narrow Rocks Road  
Westport, CT 06880

M. **SEVERABILITY.** 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.

N. **DEFINED TERMS.** All capitalized but undefined terms used in this Agreement shall have the meanings set forth in the CDC.

O. **TITLES OF SECTIONS.** Any titles of the several parts and sections of this Agreement are inserted or convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

P. **EXHIBITS AND ATTACHMENTS.** All exhibits and attachments to this Agreement shall be incorporated herein and deemed a part of this Agreement.

Q. **MINOR CHANGES.** The Parties executing this Agreement are authorized to make insubstantial changes to this Agreement and attached exhibits with the approval of Town Staff as they mutually consider necessary, so long as such changes are consistent with the intent and understanding of the Parties at the time of approval of this Agreement by Town Council. The execution of this Agreement shall constitute the approval of such future changes by the respective Parties.

17. **TOWN APPROVAL.** Subject to the terms and conditions herein, Town does hereby finally approve this Agreement, the Final PUD Plan, the Final PUD Plat, and the Final PUD Plans. This Agreement shall be incorporated by reference on the Final PUD Plan and Final PUD Plat. These instruments shall constitute the complete and final approval for the Lots 38-5051R PUD. The Final PUD Plat and this Agreement shall be recorded, at the Owner's expense, in the Public Records and shall run with the Property. The Final PUD Plans shall be filed of record with the Town's Community Development Department.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first written above.

**TOWN OF MOUNTAIN VILLAGE,**  
a Colorado Home-Rule Municipality

By: \_\_\_\_\_  
Dan Jansen, Mayor

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

Subscribed to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Dan Jansen as Mayor of TOWN OF MOUNTAIN VILLAGE.

Witness my hand and official seal.

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

**OWNER:**

MADLINE PROPERTY OWNER, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Simon A. Hallgarten, Authorized Signatory

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Subscribed to and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by Simon A. Hallgarten, Authorized Signatory of Madeline Property Owner, LLC, a Delaware limited liability company.

Witness my hand and official seal.

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

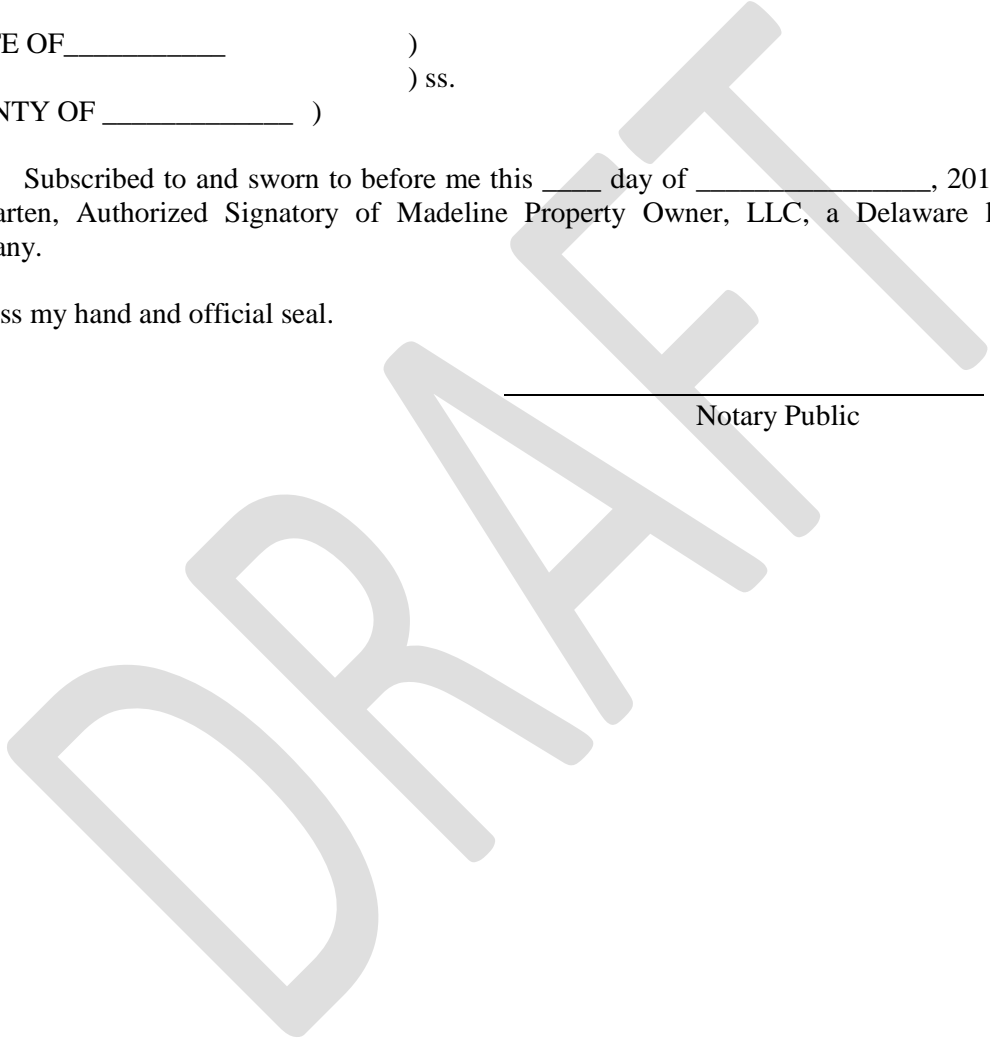


EXHIBIT A  
FINAL PUD PLANS

DRAFT

EXHIBIT B  
OS-1B-MVB CONVEYANCE AGREEMENT

DRAFT



## OS-1A-MVB CONVEYANCE AGREEMENT

**THIS OS-1A-MVB CONVEYANCE AGREEMENT** (this "**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 ("**Effective Date**"), by and between Madeline Property Owner, LLC, a Delaware limited liability company ("**Owner**") and the Town of Mountain Village, a home rule municipality and political subdivision of the State of Colorado ("**Town**").

### Recitals:

A. Owner has submitted an application to the Town to replat all of OS-1A-MVB owned by the Town ("**Open Space**") into Lot 38-50-51R to be incorporated into the Telluride Mountain Village Resort Condominiums, a Colorado common interest community, which located on Lot 38-50-51R ("**Community**"), to be used for the construction of a porte cochere and elevated outdoor pool and pool deck for the Community ("**Entry and Pool Improvements**") in accordance with plans approved by the Town's Design Review Board.

B. After a public hearing and careful consideration, the Town desires to grant and convey fee title ownership in the Open Space to Owner to be incorporated into Lot 38-50-51R.

C. The Town and Owner desire to enter into this Agreement to address the conditions and consideration for conveyance of the Open Space by the Town to Owner.

NOW, THEREFORE, for valuable consideration, consisting of the mutual promises, covenants and conditions contained herein, the sufficiency of which is acknowledged by the parties, the parties agree as follows:

1. **CONSIDERATION.** In consideration of the conveyance of the Open Space by the Town to Owner to be incorporated into Lot 38-50-51R, Owner shall provide the following:

1.1 **Cooling Upgrades.** Owner shall contribute up to \$60,000 to be used by the Town to replace the cooling unit for the Ice Rink located within the Community (the "**Cooling Upgrades**"). Upon presentment of invoices for the Cooling Upgrades to Owner from the Town, Owner shall forward funds to the Town within fifteen (15) days of receipt of the invoices.

1.2 **Ice Rink Shade Structure.** Owner shall, at Owner's sole cost and expense, design and construct shade structure improvements over the Ice Rink in substantially the same dimensions and design as the conceptual design set forth in Exhibit "A," (the "**Shade Structure**") subject to customary design review approval by the Town Design Review Board. Prior to submitting for final Town Design Review Board Approval, Owner shall submit the design and specifications of the Shade Structure to the Town's Recreation Department for review and approval of the Shade Structure, which shall not be unreasonably withheld. The completion of the Shade Structure shall be finished no later than November 30, 2015. Following completion of installation of the Shade Structure, the Owner shall notify the Town of such completion and the Town shall have ten (10) business days to inspect the Shade Structure for any defects. If such defects are noted, the Owner shall have ten (10) business days to correct any defects. Upon acceptance of the Shade Structure, the Owner shall provide the Town with a Bill of Sale for such Shade Structure along with an assignment of all warranties for the products and construction of the Shade Structure. Upon acceptance of the Bill of Sale for the Shade Structure, the Town shall be responsible for the ongoing operation, maintenance and repair of the Shade Structure, which shall be undertaken by the Town in the Town's reasonable discretion.

1.3 **Conditions for Issuance Certificate of Occupancy.** The certificate of occupancy for the Entry and Pool Improvements shall not be issued until the Town has accepted the Shade Structure and the Town has received reimbursement for the Cooling Upgrades. Provided, however, if the Town has not completed the Cooling Upgrades by November 30, 2015, then the certificate of occupancy shall be issued by the Town and the Owner shall be obligated to reimburse the Town (up to \$60,000) at such time as the Cooling Upgrades are completed and proper invoices are submitted to Owner.

2. **AMENDMENT TO CONDOMINIUM MAP.** By no later than sixty (60) days after the date of issuance of a certificate of occupancy by the Town for the Entry and Pool Improvements, Owner shall submit an amendment to the Community Condominium Map, which shall include the new units or expansion of existing units created by the Entry and Pool Improvements as well as all new ground level plaza space to be included within the existing Plaza Unit (owned by the Town) for review and approval by the Town in accordance with the Town's Community Development Code. As a condition of the Community Condominium Map amendment approval process, Owner shall submit an amendment to the Community and Public Use and Access Easements recorded at Reception No. 407366 for review and approval by the Town, which shall amend the description of the Community Entrance Easement Area to incorporate the newly constructed plaza areas.

3. **RECONVEYANCE OF PLAZA SPACE.** In connection with the amendment to the Community Condominium Map, all newly created ground level plaza space shall be incorporated into the Plaza Unit (owned by the Town) free and clear of all liens and encumbrances.

4. **GENERAL PROVISIONS.**

4.1 **Indemnity.** Owner shall indemnify and hold the Town harmless from any and all liability, damage, judgments and costs by reason of death or injuries sustained by or property damage suffered by any person on the Property in connection with Owner's activities contemplated by this Agreement, unless such claims arise from the negligence or intentional acts of the Town and/or Town's contractors, agents, representatives or invitees. If the Town is made a party to any litigation on account of any such claim, Owner shall pay all damages, cost and expenses recovered against the Town as determined by a final judgment by a court of competent jurisdiction. Such damages, costs and expenses shall be due forthwith after notice thereof from the Town. Owner shall also pay to the Town all reasonable out of pocket attorneys' fees, expert witness fees, expenses, costs and losses which the Town may incur in connection with such claim.

4.2 **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, addressed to the recipient at their address listed below their signature hereto. Any notice of a change of address shall be given as set forth in this provision to be effective.

4.3 **Waiver.** The waiver of a breach of any of the covenants contained in this Agreement, or the failure of a party to insist on the strict performance of any provision, rule or regulation shall not be construed to be a waiver of any succeeding breach of the same covenant, provision, rule or regulation.

4.4 **Written Modifications.** Any modification of this Agreement shall be effective only if it is in writing and signed by all parties hereto.

4.5 **Entire Agreement.** This Agreement contains the entire agreement between the parties as of this date, and the execution hereof has not been induced by either party by representations, promises, or understandings not expressed herein and there are no collateral agreements, stipulations, promises, or

undertakings whatsoever upon the respective parties in any way touching the subject matter of this instruments which are not expressly contained in this instrument.

4.6 Severance and Validity. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

4.7 Attorneys' and Expert Witness Fees. In the event that either party hereto has to retain counsel and/or expert witnesses to enforce any of the rights and duties created hereunder, then the prevailing party shall be awarded its reasonable attorneys' and expert witness fees and costs from the non-prevailing party, whether or not litigation is actually commenced and upon appeal.

4.8 Relationship of Parties. The parties shall not be considered or deemed to be joint venturers or partners and neither shall have the power to bind or obligate the other except as may be expressly set forth herein.

4.9 Applicable Law. This Agreement shall be construed and enforced in all respects in accordance with the laws of the State of Colorado.

4.10 Time of Essence. Time is of the essence with respect to all provisions of this Agreement.

4.11 Dispute Resolution, Venue, Remedies. The exclusive venue for resolution of disputes under this Agreement shall be in the Courts of San Miguel County, Colorado. Pursuit of any remedies provided for under this Agreement shall not preclude pursuit of any other remedies prescribed in other sections of this Agreement and other remedies provided at law or in equity, including injunctive relieve, and all remedies shall be cumulative.

4.12 Covenants Running with Land, Rights, Recordation. All covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the land and shall attach and bind and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns, except as otherwise provided herein. This Agreement shall be recorded in the real property records of San Miguel County, Colorado.

4.13 Counterparts. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year above written.

**MADLINE PROPERTY OWNER, LLC,  
a Delaware limited liability company**

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

Simon A. Hallgarten, Authorized Signatory  
Address: c/o Northview Hotel Group  
36 Narrock Rocks Road  
Westport, CT 06880  
Attn: Simon A. Hallgarten

STATE OF \_\_\_\_\_ )  
  )  
COUNTY OF \_\_\_\_\_ )

The foregoing was acknowledged before me on \_\_\_\_\_, 2015 by Simon A. Hallgarten, Authorized Signatory of Madeline Property Owner, LLC, a Delaware limited liability company.

Witness my hand and official seal.

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

\_\_\_\_\_

Notary Public

**TOWN OF MOUNTAIN VILLAGE**

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

Dan Jansen, Mayor

Address: Town of Mountain Village  
455 Mountain Village Boulevard, Suite A  
Mountain Village, Colorado 81435

STATE OF COLORADO )

)

COUNTY OF SAN MIGUEL )

The foregoing was acknowledged before me on \_\_\_\_\_, 2015 by Dan Jansen, Mayor,  
Town of Mountain Village.

Witness my hand and official seal.

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

\_\_\_\_\_

Notary Public

Approved as to Form:

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

James Mahoney, Assistant Town Attorney

**FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT**  
**FOR LOTS LOT 38-50 AND 51**  
**MIXED-USE DEVELOPMENT**  
**-51R PLANNED UNIT DEVELOPMENT**

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“**Agreement**” or “**Development Agreement**”) for the Lots-Lot 38-50 and 51 mixed-use development-51R Planned Unit Development (“Lots-Lot 38-50 and 51-51R PUD” or “**PUD**”) is made and entered into by and between the Town of Mountain Village, a home rule municipality and political subdivision of the State of Colorado (“**Town**”), and RAL Mountain Village Lodging Madeline Property Owner, LLC, a Delaware limited liability company (“**Applicant**”), with the consent of Telluride Mountain Village Resort Company, a Colorado non-profit corporation, doing business as Mountain Village Owners Association (“**MVOA**”), TSG Ski & Golf Company, LLC, a Delaware limited liability company (“**Telski**”) and the Mountain Village Metropolitan District (“**Metro District**”), a quasi-municipal corporation and political subdivision of the State of Colorado, its successors, assigns (“**Owner**”). The Town and the Applicant/Owner are sometimes also referenced hereinafter individually as a “**Party**” and collectively as “**Parties**.”

**RECITALS**

- A. The Town granted approval for a Planned Unit Development Plan for Lots 50 and 51 on March 18, 2004 by Resolution No. 2004-0318-02 recorded at Reception No. 366172 in the records of the San Miguel County, Colorado Clerk and Recorder (“**Public Records**”), as amended by Resolution No. 2005-1108-27 recorded at Reception No. 379630 in the Public Records; as memorialize in the Development Agreement for Lots 50 and 51 Mixed Use Development Agreement (the “**Original Development Agreement**”) recorded at Reception Number 379631 in the Public Records (collectively, the “**Original PUD**”).
- B. The Original PUD was amended by Resolution No. 2006-0227-01 and by the First Amendment to the Original Development Agreement recorded at Reception Number 384823 in the Public Records (“**First Amendment**”).
- C. The Original PUD was further amended by Resolution No. 2006-0613-6A and by the Second Amendment to the Original Development Agreement recorded at Reception Number 402009 in the Public Records (“**Second Amendment**”).
- D. The Original PUD was further amended by Town Council action at the February 5, 2009 special meeting and by the Third Amendment to the Original Development Agreement recorded at Reception Number 405663 in the Public Records (“**Third Amendment**”).
- E. The Original PUD was further amended by Town Council action at the May 21, 2009 meeting and by the Fourth Amendment to the Original Development Agreement as recorded at Reception Number 407360 in the Public Records (“**Fourth Amendment**”).
- F. The Town granted approval for a development on Lot 38 on August 14, 2001 pursuant to Resolution No. 2001-0814-11 (“**Lot 38 Approval**”).
- G. The development approved under the Original PUD for Lots 50 and 51 and the development approved under the Lot 38 Approval were constructed and received final certificates of occupancy in 2009, with two primary buildings: Lot 50/51 Building and the Lot 38 Building.

- H. Lots 38, 50 and 51 and certain open space parcels owned by the Town were replatted into one lot now known as “**Lot 38-50-51R**” pursuant to the replat recorded on February 2, 2009 at Reception Number 405678 in the Public Records.
- I. A Colorado common interest community known as the “**Telluride Mountain Village Resort Condominiums**” (“**Community**”) was created on Lot 38-50-51R by the recordation of a Declaration of Covenants, Conditions and Restriction for Telluride Mountain Village Resort Condominiums on February 11, 2009 at Reception No. 405677 (“**Original Declaration**”) and the Condominium Map for Telluride Mountain Village Resort Condominiums recorded on February 11, 2009 at Reception No. 405678 (“**Community Map**”).
- J. **The** Declaration was amended and restated by that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Telluride Mountain Village Resort Condominiums recorded on November 23, 2011 at Reception No. 420677 (“**Amended and Restated Declaration**”). The Original Declaration and the Amended and Restated Declaration and any further amendments or supplements thereto shall be referred to herein as the “**Declaration**.”
- K. The Town owns certain condominium units within the as follows: (i) Plaza Unit, (ii) Ice Rink Unit; (iii) Town Parking Condominium (containing approximately 122 spaces); and (iv) Civic Units: CC-1145 (Zamboni Storage); CC-1104 (Bathroom); CC-1106 (Bathroom); CC-1142 (Ice Rink Retail); Ice Rink Retail-1143; CC-139, CC-140 and CC-141 (Bathroom); CC-141 and Ice Rink Unit CC-1147 (Compressor Room); CC-1201, 1203-ST3 (Stairs); CC-1204 (Elevator Machine Room); CC-1126 (Passenger and Service Elevator Lobby); CC-1131 (Water Feature Mechanical); and CC-1132 (Town Loading Dock), which are collectively referred to herein as the (“**Town Property**”).
- L. **The** Owner owns all of the condominium units within the Community (“**Owner Property**”), except for: (i) the Town Property; (ii) Retail Unit 112 which is owned by the Telluride Adaptive Sports Program Space (“**TASP Unit**”) and (iii) Retail Unit 136 which owned by the Telluride Mountain Village Owners Association (“**TMVOA Unit**”).
- M. **The** Town Property, Owner Property, TMVOA Unit and TASP Unit are collectively referred to as the “**Property**”.
- N. Owner submitted an application to the Town for a Major PUD Amendment to: (i) officially incorporate the former Lot 38 and the Lot 38 Approval into the Lot 38-50-51 PUD; (ii) update and revise the PUD Development Agreement to reflect the current status of the PUD; (iv) expand the boundaries of the PUD to include OS-1A-MVB; (v) expand the PUD to include the construction of a porte cochere and outdoor pool and pool deck (“**Entry and Pool Improvements**”) on the western façade of the Community on a portion of the Plaza Unit and OS-1A-MVB; (vi) revise and update the current zoning within the Community; and (vi) memorialize the Town’s approval of certain variations and variances to the requirements of the CDC for the Lot 38-50-51R PUD (“**Variations**”).
- O. **The** Condominium Map shows the open plaza areas and breezeways up to the exterior building façade as a “Plaza Unit”, with the Town owning the Plaza Unit. OS-1A-MVB and the Plaza Unit are currently zoned Full Use Active Open Space and must be rezoned to the Village Center Zone District to allow for the Entry and Pool Improvements.

P. OS-1A-MVB must be replatted to incorporate OS-1-MVB into Lot 38-50-51R to allow for the construction of the Entry and Pool Improvements which shall be incorporated within the PUD and the Community. Therefore, OS-1A-MVB must be conveyed from the Town to the Owner subject to the terms and conditions of this Agreement and the OS-1A-MVB Conveyance Agreement dated \_\_\_\_\_, 2015 attached hereto as **Exhibit “B”**, and incorporated herein (“**Conveyance Agreement**”).

Q. The Town and Owner desire to amend the Original PUD to: (i) include the former area of Lot 38 into the Lot 38-50-51R PUD since the development on Lot 38 has been included within the Community; (ii) amend and restate the Original Development Agreement, First Amendment, Second Amendment, Third Amendment and Fourth Amendment; (iii) memorialize the approvals, requirements and conditions related to the Applications(defined below); (iv) delete the conditions of the Original PUD that have been completed; and (v) clarify the remaining terms and conditions of the Lot 38-50-51R PUD.

1)R. Hereafter, the boundaries of the Lot 38-50-51R PUD and the boundaries of the Community shall at all times be the same.

S. The Owner owns at least sixty seven percent (67%) of the Property within the PUD which allows the Owner to apply for a Major Amendment to the PUD pursuant to Section 17.4.12(N)(3) of the Community Development Code (“CDC”). In addition, the Town provided consent for the inclusion of certain property owned by the Town (OS-1A-MVB) into the Applications.

T. After completing a conceptual work session with both the Town Council and the Town’s Design Review Board (“DRB”) on October 16 and October 23, 2014, respectively, the Owner submitted to the Town a Major PUD Amendment Application, Rezoning Application, Minor Subdivision Application and Design Review Application (collectively the “Applications”) pursuant to the requirements of the CDC.

2)U. The DRB considered the Applications, testimony and public comment and recommended to the Town Council that the Major PUD Amendment Application and Rezoning Applications be approved with conditions pursuant to the requirement of the CDC at a public hearing held on December 4, 2014.

V. The Town Council approved the first reading of an ordinance approving the Major PUD Amendment Application and Rezoning Application and set the second reading of the ordinance and public hearing for January 15, 2015.

3)W. The Town Council approved the Minor Subdivision Application subject to conditions at a public hearing held on December 4, 2015.

X. The DRB approved the Design Review Application for the Entry and Pool Improvements subject to conditions at a public hearing held on January 8, 2015.

Y. The Town Council considered the Major PUD Amendment Application and Rezoning Application, testimony and public comment and adopted an ordinance approving the Major PUD Amendment Application and Rezoning Application with conditions pursuant to the requirement of the CDC at a public hearing held on January 15, 2015.

The ~~WHEREAS, MVOA is the Owner of certain real property presently described as:~~



~~Lots 50A, 50B, 50C, Replat Lot 50 Telluride Mountain Village, according to the plat filed of record in Plat Book 1, page 868, in the Office of the Clerk and Recorder,~~

~~\_\_\_\_\_and~~

~~Lot 51, Telluride Mountain Village, Filing 1, according to the Plat recorded in Plat Book 1 at page 476, in the Office of the Clerk and Recorder,~~

~~County of San Miguel,  
State of Colorado~~

~~(collectively the "MVOA Property");~~

~~\_\_\_\_\_WHEREAS, Telski is the Owner of certain real property presently described as:~~

~~Tract OS 3CR, Town of Mountain Village, according to the Plat of Tracts OS 3BR, OS 2CR, OS 3ER, OS 3M, OS 3N, OS 3P, OS 3Q, OS 3T, OS 3U, OS 3V, OS 3W, OS 3X, OS 3Y, OS 3Z and OS 42B, a Replat of Tract OS 3, OS 3B, OS 3C & OS 3E, Town of Mountain Village as recorded in Plat Book 1 at page 3330 in the records of the San Miguel County Clerk and Recorder,~~

~~County of San Miguel,  
State of Colorado~~

~~(collectively the "Open Space Tracts");~~

~~\_\_\_\_\_WHEREAS, RAL 50-51 Development, LLC, a New York limited liability company was the named Applicant in the Application (defined below);~~

~~\_\_\_\_\_WHEREAS, Applicant is the successor in interest of RAL 50-51 Development, LLC, and has assumed all obligation of RAL 50-51 Development, LLC and has agreed to assume and be bound by all the terms and conditions of Final PUD Plan (defined below) approval and this Development Agreement and all other agreements entered into or to be entered into in connection with and/or as a condition of the Final PUD Plan approval;~~

~~\_\_\_\_\_WHEREAS, Applicant is the contract purchaser of the MVOA Property under that certain Agreement for Sale and Purchase of Lots 50 and 51, dated November 5, 2002, as amended by those certain First and Second Amendments to Agreement for Sale and Purchase dated November 20, 2003, and October 19, 2005, respectively ("Lots 50/51 Purchase Agreement");~~

~~\_\_\_\_\_WHEREAS, Applicant submitted to the Town a detailed Planned Unit Development ("PUD") application ("Application") for approval of a Final PUD Plan known as the Lots 50 and 51 PUD or "Final PUD Plan" for the MVOA Property and the Open Space Tracts (collectively, the "Property") pursuant to Section 4-6 of the Town's Land Use Ordinance ("LUO") and its Design Regulations ("Design Regulations");~~

~~WHEREAS, at a public hearing held on February 27, 2003, and continued to March 27, 2003, the Town's Design Review Board ("**DRB**") recommended to Town Council that the Application for Conceptual PUD Plan be approved with conditions pursuant to LUO Section 4-606;~~

~~WHEREAS, at a public hearing on March 27, 2003, the Town of Mountain Village Town Council ("**Town Council**") approved the Application for the Conceptual PUD Plan with conditions pursuant to LUO Section 4-606;~~

~~WHEREAS, following public work sessions between the DRB and the Applicant on April 29, 2003, and May 22, 2003, at a public hearing held July 24, 2003, and continued to July 31, 2003, August 27, 2003, September 17, 2003, and October 15, 2003, the DRB approved the Application for Sketch PUD Plan approval with conditions pursuant to LUO Section 4-607;~~

~~WHEREAS, at a public hearing held January 14, 2004, and continued to January 27, 2004, and February 12, 2004, the DRB recommended to Town Council that the Application for the Final PUD Plan be approved with conditions pursuant to LUO Section 4-608;~~

~~WHEREAS, at a public hearing March 16, 2004, and continued to March 17, 2004, and March 18, 2004, the Town Council approved the Application for the Final PUD Plan with conditions pursuant to LUO Section 4-609;~~

~~WHEREAS, the public hearings referred to above were preceded by publication of public notice of such hearings on such dates and/or dates from which such hearings were continued in the *Telluride Watch*, and by mailing of public notice to notice as required by the CDC Public Hearing Noticing Requirements, including but not limited to notification of all property owners -within one hundred and fifty<sup>400</sup> feet (150') of the Property, as required by the LUO;~~

~~Z. WHEREAS, after public work sessionsposting of a sign and the public hearings referred to above, the DRB and the Town Council each individually considered the Application submittal materials, and all other relevant materials, public letters and public testimony, and found as follows: (1) the Lots 50 and 51 PUD complies with all LUO and Design Regulations provisionsposting on the applicable to the Property; (2) the Lots 50 and 51 PUD achieves one or more of the applicable community purposes/benefits listed in LUO Section 4-616; and, (3) the Lots 50 and 51 PUD is consistent with and substantially complies with the applicable review standards and requirements listed in LUO Section 4-617;agendas.~~

~~WHEREAS, the Applicant has met all requirements for Final PUD Plan approval under LUO Section 4-6 and the Design Regulations, and has addressed, or agreed to address, all conditions of Final PUD Plan approval imposed by Town Council based upon a recommendation for approval by the DRB, as set forth in Resolution No. 2004-0318-02 ("**Approval Resolution**") (**Exhibit A**);~~

~~WHEREAS, at a public hearing held on November 8, 2005, the Town Council approved certain amendments to the Approval Resolution as set forth in Resolution No. 2005-1108-27 ("**Amendment to Resolution**") (**Exhibit B**); and~~

~~WHEREAS, the public hearing held on November 8, 2005 was proceeded by publication of public notice of such hearings on such in the Telluride Watch, and by mailing of public notice to property owners within one hundred and fifty feet (150') of the Property, as required by the LUO.~~

NOW, THEREFORE, in consideration of the above premises, the Town Council's approval of the ~~Final PUD Plan Applications~~ upon all terms and conditions contained herein, and the ~~Covenants covenants~~, mutual obligations and promises as hereinafter set forth, it is agreed by and between the Parties as follows:

DRAFT

1. **INCORPORATION OF RECITALS.** The Parties confirm and incorporate the foregoing recitals into this Agreement.

2. **INCORPORATION OF LOT 38 IN THE PUD.** Lot 38, including the Lot 38 Approval, is hereby incorporated into and made a part of the Lot 38-50-51R PUD and subject to the terms and conditions of this Agreement.

3. **CONVEYANCE OF OS-1A-MVB TO OWNER AND INCORPORATION INTO THE PUD.**

The Town agrees to convey all of OS-1A-MVB to the Owner in order to allow for the construction of the Entry and Pool Improvements and incorporation into the Property, Community and PUD, subject to the terms and conditions of this Agreement and the Conveyance Agreement recorded at Reception No \_\_\_\_\_ in the Public Records attached hereto as **Exhibit "B"**.

4. **RELATIONSHIP TO COMMUNITY DEVELOPMENT CODE**

~~2. — To the extent **PURPOSE**, The purpose of this Agreement is to confirm and ratify approval of the Final PUD Plan and the terms and conditions of that Plan for the Property pursuant to LUO Section 4-610. This Agreement also sets forth the statutory vested rights created by the approval of the Final PUD Plan and sets forth the duration of such vested property rights, as expressly provided in paragraph 10, below, and pursuant to C.R.S., Section 24-68-101 et seq. and the LUO, Article 6.~~

~~of any conflict between this Agreement and the CDC, the terms, conditions, regulations and standards contained in this Agreement shall supersede the provisions of the CDC to the extent of conflict. Where this Agreement does not address specific CDC standards, the specific provisions contained in the CDC shall apply as determined by the Town Planning Division, subject to a final determination by the relevant review authority. In making this determination, the Planning Division and review authority shall consider the original intent of the PUD, the type of use, intensity of use, type of structure and similar factors to identify the situation covered by the CDC closest in comparison to the situation in the PUD. Notwithstanding the foregoing, when possible, the PUD and the CDC should be read to be consistent with one another.~~

~~3. — **APPROVAL OF FINAL PUD PLAN.**~~

~~— Town Council, based on a recommendation for approval from the DRB, has approved the Final PUD Plan Application including various plans, drawings and specifications for the Final PUD Plan which shall consist of the documents itemized in **Exhibit C** (hereinafter collectively referred to as "**Final PUD Plans**"). The final construction plans and drawings for Lots 50 and 51 PUD shall be incorporated into this Agreement by this reference upon approval by the Town's Building Department, and such plans and drawings shall be included in the definition of "Final PUD Plans." Any and all amendments to the Final PUD Plans shall be processed in accordance with LUO Section 4-619 and shall be deemed incorporated herein upon approval of such amendment.~~

~~4.5. **APPROVAL OF REZONING/PERMITTED USES.**~~

~~The Property is currently zoned and platted for A. The permitted uses and densities within the Property shall be the same as for the Village Center Zone District as set forth in the CDC.~~

~~B. The permitted uses for the Plaza Unit and Ice Rink Unit shall be the same as for the Full Use Active Open Space Zone District as set forth in the CDC.~~

~~a. C. Commercial and retail uses are permitted, without limitation, on floor areas in any location on Exhibit D the first floor and plaza level of the Community and on the first and second floor levels of the "Hotel Unit" as the same is depicted on the Community Map.~~

~~D. All plaza level spaces shall comply with the CDC Plaza Level Use Limitations, unless a conditional use permit has been issued by the Town in accordance with such limitations and the CDC.~~

~~E. Home occupations shall be allowed pursuant to the CDC Home Occupation Regulations.~~

## 6. PERMITTED ZONING AND DENSITY

~~b. The Town Council, based on a recommendation for approval from the DRB, has approved the following rezoning/permitted uses for the Lot 50 and 51 PUD as more specifically described in Exhibit E:~~

- ~~1) Rezone of sixteen (16) condominiums or forty eight (48) density on Lot 50A to ninety six (96) Efficiency Lodge Units, forty eight (48) density.~~
- ~~2) Rezone of two (2) condominium density units on Lot SOB to four (4) Efficiency Lodge Units.~~
- ~~3) Rezone of one (1) Employee Apartment, three (3) density to one (1) Employee Condominium, three (3) density.~~
- ~~4) Rezone of twelve (12) Employee Dorm to four (4) Employee Condominium.~~
- ~~5) Zoning of approximately 28,400 SF of commercial space on Lot 50-51R in the location proposed in the PUD Application.~~

## 5. APPROVAL OF DENSITY TRANSFER.

~~a. The table establishes the zoning designations and pertinent density designations within the PUD and allocations currently approved for the Property are set forth the Community based on Exhibit D the Original PUD and Resolution No. 2001-0814-11:~~

~~b. Town Council, based on a recommendation for approval from the DRB, has approved density transfers and density reallocations for the Property as follows:~~

- ~~1) Transfer of 25.33 Condominium Units, seventy six (76) condominium density, to the Density Bank for the benefit of the Applicant.~~
- ~~2) Transfer of three (3) Employee Condominiums, nine (9) density to Lot 50-51R from the Town's Housing Authority to accommodate the three (3) additional deed restricted Employee Condominiums.~~
- ~~3) Reallocate approved densities for development according to the "density per unit" and "total density" calculations in Exhibit E.~~

**6. REPLAT.**

- ~~a. Town Council, based on a recommendation for approval from the DRB, has approved the replat of the Property as set forth on the Final PUD Plans. Pursuant to LUO Section 4-610 and the conditions set forth in the Approval Resolution, the Applicant has submitted to the Town a revised replat of the Property satisfactorily addressing all comments from PCI, the Town's engineer of record, and commenting agencies. Such revised replat complies with all conditions of the approval of the Final PUD Plan and the LUO and shall be recorded in Plat Book PL-1, at page 3566-3569, on November 18, 2005, in the records of the San Miguel County Clerk and Recorder simultaneously with this Agreement ("Final PUD Plat").~~
- ~~b. Upon recordation of the Final PUD Plat, the Property shall consist of the lot numbers and designations as set forth in Exhibit E. The term "Property" as used in this Agreement shall also refer to the Property as reconfigured and replatted pursuant to the Final PUD Plat.~~

**7. APPROVAL OF VARIATIONS TO DESIGN REGULATIONS AND LUO REQUIREMENTS.**

<u>Zoning Designation</u>	<u>Actual Units</u>	<u>Person Equivalent per Actual Unit</u>	<u>Total Person Equivalent Density</u>
<u>Condominium</u>	<u>38</u>	<u>3</u>	<u>114</u>
<u>Efficiency Lodge Units</u>	<u>102</u>	<u>0.5</u>	<u>51</u>
<u>Lodge</u>	<u>20</u>	<u>0.75</u>	<u>15</u>
<u>Employee Condo</u>	<u>10</u>	<u>3</u>	<u>30</u>
<u>Commercial</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>

**7. BUILDING HEIGHT**

Building height allowed by this Agreement shall be as follows:

- ~~A. The DRB has approved the grant of certain variations to the Design Regulations pursuant to Design Regulations Article 3, to allow the following:~~

- 1) ~~The use of stained cementitious vertical plank under Section 8-302-3-3.~~
  - 2) ~~No recession for plaza level windows for retail space under Section 8-503-1, subject to DRB final approval of the proposed storefront and retail space designs.~~
  - 3)2) ~~The use of copper accent roof under Section 8-211-6.~~
  - 4) ~~The use of 2:12 roof form under Section 8-202.~~
- B. ~~Town Council, based on a recommendation for approval from the DRB, has granted variations from the strict application of certain standards pursuant to LUO Section 4-6, specifically 4-615, to allow the following:~~
- 1) ~~Increase the allowed maximum building height and maximum average building height under LUO Section 4-309-9 and Design Regulations Section 8-108 as indicated and marked on Plans A4.1, A4.2, A4.3, and A4.4 included in the record of the March 18, 2004, public hearing before Town Council and the PUD Application and Final PUD Plan, to the following:~~

Maximum Building Height:	86 feet 6 inches
Maximum Average Building Height:	<u>64 feet 1 inch</u>

## 8. PERMITTED VARIATIONS TO THE CDC

- A. ~~The DRB as part of the Original PUD approved the certain variations to the CDC Design Regulations, to allow the following:~~
- 1) ~~5)3) The use of stained cementitious vertical plank.~~
  - ~~2)4) No recession for plaza level windows for retail spaces.~~
  - ~~6)5) The use of copper accent roof materials.~~
  - ~~6) The use of 2:12 roof form.~~
- B. ~~Town Council, based on a recommendation for approval from the DRB, granted variations to allow the following:~~
- 1) ~~Allowing the Entry and Pool Improvements to be located in close proximity to a lot line, with a specific variation to CDC Section 17.3.14.H that allow the DRB to impose a setback of up to 20 feet for swimming pools and hot tubs since noise will be mitigated and buffered. (2015 PUD Variation)~~
  - 2) ~~Increase the allowed maximum building height and maximum average building height under the CDC to the following (Original PUD Variation):~~

Maximum Building Height: 86 feet 6 inches

Maximum Average Building Height: 64 feet 1 inch

~~2)3) Remove the requirement that a parking space must be allocated to a specific unit under Section 7-302 of the Design Regulations. (Original PUD Variation).~~

~~3)4) Allow a width reduction for 22 of the proposed 202 parking spaces located in the subsurface parking garage from the required 9-feet to 8-feet 6-inches; and, to allow a reduction in the 20-foot required backup space to 19-feet 7-inches for the four (4) parking spaces that the DRB required be 10-feet wide under Section 7-306-1 of the Design Regulations. (Original PUD Variation).~~

### ~~8. ADDITIONAL CONDITIONS OF APPROVAL:~~

~~The Town Council has approved the Final PUD Plan subject to the following conditions:~~

~~a. Architectural Requirements:~~

~~5) Allowance for the construction of the Pedestrian Bridge connecting the two major buildings within the Community, which shall be used only for pedestrian access within the Community for use as housekeeping and maintenance access between the buildings connected by the Pedestrian Bridge. In servicing the interior buildings and other portions of the Community, all housekeeping and maintenance carts shall access the Community buildings only by the Pedestrian Bridge and/or the underground garage/basement facilities within the Community. Housekeeping and Maintenance carts shall not use the Plaza Unit for access (Original PUD Variation).~~

~~6) Allow for snowmelt area in excess of the allowed square footage in the CDC (2015 PUD Variation).~~

### ORIGINAL PUD

~~4) The Applicant shall move the five (5) HOA designated parking spaces from level P1 to level P2 of the PUD Parking Plan, and depict this change in the plans submitted for a Building Permit.~~

~~5) The Applicant shall revise all window designs to depict that the windows are at least 10 inches, face-to-face of glass, regardless of the wall material in the plans submitted for a Building Permit.~~

~~6)AA. The Applicant shall present to the DRB the proposed exterior materials and window design on site prior to application, installation and purchase of the materials and windows. The presentation must include a large-scale mock-up of the walls, materials and windows to allow the DRB to render a final decision regarding these materials prior to the issuance of a Building Permit.~~

~~7)BB. The Applicant shall take the appropriate steps to insure mitigation of noise and vibration that may be caused by the ice skating rink mechanical equipment and trucks in~~



~~the proposed loading dock and trash areas. The Applicant shall submit an analysis by an acoustical engineer to the Town prior to issuance of a Building Permit. This analysis will be reviewed for the Town by an acoustical consultant hired by the Town and paid by the Applicant.~~

8) ~~CC. The Applicant shall return to the DRB for approval of the retail storefront design prior to the issuance of a Building Permit. The retail storefront design plans shall also include related plans for lighting, signage and food and beverage service.~~

9) ~~The Applicant shall depict the use of an air scrubber in the plans submitted for a building permit, as required per the following Section of the Design Regulations:~~

~~8-209-5 Exhaust vents from commercial kitchens, locker rooms and any other space that may emit undesirable odors need to be designed and located so as to vent from the roof of Buildings and thus mitigate and eliminate odors. The DRB reserves the right to require improvements, such as air cleaners (scrubbers) to any system that does not, in its judgment, perform satisfactorily.~~

~~b. Employee Housing:~~

1) ~~The Applicant shall comply with LUO Section 9-101 (set forth below) regarding the Employee Housing Restriction by recording the appropriate employee housing deed restriction against the individual employee units prior to and as a condition of the issuance of a temporary Certificate of Occupancy for the Employee Units and Applicant shall include the language of such deed restriction in the Condominium Declaration for the project:~~

~~9. LUO Section 9-101 provides as follows: This restriction on use and occupancy constitutes a covenant that runs fifty (50) years from the date of recordation with the title to the property as a burden thereon and shall be binding on the Owner and on the heirs, personal representatives, assigns, lessees, licensees and any transferee of the Owner. The duration of this restriction and covenant shall extend for an initial period of fifty (50) years, and at the option of the Town Council, or its designee, may be extended for an additional period of fifty (50) years after public hearing and comment on the proposed extension.~~

2) ~~The Applicant shall revise the floor plan for Employee Condominium Unit 7 by removing the proposed Juliet doors to create more livable space in the plans submitted for a Building Permit.~~

~~c. Landscape/Plaza/Lighting Plans:~~

~~3) Town Council requests that the Metro District make the ice skating rink operational in the fall season.~~

~~4) The Applicant shall increase the width of the pedestrian walkway located adjacent to the Mountain Village Boulevard bridge within a range of eight (8) to ten (10) feet, and explore the idea of adding an observation area. These changes shall be depicted on the plans submitted for a Building Permit.~~

~~5) The Applicant shall note on the Lighting Plan submitted for a Building Permit that the Lighting Plan will comply with the following Design Regulations:~~

~~18-204-5 DISPLAY LIGHTING~~

~~All restaurants, shops, and offices with Core Plaza frontage are required to maintain display window lighting to enhance the entire Village Core lighting (per Town of Mountain Village Design Regulations) from 5:00PM to 5:00AM, seven days per week and while open for business. Lighting Design is encouraged to be energy efficient and shall have Town of Mountain Village Design Review Board approval.~~

~~18-205 VACANT GROUND LEVEL COMMERCIAL SPACE~~

~~18-205-1 Owners of vacant, ground level commercial spaces within the Village Core are required to provide a decorative window display that masks the vacant interior from public view. Creative, colorful and varied window displays stimulating pedestrian interest that define the spirit and intent of the commercial space are encouraged.~~

~~18-205-2 Vacant window displays are required to follow the guidelines for display lighting defined in Section 18-204 of these Design Regulations.~~

~~18-205-3 Window displays for vacant, ground level commercial space within the Village Core require the approval of the Design Review Board.~~

~~6) The Applicant shall note on the Landscape Plan submitted for DRB review prior to the issuance of a Building Permit that there are no noxious weeds per Section 9-109-5 of the Design Regulations.~~

~~7) The Applicant shall depict on a revised Landscape Plan submitted for DRB review a summer pathway from the Property to Town Square prior to the issuance of a Building Permit.~~

~~8)7) The Applicant shall submit the proposed netting to be installed above the ice skating rink to the DRB for approval prior to the issuance of a Building Permit.~~

- 9) ~~The Applicant shall submit the Lighting Plan to the DRB for approval prior to issuance of a Building Permit. The Lighting Plan submitted for this DRB review shall integrate the approved Lighting Plan for Lot 38.~~
- 10) ~~The Applicant shall submit the proposed kinetic sculpture to the DRB for approval prior to the issuance of a Building Permit.~~
- 11) ~~(The Applicant shall submit the Signage Plan to the DRB for approval prior to the issuance of a Building Permit.~~
- 12) ~~The Applicant shall submit the Landscape Plan along the fire lane and adjacent to the Franz Klammer Lodge to the DRB for approval prior to the issuance of a Building Permit. In designing the Landscape Plan, the Applicant shall consider using large Aspen versus Spruce trees in the area to the south west of the Telluride Conference Center, and adding a wall along the fire lane to protect the proposed trees.~~
- 13) ~~The Applicant shall include smaller sized trees or plantings in the proposed island on Mountain Village Boulevard at the entrance of the development, in the Landscape Plan submitted to the DRB for approval prior to the issuance of a Building Permit.~~

~~**D. Agency Comments/Agreements/Deed Restrictions Required:**~~

- 1) ~~The Applicant shall coordinate with the Building Department and the Metro District regarding their comments on the plans submitted for Final PUD Application review prior to submitting plans for a Building Permit.~~
- 2) ~~The Applicant shall comply or explain non-compliance to all of the agency comments made in response to the Final PUD Plan as part of the plans submitted for a Building Permit.~~
- 3) ~~The Applicant shall comply with Section 7-306-3 of the Design Regulations, which is required for the approved tandem parking, by recording the appropriate deed restriction approved by Town Staff as a condition of the issuance of a temporary Certificate of Occupancy for the Parking Garage:~~

~~7-306-3 Valet services, for the purpose of compliance with this Section, shall be defined as a service performed by the association and/or Owner providing attendants who take, park and later return vehicles to guests, customers, etc. as in a hotel. Such valet services shall become a Deed Restriction to the property running with the~~

~~land and become a part of the recorded Condominium plat and declarations. If, for any reason, valet parking is terminated, the Parking Plan shall be revised accordingly and submitted to DRB for consideration and approval.~~

- ~~4) Prior to and as a condition of the issuance of a temporary certificate of occupancy for any portion of the Project, the Applicant shall enter into an agreement with the Metro District concerning installation, maintenance and operational prorata cost sharing for the pedestrian walkways and plaza improvement areas, including the snow melt system prior to the issuance of a Building Permit.~~
- ~~5) Prior to and as a condition of the issuance of a temporary Certificate of Occupancy for the Parking Garage, the Applicant shall record a deed restriction on the parking spaces for the hotel and condominium units, prohibiting the sale of any of the parking spaces to any third party, except for the Town, the Metro District and MVOA, at any time, for any reason, unless otherwise provided in the parking management agreement between the Applicant and the Metro District, and further, requiring that the parking spaces remain as a public benefit in perpetuity.~~
- ~~6) The Applicant shall note on the plans submitted for a Building Permit that the loading dock area shall be managed by the Metro District in accordance with the standards set forth in a Loading Dock Management Plan to be entered into by the Applicant and Metro District. The execution of the Loading Dock Management Plan shall be a condition of the issuance of a temporary Certificate of Occupancy for any portion of the Property.~~
- ~~7) The Applicant agrees that the loading dock doors and trash enclosure doors shall be open only for vehicle ingress and egress, and shall remain closed at all other times. The Applicant will include this provision in the Loading Dock Management Plan and note this operational requirement on the plans submitted for the issuance of a Building Permit.~~
- ~~8) The Applicant shall discuss with the Metro District the possibility of contacting truck drivers making deliveries to the loading dock area by cell phone to facilitate and coordinate such deliveries to the loading dock. In addition, the Applicant shall discuss with the Metro District the possibility of installing a phone line connecting the loading dock area and the truck waiting area along Mountain Village Boulevard across from the fire station. The resolution of~~

~~these issues shall be contained in the Loading Dock Management Plan.~~

- ~~9) To encourage public use of the entryway at Mountain Village Boulevard as depicted on the Final PUD Plans, there shall be no signage at that entryway delineating the hotel parking use from the public parking use.~~
- ~~10) The Applicant shall work with the Metro District and Telski to assess how skier drop-off needs can be accommodated by the Lots 50-51 PUD development at Mountain Village Boulevard and a newly configured drop-off area at Blue Mesa.~~
- ~~11) Prior to and as a condition of the issuance of a temporary certificate of occupancy for any of the Condominium or Efficiency Lodge Units, the Applicant shall convey title to MVOA the space designated on the Final PUD Plans as "TASP Space."~~

~~e. **Replat Conditions:**~~

- ~~1) The Applicant has complied with the comments of PCI and Town Staff concerning the replat of the Property submitted as part of the Final PUD Plans and has submitted the required revised replat to Town Staff and Town Staff has approved the revised replat for recordation simultaneously with this Development Agreement.~~
- ~~2) The Applicant shall work with Town Staff and the Town's legal counsel to ensure that the necessary easements are created and obsolete easements are vacated on the revised plat consistent with the Final PUD Plan prior to recordation of the Final PUD Plat.~~
- ~~3) Upon substantial completion of the Project, the Applicant shall submit an application to the Town of Mountain Village to replat the Property to match the as-built location of the building footprints. The recordation of such replat shall be a condition of the issuance of a temporary certificate of occupancy for any of the Condominium or Efficiency Lodge Units.~~

~~f. **Density Transfer Conditions:**~~

- ~~1) The Applicant shall transfer 25.33 condominium units, seventy-six (76) Condominium Density, to the Density Bank for the benefit of Applicant prior to the issuance of a Building Permit.~~

~~2) To accommodate the three (3) additional deed restricted Employee Condominiums, the Applicant shall transfer three (3) Employee Condominiums, nine (9) density, to Lot 50 51R from the Town's Housing Authority prior to the issuance of a Building Permit.~~

~~3) The Applicant shall be responsible for all BOA fees and taxes for the density transferred from the Property to the Density Bank as required by LUO Section 4 202.~~

~~g. **Rezone Condition:** In exchange for allowing a rezone of the Condominium Density to Efficiency Lodge Density versus Hotel Density, the Applicant shall record a deed restriction on the Property prior to and as a condition of the issuance of a Building Permit, that requires the hotel to be operated and managed as a four or five star hotel according to the requirements set forth herein. The deed restriction shall contain, at a minimum, the following requirements: (1) the 100 Efficiency Lodge Units shall be restricted to occupancy by the owners of the individual Units (and their family and guests) to no more than 30 consecutive days and no more than a total of 60 days in any fiscal year; (2) the hotel rating of four or five stars shall be maintained at all time and that cash damages be assessed in the event of non compliance with this deed restriction; (3) the Town of Mountain Village Town Council must approve the specific hotel operator prior to receiving a Building Permit; and (4) any change to the approved hotel operator must receive Town Council approval prior to the change in the operator.~~

~~h. **General Conditions:**~~

~~1) Prior to and as a condition of the issuance of a Building Permit, the Applicant will be required to enter into a Parking Management Agreement with the Mountain Village Metropolitan District, which shall provide that Mountain Village Metropolitan District shall manage all of the parking spaces in the proposed garage and valet parking, subject to the terms and conditions of the approved Parking Management Agreement, which may allow the Applicant to take over the operation of the valet parking in the event of a performance default or in the event that District elects to engage another operator or the Applicant to operate the valet parking operation.~~

~~2) The Applicant shall submit the Parking Management Agreement to Town Council for approval prior to issuance of a Building Permit. The Parking Management Agreement shall contain provisions to dedicate at least 122 parking spaces to public parking use and to provide for adequate short term parking for customers of the Mountain Village Core merchants and post office.~~

- 3) ~~The Applicant shall return to the DRB and Town Council for approval of the Construction Staging Plan and operational program document prior to issuance of a Building Permit. The operational program document will include input of adjacent merchants, building owners, Telski, and the Metro District regarding customer parking, deliveries and other pertinent considerations. The Applicant shall explain how the construction for Lot 38 is addressed in the Construction Staging Plan.~~
- 4) ~~The Applicant shall indicate on the Construction Staging Plan submitted for DRB and Town Council review that it will comply with the Design Regulations as amended and any applicable Town Ordinance regarding restrictions on construction on Sundays.~~
- 5) ~~Applicant must record any Resolution from Town Council of approval for the Density Transfer, Replat and Rezoning, and the approved Plat prior to receiving a Building Permit.~~
- 6) ~~All representations of the Applicant which formed the basis of the Town Council's findings set forth in the Approval Resolution, whether within the submittal or at the DRB or Town Council public hearings, are conditions of this approval.~~
- 7) ~~Per Sections 2-1207-1 and 2-1207-2 of the Town of Mountain Village Design Regulations, the approval of the Final PUD Plan by Town Council does not allow any violation of the LUO and/or Design Regulations or imply approval of any errors that may be contained in this application that violate the LUO and/or the Design Regulations, except for the specific variations approved in the Final PUD Plan and documented in this Development Agreement.~~

## **10. COMMUNITY PURPOSES- BENEFITS**

~~9-~~ The Town Council ~~has~~ determined that the ~~Final~~Lot 38-50-51R PUD-Plan achieves one or more Community Purposes ~~in accordance with LUO § 4-618~~(referred to as Community Benefits in the CDC) by providing the public benefits listed below. Any elimination, cessation or change to any of these enumerated ~~public benefits~~Community Benefits shall require a ~~major amendment~~PUD Major Amendment pursuant to the ~~Final PUD Plan~~CDC.

- 1) Addition of public parking managed by the ~~Mountain Village Metropolitan District~~Town to maximize all ~~202~~public parking spaces for the benefit of the public, with the land provided by the ~~Applicant~~Owner;
- 2) Addition of three units of ~~employee housing~~Employee Housing beyond the five ~~units~~ platted; ~~and~~ required ~~units~~on Lots 50 and 51;

- 3) Improved vehicular entry to the Village Core;
- 4) Improved pedestrian entry to the Village Core with land provided by the ApplicantOwner;
- 5) Plaza improvements that include the addition of the snowmelt system to the plaza beyond what is required and the space in the proposed structure to contain the necessary boilers for the snowmelt system; a fire pit area, plaza access and connections to adjacent plazas through the site;
- 6) Space, guaranteed by the ApplicantOwner to be used for the Telluride Adaptive Sports Program (TASP) directly adjacent to the ski run, in a development that is handicap accessible;
- 7) A ~~public ice rink, water feature and public performance space~~ owned by the Town that is designed to provide a dynamic entryway area to the Mountain Village Core, on land provided by the ApplicantOwner, which connects to the adjacent Village core plazas and is integrated to and visible from Heritage Plaza;
- 8) Addition of public, plaza level bathroom services including baby changing stations in all bathrooms;
- ~~9) Addition of a post office to serve Mountain Village core residents. The Town Council recognizes that the Applicant cannot offer a full service post office in this location, as Mountain Village does not have a zip code separate from the town of Telluride;~~
- ~~10)9) A central loading dock area~~ owned by the Town for the Village Core with land provided by the ApplicantOwner; and
- ~~11)10) Increase in the Short-Term Bed Base through the creation of a "Hotel,"~~ subject to a recorded deed restriction placed on the use of the proposed efficiency lodge units-100 Efficiency Lodge Units located within the Lot 50/51 Building to be operated and managed as a four or five star hotel.

## 11. ADDITIONAL 2015 COMMUNITY BENEFITS.

The Town Council has determined that the Applications achieve one or more Community Benefits by providing the public benefits listed below. Any elimination, cessation or change to any of these enumerated Community Benefits shall require a Major PUD Amendment pursuant to the CDC.

A. Owner shall contribute up to \$60,000 to be used by the Town to replace/convert the cooling unit for the Ice Rink located within the Community in accordance with the terms and conditions of the Conveyance Agreement ("Cooling Cost Contribution").

B. Owner shall, at Owner's sole cost and expense, design and construct shade structure improvements over the Ice Rink in accordance with the Conveyance Agreement ("Ice Rink Improvements").



## **12. HOTEL AND RECONFIGURATION DEED RESTRICTIONS.**

The Property is subject to the Amended and Restated Hotel Deed Restriction recorded at Reception Number 430163 and the Reconfiguration Deed Restriction recorded at Reception Number 384749, as may be amended from time to time by the Town and the Owner, which require: (1) the hotel to be operated and managed as a four or five star hotel according to the requirements set forth therein; (2) the provision of 100 Efficiency Lodge Units; (3) the restriction of the reconfiguration of the 100 Efficiency Lodge Units to the configurations approved by the Town in the Final PUD Plan and the construction drawings submitting in connection therewith; (4) the provision of a sufficient number of rooms as hotel rooms within the 100 Efficiency Lodge Units; (5) the hotel rating of four or five stars shall be maintained at all times and that cash damages be assessed in the event of non-compliance with this deed restriction; and (6) the Town Council to approve the specific hotel operator as set forth in the Hotel Deed Restriction. Any elimination, cessation or change to any of these enumerated requirements shall require a Major PUD Amendment pursuant to the CDC

## **13. EMPLOYEE HOUSING**

A total of ten (10) workforce housing units shall be maintained within the Community in accordance with and subject to the Town of Mountain Village Employee Housing Deed Restriction as recorded at Reception Number 406966.

## **14. COMPLIANCE WITH PUD REQUIRED AGREEMENTS.**

Pursuant to the Original PUD and approval of the Applications, the Owner and Town shall comply with the following agreements, as may be amended from time-to-time by the mutual agreement of Owner and the Town:

- A. Amended and Restated Hotel Deed Restriction recorded at Reception Number 430163.
- B. Reconfiguration Deed Restriction recorded at Reception Number 384749. .
- C. Parking Management Agreement dated October 31, 2006 (unrecorded).
- D. Loading and Facilities Easement Agreement as recorded at Reception Number 407365.
- E. Community Entrance Driveways and Landscaping Easement Agreement as recorded at Reception Number 405671.
- F. First Amended and Restated Fire Lane Easement Agreement as recorded at Reception Number 405673.
- G. Garage Access Ramp and Tunnel Easement Agreement as recorded at Reception Number 405669.
- H. Ski/Golf Resort Operations, Stairways and Irrigation System Easements Agreement as recorded at Reception Number 405854.
- I. The Lot 38R Access Easement Agreement as recorded at Reception Number 346442.
- J. The Lot 38R Parking Easement Agreement as recorded at Reception Number 346443.
- K. Common Underground Garage Agreement as Recorded at Reception Number 346444.
- L. Community and Public Use and Access Easements Agreement as recorded at Reception Number 407366.
- M. Ice rink systems easement as recorded at Reception Number 407368.
- N. Loading Facilities and Management Plan dated June 15, 2009 (unrecorded).
- O. Plaza Unit Food and Beverage Operations License Agreement dated June 15, 2009 (unrecorded).
- P. Reflection Plaza MOU dated December 17, 2013 (unrecorded).

Q. OS-1A-MVB Conveyance Agreement as recorded at Reception Number \_\_\_\_\_.

**APPROVAL OF FINAL PUD PLAN**

**15. AND DENSITY TRANSFER.**

A. Town Council approved the Final PUD Plan as a part of the Original PUD which shall consist of the documents itemized in Exhibit "A" (hereinafter collectively referred to as "Final PUD Plans"). The final DRB approved plans for the Entry and Pool Improvements shall be deemed to be part of and included in the Final PUD Plans. The final construction plans and drawings for the PUD are incorporated into this Agreement by this reference and included in the definition of the Final PUD Plans.

B. Town Council, based on a recommendation for approval from the DRB, approved density transfers and density reallocations for the Property as part of the Original PUD follows:

1) Transfer of 25.33 Condominium Units, seventy-six (76) condominium density, to the Density Bank for the benefit of the Applicant.

2) Transfer of three (3) Employee Condominiums, nine (9) density to Lot 50-51R from the Town's Housing Authority to accommodate the three (3) additional deed restricted Employee Condominiums.

**10.—15. CONSTRUCTION OF PUBLIC RINK IMPROVEMENTS:**

~~The Applicant agrees to complete, at Applicant's sole cost and expense, the construction of those certain public improvements set forth in Exhibit F ("Public Improvements") and as more fully detailed in the Final PUD Plans.~~

~~a. **APPLICANT'S AND DELIVERY OF COMMUNITY BENEFITS AND CONSTRUCTION OBLIGATION AND STANDARDS.** The Applicant shall construct and complete all required Public Improvements in accordance with this Agreement, the Construction Schedule and the Final PUD Plans, as noted above, and in compliance with all laws, regulations, standards, specifications and requirements of the United States, the State of Colorado, the Town, the Telluride Fire Protection District, MVOA, the Metropolitan District and all their pertinent agencies~~**LICENSE.**

~~b. **COMPLETION OF PUBLIC IMPROVEMENTS.** All of the Public Improvements shall be fully completed prior to and shall be a condition of the issuance of a temporary Certificate of Occupancy for any of the Condominium and Efficiency Lodge Units.~~

~~**COLLATERAL.** To secure and guarantee performance of its obligations as set forth herein, Applicant shall provide the Town with collateral in an amount equal to 120% of the uncompleted portion of the Public Improvements as shall be determined by the Town Building Official in the form of: (i) certified funds, or (ii) irrevocable letter of credit from a lending or financial institution in good standing in the state of Colorado and in a form reasonably satisfactory to the Town Manager. If certified funds are provided as collateral, they shall be deposited by the Town in a separate interest bearing account with any interest accruing to the~~

~~benefit of Applicant. Such collateral shall be posted prior to A. The Owner shall commence and complete construction of the Ice Rink Improvements in accordance with the terms and conditions of the Conveyance Agreement. The Ice Rink Improvements, and the public improvements associated with the Entry and Pool Improvements (sidewalks, landscaping, plaza areas, etc.) shall be public improvements (the "Public Improvements"). The Public Improvements shall be completed, issued certificates of occupancy and inspected by the Town to ensure compliance with the Town approved plans for such Public Improvements and deeded to the Town free and clear of all liens and encumbrances prior to the issuance of any certificate of occupancy for the Entry and Pool Improvements~~

~~B. The Owner shall enter into an improvements agreement for the Public Improvements in accordance with CDC Section 17.4.13(L), prior to and as a condition of the issuance of a building permit for the Entry and Pool Improvements.~~

~~e. C. Prior to the issuance of a Building Permit~~

~~d. **USE OF COLLATERAL BY TOWN.** If the Town Manager determines that reasonable grounds exist to believe that the Applicant is failing or will fail to construct or install the Public Improvements as required by this Agreement, the Town Manager shall notify the Applicant in writing and send by registered mail, return receipt requested that: (i) the Town intends to draw on the collateral for the purpose of completing the Public Improvements; (ii) the specific reasons therefore; and (iii) Applicant may request a hearing before the Town Council on the matter, such request to be made no less than fifteen (15) days from the date of the notice. Should a hearing not be requested within (15) fifteen days, or should the Town Council conduct a hearing and thereafter determine that the Applicant is failing or has failed to satisfactorily install the required Public Improvements, the Town may thereafter draw on the collateral as necessary solely for purposes of paying for the costs of constructing 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.~~

~~e. **APPROVAL AND ACCEPTANCE OF PUBLIC IMPROVEMENTS.**~~

~~1) Upon completion of all of the Public Improvements, Applicant shall notify the Town Manager and request inspection. The Town Building Official and Metro District Staff shall promptly inspect all such Public Improvements within thirty (30) days after the date of Applicant's request and promptly notify the Applicant in writing of non-approval or approval. If such Publicbuilding permit for the Entry and Pool Improvements are not acceptable, the reasons for nonacceptance (which shall be limited to the failure ofand the Public Improvements to have been constructed in accordance with this Agreement and the Final PUD Plans) shall be stated and corrective measures, the Owner shall be outlined in a written notice by the Town Building Official. The Applicant shall thereafter~~

~~undertake reasonable measures to correct the Public~~enter into a construction license and staging agreement for and construction of the ~~Entry and Pool~~ Improvements and ~~upon completion thereof Applicant shall request a re-inspection of the Public Improvements. The Town Building Official or Metro District Staff shall not be required to make inspections during any period when climatic conditions make thorough inspections impractical.~~

~~2) Acceptance of all the Public Improvements by the Town shall be a condition of the issuance of a Temporary Certificate of Occupancy for any of the Condominium or Efficiency Lodge Units. Upon acceptance of all of the Public Improvements by the Town, the Town shall release all collateral posted by the Applicant and thereafter the Town and/or Metro District as applicable shall assume normal maintenance responsibilities for the Public Improvements.~~

~~f. Pursuant to LUO § 4-618-5, Applicant shall warrant to the Town and Metro District the quality, workmanship and function of all the Public Improvements for a period of two (2) years after Final Acceptance by the Town, or until July 1 of the year during which the second winter terminates after Final Acceptance by the Town, which ever is greater.~~

~~g. Pursuant to LUO § 4-618-3, Applicant agrees to repair any\_ and their impact on existing improvements or facilities damaged during construction and such other items as the Town Manager and/or, Town Building Official deems reasonably appropriate as a result of an act or omission of the Applicant or any of its employees, agents or independent contractors in infrastructure.~~

## ~~11. VESTED RIGHTS.~~

~~a. INTENT. Development of the Property in accordance with the terms and conditions of this Development Agreement will provide for orderly and well planned growth, promote economic development and stability within the Town, ensure reasonable certainty, stability and fairness in the land use planning process, secure the reasonable investment backed expectations of the Applicant, foster cooperation between the public and private sectors in the area of land use planning, and otherwise achieve the goals and purposes of the Vested Property Rights Statute, C.R.S. § 24-68-101, et seq., ("Vested Rights Statute"), the LOU and the Design Regulations. In exchange for these benefits and the other benefits to the Town contemplated by the Development Agreement, together with the public benefits served by the orderly and well planned development of the Property, the Applicant desires to receive the assurance that development of the Property may proceed pursuant to the terms and conditions of the Development Agreement.~~

- b. ~~**SITE SPECIFIC DEVELOPMENT PLAN.** The Town Council Resolutions No. 2004-0318-02 and No. 2005-1108-27 approving the Lots 50 and 51 PUD, the Final PUD Plans, the Final PUD Plat, and this Development Agreement constitute a “site specific development plan,” pursuant to the “Vested Rights Statute” and LUO Article 6 and Section 4-609-5.~~
- c. ~~**VESTED REAL PROPERTY RIGHT.** Accordingly, this final approval of a site specific development plan has created for Applicant’s benefit a “vested real property right” as defined by C.R.S. § 24-68-101 et seq., and this Development Agreement shall be considered a “Development Agreement” as that term is used in C.R.S. § 24-68-104, provided, however, Applicant 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.~~
- d. ~~**DURATION.** For purposes of this Agreement, the above referenced vested property right shall remain vested for three (3) years after March 18, 2004, (the date of the Town Council approval of Resolution No. 2004-0318-02). Termination of the vesting period shall not affect any common-law vested rights obtained prior to such termination, or any right, whether characterized as vested or otherwise, arising from this Development Agreement, the Final PUD Plans, the Final PUD Plat, or from Town permits, approvals or other entitlements for the Property which were granted or approved prior to, subsequent to, concurrently, or in conjunction with the approval of this Agreement.~~
- e. ~~**PUBLICATION.** A notation of such vested real property right shall be made on the Final PUD Plans. The Town shall promptly cause to be published, at Applicant’s cost, a notice of such vested rights in the Telluride Watch.~~
- f. ~~**RELIANCE.** The Applicant has relied upon the creation of such vested real property right in entering into this Agreement. The Parties acknowledge that the Applicant shall not have an affirmative duty to commence construction of this site specific development plan.~~
- g. ~~**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 which 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 the Applicant’s rights set forth in this Development Agreement shall apply to or be effective against the Property. Thus, during the three (3) year period in which the vested real~~

~~property right shall remain vested, the Town shall not impose by legislation or otherwise cause or permit any initiated or referred zoning, land use requirement or obligations, or Town charter amendment upon Applicant or their successors or assigns which would alter, impair, prevent, diminish, impose a moratorium on development, delay, or otherwise adversely affect any of Applicant's rights to development or use of the Lots 50 and 51 PUD as set forth in the Final PUD Plans, except:~~

- ~~1) With the consent of the Applicant; or~~
- ~~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~~
- ~~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 on a uniform and non-discriminatory basis of Town ordinances or regulations which are general in nature, related to health, safety and welfare 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. Applicant does not waive its right to oppose the enactment or amendment of any such regulations.~~

16.

12. **MISCELLANEOUS.**

**A. REMEDIES FOR BREACH OR DEFAULT.**

~~a.~~ In the event ~~Applicant~~Owner, or its successor in interest, should fail to perform or adhere to its obligations as set forth herein, and such failure continues for a period of thirty (30) days after the ~~Applicant~~Owner receives written notice by registered mail, return receipt requested from the Town describing the failure in reasonable detail, then the Town shall have the following remedies against the ~~Applicant, or its successors and assigns,~~Owner which remedies are cumulative and non-exclusive unless such failure is of a nature that it is not capable of being cured with 30 days in which case it shall be commenced within the 30 day period and diligently pursued to completion:

- 1) Specific performance;
- 2) Injunctive relief, both mandatory and/or prohibitory;
- 3) Denial, withholding, or cancellation of any building permit or any other authorization authorizing or implementing the development of the ~~Lots~~

~~50 and 51~~ PUD and/or any structure or improvement to be constructed on the Property; ~~and/or~~

- 4) In the event of a material breach of this Agreement or default hereunder, denial or withholding of any Certificate of Occupancy for any structure or improvement to be constructed on the Property; ~~and/or~~

5) Treat the default as a violation of the CDC and proceed to impose fines as set forth in the CDC as a violation of the CDC.

In the event that the Town should fail to perform or adhere to its obligations as set forth herein, including but not limited to any rezoning, land use or other action or inaction, direct or indirect, or pursuant to an initiated measure, taken without the Applicant's Owner's consent, that alters, impairs, prevents, diminishes, imposes a moratorium on development, delays or otherwise materially and adversely affects any development, use or other rights under this Agreement, then the Applicant Owner shall have the following remedies:

- 1) Specific performance; ~~and/or~~
- 2) Injunctive relief, both mandatory and or prohibitory;

~~b.~~ B. INDEMNITY. Except as otherwise set forth herein, the Applicant Owner shall defend and hold the Town, ~~Metro District and MVOA~~ harmless from and against any and all claims, demands, liabilities, actions, costs, damages, and reasonable attorney's fees that may arise out of or result directly or indirectly from the Applicant's Owner's failure to comply with the terms and conditions of this Agreement, including without limitation, Applicant's Owner's defective design or construction of the Public Improvements or Applicant's Owner's failure to construct or complete the same; provided, however, that the provisions of this subsection b. shall not apply to loss, or damage or claims therefore attributable to the negligent acts or omissions of the Town, Metro District or MVOA/TMVOA their agents, employees or contractors. After inspection and acceptance by the Town, and after expiration of any applicable warranty period, this Agreement of indemnity shall expire and be of no future force or effect.

~~c.~~ C. ATTORNEY FEES. In the event of any action, proceeding or litigation between the Town and the Applicant Owner concerning this Agreement, the prevailing party shall be entitled to collect its reasonable legal fees and costs, including the reasonable value of salaried attorney's time. Any state court litigation to enforce the terms of this Agreement shall be commenced in San Miguel County, Colorado and venue shall be restricted to such county.

~~d.~~ D. BINDING EFFECT. This Agreement shall extend to, inure to the benefit of, and be binding upon the Town and its successors and assigns and, except as otherwise provided herein, upon the Applicant Owner, its successors (including subsequent owners of the Property, or any part thereof), legal representatives and assigns. Owners of the Efficiency Lodge, Condominium and Employee Condominium units permitted under the Approval Resolution shall be bound by those provisions of this Agreement which specifically apply only to those units. This Agreement shall constitute an agreement running with the Property until: (a) modification or release by mutual agreement of the Town and the Applicant Owner or their successors and assigns; or (b) expiration of the term hereof. Upon the conveyance of the Property by Applicant Owner to a different entity or person, and provided that the Applicant Owner is not in default hereunder at the time of conveyance, then upon the conveyance of the

Property the ApplicantOwner shall have no liability under this Agreement for any act or omission occurring after the date of such conveyance; provided, that the third party transferee shall assume all liability for any act or omission arising under this Agreement.

**e. E. AUTHORIZATION.** The Parties hereto warrant they are fully authorized to execute this Agreement and have taken all actions necessary to obtain such authorization.

**f. F. WAIVER.** No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

**g. G. AMENDMENT OF AGREEMENT.** Except as otherwise set forth in this Agreement, this Agreement may be amended or terminated only by mutual consent in writing of the Town and the ApplicantOwner.

**h. H. GOOD FAITH OF PARTIES.** In performance of this Agreement, or in considering any requested extension of time, the Parties agree that each will act in good faith and will not unreasonably withhold, delay or condition any approval or consent required or contemplated by this Agreement.

**i. I. FURTHER ASSURANCES.** 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. If all or any portion of the PUD, the Final Plat, or this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties shall cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that the ApplicantOwner and the Town receive the benefits that they would have received under this Agreement.

**j. J. CERTIFICATIONS.** Each Party agrees to execute such documents or instruments as the other Party shall reasonably request to verify or confirm the status of this Agreement and of the performance of the obligations hereunder and such other matters as the requesting Party shall reasonably request.

**k. K. RIGHTS OF LENDERS AND INTERESTED PARTIES.** The Town is aware that financing for acquisition, development and/or construction of the Property may be provided in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders, major tenants, hotel operators or managers and purchasers or developers of portions of the Property. In the event of an Event of Default by the ApplicantOwner, the Town shall provide notice of such Event of Default, at the same time notice is provided to ApplicantOwner, to any such interested party previously identified in writing to the Town. If such interested Parties are permitted, under the terms of its agreement with the ApplicantOwner to cure the Event of Default and/or to assume Applicant'sOwner's position with respect to this Agreement, the Town agrees to recognize such rights of interested parties and to otherwise permit such interested parties to assume all of the rights and obligations of ApplicantOwner under this Agreement.



~~l.~~ L. **NOTICES.** All notices required hereunder shall be deemed delivered to the parties five (5) calendar days after posting the same postage prepaid by certified mail, return receipt requested, and addressed as follows:

To the Town:

~~Kathy Mahoney~~  
~~Town Manager~~  
Town of Mountain Village  
~~113 Lost Creek Lane~~  
Attn: Town Manager and Town Attorney  
455 Mountain Village Blvd., Unit A  
Mountain Village, Colorado 81435

To the ~~Applicant~~Owner:

~~RAL Mountain Village Lodging~~Madeline Property Owner, LLC  
~~86 Chambers Street, Suite 704~~  
~~New York, New York 10007~~  
~~Attn: Robert A. Levine and~~  
~~Jeffrey M. Lampiasi~~  
  
c/o Northview Hotel Group  
36 Narrow Rocks Road  
Westport, CT 06880

~~m.~~ M. **SEVERABILITY.** 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.

~~n.~~ N. **DEFINED TERMS.** All capitalized ~~but~~ ~~undefined~~ ~~terms~~ used in this Agreement shall have the meanings set forth in the ~~LUO and/or Design Regulations~~CDC.

~~o.~~ O. **TITLES OF SECTIONS.** Any titles of the several parts and sections of this Agreement are inserted or convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

~~p.~~ P. **EXHIBITS AND ATTACHMENTS.** All exhibits and attachments to this Agreement shall be incorporated herein and deemed a part of this Agreement.

~~q.~~ Q. **MINOR CHANGES.** ~~Notwithstanding the provisions of paragraph 3 above (Approval of Final PUD Plan), the~~The Parties executing this Agreement are authorized to make insubstantial changes to this Agreement and attached exhibits ~~with the approval of Town Staff~~ ~~as they mutually consider necessary.~~ ~~So, so~~ long as such changes ~~were~~are consistent with the intent and



**OWNER:**

MADLINE PROPERTY OWNER, LLC,  
A Delaware limited liability company

By: ~~Mountain Village Hotel Development LLC,~~  
~~\_\_\_\_\_ a Delaware limited liability company,~~  
~~\_\_\_\_\_ Managing Member~~

By: ~~RAL Mountain Village Hotel~~ \_\_\_\_\_  
~~Investors LLC, a Delaware limited~~  
~~liability company, Managing Member~~

By: \_\_\_\_\_  
~~Robert A. Levine, Manager~~  
~~Simon A. Hallgarten, Authorized Signatory~~

STATE OF ~~NEW YORK~~ \_\_\_\_\_ )

) ss.

COUNTY OF ~~NEW YORK~~ \_\_\_\_\_ )

Subscribed to and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, ~~20\_\_\_, 2015,~~ by ~~Robert Simon A. Levine, as Manager Hallgarten, Authorized Signatory~~ of ~~RAL Mountain Village Hotel Investors LLC, a Delaware limited liability company, in its capacity as Managing Member of Mountain Village Hotel Development LLC, a Delaware limited liability company, in its capacity as Managing Member of RAL Mountain Village Lodging Madeline Property Owner, LLC,~~ a Delaware limited liability company.

Witness my hand and official seal.

~~\_\_\_\_\_ SEAL \_\_\_\_\_~~

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

**METRO DISTRICT CONSENT**

~~Mountain Village Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado hereby consents to the terms and conditions of this Agreement to the extent that they apply to the Metro District Property, facilities and/or functions.~~

~~Mountain Village Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado.~~

By: \_\_\_\_\_  
\_\_\_\_\_ A. J. Wells, President

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

\_\_\_\_\_~~Subscribed, sworn to and acknowledged before me by A. J. Wells, President, Mountain Village Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.~~

~~Witness my hand and official seal.~~

\_\_\_\_\_~~SEAL~~ \_\_\_\_\_  
\_\_\_\_\_~~Notary Public~~

**MVOA CONSENT**

~~Telluride Mountain Village Resort Company, a Colorado non-profit corporation, doing business as Mountain Village Metropolitan Services, Inc. and Mountain Village Owners Association hereby consents to the terms and conditions of this Agreement to the extent that they apply to the MVOA Property.~~

~~Telluride Mountain Village Resort Company, a Colorado non-profit corporation, doing business as Mountain Village Metropolitan Services, Inc. and Mountain Village Owners Association.~~

By: \_\_\_\_\_  
\_\_\_\_\_ Penelope Place Gleason, President

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

\_\_\_\_\_  
Subscribed, sworn to and acknowledged before me by Penelope Place Gleason, President, Telluride Mountain Village Resort Company, a Colorado non-profit corporation, doing business as Mountain Village Metropolitan Services, Inc. and Mountain Village Owners Association on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness my hand and official seal.

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

**TELSKI CONSENT**

~~TDG Ski & Golf Company, LLC, a Delaware limited liability company, hereby consents to the terms and conditions of this Agreement to the extent that they apply to the Open Space Tracts.~~

~~TDG Ski & Golf Company, LLC, a Delaware limited liability company.~~

By: \_\_\_\_\_  
\_\_\_\_\_  
~~Jeffrey T. Proteau, Senior Vice President~~

~~STATE OF COLORADO \_\_\_\_\_ )  
\_\_\_\_\_ ) ss.  
COUNTY OF SAN MIGUEL \_\_\_\_\_ )~~

~~\_\_\_\_\_ Subscribed, sworn to and acknowledged before me by Jeffrey T. Proteau, the Senior Vice President, of TSG Ski & Golf Company, LLC, a Delaware limited liability company on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.~~

Witness my hand and official seal.

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

EXHIBIT A  
FINAL PUD PLANS

DRAFT

EXHIBIT B  
OS-1B-MVB CONVEYANCE AGREEMENT

DRAFT





COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
455 Mountain Village Blvd.  
Mountain Village, CO 81435  
(970) 728-1392

**Agenda Item No. 17**

---

**TO:** Town Council  
**FROM:** Randy Kee, Chief Building Official  
**FOR:** Meeting of January 15<sup>th</sup>, 2015  
**DATE:** December 30, 2014

**RE:** Second Reading, Setting of a Public Hearing and Council Vote on an Ordinance to Amend the Community Development Code at Section 17.5, Design Regulations, Concerning Snowmelt Design; Section 17.7, Building Regulations, Concerning Snowmelt Limitations and Establishing a Smart Building Program with Energy Incentives and Energy Mitigation Requirements; and at Section 17.7.20 to Establish the Maximum Time to Complete a Construction Project

**BACKGROUND**

The Town Council conducted several work sessions on the pending amendments to the CDC in 2014. Staff has incorporated changes directed by the Council into the proposed amendments, with highlight showing the changes since the December 11<sup>th</sup> meeting.

At the December 11<sup>th</sup> the following questions were raised:

1. Provide flexibility to allow for all future renewable energy sources.  
*Flexibility for future and alternative renewable energy sources is provided for under CDC Section 17.7.12(C)(5)(B).  
Mandatory Requirements. All projects shall comply with the local energy savings measures as set forth herein unless determined by a Colorado Licensed Engineer and the Building Official that the alternative proposal meets the same renewable off set requirements. The Town may hire an engineering consultant for verification as needed at the expense of the permit applicant.*
2. Revisit allowed snow melt area for an attached single family dwellings and multi-family dwellings.  
*Attached single family dwelling units such as townhomes or, duplex r units reviewed ~~300~~ 500 from the IRC that have an attached garage with each unit shall be allowed 300 sq. ft. of exterior grade level hydronic snowmelt exempt from offset for 1 parking spot and the main egress path into the unit. Staff reviewed the multi-family allowance of 1,000 sq. ft. plus 50 sq. ft. per unit and continue to believe this is ample snowmelt allowance. Models illustrating snowmelt areas for single-family, duplex and multi-family will be presented at the meeting.*
3. Require programmable thermostats for all heating sources.  
Now that the technology has caught up with regard to new systems the 2015 energy code will require all systems to be programmable and not just forced air.

4. Attach the proposed spreadsheet, fee schedule and any fee requirement for snow melt at public pools? *A copy of the renewable offset spreadsheet is attached. Public pools and associated pool deck areas for multi-family or mixed use are exempt from mitigation requirements as envisioned for hot bed development in Comprehensive Plan. Equipment installed to heat the water beyond 82 degrees Fahrenheit by definition is a spa and should be offset as required for site built spas.*
5. Provide a study on a Mountain Village home on what is required from both a component and financial standpoint to move the home from a HERS rating of 60 to 50. Present information supporting the current HERS requirement of 50 for homes built in excess of 13,000 square feet and if the proposed incentive related to the HERS scores is attainable. *Information will be presented at the meeting.*

### **HERS discussion:**

Notes from the 2015 Energy Code that the Town will consider adopting in the near future:

- An ERI score, which is also known as a HERS score, is a method of showing compliance. San Miguel County is in climate zone 6B. The minimum HERS score required is 54. Mountain Village at an elevation of about 10,000 could qualify as climate zone 7. The minimum HERS requirement to meet the 2015 Energy code in climate zone 7 is 53. According to the Leading Builders of America (This group represents 40% of the homes built in America) the additional cost to achieve a HERS score of 60 on an average home is \$8,000.00. Typically this is financed on a 30 year mortgage with 20% down. The resultant monthly increase in a monthly payment is \$2.81. The monthly decrease in utility bills is \$25.36. Savings are immediate.
- Greenhouse gas emissions by 2030, for the US, as a result of the 2015 energy codes will reduce CO2 by 70 million metric tons, annually.
- According to the Colorado Department of Energy in 2012 the average HERS score statewide was 63. In 2013 the state average was 59. With that trend the 2014 average will be 55. The 2013 HERS average in the Grand Junction area was 51.
- According to [EnergyCodes.Gov](http://EnergyCodes.Gov) a larger home achieves a much lower HERS rating when built the same as a smaller home. In the example a 1250 square foot home achieves a score of 76 where a 5000 square foot home built identically, achieves a score of 64. With all of the home components considered; insulation, window area, appliance efficiency etc. by far the most influential factor in lowering the HERS score across all climate zones is the conditioned floor area, or home size. The larger the home is the easier it is to get a lower score. This is why there is a sliding scale with relation to home size and HERS requirements in our Building Regulations.
- Two solar panels can reduce a HERS score by approximately 1 point.
- In summary according to the Colorado Department of Energy and the Federal Energy Code Commission it should be beneficial and cost effective for all involved to build a more energy efficient home from builder to homeowner. From the builders perspective the flexible performance path to compliance through HERS cost approximately half of the prescriptive path due to the provided flexibility.
- Colorado has a Mortgage incentive program for homes built to a 50 or lower HERS rating. The incentive ranges from 1,000 to 8,000 dollars.

### **Recommendation**

Staff recommends the approval of the Ordinance.



Kim Wheels, P.E.  
 PO Box 803, Ophir, CO 81426  
 970-708-9674

lotusenergysolutions@gmail.com  
 www.lotusenergysolutions.us

**HERS Ratings & Home Energy Consulting**  
**Reducing carbon footprints, one footprint at a time.**

### Mountain Village HERS Rating Study

Produced for Mountain Village Town Council meeting on January 15, 2015

**Question:** What are the construction cost and energy savings impacts to build a Mountain Village home to a HERS rating of 50, compared with a HERS rating of 60?

**Unique factors influencing a HERS rating in Mountain Village:**

- Home Size – “House size directly affects relative heating and cooling loads and the resultant energy use due to changes in the surface-to-volume ratio of the home.” Thus, it is easier for a larger home to achieve a low HERS rating.
- Window Area – Overall “window to floor area” ratio (WFR) plays a large factor in Mountain Village homes. Typical home WFRs average close to 15%. The Mountain Village homes modeled below are moderate compared to most in TMV, at 25% and 33%.
- Window U-Value – Due to high WFRs in Mountain Village, the U-value (insulative quality) of the windows has a significant effect on a HERS rating. American manufacturers are catching up to code requirements, and European window models are available in the United States as well. Thus, several high-quality high-altitude window models are available (Pella, Jeldwen, Loewen, Alpen High Performance, etc.).

**Home #1:**

Architect – Kris Perpar (provided building & pricing information)

Construction description – Walls & Roof are structurally insulated panels (SIPs)

Size – 3580 SF

Volume – 44,300 cu ft

Window to Floor area ratio – 33%

Total construction cost - \$1,200,000

Window % of construction cost – 4%

HERS rating as designed for permit = 59

Items modified to reduce HERS rating to 50:

Changes	Cost Increase	Construction Cost Increase %
Windows & Glass Doors – U= 0.31, to U=0.27	\$4000	0.3%
Walls from 6” SIP R-33 to 10” SIP R-36	\$6600	0.55%
4 Solar Panels purchased at SMPA Solar Farm	\$2770	0.23%



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**Reducing carbon footprints, one footprint at a time.**

<b>Total</b>	<b>\$13,370</b>	<b>1.08%</b>
--------------	-----------------	--------------

**Estimated energy savings costs are approximately \$450/yr.**

**Home #2:**

Architect – Dylan Henderson (provided building & pricing information)  
 Construction description – 2x6 walls with sprayfoam insulation, finished basement with insulated concrete block walls. TJI R-49 sprayfoam roof.

Size – 4740 SF  
 Volume – 52,520 cu ft  
 Window to Floor area ratio – 25%  
 Total construction cost - \$2,000,000  
 Window % of construction cost – 6%  
 Insulation % of construction cost – 2%

Items modified to reduce HERS rating from 60 to 50:

<b>Changes</b>	<b>Cost Increase</b>	<b>Construction Cost Increase %</b>
Windows & Glass Doors – U= 0.32, to U=0.28	\$40,000	2%
Wall insulation increased from R-21 to R-33	\$12,000	0.6%
Lower Level & Garage walls from 2x4 R-21 to 2x6 with R-33 insulation	\$12,000	0.6%
Foundation Walls added 2x4 framing with R-21 batt insulation	\$18,000	0.9%
Under-slab insulation from R-10 to R-20 with R-10 perimeter insulation	\$4000	0.2%
Lighting from 50% halogen to 100% LED or CFL	nominal	0.1%
Reducing Infiltration by 2%	nominal	0.1%
<b>Total</b>	<b>\$82,000</b>	<b>4.5%</b>

**Estimated energy savings costs are approximately \$560/yr.**

**TMV Renewable Energy Mitigation Program - Outdoor Energy Use Worksheet**

**Instructions:**

Fill in all grey cells that are relevant to your project. Go to Exhibit B (see tabs at bottom of page) and complete project checklist. Submit Exhibit A and B with your signature and check made out to "Town of Mountain Village" for the Renewable Energy Mitigation Fee, if required. Innovatively engineered energy efficient systems are encouraged to be submitted for reduced mitigation requirements.

<b>Project Information:</b>		<b>Equipment Information:</b>		
			Select Type	Efficiency
Name:	TMV Example	Building Heater type:	Gas	90%
Address:	Project Address	Hot Tub Heater Type:	Electric	90%
Town/County:	Mountain Village	Pool Heater Type:	Gas	90%

<b>Exterior Energy Use</b>				
Type of use	sq. ft.	Efficiency	kBtu/yr	Lbs CO <sub>2</sub> /yr
Snowmelt (driveway, main walkway)	0	90%	0	0
Snowmelt (decks, & other)	0	100%	0	0
Hot Tub (built on-site)	0	100%	0	0
Pool	0	90%	0	0
<b>Total Carbon Usage</b>				<b>0</b>

**Factory Built, Portable Exterior Spa Energy Use, (California Energy Commission, Section 1604,**

Model	Standby Watts @ 60 deg F (W/hr)	Standby Watts @ 40 deg F (W/hr)	Annual Standby Energy (kW/yr)	Lbs CO <sub>2</sub> /yr
Spa Model	205	316	2768	5537
Average spa	205	316	2768	5537
<b>Carbon Usage Above Average</b>				<b>0</b>

<b>Renewable Energy Production Credit (On-Site)</b>				
Type of use	Installed capacity	kBtu/yr	Lbs CO <sub>2</sub> /yr	
Solar Electric (PV) (kW)		0.0	0	0
Solar Hot Water (sq ft of panel or tubes)		0.0	0	0
Other Renewable Energy Generation (on-site) (kW)		0.0	0	0
<b>Total Carbon Reduction (Double Credit)</b>				<b>0</b>

<b>SMPA Community Solar Farm (Off-Site Renewable Energy)</b>				
Type of use	Installed capacity	kBtu/yr	Lbs CO <sub>2</sub> /yr	
Solar Electric (PV) (kW)		0.0	0	0
<b>Total Carbon Reduction</b>				<b>0</b>

<b>Standard Systems: Snowmelt, hot tubs, pools, garages, &amp; spas</b>				
Net Carbon Emissions	0	Lbs CO <sub>2</sub> /yr		
Carbon Mitigation Rate	\$1.17	\$/Lbs CO <sub>2</sub>		
Mitigation Percentage Required	100%			
Carbon Mitigation Fee	<b>\$0</b>			

<b>Innovatively Engineered Energy Efficient Systems</b>				
Alternate Engineered Design kBtu/yr	0	kBtu/yr		
Engineered Design Carbon Emissions	0	Lbs CO <sub>2</sub> /yr		
Reduction in Carbon Emissions	0	Lbs CO <sub>2</sub> /yr		
Carbon Mitigation Rate	\$1.17	\$/Lbs CO <sub>2</sub>		
Mitigation Percentage Required	100%			
Carbon Mitigation Fee Reduction	<b>\$0</b>			
<b>Total Carbon Mitigation Fee</b>				<b>\$0</b>

Name: TMV Example

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Project Checklist

**Project Checklist**

This is to be completed by the owner and/or general contractor. By checking the box and signing this form you are certifying that your project meets the terms specified. Complete only the sections that are relevant to the project.

General Requirements

- R-3 min. insulation on all hot water piping
- Sealed combustion gas boiler with 90% or better AFUE rated efficiency

Snowmelt Requirements

- R-15 min. insulation below snow melted slabs
- In-slab moisture and temperature sensor (no remote snow cup controls allowed)
- Other snowmelt is controlled by a minimum of 2 of the following: outdoor temp, slab temp,

Solar Hot Water Requirements

- R-3 min. insulation on all solar hot water piping
- R-14 min. insulation for all hot water storage tanks
- Temperature sensors provided at supply and return for panels and storage tank
- Solar hot water system must provide domestic hot water heating and/or space heating
- Systems with a panel area greater than 120 sq ft must provide space and/or pool heating

PV System Requirements

- PV systems are grid tied

Pool and Hot Tub Requirements

- R-12 min. insulated cover for hot tub
- Automatic cover for outdoor pool

Factory Built Portable Spa Requirements

- Must be built and certified to ANSI/APSP-14 standard

Name:            TMV Example

Signature: _____	Date: _____
------------------	-------------

**Calculation Values**

**Equipment Efficiency**

Electric Heaters

100% efficient

Ground Source Heat Pump

350% efficient (3.5 COP)

All Other Equipment

100% (efficiency factored in at Exhibit A)

**Snowmelt Energy Use**

(Based on historic snowfall amounts and rates)

125 Btu/ft <sup>2</sup> -hr	Design load
600 Hrs/yr	Design run hours
45 Btu/ft <sup>2</sup> -hr	Clean up load
348 Hrs/yr	Clean up run hours
90.7 kBtu/ft <sup>2</sup> -yr	Nominal energy use

**Hot Tub Energy Use**

(Based on DOE Smart Pool and OIT Pool Models)

1 Hrs/day	Uncovered
102 Deg. F	Set point
281 kBtu/ft <sup>2</sup> -yr	Nominal energy use

**Pool Energy Use**

(Based on DOE Smart Pool and OIT Pool Models)

8 Hrs/day uncovered June-Sept	
8 Hrs/day uncovered Dec 15-30	
87 Deg. F	Operating set point
60 Deg. F	Idle set point
359 kBtu/ft <sup>2</sup> -yr	Nominal energy use

**Solar Hot Water Production**

(Based on hourly model with SRCC values)

750 Btu/ft <sup>2</sup> -day	Daily collection rate
365 Days/yr	Operation
274 Kbtu/ft <sup>2</sup> -yr	Nominal energy production
100 \$/sq ft	Installed Cost

**Solar Electric (PV) Production**

(Based on NREL PVWatts II)

1917 kWh/kw installed	Annual collection rate
3.412 Btu/watt	Conversion
6541 kBtu/kW-yr	Nominal energy production
4,500 \$/kW	Installed Cost

**Wind Production**

10 mph	Average wind speed
155 kWh/month	Per kW installed
12 Months/yr	Operation
3.142 kBtu/kWh	Nominal energy production

**Carbon Conversions**

12 lbs Carbon/CCF	(NG and Propane)
2 lbs carbon/Kwh	(Elec)
80 Kbtu/CCF	(NG and Propane)
3.412 Kbtu/Kwh	(Elec)
2000 Lbs/ton	(Carbon)

**Mitigation Rate Calculation:**

Rate w/ PV System:

$$\left( \frac{\$4500}{kW} \right) \left( \frac{Kwh}{1917 KWh} \right) \left( \frac{Kwh}{2lbsCO_2} \right) = \frac{\$1.17}{lb}$$

**Example Snowmelt Calc:**

100 sq ft snowmelt with 92% efficient gas boiler

$$Snowmelt(100sqft) \left[ \left( 125 \frac{Btu}{ft^2-hr} \right) \left( \frac{Hr}{600} \right) + \left( 45 \frac{Btu}{ft^2-hr} \right) \left( \frac{Hrs}{348} \right) \right] \left( \frac{1KBtu}{100Btu} \right) \left( \frac{1}{92\%Eff} \right) \left( \frac{1CCF}{80Kbtu} \right) \left( \frac{12lbsCO_2}{1CCF} \right) = 1478 \frac{lbsofCO_2}{yr}$$

## SMPA Solar Farm Offset Calculation Worksheet

**How many panels at SMPA solar farm do I need to purchase?**

**Data per Clean Energy Collective:**

Solar farm insolation rate:	1665 kWh/kW/yr
Each panel has a capacity of:	235 Watts
Each Panel produces:	391 kWh/yr

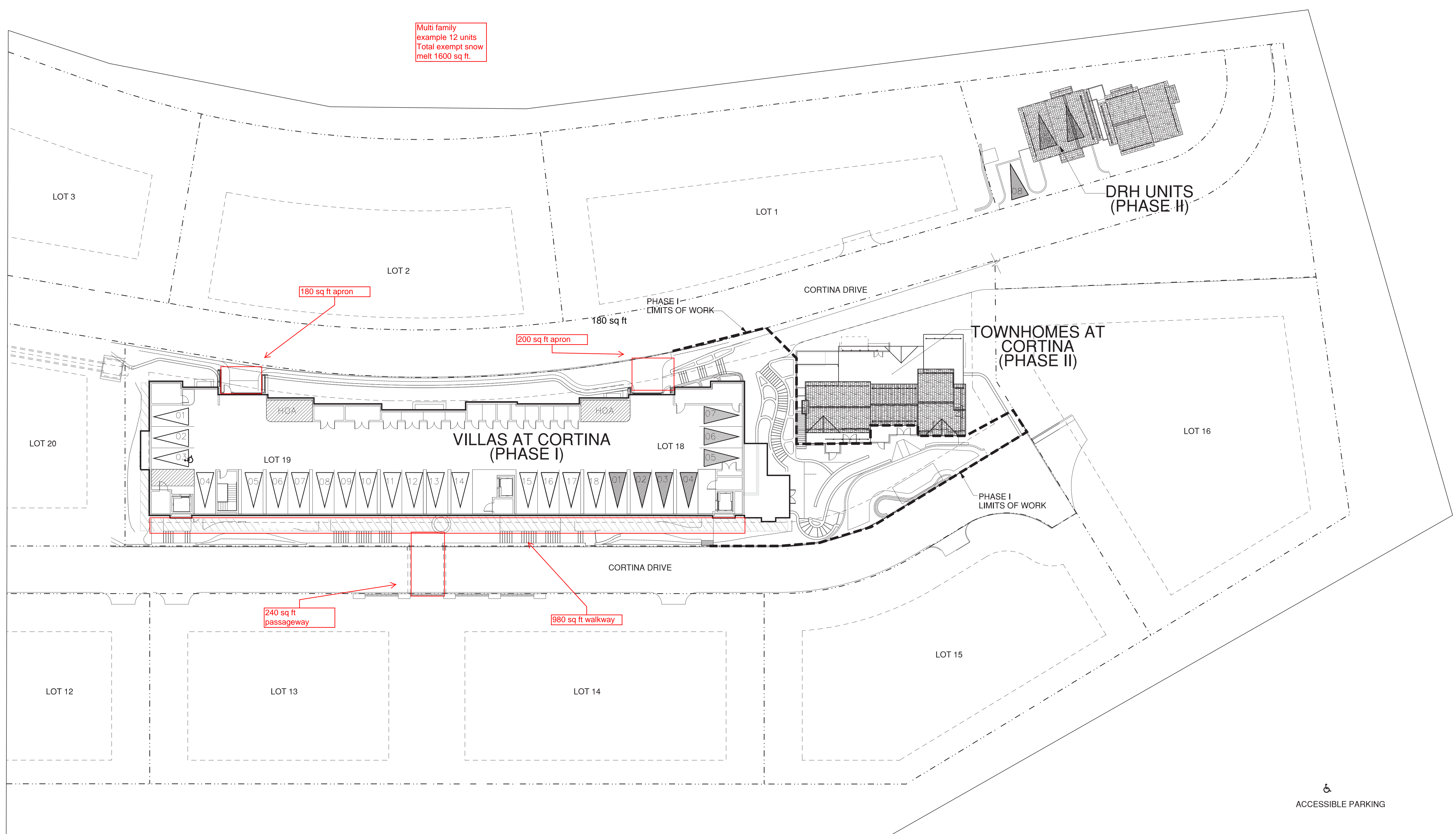
**From REMP Calculation Worksheet:**

Total Carbon Emissions to mitigate:	-	<b>Lbs CO<sub>2</sub>/yr</b>
Equivalent Energy Use to mitigate:	-	<b>kWh/yr</b>

<b># of Panels needed:</b>	<b>0</b>	<b>panels</b>
----------------------------	----------	---------------



REVISIONS

Multi family  
 example 12 units  
 Total exempt snow  
 melt 1600 sq ft.

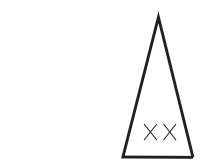
180 sq ft apron

200 sq ft apron

240 sq ft  
 passageway

980 sq ft walkway

This is for illustration only. There was additional snow melt at Cortina and mitigation fees paid.

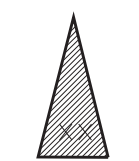


REQUIRED PARKING - VILLAS @ CORTINA:  
 12 UNITS @ 1.5 SPACES/UNIT = 18 SPACES

PROVIDED PARKING:  
 18 SPACES



ACCESSIBLE PARKING



REQUIRED PARKING - TOWNHOUSES @ CORTINA:  
 5 UNITS @ 1.5 SPACES/UNIT = 8 SPACES

PROVIDED PARKING:  
 10 SPACES

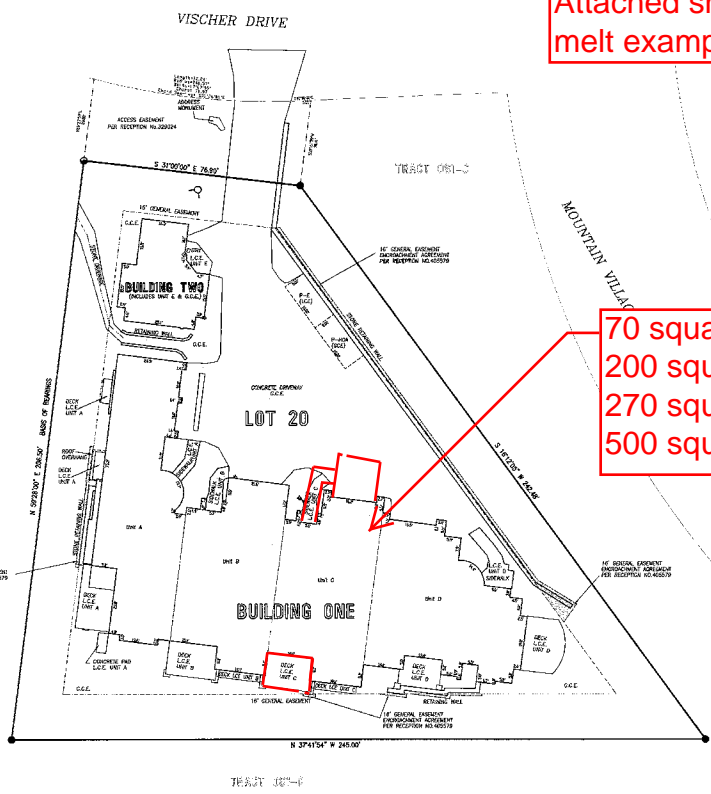


NORTH

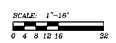
**01 PARKING DIAGRAM**  
 SCALE: 1" = 20'-0"

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Single Family Attached snow melt example



70 square foot entry  
200 square foot deck  
270 square foot parking  
500 square foot snow melt total.



- Legend**
- FLOOR REBAR WITH 1/2" DIA. ALUMINUM TOP IS 20032
  - SET REBAR WITH 1/2" DIA. FLOORING TOP IS 20031
  - FIRE HYDRANT
  - WATER VALVE
  - CURB STOP
  - COMMON COMMON ELEMENT
  - UNIT COMMON ELEMENT
  - CONSTRUCTION ELEMENT FOR RECEPTION NO. 02004

CONDOMINIUM MAP FOR THE CASTELLINA CONDOMINIUMS  
LOCATED ON LOT 20, TOWN OF MOUNTAIN VILLAGE, SAN MIGUEL COUNTY, COLORADO

PAGE 4054

Sheet No. 40	NOV 10 2014	NO. 10	<b>FOLEY</b> <b>ASSOCIATES, INC.</b> ARCHITECTS & ENGINEERS 1250 W. PACIFIC, SUITE B-1 TELLURIDE, COLORADO 81425 Drawing path: s:\1120\proj\2000\CDMS 3008.dwg
Revised: 40			
Checked by:			
Plot date: 4-11-08			

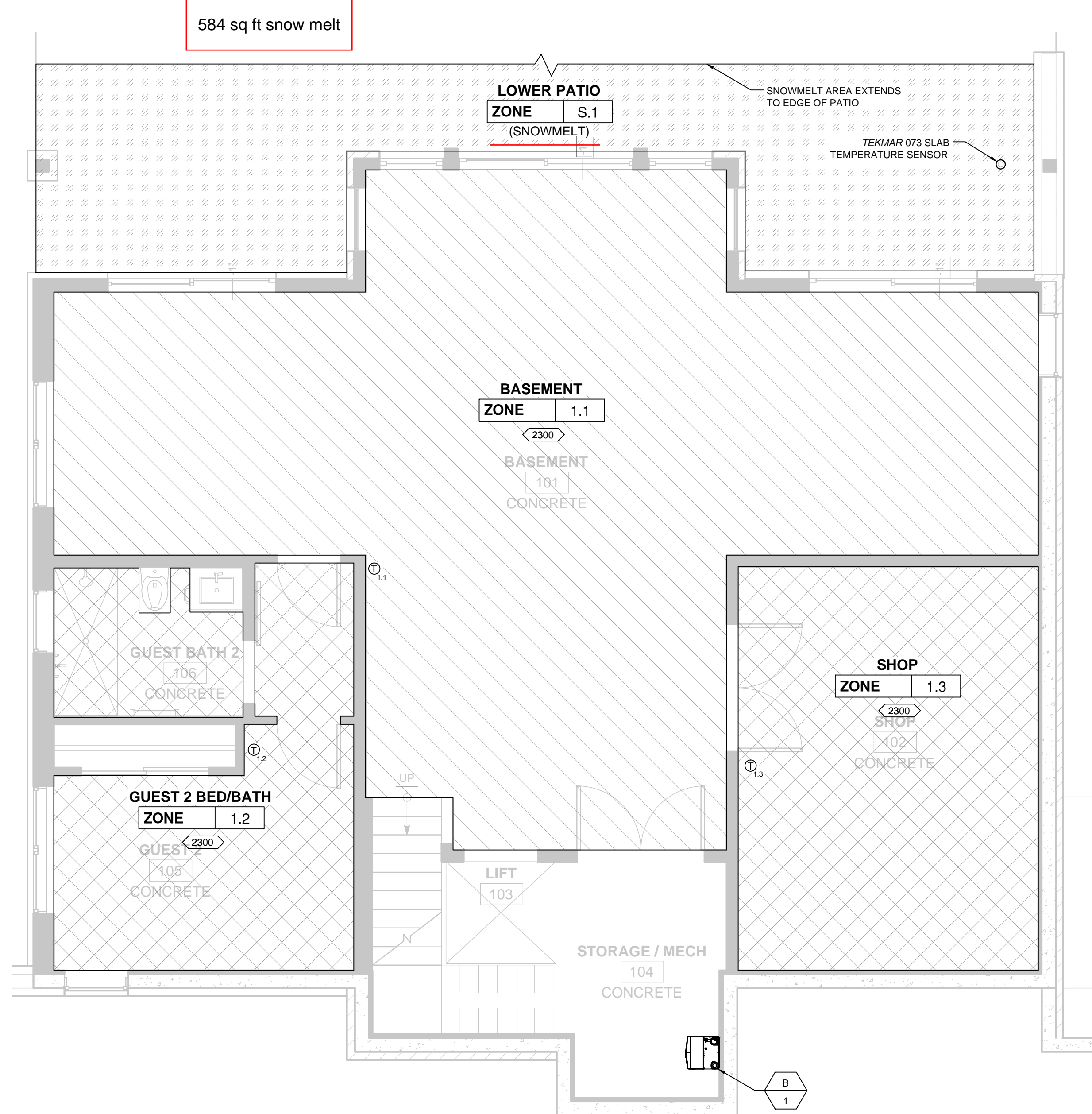


**INSTALLATION NOTES (HYDRONIC HEATING):**

< 2300 > HYDRONIC HEATING LOOP MANIFOLD. LOCATIONS TO BE FIELD LOCATED. ACCESS COVER AND FINAL LOCATIONS TO BE APPROVED BY ARCHITECT PRIOR TO INSTALLATION.

Renewable offset required when snow melt area exceeds 1000 square feet.

Single Family home snow melt example 1.000 sq ft.



**2 LOWER LEVEL HYDRONIC HEATING**  
SCALE: 1/4" = 1'-0"



**3 GROUND LEVEL HYDRONIC HEATING**  
SCALE: 1/4" = 1'-0"

FOR REVIEW PURPOSES ONLY

No.	Description	Date
1	PERMIT SUBMITTAL	8-29-2014

**Sheet Index**

Mechanical Series  
M1.0 Mechanical Schedules, Design Information, Load Calculations  
M2.0 Mechanical Layouts  
M2.1 Hydronic Heating Layouts

**Lot 801**  
Mountain Village, CO

Mechanical Schedules  
Design Information  
Load Calculations

Date	8-29-2014
Drawn by	DJM
Checked by	SCH

**M2.1**

Scale AS NOTED

**ORDINANCE NO. 2015-\_\_**

**ORDINANCE TO AMEND THE COMMUNITY DEVELOPMENT CODE AT SECTION 17.5, DESIGN REGULATIONS, CONCERNING SNOWMELT DESIGN; SECTION 17.7, BUILDING REGULATIONS, CONCERNING SNOWMELT LIMITATIONS AND ESTABLISHING A SMART BUILDING PROGRAM WITH ENERGY INCENTIVES AND ENERGY MITIGATION REQUIREMENTS; AND AT SECTION 17.7.20 TO ESTABLISH THE MAXIMUM TIME TO COMPLETE A CONSTRUCTION PROJECT**

**RECITALS**

**WHEREAS**, the Town of Mountain Village (the “Town”) is a legally created, established, organized and existing Colorado municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado (the “Constitution”) and the Home Rule Charter of the Town (the “Charter”);

**WHEREAS**, pursuant to the Constitution, the Charter, the Colorado Revised Statutes and the common law, the Town has the authority to regulate the use and development of land and to adopt ordinances and regulations in furtherance thereof;

**WHEREAS**, the Town Council may amend the CDC from time-to-time to address CDC interpretations, planning matters, clarify and refine the Town’s land use regulations; or to address issues or policy matters.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO AS FOLLOWS:**

**Section 1. Amendment of Community Development Code**

- A. The Town of Mountain Village Community Development Code is hereby amended as set forth in Exhibit A which is attached hereto and incorporated herein.
- B. The Planning Division is directed to codify the amendments in Exhibit A into the CDC.
- C. The Planning Division may correct typographical and formatting errors in the amendments or the adopted CDC.
- D. The Planning Division shall place footers on the modified pages that reflect the section being amended and the ordinance number in order to keep track of CDC amendments over time and easily address any non-conforming situation.

**Section 2. Ordinance Effect**

- E. This Ordinance shall have no effect on pending litigation, if any, and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided and the same shall be construed and concluded under such prior ordinances.
- F. All ordinances, of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed, replaced and superseded to the extent only of such inconsistency or conflict.

**Section 3. Severability**

The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause or portion of this Ordinance as determined by a court of competent jurisdiction shall not affect the validity or

effectiveness of the remainder of this Ordinance.

**Section 4. Effective Date**

This Ordinance shall become effective on February 15, 2015.

**Section 5. Public Hearing**

A public hearing on this Ordinance was held on the 15<sup>th</sup> day of January, 2015 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd, Mountain Village, Colorado 81435.

**INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 11<sup>th</sup> day of December, 2014.**

**TOWN OF MOUNTAIN VILLAGE**

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

By: \_\_\_\_\_  
Dan Jansen, Mayor

ATTEST:

\_\_\_\_\_  
Jackie Kennefick, Town Clerk

**HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this 15<sup>h</sup> day of January, 2015.**

**TOWN OF MOUNTAIN VILLAGE**

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

By: \_\_\_\_\_  
Dan Jansen, Mayor

ATTEST:

\_\_\_\_\_  
Jackie Kennefick, Town Clerk

Approved As To Form:

\_\_\_\_\_  
J. David Reed, Town Attorney

I, Jackie Kennefick, 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. \_\_\_\_\_ ("Ordinance") is a true, correct and complete copy thereof.

2. The Ordinance was introduced, read by title, approved on first reading with minor amendments and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on \_\_\_\_\_, 2015, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Dan Jansen, Mayor				
Cath Jett, Mayor Pro-Tem				
Jonette Bronson				
John Howe				
Michelle Sherry				
Martin McKinley				
Dave Schillaci				

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 \_\_\_\_\_, 2015 in accordance with Section 5.2b of the Town of Mountain Village Home Rule.

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 \_\_\_\_\_, 2015. At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Dan Jansen, Mayor				
Cath Jett, Mayor Pro-Tem				
Jonette Bronson				
John Howe				
Michelle Sherry				
Martin McKinley				
Dave Schillaci				

5. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Town this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Jackie Kennefick, Town Clerk

(SEAL)

**Exhibit A: CDC Amendments**

## CDC Section 17.5.9(D)(b)

- building improvements. These secondary spaces can add interest to the by offering areas to be explored and discovered within the overall orientation of the major circulation system.
- vi. Secondary walkways and courtyards shall be paved with a material consistent with or complimentary to the major pedestrian areas of the town. Surface materials shall be rich and interesting, using such materials as stone pavers and granite cobbles, or concrete pavers. Surface materials shall have a minimum width of eight feet (8') and be lighted for evening use. Vertical grade changes shall be made to accommodate walking in ski boots and shall, therefore, have grades no greater than five percent (5%) with access ramps no greater than eight percent (8%). Stairways shall meet the building regulation requirements for stairs.
  - vii. Wherever possible, connecting paths and walkways shall include points of interest and artwork along their routes through such items as sculpture, fountains, bridges, archways and plaza furniture.
  - viii. Development shall be required to coordinate the design and intent of all proposed pedestrian areas with appropriate Town departments.
  - ix. Owners of lots shall be required to develop any and all pedestrian areas and plaza areas to a maximum of thirty feet (30') out from the building footprint and/or the area of disturbance as determined by the review authority at the time of review and approval. The review authority may require additional development of pedestrian areas if, upon review of the completed site, the review authority determines that additional disturbance occurred during construction beyond which was identified at the time of review and approval of the development application.
  - x. Due to the extreme daily temperature changes that are experienced in the town and drastic temperature contrasts between shade and sun exposures, the review authority may require the developer to install, and require that any homeowners association operate and maintain a snowmelt system in primary ~~plaza areas and pedestrian areas or routes.~~ routes. The area of snowmelt may shall be limited in plaza areas and pedestrian routes to the extent practicable in order to minimize energy use as determined by the review authority. The extent of the snowmelt system shall be determined during the development application process ~~and under.~~ Under normal conditions snowmelt areas shall extend thirty feet (30') beyond the building footprint or cover the area of disturbance, whichever is greater unless reduced pursuant to this section by the review authority.
  - xi. The review authority shall require the developer of lots to install site furniture and fixtures a maximum of feet (30') beyond the building footprint. Secondary plaza areas shall be furnished and maintained by the developer and operator of the respective projects for general public use.
  - xii. The Town may require the developer to enter into a maintenance agreement for plaza areas that require the maintenance of all improvements in such spaces to be maintained in good repair and a clean state. The maintenance agreement shall provide that all site furniture and fixtures located on Town property shall become the property of the Town.



**10. Plumbing**

- a. **Section P2303.5.1, Rough Plumbing.** Delete the words “for piping other than plastic.”
  - b. **Section P2706.1, Waste Receptors.** Add: “Waste Receptors used for condensate disposal are permitted in any readily accessible location.”
  - c. **Section P2903.9.3, Fixture Valves and Access.** Add: Wall mounted sinks.
  - d. **Section P3009, Gray Water Recycling Add:** “Gray water may only be used as an effluent for flushing fixtures.”
- 11. Appendix A.** Sizing Capacities of Gas Piping Appendix A is a reference standard hereby adopted into the 2012 IRC.
- 12. Appendix B.** Sizing of Venting Systems Serving Appliances Equipped with Draft hoods, Category 1 Appliances, and Appliances Listed for use and Type B Vents. Appendix B is a reference standard hereby adopted into the 2012 IRC.
- 13. Appendix C.** Exit Terminals of Mechanical Draft and Direct-Vent Venting Systems: Appendix C is a reference standard hereby adopted into the 2012 IRC.
- 14. Appendix E.** Manufactured Housing Used as Dwellings: Appendix E is a reference standard hereby adopted into the 2012 IRC
- 15. Appendix G.** Swimming Pools, Spas and Hot Tubs: Appendix G is a reference standard hereby adopted into the 2012 IRC.
- 16. Appendix H.** Patio Covers: Appendix H is a reference standard hereby adopted into the 2012 IRC
- 17. Appendix J.** Existing Buildings and Structures: Appendix J is a reference standard hereby adopted into the 2012 IRC
- 18. Appendix K.** Sound Transmission: Appendix K is a reference standard hereby adopted into the 2012 IRC.
- 19. Other Appendices.** All other appendices of the IRC not adopted herein are hereby deleted in their entirety.

**17.7.12 INTERNATIONAL ENERGY CONSERVATION CODE**

- A. Adoption.** The Town hereby adopts and incorporates herein by reference as the energy code of the Town of Mountain Village the International Energy Conservation Code, 2012 Edition, ("IECC") published by the International Code Council, Inc., 4051 West Flossmoor Road, Country Club Hills, IL 60478.
- B. Alternative Methodologies.** A developer may propose to meet LEED Gold or higher certification as an alternative methodology to meeting the requirements of this section.
- C. Amendments, Additions and Modifications.** The IECC 2012 edition is hereby amended as follows:
  - 1. Section 103.1, Creation of Enforcement Agency.** Section 103.1 is hereby amended to read:

“**Section 103.1, Creation of Enforcement Agency.** The Building Division is hereby charged with enforcing the IECC, with the Building Official acting as the code official.”
  - 2. Section 103.2, Appointment.** Section 103.2 is hereby deleted in its entirety due to the administrative provisions set forth herein.
  - 3. Section A103.3, Deputies.** Section 103.3 is hereby deleted in its entirety due to the administrative provisions set forth herein.

4. **Section C101.1, Title.** Section C101.01, Title is hereby amended as follows:

“**Section C101.1, Title.** This Code shall be known as the International Energy Conservation Code of the Town of Mountain Village and shall be cited as “this code” or the “IECC”

5. **Local Energy Saving Measures**

- a) **Scope.** The following requirements apply to all new residential construction, remodels, or additions, including without limitation single-family dwellings, multi-family dwellings, and mixed use developments.
- b) **Mandatory Requirements.** All projects shall comply with the local energy savings measures as set forth herein unless the Building Official, after receiving and reviewing a proposal for alternative means from a Colorado Licensed Engineer, determines that the alternative proposal meets the required renewable offset requirements as set forth herein. The Town may retain an engineering consultant for verification as needed at the expense of the permit holder.
- c) **HERS Ratings.**
  - i. All new detached single-family dwellings shall achieve the following Home Energy Rating System (“HERS”) ratings prior to the issuance of a building permit based on the gross floor area of the home:
    - (a) 7,000 sq. ft. or less: HERS rating of 60 or lower.
    - (b) 7,000 to 13,000 sq. ft.: HERS rating of 55 or lower
    - (c) 13,000 feet and larger: HERS rating of 50 or below.
  - ii. A confirmed HERS rating is required at or before CO.
- d) **Smart Building Program.** The intent of the Smart Building Program (“Program”) is to reduce the amount of energy and greenhouse gas emissions produced in the community through the promotion of energy efficient designs and building practices.
  - i. The following incentives are provided to accomplish the intent of the Program:
    - (a) **Renewable Energy.** A renewable energy 20% building permit fee discount shall be provided when (1) there is no exterior energy use; and (2) at least 20% of the estimated energy use is offset by a renewable energy source.
    - (b) **Exterior Energy Use:** Buildings designed with no exterior energy use elements other than lighting are eligible for a 15% building permit fee discount, which shall be applied in addition to any other building permit fee discounts available. When this rebate is awarded, a covenant shall be recorded against the property for the benefit of the town, acknowledging the acceptance of the owner’s forfeiture of the right to install any exterior energy use items after obtaining the CO for a period of fifty years in a form acceptable to the town attorney’s office. If during this period after CO it is found that exterior energy use items are desired by the owner and installed, the awarded building permit fee discount pursuant to this section shall be paid

to the town per the terms of the covenant.

**(c) Interior Energy Use HERS Rating:** Buildings designed with a HERS rating below 50 are eligible for a building permit fee discount in addition to the building permit fees set forth herein. The discount calculation begins at a HERS rating of 50. A new building with a HERS rating of 50 would pay 100% of the building permit fee. The building permit fee would be reduced proportionately with the percentage reduction in the HERS rating. For instance a HERS score of 25 is a 50% reduction in the building permit fee. A HERS score of 0 would result in a 100% building permit fee discount. **HERS ratings can be lowered by either on-site or off-site solar photovoltaic systems.**

These three (3) owner incentives can be used collectively toward a building permit fee discount. Maximum collective building permit fee discount available with the Program efficient home design is a maximum cumulative discount of 100% of the building permit fee.

ii. **Exterior Energy Use.** The IECC or accepted performance compliance methods do not address exterior energy use. However, it is the intent of the Program to include all energy use on site in the evaluation of the building's performance regarding energy use. Therefore, the energy required of exterior snowmelt systems, as well as site-built pools and spas must also be offset with renewable energy via the Offset Program (see below).

iii. **Program Scope.** The Offset Program shall apply to site built outdoor, spas, pools and all exterior energy used for snowmelt.

iv. **Snowmelt**

(a) All snowmelt anywhere on the property shall be offset via the Program except for:

(i.) Single-family Development: 1,000 square feet of exempt hydronic snow melt that shall be allowed without mitigation located only on the main drive and/or code required exit walkways, decks, stairs and landings.

(ii.) Multi-family, Mixed Use and Commercial Development: 1,000 sq. ft. plus 50 square feet per dwelling unit of exempt hydronic snow melt that shall be allowed without mitigation located only on the main drive(s), decks, amenity areas and/or code required exit walkways, stairs and landings.

~~(i.)~~(iii.) **Attached single family units reviewed from the IRC (Duplex and Townhomes). 500 square foot of exempt per dwelling unit hydronic snowmelt shall be allowed without mitigation located only on the main drive and/or code required exit walkways, decks stairs and landings.**

(iv.) Pedestrian routes and plaza areas in the Village Center provided such areas meet the Design Regulations.

~~(ii.)~~(v.) Pool deck areas for multi-family or mixed-use hotbeds development sites as envisioned in the Comprehensive Plan.

- (b) **Definition of Exempt Snow-Melt Area:** Tubing installed to melt snow on a deck etc. where the intent is to remove snow from the walkable or drivable area shall be measured per the size of the entire potentially snow-melted area. For example if a 10' x 20' deck only has perimeter snow melt tubing, the entire area shall be counted toward the snow melt exemption.
- (c) All snow melt systems shall be equipped with both moisture and temperature sensors to control operation per the IECC and IRC.
- (d) Hydronic snow melt systems shall have a minimum of R-15 insulation on the non-snow melt side.
  
- v. **Spas.** Factory built spas (hot tubs) that are in compliance with section 1604 of title 20 of the current California Energy Commission requirements and have a maximum standby energy use of 205 watts per hour are exempt. Spa energy uses above 205 watts per hour adjusted for local climatic conditions are included in renewable energy mitigation offset requirements. Proof that the site built spa meets this requirement may be provided by a town engineering consultant, if needed, and will be at the expense of the owner. The owner of said property shall have the option of providing energy from a town approved renewable energy system, or making payment in lieu, or a combination of both, in order to offset energy used by exterior energy use equipment with renewable energy sources.
- vi. **Exterior Pools.** Exterior heated swimming pools must prove compliance with the currently adopted Energy Codes. The Council may waive the need to offset exterior pool heating for multifamily or mixed use hotbed projects that are envisioned in the Comprehensive Plan, or the town may use a portion of the project revenues to pay for part of or all of the energy offset.
- vii. **Heated Garages.** Heated garages must prove compliance with the currently adopted Energy Codes. This can be accomplished with a free program known as RES-Check. The garage would be included in the Res-Check calculation with the heated home. The blower door test required as per R402.4.1.2 shall apply only to the homes habitable space and the air sealing for the garage shall be visually inspected.
- viii. **Exterior Energy Use Calculation.** The total exterior energy use that must be offset with renewable energy, or payment made as a payment in-lieu as allowed in these regulations, will be calculated by the Town Building Official using the Build Smart Exterior Energy Calculation Spreadsheet (“Spreadsheet”) (Appendix 17-2). The Spreadsheet calculations were developed using the standard amount of energy used by the exterior systems and adjusted for local climatic conditions. Alternate and creative engineering solutions to reduce exterior energy use are encouraged and may be accepted as an offset method, when approved by the Building Official. The Spreadsheet will be updated regularly according to market fluctuations and may be amended and adopted by the annual Fee Resolution.
- ix. **Renewable Energy Credit Calculation.** Renewable mitigation offsets may be produced on-site or off-site and must be approved by the town. On site renewable energy methods receive double credit for offset purposes. For example if a town approved renewable energy source such

as solar, geothermal heat pump, etc. installed on site produces 4KW then it will get credit for offsetting 8KW of exterior energy use. As new technology or other offsite renewable energy projects come on line, they may also be considered as approved systems by the Building Official. Where the necessary amount of renewable energy is unattainable on-site, a combination of renewable energy methods may be used.

- x. **Payment In-lieu.** The town has the resources and ability to install renewable energy systems on public property or invest in offsite renewable energy systems that will offset exterior energy used in the community. If preferred by the property owner, the Town may accept payment from the owner of the affected property, in lieu of providing energy produced by a Town approved renewable energy system. Or, the town may accept partial payment in lieu from the affected property owner that provides only partial energy produced by a Town approved on-site or off-site renewable energy mitigation system. The owner shall make payment prior to receiving the building permit. The payment in lieu shall be calculated using the Spreadsheet.
- xi. **Approved Renewable Energy Systems.** All renewable energy systems proposed as part of the Build Smart Renewable Mitigation Program must be approved in advance by the Building Official. An engineering analysis may be required for calculating the renewable energy mitigation credit produced by an on- or off –site system. Review of the system by a Town engineering consultant, if needed, will be at the expense of the owner.
- (a) On-site renewable energy systems provided to offset exterior energy use will be required to be maintained and operated for the lifetime of the property, through a written agreement with the property owner and a covenant on the property.
- (b) Off-site renewable mitigation shall only be approved by the Building Official if, through a written agreement: (1) the system is legally tied to the property using exterior energy use with the inability to transfer to another property; and (2) the Town can easily verify at any time the offsite renewable energy system continues to provide renewable energy as provided for herein, with no restrictions on the Town’s ability to access renewable energy utility information.
- xii. **Shut-off Timers.** Exterior energy use items not mentioned shall be supplied with automatic shutoff timers.
- xiii. **Appropriation of funds.** All renewable mitigation program payments in lieu received by the town shall be deposited into a separate account with the Town and used exclusively for renewable mitigation systems to offset exterior energy consumption for the benefit of the town’s citizens.
- d)e) **Engineered Heating Systems.** All detached single-family dwellings with equipment that meets the requirements for commissioning per sub-section N must have engineered heating systems. Where mechanical ventilation is required high efficiency energy recovery ventilators or heat recovery units shall be utilized for this purpose.
- e)f) **Direct Vent Furnace.** When the scope of the work of an addition to a dwelling or a remodel of a dwelling requires replacement of a furnace, the furnace shall be

replaced with a direct vent unit that has a minimum 92 percent AFUE.

- f)g) **Direct Vent Boiler.** When the scope of the work of an addition to a dwelling or a remodel of a dwelling requires replacement of a boiler, the boiler shall be a direct vent unit that has a minimum 90 percent AFUE.
- g)h) **Prohibition on Electric Heating.** Electric resistance heating shall not be used as the buildings primary heating source.
- h)i) **Fireplaces.** Fireplaces must be EPA or California certified, and have tight fitting gasketed doors. Wood burning fireplaces shall meet the Solid Fuel Burning Device Regulations.
- i)j) **Programmable Thermostats.** Programmable thermostats are required for **forced air central all heating and cooling systems as per the 2015 IRC section N1103.2.1.**
- j)k) **Automatic Exhaust Fan Switches.** Timers, humidistats or motion sensors are required for bath exhaust fans.
- k)l) **Local Insulation Requirements.**
  - i. Headers shall be insulated full open depth.
  - ii. Framed corners must be capable of being insulated.
  - iii. Shaft and knee walls for skylights shall be insulated as exterior walls and provided with adequate backing to support the insulation.

- l)m) **Range Hood Ducting.** Range hoods are required and must be ducted to the exterior.

~~Snow Melt. 1000 sq. ft. of hydronic grade level fossil fuel snowmelt beneath drives, patios, and walkways on detached dwelling units is allowed. A 30% increase in grade level fossil fuel provided snow melt on a single family residence shall be allowed where the single family dwelling HERS rating is 50 or below. Any additional snowmelt shall be offset by a town approved renewable energy method.~~

- ~~m) **Definition of Exempt Snow Melt Area:** Tubing installed to melt snow on a deck etc. where the intent is to remove snow from the walkable or drivable area shall be measured per the size of the entire potentially snow melted area. For example if a 10' x 20' deck only has perimeter snow melt tubing, the entire area shall be counted toward the snow melt exemption. All snow melt systems shall be equipped with both moisture and temperature sensors to control operation per the IECC and IRC. Hydronic snow melt systems shall have a minimum of R-10 insulation on the non snow melt side.~~
- n) **Mechanical Systems Commissioning and Completion Requirements.** Engineering and commissioning of the mechanical and hot water heating systems shall be required on all residential where any of the following apply:
  - i. The equipment input rating exceeds 200,000 btu.
  - ii. The heated water exceeds 210 deg. F
  - iii. The heated water or water glycol storage capacity exceeds 120 gallons  
Prior to the approval of the final mechanical inspection, the registered design professional shall provide evidence of mechanical systems commissioning and completion of the mechanical system installation to the Building Official.
- o) **Systems Adjusting and Balancing.** HVAC systems shall be balanced in accordance with generally accepted engineering standards. Air and water flow rates shall be measured and adjusted to deliver final flow rates within the

**TO:** MAYOR JANSEN AND TOWN COUNCIL  
**FROM:** DEANNA DREW, DIRECTOR PLAZA SERVICES  
**SUBJECT:** REQUEST FOR ADDITIONAL VENDING CART IN HERITAGE PLAZA  
**DATE:** JANUARY 8, 2015  
**CC:** KIM MONTGOMERY, JD WISE

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### **BACKGROUND**

The town approved and permitted the applicant's vending cart, Backyard BBQ, to operate during the 2014-2015 winter season on Lot OS-3V in Sunset Plaza pursuant to Section 17.5.15.E of the Community Development Code (CDC), "Vending Regulations".

After approximately one month of operation, the applicant desires to move his vending cart to Lot OS-3X, Heritage Plaza, to operate for the remainder of the winter season. A letter from the applicant listing the reasons for this request is attached.

The town code currently allows a maximum of three vending carts to operate in Heritage Plaza. Three vending carts (Place de Crepes, Wax Guru, and Gyro Stand) were previously approved to be located in Heritage Plaza for the 2014-2015 winter season and are currently operating under license agreements with the town. Two of the existing carts serve food and the other offers ski and snowboard waxing services.

The Town Council may permit additional vending carts on Plaza Areas in its sole discretion.

### **CONSIDERATIONS**

- The applicant has met all conditions for approval of a vending cart on Town plazas.
- According to the CDC, the purpose of permitting vending carts in the Village Center is to promote vitality and vibrancy without impacting the public interest or causing detriment to existing businesses.

- The vendor serves pulled pork and chicken brisket BBQ, a food item that does not compete with other food establishments in the Sunset Plaza. However this food item does compete with the Diggity's Dogg House in Heritage Plaza.

But, Eric Moser the owner of the Dogg House has indicated he does not oppose the vending cart moving to Heritage Plaza.

- The vendor has recognized the town's intent to utilize vending carts as "incubator" businesses to eventually occupy long term, year-round, brick and mortar sites in the Village Center.
- The town desires to increase activity and vibrancy in our outlying plaza areas including Sunset Plaza. The vendor has stated he will consider returning to Sunset Plaza after he is able to build a reputation in a location with more visibility and foot traffic.
- The vendor has spent a considerable amount of time and money gaining approval from the town for his vending cart operation.
- The town acknowledges that Sunset Plaza does not provide a heated, snow-free, plaza surface or a large seating area to serve a vending cart operation, but cannot provide an immediate solution to these issues. However, manual snow removal and a variety of benches, tables and chairs do exist at this location.
- It is the Plaza Services staff opinion that there is enough physical space for an additional vending cart in Heritage Plaza this season.



1/7/15

Mayor & Town Council  
Town of Mt. Village, CO.  
RE: Sunset Plaza -Food Cart location

Dear Council Members,

As an introduction, I am Nick Pasquariello, an Executive Chef. I have worked in Mt. Village Hospitality /Food operations in the past as:

1. Deli-Manager in the Mt. Market for 2 years &
2. Line Chef at the Peaks (in the 5 Star Restaurant) for a season.

Since graduation from Johnson & Wales University -Denver Culinary College in 2005, I have been Executive Chef and/or Restaurant Manager in several restaurants in Ridgway & Montrose. The last 2 years I have been the Food Service Director /Dietary Manager of San Juan Living Center (Assisted living facility) in Montrose. I felt that I needed a “rest” from that type of Food operation- as the “clients” are usually ill & are there to either rehab or to have assisted living services until they pass. I am not a novice businessman.

I chose to open a lunch BBQ Food Cart operation in Mt Village for the 2014-2015 Winter Ski season. When I applied, there were no available Cart spots in Heritage Plaza, so I reluctantly accepted a cart location in Sunset Plaza. I started in Sunset Plaza on 12/13/14. I have been in the Sunset Plaza for over 4 weeks from 10:30 -3:30 6-7 days a week, as per contract. I have opened up & stood by the BBQ Cart during the snow storms/ blizzard/freezing temps /overcast /wind & a few sunny days.

Here are the issues with this Lunch Food Cart location assignment in Sunset Plaza:

1. This is the first year a Lunch Food cart has operated in Sunset Plaza-there is no “winter lunch cart history” to build on
2. My BBQ Cart is not advertised on the directories – & no temp sandwich board advertising is allowed for carts (although allowed for other businesses)
3. Sunset Plaza has very little Skier/visitor & local “foot traffic” before 3 PM-(happy hour & dinner).
4. Sunset Plaza is **not a winter lunch destination Plaza** (Heritage Plaza is). The several inside Food operations in Sunset Plaza have very minimal lunch traffic.
5. Sunset Plaza is not heated & requires snow shoveling & plowing –several inches of snow on the Plaza is not conducive to having potential customers get to my Food Cart (Heritage Plaza is heated)
6. My cart is required to be removed each nite. I had to rent a monthly parking spot in the parking garage.

7. Sunset Plaza did not provide public seating (tables & chairs) for my BBQ Food Cart business for the 1<sup>st</sup> 3 weeks during the Xmas or New Year's Holiday weeks (Heritage Plaza does). My few customers had to either stand or continue eating & walking. Addition of public seating (2 tables-4 chairs) this week has **not** improved traffic or revenue.

#### **Business to date:**

I have had excellent reviews of the quality of my BBQ –Pulled Pork-Chicken & Brisket. However, because of the issues above in the Sunset Plaza location, **I have only averaged from 6-12 sandwiches per day (\$50-\$75/day)**. I have grossed Less than \$800 for the 4 weeks. That barely pays for the cost of the Food & my gas each day. There is NO revenue for space rental /parking rental / licenses or my salary. I am in the red every day. I have invested over **\$6000** up front to:

1. Purchase the Food cart
2. Buy food
3. Food license & health inspection
4. Acquire the required Mt Village Insurance package
5. Pay Mt. Village Application & Licensing fees & the \$500 deposit
6. Pay monthly rental for the cart location
7. Pay monthly parking fees

#### **Request of the Town Council:**

I can not return to my former position as Food Service Director at the Assisted Living Facility. I fully intend to have this BBQ Lunch Cart be successful. However, I can not make this BBQ Food Cart a success or build the reputation in Sunset Plaza. **The Plaza is not set up for Winter Lunch Food Cart service and no history as a Winter Lunch Plaza.** I can not continue to stand in the Sunset Plaza in the snow & cold with no real lunch foot traffic for the winter ski season.

Therefore, I am asking the Town Council to **Transfer my cart location to Heritage Plaza immediately**-so that my business can survive & I can build a reputation for the BBQ Cart. BBQ (Pulled Pork-Chicken & Brisket) is an approved menu & does not compete with other restaurant or cart menu items in Heritage Plaza.

#### **Future Intent:**

As per the contract, my future vision would to become a brick & mortar operation, perhaps take over the Sweet Life location in Heritage Plaza, if I have a successful season. At a minimum, I could agree to return to Sunset Plaza **next** ski season, after I have built the BBQ Cart reputation in Heritage Plaza this season. Without this move to Heritage Plaza for the rest of the Winter Ski season, I will lose my investment & my livelihood.

Thank you for your consideration.

Nick Pasquariello/ Pasquariello Services [/nickpasquariello@ouraynet.com](mailto:/nickpasquariello@ouraynet.com) /(970) 318-0153

**Susan Johnston**

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**Subject:** FW: BBQ Cart - For Town Council Please

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**From:** [Rhdelves@aol.com](mailto:Rhdelves@aol.com) [<mailto:Rhdelves@aol.com>]  
**Sent:** Tuesday, January 13, 2015 9:54 AM  
**To:** Deanna Drew; Jackie Kennefick; Kim Montgomery; Nichole Zangara  
**Subject:** BBQ Cart - For Town Council Please

All - I see that you will be considering a request from the owner of the BBQ cart currently located on Sunset Plaza to move to Heritage Plaza. I encourage you NOT to approve this request.

Carts are historically controversial because they have very low costs to operate and operate on Town Land. Our terrestrial businesses operate with very high costs and risks and view the carts as competition with a big and, in their opinion, unfair, cost advantage. Town Council has historically looked for balance, knowing that carts are part of the visitor experience that makes the Village Center more vibrant and attractive. We settled on a 3-cart limit in Heritage Plaza and a standard that carts not offer competing products with other businesses. Crepes, Wax Guru, and Gyro carts largely meet the non-compete standard, although even that can be debated, and often is by the terrestrial owners.

BBQ cart offers a meat sandwich. So do Tracks, Diggity, Poachers, Black Iron, and Tomboy. To me, the BBQ product is competitive with all of these establishments. I know that Diggity and Tracks share this opinion, because I have discussed it with them.

I feel for the BBQ cart owner since he too has made an investment in launching a new business in our Town, and we need to encourage that. But the rules exist for a reason and I have to assume he is aware of them. I understand that he has found the business activity on Sunset plaza to be lacking, but, I have to assume he did his research ahead of time and made informed business decisions.

In this situation, I encourage you to support the long-time local owners of existing businesses and stick to the existing vending regulations.

Bob Delves

**TOWN OF MOUNTAIN VILLAGE**  
**Town Council Regular Meeting**  
**January 15, 2015**  
**8:30 a.m.**

During Mountain Village government meetings and forums, there will be an opportunity for the public to speak. If you would like to address the board(s), we ask that you approach the podium, state your name and affiliation, and speak into the microphone. Meetings are filmed and archived and the audio is recorded, so it is necessary to speak loud and clear for the listening audience. If you provide your email address below, we will add you to our distribution list ensuring you will receive timely and important news and information about the Town of Mountain Village. Thank you for your cooperation.

**NAME: (PLEASE PRINT!!)**

NAME	EMAIL:
Jackie Kenefick	EMAIL:
Ken Montgomery	EMAIL:
Laela Benitez	EMAIL:
Susan Johnston	EMAIL:
Dan Reed	EMAIL:
John Houze	EMAIL:
JEFFREY FASOLO	EMAIL:
Jonathan Greenman	EMAIL:
RICHARD NUTTALL - TRAA	EMAIL:
MICHAEL MARTELON - TTB	EMAIL:
DAN GARNER	EMAIL:
Eric Wilks	EMAIL:
REYNDA DEWITT Gayle	EMAIL: Dewitt Gayle 1@gmail.com
Spencer	EMAIL:
Corra McMills	EMAIL:
Douglas Today	EMAIL: Douglas@Northytds.com
Sean Ferguson	EMAIL:
LYN GRUSS	EMAIL: lyn.gruss@fairmont.com
Sara Larsen	EMAIL: sara@tmvva.org
Rachelle Redman	EMAIL: MWPD.
STEVE ROTH	EMAIL:
Anton Benitez	EMAIL:
STENHAMM	EMAIL: ROBERT@TELSKI.COM
LISA EIDSMO	EMAIL: lisa@visittelluride.com
Kiera Skinner	EMAIL: Kiera@visittelluride.com

TOWN OF MOUNTAIN VILLAGE  
Town Council Regular Meeting  
January 15, 2015  
8:30 a.m.

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NAME: (PLEASE PRINT!!)

*Dylan Henderson*

EMAIL: \_\_\_\_\_

*Brian Koenig*

EMAIL: \_\_\_\_\_

*JUDI SNEDECOR*

EMAIL: \_\_\_\_\_

*Nick Bongiovanni*

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OS-1A-MVB CONVEYANCE AGREEMENT

THIS OS-1A-MVB CONVEYANCE AGREEMENT (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date"), by and between Madeline Property Owner, LLC, a Delaware limited liability company ("Owner") and the Town of Mountain Village, a home rule municipality and political subdivision of the State of Colorado ("Town").

Recitals:

A. Owner has submitted an application to the Town to replat all of OS-1A-MVB owned by the Town ("Open Space") into Lot 38-50-51R to be incorporated into the Telluride Mountain Village Resort Condominiums, a Colorado common interest community, which located on Lot 38-50-51R ("Community"), to be used for the construction of a porte cochere and elevated outdoor pool and pool deck for the Community ("Entry and Pool Improvements") in accordance with plans approved by the Town's Design Review Board.

B. After a public hearing and careful consideration, the Town desires to grant and convey fee title ownership in the Open Space to Owner to be incorporated into Lot 38-50-51R.

C. The Town and Owner desire to enter into this Agreement to address the conditions and consideration for conveyance of the Open Space by the Town to Owner.

NOW, THEREFORE, for valuable consideration, consisting of the mutual promises, covenants and conditions contained herein, the sufficiency of which is acknowledged by the parties, the parties agree as follows:

1. CONSIDERATION. In consideration of the conveyance of the Open Space by the Town to Owner to be incorporated into Lot 38-50-51R, Owner shall provide the following:

1.1 Cooling Upgrades. Owner shall contribute up to \$60,000 to be used by the Town to replace the cooling unit for the Ice Rink located within the Community (the "Cooling Upgrades"). Upon presentment of invoices for the Cooling Upgrades to Owner from the Town, Owner shall forward funds to the Town within fifteen (15) days of receipt of the invoices.

~~1.2~~ Ice Rink Shade Structure. Owner shall, at Owner's sole cost and expense, design and construct shade structure improvements over the Ice Rink in substantially the same dimensions and design as the conceptual design set forth in Exhibit "A," (the "Shade Structure") subject to customary design review approval by the Town Design Review Board. Prior to submitting for final Town Design Review Board Approval, Owner shall submit the design and specifications of the Shade Structure to the Town's Recreation Department for review and approval of the Shade Structure, which shall not be unreasonably withheld. The completion of the Shade Structure shall be finished in accordance with the following provisions:

- (a) If the building permit for the Pool and Entry Improvement is issued prior to July 1, then the Shade Structure shall be completed by no later than November 30<sup>th</sup> of the year of issuance of the building permit;
- (b) If the building permit for the Pool and Entry Improvements is issued after July 1, then the Shade Structure shall be completed by November 30 of the year following the year of issuance of the building permit. Owner shall not interrupt the Ice Rink operations in

the winter seasons (December 15 through April 5) in connection with the construction and installation of the Shade Structure. ,2015.

12.1.1 Following completion of installation of the Shade Structure, the Owner shall notify the Town of such completion and the Town shall have ten (10) business days to inspect the Shade Structure for any defects. If such defects are noted, the Owner shall have ten (10) business days to correct any defects. Upon acceptance of the Shade Structure, the Owner shall provide the Town with a Bill of Sale for such Shade Structure along with an assignment of all warranties for the products and construction of the Shade Structure. Upon acceptance of the Bill of Sale for the Shade Structure, the Town shall be responsible for the ongoing operation, maintenance and repair of the Shade Structure, which shall be undertaken by the Town in the Town's reasonable discretion.

1.3 **Conditions for Issuance Certificate of Occupancy.** The certificate of occupancy for the Entry and Pool Improvements shall not be issued until the Town has accepted the Shade Structure and the Town has received reimbursement for the Cooling Upgrades. Provided, however, if the Town has not completed the Cooling Upgrades by the date of completion of the Shade Structure by Owner, November 30, 2015, then the certificate of occupancy shall be issued by the Town and the Owner shall be obligated to reimburse the Town (up to \$60,000) at such time as the Cooling Upgrades are completed and proper invoices are submitted to Owner.

2. **AMENDMENT TO CONDOMINIUM MAP.** By no later than sixty (60) days after the date of issuance of a certificate of occupancy by the Town for the Entry and Pool Improvements, Owner shall submit an amendment to the Community Condominium Map, which shall include the new units or expansion of existing units created by the Entry and Pool Improvements as well as all new ground level plaza space to be included within the existing Plaza Unit (owned by the Town) for review and approval by the Town in accordance with the Town's Community Development Code. As a condition of the Community Condominium Map amendment approval process, Owner shall submit an amendment to the Community and Public Use and Access Easements recorded at Reception No. 407366 for review and approval by the Town, which shall amend the description of the Community Entrance Easement Area to incorporate the newly constructed plaza areas.

3. **RECONVEYANCE OF PLAZA SPACE.** In connection with the amendment to the Community Condominium Map, all newly created ground level plaza space shall be incorporated into the Plaza Unit (owned by the Town) free and clear of all liens and encumbrances.

4. **GENERAL PROVISIONS.**

4.1 **Indemnity.** Owner shall indemnify and hold the Town harmless from any and all liability, damage, judgments and costs by reason of death or injuries sustained by or property damage suffered by any person on the Property in connection with Owner's activities contemplated by this Agreement, unless such claims arise from the negligence or intentional acts of the Town and/or Town's contractors, agents, representatives or invitees. If the Town is made a party to any litigation on account of any such claim, Owner shall pay all damages, cost and expenses recovered against the Town as determined by a final judgment by a court of competent jurisdiction. Such damages, costs and expenses shall be due forthwith after notice thereof from the Town. Owner shall also pay to the Town all reasonable out of pocket attorneys' fees, expert witness fees, expenses, costs and losses which the Town may incur in connection with such claim.

4.2 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, addressed to the recipient at their address listed below their signature hereto. Any notice of a change of address shall be given as set forth in this provision to be effective.

4.3 Waiver. The waiver of a breach of any of the covenants contained in this Agreement, or the failure of a party to insist on the strict performance of any provision, rule or regulation shall not be construed to be a waiver of any succeeding breach of the same covenant, provision, rule or regulation.

4.4 Written Modifications. Any modification of this Agreement shall be effective only if it is in writing and signed by all parties hereto.

4.5 Entire Agreement. This Agreement contains the entire agreement between the parties as of this date, and the execution hereof has not been induced by either party by representations, promises, or understandings not expressed herein and there are no collateral agreements, stipulations, promises, or undertakings whatsoever upon the respective parties in any way touching the subject matter of this instruments which are not expressly contained in this instrument.

4.6 Severance and Validity. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

4.7 Attorneys' and Expert Witness Fees. In the event that either party hereto has to retain counsel and/or expert witnesses to enforce any of the rights and duties created hereunder, then the prevailing party shall be awarded its reasonable attorneys' and expert witness fees and costs from the non-prevailing party, whether or not litigation is actually commenced and upon appeal.

4.8 Relationship of Parties. The parties shall not be considered or deemed to be joint venturers or partners and neither shall have the power to bind or obligate the other except as may be expressly set forth herein.

4.9 Applicable Law. This Agreement shall be construed and enforced in all respects in accordance with the laws of the State of Colorado.

4.10 Time of Essence. Time is of the essence with respect to all provisions of this Agreement.

4.11 Dispute Resolution, Venue, Remedies. The exclusive venue for resolution of disputes under this Agreement shall be in the Courts of San Miguel County, Colorado. Pursuit of any remedies provided for under this Agreement shall not preclude pursuit of any other remedies prescribed in other sections of this Agreement and other remedies provided at law or in equity, including injunctive relieve, and all remedies shall be cumulative.

4.12 Covenants Running with Land, Rights, Recordation. All covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the land and shall attach and bind and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns, except as otherwise provided herein. This Agreement shall be recorded in the real property records of San Miguel County, Colorado.

4.13 Counterparts. This Agreement may be executed in counterparts.



IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year above written.

**MADLINE PROPERTY OWNER, LLC,  
a Delaware limited liability company**

By: \_\_\_\_\_  
Simon A. Hallgarten, Authorized Signatory  
Address: c/o Northview Hotel Group  
36 Narrock Rocks Road  
Westport, CT 06880  
Attn: Simon A. Hallgarten

STATE OF \_\_\_\_\_ )  
  )  
COUNTY OF \_\_\_\_\_ )

The foregoing was acknowledged before me on \_\_\_\_\_, 2015 by Simon A. Hallgarten, Authorized Signatory of Madeline Property Owner, LLC, a Delaware limited liability company.

Witness my hand and official seal.

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

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



## MT VILLAGE TOWN COUNCIL 1/15/15

### SUNSET PLAZA CART LOCATION ISSUES

1. NO HISTORY OF LUNCH FOOD CART IN SUNSET-(1<sup>ST</sup> WINTER)
2. MINIMAL FOOT TRAFFIC ACROSS SUNSET PLAZA DURING DAY
3. SUNSET PLAZA-NOT A LUNCH PLAZA-(BUSINESS STARTS AT 4 PM)
4. LUNCH TRAFFIC IS BIG BILLY'S AT BOTTOM OF LIFT # 1
5. LEASED LOCATION- BEHIND WALL – (BLOCKED BY SNOW PILES-CAN'T BE SEEN FROM LIFT )
6. BBQ CART NOT ON DIRECTORIES OR PUBLICATIONS-(OTHER VENDING CARTS ARE)
7. FOOD CARTS NOT ALLOWED A-FRAME AD SIGNS
8. NO PUBLIC SEATING FOR 1<sup>ST</sup> 3 WEEKS-(NO WHERE FOR CART CUSTOMERS TO SIT & EAT)
9. AFTER FORMAL LETTER COMPLAINT TO TOWN -PROVIDED 2 SMALL TABLES 4 CHAIRS-(NO DIFFERENCE IN CUSTOMER BASE WITH SEATING)
10. NO PUBLIC RESTROOMS-( CUSTOMERS HAVE TO GO INTO THE 2 RESTAURANTS & FEEL OBLIGATED TO PURCHASE FOOD THERE TO BE ABLE TO USE THE RESTROOMS)
11. NO RETURN EMAIL FOR 10 DAYS FROM KATIE AS TO ISSUES-(RECEIVED EMAIL ON 10<sup>TH</sup> DAY THAT SHE HAD RESIGNED)
12. I HAVE RESIGNED FROM AN F & B MGMT JOB & INVESTED OVER \$6000 IN THIS CART BASED ON GOOD FAITH THAT THIS WAS A PROVEN LOCATION ( I WAS NOT TOLD OTHER WISE) &THAT HERE WOULD BE "ACCESS" TO THE LOCATION.

## REVENUE

13. MY BBQ CART IS AVERAGING ONLY **6-12 SANDIWCHES PER DAY** SINCE I OPEND UP 12/13/14=  
**\$50-\$75/DAY**
14. THE CARTS IN HERITAGE PLAZA ARE AVERAGING **50 SALES ON A SLOW DAY & 100+ ON A GOOD DAY**
- 15.

Add to Packet

19.2.



**COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
455 Mountain Village Blvd.  
Mountain Village, CO 81435  
(970) 728-1392**

January 15, 2015

Colorado Chapter of the American Planning Association  
Board of Directors  
P.O. Box 49573  
Colorado Springs, CO 80949

Re: 2017 APA Colorado State Conference Letter of Support

Dear Colorado APA Board:

The Mountain Village Town Council is thrilled with the prospect of hosting the 2017 American Planning Association (APA) Colorado State Conference. On behalf of the Telluride Region, we are able to provide the APA with an outstanding venue for the conference due to our stunning fall vistas, excellent conference and lodging facilities, diverse dining, and world-class recreational opportunities. Moreover, Mountain Village and Telluride are quite different from other destinations: housed in a box canyon, Telluride earned the National Historic Landmark District designation in 1964 and Mountain Village is a high alpine modern ski resort community that will be celebrating its 20<sup>th</sup> anniversary in March. Together the towns are connected by way of a free mass transit gondola system. This symbiotic relationship between Mountain Village and Telluride provides a great contrast and planning setting found nowhere else in North America.

In continuation, the region has a number of planning initiatives and accomplishments to showcase, which we believe will offer a unique conference experience both from a sharing and learning perspective. Also, the APA Colorado State Conference is well poised to offer the region an opportunity to stimulate the economy in 2017 while offering a one-of-a-kind educational opportunity for elected and appointed town and county officials and local realtors. As you may be aware, Mountain Village is fully engaged in creating a sustainable community with a diverse and vibrant economy. Playing host to the APA is certainly in line with our brand ethos as it would provide community members with a front-row seat to learn, network and grow together.

So in closing, Mountain Village Council and its staff look forward to assisting the Colorado APA in making the 2017 conference an exceptional and memorable event. Please don't hesitate to reach out to us. We are happy to serve.

Sincerely,

Dan Jansen  
Mayor, Town of Mountain Village

Add to Pack 1

### Upcoming Development Projects for 2015

#### Approved

Lot #	Sq. Ft. (Live Estimated Valuation Fee	Bldg. Permit	50% HERS	Incentive		Total If All Incentives Are Used
				20% Renewable	15% No Exterior Energy	
427	12,479 \$ 3,743,700.00	\$ 21,104.43	10552.213	4220.885	3165.66375	\$ 17,938.76
166AR-2-8	4,076 \$ 1,222,800.00	\$ 7,869.70	3934.85	1573.94	1180.455	\$ 6,689.25
182	4,080 \$ 1,224,000.00	\$ 7,876.00	3938	1575.2	1181.4	\$ 6,694.60
149BR	3,500 \$ 1,050,000.00	\$ 6,962.50	3481.25	1392.5	1044.375	\$ 5,918.13
250A	1,700 \$ 1,020,000.00	\$ 6,805.00	3402.5	1361	1020.75	\$ 5,784.25

#### Potential

Lot #	Sq. Ft. (Live Est. Fees						
407R	12,636	3790800	21351.7	10675.85	4270.34	3202.755	18148.945
		\$ 12,051,300.00					
Home No 1	3,580 \$	1,200,000.00	\$ 7,750.00	\$ 3,875.00	\$ 1,550.00	\$ 1,162.50	\$ 6,587.50
Home No. 2	4,470 \$	2,000,000.00	\$ 11,950.00	\$ 5,975.00	\$ 2,390.00	\$ 1,792.50	\$ 10,157.50

"I move to appoint the following members to the Town Hall Subarea Task Force:

<b>Task Force Representation per Bylaws</b>	<b>Members</b>
Owner of Parcel C (Primarily Town)	Bob Delves
Owner of Parcel D (Primarily TMVOA)	Pete Mitchell
One at large member from Comp. Plan Task Force	Martinique Prohaska
Two at large members from either the broader community or adjacent property owners impacted by development.	To Be Determined (TBD) By the Town Council
Four Members Representing Adjacent Property Owner Communities	
Mountain Lodge	Steve Togni
Lorian	Marcy Pickering
Trails Edge	TBD by Council
Elkstone 21	Elizabeth Barth

*The Task Force term shall run through the completion of the Conceptual Work Session for both the Lofts at Mountain Village and the medical center projects as outlined in the Bylaws and shall automatically terminate thereafter."*