

TOWN OF MOUNTAIN VILLAGE
SPECIAL TOWN COUNCIL MEETING
THURSDAY, DECEMBER 3, 2020, 8.30 AM
TO BE HELD REMOTELY VIA ZOOM WEBINAR
AGENDA

[https://zoom.us/webinar/register/WN_NfXeay9JTKyS1XDZvQx5tA](https://zoom.us/join/zoom/register/WN_NfXeay9JTKyS1XDZvQx5tA)
(see login details below)

Please note that times are approximate and subject to change

	Time	Min	Presenter	Type	
	8:30				Call to Order
1.	8:30	30			Executive Session: i. For the Purpose of Receiving Legal Advice Related to Impact of Certain Changes to the Colorado Constitution on the Town Charter Pursuant to § 24-6-402(4)(b). ii. Executive Session for the Purpose of Receiving Legal Advice and Determining Positions Relative to Matters that may be Subject to Negotiations, Developing Strategy for Negotiations, and Instructing Negotiators with Respect to Telluride Mountain Village Homeowners Association Election Pursuant to § 24-6-402(4)(b) and (e)
2.	9:00	5			Public Comment on Non-Agenda Items
3.	9:05	5	Johnston	Action	Consent Agenda: All matters in the Consent Agenda are considered to be routine by the Town Council and will be enacted with a single vote. There will be no separate discussion of these Items. If discussion is deemed necessary, that item should be removed from the Consent Agenda and considered separately: a. Consideration of Approval of the November 5, 2020 Special Meeting Minutes b. Consideration of Approval of the November 19, 2020 Regular Town Council Meeting Minutes
4.	9:10	5	Haynes Applicant	Action <i>Quasi-Judicial</i>	Second Reading, Public Hearing and Council Vote on an Ordinance Regarding a Major PUD Amendment to Extend the Length of Validity and Vested Property Rights for a Site-Specific Development Plan for Lot 109R from December 8, 2020 to December 8, 2022
5.	9:15	10	Miller Wisor	Action	Consideration of a Resolution to Set a Parking Payment in Lieu Fee Consistent with Community Development Code Section 17.5.8.D.4 Parking Payment in Lieu Rate, to Satisfy the Parking Requirements Associated with a Density Transfer and Rezone Application for Six Units from Hotel Efficiency to Lodge Designation Lot 37, Columbia Place Condominiums
6.	9:25	10	Wisor	Action	Consideration of a Resolution Approving an Intergovernmental Agreement by and Between the Town of Mountain Village and San Miguel County Authorizing the Collection of Town of Mountain Village Sales and Use Tax by San Miguel County
7.	9:35	10	Wisor Montgomery	Action	Consideration of an Emergency Ordinance Amending Chapter 5.01 – Business Licenses
8.	9:45	10	Wisor	Action	Consideration of a Resolution Amending the Bylaws for all Committees Excluding Business Development Advisory Committee and Finance Committee
9.	9:55	10	Wisor	Action	Consideration of a Resolution Amending the Bylaws for the Town of Mountain Village Business Development Advisory Committee (BDAC)
10.	10:05	10	Wisor	Action	Consideration of a Resolution Dissolving the Town of Mountain Village Finance Committee
11.	10:15	10	Montgomery Holmes	Informational	Discussion and Review of Lottery Parameters for the Sale of Town of Mountain Village Employees Units Cassidy Ridge Unit D-202 and Cassidy Ridge Unit C-201
12.	10:25	15	Major	Informational	Telluride Foundation Update
13.	10:40	10	Loebe Wise	Informational	Discussion of Public Personal Protective Equipment (PPE) Options
14.	10:50	20			Town Council Informational Council Boards and Commissions Updates 1. Telluride Tourism Board – Berry 2. Colorado Flights Alliance – Gilbride 3. Transportation & Parking – Benitez/Duprey

					<ol style="list-style-type: none"> 4. Budget & Finance Committee – Gilbride/Duprey 5. Gondola Committee – Caton/Berry 6. Colorado Communities for Climate Action – Berry 7. San Miguel Authority for Regional Transportation (SMART) – Caton/Prohaska 8. Eco Action Partners – Berry/Prohaska 9. Telluride Historical Museum – Prohaska 10. Telluride Conference Center – Gilbride/Binder 11. Alliance for Inclusion – Binder 12. Green Team Committee – Berry/Prohaska 13. Business Development Advisory Committee – Caton/Benitez 14. Mayor's Update – Benitez
15	11:10	5			Other Business
16	11:15				Adjourn

11/24/20 SJ

Register in advance for this webinar:

https://zoom.us/webinar/register/WN_NfXeay9JTKyS1XDZvQx5tA

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

Public Comment Policy:

- The Town Council will take your comments during all virtual Town Council meetings through the zoom conference app through the raise hand function where when called for the presiding officer will acknowledge those who have used the raise hand function and unmute such speaker.
- Please do not comment or use the raise hand function until the presiding officer opens the agenda item to public comment.
- All those wishing to give public comment must identify their full name and affiliation, if any, to the Town of Mountain Village.
- Please keep your comments as brief and succinct as possible and under two minutes. Please refrain from repeating what has already been said by others in the interest of time. You may simply state that you agree with a previous speaker's comments.
- No presentation of materials through Zoom screen sharing shall be allowed for non-agendized speakers unless submitted 48 hours prior to the meeting date.
- Commenters shall refrain from personal attacks and maintain a civil tone while giving public comment.
- Written materials must be submitted 48 hours prior to the meeting date in order to be included in the meeting packet and of record. Written comment submitted within 48 hours will be accepted but shall not be included in the packet or be deemed of record.



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**TOWN OF MOUNTAIN VILLAGE
MINUTES OF THE NOVEMBER 5, 2020
SPECIAL TOWN COUNCIL MEETING
DRAFT**

Agenda Item 3a

The meeting of the Town Council was called to order by Mayor Laila Benitez at 8:30 a.m. on Thursday, November 5, 2020. Due to the Town's Disaster Declaration of March 19, 2020 related to the COVID-19 virus, the meeting was held with virtual access provided through Zoom.

Attendance:

The following Town Council members were present and acting:

Laila Benitez, Mayor
Dan Caton, Mayor Pro Tem
Patrick Berry
Pete Duprey
Natalie Binder
Marti Prohaska
Jack Gilbride

The following Town Council members were absent:

Also in attendance were:

Kim Montgomery, Town Manager
Susan Johnston, Town Clerk
Christina Lambert, Senior Deputy Town Clerk
Paul Wisor, Town Attorney
Julie Vergari, Chief Accountant
Chris Broady, Chief of Police
Jaime Holmes, Director of Human Resources
Lindsay Niehaus, Human Resources Coordinator
Kathrine Warren, Public Information Specialist
Michelle Haynes, Director of Planning & Development Services
John Miller, Senior Planner
Amy Ward, Planner
Jim Loebe, Director of Transit & Recreation
Jim Soukup, Chief Technology Officer
Steven Lehane, Director of Broadband
Finn Kjome, Director of Public Works
JD Wise, Assistant Director of Public Works
Dawn Katz, Director of Mountain Munchkins
Kate Burns, Controller

Julia Caulfield
Anton Benitez
Cara Pallone
Stefano Togni
Huascar Gomez
Tony Kalyk
Tyler Newman

Public Comment (1)

There was no public comment.

Consent Agenda: (2)

All matters in the Consent Agenda are considered to be routine by the Town Council and will be enacted with a single vote. There will be no separate discussion of these Items. If discussion is deemed necessary, that item should be removed from the Consent Agenda and considered separately:

- a. **Consideration of Approval of the October 7, 2020 Town Council Budget Meeting Minutes**
- b. **Consideration of Approval of the October 15, 2020 Regular Town Council Meeting Minutes**

On a **MOTION** by Dan Caton and seconded by Natalie Binder, Council voted unanimously to approve the Consent Agenda as presented.

Council Health Benefits Discussion (3)

Director of Human Resources Jaime Holmes presented. Council discussion ensued. Council consensus was to add the cost of Council health benefits to the 2021 budget.

Jack Gilbride joined the meeting at 8:38 a.m.

Consideration to Authorize an Application for an Extension of the Gondola Parking Garage Design Review Approvals and Vested Property Rights beyond October 20, 2021, Lot 1003R-1 (4)

Director of Planning and Development Services Michelle Haynes and Town Attorney Paul Wisor presented. On a **MOTION** by Jack Gilbride and seconded by Natalie Binder, Council voted unanimously to authorize the preparation of an application for an extension of the Gondola Parking Garage Design Review approvals and vested property rights beyond October 20, 2021 for Lot 1003R-1.

On a **MOTION** by Patrick Berry and seconded by Jack Gilbride, Council voted unanimously to adjourn as the Mountain Village Town Council and convene as the Board of the Mountain Village Housing Authority.

Mountain Village Housing Authority: (5)

- a. **Consideration to Authorize an Application for an Extension of the Village Court Apartments (VCA) Phase IV Design Review Approval from January 11, 2021 to July 11, 2021 and an Extension of Vested Property Rights**

Michelle Haynes presented. Council discussion ensued. On a **MOTION** by Patrick Berry and seconded by Marti Prohaska, Council voted unanimously to authorize an application for an extension of the Village Court Apartments Phase IV Design Review approval from January 11, 2021 to July 11, 2021 and to the extend the vested property rights for ten years.

On a **MOTION** by Patrick Berry and seconded by Dan Caton Council voted unanimously to adjourn as the Board of the Mountain Village Housing Authority and to convene as the Town Council.

Discussion and Consideration of a Bolstered Fire Mitigation and Forest Health Programs and the Associated Budget Request (6)

Michelle Haynes and Senior Planner John Miller presented. Council discussion ensued regarding creating a master plan to address a Forest Health Program which would include a forester. Council directed staff to agendize an item to propose the program at the November Regular Town Council meeting.

Consideration to Hire a Mountain Munchkins Part-Time, Seasonal Substitute Teacher Position (7)

Mountain Munchkins Director Dawn Katz presented. Council discussion ensued. On a **MOTION** by Patrick Berry and seconded by Dan Caton, Council voted unanimously to approve the hiring of a Mountain Munchkins part-time, seasonal substitute teacher position.

Consideration of Approval for Telluride Mountain Village Owners Association (TMVOA) Gondola Plaza Wireless Speakers Purchase (8)

TMVOA President & Chief Executive Officer Anton Benitez presented. Mayor Benitez recused herself from the discussion and Mayor Pro-Tem Dan Caton took over for the agenda item. Council discussion

ensued. On a **MOTION** by Natalie Binder and seconded by Jack Gilbride, Council voted unanimously to approve the TMVOA application to purchase additional wireless speakers for the Gondola Plaza.

Council Boards and Commissions Updates : (9)

1. **Telluride Tourism Board – Berry**
2. **Colorado Flights Alliance – Gilbride**
3. **Transportation & Parking – Benitez/Duprey**
4. **Budget & Finance Committee – Gilbride/Duprey**
5. **Gondola Committee – Caton/Berry**
6. **Colorado Communities for Climate Action – Berry**
7. **San Miguel Authority for Regional Transportation (SMART) –Caton/Prohaska**
8. **Eco Action Partners – Berry/Prohaska**
9. **Telluride Historical Museum – Prohaska**
10. **Telluride Conference Center – Gilbride/Binder**
11. **Alliance for Inclusion – Binder**
12. **Green Team Committee – Berry/Prohaska**
13. **Business Development Advisory Committee – Caton/Benitez**
14. **Mayor’s Update – Benitez**

Other Business (10)

Dan Caton stated that a company is proposing a meal delivery program for the winter season. More information will follow.

There being no further business, on a **MOTION** by Marti Prohaska and seconded by Dan Caton, Council voted unanimously to adjourn the meeting at 9:46 a.m.

Respectfully prepared and submitted by,

Susan Johnston
Town Clerk



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**TOWN OF MOUNTAIN VILLAGE
MINUTES OF THE NOVEMBER 19, 2020
REGULAR TOWN COUNCIL MEETING
DRAFT**

Agenda Item 3b

The meeting of the Town Council was called to order by Mayor Laila Benitez at 8:31 a.m. on Thursday, November 19, 2020. Due to the Town's Disaster Declaration of March 19, 2020 related to the COVID-19 virus, the meeting was held with virtual access provided through Zoom.

Attendance:

The following Town Council members were present and acting:

Laila Benitez, Mayor
Dan Caton, Mayor Pro Tem
Patrick Berry
Pete Duprey
Natalie Binder
Marti Prohaska
Jack Gilbride

The following Town Council members were absent:

Also in attendance were:

Kim Montgomery, Town Manager	David Petty
Susan Johnston, Town Clerk	Anton Benitez
Christina Lambert, Senior Deputy Town Clerk	Michael Martelon
Paul Wisor, Town Attorney	Matt Skinner
Kevin Swain, Director of Finance	Corenna Howard
Julie Vergari, Chief Accountant	Jonette Bronson
Chris Broady, Chief of Police	Robert Stenhammer
Jaime Holmes, Director of Human Resources	Cath Jett
Zoe Dohnal, Business Development and Sustainability Senior Manager	Kevin Jones
Kathrine Warren, Public Information Specialist	Delanie Young
Michelle Haynes, Director of Planning & Development Services	Cecilia Curry
John Miller, Senior Planner	Elizabeth Savage
Amy Ward, Planner	John Howe
Seth Carson, VCA Maintenance Manager	Julia Caulfield
Jim Loebe, Director of Transit & Recreation	Keith Hampton
Jim Soukup, Chief Technology Officer	Kiera Skinner
Steven Lehane, Director of Broadband	Jonathan Greenspan
Kate Burns, Controller	Madeline Gomez
Finn Kjome, Director of Public Works	Marla Meridith
JD Wise, Assistant Director of Public Works	Sherri Reeder
Jon Tracy, Recreation Supervisor	Mya McCoy
Steve Evans	Todd Brown
Tyler Newman	Reginald Bevalacqua
Justin Kilbane	John A Wagner
Heather Knox	Judy Thompson
Tom Kennedy	Todd Campbell
Randy Root	Jeff Proteau
Tom Richards	

On a **MOTION** by Laila Benitez and seconded by Pete Duprey, Council voted unanimously to add an agenda item regarding Telluride Mountain Village Owners Association (TMVOA) elections to the executive session.

Executive Session for the Purpose of Receiving Legal Advice and Determining Positions Relative to Matters that may be Subject to Negotiations, Developing Strategy for Negotiations, and Instructing Negotiators with Respect to Telluride Conference Center Pursuant to § 24-6-402(4)(b) and (e) and for the Purpose of Receiving Legal Advice and Determining Positions Relative to Matters that may be Subject to Negotiations, Developing Strategy for Negotiations, and Instructing Negotiators with Respect to TMVOA Elections Pursuant to 24-6-402(4)(e).

On a **MOTION** by Dan Caton and seconded by Patrick Berry, Council voted unanimously to enter into executive session for the purpose of receiving legal advice and determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators with respect to Telluride Conference Center and TMVOA elections pursuant to § 24-6-402(4)(b) and (e) at 8:32 a.m.

Council returned to open session at 9:21 a.m.

Public Comment on Non-Agenda Items (3)
No public comment was received.

Consideration of an Appointment to the Green Team Committee: (4)

1. One “At Large” Seat Month

Senior Deputy Clerk Christina Lambert presented. Jonette Bronson and Heather Knox made statements of interest. Green Team Chair Cath Jett provided comment. On a **MOTION** by Dan Caton and seconded by Natalie Binder, Council voted unanimously to appoint Jonette Bronson to the vacated “At Large” seat through September 2021.

Consideration of an Appointment to the Business Development Advisory Committee (BDAC): (5)

1. Mountain Village Merchant Seat

Dan Caton presented. Kevin Jones provided a statement of interest. Council discussion ensued regarding amending BDAC Bylaws to include two Mountain Village Merchant members. Council directed staff to agendaize an item amending the bylaws to allow for two Mountain Village Merchant seats at the December 3, 2020 Special Town Council meeting. On a **MOTION** by Marti Prohaska and seconded by Jack Gilbride, Council voted unanimously to appoint Stanya Gorriaz to the Mountain Village merchant seat for a one-year term.

Marketing Telluride Inc., (MTI) and Colorado Flights Alliance (CFA) Bi-Annual Report (6)

Telluride Tourism Board President and CEO Michael Martelon and Colorado Flights Alliance CEO Matt Skinner presented.

2020 Regional Green House Gas Report Discussion (7)

Business Development and Sustainability Senior Manager Zoe Dohnal and Patrick Berry presented. Public comment was received by Cath Jett, Todd Brown and Jonathan Greenspan. Council discussion ensued.

Consideration of Approval of the Solar Incentive Program (8)

Marti Prohaska presented. Council discussion ensued. On a **MOTION** by Pete Duprey and seconded by Patrick Berry, Council voted unanimously to approve the \$50,000 for solar marketing incentive in 2021.

KOTO Broadcast Discussion (9)

Natalie Binder presented. Council discussion ensued.

First Reading, Setting of a Public Hearing and Council Vote on an Ordinance Amending the Town of Mountain Village Affordable Housing Deed Restriction (10)

Town Attorney Paul Wisor presented. Council discussion ensued. On a **MOTION** by Natalie Binder and seconded by Dan Caton, Council voted 7-0 to approve on first reading an Ordinance amending the Town of Mountain Village Affordable Housing Deed Restrictions and to set the second reading, public hearing and final Council vote for December 10, 2020.

Consideration of Forest Management Programs, Staffing and Budget Implications (11)

Director of Planning and Development Services Michelle Haynes presented. Council discussion ensued. On a **MOTION** by Dan Caton and seconded by Jack Gilbride, Council voted unanimously to approve the following items:

1. Approve a Town Forester/GIS Assistant Position.
2. An additional [\$25,000] to leverage for forestry grant funding opportunities
3. Amend the fee schedule to include [enforcement of the existing] fee for a tree removal permit, a fee for forest management plans and fire mitigation plans and [a fee for defensible space site walks]
4. Increase the defensible space rebate to 50% or a total of \$10,000 per property
5. Terminate a 2021 contract with West Region Wildfire Council for Defensible Space Site Walks and Prescriptions, and the Town Forester would assume this role.

On a **MOTION** by Dan Caton and seconded by Jack Gilbride, Council voted unanimously to convene as the Mountain Village Metro District Board.

Town Council Acting as the Board of Directors for the Dissolved Mountain Village Metro District: Public Hearing on the Proposed 2021 and Revised 2020 Budgets (12)

Director of Finance Kevin Swain presented. The Mayor opened the public hearing. No public comment was received. The Mayor closed the public hearing.

On a **MOTION** by Jack Gilbride and seconded by Pete Duprey, Council voted unanimously to re-convene as the Mountain Village Town Council.

Finance: (13)

Director of Finance Kevin Swain presented

- a. **Presentation of the October 31, 2020 Business & Government Activity Report (BAGAR)**
- b. **Consideration of the September 30, 2020 Financials**

On a **MOTION** by Dan Caton and seconded by Jack Gilbride, Council voted unanimously to approve the October 31, 2020 Financials as presented.

- c. **First Reading, Setting of a Public Hearing and Council Vote on an Ordinance of the Town Levying Property Taxes for the Year 2020 to be Collected in 2021**

Council discussion ensued. On a **MOTION** by Pete Duprey and seconded by Jack Gilbride, Council voted 7-0 to approve on first reading an Ordinance of the Town levying property taxes for the year 2020 to be collected in 2021 with the following revisions: and to set the second reading, public hearing and final vote for December 10, 2020.

- d. **First Reading, Setting of a Public Hearing and Council Vote on an Ordinance Adopting the 2021 Budget and Revising the 2020 Budget**

Council discussion ensued. Public comment was received by Keith Hampton. On a **MOTION** by Dan Caton and seconded by Pete Duprey, Council voted 7-0 to approve on first reading an Ordinance adopting the 2021 Budget and revising the 2020 Budget noting that VCA numbers for free cable services beginning in December and continuing into 2021 for a period based on budget caution levels per Council's discretion with the public health orders and adding the \$5000 KOTO grant funding and to set the second reading, public hearing and final vote for December 10, 2020.

- e. **Consideration of a Resolution Adopting Certain Fee Schedules Effective January 1, 2021**

Council discussion ensued. On a **MOTION** by Pete Duprey and seconded by Jack Gilbride, Council voted unanimously to approve a Resolution adopting certain fee schedules effective January 1, 2021.

Consideration of a Resolution to Approve a Conditional Use Permit to Allow for a Driveway and Associated Access Over an Estimated 800 Square Foot Portion of OSP 20 Benefitting Lot 716 Consistent with Table 3-1: Town of Mountain Village Use Schedule *Quasi-Judicial* (14)

Michelle Haynes presented. Patrick Berry recused himself. Council discussion ensued. The Mayor opened the public hearing. No public comment was received. The Mayor closed the public hearing. On a **MOTION** by Dan Caton and seconded by Natalie Binder, Council voted unanimously to adopt a Resolution approving a Conditional Use Permit to allow for a driveway and associated access over an estimated 800 square foot portion of OSP 20 benefitting Lot 716 consistent with Table 3-1: Town of Mountain Village Use Schedule.

First Reading, Setting of a Public Hearing and Council Vote on an Ordinance Regarding a Density Transfer and Rezone Located at Lots 517 and 518, 146 Russell Dr., to Transfer One Single-Family Unit of Density into the Density Bank This item Designation *Quasi-Judicial* (15)

Jack Gilbride recused himself because he lives adjacent to the project. Planner Amy Ward presented. The Mayor opened the public hearing. Public comment was received by David Petty. The Mayor closed the public hearing. Council discussion ensued. On a **MOTION** by Natalie Binder and seconded by Marti Prohaska, Council voted 6-0 to approve on first reading an Ordinance for a rezone and density transfer application pursuant to CDC sections 17.4.9 and 17.4.10 to transfer one density unit (four-person equivalent density) to the Density Bank for Lot 517 and to set the second reading, public hearing and final Council vote for December 10, 2020 with the following findings and conditions:

Findings:

1. The owner of record of density in the density bank shall be responsible for all dues, fees and any taxes associated with the assigned density and zoning until such time as the density is either transferred to a lot or another person or entity.

Condition:

1. The density transfer approval is conditioned upon the minor subdivision plat approval by the Town Council.

Consideration of a Resolution regarding a Conditional Use Permit to Allow for a Health and Wellness Program to Occur Within a Single-Family Home Located at Lot 114, 160 Country Club Drive, Pursuant to Section 17.4.14 *Quasi-Judicial* (16) *This item was continued from the October 15, 2020 Regular Town Council meeting. The applicant has requested that the application be withdrawn.*

Senior Planner John Miller presented. The applicant requested that the application be withdrawn. No action was taken.

First Reading, Setting of a Public Hearing and Council Vote on an Ordinance Regarding a Major PUD Amendment to Extend the Length of Validity and Vested Property Rights for a Site-Specific Development Plan for Lot 109R from December 8, 2020 to December 8, 2022 *Quasi-Judicial* (17)

Michelle Haynes presented. Council discussion ensued. Applicant Tom Kennedy provided a statement. The Mayor opened the public hearing. No public comment was received. The Mayor closed the public hearing. On a **MOTION** by Marti Prohaska and seconded by Jack Gilbride, Council voted (7-0) to approve on first reading an Ordinance regarding a Major PUD Amendment to extend the length of validity and vested property rights for a site-specific Development Plan for Lot 109R from December 8, 2020 to December 8, 2022 and set the second reading, public hearing and final vote for December 3, 2020.

Second Reading, Public Hearing and Council Vote on an Ordinance Regarding a Density Transfer and Rezone located at Lot 648AR, 313 Adams Ranch Road, to Rezone and Convert Three (3) Units or 3,264 Square Feet of Commercial Space into Four (4) Employee Apartments (18)

The Mayor recused herself because she lives adjacent to the project. Patrick recused himself because he works for TSG. John Miller and applicant Jeff Proteau presented. Council discussion ensued. The Mayor Pro Tem opened the public hearing. Public comment was received by Judy Thompson. The Mayor Pro Tem closed the public hearing. On a **MOTION** by Natalie Binder and seconded by Marti Prohaska, Council voted (5-0) to approve an Ordinance regarding a Density Transfer and Rezone located at Lot 648

AR, 313 Adams Ranch Road, to rezone and convert three units or 3,264 square feet of commercial space into four employee apartments.

Council took a break from 11:30 a.m. to 11:35 a.m.

First Reading, Setting of a Public Hearing and Council Vote on an Ordinance Regarding a Rezone and Density Transfer Application to Rezone Columbia Place Condominiums (Lot 37) Units 5-12 (8 units total) from a Hotel Efficiency Zoning Designation to Lodge Zoning Designation Quasi-Judicial (20) *This Item was Continued from the October 15, 2020 Regular Town Council*

Natalie Binder recused herself because she lives adjacent to the project. John Miller and Independent Agent Robert Stenhammer presented. Public comment was received by Tom Richards. Council discussion ensued. On a **MOTION** by Pete Duprey and seconded by Dan Caton, Council voted (6-0) to approve on first reading an Ordinance regarding a rezone located at Lot 37, Columbia Place Condominiums, to rezone Units 5-12 from a Hotel Efficiency zoning designation to a Lodge zoning designation with the following findings and conditions as noted in the staff report of record dated November 6, 2020 and contingent on setting the actual parking fee and timing of payment and to set the second reading, public hearing and final vote for December 10, 2020.

Consideration of a Resolution Regarding a Variance for Parking Requirements for 6 of the 8 Units at Columbia Place Condominiums (Lot 37) Units 5-12 (8 Units Total), (a Request to Waive a Parking Space Equivalent of 3 Parking Spaces) Quasi-Judicial This Item was Continued from the October 15, 2020 Regular Town Council Meeting (21)

John Miller presented. Council discussion ensued. On a **MOTION** by Marti Prohaska and seconded by Dan Caton, Council voted unanimously to table the item.

Council moved to agenda item 23.

Jim Loebe provided an update stating that due to the warmer weather the ice rink may not open for Thanksgiving.

San Miguel Regional Housing Authority (SMRHA) Update and Review of 2021 Budget and Goals (22)

Director Corenna Howard presented the report. Council discussion ensued.

Natalie Binder left the meeting at 12:14 p.m.

Council moved to agenda item 24.

Staff Reports: (23)

a. Transit & Recreation

Director Jim Loebe presented her report. Council discussion ensued.

b. Public Works

Director Finn Kjome presented his report. Council discussion ensued.

c. Town Manager

Kim Montgomery presented her report. Council discussion ensued.

Council moved to agenda item 22.

Other Business (24)

Pete Duprey discussed an email that was received by Suse Connelly regarding masks. Council discussion ensued. Council direction was to require KN95 or N95 masks or CDC standard qualified masks for all employees and to agendize a discussion at the December 3, 2020 Special Town Council meeting on the cost associated and possible distribution methods to provide qualified masks to the public.

Council directed staff to agendize the VCA Request for Proposal (RFP) process at the December 10 , 2020 regular meeting.

a. Safer at Home Public Order Discussion

Council discussion ensued stating that the current level of orange may be changing to red due to the number of recent positive Covid cases. The ski resort would remain open under a change to level red.

b. Consideration of Approval for the Hiring of a Recently Vacated Water Department Position and Road and Bridge Position

Finn Kjome presented. Council discussion ensued. On a **MOTION** by Jack Gilbride and seconded by Patrick Berry, Council voted unanimously to approve hiring the water department and road and bridge positions.

There being no further business, on a **MOTION** by Dan Caton and seconded by Pete Duprey, Council voted unanimously to adjourn the meeting at 12:16 p.m.

Respectfully prepared and submitted by,

Susan Johnston
Town Clerk



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 728-1392

TO: Mountain Village Town Council

FROM: Michelle Haynes, Director of Planning and Development Services

FOR: Public Hearing on December 3, 2020

DATE: November 23, 2020

RE: Consideration of a Second Reading of an Ordinance Regarding a Second Major PUD Amendment to Extend the Length of Validity and Vested Property Rights for a Site Specific Development Plan for Lot 109R from December 8, 2020 to December 8, 2022

PROJECT GEOGRAPHY

THIS MEMO IS SUBSTANTIALLY THE SAME AS THE FIRST READING OF AN ORDINANCE MEMO

Legal Description: Lot 109R
Address: 632-642 Mountain Village Blvd.
Owner/Applicant: MV Colorado Development Partners, LLC
Agent: Law Offices of Thomas G Kennedy
Zoning: Village Center Zone District
Existing Use: Vacant; North Village Center Parking Lot
Approved Use Pursuant to PUD Development Agreement: 66 efficiency lodge units; 38 lodge units, 20 condominium units, one employee apartment and 20,164 sq. ft. of commercial space.

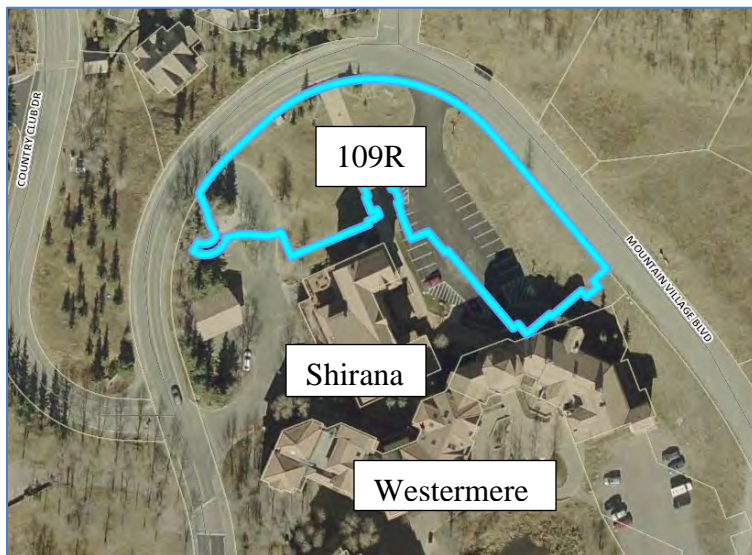
Site Area: .825 acres

Adjacent Land Uses:

- **North:** Vacant 89 Lots
- **South:** Shirana Condos
- **East:** Westermere & Palmyra Condos
- **West:** See Forever & The Peaks

ATTACHMENTS

- a) Ordinance
- b) Applicant Narrative
- c) Draft 2nd Amended PUD Agreement
- d) PUD Agreement
- e) Resolution PUD Approval
- f) [Approved PUD Plan Set](#)



RECORD DOCUMENTS

- Town of Mountain Village Community Development Code (as amended)
- Town of Mountain Village Home Rule Charter (as amended)
- Design Review Application as maintained by the Planning and Development Services Department.

PUBLIC COMMENT

None received

REFERRAL COMMENTS

Public Works – supports the application

DESIGN REVIEW BOARD RECOMMENDATION

On November 5, 2020 the Design Review Board provided a unanimous recommendation to Town Council to approve the two-year extension.

TOWN COUNCIL FIRST READING OF AN ORDINANCE

Town Council approved on first reading of an ordinance the application at their November 19, 2020 regular Town Council meeting.

DEVELOPMENT HISTORY BACKGROUND

The Town Council approved the final PUD development application on December 8, 2010 Resolution Number 2010-1208-31 as recorded at Reception Number 415339. The PUD development agreement was recorded on March 18, 2011 at Reception Number 416997 (PUD Agreement). The PUD Agreement established the length of validity until December 8, 2015. In July of 2015, the applicant applied for an extension to the PUD agreement and associated vested property rights. The First Amendment to the Development Agreement was approved to extend the PUD from December 8, 2015 to December 8, 2020 and recorded at reception Number 438754 on August 5, 2015. Approved by Ordinance No. 2015-07. The applicant is requesting an extension for two years, from December 8, 2020 to December 8, 2022, in order to allow the owner to continue monitoring the market conditions and allow for time for the owner to amend the existing approvals to something they feel is more in line with Village Center development in terms of density, use and scale.

REQUEST

The only requested amendment to the PUD Agreement is an extension of the approved final PUD plan and the associated vested property rights. Section 12.16 of the PUD Agreement (and First Amendment), allows the developer to seek an extension to the PUD. The Community Development Code does not have a PUD extension process with the major PUD amendment process the only avenue for seeking an extension.

APPROVAL HISTORY

The creation of the Mountain Village Hotel PUD included the creation of Lot 109R that is now a platted lot, with the density assigned to this lot via the Town’s approval of the final PUD plan and the associated PUD Agreement. The Town received Lot 644 in The Meadows in exchange for land it conveyed to the developer that is now a part of Lot 109R. The density assigned by the PUD is also assigned to the site. Thus, the developer and the Town have received benefits that cannot be reversed, with Lot 109R platted to fit the density and development allowed by the PUD Agreement. Staff would also note that it took several years, numerous public hearings and lots of resources to create the PUD and the associated site-specific development plan. The owners would rather extend the entitlements than let it expire at this juncture, as stated above, so that they can perfect a more suitable PUD amendment and resulting development plan.

A number of variations and waivers were granted as part of the development plan, the recitals of which can be found in the approval Resolution, exhibit d.

In the event the Town Council does not approve extension of the PUD to 2022, consistent with the Development Agreement, and as amended, the platting and density will remain on the property.

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the requested PUD amendment with the following motion:

"I move to approve on second reading of an Ordinance a Second Major PUD amendment for Lot 109R to extend the PUD Agreement and the associated vested property rights for a period of two years, expiring on December 8, 2022 and to direct staff to record the associated ordinance and 2nd PUD amendment agreement.

/mbh

ORDINANCE NO. 2020-_____**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO APPROVING A MAJOR SECOND PLANNED UNIT DEVELOPMENT (PUD) AMENDMENT TO LOT 109R EXTENDING THE LENGTH OF VALIDITY AND VESTED PROPERTY RIGHTS FOR A SITE SPECIFIC DEVELOPMENT PLAN FROM DECEMBER 8, 2020 TO DECEMBER 8, 2022****RECITALS**

- A. MV Colorado Development Partners, LLC ("Applicant") is the owner of record of real property described as Lots 109R, Town of Mountain Village as further described on the plat recorded on March 18, 2011 at Reception Number 416994 ("Property").
- B. The Town Council approved a PUD development for the Property ("PUD Approval") evidenced by Town Council Resolution Number 2010-1208-31 on December 8, 2010 as recorded at Reception Number 415339. The PUD Approval was valid through December 8, 2015.
- C. In connection with the Town's PUD Approval, the Applicant and the Town executed a certain Development Agreement for the Property, which was recorded in Reception Number 416997 ("Development Agreement").
- D. The PUD Approval and the Development Agreement further evidenced the granting and creation of a vested property right for a site specific development plan for the Property for a period of five (5) years that is valid until December 8, 2015 ("Vested Property Right").
- E. The Applicant submitted its development application for a major PUD amendment seeking Town approval to extend the PUD Approval and the Vested Property Right until December 8, 2020 ("First PUD Extension Application").
- F. The First PUD Extension Application has been processed and evaluated pursuant to the Town of Mountain Village Community Development Code ("CDC").
- G. The Design Review Board ("DRB") conducted a public hearing on the First PUD Extension Application in accordance with the CDC Public Hearing Noticing Requirements on May 7, 2015, with public notice of such application as required by the public hearing noticing requirements of the CDC.
- H. The Town Council approved the First PUD Extension Application the Vested Property Rights for a site specific development plan by Ordinance 2015-07 at reception No. 438753 and the First Amendment to Development Agreement at Reception No. 438754 to December 8, 2020.
- I. The Applicant submitted a Second Major PUD Amendment application to extend the PUD Approval and Vested Property right until December 8, 2022.
- J. The DRB conducted a public hearing on the Second Major PUD Amendment Application in accordance with the CDC Public Hearing Noticing Requirements on November 5, 2020, with public notice of such application as required by the public hearing noticing requirements of the CDC. The DRB recommended to Town Council unanimously to approve the application.
- K. The Town Council approved on first reading of an ordinance the application on November 19, 2020.
- L. The Town Council considered on second reading of an ordinance the application on December 3, 2020.

- M. The Town Council finds the proposed Second PUD Extension Application meets the PUD criteria for decision contained in CDC Section 17.4.12.E as follows:
1. The proposed rezoning is in general conformance with the goals, policies and provisions of the Mountain Village Comprehensive Plan (“Comprehensive Plan”) because, without limitation:
 2. The PUD requires 40 hotbed units in efficiency lodge units that must remain with the hotel property owner subject to specific condo-hotel regulations, which will increase the hotbed base.
 3. The projects additional 26 efficiency lodge units, 38 lodge units and 20 condominium units above the 40 required efficiency lodge units will further infuse vibrancy, activity and vitality into the Village Center.
 4. The infill development will provide a restaurant and limited commercial space that will help revitalize the North Village Center area.
 5. 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:
 6. The uses are permitted in the Village Center Zone District.
 7. 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.
 8. The development is consistent with the Development Agreement.
 9. 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 PUD extension will allow for the creative development of a high-density hotbed project that would not be possible without the variances granted under the Development Agreement.
 - b. The project will provide improved plaza areas, public parking, pedestrian connectivity, conference space, commercial development and other amenities.
 - c. The density allowed under the Development Agreement has been transferred to the Property and can only be creatively fit on the site through the variances granted by the Town through the Development Agreement.
 - d. The Town received Lot 644 in the Meadows in exchange for land conveyed to the Applicant that is now included in the Property, thus, both the Town and the Applicant have received creative benefits that cannot be extinguished.
 10. 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 amendment furthers the land use principles of the Comprehensive Plan.
 - d. Efficient land use is being encouraged through a high density infill development that is consistent with the Comprehensive Plan.
 - e. The development continues to allow for integrated planning for the Village Center, Lot I 09R and surrounding development in order to achieve the PUD purposes.
 11. The proposed PUD amendment meets the PUD general standards contained in CDC section 17.4.12(1), including but not limited to the authority to initiate a PUD amendment, landscaping and buffering and adequate infrastructure.
 12. The PUD will continue to provide adequate community benefits, such as public parking, mitigation payments and 40 deed restricted hotbed units subject to specific condo-hotel regulations.
 13. 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.
- 14. The proposed PUD amendment will not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion.
- 15. The proposed PUD meets all applicable Town regulations and standards except for the variations allowed by the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, THAT THE TOWN COUNCIL APPROVES THE SECOND PUD EXTENSION APPLICATION, INCLUDING THE EXTENSION OF THE PUD APPROVAL AND THE VESTED PROPERTY RIGHTS UNTIL DECEMBER 8, 2022 AND THE SECOND MAJOR PUD AGREEMENT AMENDMENT IS HEREBY ATTACHED AS EXHIBIT A.

Section 2. Ordinance Effect

- A. 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.
- B. 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 thirty days after the public hearing which is December 3, 2020.

Section 5. Public Hearing

A public hearing on this Ordinance was held on the 19th day of November, 2020 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 19th Day of November, 2020

TOWN OF MOUNTAIN VILLAGE:

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

ATTEST:

By: _____
Laila Benitez, Mayor

Susan Johnston, Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this 3rd Day of December, 2020.

TOWN OF MOUNTAIN VILLAGE:

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

By: _____
Laila Benitez, Mayor

ATTEST:

Susan Johnston, Town Clerk

Approved As To Form:

Paul Wisor, Town Attorney

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

- 5. The attached copy of Ordinance No. 2020-__ (“Ordinance”) is a true, correct and complete copy thereof.
- 5. 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 _____ 2020, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	“Yes”	“No”	Absent	Abstain
Laila Benitez, Mayor				
Dan Caton, Mayor Pro-Tem				
Martinique Davis Prohaska				
Peter Duprey				
Patrick Berry				
Natalie Binder				
Jack Gilbride				

- 5. 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 _____ 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 via virtual Zoom meeting, Mountain Village, Colorado, on _____.

At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	“Yes”	“No”	Absent	Abstain
Laila Benitez, Mayor				
Dan Caton, Mayor Pro-Tem				
Martinique Davis Prohaska				
Peter Duprey				
Patrick Berry				
Natalie Binder				
Jack Gilbride				

5. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this ___rd day of _____ 2020.

Susan Johnston, Town Clerk

(SEAL)

EXHIBIT A

ADDENDUM/NARRATIVE TO PUD EXTENSION/AMENDMENT

August 27, 2020

MV Colorado Development Partners, LLC, a Texas limited liability company or its successor in interest ("**Owner**") secured certain approvals ("**Town Approvals**") by the Town of Mountain Village ("**Town**"), authorizing the Owner to pursue a mixed use development project ("**Project**") on Lot 109R, Town of Mountain Village. The documents reflect the Town Approvals include, without limitation, the following documents:

1. Town Council PUD Approval Resolution
2. Replat
3. Development Agreement and First Amendment (extending the expiration date)
4. Final PUD Plan

We will establish a dropbox account and place documents relating to the Town Approvals at that site for your access to documents.

The Town Approvals and vesting period was initially granted through December 8, 2015 ("**Town Approvals Expiration Date**"), at which time they would expire unless Owner has either: (a) obtained a building permit and commenced construction of the Project Condominium; or (b) applied for and obtained an approval to extend this Agreement and the Town Approvals.

In 2015, Owner submitted its application seeking to extend the Town Approvals Expiration Date to December 8, 2020, which was approved by the Town.

The within application is being submitted by Owner to amend the Town Approvals, including the Final PUD approval for the Project, for the purpose of further extending the Town Approvals Expiration Date from December 8, 2020 to December 8, 2022 and the period of extended vesting for the Project through December 8, 2022 for reasons set forth herein.

The project as reflected in the Town Approvals allowed for the following uses and densities, which would be allowed in a building allowed to build up to maximum height of 88'-9" and a maximum average height of 65'-2.9" with a total of approximately 270,000 sf of buildable space. The project includes a sizable hotel component.

Approved Density/Commercial SF			
	# Units	Density Per	Total Density
Efficiency Lodge Units	66	.5	33
Lodge Units	38	.75	28.5
Unrestricted Condominium Units	20	3	60
Employee Apartment	1	3	3
Commercial SF	20,164		
	Total Density		124.5

Since the granting of the Town Approvals, much has changed in the Mountain Village and with the Owner. Due to the unfortunate death of a principal of the Owner who was heading up the development team for this project, the owner shifted the focus of its development program from resort projects to other

development uses. Since that event, the Owner has been actively marketing the property for sale to qualified purchasers. These marketing efforts over recent years have not proven successful.

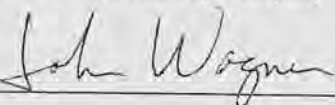
Based upon feedback from potential parties interested in purchasing and developing Lot 109R, Owner learned that there is not interest in the marketplace to develop the property as a resort/hotel project, consistent with its approvals. The Owner consulted with its marketing consultants and learned that there would be stronger interest from potential buyers/developers of the site should it be developed as a largely residential project, similar in mass/scale and uses to the surrounding developments. Starting in the fall of 2019, the Owner began discussions with the Town about modifying the approved plans to largely remove the PUD approvals and return the development of the property to more of a "use by right" project in terms of mass and scale and develop the property generally in line with those uses (residential) and densities (25 to 30) that was allowed on the property prior to the PUD approvals. A more traditional residential project would be designed to allow for and embrace short-term rental opportunities (VRBO AIRBNB, etc) which is a growing trend among owners of residential units in Mountain Village and proving to be a viable way to provide units for guests/visitors looking for accommodation units.

As Owner was getting ready to start the formal review process with the Town to amend the Town Approvals to convert it to a "use by right" project, the COVID pandemic hit and the Owner has suspended its pursuit of the application until such time as the Town was able to meet in person and not remotely. As things stand now, the Owner still wants to pursue these amendments with the Town, but would prefer to hold these meetings/hearings on the amendments with the Town in the course of in person meeting.

Should the Town Approvals expire without some type of controlled provisions in place, it would cause much confusion over the status of the project in terms of uses, densities, allowable mass/scale, etc. It was this reason that the Owner wanted to work with the Town on an amendment to the approvals to enable the "use by right" project, which would allow for an orderly change to the allowable development of Lot 109R. The approvals currently are set to expire December 8, 2020. Owner is seeking Town approval for a two-year extension to PUD expiration date to enable Owner and Town to work through a revised land use plan for Lot 109R for the "use by right" plan. Given the uncertainties surrounding the COVID circumstances and how that will affect the manner in which the Town will conduct hearings on land use applications, the Owner thought it prudent to seek the two-year extension just in case 2021 proves to be similar to 2020. The Owner is anxious to submit and have the Town review a formal amendment to the land use approvals for the revised "use by right" project, so as to enable the Owner to be able to market the property to buyers who are much more interested in pursuing a development that does not have the hotel component.

Respectfully Submitted,

MV Colorado Development Partners, LLC,
a Texas limited liability company

By: 

Printed Name: John A Wagner
Title: VP

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

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (“**Amendment**”), made effective as of _____, 2020 (“**Effective Date**”), is made by and between Town of Mountain Village, a Colorado Home Rule Municipality and Political Subdivision of the State of Colorado (“**Town**”) and MV Colorado Development Partners, LLC, a Texas limited liability company or its successor in interest (“**Owner**”). Town and Owner are sometimes each individually referred to as a “**Party**” and sometimes collectively as the “**Parties**”. The Parties agree as follows:

1. The Parties entered into that certain Development Agreement Lot 109R, Town of Mountain Village, Planned Unit Development (“**Development Agreement**”) recorded on March 18, 2011 in Reception No. 416997 as amended by the First Amendment to the Development Agreement recorded on _____ in Reception No. _____ (“**First Amendment to Development Agreement**”)

2. Owner is the current fee simple owner of certain real property described as Lot 109R, Town of Mountain Village as further described on the plat recorded on March 18, 2011 at Reception Number 416994 (“**Property**”).

3. The Town Council approved a PUD development for the Property (“**PUD Approval**”) evidenced by Town Council Resolution Number 2010-1208-31 adopted on December 8, 2010, as recorded at Reception Number 415339. The PUD Approval was valid through December 8, 2015 and subsequently was extended through December 8, 2020.

4. The PUD Approval and the Development Agreement evidenced the granting and creation of a vested property right for a site-specific development plan for the Property for a period of five (5) years that is valid until December 8, 2015 (“**Vested Property Right**”). The First Amendment to Development Agreement extended the term of the Vested Property Right for an additional five (5) years through December 8, 2020.

5. The Owner submitted its development application (“**PUD Extension Application**”) seeking Town approval to extend the PUD Approval and the Vested Property Right until December 8, 2022.

6. The PUD Extension Application was reviewed and approved by the Town, evidenced by a certain Town Council Ordinance _____, recorded in Reception No. _____ (“**Town PUD Extension Ordinance**”).

7. The Parties wish to modify portions of the Development Agreement in the manner provided for in this Amendment consistent with the Town PUD Extension Ordinance.

8. Section 12.16 of the Development Agreement is amended and restated to read as follows

12.16. **Term of Agreement.** This Agreement and the Town Approvals as they relate to the Applications, except for the Replat, shall expire as of December 8, 2022 unless Owner has either: (a) obtained a building permit and commenced construction of the Project Condominium; or (b) applied for and obtained an approval to extend this Agreement and the Town Approvals. If construction has not timely commenced or an extension not obtained prior to December 8, 2022, the Town Approvals shall expire, except that the Replat and the density assigned to the Property shall remain in place, but prior to any use and development of the Property, the Owner of the

Property must reapply for and obtain necessary approvals of applications for rezoning, PUD, waivers/variations and design review approval for any project contemplated for the Property, which will be reviewed in accordance with LUO and Design Regulations in place at the time of the submission of any such application.

9. The Vested Property Right is extended to December 8, 2022.

10. In the event that any terms, conditions and provisions contained in this Amendment are inconsistent with or otherwise in conflict with any terms, conditions and provisions contained in the Development Agreement and/or any amendments thereto, the terms, conditions and provisions contained in this Amendment shall control.

11. No other amendments, modifications or alterations to the Development Agreement, other than the amendments specifically stated herein, are contemplated or made by the execution of this Amendment. All other terms, conditions, provisions, rights, duties and benefits stated in the Development Agreement shall continue in full force and effect.

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

IN WITNESS THEREOF, the Parties have executed this Agreement intending that it become effective 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: _____

Printed Name: _____ Title: _____

Attest: _____

By: _____ Date: _____
Kim Montgomery, Town Manager

STATE OF _____)
) ss
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this ____ day of _____, 2020 by
_____ as the _____ of The Town of Mountain
Village.

Witness my hand and official seal.

_____ My commission expires: _____.
Notary Public

STATE OF _____)
) ss
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this ____ day of _____, 2020 by Kim
Montgomery as the Town Manager of The Town of Mountain Village.

Witness my hand and official seal.

_____ My commission expires: _____.
Notary Public

OWNER:

MV Colorado Development Partners, LLC,
a Texas limited liability company

By: _____

Date: _____

Printed Name: _____

Title: _____

State of _____)

)ss

County of _____)

Subscribed to and acknowledged before me this ____ day of _____, 2020 by
_____ as _____ of MV
Colorado Development Partners, LLC.

Witness my hand and official seal.

Notary Public

My commission expires: _____

DEVELOPMENT AGREEMENT
Lot 109R, Town of Mountain Village, Planned Unit Development

THIS DEVELOPMENT AGREEMENT ("Agreement"), dated and made effective as of 3/18, 2011 ("Effective Date"), is entered into by and between the Town of Mountain Village, a Colorado Home Rule Municipality and Political Subdivision of the State of Colorado ("Town") and MV Colorado Development Partners, LLC, a Texas limited liability company or its successor in interest ("Owner"). Town and Owner are sometimes each individually referred to as a "Party" and sometimes collectively as the "Parties".

DEFINITIONS

Unless otherwise provided for herein, all capitalized but undefined terms used in this Agreement shall have the meanings set forth in the LUO and/or the Design Regulations (defined below). In addition, the Parties acknowledge and agree to the following definitions ("**Definitions**") and further agree that each of the Definitions: (a) form a portion of the basis of this Agreement; and (b) are incorporated in this Agreement. As used herein, the following Definitions shall be given the meaning ascribed to the term as the same are stated below.

A. "**Act**" shall mean the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319.

B. "**Application**" shall collectively mean the various land use applications, including plans, drawings, specification, narratives, reports, studies and other materials prepared by Owner and submitted to the Town concerning the development of the Project on the Property, inclusive of: (1) Planned Unit Development (Conceptual, Sketch and Final PUD Plan)("PUD") pursuant to Section 3-5 of the LUO; (2) Replat pursuant to Section 4-4 of the LUO; (3) Rezone pursuant to Section 4-3 of the LUO; (4) Density Transfer pursuant to Section 4-2 of the LUO; (5) Variations/waivers for certain sections of the LUO and Design Regulations pursuant to Section 4-601(2) of the LUO; and (6) Extended Vested Rights.

C. "**Commercial Condominium Units**" shall mean each of those particular Condominium Units specifically designed for commercial uses by the Project Condominium Documents and the Town Approvals.

D. "**Common Elements**" shall mean the common elements, including any limited common elements formed in the Condominium and designated as such pursuant to the Project Condominium Documents.

E. "**Condominium Units**" shall mean the individual condominium units formed in the Project Condominium and designated as such pursuant to the Project Condominium Documents, which are designated for separate ownership by the Unit Owners and shall consist of the Residential Condominium Units and Commercial Condominium Units.

F. "**Contributed Town Property**" means certain land owned by the Town, which the Town agreed to allow Owner to include in the Replat and incorporated into the Property and Project pursuant to the Land Exchange Agreement.

G. "**Design Regulations**" shall mean the Mountain Village Design Regulations adopted by the Town, as amended through the Effective Date.

H. **"DRB"** or **"Design Review Board"** shall mean the Town of Mountain Village Design Review Board.

I. **"Efficiency Lodge Units"** shall mean each of those Residential Condominium Units included in the Project that are zoned and designated as an Efficiency Lodge Unit (within the meaning of the LUO) in the Town Approvals.

J. **"Final PUD Plans"** shall mean the final plans, drawings and specifications for the Property for the Property and Project that have been approved by the DRB and the Town Council, as reflected in the Town Council Approval Resolution, which plans, drawings and specifications consist of each of the documents are listed and described on attached **Exhibit "A"**.

K. **"Furniture Package"** shall mean those certain standard furnishing packages specified by Owner and the Hotel Operator for the Residential Condominium Units.

L. **"Hotel Covenant"** shall mean that certain Declaration of Covenants and Restrictions (Hotel Operator and Hotel Amenities, Facilities and Services Covenant) recorded in Reception No. 416997 in the Official Records.

M. **"Hotel Guests"** shall mean those persons who are staying in any of the Hotel Rooms or any of the Residential Condominium Units for short-term accommodation usage purposes as part of the Rental Management Program.

N. **"Hotel Operator"** means the company initially retained by the Owner and approved by the Town in the manner provided for in this Agreement and the Hotel Covenant to operate and manage the Rental Management Program in the Project Condominium.

O. **"Hotel Rooms"** means each of those forty (40) Efficiency Lodge Units located in the Project and designated and dedicated only for use and occupancy by Hotel Guests in the Rental Management Program that are deemed to be part of the Hotel Facilities Unit and will be held in the common ownership with the other portions of the Project denoted as the Hotel Facilities Unit. The location of the Hotel Rooms shall be generally consistent with the Final PUD Plans and be designated on the building permit plans and later designated on the Project Condominium Documents.

P. **"Hotel Facilities Unit"** means the Hotel Rooms, lobby area, front desk and associated office, and similar areas of the Project that are necessary for the operation of the hotel. The Hotel Facilities Unit will be owned by one entity that may change from time-to-time.

Q. **"Lock-Off Unit"** shall mean a Condominium Unit in the Project consisting of Lodge Units and Efficiency Lodge Units that shall be separated from an adjacent unit by a common keyed door.

R. **"Lodge Units"** shall mean each of those Residential Condominium Units included in the Project that are zoned and designated as a Lodge Unit (within the meaning of the LUO) in the Town Approvals.

S. **"LUO"** shall mean the Land Use Ordinance adopted by the Town of Mountain Village, as amended through the Effective Date.

T. **"Official Records"** shall mean the Official Records of the Clerk and Recorder for San Miguel County, Colorado.

U. **“Owner”** shall mean MV Colorado Development Partners, LLC, a Texas limited liability company, its successors, assigns and transferees.

V. **“Parking Condominium Units”** shall mean those particular Condominium Units designed for parking uses by the Project Condominium Documents.

W. **“Project”** shall mean the development of a certain mixed-use hotel, residential condominium and commercial project on the Property, which was approved by the Town as reflected in the Town Council Approval Resolution. The Project shall consist of: (1) a minimum of the 40 Hotel Rooms zoned Efficiency Lodge Units to be operated and deed restricted as part of the hotel and included as part of the Hotel Facilities Unit as required by this Agreement and as shown on the Final PUD Plans; (2) 26 additional Efficiency Lodge Units; (3) 38 Lodge Units; (4) 20 Unrestricted Condominium Units; and (5) approximately 20,000 sq. ft. of commercial space.

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

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

Z. **“Project Condominium Documents”** shall mean the documents prepared in connection with the formation and operation of the Project Condominium, which are anticipated to consist of the following instruments: (1) Condominium Declaration; (2) Condominium Map; (3) The Articles of Incorporation and Bylaws for the Project Association; (4) any Rules and Regulations for the Project Condominium; and (5) any and all such other pertinent documents, as the same may be amended and/or supplemented from time to time.

AA. **“Project Operational Standards”** means the standards for operating the Project as determined by the Hotel Operator, in consultation with the Owner and Project Association, consistent with the terms and conditions of the Town Approvals and the operating standards customarily followed by the Hotel Operator for similar projects managed by Hotel Operator located in mountain resort locations which are intended to promote a high standard of quality. The Project Operational Standards are intended to be followed for purposes of promoting the use and operation of the Project as a full service Hotel within the Hotel Facilities Unit and those Residential Condominium Units participating in the Rental Management Program. When developing and implementing the Operational Standards, the Hotel Operator shall exercise its good faith, commercially reasonable judgment and adhere to industry standards for similar projects located in mountain resort locations as well as the actual operational needs of the Hotel and/or Hotel Guest. It is recognized and agreed that the Project Operational Standards may vary from time to time given due consideration to winter periods, summer periods and shoulder seasons between winter and summer periods.

BB. **“Project PUD Resolution”** shall mean that certain resolution duly adopted by the Town concerning the Project Approvals for the Property and Project recorded in Reception No. 415 339 in the Official Records concerning the Development of the Project and shall include the Final PUD Plan approved by the Town.

CC. **"Property"** shall mean Lot 109R, Town of Mountain Village, San Miguel County, Colorado according to the Replat.

DD. **"Rental Management Program"** means the short-term rental management and accommodations styled program (for usage periods of less than 30 days) operated in the Condominium Project by the Hotel Operator consisting of some or all of the Condominium Units and/or the Common Elements.

EE. **"Replacement Town Property"** shall mean Lot 644, Town of Mountain Village or other mutually acceptable property to be transferred and conveyed to the Town by the Owner pursuant to the terms and conditions of this Agreement.

FF. **"Replat"** shall mean that certain Replat entitled "*Replat of Lot 109R and Tract OS-3BR-2*" establishing the boundaries of the Property recorded on March 18, 2011 in Plat Book 1, Page 4455 Reception No. 416994 in the Official Records concerning the development of the Project.

GG. **"Residential Condominium Units"** shall mean those particular Condominium Units that are zoned as Lodge Units, the Efficiency Lodge Units and the Unrestricted Condominium Units, specified for residential uses by the Project Condominium Documents and the Town Approvals.

HH. **"Town"** shall mean the Town of Mountain Village, Colorado.

II. **"Town Approvals"** shall mean those certain land use entitlement approvals concerning the Property and the Project that have been granted by the Town, including, without limitation, approvals for PUD, Variance, Rezone, Replat and Density Transfer and any other plans or permits granted by the Town for the Property and the Project. The Town Approvals are further reflected in the Project PUD Resolution, the Project Development Agreement, the Replat, The Land Exchange Agreement and this Agreement.

JJ. **"Town Council"** shall mean the Town of Mountain Village Town Council.

KK. **"Town Council Approval Resolution"** shall mean Resolution No. 2010-1208-31 adopted by the Town Council, approving the Application for the Project, which was recorded on December 10, 2010 at Reception No. 415339 in the Official Records.

LL. **"Town Enforceable Restriction"** shall mean those provisions established in the Project Condominium Documents that also run to the benefit of the Town, that may be specifically enforced by the Town and may not be modified without the prior written consent of the Town.

MM. **"Town Laws"** shall mean the Town of Mountain Village Land Use Ordinance, Town of Mountain Village Building Code, Town of Mountain Village Charter and the Town of Mountain Village Municipal Code.

NN. **"Town /Owner Land Exchange"** means the transfer and conveyance of the Contributed Town Property by the Town to Owner in exchange for the transfer and conveyance of the Replacement Town Property by the Owner to the Town in accordance with the terms and conditions of this Agreement.

OO. **"Unit Owners"** shall mean the respective owners of each of the Condominium Units.

PP. **“Unrestricted Condominium Units”** shall mean each of those Residential Condominium Units included in the Project that are zoned and designated as a Condominium Unit (within the meaning of the LUO) in the Town Approvals.

RECITALS

The Parties acknowledge and agree to the following recitals (“**Recitals**”) and further agree that each of the Recitals: (a) form a portion of the basis of this Agreement; and (b) are incorporated in this Agreement.

- A. Owner is the current, fee simple owner of the Property.
- B. Owner submitted the Application to the Town, which was reviewed and considered by the Town in accordance with applicable law, including but not limited to, the LUO and Design Regulations.
- C. The Town authorized the Owner to include the Contributed Town Property in the Application and to pursue the contemplated development of the Project on the Property, including portions affecting the Contributed Town Property, provided that Owner has transferred and conveyed the Replacement Town Property in the manner and timeframe required by this Agreement.
- D. The Parties acknowledge and agree that the proposed use and development of the Contributed Town Property are exempt from the Temporary Moratorium Prohibiting the Rezoning of Active Open Space adopted by the Town (Ordinance No. 2009-03) in accordance with its provisions.
- E. Nothing contained herein or in the Land Exchange Agreement is intended to establish any joint venture between Owner and Town with respect to the ownership, operation, management and development of the Project.
- F. At a duly noticed and conducted public hearing on March 28, 2008, the DRB recommended to the Town Council that the Application for Conceptual PUD Plan be approved with conditions pursuant to LUO Section 4-606.
- G. At a duly noticed and conducted public hearing on March 11, 2010, the Town Council granted Conceptual PUD Plan approval to the Application pursuant to LUO Section 4-606.
- H. At a duly noticed and conducted public hearings held on June 24, 2010 and again on July 22, 2010, the DRB granted Sketch PUD Plan approval to the Application pursuant to LUO Section 4-607.
- I. At a duly noticed and conducted public hearing on October 28, 2010, the DRB recommended to the Town Council that the Application for Final PUD Plan be approved pursuant to LUO Section 4-608 as well as other components of the Application.
- J. At a duly noticed and conducted public hearing on November 18, 2010, the Town Council considered Final PUD approval and continued the matter to December 8, 2010.
- K. At a duly noticed and conducted public hearing on December 8, 2010, the Town Council granted Final PUD Plan approval to the Application pursuant to LUO Section 4-609 as well as other components of the Application, including, specifically and without limitation, the request for Extended Vesting Rights.

L. After conducting the respective public hearings, receiving evidence and taking testimony and comment thereon, the DRB and the Town Council respectively found that: (i) the Property achieves one (1) or more of the applicable purposes listed in Section 4-616 of the LUO, and (ii) the resulting development will be consistent with the provisions of Section 4-617 of the LUO.

M. The public hearings referred to above were preceded by publication of public notice of such hearing(s) on such dates and/or dates from which such hearings were continued in the *Telluride Watch* and by mailing of public notice to property owners located within four hundred feet (400') of the Property, as required by the LUO.

N. The publication of the granting of the Extended Vested Rights for the Project was accomplished with placement of public notice in the Daily Planet on December 31, 2010, as required by the LUO.

O. The Town Council has adopted the Town Council Approval Resolution, the terms and conditions of which are incorporated herein by this reference.

P. Owner has now met all requirements for: (1) Final PUD approval and has addressed conditions 1 through 9 of Final PUD approval as set forth by the DRB and Town Council in the Town Council Approval Resolution, the remaining conditions are ongoing conditions that are set forth in this Agreement; and (2) final approval for the components of the Application relating to the Replat, Rezone, Density Transfer, variations/waivers and Extended Vesting Rights.

Q. This Agreement shall be recorded with the Replat.

AGREEMENTS AND CONSIDERATION

NOW THEREFORE, in consideration of the foregoing Recitals and Definitions, which are incorporated into this Agreement and the mutual agreements, obligations and promises set forth below and in further consideration of the Town Approvals upon all terms and conditions contained herein, the obligations and expenditures of development undertaken by Owner and the mutual obligations and promises set forth below, the receipt and sufficiency of which consideration is hereby acknowledged, the Owner and the Town covenant and agree as follows:

1. **General.** This Agreement establishes the land uses and density that shall be permitted within the Property, a general development plan, development standards and conditions that must be adhered to by Owner. This Agreement also specifies improvements that must be made, and conditions, which must be fulfilled in conjunction with the development of the Property. Where this Agreement does not address a specific development standard or requirement of the Town, the provisions of the LUO or Charter shall apply. Where this Agreement addresses a specific development standard or requirement, the provisions of this Agreement shall supersede the provisions of the LUO. In all cases the provisions of the Charter shall supersede the provisions of the Agreement.

2. **Town Approval.** Subject to the conditions herein, Town does hereby approve this Agreement, the Replat, the rezone, the variances, the density transfer, the extended vesting and the Final PUD Plans. This Agreement shall be incorporated by reference on the Replat. These instruments shall constitute the complete approval of the Application for the Project. The Replat and this Agreement shall be recorded, at the Owner's expense, in the records of the San Miguel County Clerk and Recorder and shall run with the Property. The Final PUD Plans shall be filed of record with the Town of Mountain

Village Community Development Department. For purposes of this Agreement, the term "**Town Approvals**" shall mean those certain land use entitlement approvals concerning the Property and the Project that have been granted by the Town, including, without limitation, approvals for the Applications, the Final PUD Plans and any other plans or permits granted by the Town for the Property and the Project. The Town Approvals are further reflected in the Town Council Approval Resolution, the Replat, the Hotel Operator and Hotel Amenities, Facilities and Services Covenant and this Agreement.

3. **Approval of Replat; Town/Owner Land Exchange; and Recordation of Easements.**

3.1. **Approval and Recordation of Replat.** Pursuant to the terms and conditions of the Land Exchange Agreement, the Town agreed to transfer and convey the Contributed Town Property to Owner in exchange for the agreement of Owner to transfer and convey the Replacement Town Property to the Town. In addition, the Town authorized Owner to include the Contributed Town Property in the Application, including the unrecorded Replat, prior to the consummation of the exchanges contemplated by the Land Exchange Agreement. The DRB and Town Council have approved the Replat, which shall be recorded simultaneous with this Agreement. Upon recordation of the Replat, Lot 109R will be owned by Owner and Tract OS-3BR-2 will be owned by the Town. The term Property as used in this Agreement refers to Lot 109R as reconfigured and replatted pursuant to the Replat, but not Tract OS-3BR-2, which is not intended to be burdened by this Agreement except for the condominium space below such land that is utilized for the parking garage, which shall be subject to the terms of this Agreement. In addition, this Agreement establishes certain responsibilities outside the Property, such as the need to maintain the drainage system, the need to maintain the snowmelt system in the plaza area, and the need to remove snow from Mountain Village Boulevard.

3.2. **Town/Owner Land Exchange.**

3.2.1. The Town has determined that the Replacement Town Property is suitable and acceptable to the Town as replacement for the Contributed Town Property. Owner is obligated to transfer and convey the Replacement Town Property to the Town in full satisfaction of its obligation to provide the Town with Replacement Town Property.

3.2.2. The Town/Owner Land Exchange shall occur simultaneously with the recordation of the Replat.

3.2.3. At the closing of the Town/Owner Land Exchange ("**Town/Owner Land Exchange Closing**"), the Parties shall proceed as follows:

A. The Town/Owner Land Exchange Closing shall be conducted by a title company mutually agreeable to the Parties ("**Title Company**").

B. The Town shall convey fee simple title, vesting good and merchantable title to the Contributed Town Property, to Owner or its designee, by special warranty deed, free and clear of all monetary liens and encumbrances and subject only to those exceptions accepted by Owner in a current commitment for title insurance to be obtained and provided by Owner by the Title Company. The Town will cooperate and assist Owner in seeking to modify, amend or delete a title exception for which Owner has interposed its reasonable objection and if the objection can not be resolved to the satisfaction of Owner.

C. Owner shall cause fee simple title to be conveyed to the Town, vesting good and merchantable title to the Replacement Town Property, to the Town or its

designee, by special warranty deed, free and clear of all monetary liens and encumbrances and subject only to those exceptions noted in a current commitment for title insurance to be obtained and provided by Owner by the Title Company. The cost and expense of procuring the title insurance shall be incurred by Owner.

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

E. To the extent applicable and required, Owner shall pay any Real Estate Transfer Assessments (RETA), if any, that may arise in connection with the Town/Owner Land Exchange. The Parties shall cooperate and assist each other in providing information that may support the granting of a full or partial exemption from the RETA.

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

G. The Parties acknowledge and agree that no real estate brokerage commissions shall become due and payable as a result of the completion of the Town/Owner Land Exchange.

3.2.4. The Parties acknowledge and agree that no other consideration is due and owing for the completion of the Town/Owner Land Exchange.

3.3. **Recordation of Easements.** At such time as Owner records the Replat, Owner and Town shall also simultaneously execute and record easements necessary and appropriate for the Project, on mutually acceptable terms and conditions.

4. **Approval of Rezoning.**

4.1. Prior to the Town Approvals, the Property was zoned and platted as follows:

Table 1 - DESIGNATED EXISTING LAND USE FOR THE PROPERTY:

Lot	Acreage	Zone District	Zoning Designation	Units	Density Per Unit	Total Density
73-76R	.141	Village Center	Condo	12	3	36
			Commercial			
			Employee Condo	1	3	3
109	.092	Village Center	Condo	8	3	24
			Commercial			
110	.077	Village Center	Condo	6	3	18
			Commercial			
89A	.020	Village Center	Commercial			
OS3-BR	2.489	Open Space	Active Open Space			
Total				27		81

4.2. The zoning and platting of the Property as a result of the Town Approvals and reflected in the Town Council Approval Resolution is as follows:

Table 2 - APPROVED ZONING/LAND USES/DENSITY FOR THE PROPERTY:

Approved Density/Commercial SF			
	# Units	Density Per	Total Density
Efficiency Lodge Units	66	.5	33
Lodge Units	38	.75	28.5
Unrestricted Condominium Units	20	3	60
Employee Apartment	1	3	3
Commercial SF	20,164		
	Total Density		124.5

5. **Approval of Density Transfer and Zoning.**

5.1. The zoning designations and appurtenant density currently approved for the Property (prior to the approval of the Replat) is the same as is set forth in Table 1 of Section 4.1 above.

5.2. Certain density transfers for and among the Property were recommended for approval by the DRB and approved by the Town Council as reflected in the Town Council Approval Resolution as the same is set forth in Table 2 of Section 4.2 above.

5.3. Upon approval of and recordation of this Agreement and the Replat, the Zoning, Zoning Designations and appurtenant Density for the same shall be as set forth in Table 2 of Section 4.2 above.

5.4. The Town authorized Owner to include the Contributed Town Property in the Application, including the Density Transfer, prior to the consummation of the exchanges contemplated by the Land Exchange Agreement, contingent upon compliance with the applicable terms and conditions of the Land Exchange Agreement.

5.5. The Town authorized the Property to be zoned "Village Center" subject to the applicable provisions of the LUO. The Official Zoning Map for the Town of Mountain Village has therefore been amended to show the Property with the Village Center zoning designation.

5.6. The Town authorized OS-3BR-2 to be zoned as Active Open Space subject to the applicable provisions of the LUO. The Official Zoning Map for the Town of Mountain Village has therefore been amended to show OS-3BR-2 with the Active Open Space zoning designation.

6. **Approval of LUO and Design Regulation Waivers and Variations.**

6.1. At the request of the Owner, in the course of the consideration of the Final PUD, the DRB and Town Council have approved certain waivers and variations to the LUO and the Design Regulations for the Project, as appropriately granted by the Town through the authority arising generally from Section 4-6(2) of the LUO, as the same are reflected in the Town Council Approval Resolution, including, the following:

6.1.1. Variation/waiver to LUO Section 2-416 to allow Lot 109 and 110, Building Footprint Lots, to expand by more than 25%.

6.1.2. Variation/waiver to LUO Section 4-308-9 to allow an increase in

maximum to 88' – 9" and maximum average height of 65' – 2.9".

6.1.3. Variation/waiver to LUO Section 4-308-2 to allow for permitted uses (parking, pedestrian paths, etc. as shown in plans) in Active Open Space as shown on the Final PUD Plans to be approved pursuant to the PUD process and not the special use permit process.

6.1.4. Variation/waiver to LUO Section 4-308-2(f) to allow for conference and meeting space on the plaza level.

6.1.5. Variation/waiver to LUO Section 2-466 to allow for the proposed lock-off unit configuration as shown in the Final PUD Plans.

6.1.6. Variation/waiver to LUO Section 4-609-5 to extend the PUD vesting period from three (3) to five (5) years.

6.1.7. Variation/waiver to LUO Section 9-13 through 9-16 to allow for the "festoon" lights over the plaza area.

6.2. At the request of the Owner, in the course of the consideration of the PUD, the DRB and Town Council granted certain specific approvals and authorizations concerning the Project as required by the LUO and the Design Regulations for the Project, as the same are reflected in the Town Council Approval Resolution, including, the following:

6.2.1. Specific approval from the Town Council to allow residential occupancy on the plaza level for an Employee Housing Apartment (LUO Section 4-308-4).

6.2.2. Specific approval from the DRB to allow tandem parking to be included as required parking (Design Regulations Section 7-306-2).

6.2.3. Specific approval from the DRB to allow for modification of the tile roofing material, not design (Design Regulations Section 8-211-5).

6.2.4. Specific approval from the DRB to allow for 2:12 roof pitch (Design Regulations Section 8-202)

7. **Public Benefits/Community Purposes.**

7.1. **Findings Relating to Community Purposes.** The DRB and Town Council have determined that the Project achieves one or more Community Purposes in accordance with LUO Section 4-616 by providing certain public benefits as found and determined by the DRB and Town Council and stated in the Town Council Approval Resolution. The DRB and Town Council have determined that the Project complies with the Review Standards set forth in LUO Section 4-617 as found and determined by the DRB and Town Council and stated in the Town Council Approval Resolution.

7.2. **Provision of Certain Public Benefits.** Owner agrees to provide and/or undertake each of the following public benefits, proffered by Owner and accepted by the Town, which establish that the Project would meet the Community Purpose requirements for the PUD as required by the LUO: Any elimination, cessation, or change to any of these enumerated public benefits shall require a major amendment to the Final PUD Plans in accordance with the LUO.

7.2.1. **Hot Beds.** In order to achieve the community purpose relating to the creation of “hot beds” in the Project, Owner agrees as follows:

A. **Provision of Dedicated Hotel Rooms.** Owner shall provide the forty Hotel Rooms, consisting of certain Efficiency Lodge Units denoted on the Final PUD Plans, which will be owned, operated and dedicated for use only as hotel rooms as part of the operation of the hotel and not as condo-hotel units owned by third parties. The Hotel Rooms are part of the Hotel Facilities Unit and may be condominiumized to enable common ownership with other components of the Hotel Facilities Unit, provided that all of the Hotel Facilities Unit will be under one common ownership, which may change from time to time. The Hotel Facilities Unit shall be made available for exclusive use by hotel guests for only short-term occupancy (30 days or less) and may not be occupied by the individual owner of the Hotel Room. These requirements will be reflected in the Project Condominium Documents in the form of an enforceable covenant that must be established and recorded prior to or simultaneously with the issuance of the initial certificate of occupancy for the Project. The form and content of the covenant shall be subject to the Town’s approval. The covenant shall be designated as a Town Enforceable Restriction in the Project Condominium Documents. The location of the Hotel Rooms must be in general conformance with the Final PUD Plans, with minor changes in locations allowed by an administrative approval during the building permit process.

B. **Retention of a Hotel Operator.** The Project shall be either: (i) operated and managed by, and/or (ii) franchised as an internationally or nationally recognized full service hotel operator/brand (as applicable) with significant experience in full service operations with existing broad marketing distribution capabilities (“Hotel Operator”) for the life of the Project. The Hotel Operator shall be capable of operating the Project in a manner consistent with the Project Operational Standards. The Hotel Operator should have a high level of name, brand awareness and marketing breadth with the general public and offer customers incentives such as a customer loyalty program. Examples of internationally or nationally recognized full service hotel operators and brands include (but are not limited to) the following: Westin, Marriott (all full service brands), Hyatt (all full service brands), Hilton (all full service brands, including Waldorf Astoria), Fairmont, Intercontinental (all full service brands), Morgans Hotel Group, Wyndham, Le Meridien, Luxury Collection (Starwood), and similarly styled operators, as recognized by accepted industry standards and brands from time to time. Prior to, and as a condition of the issuance of a building permit, the Owner will notify the Town of the proposed Hotel Operator which notice shall contain written confirmation from the Hotel Operator. The Town Council shall promptly (within 30 days) send Owner written notice advising that the Hotel Operator is not acceptable and the grounds for such determination based on the standards and guidelines for the Hotel Operator as set forth in this section. Thereafter, the Owner may meet with the Town Council to discuss and attempt to resolve the Town’s rejection of any proposed Hotel Operator. In the event that the Owner or Project Association elects to terminate the approved Hotel Operator at any time, the Owner or Project Association shall provide the Town with: (a) 30 days prior written notice of such termination including the reasons for such termination (which shall be held in confidence by the Town); and (b) within 180 days of termination of the Hotel operator, notice of the replacement Hotel Operator, which notice shall include a letter of intent from the replacement Hotel Operator. The Town shall promptly provide notice of acceptance or non-acceptance within 30 days of receipt of the notice and the failure to provide a response shall be deemed to be an approval of the replacement Hotel Operator by the Town. In considering the acceptability of the Replacement Hotel Operator, the Owner and Town shall adhere to the standards and guidelines of this Section. In the event of a dispute between the Owner and Town concerning the adequacy of the designation of a Hotel Operator consistent with

this Section, the Parties shall mutually identify a qualified, neutral third party recognized as an authority in the hospitality industry to mediate and resolve this dispute through a binding mediation process.

C. **Hotel Operator and Hotel Amenities, Facilities and Services Covenant.** Owner shall provide certain full service amenities, facilities and services within the Project, consistent with the Final PUD Plans and the Project Operational Standards which are intended to help promote "hot beds" for the Residential Condominium Units. These requirements will be reflected in the Hotel Covenant, which shall be recorded in the Official Records simultaneously with this Agreement.

D. **Rental Management Program.** The Hotel Operator will manage and operate the Rental Management Program consistent with the Project Operational Standards. All of the Hotel Rooms must be included in the Rental Management Program and may not be used or occupied or blocked off for use and occupancy by the owner of the Hotel Facilities Unit. The Project Condominium Documents and the management contract with the Hotel Operator must allow each of the Residential Condominium Units to be included in the Rental Management Program, provided, however, that nothing herein is intended to require or obligate an owner to place their Residential Condominium Units (other than the Hotel Rooms) in the Rental Management Program or to use the Hotel Operator to rent their Residential Condominium Unit if they elect to rent the unit. Subject to reasonable and actual demand requirements as determined by Owner in consultation with the Hotel Operator, the placement of the Residential Condominium Units, other than the Unrestricted Residential Condominium Units, will be placed in the Rental Management Program until such time as the Residential Condominium Unit is sold to a third party purchaser. The Owner and Hotel Operator shall provide the Rental Management Program documents and any modifications or amendments to the Town for review of compliance with the terms of this Agreement. In the event the Town determines there is non-compliance the Town shall provide written notice of such non-compliance and specify the modifications that must be made in order to achieve compliance, which notice shall be provided within 30 days of receipt of such documents and if no notice is timely received, the Rental Management Program documents shall be deemed acceptable.

E. **Standard Furnishing Package for All Lodge and Efficiency Lodge Units.** The Owner, in consultation with the Hotel Operator, will establish uniform Furniture Packages that will be provided for each of the Residential Condominium Unit (exclusive of the Unrestricted Condominium Unit). The Furniture Packages will be developed to insure a quality of decor, furniture, furnishings and appliances suitable to meet the Project Operational Standards, which may include, without limitation, appropriate and suitable fixtures (including bathroom fixtures), cabinetry, carpeting, floor covering, paint, wall covering, furniture (including built-in furniture, if any), lighting, mirrors, decor items, color television, clock, radio, drapes, shades and other window treatments and any and all other fixtures, equipment, utilities and decorative accessories within the Residential Condominium Unit (collectively, the "FF&E"). The design and content of the Furniture Packages will be offered in different variations and themes intended to achieve the Project Operational Standards. As part of the purchase contract for a Residential Condominium Unit (exclusive of the Unrestricted Condominium Unit), a Unit Owner will be required to select one of the variations of the Furniture Package to be included in their unit. The purchase price for each Residential Condominium Unit (exclusive of the Unrestricted Condominium Unit) sold by Owner will reflect the cost for the provision of the items included in the Furniture Package for the Residential Condominium Unit, which each Unit Owner will be required to pay at closing on the Residential

Condominium Unit. The Unit Owner purchasing a Residential Condominium Unit (exclusive of the Unrestricted Condominium Unit) will not be allowed to opt out of paying for Furniture Package assigned to their Residential Condominium Unit. It is expected that the Unit Rental Agreement for each Residential Condominium Unit included in the Rental Management Program shall also provide for, among other things, that the Unit Owner must: (a) obtain and maintain a certain Furniture Package designated for their Residential Condominium Unit by the Hotel Operator, (b) not add or remove elements of the Furniture Package without the prior written approval of the Hotel Operator (which may be granted or withheld in the sole and exclusive discretion of the Hotel Operator), and (c) authorize the escrowing of funds by the Hotel Operator for the repair and replacement of elements of the Furniture Package when deemed necessary as determined by the Hotel Operator. In the event a Unit Owner fails to adhere to the terms and conditions of the Unit Rental Agreement, including those provisions relating to the provision of the required Furniture Package, the Hotel Operator may exclude the noncompliant Residential Condominium Unit from participation in the Rental Management Program. There are no requirements for the provision of a Furniture Package in Unrestricted Condominium Units, provided, however, that the purchaser of an Unrestricted Condominium Unit shall be offered the opportunity to purchase a Furniture Package. The cost of the Furniture Package will not be included in the purchase price of the Unrestricted Condominium Unit.

7.2.2. **Cash Payment.** Owner agrees to make a one time payment to the Town in the total amount of \$996,288.00 (“**Mitigation Payment**”), which shall be payable simultaneously with the issuance of the initial building permit, excluding a standalone excavation permit for the Project. The Town shall use the Mitigation Payment for public purposes as determined by the Town and consistent with the Town Council Approval Resolution. The Mitigation Payment is being paid by Owner to, among other things; offset a portion of the housing, parking and transit needs of employees working at the Project. The Town may elect to use a portion of these mitigation funds to relocate the trash facility up to \$250,000.

7.2.3. **Employee Mitigation.** On the second anniversary of the initial Certificate of Occupancy for the Project, Owner shall provide a certified statement indicating the actual number of full time equivalent employees for the operation of the Project. The certified statement shall confirm to the Town the number of full time equivalents employees based upon time cards, income tax reporting and such other and similar employment records, which shall be reviewed, evaluated, discussed and otherwise held in a confidential manner by the Town. In addition to the Cash Payment, Owner shall elect in its sole discretion to either: (a) pay the Town a one time payment in the total amount equal to the sum of \$4018.52 (“**One Time Payment**”) per full time equivalent employee averaged over the two year period from the initial Certificate of Occupancy for the Project which is in excess of the 90 full time equivalent employees estimated by the Owner; or (b) build employee housing for its usage to further offset employee housing needs generated by the Project for each full time equivalent employee averaged over the two year period from the initial Certificate of Occupancy for the Project which is in excess of the 90 full time equivalent employees estimated by the Owner. The One Time Payment shall be due on the date that is the thirty month anniversary of the initial Certificate of Occupancy for the Project. Thereafter, Owner is not responsible for paying any further or additional One Time Payment or Mitigation Payment to offset a portion of the housing, parking and transit needs of employees working at the Project. In the event that the certified statement indicates that the Project is employing less than the anticipated 90 full time equivalents employees, the Town shall not be required to refund any portion of the One Time Payment or Mitigation Payment to Owner.

7.2.4. **Employee Housing Unit.** The Employee Housing Restriction on one Unit in the Project is considered a public benefit and shall not include language terminating the

Employee Housing Restriction in the event of a foreclosure on such unit. The unit may be rented by and to an employee of the Project who is a qualified employee under the Town's Employee Housing Restriction.

7.2.5. **Public Restrooms.** Owner shall construct and make available to the general public, for at least 16 hours per day, 365 days per year, restrooms in the Project reflected in the Final PUD Plans that are accessible from the plaza, without cost to the Town. During peak seasons, the restroom will be open not later than 7 AM. Owner will install directional signage for the bathroom, which signage will include content and be placed at a highly visible location to the plaza areas acceptable to the Town. Ongoing operation and maintenance of the public restroom will be undertaken by the Project Association, at the cost and expense of the Project Association. Owner shall cause easements to be established in the Project Condominium Documents enabling access to the public restrooms through the Project to the extent necessary. The Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. These provisions will be designated as a Town Enforceable Restriction in the Project Condominium Documents.

7.2.6. **Plaza Improvements.** Owner shall construct certain "Plaza Improvements" reflected in the Town Council Approval Resolution, without cost and expense to the Town. The Plaza Improvements as shown on the Final PUD Plans are generally located in the area depicted on attached "**Exhibit C**". As detailed on the Final PUD Plans, the Plaza Improvements shall also include a snow melt system and drainage system to be installed, operated and maintained by the Project Association. The design of the snow melt and drainage systems which will be reviewed and approved by the Town prior to the issuance of any building permits. The cost of repairing and maintaining the Plaza Improvements shall be funded by the Project Association, which obligation will be established in the Project Condominium Documents. The Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. These provisions will be designated as a Town Enforceable Restriction in the Project Condominium Documents. Failure to operate the snow melt system and maintain the plazas that Owner is required to maintain pursuant to this Agreement shall entitle the Town to enter into the Project for the purpose of operating the snow melt system and to maintain the Plaza Improvements. All costs associated with the Town's operation of the snow melt system and maintenance of the Plaza Improvements required to be maintained by Owner shall be reimbursed by the Project Association within 30 days of a receipt of an invoice for such costs. Failure to reimburse the Town for such costs shall entitle the Town to place a mechanics lien on the Property for collection of such costs. The Owner shall defend and hold the Town harmless from and against any and all claims, demands, liabilities, actions, costs, damages, and attorney's fees that may arise out of or result directly or indirectly from the Owner's actions or omissions in connection with the ongoing maintenance and snowmelt operations required of Owner as set forth herein, including but not limited to Owner's improper maintenance and operation of the Plaza Improvements and snowmelt system. Any new drainage through the Westermere parking garage shall require the Owner to provide a letter of permission from Westermere HOA for the drainage system along with requisite public easements for this drainage system. If Owner is unable to secure any required authorizations and consents for such work by Westermere on commercially reasonable terms and conditions, Owner and Town shall meet and discuss alternatives and if no reasonable and comparable alternatives can be identified, then the Owner shall be released from this requirement and any related requirements. For purposes of clarification, the Plaza Improvements will be owned by the Town.

7.2.7. **Town Parking Spaces.**

A. The development of the Project will result in the loss of 32 existing surface parking spaces currently located on the Contributed Town Property, inclusive of the three (3) parking spaces that will be disrupted to the north of the current Town operated trash facility. Owner is required to construct and convey 32 covered, garage parking spaces to the Town ("**Replacement Parking Spaces**").

B. Owner, as an additional public benefit, has agreed to convey an additional 16 covered, garage parking spaces (beyond the Replacement Parking Spaces) to the Town ("**Additional Parking Spaces**").

7.2.8. **Westermere Façade Improvements.** The Owner shall improve the Westermere Breezeway and the associated path through such breezeway in substantial accordance with the Final PUD Plans, provided that the Westermere HOA has provided its written authorization and consent to such work on commercially reasonable terms and conditions and within thirty days from when Owner has submitted its request for such authorization. The Owner shall submit the authorization and consent to the Town at the time of applying for the building permit. If the Westermere HOA fails to provide the authorization and consent in form, content or timeframe contemplated by this Agreement, the Owner shall be fully released from its obligation to improve the façade and the associated walkway as shown on the Final PUD Plans.

7.3. **Review of Plans for the Public Benefits.** Owner shall submit a report to the Community Development Department and, if determined it is necessary be referred to the Town Council demonstrating how its construction plans for the Project have been prepared to insure that the required public benefits have been designed to achieve applicable construction standards and requirements and will function and operate in a manner that is consistent with the customary goals and objectives for which the public benefit was accepted by the Town. The report and plans will be reviewed by the Community Development Department to determine compliance with this requirement. In the event that the Community Development Department determines that the report fails to adequately demonstrate compliance, the matter shall be referred to the Town Council for further review and appropriate action. If the matter is not resolved to the mutual agreement of the Town Council and Owner, the dispute will be referred to mediation for resolution by a mutually acceptable mediator. Any such mediation shall be scheduled to occur as expeditiously as possible.

8. **Provisions to be Addressed in the Project Condominium Documents.** Owner shall comply with the following requirements, which will be addressed in the Project Condominium Documents. The Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. These provisions will be designated as a Town Enforceable Restriction in the Project Condominium Documents.

8.1. **Town Parking Space.**

8.1.1. Owner shall construct the 48 Town Parking Spaces and convey them to the Town at the location indicated in the Final PUD Plans, with the public parking area located at the top level of the parking structure above the Project's parking. The Town Parking Spaces, including all operational equipment as well as all structural elements, maneuvering aisles, pedestrian areas, stairwells, elevators, ceiling, walls, floors, mechanical, HVAC, exhaust, electrical, plumbing, life/health welfare systems and facilities directly serving the Town Parking Spaces ("**Town's Parking Spaces Support Facilities**"), shall be designed as one or more Condominium Units in the Project Condominium Documents. Title to the Town Parking Spaces shall be deeded to the Town at no cost to the Town. The

Town may own, use, sell or lease some or all of the Town Parking Spaces, which ownership and usage shall be subject to the terms and conditions of the Town Approvals, this Agreement and the Project Condominium Documents.

8.1.2. Owner shall be responsible for all capital construction costs associated with the design and construction of the Town Parking Spaces, including, without limitation, the installation of the Town-approved gate(s), parking ticket access machine, server, software and required electronic equipment, all compatible with the Town's existing parking system for the heritage parking garage and communications for the electronic ticket machine, parking area stripping, interior parking area signage and exterior parking area signage (including directional signage on the Project building and at Mountain Village Boulevard), lighting, required handicap parking spaces and required aisles and electrical service to each parking space suitable to power an electric car.

8.1.3. The Town shall review and approve the final designs of the Town Parking Spaces and all construction, design and signage related to such spaces prior to issuing a building permit which approval will not be unreasonably delayed, withheld or conditioned.

8.1.4. The Owner may approach the Town to enter into a legal agreement to operate and manage the public parking garage on behalf of the Town on mutually agreeable terms and conditions, including allocations of costs and revenues.

8.1.5. The Project Condominium Documents shall clearly establish that the Town, as the owner of the Town's Parking Spaces and owner or beneficiary of the Town's Parking Spaces Support Facilities, shall only be responsible for those certain costs and expenses directly associated with the ownership, management and operation of the Town's Parking Spaces and the Town's Parking Spaces Support Facilities, which shall include by way of example, property taxes, insurance, utilities, maintenance and repair of such areas ("**Allocated Town's Parking Spaces Costs**"). The Project Condominium Documents shall establish a mechanism satisfactory to the Town establishing that the Allocated Town's Parking Spaces Costs shall be allocated to the Town as the owner of the Town's Parking Spaces either as limited common expenses as part of a master association that covers the Town's Parking Spaces or, if elected by the Town, as part of a separate sub-association.

8.1.6. In all events, the Project Condominium Documents shall provide that a draft budget showing the Allocated Town's Parking Spaces Costs shall be sent to the Town to review and approve, which shall not be unreasonably withheld, conditioned or delayed, with the Town having 45 days to comment. It is the intent of the parties that the actual costs incurred in connection with the Allocated Town's Parking Spaces Costs will be allocated to the Town, which will be billed to the Town on a quarterly basis. The Parking Budget shall not include for any costs that would not be included in a standalone parking garage, including but not limited to costs for sophisticated roof forms, plaza paver installation, complex heating systems or any exterior improvements not related to the Town's Parking Spaces. Further, such expenses shall not include any overhead, management fees, accounting fees or similar expenses passed through by the Project Association, Owner or Hotel Operator. The Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. These provisions will be designated as a Town Enforceable Restriction in the Project Condominium Documents. In addition, the Town Staff, Owner and Project Association shall enter into an agreement providing for the management of the Town Parking Spaces and the private parking units included in the Project prior to issuance of a Certificate of Occupancy, a mutually agreeable parking management plan will be developed between the Town staff and the Owner that may change from time-to-time.

8.2. **Conference Rooms.** The Owner shall construct two conference rooms in the Project in general accordance with the Final PUD Plans, which shall be available for use by owners and guests in the Project and non-owner guests. The two conference rooms will be designed, constructed and operated in a manner that will enable them to be broken up into four smaller rooms by sound-proof, industry standard dividers. The conference rooms shall be offered for market rent to the public at comparable rates to room rates at the Telluride Conference Center. Public access to and from the conference rooms shall be provided for in the Project Condominium Documents. The owner of the conference rooms will be responsible to maintain and repair the conferences rooms and keep them in good repair and order as provided for in the Project Condominium Documents. The owner of the conference rooms shall arrange for an entity to book and manage the conference rooms in accordance with the Town Approvals and industry standards. The conference rooms shall be available for rental in concert with other conferences or special events occurring in the Town when not booked for other functions, provided that the Owner, Project Association and Management Company may establish commercially reasonable rules, regulations and other restrictions that will govern the use of the conference rooms in a uniform manner.

8.3. **Lock-Off Units.** Each Lock-Off Unit shall meet the following requirements:

8.3.1. Lock-Off Unit doors that lock-off one unit or room from another unit or room shall be maintained as a separate, lockable door, and shall not be removed for any reason.

8.3.2. Each Lock-Off Unit entry shall maintain a separately keyed entry from the other attached Lock-Off Units and its own unit number.

8.3.3. Each Lock-Off Unit shall be shown as a separate condominium unit on the project's condominium map, with an owner allowed up to own up to a maximum of three units in a Lock-Off Unit configuration.

8.3.4. Each lock-off unit shall maintain a separate, unique unit designation in the common hallway.

8.3.5. Each lock off unit shall contain a bed or sleeper sofa for lodging accommodations.

8.4. **Valet Parking.** When the tandem parking spaces shown on the Final PUD Plan are utilized, the Owner or condominium association will provide 24 hour per day valet parking services for the Tandem Parking Spaces through the provision of attendants who take, park and later return vehicles to owners and guests. Such valet services shall provided for in the Project Condominium Documents and designated as a Town Enforceable Restriction. The Town Parking Spaces shall not include any Tandem Parking Spaces.

8.5. **Snow Removal.** The Project Association shall be responsible for removing and/or relocating snow from the south side of upper Mountain Village Boulevard.

8.6. **Grant of Easements by Town to Owner.** The Town agrees to grant and convey necessary easements to the Owner ("Lot 109R Project Easements") to enable Owner to develop, construct, operate, use, repair and maintain the Project in accordance with the Town Approvals. The easements shall, at a minimum, provide for the following:

Lot 109R Project	Authorized Uses	Timing for Grant
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Easements		
Plaza Usage	*snowmelt system *Plaza lighting *Landscaping *Hardscaping *Signage *Pedestrian Access *Access to repair and maintain Project, including vehicles and equipment *Drainage systems *Vehicular and pedestrian access to undertake authorized uses *Slope stabilization	Replat
Permanent Underground Structures	* Below grade structural elements (inclusive of, without limitation, footers, walls, foundations, columns, supports and other like components) * Below grade structures (inclusive of, without limitation, commercial space, residential space, storage space, parking garages, parking spaces, snowmelt systems, HVAC systems, mechanical systems, phone systems, boilers, exhaust systems, lights, elevators, stairs, ramps, drains, pipes, utilities and other like components) *Pedestrian Access *Vehicular and pedestrian access to undertake authorized uses	Replat
Vehicular Access	*Vehicular Access	Replat
Mt Village Blvd	*Snow storage *Landscaping *Vehicular and pedestrian access to undertake authorized uses	Replat
Utilities	*Utilities *Vehicular and pedestrian access to undertake authorized uses	Replat
Shoring, Grading, Excavation	*Temporary Shoring, Grading and Excavation *Vehicular and pedestrian access to undertake authorized uses	Building Permit

The use of these easements shall be in a reasonable location designated by Owner and Town and shall be granted and conveyed and used consistent with the Town Approvals, which usage may be made subject to any further reasonable rules and regulations of Owner and Town.

8.7. **Grant of Easements by Owner to Town.** Owner agrees to grant and convey to the Town certain necessary and suitable easements, licenses or leases for the benefit of the Town and general public as listed below ("**Owner Granted Public Easements**"). The Owner Granted Public Easements shall be in a form and content acceptable to the Town and Owner. Some of the Owner Granted Public Easements will be established in the Project Condominium Documents. The use of the Owner Granted Public Easements shall be in a reasonable location designated by Owner and Town and shall be subject to reasonable rules and regulations of Owner and Town. The Owner Granted Public Easements shall, at a minimum, provide for the following:

Owner Granted Public Easements	Authorized Uses	Timing for Grant
Interim Utility License	*operate, repair and maintain existing utilities located on the Property	Replat

Modification of Surface Parking Lease Agreement	*lease to enable continued use of Town Parking Lot on Property	Replat
Permanent Utilities	*operate, repair and maintain existing utilities located on the Property	Recordation of Project Condominium Documents
Conference Room Access	*public access and use of Conference Room	Recordation of Project Condominium Documents
Public Rest Room Access	*public access and use of Public Rest Room	Recordation of Project Condominium Documents
Town Parking Spaces Access	*public access and use of Town Parking Spaces	Recordation of Project Condominium Documents
Pedestrian Access through breezeways	*public access and use of pedestrian breezeways	Recordation of Project Condominium Documents

9. **Further Requirements by Owner**

9.1. **Owner to Comply With Conditions of Approval.** Owner agrees to comply with the terms, conditions, requirements and obligations placed upon Owner in the Town Approvals, including, without limitation, the payment of funds, dedication of lands, creation of easements, construction of improvements and the like as the same are set forth herein and in the Town Council Approval Resolution. The corresponding terms, conditions, requirements and obligations established in the Town Approvals are hereby incorporated into this Agreement by this reference. All representations of the Owner concerning the Project, whether within the submittal or at the DRB hearing and/or the Town Council hearing for the Project, are deemed to be specific obligations of the Owner under this Agreement.

9.2. **Other Requirements and Undertakings.** In addition to the foregoing, the Owner shall also comply with the following additional requirements:

9.2.1. **Provision of Improvement Location Certificate.** Prior to pouring concrete into the building's footers, the Owner shall cause a Colorado Professional Land Surveyor ("**Surveyor**") to prepare and submit an Improvement Location Certificate ("**ILC**") for the location of all footers to ensure that such are located within the platted boundaries of the Property as established by the Replat, except for those structures, facilities and other components that have been authorized by the Final PUD Plans to be placed outside of the Property in easements. Prior to the issuance of a Certificate of Occupancy, Owner will cause a Surveyor to prepare and submit to the Town an ILC demonstrating that all structures, facilities and other components of the buildings associated with the Project have been constructed such that they are located within the platted boundaries of the Property as established by the Replat, except for those structures, facilities and other components that have been authorized to be placed outside of the Property within the boundaries of easements granted to the Owner in connection with the Project. The ILC shall be certified to the Town by the surveyor. Any encroachment outside the Property not authorized by the Final PUD Plans shall require the Owner to submit for an amendment to the Replat or for Town Council authorization of an encroachment agreement, with Town Staff determining the appropriate process to remedy any unauthorized encroachment.

9.2.2. **Drainage System and Maintenance.** The Project Condominium shall be responsible for the maintenance and repair of all drainage improvements on the Property and on Tract OS-3-BR-2 leading up to the Town's existing drainage system as indicated on the Final PUD Plan. Such requirement shall be reflected in the Project Condominium Documents. The Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. These provisions will be

designated as a Town Enforceable Restriction in the Project Condominium Documents.

9.2.3. **Drainage Plan Details.** Prior to issuing any building permits, Owner shall submit a drainage plan to address permanent dewatering, the provision of sand and oil traps, drainage of the patios, drainage of the garage vents, drainage of the gutter system and other necessary drainage, with such plan submitted for Staff review and approval concurrent with the required building permit review.

9.2.4. **SMPA Review and Approval of Utility Plans.** Prior to the issuance of any building permits, the SMPA shall review and approve the final utility plan.

9.2.5. **Composite Utility Plans.** Prior to the issuance of any building permits, Owner shall submit a composite utility plan for Town review and approval that shows: (1) the proposed utility meter and utility pedestal locations with appropriate screening, (2) plans that conform to the Town's Cable Television Regulations; and (3) Qwest and Source gas approved utility and meter locations.

9.2.6. **Venting Plans.** Prior to the issuance of any building permits, Owner shall submit detailed venting plans for Staff-DRB Chair review and approval as construction documents are developed for review and approval by Staff and the DRB Chair.

9.2.7. **Snow Removal Devices and Snow Retention Systems.** Prior to the issuance of any building permits, Owner shall submit engineered plans for the snow retention devices, and include one anchor at the roof hatch and other anchors on the roof as required for a safe snow removal system. Building permit plans shall show the snow removal mechanical and safety device requirements consistent with Design Regulation Section 8-210-4.

9.2.8. **Stucco Details.** Prior to the issuance of any building permits, Owner shall submit Stucco details concurrent with the building permit application consistent with the stucco design details outlined in the exterior materials of Section the Design Regulations.

9.2.9. **Plan Notation.** Prior to the issuance of any building permits, Owner shall submit building permit plans that include a note that states all concrete, exterior walls shall have a stone, stucco or wood finish as deemed appropriate by the Town since it is not possible to see every exterior surface on the submitted elevations.

9.2.10. **Window Design.** Prior to the issuance of any building permits, Owner shall submit Details on window design consistent with the Design Regulations.

9.2.11. **Revised Geotechnical Reports and Design.** Prior to the issuance of any building permits, Owner shall submit revised geotechnical reports prepared by a Colorado Registered Professional Engineer that are based on the proposed building permit building design. Owner shall incorporate revised geotechnical report recommendations into the building's design prior to submitting for a building permit for the project.

9.2.12. **Miscellaneous Civil Engineering Concerns.** Prior to issuing a building permit, the Owner will submit plans that address the comments in the letter from the Town's consultant, Professional Land Consultants, dated Thursday, September 23, 2010 attached hereto as **Exhibit "D"**.

9.2.13. **Construction Mitigation Plan.** Prior to the issuance of any building

permits, Owner shall submit a revised detailed construction mitigation plan for Staff review and approval. Key considerations of the construction mitigation plan shall include, but are not limited to: (1) allowing through access to See Forever on the current access path to the extent possible; (2) the location of the crane(s) and avoiding movements of construction materials or equipment over neighboring properties; (3) construction parking; (4) truck ingress and egress from the job site; (5) ensuring minimal to no power or other utility interruptions; (6) the need to obtain a plaza access permit for the area south of Westermere; (7) protection of air and water quality; (8) maintaining traffic and pedestrian flows around the project in a safe manner and (9) an engineered plan for construction shoring and/or soil nailing that ensures adjoining properties will be protected.

9.2.14. **Grease Trap Plumbing Design.** Prior to the issuance of any building permits, Owner shall submit engineering drawings for the plumbing system that includes grease traps prior to the issuance of a building permit Per Design Regulation 11-102. The grease trap access will be located in the parking garage loading dock area.

9.2.15. **Westermere Courtesy Notice.** Prior to the issuance of any building permits, Owner shall notify the Westermere HOA or its property management company when building permit plans are submitted to the Town as a courtesy, provided that the foregoing is not intended to establish any requirement for Westermere to approve such plan as a condition to the issuance of a building permit by the Town

9.2.16. **Colors and Materials.** Prior to the issuance of any building permits, the Town will ensure that the colors and materials presented with the building permit are substantially the same as shown on the model presented as a part of the Final PUD Plan public hearings, with a mock up of all materials and colors presented to Staff and the DRB Chair prior to the issuance of a building permit. Stone will be set with a recessed grout and a tight pattern substantially in accordance with the mock up presented at the October 28, 2010 meeting.

9.2.17. **Garage Vents Along See Forever Walkway.** Prior to the issuance of any building permits, Owner shall provide more detail on the design of the garage vent louver venting to the plaza area along the See Forever walkway to ensure such is screened to the extent practical. To the extent practical, the design of the garage vents shall be based on the size and scale of the windows to the south to provide for a congruent design.

9.2.18. **Final Exterior Door Designs.** Prior to the issuance of any building permits, Owner shall provide final exterior door design details based on the Design Regulations, with such plans submitted concurrent with the building permit application.

9.2.19. **Acknowledge of the Town Trash Facility.** The Owner shall cause the Project Condominium Documents to reflect the existence of the Town trash facility in proximity to the Project to ensure that future property owners are put on notice of this facility and its potential impacts (noise, smell, aesthetics, etc). The Town shall have the right to review and approve the Project Condominium Documents for purposes contemplated in this Section, which approval will not be unreasonably delayed, withheld or conditioned. These provisions will be designated as a Town Enforceable Restriction in the Project Condominium Documents.

9.2.20. **Damage to Town Trash Facility.** The Owner shall be financially responsible for the repair of any damage to the Town Trash Facility caused by the construction of the Project.

9.2.21. **Landscape Plan.** The Owner shall salvage mature trees located on the

Property to the extent practical and the final landscape plan shall reflect this requirement. In addition, Owner shall maintain the required landscape planting as shown in the Town Approvals, including but not limited to replacing dead trees, pruning, irrigation and mowing in perpetuity.

10. **Construction of Public Improvements or Infrastructure Improvements.**

10.1. **Construction of Public Improvements.** The Owner agrees to complete, at Owner's sole cost and expense, the construction of those certain public improvements or infrastructure improvements set forth on attached **Exhibit "B"** and as shown on the Final PUD Plans ("**Public Improvements**") and as more fully detailed in the Final PUD Plans. The Owner agrees to enter into a Site Plan Improvements Agreement ("**SPIA**") that outlines the actual costs of the Public Improvements at the time a building permits application is submitted. The SPIA will include a clause that states that the cost of the Public Improvements are estimates only, and if the actual cost of the materials or labor exceeds such estimate, the Owner shall nevertheless be responsible therefore. Such agreement shall be substantially based on the terms of this Section of the Agreement and be in a form or manner acceptable to the Town.

10.2. **Owner's Construction Obligation and Standards.** The Owner shall timely construct and complete all required Public Improvements in accordance with the Final PUD Plans, the provisions of this Agreement and in compliance with all laws, regulations, standards, specifications and requirements of the United States, the State of Colorado, the Town of Mountain Village, and all their pertinent agencies.

10.3. **Completion of Public Improvements.** All of the Public Improvements shall be fully completed and result in Final Acceptance as outlined herein, prior to and shall be a condition of the issuance of the final Certificate of Occupancy for the non-public improvement portions of the Project unless a financial guarantee of 200% of the remaining costs for the uncompleted public improvements is provided to the Town as provided for in the SPIA.

10.4. **Collateral.** To secure and guarantee performance of its obligations as set forth herein, Owner, at the time of issuance of the building permit, shall provide the Town with collateral in the sum that is equal to 125% of the cost of the public improvements in the SPIA ("**Collateral**") which may be posted for the sole benefit and protection of the Town in the form of either: (i) a certified check, (ii) an irrevocable letter of credit from a lending or financial institution in good standing in the state of Colorado and in a form satisfactory to the Town Manager and Town Attorney; (iii) cash or some acceptable combination of the foregoing; and (iv) a performance bond, provided that the Town Manager and Town Attorney, have satisfied themselves that the bonding company and form of the performance bond will satisfactorily protect the interest of the Town consistent with this Agreement. If cash is provided as the Collateral, it shall be deposited by the Town in a separate interest-bearing account with any interest accruing to the benefit of Owner. The Collateral shall be posted as a condition of and shall be due upon issuance of an initial building permit for the physical improvements associated with the Project.

10.5. **Use of Collateral By Town.** If the Town Manager determines that reasonable grounds exist to believe that the Owner is failing or will fail to construct or install the Public Improvements as required by this Agreement, the Town Manager shall notify the Owner in writing 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) Owner 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 Owner is failing or has failed to satisfactorily install the required Public Improvements, the Town may thereafter draw on the Collateral as necessary to construct the Public Improvements. In such event the Town shall be entitled to recover such costs as are reasonable to administer the construction of the Public Improvements. In no event shall the Owner take any action which shall impair the ability of the Town to draw on the Collateral during the term of this agreement, including after receipt of notice of intent to draw on Collateral by the Town.

10.6. Acceptance and Release of Collateral.

10.6.1. Final acceptance of the Public Improvements or any portion or phase thereof shall only be made by the Town ("**Final Acceptance**").

10.6.2. Upon issuance of final Certificate of Occupancy for the Public Improvements, a Town representative shall, within 15 days, inspect all such Public Improvements for Final Acceptance. If based on such inspection the Public Improvements are not acceptable to the Town, the reasons for non-acceptance shall be prompted, reduced to writing and a notice shall be sent to Owner stating the defects and the required corrective measures necessary to come into compliance with the Final PUD Plans, and the SPIA specifications (the "**Punch List**") at which time the Owner shall have 30 days to complete the corrective measures necessary for Final Acceptance as set forth in the Punch List. The Town shall not be required to make inspections during any period when climatic conditions make thorough inspections impractical.

10.6.3. Upon final inspection by the Town correction of any Punch List items which results in Final Acceptance by the Town, the Town shall promptly release all Collateral and shall assume normal maintenance responsibilities, excepting warranty work and maintenance as required under the terms of this Agreement, for the Public Improvements.

10.6.4. The SPIA may allow for partial releases of Collateral equivalent to the costs assigned to a completed Public Improvement, provided that the Town is satisfied that the remaining balance of the Collateral is adequate to fund any remaining Public Improvements.

10.7. Pursuant to LUO Section 4-618-5, Owner shall warrant to the Town 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 winter terminates after Final Acceptance by the Town, whichever is greater.

10.8. Owner agrees at its sole cost and expense to repair or restore any existing improvements or facilities damaged during construction of the Project to its pre-existing conditions.

10.9. Prior to the issuance of a building permit for the occupiable space in the Project, Owner and the Town shall enter into an agreement allocating the obligations to undertake ongoing repair and maintenance of the Public Improvements. Any obligations of the Town to repair or maintain Public Improvement shall be subject to the Town budget process and annual appropriations by the Town for such maintenance and repair.

11. Vested Rights.

11.1.1 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 Owner, 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., the LUO 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 Owner desires to receive the assurance that development of the Property may proceed pursuant to the terms and conditions of the Development Agreement.

11.1.2 **Site Specific Development Plan.** The Replat, Final PUD Plans and this Agreement constitute a "Site Specific Development Plan", pursuant to LUO Section 6-201.

11.1.3 **Vested Real Property Right.** Accordingly, this final approval has created for Owner's benefit a "vested real property right" as defined by C.R.S. § 24-68-101 et seq.

11.1.4 **Duration.** For purposes of this Agreement, the above-referenced vested real property right shall remain vested for five (5) years after December 8, 2010 (the date of the Town Council Approval Resolution approving the Project).

11.1.5 **Publication.** A notation of such vested real property right has been made on the Final PUD Plans and a notice has been published in a newspaper of general circulation within the Town on December 31, 2010.

11.1.6 **Reliance.** The Owner has relied upon the creation of such vested real property right in entering into this Agreement.

11.1.7 **Future Legislation.** During the five (5) year period in which the vested real property right shall remain vested, the Town shall not impose by legislation or otherwise any zoning or land use requirement or obligations upon Owner or their successors or assigns which would alter, impair or diminish the development or uses of the Property as set forth in this Agreement, except:

- i. With the consent of the Owner; or
- ii. 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
- iii. To the extent that compensation is paid, as provided in Title 24, Article 68, CRS.

The establishment of such vested real property right shall not preclude the application of ordinances or regulations which are general in nature and applicable to all property subject to land use regulation by the Town, including, but not limited to, fee assessments and building, fire, plumbing, electrical, mechanical, water and sewer codes and ordinances.

12. **Miscellaneous.**

12.1. **Recording.** This Agreement will be recorded in the Official Records.

12.2. **Default, Notice and Cure.** In all instances under this Agreement, at such time

as a Party (“**Claiming Party**”) claims that any other Party (“**Responding Party**”) has violated or breached any of the terms, conditions or provisions of this Agreement (“**Default**”), the Claiming Party shall promptly prepare and deliver to the Responding Party a written notice (“**Notice of Default**”) claiming or asserting that the Claiming Party is in default under a term or provision of this Agreement, which notice shall clearly state and describe: (a) each section(s) of the Agreement which the Responding Party has allegedly violated, (b) a summary of the facts and circumstances being relied upon to establish the alleged violation, (c) the specific steps (“**Cure Events**”) that must be undertaken to come into compliance with the Governing Documents, and (d) the reasonable timeframe, not less than ten days for a monetary default and not less than thirty days for a non-monetary default (unless emergency circumstances require a shorter response time), within which time the alleged violation should be cured (“**Cure Completion Date**”).

12.3. **Remedies For Breach Or Default.** In the event Owner should fail to perform or adhere to its obligations as set forth herein, or fail to meet specified performance timelines, the Town shall have the following remedies against the Owner, or its successors and assigns, which remedies are cumulative and non-exclusive and which may be exercised after the provision of written notice stating that Owner is in breach, the specific steps required to cure the breach and a reasonable timeframe within which to cure the breach:

12.3.1. Specific performance;

12.3.2. Injunctive relief, both mandatory and or prohibitory;

12.3.3. Withdrawal or cancellation of PUD approval;

12.3.4. Injunction prohibiting the transfer or sale of any lot or unit created under the PUD approval;

12.3.5. Denial, withholding, or cancellation of any building permit, certificate of occupancy or any other authorization authorizing or implementing the development of the Property and/or any structure or improvement to be constructed on the Property; or

12.3.6. The Town shall have enforcement powers for violations of this Agreement as if they are violations of the LUO including the power to assess fines and penalties as set forth in the LUO.

12.4. **Governing Law, Costs and Expenses.** This Agreement shall be construed under and governed by the laws of Colorado, with jurisdiction and venue restricted to a court of competent jurisdiction in San Miguel County, Colorado. In addition to the remedies of the Town pursuant to Section 12.4, a Party may pursue any and all available remedies under applicable law, including, without limitation, injunctive relief and specific performance. All of the rights and remedies of the Parties under this Agreement shall be cumulative. In any action to enforce or construe the terms of this Agreement, the substantially prevailing Party shall recover all legal and related court costs, including all reasonable attorneys’ fees and expert witness fees, costs and expenses.

12.5. **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 attorney’s fees that may arise out of or result directly or indirectly from the Owner’s actions or omissions in connection with this Agreement, including but not limited to Owner’s improper design or construction of the Public Improvements required thereunder, or Owner’s failure to construct or

complete the same. After inspection and acceptance by the Town of the Public Improvements, and after expiration of any applicable warranty period, this agreement of indemnity shall expire and be of no future force or effect.

12.6. **Binding Effect.** This Agreement shall extend to, inure to the benefit of, and be binding upon the Town and its successors and assigns and upon the Owner, its successors (including subsequent owners of the Property, or any part thereof), legal representatives and assigns. This Agreement shall constitute an agreement running with the Property until: (a) modification or release by mutual agreement of the Town and the Owner (subsequent transferee owners' consent to modification(s) or release(s) shall not be required unless the modification(s) directly limit or restrict the zoning or development rights awarded to a subsequent transferee owner's specific lot); or (b) expiration of the term hereof. This Agreement may be amended or supplemented by the Town and Owner without any requirement for Owner to obtain the approval of any Unit Owners or the Association, except that notice of any amendment shall be duly noticed in accordance with the LUO and each Unit Owner and the Association shall be entitled to attend any hearing and comment on any proposed amendment to this Agreement.

12.7. **Parties Representations.** In entering into this Agreement, the Parties acknowledge and agree and represent and warrant to each other as follows: (a) that they will perform their duties and obligations in a commercially reasonable and good faith manner and that this commitment is being relied upon by each other Party; (b) that parties will promptly provide a response to a notice when required, the response will be provided within the timeframe established and if no timeframe is stated, it shall be deemed to be 30 days and the failure to timely provide a response shall be deemed to be an approval; (c) that the Party is a duly qualified and existing entity, capable of doing business in the state of Colorado; and (d) that the Party has actual and express authority to execute this Agreement, has taken all actions necessary to obtain such authorization, the Agreement constitutes a binding obligation of the Party and the person signing below is duly authorized and empowered to execute this Agreement.

12.8. **Severability and Further Assurances.** If any term or provision or Article of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the applications or such term or provision or Article to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Each Party shall execute and deliver such documents or instruments and take such action as may be reasonably requested by the other Party to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

12.9. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and no other representations, promises, agreements or understandings or obligations with respect to the payment of consideration or agreements to undertake other actions regarding the subject matter hereof shall be of any force or effect unless in writing, executed by all Parties hereto and dated after the date hereof.

12.10. **Modifications and Waiver.** No amendment, modification or termination of this Agreement or any portion thereof shall be valid or binding unless it is in writing, dated subsequent to the date hereof and signed by each of the Parties hereto. No waiver of any breach, term or condition of this Agreement by any party shall constitute a subsequent waiver of the same or any other breach, term or condition.

12.11. **Counterparts and Facsimile Copies.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Facsimile copies of any party's signature hereon shall be deemed an original for all purposes of this Agreement.

12.12. **Notice.** All notices, demands or writings in this Agreement provided to be given or made or sent that may be given or made or sent by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and delivered either by Fax, Email or United States Mail (certified, return receipt requests and postage pre-paid), and addressed to the party, at the below stated mailing address, email address or fax number. The mailing address, email address or fax number to which any notice, demand or writing may be changed by sending written notice to each party notifying the party of the change.

<p><u>Town:</u> Town of Mountain Village Attention: Town Manager 455 Mountain Village Blvd., Suite A Mountain Village, CO 81435</p>	<p><u>Owner:</u> MV Colorado Development Partners, LLC Attn: Robert Harper 1601 Elm Street, Suite 4000 Dallas, Texas 75201 Fax: (214)720-1662</p>
<p><u>With a Copy to:</u> J. David Reed, Esquire PO Box 196 Montrose, CO 81402</p>	<p><u>With copy to:</u> MV Colorado Development Partners, LLC Attn: Alan Tompkins, Esq. 1601 Elm Street, Suite 4000 Dallas, Texas 75201 Fax: (214)720-1662</p>
	<p><u>And a Copy to:</u> Thomas G. Kennedy, Esquire P.O. Box 3081 Telluride, CO 81435 Fax: (970)728-9439</p>

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

12.14. **Rights of Lenders.** The Town is aware that financing for acquisition, development and/or construction of the Project ("**Owner Loan**") may be provided in whole or in part, from time to time, by one or more lenders. In the event of an event of default by the Owner under this Agreement, the Town shall provide notice of such event of default, at the same time notice is provided to Owner, to any lender previously identified in writing to the Town ("**Registered Lender**") pursuant to this Paragraph 12.14. If a Registered Lender is permitted under the terms of any agreements with Owner to cure the event of default and/or to assume Owner's position with respect to this Agreement, the Town agrees to recognize the right of such Registered Lender and to otherwise permit such Registered Lender to assume all of the rights and obligations of Owner under this Agreement, provided that nothing contained in this Agreement shall not create any duty, obligation or other requirement on the part of the Registered Lender to assume any of the duties and obligations of Owner under this Agreement unless the Registered Lender takes fee simple title to the Project through foreclosure, deed in lieu or other legal instrument in which case the lender shall be bound by the terms and conditions of this Agreement. For so long as the Owner Loan remains outstanding, Owner and Town recognize and agree that this Agreement may only be modified or amended with the prior written approval of each Registered Lender.

12.15. **No Further Rights; No Third Party Rights.** Nothing contained herein shall be construed as creating any rights in any third persons or parties other than the parties specifically intended to be benefited or burdened by this Agreement.

12.16. **Term of Agreement.** This Agreement and the Town Approvals as they relate to the Applications, except for the Replat, shall expire as of December 8, 2015 unless Owner has either: (a) obtained a building permit and commenced construction of the Project Condominium; or (b) applied for and obtained an approval to extend this Agreement and the Town Approvals. If construction has not timely commenced or an extension not obtained prior to December 8, 2015, the Town Approvals shall expire, except that the Replat and the density assigned to the Property shall remain in place, but prior to any use and development of the Property, the Owner of the Property must reapply for and obtain necessary approvals of applications for rezoning, PUD, waivers/variations and design review approval for any project contemplated for the Property, which will be reviewed in accordance with LUO and Design Regulations in place at the time of the submission of any such application.

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

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

IN WITNESS THEREOF, the Parties have executed this Agreement intending that it become effective as of the Effective Date.

TOWN:

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

By: [Signature]
Robert H. Delves, Mayor

Date: 3/17/11

Attest: [Signature]

By: [Signature]
Gregory L. Sparks, Town Manager

Date: 3/16/11

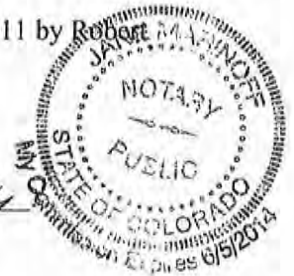
STATE OF COLORADO)
) ss
COUNTY OF SAN MIGUEL)

Acknowledged, subscribed and sworn to before me this 17th day of MARCH, 2011 by Robert H. Delves as the Mayor of The Town of Mountain Village.

Witness my hand and official seal.

[Signature]
Notary Public

My commission expires: 6/5/2014



STATE OF COLORADO)
) ss
COUNTY OF SAN MIGUEL)

Acknowledged, subscribed and sworn to before me this 16th day of MARCH, 2011 by Gregory L. Sparks as the Town Manager of The Town of Mountain Village.

Witness my hand and official seal.

[Signature]
Notary Public

My commission expires: 6/5/2014



OWNER:

MV Colorado Development Partners, LLC,
a Texas limited liability company

By: Robert R Harper, III

Date: March 14, 2011

Printed Name: Robert R HARPER III
Title: Vice President

State of Texas)
)ss
County of Dallas)

Subscribed to and acknowledged before me this 14th day of March, 2011 by
Robert R HARPER III as Vice President of MV
Colorado Development Partners, LLC.

Witness my hand and official seal.

Kathy H. McDaniel
Notary Public

My commission expires: 4-21-11



Exhibit "A"
Sheet Index:

Cover Sheet/Index	
A0.00	Sheet Index & Project Information
Civil Drawings	
C0.00	Sheet Index & Project Information
DM1	Demolition Plan
SP1	Site Plan
SP2	Site Plan
OU1	Overall Utility Plan
GR1	Grading Plan
EC1	Erosion Control Plan
SD1	Storm Drain Plan and Profile
SD2	Storm Drain Plan and Profile
SS01	Sanitary Sewer Plan and Profile
WT01	Water Main Plan and Profile
UR1	SMPA Utility Relocation Plan
UR2	Qwest Utility Relocation Plan
UR3	Cable TV Utility Relocation Plan
DT1	Details – Grading and Erosion Control
DT2	Details – Storm Drainage
DT3	Details – Storm Drainage and Roadway
DT4	Details – Sanitary Sewer
DT5	Details - Water
Landscape Drawings	
L1.01	Landscape Plan
L1.01a	Landscape Plan
L1.01b	Landscape Plan
L1.01c	Landscape Plan
L1.01d	Landscape Plan
L1.02	Westermere Improvement Plan
L1.03	Landscape Details
11.01	Irrigation Plan
12.01	Irrigation Details
12.02	Irrigation Details
Architectural Drawings	
A1.01	Site Plan
A1.01a	Garbage Truck Circulation Plan
A1.01b	Construction Staging Plan
A1.01c	Snow Melt Plan
A1.01d	Site Photos
A1.01e	Site Ownership Diagram
A1.01f	Site Density Diagram
A1.01g	Site Circulation Diagram
A1.02	Parking Diagram Plan (reference only)
A1.03	Loading Dock Detail Plan
A1.04	Erosion Control Plan
A1.05	Upper Garage Lighting Plan
A1.06	Ground Floor Lighting Plan
A1.07	Level 1 Lighting Plan
A1.08	Level 2 Lighting Plan
A1.09	Level 3 Lighting Plan

A1.10	Level 4 Lighting Plan
A1.11	Level 5 Lighting Plan
A1.12	Level 6 Lighting Plan
A1.13	Level 7 Lighting Plan
E1.00	Lighting Cut Sheets
E1.06	Garage Basement Floor Plan - Overall
E1.07	Level 1 Lighting Plan
E1.08	Level 1 Lighting Plan
PTP.200	Garage Basement Point to Point
PTP.201	Lower Garage Point to Point
PTP.202	Upper Garage Point to Point
A2.00	Garage Basement Floor Plan – Overall
A2.01	Lower Garage Floor Plan – Overall
A2.02	Upper Garage Floor Plan – Overall
A2.03	Ground Floor Plan - Overall
A2.04	Level 1 Floor Plan – Overall
A2.05	Level 2 Floor Plan – Overall
A2.06	Level 3 Floor Plan – Overall
A2.07	Level 4 Floor Plan – Overall
A2.08	Level 5 Floor Plan – Overall
A2.09	Level 6 Floor Plan – Overall
A2.10	Level 7 Floor Plan – Overall
A2.11	Roof Plan – Overall
A2.12	Average Height Targa Plan
A2.13	Maximum Height Plan
A3.02	Site Circulation Plan
A4.01	Exterior Elevation – Overall
A4.02	Exterior Elevation – Overall
A4.03	Exterior Elevation – Overall
A4.04	Exterior Elevation – Overall
A4.05	Exterior Elevation – Overall
A4.06	Exterior Elevation – Overall
A4.07	Exterior Elevation – Overall
A4.08	Exterior Elevation – Overall
A4.09	Exterior Elevation – Overall
A4.10	Exterior Elevation – Overall
4.21	Exterior Elevation – Snow Melt Study
4.22	Exterior Elevation – Snow Melt Study
4.23	Exterior Elevation – Snow Melt Study
4.24	Exterior Elevation – Snow Melt Study
4.25	Exterior Elevation – Snow Melt Study
4.26	Exterior Elevation – Snow Melt Study
4.27	Exterior Elevation – Snow Melt Study
4.28	Exterior Elevation – Snow Melt Study
4.29	Exterior Elevation – Snow Melt Study
4.30	Exterior Elevation – Snow Melt Study
A5.01	Building Section
A5.02	Building Section
A5.03	Building Section
A5.04	Building Section
A5.05	Building Section
A6.01	Typical Exterior Details
A6.01a	Typical Exterior Details

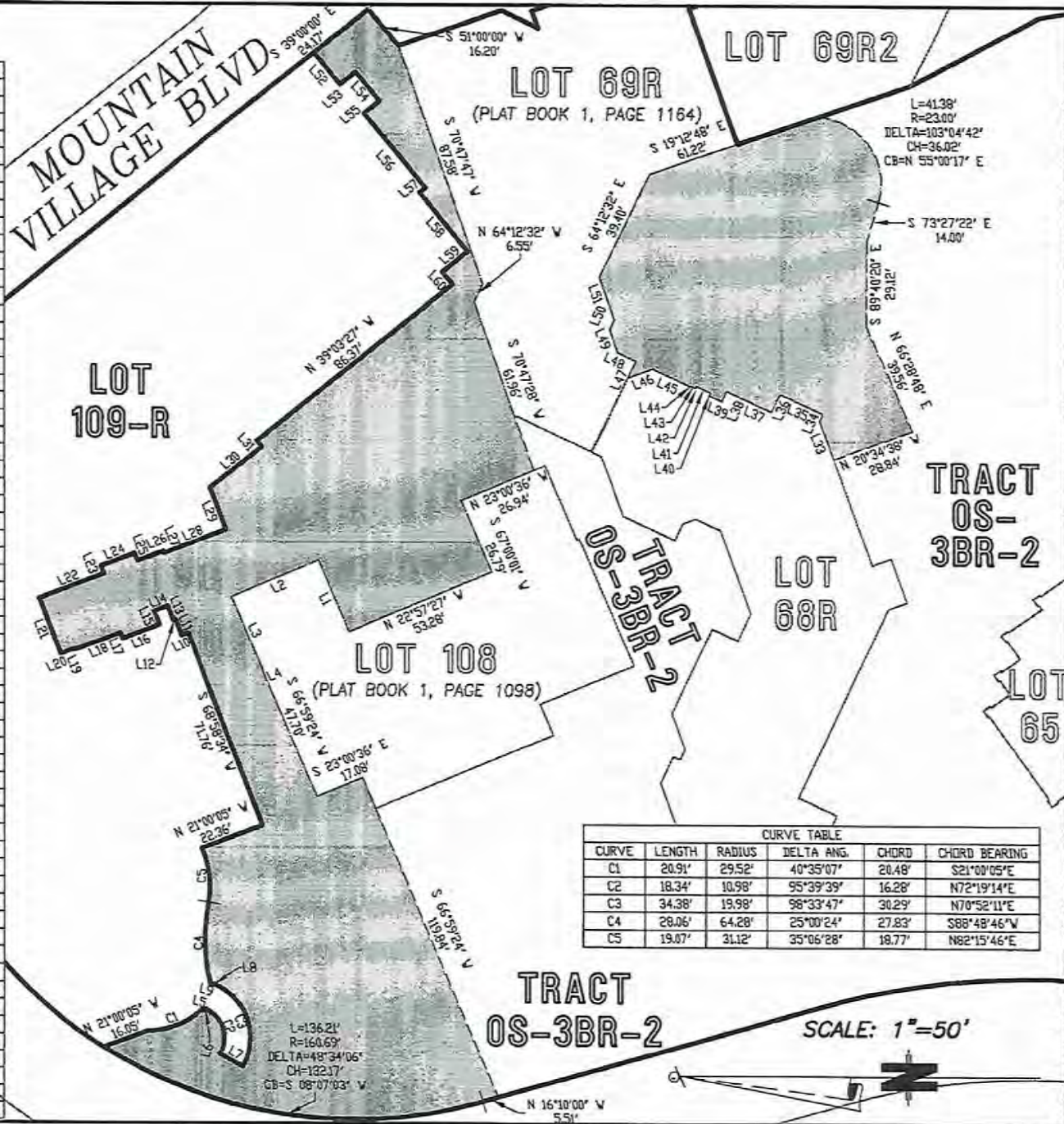
A6.01b	Typical Exterior Details
A6.02	Miscellaneous Details
A6.03	Service Diagram
A6.04	Upper Mountain Village Blvd Site Details
A6.05	Upper Mountain Village Site Details

Exhibit "B"
(Schedule of Improvements)

Public Improvement
Provision of 40 efficiency lodge units to be dedicated to hotel use.
Provision for public restrooms
Plaza improvements
Improvements to the Westermere Breezeway Plaza.
Provision of Conference Rooms facilities.
16 covered, garage parking spaces
A \$996,288.00 cash contribution toward Town public purposes

Exhibit "C"
(Area of Plaza Improvements)

LINE	BEARING	LENGTH
L1	N 66°58'47" E	26.74'
L2	N 23°00'36" W	32.44'
L3	S 66°58'13" V	27.74'
L4	N 23°00'22" V	0.25'
L5	N 17°58'24" E	1.37'
L6	N 72°01'36" V	0.68'
L7	N 30°09'04" E	9.00'
L8	S 68°24'43" E	0.21'
L9	S 17°58'24" V	1.25'
L10	S 21°00'05" E	2.50'
L11	S 68°59'23" W	5.83'
L12	S 21°02'52" E	0.83'
L13	S 68°57'08" V	5.33'
L14	S 21°00'05" E	5.00'
L15	N 68°59'55" E	4.95'
L16	S 21°00'05" E	13.62'
L17	S 68°59'55" W	2.12'
L18	S 21°00'05" E	17.00'
L19	S 69°00'25" V	0.33'
L20	S 21°00'05" E	4.75'
L21	S 68°59'55" V	20.67'
L22	N 21°00'05" V	23.71'
L23	S 68°59'56" W	2.83'
L24	N 21°00'05" V	12.33'
L25	N 68°59'55" E	2.84'
L26	N 21°00'05" V	9.76'
L27	N 68°59'37" E	0.66'
L28	N 21°00'23" V	23.15'
L29	S 68°59'54" V	15.26'
L30	N 38°58'10" V	22.86'
L31	S 51°01'50" V	2.74'
L32	N 70°03'20" E	14.47'
L33	N 70°03'20" E	14.47'
L34	S 64°56'40" E	2.61'
L35	N 25°03'20" E	16.00'
L36	N 64°56'40" W	6.83'
L37	N 25°03'20" E	17.03'
L38	N 64°56'40" V	3.92'
L39	N 25°03'20" E	4.76'
L40	S 64°56'40" E	1.01'
L41	N 25°03'20" E	5.40'
L42	N 64°56'40" W	0.68'
L43	N 25°03'20" E	1.78'
L44	N 64°56'40" V	0.33'
L45	N 25°03'20" E	14.37'
L46	N 19°56'40" V	8.98'
L47	S 64°12'32" E	6.34'
L48	N 25°47'28" E	6.66'
L49	N 70°27'23" E	8.58'
L50	S 64°12'32" E	3.77'
L51	N 70°47'28" E	15.22'
L52	S 50°56'33" V	14.32'
L53	S 39°03'27" E	6.83'
L54	S 50°56'33" V	13.00'
L55	N 39°03'27" V	6.83'
L56	S 50°56'33" V	33.36'
L57	N 39°03'27" V	8.50'
L58	S 50°56'44" V	26.00'
L59	N 39°01'35" V	11.12'
L60	S 50°56'33" V	5.38'



CURVE	LENGTH	RADIUS	DELTA ANG.	CHORD	CHORD BEARING
C1	20.91'	29.52'	40°35'07"	20.48'	S21°09'05"E
C2	18.34'	10.98'	95°39'39"	16.28'	N72°19'14"E
C3	34.38'	19.98'	98°33'47"	30.29'	N70°52'11"E
C4	28.06'	64.28'	25°00'24"	27.83'	S88°48'46"W
C5	19.07'	31.12'	35°06'28"	18.77'	N82°15'46"E

SCALE: 1"=50'



PLAZA USAGE EXHIBIT I

FOLEY & ASSOCIATES, INC.

REGISTERED PROFESSIONAL SURVEYOR

STATE OF TEXAS

NO. 12874

EXPIRES 12/31/2012

1 of 6



Exhibit "D"
(Miscellaneous Civil Engineering Concerns)

Professional Consultants Incorporated
 2121 Academy Circle, Suite 202
 Colorado Springs, Colorado 80909
 Tel.: 719-380-8857 Fax: 719-380-8858

Thursday, September 23, 2010

Chris Hawkins
 Community Dev. Dept. TMV
 455 Mountain Village Blvd.
 Mountain Village, CO 82435

Re: Final PUD Plans for Lots 73-76R, 89A, 109, 110 at 628 and 632 Mtn. Village Blvd., Town of Mountain Village, Colorado.

Dear Chris,

This letter is in response to your request for comments to the above-referenced project on behalf of the Town of Mountain Village. Professional Consultants Incorporated has previously reviewed this project and submitted comments. So, the comments below have to do with this latest submittal only.

Comments:

1. Sheet DM1 – It is evident that several, if not all, utilities are being removed and relocated. It is not clear how the interim service to the existing users of the Town would be accomplished while the infrastructure is configured to the proposed layout. I do not believe that this is something that should be left to the project owner and/or contractor to decide. The TMV is likely not interested in suspending services while the project is constructed, so, it is important to require that the logistics of interim service be presented in this approval process to recognize and avert any problems.
2. Sheet SP1 – There are significant common areas located above an under-ground parking garage. After all the recent experiences between the TMV and certain locations in the village core, it is important to cover all aspects of the existence of public facilities located over underground structures before any plans are approved. Issues of liability, maintenance responsibility, replacement responsibility, etc. need to be sorted out.
3. Sheet SP1 – The layout seems to be silent about or not indicate where the hotel intends to accommodate larger supply vehicles while loading and unloading. Is this activity planned to be done by parking on the street? If so, where?
4. OU1 - Specific comments for each infrastructure component will be made below. However, even though the overall utilities seem to follow a cleaner layout than the current, there's not enough information provided to evaluate a) whether or not some utilities are too close to building foundations so as to deserve to be sleeved; b) whether the historic capacity of the storm and sewer lines has been maintained through the site with the alternative alignments proposed, and c) Who will own the lines located inside the buildings? As more information is provided, I am sure more questions will arise. **It may desirable for the TMV to require that all lines located within the perimeter of any new building in the Village Core be owned and maintained by the building owner and that a perpetual license be granted to the town to flow all its tributary storm water, water and sewer through the lines.** This would prevent any issue

related to access to the facilities and/or having to deal with the building owner in the event of a failure within the structure. In addition, the quality of the infrastructure that will be installed is likely to be much better because no owner wants to have sewer problems inside an underground garage. Maintenance access to many of the utilities is going to be quite difficult. Generally, pipe joints must be minimized or eliminated through the village core. That means that for water, the lines should be welded steel or restrained joints ductile iron pipe. For storm and sanitary sewers, the piping should be water pressure rated, high density polyethylene with fused joints. Sanitary sewers inside structure should also be sleeved and protected from impact with independent members that would deflect damage to the pipes.

5. GR1 and EC1 - No comment, except to say that the plans are not complete. There are references to sheets that are not labeled as specified, such as "DTX".
6. SD1 and SD2 – Designer should be asked to specifically answer how the proposed piping system protects and improves the current storm water conveyance capacity that the TMV has in place. There also seems to be many floor drains which are not shown as connected to the storm drain. Storm drain sizing of the inlets and conveyance pipes has to recognize that these pipes are in a publicly transited area and are subject to larger debris, sand and gravel influx than a pipe located purely within a building. It seems that the main drainage conveyance and multiple inlet collection lines for storm flows should not be any smaller than 12" in diameter at 75% of depth maximum flow capacity with a Manning's coefficient $n=0.015$. Again, as stated earlier, the piping used should have no joints (i.e. fused HDPE type). A detention facility is shown with no details as to what flows it will retain and how it will release to historic levels. Who will own and maintain the detention pond? My recommendation is that said box is retaining the projects excess flows and must be owned and maintained by the project's owner. It is not a regional facility. The SD1 and SD2 plans are missing a few details that are necessary for a thorough review. The profile in SD1 is incomplete. There's reference to an elevation for the piping located in the building, but no indication of what's at the bottom of the reference, i.e. floor of the garage. If it is the floor of the garage, is the vertical clearance constant throughout the length of the pipe, i.e. the garage floor is dropping at the same grade (doubtful). No turns of the storm sewer should be allowed unless inside a concrete box inlet appropriately sized for maintenance access or a standard sized manhole. Several inlets are not connected to the storm drain. All storm sewer collection lines must start with an inlet box or a manhole for maintenance access. This is true for all 8" to 12" inlet collection lines also. Is the slotted drain proposed for ground water dewatering or surface water conveyance? The storm drain line between manholes MH-4 and AD-4 may be in conflict with the adjacent building foundation. Finally, the storm drain piping system inside the building must be protected against vehicular impacts. No details are available to evaluate this condition. The earlier comment about ownership of the line and licensing back to the TMV also apply. There's a portion of storm drain flowing into MH-12 that is being demolished and not replaced with an alternative.
7. SS01 – Manhole SS-7 falls approximately 15' into a 16' General Easement, it is shown to be over 15' deep to the bottom. The concern is that the current easement is too limited to allow for proper construction and maintenance of this line due to the depth of trench requirement and side slope stability, even if using construction boxes. So, as a minimum, there will be encroachment into lot 89-1C with construction and for the long term there's no room to repair or maintain the line without encroachment into that lot once more. So, an easement is needed for construction now and for ownership, access and maintenance later. The designer must provide information to support the sizing of the sewer lines such that it is demonstrated that the carrying capacity of the existing TMV lines at 75% of depth and $n=0.013$ is retained and or improved upon. It is doubtful that this is taking place because the lines shown through the

- building are at 0.5% slope and yet retain the same minimum sizing of 8" diameter. My earlier comments about materials for the lines and possible ownership within the building's limits still apply. It is recommended that manholes deeper (rim to bottom of base) than 16', but not deeper than 28', be 5' in diameter. After 30' deep they should be 6' in diameter. Also, the 4' diameter manholes should be limited to pipes 16" in diameter or less, when one inlet and one outlet exist. If multiple inlets to one outlet, less than 16" in diameter, or single inlet/outlet for pipe diameters between 18" and 30" exist the manhole should be a minimum of 5' in diameter.
8. WT01 – Water lines within 10' of any foundation should be sleeved by steel encasement. In addition, earlier comments about pipe materials and joint restraints or steel welded pipe apply.
 9. DT2 – Pipe sizing recommendation by manufacturer "Nyloplast" conflict with recommendations made here for outside drains that would be conveyed to the TMV.
 10. ST3 – Manhole detail needs to be changed to reflect that manhole inside diameter needs to be 4' for pipes up to 16" with single inlet and outlet and 5' I.D. for pipes between 18" and 30" with single inlet and outlet. All concrete for manholes must be 4,000 psi. Refer to earlier reference for depth to diameter of manholes specifications.
 11. In summary, I do not know if this is the last time the TMV gets to see these plans before approving construction. If that's the case, the plans are not complete. Too many details are missing and certain items must be proven not to cause detriment to the current TMV's system capacity.

I hope the information provided assists you I your review of the application. If we can be of further service, please advise. Thanks you.

Cordially,



Alvaro J. Testa, Ph.D., P.E.

415339
Page 1 of 10
SAN MIGUEL COUNTY, CO
PEGGY NERLIN CLERK-RECORDER
12-10-2010 10:29 AM Recording Fee \$56.00

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF MOUNTAIN VILLAGE,
MOUNTAIN VILLAGE, COLORADO
APPROVAL OF FINAL PLANNED UNIT DEVELOPMENT APPLICATION
MOUNTAIN VILLAGE HOTEL PLANNED UNIT DEVELOPMENT**

Resolution No. 2010-1208-31

WHEREAS, MV Development Partners, LLC, a Texas limited liability company ("Applicant") is the owner of record of certain real property described as Lots 73-76R, Lot 109, Lot 110 and Lot 89-A ("Applicant Property");

WHEREAS, the Town of Mountain Village ("Town") is the owner of certain unimproved property known as OS-3-BR-1 ("Town Property");

WHEREAS, the Applicant Property and the Town Property are collectively referred to herein as the "Property";

WHEREAS, the Town authorized the Applicant to include a portion of the Town Property with the Applicant Property in an application seeking (1) Final Planned Unit Development ("PUD") Plan pursuant to Section 4-6 of the Mountain Village Land Use Ordinance ("LUO"), (2) replat, rezone and density transfer pursuant to Sections 4-4 and 4-5 of the LUO; and (3) a site specific development plan and associated vested property rights pursuant to Article 6 of the LUO ("Application");

WHEREAS, the Application includes the following variations/waivers pursuant to the PUD process:

1. Variation/waiver to LUO Section 2-416 to allow Lot 109 and 110, Building Footprint Lots, to expand by more than 25%.
2. Variation/waiver to LUO Section 4-308-9 to allow an increase in maximum to 88' - 9" and maximum average height of 65' - 2.9".
3. Variation/waiver to LUO Section 4-308-2 to allow for permitted uses (parking, pedestrian paths, etc. as shown in plans) in Active Open Space as shown on the Final PUD Plans to be approved pursuant to the PUD process and not the special use permit process.
4. Variation/waiver to LUO Section 4-308-2(f) to allow for conference and meeting space on the plaza level.
5. Variation/waiver to LUO Section 4-308-2 to allow for permitted uses (parking, pedestrian paths, etc. as shown in plans) in Active Open Space to be approved pursuant to the PUD process and not the special use permit process.
6. Variation/waiver to LUO Section 2-466 to allow for the proposed lock-off unit configuration as shown in the Final PUD Plans.
7. Variation/waiver to LUO Section 4-609-5 to extend the PUD vesting period from three (3) to five (5) years.

8. Variation/waiver to LUO Section 9-13 through 9-16 to allow for the "festoon" lights over the plaza area.

WHEREAS, the Application includes the following specific approvals pursuant to the PUD process:

1. Specific approval from the Town Council to allow residential occupancy on the plaza level for an Employee Housing Condominium (LUO Section 4-308-4).
2. Specific approval from the DRB to allow tandem parking to be included as required parking (Design Regulations Section 7-306-2).
3. Specific approval from the DRB to allow for modification of the tile roofing material, not design (Design Regulations Section 8-211-5).
4. Specific approval from the DRB to allow for 2:12 roof pitch (Design Regulations Section 8-202)

WHEREAS, the duly recorded plats of the Property designates the following land uses and density:

Table 1 - DESIGNATED EXISTING LAND USE FOR THE PROPERTY:

Lot	Acres	Zone District	Zoning Designation	Units	Density Per Unit	Total Density
73-76R	.141	Village Center	Condo	12	3	36
			Commercial			
			Employee Condo	1	3	3
109	.092	Village Center	Condo	8	3	24
			Commercial			
110	.077	Village Center	Condo	6	3	18
			Commercial			
89A	.020	Village Center	Commercial			
OS3-BR-1	2.489	Open Space	Active Open Space			
Total				27		81

WHEREAS, the Applicant proposes a certain Rezoning and Density Transfer for the Property as a part of the Application as follows:

Table 2 - PROPOSED ZONING/LAND USES/DENSITY FOR THE PROPERTY:

Approved Density/Commercial SF				
	# Units	Density Per	Total Density	Density Transfer
Efficiency Lodge Units	66	.5	33	
Lodge Units	38	.75	28.5	
Unrestricted Condominium Units	20	3	60	
Employee Apartment	1	3	3	
Commercial SF	20,164			
	Total Density		124.5	
				43.5

WHEREAS, the Applicant is proposing to transfer 43.5 units owned by the Applicant from the Density Bank as a part of the Application;

WHEREAS, the Applicant is proposing to replat the Property into two lots - Lot 109R and Tract OS-3BR-2 ("Replat"), with the Applicant retaining Lot 109 and the Town retaining OS-3-BR-2

WHEREAS, the Applicant Property contains 14,374.8 sq. ft.;

WHEREAS, the Replat shall include 21,562.2 sq. ft. of the Town Property ("Contributed Town Property") with the Applicant Property creating Lot 109 that contains 35,928 sq. ft.;

WHEREAS, Lot 109R will contain 0.825 acre and Tract OS-3BR-2 contains 1.969 acre;

WHEREAS, The Town authorized the Applicant to include the Contributed Town Property in the Application provided that Applicant transfers and conveys replacement property, which property has been deemed acceptable to the Town (the "Replacement Town Property"), alternatively, in lieu of the conveyance of the Replacement Town Property, the Applicant and Town may agree to the payment of cash or other consideration deemed acceptable to the Town ("**Replacement Town Property Payment**") on mutually acceptable terms and conditions;

WHEREAS, the Town Council elected to receive Lot 644 as Replacement Town Property in lieu of the Replacement Town Property Payment; -;

WHEREAS, the Applicant is proposing to rezone the new Lot 109R to "Village Center" subject to the applicable provisions of the LUO with the density outlined in Table 2. The Official Zoning Map for the Town of Mountain Village will be amended to show Lot 109 with

the "Village Center" zoning designation upon recordation of this resolution, the Replat, and the Lot 109 Town of Mountain Village, Planned Unit Development;

WHEREAS, the Applicant is proposing to rezone the new tract OS-3BR-2 as "Active Open Space" subject to the applicable provisions of the LUO. The Official Zoning Map for the Town of Mountain Village will be amended to show OS-3BR-2 with the Active Open Space zoning designation;

WHEREAS, the Application has been reviewed and considered by the Town in accordance with applicable law, including but not limited to, the LUO and Design Regulations;

WHEREAS, at a duly noticed and conducted public hearing on October 28, 2010, the DRB recommended to the Town Council that the Application for Conceptual PUD Plan be approved with conditions pursuant to LUO Section 4-606;

WHEREAS, at a duly noticed and conducted public hearing on March 11, 2010, the Town Council granted Conceptual PUD Plan approval to the Application pursuant to LUO Section 4-606;

WHEREAS, at a duly noticed and conducted public hearings held on June 24, 2010 and again on July 22, 2010, the DRB granted Sketch PUD Plan approval to the Application pursuant to LUO Section 4-607;

WHEREAS, at a duly noticed and conducted public hearing on October 28, 2010, the DRB recommended to the Town Council that the Application for Final PUD Plan be approved pursuant to LUO Section 4-608 as well as other components of the Application;

WHEREAS, at a duly noticed and conducted public hearing on December 8th 2010, the Town Council granted Final PUD Plan approval to the Application pursuant to LUO Section 4-609 as well as other components of the Application, including, specifically and without limitation, the request for Extended Vesting Rights;

WHEREAS, after conducting the respective public hearings, receiving evidence and taking testimony and comment thereon, the DRB and the Town Council respectively found that: (i) the Property achieves one (1) or more of the applicable purposes listed in Section 4-616 of the LUO, and (ii) the resulting development will be consistent with the provisions of Section 4-617 of the LUO;

WHEREAS, the public hearings referred to above were preceded by publication of public notice of such hearing(s) on such dates and/or dates from which such hearings were continued in the *Telluride Daily Planet* and by mailing of public notice to property owners located within one hundred and fifty feet (150') of the Property, as required by the LUO;

WHEREAS, the Applicant has now met all requirements for: (1) Final PUD approval and has addressed all conditions of Final PUD approval as set forth by the DRB and Town Council, except as provided herein; and (2) final approval for the components of the Application

relating to the Replat, Rezone, Density Transfer, variations/waivers and Extended Vesting Rights;

WHEREAS, after 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 PUD complies with all LUO and Town of Mountain Village Design Regulations ("Design Regulations") provisions applicable to the Property; (2) the PUD achieves one or more of the applicable community purposes/benefits listed in LUO Section 4-616; and, (3) the PUD is consistent with and substantially complies with the applicable review standards and requirements listed in LUO Section 4-617;

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;

WHEREAS, the Applicant has specifically complied with Section 4-616, Community Purposes, in the following manner:

4-616-2 Development of, or a contribution to the Development of either: (i) public facilities, such as public parking and transportation facilities, public recreation facilities, public cultural facilities, and other public facilities; or (ii) public benefits as either may be identified by the DRB or the Town Council. The public facilities or source of the public benefits may be located within or outside of the PUD but shall be public facilities or public benefits that meet the needs not only of the PUD residents or property owners, but also of other residents, property owners and visitors of the Town.

The Applicant shall provide the following public benefits, the provision of which shall be a condition of this Resolution:

- A. The Applicant shall provide at least forty dedicated hotel rooms according to the terms and conditions of the Development Agreement.
- B. The Applicant shall require that the Project shall be either: (i) operated and managed by, and/or (ii) franchised as an internationally or nationally recognized full service hotel operator/brand (as applicable) with significant experience in full service operations with existing broad marketing distribution capabilities ("Hotel Operator") for the life of the Project according to the terms and conditions of the Development Agreement Section 7.2.1.B of the Development Agreement shall provide for mediation between the parties in the event the Applicant and the Town are unable to agree on a Hotel Operator and shall further provide that the approved Hotel Operator shall have programs in place that demonstrate broad market exposure.
- C. The Applicant shall impose a hotel operator, hotel amenities, services and facilities covenant, enforceable by the Town, on the Property according to the terms and conditions of the Development Agreement.
- D. The Applicant shall impose a covenant on the Property requiring all purchase contracts concerning the initial sale of Lodge and Efficiency Lodge Units that require a buyer to

select a standard furniture package developed by the Hotel Operator and the price for purchasing the unit shall include the cost of the furniture package and such covenant may not be waived by the parties.

- E. The Applicant shall provide for an employee housing mitigation payment to the Town in the sum of \$996,288 ("Mitigation Payment"), which shall be payable simultaneously with the issuance of the initial building permit, excluding a standalone excavation permit for the Project. The Town may use the Mitigation Payment for any public purpose as determined by the Town, which may include, but shall not be limited to, employee housing, transportation or trash facility relocation, provided that not less than 60% of the Mitigation Payment shall be used for employee housing purposes. On the second anniversary of the initial Certificate of Occupancy for the Project, Owner shall provide a certified statement indicating the actual number of full time equivalent employees employed at the Project. The certified statement shall confirm to the Town the number of full time equivalent employees based upon time cards, income tax reporting and such other and similar employment records, which shall be reviewed, evaluated, discussed and otherwise held in a confidential manner by the Town. As a further offset to employee housing needs generated by the Project, Owner shall pay the Town a one time payment of \$4,018.52 for each full time equivalent employee averaged over the two year period dating from the issuance of the initial Certificate of Occupancy for the Project in excess of the 90 full time equivalent employees estimated by the Owner ("One Time Payment"). The payment shall be due on the date that is the thirty month anniversary of the initial Certificate of Occupancy for the Project. In the event that the certified statement indicates that the Project is employing less than the anticipated 90 full time equivalent employees, the Town shall not be required to refund any portion of the Mitigation Payment to Owner. The Owner may propose to mitigate any added employees by providing on-site or off site employee units as an alternative to the One Time Payment.
- F. Employee Housing Unit. The Employee Housing Restriction on one Unit in the Project is considered a public benefit and shall specifically provide that the Employee Housing Restriction does not terminate in the event of a foreclosure on such unit.
- G. Owner shall construct and make available to the general public, for at least 16 hours per day, 365 days per year, restrooms in the Project reflected in the Final PUD Plans that are accessible from the plaza and associated easements, without cost to the Town according to the terms and conditions of the Development Agreement. The Town and Owner shall meet and confer to establish opening times, which may vary seasonally.
- H. Owner shall construct certain "Plaza Improvements" reflected in the Final PUD Plans and shall maintain such Plaza Improvements according to the terms and conditions of the Development Agreement.
- I. The Owner shall construct, and convey to the Town 48 parking spaces in the project according to the terms and conditions of the Development Agreement. Following conveyance of the 48 parking spaces, the Town may elect, in its sole and absolute discretion, to sell, lease, or further convey the 48 parking spaces. The Owner will improve the Westermere Breezeway and the associated path through such breezeway in substantial accordance with the Final PUD Plans, provided that the Westermere HOA has provided its written authorization and consent to such work on commercially reasonable terms and conditions and within thirty days following Owner's submission of its request for such authorization. The Owner shall submit the authorization and consent to the Town with its application for the building permit. If the Westermere HOA fails to

- provide the authorization and consent in form, content or timeframe contemplated by this Resolution, the Owner shall be fully released from its obligation to improve the façade and the associated walkway as shown on the Final PUD Plans.
- J. The Owner shall construct two conference rooms in the Project in general accordance with the Final PUD Plans, which shall be available for use by owners and guests in the Project and non-owner guests according to the terms and conditions of the Development Agreement.
 - K. In order to utilize the tandem parking spaces shown on the Final PUD Plan, the Owner or condominium association shall provide 24 hour per day valet parking services for the tandem parking spaces by providing attendants who receive, park and return vehicles to owners and guests as further detailed in the Development Agreement.
 - L. The owners association for the Project shall be responsible for removing and/or relocating snow from the south side of upper Mountain Village Boulevard to allow for adequate snow storage for plowing of upper Mountain Village Boulevard.

The Town Council found that the foregoing proposed Community Benefits satisfy Section 4-616 of the Land Use Ordinance.

WHEREAS, the Applicant has specifically complied with Section 4-617, Review Standards, in the following manner:

(1) The Development proposed for the PUD is generally consistent with the underlying purposes and goals of the LUO and the Design Regulations because, without limitation: (A) it was processed in accordance with the PUD process of the LUO; (B) the project will promote the public health, safety and welfare due to the extensive design review process that assured an appropriate massing that fits within the context of the Village Center while also achieving some envisioned goals of the pending Comprehensive Plan; (C) the project will preserve open space and protect the environment since Active Open Space in the Village Center was always envisioned to be developed by the expansion of footprint lots and the project avoids areas with environmental constraints; (D) the project will enhance and be compatible with the natural beauty of the Town and its surrounding since it will allow for resort development in an area that is currently covered in parking lots and poor vegetation, with the development designed to fit into the context of the site and the Village Center; (F) the project will foster a sense of community because it will provide for more activity and vitality in the Village Center area and provide more hot bed base to the community, with more traffic and activity created for the town as a whole; (G) the project's design will promote good civic design and development because it has been found to meet the Design Regulations and the PUD Regulations for the Town, with numerous public meetings to shape the final design; (H) the project will help to create and preserve an attractive community due to the attention to massing, the stepping of heights, varying wall planes, attractive design, and the modern, high alpine design theme; (I) the project will promote the economic vitality of the town, promote the resort nature and tourism trade of the town and promote property values in the towns due to the hot bed requirements of the PUD, the conference center and by adding more people to the Village Center that support more business and commercial ventures;

(2) The Development proposed for the PUD represents a creative approach to the development and use of land and related physical facilities to produce a better development than would otherwise be possible under the strict application of the requirements of the underlying Zoning Designation, Zone District and Land Use and Density and will provide amenities for residents of the PUD and the public in general. The PUD allows for the creative use of some low quality active open space and the combination of private lots to create a development that provides for a flag hotel site that would not be possible without the PUD process since such process allows for expanding footprint lots, increased heights, unique lock-off combinations, and other variations.

(3) The Development proposed for the PUD is designed to be compatible with the surrounding environment, neighborhood and area relative to, but not limited to, architectural design, scale, bulk, building height, buffer zones, character, and orientation and shall not unreasonably affect existing land uses and the future development of the surrounding neighborhood and area. The Applicant has worked with its consultants, the DRB and the Council to create a high density hot bed development that fits into the high density nature of the Village Center. The buildings bulk, scale, building height, landscaping and architectural design have been shaped to be compatible with surrounding area development. The requested maximum building height is found on only one location, with the roof heights cascading down to the south while stepping in a more linear, albeit lower height to the north and west, with specific attention paid to stepping the building towards Westermere. The building's design also breaks up the mass by extensive roof articulation, wall articulation, color changes, material changes, decks and the large open plaza area to the west.

(4) The landscaping and public spaces proposed for the PUD provides sufficient buffering of uses from one another to minimize adverse impacts and create attractive public spaces consistent with the character of the surrounding environment, neighborhood and area. The project has created a very unique plaza area that will stand out from other plaza areas due to unique paver design, lighting integrated into the pavers, festoon lighting, landscaped planters and commercial facades that are designed to have large glass areas. The building's heavy stone base will provide the vertical walls up from the plaza and create an attractive, high alpine setting. In addition, the plans call for an outdoor dining area which will help create an activity center in the area, which combined with the Westermere and Palmyra retail shops, creates the potential for a very active public place that spills out to the pond. When the pond lots are developed to the south, the whole potential of this area as an attractive, vital place with lots of pedestrian interest should be realized.

(5) The Development proposed for the PUD provides sufficient parking and traffic circulation. The final PUD plans provide for more parking spaces than required by the Design Regulations. Traffic and pedestrian circulation patterns have been extensively analyzed for this project, with the Applicant submitting a traffic analysis that shows good levels of service for the drive intersection.

(6) There is only one phase for this PUD project.

- (7) The PUD is not proposing a rezoning of a single family lot.

NOW, THEREFORE, BE IT RESOLVED that the Town Council hereby grants the following land use approvals for the Property in accordance with the provisions of the LUO: (1) Final Plan Approval pursuant to Section 4-6 LUO, and (2) replat, rezone and density transfer pursuant to Sections 4-4 and 4-5 of the LUO; with authorization for the Mayor to sign the Resolution, subject to conditions set forth herein, and the requirements of the Development Agreement for the Property in a form substantially similar to the draft development agreement presented at the December 8, 2010 Town Council meeting ("Development Agreement").

Conditions of this Final PUD Plan Approval are as follows:

1. Prior to recording the final plat, the plat shall be revised to show easements for the utilities currently traversing through Lot 109R, with notation thereon or by other legal instrument, allowance for the Applicant to relocate the easements in accordance with the composite utility plan that is a part of the building permit application.
2. The Applicant shall provide the Replacement Town Property or payment in lieu as set forth herein in accordance with the terms and conditions of the Development Agreement.
3. The Applicant shall provide all public benefits as set forth herein and in accordance with the terms and conditions of the Development Agreement.
4. Such other terms and conditions as set forth in the Development Agreement.
5. All representations of the Applicant, whether within the submittal or at the DRB hearing, are conditions of this approval.
6. Per Section 2-1307 of the Town of Mountain Village Design Regulations, this approval does not allow any violation to 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.
7. The landscaping plan shall be revised to include a requirement to salvage existing trees located on the Property to the extent practical.
8. The Development Agreement shall contain a mediation clause for the purpose of resolving any issues that may arise as a result of the design or construction of the public benefits.
9. The Development Agreement shall contain a clause that requires the Applicant to submit a report to the Community Development Department, with a copy to Town Council, demonstrating how its construction plans for the project have been prepared to insure that the required public benefits have been designed to achieve applicable construction standards and requirements and will function and operate in a manner that is consistent with the customary goals and objectives for which the public benefit was accepted by the Town. The report and plans will be reviewed by the Community Development Department to determine compliance with this requirement. In the event that the Community Development Department determines that the report fails to adequately demonstrate compliance, the matter shall be referred to the Town Council for further review and appropriate action.

BE IT FURTHER RESOLVED that pursuant to Section 3-511 the Town Council has received a draft of the Development Agreement. The Town Council authorizes the Mayor to


appoint a committee consisting of the Mayor and one or more Town Councilors, who shall, in consultation with the Town Manager, legal counsel and the Director of Community Development, finalize and authorize the Mayor to execute the Development Agreement consistent with the terms and conditions of this Resolution No. 2010-1208-31

BE IT FURTHER RESOLVED that the approval of the Final PUD Plan for the Property as set forth in this Resolution constitutes a Site Specific Development Plan and upon appropriate publication shall create a vested property right for an extended vesting period of five years pursuant to C.R.S. § 24-68-101-106 and Article 6 of the LUO.


BE IT FURTHER RESOLVED that the Property may be developed as submitted in accordance with this Resolution, the Development Agreement and the applicable provisions of the LUO and the Design Guidelines.

APPROVED by the Town Council at a public meeting held on December 8, 2010.

TOWN OF MOUNTAIN VILLAGE, TOWN COUNCIL

By:  Robert Delves
2010.12.09
16:24:36 -07'00'
Robert H. Delves, Mayor

Attest:

By:  Kim Montgomery
2010.12.09 16:25:12
-07'00'
Kim Montgomery, Town Clerk



TO: Mountain Village Town Council

FROM: John Miller, Senior Planner

FOR: Special Town Council Meeting; December 3, 2020

DATE: November 23, 2020

RE: Consideration of a Resolution to set a parking payment in lieu fee consistent with Community Development Code Section 17.5.8.D.4 Parking Payment in Lieu Rate, to satisfy the parking requirements associated with a density transfer and rezone application for six units from hotel efficiency to lodge designation Lot 37, Columbia Place Condominiums

APPLICATION OVERVIEW:

PROJECT GEOGRAPHY

Legal Description: Condominium Units 6,7,9,10,11,12 Columbia Place Condominiums Phase 1 Lot 37

Address: 562 Mountain Village Blvd

Owner: Multiple Owners (see applicant narrative and planning file)

Zoning: Village Center

Existing Use: Hotel Efficiency Lodge

Proposed Use: Lodge

Adjacent Land Uses:

- **North:** Village Center
- **South:** Village Center
- **East:** Village Center
- **West:** Village Center



CASE SUMMARY: Robert Stenhammer (Applicant), acting on behalf of the Owners of Units 6, 7, 9, 10, 11, and 12 at Columbia Place Condominiums, Lot 37, is requesting Town Council consideration of a Resolution establishing a Parking in-lieu fee in order to meet the parking requirements of the Community Development Code (CDC) associated with a proposed Density Transfer and Rezone. Each Lodge unit is required to have ½ parking space for a total of 3 required spaces in total.

In lieu of the required on-site parking, an applicant may propose and the Town Council may allow a payment-in-lieu of such required parking in those cases where site constraints prohibit the use of on-site parking. The specific amount for parking payment in-lieu is set on a case by case basis by the Town Council and all parking payment-in-lieu fees are required by the CDC to be deposited into the parking fund and used to fund existing parking debt or matinance costs.

In order to approve this request for parking payment in-lieu, the Council will need to determine if the proposal meets the criteria for decision provided in the CDC and discussed in more detail below under the Criteria, Analysis, and Findings section of this report.

BACKGROUND and RESEARCH

The CDC requirements associated with the proposed Density Transfer and Rezone at Columbia Place have trigged the need to satisfy Section 17.5.8: Parking Regulations. Typically, parking payment in lieu fees are determined by a few factors such as the following:

- Actual costs to construct a surface parking spot
- Actual costs to construct an enclosed parking spot (like in a parking garage)
- Actual costs to purchase a parking space in the Mountain Village
- Ongoing maintenance fees

The purpose of the parking in lieu fee is that if an applicant requests or elects to pay a parking payment in lieu fee, the amount collected would offset the true cost of construction of a parking space. Additionally, the CDC requires a one time operations and maintenance fee to be paid at a time determined by the associated development agreement outlining the parking in-lieu payment amounts and timelines.

In 2019 staff provided some regional comparisons in anticipation of a parking payment in lieu Council discussion:

- Surface Parking cost to construct: Lawson Hill: **\$11,666** and VCA **\$11,250** per space – not including land costs.
- Enclosed Parking Cost Recent parking garage constructed in the Town of Telluride, below grade garage parking space cost **\$100,000** per space– not including land costs
- Free market rate to purchase a parking space in the Mountain Village ranging from **\$100,000-\$150,000** – this rate reflects the cost of a below grade garage parking space.
- Parking Payment in Lieu rate set for the purposes of the 161CR settlement agreement **\$60,000**

It should be noted that Resolution 2017-0518-08 established a parking in-lieu fee schedule for the Town. According to the language within that Resolution, the fee of \$40,000 per parking space was based on the cost of construction of parking spaces in the Town's parking facilities and the cost to purchase private parking throughout the Town. Staff is

reiterating that although this resolution established this fee in 2017, the CDC states that the fee shall be established on a case-by-case basis by the Town Council. This language allows some flexibility in the Parking In Lieu rate that is ultimately determined for the request at Columbia Place.

CRITERIA, ANALYSIS AND FINDINGS

The criteria listed may not be exhaustive and does not diminish the requirements of the applicant to meet all CDC regulations – even if not specifically noted herein. (***) signifies abbreviations of irrelevant provisions to reduce length of report

Chapter 17.5: Design Regulations

17.5.8 (D)(1-5):

D. Parking Payment In-Lieu

1. Foundation to Parking Payment-In-Lieu Request. In lieu of the required on-site parking, an applicant may propose and the Town Council may allow a payment-in-lieu of such required parking in those cases where:

- a. Site constraints prohibit the provision of on-site parking; or
(***)

Staff Note: As described in length within the Density Transfer and Rezone Memo associated with this request, Columbia Place was established prior to the Mountain Village's incorporation, in 1987 through a replat of Lot 37, 38, Tract OS-3 and Tract OS-3C (Reception No. 247761) and then a subsequent condominium platting process. There is no mention of allocated parking in the original subdivision exemption and rather implies the use of surface parking. There were no parking requirements at the time of the development approvals for Columbia Place. These site constraints prohibit the creation of on-site parking that would allow the applicant to meet the requirements of the CDC in relation to their proposed density transfer and rezone. Criteria Met.

2. Criteria for Decision. The Town Council may approve a request for a parking payment-in-lieu if such application meets all applicable Town regulations and standards and subject to a finding by the Town Council that:
 - a. The proposed off-premise parking is in general conformance with the Comprehensive Plan;
 - b. The required parking cannot be located on-site due to site-specific physical constraints or site design requirements, or the Town Council determines the project provides for desired economic development;
 - c. The property is located in close proximity to a pre-existing parking facility or a public transportation route; and
 - d. Parking is available in one of the Town-owned parking garages.

Staff Note: Columbia Place is listed as Parcel H in the Comprehensive Plan, yet there is no specific guidance given to parking. Generally, the Comprehensive plan provides that on-site parking as set forth in the CDC should be required where possible unless a payment in-lieu system is approved for a specific project or provide adequate off-site parking that is connected to the intended use. Due to the unique history of Columbia Place, the required parking cannot be located on site for the reasons stated above. Additionally, the property is located within the Village Center – within very close proximity to both existing parking facilities as well as transit. The units have been providing parking on an as needed basis within

existing town owned parking garages and therefore there would be no change in existing use based on any approval of this request. Criterion Met.

3. Development Agreement. In the event that the Town Council approves a parking payment-in-lieu, a development agreement shall include provisions regarding:
 - a. The required payment of the payment-in-lieu fees including the amount and timing of the payment, which payment shall be made no later than the date of the issuance of the building permit; and
 - b. The required payment of a one-time operations and maintenance fee including the amount and timing of such payment.

Staff Note: Its recommended that prior to recordation of any Ordinance finalizing the density transfer and rezone of Lot 37, Units 6,7,9,10,11,and 12 – the Development Agreement be finalized to specify the above requirements a-b.

(***)

STAFF RECOMMENDATION

Staff recommends Town Council establish a parking payment in lieu rate of \$12,500 per ½ parking space for a total of \$25,000 per space or \$75,000 for the required 3 spaces, based on the above information and historical requirements that have been provided within this report.

PROPOSED MOTION -

Staff Note: It should be noted that reasons for approval or rejection should be stated in the findings of fact and motion. If its determined that the below amount should be modified, then the motion may be modified to reflect the change in that dollar amount.

I move to approve a Resolution setting the parking payment in lieu fee consistent with Community Development Code Section 17.5.8: Parking Regulations, at \$12,500 per ½ space for a total of three spaces or \$75,000, in order to satisfy the parking requirements associated with a density transfer and rezone application for six units to rezone from hotel efficiency to lodge designation, Lot 37, Columbia Place Condominiums; based on the evidence provided within the Staff Report of record dated November 23, 2020, and the public testimony provided by the applicant at the Public Hearing on December 3, 2020, with the following conditions:

1. *Prior to recordation of any Ordinance approving a Density Transfer and Rezone associated with Units 6,7,9,10,11 or 12, the owners shall enter into a Development Agreement with the Town based on the Parking In-Lieu Fee and Operations & Maintenance Fee established by the Town Council. This agreement shall outline the amount and timing in which payment shall be made.*
2. *Direct staff and the town attorney to establish reasonable terms within the parking payment in lieu agreement such as period of time by which the parking payments are required to be made, if not immediately and any other necessary term.*

/JJM

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, SETTING FORTH THE PARKING PAYMENT IN LIEU FEE FOR LOT 37, UNITS 6, 7, 9, 10, 11 AND 12

Resolution No. 2020-1203

WHEREAS, the Town of Mountain Village pursuant to the Community Development Code (the "CDC") allows for parking payment in lieu to the Town's parking fund in limited circumstances as set forth by the CDC.

WHEREAS, The Town Council desires to set forth the parking payment in lieu fee to be paid to the Town's parking fund for approved payment in lieu at Lot 37, Units 6, 7, 9, 10, 11, and 12.

WHEREAS, The Town Council has determined the fee set forth below based on the cost of construction of parking spaces in the Town's parking facilities and the cost to purchase private parking throughout the Town.

NOW, THEREFORE, BE IT RESOLVED, the Town of Mountain Village Parking Payment In Lieu fee for Lot 37, Units 6, 7, 9, 10, 11, and 12 shall be set at Twelve Thousand Five Hundred Dollars (\$12,500) per each ½ parking space or a total of Twenty five Thousand Dollars (\$25,000) per parking space required to be bought out. This amount includes a Five Hundred Dollar (\$500) Operations and Maintenance Fee per each ½ unit of parking as required by the CDC.

Section 2. Conditions of Approval.

The Town Council approved the parking payment in lieu with the following conditions:

1. Prior to recordation of any Ordinance approving a Density Transfer and Rezone associated with Units 6,7,9,10,11 or 12, the owners shall enter into a Development Agreement with the Town based on the Parking In-Lieu Fee and Operations & Maintenance Fee established by the Town Council. This agreement shall outline the amount and timing in which payment shall be made.
2. Direct staff and the Town Attorney to establish reasonable terms within the parking payment in lieu agreement such as period of time by which the parking payments are required to be made, if not immediately and any other necessary term.

Section 3. Resolution Effect

- A.** This Resolution 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 resolutions repealed or amended as herein provided and the same shall be construed and concluded under such prior resolutions.
- B.** All resolutions, of the Town, or parts thereof, inconsistent or in conflict with this Resolution, are hereby repealed, replaced and superseded to the extent only of such inconsistency or conflict.

Section 4. Severability

The provisions of this Resolution are severable and the invalidity of any section, phrase, clause or portion of this Resolution as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of this Resolution.

Section 5. Effective Date

This Resolution shall become effective on December 3, 2020 (the “Effective Date”) as herein referenced throughout this Resolution.

Section 6. Public Hearing

A public meeting on this Resolution was held on the 3rd Day of December 2020 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd, Mountain Village, Colorado 81435.

Approved by the Town Council at a public hearing held on December 3, 2020

Town of Mountain Village, Town Council

By: _____
Laila Benitez, Mayor

Attest:

By: _____
Susan Johnston, Town Clerk

Approved as to Form:

Paul Wisor, Town Attorney

MEMORANDUM

TO: Town of Mountain Village Council Members
FROM: Paul Wisor, Town Attorney
DATE: November 29, 2020
RE: Resolution No. 2020-1203- – IGA for the Collection and Remittance of Motor Vehicle Sales Tax

Introduction

Attached to this memorandum is Resolution No. 2020-1203- approving an intergovernmental agreement with San Miguel County for the collection and remittance of motor vehicle sales taxes (the “IGA”).

Discussion

Pursuant to Section 3.04 of the Town of Mountain Village (the “Town”) Municipal Code, the Town imposes a sales tax on the sale of motor vehicles. For the sake of efficiency, in many municipalities the sales tax on motor vehicle sales is collected by the applicable county clerk and recorder and remitted to the municipality given that the clerk and recorder is required to register and title all vehicles. Currently, the San Miguel County Clerk and Recorder does not collect sales tax on behalf of the Town. While it is theoretically possible for the Town to collect taxes on the sale of motor vehicles, it would be much more effective for the San Miguel County Clerk and Recorder to do so.

Section 9.2 of the Town’s Home Rule Charter permits the Town to enter into intergovernmental agreements for services of public benefit, under such terms and conditions deemed desirable by Town Council. This Resolution approves an IGA authorizing the San Miguel Clerk and Recorder to collect and remit the Town’s sales tax on motor vehicles, and allows the San Miguel Clerk and Recorder to retain 3.33% of the amount collected to pay the costs and expenses associated with collection of the Town’s sales tax.

Recommendation

Staff recommends Town Council adopt Resolution No. 2020-1203-.

Proposed Motion

“I move to adopt the resolution authorizing the Mayor to enter into an intergovernmental agreement with the San Miguel County Clerk and Recorder for the collection and remittance of sales tax imposed on the sale of motor vehicles.”

“I move to postpone indefinitely the resolution authorizing the Mayor to enter into an intergovernmental agreement with the San Miguel County Clerk and Recorder for the collection and remittance of sales tax imposed on the sale of motor vehicles.”

Attachment: Resolution 2020-1203-

**RESOLUTION OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO
APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN SAN MIGUEL
COUNTY AND THE TOWN FOR THE PURPOSES OF AUTHORIZING THE COUNTY TO
COLLECT MOTOR VEHICLE SALES TAX, LESS A VENDOR FEE**

RESOLUTION NO. 2020-1203-

RECITALS

WHEREAS, the Town of Mountain Village (the “Town”) is authorized to enter into intergovernmental agreements pursuant to C.R.S. §29-1-201 and §30-11-101, as amended, and Article XIV, Section 18, of the Colorado Constitution; and

WHEREAS, pursuant to Section 9.2 of the Town Home Rule Charter, the Town Council may enter into intergovernmental agreements for services of public benefit, under such terms and conditions deemed desirable by Town Council; and

WHEREAS, the purchase and sale of motor vehicles is subject to a sales tax pursuant to Sections 3.04 of the Town’s Municipal Code; and

WHEREAS, the San Miguel County Clerk and Recorder (the “County Clerk and Recorder”) registers and titles vehicles in accordance with state statute; and

WHEREAS, when registering and titling vehicles, the County Clerk and Recorder must collect all applicable sales and/or use tax unless proof is provided that sales and/or use tax has been paid for such vehicles; and

WHEREAS, it is convenient for the County Clerk and Recorder to collect applicable sale and/or use tax for vehicles on behalf of various municipalities and special districts within its jurisdiction and remit it to those municipalities and special districts; and

WHEREAS, the Town desires for the County to collect applicable sales tax on vehicles on behalf of it when registering or titling such vehicles (“Town Sales Tax”); and

WHEREAS, the County and the Town agree that the County will collect such Town Sales Tax on behalf of the Town and remit the Town Sales Tax to the Town minus an appropriate vendor fee; and

WHEREAS, the County and the Town desire to enter into an intergovernmental agreement to authorize the County to collect such Town Sales Tax on behalf of the Town.

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

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. Approval of Intergovernmental Agreement. The Town Council hereby formally authorizes the Mayor to enter into that certain intergovernmental agreement with the County for the collection of sales tax on the sale of motor vehicles in substantially the same form attached hereto as **Exhibit A.**

Section 3. Effective Date. This Resolution shall be in full force and effect upon its passage and adoption.

ADOPTED AND APPROVED by the Town Council at a regular public meeting held on the 3rd day of December 2020.

TOWN OF MOUNTAIN VILLAGE,
TOWN COUNCIL

By: _____
Laila Benitez, Mayor

ATTEST:

Susan Johnston, Town Clerk

APPROVED AS TO FORM:

Paul Wisor, Town Attorney

Exhibit A

INTERGOVERNMENTAL AGREEMENT BETWEEN SAN MIGUEL COUNTY AND THE TOWN OF MOUNTAIN VILLAGE, WHEREBY THE COUNTY CLERK AND RECORDER WILL COLLECT VEHICLE SALES AND/OR USE TAX, LESS A VENDOR FEE

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into this _____ day of _____ 2020, by and between San Miguel County (“County”), State of Colorado, a body corporate and politic and the Town of Mountain Village (“Town”), a Home Rule Municipality in the State of Colorado.

RECITALS

WHEREAS, the County Clerk and Recorder registers and titles vehicles in accordance with state statute; and

WHEREAS, when registering and titling vehicles, the County Clerk and Recorder must collect all applicable sales and/or use tax unless proof is provided that sales and/or use tax has been paid for such vehicles; and

WHEREAS, it is convenient for the County Clerk and Recorder to collect applicable sale and/or use tax for vehicles on behalf of various municipalities and special districts within its jurisdiction and remit it to those municipalities and special districts; and

WHEREAS, the Town desires for the County to collect applicable sales and/or tax on vehicles on behalf of it when registering or titling such vehicles (“Town Sales and/or Use Tax”); and

WHEREAS, the County and the Town agree that the County will collect such Town Sales and/or Use Tax on behalf of the Town and remit the Sales and/or Use Tax to the Town minus an appropriate vendor fee; and

WHEREAS, this Intergovernmental Agreement is authorize pursuant to C.R.S. § 29-1-201 and §30-11-101, as amended, and Article XIV, Section 18, of the Colorado Constitution.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree hereby as follows:

1. Services. The County Clerk and Recorder will collect Town Sales and/or Use Tax, on behalf of the Town, when registering and titling vehicles. The County will remit such Town Sales and/or Use Tax to the Town on a regular basis minus and Vendor Fee.

2. Vendor Fee. The County Clerk and Recorder will retain 3.33% of the amount collected to pay the costs and expenses associated with collection of the Town Sales and/or Use Tax.

3. Term of the Agreement. This Agreement shall commence upon the date first written above, and subject to the provisions of paragraph 4 hereof, shall continue in full force and effect until terminated by the parties.

4. Termination. Either party shall have the right to terminate this agreement with or without cause at any time by giving the other party one hundred (180) days’ prior written notice of termination. Upon termination, the County shall be entitled to compensation for services performed prior to such termination, and both parties shall thereafter be relieved of any and all duties and obligations under this Agreement.

5. Modification. Any amendments or modifications shall be in writing signed by both parties.

6. General Provisions.

A. Notice. Notice under this Agreement shall be given in writing and shall be deemed received if given by: (a) confirmed electronic transmission (as defined below) when transmitted, if transmitted on a business day and during the normal business hours of the recipient, and otherwise on the next business day following transmission; (b) certified mail, return receipt requested, postage pre-paid, three (3) business days after being deposited in the United States mail; or (c) overnight carrier service or personal delivery when received. Notice shall be given to the parties at the following addresses:

San Miguel County Representative:
San Miguel County
San Miguel County Clerk and Recorder
305 W. Colorado Ave. 1st Floor
PO Box 548
Telluride, Co 81435
Telephone: 970-728-3954
E-mail: stephanniev@sanmiguelcountyco.gov

Contractor Representative:
Town of Mountain Village
Town of Mountain Village Finance Department
455 Mountain Village Boulevard Suite A
Telluride, Co. 81435
Telephone: 970-369-6407
E-mail: Kevin Swain kswain@mtnvillage.org

Copy to: San Miguel County Attorney
Attn.: Amy Markwell
PO Box 1170 (mailing)
333 W. Colorado Ave. (physical)
Telluride, CO 81435
970-728-3879
E-mail: attorney@sanmiguelcountyco.gov

“Electronic Transmission” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and texts. The parties agree that: (a) any notice or communication transmitted by electronic transmission shall be treated in all manner and respects as an original written document; (b) any such notice or communication shall be considered to have the same binding and legal effect as an original document, and; (c) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form.

B. No modification or waiver of this Agreement or of any covenant, condition, or provision herein contained shall be valid unless in writing and duly executed by the party to be charged therewith.

C. This written Agreement embodies the whole agreement between the parties hereto and there are no inducements, promises, terms, conditions, or obligations made or entered into either by the County or the Town other than those contained herein.

D. This Agreement shall be binding upon the respective parties hereto, their successors or assigns and may not be assigned by anyone without prior written consent of the other respective party hereto.

E. All agreements and covenants herein are severable, and in the event that any of them shall be held invalid by a court of competent jurisdiction, this Agreement shall be interpreted as if such invalid Agreement or covenant were not contained herein.

F. The Town has represented to County and, likewise, the County has represented to the Town that it possess the legal ability to enter into this Agreement. In the event that a court of competent jurisdiction determines that either of the parties hereto did not possess the legal ability to enter into this Agreement, this Agreement shall be considered null and void as of the date of such Court determination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first set forth above.

COUNTY OF SAN MIGUEL, STATE OF COLORADO
By and Through its BOARD OF COUNTY COMMISSIONERS

By: _____
Hilary Cooper, Chair

Attest:

By: _____
Carmen Warfield, Chief Deputy Clerk

TOWN OF MOUNTAIN VILLAGE

By: _____
Laila Benitez, Mayor

Attest:

By: _____
Susan Johnston, Town Clerk

MEMORANDUM

TO: Town of Mountain Village Council Members
FROM: Paul Wisor, Town Attorney
DATE: November 29, 2020
RE: Emergency Ordinance No. ___, 2020 Amending Chapter 5.01 – Business Licenses

Introduction

Attached to this memorandum is Emergency Ordinance No. ___, 2020 (the “Emergency Ordinance”) amending Chapter 5.01 of the Town of Mountain Village (the “Town”) Municipal Code (the “Code”). The Code is being amended to provide the Town with greater enforcement powers with respect to public health violations.

Discussion

As the Town and San Miguel County begin to experience an uptick in COVID-19 cases, Town staff has reviewed the Code with respect to the Town’s ability to address public health concerns. While public health is a generally a matter regulated by the State of Colorado and San Miguel County, the Town Council is empowered by Section 31-15-401(1)(b), C.R.S., to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

Currently, the Town is not authorized under the Code to revoke or otherwise take action against a business licensed to do business in the Town that is in violation of a public health order or is otherwise impacting the public health, safety and morals or welfare within the Town. The proposed Emergency Ordinance clarifies the Town may revoke the business license of any business that adversely impact public health or fails to adhere to laws or regulations applicable to the business. The proposed Emergency Ordinance also provides no business may continue to operate if such business’ license is suspended or revoked.

Though the provisions of the Emergency Ordinance are generally applicable, they are especially relevant during the COVID-19 pandemic. As such, the Emergency Ordinance is being presented as an emergency ordinance under Section 5.8 of the Charter so the Town may immediately engage with businesses whose operations pose an imminent threat to public health.

Recommendation

Staff recommends Town Council adopt the Emergency Ordinance.

Proposed Motion

“I move to adopt the Emergency Ordinance amending Chapter 5.01 of the Town of Mountain Village Municipal Code.”

“I move to postpone indefinitely the Emergency Ordinance amending Chapter 5.01 of the Town of Mountain Village Municipal Code.”

Attachment: Ordinance _____, 2020

**AN EMERGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF
MOUNTAIN VILLAGE, COLORADO, AMENDING CHAPTER 5.01 – BUSINESS
LICENSING AND REGULATION OF THE TOWN OF MOUNTAIN VILLAGE
MUNICIPAL CODE**

ORDINANCE NO. 2020-__

WHEREAS, Section 5.01.010 of the Town of Mountain Village (“Town”) Municipal Code (the “Code”) requires all persons and business to obtain a license from the Town prior to doing business in the Town; and

WHEREAS, pursuant to Section 5.01.070 of the Code, the Town Council, after reasonable notice and a fair public hearing, may revoke any license, based upon a violation of Chapter 5.01; and

WHEREAS, Town Council finds it is incumbent upon all licensees to comply with all laws and regulations applicable to licensed businesses; and

WHEREAS, Town Council finds all licensees must refrain from all illegal or unlawful practices or conditions which do or may affect the public health safety and morals or welfare; and

WHEREAS, Town Council finds all licensees must refrain from operating a business under a business license after expiration of a license and during the period a license is revoked or suspended; and

WHEREAS, Section 5.8 of the Town’s Home Rule Charter provides Ordinances which are immediately necessary for the preservation of the public peace, health, safety, or welfare may be enacted at a regular or an emergency meeting of the Town Council. The proposed ordinance shall be approved by a majority vote of the members of the Town Council present at the meeting. Neither a second reading nor a public notice and hearing shall be required prior to the time it goes into effect; and

WHEREAS, Town Council finds amendments to the Code will more effectively provide for enforcement of business license violations and will promote the health, safety and general welfare of the Mountain Village community.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are incorporated by reference as findings and determinations of the Town Council.

Section 2. Amendment to Chapter 5.01. Chapter 5.01 of the Code is hereby amended by the addition of a new Section 5.01.060 to read as follows with ~~strikeout~~ indicated language to be deleted and underline indicated language to be adopted:

5.01.060

Each Licensee shall be required to:

- A. Ascertain and at all times comply with all laws and regulations applicable to any License issued to a Licensee.
- B. Refrain from all illegal or unlawful practices or conditions which do or may affect the public health, safety, morals or welfare.
- C. Refrain from operating any Business, Lodging Establishment or Place of Business expiration of the applicable License or during the period the applicable License is revoked or suspended.

Section 3. Public Hearing. A public hearing on this Emergency Ordinance was held on the 3rd day of December 2020.

Section 4. Severability. If any provision of this Emergency Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Emergency Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Emergency Ordinance are declared to be severable. The Mountain Village Town Council hereby declares that it would have passed this Emergency Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 5. Effective Date. This Emergency Ordinance shall take effect immediately upon adoption in accordance with Section 5.8(a) of the Charter.

Section 6. Codification of Amendments. The codifier of the Town’s Municipal Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Emergency Ordinance within the Mountain Village Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Emergency Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

Section 7. Publication. The Town Clerk is ordered to publish this Emergency Ordinance in accordance with Chapter 5.8(c) of the Mountain Village Municipal Code.

INTRODUCED AND ADOPTED ON FIRST AND FINAL READING on the 3rd day of
December 2020.

TOWN OF MOUNTAIN VILLAGE

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

By: _____
Laila Benitez, Mayor

ATTEST:

Susan Johnston, Town Clerk

Approved as To Form:

Paul Wisor, Town Attorney

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

1. The attached copy of Emergency Ordinance No. _____ ("Ordinance") is a true, correct and complete copy thereof.

2. The Emergency Ordinance was introduced, read by title, approved on first and final reading with minor amendments by the Town Council the Town ("Council") at a special meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on December 3, 2020, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Laila Benitez, Mayor				
Dan Caton, Mayor Pro-Tem				
Martinique Davis Prohaska				
Peter Duprey				
Patrick Berry				
Natalie Binder				
Jack Gilbride				

5. The Emergency 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 _____, 2020.

Susan Johnston, Town Clerk

(SEAL)

MEMORANDUM

TO: Town of Mountain Village Council Members
FROM: Paul Wisor, Town Attorney
DATE: November 29, 2020
RE: Resolution No. 2020-1205- Amending the Bylaws for the Community Grant Committee, Green Team Committee, and the Plaza Vending Committee

Introduction

Attached to this memorandum is Resolution No.2020-1205- amending the bylaws for the Community Grant Committee, Green Team Committee, and the Plaza Vending Committee.

Discussion

As a general matter, it is good practice for at least one Town Council member to serve on any committee established by the Town. This participation provides Town Council with direct insight in the recommendations of a committee, and it provides the committee an advocate for their position when Town Council is considering committee recommendations. It is also good practice for a member of Town Council the serve as chair of a committee to ensure the goals set forth by Town Council in establishing the committee are reflected in the committee’s agendas.

Currently, two members of Town Council are required to serve on the Community Grant Committee and the Green Team Committee while one member of Town Council is required to serve on the Plaza Vending Committee.

The Resolution amends the bylaws for the Community Grant Committee and the Green Team Committee to provide Town Council shall appoint the two Town Council members serving on the respective committees as Chairperson and Vice-Chairperson. The Resolution further provides Council will appoint the Council member serving on the Plaza Vending Committee as Chairperson, and the committee will select a Vice-Chairperson from the remaining members of the committee. The Resolution takes effect immediately upon passage.

Recommendation

Staff recommends Town Council adopt Resolution No. 2020-1205-.

Proposed Motion

“I move to adopt the resolution amending the bylaws for the Community Grant Committee, Green Team Committee, and the Plaza Vending Committee.”

“I move to postpone indefinitely the resolution amending the bylaws for the Community Grant Committee, Green Team Committee, and the Plaza Vending Committee.”

Attachment: Resolution 2020-1205-

**RESOLUTION OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO
AMENDING THE BYLAWS OF THE COMMUNITY GRANT COMMITTEE, GREEN TEAM
COMMITTEE, AND PLAZA VENDING COMMITTEE**

RESOLUTION NO. 2020-1203-

RECITALS

WHEREAS, the Town Council of the Town of Mountain Village (the “Town”), pursuant to the Town of Mountain Village Home Rule Charter Section 3.6(d), has the authority to create and dissolve advisory or fact-finding boards, commissions or committees which are considered necessary or desirable by the Town Council in the course of carrying out its legislative responsibilities of enacting, amending or repealing ordinance; and

WHEREAS, the Town Council approved and adopted the Bylaws for the Community Grant Committee on January 19, 2017, which Bylaws provide, among other things, the Community Grant Committee shall consist of two (2) Councilors, two (2) Town Department Directors, and two (2) residents of the Town; and

WHEREAS, the Town Council approved and adopted the Bylaws for the Green Team Committee on December 12, 2019, which Bylaws provide, among other things, the Green Team Committee shall consist of two (2) Councilors, two (2) residents of the Town; one (1) member of the Telluride Ski & Golf Company, one (1) member of the Telluride Mountain Village Owners Association, one (1) at large member, and one (1) at large alternate; and

WHEREAS, the Town Council approved and adopted the Bylaws for the Plaza Vending Committee on April 25, 2019, which Bylaws, among other things, provide the Plaza Vending Committee shall consist of one (1) Councilor, one (1) Town Community Engagement staff representative, one (1) Town Planning and Building staff representative, one (1) Town Plaza Services staff representative, and one (1) Town of Mountain Village Owners Association staff representative; and

WHEREAS, the respective bylaws of the Community Grant Committee, the Green Team Committee and the Plaza Vending Committee provide each committee shall decide by majority vote to elect a Chairperson and Vice-Chairperson. The Chairperson shall, among other duties, preside all Committee meetings and the Vice-Chairperson shall assume the Chairperson’s duties in the absence of the Chairperson; and

WHEREAS, Town Council hereby finds the Town Council and the Community Grant Committee, the Green Team Committee and the Plaza Vending Committee will more efficiency operate both if the Chairperson and Vice-Chairperson positions are occupied by members of Town Council; and

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

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. Community Grant Committee Amendment. Article V, Section 1 of the Community Grants Committee Bylaws are hereby amended to read as follows with ~~strikeout~~ indicated language to be deleted and underline indicated language to be adopted:

Section 1. Officers. The Town Council ~~Committee~~ shall ~~decide by majority vote to elect a~~
appoint one (1) Councilor to serve as Chairperson and one (1) Councilor to serve as a Vice-
Chairperson.

Section 3. Green Team Committee Amendment. Article V, Section 1 of the Green Team Committee
Bylaws are hereby amended to read as follows with ~~strikeout~~ indicated language to be deled and underline
indicated language to be adopted:

Section 1. Officers. The Town Council ~~Committee~~ shall ~~decide by majority vote to elect a~~
appoint one (1) Councilor to serve as Chairperson and one (1) Councilor to serve as a Vice-
Chairperson.

Section 4. Plaza Vending Committee Amendment. Article V, Section 1 of the Green Team Committee
Bylaws are hereby amended to read as follows with ~~strikeout~~ indicated language to be deled and underline
indicated language to be adopted:

Section 1. Officers. The Town Council ~~Committee~~ shall ~~decide by majority vote to elect a~~
appoint one (1) Councilor to serve as Chairperson and the Committee shall decide by a
majority vote to elect a Vice- Chairperson.

Section 5. Effective Date. This Resolution shall be in full force and effect upon its passage and adoption.

ADOPTED AND APPROVED by the Town Council at a regular public meeting held on the 3rd day of December 2020.

TOWN OF MOUNTAIN VILLAGE,
TOWN COUNCIL

By: _____
Laila Benitez, Mayor

ATTEST:

Susan Johnston, Town Clerk

APPROVED AS TO FORM:

Paul Wisor, Town Attorney

MEMORANDUM

TO: Town of Mountain Village Council Members
FROM: Paul Wisor, Town Attorney
DATE: November 29, 2020
RE: Resolution No. 2020-1205- Amending the Bylaws for the Business Development
Advisory Committee

Attached to this memorandum is Resolution No. 2020-1203- amending the bylaws for the Business Development Advisory Committee (“BDAC”).

Discussion

The BDAC Bylaws provide, among other things, that one business representative of the Town serve on the BDAC Committee. At its November 19, 2020 meeting, Town Council filled the then open seat to be filled by a business representative of the Town. At that meeting, Town Council though it appropriate to add an additional seat to the committee to be filled by a business community member.

The proposed resolution amends the BDAC Bylaws to provide two (2) business representative of the Town shall serve on the BDAC Committee.

Recommendation

Staff recommends Town Council adopt Resolution No 2020-1203-.

Proposed Motion

“I move to adopt the resolution amending the bylaws for the BDAC Committee.”

“I move to postpone indefinitely the resolution amending the bylaws for the BDAC Committee.”

Attachment: Resolution 2020-1203-

**RESOLUTION OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO
AMENDING THE BYLAWS OF THE BUSINESS DEVELOPMENT ADVISORY COMMITTEE**

RESOLUTION NO. 2020-1203-

RECITALS

WHEREAS, the Town Council of the Town of Mountain Village (the “Town”), pursuant to the Town of Mountain Village Home Rule Charter Section 3.6(d), has the authority to create and dissolve advisory or fact-finding boards, commissions or committees which are considered necessary or desirable by the Town Council in the course of carrying out its legislative responsibilities of enacting, amending or repealing ordinance; and

WHEREAS, the Town Council approved and adopted the Bylaws for the Business Development Advisory Committee on April 25, 2019, which Bylaws provide, among other things, the Business Development Advisory Committee shall consist of two (2) Councilmembers, one (1) Town business development representative, one (1) Town Planning and Development Services staff representative, one (1) member from the Telluride Ski & Golf Company, one (1) member from the Telluride Mountain Village Owners Association and one business representative of the Town; and

WHEREAS, Town Council hereby finds the Town Council and the Business Development Committee would benefit from an additional business representative from the Town; and

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

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. Business Development Advisory Committee Amendment. Article III of the Business Development Advisory Committee Bylaws are hereby amended to read as follows with ~~strikeout~~ indicated language to be deleted and underline indicated language to be adopted:

Appointments. The Committee shall consist of no less than seven members, each of whom shall be appointed by Town Council and reflect the following membership:

- Two Town Councilor Members
- A Town Business Development staff representative
- A Town Planning and Development Services staff representative
- One member from the Telluride Ski & Golf Company (TSG)
- One member from Telluride Mountain Village Owners Association (TMVOA)
- ~~One~~ Two business representative of the Town

Town Council may interview all candidates prior to appointing the Committee as an action at any regular or special meeting

Section 3. Effective Date. This Resolution shall be in full force and effect upon its passage and adoption.

ADOPTED AND APPROVED by the Town Council at a regular public meeting held on the 3rd day of December 2020.

TOWN OF MOUNTAIN VILLAGE,
TOWN COUNCIL

By: _____
Laila Benitez, Mayor

ATTEST:

Susan Johnston, Town Clerk

APPROVED AS TO FORM:

Paul Wisor, Town Attorney

MEMORANDUM

TO: Town of Mountain Village Council Members
FROM: Paul Wisor, Town Attorney
DATE: November 29, 2020
RE: Resolution No. 2020-1203- Dissolving the Employee Development Committee and the Conference Center Committee

Introduction

Attached to this memorandum is Resolution No. 2020-1203- dissolving the Employee Development Committee and the Conference Center Committee (collectively, the “Committees”).

Discussion

The Town Council approved and adopted the Bylaws for the Employee Development Committee on April 17, 2020, which Bylaws provide, among other things, the Employee Development Committee shall consist of two (2) Councilmembers, the Town Manager and the Human Resources Director. Similarly, the Town Council approved and adopted the Bylaws for the Conference Center Evaluation Committee on January 19, 2017, which Bylaws provide, among other things, the Conference Center Evaluation Committee shall consist of two (2) Councilors, the Finance Director, and two (2) staff members

Given the makeup of the Committees, the Committees function as internal units of Town staff. Therefore, it seems unnecessary these groups should work under and abide by a formal bylaws. In addition, the Colorado Open Meetings Law provides established committees are subject to certain notice requirements, which makes these working groups less nimble and more difficult to manage.

In light of the foregoing, the resolution provides for the dissolution of the Committees. While the Committees will be formally dissolved, it is anticipated the working groups will continue to address employee and conference center issues in nearly the same fashion.

Recommendation

Staff recommends Town Council adopt Resolution No 2020-1203-.

Proposed Motion

“I move to adopt the resolution dissolving the Employee Development Committee and the Conference Center Committee.”

“I move to postpone indefinitely the resolution dissolving the Employee Development Committee and the Conference Center Committee.”

Attachment: Resolution 2020-1203-

**RESOLUTION OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO
DISSOLVING THE EMPLOYEE DEVELOPMENT COMMITTEE AND THE CONFERENCE
CENTER COMMITTEE**

RESOLUTION NO. 2020-1203-

RECITALS

WHEREAS, the Town Council of the Town of Mountain Village (the “Town”), pursuant to the Town of Mountain Village Home Rule Charter Section 3.6(d), has the authority to create and dissolve advisory or fact-finding boards, commissions or committees which are considered necessary or desirable by the Town Council in the course of carrying out its legislative responsibilities of enacting, amending or repealing ordinance; and

WHEREAS, the Town Council approved and adopted the Bylaws for the Employee Development Committee on April 17, 2020, which Bylaws provide, among other things, the Employee Development Committee shall consist of two (2) Councilmembers, the Town Manager and the Human Resources Director; and

WHEREAS, the Town Council approved and adopted the Bylaws for the Conference Center Evaluation Committee (together with the Employee Development Committee, the “Committees”) on January 19, 2017, which Bylaws provide, among other things, the Conference Center Evaluation Committee shall consist of two (2) Councilors, the Finance Director, and two (2) staff members; and

WHEREAS, Town Council hereby finds the Committees function as internal working groups and not public committees that should operate under a rigid bylaw governance structure.

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

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. Dissolution of the Employee Development Committee and Conference Center Evaluation Committee. The Town Council hereby formally dissolves the Employee Development Committee and the Conference Center Evaluation Committee.

Section 3. Effective Date. This Resolution shall be in full force and effect upon its passage and adoption.

ADOPTED AND APPROVED by the Town Council at a regular public meeting held on the 3rd day of December 2020.

TOWN OF MOUNTAIN VILLAGE,
TOWN COUNCIL

By: _____
Laila Benitez, Mayor

ATTEST:

Susan Johnston, Town Clerk

APPROVED AS TO FORM:

Paul Wisor, Town Attorney



TOWN OF MOUNTAIN VILLAGE
455 Mountain Village Blvd. Suite A
Mountain Village, Co 81435
970-728-8000
970-728-4342 Fax

To: Town Council

From: Kim Montgomery

Date: 8/2020

Re: Repurchase of Deed Restricted Castellina Unit E and Cassidy Ridge Unit D-202

AGENDA ITEM 11

In 2018 and 2019 the Town became aware of two deed restricted units for sale within the Town of Mountain Village. Both of these units were built by the developer of these properties pursuant to PUD agreements. These PUD agreements required that at initial sale the units be to qualified employees in the R-1 School District working a minimum of 1,560 hours per year and that the sales be price capped at \$250/square foot. Subsequent to the initial sale from the developer, these units are subject to a 3% per year appreciation cap and the purchaser's annual income is capped at 250% of AMI. When the Town made the decision to purchase and resell both of these units we placed a restriction on the resale of these units so that the Town had the first right of refusal when either owner wished to sell the unit.

A. Castellina Unit E

The Town was recently contacted by the owner of Castellina Unit E stating he wishes to resell this unit to the Town as soon as possible. For this particular unit, in order to provide for a wider range of purchasers, the Town chose to allow any employee of a business located in the Mountain Village to be eligible to apply for the lottery for the purchase of this unit. The lottery system weighed the number of years working in the R-1 school district, first responders assigned to Station II (Town of Mountain Village) and gave priority to those employees who derive their income 100% from working for a Mountain Village employer. This spread the availability of a price capped unit to long term employees who may be looking for a home ownership opportunity since there are a limited number of these units in the Mountain Village inventory.

This unit is one bedroom/one bath, surface parking, adjacent storage and it is attractive for the Town to own and control a variety of housing unit types to meet workforce demands. The sales price back to the Town is approximately \$252,000 and closing on the Town's purchase would be scheduled to occur in mid-October to early November, 2020.

B. Cassidy Ridge Unit D-202

This unit was originally purchased by the Town and the sold to a then current employee of the Town of Mountain Village. Subsequently, the employee left the employment of the Town of Mountain Village and one of the terms of the agreement for his purchase was that it be resold

to the Town within six months of termination of employment with the Town. The owner was given an extended period until January 1, 2021 to resell the unit to the Town. For this unit the Town chose to limit the lottery of this unit to Town of Mountain Village employees and give priority to employees based on years of service, position within the Town as well as performance evaluation scores.

This unit is a 2 bedroom/2 bath, heated underground parking space, storage, locker room and gym located in the building. The sales price back to the Town is approximately \$285,000 and closing could occur sometime shortly after the Town reacquires this unit in early January 2021 with a resale to a qualified owner.

Therefore, the Town staff is requesting direction from Council on these units:

- i. Have the Town exercise their first right of refusal and repurchase these units (formal resolutions will be forthcoming to the Council for these actions at a future Council meeting)
- ii. Pursue the same lottery system for the resale of these units as set forth above or a different lottery format
- iii. Lease the unit to a qualified employee and retain ownership
- iv. Do not conduct a lottery and identify certain preferred employees for ownership

TOWN OF MOUNTAIN VILLAGE

MOUNTAIN VILLAGE HOUSING AUTHORITY

455 Mountain Village Boulevard, Ste. A
 Mountain Village, CO 81435
 (970) 239-4061

Employee Housing Purchase Program

For those persons intending to purchase an employee housing unit owned by Mountain Village, please submit the following application to Human Resources located at the above address.

Application Form:

1. Applicant (s) _____
2. Mailing Address: _____
3. Phone: (H) _____ (W) _____ (C) _____
4. Address of the property you are purchasing: Cassidy Ridge, 136 San Joaquin Road, Unit C 201, Mountain Village
5. Is this a deed restricted property? Yes No
6. Is the DR property price-capped? Yes What % 3 No

Qualification – A Household must maintain its Qualification continuously as long as it occupies the Housing Unit.

- ✓ Employee works full time for the Town of Mountain Village

THIS PROGRAM IS SUBJECT TO SELECTION BASED ON THE MATRIX BELOW. YOU WILL BE NOTIFIED IF YOU HAVE MET THE ELIGIBILITY CRITERIA.

I hereby certify that I have read and acknowledge the terms of the town housing purchase program.

_____ Applicant _____ Date

For Staff Use Only

Received _____ By _____ Receipt # _____
 date & time initials

Approved _____ By _____
 date & time initials

For Human Resources Use Only:

<u>Years of service</u>	<u>Level of responsibility</u>	<u>Performance rating (avg. past three years)</u>	<u>First Responder</u>
<u>1-5 years = 1 point</u>	<u>Employee = 1 point</u>	<u>3.0-3.75 = 1 point</u>	<u>1-5 years = 1 point</u>
<u>6-10 years = 2 points</u>	<u>Supervisor/ Manager = 2 points</u>	<u>3.76 – 4.25 = 2 points</u>	<u>6-10 years = 2 points</u>
<u>>10 years = 3 points</u>	<u>Director = 3 points</u>	<u>>4.25 = 3 points</u>	<u>>10 years = 3 points</u>

Years of service _____
 Employee position _____
 Average performance rating (over past three years) _____
 First Responder _____

Total score = _____



November 4, 2020

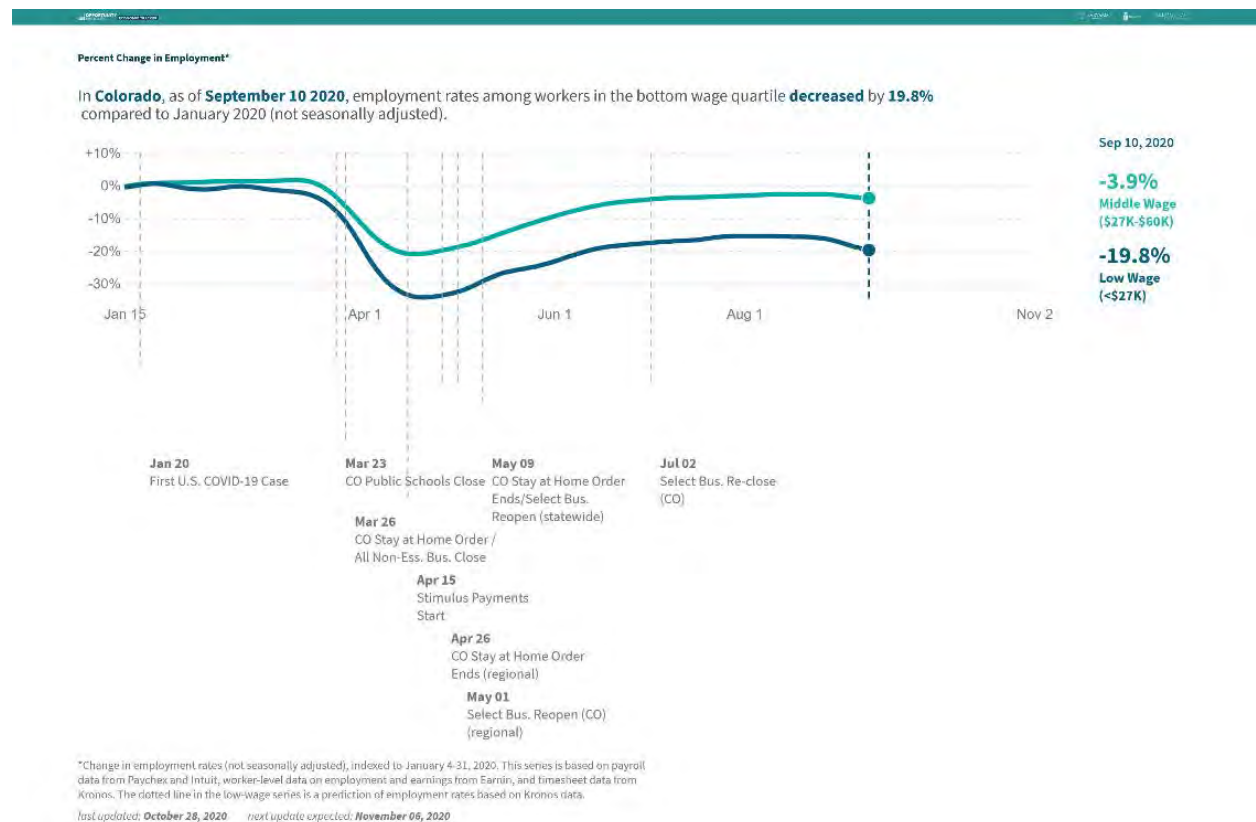
Town of Telluride Council Members
 Town of Mountain Village Council Members
 San Miguel County Board of County Commissioners

Dear Council Members and Commissioners:

We write to request funding from the CARES Act allocations (CVRF) from the Colorado Department of Local Affairs (DOLA) to help financially support the Good Neighbor assistance program. The Good Neighbor assistance program was expanded to meet the basic human needs of our community during the COVID-19 crisis. The Good Neighbor assistance supports those who live and work in San Miguel County by paying their outstanding bills of everyday living costs including rent, food, medicine, utilities, and transportation due to the impacts of COVID.

DOLA, which approves CVRF requests, has confirmed that Good Neighbor assistance program is eligible for CVRF funding. We respectfully request \$250,000.

The effects of COVID are disproportionately felt by low wage works, people of color and immigrants. Please see the chart below.



In fact, we have seen a recent increase in Good Neighbor assistance program requests in direct response to the expiration of federal and state assistance, continued high unemployment, continued under-employment, and the demands on households with young families trying to balance work and online school.

Fortunately, our local governments are anticipating record sales tax and real estate sales tax revenue. The local economy and many higher wage workers have been able to hold steady or recover over the past several months. However, the financial need for many of our community members continues to be severe and on-going. We anticipate this financial instability will continue through the summer of 2021.

The Good Neighbor assistance program has been providing emergency assistance for locals for over 15 years. The program structure enables the Telluride Foundation and Tri-County Health Network to respond immediately to the desperate needs of our community. In mid-March, the Telluride Foundation established the COVID-19 Response Fund (Response Fund). The Response Fund together with the Good Neighbor assistance program expanded the eligibility and reach of our efforts to ensure access for those disproportionately impacted by COVID-19, and created an emergency grants pool for healthcare, food assistance, internet access and volunteer organizing.

We believe that helping meet the day to day basic human needs of our community members must be considered along with governments funding and helping local businesses.

During COVID, the Telluride Foundation has raised over \$1,150,000 for the Response Fund, distributing \$320,000 in emergency grants to organizations and \$628,000 in Good Neighbor cash assistance to support 435 individuals and families. This COVID response includes San Miguel, Ouray, western Montrose Counties and Rico. As of today, we have approximately \$95,000 remaining. In April and May before the government assistance programs kicked-in, we were providing over \$120,000/month in Good Neighbor assistance.

Tri-County Health Network, who administers the Good Neighbor assistance program, added personnel who were both culturally and linguistically competent to help navigate and pursue every possible form of pandemic-related assistance from expanded SNAP and TANF to other government relief sources. Tri-County Health Network leveraged all avenues of funding. Unfortunately, many in our community, particularly immigrants, are not eligible for these expanded benefits. They rely entirely on non-governmental generosity.

Since March, we have provided to San Miguel County community members the following financial support:

- Rent/mortgage \$275,063
- Medical \$17,514
- Transportation/ Gas \$16,511
- Mental Health Services \$4,007
- Food \$14,519
- Cell Phone/Internet \$4,980
- Utilities, Other \$21,723
- Pending applications \$39,500
- Total (11/3/2020) \$393,816

We respectfully request \$250,000 from the CVRF allocation for the Good Neighbor assistance program. Any CVRF money received will be restricted to San Miguel County applicants and not pay any costs that would get reimbursed to local governments. This request will ensure monies are earmarked to help vulnerable, low-wage earners in our community who are struggling to support themselves and are most impacted by COVID-19.

One positive of this Pandemic has been the incredible generosity of donors and volunteers throughout the region who have given time and money to help their neighbors in need.

Thank you for your consideration and we look forward to working with you to address the needs of our community members impacted by the COVID crisis.

Sincerely,



Paul Major
President & CEO
Telluride Foundation



Lynn Borup
Executive Director
Tri-County Health Network

Cc: Patrick Rondinelli, DOLA
Mike Bordogna, SMC
Kim Montgomery, TMV
Ross Herzog, TOT



FOR IMMEDIATE RELEASE

Contact: Paul Major

970 728 8717 or

April Montgomery

970-729-1669

LOCAL IMPACTS ON WORKERS & FAMILIES FROM COVID-19 INCREASE
COVID-19 Response Fund & Good Neighbor Assistance Program Support Critical Human Needs

TELLURIDE, Colo. (November 20, 2020) – The economic recession caused by COVID-19 may have ended for many high-wage workers, but it persists for low-wage workers, many of whom have lost jobs and remain unemployed. While employment rates have rebounded to nearly pre-COVID levels for high-wage workers, they remain significantly lower for low-wage workers. Federal and state benefit programs helped many get by over the summer, but some residents were not eligible, and, moreover, these programs will be expiring at the end of the year. According to the New York Times, a study found that over 7 million workers will lose their benefits with the end of Pandemic Unemployment Assistance, which provides coverage for gig workers, the self-employed, and independent contractors. An additional 4.6 million will be cut off from Pandemic Emergency Unemployment Compensation, which kicks in when state employment benefits run out.

In Colorado, the wages of workers making \$60,000 and more annually have only decreased by 1.4% since January 2020; however, the wages of those making \$27,000 and less are down over 18%. The Telluride region is no different. While government sales tax is up and real estate transfer tax collections is at an all-time high, many families and workers, especially lower-wage service workers, are in deep financial stress.

The Telluride Foundation is acutely aware of this stress because of its Good Neighbor financial assistance program. This program has been providing emergency assistance for locals for over 15 years. Administered through Tri-County Health Network, the program provides grants of up to \$1,500 for urgent needs, including rent, utilities, transportation, medical expenses, and/or food.

This year, on March 16th, the Telluride Foundation pivoted from its traditional efforts to support the region and planning its 20th Anniversary to assessing critical human needs as the result of the pandemic and implementing a response plan. Some of the highlights of the Foundation's COVID-19 response plan included:

- Established the COVID-19 Response Fund, raising over \$1,150,000 to date.
- Expanded the Good Neighbor financial assistance program, providing over \$800,000 in cash assistance for rent, food, medicine, and mental health support to over 500 individuals and families thus far.
- In partnership with Tri-County Health Network's bilingual/bicultural staff, assisted clients with not only Good Neighbor hardship grants but also in navigating additional government and community support.
- Created an emergency grants pool and distributed \$320,000 in emergency grants to healthcare, food assistance, volunteer organizing, and internet access organizations.
- Foundation staff developed expertise on the federal CARES Act to help nonprofit and for-profit businesses obtain maximum funding to keep their organizations afloat.
- Foundation staff became experts on new federal and state unemployment benefits and assisted nonprofits, for-profits, and individuals.
- Helped 5,300 small businesses manage the impacts of COVID-19 via webinars and one-on-one consulting.
- Initiated an internal equity capacity building effort that includes diversity, equity, & inclusion training for all staff and grantees.
- Became a clearinghouse for regular and clear information on fundraising resources, critical human needs, and community news.
- Led a collaboration with Tri-County Health Network and five regional school districts to launch "COVIDCheck Colorado," providing baseline and ongoing COVID-19 testing of teachers and staff.

In past years, the Foundation might have provided \$40,000 for Good Neighbor assistance grants. This year, the Foundation has already deployed twenty times that amount;

applications spiked in April with immediate lay-offs due to COVID-19 and again in September, as individuals and families exhausted all of their federal and state benefits. Grant applications are again rising, many from people who need repeated assistance as they remain unemployed or furloughed.

Although the majority of Good Neighbor grants are made to people who live and work in Telluride, grants have also been made to individuals living in Rico, Norwood, the west ends of San Miguel and Montrose counties, and Ouray and Ridgway through the Ouray County Response Fund. Good Neighbor recipients vary, from long-term locals to newer residents and from seniors to immigrants. However, a common story among many is the fact that this is the first time they have ever needed or received financial assistance, and they are extremely grateful.

Tri-County Health Network and its team of in-take staff have worked closely with county social service departments and other organizations to help recipients with as many resources for which they qualify. Rent represents the largest need of Good Neighbor requests, accounting for about 71.5% of funds. Also, through the Good Neighbor assistance program, San Miguel County provides targeted grants for mental health services, and the Town of Telluride provided rent assistance for town-owned properties.

For more on how to donate or information about resources, please visit the Telluride Foundation's website: the Regional Response Fund donation page at <https://telluridefoundation.org/responsefund/>; community resources and how to apply, <https://telluridefoundation.org/covid-19-community-resources/>; or for more information about the Ouray County Response fund, <https://telluridefoundation.org/ouray-county-response-fund/>.

The Telluride Foundation exists to create a stronger Telluride and regional community through the promotion and support of philanthropy. 2020 marks 20 years of making more possible through the Telluride Foundation's commitment to enrich the quality of life of the residents, visitors, and workforce of the Telluride region. The Telluride Foundation is a nonprofit, apolitical community foundation that makes grants to nonprofits, owns and operates programs that meet emerging and unmet community needs, and makes investments. The Foundation approaches this work through the lens of its core values of inclusion, self-reliance, and innovation. Its work is funded through the generous

support of individual donors as well as grants from state and national foundations. The Foundation hopes the community will join it in celebrating its 20th anniversary as it honors the nonprofits, donors, and community members who have all partnered together to achieve a significant positive impact on the region. For more information click on www.telluridefoundation.org.

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**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 728-1392

TO: Mountain Village Town Council

FROM: Jim Loebe, Transit Director and Director of Parks and Recreation, and J.D. Wise, Assistant Director of Public Works

FOR: Meeting on December 3, 2020

DATE: November 25, 2020

RE: Discussion of Public Personal Protective Equipment (PPE) Options

BACKGROUND

At the Town Council meeting on November, 19, 2020, Town Council asked staff to research and propose a plan for FDA-certified mask distribution for staff along with feasibility of distribution of to residents.

MASK DISTRIBUTION PLAN

.Purchase and inventory of FDA certified masks are currently available with a lead time of 4 days.

- The town can purchase 5,000 masks with an estimated cost of \$2.00 per mask for a total outlay of \$10,000.
- Gondola staff can distribute mask to residents on Wednesdays beginning next week
 - We recommend distributing in pre-packaged quantities of 5 or 10, looking for council input on quantity
- We need to work immediately and closely with the communication team to broadcast distribution of masks to residents, times, dates and locations.

RECOMMENDED DISTRIBUTION LOCATIONS IN ORDER OF MOST TO LEAST DESIREABLE LOCATIONS

- Guard House/Reception Center
- Meadows Post Office
- Village Court Apartments
- Blue Mesa Bus Stop
- Market Plaza Post Office

All locations would be drive-up with a walk-up option. Hours are to be determined but staff recommends 8 am to 7 pm

COUNCIL DIRECTION

Staff seeks Council direction on purchase of masks, distribution locations and quantities to distribute. With a coordinated communications plan, distribution to residents can begin next week.

/mbh

Re: Covid/Masks

From: Pete Duprey (pduprey@mntvillage.org)

To: suseconnolly@yahoo.com

Date: Wednesday, November 11, 2020, 02:45 PM MST

Thanks for the input. Given the number of cases we are seeing I believe this is a worthwhile discussion. I'll try to get this on the agenda

Thanks

Pete

Get [Outlook for iOS](#)

From: Susanne Connolly <suseconnolly@yahoo.com>

Sent: Wednesday, November 11, 2020 8:30:38 AM

To: Patrick Berry <PBerry@mntvillage.org>; Pete Duprey <pduprey@mntvillage.org>

Subject: Covid/Masks

Dear Patrick and Peter:

In light of the fact that San Miguel County is now on Orange Level 2 - High Risk and the fact that the winter will likely drastically further increase the number of infections, I wanted to set forth some ideas I had about masks.

1. **Effective Masks:** When the mask order/law went into effect in June, it was extremely difficult to get effective masks from a reputable vendor. Additionally, effective masks were in short supply nationally and they were also relatively expensive. Accordingly, most people used (and continue to use) cloth masks without filters, bandanas, gaiters and other sub-optimal masks. KN-95 masks (the gold standard of masks available to the public) are now readily available at a cost of approximately \$1 per mask, which amount would likely be lower if the masks were purchased in bulk. For the purpose of this email, effective masks are KN-95s and standard medical masks with a strong preference for KN-95s.

A recent Duke University medical study (see link 1 below) tested the efficacy of different masks and determined that KN-95's and standard blue medical masks were the most effective and wearing a neck gaiter was least effective and worse than not wearing a mask at all. Based on observations over the last 5 months since the mask order was passed, I think that less than 10% of TMV residents wear effective masks.

2. **Town's Role:** I think that Council and TMV should take a leading role in getting its residents to wear effective masks by buying KN-95 masks for (i) all residents of Mountain Village who would like a KN-95, (ii) all gondola workers, lift operators, bus drivers and DAR drivers, (iii) policeman and (iv) restaurant workers (see Section 6 below for a more detailed discussion on restaurants and restaurant workers).

While Council could choose to educate citizens about masks and inform them that not all masks are created equal, I think it would not be particularly useful as most people have no idea where to buy effective masks and many lack the finances to get several masks per person. Additionally, time is of the essence with respect to obtaining effective masks in light of the current number of Covid cases in San Miguel County. I think it is time to change policy from focusing solely on getting residents to wear masks to getting them to wear effective masks by making them free and readily available.

The reason I am advocating for KN-95s is that they protect both the user and the general public. Regular cotton masks, bandanas and other sub-optimal masks do not protect the user or general public particularly well. I am advocating that TMV purchase (i) 3-4 KN-95 masks for each of its 1,400 residents and make them readily available at

no charge to residents who want them and (ii) masks for all gondola workers, bus drivers, policeman and other front facing government workers who have to interact with the general public.

Please note that I am not advocating that all residents be required to wear KN-95s, Rather, I am advocating that Town Council makes it as easy as possible for residents to obtain free effective masks quickly.

3. Benefits of Effective Masks: If more people in Mountain Village wear KN-95s, the number of Covid cases will naturally decrease which is beneficial to all residents. Additionally, I think that the Town providing masks to all residents sends a clear message to potential visitors that the Town of Mountain Village is doing everything in its power to combat coronavirus. I have full faith in Michael Marleton's skills to get the word out on Mountain Village providing KN-95 masks to all residents who want them.

Additionally, I think there should be an emergency ordinance passed dictating what workers are required to wear KN-95s and these workers should be the first to receive masks. I think it is problematic for a government to not provide its own front facing workers with effective masks to protect themselves, especially if the cost is minimal.

5. Cost/Masks per Resident: In a perfect world, each resident would get 4 KN-95s as there needs to be a 72 hour period between the last time you wore a mask and when it is worn a second time. I ultimately defer to the San Miguel County Health Department and the Med Center on the number of masks that are optimal and if there is a KN-95 shortage. It is my understanding that there is not currently a KN-95 mask shortage (but I could be wrong) so TMV would not be negatively impacting the medical community.

Assuming a cost of \$1 per mask, I really think TMV spend less than \$10,000 purchase effective masks to its residents and to the types of workers previously identified, which I think is a very good use of government money. The savings from hiring new legal counsel and the increased tax revenues the Town will be receiving next spring relating to the strong real estate market this fall will easily pay for the mask costs many times over.

6. Restaurants/Indoor Dining: A recent study (see 2nd link) showed that 9% of coronavirus infections in Colorado originated in a restaurant or bar, which is the second highest restaurant infection rate in the country. The 9% infection rate was when only outdoor dining was permitted in Colorado so that number will likely jump significantly with indoor dining. On a local level, there were numerous restaurants in Mountain Village and Telluride that had to close down for short periods because a staff member got Covid and infected co-workers. Most people I know won't go to restaurants because they are aware of the numerous Covid closings. I really think Town Council should both (i) pass an ordinance requiring all workers wear effective masks and (ii) purchase one round of effective masks for all restaurants workers as it might take time for restaurant owners to obtain effective masks. I also propose that TMV distribute masks to restaurant workers without regard to the size of the company or firm that employees such workers.

7. Flu Shots: I think TMV should offer its assistance to the Med Center in promoting that flu shots are now available. It will reduce the burdens on the Med Center if most residents get flu shots.

While I am normally believe strongly in minimal governmental interference, we are in a pandemic and an exception should be made. Town Council should take advantage of the fact that it has only 1,400 citizens to protect and provide its residents with masks as the current masks worn by the majority of residents provide truly minimal protection. I'm sure there (i) are many residents who would like to purchase effective masks but can't afford them and (ii) many residents who think they are doing everything to protect themselves and their families but are unaware that certain masks are much more effective than others.

If both of you are in favor of effective masks for all MV residents who want them, I ask that both of you do what you can to expedite discussion of this issue by Council. Time is not on our side.

Best,

Suse

Suse Connolly

Duke University Mask Study: [Researchers created a test to determine which masks are the least effective](#)

AUGUST 11, 2020 SHARE  ([https://twitter.com/intent/tweet?](https://twitter.com/intent/tweet?url=https://olv.duke.edu/news/researchers-created-a-test-to-determine-which-masks-are-the-least-effective/&text=Researchers+created+a+test+to+determine+which+masks+are+the+least+effective)

[url=https://olv.duke.edu/news/researchers-created-a-test-to-determine-which-masks-are-the-least-effective/&text=Researchers created a test to determine which masks are the least effective](https://olv.duke.edu/news/researchers-created-a-test-to-determine-which-masks-are-the-least-effective/&text=Researchers+created+a+test+to+determine+which+masks+are+the+least+effective)) [in](http://www.linkedin.com/shareArticle?mini=true&url=https://olv.duke.edu/news/researchers-created-a-test-to-determine-which-masks-are-the-least-effective/&text=Researchers+created+a+test+to+determine+which+masks+are+the+least+effective) ([http://www.linkedin.com/shareArticle?mini=true&url=https://olv.duke.edu/news/researchers-created-a-test-to-determine-which-masks-are-the-least-effective/&text=Researchers created a test to determine which masks are the least effective](http://www.linkedin.com/shareArticle?mini=true&url=https://olv.duke.edu/news/researchers-created-a-test-to-determine-which-masks-are-the-least-effective/&text=Researchers+created+a+test+to+determine+which+masks+are+the+least+effective)) [f](https://www.facebook.com/sharer/sharer.php?u=https://olv.duke.edu/news/researchers-created-a-test-to-determine-which-masks-are-the-least-effective/) (<https://www.facebook.com/sharer/sharer.php?u=https://olv.duke.edu/news/researchers-created-a-test-to-determine-which-masks-are-the-least-effective/>)

COVID-19 (/NEWS_CATEGORY/COVID19) DUKE NEWS

Researchers created a test to determine which masks are the least effective



DUKE HEALTH

Schools Are Reopening, Amusement Parks Are Welcoming Back Visitors, And Outdoor Dining Is The New Way To Eat Out. But Despite The Signs That Life Is Returning Back To Normal, The Coronavirus Pandemic Has Gone Nowhere. That's Why A Group Of Researchers At Duke University Created A Simple Technique To Analyze The Effectiveness Of Various Types Of Masks Which Have Become A Critical Component In Stopping The Spread Of The Virus.

The quest began when a professor at Duke's School of Medicine was assisting a local group buy masks in bulk to distribute to community members in need. The professor wanted to make sure the group purchased masks that were actually effective. In the study published (<https://advances.sciencemag.org/content/early/2020/08/07/sciadv.abd3083>) Friday, researchers with Duke's physics department demonstrated the use of a simple method that uses a laser beam and cell phone to evaluate the efficiency of masks by studying the transmission of respiratory droplets during regular speech.

A visual aid showing how the laser beam and sheet of light work to capture respiratory droplets. "We use a black box, a laser, and a camera," Martin Fischer, one of the authors of the study, told CNN. "The laser beam is expanded vertically to form a thin sheet of light, which we shine through slits on the left and right of the box." In the front of the box is a hole where a speaker can talk into it. A cell phone camera is placed on the back of the box to record light that is scattered in all directions by the respiratory droplets that cut through the laser beam when they talk. A simple computer algorithm then counts the droplets seen in the video.

Encouraging the use of effective masks

Public health experts have spent months emphasizing that masks are one of the most effective tools to help fight the pandemic, and many US states have now introduced some kind of mask requirement. But when testing their effectiveness, researchers discovered that some masks are quite literally useless. Researchers tested 14 commonly available masks including a professionally fitted N95 mask, usually reserved for health care workers. First the test was performed with a speaker talking without wearing a mask. Then they did it again while a speaker was wearing a mask. Each mask was tested 10 times. The most effective mask was the fitted N95. Three-layer surgical masks and cotton masks, which many people have been making at home, also performed well.

The 14 masks used in the test.

Neck fleeces, also called gaiter masks and often used by runners, were the least effective. In fact, wearing a fleece mask resulted in a higher number of respiratory droplets because the material seemed to break down larger droplets into smaller particles that are more easily carried away with air. Folded bandanas and knitted masks also performed poorly

and did not offer much protection. “We were extremely surprised to find that the number of particles measured with the fleece actually exceeded the number of particles measured without wearing any mask,” Fischer said. “We want to emphasize that we really encourage people to wear masks, but we want them to wear masks that actually work.” While the setup of the test is quite simple – all that is required is a box, a laser for less than \$200, one lens, and a cell phone camera – Fischer does not recommend people to set them up at home.

READ THE FULL STORY HERE ([HTTPS://WWW.CNN.COM/2020/08/08/US/DUKE-UNIVERSITY-FACE-MASK-TEST-TRND/INDEX.HTML](https://www.cnn.com/2020/08/08/us/duke-university-face-mask-test-trnd/index.html))

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PhaseBio Announces Pricing of IPO

(<https://olv.duke.edu/news/phasebio-announces-pricing-of-ipo/>)

JOB : AI Health Data Science Fellow

(<https://olv.duke.edu/news/job-ai-health-data-science-fellow/>)

The Nation Wanted to Eat Out Again. Everyone Has Paid the Price.

Governments and restaurant owners wanted to get back to business. But bars and restaurants have become a focal point for clusters of Covid infections.

By Jennifer Steinhauer

Published Aug. 12, 2020 Updated Sept. 9, 2020

Across the United States this summer, restaurants and bars, reeling from mandatory lockdowns and steep financial declines, opened their doors to customers, thousands of whom had been craving deep bowls of farro, frothy margaritas and juicy burgers smothered in glistening onions.

But the short-term gains have led to broader losses. Data from states and cities show that many community outbreaks of the coronavirus this summer have centered on restaurants and bars, often the largest settings to infect Americans.

In Louisiana, roughly a quarter of the state's 2,360 cases since March that were outside of places like nursing homes and prisons have stemmed from bars and restaurants, according to state data. In Maryland, 12 percent of new cases last month were traced to restaurants, contact tracers there found, and in Colorado, 9 percent of outbreaks overall have been traced to bars and restaurants.

It is unclear what percentage of workers transmitted the virus among themselves, or to patrons or whether customers brought in the virus. But the clusters are worrisome to health officials because many restaurant and bar employees across the country are in their 20s and can carry the virus home and possibly seed household transmissions, which have soared in recent weeks through the Sun Belt and the West.

Since late June, scores of popular restaurants throughout the country, including in Nashville, Las Vegas, Atlanta and Milwaukee, had to close temporarily because of cases among employees. Texas and Florida also had to close bars this summer after a surge of new cases hobbled those states. In a recent week in San Diego, 15 of the 39 new cases in community settings stemmed from restaurants. And in Washington, D.C., cases have begun to sneak up since the city reopened indoor dining.

In New York City and many other places, indoor dining, which has proved far more dangerous than outdoor eating, remains banned. Epidemiologists roundly agree that indoor dining, especially in bars, is far more likely to spawn outbreaks than outdoor settings.

"As of recently, we still hadn't traced a major U.S. outbreak of any sort to an outdoor exposure," Lindsey Leininger, a health policy researcher and a clinical professor at the Tuck School of Business at Dartmouth, said.

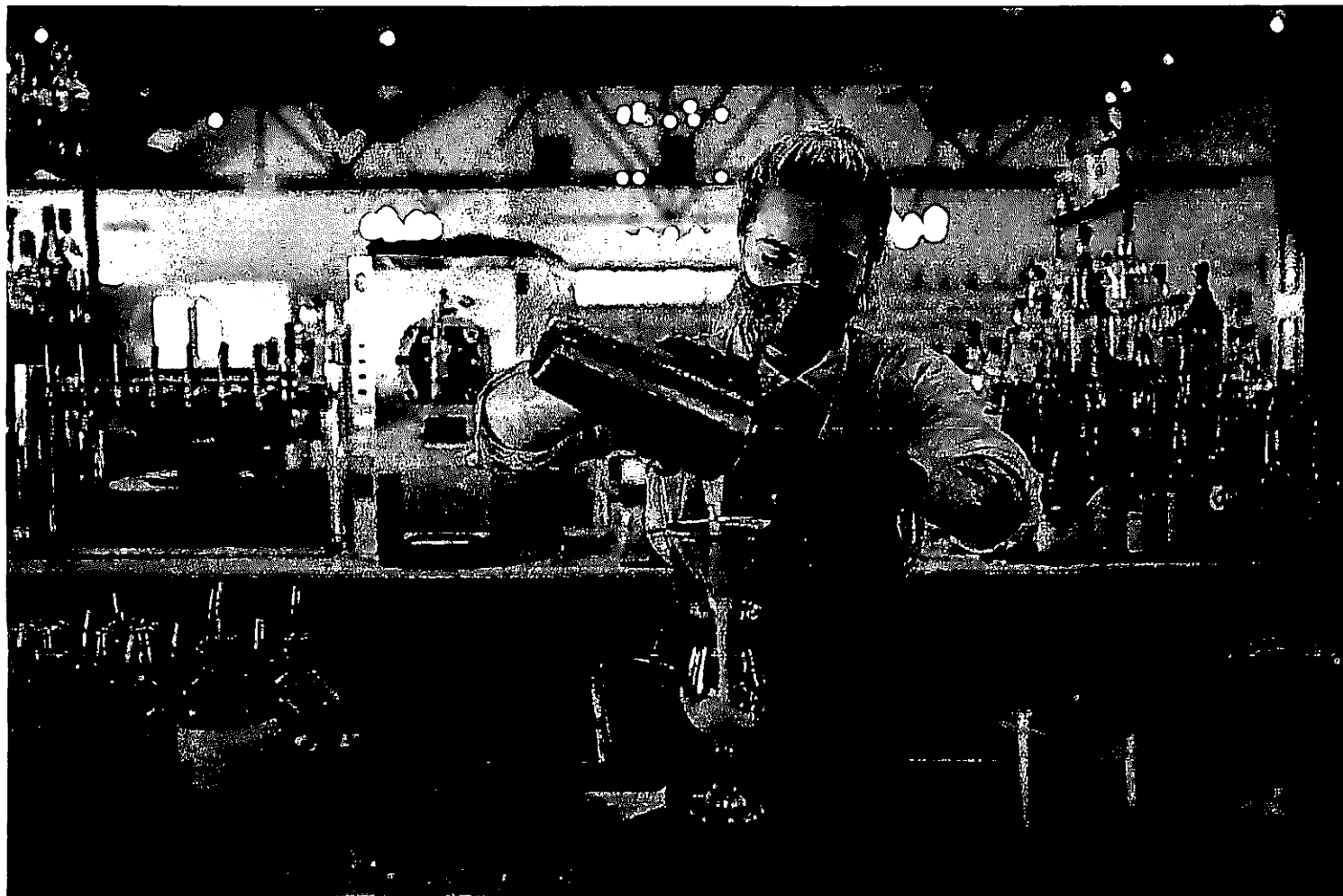
In Spokane, Wash., 24 customers and an employee, most of them between the ages of 19 and 29, all tested positive for the virus. Their cases were linked to a taco restaurant, even though health department officials indicated that the restaurant was practicing all the recommended prevention methods.

"They are a factor that has to be managed," said Kelli Hawkins, a spokeswoman for the Spokane Regional Health District.

Since the beginning of the pandemic, a few business sectors, most notably health care (especially nursing homes) and meat processing, have accounted for a large share of cases in many states. But as cities and states have moved to reopen and many restaurant owners struggle to survive, the virus has come along for the ride. When the coronavirus finally reached the last California county to see a case, remote Modoc in the far northeastern part of the state it came via a little Basque restaurant in the middle of nowhere.

While millions of restaurant and bar employees who were laid off during lockdowns have been desperate to get back to work, many have found themselves caught between bosses who want them back as soon as possible and customers who balk at following safety rules, like mask wearing and maintaining social distancing.

"I 100 percent felt forced back to work at the bar," said Jennifer Welch, a bartender at a large pool hall in Baton Rouge, La. "Even though I have an immunocompromised 1-year-old and, at the time, my 58-year-old father was in hospice for Stage 4 small cell lung cancer." Although unemployment would have paid more, she yielded to the pressure, Ms. Welch said, and worked 10-hour shifts.



Teresa Stonestreet, a bartender at Pinewood Social, one of eight spots in the Strategic Hospitality group. Some of the group's bars and restaurants have opened indoors while others remain closed. William DeShazer for The New York Times

Among food service workers, these cases appear to have particularly hurt Latinos, who have been already disproportionately hit by the virus.

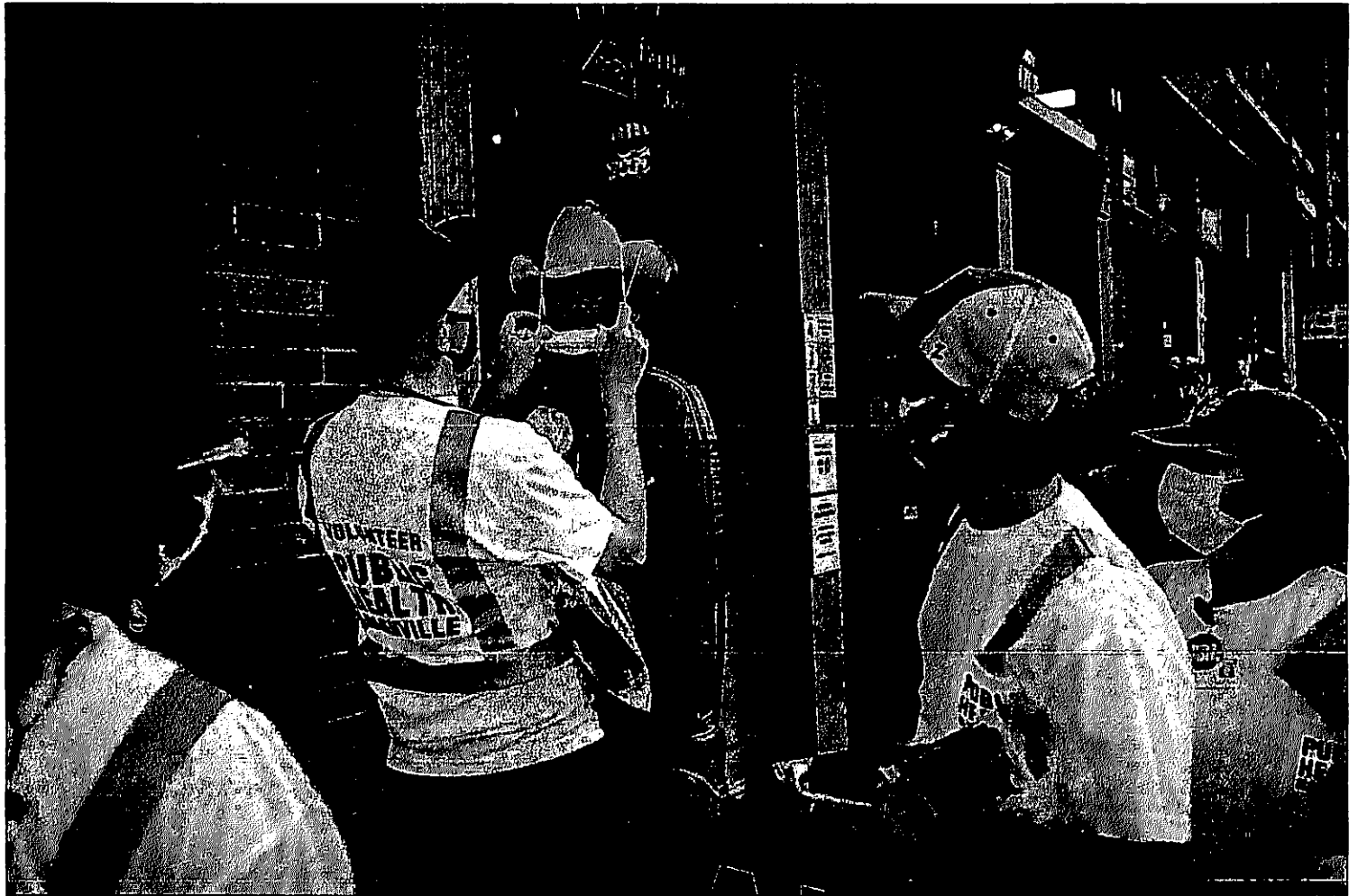
Brian Biondi, a bartender in the French Quarter in New Orleans, did not yearn to return to his job in June after three months off, because he was wary of getting the virus. By late July, his fears materialized and he came down with a mild case of Covid.

"There are still a lot of people that are denying the intensity, a lot of non-maskers," he said. After three weeks off, Mr. Biondi is waiting to be returned to the schedule. "I feel great, he said. "I still worry about long-term effects. I still worry this took years off my life."

Restaurants find themselves in a bind. Federal aid approved by Congress this spring mainly went to businesses that kept most of their workers employed, but restaurants and bars were forbidden to open. Then many officials on the local, state and federal levels — including President Trump — pressed restaurants to reopen, even as others cited them as reigniting the virus this summer.

"Restaurants generate a lot of sales and payroll tax revenue, so some of the pressure came from city and state governments," said Daniel Patterson, a chef and a restaurateur in California, where cases exploded this summer. "And I think one of the factors behind the quick openings is that our society sees restaurants as disposable and those who work in them as disposable, so in general, people are less concerned with restaurant worker safety than they are with their own needs. They want a taco and a cold beer when they want it."

Like many businesses, restaurants have been unable to tap business interruption insurance money because the virus did not cause physical damage to the properties.



Workers with Nashville's public health department outfitted a cut-out on Broadway with a mask. William DeShazer for The New York Times

To get federal aid, restaurants were first required to spend 75 percent of that relief on payroll (this was later reduced to 60 percent). They also faced a short deadline to rehire workers. But the only way this was useful to businesses, restaurant owners said, was if they were able to reopen and generate revenue in that period, which was nearly impossible. Most places were allowed to operate at 50 percent capacity, and the pandemic has stretched on longer than anyone expected.

"We scrambled to get as many people in as fast as possible," said Michael Shemtov, who was forced to close two of the 10 restaurants that he owns in Charleston and Nashville. "The only way to lure them in was to pay them for 40 hours a week, no matter how much they worked or didn't work."

"But you can't make up labor costs with crazy busy days on the weekend anymore," he added.

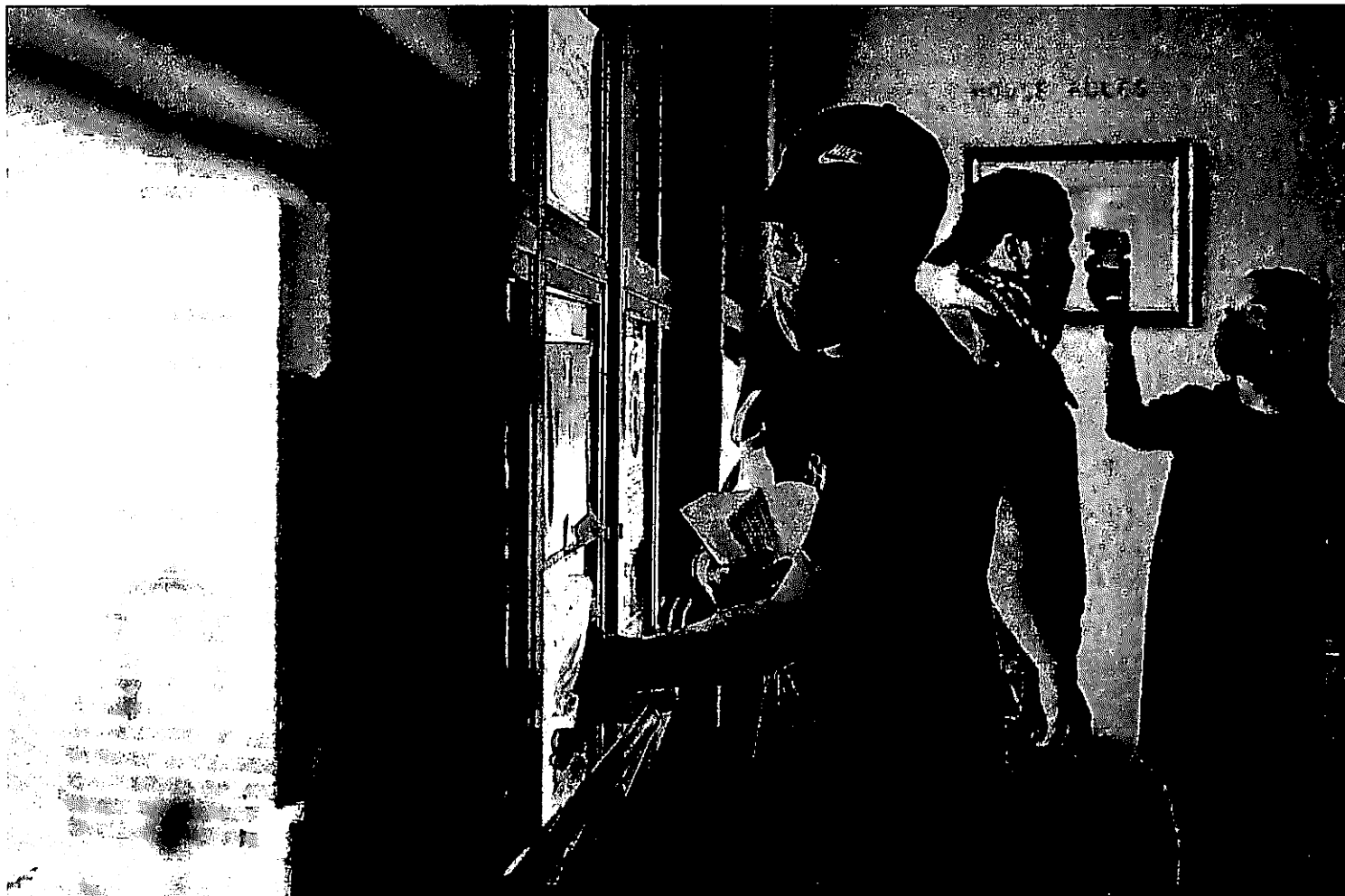
At the same time, "the conversation in May moved from keeping restaurants closed to getting back to work and life," he said. "There wasn't a sympathetic ear in the South Carolina governor's office when we said we need to get the numbers down before we reopen."

In Louisiana this spring, Republican lawmakers threatened Gov. John Bel Edwards, a Democrat, with removing his power to enforce emergency orders if he did not permit businesses to reopen. In a few states, the dynamic was reversed: Restaurants pushed governments to let them reopen, arguing that they would otherwise close for good.

"We were all understandably nervous about opening up, but any bartender worth their salt knows that when it's time to go to work, you leave your baggage at home in order to take care of your guests," said Waites Laseter, the head bartender at the Backspace Bar & Kitchen, a New Orleans hot spot. Mr. Laseter said the early days of safe practices and big tips waned as more businesses opened and tourists trickled in. Many of them nastily opposed rules and made his beloved job a misery, he said.

"A friend of mine was threatened with a gun over putting on a mask," he said. "I've always approached a bar as a safe space. Anybody can make a vodka and soda at home."

But, he said, "Improper bar behavior has become an act of political rebellion."



Devaughn Rutledge of Pinewood Social sanitized windows while a host took temperature checks at the door. William DeShazer for The New York Times

Mark Schettler, the general manager of Bar Tonique and an activist on behalf of New Orleans restaurant workers, said the story is much the same around the state. “Not one person I’m aware of went back purely for the love of the game, or because they were confident it was safe,” he said. “Bars specifically, and our industry more generally, have been made both the crash test dummies and the scapegoats.”

While Hispanic workers account for just over 17 percent of the total U.S. work force in the country, they account for over 27 percent of restaurant and food service workers.

“Due to their socio-demographic composition, food servers and their families are at elevated infection risk,” Ms. Leininger said.

“Throughout the pandemic, we’ve witnessed the phenomenon of younger workers inadvertently infecting older household members, with tragic consequences.”

Contact-tracing can help keep restaurant outbreaks at bay, experts say, but only in places without widespread infections. “I like to think that due to contact tracing and quickly quarantining close contacts, we have not had large outbreaks in restaurants yet,” said Melissa Lunt, the director of nursing at the Graham County Health Department in Arizona. When workers were sickened in two restaurants in the area, the health department moved quickly to quarantine them to prevent further community spread.

Testing is its own problem for workers. While many cities offer tests for free, results can take days or even weeks to return, leaving employees out of a job while they wait.

“A lot of times the restaurant will foot the bill if they want quick testing through a private company,” said Dr. Alex Jahangir, the chairman of a coronavirus task force in Nashville who has studied the role of restaurants and bars in his area. “Sometimes the restaurant will tell their employees to come to one of our city sites, which are free, but the results may take three days. If people are symptomatic, sometimes the restaurant will refer the person to a local medical center and will have their health insurance pay for the test.”

Of course, low-wage restaurant workers, especially part-time employees, may not have health coverage. Or if they did, layoffs might have jeopardized their ability to make payments on those plans.

In the meantime, some proprietors are doing what they can to keep operating and keep people safe, at great cost and worry. Benjamin Goldberg, a founder of Strategic Hospitality, a group that runs eight spots in Nashville, has opened some places with indoor dining and kept other places closed. In the interim, he and his staff members have become mini-public health experts. "We did research on what places around the world were doing and learned from them," he said. "City and state guidance were only the baseline of our expectations."

Short of testing everyone who worked in or entered his restaurants — an impossibility — they moved to take the temperature of every customer, worker and vendor before they are permitted to enter. Employees are tested regularly for the virus. All silverware comes in a bag sealed with stickers, menus have gone virtual and pens used to sign checks are sanitized and placed in a sealed bag.

"We felt if we could build that trust in the short term, it would pay off in the long term."



Socially distanced tables with sneeze guards separating booths at Pinewood Social. William DeShazer for The New York Times

Correction: Aug. 12, 2020

An earlier version of this article misstated the scope of Colorado's reported coronavirus cases. About 9 percent of its outbreaks had been traced to restaurants and bars, not 9 percent of all the state's cases.

Jennifer Steinhauer has been a reporter for The New York Times since 1994. She has worked on the Metro, Business and National desk, and served as City Hall bureau chief and Los Angeles bureau chief before moving to Washington in 2010. She is the author of a novel, two cookbooks and "The Firsts" the story of the women of the 116th Congress. @jestei

A version of this article appears in print on , Section B, Page 1 of the New York edition with the headline: The Cost of Dining Out This Summer