

TOWN OF MOUNTAIN VILLAGE
 SPECIAL JOINT TOWN COUNCIL & DESIGN REVIEW BOARD MEETING
 THURSDAY, DECEMBER 16, 2021, 3:00 PM
 2nd FLOOR CONFERENCE ROOM, MOUNTAIN VILLAGE TOWN HALL
 455 MOUNTAIN VILLAGE BLVD, MOUNTAIN VILLAGE, COLORADO & VIA ZOOM
 AGENDA

https://us06web.zoom.us/webinar/register/WN_TgbV6AiTQq6B-DssRBs7mA

Packet updated 12.17.21

	Time	Min	Presenter	Type	
	3:00				Call to Order
1.	3:00	60	Haynes Applicant	Worksession	Joint Discussion Regarding Lot 109R Mountain Village Hotel PUD and Possible Amendments to the Variances and public benefits
2.	4:00	30	Haynes Applicant	Action	Consideration of a Recommendation to the Town Council to Consider a Variance to Community Development Code Section 17.5.16B.4., to Vary the Coonskin View Plane Requirements Affecting Unit 12, the Ridge at Telluride, to Allow for a Building up to 35 feet, Plus 5 Feet to Allow for Chimneys, Flues, Vents or Similar Structures, Located on Lot 161-A4
3.	4:30	30	Haynes Applicant	Action <i>Quasi-Judicial</i>	Consideration of a Resolution for a Variance to Community Development Code Section 17.5.16B.4., to Vary the Coonskin View Plane Requirements Affecting Unit 12, The Ridge at Telluride, to Allow for a Building up to 35 feet, plus 5 feet to Allow for Chimneys, Flues, Vents or Similar Structures, Located on Lot 161-A4.
4.	5:00	60	Haynes Wisor Shindman Knutsen	Worksession	Community Housing Mitigation Methodology
5.	6:00	30	Haynes Wisor	Action <i>Legislative</i>	First Reading, Setting of a Public Hearing and Council Vote on an Ordinance Regarding Amendments to the Community Development Code to Allow Accessory Dwelling Unit's (ADU's) Within Detached Condominium Development Projects in the Multi-Family Zone District and Single-Family Common Interest Zone District so Long as Vehicular Access can be Provided to the Lot
6.	6:30				Adjourn

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

Public Comment Policy:

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



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

TO: Design Review Board and the Mountain Village Town Council
FROM: Michelle Haynes, Director of Planning and Development Services
FOR: December 16, 2021 Special Joint Design Review Board and Town Council Meeting
DATE: December 6, 2021
RE: Worksession to consider a Planned Unit Development Amendment to the Mountain Village Hotel PUD, Lot 109R, Town of Mountain Village

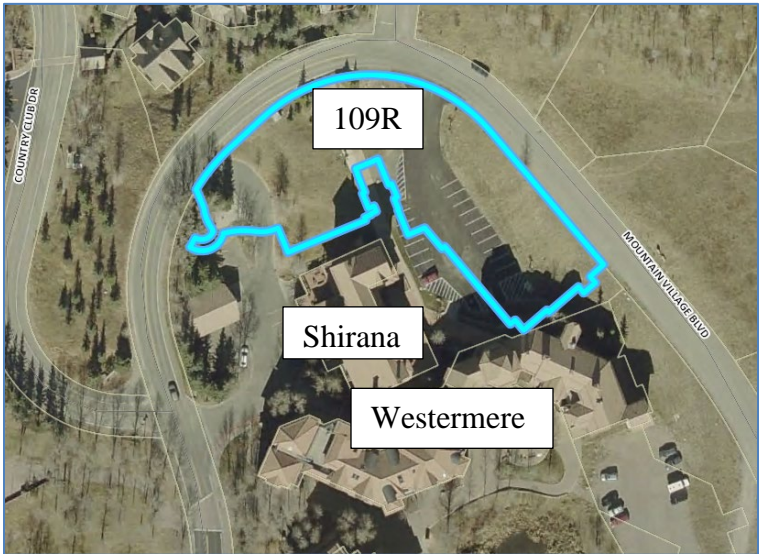
PROJECT GEOGRAPHY

Legal Description: Lot 109R
Address: 632-642 Mountain Village Blvd.
Owner/Applicant: Tiara Telluride, LLC, A Colorado Limited Liability Company
Agent: Ankur Patel
Applicant: Matthew Shear & Ankur Patel
Zoning: PUD located in the Village Center Zone District
Existing Use: Vacant; North Village Center Surface 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

- 1) Applicants Narrative
 - a) Floor plans
 - b) Topo and existing conditions survey
- 2) 109R Development Agreement
- 3) 109R Resolution
- 4) 109R 2nd amendment to the development agreement extending the approval to December 8, 2022.
- 5) [Final PUD Plan 11.18.10](#)

DEVELOPMENT HISTORY BACKGROUND

The Mountain Village Hotel PUD application process began in 2005 with final approval rendered by the Town in 2010. The application process consisted of thirteen (13) public meetings. As part of the

approval process, portions of town property were re-platted to create lot 109R. In exchange, the developer of 109R transferred Lot 644 in the Meadows to the Town to replace the property that was included in the replat of 109R.

MV Colorado Development Partners, LLC, the prior owner of Lot 109R, requested an extension of the existing PUD approvals to December 20, 2022, which was approved by Town Council. The applicants; Tiara Telluride, LLC, Matthew Shear, and Ankur Patel, sought to purchase Lot 109R, and, during its due diligence period, requested a work session with the Town Council regarding a proposed PUD amendment plan generally consistent with the existing approvals. Town Council conducted a work session on September 16, 2021.

This work session is being conducted to better assist the applicant in refining their development plan and to receive additional DRB and Town Council feedback before filing a development application.

PROCESS

As noted above, the applicants are seeking guidance on their proposed development. Currently, there is an existing Planned Unit Development Agreement and associated entitlements for this property, also called the Final PUD Plan. The applicants intend to amend portions of the PUD, which amendments are subject to the DRB and Town Council approval. Assuming the applicants move forward after receiving Council and DRB feedback during the December 16th work session, the applicants will be required to proceed through a specific process outlined below.

The applicants submit a major PUD amendment which is a class 4 application

- 1) The DRB provides a recommendation on the PUD amendment. Concurrently the DRB reviews the initial design for the building that would conform with the PUD amendment.
- 2) The Town Council reviews the PUD amendment documents and discusses the requested specific amendments.
- 3) The DRB would review the final design consistent with the Town Council PUD amendment approval.

Staff note: A major PUD amendment process allows for the applicant and Town Council to equally negotiate the terms of the PUD. Any public meeting/hearing can be continued should the DRB or the Town Council need additional information or should additional negotiations be required. This is typical in past PUD approval processes.

PUD AMENDMENT REQUEST IDENTIFIED WITH THIS WORKSESSION APPLICATION

The Town Council should familiarize itself with the PUD Development Agreement attached as Exhibit 2. The applicants propose the following modified densities and uses:

Table 1. Existing and proposed densities pursuant to a major PUD amendment

	Approved Units/Density in Current PUD		Asking Units/Density		Difference
	# Units	Density	#Units	Density	Density
Efficiency Lodge Units	66	33	66	33	0
Lodge Units	38	28.5	47	35.25	6.75
Unrestricted Condominium Units	20	60	24	72	12

Employee Apartments	1	3	1	3	0
Commercial SF	20,164		20,164		0
Total		124.5		143.25	18.75

In summary, the applicant is requesting an additional 9 efficiency lodge units and 4 unrestricted condo units, equaling a density increase of 18.75 from the originally approved PUD.

The heights of the building are also approved at 88’9” and max average height of 65’-29” above what the strict application of zoning would otherwise allow.

Public Benefits

In exchange for the listed waiver and variations, and as amended, the applicants agree to the public benefits list found on page 11-17 in the Development Agreement. Staff can generally summarize the agreed to benefits but it is not all inclusive of every benefit. This list is a general summary from the existing development agreement.

Hotel Requirements

- Provision of dedicated hotel rooms
 - 40 efficiency lodge units
- Retain a hotel operator that is internationally or nationally recognized (see talking points below)
- Hotel Amenities – owner shall provide full-service amenities, facilities, and services
- Rental Management Program
 - Standard furnishing package for all lodge and efficiency lodge units

Mitigation Payment

- \$996,288 due at issuance of the initial building permit. Used for public purpose as determined by Town Council consistent with the associated approved Resolution

Conference Space

A 1,772 square foot conference space is programed into the Final PUD Plan with the ability to break out the spaces, used for public access and a requirement that the rates be competitive with other conferences space in the Mountain Village.

Employee Mitigation

At the second anniversary of the initial Certificate of Occupancy the owner provides a certified statement indicating the actual number of full-time equivalent employees for the operation of the Project. The owner shall either pay the town a One Time Payment in the total amount equal to the sum of \$4018.52 per full time equivalent employee 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.

It is indicated that the one-time payment will minimally be the rate x 90 estimated employees = \$361,666.80 and that should the employee count be less, the town shall not be required to refund any portion of the One Time Payment or Mitigation Payment to the owner.

The one employee housing unit is considered a public benefit pursuant to the Agreement

Staff Note. A new community housing mitigation methodology would not apply to a PUD amendment, unless the applicant agreed to apply it, as it is an existing approval seeking an amendment.

Public Restrooms

Accessible from the plaza and available to the general public for at least 16 hours a day 365 days a year.

Plaza Improvements

This includes snow melt and drainage systems. See exhibit to the PUD agreement.

Town Parking Spaces

The PUD agreement recognizes that 32 surface parking spaces will be lost with development. The owner is required to provide 32 covered garage parking spaces. The applicant is also obligated to provide another 16 covered garage parking spaces for a total of 48 garage parking spaces. 32 are considered replacement spaces 16 are considered additional parking spaces.

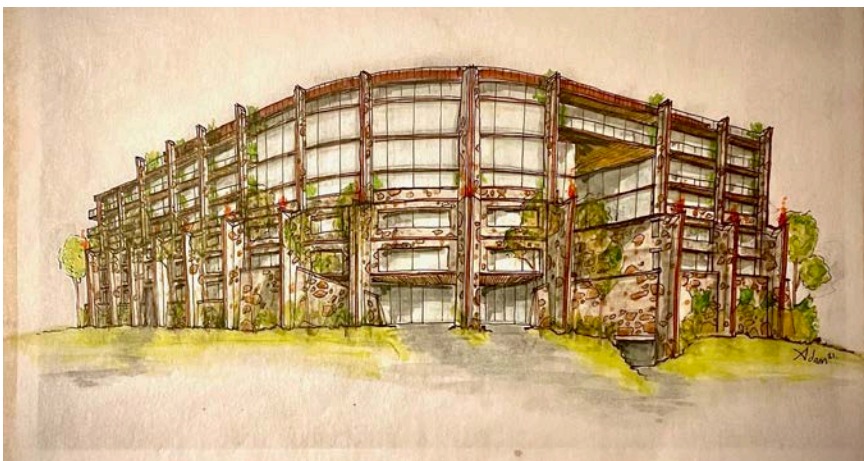
CDC and Design Regulation Waivers and Variations

For a general idea of the design changes from the Final PUD Plan to the proposed design attached are elevations from the 2010 approval and via the proposed PUD Amendment:

Illustration A. Rendering of Approved PUD Final Plan Design per 2010 approval



Illustration B. Rendering of Proposed Hotel Façade: glass, stone and metal.



For the purposes of the worksession staff has preliminarily identified the following CDC design regulations and waivers to be considered by the DRB:

- Windows – quantity of glass, recess requirements, not enough variation, lacking in human scale, potential light spill on adjacent properties
- Stucco – is supposed to be the primary wall material in the village core, this is not a stucco building
- Stone – looking closely at the single provided rendering, the bottom portion does seem to be stone and wood, however it doesn't look like they will be meeting minimum stone required
- Balconies – long uninterrupted balconies are prohibited
- Storefronts/commercial space – not having a rendering of the plaza side, it's hard to predict, however, given the overall style of the building presented, storefront design is likely to conflict as well. Pedestrian scale is encouraged facing the plaza.
- Roof pitch and roof material. The roof is not varied in design/pitch/slope and may necessitate a membrane which is not an allowable treatment.
- Landscaping. The rendering shows mature trees surrounding the façade at roughly 20-30 feet tall. The DRB will review the building for mass, scale, context absent landscaping that appears to break up the mass.

All of the aforementioned design considerations can be waived or varied through the PUD process with DRB review. The applicants will be working more closely with staff as it relates to design review to address the Village Center design guidelines as they move towards the major PUD amendment application process. They understand the importance of context, pedestrian scale and contextually compatible design. We expect revised design drawings moving forward.

- Those variations and waivers otherwise referenced in the development agreement would still apply - such as tandem parking, and may contemplate uses such as the employee apartment and conference meeting space on the plaza level – to be better identified with an application.

STAFF ANALYSIS

The 109R Mountain Village Hotel PUD Agreement is a robust agreement that took five years to finalize. There is a thoughtful set of public benefits that are in alignment with the Town's vision which include the following general provisions:

- 1) Appropriately located hotel rooms in the Village Center
- 2) Replacing the surface parking with public parking in the garage and adding an additional 16 spaces.
- 3) Necessary plaza improvements
- 4) A public restroom
- 5) Consideration for a Mitigation Payment (to be used by the Town for public purpose) along with an Employee Housing Mitigation Payment
- 6) Receipt of replacement land which already occurred which is Lot 644 in the Meadows.
- 7) An appropriate mixed-use development inclusive of hotel rooms, condominiums and 20,000+ of commercial space.
- 8) A mix of public access and private amenities

A SUMMARY OF THE REQUESTED PUD AMENDMENTS

The applicants are requesting the following amendments to the PUD that have been identified on a high level with this application:

- **Density.** Request an increase the density by 9 lodge units and 4 unrestricted condominiums
- **Design waiver and variances.** CDC and design guideline waivers and variations would be considered based upon the more modern conceptual renderings provided
- **Valet Hours.** Request that valet not be required to be 24 hour
- **A combined payment.** The applicant requests the Mitigation Payment (\$996,288) and Building Permit fees be contemplated as one payment (this would exclude water and sewer tap fees) and the applicants hope is that the building permit fee can be negotiated and reduced.
- **Pedestrian Easement.** A request that this be vacated. (*Staff note: This is a recorded pedestrian easement that benefits the 89 lot owners that they are requesting to remove. This would require the consent of the 89 lot owners. Reception No 397446, B434 P475*)

STAFF RECOMMENDED ADDITIONAL TALKING POINTS AND POTENTIAL PUD AMENDMENTS

Staff recommends other amendments and discussion points be contemplated by Council:

- **Plaza improvements.** This could contemplate Village Pond improvements as a possible point of negotiation.
- **Conference space.** Is this still as important as it was in 2010? We have a conference facility that is currently underutilized.
- **Hotel operator requirements.** Council should discuss a standard of hotel operator e.g. 4 star or 5 star hotel?
- **Back of House.** Better understand the back of house design for delivery trucks and garage access near Shirana and the town's trash shed. There are conflicting needs, requirements and uses as shown.
- **Design.** Consider more design input from staff prior to a formal submittal.
- **Community housing.** Provision of community housing to support the hotel development.

STAFF RECOMMENDATION

DRB

It is within the purview of the DRB to review the design related variations and waivers. The DRB can provide non-binding feedback regarding design inclusive of context.

Town Council

It is within the purview of the Town Council to consider the applicant's requested PUD amendments identified PUD amendments, inclusive of staff's recommended discussion points listed above. It is also appropriate for the Town Council to provide feedback regarding the applicants PUD amendment plan, and any recommended possible PUD amendments not already discussed or identified.

/mbh

Project Narrative:

Vault Home Collection, along with our design partners ODA architecture from New York, and SEH from Denver, wishes to develop a mixed-use, high-design, hotel & residences in Mountain Village. We will be developing an architecturally significant building, that takes into account the tremendous history of Telluride both in terms of its program and exterior and interior design application. Natural stone, steel, and glass will be the materials we will be using for the exterior envelope. We intend to have a top international hotel chain brand the property as required per our PUD. The development will include much needed upgrades and redevelopment to the landscape and hardscape of Mountain Village Town Center. Amenities in the project include, wedding & conference space, world recognized restaurant(s), rooftop pool, bar and cocktail area, mini-European styled market at pedestrian level and a locals “speakeasy” designed with the historical events of Telluride in mind.

We would like the following edits granted to the existing PUD

- UNIT MIX - Add 15 Hotel rooms zoned as Lodge Units, decrease Efficiency Lodge Units by 6 and Increase Condo Units to 24

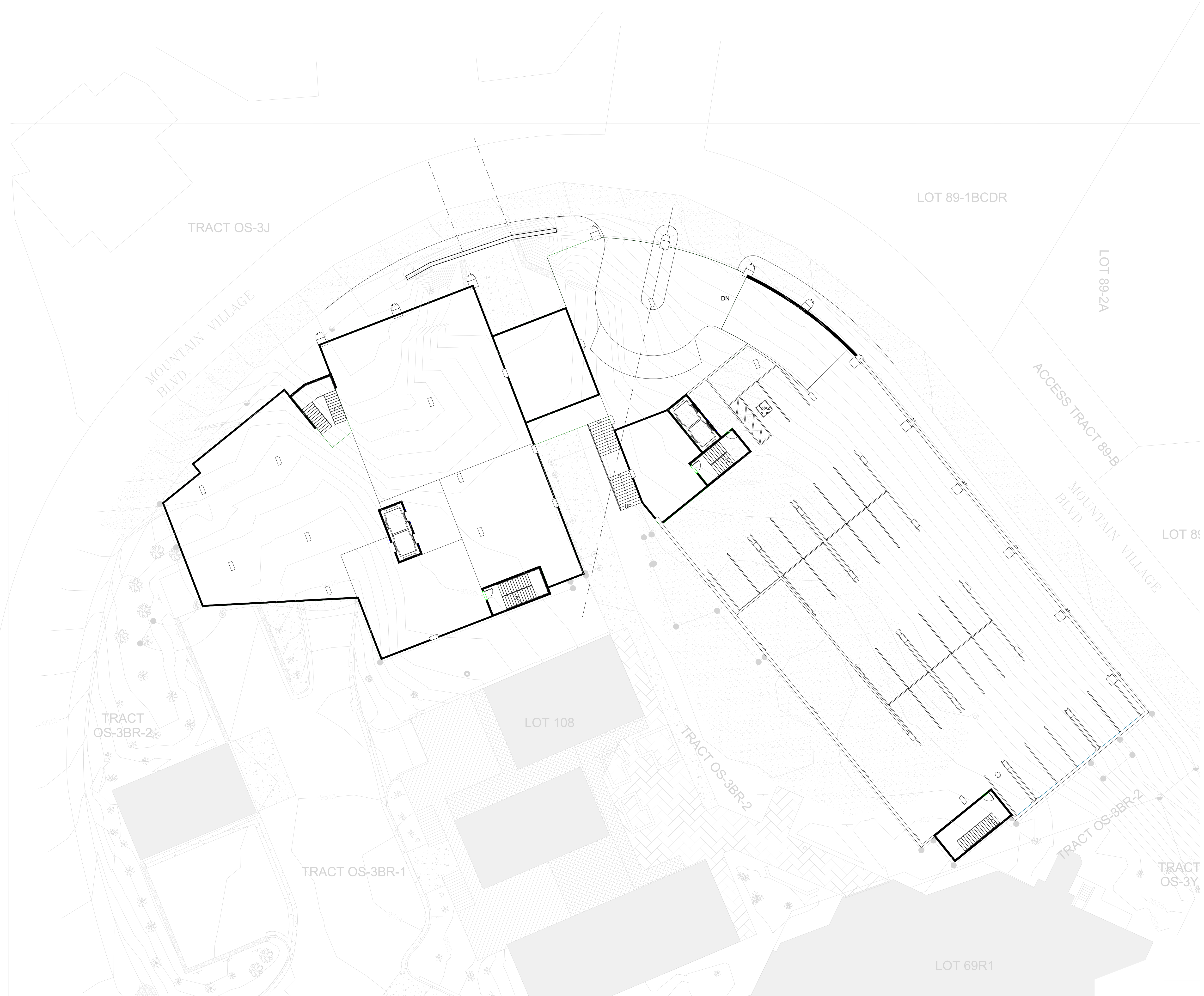
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Unrestricted Condominium Units	20	60	24	72	12
Employee Apartments	1	3	1	3	0
Commercial SF	20,164		20,164		
Total		124.5		143.25	18.75

- One large wedding and conference spaces (that are dividable)
- Conference Room rental rate offered at Market Rate (Comparable to other Hotel properties)
- Can we limit valet parking to times that comparable properties do instead of 24 hours.
- Mitigation Fees? One master fee to include permit fee.
- Approval to change the existing Pedestrian Easement with approval from other parties involved.
- 48 Town Parking Spot Locations on G2 Level



Building a Better World
for All of Us®

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SITEPLAN

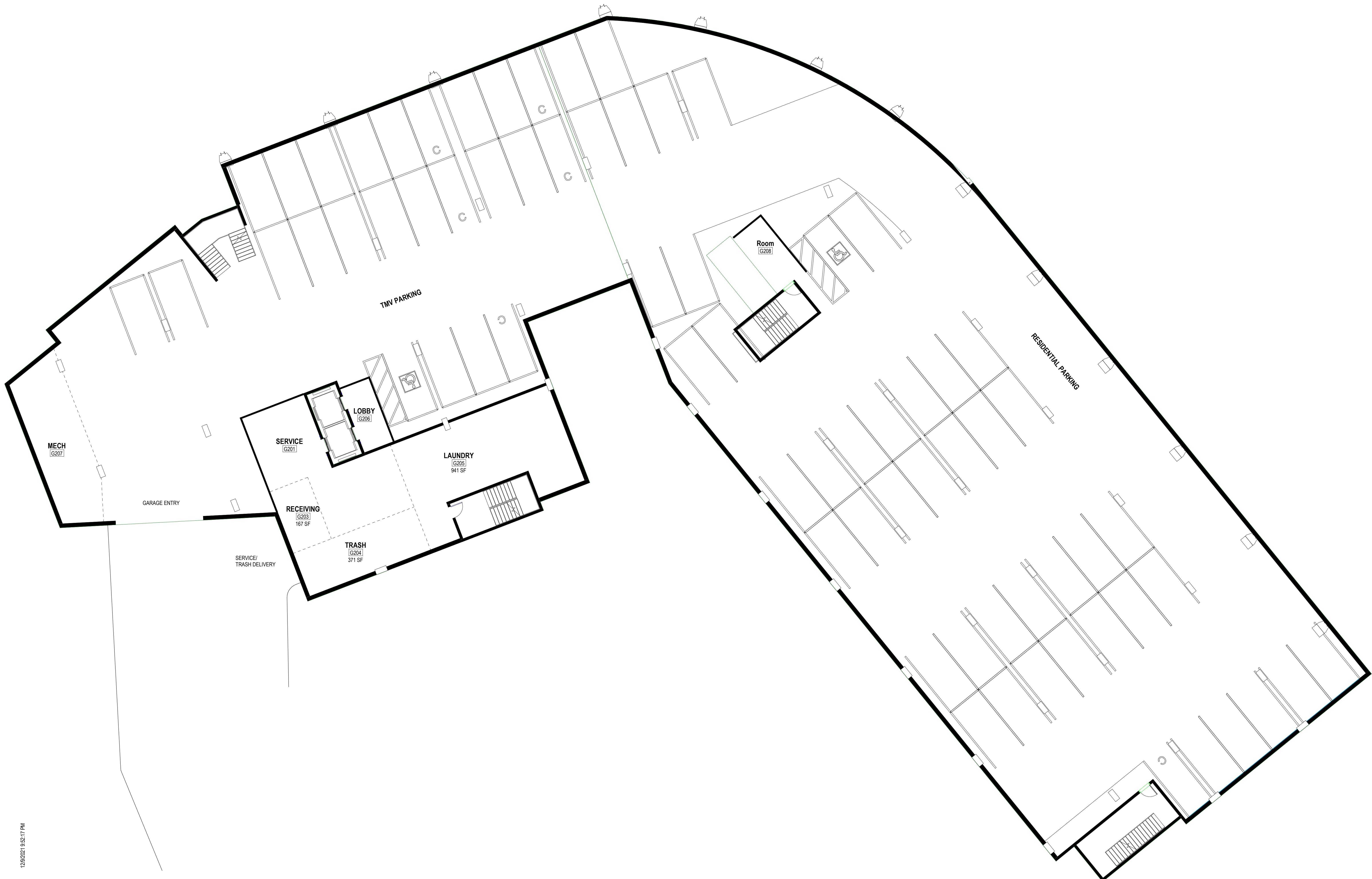
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G2 - GARAGE LOWER LEVEL

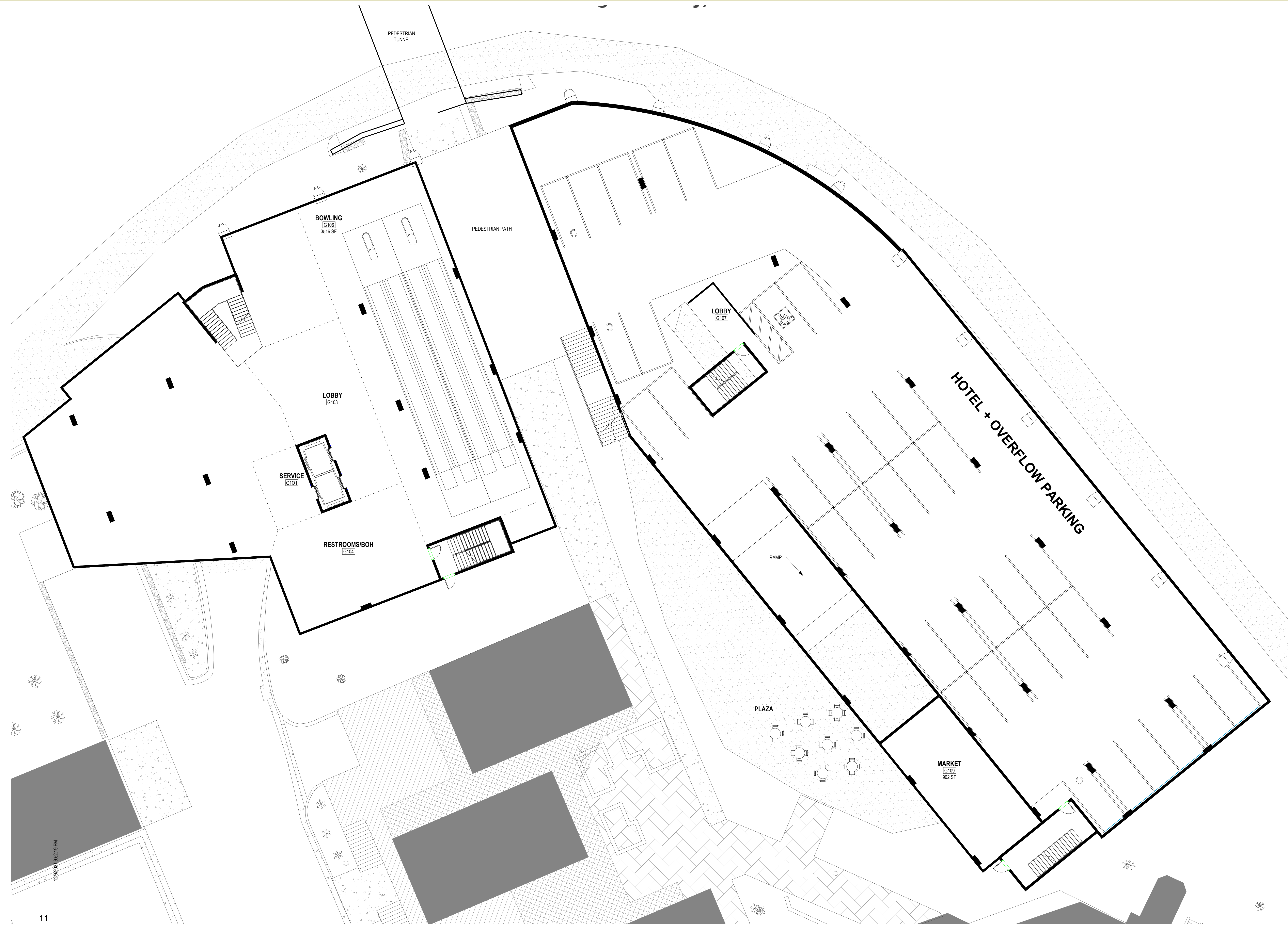
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G1 - GARAGE PLAZA LEVEL

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LEVEL 1

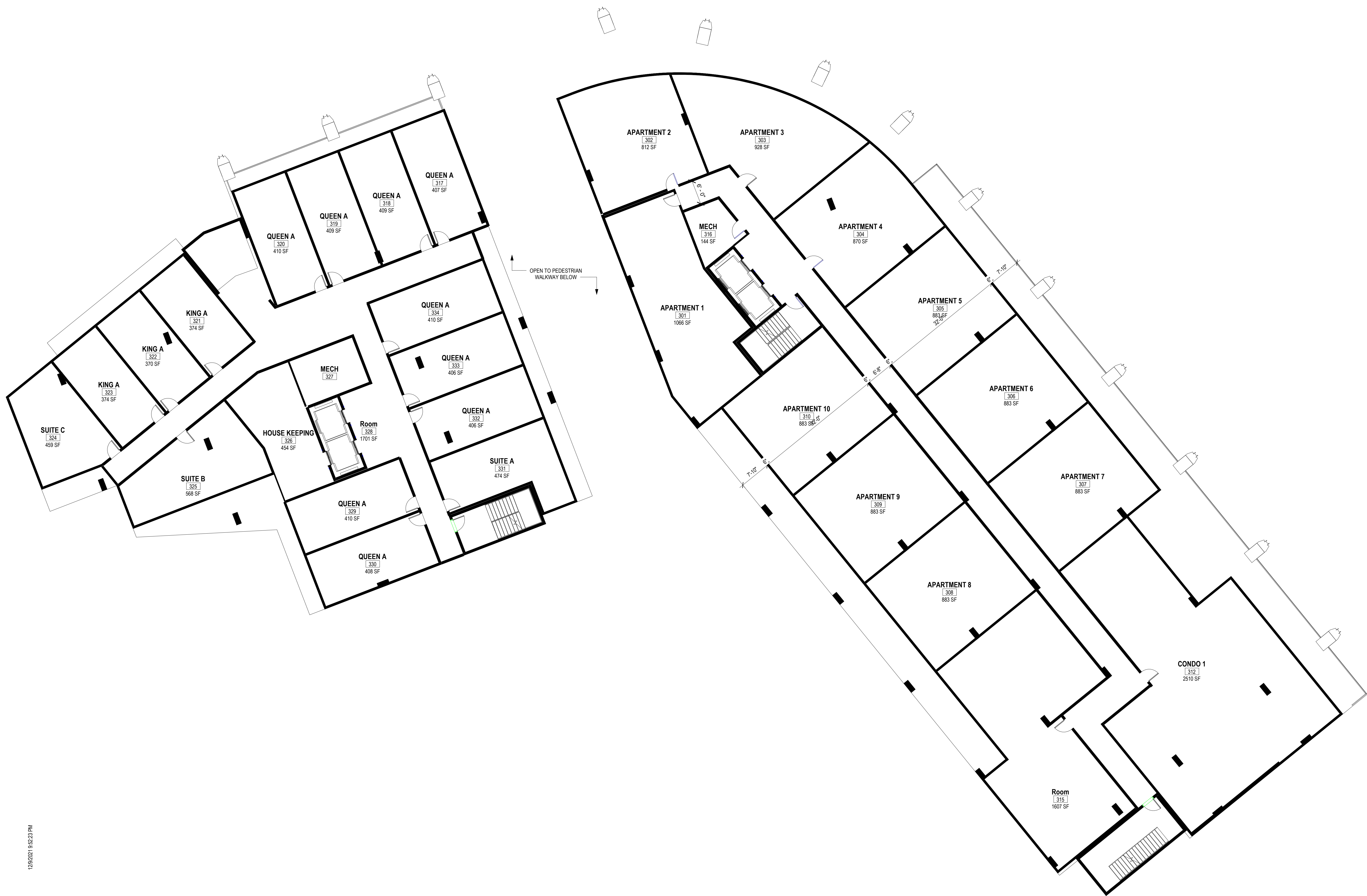
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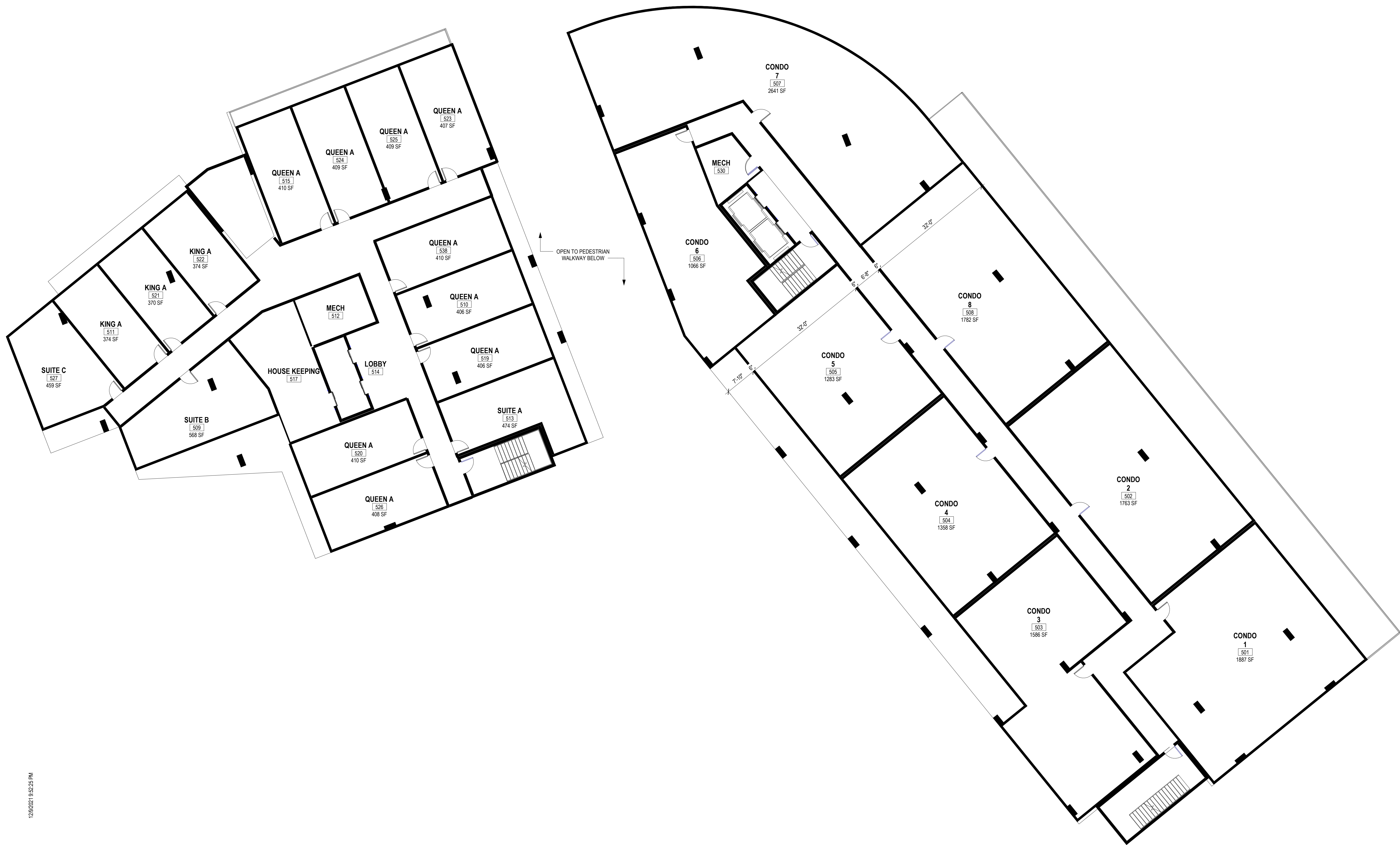
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LEVEL 5

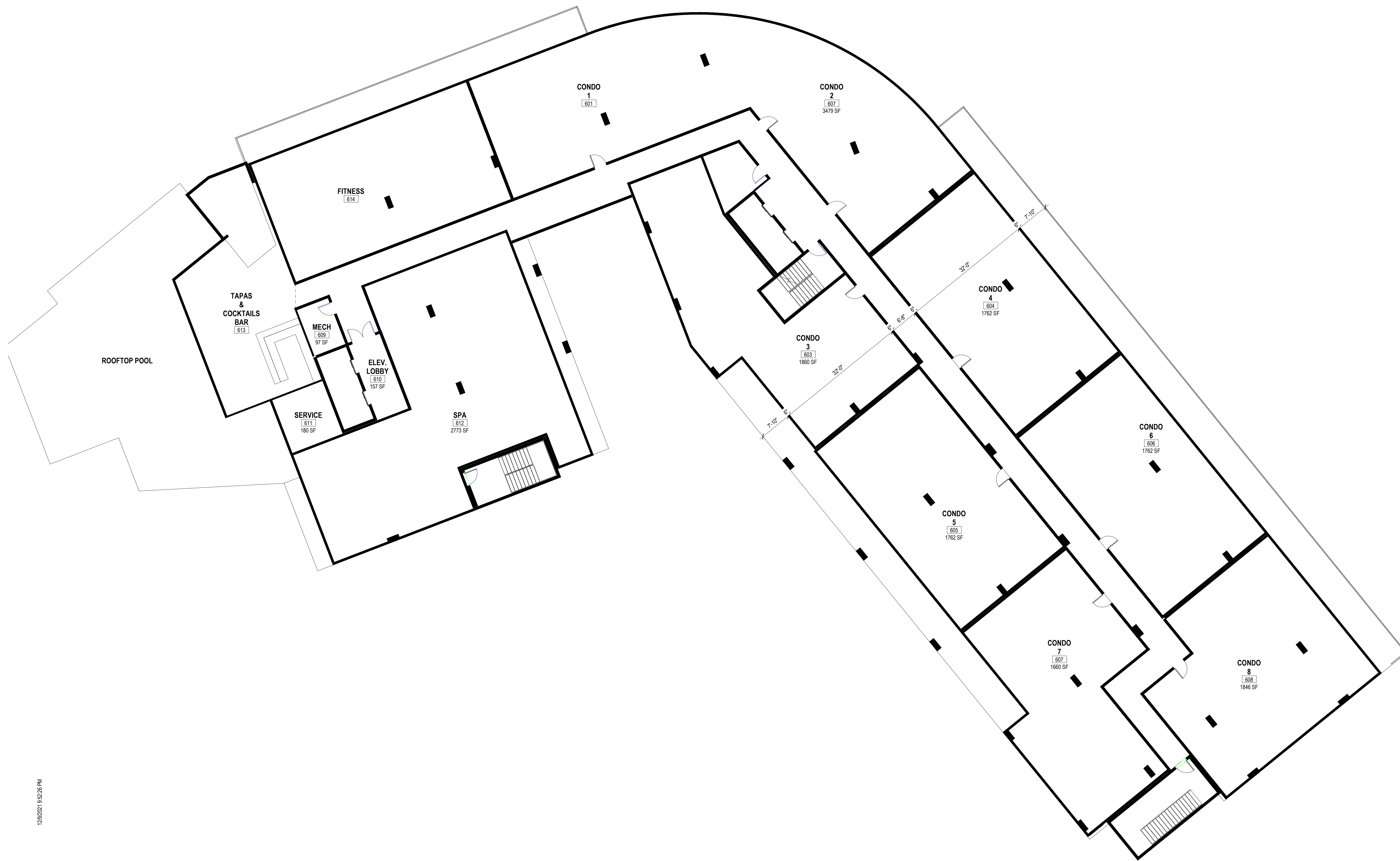
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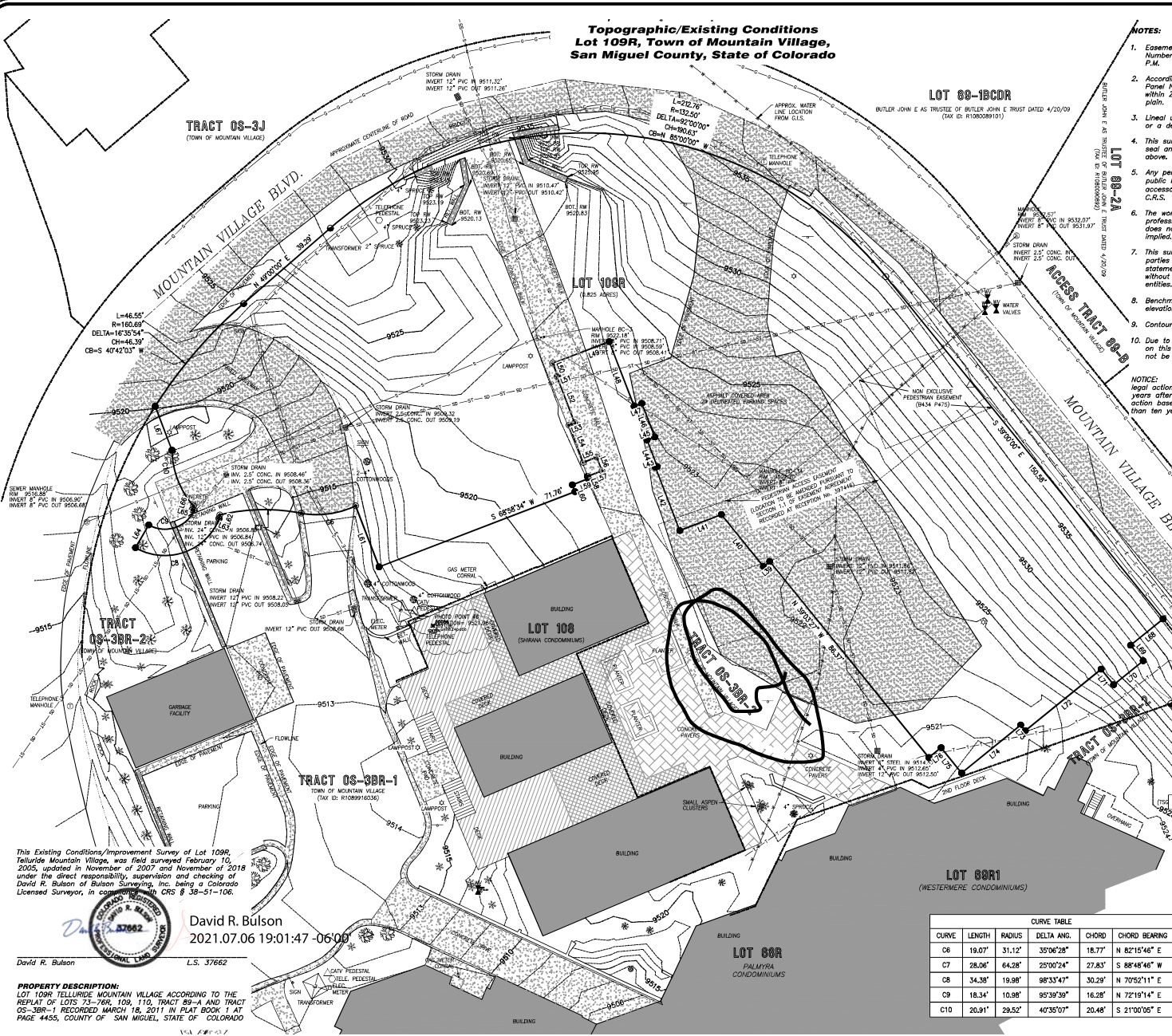
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LEVEL 6

A108

**Topographic/Existing Conditions
Lot 109R, Town of Mountain Village,
San Miguel County, State of Colorado**



- NOTES:**
- Easement research by Land Title Guarantee Company, Order Number ABS86008347-3, dated November 30, 2018 at 5:00 P.M.
 - According to FEMA Flood Insurance Rate Map 08113C0287-D, Panel Number 0287D dated September 30, 1988, Lot 109R is within Zone X; Areas determined to be outside 500-year flood plain.
 - Lineal units represented hereon are shown in U.S. Survey Feet or a decimal portion thereof.
 - This survey is valid only if a print or electronic copy has a seal and signature of the surveyor noted within the statement above.
 - Any person who knowingly removes, alters, or defaces any public land survey monument and/or boundary monument or accessory, commits a class two (2) misdemeanor pursuant to C.R.S. 18-4-508.
 - The word certify as used hereon means an expression of professional opinion regarding the facts of this survey and does not constitute a warranty or guarantee, expressed or implied.
 - This survey is prepared for the exclusive use of the party or parties indicated within the surveyor's statement. Said statement does not extend to any unnamed person or parties without an express statement by the surveyor naming said entities.
 - Benchmark: Control Point "Crystal-1", a No.5 rebar with elevation 9555.32 feet.
 - Contour interval is one (1.0) foot.
 - Due to winter conditions, only visible improvements are shown on this survey. Any improvements buried under snow cover will not be shown.

NOTICE: According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

LEGEND

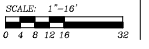
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-T-	UNDERGROUND TELEPHONE LINE
-S-	UNDERGROUND SANITARY SEWER LINE
-E-	UNDERGROUND ELECTRIC LINE
-TV-	UNDERGROUND CABLE TV LINE
-G-	UNDERGROUND GAS LINE
-SD-	UNDERGROUND STORM DRAIN LINE
⊗	STORM DRAIN GRATE
⊙	10"-12" COTTONWOOD TREE
⊙	8" SPRUCE TREE
⊙	4"-4" ASPEN TREE
⊙	MANHOLE

LINE	BEARING	LENGTH
L39	S 51°01'50" W	2.74'
L40	N 38°58'10" W	22.86'
L41	S 68°59'54" W	15.26'
L42	N 21°00'23" W	23.15'
L43	N 68°59'37" E	0.66'
L44	N 21°00'05" W	9.76'
L45	N 68°59'55" E	2.94'
L46	N 21°00'05" W	12.33'
L47	S 68°59'56" W	2.83'
L48	N 21°00'05" W	23.71'
L68	S 50°56'33" W	14.32'
L69	N 39°03'27" W	6.83'
L70	N 50°56'33" E	13.00'
L71	S 39°03'27" E	6.83'
L72	S 50°56'33" W	33.36'
L73	N 39°03'27" W	2.50'
L74	N 50°56'44" E	26.01'
L75	S 39°01'35" E	11.12'
L76	S 50°56'33" W	5.38'

LEGEND

⊗	WATER VALVE
⊙	LAMP POST
⊙	SON
⊙	SEWER MANHOLE
⊙	TELEPHONE MANHOLE
⊙	TRANSFORMER
⊙	ELECTRIC BOX
⊙	TELEPHONE PEDESTAL
⊙	CABLE-TV PEDESTAL
⊙	STORM DRAIN
⊙	FOUND 1-1/2" ALUMINUM CAP ON NO. 5 REBAR, L.S. 2496'
⊙	FOUND 1-1/2" ALUMINUM CAP ON NO. 5 REBAR, L.S. 2494'
⊙	FOUND NO. 5 REBAR, NO CAP
⊙	FOUND 1-1/2" ALUMINUM CAP ON 18" NO. 5 REBAR, L.S. 3766'
⊙	SET BRASS TAG, L.S. 3762'

LINE	BEARING	LENGTH
L49	S 68°59'55" W	20.67'
L50	S 21°00'05" E	4.75'
L51	S 69°00'25" W	0.33'
L52	S 21°00'05" E	17.00'
L53	S 68°59'55" W	2.12'
L54	S 21°00'05" E	13.62'
L55	N 68°59'55" E	4.95'
L56	S 21°00'05" E	5.00'
L57	S 68°57'08" W	5.33'
L58	S 21°02'52" E	0.83'
L59	S 68°59'23" W	5.83'
L60	S 21°00'05" E	2.50'
L61	N 21°00'05" W	22.36'
L62	S 17°58'24" W	1.25'
L63	S 68°24'43" E	0.21'
L64	N 30°09'04" E	9.00'
L65	N 72°01'36" W	0.88'
L66	N 17°58'24" E	1.37'
L67	N 21°00'05" W	16.05'



CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA ANG.	CHORD	CHORD BEARING
C6	19.07'	31.12'	35°06'28"	18.77'	N 82°15'46" E
C7	28.06'	64.28'	25°00'24"	27.83'	S 88°48'46" W
C8	34.38'	19.98'	98°33'47"	30.29'	N 70°52'11" E
C9	18.34'	10.98'	95°39'39"	16.28'	N 72°19'14" E
C10	20.91'	29.52'	40°35'07"	20.48'	S 21°00'05" E

MV Colorado Development Partners LLC a TX LLC 5956 Sherry Lane, Suite 1500 Dallas, TX 75225-9026	Lot 109R Town of Mountain Village S34 43N R9W N1/4PM
	BULSON SURVEYING
7-1-2021	
21045	

This Existing Conditions/Improvement Survey of Lot 109R, Telluride Mountain Village, was field surveyed February 10, 2005, updated in November of 2007 and November of 2018 under the direct responsibility, supervision and checking of David R. Bulson of Bulson Surveying, Inc. being a Colorado Licensed Surveyor, in compliance with C.R.S. § 38-51-106.

David R. Bulson
2021.07.06 19:01:47 -06:00
L.S. 37662

PROPERTY DESCRIPTION:
LOT 109R TELLURIDE MOUNTAIN VILLAGE ACCORDING TO THE REPLAT OF LOTS 73-745, 109, 110, TRACT 89-A AND TRACT 05-3BR-1 RECORDED MARCH 18, 2011 IN PLAT BOOK 1 AT PAGE 4455, COUNTY OF SAN MIGUEL, STATE OF COLORADO

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 simultaneously 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

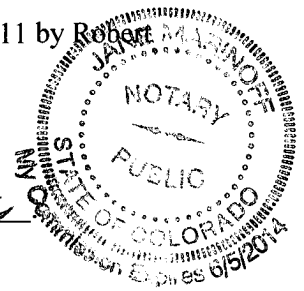
STATE OF COLORADO)
) ss
COUNTY OF SAN MIGUEL)

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

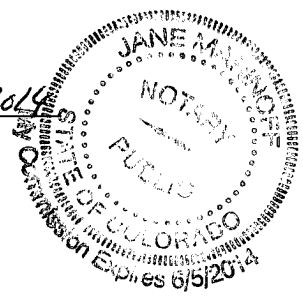


Exhibit "A"
Sheet Index:

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

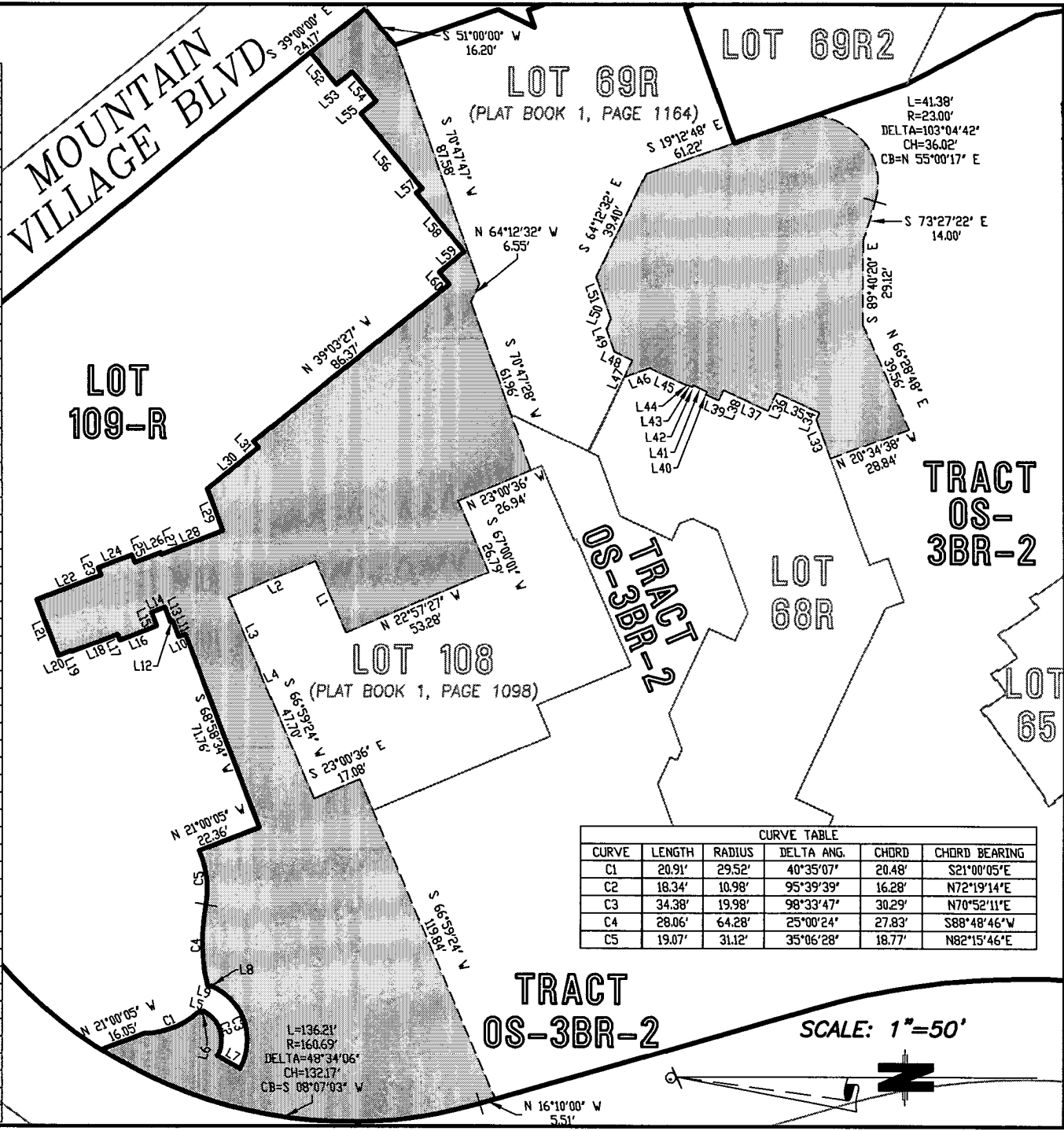
A6.01b	Typical Exterior Details
A6.02	Miscellaneous Details
A6.03	Service Diagram
A6.04	Upper Mountain Village Blvd Site Details
A6.05	Upper Mountain Village Site Details

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" W	27.74'
L4	N 23°00'22" E	0.25'
L5	N 17°58'24" E	1.37'
L6	N 72°01'36" W	0.68'
L7	N 30°09'04" E	9.00'
L8	S 68°24'43" E	0.21'
L9	S 17°58'24" W	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" W	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" W	0.33'
L20	S 21°00'05" E	4.75'
L21	S 68°59'55" W	20.67'
L22	N 21°00'05" W	23.71'
L23	S 68°59'56" W	2.83'
L24	N 21°00'05" W	12.33'
L25	N 68°59'55" E	2.84'
L26	N 21°00'05" W	9.76'
L27	N 68°59'37" E	0.66'
L28	N 21°00'23" W	23.15'
L29	S 68°59'54" W	15.26'
L30	N 38°58'10" W	22.86'
L31	S 51°01'50" W	2.74'
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" W	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" W	0.33'
L45	N 25°03'20" E	14.37'
L46	N 19°56'40" W	8.98'
L47	S 64°12'32" E	6.34'
L48	N 25°47'28" E	6.86'
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" W	14.32'
L53	S 39°03'27" E	6.83'
L54	S 50°56'33" W	13.00'
L55	N 39°03'27" W	6.83'
L56	S 50°56'33" W	33.36'
L57	N 39°03'27" W	2.50'
L58	S 50°56'44" W	26.01'
L59	N 39°01'35" W	11.12'
L60	S 50°56'33" W	5.38'



CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA ANG.	CHORD	CHORD BEARING
C1	20.91'	29.52'	40°35'07"	20.48'	S21°00'05"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'



Client: _____

Contact: _____

FOLEY & ASSOCIATES, INC.
 ENGINEERS - PLANNERS - SURVEYORS
 10100 130th Ave, Suite 101
 Richmond, BC V6V 2G9
 Tel: 604-273-1313 Fax: 604-273-1314
 Email: info@foley.com

Project No: 08018

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.

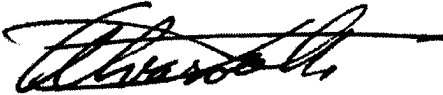
5. GR1 and EC1 - No comment, except to say that the plans are not complete. There are references to sheets that are not labeled as specified, such as "DTX".
6. SD1 and SD2 – Designer should be asked to specifically answer how the proposed piping system protects and improves the current storm water conveyance 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 MERLIN CLERK-RECORDER
 12-10-2010 10:29 AM Recordings 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

**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 December 3, 2020 (“**Effective Date**”), is made by and between Town of Mountain Village, a 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 August 5, 2015 in Reception No. 438754 (“**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 seeking Town approval to extend the PUD Approval and the Vested Property Right until December 8, 2022 (“**PUD Extension Application**”).

6. The PUD Extension Application was reviewed and approved by the Town, evidenced by a certain Town Council Ordinance No. 2020-16, recorded in Reception No. 467309 (“**Town PUD Extension Ordinance**”).

7. Pursuant to the Town PUD Extension Ordinance, the Vested Property Right is extended to December 8, 2022.

8. 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.

9. 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/exceptions 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.

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: [Signature]
Kim Montgomery, Town Manager

Date: 12/10/2020

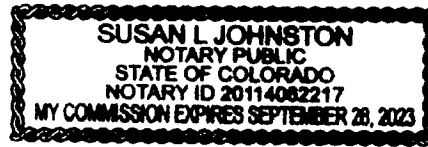
STATE OF Colorado)
COUNTY OF San Miguel) ss

Acknowledged, subscribed and sworn to before me this 10th day of December, 2020 by Kim Montgomery as the Town Manager of The Town of Mountain Village.

Witness my hand and official seal.

[Signature]
Notary Public

My commission expires: 9-28-23



STATE OF _____)
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.

Notary Public

My commission expires: _____

APPROVED AS TO FORM

By: Paul Wisor

Date: December 3, 2020

Printed Name: Paul Wisor, Town Attorney

DAVID CRAIGE LIGHTING DESIGN
138 E. COLORADO AVE, TELLURIDE, COLORADO 81435

December 6, 2021

Michelle Haynes
Planning & Development Services Director
Town of Mountain Village

Laila Benitez
Mayor
Town of Mountain Village

RE: Ridgeline Variance Request

My DRB seat represents the residents of Mountain Village and one of my concerns of this application involves light glare and the effects of exterior lighting within the Mountain Village community.

It is my understanding that all future applications to construct homes on The Ridge will be required to erect story pole per the requirement of San Miguel County. Story poles should be erected on a case by case basis for Class 3 DRB review.

Exhibit VH-14 - Story poles should remain a requirement for all future Ridge Lot applications requiring field verification per Section 17.5.16 Ridgeline Lots paragraph (B) 5.

As more homes are constructed on The Ridge, the aggregate exterior lumen emittance will be mostly notable to the residents of Mountain Village. Over time the degradation of the night sky will also become visible to the Valley Floor residents. I would encourage the Town to expand the 400' noticing requirement to the Hillside, Sunset Ridge and Coonskin HOA's for all future applications that are in close proximity to the ridge.

Exhibit VH-16 - Purpose of Community Development Code.

(D) Emphasize the natural beauty of the town's surroundings and

(H) Ensure uses and structures enhance their sites and area compatible with the natural beauty of the town's setting and its critical natural resources.

Concentrated development will add visible light above the View Plane Corridor and over time deplete the natural beauty and resources that is our night sky. The American West night time skies loom large where light pollution is low. My photo of the Village Core was taken at the Society Turn intersection on the West end of the Valley Floor. Mountain Village is slowly eroding their own Dark Sky visibility and should consider joining Ridgway, Norwood and Nucla in becoming members of the Dark Sky Community.

Currently there is not an elevation limitation to recess fixtures in exterior roof soffits. I would encourage Town Council to amend the CDC Lighting Regulations 17.5.2 (E) 5b Maximum Height Limits adding the italicized stipulation below. I would also encourage Town to add line item 8 to prohibit exterior linear LED lighting 17.5.2 (C)

17.5.2 (E) 5 (b) the maximum height for a wall mounted light fixture shall be seven feet (7') and all recessed exterior lighting limited to ten feet (10') above finished grade.

It is for the aforementioned comments that I oppose this variance request. Dark sky places must demonstrate that the Milky Way is readily visible to the unaided eye. Lets protect the natural beauty of the night sky in this valley.

Thank you,

David Craige, CLC
Design Review Board Member 2015

Susan Johnston

From: Louise Bryant <louise.bryant@financialspyglass.com>
Sent: Thursday, December 9, 2021 10:52 AM
To: mvclerk
Cc: George Bryant (gb.bryant@gmail.com)
Subject: Lot 109R project

Follow Up Flag: Follow up
Flag Status: Flagged

Dear DRB and Town Board Members-

My husband GB and I have been owners at the Westermere (Unit 410) since 2014 and owners in Mt Village since 2008. We are thrilled to be part of the Westermere "family" and village core neighborhood, and love to see the parade of families heading out to enjoy all there is to enjoy from our kitchen window, e.g. the kids of all ages heading out for all the snow sports. While our condo is our second home, we are extending the time we spend each year in this mountain community with our two children, friends, and neighbors.

We understand that during the previous years when the owners of Lot 109R sought approval for an increased density for construction on the lot, Westermere owners have supported it provided the increase was reasonable in its scope when measured against the numerous costs and benefits that need not be repeated at this juncture.

And that a (dramatic) previous density increase from 81 to 124.5 is still in place for another year. We too, are adamantly opposed to any further increase in density that is being requested. And agree that such an approval would significantly dwarf our building/ density and those around the Westermere, be out of character for this section of the core and negatively impact our property values. Further, given the immense and growing popularity of Telluride, it should be hard to argue that such a drastic increase beyond our building code rules and regs is necessary for any such venture to achieve profitability.

GB and I are taking the opportunity to weigh in now during these most important conversations related to Lot 109R project. And realize and appreciate the difficulty of your jobs, in balancing needed growth in our community with the shared interests stated above. We encourage you to preserve the spirit of the carefully crafted various building codes, rules and regulations that we have been guided by and which protect the character of our home and Village, by **not allowing unfettered growth.**

Thank you for your consideration.

Sincerely,

Louise and GB Bryant

P.S. Is there an option to attend the working session(s) via zoom, for owners who are not in town?

\$tart something!

Louise

Louise H. Bryant

CERTIFIED FINANCIAL PLANNER TM

www.financialspyglass.com

louise.bryant@financialspyglass.com

914.921.6800



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CERTIFIED FINANCIAL PLANNER™





SOLOMON LAW FIRM, P.C.

227 WEST PACIFIC AVENUE, SUITE A (REQUIRED FOR FEDEX)

PO BOX 1748 (REQUIRED FOR ALL U.S. MAIL)

JOSEPH A. SOLOMON, ESQ. TELLURIDE, COLORADO 81435

ATTORNEY AT LAW

E-MAIL: JSOLOMON@MONTROSE.NET

TEL (970) 728-8655

CELL (970) 729-2225

FAX (775) 703-9582

December 9, 2021

Town of Mountain Village Town Council
Town of Mountain Village Design Review Board
c/o Town of Mountain Village Town Clerk
455 Mountain Village Blvd. Suite A
Mountain Village, Colorado 81435

Via E-mail: mvclerk@mtnvillage.org

Re: Lot 109R Worksession
December 16, 2021

Dear Members of the Town Council and DRB:

I represent Westermere Condominium Owners Association, Inc. (Westermere). The purpose of this letter is to comment on the above matter.

In 2011, a project applicant for Lot 109R obtained Town approval for a very significant increase in density on this site, from 81 to 124.5. At that time, the Westermere along with other neighbors advocated for a meaningful but not excessive density increase.

Now, the new owner is seeking to yet again increase density, to 143.25. This second increase is inappropriate. This is a tight site surrounded by existing projects of appropriate density. The increase approved ten years ago is the right mix for this site.

Town of Mountain Village Town Council and DRB
December 9, 2021
Page 2

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joseph A. Solomon', written over a horizontal line.

Joseph A. Solomon, Esq.

cc:

Westermere Board of Directors
Louise Bryant, President
Bill Groner
Sherri Reeder
Chad Vanderheyden
Nicholas Cepeda
Full Circle HOA Management
Dan Witkowski
Hilary Swenson
Elyssa Krasic

Susan Johnston

From: Chad VanDerHeyden <chadvmd@gmail.com>
Sent: Thursday, December 9, 2021 9:29 AM
To: mvclerk
Subject: Lot 109R

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Members of the Town Council and DRB,

I am an owner of a home in the Westermere and am writing concerning the request by the new Lot 109R owner to further increase the density to 143.25.

I recognize the possible need for additional beds in Mountain Village, and certainly appreciate the need for affordable housing, but it is incredibly important as a community that we be cautious about putting these beds in the right places and with a density appropriate for the location. The density increase being requested for Lot 109R is too high and is not appropriate.

Thank you for considering my input.

Sincerely,

T. Chad VanDerHeyden

BRUCE A. CROWN
414 NORTH ORLEANS STREET • SUITE 301 • CHICAGO, IL 60654

December 10, 2021

Town of Mountain Village Town Council
Town of Mountain Village Design Review Board
c/o Town of Mountain Village Town Clerk
455 Mountain Village Blvd, Suite A
Mountain Village, Colorado 81435

Via email (mvclerk@mtnvillage.org)

Re: Lot 109R Work session 12/16/21

Members of the Town Council and of the DRB:

As stated in a letter from our HOA Counsel, Joseph Solomon, I too am opposed to any additional density increase on the property referred to as Lot 109R.

I have been an owner at Westermere since 1991. In that time I have seen quite a few changes to the Village core, none of which were accomplished without some variances to the original PUD which was used to make my purchase decision. While I have been effected by some of those including loss of views, I understand that is the way things work.

While most of you are aware, the original properties being discussed were zoned for a density of 81 density units and in 2011 the property was granted an increase to 124.5 units. This was predicated on certain actions of the property owner as stipulated in the 3/18/2011 development agreement between the Town of Mountain Village and MV Development among which were items to be completed for the public benefit including plaza improvements and Westermere Facade Improvements as well as a cash payment to the Town. I am not aware of MV Development or its successors having provided any of the public benefit purposes required by the agreement due to the lack of a building permit ever being issued (nor am I aware of if a building permit was ever applied for).

The original agreement was set to terminate and all variances would revert to the original state on December 8, 2015 if the owner has yet to act on the project. Also allowed in the agreement was the ability to apply to extend the agreement which the owner did on or about or 8/5/2015, Construction was never begun and again around 12/3/20 the owner petitioned for an extension which was granted as the second amendment to the development agreement. This request was also granted until 12/8/22.

BRUCE A. CROWN
414 NORTH ORLEANS STREET • SUITE 301 • CHICAGO, IL 60654

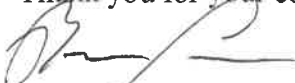
Or put in simple terms, the owner at the time was granted variances which improved the value of their property, and apparently by their lack of execution had no intention of actually building on the property. Instead were waiting until they could capitalize on the investment they had made.

Now the property has transferred to another developer who wishes to take a second bite of the apple and ask for even more density than was granted on the original requests.

It is my request that the board look at this request not as an increase from 124.5 density units to the requested 143.5 but rather it should be looked at from the perspective of the original 81 density units that were allowed on the property. Therefore the request in front of you today is asking for an increase from 81 density units to the 143.5 being requested.

Further, when applications are made, the Town should hold developers responsible for following through with granted projects or revoke any variances provided in a reasonable amount of time which I do not believe should be in excess of 10+ years.

Thank you for your consideration.



Bruce Crown

Susan Johnston

From: Bill Groner <Bill@WilliamGroner.com>
Sent: Thursday, December 9, 2021 10:10 AM
To: mvclerk
Subject: Lot 109R project

Follow Up Flag: Follow up
Flag Status: Flagged

Dear DRB and Town Board Members-

My wife Sue and I have been owners at the Westermere (Unit 310) since 1999 and have watched with great excitement and full support the wonderful growth of our Village over these past 2 decades. While our condo is our second home, it is part of our very fabric. We have raised our kids in these mountains, they learned to ride bikes in the Village Core (when it was a virtual ghost town!), and we have cumulatively spent several years in the Village Core.

During the previous years when the owners of Lot 109R sought approval for an increased density for construction on the lot, we have supported it provided the increase was reasonable in its scope when measured against the numerous costs and benefits that need not be repeated at this juncture.

While we understand that a (dramatic) previous density increase from 81 to 124.5 is still in place for another year, we are adamantly opposed to any further increase in density that is being requested. Such an approval would significantly dwarf our building/ density and those around the Westermere, be out of character for this section of the core and negatively impact our property values. Further, given the immense and growing popularity of Telluride, it should be hard to argue that such a drastic increase beyond our building code rules and regs is necessary for any such venture to achieve profitability.

We realize and appreciate the difficulty of your jobs, in balancing needed growth in our community with the interests that we state above, but we urge you to not allow unfettered growth that essentially renders moot, the carefully crafted various building codes, rules and regulations that we have all been guided by and which protect the character of our home and Village.

Thank you for your consideration.

Sincerely,

William and Susan Groner



Agenda Item No. 2 & 3
PLANNING & DEVELOPMENT SERVICE
PLANNING DIVISION
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 728-1392

TO: Mountain Village Town Council and Design Review Board
FROM: Michelle Haynes, Planning and Development Services Director
FOR: Joint Special Town Council and Design Review Board Meeting on December 16, 2021
DATE: November 22, 2021
RE: **A)** A review and recommendation by the Design Review Board to the Town Council and **B)** Consideration of a Resolution regarding a Variance to Section 17.5.16.B.4 of the Community Development Code (CDC) , specifically a request to vary the Coonskin View Planee exhibit requirements affecting Unit 12, the Ridge at Telluride, to allow for a detached condominium (a singular residence) building up to 35' (plus 5 feet to allow for chimneys, flues, vents and similar structures), located on Lot 161-A4, The Ridge at Telluride pursuant to CDC Section 17.4.16, Variance.

Overview

PROJECT GEOGRAPHY

Legal Description: UNIT 12 THE RIDGE AT TELLURIDE A PLANNED COMMUNITY LOT 161A4 ACC TO PLAT REC 04 05 2004 BK 1 PG 3262 3265 AND ACC TO 6TH SUPPLEMENTAL AND AMENDED PLANNED COMMUNITY PLAT PHASES 1 THRU 7 REC 07 02 2010 PLAT BK 1 PG 4349 4353 AND 6TH SUPPLEMENT & AMENDMENT TO DECS AT 413135 A 5.55 PER INT IN UNIT 4 LOT 161A 1R BLDG LOT 161 D1 OPEN SPACE TRACTS ROS 1A 2C 4B 5A 6A 7A LOT 161A 4 OPEN SPACE TRACTS ROS 1B 2B 3A 4A AND LOT 161A R3 OPEN SPACE TRACT ROS 5B COMMON ELEMENTS

Address: 8 Horseshoe Lane
Applicant/Agent: John Horn
Owner: Jonathan H. and Tiffany L. Horton Living Trust
Zoning: Multi-Family
Existing Use: Vacant
Proposed Use: Multi-Family
Lot Size: 0.17 Acres

ATTACHMENTS

1. Draft Resolution
2. Referral Comments
 - a. San Miguel County, Planning Department
 - b. San Miguel County, Attorney
 - c. Town of Telluride

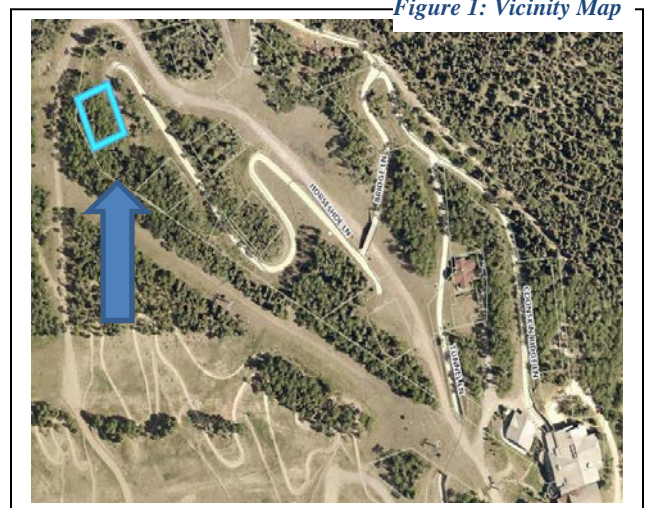


Figure 1: Vicinity Map

- d. Telluride Mountain Village Homeowners Association (TMVOA)
3. Cookskin Ridge View Plane Exhibit (View Plane Exhibit) (reception no. 328113)
4. Ridge Area CDC Section Excerpt (relevant sections to the application) (CDC Section 17.5.16.B.1-8)
5. Town and County Settlement Agreement Excerpts
6. [January 12, 2021 worksession packet \(hyperlink provided\)](#)
7. [Application \(hyperlink provided and attached\)](#)
 - a. Narrative
 - b. Cram email of support
 - c. Sightlines
 - d. Existing conditions
 - e. Proposed development plan
 - f. Survey Hency letter
 - g. 1993-6 Resolution
 - h. First Amended and Restated Development Covenant (hyperlink also provided under record documents)
 - i. Coonskin View Plan Survey (see exhibit 3)
 - j. Kennedy View Study
 - k. Affidavit of Chris Kennedy
 - l. 17.5.16 Ridgeline Lots Section
 - m. 17.4.16 Variance Process
 - n. 17.1.3 Purposes of the CDC
 - o. Coonskin Ridge Cabin Lot email of support
 - p. Story pole light photo from Town Hall
 - q. Eider Creek and Hillsdie Survey Locations

RECORD DOCUMENTS

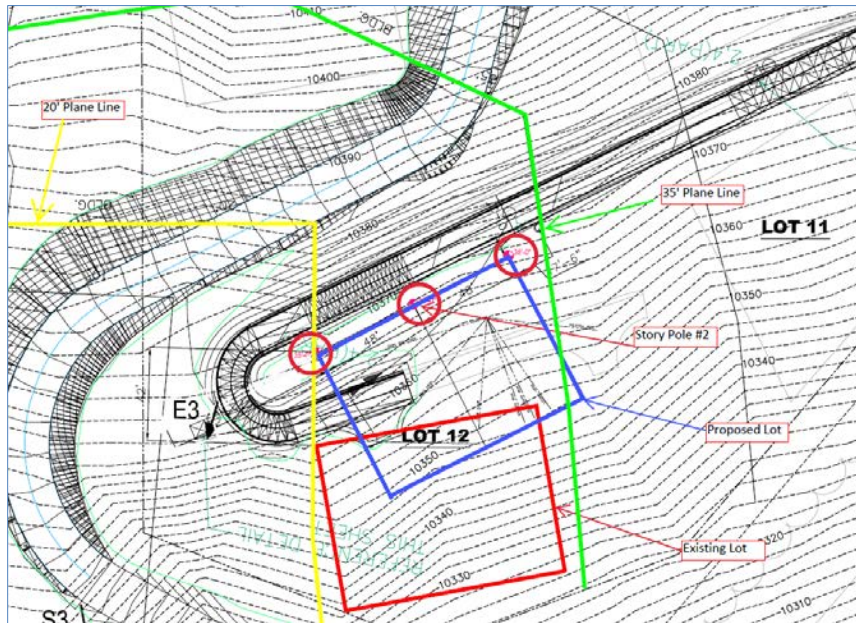
- [Town and County Settlement Agreement \(Settlement Agreement\)\(reception no. 329093\)](#)
 - [First Amended and Restated Development Covenant for Lots 161A, 161A-1, 161B, 161D and Adjacent Active Open Space, Town of Mountain Village, Exhibit B to the Settlement Agreement \(also known as the Ridgeline Covenant\)](#)
- [Community Development Code, amended August 2020 \(CDC\)](#)

CASE SUMMARY

The applicant is requesting a Variance to Community Development Code section 17.5.16, Ridgeline Lots, subsection B.3. which limits Unit 12, on Lot 161A-4, The Ridge at Telluride, A Planned Community, to 20 feet in building height with a small portion limited to 35 feet in building height. Unit 12 is subject to the Coonskin Ridge View Plane (view plane exhibit), an exhibit to the Town and County Settlement Agreement. The applicants request that via the Variance process, the building be limited to 35 feet, plus five feet for chimneys, flues and similar appurtenances. A Variance is a class 4 application subject to the criteria found at CDC Section 17.4.16, Variance Process. The application and DRB/Council review is limited to a request for a variance. In the event the variance is approved, the applicant will submit a full development application pursuant to which issues such as mass will be analyzed and considered.

[this are intentionally left blank]

Illustration A.



Staff note:
The yellow line depicts the 20 foot height limitation line pursuant to the Coonskin Ridge View Plane Exhibit. The green line represents the 35 foot height limitation line. The Unit 12 area, as repositioned, shows most of the building area subject to 20 feet and a small portion subject to 35 feet height limitations.

The Ridge Area and Ridgeline Lots CDC Section 17.5.16

Unit 12, Lot 161A-4, is subject to the CDC section 17.5.16.A.1. called the Ridge Area which is geographically limited to include six total lots located in and around the San Sophia Gondola Station/Ridge Club building (inclusive of Allred’s restaurant mentioned for reference). There are eight requirements associated with Ridge Area lots (see exhibit 5). The applicant is asking for 17.5.16.B.3 to be the subject of the Variance, which states the following,

“Except for the existing building on Lot 161A-1R and gondola facilities, the development of ridgeline area lots shall be designed to ensure that no lighting or any part of any building or structure extends into the view plane as shown on the Coonskin View Plane drawing recorded at reception number 328113.”

Development History

The applicants requested a joint worksession which was held on January 13, 2021. Demonstration story poles with lights along with the required referrals to San Miguel County and the Town of Telluride were provided at that time. General non-binding feedback was provided and the following concerns were expressed:

- Concern about the visibility/height/light spill of the possible future home from the Mountain Village, specifically the Civic Center/Town Hall.
- Whether the hardship demonstrated is adequate to justify a 75% increase in the requested height from 20 feet to 35 feet for the building.
- Although the Town of Mountain Village can consider a Variance to the CDC, the approval is not a Variance to Settlement Agreement. Concern about whether we

have enough assurance from the County to the extent the county would not later enforce the Settlement Agreement if they found reason.

Town and County Settlement Agreement explained

The Mountain Village was first developed as a ski area, then a Planned Unit Development under San Miguel County jurisdiction. When the Town was incorporated in 1995, a Settlement Agreement was executed between the newly incorporated Mountain Village and San Miguel County, outlining a number of controls as it related to density, open space, workforce housing, wood burning devices, wetlands and development requirements to mitigation light spill and visual impacts of the Mountain Village as viewed from the valley below Mountain Village (San Miguel County and/or the Town of Telluride).

Specific to the Ridge Area properties, the Settlement Agreement outlined maximum heights of 45 feet for Ridgeline Area building lots or “the maximum height allowed pursuant to the View Plane Limitations...” Further, “under no circumstances, shall any lighting or any part of any structure extend into the view plane (the “View Plane”) shown on the Coonskin View Plane drawing prepared by Jacobsen Associates and dated July 21, 1999, as recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 2601. Exhibit 3.

As noted, Unit 12 is subject to lower height requirements consistent with the View Plane exhibit. Excerpts from the Settlement Agreement are attached as exhibit 6 and begin on page 15 of 130 pages at reception no. 329093, hyperlinked under record documents above.

Ridge Area Development Requirements and CDC Noticing Requirements

The Settlement Agreement requires additional provisions of story poles, demonstration lights and referrals to San Miguel County and the Town of Telluride for any development application.

- **Story Poles.** The applicants erected poles and lights at 35 feet which were viewable on November 29 and November 30 from 5-8 pm both evenings. Staff sent a reminder email on 11/22/2021 reminding the board members that they could revisit the site of the view plane from north of the valley floor to see whether the lights or poles were viewable at night.
- **County and Town of Telluride referral.** Staff sent a referral to San Miguel County and the Town of Telluride via email on October 29, 2021 consistent with the referral language in the settlement agreement. Referral comments are provided in exhibit 2.
- **Public Notice.** 30 day public notice to adjacent property owners was sent by the applicant consistent with the requirements of a class 4 application. Affidavit of letter and sign was provided to the town.

Settlement Agreement Legal Considerations.

- Pursuant to the Settlement Agreement, it is encumbant upon the county to enforce the covenant.
- Although the Town of Telluride is also provided a referral, they are not party to the covenant and have no enforcement rights.
- Although the applicant requests a Variance to the CDC Section that references the Coonskin View Plane exhibit and Ridge Area requirements, the Variance varies the requirement outlined in the CDC and is not amending the Settlement Agreement.

VARIANCE CRITERIA

The Variance criteria is listed below. Staff notes in bold and italic.

- a) The strict development application of the CDC regulations would result in exceptional and undue hardship upon the property owner in the development of property lot because of special circumstances applicable to the lot such as size, shape, topography or other extraordinary or exceptional physical conditions;

A home could be constructed in this location but limited in height to 20 feet which would allow for a full basement and one story construction within a 7,500 square foot building footprint, subject to design review approval. The applicant argues that the original Coonskin View Planee exhibit was based upon third party topographic surveys and no actual field work or verification was done. This applicant provided exhibits to the application, illustrating that the proposed building is not viewable by utilizing modern survey equipment, field verification and attested to by a surveyor. Undue hardship is a very high threshold that the DRB and Town Council can determine whether this threshold is being met.

- b) The variance can be granted without substantial detriment to the public health, safety and welfare;

The primary consideration to vary the view plane requirement, is whether it would otherwise be viewable at the proposed 35' heights from north of the Valley Floor. Should the Council deem it is not viewable, and the County and Town of Telluride have posed no objection, Town Council could consider this criteria to be met.

- c) The variance can be granted without substantial impairment of the intent of the CDC;

With design review the DRB would apply all relevant criteria that relate to lighting, design and all relevant CDC requirements. The DRB is also under no obligation to approve a detached condominium at 35' + 5' for appertunances should it not otherwise meet the relevant design criteria and CDC requirements. Staff recommends if Town Council deems this criteria to be met, a condition of approval is included that reminds the Design Review Board that they are not obligated to approve a 35' + 5' detached condominium should the relevant design, siting and CDC requirement not otherwise be met.

- d) Granting the variance does not constitute a grant of special privilege in excess of that enjoyed by other property owners in the same zoning district, such as without limitation, allowing for a larger home size or building height than those found in the same zone district;

It is generally understood that there are other units subject to the same View Plane restrictions. If the Town Council is comfortable with the applicants exhibits and demonstration that the view plane can be varied by this process, similar applications would be forthcoming for other properties subject to the Ridge Area requirements. This application would inform how other unit owners subject to the Coonskin View Plane restrictions may be able to proceed with similar height variation requests because of the view plane restrictions.

If approved the Variance would allow for a larger home with heights up to 35 feet than if the Variance is not approved. Similarly situated Unit owners would need to apply for the same Variance in order to amend the height restrictions otherwise imposed.

The applicants, however, are not requesting the full height allowed up to 45 feet, which is otherwise enjoyed by all other Ridge Area units, except for those subject to the View Plane exhibit.

- e) Reasonable use of the property is not otherwise available without granting of a variance, and the variance being granted is the minimum necessary to allow for reasonable use;

Reasonable use in staffs opinion is still afforded whether the Variance application is approved or denied. Reasonable use is a broadly defined term; however, it is understood that a basement plus a one level home could still be constructed with generous ceiling heights. As stated above, other Ridge Area units are allowed to be 45' in height. The applicant is asking for 35' + 5' something less than the other ridge buildings, but more than the View Plane restriction. The applicant does not believe that reasonable use is afforded if the Variance is not approved.

As a point of clarification, pursuant to the CDC, detached condominiums in the multi-family zone district are allowed heights akin to single family homes of 35 feet. The Ridge area are allowed to construct up to 45 feet unless subject to the view plane exhibit height restrictions. The Ridge Area is unique in the allowance of 45' heights for detached condominiums.

- f) The lot for which the variance is being granted was not created in violation of Town regulations or Colorado State Statutes in effect at the time the lot was created;

This is met.

- g) The variance is not solely based on economic hardship alone;

Staff defers to the applicant to respond to this question. The applicant has otherwise indicated it is not based upon economic hardship alone. The application of the Coonskin View Plane exhibit to the property would have otherwise been disclosed with the sale of the property and the limitations understood at purchase.

- h) The proposed variance meets all applicable Town regulations and standards unless a variance is sought for such regulations or standards.

The application being considered is strictly related to allowing for greater heights premised on the understanding that at a greater height, it would not be visible pursuant to story poles, light demonstration and proposed heights from the View Plane view shed.

There are additional town regulations prior to construction on the site which would include design review, satisfying parking requirement consistent with the Settlement Agreement and Mutual Release Agreement between CO Lot 161C-R Mountain Village, TMVOA, Ridge property owners and the Town (see agreement for more specific ownership and party details)

Additional Considerations

According to the Ridge Covenants the town agreed to measure height uniquely for the Ridge properties. In the event of approval, staff recommends additional conditions that comport with how building height is measured consistent with the Ridge covenant for administrative ease.

STAFF ANALYSIS

There is a three part analysis for board consideration.

- 1) Is the proposed building based upon the story pole and light demonstration, along with submitted materials, visible from the view shed location located north of valley floor?

The applicants have provided technical exhibits by a qualified surveyor showing in elevation, that unit 12, with 35 foot building heights, would not be visible from just north of the Valley Floor. The applicants provided additional view plan study to illustrate that the original View Plan study may have not been as accurate as today's technology and expertise allows. The applicants have also provided two story pole with light demonstrations with the result that the poles and lights are not visible.

Staff believes the applicant has demonstrated that if a building is constructed at 35 feet it is not visible from the Valley Floor view shed location.

- 2) The second threshold is meeting the Variance criteria. "It shall be the burden of the applicant to demonstrate that submittal materials and the proposed development substantially comply with the variance review criteria." (CDC Section 17.4.16.D.2.)

Staff believes that Variance criteria a, d and e may not be met. Staff recommends that the boards discuss whether the applicant substantially complies with all of the Variance criteria prior to approval or denial of the application.

The Variance criteria is established as a very high bar. Essentially that the applicant would not otherwise have reasonable use of the property absent granting the Variance.

- 3) If the Variance is approved, it does not amend the Settlement Agreement but rather the CDC reference to the application of the Coonskin View Plane exhibit to the unit. The County provided a referral comment with no objection to the application. However, in the letter provided by the County Attorney, they are withholding the right to seek enforcement of the Settlement Agreement should the actual construction of the residence result in lighting being visible from the view plane in violation fo the Ridgeline Covenant (see exhibit 2B).

Staff agreed to an interpretation that a Variance application can be accepted for this application based upon a Variance to the CDC that does not otherwise amend the Town and County Settlement Agreement.

RECOMMENDED MOTIONS

Proposed motions of approval or denial are provided below.

Proposed Approval Motion

Design Review Board Proposed Motion:

please read the following that replaces the bracketed language under Town Council and the remainder of the motion as written:

[I move to provide a recommendation to Town Council of approval for]

Town Council Proposed Motion:

[I approve a Resolution for] a Variance for Unit 12, Lot 161A-4, The Ridge at Telluride, a Planned Community, to CDC Section 17.5.16.B.4. to vary the Coonskin View Plane exhibit requirements affecting Unit 12, to allow for a detached condominium (a singular residence) building up to 35 feet (plus 5 feet to allow for chimneys, flues, vents and similar structures), pursuant to CDC Section 17.4.16, Variance Process with the following findings:

- 1) The application meets the Variance criteria found at CDC Section 17.4.16.D.1 a-h
- 2) The applicant demonstrated that the proposed development substantially comply with the variance review criteria pursuant to CDC Section 17.4.16.D.2
- 3) The Variance is based upon the specific relocated building envelope represented in this application which location for Lot 12 and will not further be relocated.

And the following conditions:

- 1) The Variance application allows for a building up to 35 feet plus 5 feet for chimneys, flues, vents and similar structures but otherwise subject to the design and heights approved by the Design Review Board when applying the regulations of the CDC, inclusive of design regulations.
- 2) Consistent with the Ridge Covenants, building height allows for a maximum height, per the applicants request, of 35 feet plus 5 feet for chimneys, flues and similar structures, for a maximum height calculation from finished grade with no average height requirement. The maximum height is measured from the lowest finished grade to the top of any structure.
- 3) The applicant must demonstrated the associated parking requirements are met consistent with the 161CR and Ridge Settlement Agreement when a Class 3 design review application is submitted to the Town.
- 4) The applicant must submit a condominium map amendment for the relocation of the building site prior to issuance of a certificate of occupancy

This motion is based upon evidence and testimony provided at a public hearing on December 16, 2021.

Proposed Denial Motion

Design Review Board Proposed Motion:

[I move to recommend denial to the Town Council regarding]

Town Council Proposed Motion:

[I move to deny] a resolution for] a Variance for Unit 12, Lot 161A-4, The Ridge at Telluride, a Planned Community, to CDC Section 17.5.16.B.4. to vary the Coonskin View Plane exhibit requirements affecting Unit 12, to allow for a detached condominium (a singular residence) building up to 35 feet (plus 5 feet to allow for chimneys, flues, vents

and similar structures), pursuant to CDC Section 17.4.16, Variance Process with the following findings:

1. The Variance application does substantially comply with the Variance Process criteria specific items [list which ones it may not meet here] of a-h listed above.

And conditions:

1. To direct staff to draft a denial resolution to be brought to Town Council at the next regulation meeting to be approved under the consent agenda.
2. Consistent with the Ridge Covenants, building height allows for a maximum height, per the Coonskin View Plane exhibit of 20 feet or 35 feet as illustrated on the provided exhibit. The maximum height calculation is from finished grade with no average height requirement. The maximum height is measured from the lowest finished grade to the top of any structure.

This motion is based upon evidence and testimony provided at a public hearing on December 16, 2021.

/mbh

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF MOUNTAIN VILLAGE,
MOUNTAIN VILLAGE, COLORADO
GRANTING A VARIANCE TO THE APPLICATION OF THE COONSKIN RIDGE
VIEW PLANE EXHIBIT TO UNIT 12, LOT 161A-4, THE RIDGE AT TELLURIDE, A
PLANNED UNIT COMMUNITY FOUND AT CDC SECTION 17.5.16.B.4**

Resolution No. 2021-__

Whereas, Jonathan H. And Tiffany L. Horton Living Trust is the owner of record of real property described as UNIT 12 THE RIDGE AT TELLURIDE A PLANNED COMMUNITY LOT 161A4 ACC TO PLAT REC 04 05 2004 BK 1 PG 3262 3265 AND ACC TO 6TH SUPPLEMENTAL AND AMENDED PLANNED COMMUNITY PLAT PHASES 1 THRU 7 REC 07 02 2010 PLAT BK 1 PG 4349 4353 AND 6TH SUPPLEMENT & AMENDMENT TO DECS AT 413135 A 5.55 PER INT IN UNIT 4 LOT 161A 1R BLDG LOT 161 D1 OPEN SPACE TRACTS ROS 1A 2C 4B 5A 6A 7A LOT 161A 4 OPEN SPACE TRACTS ROS 1B 2B 3A 4A AND LOT 161A R3 OPEN SPACE TRACT ROS 5B COMMON ELEMENTS, Town of Mountain Village; and

Whereas, these owners have requested a Variance to CDC Section 17.5.16.B.4 as the Coonskin Ridge View Plane Exhibit limits Unit 12, in its proposed location to 20 feet in building height for a majority of the building and 35 feet to a small portion of the building; and

Whereas, the applicants submitted a Class 4, Variance Process application;

Whereas, the Town determined that an application can be filed to consider a Variance to the specific CDC code section understanding that it does not amend the Town and County Settlement Agreement;

Whereas, the applicant also requested that the Variance application include an allowance for the building to be constructed up to 35 feet plus five (5) feet for chimneys, flues, vents and similar structures.

Whereas, the Design Review Board and Town Council considered this application jointly, along with evidence and testimony, at a special public meeting on December 16, 2021.

Now, Therefore, Be It Resolved that the Town Council hereby approves the Variance for Unit 12, Lot 161A-4, The Ridge at Telluride, A Planned Unit Community, and authorizes the Mayor to sign the Resolution subject to the following findings and conditions:

- 1) The application meets the Variance criteria found at CDC Section 17.4.16.D.1 a-h
- 2) The applicant demonstrated that the proposed development [request] substantially comply with the variance review criteria pursuant to CDC Section 17.4.16.D.2
- 3) The Variance is based upon the specific relocated building envelope represented in this application which location for Lot 12 and will not further be relocated.

And the following conditions:

- 1) The Variance application allows for a building up to 35 feet plus 5 feet for chimneys, flues, vents and similar structures but otherwise subject to the design and heights approved by the Design Review Board when applying the regulations of the CDC, inclusive of design regulations.
- 2) Consistent with the Ridge Covenants, building height allows for a maximum height, per the applicant's request, of 35 feet plus 5 feet for chimneys, flues and similar structures, for a maximum height calculation from finished grade with no average height requirement. The maximum height is measured from the lowest finished grade to the top of any structure.
- 3) The applicant must demonstrate the associated parking requirements are met consistent with the 161CR and Ridge Settlement Agreement when a Class 3 design review application is submitted to the Town.
- 4) The applicant must submit a condominium map amendment for the relocation of the building site prior to issuance of a certificate of occupancy

Be It Further Resolved that Unit 12, Lot 161A-4, The Ridge at Telluride, A Planned Community may be developed as submitted in accordance with Resolution NO. 2021-__-__.

Approved by the Town Council at a public meeting December 16, 2021.

Town of Mountain Village, Town Council

By: _____
Laila Benitez, Mayor

Attest:

By: _____
Susan Johnston, Town Clerk

Approved as to Form:

Paul Wisor, Town Attorney



PLANNING DEPARTMENT

KAYE SIMONSON, PLANNING DIRECTOR

November 16, 2021

Michelle Haynes, Planning and Development Services Director
Town of Mountain Village
By email: JohnMiller@mtnvillage.org

Dear John,

San Miguel County staff has reviewed the request for a height variance for Unit 12 located at Lot 161AR4, which is subject to the County Settlement Agreement and Ridgeline Covenant. Additionally, we attended a site walk at the road in front of Eider Creek Condominiums on Wednesday, January 6 where we verified that the illuminated story poles depicting the height of the proposed structure were not visible from any area specified within the Settlement Agreement. John Horn further provided profile drawings to us showing the structure would not be visible from additional points in the Hillside area. Therefore, San Miguel County has no objections to the proposed height variance. If you have any questions, please let me know.

Sincerely,

Kaye Simonson, AICP
Planning Director

cc: Amy Markwell, County Attorney
John Horn



OFFICE OF THE COUNTY ATTORNEY

December 6, 2021

Michelle Haynes
Planning and Development Services Director
Town of Mountain Village
via email: mhaynes@mtnvillage.org

RE: The Ridge, Unit 12 - View Plane Variance Request

Dear Michelle,

Thanks to you and your team for being so diligent in including San Miguel County in communications regarding the height variance application for Unit 12, the Ridge.

Kaye Simonson and I attended the first site walk and viewing of story poles with lights as erected by the Applicant back in January 2021. We were also contacted by Mr. Horn several weeks ago and provided with updated profile drawings from different locations along Pilot Knob Lane. Finally, I attended a second site viewing of story poles with lights erected on November 29, 2021.

Based on the presented visual and written data and assertions from the Applicant, I concur with Ms. Simonson's letter dated November 16, 2021 indicating that San Miguel County has no objections to the proposed view plane variance. San Miguel County withholds the right to seek enforcement of the Settlement Agreement should the actual construction of the residence result in lighting being visible from the view plane in violation of the Ridgeline Covenant.

Sincerely yours,

Amy Markwell
Amy T. Markwell
San Miguel County Attorney

cc: Kaye Simonson, San Miguel County Planning Director
Ron Quarles, Town of Telluride Planning and Building Director
John Horn, Attorney for Applicant

From: [Phil Taylor](#)
To: [Michelle Haynes](#)
Subject: RE: Variance to the Coonskin View Plane Exhibit for Unit 12 Referral to the County and Town of Telluride
Date: Wednesday, December 1, 2021 9:55:05 AM

Good Afternoon Michelle,

Thank you for the opportunity to review this variance application. I apologize that my comments were delayed.

The Town of Telluride reviewed this application for a variance to Section 17.5.16B.4 and do not have any comments. The applicant has stated that the proposed development will not be visible from any point on the Valley Floor. If this is an accurate statement, the Town of Telluride does not object to this variance application. If any portion of this proposed project will be visible from the Valley Floor, the Town of Telluride would not support this Variance application.

Please consider this email as referral comments to the Variance application submitted by Mr. Horn for unit 12, the Ridge at Telluride.

If you have any questions or need more information, please let me know.

Thank you very much,

Phil Taylor, AICP
 Senior Planner
 Planning and Building Department
 (970) 728-2170



From: Ron Quarles <rquarles@telluride-co.gov>
Sent: Tuesday, November 23, 2021 8:00 AM
To: Phil Taylor <ptaylor@telluride-co.gov>
Subject: FW: Variance to the Coonskin View Plane Exhibit for Unit 12 Referral to the County and Town of Telluride

Hi Phil. Can you review this and let me know if there are any concerns. I missed this one.

From: Michelle Haynes <MHaynes@mtnvillage.org>
Sent: Friday, October 29, 2021 3:39 PM
To: Kaye Simonson <kayes@sanmiguelcountyco.gov>; Ron Quarles <rquarles@telluride-co.gov>
Cc: Kevin Geiger <KGeiger@telluride-co.gov>; Amy Markwell <amym@sanmiguelcountyco.gov>

Paul Wisor <pwisor@mtnvillage.org>

Subject: FW: Variance to the Coonskin View Plane Exhibit for Unit 12 Referral to the County and Town of Telluride

Dear Kaye and Ron:

Good afternoon. I am resending this as this is the referral, the prior email mentioned draft.

You will find an application from Mr. John Horn requesting a Variance to Section 17.5.16B.4 of the Community Development Code, specifically a request to vary the Coonskin View Plane exhibit requirements affecting unit 12, the Ridge at Telluride, to allow for a detached condominium (a singular residence) building up to 35' (plus 5 feet to allow for chimneys, flues, vents and similar structures, located on Lot 161-A4. The application is found at the following [link](#). The view plane restriction otherwise limits the height of a portion of the building to 20' up to a maximum of 35'.

The town had a worksession on January 13, 2021 and sent referrals at that time. Story poles and lights were erected as part of the worksession and the town boards as well as county staff participated in the story pole and light site walk/s. A link to the former application is found [here](#) if it is needed for reference.

The public hearing date is scheduled for **December 16, 2021. The meeting will begin at 3:00 pm** with this items approximate start time at 4:00 pm.

If you could please provide your referral comments to mhaynes@mtnvillage.org by **November 19th, 2021**. If you need additional time to comment, please communicate directly via email and I am happy to accommodate you. Our packet deadline is **December 9, 2021** for inclusion in the packet.

Story Poles and lights are required as part of this application. They will be erected and lit up on **November 29 and 30th from 5:00 pm to 8:00 pm**. Specific materials will be provided as part of the viewing as we get closer to that date. I can also receive any additional comments up until the public hearing.

To be clear, the applicants request a Variance to the specific Coonskin View Plane reference and requirement in the CDC. This is not a Variance to the settlement agreement.

Please feel free to reach out to me or our interim town manager/town attorney, Paul Wisor at pwisor@mtnvillage.org with any questions.

Thanks so much and have a good weekend,

[Michelle Haynes](#), MPA
Planning and Development Services Director
Housing Director

Town of Mountain Village

[455 Mountain Village Blvd. Suite A](#)

O :: [970.239.4061](tel:970.239.4061)

M :: [970.417.6976](tel:970.417.6976)

[LinkedIn](#) | [Email Signup](#) | [Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#)

Exhibit VH-22
TMVOA Email of Support

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

From: Anton Benitez <anton@tmvoa.org>

To: Jon Horton <hortonjonh@aol.com>

Sent: Thu, Dec 2, 2021 12:37 pm

Subject: Horton unit 12

Dear Jon,

It is TMVO's understanding that you and Tiffany are planning on submitting an application to the Town of Mountain Village for a variance from the view plane restrictions to allow the construction of your home on Unit 12 to a height of 35', plus 5 feet to allow for chimneys, flues, vents or similar structures. The substance of the request is set forth in Exhibits VH-5, VH-7, VH-12 and VH-19. Please be advised that TMVOA does not oppose your variance request and wish you the best of luck in your request for variance.

Anton Benitez
President and CEO of TMVOA
Unit 11, The Ridge"

328113
PLAT
TOWN OF MOUNTAIN VILLAGE
TO
COONSKIN VIEW PLANE

STATE OF COLORADO
COUNTY OF SAN MIGUEL
FILED FOR RECORD AT 1:59 P.M. JULY 26, 1999
AND DAY RECORDED IN
BOOK PL-1 PAGE 2601-2602
BY GAY CAPPS
RECEIVED
BY Rebecca N. Johnson
DATE 7-26-99

SW 1/4
NW 1/4
Section 2

NW 1/4
SW 1/4
Section 2

NE 1/4
SW 1/4
Section 2

U.S.F.S. Boundary

Tract OS161-R3
1.275 Acres

Lot 161A-4
7.469 Acres

Lot 161A-2
1.432 Acres

Lot 161A-3
0.873 Acres

SE 1/4
NW 1/4
Section 2

Lot 161A-1R
0.441 Acres

Tract OSP-49R

Tract OS161-R1
0.221 Acres

Lot 161D-2
0.988 Acres

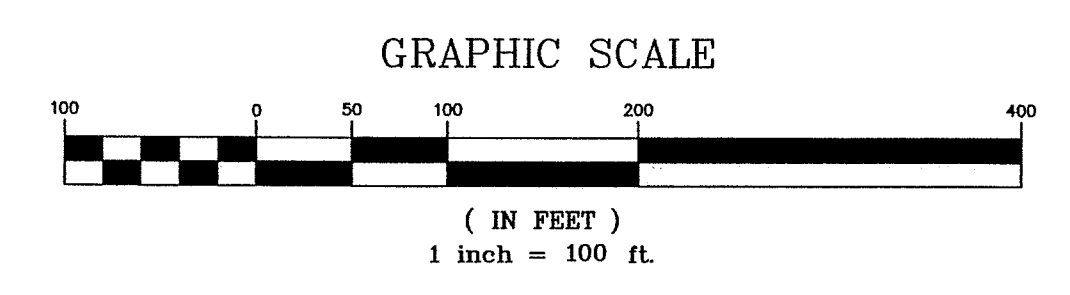
Tract OS161-R2
0.457 Acres

Lot 161D-1
6.264 Acres

Centerline Gondola Easement
(Book 485 Page 1007)
GONDOLA

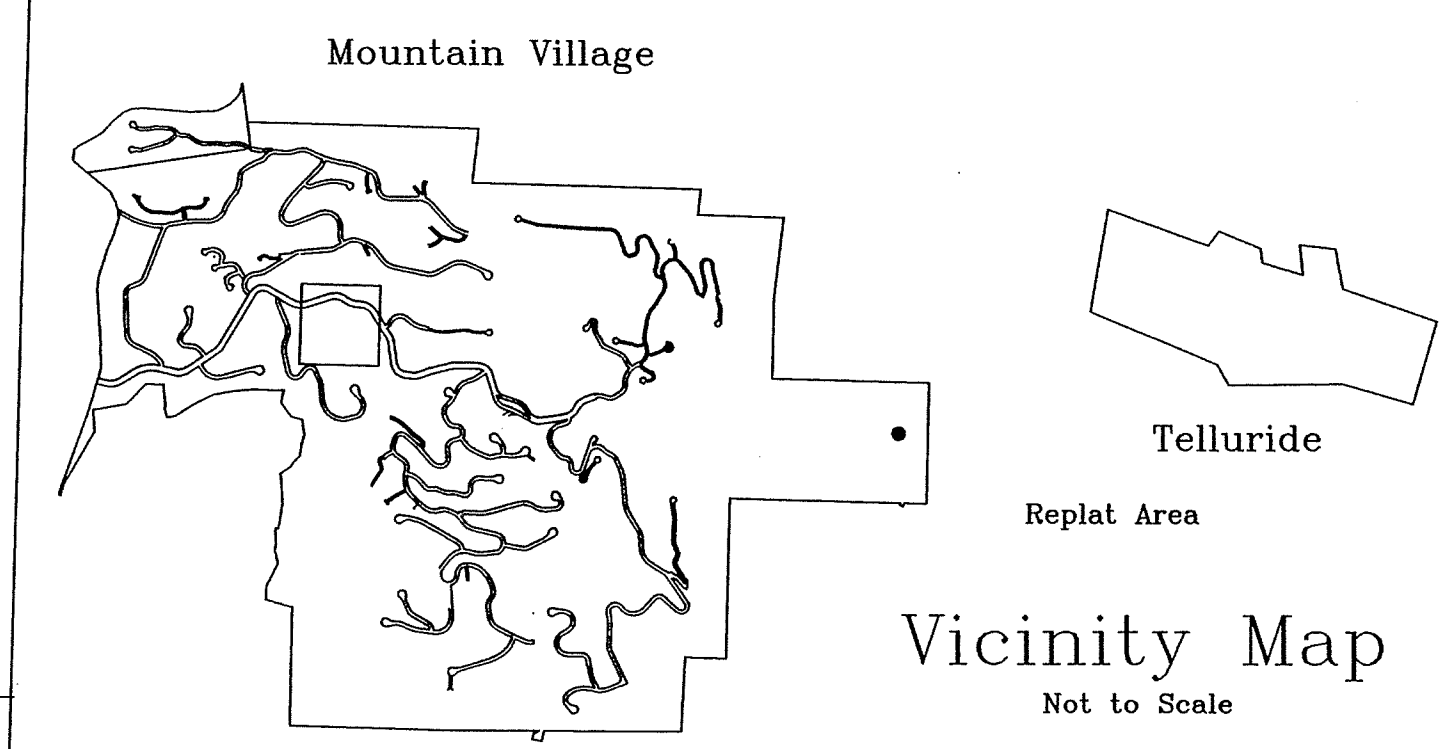
SKI RUN

- Golding View Plane
- Pandora View Plane
- Tombay View Plane
- Coronet Creek View Plane



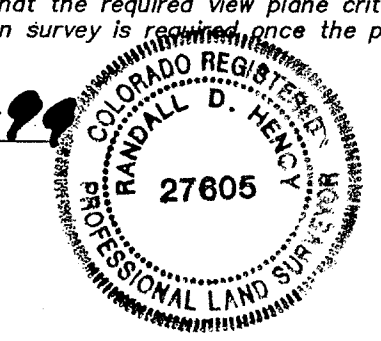
Legend:

- New Lot line
- Vacated Lot lines
- Found No. 5 Rebar with 1 1/2" Aluminum Cap marked 27605
- Found No. 5 Rebar with 1 1/2" Aluminum Cap marked Banner Inc., 20632
- Set No. 5 Rebar with 1 1/2" Aluminum Cap marked Alan Jacobsen, 28652



I do hereby certify that this Coonskin View Plane was verified by me on the 22nd day of July, 1999 in accordance with the requirements of Section 5, Item 4, First Amended Development Covenant for Lots 161A, 161A-1, 161B, 161D and Adjacent Active Open Space, Town of Mountain Village, Colorado, more particularly described as shown on the accompanying map, and that to the best of my knowledge and belief, this map of the Coonskin View Plane approximately shows the correct locations of the height restriction lines. To ensure that the required view plane criteria is met and before any construction can begin, a field verification survey is required once the proposed building sites have been determined.

Randall D. Hency 7-22-99
Randall D. Hency Date
Colorado Professional Surveyor
PLS #27605



Recorders Certificate

This View Plane was filed for record in the office at the County Clerk and Recorder of San Miguel County on the 26th day of July, A.D. 1999.

Book No: PL-1
Page No: 2601-2602
Reception: 7/26/99
Time: 1:59 PM
Gay Capps
County Clerk

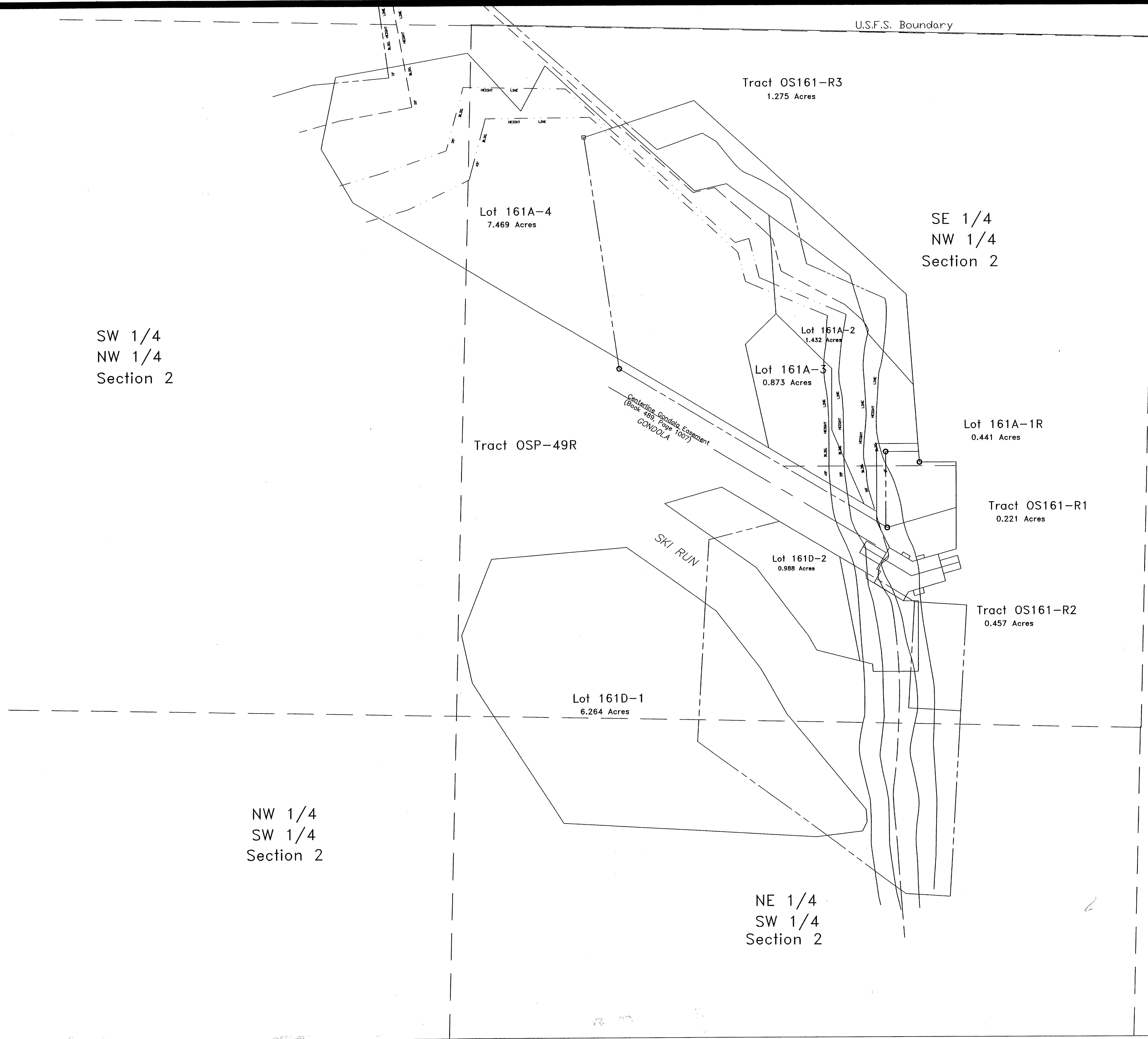
PAGE 2601

COONSKIN VIEW PLANE

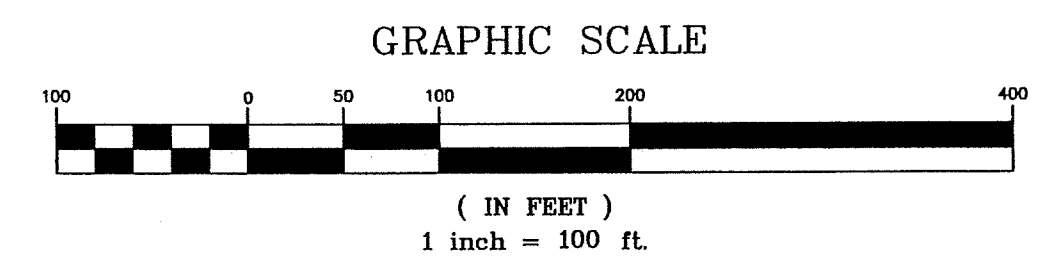
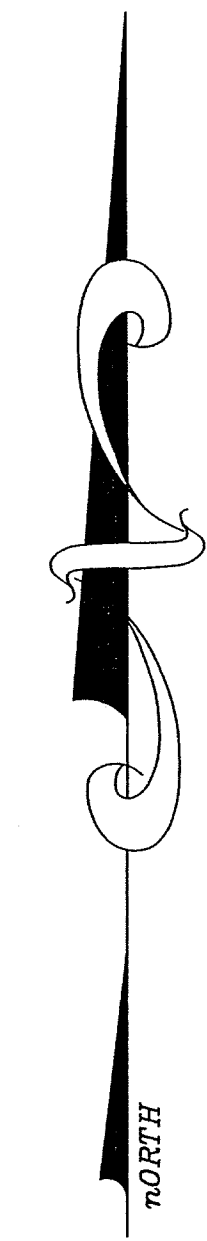
Prepared by:
Kari Distefano
Verified By:
PROFESSIONAL CONSULTANTS INC.

For:
John J. Horn
For:
Town of Mountain Village

date	7-21-1999
job number	vplane2.dwg
drawn by	KLD
checked by	RDH
sheet number	1 of 2 CM-4

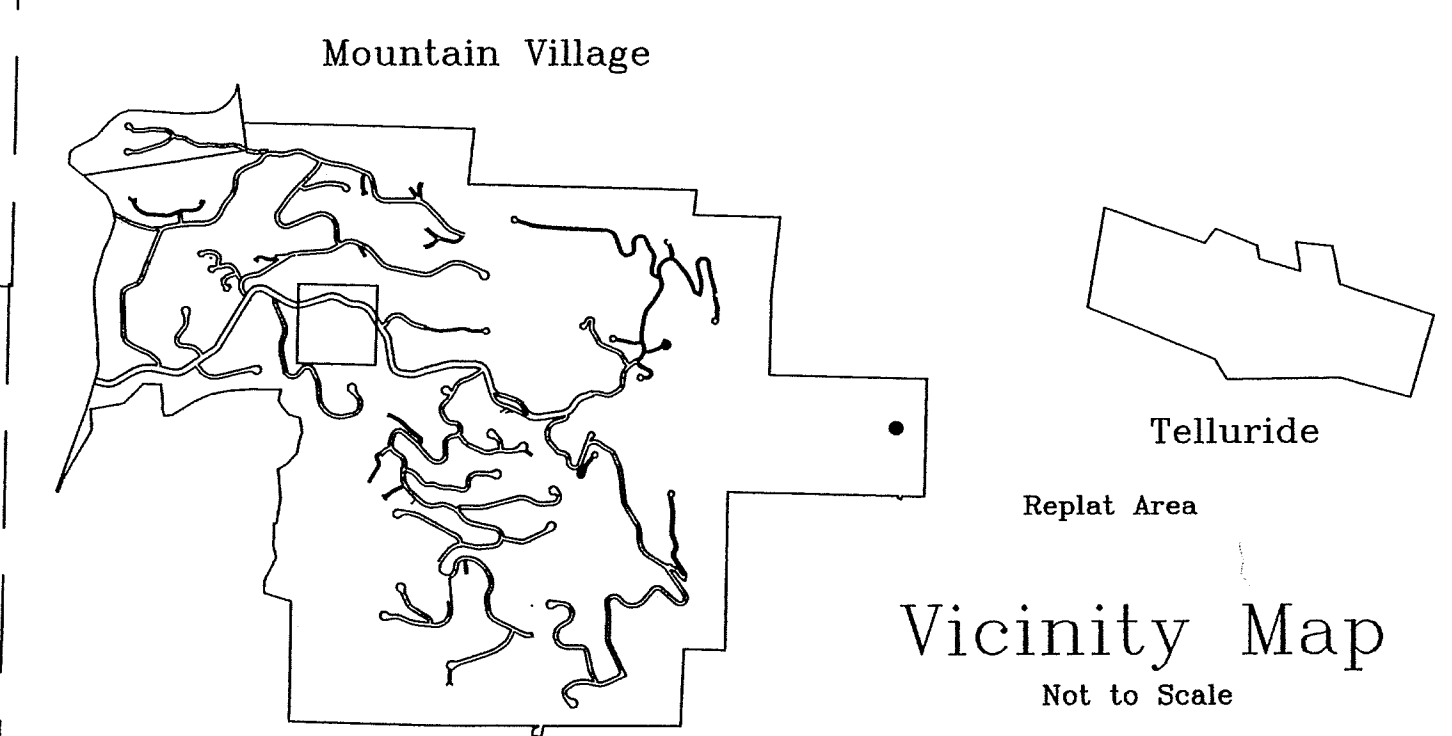


- 10' Building
- 25' Building
- 35' Building
- 45' Building



Legend:

- New Lot line
- Vacated Lot lines
- Found No. 5 Rebar with 1 1/2" Aluminum Cap marked 27605
- Found No. 5 Rebar with 1 1/2" Aluminum Cap marked Banner Inc., 20632
- Set No. 5 Rebar with 1 1/2" Aluminum Cap marked Alan Jacobsen, 28652



COONSKIN VIEW PLANE

Prepared by:
 Kari Distefano
 Verified By:
 PROFESSIONAL CONSULTANTS INC.

For:
 John J. Horn
 For:
 Town of Mountain Village

date	7-21-1999
job number	vplane3.dwg
drawn by	KLD
checked by	RDH
sheet number	2 of 2 CM-4

PAGE 2602

(relevant sections pursuant to the Variance are bold and italic)

B. The following requirements apply to the ridge area as defined in section A.1 above:

1. All improvements are subject to a ridgeline covenant with San Miguel County as recorded at reception number 329093. The Town does not enforce the ridgeline covenant, with enforcement solely administered by San Miguel County.
2. The building height on Lot 161A-1R shall not exceed 35 feet (35') along the ridgeline of such building.
3. Building height on other ridge area lots shall not exceed the lesser of:
 - a. The height of forty-five feet (45'); or
 - b. ***The maximum height allowed to the view plane limitation set forth in section 4 below.***
4. ***Except for the existing building on Lot 161A-1R and gondola facilities, the development of ridgeline area lots shall be designed to ensure that no lighting or any part of any building or structure extends into the view plane as shown on the Coonskin View Plane drawing recorded at reception number 328113.***
5. New development in the ridgeline area, excluding the existing building on Lot 161A-1R and gondola facilities, shall require (a) the erection of a story pole to reflect the maximum height of the proposed development where such development will extend closest to the view plane as described in section 4 above; and (b) the installation of a light to illuminate the story pole where off-site light would be visible from the highest window. The applicant for development shall provide written notice of the story pole erection to San Miguel County and the Town of Telluride.
6. To the extent practical, no exterior lights shall be installed on the east side of buildings. Any required exterior lighting shall be shielded, recessed, or reflected so that no lighting is oriented towards the east side of the building.
7. No solid fuel burning device shall be allowed in the building on Lot 161A-1R.
8. For all new development, or substantial modifications to existing development, a courtesy referral shall be provided to San Miguel County and the Town of Telluride consistent with the Referral and Review Process outlined in the Development Review Procedures. The Town is not bound by any referral comments from either jurisdiction

Exhibit 5. Town and County Settlement relevant excerpts

10. **Referral to County.** All applications to the Town Design Review Board Administrator for any construction on Lots 161A, 161A-1, 161B, 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2) and adjacent Active Open Space (or, subsequent to the Replat, Tracts OS161-R1, OS161R-2, OS161R-3 and OS 49), except initial building permit applications, shall be referred by said Administrator, within seven days of receipt, to the County Planning Office for review. Notwithstanding the foregoing, the Town's approval of such applications will not be subject to County land use review or approval. However, the Town's approval of such applications shall not establish compliance with this Ridgeline Covenant for purposes of enforcement by the County.
11. **Enforcement by the County.** In the event the Town considers any development application which the County believes violates this Ridgeline Covenant, the County shall have the right to initiate legal action at its sole cost and expense to enforce this Ridgeline Covenant against the applicant and/or any other parties with a legal interest in the property. Applicants will be given notice by the Town that the Ridgeline Properties are subject to this Ridgeline Covenant and that it may be enforced by the County through direct court proceedings against them. Any action taken by the County related to the
5. **View Plane Limitations for Development on Lots 161A, 161A-1, 161B, and 161D.** Development on Lots 161A, 161A-1, 161B and 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2), excluding the Ridge Club Building, shall be located such that, under no circumstances, shall any lighting or any part of any structure extend into the view plane (the "View Plane") shown on the **Coonskin** View Plane drawing prepared by Jacobsen Associates and dated July 21, 1999, as recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 2601. Replace with
6. **View Plane Limitation Review.** Prior to the Town's issuance of any development approvals and/or building permits for any improvements to be located on Lots 161A, 161A-1, 161B, 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2), excluding the Ridge Club Building, the applicant shall erect a story pole which reflects the maximum height of the proposed improvements at the point where the proposed improvements will extend closest to the View Plane to confirm that the improvements will comply with all conditions set forth herein. The applicant shall give written notice to the Town and the County at the time the story pole is erected. Contemporaneously with the erection of the story pole, a light shall be installed that illuminates the story pole at the elevation on the pole where light would be visible from off-site at the height of the highest window in the proposed improvements.

Exhibit E. Town and County Settlement relevant excerpts

development application must be brought within 60 days after final plan approval by the Town Design Review Board, provided the development application has been referred to the County in accordance with paragraph 10 above. Any County legal action for possible violations of this covenant regarding future amendments or modifications to a final plan approval shall be limited to such future amendments' or modifications' possible violation of this covenant.

In the event an improvement is constructed which the County believes violates this Ridgeline Covenant, the County shall have the right to initiate legal action at their sole cost and expense to enforce this Ridgeline Covenant against the owner of the improvement. Any action taken by the County related to a constructed improvement shall be brought within one year after the date of issuance of a temporary or permanent certificate of occupancy for the improvement.

Acknowledgments. The County hereby acknowledges that approval of development upon Ridgeline Properties is subject only to the Town's Land Use Ordinance and the provisions of this Ridgeline Covenant. Notwithstanding the foregoing, the Town hereby acknowledges the County's rights to privately enforce this Ridgeline Covenant, as set forth in paragraph 11 hereof.

Exhibit VH-5
Narrative For Variance

1 To: Town Council and Design Review Board
 2 Town of Mountain Village
 3 From: John Horn, Real Estate Consultant
 4 Agent for Jonathan H. And Tiffany L. Horton Living Trust
 5 Date: October 22, 2021
 6 Re: Unit 12, The Ridge – Variance Request
 7 -Narrative
 8

9 1. A substantial amount of time, effort, resources and money are required to prepare and submit a
 10 complete application for design review of a single-family home in the Town of Mountain Village. One of
 11 the most fundamental elements of the design of any home is its height; if a home is designed based on
 12 the assumption that the allowed height is 35 feet, but it is later determined that the allowed height is
 13 only 20 feet, then almost all of the time, effort, resources and money invested in the 35-foot design will
 14 be wasted and lost. Consequently, if there is a question as to what height will be allowed, then it is the
 15 best interest of everyone involved, including both the property owner and the interested governments,
 16 to obtain an answer to that question before extensive design efforts start. The design of any home on
 17 either Unit 12, The Ridge or the proposed new lot location labeled “Proposed Lot” on Exhibit VH-7
 18 (“Proposed Lot”) face this height question.
 19

20 The purpose of this application is to request a variance (“View Plane Variance”) from Section 17.5.16.B.4
 21 (attached as Exhibit VH-14) to allow the structure on the Proposed Lot to be built to a height of 35 feet,
 22 plus 5 feet to allow for chimneys, flues, vents or similar structures which would extend into the view
 23 plane established by the Coonskin View Plane drawing recorded at reception number 328113 (attached
 24 as Exhibit VH-11). Section 17.5.16.B.4 states:
 25

26 *“4. Except for the existing building on Lot 161A-1R and gondola facilities, the development of*
 27 *ridgeline area lots shall be designed to **ensure that no lighting or any part of any building or***
 28 ***structure extends into the view plane** as shown on the Coonskin View Plane drawing recorded at*
 29 *reception number 328113.”*
 30

31 2. Please consider the following background information regarding the View Plane Variance:
 32

33 2.1 Paragraph 5.i of the Development Covenant for Lot 161A, 161B and 161D and Adjacent
 34 Active Open Space, Mountain Village Planned Unit Development (“**Old Covenant**”), recorded at
 35 Book 504 at page 737, Reception # 282311, copy attached as Exhibit VH-9, states:
 36

(5) View Plane Establishment and Protection. Limitation of
 development on the remainder of Lot 161A (excluding the
 southern 80 ft.), and all of Lots 161B and 161D, such
 that under no circumstances may any lighting or part of
 any structure on Lots 161B, or 161D, or the remaining
 portion of Lot 161A, **be visible from** or extend into the
 following described view plane to be established by
 survey:

- (i) Gold King to Town. Any point:
 (a) east of the western boundary line of
 Telwest/Gold King Condominiums, or
 (b) west of the western boundary, extended
 northerly, of the existing Town of Telluride
 located at or below the elevation of **8,800 feet**
above sea level, or

Exhibit VH-5
Narrative For Variance

38 2.2 As shown by the language highlighted in green immediately above in paragraph 5 of the Old
39 Covenant, the sole purpose and intent of the paragraph 5.i view plane was to protect the views
40 from the San Miguel River Valley to ensure that no future structure built on Lot 161A, or light
41 emitted from the structure, could be seen from any point on the San Miguel River Valley lying
42 “east of the western boundary line of the Telwest/Goldking Condominiums” and “west of the
43 western boundary” of the Town of Telluride at any elevation “located at or below 8,800 feet
44 above sea level”. Consequently, if a future structure and light emitted from the structure cannot
45 be seen from any of those points then it meets the purpose and intent of paragraph 5.i. It was
46 not the intent of paragraph 5.i to apply a mechanical and perfunctory height limit via an
47 approximate view plane that did not accomplish the purpose of protecting the views from the
48 locations in the San Miguel River Valley identified in paragraph 5.i.

49
50 2.3 Subsequently, the Old Covenant was replaced in its entirety pursuant to paragraph 1 of the
51 First Amended and Restated Development Covenant for Lot 161A, 161B and 161D and Adjacent
52 Active Open Space, Town of Mountain Village, Colorado (“**Current Covenant**”), recorded starting
53 on page 12 of the document recorded at Reception # 329093, (attached as Exhibit VH-10).
54 Paragraph 1 of the Current Covenant states:
55

NOW, THEREFORE, the parties covenant and agree as follows:

1. Replacement and Consent. The provisions of this Ridgeline Covenant supersede and replace the Development Covenant and Resolution 1993-6 in their entirety, except that as to each of the Deeds of Trust described in Recital E hereto and any modifications or extensions thereof, the parties agree that the Development Covenant and Resolution 1993-6 shall remain and continue to be a senior covenant and encumbrance upon the Ridgeline Properties until the earlier of such time as the liens of all such Deeds of Trust, and any modifications or extensions thereof are released or extinguished, or such time as all of the beneficiaries of such Deeds of Trust have recorded in the office of the Clerk and Recorder for San Miguel County consents to this Ridgeline Covenant which subordinate the liens of such Deeds of Trust to this Ridgeline Covenant. Any person acquiring title to any of the Ridgeline Properties through foreclosure of any of the Deeds of Trust described in Recital E hereto, or through any conveyance in lieu of such foreclosure, shall take title to such Ridgeline Properties subject the covenants, conditions, restrictions and provisions of the Development Covenant and Resolution 1993-6 unless the consents contemplated by this paragraph have been duly recorded, in which event the person acquiring title to the Ridgeline Properties shall take title subject to the covenants, conditions, restrictions and provisions of this Ridgeline Covenant.

57
58 2.4 At the time the Old Covenant was approved, the paragraph 5.i view plane did not exist and,
59 instead, paragraph 5.i provided that the “view plane [was] to be established by survey”. As
60 shown below in paragraph 5 of the Current Covenant, the view plane survey (“Jacobsen View
61 Plane Survey”) was overseen by the surveying company of Jacobsen Associates and was
62 recorded at Plat Book 1 at page 2601, Reception #328113, copy attached as Exhibit VH-11.
63

Exhibit VH-5
Narrative For Variance

5. **View Plane Limitations for Development on Lots 161A, 161A-1, 161B, and 161D.** Development on Lots 161A, 161A-1, 161B and 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2), excluding the Ridge Club Building, shall be located such that, **under no circumstances, shall any lighting or any part of any structure extend into the view plane (the "View Plane") shown on the Coonskin View Plane drawing prepared by Jacobsen Associates and dated July 21, 1999, as recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 2601.**

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2.5 On December 8, 2020, in a telephone conversation with Randall Hency, the surveyor who prepared and signed the Jacobsen View Plane Survey, and confirmed in an October 18, 2021 letter from Mr. Hency (see Exhibit VH-8), Mr. Hency stated the following:

2.5.1 The survey was based solely on third-party topographic surveys, likely USGS quad mapping that could be off by as much as 10 to 20 feet.

2.5.2 No actual field work or verification was done using any type of survey equipment.

2.5.3 Because the survey was based solely on third-party topographic surveys, Mr. Hency and the other surveying professionals involved in the preparation of the Jacobsen View Plane Survey discussed and acknowledged that the Jacobsen View Plane Survey would not be accurate and would only be approximate.

2.5.4 Because Mr. Hency recognized that the techniques and resources used to produce the Jacobsen View Plane Survey would not produce completely accurate results, he included the following qualification on page 1 of the Jacobsen View Plane Survey:

*I do hereby certify that this Coonskin View Plane was verified by me on the 22nd day of July, 1999 in accordance with the requirements of Recital F, Item 4, First Amended Development Covenant for Lots 161A, 161A1, 161B, 161D and Adjacent Active Open Space, Town of Mountain Village, Colorado, more particularly described as shown on the accompanying map, and that **to the best of my knowledge and belief; this map of the Coonskin View Plane approximately shows the correct locations of the height restriction lines. To ensure that the required view plane criteria is met and before any construction can begin, a field verification survey is required once the proposed building sites have been determined.***

Randall D. Hency
Randall D. Hency
Colorado Professional Surveyor
PLS #27605

7-22-99
Date



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2.5.1 As highlighted in blue, Mr. Hency noted that the survey only "**approximately shows the correct locations of the height restriction lines**" and, therefore, as highlighted in green, he directed that "**To ensure that the required view plane criteria is met and before any construction can begin, a field verification survey is required once the proposed building sites have been determined.**"

2.6 Pursuant to Mr. Hency's direction, Jon and Tiffany Horton engaged Christopher R. Kennedy of San Juan Surveying to prepare a field verification survey to "*ensure that the required view*

Exhibit VH-5
Narrative For Variance

94 *plane criteria is met*”; a copy of Mr. Kennedy’s field verification survey is attached as Exhibit VH-
95 12. Based on the information set forth in the Exhibit VH-12 field verification survey, Mr.
96 Kennedy prepared an affidavit (Exhibit VH-13) in which he offers the following conclusions:

97
98 “3. I offer you the following opinions:

99
100 3.1 With regard to the view plane survey (“Jacobsen View Plane
101 Survey”) prepared by the surveying company of Jacobsen Associates,
102 recorded at Plat Book 1 at page 2601 (Reception #328113) (Exhibit VH-
103 11), as it relates to the Proposed Lot, please note the following:

104
105 3.1.1 Using actual ground shots, San Juan Surveying field
106 gathered the survey data the following five locations:

107
108 3.1.1.1

109 a. The concrete “x” joint in the driveway at the
110 Eider Creek Condominiums (aka
111 Telwest/Goldking Condominiums).

112
113 b. Four locations in the Hillside Subdivision
114 shown in Exhibit VH-19.

115
116 3.1.1.2 The story pole referred to as Story Pole #2 is
117 shown in Exhibit VH-6.

118
119 3.1.1.3 The site lines from the five locations are shown
120 on Exhibit VH-3.

121
122 3.2 The view lines shown in Exhibit VH-12 were created using the points
123 identified in paragraphs 3.1.1.1 and 3.1.1.2 and they arrive at the points
124 shown in Columns C and D of Table 1 below that are located directly
125 above Story Pole #2. **The result is that the top of the 35-foot Story Pole**
126 **#2 cannot be seen from any of the Five View Locations because it is**
127 **obstructed by the ground surface of the Coonskin Ridge.**
128

129 Table 1

Column A	Column B	Column C	Column D
View Location	Elevation View Location	Height of View Line <u>From View Location</u> Above Top of 35’ Story Pole #2	Height of View Line <u>From 8,800 View Point</u> Above Top of 35’ Story Pole #2
Eider Creek “x” Joint	8689’	60’	43’
Hillside #1	8724’	61’	44’
Hillside #2	8718’	60’	44’
Hillside #3	8767’	65’	44’
Hillside #4	8798’	67’	55’

130

Exhibit VH-5
Narrative For Variance

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3.3 Based on the facts set forth in Table 1, it is my opinion that the following are accurate facts:

3.3.1 Any building built on the Proposed Lot will not be visible from any of the Five View Locations if it is **less than 95 feet tall**.

3.3.2 Any building built on the Proposed Lot will not be visible from the point that is 8,800 feet above sea level located directly above any of the Five View Locations if it is **less than 78 feet tall**.

3.3.3 Because no point of any portion of Horton's proposed home will exceed a height of 35 feet, plus 5 feet to allow for chimneys, flues, vents or similar structures, it cannot be seen from any of these points.

3.4 These three significant and indisputable facts lead to one significant and indisputable conclusion, any home built on the Proposed Lot will meet the sole purpose and intent of the view plane which is to protect the views from the San Miguel River Valley by ensuring that no future structure built on the Proposed Lot can be seen from any point on the San Miguel River Valley lying "*east of the western boundary line of the Telwest/Goldking Condominiums*" and "*west of the western boundary*" of the Town of Telluride at any elevation "*located at or below 8,800 feet above sea level.*"

2.7 Mr. Kennedy's affidavit establishes the following three significant and indisputable facts:

2.7.1 Any building built on the Proposed Lot will not be visible from any of the Five View Locations if it is **less than 95 feet tall (i.e., 60' + 35')**.

2.7.2 Any building built on the Proposed Lot will not be visible from the point that is 8,800 feet above sea level located directly above any of the Five View Locations if it is **less than 78 feet tall (i.e., 43' + 35')**.

2.7.3 Because no point of any portion of Horton's proposed home will exceed a height of 35 feet, plus 5 feet to allow for chimneys, flues, vents or similar structures, it cannot be seen from any of these points.

2.8 These three significant and indisputable facts lead to one significant and indisputable conclusion, any home built on the Proposed Lot will meet the sole purpose and intent of the view plane which is to protect the views from the San Miguel River Valley by ensuring that no future structure built on the Proposed Lot or light emanating from the structure can be seen from any point on the San Miguel River Valley lying "*east of the western boundary line of the Telwest/Goldking Condominiums*" and "*west of the western boundary*" of the Town of Telluride at any elevation "*located at or below 8,800 feet above sea level*".

Exhibit VH-5
Narrative For Variance

179 3. Now, let us apply these facts to the variance criteria set forth in Section 17.4.16 (attached as Exhibit
180 VH-15). In Table 1 below the left-hand column contains the text of Section 17.4.16 and the right-hand
181 column contains the discussion that applies the facts of this matter to the corresponding variance
182 provision.

183
184 Table 2

17.4.16 Variance Process	
<p>A. Purpose and Intent The purpose and intent of the variance process is to establish policies and procedure for granting a variance to the requirements of the CDC because the strict application of CDC requirements would cause exceptional and undue hardship on the development and use of lot due to special circumstances existing relative to the lot such as size, shape, topography or other extraordinary or exceptional physical conditions. Economic hardship alone is not sufficient justification for the granting of a variance. A variance is not required where a particular standard or provision of these regulations specifically allows for the review authority to grant administrative relief. It is the Town's intent that a variance be granted only under extraordinary circumstances.</p>	<p>1.1 Tiffany and Jon Horton are requesting a variance to the view plane provision of Section 17.5.16 of the CDC because the strict application of Section 17.5.16 would cause exceptional and undue hardship on the development and use of the Proposed Lot due to special circumstances existing relative to the topography and the actual real world impact the topography has on the visibility from the San Miguel River Valley of any structure built on the Proposed Lot or light emanating from the structure.</p> <p>1.2 The sole purpose and intent of the view plane is to protect the views from the San Miguel River Valley to ensure that no future structure built on Lot 161A or light emanating from the structure can be seen from any point on the San Miguel River Valley lying <i>“east of the western boundary line of the Telwest/Goldking Condominiums”</i> and <i>“west of the western boundary”</i> of the Town of Telluride at any elevation <i>“located at or below 8,800 feet above sea level”</i>.</p> <p>1.3 The surveyor who prepared the Jacobsen View Plane Survey, Randall Hency, recognized that the techniques used to create the view plane would not produce completely accurate results and, therefore he directed that <i>“To ensure that the required view plane criteria is met and before any construction can begin, a field verification survey is required once the proposed building sites have been determined.”</i> Based on this language, and Mr. Hency’s October 18, 2021 letter (Exhibit VH-8), it is an indisputable fact that the view plane is inaccurate and that inaccuracy constitutes a “special circumstance” as set forth in Section 17.4.16.A. Consequently, if indisputably accurate data is available, then the inaccurate content of the view plane must yield and give way to the indisputably accurate data. The survey data generated by San Juan Surveying</p>

Exhibit VH-5
Narrative For Variance

	<p>set forth in Exhibit HV-12 is indisputably accurate and, therefore, the inaccurate content of the view plane must yield and give way to the indisputably accurate data of Exhibit HV-12. Based on the indisputably accurate data of Exhibit HV-12 it is indisputable that no structure or light emanating from the structure can be seen from any of the Five View Locations or any other point on the San Miguel River Valley lying <i>“east of the western boundary line of the Telwest/Goldking Condominiums”</i> and <i>“west of the western boundary”</i> of the Town of Telluride at any elevation <i>“located at or below 8,800 feet above sea level”</i>.</p> <p>1.4 Pursuant to Mr. Hency’s direction, Mr. and Mrs. Horton engaged Christopher R. Kennedy of San Juan Surveying to prepare a field verification survey to <i>“ensure that the required view plane criteria is met”</i>; a copy of Mr. Kennedy’s field verification survey is set forth in Exhibit VH-12. Based on the information set forth in the Exhibit VH-12 field verification survey, three significant and indisputable facts were established:</p> <p>1.4.1 Any building built on the Proposed Lot will not be visible from any of the Five View Locations if it is less than 95 feet tall.</p> <p>1.4.2 Any building built on the Proposed Lot will not be visible from the point that is 8,800 feet above sea level located directly above any of the Five View Locations if it is less than 78 feet tall.</p> <p>1.4.3 Because no point of any portion of Horton’s proposed home will exceed a height of 35 feet, plus 5 feet to allow for chimneys, flues, vents or similar structures, it cannot be seen from any point on the San Miguel River Valley lying <i>“east of the western boundary line of the Telwest/Goldking Condominiums”</i> and <i>“west of the western boundary”</i> of the Town of Telluride at any elevation <i>“located at or below 8,800 feet above sea level”</i>.</p>
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Exhibit VH-5
Narrative For Variance

	<p>1.5 The three significant and indisputable facts lead to one significant and indisputable conclusion, any home built on the Proposed Lot will meet the sole purpose and intent of the view plane which is to protect the views from the San Miguel River Valley by ensuring that no future structure built on the Proposed Lot that is limited to a height of 35 feet or light emitted from the Proposed Lot can be seen from any point on the San Miguel River Valley lying <i>“east of the western boundary line of the Telwest/Goldking Condominiums”</i> and <i>“west of the western boundary”</i> of the Town of Telluride at any elevation <i>“located at or below 8,800 feet above sea level”</i>.</p> <p>1.6 If Mr. and Mrs. Horton are not granted relief from the approximate and erroneous limits established by this portion of the view plane, then the height of their home will be arbitrarily and unnecessarily reduced to 20 feet resulting in the loss of roughly one and a half floors or approximately 40% of the square footage of the home, and thereby dramatically and negatively impacting the functional design of their home.</p> <p>1.7 Economic hardship is not the basis for requesting this variance. The basis for the request is set forth immediately above in paragraph 1.6 of this Table 1.</p> <p>1.8 A variance is required because no particular standard or provision of the CDC specifically allows for a review authority to grant administrative relief.</p>
<p>B. Applicability The variance process is applicable to any owner or developer who seeks a variance to the requirements of the CDC because the strict application of the CDC requirements would cause a hardship due to extraordinary or special circumstance on a lot.</p>	<p>2.1 See items 1.1 through 1.8 above.</p> <p>2.2 The loss of roughly one and a half floors or approximately 40% of the square footage of the home would cause an unnecessary hardship as a result of the special circumstances described in paragraphs 1 through 1.6 above.</p>
<p>1. A variance is not applicable to the Building Codes requirements. Please refer to the Building Codes appeals process.</p>	<p>3.1 The request does not involve any Building Code requirements.</p>

Exhibit VH-5
Narrative For Variance

<p>C. Review Process Variance development applications shall be processed as class 4 applications.</p>	<p>4.1 Acknowledged.</p>
<p>D. Criteria for Decision 1. The following criteria shall be met for the review authority to approve a variance:</p>	<p>5.1 No response necessary.</p>
<p>a. The strict development application of the CDC regulations would result in exceptional and undue hardship upon the property owner in the development of property lot because of special circumstances applicable to the lot such as size, shape, topography or other extraordinary or exceptional physical conditions;</p>	<p>6.1 As shown on Exhibit VH-7, without the variance the height of the western edge of the home will be limited to approximately 20' and then the allowed height would slope upward and easterly to approximately 33' on the eastern edge. Because this is a footprint lot, the net effect of this height limitation is that the Horton's will lose roughly one and a half floors or approximately 40% of the square footage of the home. The loss of 40% of the square footage of a home is exceptional and undue when the reason for the loss is the enforcement of an inaccurate and erroneous view plane that serves no practical real-world purpose as it applies to this specific situation.</p> <p>6.2 The topography and, consequently, topographical relationship of the San Miguel River Valley to the ridgeline of Coonskin Ridge and the Proposed Lot create a special circumstance. The special circumstance is that as a result of the topographical relationship no future structure built on the Proposed Lot that is limited to a height of 35 feet or light emitted from the Proposed Lot can be seen from any point on the San Miguel River Valley lying "<i>east of the western boundary line of the Telwest/Goldking Condominiums</i>" and "<i>west of the western boundary</i>" of the Town of Telluride at any elevation "<i>located at or below 8,800 feet above sea level</i>".</p>
<p>b. The variance can be granted without substantial detriment to the public health, safety and welfare;</p>	<p>7.1 The sole purpose and intent of the view plane is to protect the views from the San Miguel River Valley to ensure that no future structure built on Lot 161A could be seen from any point on the San Miguel River Valley lying "<i>east of the western boundary line of the Telwest/Goldking Condominiums</i>" and "<i>west of the western boundary</i>" of the Town of Telluride at any elevation "<i>located at or below 8,800 feet above sea level</i>".</p>

Exhibit VH-5
Narrative For Variance

	<p>7.2 As discussed above, the three significant and indisputable facts shown in paragraph 2.7 lead to one significant and indisputable conclusion, any home built on the Proposed Lot or light emitted from the home cannot be seen from the San Miguel River Valley and, therefore, will meet the sole purpose and intent of the view plane.</p> <p>7.3 By fulfilling the sole purpose and intent of the view plane, the <i>“variance can be granted without substantial detriment to the public health, safety and welfare”</i>.</p>
<p>c. The variance can be granted without substantial impairment of the intent of the CDC;</p>	<p>8.1 The purpose and intent of the CDC are set forth in Section 17.1.3 (see attached Exhibit VH-16). Granting the variance is consistent with every one of the twelve purposes stated in Section 17.1.3 and, in fact, the purposes set forth in Section 17.13 support granting the variance.</p> <p>8.2 The intent of the view plane provisions of Section 17.5.16 is to protect the views from the San Miguel River Valley and, as explained above, granting the variance will protect the views from the San Miguel River Valley in the manner intended.</p> <p>8.3 By fulfilling the sole purpose and intent of the view plane, the <i>“variance can be granted without substantial impairment of the intent of the CDC”</i>.</p>
<p>d. Granting the variance does not constitute a grant of special privilege in excess of that enjoyed by other property owners in the same zoning district, such as without limitation, allowing for a larger home size or building height than those found in the same zone district;</p>	<p>9.1 Bad precedent is bad for everyone, on the other hand sound and well-reasoned precedent is something that should be embraced and approved. All lots in The Ridge development are subject to the view plane provisions of Section 17.5.16 and, therefore, to the extent any other lot experiences the same issue, the other lots should be entitled to similar variance relief by following a similar process.</p> <p>9.2 Granting the variance will not allow for a larger home size or building height than what is allowed elsewhere in The Ridge; instead, by granting the variance the Horton’s will simply be allowed to build a home whose size and building</p>

Exhibit VH-5
Narrative For Variance

	height are consistent with the other lots in The Ridge.
e. Reasonable use of the property is not otherwise available without granting of a variance, and the variance being granted is the minimum necessary to allow for reasonable use;	<p>10.1 Absent the Section 17.5.16 view plane limitation, the Multi-Family Zone District allows a maximum building height of 45 feet plus <i>“Chimneys, flues, vents or similar structures may extend up to five (5) feet above the specified maximum height excluding unscreened telecommunications antenna with the height of such structures set forth in the telecommunications antenna regulations.”</i> Reasonable use of the Proposed Lot would allow a structure up to 35 feet, plus 5 feet to allow for chimneys, flues, vents or similar structures, if it cannot be seen from the San Miguel River Valley. If the purpose and intent of the CDC are met, then it is reasonable to be allowed to not have to lose roughly one and a half floors or approximately 40% of the square footage of a home.</p> <p>10.2 A 35-foot height, plus 5 feet to allow for chimneys, flues, vents or similar structures, is the minimum necessary to allow for a three-story home.</p> <p>10.3 For the reasons stated in 10.1 and 10.2, <i>“Reasonable use of the property is not otherwise available without granting of a variance, and the variance being granted is the minimum necessary to allow for reasonable use”</i>.</p>
f. The lot for which the variance is being granted was not created in violation of Town regulations or Colorado State Statutes in effect at the time the lot was created;	11.1 If the variance is granted then the property owner will replat existing Unit 12 and relocate it to the Proposed Lot location in full compliance with all Town regulations or Colorado State Statutes in effect at that time.
g. The variance is not solely based on economic hardship alone; and	12.1 The variance is not solely based on economic hardship alone; see paragraphs 1.6 and 1.7 above in this Table 1.
h. The proposed variance meets all applicable Town regulations and standards unless a variance is sought for such regulations or standards.	13.1 The home will meet all other applicable Town regulations and standards and no other variances are necessary.

Exhibit VH-5
Narrative For Variance

<p>2. It shall be the burden of the applicant to demonstrate that submittal material and the proposed development substantially comply with the variance review criteria.</p>	<p>14.1 Hopefully the discussion set forth in this narrative and the accompanying exhibits demonstrate the proposed development substantially complies with the variance review criteria.</p>
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227

4. Several issues were raised by Council and DRB in the January 21, 2021 worksession, the purpose of this paragraph and paragraphs 5 through 11 is to address those issues.

4.1 As the recent presidential election and subsequent transition of power have shown, our fundamental systems of government rely on acceptance of indisputable facts and the rejection of incorrect information. Before getting into the items raised by Council and DRB, it seems critical to ensure that everyone is in agreement with the following indisputable facts:

4.1.1 The **sole purpose** of Section 17.5.16.B.4 is to protect the views from the San Miguel River Valley to ensure that no future structure built on Lot 161A can be seen from any point on the San Miguel River Valley lying “east of the western boundary line of the Telwest/Goldking Condominiums” and “west of the western boundary” of the Town of Telluride at any elevation “located at or below 8,800 feet above sea level”; Section 17.5.16.B.4 states:

“4. Except for the existing building on Lot 161A-1R and gondola facilities, the development of ridgeline area lots shall be designed to ensure that no lighting or any part of any building or structure extends into the view plane as shown on the Coonskin View Plane drawing recorded at reception number 328113.”

4.1.2 Issues such as mass and scale, how the home will be viewed from the gondola, how the home will be viewed from elsewhere in the Mountain Village, or what the effect the massing of the entire Ridge development will have once several of the homes have been built are, without question, valid issues that must be addressed at the proper time in a Class 3 Development Application. However, other provisions in the Community Development Code control these issues and, therefore, they must be addressed in those contexts; they are simply not relevant to a Section 17.5.16.B.4 view shed variance regarding the effect on views from the San Miguel River Valley. The mass and scale of the home or how it is perceived from the gondola will have no more bearing on whether or not the home can be seen from the Valley than the roofing material, percentage of stone and type of siding material proposed for the house. We are not requesting a variance from these other issues; they will and must be addressed in entirely separate discussions that will occur in a Class 3 Development Application. The only relevant question regarding a Section 17.5.16.B.4 view plane variance is whether the Coonskin ridgeline prevents the structure and its lights from being seen in the Valley east of the western boundary of Eider Creek Condominiums below 8,800 feet. Granting a Section 17.5.16.B.4 view plane variance will in no way limit the DRB’s ability to address and control these other issues in a Class 3 Development Application.

4.1.3 Height is one of the primary measurable factors contributing to the mass and scale of a building. Therefore, any evaluation of the mass and scale of a building must include a discussion of the height of the building. **Because height, mass and scale are so**

228 **interrelated, one of the primary purposes of conventional land use code height**
229 **limitation regulations is to control the mass and scale of a building.** Consequently,
230 when considering a variance from a conventional land use code height limitation
231 regulation, the effect of the height variance on the mass and scale of the building must
232 be considered. Accordingly, when considering a variance from a conventional land use
233 code height limitation regulation, it is necessary to provide sufficient design information
234 (e.g., mass and scale drawings, etc.) to determine the effect of the height variance on
235 the mass and scale of the building. The Town of Mountain Village has correctly
236 identified the interrelationship of height, mass and scale and, therefore, whenever a
237 variance from a conventional land use code height limitation regulation is requested,
238 the Town has required a concurrent design review Class 3 Development Application.

239
240 **Section 17.5.16.B.4 is a unique view shed regulation** and its view shed provisions do
241 not fall into the category of conventional land use code height limitation regulations
242 that are intended to control the mass and scale of the buildings on the Ridge. Instead,
243 **Section 17.5.16.B.4's singular purpose is to protect the views from the San Miguel**
244 **River Valley** to ensure that no future structure built on Lot 161A can be seen from any
245 point on the San Miguel River Valley lying "*east of the western boundary line of the*
246 *Telwest/Goldking Condominiums*" and "*west of the western boundary*" of the Town of
247 Telluride at any elevation "*located at or below 8,800 feet above sea level*".
248 Consequently, the singular and controlling issue regarding a Section 17.5.16.B.4 view
249 plane variance for Unit 12, The Ridge, is whether the Coonskin ridgeline prevents the
250 structure on Unit 12 and its lights from being seen from any point on the San Miguel
251 River Valley lying "*east of the western boundary line of the Telwest/Goldking*
252 *Condominiums*" and "*west of the western boundary*" of the Town of Telluride at any
253 elevation "*located at or below 8,800 feet above sea level*". Considerations of mass and
254 scale are irrelevant to the effect on the view shed, the mass and scale of the building are
255 no more relevant to the effect on the view shed than design review issues such as
256 roofing material, percentage of stone and type of siding material.

257
258 The view plane provisions of Section 17.5.16.B.4 are in no way intended to control or
259 influence the mass and scale of the buildings at the Ridge and, therefore, do not fall
260 within the category of a conventional land use code height limitation regulations.
261 Because Section 17.5.16.B.4 is in no way intended to control or influence the mass and
262 scale of the buildings at the Ridge, mass and scale drawings and similar analysis tools are
263 not relevant to a request for a variance from the Section 17.5.16.B.4 view shed
264 provisions. Because mass and scale drawings and similar analysis tools are not relevant
265 to a request for a variance from Section 17.5.16.B.4, they should not be required.
266 Similarly, none of the items addressed in a design review Class 3 Development
267 Application are relevant to a request for a view shed variance from Section 17.5.16.B.4.
268 Because none of the other items addressed in a Class 3 Development Application are
269 relevant to a request for a view shed variance from Section 17.5.16.B.4, a concurrent
270 design review Class 3 Development Application should not be required. Nothing in the
271 Section 17.4.16 variance process requires that a request for a variance from Section
272 17.5.16.B.4 be accompanied by the submission of Class 3 Development Application.

273
274 It is not the property owners' intention to limit or avoid addressing design issues
275 including but not limited to mass and scale. The owner's only intention is to ensure that

Exhibit VH-5
Narrative For Variance

276 design issues including but not limited to mass, scale, roofing material and percentage
277 of exterior stone are addressed at the proper time in the development process; the
278 context of a view shed variance application is not the proper time.

279
280 4.1.4 As discussed above, the surveyors who prepared the Jacobsen View Plane Survey
281 that is the foundation of Section 17.5.16.B.4 recognized that because the Jacobsen View
282 Plane Survey is based solely on third-party topographic surveys, **it is not accurate and is**
283 **only approximate**. Consequently, in the certification on page 1 of the Jacobsen View
284 Plane Survey, the surveyors required that *“To ensure that the required view plane*
285 *criteria is met and before any construction can begin, **a field verification survey is***
286 **required** once the proposed building sites have been determined.” Because the Jacobsen
287 View Plane Survey is not accurate and is only approximate, any variance request should
288 not be measured from the data derived from the Jacobsen View Plane Survey and,
289 instead, should be measured from the accurate data found in the *“field verification*
290 *survey”*.

291
292 5. At the direction of the Planning Department, Steve Morton and John Horn spent a combined roughly
293 two hours a day for five consecutive days traveling up and down the gondola and hiking down to the
294 Proposed Lot to put up and take down the three story-pole lights. The five nights were required by the
295 Planning Department to make it convenient to ensure that all interested parties and decision makers
296 would be able to view the ridgeline from Eider Creek Condominiums. On Wednesday January 6, 2021
297 John Miller, Amy Markwell, Kaye Simonson, the Town’s videographer and John Horn met at Eider Creek
298 Condominiums and viewed the Coonskin ridgeline. Based on that viewing it was clear to Ms. Markwell
299 and Ms. Simonson that the Proposed Lot could not be seen and, consequently, Ms. Simonson issued her
300 letter dated January 14, 2021.

301
302 The Town’s videographer recorded a 2-hour long time-lapsed video of the portion of the Coonskin
303 Ridgeline that encompasses the Unit 12 area. The video unequivocally shows that while lights were
304 clearly visible further down and close to the Coonskin ridgeline, no lights were visible in the Unit 12
305 area. If any doubt remained as to whether lights could be seen from Eider Creek Condominiums, this
306 video should eliminate all doubt. The video can be viewed at
307 <https://www.youtube.com/watch?app=desktop&v=zkm9WouMn3A&feature=youtu.be>.

308
309 We assume that everyone on Council and DRB personally took the time on one of those five nights to
310 view the ridgeline from Eider Creek Condominiums. It may be that everyone went to Eider Creek
311 Condominiums on one of those nights but, lacking a thorough understanding of the lay of the land, it
312 was not clear to everyone where or what they needed to be looking at. We are absolutely certain that if
313 a person was looking in the correct direction, they would have come to the same conclusion that Amy
314 Markwell and Kaye Simonson came to, there is no way the Proposed Lot can be seen from Eider Creek
315 Condominiums.

316
317 It was clear at the worksession that a considerable level of skepticism existed as to whether the
318 Proposed Lot can be seen from Eider Creek Condominiums as well as other subdivisions in the San
319 Miguel River Valley located east of Eider Creek Condominiums. During the worksession it became
320 apparent that no meaningful discussion on the variance could occur until the skepticism was dealt with.
321 Consequently, it appeared the best way to deal with the skepticism was fully educate Town staff on the
322 matter and then have them present their findings and conclusions to Council and DRB. In a pre-
323 application meeting held on September 23, 2021 attended by Michelle Haynes, Amy Ward, Paul Wisor,

Exhibit VH-5
Narrative For Variance

324 John Miller, Steve Morton and John Horn, Town staff was fully briefed on the information contained in
325 Exhibit VH-12 and, therefore, we suggest that you look to them for guidance on these critical and
326 indisputable facts in this matter.

327
328 6. There was considerable discussion at the worksession about the possibility that although the
329 Proposed Lot and its lights could not be seen from Eider Creek Condominiums, it might nevertheless be
330 possible that they could be seen elsewhere in the Valley east of Eider Creek Condominiums. In fact,
331 some Council members were told by Valley floor residents that they saw the lights on the Proposed Lot.
332 Although we do not doubt that those residents saw lights on the Coonskin ridgeline, we are absolutely
333 certain that they did not see the lights on the Proposed Lot. We believe the lights they saw are the lights
334 that appear in the Town's video further down the Coonskin Ridgeline. Hopefully everyone can agree that
335 the information contained in Exhibit VH-12 indisputably proves that the lights on Unit 12 could not have
336 been seen from anywhere else in the Valley east of Eider Creek Condominiums. Once again, we suggest
337 that you look to them for guidance on these critical and indisputable facts.

338
339 7. In the worksession it was suggested that perhaps other viewpoints should be used that would be
340 more representative of the homes in the subdivisions east of Eider Creek Condominiums. Ensuring that
341 everyone's view at and below the 8,800 foot is protected is a valid concern. We believe that proving
342 these other viewpoints are protected, including those at 8,800 feet in these subdivisions, is a rather
343 simple and straight forward effort once those involved become knowledgeable of the physical
344 parameters. Based on that guidance from the worksession, on March 3, 2021 John Miller, Paul Wisor,
345 Laila Benitez, Dan Caton, David Craige, Steve Morton and John Horn met on-site at Eider Creek. As a
346 result of that meeting, we were directed to obtain the same survey information provided for Eider Creek
347 Condominiums contained in worksession Exhibit HW-12 for four sites in the Hillside subdivision. The
348 information contained in Exhibit VH-12 of this variance application contains the requested survey
349 information for the four new Hillside sites.

350
351 8. In the worksession it was suggested that perhaps the lights placed on the three story poles were
352 understated and, therefore, not representative of the lighting effect from the lights of the home once it
353 is built. Lighting can certainly have an effect beyond the effect of the structure alone. Exhibit VH-12
354 shows the indisputable fact that the top of a 35' structure on the Proposed Lot is at least 43 feet below
355 the view line from the Five View Points at the 8,800-foot elevation. At 43 feet below the 8,800-foot view
356 line and, therefore, completely shielded by the Coonskin ridgeline, it is clear that even the lights from
357 the structure will not be visible. Furthermore, the Town's video provides indisputable evidence that no
358 lights were visible from the Unit 12 area. Additionally, the lights from the three story poles were viewed
359 from the Mountain Village Town Hall area and the lights were easily and clearly visible from both
360 locations despite the existence of the moon. The clear visibility of the lights from Town Hall is evidenced
361 by Exhibit VH-18 photo which shows the three story pole lights (plus a light from a Ridge pathway light
362 bollard) appear in the top center of the photo at a level of visibility similar to the lights at the gondola's
363 Station San Sophia.

364
365 9. In the worksession it was suggested that the waxing and waning of the moon may have had an effect
366 on the ability to see the lights during the five nights they were illuminated. For those who were able to
367 view the ridgeline from Eider Creek Condominiums, it was indisputable that lights lower down on the
368 Coonskin ridgeline were easily and clearly visible; this indisputable fact is confirmed by the Town's
369 video. Consequently, if it had been possible to see the lights on the three story poles from Eider Creek
370 then they too would have been visible. However, as indisputably shown by Exhibit VH-12 and the Town's
371 video, because of the obstruction of the Coonskin ridgeline, it is physically impossible to see the lights

Exhibit VH-5
Narrative For Variance

372 and, therefore, they were not seen; the light of the moon had no impact on this. Additionally, as noted
373 above, the lights from the three story poles were viewed from the Mountain Village Town Hall area and
374 the lights were easily and clearly visible from both locations despite the existence of the moon. The clear
375 visibility of the lights from Town Hall is evidenced by Exhibit VH-18 photo which shows the three story
376 pole lights (plus a light from a Ridge pathway light bollard) appear in the top center of the photo at a
377 level of visibility similar to the lights at the gondola's Station San Sophia. Finally, as discussed earlier, the
378 Town's video unequivocally shows that while lights were clearly visible further down the Coonskin
379 ridgeline, no lights were visible in the Unit 12 area. If any doubt remained as to whether lights could be
380 seen from Eider Creek Condominiums, this video should eliminate all doubt.

381
382 10. In the worksession concerns were raised about different precedents that might be established by
383 granting a variance to Section 17.5.16.B.4. We agree, bad precedent is bad for everyone involved, on the
384 other hand sound and well-reasoned precedent is something that should be embraced and approved.
385 Based on the following discussion, we believe the variance we are requesting is a sound and well-
386 reasoned precedent that should be embraced and approved.

387
388 10.1 In terms of background for the precedent discussion, we offer the following facts in
389 response to questions raised at the worksession:

390
391 10.1.1 The Ridge development is zoned Multi-Family Zone District. Pursuant to Section
392 17.5.16.B.1.a the Community Development Code allows a maximum building height of
393 **45** feet plus *"Chimneys, flues, vents or similar structures may extend up to five (5) feet*
394 *above the specified maximum height excluding unscreened telecommunications antenna*
395 *with the height of such structures set forth in the telecommunications antenna*
396 *regulations."*

397
398 9101.2 The variance request is to allow maximum building height of **35** feet plus
399 *"Chimneys, flues, vents or similar structures may extend up to five (5) feet above the*
400 *specified maximum height excluding unscreened telecommunications antenna with the*
401 *height of such structures set forth in the telecommunications antenna regulations."*

402
403 10.1.3 As currently platted, the Ridge development contains 34 detached condominium
404 units.

405
406 10.1.5 Based on current information, it appears only the following four units may need
407 to seek relief from Section 17.5.16.B.4 to build to a height of 35 feet:

408
409 Units 1, 4, 10 and 12

410
411 10.2 All variances are based on the underlying premise that the limitation from which the
412 variance is sought is accurate and, therefore, reliable and defensible. In this case the variance is
413 being sought from a limitation that says no structure can be built on the Proposed Lot that is
414 greater than 20 feet tall on the western boundary of the lot (rising to 33 feet on the eastern
415 boundary) because data in the Jacobsen View Plane Survey indicates it can be seen from the San
416 Miguel River Valley. However, based on Exhibit VH-12's indisputable data, we now know that
417 the Jacobsen View Plane Survey is inaccurate with respect to the Proposed Lot and, therefore,
418 the 20-foot limitation is inaccurate and, therefore, unreliable and indefensible. Instead, Exhibit
419 VH-12's indisputable data proves that a 35-foot structure on the Proposed Lot lies 43 feet below

Exhibit VH-5
Narrative For Variance

420 the point on the 8,800-foot sight line (60 feet below the view location site line) where anything
421 can be seen from the San Miguel River Valley.

422
423 Perhaps the efforts in this process are best characterized as updating or correcting the data in
424 the Jacobsen View Plane Survey, as contemplated by Mr. Hency's certification, rather than
425 characterizing them as a variance from a valid established numerical benchmark.

426
427 If the Jacobsen View Plane Survey was accurate and, therefore, defensible, then asking to
428 increase the height on the western boundary from 20 feet to 35 feet would be asking for a 75%
429 height **increase** above a defensible and accurate limitation, a very large percentage increase
430 that would be difficult to justify and defend. However, a suggested 75% increase is based on a
431 faulty premise. The faulty premise is that the information on the Jacobsen View Plane is
432 accurate, but we now know that the information in the Jacobsen View Plane relative to this
433 application is incorrect; in fact, as Exhibit VH-12 shows, the Jacobsen View Plane is vastly
434 incorrect. Because the basis of the 75% increase is faulty and incorrect, it necessarily follows
435 that the conclusion is equally incorrect. The 20-foot height limit imposed by the Jacobsen View
436 Plane Survey is inaccurate and, therefore, should be eliminated from consideration for the
437 variance.

438
439 Instead of comparing the 35-foot request to the inaccurate 20-foot data, an appropriate
440 comparison would be between the 35-foot request and the following points:

441
442 10.2.1 The points on the sight lines from the San Miguel River Valley that lie the number
443 of feet above the 35-foot story-pole height as shown in Column D of Table 1.

444
445 10.2.2 The point that is established by the 45-foot maximum building height established
446 by the Multi-Family Zone District; this point lies 10 feet above the requested 35-foot
447 height. Based on this comparison, the 35-foot request is 22% **below** the 45-foot
448 maximum building height established by the Multi-Family Zone District.

449
450 The net effect of using accurate data rather than inaccurate data is that **we drop from a 75%**
451 **increase to a 22% decrease below accurate and defensible data.** Decreasing the height limit to
452 35' which is 22% below the 45-foot maximum building height established by the Multi-Family
453 Zone District establishes a variance precedent that is sound, well-reasoned, equitable,
454 defensible and one that this community can be proud of.

455
456 11. Finally, in the worksession concerns were raised about the impact on the neighboring lots in the
457 Ridge development and the fact that the owners had bought their lots based on the existence of the
458 Jacobsen View Plane Survey and the corresponding height restrictions imposed by Section 17.5.16.B.4.
459 The Proposed Lot is located at the end of Horseshoe Lane and, due to the contours of the hillside, only
460 Units 9, 10 and 11 are even remotely impacted by what is constructed on the Proposed Lot. Units 4, 6, 7
461 and 8 are the only other lots in the vicinity and all are located north of the gondola, uphill and well
462 above the Proposed Lot and will not be impacted by a height increase from 20 feet to 35 feet. Units 20,
463 23 and 25 are all located south of both the gondola and the Butterfly ski run at distances of at 821 feet
464 and greater; additionally, two thick stands of trees shield Units 20, 23 and 25 from the Proposed Lot
465 rendering it nearly invisible from those three lots. Bottom line, only seven of the lots located north of
466 the gondola in the Ridge development have even a remote chance of being impacted by the variance.

467

Exhibit VH-5
Narrative For Variance

468 Of the seven lots located north of the gondola, four (4, 7, 9 and 10) are owned by Coonskin Ridge Cabin
469 Lot, LLC which is owned by Dr. Ramesh Cherukuri, Unit 8 is owned by Steve Cram, Unit 6 is owned by
470 Carl and Patty Merzi and the seventh lot, Unit 11, is owned by the Telluride Mountain Village
471 Homeowners Association (“TMVOA”).

472
473 Exhibit VH-17 is an email from Dr. Cherukuri in his capacity as manager of Coonskin Ridge Cabin Lots, LLC
474 setting forth his support for granting the variance. It should be noted, Coonskin Ridge Cabin Lot, LLC and
475 Steve Cram own the other three units that may need to seek relief from Section 17.5.16.B.4 to build to a
476 height of 35 feet, Units 1 (Coonskin), 4 (Cram) and 10 (Coonskin). Exhibit VH-2 is an email from Steve
477 Cram setting forth his support for this variance request. We are pursuing a correspondence from Carl
478 and Patty Merzi setting forth their support for this variance request.

479
480 On February 8, 2021 Jon Horton spoke with Anton Benitez, President and CEO of TMVOA. In that
481 telephone conversation Mr. Benitez indicated he did not believe that TMVOA would have any concerns
482 about or opposition to the Horton’s variance request.

483
484 **Conclusion**

485 For the reasons stated above, we request a motion along the lines of the following **from the Town**
486 **Council and DRB:**

487
488 *“I move as follows:*

489
490 *Findings:*

491
492 *1. The sole purpose and intent of (i) paragraph 5.i of the First Amended and Restated*
493 *Development Covenant for Lot 161A, 161B and 161D and Adjacent Active Open Space,*
494 *Town of Mountain Village, Colorado (“Current Covenant”), recorded starting on page 12*
495 *of the document recorded at Reception # 329093 and (ii) CDC Section 17.5.16.B.4 is to*
496 *protect the views from the San Miguel River Valley to ensure that no structure built on*
497 *the Proposed Lot, can be seen from any point on the San Miguel River Valley lying “east*
498 *of the western boundary line of the Telwest/Goldking Condominiums” and “west of the*
499 *western boundary” of the Town of Telluride at any elevation “located at or below 8,800*
500 *feet above sea level”.*

501
502 *2. The field verification survey, set forth in Exhibit VH-12 and prepared by Christopher R.*
503 *Kennedy of San Juan Surveying, establishes the following three significant and*
504 *indisputable facts:*

505
506 *2.1 Any building built on the Proposed Lot will not be visible from the Five View*
507 *Locations if it is **less than 95 feet tall.***

508
509 *2.2 Any building built on the Proposed Lot will not be visible from the point that*
510 *is 8,800 feet above sea level located directly above the Five View Locations if it is*
511 ***less than 78 feet tall.***

512
513 *2.3 Because no point of any portion of Horton’s proposed home will exceed a*
514 *height of 35 feet, plus 5 feet to allow for chimneys, flues, vents or similar*

Exhibit VH-5
Narrative For Variance

515 *structures, it cannot be seen from any of the points described in paragraphs 2.1*
516 *and 2.2.*

517
518 *3. The three significant and indisputable facts in paragraph 2 lead to one significant and*
519 *indisputable conclusion, any home built on the Proposed Lot will meet the sole purpose*
520 *and intent of the view plane which is to protect the views from the San Miguel River*
521 *Valley by ensuring that no future structure built on the Proposed Lot can be seen from*
522 *any point on the San Miguel River Valley lying "east of the western boundary line of the*
523 *Telwest/Goldking Condominiums" and "west of the western boundary" of the Town of*
524 *Telluride at any elevation "located at or below 8,800 feet above sea level".*

525
526 *4. Based on the discussion set forth in Table 1 of this memorandum, a structure on the*
527 *Proposed Lot that does not exceed 35 feet at its highest point, plus 5 feet to allow for*
528 *chimneys, flues, vents or similar structures, would qualify for a variance under CDC*
529 *Section 17.4.16.*

530
531 *Conclusion:*

532
533 *5. The Jonathan H. And Tiffany L. Horton Living Trust, dated the 19 day of June, 2002 are*
534 *hereby granted a variance from Section 17.5.16.B.4 to allow the structure on the*
535 *Proposed Lot to be built to a height of 35 feet, plus 5 feet to allow for chimneys, flues,*
536 *vents or similar structures which would extend into the view plane established by the*
537 *Coonskin View Plane drawing recorded at reception number 328113 (attached as Exhibit*
538 *VH-11)."*

539
540 List of Exhibits
541 VH-1 Warranty Deed
542 VH-2 Cram Email of Support
543 VH-3 Sightlines - 4 Hillside & Eider Creek
544 VH-4 Title Insurance Policy
545 VH-5 Narrative For Variance
546 VH-6 Existing Conditions Plan
547 VH-7 Proposed Development Plan .1
548 VH-8 Surveyor Hency Letter
549 VH-9 Resolution 1993-6 (Old Covenant) 282311
550 VH-10 First Amended and Restated Development Covenant - Current Covenant
551 VH-11 Coonskin View Plane Survey - Jacobsen Associates 328113 PB 1 Pge 2601
552 VH-12 Kennedy View Study
553 VH-13 Affidavit Of Christopher R. Kennedy
554 VH-14 Section 17.5.16 Ridgeline Lots
555 VH-15 Section 17.4.16 Variance Process
556 VH-16 Section 17.1.3 Purposes Of The Community Development Code
557 VH-17 Coonskin Ridge Cabin Lot, LLC Email of Support
558 VH-18 Story Pole Light Photo From Town Hall
559 VH-19 Eider Creek and Hillside Survey Locations
560
561 END OF MEMORANDUM

From: [Steve Cram](#)
To: hortonjonh@aol.com
Cc: jhorn@rmi.net
Subject: Lot 12 Variance Support
Date: Tuesday, September 28, 2021 6:02:52 PM

Dear Jon,

It is my understanding that you and Tiffany are planning on submitting an application to the town of Mountain Village for a variance from the view plane restriction to allow the construction of your home on Unit 12 to a height of 35', plus 5 feet to allow for chimneys, flues, vents or similar structures. The substance of the request is set forth in Exhibits VH-5, VH-7, VH-12, and VH-19. Please be advised that I support your variance request and wish you the best of luck in your request for variance.

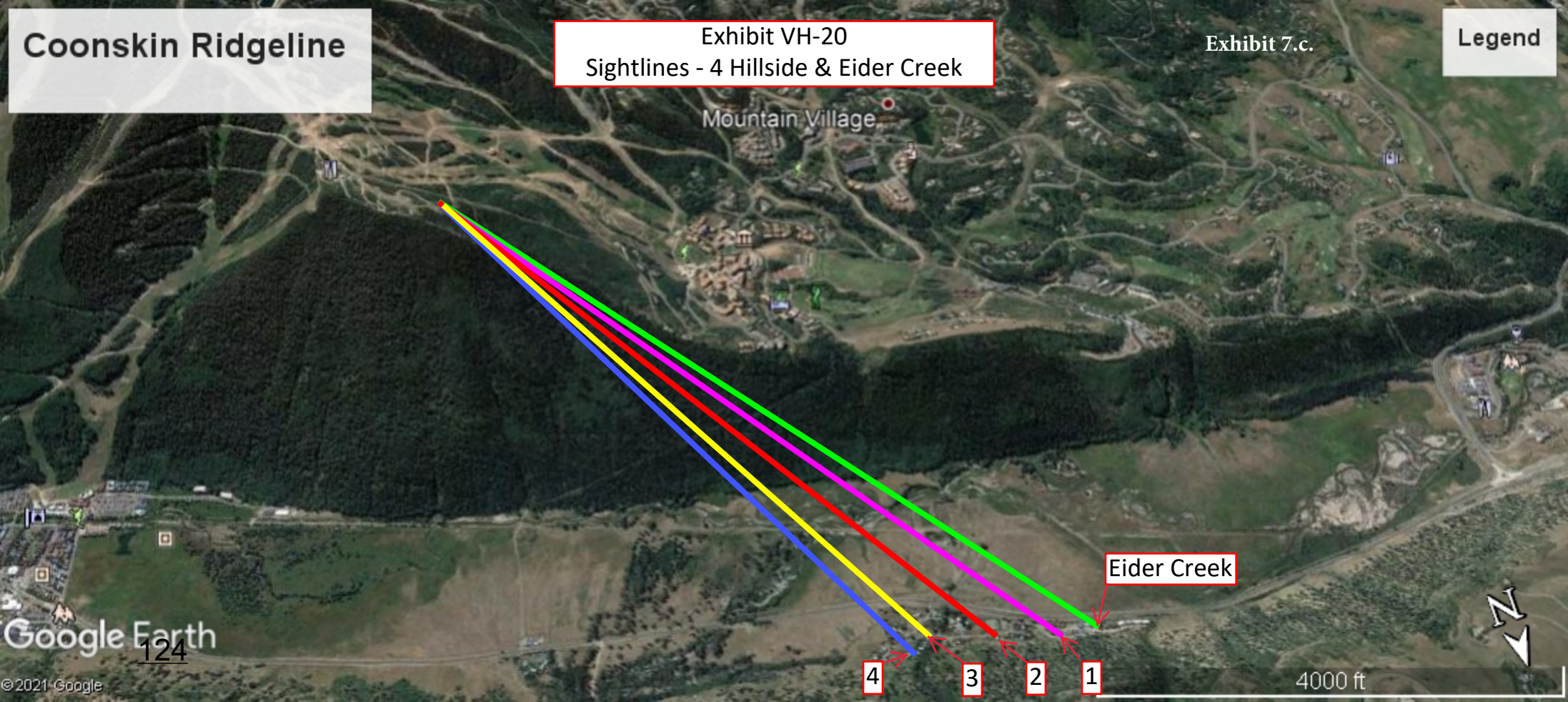
Steve Cram
Owner of Unit 8, The Ridge

Coonskin Ridgeline

Exhibit VH-20
Sightlines - 4 Hillside & Eider Creek

Exhibit 7.c.

Legend



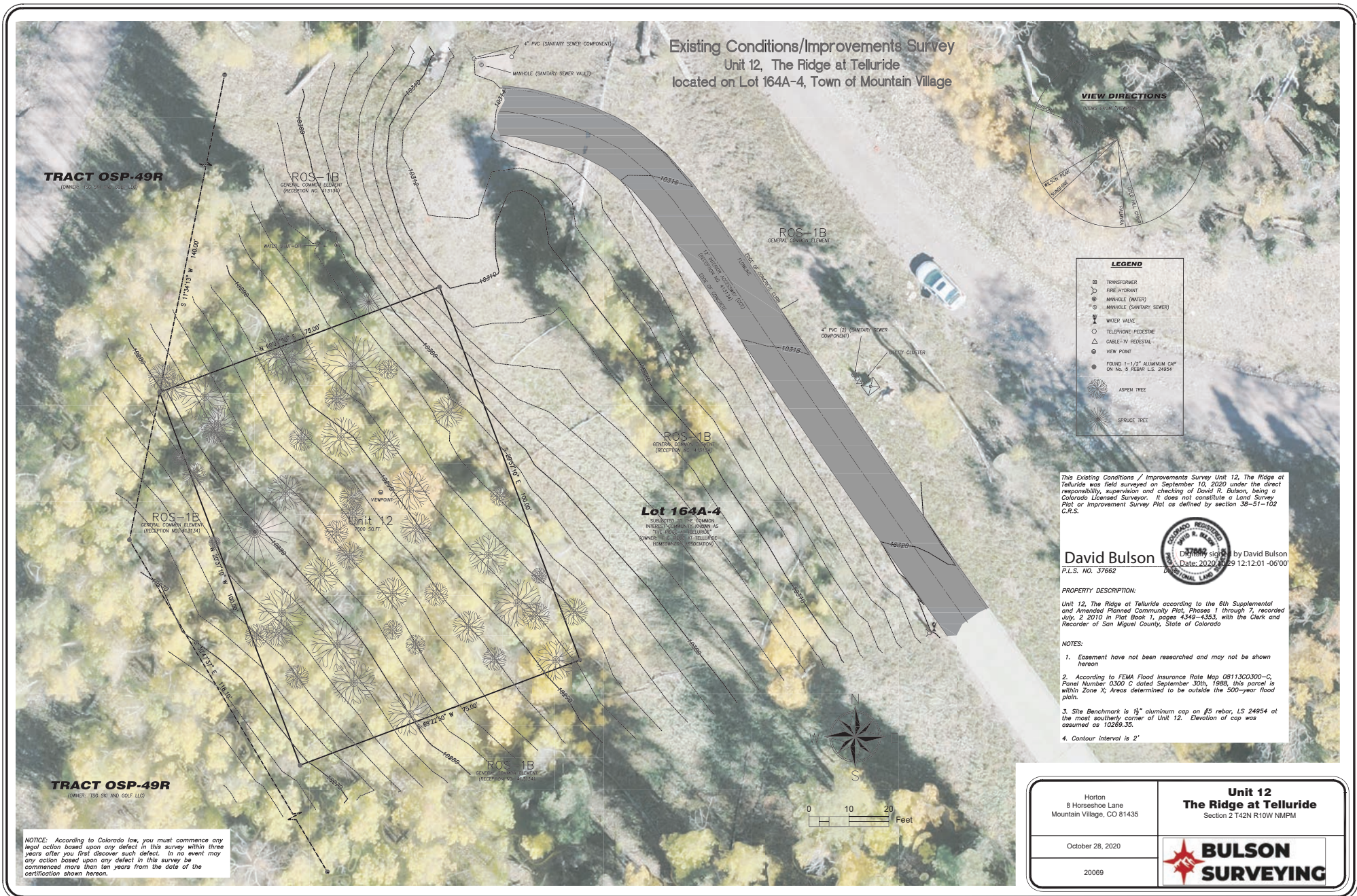
Mountain Village

Eider Creek

4 3 2 1

4000 ft

Google Earth 124



Existing Conditions/Improvements Survey
Unit 12, The Ridge at Telluride
located on Lot 164A-4, Town of Mountain Village



LEGEND

- ⊠ TRANSFORMER
- ⊕ FIRE HYDRANT
- ⊙ MANHOLE (WATER)
- ⊙ MANHOLE (SANITARY SEWER)
- ⊕ WATER VALVE
- ⊕ TELEPHONE PEDESTAL
- ⊕ CABLE-TV PEDESTAL
- ⊕ VIEW POINT
- FOUND 1-1/2" ALUMINUM CAP ON NO. 5 REBAR L.S. 24954
- ⊕ ASPEN TREE
- ⊕ SPRUCE TREE

This Existing Conditions / Improvements Survey Unit 12, The Ridge at Telluride was field surveyed on September 10, 2020 under the direct responsibility, supervision and checking of David R. Bulson, being a Colorado Licensed Surveyor. It does not constitute a Land Survey Plat or Improvement Survey Plat as defined by section 38-51-102 C.R.S.

David Bulson 
 Date: 2020-09-29 12:12:01 -0600
 P.L.S. No. 37662

PROPERTY DESCRIPTION:
 Unit 12, The Ridge at Telluride according to the 6th Supplemental and Amended Planned Community Plat, Phases 1 through 7, recorded July 2 2010 in Plat Book 1, pages 4349-4353, with the Clerk and Recorder of San Miguel County, State of Colorado

- NOTES:**
1. Easement have not been researched and may not be shown hereon
 2. According to FEMA Flood Insurance Rate Map 08113C0300-C, Panel Number 0300 C dated September 30th, 1988, this parcel is within Zone X; Areas determined to be outside the 500-year flood plain.
 3. Site Benchmark is 1 1/2" aluminum cap on #5 rebar, LS 24954 at the most southern corner of Unit 12. Elevation of cap was assumed as 10269.35.
 4. Contour interval is 2'



NOTICE: According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.


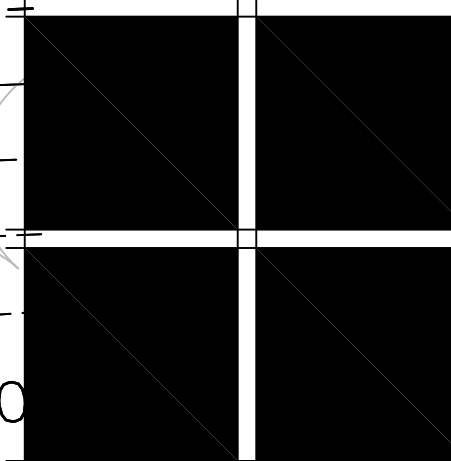
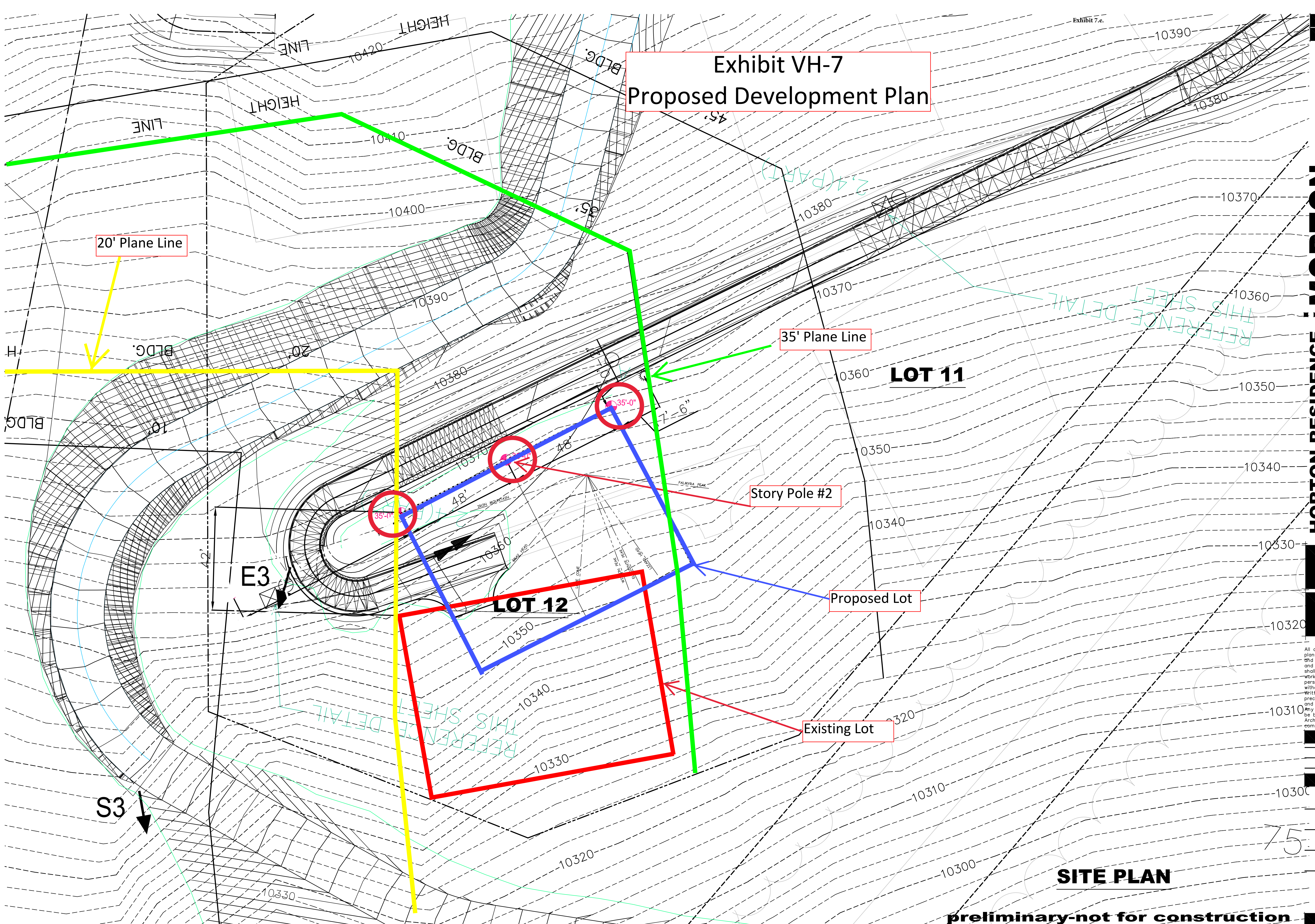
Horton 8 Horseshoe Lane Mountain Village, CO 81435	Unit 12 The Ridge at Telluride Section 2 T42N R10W NMPM
October 28, 2020	 BULSON SURVEYING
20069	

Exhibit VH-7
Proposed Development Plan

MORTON
architects inc.
221 S. PINE ST. PO BOX 3561 TELLURIDE, CO. 81435
(970) 708-2246

HORTON RESIDENCE
Lot 12-The Ridge, Town of Mountain Village, CO. 81435

SITE PLAN



COPYRIGHT
All designs, ideas, arrangements and plans indicated by these drawings and specifications are the property and copyright of the Architect and shall neither be used on any other work nor be used by any other person for any use whatsoever without written permission. Written dimensions shall take precedence over scaled dimensions and shall be verified at the site. Any dimensional discrepancies shall be brought to the attention of the Architect prior to the commencement of the work.

ISSUE LOG
FILE NAME
JOB NUMBER
XXX
DRAWN BY
SM
SCALE
1/16" = 1'-0"
SHEET

A-1
OF SHEETS

SITE PLAN

preliminary-not for construction

Exhibit VH-8
Surveyor Hency Letter

POLARIS SURVEYING, INC.

1903 Lelaray Street, Suite 102
Colorado Springs, CO 80909
Phone 719/448-0844 Fax 719/448-9225

October 18, 2021

Dear John,

Per previous correspondence concerning a View Plane Map prepared by Professional Consultants, Inc. back in July of 1999 for Lots 161, 161A, 161A1, 161B, 161D, Town of Mountain Village, the following items can be confirmed:

- I am the surveyor who verified the Coonskin View Plane recorded in the office of the San Miguel County, Colorado Clerk and Recorder at Reception #328113.
- The survey was based solely on third-party topographic surveys, likely USGS quad mapping that could be off by as much as 10 to 20 feet.
- No actual field work or verification was done using any type of survey equipment.
- Because the survey was based solely on third-party topographic surveys, I and the other surveying professionals involved in the preparation of the View Plane Survey discussed and acknowledged that the View Plane Survey would not be accurate and would only be approximate.
- Because we recognized that the techniques and resources used to produce the View Plane Survey would not produce completely accurate results, we included the qualification language in the above certification and stated, "To ensure that the required view plane criteria is met and before any construction can begin, a field verification survey is required once the proposed building sites have been determined."

Sincerely,
Randall D. Hency
Colorado PLS 27605

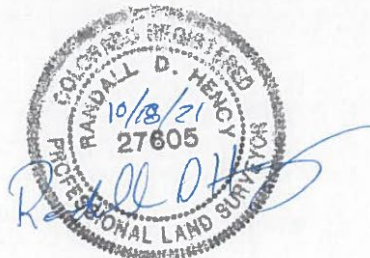


Exhibit VH-9
Resolution 1993-6 (Old Covenant)

Exhibit 7.g.

**RESOLUTION OF THE BOARD OF COMMISSIONERS
OF SAN MIGUEL COUNTY, COLORADO,
APPROVING THE FINAL PLAT OF LOTS 161B AND 161D,
TELLURIDE MOUNTAIN VILLAGE**

Resolution #1993-6

WHEREAS, The Telluride Company ("applicant") requests final plat approval for property it owns described as Lots 161B and 161D, Telluride Mountain Village;

WHEREAS, Lot 161B straddles the Coonskin Ridge and is the site of a bend in the gondola route joining Telluride and the Mountain Village, and Lot 161D is located adjacent to Lot 161B but lies almost entirely south of the Coonskin ridgeline;

WHEREAS, the application seeks approval of uses and densities designated by the Mountain Village Preliminary Plat (as amended and approved by the Board of Commissioners through Dec. 17, 1992), as follows:

Lot 161B - Unspecified Commercial Square Footage
Lot 161D - 108 condominium units (324 persons)
 6 employee apartment units (18 persons)
 1 employee dormitory unit (1 person)
 Unspecified Commercial Square Footage
Total Population: 343 persons;

WHEREAS, the applicant proposes to dedicate Lot 923A to the Telluride R-1 School District to cover a portion of the school-land dedication requirement for the proposed final plat in accordance with San Miguel County Land Use Code Section 5-804;

WHEREAS, at 1.8 acres, Lot 923A by itself is not large enough to meet the 2.36-acre school-land dedication requirement for Lots 161B and 161D;

WHEREAS, in addition, 0.47 acres of Lot 923A is proposed to cover the school-land dedication requirement for the final plat of lots 919-932 and 1175 (proposed for consideration today by the Board of Commissioners);

WHEREAS, the applicant proposes to dedicate single-family Lot 921 temporarily to cover the remaining portion of the school-land dedication requirement for Lots 161B and 161D;

WHEREAS, the applicant has submitted a final plat application for school site SS-811 to finalize the school-land dedication for this final plat;

WHEREAS, the applicant requests that the County return Lot 600, previously dedicated to meet school-land dedication requirements, concurrently with final platting of School Site 923A;

WHEREAS, the applicant proposes to reconvey Lot 600 to the County as collateral to secure infrastructure improvements necessary to serve Lots 919-932 and 1175;

WHEREAS, public park land-dedication requirements for this final plat are met with previous dedication of trails in the Mountain Village;

WHEREAS, the applicant proposes to convey Lot 600 as collateral to secure the infrastructure improvements necessary to serve the proposed lots with the execution of a Fifth Supplement to the All Filings Improvements Bonding Agreement for the Mountain Village;

WHEREAS, the open space proposed in this application meets the 30 percent Common Open Space requirement established by Land Use Code Section 5-302 H.;

WHEREAS, a number of minor problems identified by the County Engineer have been adequately addressed by the applicant;

WHEREAS, in an Oct. 19, 1991 agreement prepared by the applicant, Telluride Fire Protection District Chief Jon Moore:

finds it acceptable that The Telluride Company be able to proceed with the platting, sale and development by a third-party of the Property with the understanding that the above referenced [health, safety and fire protection] issues and additional issues identified by the [Telluride Fire Protection] District will have to be addressed in the design stages of the Property because attempts to resolve these issues in the platting process would be premature; and

WHEREAS, the Board of Commissioners of San Miguel County, Colorado, considered this application, along with relevant evidence and testimony, at its regular meeting on Jan. 7, 1993.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of San Miguel County, Colorado, hereby approves the Final Plat of Lots 161B and 161D, Telluride Mountain Village, conditional upon the following:

- (1) Above-ground Development on 161B. Deed restriction against any above-grade development on Lot 161B (storage of gondola cars shall be below grade); if Lot 161B is moved below the view plane established in condition (5) below, it shall retain existing development rights;
- (2) Height Limits. Limitation of the height of all structures on Lots 161A and 161B to:

- (i) a height of 35 feet on the ridgeline, in accordance with County Land Use Code definition of "height," and
- (ii) a height of 45 feet measured along any plumb line extending down to the original pre-construction grade of the building footprint from a plane that includes the highest point of the building and is parallel to the pre-construction grade;

and limitation of the height of all structures on Lot 161D:

- (iii) a height of 35 feet on the ridgeline, in accordance with County Land Use Code definition of "height," and
 - (iv) a height of 35 feet measured along any plumb line extending down to the original pre-construction grade of the building footprint from a plane that includes the highest point of the building and is parallel to the pre-construction grade;
- (3) Visual Quality Standards. Limitation of development on Lot 161A, Lot 161B, Lot 161D and all non-gondola uses in the adjacent Active Open Space in accordance with all provisions of Section 32 of the Final Development Approval of the Mountain Village Planned Unit Development;
- (4) Lighting on 161A. Shielding or recessing of all exterior and interior lighting fixtures within the southern 80 feet of Lot 161A and adjacent Active Open Space associated with non-gondola use on the gondola structure such that no lighting is oriented towards the east face of the building;
- (5) View Plane Establishment and Protection. Limitation of development on the remainder of Lot 161A (excluding the southern 80 ft.), and all of Lots 161B and 161D, such that under no circumstances may any lighting or part of any structure on Lots 161B, or 161D, or the remaining portion of Lot 161A, be visible from or extend into the following described view plane to be established by survey:
- (i) Gold King to Town. Any point:
 - (a) east of the western boundary line of Telwest/Gold King Condominiums, or
 - (b) west of the western boundary, extended northerly, of the existing Town of Telluride located at or below the elevation of 8,800 feet above sea level, or

- (ii) Town of Telluride. Any point within the existing Town of Telluride located at or below the elevation of 9,000 feet above sea level, or
- (iii) East of Town. East of the eastern boundary of the Town of Telluride, extended northerly, located at or below the elevation of 9,000 feet above sea level;
- (6) View Plane Survey. Completion prior to the issuance of any development permit(s) for Lots 161A, 161B or 161D, a view plane survey to be performed by a professional engineer, architect or surveyor to ensure that all portions and aspects of the site specific development plan comply with the view plane visibility standards identified for each lot; for purposes of determining compliance, all portions of buildings and structures, including but not limited to fences, walls, berms, and chimneys shall be reviewed; such survey shall be recorded upon confirmation of accuracy by the County; the view plane shall be determined based on the angle from the elevation criteria identified in condition (5) above (as of Jan. 7, 1993) to the tangent point of the Coonskin Ridge, irrespective of vegetation and other natural material that may exist on the ridge;
- (7) Structure Silhouette. Demonstration prior to the issuance of any development permit(s) for Lots 161B and 161D and the remainder of Lot 161A not located within the southern 80 feet of compliance with all conditions herein by outlining the silhouette of any structure(s) proposed for those lots or portion thereof with electric lights; verification of such demonstration shall be made by the Board of County Commissioners or its designee by viewing such lights at night and shall be noted on the zoning development permit;
- (8) Site-specific Development Plan. Submission of a site-specific development plan, prior to issuance of any development permit(s), for lots 161A, 161B and 161D, to be reviewed by the County Planning and Building Departments for compliance with the standards set forth in this approval and the County Land Use Code; under no circumstances shall a development permit be issued without the sign-off of these two departments;
- (9) Landscaping Plan. Submission by the applicant of a landscaping plan for the southern 80 feet of Lot 161A and adjacent Active Open Space in conjunction with any building permit application showing the planting locations of trees of sufficient size and number to mitigate the visual impact of non-gondola uses from the view plane described above; no trees or vegetation in

these areas may be removed prior to approval of a site specific development plan; all existing trees on Lot 161B not required to be removed for the gondola storage structure shall remain or shall be replaced subject to approval by the County Planning Department of plans for construction of this storage, prior to issuance of any building or excavation permit, to ensure that ridgeline trees are not removed unnecessarily during the construction process;

- (10) Referral to Town of Telluride. Provision to the Town of Telluride of copies of any development applications for Lots 161A, 161B and 161D at least 21 days prior to County approval; Town review shall be limited to recommendation regarding compliance with County standards established by this final plat approval, relevant standards of the County Land Use Code and/or any other matters appropriately within the jurisdiction of the Town of Telluride;
- (11) Ski Area Restaurant in Open Space. Allowing the construction of a restaurant within the portion of the gondola terminal building directly adjacent to the southern edge of Lot 161A in designated Active Open Space and extending to the centerline of the Gondola alignment, subject to the same restrictions that apply to the southern 80 foot portion of Lot 161A; this restaurant must be designed and built contiguous to the building on the southern 80 feet of Lot 161A; no solid-fuel burning devices shall be allowed in this restaurant;
- (12) Visual-impact Protection Covenants. Execution of covenants running with Lots 161A, 161B and 161D and the Active Open Space lands adjacent to those lots, prior to execution and recordation of any final plat for any of those lots, to the benefit of the San Miguel County Board of Commissioners incorporating all foregoing development standards and conditions; such covenant shall be held by San Miguel County; amendment of such this covenant shall require a duly noticed public hearing before the Board of County Commissioners;
- (13) Site-specific Plan Covenants. Execution of covenants running with the land now described as Lots 161A, 161B and 161D and adjacent Active Open Space lands, prior to approval of a site-specific development plan for any of these areas, prohibiting removal of trees (completely or partially) beyond the (85-90 percent) standard established in Section 32 G. of the Final Development Plan Approval for the Mountain Village Planned Unit Development, regrading, and recontouring or other

surface alteration within all areas not included in any site-specific plan approved by the County; and

- (14) Plat Amendment Requirement. Submission of an application (without the option of withdrawal thereof) by Jan. 24, 1993 for substantial amendment to the Final Plat of Lot 161A (and, optionally, to the Final Plat of Lots 161B and 161D) to comply with all applicable conditions of this final plat approval for Lots 161B and Lot 161D; such an application could seek shifting of any or all of the lots to move one or any of them and any development thereon, except for the southern 80 feet of Lot 161A and adjacent Active Open Space, to a site lower on the south side of the Coonskin Ridge and still retain the existing approved lot size. Notwithstanding any lot line adjustment(s), all site-specific covenants required herein shall remain in full force and effect, and the standards and protections of this Resolution #1993-6 shall be preserved.

BE IT FURTHER RESOLVED that if on or before March 7, 1993, litigation is filed by the Town of Telluride against San Miguel County, The Telluride Company, or both, relating to this final plat or the Mountain Village Preliminary Plat approval of Dec. 17, 1992, as recorded in Resolution #1992-76 of the San Miguel County Board of Commissioners, then all above conditions shall be deemed null and void and the final plat for Lots 161B and 161D, Telluride Mountain Village shall be approved, subject only to the conditions of the Final Development Plan Approval of The Telluride Mountain Village Planned Unit Development, as amended through December 17, 1992, and all terms and conditions of Board of County Commissioners Resolution #1992-76. The Board of County Commissioners shall execute documentation necessary to effectuate the terms of this provision, as appropriate.

BE IT FURTHER RESOLVED that in any case all development on Lots 161A, 161B and 161D and in the Active Open Space adjacent to those lots shall remain subject to all applicable provisions the Final Development Plan Approval of The Telluride Mountain Village Planned Unit Development as amended through December 17, 1992, and all terms and conditions of Board of County Commissioners Resolution #1992-76, including but not limited to, establishment of hours of operation of the Telluride-Mountain Village Gondola, maintenance of minimum stream flow in the San Miguel River, prohibition of solid-fuel burning devices and protection of ridgeline views from the Town of Telluride.

BE IT FURTHER RESOLVED that the Board of County Commissioners of San Miguel County, Colorado, hereby approves the Fifth Supplement

to the All Filings Improvements Bonding Agreement for the Mountain Village Planned Unit Development and associated documents.

BE IT FURTHER RESOLVED that the each of the final platted lots may be developed only in accordance with all applicable provisions of the San Miguel County Land Use Code and the Final Development Plan Approval for the Mountain Village Planned Unit Development, as follows:

- Lot 161B - Unspecified Commercial Square Footage
 - Lot 161D - 108 condominium units (324 persons)
 - 6 employee apartment units (18 persons)
 - 1 employee dormitory unit (1 person)
 - Unspecified Commercial Square Footage
- Total Population: 343 persons

BE IT FINALLY RESOLVED that the total platted population in the Telluride Mountain Village PUD increases with the approval of this plat to:

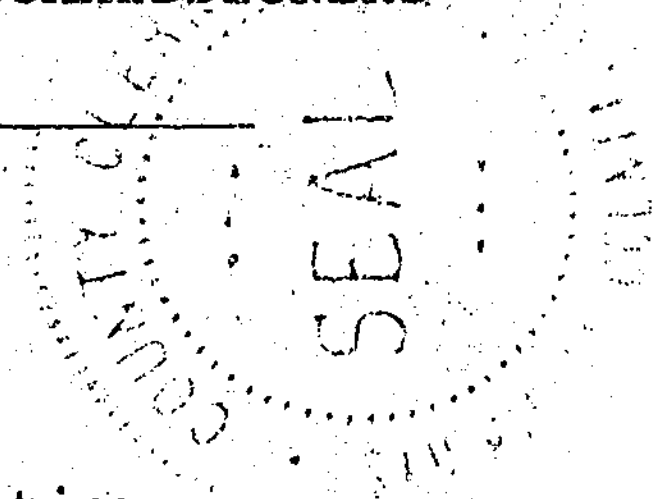
- Total Population - 6834
 - Without Transferable Development Rights (TDRs) - 6474
 - Without TDRs and Employee Housing - 5624
- The above totals were obtained by adding 343 persons including 19 employees to the population totals found on the Final Plat of Lots 919-932 and 1175, Telluride Mountain Village, recorded in Plat Book 1, Pages 1400-1402 in the office of the San Miguel County Clerk.

APPROVED by the Board of Commissioners of San Miguel County, Colorado, and made effective at its regular meeting on Jan. 7, 1993.

SAN MIGUEL COUNTY BOARD OF COMMISSIONERS

By: William Wenger
William Wenger, Chairman

ATTEST:
By: Harlene Sulman
Deputy Clerk



APPROVED by THE TELLURIDE COMPANY, a Colorado corporation

By: Ronald D. Allred
Ronald D. Allred, President

ATTEST:
By: [Signature]
Asst. Secretary

[TMV\161LOTS.RES]

**DEVELOPMENT COVENANT
FOR LOTS 161A, 161B, 161D AND ADJACENT ACTIVE OPEN SPACE,
MOUNTAIN VILLAGE PLANNED UNIT DEVELOPMENT**

This covenant is between The Telluride Company ("Telco"), a Colorado corporation, and The San Miguel County, Colorado, Board of Commissioners ("Board").

WHEREAS, Telco is the owner of the following described real properties ("Telco Properties");

A. Lot 161A, Telluride Mountain Village, according to the final plat recorded in the Office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 1375.

B. Lots 161B and 161D, Telluride Mountain Village, according to the final plat recorded in the Office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 1403.

C. The Active Open Space located adjacent to the real property described in paragraphs A. and B. above;

WHEREAS, the Board has approved and executed Resolution #1993-6; and

WHEREAS, Telco and the Board wish to insure compliance by Telco and its successors with the applicable provisions of Resolution #1993-6.

NOW, THEREFORE, Telco hereby declares, publishes and covenants that the subject Telco Properties shall be improved, occupied, owned, conveyed, encumbered, leased and used subject to the covenants, conditions and restriction described as follows:

- (1) Above-ground Development on 161B. Deed restriction against any above-grade development on Lot 161B (storage of gondola cars shall be below grade); if Lot 161B is moved below the view plane established in condition (5) below, it shall retain existing development rights;
- (2) Height Limits. Limitation of the height of all structures on Lots 161A and 161B to:
 - (i) a height of 35 feet on the ridgeline, in accordance with County Land Use Code definition of "height," and
 - (ii) a height of 45 feet measured along any plumb line extending down to the original pre-construction grade of the building footprint from a plane that includes the highest point of the building and is parallel to the pre-construction grade;

and limitation of the height of all structures on Lot 161D:

- (iii) a height of 35 feet on the ridgeline, in accordance with County Land Use Code definition of "height," and
- (iv) a height of 35 feet measured along any plumb line extending down to the original pre-construction grade of the building footprint from a plane that includes the highest point of the building and is parallel to the pre-construction grade;

- (3) Visual Quality Standards. Limitation of development on Lot 161A, Lot 161B, Lot 161D and all non-gondola uses in the adjacent Active Open Space in accordance with all provisions of Section 32 of the Final Development Approval of the Mountain Village Planned Unit Development;
- (4) Lighting on 161A. Shielding or recessing of all exterior and interior lighting fixtures within the southern 80 feet of Lot 161A and adjacent Active Open Space associated with non-gondola use on the gondola structure such that no lighting is oriented towards the east face of the building;
- (5) View Plane Establishment and Protection. Limitation of development on the remainder of Lot 161A (excluding the southern 80 ft.), and all of Lots 161B and 161D, such that under no circumstances may any lighting or part of any structure on Lots 161B, or 161D, or the remaining portion of Lot 161A, **be visible from** or extend into the following described view plane to be established by survey:
 - (i) Gold King to Town. Any point:
 - (a) east of the western boundary line of Telwest/Gold King Condominiums, or
 - (b) west of the western boundary, extended northerly, of the existing Town of Telluride located at or below the elevation of **8,800 feet above sea level**, or
 - (ii) Town of Telluride. Any point within the existing Town of Telluride located at or below the elevation of 9,000 feet above sea level, or
 - (iii) East of Town. East of the eastern boundary of the Town of Telluride, extended northerly, located at or below the elevation of 9,000 feet above sea level;

- (6) View Plane Survey. Completion prior to the issuance of any development permit(s) for Lots 161A, 161B or 161D, a view plane survey to be performed by a professional engineer, architect or surveyor to ensure that all portions and aspects of the site specific development plan comply with the view plane visibility standards identified for each lot; for purposes of determining compliance, all portions of buildings and structures, including but not limited to fences, walls, berms, and chimneys shall be reviewed; such survey shall be recorded upon confirmation of accuracy by the County; the view plane shall be determined based on the angle from the elevation criteria identified in condition (5) above (as of Jan. 7, 1993) to the tangent point of the Coonskin Ridge, irrespective of vegetation and other natural material that may exist on the ridge;
- (7) Structure Silhouette. Demonstration prior to the issuance of any development permit(s) for Lots 161B and 161D and the remainder of Lot 161A not located within the southern 80 feet of compliance with all conditions herein by outlining the silhouette of any structure(s) proposed for those lots or portion thereof with electric lights; verification of such demonstration shall be made by the Board of County Commissioners or its designee by viewing such lights at night and shall be noted on the zoning development permit;
- (8) Site-specific Development Plan. Submission of a site-specific development plan, prior to issuance of any development permit(s), for lots 161A, 161B and 161D, to be reviewed by the County Planning and Building Departments for compliance with the standards set forth in this approval and the County Land Use Code; under no circumstances shall a development permit be issued without the sign-off of these two departments;
- (9) Landscaping Plan. Submission by the applicant of a landscaping plan for the southern 80 feet of Lot 161A and adjacent Active Open Space in conjunction with any building permit application showing the planting locations of trees of sufficient size and number to mitigate the visual impact of non-gondola uses from the view plane described above; no trees or vegetation in these areas may be removed prior to approval of a site specific development plan; all existing trees on Lot 161B not required to be removed for the gondola storage structure shall remain or shall be replaced subject to approval by the County Planning Department of plans for construction of this storage, prior to issuance of any building or excavation permit, to ensure that ridgeline trees are not removed unnecessarily during the

construction process;

- (10) Referral to Town of Telluride. Provision to the Town of Telluride of copies of any development applications for Lots 161A, 161B and 161D at least 21 days prior to County approval; Town review shall be limited to recommendation regarding compliance with County standards established by this final plat approval, relevant standards of the County Land Use Code and/or any other matters appropriately within the jurisdiction of the Town of Telluride;
- (11) Ski Area Restaurant in Open Space. Allowing the construction of a restaurant within the portion of the gondola terminal building directly adjacent to the southern edge of Lot 161A in designated Active Open Space and extending to the centerline of the Gondola alignment, subject to the same restrictions that apply to the southern 80 foot portion of Lot 161A; this restaurant must be designed and built contiguous to the building on the southern 80 feet of Lot 161A; no solid-fuel burning devices shall be allowed in this restaurant;
- (12) Site-specific Plan Covenants. Execution of covenants running with the land now described as Lots 161A, 161B and 161D and adjacent Active Open Space lands, prior to approval of a site-specific development plan for any of these areas, prohibiting removal of trees (completely or partially) beyond the (85-90 percent) standard established in Section 32 G. of the Final Development Plan Approval for the Mountain Village Planned Unit Development, regrading, and recontouring or other surface alteration within all areas not included in any site-specific plan approved by the County;
- (13) Run with Land. The provisions of the covenant shall be for the benefit of and a burden upon the title to the Telco Properties, including any future boundary modifications thereto, and shall be binding on the successors and assigns of Telco;
- (14) County Benefit. The provisions of the covenant shall inure to the benefit of and shall be binding upon San Miguel County and the Board;
- (15) Amendment. This covenant may be amended upon the mutual written consent of Telco and the Board following a public hearing before the Board that is noticed pursuant to the terms of the County Land Use Code; and

- (16) Enforcement. The County or other parties entitled may enforce these covenants by actions in equity or law by injunction or any other action authorized by laws and regulations for enforcement of zoning under, but not limited to, CRS 30-28-101 et seq. The failure to enforce any covenants herein shall not constitute a waiver of any of these covenants. Should the County or other party to whom these covenants run be required to enforce these covenants in court, they also shall be awarded attorney's fees.

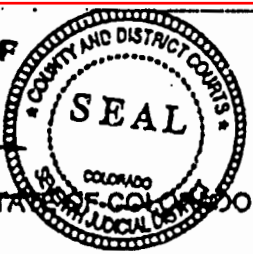
Effective Date: Jan. 13, 1993.

Exhibit VH-10
First Amended and Restated Development
Covenant (Current Covenant)

PAID: N/C 329093

CERTIFIED TO BE A FULL
TRUE AND CORRECT COPY OF
ORIGINAL IN MY CUSTODY.

DATE: 9-2-95



filed
KTB
9-2-95

Exhibit 7.h.

DISTRICT COURT, SAN MIGUEL COUNTY, STATE OF COLORADO
Deputy Clerk
Montrose Combined Court
Case No. 97 CV 133

STIPULATED SETTLEMENT ORDER

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SAN MIGUEL, STATE OF
COLORADO & SAN MIGUEL COUNTY HOUSING AUTHORITY,

Plaintiffs,

v.

TOWN OF MOUNTAIN VILLAGE, COLORADO; THE TELLURIDE COMPANY; TELLURIDE
SKI & GOLF COMPANY; TELLURIDE MOUNTAIN VILLAGE RESORT COMPANY, INC., dba
MOUNTAIN VILLAGE METROPOLITAN SERVICES, INC.; TELLURIDE GONDOLA TRANSIT
COMPANY; and MOUNTAIN VILLAGE METROPOLITAN DISTRICT,

Defendants.

THIS MATTER having come before the Court on the Settlement Stipulation and Motion
for Joinder of Parties, for Approval of Settlement, for Dismissal of Claims With Prejudice and for
Retention of Jurisdiction to Enforce Settlement Agreement ("Stipulation"), filed by the parties:
The San Miguel County Board of County Commissioners, a body corporate and politic, and the
San Miguel County Housing Authority (collectively, the "County"), the Town of Mountain Village,
a Colorado home rule municipality ("Town"), The Telluride Company ("Telco"), Telluride Ski &
Golf Company, a Colorado limited liability limited partnership ("Telski"), Telluride Mountain
Village Resort Company, Inc., a Colorado non-profit corporation doing business as Mountain
Village Metropolitan Services, Inc. ("Metro Services"), Telluride Gondola Transit Company, a
Colorado non-profit corporation ("TGTC"), and Mountain Village Metropolitan District, a quasi-
municipal corporation ("Metro District"), the Court having considered the same and the
pleadings, and good cause appearing therefore,

THE COURT HEREBY FINDS:

A. The County is the plaintiff and the Town and Telco are the Defendants in Case
No. 97-CV-133, now pending in the District Court, San Miguel County, Colorado (the "Lawsuit").

B. The Lawsuit arises from a controversy among the parties regarding which entity
or entities has the right to enforce certain covenants, conditions, and restrictions contained in
various documents executed at or around the time the Mountain Village Planned Unit
Development was approved. As set forth in more detail in the pleadings filed in the Lawsuit, the
County generally alleges that it has the right to enforce those covenants, conditions, and
restrictions, while the Town alleges that the County's rights to do so passed to it upon
incorporation.

C. As set forth in more detail in the pleadings filed in the Lawsuit, the issues of dispute between the parties include the following: (1) the conditions and restrictions to be attached to future operation of the Gondola between the Town of Telluride and the Town of Mountain Village; (2) the right to enforce the Ridgeline Covenant burdening certain tracts of real property which as of July 21, 1999 are platted as Lots 161A, 161A-1, 161B and 161D and Active Open Space Tract OSP-49 in the Town of Mountain Village, and the manner in which development on the ridgeline portions of the Ridgeline Properties may be regulated; (3) the right to enforce certain provisions of the Final Development Plan Approval for the Mountain Village Planned Unit Development, as amended (the "PUD Development Plan") and the General Declaration for the Telluride Mountain Village ("General Declaration"), as amended, including provisions relating to open space, density, air quality, and the amendment of the General Declaration; (4) conditions to be attached to future wetlands development in the Town, if any; (5) the right to enforce deed restrictions attached to certain properties located in the Town, requiring that they be used for affordable housing, and the restrictions applicable to the same; (6) the validity of certain Town Plats adopted by the Town Council subsequent to incorporation; and (7) the validity of an ordinance adopted by the Town with respect to the above issues.

D. In an effort to resolve their differences, and eliminate the need to spend additional public and private funds on the Lawsuit, the parties now wish to compromise and settle their claims upon the terms and conditions set forth in the Stipulation, this Stipulated Settlement Order ("Order"), and the Exhibits to this Order, without admitting liability, one to the other, for the claims or counterclaims asserted in the Lawsuit.

E. The settlement contemplated by the parties affects the rights of, and requires the joinder and consent of, Metro Services, TGTC, Telski and Metro District. Metro Services, Telski, TGTC, and Metro District have stipulated to be joined as parties to the Lawsuit for purposes of entering into and enforcing the obligations contained in this Order. Hereafter, any reference to the Parties shall include Metro Services, TGTC, Telski and Metro District. The Parties have stipulated and agreed to the settlement of all claims asserted in the Lawsuit upon the terms and conditions of the Stipulation, this Order and the Exhibits to this Order.

F. The Parties recognize and have stipulated to the inherent power of this Court to retain jurisdiction over the Parties and the subject matter of this Lawsuit for enforcement of their Stipulation and this Order, including the authority of the Court to enter injunctive orders if necessary. The Parties have stipulated to the Court's retention of jurisdiction over the Parties and the subject matter of this Lawsuit to give effect to their Stipulation and this Order notwithstanding the dismissal of all claims in this Lawsuit with prejudice.

H. The Court finds the provisions of the Stipulation and this Order represent a fair and equitable resolution of the claims of the Parties.

THEREFORE: IT IS HEREBY ORDERED:

1. Definitions.

(a) "Affordable Housing Deed Restriction" means the R-1 Housing Deed Restriction referenced in § 5-1305 of the San Miguel County Land Use Code in force at any time since the recording of the PUD Final Development Plan and General Declaration on December 28, 1981.

(b) "Development Covenant" means that certain Development Covenant entered into on January 18, 1993, between Telco and the County.

(c) "Employee Housing Restriction" means the Town of Mountain Village Employee Housing Restriction replacing and superseding San Miguel County R-1 Housing Deed Restriction dated September 8, 1997 and recorded September 8, 1997 at Book 586, Page 575 in the records of the Clerk and Recorder for the County.

(d) "General Declaration" means the General Declaration for the Telluride Mountain Village recorded March 9, 1984 at Book 409, Page 714 in the records of the Clerk and Recorder for the County, as subsequently amended and supplemented, which specific amendments and supplements are identified in Exhibit A, a copy of which is attached hereto and incorporated herein by reference.

(e) "Gondola" means the aerial gondola transportation facility connecting the Town of Telluride with the Telluride Ski Area and the Town of Mountain Village.

(f) "Mountain Village Planned Unit Development" means the real property encompassed within the PUD Final Development Plan and the PUD.

(g) "PUD" means the geographic area of the Mountain Village Planned Unit Development encompassed within the Zoning Map and Preliminary Plat-Master Plan, as approved by the San Miguel County Board of Commissioners on December 17, 1992 and recorded in the real estate records of the San Miguel County Clerk and Recorder's office at Reception No. 282099, Plat Book #2, Pages 1388-1397, on January 7, 1993.

(h) "PUD Final Development Plan" means the Final Development Plan Approval for the Mountain Village Planned Unit Development approved by the County on December 22, 1981 and recorded on December 28, 1981 at Book 387, Page 382 of the records of the Clerk and Recorder for the County, as amended, through December 13, 1990, by document recorded on January 11, 1991 at Book 474, Page 234, in the records of the Clerk and Recorder for the County, and as further amended through December 17, 1992 by document recorded on January 19, 1993 at Book 504, Page 788 in the records of the Clerk and Recorder for the County.

(i) "Ridgeline Covenant": means the First Amended and Restated Development Covenant attached hereto as Exhibit B.

(j) "Ridgeline Properties" means Lots 161A, 161A-1, 161B and 161D and Active Open Space Tract OSP-49, which are legally described as follows:

- (1) Lot 161A, Telluride Mountain Village, according to the final plat recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 1375.
- (2) Lots 161B and 161D, Telluride Mountain Village, according to the final plat recorded in the office of the San Miguel County, Clerk and Recorder in Plat Book 1 at Page 1403.
- (3) Lots 161A-1, Telluride Mountain Village, according to the final plat recorded in the office of the San Miguel County, Clerk and Recorder in Plat Book 1 at Page 2193.
- (4) Active Open Space Tract OSP-49, according to the final plat as amended and recorded in the office of the San Miguel County, Clerk and Recorder in Plat Book 1 at Page 1403.

(k) "Town Council" shall mean the Town Council of the Town of Mountain Village.

2. Gondola. The First Amended and Restated Gondola Agreement attached hereto as Exhibit C has been executed by all Parties and placed in escrow pursuant the Stipulation and is incorporated herein by reference. It shall be effective as of the date of this Order.

3. Ridgeline Covenant. The Ridgeline Covenant in the form attached hereto as Exhibit B has been lawfully executed and placed in escrow pursuant to the Stipulation and is incorporated herein by reference. It shall be effective as of the date of this Order.

4. Eleventh and Twelfth Amendments to the General Declaration. The necessary Parties have lawfully executed the Eleventh and Twelfth Amendments to the General Declaration for the Telluride Mountain Village, attached hereto as Exhibits D and E, respectively. The Eleventh and Twelfth Amendments to the General Declaration are incorporated herein by reference and shall be effective as of the date of this Order.

5. Affordable Housing. The County has lawfully executed an Acknowledgment in the form attached hereto as Exhibit F. This Acknowledgment is incorporated herein by reference and shall be effective as of the date of this Order as to those Properties identified on Exhibit F-1 attached hereto, which is incorporated herein by reference. The County waives the right to enforce the Affordable Housing Deed Restriction within the incorporated limits of the Town, as those limits may from time to time be changed through annexation or deannexation proceedings. The Town's Employee Housing Restriction has superseded the Affordable Housing Deed Restriction with respect to properties located within the Town limits. During the initial 50 year term of the Town's Employee Housing Restriction, the Town will maintain qualification and verification procedures for affordable housing eligibility that are not less stringent than those in place as of the date of this Order, a copy of which is attached hereto as Exhibit F-2 and is incorporated herein by reference.

6. Wetlands. The County has been granted "referral status" by the U.S. Army Corps of Engineers with respect to any applications for development within the Town for which a Nationwide Permit or any other permit issued under section 404 of the Clean Water Act is required. The Town shall not seek withdrawal of, or otherwise object to, the County's referral status.

7. Plats. The Town has enacted an Ordinance clarifying the Official Town Plat in the form attached hereto as Exhibit G. This Ordinance is incorporated herein by reference and shall be effective as of the date of this Order.

8. PUD Development Plan. The provisions of the PUD Final Development Plan are no longer enforceable by the County under its constitutional police power or pursuant to the County's zoning, subdivision, and land use regulations. This Order, however, shall not affect any right of the County to enforce rights under the PUD Final Development Plan which the County may have as an owner of property within the PUD, nor shall this Order affect or impair any of the rights of the County under the General Declaration as amended in accordance with this Order, nor shall this Order affect or impair any rights or powers conferred upon the County by the Constitution, statutes or laws of the State of Colorado.

9. Releases. The parties shall and have granted the following releases, which are mutual in scope and effect.

(a) *By The County*. The County, on behalf of itself, its officers, and all related governmental entities, releases, waives, discharges, and forgives forever the Town, Telco, Telski, Metro Services, TGTC and Metro District, their respective affiliated entities, subsidiaries, successors, assigns, and their respective past and present directors, officers, agents, and employees, from any and all claims, demands, obligations, damages, and causes of action, of whatever nature, whether known or unknown, which the County, or any person or entity claiming under it, may now have or claim at a future time to have which were asserted or could have been asserted arising out of the facts and circumstances which are the subject of this Lawsuit.

(b) *By The Town*. The Town, on behalf of itself, its officers, and all related governmental entities, releases, waives, discharges, and forgives forever the County, its officers, and all related governmental entities, and its past and present directors, officers, agents, and employees, from any and all claims, demands, obligations, damages, and causes of action, of whatever nature, whether known or unknown, which the Town, or any person or entity claiming under it, may now have or claim at a future time to have which were asserted or could have been asserted arising out of the facts and circumstances which are the subject of this Lawsuit.

(c) *By Telco and Telski*. Telco has transferred substantially all of its assets to Telski. The rights and obligations of Telco under this Order have been assumed by Telski. Telco and Telski, on behalf of themselves, their officers, directors, agents and all their affiliated entities, subsidiaries, successors and assigns, release, waive, discharge, and forgive forever the County, its officers, and all related governmental entities, and their respective past and present directors, officers, agents, and employees, from any and all claims, demands, obligations, damages, and causes of action, of whatever

nature, whether known or unknown, which Telco or Telski, or any person or entity claiming under either of them, may now have or claim at a future time to have which were asserted or could have been asserted or arising out of the facts and circumstances which are the subject of this Lawsuit.

(d) *By Metro Services to County:* Metro Services, on behalf of itself, its officers, and all related governmental entities, releases, waives, discharges, and forgives forever the County, its officers, and all related governmental entities, and its past and present directors, officers, agents, and employees, from any and all claims, demands, obligations, damages, and causes of action, of whatever nature, whether known or unknown, which Metro Services, or any person or entity claiming under it, may now have or claim at a future time to have which were asserted or could have been asserted arising out of the facts and circumstances which are the subject of this Lawsuit.

(e) *By TGTC to County:* TGTC, on behalf of itself, its officers, and all related governmental entities, releases, waives, discharges, and forgives forever the County, its officers, and all related governmental entities, and its past and present directors, officers, agents, and employees, from any and all claims, demands, obligations, damages, and causes of action, of whatever nature, whether known or unknown, which TGTC, or any person or entity claiming under it, may now have or claim at a future time to have which were asserted or could have been asserted arising out of the facts and circumstances which are the subject of this Lawsuit.

(f) *By Metro District to County:* Metro District, on behalf of itself, its officers, and all related governmental entities, releases, waives, discharges, and forgives forever the County, its officers, and all related governmental entities, and its past and present directors, officers, agents, and employees, from any and all claims, demands, obligations, damages, and causes of action, of whatever nature, whether known or unknown, which Metro District, or any person or entity claiming under it, may now have or claim at a future time to have which were asserted or could have been asserted arising out of the facts and circumstances which are the subject of this Lawsuit.

(g) *Reservations.* Each of the Parties does not release, and each of the Parties expressly reserves, any claims, demands, obligations, damages or causes of action which do not relate to the subject matter of this Lawsuit so as to be precluded by the doctrines of *res judicata* or collateral estoppel or which were not required to be asserted in the Lawsuit as compulsory claims under Colo. R. Civ. P. 13. The releases provided herein shall not operate to relieve any party of rights and obligations under the Stipulation, this Order, or the Exhibits to this Order.

10. Denial of Liability. This Order is the consequence of a compromise of disputed and doubtful claims, and nothing herein is to be construed as an admission of liability on the part of any party, all of whom have expressly denied liability for the claims asserted in the Lawsuit.

11. Continuing Jurisdiction. The Court shall retain jurisdiction over the Parties and the subject matter of this Lawsuit for the purpose of giving effect to the Stipulation, this Order and the Exhibits hereto, through any of the Court's legal or equitable powers including, without limitation, its powers under Colo. R. Civ. P. 65 and 107. Pursuant to the Stipulation, this Order

shall be final and non-appealable. The provisions of the Stipulation and this Order shall not be construed as a limitation of any remedies for breach or violation of the provisions of this Order which may be available at law or in equity to any party.

12. Dismissal of Claims. The claims of all Parties in the Lawsuit are dismissed with prejudice.

13. Resolutions of Approval.

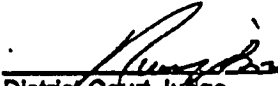
(a) On July 13, 1999, the Town Council, by Resolution No. 1999-0622-18 approved the Eleventh Amendment to the General Declaration and the Twelfth Amendment to the General Declaration, in the form attached hereto as Exhibit H, which is incorporated herein by reference. Town Council Resolution No. 1999-0622-18 shall be effective as of the date of this Order.

(b) On July 21, 1999, the Board of County Commissioners of the County, by Resolution No. 1999-26, approved the Eleventh Amendment to the General Declaration and the Twelfth Amendment to the General Declaration, in the form attached hereto as Exhibit I, which is incorporated herein by reference. County Resolution No. 1999-26 shall be effective as of the date of this Order.

14. Escrow. Within ten days of the entry of this Order, the Parties shall each instruct the Escrow Agent to record the Stipulation, this Order and each Exhibit to this Order, in accordance with the terms of the Escrow Agreement entered into by the Parties with Telluride Mountain Title Company on July 9-5, 1999, a copy of which is attached hereto as Exhibit J and is incorporated herein by reference.

15. Attorneys' Fees. Each of the Parties shall bear its own costs and attorneys' fees in connection with the Lawsuit, the Stipulation, this Order and each Exhibit to this Order, provided, however, that in any action seeking damages under or enforcement of the Stipulation, this Order and any Exhibits hereto, the prevailing party shall recover its reasonable costs and reasonable attorneys' fees from the losing party in an amount determined by the Court.

DATED this 2² day of September, 1999.



District Court Judge

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EXHIBIT A

STIPULATED SETTLEMENT ORDER
GENERAL DECLARATION AMENDMENTS/SUPPLEMENTS

- (1) Supplemented by Filing 6, recorded in the records of the Clerk and Recorder for the County on June 20, 1985, at Book 419, Page 593;
- (2) Amended by First Amendment, recorded in the records of the Clerk and Recorder for the County on June 20, 1985, at Book 419, Page 597;
- (3) Amended by Second Amendment, recorded in the records of the Clerk and Recorder for the County on May 1, 1986, at Book 426, Page 963;
- (4) Supplemented by Second Supplement, recorded in the records of the Clerk and Recorder for the County on March 3, 1987, at Book 434, Page 520;
- (5) Supplemented by Third Supplement, recorded in the records of the Clerk and Recorder for the County on September 1, 1987, at Book 438, Page 881;
- (6) Supplemented by Fourth Supplement, recorded in the records of the Clerk and Recorder for the County on September 1, 1987, at Book 438, Page 702;
- (7) Supplemented by Fifth Supplement, recorded in the records of the Clerk and Recorder for the County on October 30, 1987, at Book 439, Page 982;
- (8) Supplemented by Sixth Supplement, recorded in the records of the Clerk and Recorder for the County on January 15, 1988, at Book 441, Page 677;
- (9) Supplemented by Seventh Supplement, recorded in the records of the Clerk and Recorder for the County on February 3, 1988, at Book 441, Page 980;
- (10) Supplemented by Eighth Supplement, recorded in the records of the Clerk and Recorder for the County on February 19, 1988, at Book 442, Page 269;
- (11) Amended by Third Amendment, recorded in the records of the Clerk and Recorder for the County on July 20, 1988, at Book 445, Page 522;
- (12) Supplemented by Ninth Supplement, recorded in the records of the Clerk and Recorder for the County on August 3, 1988, at Book 445, Page 769;
- (13) Supplemented by Tenth Supplement, recorded in the records of the Clerk and Recorder for the County on September 6, 1988, at Book 446, Page 804;
- (14) Supplemented by Eleventh Supplement, recorded in the records of the Clerk and Recorder for the County on October 24, 1988, at Book 447, Page 942;
- (15) Supplemented by Twelfth Supplement, recorded in the records of the Clerk and Recorder for the County on November 21, 1988, at Book 448, Page 589;

- (16) Corrected by First Correction to Twelfth Supplement, recorded in the records of the Clerk and Recorder for the County on December 7, 1988, at Book 449, Page 139;
- (17) Supplemented by Thirteenth Supplement, recorded in the records of the Clerk and Recorder for the County on February 22, 1989, at Book 451, Page 402;
- (18) Supplemented by Fourteenth Supplement, recorded in the records of the Clerk and Recorder for the County on April 6, 1989, at Book 452, Page 621;
- (19) Supplemented by Fifteenth Supplement, recorded in the records of the Clerk and Recorder for the County on June 22, 1989, at Book 454, Page 690;
- (20) Supplemented by Sixteenth Supplement, recorded in the records of the Clerk and Recorder for the County on June 22, 1989, at Book 454, Page 694;
- (21) Amended by Fourth Amendment, recorded in the records of the Clerk and Recorder for the County on July 13, 1989, at Book 455, Page 167;
- (22) Supplemented by Seventeenth Supplement, recorded in the records of the Clerk and Recorder for the County on July 21, 1989, at Book 455, Page 522;
- (23) Supplemented by Eighteenth Supplement, recorded in the records of the Clerk and Recorder for the County on July 21, 1989, at Book 455, Page 526;
- (24) Supplemented by Nineteenth Supplement, recorded in the records of the Clerk and Recorder for the County on August 30, 1989, at Book 456, Page 870;
- (25) Supplemented by Twentieth Supplement, recorded in the records of the Clerk and Recorder for the County on September 22, 1989, at Book 457, Page 781;
- (26) Supplemented by Twenty-First Supplement, recorded in the records of the Clerk and Recorder for the County on October 5, 1989, at Book 458, Page 157;
- (27) Supplemented by Twenty-Second Supplement, recorded in the records of the Clerk and Recorder for the County on November 17, 1989, at Book 459, Page 741;
- (28) Supplemented by Twenty-Third Supplement, recorded in the records of the Clerk and Recorder for the County on November 17, 1989, at Book 459, Page 745;
- (29) Supplemented by Twenty-Fourth Supplement, recorded in the records of the Clerk and Recorder for the County on November 17, 1989, at Book 459, Page 749;
- (30) Supplemented by Twenty-Fifth Supplement, recorded in the records of the Clerk and Recorder for the County on January 5, 1990, at Book 461, Page 609;
- (31) Supplemented by Twenty-Sixth Supplement, recorded in the records of the Clerk and Recorder for the County on February 9, 1990, at Book 462, Page 747;
- (32) Supplemented by Twenty-Seventh Supplement, recorded in the records of the Clerk and Recorder for the County on February 15, 1990, at Book 462, Page 886;

- (33) Supplemented by Twenty-Eighth Supplement, recorded in the records of the Clerk and Recorder for the County on March 6, 1990, at Book 463, Page 526;
- (34) Supplemented by Twenty-Ninth Supplement, recorded in the records of the Clerk and Recorder for the County on April 6, 1990, at Book 464, Page 712;
- (35) Supplemented by Thirtieth Supplement, recorded in the records of the Clerk and Recorder for the County on June 19, 1990, at Book 466, Page 988;
- (36) Supplemented by Thirty-First Supplement, recorded in the records of the Clerk and Recorder for the County on July 5, 1990, at Book 467, Page 829;
- (37) Amended by Fifth Amendment, recorded in the records of the Clerk and Recorder for the County on February 7, 1991, at Book 474, Page 833;
- (38) Supplemented by Thirty-Second Supplement, recorded in the records of the Clerk and Recorder for the County on August 6, 1991, at Book 480, Page 954;
- (39) Supplemented by Thirty-Third Supplement, recorded in the records of the Clerk and Recorder for the County on October 28, 1991, at Book 484, Page 184;
- (40) Supplemented by Thirty-Fourth Supplement, recorded in the records of the Clerk and Recorder for the County on December 31, 1991, at Book 486, Page 106;
- (41) Amended by Sixth Amendment, recorded in the records for the Clerk and Recorder for the County on March 30, 1992, at Book 489, Page 938;
- (42) Amended by Seventh Amendment, recorded in the records of the Clerk and Recorder for the County on March 30, 1992, at Book 489, Page 954;
- (43) Supplemented by Declarant Agreement, recorded in the records of the Clerk and Recorder for the County on March 30, 1992, at Book 489, Page 974;
- (44) Amended by Eighth Amendment, recorded in the records of the Clerk and Recorder for the County on November 24, 1992, at Book 501, Page 1022;
- (45) Supplemented by Thirty-Fifth Supplement, recorded in the records of the Clerk and Recorder for the County on December 29, 1992, at Book 503, Page 646;
- (46) Supplemented by Thirty-Sixth Supplement, recorded in the records of the Clerk and Recorder for the County on January 22, 1993, at Book 505, Page 12;
- (47) Supplemented by Thirty-Seventh Supplement, recorded in the records of the Clerk and Recorder for the County on January 28, 1993, at Book 505, Page 252;
- (48) Supplemented by Thirty-Eighth Supplement, recorded in the records of the Clerk and Recorder for the County on March 10, 1993, at Book 507, Page 326;
- (49) Supplemented by Thirty-Ninth Supplement, recorded in the records of the Clerk and Recorder for the County on April 4, 1993, at Book 509, Page 281;

- (50) Supplemented by Fortieth Supplement, recorded in the records of the Clerk and Recorder for the County on August 2, 1993, at Book 515, Page 83;
- (51) Supplemented by Forty-First Supplement, recorded in the records of the Clerk and Recorder for the County on August 12, 1993, at Book 515, Page 89;
- (52) Supplemented by Forty-Second Supplement, recorded in the records of the Clerk and Recorder for the County on August 25, 1993, at Book 516, Page 402;
- (53) Supplemented by Forty-Third Supplement, recorded in the records of the Clerk and Recorder for the County on November 17, 1993, at Book 520, Page 629;
- (54) Supplemented by Forty-Fourth Supplement, recorded in the records of the Clerk and Recorder for the County on January 4, 1994, at Book 523, Page 79;
- (55) Supplemented by Forty-Fifth Supplement, recorded in the records of the Clerk and Recorder for the County on July 22, 1994, at Book 532, Page 745;
- (56) Supplemented by Forty-Sixth Supplement, recorded in the records of the Clerk and Recorder for the County on November 16, 1994, at Book 537, Page 1001;
- (57) Amended by Ninth Amendment, recorded in the records of the Clerk and Recorder for the County on or about June 14, 1995, at Book 548, Page 153;
- (58) Supplemented by Second Declarant Agreement, recorded in the records of the Clerk and Recorder for the County on or about December 14, 1995, at Book 554, Page 429;
- (59) Supplemented by Forty-Seventh Supplement, recorded in the records of the Clerk and Recorder for the County on March 21, 1996, at Book 559, Page 151;
- (60) Supplemented by Thirty-Second Supplement, recorded in the records of the Clerk and Recorder for the County on November 22, 1996, at Book 572, Page 445;
- (61) Supplemented by Forty-Eighth Supplement, recorded in the records of the Clerk and Recorder for the County on July 8, 1997, at Book 583, Page 103.
- (62) Amended by Tenth Amendment, recorded in the records of the Clerk and Recorder for the County on July 24, 1997, at Book 584, Page 344 (which Amendment has been rescinded and annulled by virtue of the Eleventh Amendment referenced below).
- (63) Amended by Eleventh Amendment dated July 21, 1999, to be recorded in the records of the Clerk and Recorder for the County in accordance with the terms of the Stipulated Settlement Order to which this Exhibit A is attached.
- (64) Amended by Twelfth Amendment dated July 21, 1999, to be recorded in the records of the Clerk and Recorder for the County in accordance with the terms of the Stipulated Settlement Order to which this Exhibit A is attached.

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EXHIBIT B

FIRST AMENDED AND RESTATED DEVELOPMENT COVENANT
FOR LOTS 161A, 161A-1, 161B, 161D AND ADJACENT ACTIVE OPEN SPACE,
TOWN OF MOUNTAIN VILLAGE, COLORADO

THIS FIRST AMENDED AND RESTATED DEVELOPMENT COVENANT (this "Ridgeline Covenant") is entered into between TELLURIDE SKI & GOLF COMPANY, LLLP, a Colorado limited liability limited partnership ("Telski"), the SAN MIGUEL COUNTY, COLORADO, BOARD OF COUNTY COMMISSIONERS (the "County"), ST. SOPHIA PARTNERS, LLLP, a Colorado limited liability limited partnership ("St. Sophia"), and the TOWN OF MOUNTAIN VILLAGE, COLORADO (the "Town").

RECITALS

- A. Telski and the County are parties to the Development Covenant for Lots 161A, 161B, 161D and Adjacent Active Open Space, Mountain Village Planned Unit Development as recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Book 504 at Page 744 (the "Development Covenant"). County Resolution 1993-6, authorizing the County to execute the Development Covenant, is recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Book 504 at Page 737 ("Resolution 1993-6").
- B. Subsequent to January 13, 1993, the Town incorporated in what was previously an unincorporated area of San Miguel County, Colorado.
- C. St. Sophia is now the owner of the following described real property (the "Current St. Sophia Property"):
- (i) Lot 161A, Telluride Mountain Village, according to the final plat recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 2193.
 - (ii) Lot 161D, Telluride Mountain Village, according to the final plat recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 1403.
- D. Telski is the owner of the following described real property (the "Current Telski Property"):
- (i) Lot 161A-1, Telluride Mountain Village, according to the final plat recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 2193.
 - (ii) Lot 161B, Telluride Mountain Village, according to the final plat recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 1403.
 - (iii) Active Open Space Tract OSP-49, according to the final plat as amended and recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 1403.

- E. The Current St. Sophia Property is encumbered by the following deeds of trust:
- (i) Deed of trust for the benefit of Warren William Lovell, III, Robert Pickering and the J. Robert Pickering Charitable Remainder Trust as recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Book 539 at Page 341.
 - (ii) Deed of trust for the benefit of William Warren Lovell, III and Connie M. Pickering as recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Book 544 at Page 951.
 - (iii) Deed of trust for the benefit of David Iverson, et al. as recorded in the office of the San Miguel County, Colorado, Clerk and Recorder at Reception No. 325420.
- F. The Current Telski Property is encumbered by the following deed of trust:
- (i) Deed of trust for the benefit of U.S. Bank National Association as recorded in the office of the San Miguel County, Colorado, Clerk and Recorder at Reception No. 319935.
- G. The Town, St. Sophia and Telski anticipate that a replat ("Replat") of the St. Sophia Property and the Telski Property will be recorded with the San Miguel County, Colorado, Clerk and Recorder in the form approved by the Town on February 23, 1999.
- H. Subsequent to the recordation of the Replat and certain related real property conveyances between St. Sophia and Telski, it is anticipated that St. Sophia will be the owner of the following described real property (the "Anticipated St. Sophia Property"):
- (i) Lots 161A-2, 161A-3 and 161A-4, as shown on the Replat;
 - (ii) Lots 161D-1 and 161D-2, as shown on the Replat; and
 - (iii) Active open space Tract OS161R-3, as shown on the Replat.
- I. Subsequent to the recordation of the Replat and certain related real property conveyances between St. Sophia and Telski, it is anticipated that Telski will be the owner of the following described real property (the "Anticipated Telski Property"):
- (i) 161A-1R, as shown on the Replat; and
 - (ii) Active open space Tracts OS161-R1, OS161-R2 and OSP-49, as shown on the Replat.
- J. The Current St. Sophia Property and the Current Telski Property (or subsequent to the Replat, the Anticipated St. Sophia Property and the Anticipated Telski Property) are referred to herein collectively as the "Ridgeline Properties".
- K. The parties desire to enter into this Ridgeline Covenant to set forth the rights and obligations of the parties with respect hereto and to assure that the Ridgeline Properties shall be improved, occupied, owned, conveyed, encumbered, leased and used subject to the covenants, conditions, restrictions, undertakings and equitable servitudes described herein.

NOW, THEREFORE, the parties covenant and agree as follows:

1. **Replacement and Consent.** The provisions of this Ridgeline Covenant supersede and replace the Development Covenant and Resolution 1993-6 in their entirety, except that as to each of the Deeds of Trust described in Recital E hereto and any modifications or extensions thereof, the parties agree that the Development Covenant and Resolution 1993-6 shall remain and continue to be a senior covenant and encumbrance upon the Ridgeline Properties until the earlier of such time as the liens of all such Deeds of Trust, and any modifications or extensions thereof are released or extinguished, or such time as all of the beneficiaries of such Deeds of Trust have recorded in the office of the Clerk and Recorder for San Miguel County consents to this Ridgeline Covenant which subordinate the liens of such Deeds of Trust to this Ridgeline Covenant. Any person acquiring title to any of the Ridgeline Properties through foreclosure of any of the Deeds of Trust described in Recital E hereto, or through any conveyance in lieu of such foreclosure, shall take title to such Ridgeline Properties subject the covenants, conditions, restrictions and provisions of the Development Covenant and Resolution 1993-6 unless the consents contemplated by this paragraph have been duly recorded, in which event the person acquiring title to the Ridgeline Properties shall take title subject to the covenants, conditions, restrictions and provisions of this Ridgeline Covenant.

2. **General Objective.** All improvements, including, but not limited to all structures, constructed on the Ridgeline Properties shall conform to the applicable requirements and restrictions set forth herein. All structures, improvements and lighting on the Ridgeline Properties shall be constructed, operated, and maintained so that they shall not be visible from or extend into the View Plane described herein below, excluding the structure which received final plan approval by the Town Design Review Board on April 29, 1999, for development on the Current Telski Property (i.e., Lot 161A-1 and Tract OSP-49 or, subsequent to the Replat, Lot 161A-1R and OS 161-R1) (the "Ridge Club Building"). The final development plans approved by the Town Design Review Board on April 29, 1999 together with the Ridge Club Building Landscape Plan, dated July 1, 1999 and the Ridge Club Site Plan, dated July 1, 1999, which have also received County review and approval, shall be collectively referred to hereafter as the "Approved Plans."

3. **Modifications to Ridge Club Building.** The Ridge Club Building shall be constructed in full compliance with the Approved Plans. Any modifications of the Ridge Club Building shall be subject to this Covenant. However, in no event shall the Ridge Club Building, including any modifications thereto, exceed the maximum height of thirty-five (35) feet along the ridgeline, as measured in accordance with Section 8.2 of the Town's Land Use Ordinance in effect on the date of execution of this Ridgeline Covenant, a copy of Section 8.2 of the Town's Land Use Ordinance is attached hereto and incorporated herein by reference as Exhibit B-1.

4. **Height limits on Lots 161A, 161A-1, 161B and 161D.** Except for the Ridge Club Building, all improvements constructed on Lots 161A, 161A-1, 161B and 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2) shall have a maximum height limit of the lesser of (i) forty-five (45) feet or (ii) the maximum height allowed pursuant to the View Plane Limitations described below. For the purposes of clause (i) above, the height of any such improvements shall be measured in accordance with Section 8.2 of the Town's Land Use Ordinance as in effect on the date of the execution of this Ridgeline Covenant, a copy of which is attached hereto and incorporated herein by reference as Exhibit B-1.

5. View Plane Limitations for Development on Lots 161A, 161A-1, 161B, and 161D. Development on Lots 161A, 161A-1, 161B and 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2), excluding the Ridge Club Building, shall be located such that, under no circumstances, shall any lighting or any part of any structure extend into the view plane (the "View Plane") shown on the Coonskin View Plane drawing prepared by Jacobsen Associates and dated July 21, 1999, as recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 2801.
6. View Plane Limitation Review. Prior to the Town's issuance of any development approvals and/or building permits for any improvements to be located on Lots 161A, 161A-1, 161B, 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2), excluding the Ridge Club Building, the applicant shall erect a story pole which reflects the maximum height of the proposed improvements at the point where the proposed improvements will extend closest to the View Plane to confirm that the improvements will comply with all conditions set forth herein. The applicant shall give written notice to the Town and the County at the time the story pole is erected. Contemporaneously with the erection of the story pole, a light shall be installed that illuminates the story pole at the elevation on the pole where light would be visible from off-site at the height of the highest window in the proposed improvements.
7. Lighting on Ridge Club Building. All exterior and interior light fixtures on the Ridge Club Building associated with non-gondola uses shall be shielded, recessed or reflected so that no lighting is oriented towards the east face of the building.
8. Ski Area Commercial Operations in Open Space. One or more restaurants or other commercial operations may be constructed within the Ridge Club Building. No solid fuel burning device shall be allowed in any proposed restaurant, or at any other commercial operation within the Ridge Club Building.
9. Landscaping Plan. St. Sophia shall complete all landscaping surrounding the Ridge Club Building in accordance with the Approved Plans.
10. Referral to County. All applications to the Town Design Review Board Administrator for any construction on Lots 161A, 161A-1, 161B, 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2) and adjacent Active Open Space (or, subsequent to the Replat, Tracts OS161-R1, OS161R-2, OS161R-3 and OS 49), except initial building permit applications, shall be referred by said Administrator, within seven days of receipt, to the County Planning Office for review. Notwithstanding the foregoing, the Town's approval of such applications will not be subject to County land use review or approval. However, the Town's approval of such applications shall not establish compliance with this Ridgeline Covenant for purposes of enforcement by the County.
11. Enforcement by the County. In the event the Town considers any development application which the County believes violates this Ridgeline Covenant, the County shall have the right to initiate legal action at its sole cost and expense to enforce this Ridgeline Covenant against the applicant and/or any other parties with a legal interest in the property. Applicants will be given notice by the Town that the Ridgeline Properties are subject to this Ridgeline Covenant and that it may be enforced by the County through direct court proceedings against them. Any action taken by the County related to the

development application must be brought within 60 days after final plan approval by the Town Design Review Board, provided the development application has been referred to the County in accordance with paragraph 10 above. Any County legal action for possible violations of this covenant regarding future amendments or modifications to a final plan approval shall be limited to such future amendments' or modifications' possible violation of this covenant.

In the event an improvement is constructed which the County believes violates this Ridgeline Covenant, the County shall have the right to initiate legal action at their sole cost and expense to enforce this Ridgeline Covenant against the owner of the improvement. Any action taken by the County related to a constructed improvement shall be brought within one year after the date of issuance of a temporary or permanent certificate of occupancy for the improvement.

12. **Acknowledgments.** The County hereby acknowledges that approval of development upon Ridgeline Properties is subject only to the Town's Land Use Ordinance and the provisions of this Ridgeline Covenant. Notwithstanding the foregoing, the Town hereby acknowledges the County's rights to privately enforce this Ridgeline Covenant, as set forth in paragraph 11 hereof.
13. **Run with Land.** The provisions of this Ridgeline Covenant shall be for the benefit of and a burden upon the title to the Ridgeline Properties, including any future boundary modifications thereto, and shall be binding on the successors and assigns of St. Sophia and Telski.
14. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Ridgeline Covenant and nothing contained herein shall in any way be construed to give any rights to any third party.
15. **Town of Telluride Referral.** All applications to the Town Design Review Board Administrator for any construction on Lots 161A, 161A-1, 161B and 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2), and adjacent Active Open Space (or, subsequent to the Replat, Tracts OS161-R1, OS161R-2, OS161R-3 and OS 49) shall be referred to the Town of Telluride for comments regarding compliance with the provisions of this Ridgeline Covenant within seven days of receipt of any such application for construction. Prior to the Town Design Review Board Administrator or the Town Design Review Board taking action on the application, the Town of Telluride shall have 21 days from receipt of such a referral to provide comments concerning an application. Any comments of the Town of Telluride on an application to the Town Design Review Board Administrator shall be advisory and not binding upon the parties hereto. Except for the rights granted to the Town of Telluride in this paragraph, the Town of Telluride shall have no third party beneficiary rights of any nature to enforce any of the provisions of this covenant.
16. **Effect of Provisions of this Covenant.** Each provision of this Ridgeline Covenant, and any agreement, promise, covenant and undertaking to comply with each provision of this Ridgeline Covenant, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Ridgeline Covenant: (a) shall be deemed incorporated in each deed, lease, or other instrument by which any right, title or interest in Lots 161A, 161A-1, 161B, and/or 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2) is granted, devised, leased, or conveyed, whether or not set forth or referred to in such deed, lease, or other

instrument; (b) shall, by virtue of acceptance of any right, title or interest in Lots 161A, 161A-1, 161B, and/or 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2) by an owner or lessee, be deemed accepted, ratified, adopted and declared to be a real covenant and binding as such upon such owners or lessees; (c) shall be deemed a real covenant by the parties hereto for themselves, their successors and assigns, and also an equitable servitude, running, in each case, as a burden with and encumbrance upon the title to Lots 161A, 161A-1, 161B, and 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2) for the benefit of the Town and the County.

17. Approvals by Lenders. St. Sophia and Telski shall use all reasonable efforts to secure the written consent to their execution of this Covenant from each of the beneficiaries to the deeds of trust currently encumbering their respective properties, as identified in Recitals E and F herein, prior to the District Court's approval of the Stipulated Settlement Order, which is scheduled to be submitted to the District Court for consideration on Friday, July 23, 1999.
18. Mutual Attorneys' Fees. In the event of any litigation (but not including arbitration proceedings) between the parties hereto concerning this Ridgeline Covenant and the enforcement hereof, the prevailing party in such action shall receive from the opposing party all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in such action.
19. Notices. All notices, requests, demands, consents and other communications which are required or may be given under this Ridgeline Covenant shall be in writing and shall be given either by personal delivery against a receipted copy or by certified or registered United States mail, return receipt requested, postage prepaid, to the following addresses:

Telluride Ski & Golf Company, LLLP
565 Mountain Village Boulevard
Telluride, CO 81435
Attn: Isaac B. Shisler

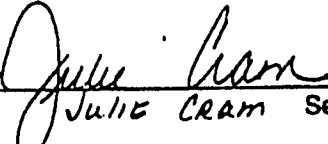
San Miguel County, Colorado
Board of County Commissioners
P.O. Box 1170
Telluride, CO 81435

ST. SOPHIA PARTNERS, a Colorado
limited liability limited partnership

By: C & S CONSTRUCTION AND
DEVELOPMENT, Inc., a Virginia
corporation

By: 
STEPHEN H. CRAM, President

ATTEST:

By: 
Julie Cram Secretary

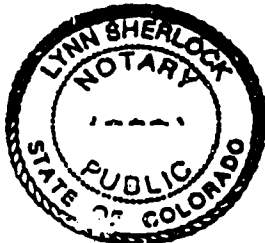
STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

The foregoing instrument was acknowledged before me on the 2nd day of Aug.,
1999, by Stephen H. Cram as President and JULIE CRAM as Secretary of C & S
Construction and Development, Inc., the General Partner of St. Sofia Partners, LLLP, a
Colorado limited liability limited partnership.

WITNESS my hand and official seal.

My commission expires: 5/25/00


Notary Public



My Commission Expires May 25, 2000

ARTICLE 7 EMPLOYEE HOUSING

SECTION 7-1 EMPLOYEE HOUSING RESTRICTION ("EHR")

7-101 Lots or dwelling units zoned Employee Apartment, Employee Condominium or Employee Dorm are restricted to occupancy exclusively by persons who are employed or can show intent to be employed within the Telluride R-1 District, and their spouses and children. This restriction on use and occupancy constitutes a covenant that runs fifty (50) years from the date of recordation with the title to the property as a burden thereon and shall be binding on the owner, and on the heirs, personal representatives, assigns, lessees and licensees and any transferee of the owner. The duration of this restriction and covenant shall extend for an initial period of fifty (50) years, and at the option of the Town Council, or its designee, may be extended for an additional period of fifty (50) years after public hearing and comment on the proposed extension. This restriction and covenant shall be administered by the Town Council, or its designee, and shall be enforceable by any appropriate legal or equitable action including, but not limited to, specific performance, injunction, abatement or eviction of non-complying owners, users or occupants, or such other remedies and penalties as may be provided by Colorado law or the ordinances of the Town.

7-102 Development shall be in accordance with the specific Design Zone of the property, except that the DRB may, at its discretion, relax the Design Zone requirements to allow for more affordable housing to be built. Employee Dorms may convert to either Employee Condominiums or Employee Apartments, and vice versa, according to the density formula.

ARTICLE 8 BUILDING HEIGHTS

SECTION 8-1 BUILDING HEIGHT LIMITATIONS

8-101 All Lots within the Town, except Lots specifically otherwise assigned in this Section or otherwise specified in a more restrictive Design Zone Covenant or on a recorded plat, shall not exceed thirty-five (35) feet in height relevant to the Maximum Height Limit requirement.

SECTION 8-2 BUILDING HEIGHT REQUIREMENTS - VILLAGE CORE

8-201 **Inner Village Core Lots.** The Maximum Height Limit for Inner Village Core Lots shall be sixty (60) feet. The Maximum Average Height shall be forty-eight (48) feet. For the purpose of determining height restrictions, the Village Core shall include the following lots: 28, 28A, 29B, 29C, 29D, 29E, 29F, 29G, 34, 35, 37, 38, 41, 42A, 42B, 43, 50A, 50B, 50C, 51, 53A, 53B, 60RA, 60RB, 61A, 61B, 61C, 61D, 62, 63R/64R, 65, 67, 68R, 69R1, 69R2, 71R, 73, 76, 89A, 108, 109, 110, 181CR.

8-202 **Village Core Transition Lots.** The Maximum Height Limit for Village Core Transition Lots, unless specifically otherwise assigned in this Section or otherwise specified in a more restrictive Design Zone Covenant or on a recorded plat, shall be forty-eight (48) feet. The Maximum Average Height shall be forty-eight (48) feet. For the

purpose of determining height restrictions, Village Core Transition lots shall include the following: 8, 10, 11, 12, 14, 15, 30, 89-1C, 89-1D, 122, 123, 129, 129A, 134, 135, 136, 152A, 152B,

SECTION 8-3 BUILDING HEIGHT REQUIREMENTS - MULTI-UNIT LOTS AND DETACHED CONDOMINIUMS

8-301 Multi-Unit Lots. The Maximum Height Limit for Multi-Unit Lots, unless specifically otherwise assigned in this Section or otherwise specified in a more restrictive Design Zone Covenant or on a recorded plat, shall be forty-eight (48) feet. The Maximum Average Height shall be forty-eight (48) feet.

8-302 Detached Condominium Lots. The Maximum Height Limit for Detached Condominiums shall be thirty-five (35) feet. The Maximum Average Height shall be thirty (30) feet.

SECTION 8-4 BUILDING HEIGHT REQUIREMENTS - RIDGE LINE LOTS

8-401 The Maximum Height Limit, not including chimneys and mechanical equipment, for all Ridge Line Lots shall not exceed forty-five (45) feet, as measured to the top of any structure from finish grade, except for Lots with more restrictive Height Limitations, as more particularly described in Section 5-1 of this Ordinance. The Maximum Average Height shall be thirty (30) feet.

SECTION 8-5 BUILDING HEIGHT REQUIREMENTS - SPECIAL CONSIDERATION LOTS

8-501 The Maximum Average Height Limit for Special Consideration Lots shall be forty-eight (48) feet. The Maximum Height Limit for Special Consideration Lots shall be:

Lots 10, 12 & 14 - 48 feet from Natural Grade

Lot 27A - 60 feet from Natural Grade

Lot 33 - 50 feet from Natural Grade

Lot 52 - 65 feet from Natural Grade

Lot 128 - the "As-Built" height as of 11-21-91

Lot 152C - 55 feet from Natural Grade

Lot 154 - 45 feet from Natural Grade

SECTION 8-6 BUILDING HEIGHT REQUIREMENTS - SINGLE FAMILY, DUPLEX LOTS

8-601 The Maximum Height Limit for Single Family and Duplex Lots, unless specifically otherwise assigned in this section or otherwise specified in a more restrictive Design Zone Covenant or on a recorded plat, shall be thirty-five (35) feet. The Maximum Average Height for Single Family and Duplex Lots, unless specifically otherwise assigned in this Section or otherwise specified in a more restrictive Design Zone Covenant or on a recorded plat, shall be thirty (30) feet.

EXHIBIT C

FIRST AMENDED AND RESTATED GONDOLA OPERATING AGREEMENT

THIS FIRST AMENDED AND RESTATED GONDOLA OPERATING AGREEMENT is made and entered into this 28th day of July, 1999, by and between TELLURIDE SKI & GOLF COMPANY, a Colorado limited liability limited partnership ("Telski"), TELLURIDE MOUNTAIN VILLAGE RESORT COMPANY, INC., a Colorado non-profit corporation, doing business as MOUNTAIN VILLAGE METROPOLITAN SERVICES, INC. ("Metro Services"), TELLURIDE GONDOLA TRANSIT COMPANY, a Colorado non-profit corporation ("TGTC"), MOUNTAIN VILLAGE METROPOLITAN DISTRICT, a quasi-municipal corporation ("Metro District"), the TOWN OF MOUNTAIN VILLAGE, COLORADO, a Colorado home rule municipality (the "Town") and SAN MIGUEL COUNTY, COLORADO, a body corporate and politic (the "County").

RECITALS

A. Telski, Metro Services, TGTC, Metro District, the Town, and the County acknowledge and agree that the operation of the gondola transportation facility (the "Gondola") is important to the economic health of the Mountain Village while at the same time providing an efficient, free public transportation system between the Town and the Town of Telluride.

B. Telski is directly affected by the operation of the Gondola in that in addition to providing a free public transportation system, the Gondola also functions as a ski lift during ski area hours of operation, which function creates a positive effect on the number of skier days.

C. Metro Services is directly affected by the operation of the Gondola in that the increased economic development of the Mountain Village resulting from said operation will provide additional revenues from Civic Assessments which are used to fund the operations of Metro Services.

D. TGTC is directly affected by the operation of the Gondola in that the increased economic development of the Mountain Village resulting from said operation will provide additional revenues from Real Estate Transfer Assessments which are pledged to pay debt service on the Gondola bonds and Gondola operating costs and, after defeasance of the bonds, will fund Gondola operating costs.

E. Metro District is directly affected by the operation of the Gondola in that the increased economic development of the Mountain Village resulting from said operation will provide additional revenues from tap fees, service fees and ad valorem taxes which are used to fund the operations of and the services provided by Metro District.

F. The Town is directly affected by the operation of the Gondola in that the increased economic development to the Mountain Village community resulting from said operation will provide additional revenues from permit fees, use taxes, ad valorem taxes, sales taxes, and lodging taxes which are used to fund the operations of and the services provided by the Town.

G. The County is directly affected by the operation of the Gondola in that it provides an efficient free public transportation system without impacting air quality and generally contributes to the economic well being of the County.

H. In recognition of the benefits to be derived by the respective parties as set forth herein, Telski, Metro Services, TGTC, Metro District, the Town and the County believe that it is in the best interests of each entity, the Mountain Village community, and the region as a whole, to enter into this Agreement to insure the future operation of the Gondola.

I. The Parties are entering into this Agreement for among other reasons the settlement of Case No. 97-CV-133 pending in the District Court, San Miguel County, State of Colorado (the "Lawsuit") and pursuant to the terms of the Settlement Stipulation ("Stipulation") and Stipulated Settlement Order ("Settlement Order") filed therein.

NOW THEREFORE, in consideration of the mutual benefits to be derived herefrom, the agreement of the parties to settle Case No. 97-CV-133 pending in the District Court, San Miguel County, State of Colorado, and the consent of the parties to the assignment of rights and delegation of duties provided for herein, the parties covenant and agree as follows:

DURATION OF AGREEMENT

1. This Agreement, and the respective rights, duties and obligations of the parties hereto, shall commence upon entry by the Court of the Settlement Order and shall terminate on December 31, 2027.

TGTC OBLIGATIONS

2. Until the payment, redemption or defeasance of the Telluride Gondola Transit Company Revenue Bonds, Series 1995 (the "1995 Bonds"), and Metro District's acceptance of the assignment by TGTC of all of TGTC's right, title and interest in and to the Gondola, TGTC, as owner of the Gondola shall operate, manage and maintain the Gondola as a free public transportation system. In connection with its obligation to operate, manage and maintain the Gondola, TGTC shall:

(a) Hire and supervise (and to the extent it deems necessary, discharge) operating and maintenance personnel, security guards and such other employees and agents as it deems in its judgment are desirable or necessary in connection with the performance of its duties and obligations hereunder;

(b) Cause the Gondola to be operated and maintained in good condition and repair, and in accordance with applicable law and any operating schedule that may be in place from time to time;

(c) (i) Keep the operation of the Gondola in compliance with all statutes, regulations and orders relating to occupational safety and health or environmental protection, (ii) maintain all records and file all reports or returns required to be maintained or filed pursuant to the provisions of

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any applicable statute, regulation or order and (iii) obtain all applicable consents, permits, licenses and approvals of all governmental bodies the obtaining of which is of material importance to, or the failure to obtain which may have a material adverse effect on, the ownership or operation of the Gondola;

(d) Take such action as may be necessary to comply promptly with any orders or requirements affecting the Gondola imposed by any federal, state or local government having jurisdiction over the Gondola and any property on which the Gondola is located or which is used in connection with the Gondola;

(e) Maintain a tally of ridership of the Gondola during operation thereof and make such information available to the public;

(f) Increase the capacity of the Gondola facilities from time to time from its initial capacity to its ultimate capacity as necessary to meet demand.

(g) Operate the Gondola as a free transportation service for a scheduled minimum of sixteen (16) hours per day for a number of days such that the Gondola operates a total of not less than four thousand four hundred (4,400) scheduled hours per calendar year, (subject to, mechanical, lightning, wind, and other weather related shutdowns) which is the equivalent of sixteen (16) hours per day times two hundred seventy-five (275) days per calendar year. All consecutive hours of operation in excess of sixteen (16) shall be counted at one and one-half (1 1/2) times actual. Notwithstanding the foregoing, in no event shall the Gondola be operated for less than sixteen (16) actual hours per day for at least two hundred fifty (250) days per calendar year (subject to, mechanical, lightning, wind, and other weather related shutdowns).

3. Notwithstanding the foregoing obligations of TGTC, TGTC may retain a manager to operate, manage and maintain the Gondola and to carry out its obligations set forth herein.

4. Upon the payment, redemption or defeasance of the 1995 Bonds, or any subsequent bonds, TGTC shall assign all of its right, title and interest in and to the Gondola and delegate all of its duties with respect to the Gondola to Metro District.

5. In performance of TGTC's obligations set forth herein, TGTC may use shuttle vans or buses during periods of Gondola shutdown due to emergencies, including, but not limited to, adverse weather conditions, repairs, or power outages (but not including periods of low use or demand). Notwithstanding the above restriction, the Gondola operator may in its sole discretion elect to substitute shuttle vans or buses for Leg 3 (Station Mountain Village to Station Parking) of the Gondola during hours when the ski area is not operating.

6. In performance of TGTC's obligations set forth herein, TGTC shall exercise the care, skill and diligence as would be exercised by a prudent person

engaged in the ownership, operation and maintenance of a gondola transportation system.

METRO DISTRICT OBLIGATIONS

7. Upon the payment, redemption or defeasance of the 1995 Bonds, or any subsequent bonds, and Metro District's acceptance of the assignment by TGTC of all of TGTC's right, title and interest in and to the Gondola, and the delegation of all of TGTC's obligations with respect to the Gondola, Metro District shall immediately assume and be responsible for all of the obligations of TGTC set forth in Paragraph 2(a)-(g) hereof with respect to the operation, management and maintenance of the Gondola as a free public transportation system until December 31, 2027.

8. Notwithstanding the foregoing obligation of Metro District to assume the obligations of TGTC, Metro District may retain a manager to operate, manage and maintain the Gondola and to carry out its assumed obligations.

9. In performance of Metro District's obligations set forth herein, Metro District may use shuttle vans or buses during periods of Gondola shutdown due to emergencies, including, but not limited to, adverse weather conditions, repairs, or power outages (but not including periods of low use or demand). Notwithstanding the above restriction, Metro District may, in its sole discretion elect to substitute shuttle vans or buses for Leg 3 (Station Mountain Village to Station Parking) of the Gondola during hours when the ski area is not operating.

10. In performance of Metro District's obligations set forth herein, Metro District shall exercise the care, skill and diligence as would be exercised by a prudent person engaged in the ownership, operation and maintenance of a gondola transportation system.

METRO SERVICES OBLIGATIONS

11. Metro Services shall pay to TGTC, sufficient funds necessary to fund the operation and maintenance of the Gondola as a free public transportation system for a scheduled minimum of sixteen (16) hours per day for a number of days such that the Gondola operates a total of not less than four thousand four hundred (4,400) scheduled hours per calendar year, (subject to mechanical, lightning, wind, and other weather related temporary shutdowns) which is the hourly equivalent of sixteen (16) hours per day times two hundred seventy-five (275) days per year (the "Metro Services Financial Obligation"). All consecutive hours in excess of sixteen (16) shall be counted at one and one-half (1 1/2) times actual. Notwithstanding the foregoing, in no event shall Metro Services Financial Obligation in any calendar year be less than is necessary for the maintenance and operation of the Gondola for at least sixteen (16) actual hours per day for at least two hundred fifty (250) days per year (subject to, mechanical, lightning, wind and other weather related temporary shutdowns).

12. Prior to the payment, redemption or defeasance of the 1995 Bonds, the Metro Services Real Estate Transfer Assessment ("RETA") shall remain pledged to the lender on the 1995 Bonds and shall be deposited with the 1995 Bonds Trustee on a monthly basis for the payment of the debt service on the 1995 Bonds and operations.

Gondola Operating Agreement - Page 4 of 12

Upon payment, redemption or defeasance of the 1995 Bonds, Metro Services shall pay or cause to be paid to Metro District, on a monthly basis, sufficient funds necessary to fund the operation and maintenance of the Gondola as a free public transportation system, as provided in paragraphs 2 and 11 hereof, and Metro Services hereby pledges its full faith and credit to the support of such payment obligations.

13. Subject to its obligations arising under the Series 1995 Gondola Funding Agreement dated November 30, 1995, the Telluride Mountain Village Resort Company Second Assignment of Real Estate Transfer Assessments dated November 30, 1995, the Guaranty Agreement dated November 30, 1995, and any other obligation of Metro Services in connection with the 1995 Bonds or any refinancing or refunding thereof, Metro Services hereby pledges, for the term of this Agreement, RETA revenues to fund the operation and maintenance of the Gondola as a free public transportation system, as provided in paragraph 11.

14. If, during any calendar year during the term of this Agreement, Metro Services shall have insufficient revenues, whether from RETA or other revenue sources, to fund the operation and maintenance of the Gondola as a free public transportation system in accordance with paragraphs 2 and 11 hereof, Metro Services shall levy a special assessment in accordance with its bylaws and the General Declaration for the Telluride Mountain Village, in an amount sufficient to perform its obligations hereunder.

TELSKI OBLIGATIONS

15. Telski shall pay, on a monthly basis, an amount equal to one percent (1%) of all gross revenues from the date hereof until December 31, 2027, from the sale of ski lift tickets for the Telluride Ski Area (the "Telski Surcharge Amount") for the immediately preceding month. For purposes of this section, "gross revenues" shall mean the gross selling price of all ski lift tickets whether for cash or credit, whether made by Telluride Ski Area or Telski personnel or by machines, and whether in the form of gift certificates or like vouchers, but excluding therefrom the following: (a) revenues received from the sale of season ski passes for the Telluride Ski Area; and (b) the sale of discount cards such as the Telluride Card, but gross revenues shall include the revenues from the sale of daily ski lift tickets purchased utilizing such discount cards.

16. Prior to the payment, redemption or defeasance of the 1995 Bonds, Telski shall deposit the Telski Surcharge Amount, on a monthly basis, into the Project Account as defined and set forth in the Amended and Restated Funding Agreement dated November 30, 1995, between Metro Services, TGTC, Metro District and Telski. Upon payment, redemption or defeasance of the 1995 Bonds, Telski shall remit the Telski Surcharge Amount directly to Metro District or to such other entity operating the Gondola as Metro District may direct.

COOPERATION BETWEEN THE PARTIES

17. Each of the parties hereto agrees to cooperate with each other to assure the safe and efficient operation of the Gondola.

DEFAULT AND ENFORCEMENT RIGHTS

18. In the event any party to this Agreement defaults in the performance of its respective obligations arising hereunder, any one or all of the non-defaulting parties shall deliver written notice of such default to the defaulting party. In the event the defaulting party fails to cure such default within ten (10) days after receipt of said written notice, this Agreement and the respective obligations of the defaulting party shall be enforceable by an order of specific performance or injunctive relief upon motion therefore brought by one or all of the non-defaulting parties against the defaulting party. Additionally, any non-defaulting party may seek the recovery of actual damages but may not seek to recover consequential or special damages.

NO THIRD PARTY BENEFICIARIES

19. There are no third party beneficiaries to this Agreement and nothing contained herein shall in any way be construed to give any rights to any third party.

NOTICE

20. Notice shall be by certified mail, return receipt requested, or by personal delivery. The addresses of the parties for the delivery of any notices authorized by this Agreement are:

Telluride Ski & Golf Company
565 Mountain Village Blvd.
Mountain Village, CO 81435

Mountain Village Metropolitan Services, Inc.
113 Lost Creek Lane, Suite A
Mountain Village, CO 81435

Telluride Gondola Transit Company
113 Lost Creek Lane, Suite A
Mountain Village, CO 81435

Mountain Village Metropolitan District
113 Lost Creek Lane, Suite A
Mountain Village, CO 81435

Town of Mountain Village
113 Lost Creek Lane, Suite A
Mountain Village, CO 81435

San Miguel County, Colorado
P.O. Box 1170
Telluride, CO 81435

Notice shall be considered delivered, if sent by certified mail, on the date indicated upon the return receipt; or, upon receipt if delivered in person.

INTEGRATION

21. This Agreement and the Settlement Order constitute the full, complete, and integrated understanding of the parties hereto, and no prior or contemporaneous promise, representation, term, condition, or understanding, of any party regarding the subject matter specified herein, shall be of any legal force or effect unless embodied herein in writing, or in a subsequent written amendment to this Agreement mutually agreed to by the parties.

BINDING EFFECT

22. This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties hereto.

REPLACEMENT OF GONDOLA OPERATING AGREEMENT

23. This Agreement supersedes and replaces in its entirety the Gondola Operating Agreement dated the 27th day of October, 1998.

REPRESENTATIONS AND WARRANTIES OF THE PARTIES

24. Each person signing for a party represents and warrants that such party (i) has not assigned any rights or delegated any obligations which are the subject of this Agreement; (ii) that all required authorizations and approvals for a party to enter into this Agreement have been duly and lawfully given; (iii) that each person signing for a party has authority to sign this Agreement as a binding obligation of such party; and (iv) that each party intends for this Agreement to be enforceable according to its terms.

COUNTERPARTS

25. This Agreement may be executed in counterparts, all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

TELLURIDE SKI & GOLF COMPANY, LLLP, a
Colorado limited liability limited partnership

By: THE MOUNTAIN VILLAGE, INC., a
Colorado corporation, general partner

By: Ronald D. Allred
Ronald D. Allred, Chairman

ATTEST:

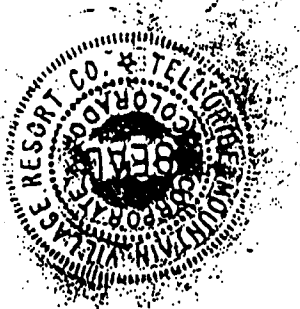
Kim Montgomery
Kim Montgomery, Secretary

TELLURIDE MOUNTAIN VILLAGE RESORT
COMPANY, INC., a Colorado non-profit
corporation, d.b.a. MOUNTAIN VILLAGE
METROPOLITAN SERVICES, INC.

By: 
A. J. WELLS, President

ATTEST:


RUTHANN K. RUSSELL, Secretary



TELLURIDE GONDOLA TRANSIT COMPANY, a
Colorado non-profit corporation

By: 
A. J. WELLS, President

ATTEST:


ISAAC B. SHISLER, Secretary



MOUNTAIN VILLAGE METROPOLITAN
DISTRICT, a quasi-municipal corporation

By: 
A. J. WELLS, President

ATTEST:

DAVID C. FLATT, Secretary

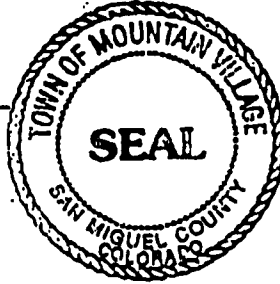


TOWN OF MOUNTAIN VILLAGE, COLORADO, a
Colorado home rule municipality

By 
WILLIAM A. HANLEY III, Mayor

ATTEST:

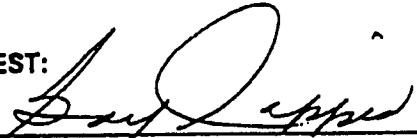

LINDA L. CHECK, Town Clerk



BOARD OF COUNTY COMMISSIONERS OF SAN
MIGUEL COUNTY, COLORADO

By 
ART GOODTIMES, Chairman

ATTEST:


GAY CAPPIS, County Clerk and Recorder

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EXHIBIT D

ELEVENTH AMENDMENT TO THE GENERAL DECLARATION
FOR THE TELLURIDE MOUNTAIN VILLAGE
SAN MIGUEL COUNTY, COLORADO

THIS ELEVENTH AMENDMENT to the General Declaration for the TELLURIDE MOUNTAIN VILLAGE, San Miguel County, Colorado, is made this 28th day of July 1999, by THE TELLURIDE COMPANY, a Colorado Corporation ("Telco").

WHEREAS, Telco, as Declarant, executed and recorded the General Declaration for the Telluride Mountain Village in Book 409 at Page 714, of the records of the Clerk and Recorder for San Miguel County, Colorado (the "General Declaration").

WHEREAS, Telco has filed in the office of the San Miguel County Clerk and Recorder the following amendments to the General Declaration:

<u>Document</u>	<u>Date of Recording</u>	<u>Book</u>	<u>Page</u>
First Amendment	June 20, 1985	419	597
Second Amendment	May 1, 1986	426	693
Third Amendment	July 20, 1988	445	522
Fourth Amendment	July 13, 1989	455	187
Fifth Amendment	February 7, 1991	474	833
Sixth Amendment	March 30, 1992	489	938
Seventh Amendment	March 30, 1992	489	964
Eighth Amendment	November 24, 1992	501	1022
Ninth Amendment	July 10, 1995	548	193
Tenth Amendment	July 24, 1997	584	344

WHEREAS, Declarant desires to make certain amendments to the General Declaration.

WHEREAS, through their execution of this Eleventh Amendment, the San Miguel County Board of Commissioners and the Town of Mountain Village desire to confirm their consent and agreement to the Eleventh Amendment.

NOW THEREFORE, in accordance with Section 11.18 of the General Declaration, and with the consent and agreement of the Town of Mountain Village (the "Town") and the San Miguel County Board of Commissioners (the "County"), Declarant does hereby amend the General Declaration as set forth below.

1. The Tenth Amendment to the General Declaration for the Telluride Mountain Village, San Miguel County, Colorado is hereby rescinded and annulled
2. Section 7.13 of the General Declaration is hereby deleted in its entirety and is replaced with the following:

F

7.13 Restriction on Solid Fuel Burning Devices: The number of permits for wood-burning fireplaces or other Solid Fuel Burning Devices shall be limited to one hundred (100) plus the number of permits actually issued by San Miguel County prior to March 10, 1995 (which the County believes is ninety-four (94)).

3. Section 9.1 of the General Declaration is hereby deleted in its entirety and is replaced with the following:

9.1 Density Limitation: The total Density within the boundaries of the original PUD, as described on the "Zoning Map and Preliminary Plat - Master Plan," as approved by the San Miguel County Board of Commissioners on December 17, 1992 and recorded in the real estate records of the San Miguel County Clerk and Recorder's Office at Reception #282099, Plat Book #2, pages 1386 - 1397, on January 7, 1993, ("Original P.U.D.") either platted or banked is 8,027 (8,015 persons from the original P.U.D. and 12 persons of bonus Employee Density). Density Transfers, Platting/Replatting, and Zoning/Rezoning shall not increase the total density above that cap, except to allow for the creation of additional Multi-Unit Employee Housing, subject to the Town of Mountain Village Employee Housing Restriction. Density allocations for specific uses and parcels within the area encompassed by the Original P.U.D. shall be determined as set forth in section 2-10 of the Town of Mountain Village Land Use Ordinance as in effect on March 31, 1999, a copy of which is attached hereto as Exhibit D-1.

4. Section 9.2 of the General Declaration is hereby deleted in its entirety and is replaced with the following:

9.2 Open Space: Active and Passive Open Space shall be preserved as to acreage and general location, as it presently exists in the Town, and as it is shown on the Town Open Space Map, dated June 16, 1999 and recorded in Book 1, at Page 2603, in the records of the Clerk and Recorder for San Miguel County, subject to an approved but not yet recorded replat of Lots 161A, 161A-1, 161B and 161D. Platted Open Space within the Original P.U.D. shall not be less than sixty percent (60%) of the total acreage within the Original P.U.D., exclusive of the Village Core, which consists of those parcels of real property described on Exhibit D-2, a copy of which is attached hereto and incorporated herein by reference, as verified by the Town Open Space Recap dated April 16, 1999 and recorded at Reception No. 328115 in the records of the Clerk and Recorder for San Miguel County. Passive Open Space within the Original P.U.D. shall not be reduced below the one hundred fifty one and three hundred thirty four thousandths (151.334) acres platted as of July 1, 1999 within the Original P.U.D., but Active Open Space may be reduced if it is replatted as Passive Open Space. Lot line adjustments that affect Open Space are permitted, subject to approval of the Town Council of the Town of Mountain Village and the owner(s) of the affected property, but only to the extent there is no net loss of Open Space within the Original P.U.D.

5. Section 11.16 of the General Declaration is hereby deleted in its entirety and is replaced with the following:

11.16 Additions, Modifications or Annulment of Declaration.

(a) Declarant, San Miguel County and Town of Mountain Village: Nothing to the contrary withstanding, the covenants, agreements, conditions, reservations, restrictions and charges created and established in Sections 2.1, 2.16, 2.18, 2.20, 2.21, 2.25, 2.26, 2.28, 5.3, 5.4, 5.5, 7.13, 9.1, 9.2, 10.1, 10.2, 11.16(a), 11.18, and 11.19 for the benefit of the parties named herein, San Miguel County and the Telluride Mountain Village may only be changed, waived, terminated, modified, supplemented, or annulled by the Declarant, San Miguel County and the Town of Mountain Village upon their mutual agreement. The waiver, change, termination, modification, supplementation or annulment shall become effective upon the recordation in the office of the San Miguel County Clerk and Recorder of a written instrument properly executed by Declarant, the duly authorized Chairman of the San Miguel County Board of Commissioners, and the Mayor of the Town of Mountain Village;

(b) Declarant and Town of Mountain Village: Nothing to the contrary withstanding, the covenants, agreements, conditions, reservations, restrictions and charges created and established in Sections 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 2.22, 2.27, 3.6, 3.11, 3.19, 3.28, 7.9, 7.11, 7.12, 7.16, 7.17, 7.18, 7.21, 8.8, 8.8, 9.3, 10.3, and 11.16(b) for the benefit of the parties named herein and the Telluride Mountain Village may only be changed, waived, terminated, modified, supplemented, or annulled by the Declarant and the Town of Mountain Village upon their mutual agreement. The waiver, change, termination, modification, supplementation or annulment shall become effective upon the recordation in the office of the San Miguel County Clerk and Recorder of a written instrument properly executed by Declarant and the Mayor of the Town of Mountain Village.

6. Section 11.17 of the General Declaration is hereby deleted in its entirety and is replaced with the following:

11.17 [Reserved].

7. Section 11.18 is hereby deleted in its entirety and is replaced with the following:

11.18 Declarant's Continuing Responsibility: Telco may assign all, but not less than all, of its rights as Declarant under this General Declaration and the Master Plan and may delegate all, but not less than all, of the obligations, duties and responsibilities imposed upon Telco pursuant to this General Declaration and the Master Plan, to Telluride Mountain Village Resort Company, a Colorado non-profit corporation, doing business as, Mountain Village Metropolitan Services, Inc. ("Metro Services"). Upon such assignment and delegation, Telco shall be released from the obligations, duties and responsibilities imposed upon Telco pursuant to this General Declaration and the Master Plan, and Metro Services shall become responsible for all of Declarant's obligations, duties or responsibilities imposed upon Declarant pursuant to the Master Plan and this

General Declaration. Thereafter, if Metro Services assigns or delegates any obligations, duties or responsibilities imposed upon it pursuant to this General Declaration or the Master Plan, Metro Services shall nevertheless remain responsible for all such obligations, duties and responsibilities imposed upon Declarant pursuant to this General Declaration and the Master Plan.

THE TELLURIDE COMPANY, a Colorado corporation

By: Ronald D. Allred
Ronald D. Allred, Chairman

ATTEST:

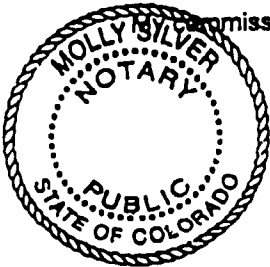
KIM MONTGOMERY
KIM MONTGOMERY, Secretary

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

The foregoing instrument was acknowledged before me on the 16th day of July, 1999, by Ronald D. Allred, as Chairman of THE TELLURIDE COMPANY, and by KIM MONTGOMERY, as Secretary.

WITNESS my hand and official seal.

My Commission expires: 7/21/2002



[Signature]
Notary Public

My Commission Expires 09/21/2002

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

By William A. Hanley, III
WILLIAM A. HANLEY, III, Mayor

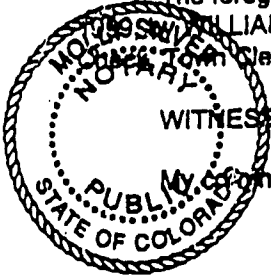
ATTEST:

Linda L. Check
LINDA L. CHECK, Town Clerk



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

The foregoing instrument was acknowledged before me on the 25th day of July,
1999, by WILLIAM A. HANLEY, III, Mayor, of the Town of Mountain Village, and by Linda L.
Check, Town Clerk.



WITNESS my hand and official seal.

My commission expires: 9/21/2002

[Signature]
Notary Public

My Commission Expires 09/21/2002

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corresponding increase or decrease in the acreage of contiguous Active Open Space. The increase or decrease in acreage shall not affect the density of the Lot. Any adjustment requires the review of the DRB, and approval of Telski and the Town Council, and must take into consideration the impact on neighboring properties. The adjustment is a one time only increase or decrease and shall cause the "TF" designation to be removed. Any Lot line adjustments pursuant to the "TF" designation shall require the Lot to be replatted.

2-6 Building Official is the Town official responsible for administration and enforcement of all applicable building codes and the issuance of Building Permits.

2-7 Commercial designates a Lot or Condominium Unit which by right may be used for a broad range of commercial operations and services. Allowed retail and service operations include, but are not limited to, the following: sale of food, beverages, dry goods, furniture, appliances, bakery, automotive and vehicular equipment, hardware, sporting goods, clothing, building materials, garden supplies, equipment rental and plant materials, personal services establishments, including banks, barber and beauty shops, libraries and other civic facilities, laundry or dry-cleaning plants servicing individuals only, laundromat, mortuary, photo studio, shoe repair, tailor shop, bowling alley, electronic game center, restaurant, cocktail lounge, private reading club, theater, movie house, roller skating establishment, ice skating establishment and indoor recreation, general service establishments, including service of automobiles, vehicular rental and repair shops, hotel/motel/lodges, boarding and rooming houses, business and professional offices, arts and crafts studios, dental and medical clinics, employee housing, transportation systems, including all directly related structures and facilities.

2-8 Condominium Lot is a Lot which shall be used for the construction of Condominium Units. Condominium Lots which have six (6) or more Condominium Units have the right to provide a Commercial restaurant and bar.

2-9 Condominium Unit is an individual unit within a common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions.

2-10 Density refers to the population equivalents that have been established for each type of dwelling unit or zoning designation as follows:

<u>Zoning Designation</u>	<u>Density</u>
Single Family	4.0
Subdividable Duplex	8.0
Non-Subdividable duplex	6.5
Condominium	3.0
Hotel	1.5
Hotel Efficiency	2.0
Employee Condominium	3.0
Employee Apartment	3.0
Employee Dorm	1.0
Lodge Unit	0.75
Efficiency Lodge Unit	0.50

Lot No.

329093 09/08/1999, 09:13 AM Page 43 of 130
Gay Cappis Clerk-Recorder San Miguel Cnty Co

27a
28
29a
29b
29c
29d
29e
29f
29g
33
34
35
37
38
41
42a
42b
43
50a
50b
50c
51
52
59
60ra
60rb
61r
61b
61cd
65
67
68
69r1
69r2
71r
73
76
77r
78r
79r
80r
81a
81b
81c
82r
83r
84r
85r
86r
87r
88r
105r
106r

Village Core
June 27, 1999

Exhibit D-2
Page 2 of 2

329093 09/08/1999, 09:13 AM Page 44 of 130
Gay Cappis Clerk-Recorder San Miguel Cnty Co

	Lot No.
	108
	109
	110
	129
	129a1
	129a2
a portion of	181CR
	Open Space
a portion of	OS-3
a portion of	OS-3B
a portion of	OS-3C
a portion of	OS-4
a portion of	Roads in Village Core
Total Lots & Open Space	27.439 Acres

EXHIBIT E

TWELFTH AMENDMENT TO THE GENERAL DECLARATION
FOR THE TELLURIDE MOUNTAIN VILLAGE
SAN MIGUEL COUNTY, COLORADO

THIS TWELFTH AMENDMENT to the General Declaration for the TELLURIDE MOUNTAIN VILLAGE, San Miguel County, Colorado, is made this 28th day of July, 1999, by THE TELLURIDE COMPANY, a Colorado corporation, hereinafter referred to as "Telco".

WHEREAS, Telco, as Declarant, executed and recorded the General Declaration for the Telluride Mountain Village in Book 109 at Page 714, of the records of the Clerk and Recorder for San Miguel County, Colorado (the "General Declaration").

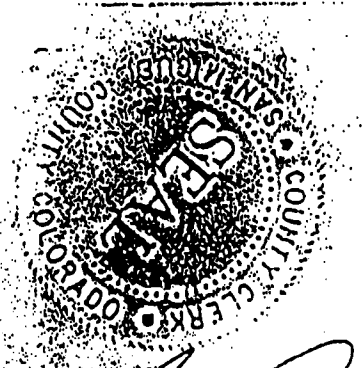
WHEREAS, Telco has filed in the office of the San Miguel County Clerk and Recorder the following amendments to the General Declaration:

<u>Document</u>	<u>Date of Recording</u>	<u>Book</u>	<u>Page</u>
First Amendment	June 20, 1985	419	597
Second Amendment	May 1, 1988	426	693
Third Amendment	July 20, 1988	445	522
Fourth Amendment	July 13, 1989	455	187
Fifth Amendment	February 7, 1991	474	833
Sixth Amendment	March 30, 1992	489	938
Seventh Amendment	March 30, 1992	489	964
Eighth Amendment	November 24, 1992	501	1022
Ninth Amendment	July 10, 1995	548	193
Tenth Amendment	July 24, 1997	584	344
Eleventh Amendment			

WHEREAS, Telco has assigned all of its rights as Declarant and delegated all of its obligations, duties and responsibilities as Declarant under the General Declaration and the Master Plan to the Telluride Mountain Village Resort Company, a Colorado non-profit corporation doing business as Mountain Village Metropolitan Services, Inc. ("Metro Services"), all in accordance with the Assignment from Telco to Metro Services of Telco's rights as Declarant under the General Declaration and Master Plan, attached hereto as Exhibit-E-1 and incorporated herein by reference.

WHEREAS, Telco desires to make certain amendments to the General Declaration to recognize the assignment of Telco's rights as Declarant and the delegation of Telco's obligations, duties and responsibilities as Declarant to Metro Services.

WHEREAS, through its execution of this Twelfth Amendment, Metro Services desires to confirm its acceptance of the assignment of all of Telco's rights as Declarant and the delegation of all of Telco's obligations, duties and responsibilities as Declarant under the General Declaration and the Master Plan.



BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, COLORADO

By *Art Goodtimes*
ART GOODTIMES, Chairman

ATTEST: *Gay Cappis*
GAY CAPPIS, County Clerk and Recorder

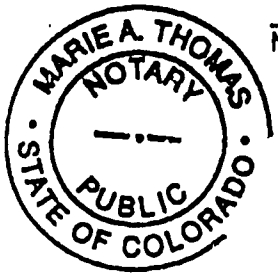
STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

The foregoing instrument was acknowledged before me on the 24th day of July, 1999, by ART GOODTIMES, as Chairman of the San Miguel County Board of Commissioners, and by Gay Cappis, as County Clerk and Recorder.

WITNESS my hand and official seal.

My commission expires: 02/05/01

Marie A. Thomas
Notary Public



ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Agreement") is entered into this 28th day of July, 1999 by and between The Telluride Company, a Colorado corporation ("Telco") and the Telluride Mountain Village Resort Company, a Colorado non-profit corporation doing business as Mountain Village Metropolitan Services, Inc. ("Metro Services").

RECITALS

- A. Telco, as Declarant, executed and recorded the General Declaration for the Telluride Mountain Village in Book 409 at Page 714 of the records of the Clerk and Recorder for San Miguel County, Colorado together with various supplements and amendments filed of record (the "General Declaration").
- B. Telco and Metro Services have agreed to have Metro Services replace Telco as Declarant under the General Declaration.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Telco and Metro Services agree as follows:

- 1. Telco hereby assigns all of its rights as Declarant and delegates all of its obligations, duties and responsibilities as Declarant under the General Declaration and the Master Plan (as defined in the General Declaration) to Metro Services.
- 2. Metro Services hereby assumes all of Telco's rights as Declarant and all of Telco's obligations, duties and responsibilities as Declarant under the General Declaration and the Master Plan.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement intending it to be effective as of the date first set forth above.

THE TELLURIDE COMPANY

By: Ronald D. Allred
Ronald D. Allred, Chairman

MOUNTAIN VILLAGE METROPOLITAN SERVICES, Inc.

By: A.J. Wells
A.J. Wells, President

EXHIBIT F

**TOWN OF MOUNTAIN VILLAGE EMPLOYEE HOUSING RESTRICTION
REPLACING AND SUPERCEDING
SAN MIGUEL COUNTY R-1 HOUSING DEED RESTRICTION
ON EACH PARCEL OF REAL PROPERTY DESIGNATED AS
EMPLOYEE APARTMENT OR EMPLOYEE DORMITORY
ON THE
TOWN OF MOUNTAIN VILLAGE OFFICIAL LOT LIST**

Subject Property: (See Exhibit "F1" attached hereto and incorporated herein)

The use and occupancy of the Subject Property is hereby limited exclusively to such employees who are employed or can show intent to be employed within the Telluride R-1 School District and their spouses and children.

The foregoing restriction on use and occupancy constitutes a covenant that runs fifty (50) years from the date of recordation with the title to the Property as a burden thereon and shall be binding on the owner, and on the heirs, personal representatives, assigns, lessees and licensees and any transferee of the owner. The duration of this restriction and covenant shall extend for an initial period of fifty (50) years, and at the option of the Town Council of the Town, or its designee, may be extended for an additional period of fifty (50) years after public hearing and comment on the proposed extension. This restriction and covenant shall be administered by the Town Council, or its designee, and shall be enforceable by any appropriate legal or equitable action including but not limited to specific performance, injunction, abatement or eviction of non-complying owners, users or occupants, or such other remedies and penalties as may be provided by Colorado law or the ordinances of the Town.

During the initial fifty (50) year period of this restriction, the Town of Mountain Village shall maintain qualification and verification procedures for employee housing eligibility that are not less stringent than those in place as of the date hereof, a copy of which is attached hereto as Exhibit "F2".

**THE TOWN OF MOUNTAIN VILLAGE EMPLOYEE HOUSING RESTRICTION
REPLACES AND SUPERCEDES THE SAN MIGUEL COUNTY R-1 HOUSING DEED
RESTRICTION ON THE SUBJECT PROPERTY.**

Page 1 of 4

Lot 17

Lot 17, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 28

Lot 28, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 30

Lot 30, Town of Mountain Village, Amendment to the Final Plat of Lots 11 and 30, Telluride Mountain Village, Filing 1, according to the plat filed in the office of the Clerk and Recorder in Plat Book 1 at page 2139,
County of San Miguel, State of Colorado.

Lot 51

Lot 51, Town of Mountain village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 56A

Lot 56A, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 56B

Lot 56B, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 61R

Lot 61R, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Reception #322637
County of San Miguel, State of Colorado.

Lot 61C and Lot 61D (Replatted with Lot 61R)

Lot 61C and 61D, Town of Mountain Village, Amendment to the Final Plat of Lots 61C and 61D, Telluride Mountain Village, Filing 1, according to the plat filed in the office of the Clerk and Recorder in Plat Book 1 at page 2148
County of San Miguel, State of Colorado.

Lot 62R (Replatted with Lot 61R)

Lot 62R, Town of Mountain Village, Amendment to the Final Plat of Lots 61C, 61D, and 62, Telluride Mountain Village, Filing 1, according to the plat filed in the office of the Clerk and Recorder in Plat Book 1 at page 2148,
County of San Miguel, State of Colorado.

Lot 71R

Lot 71R, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in the Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 82R

Lot 82R, Town of Mountain Village, Amendment to the Final Plat of Lots 70, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 124 and Tract OS-J of Filing 1, Telluride Mountain Village, and Lots 77, 105, 106, 107 and Tract OS-3A of Replat No. 3 of Filing 1, Telluride Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 1 at page 2248,
County of San Miguel, State of Colorado.

Lot 122

Lot 122, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 123

Lot 123, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 158 R

Lot 158R Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 159 R

Lot 159R Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 160

Lot 160, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 161A

Lot 161A, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 161D

Lot 161D, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 165

Lot 165, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 166AR

Lot 166AR, Town of Mountain Village, Amendment to the Final Plat of Lot 166A of Filing 31, Telluride Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 1 at page 2176,
County of San Miguel, State of Colorado.

Lot 600A

Lot 600A, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 639

Lot 639, Town of Mountain Village, Amendment to the Final Plat of Lot 639 of Filing 33, Telluride Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 1 at page 1144,
County of San Miguel, State of Colorado.

Lot 640A

Lot 640A, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 640BR

Lot 640BR Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 1 at page 2398-2401
County of San Miguel, State of Colorado.

Lot 640C

Lot 640C, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 640DR

Lot 640DR Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 1 at page 2398-2401
County of San Miguel, State of Colorado.

Lot 642

Lot 642, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 644

Lot 644, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 645

Lot 645, Town of Mountain Village, Amendment to the Final Plat of Lot 645, Telluride Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 1 at page 932,
County of San Miguel, State of Colorado.

Lot 647

Lot 647, Town of Mountain Village, Amendment to the Final Plat of Lot 647, Telluride Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 584 at page 347,
County of San Miguel, State of Colorado.

Lot 648

Lot 648, Town of Mountain Village, Amendment to the Final Plat of Lot 648, Telluride Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 1 at page 1761,
County of San Miguel, State of Colorado.

Lot 651A

Lot 651A, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 1001

Lot 1001, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Lot 1005

Lot 1005, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

Tract OSP35B

Tract OSP35B, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 2 at page 2073,
County of San Miguel, State of Colorado.

ORDINANCE ADOPTING
TOWN OF MOUNTAIN VILLAGE EMPLOYEE HOUSING RESTRICTION
ORDINANCE NO. 1997-05

AN ORDINANCE ADOPTING THE TOWN OF MOUNTAIN VILLAGE EMPLOYEE HOUSING RESTRICTION.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, the following:

SECTION 1: ADOPTION

I. TOWN OF MOUNTAIN VILLAGE EMPLOYEE HOUSING RESTRICTION

The following Town of Mountain Village Employee Housing Restriction (the "EHR") shall be imposed on each parcel of real property designated as "Employee Apartment" or "Employee Dormitory" on the Town of Mountain Village Official Lot List as recorded in the records of the San Miguel County Clerk and Recorder and as may be subsequently amended from time to time (the "Official Town Lot List"). The EHR shall replace and supercede the County R-1 Housing Deed Restriction on all such property.

A. Employee Housing Restriction

Subject Property: (Legal Description) ("the Property")

The use and occupancy of the Property is hereby limited exclusively to such employees who are employed or can show intent to be employed within the Telluride R-1 School and their spouses and children.

The foregoing restriction on use and occupancy constitutes a covenant that runs fifty (50) years from the date of recordation with the title to the Property as a burden thereon and shall be binding on the owner, and on the heirs, personal representatives, assigns, lessees and licensees and any transferee of the owner. The duration of this restriction and covenant shall extend for an initial period of fifty (50) years, and at the option of the Town Council of the Town, or its designee, may be extended for an additional period of fifty (50) years after public hearing and comment on the proposed extension. This restriction and covenant shall be administered by the Town Council, or its designee, and shall be enforceable by any appropriate legal or equitable action including but not limited to specific performance, injunction, abatement or eviction of non-complying owners, users or occupants, or such other remedies and penalties as may be provided by Colorado law or the ordinances of the Town.

B. Limitation on Amendments to Employee Housing Restriction

Although this Ordinance may be amended from time to time, the EHR recorded against a particular property may not be amended without the consent of the owner and

the Town Council of the Town, or its designee. Subsequent amendments to this Ordinance that are less restrictive than those in effect at the time when the EHR was recorded against a particular Affordable Housing unit shall apply to such unit. Subsequent amendments to this Ordinance that are more restrictive than those in effect at the time when the EHR was recorded against a particular Affordable Housing unit shall not be applied against the unit without the written consent of the then Owner, and upon such consent shall be recorded as an amendment to the EHR for the subject property.

II. GUIDELINES, RULES AND REGULATIONS GOVERNING AFFORDABLE HOUSING
IN THE TOWN OF MOUNTAIN VILLAGE

C. Purpose

This Ordinance shall govern the ownership, use and occupancy of Affordable Housing in the Town, including all "Employee Apartment" and "Employee Dormitory" dwelling units (defined on the Official Town Lot List).

D. Definitions

1. Acknowledgment of Employee Housing Restriction shall mean that document executed by the Owner of Affordable Housing in which the Owner acknowledges and agrees to comply with the EHR.

2. Affordable Housing shall mean residential lots and dwelling units restricted by the EHR to use and occupancy by Employees and their spouses and children.

3. Certificate of Qualification shall mean that document in which the Town Council or its designee certifies an Occupant as an Employee according to the EHR.

4. Employee shall mean a person who is employed or can show intent to be employed within the Telluride R-1 School District and maintains Residence in the Town. The Town Council or its designee shall determine whether a person qualifies as an Employee based on criteria including evidence of income earned within the Telluride R-1 School District, place of voter registration, place of automobile registration, drivers license address, income tax records and public service involvement within the Telluride R-1 School District community. A person not otherwise meeting the definition of Employee may be qualified as an Employee by staff if that person is more than sixty (60) years of age and has been employed in the Telluride R-1 School District. Determination of Employee eligibility by the staff may be appealed to the Town Council or its designee.

5. Owner shall mean any person, group, organization, agency or other entity holding fee title to Affordable Housing. Notwithstanding the lack of limitation on ownership of Affordable Housing, the use and occupancy of Affordable Housing shall be limited to Employees and their spouses and children.

6. Property shall mean the real estate subject to the EHR and the improvements thereon.

7. **Residence** shall mean that home or place of abode in which a person's habitation is fixed and to which he, whenever absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of such absence. A Residence is a permanent building, or part thereof, including a house, condominium, Employee Apartment or Employee Dormitory.

E. Procedure for Qualifying Affordable Housing

Property becomes designated as Affordable Housing when the Town Council or its designee and the Owner of the Property execute and record with the Office of the Clerk and Recorder of San Miguel County a final plat containing the EHR or a separately recorded document imposing the EHR on the Property. Prior to the issuance of a Certificate of Occupancy for each "Employee Apartment" and "Employee Dormitory" unit, the Owner shall subject the unit to the EHR through proper execution and recordation of that document, as described in this Section.

F. Ownership, Use and Occupancy Regulations

1. The terms of this EHR shall constitute covenants running with the Property, as a burden thereon, for the benefit of, and shall be specifically enforceable by, the Town Council or its designee, by any appropriate legal action including but not limited to specific performance, injunction, eviction of non-complying owners and/or occupants, and/or by any of the enforcement and remedy provisions of this EHR.

2. Any person, group, organization, agency or other entity may own one or more Affordable Housing units. Ownership of Affordable Housing units shall be subject to the Owner limiting occupancy to qualified Employees. On or prior to assuming ownership of an Affordable Housing unit, the Owner shall execute and record an Acknowledgment of Employee Housing Restriction in the property records of San Miguel County.

3. Prior to occupancy of Affordable Housing by an Owner, the Owner must submit a standard application on forms provided by the Town Council or its designee, plus an application fee in an amount set by the Town Council or its designee.

G. Rental Regulations

1. Prior to occupancy of Affordable Housing by an Employee, the Employee must submit a standard application on forms provided by the Town Council or its designee, plus an application fee in an amount set by the Town Council or its designee.

2. A signed copy of the lease or other occupancy agreement must be provided to the Town Council or its designee prior to occupancy by an Employee, pursuant to this Section.

3. Nothing herein shall be construed to require the Town Council, its designee or any other entity to protect or indemnify an Owner against any loss attributable to rental, including but not limited to non-payment of rent or damage to Affordable Housing,

F

nor shall the Town Council, its designee or any other entity be responsible for locating an Employee to occupy Affordable Housing in the event that no Employee occupant is found by the owner.

H. Procedure for Selling Affordable Housing

1. In the event an Owner desires to sell Affordable Housing, the Owner may sell the unit himself or list and sell the unit through a real estate broker licensed in the State of Colorado.

2. As part of all sales and other transfers of Affordable Housing, an Acknowledgment of Housing Use and Occupancy, in which the Owner acknowledges and agrees to abide by all terms and conditions of the EHR shall be executed and recorded in the Office of the Clerk and Recorder of San Miguel County (in addition to recordation of the EHR on the appropriate plat for the Subject Property).

I. Violations

1. The Town Council or its designee may require at any time that an Owner verify within five (5) days of such request by the Town Council or its designee that:

- a. If Owner occupied, that the Owner is a qualified Employee; or
- b. Any particular tenant is a qualified Employee.

2. In the event an occupant of Affordable Housing does not or no longer qualifies as an Employee, the Town Council or its designee may require that occupant to:

- a. Vacate rental Affordable Housing within sixty (60) days, or requalify as an Employee within that period; or
- b. Vacate Affordable Housing he owns.

3. In the event a violation is discovered, the Town Council or its designee shall provide a written notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days from the date of such written notification to remedy such violation. Said notice shall state that the Owner may request a hearing before the Town Council or its designee within the fifteen (15) day period to determine the merits of the allegations.

J. Remedies

There is hereby reserved to the Town Council or its designee any and all remedies provided by law, by the Home Rule Charter for the Town of Mountain Village, by the general ordinances of the Town and by the this Ordinance for violation of this Ordinance or any of its terms. In the event of litigation with respect to any or all

provisions of this Ordinance, the prevailing party in such litigation shall be entitled to recover damages and costs, including reasonable attorney's fees.

K. Foreclosure

The use and occupancy restrictions contained herein shall terminate in the event of foreclosure by the holder of the promissory note secured by a first deed of trust on the respective Affordable Housing and subject to the issuance of a public trustee's or sheriff's deed to the holder of the promissory note or governmental agency guaranteeing, insuring or acquiring the promissory note from the holder.

L. Notices

Any notice, consent or approval required under this Ordinance shall be provided in writing by certified mail, return receipt requested, properly addressed and with postage fully prepaid, to the Town Council or its designee at the address provided below or to the Owner at an address provided by that Owner at the time of qualifying Affordable Housing.

Address for the Town Council:

Town of Mountain Village, Town Council
P.O. Box 11162
Telluride, CO 81435

M. General Provisions

1. Further Actions. The parties to any Agreement contemplated under this Ordinance shall execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Ordinance or any agreement or document relating hereto or entered into in connection herewith.

2. Gender and Number. Whenever the context so requires in this Ordinance, the neuter gender shall include any or all genders and vice versa, and the use of the singular shall include the plural and vice versa.

3. Non-discrimination. No Employee shall be discriminated against on the basis of race, national origin, sex, color, creed or physical infirmity.

4. Personal Liability. The Owner shall be personally liable for any violations of the provisions of this Ordinance.


5. Severability. Whenever possible, each provision of this Ordinance shall be interpreted in such a manner as to be valid under applicable law; however, if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating any remaining provision.

6. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Ordinance shall be valid against any party hereto, except on the basis of a written instrument executed by the parties to the EHR. However, the party for whose benefit a condition is inserted shall have the unilateral right to waive such condition.

SECTION 2: CERTIFICATION

THE TOWN CLERK SHALL PUBLISH NOTICE OF THIS ORDINANCE IN COMPLIANCE WITH THE HOME RULE CHARTER FOR THE TOWN OF MOUNTAIN VILLAGE.

PASSED BY THE TOWN COUNCIL AFTER PUBLIC HEARING AND SIGNED THIS 27th
DAY OF MAY, 1997.


WILLIAM A. HANLEY, II, Mayor

ATTEST:


LINDA L. CHECK, Town Clerk

TOWN OF MOUNTAIN VILLAGE

MOUNTAIN VILLAGE EMPLOYEE HOUSING DEPARTMENT

415 Mountain Village Blvd. Ste #1
Telluride, CO 81435
(970) 728-9117
(970) 728-1318 (fax)

EMPLOYEE HOUSING QUESTIONNAIRE

For those persons intending to occupy employee housing in Mountain Village.

Complete this form and submit it with a \$50.00 nonrefundable application fee to the Mountain Village Employee Housing Department located at:

415 Mountain Village Boulevard
Mountain Village, Colorado

Present a driver's license or other acceptable proof of identification.

Complete the Employer/Employee Affidavit of employment (page 3).

Complete the following information:

1. Applicant(s)

Children: _____

Address: _____

Phone: _____

Age of primary applicant: _____ Gender: _____ Marital Status _____

2. Do you currently live in the Telluride R-1 School District? _____

3. For information purposes, how many years and months have you lived in the Telluride R-1 School District? _____

4. For information purposes, if you, your spouse or your dependents own other property in the Telluride R-1 School District, list the type and location of each property (i.e., affordable housing, raw land, developed, commercial, etc.):

5. Current Employer: _____ Employer Phone #: _____

6. Date of Current Employment: _____

7. How many years and months have you been employed within the Telluride R-1 School District? _____

I hereby certify that all information provided above is to the best of my knowledge true and complete. I also give my permission to the Housing Department to make inquiries to verify any information provided herein.

Signature: _____ Date: _____

EMPLOYEE HOUSING CERTIFICATE
EMPLOYER/EMPLOYEES AFFIDAVIT OF ELIGIBILITY TO OCCUPY EMPLOYEE HOUSING

Employer's Affidavit

I, _____, hereby declare that _____ is presently employed by _____ whose principal address of business is: _____, and further certify that the above named Employee is employed in the Telluride R-1 School District of San Miguel County and that employment of said Employee began on _____.

Signature: _____ Date: _____.

Employee's Affidavit

I, _____, hereby declare that I am presently employed by _____ whose principal address of business is: _____, and further certify that I am employed in the Telluride R-1 School District of San Miguel County and that my employment began on _____.

Signature: _____ Date: _____.

Affidavit of Employee Qualified by Virtue of Age and Residency

I, _____, hereby declare that I qualify as an Employee as defined in the Mountain Village Employee Housing Restriction Ordinance by being at least 60 years of age and by having resided in the Telluride R-1 School District of San Miguel County for at least five years.

Signature: _____ Date: _____

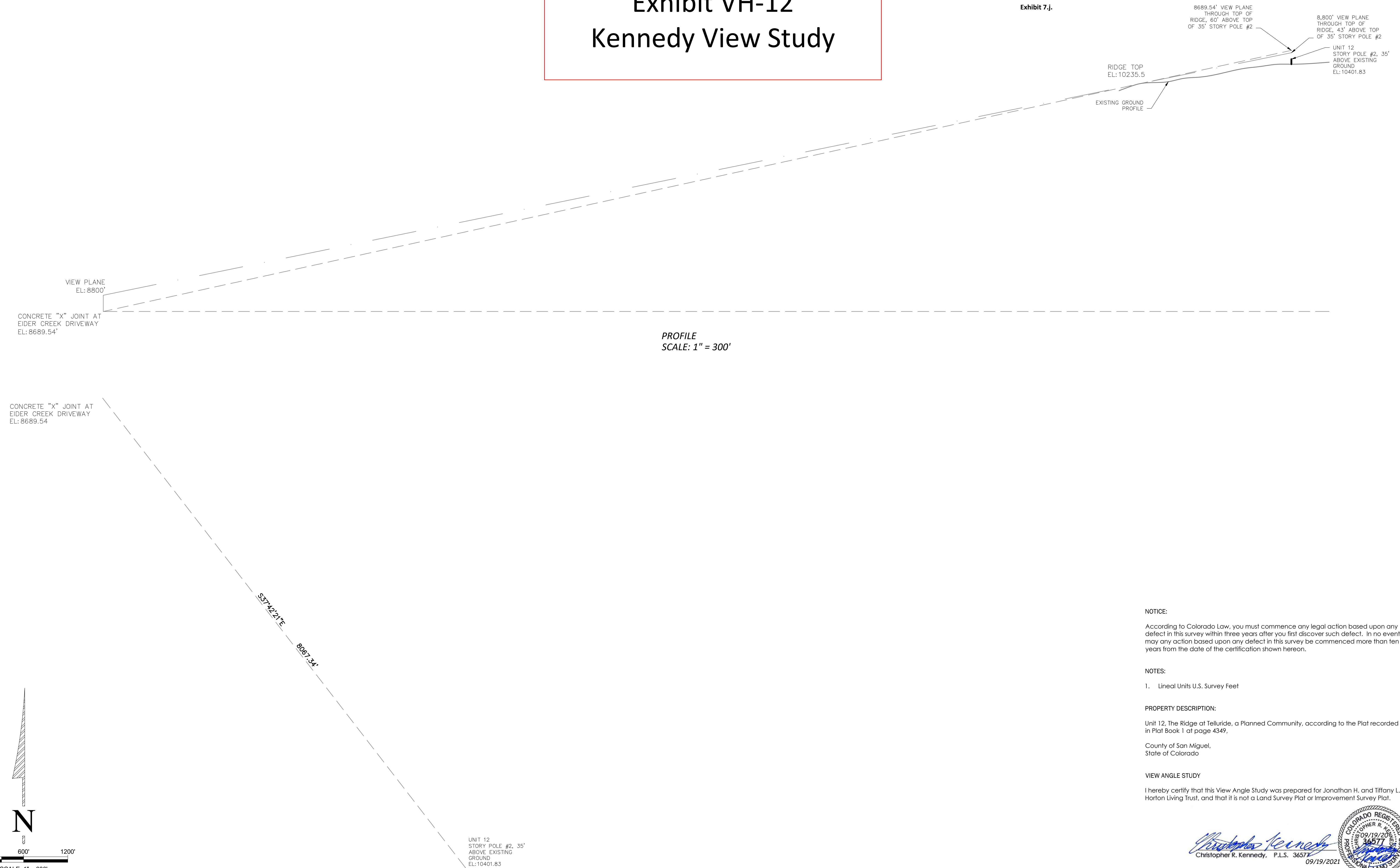
Mountain Village Employee Housing Department Certification

The Mountain Village Employee Housing Department, after diligent review, finds that _____ is qualified as an Employee eligible to occupy Employee Housing, as defined in the Employee Housing Restriction Ordinance

Signature: _____ Date: _____
Guy Poulin, Director

Exhibit VH-12 Kennedy View Study

Exhibit 7.j.

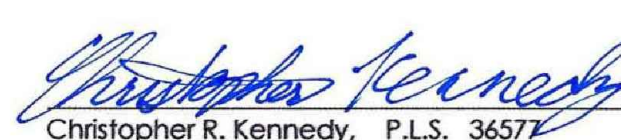



NOTICE:
According to Colorado Law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

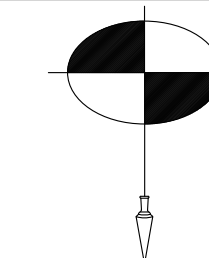
NOTES:
1. Lined Units U.S. Survey Feet

PROPERTY DESCRIPTION:
Unit 12, The Ridge at Telluride, a Planned Community, according to the Plat recorded in Plat Book 1 of page 4349,
County of San Miguel,
State of Colorado

VIEW ANGLE STUDY
I hereby certify that this View Angle Study was prepared for Jonathan H. and Tiffany L. Horton Living Trust, and that it is not a Land Survey Plat or Improvement Survey Plat.

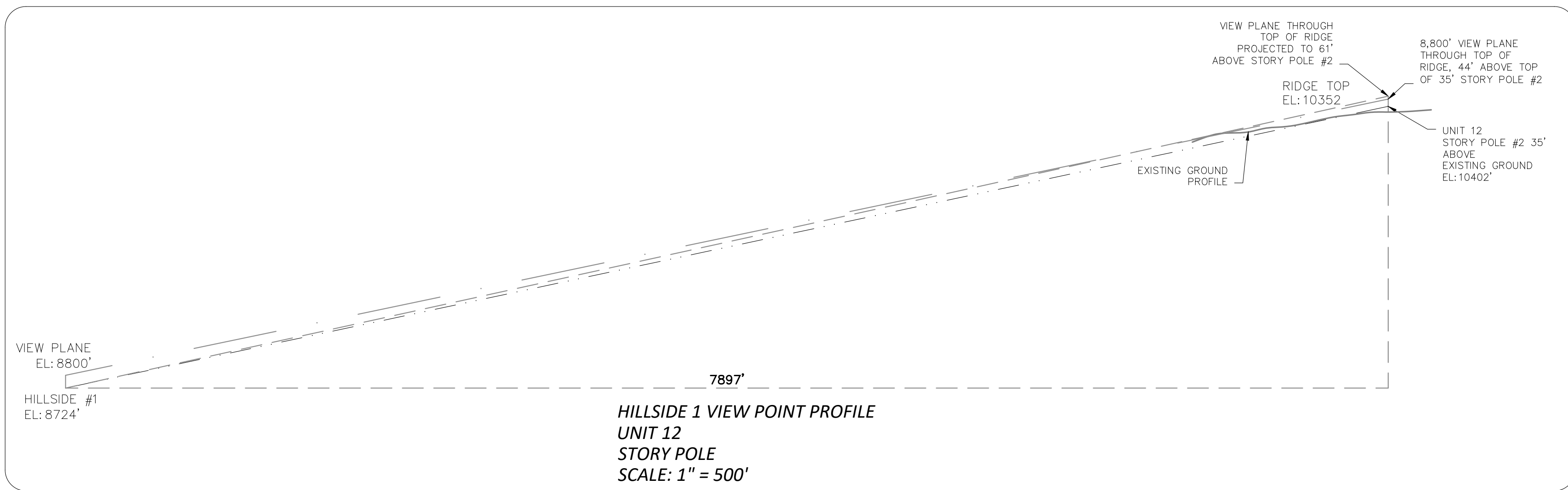

 Christopher R. Kennedy, P.L.S. 36577
 09/19/2021


VIEW ANGLE STUDY UNIT 12, THE RIDGE AT TELLURIDE



SAN JUAN SURVEYING
SURVEYING * PLANNING
102 SOCIETY DRIVE TELLURIDE, CO. 81435
(970) 728 - 1128 (970) 728 - 9201 fax
office@sanjuansurveying.net

DATE:
JOB:	04068
DRAWN BY:	CRK
CHECKED BY:	CKP
REVISION	
DATES:	
SHEET:	1 OF 2



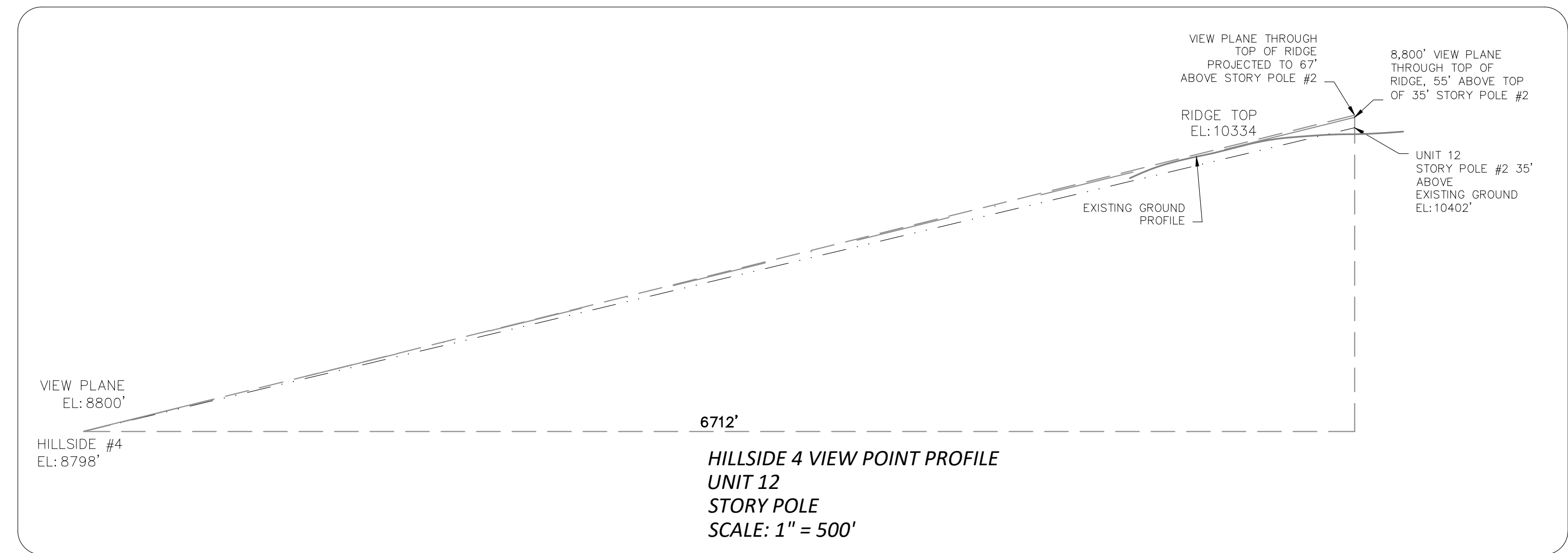
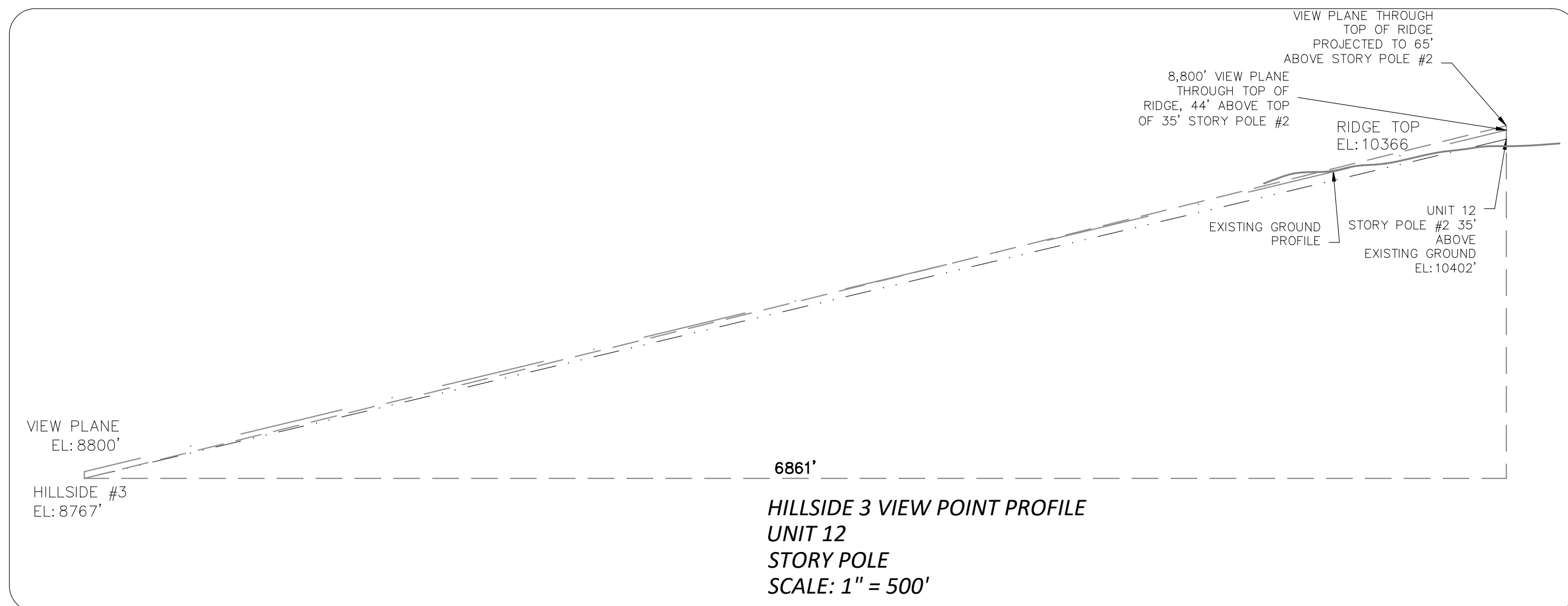
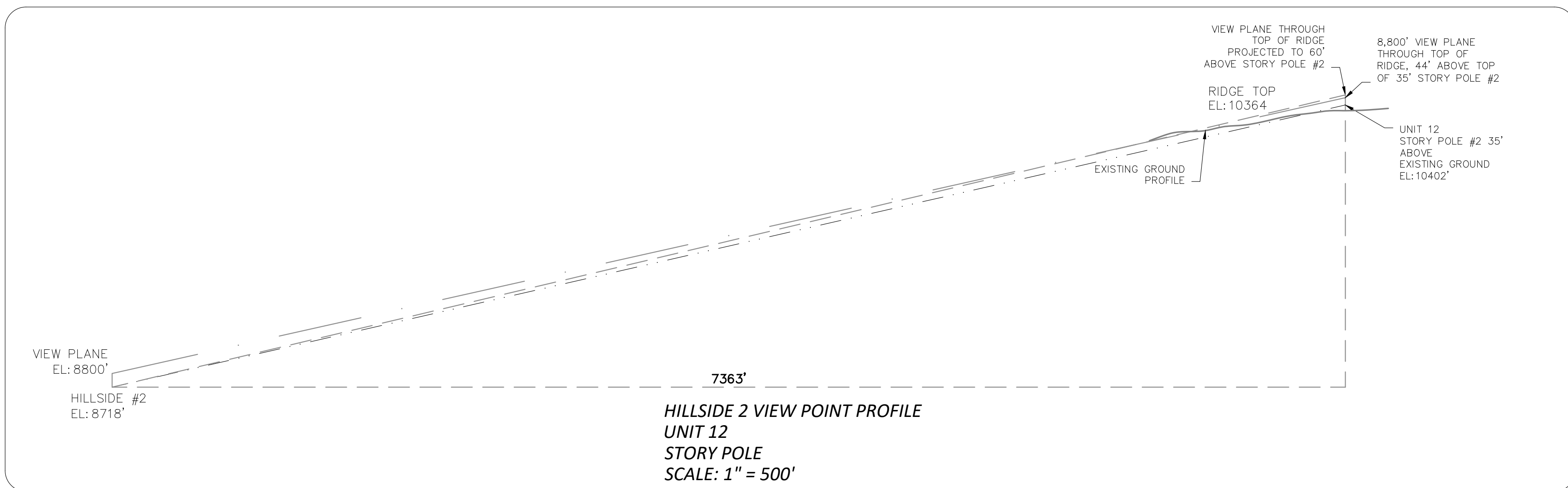
NOTICE:
 According to Colorado Law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown herein.

NOTES:
 1. Lineal Units U.S. Survey Feet

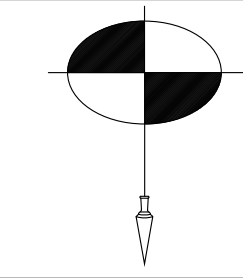
PROPERTY DESCRIPTION:
 Unit 12, The Ridge at Telluride, a Planned Community, according to the Plat recorded in Plat Book 1 at page 4349,
 County of San Miguel,
 State of Colorado

VIEW ANGLE STUDY
 I hereby certify that this View Angle Study was prepared for Jonathan H. and Tiffany L. Horton Living Trust, and that it is not a Land Survey Plat or Improvement Survey Plat.

Christopher R. Kennedy
 Christopher R. Kennedy, P.L.S. 36577
 09/19/2021



VIEW ANGLE STUDY
UNIT 12, THE RIDGE AT TELLURIDE



SAN JUAN SURVEYING
 SURVEYING * PLANNING
 102 SOCIETY DRIVE TELLURIDE, CO. 81435
 (970) 728 - 1128 (970) 728 - 9201 fax
 office@sanjuansurveying.net

DATE:	09/19/2021
JOB:	04068
DRAWN BY:	CRK
CHECKED BY:	CKP
REVISION DATES:	
SHEET:	2 OF 2

Exhibit VH-13
Affidavit Of Christopher R. Kennedy

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To: Town Council and Design Review Board
Town of Mountain Village
From: Christopher R. Kennedy
Date: September 28, 2021
Re: Unit 12, The Ridge – Variance Request
-Affidavit

Please be advised of the following:

- 1. I am a licensed surveyor in the State of Colorado and the principal of San Juan Surveying.
- 2. This affidavit addresses issues related to proposed development activities on Unit 12, The Ridge or the proposed new lot location labeled "Proposed Lot" on Exhibit VH-7 ("Proposed Lot") and is based on the survey work shown in Exhibit VH-12 Kennedy View Study.
- 3. I offer you the following opinions:

3.1 With regard to the view plane survey ("Jacobsen View Plane Survey") prepared by the surveying company of Jacobsen Associates, recorded at Plat Book 1 at page 2601 (Reception #328113) (Exhibit VH-11), as it relates to the Proposed Lot, please note the following:

3.1.1 Using actual ground shots, San Juan Surveying field gathered the survey data the following locations:

3.1.1.1

- a. The concrete "x" joint in the driveway at the Eider Creek Condominiums (aka Telwest/Goldking Condominiums).
- b. Four locations in the Hillside Subdivision shown in Exhibit VH-19 .

3.1.1.2 The story pole referred to as Story Pole #2 is shown in Exhibit VH-6.

3.2 The view lines shown in Exhibit VH-12 were created using the points identified in paragraphs 3.1.1.1 and 3.1.1.2 and they arrive at the points shown in Columns C and D of Table 1 below that are located directly above Story Pole #2. **The result is that the top of the 35 foot Story Pole #2 cannot be seen from any of the Five View Locations because it is obstructed by the ground surface of the Coonskin Ridge.**

Table 1

Exhibit VH-13
Affidavit Of Christopher R. Kennedy

Column A	Column B	Column C	Column D
View Location	Elevation View Location	Height of View Line <u>From View Location</u> Above Top of 35' Story Pole #2	Height of View Line <u>From 8,800 View Point</u> Above Top of 35' Story Pole #2
Eider Creek "x" Joint	8689'	60'	43'
Hillside #1	8724'	61'	44'
Hillside #2	8718'	60'	44'
Hillside #3	8767'	65'	44'
Hillside #4	8798'	67'	55'

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3.3 Based on the facts set forth in Table 1, it is my opinion that the following are accurate facts:

3.3.1 Any building built on the Proposed Lot will not be visible from any of the Five View Locations if it is **less than 95 feet tall**.

3.3.2 Any building built on the Proposed Lot will not be visible from the point that is 8,800 feet above sea level located directly above any of the Five View Locations if it is **less than 78 feet tall**.

3.3.3 Because no point of any portion of Horton's proposed home will exceed a height of 35 feet, plus 5 feet to allow for chimneys, flues, vents or similar structures, it cannot be seen from any of these points.

3.4 These three significant and indisputable facts lead to one significant and indisputable conclusion, any home built on the Proposed Lot will meet the sole purpose and intent of the view plane which is to protect the views from the San Miguel River Valley by ensuring that no future structure built on the Proposed Lot can be seen from any point on the San Miguel River Valley lying "*east of the western boundary line of the Telwest/Goldking Condominiums*" and "*west of the western boundary*" of the Town of Telluride at any elevation "*located at or below 8,800 feet above sea level*".

I, Christopher R. Kennedy, state that the above statements in this document are true and correct to the best of my knowledge and are based upon information and knowledge that are known personally to me.

Respectfully,

Christopher R. Kennedy



Exhibit VH-14
Section 17.5.16 Ridgeline Lots

Section 17.5.16 Ridgeline Lots

A. There are two (2) ridgeline areas of the town:

1. The Ridge Area. The ridge area consists of the following legally described lots as may be amended from time-to-time by replat: 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1, 161D-2.

2. Ridgeline Lots. The ridgeline lots consists of the following legally described lots as may be amended from time-to-time by replat: 89-3A, 89-3B, 89-3C, 105R1, 82R1, 114, 115, 116, 126R, , 143A, 144BR, 144A, 145A, 146B, 146A, 147A, 147B, 147C, 650, 648BR, 649R, 643B, 643A, 621, 620, 617, 616C, 616B, 616A, 615-1CR, BC513E, BC 513D, BC513AR, BC107, BC 106, BC105, BC104, BC103, BC102 and BC101.

B. The following requirements apply to the ridge area as defined in section A.1 above:

1. All improvements are subject to a ridgeline covenant with San Miguel County as recorded at reception number 329093. The Town does not enforce the ridgeline covenant, with enforcement solely administered by San Miguel County.

2. The building height on Lot 161A-1R shall not exceed 35 feet (35') along the ridgeline of such building.

3. Building height on other ridge area lots shall not exceed the lesser of:

a. The height of forty-five feet (45'); or

b. The maximum height allowed to the view plane limitation set forth in section 4 below.

4. Except for the existing building on Lot 161A-1R and gondola facilities, the development of ridgeline area lots shall be designed to ensure that no lighting or any part of any building or structure extends into the view plane as shown on the Coonskin View Plane drawing recorded at reception number 328113.

5. New development in the ridgeline area, excluding the existing building on Lot 161A-1R and gondola facilities, shall require (a) the erection of a story pole to reflect the maximum height of the proposed development where such development will extend closest to the view plane as described in section 4 above; and (b) the installation of a light to illuminate the story pole where off-site light would be visible from the highest window. The applicant for development shall provide written notice of the story pole erection to San Miguel County and the Town of Telluride.

6. To the extent practical, no exterior lights shall be installed on the east side of buildings. Any required exterior lighting shall be shielded, recessed, or reflected so that no lighting is oriented towards the east side of the building.

7. No solid fuel burning device shall be allowed in the building on Lot 161A-1R.

8. For all new development, or substantial modifications to existing development, a courtesy referral shall be provided to San Miguel County and the Town of Telluride consistent with the Referral and Review Process outlined in the Development Review Procedures. The Town is not bound by any referral comments from either jurisdiction.

C. The following provisions apply to ridgeline lots as defined in section A.1 above:

1. All structures shall have varied facades to reduce the apparent mass.

2. To the extent practical, foundations shall be stepped down the hillsides to minimize cut, fill and vegetation removal.

3. Building and roofing materials and colors shall blend with the hillside.

4. Colors and textures shall be used that are found naturally in the hillside.

5. Reflective materials, such as mirrored glass or polished metals, shall not be used.

6. To the extent practical, no exterior lights shall be installed on the east side of buildings.

Exhibit VH-14
Section 17.5.16 Ridgeline Lots

Any required exterior lighting shall be shielded, recessed, or reflected so that no lighting is oriented towards the east side of the building.

Ridge Club Building: The building located on Lots 161A-1R, 161A-R2, and 161A-R3.

Exhibit VH-15

Section 17.4.16 Variance Process

17.4.16 Variance Process

A. Purpose and Intent

The purpose and intent of the variance process is to establish policies and procedure for granting a variance to the requirements of the CDC because the strict application of CDC requirements would cause exceptional and undue hardship on the development and use of lot due to special circumstances existing relative to the lot such as size, shape, topography or other extraordinary or exceptional physical conditions. Economic hardship alone is not sufficient justification for the granting of a variance. A variance is not required where a particular standard or provision of these regulations specifically allows for the review authority to grant administrative relief. It is the Town's intent that a variance be granted only under extraordinary circumstances.

B. Applicability

The variance process is applicable to any owner or developer who seeks a variance to the requirements of the CDC because the strict application of the CDC requirements would cause a hardship due to extraordinary or special circumstance on a lot.

1. A variance is not applicable to the Building Codes requirements. Please refer to the Building Codes appeals process.

C. Review Process

Variance development applications shall be processed as class 4 applications.

D. Criteria for Decision

1. The following criteria shall be met for the review authority to approve a variance:
 - a. The strict development application of the CDC regulations would result in exceptional and undue hardship upon the property owner in the development of property lot because of special circumstances applicable to the lot such as size, shape, topography or other extraordinary or exceptional physical conditions;
 - b. The variance can be granted without substantial detriment to the public health, safety and welfare;
 - c. The variance can be granted without substantial impairment of the intent of the CDC;
 - d. Granting the variance does not constitute a grant of special privilege in excess of that enjoyed by other property owners in the same zoning district, such as without limitation, allowing for a larger home size or building height than those found in the same zone district;
 - e. Reasonable use of the property is not otherwise available without granting of a variance, and the variance being granted is the minimum necessary to allow for reasonable use;
 - f. The lot for which the variance is being granted was not created in violation of

Exhibit VH-15

Section 17.4.16 Variance Process

Town regulations or Colorado State Statutes in effect at the time the lot was created;

g. The variance is not solely based on economic hardship alone; and

h. The proposed variance meets all applicable Town regulations and standards unless a variance is sought for such regulations or standards.

2. It shall be the burden of the applicant to demonstrate that submittal material and the proposed development substantially comply with the variance review criteria.

Exhibit VH-16

Section 17.1.3 Purposes Of The Community Development Code

17.1.3 PURPOSES OF THE COMMUNITY DEVELOPMENT CODE

The purposes of the CDC are to:

- A.** Promote and protect the health, safety and welfare of citizens and visitors;
- B.** Implement the Comprehensive Plan;
- C.** Preserve open space and protect the environment as envisioned in the Comprehensive Plan;
- D.** Emphasize the natural beauty of the town's surroundings;
- E.** Foster a sense of community as envisioned in the Comprehensive Plan;
- F.** Promote the economic vitality of the town as envisioned in the Comprehensive Plan;
- G.** Promote the resort nature and tourism trade of the town as envisioned in the Comprehensive Plan;
- H.** Ensure that uses and structures enhance their sites and area compatible with the natural beauty of the town's setting and its critical natural resources as envisioned in the Comprehensive Plan;
- I.** Protect property values within the town;
- J.** Promote good civic design and development as envisioned in the Comprehensive Plan;
- K.** Create and preserve an attractive and functional community as envisioned in the Comprehensive Plan; and
- L.** Establish and enforce comprehensive, efficient, clear and consistent standards, regulations and procedures for the planning, evaluation, approval and implementation of land uses and development within the town.

From: [RADHA CHERUKURI](#)
To: [John Horn](#)
Subject: Fwd: Lot 12
Date: Saturday, October 16, 2021 11:44:13 AM

Sent from my iPhone

Begin forwarded message:

From: RADHA CHERUKURI <rcherukur@aol.com>
Date: October 16, 2021 at 1:24:22 PM EDT
To: Jon Horton <hortonjonh@aol.com>
Subject: Lot 12

Dear Jon,

It is our understanding that you and Tiffany are planning on submitting an application to the Town of Mountain Village for a variance from the view plane restrictions to allow the construction of your home on lot 12 to a height of 35' plus 5 feet to allow for chimneys, flues, vents or similar structures. The substance of this request is set forth in Exhibits VH-5, VH-7, VH-12 and VH-19. Please be advised that we support your variance request and wish you the best of luck in your request for variance.

Ramesh cherukuri
Coonskin ridge cabin lot 1v
Owner of lots 4, 7, 9 and 10
Sent from my iPhone

Exhibit VH-18
Story Pole Light Photo From Town Hall



Exhibit VH-19
Eider Creek and Hillside
Survey Locations

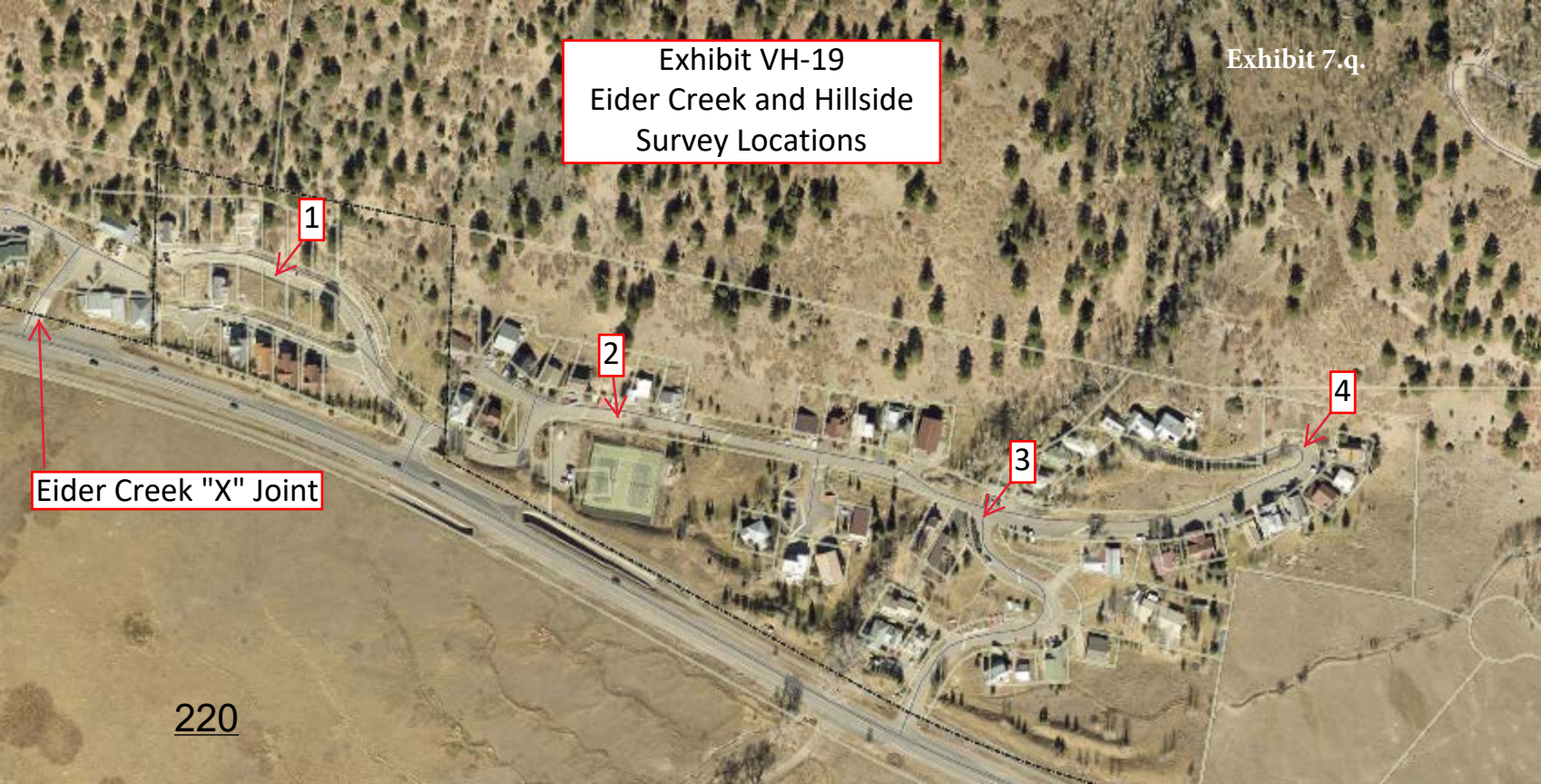
1

2

3

4

Eider Creek "X" Joint





Agenda Item No. 4
PLANNING & DEVELOPMENT SERVICE
PLANNING DIVISION
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 728-1392

TO: Mountain Village Town Council and Design Review Board
FROM: Michelle Haynes, Planning and Development Services Director, Rachel Shindman EPS, Andrew Knudtsen EPS, Paul Wisor, Interim Town Manager
FOR: Town Council Meeting of December 16, 2021
DATE: December 7, 2021
RE: A Worksession to Discuss the Community Housing Mitigation Methodology

Work Session Overview

In June of 2021, the Town of Mountain Village issued a request for proposal (RFP) to hire a firm to generate a linkage study and proposed community housing mitigation formula for community housing mitigation requirements generated by new construction.

What would result is a study, a housing mitigation rate for payment in lieu, a hierarchy of desired mitigation, a housing mitigation worksheet and an update to our housing guidelines. Our primary focus as explained in the RFP, is developing the linkage and rate for commercial, lodging, and multi-family new construction. Secondly, single family new construction.

We hired Economic Planning Systems and RRC Associates which have been creating such linkage studies and reports for decades with specific expertise working with Colorado mountain communities.

The intent of this program is to create a simple methodology that is easy to understand and apply both for the developer and administration.

ATTACHMENT

- Powerpoint Presentation

For Council consideration:

Establish a hierarchy of desired mitigation. Below are the typical ways housing mitigation can be satisfied in descending order. Town Council can eliminate or add any desired form of mitigation listed below.

- 1) Build onsite
- 2) Build off-site but in the town
- 3) Build off-site but in the region
- 4) Deed restrict existing free market inventory in the town
 - a. So long as it has not been previously deed restricted
 - b. Need HOA consent, as applicable
 - c. Verify affordability of HOA dues
- 5) Deed restrict existing free market inventory in the region
 - a. So long as it has not been previously deed restricted

- b. Need HOA consent, as applicable
 - c. Verify affordability of HOA dues
 - d. Need consent of the relevant jurisdiction
- 6) Payment in lieu
 - 7) Acquisition of free market land for housing purposes in the community – equitable valuation to the mitigation requirement.
 - 8) Acquisition of free market land for housing purposes outside of the community - equitable but in the region – equitable valuation to the mitigation required

Consider how broad of a net to capture housing mitigation

Commercial, lodging and multi-family. These uses generate a higher mitigation rate therefore staff recommends we focus our primary attention on capturing housing mitigation for these uses.

Staff recommends we do not capture mitigation for change of use (for example, a residential condominium that rezones to a restaurant space), but could consider it once the program is established.

Single Family construction. Staff recommends we capture housing mitigation for single family with a new construction square footage threshold.

- One approach could be to apply the mitigation for new construction that exceeds our average home size which is approximately 6,000 square feet. Any home constructed below 6,000 square feet would not pay a mitigation fee.
- Staff recommends mitigation related to single family construction always results in a payment in lieu.
- Staff also recommends that we do not consider mitigation for additions; however, if Council wants to consider this, we could establish a threshold for additions over 500 square feet. We could adopt this element now or consider it in the future once the program is established.

Other considerations, mitigation could apply to these uses and activities also

- Change of use (e.g. from a office to a restaurant)
- Additions (e.g. additions to existing uses like single family homes)
- Expansion of existing uses (e.g. like a larger restaurant)
- Short term rentals (this is trending now)

Policy Items to Discuss - January

- Minimum mitigation to require a unit
- Percent mitigation that could be paid out
- Percent mitigation rate
- Phasing the mitigation requirements

Anticipated Next Steps:

- January 20, 2022 Town Council worksession – to discuss more detailed policy decisions
- February 3, 2022 Design Review Board recommendation and Town Council first reading of an ordinance
- February 17, 2022 Town Council first reading of an Ordinance
- March 17, 2022 Town Council adoption.

COMMUNITY HOUSING MITIGATION STUDY

Town Council Work Session
December 16, 2021



Economic & Planning Systems, Inc.
The Economics of Land Use

223

730 17th Street, Suite 630 ■ Denver, CO 80202
303.623.3557 ■ www.epsys.com

TODAY'S AGENDA

- Project overview and key outcomes
- Linkage program overview and examples
- Fee-in-lieu calculation methodology
- Key policy considerations
 - Mitigation method
 - Mitigation rate
- Peer community examples
- Questions and discussion

PROJECT OVERVIEW

RESIDENTIAL AND COMMERCIAL LINKAGE STUDIES

What are we doing?

- Generating linkage program components
 - Employee generation
 - Affordability gap
 - Mitigation requirements
- Creating policy implementation tool
 - Interactive worksheet
- Reviewing 2002 Affordable Housing Guidelines

Why do this type of work?

- New development generates local employment
- Many of these local employees struggle to afford housing
- Linkage programs “link” the need generated by new development to an obligation for the developer to provide an amount of housing to mitigate the new need

Who else is doing this?

- Common approach, particularly in mountain resort communities
- Telluride, CO
- Vail, CO
- Aspen, CO
- Mt. Crested Butte, CO
- Jackson, WY

PROJECT OUTCOMES

- Program components
 - Employee generation rates – commercial and residential
 - Fee-in-lieu (locally calibrated)
 - Mitigation rate
 - Mitigation methods

- Implementation worksheet (similar to Telluride)

- Program will be structured through consultation with Council and staff
 - There are many options for what linkage programs can be
 - Determine development that is subject to the policy, methods for mitigation need, mitigation rate

226



Box 397 Telluride, CO 81435
 Contact: Ron Quarles
 (970) 728-2150
 rquarles@telluride-co.gov

TOWN OF TELLURIDE PLANNING DEPARTMENT
 HOUSING IMPACT MITIGATION

PROJECT & APPLICANT

Project Title Project Address
 Applicant Name Applicant Address
 Applicant Phone Applicant Email
 Number of free market residential, hotel or accommodation units proposed:
 Net floor area of commercial space proposed:

CALCULATION OF MINIMUM AFFORDABLE HOUSING REQUIREMENTS

For commercial / public facility uses:
 (net commercial / public space increase) x 4.5 / 1,000 sq.ft. x 400 sq.ft. / employee x .40 = sq.ft.
 For multi-family residential, mixed-use residential and accommodation uses:
 (no. of lodging or dwelling units) x .33 / lodging unit x 400 sq.ft. / employee x .60 = sq.ft.
 For hotel uses:
 (no. of lodging or dwelling units) x .33 / lodging unit x 400 sq.ft. / employee x .40 = sq.ft.
TOTAL MINIMUM AFFORDABLE HOUSING REQUIREMENT: = sq.ft.

▶ Note: For single-family and duplex mitigation rates, contact the Planning Department to be emailed the worksheet OR it can be found online at <<http://www.telluride-co.gov/241/Planning-Resources>>.

PROPOSED METHODS OF MEETING AFFORDABLE HOUSING MINIMUM REQUIREMENTS

Fill in all that apply:

Number of units and square feet to be constructed on the site of proposed development: units sq.ft.
 Number of units and square feet to be constructed off-site within the Town of Telluride: units sq.ft.
 Number of units and square feet to be constructed outside of Telluride (in the Telluride region): units sq.ft.
 Number of existing free market units to be deed-restricted: units sq.ft.
 Fees in Lieu to be paid (pursuant to Section 3-750.D Land Use Code):
 Land to be conveyed (pursuant to Section 3-750.D Land Use Code):
 Preliminary appraised market value of such land:

WHY A LINKAGE PROGRAM?

- Ties development to local needs for housing, based on employment generated
- Equitable approach to addressing impacts of development – obligation based on size/scale of new development
- For residential, more finely calibrated policy than inclusionary zoning
- Creates uniform approach aligning residential and commercial development (obligation based on employment generated)
- Enables Town to provide simple and consistent methods to fulfill either residential or commercial linkage requirements

PROGRAM OVERVIEW

COMMERCIAL PROGRAM EXAMPLE

	Retail	Restaurant	Hotel	Office
Development Size	5,000 sq. ft.	5,000 sq. ft.	50 rooms	5,000 sq. ft.
Employees Generated	10	10	30	15
Gap (fee) per Employee	\$1,000	\$1,000	\$1,000	\$1,000
Total Fee or Units Required				
25% Mitigation	\$2,500 / 2.5 units	\$12,500 / 12.5 units	\$7,500 / 7.5 units	\$3,750 / 3.75 units
45% Mitigation	\$4,500 / 4.5 units	\$22,500 / 22.5 units	\$13,500 / 13.5 units	\$8,250 / 8.25 units

Mitigation requirement is relative to development size (net new space)

Size of development determines employees generated (based on generation rates from this study)

Affordability gap per employee is applied to new employees generated (gap is calculated in this study)

Fee/units required is calculated by applying need generated from new development (units or fee), multiplied by the mitigation rate

RESIDENTIAL PROGRAM EXAMPLE

Residential	
Development Size	10 units (avg. 3,000 sq. ft. per unit)
Employees Generated	10
Gap (fee) per Square Foot	\$100
Total Fee (per 1 unit new development)	
25% Mitigation	\$75,000
45% Mitigation	\$135,000

Since less than 1 unit of housing is needed, a fee would be paid

FEE-IN-LIEU CALCULATION

Metric	Description	Factor	Variable	Calculation	Example
Step 1: Affordable Home Price	<i>Based on 30% of income, purchase assumptions (e.g. down payment, interest rate, loan term)</i>	<i>Total Cost</i>	A		\$20,000
Step 2: Market Home Price	<i>Based on MLS sales data (all sales, or defined parameters)</i>	<i>Median Home Cost (condo sales 2018-2021)</i>	B		\$50,000
Step 3: Calculate Gap (Fee)	<i>Market Price - Affordable Purchase Price</i>	<i>Affordability Gap</i>	C =	B - A	\$30,000

KEY POLICY QUESTIONS

MITIGATION RATE

MITIGATION METHODS

PROGRAM COMPONENTS

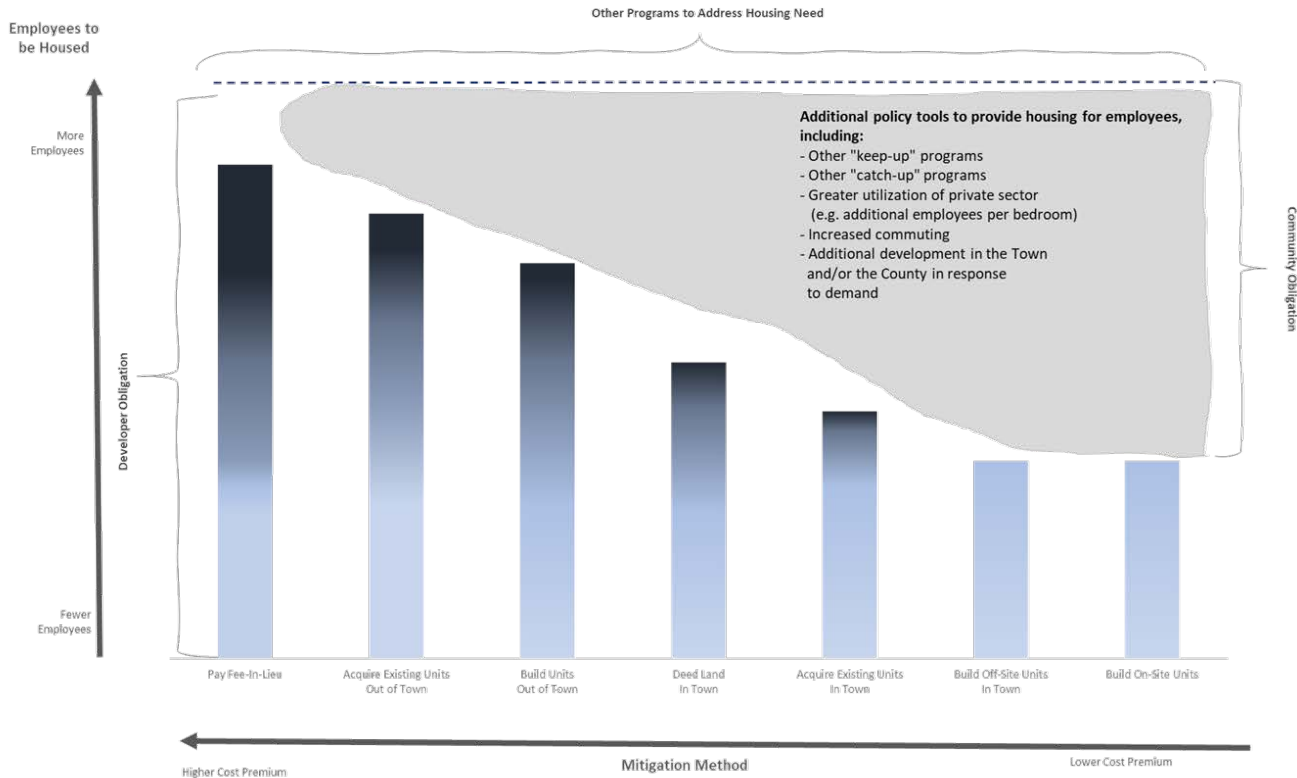
Analysis/Data Based

- Employee generation
 - For every X square feet of net new development, Y employees are generated
- Mitigation requirement (100%)
 - Of the Y employees generated, there is a need for Z units of affordable housing
 - Accounts for household formation, income levels of employees
- Fee-in-Lieu
 - Based on affordability needs, a fee of \$____ will mitigate the affordability gap generated

Policy Based

- Mitigation methods
 - How can developers mitigate the housing need generated by their development?
 - Two broad categories
 - Units (construct or acquire/buy down)
 - Resources (land or money)
- Mitigation rate
 - How much of the housing need generated is the developer's responsibility to mitigate, and how much is a community obligation?

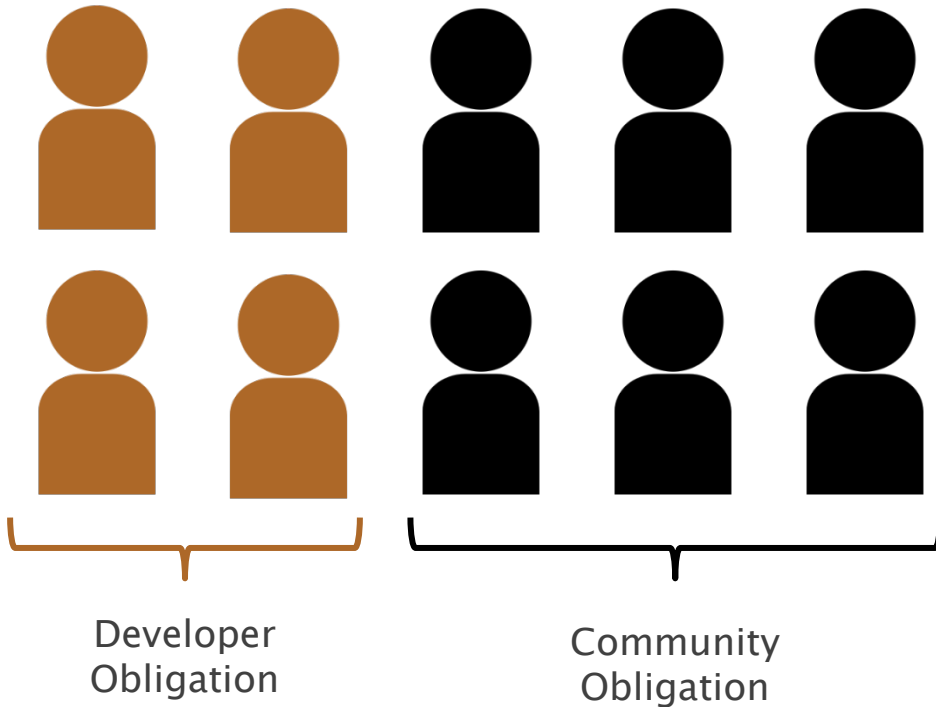
MITIGATION METHODS



Policy Considerations

- What does the Town want? New units, acquisition/deed restriction of existing units, land for development, money
- Distinction between inventory (providing units) and resources (land/money)

MITIGATION RATE



Example: 40% mitigation

(10 employee-households generated, developer mitigates housing need of 4)

Key Considerations

- Commercial + Residential should not exceed 100%
- Differential impacts on development feasibility between commercial and residential
- Community Obligation is responsible for the balance

The cost to mitigate the housing needs of these employees is the same regardless of who is doing the mitigation

PEER COMMUNITY PROGRAMS

APPLICABLE DEVELOPMENT

	Jackson, WY	Mt. Crested Butte, CO	Telluride, CO	Aspen, CO
Commercial	◆	◆	◆	◆
Accommodations	◆	◆	◆	◆
Single Family/Duplex	◆	◆	◆	◆
Multifamily	◆	◆	◆	◆
Other	All development (incl. industrial, recreation, institutional)		Other non-residential	
Exemptions	Mobile homes; dormitories; group homes; daycares; accessory uses	Commercial additions less than 500 sq. ft. Residential additional less than 500 sq. ft.	Redevelopment with no additional employment generation	Remodeling/redevelopment (with no additional floor area/net leasable sq.ft.) Expansion of ≤500 sq. ft. of net leasable space ≤ 250 sq. ft. of Floor Area, and ≤3 additional hotel/lodge units Full-time local working resident property owners (for residential)

MITIGATION RATE

	Jackson, WY	Mt. Crested Butte, CO	Telluride, CO	Aspen, CO
Commercial	Embedded in employee generation	15%	40%	65%
Accommodations	Embedded in employee generation	30% (within DDA) 15% (outside DDA)	60% (non-hotel) 40% (hotel)	65%
Single Family/Duplex	Embedded in employee generation	30%	60%	Free-market residential development: affordable housing net livable area provided equal to at least 30% of the additional free-market residential net livable area
Multifamily	Embedded in employee generation	30%	60%	
Other				For redevelopment of existing commercial space that did not previously mitigate, mitigation will be phased 15% beginning in 2017, and by 3% each year until 65% is reached

FEE-IN-LIEU DETAILS

	Jackson, WY	Mt. Crested Butte, CO	Telluride, CO	Aspen, CO
Fee Amount	Ranges from \$129,335 to \$565,486 / unit	\$163,900 / unit	\$494 / sq. ft.	Ranges from \$111,438 to \$381,383 / employee
Factor	Unit	Unit	Square Foot	Employee
Update Frequency	Annually		2 years	5 years
Notes	Varies by unit size and affordability level		Fee in Lieu not to exceed 10% of total affordable housing requirement (unless required mitigation is ≤ 400 sq.ft. or minimum requirement is $> 15\%$ of gross floor area of development – then only portion of requirement above 15% is eligible to be mitigated by FIL)	Fee payment only allowed for certain categories (\$238,687 - \$381,383) If mitigation requirement is $< .25$ FTEs, FIL may be made by right; otherwise, FIL requires City Council approval

QUESTIONS AND DISCUSSION

KEY QUESTIONS

1. Depth/breadth of the program
 - What development should be subject to linkage fees?
2. Mitigation methods
 - How should developers be able to mitigate the need generated?
3. Mitigation rate
 - How much of the need generated should be mitigated?

1. DEPTH/BREADTH OF PROGRAM

- What development would be subject to linkage fees?
- Land use
 - Single family residential (could be fee-only)
 - Multifamily
 - Commercial
 - Mixed use
- Development type
 - New construction
 - Additions
 - Changes of use

Questions to consider:

- Apply mitigation to residential additions?
- Apply mitigation to change of use?
- Include a minimum size threshold for application? (e.g. under 500 sf is exempt)

2. MITIGATION METHODS

- How should developers be able to mitigate the need generated?
 - New units
 - Acquisition and deed restriction of existing units
 - Land
 - Fee
 - Geography – in town/out of town
- Which should be included/excluded?
- Minimum threshold to provide a unit (i.e. if mitigation need is under a certain size, pay a fee)
- How do we prioritize the options?

1. Build onsite
2. Build offsite within the town
3. Build offsite but within the region
4. Deed restrict free market inventory
 - With some conditions related to demonstration of affordability in the long term
 - Need consent of the relevant jurisdiction or HOA if outside (or inside) of the town
5. Payment in Lieu
6. Conveyance of land
 - On condition that it had not been previously deed restricted within the town or the region
 - Need consent of the relevant jurisdiction or HOA if outside of the town

3. MITIGATION RATE

- How much of the need generated should be mitigated by the developer?
- Considerations include the financial impact on development, how remainder of need might be met
- Town needs to be cognizant of market viability and adopt standards that enable the market to fulfill the housing requirements

Peer community mitigation rates generally fall in the range of 30% to 60%

PROGRAM WALK-THROUGH

Development Size

Mitigation Calculation Accounts for:

- Employee generation
- Employee housing needs
- Mitigation rate



PROJECT & APPLICANT

Project Title Project Address
 Applicant Name Applicant Address
 Applicant Phone Applicant Email

Number of free market residential, hotel or accommodation units proposed:
 Net floor area of commercial space proposed:

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Number of units and square feet to be constructed outside of Telluride (in the Telluride region): units sq.ft.

Number of existing free market units to be deed-restricted: units sq.ft.

Fees in Lieu to be paid (pursuant to Section 3-750.D Land Use Code):

Land to be conveyed (pursuant to Section 3-750.D Land Use Code):

Preliminary appraised market value of such land:

Mitigation Requirement

Mitigation Methods



TO: Mountain Village Town Council

FROM: Michelle Haynes, Planning and Development Services Director, Paul Wisor, I Town Manager

FOR: Town Council; December 16, 2021

DATE: December 10, 2021

RE: First Reading of an Ordinance regarding Amendments To The Community Development Code Regarding Modifications To The Definition Of Accessory Dwelling Unit (ADU) and Removing Mother-In-Law Suite

THE HOUSING CRISIS

The Town of Mountain Village, and the Telluride region as a whole, is in the midst of a housing crisis that directly threatens the quality of life of every Mountain Village resident, second homeowner, business, and visitor. From entry level restaurant workers to top level ski executives, and every other position in between, these critical roles are going unfilled, in large part, because such workers and their families lack viable housing options within or near Mountain Village. Unless this crisis is addressed, the basic services and amenities that make Mountain Village a place like no other, will be diminished or eliminated altogether.

ATTACHMENTS

A.1 Ordinance

ACCESSORY DWELLING UNIT

Accessory Dwelling Units are allowed within the single-family zone district as attached [to the primary home] if the lot size is less than .75 acres and detached [from the primary home] if the lot size is over .75 acres. This accessory use is considered ancillary to the primary home, allows for a separate lock-off entrance and a full kitchen. Traditionally the ADU's were intended for caretaker and ancillary uses to manage estate properties in the Mountain Village. ADU's have functioned like this, and provided long term and short-term rental options for homeowners at their discretion. The ADU's size is limited and subordinate to the main dwelling consistent with the regulations found in the CDC.

The original definition of the ADU allowed for it as a normal incidental to, subordinate to and devoted exclusively to the main use of the residence (1998 LUO)

The current CDC also allows for a mother-in-law suite in detached condominiums. This is very similar to an ADU except there must be a common shared entrance, and the kitchen facility is limited in size. Many residents in Single family Common Interest Community (SFCI) zone district, and Multi-Family zone district have expressed interest in being able to utilize ADUs rather than mother-in-law suites as ADUs are generally consider less restrictive and more desirable.

Proposal

Pursuant to Council direction, staff has removed the definition of a mother-in-law suite, then integrating some of the mother-in-law language into the ADU definition. Staff clarified that an ADU is allowed within detached condominiums in addition to the single-family zone district and SFCI.

Allowable Zone Districts

The proposed CDC amendment will make it clear that an ADU is allowed in the Single-Family zone district, Single family Common Interest Community (SFCI) zone district, and Multi-Family zone district when the unit configuration is a detached condominium dwelling unit.

ADU's are not permitted in areas not legally accessible by motor vehicles.

Parking

In the CDC there is no parking requirement for an ADU; however, it can be determined by the Design Review Board parking is required pursuant to development review on a case-by-case basis per CDC Section 17.5.8.A(5). Staff is recommending that this flexibility is maintained for any future ADUs.

RECOMMENDED MOTION

I move to approve on first reading an Ordinance amending ADU provisions in the Town's Community Development Code (attached as exhibit A) and to direct the Town Clerk to set a public hearing for January 20, 2022.

ORDINANCE NO. 2021-__

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO AMENDING THE COMMUNITY DEVELOPMENT CODE TO ALLOW FOR ACCESSORY DWELLING UNITS.

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

WHEREAS, the Town, and the Telluride region as a whole, is in the midst of a housing crisis that directly threatens the quality of life of every Town resident, second homeowner, business, and visitor; and

WHEREAS, pursuant to the Town’s Community Housing Initiative, the Town Council of the Town of Mountain Village (“Town Council”) provided direction to pursue certain zoning incentives including Accessory Dwelling Units (“ADUs”); and

WHEREAS, Title 17 of the Town of Mountain Village Municipal Code (“Code”) is known as the Town of Mountain Village Community Development Code (“CDC”); and

WHEREAS, in compliance with Section 17.1.7 of the Code, the Design Review Board reviewed the proposed amendment and provided a recommendation to Town Council on August 5, 2021; and

WHEREAS, in compliance with C.R.S. § 31-23-304, Town Council held a public hearing on the proposed amendment on January __, 2022; and

WHEREAS, the Town Council desires to amend the CDC to allow for ADUs as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, as follows:

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

Section 2. Amendment to the CDC. Section 17.3.4, Table 3-1 of section 17.3.3, and Chapter 17.8 are hereby amended to read as set forth in Exhibit A, attached hereto.

Section 3. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

Section 4. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 5. Effective Date. This Ordinance shall become effective on _____, 2022 and shall be recorded in the official records of the Town kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

Section 6. Public Hearing. A public hearing on this Ordinance was held on the ___ day of January, 2022 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado 81435.

Section 6. Publication. The Town Clerk or Deputy Town Clerk shall post and publish notice of this Ordinance as required by Article V, Section 5.8 of the Charter.

INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the ___ of December, 2021

TOWN OF MOUNTAIN VILLAGE:

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

By: _____
Laila Benitez, Mayor

ATTEST:

Susan Johnston, Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this __ of January, 2022

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 Ordinance No. __ ("Ordinance") is a true, correct and complete copy thereof.
2. The Ordinance was introduced, read by title, approved on first reading with minor amendments and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on December __, 2021, by the affirmative vote of a quorum of the Town Council as follows:

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

3. After the Council's approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on __, 2021 in accordance with Section 5.2d of the Town of Mountain Village Home Rule.
4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on January __, 2022. At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this ____ day of _____, 2022.

Susan Johnston, Town Clerk
(SEAL)

Exhibit A

Section 17.3.4 SPECIFIC ZONE DISTRICT REQUIREMENTS

D. Multi-Family Zone District

1. **Permitted Uses.** Lots in the Multi-family Zone District shall be used for the construction of multi-family dwellings, including lodge units, efficiency lodge units, condominium units (attached or detached), workforce housing units, hotel units, hotel efficiency units, accessory commercial uses as limited below and other similar uses.
2. **Accessory Buildings or Structures.** Permitted accessory buildings or structures include hot tubs, saunas, swimming pools, gazebos, art and similar uses. Detached storage buildings are expressly prohibited in the Village Center, and are only allowed in other projects for trash and recycling structures or buildings, bike storage/common community storage (such as bicycles), and similar situations.
3. **Accessory Uses.** Permitted accessory uses include home occupations pursuant to the Home Occupation Regulations, surface parking as limited by the Parking Regulations, and other similar uses.
4. **Commercial Area Limitation.** Commercial area is limited to restaurants and gift shops that primarily serve the guests and owners of a development, or as otherwise provided in the Comprehensive Plan.
5. **Accessory Dwelling Unit (ADU).** Accessory dwelling units are allowed within detached condominium dwelling units (not a multi-family building); provided, however, no ADU shall be permitted in any area not legally accessible by motor vehicle. The ADU is an accessory use and ancillary to the primary use. Such units shall:
 - a. Only be allowed if the primary detached condominium dwelling unit exists or is constructed concurrently;
 - b. Comply with the Design Regulations;
 - c. Have the following floor area limitations:
 - i. A maximum of 800 sq. ft. of floor area if the detached condominium dwelling unit is 4,000 sq. ft. or less of floor area; and
 - ii. If the detached condominium dwelling unit is in excess of 4,000 sq. ft., the accessory dwelling unit is limited to twenty percent (20%) of the floor area of the primary detached condominium dwelling unit or 1,500 square feet of floor area, whichever is less.
 - d. Be located within the detached condominium dwelling (not detached).
 - e. Provide separate access to the unit, a kitchen facility separate from the main detached condominium dwelling unit, and off-street parking as required by the Design Regulations. A common entrance can alternatively be provided; and
 - f. Be located so as to minimize visual impacts on the lot and on lots immediately adjacent to the proposed unit to the extent practical.
 - g. Notwithstanding the foregoing, an ADU shall not be permitted in any portion of a Multi-Family Zone District not legally accessible by motor vehicle.

E. Maintenance-Public Works Zone District

1. **Permitted Uses.** Lots in the maintenance-public works zone district shall be used for municipal facilities such as maintenance shops, storage, infrastructure, fueling, offices and other similar uses.

2. **Accessory Buildings or Structures.** Permitted accessory buildings or structures include telecommunications antennas, storage buildings, fuel islands, snow storage/disposal and other similar buildings.
3. **Accessory Uses.** Permitted accessory uses include golf course maintenance, ski resort maintenance, infrastructure and other similar uses.

F. **Single-Family Zone District**

1. **Permitted Uses.** Lots in the single-family zone district may be used for the construction of one (1) single-family dwelling unit and one (1) accessory dwelling unit.
 - a. Three (3) lots in the single-family zone district have a zoning designation of non-subdivideable duplex: Lot 213, Lot 245 and Lot 257B, with the following allowances and limitations to such lots:
 - b.
 - c. Two (2) dwelling units may be constructed;
 - d. One (1) dwelling unit shall be designated as a major duplex unit, and one (1) dwelling unit shall be designated as minor duplex unit;
 - e. The square footage of the minor duplex unit may not exceed seventy-five percent (75%) of the square footage of the major unit;
 - f. Dwelling units may be either detached or combined into one (1) structure; and
 - g. Accessory dwelling units shall not be allowed.
2. **Accessory Buildings or Structures.** Permitted accessory buildings or structures include hot tubs, saunas, swimming pools, gazebos, art, ski tramways approved pursuant to the Conditional Use Permit Process, outdoor kitchens, play equipment, fire pits, tennis courts and typical court fencing, ice skating rinks approved pursuant to the Conditional Use Permit Process, fenced dog areas, and similar uses. Storage buildings are expressly prohibited, except the DRB may approve a trash and recycling bin storage building at the end of a driveway longer than 100 feet provided such is designed in accordance with the Design Regulations.
 - a. All accessory buildings or structures shall be located in the rear yard to the extent practical.
 - b. Accessory buildings or structures shall not exceed 500 sq. ft. in size or floor area, as applicable.
 - c. Design requirements applicable to accessory dwelling units are in the Single-Family zone district.
 - d. Buffering is provided for high activity level buildings or structures, such as hot tubs, swimming pools and tennis courts to mitigate the adverse visual and noise impacts.
3. **Accessory Uses.** Permitted accessory uses include home occupations pursuant to the Home Occupation Regulations, firewood storage in the rear yard when a valid fireplace permit is held, ski surface parking as limited by Parking Regulations, private outdoor projection system onto the wall of a building to show movies or other media that is not visible from a public way or adjoining lot (buffering required), and other similar uses.
4. **Further Subdivision Prohibited and Rezoning Limited.** A single-family lot may not be further subdivided and additional density may not be transferred onto a single-family lot by the Rezoning Process or otherwise. This prohibition does not prohibit lot line

adjustments, lot line vacations or correction plats, which do not create additional lots. Single-family lots may only be rezoned to the Passive Open Space District.

- 5. Accessory Dwelling Unit.** Accessory dwelling units are permitted in the Single-Family Zone District provided such units shall:
- a. Only be allowed if the primary single-family dwelling unit exists or is constructed concurrently;
 - b. Comply with the Design Regulations;
 - c. Have the following floor area limitations:
 - i. A maximum of 800 sq. ft. of floor area if the primary single-family dwelling unit on the lot is 4,000 sq. ft. or less of floor area; and
 - ii. If the primary single-family dwelling unit is in excess of 4,000 sq. ft., the accessory dwelling unit is limited to twenty percent (20%) of the floor area of the primary single-family dwelling unit or 1,500 square feet of floor area, whichever is less.
 - d. Be physically attached (roof forms and foundation) to the primary single-family dwelling unit if the lot is less than or equal to 0.75 acres. Lots that are greater than 0.75 acres may develop an accessory dwelling unit that is detached from the main single-family dwelling unit;
 - e. Provide separate access to the unit, a kitchen facility separate from the main single-family dwelling unit, and off-street parking as required by the Design Regulations. A common entrance can alternatively be provided; and
 - f. Be located on a lot so as to minimize visual impacts to existing buildings on lots immediately adjacent to the proposed unit to the extent practical.
 - g. Notwithstanding the foregoing, an ADU shall not be permitted in any portion of a Single-Family Zone District not legally accessible by motor vehicle.

G. **Single-Family Common Interest Community Zone District**

- 1. Permitted Uses.** Detached single-family condominium dwelling units are permitted in the Single-family Common Interest Community Zone District provided:
- a. The official land use and density allocation list shows the lot to currently have condominium density, and such area has already been platted as a condominium community with owners now desiring to convert to a common interest community;
 - b. Three (3) or more single-family units are located in the same common interest community;
 - c. The detached single-family condominium dwellings are located in a common interest community;
 - d. The common interest community contains common elements such as parking areas, roads, tennis courts, driveways or amenity areas;
 - e. The Town has reviewed and approved concurrent rezoning and subdivision plat development applications to create the single-family common interest community, with 100% of all owners participating in the subdivision and rezoning processes;
 - f. The detached single-family dwellings meet the Design Regulations for single-family dwellings; and
 - g. A plat note and development agreement related to the concurrent subdivision approval prohibiting lot line vacations and lot line adjustments that would allow for a larger home than the original condominium subdivision would have allowed based on the application of the requirements of the CDC.

2. **Accessory Buildings.** Permitted accessory buildings or structures include hot tubs, saunas, swimming pools, gazebos, art, outdoor kitchens, play equipment, fire pits, tennis courts and typical court fencing, ski tramways approved pursuant to the Conditional Use Permit Process, fenced dog areas and other similar uses. Storage buildings are expressly prohibited.
 - a. All accessory buildings or structures shall be located in the rear yard to the extent practical.
 - b. Accessory buildings or structures shall not exceed 500 sq. ft. in size or floor area, as applicable.
 - c. Buffering is provided for high activity level buildings or structures, such as hot tubs, swimming pools and tennis courts to mitigate the adverse visual and noise impacts.

3. **Accessory Uses.** Permitted accessory uses include home occupations pursuant to the Home Occupation Regulations, firewood storage in the rear yard when a valid fireplace permit is held, surface parking to meet the Parking Regulations, private outdoor projection system onto the wall of a building to show movies or other media that is not visible from a public way or adjoining lot (buffering required), and other similar uses. Accessory dwelling units are expressly prohibited.

4. Accessory Dwelling Unit (ADU). Accessory dwelling unit is allowed within a single family detached condominium dwelling unit (not a multi-family building). The ADU is an accessory use and ancillary to the primary use. Such dwelling units shall:
 - a. Only be allowed if the primary detached condominium dwelling unit exists or is constructed concurrently;
 - b. Comply with the Design Regulations;
 - c. Have the following floor area limitations:
 - i. A maximum of 800 sq. ft. of floor area if the detached condominium dwelling unit is 4,000 sq. ft. or less of floor area; and
 - ii. If the detached condominium dwelling unit is in excess of 4,000 sq. ft., the accessory dwelling unit is limited to twenty percent (20%) of the floor area of the primary detached condominium dwelling unit or 1,500 square feet of floor area, whichever is less.
 - d. Be located within the detached condominium dwelling (not detached).
 - e. Provide separate access to the unit, a kitchen facility separate from the main detached condominium dwelling unit, and off-street parking as required by the Design Regulations. A common entrance can alternatively be provided; and
 - f. Be located so as to minimize visual impacts on the lot and on lots immediately adjacent to the proposed unit to the extent practical.
 - g. Notwithstanding the foregoing, an ADU shall not be permitted in any portion of a Single-Family Common Interest Community Zone District not legally accessible by motor vehicle.

Section 17.3.3 USE SCHEDULE

Table 3-1 Town of Mountain Village Use Schedule

Use/Zone	C L A S S 1 A O S	C L A S S 2 A O S	C L A S S 3 A O S	C L A S S 4 A O S	C L A S S 5 A O S	P O S	SF, SFCI	MF	MPW	CV	VC
Temporary real estate sales office associated in one unit of new development							C	C	C	C	C
Private outdoor tennis courts and tennis facilities			C	C	C		A				P
Private indoor tennis							C				
Public tennis courts	C	C	C								P
Town shops and storage		C	C					C		P	
Trash and recycling facilities			C					C		P	
Utility infrastructure, underground	P	P	P	P	P	P	P	P	P	P	P
Major Utility infrastructure, above ground	C	C	C	C	C		C	C	C	C	C
Minor utility infrastructure, above ground accessory to development	P	P	P	P	P		P	P	P	P	P
Vehicle sponsorship as limited by Sign Regulations	C	C	C							C	C
Water and sewer infrastructure	P	P	P	P	P	P	P	P	P	P	P
Water storage tanks	C	C	C	C	C		C	C	C	C	C
Water and sewer treatment facilities	C	C	C	C	C			C		C	
Water wells	P	P	P	P	P	C	P	P	P	P	P
Weddings, parties and private events (Refer to Special Event Regulations)	P	P	P				P	C		C	C
Wind turbines	C	C	C				C	C	C	C	
Residential and Lodging Uses											
Clothes line, rear yard not visible from public way							A	A			
Permitted accessory buildings or structures limited to detached garage, gazebo and similar accessory buildings							A	A	A	A	A
Single-family dwelling platted as a condominium dwelling unit							P <u>(SFCI only)</u>	P			P
<u>Single family detached condominium dwelling unit</u>							P <u>(SFCI Only)</u>				
<u>Accessory dwelling unit</u>							P	P ¹			
Condominium dwelling unit								P		P	P

Use/Zone	C L A S S 1 A O S	C L A S S 2 A O S	C L A S S 3 A O S	C L A S S 4 A O S	C L A S S 5 A O S	P O S	SF, SFCI	MF	MPW	CV	VC
Condominium-hotel dwelling unit								P		C	P
<u>Detached condominium dwelling unit</u>								<u>P</u>			
Nonsubdivided duplex							P				
Efficiency lodge dwelling unit								P		C	P
Employee apartment dwelling unit			C				A	P		P	P
Employee condominium dwelling unit			C					P		P	P
Employee dorm dwelling unit			C					P		P	P
Employee Single-family dwelling unit			C				P	P			
Hotel dwelling unit								P		C	P
Hotel efficiency dwelling unit								P		C	P
Industrial								P ²			
Lodge								P		C	P
Parking, public garage			C					A	C	P	P
Parking, surface lot			C					A	C	A	C
Recreational facilities, private, non-commercial							C	A			C
Rentals, short or long-term							P	P		P	P
Single-family							P				
Single-family accessory garage							A				
Single-family accessory dwelling unit							A (SF only)				
Single-Family, general accessory uses in the rear yard such as a fenced in dog area.							A				
Construction staging			PM				PM	PM	PM	PM	PM
Educational Facilities											
School, private or public			C					C		P	C
College, private or public			C					C		P	C
Day-care, home								C		P	C
Day-care, non-profit or public								C		P	C

²¹—Permitted within detached condominium dwelling units only.

²where industrial zoning is allowed as a legal non-conforming use.

Chapter 17.8 DEFINITIONS

development, drainage and other improvements provided, however, the following exceptions may be allowed outside of the disturbance envelopes:

1. Trails;
2. Driveways;
3. Utilities provided such should be located under the driveway, if practicable;
4. Grading improvements associated with the overall subdivision that were reviewed and approved by the Town;
5. Tree removal for required fire mitigation or forest health; and/or
6. Other improvements as may be allowed by the review authority provided the natural integrity of the lot is maintained and development constraints are avoided.

Domesticated Animal. Domesticated animals are defined as (1) any animal normally domesticated and kept inside a dwelling, including but not limited to parakeets, canaries or aquarium fish; and (2) any dog or cat not otherwise regulated by Town ordinances.

Drainage: The removal of surface water or ground water from a lot by drains, grading or other means. Drainage, sometimes referred to in terms of storm water management, also includes water quality protection through the control of run-off to minimize erosion, sedimentation and other pollutants (oil, etc.) during and after development and includes the prevention or alleviation of flooding through detention or retention. Please refer to drainage design standards.

Drainage Design Standards: The grading and drainage design requirements of the Town as provided for in Chapter 5.

Dwelling Unit: Dwelling unit means a building or a portion of a building containing a single unit providing living facilities for one (1) or more persons, including permanent provisions for living, sleeping, a kitchen as limited herein, and sanitation. Dwelling units are further classified as:

Accessory Dwelling Unit: ~~A single family~~An accessory dwelling unit that is located on the same lot or within the same primary dwelling (as applicable) as the primary single-family or detached condominium dwelling that meets the requirements for an accessory dwelling unit contained in Chapter 3. Each dwelling unit may have one (1) kitchen without size limitation. A separate entrance is allowed. Size limitations apply as contained in Chapter 3. Wet bars are also allowed in common living rooms, entertainment rooms and similar common areas that cannot be locked-off from the dwelling unit. Accessory Dwelling Unit can share a common entrance or common hallway within the primary dwelling unit.

Multi-Family Dwelling Unit: A building containing three (3) or more dwelling units on one (1) lot. Multi-family dwelling units include apartment units and condominium units and lodge units that may also be built with hotel units, hotel efficiency units and efficiency lodge units (Please refer to the zoning designation definition that contains specific allowances and limitations for each type of multi-family dwelling unit, that may limit kitchen and room configuration limitations for these unit types). When a kitchen size is not limited by a dwelling unit zoning designation definition, each dwelling unit may have one (1) kitchen without size limitation. For condominiums, wet bars are also allowed in common living rooms, entertainment rooms and similar common areas that cannot be locked-off from the dwelling unit.

Non-Subdivideable Duplex Dwelling Unit: A lot containing either (a) a detached building containing only two (2) dwelling units that are located on one (1) lot; or (b) two (2) detached buildings with each building only containing one (1) dwelling unit, both as limited under the

single-family zone district requirements. Each dwelling unit may have one (1) kitchen without size limitation. Wet bars are also allowed in common living rooms, entertainment rooms and similar common areas that cannot be locked-off from the dwelling unit. A mother-in-law suite is permitted.

Detached Condominium Dwelling Unit: An individual Dwelling Unit, without common attachment, within a common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the Owners of the separate ownership portions.

Single-Family Detached Condominium Dwelling Unit: A detached building containing only one (1) dwelling unit that is located within a condominium community with at least three (3) or more detached single-family condominium dwelling units located on one (1) lot. Each dwelling unit may have one (1) kitchen without size limitation. Wet bars are also allowed in common living rooms, entertainment rooms and similar common spaces ~~areas that cannot be locked off from the dwelling unit~~. An accessory dwelling unit mother-in-law suite is permitted within the single family detached condominium dwelling (not detached).

Single-Family Dwelling Unit: A detached building containing only one (1) dwelling unit that is located on one (1) lot unless such is in the single-family common interest community zone district where three (3) or more single-family dwellings in such community. Each dwelling unit may have one (1) kitchen without size limitation. In addition, one (1) additional kitchen is permitted for homes over 5,000 sq. ft. for the preparation of large meals for guests if such kitchen cannot be locked off from the dwelling unit. Wet bars are also allowed in common living rooms, entertainment rooms and similar common areas that cannot be locked-off from the dwelling unit. An accessory dwelling unit mother-in-law suite is permitted.

Easement: A less than fee interest in land, which provides a person other than the owner of the land certain rights over that land, or any designated part of that land, for the purposes specified by such easement.

Easement Vacation: The vacation or removal of an easement shown on a recorded subdivision plat that is dedicated to or held by the Town Council.

Effective Date of CDC: The date the CDC was effective after the second reading of the ordinance adopting such code.

Efficacy: Luminous efficacy is a measure of how well a light source produces visible light. It is the ratio of luminous flux to power, measured in lumens per watt (lm/W).

Efficiency Lodge Unit: See zoning designation definition.

Employee: A person who is employed within the Telluride R-1 School District and maintains residence in the town as set forth in the employee housing or workforce housing restriction.

Employee Apartment: See zoning designation and dwelling unit definitions.

Employee Condominium: See zoning designation and dwelling unit definitions.

Employee Dorm: See zoning designation definition.

Monumented Land Survey: A survey prepared by a Colorado licensed public land surveyor that finds or marks all property corners, property lines, existing improvements and construction and development improvements. The lot corners and lot lines included in the monument land survey may be limited down by the Planning Division to the area affected by development or construction.

~~**Mother-in-Law Suite:** A suite that is accessed from a common hallway in the home that does not contain a separate entrance, lock or the ability to lock off a common foyer that may contain a bedroom, small living area, and a limited kitchen facilities consisting of a sink, microwave, two element burner and a six (6) cubic foot (maximum) refrigerator.~~

Mountain Village: When used as a freestanding phrase not referring to the Town of Mountain Village or a Town document, Mountain Village shall mean the geographic, incorporated area of the Town.

MPUD: A master PUD as set forth in the PUD Regulations.

MPUD Development Agreement: The binding agreement between the developer and the Town required as a condition of approval of an outline PUD, which agreement includes requirements for dedication and conveyance of community benefits associated with all phases of the MPUD and which details the uses and densities associated with the individual parcels and/or phases of the MPUD as provided for in the PUD Regulations.

Multi-Family Zone District: A lot zoned as multiunit or multi-family that permits multi-family development with the following limited zoning designations as specifically zoned on each lot: hotel units, hotel efficiency units, lodge units, efficiency lodge units, condominium units, commercial space, workforce housing units and parking together with such public and semi-public facilities, private recreation facilities and related visitor-oriented uses as may be appropriately developed on the property.

Municipal Facilities: Facilities and services traditionally provided by the Town, such as water services, police protection, fire protection, maintenance/shops and similar uses.

Natural Grade: See definition of Grade.

Native Grass Seed Mix: The native grass seed mix as set forth in the Landscaping Regulations section of the Design Regulations.

Nonconforming Structure: Any building or structure legally established pursuant to the land use regulations in effect at the time of its development that does not comply with the CDC regulations.

Nonconforming Use: Any use of land, building or structure that was established pursuant to the land use regulations in effect at the time of its development but which use does not comply with the CDC regulations.

Non-Domesticated Animal: Any animal that is not a domesticated animal (Please refer to domesticated animal definition).

Non-Subdivideable Duplex Lot: A lot with a zoning designation of non-subdivideable duplex that allows for the construction of two (2) dwelling units consistent with the accessory dwelling unit requirements in the single-family zone district.

Right-of-Way: An area dedicated to public use for pedestrian and vehicular circulation, which may also accommodate public utilities and similar uses.

Roofline: The highest horizontal line of a building or structure as defined by ridges, gables, dormers or parapets and excepting chimneys, antennas, cupolas and steeples.

Sale or Sell: The exchange of goods or services for money or other consideration, including the offering of goods or services for donation except when offered to express religious, social or political belief.

Sandwich Board Signs: Freestanding signs with signage on two (2) sides.

Seasonal Lighting: Lighting installed and operated in connection with the holidays or other seasonal traditions.

Service Commercial: Any establishment of which the primary activity is the provision of personal or professional service as opposed to products, such as attorney services, surveying services, title services, real estate services or beauty services.

Short Term Accommodation: Means a building or any unit within a building may only be rented, leased or occupied for a period of less than 30 (thirty) consecutive days by any occupant (that is, any length of time between 1 and 29 consecutive days) and not as a primary residence.

Sign: Any object, device, display, structure or part thereof situated outdoors or indoors, which is used to advertise, identify, inform, display, direct or attract attention to an object, person, institution, organization, business, religious group, product service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images.

Off-premise Signs: Signs advertising goods, products or services that are not located or sold on the lot or premise on which the sign is located except for signs that project into a plaza area, directory signs and other off-premise signs as allowed by the Sign Regulations.

Sign Area; The area of the entire face of a sign shall be measured in determining sign area, including but not limited to the advertising surface and any framing trim or molding. On a two-sided sign where the faces are parallel to each other and separated by less than one (1) foot, only one (1) face is counted in calculating the sign area.

Single-Family Condominium Dwelling Unit: See zoning designation and dwelling unit definitions.

Single-Family Dwelling Unit: See zoning designation and dwelling unit definitions.

Site: The entire area included in the legal description of the land on which a development activity is proposed in a development application.

Site Coverage: The total horizontal area of any building, carport, porte-cochere or arcade and shall also include walkways, roof overhangs, eaves, exterior stairs, decks, covered porch, terraces and patios. Such horizontal measurement shall be from the driplines of buildings and from the exterior surface of the total wall assembly.

Site-Specific Development Plan: The final approved development application plans for a development where (a) a development permit has been issued and no further development approvals are required



Agenda Item No. 8
PLANNING & DEVELOPMENT SERVICE
PLANNING DIVISON
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 728-1392

TO: Mountain Village Town Council and Design Review Board

FROM: John Miller, Senior Planner
FOR: Town Council Meeting of September 21, 2021
DATE: January 13, 2021
RE: **Joint Work Session between the Design Review Board and the Town Council discussing a future height Variance Request to allow the height of Unit 12 at The Ridge to exceed the height restriction illustrated by the Coonskin View Plane Survey found within the Town and County settlement agreement and pursuant to CDC Section 17.5.16(B)(4)**

Work Session Overview

PROJECT GEOGRAPHY

Legal Description: UNIT 12 THE RIDGE AT TELLURIDE A PLANNED COMMUNITY LOT 161A4 ACC TO PLAT REC 04 05 2004 BK 1 PG 3262 3265 AND ACC TO 6TH SUPPLEMENTAL AND AMENDED PLANNED COMMUNITY PLAT PHASES 1 THRU 7 REC 07 02 2010 PLAT BK 1 PG 4349 4353 AND 6TH SUPPLEMENT & AMENDMENT TO DECS AT 413135 A 5.55 PER INT IN UNIT 4 LOT 161A 1R BLDG LOT 161 D1 OPEN SPACE TRACTS ROS 1A 2C 4B 5A 6A 7A LOT 161A 4 OPEN SPACE TRACTS ROS 1B 2B 3A 4A AND LOT 161A R3 OPEN SPACE TRACT ROS 5B COMMON ELEMENTS

Address: 8 Horseshoe Lane
Applicant/Agent: John Horn
Owner: Jonathan H. and Tiffany L. Horton Living Trust

Zoning: Multi-Family
Existing Use: Vacant
Proposed Use: Multi-Family
Lot Size: 0.17 Acres

ATTACHMENTS

- Exhibit A: Application
- Exhibit B: Referral Comments

Figure 1: Vicinity Map



Case Summary:

John Horn (Applicant), working on behalf of the Jonathan H. and Tiffany L. Horton Living Trust (Owner) has requested a joint work session with the Town Council and Design Review Board (DRB) to discuss a proposed height Variance to Section 17.5.16(B)(4) of the Community Development Code (CDC). If approved, the variance would allow for the future home on Unit 12 to extend into the Coonskin View Plane Survey (attached) based on the applicant's premise that the survey of record is an approximation and that Unit 12 is not visible as shown on the updated survey information provided by San Juan Surveying. The view plan would otherwise limit the height to 20 feet, the applicants desire to construct a building with 35' heights. The CDC would otherwise allow Ridge development at 45' heights.

The applicant has provided several supplemental documents addressing the history of the Ridge Development Covenant and Viewshed Limitations and is asserting that the topography of Coonskin Ridge prevents any portion of a future 35 foot tall home from being seen from any portion of the valley floor east of the entrance to Eider Creek Condominiums. The applicant has indicated that before pursuing additional architectural plans related to Unit 12, they would like some indication on the appropriateness of this variance request.

Existing Conditions:

Unit 12, The Ridge at Telluride is a forested vacant condominium land unit that allows for the future development of a single-family home according to the requirements of the CDC. The site is located near the San Sophia Gondola Station. Due to its unique location, no vehicular access is permitted to these land units.

Generally speaking, development on the Ridge is required to provide story poles in order to verify that no portion of a future home will be visible from view planes located within Telluride and the valley floor. As such, the applicant did install three separate story poles in order to demonstrate the maximum heights of the future home. The Council and DRB, in addition to regional stakeholders, were notified of the story pole locations and viewpoints and generally visited the site over the period of January 4th, 2021, and January 8th, 2021. In addition, the town contracted to obtain a visual time-lapse on January 6th, 2021 in order to determine if the story poles were visible from the Gold King Condominiums (now Eider Creek Condos). The video was distributed in advance of the meeting and also can be found here:

<https://youtube.com/watch?v=zkm9WouMn3A&feature=youtu.be>

Town of Mountain Village Staff and San Miguel County Planning Staff / Legal Counsel visited the site on January 6, 2021, and it was determined that the illuminated story poles were not visible from the entrance to Eider Creek Condos. Both San Miguel County and the Town of Telluride have indicated in their referral comments that there are currently no objections to this request.

Variance Request:

It will be very important to give clear guidance to the applicant regarding this request as the design of the home is dependent on the ability of the applicant to understand if the View Plane Study of record will limit the overall height of the home to 20 feet versus 35 feet. The CDC provides criteria for approval of a Variance within the CDC (listed below) which has been specifically addressed by the applicant on pages 6-8 of the Narrative.

Exhibit HW-5. Ultimately, the DRB and Council will need to determine if they agree that these criteria have been met in their entirety for any future approvals related to this request. The criteria are listed below:

1. The strict development application of the CDC regulations would result in exceptional and undue hardship upon the property owner in the development of property lot because of special circumstances applicable to the lot such as size, shape, topography or other extraordinary or exceptional physical conditions;
2. The variance can be granted without substantial detriment to the public health, safety and welfare;
3. The variance can be granted without substantial impairment of the intent of the CDC;
4. Granting the variance does not constitute a grant of special privilege in excess of that enjoyed by other property owners in the same zoning district, such as without limitation, allowing for a larger home size or building height than those found in the same zone district;
5. Reasonable use of the property is not otherwise available without granting of a variance, and the variance being granted is the minimum necessary to allow for reasonable use;
6. The lot for which the variance is being granted was not created in violation of Town regulations or Colorado State Statutes in effect at the time the lot was created;
7. The variance is not solely based on economic hardship alone; and
8. The proposed variance meets all applicable Town regulations and standards unless a variance is sought for such regulations or standards.

Next Steps - In order to proceed with any future request to develop Unit 12, the applicant will need to obtain the following approvals. Each of these future items would be required to be referred to San Miguel County and the Town of Telluride per the ridge development covenant.

1. Design Review Board: Unit 12 the Ridge, Concurrent Initial Architectural and Site Review / Review and Recommendation of a Variance to the Coonskin View Survey
2. Town Council consideration of a Variance to the Coonskin View Survey allowing a maximum height of 35 feet for Unit 12, The Ridge
3. Design Review Board: Unit 12 the Ridge, Final Architectural Review

RECOMMENDATION

A conceptual work session is a process that allows for the DRB and Town Council to provide an informal, non-binding review of a conceptual development proposal. The DRB shall evaluate a proposed concept based on the applicable criteria for decision in the future. Any comments or general direction given by either body shall not be considered binding or represent any warranties or guarantees of approval of any kind. No formal action is taken by the DRB or Town Council on conceptual work sessions.

Staff recommends that each body review and evaluate the proposed concept plans based on the applicable criteria for decision for the future development application and provide non-binding feedback and direction to the applicant regarding the design and proposed density. Because there appear to be no visual impacts from the valley floor, based upon the materials provided by the applicant and the view study, staff does not take any issue with this future request.



CONCEPTUAL WORKSESSION SUBMITTAL APPLICATION

PLANNING & DEVELOPMENT SERVICES
 455 Mountain Village Blvd. Suite A
 Mountain Village, CO 81435
 970-369-1392
 970-728-4342 Fax
 cd@mtnvillage.org

WORKSESSION SUBMISSION PROCESS
APPLICANT INFORMATION

Name: Jonathan H. And Tiffany L. Horton Living Trust, dated the 19 day of June, 2002		E-mail Address: c/o jhorn@rmi.net	
Mailing Address: 10115 E Bell Rd Ste 107 510		Phone: 970-708-1233	
City: Scottsdale	State: AZ	Zip Code: 85260	
Mountain Village Business License Number: N/A			

PROPERTY INFORMATION

Physical Address: 8 Horseshoe Lane		Acreage: .17
Zone District: Multi-Family	Zoning Designations: 1 Condominium	Density Assigned to the Lot or Site: 3 Density Units (1 Condominium equivalent)
Legal Description: Unit 12, The Ridge At Telluride		
Existing Land Uses: Vacant 1 Multi-Family Unit		
Proposed Land Uses: Built 1 Multi-Family Unit		

OWNER INFORMATION

Property Owner: Jonathan H. And Tiffany L. Horton Living Trust, dated the 19 day of June, 2002		E-mail Address: hortonjonh@aol.com	
Mailing Address: 10115 E Bell Rd Ste 107 510		Phone:	
City: Scottsdale	State: AZ	Zip Code: 85260	

DESCRIPTION OF REQUEST

1. Guidance on variance from Section 17.5.16.B.4 to allow the structure on Unit 12 to extend into the view plane as shown on the Coonskin View Plane drawing recorded at reception number 328113.

1 To: Town Council and Design Review Board
2 Town of Mountain Village
3 Via email: c/o Michelle Haynes (MHaynes@mtnvillage.org)
4 From: John Horn, Real Estate Consulting
5 Agent for Jonathan H. And Tiffany L. Horton Living Trust
6 Date: December 10, 2020
7 Re: Unit 12, The Ridge – Worksession
8 -Narrative
9

10 1. A substantial amount of time, effort, resources and money are required to prepare and submit a
11 complete application for design review of a single-family home in the Town of Mountain Village. One of
12 the most fundamental elements of the design of any home is its height; if a home is designed based on
13 the assumption that the allowed height is 35 feet, but it is later determined that the allowed height is
14 only 20 feet, then almost all of the time, effort, resources and money invested in the 35 foot design will
15 be wasted and lost. Consequently, if there is a question as to what height will be allowed, then it is the
16 best interest of everyone involved, including both the property owner and the interested governments,
17 to obtain an answer to that question before extensive design efforts start. The design of the home on
18 Unit 12, The Ridge faces this height question.
19

20 The purpose of the worksession is obtain guidance from the Town Council and Design Review Board
21 regarding a future variance request (“View Plane Variance”) from Section 17.5.16.B.4 (attached as
22 Exhibit HW-14) to allow the structure on Unit 12 to extend into the view plane established by the
23 Coonskin View Plane drawing recorded at reception number 328113 (attached as Exhibit HW-11).
24 Section 17.5.16.B.4 states:
25

26 *“4. Except for the existing building on Lot 161A-1R and gondola facilities, the development of*
27 *ridgeline area lots shall be designed to **ensure that no lighting or any part of any building or***
28 ***structure extends into the view plane** as shown on the Coonskin View Plane drawing recorded at*
29 *reception number 328113.”*
30

31 2. Please consider the following background information regarding the View Plane Variance:
32

33 2.1 Paragraph 5.i of the Development Covenant for Lot 161A, 161B and 161D and Adjacent
34 Active Open Space, Mountain Village Planned Unit Development (“**Old Covenant**”), recorded at
35 Book 504 at page 737 (Reception # 282311), copy attached as Exhibit HW-9, states:
36

(5) View Plane Establishment and Protection. Limitation of development on the remainder of Lot 161A (excluding the southern 80 ft.), and all of Lots 161B and 161D, such that under no circumstances may any lighting or part of any structure on Lots 161B, or 161D, or the remaining portion of Lot 161A, **be visible from** or extend into the following described view plane to be established by survey:

- (i) Gold King to Town. Any point:
 - (a) east of the western boundary line of Telwest/Gold King Condominiums, or
 - (b) west of the western boundary, extended northerly, of the existing Town of Telluride located at or below the elevation of **8,800 feet above sea level**, or

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2.2 As shown by the language highlighted in green immediately above in paragraph 5 of the Old Covenant, the fundamental underlying purpose and intent of the paragraph 5.i view plane was to protect the views from the San Miguel River Valley to ensure that no future structure built on Lot 161A could be seen from any point on the San Miguel River Valley lying “*east of the western boundary line of the Telwest/Goldking Condominiums*” and “*west of the western boundary*” of the Town of Telluride at any elevation “*located at or below 8,800 feet above sea level*”. Consequently, if a future structure cannot be seen from any of those points then it meets the purpose and intent of paragraph 5.i. It was not the intent of paragraph 5.i to apply a mechanical and perfunctory height limit via an approximate view plane that did not accurately accomplish the purpose of protecting the views from the locations in the San Miguel River Valley identified in paragraph 5.i.

2.3 Subsequently, the Old Covenant was replaced in its entirety pursuant to paragraph 1 of the First Amended and Restated Development Covenant for Lot 161A, 161B and 161D and Adjacent Active Open Space, Town of Mountain Village, Colorado (“**Current Covenant**”), recorded starting on page 12 of the document recorded at Reception # 329093, (attached as Exhibit HW-10). Paragraph 1 of the Current Covenant states:

NOW, THEREFORE, the parties covenant and agree as follows:

1. **Replacement and Consent.** The provisions of this Ridgeline Covenant supersede and replace the Development Covenant and Resolution 1993-6 in their entirety, except that as to each of the Deeds of Trust described in Recital E hereto and any modifications or extensions thereof, the parties agree that the Development Covenant and Resolution 1993-6 shall remain and continue to be a senior covenant and encumbrance upon the Ridgeline Properties until the earlier of such time as the liens of all such Deeds of Trust, and any modifications or extensions thereof are released or extinguished, or such time as all of the beneficiaries of such Deeds of Trust have recorded in the office of the Clerk and Recorder for San Miguel County consents to this Ridgeline Covenant which subordinate the liens of such Deeds of Trust to this Ridgeline Covenant. Any person acquiring title to any of the Ridgeline Properties through foreclosure of any of the Deeds of Trust described in Recital E hereto, or through any conveyance in lieu of such foreclosure, shall take title to such Ridgeline Properties subject the covenants, conditions, restrictions and provisions of the Development Covenant and Resolution 1993-6 unless the consents contemplated by this paragraph have been duly recorded, in which event the person acquiring title to the Ridgeline Properties shall take title subject to the covenants, conditions, restrictions and provisions of this Ridgeline Covenant.

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2.4 At the time the Old Covenant was approved, the paragraph 5.i view plane did not exist and, instead, paragraph 5.i provided that the “*view plane [was] to be established by survey*”. As shown below in paragraph 5 of the Current Covenant, the view plane survey (“Jacobsen View Plane Survey”) was overseen by the surveying company of Jacobsen Associates and was recorded at Plat Book 1 at page 2601 (Reception #328113), copy attached as Exhibit HW-11.

5. **View Plane Limitations for Development on Lots 161A, 161A-1, 161B, and 161D.** Development on Lots 161A, 161A-1, 161B and 161D (or, subsequent to the Replat, Lots 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1 and 161D-2), excluding the Ridge Club Building, shall be located such that, under no circumstances, shall any lighting or any part of any structure extend into the view plane (the “View Plane”) shown on the Coonskin View Plane drawing prepared by Jacobsen Associates and dated July 21, 1999, as recorded in the office of the San Miguel County, Colorado, Clerk and Recorder in Plat Book 1 at Page 2601.

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2.5 On December 8, 2020, I spoke with Randall Hency, the surveyor who prepared the Jacobsen View Plane Survey, and he informed me of the following:

2.5.1 The survey was based solely on third-party topographic surveys, likely USGS quad mapping that could be off by as much as 10 to 20 feet.

2.5.2 No actual field work was done using any type of survey equipment.

2.5.3 Because the survey was based solely on third-party topographic surveys, Mr. Hency and the other surveying professionals involved in the preparation of the Jacobsen View Plane Survey discussed and acknowledged that the Jacobsen View Plane Survey would not be accurate and would only be approximate.

79 Because Mr. Hency recognized that the techniques and resources used to produce the Jacobsen
80 View Plane Survey would not produce completely accurate results, he included the following
81 qualification on page 1 of the Jacobsen View Plane Survey:
82

I do hereby certify that this Coonskin View Plane was verified by me on the 22nd day of July, 1999 in accordance with the requirements of Recital F, Item 4, First Amended Development Covenant for Lots 161A, 161A1, 161B, 161D and Adjacent Active Open Space, Town of Mountain Village, Colorado, more particularly described as shown on the accompanying map, and that to the best of my knowledge and belief, this map of the Coonskin View Plane approximately shows the correct locations of the height restriction lines. To ensure that the required view plane criteria is met and before any construction can begin, a field verification survey is required, once the proposed building sites have been determined.

Randall D. Hency
Randall D. Hency
Colorado Professional Surveyor
PLS #27605

7-22-99
Date



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84
85 2.5.1 As highlighted in blue, Mr. Hency noted that the survey only “approximately shows
86 the correct locations of the height restriction lines” and, therefore, as highlighted in
87 green, he directed that “To ensure that the required view plane criteria is met and
88 before any construction can begin, a field verification survey is required once the
89 proposed building sites have been determined.”

90
91 2.6 Pursuant to Mr. Hency’s direction, Jon and Tiffany Horton engaged Christopher R. Kennedy
92 of San Juan Surveying to prepare a field verification survey to “ensure that the required view
93 plane criteria is met”; a copy of Mr. Kennedy’s field verification survey is attached as Exhibit HW-
94 12. Based on the information set forth in the Exhibit HW-12 field verification survey, Mr.
95 Kennedy prepared an affidavit (Exhibit HW-13) in which he offers the following conclusions:

96
97 “3.1 With regard to the view plane survey (“Jacobsen View Plane Survey”) prepared by
98 the surveying company of Jacobsen Associates, recorded at Plat Book 1 at page 2601
99 (Reception #328113) (Exhibit HW-11), as it relates to Unit 12, The Ridge please note the
100 following:

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102 3.1.1 Using actual ground shots, San Juan Surveying field verified the following
103 locations shown in Exhibit HW-12:

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105 3.1.1.1 The concrete “x” joint in the driveway at the Eider Creek
106 Condominiums (aka Telwest/Goldking Condominiums) which is at
107 elevation 8,689.54 North American Vertical Datum.

108
109 3.1.1.2 The story pole referred to as Story Pole #2 in Exhibit HW-6.

110
111 3.1.1.3 The point on the line from the concrete “x” joint to Story Pole #2
112 crosses where it crosses the Coonskin Ridge at an elevation of 10,235.50.
113

114 3.2 The view line created using the three points identified in paragraphs 3.2.1.1, 3.2.1.2
 115 and 3.2.1.3 arrives at a point that is 95 feet in elevation directly above the ground
 116 surface at the base of Story Pole #2. **The result is that the top of the 35 foot Story Pole**
 117 **#2 cannot be seen from the concrete "x" joint in the driveway at the Eider Creek**
 118 **Condominiums, located at 8,689.54 feet above sea level, because it is 60 feet below**
 119 **the 10,496.83 foot elevation point that can be seen from the concrete "x" joint.**
 120 **Anything below the 10,496.83 foot elevation point cannot be seen from the concrete**
 121 **"x" joint because it is obstructed by the ground of the Coonskin Ridge.** These
 122 determinations are based on the following:
 123

<u>Location</u>	<u>Elevation</u>	<u>Ft. Above Bottom of Story Pole 2</u>	<u>Ft. Above Top of Story Pole 2</u>
Bottom Story Pole 2	10401.8	0	-35
Top Story Pole 2	10436.8	35	0
Elevation From "x" to Top Story Pole 2	10496.8	95	60
Elevation From 8,800 to Top Story Pole 2	10479.8	78	43

124
 125 3.3 The view line created using a point located at 8,800 feet above sea level and directly
 126 above the concrete "x" joint in the driveway at the Eider Creek Condominiums and the
 127 two points identified in paragraphs 3.2.1.2 and 3.2.1.3 arrives at a point that is 78 feet in
 128 elevation above the ground surface at the base of Story Pole #2. **The result is that the**
 129 **top of the 35 foot Story Pole #2 cannot be seen from the point that is 8,800 feet above**
 130 **sea level located directly above the concrete "x" joint in the driveway at the Eider**
 131 **Creek Condominiums because it is 43 feet below the 10,479.83 foot elevation point**
 132 **that can be seen from the 8,800 foot point. Anything below the 10,479.83 foot**
 133 **elevation cannot be seen from the 8,800 foot point because it is obstructed by the**
 134 **ground of the Coonskin Ridge."**
 135

136 2.7 Mr. Kennedy's affidavit establishes the following three significant and indisputable facts:
 137

138 2.7.1 Any building built on Unit 12, The Ridge will not be visible from the concrete "x"
 139 joint in the driveway at the Eider Creek Condominiums if it is **less than 95 feet tall.**
 140

141 2.7.2 Any building built on Unit 12, The Ridge will not be visible from the point that is
 142 8,800 feet above sea level located directly above the concrete "x" joint in the driveway
 143 at the Eider Creek Condominiums if it is **less than 78 feet tall.**
 144

145 2.7.3 Because no point of any portion of Horton's proposed home will exceed a height
 146 of 35 feet, plus 5 feet to allow for chimneys, flues, vents or similar structures, it cannot
 147 be seen from either of these two points.
 148

149 2.8 These three significant and indisputable facts lead to one significant and indisputable
 150 conclusion, any home built on Unit 12, The Ridge will meet the fundamental underlying purpose
 151 and intent of the view plane which is to protect the views from the San Miguel River Valley by
 152 ensuring that no future structure built on Unit 12 can be seen from any point on the San Miguel
 153 River Valley lying "east of the western boundary line of the Telwest/Goldking Condominiums"

154 and “west of the western boundary” of the Town of Telluride at any elevation “located at or
 155 below 8,800 feet above sea level”.

156
 157 3. Now, let us apply these facts to the variance criteria set forth in Section 17.4.16 (attached as Exhibit
 158 HW-15). In Table 1 below the left-hand column contains the text of Section 17.4.16 and the right-hand
 159 column contains the discussion that applies the facts of this matter to the corresponding variance
 160 provision.

161
 162 Table 1

17.4.16 Variance Process	
<p>A. Purpose and Intent The purpose and intent of the variance process is to establish policies and procedure for granting a variance to the requirements of the CDC because the strict application of CDC requirements would cause exceptional and undue hardship on the development and use of lot due to special circumstances existing relative to the lot such as size, shape, topography or other extraordinary or exceptional physical conditions. Economic hardship alone is not sufficient justification for the granting of a variance. A variance is not required where a particular standard or provision of these regulations specifically allows for the review authority to grant administrative relief. It is the Town's intent that a variance be granted only under extraordinary circumstances.</p>	<p>1.1 At a point in the near future Tiffany and Jon Horton anticipate requesting a variance to the view plane provision of Section 17.5.16 of the CDC because the strict application of Section 17.5.16 would cause exceptional and undue hardship on the development and use of Unit 12, The Ridge due to special circumstances existing relative to the topography and the actual real world impact the topography has on the visibility from the San Miguel River Valley of any structure built on Unit 12.</p> <p>1.2 The fundamental underlying purpose and intent of the view plane is to protect the views from the San Miguel River Valley to ensure that no future structure built on Lot 161A can be seen from any point on the San Miguel River Valley lying “east of the western boundary line of the Telwest/Goldking Condominiums” and “west of the western boundary” of the Town of Telluride at any elevation “located at or below 8,800 feet above sea level”.</p> <p>1.3 The surveyor who prepared the Jacobsen View Plane Survey, Randall Hency, recognized that the techniques used to create the view plane would not produce completely accurate results and, therefore he directed that “To ensure that the required view plane criteria is met and before any construction can begin, a field verification survey is required once the proposed building sites have been determined.”</p> <p>1.4 Pursuant to Mr. Hency’s direction, Mr. and Mrs. Horton engaged Christopher R. Kennedy of San Juan Surveying to prepare a field verification survey to “ensure that the required view plane criteria is met”; a copy of Mr. Kennedy’s field</p>

verification survey is set forth in Exhibit HW-12. Based on the information set forth in the Exhibit HW-12 field verification survey, three significant and indisputable facts were established:

1.4.1 Any building built on Unit 12, The Ridge will not be visible from the concrete "x" joint in the driveway at the Eider Creek Condominiums if it is **less than 95 feet tall.**

1.4.2 Any building built on Unit 12, The Ridge will not be visible from the point that is 8,800 feet above sea level located directly above the concrete "x" joint in the driveway at the Eider Creek Condominiums if it is **less than 78 feet tall.**

1.4.3 Because no point of any portion of Horton's proposed home will exceed a height of 35 feet, plus 5 feet to allow for chimneys, flues, vents or similar structures, it cannot be seen from either of these two points.

1.5 The three significant and indisputable facts lead to one significant and indisputable conclusion, any home built on Unit 12, The Ridge will meet the fundamental underlying purpose and intent of the view plane which is to protect the views from the San Miguel River Valley by ensuring that no future structure built on Unit 12 can be seen from any point on the San Miguel River Valley lying "*east of the western boundary line of the Telwest/Goldking Condominiums*" and "*west of the western boundary*" of the Town of Telluride at any elevation "*located at or below 8,800 feet above sea level*".

1.6 If Mr. and Mrs. Horton are not granted relief from the approximate and ineffectual limits established by the view plane, then the height of their home will be arbitrarily and unnecessarily reduced to 20 feet resulting in the loss of roughly one and a half floors or approximately 40% of the square footage of the home, and thereby

	<p>dramatically and negatively impacting the functional design of their home.</p> <p>1.7 Economic hardship is not the basis for requesting this variance. The basis for the request is set forth immediately above in paragraph 1.6 of this Table 1.</p> <p>1.8 A variance is required because no particular standard or provision of the CDC specifically allows for a review authority to grant administrative relief.</p>
<p>B. Applicability The variance process is applicable to any owner or developer who seeks a variance to the requirements of the CDC because the strict application of the CDC requirements would cause a hardship due to extraordinary or special circumstance on a lot.</p>	<p>2.1 See items 1.1 through 1.8 above.</p> <p>2.2 The loss of roughly one and a half floors or approximately 40% of the square footage of the home would cause an unnecessary hardship.</p>
<p>1. A variance is not applicable to the Building Codes requirements. Please refer to the Building Codes appeals process.</p>	<p>3.1 The request does not involve any Building Code requirements.</p>
<p>C. Review Process Variance development applications shall be processed as class 4 applications.</p>	<p>4.1 Acknowledged.</p>
<p>D. Criteria for Decision 1. The following criteria shall be met for the review authority to approve a variance:</p>	<p>5.1 No response necessary.</p>
<p>a. The strict development application of the CDC regulations would result in exceptional and undue hardship upon the property owner in the development of property lot because of special circumstances applicable to the lot such as size, shape, topography or other extraordinary or exceptional physical conditions;</p>	<p>6.1 As shown on Exhibit HW-7, without the variance the height of the western edge of the home will be limited to approximately 20' and then the allowed height slopes upward and easterly to approximately 33' on the eastern edge. Because this is a footprint lot, the net effect of this height limitation is that the Horton's will lose roughly one and a half floors or approximately 40% of the square footage of the home. The loss of 40% of the square footage of a home is exceptional and undue when the reason for the loss is the enforcement of a view plane that serves no practical real-world purpose as it applies to this specific situation.</p>
<p>b. The variance can be granted without substantial detriment to the public health, safety and welfare;</p>	<p>7.1 The fundamental underlying purpose and intent of the view plane is to protect the views from the San Miguel River Valley to ensure that no future structure built on Lot 161A could be</p>

	<p>seen from any point on the San Miguel River Valley lying “east of the western boundary line of the Telwest/Goldking Condominiums” and “west of the western boundary” of the Town of Telluride at any elevation “located at or below 8,800 feet above sea level”.</p> <p>7.2 As shown above, the three significant and indisputable facts shown in paragraph 2.7 lead to one significant and indisputable conclusion, any home built on Unit 12, The Ridge cannot be seen from the San Miguel River Valley and, therefore, will meet the fundamental underlying purpose and intent of the view plane.</p> <p>7.3 By fulfilling the fundamental underlying purpose and intent of the view plane, the “variance can be granted without substantial detriment to the public health, safety and welfare”.</p>
<p>c. The variance can be granted without substantial impairment of the intent of the CDC;</p>	<p>8.1 The purposes of the CDC are set forth in Section 17.1.3 (see attached Exhibit HW-16). Granting the variance is consistent with every one of the twelve purposes stated in Section 17.1.3 and, in fact, the purposes set forth in Section 17.13 support granting the variance.</p> <p>8.2 The intent of the view plane provisions of Section 17.5.16 is to protect the views from the San Miguel River Valley and, as explained above, granting the variance will protect the views from the San Miguel River Valley in the manner intended.</p> <p>8.3 By fulfilling the fundamental underlying purpose and intent of the view plane, the “variance can be granted without substantial impairment of the intent of the CDC”.</p>
<p>d. Granting the variance does not constitute a grant of special privilege in excess of that enjoyed by other property owners in the same zoning district, such as without limitation, allowing for a larger home size or building height than those found in the same zone district;</p>	<p>9.1 All lots in The Ridge development are subject to the view plane provisions of Section 17.5.16 and, therefore, to the extent any other lot experiences the same issue, the other lots should be entitled to similar relief.</p> <p>9.2 Granting the variance will not allow for a larger home size or building height than what is</p>

	<p>allowed elsewhere in The Ridge; instead, by granting the variance the Horton’s will simply be allowed to build a home whose size and building height are consistent with the other lots in The Ridge.</p>
<p>e. Reasonable use of the property is not otherwise available without granting of a variance, and the variance being granted is the minimum necessary to allow for reasonable use;</p>	<p>10.1 Absent the Section 17.5.16 view plane limitation, the Multi-Family Zone District allows a maximum building height of 45 feet plus <i>“Chimneys, flues, vents or similar structures may extend up to five (5) feet above the specified maximum height excluding unscreened telecommunications antenna with the height of such structures set forth in the telecommunications antenna regulations.”</i> Reasonable use of Unit 12 would allow a structure up to 35 feet, plus 5 feet to allow for chimneys, flues, vents or similar structures, if it cannot be seen from the San Miguel River Valley. If the purpose and intent of the CDC are met, then it is reasonable to be allowed to not have to lose roughly one and a half floors or approximately 40% of the square footage of a home.</p> <p>10.2 A 35-foot height, plus 5 feet to allow for chimneys, flues, vents or similar structures, is the minimum necessary to allow for a three-story home.</p> <p>10.3 For the reasons stated in 10.1 and 10.2, <i>“Reasonable use of the property is not otherwise available without granting of a variance, and the variance being granted is the minimum necessary to allow for reasonable use”</i>.</p>
<p>f. The lot for which the variance is being granted was not created in violation of Town regulations or Colorado State Statutes in effect at the time the lot was created;</p>	<p>11.1 Correct.</p>
<p>g. The variance is not solely based on economic hardship alone; and</p>	<p>12.1 Correct; see paragraphs 1.6 and 1.7 above in this Table 1.</p>
<p>h. The proposed variance meets all applicable Town regulations and standards unless a variance is sought for such regulations or standards.</p>	<p>13.1 The home will meet all other applicable Town regulations and standards and no other variances are necessary.</p>

<p>2. It shall be the burden of the applicant to demonstrate that submittal material and the proposed development substantially comply with the variance review criteria.</p>	<p>14.1 Hopefully the discussion set forth in this narrative and the accompanying exhibits demonstrate the proposed development substantially complies with the variance review criteria.</p>
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For the reasons stated above, we request a motion along the lines of the following **from the Town Council and DRB:**

"I move to provide the Jonathan H. And Tiffany L. Horton Living Trust, dated the 19 day of June, 2002 with the following guidance:

Findings:

1. The fundamental underlying purpose and intent of (i) paragraph 5.i of the First Amended and Restated Development Covenant for Lot 161A, 161B and 161D and Adjacent Active Open Space, Town of Mountain Village, Colorado ("Current Covenant"), recorded starting on page 12 of the document recorded at Reception # 329093 and (ii) CDC Section 17.5.16.B.4 is to protect the views from the San Miguel River Valley to ensure that no structure built on Unit 12, The Ridge, can be seen from any point on the San Miguel River Valley lying "*east of the western boundary line of the Telwest/Goldking Condominiums*" and "*west of the western boundary*" of the Town of Telluride at any elevation "*located at or below 8,800 feet above sea level*".

2. The field verification survey prepared by Christopher R. Kennedy of San Juan Surveying establishes the following three significant and indisputable facts:

2.1 Any building built on Unit 12, The Ridge will not be visible from the concrete "x" joint in the driveway at the Eider Creek Condominiums if it is **less than 95 feet tall.**

2.2 Any building built on Unit 12, The Ridge will not be visible from the point that is 8,800 feet above sea level located directly above the concrete "x" joint in the driveway at the Eider Creek Condominiums if it is **less than 78 feet tall.**

2.3 Because no point of any portion of Horton's proposed home will exceed a height of 35 feet, plus 5 feet to allow for chimneys, flues, vents or similar structures, it cannot be seen from either of these two points.

3. The three significant and indisputable facts lead to one significant and indisputable conclusion, any home built on Unit 12, The Ridge will meet the fundamental underlying purpose and intent of the view plane which is to protect the views from the San Miguel River Valley by ensuring that no future structure built on Unit 12 can be seen from any point on the San Miguel River Valley lying "*east of the western boundary line of the Telwest/Goldking Condominiums*" and "*west of the western boundary*" of the Town of Telluride at any elevation "*located at or below 8,800 feet above sea level*".

205 4. Based on the discussion set forth in Table 1 of the Unit 12, The Ridge – Worksession –
206 Narrative, dated December 9, 2020, a structure on Unit 12, The Ridge that does not
207 exceed 35 feet at its highest point, plus 5 feet to allow for chimneys, flues, vents or
208 similar structures, would qualify for a variance under CDC Section 17.4.16.

209
210 Conclusion:

211
212 5. If the Jonathan H. And Tiffany L. Horton Living Trust, dated the 19 day of June, 2002
213 are able to receive relief from San Miguel County from the provisions of the Current
214 Covenant that would allow it to build a structure on Unit 12, The Ridge that does not
215 exceed 35 feet at its highest point, plus 5 feet to allow for chimneys, flues, vents or
216 similar structures, then the variance described in paragraph 4 of this motion will be
217 approved.

218
219 Correspondingly, for the reasons stated above, we request a motion along the lines of the following
220 **from the San Miguel County Board of Commissioners:**

221
222 “I move to provide the Jonathan H. And Tiffany L. Horton Living Trust, dated the 19 day of June,
223 2002 with the following guidance:

224
225 Findings:

226
227 1. The fundamental underlying purpose and intent of (i) paragraph 5.i of the First
228 Amended and Restated Development Covenant for Lot 161A, 161B and 161D and
229 Adjacent Active Open Space, Town of Mountain Village, Colorado (“Current Covenant”),
230 recorded starting on page 12 of the document recorded at Reception # 329093 and (ii)
231 CDC Section 17.5.16.B.4 is to protect the views from the San Miguel River Valley to
232 ensure that no structure built on Unit 12, The Ridge, can be seen from any point on the
233 San Miguel River Valley lying “east of the western boundary line of the Telwest/Goldking
234 Condominiums” and “west of the western boundary” of the Town of Telluride at any
235 elevation “located at or below 8,800 feet above sea level”.

236
237 2. The field verification survey prepared by Christopher R. Kennedy of San Juan
238 Surveying establishes the following three significant and indisputable facts:

239
240 2.1 Any building built on Unit 12, The Ridge will not be visible from the concrete
241 “x” joint in the driveway at the Eider Creek Condominiums if it is **less than 95**
242 **feet tall.**

243
244 2.2 Any building built on Unit 12, The Ridge will not be visible from the point
245 that is 8,800 feet above sea level located directly above the concrete “x” joint in
246 the driveway at the Eider Creek Condominiums if it is **less than 78 feet tall.**

247
248 2.3 Because no point of any portion of Horton’s proposed home will exceed a
249 height of 35 feet, plus 5 feet to allow for chimneys, flues, vents or similar
250 structures, it cannot be seen from either of these two points.

252 3. The three significant and indisputable facts lead to one significant and indisputable
253 conclusion, any home built on Unit 12, The Ridge will meet the fundamental underlying
254 purpose and intent of the view plane which is to protect the views from the San Miguel
255 River Valley by ensuring that no future structure built on Unit 12 can be seen from any
256 point on the San Miguel River Valley lying *“east of the western boundary line of the*
257 *Telwest/Goldking Condominiums”* and *“west of the western boundary”* of the Town of
258 Telluride at any elevation *“located at or below 8,800 feet above sea level”*.
259

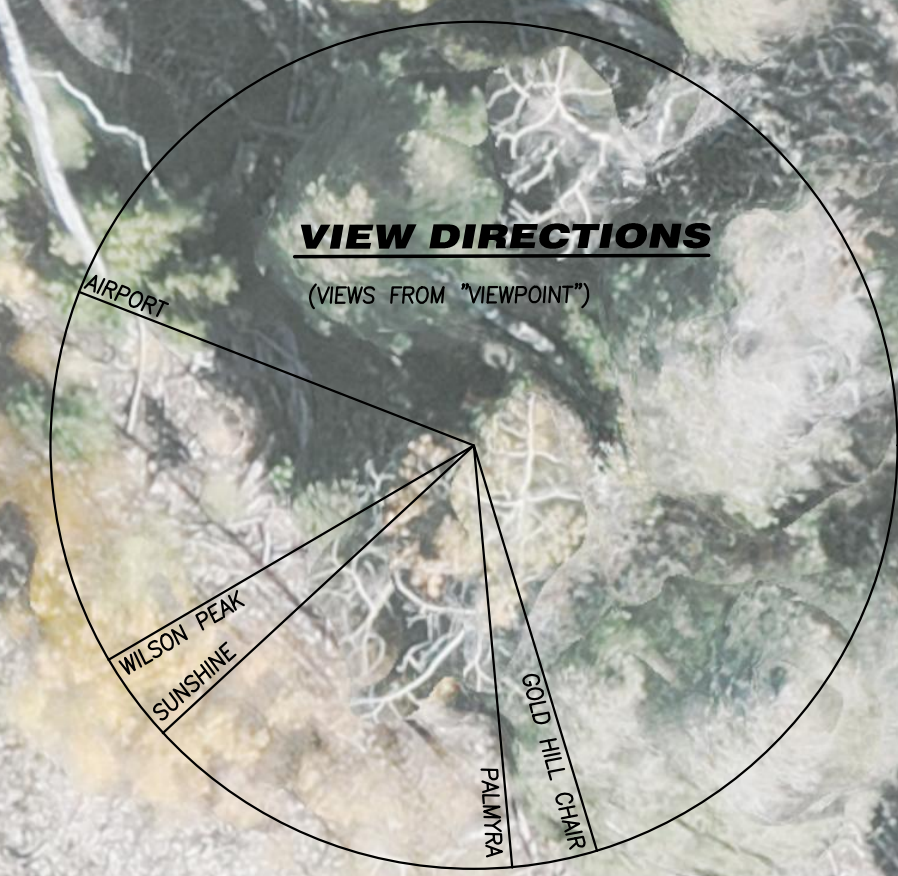
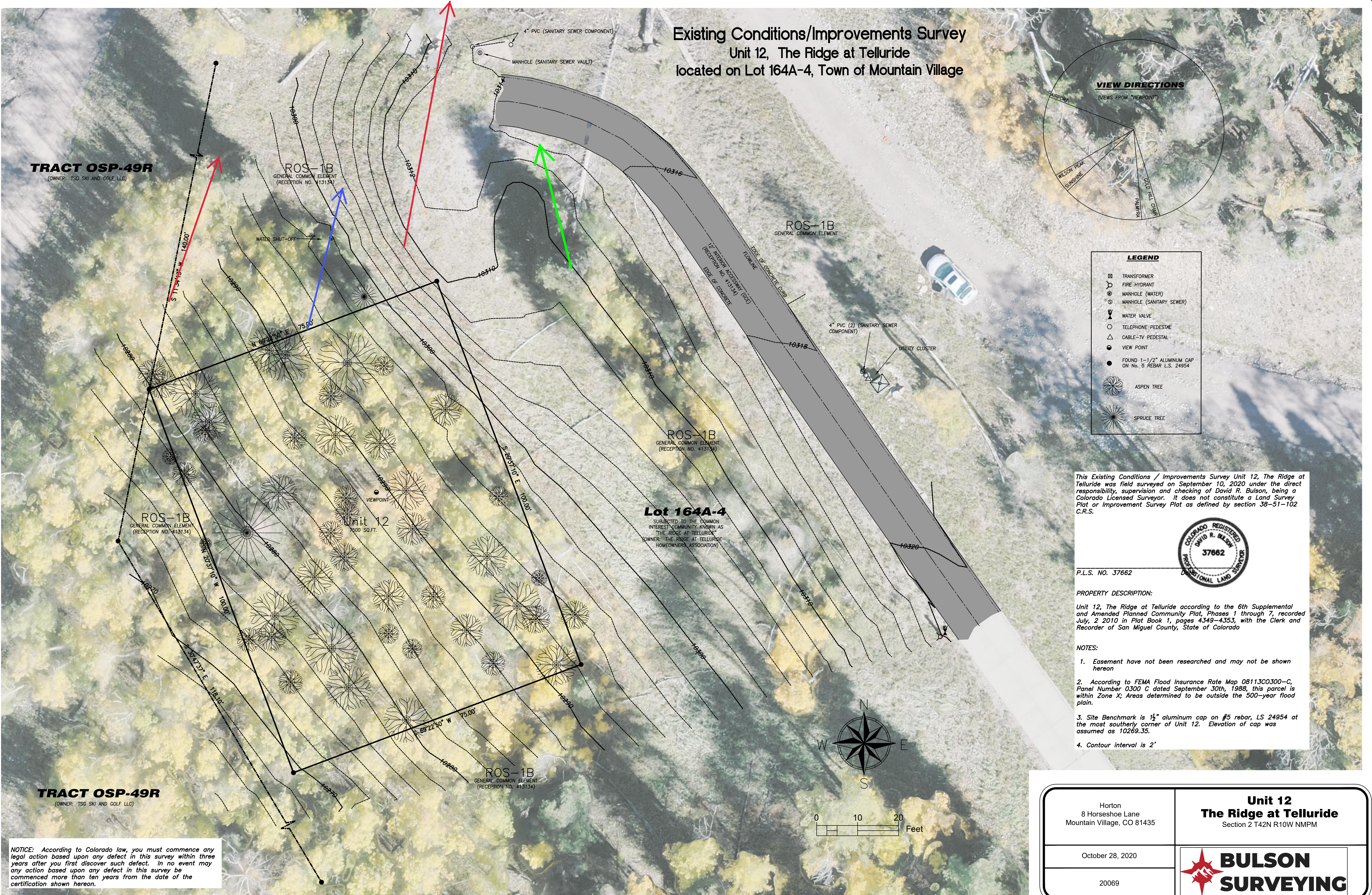
260 4. Based on the discussion set forth in Table 1 of the Unit 12, The Ridge – Worksession –
261 Narrative, dated December 9, 2020, a structure on Unit 12, The Ridge that does not
262 exceed 35 feet at its highest point, plus 5 feet to allow for chimneys, flues, vents or
263 similar structures, would qualify for relief from enforcement of the Current Covenant
264 that would otherwise prohibit the construction of a structure on Unit 12, The Ridge that
265 is 35 feet at its highest point, plus 5 feet to allow for chimneys, flues, vents or similar
266 structures.
267

268 Conclusion:

269
270 5. If the Jonathan H. And Tiffany L. Horton Living Trust, dated the 19 day of June, 2002
271 make application to the Town of Mountain Village to build a structure on Unit 12, The
272 Ridge that does not exceed 35 feet at its highest point, plus 5 feet to allow for chimneys,
273 flues, vents or similar structures, then San Miguel County will grant relief from
274 enforcement of the Current Covenant that would otherwise prohibit the construction of
275 a structure on Unit 12, The Ridge that is 35 feet at its highest point, plus 5 feet to allow
276 for chimneys, flues, vents or similar structures.
277

278 END OF NARRATIVE MEMORANDUM

**Existing Conditions/Improvements Survey
Unit 12, The Ridge at Telluride
located on Lot 164A-4, Town of Mountain Village**



LEGEND

- ⊠ TRANSFORMER
- ⊕ FIRE HYDRANT
- ⊙ MANHOLE (WATER)
- ⊙ MANHOLE (SANITARY SEWER)
- ⊕ WATER VALVE
- TELEPHONE PEDESTAL
- △ CABLE-TV PEDESTAL
- VIEW POINT
- FOUND 1-1/2" ALUMINUM CAP ON No. 5 REBAR L.S. 24954
- ⊙ ASPEN TREE
- ⊙ SPRUCE TREE

This Existing Conditions / Improvements Survey Unit 12, The Ridge at Telluride was field surveyed on September 10, 2020 under the direct responsibility, supervision and checking of David R. Bulson, being a Colorado Licensed Surveyor. It does not constitute a Land Survey Plat or Improvement Survey Plat as defined by section 38-51-102 C.R.S.



P.L.S. NO. 37662

PROPERTY DESCRIPTION:

Unit 12, The Ridge at Telluride according to the 6th Supplemental and Amended Planned Community Plat, Phases 1 through 7, recorded July, 2 2010 in Plat Book 1, pages 4349-4353, with the Clerk and Recorder of San Miguel County, State of Colorado

NOTES:

1. Easement have not been researched and may not be shown hereon
2. According to FEMA Flood Insurance Rate Map 08113C0300-C, Panel Number 0300 C dated September 30th, 1988, this parcel is within Zone X; Areas determined to be outside the 500-year flood plain.
3. Site Benchmark is 1 1/2" aluminum cap on #5 rebar, LS 24954 at the most southern corner of Unit 12. Elevation of cap was assumed as 10269.35.
4. Contour interval is 2'

TRACT OSP-49R
(OWNER: TSG SKI AND GOLF LLC)

TRACT OSP-49R
(OWNER: TSG SKI AND GOLF LLC)

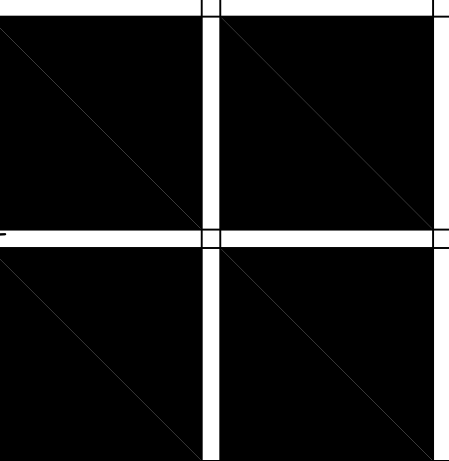
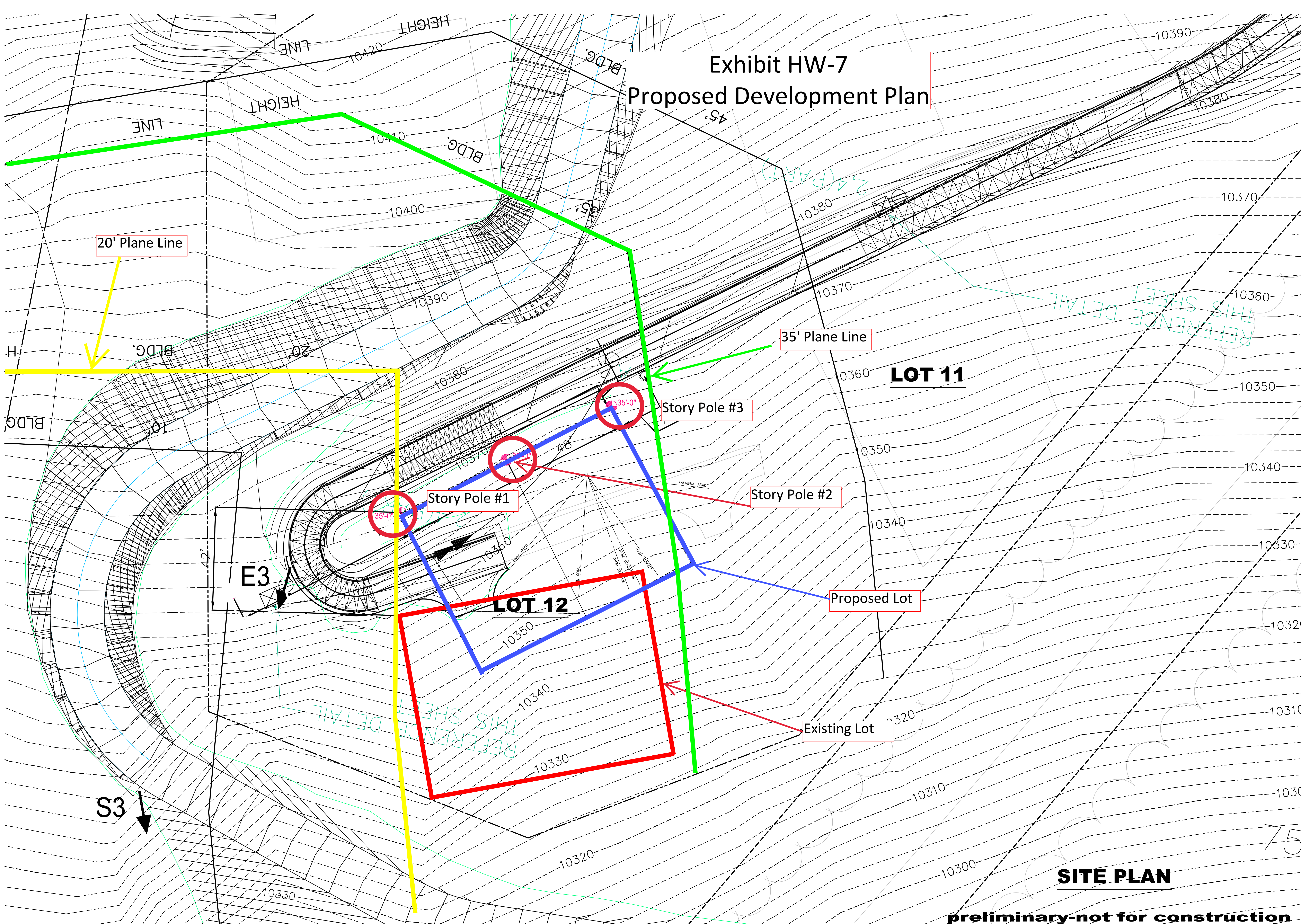
Lot 164A-4
SUBJECT TO THE COMMON INTEREST COMMUNITY KNOWN AS "THE RIDGE AT TELLURIDE"
(OWNER: THE RIDGE AT TELLURIDE HOMEOWNERS ASSOCIATION)

NOTICE: According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.



Horton 8 Horseshoe Lane Mountain Village, CO 81435	Unit 12 The Ridge at Telluride Section 2 T42N R10W NMPM
October 28, 2020	BULSON SURVEYING
20069	

Exhibit HW-7 Proposed Development Plan



COPYRIGHT
All designs, ideas, arrangements and plans indicated by these drawings and specifications are the property and copyright of the Architect and shall neither be used on any other work nor be used by any other person for any use whatsoever without written permission. Written dimensions shall take precedence over scaled dimensions and shall be verified at the site. Any dimensional discrepancies shall be brought to the attention of the Architect prior to the commencement of the work.

ISSUE LOG
FILE NAME
JOB NUMBER
XXX
DRAWN BY
SM
SCALE
1/16" = 1'-0"
SHEET

SITE PLAN

preliminary-not for construction

328113

PLAT

TOWN OF MOUNTAIN VILLAGE
 TO
 COONSKIN VIEW PLANE

STATE OF COLORADO
 COUNTY OF SAN MIGUEL
 FILED FOR RECORD AT 1:59 P.M. JULY 26, 1999
 AND DULY RECORDED IN
 BOOK PL-1 PAGE 2601-2602
 BY GAY CAPPIS
 REBECCA DOLBERG
 20.00

U.S.F.S. Boundary

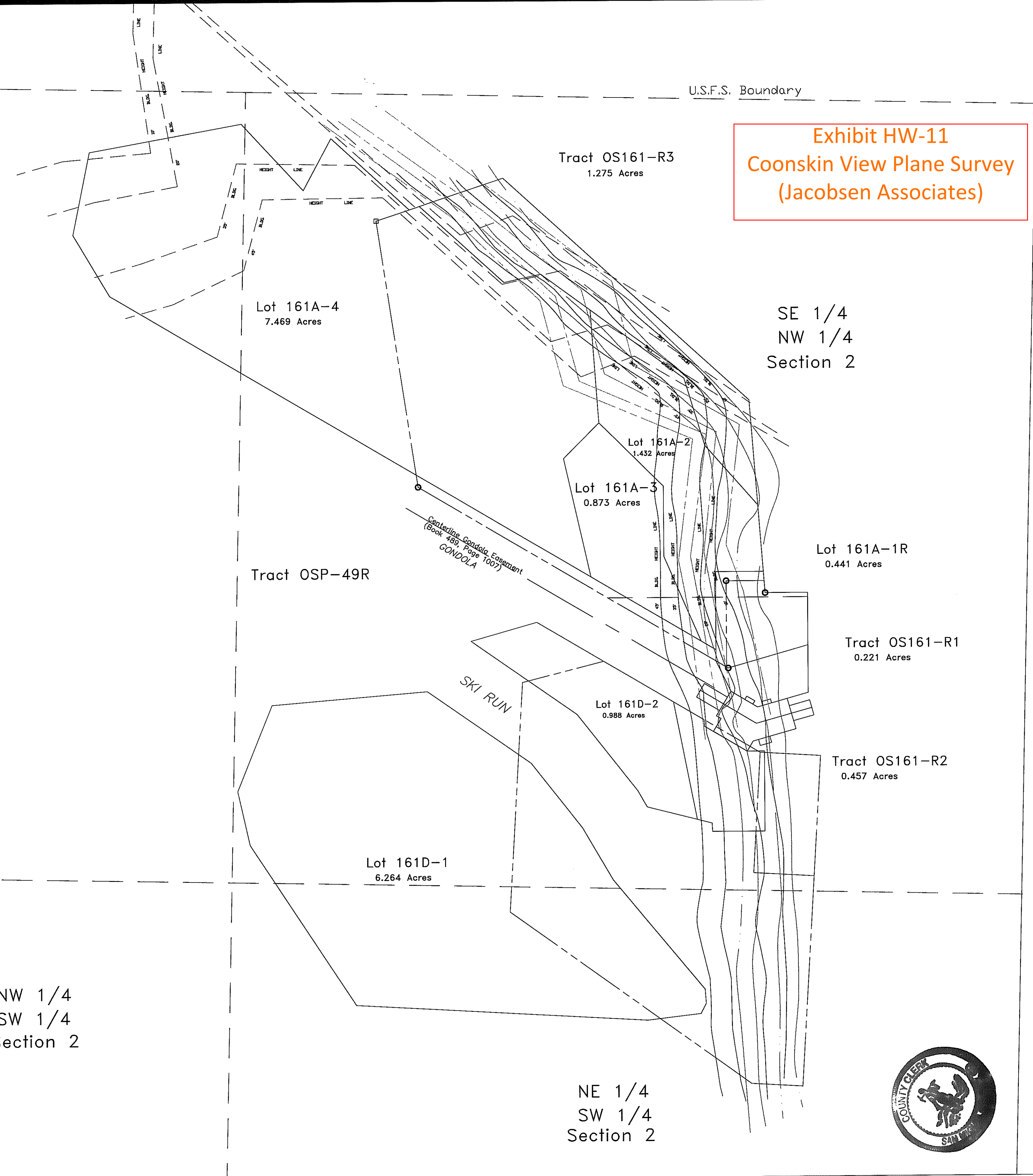
Exhibit HW-11
 Coonskin View Plane Survey
 (Jacobsen Associates)

SE 1/4
 NW 1/4
 Section 2

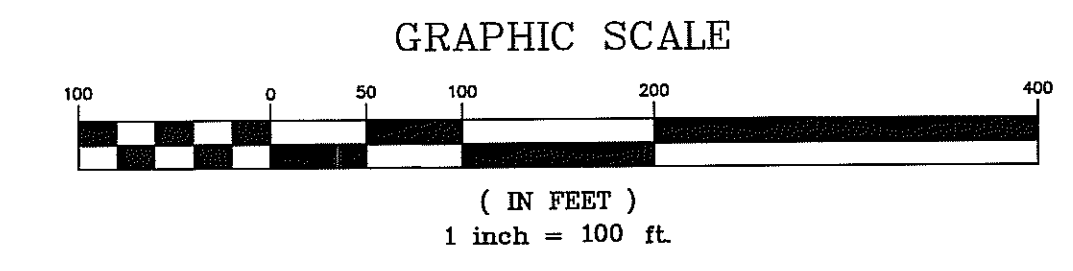
SW 1/4
 NW 1/4
 Section 2

NW 1/4
 SW 1/4
 Section 2

NE 1/4
 SW 1/4
 Section 2

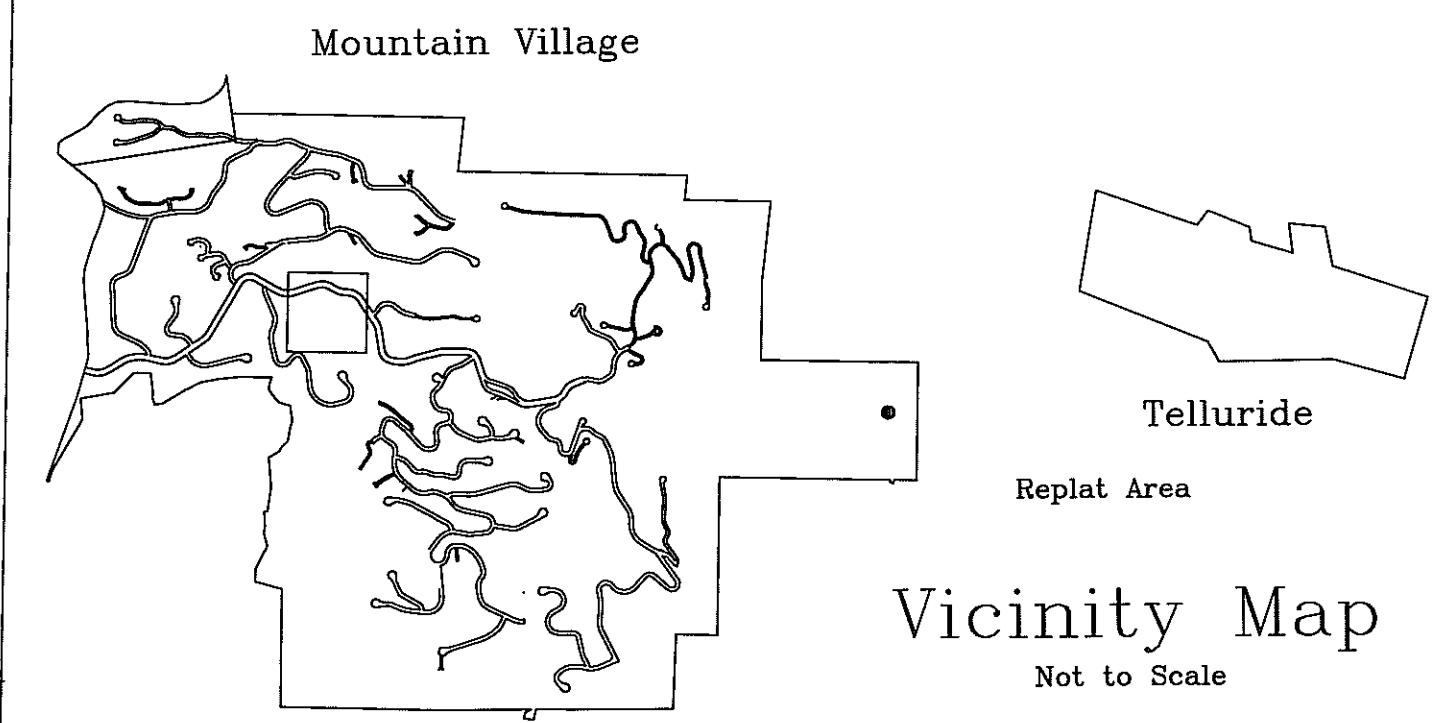


- Goldking View Plane
- Pandora View Plane
- Tambo View Plane
- Coronet Creek View Plane



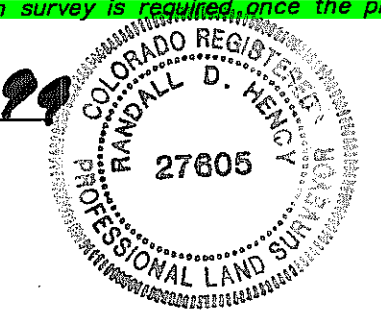
Legend:

- New Lot line
- Vacated Lot lines
- Found No. 5 Rebar with 1 1/2" Aluminum Cap marked 27605
- Found No. 5 Rebar with 1 1/2" Aluminum Cap marked Banner Inc., 20632
- Set No. 5 Rebar with 1 1/2" Aluminum Cap marked Alan Jacobsen, 28652



I do hereby certify that this Coonskin View Plane was verified by me on the 22nd day of July, 1999 in accordance with the requirements of Recital F, Item 4, First Amended Development Covenant for Lots 161A, 161A1, 161B, 161D and Adjacent Active Open Space, Town of Mountain Village, Colorado, more particularly described as shown on the accompanying map, and that to the best of my knowledge and belief, this map of the Coonskin View Plane approximately shows the correct locations of the height restriction lines. It is assumed that the required view plane setbacks and setbacks before any construction can begin, and that verification survey is completed, the proposed building sites have been determined.

R. D. Hency 7-22-99
 Randall D. Hency Date
 Colorado Professional Surveyor
 PLS #27605



Recorders Certificate

This View Plane was filed for record in the office at the County Clerk and Recorder of San Miguel County on the 24th day of July, A.D. 1999.

Book No: PL-1
 Page No: 2601-2602
 Reception No: 328113
 Time: 1:59 PM
 County Clerk: Gay Capps



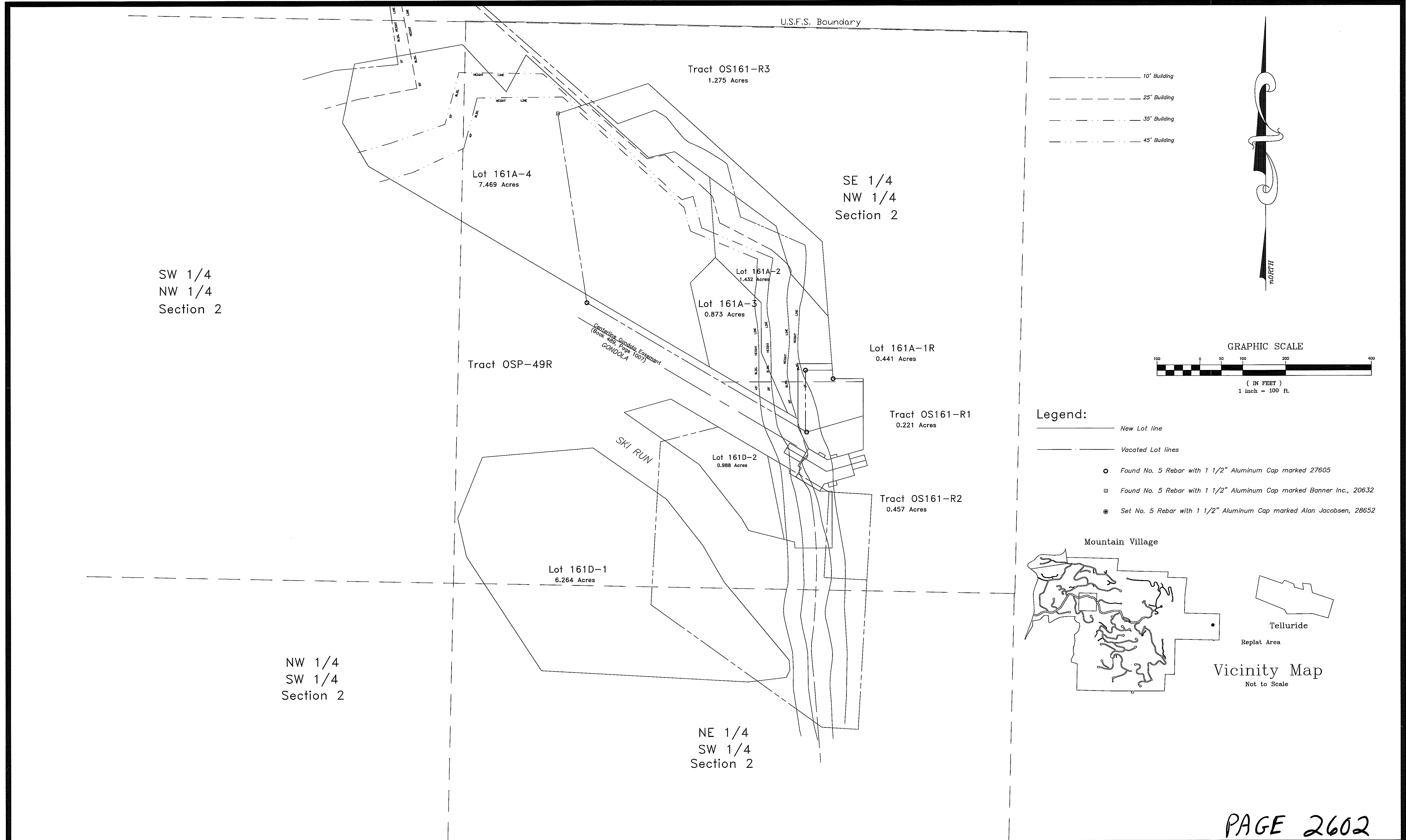
PAGE 2601

COONSKIN VIEW PLANE

Prepared by:
 Kari Distefano
 Verified By:
 PROFESSIONAL CONSULTANTS INC.

For:
 John J. Horn
 For:
 Town of Mountain Village

date	7-21-1999
job number	vplane2.dwg
drawn by	KLD
checked by	RDH
sheet number	1 of 2



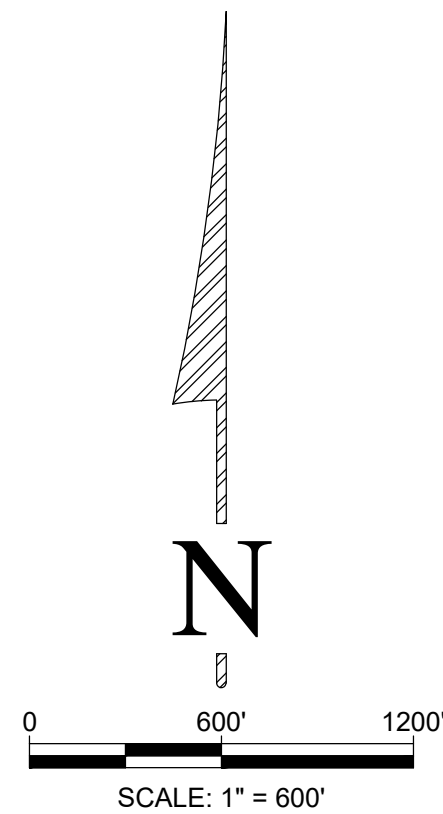
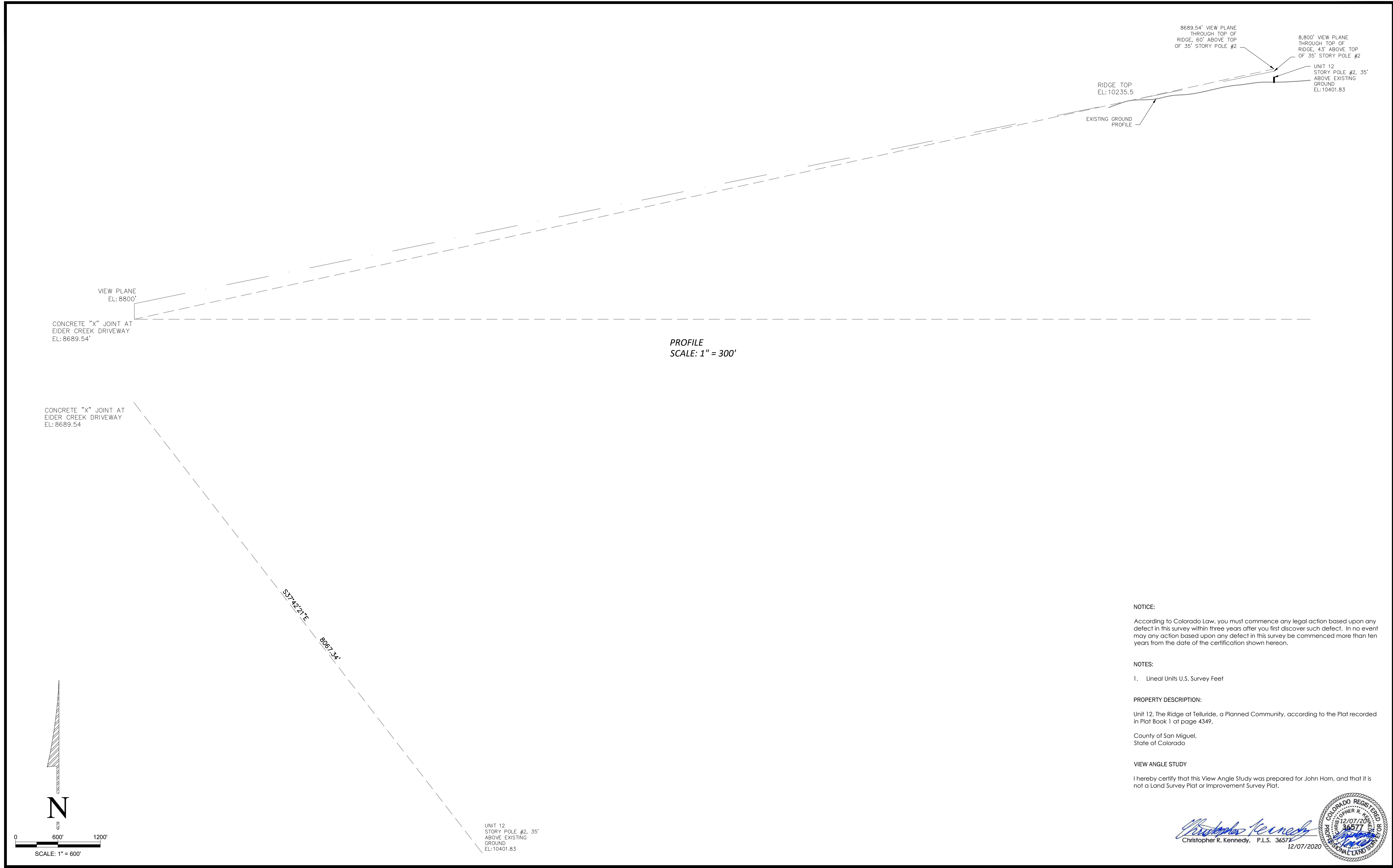
PAGE 2602

COONSKIN VIEW PLANE

Prepared by:
Kari Distefano
Verified By:
PROFESSIONAL CONSULTANTS INC.

For:
John J. Horn
For:
Town of Mountain Village

date	7-21-1999
job number	vplane3.dwg
drawn by	KLD
checked by	RDH
sheet number	2 of 2



NOTICE:
According to Colorado Law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

NOTES:
1. Lineal Units U.S. Survey Feet

PROPERTY DESCRIPTION:
Unit 12, The Ridge at Telluride, a Planned Community, according to the Plat recorded in Plat Book 1 at page 4349,
County of San Miguel,
State of Colorado

VIEW ANGLE STUDY
I hereby certify that this View Angle Study was prepared for John Horn, and that it is not a Land Survey Plat or Improvement Survey Plat.

Christopher R. Kennedy
Christopher R. Kennedy, P.L.S. 36577
12/07/2020

VIEW ANGLE STUDY UNIT 12, THE RIDGE AT TELLURIDE

SAN JUAN SURVEYING
SURVEYING * PLANNING
102 SOCIETY DRIVE TELLURIDE, CO. 81435
(970) 728 - 1128 (970) 728 - 9201 fax
office@sanjuansurveying.net

DATE:	12/07/2020
JOB:	04068
DRAWN BY:	CRK
CHECKED BY:	CKP
REVISION DATES:	
SHEET:	1 OF 1

Exhibit HW-13
Affidavit Of Christopher R. Kennedy

1
2
3
4 To: Town Council and Design Review Board
5 Town of Mountain Village
6 Via email: c/o Michelle Haynes (MHaynes@mtnvillage.org)
7 From: Christopher R. Kennedy
8 Date: December 8, 2020
9 Re: Unit 12, The Ridge – Worksession
10 -Affidavit
11

12
13 Please be advised of the following:
14

- 15 1. I am a licensed surveyor in the State of Colorado and the principal of San Juan Surveying.
16
17 2. This affidavit addresses issues related to proposed development activities on Unit 12, The Ridge and is
18 based on the survey work shown in Exhibit HW-12 Kennedy View Study.
19
20 3. I offer you the following opinions:
21

22 3.1 With regard to the view plane survey ("Jacobsen View Plane Survey") prepared by
23 the surveying company of Jacobsen Associates, recorded at Plat Book 1 at page 2601
24 (Reception #328113) (Exhibit HW-11), as it relates to Unit 12, The Ridge please note the
25 following:
26

27 3.1.1 Using actual ground shots, San Juan Surveying field verified the following
28 locations shown in Exhibit HW-12:
29

30 3.1.1.1 The concrete "x" joint in the driveway at the Eider Creek
31 Condominiums (aka Telwest/Goldking Condominiums) which is at
32 elevation 8,689.54 feet, North American Vertical Datum.
33

34 3.1.1.2 The story pole referred to as Story Pole #2 in Exhibit HW-6.
35

36 3.1.1.3 The point on the line from the concrete "x" joint to Story Pole #2
37 crosses where it crosses the Coonskin Ridge at an elevation of
38 10,235.50.
39

40 3.2 The view line created using the three points identified in paragraphs 3.2.1.1, 3.2.1.2
41 and 3.2.1.3 arrives at a point that is 95 feet in elevation directly above the ground
42 surface at the base of Story Pole #2. **The result is that the top of the 35 foot Story Pole**
43 **#2 cannot be seen from the concrete "x" joint in the driveway at the Eider Creek**
44 **Condominiums, located at 8,689.54 feet, because it is 60 feet below the 10,496.83 foot**
45 **elevation point that can be seen from the concrete "x" joint. Anything below the**
46 **10,496.83 foot elevation point cannot be seen from the concrete "x" joint because it is**
47 **obstructed by the ground of the Coonskin Ridge.** These determinations are based on
48 the following:

Exhibit HW-13
Affidavit Of Christopher R. Kennedy

49

<u>Location</u>	<u>Elevation</u>	<u>Ft. Above Bottom of Story Pole 2</u>	<u>Ft. Above Top of Story Pole 2</u>
Bottom Story Pole 2	10401.8	0	-35
Top Story Pole 2	10436.8	35	0
Elevation From "x" to Top Story Pole 2	10496.8	95	60
Elevation From 8,800 to Top Story Pole 2	10479.8	78	43

50

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61

3.3 The view line created using a point located at 8,800 feet above sea level and directly above the concrete "x" joint in the driveway at the Eider Creek Condominiums and the two points identified in paragraphs 3.2.1.2 and 3.2.1.3 arrives at a point that is 78 feet in elevation above the ground surface at the base of Story Pole #2. **The result is that the top of the 35 foot Story Pole #2 cannot be seen from the point that is 8,800 feet above sea level located directly above the concrete "x" joint in the driveway at the Eider Creek Condominiums because it is 43 feet below the 10,479.83 foot elevation point that can be seen from the 8,800 foot point. Anything below the 10,479.83 foot elevation cannot be seen from the 8,800 foot point because it is obstructed by the ground of the Coonskin Ridge.**

62

I, Christopher R. Kennedy, state that the above statements in this document are true and correct to the best of my knowledge and are based upon information and knowledge that are known personally to me.

63

64

65

Respectfully,

66

67

68

69

Christopher R. Kennedy

70



Exhibit HW-14

Section 17.5.16 View Plane

Section 17.5.16 Ridgeline Lots

A. There are two (2) ridgeline areas of the town:

1. The Ridge Area. The ridge area consists of the following legally described lots as may be amended from time-to-time by replat: 161A-1R, 161A-2, 161A-3, 161A-4, 161D-1, 161D-2.

2. Ridgeline Lots. The ridgeline lots consists of the following legally described lots as may be amended from time-to-time by replat: 89-3A, 89-3B, 89-3C, 105R1, 82R1, 114, 115, 116, 126R, , 143A, 144BR, 144A, 145A, 146B, 146A, 147A, 147B, 147C, 650, 648BR, 649R, 643B, 643A, 621, 620, 617, 616C, 616B, 616A, 615-1CR, BC513E, BC 513D, BC513AR, BC107, BC 106, BC105, BC104, BC103, BC102 and BC101.

B. The following requirements apply to the ridge area as defined in section A.1 above:

1. All improvements are subject to a ridgeline covenant with San Miguel County as recorded at reception number 329093. The Town does not enforce the ridgeline covenant, with enforcement solely administered by San Miguel County.

2. The building height on Lot 161A-1R shall not exceed 35 feet (35') along the ridgeline of such building.

3. Building height on other ridge area lots shall not exceed the lesser of:

a. The height of forty-five feet (45'); or

b. The maximum height allowed to the view plane limitation set forth in section 4 below.

4. Except for the existing building on Lot 161A-1R and gondola facilities, the development of ridgeline area lots shall be designed to ensure that no lighting or any part of any building or structure extends into the view plane as shown on the Coonskin View Plane drawing recorded at reception number 328113.

5. New development in the ridgeline area, excluding the existing building on Lot 161A-1R and gondola facilities, shall require (a) the erection of a story pole to reflect the maximum height of the proposed development where such development will extend closest to the view plane as described in section 4 above; and (b) the installation of a light to illuminate the story pole where off-site light would be visible from the highest window. The applicant for development shall provide written notice of the story pole erection to San Miguel County and the Town of Telluride.

6. To the extent practical, no exterior lights shall be installed on the east side of buildings. Any required exterior lighting shall be shielded, recessed, or reflected so that no lighting is oriented towards the east side of the building.

7. No solid fuel burning device shall be allowed in the building on Lot 161A-1R.

8. For all new development, or substantial modifications to existing development, a courtesy referral shall be provided to San Miguel County and the Town of Telluride consistent with the Referral and Review Process outlined in the Development Review Procedures. The Town is not bound by any referral comments from either jurisdiction.

C. The following provisions apply to ridgeline lots as defined in section A.1 above:

1. All structures shall have varied facades to reduce the apparent mass.

2. To the extent practical, foundations shall be stepped down the hillsides to minimize cut, fill and vegetation removal.

3. Building and roofing materials and colors shall blend with the hillside.

4. Colors and textures shall be used that are found naturally in the hillside.

Exhibit HW-14

Section 17.5.16 View Plane

5. Reflective materials, such as mirrored glass or polished metals, shall not be used.
6. To the extent practical, no exterior lights shall be installed on the east side of buildings.

Any required exterior lighting shall be shielded, recessed, or reflected so that no lighting is oriented towards the east side of the building.

Exhibit HW-15

Section 17.4.16 Variance Process

17.4.16 Variance Process

A. Purpose and Intent

The purpose and intent of the variance process is to establish policies and procedure for granting a variance to the requirements of the CDC because the strict application of CDC requirements would cause exceptional and undue hardship on the development and use of lot due to special circumstances existing relative to the lot such as size, shape, topography or other extraordinary or exceptional physical conditions. Economic hardship alone is not sufficient justification for the granting of a variance. A variance is not required where a particular standard or provision of these regulations specifically allows for the review authority to grant administrative relief. It is the Town's intent that a variance be granted only under extraordinary circumstances.

B. Applicability

The variance process is applicable to any owner or developer who seeks a variance to the requirements of the CDC because the strict application of the CDC requirements would cause a hardship due to extraordinary or special circumstance on a lot.

1. A variance is not applicable to the Building Codes requirements. Please refer to the Building Codes appeals process.

C. Review Process

Variance development applications shall be processed as class 4 applications.

D. Criteria for Decision

1. The following criteria shall be met for the review authority to approve a variance:
 - a. The strict development application of the CDC regulations would result in exceptional and undue hardship upon the property owner in the development of property lot because of special circumstances applicable to the lot such as size, shape, topography or other extraordinary or exceptional physical conditions;
 - b. The variance can be granted without substantial detriment to the public health, safety and welfare;
 - c. The variance can be granted without substantial impairment of the intent of the CDC;
 - d. Granting the variance does not constitute a grant of special privilege in excess of that enjoyed by other property owners in the same zoning district, such as without limitation, allowing for a larger home size or building height than those found in the same zone district;
 - e. Reasonable use of the property is not otherwise available without granting of a variance, and the variance being granted is the minimum necessary to allow for reasonable use;
 - f. The lot for which the variance is being granted was not created in violation of

Exhibit HW-15

Section 17.4.16 Variance Process

Town regulations or Colorado State Statutes in effect at the time the lot was created;

g. The variance is not solely based on economic hardship alone; and

h. The proposed variance meets all applicable Town regulations and standards unless a variance is sought for such regulations or standards.

2. It shall be the burden of the applicant to demonstrate that submittal material and the proposed development substantially comply with the variance review criteria.

Exhibit HW-16

Section 17.1.3 Purposes Of The Community Development Code

17.1.3 PURPOSES OF THE COMMUNITY DEVELOPMENT CODE

The purposes of the CDC are to:

- A.** Promote and protect the health, safety and welfare of citizens and visitors;
- B.** Implement the Comprehensive Plan;
- C.** Preserve open space and protect the environment as envisioned in the Comprehensive Plan;
- D.** Emphasize the natural beauty of the town's surroundings;
- E.** Foster a sense of community as envisioned in the Comprehensive Plan;
- F.** Promote the economic vitality of the town as envisioned in the Comprehensive Plan;
- G.** Promote the resort nature and tourism trade of the town as envisioned in the Comprehensive Plan;
- H.** Ensure that uses and structures enhance their sites and area compatible with the natural beauty of the town's setting and its critical natural resources as envisioned in the Comprehensive Plan;
- I.** Protect property values within the town;
- J.** Promote good civic design and development as envisioned in the Comprehensive Plan;
- K.** Create and preserve an attractive and functional community as envisioned in the Comprehensive Plan; and
- L.** Establish and enforce comprehensive, efficient, clear and consistent standards, regulations and procedures for the planning, evaluation, approval and implementation of land uses and development within the town.



PLANNING DEPARTMENT

KAYE SIMONSON, PLANNING DIRECTOR

January 14, 2021

John Miller, Senior Planner
Town of Mountain Village
By email: JohnMiller@mntvillage.org

Dear John,

San Miguel County staff has reviewed the request for a height variance for Unit 12 located at Lot 161AR4, which is subject to the County Settlement Agreement and Ridgeline Covenant. Additionally, we attended a site walk at the road in front of Eider Creek Condominiums on Wednesday, January 6 where we verified that the illuminated story poles depicting the height of the proposed structure were not visible from any area specified within the Settlement Agreement. Therefore, San Miguel County has no objections to the proposed height variance. If you have any questions, please let me know.

Sincerely,

Kaye Simonson, AICP
Planning Director

cc: Amy Markwell, County Attorney
John Horn



Building and Planning Department
Ron Quarles, Director

MEMORANDUM

TO: John A Miller III, Senior Planner, Town of Mountain Village

FROM: Phil Taylor, Senior Planner, Town of Telluride

DATE: January 6th, 2021

Address: 8 Horseshoe Lane

SUBJECT: Work Session for potential Variance to CDC Section 17.5.16(B)(4) to allow for a 35-foot tall detached condominium building, where 20 feet is the maximum allowed.

The Planning and Building Department has the following comments on this case:

1. After review, it appears that a new structure with a maximum height of 35 feet will not be visible from the Valley Floor or from the Town of Telluride.
2. Any new development within The Ridge at Telluride Subdivision shall not be visible from the Valley Floor or from the Town of Telluride. This should be reviewed and confirmed during a formal design review process.
3. The Town of Telluride does not object to a Variance to increase the maximum height allowed for new construction on Unit 12, The Ridge as long as the intent of CDC Section 17.5.16(B)(4) is met.
4. The Town of Telluride would like the opportunity to provide referral comments on this project in the future.
5. The Town of Telluride Building and Planning Department does not have any additional comments at this time.

Thank you,

Philip Taylor, AICP

Due to length of packet materials some documents have been removed from this PDF. They are legal in nature and can be found at the following link:

<https://mtnvillage.exavault.com/share/view/2bmca-fyc5y1xj>

From: [Susan Johnston](#)
To: [Michelle Haynes](#)
Subject: FW: Lot 109R - Mountain Village
Date: Monday, December 13, 2021 3:58:28 PM
Attachments: [image001.png](#)

Public comment re: 109R

Susan Johnston
Town Clerk
Town of Mountain Village
O::970.369.6429
M::970-729-3440

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [Email Signup](#)

From: Hilary Swenson <Hilary@fullcirclehoa.com>
Sent: Monday, December 13, 2021 3:03 PM
To: mvclerk <mvclerk@mtnvillage.org>
Cc: sowen@streamrealty.com
Subject: FW: Lot 109R - Mountain Village

Dear Town of Mountain Village Town Clerk,

Please see the below message from Sam Owen, Westermere Condo Owners Association Owner, regarding the Lot 109R application.

Regards,
Hilary Swenson
Full Circle HOA Management
560 Mountain Village Blvd., Suite 102B
Mountain Village, CO 81435
Telephone: (970) 369-1428 ext. 2
Hilary@FullCircleHOA.com

From: Sam Owen <sowen@streamrealty.com>
Sent: Monday, December 13, 2021 2:55 PM
To: Hilary Swenson <Hilary@fullcirclehoa.com>
Subject: Lot 109R - Mountain Village

Hilary –

I would like to write you to let you know that I am not in favor of increasing the density on Lot 109R in Mountain Village. This parcel has already increased density recently and I do not think additional density will be a benefit to Mountain Village long term.

Please pass this letter along to the appropriate people.

Sam

Sam Owen

Managing Director & Partner



515 Congress Avenue | Suite 2100
Austin, TX 78701

Phone 512-481-3030

Mobile 214-356-4433

sowen@streamrealty.com

www.streamrealty.com

December 12, 2021
RE: Unit 12, the Ridge

Dear Members of Mountain Village Town Council and Michelle Haynes,

We, the Board of Hillside of Telluride HOA, are writing to request that you vote against the View Plane Variance agenda meeting item scheduled for December 16, 2021.

The Ridge lots were originally planned and approved with the conditions included in the View Plane guidelines. The height limitations were set up to protect other residents of our area from negative visual impacts, including lighting. The rules were in place when the lots were sold. To disregard those rules will impact the very people they are meant to protect. Please keep the integrity of the original agreement intact.

Secondly, we request that you enact a requirement to notice the Hillside of Telluride HOA on all future proposed development projects that are on the ridge area.

Thank you,
The Hillside of Telluride HOA Board of Directors

We are writing to relay our objection the potential granting of a variance to rules governing the Coonskin View Plane restriction as it applies to Unit 12 at the Ridge. These rules were enacted years ago to prevent negative visual impacts from building visibility and light pollution affecting the valley below. The rules should be applied, and developments should not be able to circumvent these rules with variance requests. As part of any ridge development, an applicant is required to install illuminated story poles in order to verify that the topmost portion of the home is not within the view plane established by the aforementioned Coonskin View Plane Restriction. We went to different locations along the 145 spur, as well as the Eider Creek, Sunnyside, and Hillside developments and looked at the lighted story poles that were in place, and felt that the proposed structure and lighting would most certainly have a negative visual effect upon residents, drivers, and wildlife below. We also feel that the 3 500 lumen illuminated story poles were not even remotely close to the light levels this project will emit into the view plane. Preventing these effects is exactly why the original Coonskin View Plane Restriction rules were put in place, and they should apply to everyone and every development. Granting such a variance would neglect the intent and spirit of these rules, and negatively affect residents below. Please respect the rules, and do not allow the wants of a single development to impact the public at large by denying any height and/or lighting variance requests from the developers of Unit 12. It's the right thing to do.

Thank You for your time and consideration-

Steven Steinberg
Lucy Lerner
167 hillside lane



**Flagship Hotel and Residences, Lot 109
Town of Mountain Village, CO**

Tiara Telluride Presentation

- 1) Project Mission, Vision & Goals
- 2) Design Team & Consultants
- 3) Conceptual Designs & Floor Plans
- 4) Prospective Hotel Brands
- 5) F&B Operators and Common Areas
- 6) Public Benefits
- 7) PUD Amendments Requested
- 8) Questions & Recommendations

Project Mission & Goals

- ▶ To Create a High End, High Design, Hotel & Residence
- ▶ Use the History of Telluride to develop an Architecturally Significant Building
- ▶ Partner with a 4+ star Brand with an International Hotel Chain
- ▶ Redevelop Pedestrian Courtyards with appropriate Landscape & Hardscape
- ▶ Provide quality, functional, and locally inspired F&B Options
- ▶ Provide additional Public Benefits with Commercial Space use.

Development Team

Vault Home Collection

Matthew Shear (*Lead Developer*), Ankur Patel (*Head of Engineering*), Nikoleta Angelova (*Finance Director*), Avani Patel (*Legal Counsel*), Gabriel Palacio (*Head of Construction*), Adam Raiffe (*Head of Design*)

SB Architects (*Design Architect, Landscape Architect and Interior Design*)

Mark Sopp

Uncompahgre Engineering (*Civil Engineering*)

David Balode

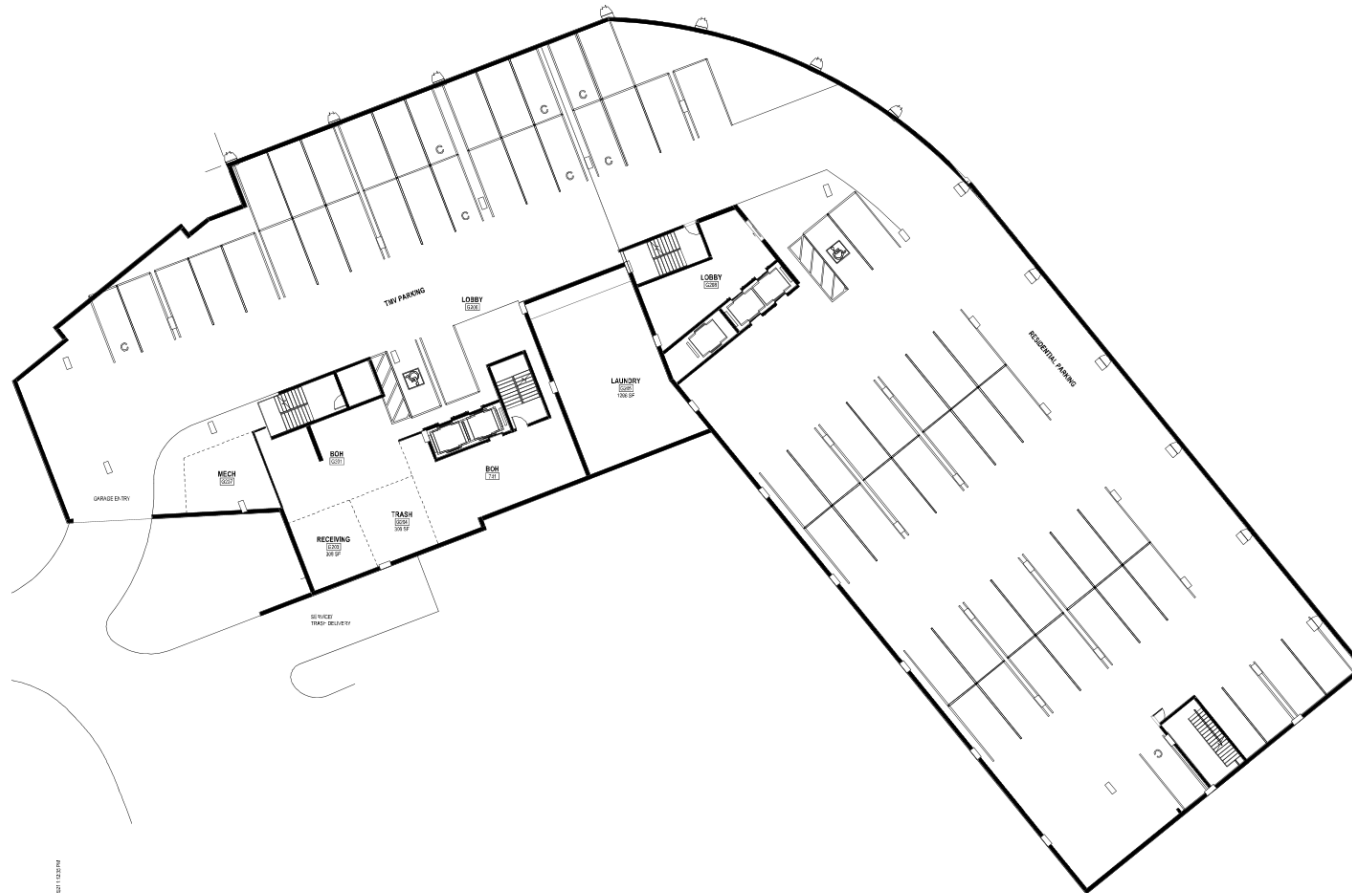
SEH (*Architect of Record, Structural, Mechanical, Traffic and Environmental Engineering*)

Allison Miller

Paul Morgan Visuals (*Lighting Consultants*)

Paul Morgan





NOT FOR CONSTRUCTION

OWNER
 Metropolitan Capital Partners LLC
 1000 N. Lincoln Hwy. Suite 100
 Philadelphia, PA 19104
 (215) 581-1111

ARCHITECT
 SEH Architecture, Inc.
 2000 N. Lincoln Hwy. Suite 100
 Philadelphia, PA 19104
 (215) 581-1111

DATE
 08/15/2017

PROJECT
 SEH - 1000 N. Lincoln Hwy. Suite 100
 Philadelphia, PA 19104

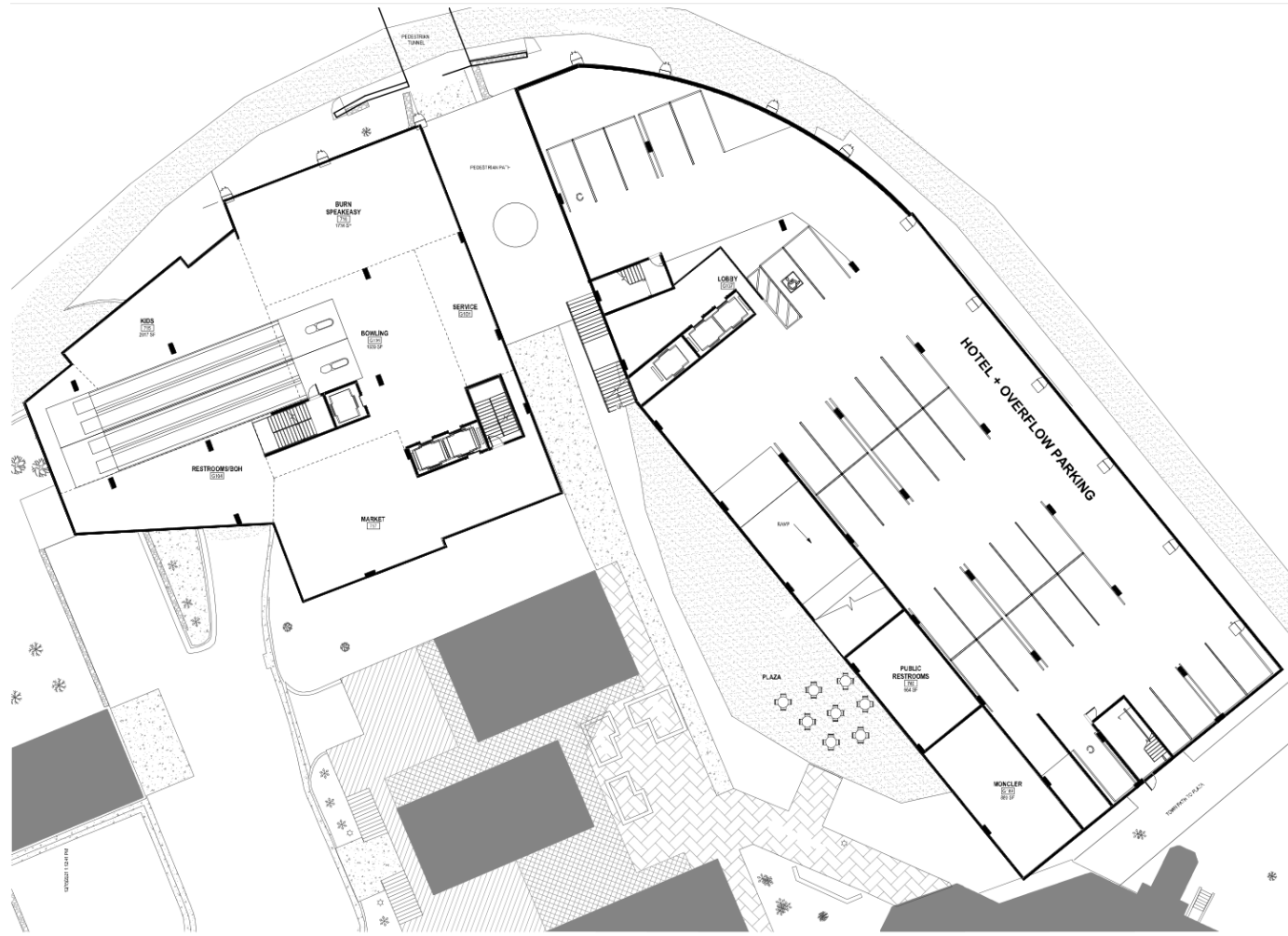
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Project Name: _____
 Date: _____

Sheet No.: _____
 Date: _____

G2 - GARAGE LOWER LEVEL

A101



SEH
 Making a Better World
 for all of Us.

**NOT FOR
 CONSTRUCTION**

DATE:
 September 24th 2018
 1000 N. Lincoln St. Suite 100
 Aurora, CO 80010

CLIENT:
 Starwood Hotels & Resorts Worldwide, Inc.
 1000 N. Lincoln St. Suite 100
 Aurora, CO 80010

PROJECT:
 Starwood Hotels & Resorts Worldwide, Inc.
 1000 N. Lincoln St. Suite 100
 Aurora, CO 80010

DESIGNER:
 Starwood Hotels & Resorts Worldwide, Inc.
 1000 N. Lincoln St. Suite 100
 Aurora, CO 80010

SCALE:
 1/8" = 1'-0"

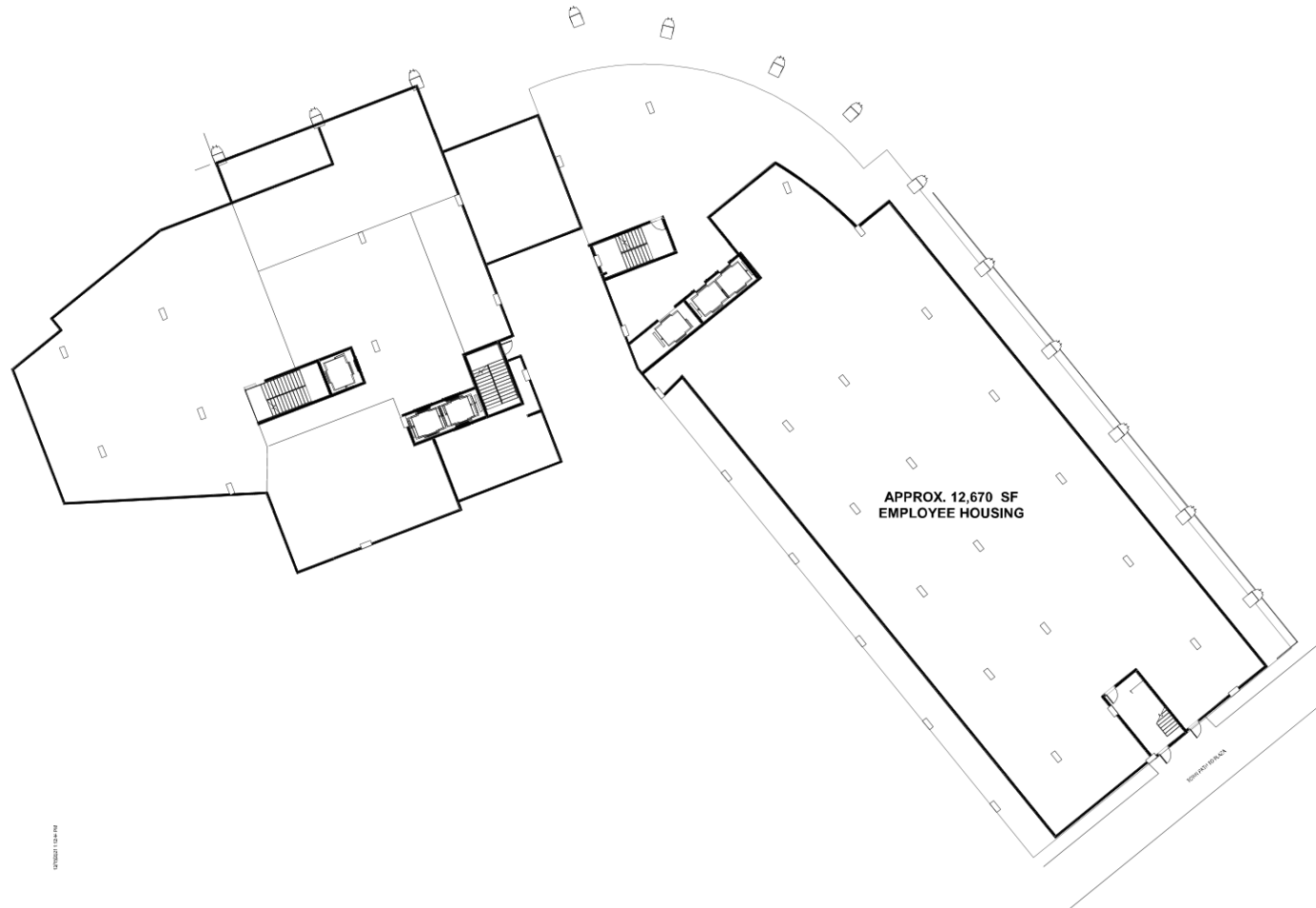
NOTES:
 1. See related drawings for details.
 2. See related drawings for details.
 3. See related drawings for details.
 4. See related drawings for details.
 5. See related drawings for details.
 6. See related drawings for details.
 7. See related drawings for details.
 8. See related drawings for details.
 9. See related drawings for details.
 10. See related drawings for details.

REVISIONS:

No.	Description	Date

G1 - GARAGE PLAZA LEVEL

A102



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OWNER
 Dominion Capital Partners LLC
 10000 West 10th Avenue, Suite 100
 Denver, CO 80202

ARCHITECT
 SEH Architecture, Inc.
 10000 West 10th Avenue, Suite 100
 Denver, CO 80202

DATE
 10/15/2015

**APPROX. 12,670 SF
 EMPLOYEE HOUSING**

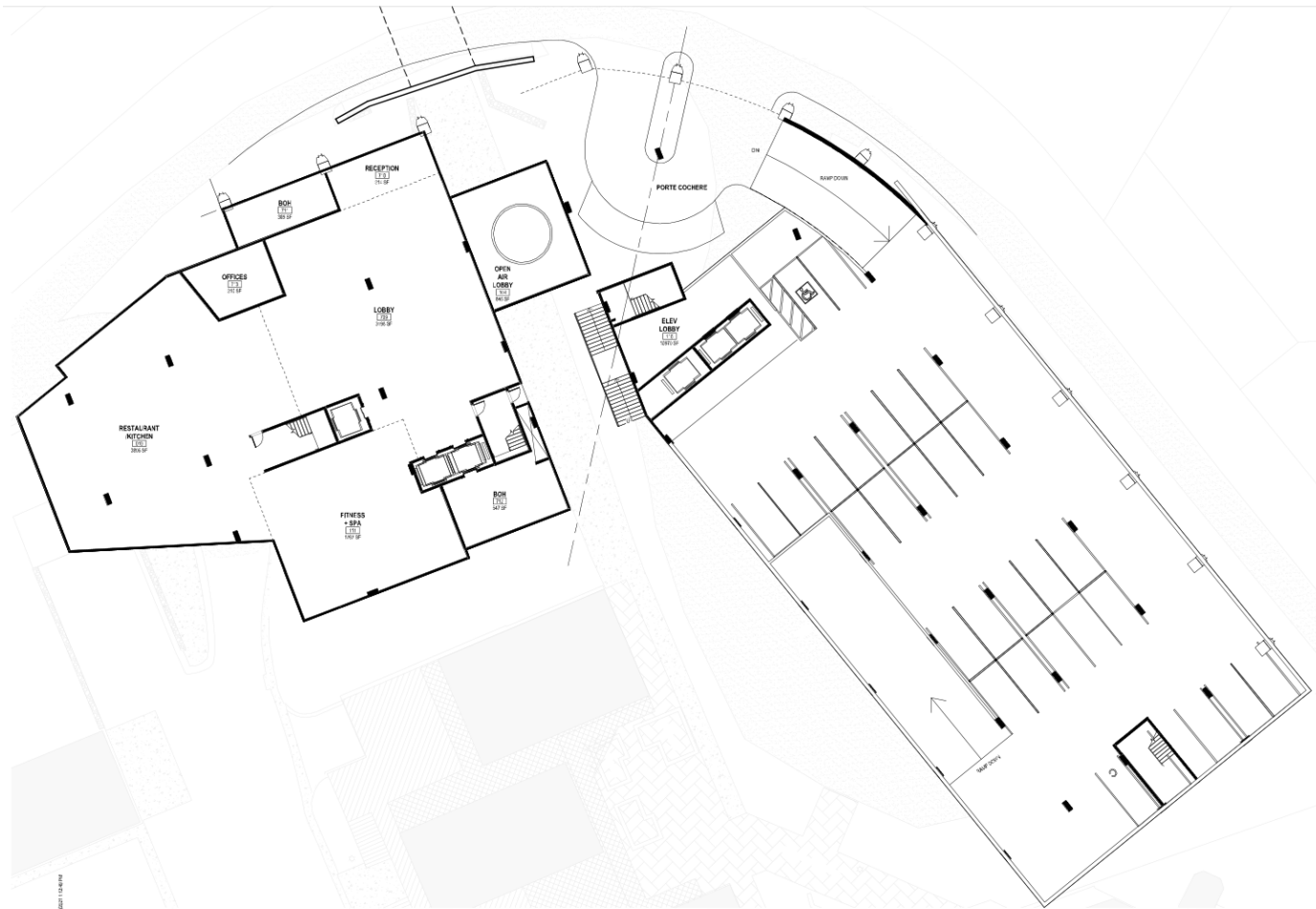
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REVISIONS

No.	Description	Date

LEVEL 1A

A102a



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OWNER
 Metropolitan Capital Partners LLC
 1000 N. Lincoln St., Suite 100
 Denver, CO 80202

ARCHITECT
 SEH
 1000 N. Lincoln St., Suite 100
 Denver, CO 80202

DATE
 10/15/2013

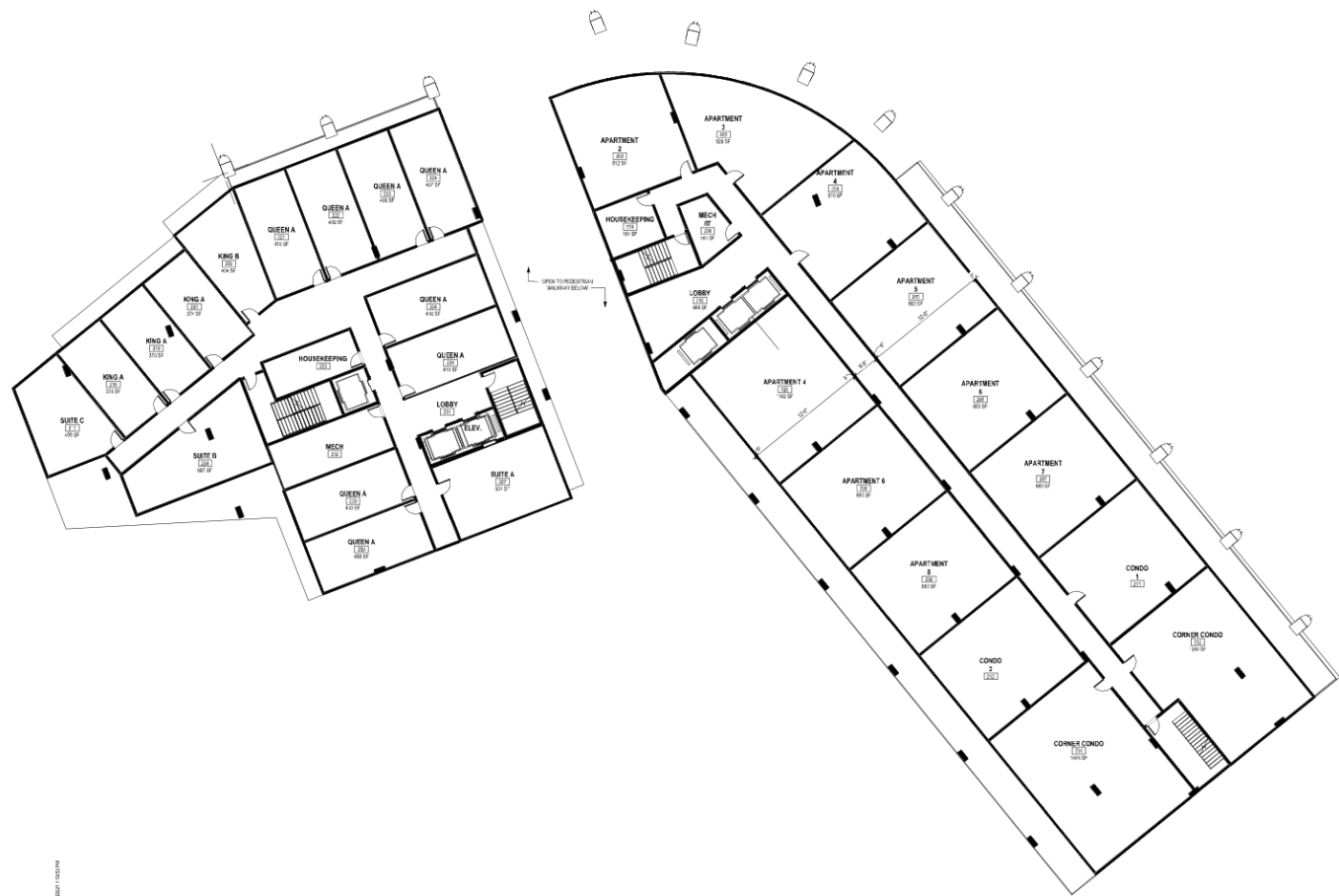
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 Issue Date: _____

Revision
 No. | Description | Date

LEVEL 1

A103



REVISED 11/20/2014



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OWNER
 Metropolitan Capital Partners LLC
 1000 N. Lincoln St. Suite 100
 Aurora, CO 80017

ARCHITECT
 SEH
 1000 N. Lincoln St. Suite 100
 Aurora, CO 80017

MECHANICAL ENGINEER
 SEH
 1000 N. Lincoln St. Suite 100
 Aurora, CO 80017

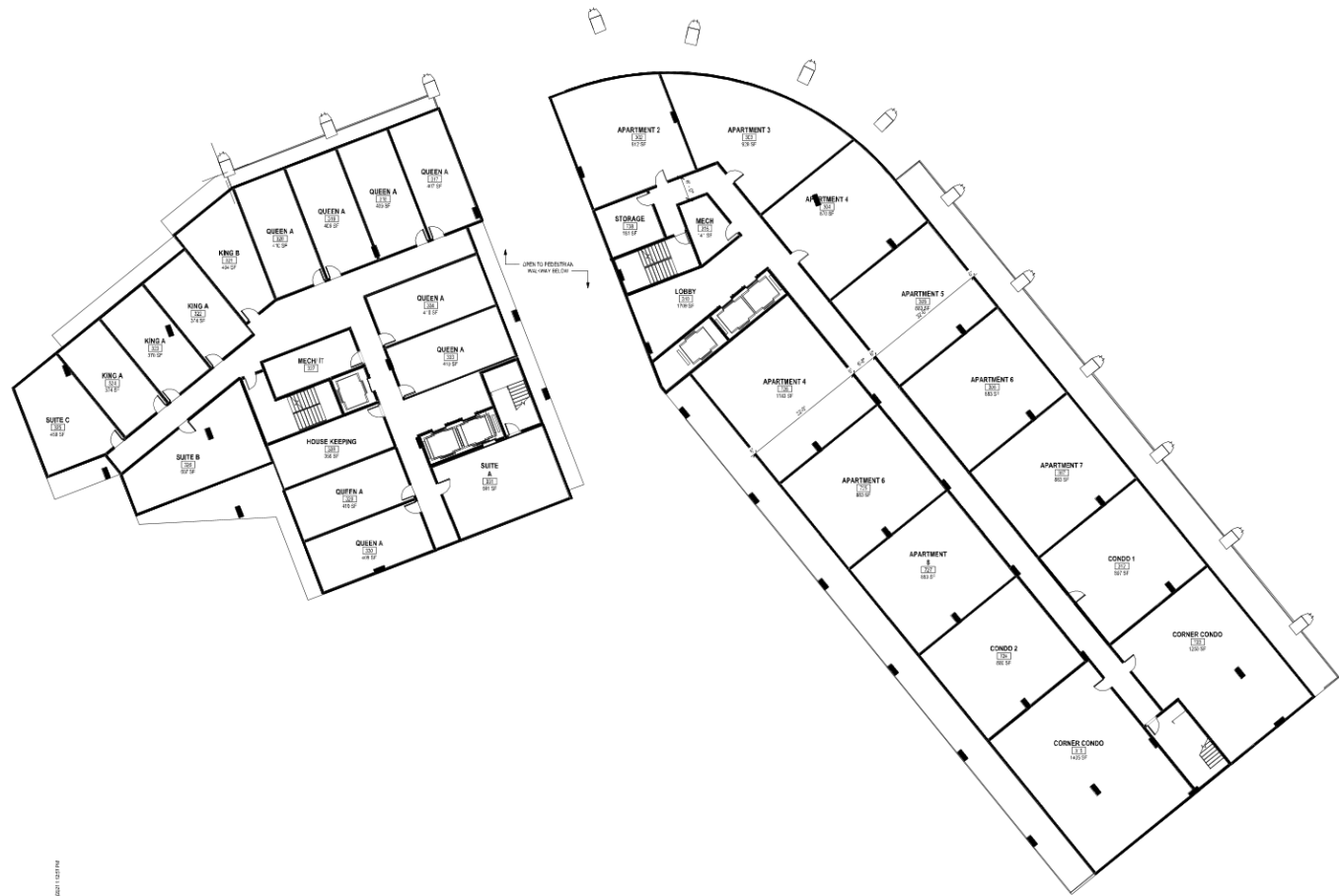
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Sheet No.: _____
 Date: _____

LEVEL 2

A104



LEVEL 3 (10/27/14)



NOT FOR CONSTRUCTION

OWNER
 Spectrum Capital Partners LLC
 10000 W. Hampden Ave. Suite 100
 Denver, CO 80231

ARCHITECT
 SEH Architecture, Inc.
 10000 W. Hampden Ave. Suite 100
 Denver, CO 80231

MECHANICAL ENGINEER
 SEH Mechanical, Inc.
 10000 W. Hampden Ave. Suite 100
 Denver, CO 80231

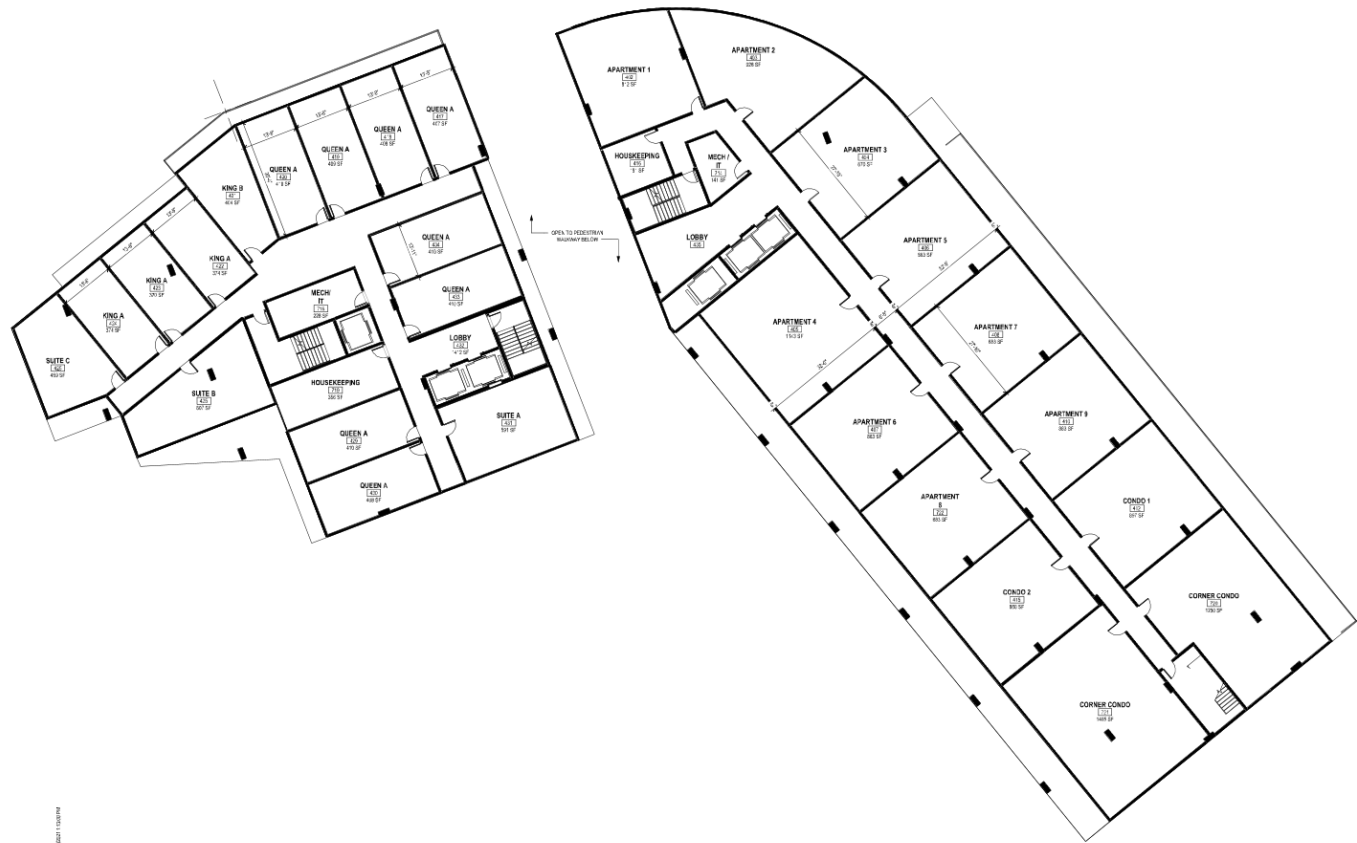
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Sheet No.: _____
 Date: _____

LEVEL 3

A105



REVISION 11/2019



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OWNER
 Metropolitan Capital Partners LLC
 1000 Pennsylvania Avenue, N.W.
 Washington, DC 20004

ARCHITECT
 SEH Architecture, Inc.
 1000 Pennsylvania Avenue, N.W.
 Washington, DC 20004

MECHANICAL ENGINEER
 SEH Mechanical, Inc.
 1000 Pennsylvania Avenue, N.W.
 Washington, DC 20004

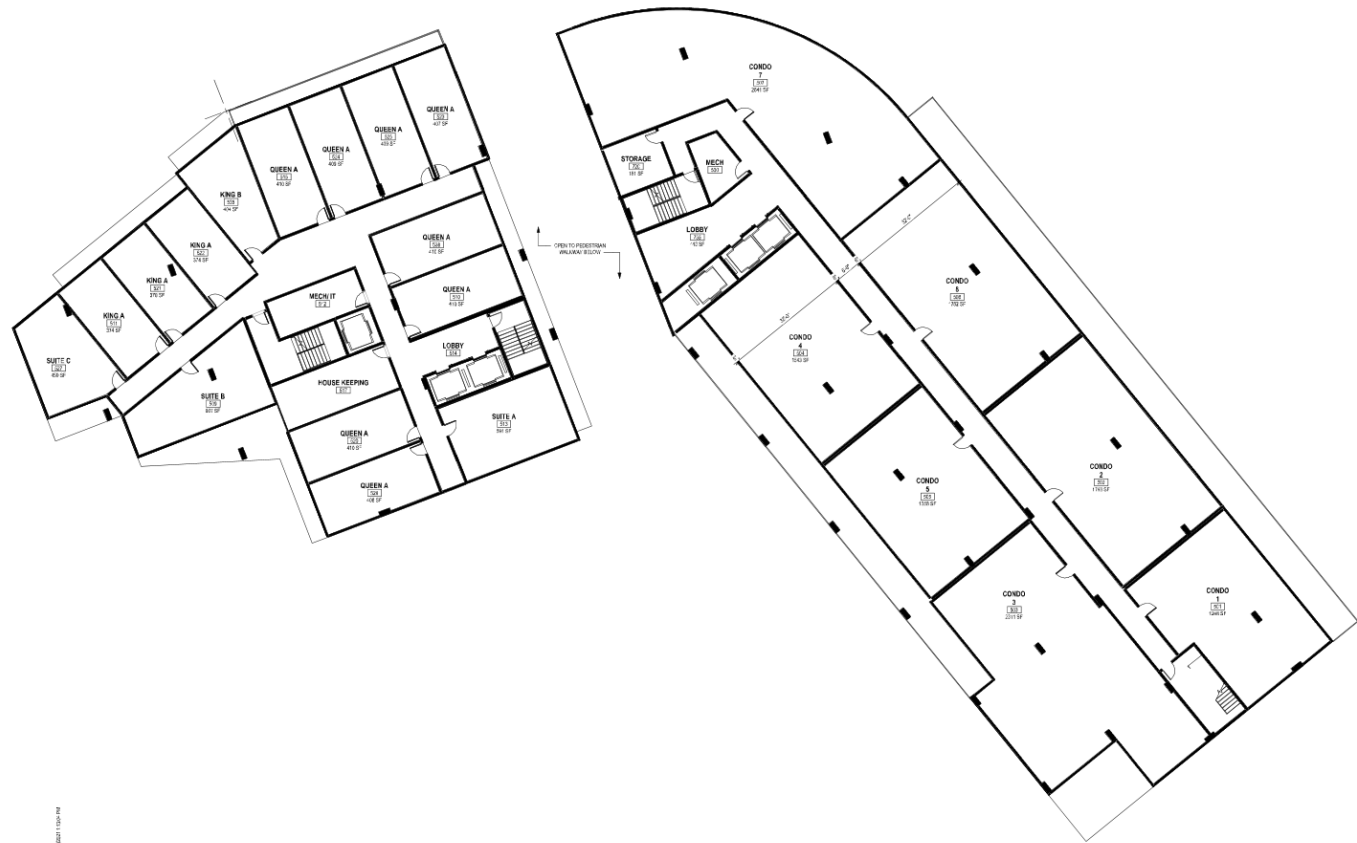
NOTES
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 2. THE ARCHITECT HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE PROJECT AND HAS FOUND NO MAJOR DISCREPANCIES.
 3. THE ARCHITECT HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE PROJECT AND HAS FOUND NO MAJOR DISCREPANCIES.
 4. THE ARCHITECT HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE PROJECT AND HAS FOUND NO MAJOR DISCREPANCIES.

DATE
 11/2019

NO. OF SHEETS
 10

LEVEL
 4

A106



REVISED 11/20/17 PM



NOT FOR CONSTRUCTION

OWNER
 Metropolitan Capital Partners LLC
 1000 N. Lincoln St. Suite 100
 Denver, CO 80202

ARCHITECT
 SEH Architecture, Inc.
 1000 N. Lincoln St. Suite 100
 Denver, CO 80202

MECHANICAL ENGINEER
 SEH Mechanical, Inc.
 1000 N. Lincoln St. Suite 100
 Denver, CO 80202

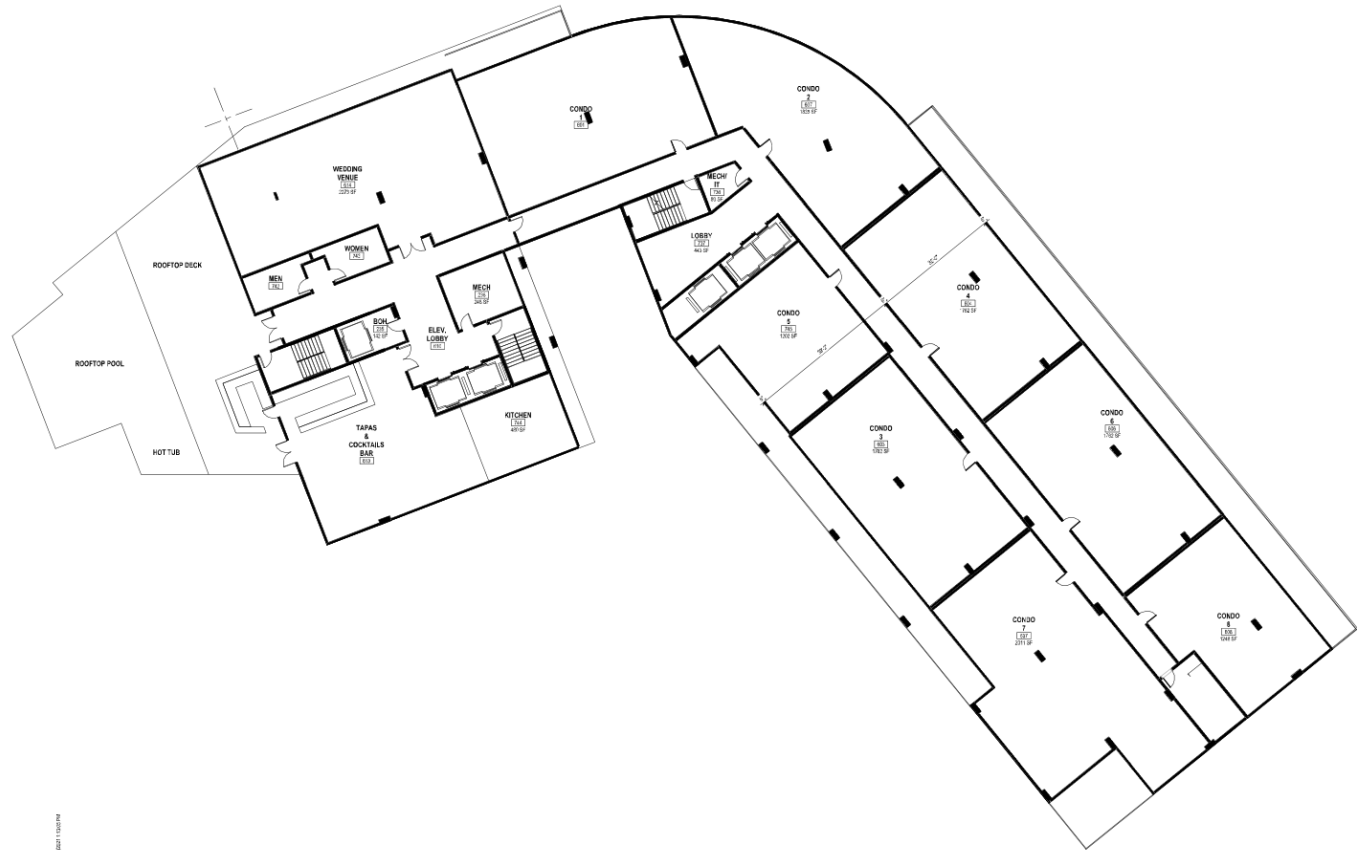
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Project Name: _____
 Issue Date: _____

Revision
 No. Description Date

LEVEL 5

A107



11/15/2017 11:02:29 AM



NOT FOR CONSTRUCTION

OWNER
 Metropolitan Capital Partners LLC
 10000 W. Hampden Ave. Suite 100
 Denver, CO 80231

ARCHITECT
 SEH Architecture, Inc.
 10000 W. Hampden Ave. Suite 100
 Denver, CO 80231

DATE
 11/15/2017

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DATE
 11/15/2017

NO. / **DESCRIPTION** **DATE**

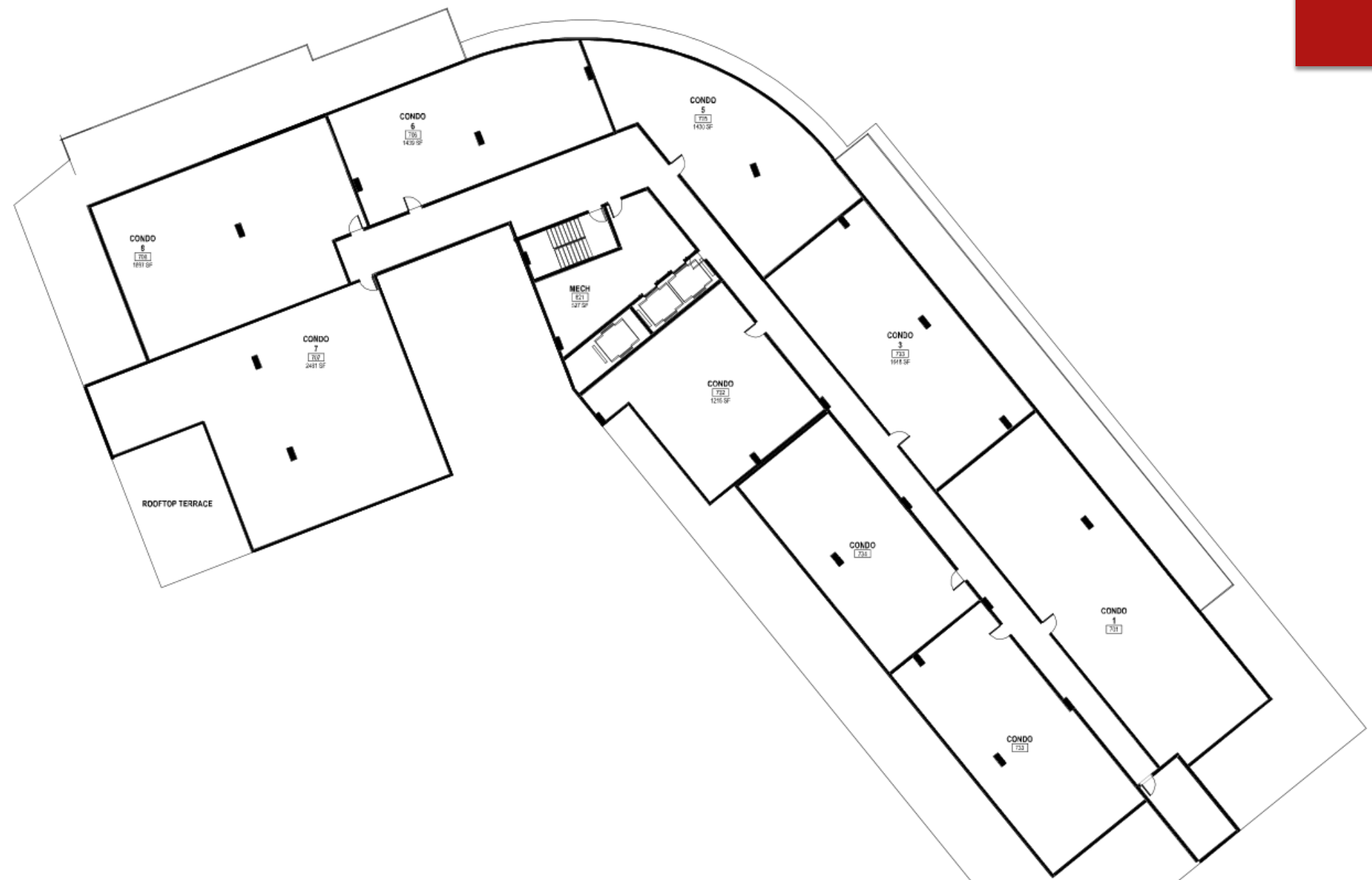
LEVEL 5

A108



Building a Better World
for All of Us®

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CONSTRUCTION



Owner:

Georgetown Capital Partners LLC
281 E. Swanton St. Suite 191
Wayside, PA 15105
670.613.7773

Architect:

Shir Elliott Henderson, Inc.
504 Main Ave. Suite C
Durango, CO 81301
970.458.8017

Structural and MEP Engineer:

Shir Elliott Henderson, Inc.
220 South Colorado Boulevard, Suite
6300, Colorado Center Tower One,
Denver, CO 80222
720.543.8383

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Shir Elliott Henderson, Inc.

SEH Project:
Checked By:
Drawn By:

Project Status: _____
Issue Date: _____

Potential Hotel Chains & Brands

- ▶ Marriott Group
 - ▶ *EDITION*
 - ▶ *RITZ CARLTON*
 - ▶ *LUXURY COLLECTION*
- ▶ Hilton Hotels
 - ▶ *WALDORF ASTORIA*
- ▶ IHG Group
 - ▶ *SIX SENSES*
- ▶ Hyatt Hotels & Resorts
 - ▶ *ALILA*
- ▶ Belmond Hotels & Resorts



TELLURIDE

MARRIOTT INTERNATIONAL
LUXURY BRANDS

EXAMPLES OF ALPINE RESORTS

THE ST REGIS DEER VALLEY



W ASPEN



THE HYTHE, A LUXURY COLLECTION RESORT, VAIL



THE ST REGIS ASPEN RESORT



W VERBIER



THE RITZ-CARLTON, LAKE TAHOE



EDITION



The New York EDITION
LOBBY



The New York EDITION
THE CLOCKTOWER BY JASON ATHERTON



The Times Square EDITION
701 WEST

SANYA

- OPEN DATE: November 2016
- GUESTROOMS: 500 rooms, suites, and villas
- FOOD & BEVERAGE (7):
The Jade Egret
Xianhai by the Sea
Beach Barbacoa
Market at EDITION
Private Table at The Floating Deck
Rooftop Bar
Pool Bar
- ENTERTAINMENT: Playland
- EVENT SPACE: 39826 FT²/3700 M² of Event Space
- OTHER AMENITIES:
Gym
Spa with 11 Treatment Rooms
Four Outdoor Pools
Direct Beach Access
20,000 sqm Private Ocean



















Potential F&B Operations & Common Areas

- ▶ Main Lobby Restaurant & Bar
 - ▶ *Tosh Berman, World Renowned Restaurateur, Grew up in Telluride**
- ▶ Rooftop Pool, Bar and Tapas
- ▶ Rooftop Wedding & Conference
- ▶ Gym & Spa
- ▶ Speakeasy & Cigar Bar
 - ▶ *Burn by Rocky Patel**
- ▶ Bowling (boutique, 4-lane)*
- ▶ Public Hall on plaza level
- ▶ Clothing Retail











Public Benefits

- ▶ Bringing a Globally Recognized Brand to the area
- ▶ We are committing all Efficiency Lodge Units and some Lodge Units to be Hotel keys
- ▶ Providing a Conference Room in Prime Real Estate
- ▶ Providing top operators for F&B
- ▶ Providing a Spa
- ▶ Developing Common Areas as stated in the PUD.
- ▶ Provide a Public Restroom
- ▶ Developing Workforce/Employee Housing in Prime Real Estate
- ▶ Providing a Pedestrian Easement between our property and another one at the east end
- ▶ Planning to relocate and update Trash Facility

PUD Amendments Requested

- ▶ Unit Mix with Existing Density
- ▶ Conference Room Requirements (Space & Rental Rate)
- ▶ Pedestrian Easement Change
- ▶ Valet Parking Hours
- ▶ Town Parking
- ▶ Easement for Deliveries
- ▶ Easement for Service
- ▶ Mitigation Fees/Permit Fees

	Approved Units/Density in Current PUD		Asking Units/Density		Difference
	# Units	Density	#Units	Density	Density
Efficiency Lodge Units	66	33	68	34	+1
Lodge Units	38	28.5	26	19.5	-9
Unrestricted Condominium Units	20	60	23	69	+9
Employee Apartments	1	3	TBD	* workforce housing	TBD
Total		124.5		122.5	-2

Unit Mix Amendment

- ▶ Efficiency Lodge Units - 68
- ▶ Lodge Units - 26
- ▶ Condominiums - 23
- ▶ Employee Units/Workforce Housing – planning to provide between 12,000 to 13,000 square ft of space. Requesting the council to waive the density requirements for this, so that we can effectively build the area and maximize employee housing units.

Conference Room Requirement Amendment

- ▶ One Divisible Conference Room instead of two
- ▶ Conference Room Rate based on Market rate of Similar Product only. Not to be based on rates of Telluride Convention Center.

Pedestrian Easement Amendment

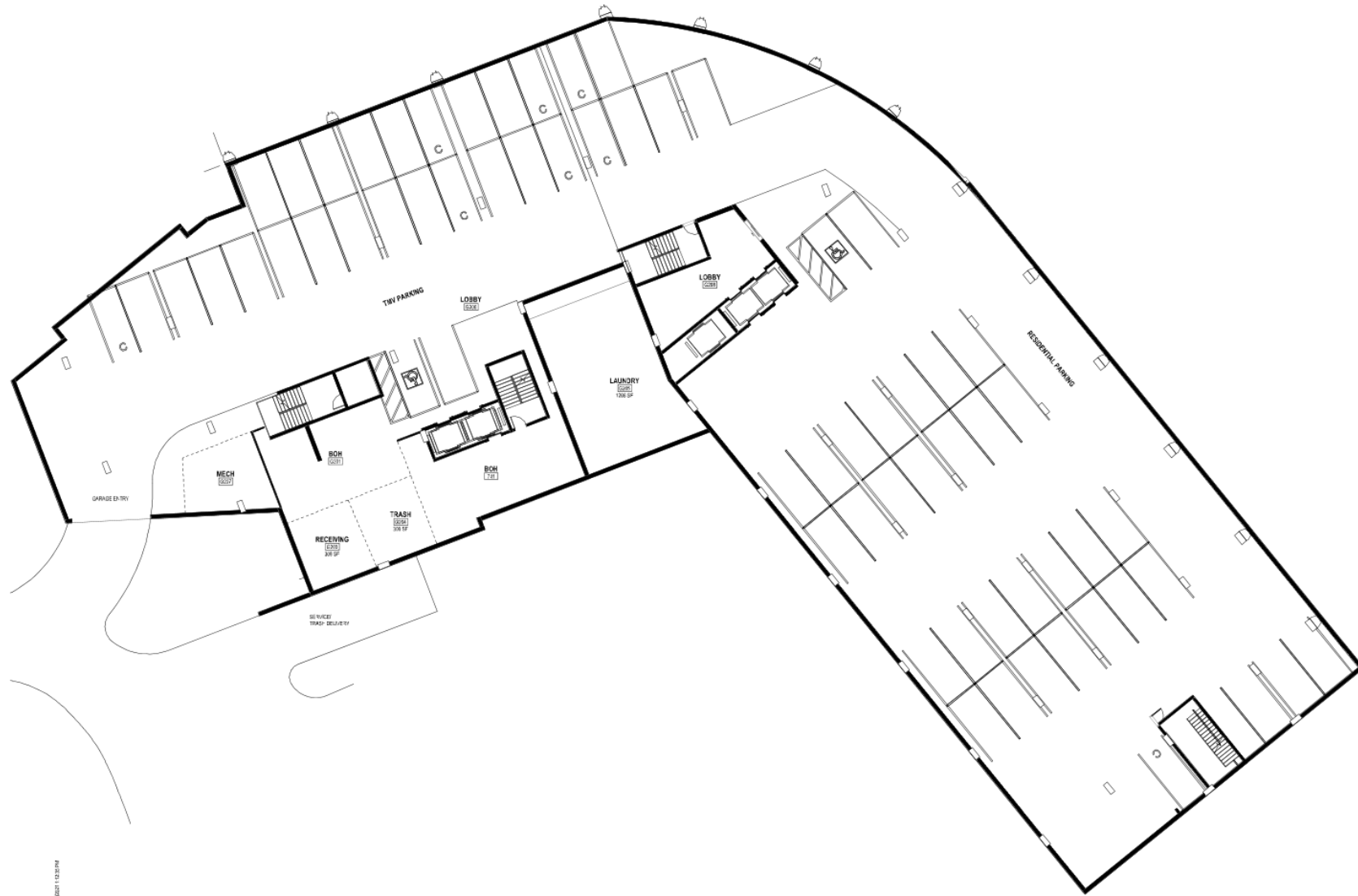
- ▶ Allow a new Pedestrian Easement along the eastern edge of the property which we will be required to develop with Landscape and Hardscape

Valet Parking Amendment

- ▶ Currently PUD states we need 24hr Valet Parking
- ▶ We would like to request that Valet follows times similar to other hotels in the area.

Town Parking Amendment

- ▶ Currently PUD states we need to provide 32 covered garage spots to the town for town parking to replace existing parking and an additional 16 covered garage spots
- ▶ The town also wants the public parking to be at the top level of the parking structure
- ▶ We would like to request an amendment to grant the parking on Level G2, since it will have direct entry from Mountain Village Blvd and will have easier access to the Garage and easier flow of traffic
- ▶ We would also request to amend the number of additional spots to 6 instead of 16 since we took space from the Garage to create area for Workforce Housing



DATE: 11/11/2014



NOT FOR CONSTRUCTION

Owner:
 Clearstone Capital Partners LLC
 400 E. Swanton Rd, Suite 101
 Wynne, PA 19887
 610.611.7773

Architect:
 Star E-Build Architects, Inc.
 240 Main Ave, Suite C
 Danvers, CO 81921
 970.858.9177

Structural and MEP Engineer:
 Star E-Build Architects, Inc.
 240 Main Ave, Suite C
 Danvers, CO 81921
 970.858.9177

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SEH Project
 Checked By
 Drawn By

Project Status Issue Date

Revised By
 Rev. / Description Date

G2 - GARAGE LOWER LEVEL

A101

Easement for Deliveries (Tract OS-3BR-1)

- ▶ We would like to request an easement granted on Tract OS-3BR-1
 - ▶ We would like to request an easement granted on the tract to receive deliveries
 - ▶ We request that we relocate and rebuild the Garbage collection center/compactor



Uncompahgre
Engineering, LLC

P.O. Box 3945
Telluride, CO 81435
970-729-0683

SUBMISSIONS:
Internal 2021-12-14

Lot 109R
Mtn. Village, CO

NOT FOR CONSTRUCTION

CONTRACTOR TO REVIEW AND COMPARE ALL
DIMENSIONS AND INTERFERENCES TO THE
ARCHITECT'S DRAWINGS TO ALL UTILITIES AND
EXISTING CONDITIONS WITHIN DISCLOSED T-AS



Uncompahgre
Engineering, LLC

P.O. Box 3945
Telluride, CO 81435
970-729-0683

SUBMISSIONS:
0201-12-14

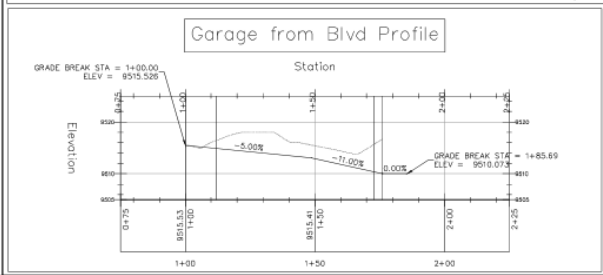
Lot 109R
Mtn. Village, CO

NOT FOR CONSTRUCTION

CONTRACTOR TO REVIEW AND COMPARE ALL
DIMENSIONS AND DISTANCES TO THE
FIELD AND REPORT ANY DISCREPANCIES TO THE
ENGINEER IN WRITING. THIS PLAN IS TO BE
USED IN ACCORDANCE WITH ALL APPLICABLE
CODES.

Type
of
Plan

C1





Uncompahgre
Engineering, LLC

P.O. Box 3945
Telluride, CO 81435
970-729-0683

SUBMISSIONS:
Internal 2021-12-14

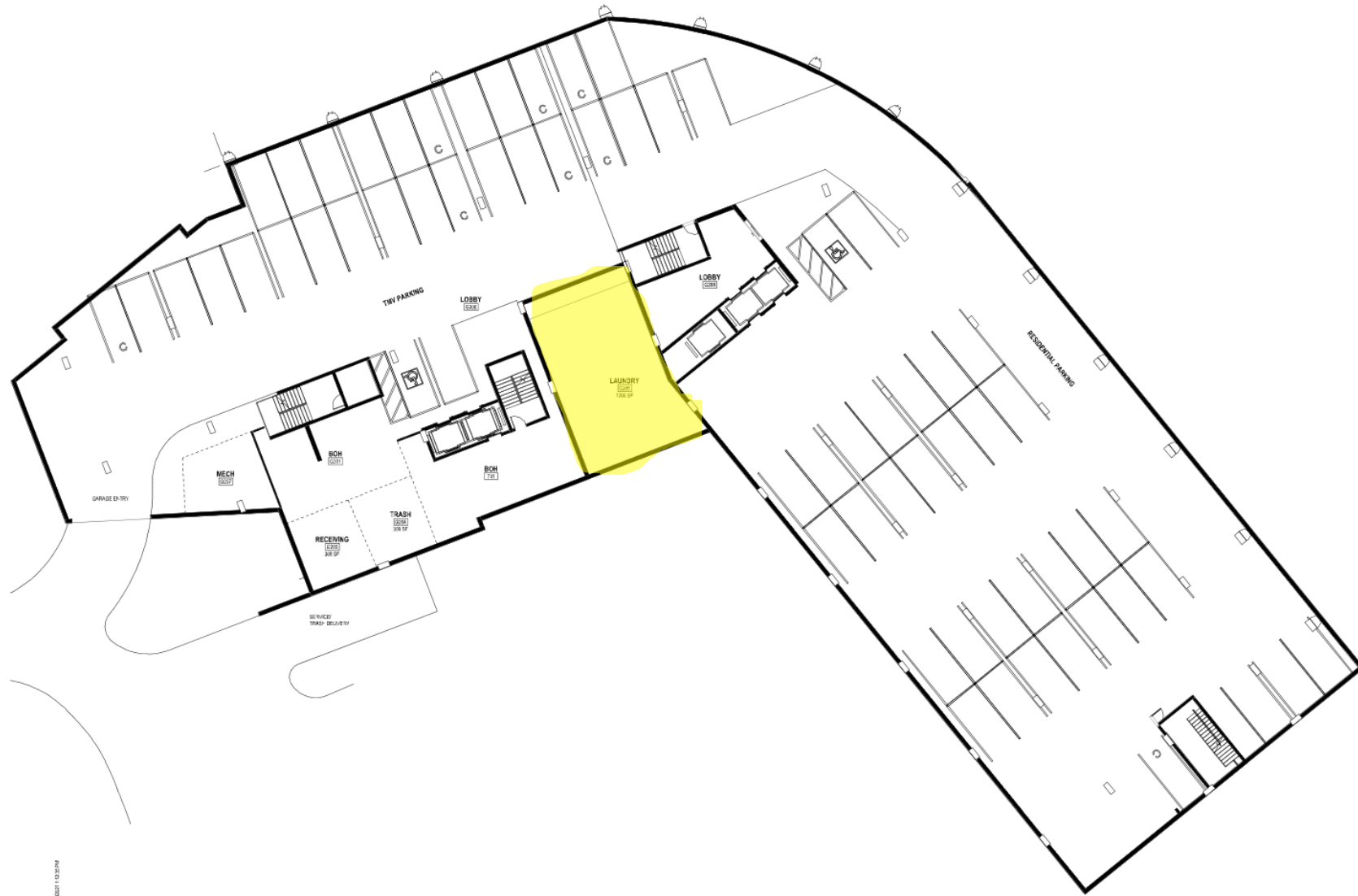
Lot 109R
Mtn. Village, CO

NOT FOR CONSTRUCTION

CONTRACTOR TO REVIEW AND CONFIRM ALL
DIMENSIONS AND PROJECTIONS WITH LEGAL
AND REPORT ANY DISCREPANCIES TO THE
ARCHITECT PRIOR TO ANY CONSTRUCTION.
DO NOT IN ACCORDANCE WITH ALL APPLICABLE LAWS

Easement for Service (Tract OS-3BR-2)

- ▶ We would like to request an easement granted on Tract OS-3BR-2 under the pedestrian walkway for a connectivity for service between the buildings



DATE: 11/11/2014



NOT FOR CONSTRUCTION

Owner:
 Clearstone Capital Partners LLC
 400 E. Swanton Rd, Suite 101
 Wynne, PA 19387
 610.611.7773

Architect:
 Star EBBitt Architects, Inc.
 244 Main Ave., Suite C
 Danville, CO 80101
 970.826.9177

Structural and MEP Engineer:
 Star EBBitt Architects, Inc.
 244 Main Ave., Suite C
 Danville, CO 80101
 970.826.9177

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SEH Project	_____
Checked By	_____
Drawn By	_____
Project Status	_____
Issue Date	_____
Revised By	_____
Rev. 1	Emergency
	Date

G2 - GARAGE LOWER LEVEL

A101

Mitigation Fee/Building Permit Fee Amendment

- ▶ Currently PUD states we need to pay **\$996,288.00** (Mitigation Payment) simultaneously with building permit fee. It also states **“The Mitigation Payment 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 us a portion of these mitigation funds to relocate trash facility up to \$250,000”**
- ▶ Building Permit would be an extra fee
- ▶ We are creating workforce housing on our property, which is a loss of financially profitable space and will require a sizeable investment
- ▶ Therefore, we would like to request a decrease to the amount of mitigation, and pay a combined mitigation and building permit fee of **\$500,000.00**
- ▶ We will be relocating and renewing the trash structure



Questions / Comments?

The Vault Home Collection Team