

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE,
COLORADO CONDITIONALLY APPROVING A MAJOR SUBDIVISION FOR LOTS 161C-R, 67, 69R-
2 AND 71R, TRACT OS-3Y, AND PORTIONS OF OS-3BR-2 AND OS-3XRR TO BE REPLATTED AS
LOT 161C-RR**

RESOLUTION NO. 2022-0908-14

WHEREAS, Merrimac Fort Partners, LLC (the “**Developer**”) is under contract to purchase certain real property described as Lot 161C-R, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 325409 (“**Lot 161C-R**”), from CO Lot 161-CR Mountain Village, LLC; and

WHEREAS, the Developer is under contract to purchase certain real property described as Lot 67, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 233115 (“**Lot 67**”), from TSG Asset Holdings, LLC; and

WHEREAS, the Developer is under contract to purchase certain real property described as Lot 69R-2, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 272500 (“**Lot 69R-2**”), from TSG Asset Holdings, LLC; and

WHEREAS, the Developer is under contract to purchase certain real property described as Lot 71R, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 274123 (“**Lot 71R**”), from TSG Asset Holdings, LLC; and

WHEREAS, the Developer is under contract to purchase certain real property described as Tract OS-3Y, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 367628 (“**Tract OS-3Y**”), from TSG Ski & Golf Company, LLC; and

WHEREAS, the Town of Mountain Village (“**Town**”) is the owner of certain real property adjacent to Lot 161C-R described as open space parcels OS-3BR-2 and OS-3XRR, according to the respective plats recorded as Reception Nos. 416994 and 405665 (the “**Town Property**”); and

WHEREAS, the Developer has submitted a Major Subdivision application to the Town (“**Subdivision Application**”) to replat Lot 161C-R, Lot 67, Lot 69R-2, Lot 71R, Tract OS-3Y, and portions of the Town Property (the “**Adjustment Parcels**”) into one integrated parcel to be known as Lot 161C-RR (the “**Property**”), as depicted on the replat of the Property set forth in Exhibit A hereto (“**Property Replat**”) for the purpose of including the Property in the Developer’s SPUD Application (defined below); and

WHEREAS, the Developer has submitted applications to the Town for approval of a Site-Specific Planned Unit Development (“**SPUD**”) for the Property (collectively, the “**SPUD Application**”); and

WHEREAS, the current owners of Lot 161C-R, Lot 67, Lot 69R-2, Lot 71R, and Tract OS-3Y have consented to Developer’s pursuing the SPUD Application and Subdivision Application; and

WHEREAS, the Town has consented to including the Adjustment Parcels in the Developer’s SPUD Application and Subdivision Application; and

WHEREAS, the Subdivision Application and the SPUD Application are being processed and considered concurrently by the Town of Mountain Village Design Review Board (“**DRB**”) and the Town of Mountain Village Town Council (“**Town Council**”); and

WHEREAS, the Subdivision Application consists of the materials submitted to the Town and itemized on **Exhibit B**, plus all statements, representations, and additional documents of the Developer and its representatives as reflected in the minutes of the public hearings before the DRB and Town Council; and

WHEREAS, the DRB held a public hearing on July 20, 2022 to consider the Subdivision Application and testimony and comments from the Developer, Town Staff, and members of the public, and voted 5-2 to issue a recommendation of approval to the Town Council concerning the Subdivision Application, subject to conditions; and

WHEREAS, the Town Council opened a public hearing on August 25, 2022, which was continued to September 8, 2022, to consider the Subdivision Application, the DRB's recommendations, and testimony and comments from the Developer, Town Staff, and members of the public, and voted unanimously to approve this Resolution ("**Subdivision Approval**"); and

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

WHEREAS, the Town Council has considered the criteria set forth in Section 17.4.13 of the CDC and finds that each of the following have been satisfied or will be satisfied upon compliance with the conditions of this Resolution set forth below:

1. The proposed subdivision is in general conformance with the goals, policies and provisions of the Comprehensive Plan;
2. The proposed subdivision is consistent with the applicable Zoning and Land Use Regulations and any PUD development agreement regulating development of the property;
3. The proposed density is assigned to the lot by the official land use and density allocation, or the applicant is processing a concurrent rezoning and density transfer;
4. The proposed subdivision is consistent with the applicable Subdivision Regulations;
5. Adequate public facilities and services are available to serve the intended land uses;
6. The applicant has provided evidence to show that all areas of the proposed subdivision that may involve soil or geological conditions that may present hazards or that may require special precautions have been identified, and that the proposed uses are compatible with such conditions;
7. Subdivision access is in compliance with Town standards and codes unless specific variances have been granted in accordance with the variance provisions of this CDC; and
8. The proposed subdivision meets all applicable Town regulations and standards.

WHEREAS, the Town Council now desires to approve the Subdivision Application and the related Property Replat, subject to the terms and conditions set forth below.

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

SECTION 1. RECITALS. The foregoing recitals are incorporated herein as findings and determinations of the Town Council.

SECTION 2. APPROVAL. The Town Council hereby approves the Subdivision Application and the related Property Replat, subject to the conditions set forth below. The Town Council hereby approves the Conveyance MOU (defined below) and Development Agreement (defined below), subject to the conditions set forth below, and authorizes the Mayor and Town Clerk to sign said documents on behalf of the Town following approval of the same by the Town Manager. All exhibits to this Resolution are available for inspection at the Town Clerk's Office.

SECTION 3. CONDITIONS. The Subdivision Approval is subject to the following terms and conditions:

3.1 The Town Council must separately approve the related SPUD Application for the Property ("**Final SPUD Approval**"). If the Final SPUD Approval is not approved within ninety (90) days after adoption of this Resolution, this Resolution shall become null and void.

3.2 All conditions of the Final SPUD Approval are conditions of this Subdivision Approval.

3.3 The length of validity for the Final SPUD Approval and the Subdivision Approval shall be the "**Approval Period**" (as may be extended) as defined in the ordinance granting the Final SPUD Approval.

3.4 The Town Council must separately approve a Major Subdivision Application to create the Adjustment Parcels ("**Adjustment Parcels Subdivision Application**"). Within sixty (60) days of this Subdivision Approval, the Developer, at its expense, shall order the necessary existing conditions and proposed replat of the Adjustment Parcels ("**Adjustment Parcels Replat**"). Within six (6) months of this Subdivision Approval, the Developer, at its expense, shall submit to the Town the Class 4 Adjustment Parcels Subdivision Application, for which the Developer shall be the applicant as agent of the Town. The Town Council hereby authorizes the conveyance of said parcels to the Developer or Developer Party (defined below) as provided for in this paragraph and authorizes the Mayor and Town Clerk to execute the deed needed for the same. The newly created parcels will be conveyed in their as-is condition, with no warranties or representations of any kind.

3.5 **Conveyance MOU.** Within sixty (60) days after the effective date of the Final SPUD Approval, the Town and the Developer shall work together in good faith to prepare and execute a memorandum of understanding, or similar agreement in a form acceptable to the Town Attorney, by which the parties memorialize Section 3.4 above and identify the procedural steps for conveyance and closing of the Adjustment Parcels and order of recordation of the necessary documents, which shall be approved by the Town Manager.

3.6 **Development Agreement.** Prior to the expiration of the Approval Period, the Town and Developer (or Developer Party, as defined below) shall enter into a Development Agreement in substantially the form set forth in **Exhibit C**, attached hereto, which shall incorporate by reference all conditions of this Subdivision Approval, the Final SPUD Approval, the Adjustment Parcels Subdivision Application approval, and the Conveyance MOU, and be approved by the Town Manager.

3.7 All Public Improvements to be dedicated to the Town, including those required as conditions of the Final SPUD Approval, shall be constructed by the Developer at its expense pursuant to plans and specifications approved by the Town Engineer, and the Developer shall provide a letter of credit or other security, in a form subject to approval by the Town Manager (which shall not be unreasonably withheld), to secure the construction and completion of such improvements based on engineering cost estimates to be approved by the Town Engineer. The procedures for providing and releasing security, inspection and acceptance of public dedications, and construction warranties shall be addressed in the Development Agreement and/or a supplement thereto to be executed prior to issuance of a building permit when final plans and specifications and cost estimates are complete. The Public Improvements specifically required as conditions of this Subdivision Approval shall be described in the SPUD Approval Ordinance and/or the exhibits thereto.

3.8 Concurrent with the recordation of the Property Replat, the Developer shall execute and record a **"Utility Easement Agreement"** granting a blanket utility easement for the area designated and depicted on the Property Replat as **"UTILITY EASEMENT (CREATED BY THIS PLAT)"** (**"Utility Easement Area"**), which Utility Easement Agreement shall be subject to review and approval by the Town Attorney. If necessary, prior to issuance of a final certificate of occupancy for the Project, the Developer and the Town shall execute an amendment to the Utility Easement Agreement amending the legal description of the utility easements granted therein to reflect the as-built location of utilities that have been installed or relocated within the Utility Easement Area. If upon construction of the Project, the Developer and Town Attorney determine that an amendment to the Shoring Easement Agreement, recorded as Reception No. 392363, is necessary, the parties shall execute and record such amendment prior to issuance of a final certificate of occupancy.

3.9 As part of its building permit application, the Developer shall submit a utility relocation plan to relocate the existing water and sewer lines designated on the Property Replat and labeled as **"BURIED UTILITIES SUBJECT TO RELOCATION PURSUANT TO 32' NON-EXCLUSIVE EASEMENT (RECEPTION #325409)."**

3.10. The Developer shall coordinate with Town Staff and the Town Attorney to ensure that the Property Replat creates all necessary easements, vacates all obsolete easements, and modifies existing easements as appropriate prior to recordation of the Property Replat. Any covenants or easements to be created or amended must be provided for review and approval by the Town Attorney prior to recordation of the Property Replat. Any such easement agreements with the Town shall be recorded at the same time as the Property Replat.

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

3.12 The Developer intends to relocate the main water line through the underground parking garage to be constructed on the Property. The Developer shall grant an easement to the Town for the relocated main water line (**"Water Line Easement"**) and shall provide a copy of an easement agreement (**"Water Line Easement Agreement"**) to the Town for review and approval by the Town Attorney, which agreement shall outline, among other things, that the Developer shall be responsible for maintenance of the water line inside the garage. The Water Line Easement shall be depicted on the condominium map and described in the condominium declaration for the project constructed on the Property. Finalization of the Water Line Easement Agreement and the proper reference to the Water Line Easement Agreement in the condominium declaration and map for the project constructed on the Property to the satisfaction of the Town Attorney shall be a condition of the issuance of a final certificate of occupancy for the Property.

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

3.14 Town Staff will review and must approve the final proposed Property Replat to verify consistency with CDC Section 17.4.13.N. Plat Standards and Section 3. Plat Notes and Certifications and provide redline comments to the Developer prior to execution of the final mylar.

3.15 Town Staff has the authority to provide ministerial and conforming comments on the mylar prior to recordation of the Property Replat.

3.16 Permanent monuments on the external boundary of the subdivision shall be set within thirty (30) days of the recording of the Property Replat. Block and lot monuments shall be set pursuant to C.R.S. § 38-51-101. All monuments shall be located and described. Information adequate to locate all monuments shall be noted on the Property Replat.

3.17 All recording fees related to the recording of the Property Replat in the records of the San Miguel County Clerk and Recorder shall be paid by the Developer.

3.18 The Developer will work with Town Staff and San Miguel County's Emergency Management Coordinator to create a street address for the Property consistent with applicable regulations.

3.19 The Developer shall be responsible for any additional street improvements that may be determined necessary by the Town following the Town's review of final construction drawings for the project described in the SPUD Application, and Town Staff shall have authority to enter into an amendment to the Development Agreement to provide for any such additional street improvements and security therefor; provided, however, if the Developer disagrees with Town Staff's determination on this subject then the matter may be presented to Town Council for a decision by motion at a duly-noticed public meeting without the need to revise the SPUD Approval Ordinance or this Resolution.

3.20 All representations of the Developer, whether within the Subdivision Application materials or made at the DRB or Town Council meetings, are conditions of this Subdivision Approval.

SECTION 4. EFFECTIVE DATE. This Resolution shall be in full force and effect upon its passage and adoption, subject to Section 5.

SECTION 5. EXPIRATION OF APPROVALS. This Subdivision Approval and the Final SPUD Approval shall expire on the expiration of the Approval Period (as may be extended) unless all of the following items have been completed prior to the expiration of the Approval Period (as may be extended):

- a. Fee title ownership of Lot 161C-R, Lot 67, Lot 69R-1, Lot 71R and Tract OS-3Y shall be conveyed to the Developer, or an affiliated party of the Developer ("**Developer Party**") approved by the Town in accordance with the Conveyance MOU;
- b. All conditions under the Conveyance MOU have been resolved to the satisfaction of Town Staff;
- d. The Property Replat shall be executed by the Town and the Developer or Developer Party and recorded in the records of the San Miguel County Clerk and Recorder;
- e. The SPUD Approval Ordinance and this Resolution shall be recorded in the records of the San Miguel County Clerk and Recorder; and
- f. The Development Agreement shall be executed by the Town and the Developer or Developer Party and recorded in the records of the San Miguel County Clerk and Recorder.


SECTION 6. RECORDATION. This Resolution approving the Subdivision Approval shall be recorded concurrently with the recordation of the Property Replat and Development Agreement.

ADOPTED AND APPROVED by the Town of Mountain Village Town Council at a regular public meeting held on September 8, 2022.

TOWN OF MOUNTAIN VILLAGE, COLORADO

By: 
Laila Benitez, Mayor

ATTEST:


Susan Johnston, Town Clerk

APPROVED AS TO FORM:

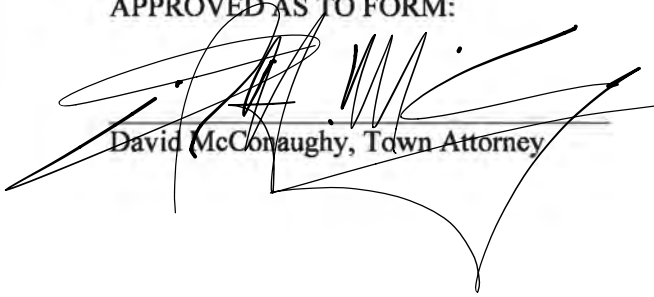

David McConaughy, Town Attorney

Exhibit A

[PROPERTY REPLAT]

Lot 161C-RR, Town of Mountain Village

A Replat of Tract OS-3BR-2, Tract OS-3XRRR, Tract OS-3Y, Lot 161C-R, Lot 67, Lot 71R, Lot 69R-2
located within the NE 1/4 of Section 3, T.42N., R.9W. and the SE 1/4 of Section 34, T.42N., R.9W., N.M.P.M.,
lying within the Town of Mountain Village, County of San Miguel, State of Colorado

CERTIFICATE OF OWNERSHIP
SHOW ALL INTERESTS IN THIS PROPERTY

ACCORDING TO:

1. THAT CERTAIN PART PARTNERS, LLC, a Florida limited liability company ("CERTAIN PART"), in the center of the sample of the following plat maps:

2. THE 161C-R, TOWN OF MOUNTAIN VILLAGE, ACCORDING TO THE PLAT RECORDED APRIL 2, 1998 IN PLAT BOOK 1 AT PAGE 228, COUNTY OF SAN MIGUEL, STATE OF COLORADO (PLAT 161C-R);

3. THE 161C-R, TOWN OF MOUNTAIN VILLAGE, ACCORDING TO THE REPLAT OF LOT 161C-R AND LOT 69R-2 RECORDED SEPTEMBER 3, 1991 IN PLAT BOOK 1 AT PAGE 118, COUNTY OF SAN MIGUEL, STATE OF COLORADO (PLAT 161C-R);

4. THE 161C-R, TOWN OF MOUNTAIN VILLAGE, ACCORDING TO THE REPLAT AND RE-JOING OF LOT 161C-R AND LOT 69R-2 RECORDED SEPTEMBER 3, 1991 IN PLAT BOOK 1 AT PAGE 118, COUNTY OF SAN MIGUEL, STATE OF COLORADO (PLAT 161C-R);

5. TRACT OS-3R, TOWN OF MOUNTAIN VILLAGE, ACCORDING TO THE REPLAT OF TRACT OS-3R, OS-3R-2, OS-3R-3, OS-3R-4 RECORDED AUGUST 14, 2004 IN PLAT BOOK 1 AT PAGE 125, COUNTY OF SAN MIGUEL, STATE OF COLORADO (TRACT OS-3R);

6. TRACT OS-3BR-2, TOWN OF MOUNTAIN VILLAGE, ACCORDING TO THE REPLAT OF TRACT OS-3R, OS-3R-2, OS-3R-3, OS-3R-4 RECORDED SEPTEMBER 3, 1991 IN PLAT BOOK 1 AT PAGE 118, COUNTY OF SAN MIGUEL, STATE OF COLORADO (TRACT OS-3BR-2);

7. TRACT OS-3BR-2, TOWN OF MOUNTAIN VILLAGE, ACCORDING TO THE REPLAT OF TRACT OS-3R, OS-3R-2, OS-3R-3, OS-3R-4 RECORDED SEPTEMBER 3, 1991 IN PLAT BOOK 1 AT PAGE 118, COUNTY OF SAN MIGUEL, STATE OF COLORADO (TRACT OS-3BR-2);

8. TRACT OS-3BR-2, TOWN OF MOUNTAIN VILLAGE, ACCORDING TO THE REPLAT OF TRACT OS-3R, OS-3R-2, OS-3R-3, OS-3R-4 RECORDED SEPTEMBER 3, 1991 IN PLAT BOOK 1 AT PAGE 118, COUNTY OF SAN MIGUEL, STATE OF COLORADO (TRACT OS-3BR-2);

9. TRACT OS-3BR-2, TOWN OF MOUNTAIN VILLAGE, ACCORDING TO THE REPLAT OF TRACT OS-3R, OS-3R-2, OS-3R-3, OS-3R-4 RECORDED SEPTEMBER 3, 1991 IN PLAT BOOK 1 AT PAGE 118, COUNTY OF SAN MIGUEL, STATE OF COLORADO (TRACT OS-3BR-2);

10. LOT 161C-R, TOWN OF MOUNTAIN VILLAGE, ACCORDING TO THE REPLAT AND RE-JOING OF LOT 161C-R AND LOT 69R-2 RECORDED SEPTEMBER 3, 1991 IN PLAT BOOK 1 AT PAGE 118, COUNTY OF SAN MIGUEL, STATE OF COLORADO (PLAT 161C-R);

OWNER SIGNATURES

Montana Park Partners, LLC
a Florida limited liability company

By: _____

ACKNOWLEDGMENT

I, _____

State of _____

County of _____

do hereby certify that I am the owner of the above and described property and that I have signed the foregoing certificate of ownership in my own free and clear mind.

In my presence and in the presence of two other disinterested persons who are duly sworn in and who are acting as witnesses:

Notary Public: _____

EASEMENT VACATION

The following easements have been terminated and vacated or left forth below:

1. THE GENERAL EASEMENT AND REC 23022 as revised and terminated by the Easement Termination Agreement recorded as Recitation No. _____

2. THE PUBLIC UTILITY EASEMENT (BOOK 421 PAGE 142 AND PAGE 143) as vacated and terminated by the Easement Termination Agreement recorded as Recitation No. _____

SHEET INDEX

Page 1 - Description of the lot.

Page 2 - Boundaries and easements (17-18).

PARCEL AREA SUMMARY

Parcel ID	Acres
Lot 161C-R	0.438
Lot 67	0.208
Lot 71R	0.178
Lot 69R-2	0.117
Tract OS-3Y	0.587
Tract OS-3BR-2	0.083

WARNING: CERTAIN PART PARTNERS, LLC, DOES HEREBY, CREDIT, GUARANTEE, AND ENTER INTO AND REMAIN UNDER THE SAME AND SIGN AS "LOT 161C-R, TOWN OF MOUNTAIN VILLAGE, ACCORDING TO THE REPLAT AND RE-JOING OF LOT 161C-R AND LOT 69R-2 RECORDED SEPTEMBER 3, 1991 IN PLAT BOOK 1 AT PAGE 118, COUNTY OF SAN MIGUEL, STATE OF COLORADO (PLAT 161C-R);"

WHEREBY: CERTAIN PART PARTNERS, LLC, DOES HEREBY, CREDIT, GUARANTEE, AND ENTER INTO AND REMAIN UNDER THE SAME AND SIGN AS "LOT 161C-R, TOWN OF MOUNTAIN VILLAGE, ACCORDING TO THE REPLAT AND RE-JOING OF LOT 161C-R AND LOT 69R-2 RECORDED SEPTEMBER 3, 1991 IN PLAT BOOK 1 AT PAGE 118, COUNTY OF SAN MIGUEL, STATE OF COLORADO (PLAT 161C-R);"

(1) MONTANA PARK PARTNERS, LLC, HEREBY WARRANTS THE FORMER PROPERTY INTERESTS SHOWN ON LOT 161C-R, LOT 67, LOT 71R, AND LOT 69R-2.

3. LOT 71-R
4. LOT 67
5. TRACT OS-3Y
6. TRACT OS-3BR-2

7. THE APPROVAL OF THE PLAT MAPS AND THE PLAT MAPS FOR THE ABOVE DESCRIBED LOTS AS SHOWN ON THE REPLAT AND RE-JOING OF LOT 161C-R AND LOT 69R-2 RECORDED SEPTEMBER 3, 1991 IN PLAT BOOK 1 AT PAGE 118, COUNTY OF SAN MIGUEL, STATE OF COLORADO (PLAT 161C-R);

TITLE INSURANCE COMPANY CERTIFICATE

I, _____

State of _____

County of _____

do hereby certify that I am the owner of the above and described property and that I have signed the foregoing certificate of ownership in my own free and clear mind.

NOTES:

1. All records of this plat may be viewed at the public records office in the County of San Miguel, Colorado at the Office of the County Clerk and Recorder, 300 West Main Street, Silver Lake, Colorado 81062.

2. All records of this plat may be viewed at the public records office in the County of San Miguel, Colorado at the Office of the County Clerk and Recorder, 300 West Main Street, Silver Lake, Colorado 81062.

ACKNOWLEDGMENT:

City of _____

County of _____

The foregoing signature was acknowledged before me this _____ day of _____, 2009, by _____

Notary Public: _____

3. Lot 71-R
4. Lot 67
5. Tract OS-3Y
6. Tract OS-3BR-2

7. The approval of the plat maps and the plat maps for the above described lots as shown on the replat and re-joining of lot 161c-r and lot 69r-2 recorded september 3, 1991 in plat book 1 at page 118, county of san miguel, state of colorado (plat 161c-r);

TITLE INSURANCE COMPANY CERTIFICATE

I, _____

State of _____

County of _____

do hereby certify that I am the owner of the above and described property and that I have signed the foregoing certificate of ownership in my own free and clear mind.

NOTES:

1. All records of this plat may be viewed at the public records office in the County of San Miguel, Colorado at the Office of the County Clerk and Recorder, 300 West Main Street, Silver Lake, Colorado 81062.

2. All records of this plat may be viewed at the public records office in the County of San Miguel, Colorado at the Office of the County Clerk and Recorder, 300 West Main Street, Silver Lake, Colorado 81062.

ACKNOWLEDGMENT:

City of _____

County of _____

The foregoing signature was acknowledged before me this _____ day of _____, 2009, by _____

Notary Public: _____

PLANNING APPROVAL:

I, _____, of the Planning and Development Services Director of Mountain Village, Colorado, do hereby certify that the above plat has been approved by the Town of Mountain Village, the Community Development Code.

By: _____
Planning and Development Services Director

SURVEYOR'S CERTIFICATE

I, David R. Bulson, of Bulson Surveying, a Professional Land Surveyor licensed under the laws of the State of Colorado, do hereby certify that this plat of LOT 161C-R, A REPLAT OF TRACT OS-3BR-2, TRACT OS-3XRRR, TRACT OS-3Y, LOT 161C-R, LOT 67, LOT 71R, LOT 69R-2, TOWN OF MOUNTAIN VILLAGE, COUNTY OF SAN MIGUEL, STATE OF COLORADO has been prepared under my direct supervision and my personal supervision and that I am duly sworn in and qualified under the laws of the State of Colorado, C.E.C. to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and office seal this _____ day of _____, A.D. 2009.

D.R. Bulson

TREASURER'S CERTIFICATE

I, the undersigned, Treasurer of the County of San Miguel, do hereby certify that I have reviewed the above plat and find it correct in all respects and that the same complies with the provisions of Article 16, Section 10, of the Constitution of the State of Colorado, and that the same is in accordance with the laws of the State of Colorado.

By: _____
San Miguel County Treasurer

RECORDER'S CERTIFICATE

This Replat was filed for record in the office of the San Miguel County Clerk and Recorder on this _____ day of _____, 2009, at _____ of _____, Colorado.

San Miguel County Clerk and Recorder

TOWN OF MOUNTAIN VILLAGE APPROVAL

2. The approval of the plat maps and the plat maps for the above described lots as shown on the replat and re-joining of lot 161c-r and lot 69r-2 recorded september 3, 1991 in plat book 1 at page 118, county of san miguel, state of colorado (plat 161c-r);

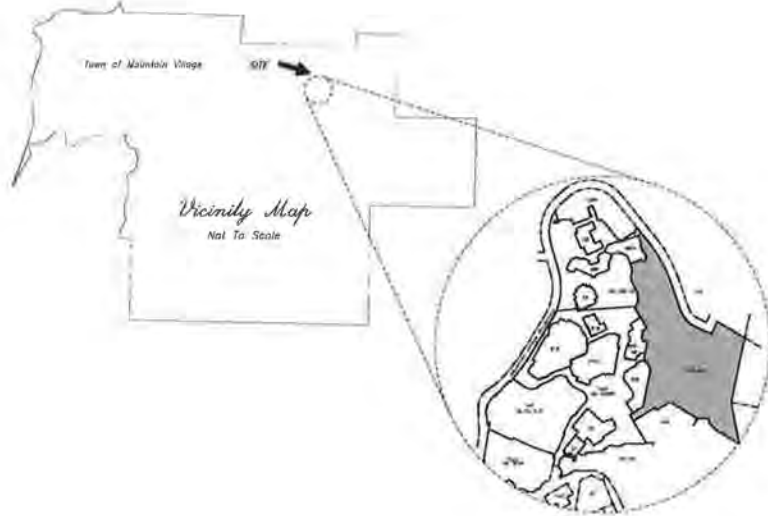
ACKNOWLEDGMENT:

City of _____

County of _____

The foregoing signature was acknowledged before me this _____ day of _____, 2009, by _____

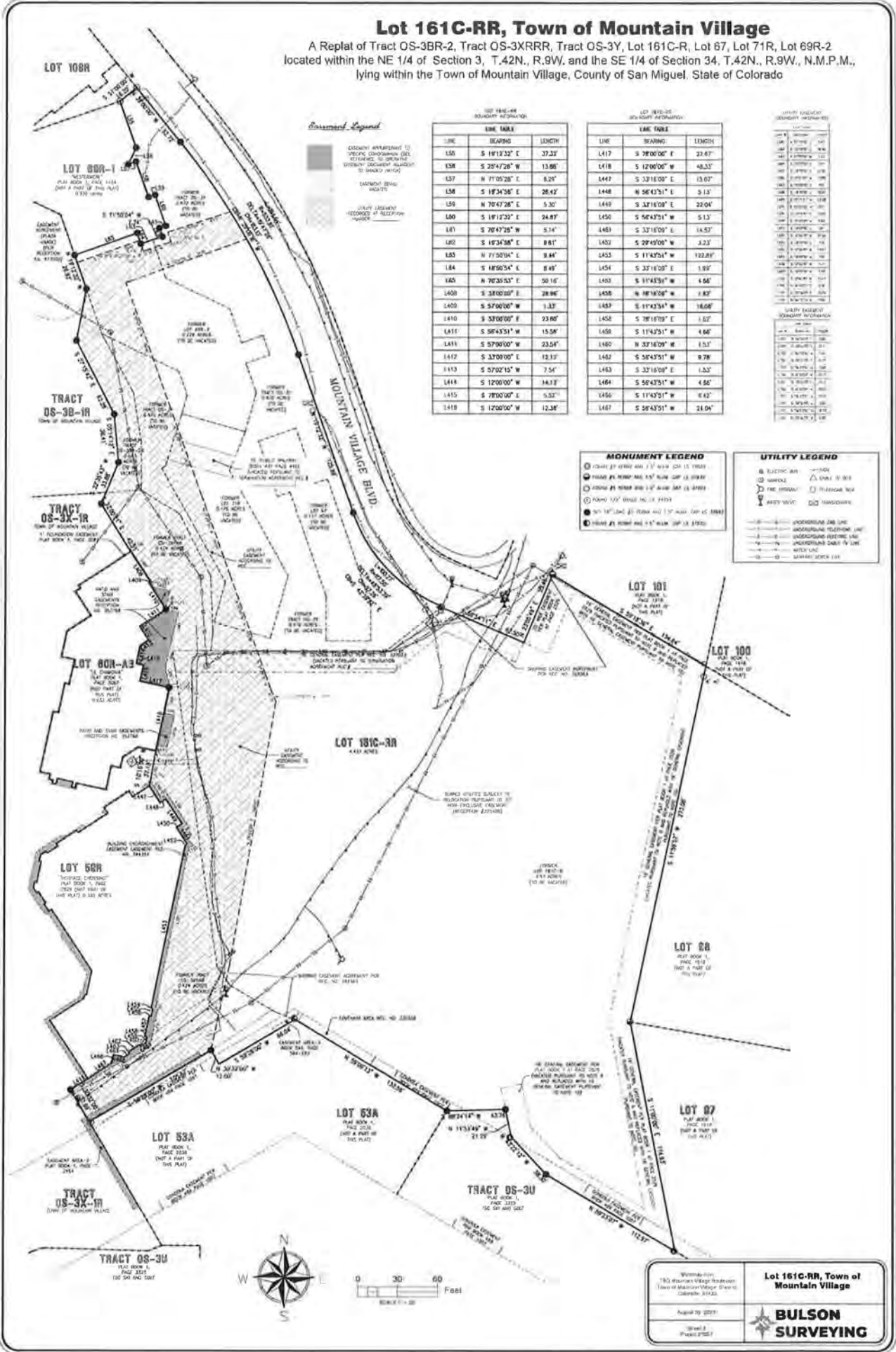
Notary Public: _____



Mountain Village 142 Mountain Village Boulevard P.O. Box 1000 Silver Lake, CO 81062 (970) 739-7000 Fax: (970) 739-7001	Lot 161C-RR, Town of Mountain Village BULSON SURVEYING
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Lot 161C-RR, Town of Mountain Village

A Replat of Tract OS-3BR-2, Tract OS-3XRRR, Tract OS-3Y, Lot 161C-R, Lot 67, Lot 71R, Lot 69R-2 located within the NE 1/4 of Section 3, T.42N., R.9W. and the SE 1/4 of Section 34, T.42N., R.9W., N.M.P.M., lying within the Town of Mountain Village, County of San Miguel, State of Colorado



Government Legend

- COUNTY APPLICABLE TO DEEDS CONVEYING (SEE RECORD TO DETERMINE WHICH DOCUMENT APPLICABLE TO SAVED RECORD)
- EASEMENT BEING REVERTED
- UTILITY EASEMENT ACCORDING TO RECEIVING NUMBER

LOT 161C-RR BOUNDARY MEASUREMENTS

LINE	BEARING	LENGTH
L156	S 19°12'32" E	27.22'
L158	S 29°47'28" W	13.96'
L157	N 71°05'28" E	8.29'
L158	S 18°34'58" E	28.42'
L159	N 70°47'28" E	9.30'
L160	S 19°12'32" E	24.87'
L161	S 70°47'28" W	9.74'
L162	S 10°34'58" E	8.61'
L163	N 71°05'28" E	8.84'
L164	S 18°50'54" E	8.49'
L165	N 70°30'53" E	50.14'
L160	S 37°00'00" E	38.86'
L160	S 57°00'00" W	1.33'
L161	S 37°00'00" E	23.80'
L161	S 58°43'51" W	15.58'
L161	S 57°00'00" W	23.54'
L162	S 37°00'00" E	12.12'
L163	S 57°02'15" W	7.54'
L164	S 12°00'00" W	14.12'
L165	S 78°00'00" E	5.23'
L168	S 12°00'00" W	12.38'

LOT 161C-RR BOUNDARY MEASUREMENTS

LINE	BEARING	LENGTH
L117	S 78°00'00" E	23.87'
L118	S 12°00'00" W	48.53'
L147	S 33°18'00" E	15.07'
L148	N 58°43'51" E	5.13'
L149	S 32°18'00" E	22.04'
L150	S 58°43'51" W	5.13'
L161	S 32°18'00" E	14.57'
L162	S 29°49'00" W	2.23'
L163	S 11°43'51" W	122.81'
L164	S 32°18'00" E	1.93'
L165	S 11°43'51" W	4.66'
L168	N 88°18'00" W	7.87'
L167	S 11°43'51" W	16.68'
L168	S 78°18'00" E	1.52'
L168	S 11°43'51" W	4.66'
L180	N 32°18'00" W	1.51'
L162	S 58°43'51" W	9.78'
L163	S 32°18'00" E	1.52'
L164	S 58°43'51" W	4.66'
L166	S 11°43'51" W	6.42'
L167	S 58°43'51" W	21.04'

UTILITY EASEMENT BOUNDARY MEASUREMENTS

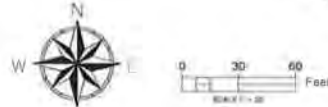
LINE	BEARING	LENGTH
L161	S 37°00'00" E	23.80'
L161	S 58°43'51" W	15.58'
L161	S 57°00'00" W	23.54'
L162	S 37°00'00" E	12.12'
L163	S 57°02'15" W	7.54'
L164	S 12°00'00" W	14.12'
L165	S 78°00'00" E	5.23'
L168	S 12°00'00" W	12.38'

MONUMENT LEGEND

- CORNER AT 8780' AND 1.5' WIDE (SP. 15. 8780)
- CORNER AT 8780' AND 1.5' WIDE (SP. 15. 8780)
- CORNER AT 8780' AND 1.5' WIDE (SP. 15. 8780)
- CORNER AT 8780' AND 1.5' WIDE (SP. 15. 8780)
- CORNER AT 8780' AND 1.5' WIDE (SP. 15. 8780)
- CORNER AT 8780' AND 1.5' WIDE (SP. 15. 8780)

UTILITY LEGEND

- ELECTRIC BOX
- WAREHOUSE
- FENCE
- BRICK WALL
- UNDERGROUND GAS LINE
- UNDERGROUND TELEPHONE LINE
- UNDERGROUND FIBER OPTIC LINE
- UNDERGROUND WATER LINE
- METAL
- SANDSTONE



Witnessed by:
 180 Mountain Village Professional
 Town of Mountain Village, Colorado, 81133

August 29, 2023

180 Mountain Village Professional
 BULSON SURVEYING

Exhibit B

[LIST OF SUBDIVISION APPLICATION MATERIALS]

1. Applicant's Narrative dated 7.7.22
2. Existing Conditions Map dated 7.13.22
3. Civil Drawings dated 7.13.22
 - a. Trail and Sidewalk Civil Exhibit
4. Public Access Exhibit
5. Proposed Replat dated 8.9.22

Faint, illegible text, possibly a signature or stamp.

Exhibit C

[DEVELOPMENT AGREEMENT]

[Faint, illegible text]

**DEVELOPMENT AGREEMENT
SITE SPECIFIC PLANNED UNIT DEVELOPMENT
LOT 161C-RR**

THIS DEVELOPMENT AGREEMENT ("**Agreement**") for a Site Specific Planned Unit Development for Lot 161C-RR is made and entered into by and between the Town of Mountain Village, a home rule municipality and political subdivision of the State of Colorado ("**Town**"), and _____ ("**Developer**"), to be effective as of the ____ day of _____, 202__ ("**Effective Date**"). The Town and the Developer are sometimes also referenced hereinafter individually as a "**Party**" and collectively as the "**Parties**."

[NOTE TO DRAFT: UPDATE TERM "Developer" throughout if there is an assignment of rights prior to execution]

RECITALS

WHEREAS, the Developer submitted applications to the Town for the approval of a Site-Specific Planned Unit Development ("**SPUD**") pursuant to Section 17.4.12 of the Town of Mountain Village Community Development Code ("**CDC**") for Lot 161C-R (defined below), the Pond Lots (defined below) and the Town Parcels (defined below) ("**SPUD Application**");

WHEREAS, the SPUD Application involved individual applications for Conceptual SPUD approval pursuant to CDC Section 17.4.12(D)(1)(a) ("**Conceptual SPUD Application**"), Sketch SPUD approval pursuant to CDC Section 17.4.12(D)(1)(b) ("**Sketch SPUD Application**") and Final SPUD approval pursuant to CDC Section 17.4.12(D)(1)(c) ("**Final SPUD Application**");

WHEREAS, the Developer submitted an application to the Town for the approval of a Major Subdivision pursuant to CDC Section 17.4.13 to replat Lot 161C-R (defined below), the Pond Lots (defined below) and the Town Parcels (defined below) into one integrated parcel ("**Subdivision Application**");

WHEREAS, the Developer submitted an application to the Town for the approval of a Major Subdivision pursuant to CDC Section 17.4.13 to create the Town Parcels (defined below) ("**Town Parcels Subdivision Application**");

WHEREAS, the SPUD Application, Subdivision Application and Town Parcels Subdivision Application involved certain parcels of real property known as Lot 161C-R, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 325409 ("**Lot 161C-R**"), Lot 67, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 233115 ("**Lot 67**"), Lot 69R-2, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 272500 ("**Lot 69R-2**"), Lot 71R, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 274123 ("**Lot 71R**"), Tract OS-3Y, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 367628 ("**Tract OS-3Y**," and together with Lots 67, 69R-2, and 71R, the "**Pond Lots**"), and portions of open space parcels OS-3BR-2 and OS-3XRR, according to the respective plats recorded as Reception Nos. 416994 and 405665 (the "**Town Parcels**"), which shall be referred to herein collectively as the "**SPUD Property**," as legally described in **Exhibit A**, attached hereto;

WHEREAS, at the time of submittal of the SPUD Application and the Subdivision Application by the Developer to the Town, CO LOT 161CR Mountain Village, LLC, a Delaware limited liability company ("**CO LOT**") was the fee title owner of Lot 161C-R;

WHEREAS, at the time of submittal of the SPUD Application and the Subdivision Application by the Developer to the Town, TSG Ski & Golf Asset Holdings, LLC, a Delaware limited liability company and TSG Ski & Golf, LLC, a Delaware limited liability company (collectively, "TSG") were the fee title owners of the Pond Lots;

WHEREAS, at the time of submittal of the SPUD Application and the Subdivision Application by the Developer to the Town, the Town was the fee title owner of the Town Parcels;

WHEREAS, the SPUD Application and the Subdivision Application were processed concurrently by the Town;

WHEREAS, at a public hearing held on February 17, 2022, and continued to March 17, 2022, the Town of Mountain Village Design Review Board ("**DRB**") recommended to the Town of Mountain Village Town Council ("**Town Council**") that the Conceptual SPUD Application for the SPUD Property be approved with conditions;

WHEREAS, at a public hearing held on February 17, 2022 and continued to March 17, 2022, Town Council approved the Conceptual SPUD Application for the SPUD Property with conditions;

WHEREAS, at a public meeting and a public hearing held on May 17, 2022, the DRB approved the Sketch SPUD Application for the SPUD Property with conditions;

WHEREAS, at a public hearing held July 20, 2022, the DRB recommended to Town Council that the Final SPUD Application for the SPUD Property be approved with conditions;

WHEREAS, at a public hearing held on July 21, 2022, Town Council approved the Final SPUD Application for the SPUD Property with conditions and held the first reading of Town of Mountain Village Ordinance 2022-__ conditionally approving the Final SPUD Application for the SPUD Property ("**SPUD Approval Ordinance**");

WHEREAS, at a public hearing held on September 8, 2022, Town Council held the second reading of the SPUD Approval Ordinance and conditionally approved the SPUD Approval Ordinance and this Agreement;

WHEREAS, at a public hearing held July 20, 2022, the DRB recommended to Town Council that the Subdivision Application for the SPUD Property be approved with conditions;

WHEREAS, at a public hearing held on July 21, 2022, which was continued to August 25, 2022, and again continued to September 8, 2022, Town Council approved the Subdivision Application for the SPUD Property with conditions in accordance with CDC Section 17.4.13 as set forth in Town of Mountain Village Resolution No. 2022-__ ("**Subdivision Approval Resolution**"), which approved the replat of the SPUD Property into one integrated parcel in accordance with the plat set forth in **Exhibit B** ("**SPUD Property Replat**"), subject to the requirement of the separate approval of the Town Parcels Subdivision Application;

WHEREAS, at a public hearing held on _____, 202_, DRB recommended to Town Council that the Town Parcels Subdivision Application be approved with conditions;

WHEREAS, at a public hearing held on _____, 202_, Town Council approved the Town Parcels Subdivision Application with conditions in accordance with CDC Section 17.4.13 as set forth in Town of Mountain Village Resolution No. 202_-__ ("**Town Parcels Subdivision Approval Resolution**");

WHEREAS, as of the Effective Date, fee title ownership of the SPUD Property has been conveyed to the Developer prior to the expiration of the “**Approval Period**” as set forth in the SPUD Approval Ordinance and Subdivision Approval Resolution;

WHEREAS, as of the Effective Date, the SPUD Property Replat has been recorded in the records of the San Miguel County Clerk and Recorder contemporaneous with the recordation of this Agreement and such other documents as required to be recorded at the same time as the SPUD Property Replat have been recorded as set forth in the SPUD Approval Ordinance, Subdivision Approval Resolution and this Agreement prior to the expiration of the Approval Period; and

WHEREAS, as of the Effective Date, the Developer has met all of the requirements under the SPUD Approval Ordinance, the Subdivision Approval Resolution and the Town Parcels Subdivision Approval Resolution and has addressed, or agreed to address, all conditions under the SPUD Approval Ordinance, the Subdivision Approval Resolution and the Town Parcels Subdivision Approval Resolution in accordance with the terms and conditions set forth in this Agreement.

NOW THEREFORE, for good and valuable consideration of the mutual covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **RECITALS AND CONSIDERATION.** The foregoing Recitals are incorporated herein by reference as essential terms of this Agreement.

2. **PURPOSE.** The purpose of this Agreement is to effectuate certain terms and conditions of the Final SPUD Approval Ordinance, the Subdivision Approval Resolution and the Town Parcels Subdivision Approval Resolution, which are incorporated herein by reference, on a contractual basis as set forth herein. This Agreement also sets forth the statutory vested rights created by the Final SPUD Approval and sets forth the duration of such vested property rights, as expressly provided in Section 21, below, CDC Sections 17.4.12(J) and 17.4.17 and pursuant to C.R.S. § 24-68-101, *et seq.* All terms and conditions contained herein are in addition to all terms and conditions of the SPUD Approval Ordinance and the Subdivision Approval Resolution, the Mountain Village Municipal Code (“**Code**”) and applicable State and Federal statutes. This Agreement supersedes and replaces _____ (list prior agreements of record no longer applicable, e.g., Silverline agreement)

3. **CONVEYANCE OF SPUD PROPERTY TO DEVELOPER.** As of the Effective Date: (i) CO LOT has conveyed fee title ownership of Lot 161C-R to the Developer; (ii) TSG has conveyed fee title ownership of the Pond Lots to the Developer; and (iii) the Town has conveyed fee title ownership of the Town Parcels to the Developer. As of the Effective Date, the Approval Period has not expired.

4. **REPRESENTATIONS REFLECTED IN THE MINUTES.** The Developer shall comply with all representations made by the Developer, or the Developer’s predecessor in interest, or its agents or representatives and reflected in the minutes of the Design Review Board and Town Council meetings and public hearings regarding the Applications.

5. **FINAL SPUD APPROVAL.**

A. **SPUD Development Project.** Town Council, based on a recommendation for approval from the DRB, conditionally approved the Final SPUD Application for the SPUD Property in accordance with CDC Section 17.4.12 as set forth in the SPUD Approval Ordinance for the development of a mixed use project consisting of Hotel Rooms, Hotel Residences, Private

Residences, Employee Apartments, public and patron amenity spaces including a pool, spa and restaurant, along with a ballroom, meeting rooms, private ski lockers, commercial and retail square footage, underground parking garage, and public and private outdoor landscaped areas and plazas and related improvements to be operated by a five-star luxury brand hotel operator as more particularly depicted in the Final SPUD Plans (defined below) and the SPUD Approval Ordinance (the “**SPUD Development Project**”).

B. **Final SPUD Approval.** For purposes of this Agreement, the term “**Final SPUD Approval**” shall mean collectively the SPUD Approval Ordinance, the Final SPUD Plans (defined below) and this Agreement.

C. **Final SPUD Plans.** The Town Council’s approval of the Final SPUD Application was based the review and recommendation for approval from the DRB of various plans, drawings and specifications submitted by the Developer as itemized in **Exhibit C** (hereinafter collectively referred to as “**Final SPUD Application Plans**”).

a. **Final SPUD Construction Plans.** As of the Effective Date, the Developer has submitted final construction plans and drawings to the Town of Mountain Village Building Department consistent with the Final SPUD Application Plans consisting of the documents itemized in **Exhibit D** (hereinafter collectively referred to as the “**Final SPUD Construction Plans**”). For purposes of this Agreement, the Final SPUD Application Plans and the Final SPUD Construction Plans shall be referred to hereinafter collectively as the “**Final SPUD Plans**.” Any and all amendments to the Final SPUD Plans shall be processed in accordance with CDC Section 17.4.12(N) and shall be deemed incorporated herein upon approval of such amendment.

D. **Final SPUD Community Benefits.** In accordance with the Final SPUD Approval, the Developer shall provide the Community Benefits set forth in **Exhibit E** (“**Community Benefits**”).

a. In accordance with the Final SPUD Approval, the Developer shall execute and deliver to the Town the following documents no later than sixty (60) days following the later of either (i) date of issuance of a final Certificate of Occupancy by the Town for the SPUD Development Project; or (ii) recordation of the condominium map for the SPUD Development Project:

Special Warranty Deed conveying Public Bathroom to the Town in substantially the same form as set forth in Exhibit F
Special Warranty Deed conveying Parking Spaces to the Town in substantially the same form as set forth in Exhibit G
Special Warranty Deed conveying Storage Facility to the Town in substantially the same form as set forth in attached Exhibit H
Public Easement*for Public Plazas in substantially the same form as set forth in Exhibit I
Public Easement* for the Wetlands Walking Trail in substantially the same form as set forth in Exhibit J
Public Easement* for the Ridge Trail Connection in substantially the

* At the Developer’s option, the easement areas may alternatively be dedicated to the Town in fee simple ownership.

same form as set forth in **Exhibit K**

6. SUBDIVISION APPROVAL.

A. Town Council, based on a recommendation for approval from the DRB, approved the Subdivision Application for the SPUD Property in accordance with the Subdivision Approval Resolution and CDC Section 17.4.13. For purposes of this Agreement, the term “**Subdivision Approval**” shall mean collectively the Subdivision Approval Resolution, the Town Parcels Subdivision Approval the SPUD Property Replat and the terms and conditions of this Agreement.

B. **Subdivision Plat.** As of the Effective Date, the Developer has recorded the SPUD Property Replat as Reception No. _____, in the records of the San Miguel County Clerk and Recorder. As of the Effective Date, the Developer has recorded the following termination of easements, modification of easements and new easement agreements in accordance with the Subdivision Approval:

DOCUMENT	RECEPTION NO.
Vacation of Easement recorded at Reception No. 327023	
Vacation of Easement recorded in Book 431 at page 445	
Vacation of Easement recorded in Book 546 at page 584	
Shoring Easement Modification Agreement (if necessary)	
Le Chamonix Easement Modification Agreement	
Heritage Crossing Easement Modification Agreement	
Utility Easement Agreement	

[Any modifications to the above as determined necessary by the Parties at the time of recording of this Agreement.]

C. Additional Conditions of Subdivision Approval.

- a. As a condition of the issuance of a final Certificate of Occupancy for the SPUD Development Project, the Developer shall execute and deliver an amendment to the Utility Easement Agreement, recorded as Reception No. _____, that amends the legal description of the Utility Easement granted therein to reflect the as-built location of all utilities that have been installed or relocated within the Utility Easement Area depicted on the SPUD Property Replat.
- b. If upon construction of the SPUD Development Project, the Developer and the Town Manager determine that an amendment to the Shoring Easement Agreement, recorded as Reception No. _____, is necessary, the Parties shall execute and record such amendment prior to issuance of a final Certificate of Occupancy.
- c. Construction of “Public Improvements” as defined in the Subdivision Approval and as set forth in Exhibit N.

7. OPERATION OF FIVE-STAR LUXURY BRAND HOTEL. The Developer expressly agrees that the continued operation of the Hotel Rooms and Hotel Residences (collectively the “Hotel”) within the SPUD Development Project by a five-star luxury brand hotel operator is an essential requirement of the Final SPUD Approval and this Agreement. Prior to the Developer’s application for a Building Permit,

the Developer shall provide the Town with written confirmation from the Four Seasons, or an equivalent operator, of its commitment to operate the Hotel. Should the Four Seasons, or an equivalent operator, discontinue operation of the Hotel at any time thereafter, the Developer must immediately find a similar five-star luxury brand hotel operator subject to approval by the Town. In the event that the Developer is unable to contract with a five-star luxury brand hotel operator, the Developer must apply to the Town for an amendment to the Final SPUD Approval via a Class 4 application for approval of an operator with fewer than five stars. As represented by the Developer, the restaurants and spa to be constructed on the SPUD Property shall be open to the public.

8. **SINGULAR OWNERSHIP.** The Developer agrees that the 53 Hotel Rooms must be kept under singular ownership and cannot be further condominiumized. The Developer further agrees that the 10 Employee Apartments must also be kept under singular ownership and cannot be further condominiumized.

9. **DEED RESTRICTIONS.**

A. **WORKFORCE HOUSING.** The Developer shall record the “**Employee Housing Deed Restriction**” set forth in **Exhibit L**, attached hereto, against title to the 10 Employee Apartments. The Employee Housing Deed Restriction shall be approved by the Town Attorney and executed and recorded by the Developer concurrent with recordation of the condominium map for the SPUD Development Project and prior to sale of all 10 units or lease of the individual units to any third party. Any prior lienholder shall be required to subordinate its rights to the Employee Housing Deed Restriction.

B. **HOTEL RESIDENCES.** The 38 Hotel Residences shall be subject to a “**Hotel Residence Deed Restriction**” set forth in **Exhibit M**, attached hereto. The Hotel Residence Deed Restriction shall be approved by the Town Attorney and executed and recorded by the Developer concurrent with recordation of the condominium map for the SPUD Development Project and prior to sale of individual units to any third party. Any prior lienholder shall be required to subordinate its rights to the Hotel Residence Deed Restriction.

10. **PUBLIC IMPROVEMENTS.** The “**Public Improvements**” required by this Agreement for the SPUD Development Project are listed in **Exhibit N**, attached hereto, and the estimated costs for construction of such improvements are set forth therein. All Public Improvements shall be constructed at the expense of the Developer and in conformance with the Town’s Building Regulations then in effect, the plans and specifications submitted by the Developer and approved in writing by the Town Engineer, and any utility plan (hereinafter collectively referred to as “**Plans and Specifications**”). The Developer shall install the Public Improvements in compliance with the Plans and Specifications, the Code, all other applicable laws and regulations, and the terms of this Agreement.

A. **CONSTRUCTION OBSERVATION AND INSPECTION.**

a. *Pre-Construction Meeting.* The Developer shall hold a pre-construction meeting with the Town Engineer and the Developer and the Developer’s engineer and contractor(s) for the purpose of discussing all construction issues related to the Project.

b. *Construction Inspection by the Developer.* The Developer shall be responsible for ensuring that its certified professional engineer provides construction inspection services as necessary to allow Developer’s engineer to provide, when Public Improvements are submitted to the Town for acceptance, a stamped certification that

the Public Improvements have been constructed in accordance with the Plans and Specifications approved by the Town.

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

B. **COMPLETION OF PUBLIC IMPROVEMENTS.** The Public Improvements shall be completed by Developer and accepted by the Town prior to the recordation of a condominium map. Before issuance of a building permit, the Town Staff and Developer shall establish by mutual agreement a specific date of completion for all Public Improvements that involve relocation of any public utility main lines or construction within Town rights of way, or if Staff and the Developer cannot so agree then this deadline shall be established by the Town Council at a public meeting. Additionally, the Developer shall complete construction of, and the Town shall approve and accept, all Public Improvements prior to and as a condition of the issuance of a final Certificate of Occupancy by the Town for the SPUD Development Project.

C. **APPROVAL AND ACCEPTANCE OF PUBLIC IMPROVEMENTS.**

- a. *Request for Final Inspection.* Upon completion of all of the Public Improvements, the Developer shall notify the Town Manager in writing and request inspection of the Public Improvements by the Town. The Town Engineer shall inspect all such Public Improvements within thirty (30) days after the date of Developer's request and notify the Developer in writing and with specificity of their conformity or lack thereof to the Plans and Specifications. If any such Public Improvements are not acceptable, the Town Engineer shall also outline corrective measures. The Developer, at its expense, shall make all corrections necessary to bring the Public Improvements into conformity with the Plans and Specifications and, upon completion thereof, shall request a re-inspection of the Public Improvements. The Town Engineer shall not be required to make inspections during any period when climatic conditions make thorough inspections impractical.

- b. *Engineering Acceptance.* The Developer, at its expense, shall have “as-built” drawings of the Public Improvements prepared by a professional engineer and a registered land surveyor, which drawings shall include all legal descriptions the Town may require. The Developer shall also prepare a summary of the actual construction costs of all Public Improvements to be dedicated to the Town. The as-built drawings and costs summary shall be forwarded to the Town Manager for review and approval. Once the as-built drawings and costs summary are approved, and any and all corrections are completed, the Town Engineer shall promptly notify the Parties in writing that all Public Improvements are in conformity with the Plans and Specifications, and the date of such notification shall be known as the “**Engineering Acceptance Date.**” The Town shall be under no obligation to provide water and/or sewer service to the Project until any water/sewer Public Improvements are brought into conformance with the Plans and Specifications as determined by the Town Engineer.
- c. *Final Acceptance and Conveyance.* Within thirty (30) days of the Engineering Acceptance Date, the Developer shall execute a bill of sale conveying the applicable portions of the Public Improvements to the Town, free and clear of all liens and encumbrances. As a condition precedent to the Town’s acceptance of the Public Improvements, the Developer shall provide the Town with a policy of title insurance for at least \$25,000.00 to insure any property dedicated to the Town. The effective date of the bill of sale shall be known as the “**Final Acceptance Date.**”
- D. **WARRANTY.** The Developer shall warrant any and all Public Improvements conveyed to the Town pursuant to this Agreement for a period of two (2) years from the Final Acceptance Date. Specifically, but not by way of limitation, the Developer shall warrant:
 - a. Any and all improvements conveyed shall be free from any security interest or other lien or encumbrance;
 - b. Any and all improvements conveyed shall be free of any defects in materials or workmanship for a period of two (2) years as stated above; and
 - c. The title conveyed shall be good and its transfer rightful.
- E. **DAMAGE TO EXISTING FACILITIES.** The Developer, at its expense, agrees to repair any existing improvements or facilities in the Town damaged during construction of the Public Improvements.

11. **PERFORMANCE GUARANTEE.** In accordance with Section 17.4.13(L) of the Code, the total amount of required security for the Public Improvements shall be one hundred twenty-five percent (125%) of the cost estimates set forth in Exhibit N (the “**Performance Guarantee**”).

- A. **FORM OF SECURITY.** To secure the construction and installation of the Public Improvements for which the Developer is responsible, the Developer shall, prior to issuance of a building permit, provide the Town with a letter of credit or other security, in a form subject to approval by the Town Manager (which shall not be unreasonably withheld). Said letter of credit or other form of security shall be valid

for at least two (2) months longer than the deadline for completion of all Public Improvements. If the time of completion of the Public Improvements is extended, the letter of credit or other form of security shall be similarly extended.

- B. **DEVELOPER RESPONSIBLE FOR ACTUAL COSTS.** The Parties agree that the Performance Guarantee does not necessarily reflect the Town Engineer's estimate of what the actual costs to the Town would be if the Town were required to fund construction of the Public Improvements. In the event that the actual costs of the Public Improvements exceed the amount of the Performance Guarantee, the Developer shall be responsible for the actual costs. The purpose of Exhibit N is solely to determine the amount of security and shall be revised as necessary to reflect the actual costs, and the Performance Guarantee required by this Agreement shall be adjusted accordingly. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the actual costs of all Public Improvements.
- C. **DEFAULT.** The Parties expressly agree that the Developer's preparation and submission to the Town of as-built drawings and a summary of actual construction costs for the Public Improvements to be dedicated to the Town are essential requirements of this Agreement. In the event that the Developer fails to provide the as-built drawings and costs summary to the Town fifteen (15) business days prior to the expiration of the Performance Guarantee or any extension thereof, such failure shall constitute a default of this Agreement with regard to the completion of the Public Improvements, damages for which are impossible to ascertain, entitling the Town to liquidated damages in the amount of \$15,000.00.
- D. **USE OF PERFORMANCE GUARANTEE.** If the Developer fails to complete the Public Improvements, which completion shall include approval and acceptance by the Town, by the time required by this Agreement, this shall constitute a default of this Agreement by the Developer, upon which the Town may withdraw or acquire funds upon demand to partially or fully complete and/or pay for any of the Public Improvements in accordance with this Section.
- E. **RELEASE OF PERFORMANCE GUARANTEE.** Upon acceptance of all Public Improvements by the Town, but no earlier than the Final Acceptance Date, the Town shall release the Performance Guarantee and shall assume normal maintenance responsibilities for the Public Improvements. A portion of the Performance Guarantee may be released as specific improvements are completed; provided, however, that no such partial or final release shall be granted until the Public Improvements guaranteed have been inspected and accepted by the Town, as evidenced by a written correspondence confirming completion.
- F. **REDUCTION IN SECURITY NOT APPROVAL OF PUBLIC IMPROVEMENTS.** Neither approval of any reduction to the approved form of security nor any other reduction in security shall be construed as the approval or acceptance of any of the Public Improvements, which approval and acceptance shall only occur pursuant to Section 10(C) above.

12. **CIVIC WAYFINDING SIGNAGE IN PUBLIC AREAS.** Prior to issuance of a final Certificate of Occupancy, the Developer must submit to and receive approval from Town Staff regarding

signage for civic wayfinding through the Village Center pedestrian plazas, in accordance with the map attached to the SPUD Approval Ordinance as Exhibit F. Such signage shall be owned and paid for by the Developer but approved by the Town for consistency with the rest of the wayfinding signage throughout the Town.

13. **ONSITE IMPROVEMENTS.** Pursuant to Section 17.3.4(H) of the Code, the Developer, at its expense, shall construct onsite improvements, including but not limited to pavers, landscaping, walkways, rails and stairs (as applicable), and snowmelt for all areas designated for public access, and be responsible for continued maintenance thereof. The Developer's maintenance responsibilities for such onsite improvements shall also be outlined in the governing documents of the owners' association, which governing documents shall be subject to review and approval by the Town Attorney, which approval shall not be unreasonably withheld, as well as a "**Sidewalk Maintenance Agreement**" with the Town, which may be approved and executed by the Town Manager.

14. **TRASH MANAGEMENT SYSTEM.** When trash removal trucks and related equipment must cross over Mountain Village Boulevard arising from or related to the Developer's Trash Facility at the SPUD Development Project, the Developer shall implement a trash management system, which shall be submitted to and approved by Town Staff prior to Building Permit issuance and, at a minimum, include the provision of flaggers and safety lights stationed at appropriate points along such trucks' route to and from the SPUD Development Project.

15. **TAP FEES.** Tap fees for the SPUD Development Project will be assessed by Town Staff and paid for by the Developer prior to issuance of a Building Permit.

16. **UTILITIES.** The Parties hereto agree that the Town shall not be responsible for utility costs associated with the snowmelt Public Plazas or MVB Sidewalk, Town Parking Spaces, or Storage Facility (defined in Exhibit E) prior to conveyance to the Town by the Developer. The Town will be responsible for utility costs associated with the dedicated Public Bathrooms if they are separately metered.

17. **EASEMENTS AND DEDICATIONS.** Prior to issuance of a final Certificate of Occupancy by the Town for the SPUD Development Project, the Developer shall cause documents of conveyance for all easements and/or dedications, if any, to be recorded in accordance with forms subject to approval by the Town Manager.

18. **CONDITIONS OF BUILDING PERMIT.** In addition to all requirements of the Code, the Town's Building Regulations, and any requirements imposed by operation of State, Federal, or local law, no Building Permit shall be issued for the SPUD Development Project until:

- a. The SPUD Property Replat and this Agreement have been approved by Town Staff and the Town Manager, signed by all required Parties, and recorded with the office of the San Miguel County Clerk and Recorder.
- b. Exhibit N outlining the Performance Guarantee has been completed and executed by the Parties after final plans and specifications and cost estimates are complete.
- c. The Performance Guarantee has been provided to the Town.
- d. Final housing mitigation based upon construction drawings has been verified by Town Staff for compliance with CDC requirements.
- e. Contribution to the Pond Area Improvements to the Town per Exhibit E.
- f. Payment to the Housing Fund and/or contribution of land to the Town per Exhibit E.
- g. The Developer has submitted to Town Staff written confirmation of the commitment by the Four Seasons or an equivalent five-star luxury brand hotel operator.

- h. The Developer's Class 3 Application, Sign Plan has been submitted to the Town.
- i. The Developer's trash management system has been approved by Town Staff.
- j. The Developer has paid all tap fees.
- k. All complete construction plans, drawings, estimates, and all other plans required under the Code or this Agreement, including but not limited to final construction mitigation plans, revised landscape plans with final irrigation calculations, recirculation and revegetation plans for the Gorrone Creek Riparian Corridor, and Mountain Village Boulevard sidewalk lighting plans, have been approved by Town Staff.
- l. All conditions of the SPUD Approval Ordinance have been addressed and resolved, as applicable, to the satisfaction of Town Staff.
- m. All conditions of the Subdivision Approval Resolution have been addressed and resolved, as applicable, to the satisfaction of Town Staff.
- n. The Developer has paid all then-outstanding invoices from the Town.

19. CONDITIONS OF CERTIFICATE OF OCCUPANCY. In addition to all requirements of the Code, the Town's Building Regulations, and any requirements imposed by operation of State, Federal, or local law, no Certificate of Occupancy shall be issued for the SPUD Development Project until:

- a. The Town Engineer has determined that the SPUD Development Project has adequate access and that any water and sewer utility improvements have been completed and accepted by the Town.
- b. If applicable, execution and recordation of public access easement agreements or deeds for the Public Plaza, Wetlands Walking Trail, and Ridge Trail Connection.
- c. Completion of Trash Facility and Vehicular Delivery Space per Exhibit E.
- d. Review and approval of the Developer's owners' association governing documents.
- e. Execution of the Association Waiver per Exhibit E.
- f. The Developer's Class 3 Application, Sign Plan has been approved by the Town.
- g. Installation of civic wayfinding signage for public access areas per Section 12.
- h. Submission of a monumented land survey prepared by a Colorado public land surveyor establishing the maximum building height and maximum average building height for all buildings on the SPUD Property.
- i. The Town's acceptance of all Public Improvements.
- j. All conditions of the SPUD Approval Ordinance have been resolved to the satisfaction of Town Staff.
- k. All conditions of the Subdivision Approval Resolution have been resolved to the satisfaction of Town Staff.
- l. The Developer has paid all then-outstanding invoices from the Town.

20. CONDITIONS OF RECORDATION OF CONDOMINIUM PLAT. The following items shall be addressed as part of the application for approval of a condominium plat to define the unit boundaries of units within the SPUD Development Project that may be conveyed to third party purchasers and shall be completed contemporaneously with the recordation of the condominium plat:

- a. Conveyance of Public Bathroom per Exhibit E.
- b. Conveyance of Storage Facility per Exhibit E.
- c. Conveyance of Town Parking Spaces per Exhibit E.
- d. The Employee Housing Deed Restriction and Hotel Residence Deed Restriction have been executed and recorded in the office of the San Miguel County Clerk and Recorder.
- e. All easement and/or dedication conveyance documents have been executed and recorded with the office of the San Miguel Clerk and Recorder.

- f. The Developer has paid all then-outstanding invoices from the Town.

21. **VESTED RIGHTS**

A. **INTENT.** Development of the SPUD Property in accordance with the terms and conditions of this Agreement will provide for orderly and well planned growth, promote economic development and stability within the Town, ensure reasonable certainty, stability and fairness in the land use planning process, secure the reasonable investment-backed expectations of the Developer, foster cooperation between the public and private sectors in the area of land use planning, and otherwise achieve the goals and purposes of the Vested Property Rights Statute, C.R.S. § 24-68-101, et seq., (“**Vested Rights Statute**”), the CDC. In exchange for these benefits and the other benefits to the Town contemplated by this Agreement, together with the Community Benefits served by the orderly and well-planned development of the SPUD Property, the Developer desires to receive the assurance that development of the SPUD Property may proceed pursuant to the terms and conditions of this Agreement.

B. **SITE SPECIFIC DEVELOPMENT PLAN.** The SPUD Approval Ordinance, the Final SPUD Plans, the Subdivision Approval Resolution, the SPUD Property Replat and this Agreement constitute a “site specific development plan”, pursuant to the “Vested Rights Statute” and CDC Sections 17.4.12(D)(1)(g), 17.4.12(J) and 17.4.17.

C. **VESTED REAL PROPERTY RIGHT.** Accordingly, this final approval of a site specific development plan has created for Developer’s benefit a “vested real property right” as defined by C.R.S. Section 24-68-101 et seq., and this Agreement shall be considered a “Development Agreement” as that term is used in C.R.S. Section 24-68-104, provided, however, Developer acknowledges that the Town does not represent, warrant or guarantee that the duration of this site specific development plan will be extended beyond three (3) years by the Town.

D. **REQUIRED PLAN NOTATION.** Pursuant to CDC Section 17.4.17, the Parties set forth the following required plan notation:

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

E. **DURATION.** For purposes of this Agreement, the above-referenced vested property rights shall remain vested for the Approval Period (as may be extended) as set forth in the SPUD Approval Ordinance. Termination of the vesting period shall not affect any common-law vested rights obtained prior to such termination, or any right, whether characterized as vested or otherwise, arising from this Agreement, the Final SPUD Plans, the SPUD Property Replat, or from Town permits, approvals or other entitlements for the SPUD Property which were granted or approved prior to, subsequent to, concurrently, or in conjunction with the approval of this Agreement.

F. **PUBLICATION.** A notation of such vested real property right shall be made on the Final PUD Plans. The Town shall promptly cause to be published, at Developer’s expense, a notice of such vested rights in the *Telluride Daily Planet*.

G. **RELIANCE.** The Developer has relied upon the creation of such vested real property right in entering into this Agreement. The Parties acknowledge that the Developer shall not have an affirmative duty to commence construction of this site-specific development plan.

H. **FUTURE LEGISLATION.** Except as the Vested Rights Statute expressly provides otherwise, no initiated or referred zoning, subdivision, land use or other legal or administrative action which would directly or indirectly have the effect of adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise adversely affecting any of the Developer's rights set forth in this Development Agreement shall apply to or be effective against the Property. Thus, during the period in which the vested real property right shall remain vested, the Town shall not impose by legislation or otherwise cause or permit any initiated or referred zoning, land use requirement or obligations, or Town charter amendment upon Developer or their successors or assigns which would alter, impair, prevent, diminish, impose a moratorium on development, delay, or otherwise adversely affect any of Developer's rights to development or use of the SPUD Property as set forth in the Final SPUD Plans, except:

- a. With the consent of the Developer; or
- b. 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;
- c. To the extent that compensation is paid, as provided in Title 24, Article 68, CR

The establishment of such vested real property right shall not preclude the application on a uniform and non-discriminatory basis of Town ordinances or regulations which are general in nature, related to health, safety and welfare and applicable to all property subject to land use regulation by the Town, including, but not limited to, fee assessments and building, fire, plumbing, electrical, mechanical, water and sewer codes and ordinances. Developer does not waive its right to oppose the enactment or amendment of any such regulations.

22. REMEDIES FOR BREACH OR DEFAULT.

A. In the event of any default by the Developer of any term, condition, covenant, or obligation under this Agreement, the Town Council shall be notified immediately. The Town may take such action as it deems necessary to protect the public health, safety, and welfare and to protect the citizens of the Town from hardship. The Town's remedies include any one or more of the following:

- (1) Refusing to issue to the Developer any Building Permit or Certificate of Occupancy; provided, however, that this remedy shall not be available to the Town until after the affidavit described below has been recorded;
- (2) Recording with the San Miguel County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Manager or designee, stating that the terms and conditions of this Agreement have been breached by the Developer. At the next regularly scheduled Town Council meeting, the Town Council shall either ratify the recordation of said affidavit or direct the Town Manager to record an affidavit stating that the default has been cured. Upon the recording of such an affidavit, no further development may occur on the SPUD Property until the default has been cured. An affidavit signed by the Town Manager

or designee and approved by Town Council stating that the default has been cured shall remove the restriction on further development;

- (3) A demand that the Performance Guarantee be paid or honored;
- (4) The refusal to consider further development plans on the SPUD Property; and/or
- (5) Any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town or its residents, the Town shall provide the Developer with twenty-one (21) days' written notice of its intent to take any action under this Section 22 during which period the Developer may cure the default described in said notice and prevent any further action by the Town. Furthermore, unless an affidavit as described above has been recorded with the San Miguel County Clerk and Recorder, any person dealing with the Developer shall be entitled to assume that no default by the Developer has occurred hereunder unless a notice of default has been served upon the Developer as described above, in which event the Developer shall be expressly responsible for informing any such third party of the claimed default by the Town.

23. INDEMNITY. Except as otherwise set forth herein, the Developer shall defend and hold the Town harmless from and against any and all claims, demands, liabilities, actions, costs, damages, and reasonable attorney's fees that may arise out of or result directly or indirectly from the development of Lot 161C-RR and all other approvals pursuant to the SPUD Approval Ordinance and Subdivision Approval Resolution, including but not limited to any claims regarding insufficient notice of any public meeting or hearing concerning the Applications, the Developer's failure to comply with the terms and conditions of this Agreement, the Developer's design or construction of the Public Improvements, or the Developer's failure to construct or complete same; provided, however such indemnification shall not apply to loss, damage, or claims attributable to the negligent acts or omissions of the Town or its agents, employees, or contractors. The Parties hereto intend not to duplicate any legal services or other costs associated with the defense of any claims against either party described in this section. The Parties agree to fully cooperate and minimize expenses incurred as a result of the indemnification described herein. In the event of any claim asserted against the Town by a third party, the Developer's indemnity obligations to the Town with respect to such third party claims shall be limited to claims arising out of matters under the Developer's control and not to procedural interpretations or similar exercise of discretion of the Town or its staff or consultants. In the event that the Town and Developer cannot agree on an equitable scope of indemnity or apportionment of fees and expenses incurred by the Town in defense of any third party claim, then such dispute shall be resolved by binding arbitration. In no event shall the Town be liable to reimburse Developer for any attorney fees or costs incurred by Developer in defense of any third party claims.

24. ATTORNEY AND CONSULTANT FEES; VENUE. In the event of any action, proceeding or litigation between the Town and the Applicant concerning this Agreement, the prevailing party shall be entitled to collect its reasonable legal fees and costs, including the reasonable value of salaried attorney's time. Regardless of the prevailing party in any such dispute, the Developer shall reimburse the Town for any fees and costs incurred by the Town in relation to the review and approval of the SPUD Application and Subdivision Application, including but not limited to fees and costs for legal, engineering, and surveying services by outside consultants. Any state court litigation to enforce the terms of this Agreement shall be commenced in San Miguel County, Colorado and venue shall be restricted to such county.

25. BINDING EFFECT. This Agreement shall extend to and inure to the benefit of and be binding upon the Town and, except as otherwise provided herein, upon the Developer, its successors and

assigns (including subsequent owners of the SPUD Property, or any part thereof). Owners of the Efficiency Lodge, Lodge and Employee Apartments permitted under the SPUD Approval Resolution shall be bound by those provisions of this Agreement which specifically apply only to those units. This Agreement shall constitute an agreement running with the SPUD Property until modification or release by mutual agreement of the Town and the Developer or their successors and assigns. Upon the conveyance of the SPUD Property by Developer to a different entity or person, and provided that the Developer is not in default hereunder at the time of conveyance, then upon the conveyance of the SPUD Property the Developer shall have no liability under this Agreement for any act or omission occurring after the date of such conveyance; provided, that the third-party transferee shall assume all liability for any act or omission arising under this Agreement.

26. **VOLUNTARY AGREEMENT.** Notwithstanding any provision of the Code, this Agreement is the voluntary and contractual agreement of the Developer and the Town. The Developer agrees that all terms and conditions of this Agreement, including specifically the payment of all fees, and the completion and satisfaction of all terms and conditions of the SPUD Approval Ordinance and Subdivision Approval Resolution are agreed to and constitute the voluntary actions of the Developer.

27. **AUTHORIZATION.** The Parties hereto warrant they are fully authorized to execute this Agreement and have taken all actions necessary to obtain such authorization.

28. **WAIVER.** No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

29. **GOOD FAITH OF PARTIES.** In performance of this Agreement, or in considering any requested extension of time, the Parties agree that each will act in good faith and will not unreasonably withhold, delay or condition any approval or consent required or contemplated by this Agreement.

30. **RIGHTS OF LENDERS AND INTERESTED PARTIES.** The Town is aware that financing for acquisition, development and/or construction of the SPUD Property may be provided in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders, major tenants, hotel operators or managers and purchasers or developers of portions of the SPUD Property. In the event of an Event of Default by the Developer, the Town shall provide notice of such Event of Default, at the same time notice is provided to Developer, to any such interested party previously identified in writing to the Town. If such interested Parties are permitted, under the terms of its agreement with Developer to cure the Event of Default and/or to assume Developer's position with respect to this Agreement, the Town agrees to recognize such rights of interested parties and to otherwise permit such interested parties to assume all of the rights and obligations of Developer under this Agreement.

31. **NOTICES.** All notices required hereunder shall be deemed delivered to the parties five (5) calendar days after posting the same postage prepaid by certified mail, return receipt requested, and addressed as follows:

To the Town:
Town of Mountain Village
Attn: Town Manager
455 Mountain Village Blvd., Suite A
Mountain Village, CO 81435
pwisor@mtnvillage.org

To the Developer:

32. **SEVERABILITY.** If any term or provision or Article of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the applications or such term or provision or Article to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

33. **DEFINED TERMS.** All capitalized but undefined terms used in this Agreement shall have the meanings set forth in the CDC, the Final SPUD Approval or the Subdivision Approval.

34. **TITLES OF SECTIONS.** Any titles of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

35. **EXHIBITS AND ATTACHMENTS.** All exhibits and attachments to this Agreement shall be incorporated herein and deemed a part of this Agreement.

36. **MODIFICATIONS.** This Agreement shall not be amended, except by subsequent written agreement of the Parties; provided, however, minor revisions to this Agreement, as approved by the Town Manager, shall be permitted as necessary including finalization of any exhibits hereto. So long as such changes are consistent with the intent and understanding of the Parties at the time of approval of this Agreement by Town Council, the execution of this Agreement shall constitute the approval of such changes by the respective Parties. Notwithstanding the foregoing, this provision does not apply to modifications to the Final SPUD Approval, which shall be made in accordance with Section 2.3(e)-(f) of the SPUD Approval Ordinance.

37. **ASSIGNMENT.** This Agreement may not be assigned by the Developer without the prior written consent of the Town, which consent shall not be unreasonably withheld and shall be based, among other things, upon the financial capability of the proposed assignee to perform the terms of this Agreement. In the event the Developer desires to assign its rights and obligations herein, it shall so notify the Town in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein.

38. **NON-APPROPRIATION.** No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate the Town to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 16 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by the Town to or in aid of any person, company or corporation within the meaning of the Colorado Constitution.

39. **IMMUNITY.** Nothing herein nor in any related documents relating to the SPUD or Subdivision shall be construed as a waiver, or partial waiver, by the Town of any portion of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

[Signature page to follow]

IN WITNESS THEREOF, this Agreement is approved, covenanted, agreed to and executed by the Parties this _____ day of _____, 202__ to be effective as of _____, 202__.

TOWN OF MOUNTAIN VILLAGE

By: _____
_____, Mayor

Town Manager

Director of Community Development

ATTEST:

_____, Town Clerk

DEVELOPER:

By: _____
Name:
Title:

State of _____)
) ss.
County of _____)

Subscribed, sworn to and acknowledged before me by _____ the _____ of _____
_____ on this ____ day of _____, 202__.

Witness my hand and seal.
My commission expires:

Notary Public