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

TO: Town of Mountain Village Town Council

FROM: Michelle Haynes, Assistant Town Manager and Amy Ward, Community Development Director

FOR: June 15, 2023

DATE: June 3, 2023

RE: 1. Consider Action on a Major Subdivision application to replat portions of OS-3BR-2 into Lot 109R and a portion of Lot 109R into OS-3BR-2, along with a small right of way dedication to the Mountain Village Boulevard, resulting in a net decrease to OS-3BR-2, Village Center active open space of 420 square feet, increase of Lot 109R of 339 square feet and 81 square feet dedicated to Mountain Village Boulevard, Active Open Space right of way that consists of an existing portion of the bridge – ***continued from January 19, to March 16, 2023 to June 15, 2023***

2. Consider Action on a rezone of portions of tract OS-3BR-2 to Lot 109R site specific PUD, and portions of Lot 109R2 to Active Open Space, Village Center, and a small tract from Lot 109R to Mountain Village Boulevard, Active Open Space Right of Way consistent with the proposed major subdivision plat.

PROJECT OVERVIEW

The applicant requests a fourth major PUD amendment to the 109R Planned Unit Development (PUD) Six Senses Operator, property, formerly known as the Mountain Village Hotel PUD. This PUD was first approved in 2010, but subsequently received three PUD amendments to extend the approval to September 8, 2023. In order to bring the fourth Major PUD amendment to a first reading of an ordinance by Town Council the DRB provided a recommendation on the major subdivision, the associated rezoning of the associated major subdivision application of portions of 109R to Village Center active open space, and portions of Village Center active open space to 109R, along with a small portion of 109R to Active Open Space Right of Way and the final design review.

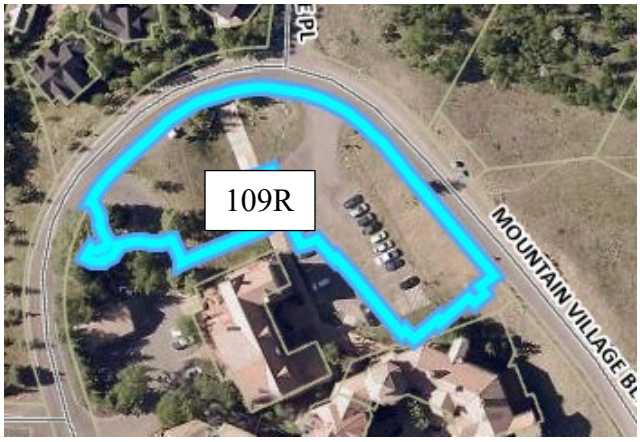
Legal Description: Lot 109R, Town of Mountain Village according to the Plat recorded on March 18, 2011 in Plat Book 1 at Page 4455, Reception No. 416994, County of San Miguel, State of Colorado
Lot OS-3BR-2, a tract of land lying in the se quarter of section 34 t43n r9w nmpm san miguel county colorado described as follows tract os 3br2 town of mountain village pl bk 1 pg 4455 recpt 416994 march 18 2011 cont 1.969 acres mol

Address: TBD
Owner/Applicant: Tiara Telluride, LLC
Agent: Ankur Patel & Matt Shear, Vault Home Collection
Zoning: Planned Unit Development within the Village Center, Village Center Active Open Space
Proposed Zoning: Planned Unit Development (PUD) & Active Open Space (Village Center), and Active Open Space Right of Way
Existing Use: Vacant, used for temporary surface parking, pedestrian access from See Forever to the Village Center & Village Center trash collection leased to Bruin Waste.

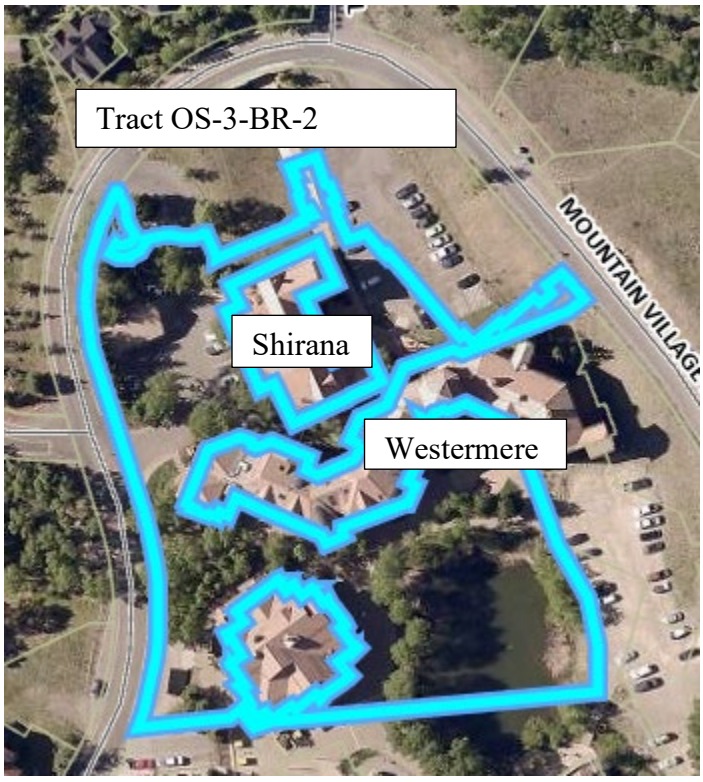
Table 1. 109R Original Density 109R Proposed Density

Zoning Designations	Original 109R Density	Proposed 109R Density[1]
Efficiency Lodge	66	50
Lodge	38	31
Condominiums	20	20
Employee Apartments	1	2
Employee Dormitory	0	18
Commercial Space	20,164 square feet	22,609 square feet

[1] Subject to final town council approval



Site Area: .825 acres proposed to change to .833 acres for Lot 109R.



Adjacent Land Uses:

- **North:** See Forever, Village Center
- **South:** Village Center, mixed use
- **East:** Multi-Family and Single Family, vacant
- **West:** Peaks, Village Center

RECORD DOCUMENTS

- Town of Mountain Village Community Development Code (as amended)
- Town of Mountain Village Home Rule Charter (as amended)

ATTACHMENTS

1. Applicants Narrative and Exhibits dated 5.2.23
2. Approval Subdivision Resolution- *to be provided at the continued hearing date*
3. Denial Subdivision Resolution
4. Approval Rezone Ordinance
5. Denial Rezone Resolution
6. SGM Referral Comments dated 5.26.23 – see PUD Amendment packet materials

109R MOUNTAIN VILLAGE HOTEL PLANNED UNIT DEVELOPMENT HISTORY

- Lot 109R PUD was approved in 2010 by Resolution 2010-12088-31 which included a replat inclusive of Village Center open space.
- 1st amended PUD agreement via a Major PUD amendment process extended the approval to expire on December 8, 2015, approved by ordinance.
- 2nd amended PUD agreement via a Major PUD amendment process extended the approval to expire on December 8, 2022, approved by ordinance.
- 3rd amended PUD agreement via a Major PUD amendment process extended the approval to expire on September 8, 2023, approved by ordinance.[1]

Table 2. Break Down of land to be added to OS-3BR-2 and to 109R from OS-BR-2

Existing Lot/Tract Name	Current Zoning	Current Size (sq.ft.)
Lot 109R	PUD	35980
Tract OS-3BR-2R-1	AOS Village Center	83004

Table 3. Approximate Before and After Lot Areas

Proposed Lot/Tract Name	Proposed Zoning	Proposed Size (sq.ft.)	Net Change (sq.ft.)
Lot 109R2	PUD	36319	339 INCREASE
Tract OS-3BR-2R-1R	AOS Village Center	82584	420 DECREASE
ROW Tract	AOS Right of Way	81	81 INCREASE

OVERVIEW

On June 16, 2022 the Town Council provided consent to the major subdivision application specifically for it to include town owned portions of OS-3BR-2 for the purposes of the replat. At that time the applicants represented that OS-3BR-2 would increase overall by 360 square feet and that Lot 109R would decrease by 360 square feet. Town Council agreed to the replat application with the following conditions:

> *(1) [the consent] does not guarantee approval of the application.*
> *(2) the developer of Lot 109R, and not the Town, shall be responsible for all costs related to the subdivision application.*

The subdivision application as submitted shows both affected properties within the plat and reflects the square footage and configuration changes to both. As shown in table 3 above, there is a net decrease to OS-3BR-2R-1 of 420 square feet and an increase to Mountain Village Boulevard of 81 square feet and net increase to 109R2 by 339 square feet. The original plat proposal indicated an increase to town property and a decrease to lot 109R2.

In the applicant's narrative they indicate there is a net positive amount of land the town is receiving. The amount of land the town is receiving is the same as that which the applicant is receiving at approximately 420 square feet in total.

The applicants agreed to purchase a portion of town land approximately 551 square feet which consisted of an area otherwise previously depicted to by used by easement as a garage venting area. The applicants have agreed to purchase this land at approximately $194 a square foot for

[1] This approval is currently being challenged in court. *Scythian Ltd, et al. v. Town of Mountain Village, et al.*, San Miguel County District Court Case No. 2021CV31180. Until and unless the Court issues an order to the contrary, the extension remains effective.

a total of $106,894 for the additional acquisition of this portion of town owned land replat into 109R2.

REQUESTED ENCROACHMENTS

A summary of the resulting land area is described above. The applicant also intends to use portions of OS-3BR-2R-1 near the town trash shed and Shirana for the following uses:

1. vehicular and pedestrian access (valet and back of house uses)
2. relocation of the Shirana SMPA transformer out of the proposed fire lane (see drawings)

and to the northeast on OS-3BR-2:

1. access stairs to and from the building from Mountain Village Boulevard

The applicants also request placement of SMPA transformers on OS 3J, owned by the Town of Mountain Village, adjacent to See Forever.

Additionally, the applicant is proposing to extend areas of the garage sub-grade below town owned portions of OS-3BR-2R-1 to allow for:

1. Sub-grade parking
2. additional back of house/mechanical room

These uses are allowed, with Town Council approval and associated easement and use agreements.

Additional modifications to existing easements are noted and listed below and will be modified with the overall PUD approval.

EASEMENTS

There are a number of associated easements on the property that need to be terminated, modified or executed with the proposed new development plan that is being processed as a fourth PUD amendment and would be reflected on the final replat, or amended plat as necessary. Here is the list of existing easements on the property:

1. **Pedestrian** Access Easement Agreement between 109R and John E. and Alice L. Butler Trust at reception no. 397446.
2. Non-exclusive **pedestrian** access easement by the Telluride Company at reception No 416994 and 416997
3. Terms, conditions, provisions, agreements, easements and obligations contained in the License Agreement **(Utilities)** recorded March 18, 2011 at Reception No. 416999.
4. Terms, conditions, provisions, agreements, easements and obligations contained in the Easement Agreement (**Plaza Usage)** recorded March 18, 2011 at Reception No. 417000.
5. Terms, conditions, provisions, agreements, easements and obligations contained in the Easement Agreement (**Permanent Structures**) recorded March 18, 2011 at Reception No. 417001.
6. Terms, conditions, provisions, agreements, easements and obligations contained in the Easement Agreement (**Vehicular Access**) recorded March 18, 2011 at Reception No. 417002.
7. Terms, conditions, provisions, agreements, easements and obligations contained in the Easement Agreement (**Mountain Village Boulevard Work**) recorded March 18, 2011 at Reception No. 417003.
8. Terms, conditions, provisions, agreements, easements and obligations contained in the Easement Agreement (**Utilities**) recorded March 18, 2011 at Reception No. 417004.

The prior approval indicated that the See Forever pedestrian and maintenance access easement would be executed with the condominium documents. As a condition of approval staff recommends this See Forever pedestrian and access easement be shown on the plat prior to recordation.

The Town has identified that the following easements would need to be amended or executed:

- See Forever pedestrian and maintenance access – benefitting the town
- Plaza Use - benefits 109R on town property
- Building Maintenance – benefits 109R on town property
- Access Easement – vehicular, pedestrian and back of house
- Snowmelt use, billing and maintenance for plaza areas as well as the sidewalk
- Construction Staging – temporary use, layback or temporary/permanent shoring
- Permanent Utilities on OS-3BR-2 if approved by Council
- Permanent Utilities on OS-3J if approved by Council
- Sub-grade permanent use for parking, back of house/mechanical room on town owned property
- Underground stormwater and sewer currently bisecting the property

There are two additional above grade utility support locations that are identified on their civil drawings. One location is within a general easement on Lot 89-1BCDR, for an electrical switch station. The other location is on private property, Access Tract 89B, and a gas substation.

PUBLIC IMPROVEMENTS AND A PUBLIC IMPROVEMENTS AGREEMENT

The major subdivision and associated requirements and conditions will be integrated into the overall PUD amendment inclusive of public improvements and a public improvements agreement. The applicants have provided a public improvements spreadsheet consistent with the major subdivision requirements and public improvements identified through the process. Public improvements attributed to the major subdivision request include the following items shown in table 4.

Table 4. Public Improvements Associated with the Major Subdivision

Item	Value
Snowmelted Sidewalk and lighting	$612,030
Utility relocations/installations as approved by Town Council	$2,500,000
Repaving Mountain Village Boulevard, replacing top course of asphalt over 2,309 square yards	$79,213
TOTAL	**$3,191,243**[2]

REFERRAL COMMENT ISSUE OVERVIEW

- The fire department indicated that no new fire hydrants are needed associated with the subdivision, that five fire hydrants are available currently and meeting requirements**.**
- Public works noted safety lighting may be required associated with the new snowmelted sidewalk along Mountain Village Boulevard. The town will collaborate as to the lighting specifications whether street-lights or bollards prior to issuance of a building permit.

[2] The applicant's engineer will need to certify the estimated construction costs, including a contingency, to determine the appropriate security to be posted by the developer prior to building permit. The number here may change.

- If utilities are relocated onto town property, repaving and restoring those areas will be a requirement and associated with the public improvements agreement.
- Better address how sewer and stormwater is sized, routed and accessed through the garage See SGM engineering comments at exhibit x.
- See attachment x for SGM's full referral comments.

SUBDIVISION PURPOSE AND INTENT found at CDC Section 17.4.13

A. *Purpose and Intent.* The purpose and intent of the Subdivision Regulations is to:

1. Provide for the orderly, integrated and efficient development of the Town;
2. Provide safe, adequate and efficient pedestrian and vehicular traffic systems and circulations;

A traffic study has been provided to address back of house; however, did not adequately address the porte cochere area.

3. Ensure the provision of adequate and efficient water, sewer and fire fighting infrastructure;

Engineering and access of the drainage system inclusive of stormwater has not been provided and can be conditioned prior to building permit if deemed appropriate by Town Council.

4. Avoid land with geologic hazards, such as flooding, debris flows, soil creep, mud flows, avalanche and rockfall;

Temporary dewatering is allowed with the requisite state permit during construction; however, permanent dewatering is prohibited.

5. Encourage the well-planned subdivision of land by establishing standards for the design of a subdivision;
6. Improve land records and survey monuments by establishing standards for surveys and plats;
7. Coordinate the construction of public facilities with the need for public facilities;
8. Provide and ensure the maintenance of open space and parks;
9. Provide procedures so that development encourages the preservation of ridgelines, steep slopes, perennial streams, intermittent streams and wetlands or similar geologic features;
10. Promote the health, safety and general welfare of the residents of the Town;
11. Promote and implement the Comprehensive Plan;
12. Promote more efficient use of land, public facilities and governmental services; and
13. Encourage integrated planning in order to achieve the above purposes.

With the exception of the items noted above, staff feels the remaining purposes and intent have been conditionally met.

SUBDIVISION CRITERIA FOR DECISION 17.4.13.E.

1. *Major Subdivisions.* The following criteria shall be met for the review authority to approve a major subdivision:

a. The proposed subdivision is in general conformance with the goals, policies and provisions of the Comprehensive Plan;

This property has been identified as a mixed-use hotel property and PUD since 2010. There are no site-specific principles, policies or actions associated with Lot 109R. The PUD amendment should otherwise be consistent with the existing approved PUD uses.

b. The proposed subdivision is consistent with the applicable Zoning and Land Use Regulations and any PUD development agreement regulating development of the property;

This is being met, consistent with the submitted CDC applications.

c. 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;

This is being processes consistent with the PUD amendment application in process.

d. The proposed subdivision is consistent with the applicable Subdivision Regulations;

This is being met, the issues to be addressed by Council are uses on town owned property like access, circulation and utilities.

e. Adequate public facilities and services are available to serve the intended land uses;

The applicant has relocated a number of necessary utilities to be located in the immediate vicinity and less concentrated on town property.

f. 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;

A geotechnical report has been provided; however staff has concern and is affirmatively stating by way of this record, that permanent dewatering is prohibited.

g. 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

This is under review with the major PUD amendment application and the applicants have requesting two curb cuts noted within the design review application. The entrance to the garage is required to be at 5% per the CDC however, neither garage entrance meets this standard and both exceed this standard. Public parking is shown at 9.8% and the hotel parking garage is shown at 6%. Ramp slopes and cross slopes are also missing. Staff has addressed this in the PUD application which would either need to be brought into compliance or approved as a design variation by Town Council.

h. The proposed subdivision meets all applicable Town regulations and standards.

Except for those otherwise varied by the PUD amendment application.

SUBDIVISION DESIGN STANDARDS AND GENERAL STANDARDS 17.4.13.F.

Staff will make notes in bold highlight.

1. *Lot Standards.*

a. *Minimum Frontage.* Each lot shall provide frontage onto a Town right-of-way, access tract or other public easement. The minimum frontage shall be fifty (50) feet to the extent practical.

i. Village Center lots are exempt from this requirement. – **this is being met.**

ii. Condominium maps, townhouse plats and amendments to such maps or plats are exempt from this requirement. **n/a**

b. *General Vehicular and Utility Access.* Each lot shall have access that is sufficient to afford a reasonable means of ingress and egress for utilities and emergency vehicles as well as for all traffic requiring access to the property and its intended use. Such access shall be provided either by a public or private street or by driveway, as applicable, meeting the requirements of the Town road and driveway standards contained in and the applicable requirements of the Subdivision Regulations.

The applicants were required to integrate a circulation analysis as it related to use and access from Mountain Village Boulevard for back of house and valet uses on town owned OS-3BR-2. The fire lane width and grade was deemed acceptable by the fire marshal.

i. *Driveway Allowed.* **n/a**

ii. *Public or Private Street Required.* A public or private street meeting the requirements of the CDC shall be provided for all subdivisions that do not meet the criteria in section i above. **n/a**

c. *Minimum Lot Size.* Every subdivision shall provide for lot sizes that are in general conformance with either the surrounding lot sizes for related land uses, or the lot sizes envisioned in the Comprehensive Plan. Each lot shall contain sufficient land area to be buildable given the intended use and the requirements of the CDC. **This requirement is being met**

d. *Solar Access.* To the extent practical, all lots in a subdivision shall be designed to have solar access. **This is being reviewed with design review.**

e. *General Easement.* Each lot shall provide for a sixteen (16) foot, general easement that is consistent with the general easement requirements set forth in the Zoning and Land Use Regulations. **Not applicable to a footprint lot in the Village Center.**

f. *Design of Lots.* The lengths, widths and shapes of lots shall be designed with the following considerations:

i. Development patterns envisioned in the Comprehensive Plan;

ii. Limitations and opportunities of topography;

iii. Convenient and safe access and circulation, including public, emergency, construction, maintenance and service access;

iv. Provision of adequate building area on each lot that meets the requirements of the Subdivision Regulations and the CDC; and

v. Availability of utility service and utility system design and capacity.

2. *Environmental Standards.*

a. *Protection of Distinctive Natural Features.* To the extent practical, subdivisions shall be designed to protect and preserve distinctive natural features, such as ridgelines, steep slopes, perennial streams, intermittent streams and wetland areas. Such areas shall be left in their natural state and protected by either the use of disturbance envelopes, the establishment of open space lots where development is prohibited or some other protective measures acceptable to the review authority.

b. *Designing Subdivisions to Fit the Topography of the Land.* To the extent practical, subdivisions shall be designed so that the layout of lots, the placement of building envelopes, the alignment of roads, trails, driveways, walkways and all other subdivision features shall utilize a design philosophy that generally reflects the existing natural topographic contours of the property.

c. *Areas Subject to Environmental Hazard.* Lots proposed for development and access roads to such development shall avoid areas subject to avalanches, landslides, rockfalls, mudflows, unstable slopes, floodplains or other areas subject to environmental or geologic hazards unless these hazards are mitigated to the satisfaction of the review authority. All mitigation measures shall be designed by a Colorado professional engineer. To the extent identified hazards cannot be mitigated to the satisfaction of the review authority, the subdivision plat shall reflect those areas as nondevelopable.

3. *Drainage.* Subdivision drainage shall be designed and constructed in accordance with the drainage design standards.

Drainage including stormwater engineering has not been provided and needs to be demonstrated to address all issues raised by the town engineer before a building permit is issued.

G. *Fire Protection.*

1. *Water Supply and Fire Flow.* Water supply and fire flow requirements for all buildings in a subdivision shall comply with all requirements of the Fire Code. **The applicants have demonstrated this is adequate.**

2. *Hydrants.* Fire hydrants shall be provided in accordance with the Fire Code. **No new fire hydrants were identified to be provided with this subdivision.**

3. *Fuel Reduction Plans/Forest Management Plans.* Fire mitigation and forest management plans to reduce fire hazards and improve forest health may be required by the review authority for subdivisions that include forested or treed areas.

4. *Installation of Facilities.* When fire protection facilities are required by the Town to be installed by the developer, such facilities, including but not limited to all surface access roads necessary for emergency access, water supply and fire hydrants shall be installed and made

serviceable prior to and shall remain serviceable at all times during any construction within the subdivision.

H. *Street Improvements.* As a condition of approval of any subdivision, the developer shall be required to provide and/or construct the following improvements and any improvements specified in a PUD development agreement:

1. *Access Plan Required.* As part of any plat submittal, the developer shall include a preliminary road and/or driveway layout (as applicable) and shall identify approximate grades, cuts and fills. **This is provided with the final design review application.**

a. The developer shall indicate the intended means of providing access to each lot in the proposed subdivision and prepare engineered access plans for such access consistent with the Subdivision Regulations and the other applicable provisions of this CDC.

b. The extent of the easements or rights-of-way proposed to be acquired shall be sufficient to demonstrate the ability to construct an access road meeting Town road and driveway standards for the proposed subdivision.

2. *Construction of New Streets and Bridges Within the Subdivision.* The developer shall be responsible for the construction of all new public or private streets or driveways and any new bridges in accordance with the design and construction standards in the Town road and driveway standards. **n/a**

3. *Construction of New Streets and Bridges Outside of the Subdivision.* The developer shall be responsible for the construction of streets and any bridges outside the subdivision necessary to establish a connection between the subdivision and the existing street system, with the design and construction standards in accordance with Town road and driveway standards. **The applicants are making improvements to Mountain Village Boulevard that include ~~a~~ snowmelted sidewalks including a sidewalk over the existing Mountain Village Boulevard Bridge. The applicants need to demonstrate detailed construction drawings that shown the sidewalk over the bridge that may necessitate improvements to the bridge which would be born by the applicant.**

4. *Upgrading of Existing Intersections.* Where existing intersections provide access between the subdivision and the existing intersections have a level of service of D or below, as indicated by a traffic study, due to the added traffic of the new subdivision, the developer may be required by the Town to improve the intersection to achieve a level of service of C or above, as indicated by a traffic study, or to provide a proportional share of funding for such improvements as determined at the time of subdivision review. **Improvements to the access to the back of house are being provided. There are no planned upgrades to other intersections along Mountain Village Boulevard.**

5. *Pedestrian Connections.* The developer shall be responsible for all pedestrian access as required by the Subdivision Regulations, Town road and driveway standards, or the Comprehensive Plan.

This is being provided along Mountain Village Boulevard and through the property.

6. *Drainage Improvements.* The developer shall be responsible for the all improvements as required by the drainage design standards, including but not limited to street drainage, required detention or retention; all of which may include, by means of example, culverts, drainage pans,

inlets, curbs and gutters, weirs, etc. Required detention or retention systems for drainage from each lot in a subdivision can also be required for each lot in a subdivision with the required Design Review Process as a plat note, if the Town determines that there is sufficient lot area for such systems and the intended development, and if the subdivision improvements are providing proper drainage as required by these regulations. **Engineered plans need to be provided consistent with the town engineer comments prior to issuance of a building permit.**

7. *Traffic Control and Safety Devices.* The developer shall be responsible for the traffic control devices and crosswalks in conformance with the criteria contained in the Manual of Uniform Traffic Control Devices, including but not limited to signs and signals, street name signs, striping and pedestrian signage. **The town may require pedestrian crossing striping or other measures to be identified prior to a certificate of occupancy.**

8. *Other Improvements.* The developer shall be responsible for any street improvement associated with a proposed subdivision that is not otherwise set forth in this section or, when a PUD, and this CDC or the Comprehensive Plan requires additional improvements in connection with a subdivision, the developer shall comply with those requirements.

9. *Maintenance of Improvements.* The developer shall be responsible for obligations relative to the maintenance of the improvements required by this section which shall be determined during the subdivision development review process. The developer may be required to provide for private maintenance of the improvements, if the improvements within the right-of-way are not accepted for maintenance by the Town or if the Town requires the maintenance of a street that is intended to serve primarily two (2) or less lots. In the event a developer desires to construct improvements that exceed Town design requirements, the developer may be required by the Town to pay for the maintenance of such improvements.

I. *Water, Sewage Disposal and Utilities.*

1. *Evidence of Adequate Water and Sewer.* The developer shall consult with the Director of Public Works on water and sewer availability prior to submitting a subdivision application. The subdivision application shall include a statement from the Director of Public Works indicating that adequate water and sewer capacity exist to serve the intended uses, and that the developer has consulted with the Public Works Department in the design of the water and sewer system and all proposed connections.

2. *Water and Sewer System Design.* The proposed water and sewer system shall be designed in accordance with Town Water and Sewer Regulations.

3. *Other Utility Systems Design.* The developer shall submit a composite utility plan that meets the design requirements of other required utility agencies, including but not limited to Mountain Village Cable, San Miguel Power Association, Source Gas and Century Link or any successors or assigns of such entities.

a. The developer shall submit evidence that provision has been made for facility sites, easements and rights of access for electrical and natural gas utility service sufficient to ensure reliable and adequate electric or, if applicable, natural gas service for any proposed subdivision. Submission of a letter of agreement between the developer and utility serving the site shall be deemed sufficient to establish that adequate provision for electric or, if applicable, natural gas service to a proposed subdivision has been made.

4. *Utility Design Standards.* All utilities shall be located underground, including but not limited to all utility stub outs, unless located in a pedestal, transformer or other required above-grade utility structure.

a. All above ground utility stub outs shall be located within pedestals that are painted to match the natural or man-made backdrop.

b. The review authority may require that an approved above-ground utility feature be screened or buffered from surrounding area development.

c. All freestanding electric, gas or other meters needed for a common utility shall be appropriately screened or buffered from all public rights-of-way.

5. *Required Utility Improvements.* As a condition of approval of any subdivision, the developer shall be required to provide the following water, sewage disposal and utility improvements:

a. Water Systems: Construction of water system improvements required to serve the subdivision shall include the following:

i. All water mains within the boundaries of the subdivision;

ii. Water mains necessary to connect the subdivision with any existing water system intended to provide service to the subdivision;

iii. All water system improvements required by Town Water and Sewer Regulations;

iv. Pump stations needed for operation of the water system; and

v. Individual service lines stubbed to each property lot line.

b. Sewer Systems: Construction of sewage disposal system improvements shall include the following:

i. All sewer mains within the boundaries of the subdivision;

ii. Sewer mains necessary to connect the subdivision with any existing sewer system intended to provide service to the subdivision;

iii. Lift stations needed for operation of the disposal system; and

iv. Individual service lines stubbed to each property lot line.

c. Other Utilities: Construction of electric lines, gas lines, cable lines or fiber optics as required by the various utility providers.

J. *Required Dedications and Easements.*

1. *Dedication of Public and Private Streets, Sidewalks or Trails.* All streets, sidewalks and trails located within a subdivision shall be dedicated to the Town as public rights-of-way for access, utilities, snow storage, drainage and related infrastructure uses regardless of whether maintenance is to be public or private. Right-of-way dedications for public and private streets shall conform in width to the requirements of the Town road and driveway standards, including

sufficient width to include all drainage improvements, associated cut and fill slopes, intersections, curb returns, snow storage, retaining walls and other road appurtenances.

2. *Platting of Easements for Private Accessways.* Easements shall be platted for all common and shared driveways, parking areas, alleys or other common accessways. Easements for common accessways shall include, at a minimum, two (2) feet on either side of the required width of the travel surface in addition to the area determined to be necessary for snow storage, any associated cut and fill slopes and any drainage improvements.

a. Public use of private streets, driveways and other common accessways shall be allowed in those instances where there is a commercial or other public facility located on the affected lot.

3. *Utility Easements.* The developer shall grant easements to the Town and applicable utility providers in such form as shall be required by the Town and the applicable utility provider.

4. *Ski-in/Ski-Out Easements.* In the case of newly created lots that are adjacent to an existing ski run where ski-in and ski-out access is desired by the developer or envisioned by the Comprehensive Plan, the developer shall secure a ski-in/ski out easement from the current ski resort operator, which easement shall be noted on the plat of the subdivision.

K. *Maintenance of Common Areas.* The developer shall enter into a covenant running with the development, in a form acceptable to the Town Attorney that shall include provisions guaranteeing the maintenance of common areas and improvements.

With the exception of those items noted above, staff otherwise indicates that these items are being met.

ANALYSIS
If Council approves the PUD overall, then staff recommends conditional approval of the major subdivision. Payment in the amount of $106,894 along with subdivision public improvements at roughly $3.2 million dollars benefits the community by assuring use of town property is understood to have value and public improvements are necessary for safe pedestrian access in and around the property.

B. REZONING
If the boards approve the major subdivision then the newly configured land areas will be rezoned accordingly.

REZONE CRITERIA

Criteria for Decision. The following criteria shall be met for the review authority to approve a rezoning development application:

a. The proposed rezoning is in general conformance with the goals, policies and provisions of the Comprehensive Plan;

As it is a PUD amendment, there were no site-specific principles, policies and actions in the Comprehensive Plan, but has been approved for a mixed use hotel since 2011. The existing use is consistent with its intended use.

b. The proposed rezoning is consistent with the Zoning and Land Use Regulations;

Except as requested to be varied by the PUD amendment.

c. The proposed rezoning meets the Comprehensive Plan project standards (CDC 17.4.12.H);

1. Visual impacts shall be minimized and mitigated to the extent practical, while also providing the targeted density identified in each subarea plan development table. It is understood that visual impacts will occur with development.

   The proposed density is similar to the original PUD approval. The height is proposed as the same height consistent with the existing PUD development agreement.

2. Appropriate scale and mass that fits the site(s) under review shall be provided.

   The design review board approved a final design, subject to Town council approval with the final PUD, on December 1, 2022 with conditions.

3. Environmental and geotechnical impacts shall be avoided, minimized and mitigated, to the extent practical, consistent with the Comprehensive Plan, while also providing the target density identified in each subarea plan development table.

   Staff does not support permanent dewatering as part of this application and ask the applicant to demonstrate this is not necessary.

4. Site-specific issues such as, but not limited to the location of trash facilities, grease trap cleanouts, restaurant vents and access points shall be addressed to the satisfaction of the Town.

   These details are to be demonstrated prior to issuance of a building permit.

5. The skier experience shall not be adversely affected, and any ski run width reductions or grade changes shall be within industry standards.

   n/a

d. The proposed rezoning is consistent with public health, safety and welfare, as well as efficiency and economy in the use of land and its resources;

e. The proposed rezoning is justified because there is an error in the current zoning, there have been changes in conditions in the vicinity or there are specific policies in the Comprehensive Plan that contemplate the rezoning; **n/a**

f. Adequate public facilities and services are available to serve the intended land uses;

Town Council needs to weigh in on use of town property for the benefit of the proposed development below grade and above grade. Compensation is being considered for the vent area integrated into Lot 109R2.

g. The proposed rezoning shall not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion; and

This is demonstrated by the applicant through the final design review and PUD materials.

h. The proposed rezoning meets all applicable Town regulations and standards.

Yes except as otherwise requested to be varied by the PUD amendment process.

The proposed rezoning will be necessary to create uniform and distinctive zoning between the property and town OS-3BR-2 property.

DESIGN REVIEW BOARD
The Design Review Board provided a positive recommendation on the rezone on December 1, 2022.

REZONE ANALYSIS
Staff recommends if the major subdivision is recommended for approval, the associated rezoning is necessary.

MAJOR SUBDIVISION RECOMMENDED MOTION
The subdivision would be approved by a resolution. Staff recommends the subdivision resolution be heard concurrently with the second readings of the PUD Amendment and the rezone ordinance. Therefore, staff recommends continuance of the subdivision resolution to the same date.

I move to continue a Resolution the major subdivision plat regarding Lot 109R and OS-3BR-2 to be replat as Lot 109R2, OS-3BR-2R-1 and Active Open Space Right of Way to ___[insert date here]___, 2023.

Findings:

1. *The proposed major subdivision is in general conformance with the future land use map and 2011 Comprehensive Plan.*
2. *The proposed major subdivision is consistent with the criteria for review*
3. *The proposed major subdivision is consistent with the subdivision purpose and intent at 17.4.13.A.*
4. *The town will work with the county 911 emergency coordinator to appropriately address the property prior to issuance of a building permit.*

Conditions:

1. *The Town Council must separately approve the related Rezoning Application for the Properties. If the Rezoning Application is not approved within ninety (90) days after adoption of this Resolution, this Resolution shall become null and void.*
2. *All conditions of the approval as set forth in Town Council Ordinance No. 2023-__ ("**Rezoning Approval**") are conditions of this Subdivision Approval.*

3. *All Public Improvements to be dedicated to the Town, including those required as conditions of the Subdivision 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.

4. *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 over the Property or Town-owned property, and modifies existing easements as appropriate prior to recordation of the Property Replat, provided that certain easements as identified in the Development Agreement may be granted after construction based on as-built conditions but prior to a certificate of occupancy for the structures such easements are intended to benefit. 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.*

5. *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.*

6. *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.*

7. *The applicant will conform to the public improvements to the requirements of CDC Section 17.4.13.L. Public Improvements Policy and as found in the associated Development Agreement.*
8. *The fee for purchase of town land in the amount of $106,894 will be due prior to building permit issuance.*

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

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

11. *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.*

12. *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.*

13. *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.*

14. *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 Subdivision 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.*

15. *Prior to recording, the final form of the plat shall be subject to staff review and approval , including any prior adjustments associated with the 161CR replat, or changes of OS-3BR-2R parcel associated with the Four Seasons development approvals.*

16. *The developer shall add the density table associated with the PUD approval, and zoning on the face of the final plat prior to recordation consistent with the final approved PUD amendment.*

17. *Assure whether sidewalk improvements can meet ADA standards for pedestrian access prior to issuance of a building permit or minimally assure ADA access through or around the development prior to issuance of a building permit.*

18. *Construction drawings must demonstrate how the sidewalk will integrate with and over the Mountain Village Boulevard bridge. If improvements to the bridge are necessary these costs are born by the applicant.*

19. *Address all of the town engineer concerns as noted in the letter dated May 26, 2023 prior to issuance of a building permit.*

20. *The See Forever pedestrian and access easement must be depicted on the plat prior to recordation. Once constructed the dimensions can be adjusted accordingly by legal instrument to the satisfaction of the town attorney.*

21. *As part of the building permit application, the developer shall submit a utility relocation plan to relocate the existing utilities and a utilities management plan that will manage the relocation of utilities and any possible interruption of service during construction.*

22. *The Affordable Housing deed restriction shall be finalized prior to recordation of the Property Replat.*

23. *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.*

24. *If the PUD amendment is not approved, the major subdivision approval shall become null and void as the subdivision boundaries are premised upon the final design review consistent with the PUD Amendment application.*

25. *The subdivision approval is valid for 18 months.*

26. *The Developer shall reimburse the Town for all costs of outside consultants, including but not limited to legal, engineering, survey, and planning services relating to the application.*

This motion is based on the evidence and testimony provided at a public hearing held on June 15, 2023, with notice of such hearing as required by the Community Development Code.

ALTERNATIVE MOTION TO CONTINUE

If the Town Council determines to continue the application the following motion can be utilized:

I move to continue consideration of a Resolution of a major subdivision plat regarding Lot 109R and OS-3BR-2 to be replat as Lot 109R2, OS-3BR-2R-1 and Active Open Space Right of Way to [insert date specific here]:

REZONE RECOMMENDED MOTION

As the applicants integrated into one major subdivision plat adjustments to both properties, please consider the following motion to also rezone the properties consistent with the subdivision plat.

I move to approve on first reading of an ordinance, a rezone to former portions of OS-3BR-2 to Lot 109R2 site specific PUD and portions of 109R to OS-3BR-2R-1 Active Open Space Village Center and a small portion of former 109R rezone to Mountain Village Boulevard, Active Open Space Right of Way as shown on the proposed major subdivision plat and ask the clerk to set a public hearing on __[insert date here]_____ with the following findings and conditions:

Findings:

1. *The proposed rezone is in general conformance with the future land use map.*
2. *The proposed rezone and density transfer is consistent with the criteria for review.*
3. *The proposed rezone and density transfer is consistent with the rezoning purpose and intent at 17.4.9.A and the density transfer purpose and intent at 17.4.10.A.*

Conditions:

1. All conditions of approval of the Major Subdivision Application as set forth in Resolution 2023-__ ("Subdivision Approval") are incorporated as conditions of this approval.

2. The approved rezone, further described on the Replat/Rezone attached hereto as attachment 1, shall be shown on a map reflecting the new zoning and associated boundaries, to be provided with second reading of this Ordinance as required by the CDC. The precise boundaries of each zone district shall conform to the approved final plat being considered as part of the Major Subdivision Application.

3. The rezoning created hereby shall not become effective until the Effective Date of this Ordinance.

4. Town staff shall update the Town's Official Zoning Map to reflect the changes made by this Ordinance as soon as practicable after the Effective Date.

5. The Town and Developer shall enter into a Development Agreement in substantially the form set forth in the PUD amendment approval, which shall incorporate by reference all conditions of this approval and the Subdivision Approval. The Town Manager is authorized to approve the final version of the Development Agreement and, upon such approval, the Development Agreement and all related documents necessary to effectuate the intent of this Ordinance may be executed by the Town Manager, Director of Community Development, Mayor, and Town Clerk, as appropriate or necessary.

6. All representations of the Developer, whether within Rezoning or Subdivision Applications submittal materials or at the DRB or Town Council public hearings, are conditions of this approval.

7. The rezone approval is conditioned upon the major subdivision approval.

This motion is based on the evidence and testimony provided at a public hearing held on June 15, 2023, with notice of such hearing as required by the Community Development Code.

/mbh

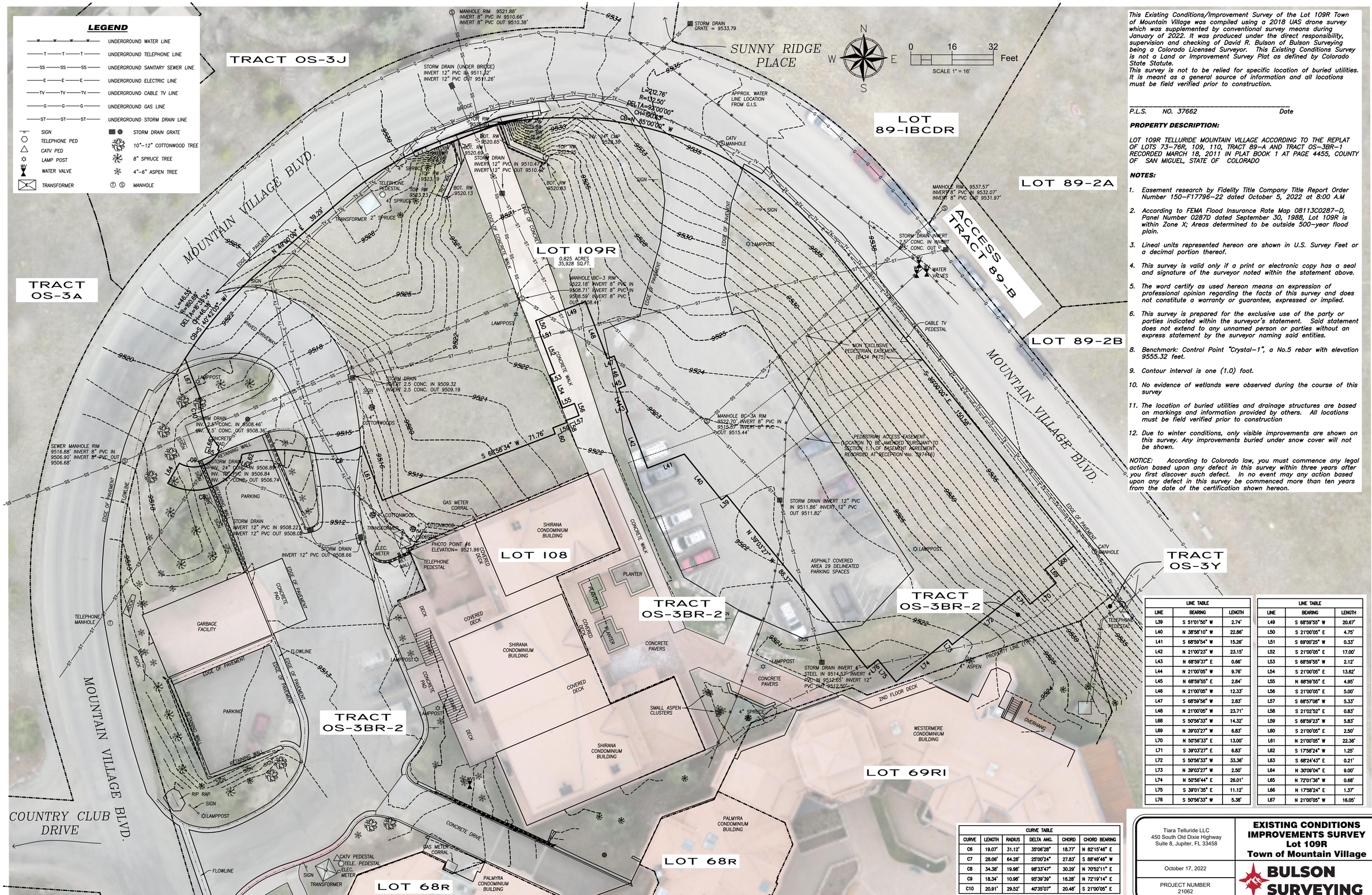
Summary report: **Litera Compare for Word 11.4.0.111 Document comparison done on 6/6/2023 9:45:50 AM**	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://cloudimanage.com/IMANAGE/2842051/1	
Modified filename: 109R Rezone Subdivision Memo TC dhm 6-6-23(2842051.2).docx	
Changes:	
Add	17
~~Delete~~	5
~~Move From~~	0
Move To	0
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	22

VAULT DESIGN GROUP

2023.05.02 Town Council
First Reading Submittal

Subdivision Table of Contents

- Consolidated Application Narrative for Major PUD Amendment, Major Subdivision and Rezoning (See Legal Documents)
- Existing Conditions Topo/Survey
- Replat and Rezone Lot 109R2, Tract OS-3BR-2R and ROW Tract (Applies to current platting configuration of OS-3BR-2)
- Replat and Rezone Lot 109R2, Tract OS-3BR-2R-1R and ROW Tract (Applies if parallel replat of OS-3BR-2 is approved)



This Existing Conditions/Improvement Survey of the Lot 109R Town of Mountain Village was compiled using a 2018 UAS drone survey which was supplemented by conventional survey means during January of 2022. It was produced under the direct responsibility, supervision and checking of David R. Bulson of Bulson Surveying being a Colorado Licensed Surveyor. This Existing Conditions Survey is not a Land or Improvement Survey Plat as defined by Colorado State Statute.
This survey is not to be relied for specific location of buried utilities. It is meant as a general source of information and all locations must be field verified prior to construction.

_____

P.L.S. NO. 37662 Date

PROPERTY DESCRIPTION:

LOT 109R TELLURIDE MOUNTAIN VILLAGE ACCORDING TO THE REPLAT OF LOTS 73-76R, 109, 110, TRACT 89-A AND TRACT OS-3BR-1 RECORDED MARCH 18, 2011 IN PLAT BOOK 1 AT PAGE 4455, COUNTY OF SAN MIGUEL, STATE OF COLORADO

NOTES:

1. *Easement research by Fidelity Title Company Title Report Order Number 150-F17796-22 dated October 5, 2022 at 8:00 A.M*
2. *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.*
3. *Lineal units represented hereon are shown in U.S. Survey Feet or a decimal portion thereof.*
4. *This survey is valid only if a print or electronic copy has a seal and signature of the surveyor noted within the statement above.*
5. *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.*
6. *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.*
8. *Benchmark: Control Point "Crystal-1", a No.5 rebar with elevation 9555.32 feet.*
9. *Contour interval is one (1.0) foot.*
10. *No evidence of wetlands were observed during the course of this survey*
11. *The location of buried utilities and drainage structures are based on markings and information provided by others. All locations must be field verified prior to construction*
12. *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.

LINE TABLE		
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	15.28'
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	2.84'
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'

LINE TABLE		
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	0.68'
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

Tiara Telluride LLC
450 South Old Dixie Highway
Suite 8, Jupiter, FL 33458

October 17, 2022

PROJECT NUMBER
21062

EXISTING CONDITIONS IMPROVEMENTS SURVEY
Lot 109R
Town of Mountain Village

BULSON SURVEYING

F:\Bulson Surveying Jobs\Jobs 2021\21062\21062 Lot 109R Combined Topo and Boundary 02-10-22.dwg, 10/17/2022 4:03:07 PM

This version reflects current platting configuration of Town Open Space surrounding Lot 109R

REPLAT AND REZONE
Lot 109R2, Tract OS-3BR-2R and ROW Tract

A Subdivision of Tract OS-3BR-2 and Lot 109R, 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

KNOW ALL PERSONS BY THESE PRESENTS:

TIARA TELLURIDE, LLC – (Title Commitment Parcel A) THAT Tiara Telluride, LLC, a Colorado limited liability company ("TIARA TELLURDE"), is the owner in fee simple of:

LOT 109R TELLURIDE MOUNTAIN VILLAGE ACCORDING TO THE REPLAT OF LOTS 73–76R, 109, 110, TRACT 89–A AND TRACT OS–3BR–1 RECORDED MARCH 18, 2011 IN PLAT BOOK 1 AT PAGE 4455, COUNTY OF SAN MIGUEL, STATE OF COLORADO

AND THAT

the Town of Mountain Village, a Colorado Home–charter–rule municipality (the "Town"), is the owner in fee simple of:

TRACT OS–3BR–2, MOUNTAIN VILLAGE, ACCORDING TO THE REPLAT OF LOTS 73–76R, 109, 110, TRACT 89–A AND TRACT OS–3BR–1 RECORDED MARCH 18, 2011 IN PLAT BOOK 1 AT PAGE 4455, COUNTY OF SAN MIGUEL, STATE OF COLORADO

COUNTY OF SAN MIGUEL, STATE OF COLORADO.

TIARA TELLURDE AND THE TOWN (collectively the "OWNERS") DO HEREBY , EXECUTE, DELIVER, AND ENTER INTO this Replat under the name and style of "REPLAT AND REZONE LOT 109R2, TRACT OS–3BR–2R AND ROW TRACT TOWN OF MOUNTAIN VILLAGE , COUNTY OF SAN MIGUEL, STATE OF COLORADO" (the "Replat"); AND

THE OWNERS DO THEREBY, CREATE the following new parcels LOT 109R2, TRACT OS–3BR–2R AND ROW TRACT, TOWN OF MOUNTAIN VILLAGE ("Created Parcels")

THE OWNERS DO THEREBY, vacate the former property boundary lines of LOT 109R and TRACT OS–3BR–2 and establishes the boundaries of Created Parcels as set forth, depicted and described on this Replat.

THE OWNERS DO THEREBY AFFIRM that, by virtue of and through this Replat, fee simple title ownership is hereby established in and to Lot 109R2 in and to TIARA TELLURDE LLC, a Colorado limited liability company and fee simple title ownership is hereby established in and to ROW TRACT AND TRACT OS–3BR–2R, in and to the TOWN OF MOUNTAIN VILLAGE

IN WITNESS WHEREOF, Owner executes this Plat as of _____, 200___ ("Effective Date") for the purposes stated herein.

TAIRA TELLURIDE LLC, A COLORADO LIMITED LIABILITY COMPANY

by:_____
printed name: _____
Title:_____

ACKNOWLEDGMENT

State of)
) ss
County of)

The foregoing signature was acknowledged before me this _____ day of _____, 20___ A.D. by _____ as _____ TIARA TELLURIDE LLC, A COLORADO LIMITED LIABILITY COMPANY

Witness my hand and seal.
My commission expires _____.

_____
Notary Public

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

By: _____
Leila Benitez, Mayor

ACKNOWLEDGMENT

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

Subscribed and sworn to before me this _____ day of _____, 2022 by Leila Benitez, as Mayor of the Town of Mountain Village, a home rule municipality and political subdivision of the state of Colorado

My commission expires _____.
Witness my hand and seal.

_____
Notary Public

TOWN OF MOUNTAIN VILLAGE APPROVAL

I, _____, as Mayor, of the Town of Mountain Village, Colorado, do hereby certify that this Replat has been approved by the Town of Mountain Village Town Council in accordance with Ordinance No. _____, the Development Agreement recorded at Reception No. _____ and Town of Mountain Village Resolution No. _____ recorded at Reception No. _____ which authorized my execution of this Replat. .

_____
____, Mayor, Date

ACKNOWLEDGMENT

State of)
) ss
County of))

The foregoing signature was acknowledged before me this _____ day of _____, 20 ___ A.D. by _____ as Mayor of the Town of Mountain Village.

Witness my hand and seal.
My commission expires _____.

_____
Notary Public

COMMUNITY DEVELOPMENT DIRECTOR APPROVAL:

I, _____, as the Community Development Director of Mountain Village, Colorado, do hereby certify that this Replat has been approved by the Town in accordance with the Community Development Code.

_____ Date: _____
Community Development Director

TREASURER'S CERTIFICATE

I, the undersigned, Treasurer of the County of San Miguel, do hereby certify that according to the records of the San Miguel County Treasurer there are no liens against the subdivision or any part thereof for unpaid state, county, municipal or local taxes or special assessments due and payable, in accordance with Land Use Code Section 3–101.

Dated this _____ day of _____, 20___.

_____
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 _____, 20_____, at
Reception No. _____,
Time _____.

_____
San Miguel County Clerk and Recorder

TITLE INSURANCE COMPANY CERTIFICATE

Fidelity National Title Company does hereby certify that we have examined the title to the lands herein shown on this Replat and that the title to this land is in the name of TIARA TELLURIDE LLC, A COLORADO LIMITED LIABILITY COMPANY and TOWN OF MOUNTAIN VILLAGE, A COLORADO HOME–CHARTER–RULE MUNICIPALITY is free and clear of all encumbrances, liens, taxes, and special assessments except as follows:

_____
Title Insurance Company Representative

SECURITY INTEREST HOLDER'S CONSENT

The undersigned _____, as a beneficiary of a deed of trust which constitutes a lien upon the declarant's property, recorded at Reception No. _____, in the San Miguel County Clerk and Recorder's real property records, hereby consents to the subdivision of the real property as depicted on this Plat and to the dedication of land as streets, alleys, roads and other public areas, as designated on this Plat, and hereby releases said dedicated lands from the lien created by said instrument.

Name: _____

Date: _____

Address: _____

Signature: _____

Title: _____

ACKNOWLEDGMENT

State of)
) ss
County of)

The foregoing signature was acknowledged before me this _____ day of _____, 20___ A.D. by _____ as _____ of _____.

Witness my hand and seal.
My commission expires _____.

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 REPLAT AND REZONE LOT 109R2, TRACT OS–3BR–2R AND ROW TRACT TOWN OF MOUNTAIN VILLAGE , COUNTY OF SAN MIGUEL, STATE OF COLORADO shown hereon has been prepared under my direct responsibility and checking and accurately represents a survey conducted under my direct supervision. This survey complies with applicable provisions of Title 38, Article 51, C.R.S. to the best of my knowledge and belief.

IN WITNESS HEREOF, I here unto affix my hand and official seal this _____ day of _____, A.D. 200___.

NOTES

Approval of this plat may create a vested property right pursuant to Article 68 of Title 24, C.R.S., as amended.

Fidelity National Title Company, Order Number 150–F17796–22 dated October 5, 2022 at 08:00 AM as to Lot 109R

BASIS OF BEARINGS. The bearing from monument "Overpass" to monument "Rim", as shown monumented hereon, was assumed to bear N31°16'24"W according to Banner Associates, Inc. project bearings.

LINEAL UNITS. LINEAL DISTANCES shown hereon measured in US survey feet.

Notice is hereby given that the area included in the plat described herein is subject to the regulations of the Land Use Ordinance, of the Town of Mountain Village, December 2003 as amended.

NOTES OF CLARIFICATION

The Configuration of the following lots, tracts, and right–of–way have been modified by this plat:
None

The following lots/tracts have been created by this plat:
Lot 109R2, ROW TRACT and TRACT OS–3BR–2R,

The following lots/tracts have been deleted by this plat:
LOT 109R, TRACT OS–3BR–2

The approval of this Plat Amendment vacates all prior plats and Lot boundary lines for the area described in the Legal Description as shown hereon in the Certificate of Ownership.

NOTICE: According to Colorado law you must commence any legal action based upon 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

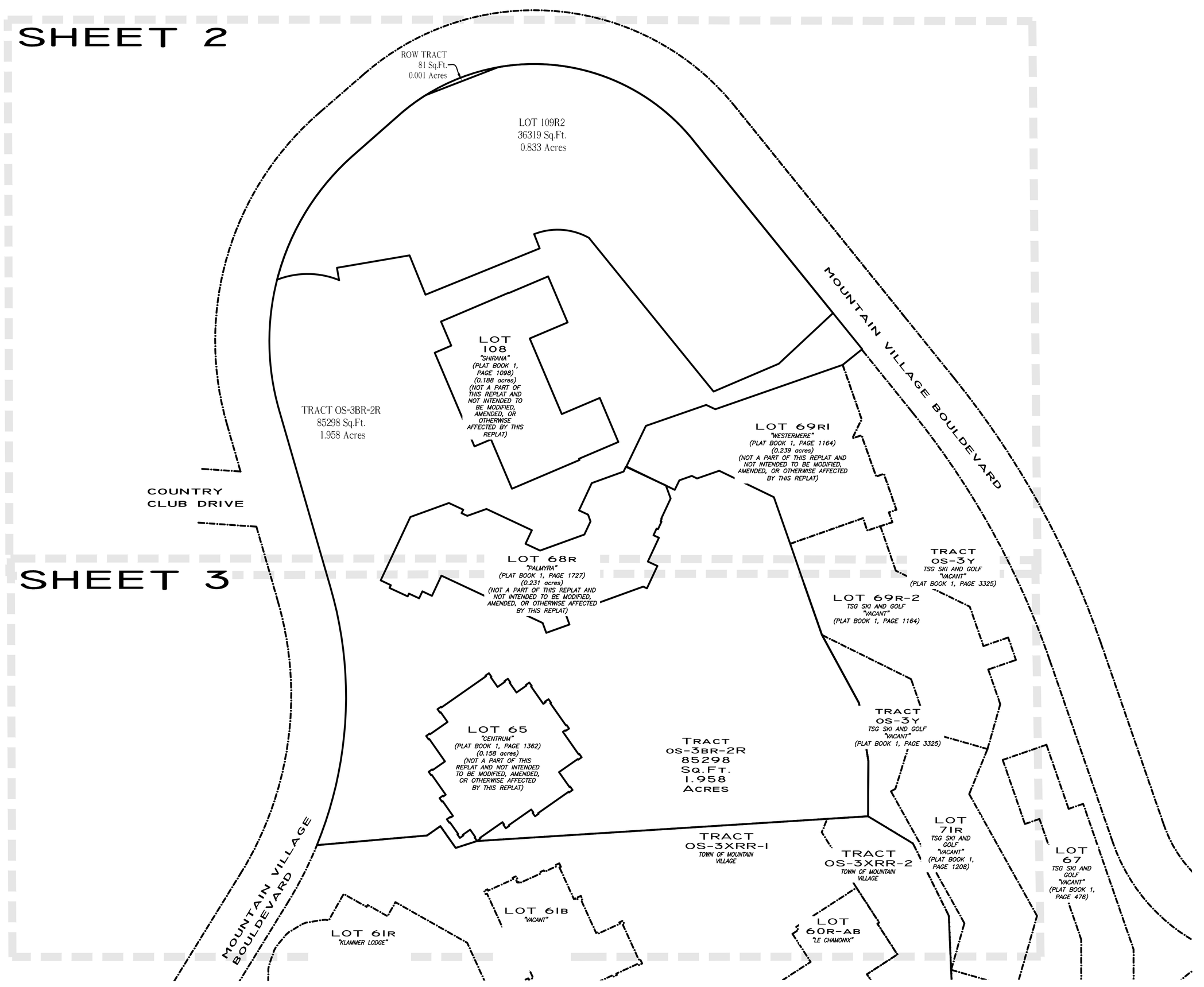
SHEET INDEX

PARCEL AREA SUMMARY

Current Lot	Acreage
LOT 109R	0.825 acres
TRACT OS–3BR–2	1.969 acres
TOTAL	2.79 acres

Replatted Lot\Tracts	Acreage
Tract OS–3BR–2R	1.958 acres
ROW TRACT	0.001 acres
LOT 109R2	0.833 acres
Total	2.79 acres

SHEET 2



SHEET 3

N
W E
S

0 40 80 Feet
SCALE 1" = 40'

CERTIFICATIONS AND VICINITY MAP

Tiare Telluride Mountain Village Boulevard Town of Mountain Village, State of Colorado, 81435	**REPLAT AND REZONE** **Lot 109R2, Tract OS-3BR-2R and ROW Tract** Town of Mountain Village, Colorado
May 2, 2023	**BULSON SURVEYING**
Sheet 1 of 3 Project 21062	

C:\Users\daveb\Bulson Surveying Dropbox\Bulson Surveying Jobs (Complete)\Jobs 2021\21062\Replat Existing OS Configuration 04272023.dwg, 4/30/2023 1:43:47 PM, DWG To PDF.pc3

REPLAT AND REZONE
Lot 109R2, Tract OS-3BR-2R and ROW Tract

A Subdivision of Tract OS-3BR-2 and Lot 109R, 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

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 25°47'28" W	29.22'
L2	N 64°12'32" W	24.20'
L3	N 64°56'40" W	24.39'
L4	S 25°03'20" W	3.48'
L5	S 70°03'20" W	21.96'
L6	S 25°03'20" W	19.52'
L7	S 64°56'40" E	6.43'
L8	S 19°56'40" E	4.69'
L9	S 25°03'20" W	9.44'
L10	S 70°03'20" W	30.55'
L11	N 64°56'40" W	10.41'
L12	N 25°03'20" E	9.75'
L13	N 64°56'40" W	32.56'
L14	S 70°03'20" W	13.23'
L15	N 64°56'40" W	4.12'
L16	N 25°03'20" E	2.53'
L17	N 64°56'40" W	10.25'
L18	S 70°03'20" W	26.63'
L19	S 25°03'20" W	45.43'
L20	S 64°56'40" E	7.26'
L21	S 25°03'20" W	2.00'
L22	S 64°56'40" E	13.00'
L23	N 25°03'20" E	2.00'
L24	S 64°56'40" E	7.25'
L25	N 25°03'20" E	5.00'
L26	S 64°56'40" E	6.84'
L27	N 25°03'20" E	14.50'
L28	S 19°56'40" E	6.85'
L29	N 70°03'20" E	16.00'
L30	N 19°56'40" W	6.75'
L31	S 64°56'40" E	2.61'
L32	N 25°03'20" E	16.00'
L33	N 64°56'40" W	6.83'
L34	N 25°03'20" E	17.03'
L35	N 64°56'40" W	3.92'
L36	N 25°03'20" E	4.76'
L37	S 64°56'40" E	1.01'
L38	N 25°03'20" E	5.40'
L39	N 64°56'40" W	0.68'
L40	N 25°03'20" E	1.78'
L41	N 64°56'40" W	0.33'
L42	N 25°03'20" E	14.37'
L43	N 19°56'40" W	8.93'
L44	S 64°12'32" E	6.39'
L45	N 25°47'28" E	6.86'
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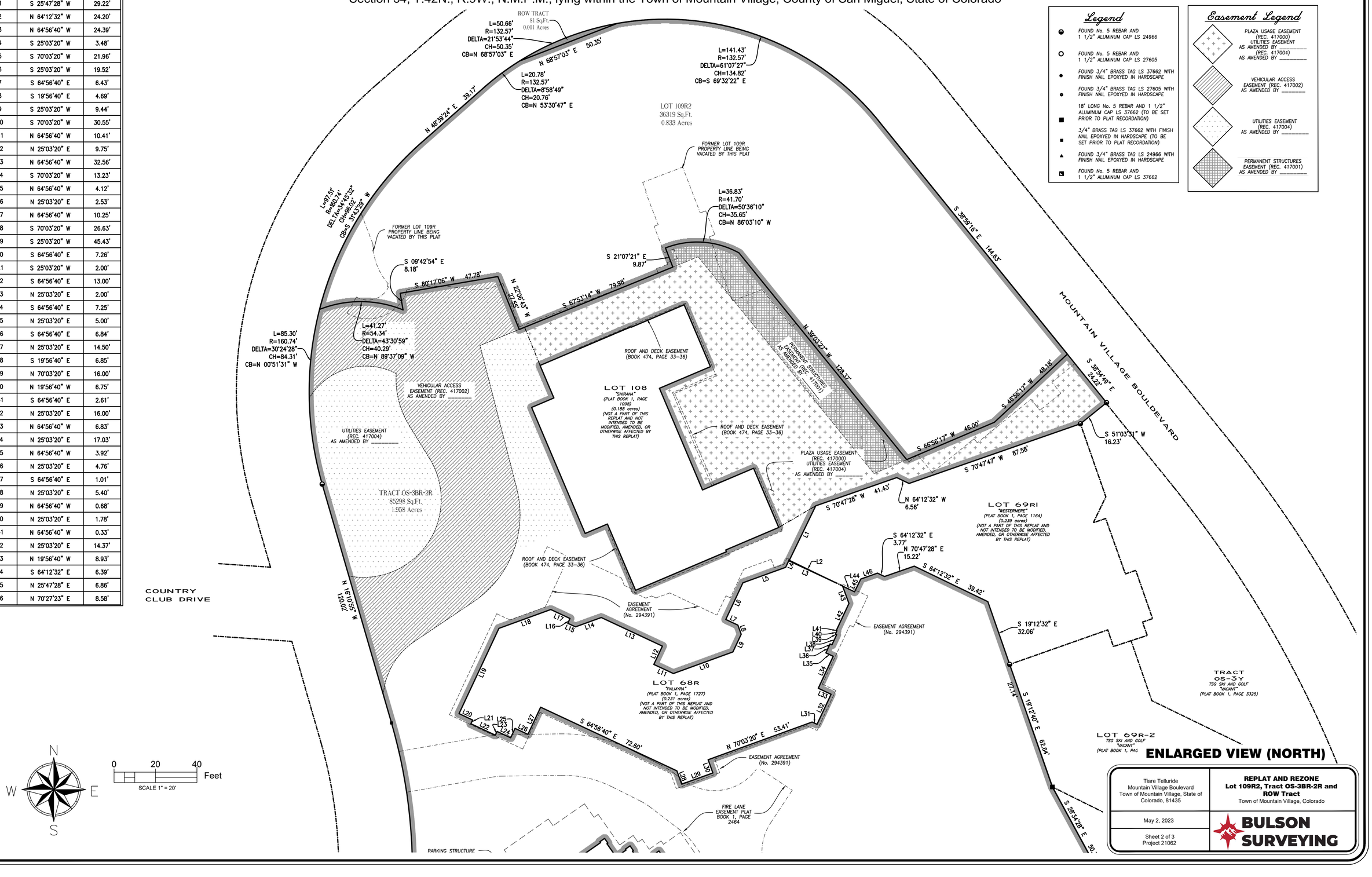

Legend

- FOUND No. 5 REBAR AND 1 1/2" ALUMINUM CAP LS 24966
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- FOUND 3/4" BRASS TAG LS 37662 WITH FINISH NAIL EPOXYED IN HARDSCAPE
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Easement Legend

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- PERMANENT STRUCTURES EASEMENT (REC. 417001) AS AMENDED BY _____

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0 20 40 Feet
SCALE 1" = 20'

ENLARGED VIEW (NORTH)

Tiare Telluride
Mountain Village Boulevard
Town of Mountain Village, State of Colorado, 81435

REPLAT AND REZONE
Lot 109R2, Tract OS-3BR-2R and ROW Tract
Town of Mountain Village, Colorado

May 2, 2023

Sheet 2 of 3
Project 21062

BULSON SURVEYING

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REPLAT AND REZONE
Lot 109R2, Tract OS-3BR-2R and ROW Tract

A Subdivision of Tract OS-3BR-2 and Lot 109R, 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

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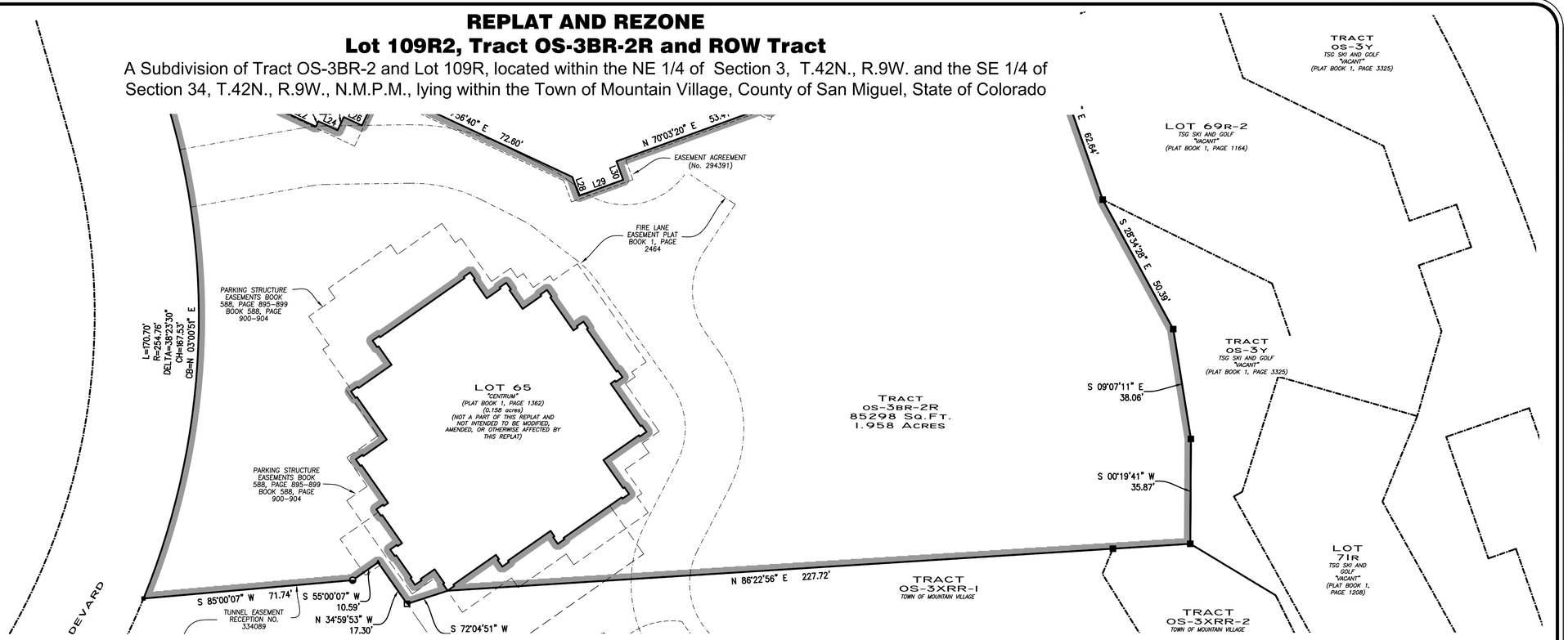
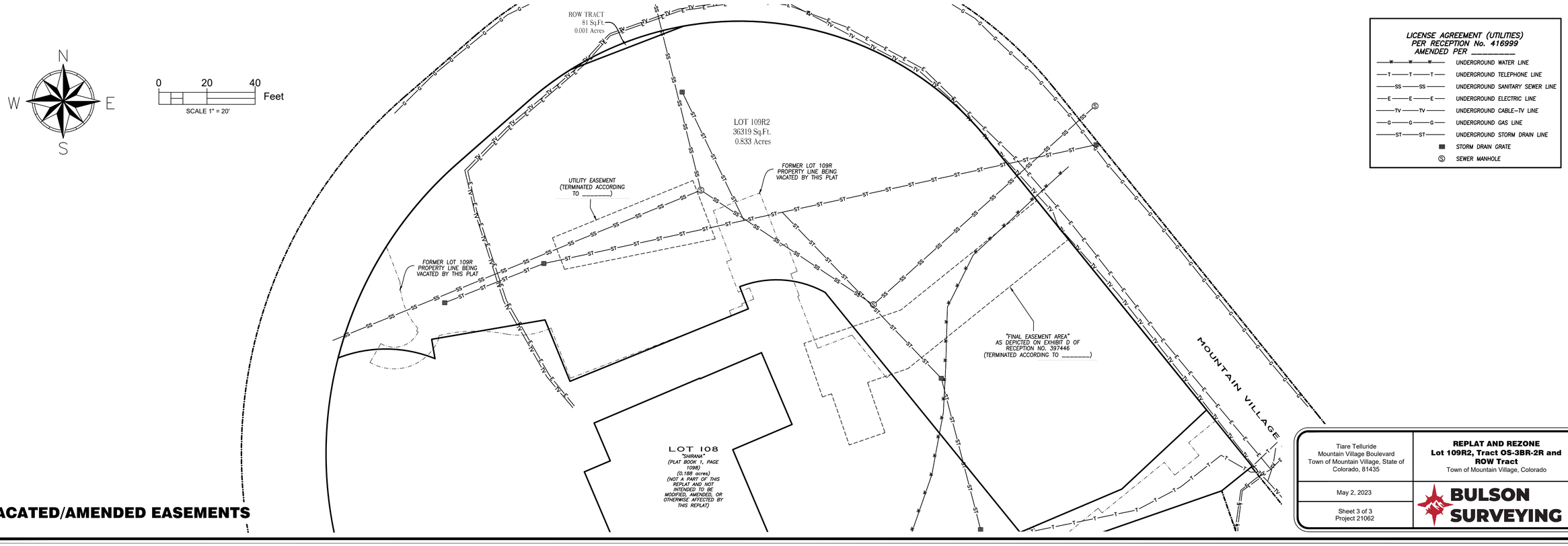
ENLARGED VIEW (SOUTH)



VACATED/AMENDED EASEMENTS



LICENSE AGREEMENT (UTILITIES) PER RECEPTION No. 416999 AMENDED PER _____

- UNDERGROUND WATER LINE
- UNDERGROUND TELEPHONE LINE
- UNDERGROUND SANITARY SEWER LINE
- UNDERGROUND ELECTRIC LINE
- UNDERGROUND CABLE–TV LINE
- UNDERGROUND GAS LINE
- UNDERGROUND STORM DRAIN LINE
- STORM DRAIN GRATE
- SEWER MANHOLE

Tiare Telluride
Mountain Village Boulevard
Town of Mountain Village, State of Colorado, 81435

REPLAT AND REZONE
Lot 109R2, Tract OS-3BR-2R and ROW Tract
Town of Mountain Village, Colorado

May 2, 2023

Sheet 3 of 3
Project 21062

BULSON SURVEYING

This version reflects the configuration of Open Space surrounding Lot 109R if existing application for replat of Town Open Space is approved

REPLAT AND REZONE
Lot 109R2, Tract OS-3BR-2R-1R and ROW Tract

A Subdivision of Tract OS-3BR-2R-1 and Lot 109R, 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

KNOW ALL PERSONS BY THESE PRESENTS:

TIARA TELLURIDE, LLC – (Title Commitment Parcel A) THAT Tiara Telluride, LLC, a Colorado limited liability company ("TIARA TELLURDE"), is the owner in fee simple of:

LOT 109R TELLURIDE MOUNTAIN VILLAGE ACCORDING TO THE REPLAT OF LOTS 73–76R, 109, 110, TRACT 89–A AND TRACT OS–3BR–1 RECORDED MARCH 18, 2011 IN PLAT BOOK 1 AT PAGE 4455, COUNTY OF SAN MIGUEL, STATE OF COLORADO

AND THAT

the Town of Mountain Village, a Colorado Home–charter–rule municipality (the "Town"), is the owner in fee simple of:

TRACT OS–3BR–2R–1, MOUNTAIN VILLAGE, ACCORDING TO THE PLAT OF LOT 109R AND TRACT OS–3BR–2, TOWN OF MOUNTAIN VILLAGE, A REPLAT OF LOTS 73–76R, 109, 110, TRACT 89–A AND TRACT OS–3BR–1, TOWN OF MOUNTAIN VILLAGE RECORDED _____ IN PLAT BOOK 1 AT PAGE _____,

COUNTY OF SAN MIGUEL, STATE OF COLORADO.

TIARA TELLURDE AND THE TOWN (collectively the "OWNERS") DO HEREBY , EXECUTE, DELIVER, AND ENTER INTO this Replat under the name and style of "REPLAT AND REZONE LOT 109R2, TRACT OS–3BR–2R–1R AND ROW TRACT TOWN OF MOUNTAIN VILLAGE , COUNTY OF SAN MIGUEL, STATE OF COLORADO" (the "Replat"); AND

THE OWNERS DO THEREBY, CREATE the following new parcels LOT 109R2, TRACT OS–3BR–2R–1R AND ROW TRACT, TOWN OF MOUNTAIN VILLAGE ("Created Parcels")

THE OWNERS DO THEREBY, vacate the former property boundary lines of LOT 109R and TRACT OS–3BR–2BR–1, and establishes the boundaries of Created Parcels as set forth, depicted and described on this Replat.

THE OWNERS DO THEREBY AFFIRM that, by virtue of and through this Replat, fee simple title ownership is hereby established in and to Lot 109R2 in and to TIARA TELLURDE LLC, a Colorado limited liability company and fee simple title ownership is hereby established in and to ROW TRACT AND TRACT OS–3BR–2R–1R, in and to the TOWN OF MOUNTAIN VILLAGE

IN WITNESS WHEREOF, Owner executes this Plat as of _____, 200___ ("Effective Date") for the purposes stated herein.

TAIRA TELLURIDE LLC, A COLORADO LIMITED LIABILITY COMPANY

by:_____
printed name: _____
Title:_____

ACKNOWLEDGMENT

State of)
) ss
County of)

The foregoing signature was acknowledged before me this _____ day of _____, 20___ A.D. by _____ as _____
TIARA TELLURIDE LLC, A COLORADO LIMITED LIABILITY COMPANY

Witness my hand and seal.
My commission expires _____.

_____
Notary Public

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

By: _____
Leila Benitez, Mayor

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

Subscribed and sworn to before me this _____ day of _____, 2022 by Leila Benitez, as Mayor of the Town of Mountain Village, a home rule municipality and political subdivision of the state of Colorado

My commission expires _____.
Witness my hand and seal.

_____
Notary Public

TOWN OF MOUNTAIN VILLAGE APPROVAL

I, _____, as Mayor, of the Town of Mountain Village, Colorado, do hereby certify that this Replat has been approved by the Town Council in accordance with Ordinance No. _____, the Development Agreement recorded at Reception No. _____ and Town of Mountain Village Resolution No. _____ recorded at Reception No. _____ which authorized my execution of this Replat. .

_____
____, Mayor, Date

ACKNOWLEDGMENT

State of)
) ss
County of))

The foregoing signature was acknowledged before me this _____ day of _____, 20 ___ A.D. by _____ as Mayor of the Town of Mountain Village.

Witness my hand and seal.
My commission expires _____.

_____
Notary Public

COMMUNITY DEVELOPMENT DIRECTOR APPROVAL:

I, _____, as the Community Development Director of Mountain Village, Colorado, do hereby certify that this Replat has been approved by the Town in accordance with the Community Development Code.

_____ Date: _____
Community Development Director

TREASURER'S CERTIFICATE

I, the undersigned, Treasurer of the County of San Miguel, do hereby certify that according to the records of the San Miguel County Treasurer there are no liens against the subdivision or any part thereof for unpaid state, county, municipal or local taxes or special assessments due and payable, in accordance with Land Use Code Section 3–101.

Dated this _____ day of _____, 20___.

_____
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 _____, 20_____, at
Reception No. _____,
Time _____.

_____
San Miguel County Clerk and Recorder

TITLE INSURANCE COMPANY CERTIFICATE

Fidelity National Title Company does hereby certify that we have examined the title to the lands herein shown on this Replat and that the title to this land is in the name of TIARA TELLURIDE LLC, A COLORADO LIMITED LIABILITY COMPANY and TOWN OF MOUNTAIN VILLAGE, A COLORADO HOME–CHARTER–RULE MUNICIPALITY is free and clear of all encumbrances, liens, taxes, and special assessments except as follows:

_____
Title Insurance Company Representative

SECURITY INTEREST HOLDER'S CONSENT

The undersigned _____, as a beneficiary of a deed of trust which constitutes a lien upon the declarant's property, recorded at Reception No. _____, in the San Miguel County Clerk and Recorder's real property records, hereby consents to the subdivision of the real property as depicted on this Plat and to the dedication of land as streets, alleys, roads and other public areas, as designated on this Plat, and hereby releases said dedicated lands from the lien created by said instrument.

Name: _____

Date: _____

Address: _____

Signature: _____

Title: _____

ACKNOWLEDGMENT

State of)
) ss
County of)

The foregoing signature was acknowledged before me this _____ day of _____, 20___ A.D. by _____ as _____ of _____.

Witness my hand and seal.
My commission expires _____.

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 REPLAT AND REZONE LOT 109R2, TRACT OS–3BR–2R–1R AND ROW TRACT TOWN OF MOUNTAIN VILLAGE , COUNTY OF SAN MIGUEL, STATE OF COLORADO shown hereon has been prepared under my direct responsibility and checking and accurately represents a survey conducted under my direct supervision. This survey complies with applicable provisions of Title 38, Article 51, C.R.S. to the best of my knowledge and belief.

IN WITNESS HEREOF, I here unto affix my hand and official seal this _____ day of _____, A.D. 200___.

_____
No. 37662 Date

NOTES

Approval of this plat may create a vested property right pursuant to Article 68 of Title 24, C.R.S., as amended.

Fidelity National Title Company, Order Number 150–F17796–22 dated October 5, 2022 at 08:00 AM as to Lot 109R

BASIS OF BEARINGS. The bearing from monument "Overpass" to monument "Rim", as shown monumented hereon, was assumed to bear N31°16'24"W according to Banner Associates, Inc. project bearings.

LINEAL UNITS. LINEAL DISTANCES shown hereon measured in US survey feet.

Notice is hereby given that the area included in the plat described herein is subject to the regulations of the Land Use Ordinance, of the Town of Mountain Village, December 2003 as amended.

NOTES OF CLARIFICATION

The Configuration of the following lots, tracts, and right–of–way have been modified by this plat:
None

The following lots/tracts have been created by this plat:
Lot 109R2, ROW TRACT and TRACT OS–3BR–2R–1R,

The following lots/tracts have been deleted by this plat:
LOT 109R, TRACT OS–3BR–2R–1

The approval of this Plat Amendment vacates all prior plats and Lot boundary lines for the area described in the Legal Description as shown hereon in the Certificate of Ownership.

NOTICE: According to Colorado law you must commence any legal action based upon 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

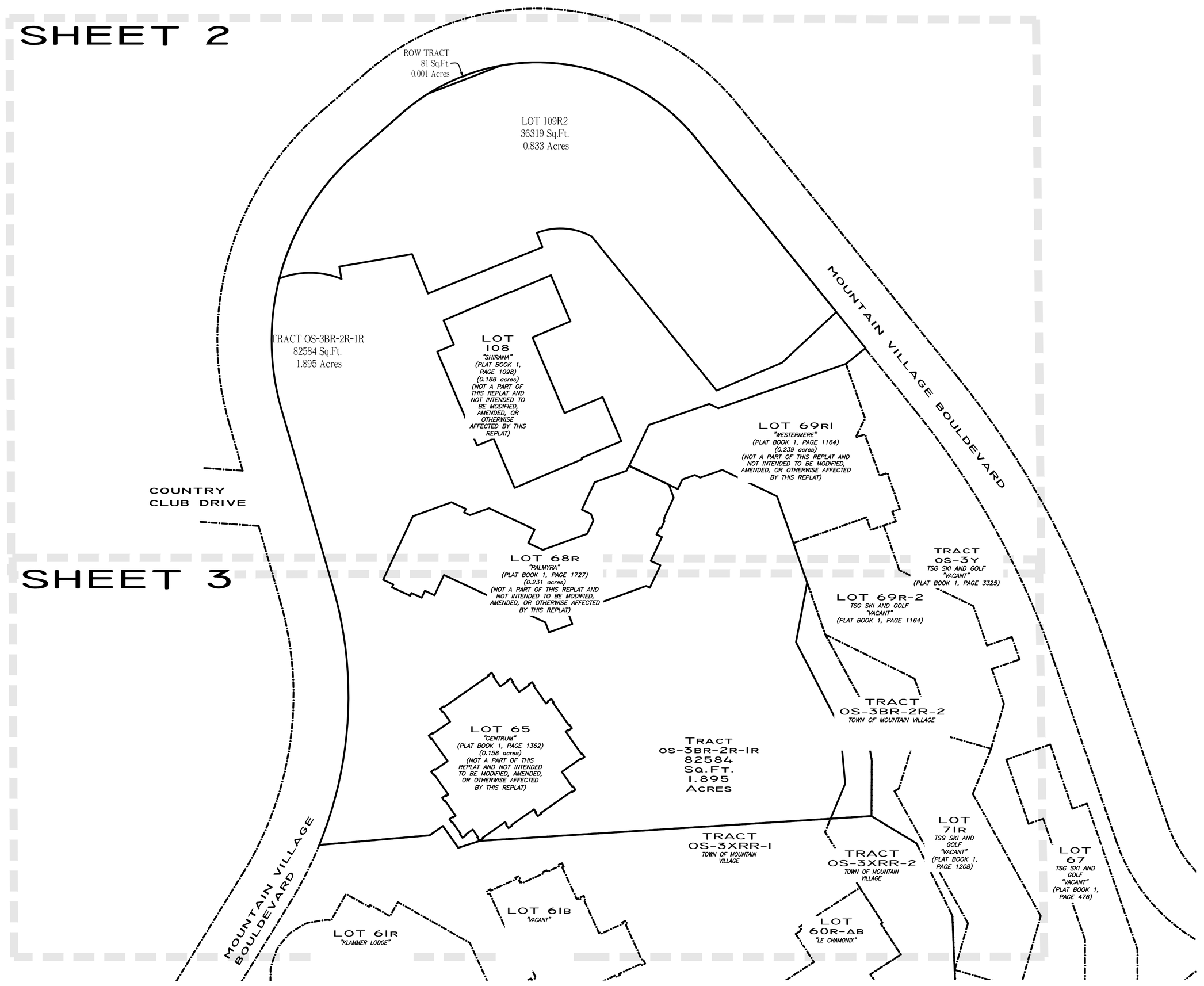
SHEET INDEX

PARCEL AREA SUMMARY

Current Lot	Acreage
LOT 109R	0.825 acres
TRACT OS–3BR–2R–1	1.906 acres
TOTAL	2.73 acres

Replatted Lot\Tracts	Acreage
Tract OS–3BR–2R–1R	1.895 acres
ROW TRACT	0.001 acres
LOT 109R2	0.833 acres
Total	2.73 acres

SHEET 2



SHEET 3

CERTIFICATIONS AND VICINITY MAP

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0 40 80 Feet
SCALE 1" = 40'

Tiare Telluride Mountain Village Boulevard Town of Mountain Village, State of Colorado, 81435	**REPLAT AND REZONE** **Lot 109R2, Tract OS-3BR-2R-1R and ROW Tract** Town of Mountain Village, Colorado
May 2, 2023	**BULSON SURVEYING**
Sheet 1 of 3 Project 21062	

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REPLAT AND REZONE
Lot 109R2, Tract OS-3BR-2R-1R and ROW Tract

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LINE TABLE		
LINE	BEARING	LENGTH
L1	S 25°47'28" W	29.22'
L2	N 64°12'32" W	24.20'
L3	N 64°56'40" W	24.39'
L4	S 25°03'20" W	3.48'
L5	S 70°03'20" W	21.96'
L6	S 25°03'20" W	19.52'
L7	S 64°56'40" E	6.43'
L8	S 19°56'40" E	4.69'
L9	S 25°03'20" W	9.44'
L10	S 70°03'20" W	30.55'
L11	N 64°56'40" W	10.41'
L12	N 25°03'20" E	9.75'
L13	N 64°56'40" W	32.56'
L14	S 70°03'20" W	13.23'
L15	N 64°56'40" W	4.12'
L16	N 25°03'20" E	2.53'
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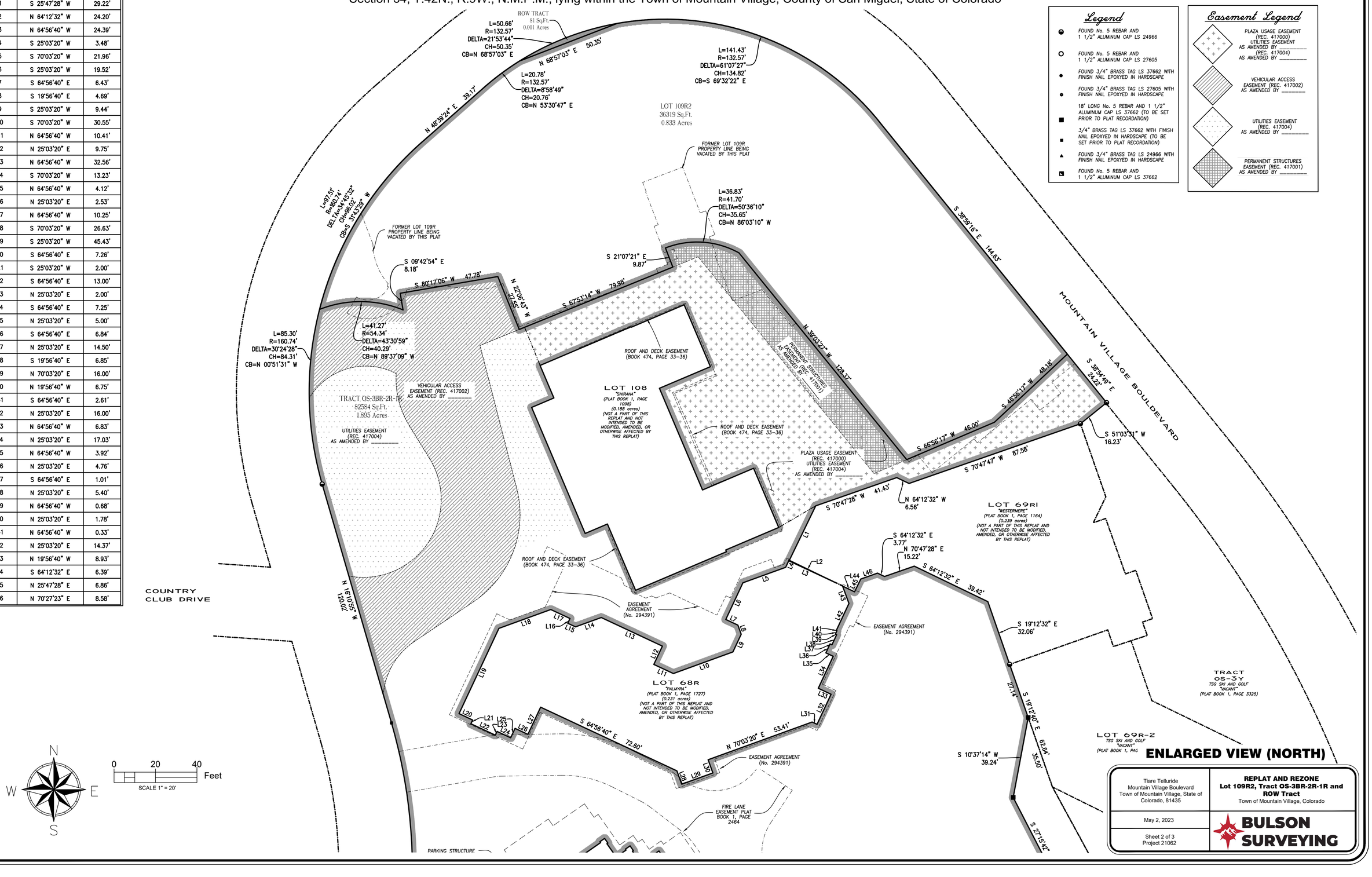

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ENLARGED VIEW (NORTH)

Tiare Telluride Mountain Village Boulevard Town of Mountain Village, State of Colorado, 81435	**REPLAT AND REZONE** **Lot 109R2, Tract OS-3BR-2R-1R and ROW Tract** Town of Mountain Village, Colorado
May 2, 2023	BULSON SURVEYING
Sheet 2 of 3 Project 21062	

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REPLAT AND REZONE
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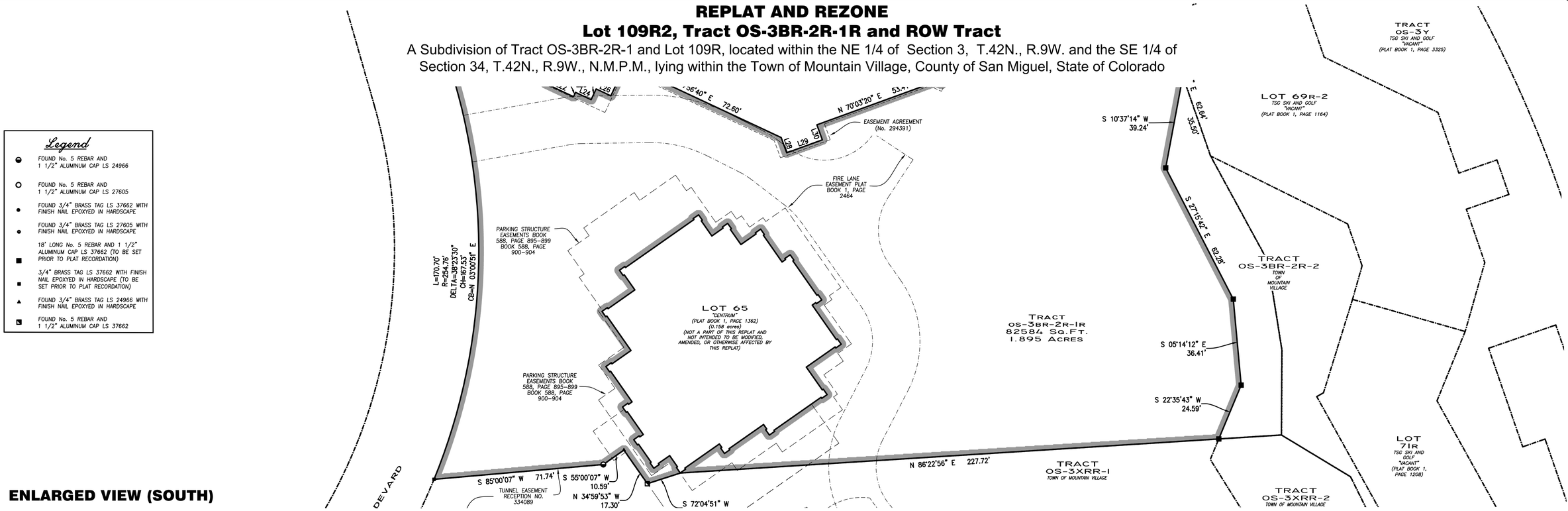
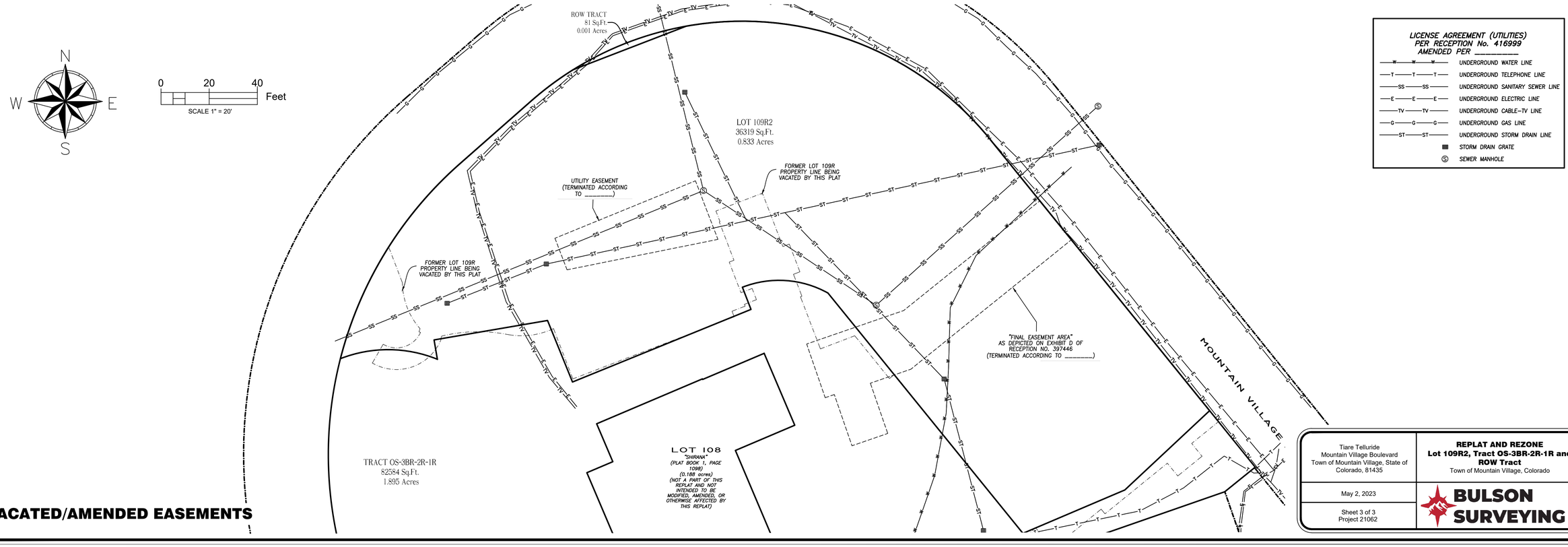


VACATED/AMENDED EASEMENTS



Tiare Telluride
Mountain Village Boulevard
Town of Mountain Village, State of Colorado, 81435

REPLAT AND REZONE
Lot 109R2, Tract OS-3BR-2R-1R and ROW Tract
Town of Mountain Village, Colorado

May 2, 2023

Sheet 3 of 3
Project 21062

BULSON SURVEYING

Attachment 3.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO CONCERNING A MAJOR SUBDIVISION OF LOT 109R

RESOLUTION NO. 2023-__

WHEREAS, Tiara Telluride, LLC (the "Developer") is the owner of certain real property described as Lot 109R, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 416994 ("Lot 109R") and

WHEREAS, the Town of Mountain Village (the "Town") is the owner of certain real property adjacent to Lot 109R described as open space parcel OS-3BR-2, according to the plat recorded as Reception No. 416994 (the "Town Property"); and

WHEREAS, the Developer has applied to the Town to replat Lot 109R and the Town Property (the "Major Subdivision Application") for the purpose of a land exchange where the Town would convey portions of the Town Property to become part of Lot 109R and the Developer would convey portions of the current Lot 109R to become part of the Town Property ("Rezoning Application) in connection with its application for approval of a Major PUD Amendment for the remainder of Lot 109R, including 109R Adjustment Parcels to be conveyed by the Town to the Developer (the "Major PUD Amendment Application," and together with the Major Subdivision Application and Rezoning Application, the "Applications"); and

WHEREAS, the DRB held public hearings regarding the Major PUD Amendment Application on May 5, 2022 and May 31, 2022, and voted 3-1 to issue a recommendation of approval to the Town Council concerning the Application, subject to further consideration by the DRB for final design review and for its recommendation regarding the related Major Subdivision Application; and

WHEREAS, the Town Council considered an ordinance approving the Major PUD Amendment Application (the "Major PUD Amendment Ordinance") on first reading at its regular meetings on June 16, 2022 and August 18, 2022, and consented to including the 109R Adjustment Parcels in the Developer's Major PUD Amendment Application and Major Subdivision Application, but voted to continue the matter to November 17, 2022 so as to allow the Developer time to submit the Major Subdivision Application and final design review materials; and

WHEREAS, the Town Council again considered the Major PUD Amendment Ordinance on first reading at its regular meeting on November 17, 2022, but voted to continue the matter to January 19, 2023 so as to allow the DRB to conduct a further public meeting regarding final design review and the Major Subdivision Application before the Town Council would make a decision as to the Major PUD Amendment Application; and

WHEREAS, following a DRB meeting held on December 1, 2022, the DRB recommended to the Town Council approval of the Major PUD Amendment Application and the Major Subdivision Application, subject to conditions, as well as approval of the Rezoning Application; and

WHEREAS, the Town Council considered the Major PUD Amendment Application, the DRB's recommendations, and testimony and comments from the Developer, Town staff, and members of the public at a public meeting on January 19, 2023 and voted 6-1 to direct Town staff to prepare a resolution denying the Major PUD Amendment Application; and

WHEREAS, because the Major Subdivision Application is contingent upon the Major PUD Amendment Application, a denial of the Major PUD Amendment Application has made the Major Subdivision Application moot; and

WHEREAS, the Town Council held a public meeting on March 16, 2023, to consider this Resolution and voted _____ to approve this Resolution concerning the Major Subdivision Application.

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

Section 1. Recitals. The above recitals and Resolution No. 2023-__ are hereby incorporated as findings of the Town Council in support of the enactment of this Resolution.

Section 2. Application. The Town Council finds that, because the Major PUD Amendment Application has been denied pursuant to Resolution No. 2023-__, the Major Subdivision Application is now moot and shall be considered withdrawn, without prejudice.

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

ADOPTED AND APPROVED by the Town Council at a regular public meeting held on March 16, 2023.

TOWN OF MOUNTAIN VILLAGE TOWN COUNCIL

By: _____
Laila Benitez, Mayor

ATTEST:

_____
Susan Johnston, Town Clerk

APPROVED AS TO FORM:

_____
David McConaughy, Town Attorney

ORDINANCE NO. 2023-__

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, REZONING CERTAIN PORTIONS OF SITE SPECIFIC PUD LOT 109R TO ACTIVE OPEN SPACE VILLAGE CENTER AND PORTIONS OF ACTIVE OPEN SPACE VILLAGE CENTER TO SITE SPECIFIC PUD LOT 109R, AND A SMALL PORTION OF SITE SPECIFIC PUD LOT 109R TO ACTIVE OPEN RIGHT OF WAY

WHEREAS, Tiara Telluride, LLC ("Developer") is the owner of certain real property described as Lot 109R, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 416994 ("Lot 109R") and

WHEREAS, the Town of Mountain Village ("Town") is the owner of certain real property adjacent to Lot 109R described as open space parcel OS-3BR-2, according to the plat recorded as Reception No. 416994 (the "Town Property"); and

WHEREAS, the Developer has submitted an application to replat Lot 109R and the Town Property (the "Major Subdivision Application") for the purpose of a land exchange where the Town would convey portions of the Town Property described in Exhibit A to become part of Lot 109R (the "Town Contributed Property") and the Developer would convey portions of the current Lot 109R also described in Exhibit A to become part of the Town Property (the "Replacement Town Property") and a small portion of lot 109R to become part of the existing Mountain Village Boulevard right of way, (the Town Property and the Replacement Town Property combined may be referred to herein as the "Town Open Space Property"); and

WHEREAS, the purpose of this Ordinance is to act on the required rezoning of the Replacement Town Property to bring them into the same zoning designation as the Town Property, and the Town Council will simultaneously be considering a separate ordinance concerning the Developer's application for a Major Planned Unit Development ("PUD") Plan for the Property (the "PUD Ordinance"); and

WHEREAS, this Ordinance is contingent upon the Town Council's approval of a Major Subdivision Application by resolution to be considered simultaneously with second reading of this Ordinance to create the Town Open Space Property as a legal parcel and the transfer ownership of the Replacement Town Property to the Town; and

WHEREAS, the Developer has applied to rezone the Town Open Space Property as active open space, village center, portion of active open space village center to site specific PUD lot 109R, and a small portion of Lot 109R to active open space right of way ("Rezoning Application") in connection with its application for approval of a Major PUD Amendment for the remainder of Lot 109R, including parcels to be conveyed by the Town to the Developer, which is being considered simultaneously with this Ordinance (the "Major PUD Amendment Application"); and

WHEREAS, the DRB held public hearings regarding the Major PUD Amendment Application, which included the proposal to transfer and rezone certain portions of Lot 109R into active open space, village center, on May 5, 2022 and May 31, 2022, and voted 3-1 to issue a recommendation of approval to the Town Council concerning the Application, subject to further consideration by the DRB for final design review and for its recommendation regarding the related Major Subdivision Application; and

WHEREAS, the Town Council considered the PUD Ordinance on first reading at its regular meetings on June 16, 2022 and August 18, 2022, and voted to continue the matter to November 17, 2022 so as to allow the Developer time to submit the Major Subdivision Application and final design review materials; and

WHEREAS, the Town Council again considered the PUD Ordinance on first reading at its regular meeting on November 17, 2022, but voted to continue the matter to January 19, 2023 so as to allow the DRB to conduct a further public meeting regarding final design review and the Major Subdivision Application before the Town Council would make a decision as to the Major PUD Amendment Application; and

WHEREAS, following a DRB meeting held on December 1, 2022, the DRB recommended to the Town Council approval of the Major PUD Amendment Application and the Major Subdivision Application, subject to conditions, as well as approval of the required rezoning outlined in this Ordinance; and

WHEREAS, the Town Council has considered the Rezoning Application, the DRB's recommendations, and testimony and comments from the Developer, Town staff, and members of the public at a public meeting on June 15, 2023 and at a duly noticed public hearing on June 26, 2023; and

WHEREAS, the Town Council has considered the criteria set forth in Section 17.4.9.C.3 of the Town's Community Development Code ("CDC") and finds that each of the following has been satisfied or will be satisfied upon compliance with the conditions of this Ordinance set forth below:

1. The proposed rezoning is in general conformance with the goals, policies and provisions of the Comprehensive Plan. (Because the Major PUD Amendment Application was submitted before November 1, 2022, the 2011 version of the Comprehensive Plan applies);

2. The proposed rezoning is consistent with the Zoning and Land Use Regulations;

3. The proposed rezoning meets the Comprehensive Plan project standards (CDC section 17.4.12(H));

4. The proposed rezoning is consistent with public health, safety and welfare, as well as efficiency and economy in the use of land and its resources;

5. The proposed rezoning is justified because there is an error in the current zoning, there have been changes in conditions in the vicinity or there are specific policies in the Comprehensive Plan that contemplate the rezoning;

6. Adequate public facilities and services are available to serve the intended land uses;

7. The proposed rezoning shall not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion; and

8. The proposed rezoning meets all applicable Town regulations and standards.

WHEREAS, the Town Council now desires to approve the Rezoning Application, subject to the terms and conditions set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, as follows:

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

Section 2. Approvals. The Town Council hereby approves the Rezoning Application, subject to the conditions set forth below. All exhibits to this Ordinance are available for inspection at the Town Clerk's Office. The Town Council specifically approves the following rezoning:

Break Down of land to be added to OS-3BR-2 and to 109R from OS-BR-2

Existing Lot/Tract Name	Current Zoning	Current Size (sq.ft.)
Lot 109R	PUD	35980
Tract OS-3BR-2R-1	AOS Village Center	83004

Approximate Before and After Lot Areas

New Lot/Tract Name	New Zoning	Proposed Size (sq.ft.)	Net Change (sq.ft.)
Lot 109R2	PUD	36319	339 INCREASE
Tract OS-3BR-2R-1R	AOS Village Center	82584	420 DECREASE
ROW Tract	AOS Right of Way	81	81 INCREASE

Section 3. Conditions. The approval of the Rezoning Application is subject to the following terms and conditions:

3.1. The Town Council must separately approve the Major Subdivision Application, which concerns the re-subdivision of Lot 109R and OS-2BR-2.

3.2. All conditions of approval of the Major Subdivision Application as set forth in Resolution 2023-__ ("Subdivision Approval") are incorporated as conditions of this approval.

3.3. The land swap involving the Town Contributed Property and Replacement Town Property must be completed as provided by the Amended and Restated Development Agreement.

3.4. The approved rezone, further described on the Replat/Rezone attached hereto as Exhibit C, shall be shown on a map reflecting the new zoning and associated boundaries, to be provided with second reading of this Ordinance as required by the CDC. The precise boundaries of each zone district shall conform to the approved final plat being considered as part of the Major Subdivision Application.

3.5. The rezoning created hereby shall not become effective until the Effective Date of this Ordinance.

3.6. Town staff shall update the Town's Official Zoning Map to reflect the changes made by this Ordinance as soon as practicable after the Effective Date.

3.7 The Town and Developer shall enter into the Amended and Restated Development Agreement approved by the PUD Ordinance. The Town Manager is authorized to approve the final version of the Development Agreement and, upon such approval, the Development Agreement and all related

documents necessary to effectuate the intent of this Ordinance may be executed by the Town Manager, Director of Community Development, Mayor, and Town Clerk, as appropriate or necessary.

3.8 All representations of the Developer, whether within Rezoning or Subdivision Applications submittal materials or at the DRB or Town Council public hearings after December 1, 2022, are conditions of this approval.

3.9 The final designation of the Replacement Town Property will either be OS-3BR-2R or OS-3BR-2R-1R, depending on whether the pending resubdivision application of OS-3BR-2 by the Lot 161CR owner is completed and recorded prior to the recording of the plat approved pursuant to the Major Subdivision Application. References herein to OS-3BR-2 include OS-3BR-2R and OS-3BR-2R-1R, as appropriate.

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

Section 5. Effective Date. This Ordinance shall become effective on _____, 2023 ("Effective Date") and shall be recorded in the official records of the Town kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

Section 6. Public Hearing. A public hearing on this Ordinance was held on the 26th day of June, 2023 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado 81435.

Section 7. Publication. The Town Clerk or Deputy Town Clerk shall post and publish notice of this Ordinance as required by Article V, Section 5.9 of the Charter.

INTRODUCED, READ, AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado this 15th day of June, 2023.

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 26th day of June, 20223.

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:

_____
David McConaughy, Town Attorney

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

1. The attached copy of Ordinance No. 2023-__ ("Ordinance") is a true, correct, and complete copy thereof.

2. The Ordinance was introduced, read by title, approved on first reading and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on June 15, 2023, 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 _____, 202__ in accordance with Section 5.2(d) of the Town of Mountain Village Home Rule Charter.

4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on June 26, 2023. 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 _____, 2023.

_____
Susan Johnston, Town Clerk
(SEAL)

Exhibit A

[Legal Descriptions of Adjustment Parcels]

Exhibit B

[List of Rezoning Application Materials]

Exhibit C

[Approved Rezone Exhibit]

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO CONCERNING THE REZONING OF CERTAIN PARCELS IN CONNECTION WITH A MAJOR SUBDIVISION OF LOT 109R

RESOLUTION NO. 2023-__

WHEREAS, Tiara Telluride, LLC (the "Developer") is the owner of certain real property described as Lot 109R, Town of Mountain Village, Colorado, according to the plat recorded as Reception No. 416994 ("Lot 109R") and

WHEREAS, the Town of Mountain Village (the "Town") is the owner of certain real property adjacent to Lot 109R described as open space parcel OS-3BR-2, according to the plat recorded as Reception No. 416994 (the "Town Property"); and

WHEREAS, the Developer has applied to the Town to replat Lot 109R and the Town Property (the "Major Subdivision Application") for the purpose of a land exchange where the Town would convey portions of the Town Property to become part of Lot 109R (the "109R Adjustment Parcels") and the Developer would convey portions of the current Lot 109R to become part of the Town Property (the "Open Space Adjustment Parcels," and together with the Town Property, the "Adjusted Town Property"); and

WHEREAS, the Developer has applied to the Town to rezone the Adjusted Town Property as open space (the "Rezoning Application") in connection with its application for approval of a Major PUD Amendment for the remainder of Lot 109R, including 109R Adjustment Parcels to be conveyed by the Town to the Developer (the "Major PUD Amendment Application," and together with the Major Subdivision Application and Rezoning Application, the "Applications"); and

WHEREAS, the DRB held public hearings regarding the Major PUD Amendment Application, which included the proposal to transfer and rezone certain portions of Lot 109R into Town open space, on May 5, 2022 and May 31, 2022, and voted 3-1 to issue a recommendation of approval to the Town Council concerning the Application, subject to further consideration by the DRB for final design review and for its recommendation regarding the related Major Subdivision Application; and

WHEREAS, the Town Council considered an ordinance approving the Major PUD Amendment Application (the "Major PUD Amendment Ordinance") on first reading at its regular meetings on June 16, 2022 and August 18, 2022, and consented to including the 109R Adjustment Parcels in the Developer's Major PUD Amendment Application and Major Subdivision Application, but voted to continue the matter to November 17, 2022 so as to allow the Developer time to submit the Major Subdivision Application and final design review materials; and

WHEREAS, the Town Council again considered the Major PUD Amendment Ordinance on first reading at its regular meeting on November 17, 2022, but voted to continue the matter to January 19, 2023 so as to allow the DRB to conduct a further public meeting regarding final design review and the Major Subdivision Application before the Town Council would make a decision as to the Major PUD Amendment Application; and

WHEREAS, following a DRB meeting held on December 1, 2022, the DRB recommended to the Town Council approval of the Major PUD Amendment Application and the Major Subdivision Application, subject to conditions, as well as approval of the Rezoning Application; and

WHEREAS, the Town Council considered the Major PUD Amendment Application, the DRB's recommendations, and testimony and comments from the Developer, Town staff, and members of the public

at a public meeting on January 19, 2023 and voted 6-1 to direct Town staff to prepare a resolution denying the Major PUD Amendment Application; and

WHEREAS, because the Rezoning Application is contingent upon the Major PUD Amendment Application, a denial of the Major PUD Amendment Application has made the Rezoning Application moot; and

WHEREAS, the Town Council held a public meeting on March 16, 2023, to consider this Resolution and voted _____ to approve this Resolution concerning the Rezoning Application.

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

Section 1. Recitals. The above recitals and Resolution No. 2023-__ are hereby incorporated as findings of the Town Council in support of the enactment of this Resolution.

Section 2. Application. The Town Council finds that, because the Major PUD Amendment Application has been denied pursuant to Resolution No. 2023-__, the Rezoning Application is now moot and shall be considered withdrawn by the Developer, without prejudice.

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

ADOPTED AND APPROVED by the Town Council at a regular public meeting held on March 16, 2023.

TOWN OF MOUNTAIN VILLAGE TOWN COUNCIL

By: _____
Laila Benitez, Mayor

ATTEST:

_____
Susan Johnston, Town Clerk

APPROVED AS TO FORM:

_____
David McConaughy, Town Attorney

AGENDA ITEM 16 & 17
COMMUNITY DEVELOPMENT DEPARTMENT
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 728-1392

TO: Mountain Village Town Council

FROM: Amy Ward, Community Development Director

FOR: Regular Town Council Meeting; June 15, 2023

DATE: June 7, 2023

RE: Staff Memo – Consideration of a Resolution Approving a Height Variance of 12' over allowable and Consideration of a Resolution Approving a Minor Subdivision to vacate a portion of the General Easement on Lot 137, TBD Granite Ridge pursuant to CDC 17.4.13 and 17.4.16

APPLICATION OVERVIEW: Height Variance & Minor Subdivision on Lot 137

PROJECT GEOGRAPHY

Legal Description: Lot 137, Telluride Mountain Village, Filing 1, according to the Plat recorded March 09, 1984 in Plat Book 1 at page 476, County of San Miguel, State of Colorado.
Address: 102 Granite Ridge
Applicant/Agent: Narcis Tudor, Narcis Tudor Architects
Owner: Sam Zussman, Epic Ridge Properties, LLC
Zoning: Single-Family
Existing Use: Vacant
Proposed Use: Single-Family
Lot Size: .98 acres
Adjacent Land Uses:

- **North**: Open Space (northeast) and Single-Family (northwest)
- **South:** Single-Family
- **East:** Open Space
- **West:** Single-Family

Figure 1: Vicinity Map

ATTACHMENTS

Exhibit A: Height Variance Application
Exhibit B: Minor Subdivision Application

Exhibit C: Resolution Approving Height Variance
Exhibit D: Resolution Approving Minor Subdivision

Case Summary:

Narcis Tudor of Narcis Tudor Architects (Applicant), on the behalf of Sam Zussman of Epic Ridge Properties, LLC (Owner) is currently under review by the Design Review Board (DRB) for approval of a Class 3 Design Review Application for a new single-family residence located at Lot 137, 102 Granite Ridge. The applicant has two additional concurrent applications to be reviewed by Town Council. One is for a height variance for up to 12' above allowable height for a portion of the roof. The second is for a minor subdivision amendment to vacate the north-east and east general easements. This allows for the home site to be pushed further to the NE and and to locate the home on an area with better slope stability.

The Lot is 42,689 square feet and is zoned Single Family. The proposal includes a single-family development with an approximate 11,227 livable square feet and 1,113 square foot garage. The structure is technically a five-story home with two levels that are mostly subterranean and three stories above grade.

DRB Recommendation:
This application was reviewed by the DRB on June 1, 2023. It received approval of the Initial Architecture and Site Review with a 6-1 vote. DRB voted 5-2 to recommend approval of the height variance. DRB does not weigh in on the subdivision application.

It should be noted that as a condition of approval for the Initial Architecture and Site Review that DRB requested some design changes be made to further reduce the request for additional height prior to final review.

Applicable CDC Requirement Analysis: The applicable requirements cited may not be exhaustive or all-inclusive. The applicant is required to follow all requirements even if an applicable section of the CDC is not cited. ***Please note that Staff comments will be indicated by*** *Italicized Text.*

Table 1: Relevant information from CDC Sections 17.3.11-14; 17.5.6 (materials); 17-5.8 (parking)

CDC Provision	**Requirement**	**Proposed**
Maximum Building Height	35' (shed) Maximum	47'
Avg. Building Height	30' (shed) Maximum	14' 6 1/4"
Maximum Lot Coverage	40% (17,076 sq ft)	27% (11,563 sq ft)
General Easement Setbacks	No encroachment	GE encroachment
Roof Pitch		
Primary		
Secondary		
Exterior Material		
Stone Veneer	35% minimum	52%
Wood Siding	n/a	None
Windows/Door Glazing	40% maximum	28%
Steel	n/a	23%
Parking	2 interior/2 exterior	2 interior/ 3 exterior

17.3.11 and 17.3.12: Building Height and Building Height Limits
Sections 17.3.11 and 17.3.12 of the CDC provide the methods for measuring maximum building height and average building height, along with providing the height allowances for specific types of buildings based on their roof form. The proposed design incorporates a combination of shed roof forms. Homes with a primary shed roof form are allowed a maximum building height of 35 feet. The average height is an average of measurements from a point halfway between the roof ridge and eave. The maximum height is measured from the highest point on a roof directly down to the existing grade or finished grade, whichever is more restrictive.

Staff: Staff has determined that the primary roof forms are shed and therefore granted a maximum height of 35' and an average height of 30'. The applicant has calculated a maximum height of 47' for portions of the roof. The applicant has also calculated an average height of 14' 6 1/4". Because the proposed structure exceeds the height maximum, the applicant is applying for a variance from the Town Council for the proposed height. The application materials note the 47' roof height is limited to the shed roof overhang and occurs due to a drastic grade drop from the north ridge. Figures 2-5 below depict the height calculations; the west and east elevations (Figures 2 and 4) depict the portion of the roof overhang that exceeds the allowed 35' height maximum (highlighted in orange).

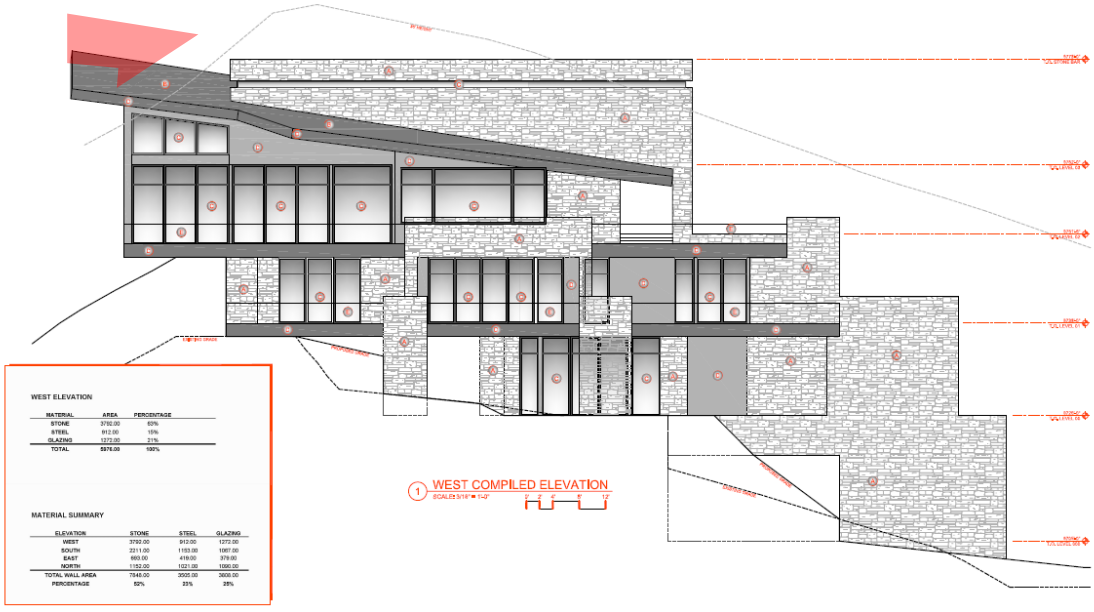


Figure 2: West Elevation – Height

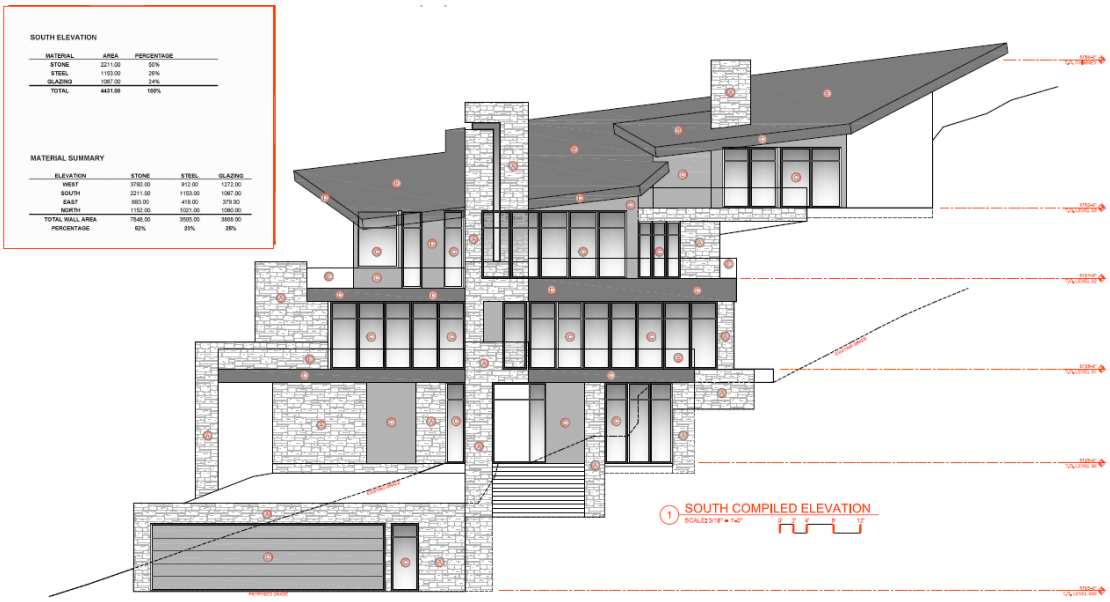


Figure 3: South Elevation – Height

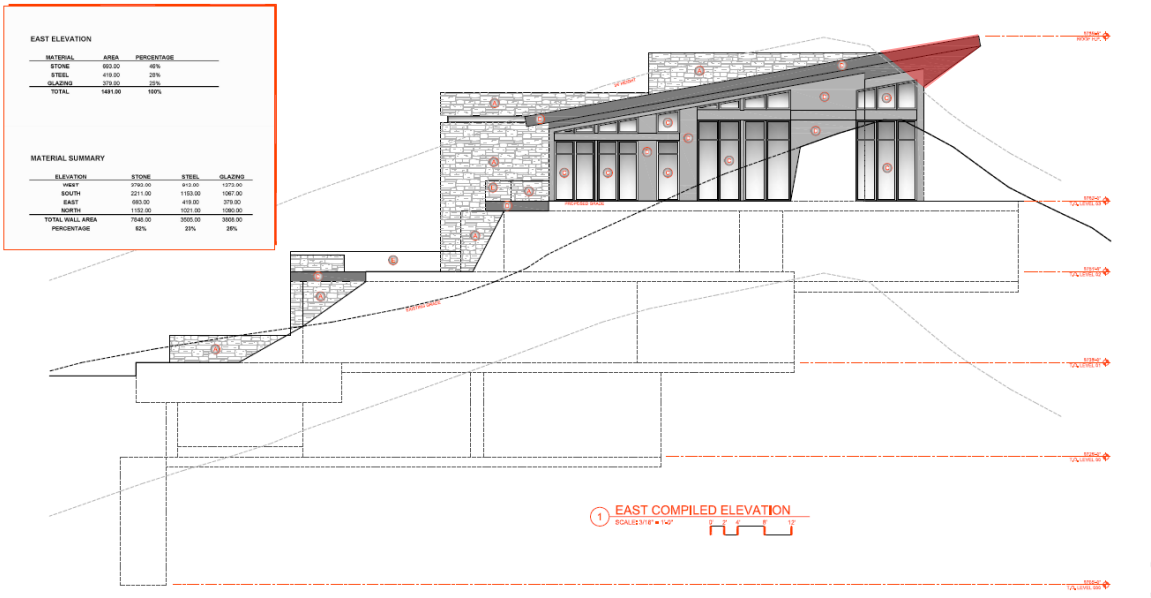


Figure 4: East Elevation – Height

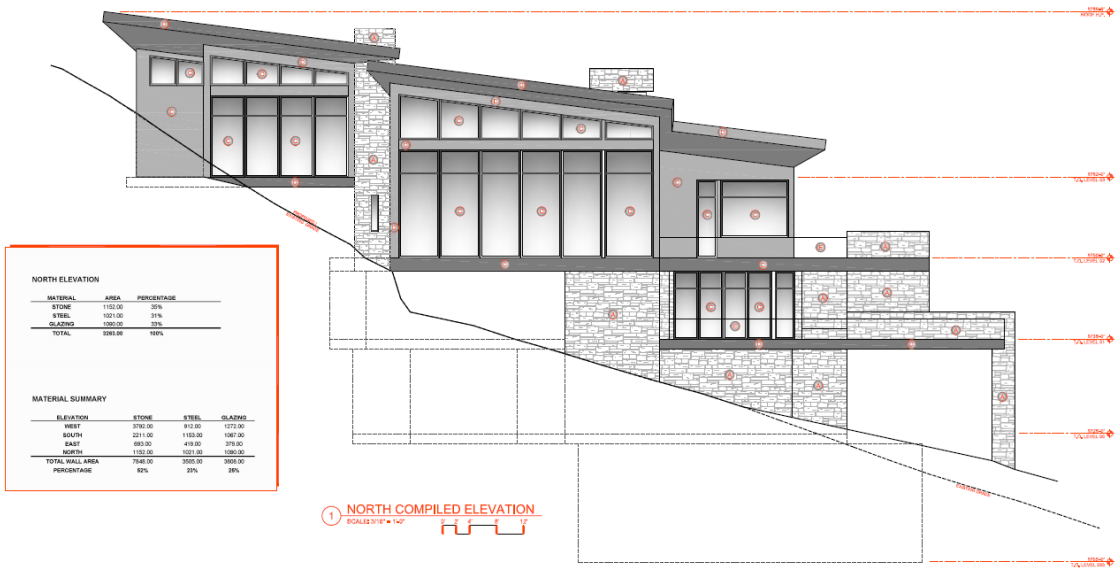


Figure 5: North Elevation – Height

17.4.16 Variance Process
Criteria for Decision
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 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.

*Staff feels that most of this criteria is met, however **criteria d, and e should be discussed**. Slope instability will be further discussed below, however the siting of the home in an effort to locate the structure in an area of stability due to underlying bedrock certainly makes meeting the height requirements more difficult due to the steep drop of the site on the north side. Minimizing the overall mass and scale of the home could lead*

to a lower roof height, but some request for a height variance would still be anticipated if the applicant proposes to build a home of comparable size to other homes in the vicinity.

17.3.14: General Easement Setbacks

Lot 137 has a sixteen (16) foot General Easement (GE) which surrounds its perimeter. The CDC provides that the GE and other setbacks be maintained in a natural, undisturbed state to provide buffering to surrounding land uses. The CDC allows some development activity within the GE and setbacks such as ski access, natural landscaping, utilities, address monuments, driveways, walkways, and fire mitigation.

Staff: The proposal includes two GE encroachments that fall into the above category of permitted GE development activity including the following:

- *Driveway: The driveway as shown takes access from the south off Granite Ridge and crosses the General Easement to the homesite. The driveway has associated retaining walls that continue to the GE (see Grading Plan, Sheet C1.0).*
- *Utilities: Utilities are drawn from Granite Ridge and also cross the southern GE to the lot.*

Figure 6 at right displays the proposed development in relation to the existing GE.

Figure 6: Site Plan

The applicant is requesting a minor subdivision amendment to vacate a portion of the north and northeast GE in order to site the primary structure. The proposed location is due to site constraints. The entire lot contains slopes that are 30 percent or greater. There is a massive rock slab on the site, which slopes upwards from the west to the east. Per recommendations by geotechnical and civil engineers, any cuts across the site on a north-south axis would destabilize this formation. The northern portion of the site, where the proposed home would be located, contains a geological composition of solid rock along a natural ridge and is deemed to be the most stable (see Figure 7). Figure 8 illustrates the proposed changes to the General Easements for the property. This is also seen on the proposed Replat in the application.

Regardless of the encroachment, any development within the General Easement will

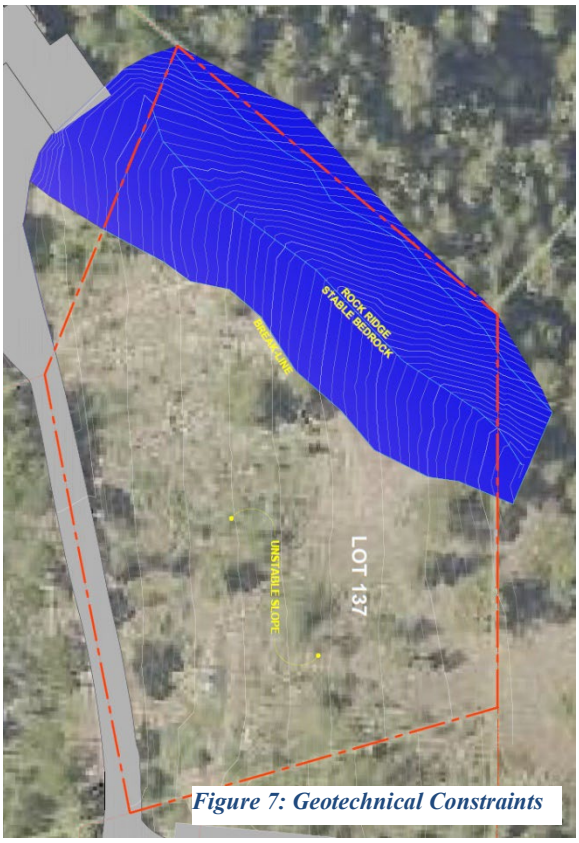


Figure 7: Geotechnical Constraints

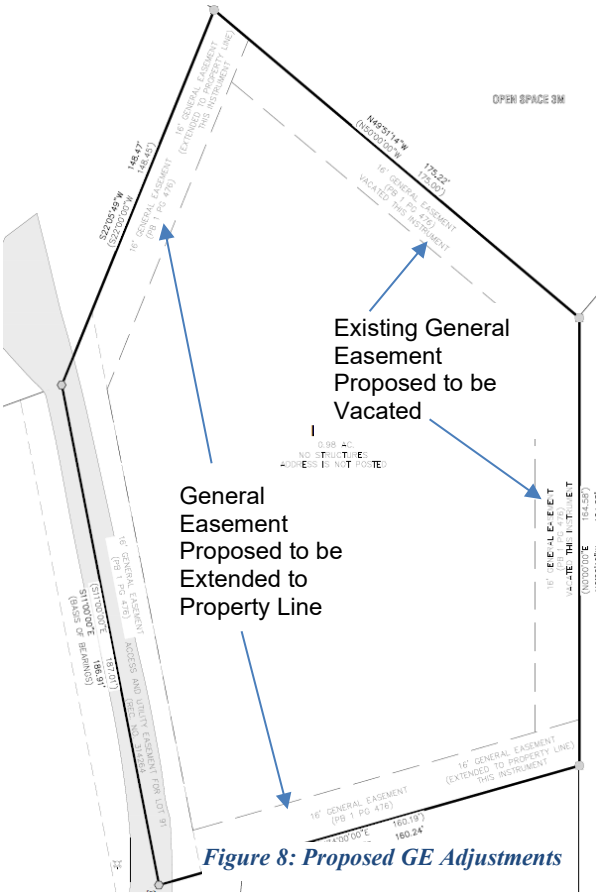


Figure 8: Proposed GE Adjustments

require the owner and the Town to enter into an Encroachment Agreement which will be a condition of approval with the design review.

Public Works: Public Works supports the use of the General Easement as this is a very difficult lot to develop.

17.4.13 Minor Subdivisions. The following criteria shall be met for the review authority to approve a lot line vacation, lot line adjustment, easement vacation or similar subdivision:

a. The lots resulting from the adjustment or vacation are in compliance with Town Zoning and Land Use Regulations and Subdivision Regulations;

Staff finds this criteria is being met

b. The proposed subdivision is in general conformance with the goals, policies and provisions of the Comprehensive Plan;

Staff finds this criteria is being met

c. 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;

Staff finds this criteria is being met

d. Easements are not affected, or have been relocated to the satisfaction of the utility companies and/or the benefited party under the easement or, in the case of vacated easements, the easement is no longer necessary due to changed

conditions, and the easement vacation has been consented to by the benefitted. party under the easement; and
The Town is 100% beneficiary of this easement. Public Works has indicated support for the vacation of this easement.
e. The proposed subdivision meets all applicable Town regulations and standards.
Staff finds this criteria is being met

Staff Note: It should be noted that reasons for approval or rejection should be stated in the findings of fact and motion.

Staff Recommendation: There are two items before Council with this application: (1) Consideration of a Resolution Approving a height Variance and (2) Consideration of a Resolution Approving a Minor Subdivision to Vacate a portion of the General Easement. Staff has provided suggested motions for both applications.

If Council chooses to **approve the height variance,** then staff suggests the following motion:

I move to approve the Resolution regarding a height variance of 12 feet above the allowable, per the height restrictions listed in the CDC for portions of a new single-family home located at Lot 137, TBD Granite Ridge based on the evidence provided in the staff memo of record dated June 7, 2023 and the findings of this meeting, and the following findings and conditions:

Findings:

I. 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*.

Conditions:

The approved height variance is valid only with the design presented for Initial DRB review on June 1,2023 and is valid only for the 18 month period of that design approval. One 6-month extension of the original design review approval is allowable.

The height variance is specific to the area described in the staff memo in figures 2,4 and represented in the DRB approved drawings. Should any modifications to the building design occur, including future expansion, that the variance would not cover portions of the building that are not thus described.

If Council chooses to **approve the minor subdivision,** then staff suggests the following motion:

I move to approve the Resolution regarding a minor subdivision to vacate a portion of the general easement on Lot 137, TBD Granite Ridge, based on the evidence provided in the staff memo of record dated June 7, 2023, and the following findings and conditions :

Findings:

1. *The lots resulting from the adjustment or vacation are in compliance with Town Zoning and Land Use Regulations and Subdivision Regulations;*
2. *The proposed subdivision is in general conformance with the goals, policies and provisions of the Comprehensive Plan;*
3. *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;*
4. *Easements are not affected, or have been relocated to the satisfaction of the utility companies and/or the benefited party under the easement or, in the case of vacated easements, the easement is no longer necessary due to changed conditions, and the easement vacation has been consented to by the benefited party under the easement; and*
5. *The proposed subdivision meets all applicable Town regulations and standards.*

And, conditions:

1. *A revised plat showing the vacation of the GE will be recorded with the County prior to the issuance of a building permit.*
2. *The minor subdivision approval is valid for an 18 month period.*
3. *The approval of the minor subdivision is premised on the site-specific design approval. If the design approval expires, the subdivision approval to vacate the GE will also expire.*

EXHIBIT A

NARCIS TUDOR ARCHITECTS©

October 31, 2022

RE: LOT 137 TELLURIDE MOUNTAIN VILLAGE – DESIGN NARRATIVE

To: Mountain Village Design Review Board

Thank you for taking the time to review our design application for a single family residence on Lot 137 Telluride Mountain Village. This memo outlines the main design elements of the project and its response to the unique site conditions.

LOCATION | GEOLOGICAL HAZARDS
The parcel is located towards the east and north hillside of the Granite Ridge access easement extension.
To the east, the geological composition of the site comprises of a massive rock slab with a potential of sliding west down the slope; any cuts across the site on a north-south axis will destabilize this formation.
To the north, the geological composition is solid rock formation along the natural ridge. This areas is deemed as the most stable and the best location for the proposed structure. A site analysis and recommendations by the Geotechnical and Civil Engineers were critical components in the design layout of the home.

VIEWS
The primary views are south-west towards Sunshine and Wilson Peaks with secondary views to the west and tertiary views north towards the Dallas Range.

ACCESS | PRESERVATION OF NATURAL FEATURES | GEOHAZARD CONDITIONS
The parcel is accessed from the eastern part of the access easement veering north towards the stable geological formation. The driveway is increased in size to allow for fire department access from the narrow easement. From this location, the structure steps up the site to the ridge and the stable formation.

ARCHITECTURAL DESIGN
The design of the home can be described as a stepped, horizontally oriented approach to a contemporary alpine structure. Grounding the structure are two vertical stone from which the individual levels radiate out of the site. The lower two levels are predominantly subterranean with the upper levels floating above grade. Roof forms are low profile following the natural topography blending the house into its natural setting.

MATERIALS
The primary exterior materials are stone and steel with the fenestration as the subtractive element.

VARIANCES | REQUESTS
Due to the site's geology, the design warrants 2 variances:

1. Using the north and east setbacks to locate the house due to soil stability and to allow for the firetruck access to the west.

2. Roof maximum height of 47' for a shed roof overhang due to the drastic grade drop of the north ridge.

Thank you for taking the time to review our application and should you have any questions please do not hesitate to contact me directly.

Narcis Tudor
ARCHITECT # 00402820

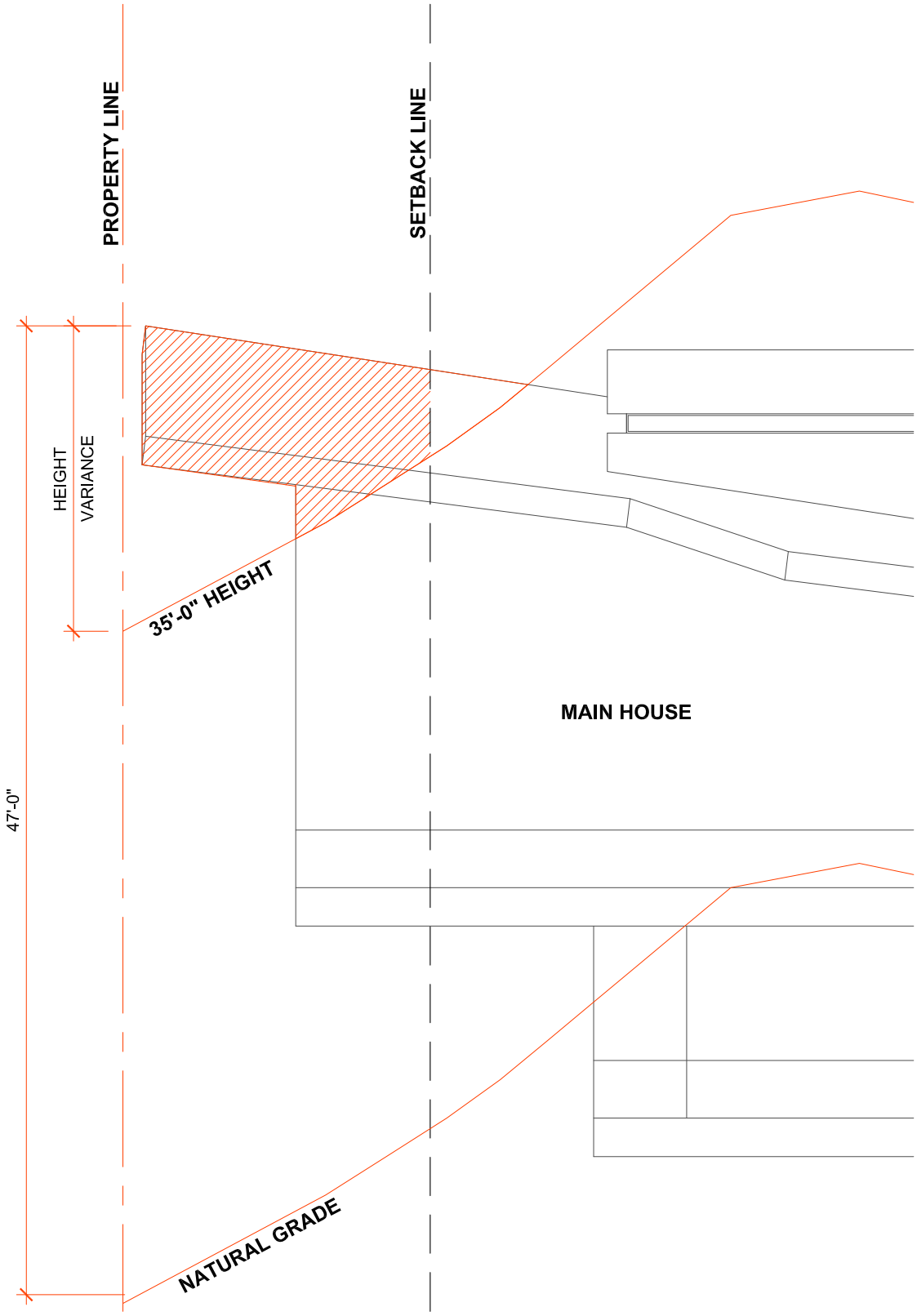
P.O. Box 1717. Telluride. Colorado. 81435. info@narcistudor.com. mobile. 970.708.4983

1 LOT 137 - VARIANCE EXHIBIT 1

SCALE: NTS

N

NARCIS TUDOR ARCHITECTS© 970.708.4983. info@narcistudor.com. box 1717 telluride



2 LOT 137 - VARIANCE EXHIBIT 2

SCALE: NTS

N

NARCIS TUDOR ARCHITECTS© 970.708.4983.info@narcistudor.com.box 1717 telluride

EXHIBIT B

April 24, 2023

RE: LOT 137 GRANITE RIDGE – CLASS 5 APPLICATION

To: Mountain Village Planning Department

Thank you for taking the time to review our Class 5 application for the proposed residence on Lot 137 Granite Ridge, Mountain Village, Colorado.

The parcel is located on the north-east hillside of Granite Ridge extension accessed by a narrow easement that terminates at Lot 91.

EXSITING CONDTIONS | SITE CONSTRAINTS

Geological Conditions

The site is comprised of sloped grade to the south with an exposed rock ridge against the north-east property line. Based on the geotechnical analysis, this rock ridge location is the most stable portion of the lot requiring no special construction or soils stabilization. As the site unfolds to the south, the geological conditions become more unstable and construction on this portion will require soil retention | stabilization.

Vehicular | Firetruck Access

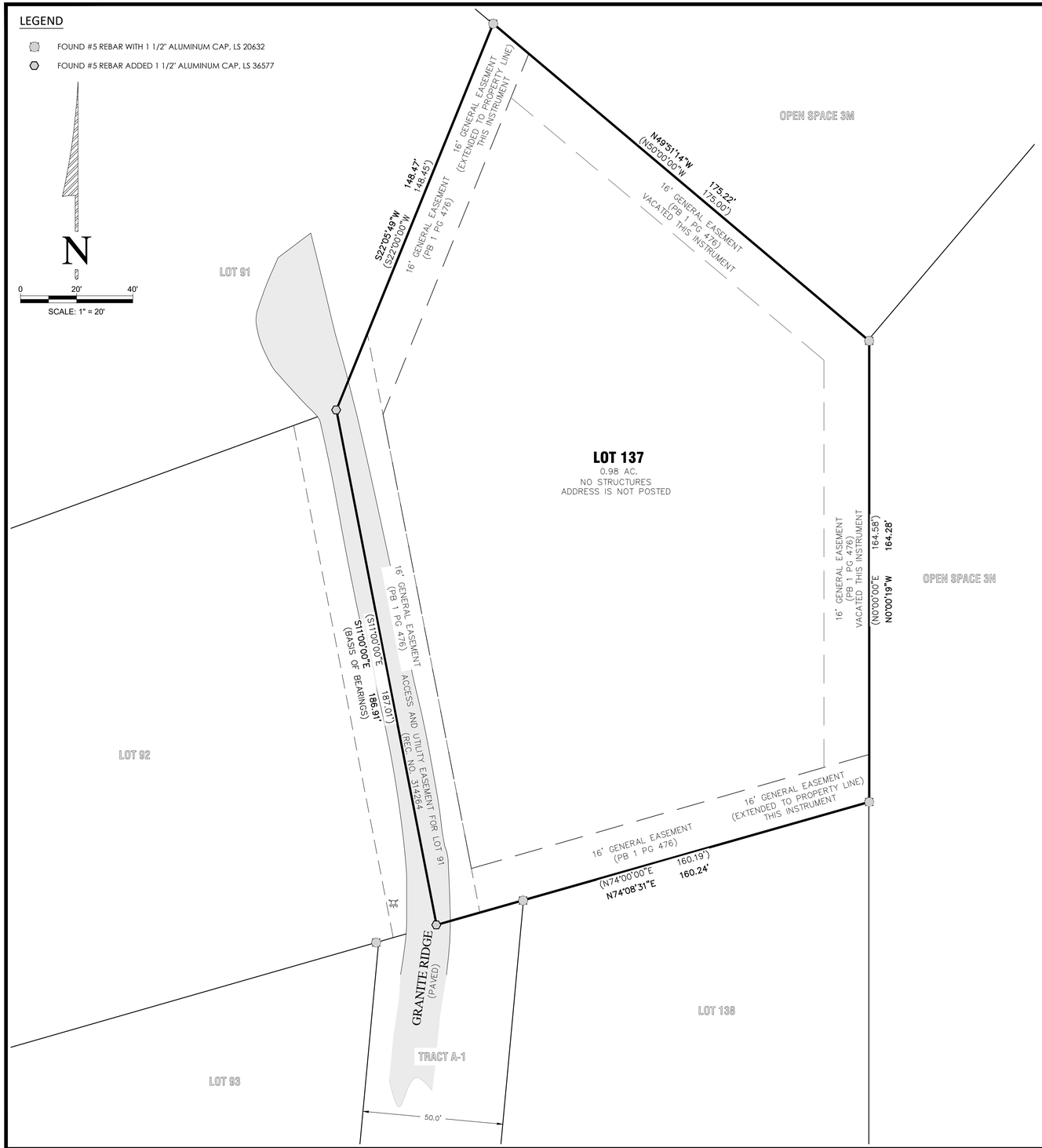
Since the site is accessed by a narrow, dead-end easement, there is no reasonable | safe vehicular turnaround access, especially for a firetruck.

Due to these existing conditions and site constraints, we request the north-east and east 16' general easements to be vacated. These easements carry no burden of use as they are in challenging locations and adjacent to open space.

Vacating these easements will allow for the structure to be strategically placed on the most stable portion of the lot with minimal site disturbance. Additionally, this location will allow for a 36' wide driveway that is 50' deep with adequate room for vehicle maneuvering and firetruck access.

Thank you for taking the time to review our variance application and should you have any questions please do not hesitate to contact me directly.

Narcis Tudor
ARCHITECT # 00402820
info@narcistudor.com



CERTIFICATE OF OWNERSHIP AND DEDICATION:

Know all persons by these presents:

THAT Epic Ridge Properties, LLC, a Colorado Limited Liability Company, being the owner of the land describes as follows:

Lot 137, Telluride Mountain Village, Filing 1, according to the Plat recorded March 09, 1984 in Plat Book 1 at page 476,

County of San Miguel,
State of Colorado

has laid out, platted and subdivided same as shown on this plat, and by these presents does hereby dedicate to the perpetual use of Town of Mountain Village, the streets, alleys, road and other public areas as shown hereon and hereby dedicate those portions of land labeled as utility easements for the installation and maintenance of public utilities as shown hereon, if any.

In witness hereof the said owner has caused its name to be here unto subscribed this _____ day of _____ , 2023.

By: _____
Name and Title Epic Ridge Properties, LLC, a Colorado Limited Liability Company

ACKNOWLEDGMENT OF OWNER:

STATE OF COLORADO }
} SS
COUNTY OF SAN MIGUEL }

Subscribed to and sworn to before me this _____ day of _____, 2023 by _____
, _____, Epic Ridge Properties, LLC, a Colorado Limited Liability Company

Witness my hand and official seal.

_____ My Commission Expires: _____

_____
Notary Public

TITLE INSURANCE CERTIFICATE:

Land Title Guarantee Company, a Colorado licensed Title Company, does hereby certify that we have examined the title to the lands herein shown on the Replat and that the title to this land is in the name of Epic Ridge Properties, LLC, a Colorado Limited Liability Company and is free and clear of all liens, and taxes except as follows: ad valorem taxes.

_____
Title Insurance Company Representative

COUNTY TREASURER'S CERTIFICATE:

I certify that according to the records in the San Miguel County Treasurer's office, there are no liens against the property included in this subdivision, or any part thereof, for unpaid State, county of municipal ad valorem taxes or special assessments certified to the County Treasurer for collection.

_____
County Treasurer ***Date***

TOWN OF MOUNTAIN VILLAGE CERTIFICATE:

I, Amy Ward, as Community Development Director for the Town of Mountain Village, Colorado, do hereby certify that this Map has been approved by the Town of Mountain Village and we are authorized to execute this document.

_____ _____
Amy Ward Date

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. According to Flood Insurance Rate Map 08113C0287 C dated September 30, 1988, this parcel lies within Flood Zone "X" (Areas determined to be outside the 500-year flood plain).
2. Easement research from Land Title Guarantee Company, Commitment No. TLR86009091, Effective Date 07/05/2019 at 05:00 PM.
3. Lot 137 is designated with the symbol VA and if the Design Review Board of the Telluride Mountain Village Resort Company has approved an enclosed parking space for the particular lot, then one automobile or its equivalent may be parked on the lot for each approved enclosed parking space. Plat Book 1 Page 477.
4. Lineal Units U.S. Survey Feet

PROPERTY DESCRIPTION:

Lot 137, Telluride Mountain Village, Filing 1, according to the Plat recorded March 09, 1984 in Plat Book 1 at page 476,

County of San Miguel,
State of Colorado

BASIS OF BEARINGS:

The Basis of Bearings for this Replat was derived from the West line of Lot 137, Telluride Mountain Village, Filing 1 recorded in Book 1 at page 476, said bearing being **S 11°00'00" E**, both being found monuments as depicted on this plat**.**

SURVEYOR'S CERTIFICATE:

I, Christopher R. Kennedy, of San Juan Surveying, being a Licensed and Registered Land Surveyor in the State of Colorado, do hereby certify that this Replat prepared for Land Title Guarantee Company, and Epic Ridge Properties, LLC, a Colorado Limited Liability Company was performed under my direct responsibility, supervision, and checking, and that the information herein is true and accurate to the best of my belief and knowledge. I further certify that the monuments as shown were field set as required by Articles 50 and 51 of Title 38, C.R.S.

Christopher R. Kennedy, P.L.S. 36577
04/25/2023

COLORADO REGISTERED
CHRISTOPHER R. KENNEDY
36577
04/25/23
PROFESSIONAL LAND SURVEYOR

SAN MIGUEL COUNTY RECORDER'S CERTIFICATE:

This Plat was accepted for filing in the office of Clerk and Recorder of San Miguel County, Colorado on this _____ day of _____, 2023.

Reception No. _____.

Time _____

_____
San Miguel County Clerk

REPLAT FOR
LOT 137, TELLURIDE MOUNTAIN VILLAGE, FILING NO. 1

LOCATED WITHIN THE SE 1/4 OF
SEC. 34, T43N, R9W, N.M.P.M.
COUNTY OF SAN MIGUEL
STATE OF COLORADO

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

DATE:	04/25/2023
JOB:	97094
DRAWN BY:	CRK
CHECKED BY:	CRK
REVISION DATES:	
SHEET:	1 OF 1

EXHIBIT C

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO APPROVING A VARIANCE OF THE MAXIMUM HEIGHT LIMITATIONS OF THE MOUNTAIN VILLAGE MUNICIPAL CODE TO LOT 137

RESOLUTION NO. 2023-0316-04

WHEREAS, Epic Ridge Properties, LLC (the "Owner") is the owner of certain real property described as Lot 137, Mountain Village, Colorado, Assessor Parcel No. 456534401003, and commonly known as 102 Granite Ridge Drive (the "Property"); and

WHEREAS, Narcis Tudor of Narcis Tudor Architects, LLC (the "Applicant"), with the Owner's consent, has submitted a request to the Town of Mountain Village (the "Town") for a variance to the maximum height limitations (the "Variance Request") found in the Town's Community Development Code ("CDC") for the purpose of developing a single-family detached condominium on the Property; and

WHEREAS, the Variance Request consists of the materials submitted to the Town, plus all statements, representations, and additional documents of the Applicant and its representatives made or submitted at the public hearings before the DRB and Town Council; and

WHEREAS, the DRB held a public hearing on June 1, 2023, to consider the Variance Request and testimony and comments from the Applicant, Town Staff, and members of the public, and voted 5-2 to issue a recommendation of approval to Town Council of the Variance Request; and

WHEREAS, the Town Council held a public hearing on June 15, 2023 to consider the Variance Request, the DRB's recommendations, and testimony and comments from the Applicant, Town Staff, and members of the public, and voted unanimously to approve this Resolution ("Variance Approval"); and

WHEREAS, the public hearings and meetings to consider the Variance Request were duly noticed and held in accordance with the CDC; and

WHEREAS, the Town Council has considered the criteria set forth in Section 17.4.16 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:

I. 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.

WHEREAS, the Town Council now desires to approve the Variance Request, 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 above recitals are hereby incorporated as findings of the Town Council in support of the enactment of this Resolution.

Section 2. Approval. The Town Council hereby approves a variance of 13.79 feet above the allowable maximum height and a variance of 4.29 feet above the allowable average height as outlined in the CDC for portions of a new single-family detached condominium to be constructed on the Property, as described in the Variance Request.

Section 3. Conditions. The Variance Approval is subject to the following terms and conditions:

3.1. *The approved height variance is valid only with the design presented for Initial DRB review on June 1,2023 and is valid only for the 18 month period of that design approval. One 6-month extension of the original design review approval is allowable.*

3.2 The height variance is specific to the area described in the staff memo in figures 2, 4 and represented in the DRB approved drawings. Should any modifications to the building design occur, including future expansion, that the variance would not cover portions of the building that are not thus described.

Section 4. Effective Date. This Resolution shall be in full force and effect upon its passage and adoption.

ADOPTED AND APPROVED by the Town of Mountain Village Town Council at a regular public meeting held on June 15, 2023.

TOWN OF MOUNTAIN VILLAGE, COLORADO

By:_____
Laila Benitez, Mayor

ATTEST:

_____
Susan Johnston, Town Clerk

APPROVED AS TO FORM:

_____
David McConaughy, Town Attorney

EXHIBIT D

RESOLUTION APPROVING A MINOR SCALE SUBDIVISON VACATING A PORTION OF THE GENERAL EASEMENT ON LOT 137

Resolution No. 2022-0120-01

A. Epic Ridge Properties LLC ("Owners") are the owner of record of real property described as Lot 137 ("Property").

B. The Owner applied for a minor subdivision of these properties ("Application").

C. The proposed minor subdivision complies with the provisions of sections 17.4.13 of the Community Development Code ("CDC").

D. The Town Council conducted a public hearing at which it considered and approved the Application at a public meeting held on June 15, 2023 the "Public Hearing."

E. At the Public Hearing, the Town Council considered the Application's submittal materials, and all other relevant materials, public letters and public testimony, and approved the Application with conditions as set forth in this Resolution.

F. The Owner has, agreed to address, all conditions of approval of the Application imposed by Town Council.

G. The Town Council finds the Applications meets the minor subdivision criteria for decision contained in CDC Section 17.4.13(D) as follows:

Minor Subdivision Criteria:

1. The lots resulting from the adjustment or vacation are in compliance with Town Zoning and Land Use Regulations and Subdivision Regulations;
2. The proposed subdivision is in general conformance with the goals, policies and provisions of the Comprehensive Plan;
3. 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;
4. Easements are not affected, or have been relocated to the satisfaction of the utility companies and/or the benefited party under the easement or, in the case of vacated easements, the easement is no longer necessary due to changed conditions, and the easement vacation has been consented to by the benefited party under the easement; and
5. The proposed subdivision meets all applicable Town regulations and standards.

NOW, THEREFORE, BE IT RESOLVED THAT THE TOWN COUNCIL HEREBY APPROVES A MINOR SUBDIVISION VACATING A PORTION OF THE GE AND AUTHORIZES THE MAYOR TO SIGN THE RESOLUTION SUBJECT TO CONDITIONS SET FORTH IN SECTION 1 BELOW:

Section 1. Conditions of Approval

1. A revised plat showing the vacation of the GE will be recorded with the County prior to the issuance of a building permit.
2. The minor subdivision approval is valid for an 18 month period.
3. The approval of the minor subdivision is premised on the site-specific design approval. If the design approval expires, the subdivision approval to vacate the GE will also expire.

Section 2. Resolution Effect

A. This Resolution shall have no effect on pending litigation, if any, and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the resolutions repealed or amended as herein provided and the same shall be construed and concluded under such prior resolutions.

B. All resolutions, of the Town, or parts thereof, inconsistent or in conflict with this Resolution, are hereby repealed, replaced and superseded to the extent only of such inconsistency or conflict.

Section 3. Severability

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

Section 4. Effective Date

This Resolution shall become effective on June 15th, 2023 (the "Effective Date") as herein referenced throughout this Resolution.

Section 5. Public Hearing

A public hearing on this Resolution was held on the 15th day of June and approved.

Town of Mountain Village, Town Council

By: _____
Laila Benitez, Mayor

Attest:

By: _____
Susan Johnston, Town Clerk

Approved as to Form:

David Mcconaughy, Town Attorney

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

Agenda Item #18

TO: Mountain Village Town Council

FROM: Amy Ward, Community Development Director

FOR: June 15, 2023

DATE: June 6, 2023

RE: Work session to discuss upcoming vested property rights extension applications on Lots 30 and Lots 27A, TBD Mountain Village Blvd.

PROJECT GEOGRAPHY

Legal Description: Lot 30 and Lot 27A on file with the planning department
Address: TBD Mountain Village Blvd.
Applicant/Agent: Chris Chaffin, Jim Mahoney
Owner: MV Lot 27A LLC & MV Lot 30 LLC
Zoning: Lot 30 – Multi Family, Lot 27A Multi Family, Village Center
Existing Use: Vacant
Proposed Use: Condominiums and Employee Condominiums

Adjacent Land Uses Lot 30:

- **North:** Full Use Ski Resort Active Open Space
- **South:** Multi Family and Full Use Ski Resort Active Open Space
- **East:** Multi Family
- **West:** Multi Family

Adjacent Land Uses Lot 27A:

- **North:** Multi Family Village Center
- **South:** Single Family Village Center
- **East:** Multi Family Village Center
- **West:** Multi Family

ATTACHMENTS

Exhibit A: Applicant Narrative
Approved plans for Lot 30 and Lot 27A on file with the Planning Department

Current entitlements

Lot 30 was approved in October of 2021 for a development inclusive of 16 condominium units and a total of 4 employee condominium units. The approval was valid for 18 months and the applicant requested, and was granted a one-time six month extension to expire on February 13, 2023. This approval is set to expire on October 7, 2023. The applicant has submitted an application for a Vested Property Rights Extension for this property. Due to a backlog of design review with the Design Review Board it is not scheduled to be heard by DRB until August.

Lot 27A was approved in October 2022 for a development inclusive of 19 condominiums and 2 employee condominiums. The approval is valid for 18 months and set to expire on April 6, 2024. This approval would be valid for a one-time six month extension if requested by the applicant.

WORK SESSION REQUEST

The applicant is requesting this work session to gauge the Council's general support of vested property rights to extend the approval periods for both properties as well to discuss the idea of encouraging a more phased development approach for both of these properties in the Village Core. They also cite difficult lending conditions as a deterrent to being able to immediately construct.

VESTED PROPERTY RIGHTS

A vested property rights extension allows for a developer to extend their existing approvals through a Class 4 development application process for a period longer than the initial 18 month period. Town Council can elect to approve an extended s vested period, that is specific to their site specific development plan (approved design drawings) typically for an additional three year period. This is the most logical way a developer can request additional time in order to construct their project because more time is needed and not lose their entitlements.

17.4.17 of the CDC sites the following criteria for decision to approve a vested property right:

a. A vested property right is warranted in light of relevant circumstances, such as the size and phasing of the development, economic cycles and market conditions;
b. The site-specific development plan is consistent with public health, safety and welfare;

c. The site-specific development plan provides for the construction and financing of improvements and facilities needed to support the proposed development;
d. The site-specific development plan meets the criteria for decision for concurrent, required development application(s); and
e. The proposed vested property right meets all applicable Town regulations and standards.

A work session is a process that allows for the Town Council to provide an informal, non-binding review of a development proposal issue. The Council shall evaluate the issue presented based on the applicable criteria for decision in the future. Any comments or general direction given by the Council shall not be considered binding or represent any warranties or guarantees of approval of any kind. No formal action is taken by the Town Council on work sessions.

Staff recommends the Town Council review and evaluate the issue as presented based on the applicable criteria for decision for the future development application and provide non-binding feedback and direction to the applicant regarding possible solutions.

/aw

GENERIC APPLICATION FORM

Planning & Development Services
455 Mountain Village Blvd. Suite A
Mountain Village, CO 81435
970-728-1392
970-728-4342 Fax
cd@mtnvillage.org

Revised 1.3.2020

APPLICATION		
APPLICANT INFORMATION		
Name: MV Lot 27A LLC & MV Lot 30 LLC	**E-mail Address:** jmahoney@telluriderlaw.com; chris@idaradorealestate.com	
Mailing Address: P.O. Box 2107	**Phone:** 970-708-5070; 970-708-1497	
City: Telluride	**State:** CO	**Zip Code:** 81435
Mountain Village Business License Number: 07964		
PROPERTY INFORMATION		
Physical Address: 98 Aspen Ridge Drive & TBD Lost Creek LN (Lot 27A)	**Acreage:** Lot 30 .60 Acres - Lot 27A .91 Acres	
Zone District: Lot 30 - Multi Lot 27A - VC	**Zoning Designations:** Condo, employee condo	**Density Assigned to the Lot or Site:** Lot 30 - 16 Condo 4 EC. Lot 27A - 19 condo 2 EC
Legal Description: Lot 30 TMV & Lot 27A TMV		
Existing Land Uses: Lot 30 - 1 Employee Condo - Commercial. Lot 27A - vacant.		
Proposed Land Uses: Work session to discuss vested rights for the two properties to space out development.		
OWNER INFORMATION		
Property Owner: MV Lot 27A, LLC and MV Lot 30, LLC	**E-mail Address:** chris@idaradorealestate.com	
Mailing Address: P.O. Box 2107	**Phone:** 970-708-1497	
City: Telluride	**State:** CO	**Zip Code:** 81435

GENERIC APPLICATION FORM

Planning & Development Services
455 Mountain Village Blvd. Suite A
Mountain Village, CO 81435
970-728-1392
970-728-4342 Fax
cd@mtnvillage.org

Revised 2.26.18

DESCRIPTION OF REQUEST

See attached narrative

OWNER AGENT AUTHORIZATION FORM

I have reviewed the application and hereby authorize(*agent name*) James Mahoney of (agent's business name) James Mahoney P.C. to be and to act as my designated representative and represent the development application through all aspects of the development review process with the Town of Mountain Village.

(Signature)

5/23/2023
(Date)

Chris Chaffin
(Printed name)

James Mahoney P.C.
www.telluriderlaw.com
James Mahoney, Esq.

LOT 30 & LOT 27A WORK SESSION NARRATIVE

To: Mountain Village Town Council

From: James Mahoney and Chris Chaffin

Date: May 22, 2023

Re: Lot 27A and Lot 30 Vested Property Rights Work Session.

On behalf of the owner of Lots 30 and 27A, MV Lot 30, LLC, and MV Lot 27A, LLC we appreciate the ability to discuss the development of those two properties with the Town Council and address the forthcoming vested property rights applications for the two properties.

As background the key elements of each property as site specific developments and their currently entitled are as follows:

Lot 30:

1. The Design Review Board (DRB) approved the Final Architectural Review on October 7, 2021, allowing for the construction of a new multi-family building consisting of 16 Condominium Units, and one Employee Condominium Unit as well as the conversion of the commercial space in the existing building on Lot 30 to two employee housing units (these are in addition to the one employee condominium unit already in the existing building).
2. Alternative Parking Plan Specific Approval for 1.2 spaces per unit.
3. Ordinance No. 2021-13 Approving a Density Transfer and Rezone at Lot 30 Increasing Density to 16 Condo Units and 4 Employee Condo Units recorded on March 14, 2022, at reception number 475634.
4. January 20, 2022, Class 1 Minor Revision Approval to Final Architectural Review.
5. Class 1 Renewal Application for extension of Final Architectural Review for an additional six months to October 7, 2023, granted by the Town on February 13, 2023.
6. February 25, 2022, Approval of Surface Parking on Lot 30 to serve the existing building until Lot 30 is fully developed.
7. Development Agreement with the Town regarding parking on Lot 30 not being sold or otherwise conveyed and remaining as common elements to Lot 30 (final agreement is pending with the Town and is a condition of approval for the Alternative Parking Plan Specific Approval and Final Architectural Review Approval).
8. Development Agreement with the Town regarding the requirement that the existing commercial space be converted to the two outstanding employee housing units within 5 years of the issuance of a Certificate of Occupancy for the development at Lot 30 (final agreement is pending with the Town and is a condition of approval for Ordinance No. 2021-13).

Lot 27A:

PO Box 1902
Telluride, Colorado 81435

970.708.5070
jmahoney@telluriderlaw.com

James Mahoney P.C.
www.telluriderlaw.com
James Mahoney, Esq.

1. The Design Review Board (DRB) approved the Final Architectural Review allowing for the construction of a new multi-family building consisting of 19 Condominium Units, and two Employee Condominium Units.
2. 2006 Replat Belvedere Park Condominiums – Creates Parcel III pursuant to master development plan for Belvedere Park Condominiums (Parcel I – 3 Condo Units and Parcel II – 7 Condo Units already developed).
3. Master Plan for Belvedere Park Condominiums phases I through III.
4. Ordinance No. 2021-14 recorded at reception number 474709 Approving a Density Transfer and Rezone at Lot 27A from 17 Condo Units, 10 Lodge Units and 2 Efficiency Lodge Units to 19 Condo Units and 2 Employee Condominiums.

As you can see, Lot 30 and Lot 27A are both substantial projects with similar ownership led by Chris Chaffin or Idarado Real Estate a local real estate and community member. Included is a vicinity map that shows the vicinity of both projects being at or near the entrance to the Mountain Village Center. We have applied for vested rights for Lot 30 to preserve the site-specific development approvals which currently exist for that property and intend to do so for Lot 27A as well. The reason for applying for the vested rights is to give the ability to spread development of the two properties out with the target schedule of breaking ground on Lot 30 in the spring of 2024 and then for Lot 27A when Lot 30 nears completion (likely spring 2026). This strategic phasing of development helps to mitigate the areas being inundated with two simultaneous construction projects. It will also help the owners of these properties to not overwhelm existing infrastructure and limited construction resources by having two large projects at the same time.

Secondly, the capital markets have made it almost impossible to obtain a loan for construction development of large-scale projects. The weakening office and multifamily real estate asset classes in urban areas have caused strain on banks and their lending criteria. We are hopeful that the lending environment will stabilize within the next year.

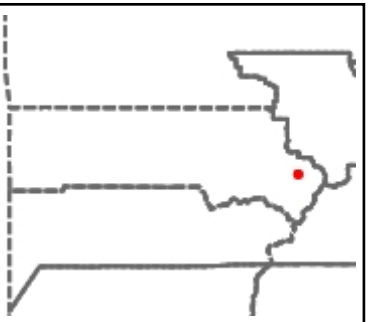
This application is a work session to get Town Council feedback on this plan and support for the vested property rights applications which would be necessary for such a plan to be accomplished as the approvals for Lot 30 expire in October of 2023 unless a building permit were to be approved. Lot 27A's DRB approvals expire in April 6 of 2024. If vested property rights are not granted the owner will have to pursue building permits and construction of both projects nearly simultaneously.

We look forward to your thoughts and direction.

PO Box 1902
Telluride, Colorado 81435

970.708.5070
jmahoney@telluriderlaw.com

San Miguel County, Colorado
Map Viewer



Legend

- Road
- Regional Road
- County Boundary
- Town Boundary
- Tax Parcels cache

Map Generated
5/22/23 1:56 PM

Notes

0.1 0 0.07 0.1 Miles

AGENDA ITEM #19
TOWN MANAGER
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 729-2654

TO: Mountain Village Housing Authority

FROM: Paul Wisor, Town Manager; Michelle Haynes, Assistant Town Manager

DATE: June 13, 2023
RE: Meadowlark at Mountain Village, Lot 644, Development Agreement with Triumph Development West

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Executive Summary: In April 2022, the Mountain Village Housing Authority approved a Pre-Development Agreement Triumph Development West to establish terms of the preliminary services to be provided by the Triumph for the preliminary work associated with the development of Lot 644, now known as Meadowlark at Mountain Village (Meadowlark). While final pricing for the project is still being established by the Authority, Triumph and the Authority are prepared to work in partnership to move forward with construction of Meadowlark. The attached Operating Agreement creates a new development entity, of which both Triumph and the Authority are partners, and sets forth the terms associated with that partnership.

Overview

The primary terms of the Operating Agreement, attached hereto as Exhibit A, are as follows:

- Creates Meadowlark 644, LLC, which will construct, own, and sell 29 deed restricted units.
- Triumph is a 99.9999% owner of the LLC, and the Housing Authority is a .0001% owner. The Housing Authority has an ownership share for the purpose of availing the LLC to certain statutory provisions exempting the LLC from certain sales and use taxes.
- The total budget for the project is approximately $22,000,000.
- The Authority will make an initial $5,000,000 equity contribution to the project.
- The Authority will also contribute the land on which Meadowlark will be constructed and will pay for the cost bringing utilities to the site and improving the access tract for the project.
- The remainder of the project will be financed by Triumph, who anticipates taking out a construction loan.
- Upon sale of the Meadowlark units, the Authority will be repaid $4.3 million of its equity contribution and Triumph will be repaid its construction loan on a dollar for dollar basis.
- Any profits remaining after repayment of the Authority's equity contribution and Triumph's construction loan will be distributed to Triumph. Triumph has agreed to reduce their anticipated profits on the project by $740,000.
- Triumph will also be paid a management fee of $800,000.

The Authority, along with Triumph and its subcontractors, is working to finalize pricing for Meadowlark, including securing outside funding. It is necessary to approve the Operating Agreement now so construction on Meadowlark can begin in earnest. It is anticipated an

amendment to the Operating Agreement will be brought to Council, pursuant to which pricing for the Meadowlark units will be established.

Financial Considerations

The Operating Agreement obligates the Authority to invest $5 million into the project, which has already been budgeted.

Proposed Motion

"I move to approve as to form the Operating Agreement between the Mountain Village Housing Authority and Triumph Development West of the development of the Meadowlark project, subject to a future amendment to provide final pricing."

Exhibit A

OPERATING AGREEMENT
OF
Meadowlark 644, LLC

This Operating Agreement is made as of _____, 2023, by all of the Members of Meadowlark 644, LLC (the "Company") with consent and agreement from the Town of Mountain Village, Colorado. In consideration of our mutual promises and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), we agree as follows with respect to the administration and regulation of the affairs of the Company.

ARTICLE 1 FORMATION

1.1 **Formation**. The Company was formed on _____, 2023, by filing Articles of Organization with the Colorado Secretary of State pursuant to the Colorado Act.

1.2 **Company Name**. The business of the Company will be conducted under the name "Meadowlark 644, LLC."

1.3 **Office and Agent**. The initial registered office of the Company in Colorado will be 105 Edwards Village Boulevard #C201, PO Box 2444, Edwards, CO 81632, and the name of its initial registered agent at such address is Michael O'Connor. The initial principal office of the Company will be 105 Edwards Village Boulevard #C201, PO Box 2444, Edwards, CO 81632. The Company may subsequently change its registered office or registered agent in Colorado in accordance with the Colorado Act.

1.4 **Term**. The Company will continue until its Dissolution (under Article 12) and Liquidation (under Article 13).

1.5 **Definitions**. The following capitalized terms, when used in this Agreement, have the meanings set forth below:

Access Improvements:	has the meaning given that term in 7.5[a].
Access Parcel:	has the meaning given that term in 7.5[a].
Affiliate:	any Person who is a partner of a Member who directly or indirectly controls, or is controlled by, or is under common control with such Member or any partner of such Member; or of which 50% or more of the voting stock or other voting interests of such Person is directly or indirectly beneficially owned or held by such Member or any partner of such Member. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Additionally, Housing Authority and Town are Affiliates of one another.
Agreement:	this Operating Agreement, as it may be amended.
Articles:	the Articles of Organization of the Company, as they may be amended.
Capital Account:	the capital account to be established and maintained for each Member in accordance with Article 4.

Capital Contribution:	any contribution of money or property by a Member to the Company.
Cash Flow:	gross revenues from business activities, less [a] operating expenses, [b] capital expenditures, [c] debt service, [d] prepaid items and [e] reasonable reserves for anticipated costs, as determined by the Manager.
IRC:	the Internal Revenue Code of 1986, as amended from time to time (including corresponding provisions of subsequent revenue laws).
Charter:	the Home Rule Charter of the Town of Mountain Village, Colorado.
Colorado Act:	the Colorado Limited Liability Company Act, as it may be amended.
Company:	Meadowlark 644, LLC, a Colorado limited liability company, as formed under the Articles.
Dissolution:	the change in the relation of the Members caused by an event of withdrawal of a Member or as otherwise provided in Article 12.
Distribution:	a distribution of money or other property made by the Company with respect to an Ownership Interest.
Fair Market Value:	as to any property, the price at which a willing seller will sell and a willing buyer would buy such property having full knowledge of the relevant facts, in an arm's length transaction without time constraints, and without being under any compulsion to buy or sell.
Fiscal Year:	the fiscal and taxable year of the Company as determined under this Agreement, including both 12 month and short taxable years.
Housing Authority:	The Mountain Village Housing Authority, a Colorado corporate body organized and controlled by the Town Council under C.R.S. §§ 29-4-201, *et seq.* and Chapter 16.04 of the Municipal Code.
Liquidation:	the process of terminating the Company and distributing its assets to the Members under Article 13, after its Dissolution or the happening of an event causing termination under 13.2.
Losses:	the Company's net loss for any Fiscal Year, determined under 5.1.
Manager:	Triumph, or any other Person elected as Manager in the manner set forth in 7.1[a].
Member:	Triumph and Housing Authority, and any Person who is subsequently admitted as an additional Member as provided in this Agreement.
Municipal Code:	the Municipal Code of the Town of Mountain Village, Colorado.
Ownership Interest:	with respect to each Person owning an interest in the Company, all of the interests of such Person in the Company (including, without limitation, an

	interest in the Profits and Losses, a Capital Account interest, and all other rights and obligations of such Person under this Agreement) expressed as a percentage interest (rounded to four decimal points), as set forth in 5.2.
Person:	an individual, corporation, partnership, limited liability company, trust, unincorporated organization, association or other entity.
Profits:	the Company's net profit for any Fiscal Year, determined under 5.1.
Project:	the development and sale of 29 residential condominium units on the Property for deed restricted, resident-occupied housing for employees of businesses operating within the boundaries of Telluride School District R-1.
Property:	certain real property located within the Town of Mountain Village, Colorado, and legally described as Lot 644, Telluride Mountain Village Filing 22, County of San Miguel, State of Colorado, as depicted on the plat recorded with the San Miguel County Clerk and Recorder as Reception No. 261214. The Property is owned by Housing Authority. The Property will be contributed to the Company on the terms described in the Section 4.4 of this Agreement.
Regulations:	the Treasury Regulations (including temporary regulations) promulgated under the IRC, as amended from time to time (including corresponding provisions of succeeding regulations).
Third Party:	a Person not a party to this Agreement.
Third Party Offer:	a bona fide, non-collusive, binding, arm's length written offer from a Third Party stated in terms of U.S. dollars.
Town:	Town of Mountain Village, a Colorado home rule municipality.
Town Council:	the elected governing body of Town.
Transfer:	a sale, exchange, assignment, encumbrance, gift or other disposition, whether voluntary or by operation of law.
Transferee:	a Person to whom an Ownership Interest is transferred in compliance with this Agreement, having the rights and obligations specified in 14.2.
Transferor:	a Person who transfers an Ownership Interest in compliance with this Agreement.
Triumph:	Triumph Development West, LLC, a Delaware limited liability company

ARTICLE 2 PURPOSES AND POWERS

2.1 **Principal Purpose**. The principal purpose of the Company is to engage in constructing, marketing and selling the Project on the Property.

2.2 **Other Purposes**. The Company may also engage in other business and investment activities as the Members may from time to time determine.

2.3 **Powers**. Subject to the other provisions of this Agreement, the purposes of the Company may be accomplished through the following powers (which are not exclusive):

[a] To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;

[b] To purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal with real or personal property, or an interest in it, whenever situated;

[c] To purchase, take, acquire, receive, subscribe for, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with shares or other interests in or obligations of other Persons, or direct or indirect obligations of the United States or of any government, state, territory, municipality or governmental instrumentality;

[d] To enter into any leases, contracts or agreements concerning its assets;

[e] To sign and deliver all instruments, including deeds, assignments, and other documents of transfer or encumbrance as may be necessary or advisable for the administration of its assets;

[f] To settle claims and take or defend judicial and administrative proceedings;

[g] To establish reserves for taxes, assessments, insurance premiums, repairs, maintenance, improvements, depreciation, depletion and obsolescence out of rents, profits or other income received;

[h] To pay all expenses reasonably incurred in the administration of its assets;

[i] To make contracts and guarantees and incur liabilities, borrow money at such rates of interest as it may determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage or pledge or all or any part of its property and income;

[j] To invest and reinvest its funds and take and hold real property and personal property for the payment of funds so invested;

[k] To appoint agents and define their duties and fix their compensation;

[l] To make and alter this Agreement, not inconsistent with the Articles or with the Colorado Act, for the administration and regulation of its affairs;

[m] To conduct its business, carry on its operations and have and exercise the powers granted by the Colorado Act in any state of the United States and in any foreign jurisdiction; and

[n] To do such other things and engage in such other activities related directly or indirectly to the foregoing as may be necessary, convenient or advisable to the conduct of its business, and to have and exercise all of the powers and rights conferred upon limited liability companies formed under the Colorado Act.

ARTICLE 3 MEMBERS

3.1 **Initial Members**. The initial Members of the Company are Triumph and Housing Authority.

3.2 **Addresses**. The initial address of each Member is as follows:

Triumph: 105 Edwards Village Boulevard #C201
PO Box 2444
Edwards, Colorado 81632
email: michael@triumphdev.com

Housing Authority: 411 Mountain Village Boulevard, Suite A
Mountain Village, Colorado 81435
Email: pwisor@mtnvillage.org

ARTICLE 4 COMPANY CAPITAL

4.1 **Capital Accounts**. A Capital Account will be maintained for each Member and will be credited, charged and otherwise adjusted as required by IRC §704(b) and the §704(b) Regulations. Each Member's Capital Account will be:

[a] Credited with [i] the amount of cash and the Fair Market Value of any property (other than the Property, as described in Section 4.4 below) contributed by the Member to the capital of the Company, [ii] the Member's allocable share of Profits, [iii] the amount of the liabilities of the Company assumed by the Member or secured by any property distributed to the Member and [iv] all other items properly credited to Capital Account as required by the §704(b) Regulations; and

[b] Charged with [i] the Member's allocable share of Losses, [ii] the Member's share of Distributions, [iii] the amount of liabilities of the Member assumed by the Company or secured by property contributed to the Company by the Member, and [iv] all other items properly charged to Capital Account as required by the §704(b) Regulations.

All credits and charges to capital accounts will be allocated among the Members in accordance with the provisions of Article 5. Any unrealized appreciation or depreciation with respect to any asset distributed in kind will be allocated among the Members in accordance with the provisions of Article 5 as though such asset had been sold for its Fair Market Value on the date of distribution, and the Members' Capital Accounts will be adjusted to reflect both the deemed realization of such appreciation or depreciation and the Distribution of such property.

4.2 **Adjustments**. The Members intend to comply with the §704(b) Regulations in all respects, and the Members agree to adjust the Capital Accounts of the Members to the full extent that the §704(b) Regulations may apply (including, without limitation, applying the concepts of qualified income offsets and minimum gain chargebacks). To this end, the Members agree to make any Capital Account adjustment that is necessary or appropriate to maintain equality between the aggregate capital accounts of the Members and the amount of capital of the Company reflected on its balance sheet (as computed for book purposes), as long as such adjustments are consistent with the underlying economic arrangement of the Members and are based, wherever practicable, on federal tax accounting principles.

4.3 **Market Value Adjustments**. The Members agree to make appropriate Capital Account adjustments upon any transfer of an Ownership Interest, including those that apply upon the constructive liquidation of the Company under §708(b) of the IRC, all in accordance with the §704(b) Regulations.

4.4 **Initial Capital Contribution**. The Members each hereby agree to make initial Capital Contributions, which shall be contributed to the Company upon the execution of this Agreement, as follows:

[a] Housing Authority: $5,000,000.00 in cash, which may be contributed directly by Housing Authority or by Town on its behalf. As additional Capital Contribution, the Housing Authority shall convey the Property to the Company, free and clear of all liens or other monetary obligations. In order to permit the residences constructed within the Project to be sold at below market value to employee purchasers thereof, the Property will be deemed to have a value of $1.00 for all purposes under this Agreement.

[b] Triumph: $0.00.

4.5 **Additional Contributions as Determined by Manager**. Any additional capital call to the Members and Transferees at any time, in any amount, shall be made only with the approval of the Manager. No additional Capital Contributions shall be due or owing from Town or Housing Authority for any reason, and Triumph agrees to contribute any additional capital needed to complete the Project if needed above Housing Authority's Capital Contribution and proceeds of loan funding.

4.6 **Transfer**. If all or part of any Ownership Interest is transferred in accordance with the terms of this Agreement, the Capital Account of the Transferor that is attributable to the transferred interest will carry over to the Transferee.

4.7 **No Withdrawal**. Except as specifically provided in this Agreement, no Member will be entitled to withdraw all or any part of such Member's capital from the Company or, when such withdrawal of capital is permitted, to demand a distribution of property other than money. In addition, no Member will be entitled to withdraw, resign or retire from the Company except upon the occurrence of an event described in 12.2[a], or [b].

4.8 **Withdrawal of Capital.** No Member may receive any part of such Member's Capital Contribution out of Company assets unless all of the following conditions are satisfied:

[a] No Member may receive a Distribution in an amount that causes the liabilities of the Company, other than liabilities to Members on account of their Ownership Interests, to exceed the Fair Market Value of the Company's assets; and

[b] Such return of capital is either provided for in this Agreement (such as upon Liquidation of the Company) or all Members consent.

4.9 **No Interest on Capital.** No Member will be entitled to receive interest on its Capital Contributions or Capital Account except as set forth herein.

4.10 **No Drawing Accounts.** The Company will not maintain a drawing account for any Member. All Distributions to Members will be governed by Article 6 (relating to Distributions) and by Article 13 (relating to Liquidation of the Company).

4.11 **Loans by Members.** The Company may borrow money from any Member for Company purposes. Any such amount will be repaid on demand or upon such terms as the Company and such Member may agree (provided that the interest rate will at least equal the rate required to avoid imputed interest for federal income tax purposes). Any such advance or loan will be treated as indebtedness of the Company, and will not be treated as a Capital Contribution by a Member.

ARTICLE 5 PROFITS AND LOSSES

5.1 **General Rule**. For each Fiscal Year, Profits (including items of income and gain) or Losses (including items of loss and deduction) of the Company will be an amount determined in accordance with the tax accounting principles of the §704(b) Regulations (including the allocation to the Members of depreciation, amortization, gain or loss as computed for book purposes).

Except as otherwise specifically provided in this Article, Profits and Losses of the Company for each Fiscal Year will be allocated to the Members in proportion to their Ownership Interests as of the date of such allocation. The Members acknowledge that Town and Housing Authority are tax-exempt, and nothing herein shall be construed to suggest otherwise.

5.2 **Ownership Interests.** The Ownership Interest of each Member are as follows:

Housing Authority:	00.0001%
Triumph:	99.9999%

5.3 **Nonrecourse Debt.** If there is Company nonrecourse debt (for which no Member bears the economic risk of loss) or Member nonrecourse debt (which is nonrecourse to the Company but for which one or more Members bear the economic risk of loss), Losses attributable to any such Company nonrecourse debt will be allocated to the Members in proportion to their Ownership Interest as of the date of such allocation, and Losses attributable to any such Member nonrecourse debt will be allocated to those Members bearing the economic risk of loss.

5.4 **Minimum Gain Chargeback.** If there is a net decrease in the minimum gain (as defined in the §704(b) Regulations) of the Company for a Fiscal Year, items of income and gain will be allocated among the Members in the manner required to comply with the minimum gain chargeback provisions of the §704(b) Regulations. This chargeback provision will apply both to items of Company nonrecourse debt (for which no Member bears the economic risk of loss) and to items of Member nonrecourse debt (which is nonrecourse to the Company but for which one or more Members bear the economic risk of loss).

5.5 **Qualified Income Offset.** If any Member unexpectedly receives an adjustment, allocation or distribution described in §1.704-1(b)(2)(ii)(d)(4),(5) or (6) of the §704(b) Regulations, then such Member will be allocated items of income and gain in an amount and manner sufficient to eliminate any adjusted negative balance (determined under the §704(b) Regulations, including adjustments to reflect reasonably unexpected future items) in such Member's Capital Account as quickly as possible. Such items will consist of a pro rata portion of each item of Company income (including gross income) and gain of the Company for such Fiscal Year. If more than one Member receives such an allocation, such items will be allocated among them in the ratio of the adjusted negative balances in their Capital Accounts.

5.6 **Priority.** The general rule of allocating Profits or Losses of 5.1 will be subject first to the prior application of the nonrecourse debt allocation and minimum gain chargeback rules of 5.3 and 5.4 and then to the application of the qualified income offset rule of 5.5.

5.7 **Tax Allocations.** Allocation of items of income, gain, loss and deduction of the Company for federal income tax purposes for a Fiscal Year will be allocated, as nearly as is practicable, in accordance with the manner in which such items are reflected in the allocations of Profits and Losses among the Members for such Fiscal Year. To the extent possible, principles identical to those that apply to allocations for federal income tax purposes will apply for state and local income tax purposes.

5.8 **Transfer.** If any Ownership Interest is transferred during any Fiscal Year of the Company (whether by liquidation of an Ownership Interest, transfer of all or part of an Ownership Interest or otherwise), the books of the Company will be closed as of the effective date of transfer. The Profits and Losses attributed to the period from the first day of such Fiscal Year through the effective date of transfer will be allocated to the Transferor, and the Profits and Losses attributed thereafter to the Transferee. In lieu of an interim closing of the books of the Company and with the agreement of the Transferor and Transferee, the Members may agree to allocate Profits and Losses for such Fiscal Year between the Transferor and Transferee based on a daily proration of items for such Fiscal Year or any other reasonable method of allocation (including an allocation of extraordinary Company items, as determined by the Members, based on when such items are recognized for federal income tax purposes).

5.9 **INTENTIONALLY OMITTED.**

5.10 **Tax Credits.** To the extent that the federal income tax basis of an asset is allocated to the Members in accordance with the Regulations promulgated under §46 of the IRC, any tax credit attributable to such tax basis will be allocated to the Members in the same ratio as such tax basis. With respect to any other tax credit, to the extent that a Company expenditure gives rise to an allocation of loss or deduction, any tax credit attributable to such expenditure will be allocated to the Members in the same ratio as such loss or deduction. Consistent principles will apply in determining the Members' interests in tax credits that arise from taxable or non-taxable receipts of the Company. All allocations of tax credits will be made as of the time such credit arises. Any recapture of tax credit will, to the extent possible, be allocated to the Members in the same manner as the tax credit was allocated to them. Except as otherwise specifically provided in the §704(b) Regulations (such as the adjustments required when there is an upward or downward adjustment in the tax basis of investment credit property), allocations of tax credits and their recapture will not be reflected by any adjustment to Capital Accounts.

ARTICLE 6 DISTRIBUTIONS

6.1 **Distributions.** The Company will distribute its Cash Flow as follows:

[a] If Cash Flow involves the Dissolution and Liquidation of the Company, to the Members as provided in Article 13.

[b] If Cash Flow does not involve the Dissolution and Liquidation of the Company, to the Members and Persons prioritized as follows:

[i] To Housing Authority to the in repayment of its Capital Contribution to the Company, up to a maximum distribution of $4,300,000.00, it being understood and agreed that Housing Authority shall have no other claim to repayment of its Capital Contribution;

[ii] To the Members, ratably and in proportion to the balances of Member loans, as repayment of any loans made to the Company pursuant to 4.11, if any;

[iii] To the Members who have made additional Capital Contributions pursuant to 4.5; ratably and in proportion to such additional Capital Contributions;

[iv] To Triumph as payment for the Management Fee described in 7.1[d] below; and

[v] All remaining Cash Flow to Triumph.

[c] The Company will make the distributions of Cash Flow generated within any Fiscal Year of the Company promptly upon the sale of any of the residential dwelling units comprising the Project, subject to repayment obligations of any construction and development loan.

6.2 Payment. All Distributions will be made to applicable Members owning Ownership Interests on the date of Distribution, as reflected on the books of the Company.

6.3 Withholding. If required by the IRC or by state or local law, the Company will withhold any required amount from Distributions to a Member for payment to the appropriate taxing authority. Any amount so withheld from a Member will be treated as a Distribution by the Company to such Member.

ARTICLE 7 MANAGEMENT RIGHTS

7.1 Management: Delegation of Duties.

[a] The Company shall have one (1) Manager. The business of the Company shall be conducted by its Manager. The Manager will have the power and authority to take all actions on behalf of the Company, except as such authority may be reserved to the Members under the Articles or this Agreement. The initial Manager is Triumph, which by executing this Agreement consents to the same.

[b] The Manager shall be responsible, subject to the provisions of 7.1[c] and 7.2 below, for the management of all matters that the Manager may deem necessary or convenient to accomplish any of the purposes of the Company, including, without limitation, the development, management and sale of the Project. The Manager will keep the Members updated on the status of the Project, but otherwise the Manager is expressly authorized to act and to sign all documents on behalf of the Company in all of the following, so long as same are consistent with the Budget (hereinafter defined), plans and loan terms approved by both Members pursuant to 7.1[c]: executing all construction loan documents and financing documents relating to the Project; negotiating and executing all agreements with the Project's contractors and architect; submitting all design review, planning, and any other related applications to the Town of Mountain Village or other applicable governmental or quasi-governmental entity and obtaining all land use approvals and other permits related to the Project; managing construction of the Access Improvements on the Access Parcel for the benefit of the Project; grant any and all easements or other rights in the Property necessary for the development of the Project; prepare and record condominium common interest community documents for the Project; submitting all subdivision and other required applications to the Town of Mountain Village or other applicable governmental or quasi-governmental entity; negotiating and executing any and all documents arising in connection with the sale of any portion of the Project, including but not limited to contracts, deeds, leases, agreements, disclosure forms, statements of authority, and any other instruments as necessary or appropriate in connection with such sale; and performing any and all other tasks arising in connection with the development and sale of any portion of the Project. Nothing herein shall be interpreted as a waiver, limitation, or delegation of the Town's land use approval authority nor any promise or guaranty of any particular land use approval not already approved as of the date of this Agreement.

[c] Notwithstanding any contrary provision herein, and in addition to the matters identified in 7.2 to require approval of both Members, the affirmative vote or consent of both Members will be required with respect to the following matters:

[i] Approval of any budget for the Project, other than the Budget attached hereto as Exhibit A (the "Budget"), which shall include the sales price of the residences;

[ii] Approval of the plans for the Project other than those identified on, or attached hereto as, Exhibit B;

[iii] Approval of any architect for the Project other than the current architect of record, Pure Design LLC;

[iv] Approval of any general contractor for the Project other than Shaw Construction, LLC, which is hereby approved;

[v] Approval of any modular building provider for the Project other than Northstar SystemBuilt, which is hereby approved; and

[vi] Any amendments to the above items.

[d] *Management Fee*. In exchange for its services as Manager for the the Company and the Project, Triumph shall be paid a Management Fee in the amount of $800,000.00 out of the Cash Flow of the Company as provided in 6.1[b].

7.2 Approval of Additional Matters. Notwithstanding Section 7.1 or any other provision contained in this Agreement to the contrary, the following decisions by the Company require the affirmative vote or consent of the Members as set forth in Section 8.8:

[a] The voluntary Dissolution of the Company under 12.1;

[b] The admission of an additional Member under 14.2 upon the Transfer of an Ownership Interest;

[c] The admission of an additional Member incident to the contribution of money or other property to the Company;

[d] The sale of new Ownership Interests to any Person;

[e] The merger or consolidation of the Company with any other Person;

[f] The appointment of a replacement Manager at any time that the prior Manager shall have resigned; and

[g] Any transaction between the Company and the Manager.

7.3 Efforts of Members. Each Member will devote such time and effort to the affairs of the Company as such Member determines to be necessary or desirable to promote the successful operation of the Company.

7.4 Other Activities. The Members may engage in or possess interests in other business ventures of any nature and description, independently or with others, whether or not such businesses are in competition with the business of the Company, and neither the Company nor any other Member will have any right by virtue of this Agreement in such independent ventures.

7.5 Housing Authority and Town Agreements and Rights.

[a] *Access Parcel*. Town agrees, for the benefit of the Project, and subject to Manager's obligation to manage construction as provided in 7.1[b], to construct and pay for all access and utility

improvements to that certain parcel of real property adjacent to the Property and legally described as Tract F22-2, Telluride Mountain Village Filing 22, according to the final plat recorded with the Clerk and Recorder of San Miguel County as Reception No. 261214 (the "Access Parcel"), which improvements are described on Exhibit C attached hereto (the "Access Improvements"). Town agrees to commence and complete the Access Improvements as necessary to allow timely completion of the Project and access thereto for construction purposes at all times. While for the benefit of the Project, Town's obligations under this Section 5 are separate from any other terms and conditions of this Agreement, and any costs incurred by Town in connection with the Access Parcel or the Access Improvements are not Capital Contributions under this Agreement.

[b] *Tax Exemption*. Town and Housing Authority will take all actions reasonably required to maintain the real property tax exemption for the Property, for the benefit of the Project.

[c] *Construction Loan*. Neither Town nor Housing Authority shall have any obligation under any loan obtained by Manager for purposes of paying costs of construction and development of the Project. For this reason, Town and Housing Authority may review loan documents solely to assure compliance with the terms and requirements of this Agreement but shall have no right to approve any loan documents or the terms thereof. However, Manager agrees that the loan documents shall include provisions that permit Town or Housing Authority to cure any default by Manager under the loan documents in their discretion.

[d] *Fees*. Town agrees to either pay for or waive all planning fees, permitting fees, inspection fees, impact fees, and the like, related to the construction, development and sale of the Project; provided, however, that no such payment or waiver shall be deemed to be a capital contribution under this Agreement.

[e] *Allocation of Responsibilities and Rights*. Town and Housing Authority shall have the authority and discretion to allocate, assign, or assume any rights of either of them pursuant to this Agreement to the other, but not to third parties except as provided elsewhere herein.

7.6 Additional Triumph Agreements. In addition to all other agreements, responsibilities and obligations of Triumph as a Member and Manager under this Agreement, Triumph, or its Affiliate, shall :

[a] Advance for the benefit of the Project all predevelopment costs and expenses (which may be reimbursed from proceeds of the construction loan); and

[b] provide any financial guaranty or other assurances required by any construction lender to the Project.

ARTICLE 8 MEETINGS OF MEMBERS

8.1 Annual Meeting. The annual meeting of the Members will be held at such time and date as determined by resolution of the Members, commencing with the year 2023. The purpose of the annual meeting is to review the Company's operations and to transact such business as may come before the meeting.

8.2 Special Meetings. Special meetings of the Members, for any purpose or purposes, may be called by any Member.

8.3 Place. The Members may designate any place as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting is otherwise called, the place of meeting will

be held at 411 Mountain Village Boulevard, Mountain Village, CO 81435, or such other location that the Members mutually determine.

8.4 Notice. Written notice of any annual meeting determined by resolution of the Members or of any special meeting must be given not less than ten (10) days nor more than fifty (50) days before the date of the meeting. Such notice will state the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Such notice must be given, either by personal delivery, by mail, by email or by other method capable of document transmission, by or at the direction of the Member calling the meeting, to each Member entitled to such notice.

8.5 Waiver of Notice. Any Member may waive, in writing, any notice that is required to be given to such Member, whether before or after the time stated in such notice.

8.6 Record Date. For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members, the date on which notice of the meeting is first given will be the record date for such determination of Members. Any such determination of Members entitled to vote at any meeting of Members will apply to any adjournment of a meeting.

8.7 Quorum. A quorum at any meeting of Members will consist of all Members. Any meeting at which a quorum is present may adjourn the meeting to a place, day and hour without further notice.

8.8 Manner of Acting. The affirmative vote of Members of the Company representing all Ownership Interests within the Company will be the act of the Members.

8.9 Proxies. At all meetings of Members, a Member may vote in person or by written proxy, which is signed by the Member or by a duly authorized attorney-in-fact. Such proxy must be filed with the Company, before or at the time of the meeting. No proxy will be valid after eleven months or more from the date of its signing unless otherwise provided in the proxy.

8.10 Meetings by Telephone. The Members may participate in a meeting by means of a conference telephone or similar communications equipment by which all Members participating in the meeting can hear each other at the same time. Such participation will constitute presence in person at the meeting and waiver of any required notice.

8.11 Action Without a Meeting. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by all Members. Action so taken is effective when all Members have signed the consent, unless the consent specifies a later effective date. The record date for determining Members entitled to take action without a meeting will be the date the first Member signs a written consent.

8.12 Member Representatives/Open Meetings. Each Member shall have the authority and discretion to appoint whomever it deems appropriate to represent that Member at any meeting of the Company; provided, however, neither Town nor Housing Authority shall designate more than two (2) members of the Town Council as such representatives, it being the intent of the parties that meetings of the Company shall not trigger the requirements of the Colorado Open Meetings Laws in order to conduct such meetings.

ARTICLE 9 LIABILITY OF A MEMBER

9.1 **Limited Liability.** As provided in the Colorado Act, no Member of the Company is liable under a judgment, decree or order of a court in any other manner, for any debt, obligation or liability of the Company. Each Member will use all reasonable efforts to cause the Company to take such steps as may be required to retain the Company's status as a limited liability company.

9.2 **Capital Contribution.** The Members are each liable to the Company for their respective shares (as indicated below) of the following:

[a] The Capital Contributions agreed to be made under 4.4 and 4.5;

[b] Capital that has been wrongfully or erroneously returned to such Member in violation of the Colorado Act, the Articles or this Agreement; and

[c] Any money or other property wrongfully paid or conveyed to such Member on account of such Member's Capital Contribution.

ARTICLE 10 INDEMNIFICATION

10.1 **Indemnification.** The Company will indemnify and hold harmless each Member, Manager and each employee or principal of a Member or Manager from any loss, liability or damage actually and reasonably incurred or suffered by any such Person by reason of any act performed or omitted to be performed, or alleged to have been performed or omitted, by such Person in connection with the business of the Company, provided that, no such Person whose action or omission to act caused the loss, liability or damage incurred or suffered may receive indemnification or avoid liability with respect to any claim, issue or matter as to which there is a final determination that such Person acted in bad faith, gross negligence or willful misconduct. A final determination means an order of any court or arbitration panel that is not appealed. This right of indemnification includes any judgment, award, settlement, cost, expenses and reasonable attorney's fees incurred in connection with the defense of any actual or threatened claim or action based on any such act or omission.

10.2 **Payment.** Any such indemnification will only be paid from the assets of the Company or from available insurance coverage, if any, and will be made promptly following the fixing of the loss, liability, or damage incurred or suffered by final judgment of any court, arbitration, settlement, contract or otherwise (provided that attorneys' fees and costs will be paid as incurred).

10.3 **Liability Limitation.** A Member will not be liable to the Company or any other Member for any loss, liability or damage suffered or incurred by the Company, directly or indirectly, because of any act or omission made by such Member in good faith and in the absence of gross negligence or willful misconduct. Further, nothing herein shall be construed as a waiver or limitation of governmental immunity of Housing Authority or Town.

ARTICLE 11 ACCOUNTING AND REPORTING

11.1 **Fiscal Year.** For income tax and accounting purposes, the Fiscal Year of the Company will end on December 31 in each year (unless subsequently changed as provided in the IRC).

11.2 **Accounting Method.** For income tax and accounting purposes, the Company will use the cash basis method of accounting (unless the Company otherwise determines, and if permitted by the IRC).

11.3 **Returns.** The Company will cause the preparation and timely filing of all tax returns to be filed by the Company pursuant to the IRC, as well as all other tax returns required in each jurisdiction (if any) in which the Company does business.

11.4 **Tax Elections.** The Company may make or revoke any tax election; provided, however, that the Company will make the election under §754 of the IRC (relating to the optional adjustment to the tax basis of Company property) upon the written request of any Member.

11.5 **Non-Colorado Members.** It is anticipated that all of the Company's taxable income will be derived from sources within the State of Colorado. If any Member is not a resident of Colorado for Colorado income tax purposes, such Member agrees to file Colorado income tax returns and to pay Colorado income tax on such Member's share of Colorado taxable income, if required by Colorado income tax law.

11.6 **Reports.** The Company books will be closed at the end of each Fiscal Year and statements prepared showing the financial condition of the Company and its Profits or Losses from operations. Copies of these statements will be given to each Member. In addition, as soon as practicable after the close of each Fiscal Year, and in any event within ninety (90) days after the end of each Fiscal Year, the Company will provide each Member with all necessary tax reporting information.

11.7 **Books and Records.** The following records of the Company will be kept at the Company's principal office address.

[a] A current list of the full name and last known mailing address of each Member;

[b] A copy of the Articles and of this Agreement;

[c] The Budget;

[d] Draw requests from the contractor engaged by the Company to construction the Project;

[e] Inspection reports and other reasonable and customary documentation related to the development and construction of the Project; and

[f] Copies of the Company's federal and state income tax returns and reports, and copies of any Company financial statements, for the three most recent years.

Such records will be available for inspection and copying by any Member at such Member's expense, during normal business hours. Manager shall maintain such records in an electronic shared folder for access by the Members.

11.8 **Banking.** The Company may establish one or more bank accounts and safe deposit boxes. The Company may specify the persons who will be authorized to sign checks on and withdraw funds from such bank accounts and to have access to such safe deposit boxes, and may place such limitations and restrictions on such authority as the Company deems advisable.

11.9 **Partnership Representative.**

[a] Designation. Michael O'Connor shall be designated as the "partnership representative" (the "**Partnership Representative**") as provided in Section 6223(a) of the IRC (or under any applicable state or local law providing for an analogous capacity). Any reasonable expenses incurred by the

Partnership Representative in carrying out its responsibilities and duties under this Agreement shall be an expense of the Company for which the Partnership Representative shall be reimbursed.

[b] Tax Examinations and Audits. The Partnership Representative is authorized and required to represent the Company in connection with all examinations of the affairs of the Company by any taxing authority, including any resulting administrative and judicial proceedings, and to expend funds of the Company for professional services and costs associated therewith. Each Member agrees that any action taken by the Partnership Representative in connection with audits of the Company shall be binding upon such Member and that such Member shall not independently act with respect to tax audits or tax litigation affecting the Company. The Partnership Representative shall have sole and absolute discretion to determine whether the Company (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any taxing authority. A Member's obligations under this 11.9[b] shall survive the Transfer, assignment, or liquidation (in whole or in part) of such Member's Ownership Interest in the Company.

[c] Tax Returns. The Manager shall cause to be prepared and timely filed all U.S. and non-U.S. tax returns, if any, required to be filed by or for the Company.

11.10 Notice of Litigation, Etc. The Members agree to provide each other with prompt notice of the commencement of any litigation, action, arbitration or other proceedings that involve the Company, any asset of the Company, or either party's rights to its interest in the Company, and to the receipt of any written threat regarding the commencement of any such proceeding.

11.11 Audit of Financial Statements. Any Member may require the Company's financial statements to be audited by a certified public accounting firm that is independent of all Members. Any audit of the Company's annual financial statements will be conducted at the Company's expense and all other audits of the Company's financial statements will be conducted at the expense of the Member requiring the audit. The selection of the auditor will be made by the Members.

11.12 Colorado Open Records Act. Town and/or Housing Authority may be subject to the Colorado Open Records Act ("CORA") and may be required to disclose certain documents, records, or information relating to the Company pursuant to a valid request under CORA. If Town or Housing Authority receives such a request, they shall promptly notify the Manager who shall reasonably cooperate to comply with CORA to the extent required by law.

ARTICLE 12 DISSOLUTION OF THE COMPANY

12.1 Dissolution. Notwithstanding anything to the contrary in this Agreement or the Colorado Act, Dissolution of the Company will occur only by action of the Members in accordance with 7.2. The Members anticipate Dissolution of the Company within a reasonable time after the completion of the Project and sale of all of the Company's assets.

12.2 Event of Withdrawal. An event of Withdrawal of a Member occurs when any of the events specified in clauses [a] through [b] occurs. The effect of an event of Withdrawal is that the Member retains its Ownership Interest but loses certain voting and informational rights, as more fully described in 14.2.

[a] The dissolution of any Member; or

[b] The bankruptcy of the Member.

In the event of Withdrawal of a Member, the Company will be continued unless the remaining Members elect to dissolve the Company. If the Company is so continued, with respect to any Member as to which an event of Withdrawal has occurred, such Member or such Member's Transferee or other successor-in-interest (as the case may be) will, without further act, become a Transferee of such Ownership Interest, with the limited rights of a Transferee as set forth in 14.2, unless admitted as an additional Member.

ARTICLE 13 LIQUIDATION

13.1 Liquidation. Upon Dissolution of the Company, the Company will immediately wind up its affairs and liquidate. A reasonable time will be allowed for the orderly Liquidation of the Company and the discharge of liabilities to creditors so as to enable the Company to minimize any losses attendant upon Liquidation. Any gain or loss on disposition of any Company assets in Liquidation will be credited or charged to the Members' Capital Accounts in accordance with the provisions of Articles 4 and 5.

13.2 Priority of Payment. The assets of the Company will be distributed in Liquidation of the Company in the following order:

[a] To creditors by the payment or provision for payment of the debts and liabilities of the Company (including any loans or advances that may have been made by any Member pursuant to 4.11 and the expenses of the Liquidation);

[b] To the setting up of any reserves that are reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company; and

[c] As provided in 6.1[b].

13.3 Distribution to Members. Distributions in Liquidation due to the Members may be made by either or a combination of the following methods: selling the Company assets and distributing the net proceeds or by distributing the Company assets to the Members in kind, with the Distribution being valued at the Fair Market Value of the asset(s) so distributed. Any liquidating Distribution in kind to the Members may be made either by a pro rata Distribution of undivided interests or, if the Members unanimously agree in writing, by non pro rata distribution of specific assets at Fair Market Value on the effective date of Distribution. Any Distribution in kind may be made subject to, or require assumption of, liabilities to which such property may be subject, but only upon the express written agreement of the Member receiving the Distribution. Appropriate and customary prorations and adjustments will be made incident to any Distribution in kind.

13.4 Deficit Capital Account. Except as otherwise specifically provided in 9.2, nothing contained in this Agreement will impose on any Member an obligation to make an additional Capital Contribution in order to restore a deficit Capital Account upon Liquidation of the Company. Each Member will look solely to the assets of the Company for the return of such Member's Capital Contribution.

13.5 Articles of Dissolution. When all debts, liabilities and obligations of the Company have been provided for or paid, and all remaining assets distributed to the Members as provided in 13.3, and after a reasonable period of time thereafter as determined by Manager, the Company will file articles of dissolution with the Colorado Secretary of State pursuant to the Colorado Act. At such time, the Company will also file an application for withdrawal of its certificate of authority with the Colorado Secretary of State pursuant to the Colorado Act.

ARTICLE 14 RESTRICTIONS ON TRANSFERS

14.1 **General Restriction.** Except as set forth in 14.3, and except for any transaction among the Members or between Housing Authority and Town, no Member may Transfer all or any part of such Member's Ownership Interest in any manner whatsoever without the approval of the Members as provided in 8.8. No Member has the power to grant any Transferee the right to become a Member except as between Housing Authority and Town.

14.2 **General Conditions on Transfers.** No permitted Transfer of an Ownership Interest by a Member will be effective unless all of the conditions set forth below are satisfied:

[a] Unless waived by the other Members, the Transferor signs and delivers to the other Members an undertaking in form and substance satisfactory to the other Members to pay all reasonable expenses incurred by the Company and such other Members in connection with the Transfer (including reasonable fees of counsel and accountants and the costs to be incurred with any additional accounting required in connection with the Transfer, and the cost and fees attributable to preparing, filing and recording such amendments to the Articles or other organizational documents or filings as may be required by law);

[b] Unless waived by the other Members, an opinion of counsel for the Transferor satisfactory in form and substance to such other Members will be delivered to such other Members to the effect that the Transfer of the Ownership Interest is in compliance with the applicable federal and state securities laws, and a statement of the Transferee in form and substance satisfactory to such other Members making appropriate representations and warranties with respect to compliance with the applicable federal and state securities laws;

[c] The Transferor has signed and delivered to the other Members a copy of the assignment of the Ownership Interest to the Transferee, in form and substance satisfactory to such other Members;

[d] The Transferee signs and delivers to the other Members an agreement to be bound by this Agreement; and

[e] The Transfer is in compliance with the other provisions of this Article.

Except as otherwise agreed in writing by the Transferor, Transferee and the other Members, the Transfer of an Ownership Interest will be effective as of 11:59 p.m. (local time) on the last day of the month in which all of the above conditions have been satisfied. Upon the effective date, the Company will amend 5.2 to reflect the new Ownership Interests of all Members.

14.3 **Transfers to Affiliates.** Notwithstanding the provisions of 14.1 and 14.2, a Member may transfer to an Affiliate (and any subsequent Transferee may transfer to an Affiliate) all (but not less than all) of the Ownership Interest of such Member (or such subsequent Transferee). The other Members agree to consent to the admission of such Transferee as a Member of the Company, in the place and stead of the Transferor.

14.4 **Secured Party.** A Member may not grant a security interest in such Member's Ownership interest to one or more Persons.

14.5 **Resignation of Selling Party**. In the event of a sale of all of the Ownership Interest by one of the Members to the Company and/or the remaining Members and/or to any third party, in accordance with the provisions of this Agreement, simultaneously with the closing of the purchase, the selling party shall execute and deliver a resignation as a Member, Manager and employee (as may be applicable) of the

Company, but shall be entitled to receive, at the closing, all earned and/or accrued compensation not previously received, as well as any distributions of cash flow on account of the period of time that such Member was a member of the Company.

ARTICLE 15 GENERAL PROVISIONS

15.1 Amendment. This Agreement may be amended at any time and from time to time, but only by a written instrument signed and approved by all Members.

15.2 Governing Law; Venue; Interpretation. The laws of the State of Colorado will govern this Agreement and the construction of any of its terms. Any litigation arising in connection with this Agreement shall be commenced only in the District Court for San Miguel County, Colorado. If any provision is unenforceable or invalid for any reason, the remainder of this Agreement will continue in effect. All pronouns (and any variation) will be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require or permit. The word "include" (and any variation) is used in an illustrative sense rather than a limiting sense.

15.3 Arbitration. Except as provided in 15.5, if any controversy or claim arising out of this Agreement cannot be settled by the Members, or if the Members cannot come to a unanimous decision where same is required under this Agreement, the decision, controversy or claim will be settled by an individual or corporation selected by the written agreement of the Members or, if they cannot agree, by the Judicial Arbiter Group in Denver, Colorado, and utilizing the then-applicable provisions of the Commercial Arbitration Rules of the American Arbitration Association and pursuant to the Colorado Uniform Arbitration Act, as it may be amended, and judgment on such arbitration award may be entered in any court having jurisdiction.

15.4 Waiver of Partition Right. Each Member hereby waives and renounces any right that such Member may have, prior to the Dissolution and Liquidation of the Company, to maintain any action for partition with respect to the Company's property.

15.5 Specific Performance. If any Member proposes to Transfer all or any part of such Member's Ownership Interest in violation of the terms of this Agreement, to the extent permitted by law, the Company or any other Member may apply to any court of competent jurisdiction for an injunctive order (without the requirement of posting a bond or other security) prohibiting such proposed disposition except upon compliance with the terms of this Agreement, and the Company or any other Member may institute and maintain any action or proceeding against the Member proposing to make such Transfer in violation of this Agreement, and the Transfer will be null and void and of no force and effect. Similar injunctive relief and specific performance may be obtained by the Company or any Member against any third party to compel compliance with the terms of this Agreement. The Person against whom such action or proceeding is brought hereby waives the claim or defense that an adequate remedy at law exists, and such Person agrees not to urge in any such action or proceeding the claim or defense that such remedy at law exists.

15.6 Colorado Constitution and Charter. Any fiscal or monetary obligations of Housing Authority or Town pursuant to this Agreement shall at all times but subject to annual budgeting and appropriation as required by Article X, Section 20 of the Colorado Constitution and all applicable provisions of the statutes of the State of Colorado and of the Charter.

15.7 Attorneys' Fees. Should any arbitration or legal action be brought to enforce or interpret this Agreement, the prevailing party in such action shall receive from the defaulting party all reasonable costs and expenses, including reasonable attorneys' fees (and reasonable fees of legal assistants), incurred by the

prevailing party in such action. For the purposes of this Section, the term "prevailing party" shall include a party who withdraws a claim in consideration for payment allegedly due or performance allegedly owed or other consideration in substantial satisfaction of the claim withdrawn.

15.8 Time and Notices. All notices or deliveries required under this Agreement shall either be (i) hand-delivered, (ii) given by certified mail directed to the address of a Member set forth below, (iii) given by overnight courier directed to the address of a Member set forth below or (iv) by email transmission to a Member's email address set forth below. All notices so given shall be considered effective, (i) if hand delivered, when received, (ii) if by certified mail, three (3) days after deposit, certified mail postage prepaid, with the United States Postal Service, (iii) if by overnight courier, one (1) day after deposit with overnight courier company or (iv) if by email transmission, upon computer confirmation of successful transmission. Any Member may change the address or email address to which future notices shall be sent by notice given in accordance with this Section. All notices will be sent to a Member at the address and email address provided in 3.2. In computing the period of days, the date of personal delivery of date or deemed receipt of such notice will be included. Any Member may waive, in writing, any notice required to be given pursuant to this Agreement, whether before or after such required notice.

15.9 Binding Effect. Except as otherwise provided in this Agreement, this Agreement will be binding upon, and will inure to the benefit of, the Members and their respective successors and assigns. Any such successor-in-interest or assignee will succeed to the benefits and burdens of such Person's predecessor-in-interest in proportion to the Ownership Interest transferred. No provision of this Agreement will be enforceable by any creditor of the Company for such creditor's benefit.

15.10 Further Assurances. Without additional consideration, each Member hereby agrees to sign, acknowledge and deliver any further instruments and documents as the Company determines to be necessary or desirable [a] to ensure its status as a limited liability company in any jurisdiction where it owns property or transacts business or [b] to comply with any law, rule or regulation applying to the Company.

15.11 Waiver. No waiver, express or implied, by any Member with respect to any breach or default by any other Member in the performance of such Member's obligations under this Agreement will be deemed a waiver of any further or other breach or default by such other Member. Failure on the part of any Member to declare any other Member to be in breach or default, regardless of how long such failure continues, will not constitute a continuing waiver.

15.12 Entire Agreement. This Agreement sets forth the entire agreement and understanding of the Members in respect of the transactions contemplated by this agreement, and supersedes all prior agreements, arrangements and understandings relating to its subject matter.

15.13 Multiple Counterparts. This Agreement may be signed in one or more identical counterparts which, when taken together, will be deemed to constitute the original of this Agreement.

15.14 Headings. The section and other headings contained in this Agreement are inserted only as a matter of convenience and for reference, and do not affect, define, or limit the scope, meaning, intent, or interpretation of the text of this Agreement.

15.15 Governmental Immunity. Nothing herein shall be construed as a waiver of the governmental immunity of Town or Housing Authority.

IN WITNESS WHEREOF, all of the Members and Town have signed this Operating Agreement of Meadowlark 644, LLC to be effective upon formation of the Company, notwithstanding the actual date of signing.

TOWN OF MOUNTAIN VILLAGE HOUSING AUTHORITY

By:_____
Name:_____
Title:_____
Date:_____

TRIUMPH DEVELOPMENT WEST, LLC, a Colorado limited liability company

By:_____
Name:_____
Title:_____
Date:_____

The Town of Mountain Village, a Colorado home rule municipality, agrees and consents to the provisions of this Agreement:

_____ _____
Mayor Date

Meadowlark Lot 644 Mountain Village **Exhibit A**
Project Budget & Unit Sales Prices **6.13.23**

Development Program

Condos	Units	SF
A1-1 (1BR)	4	740
A2-1 (2BR)	2	955
A2-2 (2BR)	6	1,015
Total Units/SF	12	10,960
Gross SF		**15,240**

Townhomes	Units	Livable SF	Garage SF
B3-3 (3BR Garage)	3	1,885	340
B3-2 (3BR Garage)	2	1,620	340
CD3-2.5(3BR)	8	1,485	-
CD2-2 (2BR)	4	1,075	-
Total	**17**	**25,075**	**1,700**
Gross SF			**26,775**

Development Budget	Budget Total	Paid To Date
Contributed Land	$ 2,255,000	$ -
Modular Hardcost & Transport	$ 6,050,595	$ 67,375
All Other Hardcost	$ 12,462,278	$ -
Planning, Impact Fees and Use Tax	$ -	$ -
Sales Tax	$ 120,290	$ -
Softcosts	$ 668,790	$ 415,636
Development Fee	$ 800,000	$ -
Contingency	$ 703,568	$ -
Financing & Interest Carry	$ 1,227,753	$ -
Total Onsite Development Budget	**$ 24,288,274**	**$ 483,011**
Cost Excluding Land	22,033,274	483,011
TOMV Access Tract Construction	$ 944,412	$ -
Total Development Costs	**$ 25,232,686**	**$ 483,011**

Onsite Project Funding	$	%
Construction Loan	$ 16,500,000	67.9%
Contributed Land	$ 2,255,000	9.3%
TOMV Cash Equity	$ 5,000,000	20.6%
Required Additional Equity	$ 533,274	2.2%
Total Budget	**$ 24,288,274**	100.0%

Additional TOMV Funding	$
TOMV Access Tract Cost	**944,412**

TOWN MANAGER
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 729-2654 **Agenda Items 20 and 21**

TO: Mountain Village Town Council

FROM: Paul Wisor, Town Manager; Jim Soukup, Chief Technology Officer; Lizbeth Lemley, Finance Director

DATE: June 8, 2023

RE: **Sale of the Town of Mountain Village Broadband and Cable System**

Executive Summary: Pursuant to an RFP issued in December 2022 and further direction from Town Council, Town staff has been working with Vero networks on the sale of the broadband network. This memo is being provided to summarize the provisions of the Asset Purchase Agreement between the Town and Vero Networks, which is to be approved by Resolution. The Town will also license the use the headend currently used by the Town to run the broadband and cable system.

Background

Pursuant to an RFP and Council's further direction, Town staff has been working with Vero Networks on the sale of the broadband network.[1] The Town issued a RFP after it concluded the underlying rationale for owning and operating a cable and broadband system no longer existed. When initially installed, the cable, and later broadband, system was needed in Mountain Village because no private entity could provide a high level of service to the community at a reasonable price. That is no longer the case. Today, many providers are able to serve customers throughout the region, and the market is robust enough to assure prices will remain competitive. As such, the Town no longer needs to fill a gap in the private sector.

For its part, Vero Networks was founded in 2017 by former Zayo executives and is focused on providing cable and broadband service to rural and underserved communities through the development of private networks. Vero is committed to maintaining and enhancing Mountain Village's cable and broadband infrastructure and overall service.

The key documents associated with this transaction are the Network and Asset Purchase Agreement (APA), which effectively is the mechanism by which the broadband network is transferred to Vero. There is also an Irrefutable Right of Use (IRU) Agreement and a Master Services Agreement (MSA) both relating to the fiber provided to the Town for the Town's internal use by Vero as part of the transaction. Finally, there is a separate License Agreement for the Headend, which will provide access to the Headend from which the system is operated. All

[1] The Town initially issued an RFP in May of 2022 for the management of the Town's broadband and cable system. After selecting a management company, both parties agreed to terminate negotiations as it became clear to both parties that an operating agreement would not work for either party given the unique characteristics of Mountain Village generally, and the systems specifically.

documents are briefly summarized below and attached hereto. The APA, IRU, and MSA will be approved by Resolution while the license will be approved by Ordinance.

Network and Asset Purchase Agreement

The relevant Network and Asset Purchase Agreement provisions are as follows:

- Sale price of $5,700,000
- Acquisition includes network as well as all associated assets.
- Town pays for all obligations up to the Effective Date
- Town has right of first refusal in event of sale to a third party
- In the (unlikely) event Vero abandons the network, the Town may repurchase the network. The value of the Network will be a minimum of $5,700,00 and inclusive of any upgrades made to the network.
- Vero may assign the network to a related party, subject to Town consent. Such assignment must include all responsibilities and liabilities under the proposed agreement
- Vero must adhere to baseline customer service standards, which standards are consistent with service level obligations of the Town.

Irrefutable Right of Use (IRU) Agreement and a Master Services Agreement (MSA)

- The IRU Agreement provides the Town with Fiber for its internal use for $1.00. The Term of the IRU is for the useful life of the fiber, which is typically understood to be 25-50 years, or longer if replaced.
- Vero will maintain the fiber pursuant to the Master Services Agreement at $0.10/ft.
- The exact number of strands Vero will be providing to the Town for $1.00

Headend License Agreement

The relevant License Agreement provisions are set forth below:

- Initial 10 year term, with two five year options to be approved by Council
- Monthly rent of $3,000. This amount represents the historical maintenance and operations cost of the equipment necessary to run the headend (A/C and generators).
- 3% annual rent escalation
- Town continues its current use of the licensed property
- Town pays utilities and ongoing O&M
- Vero agrees to relocation in the event there is development by the Town necessitating such relocation

Proposed Motions

Agenda Item 21 (Resolution) – "*I move to approve the Network Asset and Purchase Agreement with Vero Broadband, LLC, with all documents approved to form and delegating to the Town Manager and Town Attorney the authority to make any administrative changes*."

Agenda Item 22 (Ordinance) – "*I move to approve a License Agreement with Vero Broadband, LLC for communications equipment space at 317 Adams Ranch Road, Mountain Village, Colorado*."

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO APPROVING A NETWORK ASSET AND PURCHASE AGREEMENT WITH VERO BROADBAND, LLC

RESOLUTION NO. 2023-_____

RECITALS:

A. The Town of Mountain Village (the "Town"), in the County of San Miguel and State of Colorado, is a home rule municipality duly organized and existing under the laws of the State of Colorado and the Town Charter.

B. The Town is authorized to sell and otherwise dispose of personal property.

C. The Town has constructed, operated, and maintained a broadband internet network serving the businesses and residents of the Town.

D. The Town Council has directed Town Staff to sell the facilities serving the broadband internet network (the "Broadband Facilities").

E. As the Town intends to no longer operate the broadband network, the Broadband Facilities are surplus.

F. Pursuant to a request for proposals, the Town identified Vero Broadband, LLC ("Vero") as the most qualified buyer for the Broadband Facilities.

G. The Town and Vero negotiated a Network Asset and Purchase Agreement with Vero Broadband, LLC (the "Agreement") attached to this Resolution as **Exhibit A**.

H. The Town Council desires to approve the Agreement.

NOW, THEREFORE, BE IT RESOLVED, the Town Council hereby authorizes:

1. The Town Manager to sell the Broadband Facilities pursuant to the Agreement Attached as Exhibit A.

2. The Town Manager, in consultation with the Town Attorney, to make any necessary nonmaterial changes to the Agreement which do not increase the financial obligations of the Town.

3. The Town Manager to take all other actions necessary to complete the sale of the Broadband Facilities.

ADOPTED AND APPROVED by the Town Council of the Town of Mountain Village, Colorado, at a regular meeting held on the __th day of June 2023.

TOWN OF MOUNTAIN VILLAGE,
COLORADO, a home rule municipality

By: _____
Laila Benitez, Mayor

ATTEST:

By:_____
Susan Johnston, Town Clerk

APPROVED AS TO FORM:

By:_____
_____, Town Attorney

Network and Asset Purchase Agreement

This Network and Asset Purchase Agreement (the "**Agreement**") is entered into as of June ____, 2023 and will become effective on August 1, 2023 (the "**Effective Date**"), by and between the Town of Mountain Village, a Colorado home rule municipality ("**TMV**"), Vero Broadband, LLC ("**Vero LLC**"), a Colorado limited liability company, and VFN Holdings Inc. ("**VFN**"), a Colorado Corporation (Vero LLC and VFN shall hereinafter collectively be referred to as "**Vero**"). "**Party**" shall mean each of TMV and Vero and "**Parties**" shall collectively mean TMV and Vero.

RECITALS

WHEREAS, TMV is the owner and operator of a cable television and internet network and other related assets;

WHEREAS, Vero desires to purchase, and TMV desires to sell, the network and other assets pursuant to the terms and conditions herein; and

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TMV and Vero hereby covenant and agree as follows:

1. **Overview**

1.1 As used herein, "**Town**" shall mean the territorial boundaries of the Town of Mountain Village in San Miguel County, Colorado.

1.2 As used herein, "**Network**" shall mean all TMV owned or controlled network facilities and equipment providing cable TV and internet services to the Town as well as neighboring unincorporated communities; including but not limited to the conduit, innerduct, fiber optic cable, coaxial cable, manholes, handholes, head end building, telecommunications equipment, and related telecommunications facilities, as more fully described in Exhibit A. Network shall not include the Wi-FI Network.

1.3 As used herein, "**Demarcation Point**" shall mean the point where the Network ends and the connection to the customer begins. This may be, but is not limited to, the output of the distribution amplifier/switch, the subscriber test access point ("tap") box, optical network terminal, or any other output device or splice point that provides signals and/or bandwidth to customers, situated at each building serviced by the Network.

1.4 As used herein, "**MDU**" shall mean multifamily dwelling units that include but are not limited to condominium complexes, townhouse complexes, duplexes.

1.5 As used herein, "**Building Agreement**" shall mean a building access and services agreement between TMV and the authorized representative of each MDU or commercial building required in order for Vero to provide services to a building.

1.6 As used herein, "**Demarcation Point**" shall mean the point where the Network ends and the connection to the Network customer begins. This may be, but is not limited to, the output of the distribution amplifier/switch, the subscriber tap, or any other output device or splice point that provides signals and/or bandwidth to customers, situated at each building serviced by the Network.

1.7 As used herein, "**Underlying Rights**" shall mean all applicable private rights of way, private easements, any other dedicated rights-of-way, Building Agreements, licenses, leases, easements, deeds, and any other contracts of any kind, written or oral, relating to and associated with the Network or any part thereof that are necessary for the construction, installation, maintenance, operation, use, or repair of the facilities of the Network.

1.8 As used herein, **"Affiliate"** means any entity who owns or controls, is owned or controlled by, or is under common ownership or control with Vero, including but not limited to any entity that has any ownership in or is in any way owned by Vero.

1.9 As used herein, "**Other Assets**" shall mean all TMV customer contracts, relationships and receivables, all customer premises equipment, all equipment used to operate the Network or to serve any TMV customers, all Underlying Rights, all equipment or other assets including but not limited to those set forth on Exhibits A-2, A-3, and B.

1.10 As used herein, "**Wi-Fi Network**," means the radio transmitters used to provide public Wi-Fi within the Town.

1.11 "**Knowledge**" means, with respect to the TMV, the actual knowledge of any official, officer, employee or other member or agent of TMV, in all cases, in good faith after due inquiry of any individuals that each such person reasonably believes would have information or knowledge pertaining to the particular disclosure, representation or warranty.

2. **Sale of the Network and Other Assets.** As consideration for this Agreement and for payment by Vero to TMV of the Purchase Price defined below and effective upon the Effective Date, TMV hereby grants, bargains, sells, and conveys to Vero, pursuant to the terms and conditions set forth in this Agreement:

2.1 The Network;

2.2 All applicable vendor agreements, and any other contracts of any kind, written or oral, relating to and associated with the Network or any part thereof (the "Assumed **Network Agreements**") set forth on Exhibit B;

2.3 To the extent such any Underlying Rights Agreements are not assignable ("**Unassigned ULR Agreements**"), TMV hereby grants to Vero a sublicense to use such Unassigned Network Agreements for telecommunications use;

2.4 All readily available as-built drawings and comparable engineering drawings and related documentation (in both paper and electronic form, as available) of the Network ("**Network Drawings**");

2.5 The Other Assets; and

2.6 All customer payments and other receivables received following the Effective Date.

3 **Purchase Price.** The purchase price to be paid by Vero to TMV for the conveyance of the Network and Other Assets, subject to the terms and conditions of this Agreement, shall be the sum of FIVE MILLION SEVEN HUNDRED THOUSAND DOLLARS AND NO/100 ($5,700,000.00) (the **"Purchase Price"**). The Purchase Price shall be paid by Vero to TMV on the Effective Date by wire transfer of immediately available U.S. Dollars to an account designated by TMV.

4 **Working Capital.** All receivables received following the Effective Date shall be the property of Vero. TMV shall pay all amounts due under the Assumed Network Agreements through the Effective Date. Vero shall be responsible for any payments due in the regular course of business for the Assumed Network Agreements after the Effective Date.

5 **Transfer of Documents.** On the Effective Date, TMV shall deliver the following documents in consummation of this transaction:

5.1 Executed Bill of Sale in the form of Exhibit C;

5.2 All Network Agreements, duly assigned to Vero; and

5.3 All Network Drawings.

6. **Right of First Refusal.** In the event that Vero seeks to sell the Network to a third-party, TMV shall have a right of first refusal on any offered sale of the Network to such third-party as further described in **Exhibit D-1**.

7 **TMV Option to Repurchase the Network if Abandoned**. In the event Vero ceases all operations in the Town, ceases serving all customers in the Town, and permanently abandons the Network, TMV shall have an option to purchase the Vero Network pursuant to the terms of Exhibit D-2. For the purposes of this section the Network shall be deemed permanently abandoned if the Network is not used to provide any services for a period of ninety (90) days and such lack of use is not due to a Force Majeure Event. If Vero has terminated all services to all customers within the Town and a repurchase is triggered under this provision, then at the time that the Town sends the Option Notice in accordance with Exhibit D-2) the Town may also take reasonable steps to temporarily provide services to those terminated customers.

8 **Representations and Warranties**. TMV hereby represents and warrants to Vero that to TMV's Knowledge:

8.1 Exhibit A is a complete description of the Network sold to Vero under this Agreement and constitutes all of the assets required to operate and maintain the Network by Vero;

8.2 Exhibit B lists all known and applicable Network Agreements required to operate and maintain the Network and that to TMV's Knowledge each of which is in full force and effect, legal, and not in material breach or default, and no event has occurred that, with lapse of time, would constitute a material breach or default, or permit termination, modification, or acceleration thereunder;

8.3 TMV is the sole owner of the full legal and beneficial title to the Network, has the good and lawful right to sell the same;

8.4 The Network is free and clear of all loans, liens, claims, mortgages, pledges, leases, encumbrances, other security interests, and rights of others;

8.5 The Network is, as of the Effective Date, to TMV's Knowledge, in good working order and condition pursuant to commonly accepted telecommunications industry standards and in compliance with applicable laws, codes and regulations;

8.6 No regulatory, private, governmental, governing organization, or other third-party review, consent, or approval is required to enter into this Agreement and convey the Network to Vero;

8.7 Except those that are currently known to Vero, there is no pending or threatened action by a governmental or other entity that would require the relocation or protection of the Network,

8.8 All taxes and assessments relating to the Network which are attributable to periods prior to the Effective Date are either not applicable to the Network due to TMV's status as a governmental entity or to the extent they are applicable have been or shall be properly rendered by the filing of timely returns and reports and promptly paid by TMV; and

8.9 To TMV's Knowledge, the Network is lawfully located entirely within public or private rights-of-way, public or private easements, and any other dedicated rights-of-way or other easements which allow for telecommunications use.

8.10 The Network is not subject to any repaving or other similar remediation obligation in connection with the Network;

8.11 The Network is not subject to any relocation requests and TMV has not received any notices of pending relocations related to the Network;

8.12 There are no actions, suits or proceedings pending or threatened at law or in equity, or before or by any governmental entity or before any arbitrator of any kind, against TMV to the extent that such action, suit or proceeding relates to the Network, that affect or are reasonably likely to affect the Network or the consummation of the transactions contemplated hereby;

8.13 TMV is not in violation of or has not violated any legal requirement, applicable to TMV to the extent that such legal requirement relates to the Network.

8.14 TMV holds and is in compliance with all respective environmental permits and all applicable environmental laws pertaining to the Network in all material respects, and there is no condition that is reasonably likely to give rise to any remedial obligation by TMV under environmental laws pertaining to the Network;

8.15 TMV shall grant to Vero a sublicense to to use the Unassigned Network Agreements required by Vero for the construction, installation, maintenance, operation, use, or repair of the facilities of the Network, and that TMV shall maintain these Unassigned Network Agreements in full force and effect. TMV makes no warranty as to whether such sublicense is effective in the case where the Unassigned Network does not expressly permit sublicensing.

8.16 TMV hereby covenants that Vero shall have quiet and peaceful possession of the Network.

8.17 To TMV's Knowledge, the Network was properly constructed in a good and workmanlike manner, by workers who are appropriately trained and experienced in the work being performed, and in accordance with all requirements of the Contract documents, industry standards for projects of similar type and quality, and all applicable rules, Laws, permits and other requirements. To the TMV's Knowledge, all Network is either (i) properly attached to poles or (ii) properly buried underground at an appropriate depth and properly placed in conduit.

8.18 To TMV's Knowledge there are no amounts due after the Effective Date for, or related to, the Assumed Network Agreements that exceed the regular monthly amounts set forth in the financial statements provided by TMV to Vero in due diligence.

9. **Indemnities**. Vero, on behalf of itself and its Affiliates ("**Indemnitor**") hereby agrees to indemnify, defend, protect and hold harmless TMV and its affiliates, agents, employees, and elected officials ("**Indemnitee**"), from and against, and assumes liability for all claims, suits, actions, damages, costs and expenses (including reasonable attorneys' fees and costs of litigation) (collectively, "**Claims**") which in whole or in part arise out of or result from (a) the negligent or willful acts, omissions, or willful misconduct of the Indemnitor in the performance or non-performance of its obligations or exercise of its rights under this Agreement; (b) any breach of a representation, warranty, covenant or agreement made or

to be performed by the Indemnitor in this Agreement, (c) any act or failure to act by the Indemnitor in regard to the performance of this Agreement, or (d) the violation of any law, regulation, rules, tariffs, dockets, ordinances, orders or guidelines, or other regulatory requirements applicable to this Agreement by the Indemnitor in the performance or non-performance of its obligations or exercise of its rights under this Agreement. The Indemnitor's indemnification obligations hereunder shall not be applicable to any Claims arising from the Indemnitee's negligence, intentional acts, omissions, willful misconduct, or the Indemnitee's violation of any law or regulation.

10 **Force Majeure**. Neither Party shall be liable for its inability to perform its obligations under this Agreement if caused by acts or conditions beyond its reasonable control including but not limited to acts of God, acts of third parties not under the direction or actual control of the Party delayed or unable to perform, environmental conditions, perils, hazards, fire, explosion, theft, vandalism, cable cut (not caused by Vero), power outage (including rolling blackouts), flood, storm or other similar occurrence, epidemic, pandemic, quarantine, any law, order, regulation, direction, action or request of the United States Government or state or local governments, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of said governments (other TMV), or of any civil or military authority, national emergencies, civil disorders, insurrections, riots, wars, terrorist attacks and responses to such attacks, sabotage, strikes, lockouts or work stoppages, supplier failures, shortages, breaches or delays, , customer and third-party equipment performance, third party network problems, or acts or omissions of underlying carriers or other third parties (each, a "**Force Majeure Event**"). In the event either Party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its control, that Party shall have a reasonable time, under the circumstances, to perform the affected obligation under this Agreement or to procure a substitute for such obligation which is satisfactory to the other Party. If either Party believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Agreement, that Party shall provide documentation as reasonably required by the other Party to substantiate the claim. If the Party has not yet cured the deficiency, it shall also provide the other Party with its proposed plan for remediation, including the timing for such cure. In order to be entitled to an excuse for any delay or failure to perform under this Agreement, the Party claiming such excuse shall promptly give written notice to the other Party to this Agreement of any event or occurrence which it believes falls within the contemplation of this section and shall not be in default so long as that Party is diligently working toward complying with its obligations under this Agreement at the earliest possible time.

11 **Confidentiality**. Subject to the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies, "**Confidential Information**" shall mean all information, including this Agreement, regarding the sale of the Network which is disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), to the extent that such information is marked or identified as confidential or proprietary. Notwithstanding the

foregoing, all written or oral pricing and contract proposals exchanged between the Parties shall be deemed Confidential Information, whether or not so designated. Confidential Information is the property of the Disclosing Party and shall be returned to the Disclosing Party upon request. Information that (i) is independently developed by the Receiving Party, (ii) is lawfully received by the Receiving Party free of any obligation to keep it confidential, or (iii) becomes generally available to the public other than by breach of this Agreement, shall not be considered Confidential Information. A Receiving Party, including its officers, directors, employees, partners, affiliates, agents, and representatives, shall hold all Confidential Information in confidence from the time of disclosure until three (3) years following its disclosure. During that period, the Receiving Party: (a) shall use such Confidential Information only for the purposes of performing its obligations under this Agreement; (b) shall reproduce such Confidential Information only to the extent necessary for such purposes; (c) shall restrict disclosure of such Confidential Information to employees that have a need to know for such purposes; (d) shall not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in this Agreement or as required by law including, but not limited to the Colorado Open Records Act; and (e) shall use at least the same degree of care (in no event less than reasonable care) as it uses with regard to its own proprietary or confidential information to prevent the disclosure, unauthorized use or publication of Confidential Information. In the event that the Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to law, the Receiving Party will notify the Disclosing Party of the required disclosure with sufficient time for the Disclosing Party to seek relief, will cooperate with the Disclosing Party in taking appropriate protective measures, and will make such disclosure in a fashion that maximizes protection of the Confidential Information from further disclosure. Notwithstanding anything herein to the contrary, the fact that Vero provides services for the Town shall not be deemed Confidential Information and either Party may disclose the same without liability therefor.

12 **Miscellaneous**.

12.1 **Assignment**. Either Party may assign this Agreement and the Network assets conveyed as part of this Agreement without consent to: (a) a subsidiary, affiliate, or parent company; (b) any firm, corporation, or entity which the Party controls, is controlled by, or is under common control with; (c) any partnership in which it has a majority interest; (d) if by Vero, to any entity with less than one million fiber to the home subscribers in Colorado which succeeds to all or substantially all of its assets whether by merger, sale or otherwise, or (e) any business reorganization that may result in a change in majority control, investor ownership, or refinancing (collectively, "**Permitted Assignments**"). In the event this Agreement is assigned by Vero other than by a Permitted Assignment, Vero shall first obtain approval in writing by TMV, where such approval shall not be unreasonably conditioned, delayed, or withheld. The assignee of any of the above assignments shall assume the obligations of the assignor under this Agreement. In the event of an assignment, assignee shall assume all duties, obligations, and responsibilities set forth in this

Agreement. In the event that TMV refuses to provide approval for any assignment, then at Vero's option, (i) TMV shall repurchase the Network from Vero in accordance with the applicable terms of Exhibit D-2 and, (ii) in the event TMV declines to repurchase the Network from Vero (or fails to complete such repurchase within 60-days of a notice to repurchase from Vero), then the assignment shall be deemed approved.

12.2 **Governing Law**. This Agreement shall be governed by, enforced, and construed in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Colorado, without regard to choice of law principles. Venue for any legal action relating to this Agreement shall be the State Court in and for the County of San Miguel, Colorado.

12.3 **Subject to Laws**. This Agreement is subject to all applicable federal, state, and local laws, and regulations, rulings, and orders of governmental agencies, including, but not limited to, the Communications Act of 1934, as amended, the Telecommunications Act of 1996, the Rules and Regulations of the Federal Communications Commission ("FCC"), applicable tariffs, if any, and the obtaining and continuance of any required approval or authorization of the FCC or any governmental body. Either Party may terminate its obligations under this Agreement without liability if ordered to do so by the final order or ruling of a court or other governmental agency or if such order or ruling would make it impossible for either Party to carry out its obligations under this Agreement.

12.4 **Entire Agreement**. This Agreement and its exhibits constitute the entire agreement between the Parties hereto and supersedes and replaces any and all prior understandings, agreements, negotiations, and communications, whether written or oral, between the Parties relating to the subject matter hereof, and the transactions provided for herein. Any prior agreements, promises, negotiations or representations regarding the subject matter hereof are of no force or effect.

12.5 **Fully Negotiated**. This Agreement has been jointly drafted by and fully negotiated between TMV and Vero and should not be construed more strictly against either Party.

12.6 **No Third-Party Beneficiaries**. The representations, warranties, covenants, and agreements of the Parties set forth herein are not intended for, nor shall they be for the benefit of or enforceable by, any third party or person not a Party hereto. This Agreement does not and shall not be deemed to confer upon any third party any right to claim damages to bring suit, or other proceeding against either TMV or Vero because of any term contained in this Agreement.

12.7 **Notices**. All notices, demands, requests, and other communications required or permitted under this Agreement shall be in writing and shall be deemed properly given (a) if delivered in person to a Party; or (b) if delivered by an overnight delivery service, private courier or commercial courier; or (c) if delivered by the United States mails, certified or registered mail with return receipt requested. All notices so given shall be deemed effective

on actual delivery or if delivery is refused, upon refusal. All notices shall be delivered at the following addresses:

If for TMV:

Town of Mountain Village
411 Mountain Village Blvd.
Mountain Village, CO 81435
Attn: Town Manager

If for Vero:

Vero Broadband, LLC
1023 Walnut St
Boulder, CO 80302
Attention: Chief Operating Officer

With a copy to:
Gregg Strumberger
Chief Legal Officer
At the same address

12.8 **Survival**. Those obligations established by and arising under this Agreement that by their nature, would apply and be enforceable by either Party after termination, shall survive the expiration or termination of this Agreement for the duration of any applicable statutory period of limitations on claims relating thereto, or such shorter period as may be stated in any specific provision of this Agreement.

12.9 **Binding Effect**. Each of the provisions of this Agreement shall extend to, bind, or inure to the benefit of, as the case may be, TMV and Vero, and their respective heirs, successors, and assigns.

12.10 **Modification**. No modification, waiver, or amendment of this Agreement or of any of its provisions shall be binding upon a Party unless in writing signed by a duly authorized representatives of each Party.

12.11 **No Waiver**. No course of dealing between the Parties and no failure to exercise any right hereunder shall be construed as a waiver of any provision hereof. No waiver of any provision of this Agreement shall be implied by any failure of either Party to enforce any remedy upon the violation of such provision, even if such violation is continued or repeated subsequently. No express waiver shall affect any provision other than the one specified in such waiver, and that only for the time and in the manner specifically stated.

12.12 **Severability**. If any term, covenant, or condition in this Agreement shall, to any extent, be invalid, illegal, or unenforceable in any respect under the laws governing this

Agreement, the remainder of this Agreement shall not be affected thereby, and each remaining term, covenant or condition of this Agreement shall be valid, legal, and enforceable to the fullest extent permitted by law, and the application thereof shall not in any way be affected or impaired thereby.

12.13 **Authority to Bind**. Vero and TMV represent and warrant that they have the full power and authority to enter into, deliver, and perform under this Agreement and that the individuals signing this Agreement on behalf of Vero and TMV are empowered and duly authorized to bind Vero or TMV, as the case may be, to this Agreement.

12.14 **Relationship of the Parties**. Vero and TMV agree that nothing in this Agreement shall be deemed to create a partnership, joint venture, agency, or any relationship between the Parties other than the relationship of independent parties contracting to purchase and sale the Network. Neither Party shall have any authority to bind the other Party to any agreement, understanding or other instrument, in any manner whatsoever.

12.15 **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which counterparts collectively shall constitute one and the same Agreement. This Agreement may be executed via a recognized electronic signature service (e.g., Docusign), or may be signed, scanned, and emailed to Vero, and any such signatures shall be treated as original signatures for all applicable purposes.

12.16 **No Waiver of Governmental Immunity**. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to TMV, its elected and appointed officials, employees, contractors, or agents, or any other person acting on behalf of TMV and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

12.17 **Customer Service Standards**. Vero will use commercially reasonable efforts to provide services to the residents of the Town in accordance with the standards set forth in Exhibit E.

12.18 **Transition Period**. TMV acknowledges that a transition period of ninety (90) days will be required immediately after the Effective Date for Vero to understand the Network and customers' configurations and to transition services over to the Vero platform ("Transition Period"). During the Transition Period, TMV will continue to support the existing customers immediately after the Effective Date until these configurations are finalized by Vero, and will provide Vero with all reasonably requested support, training, and documentation during this period. Vero will use reasonable commercial efforts to complete this transition as expediently as possible. Following the Transition Period, TMV shall use commercially reasonable efforts to assist Vero with necessary transition activities upon reasonable request by Vero.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Vero and TMV have executed this Agreement as of the date first above written by a representative empowered to bind that Party with respect to the undertakings and obligations contained herein.

THE TOWN OF MOUNTAIN VILLAGE, COLORADO

By: _____

Name: _____

Title: _____

Date: _____

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

The foregoing Network Purchase and Sale Agreement by and between the Town of Mountain Village, VFN Holdings, Inc., and Vero Broadband, LLC was acknowledged before me this ____ day of _____, 2023, by _____, Town Manager.

Witness my hand and official seal.

_____
Notary Public
My Commission Expires: _____

VFN HOLDINGS, INC.

By: _____

Name: _____

Title: _____

Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Network Purchase and Sale Agreement by and between the Town of Mountain Village, VFN Holdings, Inc. and Vero Broadband, LLC was acknowledged before me this ____ day of _____, 2023, by _____, _____.

Witness my hand and official seal.

_____
Notary Public
My Commission Expires: _____

VERO BROADBAND, LLC

By: _____

Name: _____

Title: _____

Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Network Purchase and Sale Agreement by and between the Town of Mountain Village, VFN Holdings, Inc., and Vero Broadband, LLC was acknowledged before me this ____ day of _____, 2023, by _____, _____.

Witness my hand and official seal.

_____
Notary Public
My Commission Expires: _____

Exhibit A-1
Town of Mountain Village Network Route Maps

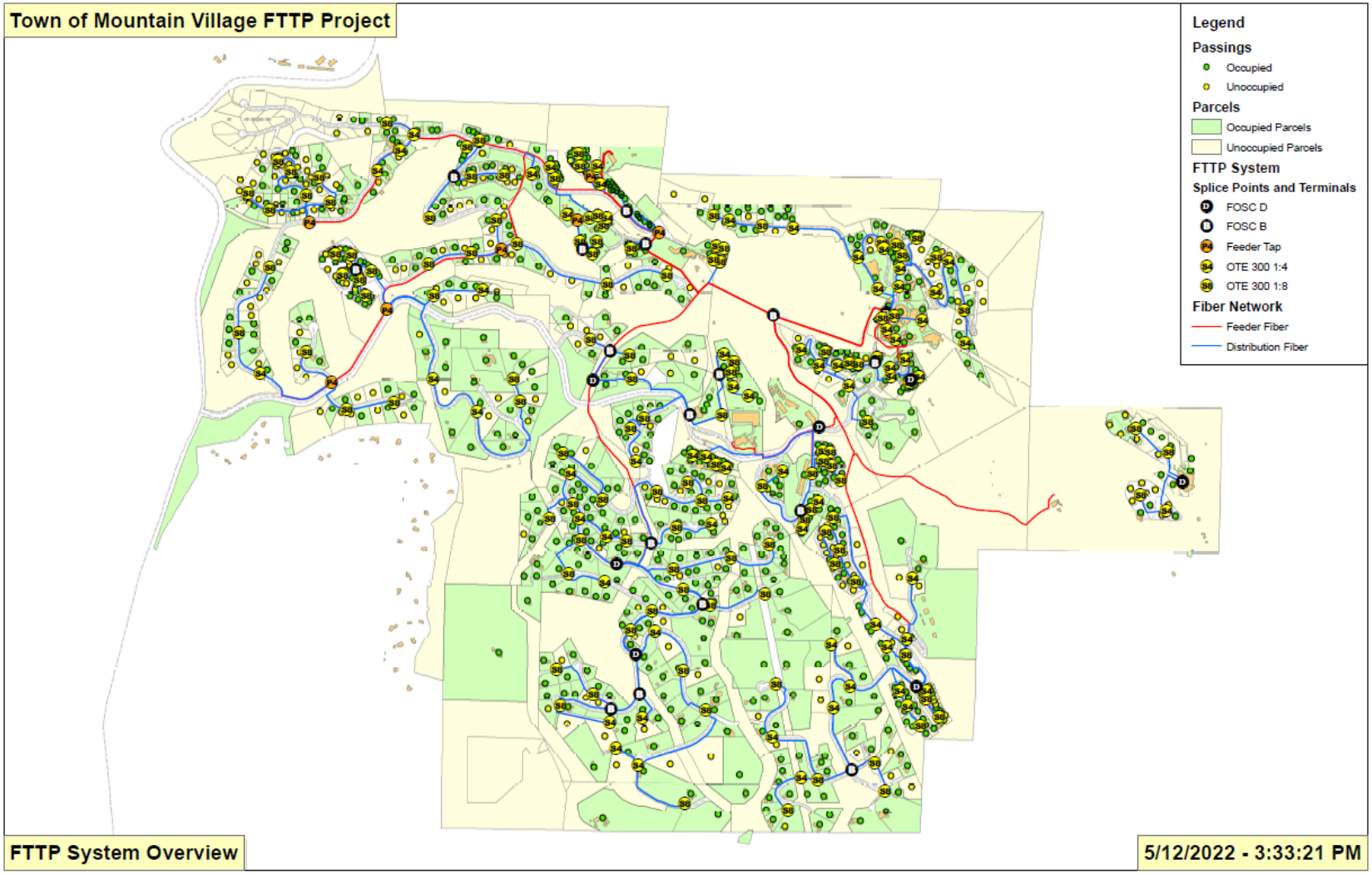


Exhibit A-2
Network Equipment

Vendor	Equipment	Units	Deployed
ARIN		216.237.240.0 -	
216.237.240.0/20	NET-216-237-240-0-1	216.237.255.255	
TMV retains /24	216.237.245.1 - 216.237.245.254		
Plant			
Adtran	TA5000		2019
Juniper	MX1		2019
Juniper	MX2		2019
FS Switch	5800		2019
FS Switch	5800		2019
FS Switch	1150		2019
Sonicwall	NSA 4600		2019
Adtran	AOE Server		2019
Adtran	MSI Proxy Server		2019
Dell	Speedtest		2019
Alpha	DC Plant		2019
Dell HyperV VM	Ubuntu DHCP		2019
Dell HyperV VM	ECMO Ping Monitor		2019
Adtran	7278		2019
Adtran	611		2022
Cisco	UBR		2010
Cisco UBR 10k			
Cisco UBR 10k backup			
JDSU 5500 Stealth			
RPD General Instrument			
Outside Plant - see kmzs and pdfs			
Commscope	8 OTE		2019
Commscope	4 OTE		2019
Commscope	OFDC		2022
Commscope	FOSC 450 Splice Closure		2019
Duraline	4 Way Future Path		2019
FiberX	OP12124 Pedestal		2019
FiberX	OSV Node Pedestal		2019
TII	FacePlates		2019
Commscope	Gators	2	2022
Fuji	Fuji Kara Fusion splicer		2014

Exhibit A-3
Network Materials and Inventory

Vendor	Equipment	Units	
Commscope	FOSC 450-D6 Splice Closure	12	
Commscope	FOSC 450-B6 Splice Closure	6	
Scientific Atlanta	Brigder Housings with Modules	8	
Scientific Atlanta	Bridger Modules	1	
Scientific Atlanta	Line Extender Housings with Modules		5
Scientific Atlanta	Line Extender Modules	10	
Scientific Atlanta	XMTR	5	
Scientific Atlanta	RCVR	3	
Scientific Atlanta	Nodes	7	
Scientific Atlanta	Housing Nodes	6	
Alpha-XM Series	Power Supply	4	
Gilbert	500-Pin Connectors	15	
Gilbert	750-Pin Connectors	25	
Gilbert	500 Straight Splice Connectors	15	
Gilbert	750-Straight Splice Connectors	25	
Gilbert	Housing to Housing Connectors	25	
Gilbert	500-Pin to F-Connector	10	
Gilbert	Terminal Connectors	50	
Scientific Atlanta	Bridger-Gain Maker Power Supply	1	
Scientific Atlanta	LE-Gain Maker Power Supply	1	
Scientific Atlanta	SA2SG-G	4	
Scientific Atlanta	SAPISG-G	4	
Extreme	2-Way Splitter	25	
Extreme	3-Way Splitter	10	
Extreme	4-Way Splitter	10	
Extreme	6-Way Splitter	10	
Lindsay Broadband	House Amplifier	15	
PCT	RG-6 Connectors	300	
N/A	Barrels- G-F811	300	
Adtran	7473-ONU	50	
Adtran	7278-ONU	360	
Adtran	611-ONU	440	
Arris	Cable Modem	65	
Motorola	Cable Modem	2	
Commscope	Fiber Drops-100ft	60	
Commscope	Fiber Drops-250ft	120	
Commscope	Fiber Drops-500ft	85	
Commscope	OTE-9905	8	
Commscope	OTE-3823	8	
Charles Industries	CFTT4-1SCA Enclosure	65	
Dura-line Conduit	Orange 1'1/4" ft	5000	
Dura-line Conduit	Orange 1'1/4" ft	5000	

Dura-line Conduit	Orange 1'1/4" ft	5000	
Dura-line Conduit	Orange 1'1/4" ft	5000	
Dura-line Conduit	Orange 1'1/4" ft	1284	
Commscope	P3 750 JCASS SM PR997	2500	
Commscope	FOSC 450-D6 Splice Closure	16404	
Commscope	FOSC 450-B6 Splice Closure	1000	
Scientific Atlanta	Brigder Housings with Modules	500	
Scientific Atlanta	Bridger Modules	1000	
Scientific Atlanta	Line Extender Housings with Modules		5
Scientific Atlanta	Line Extender Modules	5	
Scientific Atlanta	XMTR	5	
Scientific Atlanta	RCVR	5	
Scientific Atlanta	Nodes	224	
Scientific Atlanta	Housing Nodes	3000	
Alpha-XM Series	Power Supply	3000	
Gilbert	500-Pin Connectors	2000	
Gilbert	750-Pin Connectors		
Gilbert	501 Straight Splice Connectors		
Roku		290	

Exhibit B
Network Agreements

CONFIDENTIAL

Exhibit C
Bill of Sale

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that, for Ten and No/100 Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town of Mountain Village, a Colorado home rule municipality ("**Seller**") does hereby grant, bargain, sell, assign, transfer, convey and set over unto Vero Broadband, LLC., a Colorado limited liability company ("**Buyer**") all right, title and interest in the **Network and Other Assets**, as those terms are defined and more fully described in the Network and Asset Purchase Agreement between Buyer and Seller.

Seller hereby represents and warrants to Buyer that (i) immediately prior to the delivery of this Bill of Sale, Seller was the sole owner of the full legal and beneficial title to the Network and Other Assets and that Seller had the good and lawful right to sell the same; (ii) good and marketable title to the Network and Other Assets is hereby vested in Buyer free and clear of all liens, claims, encumbrances, and rights of others; (iii) the Network and Other Assets are, as of the date of this instrument, in good working order and condition pursuant to commonly accepted telecommunications industry standards and in compliance with applicable laws, codes and regulations; (iv) no regulatory or other private or governmental approvals are necessary to convey the Network or Other Assets to Buyer; (v) there is no pending or threatened action by a governmental or other entity that would require the relocation or protection of the Network, and (vi) all taxes and assessments relating to the Network or Other Assets which are attributable to periods prior to the date of this instrument have been or shall be properly rendered by the filing of timely returns and reports and promptly paid by Seller

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed and delivered in its name this ____ day of _____, 2023.

SELLER:

Town of Mountain Village

By: _____

Name: _____

Title: _____

Date: _____

Exhibit D-1

Right of First Refusal

In the event Vero, in its sole discretion, elects to seek a third-party buyer for the Network, Vero must first offer to sell the Network to TMV (a right of first refusal, or "**ROFR**") subject to the procedures set forth below.

Vero may market the Network to prospective third-party purchasers and negotiate a purchase price and other terms and conditions with a third party selected by Vero in its sole discretion. Upon Vero and a third party reaching a mutually agreed proposed purchase price and all other applicable terms and conditions (collectively, the "**Purchase Terms**"), Vero shall provide TMV with written notice of the proposed sale, including the Purchase Terms (a "**ROFR Notice**").

For a period of thirty (30) calendar days commencing on the date such ROFR Notice is delivered (the "**ROFR Period**"), TMV shall have the right, but not the obligation, to elect to purchase all, but not less than all, of the Network at the Purchase Terms. Regardless of the Purchase Terms, TMV shall have an additional ninety (90) calendar days after the expiration of the ROFR Period to close the sale of the Network after exercising its ROFR (the "**Closing Period**"). TMV shall provide written notice to Vero no later than the end of the ROFR Period of TMV's decision to either purchase or not purchase the Network. If Vero does not timely receive such written notice, then the ROFR shall become null and void and neither Party shall have any further rights or obligations to the other with respect to the proposed sale.

In the event TMV elects to not purchase the Network under the Purchase Terms and TMV timely provides such written notice to Vero within the ROFR Period, then the ROFR shall become null and void and neither Party shall have any further rights or obligations to the other with respect to the proposed sale.

In the event TMV elects to purchase the Network under the Purchase Terms and TMV timely provides such written notice to Vero within the ROFR Period, then such written notice shall be considered a binding offer and must be executed by an authorized representative of TMV. The Parties shall close such purchase in accordance with the Purchase Terms. The purchase price for the Network shall be paid in full at the closing by wire transfer of immediately available funds to an account or accounts designated in writing by Vero. At closing, Vero shall deliver to TMV good and marketable title to the Network, free and clear of all liens and encumbrances. In no event shall the purchase price be less than the amount of the $5,700,000 Purchase Price paid by Vero under Section 3 of this Agreement, plus any amounts spent by Vero in maintaining, repairing, relocating, or upgrading the Network through the date of the Option Notice. The repurchase option shall only apply to the original Network routes as set forth in Exhibit A-1 and shall not include

any other network routes owned, built, IRU'd, leased or otherwise used or controlled by Vero regardless of whether such network routes are connected to the Network.

For the avoidance of doubt, a Permitted Assignment shall not be considered a sale of the Vero Network.

Exhibit D-2

TMV Option to Buy Vero Network in the Event of Abandonment

The following sets forth the procedures to be followed in the event the TMV exercises its option purchase the Network upon the event of Network Abandonment as described in Sections 7 and 12.1.

In the event the TMV elects to exercise its option to repurchase the Network from Vero as described in Sections 7 and 12.1 , the following paragraph shall apply:

Within thirty (30) days of gaining the right to repurchase the Network pursuant to Section 7, TMV shall provide Vero with written notice (the "**Option Notice**") of its intent to exercise its option to repurchase the Network from Vero. In the event that TMV fails to send an Option Notice within such 30-day period, TMVs option to repurchase under Section 7 shall expire.

Within thirty (30) days of gaining the right to request TMV to repurchase the Network pursuant to Section 12.1, Vero shall provide TMV with written notice (the "**Option Notice**") of its request that TMV repurchase the Network from Vero. In the event that TMV fails to respond to the Option Notice within such 30-day period, TMV shall be deemed to decline Vero's request that TMV repurchase under Section 12.1.

Upon receipt of the Option Notice by the relevant party, but in no case more than thirty (30) days from receipt, the Parties shall then negotiate in good faith to agree upon a purchase price and all other relevant terms and conditions (collectively, the "**Transfer Terms**") and close the proposed transaction.

Subsequent to the potential transaction being initiated, the remainder of this Exhibit D-2 shall apply:

If the Parties cannot in good faith agree on the Transfer Terms and close the proposed transaction within ninety (90) calendar days following Vero's receipt of the Option Notice (subject to (i) extension to the extent such purchase requires any third party or governmental consent, or (ii) any extension of such time mutually agreed upon by the parties in writing prior to the expiration of the ninety (90) day period), then the Parties will mutually select an independent third-party appraiser qualified to conduct appraisals of telecommunications networks. The appraiser shall determine the fair market value of the network that is proposed to be conveyed. Each Party shall share one-half of the cost of the appraisal fee. The appraiser shall be directed to complete the appraisal within sixty (60) calendar days from the date the appraiser is selected by the Parties.

In the event the Parties agree upon the appraised fair market value of the proposed network conveyance, then the Parties shall use commercially reasonable efforts to close the purchase within thirty (30) calendar days following the receipt of the appraisal report

(subject to extension to the extent such purchase requires any third party or governmental consent). The purchase price shall be paid in full at the closing by wire transfer of immediately available funds to an account or accounts designated in writing by the selling Party. At closing, the selling Party shall deliver to the purchasing Party good and marketable title to the network, free and clear of all liens and encumbrances.

In the event that the Parties do not agree on the appraised fair market value of the proposed network conveyance, then the dispute will be resolved by final and binding arbitration. The Parties shall select and appoint a neutral arbitrator who shall determine fair market value and any relevant terms and conditions. In the event that the Parties cannot mutually agree on a neutral arbitrator, the arbitrator will be selected in accordance with the American Arbitration Association rules. The arbitration will be held within Denver County, Colorado, and administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules in effect at the time of the arbitration. The Parties shall be entitled to submit expert testimony and/or written documentation on such arbitration proceeding. The decision of the arbitrator shall be final and binding upon the Parties. The Parties shall each bear the cost of preparing and presenting its own case. The cost of the arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the Parties. The arbitrator shall be instructed to establish procedures such that a decision can be rendered within sixty (60) calendar days of the appointment of the arbitrator.

TMV's Remedies in the Event of a TMV's failure to Respond to TMV's Option Notice

In the event Vero fails to respond to TMV's Option Notice, TMV may initiate any remedy available to it in law or equity to assert its ownership interest over the Network. Vero agrees that in any bankruptcy proceeding concerning the network, TMV's rights to the Network shall be deemed superior to those of any other creditor and such rights shall not be subrogated.

*** In no event shall the repurchase price be less than the amount of the $5,700,000 Purchase Price paid by Vero under Section 3 of this Agreement, plus any amounts spent by Vero in maintaining, repairing, relocating, or upgrading the Network through the date of the Option Notice. The repurchase option shall only apply to the original Network routes as set forth in Exhibit A-1 and shall not include any other network routes owned, built, IRU'd, leased or otherwise used or controlled by Vero regardless of whether such network routes are connected to the Network.

Exhibit E

Service Level Objectives:

Normal business hours Monday-Saturday 8am-5pm. Calls during this time are responded to within 2 hours. Service calls received during regular business hours will be repaired, tested, and available for use within 24 hours given it's not a larger issue.

After hours Monday-Saturday 5pm-9pm. No truck roll for a single issue after 5pm until 9pm. Calls between 5pm-9pm are responded to within 2 hours. If 5 calls or more come in between 5pm-9pm from the same area, truck rolls to begin fixing outage. If there are more than 5 calls after 9pm, that gets addressed by 8am the next morning with crews on site and calls to homeowners.

Sunday 8am-9pm. A call back within 2 hrs after you receive notice. If 5 calls or more come in between 8am-9pm from the same area, truck rolls to begin fixing outage. If there are more than 5 calls after 9pm, that gets addressed by 8am the next morning with crews on site and calls to homeowners.

Service Level Reports:

For the first 2 years, Vero will provide a service level report to TMV twice per year. After that, Vero will provide service level reports as requested by TMV, but no more often than twice per year.

Pricing:

Vero will continue to offer for a period of two years from the Effective Date, pricing on the same or similar terms as offered by TMV as of January 1, 2023. Thereafter, Vero will adjust pricing in its reasonable discretion in accordance with market conditions.

Bandwidth Caps:

Vero will not impose bandwidth caps within the two years following the Effective Date. Thereafter, Vero will seek to avoid imposing bandwidth caps in its reasonable discretion in accordance with market conditions. This section shall not restrict Vero from implementing reasonable policies that allow it to limit individual customer bandwidth usage in the event of abuse, unlawful activity or other unreasonable or excessive usage.

Network Redundancy:

Vero will use commercially reasonable efforts to provide industry standard network redundancy to its customers in the Town.

ORDINANCE NO. 2023-XX

AN ORDINANCE OF THE TOWN COUNCIL OF MOUNTAIN VILLAGE APPROVING A LICENSE AGREEMENT WITH VERO BROADBAND, LLC FOR COMMUNICATIONS EQUIPMENT SPACE AT 317 ADAMS RANCH ROAD, MOUNTAIN VILLAGE, COLORADO 81435

A. The Town of Mountain Village (the "Town"), in the County of San Miguel and State of Colorado, is a home rule municipality duly organized and existing under the laws of the State of Colorado and the Town Charter.

B. CRS. § 31-15-713(l)(c) authorizes the Town to lease or license any real estate owned by the Town when deemed by the Town Council to be in the best interest of the community; and

C. C.R.S. § 31-15-713(l)(c) requires any lease of Town property for a period of more than one year to be approved by ordinance.

D. The Town owns real property at 317 Adams Ranch Road, Mountain Village, Colorado 81435 (the "Property") which is used to house communications equipment necessary to operate the Town's broadband internet system.

E. The Town is selling its broadband internet system.

F. Vero Broadband, LLC ("Vero") has contracted with the Town to purchase the Town's broadband internet system and requires use of the Property following the close of the transaction to continue operating the broadband internet system.

G. Town Staff and Vero have negotiated a License Agreement ("Agreement"), Attached as Exhibit A, to permit use of the Property.

H. The Town Council desires to approve the Agreement.

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

Section 1. Legislative Findings.

The recitals to this Ordinance are adopted as findings of the Town Council in support of the enactment of this Ordinance.

Section 2. The License Agreement with Vero is hereby adopted as set forth on Exhibit A attached hereto.

Section 3. Severability.

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and, to this end, the provisions of this Ordinance are declared to be severable.

Section 4. Ordinance Effect.

Existing ordinances or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and any and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed, provided however, that the repeal of any ordinance or parts of ordinances of the Town shall not revive any other section of any ordinance or ordinances hereto before repealed or superseded and further provided that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 5. Safety Clause.

The Town Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare of the citizens of the Town.

Section 6. Effective Date.

This Ordinance shall become effective thirty days after publication following the final passage.

Section 7. PUBLIC HEARING.
A public hearing on this Ordinance was held on the ___th day of ____, 2023, in the Town Council Chambers, 455 Mountain Village Boulevard, Mountain Village, Colorado.

INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the ___th day of June, 2023.

TOWN OF MOUNTAIN VILLAGE,
COLORADO, a home rule municipality

By: _____
Laila Benitez, Mayor

ATTEST:

By:_____
Susan Johnston, Town Clerk

APPROVED AS TO FORM:

By:_____
_____, Town Attorney

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado, this ___th day of _____, 2023.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "**Agreement**") is made as of this ____ day of _____, 2023 ("**Effective Date**") by and between the Town of Mountain Village, Colorado, a Colorado home rule municipality ("**Owner**"), and Vero Broadband, LLC, a Colorado limited liability company ("**Licensee**"). Each of Owner and Licensee may be referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**."

WHEREAS Owner is the owner of that certain land and the building (the "**Building**") thereon (together, the "**Property**"), having a street address of 317 Adams Ranch Road, Mountain Village, Colorado 81435.

WHEREAS Owner desires to license the Premises defined herein to the Licensee under the terms and conditions as set forth herein.

WHEREAS Licensee desires to license the Premises defined herein from the Owner under the terms and conditions set forth herein.

WHEREAS Owner is willing to permit Licensee to construct, replace, maintain, repair, operate, inspect, augment, and remove its communications system through, over, and under the Property, under the terms and conditions described below.

NOW, THEREFORE, for and in consideration of the covenants and obligations set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensee and Owner hereby agree as follows:

1. Grant.

a. Owner hereby grants to Licensee a non-exclusive license, at Licensee's sole option and expense, to construct, replace, maintain, repair, operate, inspect, augment, and remove, on, within, under, across, and along those portions of the Property (the "**Licensed Area**"), as depicted on the attached Exhibit A, Licensee's communications equipment and related wires, cables, underground conduit, aerial supports, aerial cabling, antennas, building entrance facilities, above-ground enclosures, markers and concrete pads and other appurtenant fixtures and equipment (together, the "**Facilities**").

b. Without limiting the foregoing, Owner shall give Licensee reasonable access to vertical and horizontal shafts, conduits, roof, and the common areas, on within, under and along the Property and Licensed Area to enable Licensee, where necessary and at its expense, to install Facilities.

c. Nothing contained herein shall be construed as granting to Licensee any ownership rights in the Property or to create a partnership or joint venture between Owner and Licensee.

2. Term.

a. Commencing on the Effective Date, this Agreement shall have an initial term of ten (10) years (the "**Initial Term**"). This Agreement may renew for four (4) successive periods of five (5) years each (the "**Renewal Terms**") upon approval by the Town Council (the "Initial Term" and the "Renewal Terms" are collectively referred to as the "**Term**").

b. The license granted hereby may not be revoked during the Term, except as provided in Sections 9 and 13.

3. **Base Rent**. In consideration for the Agreement, Licensee shall pay Owner One Dollar ($3,000.00) ("**Base Rent**") annually and continuing throughout the Term. Base rent is inclusive of all utility costs and the Owner's obligations detailed in Section 6 below. The Base Rent for the Initial Term shall be paid within 30 days following the Effective Date and the Base Rent for each Renewal Term shall be paid within 30 days following the start of each such Renewal Term. Base rent shall be subject to a three percent (3%) annual escalation which shall increase annually on the anniversary of the Effective Date.

4. Installation. Licensee may construct, replace, maintain, repair, operate, inspect, augment, and remove its Facilities, at Licensee's sole cost and expense, provided that Licensee shall:

a. perform such work in a safe manner consistent with generally accepted construction standards;

b. perform such work in such a way as to reasonably minimize interference with the operation of the Property; and

c. obtain, prior to the commencement of any work, necessary federal, state, and municipal permits, licenses, and approvals.

5. Facilities. The Facilities shall belong to Licensee and shall be there at the sole risk of Licensee, and Owner shall not be liable for damage thereto or theft, misappropriation, or loss thereof, except in the event of the negligence or willful misconduct of Owner, its employees, agents, contractors, or invitees. At the expiration of this Agreement, Licensee shall, at Licensee's sole cost and expense, remove the Facilities and Licensee's other personal property from the Building, and return the Licensed Area to Owner in good condition and repair, ordinary wear and tear excepted. Any property not so removed within ninety (90) days after the expiration of this Agreement shall be deemed the property of Owner without further liability to Licensee.

6. Owner's Obligations. At Owner's expense, Owner shall:

a. keep the Property in good order, repair, and condition.

b. supply the following services and utilities: (i) heat, ventilation, and air conditioning; (ii) cleaning and janitorial services; (iii) hot and cold, running, potable water reasonably adequate for Tenant's needs; (iv) electricity for lighting and operating small equipment; (v) provide, install, and replace all necessary light bulbs and tubes; (vi) illuminate and maintain the parking area, walks, and driveways, including snow and ice removal.

c. Maintain a service contract on the building generator to include periodic maintenance, load testing, and fuel supply.

7. Licensee's Obligations. At Licensee's expense, Licensee shall:

a. keep the Facilities in good order, repair, and condition, and promptly and adequately repair all damage to the Property caused by Licensee, other than ordinary wear and tear.

b. be responsible for all taxes assessed on Licensee's Facilities.

c. comply with federal, state, and municipal laws, orders, rules, and regulations applicable to the Facilities.

8. **Access.** Owner shall allow Licensee, and its employees, agents, and contractors, access to the Property at all times on a 24x7x365 basis. Licensee shall not be permitted to access Owner's proprietary systems unrelated to the Licensee's operation of their broadband network including but not limited to Owner's Supervisory Control and Data Acquisition ("SCADA") systems.

9. **Relocation**. Licensee acknowledges and understands that the Building may be required to removed or relocated pursuant to Owner-approved development projects. Owner shall provide Licensee no less than one (1) year written notice of any proposed relocation or removal of the Building. In the event of a proposed relocation or removal, Owner will work in good faith with Licensee to propose an alternative location where headend access can be provided on substantially the same terms and conditions as provided under this Agreement. In the case that no suitable replacement location can be found this Agreement shall terminate upon one (1) year written notice by Owner that no such location could be found.

10. **Liens.** Licensee shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under Licensee. Licensee shall also indemnify, hold harmless and defend Owner against any such liens, including the reasonable fees of Owner's attorneys. Such liens shall be discharged by Licensee within sixty (60) days after notice by Owner of filing thereof by bonding, payment or otherwise, provided that Licensee may contest, in good faith and by appropriate proceedings any such liens.

11. **Performance of Work.** Licensee may contract or subcontract any portion of work at the Property contemplated by this Agreement to any person or entity competent to perform such work. In no event shall such subcontract relieve Licensee of any of its obligations under this Agreement.

12. **Limitation of Liability.** Neither Party shall be liable for loss or damage occasioned by a Force Majeure Event. No cause of action under any theory which accrued more than one (1) year prior to the filing of a complaint alleging a cause of action may be asserted by either Party against the other Party. Neither Party shall be liable to the other Party for any lost profits, special, incidental, punitive, exemplary, or consequential damages, including but not limited to frustration of economic or business expectations, loss of revenue, loss of capital, cost of substitute product(s), facilities or services, or down time cost, even if advised of the possibility of such damages.

13. **Default.** Should either Party default in the performance of a material provision of this Agreement and fail to correct same within sixty (60) days after having received written notice specifying the nature of such default, unless such default is of a nature that it cannot be completely cured within sixty (60) days, if a cure is not commenced within such time and thereafter diligently pursued to completion, then the non-defaulting Party may terminate this Agreement and may pursue all other remedies available to it at law and/or equity.

14. **Indemnification.** Licensee shall indemnify, hold harmless, and defend Owner, its employees, agents, contractors, invitees, officers, directors, affiliates and subsidiaries from and against any and all claims, actions, damages, liabilities and expenses, including reasonable attorneys' and other professional fees, arising from or out of the installation, operation, maintenance or removal by Licensee of the Facilities, except to the extent that any such claims, actions, damages, liabilities, expenses or damage are caused by Owner, its employees, agents, contractors, invitees, officers, directors, affiliates or subsidiaries.

15. **No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Owner, its elected and appointed officials, employees, contractors, or agents, or any other person acting on behalf of the Owner and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

16. **Insurance.** Licensee shall maintain insurance coverage insuring against claims, demands, or actions for personal injuries or death resulting from the use or operation of the Facilities with limits of not less than One Million Dollars ($1,000,000) any one occurrence, in an aggregate amount of Two Million Dollars ($2,000,000), and for damage to property in an amount of not less than Two Million Dollars ($2,000,000). Such insurance shall name Owner as additional insured for coverage only, with no premium payment obligation, and shall provide that it is primary insurance and not "excess over" or contributory with any other valid, existing, and applicable insurance in force for or on behalf of Owner. The policy shall not eliminate cross-liability and shall contain a severability of interest clause. Upon Owner's request, Licensee shall provide a certificate of insurance to Owner.

17. **Damage to Building**. In the event that the Building is damaged or destroyed by fire or other casualty such that Licensee is unable to occupy the Premises for its permitted use, Licensee may at its option terminate this Agreement.

18. **Assignment.** Licensee shall not assign or transfer this Agreement without the written consent of the Owner, which consent will not be unreasonably withheld, conditioned, or unduly delayed; except that, upon written notice to the Owner, Licensee may, without obtaining Owner's prior consent, make such assignment to:

a. any subsidiary, affiliate, or parent of Licensee.

b. any partnership in which it has a majority interest.

c. any entity which succeeds to all or substantially all of Licensee's assets or ownership interests, whether by merger, sale or otherwise.

d. any business reorganization that may result in a change in majority control, investor ownership, or refinancing.

The surviving entity of any of the above assignments shall assume the obligations of Licensee or its assignees under this Agreement.

19. **Force Majeure.** Neither Party shall be liable for loss, damage, or failure to perform its obligations hereunder due to acts or conditions beyond its reasonable control including but not limited to acts of God, the failure of equipment or facilities not belonging to Licensee (including, but not limited to, utility facilities or service), denial of access to facilities or rights-of-way essential to accessing the Property or Building, government order or regulation, or any other circumstances beyond the reasonable control of the Licensee.

20. **Notice.** All notices, demands, requests or other communications given under this Agreement shall be in writing and shall be deemed properly given (a) if delivered in person to a Party; or (b) if delivered by an overnight delivery service, private courier, or commercial courier; or (c) if delivered by the United States mails, certified, or registered mail with return receipt requested. All notices so given

shall be deemed effective on actual delivery or if delivery is refused, upon refusal. All notices shall be delivered at the following addresses:

If to Owner: Town of Mountain Village
411 Mountain Village Blvd.
Mountain Village, CO 81435
Attn: Town Manager

If to Licensee: Vero Broadband, LLC
1023 Walnut St.
Boulder, CO 80302
Attn: Chief Operating Officer

With a copy to:
Gregg Strumberger
Chief Legal Officer
At the same address.

21. Governing Law. This Agreement shall be governed by and construed under the laws of the state of Colorado.

22. Miscellaneous. This Agreement shall run with the land and shall bind and benefit the Parties and their respective successors and assigns. This Agreement is the entire understanding between the Parties and supersedes any prior agreements or understandings whether oral or written. This Agreement may not be amended except by a written instrument executed by both Parties. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired. Each Party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such Party to the commitments and obligations set forth herein.

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

Owner:

Town of Mountain Village

_____
Signature

_____
Name

_____
Title

_____
Date

Licensee:

Vero Broadband, LLC

_____

Signature

_____

Name

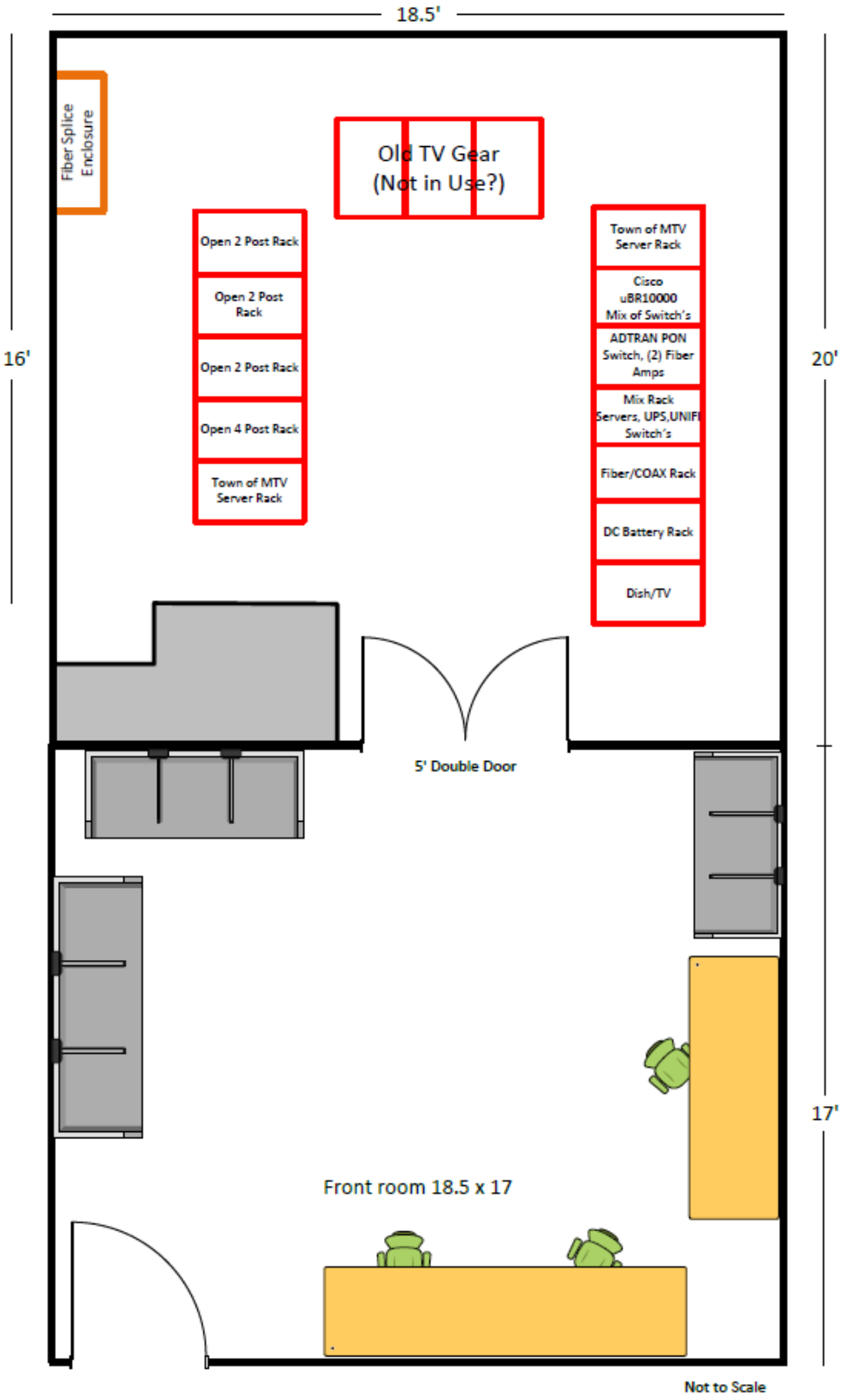
_____

Title

_____

Date

EXHIBIT A
Property and Licensed Area



MEMORANDUM

TO: Town of Mountain Village Town Council
FROM: Shannon Armstrong, San Miguel County Emergency Manager
RE: Adoption of the San Miguel County All Hazard Mitigation Plan, 2023
DATE: June 15, 2023

BACKGROUND

In the third quarter of 2022, San Miguel County Office of Emergency Management (OEM) began the process of updating the countywide All Hazard Mitigation Plan. This plan details the hazards, both natural and manmade, that threaten the geographical county and the jurisdictions within, and explores the risks they pose. It then establishes a list of mitigation actions that jurisdictions plan to take to reduce those risks and protect life and property from future damage.

The plan has a five year update cycle and the last update was completed in 2018. The 2023 update process involved several meetings involving stakeholder representatives and various "assignments" used to gather data and mitigation actions. The data was compiled and used to update the plan which was then sent to the State of Colorado's Mitigation Planning Specialist for review. After two rounds of revisions, the plan was submitted to FEMA for their review and approval. San Miguel County received the notice of FEMA approval in April of 2023.

ADOPTION

Jurisdictions who participated in the planning process and adopt the plan with a formal resolution are eligible to apply for certain state and federal grant opportunities to pay for mitigation projects[1]. Those grant opportunities include the Flood Mitigation Assistance (FMA), Hazard Mitigation Grant Program (HMGP), Hazard Mitigation Grant Program Post Fire, and Building Resilient Infrastructure and Communities (BRIC) funds, among others.

By adopting this plan, each jurisdiction is also committing to integrating it into other planning mechanisms by building the identified mitigation actions into new and existing programs. Mitigation is most successful when it is incorporated in the day-to-day functions and priorities of government and in land use and development planning. San Miguel County has already passed Resolution 2023-19 adopting the plan (which is attached to the resolution).

Once all adoption resolutions have been received, OEM will collect them and add them to the plan. The final version of the plan will then be sent to FEMA to be recorded. Adoption resolutions and the FEMA adoption packet will also be posted to the San Miguel County website for public access.

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[1] Mitigation projects do not need to be in the plan but must align with the goals and objectives of the plan. Mitigation funding opportunities can be found at https://www.fema.gov/emergency-managers/risk-management/hazard-mitigation-planning/requirements

Resolution 2023- ____

RESOLUTION OF TOWN OF MOUNTAIN VILLAGE COUNCIL, FOR ADOPTION OF THE PRE-HAZARD MITIGATION PLAN

WHEREAS, Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) requires local governments to develop the All-Hazard Mitigation Plan as a condition for receiving funding for mitigation projects under multiple FEMA pre- and post-disaster mitigation grant programs; and,

WHEREAS, the Code of Federal Regulations (CFR) at Title 44, Chapter I, part 201, requires the counties and municipalities to prepare and adopt a local hazard mitigation plan every five years; and,

Whereas, the Town of Mountain Village recognize the threat that natural hazards pose to people and property within our community; and

Whereas, undertaking hazard mitigation actions will reduce the potential for harm to people and property from future hazard occurrences; and

Whereas, an adopted All Hazard Mitigation Plan is required as a condition of future funding for mitigation projects under multiple FEMA pre- and post-disaster mitigation grant programs; and

Whereas, the elected officials of Town of Mountain, the Town Council members and their department heads, or their designees, fully participated in the mitigation planning process to prepare this All-Hazard Mitigation Plan; and

Whereas, the Colorado State Emergency Management Division and Federal Emergency Management Agency, Region VIII officials have reviewed the All-Hazard Mitigation Plan and approved it contingent upon this official adoption of the participating governments and entities;

Now, therefore, be it resolved, that the Town of Mountain Village hereby adopts the San Miguel County All Hazard Mitigation Plan as an official plan; and

Be it further resolved, that the San Miguel County Office of Emergency Management will submit this Adoption Resolution to the Colorado State Emergency Management Division and Federal Emergency Management Agency, Region VIII to enable the San Miguel County All Hazard Mitigation Plan's final approval.

PASSED AND ADOPTED this June15, 2023

_____

Laila Benitez, Mayor

ATTEST:

_____

Susan Johnston, Town Clerk

Agenda Item 23

TOWN MANAGER
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 729-2654

TO: Mountain Village Town Council

FROM: Lizbeth Lemley, Finance Director, Chambers Squire, Mountain Munchkins Director

DATE: June 7, 2023

RE: Proposed Increases to Mountain Munchkins Rates

Summary: Included in your packet is a proposed resolution to amend the 2023 Mountain Munchkins daily rates beginning with the new school year in August 2023. The last increase approved was a $2 per day increase in 2019.

Overview: Since the last rate increase, expenses to run the program have increased significantly. During COVID, the Town received multiple grants to assist in covering the lower enrollment and increasing expenses, but these grant funds have been fully expended. This has also been the case in other childcare facilities in our region. These facilities will also be implementing increases similar to what is proposed in this resolution. If fees are increased, it will allow Mountain Munchkins to increase staffing to implement a five day per week program. The program was shortened to four days per week during the COVID response. Five day a week childcare is a necessity for many working parents in our community and it is our goal to provide this level of care again.

The proposed increases could result in an increased monthly cost of between $260-$320. We understand that these increases are significant and have directed parents to the mill levy supported Strong Start grants to bridge the increase for those that need the assistance. Childcare providers in the community have been communicating closely with Strong Start to ensure our families receive the assistance they may need to cover these increases. We will also continue to offer tuition assistance to our families as well. Lastly, the rates we are proposing fall within the state reimbursable guidelines for our families that receive state assistance.

	Current Fees 2023	Proposed Fees August 2023
DAYCARE FEES		
Non Resident Infant	$ 60	$ 76
Non Resident Toddler	57	70
Resident Infant	56	72
Resident Toddler	52	66
PRESCHOOL FEES		
Non Resident	$ 50	$ 66
Resident	48	62

Proposed Motion
I move to approve the fee increase for Mountain Munchkins as set forth in the Resolution.

RESOLUTION OF THE TOWN COUNCIL
TOWN OF MOUNTAIN VILLAGE, COLORADO
FOR THE ADOPTION OF CERTAIN
PROPOSED FEE SCHEDULES OF THE TOWN

Resolution No. 2023 –

RECITALS

A. Town staff has evaluated the current fee structure for the Mountain Munchkins and has proposed an amended rate schedule beginning August 1, 2023.
B. Increased fees proposed by this resolution are:
    1. Mountain Munchkins fees, Exhibit A
C. The Town is authorized by the Town Charter of the Town of Mountain Village to collect the fees and charges listed above and on the attached Town of Mountain Village fee schedule amendment Exhibits "A" to this Resolution.

NOW THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Mountain Village, Colorado, hereby approves and adopts the attached 2023 fee schedule modifications as proposed above and in Exhibits "A" to this Resolution.

This Resolution adopted by the Town Council of the Town of Mountain Village, Colorado, at a public meeting held on the 15th day of June, 2023.

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

_____
Laila Benitez, Mayor

ATTEST:

_____
Susan Johnston, Town Clerk

APPROVED AS TO FORM:

By:_____
David McConaughy, Town Attorney

EXHIBIT "A" CONTINUED

	Current Fees 2023	Proposed Fees August 2023
DAYCARE FEES		
Non Resident Infant	$ 60	$ 76
Non Resident Toddler	57	70
Resident Infant	56	72
Resident Toddler	52	66
PRESCHOOL FEES		
Non Resident	$ 50	$ 66
Resident	48	62

Fees were most recently increased in 2014 and 2019.

All proposed fees remain under state reimbursable amounts for qualifying families.

TOWN OF MOUNTAIN VILLAGE
Town Council Meeting
June 15, 2023
2:00 p.m.

During Mountain Village government meetings and forums, there will be an opportunity for the public to speak. If you would like to address the board(s), we ask that you approach the podium, state your name and affiliation, and speak into the microphone. Meetings are filmed and archived and the audio is recorded, so it is necessary to speak loud and clear for the listening audience. If you provide your email address below, we will add you to our distribution list ensuring you will receive timely and important news and information about the Town of Mountain Village. Thank you for your cooperation.

NAME: (PLEASE PRINT!!)

Joe Coleman	EMAIL:	joe@cglawfirm.net
Kristin Decker	EMAIL:	Kdecker@fostergraham.com
KATSIA LORD	EMAIL:	KLORD@VAULTDESIGNGROUP.COM
ADAM RAIFFE	EMAIL:	ARAIFFE@VAULTDESIGNGROUP.COM
Bill Kyriagis	EMAIL:	kyriagis@otteryohnson.com
AVANI PATEL	EMAIL:	avani@vaulthomecollection.com
Debra Willits	EMAIL:	debski79@gmail.com
Laura Fehrenbacher	EMAIL:	laa@tchnetwork.org
Jonathon Duerr	EMAIL:	Jon.Duerr@Compass.com
ANKUR PATEL	EMAIL:	ankur@vaulthomecollection.com
Chris Hawkins	EMAIL:	
Jessica Goldberg	EMAIL:	dudleyrules@aol.com
Matt Hintermister	EMAIL:	tellurideboker@aol.com
MANITOU SHAW	EMAIL:	manitou@vaulthomecollection.com
TUCKER MAGID	EMAIL:	tbmagid@gmail.com
Mickey Sallows	EMAIL:	MICK SKI AND GOLF I@ GMAIL
Rosie Cusack	EMAIL:	rosie@rosiestack.com
Catherine Frank	EMAIL:	catherine@studiofrank.com
CHRIS KNIGHT	EMAIL:	cknight@cumming-group.com
Hugo Sumpf	EMAIL:	Hugos@ironworksllc.net
Johnna Vanek	EMAIL:	On file
Dan Jansen	EMAIL:	
DAVID BALLODE	EMAIL:	
	EMAIL:	
	EMAIL:	

TOWN OF MOUNTAIN VILLAGE
Town Council Meeting
June 15, 2023
2:00 p.m.

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NAME: (PLEASE PRINT!!)

Annelise Riepel	EMAIL: annelise81485@gmail.com
Naples Tudor	EMAIL: Info@NaplesTudor.com
Chris Clanton	EMAIL: chris@idealrealestate.com
Jim Mahoney	EMAIL:
	EMAIL:
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COLEMAN & QUIGLEY, LLC
Attorneys at Law

Joseph Coleman
Isaiah Quigley
Timothy E. Foster
Stuart R. Foster

2454 Patterson Road, Suite 200
Grand Junction, CO 81505
Telephone: (970) 242-3311

June 12, 2023

Via email: council@mtnvillage.org

Council Members
Town of Mountain Village

Dear Council Member:

I represent entities which own multiple properties in or near the Village Center Zone district, including but not limited to Winston Kelly, Manager of the limited liability company which owns residential lots located adjacent to Lot 109R.

Background. A project for Lot 109R was approved in 2010, under an application that predated 2010. That project was not subject to any of the Town aspirations, as contained in the 2010 Comp Plan and the recently approved Amended Comp Plan. The community speaks through the Comp Plan process and best articulates the community's wishes.

While projects pending approval near in time to adoption of a comp plan can logically complete the application process, somewhat independent of the Comp Plan. Conversely, a developer seeking 2023 approvals should not be permitted to ignore Comp Plans that have continually been in existence for 13 years. In 2023, no matter what the Council decides at the June 15th Council Hearing, the community can rightfully expect that a 2023 approval will have tested the application against the Comp Plan (which was adopted more than a decade ago. The simple misnaming of a new project as a mere 'amendment' should not allow a developer to render meaningless both the Comp Plan and the Amended Comp Plan.

Appropriate Standards. 2023 approval of this project under 2009 standards and community expectations, is wrong; and a slap in the face of Town Staff and residents who worked (in 2010 and from 2020 to 2022) on the Comp Plan and Amended Comp plan. Judging any project in 2023 based on 2009 planning concepts is wrong.

Mayor Benitez eloquently stated the obvious on March 17, 2022, recognizing that:

> "98% of our residents coming at us with a very clear message [and] . . . it would be the height of ego for me to ignore that type of feedback . . . . we need to be mindful, that our community is saying something to us. Yes, the seven of us were elected but that doesn't make us above their will . . . . aspirationally, do we listen to our community?"

An honest answer to the Mayor question is that the Comp Plan and the Amended Comp Plan should guide the Lot 109R evaluation, not whatever standards existed in 2009 (in all honesty, I

cannot even expect that for this one project, Council would review the 2023 project with 2009 CDC provisions. What a waste of time, why ignore what Town, its residents and councils have learned during the last decade? Why ignore the 2023 needs of the Town simply to apply 2009 standards that have been updated and changed during the past 14 years?

Misuse of Amendment Process. Truth be told, we all know that the plan being submitted is not a mere 'amendment'; the changes are so massive that the entire review process should have been on a new Application. 2 years have been wasted trying to pretend we could force a 'square peg' (the 2009 application) into a 'round hole' (the current plan). The current plan is a new application for (generally) the same property; it should be reviewed and approved or disapproved based on criteria all current applications must comply with. This commonsense approach is in line with the Mayor's respect for the feedback from residents.

With a new Application, Staff will know to apply the current Amended Comp Plan. Citizens' input on the Amended Comp Plan will be respected. A new Application will also respect this Council's January 17th recognition (by a 6 to 1 vote) that the current plan is so different than the 2009 Application that Council, in good conscience, cannot honestly continue the charade of pretending the 2023 evaluation is of a mere amendment to the 2009 Application.

The Council apparently had a change of position following the January 17th Council meeting and no longer requires that a functionally new project be presented by Application, not amendment. All developer accomplishes is the negation of all community efforts to approve both the Comp Plan and the 2022 Amended Comp Plan. Disregard of Staff, Council and community efforts to approve the Comp Plans must stop.

While no one can predict the future, I urge you to consider Section 5.3(a) and (b) of the Town Charter. With submission of merely 18 signatures on the Petition (which the Town rightfully has had a couple weeks to review), a new CDC provision will be presented to the Council for good faith consideration for approval. With some 69 voters already identified as supporting the proposed initiative, one can envision satisfying the 52 signatures needed to get the CDC amendment on the ballot for a special election.

Step one will be the Councils good faith consideration whether to approve the proposed CDC amendment (and save the time and expense of a special election). The proposed initiative simply gives the neighbors some meaningful input on what is constructed next door. That is an easy 'to sell' concept to the community. If within only a few days of receiving the updated voter lists we have names of some100 supporters, the Council is presented with a golden opportunity to demonstrate the Mayor's stated aspiration of listening to the residents.

Imagine the 'doubt' created in the minds of residents ***if,*** a matter of days before your Charter Section 5.3(a) duty (to consider passing the CDC amendment), you approve a 2009 application for Lot 109R? Residents are entitled to good faith application of your 5.3(a) duty; contrary action (mere days before the petition can be filed) suggests a disregard of the wishes of the residents. A continuance of the approval process (to consider 'amendment vs new application') affords the Council the ability to say that its application of Charter Section 5.3(a) was not

predetermined by a June 2023 approval of a project that violates the current CDC maximum height limit and appears to be an attempt to sidestep the residents' rights to exercise their initiative rights.

The developer has intentionally delayed the approval process by requesting 13 years of extensions. A short delay, to allow time for the Council to perform its Section 5.3(a) obligation, is logical and respects the wishes of the residents.

Conversely, if Council gives approval on June 15th, after review of the proposed CDC amendment by Town Council and Town Attorney in executive session this week, trust in the Council's good faith compliance with Charter Section 5.3(a) will be impossible to restore. After 6 members of Council recognized that

> "we need to be mindful, that our community is saying something to us. . . . aspirationally, do we listen to our community"?

I hope your answer is yes. My clients urge you not to approve this project on June 15, 2023. The Amended Comp Plan will result in a better project; one the residents reasonably expect after this Council approved the Amended Comp Plan.

Sincerely,
COLEMAN & QUIGLEY, LLC

s/Joseph Coleman

Joseph Coleman
joe@cqlawfirm.net

xc: Clients
County Planning –
Michelle Haynes-mhaynes@mtnvillage.org
Karen Warren- kwarren@mtn.village.org

From: Michelle Haynes
To: Amy Ward; Paul Wisor
Subject: Fwd: recap of our conversation
Date: Tuesday, June 13, 2023 7:24:53 AM

Sent from my iPhone

Begin forwarded message:

> **From:** Rob Connor <rcconnor1@gmail.com>
> **Date:** June 13, 2023 at 7:15:48 AM MDT
> **To:** Chris Knight <cknight@cumming-group.com>, Katsia Lord <klord@vaultdesigngroup.com>
> **Cc:** Jody Edwards <jee@kceclaw.com>, Ankur Patel <ankur@vaulthomecollection.com>, Michelle Haynes <MHaynes@mtnvillage.org>
> **Subject: recap of our conversation**
>
> Chris (and Katsia, fyi) -
>
> Good to speak with you last week. As you suggested, I'd like to recap a few of the items we talked about:
>
> 1) Shirana HOA is ok with the transformer relocation provided it is adequately screened. However, we are worried about inheriting responsibility for the relocated transmission line which is proposed to be buried under the proposed heated driveway. We would like to be indemnified against future maintenance or repair requirements which would be considerably more expensive than the excavating and fixing the current run from the current transformer to our building. As I mentioned, it might be easier - subject to SMPA's approval, codes, etc. - to bring the power in through the Shirana basement. Again, we expect that this is at no cost or risk to Shirana.
>
> 2) I have copied our attorney, Jody Edwards, on this email so that he may work with your team to draft some type of contract that memorializes the commitments that the Vault team has made regarding paying for a detailed, independent engineering survey of our building as well as ongoing monitoring during construction as well as the commitments to fully insure, indemnify, and hold harmless our building HOA from any damage or loss that results from your proposed construction, as well as commitments contained in the draft CMP.
>
> 3) I asked that you review our drainage concerns, specifically the drain by our Unit #3 (Silverstar) which we had to excavate and repair last year and has historically created a significant ice problem on the back "plaza", as well as all of our building's roof drain network which is likely to be impacted by your project (i.e., gutter drains into the current garden beds between units 1 & 2, any drainage

into the vacant field to the east, etc.).

4) Our owner group at this time is unwilling to permit the proposed crane access to the airspace above Shirana. There are real concerns about safety and liability.

5) We continue to believe the traffic study underestimates the impacts of the project on congestion in front of our building, even with the redesign of flow. The study is patently wrong on trash truck volume and seems to ignore the impact of the new public parking garage on congestion in front of our building. This creates for us an unacceptable nuisance and potential safety issues. I understand that we disagree on the merits of the study, respectfully.

6) We also discussed the importance of minimizing the time period that will limit access to our garage, keeping in mind as well that our building's trash is stored in the garage and hauled out to be picked up by Bruin at the current, proposed, and proposed temporary trash structures. We require some specificity about the proposed impacts to our units during construction.

7) We would ask, and will raise this with the Town, that at least three of the proposed parking spaces in front of the building be reserved for deliveries, visitors, and service to Shirana. It is entirely likely that during the construction, we will need to perform regular work and maintenance on our units and must have this access preserved, in addition to our garage.

8) Our owner group remains concerned that our short-term rental units will effectively be unleasable during the majority of this project. Recognizing that nearby construction is inevitable in a place like Mountain Village, we think the burden on our building, which will effectively be surrounded during several years of construction, is unique and should be addressed or mitigated by the developer.

9) We would ask to the extent that there is any reference to Westermere in the Development Agreement or other documents presented to the Town that our HOA, arguably more affected by the project than Westermere's, be given the same rights and courtesies regarding notice of pulling of permits, commencing of work, etc., when and if this project commences.

Thank you,

Sincerely,

Rob Connor
President, Shirana Condominium Association

FOSTER GRAHAM MILSTEIN & CALISHER, LLP
ATTORNEYS AT LAW

360 South Garfield Street
6th Floor Denver, CO 80209
T 303-333-9810 F 303-333-9786

fostergraham.com

June 13, 2023

Via Electronic Mail:
mvclerk@mtnvillage.org
mhaynes@mtnvillage.org

Town Council
Town of Mountain Village
455 Mountain Village Blvd.
Mountain Village, CO 81435

Re: Opposition to Major PUD Amendment to the Lot 109R PUD and Rezoning

Dear Honorable Members of Town Council:

Foster Graham Milstein & Calisher, LLP ("FGMC") represents Winston Kelly regarding his properties and home on Mountain Village Boulevard that are directly across from Lot 109R, the property under consideration for: (1) the proposed Major Amendment to the Lot 109R Planned Unit Development ("PUD Amendment"), (2) the proposed rezone of portions of Town-owned and applicant-owned property ("Rezone"), and (3) the Major Subdivision to replat portions of property between 109R and OS-3-BR-2 ("Subdivision")(collectively, "Applications"). Despite major changes from the previous submittal for the PUD Amendment to the extent it reads like a new application, the defects raised in previous comments on various past iterations of the Applications still exist, and the Applications do not meet the Town's approval criteria in the Community Development Code ("CDC"). The analysis below highlights new deficiencies and continuing deficiencies that were raised in previous FGMC letters to Town Council.

I. PUD AMENDMENT APPLICATION

A. Procedural Deficiencies

i. Vested rights are expired. As articulated by separate complaint filed under C.R.C.P 106(a)(4) in San Miguel District Court on October 20, 2022, Case Filing A3084586FBD68, incorporated herein, the Third Major Amendment to the 2010 PUD to extend the vested rights for the 2010 Mountain Village Hotel PUD ("2010 PUD") for the third time to September 8, 2023 was made in error. However, that is not the only reason the vested rights have expired. Pursuant to CDC Section 17.4.17.E.4, notice of the approval of the vested right must be published within 14 days after its approval, which

was not done. This is a mandatory deadline that exists both in the CDC and C.R.S. Section 24-68-103(1)(c), and non-compliance with it constitutes a procedural defect under the law. As such, a new application should have been filed in accordance with CDC Section 17.4.4.H.1. A more detailed analysis was provided to Town Council in Sections I and II of the FGMC letter dated January 18, 2023, attached hereto and incorporated herein as **Exhibit A**.

ii. Contributed Town Property does not have the 2010 PUD vested rights associated with it. Rezoning the Contributed Town Property via the PUD Amendment is procedurally improper and cannot, by law, have the same vested rights for the reasons stated in Section I of the FGMC letter to Town Council dated March 14, 2023, attached hereto and incorporated herein as **Exhibit B**. Such vested rights include the variations to maximum and average building height. As such, no portion of the proposed building in the PUD Amendment may exceed a 60' maximum building height and a 48' average building height as required by the CDC.

iii. Variations not approved by the Design Review Board ("DRB"). The PUD Amendment is a class 4 application pursuant to CDC Section 17.4.12.O.1.b. It contains a wide array of new variations as defined in CDC Section 17.4.11 in addition to a few in CDC Section 17.4.12, which appear in this substantially revised submittal of the PUD Amendment. The proposed approval of these new design and CDC variations does not follow the Town's adopted review process in CDC Section 17.4.11.C.3 for a class 4 application, which requires they be submitted to the DRB for review prior to City Council considering the application. The PUD Amendment agenda packet clearly demonstrates the error.

The DRB last convened and made a recommendation on the PUD Amendment on December 1, 2022 ("December DRB Hearing), more than 6 months ago. Since then, in the words of the applicant on May 3, 2023, "Tiara has prepared an entire new set of design documents for review by the Town." Similarly, Town staff on page 4 of its staff memorandum dated June 3, 2023 ("Staff Memo"), referred to "Major Design Changes since March 16, 2023 Town Council Hearing." This new set of design documents includes several new concepts, including proposed variations not reviewed by the DRB. This is in direct violation of CDC Sections 17.4.11.E.5.a and17.4.11.E.5.f, which require consideration of specific criteria by the DRB and Town Council before a variation may be approved according to CDC 17.4.11.E.5.c. This procedural flaw requires Town Council to remand the PUD Amendment to the DRB for review. Without DRB review, approving the application constitutes a clear abuse of discretion.

The Town's draft ordinance of approval further highlights the error. Rather than simply remanding to meet the DRB review requirement, a recital in the ordinance instead finds that, "Town Council has determined that no further DRB review or approval is required as a condition of proceeding with the June 15, 2023 Council meeting…." City Council lacks the authority to agree to ignore its regulatory procedure, and acknowledging the requirement in a recital highlights the error but does not fix it.

The procedural error is exacerbated by the fact that among the items substantially amended since the December DRB Hearing, including parking, trash facilities, Town

property encroachments, utilities, and traffic circulation, previous submittals were tremendously flawed or simply incomplete. The magnitude of the prior concerns alone should be enough to force remand, even if the Town's process didn't require it directly.

B. **Substantive Deficiencies**

i. As required by CDC Section 17.4.12.E.1, the PUD Amendment is not in general conformity with the policies, principles and standards set forth in the Comprehensive Plan. Specifically, it does not conform with Land Use Value 7 - *Gateways*, that states, "Protecting public viewsheds, the natural corridor surrounding Mountain Village Boulevard, improving wayfinding and identifying gateways is paramount to preserving this sense of arrival and reinforcing the Town's identity." This PUD Amendment does the opposite with a building scale too large for the lot thereby obstructing the viewshed and the natural corridor surrounding Mountain Village Boulevard and encroaching upon it. It also does not conform with Land Use Value 8 - *Appropriateness and Fit of Land Uses*, that states, "Land uses envisioned by the Comprehensive Plan are designed to "fit" into the surrounding neighborhood to ensure appropriate scale and context to their surrounding natural and built environments." The PUD Amendment allows for a maximum building height almost 30 feet above what is allowed in the CDC. Above grade and below grade encroachments on to Town property confirms that the project literally does not fit on Lot 109R. The significant number of variations and conditions of approval provide additional evidence that this project is not appropriate for this lot. Lastly, without what is being referred to as the "land swap" whereby the Town sells its property to the applicant for its development, the application must be denied, indicating the project does not fit on the lot.

ii. As required by CDC Section 17.4.12.E.2, the PUD Amendment is not consistent with the underlying zone district and zoning designations on the site, unless the PUD Amendment is proposing a variation to such standards. Significant variations are proposed, many of which are not being considered in accordance with the CDC as discussed in detail above in paragraph I.A(iii), including, but not limited to, those set forth in Table 13 of the Staff Memo related to: building height; density; encroachments; conference center; garage drive aisle width; and employee housing.

iii. As required by CDC Section 17.4.12.E.3, 4 and 5, the PUD Amendment does not represent a creative approach to the development, use of land and related facilities to produce a better development than would otherwise be possible and will provide amenities for residents of the PUD and the public in general; it is not consistent with the PUD purposes and intent; nor does it meet the PUD general standards. A "better development" would comply with the Comprehensive Plan and the CDC. Instead, under the guise of a PUD Amendment, a new PUD is being created that relies on pre-CDC standards approved in 2010. The reason for the reliance upon these outdated regulations is that this PUD Amendment would never be approvable if it had to comply with current regulations.

iv. As required by CDC Section 17.4.12.E.6, the PUD Amendment does not provide adequate community benefits. Given the extent of the variations needed to make

this project viable, the community benefits provided are inadequate and fall short of what is needed as explained in the Hawkins Letter, defined below. The mitigation payment of $996,288 set forth in the 2010 PUD was never adjusted for inflation and would equate to an increase of approximately $360,000. Also, the 48 parking spaces which were required to be deeded to the Town are no longer required to be conveyed. Lastly, the mandatory triggering event for when the community benefits will be provided are not identified in violation of CDC Section 17.4.12.D.1.f.i(j).

v. As required by CDC Section 17.4.12.E.7, the PUD Amendment does not provide adequate public facilities and services to serve the intended land use. Written testimony of Chris Hawkins, AICP, of Alpine Planning, LLC and the former Town Community Development Director and lead planner on the 2010 PUD, provides definitive guidance on the intent of the 2010 PUD and submitted a letter to Town Council dated June 8, 2023, that clearly outlines the deficiencies in parking and employee housing. The Hawkins letter is attached hereto as **Exhibit C** and incorporated herein as evidence of the failure to meet this approval criteria ("Hawkins Letter").

vi. As required by CDC Section 17.4.12.E.8, the PUD Amendment does not provide adequate vehicular or pedestrian circulation, parking, trash, or service delivery resulting in traffic hazards and congestion. The vehicular and pedestrian circulation, parking, delivery, and trash enclosure plans are completely redesigned and have not been reviewed by the DRB in violation of the CDC as explained in paragraph I.A(iii) above. Such a review is required to determine the adequacy of these plans.

vii. As required by CDC Section 17.4.12.E.9, the PUD Amendment does not meet all applicable Town regulations and standards unless a variation is proposed. As stated above, this PUD Amendment is not approvable under the Town's current regulations. The variation granted as part of the 2010 PUD allowing a maximum building height and average building height well above what is allowed in the CDC was approved prior to the adoption of the CDC. Even with the variation for height, the PUD Amendment is not compliant with it, as the method for calculating the building height used by the applicant is flawed, as described in the Hawkins Letter.

II. REZONE APPLICATION

A. The concurrent Rezone application also fails to conform with the approval criteria in CDC Section 17.4.9.C.3.

i. As required by CDC Section 17.4.9.C.3.a, the Rezone application is not in general conformance with the goals, policies, and provisions of the Comprehensive Plan for the reasons included in paragraph I.B(i) above.

ii. As required by CDC Section 17.4.9.C.3.b, the Rezone application is not consistent with the Zoning and Land Use Regulations for the reasons stated in paragraph I.B(ii) above.

iii. As required by CDC Section 17.4.9.C.3.d, the Rezone application is not consistent with public health, safety and welfare, as well as efficiency and economy in the use of land and its resources due to procedural and substantive deficiencies in the Applications as specified in this letter.

iv. As required by CDC Section 17.4.9.C.3.e, the Rezone application is not justified because there is no error in the current zoning, there have been changes in conditions in the vicinity, and there are no specific policies in the Comprehensive Plan that contemplate the rezoning.

v. As required by CDC Section 17.4.9.C.3.f, the Rezone application does not provide adequate public facilities and services to serve the intended land uses for the reasons stated in paragraph I.B(v) above.

vi. As required by CDC Section 17.4.9.C.3.g, the Rezone application does not provide adequate vehicular or pedestrian circulation, parking, trash, or service delivery resulting in traffic hazards and congestion for the reasons stated in paragraph I.B(vi) above.

vii. As required by CDC Section 17.4.9.C.3.h, the Rezone application does not meet all applicable Town regulations and standards for the reasons stated in paragraph I.B(vii) above.

For all the reasons stated herein, the PUD Amendment and Rezone applications should be denied or remanded back to the DRB for further consideration as required by the CDC.

Sincerely,

Kristin A. Decker
for
FOSTER, GRAHAM, MILSTEIN & CALISHER LLP

EXHIBIT A

FOSTER GRAHAM MILSTEIN & CALISHER, LLP
ATTORNEYS AT LAW

360 South Garfield Street
6th Floor Denver, CO 80209
T 303-333-9810 F 303-333-9786

fostergraham.com

January 18, 2023

Via Electronic Mail: mvclerk@mtnvillage.org; mhanes@mtnvillage.org
Town Council
Town of Mountain Village
455 Mountain Village Blvd.
Mountain Village, CO

Re: Opposition to Major PUD Amendment to the Lot 109R PUD and Rezoning

Dear Honorable Members of Town Council:

Foster Graham Milstein & Calisher, LLP ("FGMC") represents Winston Kelly regarding his properties and home on Mountain Village Boulevard that are directly across from Lot 109R, the property under consideration for: (1) the proposed Major Amendment to the Lot 109R Planned Unit Development ("PUD Amendment") and (2) the proposed rezone of portions of Town-owned Village Center active open space (OS-3-BR2) to 109R PUD and 109R PUD to OS-3-BR2 ("Rezone"), collectively referred to as the "Applications", neither of which are complete nor meet the Town's approval criteria for approval. Comments on the Major Subdivision are not included in this letter due to its continuance to March 16, 2023, but several issues will be addressed in a future letter for such application.

I. SUMMARY

The vested rights for the 2010 Mountain Village Hotel PUD ("2010 PUD") are expired, and these Applications should not be considered by Town Council at this time. The proper procedure is to submit a new application subject to the current Community Development Code ("CDC") requirements and Comprehensive Plan, both of which were not in existence when the 2010 PUD was approved and have been updated since these Applications were submitted. Town Council suggested the applicant submit a new application last year, but the applicant declined. Now the applicant requests that the PUD Amendment replace and supersede the 2010 PUD thereby creating a new PUD that incorporates the lesser standards of the 2010 PUD that benefit the applicant and significant changes that further benefit the applicant, instead of creating a new PUD that follows the current CDC and Comprehensive Plan.

But even if the procedural issue is ignored, the Applications are deficient in more than a few areas, with each deficiency clearly identified by staff in the staff report for the PUD Amendment dated January 8, 2023 ("Staff Report") incorporated herein. The number of unresolved issues, variances, encroachments, and conditions of approval demonstrate that the project is too massive in scale to fit on Lot 109R. As a result, several approval criteria for the Applications are not met. What is most telling is that even with using the lesser standards included in the 2010 PUD, the PUD Amendment is not approvable, as highlighted by the language below taken directly from page 4 of the Staff Report.

> *The ordinance remains in draft form and a development agreement is not provided because there were too many outstanding, substantive questions that have not been either answered to the satisfaction of the town, or simple disagreements that need to be agreed to prior to producing an ordinance, a development agreement and the associated necessary legal instruments.*

II. VESTED RIGHTS

As articulated by separate complaint filed under C.R.C.P 106(a)(4) in San Miguel District Court on October 20, 2022, Case Filing A3084586FBD68, incorporated herein, the Third Major Amendment to the 2010 PUD to extend the vested rights for the third time to September 8, 2023 was made in error. However, that is not the only reason the vested rights have expired. Pursuant to CDC Section 17.4.17.E.4,

> *Upon approval of a vested property right and a site-specific development plan, the Town shall publish, at the applicant's expense, a notice describing generally the type and intensity of the use approved, the specific lot(s) affected and stating that a vested property right has been created. The notice shall be published once in a newspaper of general circulation within the Town <u>not more than fourteen (14) days after approval</u> of the site-specific development plan.*

The Third Major Amendment to the 2010 PUD was approved by Town Council on September 22, 2022 and notice of such approval was not published until October 21, 2022, more than 14 days after the approval, denying the public the right to a timely referendum. This is a mandatory deadline that exists both in the CDC and C.R.S. Section 24-68-103(1)(c), and non-compliance with it constitutes a procedural defect under the law.

Pursuant to CDC Section 17.4.4.H.1, a new application should be resubmitted as follows:

> *Development application approvals that have expired shall have to resubmit a new development application following the requirements of this CDC and be subject to*

the applicable requirements of this CDC in effect at the time of submittal or as otherwise provided for by law.

III. THE PUD AMENDMENT IS NOT CONSISTENT WITH THE CRITERIA BELOW SET FORTH IN CDC SECTION 17.4.12.E.

1. The PUD Amendment is in general conformity with the policies, principles and standards set forth in the Comprehensive Plan.

The PUD Amendment violates many of the Land Use Values and Land Use Principles, Polices and Actions cited in the Comprehensive Plan. Because conformity with the Comprehensive Plan is included as one of the approval criteria, mandatory compliance is required. The PUD Amendment is not in conformity with the following Land Use Values:

Land Use Value 7 - *Gateways*, states, "Protecting public viewsheds, the natural corridor surrounding Mountain Village Boulevard, improving wayfinding and identifying gateways is paramount to preserving this sense of arrival and reinforcing the Town's identity." This PUD Amendment does the opposite with a building scale too large for the lot thereby obstructing the viewshed and the natural corridor surrounding Mountain Village Boulevard and encroaching upon it.

Land Use Value 8 - *Appropriateness and Fit of Land Uses*, states, "Land uses envisioned by the Comprehensive Plan are designed to "fit" into the surrounding neighborhood to ensure appropriate scale and context to their surrounding natural and built environments." The PUD Amendment allows for a maximum building height almost 30 feet above what is allowed in the CDC. Above grade and below grade encroachments on to Town property confirms that the project literally does not fit on Lot 109R. The significant number of variations and conditions of approval needed, as well as the applicant's inability to produce a viable traffic circulation plan shows the use is too intensive.

The Comprehensive Plan Mountain Village Center Subarea Plan Goals I.B (requires that the project "fit" on site) and I.C (encourages deed restricted units) are not met because those issues remain unresolved, as described in the Staff Report.

2. The PUD Amendment is consistent with the underlying zone district, unless the PUD Amendment is proposing a variation to such standards.

In addition to the variations approved by the 2010 PUD, the applicant requests significant additional variations as set forth in Table 9 of the Staff Report related to: density; employee housing; encroachments on to Town property; trash enclosure; access; conference center; garage

aisle width reduction; parking; long term rentals; roof form; wall material; glazing; decks and balconies; commercial areas; lighting; aisle and driveway width reductions; roof materials; and solar panels. Also, the proposed maximum building height of 88' 9" is 28' 9" above the maximum building height of 60' permitted in the CDC, and the proposed average building height of 62.35' is 14.35' above the average building height of 48' permitted in the CDC. An application compliant with the CDC would result in a more appropriate use of Lot 109R.

Adequate community benefits shall be provided to offset variations to CDC requirements. However, due to the "evolving changes in monetary values and requests related to public benefits, variations and public improvements" as described in paragraph 3 on page 5 of the Staff Report, many the variations cannot be approved as proposed. Without the approval of the variations, the PUD Amendment is non-compliant with this criterion.

6. The PUD Amendment provides adequate community benefits.

Community benefits are inadequate. The cost associated with some the community benefits has been increased without explanation. Certain improvements proposed by the applicant are erroneously described as public benefits. Some of these include EV parking spaces, parking associated with housing, plaza improvements, and snowmelt. Some of the significant variations are the decrease in public parking from 48 to 22 spaces, an additional reduction of 5 parking spaces in exchange for a fee in lieu, an increase in commercial density of over 6300 square feet, an increase in housing density, and several encroachments on to Town property. Long-term rentals and ownership and maintenance of the boilers is not adequately addressed. And while the cost of public improvements has been increased by the applicant, the mitigation payment due to the Town has not. If adjusted for inflation, the mitigation payment of $996,288 set forth in the 2010 PUD would equate to an increase of approximately $360,000. The substantial number of variations and encroachments and their evolving nature outweigh the community benefits to justify them.

8. The PUD Amendment shall not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion.

A traffic circulation study and an impact study are required. The applicant provided a traffic circulation study, and the uses shown on Town-owned OS-3BR-2 are significant. The lack of surface area on Lot 109R necessitates the use of large portions of Town-owned property above and below grade for multiple purposes, including parking and trash enclosure. Also, most of the surface parking will be eliminated. Without the approval of the Town for use of its property, the PUD creates circulation, parking, and traffic congestion. Even with Town approval to use its property, the proposed use of this small lot for such an intensive use is highly likely to cause circulation and safety concerns.

9. The PUD Amendment meets all applicable Town regulations and standards unless the PUD Amendment is proposing a variation to such standards.

The PUD Amendment is not consistent with the underlying Village Center zone district as required improvements for adjacent public areas, including the snowmelt system as required by CDC Section 17.3.4.H.7, are not being provided by the applicant. The PUD Amendment also does not meet several standards as listed in Table 9 of the Staff Report, consisting of design standards and other variations that require the approval of Town Council. These variations are in addition to those already granted in the 2010 PUD.

IV. THE REZONING IS NOT CONSISTENT WITH THE CRITERIA BELOW SET FORTH IN CDC SECTION 17.4.9.C.3.

While difficult to review without the accompanying Major Subdivision that is not being considered by Town Council until March 16, 2023, it is clear that Rezone approval criteria 1, 8, and 9 referenced above that are the same for the PUD Amendment are not met for the same reasons stated above.

V. CONCLUSION

In direct conflict with the approval criteria for both Applications, this project does not fit on Lot 109R. Evidence of this fact is made clear by the significant number of easements, encroachments, and land transfers that are required.

To summarize, the applicant needs:

- Use of Town Property (OS-3BR-2) for:
    - Vehicular and pedestrian access (valet and back of house uses);
    - Above grade and below grade utilities;
    - Permanent snow melt boilers co-located in the rebuilt Village Center trash enclosure;
    - Mechanical room beneath the fire lane;
    - Parking;
    - Mechanical room;
    - Additional back of house;
    - Access stairs to and from the building and into the Village Center pedestrian core from Mountain Village Boulevard; and
    - Building egress

Town staff expressed concern over the easements and uses on Town property in the Design Review Board staff report on the Major Subdivision dated November 19, 2022 on page 13 and stated:

[T]hese uses and easements will encumber town property in perpetuity and limit our potential use of these lands for the sole benefit of the developer. The applicant and town need to be thoughtful as to the placement of utilities on town property as it will otherwise restrict the use. Staff recommends Town Council consider adequate compensation for these uses and easements.

- Encroachments on Town property for:
    - Awning at porte cochere (road right of way) on north side;
    - Awnings at retail storefronts on south Plaza side;
    - Area well on west side of building;
    - Cantilevered deck (egress) on the east side of building;
    - Light fixtures on columns appear to be above grade encroachments of both OSP; and
    - Right of way all the way around building
        - Underground parking, back of house area and mechanical room
        - Soil nails under Mountain Village Blvd. (indicated as temporary)

Regarding the encroachments, staff noted on page 181 of the Staff Report:

The approved design depends on certain allowances from the Town for encroachment on Town owned properties, the denial of any of these encroachments could have design implications. Staff requested of the applicant an exhibit that demonstrates all temporary and permanent encroachments on Town property, the construction mitigation plan addresses some temporary encroachments, but an exhibit of permanent encroachments has not been provided by the applicant. Staff has identified some encroachments from various pages within the drawing set, but would like clarification from the applicant that no other encroachments are being requested.

Additionally, encroachments on Town property and Town right of way require an encroachment agreement, in accordance with CDC Section 17.3.22, which have not been provided.

- Easements from surrounding landowners:

  The applicant must obtain the consent from all nearby property owners or their representatives or associates for any direct impacts during construction, including any properties that will be used for construction access, staging, or storage or which will be underneath the span of the construction crane such as the Town, Shirana, and Westermere. However, in its letter to Town Council dated November 22, 2022, the President of the Shirana HOA, Robert Connor, stated that it is "extremely unlikely to permit a large-scale crane to trespass over our airspace."

Without the Town's significant contribution of its property for the applicant's private development and the cooperation of surrounding property owners, this project is not feasible, cannot meet the approval criteria, and must be denied. The community benefits aren't nearly enough to justify approval of the Applications.

Sincerely,

Kristin A. Decker
for
FOSTER GRAHAM MILSTEIN & CALISHER, LLP

AND

David Wm. Foster
for
FOSTER GRAHAM MILSTEIN & CALISHER, LLP

EXHIBIT B

FOSTER GRAHAM MILSTEIN & CALISHER, LLP
ATTORNEYS AT LAW

360 South Garfield Street
6th Floor Denver, CO 80209
T 303-333-9810 F 303-333-9786

fostergraham.com

March 14, 2023

Via Electronic Mail:
mvclerk@mtnvillage.org
mhaynes@mtnvillage.org

Town Council
Town of Mountain Village
455 Mountain Village Blvd.
Mountain Village, CO

Re: Opposition to Major PUD Amendment to the Lot 109R PUD and Rezoning

Dear Honorable Members of Town Council:

Foster Graham Milstein & Calisher, LLP ("FGMC") represents Winston Kelly regarding his properties and home on Mountain Village Boulevard that are directly across from Lot 109R, the property under consideration for: (1) the proposed Major Amendment to the Lot 109R Planned Unit Development ("PUD Amendment"), (2) the proposed rezone of portions of Town-owned and applicant-owned property ("Rezone"), and (3) the Major Subdivision to replat portions of property between 109R and OS-3-BR-2 ("Subdivision")(collectively, "Applications"). Because the Applications do not meet, and in fact, cannot meet, the Town's approval criteria in the Community Development Code ("CDC"), denial is required. FGMC reiterates and incorporates all arguments made in its letter on behalf of Mr. Kelly to Town Council dated January 18, 2023, in opposition to the Applications ("January Letter"), since none of the issues raised have been resolved by the applicant.

The following additional procedural and substantive points are made in support of the approval of the *Resolution of the Town Council of the Town of Mountain Village, Colorado Denying a Major Planned Unit Development for Lot 109R* and denial of the concurrent Rezone and Subdivision applications.

Procedural Deficiencies:

- The vested rights for the 2010 Mountain Village Hotel PUD ("2010 PUD") were not properly extended and are expired.

- Town-owned open space included in the PUD Amendment does not have the 2010 vested rights associated with it.[1] The legal description for the land, subject to the 2010 vested rights, is different from the land in this application. Therefore, attempting to rezone Town-owned open space via a major PUD amendment is procedurally improper and cannot, by law, have the same vested rights. While an amendment to the PUD is possible and an extension of the vested rights is possible, an amendment to the vested rights that includes new property is not legally permissible.
- If the 2010 PUD is amended and restated as the applicant proposes, it constitutes a new PUD, whereby the Town allows the applicant to bypass current more restrictive regulations under the guise of an amendment.
- The entirety of the Subdivision application cannot accurately be described as a "subdivision" under the CDC, defined as any division or re-division of a lot, tract, or parcel into two or more parts. Rather, there are several "lot line adjustments," a class 5 application. The significance of this distinction is that class 5 applications have different requirements including mandatory referrals to San Miguel County and the Colorado Geologic Survey, and Class 4 subdivision applications do not.

Substantive Deficiencies:

- In addition to the deficiencies raised in the January Letter, written testimony of Chris Hawkins, AICP, of Alpine Planning, LLC and the former Town Community Development Director and lead planner on the 2010 PUD, provides definitive guidance on the intent of the 2010 PUD and affirms that the proposed PUD Amendment is of a mass and scale not consistent with the 2010 PUD, in conflict with the criteria in CDC Section 17.4.12.E. It also sheds light on the flawed manner in which height is being measured by the applicant.

Despite the time and energy put into its review, the procedural and substantive flaws in the PUD Amendment continue to be too numerous for it to be approved.

I. PROCEDURAL DEFCIENCIES IN OPEN SPACE REZONING

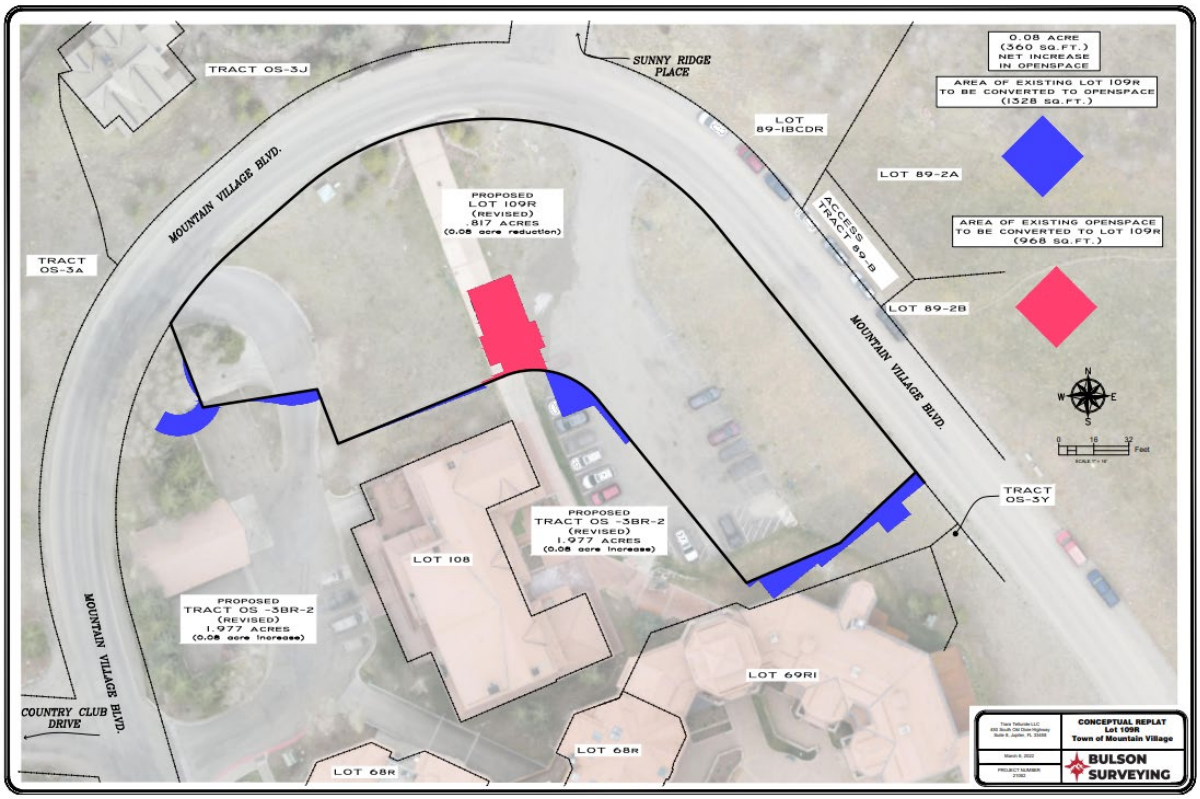
A major PUD amendment cannot be applied to Town-owned open space which was not within the legal description boundaries of the 2010 PUD. The CDC states all PUD applications require a concurrent rezoning process to convert the original zoning designation to the newly created PUD district.[2] The PUD development review process is a rezoning process in itself. Therefore, a PUD amendment, in effect, is a rezoning process applicable to the specific area of the originally defined PUD. Areas outside of the originally defined 2010 PUD cannot be rezoned by the PUD amendment process. The Town-owned open space does not carry with it the

[1] As discussed above, such vested rights have expired. However, in the event the District Court were to determine that the vested rights have not expired, this argument remains.
[2] Community Development Code Section 17.4.12 (5).

development rights of the original 2010 PUD, and the PUD Amendment cannot supplement or amend non-existent development rights.

Land outside of the 2010 PUD is subject to a separate rezoning process laid out in Section 17.4.9 of the CDC—the standard rezoning process. Land adjacent to the PUD, in this scenario, open space, does not have the same vested development rights as the 2010 PUD. In fact, open space has no development rights at all; therefore, it cannot be "amended" to comply with a newly proposed PUD amendment.

Adding parcels of land to a lot zoned as PUD does not extend the rights of the PUD to the supplemental land acquisitions. The land represented in pink does not have any vested property rights or development rights. Incorporating this land into the PUD does not confer upon it the 2010 vested property rights. Those vested rights are reserved only to the legal description of property outlined in the 2010 PUD. The applicant is attempting to acquire land zoned as open space, and use the vested rights established under the existing 2010 PUD as a baseline for a rezoning application. Rezoning town open space in 2023 should be evaluated against the criteria set forth in the current CDC.



Although the area above, represented in pink, will be incorporated into the 2010 PUD parcel, that area will still be zoned as open space resulting in the applicant's use being

impermissible. Subdividing property does not impact the zoning of the property.[3] The underlying zoning and property use regulations attached to such lot, tract or parcel remain. Any rezoning accomplished by the PUD Amendment will only result in rezoning the legally described parcel of the 2010 PUD.

The only procedurally proper way to rezone town open space is to follow the standard provisions laid out in Section 17.4.9 or create an entirely new PUD subject to the current provision of the CDC and comprehensive plan. The applicant cannot rely on the development rights of an adjacent lot, in this case the 2010 PUD, to provide the basis to rezone Town-owned open space.

II. MISCLASSIFICATION OF LOT LINE ADJUSTMENT

The proposed action contemplated by the major subdivision application cannot accurately be described as only a "subdivision" under the CDC. The CDC defines a subdivision as "[a]ny division or re-division of a lot, tract or parcel of property into two (2) or more parts, or the alteration of an existing lot's easements or other platted subdivision elements by means of platting in accordance with the procedures and standards set forth in the Subdivision Regulations of this CDC".[4] The proposed action is not a division or redivision of a lot, tract or parcel into two or more parts. The proposed action requires boundary adjustments made on both parcels, and no additional parcels are created.

The CDC defines a lot line adjustment as, "[t]he minor adjustment of common property line(s) between adjacent lots, tracts or parcels for the purpose of accommodating the transfer of property, rectifying a disputed lot-line location and similar purposes. The resulting adjustment shall not create additional lots, parcels or tracts."[5]

The proposed action is a minor adjustment of common property lines for the purpose of transferring property, the resulting adjustment does not create any additional lots, parcels, or tracts. This action fits squarely within the definition of a lot line adjustment but does not constitute a subdivision. In fact, the applicant has submitted materials requesting a lot line adjustment. See EXHIBIT A. The applicant submitted a major subdivision application which is a class 4 application. However, their presentation is requesting a lot line adjustment, a class 5 application. Approving the applicant's request for a lot line adjustment would allow for a circumvention the procedural requirements of the CDC.

The proper application to propose a lot line adjustment is a minor subdivision application. Minor subdivision applications must be processed as class 5 applications[6] as opposed to major subdivision applications which are processed as class 4.[7] The applicant submitted a major

[3] Community Development Code Section 17.8.1.
[4] Community Development Code Section 17.8.1.
[5] Community Development Code Section 17.8.1.
[6] Community Development Code Section 17.4.13(d)(2).
[7] Community Development Code Section 17.4.13(d)(1).

subdivision application. The primary difference between a class 4 and class 5 application for a minor subdivision is which referral agencies are notified for comment at the beginning of the process. Class 5 applications require a referral to San Miguel County and the Colorado Geologic Survey.[8]

Without the proper application for the proposed action, San Miguel County and the Colorado Geologic Survey were not properly notified of the action and were not provided adequate opportunity to submit referral comments for the record. As such, to rectify this procedural deficiency the referral agencies must receive proper notice and time to submit comments as is required by the CDC.

III. CONCLUSION

A significant and fatal error in this PUD Amendment, rezoning, and subdivision process is the failure to understand that the vested rights from the 2010 PUD cannot subsequently infer a benefit on property not initially within the legally described property boundary at the time of approval of such right. The proposed PUD Amendment and concurrent subdivision application are insufficient both procedurally and substantively. The PUD Amendment can only amend the zoning within the original 2010 PUD parcel. Allowing the applicant to rezone Town-owned open space via a PUD amendment, improperly allows the applicant to rely on nonexistent development rights. Additionally, the concurrent subdivision application is not a subdivision, but a lot line adjustment with different procedures in the CDC. This misclassification of an application resulted in omitting mandatory referral agencies from the process. For all the reasons stated herein, Mr. Kelly requests that Town Council deny the request for the PUD Amendment and concurrent major subdivision application.

Sincerely,

FOSTER, GRAHAM, MILSTEIN & CALISHER LLP

[8] Community Development Code Section 17.4.3 Table 4-2 Referral Agency Table.

EXHIBIT A

March 16, 2023, Town of Mountain Village Town Council Pack: MAJOR PUD AMENDMENT APPLICATION MATERIALS (pg. 78).

LOT LINE ADJUSTMENTS PER SECTION 17.3:

6A

Net area gain back to Town of 167 S.F. of Open Space

NOTE: *DIAGRAM PURPOSES ONLY, LEGAL EXHIBITS TO BE PROVIDED BY SURVEYOR AT FINAL TOWN COUNCIL.*

LOT LINE ADJUSTMENTS PER SECTION 17.3:

6B

Net area gain back to Town of 167 S.F. of Open Space

WHAT THIS IS:

A request for an adjustment to the lot line.

TIMELINE:

DRB Conditions #28	- Prior to FTC	12.01.2022
DRB Conditions #29	- Prior to FTC	12.01.2022
Town Memo #4	- Overview	01.19.2023
Town Memo #8	- Overview	01.19.2023
Town Memo #2	- First Reading	01.19.2023
Town Memo Bullet Points #3/4	- G. Staff Concerns	01.19.2023

REQUEST:

- For a Lot Line adjustment

CODE:

- ZONING & LAND USE CODE PER SECTION 17.3 ZONING AND LAND USE H. LOT LINE ADJUSTMENTS. LOT LINE ADJUSTMENTS THAT AFFECT OPEN SPACE ARE PERMITTED, SUBJECT TO THE APPROVAL OF THE TOWN, BUT ONLY TO THE EXTENT THAT THERE IS NO NET LOSS OF OPEN SPACE AS REQUIRED HEREIN.

Alpine Planning, LLC
P.O. Box 654 | Ridgway, CO 81432 | 970.964.7927 | chris@alpineplanningllc.com

EXHIBIT C

Mountain Village Town Council
Sent via email to: mvclerk@mtnvillage.org

Dear Town Council Members,

My firm consults with Winston Kelly on land use planning for Lots 104, 89-2C and 89-2B ("**Kelly Properties**"). The Kelly Properties are located across from the Sixth Senses Hotel project site that proposes a Major PUD Amendment, Rezoning and Subdivision to reconfigure the Mountain Village Hotel PUD currently pending before the Town Council. This memo analyzes the proposed hotel parking requirements, employee generation and some public benefits for the Sixth Senses Hotel proposed on Lot 109R in the Town of Mountain Village.

Hotel Parking

The proposed hotel is required by the Mountain Village Community Development Code ("**CDC**") to provide 116 spaces for the proposed hotel, condo, employee housing, and commercial uses ("**Hotel Uses**") as shown in Table 1. The parking shown in the plan set provides only 111 spaces for the Hotel Uses so there is a CDC required parking deficiency of four (4) spaces. The reason for this deficiency is because the applicant has not included all the floor areas for high intensity uses, including the kitchen and lounge/bar area on Level GIA, or the kitchen on Level 6. The total of high intensity use is estimated to be approximately 8,703 sq. ft as shown in Table 2, with the hotel lobby/restaurant lounge space on Level G1A potentially larger than estimated off the floorplans. The applicant should be required to include all the kitchen areas and the area dedicated to the bar/lounge area on Level G1A to ensure there is adequate parking for all the floor area dedicated to the high intensity uses, with the floor plans revised to clearly show the areas and square feet dedicated to high intensity and low intensity commercial uses.

Table 1. CDC Parking Requirements

Land Use	Units or Floor Area	Required Number of Parking Spaces Per Unit, or Per Sq. ft.*	Required Parking
Efficiency Lodge	50	0.5	25
Lodge	31	0.5	15.5
Condo	20	1	20
Employee Condo	2	1	2
Employee Dorm*	18	1	18
High Intensity Commercial Use	8703	500	17
Low Intensity Commercial Uses	16850	1000	17
Total Required Parking			115

*Town established dorm parking requirement through PUD process.

Table 1. CDC Parking Requirements

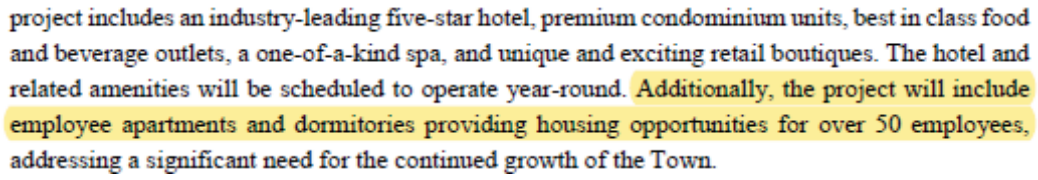
Commercial Uses	
Level G1	
Spa	10,220
Market	2629
G1 Retail No. 1	918
G1 Retail No. 2	1159
G1 Lounge + Ski Shop No. 3	914
Level G2	
Est. Bar+ Restaurant Area Next to Lobby	3962
Sotheby's Vault Office	1010
Level 6	
Signature Dining, W,edding Conference + Kitchen	3838
Omakase Restaurant + Bar	903
High Intensity Uses Est. Floor Area	8703
Low Intensity Uses	16,850
Total Commercial Area	**25553**

It is also important to note that the CDC Parking Regulations in Section 17.5.8 do not establish parking requirements for dorm units, with this use and zoning designation not listed in Table 5-2. CDC Section 17.5.8(A)5 states:

> "For uses not listed, the parking requirements shall be determined by the review authority based upon the parking requirements of a land use that is similar to the proposed use, other Town parking requirements or professional publications. A parking study may also be submitted by an applicant to assist the review authority in making this decision."

The Applicant's narrative states that the proposed 18 employee dorm rooms and 2 employee apartments will house over 50 employees as shown in Figure 1. The applicant's Summary of Community Benefits indicates that there will be 56 employees living in the 18 dorms and 2 employee condos, with three (3) people per dorm room. Where will the other 36 plus employees park with only 20 on-site parking spaces designated for employees?

Figure 1. Snapshot of Applicant Narrative



project includes an industry-leading five-star hotel, premium condominium units, best in class food and beverage outlets, a one-of-a-kind spa, and unique and exciting retail boutiques. The hotel and related amenities will be scheduled to operate year-round. Additionally, the project will include employee apartments and dormitories providing housing opportunities for over 50 employees, addressing a significant need for the continued growth of the Town.

The applicant is only providing one (1) parking space per each of the 18 dorm rooms that clearly is not adequate with three (3) employees per dorm room per the applicant's provided

information. The parking requirements for a dorm room should be higher than an employee apartment because the dorm units will have three (3) employees in each dorm unit.

The CDC parking requirements do not require parking for the actual number of employees generated by a proposed land use. The actual number of employees generated by the hotel is significantly higher as shown in Table 3, with the Town of Mountain Village housing mitigation spreadsheet's generation rates indicating a very low employee generation rate of 95 employees for the entire hotel. Telluride and San Miguel County employee generation rates estimate 148 total employees. Industry standards for a five-star hotel are typically in the range of 2 to 2.5 employees per hotel room that results in an estimate of approximately 200 employees for the hotel looking at lodge and efficiency lodge units only (assumes condos are not in the rental pool). It is estimated that there will be approximately 150 to 200 employees for the hotel based on regional employee generation rates shown in Exhibit B and industry standards. This estimate could be higher if some of the penthouse condo units are included in the hotel unit rental program, and due to the large amount of proposed commercial uses that may not be captured in the industry standard parking requirements.

Table 3. Employee Housing Generation Rates

Jurisdiction/Use	Number of Units or Area	Employees Generated	Emp. Generation Rate	Employees Generated
Mountain Village				
Efficiency Lodge/Lodge	81	0.50 emps / unit	0.5	40.5
Condo	20	0.19 emps / unit	0.19	3.8
Commercial Use	25553	2 emps / 1,000 sq. ft.	2	51.106
				95
Telluride and San Miguel County Housiing Mitigation				
Efficiency Lodge/Lodge	81	0.33 emps / unit	0.33	26.73
Condo	20	0.33 emps / unit	0.33	6.6
Commercial Use	25553	4.5 emps / 1,000 sq. ft	4.5	115
				148
Five Star Hotel Emp. Housing Requirement				
	81	>2.5 : 1 room	202.5	

Assuming two (2) day shifts, there would be approximately 75 to 100 employees working at the property throughout the day. Where will these employees park with only 20 on-site parking spaces? The Gondola Parking Garage is not an option since it is already over capacity during the ski season. There will be a loss of public parking spaces if employees park in the hotel's 48 public spaces. The Applicant should therefore be required to document the exact number of employees working at the hotel, the maximum number working one shift and where they will be parked. If not, the skier and visitor experience will be further degraded due to the lack of parking in Mountain Village.

CDC Section 17.5.8(B)(1) states:

> "All parking shall be contained within the lot(s) upon which the proposed development is located and off of public and private rights-of-way and the general easement. The use of the road right-of-way for the parking of vehicles is strictly prohibited."

This provision mandates that all required parking be located on the same lot as development. The Applicant has not met this requirement because there is not enough on-site parking for the dorm rooms with a deficiency of at least 36 employee spaces, or for the high intensity commercial uses where there is a deficiency of approximately four (4) parking spaces. This creates a parking deficiency of approximately 40 spaces.

Employee Housing

The proposed PUD states that the proposed employee housing is a community benefit when it is less than mitigation for 40% of the employees generated. The proposed hotel should be subject to the Town's affordable housing requirements. The Town's minimum affordable housing requirements establish standards for mitigating 40% of the employees generated by the project, with the Town's spreadsheet shown in Exhibit A indicating the total required mitigation for the new hotel is 15,569 sq. ft. excluding all the phase in reductions over time and the 30% discount for in-town units. The Town phase in reductions cuts the housing mitigation down to only 2,725 sq. ft. for a development application submitted in 2022 which is interesting given the employee housing impacts to the Telluride Region and all down valley towns. The employee housing mitigation requirement would be approximately 25,051 sq. ft. if the hotel were proposed in Telluride. If the Town's housing mitigation was truly at 40% then the required mitigation would be over 15,000 sq. ft. of floor area and more than provided by the applicant. The Town 30% discount for in-town units combined with the percent reductions to phase in the housing mitigation over time make it seem like the provided housing is a public benefit when the developer should be required to provide at least 40% mitigation. Otherwise, the number of employees generated by the hotel further exacerbates the regional housing crisis.

The applicant proposes to provide approximately 13,000 sq. ft. in housing on the Level 1 Mezzanine excluding stairs, back of house, and electric space as shown on Sheet A-104 and as measured in Figure 2. The Applicant states that they are providing 14,455 gross sq. ft. in housing mitigation; however, this includes a stair corridor and elevator shafts that do not appear to be accessible to the employee level and back of house space that should not count as housing mitigation floor area. The Applicant should be required to provide the actual floor area used for housing since it is including space not accessible or useable by employees.

Figure 2. Housing Mitigation Area

Building Height

The applicant continues to state that the current PUD allows for a maximum height of 88'-9" across the whole of the property, which is incorrect. The current PUD only allows for this height along the highest roof ridge on the west side of the building. The current PUD limits building massing the to approved site-specific development plan with stepping as shown in prior correspondence. The applicant is increasing the maximum height by spreading it out across the whole of the site and not maintaining the height approved under the current PUD.

The average height calculations are also very questionable. All the highest measuring points except one are to the top of guardrails and not to the top of a roof. These guardrails clearly are not the highest roof above the grade and are not roofs. The guardrails are on the side of a deck next to the building. Since when are deck railings considered roofs? Average height is measured from "…finished grade to a point on the roof plane midway between the eave and ridge". The highest roof points are not the highest roof above in numerous locations. Not one of the average height measuring points is measured to the highest roof element. How can this be when that is the highest roof over several areas, including the main plaza? There must be more of an explanation on how average height was measured and what appears to be several highly questionable measuring points on the plans. A comparison of the current PUD Mountain Village Hotel plans and the proposed plans shows way more massing than the approved hotel. It seems impossible to have an average height comparable to the Mountain Village Hotel PUD when the building mass is so much higher across the property. We therefore believe that the actual

average height is much higher than presented and should be fully explored by the Town Council prior to any approval.

We sincerely appreciate the Town Council's time and consideration of all public comments.

Thank you.

Chris Hawkins Digitally signed by Chris Hawkins
Date: 2023.06.08 23:23:24 -06'00'

Chris Hawkins, AICP

AFFORDABLE HOUSING MITIGATION CALCULATOR

INSTRUCTIONS

1. Input project details and size for relevant development type(s) in green boxes
2. Resultant required housing mitigation/fee-in-lieu can be found in yellow boxes (total) and blue boxes (by mitigation type)
3. Enter amount of housing to be mitigated/fee to be paid by mitigation type in green boxes
4. Ensure total mitigation amount, accounting for all types, totals 100% of requirement

1. PROJECT & APPLICANT

Project Title	Sixth Senses	Project Address	
Applicant Name		Applicant Address	
Applicant Phone		Applicant Email	
Date			

Year of land use application submittal (select one): 2022 — *25% of mitigation required*

Net floor area of **commercial** space proposed:	25,553	sq. ft.
Number of **hotel/accommodation** units proposed:	81	units
Number of free market **multifamily** residential units proposed:	20	units
Net floor area of **multifamily** additions proposed:		sq. ft.
Net floor area of **single family** residential unit(s) proposed:		sq. ft.

2. CALCULATION OF MINIMUM AFFORDABLE HOUSING REQUIREMENTS

For commercial uses:

25,553 (*net floor area or increase (sq. ft.)*) x 2.00 employees / 1,000 sq.ft. x 400 sq.ft./employee x 40% mitigation = 8,177 sq. ft. employee housing

For hotel and accommodation uses:

81 (*number of units*) x 0.50 employees / unit x 400 sq.ft./employee x 40% mitigation = 6,480 sq. ft. employee housing

For multi-family residential and mixed-use residential uses:

20 (*number of units*) x 0.19 employees / unit x 400 sq.ft./employee x 60% mitigation = 912 sq. ft. employee housing

0 (*net floor area increase (sq. ft.)*) x 0.13 employees / 1,000 sq.ft. x 400 sq.ft./employee x 60% mitigation = 0 sq. ft. employee housing

For single family residential uses:

0 (*net floor area or increase (sq. ft.)*) x 0.12 employees / 1,000 sq.ft. x 400 sq.ft./employee x 60% mitigation = 0 sq. ft. employee housing

TOTAL MINIMUM AFFORDABLE HOUSING REQUIREMENT = 15,569 sq. ft. employee housing

Town of Mountain Village
Affordable Housing Mitigation Calculator

3. MITIGATION OPTIONS AND REQUIREMENTS

(Note that blue boxes represent mitigation required if all requirement is mitigated using that method)

	Total Employee Housing Required*			Net Required Mitigation
Units in Town				
Commercial:	2,044 sq. ft.	-30% discount		1,431 sq. ft.
Hotel and accommodation:	1,620 sq. ft.	-30% discount		1,134 sq. ft.
Multi-family residential and mixed-use residential:	228 sq. ft.	-30% discount		160 sq. ft.
Single family residential:	0 sq. ft.	-30% discount		0 sq. ft.
TOTAL MINIMUM AFFORDABLE HOUSING REQUIREMENT	3,892 sq. ft.	-30% discount		2,725 sq. ft.
Units Out of Town				
Commercial:	2,044 sq. ft.	-15% discount		1,738 sq. ft.
Hotel and accommodation:	1,620 sq. ft.	-15% discount		1,377 sq. ft.
Multi-family residential and mixed-use residential:	228 sq. ft.	-15% discount		194 sq. ft.
Single family residential:	0 sq. ft.	-15% discount		0 sq. ft.
TOTAL MINIMUM AFFORDABLE HOUSING REQUIREMENT	3,892 sq. ft.	-15% discount		3,308 sq. ft.
Fee in Lieu				
For commercial uses:	2,044 sq. ft.	0% discount	x $606 /sq.ft.	$1,238,809
For hotel and accommodation uses:	1,620 sq. ft.	0% discount	x $606 /sq.ft.	$981,720
For multi-family residential and mixed-use residential uses:	228 sq. ft.	0% discount	x $606 /sq.ft.	$138,168
For single family residential uses:	0 sq. ft.	0% discount	x $606 /sq.ft.	$0
TOTAL MINIMUM AFFORDABLE HOUSING REQUIREMENT	3,892 sq. ft.	0% discount	x $606 /sq.ft.	$2,358,697

** Accounts for phase-in of requirements, based on year of land use application submittal*

4. PROPOSED METHODS OF MEETING AFFORDABLE HOUSING MINIMUM REQUIREMENTS

Fill in all that apply:			% of Requirement	Remainder to reach 100%
To be constructed within the Town of Mountain Village		sq. ft.	0%	2,725 sq. ft.
To be constructed outside of the Town limits		sq. ft.	0%	3,308 sq. ft.
Fees in Lieu to be paid			0%	$2,358,697
4. Mitigation Requirement Met			**0%**	

Mastro, Barnes & Stazzone, P.C.

—Attorneys at Law—

Craig Mastro
Steven Barnes
Victor Stazzone

Lance Ingalls, Of Counsel

June 13, 2023

Mountain Village Town Council
455 Mountain Village Blvd., Suite A
Mountain Village, CO 80435

Dear Council Members:

My name is Lance Ingalls and I have been a practicing attorney in Colorado for nearly 29 years, most of that serving as Douglas County Attorney. As development pressure in Douglas County caused it to be the fastest growing county in the Country for well over a decade, I have handled more than my share of land use applications and issues. I am now in private practice. One significant thing I learned in my prior work is that it is critically important that local governments follow their adopted regulations and procedures or they commit both abuses of process and abuses of discretion.

Foster Graham Milstein and Calisher, LLC ("FGMC") and Winston Kelly requested that I review the land use applications for the Lot 109R Major PUD Amendment, rezoning and subdivision in Mountain Village and offer an independent opinion regarding their concerns. I reviewed the land use applications and staff reports for Lot 109R as well as the letter written by Kristin Decker, Esq., Special Counsel at FGMC, dated June 13, 2023 and agree that the letter and Ms. Decker's concerns are valid. More specifically, but without reiterating the contents of her letter, I agree that, unless Mountain Village meaningfully addresses the issues raised, there are a number of procedural and substantive errors in the processing of the land use applications for Lot 109R such that ongoing legal challenges are warranted.

It is my conclusion that Mountain Village is not following its adopted regulatory processes in its consideration of Lot 109R land use applications.

Sincerely,

Lance Ingalls
Of Counsel Mastro, Barnes and Stazzone, PC

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OTTENJOHNSON
ROBINSON NEFF + RAGONETTI PC

June 13, 2023

BILL E. KYRIAGIS
303 575 7506
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VIA E-MAIL – MVCLERK@MTNVILLAGE.ORG

Town Council
Town of Mountain Village
455 Mountain Village Boulevard
Mountain Village, CO 81435

Re: Letter for the Record Regarding Pending Lot 109R Applications

Dear Mayor and Town Council Members :

This firm comprises part of the team representing Tiara Telluride, LLC ("**Tiara**") in connection with its applications for a Major Subdivision for Lot 109R and Tract OS-3BR-2 (the "**Subdivision**"), a Major PUD Amendment to the Lot 109R PUD (the "**PUD Amendment**") originally approved in 2010 (the "**2010 PUD**"), which PUD Amendment includes and associated rezoning of the resulting Lot 109R2, and the rezoning of the resulting Tract OS-3BR-2R[1] (the "**Rezoning**), with a vested property right to complete the development (the "**Vested Rights**," and together with the applications for the Subdivision, the PUD Amendment, and the Rezoning, the "**Applications**"). Approval of the Applications will advance critical priorities of the Town of Mountain Village (the "**Town**") reflected in the Town's Comprehensive Plan, by allowing Tiara to develop a five-star hotel with at least 50 hotbeds, employee housing significantly over and above Town requirements, public parking spaces, public plaza improvements, and mixed-use commercial space (the "**Project**").

The current versions of the Applications follow a number of public hearings with the Town. Initially, Tiara had proposed to develop the Project in accordance with the 2010 PUD.[2] However, after receiving feedback from the Town, Tiara agreed to pursue significant amendments to deliver an overhauled building design suitable for a five star hotel operator. This resulted in plans for a beautiful building that compliments the Town's stunning natural setting, with Tiara bringing in Six Senses as its hotel operator partner.

The most recent public hearing occurred on March 15, 2023. At that meeting, the Council voted to continue the Applications, giving very clear direction to Tiara to listen to Town staff and address the concerns they had raised. Since that time, Tiara has worked closely with staff, and Tiara wants to recognize the tremendous efforts staff has made to review and process the Applications on a tight timeline. As a result, this Council, which has also invested significant time and attention in evaluating the Applications, will be able to review the

[1] The resulting tract may be designated OS-3BR-2R-1R, as described below.
[2] Background documents relating to the 2010 PUD are attached here as **Exhibit A**.

Applications at its June 15, 2023 meeting.[3] Tiara sincerely appreciates the staff's dedication and professionalism, without which this would not have been possible.

Following Council's direction, Tiara has made every effort to agree to all of staff's substantive requests. Notable changes since the March 15 hearing include:

- The Town had raised concerns about areas where snowmelt would be installed, and responsibility for ongoing operation and maintenance expenses for plaza areas and snowmelt systems. Tiara has agreed to snowmelt all areas requested by staff and for Tiara/the Project to be responsible for all such costs, including ongoing operation and maintenance of plaza areas, boilers, etc. The planned snowmelt systems comply with Town guidelines using boilers, not electric snowmelt. Providing the Town's requested snowmelt solutions also addresses circulation concerns.

- The Town had raised concerns about Tiara's encroachments (via easements) into Town land that were contemplated in prior submittals. Tiara significantly reduced encroachment requests, with above-ground encroachments now limited to only retail overhang awnings in the plaza area, which we understand is common throughout the Village Center. Underground encroachments are limited as well, with the encroachment under the plaza area for underground parking and back of house/mechanical areas. Tiara has agreed to staff's request that Tiara pay a reasonable market value to take ownership to a separate area that Tiara had proposed to use pursuant to a subsurface use easement. This further reduces encroachments/uses of Town land.

- The Town had raised concerns about the utilities plans. Utilities are now being located in areas designated by staff and/or utility providers, and located on-site, in areas designated for utilities, or on private land specifically approved by the private landowner. In particular, with respect to the gas regulator station, it is being located on Lot 89B, which Black Hills has identified as the only approved location. It will provide service to Lot 109R, Lot 161 (Four Seasons) and other properties in the area. The owner of Lot 89B has expressly consented to locating it there.

- The Town had raised concerns about locating boilers for snowmelt systems in the trash shed, and had raised concerns about lost parking near the trash shed. With the approval of the Town's trash vendor, Tiara has redesigned the trash shed, relocating the boilers to an area within its building, and reducing the size of the trash shed. The reduced size allows for additional parking and improved circulation. The Development Agreement also addresses the possibility of relocating the trash shed, should a suitable location be identified, with a financial contribution from Tiara equivalent to its cost of building the trash shed as currently planned.

- The Town had raised concerns about reduction in public parking spaces. Tiara developed a solution, supported by staff, that will provide all 48 public parking the Town requested. Per staff request, the public parking spaces in the garage will be privately owned as part of the Project, and dedicated to public use.

[3] Public notice has been previously provided as to all hearings, and hearings have been continued to a date certain. However, public notice was again provided by mailing at least 30 days before the June 15 hearing, and posting at least 15 days before the June 15 hearing. Copies of the affidavits reflecting the notice are attached as **Exhibit B**.

- The Town had raised concerns about ambiguity in the public improvements and public benefits. Tiara has prepared a revised public benefits and public improvements information, with staff's direction, with complete cost estimates.

- The Town raised concerns about the status of the legal documents/agreements. Drafts have now circulated between the parties, and most agreements are in essentially in final form after discussion with staff. It is anticipated that any remaining necessary changes will be limited, and based on direction from Town Council or to update/ensure consistency across all final forms of the documents. Per previous staff comments, timing and sequencing of specific documents to be included as part of the approvals will be established prior to second reading.

The staff report reflects Tiara's significant efforts to address the concerns that the Town has raised, and Tiara is hopeful that Town Council will agree and approve the Applications on first reading. In support of such approval, I am writing now to address the relevant approval criteria[4] for the Applications. This letter also addresses certain legal issues that Winston Kelly ("**Mr. Kelly**"), through his attorney, David Foster,[5] has raised. Please include this letter in the record for the Applications.

Satisfaction of Approval Criteria

The Town's review of the Subdivision, the PUD Amendment, the Rezoning and the Vested Rights is governed by approval criteria specified in the current version of the Town's Community Development Code (the "**CDC**"). The approval criteria for each process are different, though there is some overlap. In particular, general conformance with the Town's Comprehensive Plan is an element of each process. The Applications have been evaluated in light of the Comprehensive Plan, and general conformance with the Comprehensive Plan is addressed here first, with the approval criteria for each of the specific requested approvals then addressed in turn.

1. **The Project is in Conformance with the Comprehensive Plan**

The Town's Comprehensive Plan was originally adopted in 2011 ("**Comprehensive Plan**"), and a copy is attached as **Exhibit C**. Its own terms summarize its purpose well:

> The Comprehensive Plan is the adopted advisory document that sets forth the Mountain Village Vision and the way to achieve the vision through principles, policies and actions. The Comprehensive Plan is intended to direct – the present and future – physical, social and economic development that occurs within the town. In short, the Comprehensive Plan defines the public interest and the public policy base for making good decisions.

[4] Tiara has also addressed compliance with the approval criteria in prior submissions, including application narratives, as well as in public hearings, and the discussion contained herein should not be considered exhaustive, nor a limitation on the evidence in the record that demonstrates compliance with the applicable approval criteria.

[5] Mr. Foster also represents Scythian Ltd, Cloud 9 Investments, and Cloud 9 Land Holdings, LLC, which are entities affiliated with Mr. Kelly, in the litigation known as Scythian Ltd, et al. v. The Town of Mountain Village, Colorado, San Miguel County District Court Case No. 2022CV30045 (the "**Litigation**"). In the Litigation, Mr. Kelly's entities sued the Town, alleging that the Town Council abused its discretion in approving the Third Amendment to the 2010 PUD, and seeking to overturn the Third Amendment.

Comprehensive Plan, p. 7. As stated in the Comprehensive Plan, "[w]hen a development application is evaluated regarding its general conformance with the Comprehensive Plan, the Town Council and Design Review Board (DRB) should evaluate the application against the entirety of the goals, policies and actions contained in the Comprehensive Plan and need not require compliance with every provision contained therein." Comprehensive Plan, p. 7. The Project furthers the entirety of the goals, policies and actions contained in the Comprehensive Plan. For example, the Comprehensive Plan designates the land at issue in the Mountain Village Center Subarea, and the Comprehensive Plan envisions this subarea as a vibrant and social center housing 1,500 to 2,000 hotbeds and prioritizing pedestrian circulation and connections. *See* Comprehensive Plan, pp. 4, 17, 51. The Project will include desired development with a five-star hotel delivering needed hotbeds, and associated amenities and commercial space. *See* Comprehensive Plan, p. 28. The Project also includes more deed restricted employee housing than required, advancing one of the eight key Land Use Values. Comprehensive Plan, p. 35. The building is a high-quality design, complementing the Town's natural alpine setting. Comprehensive Plan, p. 18. Tiara's agreed hotel operator, Six Senses, is a world class brand, addressing one of the "Critical Actions," in the Comprehensive Plan. Comprehensive Plan, p. 30. In short, the Project will deliver exactly the type of flagship hotel that the Comprehensive Plan recognizes as key to the Town's long-term, big picture success.

On December 8, 2022, the Town Council adopted the 2011 Comprehensive Plan, 2022 Amendment ("**Comprehensive Plan Amendment**"), a copy of which is attached as **Exhibit D**. By its terms, the 2022 Comprehensive Plan does not apply to applications submitted prior to November 1, 2022, so it does not apply to the Applications. However, it is worth noting that the Applications are also in general conformance with the Comprehensive Plan Amendment.[6] For example, the Comprehensive Plan Amendment continues to emphasize the importance of the development of hotbeds and of securing "a flagship hotel that can have far-reaching economic impacts on a resort community due to broad marketing programs that significantly enhance local marketing." Comprehensive Plan Amendment, p. 10. In short, the Project will deliver on what the Town continues to define as its critical goals.

Additional applications of the Comprehensive Plan relevant to the approval criteria for each of the approvals is also addressed below.

2. **The Subdivision Satisfies the Approval Criteria**

Approval of the Subdivision will resubdivide Lot 109R and OS-3BR-2, creating a new Lot 109R2[7] a new Tract OS-3BR-2R.[8] It will also create a new right-of-way tract (the "**ROW Tract**") to be conveyed to the Town. The Subdivision allows a land exchange between Tiara and the Town, with a net positive amount of land being

[6] Reinforcing this, the standard is general conformance and not strict conformance. According to the Town's Blog, "[t]he Town's goal in amending the plan was to make it more flexible and a better reflection of current economic conditions." The Comprehensive Plan Amendment also states that "no development applicant shall be required to strictly adhere to every provision of the Comprehensive Plan given its inherently aspirational nature." Comprehensive Plan Amendment, p. 7.

[7] References herein to Lot 109R include Lot 109R2, which is the resulting Lot designation following the Subdivision.

[8] As noted in the materials with the Applications, the final designation of the resulting OS-3BR-2 parcel will either be OS-3BR-2R or OS-3BR-2R-1R, depending on whether the pending resubdivision application of OS-3BR-2 by the Lot 161CR owner is approved prior to the recording of the Plat submitted by Tiara or not. References herein to OS-3BR-2 include OS-3BR-2R and OS-3BR-2R-1R, as appropriate.

conveyed to by Tiara to the Town, and Tiara paying the Town for a small additional parcel that staff requested be converted from an easement on Town land to a purchase by Tiara (collectively, the "**Land Exchange**").

The record contains ample evidence to satisfy the approval criteria set forth in CDC Section 17.4.13.E.1 as follows:

- **Section 17.4.13.E.1.a: The proposed subdivision is in general conformance with the goals, policies and provisions of the Comprehensive Plan.** As discussed above, the Subdivision will allow for development of the Project, which furthers many of the goals, policies, and provisions of the Comprehensive Plan. Additionally, as detailed more in the application materials, it satisfies or exceeds the criteria in Land Use Principle IV, as described on pages 42-43 of the Comprehensive Plan.[9]

- **Section 17.4.13.E.1.b: The proposed subdivision is consistent with the applicable Zoning and Land Use Regulations and any PUD development agreement regulating development of the property.** As discussed in other parts of this letter, the Subdivision will operate together with the other Applications, which ensure that the Project is consistent with all applicable regulations and the relevant PUD development agreement.

- **Section 17.4.13.E.1.c: 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.** As discussed, Tiara is requesting the Rezoning and PUD Amendment concurrently, and approval of these Applications together will ensure that the appropriate density is assigned to the lots at issue.

- **Section 17.4.13.E.1.d: The proposed subdivision is consistent with the applicable Subdivision Regulations.** As described in CDC Section 17.4.13, the Subdivision Regulations are intended to, among other things, provide for the efficient development of the Town with safe traffic circulation and promote the health, safety, and general welfare of Town residents. They also ensure that all development is located on an approved lot, and provide for lot design and access standards. By facilitating the Land Exchange and the development of the Project, the Subdivision directly aligns with these intentions. Additionally, the Subdivision will meet all applicable CDC standards, as they are requested to be modified by approved variations.

- **Section 17.4.13.E.1.e: Adequate public facilities and services are available to serve the intended land uses.** As described in the Applications, adequate public facilities and services exist or will be developed by Tiara to serve the Project allowed by the Subdivision. Significant new public facilities and improvements, as necessary to serve the development, will be installed as part of the Project.

- **Section 17.4.13.E.1.f: 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.** Tiara has included this evidence in its Subdivision application.

- **Section 17.4.13.E.1.g: 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.**

[9] The property is not designated by a Subarea Plan for hotbed development, but the Project is still in general conformance with the requirements of Principle VI.B.

The Subdivision is in compliance with all applicable Town standards and codes. Tiara has not requested any variances in accordance with the variance provisions of the CDC, which are set forth in CDC Section 17.4.16.[10]

- **Section 17.4.13.E.1.h: The proposed subdivision meets all applicable Town regulations and standards.** As confirmed by staff, the Subdivision meets all applicable Town regulations and standards.

3. **The PUD Amendment Satisfies the Approval Criteria**

The Town is evaluating the PUD Amendment under the standards and requirements of the current CDC. Under Section 17.4.12.O.1.b of the CDC, a major PUD amendment is processed as a class 4 development application, like the creation of a PUD itself. *See* CDC Table 4-1. Similarly, the review criteria for a PUD amendment are exactly the same as for the creation of a PUD: those set forth in CDC Section 17.4.12.E. CDC Section 17.4.12.O.3.[11] As described more thoroughly in the application materials for the PUD Amendment, the PUD Amendment meets those approval criteria as follows:

- **Section 17.4.12.E.1: The proposed PUD is in general conformity with the policies, principles, and standards set forth in the Comprehensive Plan.** General conformity with the Comprehensive Plan is discussed above.

- **Section 17.4.12.E.2: The proposed PUD is consistent with the underlying zone district and zoning designations on the site or to be applied to the site unless the PUD is proposing a variation to such standards.** Lot 109R is currently zoned "Village Center," and subject to the 2010 PUD, and OS-3BR-2 is currently zoned Village Center Active Open Space. Pursuant to the Rezoning, Lot 109R (including the portion of Lot OS-3BR-2 that will be included in Lot 109R pursuant to the Subdivision) will be rezoned to PUD, and the portion of the current Lot 109R that will be included in OS-3BR-2 will be rezoned to Village Center Active Open Space. Variations to the underlying zoning standards are being proposed as described in the application documents.

- **Section 17.4.12.E.3: The development proposed for the PUD represents a creative approach to the development, use of land and related facilities to produce a better development than would otherwise be possible and will provide amenities for residents of the PUD and the public in general.** The site proposed to be subject to the PUD Amendment has unique features, and is located on a critical site in the Village Center. The PUD Amendment allows for it to be efficiently developed with a world class, five-star hotel operation providing needed hotbeds and employee housing while respecting the natural environment, all with a creative design allowing a pass-through pedestrian connection from See Forever to the Village Center. The PUD Amendment also provides significant amenities to residents and the public, such as snowmelted plazas and traffic and circulation areas, and

[10] Note that this is a distinct process from the variations that are authorized under the PUD provisions of CDC Section 17.4.12

[11] Tiara acknowledges that the review procedures for a new PUD, CDC Section 17.4.12.D, are different than for a PUD amendment, but here, given the existence of the 2010 PUD, and the process that Tiara and the Town went through to revise the PUD plans, there was not a need to separately go through the Conceptual SPUD and Sketch PUD processes. These issues were substantively addressed in the process that was completed here.

public restrooms. The provision of these benefits and amenities would not be possible under a default zoning district.

- **Section 17.4.12.E.4: The proposed PUD is consistent with and furthers the PUD purposes and intent.** The PUD Amendment is consistent with the purposes and intent of the PUD Regulations as set forth in CDC Section 17.4.12.A. First, variations from the strict application of CDC standards will allow for an innovative development that maximizes response to Town needs. Second, the PUD Amendment will allow for a creative approach to development, reflected in a unique design that complements the natural environment, as described above. Third, as detailed in the narrative submitted with the Applications (as the same has been amended and supplemented over time, the "**Narrative**"), the PUD Amendment will allow Tiara to provide significant and valuable community benefits. Fourth, the Project allowed by the PUD Amendment will promote and implement several key objectives of the Comprehensive Plan, as described above. Fifth, the PUD Amendment will allow development that efficiently uses land, public facilities and governmental services, such as through snowmelting sidewalks and rebuilding the trash shed. Sixth, the PUD Amendment will promote integrated planning, such as by improving pedestrian circulation through the Village Core.

- **Section 17.4.12.E.5: The PUD meets the PUD general standards.** As described in the Narrative, the PUD Amendment meets all general standards set forth in CDC Section 17.4.12.I.

- **Section 17.4.12.E.6: The PUD provides adequate community benefits.** Pursuant to CDC Section 17.8.1 "Community Benefits" means "The dedications, conveyances, public improvements, exactions and conditions required to ensure that the impacts of a development project are adequately mitigated." It goes on to list that community benefits include

> without limitation, additional affordable or employee housing; conveyance of land or easements for public purposes; construction and/or land, material or financial contribution to the construction of public facilities, such as public parking and transportation facilities, pedestrian improvements, streetscape improvements, lighting, public cultural facilities, parks, conference centers, public buildings and features; and other public facilities determined by the Town Council to meet the requirement for community benefit as set forth in the PUD Regulations.

In turn, CDC Section 17.4.12.G.1 states that community benefits include "[d]evelopment of, or a contribution to, the development of public benefits or public improvements, or the attainment of principles, policies and or actions envisioned in the Comprehensive Plan . . ."[12] The community benefits respond to feedback raised by the Town and members of the public during the planning process. Information in the draft PUD Amendment ordinance, the staff report, and submission materials itemize the community benefits, and the overall value of the community benefits being provided exceeds $18 million. This is an increase in over $10 million over the benefits that were to be provided pursuant to the original 2010 PUD, and justifies the additional variations from the CDC

[12] Note that CDC Section 17.4.12.G.2 excludes from community benefits the "provision of hotbeds, commercial area, workforce housing or the attainment of other subarea plan principles, policies and actions on development parcels identified in a subarea plan development table . . ." However, Lot 109R is *not* identified in a subarea plan development table, so this exclusion is not applicable. Accordingly, the provision of hotbeds, commercial areas, and workforce housing do qualify as community benefits for the Project within the meaning of the CDC.

that are being approved pursuant to the PUD Amendment, including applying variations from the CDC as to land that was not included in the 2010 PUD.

- **Section 17.4.12.E.7: Adequate public facilities and services are or will be available to serve the intended land uses.** As described in the Applications, Tiara will expand public facilities and services necessary to serve the Project, at its own expense, including providing significant Public Improvements.

- **Section 17.4.12.E.8: The proposed PUD shall not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion.** As detailed in the materials for the Applications, the PUD Amendment improves pedestrian circulation and features a new trash facility that decreases congestion. Parking will be located in a covered garage, and traffic will follow a detailed circulation plan that does not create any hazards. Service delivery is contemplated within the new parking area, rather than existing surface-area locations.

- **Section 17.4.12.E.9: The proposed PUD meets all applicable Town regulations and standards unless a PUD is proposing a variation to such standards.** As detailed in the Narrative and other materials submitted with the PUD Amendment application, the PUD Amendment meets all applicable Town regulations and standards, except for where a variation from CDC standards is requested.

The above is illustrative of the fact that there is ample evidence in the record to support the Council's finding that the PUD Amendment satisfies the approval criteria.

The PUD Amendment is an amendment of the 2010 PUD. As noted above, under the CDC, the same approval criteria apply for a PUD amendment as would apply for the creation of a new PUD. CDC Section 17.4.12.O.3. Additionally, PUD amendments and final SPUDs are each processed as class 4 applications. Notwithstanding the existing 2010 PUD and its associated vested rights, the Applications have been submitted and reviewed under the current version of the CDC and under the Comprehensive Plan. All of the specified variations from the CDC, as to all of the property to be included in the revised boundaries of Lot 109R are justified on the merits of the Applications as they have been presented.

4. **The Rezoning Satisfies the Approval Criteria**

As part of the Applications, a portion of what was formerly Lot 109R is now being included in OS-3BR-2, and must be rezoned to Active Open Space. Most of this property is being rezoned Active Open Space Village Center, and the ROW Tract is being zoned Active Open Space Right of Way. In connection with the PUD Amendment and Rezoning, the land comprising the revised Lot 109R is being rezoned to PUD. The Rezoning satisfies the applicable criteria in CDC Section 17.4.9.C.3 as follows:

- **Section 17.4.9.C.3.a: The proposed rezoning is in general conformance with the goals, policies and provisions of the Comprehensive Plan.** As discussed, the Comprehensive Plan targets development of the Mountain Village Center Subarea as a vibrant and social center with 1,500 to 2,000 hotbeds and pedestrian connections. The Rezoning will allow development of the Project in alignment with the Comprehensive Plan's vision.

- **Section 17.4.9.C.3.b: The proposed rezoning is consistent with the Zoning and Land Use Regulations.** The Rezoning is consistent with all applicable Zoning and Land Use Regulations set

forth in CDC Chapter 17.3, since the allowed uses are consistent with the relevant Active Open Space zoning. The uses allowed pursuant to the PUD will be allowed for the land in Lot 109R.

- **Section 17.4.9.C.3.c: The proposed rezoning meets the Comprehensive Plan project standards.** As discussed, the Rezoning and associated Applications further and generally conform with the Comprehensive Plan.

- **Section 17.4.9.C.3.d: The proposed rezoning is consistent with public health, safety and welfare, as well as efficiency and economy in the use of land and its resources.** The Rezoning will allow for development of the Project, which will positively contribute to the Town's health, safety, and welfare by providing things such as more highly-needed employee housing units than required. As discussed above, it will also provide safe pedestrian connections and traffic circulation while enhancing economic vitality. As a creative PUD development, the Project allowed by the Rezoning will efficiently and strategically use land and resources to maximize the public benefits given to the Town through the development of a relatively small area.

- **Section 17.4.9.C.3.e: The proposed rezoning is justified because there is an error in the current zoning, there have been changes in conditions in the vicinity or there are specific policies in the Comprehensive Plan that contemplate the rezoning.** As discussed, the Comprehensive Plan contemplates the development of the Mountain Village Center Subarea with mixed use development including hotbeds and employee housing, as will be provided by the Project allowed by the Rezoning. Since the land at issue was last zoned, conditions in the vicinity, and the Town's needs, have also changed, as reflected in the Comprehensive Plan.

- **Section 17.4.9.C.3.f: Adequate public facilities and services are available to serve the intended land uses.** As demonstrated by the Applications, adequate public facilities and services exist or will be developed by Tiara to serve the Project. These include the substantial Public Improvements that Tiara will construct that will enhance the Town's Village Center open space, for example, by the installation of plazas with snowmelt.

- **Section 17.4.9.C.3.g: The proposed rezoning shall not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion.** As discussed above, the Rezoning, together with the other Applications, will allow development of the Project, and the Project will minimize traffic, parking, trash, and service delivery impacts while providing pedestrian circulation, in line with Comprehensive Plan goals and policies.

- **Section 17.4.9.C.3.h: The proposed rezoning meets all applicable Town regulations and standards.** As discussed, and confirmed by staff, the Rezoning meets all applicable Town regulations and standards.

5. **The Applications Satisfy the Approval Criteria for Granting Vested Rights**

Finally, because the Applications involve the granting of vested property rights, the approval criteria in CDC Section 17.4.17.D may apply.[13] The PUD Amendment satisfies the criteria for vested rights approval as follows:

- **Section 17.4.17.D.1.a: A vested property right is warranted in light of relevant circumstances, such as the size and phasing of the development, economic cycles and market conditions.** The Project is a major project that will take years to complete. It will also require a significant investment. In light of the time needed to complete the Project, and considering current economic and market conditions, including circumstances that may cause building materials to be delivered slowly, vested property rights are warranted to allow Tiara to construct the Project in a responsible, quality manner.

- **Section 17.4.17.D.1.b: The site-specific development plan is consistent with public health, safety and welfare.** The PUD Amendment will allow for development of the Project, which will positively contribute to the Town's health, safety, and welfare by providing, for example, more highly-needed employee housing units than required. As discussed elsewhere in this letter, it will also provide safe pedestrian connections and traffic circulation while enhancing economic vitality. It will also advance the Town's critical goals concerning its overall economic health, as set forth in the Comprehensive Plan.

- **Section 17.4.17.D.1.c: The site-specific development plan provides for the construction and financing of improvements and facilities needed to support the proposed development.** As provided in Tiara's application materials, the PUD Amendment provides for the construction and financing of improvements and facilities needed to support the Project. Tiara will provide adequate security, in the form the Town has requested, for the completion of all public improvements as set forth in the Development Agreement. Care has been taken in the negotiation of the Development Agreement to ensure that construction can proceed efficiently, and that Tiara can secure financing (in the form of a construction loan) to complete the construction of the Project.

- **Section 17.4.17.D.1.d: The site-specific development plan meets the criteria for decision for concurrent, required development application(s).** As discussed throughout this letter, the PUD Amendment—and all of the Applications—meet the relevant CDC criteria for approval.

- **Section 17.4.17.D.1.e: The proposed vested property right meets all applicable Town regulations and standards.** The proposed vested property rights meet all applicable Town regulations and standards, including but not limited to the requirement in CDC Section 17.4.12.B.4 to provide a PUD development agreement setting forth permitted uses, density, maximum building height and massing, zoning designations, and variations from CDC standards (some of which are addressed by the incorporation of the plan documents).

- **Section 17.4.17.D.2: It shall be the burden of the applicant to demonstrate that submittal material and the proposed development substantially comply with the vested property right**

[13] The PUD Regulations contemplate that an SPUD approval results in a site-specific development plan and a vested property right, so it may not be necessary to separately satisfy the approval criteria for granting of vested property rights under CDC Section 17.4.17.D. Regardless, they are satisfied here, based on evidence in the record.

review criteria. As demonstrated above and in materials submitted with the PUD Amendment application, Tiara has demonstrated that the PUD Amendment and proposed vested property rights substantially comply with the vested property right review criteria.

The duration of the vested rights here is the three years, commencing from Final Approval, as defined in the Development Agreement. The CDC does not specifically address commencement of a vested rights period, but Town Council is authorized to approve a period longer than three years under CDC Section 17.4.17.E.5. Using the Final Approval concept ensures that, in the event of a legal challenge, the vested rights period would not expire during extended litigation. This will help ensure Tiara can build the Project.

Response to Legal Issues in Winston Kelly Letter

On March 14, 2023, Foster Graham Milstein & Calisher, LLP, on behalf of Mr. Kelly, submitted a letter to the Town Council titled "Opposition to Major PUD Amendment to the Lot 109R PUD and Rezoning" (the "**Letter**"). The Letter appears to allege that the Applications are procedurally deficient because (1) the legal description of a PUD cannot be changed, even though nothing in the CDC applies such a limitation to a PUD amendment, and all the criteria for either the creation *or* amendment of a PUD are satisfied here; and (2) though Town staff concluded that the Subdivision is a Major Subdivision, the Town should have evaluated it as a Minor Subdivision. Mr. Kelly's letter fundamentally misunderstands the function of the PUD Regulations, and what the Applications seek to accomplish. He also employs a strained reading of certain definitions in the CDC to suggest that the procedures the Town directed Tiara to follow "would allow for a circumvention the procedural requirements of the CDC," even though he is arguing for the application of much less stringent review procedures than were followed here.

Before addressing the Letter's flawed reasoning, an overarching point is important to emphasize. While Mr. Kelly challenges procedural aspects of how the Applications have been processed based on his interpretation of the CDC, Tiara submitted the Applications at the direction of the Town staff. Colorado law is clear that the Town's reasonable determinations of the appropriate and applicable procedures and related matters under the CDC are entitled to deference. *See Giuliani v. Jefferson Cty. Bd. of Cty. Comm'rs*, 2012 COA 190, ¶ 40. Under CDC Section 17.1.6, the Director of Community Development holds the authority to interpret the CDC, and Town staff holds the authority to administer and enforce the CDC. At the beginning of (and throughout) this process, when Tiara explained what it wanted to accomplish, Town staff gave direction on how Tiara would have to proceed. As explained below, staff's direction was not only reasonable, it was what the CDC required. Respectfully, Mr. Kelly's interpretations are incorrect, and they are not entitled to deference.

1. **There are no Deficiencies in the PUD Amendment or Inclusion of a Portion of OS-3BR-2 in the PUD**

The first issue raised in the letter is that the PUD Amendment cannot amend the boundaries of the 2010 PUD to reflect the Land Exchange because of the existence of vested rights conferred by the 2010 PUD. Among disjointed points, the Letter states:

- "Areas outside of the originally defined 2010 PUD cannot be rezoned by the PUD amendment process."
- "[A]n amendment to the vested rights that includes new property is not legally permissible."

- "Land outside of the 2010 PUD is subject to a separate rezoning process laid out in Section 17.4.9 of the CDC."

- "Incorporating this land into the PUD does not confer upon it the 2010 vested property rights. Those vested rights are reserved only to the legal description of property outlined in the 2010 PUD."

- "The applicant is attempting to acquire land zoned as open space, and use the vested rights established under the existing 2010 PUD as a baseline for a rezoning application."

- "Rezoning town open space in 2023 should be evaluated against the criteria set forth in the current CDC."

Mr. Kelly seems confused about the purpose of the Applications and the procedures that Tiara, at the Town's direction, has followed. To clarify, if each of the Applications is approved: (1) the Subdivision, discussed above, will creates a new Lot 109R2 a new Tract OS-3BR-2R and a new ROW Tract; (2) the PUD Amendment will amend the legal description of the PUD to cover the new boundaries of Lot 109R2, rezoning all of that land to the PUD, with the resulting PUD having the same characteristics as to all of the other land in newly defined Lot 109R2; and (3) as a result of the Rezoning, the land conveyed by Tiara to the Town will be zoned open space, and pursuant to the PUD Amendment and Rezoning, the land in Lot 109R2 will be designated PUD. All of this is being evaluated under the current version of the CDC.

Contrary to the Mr. Kelly's apparent interpretation of the CDC, there is nothing procedurally improper about simultaneously amending the 2010 PUD to include additional land via the PUD Amendment, and rezoning the land that was formerly a part of OS-3BR-2 to PUD. Nothing in the CDC limits or prohibits the use of the Major PUD Amendment process to amend any particular aspect of a PUD, including the legal description of the land subject to a PUD. *See* CDC Section 17.4.12.N.

Mr. Kelly references CDC Section 17.4.12.I.5,[14] which states that "[t]he PUD development review process is a Rezoning Process, and a concurring rezoning development application shall not be required." That is correct, and it is under that provision that all of the land in the resulting Lot 109R2 is being rezoned to PUD. For this reason, Mr. Kelly is *incorrect* in stating that the "only procedurally proper way to rezone town open space is to follow the standard provisions laid out in Section 17.4.9 . . ." This contradicts CDC Section 17.4.12.I.5. If Town open space is being included in a PUD, the PUD development review process, which includes the amendment provisions in CDC Section 17.4.12.N, is the rezoning process that applies to designate land to PUD zoning. Additionally, the Rezoning addresses zoning all of the resulting land included in Lot 109R to PUD.

He also states that, "[r]ezoning town open space in 2023 should be evaluated against the criteria set forth in the current CDC," and makes the similar point that rezoning Town open space must be accomplished by creating "an entirely new PUD subject to the current provision of the CDC and comprehensive plan." While Tiara is processing this as a PUD amendment, and not a new PUD, that has no effect on the outcome. Specifically, as noted above, the approval criteria are the same for both the creation of a new PUD and for a Major PUD Amendment, and the Town *has* evaluated this amendment against the criteria set forth in the

[14] Mr. Kelly incorrected referenced this provision as Section 17.4.12 (5).

current CDC, as well as the 2011 version of the Comprehensive Plan.[15] As noted above, the evidence in the record supports a finding that those approval criteria are satisfied. Thus, the validity of the PUD Amendment is not predicated on the validity of the 2010 PUD and its associated vested rights. Indeed, the Applications were pending when the Third Amendment to the 2010 PUD was approved, and the approvals here will supersede the Third Amendment and associated extension of vested rights. The Applications will result in new vested rights for the Project, which the Town Council has reviewed comprehensively.

Though he does not say it in the letter, Mr. Kelly has made clear his primary objection to the Project is the height and massing, which he believes will block views from his properties across Mountain Village Boulevard. He seems to believe that, if the PUD were evaluated as a new application, the Town would not be able to approve building heights in excess of those set forth in CDC Section 17.3.12.A. This is simply incorrect. The essential purpose of the PUD provisions in the CDC is to allow for "variations from the strict application of certain standards of the CDC in order to allow for flexibility, creativity and innovation in land use planning and project design." CDC Section 17.4.12.A. This includes variations from CDC restrictions on things like height.

Indeed, the Town's recent approval of Ordinance No. 2022-09[16], relating to the PUD for the proposed Four Seasons project (the "**Four Seasons PUD**") shows this to be the case. There, the Town subdivided and added Town open space to a development tract, zoned that and other land to PUD, and as part of a PUD approval, authorized a variation from the CDC allowing heights in excess of the presumptive standards under the CDC. While the Applications here involve a PUD amendment, that does not dictate any different results given that the approval standards are the same for creation of a new PUD.

As described above, those standards are satisfied here. In particular, we note that, while the Comprehensive Plan contemplates building heights as high as 95.5 feet for hotbed projects in the Village Center, Comprehensive Plan, p. 52, the Comprehensive Plan does not expressly address the maximum permitted height on the property subject to the PUD Amendment, because it is not one of the specifically addressed parcels in the Mountain Village Center Subarea Plan. What's more, even if it were addressed, "[t]he Development Table is not intended to set in stone the maximum building height or target density, and an applicant or developer may propose either a different density and/or a different height provided such density and height 'fits' on the site per the applicable criteria for decision-making for each required development review application." Comprehensive Plan, p. 51. Though there is no height specified in the Comprehensive Plan for Lot 109R, the Comprehensive Plan makes clear that allowing heights taller than the presumptive limits set forth in the CDC is appropriate to incentivize hotbed development. *See* Comprehensive Plan, p. 43. This is a case where the proposed height is necessary to justify the level of investment needed to deliver the world class Six Sense brand, the hotbed density that advances the Town's goals, and high caliber and level of service consistent with maintaining the Town's status as a premier resort destination.

Similarly, neither the CDC nor Colorado's Vested Property Rights Act, C.R.S. § 24-68-101 *et. seq.*, prohibit the amendment of a PUD, as a site specific development plan conferring vested rights, to include new property or modify variations from the CDC. Rather, the PUD Amendment, as amending a statutorily-defined site specific development plan, would merely be subject to the same statutory and CDC requirements applicable to

[15] As noted above, this version of the Comprehensive Plan applies because the Applications were submitted before November 1, 2022.

[16] A copy of Ordinance No. 2022-09 is attached as **Exhibit E**, but is also available at https://townofmountainvillage.com/site/assets/files/40060/ordinance_2022-09_conditionally_approving_a_site-specific_planned_unit_development_plan_for_lots_161c-r-_67-_69r-2_71r-_tr.pdf and incorporated by reference.

the approval of new site specific development plans. These requirements include the provision of public notice of the vested property rights, and satisfaction of approval criteria set forth in CDC Section 17.4.17.D. These are satisfied, as described above. Viewed in the context of the Vested Property Rights Act and the CDC as a whole, an approval of vested rights is not intended to be a straightjacket that precludes minor variations to a legal description (in this case, less than 500 square feet in either direction).

Referencing inclusion of what was formerly a part of OS-3BR-2 into part of Lot 109R, Mr. Kelly states that "[i]ncorporating this land into the PUD does not confer upon it the 2010 vested property rights." This is irrelevant, because the Town's approval with respect to the PUD *does not have to* extend the vested property rights to the formerly Town-owned property. In reviewing the Applications, the Town is deciding whether to approve a rezoning of that land to PUD, with the characteristics of that PUD defined through the PUD Amendment. This is being done simultaneously with the Town's decision of whether to approve the PUD Amendment, including *all* of the variations to the CDC referenced therein. Town Council can determine that the variations from the CDC are justified for the Project, and approve them as to all of the land. In that context, a new vested property right will apply to all of the land subject to the approval. The old vested property right will be superseded and irrelevant.

In short, the 2010 PUD is not dictating the outcome of the Town's evaluation of whether it should approve the PUD Amendment. The Town has made clear that the former version of the CDC (the Land Use Ordinance) does not apply here, and has made clear that the PUD Amendment has to comply with the Comprehensive Plan, which did not exist when the 2010 PUD was approved. Tiara is providing significant new and expanded community benefits with its current Applications, and they justify the Town's approval of the PUD Amendment, including all variations from presumptive CDC standards, as to all of the property included in the revised Lot 109R. Town Council should approve the Applications because they will allow Tiara to deliver a Project that will advance the Town's critical goals as set forth in the Comprehensive Plan.

2. **The Subdivision was Properly Processed as a Major Subdivision, as Directed by the Town**

The staff determined that the Subdivision is a major subdivision under the definitions in CDC Section 17.8.1, and required it be processed as a class 4 application. CDC Section 17.4.13.D.1. In contrast, minor subdivisions are considered a class 5 applications. CDC Section 17.4-13.D.2. The class 4 major subdivision process is far more extensive than the class 5 minor subdivision review process. Most importantly, all class 4 applications require Design Review Board recommendation and a public hearing before Town Council, whereas no class 5 applications require Design Review Board action. CDC Section 17.4.2.A. Critically, the only class 5 application that requires a public hearing before the Town Council is an Outline MPUD (master PUD) application; no public hearing would be required for any kind of minor subdivision, including a lot line adjustment. CDC Section 17.4.3.J.

Despite the fact that Tiara, at Town staff's directions, followed the more stringent class 4 application process applicable to major subdivisions, Mr. Kelly makes the claim that this has "allow[ed] for a circumvention of the procedural requirements of the CDC." This is absurd, yet Mr. Kelly asserts that, because class 5 applications presumptively involve a referral to San Miguel County and the Colorado Geologic Survey, the Subdivision must be denied.

Mr. Kelly is wrong in his interpretation of the CDC and conclusion that the Subdivision is a lot line adjustment, and thus a minor subdivision. As he points out, a subdivision is defined as

> [a]ny division or re-division of a lot, tract or parcel of property into two (2) or more parts, or the alteration of an existing lot's easements or other platted subdivision elements by means of platting in accordance with the procedures and standards set forth in the Subdivision Regulations of this CDC.

CDC Section 17.8.1. Similarly, he correctly cites the definition of a lot line adjustment as "[t]he minor adjustment of common property line(s) between adjacent lots, tracts or parcels for the purpose of accommodating the transfer of property, rectifying a disputed lot-line location and similar purposes. The resulting adjustment shall not create additional lots, parcels or tracts." *Id*.

Mr. Kelly's theory falls apart completely where he asserts that the Subdivision does not create any additional lots, parcels or tracts, so it must be a lot line adjustment. The Subdivision *does* create additional parcels. The proposed Replat and Rezone, which is in the record states that:

> THE OWNERS DO THEREBY, CREATE the following new parcels LOT 109R2, TRACT OS-3BR-2R[17] AND ROW TRACT, TOWN OF MOUNTAIN VILLAGE ("Created Parcels").

These parcels are newly created. In particular, it is beyond debate that the ROW Tract is newly created and is not a part of either Lot 109R or OS-3BR-2.

The overall structure of the CDC's definitions also does not support Mr. Kelly's position. He states that the essential element of a subdivision is that it must create additional parcels. However, a lot line adjustment is classified *as a type of subdivision*, and the definition of a lot line adjustment says it "shall not create additional lots, parcels or tracts." A subdivision cannot both, as an essential feature, require the creation of additional parcels, but also have a subtype that does not create additional parcels, unless there is overlap and ambiguity in the definitions. This leaves significant discretion for the Town's Director of Community Development on how to interpret the CDC under Section 17.1.6. Ultimately, the important definition in the CDC is the definition of a "major subdivision," which is simply defined by reference to any "subdivision that is not classified as a minor subdivision." CDC Section 17.8.1. Here, the Director of Community Development determined that the Subdivision is not a minor subdivision, and that interpretation is reasonable and within her authority. References to lot adjustments or adjusted lot lines, made at various points throughout the lengthy review process do not change the outcome. The important issue is how the staff determined the Subdivision should be processed, and they gave clear direction that this was to be reviewed as a major subdivision.

Finally, even if the minor subdivision procedures applied, the issue relating to referral to San Miguel County and the Colorado Geologic Survey is not fatal. The Planning Division has authority to determine that a referral is not necessary based on the nature of the development application. CDC Section 17.4.3.D.4. There is no limitation on this authority, even though the referral to San Miguel County is designated as "mandatory" for "subdivisions and lot line vacations that affect active or passive open space." Setting aside the fact that Mr. Kelly asserts that this is not a subdivision at all (and he does not assert it is a lot line vacation), this language is not relevant. It derives from the Town's Intergovernmental Agreement with Respect to Platted Open Space Requirements within the Town of Mountain Village, dated January 17, 2013 (the "**IGA**").[18] *See, e.g.,*

[17] As noted above, the final designation of this parcel may actually be OS-3BR-2R-1R.

[18] A copy is attached as **Exhibit F**, but it is also available at https://townofmountainvillage.com/site/assets/files/25924/intergovernmental-agreement-for-platted-open-space-requirements.pdf, and incorporated by this reference.

Comprehensive Plan, pp. 32-33, 42; Comprehensive Plan Amendment, p. 31. The IGA concerns referrals for what the 2012 Open Space Map[19] designates as Active and Passive Open Space. The land at issue here is either part of Lot 109R, which is not open space at all under the 2012 Open Space Map, or is shown on the 2012 Open Space Map as Village Core Open Space. No referral requirement applies to rezoning or replatting of Village Core Open Space. *See* CDC Section 17.3.10.

Tiara has done nothing to attempt to circumvent the extensive review required under the major subdivision provisions of the CDC. Town staff required Tiara to follow the process it did here, with months of review and multiple public hearings. Mr. Kelly is simply wrong in suggesting that Town staff made a mistake, and he is wrong that his interpretation—requiring a *less onerous* review process—mandates that Town Council reject the Subdivision.

Matters for Inclusion in the Record

In addition to the other materials in the record, including all prior submissions made in connection with the Applications, and hearing videos/transcripts, including those in front of the DRB, in order to ensure that the record is complete, Tiara is including as **Exhibit H** copies of all sections of the CDC, and as **Exhibit I** copies of the Town's Home Rule Charter, for the record. All of the Exhibits referenced herein have been provided to the Town with this letter for the record, and they are available at:

https://www.dropbox.com/scl/fo/du1eeq1hbbtatwnpcpzhr/h?dl=0&rlkey=t5y4m048kwb9zc1ifvepnaahl

Conclusion

In conclusion, the Applications, which have been submitted by the Tiara at the Town's direction, are procedurally appropriate and satisfy all applicable approval criteria under the CDC. This letter is reflective of the massive amount of evidence in the record that will support Town Council's action to approve the Applications. Tiara is excited to bring the Project to the Town, and is confident it will advance the critical and broadly shared Town interests reflected in the Comprehensive Plan.

Very truly yours,

Bill E. Kyriagis
For the Firm

BEK/
cc: David H. McConaughy (By Email)
Christine Gazda (By Email)
Michelle Haynes (By Email)
Amy Ward (By Email)
Cynthia Stovall (By Email)

[19] A copy is attached as **Exhibit G**, but it is also available at https://townofmountainvillage.com/site/assets/files/25921/2012-open-space-map.pdf, and incorporated by this reference.

RE: Matters for Inclusion in the Record

The exhibits listed in this public comment are available upon request from the Town Clerk. Please email mvclerk@mtnvillage.org to make an appointment for review.

Exhibit A: 2010 PUD Documents

Exhibit B: Proof of Notice

Exhibit C: 2011 Mountain Village Comprehensive Plan

Exhibit D: 2022 Amended Mountain Village Comprehensive Plan

Exhibit E: Ordinance 2022-09 Conditionally Approving a Site-Specific Planned Unit Development Plan 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 161C-RR)

Exhibit F: Intergovernmental Agreement with Respect to Platted Open Space Requirements Within the Town of Mountain Village

Exhibit G: 2012 Open Space Map

Exhibit H: Town of Mountain Village Municipal Code Title 17

Exhibit I: Town of Mountain Village Home Rule Charter

From:	Randy Podolsky
To:	council
Cc:	Kathrine Warren
Subject:	PUBLIC COMMENT: Town Council to consider application for Lot 109R hotel project PUD amendment
Date:	Tuesday, June 13, 2023 7:45:30 AM

Mayor Benitez and Town Council,

I am unable to attend this Thursday's town council meeting to provide public comment on the subject Lot 109R project due to US Coast Guard Auxiliary duties I perform. Therefore, I am submitting these comments in advance to assure they are included in the public record.

I am specifically writing to comment on the application for Lot 109R concerning the project to include a hotel operated by Six Senses. As a Realtor® and five-decade commercial real estate developer, I feel that I bring significant experience in planning, entitling, and executing development projects in myriad municipalities to this conversation. As such, I may have a unique perspective as to the process compared to other non-developers. I am also a property owner in Mountain Village, and speak from that local perspective as well.

That said, I continue to believe that the project Should now be approved. It is overall aesthetically pleasing, serves many stated needs, and does not adversely impact the community based upon the Lot's existing zoning and other approvals. Moreover, it appears that the developer heard Councils concerns as stated at the projects last meeting and, as stated in this meeting notice worked diligently with staff to meet the Town's requirements for approval. Further, the project appears to desired by TMVOA, Telski, the public with little exception, and, presumably the Town as well.

The longevity of our community relies on sound development. This hotel, in this location, seems poised to contribute to positive growth, within the bounds of what is planned for this site - and serves the community with hotbeds, hotel rooms and, very importantly, employee housing units.

In closing, I reiterate what I last said - Projects like the one brought before you for Lot 109A do not come often, and once lost at this stage is likely to never come back.

As we all know, financial & real estate markets are not as strong as they were even a couple years ago. In my opinion, if the developer has now overwhelmingly met staff and council's design expectations, the project should now be approved.

I thank you for your time in considering my comments and for your hard work in promoting the best interests of our community.

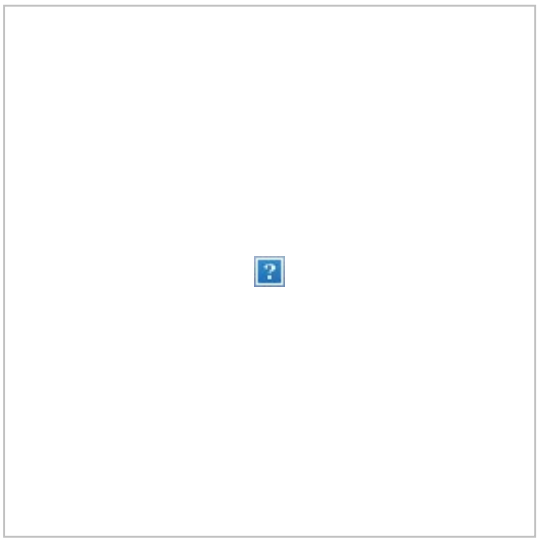
Very Respectfully,
Randy

Randy D. Podolsky
As a TMV property owner since 1993

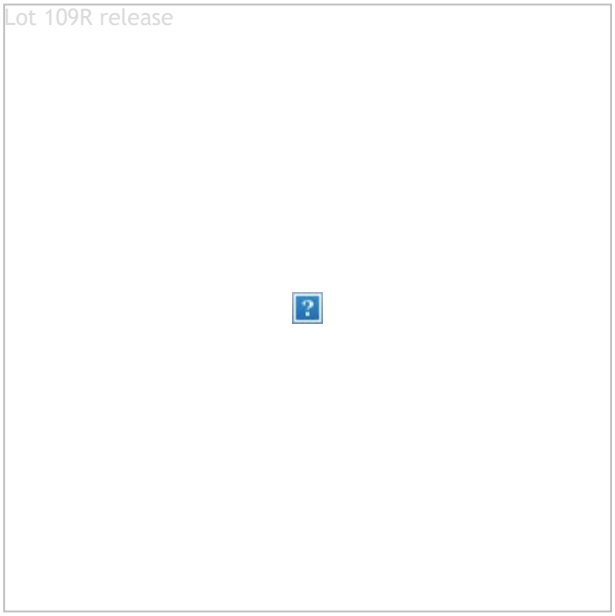
On Jun 12, 2023, at 5:53 PM, Town of Mountain Village <kwarren@mtnvillage.org>

wrote:

June 15 meeting No images? Click here



RESIDENTS | BUSINESSES | GOVERNING | EVENTS



At its regularly scheduled meeting on **Thursday, June 15,** the Mountain Village Town Council is scheduled to

consider the pending application for a Major Planned Unit Development (PUD) Amendment to the existing Lot 109R PUD.

At its January 19 meeting, Town Council voted 6-1 to direct staff to draft a resolution of denial for Council's subsequent consideration.

At its March 17 meeting, Council considered the motion and associated resolution to deny the application. After hearing from the applicant, Town Council directed staff to work with the applicant so that the applicant could better address outstanding questions raised in the staff report and come back to Council on June 15.

"Pursuant to Council's direction, staff has worked diligently with the applicant over the course of the last several months," said Town Manager Paul Wisor. "Council will again consider the application at a public hearing on June 15."

The consideration is scheduled to begin at 3:35 p.m.

The project applicant is Tiara Telluride, LLC which owns the Mountain Village Hotel site, located where North Village Center Parking lot currently sits. The 109R PUD (also known as Mountain Village Hotel PUD) was first approved in 2010 and has received three PUD amendments that extended its vesting period and is now

set to expire in September 2023.

The luxury hotel brand Six Senses has provided a letter of intent to operate the proposed hotel. The project proposes 50 hotbeds, 20 condominiums, 31 lodge units, 18 employee dorms, 2 employee apartments, restaurants, conference space, hotel amenity spaces and improvements to Village Center plazas.

To view the application material, please visit the Town's current planning webpage at **townofmountainvillage.com/current-planning.**

Written public comments on the proposal may be addressed to Town Council and sent to **council@mtnvillage.org.**

The public is invited to attend all hearings meetings virtually or in person. Meeting info and Zoom log-in information is posted on the Town's **website.**

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From: JUSTIN KILBANE
To: council
Subject: Lot 109 opposition letter
Date: Wednesday, June 14, 2023 6:48:41 PM

Dear Mountain Village Town Council

I am writing to voice my opposition to the proposed hotel development on Lot 109R.

As a homeowner and local architect based in the Mountain Village, I have, and always will support well thought out development projects that support our resident's needs, comply with the Comprehensive Plan, stimulate the local economy, and help to achieve the critical mass we've all sought for so many years. Unfortunately, I do not believe the proposed development plan for Lot 109R will result in a project that supports these objectives.

Lot 109R is a challenging site for a hotel that simply does not support a Six Senses caliber of product. The site is not ski-in / ski-out, it's negatively impacted by the adjacent condominium properties, and it does not allow for efficient means of ingress and egress for a project of this scale. Further, the proposed development plan does not adequately address the parking needs in our community. Previous Town Councils have approved under-parked developments that continue to negatively impact the destination. I firmly believe that approval of this plan will not only add to our challenges with parking, but will also create access issues for emergency vehicles and neighbors further up on Mountain Village Blvd., including the already approved Four Seasons Hotel.

And lastly, with regard to the Four Season Project on lot 161CR, I'd like to take this opportunity to thank Town Council for the time, energy and extraordinary dedication spent working with the developer to approve a project the Mountain Village will be proud of for years to come.

Sincerely,

Justin Kilbane

signatureImage

From: Anna Trentadue
To: council
Subject: Letter to Mountain Village Town Council for June 15, 2023 hearings
Date: Wednesday, June 14, 2023 3:16:56 PM

Dear Council Members -

My name is Anna Trentadue; since 2007 I have represented a small nonprofit organization in Driggs, Idaho called "Valley Advocates For Responsible Development" (hereinafter, VARD). As a grassroots community planning organization, VARD has advocated for open spaces, wild places, and vibrant towns in Teton Valley, Wy-daho and beyond. We were formed in 2001.

On information and belief, Tiara Telluride LLC and Mr. Matthew Shear have proposed the Mountain Village Six Senses hotel that is up for consideration before your Board. The Six Senses project was referenced in discussions and also the powerpoint presentation for the High Noon Ranch project which was recently proposed by Mr. Shear in Teton County, Idaho. **I would like to clarify the history of VARD's interactions with the High Noon Ranch project to the extent that it may be mentioned in your Board deliberations or town staff discussions.**

Our first interaction was a written comment in opposition to High Noon Ranch that we submitted to the Teton County Planning Department on October 4, 2022.

On October 6, 2022 we sent out our first email notifying the general public of an upcoming October 11, 2022 public hearing before the Teton County, Idaho Planning & Zoning Commission (P&Z) for the High Noon Ranch concept plan. The hearing was ultimately not held because the application was pulled from the agenda.

In January of 2023, I was contacted by legal counsel for Shear's team because they were interested in having a facebook-to-face meeting to discuss their project.

On January 30, 2023 I hosted a meeting with Shear and team at my office in Driggs. While the Six Senses project was presented to me at that meeting, the discussion primarily focused on the challenging remote location of the High Noon property, the need for road improvements, concerns over wildlife impacts, and the possibility of the High Noon project adhering to the new conservation-based zoning densities that had been

approved just days after the concept proposal was submitted to the Teton County planning department. I emphasized to Shear's team that a dude ranch-resort project of this large size and intensity should host a public charette to gain robust input. VARD places a high value on incorporating public feedback into developments, and as such, we were willing to help organize the charette. Ultimately, no firm commitment was made with Shear's team to host a public meeting or open house with us.

At the end of the meeting, I specifically asked Shear and team not to state that VARD was endorsing or in any way partnering with their project. I advised Shear that this type of initial meeting was *pro-forma*, and that VARD staff regularly meet with developers as a matter of course to provide feedback on their projects. I reiterated this point to Shear's local legal counsel in a follow up phone call soon after the meeting.

On March 6, 2023 I sent a follow up email to Shear and his team, summarizing the feedback I had collected from other nonprofits regarding High Noon Ranch. I reiterated my earlier request for a public charrette and our offer to help organize it. Again, no concrete commitment was reached with Shear's team to host a charette with us.

On April 5, 2023, I had a zoom call with Mr. Shear, his team, and our Executive Director Niki Richards. The call was to review the summary of comments I had submitted on March 6th. At this meeting there was no firm commitment made to host a public charrette either.

On April 11, 2023 this article, *Jackson Hole dinner tees up dude ranch*, (Jeannette Boner) ran on the cover of the Jackson Hole News and Guide. It includes quotes from Mr. Shear, two attendees of the dinner event, and our Executive Director Niki Richards.

Also on April 11, 2023, I submitted this comment email to the Teton County Planning & Zoning Commission, stating that the High Noon Ranch proposal merited a recommendation for denial. At the hearing before the P&Z that same evening, there were several additional public comments taken, including verbal comments in opposition to the project from our Executive Director Niki Richards. The written public comment record included several letters from women who said they had attended the Teton Village event that was covered in the Jackson Hole New & Guide story. (See comments from Nikki Kaufmann, Sophia Zerebinski (submitted two letters), and Anna Gunderson) Comments were also received from Teton Regional Land Trust and Friends of the Teton River.

At the close of the hearing, the P&Z commissioners ultimately voted 4:3 to recommend denial of the High Noon Concept Plan. The official minutes also reflect Mr. Shear stating:

> *"Mr. Shear commented during the discussion of a motion that if the application was tabled for more information they would not be coming back for another Concept hearing. If their ideas for the property were not approved at*
> *the Concept level they would not spend more money on studies and water rights."*

On April 19, 2023, this article *High Noon Development Gets Reality Check from County P&Z*, (Connor Shea) ran on the cover of the Teton Valley News.

On May 26, 2023 a "Letter for Reconsideration" was submitted to the Teton County Planning Department. The letter states:

> *"The applicant, High Noon Ranch, and the property owner, Twin Tree II, have terminated the purchase and sales contract. The Affidavit of Legal Interest and Letter of Authorization provided to High Noon Ranch shall be revoked. The request for reconsideration is solely made by Twin Trees II as the property owner who was/is conclusively authorized to act on the application."*

This request for reconsideration is not yet scheduled on the Teton County, Idaho Board Of County Commissioners' calendar.

I hope this clarifies the current status of High Noon Ranch in Teton County, Idaho and VARD's history with this project. Please feel free to contact me with any questions or clarifications.

Anna Trentadue
Program Director / Staff Attorney
(208) 354-1707 Office in Driggs
anna@tetonvalleyadvocates.org

From:	Anna Trentadue
To:	council
Cc:	Niki Richards
Subject:	Addendum to Trentadue comment letter re: Six Senses hotel
Date:	Wednesday, June 14, 2023 6:58:13 PM

Dear Council -
I would like to add the following article (published today) to my earlier comment letter, as it pertains to the relationship between the proposed Six Senses Hotel in Mountain Village, Colorado and the proposed High Noon Ranch in Teton Valley, Idaho.

Time Running Out on Six Senses Hotel Project Outside Telluride, Justin Criado, Westwood Magazine, June 14,2023

https://www.westword.com/news/mountain-village-hotel-project-telluride-developer-17079516

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Anna Trentadue
Program Director / Staff Attorney
(208) 354-1707 Office in Driggs
anna@tetonvalleyadvocates.org

From:	Will Watters
To:	mvclerk; council
Subject:	Six Senses Project
Date:	Wednesday, June 14, 2023 1:52:34 PM

Dear Esteemed Town Council Members:

The committed team behind Tiara Telluride has devoted well over a year to curate optimal utility for the property situated at Lot 109-R, also known as the Mountain Village Hotel. With an adherence to approved PUD height constraints, they have created an elegant, location-sensitive, five-star venture that brings significant benefits to the community in several ways that go beyond the approved PUD:

· A reduction in density to alleviate village core traffic

· The creation of around 14,000 sq ft of workforce housing, despite the added costs. This unique aspect of the project is designed to accommodate up to 56 employees, addressing a significant need in the area.

· The proposal of Mountain Village's first LEED-certified commercial building. (Hopefully many future buildings will consider this)

· A fruitful collaboration with Six Senses, one of the globe's premium hotel chains that aligns with the ethos of Mountain Village. This partnership aims to foster an environmentally conscious and community-centric operation.

· The renovation of the area surrounding the trash facility, inclusive of the facility itself, substantially mitigating current and potential future issues in the area.

· The construction of expansive new sidewalks to ensure safe pedestrian mobility around the core

· The replacement of all on-site public parking with modern, garage parking spaces.

In addition to these points, I am thrilled to share that as the co-owner of Western Rise, a local performance men's clothing brand, we are planning to work with the Six Senses team to open a store location within the hotel premises. Western Rise is highly regarded in the community and our presence in the hotel will enhance the guest experience, further enriching the local economy.

The project has numerous further advantages in store for the area. The variances being sought will only serve to enhance the overall project. The significant public benefits and improvements more than justify the request and exceed those offered by similar ventures in the area. I respectfully urge the Council to grant approval to this transformative project. Thank you for your consideration.

Sincerely,

--

Will Watters

Co-Founder & Creative Director

m. +1 706.766.2271 | will@westernrise.com

100 W Colorado Ave, Suite E, Telluride, CO 81435

www.westernrise.com

From: Karen Kirby
To: mvclerk
Subject: Six Senses
Date: Thursday, June 15, 2023 7:49:29 AM

Good morning,

My name is Karen Kirby. My husband, Jeff, and I, have been homeowners since 2005.

We are opposed to the proposed Six Senses hotel development. The design does not fit the space and I'm concerned about the traffic on MVB. Two hotels being built at the same time right next to each other is problematic for all the residents in the core. Safety for hikers & bikers and general enjoyment are a huge concern.

I have attached an article which talks about Six Senses from an outside reporter. I think we should be weary of this developer…not a good fit for Mountain Village. Residents are counting on you, the town council, to make good and difficult decisions to keep MV character and quality consistent. Please deny this application and wait for a more organized plan with another developer.

Regards,
Karen Kirby

Time Running Out on Six Senses Hotel Project Outside Telluride
westword.com

Sent from my iPhone
Karen Kirby
(973)668-0926
Kmk604@comcast.net

From: Alex Martin
To: council
Subject: PUD Amendment - Lot 109R
Date: Thursday, June 15, 2023 1:00:57 PM

Good afternoon,

I am writing to voice my opposition to the proposed PUD Amendment for Lot 109R. As Council is well aware, this site is a challenge for any type of hotel development for a myriad of reasons, and while we'd all be thrilled to see a Six Senses in the Mountain Village, Lot 109R doesn't come anywhere close to meeting the standard required for a flag of that caliber.

With regard to the proposed development plan itself, the plan doesn't adequately address housing or parking, doesn't allow for efficient means of ingress and egress for a project of this scale, and it will likely create access issues for emergency vehicles and neighbors further up on Mountain Village Blvd., including the already approved Four Seasons Hotel.

I will always support well thought out development projects that enhance our community, comply with the comprehensive plan, and help to achieve the critical mass we've all sought for so many years. And while it's easy to be enamored with the idea of a Six Senses Hotel coming to Mountain Village, I just don't buy into the Six Senses flying their flag at a world class ski resort without having A+ ski access.

My sincere thanks to each of you for all that you do for this community.

Alex Martin

TMVOA Settlement Summary

Objectives of the Friends & Town Litigation	Outcome
Fix Non-compliance with Colorado Common Interest Owners Assoc. (CCIOA) • Member is an owner of a Site • Density is not eligible to Vote • One Vote per site except commercial one vote per 250 sq ft • Tenants are not eligible to vote	√ Achieved all
Fix the Compliance with the IRS Determination letter • TSG cast a majority of the votes in the Commercial and Residential election in 2020	√ TSG can no longer vote in any other class
• TSG has a Veto right on any proposal brought before the Board	√ Veto power given to all classes and limited to certain specific criteria
• TMVOA needs to ensure a majority of the Board is independent	X Only requirement is to review the conflict of intertest policy
Allocate Board seats based on economic contribution • TSG has 3 permanent Board seats but only ~100 sites	X TSG would not give up their 3 seats. Not clear a Court would rule on fairness of Board Seat allocation
• Residential has 2 elected seats and ~1550 sites	TSG's sites will be allocated to the Class D ~ 100 sites on which they will pay dues

TMVOA Settlement Summary

Objectives of the Friends & Town Litigation		Outcome
TMVOA will form an independent audit and compliance committee comprised of financial experts to coordinate the annual audit, review director disclosure forms, review annual financial statement disclosures	X	Audit committee will be formed of existing board members and a local CPA will advise the committee. No requirement of financial expert. TSG will not participate in the selection of the Auditor
Town of Mountain Village who owns ~ 30 sites will be able to vote in the appropriate class	X	TMVOA will not allow the Town to vote their sites. The Town will no longer pay dues on their sites saving ~$100k per year.

TMVOA Settlement Summary

Other Provisions

No appointed or Elected Town official, employee will nominate, promote support or oppose any candidate for any TMVOA board seat or attempt to influence the outcome of any election	X
No appointed or elected Town official, Town management employee or department heads or immediate family member or domestic partner of any of them can serve on the TMVOA Board while in office or employed by the Towm. No such person may serve on the TMVOA Board within 1 year after the appointed or elected Town official leaves office or employment with the Town	X