



**First Amended and Restated Agreement Regarding Maintenance Obligations
Town / See Forever Village II**

This First Amended and Restated Agreement Regarding Maintenance Obligations (this "**Agreement**") is entered into effective June 1, 2022 ("**Effective Date**"), by and between See Forever Village II Owners Association, Inc., a Colorado nonprofit corporation (the "**Association**"); and the Town of Mountain Village, a municipal corporation and political subdivision of the State of Colorado (the "**Town**"). The Association and the Town may hereafter be referred to individually as a "**Party**" and collectively as the "**Parties**."

Recitals

A. The Association is the owners association for See Forever Village II, a Condominium, Town of Mountain Village, San Miguel County, State of Colorado (the "**Community**"), created by virtue of that certain Declaration recorded with the Office of the Clerk and Recorder on April 3, 2017, at Reception No. 447903, as amended, and the Condominium Map recorded December 5, 2005 in Plat book PL-1 at page 3578, as amended.

B. The Town and the Association's obligations with respect to maintenance of certain aspects of the Community and adjacent Town property are governed by various agreements, including the Development Agreement for See Forever Plaza Phase III, recorded August 1, 2002 at Reception No. 350631 (the "**Development Agreement**").

C. Pursuant to Section 10.1 of the Development Agreement, the Community developer was obligated to install certain public improvements described in Exhibit J to the Development Agreement.

D. Pursuant to Section 10.6 of the Development Agreement, Telluride Mountain Village Resort Company, a Colorado nonprofit corporation, doing business as Mountain Village Metropolitan Services, Inc. ("**Metro Services**") was to assume maintenance responsibility for certain of the public improvements upon completion.

E. Thereafter, the Association, the Mountain Village Metropolitan District, a Colorado quasi-governmental entity ("**MVMD**") and the Community developer entered into an Agreement Regarding Maintenance Obligations dated November 17, 2006 (the "**11/17/06 Agreement**"). As set forth in the 11/17/06 Agreement, MVMD recognized that the Community developer had completed the required public improvements, and MVMD therefore agreed to assume maintenance responsibility for such public improvements. The 11/17/06 Agreement clarified that MVMD, not Metro Services, was to assume maintenance responsibility for such public improvements. The 11/17/06 Agreement was not recorded.

F. Thereafter, the Association, the Town and the Community developer entered into an Agreement Regarding Maintenance Obligations dated May 6, 2008 (the "**5/6/08 Agreement**") and recorded May 8, 2008 at Reception No. 401459. As set forth in the 5/6/08 Agreement, the parties recited that MVMD was dissolved 1/1/07, and the Town was the successor in interest to MVMD.

G. As set forth in the 5/6/08 Agreement, the Town accepted certain referenced “**Public Improvements**” as defined below and agreed to maintain them, and the Association agreed to maintain certain private improvements. The 5/6/08 Agreement contained other mutual cooperation provisions.

H. The 11/17/06 Agreement and the 5/6/08 Agreement each included an **Exhibit A** map purporting to accurately depict certain “**Improvements**” defined as either: (1) “**Public Improvements**” consisting of certain property, pedestrian paths, stairways, snowmelt systems, landscaping, irrigation and associated improvements surrounding the Community that the Town was required to maintain; or (2) “**See Forever Improvements**” consisting of certain property, pedestrian paths, stairways, snowmelt systems, landscaping, irrigation and associated improvements within the Community that the Association was required to maintain. The 11/17/06 Agreement and the 5/6/08 Agreement set forth certain maintenance and cost-sharing ratios based upon the surface area of these Improvements. However, the **Exhibit A** map contained some errors in depicting these Improvements.

I. By this Agreement, the Parties agree to establish a corrected **Exhibit A** map in order to more accurately depict the Improvements and the attendant cost-sharing percentages and obligations among the Parties. By this Agreement, the Parties further agree to adjust some of the physical maintenance, repair and replacement obligations of the Parties and the attendant reimbursements to be made to resolve such adjustments. This Agreement shall therefore supersede and replace the 11/17/06 Agreement and the 5/6/08 Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the Parties hereby agree as follows:

Agreement

1. The Improvements. Attached hereto as **Exhibit A** is a corrected map that more accurately depicts the Improvements, including both the Public Improvements and the See Forever Improvements.

2. Public Improvements. The Town shall perform all necessary maintenance, repair and replacement of the Public Improvements consisting of pedestrian paths, signage, stairways, snowmelt systems and associated improvements. As set forth below, until the special landscaping/irrigation arrangement is terminated, the Association agrees to perform all necessary maintenance, repair and replacement of the Public Improvements consisting of landscaping and irrigation (aka the “**Upper Seeforever Town Landscaping Area**”). The Town shall be responsible for the payment of all costs associated with the maintenance, replacement and repair of all Public Improvements. The Town shall also be responsible for the operation of all Utilities associated with the Public Improvements and shall pay all costs attendant thereto. The word “**Utilities**” as used in this Agreement shall include the electric for site lighting, gas for heating the walkways, water for the irrigation system, landscape maintenance and replacement.

3. See Forever Improvements and Unit Owner Limited Common Element Areas. The Association shall perform all necessary maintenance, repair and replacement of the See Forever

Improvements and Unit Owner Limited Common Element Areas consisting of pedestrian paths, stairways, landscaping, irrigation, snowmelt piping and associated improvements. These areas are marked as:

Upper Seeforever HOA Hardscape
Upper Seeforever HOA Landscaping
Upper Seeforever Unit GL-101 Patio Hardscape

4. Cost Allocations. Following are the various hardscape areas, which areas are is used to calculate the Parties' percentage obligations to contribute to the costs of the Snowmelt Expenses as defined below.

a. As set forth on **Exhibit A**, a portion of the area is marked "**Upper Seeforever Town Hardscape**." The Town shall pay the percentage operational, utility, maintenance, repair and replacement costs of this area.

b. As set forth on **Exhibit A**, a portion of the snowmelted area is marked "**Upper Seeforever HOA Hardscape**." The Association shall pay the percentage operational, utility, maintenance, repair and replacement costs of this area.

c. As set forth on **Exhibit A**, a portion of the snowmelted area is marked "**Upper Seeforever Unit GL-101 Patio Hardscape**." The Association shall pay the percentage operational, utility, maintenance, repair and replacement costs of this area and invoice the owner of Unit GL-101 for such expenses.

d. As set forth on **Exhibit A**, a portion of the snowmelted area is marked "**Upper Seeforever Lot 114 Hardscape**." The Town shall pay the percentage operational, utility, maintenance, repair and replacement costs of this area and invoice the owner of Lot 114 for such expenses.

e. The Association acknowledges and agrees that the Town shall not be responsible for any claims, damages or costs associated with any failure of and/or maintenance to any membranes installed above any garage or parking structure or lower level spaces in any portion of the See Forever project, including without limitation membranes under pathways, plazas, planters, drains or any other penetration through any such membrane located in the Sec Forever project. The Association hereby releases and holds the Town harmless from and against any and all costs, claims or liabilities related to any membrane located in the See Forever project under any Public Improvements. Furthermore, the Association shall promptly repair any membrane that fails or is damaged that is located under any of the Public Improvements.

5. Boilers. The public pedestrian paths, the entry drive into the Association and the walkway spurs off of the main pedestrian paths leading to the Association Units are all on a common snowmelt system. The boilers for this system (the "**Boilers**") are located in the Community. The Town shall perform all maintenance, repair and replacement of the Boilers and associated systems and pay the Utility costs incurred ("**Snowmelt Expenses**"). The Association shall reimburse the Town for fifty-

one point six percent (51.6%)¹ of the costs of said operational, maintenance, repair, replacement and Utility expenses. The Association shall provide twenty-four (24) hour access to the mechanical rooms for the Town through a key lock box mounted on the wall next to the door. The Association shall not take any action which impairs the boilers operating the Public Improvements or the Town's access to the mechanical room. Utilities necessary for the operation of the heating system to the outdoor surfaces are and shall continue to be separately metered from all other utilities to the Community. The Association shall, each month, reimburse the Town for fifty-one point six percent (51.6%) of the invoiced Utilities and/or other costs within thirty (30) calendar days after the Association's receipt of written notice from the Town that such Utilities and/or other costs have been paid by the Town.

6. Upper Seeforever Town Landscaping. As shown on **Exhibit A**, a portion of the Town property surrounding the Community is marked "**Upper Seeforever Town Landscaping.**" The "**Upper Seeforever Town Landscaping Area**" consists of the Public Improvements area requiring landscaping and irrigation maintenance, repair and replacement. The Association shall retain a professional landscaping company to provide landscaping maintenance, replacement and repair of the Upper Seeforever Town Landscaping Area.

a. Responsibilities of the Town. The Town shall reimburse the Association for landscaping services on the Upper Seeforever Town Landscaping Area. For 2022, the annual monetary cap shall be calculated based upon utilizing up to two hundred and seventy (270) labor hours at a rate of fifty dollars (\$50.00) per hour for landscaping services and sixty-five dollars (\$65.00) per hour for irrigation services. Landscaping services shall include, but not be limited to: general maintenance; cleanup; raking; aerating; mulching; deadheading; weeding; fertilizing; light pruning; fall cutbacks; irrigation scheduling; irrigation adjustments; and irrigation repair, as needed. Irrigation labor hours shall be included in the two hundred and seventy (270) total labor hours but may be billed up to \$65.00 per hour.

For 2023, landscaping will be budgeted at \$27,225.00, irrigation at \$3,575.00 and administration at \$3,060.00. These budgeted dollar amounts and the reimbursements are not based on hours. The Association may use the total budget amounts as the maximum reimbursement amounts. The irrigation figure is for recurring maintenance and does not include any major issues/repairs that may come up which would fall outside the normal operations. Any such additional expenses shall be agreed upon by the Parties in writing prior to the performance of such work.

The Town shall provide mulch and fertilizer for use by the Association's contractor and shall deliver these materials to the property. The Town shall also, annually, provide a minimum of one hundred (100) perennial plants to be planted in the Upper Seeforever Town Landscaping Area. Delivery of mulch and fertilizer and plants can be coordinated with the Town's Plaza Services Manager, who can be reached at (970) 729-3456. The hourly rates set forth in this Agreement may be increased annually according to the Consumer Price Index or four percent (4%), whichever is less.

b. Responsibilities of the Association. The Association shall supervise and oversee the

¹ This is calculated as the Association share of forty-seven point eight percent (47.8%), plus the Unit GL-101 share of three point eight percent (3.8%).

landscaping services provided by the contractor. If the Association desires any additional landscaping work or improvements outside the scope of the services defined in Section (a), above, the Association must obtain the approval of the Town, in writing, prior to the work taking place. The Association shall submit monthly bills for reimbursement of landscaping services provided by the contractor to the Town, including documentation for labor hours spent by the contractor as well as materials and equipment costs, including necessary irrigation parts and materials. The Association bills shall also include reasonable charges incurred by the Association for management and oversight of the landscaping services. Such landscaping and management hours must be reasonable for the work and services actually provided, as objectively determined, in order to qualify for reimbursement. The Town shall reimburse the Association right away and no later than within thirty (30) calendar days of the date the invoice is provided. The Association shall be responsible to make all payments to the contractor and its management company regardless of whether reimbursement is approved by the Town.

c. Insurance. The Association shall require that the landscaping and/or irrigation contractor(s) maintain insurance in amounts that meet or exceed the current judgment limitation amounts set forth in the Colorado Governmental Immunity Act, C.R.S. § 24-10-114, *et seq.*, to cover losses such as property damage, personal injury, or death as well as workers compensation insurance in at least the statutory amounts. All such insurance policies shall name the Association and the Town as additional insureds on the liability policy and certificate holders on the workers compensation policy. The Association shall require that such contractor(s) provide the Town with a Certificate of Insurance in accordance with this paragraph stating that such insurance cannot be canceled without thirty (30) calendar days prior written notice to the Town.

d. Term. The term of this special Upper Seeforever Town Landscaping provision shall begin on the Effective Date and continue through October 31, 2022 (the “**Initial Term**”), unless sooner terminated as provided herein. The terms of this special Upper Seeforever Town Landscaping provision shall renew automatically, year by year, unless one of the Parties informs all others in writing of its intent to terminate the terms of this special Upper Seeforever Town Landscaping provision at least thirty (30) days before the start of the next seasonal Renewal Term (June 1 of the applicable year). The terms of this special Upper Seeforever Town Landscaping provision shall remain in effect for the duration of any Renewal Term. In the event either Party terminates this special Upper Seeforever Town Landscaping provision, then the Town shall resume maintenance, repair and replacement of landscaping and irrigation in the Upper Seeforever Town Landscaping Area.

7. Unit B-101 Patio. As shown on Exhibit A, Unit B-101 has a patio on Town property. The Association shall maintain, repair and replace this area as necessary and invoice the owner of Unit B-101 for such expenses.

8. Default. If any Party fails to perform in accordance with the terms and conditions of this Agreement or is otherwise in breach or default of any of the terms or conditions of this Agreement (in any case, a “**Default**”), then the non-defaulting Party shall give notice of the Default to the other Party, and that Party shall have thirty (30) calendar days thereafter in which to cure such Default. If the nature of the Default is not curable within such time period and the defaulting Party is diligently proceeding in its efforts to cure the breach, the cure period shall be extended for a period not to

exceed ninety (90) calendar days, unless otherwise agreed by the non-defaulting Party. Notwithstanding any other provision of this paragraph, no cure period shall be allowed for the following matters: any breach of the insurance obligations set forth above; or any default that is not reasonably susceptible of cure. If a Default is not cured within the applicable cure period, if any, then the non-defaulting Party, at its election and without obligation to do so, may take such action and expend such sums as the non-defaulting Party in its ordinary business judgment may deem necessary or appropriate to cure the subject default, in whole or in part, or to protect the interests of the non-defaulting Party. All sums, including attorneys' fees, incurred by the non-defaulting Party in connection with the consideration or exercise of this remedy shall be due and payable from the Party in default within ten (10) calendar days after demand, from time to time.

9. General Remedies. Any default by a Party that is not cured within any applicable cure period established in paragraph 8 above may be enforced by any or all of the foregoing remedies, and any other remedies available at law or equity or by statute, and all such rights and remedies shall be cumulative with and non-exclusive of one another, and may be exercised concurrently or successively as the non-defaulting Party may elect. No exercise of any one remedy shall constitute or be construed as an election to the bar of any other remedy. In connection with any exercise or pursuit of its remedies under this Agreement, whether or not legal proceedings are actually commenced, the non-defaulting Party shall be entitled to recover from the other Party any and all attorneys' fees and court costs that the non-defaulting party may incur in connection therewith.

10. Notices. All notices required or permitted by this Agreement shall be in writing and shall be effective and deemed received at the earliest of: (a) when actually delivered and received, personally, by mail, by messenger services or by fax delivery; (b) seventy-two (72) hours after being postmarked in the United States mail, certified, return receipt requested; (c) on the next business day after deposit for delivery by a nationally recognized overnight courier service such as Federal Express; or (d) on the date sent by e-mail, provided that a delivery receipt for the e-mail (which receipt may be automated), showing the date the e-mail was sent, is given to the sender. All such notices shall be furnished with delivery or postage charges prepaid and addressed to the respective Parties as follows:

To the Town: Town Manager
Town of Mountain Village
411 Mountain Village Blvd.
Mountain Village, CO 81435
pwisor@mtnvillage.org

With a copy to: David H. McConaughy, Esq.
Garfield & Hecht, P.C.
910 Grand Ave., Ste. 201
Glenwood Springs, CO 81601
dmcconaughey@garfieldhecht.com

To the Association: See Forever Village II Owners Association, Inc.
c/o Telluride Consulting, LLC, Manager
PO Box 518
Telluride, CO 81435
garrett@tellurideconsulting.com

11. Time of the Essence. Time is of the essence hereof.

12. Entire Agreement. This Agreement memorializes and constitutes the final, complete, and exclusive agreement and understanding between the Parties. It supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written or oral. The Association acknowledges that no official, officer, employee, agent, attorney, or other representative of the Town has made any promises or representations whatsoever, express or implied, which is not expressly contained in this Agreement. The Town acknowledges that no officer, employee, agent, attorney, or other representative of the Association has made any promises or representations whatsoever, express or implied, which is not expressly contained in this Agreement. The Parties further acknowledge that they have not executed this Agreement in reliance upon any representation, or in reliance upon any belief as to any fact not expressly stated in this Agreement. This Agreement may not be amended or modified, except in writing and signed by the Parties.

13. Binding Effect. This Agreement shall be binding upon the Parties hereto, their successors or assigns, and shall not be assigned by anyone without prior written consent of the other respective Party hereto. This Agreement shall be recorded in the real property records of the Office of the Clerk and Recorder of San Miguel County, Colorado.

14. No Third-Party Beneficiary. This Agreement is not intended and shall not be construed so as to grant, provide or confer any benefits, rights, privileges, claims, causes of action, or remedies to any person or entity as a third-party beneficiary under any statutes, laws, codes, ordinances, or otherwise.

15. Severability. In the event any part of this Agreement is found to be void, illegal, invalid, or unenforceable under present or future laws, then, in such event, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though such part was deleted and shall be construed to effectuate, as nearly as possible, the original intentions of the Parties based upon the entire agreement, including the invalidated provision.

16. Captions. The captions contained in this Agreement are for convenience only and shall not affect the construction or interpretation of any provision herein.

17. Governing Law, Jurisdiction, and Venue. This Agreement is made within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation, validity, and enforceability. Personal jurisdiction and venue for any civil action commenced by any Party to this Agreement, whether arising out of or relating to the Agreement, will be deemed to be proper only if such action is commenced in the District or County Court for San Miguel County, Colorado, as appropriate.

18. Attorneys' Fees; Survival. Notwithstanding anything to the contrary, should this Agreement become the subject of litigation to resolve a claim of default in performance, to the extent permitted by law, the prevailing Party shall be entitled to reasonable attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys shall survive any termination of this Agreement.

19. Non-Appropriation. All direct and indirect financial obligations of the Town under this Lease are subject to appropriation, budgeting, and availability of funds to discharge such obligations. If the Town's governing body fails to appropriate funds for its obligations under this Agreement, then the Association may invoke paragraph 8's right to cure. No provision of this Agreement shall be construed or interpreted: (a) to directly or indirectly obligate the Town to make any payment in any year in excess of amounts appropriated for such year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or (c) as a donation or grant to or in aid of any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

20. Immunity. The Parties hereto understand and agree that the Town neither waives nor intends to waive by this Agreement, or any provision hereof, the monetary limitations and any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

21. Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

22. Counterparts. This Agreement may be executed in counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute one and the same agreement. Any such counterpart may be transmitted by e-mail (in PDF format), and any such counterpart so transmitted shall have full force and effect as if it were an original.

This Agreement is executed by the Parties hereto as of the date first set forth above.

TOWN OF MOUNTAIN VILLAGE, COLORADO

By: 

Laila Benitez, Mayor

Dated: 06/27/2023

Attest:


Susan Johnston, Town Clerk

**SEE FOREVER VILLAGE II OWNERS ASSOCIATION, INC.,
A COLORADO NONPROFIT CORPORATION**

By: [Signature]
Bill Nictakis, President

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

The foregoing instrument was acknowledged before me this 9 day of May, 2023 by Bill Nictakis, as President on behalf of the See Forever Village II Owners Association, Inc.

Witness my hand and official seal:

My commission expires: 9/29/2024 [Signature]
 Notary Public Sara Ann Hammond



SCALE:
1 inch equals 25 feet
0 20 40 80 Feet

**TOWN OF MOUNTAIN VILLAGE
SEEFORVER AGREEMENT
Exhibit A**

**TOWN OF MOUNTAIN VILLAGE
GEOGRAPHICAL INFORMATION SYSTEMS**
455 Mountain Village Blvd, Unit A
Mountain Village, Colorado 81435



DISCLAIMER:
The information herein is provided for the use of the Town of Mountain Village and its residents. It is not intended to constitute a warranty, representation, or guarantee of any kind. The Town of Mountain Village and its employees and contractors make no representation or warranty as to the accuracy or completeness of the information herein. The Town of Mountain Village and its employees and contractors are not liable for any damages, including consequential damages, that may result from the use of the information herein. The Town of Mountain Village and its employees and contractors are not liable for any damages, including consequential damages, that may result from the use of the information herein.

CARTOGRAPHER: Lauren Tyler
DATE: May 2, 2023

- HOA 1 ELEMENTS**
 - Landscaping
 - Snowmelt
 - House / Building
 - Porch
 - Parcel / OS
- HOA 2 ELEMENTS**
 - Landscaping
 - Snowmelt
 - House / Building
 - Porch
- HOA 1 RESPONSIBILITY**
 - Snowmelt
- HOA 2 RESPONSIBILITY**
 - Snowmelt
 - Landscaping
 - Patio
- ADDITIONAL FEATURES**
 - Retaining Wall
 - Road
- PRIVATE PROPERTY**
 - Sidewalk
 - Patio

COST SHARE ANALYSIS

HOA 1 / TMV LANDSCAPING	24780.64 sq. ft. 100%
TOTALS:	24780.64 sq. ft. 100%
TMV responsibility	
HOA 2 / TMV LANDSCAPING	23786.95 sq. ft. 100%
TOTALS:	23786.95 sq. ft. 100%
TMV responsibility	22692.88 sq. ft. 99.2%
HOA 2 responsibility	184.07 sq. ft. 0.8%
HOA 1 / TMV SNOWMELT	7263.99 sq. ft. 100%
TOTALS:	7263.99 sq. ft. 100%
TMV responsibility	4926.75 sq. ft. 68.3%
HOA 1 responsibility	3027.23 sq. ft. 41.7%
HOA 2 / TMV SNOWMELT	20580.51 sq. ft. 100%
TOTALS:	20580.51 sq. ft. 100%
TMV responsibility	9533.54 sq. ft. 46.4%
HOA 2 responsibility	9826.38 sq. ft. 47.8%
LOT 114 hardscape	418.74 sq. ft. 2.0%
Unit GL-101 patio	779.81 sq. ft. 3.8%