

FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT (hereafter referred to as the Fourth Amendment) is made and entered into effective this 13th day of April, 2016, by and among BOARDS OF COUNTY COMMISSIONERS OF LA PLATA COUNTY COLORADO AND OF SAN JUAN COUNTY, COLORADO (“Counties”); the PURGATORY METROPOLITAN DISTRICT (“Metro”); and DSC/PURGATORY, LLC d/b/a Durango Mountain Resort, a Colorado limited liability company, DURANGO MOUNTAIN LAND COMPANY, LLC, a Colorado limited liability company, PURGATORY VILLAGE LAND, LLC, a Colorado limited liability company, PURGATORY VILLAGE HOLDINGS, LLC, a Colorado limited liability company and DURANGO MOUNTAIN HOLDINGS, LLC, a Colorado limited liability company (referred to collectively as “Owners”).

WHEREAS, the Counties and Metro entered into a Development Agreement with Owners and/or Owners’ predecessors-in-title effective August 22, 2002, and recorded in La Plata County, Colorado on August 23, 2002 at Reception No. 836596, and recorded in San Juan County, Colorado on August 30, 2002 at Reception No. 142061; and

WHEREAS, the Development Agreement was amended by a First Amendment to Development Agreement effective July 16, 2003 and recorded in La Plata County, Colorado on August 7, 2003 at Reception No. 864254 and recorded in San Juan County, Colorado on September 3, 2003 at Reception No. 142838; and

WHEREAS, the Development Agreement was amended by a Second Amendment to Development Agreement effective June 21, 2011 and recorded in La Plata County, Colorado on October 4, 2011 at Reception No. 1036579 and recorded in San Juan County, Colorado on June 24, 2011 at Reception No. 147948 ; and

WHEREAS, the Development Agreement was amended by a Third Amendment to Development Agreement effective June 21, 2011 and recorded in La Plata County, Colorado on October 4, 2011 at Reception No. 1036578 and recorded in San Juan County, Colorado on June 24, 2011 at Reception No. 147949; and

WHEREAS, within the Development Agreement, the parties adopted a Comprehensive Development Plan (“CDP”) which consists of Exhibit B to the Development Agreement (“Master Plan”), Exhibit C to the Development Agreement (“DMR Regulations”), and the Development Agreement, as amended; and

WHEREAS, the fee simple ownership of the property subject to this Fourth Amendment and described on Exhibit A (“San Juan County Property”) is owned by Durango Mountain Holdings, LLC, a Colorado limited liability company; and

WHEREAS, Owners have retained the rights to supplement, modify and amend the Development Agreement notwithstanding prior transfers of portions of the original Property as defined in the Development Agreement; and

Rtn: Daniel Murray
211 Rock Point Dr.
Durango, CO 81301

WHEREAS, pursuant to Section 2.13 of the DMR Regulations, the Owners and the Counties have jointly proposed and have agreed to an amendment to remove the San Juan County Property from and to remove San Juan County as a party to the Development Agreement and the CDP, subject to certain conditions set forth herein; and

WHEREAS, the Joint Planning Commissions of La Plata County and San Juan County have held duly noticed public hearings with regard to this proposed Fourth Amendment and recommend the adoption thereof by the Board of County Commissioners of La Plata County and San Juan County;

WHEREAS, the Board of County Commissioners of La Plata County and the Board of County Commissioners of San Juan County have conducted duly noticed public hearings on this Fourth Amendment, and, based upon the evidence presented at the hearings, have determined that the approval of this Fourth Amendment is warranted.

NOW THEREFORE, for and in consideration of the mutual obligations set forth herein, this Fourth Amendment is hereby adopted by the Counties as a legislative act, and the parties agree to further amend the Development Agreement as follows:

1. This Fourth Amendment shall be effective thirty-one days after both final passage and the date of publication of a notice advising the general public of the Fourth Amendment's approval by the La Plata and San Juan Boards of County Commissioners. If this Fourth Amendment is subject to the right of the voters to initiate a referendum regarding its adoption, and if a legally sufficient referendum petition complying with all relevant statutory requirements is filed within thirty days after final passage and publication of the Fourth Amendment in La Plata or in San Juan County, no part of this Fourth Amendment shall take effect until approved by a vote of the registered electors of the County in which such vote occurs.

2. For a period of five years following the effective date of this Fourth Amendment, Durango Mountain Holdings, LLC agrees that the current tax classification of the San Juan County Property as vacant/development land will not be changed unless pursuant to a subdivision or land use plan approved by San Juan County. .

3. The parties agree that if there are proposed, material changes to the CDP in La Plata County, San Juan County will be provided advance notice and will be treated as a commenting agency. San Juan County will provide La Plata County advance notice of any proposed development of the San Juan County Property and La Plata County will be treated as a commenting agency with respect to any such development.

4. The parties agree that none of the following provisions of the Development Agreement and CDP shall be subject to modification or change for the life of the Development Agreement, including any extensions thereof, without the prior written consent of all of the parties to this Fourth Amendment:

- Sections 5.14 - 5.14.2 of the DMR Regulations - Air Quality (as amended by the Second Amendment)

- Section 5.11 of the DMR Regulations – Scenic View Corridor Preservation
- Section 5.18.1 of the DMR Regulations – Building Materials
- Paragraph 5 of the Development Agreement – “Non-Abrogation upon Incorporation.”
- Paragraph 6 of this Fourth Amendment – Maximum Total Density Pursuant to the CDP.

5. The existing reimbursement agreement(s) between Owners and San Juan County shall remain in effect through the final approval and recording of this Fourth Amendment, at which time any amounts due and owing shall be paid and such agreements shall terminate.

6. Upon this Amendment becoming fully effective, the maximum total density under the CDP, all located in La Plata County, shall be revised to a total of 1,504 units (including all new development which has taken place since the adoption of the Development Agreement in 2002). The parties further agree that this maximum density shall not be increased by more than 15%, which agreement shall be enforceable by San Juan County.

7. Notwithstanding any provision of this Agreement to the contrary, the workforce housing unit previously provided by Owners in Cascade Village in order to satisfy Owner’s obligation to provide a workforce housing unit in San Juan County shall remain a workforce housing unit subject to all terms previously agreed to by the parties for the term of the Development Agreement including any extension thereof provided however that if, consistent with the terms of the agreement with regard to such unit, such unit is no longer used as a workforce housing unit, the Owner shall make alternate workforce housing arrangements with San Juan County or, with San Juan County’s consent, with La Plata County so as to continue to provide a workforce housing unit.

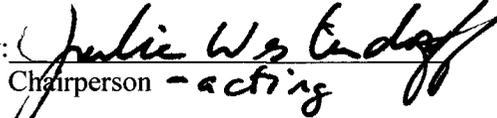
8. Any and all prior claims or disputes between San Juan County and the Owners or La Plata County or the Metro District related to compliance under the CDP are hereby waived.

9. The San Juan County Property attached as Exhibit A, being all of Durango Mountain Holding’s property in San Juan County, Colorado, is hereby removed from the Development Agreement and CDP, and San Juan County shall no longer be a party to the Development Agreement or CDP. Nothing herein shall prevent Durango Mountain Holdings, its successors and assigns, from seeking to develop the Property according to the San Juan County Land Use Code then in effect.

10. The Development Agreement, as amended hereby and by the First, Second and Third Amendments to the Development Agreement, including the CDP, is in all respects ratified, approved, and confirmed and shall remain in full force and effect. In the event the Development Agreement and CDP are extended beyond the current expiration date of 2027, the provisions of this Fourth Amendment shall remain in effect. In the event the Development Agreement and CDP are lawfully terminated the provisions of this Fourth Amendment shall likewise terminate.

IN WITNESS WHEREOF, this Fourth Amendment has been executed effective as of the date written above.

BOARD OF COUNTY COMMISSIONERS
OF LA PLATA COUNTY, COLORADO

By: 
Chairperson - acting

BOARD OF COUNTY COMMISSIONERS
OF SAN JUAN COUNTY, COLORADO

By: 
Chairperson

PURGATORY METROPOLITAN DISTRICT,
a Colorado non-profit corporation

By: 
Dede Carlson, President

DSC/PURGATORY, LLC, d/b/a Durango Mountain Resort,
a Colorado limited liability company

By: 
Gary S. Derck, CEO

DURANGO MOUNTAIN LAND COMPANY, LLC,
a Colorado limited liability company

By: 
Gary S. Derck, CEO

PURGATORY VILLAGE LAND, LLC,
a Colorado limited liability company

By: 
Gary S. Derck, CEO

PURGATORY VILLAGE HOLDINGS, LLC,
a Colorado limited liability company

By: 
Gary S. Derck, CEO

DURANGO MOUNTAIN HOLDINGS, LLC, a

Colorado limited liability company

By: *Gary S. Derck*
Gary S. Derck, CEO

STATE OF COLORADO)
)ss.
COUNTY OF LA PLATA)

The foregoing instrument was acknowledged before me this 5th day of April, 2016, by Julie Westen Driff ^{Vice} Chairperson of the BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO, and Jan Mayer-Gawlik County Clerk for La Plata County, Colorado, who acknowledged the signing and execution of this instrument as the duly authorized act of said entity. In testimony whereof, I have hereunto set my hand and affixed my notarial seal on the day and year aforesaid.

My commission expires on 2/25/20.

Jan Mayer-Gawlik
JANICE MAYER-GAWLIK Public
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20084006599
MY COMMISSION EXPIRES FEBRUARY 25, 2020

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

The foregoing instrument was acknowledged before me this 19th day of April, 2016, by Ernest Kuhlman Chairperson of the BOARD OF COUNTY COMMISSIONERS OF SAN JUAN COUNTY, COLORADO, and N/A County Clerk for San Juan County, Colorado, who acknowledged the signing and execution of this instrument as the duly authorized act of said entity. In testimony whereof, I have hereunto set my hand and affixed my notarial seal on the day and year aforesaid.

My commission expires on June 5, 2018.

Blair C. Runion
Signature of Notary Public

BLAIR C. RUNION
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20144022610
My Commission Expires June 5, 2018

STATE OF COLORADO)
)ss.
COUNTY OF LA PLATA)

The foregoing instrument was acknowledged before me this 22nd day of March, 2016, Jefferson Watson ^{Dede Carlson}, who attested that he is the President of PURGATORY METROPOLITAN DISTRICT, and who acknowledged the signing and execution of this instrument as the duly authorized act and deed of said entity. In testimony whereof, I have hereunto set my hand and affixed my notarial seal on the day and year aforesaid.

My commission expires on 6/23/2019.

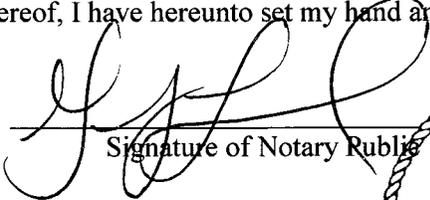
Gloryann Linch
Signature of Notary Public

GLORYANN LINCH
NOTARY PUBLIC
STATE OF COLORADO
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STATE OF COLORADO)
)ss.
COUNTY OF LA PLATA)

The foregoing instrument was acknowledged before me this 17th day of March, 2016, by Gary S. Derck, who attested that he is the CEO of DSC/PURGATORY, LLC d/b/a Durango Mountain Resort, a Colorado limited liability company, as CEO of DURANGO MOUNTAIN LAND COMPANY, LLC, a Colorado limited liability company, as CEO of PURGAOTRY VILLAGE LAND, LLC, a Colorado limited liability company, as CEO of PURGATORY VILLAGE HOLDINGS, LLC, a Colorado limited liability company and as CEO of DURANGO MOUNTAIN HOLDINGS, LLC, a Colorado limited liability company, and who acknowledged the signing and execution of this instrument as the duly authorized act and deed of said entity. In testimony whereof, I have hereunto set my hand and affixed my notarial seal on the day and year aforesaid.

My commission expires on 6/23/2019.



Signature of Notary Public

