

Gondola Management Agreement

GONDOLA MANAGEMENT AGREEMENT

THIS GONDOLA MANAGEMENT AGREEMENT ("Agreement") is made and entered into as of this 12th day of October, 1999, by and between Mountain Village Metropolitan District, a Colorado special district ("Manager"), Telluride Gondola Transit Company, a Colorado nonprofit corporation ("Transit Company"), Telluride Mountain Village Resort Company d/b/a Mountain Village Metropolitan Services, Inc. ("Services") and Telluride Ski & Golf Company, LLLP, a Colorado limited liability limited partnership ("Telski") in connection with the following facts and circumstances:

RECITALS

- A. Transit Company is the owner of a gondola transit system and terminals (the "Project") which extends from the reception center of the Telluride Mountain Village, San Miguel County, Colorado (the "Village") to the core area of the Village, and from the core area of the Village to the Town of Telluride, Colorado.
- B. Transit Company needs to retain a manager to operate, manage and maintain the Project.
- C. Manager has expertise and knowledge in this area, and Transit Company desires to retain Manager to operate, manage and maintain the Project under the terms and conditions set forth herein, and Manager is willing to accept such engagement.
- D. In accordance with the terms of the First Amended and Restated Gondola Operating Agreement dated as of July 28, 1999 between Telski, Services, Transit Company, Manager, the Town of Mountain Village, Colorado and San Miguel County, Colorado ("Gondola Operating Agreement"), Services is obligated to pay to Transit Company sufficient funds necessary to fund the operation and maintenance of the Project.
- E. Telski has contributed approximately seventy percent (70%) of the capital costs of the Project.
- F. Telski pays one percent (1%) of all gross revenues from the sale of ski lift tickets for the Telluride Ski Area toward the operation of the Project as set forth in the Gondola Operating Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Transit Company, Manager, Services and Telski do hereby agree as follows;

1. *Engagement.* Transit Company hereby retains Manager as manager and Manager hereby agrees to be retained as manager for the purpose of operating, managing and maintaining the Project.

1.1. *Grant of Authority.* Manager is hereby authorized and empowered and agrees with Transit Company, for its benefit, to undertake and discharge the following duties and obligations:

1.1.1. *Personnel.* To hire and supervise (and to the extent it deems necessary, to discharge) operating and maintenance personnel, security guards and such other employees and agents as it deems in its judgment are desirable or necessary in connection with the performance of its duties and obligations hereunder.

1.1.2. *Operation and Maintenance.* To cause the Project and any property on which the Project is located or which is used in connection with the Project, to be operated and maintained in good condition and repair, in accordance with the standards set forth in Section 1.3 herein, and in accordance with applicable law and any Project operating schedule that may be in place from time to time. In the sole and reasonable discretion of Manager, and in accordance with the ordinary course of operating the Project as a gondola transportation system in accordance with its intended purpose, it may choose to shut down the operation of all or a portion of the Project for various periods of time during the term of this Agreement, which action shall not be considered a breach of Manager's operation obligations hereunder; provided, however, that any shut down which occurs outside the ordinary course of gondola operations, must be consented to by Transit Company, Services and Telski.

1.1.3. *Governmental Actions.* To take such action as may be necessary to comply promptly with any orders or requirements affecting the Project imposed by any Federal, state or local government having jurisdiction over the Project and any property on which the Project is located or which is used in connection with the Project, unless Transit Company instructs it to the contrary in writing. Manager shall give written notice to Transit Company of any such order or requirement promptly upon its receipt thereof, and Transit Company shall give prompt written notice to Manager of any such order or notice received by Transit Company.

1.1.4. *Damage to the Project.* To promptly investigate all accidents or damage relating to ownership, operation or maintenance of the Project and any property on which the Project is located or which is used in connection with the Project, including any damage or destruction of any of the aforementioned and the estimated cost of repair, and to cooperate with and make any reports required by any insurer or lender (or any person having an interest in Transit Company's property) in connection therewith.

1.1.5. *Warranty and Insurance Claims.* To obtain and assemble all information relating to warranty or insurance claims associated with the Project and any property on which the Project is located or which is used in connection with the Project, and to assist Transit Company in the enforcement thereof.

1.1.6. *Cooperation with Lenders.* Except as otherwise directed by Transit Company, to provide such reports and information and take such other actions as may be reasonably requested by Transit Company's lenders (or any other person having an interest in the Transit Company's property, including without limitation, Services and the Trustee (as hereinafter defined)) in accordance with such agreements as the Transit Company may enter into with such lenders or other persons.

1.1.7. *Books and Records.* To keep or cause to be kept books, records and accounts which accurately, fairly and in reasonable detail reflect all dealings and transactions in relation to Manager's activities under this Agreement and which shall be sufficient to enable such dealings and transactions to be audited in accordance with generally accepted auditing principles.

1.1.8. *Inspection and Audits.* To permit Transit Company or its authorized representative, upon reasonable prior notice to Manager, to inspect the books and records maintained by Manager with respect to the Project and any property on which the Project is located or which is used in connection with the Project, and upon request of Transit Company or its authorized representative, upon reasonable prior notice to Manager, cause an audit thereof to be conducted, including but not limited to, any reports and returns prepared and filed by Manager with any governmental agencies. Any inspection or audit shall take place only during Manager's normal business hours.

1.1.9. *Reports on Operations.* To provide reports to Transit Company and Services, on a quarterly basis, describing in general terms the results of operations.

1.1.10. *Protection of Project.* To provide reasonable security of the Project from theft, vandalism, trespass or the like.

1.1.11. *Insurance.* To obtain and maintain general operating and public liability insurance of the types and in the amounts specified in that certain Indenture of Trust between Transit Company and Central Bank, National Association, as trustee ("Trustee"), pursuant to which the Bonds are issued (the "Indenture"), the premiums of which are to be paid by Manager on behalf of Transit Company; provided, however, that Transit Company shall reimburse Manager for all such premiums paid.

1.1.12. *Contracting.* To enter into, execute, amend, supplement, acknowledge and deliver any and all contracts, agreements, licenses or other instruments necessary, proper or desirable to carry out Manager's duties and responsibilities as manager hereunder.

1.1.13. *Other Services.* To perform for Transit Company such other services incidental to the operation of the Project as manager, in its reasonable judgment, may deem to be reasonably necessary or as may from time to time be reasonably requested by Transit Company.

1.2. *Exclusions.* Anything to the contrary herein notwithstanding, Manager shall have no responsibility or liability for the following:

1.2.1. subject to Section 1.1.7 hereof, maintaining the books, records, or accounts of Transit Company;

1.2.2. preparing the tax returns and financial statements of Transit Company;

1.2.3. retaining legal counsel or taking any other action with respect to any claims or demands made or lawsuits filed against Transit Company by third parties; and

1.2.4. any other obligations of Transit Company not expressly undertaken by Manager pursuant to Section 1.1 hereof.

1.3. *Standard of Care.* In its performance of each of the duties hereunder, Manager shall cause the Project (and related signage) to be operated, repaired and maintained at a level of quality commensurate with or exceeding the level of quality provided by Telski in the operation of the Telluride Ski Area. It is the intent of the parties that the operation of the Project and the Telluride Ski Area should appear seamless to the public. In furtherance of the above standards, Manager shall assure that policies regarding operations include, without limitation, (i) grooming and appearance standards that are consistent with those of the ski lift operations department of the Telluride Ski Area; (ii) use of uniforms that are the same style, brand, age, and color as the uniforms used by the Telluride Ski Area lift operators, (iii) policies regarding transportation of skiers that are consistent with those of the Telluride Ski Area; (iv) the provision of emergency access to the Telluride Ski Area ski patrol; (v) the response by gondola operators to the Telluride Ski Area dispatch; (vi) policies regarding guest relations comparable to those of the ski lift department of the Telluride Ski Area.

All operating policies of Manager for the Project are subject to approval by Services, and Manager shall operate the Project in accordance with such policies. In addition, Services is hereby authorized to regulate day-to-day operations for the Project

1.4. *Independent Contractor.* Manager shall perform its duties here under as an independent contractor, and not as a general agent or joint venturer.

1.5. *Compliance with Law.* Manager shall (i) keep the operations of the Project in compliance with all statutes, regulations and orders relating to occupational safety and health or environmental protection, (ii) maintain all records and file all reports or returns required to be maintained or filed by the Project pursuant to the provisions of any applicable statute, regulation or order and (iii) obtain on behalf of and in the name of Transit Company or Manager, as the case may be, all applicable consents, permits, licenses and approvals of all governmental bodies the obtaining of which is of material importance to, or the failure to obtain which may have a material adverse effect on, the ownership or operation of the Project.

1.6. *Subcontractor.* Manager may perform the duties and services under this Agreement either directly, or through one or more subcontractors ("Subcontractors"); provided, however, that the use of such Subcontractors *shall not relieve Manager of its responsibilities and obligations* under this Agreement. Transit Company hereby consents to Manager's engaging any affiliate of Manager as a Subcontractor.

2. *Management Costs, Expenses and Fees.*

2.1. *Management Costs and Expenses.* It is the intent of the parties that all costs and expenses incurred by Manager in the course of its carrying out its duties and obligations hereunder, shall be paid for by Manager and reimbursed to Manager by Services in accordance with the terms of the Gondola Operating Agreement.

2.2. *Management Fees.* Manager shall receive no fees for performance of its duties and obligations hereunder.

2.3. *Preliminary Budget Process.* During each year, Manager, in consultation with the other parties hereto, shall prepare and submit to the other parties a set of preliminary budget documents for the forthcoming budget year. Manager shall deliver the preliminary budget documents to the other parties hereto on or before October 15 of the year preceding the next budget year. Preliminary budget documents shall set forth the estimated costs and expenses to be incurred by the Project for the forthcoming budget year in the performance of the applicable duties of the parties hereto.

2.4. *Budget Review and Approval.* On or before November 15 of the year preceding the forthcoming budget year, each of the parties hereto shall either: (i) approve the preliminary budget documents- in which case the preliminary budget documents shall become the final budget for the forthcoming budget year, or (ii) propose in writing to Manager additions to and/or deletions from the preliminary budget documents. In the event any of the parties hereto proposes additions to and/or deletions from the preliminary budget documents, the parties hereto shall reach an agreement as to the final budget. If the parties hereto fail to reach an agreement as to the final budget, the Project shall be operated in accordance with the prior year's budget, adjusted as necessary for inflation.

3. *Term.*

3.1 *Term.* The term of this Agreement shall commence on the ___ day of October, 1999, and shall continue in effect, unless terminated earlier hereunder, until such time as the Project permanently ceases to be operated for the benefit of the public (the "Term").

3.2. *Events of Termination.* This Agreement may be terminated prior to the expiration of its Term upon the occurrence of any of the following events:

3.2.1. *Written Agreement.* The written agreement of Transit Company, Manager, Services and Telski to terminate this Agreement;

3.2.2. *Bankruptcy or Insolvency.* At the option, and upon the agreement of, all the other parties, (i) the petition by a party to this Agreement seeking liquidation of its assets or its reorganization under Chapter 11 of the United States Bankruptcy Code; (ii) the appointment of a receiver, trustee or other officer with similar powers to govern the affairs of such party; or (iii) the admission in writing by such party of its general inability to pay its debts as they come due.

3.2.3. *Breach of this Agreement.* At the option, and upon agreement of, all the non-breaching parties, in the event any party to this Agreement shall materially breach this Agreement, which breach is not remedied within thirty (30) days following receipt of written notice of said breach; provided, however, in the event such breach cannot be cured within said thirty day period despite the good faith efforts of the breaching party, then the thirty day period will be extended to the date reasonably necessary for the breaching party to cure, which date shall not be greater than ninety (90) days after receipt of the notice referred to herein.

3.3. *Procedures Upon Termination.* Upon termination of this Agreement as set forth in Section 3.1, the following shall occur:

3.2.1. *Dismissal.* Manager shall be relieved of all responsibility for and shall perform no further acts with respect to the Project and shall have no further duties and obligations under this Agreement except as specified in this Section 3.2.

3.2.2. *Records.* As soon as practicable after termination, Manager shall, upon the request of Transit Company, make available to Transit Company at Manager's principal place of business all documents, books and records of Transit Company in Manager's possession pertaining to the operation of the Project and Manager's duties and responsibilities under this Agreement.

3.3. *Non-Waiver of Rights.* The termination of this Agreement shall be without prejudice to any other rights or remedies which Transit Company, Manager, Services or Telski may have against the others (including, without limitation, under Section 10.1 or 10.2 hereof), and no termination of this Agreement shall constitute a waiver, release or estoppel by either Transit Company, Manager, Services or Telski of any right, action or cause of action it may have against the others.

4. *Remission of Revenues.* If and when Manager receives revenues payable to Transit Company, Manager shall remit such revenues to Services, less any amounts paid by Manager for Project costs and expenses specified in the final budget for which it has not yet been reimbursed.

5. *Operating Budget and Operating Schedule.* Anything to the contrary herein notwithstanding, the parties agree that the Project will be operated and maintained in accordance with the terms of the Gondola Operating Agreement and the budget determined annually in the manner set forth in Section 2 hereof.

6. *Unassumed Obligations.* Transit Company hereby warrants and agrees that it shall keep and perform all obligations required to be performed by Transit Company under any agreement not specifically assumed by Manager. Transit Company shall indemnify, hold harmless and defend Manager against any and all claims, demands, lawsuits or liabilities caused by Transit Company's failure to so perform the obligations not specifically assumed by Manager.

7. *Access to Project Site.* Transit Company hereby grants Manager, its employees, representatives and agents, and, as the case may be, any authorized Subcontractor and its employees, representatives and agents, full rights of access to the Project to perform Manager's obligations hereunder.

8. *Force Majeure.*

8.1. *Limitations.* Manager shall be excused for any delay or failure to perform its duties and obligations under this Agreement, but only to the extent that such failure or delay is caused by an event of Force Majeure as set forth in Section 8.2 hereof. If an event set forth in

Section 8.2 hereof causes a delay or failure in performance of only a portion of the obligations of a party under this Agreement, then only that portion of performance which was delayed or prevented by such cause shall be deemed excused, and the performance of all other obligations of that party or any other party not so delayed shall not be excused by an event of Force Majeure. Delay or failure in performance by Manager which is the result of an event set forth in Section 8.2 shall be deemed excused for a period no longer than the delay or failure in performance caused by such event.

8.2. *Force Majeure.* No delay or failure in performance by Manager shall constitute a default under this Agreement if, and only to the extent, such delay or failure is caused by occurrences beyond the control of Manager, including but not limited to flood, drought, earthquake, storm, fire, pestilence, lightning, and other natural catastrophes, unusual inclement weather, including, but not limited to, rain or snow which falls earlier in the year, or in greater amounts, or for longer periods, than has generally been experienced in the area of the Project site, unavoidable casualties, epidemics, acts of God or the public enemy, war, riot, civil disturbance or disobedience, explosions, strike, labor dispute, delays in performance by others, changes of applicable law, compliance with any order of any governmental authority, or failure of the Project to run after having been maintained in a good and workmanlike manner and in accordance with applicable laws.

8.3. *Notice.* Manager shall give written notice to Transit Company as soon after becoming aware of the delay or failure in performance caused by an event of Force Majeure as is reasonably possible, but in any event within five (5) working days after Manager becomes aware of such delay or failure.

9. *Condemnation, Termination of Easements, Leases and Forest Service Permits.* Any proceeds from (i) the condemnation of the Project or the property on which the Project is located (including easements and leasehold interests), (ii) the termination of any easements or leasehold interest on which the Project is located, or (iii) the termination or revocation of any permits issued to Transit Company by the U.S. Department of Agriculture, Forest Service with regard to the Project shall be the exclusive property of Transit Company.

10. *Indemnifications.*

10.1. *Transit Company to Manager and Services.* To the fullest extent permitted by law, Transit Company shall indemnify Manager and Services and their respective officers, directors, shareholders, agents, employees, subsidiaries and affiliates, and their officers, directors, shareholders, agents, employees, subsidiaries and affiliates (collectively, the "Indemnified Manager/Services Parties"), and shall protect, defend, save and hold them harmless from and against all liabilities, losses, damages, penalties, claims, demands, actions, and related costs and expenses (including, without limitation, attorneys fees, court costs and other expenses of litigation), incurred by or asserted against any of the Indemnified Manager/Services Parties as a result of the use and operation of the Project, to the extent that such liabilities, losses, damages, penalties, claims, demands, actions, costs and expenses arise out of or result from the bad faith, gross negligence or willful misconduct of, or material breach of this Agreement by, Transit Company or its officers, directors, agents, employees, subsidiaries or affiliates, or their officers, directors, shareholders, agents, employees,

subsidiaries or affiliates, provided, however, that the foregoing indemnity shall be enforceable only to the extent actually covered by insurance obtained by or on behalf of Transit Company.

10.2. *Manager to Transit Company.* To the fullest extent permitted by law, Manager shall indemnify Transit Company and its officers, directors, shareholders, agents, employees, subsidiaries and affiliates, and their officers, directors, shareholders, agents, employees, subsidiaries and affiliates (collectively the "Indemnified Transit Company Parties"), and shall protect, defend, save and hold them harmless from and against all liabilities, losses, damages, penalties, claims, demands, actions, and related costs and expenses (including, without limitation, attorneys fees, court costs and other expenses of litigation), incurred by or asserted against any of the Indemnified Transit Company Parties as a result of the use and operation of the Project, to the extent that such liabilities, losses, damages, penalties, claims, demands, actions, costs and expenses arise out of or result from the bad faith, gross negligence or willful misconduct of, or material breach of this Agreement by, Manager or its officers, directors, shareholders, agents, employees, subsidiaries or affiliates, or their officers, directors, shareholders, agents, employees, subsidiaries or affiliates, provided, however, that the foregoing indemnity shall be enforceable only to the extent actually covered by insurance obtained by or on behalf of Manager.

10.3. *Survival and Enforce ability Upon Transfer or Assignment.* The indemnities contained in this Section 10 shall survive the assignment, transfer, expiration or earlier termination of this Agreement.

11. *Post Conveyance Obligations.* If Transit Company conveys its ownership of the Project to Manager, all of the rights and obligations set forth herein (except the rights and obligations of Transit which shall terminate upon the consummation of the conveyance), including without limitation, standards of operation, shall remain unchanged. Other than the conveyance described in the previous sentence, neither Transit Company nor Manager shall convey the ownership of the Project to any other person or entity without the written consent of each of the parties hereto.

12. *Miscellaneous Provisions.*

12.1. *Arbitration.* Any controversy, claim or dispute between the parties hereto arising out of or related to this Agreement or the breach hereof, which cannot be settled amicably by the parties, shall be submitted for arbitration in accordance with the provisions contained herein and in accordance with the rules of the American Arbitration Association, or such other rules as Manager, Services, Transit Company and Telski shall agree upon. The arbitrators shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including but not limited to whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein. The arbitration contemplated hereunder shall be binding upon the parties.

12.2. *Notices.* All notices, notifications and other communications required or permitted by this Agreement shall be in writing and shall be delivered by hand, sent by telecopy (with confirmation of receipt), or mailed by registered or certified first class mail, return receipt

requested (postage prepaid) to the parties at the following addresses (or such other address for a party as shall be specified by notice given pursuant hereto):

If to Transit Company:

Telluride Gondola Transit Company
113 Lost Creek Lane, Suite A
Mountain Village, Colorado 81435
Facsimile No.: (970) 728-7577

If to Manager:

Mountain Village Metropolitan District
113 Lost Creek Lane, Suite A
Mountain Village, CO 81435
Facsimile No.: (970) 728-7577

If to Services:

Mountain Village Metropolitan Services, Inc.
113 Lost Creek Lane, Suite A
Mountain Village, CO 81435
Facsimile No.: (970) 728-7577

If to Telski:

Telluride Ski & Golf Company, LLLP
565 Mountain Village Boulevard
Telluride, CO 81435
Facsimile No.: (970) 728-7340
Attn: Isaac B. Shisler

Notices delivered by hand or sent by telecopy shall be deemed given the day so delivered, transmitted or sent. Notices mailed as provided herein shall be deemed given on the third business day following the date so mailed or on the date of actual receipt, whichever is earlier.

12.3. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Transit Company, Services, Manager and Telski. No party may assign or transfer this Agreement, in whole or in part, except upon the prior written consent of the other parties, which prior consent shall not be unreasonably withheld. Operation of the Project under any assignment authorized hereunder shall be subject to the terms and conditions of the Transit Company's Term Special Use Permit.

12.4. *Waiver.* Unless otherwise expressly provided herein, no delay or omission by the parties hereto in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy and shall not be construed as a bar to or a waiver of any such right or remedy on any future occasion.

12.5. *Governing Law.* This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Colorado.

12.6. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

12.7. *Effect of Section Headings.* Section headings appearing in this Agreement are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

12.8. *Amendments.* This Agreement may only be modified or amended by an instrument in writing duly executed and delivered by all the parties or their duly authorized representatives.

12.9. *Attorneys' Fees.* In the event of any litigation or arbitration to enforce the provisions of this Agreement, the prevailing party in such litigation or arbitration shall be entitled to reasonable attorneys' fees and costs as fixed by the court or arbitrator.

12.10. *Entire Agreement.* Except with respect to the Gondola Operating Agreement, the terms and conditions set forth herein constitute the complete and exclusive statement of the agreement between Transit Company, Services, Manager and Telski relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement.

12.11. *No Third Party Beneficiaries.* The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

12.12. *Further Assurances.* The parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm the agreements contained herein in the manner contemplated hereby.

12.13. *Partial Invalidity.* If any provision of this Agreement is found to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

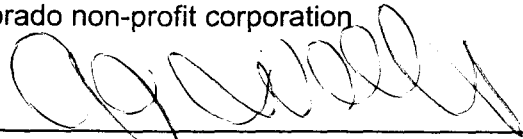
12.14. *Specific Performance.* The parties hereto agree that there would be no adequate remedy at law if one of the parties hereto fails to perform its obligations hereunder and that the parties shall be entitled to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity.

SIGNATURES ON FOLLOWING PAGE

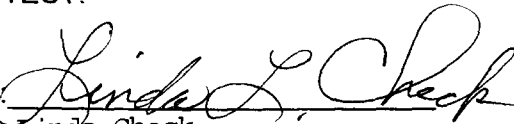
IN WITNESS WHEREOF, the Transit Company, Services, Manager and Telski have caused this Agreement to be executed by their duly authorized representatives.

TRANSIT COMPANY

TELLURIDE GONDOLA TRANSIT COMPANY, a
Colorado non-profit corporation

By: 
A. J. Wells, President

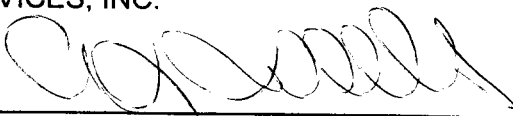
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By: 
Linda Check

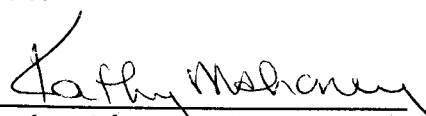
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SERVICES

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

By: 
A. J. Wells, President

ATTEST:

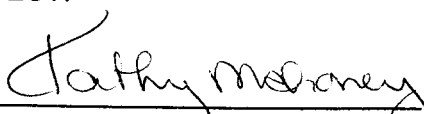
By: 
Kathy Mahoney, Asst. Secretary

MANAGER

MOUNTAIN VILLAGE METROPOLITAN DISTRICT, a Colorado special district

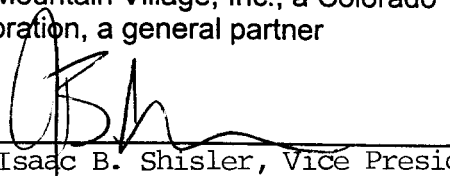
By: 
David Wright, Board Member

ATTEST:


By: 
Kathy Mahoney, Asst. Secretary

TELSKI

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

By: The Mountain Village, Inc., a Colorado corporation, a general partner
By: 
Isaac B. Shisler, Vice President

ATTEST:

By: 
Molly Silver