

**TOWN OF PAGOSA SPRINGS, COLORADO**

**ORDINANCE NO. 1042  
(SERIES 2026)**

**AN ORDINANCE OF THE TOWN OF PAGOSA SPRINGS  
AMENDING THE OFFICIAL ZONING MAP AND  
APPROVING A PLANNED DEVELOPMENT OVERLAY DISTRICT  
AND A PLANNED DEVELOPMENT AGREEMENT FOR PROPERTY  
KNOWN AS PONDEROSA MOUNTAIN**

WHEREAS, the Town of Pagosa Springs ("Town") is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Pagosa Springs Home Rule Charter of 2003, as amended (the "Charter"); and

WHEREAS, pursuant to Section 1.4 A of the Charter, the Town has all the power of local self-government and home rule and all power possible for a municipality to have under the Constitution and laws of the State of Colorado; and

WHEREAS, Section 11.2, A) of the Charter provides that the Town Council may adopt land use and development ordinances, including but not limited to zoning ordinances, subdivision ordinances and an official map of the Town; and

WHEREAS, the Town has provided in the Pagosa Springs Municipal Code ("Code" or "P.S.M.C."), within Chapter 21 ("Land Use Code"), Articles 2 through 6, for development application processes, zoning districts, use regulations, dimensional requirements, and development and design standards, for the purpose of promoting the health, safety, morals and general welfare of the Town; and

WHEREAS, the Town has received an application for a Planned Development for a parcel of land, which is described and depicted on Exhibit A attached hereto and incorporated herein ("Property"), for the designation of a Planned Development Overlay district for the Property, amending the Official Zoning map designating the Property as Mixed Use Corridor, and Planned Development Agreement for the development of the Property; and

WHEREAS, the Land Use Code, Section 21.2.4.2, P.S.M.C., allows for the Town's Official Zoning Map to be amended by the Town Council when necessary, in light of changed conditions or changes in public policy, or to advance the general welfare of the Town; and

WHEREAS, the Land Use Code, Section 21.3.5.1, P.S.M.C. provides that the Planned Development (OPD) Overlay District is intended to encourage compatible uses to be developed in accordance with a unified development plan in harmony with the environment and surrounding neighborhood, permit greater flexibility in zoning and development standards and mix of land uses, and encourage preservation of critical environmental resources, provide above average open space and recreational amenities, include exceptional and innovative design, and provide greater efficiency in the layout and provision of roads, utilities and other infrastructure; and

WHEREAS, the Land Use Code, section 21.2.4.2.D.3.a, P.S.M.C., approval criteria for Planned Developments includes: “the PD addresses a unique situation, confers a substantial benefit to the Town, or incorporates creative site design such that it achieves the purposes of this Land Use Code and represents an improvement in quality over what could have been accomplished through strict application of the otherwise applicable district or development standards.” Such improvements include in quality may include, but are not limited to: improvements in open space provision and access; environmental protection; tree/vegetation preservation; efficient provision of streets, roads, and other utilities and services; or increased choice of living and housing environments”; and

WHEREAS, a Planned Development Agreement is necessary to formalize the specific use regulations, dimensional requirements, and development and design standards as approved by the Town Council; and

WHEREAS, the Town’s adopted 2018 comprehensive Plan identifies the Property to be rezoned for accommodating higher residential density in close proximity to Town with open space dedications, inclusion of a pedestrian/bike commuter trail, and providing a secondary road network; and

WHEREAS, the Town’s adopted Town to Pagosa Lakes Trail Master Plan identifies a non-motorized commuter trail along the Hwy 160 frontage of the subject property; and

WHEREAS, the Access Control Plan adopted by the Colorado Department of Transportation, Archuleta County and the Town identifies the requirement for providing a local road network extension through the Property and a full movement intersection at Great West Ave and U.S. Hwy 160; and

WHEREAS, the Town Council adopted Goals and Objectives identifies the need to provide workforce housing to address current and projected needs by supporting efforts to add more deed-restricted units to local inventory through the public and private sectors; and

WHEREAS, after notice and public hearing as provided for in the Pagosa Springs Municipal Code, Sections 21.2.3.6, 21.2.3.7 and 21.2.4.2, the Town of Pagosa Springs Planning Commission conducted a public hearing on September 8, 2026, recommending that the Town Council approve the Planned Development Overlay District, changing the base zoning to Median Density Residential (R-12), Mixed Use Corridor (MU-C), Open Space and Parks (OS) and the planned development agreement for the Property; and

WHEREAS, the Town Council has upon proper notice and a public hearing as provided for in the P.S.M.C., Sections 21.2.3.6, 21.2.3.7 and 21.2.4.2, considered the developers application, the recommendation of the Planning Commission, the report of the Town Planning Manager, public comments, and other evidence presented at such hearing; and

WHEREAS, the Town Council finds and determines that amending the Official Zoning Map and approving the Planned Development Overlay District and Planned Development Agreement for the Property is in the best interests of the Town and will promote the general welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, as follows:

Section 1. Incorporation of Recitals. The recitals set forth above are incorporated and ordained hereby as if set forth hereafter in full.

Section 2. Amendment of the Town's Official Zoning Map. The Town Council hereby approves amending the Town's Official Zoning map; changing the base zoning for Property to Mixed Use Corridor, Medium Density Residential, Open Space and Parks, with a Planned Development Overlay District designation.

Section 3. Approval of Planned Development Agreement. The Town Council hereby approves the adoption of the Ponderosa Mountain Planned Development Agreement, attached hereto as Exhibit I.

Section 5. Public Inspection. The full text of this Ordinance, with any amendments, is available for public inspection at the office of the Town Clerk.

Section 6. 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 7. Public Hearing. A public hearing on the first reading of this Ordinance shall be held on the 6th day of October 2026 at 5:00 p.m., at the Pagosa Springs Town Hall, 551 Hot Springs Boulevard, Pagosa Springs, Colorado.

Section 8. Effective Date. Pursuant to Section 3.9 of the Town Charter, this Ordinance shall become effective and be in force immediately upon final passage at second reading, which shall be held 20<sup>th</sup> day of October 2026 at 5:00 p.m., at the Pagosa Springs Town Hall, 551 Hot Springs Boulevard, Pagosa Springs, Colorado.

INTRODUCED, READ, AND ORDERED PUBLISHED BY TITLE ONLY  
PURSUANT TO SECTION 3.9, B) OF THE PAGOSA SPRINGS HOME RULE  
CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS,  
COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS  
REGULAR MEETING HELD AT THE TOWN OF PAGOSA SPRINGS, ON THE  
\_\_\_\_ DAY OF \_\_\_\_\_, 2026.

TOWN OF PAGOSA SPRINGS,  
COLORADO

By: \_\_\_\_\_  
Shari Pierce, Mayor

Attest:

\_\_\_\_\_  
April Hessman, Town Clerk

FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED BY  
TITLE ONLY PURSUANT TO SECTION 3.9, D) OF THE PAGOSA SPRINGS HOME  
RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA  
SPRINGS, COLORADO, UPON A MOTION DULY MADE, SECONDED AND  
PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF PAGOSA  
SPRINGS, ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2026.

TOWN OF PAGOSA SPRINGS,  
COLORADO

By: \_\_\_\_\_  
Shari Pierce, Mayor

Attest:

\_\_\_\_\_  
April Hessman, Town Clerk

**CERTIFICATE OF PUBLICATION**

I, the duly appointed, qualified and acting Town Clerk of the Town of Pagosa Springs, Colorado, do hereby certify the foregoing Ordinance No. 1042 (Series 2026) was approved by the Town Council of the Town of Pagosa Springs on first reading at its regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2026, and was published by title only, along with a statement indicating that the full text of the Ordinance is available at the office of the Town Clerk, on the Town's official website, on \_\_\_\_\_, 2026, which date was at least ten (10) days prior to the date of Town Council consideration on second reading.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Pagosa Springs, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2026.

\_\_\_\_\_  
April Hessman, Town Clerk

(S E A L)

I, the duly appointed, qualified and acting Town Clerk of the Town of Pagosa Springs, Colorado, do hereby certify the foregoing Ordinance No. 1042 (Series 2026) was approved by the Town Council of the Town of Pagosa Springs on second reading, at its regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2026, and was published by title only, along with a statement indicating the effective date of the Ordinance and that the full text of the Ordinance is available at the office of the Town Clerk, on the Town's official website, on \_\_\_\_\_, 2026.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Pagosa Springs, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2026.

\_\_\_\_\_  
April Hessman, Town Clerk

(S E A L)

## **EXHIBIT I**

### **Ponderosa Mountain Planned Development Agreement**



# PLANNED DEVELOPMENT AGREEMENT

## PONDEROSA MOUNTAIN

This Planned Development Agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2026, by and between the Town of Pagosa Springs, a municipal corporation (hereinafter referred to as the "Town"), and Modern Community Builders, Inc. (hereinafter referred to as the "Developer"), collectively referred to herein as the "Parties".

### RECITALS

- A. The Developer is the owner (condition of approval) of certain property within the Town limits comprised of 3 properties totaling approximately 70 acres (the "Property"), more specifically described on the attached Exhibit A.
- B. The Developer has submitted an application for a Planned Development ("PD") with a multi-phased Concept Plan as set forth in Exhibit B, the "Project", incorporated herein by reference, and has sought approval to rezone the Property to develop as a Planned Development containing residential housing, lodging rental units/cabins and associated light commercial uses. The Parties agree to replace Exhibit B with the Final Approved Major Subdivision Plan approved by the Town through the subsequent required approval processes.
- C. Developer's Planned Development ("PD") Application proposal has been received in accordance with the Town of Pagosa Springs Planned Development regulations, as adopted in the Town of Pagosa Springs Municipal Code ("Code" or "P.S.M.C.") within chapter 21 ("Land Use Code") section 2.4.2.D.
- D. The Developer shall develop the property only as specified in the approval final PD Project site plan and consistent with all conditions and requirements of this approved Agreement. All future Project phasing plans shall be consistent with the final approved PD Agreement and PD site plan.
- E. The Developer as Property Owner, understands and agrees that the Final PD Site Plan approved through the Major Subdivision application process and this approved Agreement shall run with the property and be an obligation of all successors of ownership, for all or any portion of the subject Property, subject to any Performance Contingencies identified in section 19 of this Agreement.
- F. The Developer proposes the inclusion of workforce housing units as a primary community benefit for considering the PD Proposal. Additional community benefits include; secondary public roadway, Town to Lakes non-motorized commuter trail, interior public trails and dedicated Open Space.

## **AGREEMENT**

For good and valuable consideration, including the covenants, agreements, and pledges contained herein, the parties agree as follows:

**1. Compliance with all Laws, Ordinances, Approvals, and Permits:**

The Developer agrees to design, construct, install, and operate the Project in accordance with approvals received from all governmental entities and utility providers with applicable jurisdiction. The Developer agrees to comply with all state and local laws, ordinances, and regulations as well as the terms of this Agreement, the Town's Land Use Development Code (LUDC), and approved Development Applications.

**2. Town Development Applications Required:** The Developer shall submit required Development applications as required by the Town, for consideration and approval by the respective Town Board/Commission, and its various departments, for consistency with the Land Use Development Code, adopted building codes, regulations, ordinances and standards within this Agreement and Approved PD site plan, prior to work being conducted.

**a. Phased Development Applications.** Prior to the issuance of building permits for each phase of the Project, and prior to any construction of any infrastructure/utility improvement, building, or structure commencing on the Property, the Developer shall submit development applications and receive approval for the following:

- i. Preliminary Major Subdivision applications.
- ii. Final Major Subdivision applications.
- iii. Development Improvements Agreements with the Town for each Project Phase with required financial security.
- iv. Applicable Major Design Review applications for initial Project Phases.
- v. Building Permit applications.

**3. Public and Commonly Owned Private Improvements:** Public and Commonly Owned Private Improvements shall be identified in each Project phase development application submission and identified in the Development Improvements Agreement.

**a. Public Improvements.** The Project shall provide and dedicate certain public improvements as identified during the Major Subdivision Application process which shall be included in the Development Improvements Agreement associated with each project Phase. Public Improvements shall be accepted by the Town and deeded to the Town free of liens with a Bill of Sale, pursuant to the terms set forth in the executed Development Improvements Agreement for each Project Phase. Public Improvements shall include but are not limited to:

- i. Construction of a local road network and improvements to existing roadways as approved by the Town and Archuleta County, and consistent with the intent of the Access Control Plan adopted, and as amended, by the Town, Archuleta County and the Colorado Department of Transportation.
- ii. Construction of the Town to Lakes Commuter Trail shall occur concurrently with phase-one and the first plat, pursuant to a Town approved engineered design and alignment plans.

- iii. Public Open Space dedications, minimum 10% per phase, as approved by the Town within each Project phase development application.
  - iv. Internal Sidewalks and Trails that are determined to be publicly owned.
- b. Commonly Owned Private Improvements. Developer proposes portions of the Project to be commonly owned private infrastructure and amenities, as identified in each Project phase, to be maintained and managed by a legally formed Property Owners Association (POA). Privately owned infrastructure may include, but not limited to: Roads, sidewalks, trails, neighborhood parks and utilities.
- i. All private roads, sidewalks and trails shall provide easement dedications for the general public's use.
  - ii. Private commonly owned infrastructure shall be identified in development applications and identified in each Project phased Development Improvements Agreement along with the required financial bond.

#### **4. Utility Improvements:**

- i. Developer shall work with each respective Utility provider (Water, Sanitary Sewer, Electricity, Natural Gas, Communication Lines, etc.) to ensure the providers' ability to serve the phased Project.
- ii. Developer shall install or coordinate installation of such utilities pursuant to each utility provider's rules and regulations.
- iii. Developer is required to ensure utility infrastructure installation through each phase is sized to accommodate subsequent future Project phases and Project build-out utility needs. Project build-out is defined as the maximum allowable uses and density of units, unless a complete build-out plan is provided for approval.

#### **5. Vehicular Road Improvements:**

The parties agree that development of the Project will have an impact on vehicular traffic patterns along public and/or private roadways.

- i. Developer shall provide roadway and intersection improvements as required by Colorado Department of Transportation (CDOT), the Town, Archuleta County and the adopted Access Control Plan; Including but not limited to Great West Ave, Baldwin Court, Hwy 160, and the new Ponderosa Mountain Public and Private roadways.
- ii. Basis for the engineered design of roadways in each Project phase shall follow best traffic engineering practices and be informed by professionally developed traffic studies, the intent of the LUDC and the adopted Access Control Plan.
- iii. At the time of the phase-one Major Subdivision Application submittals, the Developer shall provide a detailed and complete Traffic Study prepared by a Colorado licensed traffic engineer for the phased and build-out of the entire Project.
- iv. Where appropriate, curb cuts or provisions for drainage culverts shall be included in each Project phase for development of lot ingress and egress.
- v. Future road connectivity to neighboring properties roadways shall be accommodated in each Project phase.
- vi. All roadways shall be dedicated for public use.

**6. Sidewalks and Non-Motorized Trails:**

- i. Developer shall construct a 12-foot wide, concrete surfaced, Town to Pagosa Lakes (TTPL) non-motorized public commuter trail segment along the northern portion of the property, specifically along Lot 2 of Block D, of the Rock Ridge Country Estates Subdivision Amendment, as part of the development's phase-one and first plat. This will ensure a safe pedestrian and bicycle route to the Downtown sidewalk network for lodgers and residents. The Developer shall use the Town's engineered design plans for the construction of such trail. The trail and easement shall be conveyed to the Town for ownership and public use.
- ii. Developer shall provide American Disability Act (ADA) compliant design standards for pedestrian & bicycle sidewalk and/or trail infrastructure adjacent to or in the near vicinity to each public and private roadway to ensure safe routes for non-motorized use.
- iii. Sidewalks and Trails shall meet the intent of the LUDC and other adopted plans or regulations.
- iv. Such trails and sidewalks shall be designed to accommodate the ability for future potential connectivity to neighboring properties.
- v. Internal trails/sidewalks shall be incorporated within each project phase, to provide safe access for pedestrians and bicycles to access the TTPL commuter trail. These routes shall be designed and maintained as hard surfaced for year-round use and shall meet width standards for shared uses.
- vi. Trails and sidewalks shall be dedicated for public use.

**7. Stormwater Management:**

- i. Developer shall apply to the State of Colorado for a Stormwater Management Plan permit for each phased construction activity and shall maintain all erosion control structures until 70% revegetation is established.
- ii. Developer shall provide Storm Water conveyance and detention facilities for each phase to accommodate post development stormwater flows pursuant to acceptable stormwater analysis methods provided in the Town's LUDC.
- iii. Developer is allowed to provide roadside ditches for storm water conveyance along private roadways versus curb and gutter, designed and constructed pursuant to an engineered drainage and grading plan.

**8. Landscaping Elements:** Each Phase of the Project shall include and identify landscaping elements consistent with the LUDC and adopted regulations.

- i. The Developer shall provide installation and maintenance of landscaping along public roadways including irrigation.
- ii. The Town's LUDC requires street trees with irrigation to be included along public roadways.
- iii. The Developer shall provide a minimum of 5-foot landscape strips between public roadways and trails/sidewalks to accommodate snow storage.

## **9. Protection of Natural Resources:**

A principal feature of this Agreement is the preservation of natural resources for the entire Property as contemplated in the 2018 Comprehensive Plan. At the time of submittal for each Project phase Preliminary Major Subdivision Application, Developer shall provide the following prepared by a person or firm with the professional expertise to prepare such.

### **a. Tree/Fire Management Plan.**

#### **i. Pre-Construction and During Construction.**

- Existing tree inventory map Identifying significant trees to be preserved and trees to be removed.
- Plan for tree protection and installation of protection fencing during construction.
- Building footprint considerations in each plat.
- Low impact building foundation designs, where possible.
- Tree branch and root pruning plan and procedures for construction and future fire mitigation.
- Best practices for forest health, fire mitigation maintenance, and insect control plan.
- Contractor communication and education to ensure identified significant trees are protected throughout construction activities.

#### **ii. Post Construction**

- Communication and education for property residents, owners, and maintenance managers.
- Maintenance Manual defining proper tree protection, maintenance and care.

### **b. Wetlands delineation report and a wetlands and waterway preservation and mitigation plan.**

- i. Such preservation and mitigation plan shall include a detailed analysis regarding the impacts to the wetlands and waterways on the Property and an onsite mitigation plan for consideration by the Town, and as required by State and/or Federal agencies having jurisdiction of such.
- ii. Recommended buffering distances for buildings from wetlands, prepared by a professional having such expertise.
- iii. Wetlands along the Hwy corridor and within the development shall be preserved as such or mitigated pursuant to local, state and federal regulations.
- iv. Preserved wetlands shall be maintained to eradicate invasive plant species.

### **c. Open Space and Park dedication.**

- i. Open space within the development shall be dedicated for public access.
- ii. Additional open space shall be dedicated in each future phase of development, equating to a minimum of 10% of each phase's gross acreage.

## **10. Zoning and Allowable Uses:**

- a. The Base Zoning designations of Medium Density Residential (R-12), Mixed-Use Corridor (MU-C), and Open Space and Parks (OS) in conjunction with a Planned Development

Overlay (OPD) zoning shall be applied to the Project as indicted in the Concept Plan and shall be effective pursuant to the terms of this Agreement. This PD Agreement shall also govern the permissible uses on the subject land, as shown in Exhibit C, "Allowable Uses".

**b. Residential Uses.**

- i. Short-Term Vacation Rentals Prohibited. Since the Project proposes a number Lodging Units, as a means to preserve residential homes and units as residential uses only, short-term vacation rentals shall be prohibited in the R-12 base zoned areas of the Project. This prohibition shall also be included in the Projects POA Codes, Covenants and Restrictions (CC&R's).
- ii. Accessory Uses Allowed. Residential amenity facilities serving as allowable accessory uses are permitted, which may include the Clubhouse, pool, pickleball courts, hot-tubs, open space, parks, and trails, which shall be open to the public. A fee may be charged for amenities other than public parks, open space and trails.
- iii. Outdoor Spaces Required. All residential dwelling units, both for-lease and for-sale, including single-family (detached) and multi-family (attached), shall include substantial private outdoor space to provide an area for each resident to enjoy, attached to, adjacent to or near their dwelling unit. Private Outdoor Space shall be either a deck, a patio, or a balcony, and may be a combination of one or more of these:
  - A covered structure such as an awning or pergola
  - Partially enclosed or shielded, or recessed into the building façade
  - A patio or deck large enough to accommodate a dining table with 4 or more chairs
- iv. Garages: Garages and/or Carports shall be provided for residential dwellings of 510 sq.ft. or greater and shall include additional storage space beyond the vehicle parking area to store personal items. Garages and carports may or may not be attached to the dwelling unit.
- v. Dwelling Unit Storage Space: All dwelling units shall have a secure storage space to store personal items, either within the dwelling unit, within the multi-family building or within 100 feet of the dwelling unit. Storage Space Area Size shall be a minimum of 200 cubic feet (for example 5' wide x 5' deep x 8' tall) to accommodate items such as bicycles, recreational equipment, seasonal items and intermittently used items. Secured storage space for all residential dwelling units is considered critical to the success of the development to avoid outdoor storage of items and shall be further governed by the POA CC&Rs recorded for each property/dwelling.
- vi. Outdoor Storage prohibited: Outdoor storage of personal items shall not be allowed unless approved by the POA and, if allowed, must be shielded by opaque building materials at least five feet in height.

**c. Lodging/Resort Uses.**

- i. Lodging and resort establishments are allowed only in the MU-C base zoning portions of the development property.

- ii. Lodging and resort establishment and units shall require the appropriate permitting and licensing from the Town of Pagosa Springs and not to exceed a combined total of 85 lodging units.
- iii. Lodging amenity facilities serving as allowable accessory uses are permitted, which may include the Clubhouse, pool, pickleball courts, hot-tubs, open space, parks, and trails, which shall be open to the public. A fee may be charged for amenities other than public parks, open space and trails.

#### **11. Attainable Workforce Housing Units:**

- a. Attainable workforce housing is one of the primary community benefits for considering the Ponderosa Mountain Planned Development. Thus the following provisions are meant to ensure that as the project advances through multiple phases, attainable workforce housing units are being constructed concurrently with residential unit and resort cabin unit construction.
  - i. Developer shall provide a minimum of 18% of the total of all resort cabin units and residential units combined in phase-one as attainable workforce housing units. Construction of phase-one attainable workforce housing units shall occur concurrently with the construction of resort (cabin) units and residential units at a rate of 18% of the combined total of units being constructed in each phase-one plat. Developer proposes 82 residential units and 82 resort cabins units in phase-one, equating to 30 attainable workforce housing units in phase-one.
  - ii. Subsequent to and separate from phase-one, the Developer shall provide a 12% minimum of attainable workforce housing units compared to the total number of residential units as the Project advances after the phase-one commitments stated in section 11.a.i above. At no time shall the total percentage of attainable workforce housing units be less than 12% in relation to the total number of cumulated residential units.
  - iii. Attainable workforce housing ownership units shall serve 90-130% of Area Median Income (AMI) consistent with the annually published Colorado Housing Finance Authority (CHFA) AMI table for Archuleta County.
  - iv. Developer shall provide an equal split of the attainable workforce housing ownership units as all phases advance with an equal number of units in each AMI Range as follows: 90%-100%, 101%-110%, 111%-120%, 121%-130%. Applicable monthly housing expenses shall be inclusive of mortgage, utilities, HOA dues, taxes and insurance.
  - v. Attainable ownership units shall be deed-restricted in perpetuity to ensure attainability is sustainable throughout future successors of ownership.
  - vi. Town shall approve all attainable workforce housing sale agreements, deed restrictions, lease agreements, and other related documentation to ensure compliance with adopted regulations, policies and guidelines.
  - vii. Short-term vacation rentals shall be prohibited for all deed-restricted attainable workforce housing units, including rental and ownership units.

## **12. Ponderosa Mountain Development and Design Standards:**

- a. All terms shall be defined pursuant to definitions within the Town's Land Use Development Code, unless expressly defined differently within this Agreement.
- b. Development Standards shall comply with the Town's LUDC, unless otherwise identified in this Agreement.
- c. Exhibit D of this agreement defines the dimensional design standards for the Project.
- d. Exterior Siding and Building Materials. Exterior materials and building assembly methods shall comply with current adopted International Building Codes and Colorado Wildfire Resiliency Code, and shall adhere to the following:
  - i. Building wall facades shall utilize 3 varying materials and/or textured materials on 2 of the four facades. Remaining wall facades shall utilize 2 varying materials and/or textured materials. Durable wainscoting along bottom portion of walls is encouraged to protect the building from ground snow, water and ice. Following are preferred material options:
    - Painted or natural brick
    - Composite and/or cement board or tile siding material.
    - Metal panel members
    - Stucco or stone
    - Metal does not exceed 80% of the associated facade area.
- d. Roof Designs. Roof designs shall apply to all buildings and structures outlined and allowed in the Land Use Summary.
  - i. Hip and Gable roof pitches shall be at least a 6/12 pitch. Major Shed roof pitches shall be at least a 4/12 pitch.
  - ii. Roof materials shall include either standing seam metal roofing or composite shingles or a combination of both.
  - iii. A Flat roof section may be incorporated into roof designs;
    - i. Flat roof sections shall include adequate slope of a minimum of 1/12, to ensure proper drainage.
    - ii. Flat roof sections shall not dominate roof designs and be used as an architectural design element only, not to exceed 30% of the overall width of the roof design.
  - iv. For maintenance and safety, roof valleys shall be minimized.
  - v. Protection of pedestrians, vehicles and neighboring properties from snow shedding shall be provided.

**13. Amendments to Final Approved PD Plans and the PD Agreement.** Changes to a final PD site plan or this Agreement shall be applied for by the Developer to the Town in accordance with the LUDC provisions and Ordinances adopted at the time of such request for amendment.

**14. Financial Security (Bonding).** The Developer shall file any Financial Security associated with each Project Phase as identified in the phased Development Improvements Agreement.

- i. Financial Security is required to cover the cost of construction of public and commonly owned private infrastructure as identified for each Project phase.

- ii. Following acceptance of public infrastructure and approval of private infrastructure improvements, Warranty Financial Security is required pursuant to the terms of the Development Improvements Agreement, to cover costs associated with material or workmanship defects.

**15. Violation of this Agreement.** The parties acknowledge that monetary damages for a breach of this Agreement would be inadequate to compensate the parties for the benefit of their bargain. Accordingly, the parties expressly agree that in the event of a violation of this Agreement, the non-breaching party shall be entitled to receive specific performance. Nothing herein shall be deemed a waiver of the Town's rights to seek enforcement of this Agreement or Development application approvals previously granted, to the extent otherwise authorized by law. Notwithstanding the foregoing, in the event there is a violation(s) or alleged violation(s) of the terms or conditions of this Agreement by the Developer, then the Town shall serve written notice upon the Developer setting forth the manner in which Developer has violated the Agreement, and such notice shall include a demand that the violation(s) be cured within a stated reasonable time period. Should a court of competent jurisdiction find the Developer to be in breach of any provision of this Agreement or the PD approval (in whole or in part), then the Developer shall be required to reimburse the Town for its reasonable attorney fees and costs. Additionally, the Town shall have the right to utilize stop work orders as appropriate for any violations. All of the remedies of the Town under this Agreement, the Town's LUDC, and state law shall be deemed to be cumulative.

**16. Recording and Binding Effect.** The obligations under this Agreement are covenants that permanently run with the land, and shall bind all successors in title as to the Property (as well as any and all portions thereof), including, but not limited to, successor developer(s) and the purchasers and owners of any individual lot, parcel, or unit within the Property. It is the parties' intent that this Agreement will be recorded with the Archuleta County Clerk and Records Office. The Developer is responsible for all costs associated with recording the Agreement. A copy of the recorded agreement shall be submitted to the Town.

**17. Heading and Recitals.** The parties acknowledge and agree that the headings and subheadings in this Agreement are for convenience only and shall have no bearing or effect. The parties acknowledge and agree, however, that the recitals hereto are and shall be considered an integral part of this agreement proper to its correct understanding and interpretation.

**18. Miscellaneous.**

- i. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions and this Agreement shall be constructed in all respects as if any invalid or unenforceable provision were omitted.

- ii. Notices. Any and all notices permitted or required to be given shall be in writing and sent either by mail or personal delivery to the address below, and as amended, for successors in ownership/developer:
 

|                                                                                            |                                                                                                                             |
|--------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| Town of Pagosa Springs<br>PO Box 1859<br>551 Hot Springs Blvd<br>Pagosa Springs, CO. 81147 | Ponderosa Mountain Properties<br>Modern Community Builders<br>9903 Santa Monica Blvd. Suite 816<br>Beverly Hills, CA. 90212 |
|--------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
- iii. Waiver. No failure or delay on the part of any party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- iv. Governing Law. This Agreement is being executed and delivered and is intended to be performed in the state of Colorado and shall be constructed and enforced in accordance with, and the rights of the parties shall be governed by, the laws thereof.
- v. Authorization. The parties affirm that their representatives executing this Agreement on their behalf are authorized to do so (and can fully bind their respective party) and that all resolutions or similar actions necessary to approve this Agreement have been adopted and approved. The Developer further affirms that it is not in default under the terms of any land contract for all or part of the Property.
- vi. Fees. The Developer shall pay any and all applicable development application, impact, building permit, and other required fees to the Town.

#### **19. PD Agreement Performance Contingencies**

Town's approval of this Agreement is partially based on the Developers assertion they will proceed through the appropriate development application processes and begin construction following a Final Major Subdivision Application and Development Improvements Agreement approval.

- a. Within one (1) year from the approval of the rezoning to the PD overlay district, the property owner shall have commenced development by filing a complete Final Major Subdivision approval and executing a Development Improvements Agreement (DIA) with the Town.
- b. If such application has not been filed and DIA executed within one (1) year, the Developer may submit a request for one (1) – one (1) year extension to the Town for consideration of such request. Request shall be received no later than forty-five (45) days prior to the one (1) year date from the date of this Agreement. Such request shall state the reasons for and purpose of such extension request.
- c. If such application has not been filed, and DIA executed within one (1) year and an extension request has not been received as set forth above, the Town Planning Division shall initiate a public hearing process for the purpose of considering whether or not to rezone the property back to its prior zoning classification, or in light of other conditions, to another zoning classification, and revocation of all permits issued and action taken.

DEVELOPER / PROPERTY OWNER:  
Modern Community Builders, Inc.

Title: \_\_\_\_\_

Notary Public

TOWN OF PAGOSA SPRINGS, COLORADO

Title: \_\_\_\_\_

April Hessman, Town Clerk