

Town of Minturn Town Council
Conditions to Approval of Battle Mountain PUD Preliminary
Development Plan Application and Environmental Impact
Report
Approved February 27th, 2008

Administrative:

1. The Applicant shall pay all required fees and charges related to development of the subject property.
2. Any and all material representations of the Applicant made orally in its presentation at public hearings or in the materials presented, except as the same may have been subsequently modified in written or oral testimony submitted in the course of the public hearings on this application, shall be adhered to and are made conditions of approval.

Council and Staff:

1. All staff and consultant comments received in connection with the review and processing of the PUD Final Development Plan will be appropriately addressed, mitigated, or corrected in connection with the review and processing of the PUD Final Development Plan.
2. In connection with Applicant's request for review of its PUD Final Development Plan submission, Applicant agrees to address in writing these conditions and recommendations and the manner in which they have been addressed, as appropriate.
3. All building permits required by the Town must be applied for and obtained consistent with the provisions of the Municipal Code and consistent with the rules and regulations of any other governmental entity with jurisdiction.

Outside Agencies:

1. All additional outside agency review comments received in connection with the PUD Final Development Plan submission will be appropriately addressed, mitigated, or corrected in connection with the review and processing of the PUD Final Development Plan.
2. Prior to the recording of the first final subdivision plat, Applicant will pay to Eagle County School District the amount of the fees-in-lieu of school land dedication based upon the calculation of those fees as set forth in the School District's letter dated March 15, 2007 or as otherwise agreed between Applicant and School District.
3. Applicant must obtain appropriate U.S. Army Corps of Engineers or EPA authorization and/or Section 404 permits or other appropriate federal authorization for any activities involving wetlands or navigable waters prior to conducting dredge or fill activities in

regulated waters and provide copies of same to the Town prior to the commencement of any such activities.

4. Applicant will implement the provisions of the Wildlife Mitigation and Enhancement Plan attached to the approved Preliminary Development Plan and will attach the Plan as an Exhibit to the final Battle Mountain Planned Unit Development Guidelines (“PUD Guide”).
5. At the time review and processing are sought for the Final Subdivision Plat for the first phase, Applicant, if appropriate, will identify and designate for dedication the locations for facilities for fire, emergency response, and police services to be located within the Project, the timing of construction and equipping such facilities, the funding for the same, including bridge funding for the additional employees that will be hired during early construction phases, and provide the approval of the same by the fire district, health services district, and Town police department. Irrespective of the phase in which such dedication will occur or in which the construction of the facilities will occur, the security for such facilities and equipment shall be provided in the form of an escrow or letter of credit as provided in the Annexation Agreement at the time of approval of the final subdivision plat for the first phase of the Project. The property on which the facilities are located shall be dedicated without liens or encumbrances to the fire district, health services district or the Town, as appropriate, at the time of the approval of the final plat that includes such locations; upon construction of the facilities, they will be so dedicated to the appropriate entity. During the initial construction phases, Applicant agrees, as may be required, to provide the funding for the operation and maintenance of such facilities and equipment until the tax revenues to the Town are sufficient to pay for the same with respect to the police services; such funding may come directly through the Applicant, the homeowners association, or a special district. In any such case, Applicant shall provide a budget and financial security for the same and secure approvals for such budget from the fire district, health district, and Town as appropriate. Provision for such budget and financial security shall be included in the information provided in connection with the submission for PUD Final Development Plan. In addition, Applicant will provide information regarding the number of employees necessary to provide such services and, as may be required, the provisions for the provision of housing for the same consistent with the percentage requirements set forth in the Employee Housing Plan for the Project employees.
6. The approval is subject to any conditions, covenants, or restrictions that may be imposed on the property or Project by the U.S. Fish and Wildlife Service and as may be contained in an approved Habitat Conservation Plan. Applicant will provide the Town with a copy of any decisions, agreements, or approvals that are obtained from the U.S. Fish and Wildlife Service. To the extent such decisions, agreements, or approvals require modifications to the PUD Preliminary Development Plan or the PUD Final Development Plan or PUD Guide, such modifications must be made consistent with the provisions of the Municipal Code and, in the case of the PUD Guide, the final PUD Guide and Municipal Code.

7. Applicant must obtain any necessary local, regional, state, or federal authorizations, approvals or permits that may be required in connection with the Project prior to commencement of any authorized activity and provide evidence of same to the Town.
8. In connection with the review and processing of the PUD Final Development Plan, Applicant and the Town shall discuss and agree upon the Town services that will be necessary to provide service to the Project and its citizens and the numbers of Town employees in each service area that will be necessary together with the required office space and equipment. Such services will include public works, parks and recreation, police (see condition above) water and sewer, and administration. In connection with the review of the PUD Final Development Plan and as a part of the Development Agreement required by the Municipal Code, Applicant agrees to provide for the funding of the same to serve as bridge funding until the tax revenues to the Town are sufficient to pay for the same. The agreement will include the appropriate phasing of the hiring of such employees and the need for the physical facilities and equipment and for their housing. The housing program for such employees is set forth in the Battle Mountain Housing Plan.

Traffic:

1. Applicant has provided a final Town Traffic Improvement Plan (December 14, 2007), Resort Guest and Employee Traffic Plan (February 6, 2008), and Construction Traffic Management Plan (February 21, 2008) that have been approved by the Town's traffic consultants. In connection with the submission of the PUD Final Development Plan, Applicant will submit an appropriate plan or amend one of the referenced plans to include the specifics of the proposed shuttle and transit program for employees and construction workers including without limitation the identification of intercept parking lots or facilities. Applicant will implement these plans in accordance with their provisions. Notwithstanding the foregoing to the contrary, Applicant agrees to begin permitting, implementation and subsequent construction of the Town Traffic Improvement Plan pertaining to Main Street improvements upon the latest to occur of (i) thirty days after Final Approval, (ii) as required by the Water Service Agreement and Wastewater Service Agreement, or (iii) March 1, 2009, subject to issuance of all required CDOT approvals and permits. Financial security for such improvements will be provided in the amount of 125% of the estimated costs of the construction of such improvements in the form of a letter of credit, escrow or performance bond as provided in the Annexation Agreement no later than one month prior to initiating construction. It is anticipated that the implementation of the Town Traffic Improvement Plan for the Main Street section will take place in connection with the installation of the main water line and wastewater trunk line and utilities under Main Street at Applicant's expense and as may be provided in the Water Service Agreement and Wastewater Service Agreement. Accordingly, a new asphalt cap will be installed on Main Street at the time of the completion of the installation of such infrastructure.
2. In connection with Applicant's request for review of its PUD Final Development Plan submission, Applicant shall submit a program for the repair and maintenance of Highway 24 directly associated with the monitored level of damage that may occur in connection

with the Project-related construction traffic. At the time of approval of the PUD Final Development Plan, the Applicant and the Town shall agree upon the estimated financial requirements to satisfy this condition and Applicant shall provide security as provided in the Annexation Agreement.

3. Applicant shall be solely responsible for obtaining appropriate CDOT access permits for all entry points of the Project to Highway 24 and agrees to provide the Town with appropriate expertise paid for by Ginn as necessary in connection with obtaining any such permits required for the construction associated with Main Street as provided above.

Bike Trail

1. Applicant agrees to dedicate an easement to the Town for the ECO Trail through the entire Project from the north end at Maloit Park to Red Cliff along the general alignment set forth in the approved Preliminary Development Plan documents ("Project Trail"). Applicant and the Town acknowledge that the proposed alignment as reflected on-Sheets No. L10.02 through L10.06 reflects a general proposed alignment and that detailed engineering studies for construction of the trail have not been performed. The general proposed alignment is subject to changes as a result of detailed engineering and title issues on property that is not owned or controlled by Applicant. The Project Trail must be designed to connect with the bike trail to be constructed from Town to Maloit Park and the referenced Sheets will be changed to reflect such connection at the time of the design of the two trail sections. Such easement shall be dedicated on each final subdivision plat of the Project that includes the Project Trail or portions thereof as designated hereby. Applicant shall design and construct the Project Trail; the design and construction of the Project Trail will be based upon standards developed by engineers for Applicant and for the Town that will take into account the design standards of ECO Trails (including without limitation such standards pertaining to emergency access). Such construction shall take place during the first phase of the Project. Applicant shall pay for all costs associated with the design and construction of the Project Trail. Within thirty days after the execution of the subdivision improvements agreement for the first phase of the Project, Applicant will provide to the Town a letter of credit or escrow in accordance with the provisions of the Annexation Agreement in the amount of 125% of the estimated construction costs for the Project Trail. . The construction of the trail through the Bolts Lake and Gilman Character Areas may require approval by the EPA and CDPHE. In the event there are no such approvals as required at the time that the Project Trail is to be constructed, Applicant will provide another alignment reasonably acceptable to the Town through the Project for the Project Trail and dedicate an easement for the same. In the event no other alignment is available until such approvals are received, any approved final subdivision plats shall include the condition that no lots may be sold until there is an approved alignment for the Project Trail from the north end of the Project to Red Cliff.
2. Applicant agrees to work with ECO Trails and the Town in order to reach a consensus on the final alignment for the Project Trail, which alignment may be different than that set forth in **Exhibit A**. Applicant agrees to pay ECO Trails in an amount up to \$50,000.00 for reasonable expenses incurred by consultants retained by ECO Trails and

associated costs to investigate the property ownership and viability of constructing the Project Trail on such alternative alignment. This investigation shall be completed and the incurred expenses shall be paid by Applicant as provided herein on or before the approval of the Final Development Plan. As a part of this effort and in the event a portion of such alignment is off the Project property, a coordinated plan prepared with ECO Trails for addressing the securing of rights of way and funding the construction of such off site portion should be provided together with a time line for the same. It shall not be the responsibility of Applicant to secure the rights of way along any alignment that is not located on the Project property or within the dedicated easements for the Project Trail. It is anticipated that such alternative alignment is along the old Highway 24 roadway that is off of the Project property. In addition, Applicant will provide ECO Trails with reasonable planning and design assistance for the same. The decision concerning which alignment will be constructed must be made prior to or at the time of the submission of a Final Development Plan for the Project. In the event portions of the final alignment of the Project Trail are to be constructed off of the Project property, Applicant shall be responsible for the payment of the costs of the same. In the event there is no such agreement regarding an alternate alignment at such time, Applicant will be responsible for the construction of the Project Trail as designated on **Exhibit A** as provided herein, unless the Town, Applicant and ECO Trails otherwise agree in writing. Applicant, the General Improvement District provided for in the annexation agreement, or a special district formed by Applicant, as determined by Applicant, will be responsible for the maintenance of those portions of any of the Project Trail located on Project property. In the event that this maintenance obligation is undertaken by the Applicant, it will be reflected in Applicant's Master Declaration of Covenants, Conditions, and Restrictions and may not be changed without approval by the Town. The General Improvement District provided for in the annexation agreement pertaining to the Property will be responsible for the maintenance of those portions of the trail off of the Project Property.

3. Applicant's internal trail system will be identified in the Open Space, Parks and Recreation Plan to be submitted with the PUD Final Development Plan and may be appropriately connected to the Project Trail. The internal trail system shall be constructed by Applicant at Applicant's expense and the operation, maintenance, and repair of such system shall be funded either through the homeowners association or a special district. The Open Space, Parks and Recreation Plan shall identify the proposed routes of access to adjacent U.S. Forest Service lands through the Project and the designated areas for public parking; provided, however, that Applicant shall not be required to dedicate or otherwise provide for any access through the Project to adjacent public lands except as otherwise expressly provided herein. To the extent appropriate, such access points shall be consistent with those historically used by the public. Such access and the access along Shrine Pass Road and Tigiwon Road shall be for hikers, hunters, backcountry skiers, snowmobilers, bikers, and river activities such as kayaking, tubing, rafting and fishing and other appropriate and authorized uses of public lands as appropriate given the uses of the adjacent public lands. To the extent that such access routes and trailheads are on the Project, the same shall be identified on the applicable final subdivision plats and easements for the same acceptable to the Town shall be dedicated on such plats.

Open Space:

1. All open space within the Project that is not dedicated as provided herein or as required under the approval for the Preliminary Subdivision Plat shall be owned by the master homeowner's association, the owner of the Battle Mountain Club (the Project's non-equity club), individual lot owners, a special district or Applicant or a combination thereof depending upon the specific parcels involved.
2. In connection with its submission of a Final Development Plan, Applicant will provide a more detailed Open Space, Park and Recreation Plan that includes specifics associated with infrastructure installation and construction, maintenance, granting of conservation easements and the budgetary sources of funds from the homeowners association or special district for those common areas within the common interest community and from the Battle Mountain Club (the Project's non-equity club) for those other areas that will be open space, parks, and recreation. Upon approval of the final Open Space, Park and Recreation Plan by the Town, conservation easements in the form approved by the Town shall be placed on appropriate lands within the Project designated as permanent open space. The plan must include a map of the parks, open space, and location of conservation easements, together with a designation of which are open to the public and which will remain private.
3. Applicant shall not cause Tigiwon Road or Shrine Pass Road to be closed to the public through the Project Property. Any realignment or other changes to such roads by Applicant must be made in accordance with applicable rules and regulations of the U.S. Forest Service and applicable provisions of the Municipal Code. Applicant shall work with the U.S. Forest Service to identify an appropriate location proximate to the winter trailhead of Tigiwon Road for the parking of vehicles and for trucks and trailers to turn around in the winter to accommodate the winter use of Tigiwon Road consistent with historic practice.
4. In connection with the submittal of the Final Development Plan, conservation easements in a form approved by the Town shall be placed on lands within the Holy Cross Character Area – specifically the cliffs where the peregrine falcons nest and the drainage directly to the east of those cliffs- except for those areas used for ski lifts or ski runs.

Employee Housing:

1. Applicant will implement the Battle Mountain Employee Housing Plan attached the approved Preliminary Development Plan. In connection with the review and processing of the Final Development Plan, Applicant will provide additional details regarding the implementation of the plan, including the following: the location and funding of on and off site housing and the financial assistance program for such housing; and a more detailed analysis and plan for chosen employee housing locations in terms of housing types, sizes, numbers and timing of construction and the extension of infrastructure and utility services for such housing. With regard to offsite housing, such plan will include the means by which the employees in such housing will be transported to the Project.

Environmental/ Superfund:

a. At the time of the execution of this Agreement, Applicant had not received a copy of a proposed final Agreement and Order on Consent pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601, *et. seq.*, (“AOC”) from the United States Environmental Protection Agency (“EPA”) for the Bolts Lake Area and Areas within Operable Unit 1 (“OU-1”) of the Eagle Mine Superfund Site (“Superfund Site” which includes withinout limitation both OU-1 and OU-2), also known as the Bolts Lake Character Area, that is acceptable to the Town or Applicant. It is very important to the Town that the Bolts Lake Character Area within the Superfund Site be the subject of additional remediation or environmental response activities as proposed by Applicant to accommodate residential and recreational uses and provide for the future health and safety of the Town. It is also critical to the interests of the Town that it be able to store water in Bolts Lake and that the remedy or environmental response activities approved pursuant to an AOC and Record of Decision (“ROD”) permit the reconstruction and future use of the historic footprint of Bolts Lake in a manner that is acceptable to the Town. Applicant agrees to use its commercially reasonable best efforts to work with the EPA and the Town in order to secure as soon as practicable an AOC and ROD that include remediation of the Bolts Lake Character Area and the reconstruction and future use of Bolts Lake in a manner that is acceptable to the Town and Applicant. If Applicant provides an AOC approved by EPA and acceptable to Ginn that is rejected by the Town, Applicant shall be required for no more than two years from such rejection to use its commercially reasonably best efforts to obtain an AOC acceptable to the Town. In the event a proposed final AOC for the remedial or environmental response activities within the Bolts Lake Character Area is provided to Applicant for execution that is not acceptable to the Town, including but not limited to, because it does not include the right to store water in Bolts Lake, Applicant agrees that it will not execute the proposed final AOC. In such circumstance or in the event that no AOC for the remedial or environmental response activities within the Bolts Lake Character Area has been agreed upon by EPA and Applicant within 3 years from the Effective Date of the Annexation Agreement, or sooner upon agreement of Applicant and the Town, the Town and Applicant agree to explore in good faith the options available to generate an acceptable revised proposed AOC from the EPA within a reasonable time and the options available for the preparation of a different development scenario for the Project within the Bolts Lake Character Area that would allow for the storage of water in Bolts Lake. Such different development scenarios may be inconsistent with the approved Preliminary Development Plan and approved Preliminary Subdivision Plat and may require an amendment to one or both that is acceptable to the Town under the Municipal Code.

b. Notwithstanding the foregoing, Applicant agrees that it will not, at any time, execute any AOC relating to remedial or environmental response activities within the Bolts Lake Character Area or the Gilman Character Area in connection with development scenarios prepared subsequent to the Effective Date of the Annexation Agreement without the review and acceptance of the Town, in its sole discretion.

c. Applicant agrees to negotiate in good faith in order to secure, no later than the time of the Town’s approval of an AOC for the Bolts Lake Character Area environmental response activities, an agreement with CBS Operations, Inc. (“CBS”) regarding Applicant’s and CBS’s respective responsibilities for the operation and maintenance and monitoring of remedies

at the Superfund Site as approved by the EPA and State of Colorado and that is acceptable to the Town. Applicant agrees that prior to the execution of a final agreement with CBS, it will provide to the Town a copy of such agreement for the Town's review and acceptance, in its sole discretion.

d. In the event no AOC for the remedial or environmental response activities within the Bolts Lake Character Area has been agreed upon by EPA and Applicant within three years of the Effective Date of the Annexation Agreement or sooner if Applicant seeks approval from the Town after the such date for a development scenario that does not include remedial or environmental response activities within the Bolts Lake Character Area, Applicant shall be obligated to rehabilitate the Bolts Lake or provide for alternative water storage as further provided in the Water Service Agreement between the parties. Applicant shall use commercially reasonable best efforts to obtain all appropriate agreements with and approvals from the EPA, the Colorado Department of Public Health and Environment ("CDPHE"), the United States Army Corps of Engineers, the Colorado Division of Water Resources (Dam Safety Branch) and any other state or federal agency with jurisdiction over the rehabilitation and construction of Bolts Lake. Applicant will provide timely to the Town copies of all appropriate agreements and approvals as they are issued for the Town's review and acceptance, in its sole discretion.

e. Prior to approval of the Final Development Plan for the Project and prior to the approval of the Preliminary Subdivision Plat for the MU-1 parcel in the Bolts Lake Character Area, Applicant will provide timely to the Town copies of all documents prepared consistent with the National Contingency Plan in connection with regulated activities in the Bolts Lake Character Area as they are issued for the Town's review and acceptance, in its sole discretion.

f. Prior to commencing construction activities, remediation or other environmental response activities and ground disturbance activities within the boundaries of the Superfund Site at Bolts Lake Character Area, Applicant will provide timely to the Town copies of all drafts of the AOC relating to the Bolts Lake Character Area and a copy of the proposed final AOC, as they are issued by EPA for the Town's review and acceptance, in its sole discretion. To the extent any construction activities and ground disturbance activities within the Bolts Lake Character Area are conducted outside of the Superfund Site boundaries and are exclusive of activities relating to the Superfund Site, Applicant will secure appropriate permits and approvals from the Town in accordance with the Municipal Code.

g. At the time of the execution of this Agreement, Applicant had not received a proposed final AOC from the EPA for environmental response activities within the North Gilman areas within the Gilman Character Area, also known as OU-2, of the Superfund Site, that would permit the location of proposed infrastructure connecting the Bolts Lake Character Area and the other Character Areas of the Project through the North Gilman area. Applicant agrees to use its commercially reasonable best efforts to work with the EPA, CDPHE and the Town in order to secure as soon as possible an AOC for the environmental response activities within the North Gilman portion of the Gilman Character Area. Applicant agrees that it will execute an AOC relating to the environmental response activities in the North Gilman portion of the Gilman Character Area only following the Town's review and acceptance, in its sole discretion.

h. Prior to the approval of an amended Preliminary Subdivision Plat or other authorization for the location and installation of infrastructure in the North Gilman areas of the Superfund Site, Applicant will provide timely to the Town copies of documents relating to the proposed environmental response activities for infrastructure installation, including but not limited to the Engineering Evaluation and Cost Analysis, draft AOCs and proposed final AOC, as they are issued for the Town's review and acceptance, in its sole discretion.

i. Prior to the commencement of construction activities relating to the installation of infrastructure through the North Gilman areas within the Gilman Character Area of the Superfund Site, Applicant will provide to the Town written evidence of approval by EPA, CDPHE and other regulatory authorities of such activities for the Town's review and acceptance, in its sole discretion.

j. Prior to approval of an amended Preliminary Subdivision Plat or Plats for the MU-2 parcel in the Gilman Character Area, Applicant will, as appropriate and applicable, provide timely to the Town copies of all documents prepared pursuant to the National Contingency Plan in connection with environmental response activities proposed to be conducted in the Gilman Character Area, as they are issued for the Town's review and acceptance, in its sole discretion.

k. Prior to commencing construction activities, environmental response activities and ground disturbance activities within the boundaries of the Gilman Character Area other than activities associated with approved infrastructure installation, Applicant will provide timely to the Town copies of the draft AOCs for the Gilman Character Area and copies of the proposed final AOC(s) for the Town's review and acceptance, in its sole discretion. To the extent any construction activities and ground disturbance activities within the Gilman Character Area are conducted outside of the Superfund Site boundaries and are exclusive of activities relating to the Superfund Site, Applicant will secure appropriate permits and approvals from the Town in accordance with the Municipal Code.

l. All activities, uses, construction, operation and maintenance plans for any areas that are designated areas in the Superfund Site, including areas within the Bolts Lake Character Area and Gilman Character Area, will comply fully with the environmental response, construction, operation and maintenance plans and requirements of the EPA, CDPHE, and the Town. Financial assurance, acceptable to the Town, will be provided to the EPA for the environmental response, operation and maintenance requirements as provided herein. Except as provided below in connection with the Bolts Lake Character Area, financial assurance for any designated areas in the Superfund Site to the EPA will be approved by the Town at such time that the final environmental response activity plans are completed for the designated areas and approved by the EPA and by the Town in its sole and absolute discretion and the estimated costs of construction of the same, acceptable to the Town, are created based on such plans.

m. Use of the Superfund Site will be restricted by environmental covenants consistent with the requirements of C.R.S. Sections 25-15-317 through 327 and consistent with the remediation, use, construction, operation and maintenance plans and requirements of the EPA, CDPHE, and the Town. Financial assurance, acceptable to the Town, will be provided to

the EPA for the long term operation and maintenance requirements for the Superfund Site, including areas within the Bolts Lake Character Area and the Gilman Character Area.

n. At such time that an amended Preliminary Subdivision Plat or Plats are prepared by Applicant for the MU-1 parcel in the Bolts Lake Character Area and for the MU-2 parcel in the Gilman Character Area and submitted to the Town for approval, a supplemental Environmental Impact Report (consistent with Minturn Municipal Code Section 16-20-4-9 (2007)) that includes information developed consistent with the National Contingency Plan, in connection with its efforts with the EPA and CDPHE, will be submitted for each such character area.

o. The estimated costs of remediation for the Bolts Lake Area and Areas within OU-1 of the Superfund Site have been identified in the Remediation Feasibility Study (“RI/FS”) dated February 16, 2007. Applicant asserts that the assumptions and formulas used to prepare such estimated costs are confidential business information and the Town agrees to treat such information consistent with the provisions of C.R.S. Section 24-72-204(3) (A) (IV). In accordance with the terms of the AOC, Applicant will provide to the EPA a performance bond or letter of credit in the amount equal to 125% of the sum of the estimated costs identified in the RI/FS for Alternatives 2 through 9 for remediation of the Bolts Lake Character Area and operation and maintenance of Alternatives 2 through 9, excluding the cost of rehabilitation of Bolts Lake, which is addressed in Section 2.2 hereof. The performance bond or letter of credit will be in accordance with the provisions of the Annexation Agreement in a form acceptable to the Town and approved by EPA. At such time that the final remediation or environmental response plans are completed for the Bolts Lake Character Area and approved by the EPA and by the Town in its sole and absolute discretion and the estimated costs of construction of the same, acceptable to the Town, are created based on such plans, the above-stated amount of the performance bond or letter of credit will be increased or decreased as appropriate to ensure that it represents 125% of the estimated remediation costs.

p. There shall be no excavation, boring, dredging, trenching, or other intrusion of the contaminated soil associated with, but not limited to, new construction, operation, maintenance, and repair actions within the Superfund Sites without prior notice to the CDPHE with a copy provided to the Town. There shall be no boring, drilling, advancing, installation, or construction of new wells to groundwater including, but not limited to, drinking water wells, irrigation water wells, monitoring wells, and piezometers within the Superfund Sites without prior notice to the CDPHE with a copy provided to the Town.

Planning:

1. The PUD Final Development Plan submission shall include a final version of the Design Guidelines that include architectural designs and guidelines regarding bulk, scale, density, and effects on ridgelines and other construction requirements, including without limitation those relating to wildland fires. The revised Design Guidelines will incorporate, as appropriate, Applicant’s commitments made in connection with the processing of the Preliminary Development Plan and, as appropriate, those conditions set

forth herein. Applicant's plan for determining and limiting heights, mass and scale of buildings in different character areas designated in the PUD Guide shall be adhered to. In addition, a final version of the Design Guidelines containing the same information shall be submitted for the employee housing units. The Design Guidelines for the employee housing units within the Gilman Character Area will be consistent with the historic character of the former and still existing facilities on site.

2. Applicant agrees that the final PUD Guide that will be approved in connection with the PUD Final Development Plan will be no less restrictive than the draft PUD Guide dated February 13, 2008. The revised and final PUD Guide will incorporate, as appropriate, Applicant's commitments made in connection with these conditions, representations made to the Town, and the provisions of the Annexation Agreement.
3. Applicant agrees to fund the costs associated with the various public improvements, property acquisition, and appropriate Town facilities in order to accommodate the additional needs of the Town that will be generated by the Project. Such costs are estimated to be \$4,000,000.00. Applicant will pay to the Town such amount as a dedication fee upon approval of the Final Development Plan. The Town shall be responsible for the design, engineering, and reconstruction of any such facilities and the timing thereof.
4. There shall be no more than 1700 residential dwelling units of mixed type, excluding designated employee housing units, within the PUD as defined in the application and as approved herein and as the Project property is expanded by the inclusion of lands to be annexed into the Town in the future as provided herein.
5. There shall be no ridgeline development as defined in the PUD Guide, other than ski lifts, that could be seen from a public right of way within the Town or Town of Red Cliff.
6. The land uses included as part of the PUD Preliminary Development Plan shall be private only and not open to the public with the limited exception of the access created for Minturn and Red Cliff residents in the Battle Mountain Partnership Pass Plan.
7. In light of the approval of a PUD Preliminary Development Plan that increases the density of the Property and that includes minimal land dedications for the benefit of the public, land dedications of land that is off-site of the Project property and located within or adjacent to the Town shall be made. Accordingly, Applicant agrees to provide the Town with \$12,000,000.00, in the form of a letter of credit, or escrow in accordance with the provision of the Annexation Agreement, upon the approval of the Final Development Plan, in order for the Town to purchase the five separate U.S. Forest Service parcels located in or adjacent to the Town the five parcels are commonly known as the Holy Cross D.O. (Dowd Junction) Parcel, Martin Parcel, USFS Boneyard/Storage Area Parcel, USFS Housing Compound Parcel, and Cross Creek Parcel. The Forest Service has indicated that it is interested in the sale of these parcels. There are processing, appraisal, and other related fees to be incurred in connection with the possible opportunity to purchase the same. Applicant agrees to pay for the reasonable

costs of processing, appraisal and other expenses associated with the processing of the efforts of the Town to purchase the same. Such costs shall be paid immediately upon the presentation of an invoice for the same to Applicant by the Town. The Town hereby acknowledges that Applicant has advanced \$20,000.00 to the Town to pay for appraisal costs and Applicant shall be credited with such payment amount for such purpose. In the event such amount is insufficient to purchase such parcels when they individually come up for sale, Applicant agrees (1) that the general improvement district will fund up to \$10,000,000.00 through its debt authorization and (2) in the event this amount is insufficient or not available at the time needed, to provide a bridge loan to the Town in the amount necessary to complete the purchase of all of the parcels as they are available for purchase to be repaid from revenues generated by the general improvement district up to the amount of \$10,000,000, if and when available, and thereafter revenues accrued by the Town. In the event any or all such parcels are available for purchase prior to Final Development Plan approval, Applicant will provide a bridge loan to the Town in the amount necessary to complete the purchase of all such parcels to be repaid, first, through a credit against the \$12,000,000 due hereunder, second, from revenues generated by the general improvement district up to the amount of \$10,000,000, if and when available, and thereafter revenues accrued by the Town. In the event there is no Final Approval, such loan shall be repaid by the Town within one year after the determination that there is no Final Approval from such funding sources as are available.

8. Applicant will install and operate a batch plant on the Project property for the provision of concrete and other appropriate construction materials for the Project. The Town hereby approves the use of a batch plant within the Project so long as such plant is used for this Project only and is dismantled at the completion of construction or abandonment of the Project for more than 180 days. To the extent possible, all materials for such batch plant operation that are transported by road will be delivered to the plant from the south and not through the Town. The final location and type of batch plant and dust management and mitigation plan must be approved by the Town administrator and planner.
9. Up to 36 holes of private golf course are approved for the Project under the PUD Preliminary Development Plan of which no more than 18 holes may be located outside the Bolts Lake Character Area.
10. In connection with the consideration of the first application for Final Subdivision Plat, Applicant shall provide to the Town for approval copies of its proposed articles of incorporation and bylaws for each property owners association for the common interest community and for the employee housing property owners association.
11. No Town issued approvals for and no construction of those portions of the Project that are located to the east of the rights of way for the railroad and for Highway 24 and no approvals for and no construction of infrastructure, improvements, gondola, or utilities across such portions of such rights of way shall take place until the property that underlies the alignment of infrastructure, improvements, gondola, and utilities across such rights of way to serve such portions of the Project is annexed into the Town.

12. In connection with the approval of the PUD Final Development Plan but no more than one year from the Effective Date of the annexation agreement, Applicant shall dedicate to the Town and public an easement parallel to the Eagle River and Cross Creek through its property 20 feet from the Ordinary High Water Mark (as defined in the PUD Guide) for the purpose of picnicking, walking, fishing and any and all forms of boating such as kayaking, rafting, canoeing, and tubing, provided however that a condition of such easement on Cross Creek will be that portions of such access between the golf course cart paths that cross Cross Creek may be closed during those times of the year that the golf course is open and operational. In the event the dedication is made prior to the Final Approval as defined in the Annexation Agreement, such dedication shall be in the form of a revocable license to be confirmed by easement free and clear of liens and encumbrances at Final Approval. In the event there is no Final Approval as defined in the annexation agreement, the license shall terminate upon the termination of the Annexation Agreement. Such easement shall be subject to any restrictions imposed by the EPA, CDPHE or both.
13. In connection with its submission of the PUD Final Development Plan, Applicant will submit an updated and revised phasing plan with anticipated but flexible timelines and dates that detail the timing and phasing of the implementation of its Project, infrastructure, and commitments consistent with the phasing form set form in Exhibit 95, which plan will expand that submitted in the Application as appropriate. In such update, Applicant will incorporate in its phasing plan anticipated dates that detail the timing and phasing of the implementation of its commitments to the Town for infrastructure improvements and other construction required of the Applicant, both on and off Applicant's Property as required in these Conditions, the Annexation Agreement and the Town Traffic Improvement Plan. The Town and Applicant will agree on a phasing plan for Town street scope improvements and infrastructure construction and improvements along highway 24 that minimizes impacts on traffic flow and pedestrian safety and that takes into account the construction schedule for the Applicant's Property and consistent with the provisions of these Conditions.
14. Applicant will implement the Water Service Agreement with the Town for municipal water service for the Project in accordance with its terms.
15. In connection with its submission of a Final Development Plan, Applicant will provide an agreement with the appropriate utility companies that indicates that utility service can and will be provided to the Project and a detailed phasing plan that includes specifics associated with infrastructure installation and construction.
16. In connection with its submission of a Final Development Plan, Applicant shall submit a final Water Quality Management Plan acceptable to the Town incorporating Best Management Practices for the golf course and other irrigated lands. The Water Quality Management Plan will include provisions for the protection of all water courses, creeks and rivers within and adjacent to the Project during both construction activities and final Project operations.

17. Applicant will implement the provisions of the Battle Mountain Community Partnership Pass plan dated September 19, 2007 and will attach the plan as an exhibit to the final Battle Mountain PUD Guide. This plan must be made an exhibit to the annexation agreement and will be in effect in perpetuity.
18. No final subdivision plats will be approved unless and until either: (1) All applicable approvals and permits for the wastewater treatment plant contemplated in the Wastewater Service Agreement dated March 15, 2006 (“WW Agreement”) have been obtained; or (2) Applicant has obtained an “ability to serve” letter from ERWSD for the development proposed in the final subdivision plat. The WW Agreement shall not be assigned by Applicant without the express written consent of the Town, which consent may be withheld in the event the Town determines in its reasonable discretion that the proposed successor or assign (i) does not have the financial capability of performing the obligations of the Applicant therein, (ii) is adverse to Minturn in adversarial proceedings, or (iii) would jeopardize or interfere with the water rights owned by the Town, the operation of the Town of Minturn, Water, Sanitation and Recreation Activities Enterprise wastewater system, or the provision of wastewater service to the Town or the Project. Applicant has filed its PUD Final Development Plan application, the review of which was tabled by staff at the request of Applicant. Applicant shall have three years after the approval of the PUD Preliminary Development Plan within which to supplement and request the review of the PUD Final Development Plan in accordance with the provisions of the Municipal Code.
19. In accordance with the provisions of the Annexation Agreement, Applicant will submit petitions for annexation of its remaining lands contiguous to the Project property when it is legally permissible to do so; provided however that the total density for all of Applicant’s lands that will be annexed shall not exceed 1700 residential units with the exception of those units that are dedicated for employee housing.
20. The Preliminary Development Plan approval is conditioned upon confirmation by the Planning Director that all representations made by Applicant and all requests made by staff and Town Council that were agreed upon by Applicant are incorporated into the plan or applicable components thereof.
21. At such time as the Applicant installs infrastructure for cellular telephone and wireless broadband internet access within this PUD, to the extent permitted by applicable federal, state and local laws and regulations, the Applicant shall also use its commercially reasonable efforts to cause the service provider(s) to install, operate, and maintain such infrastructure (i) for cellular telephone for monthly charges that are determined by the service provider and (ii) free wireless broadband internet access for the current Town of Minturn insofar as the same can be provided on Town-Owned Facilities. The Applicant and service provider shall work with the Town to define the technological requirements (which, with respect to wireless broadband internet access, shall be 802.11b/g broadband communication at approximately 300 Kbps) and locations of the infrastructure to best service the Town. The Town shall make available to the network provider(s) without charge “Town-Owned Facilities”, which shall include but not be limited to Town-owned street light poles, lighting fixtures that have 24 hour electrical service that is not

switched off during the day, frames, buildings and all other Town-owned facilities and structures, including those within any municipal right of way, for the purpose of installing all network facilities, including but not limited to radios, antennas, wires, cables and other equipment or fixtures necessary to the operation of such cellular telephone and wireless broadband networks and Town shall not charge any fees, rental or inspection or permit fees in connection with the installation and operation of the network. Applicant's obligation hereunder shall terminate at such time as the wireless broadband internet network required hereunder becomes obsolete, but not later than ten (10) years from the date of approval of the Final Development Plan. Applicant, as its sole financial obligation with respect to this condition, shall provide funding for the operation and maintenance expenses of the wireless broadband internet network in accordance with Section 5.3 of the Annexation Agreement.

22. Within thirty days of the date of approval of the Preliminary Development Plan, Applicant and the Town shall complete the negotiations for and agree upon bridge funding for the payment of continued Town expenses associated with the Project.

Town of Red Cliff:

1. In connection with its submission of a Final Development Plan, Applicant will articulate its operation and maintenance plan regarding the use of Willow Creek Road, if any. This plan shall include the following components:
 - a. emergency services access to the Willow Creek Character Area and other Project areas;
 - b. potential construction traffic through Red Cliff and mitigation of the impacts of the same assuming Red Cliff determines that such traffic can go through Red Cliff, which mitigation shall include the appropriate mitigation measures which shall be identified in the plans to be submitted to the Town and Red Cliff, as applicable;
 - c. potential materials and other deliveries through Red Cliff and mitigation of the impact of the same assuming Red Cliff determines that such traffic can go through Red Cliff, which mitigation shall include the appropriate mitigation measures which shall be identified in the plans to be submitted to the Town and Red Cliff, as applicable;
 - d. impacts of traffic and mitigation of the same if employee housing is developed in the Turkey Creek Drainage and its traffic is routed through Red Cliff, including use of shuttles for the employees, and the use of Willow Creek Road if such traffic is routed up such road as a result of Red Cliff's determination that such traffic should not go through Red Cliff, which mitigation shall include the appropriate mitigation measures which shall be identified in the plans to be submitted to the Town and Red Cliff, as applicable;
 - e. impacts of traffic and mitigation of the same if development other than employee housing, including use of shuttles for employees, is developed at the Shrine Pass

Road site and its traffic is routed through Red Cliff and the use of Willow Creek Road if such traffic is routed up such road as a result of Red Cliff's determination that such traffic should not go through Red Cliff, which mitigation shall include the appropriate mitigation measures which shall be identified in the plans to be submitted to the Town and Red Cliff, as applicable;

- f. incorporation of the traffic monitoring program for all traffic entering Red Cliff set forth under the traffic plans referred to above.
2. In the event that the fire station, ambulance facility, and police facility are located in the Turkey Creek Drainage, Applicant shall facilitate coordination with the Minturn Police Department and the Eagle County sheriff's office regarding the police department's role as a supportive law enforcement agency when emergency circumstances require assistance to the sheriff's office in responding to law enforcement needs in Red Cliff.
3. In the event that Applicant constructs employee housing or any other development that requires wastewater treatment in the Turkey Creek Drainage, Applicant shall work with the Town and Red Cliff to determine whether such wastewater treatment shall occur at Red Cliff. If such wastewater treatment does not occur at Red Cliff, Applicant, if requested by Red Cliff, shall design and construct its wastewater collection and transportation infrastructure so that it has the capability to collect and transport Red Cliff's wastewater to the Minturn wastewater treatment plant for treatment, in the event that Red Cliff obtains capacity for the treatment of its wastewater at the Minturn wastewater treatment plant. These conditions and the Annexation Agreement do not address the allocation of costs associated with wastewater collection and transportation infrastructure and the provision of wastewater service.
4. Applicant shall implement any terms or conditions required by a Water Court Decree obtained by Applicant or Minturn that is final and not subject to appeal that are imposed by the Court or by stipulation for the purpose of avoiding injury to the existing water rights of Red Cliff.
5. Applicant agrees that it will submit a petition or petitions for annexation of its remaining adjacent property consisting of approximately 1000 acres, more specifically described in **Exhibit B** attached hereto ("Additional Property"), into the Town of Minturn when it legally is permissible to do so as provided in and subject to these conditions and in connection with such effort it shall work with Red Cliff and assist Red Cliff in identifying the boundaries of Red Cliff in so far as they are contiguous to portions of Applicant's property. At such time that Applicant submits to the Town of Minturn its petition or petitions for the annexation of the Additional Property, Applicant will work with Red Cliff and the Town of Minturn to assess the impacts on Red Cliff of the land use plans when they are submitted in order to determine the basis for a revenue sharing agreement, if appropriate, between the two towns to mitigate the impacts on Red Cliff of such land use plan. The maximum density of 1700 free market residential dwelling units for the Property extends to the Additional Property upon its annexation into the Town.

6. To the extent that the Project results in impacts not anticipated herein, Applicant agrees to cooperate with Red Cliff in the identification of the same and, as appropriate, address the same. Applicant agrees to work with Red Cliff as neighbors in good faith to identify and implement reasonable mitigation of such impact including, without limitation, consideration of an impact fee.
7. Applicant may propose a development that results in the Town of Minturn and Applicant considering the possibility of water service through Red Cliff and water treatment at or near Red Cliff on either (i) property within the present annexation submittal, or (ii) upon lands not subject to the existing annexation. If the Town of Minturn and the Applicant make such a determination, Applicant agrees that any water treatment facility and infrastructure will be designed to address Red Cliff's water service needs for the impacted area. Additionally, the Towns of Red Cliff and Minturn will work toward a revenue sharing agreement for such water service.

Environmental Impact Report Conditions:

1. As a part of its PUD Final Development Plan submission, Applicant agrees to address the conditions and recommendations set forth herein and in connection with the conditions of approval of the PUD Preliminary Development Plan and Environmental Impact Report.
2. Applicant must obtain any necessary local, regional, state, or federal authorizations, approvals or permits that may be required in connection with the Project prior to commencement of any authorized activity and provide evidence of the same to the Town.
3. Applicant will implement the Sustainable Design Plan that will be presented in final form with the PUD Final Development Plan for Town approval. The Sustainable Design Plan will incorporate green building concepts from the LEED certification standards and other energy conservation programs. It will be incorporated into the final Design Guidelines, as appropriate, and shall otherwise apply to those facilities and structures to which the Design Guidelines do not apply. These standards will apply to all structures and buildings within the project that they apply to, including without limitation, all single family residences and all other dwelling units whether built by applicant or not. Applicant will continue to coordinate with the Town staff and consultants to refine the details for the standards and monitoring of and provisions of the Plan.
4. Any and all material representations of the Applicant made orally in its presentation at public hearings or in the materials presented, except as the same may have been subsequently modified in written or oral testimony submitted in the course of the public hearings on this application, shall be adhered to and are made a condition of approval.

5. At such time that an amended preliminary subdivision plat is prepared for the MU-1, MU-2, MU-3 and MU-4 Areas, a supplemental environmental impact report (consistent with Minturn Municipal Code Section 16.20.4.9 (2007)) that includes information developed consistent with the National Contingency Plan, including, but not limited to, Remedial Investigation, Risk Assessment, Feasibility Study, Proposed Plan, Record of Decision and Agreement and Order on Consent, in connection with its efforts with the EPA and CDPHE will be submitted for the Gilman Character Area, if appropriate.

Town of Minturn Town Council
Conditions to Approval of Battle Mountain PUD Preliminary
Subdivision Plat Application
Approved February 27, 2008

Administrative:

1. The Applicant shall pay all required fees and charges related to development of the subject property.

Council and Staff:

1. All staff and consultant comments received in connection with the review and processing of all applications for Final Subdivision Plat will be appropriately addressed, mitigated, or corrected in connection with the review and processing of each Final Subdivision Plat application.
2. Any and all material representations of the Applicant made orally in their presentation at public hearings or in the materials presented, except as the same may have been subsequently modified in written or oral testimony submitted in the course of the public hearings on this application, shall be adhered to and are made a condition of approval.
3. The Applicant will identify and designate on the applicable final subdivision plats for dedication the lots and easements on which the locations for facilities and associated infrastructure and equipment for fire, emergency response, and police services will be located within the Project, and Applicant will comply with all applicable provisions of the Code pertaining to such infrastructure.

The Applicant will continue to coordinate with the Town staff and consultants to develop appropriate engineering standards specifically for the Project (that include, without limitation, standards, the process for securing variances and approvals, and the process for amending the standards) that will be submitted with the Final Development Plan for the Project and approved as a part of the same; in the event of a conflict on the appropriate standards to apply, the reasonable engineering determination by the Town shall prevail. Notwithstanding the fact that preliminary engineering plans have been submitted by Applicant prior to the development of these standards, all final construction plans shall meet or exceed these standards, unless a variance is otherwise granted by the Town.

Outside Agencies:

1. Prior to the recording of the first final subdivision plat, Applicant will pay to Eagle County School District the amount of the fees-in-lieu of school land dedication based

upon the calculation of those fees as set forth in the School District's letter dated March 15, 2007 or as otherwise agreed between Applicant and School District.

Environmental/Superfund:

a. At the time of the execution of this Agreement, Applicant had not received a copy of a proposed final Agreement and Order on Consent pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601, *et. seq.*, ("AOC") from the United States Environmental Protection Agency ("EPA") for the Bolts Lake Area and Areas within Operable Unit 1 ("OU-1") of the Eagle Mine Superfund Site ("Superfund Site" which includes without limitation both OU-1 and OU-2), also known as the Bolts Lake Character Area, that is acceptable to the Town. It is very important to the Town that the Bolts Lake Character Area within the Superfund Site be the subject of additional remediation or environmental response activities as proposed by Applicant to accommodate residential and recreational uses and provide for the future health and safety of the Town. It is also critical to the interests of the Town that it be able to store water in Bolts Lake and that the remedy or environmental response activities approved pursuant to an AOC and Record of Decision ("ROD") permit the reconstruction and future use of the historic footprint of Bolts Lake in a manner that is acceptable to the Town. Applicant agrees to use its commercially reasonable best efforts to work with the EPA and the Town in order to secure as soon as practicable an AOC and ROD that include remediation of the Bolts Lake Character Area and the reconstruction and future use of Bolts Lake in a manner that is acceptable to the Town and Applicant. If Applicant provides an AOC approved by EPA and acceptable to Ginn that is rejected by the Town, Applicant shall be required for no more than two years from such rejection to use its commercially reasonable best efforts to obtain an AOC acceptable to the Town. In the event a proposed final AOC for the remedial or environmental response activities within the Bolts Lake Character Area is provided to Applicant for execution that is not acceptable to the Town, including but not limited to, because it does not include the right to store water in Bolts Lake, Applicant agrees that it will not execute the proposed final AOC. In such circumstance or in the event that no AOC for the remedial or environmental response activities within the Bolts Lake Character Area has been agreed upon by EPA and Applicant within 3 years from the Effective Date of the Annexation Agreement, or sooner upon agreement of Applicant and the Town, the Town and Applicant agree to explore in good faith the options available to generate an acceptable revised proposed AOC from the EPA within a reasonable time and the options available for the preparation of a different development scenario for the Project within the Bolts Lake Character Area that would allow for the storage of water in Bolts Lake. Such different development scenarios may be inconsistent with the approved Preliminary Development Plan and approved Preliminary Subdivision Plat and may require an amendment to one or both that is acceptable to the Town under the Municipal Code.

b. Notwithstanding the foregoing, Applicant agrees that it will not, at any time, execute any AOC relating to remedial or environmental response activities within the Bolts Lake Character Area or the Gilman Character Area in connection with development scenarios prepared subsequent to the Effective D of the Annexation Agreement without the review and acceptance of the Town, in its sole discretion.

c. Applicant agrees to negotiate in good faith in order to secure, no later than the time of the Town's approval of an AOC for the Bolts Lake Character Area environmental response activities, an agreement with CBS Operations, Inc. ("CBS") regarding Applicant's and CBS's respective responsibilities for the operation and maintenance and monitoring of remedies at the Superfund Site as approved by the EPA and State of Colorado and that is acceptable to the Town. Applicant agrees that prior to the execution of a final agreement with CBS, it will provide to the Town a copy of such agreement for the Town's review and acceptance, in its sole discretion.

d. In the event no AOC for the remedial or environmental response activities within the Bolts Lake Character Area has been agreed upon by EPA and Applicant within three years of the Effective Date of the Annexation Agreement or sooner if Applicant seeks approval from the Town after such date for a development scenario that does not include remedial or environmental response activities within the Bolts Lake Character Area, Applicant shall be obligated to rehabilitate the Bolts Lake or provide for alternative water storage as further provided in the Water Service Agreement between the parties. Applicant shall use commercially reasonable best efforts to obtain all appropriate agreements with and approvals from the EPA, the Colorado Department of Public Health and Environment ("CDPHE"), the United States Army Corps of Engineers, the Colorado Division of Water Resources (Dam Safety Branch) and any other state or federal agency with jurisdiction over the rehabilitation and construction of Bolts Lake. Applicant will provide timely to the Town copies of all appropriate agreements and approvals as they are issued for the Town's review and acceptance, in its sole discretion.

e. Prior to approval of the Final Development Plan for the Project and prior to the approval of the Preliminary Subdivision Plat for the MU-1 parcel in the Bolts Lake Character Area, Applicant will provide timely to the Town copies of all documents prepared consistent with the National Contingency Plan in connection with regulated activities in the Bolts Lake Character Area as they are issued for the Town's review and acceptance, in its sole discretion.

f. Prior to commencing construction activities, remediation or other environmental response activities and ground disturbance activities within the boundaries of the Superfund Site at Bolts Lake Character Area, Applicant will provide timely to the Town copies of all drafts of the AOC relating to the Bolts Lake Character Area and a copy of the proposed final AOC, as they are issued by EPA for the Town's review and acceptance, in its sole discretion. To the extent any construction activities and ground disturbance activities within the Bolts Lake Character Area are conducted outside of the Superfund Site boundaries and are exclusive of activities relating to the Superfund Site, Applicant will secure appropriate permits and approvals from the Town in accordance with the Municipal Code.

g. At the time of the execution of this Agreement, Applicant had not received a proposed final AOC from the EPA for environmental response activities within the North Gilman areas within the Gilman Character Area, also known as OU-2, of the Superfund Site, that would permit the location of proposed infrastructure connecting the Bolts Lake Character Area and the other Character Areas of the Project through the North Gilman area. Applicant agrees to use its commercially reasonable best efforts to work with the EPA, CDPHE and the Town in order to secure as soon as possible an AOC for the environmental response activities within the

North Gilman portion of the Gilman Character Area. Applicant agrees that it will execute an AOC relating to the environmental response activities in the North Gilman portion of the Gilman Character Area only following the Town's review and acceptance, in its sole discretion.

h. Prior to the approval of an amended Preliminary Subdivision Plat or other authorization for the location and installation of infrastructure in the North Gilman areas of the Superfund Site, Applicant will provide timely to the Town copies of documents relating to the proposed environmental response activities for infrastructure installation, including but not limited to the Engineering Evaluation and Cost Analysis, draft AOCs and proposed final AOC, as they are issued for the Town's review and acceptance, in its sole discretion.

i. Prior to the commencement of construction activities relating to the installation of infrastructure through the North Gilman areas within the Gilman Character Area of the Superfund Site, Applicant will provide to the Town written evidence of approval by EPA, CDPHE and other regulatory authorities of such activities for the Town's review and acceptance, in its sole discretion.

j. Prior to approval of an amended Preliminary Subdivision Plat or Plats for the MU-2 parcel in the Gilman Character Area, Applicant will, as appropriate and applicable, provide timely to the Town copies of all documents prepared pursuant to the National Contingency Plan in connection with environmental response activities proposed to be conducted in the Gilman Character Area, as they are issued for the Town's review and acceptance, in its sole discretion.

k. Prior to commencing construction activities, environmental response activities and ground disturbance activities within the boundaries of the Gilman Character Area other than activities associated with approved infrastructure installation, Applicant will provide timely to the Town copies of the draft AOCs for the Gilman Character Area and copies of the proposed final AOC(s) for the Town's review and acceptance, in its sole discretion. To the extent any construction activities and ground disturbance activities within the Gilman Character Area are conducted outside of the Superfund Site boundaries and are exclusive of activities relating to the Superfund Site, Applicant will secure appropriate permits and approvals from the Town in accordance with the Municipal Code.

l. All activities, uses, construction, operation and maintenance plans for any areas that are designated areas in the Superfund Site, including areas within the Bolts Lake Character Area and Gilman Character Area, will comply fully with the environmental response, construction, operation and maintenance plans and requirements of the EPA, CDPHE, and the Town. Financial assurance, acceptable to the Town, will be provided to the EPA for the environmental response, operation and maintenance requirements as provided herein. Except as provided below in connection with the Bolts Lake Character Area, financial assurance for any designated areas in the Superfund Site to the EPA will be approved by the Town at such time that the final environmental response activity plans are completed for the designated areas and approved by the EPA and by the Town in its sole and absolute discretion and the estimated costs of construction of the same, acceptable to the Town, are created based on such plans.

m. Use of the Superfund Site will be restricted by environmental covenants consistent with the requirements of C.R.S. Sections 25-15-317 through 327 and consistent with the remediation, use, construction, operation and maintenance plans and requirements of the EPA, CDPHE, and the Town. Financial assurance, acceptable to the Town, will be provided to the EPA for the long term operation and maintenance requirements for the Superfund Site, including areas within the Bolts Lake Character Area and the Gilman Character Area.

n. At such time that an amended Preliminary Subdivision Plat or Plats are prepared by Applicant for the MU-1 parcel in the Bolts Lake Character Area and for the MU-2 parcel in the Gilman Character Area and submitted to the Town for approval, a supplemental Environmental Impact Report (consistent with Minturn Municipal Code Section 16-20-4-9 (2007)) that includes information developed consistent with the National Contingency Plan, in connection with its efforts with the EPA and CDPHE, will be submitted for each such character area.

o. The estimated costs of remediation for the Bolts Lake Area and Areas within OU-1 of the Superfund Site have been identified in the Remediation Feasibility Study (“RI/FS”) dated February 16, 2007. Applicant asserts that the assumptions and formulas used to prepare such estimated costs are confidential business information and the Town agrees to treat such information consistent with the provisions of C.R.S. Section 24-72-204(3) (A) (IV). In accordance with the terms of the AOC, Applicant will provide to the EPA a performance bond or letter of credit in the amount equal to 125% of the sum of the estimated costs identified in the RI/FS for Alternatives 2 through 9 for remediation of the Bolts Lake Character Area and operation and maintenance of Alternatives 2 through 9, excluding the cost of rehabilitation of Bolts Lake, which is addressed in Section 2.2 hereof. The performance bond or letter of credit will be in accordance with the provisions of the Annexation Agreement in a form acceptable to the Town and approved by EPA. At such time that the final remediation or environmental response plans are completed for the Bolts Lake Character Area and approved by the EPA and by the Town in its sole and absolute discretion and the estimated costs of construction of the same, acceptable to the Town, are created based on such plans, the above-stated amount of the performance bond or letter of credit will be increased or decreased as appropriate to ensure that it represents 125% of the estimated remediation costs.

p. There shall be no excavation, boring, dredging, trenching, or other intrusion of the contaminated soil associated with, but not limited to, new construction, operation, maintenance, and repair actions within the Superfund Sites without prior notice to the CDPHE with a copy provided to the Town. There shall be no boring, drilling, advancing, installation, or construction of new wells to groundwater including, but not limited to, drinking water wells, irrigation water wells, monitoring wells, and piezometers within the Superfund Sites without prior notice to the CDPHE with a copy provided to the Town.

Planning:

1. No construction of those portions of the Project that are located to the east of the rights of way for the railroad and for Highway 24 and no construction of infrastructure, improvements, gondola, or utilities across such rights of way shall take place until the property that underlies the alignment of infrastructure, improvements, gondola, and

utilities across such rights of way to serve such portions of the Project is annexed into the Town. If applicable, any final plat for such portions of the Project shall contain a plat note with this restriction.

2. In addition, the final plat for any portion of the Project that is located to the east of the rights of way for the railroad and for Highway 24 shall include a plat note that provides that no lots may be sold until the property that underlies the alignment of infrastructure, improvements, gondola, and utilities across such rights of way to serve such portions of the Project is annexed into the Town.
3. In connection with the final subdivision plat submission, Applicant will provide the locations of utilities through the property and an agreement with the appropriate utility companies that indicates that utility service can and will be provided to the Project and a detailed phasing plan that includes specifics associated with infrastructure installation and construction.
4. In connection with the approval of the PUD Final Development Plan but no more than one year from the effective date of the Annexation Agreement, Applicant shall dedicate to the Town and public an easement parallel to the Eagle River and Cross Creek through its property 20 feet from the Ordinary High Water Mark (as defined in the PUD Guide) for the purpose of walking, fishing and any and all forms of boating such as kayaking, rafting, canoeing, and tubing, provided however that a condition of such easement on Cross Creek will be that portions of such access between the golf course cart paths that cross Cross Creek may be closed during those times of the year that the golf course is open and operational. In the event the dedication is made prior to the Final Approval as defined in the annexation agreement, such dedication shall be in the form of a revocable license to be confirmed by easement free and clear of liens and encumbrances at Final Approval. In the event there is no Final Approval as defined in the annexation agreement, the license shall terminate upon the termination of this agreement. Such easement shall be subject to any restrictions imposed by the EPA, CDPHE or both.
5. Final Subdivision Plat notes shall be comprehensive for each final subdivision plat regarding requirements pertaining to each parcel or lot for the protection of wetland and riparian areas, the need, as appropriate, for onsite geotechnical assessments prior to building, site drainage assessment and mitigation, the submission of grading plans and evaluation of slope stability, and such other requirements as may be appropriate or necessary and such dedications, reservations, and easements as are necessary to effectuate the conditions or Applicant commitments or obligations as appropriate on a final subdivision plat.
6. Area MU-1 (Bolts Lake Character Area): The Applicant has requested that tract MU-1 be platted as one parcel that will be subjected to future preliminary subdivision plat application and review consistent with the requirements of the Municipal Code once there is more information regarding remediation activities for the parcel and the specific land uses for the parcel. Applicant will have to provide specific information on the location and engineering for the utility corridor for utilities and related infrastructure that is planned to traverse the east portion of the site, which information will include the

approval of the EPA and CDPHE, as appropriate, for the utility corridor. It is anticipated that these facilities will be constructed in connection with the first phase of development. Their as-built locations will be the basis for specific dedicated easements for such facilities on the subsequent preliminary subdivision plat. Prior to approval of the amended preliminary subdivision plat for the MU-1, Applicant will provide to the Town copies of the Remedial Investigation, Risk Assessment, Feasibility Study, Proposed Plan, Record of Decision, Remedial Design/Remedial Action documents and draft and final Agreement and Order on Consent, as they are issued.

7. Area MU-2 (Gilman Character Area): The Applicant has requested that tract MU-2 be platted as one parcel that will be subjected to future preliminary subdivision plat application and review consistent with the requirements of the Municipal Code once there is more information regarding remediation activities for the parcel and the specific land uses for the parcel. Applicant will have to provide specific information on the location and engineering for the utility corridor for utilities and related infrastructure that is planned to traverse the east portion of the site, which information will include the approval of the EPA and CDPHE, as appropriate, for the utility corridor. It is anticipated that these facilities will be constructed in connection with the first phase of development. Their as-built locations will be the basis for specific dedicated easements for such facilities on the subsequent preliminary subdivision plat. Prior to approval of the amended preliminary subdivision plat for the MU-2, Applicant will provide to the Town copies of the Remedial Investigation, Risk Assessment, Feasibility Study, Proposed Plan, Record of Decision, Remedial Design/Remedial Action documents and draft and final Agreement and Order on Consent, as they are issued.
8. Area MU-3 and MU-4: The Applicant has requested that tracts MU-3 and MU-4 be both platted as one parcel for each tract that will be subjected to future preliminary subdivision plat applications and review consistent with the requirements of the Municipal Code once there is more information regarding the specific land uses for each parcel that are dependent upon the environmental response activities located in the PUD.