

**SITE SPECIFIC DEVELOPMENT PLAN AND  
SUBDIVISION IMPROVEMENTS AGREEMENT  
FOR BELDEN PLACE PLANNED UNIT DEVELOPMENT**

THIS AGREEMENT made this \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the TOWN OF MINTURN, COLORADO, a home rule municipality whose address is 302 Pine Street, P.O. Box 309, Minturn, CO 81645 (the "Town") and MINERS BASE CAMP LLC, a Colorado limited liability corporation whose address is 1000 Enterprise Dr., Allen Park, MI 48101, (the "Developer") (individually, a "Party"; collectively, the Parties );

WITNESSETH:

WHEREAS, the Developer is the owner of certain real property located in the Town of Minturn, Colorado known as Belden Place Subdivision and described on **Exhibit A**, attached and incorporated by this reference (the "Property"); and

WHEREAS, on June 9, 2021 after a duly-noticed public hearing and pursuant to Minturn Municipal Code §§ 16-15-160, 17-5-40 and 16-21-200, the Town of Minturn Planning Commission approved a Preliminary Subdivision Plat and Preliminary PUD Development Plan for the Property; and

WHEREAS, on June 16, 2021 after a duly-noticed public hearing and pursuant to Minturn Municipal Code §§ 16-15-170, 17-5-60 and 16-21-200, the Town Council of the Town of Minturn adopted Resolution No. 20 –Series 2021 approving a Preliminary Subdivision Plat and Preliminary PUD Development Plan for the Property; and

WHEREAS, on March 2, 2022 and March 16, 2022, after a duly-noticed public hearing and pursuant to Minturn Municipal Code §§ 16-15-200, and 16-21-200, the Town Council of the Town of Minturn, adopted Ordinance No. 4 - Series 2022 approving a Final Plan for PUD for the Property, which Ordinance is recorded as Reception No. \_\_\_\_\_ with the Eagle County Clerk and Recorder; and

WHEREAS, on March 2, 2022 and March 16, 2022, after a duly-noticed public hearing and pursuant to Minturn Municipal Code §§ 17-6-30, and 16-21-200, the Town Council of the Town of Minturn, approved by appropriate ordinance a Final Subdivision Plat for the Property, which Ordinance No. 5, Series of 2022 is recorded as Reception No. \_\_\_\_\_ with the Eagle County Clerk and Recorder; and

WHEREAS, Minturn Municipal Code Chapter 17, Article 7 requires a Subdivisions Improvements Agreement to be approved concurrent with approval of a final subdivision plat, as governed by that Article to require certain standards in development and guarantee certain public improvements; and

WHEREAS, the Town's approval of the Final Subdivision Plat and PUD Final Plan for the

Property cited above is contingent upon the express condition that all obligations and duties created by this Agreement are faithfully performed by the Developer.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are incorporated herein as material representations and acknowledgments of the Parties.

2. Purposes. The purpose of this Agreement is to set forth the terms and conditions to be met by the Developer; to set forth the fees to be paid by the Developer upon subdivision of the Property; and to constitute the Subdivision Improvement Agreement (“SIA”) provided for in Sections 17-7-10 through 17-7-20 of the Minturn Municipal Code. All terms and conditions contained herein are in addition to all requirements of the Minturn Municipal Code, the Town of Minturn Zoning and Subdivision Regulations (Titles 16 and 17 of the Minturn Municipal Code), and state and federal statutes, and are not intended to supersede any requirements contained therein, except where specifically provided in this Agreement. The Developer agrees to bear all costs and responsibility for completion of the improvements servicing the Property as provided in this Agreement. This Agreement is not executed for the benefit of materialmen, laborers, or others providing work, services, or materials to the Property, or for the benefit of future lot owners or occupants of the Property.

3. Amended Final Subdivision Plats and Condominium Plat.

A. Developer acknowledges that by recording a Final Subdivision Plat depicting property lines between duplex, triplex, and five-plex units prior to the location of foundations for such buildings, Developer may be required to submit an Amended Final Subdivision Plat for approval under the Minturn Municipal Code. Notwithstanding the foregoing, Developer shall submit “as-built” surveys to the Town Engineer to certify the locations of foundations as constructed are consistent with the lot lines as depicted on the Final Subdivision Plat. Town Engineer shall determine whether an Amended Final Subdivision Plat is necessary for individual buildings.

B. For Lots or Tracts that are developed with “airspace” units, the Town and the Developer agree and acknowledge that a condominium plat shall be prepared after final “as-built” survey of the common elements, limited common elements and units has been completed. This “Type B Subdivision” may be approved administratively by the Town without further review by the Town Council or the Planning Commission. No individual condominium unit shall be sold into separate ownership until and unless a Type B Subdivision plat has been approved by the Town and such plat has been recorded in the real estate records of Eagle County. A plat note on the Final Subdivision Plat for the Property shall be included to this effect.

4. Fees and Dedications. In addition to any fees enacted by any ordinance of general applicability in the Town, the following fees shall be paid to the Town by the Developer:

A. Reimbursement of Costs. The Developer hereby agrees to pay the Town the actual costs to the Town for engineering, surveying, and legal services rendered in connection with the review of the subdivision of the Property. In addition, the Developer shall reimburse the Town for the cost of making corrections or additions to the master copy of the official Town map, for the fee for recording the Final Subdivision Plat and accompanying documents with the County Clerk and Recorder of Eagle County. The Developer shall also pay any fees required pursuant to the Minturn Municipal Code. Interest shall be imposed at rate of 1.5% per month on all balances not paid within thirty (30) days of the date of the statement. In addition to any and all remedies available to the Town and in the event the Town is forced to pursue collection of any amounts due and unpaid under this provision or under this Agreement, the Town shall be entitled to collect attorney's fees and costs incurred in said collection efforts in addition to the amount due and unpaid.

B. Water and Sewer Taps. The Developer, its successors and assigns, shall comply in full with Title 13 of the Minturn Municipal Code regarding tap fees and system improvement fees for water and sewer service, subject to the following stipulations:

i. For the purposes of Water Tap Fees due at time of Building Permit issuance, Developer shall pay the fee required under Minturn Municipal Code Sec. 13-2-20 pursuant to the Town's duly adopted fee schedule, less nineteen (19) existing SFEs, one and a half (1.5) of which have been put into use on Lot 17 of the Belden Place PUD Plat at the time of Final Subdivision Plat.

ii. For the purposes of System Improvement Fees due at time of Building Permit issuance Developer shall pay the fee required under Minturn Municipal Code Sec. 13-2-20 pursuant to the Town's duly adopted fee schedule. Developer has paid on the System Improvement Fee for Lot 17.

iii. Sewer taps shall be assessed in accordance with the requirements of the Eagle River Water and Sanitation District.

C. Water Rights Dedication. The Developer shall deed to the Town water rights (or pay the cash in lieu of the water rights dedication fees) as required under Minturn Municipal Code Section 13-2-20, as it may be amended. Developer shall receive a credit in the amount of nineteen (19) SFEs for water service historically provided to the Property. Developer acknowledges that at the time of its Final Subdivision Plat approval a moratorium is in place prohibiting the Town from providing water service beyond the 19 historical SFEs associated with the property plus 1 SFE associated with Duran Subdivision Lot 3 plus 3 SFEs as provided for in the moratorium ordinance [plus 16 SFEs as provided for in the Settlement Agreement between the parties in Eagle County District Court Case No. 2022CV30054.](#) Therefore, Developer shall receive a total of 39 SFEs. No additional SFEs of water service can be provided to the Property until such time as the moratorium is lifted or amended.

Under the Town Code, water rights dedication fees are due at the time a Final Subdivision Plat is recorded. Developer and Town agree that prior to the recording of the Final Subdivision Plat, the Developer shall pay the fee then in effect for each of the 39 allocated SFEs at the rate of one (1) SFE for each of the forty one (41) units and one half (0.5) SFE for the accessory dwelling unit located on Lot 17 for which potable water service is to be provided by the Town. Developer shall receive a credit for nineteen (19) SFEs associated with historical water usage on the Property. Therefore, at the current rate in effect at the time of the Final Plat recordation of \$12,694.60/40,501.00, Developer shall pay Two hundred fifty three thousand eight hundred eighty~~Eight hundred ten thousand twenty and no/100ths~~ dollars (\$253810.88/20.00)~~Two hundred eighty five Thousand six hundred twenty eight dollars and fifty cents (\$285,628.50)~~ in water rights dedication fees:  $\$1240,694501.00 \times 2022.5 \text{ SFEs}_{\text{new units}} (41.5 \text{ total SFEs} \text{ minus } 19 \text{ SFE Credit} = 2022.5 \text{ SFEs})$  prior to the recording of the Final Subdivision Plat. Additional cash-in-lieu of water rights dedication fees shall be due in the amount then in effect at the time of building permit for any proposed uses over 3941.5 SFEs. This payment in no way guarantees the availability of water to any units constructed beyond the number of SFEs available at the time of Final Subdivision Plat as provided in the moratorium ordinance. Within seven (7)~~two (2)~~ years of recordation of the Final Subdivision Plat, Developer may amend the Final Subdivision Plat and this Agreement to eliminate Lots and/or Units. Developer may then receive reimbursement at the rate paid associated with each Lot or Unit that is eliminated.

If there are additional SFEs associated with development or use of any of the lots or Property, payment shall be due at the time of building permit for such units which raise the total SFEs above the above-referenced calculations. The water rights dedication fee per SFE to be paid will be the fee then in effect. Further, the Developer agrees to be bound by any ordinance or resolution of general applicability that modifies these fees.

D. Land and Open Space Dedication. The Parties agree that the Property is subject to the Town land and open space dedication requirements set forth in Minturn Municipal Code § 16-17-90. The Developer shall deed to the Belden Place Homeowners Association Parcels B, C, and D depicted on the Final Subdivision Plat, for the use and enjoyment of the general public.

E. Impact Fees. The Developer shall pay to the Town Impact Fees required under the Minturn Municipal Code.

5. Specific Conditions. The Developer agrees to perform the following conditions:

A. Representations. All representations of the Developer made in its application and in statements during the public hearings for Final Subdivision Plat approval before the Planning Commission and Town Council shall be considered conditions of approval with which the Developer shall comply.

B. Approved Plans. The lots and public improvements to be constructed on the Property shall conform to the elevations and general design elements as shown on the plans approved by Ordinance No. 5, Series 2022 incorporated by this reference. The construction documents approved by the Town are attached as **Exhibit B** hereto. Any amendments to such plans and drawings shall require approval by the Town, which approval shall not be unreasonably withheld.

C. Revegetation and Landscaping. Within eighteen (18) months of the filing of the final subdivision plat, the Developer shall landscape the Property to eliminate erosion and revegetate any disturbed areas pursuant to plans reviewed and approved by the Town concurrent with the development schedule. Erosion mitigation shall be ongoing. The Developer shall further install or require by covenant, landscaping on the Property pursuant to plans approved by the Town. Cost estimates of all landscaping shall be submitted to the Town, guaranteed by the security required by this Agreement, and shall be considered a public improvement hereunder. Specific components of the Landscaping Plan shall include, but are not limited to:

- i. Compliance with all applicable Town Code provisions, including Sections 16-17-130 to 16-17-170 and Appendix C.
- ii. Park/green space improvements to be installed no later than the time of completion of one half (1/2) of the residential units on the Property.
- iii. Landscaping of individual yards, including fencing, as part of the building process.
- iv. Plans for installation and maintenance of seed mix if this approach is selected over sod landscaping.
- v. Screening elements.
- vi. Features to protect mature tree stands, where feasible.

D. Fencing Plan. Prior to the commencement of development of the Property, Developer shall provide a Fencing Plan to the Town for its review and approval, which approval shall not be unreasonably withheld. The Fencing Plan shall show a common and uniform fencing theme (design and materials) for the Property and shall be included in the Covenants for the Property as an architectural requirement applicable to all unit owners.

E. Irrigation. The Developer agrees to construct and install, at the Developer's sole expense, an irrigation system sufficient to irrigate all open space for which the Developer has installed landscaped improvements and all areas of multi-use open space parcels landscaped by the Developer within the Property. The plans and specifications for such system shall be subject to the approval of the Town Engineer, which approval shall not be unreasonably withheld. Irrigation systems in the drainage ways and cut and fill slopes shall be installed temporarily and may be removed when revegetation has been established and irrigation is no longer necessary.

F. Pedestrian Access. The Developer shall install safe pedestrian access within the Property consistent with the approved construction plans. The Developer shall

ensure such access complies with ADA requirements, including proper ramps and sidewalks/paths.

G. Emergency Access. Plans for emergency access to the Property shall be submitted to the Planning Department according to specifications approved by the Eagle River Fire Protection District.

H. Dust, Mud, and Erosion Control. The Developer shall maintain all streets and surrounding areas during construction of the Public Improvements by employing techniques acceptable to the Town for dust, mud, and erosion control. Further, as may be applicable, the Developer shall apply and receive a Storm Water Management Permit from the State of Colorado prior to any construction work, including grading, if required.

I. Dogs Prohibited During Construction. The Developer shall prohibit its contractors and subcontractors from bringing dogs onto the Property during working hours, even if such dogs are to be kept inside motor vehicles.

6. Pre-Construction Meeting. The Developer shall hold a pre-construction meeting with the Town Engineer and Public Works Director, as well as the Developer's engineer and contractor for the purpose of discussing all construction issues that will be required for this project.

7. Public Improvements. All water lines, water facilities, sewer lines, sewer facilities, hydrants, water or sewer distribution facilities, drainage structures, landscaping, gas lines, electrical facilities, cable T.V., telephone lines, utility systems, streets (public and/or private), lighting, and signage required by this Agreement, construction drawings approved by the Town, or shown on the Final Subdivision Plat prepared by Slagle Surveying Services, as Job No. 18029 dated \_\_\_\_\_2024, as it may be amended (the "Public Improvements") shall be installed and completed at the expense of the Developer.

A. All Public Improvements required by this Agreement are shown on the Final Subdivision Plat submittal, and the estimated costs thereof which are identified on the Final Submittal Cost Estimate attached as **Exhibit C**. The Public Improvements shall be constructed in conformance with the approved plans and specifications attached as **Exhibit B**, including all supplemental plans and specifications of the Town of Minturn Public Works Manual Municipal Code Appendix C, then in effect, and the utility plan (hereinafter collectively referred to as "Plans and Specifications").

B. The Developer shall provide, at its sole cost and expense, all necessary engineering designs, surveys, field surveys, and incidental services related to the construction of the Public Improvements.

C. The approved construction plans include drainage improvements associated with development of the Property that pipes stormwater under Highway 24 across the Town's "Boneyard" property and USFS Property, to the Eagle River ("Alternative A"). At the time of approval of this Agreement, Developer has not obtained

approvals from CDOT, Eagle Valley Land Trust and the USFS to implement Alternative A. To that end, Developer has provided conceptual level engineering that demonstrates drainage detention ponds sufficient for the needs of the Belden Place subdivision can be constructed on Lots 18, 19 and 20.

Developer desires to proceed with Alternative A if the necessary improvements can be obtained within the next twelve (12) month period. At the time of recording the Final Subdivision Plat, Developer will record a covenant restricting the use of Lots 18, 19 and 20 which will be used to construct on-site detention in the event that Alternative A cannot be implemented. If Developer does not obtain the necessary approvals for Alternative A within twelve (12) months from recordation of the Final Subdivision Plat, Developer will submit engineered plans for on-site detention ponds within thirty (30) days. Developer will then construct the Town-approved on-site detention ponds within seventeen (17) months of recordation of the Final Subdivision Plat and dedicate the Lots associated with the on-site detention ponds to the homeowners association. If Developer constructs the Alternative A drainage improvements in conformance with the approved construction plans, the Town will release the covenant from the public records within thirty days of acceptance of the Alternative A drainage improvements by the Town.

Until either the Alternative A or Alternative B drainage improvement are completed and accepted by the Town, Developer shall provide the Town with financial security equal to the estimated cost thereof.

8. Construction Observation and Inspection.

A. Materials and Workmanship. Unless otherwise specified, all materials used for the Public Improvements shall be new, and both workmanship and materials shall be of good quality. Upon request, the Developer shall furnish to the Town for the Town's approval, the name of the manufacturer of equipment and materials that it contemplates incorporating into the Public Improvements, which approval shall not be unreasonably withheld. The Developer shall also furnish, upon request, information on capacities, efficiencies, sizes, etc. as the Town may require. Equipment, materials, and articles not conforming to the construction plans shall be placed and installed at the risk of subsequent rejection by the Town.

B. Construction Inspection by the Developer. The Developer shall be responsible for ensuring that its certified professional engineer provides construction inspection services as necessary to allow The Developer's engineer to provide a stamped certification, when improvements are submitted to the Town for acceptance, that the Public Improvements have been constructed in accordance with the Plans and Specifications approved by the Town.

C. Construction Observation by the Town. The Town shall have the right to make engineering and construction observations at reasonable intervals and at the

Developer's expense during construction of the Public Improvements. Observation, acquiescence in or approval by any engineering and/or building inspector of the construction of any physical facilities, at any particular time, shall not constitute Town approval of any phase of construction of the Public Improvements. Town approvals shall be made only after completion of construction and in the manner hereinafter set forth. To assist the Town in monitoring the installation of the Public Improvements, a supervisor employed by the Developer's general contractor shall inspect the Public Improvements on at least a weekly basis, and shall provide the Town Engineer and/or Town Public Works Director or his/her designee with supervisor's field and inspection notes relating to the installation of the Public Improvements which have been reviewed and stamped by a professional engineer. The supervisor shall regularly apprise the Town Public Works Director or his/her designee of the status of the work on the Public Improvements. Further, the Developer at its own expense shall have an approved geotechnical engineer monitor the methods of construction and backfill, to ensure such work is being completed in conformance with the approved Plans and Specifications, and accepted standards for such work. The geotechnical engineer shall conduct inspections and testing as directed by the Town Public Works Director or his/her designee. The Town agrees to respond to requests for interim inspections in a timely manner and to respond not later than ten (10) business days after a request for a final inspection. Nothing in this paragraph shall be construed to constitute an acceptance by the Town of the Public Improvements, which approval and acceptance shall only occur pursuant to the specific provisions below.

9. Permits and Easements. The Developer shall obtain and present to the Town all land boundary surveys, permits, licenses, and easements of a temporary or permanent nature, if any, necessary for the construction or maintenance of Public Improvements.

10.

Completion of Public Improvements: Approval. The Developer shall complete all Public Improvements within eighteen (18) months of the execution of this Agreement, unless otherwise agreed in writing. Upon the Developer's completion of construction of the Public Improvements, the Developer's engineer shall certify in writing that the improvements have been completed in conformance with the Plans and Specifications and submit to the Town a completed acceptance checklist utilizing a form approved by the Town. Thereafter, the Town Public Works Director or his/her designee shall inspect the Public Improvements and certify in writing and with specificity their conformity or lack thereof to the Plans and Specifications. The Developer shall make all corrections necessary to bring the Public Improvements into conformity with the Plans and Specifications. The Developer shall at its expense have as-built drawings prepared by a professional engineer and a registered land surveyor, which drawings shall include all legal descriptions the Town may require. The Developer shall also prepare a summary of the actual construction costs of all Public Improvements to be dedicated to the Town. The as-built drawings and costs summary shall be forwarded to the Town for review and approval.

Once the as-built drawings and costs summary are approved, and any and all corrections are completed, the Town Public Engineer or his/her designee shall certify in writing that all Public Improvements are in conformity with the Plans and Specifications, and the date of such certification.



fication shall be known as the Acceptance. The Town shall be under no obligation to provide any water or sewer service until all Public Improvements are brought into conformance with the Plans and Specifications and the approved Final Plan and Final Subdivision Plat, and are certified and approved by the Town Public Works Director or his/her designee pursuant to this Agreement. However, upon certification and approval, the Town shall be obligated to provide water and sewer service to the Property, subject to all provisions of the Minturn Municipal Code, and in particular to the availability of water or sewer taps, which shall be on a first-come, first-served basis. The Town does not guarantee an adequate number of taps will be available to serve the Property at the time the Developer intends to proceed with development.

11. Acceptance; Conveyance. Within thirty (30) days of the Acceptance Date, the Developer of the Property shall execute a deed to the Town (or the homeowners association as the case may be) conveying all rights-of-way and easements required for the operation, maintenance, repair and replacement of the Public Improvements. The Developer agrees to dedicate to the public and to convey or, with respect to off-site easements, to assign, to the Town, in such form as may be required by the Town, such easements and other rights as acquired by the Developer as may be reasonably required for the construction of the Public Improvements. Such conveyance and dedication shall be free and clear of all liens and encumbrances that might adversely affect the use of the Public Improvements for their intended purpose. The Developer shall also execute a bill of sale conveying the Public Improvements to the Town (or the homeowners association as the case may be), free and clear of all liens and encumbrances. All Public Improvements shall be warranted for a period of twelve (12) months from the Acceptance Date, as provided below.

12. Warranty. The Developer shall warrant any and all Public Improvements and facilities which are conveyed to the Town or a homeowners association pursuant to this Agreement for a period of twenty-four (24) months (the "Warranty Period") from the Acceptance Date. Such Warranty shall automatically terminate at the expiration of Warranty Period or twelve (12) months from the final repair or replacement required under the Warranty, whichever is sooner, unless otherwise agreed by the Parties. Specifically, but not by way of limitation, the Developer shall warrant that:

- A. The title conveyed shall be good and its transfer rightful;
- B. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
- C. Any and all facilities so conveyed shall be free of any defects in materials or workmanship for a period of twelve (12) months, as stated above.

13. Warranty Securitization. The Developer shall provide to the Town a Warranty Security in the form of a bond, letter of credit or deposit agreement satisfactory to the Town Attorney

no later than the Acceptance Date. The Warranty Security shall be adequate to repair or replace twenty-five percent (25%) of the improvements made to the property, as described on **Exhibit C**, during the Warranty Period. If the Developer does not repair or replace damaged or inoperable improvements upon ~~60 days' notice~~ days' notice from the Town, or within ten (10) days of expiration of the

Warranty Security, the Town shall have the right to do so and deduct the cost of the same from the Warranty Security. Such Warranty Security shall be held by the Town for the Warranty Period and shall be released upon the expiration of the same, once all warranty issues have been resolved.

14. Performance Guarantee.

- A. The total amount of required security for the Public Improvements shall be as specified on **Exhibit C**. The Developer shall provide to the Town security in the form required herein. Such guarantees shall be subject to increase if deemed reasonable and necessary in the sole opinion of the Town.

In order to secure the construction and installation of the Public Improvements above described, for which the Developer is responsible, the Developer shall upon execution of this Agreement, and before any lots are contracted for or sold or offered for sale, furnish the Town with a certificate or other evidence, in good and sufficient form approved by the Town Attorney, of a bond, an irrevocable letter of credit or deposit agreement, in a form acceptable to the Town Attorney issued or confirmed by a commercial banking institution authorized to do business and with offices located within the State of Colorado to secure the performance and completion of the Public Improvements, in an amount equal to the estimated costs of said facilities as set forth on **Exhibit C**. The Town shall have the right to review and approve all terms and conditions of the bond, letter of credit or deposit agreement prior to recording of the Final Subdivision Plat.

The original letter of credit or deposit agreement shall be delivered to the Town prior to the recordation of the Final Subdivision Plat. This Letter of Credit shall comply in all respects with the Uniform Customs and Practice for Documentary Credits, 1993 Revision, issued by the International Chamber Commerce, Paris, to the extent it does not conflict with Article 5 of the Colorado Uniform Commercial Code.

The Performance Guarantee shall specifically address:

- i. Landscape Guarantee. Developer shall provide Town with a guarantee for no less than one hundred twenty-five percent (125%) of the cost of the landscaping improvements for the entire Property to ensure proper installation and continued maintenance of all features for a warranty period of two (2) years after installation. The guarantee shall be provided prior to the initiation of any land clearing or infrastructure development on the Property and shall be released upon the Planning Director's and/or Town Engineer's inspection, approval, and acceptance of the landscaping, except that twenty-five percent (25%) of the cost of each feature shall be retained for the two (2) year warranty period.

ii. Public Improvements Guarantee. A guarantee acceptable to the Town Attorney for no less than one hundred percent (100%) of the current estimated costs of necessary public improvements, as estimated by the Town Engineer. Such guarantee shall be released upon inspection, approval, and acceptance by the Town Engineer, except that ten percent (10%) of the cost of each improvement shall be retained until all proposed improvements are completed.

B. In the event the Public Improvements are not constructed or completed within eighteen (18) months of the date of this Agreement, the bond, letter of credit or deposit agreement shall provide that the funds necessary to complete the Public Improvements shall be put directly to an escrow account under the control of the Town Manager and shall be used to complete the Public Improvements called for herein.

C. Within ten (10) days of timely completion and acceptance of the Public Improvements, and performance of the conditions and requirements of this Agreement secured by the performance guarantee, and upon the approval of the Town Manager, the performance guarantee shall be released to the Developer. If the Public Improvements are not completed within the required time, the performance guarantee may be called by the Town and the monies may be used to complete the Public Improvements; provided, however, that if such guarantee is not sufficient to pay the actual costs, the Developer shall be responsible for the balance.

D. Prior to release of any portion of the performance guarantee, Developer shall demonstrate to the reasonable satisfaction of the Town Attorney:

- i. that Sewer easements identified on Sheet 2 of the Final Subdivision Plat have been "revised by separate document after Plat recording."
- ii. that a deed to the Belden Place Homeowners Association has been recorded in the public records of Eagle County conveying Tracts B, C, and D together with all rights in the easements identified in Plat Note 8.

E. The required security for the Public Improvements is the amount mutually agreed upon by the Developer and the Town Engineer as set forth above. The Parties agree that this amount does not necessarily reflect the Town Engineer's estimate of what the actual cost to the Town would be if the Town were required to fund construction of all of the Public Improvements. In the event the costs of the Public Improvements exceed the amount set forth above, the Developer shall be solely responsible for the actual cost. The purpose of **Exhibit C** is solely to determine the amount of security and shall be revised every twelve (12) months to reflect the actual costs, and the performance guarantee required by this SIA shall be adjusted accordingly. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the actual costs of all such Public Improvements.

F. The Parties expressly agree that the Developer's preparation and submission to the Town of "as-built drawings" and a summary of actual construction costs for the Public Improvements to be dedicated to the Town or owners association—and approval by the Town of the as-built drawings and summary—are essential requirements of this Agreement. In the event the Developer fails to provide the as-built drawings and summary to the Town thirty (30) days prior to the expiration of the performance guarantee or any extension thereof, such failure shall constitute a breach of this Agreement with regard to the completion of the Public Improvements, damages for which are impossible to ascertain, entitling the Town to call upon the performance guarantee in an amount equal to ten percent (10%) of the total amount set forth on **Exhibit C**, which amount the Town may retain as liquidated damages due to the Developer's breach. No releases of the letter of credit or deposit agreement shall be granted by the Town until such as-built drawings are provided and all Public Improvements are accepted by the Town.

15. Title Policy. Prior to the recordation of the Final Subdivision Plat for the Property, the Developer shall provide the Town a commitment for a title insurance policy, indicating that the Property is free and clear of all encumbrances whatsoever which would impair the use of the Property as proposed by the Final Subdivision Plat. Further, said title commitment, and/or an additional title commitment, shall show that all other property to be dedicated to the Town is free and clear of all encumbrances which would make said dedications unacceptable as the Town in its sole discretion determines. At the time of recording the Final Subdivision Plat, the title insurance policy(s) shall be provided to the Town, and the premium(s) for the title insurance shall be paid by the Developer. In the event the title commitment(s) reflect encumbrances which would impair the use of the Property as proposed or which would make the public dedications unacceptable, the Town shall notify the Developer, who shall cure or otherwise remove or subordinate said encumbrances to the satisfaction of the Town prior to the recordation of the Final Subdivision Plat.

16. Vested Rights. Pursuant to Section 16-11-10, *et. seq.*, of the Minturn Municipal Code, the Town and the Developer agree that the Town Council's Subdivision Final Subdivision Plat approval of the Property constitutes the approval of a "Site Specific Development Plan", and no further hearings are required. Pursuant to the approval by the Town Council of the Final Subdivision Plat for the Property, the Town granted vested property rights for the Property for a period of three (3) years from the effective date of the Town ordinance approving this Agreement and the Final Subdivision Plat upon the condition that the Developer comply with all of the terms and conditions of this Agreement, the Final Subdivision Plat for the Property, and the development submittal. If Developer has submitted a complete application for a building permit and paid all applicable fees for a building that cannot be served with water due to a moratorium on water service, vested rights shall extend for a period of ~~four (4)~~<sup>two (2)</sup> years after the termination of the three (3) year vested rights period. Such rights shall also be subject to the provisions of Minturn Municipal Code Section, and the Developer shall at its expense publish the vested rights notice required by C.R.S. §24-68-103(1) and Minturn Municipal Code Section 16-21-710.

17. Owners Association; Covenants. An owners association shall be created by the Developer under the laws of the State of Colorado before any properties within the subdivision are sold to third parties. The Articles of Incorporation and covenants shall be reviewed by the Town

Attorney to ensure that they meet the Town's requirements that the owners association (1) maintains, operate and assume full responsibility for all easements and common areas within the Property and shown on the Final Subdivision Plat, including landscaping; (2) maintains all private open space; and (3) is empowered to enforce any provisions of the covenants, conditions and restrictions affecting the Property. The covenants for the Property shall also address, at a minimum: party wall agreements, snow removal, building and landscape maintenance, sidewalk maintenance, drainage maintenance, road maintenance, use of limited and general common elements, fencing styles and heights, outdoor storage of vehicles (including recreational vehicles, boats, trailers, and the like), and pets. The Articles of Incorporation and covenants shall be reviewed and approved, and the Articles filed with the Colorado Secretary of State prior to the recordation of the Final Subdivision Plat.

18. Conditions of Building Permit / Certificate of Occupancy. In addition to all requirements of the Minturn Municipal Code and any requirements imposed by operation of state, federal, or local law, no building permits shall be issued for the Property until:

A. This SIA has been recorded in the Office of the Eagle County Clerk and Recorder, and a recorded copy is on file in the Office of the Town Clerk.

B. The Final Subdivision Plat has been recorded in the Office of the Eagle County Clerk and Recorder, and a recorded copy is on file in the Office of the Town Clerk.

C. All Public Improvements have been accepted, or a performance guarantee to secure all Public Improvements has been provided in accordance with this SIA.

19. Voluntary Action of Developer. Notwithstanding any provision of the Minturn Municipal Code, the Developer agrees that all terms and conditions of this Agreement, including specifically the payment of fees, the dedication of land, and the completion of off-site infrastructure improvements, are agreed to and constitute the voluntary actions of the Developer.

20. Breach by Developer; Town's Remedies. In the event of any default or breach by the Developer of any term, condition, covenant or obligation under this Agreement, the Town Council shall be notified immediately. The Town may take such action as it deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders, and to protect the citizens of the Town from hardship. The Town's remedies include:

A. The refusal to issue to the Developer any building permit or certificate of occupancy; provided, however, that this remedy shall not be available to the Town until after the affidavit described below has been recorded;

B. The recording with the Eagle County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Manager or his designee, stating that the terms and conditions of this Agreement have been

breached by the Developer. At the next regularly scheduled Town Council meeting, the Town Council shall either approve the filing of said affidavit or direct the Town Manager to file an affidavit stating that the default has been cured. Upon the recording of such an affidavit, no further lots or parcels may be sold within the Property until the default has been cured. An affidavit signed by the Town Manager or his designee and approved by the Town Council stating that the default has been cured shall remove this restriction;

C. A demand that the security given for the completion of the public improvements be paid or honored; the refusal to consider further development plans within the Property; and/or any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town or Town residents, the Town shall provide the Developer ten (10) days' written notice of its intent to take any action under this paragraph during which ten-day period the Developer may cure the breach described in said notice and prevent further action by the Town. Furthermore, unless an affidavit as described above has been recorded with the Eagle County Clerk and Recorder, any person dealing with the Developer shall be entitled to assume that no default by the Developer has occurred hereunder unless a notice of default has been served upon the Developer as described above, in which event Developer shall be expressly responsible for informing any such third party of the claimed default by the Town.

21. Assignment. This Agreement may not be assigned by the Developer without the prior written consent of the Town, which consent shall not be unreasonably withheld. In the event the Developer desires to assign its rights and obligations herein, it shall so notify the Town in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein.

22. Indemnification. The Developer agrees to indemnify and hold the Town harmless from any and all claims or losses of any nature whatsoever incurred by the Town resulting from the subdivision of the Property and construction of the Public Improvements. This indemnification shall include actual attorneys' fees incurred in the event that any party brings an action against the Town for any of the approvals described herein. The Parties intend not to duplicate any legal services or other costs associated with the defense of any claims against either Party described in this section. Therefore, the Parties agree to cooperate in full to prevent duplicative expenses incurred as a result of the indemnification herein described.

23. Waiver of Defects. In executing this Agreement, the Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on the Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

24. Final Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties and is the total integrated agreement between the parties.

25. Modifications. This Agreement shall not be amended, except by subsequent writ-

ten agreement of the Parties.

26. Release of Liability. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Town of Minturn Municipal Code and Ordinances and the laws of the State of Colorado, and that the Developer, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town officers or agents or their designees which is subsequently held unlawful by a court of law.

27. Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part thereof.

28. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, and assigns.

29. Invalid Provision. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

30. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Eagle County, Colorado.

31. Attorneys' Fees; Survival. Should this Agreement become the subject of litigation, the substantially prevailing Party shall be entitled to, and the failing Party shall pay, all reasonable attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys shall survive any termination of this Agreement.

32. Authority. Each person signing this Agreement represents and warrants that he is fully authorized to enter into and execute this Agreement, and to bind the Party it represents to the terms and conditions hereof.

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

34. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to

the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices shall be sent.

Notice to Town: Town of Minturn  
P. O. Box 309  
Minturn, CO 81645

With copy to: Michael J. Sawyer  
Karp Neu Hanlon, P.C.  
P. O. Drawer 2030  
Glenwood Springs, CO 81602

Notice to Developer: Miners Base Camp LLC  
PO Box 1134  
Minturn, CO 81645

With copy to: James Wm. Stovall  
**STOVALL ASSOCIATES**  
175 Main Street, Suite C-109  
Edwards, CO 81632

35. Gender. Whenever the context shall require, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

36. No Agency, Joint Venture, or Partnership. It is specifically understood and agreed to that the Parties that this Agreement does not create any agency, joint venture, or partnership relationship between the Parties. The Town has no interest in responsibility for, or duty to, third parties concerning any improvements made hereunder until such time, and only until such time, that the Town accepts the Public Improvements under the provisions of this Agreement.

WHEREFORE, the parties hereto have executed duplicate originals of this Agreement on the day and year first written above.



TOWN OF MINTURN, COLORADO

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Jay Brunvand, Clerk

DEVELOPER

By: \_\_\_\_\_  
\_\_\_\_\_, Manager

STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF                )

Acknowledged, subscribed, and sworn to before me this \_\_\_\_day of \_\_\_\_\_, 20\_\_.  
by \_\_\_\_\_ as Manager of \_\_\_\_\_, LLC.

WITNESS my hand and official seal.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**Exhibit A**  
**Legal Description**

Property located in the Town of Minturn, Eagle County:

LOTS 29, 31 AND 32, SOUTH MINTURN ADDITION, ACCORDING TO THE ANNEXATION PLAT THEREOF RECORDED MARCH 1, 1978 AS RECEPTION No. 163447 IN THE OFFICE OF THE EAGLE COUNTY CLERK AND RECORDER, EAGLE COUNTY, COLORADO AND LOTS 1, 2 AND 3 DURAN SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 14, 1994 AS RECEPTION No. 553188 IN THE OFFICE OF THE EAGLE COUNTY CLERK AND RECORDER, EAGLE COUNTY, COLORADO, THE PERIMETER OF WHICH PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EAST LINE OF SECTION 35, TOWNSHIP 5 SOUTH, RANGE 81 WEST, OF THE 6TH PRINCIPLE MERIDIAN, SAID POINT BEING A FOUND RED PLASTIC CAP STAMPED LS 26626 FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 35 BEARS N00°02'00"W 1962.17 FEET; THENCE S00°02'00"W 0.57 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT OF BEGINNING ALSO BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY 24 PER C.D.O.T. PROJECT TAP M890-001 AND THE MAP THEREOF AND ALSO BEING THE NORTHEAST CORNER OF SAID LOT 32, SOUTH MINTURN ADDITION; THENCE UPON SAID EAST LINE OF SECTION 35 S00°02'00"W 356.38 FEET TO THE SOUTHEAST CORNER OF SAID LOT 32 BEING A FOUND 3" ALUMINUM DEPT. OF AGRICULTURE CAP IN MONUMENT BOX STAMPED LS 7235, 1984; THENCE DEPARTING SAID EAST LINE SECTION 35 AND UPON THE SOUTH LINE OF SAID LOT 32 AND SAID LOT 31, SOUTH MINTURN ADDITION S84°06'47"W 220.37 FEET TO THE SOUTHEAST CORNER SAID LOT 29, SOUTH MINTURN ADDITION BEING A FOUND 2.5" BRASS CAP ON 1" IRON PIPE STAMPED SW COR GATES TRACT; THENCE UPON THE SOUTH LINE OF SAID LOT 29 N71°22'44"W 63.47 FEET TO THE SOUTHWEST CORNER SAID LOT 29 BEING A FOUND 1" IRON PIPE WITH NO CAP; THENCE DEPARTING SAID SOUTH LINE AND UPON THE WEST LINE OF SAID LOT 29 N00°01'03"W 467.14 FEET TO SAID SOUTH RIGHT OF WAY U.S. HIGHWAY 24 ALSO BEING THE NORTHWEST CORNER OF SAID LOT 29; THENCE UPON SAID SOUTH RIGHT OF WAY U.S. HIGHWAY 24 S68°46'59"E 299.59 FEET TO THE TRUE POINT OF BEGINNING.

**Exhibit B**  
**Construction Plans and Specifications**

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Exhibit C  
Public Improvements and Landscape Cost Estimates

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