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DATE: November 10, 2023
TO: Minturn Mayor and Council
FROM: Karp Neu Hanlon, P.C.
RE: Minturn North PUD Agreement

Section 16-15-220 of the Code provides for a Planned Unit Development Agreement (“PUD Agreement”) to be adopted with the approval of the final development plan.

Sec. 16-15-220. - Planned Unit Development agreement for final development plan.

- (a) General. Concurrent with the approval of a final development plan for the PUD, the applicant and the Town Council shall enter into a PUD agreement binding the Planned Unit Development to any conditions placed in the agreement.
- (b) Common park and recreation areas. The PUD agreement shall refer to the approved common open space, park and recreation area plan. It shall outline the areas of common open space, parks and recreation lands and specify any agreement on the part of the developer to preserve the open space, parks and recreation lands and how this will be implemented by deeding the land to the appropriate entity. It shall also identify any deed or other restrictions against future residential, commercial or industrial development. It shall also include the terms by which any common areas shall be maintained.
- (c) Landscape guarantee. The PUD agreement shall set down how the landscaping proposed for the PUD will comply with the Town standards. In order to ensure implementation and maintenance of the landscape plan, the Town may require the developer to provide a guarantee for no less than one hundred twenty-five percent (125%) of the current cost of the landscaping improvements, as estimated by the applicant and approved by the Town Council, to ensure the installation of all landscaping shown and the continued maintenance and replacement of that landscaping for a period of two (2) years after installation. The guarantee shall be in a form acceptable to the Town Council, upon a recommendation from the Town Attorney. As portions of the landscape improvements are completed, the Planning Director shall inspect them and, upon approval and acceptance, shall authorize the release of the agreed estimated cost for that portion of the improvements, except that ten percent (10%) shall be withheld until all proposed improvements are completed and approved, and an additional twenty-five percent (25%) shall be retained until the improvements have been

maintained in a satisfactory condition for two (2) years.

- (d) Public facilities guarantee. In order to ensure installation of necessary public facilities planned to accommodate the development, the PUD agreement shall provide a guarantee for no less than one hundred percent (100%) of the current estimated cost of such public facility improvements, as estimated by the applicant, reviewed by the Town Engineer and approved by Town Council. The guarantee shall be in a form acceptable to the Town Council, upon a recommendation from the Town Attorney. As portions of the public facilities improvements are completed, the Town Engineer shall inspect them and, upon approval and acceptance, shall authorize the release of the agreed cost for that portion of the improvements, except that ten percent (10%) shall be withheld until all proposed improvements are completed and approved by the Town Engineer.

Resolution No. 31 authorizes the Mayor to sign a PUD development agreement for the Minturn North subdivision. The PUD Agreement is a lengthy document containing several commitments associated with the implementation and long term maintenance of the Minturn North PUD. There are several exhibits attached to the PUD Agreement that are substantive in nature. This memo outlines the provisions of the PUD Agreement and the relevant exhibits.

Section 3.B. and 3.C. deal with water rights and water service for the property within the PUD. The developer will pay the current rates for water right dedication in lieu fees and for water tap fees. The PUD creates 39 lots. The developer has a credit for six existing SFEs of water service. The developer is additionally acquiring one SFE of service to irrigate common area. As such, the developer will pay 34 tap fees in the amount of \$439,960 and 34 SFEs for water rights dedication in lieu of fees totaling \$1,377,034. These fees will be paid within 30 days of recording the final plat. System improvement fees which are associated with the size of a structure will be paid at the time of building permit. Because some of the structures at Minturn North may be larger in size than 3000 square feet (the maximum size for a 1 SFE house) the development agreement reserves the right for a period of two years to use up to a total 54 SFEs of water rights dedication which can be acquired at the time of building permit. The PUD agreement contains a release of 16 SFEs of water service reserved to the Minturn North development in ordinance #5, series 2020. The developer will also convey a portion of historic water rights associated with the UPRR rail yard. These water rights, unfortunately, cannot be integrated into the Town's water supply.

Section 4.C. contains limitations on the amount of irrigation that can occur on lots within the PUD. Specifically, each lot is limited to a maximum of 2000 square feet of irrigated landscaped area. This is true regardless of whether a lot owner pays additional water rights dedication in lieu of fees to build a larger house.

The PUD Agreement requires several real property interest conveyances. These are outlined in Section 3.D. and the attached exhibits. The developer will convey a parcel of land 0.9 acres in size (identified as Tract C on the plat) to the Town. At the time that this property is conveyed, the town will pass a resolution indicating that the property is not being held for a public purpose. This will allow the town flexibility to determine a future use of this property through a planning process.

The PUD Agreement contains several provisions related to conveyances from the Union Pacific Railroad company (UPRR).

- The Town will be a party to an agreement with Eagle County and UPRR to vacate an outdated easement for Minturn Road (Exhibit D2). This will then be replaced with the surveyed easement for Minturn Road (Exhibit D3) together with an easement for a portion of Railroad Ave. that is located on UPRR property. The Railroad Ave. easement includes land on the north side to construct pedestrian improvements.
- UPRR has offered to grant to the Town various easements and crossing agreements to clean up existing roadway network features that interact with UPRR land and the railroad tracks. This includes easements and crossing agreements for the location where Railroad Ave. crosses the railroad tracks and where Minturn Road crosses the railroad tracks near Dowd Junction. These easements and crossing agreements are subject to standardized direct the Town's ability to undertake work or interfere with the railway network. These documents are attached as exhibits D4, D5, D6, and D7.
- UPRR held an old reversionary interest in land underlying Taylor Ave. As part of recording the Final Plat, UPRR will vacate any interest it has in Taylor Ave. (Exhibit D8).

As part of the application, Minturn North offered to record a restrictive covenant against lots 34-39 dedicating these lots to locals' housing (Exhibit E). The covenant requires that these lots be offered first to Minturn residents at the time of any sale. In the event that there is not an interested Minturn resident buyer, then the lots can be offered to Eligible Households within Eagle County. Eligible Households include persons who are employed at least 30 hours per week within Eagle County or who are over the age of 60 and are retired Eagle County residents. Houses on lots 34-39 can be rented – but only to Eligible Households. The effect of this restriction is to require that the users of lots 34 - 39 be Eligible Households who are locals. The term of this covenant runs for 50 years.

Additionally as part of the application, Minturn North agreed to record a restrictive covenant against lots 1-33 imposing a transfer assessment for non-permanent resident buyers. The transfer assessment applies to all non-Eligible Households. Similar to the locals housing covenant, Eligible Households work in Eagle County at least 30 hours per week, are telecommuter employees who live in Eagle County, or are retired Eagle County residents. The homes on the lots must be used as a primary residence for at least 9 of 12 months of the year. Rental of the property is prohibited under the covenant. In the event that a non- permanent resident purchases a lot, a 1% transfer assessment on the purchase price will be added and paid to the Town. Further, if an owner loses their Eligible Household status under the covenant, they can be required to pay the transfer assessment at that time. Council should be aware that not every one of lots 1 - 33 will pay the transfer assessment. This should not be viewed as a robust source of regular income to the Town.

The developer will form a property owners association to govern common elements within the PUD. The Declaration of Covenants is Exhibit G to the PUD Agreement. The common elements generally include internal roadways, sidewalks, drainage facilities, a mud flow protection berm, and common

areas such as Game Creek. Common elements are required to be funded and maintained by the owners association. The association will be responsible for landscape maintenance of all of the lots. The developer will be installing a separate irrigation system from the water lines that serve the houses. This will have a master meter making it easier for the Town to track water usage for irrigation purposes. In response to Council comments, an architectural review committee was eliminated from the covenants. Further, the developer removed certain use restrictions associated with outside storage and play equipment.

The PUD agreement approves the construction plans for the subdivision. Those plans have been reviewed by Jeff Spanel. Jeff has drafted a letter of various technical changes that need to be made to the construction plans prior to recordation of the final plat. Resolution No. 31 is contingent upon the developer completing the items listed in Jeff Spanel's letter.

Section 4 of the PUD Agreement memorializes various commitments made by the developer during the application process. These include the construction of the eco trail, soft surface trails within the PUD, and sidewalks along 4th Street. The internal trails and roads are open to the public. Drainage improvements along Taylor Ave. 4th Street and under Minturn Road will be maintained by the owners association. In the event that the association fails to maintain these structures, the Town can do so and bill back the owners association. The developer will construct improvements to Minturn Road between the PUD and Dowd Junction. These improvements must be engineered within one year of this approval. The developer will then have two years thereafter to construct the improvements. The same is true for a bridge across Game Creek for the eco trail. The developer will provide security to the Town for all items on the construction cost estimates including Minturn Road and the Game Creek bridge to guarantee that they are constructed. The construction cost estimates are Exhibits J1-J3. Small modifications to exhibits J1 - J3 will be made pursuant to Jeff Spanel's letter.

Section 6 identifies additional public improvements to be constructed or funded by the developer. In addition to the public improvements identified on Exhibits J1 to J3, the developer will install soft surface parking spaces along Taylor Ave. as shown in the construction plans. The developer will also pay the town \$85,108 for making pedestrian improvements along Railroad Ave.

The remainder of the PUD Agreement governs the construction and acceptance of the public improvements. With the exception of Minturn Rd., Highway 24 turn lane, and Game Creek bridge, all public improvements must be completed within 24 months. The developer is required to coordinate construction with the town and at the end to submit engineered stamped as built drawings for all public improvements. Once the public improvements are completed, a warranty period of 12 months is in place (24 months for landscaping). The developer must maintain security with the Town to complete any warranty items.

The development agreement contains a vested right section (Section 16) that grants the PUD vested rights for a period of 10 years. Vested rights mean that the Town cannot modify the development approvals including the PUD guide for a period of 10 years. The developer has indicated that all

improvements will be completed and lots sold within three-years. If that is the case, the impacts of the vested rights provision would be minimal for both the Town and the developer.