



VERZUH RANCH ANNEXATION

SUBDIVISION IMPROVEMENTS AGREEMENT

This **Subdivision Improvements Agreement** ("Agreement") is made and entered into by and between the **TOWN OF CRESTED BUTTE**, a Colorado municipal corporation ("Town") and **Verzuh Ranch, Inc.**, a Colorado corporation ("Subdivider"). This Agreement shall be effective following execution by the Subdivider and immediately upon approval by the Town Council of the Town of Crested Butte as evidenced by the signature of the Town's Mayor or Mayor Pro Tem on the date indicated below.

1. **Recitals.** The parties agree that each of the following statements is true and is a material part of this Agreement.

1.1 Subdivider represents that it is the sole owner of the real property described in the attached **Exhibit A** ("Property"), and has obtained approval from the Town to subdivide said property for a new subdivision to be known as **Verzuh Ranch Annexation** ("Subdivision").

1.2 Pursuant to the Town's Subdivision Regulations (Article 15.3 of the 1987 Crested Butte Municipal Code), the Final Plat of the Subdivision cannot be recorded until the Subdivider has entered into an agreement with the Town concerning the construction of the public improvements within the Subdivision. A copy of the Final Plat and the accompanying documents and plans shall be available for inspection at the Town Offices at 507 Maroon Avenue in Crested Butte, Colorado, during regular business hours. The Final Plat, as approved by the Town, is incorporated into this Agreement for all purposes, including illustration and interpretation of the terms and conditions of this Agreement.

1.3 The Town seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements within the Subdivision and thereby limiting the harmful effects of substandard subdivisions, including premature subdivision which leaves property undeveloped and unproductive.

1.4 The purpose of this Agreement is to protect the Town from the cost of completing subdivision improvements itself, and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the Subdivision or for the benefit of lot or home buyers in the Subdivision.

1.5 As consideration for the approval by the Town of the Final Plat for the Subdivision, Subdivider agrees to construct certain hereinafter described public improvements within the Subdivision in accordance with, and subject to, the terms, conditions and requirements of this Agreement. The parties hereby acknowledge the sufficiency and adequacy of said consideration.

2. **Construction of Public Improvements.** The Subdivider covenants and agrees with the Town to plan, design, engineer and construct, at its sole cost, those public improvements (including required utility services) for the Subdivision as depicted on the attached **Exhibit B** and as described on the attached **Exhibit C** ("Improvements"). The Improvements shall be constructed strictly in accordance with the Town approved plans and specifications for the Subdivision. In addition, the Subdivider shall provide to the Town at no cost to the Town: (a) adequate assurance by a registered engineer that all construction done pursuant to this Agreement has been completed in accordance with the approved plans and specifications for the Subdivision; and (b) "as-built" drawings for all the improvements before

preliminary acceptance by the Town as set forth in Subsection 15-3-6.H.7.c. of the Town's Subdivision Regulations. Further, Subdivider shall hire one or more inspectors acceptable to the Town's engineer to provide inspection services to the reasonable satisfaction of the Town's engineer with respect to the construction of the improvements to be constructed pursuant to this Agreement.

3. Timetable For Construction Of Public Improvements.

3.1 Time of Essence. Town and Subdivider mutually agree that time is of the essence and that timely performance by the Subdivider shall be an essential part of this Agreement.

3.2 Construction Schedule. Subdivider shall construct the Improvements in strict accordance with the schedule described on the attached **Exhibit D**. Any failure by the Subdivider to commence or complete the construction of the Improvements in strict compliance with the Schedule established in **Exhibit D** shall constitute a default by Subdivider and shall entitle the Town to proceed in accordance with the provisions of Paragraph 14 of this Agreement. Subdivider shall not cease construction activities for any period of more than 30 consecutive days, except for delays occasioned by winter weather conditions, without the Town's prior written approval.

3.3 Subdivider's Obligation Not Contingent. The Subdivider's obligation to complete the improvements shall arise upon the recording of the Final Plat of the Subdivision, shall be independent of any obligations of the Town contained herein, and shall not be conditioned on the commencement of construction or sale of any tracts or improvements within the Subdivision.

3.4 Force Majeure. If Subdivider is delayed in commencing or completing construction of the Improvements, as required herein, by reasons of strikes or other labor troubles, unavailability of materials, national emergency, any rule, order or regulation of any governmental authority, or other similar cause not within Subdivider's control, and if prompt written notice of said cause of delay shall be given to Town by Subdivider, then the time for Subdivider to commence or complete construction, as the case may be, shall be deemed extended by the period of time during which said cause of delay shall continue.

3.5 Extension of Letter of Credit. In the event that any delay in construction activities occurs for any period of more than 30 consecutive days, then the Letter of Credit that the Subdivider has posted in accordance with paragraph 8 of this Agreement, shall be extended by a like period of time.

4. Construction Standards.

A. The Improvements shall be constructed in accordance with all applicable laws, ordinances, codes, regulations and standards applicable in the Town.

B. All disturbed land which is not paved or graveled shall be revegetated with certified noxious weed free seed and certified noxious weed free mulch.

5. Quality of Construction: Warranty.

5.1 Quality of Construction. The construction of the Improvements shall be done in a good and workmanlike manner.

5.2 Warranty. The Subdivider warrants that the Improvements, each and every one of them, shall remain free from defects for a period of two (2) years from the date that the Town preliminarily accepts the Improvements as provided in Paragraph 10 of this Agreement. During such two (2) year period any defect determined to exist with respect to such improvements shall be repaired or the Improvement replaced, at the Town's option, at the sole cost of the Subdivider. Town shall have no obligation with respect to the Improvements, except for snow plowing, until they have been finally accepted by the Town in accordance with Subparagraph 10. The Subdivider shall maintain, in a reasonable, suitable and proper condition for travel, ingress, and egress, all streets located within the subdivision until such time as the streets are finally accepted for maintenance by the Town.

5.3 Notice of Default: Cure Period. Except as provided in Subparagraph 5.4 with respect to emergency repairs, the Town shall provide notice to the Subdivider if inspection reveals that any Improvement is defective for any reason. The Subdivider shall have 30 days from the giving of such notice to cure the defect. Such 30 day time limit may be extended by the Town if Town determines that such defect cannot reasonably be cured within such 30 day period. In the event Subdivider fails to cure the defect within the 30 day period, or any extension thereof granted by the Town, Town may declare a default under this Agreement without further notice. No notice shall be required with respect to emergency repairs except as provided in Subparagraph 5.4.

5.4 Emergency Repairs. If at any time it appears that the Improvements may be significantly damaged or destroyed as a result of a bona fide emergency, the Town shall have the right, but not the duty, to enter upon the Property and perform such repairs and take such other action as may be reasonably required in the Town's judgment to protect and preserve the Improvements. Town shall have no duty to inspect the Property to identify emergency situations which may arise. Prior to taking any action pursuant to this Subparagraph 5.4, Town shall make a reasonable effort to locate Subdivider and advise it of the existence and nature of the emergency. The reasonableness of Town's efforts to locate Subdivider shall be determined based upon the nature of the emergency and the Town's efforts to locate and notify the Subdivider. If, after reasonable efforts, Subdivider cannot be located, Town shall have the right to enter the Property and perform any needed emergency repairs as herein provided, and, upon demand, Subdivider shall reimburse Town for the costs of such emergency repairs. Failure of Subdivider to pay to the Town the costs of such emergency repairs within 15 days after demand shall constitute a default as provided in Subparagraph 12.H of this Agreement.

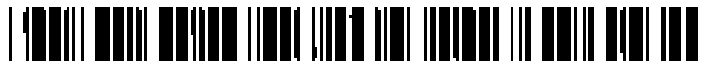
6. Compliance With Law And Building Permit.

6.1 Compliance With Law. When fulfilling its obligations under this Agreement the Subdivider shall comply with all relevant laws, ordinances, and regulations in effect at the time of Final Plat approval. The Subdivider shall also be subject to laws, ordinances and regulations that become effective after Final Plat approval to the extent permitted by applicable Colorado law.

6.2 Compliance With Building Permit. When fulfilling its obligations under this Agreement the Subdivider shall strictly comply with the terms, conditions, limitations and requirements of the Building Permit which has been issued for the construction of the Improvements by the Town.

7. Transfer Of Title To Improvements.

7.1 Dedication On Plat. The Subdivider shall dedicate such of the Improvements as may be requested by the Town, by appropriate language on the face of the Final Plat of the Subdivider. Such dedication shall be made free and clear of all liens, encumbrances and restrictions, except for the permitted exceptions shown on the attached **Exhibit E** which are the same or fewer than



those identified in the statement of ownership and encumbrances provided pursuant to section 15-3-45.B.3. of the Subdivision Regulations, and which, in the sole discretion of the Town, do not defeat, limit, or impede the Town's ability to use the dedicated property as intended.

7.2 Conveyance Of Improvements Other Than By Dedication On Plat. As to any of the Improvements which have not previously been dedicated on the Final Plat of the Subdivision, such Improvements shall be conveyed to the Town, or other appropriate entity, by general warranty deed (if real estate) or by bill of sale with full warranty of title (if personal property), free and clear of all liens, encumbrances and restrictions (except for permitted exceptions shown on Exhibit F), upon the determination of the Town's engineer that such Improvements have been satisfactorily completed and that acceptance of such Improvements by the Town is proper in accordance with the provisions of Paragraph 11. Conveyance of such Improvements shall be made by an instrument acceptable as to form and substance by the Town Attorney.

7.3 Timing of Dedications and Conveyances. All water rights, Donated Development Land, Future Development Land, Parks, Greenway/Snow Storage, trails and Private Open Space as shown on the Plat and as provided for in the Annexation Agreement shall be conveyed and/or dedicated to the Town simultaneously with the recording of the phase 1 plat. No further dedications or conveyances shall be required prior to or upon the recording of the phase 2 plat, except for streets, alleys and utilities in phase 2 of the subdivision.

8. Performance Guarantee. The estimated cost of constructing the Improvements, as determined by a licensed engineer selected by Subdivider, with the Town's approval is \$933,400.63 for phase 1 and \$585,773.75 for phase 2 for a total of \$1,519,174.38. (See the attached Exhibit C). Accordingly, Subdivider has posted the following with the Town's approval as a guarantee of the performance of its obligations hereunder, including its obligation with respect to the two year warranty period provided for in Subparagraph 5.2 ("Performance Guarantee"):

- A cash bond in the amount of \$
- Irrevocable Letters of Credit issued by a qualified Colorado lending institution acceptable to the Town in the amount of \$933,400.63 for phase 1 and \$585,773.75 for phase 2.
- Other: Loan Agreement for Construction and Guaranty of Subdivision Improvements.

Such Performance Guarantee shall remain in effect and shall be renewed by the Subdivider as necessary until released by the Town in accordance with the provisions of Paragraph 9 of this Agreement. The Town shall use the Performance Guarantee, or any funds realized from the Performance Guarantee, for the purposes of completing the Improvements, correcting defects in or associated therewith, including actual legal and engineering expenses reasonably incurred by the Town.

In the event that construction of phase 2 is started more than 2 years after the start of construction of phase 1, the Town shall have the right to require the Subdivider to submit updated engineer's cost estimates for the purpose of updating the Performance Guarantee, which shall be subject to review and approval by the Town. Any dispute over the amount of such Performance Guarantee shall be subject to binding arbitration under rules of the American Arbitration Association.

9. Release Of Performance Guarantee.

9.1 When Released. The Subdivider's Performance Guarantee described in Paragraph 8 shall be released and returned to the Subdivider, without interest thereon, only at such time as the Town determines, in its sole discretion, that all of the Improvements have been properly constructed or installed, and preliminarily accepts them in accordance with Subsection 15-3-6.H.7 of the Subdivision Regulations, and the two-year warranty period provided for in Subparagraph 9.2 has expired and the Improvements are finally accepted. The Town may, in its sole discretion, and upon the request of the Subdivider made in accordance with Subparagraph 9.2, and subject to the requirements of said Subparagraph, partially release the Performance Guarantee so long as the amount of the Performance Guarantee at all times equals or exceeds 125 % of the estimated cost to complete the remaining Improvements. There shall be no reduction in the amount of the Performance Guarantee if the Subdivider is in default under this Agreement.

9.2 Request For Partial Release Of Performance Guarantee. Subdivider may make periodic requests for the partial release of the Performance Guarantee in accordance with the provisions of this Subparagraph 9.2. All such requests shall be in writing to the Town Council, shall be for a reduction of at least 20 % of the total original Performance Guarantee, or a multiple thereof, and shall be accompanied by an invoice(s) for the portion of the work reflected in the request. No more than one request for a partial release of the Performance Guarantee may be submitted each month. The last 20% of the Performance Guarantee may not be released until all of the Improvements have been preliminarily accepted, and the two year warranty period has run and the Improvements are finally accepted by the Town.

10. Acceptance Of Improvements. Final acceptance of the Improvements by the Town shall occur as set forth in Subsection 15-3-6.H.8. of the Subdivision Regulations, and evidenced by written notification from the Town Manager. The Town shall not be required to accept any of the Improvements until the Town's engineer determines that:

- A. The Improvements have been satisfactorily completed in accordance with the approved plans and specifications for the Improvements;
- B. The Subdivider has delivered to the Town the as-built drawings as required by Paragraph 2; and
- C. As to any of the Improvements not dedicated on the face of the Plat, the Subdivider has delivered to the Town instruments conveying such Improvements to the Town or other appropriate entity in accordance with Paragraph 7, together with a policy of title insurance demonstrating to the satisfaction of the Town Attorney that the Town or other entity is or will be the owner of such Improvements free and clear of all liens, encumbrances or other restrictions (except for those permitted title exceptions as shown on Exhibit E).

Preliminary acceptance of the Improvements does not constitute a waiver by the Town of the right to draw on the Performance Guarantee to remedy any defect in or failure of the Improvements that is detected or which occurs after acceptance of the Improvements, nor shall such acceptance operate to release Subdivider from its warranty as herein provided.



11. **Payments to Town.** Developer agrees to make payments as set forth on Exhibit F to the Town prior to the recording of the phase 1 Final Plat. The amount of such payments shall be as calculated on the attached **Exhibit F**.

12. **Default.** The following conditions, occurrences or actions shall constitute a default by the Subdivider under this Agreement:

A. Subdivider's failure to commence construction of the Improvements within the time specified in **Exhibit D**;

B. Subdivider's failure to complete construction of the Improvements within the time specified in **Exhibit D**;

C. Subdivider's failure to construct improvements in accordance with the approved plans and specifications for the Improvements and this Agreement;

D. Subdivider's failure to cure defective construction of any Improvement within the applicable cure period as provided in Subparagraph 5.3;

E. Subdivider's failure to perform work within the Subdivision for a period of more than 30 consecutive days, except for delays occasioned by winter weather conditions, without the prior written approval of the Town;

F. Subdivider's insolvency, the appointment of a receiver for the Subdivider or the filing of a voluntary or involuntary petition in bankruptcy respecting the Subdivider;

G. Foreclosure of any lien against the Property or a portion of the Property or assignment or conveyance of all or part of the Property in lieu of foreclosure prior to final acceptance of the Improvements by the Town as provided in Paragraph 10;

H. Subdivider's failure to pay to Town upon demand the cost of emergency repairs performed in accordance with Subparagraph 5.4 of this Agreement; or

I. Subdivider's violation of any provision of this Agreement, the Town's Subdivision Regulations or Zoning and Land Use Ordinance, or any other ordinances of the Town;

The Town may not declare a default until 15 days' advance written notice has been given to the Subdivider, provided, however, that such notice shall not be required with respect to any defective construction for which a 30 days' notice of right to cure has been given in accordance with Subparagraph 5.3 hereof.

13. **Measure Of Damages.** The measure of damages for breach of this Agreement by the Subdivider shall be the reasonable costs of obtaining the appropriate performance guarantee funds and completing the Improvements, including design, engineering, legal and inspection costs. For Improvements upon which construction has not begun, the estimated cost of the Improvements as supplied by Subdivider pursuant to Paragraph 8 shall be prima facie evidence of the cost of completion, however, neither that amount nor the amount of the Performance Guarantee establishes the maximum amount of the Subdivider's liability. The Town shall be entitled to, but not obligated



to, complete all unfinished Improvements after at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced.

14. Town's Rights Upon Default. In the event of default the Town shall have the following rights:

A. The Town Manager may stop work on the Improvements until a schedule and agreement on compliance for construction has been reached.

B. The Town may, but shall not be required to, have the Improvements constructed by such means and in such manner as the Town shall determine, without the necessity of public bidding.

C. If the Town elects to have the Improvements constructed pursuant to Subsection 15-3-6.H.5. of the Subdivision Regulations and this Paragraph 14, it shall have the right to use Subdivider's Performance Guarantee to pay for the construction of such Improvements. If the amount of the Performance Guarantee exceeds the costs of obtaining the performance guarantee funds and constructing the Improvements as set forth in Paragraph 13 hereof, the Town shall deliver any excess funds to the Subdivider. If the Performance Guarantee is insufficient to fully pay such costs, the Subdivider shall, upon demand, pay such deficiency to the Town, together with interest thereon as provided in Paragraph 15.

D. The Town may exercise such rights it may have under Colorado law, including, without limitation, the right to bring suit against the Subdivider for injunctive relief, for specific performance of this Agreement, or to recover damages for the breach by the Subdivider of this Agreement.

E. The Subdivider hereby grants to the Town, its successors, assigns, agents, contractors and employees, a non-exclusive right and easement to enter the Property for the purposes of constructing, maintaining and repairing any Improvements pursuant to the provisions of this Paragraph 14.

F. In addition to any remedies provided for herein, or by law or equity, while the Subdivider is in default under this Agreement the Town may refuse to issue building permits for the Subdivision and the Subdivider shall have no right to sell, transfer or otherwise convey tracts or homes within the subdivision without the express written approval of the Town.

G. The remedies provided for herein are cumulative in nature.

15. Interest. Any sum which is required to be paid by the Subdivider to the Town under this Agreement and which is not timely paid shall accrue interest at eighteen percent (18 %) per annum commencing as of the date such sum was due.

16. Maintenance Of Open Lands. As required by Section 15-3-7.D.9. of the Subdivision Regulations, the Subdivider shall be responsible for and hereby agrees that open lands not dedicated to the Town shall be maintained in their natural state by providing for at least the following:



- A. Maintenance of natural and artificial water courses as free flowing and devoid of debris;
- B. Adequate undeveloped space for stream channels to change as they naturally do over time; and
- C. The Subdivider and its successors and assigns, and the grantee of any conservation easement or other appropriate instrument, shall defend the preservation and use of the land as open land in perpetuity.

17. **Public Utilities.** The Subdivider shall pay all installation charges for telephone, lighting, electricity, natural gas, and cable television required for the Subdivision. All utility lines shall be placed underground in accordance with applicable Town requirements.

18. **Relocation of Utility Lines and Easements, and Oversizing.** The Subdivider shall bear all costs associated with relocating any water, sewer, electrical, gas or cable television lines and providing for respective easements for construction of same within and outside of the Subdivision. If oversizing is required, the cost of such oversizing shall be paid as agreed upon by the Town and the Subdivider.

19. **Subdivision Monumentation.** In accordance with applicable Colorado law, and with Section 15-3-7.5 of the of the Subdivision Regulations, the Subdivider shall establish all subdivision monumentation and have the monumentation approved by the Town Building Official or his or her designee prior to issuance of any certificate of occupancy within the Subdivision.

20. **Debris.** The Subdivider shall take all steps necessary to limit and prevent the accumulation of, and to remove accumulated mud, sediment, dirt, trash and other debris that is "tracked," blown or otherwise carried onto public property or off-site onto private property during development. Such obligation shall continue until all improvements within the subdivision are completed. If the Subdivider fails to remedy any conditions caused or generated by the development of the Subdivision as contemplated by this Paragraph within twenty-four (24) hours of oral or written notice by the Town, the Subdivider agrees to pay upon demand to the Town any costs reasonably incurred by the Town in remedying such conditions. Nothing herein shall obligate the Town to remedy any such conditions, or limit the Town in its selection of the method or manner of remedy.

21. **Payment of Fees and Charges.** The Subdivider agrees to comply with all the ordinances, rules and regulations of the Town and shall pay all fees and other charges in a timely manner as required by the Town, including but not limited to building permit fees, inspection fees, and tap fees imposed by Town ordinance, resolution or motion, or by the terms and conditions of this Agreement.

22. **Landscaping Improvements.** The Subdivider shall install at its own expense and at no cost to the Town all landscaping as depicted on the approved landscaping plan. All landscaping that dies within two years after preliminary acceptance of the Improvements by the Town shall be replaced by the Subdivider at its sole cost, and shall be required to live for at least two years from the



time it is replanted. Subdivider's obligations under this Paragraph shall be guaranteed as part of the Improvements, as set forth in Paragraphs 8, 9 and 10 of this Agreement.

23. **Erosion Control.** The Subdivider shall comply with the applicable provisions of Section 15-3-7.U. of the Subdivision Regulations during all stages of Improvement construction.

24. **State Highway Access Permit.** Not applicable.

25. **Parking.** Not applicable.

26. **Contracting Licensing.** Before proceeding with any of the work contemplated herein, the Subdivider shall ensure that all contractors and/or subcontractors employed by the Subdivider shall have paid the appropriate Business Occupational License Tax and other taxes or fees to the Town before commencing work on any of the Improvements.

27. **No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Town and Subdivider, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on this Agreement. It is the express intention of the Town and Subdivider that any person other than the Town or Subdivider receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

28. **Form of Payment of all Fees and Charges.** Unless otherwise agreed to by the Town Manager on a case by case basis, the Subdivider's payment of fees and charges specified by this Agreement shall be made in the form of certified funds, cashier's check or wire transferred funds delivered to the Town Manager or his or her designee, or to accounts identified by said person.

29. **Review of Reference Documents.** The Subdivider hereby understands and acknowledges that the public documents referenced in this Agreement, including but not limited to the Town Code, Zoning and Land Use Ordinance and Subdivision Regulations, were prior to the execution of this Agreement, and are presently available for review and inspection at the Town Offices located at 507 Maroon Avenue, Crested Butte, Colorado from 8:30 a.m. through 5:00 p.m., Monday through Friday.

30. **Attorneys' Fees.** It is agreed that if any action is brought in a court of law by either party to this Agreement concerning the arbitration, enforcement, interpretation or construction of this Agreement, or documents provided for herein or related hereto, the substantially prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorneys' fees, as well as costs, including expert witness fees, incurred in the prosecution or defense of such action.

31. **Indemnification.** The Subdivider agrees to indemnify and hold the Town, its officers, employees, agents and insurers harmless from and against all liability, claims, and demands, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the construction of the Improvements or other work performed upon the Subdivision, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by the act, omission,

error, professional error, mistake, negligence, intentional act, or other fault of the Subdivider, any subcontractor of the Subdivider, or any officer, employee, representative, or agent of the Subdivider or of any subcontractor of the Subdivider, or which arise out of any worker's compensation claim of any employee of the Subdivider, or of any employee of any subcontractor of the Subdivider. The Subdivider agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims, or demands at the sole expense of the Subdivider. The Subdivider also agrees to bear all other costs and expenses related thereto, including court costs and attorneys' fees, whether or not any such liability, claims or demands alleged are determined to be groundless, false, or fraudulent.

32. No Waiver. No Waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Subdivider, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Subdivider or the acceptance of any Improvements.

33. Vested Property Rights. Subdivider's vested property right in connection with the Subdivision shall expire fifteen years after the end of the warranty period provided for in Paragraph 5.2 of this Agreement. This Agreement shall not otherwise alter, enlarge, extend or modify any vested right obtained by the Subdivider in connection with the Subdivision. Subdivider hereby waives its rights to any claims against the Town under Colorado vested property rights statutory or common laws if the Town suspends work or withdraws its approval because of false or inaccurate information provided by the Subdivider.

34. Recordation. This Agreement and the Subdivision Final Plat shall be recorded by the Town in the office of the Clerk and Recorder of Gunnison County, Colorado, and Subdivider shall pay the Town the costs thereof upon demand. It is the Subdivider's obligation to prepare and submit to the Town the Final Plat in a form and upon material acceptable for recordation by the Clerk and Recorder.

35. Immunity. Nothing contained in this Agreement shall constitute a waiver of the Town's sovereign immunity under any applicable state or federal law.

36. Personal Jurisdiction And Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to the Agreement or the Performance Guarantee, shall be deemed to be proper only if such action is commenced in the District Court of Gunnison County, Colorado. The Subdivider expressly waives its right to bring such action in or to remove such action to any other court, whether state or federal.

37. Code Changes. References in this Agreement to any provision of the Town's Municipal Code or to any Town or other governmental standard are intended to refer to any subsequent amendments and/or revisions to such Code or standard. Such amendments or revisions shall be binding upon Subdivider.

38. **Nonassignability.** This Agreement may not be assigned by the Subdivider without the prior written consent of the Town.

39. **Notices.** Any notice required or permitted hereunder shall be in writing and shall be sufficient if personally delivered, mailed by certified mail, return receipt requested, or sent by facsimile, addressed as follows:

If to the Town:

Town of Crested Butte
Attn: Town Manager
P.O. Box 39
Crested Butte, CO 81224
(970) 349-5338 Fax No. (970) 349-6626

With a copy to:

Laura Magner, Esq.
P.O. Box 2898
Crested Butte, CO 81224
(970) 349-7770 Fax No. (970) 349-9372

If to The Subdivider:

Billy Joe Lacy, President
Verzuh Ranch, Inc.
P.O. Box 836
Crested Butte, CO 81224
(970) 349-5010 Fax No. (970) 349-5020

With a copy to:

David Leinsdorf, Esq.
P.O. Box 187
Crested Butte, CO 81224
(970) 349-6111 Fax No. (970) 349-6243

Notices mailed in accordance with the above provisions shall be deemed to have been given on the third business day after mailing. Notices personally delivered shall be deemed to have been given upon delivery. Notices sent by facsimile shall be deemed to have been given at the time the transmission is received. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process.

40. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes any prior agreement or understanding relating to such subject matter.

Property Description of Verzun Tract Prepared for Bill Lacy

REVISION #4 - 7/20/00

A tract of land within the NW1/4 of Section 2, Township 14 South, Range 86 West, Sixth Principal Meridian, Gunnison County, Colorado; said tract being more particularly described as follows:


Commencing at the north quarter corner of said Section 2, (as marked by a USGLO brass cap monument), thence North 89° 38' 07" West 169.11 feet along the north boundary of said Section 2 to the POINT OF BEGINNING for the herein described tract; thence the following courses around said tract:

1. North 89° 38' 07" West 1411.14 feet along said north boundary to a point on the east boundary of Eighth Street of the Town of Crested Butte;
2. South 00° 02' 08" East 2143.05 feet along said boundary to the northwest corner of the east-west alley in Block 66 of the Town of Crested Butte;
3. North 89° 57' 52" East 460.00 feet along the north boundary of the east-west alley of said Block 66 and its easterly extension to a point on a line lying 60 feet easterly of and parallel to the west boundary of Ninth Street;
4. South 00° 02' 08" East 471.00 feet along said line to a point on the easterly extension of the southerly boundary of Block 65 of the Town of Crested Butte;
5. North 89° 57' 52" East 949.49 feet along said easterly extension;
6. NORTH 2604.19 feet to a point on the north boundary of said Section 2, said point also being the POINT OF BEGINNING of the herein described tract.

This tract contains 79.50 acres more or less.

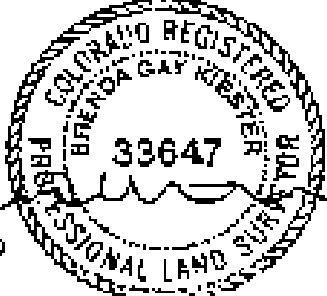
The basis of bearings used herein is astronomic north as determined by solar observations.

Exhibit A
to
Subdivision
Improvements Agreement



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13 of 25 R 125.00 D 0.00 N 0.00 Gunnison County

Burda
7/20/00





884289 08/18/2008 04:08P 538

14 of 25 R 125.00 D 0.00 N 0.00 Gunnison County

EXHIBIT B

List of Public Improvements

Streets and alleys
Curbs and gutters
Water mains and service lines to each tract
Sewer mains and service lines to each tract
Electric lines
Hydrants
Gas lines
Cable TV lines
Telephone utility installations
Irrigation pipelines and ditches
Gravel
Fencing
Storm drainage improvements
Signage, including regulatory and identification signs
Elk Avenue cattle guard
Street lights
Fiber optic conduit (on condition that such conduit can be installed in a trench containing other utilities and the Town pays for all materials)

**VERZUH RANCH ANNEXATION - PHASE 1
PRELIMINARY OPINION OF COSTS**

Exhibit C
Page 1 of 4

7/19/00

ITEM	UNITS	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
1 MOBILIZATION	LUMP SUM	1.00	\$2,500.00	\$2,500.00
2 CLEARING AND GRUBBING	ACRE	5.15	\$500.00	\$2,575.00
3 UNCLASSIFIED EXCAVATION	CUBIC YARD	4,968.00	\$2.50	\$12,420.00
4 EMBANKMENT MATERIAL	CUBIC YARD	276.00	\$3.00	\$828.00
5 AGGREGATE BASE COURSE CLASS 6	TON	6,395.00	\$18.00	\$115,110.00
6 HOT BITUMINOUS PAVEMENT	TON	933.00	\$50.00	\$46,650.00
7 MOUNTABLE CURB AND GUTTER	LINEAL FEET	3,757.00	\$14.00	\$52,598.00
8 6" CONCRETE VALLEY PAN	SQUARE YARD	232.00	\$50.00	\$11,600.00
9 8" PVC SEWER MAIN	LINEAL FEET	1,733.00	\$19.00	\$32,927.00
10 12" PVC SEWER MAIN	LINEAL FEET	675.00	\$15.00	\$10,125.00
11 SEWER MANHOLES	EACH	7.00	\$2,000.00	\$14,000.00
12 SEWAGE LIFT STATION	EACH	1.00	\$30,000.00	\$30,000.00
13 SEWER SERVICES	EACH	36.00	\$850.00	\$30,600.00
14 8" D.I.P. WATER LINE	LINEAL FEET	2,625.00	\$30.00	\$78,750.00
15 8" WATER VALVES	EACH	9.00	\$800.00	\$7,200.00
16 6" D.I.P. WATER LINE	LINEAL FEET	0.00	\$25.00	\$0.00
17 6" WATER VALVES	EACH	0.00	\$600.00	\$0.00
18 FIRE HYDRANT ASSEMBLY	EACH	5.00	\$2,800.00	\$14,000.00
19 1" WATER SERVICES	EACH	40.00	\$1,000.00	\$40,000.00
20 RIP-RAP	SQUARE FEET	578.00	\$3.00	\$1,734.00
21 TYPE I DITCH	LINEAL FEET	3,243.00	\$5.00	\$16,215.00
22 ROADSIDE DITCH	LINEAL FEET	0.00	\$5.00	\$0.00
23 18" PVC, CL 80 IRRIGATION PIPE	LINEAL FEET	1,700.00	\$20.00	\$34,000.00
24 18" PVC TEE W/ CAP	EACH	3.00	\$500.00	\$1,500.00
25 18" 45° BENDS	EACH	6.00	\$600.00	\$3,600.00
26 18" CAP	EACH	1.00	\$200.00	\$200.00
27 18"X6" TEE, 6" VALVE, 6" ELBOW	EACH	2.00	\$400.00	\$800.00
28 IRRIGATION DITCH	LINEAL FEET	750.00	\$5.00	\$3,750.00
29 6" PVC DRAIN LINE	LINEAL FEET	358.00	\$12.00	\$4,296.00

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**VERZUH RANCH ANNEXATION - PHASE 1
PRELIMINARY OPINION OF COSTS**

7/19/00

ITEM	UNITS	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
30 SCREENED INLET BOX	EACH	1.00	\$2,500.00	\$2,500.00
31 TYPE 13 VALLEY INLET	EACH	3.00	\$2,800.00	\$8,400.00
32 CURB INLET	EACH	4.00	\$2,500.00	\$10,000.00
33 12" CSP CULVERT PIPE	LINEAL FEET	51.00	\$12.00	\$612.00
34 30" CSP CULVERT PIPE	LINEAL FEET	128.00	\$14.00	\$1,792.00
35 30" CSP END SECTION	EACH	4.00	\$200.00	\$800.00
36 18" CSP CULVERT PIPE	LINEAL FEET	17.00	\$16.00	\$272.00
37 18" CSP END SECTION	EACH	1.00	\$300.00	\$300.00
38 24" CSP CULVERT PIPE	LINEAL FEET	328.00	\$25.00	\$8,200.00
39 24" CSP END SECTION	EACH	1.00	\$400.00	\$400.00
40 SAWCUT PAVEMENT	LINEAL FEET	84.00	\$2.00	\$168.00
41 TRAFFIC SIGN	LUMP SUM	20.00	\$62.50	\$1,250.00
42 CONSTRUCTION TRAFFIC CONTROL	LUMP SUM	1.00	\$2,500.00	\$2,500.00
43 SOIL PREPARATION	ACRE	1.06	\$800.00	\$848.00
44 HYDROSEEDING/FERTILIZING	ACRE	1.06	\$800.00	\$848.00
45 MULCHING	ACRE	1.06	\$400.00	\$424.00
46 EROSION CONTROL	LUMP SUM	1.00	\$1,000.00	\$1,000.00
47 STREET LIGHTS	EACH	3.00	\$500.00	\$1,500.00
48 CATTLE GUARD	EACH	1.00	\$2,500.00	\$2,500.00
49 ELECTRIC SYSTEM	CONTRACT	1.00	\$98,048.00	\$98,048.00
50 48" UTILITY TRENCH	LINEAL FEET	2,565.00	\$6.50	\$16,672.50
51 2" GAS LINE	LINEAL FEET	2,454.00	\$5.50	\$13,508.00
52 GAS SERVICES	EACH	40.00	\$155.00	\$6,200.00
53 TELEPHONE & CABLE TV	CONTRACT			50.00
SUB-TOTAL				746,720.50
CONTINGENCY 25%				186,680.13
TOTAL				933,400.63

**VERZUH RANCH ANNEXATION - PHASE 2
PRELIMINARY OPINION OF COSTS**

Exhibit C
Page 4 of 4

7/18/00

ITEM	UNITS	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
30 SCREENED INLET BOX	EACH	0.00	\$2,500.00	50.00
31 TYPE 13 VALLEY INLET	EACH	0.00	\$2,500.00	50.00
32 CURB INLET	EACH	0.00	\$2,500.00	50.00
33 12" CSP CULVERT PIPE	LINEAL FEET	0.00	\$12.00	50.00
34 15" CSP CULVERT PIPE	LINEAL FEET	0.00	\$14.00	50.00
35 15" CSP END SECTION	EACH	0.00	\$200.00	50.00
36 18" CSP CULVERT PIPE	LINEAL FEET	0.00	516.00	50.00
37 18" CSP END SECTION	EACH	0.00	\$300.00	50.00
38 24" CSP CULVERT PIPE	LINEAL FEET	0.00	\$25.00	50.00
39 24" CSP END SECTION	EACH	0.00	\$400.00	50.00
40 SAWCUT PAVEMENT	LINEAL FEET	36.00	\$2.00	\$72.00
41 TRAFFIC SIGN	EACH	20.00	\$62.50	\$1,250.00
42 CONSTRUCTION TRAFFIC CONTROL	LUMP SUM	1.00	\$2,500.00	\$2,500.00
43 SOIL PREPARATION	ACRE	0.22	\$900.00	\$176.00
44 HYDROSEEDING/FERTILIZING	ACRE	0.22	\$800.00	\$176.00
45 MULCHING	ACRE	0.22	\$400.00	\$88.00
46 EROSION CONTROL	LUMP SUM	1.00	\$1,000.00	\$1,000.00
47 STREET LIGHTS	EACH	3.00	\$500.00	\$1,500.00
48 CATTLE GUARD	EACH	0.00	\$2,500.00	\$0.00
49 ELECTRIC SYSTEM	CONTRACT	1.00	\$98,048.00	\$98,048.00
50 48" UTILITY TRENCH	LINEAL FEET	2,565.00	\$6.50	\$16,672.50
51 2" GAS LINE	LINEAL FEET	1,829.00	\$5.50	\$10,059.50
52 GAS SERVICES	EACH	28.00	\$155.00	\$4,340.00
53 TELEPHONE & CABLE TV	CONTRACT	0.00		\$0.00
SUB-TOTAL				468,619.00
CONTINGENCY 25%				117,154.75
TOTAL				\$585,773.75

EXHIBIT D

Public Improvements Completion Schedule

Phase 1

Start August 9, 2000
Completion December 31, 2002

Phase 2

Start On or before 15 years after the phase 1 Public Improvements have been finally accepted by the Town.
Completion December 31 of the second year following start of construction.

Notes

1. The "start" of construction shall mean moving dirt.
2. Subdivider reserves right to delete phasing and to construct all Public Improvements as one project. In which event the completion date of all Public Improvements shall be December 31, 2003.

504220 08/18/2008 04:00P 558
18 of 25 @ 125.00 D 0.00 N 0.00 Currituck County

EXHIBIT E

PERMITTED EXCEPTIONS

1. Taxes and assessments which are a lien or are now due and payable; any tax, special assessment, charge or lien imposed for or by any special taxing district or for water or sewer service; any unredeemed tax sales.
 2. The right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law, as reserved in the United States Patents recorded October 30, 1882 in Book 45 at page 12 affecting the NW¼ of Section 2; recorded November 18, 1882 in Book 45 at page 13 affecting the NE¼ of Section 2.
 3. Any rights, interest or easements in favor of the United States, State of Colorado or the public which exist or are claimed to exist in and over present and past bed, banks and water of the Slate River.
 4. Terms and conditions as contained in Resolution No. 19, Series 1999, approving land use change application no. 1998-76 land use change permit for Lacy and Dow LLC recorded June 9, 1999 as Reception No. 493678.
 5. Notices of Ordinances in the Town of Crested Butte recorded in Book 636 at Page 145.
-

EXHIBIT F - I
(Phase I)

August 7, 2000

IRREVOCABLE LETTER OF CREDIT

NUMBER _____

APPLICANT: Verzuh Ranch, Inc.

BENEFICIARY: Town of Crested Butte

We hereby authorize Beneficiary to draw on Community First National Bank for the account of Verzuh Ranch, Inc. up to an aggregate amount of \$933,400.63 available by Beneficiary's draft(s) drawn at sight accompanied by a duly signed statement signed by Beneficiary's authorized officer to the effect that Verzuh Ranch, Inc. has failed to comply with its obligations to complete phase I public improvements pursuant to the Subdivision Improvements Agreement between Verzuh Ranch, Inc. and the Town of Crested Butte.

The request for payment under this Letter of Credit shall be final and conclusive for all purposes without verification by Community First National Bank and shall not be subject to refutation, denial, or contest. Multiple drawings shall be permitted.

Except as otherwise set forth below, drafts must be presented and negotiated at our counters not later than May 1, 2003. This Letter of Credit is not automatically renewable and expires on May 1, 2003. This letter shall expire prior to said date if Community First National Bank receives a release signed by Beneficiary's authorized officer stating that all or a portion of this Letter of Credit is released.

Each draft under this credit must bear upon its face the words "Drawn Under Credit No. _____ at Community First National Bank".

Notwithstanding the expiration of this credit, should Beneficiary receive payments from Verzuh Ranch, Inc. which payments are subsequently invalidated, determined to be preferential, set aside or required to be repaid by Beneficiary in whole or in part for reasons arising under the bankruptcy or other laws, then all our obligations to Beneficiary hereunder shall be reinstated in full and shall remain in full force and effect until 90 days beyond the filing of a bankruptcy petition but in any event no later than August 1, 2003.

This Letter of Credit shall be governed by the laws of the State of Colorado to the extent not governed by the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits 1993 Revision, ICC Publication No. 500, and to the extent such laws are consistent with the terms of this Letter of Credit.

The effectiveness of this Letter of Credit is conditioned upon:



504286 04/18/2000 04:00P 550

22 of 25 R 125.00 D 0.00 N 0.00 Gunnison County

- A. Annexation of 79.280 acres of the Verzuh Ranch Annexation by the Town of Crested Butte;
- B. Recording of a plat dividing phase I of the Verzuh Ranch Annexation into 34 residential lots; and
- C. Recording of a Real Estate Mortgage or Deed of Trust granting Community First National Bank a first lien encumbering collateral satisfactory to Community First National Bank.

We engage with Beneficiary that all drafts drawn under and in compliance with the terms of this credit will be duly honored upon presentation to us.

Yours Very Truly,

Community First National Bank

By: _____
James Cortez, President



EXHIBIT F - 2
(Phase 2)

August 1, 20__

IRREVOCABLE LETTER OF CREDIT

NUMBER _____

APPLICANT: Verzuh Ranch, Inc.

BENEFICIARY: Town of Crested Butte

We hereby authorize Beneficiary to draw on Community First National Bank for the account of Verzuh Ranch, Inc. up to an aggregate amount of \$585,773.75 available by Beneficiary's draft(s) drawn at sight accompanied by a duly signed statement signed by Beneficiary's authorized officer to the effect that Verzuh Ranch, Inc. has failed to comply with its obligations to complete phase 2 public improvements pursuant to the Subdivision Improvements Agreement between Verzuh Ranch, Inc. and the Town of Crested Butte.

The request for payment under this Letter of Credit shall be final and conclusive for all purposes without verification by Community First National Bank and shall not be subject to refutation, denial, or contest. Multiple drawings shall be permitted.

Except as otherwise set forth below, drafts must be presented and negotiated at our counters not later than May 1, 20__ . This Letter of Credit is not automatically renewable and expires on May 1, 20__ . This letter shall expire prior to said date if Community First National Bank receives a release signed by Beneficiary's authorized officer stating that all or a portion of this Letter of Credit is released.

Each draft under this credit must bear upon its face the words "Drawn Under Credit No. _____ at Community First National Bank".

Notwithstanding the expiration of this credit, should you receive payments from Verzuh Ranch, Inc. which payments are subsequently invalidated, determined to be preferential, set aside or required to be repaid by Beneficiary in whole or in part for reasons arising under the bankruptcy or other laws, then all our obligations to Beneficiary hereunder shall be reinstated in full and shall remain in full force and effect until 90 days beyond the filing of a bankruptcy petition but in any event no later than August 1, 20__ .

This Letter of Credit shall be governed by the laws of the State of Colorado to the extent not governed by the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits 1993 Revision, ICC Publication No. 500, and to the extent such laws are consistent with the terms of this Letter of Credit.

The effectiveness of this Letter of Credit is conditioned upon:



504255 05/18/2008 04:00P 555

24 of 25 R 125.00 D 0.00 H 0.00 Gunnison County

- A. Annexation of 79.280 acres of the Verzuh Ranch Annexation by the Town of Crested Butte;
- B. Recording of a plat dividing phase 2 of the Verzuh Ranch Annexation into 34 residential lots; and
- C. Recording of a Real Estate Mortgage or Deed of Trust granting Community First National Bank a first lien encumbering collateral satisfactory to Community First National Bank

We engage with Beneficiary that all drafts drawn under and in compliance with the terms of this credit will be duly honored upon presentation to us.

Yours Very Truly,

Community First National Bank

By: _____
James Corlett, President



904208 04/18/2000 04:00P 000
25 of 25 R 125.00 D 0.00 H 8.00 Gunnison County

EXHIBIT G

Payments to Town

Red Lady Avenue Improvements	\$ 25,500.00
Park Improvements	94,382.76
Fire	31,103.20
Snow Plow Equipment	26,172.00
Water Treatment Plant	<u>168,342.04</u>
Total	\$345,500.00