

## **RESTRICTIVE COVENANT IMPOSING A DEED RESTRICTION FOR THE BENEFIT OF TOWN OF MINTURN LOCAL HOUSING**

THIS RESTRICTIVE COVENANT IMPOSING A DEED RESTRICTION FOR THE BENEFIT OF TOWN OF MINTURN LOCAL HOUSING (the “Covenant”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by Minturn Crossing, LLC, a Colorado limited liability company (together with its successors and assigns “Declarant”) and is enforceable by the Town of Minturn, Eagle County, Colorado, or its assigns (the “Town”) as and to the extent set forth herein.

### **RECITALS:**

A. The property which is the subject of this Covenant is that certain real property located within the Minturn North residential planned unit development “MNPUD” on Lots 34, 35, 36, 37, 38 and 39 in the Town of Minturn, Eagle County, Colorado legally described on **Exhibit A** attached hereto and incorporated herein (the “Properties”). The Declarant is the sole owner in fee simple of the Properties, which have been platted as a part of the MNPUD consisting of 39 individual lots, each approved for future residential improvements thereon pursuant to the Final Plat for MNPUD, recorded on \_\_\_\_\_, 202\_ under Reception No. \_\_\_\_\_ in the real property records of Eagle County, Colorado; and

B. The Declarant agreed to this Covenant as part of its application for approval of the MNPUD, approved by the Town of Minturn by Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, 202\_, as a means by which housing can be provided for persons residing in the Town of Minturn as further defined below; and

C. The Declarant agrees that each of the six (6) lots and the residential improvements thereon located within the Property identified on **Exhibit A** (each a “Unit”) shall be held, sold and conveyed only subject to the following covenants, conditions and restrictions, which constitute irrevocable covenants running with the title to the Properties as a burden thereon for the benefit of the Town of Minturn, or its designee, and shall be binding on the Owner of each Unit, and its heirs, personal representatives, assigns, lessee’s, licensees and any transferee of the Owner of each Unit; and

D. The Declarant agrees that upon the initial offering of homes for sale within Lots 34-39, existing Town of Minturn Residents, as defined below, shall be given the first opportunity to purchase one Home and Lot on Lots 34-39 for a period of 30 days from initial offering. In the event existing Minturn Residents have not contracted for the purchase of all Lots within Lots 34-39 during the 30 day initial offering period, Declarant may contract with other Eligible Households, as defined below, pursuant to the terms below; and

E. For each subsequent transfer or conveyance of a Unit during the Term, such transfer or conveyance must be made to a Minturn Resident or Eligible Household; and

F. There is a demonstrated need for Local Housing for residents of the Town of Minturn and this Covenant, as defined below, supports the health, safety and welfare of the citizens of the Town.

NOW, THEREFORE, in consideration of the foregoing, Declarant hereby represents, covenants and agrees as follows:

1. Definitions

- a. “Eligible Households” or “Eligible Household” means Households that will use the Unit as their Primary Residence and/or are qualified employees. Each of the criteria are further defined below:

i. Qualification:

1. At least one member of the Household must meet one or more of the following criteria:

- a. Has earned a living primarily in Eagle County by having worked an average of at least thirty (30) hours per week on an annual basis at a business with an office or job site physically located in Eagle County (multiple jobs in eagle County may be combined to reach 30 hours per week); or
- b. Has been hired for a job in Eagle County on a permanent basis to work at least thirty (30) hours per week; or
- c. Employees that make their home in Eagle County but work for employers that are located outside of Eagle County (i.e., telecommuters) shall be considered eligible; or
- d. Is over the age of sixty (60) and has earned a living primarily in Eagle County for thirty-six (36) months prior to his or her retirement; or
- e. Is a disabled person who had been a full-time employee in Eagle County (subject to the retirement exception) for a minimum of two years immediately prior to his or her disability or has been granted an exception to the minimum thirty (30) hours per week in order to continue with a federal or state benefit program, if the person works the maximum number of hours per week the program will allow.

2. The Household must cumulatively earn at least 75% of the Households Gross Household Income in Eagle County.

- ii. Title of the Unit shall be held in the name of the natural person(s) who are members of the Household which qualifies under criteria i. above. For example, title may be held jointly in the name of the husband and wife who are members of an eligible Household.

1. Notwithstanding the foregoing, an Eligible Household may seek a variance to allow title of a Unit to be held in trust for the benefit of a natural person who also meets the definition of an Eligible Household. Such ownership in trust may only occur in the circumstances provided herein and at the sole discretion of the Town of Minturn, or its assign. To request a variance, the applicant shall submit a letter to the Town of Minturn, or its assign, requesting a special review and a determination that title of the Unit may be held in trust as set forth herein.

2. The beneficiary of the trust must be of the age of majority to qualify for this variance.
  3. Notwithstanding the foregoing, a party may seek a variance to allow title of a Unit to be held by an entity that leases the Unit for employee housing purposes where said employees meet the definition of an Eligible Household.
  4. Upon receipt of a request for special review and any requested information and documentation, the Town of Minturn, or its assign, may grant the request with or without conditions.
- b. "Household" means all individuals who will occupy a unit.
  - c. "Minturn Resident" means a person or persons who have lived in Eagle County as their primary place of residence for a period of thirty-six (36) months prior to seeking conveyance of Lots 34-39. Primary place of residence shall be determined based upon voter registration records, employment history, payment of taxes imposed by the Town of Minturn, and ownership or rental of residential property within the Town of Minturn.
  - d. "Owner" means the owner of record of the Unit regardless of relation to the Owner or lessee.
  - e. "Primary Residence" means the residence in which an Owner lives for at least nine (9) out of any twelve (12) months. Determination of Eagle County residency status shall be based on criteria including but not limited to 1). Copy of deed or property tax statement, or 2). Utility statements from service providers, or 3). Other documentation that the Town of Minturn, or its assign, deem necessary to make a determination, such as voter registration information, place of automobile registration, driver's license address, evidence of rental of the Home and Lot, in whole or in part, to any third party, and income tax returns.
2. Conveyance limited to Minturn and Eligible Households: From the initial offering of homes for sale within Lots 34-39 until the end of the Term of Covenant, existing Town of Minturn Residents shall be given the first opportunity to purchase one Home and Lot on Lots 34-39 for a period of 30 days from initial offering or when said Home and Lot is placed on the market. In the event existing Minturn Residents have not contracted for the purchase of said Lot during the 30 day initial offering period, opportunity shall be given to acquire said Home and Lot by other Eligible Households. During the Term of Covenant, ownership of a Home and Lot subject by this covenant may only be held by Eligible Households subject to the variances provided herein.
  3. Restriction on Rentals: During the Term of Covenant, the Home and Lot on Lots 34-39 may only be rented, in whole or in part, to Eligible Households.
  4. Seniority of Covenant: Any interest in, lien upon or obligation recorded of record against a Unit acquired by any person or entity shall be subject and subordinate to the covenants and restrictions set forth in this Covenant.
  5. Term of Covenant: This Covenant shall expire on the 1st day of March 2073, unless extended, at the sole option of the Town of Minturn Town Council, for an additional not to exceed 50 years, after public hearing and comment on the proposed extension.

6. Covenant Runs with the Land: Declarant and all Owners of a Unit, and all other parties with an interest in title to a Unit hereby acknowledge, or are deemed to acknowledge by virtue of recordation of the deed by which such Owner takes title to a Unit, that this Covenant shall constitute an irrevocable covenant running with the title to the Unit as a burden thereon for the benefit of the Town of Minturn, or its assign, and shall be binding on the Owner of each Unit, and on its heirs, personal representatives, assigns, lessees, licensees and any transferee of the Owner of each Unit. This Covenant shall be enforceable by the Town of Minturn and its Town Council, and their respective successors and assigns, as applicable, or their designee, by any appropriate legal action including but not limited to specific performance, injunction, reversion, or eviction. The remedies provided herein are cumulative and not exclusive of all other remedies provided by law.
7. Default: In the event of default, the Town of Minturn shall have all remedies legally available to it at law and in equity. Said remedies shall include obtaining a decree of specific performance requiring the Owner to convey title to an Eligible Household within thirty (30) days.
8. Annual Reporting: An Owner of Lots 34-39 must verify to the Town of Minturn, or its assign, on at least an annual basis, that it remains an Eligible Household. To confirm such eligibility, the Owner shall submit the following information, to the Town of Minturn: (i) a verification that the Owner continues to meet the requirements of an Eligible Household who uses the Unit as its Primary Residence, (ii) proof of employment pursuant to Paragraph 1)a)i), and (iii) a statement made under criminal penalty of perjury that the Unit, in whole or in part, was not rented to any third party in the last twelve (12) months except to other Eligible Households.
9. Notices: any notice, consent, or approval that is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the parties indicated below as long as prior written notice of the change of address has been given to all parties as indicated.

Said notices, consents and approvals shall be sent to the following addresses unless otherwise notified in writing:

To Declarant: Minturn Crossing, LLC  
c/o Resort Concepts  
225 Main Street, Unit C-101  
Edwards, CO 81632

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

To Owner: To the address set forth in the records of the Town of  
Minturn Tax Assessor for purposes of mailing tax bills.

10. Disputes: There is hereby reserved to the Town of Minturn any and all remedies provided by law for breach of this Covenant or any of its terms. In any dispute, each party shall bear its own costs and fees. The exclusive forum for any dispute arising from or relating to the Covenant shall be the Eagle County District Court.
11. Severability: Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Covenant or such documents.
12. Choice of Law: This Covenant and each and every related document are to be governed and construed in accordance with the laws of the State of Colorado.
13. Attorney Fees and Costs: in the event of any judicial enforcement of this covenant, the substantially prevailing party shall be awarded its attorney fees and costs.
14. Successors: Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the respective heirs, successors and assigns of the Declarant, any Owner of a Unit, and the Town of Minturn.
15. Section Headings: Paragraph or section headings within this Covenant are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.
16. Waiver: No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against the Declarant and the Town of Minturn except on the basis of a written instrument executed by the Town of Minturn.
17. Gender and Number: Whenever the context so required herein, the neuter gender shall include any and all genders and vice versa and the use of the singular shall include the plural and vice versa.
18. Personal Liability: By taking title to a Unit, an Owner agrees that he or she shall be personally liable for compliance with the applicable terms and conditions of this Covenant.
19. Further Actions: The Declarant for so long as the Declarant owns the Properties, the Owner of a Unit, and the Town of Minturn agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any Covenant or documents relating hereto or entered into in connection herewith.
20. Modifications: The Declarant, any Owner of a Unit, and the Town of Minturn agree that any modifications of this Covenant shall be effective only when made by writings signed by the parties and recorded with the Clerk and Recorder of the Town of Minturn. The Town of Minturn reserves the right to amend this Covenant unilaterally where deemed necessary to

effectuate the purpose and intent of this Covenant, and where such unilateral action does not materially impair an Owner's rights or any lender's rights under this Covenant.

21. Perpetuities Savings Clause: If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Covenant or any of its **Exhibits A, B and C** shall be unlawful or void for violation of: (a) the rule against perpetuities or some similar statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only by the lives of the then then-current duly elected and seated Town of Minturn Town Council members, and the then-current Town of Minturn employees, their now living descendants, if any, ad the survivor of them, plus twenty-one (21) years.
22. Assignment: The Town of Minturn may in its sole discretion assign the benefits and delegate the responsibilities hereunder to a non-profit private entity or public agency or authority or operated in whole or in part to provide housing programs in Eagle County.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year above first written.

Town of Minturn:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Minturn Crossing, LLC:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF COLORADO    )  
  )ss.  
COUNTY OF EAGLE        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_, as \_\_\_\_\_ of Minturn Crossing, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires:\_\_\_\_\_

\_\_\_\_\_

Notary Public

## **Exhibit A**

### Legal Description of the Properties

## Exhibit B

### ACKNOWLEDGEMENT OF THE RESTRICTIVE COVENANT IMPOSING A DEED RESTRICTION FOR THE BENEFIT OF TOWN OF MINTURN LOCAL HOUSING

WHEREAS, \_\_\_\_\_ (the “Buyer”) is purchasing from  
\_\_\_\_\_ (the “Seller”) at a price of \$ \_\_\_\_\_, the real property and  
improvements located in the Minturn North PUD more particularly described as \_\_\_\_\_,  
according to the plat recorded under Reception No. \_\_\_\_\_, in the real property records of  
Eagle County, Colorado (the “Unit”); and

WHEREAS, the Seller of the Unit is requiring, as a prerequisite to the sale transaction, that the  
Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument  
entitled “RESTRICTIVE COVENANT IMPOSING A DEED RESTRICTION FOR THE BENEFIT OF  
TOWN OF MINTURN LOCAL HOUSING”, recorded on \_\_\_\_\_, 202\_, under Reception No.  
\_\_\_\_\_, in the real property records of Eagle County, Colorado (the “Covenant”). A copy of the  
Covenant is attached to this acknowledgement as **Exhibit A**.

NOW THEREFORE, as an inducement to the Seller to sell the Unit, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Covenant, has had the opportunity to  
consult with legal and financial counsel concerning the Covenant and fully understands the terms,  
conditions, provisions, and restrictions contained in the Covenant, and agrees to abide by the  
Covenant.
2. States that the notice to Buyer, pursuant to Section 5 of the Covenant, should be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Directs that this acknowledgement be placed of record in the real estate records of the Town of  
Minturn, Eagle County, Colorado.



IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year above first written.

BUYER(S): \_\_\_\_\_  
Printed Name(s) \_\_\_\_\_

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

Notary Public

## Exhibit C

### BUYERS AFFIDAVIT

Name of Buyer(s): \_\_\_\_\_  
Phone #: \_\_\_\_\_  
Name of Title Co.: \_\_\_\_\_  
Name of Escrow Officer: \_\_\_\_\_  
Phone #: \_\_\_\_\_  
Name of Buyers Broker: \_\_\_\_\_  
Phone #: \_\_\_\_\_  
  
Unit to be Purchased: \_\_\_\_\_  
Expected Closing Date: \_\_\_\_\_

Please complete the following checklist and submit the package to the Town of Minturn no less than 14 days prior to the expected closing date.

Item to be delivered along with affidavit	Enclosed
1. Check for \$100.00 processing fee as such may be amended by Minturn Town Council ( <i>To: Town of Minturn Clerk</i> )	_____
2. Identification ( <i>Copy of ID; drivers license, passport, etc.</i> )	_____
3. Affidavit for verification of employment	_____

DELIVER/MAIL PACKET TO: Town of Minturn  
c/o \_\_\_\_\_  
302 Pine St., Minturn, Colorado 81645

#### Buyer's Affidavit and Acknowledgements:

	Initials
I (we) acknowledge that the Unit identified above is subject to a Restrictive Covenant which imposes a deed restriction on the Unit.	_____
I (we) have read the Restrictive Covenant and agree to abide by the terms of it.	_____
I (we) will notify the Town of Minturn if I (we) cease to be an Eligible Household.	_____
I (we) intend to use the Unit as our Primary Residence and will occupy the Unit for at least 9 out of any 12 months.	_____

#### AND

At least one member of the Household:

- \_\_\_\_\_ has earned a living primarily in Eagle County by having worked an average of at least thirty (30) hours per week on an annual basis at a business with an office or job site physically located in Eagle County (multiple jobs in

eagle County may be combined to reach 30 hours per week); or

- \_\_\_\_\_ has been hired for a job in Eagle County on a permanent basis to work at least thirty (30) hours per week; or
- Resides in Eagle County, but works for an employer that is located outside of Eagle County (i.e., telecommuters); or
- I (we) are over the age of sixty (60) and have earned a living primarily in Eagle County for at least thirty-six (36) months prior to retirement; or
- I (we) are a disabled person who had been a full-time employee in Eagle County (subject to the retirement exception) for a minimum of two years immediately prior to the disability or have been granted an exception to the minimum thirty (30) hours per week in order to continue with a federal or state benefit program and work the maximum number of hours per week the program will allow.

**AND**

- I (we) cumulatively earn at least 75% of the Households Gross Household Income in Eagle County.

**AND**

- I (we) understand that real estate that is owned by a prospective Eligible Household may not be deeded to a corporation or other person or entity except at fair market value nor may any real estate be deeded to a corporation or other legal entity in which any Household member has any other financial interest in order to meet these requirements.

**AND**

- I (we) understand that title of the Unit shall be held in the name of the natural person(s) who are members of the Household which qualifies under criteria i. and ii. Above. For example, title may be held jointly in the name of the husband and wife who are members of an eligible Household.
- I (we) understand that the Eligible Household may seek a variance to allow title of a Unit to be held in trust for the benefit of a natural person who also meets the definition of an Eligible Household. Such ownership in trust may only occur in the circumstances provided herein and at the sole discretion of the Town of Minturn, or its assign. To request a variance, the applicant shall submit a letter to the Town of Minturn, or its assign, requesting a special review and a determination that title of the Unit may be held in trust as set forth herein.
- I (we) understand that upon receipt of a request for special review and any requested information and documentation, the Town of Minturn, or its assign, may grant the request with or without conditions.

**AND**

- I (we) understand that the Home and Lot may be rented only to Eligible Households.

I have read and acknowledge the above information to be true under penalty of perjury, All Household members over the age of 18 must sign and date this form below.

Buyer(s) Signature	_____	Date: _____
Buyer(s) Signature	_____	Date: _____
Member(s) Signature	_____	Date: _____
Member(s) Signature	_____	Date: _____
Member(s) Signature	_____	Date: _____
Member(s) Signature	_____	Date: _____

Please allow 14 days for review of information in the event additional information is requested. If you have any questions, please contact the Town of Minturn \_\_\_\_\_ at \_\_\_\_\_ or email \_\_\_\_\_.

Package received by: \_\_\_\_\_ Date: \_\_\_\_\_

## EMPLOYERS AFFIDAVIT AND VERIFICATION OF EMPLOYMENT

The following affidavit concerns the employment of \_\_\_\_\_

Employer Information/Verification of Employee Start Date

Employer Name and Contact Information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby declare under penalty of perjury that \_\_\_\_\_ began employment on \_\_\_\_\_ and has continuously worked for thirty (30) or more hours per week since employment began; or has been offered and accepted employment which will continue for a period of at least six (6) months and will include a minimum of thirty (30) or more hours per week; or is over the age of sixty (60) years old and has worked a minimum of thirty (30) or more hours per week for five (5) consecutive years before retirement.

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

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_