

**DECLARATION  
OF  
COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
MINTURN NORTH**

## TABLE OF CONTENTS

<b>ARTICLE 1</b>	<b>DECLARATION AND SUBMISSION</b>	- 1 -
Section 1.1	Purpose.	- 1 -
Section 1.2	Intention of Declarant.	- 1 -
Section 1.3	Declaration.	- 1 -
Section 1.4	Covenants Running With the Land.	- 1 -
<b>ARTICLE 2</b>	<b>DEFINITIONS</b>	- 2 -
Section 2.1	Definitions.	- 2 -
<b>ARTICLE 3</b>	<b>NAME, DIVISION INTO UNITS</b>	- 5 -
Section 3.1	Name.	- 5 -
Section 3.2	Association.	- 5 -
Section 3.3	Number of Units.	- 5 -
Section 3.4	Identification of Units.	- 5 -
Section 3.5	Description of Units.	- 5 -
<b>ARTICLE 4</b>	<b>MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION</b>	
<b>OPERATIONS</b>		- 6 -
Section 4.1	The Association.	- 6 -
Section 4.2	Transfer of Membership.	- 6 -
Section 4.3	Membership, Votes.	- 6 -
Section 4.4	Declarant Control.	- 6 -
Section 4.5	Owner's and Association's Address for Notices.	- 7 -
<b>ARTICLE 5</b>	<b>EXTERIOR MAINTENANCE AREA, LANDSCAPING AND SPECIAL</b>	
<b>EASEMENT</b>		- 7 -
Section 5.1	Maintenance.	- 7 -
Section 5.2	Owner Responsibility	- 9 -
Section 5.3	Insurance Proceeds; Damage	- 9 -
Section 5.4	Association's Right to Grant Owner's Maintenance Area, Adopt Regulations.	- 9 -
Section 5.6	Maintenance Contract.	- 9 -
Section 5.7	Owner's Failure to Maintain or Repair.	- 9 -
<b>ARTICLE 6</b>	<b>ASSOCIATION RIGHTS AND DUTIES</b>	- 10 -
Section 6.1	Association Management Duties	- 10 -
Section 6.2	Replacement Reserve Account.	- 10 -
Section 6.3	Owner's Negligence	- 10 -
Section 6.4	Delegation of Management and Maintenance Duties.	- 10 -
Section 6.5	Acquiring and Disposing of Personal Property.	- 11 -
Section 6.6	Pledge of Future Income.	- 11 -
Section 6.7	Cooperation with Other Associations.	- 11 -
Section 6.8	Issuance of Rules and Regulations.	- 11 -
Section 6.9	Enforcement of Association Documents.	- 11 -
Section 6.10	Identity of Executive Board and Managing Agent.	- 11 -
Section 6.11	Payments to Working Capital Account.	- 11 -
Section 6.12	Implied Rights.	- 12 -
Section 6.13	Books and Records of the Association.	- 12 -
Section 6.14	LIMITATION OF LIABILITY OF ASSOCIATION.	- 12 -

<b>ARTICLE 7</b>	<b>MECHANICS LIENS</b> .....	- 12 -
Section 7.1	No Liability.....	- 12 -
Section 7.2	Indemnification.....	- 12 -
Section 7.3	Association Action. ....	- 13 -
<b>ARTICLE 8</b>	<b>PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY</b>	
<b>DECLARANT</b> .....		- 13 -
Section 8.1	Owners' Easements. ....	- 13 -
Section 8.2	Recorded Easements.....	- 13 -
Section 8.3	Declarant's Rights Incident to Construction and Marketing .....	- 13 -
Section 8.4	Other Easements. ....	- 14 -
Section 8.5	General Maintenance Easement. ....	- 14 -
Section 8.6	Drainage and Irrigation Easement. ....	- 15 -
Section 8.7	Association as Attorney-in-Fact. ....	- 15 -
Section 8.8	Delegation of Use.. ....	- 15 -
Section 8.9	Reservation of Easements, Exceptions, and Exclusions.....	- 15 -
Section 8.10	Emergency Access Easement.. ....	- 15 -
Section 8.11	Governmental Requirements. ....	- 15 -
Section 8.12	Declarant Easements.....	- 15 -
<b>ARTICLE 9</b>	<b>INSURANCE AND FIDELITY BOND</b> .....	- 16 -
Section 9.1	General Insurance Provisions. ....	- 16 -
Section 9.2	Cancellation. ....	- 16 -
Section 9.3	Policy Provisions. ....	- 16 -
Section 9.4	Insurance Proceeds. ....	- 17 -
Section 9.5	Association Policies.....	- 17 -
Section 9.6	Insurer Obligation.....	- 17 -
Section 9.7	Insurance Obtained by Owners.....	- 17 -
Section 9.8	Repair and Replacement. ....	- 18 -
Section 9.9	Common Expenses. ....	- 18 -
Section 9.10	Fidelity Insurance. ....	- 18 -
Section 9.11	Worker's Compensation Insurance. ....	- 19 -
Section 9.12	Other Insurance. ....	- 19 -
<b>ARTICLE 10</b>	<b>ASSESSMENTS</b> .....	- 19 -
Section 10.1	Obligation. ....	- 19 -
Section 10.2	Purpose of Assessments.....	- 19 -
Section 10.3	Budget.....	- 19 -
Section 10.4	Annual Assessments. ....	- 20 -
Section 10.5	Due Dates for Assessment Payments. ....	- 20 -
Section 10.6	Apportionment of Annual Assessments. ....	- 21 -
Section 10.7	Special Assessments. ....	- 21 -
Section 10.9	Default Assessments.....	- 21 -
Section 10.10	Lien for Assessments.....	- 22 -
Section 10.11	Effect of Nonpayment of Assessments.....	- 22 -
Section 10.12	Successor's Liability for Assessments. ....	- 23 -
Section 10.13	Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments.....	- 23 -
Section 10.14	Statement of Status of Assessments. ....	- 24 -

<b>ARTICLE 11</b>	<b>ATTORNEY-IN-FACT</b> .....	- 25 -
<b>ARTICLE 12</b>	<b>DAMAGE OR DESTRUCTION</b> .....	- 25 -
Section 12.1	The Role of the Executive Board. ....	- 25 -
Section 12.2	Estimate of Damages or Destruction. ....	- 25 -
Section 12.3	Repair and Reconstruction.....	- 25 -
Section 12.4	Funds for Repair and Reconstruction; Insufficient Funds.....	- 26 -
Section 12.5	Disbursement of Funds for Repair and Reconstruction.....	- 26 -
Section 12.6	Repairs. ....	- 26 -
Section 12.7	Notice of Damage or Destruction. ....	- 26 -
<b>ARTICLE 13</b>	<b>CONDEMNATION</b> .....	- 27 -
Section 13.1	Rights of Owners.....	- 27 -
Section 13.2	Partial Condemnation; Distribution of Award; Reconstruction. ....	- 27 -
Section 13.3	Complete Condemnation. ....	- 27 -
Section 13.4	Notice of Condemnation.....	- 27 -
<b>ARTICLE 14</b>	<b>[OMITTED]</b> .....	- 27 -
<b>ARTICLE 15</b>	<b>USE RESTRICTONS</b> .....	- 28 -
Section 15.1	Residential Use.....	- 28 -
Section 15.2	Restrictions on Leasing; Prohibition on Timesharing. ....	- 28 -
Section 15.3	Conveyance of Units. ....	- 28 -
Section 15.4	Use of Common Area and Exterior Maintenance Area.....	- 29 -
Section 15.5	Prohibition of Increases in Insurable Risks and Certain Activities.. ....	- 29 -
Section 15.6	Restriction on Signs. ....	- 29 -
Section 15.7	Regulation of Pets.....	- 29 -
Section 15.8	Nuisances and Unsightliness .....	- 30 -
Section 15.9	Antennas and Satellite Dishes. ....	- 30 -
Section 15.10	Declarant's Exemption. ....	- 30 -
<b>ARTICLE 16</b>	<b>MISCELLANEOUS MATTERS AND OWNER</b>	
<b>ACKNOWLEDGEMENTS</b> .....		- 30 -
Section 16.1	Architectural Control.....	- 30 -
Section 16.2	General Reservation. ....	- 30 -
Section 16.3	No Use of Trademark. ....	- 30 -
Section 16.4	Acknowledgements. ....	- 31 -
<b>ARTICLE 17</b>	<b>DECLARANTS RIGHTS REGARDING TRANSFER</b> .....	- 33 -
<b>ARTICLE 18</b>	<b>ALTERNATIVE DISPUTE RESOLUTION</b> .....	- 33 -
Section 18.1	<b>IMPORTANT NOTICE</b> .....	- 33 -
Section 18.2	Statement of Clarification.....	- 34 -
Section 18.3	Certain Definitions. ....	- 34 -
Section 18.4	Informal Procedures. ....	- 35 -
Section 18.5	Formal Notice and Association Consensus. ....	- 39 -
Section 18.6	Mediation.....	- 41 -
Section 18.7	Final and Binding Arbitration.....	- 41 -
Section 18.8	Amendments to this Article; Standing to Enforce.....	- 43 -
Section 18.9	Reformation. ....	- 44 -
Section 18.10	Notices; Computation of Time. ....	- 44 -
<b>ARTICLE 19</b>	<b>MISCELLANEOUS</b> .....	- 44 -
Section 19.1	Restriction on Declarant Powers.. ....	- 44 -

Section 19.2	Term.....	- 44 -
Section 19.3	Amendment. ....	- 44 -
Section 19.4	Unilateral Amendment Rights Reserved by Declarant.....	- 45 -
Section 19.5	Recording of Amendments.....	- 45 -
Section 19.6	Enforcement.....	- 45 -
Section 19.7	Severability.....	- 45 -
Section 19.8	Conflict of Provisions.....	- 45 -
Section 19.9	Nonwaiver. ....	- 45 -
Section 19.10	Number and Gender.....	- 45 -
Section 19.11	Captions.....	- 46 -
Section 19.12	Exhibits.....	- 46 -

Exhibit A – Property Description .....	A-1
Exhibit B – Table of Allocated Interests.....	B-1
<b>Exhibit C – Easements and Licenses of Record .....</b>	<b>C-1</b>
<b>Exhibit D – Union Pacific Restrictive Covenant .....</b>	<b>D-1</b>
<b>Exhibit E – Unit Nos. 1-33 Restrictive Covenant.....</b>	<b>E-1</b>
<b>Exhibit F – Unit Nos. 34-39 Restrictive Covenant .....</b>	<b>F-1</b>
<b>Exhibit G – Wildlife Mitigation Plan .....</b>	<b>G-1</b>

**DECLARATION  
OF  
COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
MINTURN NORTH**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MINTURN NORTH (this “Declaration”) shall be made effective upon recordation and is made as of \_\_\_\_\_, 202\_\_, by MINTURN CROSSING, LLC, a Colorado limited liability company (“Declarant”).

**RECITALS**

A. Declarant is owner of that certain real property located in the County of Eagle, Colorado, more particularly described on the attached **Exhibit A** attached hereto and incorporated herein (the “Property”).

B. Declarant desires to create a Planned Community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes 38-33.3-101, et. seq. on the Property, the name of which is Minturn North.

C. Declarant hereby makes the following grants, submissions, and declarations:

**ARTICLE 1  
DECLARATION AND SUBMISSION**

Section 1.1 **Purpose.** The purpose of this Declaration is to create a residential planned community within the Property (the “Community”) pursuant to the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes.

Section 1.2 **Intention of Declarant.** Declarant desires to (a) protect the value and desirability of the Community, (b) further a plan for the improvement, sales, and common ownership of the Community, (c) create a harmonious and attractive residential development within the Community, and (d) promote and safeguard the health, comfort, safety, convenience, and welfare of the owners of units in the Community.

Section 1.3 **Declaration.** Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following covenants, restrictions and easements which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties and heirs, successors, and assigns of parties having any right, title, or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act.

Section 1.4 **Covenants Running With the Land.** All provisions of this Declaration shall be deemed to be covenants running with the land or equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding

upon and shall inure to the benefit of Declarant, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

## **ARTICLE 2 DEFINITIONS**

Section 2.1 Definitions. The following words when used in this Declaration or any amendments to this Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

2.1.1 “Act” means the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as such act exists on the date hereof, except to the extent that the applicability of future amendments to the Act are mandatory.

2.1.2 “Allocated Interest” means the Common Expense Liability and the votes in the Association allocated to each of the Units in the Project, as set forth on **Exhibit B**. The formula used to establish each Allocated Interest is described in **Article 10**.

2.1.3 “Annual Assessment” means the Assessment levied annually.

2.1.4 “Articles” mean the Articles of Incorporation for Minturn North Owners Association, currently on file with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.

2.1.5 “Assessments” means the Annual, Special, Individual Purpose, and Default Assessments levied pursuant to Article 11 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

2.1.6 “Association” means Minturn North Property Owners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns, charged with the duties and obligations of administering the Community. The Association acts through its Executive Board unless a vote of the Owners is otherwise specifically required by this Declaration or by the Articles or Bylaws.

2.1.7 “Association Documents” means this Declaration, the Articles, the Bylaws, and any procedures, rules, regulations, or policies adopted under such documents by the Association.

2.1.8 “Minturn North” or the “Community” shall mean the planned community created by this Declaration, consisting of the Property, the Units, and any other improvements constructed on the Property and as shown on the Plat.

2.1.9 “Bylaws” means the Bylaws adopted by the Association, as amended from time to time.

2.1.10 “Common Area” means to the extent of the Association’s interest in such real property or improvements, any real property or improvements for the common use and enjoyment of all of the Owners on a non-exclusive basis (i) that are owned by the Association,

including estates in fee and terms of years, or (ii) that are owned by a person or entity other than the Association, including, without limitation the Union Pacific Railroad Company (“UPRR”), but in which the Association has rights of use or possession pursuant to a lease, license, easement or other agreement, in each case together with any improvements located thereon.

2.1.11 “Common Expenses” means (i) all expenses expressly declared to be common expenses by this Declaration, or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Area and Exterior Maintenance Area; (iii) insurance premiums for the insurance carried under Article 9; and (iv) all expenses lawfully determined to be common expenses by the Executive Board of the Association.

2.1.12 “Declarant” means Minturn Crossing, LLC, a Colorado limited liability company, and its successors and assigns. No party other than Minturn Crossing, LLC shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the real property records of the County of Eagle, Colorado, a written assignment from Minturn Crossing, LLC of all or a portion of such rights and privileges.

2.1.13 “Declaration” means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements for Minturn North, as supplemented and amended from time to time.

2.1.14 “Default Assessment” means the Assessments levied by the Association pursuant to Section 10.8 below.

2.1.15 “Executive Board” means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.

2.1.16 “Exterior Maintenance Area” means those portions of the Lot surrounding the Residence and improvements on the Lot to be maintained by the Association as described in Section 5.1 below. Initially, the Exterior Maintenance Area shall comprise only the grounds and landscaping surrounding each Residence within the Lot as described in Section 5.1.1.

2.1.17 “First Mortgage” means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

2.1.18 “First Mortgagee” means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

2.1.19 “Lot” means a plot of land subject to this Declaration and designated as a “Lot” on any subdivision plat of the Property recorded by Declarant in the Eagle County Office of the Clerk and Recorder.

2.1.20 “Managing Agent” shall mean a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Executive

Board may authorize from time to time.

2.1.21 “Member” shall mean every person or entity who holds membership in the Association.

2.1.22 “Mortgage” shall mean any mortgage, deed of trust, or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

2.1.23 “Mortgagee” means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

2.1.24 “Owner” means the owner of record, whether one or more persons or entities, of fee simple title to any Unit, and “Owner” also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit, but excludes those having such interest in such Unit merely as security for the performance of an obligation, including a Mortgagee, unless and until such person has acquired fee simple title to the Unit pursuant to foreclosure or other proceedings.

2.1.25 “Plat” means the subdivision plat of Minturn North recorded \_\_\_\_\_, 202\_\_, at Reception No. \_\_\_\_\_ in the Office of the Clerk and Recorder of Eagle County, Colorado, and all supplements and amendments thereto.

2.1.26 “Property” means and refers to that certain real property described on **Exhibit A** attached to this Declaration, as the same may be expanded in the manner provided in this Declaration.

2.1.27 “Residence” means the residence constructed on any Lot.

2.1.28 “Special Assessment” means an assessment levied pursuant to Section 10.7 below on an irregular basis.

2.1.29 “Successor Declarant” means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded in the Eagle County, Office of the Clerk and Recorder, designating such party as a Successor Declarant. Upon such recording, Declarant’s rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

2.1.30 “Unit” means a Lot together with all improvements thereon, including, without limitation and once constructed on a Lot, a Residence, and all easements and rights-of-way appurtenant thereto.

2.1.31 “Wildlife Plan” means the Minturn North PUD Wildlife Mitigation Plan attached hereto as **Exhibit G**.

Each capitalized term not otherwise defined in this Declaration or in the Plat shall have the same meanings specified or used in the Act.

### **ARTICLE 3 NAME, DIVISION INTO UNITS**

Section 3.1 Name. The name of the project is Minturn North. The project is a Planned Community pursuant to the Act.

Section 3.2 Association. The name of the association is Minturn North Property Owners Association, Inc. Declarant has caused the Association to be incorporated under the laws of the State of Colorado as a non-profit corporation with the purpose of exercising the functions as herein set forth.

Section 3.3 Number of Units. The Property is hereby divided into thirty-nine (39) Units, each consisting of a fee simple interest in a Unit and its appurtenances.

Section 3.4 Identification of Units. The identification number of each Unit is shown on the Plat.

Section 3.5 Description of Units.

3.5.1 Each Unit shall be inseparable and may be leased, devised or encumbered only as a residence.

3.5.2 Title to a Unit may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Unit in which he owns an interest. For all purposes herein, there shall be deemed to be only one Owner for each Unit. The parties, if more than one, having the ownership of a Unit shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Unit in which they own an interest.

3.5.3 Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Unit may describe it by its Lot number, Minturn North, according to the plat recorded \_\_\_\_\_, 202\_\_, at Reception No. \_\_\_\_\_, County of Eagle, State of Colorado, and any recorded amendment and supplement thereto, and this Declaration, which will be recorded in the records of the Clerk and Recorder of Eagle County, Colorado, and any recorded amendment and supplement hereto (with applicable recording information inserted therein).

3.5.4 Each Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed. Accordingly, the Common Area shall not be assessed separately but shall be assessed with the Units as provided pursuant to Colorado Revised Statutes Subsections 39-1-103(10) and 38-33.3-105(2).

3.5.5 No Owner of a Unit shall bring any action for partition or division of the Common Area.

3.5.6 Each Unit shall be used and occupied solely for residential dwelling purposes in the manner described in Article 15 below. Notwithstanding the foregoing, Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Unit or Units as sales offices, management offices or model residences so long as Declarant, or its successors or assigns, is the Owner or Lessee of the Unit. The use by Declarant of any Unit as a model residence, office or other use shall not affect the Unit's designation on the Plat as a separate Unit.

3.5.7 An Owner shall have the right to lease its Unit upon such terms and conditions as the Owner may deem advisable; provided, however, that (i) any such lease shall be in writing and shall provide that the lease is subject to the terms of this Declaration, (ii) a Unit may be leased only for the uses provided hereinabove, and (iii) any failure of a lessee to comply with the terms of this Declaration, the Articles, the Bylaws or the rules of the Association shall be a default under the lease enforceable by the Association. Any such lease terms shall be subject to the Town of Minturn Code and Ordinances as may be revised or amended from time to time.

#### **ARTICLE 4**

##### **MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS**

Section 4.1 The Association. Every Owner of a Unit shall be a Member of the Association. No Owner, whether one or more persons, shall have more than one membership per Unit owned, but all of the persons owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

Section 4.2 Transfer of Membership. An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit.

Section 4.3 Membership. The Association shall have one (1) category of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to one (1) vote for each Unit owned in Association matters pursuant to this Declaration. Declarant shall be entitled to vote with respect to Units owned by it. Members of the Association may exercise such voting rights subject to and in accordance with the provisions of the Bylaws. All members of the Association shall be entitled to vote on all matters affecting the Community.

Section 4.4 Declarant Control. Notwithstanding anything to the contrary provided for herein or in the Bylaws, Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set out in the Bylaws. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded in the Office of the Clerk and Recorder for Eagle County, Colorado but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove Directors and officers, be approved by Declarant before they

become effective.

Section 4.5 Owner's and Association's Address for Notices. All Owners of each Unit shall have one and the same mailing address to be registered with the Association and used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Unit shall furnish such address to the Secretary of the Association within five (5) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners of the Unit. Notwithstanding the foregoing, the Association shall be entitled to rely upon any such registration or other notice of a change in address of the Owners of the Unit which is signed by less than all of the Owners of such Unit.

If no address is registered or if all of the Owners cannot agree, then the address set forth in the deed to the Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

Any notice delivered to a First Mortgagee in accordance with the terms of this Declaration shall be sent to the address for such party specified in the First Mortgage unless the First Mortgagee notifies the Association in writing of a different address.

All notices and demands intended to be served upon the Executive Board shall be sent to the following address or such other address as the Executive Board may designate from time to time by notice to all of the Owners:

Executive Board  
Minturn North 'Property Owners Association, Inc.  
c/o Resort Concepts  
225 Main Street, Unit C-101  
Edwards, CO 81632

All notices given in accordance with this Section shall be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. mail.

## **ARTICLE 5**

### **EXTERIOR MAINTENANCE AREA, LANDSCAPING AND SPECIAL EASEMENT**

Section 5.1 Maintenance. In order to maintain a uniform appearance and a high standard of maintenance within the Community, the Association shall maintain the Exterior Maintenance Area, as follows:

5.1.1 Landscaping. The Association shall maintain landscaping of the Exterior Maintenance Area and landscaping within the Common Area. Maintenance of the landscaping shall include, but not be limited to, maintaining lawns, trees, shrubs and flower beds.

The Association shall provide and maintain all irrigation to landscaping within the Exterior Maintenance Area and Common Area, and shall provide all other utilities necessary for the maintenance and upkeep of such landscaping and irrigation. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed, including, without limitation, decisions related to dying landscaping and the replacement thereof, if any, provided that the Association shall be responsible for maintaining the landscaping plan as approved by the Town of Minturn.

5.1.2 Optional Association Maintenance. The Association may, but shall not be obligated to, provide for the maintenance of additional improvements with respect to the Units as determined by action of the Executive Board or of the Owners, provided that such adopted maintenance is uniformly provided for all such improvements on all Lots. Accordingly, subject to the insurance responsibilities set forth in Article 9 below, the Association may by action described immediately above expand the Exterior Maintenance Area and provide maintenance for all or any of the following: (a) the maintenance, repair and replacement of the exterior building façade of each Residence, including the painting and/or staining of exterior building surfaces and the repair and replacement of exterior siding, siding elements and stucco of the building, and/or (b) the maintenance, repair and replacement of all sidewalks, driveways, roof snow removal, and exterior walkways serving the Residence (including snow removal services), unless any of the foregoing are covered by an Owner's insurance. Should the Association so expand the Exterior Maintenance Area, the Association shall have the sole discretion to determine the time and manner in which its maintenance shall be performed as well as the color or type of materials used to maintain the Residences. By action of the Executive Board or of the Owners, the Association may also later reassign any maintenance responsibilities adopted by the Association pursuant to this Section 5.1.2 back to the Owners.

Section 5.2 Owner Responsibility. The Owner shall be responsible for the maintenance, repair and replacement of, and shall maintain in good repair and condition, the Residence and all areas and improvements comprising the Unit that are not the responsibility of the Association, including, without limitation, areas of optional Association maintenance as described in Section 5.1.2 above unless and until the Association acts to adopt any such maintenance. Without limiting the generality of the foregoing, Owners shall maintain the foundation, roof (including snow removal as required), decks, terraces, patios, windows, window frames and elements, window washing and doors serving the Residence. Owners shall also maintain and be fully responsible for the operation and maintenance of any hot tub and/or fire pit or fireplace on such Owner's Lot.

Section 5.3 Insurance Proceeds; Damage. Notwithstanding the foregoing, in the event insurance proceeds under Article 9 are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost. Further, Owners acknowledge and agree that the Owner shall be responsible for the cost of repair and/or replacement of any damage caused to the Residence and/or its related improvements and contents (including the deductible amount on the Owner's insurance covering such damage), even if the damage was the result of failures of the Exterior Maintenance Area, with the Association's responsibility limited to the repair or replacement of the damaged elements of the Exterior Maintenance Area only.

Section 5.4 Association's Right to Grant Owner's Maintenance Area, Adopt Regulations. The Association reserves the right to grant the maintenance responsibility of certain areas of each Unit to the Unit Owner, and the Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner. Furthermore, the Association shall have the right to promulgate reasonable rules and regulations regarding the maintenance by the Owner. The Association shall have the right and power to prohibit on a Unit any storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Area. No Owner shall make any addition or other alteration to any exterior portion of such Owner's Unit, including, without limitation, the removal or alteration of any landscaping or irrigation system without the express consent of the Executive Board in accordance with Section 16.1.

Section 5.5 Special Easement. The Association and the Executive Board and their respective representatives are hereby granted a nonexclusive easement to enter upon and use the Exterior Maintenance Area as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article 5.

Section 5.6 Maintenance Contract. The Association or Executive Board may employ or contract for the services of an individual or management company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Area and Exterior Maintenance Area. The employed individual or management company shall have the authority to make expenditures upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

5.6.1 Association Maintenance of Drainage Facilities. The Association is responsible for the maintenance of drainage facilities serving the Property including drainage facilities adjacent to Taylor Ave., along 4<sup>th</sup> Street, and underneath Minturn Road discharging on lands owned by UPRR. Notwithstanding the foregoing, the Association or Executive Board hereby authorizes the Town of Minturn to perform any emergency maintenance or repair duties of the Association in connection with the drainage improvements including under the Drainage Facility & Waterway Agreement, by and between UPRR and the Association, recorded \_\_\_\_\_, 202\_\_, at Reception No. \_\_\_\_\_ in the Office of the Clerk and Recorder of Eagle County, Colorado. In the event that the Town of Minturn performs emergency maintenance on the drainage improvements, the Town shall bill the Association for the cost of the work which shall be paid by the Association within thirty (30) days. This provision may only be amended after receiving written approval of the Town of Minturn.

Section 5.7 Owner's Failure to Maintain or Repair. In the event that (a) a Unit and the improvements thereupon are not properly maintained and repaired or have been altered in a manner which deviates from the consistent appearance of Units within the Community and the maintenance responsibility for the unmaintained or inconsistent portion of the Unit lies with the Owner of the Unit, or (b) in the event that the improvements or landscaping on the Unit that are insured by the Owner are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the

damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and the Residence and other improvements thereon to a condition of good order, repair and consistency. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

## **ARTICLE 6 ASSOCIATION RIGHTS AND DUTIES**

Section 6.1 Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Community and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Area and the Exterior Maintenance Area (including facilities, furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. Without limiting the generality of the foregoing, the Association shall keep in good order and repair (including snow removal as required) all roadways, sidewalks, drainage, 4' wide pedestrian connector trails, mudflow deflection berms, and other improvements within the Common Area. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments, and, subject to the budget approval procedures of Section 10.3 below, prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees.

Section 6.2 Replacement Reserve Account. The Association may establish and maintain, as part of its budget and out of the installments of the annual Assessments, replacement reserve accounts for the maintenance, repair, or replacement of any portion of the Common Area or the Exterior Maintenance Area that must be maintained, repaired and/or replaced on a periodic basis. Such capital reserves will be based on reserve studies conducted by the Association pursuant to its Policies for Investment of Reserve Funds and Performance of Reserve Study. The Association may borrow from and between its operating account and its replacement reserve account as the Executive Board deems necessary or appropriate.

Section 6.3 Owner's Negligence. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Area or the Exterior Maintenance Area is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's family, or by an Owner's guests, invitees, or tenants, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If the Owner fails to repay the expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Section, and such expenses shall automatically become a Default Assessment determined and levied against such Unit, enforceable by the Association in accordance with Sections 10.8, 10.9, and 10.10 below.

Section 6.4 Delegation of Management and Maintenance Duties. The Executive

Board may delegate all or any part of its powers and duties to a Managing Agent, including Declarant; however, the Executive Board, when so delegating, shall not be relieved of its responsibilities under this Declaration.

Section 6.5 Acquiring and Disposing of Personal Property. The Association may acquire, own, and hold for the use and benefit of all Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners.

Section 6.6 Pledge of Future Income. The Association is authorized to pledge and assign its right to future income, including the right to receive Assessments, as collateral for loans or to secure other monetary obligations of the Association.

Section 6.7 Cooperation with Other Associations. The Association may contract or cooperate with other homeowners' associations, metropolitan districts or entities as convenient or necessary to provide services and privileges and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their family members, guests, tenants, and invitees. The costs associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense.

Section 6.8 Issuance of Rules and Regulations. The Executive Board may make and amend reasonable rules and regulations governing the use and rental of the Units and the use of the Common Area, which rules and regulations shall be substantially consistent with the rights and duties established in this Declaration. The Executive Board shall provide thirty (30) days written notice prior to the adoption or amendment of any rules and regulations and provide for a reasonable opportunity for Owners to comment at a meeting of the Executive Board on the proposed adoption or amendment of any rules and regulations.

Section 6.9 Enforcement of Association Documents. The Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such rules and regulations and with the other provisions of the Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law.

Section 6.10 Identity of Executive Board and Managing Agent. From time to time, but no less frequently than annually, the Association shall deliver to each Owner a notice containing the names and addresses of the members of the Executive Board and the Managing Agent, if any.

Section 6.11 Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association shall collect an amount equal to twenty-five percent (25%) of the then-current annual Assessments at the time of the sale of each Unit. The Association shall maintain the working capital funds to meet unforeseen expenditures or to acquire additional equipment or services in connection with the Common Area and the Exterior Maintenance Area for the benefit of the members of the Association, subject to the budget approval procedures of Section 10.3 below. Such payments to this fund shall not be considered advance payments of Annual Assessments. The working capital contribution shall be returned to

each Owner upon the sale of his Unit; provided, however that the subsequent purchaser of the Unit has contributed the required working capital to the Association.

Section 6.12 Implied Rights. The Association may exercise any and all other rights or privileges given to it by this Declaration, or by the other Association Documents, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association or reasonably necessary to effectuate any such right or privilege.

Section 6.13 Books and Records of the Association. The Executive Board or the Managing Agent, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the Common Area and the Exterior Maintenance Area and shall maintain such other books and records as may be required under the Act. Owners and Mortgagees may inspect the records of receipts and expenditures of the Managing Agent or the Executive Board at convenient weekday business hours. In addition, the other books, records, and papers of the Association, including this Declaration, the Articles and Bylaws, as well as any Management Agreement and any rules and regulations of the Association, shall be available for inspection by any Owner or Mortgagee at all times during convenient weekday business hours.

Section 6.14 LIMITATION OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR THE COMMON AREA AND THE EXTERIOR MAINTENANCE AREA, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE 9, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THE COMMON AREA OR THE EXTERIOR MAINTENANCE AREA TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

## **ARTICLE 7 MECHANIC'S LIENS**

Section 7.1 No Liability. If any Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no Owner of any other Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Unit. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Common Area or any Unit other than of such Owner with any mechanic's lien or other lien or encumbrance whatever. On the contrary (and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against the Common Area or against any Owner or any Owner's Unit for work done or materials furnished to any other Owner's Unit are hereby expressly denied.

Section 7.2 Indemnification. If, because of any act or omission of any Owner, any

mechanic's or other lien or order for the payment of money shall be filed against the Common Area or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

Section 7.3 Association Action. Labor performed or materials furnished for the Common Area, if duly authorized by the Association in accordance with this Declaration or its bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against the Common Area. Any such lien shall be limited to the Common Area and no lien may be effected against an individual Unit or Units.

## **ARTICLE 8 PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY DECLARANT**

Section 8.1 Owners' Easements. Every Owner has a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Unit subject to the provisions contained herein. Every Owner shall have a right of access to and from his or her Unit over and across the roadway and/or driveway serving the Unit. No Owner shall hinder nor permit his guest to hinder reasonable access by any other Owner and his guest to the Unit. Subject to the Association's rights of maintenance as provided herein, every Owner possesses the full right of use and enjoyment of the Exterior Maintenance Area related to such Owner's Unit. No Owner has use and enjoyment rights over the Exterior Maintenance Area of another Owner's Unit.

Section 8.2 Recorded Easements. The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements and licenses of record or of use as of the date of recordation of this Declaration, which easements and licenses of record are set forth on the attached Exhibit C. In addition, the Property is subject to those easements set forth in this Article 8.

Section 8.3 Declarant's Rights Incident to Construction and Marketing. Declarant, for itself and its successors and specific assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Property and the right to store materials on the Property and to make such other use of the Property as may be reasonably necessary or incident to the complete construction and sale of the Community, including, but not limited to, construction trailers, temporary construction offices, sales offices, and directional and marketing signs; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, or family members, guests, tenants, or invitees of any Owner. Declarant, for itself and its successors and specific assigns, hereby retains a right to maintain any Unit or Units as sales offices,

management offices, or model residences so long as Declarant, or any Successor Declarant, continues to own, lease, or control a Unit. The use by Declarant of any Unit as a model residence, office, or other use shall not affect the Unit's designation on the Plat as a separate Unit.

#### Section 8.4 Other Easements.

8.4.1 Each Unit shall be subject to an easement for encroachments created by construction, settling and overhang, previously existing or as designed and constructed by Declarant or as a result of any addition or improvement pursuant to this Declaration including, without limitation, any patios and decks encroaching into the Common Area or an adjacent Lot. A valid easement for such encroachments and for the maintenance of same, so long as they exist, shall and does exist. In the event any improvement is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Unit due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the improvements shall stand.

8.4.2 Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of the structures or landscape improvements presently situated, or to be built in the future, on the Units.

8.4.3 There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Units and the structures and improvements situated thereon for ingress and egress, driveways, installation, replacing, repairing and maintaining a common landscape irrigation system and common fire safety system, if any, and all utilities, including, but not limited to, water, sewer, gas, telephone, cable television and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for Declarant or the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the unimproved portions of the Lots, all in a manner customary for such lines and equipment in the area surrounding the Property, subject to approval by the Association as to locations.

8.4.4 The Units are served by common access roads, and there is granted hereby a non-exclusive easement to the Owners for ingress and egress purposes over and across those portions of the Common Area which are used as such common road. No Owner shall hinder nor permit his guest to hinder reasonable access by any other Owner and his guest to the Units and any parking areas.

Section 8.5 General Maintenance Easement. An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Executive Board or the Managing Agent, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs, to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, or to exercise its rights under Article 5 and Article 6 above, including the right to enter upon any Unit

for the purpose of performing maintenance to the exterior of any Residence, as set forth in Article 5 and Article 6 above.

Section 8.6 Drainage and Irrigation Easement. An easement is hereby reserved to Declarant and its successors and assigns and granted to the Association and its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Community for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property, or changing any portions of the irrigation system, so as to improve the drainage of water on the Property

Section 8.7 Association as Attorney-in-Fact. Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Unit, does irrevocably constitute and appoint the Association and/or Declarant with full power of substitution in the Owner's name, place and stead to deal with Owner's interest in order to effectuate the rights reserved by Declarant or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner and to take any other action which the Association or Declarant may consider necessary or advisable to give effect to the provisions of this Section and this Declaration generally. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment.

Section 8.8 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area to the members of his family, his tenants, guests, licensees, and invitees, but only in accordance with and subject to the limitations of the Association Documents.

Section 8.9 Reservation of Easements, Exceptions, and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area, for purposes including, but not limited to, streets, paths, walkways, drainage, retaining walls, recreation areas, parking areas, ducts, shafts, flues, and conduit installation areas, to create other reservations, exceptions, and exclusions with respect to the Common Area for the best interest of all the Owners and the Association.

Section 8.10 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

Section 8.11 Governmental Requirements. Declarant hereby reserves the right to grant such easements, from time to time, as may be required by any government agency. Such easements shall specifically include, but not be limited to, any public rights-of-way and any environmental easements required by federal, state or local environmental agencies, for so long as the Declarant holds an interest in any Unit subject to this Declaration.

Section 8.12 Declarant Easements. Declarant reserves unto itself, its successors, assigns, lessees, guests, licensees and invitees, for so long as it holds any interest in any Unit, the same easement rights granted to Owners under this Declaration and specific easement rights over and across the Property as it may deem necessary for its use from time to time. Declarant reserves (a) the right to dedicate any access roads and streets serving the Property to public use,

to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land; and (b) the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking or recreational facilities, which may or may not be a part of the Property for the benefit of the Owners, or the Association.

## **ARTICLE 9 INSURANCE AND FIDELITY BONDS**

Section 9.1 General Insurance Provisions. The Association shall maintain, to the extent reasonably available:

9.1.1 Property insurance on the Common Area for special form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping and other items normally excluded from property policies. Such insurance shall cover all insurable improvements located on or constituting part of the Common Area.

9.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area, the Exterior Maintenance Area and the Association, in an amount deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Association, the Managing Agent, and their respective employees, agents, and all persons acting as agents. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area and the Exterior Maintenance Area. The insurance shall cover claims of one or more insured parties against other insured parties.

9.1.3 The Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Units that the Association is not obligated to insure to protect the Association or the Owners.

Section 9.2 Cancellation. If the insurance described in Section 9.1 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be delivered to all Owners.

Section 9.3 Policy Provisions. Insurance policies carried pursuant to Section 9.1 must provide that:

9.3.1 Each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association;

9.3.2 The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

9.3.3 No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

9.3.4 If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 9.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 9.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 9.7 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 9.5 Association Policies. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

Section 9.6 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Section 9.1 shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

Section 9.7 Insurance Obtained by Owners. Each Owner shall obtain and at all times maintain at such Owner's expense the following:

9.7.1 Physical damage insurance for the full replacement value of the Unit, less applicable deductibles, at the time the insurance is purchased and at each renewal date, exclusive of those items normally excluded from property policies. The insurance coverage shall include the full replacement value of the Owner's fixtures, personal property and upgrades or modifications made to the Owner's Residence.

9.7.2 Personal liability insurance in a limit of not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to personal property, and if higher limits shall at any time be customary to protect against tort liability such higher limits shall be carried.

9.7.3 An Owner may obtain such other and additional insurance coverage on the Unit as such Owner in the Owner's sole discretion shall conclude to be desirable.

9.7.4 Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Unit. No Owner shall obtain separate insurance policies on the Common Area.

#### Section 9.8 Repair and Replacement.

9.8.1 Any portion of the Property for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly unless:

9.8.1.1 The regime created by this Declaration is terminated;

9.8.1.2 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

9.8.1.3 Sixty-seven percent (67%) of the Owners and all directly adversely affected Owners agree in writing not to rebuild; or

9.8.1.4 Prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a deed of trust or mortgage on the damaged improvements rightfully demands all or a substantial part of the insurance proceeds.

9.8.2 The cost of repair or replacement of Common Area in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Area is not repaired or replaced, the insurance proceeds attributable to the damaged Common Area must be used to restore the damaged area to a condition compatible with the remainder of the Community and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear on an equal per-Unit basis.

Section 9.9 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 9.10 Fidelity Insurance. Fidelity bonds shall be maintained by the Association, to extent reasonably available, to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than two (2) months' current Assessments plus reserves as calculated from the then-current budget of the Association. The Association must also secure and maintain, or require to be secured or maintained by any parties handling the collection, deposit, transfer, or disbursement of Association funds, fidelity insurance with aggregate coverage of not less than two (2) months' assessments plus reserves as calculated from the then-current budget of the Association; provided, however, in no event shall the coverage for third parties handling the collection, deposit, transfer, or disbursement of Association funds be less than \$50,000. In addition all funds and accounts of the Association being held by a Managing Agent or other third persons

shall be kept in an account separate from the funds of other parties held by such Managing Agent or third party, and all reserves of the Association shall be kept in an account separate from the operational account of the Association. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees,” or similar terms or expressions.

Section 9.11 Worker’s Compensation Insurance. The Executive Board shall obtain worker’s compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 9.12 Other Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association’s responsibilities and duties.

## **ARTICLE 10 ASSESSMENTS**

Section 10.1 Obligation. Each Owner, including Declarant, by accepting a deed for a Unit, is deemed to covenant to pay to the Association (1) the Annual Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Area and the Exterior Maintenance Area and to perform the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; (3) Individual Purpose Assessments for matters applicable only to fewer than all of the Units; and (4) Default Assessments which may be assessed against a Unit for the Owner’s failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Area or the facilities contained in the Common Area or by abandoning or leasing his Unit. In accordance with Section 38-33.3-315(1) of the Act, Declarant shall pay all Common Expenses until the Association levies its first Assessment to Owners. In the event Assessments have not first been levied by the Association at the time of any conveyance of a Unit from Declarant to an Owner, then that Owner shall not be obligated for Common Expenses until the first levy of Assessments, which the Association may effect at any time upon written notice to Owners.

Section 10.2 Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of Minturn North, and for the improvement and maintenance of the Common Area and the Exterior Maintenance Area, and other areas of Association responsibility referred to herein, as more fully set forth in this Article below.

Section 10.3 Budget. Within ninety (90) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the

Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as provided in the Bylaws. The Executive Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Executive Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by more than fifty percent (50%) of all Owners. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Executive Board is not vetoed by the Owners. The Executive Board shall levy and assess the Association's annual Assessments in accordance with the annual budget.

Section 10.4 Annual Assessments. Annual Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Area and Exterior Maintenance Area; expenses of management; insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping of the Property; care of grounds within the Common Area and Exterior Maintenance Area; routine repairs and renovations within the Common Area and Exterior Maintenance Area; wages; common water and utility charges for the Common Area and Exterior Maintenance Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements within the Common Area and Exterior Maintenance Area on a periodic basis, as needed.

Annual Assessments shall be payable in quarterly installments on a prorated basis in advance and shall be due on the first day of each calendar quarter. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

Section 10.5 Due Dates for Assessment Payments. Unless otherwise determined by the Executive Board, the Annual Assessments and any Special Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Executive Board may otherwise direct in any Management Agreement, without notice (except for the notices required by this Article 10), on the first day of each quarter. If any installment (a) remains unpaid fifteen (15) days after the due date, then the Executive Board may assess a "late charge" on the installment in an amount of eight percent (8%) of the installment (or of the amount outstanding on such installment, if less) or such other charge as the Executive Board may fix by rule from time to time, and (b) remains unpaid thirty (30) days after the due date, then the Executive Board may also assess default interest equal to 1% of such assessment per month, or such other rate of default interest as the Executive Board may fix by rule from time to time, which default interest shall be imposed on the first day of each calendar month, so long as the assessment remains unpaid. An Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of a quarter or other applicable payment period.

Section 10.6 Apportionment of Annual Assessments. As shown on **Exhibit B**, each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided among the Units in accordance with the following formula: Owners of Unit Nos. 1-33 shall be responsible for 96% of the Common Expenses divided equally among the Unit Nos. 1-33, and Owners of Unit Nos. 34-39 shall be responsible for 4% of the Common Expenses divided equally among the Unit Nos. 34-39.

Section 10.7 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Area or Exterior Maintenance Area or for any other expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments in Section 10.6, subject to the requirements that any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Residence or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Special Assessments shall be based on a budget adopted in accordance with Section 10.3 above provided that, if necessary, the Association may adopt a new budget pursuant to Section 10.3 prior to levying a Special Assessment. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

Section 10.8 Individual Purpose Assessments. In addition to the Annual and Special Assessments as hereinabove provided, the Board of Directors of the Association may at any time, or from time to time, levy and collect Assessments against any one or more, but fewer than all, of the Units, for any matters applicable only to such Units ("Individual Purpose Assessments"). Such Individual Purpose Assessments may be levied against Units to pay or reimburse the Association for any costs, expenses, fees, reserves, and other charges, incurred or reasonably anticipated to be incurred by the Association, for management, control, administration, maintenance, repair, replacement and improvement, or any other purpose, of or with respect to any matter pertinent to the Unit(s) against which such Individual Purpose Assessment is levied. Without limiting the foregoing, such Individual Purposes Assessment may include insurance premiums pertaining to fire and extended coverage insurance for individual Units, cable service, trash removal service and costs and expenses, including fines, incurred to enforce compliance with this Declaration. The amounts determined, levied and assessed pursuant to this Section 10.8 shall be due and payable as determined by the Board of Directors of the Association provided that written notice setting forth the amount of such Individual Purpose Assessment for each Unit and the due date(s) for payment thereof shall be given to the Owners or the affected Units not less than thirty (30) days prior to the due date.

Section 10.9 Default Assessments. All monetary fees, fines, late charges, interest, expenses, costs, including receiver's and appraiser's fees, and reasonable attorney's fees and disbursements incurred by the Association in connection with the collection of Annual, Special, and Individual Purpose Assessments or in connection with the enforcement of the terms,

conditions and obligations of the Association Documents assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents shall become a Default Assessment assessed against the Owner's Unit. Notice of the amount and due date of such Default Assessment shall be sent to the Owner prior to enforcing any remedies for non-payment hereunder.

Section 10.10 Lien for Assessments. The Annual, Special, Individual Purpose, and Default Assessments (including installments of the Assessments) arising under the provisions of this Declaration (together with any and all interest, costs, late charges, expenses, and reasonable attorneys' fees, including legal assistants' fees, which may arise under the provisions of Section 10.10 below) shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Unit to which such Assessments apply in accordance with Section 38-33.3-316 of the Act. To further evidence such lien upon a specific Unit, the Association may, but shall not be obligated to, prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as described in Section 10.5 above, the name of the Owner or Owners of the Unit, and any and all other information that the Association may deem proper. Any such lien notice shall be signed by a member of the Executive Board, an officer of the Association, or a Managing Agent and shall be recorded in the Office of the Clerk and Recorder of Eagle County, Colorado. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied.

Section 10.11 Effect of Nonpayment of Assessments. If any Annual, Special, Individual Purpose, or Default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (i) interest shall accrue on any amount of the Assessment which was not paid within such 30-day period or on the amount of Assessment in default, whichever shall be applicable, accruing from the due date until date of payment in the manner described in Section 10.5 above, (ii) the Association may declare due and payable all unpaid quarterly or other installments of the Annual Assessment or any Individual Purpose or Special Assessment otherwise due during the fiscal year during which such default occurred, (iii) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, and (iv) the Association may proceed to foreclose its lien against the particular Unit in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. If any such Assessment (or installment thereof) is not fully paid when due and if the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against any Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Unit, then all unpaid installments of Annual, Individual Purpose, and Special Assessments and all Default Assessments (including any such installments or Assessments arising during the proceedings of such action or foreclosure proceedings), any late charges under Section 10.5 above, any accrued interest, and the Association's costs, expenses,

and reasonable attorneys' fees (including legal assistants' fees) incurred for any such action and/or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Unit in satisfaction of the Association's lien.

Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent Default Assessments. The Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, or mortgage the Unit, and to convey or otherwise deal with the Unit acquired in such proceedings.

First Mortgagees shall be entitled to cure any delinquency of the Owner of a Unit encumbered by the First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 10.12 Successor's Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Unit to pay all Assessments on the Unit, and notwithstanding the Association's perpetual lien upon a Unit for such Assessments, all successors in interest to the fee simple title of a Unit, except as provided in Section 10.12 and Section 10.13 below, shall be jointly and severally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. However, such successor in interest shall be entitled to rely upon the existence and status of unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest pursuant to the provisions of Section 10.13 below.

Section 10.13 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

10.13.1 Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute;

10.13.2 To the extent permitted under the Act, after taking into account the superiority of a certain amount of assessment liens permitted by Section 38-33.3-316(2) of the Act, the lien of any First Mortgage, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens; and

With respect to the foregoing subpart 10.12.2, to the extent permitted under the Act, any First Mortgagee who acquires title to a Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Association Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Unit, and the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

All other persons not holding liens described in Section 10.12 above and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for Assessments, interest, late charges, costs, expenses, and attorneys' fees as provided in this Article 10, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of any Unit, including but not limited to a foreclosure sale, except as provided in Section 10.11 above and except as provided in Section 10.13 below, shall not affect the Association's lien on such Unit for Assessments, interest, late charges, costs, expenses, and attorneys' fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 10.14 Statement of Status of Assessments. Upon fourteen (14) calendar days written request (furnished in the manner described below for the response to such request) to a Managing Agent, the Executive Board, or the Association's registered agent and payment of a reasonable fee set from time to time by the Executive Board, any Owner, prospective purchaser of a Unit, or Mortgagee shall be furnished, by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) a statement of the Owner's account setting forth:

10.14.1 The amount of any unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Unit;

10.14.2 The amount of the current installments of the Annual Assessment and the date that the next installment is due and payable;

10.14.3 The date of the payment of any installments of any Special or Individual Purpose Assessments then existing against the Unit; and

10.14.4 Any other information deemed proper by the Association.

Upon the issuance of such a certificate signed by a member of the Executive Board, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is

addressed and who rely on the certificate in good faith. Unless such a statement of status of Assessments is delivered as described above within said fourteen (14) calendar day period, the Association shall have no right to assert a priority lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

## **ARTICLE 11 ASSOCIATION AS ATTORNEY-IN-FACT**

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9, upon their damage or destruction as provided in Article 12, or a complete or partial taking as provided in Article 13 below. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. The Association may exercise its authority as attorney-in-fact for any purpose permitted pursuant to this Declaration only if, in each and every instance where such exercise is so permitted, the Executive Board approves the exercise of such authority by the affirmative vote of a majority of the voting Directors. If the Executive Board fails to so approve any exercise of authority as attorney-in-fact, the Association shall have such authority as it may have pursuant to the Act.

## **ARTICLE 12 DAMAGE OR DESTRUCTION**

Section 12.1 The Role of the Executive Board. Except as provided in Section 12.4, in the event of damage to or destruction of all or part of any Common Area improvement, or other property covered by insurance written in the name of the Association under Article 9, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 9 is sometimes referred to as the "Association-Insured Property").

Section 12.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article 12 shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the insurance trustee, if any, determines to be necessary.

Section 12.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured

Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 12.4 Funds for Repair and Reconstruction; Insufficient Funds. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement, and reconstruction of the Association-Insured Property. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may (in addition to applying replacement reserve funds, at its discretion), pursuant to Section 10.7, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

Notwithstanding the foregoing or any contrary provision in this Article 12, in the event that insurance proceeds are insufficient to pay the estimated cost of repair, replacement or reconstruction of the Association-Insured Property based on the estimate or estimates of the costs to complete same, then Owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association (other than Declarant) and sixty-seven percent (67%) of all directly adversely affected Owners may agree in writing not to repair and reconstruct the damaged improvements or may adopt a plan for the construction of alternative improvements. Any Association-Insured Property not reconstructed shall be restored to its natural state and maintained by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with the Act.

Section 12.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

Section 12.6 Repairs. All repairs and reconstruction contemplated by this Article shall be performed substantially in accordance with this Declaration, the Plat of the Community and the original plans and specifications for the Community, unless other action is approved by the Association in accordance with the requirements of this Declaration and the other Association Documents.

Section 12.7 Notice of Damage or Destruction. In the event that any portion of the Community is substantially damaged or destroyed by fire or other casualty, then written notice of

the damage or destruction shall be given by the Association to each Owner and First Mortgagee of the affected Units within a reasonable time following the event of casualty damage.

### **ARTICLE 13 CONDEMNATION**

Section 13.1 Rights of Owners. Whenever all or any part of the Common Area shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Area is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 13.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Area was conveyed and, unless otherwise required under the Act, the award shall be disbursed as follows:

13.2.1 If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least two-thirds (2/3rds) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in Article 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Unit among the Owners, first to the Mortgagees and then to the Owners, as their interests appear.

Section 13.3 Complete Condemnation. If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Section 12.5 above.

Section 13.4 Notice of Condemnation. In the event that any portion of the Community shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and First Mortgagee.

### **ARTICLE 14 [OMITTED AS INAPPLICABLE]**

## **ARTICLE 15 USE RESTRICTIONS**

Section 15.1 Residential Use. All Units shall be used for residential dwelling purposes only, in conformity with all zoning laws, ordinances and regulations; provided, however, a Unit may be used for business activities if, and only if, any such activity (a) is incidental to the Unit's residential use and is lawful and complies with all zoning requirements and other applicable laws and ordinances, (b) employs no outside employees, (c) is conducted entirely within the Unit, with no visible signage whatsoever, (d) is not detectable to any extent from outside the Unit by sight, sound, smell or otherwise, (e) requires no parking or the physical presence of clients or customers and requires no repeated or continual delivery or shipping services, and (f) conforms to any rules and regulations adopted by the Board of Directors from time to time. Notwithstanding the foregoing, Units owned, leased or controlled by Declarant may be used as a sales office, management office, rental management office, storage facility, and/or such other uses as may be permitted under the Act.

Section 15.2 Restrictions on Leasing; Prohibition on Timesharing. An Owner shall have the right to lease his or her Unit upon such terms and conditions as the Owner may deem advisable, subject to the following limitations and requirements (which limitations and requirements shall similarly apply to any subleases by tenants of any Owner):

15.2.1 Compliance with Laws. Any lease, sub-lease or rental agreement related to a Unit must be in compliance with all laws, ordinances and regulations.

15.2.2 Nuisances. Each Owner of a Unit providing overnight rental services is advised of the restrictions of Section 15.8 hereof (Nuisances), which restrictions and associated remedies as set forth in this Declaration are enforceable against the Owner.

15.2.3 Prohibition on Timesharing. No Unit may be used for the creation of "time share estates" as defined in C.R.S. § 38-33-110 or any other time share, fractional interest or similar real estate interest in a Unit.

15.2.4 Owner and Tenant Liability. Any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration and all governing documents of the Association (copies of which are to be furnished to the lessee of the Unit by the Owner thereof). Both the Unit Owner and the tenant(s) shall be jointly and severally liable to the Association for any and all violations caused by said tenants. Leasing of a Unit shall not relieve the Unit Owner of his or her rights, responsibilities and obligations under this Declaration and other governing documents, including, but not specifically limited to, the duty to pay Assessments, and the same shall be as fully enforceable as to such Unit Owner as though such Unit Owner were itself occupying such Unit.

Section 15.3 Conveyance of Units. All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, as the same may be amended from time to time.

Section 15.4 Use of Common Area and Exterior Maintenance Area. There shall be no obstruction of the Common Area or the Exterior Maintenance Area, nor shall anything be kept or stored on any part of the Common Area or the Exterior Maintenance Area by any Owner without the prior written approval of the Association. Notwithstanding the foregoing, patio furniture, planters and other items appropriate for use and display on patios, porches and front walkways may be kept in those portions of the Common Area and Exterior Maintenance Area designed for such uses, unless the Association requests that such items be moved or removed.

Section 15.5 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Area, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Community or in an increase in the rate of the insurance on all or any part of the Community over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Area which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the Property. No damage to or waste of the Common Area shall be committed by any Owner, or by any member of the Owner's family, or by any guest, lessee, invitee, or contract purchaser of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him, the members of his family, or his guests, lessees, invitees, or contract purchasers. Failure to so indemnify shall be a default by such Owner under this Section, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Unit. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a Default Assessment as provided in Sections 10.8, 10.9, and 10.10 above.

Section 15.6 Restriction on Signs. Except as otherwise provided in Section 15.10 and subject to applicable law, no signs or advertising of any kind shall be erected or maintained anywhere within the Community, including, without limitation, signage advertising a Unit being for sale, rent or lease placed in the windows of a Unit or otherwise inside such Unit where the same is visible from outside of the Unit, or placed on any other portion of the exterior of an Owner's Unit or in any portion of the Common Area, except for those signs permitted by law or otherwise specifically approved by the Executive Board.

Section 15.7 Regulation of Pets. Subject to applicable law, the Executive Board shall have full and absolute authority to adopt and enforce rules and regulations related to pets within Minturn North, including, without limitation, the prohibition of pets by tenants or of pets deemed dangerous, exotic or a threat to the well-being of people or other animals or otherwise being possessed of a disposition that is unreasonably annoying to other residents. The Executive Board may take such action or actions as it deems reasonably necessary to correct any violation, including, after notice and the opportunity for a hearing as provided in the Responsible Governance Policies of the Association, directing permanent removal of the animal(s) from the Community and/or the imposition of fines during any period of violation. Notwithstanding the foregoing, all Owners shall comply with the Wildlife Plan attached hereto as **Exhibit G**, which Wildlife Plan may only be amended with the prior written consent of the Colorado Division of Wildlife, as well as any additional more restrictive rules, laws, or regulations which conflict with

this Section implemented by the Colorado Department of Wildlife or any other governmental or quasi-governmental entity.

Section 15.8 Nuisances and Unsightliness. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done or maintained thereon that may be or become an annoyance or nuisance to others, endanger the health or safety of other Owners, violate the law or any other provision of this Declaration or the governing documents of the Association, or otherwise detract from the Community's value as an attractive residential community. Subject to applicable law, the Executive Board shall each have full and absolute authority to adopt and enforce rules and regulations related to nuisances, unsightliness and/or hazardous activities or conditions within Minturn North. The Executive Board may take such action or actions as it deems reasonably necessary to correct any violation, including, after notice and the opportunity for a hearing as provided in the Responsible Governance Policies of the Association, directing permanent removal of the offending item(s) from the Community and/or the imposition of fines during any period of violation.

Section 15.9 Antennas and Satellite Dishes. No satellite dishes, antennas and similar devices for the transmission or reception of television, radio, satellite or other signals of any kind (hereinafter, a "Reception Device") shall be permitted upon the exterior of any Unit within Minturn North except as permitted by law or otherwise expressly approved by the Executive Board.

Section 15.10 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent (i) the exercise by Declarant of any special declarant rights (as that term is defined in the Act); or (ii) the erection or maintenance by Declarant or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of property within Minturn North; provided, however, that Declarant shall comply with all applicable laws in the exercise of the rights in this Section.

## **ARTICLE 16**

### **MISCELLANEOUS MATTERS AND OWNER ACKNOWLEDGEMENTS**

Section 16.1 Architectural Control. No exterior or structural addition, attachment, change or alteration to any Residential Unit or its landscaping, irrigation system or other exterior improvement shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved by the Town of Minturn or any other governmental or quasi-governmental body having jurisdiction over the Property.

Section 16.2 General Reservation. Subject to any applicable restrictions under the Act, Declarant reserves the right to dedicate any access roads, streets and/or sidewalks serving the Community for and to public use and to allow such improvements to be used by owners of adjacent land.

Section 16.3 No Use of Trademark. The term "Minturn North" is a service mark and trade name of Declarant. Each Owner, by accepting a deed to a Unit, covenants and agrees that

such Owner shall not use the terms “Minturn North” without the prior written permission of Declarant.

Section 16.4 Acknowledgements. Each Owner is hereby advised of, and acknowledges and understands, the following matters affecting Minturn North and the Owners’ use and enjoyment thereof:

16.4.1 Public Parking. Owners acknowledge that portions of the Property and areas immediately adjacent to the Property are designated for public parking and public access to Game Creek Trail. The parking along Taylor Ave. associated with the Game Creek Trail shall not be used by Owners and their guests as overflow parking or for the parking of work or recreational vehicles or trailers.

16.4.2 Ongoing Construction. Construction may be ongoing within the Community or in other projects being developed in the neighborhood and Owners may experience construction-related impacts, inconveniences and disruptions, such as, but not limited to: traffic, noise, detours, congestion, dust, and dirt during the course of ongoing construction within the Community and surrounding areas.

16.4.3 Lighting. Owners may experience light entering the Unit from street lighting, commercial lighting, LED signs and displays, and other lighting in the vicinity of Minturn North.

16.4.4 Amenities. No interest in or right to use any amenity located on or near Minturn North shall be conveyed to an Owner pursuant to this Declaration. The owners of nearby facilities shall have the right, in their sole discretion, to remove, relocate, discontinue operation, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to any residents of Minturn North.

16.4.5 No View Easement. Owners acknowledge and accept that there is no easement or other right, express or implied, for the benefit of an Owner or a Unit for light, view or air included in or created by this Declaration or as a result of Owner owning a Unit.

16.4.6 Railroad Activities. The properties within Minturn North PUD are subject to a restrictive covenant benefitting Union Pacific Railroad Company and is binding on the Owner of each Unit, its heirs and/or successors and assigns. The restrictive covenant is attached as **Exhibit D**.

16.4.7 Unit Nos. 1-33 Restrictive Covenant. Unit Nos. 1-33 are subject to a restrictive covenant benefitting the Town of Minturn and is binding on the Owner of each Unit, its heirs and/or successors and assigns. The restrictive covenant is attached as **Exhibit E**.

16.4.8 Unit Nos. 34-39 Restrictive Covenant. Unit Nos. 34-39 are subject to a restrictive covenant benefitting the Town of Minturn and is binding on the Owner of each Unit, its heirs and/or successors and assigns. The restrictive covenant is attached as **Exhibit F**.

16.4.9 Other Property Uses. Owner acknowledges that other properties

located in the vicinity of Minturn North may be developed pursuant to the land uses and restrictions set forth in the applicable zoning and land use documentation, which zoning and/or land use documentation may be amended from time to time, with no representation being made herein concerning the planned uses of such other properties. Purchaser further acknowledges that certain nearby developments contain or may contain certain rental or for-sale restrictions intended to maintain the affordability of units within such developments, which restrictions may include, without limitation, income limits, residency and owner-occupancy requirements and limits on price appreciation.

16.4.10 Rules and Regulations. All Owners are given notice that use of their Units and the Common Area is limited by the rules and regulations as modified from time to time. By acceptance of a deed, each Owner acknowledges and agrees that the use and enjoyment and marketability of the Owner's Unit can be affected by this provision and that the rules and regulations may change from time to time.

16.4.11 Access Road. The main access roads within the Community are private, are maintained by the Association and is subject to rules and regulations of the Association.

16.4.12 Declarant Solely Responsible for Obligations. Declarant is part of the family of related but independent companies affiliated with Minturn North Land Company, LLC. "Minturn North Land Company" is a service mark of Minturn North Land Company, LLC. Declarant is a separate, single-purpose entity that is solely responsible for all of its obligations and liabilities, and it is not the agent of any other entity. Any obligation or liability of Declarant shall be satisfied solely from the assets of Declarant.

16.4.13 Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Colorado. Additional information regarding radon and radon testing may be obtained from the applicable county public health unit.

16.4.14 Mold. Mold, mildew, fungi bacteria and microbiologic organisms (collectively, "Molds") are present in soil, air and elsewhere in the environment. Molds can proliferate in various environments, including, without limitation, damp areas such as crawl spaces, attics, bathrooms, within walls and partitions and in basements. Certain parties have expressed concerns about the possible adverse effects on human health from exposure to molds. Due to various reasons, including the varying sensitivities of different individuals to various types of Molds, there currently exist no state or federal standards regarding acceptable levels of exposure to Molds. Owners are advised to perform their own investigation regarding the presence or potential presence of Molds within the Unit and acknowledge that Declarant will not be responsible for damage caused by Mold.

16.4.15 Development Plans. Declarant may at its discretion at any time, and from time to time without notice, elect for whatever reasons it deems appropriate in its sole and absolute discretion to (a) notwithstanding any proposed development or site plan for the Community, change such development plan or the style, design, size, price, materials,

specifications, number of units, or any other feature or attribute of lots or residences Declarant owns or may build within the Community or in the vicinity of the Project, (b) change the timing of its construction of any other residences or decide not to build at all any or all other residences contemplated by any development plan related to the Community, and/or (c) use any method of marketing to sell, lease or otherwise dispose of any or all of its remaining or future inventory of lots or residences within the Community, including the use of incentives, concessions, price reductions, lot sale programs, bulk sales, or other promotions and techniques without any obligation to offer any comparable benefits to Owner. Declarant cannot be responsible for fluctuations in the market for the price of homes or for other market conditions affecting the Community, and Declarant has the absolute right to respond to market demands.

16.4.16 No Environmental Representation. OWNERS ACKNOWLEDGE AND AGREE THAT DECLARANT HAS NOT MADE, AND OWNERS HEREBY SPECIFICALLY DISCLAIM, ANY WARRANTY OR REPRESENTATION CONCERNING ANY GEOLOGICAL OR ENVIRONMENTAL MATTERS PERTAINING TO THE LOT, THE RESIDENCE OR THE COMMUNITY.

## **ARTICLE 17 DECLARANT'S RIGHTS REGARDING TRANSFER**

Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association or other entity, by written instrument executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk of Eagle County, Colorado. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

## **ARTICLE 18 ALTERNATIVE DISPUTE RESOLUTION**

Section 18.1 **IMPORTANT NOTICE: Agreement to Encourage Resolution of Disputes; Exclusive Procedures; Statutes of Limitation.** Declarant, the Association, its officers and directors, all Owners, and any Person not otherwise subject to the Declaration but who agree to submit to the procedures set forth in this Article (these "Procedures"), including all construction professionals, architects, contractors, subcontractors, developers, builders, builder vendors, engineers, inspectors and others who performed or furnished any engineering, design, planning, supervision, inspection, construction or observation of the construction of any improvement in the Community (each of the foregoing being referred to as a "Party"), hereby agree to encourage the amicable resolution of disputes involving the Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims, as defined below, each alleges to have to the Procedures set forth herein and not to a court of law. **All Parties hereby agree to the mandatory mediation and arbitration of all Claims as set forth in this Article and irrevocably waive any right to trial of any Claim by jury or otherwise in a court of law.**

**Each Party agrees that these Procedures shall be the sole and exclusive remedy that**

**each Party shall have for any Claim.** Should any Party commence litigation or any other action against any Party in violation of the terms of this Article, such Party shall reimburse all costs and expenses, including attorneys' fees, incurred by the other Party in such litigation or action within ten (10) days after written demand.

The Parties understand and agree that no Claim may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

Section 18.2 Statement of Clarification. Without modifying or restricting the scope of these Procedures and as a statement of clarification only, the intent of these Procedures is to foster constructive dialogue between the Parties, to permit corrective measures to be implemented without the necessity of final settlement documentation, to inform Parties of implications related to certain Claims that may not otherwise be readily apparent to such Parties, and to assist the Parties in resolving Claims, if possible, *before* incurring significant legal and consultant expenses, particularly through the informal Procedures set forth in Section 18.4 below.

### Section 18.3 Certain Definitions.

18.3.1 Definition of Claim. As used in this article, the term "Claim" shall mean all claims, disputes and other controversies between one Party and another Party, regardless of how the same may have arisen or on what it might be based, excepting only those matters identified as exclusions in this Section below. Without limiting the generality of the foregoing, "Claim" shall include all claims, disputes or controversies relating to or arising out of, in whole or in part, any of the following: (a) any Agreement for Sale and Purchase between Declarant and any Owner; (b) the Property or the Unit (as defined in any such Agreement); (c) the purchase of the Property or the Unit; (d) the interpretation, application or enforcement of any of the Association Documents; (e) the soils of any property that lie within the Community or the presence of radon and/or mold within any Unit or other areas within the Community; (f) land development, design, construction and/or alteration of any of the improvements within the Community and/or any alleged defect therein; (g) any rights, obligations or duties of any Party under any of the Association Documents or any warranty, whether express, implied or limited, owed by a Party; (h) any limited warranty agreement between Declarant and any Owner and/or the Association; or (i) any breach of any of the foregoing referenced documents.

Notwithstanding the foregoing, the following will not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the Procedures set forth in this Article: (i) any suit by the Association to collect assessments or other amounts due from any Owner, (ii) any suit or other action by the Association or Declarant to act under or enforce any provisions of this Declaration relating to additions or alteration of improvements by Owners and/or any restrictive covenants or obligations of this Declaration, including any suit to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) or such other ancillary relief as the court may deem necessary, and (iii) any suit between Owners, which does not include Declarant or the Association as a party.

18.3.2 Definition of Defect Claim. Any Claim involving the development,

design, construction and/or alteration of the Community or any improvement within the Community and/or any alleged defect therein, however arising, is referred to herein as a “Defect Claim” and the alleged defect, the “Alleged Defect.” The Association, its officers, directors and members, and Owners generally acknowledge, understand and agree that not every necessary repair or replacement of an improvement within the Community is due to a construction defect and, similarly, Declarant and other construction and design professionals that are Parties hereunder generally acknowledge, understand and agree that not every necessary repair or replacement of an improvement is due to faulty required maintenance of or damage to such improvement. Often, such repair and replacement issues arise from a combination of issues that may or may not include the original design and construction, the level of inspection and maintenance programs (or lack thereof) and the existence of other factors such as unusual weather events or conditions, improper use and/or unforeseen wear and tear. This Article supports a proper evaluation of all factors and encourages a collaborative and comparative approach to responsibility.

18.3.3 Association and Owner Responsibilities. The Association and its Executive Board and each Owner understand and acknowledge the importance of a regular inspection and maintenance program for the Community and the Units therein and shall comply with all maintenance manuals and other documents and recommendations provided to the Association and/or Owners with respect to the inspection, operation and routine maintenance of all systems, equipment, and similar items (including, but not limited to, mechanical, electrical, plumbing, structural and exterior systems and improvements) made part of or serving the Community or its Units. The Association and each Owner shall perform such recommended inspection and maintenance and shall make all necessary repairs and maintenance called for to reasonably address the results of these inspections and to maintain the Community and its Units to a level consistent with its original quality. Further, the Executive Board and each Owner shall cooperate, at no cost or expense to them, with all inspections that may be undertaken by or at the request of the Declarant on or with respect to the Community or its Units and any improvement thereon or therein. The Association and each Owner understand, assume the risk and agree that, if the Association or such Owner fails to follow the inspection, maintenance and repair requirements and standards contained in such manuals or materials delivered to them and such failure causes, whether in whole or in part, damage to the Community or its Units, to any improvement within the Community or to other property, the resulting damage shall not be deemed to be the result of a design or construction defect.

#### Section 18.4 Informal Procedures.

18.4.1 Association Meetings. For a period of eight (8) years following the recording of this Declaration, notices of Association and director meetings (including notice of agenda items relating to potential Defect Claims) shall be given to Declarant, and Declarant and/or its representative(s) shall be entitled to attend and participate in at least one (1) meeting of the Association’s members to discuss any potential Claim against Declarant. The Declarant and the Executive Board agree to use their respective good faith efforts to engage in constructive dialogue toward the goal of resolving any design or construction concerns.

18.4.2 Initial Notice. Any Party asserting a Claim (“Claimant”) against another Party (“Respondent”) shall give written notice to each Respondent and to the Executive

Board stating Claimant's good faith description of: (i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim, and (ii) the Claimants' desire to meet with the Respondent to discuss in good faith, ways to resolve the Claim. In that legal and professional fees are discouraged at this stage of these Procedures, no statement as to the legal basis of the Claim or of any proposed remedy is necessary.

18.4.3 Right to be Heard; Negotiation. Any Respondent shall have the right to be heard by the Claimant and, if any Claimant is the Association, by the Members, and the Claimant shall make itself reasonably available upon the request of Respondent to meet in person and to confer for the purpose of resolving the Claim by good faith negotiation. The Parties shall confer and negotiate in good faith toward such resolution for a minimum period of forty-five (45) days after the date that the Claimant has provided notice to each Respondent pursuant to Section 18.4.2 above. Notwithstanding such minimum negotiations period, the Parties are encouraged throughout these Procedures to attempt to resolve any differences between them through ongoing communications and informal dialogue. Any settlement of the Claim through discussion and negotiation shall be documented in writing and signed by the Parties in the manner described in Section 18.6.4 below.

18.4.4 Right to Inspect, Cure and Correct. Any Respondent shall have the right (without obligation), before the institution by the Claimant of binding arbitration below, to inspect, cure and correct any improvement or condition within the Community with respect to a Defect Claim, as follows:

18.4.4.1 In addition to other rights and obligations set forth in this Article, a Respondent may elect to inspect the Alleged Defect, in which event the Respondent shall complete the initial inspection and testing within thirty (30) days after the date that the Claimant has provided notice to each Respondent pursuant to Section 18.4.2 above, and at a mutually agreeable date and time. The Respondent shall bear all costs of inspection and testing, including any damage caused by the inspection and testing. Before entering onto the Community for the inspection, the Respondent shall supply the Claimant with proof of liability insurance coverage. The Respondent shall, upon request, allow the inspection to be observed and recorded or photographed. Nothing that occurs during a Respondent's inspection may be used or introduced as evidence to support a defense of spoliation of evidence by the Claimant or any potential party in subsequent litigation.

18.4.4.2 Within sixty (60) days of completion of the initial inspection or testing, the Respondent may elect to repair some or all of the Alleged Defects by sending a written notice of election to repair to the Claimant. Notwithstanding any tolling provided by law, the applicable statutes of limitation and repose on any and all Claims relating to the Alleged Defects shall be tolled (i) from the completion of the initial inspection and/or testing until (a) Respondent's written notice of election to repair, or (b) the expiration of sixty (60) days, whichever is sooner; and (ii) from the date of any written notice of election to repair by Respondent until sixty (60) days after substantial completion of the repairs. This tolling applies to any and all Claims relating to Alleged Defects for which Claimant has given written notice pursuant to subparagraph 18.4.2 (regardless of whether Respondent has elected to repair none, some or all of the Alleged Defects). If the Respondent elects to repair some or all of the Alleged Defects, then (i) Respondent has the right to do so and the Claimant may not, directly or

indirectly, impair, impede or prohibit the Respondent from making repairs; and (ii) until after the substantial completion of the repairs (a) the Claimant shall not file or pursue final binding arbitration (but may pursue mediation), and (b) if the Claimant is the Association, the Claimant shall not undertake the procedures for a consensus vote for Association action set forth in subparagraph 18.5.4. With any notice of election to repair, Respondent shall provide to Claimant a list of the Alleged Defects that Respondent has elected to repair, a detailed explanation of the repair work to be performed and the reasonably expected completion date for the repairs. The notice shall also include the name of any contractors the Respondent intends to employ for the repairs. Claimant shall promptly cooperate with the Respondent to schedule the repairs and provide reasonable access to the Community (including Common Area, Exterior Maintenance Areas and Unit) for the repairs.

18.4.4.3 For the purpose of exercising the rights to inspect, cure, correct and repair set forth above in subparagraphs 18.4.4.1 and 18.4.4.2, Declarant reserves for itself, its designees, the Association and its designees, a perpetual nonexclusive easement of access throughout the Community (including Common Area, Exterior Maintenance Area and Units) to the extent reasonably necessary to exercise such rights.

18.4.4.4 Within ten (10) days after receipt of the Respondent's notice to repair, a Claimant may deliver to the Respondent a written objection to the proposed repair if the Claimant believes in good faith that the proposed repairs will not remedy the Alleged Defect. The Respondent may elect to modify the proposal in accordance with the Claimant's objection, or may proceed with the scope of work set forth in the original proposal.

18.4.4.5 If the Respondent fails to send a notice to repair or otherwise strictly comply with this Section 1.4.4 within the specified time frames, or if the Respondent does not complete the repairs within the time set forth in the notice to repair, the Claimant shall be released from the requirements of this Section 18.4.4 and may proceed with the formal procedures set forth in Section 18.5 below. Notwithstanding the foregoing, if the Respondent notifies the Claimant in writing before the stated completion date that the repair work will not be completed by the completion date, the Respondent shall be entitled to one reasonable extension of the completion date.

18.4.4.6 The Respondent shall notify the Claimant when repairs have been completed. The Claimant shall have ten (10) days following the completion date to have the work inspected to verify that the repairs are complete and satisfactorily resolved the Alleged Defect. A Claimant who believes in good faith that the repairs made do not resolve the Alleged Defect may proceed with the formal procedures set forth in Section 18.5 below.

18.4.4.7 The specific materials and workmanship related to the repair work performed by the Respondent shall be warranted against material defects for a period of one (1) year, which warranty shall be in addition to any express warranties on the original work and shall be subject to the same terms and conditions of the original express warranty, but which repair work shall not be construed to be an "improvement" to real property for purposes of C.R.S. § 13-80-104.

18.4.4.8 Any Alleged Defect discovered after repairs have been completed shall be subject to the same requirements of this Article if the Respondent did not have notice or an opportunity to repair the new Alleged Defect.

18.4.5 No Requirement for Final Settlement to Begin Repairs; Settlement Proposal. The informal Procedures set forth in this Section 18.4 are for the purpose of encouraging early resolution of Claims and no formal written settlement or other agreement shall be required for inspection and corrective work to occur pursuant to Section 18.4.4 above. No Party shall be deemed to have waived any rights or Claims by reason of such corrective work, and the Claimant shall be entitled to monitor the effectiveness of the corrective measures instituted. Alternatively, if the Respondent desires a formal settlement agreement before commencing corrective measures or other action to resolve the subject matter of the Claim, the following Procedures may be employed:

18.4.5.1 Within thirty (30) days following completion of the inspection process, the Respondent may give Claimant written notification of its settlement proposal, including, in the case of a proposal to remedy a Defect Claim, a report of the scope, findings and results of the inspection, the damage caused by the Alleged Defect and a description of and a timetable for the work necessary to remedy the Alleged Defect.

18.4.5.2 Within fifteen (15) days after its receipt of Respondent's settlement proposal, Claimant shall notify Respondent of its acceptance or rejection thereof. Failure to give such notice shall be deemed to be a rejection of the proposal.

18.4.5.3 If the settlement proposal for remedial work is accepted, Claimant and Respondent shall endeavor to document the settlement proposal in writing within thirty (30) days after acceptance, which settlement shall be signed by the Parties in the manner described in Section 18.6.4 below.

18.4.6 Effect of Corrective Work. It is acknowledged and agreed by all Parties and by any guarantors, insurers and/or indemnitors of the Parties that any work conducted pursuant to Section 18.4.4 above (a) is in the nature of corrective or repair work and does not constitute nor shall be asserted or construed to be an "improvement" to real property for purposes of C.R.S. § 13-80-104, and (b) unless part of a written settlement agreement signed by the Claimant and each Respondent, does not constitute nor shall be asserted or construed to be a voluntary payment or assumption of a voluntary obligation without insurer consent under any applicable commercial general liability insurance policy.

18.4.7 Broad Construction. The Procedures set forth in this Section 18.4 shall be designed to encourage the good faith resolution of a Claim or appropriate correction of improvements and the right of the Respondent to be heard and to inspect and correct shall be ongoing and construed liberally throughout all of the Procedures set forth in this Article so as to permit the same, for example but not limitation, as there arise new issues, legal theories, engineering opinions, developments with insurers, and other developments and information, even if after the formal dispute resolution procedures commence as described below. Accordingly, the informal and formal dispute resolution procedures are anticipated to run concurrently from time to time and the Parties agree to reasonably, timely and in good faith cooperate with each other to respond to requests, to permit the rights set forth in these

Procedures and to facilitate the processes of these Procedures toward the goal of a successful and voluntary resolution of Claims.

## Section 18.5 Formal Notice and Association Consensus.

18.5.1 Formal Notice. At any time following the forty-five (45) day negotiation period described in Section 18.4.3 above (or following such longer period as the Parties may agree), the Claimant may provide written formal notice to each Respondent stating (i) the nature of the Claim, including if applicable a list of any alleged construction defects and a description, in reasonable detail, of the type and location of such defects, the damages claimed to have been caused thereby, and Respondent's role in the Claim, (ii) the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises), (iii) the date on which the Claim first arose, and (iv) the specific relief and/or proposed remedy sought. Notwithstanding the foregoing or any contrary provision herein, the Claimant shall, in addition to complying with these Procedures, follow the alternative dispute resolution procedures set out in the Construction Defect Action Reform Act, Colo. Rev. Stat. § 13-20-801 et seq., as it may be amended from time to time ("CDARA") with respect to any Defect Claim, and the initial formal notice required under CDARA may be combined with the formal notice of Claim required by this Section 18.5.1.

Formal written notice as provided in this Section, following the satisfaction of the Association Consensus Vote (defined below), if applicable, is required as an express condition to commence the resolution Procedures set forth in Sections 18.6, 18.7 and the Sections following, below.

18.5.2 Association Defect Claims. Notwithstanding any contrary provision herein, no formal notice of Claim under Section 18.5.1 (including, without limitation, a Notice of Claim under CDARA) may be made by a Claimant (a) if the Claim is a Defect Claim which relates, in whole or in part, to the Common Area, to the Exterior Maintenance Area or to any portion of the Units that is the responsibility of the Association to maintain, repair, and replace or to any Defect Claim that the Association intends to assert on its own behalf or on behalf of Owners (referred to herein as an "Association Defect Claim"), and (b) unless and until the Procedures set forth in this Section 18.5 below are satisfied. The Parties understand and agree that the Procedures of this Section 18.5 are essential to the protection of individual Owners who may not understand the implications and effects of the assertion of an Association Defect Claim by the Association, including, without limitation, the possible impact of such Claim on sales of Units within the Community and/or the ability of Owners to borrow funds when an Owner's Unit is being pledged as collateral for the loan.

18.5.3 Power of Attorney to Association. The Association is hereby designated to act as the exclusive representative of all Owners in asserting any Association Defect Claim, and each Owner does hereby appoint the Association to exclusively act as its power of attorney (which power shall be irrevocable) with respect to any Association Defect Claims, including the right to compromise and settle the same. No Owner shall assert an Association Defect Claim except through the Association.

18.5.4 Consensus Vote for Association Action. Notwithstanding anything

contained in these Procedures to the contrary and in addition to any requirements prescribed by law, before asserting a Claim the Association shall do the following:

18.5.4.1 The Executive Board of the Association, following the approval of an Association Defect Claim by a majority of all Directors, shall mail or deliver written notice to each Owner at the Owner's last-known address described in the Association's records containing the following: (a) the nature of the Association Defect Claim, the parties involved, and the relief sought, (b) the expenses and fees that the Executive Board anticipates will be incurred, directly or indirectly, in the prosecuting the Association Defect Claim, including attorney fees and consultant and witness fees and other costs of prosecution of the Claim, (c) the costs, if any, to the Association pursuant to an agreement with its attorney or otherwise that would be incurred if the Association elects at any time not to proceed with the Association Defect Claim, (d) the manner in which the Association proposes to fund the cost of the Association Defect Claim, including any proposed special assessments or use of reserves, (e) the anticipated duration of the Association Defect Claim, the likelihood of its success, and the risks to which the Association is exposed (e.g., an assessment of counter-claims and/or other potential liability to the Association), (f) a reasonable assessment and explanation of the anticipated impact of the Association Defect Claim on the marketability of Units for sale within the Community and the impact on the ability of Owners to refinance and buyers of Units to secure financing, explained for both during the pendency of the Association Defect Claim and after its resolution, together with a prominent statement advising Owners if it is concluded that any such impact does exist, (g) a prominent statement advising Owners that the existence of the Association Defect Claim may represent a material matter requiring legal disclosure to lenders, purchasers, auditors and/or other appropriate parties, and (h) providing proper notice for a meeting of Owners to be held not sooner than thirty (30) days or longer than sixty (60) days after such mailing, at which Owners shall discuss and vote on the Association Defect Claim as described in Section 18.5.4.2 below.

18.5.4.2 The Association Defect Claim must be approved and authorized at the meeting of Owners held pursuant to the notice described in Section 18.5.4.1 above by the written affirmative vote, by ballot or by proxy directing the specific vote of the Owner (but not by proxy granting discretion to the proxy holder as to how to vote), of Owners holding at least sixty-seven percent (67%) of the total voting rights in the Association (the "Association Consensus Vote").

18.5.4.3 The Association Consensus Vote must be obtained within sixty (60) days after the mailing to Owners; otherwise the Owners shall be deemed to have declined to provide their informed consent to the Association Consensus Vote.

18.5.5 Limit on Director and Officer Liability. No director or officer of the Association shall be liable to any person or entity for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for an Association Defect Claim if the following criteria are satisfied: (i) the director or officer was acting within the scope of his or her duties; (ii) the director or officer was not acting in bad faith; and (iii) the act or omission was not willful, wanton or grossly negligent.

18.5.6 Association Approval. Only after an Association Consensus Vote is

successfully secured by the Association in the manner described in this Section 18.5 may the Association deliver a formal notice of the Association Defect Claim to each Respondent in the manner described in Section 18.5.1 above.

#### Section 18.6 Mediation.

18.6.1 Following the formal written notice discussed in Section 18.5.1 above, the Claimant shall have thirty (30) days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the County in which the Community is located, unless otherwise agreed by the Parties. A mediator shall be selected no later than forty-five (45) days after the Claimant has given notice to the Respondent of its submittal to mediation and, if the Association is a Party and the Parties are unable to agree on a mediator, one shall be chosen by the American Arbitration Association. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

18.6.2 If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

18.6.3 If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to submit the Claim to binding arbitration as provided below.

18.6.4 Any settlement of the Claim through mediation or through negotiation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the Procedures set forth in this Article. In such event, the Party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney's fees and court costs.

Section 18.7 Final and Binding Arbitration. Upon termination of mediation as provided in Section 18.6.3 above, if Claimant desires to pursue the Claim, Claimant shall have forty-five (45) days to deliver an arbitration notice to Respondent(s) and to initiate final, binding arbitration of the Claim under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. If any Claim is not timely submitted to arbitration, or if Claimant fails to appear for the arbitration proceeding, then the Claim shall be deemed waived and abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of any such Claim. The following arbitration procedures shall be applicable to each Claim that is arbitrated:

18.7.1 The arbitrator must be a person qualified, with applicable industry experience and/or legal experience, to consider and resolve the applicable Claim.

18.7.2 No person shall serve as the arbitrator where that person has any financial or personal interest in the result of the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration (“Arbitrator Disclosure”). If any Party objects to the service of any arbitrator with fourteen (14) days after receipt of the Arbitrator’s Disclosure, such arbitrator shall be replaced in the same manner in which that arbitrator was selected.

18.7.3 The arbitration shall be presided over by a single arbitrator. Notwithstanding any other provision of this Section 18.7, if the Parties are unable to agree upon an arbitrator to resolve a Claim, they shall request from the AAA a list of qualified arbitrators. Promptly following their receipt of the list, the Parties shall meet in person or by telephone and shall follow the AAA procedures of ranking and striking names so as to determine the person who shall serve as the arbitrator. The cost of the list shall be split equally by the Parties.

18.7.4 The arbitrator shall hold at least one hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in the County in which the Community is located unless otherwise agreed by the Parties.

18.7.5 Discovery shall be limited to document disclosures as provided by the AAA, and no other discovery shall be conducted in the absence of an order of the arbitrator or express written agreement among all the Parties. The manner, timing and extent of any discovery shall be committed to the arbitrator’s sound discretion, provided that under no circumstances shall the arbitrator allow more depositions or interrogatories than permitted by the presumptive limitations set forth in Federal Rules Of Civil Procedure 30(a)(2)(A) and 33(a). The arbitrator shall levy appropriate sanctions, including an award of reasonable attorneys’ fees, against any Party that fails to cooperate in good faith in discovery agreed to by the Parties or ordered by the arbitrator pursuant to this Section.

18.7.6 The arbitrator may, in his or her reasonable discretion, permit the Parties to submit pre-hearing briefs, post-hearings briefs and/or proposed findings of fact and conclusions of law. The arbitrator shall also have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants, if applicable.

18.7.7 The Parties agree that where any Claim, dispute or other controversy existing between them is submitted to arbitration, and any other Party may have liability with respect thereto, all Parties agree that the third parties may be joined as additional Parties in the arbitration, or if a separate arbitration exists or is separately initiated, to the consolidation of all such arbitrations. By way of example only and not by limitation, in the event of an Alleged Defect, Declarant would have the right to join in the arbitration any design professional, contractor, subcontractor or other third party whose acts or omissions allegedly caused or contributed to the damages alleged by the Claimant.

18.7.8 The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered promptly after the close of the hearing and no later than thirty (30) days from the close of the hearing, unless otherwise agreed by the Parties. The arbitration award shall be in writing and shall be signed by the arbitrator.

18.7.9 Any issue about whether a Claim is covered by this Article shall be determined by the arbitrator. Notwithstanding anything to the contrary, if a Party contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party.

18.7.10 The arbitrator shall apply the substantive law of Colorado and may award injunctive relief or any other remedy available in Colorado.

18.7.11 The award rendered by the arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in the County in which the Community is located in accordance with applicable law and judgment obtained thereon, and execution may issue. If any Party objects to entry of judgment upon any arbitration award entered pursuant to this Section 18.7, the Party that substantially prevails in any ensuing dispute concerning the entry of judgment upon such award shall be entitled to all reasonable attorneys' fees and costs incurred in the enforcement of the award.

18.7.12 The fees and costs of the arbitration, including without limitation the arbitrator and its consultants, shall be borne equally by the Parties.

18.7.13 Except as may be required by law or for confirmation of an arbitration award, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration or arbitration award without the prior written consent of all Parties to the Claim.

Section 18.8 Amendments to this Article; Standing to Enforce. Notwithstanding anything to the contrary contained in this Declaration or any of the Association Documents, the terms and provisions of this Article 18 inure to the benefit of Declarant, are enforceable by Declarant, and shall not ever be amended or nullified without the written consent of Declarant and without regard to whether Declarant owns any portion of the Community at the time of such amendment. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 18 ARE A SIGNIFICANT INDUCEMENT TO THE DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. Any amendment made without the requisite written consent of Declarant shall be null and void and shall have no effect. Further, all employees and agents of Declarant and all contractors, subcontractors, architects, engineers and other development professionals associated with the design or construction of any portion of the Community (each a "Third Party Beneficiary") are third-party beneficiaries of this Article and of the terms and conditions contained herein, including without limitation the requirement for binding arbitration, and any Third Party

Beneficiary has standing to enforce the terms and conditions of this Article, including without limitation to compel binding arbitration.

Section 18.9 Reformation. The Parties agree that reliance upon courts of law and equity can add significant costs and delays to the process of resolving Claims. Accordingly, they recognize that an essential part of the Declaration is this Article and its agreement between and among the Parties to provide for the submission of all Claims to informal negotiation and correction efforts, mediation and final and binding arbitration. Therefore, if any court or arbitrator concludes that any provision of these Procedures is void, voidable or otherwise unenforceable, the Parties understand and agree that the court or arbitrator shall reform each such provision to render it enforceable, but only to the extent absolutely necessary to render the provision enforceable and only in view of the Parties' express desire that the merits of all Claims be resolved only by arbitration and, to the greatest extent permitted by law, in accordance with the principles, limitations and procedures set forth in these Procedures.

Section 18.10 Notices; Computation of Time. All notices given or required by these Procedures shall be in writing and shall be deemed given and received (a) when hand delivered to the intended recipient by whatever means; (b) three business days after the same is deposited in the United States mail, with adequate postage prepaid and sent by certified mail, return receipt requested, or (c) one business day after the same is deposited with an overnight courier service of national reputation, with the delivery charges prepaid. In the event any date called for herein falls on a Saturday, Sunday or legal holiday for which U.S. mail service is not provided, such date shall be extended to the next business day following such Saturday, Sunday or holiday.

## **ARTICLE 19 MISCELLANEOUS**

Section 19.1 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 19.2 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the provisions of this Declaration and the termination provisions of the Act.

Section 19.3 Amendment. The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon approval of Owners representing sixty-seven percent (67%) or more of the total voting interest in the Association at a meeting of the Owners called for that purpose or by written consent; provided, however, any proposed amendment to this Declaration which affects any right of Declarant shall require the prior written approval of Declarant, in addition to the approval requirements otherwise set forth herein, including, without limitation, in the manner provided in Section 18.8 above. In addition, a majority of the voting Directors of the Executive Board may make, without the approval of the Owners, changes to any Association Documents to the extent necessary to correct a factual error.

Section 19.4 Unilateral Amendment Rights Reserved by Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration to the fullest extent permitted under the Act including, without limitation, to correct clerical, typographical or technical errors, or to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association.

Section 19.5 Recording of Amendments. Any amendment to this Declaration must be executed by the President of the Association and recorded in the Office of the Clerk and Recorder of County of Eagle, Colorado, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment or that no approval of the Owners was necessary.

Section 19.6 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges, and other provisions contained in this Declaration, the Articles, the Bylaws, and the rules and regulations of the Association, all as amended, shall be by any proceeding pursuant to Article 18 of this Declaration to the extent required by the terms of this Declaration, or otherwise at law or in equity, against any person or persons, including the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain, and/or prosecute any such proceedings, and the Association shall further have the right (after notice and an opportunity to be heard) to levy and collect fines for the violation of any provision of the aforesaid documents. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded under Article 18 or by the Court, as applicable.

Section 19.7 Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 19.8 Conflict of Provisions. In case of any conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In case of any conflict between the Articles and the Bylaws, the Articles shall control.

Section 19.9 Nonwaiver. Failure by Declarant, the Association, or any Owner or First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 19.10 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular and the use of any gender shall include all genders.

Section 19.11 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 19.12 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Executed as of the date first written above.

MINTURN CROSSING, LLC, a Colorado limited liability company

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

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

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

STATE OF COLORADO                    )  
  )ss.  
COUNTY OF EAGLE                    )

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

Witness my hand and official seal.  
My commission expires:\_\_\_\_\_

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

**EXHIBIT A**  
**Property Description**

A PARCEL OF LAND LOCATED IN THE NW 1/4 OF THE NW 1/4 OF SECTION 26, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE 6TH PRINCIPAL MERIDIAN AND BEING A PORTION OF THOSE LANDS DEFINED IN DEED RECORDED IN BOOK 687 AT PAGE [268](#) AND NON-RECORDED LAND SURVEY PLAT PERFORMED BY EAGLE VALLEY SURVEY, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF A PARCEL RECORDED AT RECEPTION NUMBER [225471](#), FROM WHICH THE WEST 1/16 CORNER OF SECTION 23 AND SAID SECTION 26, WITH ALL BEARINGS CONTAINED HEREIN BEING BASED UPON, BEARS N09°23'22"E 505.29 FEET; THENCE UPON SAID WESTERLY LINE S00°54'59"E 83.57 FEET; THENCE CONTINUING ALONG THE SOUTHERLY AND WESTERLY LINE OF SAID PARCEL N89°05'00"E 20.00 FEET; THENCE S00°55'00"E 11.78 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF TAYLOR AVENUE PER THE DOCUMENT RECORDED AT RECEPTION NUMBER [144697](#); THENCE THE FOLLOWING SIXTEEN (20) COURSES UPON SAID RIGHT-OF-WAY LINE:

- 1) S61°43'41"W 0.56 FEET;
- 2) THENCE 146.86 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 123.25 FEET, A DELTA ANGLE OF 68°16'25", AND A CHORD THAT BEARS S27°35'35"W 138.33 FEET;
- 3) THENCE S06°32'44"E 191.80 FEET;
- 4) THENCE 97.75 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 294.17 FEET, A DELTA ANGLE OF 19°02'23", AND A CHORD THAT BEARS S02°58'28"W 97.31 FEET;
- 5) THENCE 136.62 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 315.79 FEET, A DELTA ANGLE OF 24°47'17", AND A CHORD THAT BEARS S00°06'00"W 135.56 FEET;
- 6) THENCE S12°17'38"E 36.23 FEET;
- 7) THENCE 36.82 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 237.18 FEET, A DELTA ANGLE OF 8°53'37", AND A CHORD THAT BEARS S07°50'50"E 36.78 FEET;
- 8) THENCE S03°24'01"E 331.37 FEET;
- 9) THENCE 56.70 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 354.36 FEET, A DELTA ANGLE OF 9°10'03", AND A CHORD THAT BEARS S01°04'30"W 56.64 FEET;
- 10) THENCE S05°39'15"W 31.82 FEET;
- 11) THENCE 61.97 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 613.32 FEET, A DELTA ANGLE OF 5°47'21", AND A CHORD THAT BEARS S02°45'35"W 61.94 FEET;
- 12) THENCE S00°08'06"E 130.70 FEET;
- 13) THENCE 51.69 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 600.87 FEET, A DELTA ANGLE OF 4°55'44", AND A CHORD THAT BEARS S02°35'58"E 51.67 FEET;
- 14) THENCE S05°03'50"E 70.50 FEET;
- 15) THENCE 38.39 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 483.44 FEET, A DELTA ANGLE OF 4°33'00", AND A CHORD THAT BEARS S02°47'20"E 38.38 FEET;
- 16) THENCE S00°30'50"E 233.54 FEET;
- 17) THENCE 39.30 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 1128.82 FEET, A DELTA ANGLE OF 1°59'41", AND A CHORD THAT BEARS S00°29'01"W 39.30 FEET;
- 18) THENCE S01°28'51"W 104.95 FEET;
- 19) THENCE 152.32 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 247.77 FEET, A DELTA ANGLE OF 35°13'20", AND A CHORD THAT BEARS S19°05'31"W 149.93 FEET;
- 20) THENCE S36°42'11"W 48.35 FEET;

THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY LINE 211.61 FEET ALONG THE ARC OF A

CURVE TO THE LEFT, HAVING A RADIUS OF 2208.58 FEET, A DELTA ANGLE OF 5°29'23", AND A CHORD THAT BEARS N05°16'34"W 211.53 FEET;  
 THENCE N08°01'15"W 215.43 FEET;  
 THENCE 252.18 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 2013.41 FEET, A DELTA ANGLE OF 7°10'35", AND A CHORD THAT BEARS N11°36'33"W 252.02 FEET;  
 THENCE N15°11'50"W 538.46 FEET;  
 THENCE N14°53'24"W 239.28 FEET;  
 THENCE 127.08 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 800.55 FEET, A DELTA ANGLE OF 9°05'42", AND A CHORD THAT BEARS N11°48'34"W 126.94 FEET;  
 THENCE N07°15'43"W 164.66 FEET;  
 THENCE 143.34 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 763.58 FEET, A DELTA ANGLE OF 10°45'21", AND A CHORD THAT BEARS N12°38'24"W 143.13 FEET;  
 THENCE N18°01'03"W 324.55 FEET;  
 THENCE 60.43 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 2813.69 FEET, A DELTA ANGLE OF 1°13'50", AND A CHORD THAT BEARS N18°37'58"W 60.43 FEET TO THE NORTH PHASE LINE OF PHASE I;  
 THENCE UPON SAID NORTH PHASE LINE THE FOLLOWING THREE (3) COURSES:  
 1) S89°29'35"E 285.21 FEET;  
 2) S44°37'42"E 237.92 FEET;  
 3) N90°00'00"E 117.73 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B**  
**Table of Allocated Interests**

<b><u>UNIT</u></b>	<b><u>ALLOCATED INTEREST</u></b>	<b><u>ALLOCATED VOTES</u></b>
1	2.91	1
2	2.91	1
3	2.91	1
4	2.91	1
5	2.91	1
6	2.91	1
7	2.91	1
8	2.91	1
9	2.91	1
10	2.91	1
11	2.91	1
12	2.91	1
13	2.91	1
14	2.91	1
15	2.91	1
16	2.91	1
17	2.91	1
18	2.91	1
19	2.91	1
20	2.91	1
21	2.91	1
22	2.91	1
23	2.91	1
24	2.91	1
25	2.91	1
26	2.91	1
27	2.91	1
28	2.91	1
29	2.91	1
30	2.91	1
31	2.91	1
32	2.91	1
33	2.91	1
34	0.67	1
35	0.67	1
36	0.67	1
37	0.67	1
38	0.67	1
39	0.67	1
<b>TOTALS</b>	<b>100%</b>	<b>39</b>

**EXHIBIT C**  
**Easements and Licenses of Record**

9. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT DEED RECORDED JULY 29, 1912 IN BOOK 78 AT PAGE [401](#).
10. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN ORDINANCE NO. 128 SERIES OF 1974 RECORDED DECEMBER 20, 1974 IN BOOK 238 AT PAGE [4](#).
11. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN ORDINANCE NO. 147 SERIES 1976 RECORDED AUGUST 20, 1976 IN BOOK 248 AT PAGE [178](#).
12. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DEDICATION RECORDED SEPTEMBER 02, 1976 IN BOOK 248 AT PAGE [452](#).
13. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT RECORDED MAY 10, 1979 IN BOOK 285 AT PAGE [292](#).
14. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN QUIT CLAIM DEED RECORDED JANUARY 07, 1980 IN BOOK 297 AT PAGE [22](#).
15. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN ORDINANCE NO. 5 SERIES 1981 RECORDED SEPTEMBER 29, 1981 IN BOOK 329 AT PAGE [618](#).
16. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN ORDINANCE NO. 128 SERIES 1974 RECORDED DECEMBER 14, 1981 IN BOOK 333 AT PAGE [349](#).
17. THE EFFECT OF DISCLAIMER OF RIGHT, TITLE AND INTEREST TO CERTAIN LAND LYING WITHIN EAGLE COUNTY, RECORDED NOVEMBER 05, 1984, IN BOOK 398 AT PAGE [946](#).
18. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN QUIT CLAIM DEED RECORDED MAY 31, 1991 IN BOOK 555 AT PAGE [87](#).
19. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN BARGAIN AND SALE DEED RECORDED FEBRUARY 02, 1996 IN BOOK 687 AT PAGE [268](#).
20. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN QUIT CLAIM DEED RECORDED DECEMBER 22, 2000 UNDER RECEPTION NO. [746799](#).
21. THE EFFECT OF INCLUSION OF SUBJECT PROPERTY IN THE EAGLE RIVER FIRE PROTECTION DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED JUNE 24, 2002,

UNDER RECEPTION NO. [799500](#).

22. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN PUBLIC SERVICE COMPANY OF COLORADO EASEMENT RECORDED NOVEMBER 16, 2004 UNDER RECEPTION NO. [897924](#).
23. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN BOUNDARY AGREEMENT RECORDED NOVEMBER 10, 2008 UNDER RECEPTION NO. [200824177](#).
24. EAGLE RIVER FIRE PROTECTION DISTRICT MAP RECORDED DECEMBER 7, 2009 UNDER RECEPTION NO. [200926003](#).
25. MAP SHOWING THE LOCATION OF THE PROPOSED DITCHES AND PIPE LINES OF THE LEADVILLE\RED CLIFF WATER, LIGHT AND POWER COMPANY RECORDED FEBRUARY 27, 2017 UNDER RECEPTION NO. [201703240](#).
26. STATEMENT OF SPRAQUE DITCH RECORDED FEBRUARY 28, 2017 UNDER RECEPTION NO. [201703454](#).
27. THE EFFECT OF INCLUSION OF SUBJECT PROPERTY IN THE UPPER EAGLE VALLEY SANITATION DISTRICT, AS EVIDENCED BY INSTRUMENTS RECORDED MARCH 28, 2017, UNDER RECEPTION NO. [201705247](#) AND [201705251](#).
28. (THIS ITEM WAS INTENTIONALLY DELETED)
29. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AGREEMENT RECORDED JANUARY 10, 2019 UNDER RECEPTION NO. [201900427](#) AND RE-RECORDED JANUARY 31, 2019 UNDER RECEPTION NO. [201901422](#).
30. COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATION OF MINERALS AND MINERAL RIGHTS, RESERVATION OF TELEVISION OR COMMUNICATIONS LINES AND APPURTENANT FACILITIES, AND RESERVATION OF EASEMENTS AS SET FORTH IN QUIT CLAIM DEED BY AND BETWEEN UNION PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION AND MINTURN CROSSING, LLC, A COLORADO LIMITED LIABILITY COMPANY RECORDED \_ \_ \_ \_ \_ , 2023 UNDER RECEPTION NO. \_ \_ \_ \_ \_ .

**EXHIBIT D**  
**Union Pacific Railroad Company Restrictive Covenant**

**RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:**

Union Pacific Railroad Company  
Attn: Real Estate Sales (Folder No. 2802-90)  
1400 Douglas Street, Mail Stop 1690  
Omaha, Nebraska 68179

---

*(Space Above for Recorder's Use Only)*

2802-90

**RESTRICTIVE COVENANT FOR THE BENEFIT OF  
UNION PACIFIC RAILROAD COMPANY**

This RESTRICTIVE COVENANT FOR THE BENEFIT OF UNION PACIFIC RAILROAD COMPANY ("Covenant") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by **MINTURN CROSSING, LLC**, a Colorado limited liability company ("Declarant"), and is enforceable by **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("UPRR"), as and to the extent set forth herein. Declarant and UPRR may hereinafter be collectively referred to as "Parties".

**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 1-39 in the Town of Minturn, Eagle County, Colorado legally described on Exhibit A attached hereto and incorporated herein (collectively, "Properties"). 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 (each, a "Unit"), pursuant to the Final Plat for MNPUD, recorded on \_\_\_\_\_, 202\_ under Reception No. \_\_\_\_\_ in the real property records of the Town of Minturn, Eagle County, Colorado.

B. The Parties agreed to the Covenant under that certain Purchase and Sale Agreement dated October 17, 2019, as amended, located in UPRR's Real Estate Folder No. 2802-90.

C. Declarant agrees that each Unit will be held, sold and conveyed by Declarant to various third party property owners (each, an "Owner") subject to the following covenant, condition and restriction, which constitutes an irrevocable covenant running with the title to the

Properties as a burden thereon for the benefit of UPRR, its successors and assigns, and will be binding on the Owner of each Unit, its heirs and/or successors and assigns.

#### **AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing, Declarant hereby represents, covenants and agrees to sell and convey each Unit to any Owner, subject to the following covenant, condition and restriction which each Owner, shall covenant for itself, its heirs and/or successors and assigns, to faithfully keep, observe and perform as set forth below.

1. Railroad Proximity: Owner acknowledges that the adjacent property abutting the westerly boundary line of the MNPUD ("UPRR's Adjacent Property") is dedicated and used for railroad purposes, and that railroad operations may create noise, vibrations, emissions, fumes and odors twenty-four (24) hours a day, and that the amount, nature and intensity of railroad operations may increase or change (collectively, the "Permitted Effects"). Owner accepts and the Unit is subject to the existence of the Permitted Effects. By acceptance of the Unit, Owner agrees that, at Owner's sole cost and expense, as a part of the development of the MNPUD, Owner shall design and install and/or construct and thereafter maintain improvements to reduce or limit the Permitted Effects and to comply with all governmental requirements, if any, which may be imposed as a condition to the development and use of the Unit because of the Permitted Effects.

Owner shall not, and hereby waives all rights to, (i) institute legal proceedings against UPRR to reduce or lessen the Permitted Effects, (ii) directly or indirectly participate in petition drives, lobbying efforts or other activities seeking the enactment of federal, state or local laws or ordinances to reduce or lessen Permitted Effects, or (iii) directly or indirectly petition the United States Surface Transportation Board ("STB") or any other government entity with jurisdiction over UPRR's use of UPRR's Adjacent Property to reduce or terminate UPRR's performance of railroad operations on UPRR's Adjacent Property, including, but limited to, re-activation of UPRR's Tennessee Pass Subdivision, which includes the MNPUD, as permitted under **STB Docket No. AB-8, Sub-No. 36X and STB Docket No. AB-12, Sub-No. 189X**. Any party breaching such covenant shall reimburse UPRR for all costs incurred by UPRR to comply with any such orders, laws or ordinances, including, without limitation, attorney fees and court costs.

2. Covenant Runs with the Properties: 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 constitutes 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, its heirs and/or successors and assigns.

3. Disputes: This Covenant shall be enforceable by UPRR, its successors and assigns, 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.
4. 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.
5. 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 Declarant, any Owner of a Unit, and UPRR.
6. 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.
7. 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.

*(Remainder of page intentionally left blank.)*

IN WITNESS WHEREOF, the Parties have executed this Covenant on the day and year above first written.

Declarant:

**MINTURN CROSSING, LLC,**  
**a Colorado limited liability company**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF COLORADO)**

) ss.

**COUNTY OF EAGLE )**

This 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.

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

(Seal)



**EXHIBIT A**  
**TO FORM OF RESTRICTIVE COVENANT INSTRUMENT**

**LEGAL DESCRIPTION OF THE PROPERTIES  
(TO BE ATTACHED)**

**EXHIBIT E**  
**Lots 1-33 Restrictive Covenant**

**RESTRICTIVE COVENANT IMPOSING A TRANSFER ASSESSMENT DEED  
RESTRICTION FOR THE BENEFIT OF TOWN OF MINTURN**

THIS RESTRICTIVE COVENANT IMPOSING A TRANSFER ASSESSMENT DEED RESTRICTION FOR THE BENEFIT OF TOWN OF MINTURN (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:

D. 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 1-33 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

E. The Declarant agreed to this Covenant as part of its application for approval of the MNPUD, approved by the Town of Minturn by Resolution No. \_\_\_\_\_ dated \_\_\_\_\_, 202\_, as a means by which a one percent (1%) Transfer Assessment can be provided for the benefit of persons residing in the Town of Minturn as further defined below; and

F. The Declarant agrees that each of the thirty-three (33) 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

G. This Covenant requires that each Unit within the Property is subject to a Transfer Assessment of one percent (1%) of the gross sales price of such Unit, excluding escrow and closing costs. An “Eligible Household” using the Unit as its Primary Residence (as those

terms are defined herein), may be eligible for a temporary exemption of the Transfer Assessment; and

H. Declarant desires to enter into this Covenant requiring a Transfer Assessment. In addition, the declarant agrees to bind the Properties, and restrict the use and occupancy of the units in accordance with this Covenant.

I. There is a demonstrated need for a Transfer Assessment in support of the 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:

8. Definitions

- a. "Eligible Households" means Households that will use the Unit as their Primary Residence, and 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 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. 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. "Owner" means the owner of record of the Unit regardless of relation to the Owner or lessee.
  - d. "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 and income tax returns.
  - e. "Transfer Assessment" means the Assessment payable to the Town of Minturn, or its assign, upon the sale of a Unit (conveyance of title to a Unit, whether or not the conveyance is filed of record) of 1% of the gross sales price of such Unit, excluding escrow and closing costs. The Transfer Assessment shall be used at the sole discretion of the Town of Minturn for the benefit of Town residents and for any private, nonprofit successor or assign, and to support the cost of administering such programs.
9. 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.
10. Payment of Transfer Assessment:
- a. The Transfer Assessment shall be due and payable to the Town of Minturn, or its assign, at the time of closing of a sale of a Unit (conveyance of title to a Unit, whether or not the conveyance is filed of record).
  - b. The Transfer Assessment shall constitute a lien upon the Unit until it is paid. If not paid when due, the unpaid Assessment shall bear interest at 12% per annum from the due date until paid in full.

- c. The Transfer Assessment is payable to the Town of Minturn, 302 Pine St., Minturn CO, 81645 (or its assign) and must be accompanied by:
  - i. A real property Declaration Form or other form as is filed with the Clerk and Recorder along with the conveying instrument attesting to the gross sales price of the Unit, and
  - ii. An Acknowledgement of the Restrictive Covenant Imposing a Transfer Assessment executed by the Buyer, in the form set forth in **Exhibit B** attached hereto and incorporated herein by this reference.

11. Temporary Exemption from Transfer Assessment:

- a. A sale to an Eligible Household who is using a Unit as its Primary Residence is exempt from paying the Transfer Assessment until the exemption ends. The exemption is “temporary” in that it applies only as long as the Owner is considered an Eligible Household and uses the Unit as its Primary Residence. The Town of Minturn shall determine whether a person(s) meets the definition of Eligible Household and Primary Residence based on the criteria set forth in the definitions above. The determination shall be made as of the closing date of the sale of a Unit.
- b. If a proposed Buyer seeks to claim a temporary exemption from the transfer Assessment provided herein before a conveyance or transfer of a Assessment interest in a Unit, the proposed Buyer shall submit an Application for Temporary Exemption of the transfer Assessment, together with the applicable processing Assessment, to the Town of Minturn, or its assign, at least fourteen (14) days prior to the closing date and shall have received the Town’s written determination of the proposed Buyers exemption status.
- c. The application for Temporary Exemption is attached hereto as **Exhibit C** and incorporate herein by this reference. If a proposed Buyer has not been deemed as eligible for a temporary exemption to the Transfer Assessment prior to the close of the sale of a Unit, the sale shall be deemed not exempt and the Transfer Assessment shall be paid as set forth herein.
- d. An Owner who received a temporary exemption from the Transfer Assessment must verify to the Town of Minturn, or its assign, on at least an annual basis, that it remains eligible for the temporary exemption. To confirm such eligibility, the Owner of a Unit 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.
- e. If at any time, the Owner becomes ineligible because it is no longer considered an Eligible Household or the Owner stops using the Unit as its Primary Residence, the Owner must immediately pay the Transfer Assessment. The Transfer Assessment shall be calculated based on the Owners original sale price for the Unit as evidenced by items in Section 3.c.i above. If the Transfer Assessment is not paid, the Transfer Assessment shall constitute a lien upon the Unit until it is paid. If not paid when due, the unpaid Assessment shall bear interest at 12% per annum from the due date until paid in full.

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

To Town of Minturn: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

- 62

16. 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.
17. 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.
18. 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.
19. 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.
20. 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 both the Declarant and the Town of Minturn. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.
21. 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.
22. 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.
23. 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.
24. 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.
25. 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.

26. 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 benefits within the Town of Minturn.

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

OWNER:

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 TRANSFER ASSESSMENT DEED RESTRICTION FOR THE BENEFIT OF TOWN OF MINTURN

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 “THE RESTRICTIVE COVENANT IMPOSING A TRANSFER ASSESSMENT DEED RESTRICTION FOR THE BENEFIT OF TOWN OF MINTURN “, 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. Buyer acknowledges that the Covenant imposes a 1% Transfer Assessment on the sale or conveyance of the Unit. The Transfer Assessment is due and payable at the time of closing of the sale or conveyance of the Unit and is a lien on the Unit until paid.
3. Some sales/purchases are exempt from the Transfer Assessment. If I (we) believe my (our) purchase is exempt, I (we) may apply for a temporary exemption from the Transfer Assessment. If I (we) believe my subsequent sale of the Unit is exempt from the Transfer Assessment, the Buyer may apply for the exemption. A sale/purchase for which no exemption is applied for and granted before closing is conclusively deemed to be not exempt. The exemption described herein is considered “temporary” because it applies only so long as the property use which qualified the purchase as exempt continues. Generally, if I (we) stop using the Unit for my (our) Primary Residence, but continue to own the Unit, I (we) will then owe the Transfer Assessment from my (our) purchase of the Unit.
4. States that the notice to Buyer, pursuant to Section 5 of the Covenant, should be sent to:

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

5. 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

### TRANSFER ASSESSMENT EXEMPTION AND 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 ( <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 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.

I have read and acknowledge the above information to be true, 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: \_\_\_\_\_

**TRANSER ASSESSMENT EXEMPTION - 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: \_\_\_\_\_

**EXHIBIT F**  
**Lots 34-39 Restrictive Covenant**

**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:

J. 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

K. The Declarant agreed to this Covenant as part of its application for approval of the MNPUD, approved by the Town of Minturn by Resolution 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

L. 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

M. The Declarant agrees that upon the initial offering of homes for sale within Lots 34-39, 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. 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 Eagle County residents pursuant to the terms below; and

N. 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:

27. Definitions

- a. "Eligible Households" 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 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. 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. "Owner" means the owner of record of the Unit regardless of relation to the Owner or lessee.
  - d. "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 and income tax returns.
28. 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.
29. 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.
30. 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.
31. 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 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Town of Minturn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

32. 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.
33. 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.
34. 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.
35. 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.
36. 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.
37. 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 both the Declarant and the Town of Minturn. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

38. 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.
39. 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.
40. 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.
41. 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.
42. 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.
43. 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.

OWNER:

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:

6. 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.
7. States that the notice to Buyer, pursuant to Section 5 of the Covenant, should be sent to:  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. 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
4. Check for \$100.00 processing fee ( <i>To: Town of Minturn Clerk</i> )	_____
5. Identification ( <i>Copy of ID; drivers license, passport, etc.</i> )	_____
6. 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 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.

I have read and acknowledge the above information to be true, 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: \_\_\_\_\_

**EXHIBIT G**  
**Minturn North PUD**  
**Wildlife Mitigation Plan**

This Wildlife Mitigation Plan is provided to avoid, minimize, and mitigate wildlife impacts resulting from the Minturn North PUD. The Minturn North Property Owners Association will have the responsibility and authority to enforce this plan. **This plan will be incorporated by reference into the Declaration of Covenants, Conditions and Restrictions for the PUD.**

**1.0 DOGS**

Each residential lot will be permitted to have up to two dogs and offspring up to three months old. Dogs shall not be allowed off-leash within the PUD unless contained within an adequate facility such as fences, walled space, dog run, or kennel. These facilities must be located immediately adjacent to the residence within the building envelope and shall not exceed 500 square feet.

At no time are dogs allowed to run freely. When dogs move beyond their owner's building envelope, the dogs must be controlled by a leash and under the direct control of its owner(s) or owner(s) representative. Owner(s) or Owner(s) representative shall be required to immediately pick up any fecal waste of their animals and dispose of in an appropriate manner. Guests of homeowners shall comply with all dog control measures contained herein. It is the lot and/or dog owner's responsibility to ensure compliance.

Any dog harbored on-site must be licensed by the appropriate governmental entity and must wear the numbered identification tags provided.

Contractors, Sub-Contractors, and employees working within the PUD are prohibited from bringing dogs onto the PUD.

The Town, Property Owners Association and Colorado Parks and Wildlife (CPW) may also control stray dogs within the PUD. Persons not in compliance with these dog restrictions will be responsible for all costs for enforcing these provisions.

Homeowners will be educated regarding dog policies. Homeowners will also be educated that they should not feed dogs and other pets outside their homes, including decks, to avoid attracting nuisance wildlife or predators.

**2.0 FENCING**

a) Wildlife movements, optimize habitat availability, and reduce wildlife mortality. Except for designed character fencing (including privacy fencing), dog runs, temporary erosion, sediment control, Game Creek setback fencing, and construction fencing, fencing is prohibited throughout the PUD. All fencing must comply with the CPW approved fencing designs to facilitate local and migratory wildlife. Homeowners must educate themselves about bears and other wildlife via CPW's online brochure entitled: "Living with Wildlife in Bear Country".

Fencing along the Game Creek setback shall be maintained by the Association and conform to CPW approved fencing designs. Game Creek fencing shall not restrict movement of deer and elk with an opening in the lower ½ of at least 16” to allow passage of deer fawns and elk calves. This does not apply to approved individual lot fences. Individual lot owners shall maintain fencing on their property. All fencing shall not exceed 42” in height.

### **3.0 LIVESTOCK**

It is expressly prohibited to board or keep any livestock with the Minturn North PUD.

### **4.0 BEARS AND MOUNTAIN LIONS**

Black bears are known to travel great distances in their daily seasonal movements. Most bears do not cause damage where residential areas have encroached into bear habitat. The key is that if a bear doesn’t find food, it will move on. Black bears are omnivorous and while they mostly eat vegetation, they will eat almost anything. They will eat human food, garbage, hummingbird nectar, birdseed, pet food, grease off grills, suntan lotion, etc. Garbage generally provides the greatest attraction for bears to residential developments. Once a bear has found an easily accessible, consistent food source, it will overcome its wariness of people and visit regularly. This increases the chance of bear-human interaction. After repeated use of a food source, the bear may even act aggressively toward residents, their pets, or their unsuspecting neighbors. When this occurs and wildlife authorities are notified, the bear may be killed to protect human safety.

The following measures are required to reduce potential bear interaction:

- a) All lots must use bear proof trash cans. During construction, all trash bins must be regularly cleared of debris.
- b) Except for construction dumpsters, outside storage of trash or garbage, no matter how briefly (e.g., overnight), at any residence or anywhere in the PUD is not permitted. If wildlife damages trash containers to a point where they are ineffective, the trash containers must be kept indoors until they are replaced by effective containers by the Owner.
- c) There shall be no dumps or underground disposal within the PUD. Buried garbage will attract bears.
- d) Residents are prohibited from using a garden compost pile, unless the compost pile is contained within a bear proof receptacle meeting North American Bear Society, CPW, or U.S. National Park Service specifications and Town DRB approval.
- e) Pets shall not be fed outside. Bowls of food left outside will attract bears and other predators and nuisance species (e.g., skunks) of wildlife. Some of these wildlife species may carry disease that can be transmitted to pets.
- f) Bird Feeders must be taken in at night.
- g) Homeowners must educate themselves about bears and other wildlife via CPW’s online brochure entitled: “Living with Wildlife in Bear Country”.

- h) Mountain Lions are occasionally present year-round in the Minturn area but may be more common from fall through spring when deer and elk are wintering and fawning/calving at lower elevations. Homeowners must educate themselves about bears and other wildlife via CPW's online brochure entitled: "Living with Wildlife in Mountain Lion Country". Except for bird feeders, the feeding, baiting, salting, or other means of attracting wildlife to the PUD is prohibited.

## **5.0 GAME CREEK PRESERVED AREA**

Riparian habitats support some of the highest wildlife values on any habitat type. As a result, the PUD has created a minimum 30' Game Creek setback with limited access for the purpose of enhancements and maintenance only. Permanent impacts to wetlands will be avoided. Appropriate precautionary measures shall be taken to assure the protection of all native vegetation with the wetland areas.

## **6.0 NEIGHBORHOOD LANDSCAPING**

Landscaping within the PUD shall utilize plant material intended to minimize attraction to wildlife as well as visual cover for Mountain Lions.

## **7.0 ADDITIONAL COMMITMENTS**

This Wildlife Mitigation Plan will be incorporated by reference into the Property Owners Association Declaration of Covenants, Conditions and Restrictions and cannot be changed without the written consent of CPW and the Town of Minturn.

## **8.0 ENFORCEMENT**

The authority to enforce the terms of the Plan is granted to CPW, Eagle County, and the Minturn North Property Owners Association. If there is a violation of this Plan by an owner within the PUD, then the following procedures shall be taken to enforce the terms hereof:

- a) The owner violating the Plan shall first receive a written warning of the violation. The violation must be cured as reasonably determined by the Property Owners Association.
- b) If a second offense occurs of the same violation or owner does not remedy the offense within the reasonable timeframe, a \$100 fine will be assessed against the owner.
- c) If a third offense occurs of the same violation, owner will be assessed a \$500 fine.
- d) Future offenses by the same owner of the same violation will double as they occur.
- e) All remedies available under Colorado law shall be used to collect fines including the POA's right to lien a property.
- f) All collected fines will be paid 30% to the POA and 70% to the Town of Minturn.

Enforcement of the Wildlife Mitigation Plan shall be administered by the Minturn North Property Owners Association.